

CAUSE NO. DC-13-03220-H

CHERENE JACKSON PATTY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
CHRISTOPHER DEDMON, SDC	§	DALLAS COUNTY, TEXAS
MONTANA CONSULTING, LLC, and	§	
U.S. ENCERCORP, LTD., AND BRUCE	§	
GATES,	§	
	§	
Defendants.	§	160 th JUDICIAL DISTRICT

PLAINTIFF’S FOURTH AMENDED ORIGINAL PETITION

Plaintiff Cherene Jackson Patty files her Fourth Amended Original Petition suit against Defendants Christopher Dedmon, SDC Montana Consulting, LLC, and U.S. Enercorp, Ltd. (collectively, “**Defendants**”).

1. Pursuant to Rule 190.2, discovery is intended to be conducted under Level 2.

I. THE PARTIES

2. Plaintiff Cherene Jackson Patty (“**Patty**”) is an individual who resides in Dallas County, Texas.
3. Defendant SDC Montana Consulting, LLC, a.k.a., d.b.a., a.b.n. “SDC MONTANA” and “SDC MONTANA OIL & GAS EXPLORATION”, (“**SDC Montana**”) is an Arizona limited liability company with its principal place of business at 8620 N. New Braunfels, the Petroleum Club Building, San Antonio, TX 78217. SDC Montana may be served through its attorney of record.

4. Defendant Christopher Dedmon (“**Dedmon**”) is an individual resident of Montana, and may be served through his attorney of record.

5. Defendant U.S. Enercorp, Ltd. (“**US Enercorp**”) is a Texas limited partnership with its principal place of business in Bexar County, Texas, and may be served through its attorney of record.

6. Defendant Bruce Gates (“**Gates**”) is an individual resident of Texas and may be served may be served through its attorney of record.

II. JURISDICTION AND VENUE

7. Defendants, at times relevant to this lawsuit, were doing business in Dallas County, Texas. Further, all or a substantial part of the acts and/or omissions giving rise to Patty’s damages occurred in Dallas County, Texas.

8. Patty’s damages are within the jurisdictional limits of this Court and are over \$100,000.00 in damages.

9. Accordingly, jurisdiction and venue are proper in Dallas County, Texas.

III. FACTS

10. This suit is for the recovery revenue sharing, and royalty interests due and owing to Patty as the procuring cause of multiple Montana Bakken Shale oil and gas leases.

A. Background of Parties.

11. Patty is a landman. A landman is an individual who performs various services for oil companies, including negotiating for the acquisition or divestiture of mineral rights; negotiating business agreements that provide for the exploration for and/or development of minerals; determining ownership in minerals through the research of public and private records; reviewing

the status of title, curing title defects and otherwise reducing title risk associated with ownership in minerals; managing rights and/or obligations derived from ownership of interests in minerals; and unitizing or pooling of interests in minerals.

12. Dedmon operates SDC Montana Consulting, LLC which acquires non-operating working interests, marks up the interests, and resells the interests to investors and in many instances retaining overriding royalty interests in the Bakken Shale.

13. In September 2010, Dedmon approached Patty and some of Patty's relatives to serve as landmen for SDC Montana's Bakken Shale play. SDC Montana needed landmen to provide services to acquire various royalty interests in northeast Montana. Patty was excited about the opportunity to work hard and secure just compensation for her efforts. Unbeknownst to Patty, Dedmon had a shady past in business dealings. For example, the Arizona Corporation Commission punished him for unethical business practices and banned him from exercising any control over an entity that offers or sells securities within Arizona. Dedmon failed to disclose his checkered history with Patty. Patty agreed to serve as a landman and Dedmon promised that Patty would receive day rate payments and interests in acquired leases.

B. Dedmon and SDC Montana Fail to Satisfy Obligations.

14. By November 2010, SDC Montana had failed to routinely pay the landman day rates to its landmen. SDC's Montana's landmen grew tired of working without pay. Consequently, all of SDC Montana's landmen quit except Patty.

