

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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In re:	§	
	§	Chapter 11
	§	
CHESAPEAKE ENERGY CORPORATION,	§	Case No. 20-33233 (DRJ)
<i>et al.</i> , <sup>1</sup>	§	
	§	(Jointly Administered)
Reorganized Debtors.	§	
	§	

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**REORGANIZED DEBTORS' OBJECTION TO  
PROOF OF CLAIM NO. 13382 FILED BY MARCO A. MONTEMAYOR**

**This is an objection to your claim. The objecting party is asking the Court to disallow the claim that you filed in this bankruptcy case. You should immediately contact the objecting party to resolve the dispute. If you do not reach an agreement, you must file a response to this objection and send a copy of your response to the objecting party within 30 days after the objection was served on you. Your response must state why the objection is not valid. If you do not file a response within 30 days after the objection was served on you, your claim may be disallowed without a hearing.**

**Represented parties should act through their attorney.**

The above-captioned reorganized debtors (together, the “Reorganized Debtors”) file this Objection (the “Objection”) to Proof of Claim No. 13382 (the “Montemayor Claim”) filed by Marco A. Montemayor (the “Claimant”). In support of the Objection, the Reorganized Debtors affix as **Exhibit A** the *Declaration of Benjamin E. Russ in Support of the Objection to Proof of Claim No. 13382 Filed by Marco A. Montemayor* (the “Declaration”) and represent as follows:

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<sup>1</sup> A complete list of each of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/chesapeake>. The location of Reorganized Debtor Chesapeake Energy Corporation’s principal place of business and the Reorganized Debtors’ service address in these chapter 11 cases is 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

### **Jurisdiction and Venue**

1. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Reorganized Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a) and 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, and Rules 9013-1 and 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

### **Background**

#### **A. The Montemayor Claim.**

4. On December 14, 2020, the Montemayor Claim was received by the Reorganized Debtors’ claims, noticing and solicitation agent, Epiq Corporate Restructuring, LLC (“Epiq”). It is nonsensical. The Montemayor Claim asserts a secured claim in the amount of \$538,677,777.77 and an unsecured claim in the amount of \$2,345,777.77 against Chesapeake Operating, L.L.C. *See* Montemayor Claim, § 9. It also alleges a \$0.15 administrative claim and a \$0.50 priority claim. *See* Montemayor Claim, §§ 12 & 13. The alleged basis of the Montemayor Claim is an executory contract. *See* Montemayor Claim, § 8. Attached to the Montemayor Claim are a cover letter and a dismissal of an appeal from the Fifth Circuit dated January 7, 2019, in the case styled *Kenneth Robert Stewart, Jr.; Marco A. Montemayor v. JP Morgan; Texas Industries, Inc.* (Case No. 18-10585). The Reorganized Debtors have no knowledge of the underlying lawsuit. The Claimant provides an address in Irving, Texas, although the Debtors ceased operations in North Texas in 2017.

## **B. The Claims Reconciliation Process.**

5. On August 13, 2020, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Docket No. 787] (the “Bar Date Order”), establishing certain dates and deadlines for filing proofs of claim in these chapter 11 cases. Among other things, the Bar Date Order established October 30, 2020, at 5:00 p.m., prevailing Central Time, as the deadline for all non-governmental entities holding or wishing to assert a “claim” (as defined in section 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing (the “Bar Date”).

6. The Bar Date Order stated: “The Debtors shall cause notice of the Claims Bar Date and the Governmental Bar Date to be given by publication to creditors to whom notice by mail is impracticable, including creditors who are unknown or not reasonably ascertainable by the Debtors and creditors whose identities are known but whose addresses are unknown by the Debtors.” *See* Bar Date Order, ¶ 16. Specifically, the Bar Date Order required the Debtors to publish the Bar Date Notice in the *New York Times*, the *Oklahoman*, the *Houston Chronicle*, the *Billings Gazette*, the *Philadelphia Inquirer*, the *Casper Star-Tribune*, the *Canton Repository*, and *The Advocate*. *See id.* Finally, the Bar Date Order stated: “Notice of the Bar Dates as set forth in this Order and in the manner set forth herein [...] constitutes adequate and sufficient notice of each of the Bar Dates and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules.” *See id.*, ¶ 17.

7. On September 3, 2020, September 8, 2020, and September 14, 2020, Epiq filed affidavits of publication for each of the aforementioned newspapers. *See* Docket Nos. 1096-1099; 1125-1127; 1157.

