THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROGER A. SALVATORA and SANDRA E. SALVATORA, D&M MARBURGER FAMILY ENTERPRISES, L.P., HEASLEY NURSERIES, INC. and RODNEY L. LANG and BONITA A. LANG, individually and on behalf of all those similarly situated,	:	Civil Action No. 2:19-cv-01097-CRE
Plaintiffs,	:	
v.	:	
XTO ENERGY INC.,	:	
Defendant.	:	

DEFENDANT XTO ENERGY INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO THE THIRD AMENDED COMPLAINT – CLASS ACTION

Defendant XTO Energy Inc. ("XTO") files the following Answer and Affirmative Defenses to the Third Amended Complaint – Class Action (the "Third Amended Complaint"):

ANSWER

1. Denied.

2. XTO lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Third Amended Complaint.

3. XTO lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Third Amended Complaint.

4. XTO lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Third Amended Complaint.

5. XTO lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Third Amended Complaint.

6. It is admitted that XTO is a corporation organized under the laws of the State of Delaware, has a principal place of business at 22777 Springwoods Village Parkway, Spring, Texas, and is a wholly owned subsidiary of Exxon Mobil Corporation. The allegations relating to XTO's citizenship are conclusions of law to which no response is required. The remaining allegations in Paragraph 6 of the Third Amended Complaint are denied.

7. The allegations in Paragraph 7 of the Third Amended Complaint state conclusions of law to which no response is required.

8. The allegations in Paragraph 8 of the Third Amended Complaint state conclusions of law to which no response is required.

9. The allegations in Paragraph 9 of the Third Amended Complaint state conclusions of law to which no response is required.

10. The allegations in Paragraph 10 of the Third Amended Complaint state conclusions of law to which no response is required.

11. It is admitted that the oil and gas leases of Mr. & Mrs. Salvatora, D&M Marburger, and Heasley's Nurseries were modified by the Final Order in *Marburger*. The remaining allegations in Paragraph 11 of the Third Amended Complaint state conclusions of law to which no response is required.

12. The allegations in Paragraph 12 of the Third Amended Complaint state conclusions of law to which no response is required.

13. Denied.

14. Admitted.

15. XTO denies the allegations in the first two sentences of Paragraph 15 as stated. Upon information and belief, Phillips Exploration, L.L.C. holds title to the named Plaintiffs' oil

and gas leases. XTO administers and operates the wells drilled pursuant to the leases attached to the Third Amended Complaint.

16. It is admitted that the oil and gas leases of Mr. & Mrs. Salvatora, D&M Marburger, and Heasley's Nurseries were modified by the Final Order in *Marburger*. By way of further response, the oil and gas leases of the named Plaintiffs and the Final Order in *Marburger* are written documents that speak for themselves. XTO denies the allegation in the first sentence of Paragraph 16. The remaining allegations in Paragraph 16 state legal conclusions to which no response is required.

17. It is admitted that named Plaintiffs Mr. & Mrs. Salvatora signed an oil and gas lease with Phillips Exploration Inc. covering oil and gas interests in property situated in Butler County, Pennsylvania, and it is admitted that a copy of an that lease is attached as Exhibit A to the Complaint at ECF No. 1-2. Exhibit A is a written document that speaks for itself. XTO is without knowledge or information sufficient to form a belief as to the allegation regarding whether Mr. & Mrs. Salvatora currently own approximately 158.362 acres of oil and gas interests and therefore denies that allegation. XTO denies the allegations that Exhibit A is a "standard form oil and gas lease."

18. The allegations of Paragraph 18 that purport to restate and quote excerpted portions of Exhibit A are denied to the extent they are at variance with Exhibit A (such as the allegation that the lessee agreed to pay royalty on "total proceeds"). The remaining allegations of Paragraph 18 are denied.

19. It is admitted that XTO has produced and sold gas under the terms of the Salvatora Gas Lease and has paid royalties to Mr. & Mrs. Salvatora. XTO admits that gas produced under the Salvatora Gas Lease was and is gathered by Mountain Gathering LLC

("Mountain Gathering"), but denies the remaining allegations in Paragraph 19 of the Third Amended Complaint.

20. It is only admitted that XTO administers and operates wells drilled pursuant to the lease attached as Exhibit A to the Complaint at ECF No. 1-2. XTO denies the remaining allegations in Paragraph 20, including the phrase "at all relevant times."