15. Patty worked tirelessly and efficiently through the remainder of 2010 on SDC Montana's behalf. She successfully found and solidified numerous working interests. Patty's success

permitted enabled SDC Montana to rehire other landmen by the end of 2010. Patty conquered her tasks despite SDC Montana's failure to provide adequate compensation, as Patty believed in SDC Montana's representations that SDC Montana would eventually pay what it owed her. Dedmon represented to and orally agreed with Patty on various occasions that she would receive a working interest in the Bakken Shale leases and day rates.

16. In the first half of 2011, Patty continued to serve SDC Montana well as a landman. SDC Montana continued to slow pay or miss day rate payments. Patty notified SDC Montana on numerous occasions of her displeasure with working for little or no compensation as agreed. Yet SDC Montana overwhelmingly saw the value in Patty's work and designated her as a gatekeeper for all lease information. That is, SDC Montana mandated that all leases, title work, agreements, and contracts regarding the Bakken Shale go through Patty for quality control.

17. SDC Montana sought and acquired additional cash injections from new sources in the second half of 2011. Nonetheless, SDC Montana continued its pattern of failing to adequately pay Patty.

18. Dedmon and Patty met in person or talked on various occasions about SDC Montana's incessant outstanding debts owed to Patty and some of her family members as months dragged on. But Dedmon would intentionally avoid signing a contract that required the debts to be repaid. More egregiously, Dedmon even admitted in March 2012 to Patty's husband that he never intended to honor a written agreement or oral agreement that required Dedmon to pay Patty.

C. US Enercorp Joins the Venture and a New Contract is formed.

19. Dedmon's actions severely strained the parties' relationship. Patty needed assistance to deal with SDC Montana. She believed she found the answer with US Enercorp, and its President, Bruce Gates. Like SDC Montana, US Enercorp is in the business of acquiring working interests and selling such interests for a profit. Patty believed US Enercorp had a good reputation in the oil and gas industry. US Enercorp therefore became involved in SDC Montana's business in the Bakken Shale in northeast Montana as the "face" of the venture.

20. Upon information and belief, Gates is a part owner in SDC Montana. Yet he failed to disclose this to Patty.

21. Patty believed that US Enercorp and Gates would add value to the venture and be able to successfully sell the working interests acquired as a result of Patty's tireless efforts. But she wanted to protect her financial interest. US Enercorp saw Patty's value and wanted to ensure her financial interest. To that end, the parties agreed to enter into a new written contract.

22. On April 12, 2012, the parties entered a contract entitled "Independent Contractor Engagement Agreement" (**the "Contract"**). Patty's husband assisted her in the negotiation of the Contract.

23. The Contract stated that Patty would serve as an independent contractor landman to locate and acquire oil and gas leases in the Bakken Shale. In return, the Contract required Defendants to compensate Patty a daily rate for her services. Additionally, Section 4B of the Contract required Defendants to pay Patty a 1.5% "Revenue Sharing Payment." The 1.5% stemmed from **"all revenues paid or payable to SDC, or any affiliate or related company of SDC, collectively**

called “SDC.”” Affiliates and related companies of SDC would include all the parties to the collaboration agreement – Defendant US Enercorp, SDC Montana Consulting, LLC, SDC Montana, LLC, SDC Montana Bakken Exploration, LLC, Val Verde investments, LLC and JL resources, LLC. By way of illustration and not by limitation, the parties to the collaboration agreement under Texas law are partners in a partnership whether the parties intended to create a partnership or not. That is, the collaboration agreement creates an association of two or more persons to carry on a business for profit. See section 152.051 of the Texas business organizations code. There are more than two parties in the collaboration agreement, the project of pooling and then accumulating oil and gas leases for resale constitutes a business, and pursuant to paragraph 10 of the collaboration agreement the parties agreed to divide their profit. By definition, partners and their partnership are the same as or synonymous with affiliates and related companies.

24. At a minimum, it was Patty’s understanding and belief that for purposes of section 4B of the contract this would include SDC and Val Verde’s share of gross revenues. Before signing a contract, based on representations made by Dedmon and Bruce Gates, it was Patty’s understanding that SDC and Val Verde’s share of the gross revenues in the eventual sale of the oil and gas leases to southwestern would be two thirds.