8. On January 13, 2021, the Court confirmed the Debtors' plan of reorganization [Docket No. 2833] (as amended, the "Plan") memorializing that decision in an order filed on January 16, 2021. *See Order Confirming Fifth Am. Joint Ch. 11 Plan of Reorganization of Chesapeake Energy Corp. & Its Debtor Affiliates* [Docket No. 2915].

### **Objection**

9. For the reasons outlined below, the Reorganized Debtors believe that the Montemayor Claim should be disallowed. A filed proof of claim is deemed allowed, unless a party in interest objects. 11 U.S.C. § 502(a). *See also* Fed. R. Bankr. P. 3001(f) ("A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim."). Further, section 502(b)(1) of the Bankruptcy Code provides that the court "shall determine the amount of such claim ... as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—such claim is unenforceable against the debtor and the property of the debtor ..." 11 U.S.C. § 502(b)(1). The Montemayor Claim should be disallowed and lacks prima facie validity for the following reasons.

#### **A. The Reorganized Debtors Are Not Liable on Account of the Montemayor Claim.**

10. The Reorganized Debtors do not believe they are liable to the Claimant because the Montemayor Claim appears nonsensical. It asserts a secured claim in excess of half a billion dollars, based upon an unattached executory contract. It also asserts priority and administrative

claims of less than \$1.00. The only attachments are a cover letter and the dismissal of an appeal of an unrelated lawsuit.

11. The Reorganized Debtors have spent time investigating the attachments, as well as looking up the Claimant in its various files. To the best of the Reorganized Debtors knowledge, Marco A. Montemayor does not appear as a landholder, lessor or lessee, mineral holder, contract counterparty—or anything else that could give rise to the alleged claim. To be sure of this, the Debtors and Reorganized Debtors searched their Teamconnect litigation management system and cross-checked the Claimant’s name in both of its systems used to manage land and royalty data: Wellview (legacy system) and SAP PRA (current system). Both systems were searched, without identifying any Marco A. Montemayor. The Debtors did identify 10 individuals with the last name Montemayor, but none of them resided in Irving, Texas. There were also no references to Marco A. Montemayor in the call logs.

12. Finally, the Claimant provided an address in Irving, Texas, but the Debtors ceased operations in North Texas in 2017. No demand letter with regard to the alleged claim was ever received. No lawsuit with regard to the alleged claim was ever filed. Accordingly, the Reorganized Debtors do not believe they have any liability with regard to the Montemayor Claim.

**B. The Montemayor Claim Should Be Disallowed Because it Was Late-Filed.**

13. The Claimant received sufficient notice of the Bar Date, by virtue of the publication notice provided. *See* Bar Date Order, ¶¶ 16-17. Nevertheless, the Montemayor Claim was filed about six weeks after the Bar Date. The Bar Date Order states that anyone “that is required, but fails, to file a Proof of Claim in accordance with the Bar Date Order on or before the applicable Bar Date shall be forever barred, estopped, and enjoined from asserting such claim against the Debtors (or filing a Proof of Claim with respect thereto) and the Debtors and their property shall be forever discharged from any and all indebtedness or liability with respect to or arising from

such claim.” *See* Bar Date Order, ¶ 18. Case law is clear that a late-filed proof of claim may be allowed “if the creditor’s failure to file a timely proof of claim was the result of excusable neglect on the part of the creditor and its counsel.” *In re Bison Bldg. Holdings, Inc.*, 2012 WL 3230472, \*2 (Bankr. S.D. Tex. 2012) (citing Fed. R. Bankr.P. 9006(b)(1) and *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 397 (1993)).

14. The Claimant plainly missed the Bar Date, which deadline was created by the Bar Date Order. The consequences of the untimeliness are clearly described in the Bar Date Order: The Claimant is estopped from (among other things) asserting the Montemayor Claim. Furthermore, the Claimant did not seek leave to file a late-filed claim, nor has the Claimant alleged excusable neglect for missing the Bar Date. Accordingly, the Montemayor Claim should be disallowed in its entirety as a late-filed claim.

### **C. The Montemayor Claim Lacks *Prima Facie* Validity.**

15. A properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See* Fed. R. Bankr. P. 3001(f). “[W]hen a claim [...] is based on a writing, a copy of the writing shall be filed with the proof of claim.” Fed. R. Bankr. P. 3001(c)(1). “The ultimate burden of proof always rests upon the claimant.” *In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988).