21. Admitted that, in calculating and paying royalties to the Salvatoras under the lease attached as Exhibit A to the Complaint at ECF No. 1-2, XTO has deducted post-production expenses. The remaining allegations in Paragraph 21 are denied.

22. It is admitted that there was a putative class action lawsuit captioned *Marburger v. XTO Energy Inc.*, Civ. A. No. 2:15-cv-00910, which was subsequently settled with the members of the *Marburger* settlement class pursuant to a settlement agreement. The written terms of the settlement speak for themselves, and any characterization of the settlement in Paragraph 22 that conflicts with the written terms of the settlement or suggests that the Court's orders regarding the settlement class constituted a finding that the disputed class was properly certified or otherwise ruled that certification of the disputed class was proper is denied.

23. The allegations in Paragraph 23 purport to quote from the terms of the Final Order and Judgment issued by this Court on March 27, 2018. The allegations are denied to the extent they are at variance with the written terms of that Final Order and Judgment. The last sentence of Paragraph 23 purports to summarize the legal effect of the Court's Order. This allegation is a legal conclusion to which XTO is not required to respond.

24. Admitted.

25. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, and a Lease Modification Agreement, are attached as Exhibit B to

the Complaint at ECF No. 1-3. Exhibit B compromises written documents that speak for themselves. After reasonable investigation, XTO is without knowledge or information sufficient to form a belief as to whether Phillips Production Company "drafted and prepared" the oil and gas lease attached as part of Exhibit B. XTO denies the allegations that Exhibit B is a "standard form oil and gas lease."

26. The allegations in Paragraph 26 that purport to quote from Exhibit B are denied to the extent they are at variance with Exhibit B. The remaining allegations in Paragraph 26 are denied. It is specifically denied that the oil and gas lease attached as part of Exhibit B requires the payment of royalties based on "total proceeds."

27. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, and a Lease Modification Agreement and amendment, are attached as Exhibit C to the Complaint at ECF No. 1-4. Exhibit C comprises written documents that speak for themselves. After reasonable investigation, XTO is without knowledge or information sufficient to form a belief as to whether Phillips Production Company "drafted and prepared" the oil and gas lease attached as part of Exhibit C. XTO denies the allegations that Exhibit C is a "standard form oil and gas lease."

28. The allegations in Paragraph 28 that purport to describe the contents of the oil and gas lease attached at Exhibit C to the Complaint at ECF No. 1-4 are denied to the extent they are at variance with Exhibit C. The remaining allegations in Paragraph 28 are denied. It is specifically denied that the oil and gas lease attached as part of Exhibit C requires the payment of royalties based on "total proceeds."

29. It is admitted that XTO has produced and sold gas under the terms of the Marburger 97 Acre and the Marburger 58 Acre Gas Leases and did pay royalties to the Olive M.

Marburger Living Trust for such gas. XTO admits that gas produced under the Marburger 97 Acre and the Marburger 58 Acre Gas Leases was and is gathered by Mountain Gathering, but denies the remaining allegations in Paragraph 29 of the Third Amended Complaint.

30. It is only admitted that XTO administers and has operated wells drilled pursuant to the leases attached as part of Exhibits B and C. XTO denies the remaining allegations in paragraph 30, including the phrase "at all relevant times."

31. Admitted that, in calculating and paying royalties to D&M Marburger under the leases attached as part of Exhibits B and C, XTO has deducted post-production expenses. The remaining allegations in Paragraph 31 are denied.

32. It is admitted that that the leases attached as part of Exhibits B and C are subject to the *Marburger* Final Order Modification, and that XTO has paid royalties under those leases after the *Marburger* Final Order Modification became effective. Based upon information provided by D&M Marburger to XTO, XTO admits the allegation in Paragraph 32 that D&M Marburger is "a successor in interest."

33. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, is attached as Exhibit D to the Complaint at ECF No. 1-5. Exhibit D is a written document that speaks for itself. XTO denies the allegations that Exhibit D is a "standard form oil and gas lease."

34. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, is attached as Exhibit E to the Complaint at ECF No. 1-6. Exhibit E is a written documents that speaks for itself. XTO denies the allegations that Exhibit E is a "standard form oil and gas lease."

35. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, is attached as Exhibit F to the Complaint at ECF No. 1-7. Exhibit F is a written documents that speaks for itself. XTO denies the allegations that Exhibit F is a "standard form oil and gas lease."

36. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, is attached as Exhibit G to the Complaint at ECF No. 1-8. Exhibit G is a written documents that speaks for itself. XTO denies the allegations that Exhibit G is a "standard form oil and gas lease."

37. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, is attached as Exhibit H to the Complaint at ECF No. 1-9. Exhibit H is a written documents that speaks for itself. XTO denies the allegations that Exhibit H is a "standard form oil and gas lease."

38. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, is attached as Exhibit I to the Complaint at ECF No. 1-10. Exhibit I is a written documents that speaks for itself. XTO denies the allegations that Exhibit I is a "standard form oil and gas lease."

39. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, is attached as Exhibit J to the Complaint at ECF No. 1-11. Exhibit J is a written documents that speaks for itself. XTO denies the allegations that Exhibit J is a "standard form oil and gas lease."

40. The allegations in Paragraph 40 that purport to describe the contents of the oil and gas leases attached at Exhibits D through J are denied to the extent they are at variance with Exhibits D through J. The remaining allegations in Paragraph 40 are denied. It is specifically

denied that the oil and gas lease attached as Exhibits D through J require the payment of royalties based on "total proceeds."

41. It is admitted that XTO has produced and sold gas under the terms of the Heasley's Nurseries' Gas Leases and paid royalties to Heasley's Nurseries for such gas. XTO admits that the gas produced under the Heasley's Nurseries' Gas Leases was and is gathered by Mountain Gathering, but denies the remaining allegations in Paragraph 41 of the Third Amended Complaint.

42. It is only admitted that XTO administers and operates wells drilled pursuant to the leases attached as part of Exhibits D through J. The phrase "at all relevant times" is denied.

43. Admitted that, in calculating and paying royalty to Heasley's Nurseries under the leases attached as part of Exhibits D through J, XTO has deducted post-production expenses. The remaining allegations in Paragraph 43 are denied.

44. Admitted.

45. It is admitted that a copy of an oil and gas lease covering property located in Butler County, Pennsylvania, is attached as Exhibit K to the Complaint at ECF No. 1-11. Exhibit K is a written document that speaks for itself. XTO denies the allegations that Exhibit K is a "standard form oil and gas lease."

46. After reasonable investigation, XTO is without knowledge or information sufficient to form a belief as to whether Phillips Production Company or one of its affiliates "drafted and prepared" the oil and gas lease attached as part of Exhibit K. XTO denies the allegations that Exhibit K is a "standard form oil and gas lease."

47. The allegations in Paragraph 47 that purport to quote from Exhibit K are denied to the extent they are at variance with Exhibit K. The remaining allegations in Paragraph 47 are

denied. It is specifically denied that the oil and gas lease attached as part of Exhibit K requires the payment of royalties based on "total proceeds."

48. The allegations in Paragraph 48 that purport to quote from Exhibit K are denied to the extent they are at variance with Exhibit K. The remaining allegations in Paragraph 48 are denied.

49. The allegations in Paragraph 49 that purport to describe the contents of Exhibit K are denied to the extent they are at variance with Exhibit K. XTO admits there are other oil and gas leases containing the clause quoted in Paragraph 48 of the Complaint, but denies the remaining factual allegations in Paragraph 49. The remaining allegations in Paragraph 49 purporting to interpret and characterize lease provisions state conclusions of law to which no response is required.

50. It is admitted that XTO has produced and sold gas under the terms of the Lang Gas Lease and paid royalties to Mr. & Mrs. Lang. XTO admits that gas produced under the Lang Gas Lease was and is gathered by Mountain Gathering, but denies the remaining allegations in Paragraph 50 of the Third Amended Complaint.

51. It is only admitted that XTO administers and operates wells pursuant to the lease attached as Exhibit K. XTO denies the remaining allegations in Paragraph 51, including the phrase "at all relevant times."

52. Admitted that, in calculating and paying royalty to the Langs under the lease attached as Exhibit K, XTO has deducted post-production expenses. After reasonable investigation, XTO is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 52, which pertain to leases and royalty payments that have not been identified by Plaintiffs, and therefore denies those allegations.

53. Admitted that Mr. & Mrs. Lang were not members of the class certified in *Marburger v. XTO Energy Inc.*, No. 2:15-cv-00910 and were not subject to the *Marburger* Final Order Modification. The remaining allegations in Paragraph 53 as to "other lessors similarly situated to Mr. & Mrs. Lang" relate to a vaguely-defined set of leases and persons or entities that are not parties to the lawsuit, and therefore no response is required.

54. Admitted that XTO calculated and paid royalties under the leases attached as Exhibits A through K to the Complaint at ECF No. 1. The phrase "at all relevant times" is denied. The remaining allegations in Paragraph 54 relate to persons or entities that are not parties to the lawsuit, and therefore no response is required. XTO denies there are any "class members" in this lawsuit and Plaintiffs have not provided a list of putative class members.