25. Recently, US Enercorp has reversed its position on the contract. That is, US Enercorp instead of asserting that Patty’s share of gross revenues would include SDC and Val Verde’s share of gross revenues, US Enercorp’s posturing is to limit the gross revenues to SDC based on a myopic interpretation of the contract. However, the contract plainly and unambiguously states that the 1 ½% of gross revenues is derived from **“all revenues paid or payable to SDC, or any**

affiliate or related company of SDC, collectively called “SDC.”” Therefore, under a strict construction and application of the contract the revenues of SDC’s affiliates and related companies, including all parties to the collaboration agreement, are to be aggregated and then multiplied by the 1 ½% amount stated in the contract.

26. Section 4C of the Contract also provided Patty with a 2.5% overriding interest in all royalties, overriding royalties, production payments, and similar interests paid or to be paid to SDC Montana for any of SDC Montana’s Bakken leases.

27. The Contract requires US Enercorp to pay Patty directly for the aforementioned disbursements.

D. Defendants Intentionally Worked Around Patty in a Collaboration Agreement.

28. In reality, Defendants and affiliated third parties entered into a Collaboration Agreement April 13, 2012 (the “**Collaboration Agreement**”). The terms and conditions of the Collaboration Agreement were kept secret from Patty. After much wrangling with Defendants, Patty was finally able to procure a copy of the Collaboration Agreement, albeit incomplete, during discovery. Under the Collaboration Agreement, all parties transferred their leases to USE who held legal title for the benefit of the parties to the Collaboration Agreement in connection with the sale of the leases to SWN. The parties to the Collaboration Agreement agreed to share profits. USE sold the leases to SWN. USE paid costs and expenses on behalf of the parties in accordance with their Allocable Share, and then delivered were was to deliver the net proceeds to the parties.

29. Defendants have concealed the Gross Sales Price. Patty subpoenaed SWN and was provided a spreadsheet reflecting more than \$72 million in payments. But Bruce Gates of USE

during his deposition said “**I want to say it's more around \$100 million in total.**” 51:24. Chris Dedmon claims ignorance. Dedmon in his deposition said and wrote in a demonstrative exhibit he did not know the amount.

E. Defendants Fail to Perform Under the New Contract.

30. In September 2012, US Enercorp began disbursements to Patty. US Enercorp and Gates paid \$34,660.96 without explanation or an accounting of how they derived this figure. Gates strangely requested that Patty sign a statement that the payment was correct. Since Gates failed to provide payment details, Patty refused.

31. On or about November 30, 2012, US Enercorp paid Patty \$152,989.00 with a limited amount of information of how it determined Patty’s share. Even with this limited information, Patty quickly realized the payments failed to comply with the Contract.

32. Patty immediately informed US Enercorp and Gates that she was not being paid the 1.5% of gross revenues as required under the Contract. Gates refused to return various phone calls. Patty attempted to obtain clarity on the payment status and Gates’ unreasonable behavior of refusing to pay Patty, refusing to provide an accounting, or refusing to simply answer basic questions regarding payments owed to Patty. In December 2012, Gates elected to verbally abuse and threaten Patty in an email chain. Bruce Gates then cut off all communications with Patty.

33. Unbeknownst to Patty, Gates’ cavalier antics stemmed from his goal to cheat Patty out of her money so Defendants could reap more financial gain from multiple Montana Bakken Shale leases.

34. Defendants intentionally and maliciously refused to provide an accounting of the exact amount of money Defendants received from the Montana Bakken Shale leases.

35. Upon information and belief, sometime in January 2012 US Enercorp and SDC Montana agreed to split the profits from the sale of the Montana oil and gas leases on a 50-50 basis.

36. On or about December 19, 2012, Patty with the assistance of her husband made written notice and demand to Dedmon, Gates, SDC Montana and US Enercorp of breach of contract and final demand for revenue sharing payment. In the demand letter, Patty alleged breach of contract, breach of fiduciary duty, and fraud. Patty demanded an immediate and full accounting and disclosure of all payments and revenue, and immediate payment of Patty's revenue share due under the Contract.