16. The Montemayor Claim is allegedly based on a writing. However, the Montemayor Claim fails to attach the executory contract, instead attaching what appears to be an irrelevant dismissal from the Fifth Circuit. The Montemayor Claim is not properly filed in accordance with the Bankruptcy Rules and therefore lacks *prima facie* validity. The Claimant does not (and cannot) meet its burden of proof with regard to the Montemayor Claim. It should be disallowed in its entirety. For all of the reasons outlined above, the Reorganized Debtors believe the Montemayor Claim should be disallowed.

**Reservation of Rights**

17. This Objection is limited to the grounds stated herein. It is without prejudice to the rights of the Reorganized Debtors or any other party in interest to object to the Montemayor Claim on any grounds whatsoever. The Reorganized Debtors expressly reserve all further substantive or procedural objections they may have. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor or Reorganized Debtor entity; (b) a waiver of any party's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this objection or any order granting the relief requested by this objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Reorganized Debtors' rights under the Bankruptcy Code or any other applicable law.

18. In the event that any of the Montemayor Claim is not disallowed on the grounds asserted herein, the Reorganized Debtors hereby reserve all rights to object to such claims, or any amended claim, on any other grounds. Additionally, the Reorganized Debtors expressly reserve all rights to amend, modify, or supplement the objections asserted herein and to file additional objections to the Montemayor Claim.

**Notice**

19. Notice of this Objection has been provided to the Claimant, all parties receiving ECF notices in this case, and any party requesting notice pursuant to Rule 2002. This notice is sufficient and proper under the circumstances.

The Reorganized Debtors request that the Court enter the Order sustaining the Objection in its entirety and disallowing the Montemayor Claim and grant such other and further relief as is just and proper under the circumstances.

Houston, Texas  
August 26, 2021

*/s/ Matthew D. Cavanaugh*

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*Co-Counsel to the Reorganized Debtors*



**Certificate of Service**

I certify that on August 26, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh

**Exhibit A**

Declaration of Benjamin E. Russ

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:	§	
	§	Chapter 11
	§	
CHESAPEAKE ENERGY CORPORATION, <i>et al.</i> , <sup>1</sup>	§	Case No. 20-33233 (DRJ)
	§	
Reorganized Debtors.	§	(Jointly Administered)
	§	
	§	

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**DECLARATION OF BENJAMIN E. RUSS IN SUPPORT OF THE REORGANIZED  
DEBTORS' OBJECTION TO PROOF OF CLAIM NO. 13382 FILED BY MARCO A.  
MONTEMAYOR**

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I, Benjamin E. Russ, declare under penalty of perjury:

1. I have personal knowledge of all of the facts set out in this Declaration.<sup>2</sup>
2. I am the Executive Vice President – General Counsel and Corporate Secretary at Chesapeake Energy (together with related affiliates, “Chesapeake”).
3. As part of my job, I am familiar with and have read the *Reorganized Debtors’ Objection to Proof of Claim No. 13382 filed by Marco A. Montemayor* (the “Objection”). I am also familiar with and have read the Montemayor Claim. I believe all of the facts stated in the Objection are accurate.
4. The Reorganized Debtors have researched the Montemayor Claim to determine if they have any liability. To the best of my knowledge, Marco A. Montemayor does not appear as a landholder, lessor or lessee, mineral holder, contract counterparty—or anything else that could

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<sup>1</sup> A complete list of each of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtors’ claims and noticing agent at <https://dm.epiq11.com/chesapeake>. The location of Reorganized Debtor Chesapeake Energy Corporation’s principal place of business and the Reorganized Debtors’ service address in these chapter 11 cases is 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

<sup>2</sup> Capitalized and undefined terms herein shall have the meanings ascribed to them in the objection to which this Declaration is affixed.

merit the alleged claim. To be sure of this, the Debtors and/or the Reorganized Debtors searched their Teamconnect litigation management system and cross-checked the Claimant's name in both of its systems used to manage land and royalty data: Wellview (legacy system) and SAP PRA (current system). Both systems were searched, without identifying any Marco A. Montemayor. The Debtors did identify 10 individuals with the last name Montemayor, but none of them resided in Irving, Texas. There were also no references to Marco A. Montemayor in the call logs.

5. To the best of my knowledge, the Debtors and Reorganized Debtors never received a demand letter with regard to the Montemayor Claim. To the best of my knowledge, no lawsuit with regard to the Montemayor Claim was ever filed.

6. I do not believe that the Debtors or the Reorganized Debtors, as applicable, have liability with regard to the Montemayor Claim.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information and belief.

Date: August 26, 2021

/s/ Benjamin E. Russ

Executive Vice President – General Counsel  
and Corporate Secretary  
Chesapeake Energy Corporation