The heading "Late Royalty Payments" is denied.

55. Plaintiffs have withdrawn Paragraph 55 and thus no response is required.

56. Plaintiffs have withdrawn Paragraph 56 and thus no response is required.

The heading "Excessive Post-Production Costs" is denied.

57. The allegations in Paragraph 57 state legal conclusions to which no response is required. XTO denies that Plaintiffs correctly summarized the legal obligations under these vaguely-defined sets of leases.

58. Denied.

59. Denied.

60. It is admitted that Mountain Gathering is a Delaware limited liability company and was a subsidiary of XTO. The phrase "at all relevant times" is denied.

61. Upon information and belief, admitted that Mountain Gathering provides gathering services and processing services for gas produced from certain gas wells in Butler

County, Pennsylvania pursuant to a Gas Gathering Agreement between Mountain Gathering and XTO. XTO denies the remaining allegations in Paragraph 61 of the Third Amended Complaint.

62. It is admitted that, in a Gas Gathering Agreement between XTO and Mountain Gathering, Mountain Gathering contracted with XTO to provide gathering and processing services associated with production of hydrocarbons from certain property in Butler County, Pennsylvania. The remaining allegations in Paragraph 62 are denied.

63. XTO lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63 regarding the activities of "Rex Energy and its successor in interest, PennEnergy" or how XTO's "deductions" compare to "deductions" by PennEnergy/Rex Energy. Plaintiffs did not provide that information in response to discovery requests form XTO. XTO lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63 regarding whether plaintiffs dispute "MarkWest's charges." The remaining allegations of Paragraph 63 are denied.

64. Denied.

65. Denied.

66. The allegations of Paragraph 66 of the Third Amended Complaint state conclusions of law to which no response is required.

67. The allegations in Paragraph 67 that purport to describe the contents of the oil and gas leases attached at Exhibits A through K to the Complaint at ECF No. 1 are denied to the extent they are at variance with Exhibits A through K. XTO denies that there are "class members" who have been identified by Plaintiffs or are parties to this lawsuit and, therefore, denies Plaintiffs' allegation regarding the terms of the "oil and gas leases of the class members."

The remaining allegations of Paragraph 67 of the Third Amended Complaint state conclusions of law to which no response is required.

68. The allegations in Paragraph 68 that purport to describe the contents of "the *Marburger* Final Order Modification" and "leases that contained a Market Enhancement provision" are denied to the extent they are at variance with the express terms those unidentified documents. The remaining allegations of Paragraph 68 of the Third Amended Complaint state conclusions of law to which no response is required.

69. Denied.

The heading "Deduction of Post-Production Costs Under the Market Enhancement Leases After the Product was Marketable" is denied.

70. Denied.

71. Denied.

72. Plaintiffs have withdrawn Paragraph 72 and thus no response is required.

73. Plaintiffs have withdrawn Paragraph 73 and thus no response is required.

74. The allegations of Paragraph 74 of the Third Amended Complaint state conclusions of law to which no response is required.

75. Denied.

76. The allegations of Paragraph 76 of the Third Amended Complaint state conclusions of law to which no response is required.

77. Plaintiffs have withdrawn Paragraph 77 and thus no response is required.

78. The allegations of Paragraph 78 of the Third Amended Complaint state conclusions of law to which no response is required. XTO denies that the proposed "class" constitutes a proper class for the purposes of any of the subsections of Fed. R. Civ. P. 23.

79. The allegations of Paragraph 79 of the Third Amended Complaint state conclusions of law to which no response is required. XTO denies that the proposed "class" constitutes a proper class for the purposes of any of the subsections of Fed. R. Civ. P. 23.

80. Plaintiffs have withdrawn Count I and thus no response is required to the portions of Paragraph 80 regarding Count I. XTO denies that the precise number of class members and their identities can be ascertained from the records of XTO and its subsidiaries and affiliates. XTO also denies all Plaintiffs' allegations regarding a "standard form oil and gas lease" or "leases." The remaining allegations of Paragraph 80 of the Third Amended Complaint and its subparts state conclusions of law to which no response is required. XTO denies that the proposed "class" constitutes a proper class for the purposes of Fed. R. Civ. P. 23(a).