37. Defendants responded with brash, profane, and vile emails broadcasting Defendants' malicious intent to defraud and steal funds from Patty. For example and not by limitation,

a. Gates' abusive email tirades against Patty and her family admit and state that his intention is to:

i. **“fuck them up because they deserve it”** and that **“revenge [against Patty] is beautiful.”**

ii. **“Have you ever seen the film where the killer whale toys with the seal? They are very gentle animals (killer whales) if you leave them alone.... Va ya con dios”**

b. Dedmon's emails to Gates, including

i. **“These people are unbelievable amount of money they've made off us and off my efforts and your efforts it is phenomenal. They're going to make it so nobody will ever do**

business with them. They brought it on themselves. Hell with em. Enjoy your weekend with your wife and ignore this crap. And thank you for having my back as always.”

c. Gates taunting emails to Patty,

i. “I have enough going on that I thought he should handle your issues. You have now made them mine, so bring it on baby, I can take it. I have SEPCO behind me and nothing better to do than to fight you and Ringo. **I have more of your money to disburse, but since I cannot calculate it correctly, I will wait for the courts to tell me how to do it.”**

ii. “**And frankly I'm not sure that you deserve the wrath that you're going to receive. I apologize in advance. Via con dios.”**

iii. “**And again I am sorry for the wrath of shit you are stirring up. I live for this stuff. So have fun.”**

38. Gates’ excuse for his vile, profane, and hateful emails to and regarding Patty, Gates said he thought Patty had disclosed confidential information to a company in Dallas called Bakken Energy. His source of information was a landman named Fenwick How. Fenwick How says he never told Bruce Gates that Cherene and/or Kim Patty disclosed confidential information. Fenwick How who is an IT expert said he only discussed with Mr. Gates general measures one may take to protect confidential information and that is it. See Endnote containing excerpts from Gates’ deposition. ⁱ

39. Gates latest excuse for his vile, profane, and hateful emails to and regarding Patty revolve around her husband who properly stood up for his wife to thwart Gates tirades and bully maneuvers.

40. Gates wrote in May 2013 to Dedmon that he was holding back ~\$480,000 for Patty's claim. But Gates was going to have his lawyers talk with Dedmon's lawyers about sending this money to Dedmon. Both Gates and Dedmon testified they could not remember if the money was sent to Dedmon.¹

41. SDC Montana and Dedmon officially terminated Patty as its landman only a few days after Gates cut off communications. SDC Montana and US Enercorp are contractually obligated to pay Patty for all past revenue shares and overriding royalty payments. SDC Montana and US Enercorp are also contractually obligated to pay Patty future revenue shares for three (3) years and future overriding royalty payments for five (5) years. Gates intentionally and maliciously prevented a proper accounting and monetary payment to Patty for amounts owed to her.

42. Now that discovery is complete, US Enercorp admits to having sold the Montana oil and gas leases on behalf of the parties to the collaboration agreement to southwestern for \$69,549, 973 \$69,549,973.51 are the minimum gross revenues under paragraph 4B of the contract. One and

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4 Q Okay. And so have you transferred that \$477,383 to
5 Mr. Dedmon?

6 A I have not transferred all the money that he's owed,
7 no.

8 Q Okay. How much have you transferred?

9 A I do not know the number on my head.

10 Q Can you have your accountants figure it out and tell
11 me how much --

12 A I'm quite sure --

13 Q -- has been held back?

14 A -- you've been supplied all that information.

a half percent of \$69,549,973.51 is \$1,043,249.60. Giving credit for a partial payment of \$187,650.03, \$855,599.57 is the balance due under paragraph 4B of the contract.

IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT

43. Patty incorporates by reference all of the preceding paragraphs as if fully set forth herein.

44. Pursuant to Texas state law, Patty pleads a cause of action against US Enercorp and SDC Montana for breach of contract.

45. Patty and US Enercorp and SDC Montana entered into one or more valid contractual agreements. Patty gave US Enercorp and SDC Montana valuable consideration and fully performed all duties required of her under the contracts.

46. US Enercorp and SDC Montana breached the contracts by refusing to pay Patty pursuant to the agreements described herein.

47. US Enercorp's conduct of breaching the Contract was either grossly negligent or willful. That said, the exculpatory language in the contract ("14. **Acknowledgment of USE.** USE joins in the execution of this agreement in order to acknowledge its receipt of the instructions for payment and assignment of interests...; provided, however, that USE shall have no liability to any of the parties for any mistake interpretation of this agreement, or for any other error except for those caused by gross negligence or willful misconduct of use.") is unenforceable as a matter of law because the contents do not comply with the fair notice requirements and the conspicuousness requirement under Texas law. Compliance with fair notice requirements is a question of law for the court.

48. Each of the above-referenced acts or omissions, singularly or in combination with others, constitutes a breach of contract by US Enercorp and SDC Montana.

49. As a direct and proximate consequence of US Enercorp and SDC Montana' breaches, Patty has suffered actual and consequential damages in excess of the minimum jurisdictional limit of this Court, for which she sues.

50. Because of the above-described breaches of contract, Patty was required to retain attorneys to prosecute this action and agreed to pay the retained attorneys a reasonable fee. Pursuant to Section 38.000 of the Texas Civil Practice and Remedies Code, Patty seeks her reasonable and necessary attorneys' fees.

51. All conditions precedent to Patty recovering under the contracts and recovering attorney's fees have occurred been performed, or have been waived.

V. SECOND CAUSE OF ACTION: COMMON LAW FRAUD

52. Patty incorporates by reference all of the preceding paragraphs as if fully set forth herein.

53. Pursuant to Texas state law, Patty pleads a cause of action against Defendants for fraud.

54. The misrepresentations made by Defendants include, but are not limited to, the following:

a. As to Dedmon only, concealing and failing to disclose to Patty that he had previously defrauded investors and been officially sanctioned by a state regulatory body for unethical business dealings.

b. As to Dedmon only, concealing and failing to disclose to Patty his multiple personal and corporate bankruptcies after holding himself out as an honest person who pays his debts.

c. Concealing the gross revenues and royalties of oil and gas interests in the Montana Bakken Shale with the intent of denying and depriving Patty of all payments due Patty.

d. Representing that Patty would be paid gross revenues and royalty interests with the intent that Patty would continue to work, pursue, and perform due diligence on working interest for the benefit of Defendants when Defendants never intended to completely pay all payments due Patty.

55. Each of the above-referenced acts or omissions, singularly or in combination with others, constitutes fraud by Defendants. Defendants' misrepresentations by material omission were the proximate cause of significant damages to Patty, which are in excess of the minimum jurisdictional limit of this Court.

VI. THIRD CAUSE OF ACTION: FRAUDULENT CONVEYANCE

56. Patty incorporates by reference all of the preceding paragraphs as if fully set forth herein.

57. Upon receipt of payment the sale of the Montana Bakken Shale leases and overriding royalty payments, the Contract mandated that Defendants remit funds to Patty for her contractual portion of gross revenues and 1.5% of overriding royalty interests paid to SDC Montana and similar entities. Gates and US Enercorp obtained these initial payments with the understanding and contractual obligation that the same would be disbursed to others including Patty.

58. Despite Patty having a claim to the aforementioned funds, Gates and US Enercorp refused payment to Patty with the intent to hinder, delay, or defraud Patty from receiving funds owed by engaging in one or more of the following actions:

- a. Gates and US Enercorp transferred funds owed to Patty to Dedmon and other parties affiliated with Dedmon or Gates;
- b. Gates and US Enercorp concealed from Patty the transfer of funds to other parties;

- c. Gates and US Enercorp transferred funds owed to Patty after Patty threatened a lawsuit and after the filing of this cause;
- d. Gates and US Enercorp transferred substantially the funds owed to Patty; and
- e. Gates and US Enercorp absconded with Patty's funds.

59. Because of the above-described conduct, Gates and US Enercorp are liable to Patty for violation of the Texas Uniform Fraudulent Transfer Act under Chapter 24 of the Texas Business & Commerce Code. Such violations were the proximate cause of significant damages to Patty, which are in excess of the minimum jurisdictional limit of this Court.

VII. FOURTH CAUSE OF ACTION: QUANTUM MERUIT (UNJUST ENRICHMENT)

60. Patty incorporates by reference all of the preceding paragraphs as if fully set forth herein.

61. Pursuant to Texas state law, Patty pleads, in the alternative if necessary, a cause of action against Defendants for quantum meruit.

62. Patty provided and rendered a variety of valuable services for Defendants as a landman.

63. As a direct result of Patty's rendition of services, benefits were conferred on Defendants, including but not limited to Defendants receiving valuable landman services to procure multiple oil and gas leases.