81. The allegations of Paragraph 81 of the Third Amended Complaint and its subparts state conclusions of law to which no response is required. XTO denies Plaintiffs' description of the Court's findings and orders regarding the *Marburger* settlement class. Those findings, orders, and the *Marburger* settlement agreement speak for themselves. XTO denies that the proposed "class" constitutes a proper class for the purposes of Fed. R. Civ. P. 23(b)(3).

82. The allegations at Paragraph 82 of the Third Amended Complaint and its subparts state conclusions of law to which no response is denied. XTO denies that the proposed "class" constitutes a proper class for the purposes of Fed. R. Civ. P. 23(b)(2).

COUNT I

83-90. Plaintiffs have withdrawn Count I and thus no response is required to Paragraphs 83-90 of the Third Amended Complaint.

COUNT II

91. XTO incorporates its response to Paragraphs 1 through 90 of the Third Amended

Complaint above.

92. It is admitted that XTO has paid royalties under and operated wells drilled pursuant to the oil and gas leases of the named Plaintiffs. The phrase "at all relevant times" is denied. Plaintiffs' allegation regarding the types of costs XTO was permitted to deduct is a legal conclusion to which XTO is not required to respond. The remaining allegations of Paragraph 92 of the Third Amended Complaint relate to unidentified oil and gas leases of persons or entities that are not parties to the lawsuit, and therefore no response is required. It is denied there are "Count II class members."

93. The allegations of Paragraph 93 relating to the named Plaintiffs state conclusions of law to which no response is required. The remaining allegations of Paragraph 93 of the Third Amended Complaint relate to unidentified persons or entities that are not parties to the lawsuit, and therefore no response is required.

94. The allegations of Paragraph 94 relating to the named Plaintiffs state conclusions of law to which no response is required. The remaining allegations of Paragraph 94 of the Third Amended Complaint relate to persons or entities that are not parties to the lawsuit, and therefore no response is required. It is denied there are "Count II class members."

95. Denied. XTO is not required to respond to the allegations of Paragraph 95 of the Third Amended Complaint relating to unidentified oil and gas leases of persons or entities that are not parties to the lawsuit. It is denied there are "Count II class members."

96. Denied. XTO is not required to respond to the allegations of Paragraph 96 of the Third Amended Complaint relating to unidentified persons or entities that are not parties to the lawsuit.

WHEREFORE, XTO requests that this Court enter judgment on Count II of the Third Amended Complaint in XTO's favor and against the named Plaintiffs, all at the named Plaintiffs' cost, and deny class certification on Count II of the Third Amended Complaint.

COUNT III

97. XTO incorporates its response to Paragraphs 1 through 96 of the Third Amended Complaint above.

98. It is admitted that XTO has paid royalties under and operated wells drilled pursuant to the oil and gas leases of Mr. & Mrs. Lang. The phrase "at all relevant times" is denied. XTO is not required to respond to the allegations of Paragraph 98 of the Third Amended Complaint relating to unidentified oil and gas leases of persons or entities that are not parties to the lawsuit. It is denied there are "Count III class members."

99. The allegations of Paragraph 99 relating to Mr. & Mrs. Lang state conclusions of law to which no response is required. The remaining allegations of Paragraph 99 of the Third Amended Complaint relate to unidentified persons or entities that are not parties to the lawsuit, and therefore no response is required.

100. To the extent the allegations of Paragraph 100 of the Third Amended Complaint relate to any of the named Plaintiffs, the allegations state legal conclusions to which no response is required. XTO denies Plaintiffs' allegation regarding the location at which "the class members' gas and constituents were marketable." The remaining allegations of Paragraph 100 of the Third Amended Complaint relate to unidentified persons or entities that are not parties to the lawsuit, and therefore no response is required.

101. Denied as to Mr. & Mrs. Lang. The remaining allegations of Paragraph 101 of the Third Amended Complaint relate to unidentified oil and gas leases of persons or entities that

are not parties to the lawsuit, and therefore no response is required. It is denied there are "Count III class members."

102. It is admitted that XTO has deducted certain post-production costs when paying royalties to Mr. & Mrs. Lang. The phrase "at all relevant times" is denied. The remaining allegations of Paragraph 102 of the Third Amended Complaint relate to persons or entities that are not parties to the lawsuit, and therefore no response is required. It is denied there are "Count III class members."

103. Denied. XTO is not required to respond to the allegations of Paragraph 103 of the Third Amended Complaint relating to unidentified oil and gas leases of persons or entities that are not parties to the lawsuit. It is denied there are "Count III class members."