64. Defendants accepted the benefits of Patty's services. Indeed, Defendants on many occasions recognized Patty's services and their value.

65. Defendants used, accepted, and enjoyed the services provided by Patty, and had notice that Patty expected to be paid for the services.

66. As a direct and proximate result of Defendants' nonpayment, Patty has been damaged and is entitled to recover the reasonable value of the services she provided to Defendants. Patty reasonably expected payment for her services, and Defendants knew Patty expected payment.

67. Because of the above-described conduct, Patty was required to retain attorneys to prosecute this action and agreed to pay the retained attorneys a reasonable fee. Pursuant to Section 38.000 of the Texas Civil Practice and Remedies Code, and under Texas common law, Patty seeks her reasonable and necessary attorneys' fees.

VIII. FIFTH CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY

68. Patty incorporates by reference all of the preceding paragraphs as if fully set forth herein.

69. Gates and US Enercorp had a fiduciary relationship with Patty. Patty had a relationship of trust and confidence with Gates and US Enercorp. Patty relied on Gates and US Enercorp to handle, manage, and ensure that Patty would receive fair treatment and payment for extensive services regarding the Bakken Shale Montana leases. Dedmon's shady past necessitated the Contract among the parties and Gates involvement to ensure proper payments to Patty.

70. US Enercorp was a fiduciary as matter of law. US Enercorp acted as an escrow agent/trustee under the Contract. As such, US Enercorp's fiduciary duty consists of: (1) the duty of loyalty; (2) the duty to make full disclosure; and (3) the duty to exercise a high degree of care to conserve the money and pay it only to those persons entitled to receive it. US Enercorp breached all 3 duties owed to Patty.

71. US Enercorp is also not licensed as a corporate fiduciary under Section 201.101 of the Finance Code. None of the exempted activities apply under Section 182.021 of the Texas

Finance Code. As a result of acting without a Texas trust license which was clearly required to perform the escrow services under the Contract, all of US Enercorp's ill-gotten profits reaped in the underlying transactions should be disgorged.

72. Moreover, since US Enercorp was a unlicensed corporate fiduciary, Gates activities as the chief executive officer of US Enercorp should not be permitted to hide behind any corporate shield.

73. Gates and US Enercorp breached the fiduciary duty owed when they failed and refused to provide a proper accounting of and pay funds owed to Patty. Instead, Gates lined the pockets of Defendants with funds owed to Patty and provided incomplete and inaccurate accounting to Patty.

IX. SIXTH CAUSE OF ACTION: CONSPIRACY

74. Patty incorporates by reference all of the preceding paragraphs as if fully set forth herein.

75. Defendants are members of a combination of two or more parties. Together, Defendants combined to accomplish the unlawful act to defraud, convert, dispossess, and/or steal funds from Patty.

76. Defendants had a meeting of the minds to accomplish their common objective. Defendants accomplished their objective through the overt act by at least one of Defendants.

77. As a result, Patty has been damaged in an amount exceeding the minimum jurisdictional amounts of this Court.

X. SEVENTH CAUSE OF ACTION: CONVERSION

78. The foregoing paragraphs are hereby incorporated by reference as if set forth fully herein.

79. Patty is the lawful owner of her rights to monies and overriding royalty interests and carried working interests under the Contract.

80. Defendants have no right, title or interest in her rights to monies and overriding royalty interests and carried working interests under the Contract.

81. Defendants' taking of her rights to monies and overriding royalty interests and carried working interests under the Contract constitutes an unlawful, ongoing conversion of Patty's personal property.

82. As a result of the Defendants' ongoing conversion, Patty has suffered actual and economic damages in an amount within the jurisdictional limits of this Court.

83. Furthermore, the Defendants' ongoing conversion constitutes an act of malice for which Patty is entitled to recover exemplary damages under Chapter 41 of the Texas Civil Practice & Remedies Code.

XI. DECLARATORY RELIEF

84. **Declaratory Judgment - Self-Dealing, Breach of Fiduciary Duty, Constructive Fraud, Constructive Trust, and Conversion.** Pursuant to Chapter 37, Texas Civil Practices & Remedies Code, Patty seeks a declaration that:

- a) US Enercorp and Gates are fiduciaries because they are trustees and escrow agents under the Contract with respect to the monies and oil and gas properties due Patty under the Contract **(the "Escrow Funds")**;
- b) As fiduciaries, US Enercorp and Gates are prohibited from commingling Escrow Funds in accounts with money belonging to US Enercorp and/or SDC Montana;

- c) US Enercorp and Gates have breached their fiduciary duties owed to Patty by commingling Escrow Funds in one or more accounts with money belonging to US Enercorp and/or SDC Montana (**the “Commingling”**);
- d) As fiduciaries, US Enercorp and Gates have an obligation to truthfully and timely report to Patty the full amount of the Escrow Funds;
- e) US Enercorp and Gates breached their fiduciary duty by emailing false and incomplete spreadsheets and settlement statements (**the “False Reporting”**);
- f) US Enercorp and Gates misapplied fiduciary property belonging to Patty when US Enercorp and Gates transferred Escrow Funds to SDC Montana, Sid Greehey, US Enercorp and/or Gates (**the “Misapplication of Fiduciary Property”**);
- g) The Commingling, the False Reporting, the Misapplication of Fiduciary Property are acts of self-dealing by US Enercorp and Gates and/or breaches of fiduciary duties;
- h) The breaches of fiduciary duties constitute constructive fraud;
- i) A constructive trust should be imposed on all of US Enercorp’s ill-gotten profits reaped in the underlying transactions and should be disgorged; and,
- j) The Misapplication of Fiduciary Property constitutes conversion.

85. **Declaratory Judgment – Tortious Interference and Other Frivolous Claims against Plaintiff’s husband by Defendants.** Pursuant to Chapter 37, Texas Civil Practices & Remedies Code, Patty seeks a declaration that:

- a. As a matter of law, Patty’s husband, Kim Patty, has community property interests in the Contract.

- b. At Patty's request, her husband assisted her in the negotiation and later enforcement of her rights with respect to the Contract.
- c. Kim Patty had the right to assist his wife in the negotiation and later enforcement of her rights with respect to the Contract.
- d. No Defendant has any claim against Patty's husband, Kim Patty, for tortuously interfering with the Contract (i.e., his wife's contract).
- e. Defendants have no claims against Plaintiff's husband with respect to the subject matter of this dispute.
- f. Any and all claims against Patty's husband by Defendants are frivolous and nothing more than dilatory litigation tactics of desperate Defendants last ditch attempt to grasp straws.

XII. REQUEST FOR SPECIFIC PERFORMANCE

- 86. Patty incorporates by reference all of the preceding paragraphs as if fully set forth herein.
- 87. Patty is entitled to be assigned overriding royalty interests and carried working interests under paragraph 4C of the Contract.
- 88. Defendants have failed and refused and continue to refuse and to fail to assign her overriding royalty interests and carried working interests due under paragraph 4C of the Contract.
- 89. Patty has no complete and adequate remedy at law for Defendants' breach, because the overriding royalty interests and carried working interests are unique property interests for which at this time is difficult to ascertain a fair market value.
- 90. Accordingly, Patty seeks an order compelling Defendants to assign all of her overriding royalty interests and carried working interests due under paragraph 4C of the Contract.

XIII. REQUEST FOR ACCOUNTING

91. Patty incorporates by reference all of the preceding paragraphs as if fully set forth herein.

92. Defendants hold, possess, or manage funds and will continue to hold, possess, or manage future funds, from revenues and royalties stemming from the Bakken Shale Montana leases to which Patty is entitled in whole or in part.

93. Even after months of litigation, depositions, and written discovery, Defendants refuse to provide a simple accounting of financial information as to the Bakken Shale Montana leases.

94. Patty is entitled to an accounting from Defendants to determine the actual amounts due and owing to Patty.

XIV. REQUEST FOR CONSTRUCTIVE TRUST

95. Patty incorporates by reference all of the preceding paragraphs as if fully set forth herein.

96. Defendants hold, possess, or manage funds and will continue to hold, possess, or manage future funds, from revenues and royalties stemming from the Bakken Shale to which Patty is entitled in whole or in part.

97. Patty is entitled to the creation of a constructive trust to protect and manage such funds for the proper and equitable distribution of such funds and to prevent unjust enrichment for Defendants.

XV. PUNITIVE DAMAGES

98. As a consequence of the foregoing clear and convincing facts and the willful and malicious nature of the wrongs committed against Patty, Patty is entitled to punitive damages. Patty is entitled to exemplary damages under Texas law in excess of the minimum jurisdictional limits of this court.

XVI. JURY DEMAND

99. Patty demands that this court empanel a lawful jury to hear this case.

XVII. REPORTER DEMAND

100. Patty requests the Official Court Reporter for this Court, perform all the duties of the office, as set forth in Section 52.046 of the Government Code of the State of Texas, and as set forth in Rule 13 of the Rules of Appellate Procedure, including reporting all testimony and trial proceedings, voir dire examinations and jury arguments.

XVIII. RESERVATION OF RIGHTS

101. Patty specifically reserves the right to bring additional causes of action against Defendants and to amend this pleading as necessary.

102. All conditions precedent have been performed or have occurred. The damages and remedies sought are within the court's jurisdiction.

PRAYER

103. Patty asks the Court to award Patty the following:

- a. All contractual payments due Patty;
- b. An order compelling specific performance of Patty's rights to overriding royalties and carried working interests due under paragraph 4C of the Contract.

- c. Compensatory damages for injuries including, but not limited to, pecuniary losses, in the maximum amount authorized by law;
- d. Punitive damages in the maximum amount authorized by law;
- e. Pre-judgment and post-judgment interest at the highest rate allowed by law;
- f. Actual and consequential damages;
- g. Reasonable and necessary attorneys' fees;
- h. Costs of Court;
- i. An accounting of finances;
- j. A creation of a constructive trust; and,
- k. Such other relief as to which she may be justly entitled.

Respectfully Submitted,



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and

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CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and correct copy of the foregoing to all counsel of record on January 5, 2015 by eservice.



Douglas C. Kittelson

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15 **Q (By Mr. Kittelson) Okay. I'm just you said you**
16 **were drinking at the time and you used some vulgar language**
17 **and you do apologize for it. But sometimes when, you know,**
18 **it's a truth serum with some people that it gets down and you**
19 **can really figure how they feel.**

20 A I don't think there's an excuse for using vulgar
21 language. Okay?

22 **Q Okay.**

23 A There's no need for that and I apologize.

24 **Q But you express contempt for them. And you did tell**
25 **me the reason that you're upset with them is that you thought**

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1 **that they disclosed some confidential information to Bakken**
2 **Energy?**

3 A Right.

4 **Q And -- at the time. And you haven't done anything**
5 **about it. So I guess I take it that sitting here today and**
6 **looking back at it, you don't have any evidence that that**
7 **occurred, do you?**

8 MR. WEHMEYER: Objection, form.

9 A I have what I have. I have not pursued it to date.

10 **Q (By Mr. Kittelson) Okay.**

11 A I have not.

12 **Q What's the -- what's the source of your information?**

13 A There's various different people.

14 **Q Okay. Can you name one?**

15 A Yeah.

16 Q **Who?**

17 A One is -- God, Fen Howick.

18 Q **Dan Howick?**

19 A No, Fen -- shoot, I don't. I'm going to get his

20 name wrong. His last name wrong. Fen Howick.

21 Q **Fen Howick? How do you spell Fen, F-i-n?**

22 A F-e-n.

23 Q **F-e-n?**

24 A I think it's actually Fenwick.

25 Q **Fenwick Howick. How do you spell the last name?**

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1 A I'm not getting the last name correct. I'm sorry.

2 Q **And who is Fenwick?**

3 A He's an independent landman.

4 Q **And where does he live?**

5 A I don't really know where he lives.

6 Q **And who does he work for?**

7 A His own company, Trifield something, something,

8 something.

9 THE REPORTER: Trifield?

10 A Trifield. I don't know the names off the top of my

11 head.

12 Q **(By Mr. Kittelson) So Mr. Howick, did he tell you**

13 **this in person?**

14 A I don't think that's the correct last name.

15 Q **Did he tell you this in person about the Pattys?**

16 A I cannot recall if it was in person or over the

17 phone. I do not recall.

18 Q **Okay. No e-mails on this?**

19 A No, I don't -- no, I -- we've produced all the

20 e-mails, so if it's not in there, it's you know.