104. Denied. XTO is not required to respond to the allegations of Paragraph 104 of the Third Amended Complaint relating to oil and gas leases of persons or entities that are not parties to the lawsuit.

WHEREFORE, XTO requests that this Court enter judgment on Count III of the Third Amended Complaint in XTO's favor and against the named plaintiffs, all at the named plaintiffs' cost, and deny class certification on Count III of the Third Amended Complaint.

AFFIRMATIVE DEFENSES

1. XTO incorporates its responses to Paragraphs 1 through 104 of the Third Amended Complaint above.

2. All allegations not expressly admitted above are denied.

3. The Third Amended Complaint fails to state a claim upon which relief may be granted.

4. At all times XTO has complied with the language of the oil and gas leases of the

named Plaintiffs and the members of the putative class.

5. At all times XTO acted reasonably, prudently, in good faith, and in conformance with applicable duties, statutes, regulations, and standards of the industry.

6. The claims of the named Plaintiffs and the putative class are barred, in whole or in part, by the provisions of their respective oil and gas leases that govern the payment of royalties.

7. The claims of the named Plaintiffs and the putative class may be barred, in whole or in part, by the applicable statute of limitations.

8. The claims of the named Plaintiffs and the putative class may be barred, in whole or in part, by the doctrines of res judicata or collateral estoppel.

9. The claims of the named Plaintiffs and the putative class may be barred, in whole or in part, by the doctrines of laches, waiver, consent, estoppel, and limitations.

10. The claims of the named Plaintiffs and the putative class may be barred, in whole or in part, by the doctrines of payment, settlement, release, ratification, accord and satisfaction, and performance.

11. The claims of the named Plaintiffs and the putative class may be barred in whole or in part as result of the settlement and release in *Marburger v. XTO*, 2:15-cv-00910.

12. XTO asserts the affirmative defense of offset and recoupment.

13. The claims of some members of the putative class are barred because they lack standing to bring some or all of the claims alleged in the Third Amended Complaint.

14. Plaintiffs' claims and the claims of the putative class are barred by payment.

15. The claims of some of the members of the putative class are barred because there is no actual and justiciable controversy between them and XTO.

16. The claims of some members of the putative class are barred because XTO did not incur post-production costs and did not net out post-production costs in the calculation of the royalties.

17. The class action allegations of the Third Amended Complaint are barred in that trying the named Plaintiffs' claims through a class action or other aggregate proceeding would violate XTO's statutory and constitutional rights to due process and a jury trial, and other constitutional and statutory rights, by: (a) allowing for the recovery of damages by class members who do not have valid claims; (b) allowing the class action procedural device to change the substantive law and substantive rights and responsibilities of the parties; and (c) depriving XTO of its right to defend itself with respect to individual claims.

18. The claims of certain named Plaintiffs and members of the putative class are barred by lack of privity with XTO.

19. The named Plaintiffs have failed to join necessary or indispensable parties.

20. The named Plaintiffs and members of the putative class have incurred no damages.

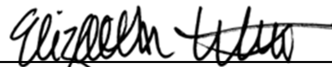
21. The named Plaintiffs are not entitled to recover attorneys' fees.

22. XTO expressly reserves the right to plead further including the reservation of all affirmative defenses required to be pleaded in its initial pleading.

23. XTO expressly reserves the right to assert other defenses if, among other things, the Court certifies a class, or if the facts developed during discovery otherwise warrant amendment. The claims of the named Plaintiffs and members of the putative class vary substantially, thereby demonstrating the impropriety of class-wide treatment, and rendering it impossible for XTO to articulate all defenses against all putative class members.

Date: February 9, 2022

REED SMITH LLP



Nicolle R. Snyder Bagnell
PA I.D. No. 87936
nbagnell@reedsmith.com
Justin H. Werner
PA I.D. No. 203111
jwerner@reedsmith.com
Reed Smith LLP
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
Tel: (412) 288-3804
Fax: (412) 288-3063

Elizabeth L. Tiblets
TX I.D. No. 24066194
elizabeth.tiblets@klgates.com
Jeffrey C. King
TX I.D. No. 11449280
jeffrey.c.king@klgates.com
K&L Gates LLP
301 Commerce Street, Suite 3000
Fort Worth, TX 76102
Tel: (817) 347-5070
Fax: (817) 347-5299

Counsel for Defendant
XTO Energy Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant XTO Energy Inc.'s Answer and Affirmative Defenses to the Third Amended Complaint – Class Action has been served by via the Court's ECF system on the following counsel of record:

David A. Borkovic
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue
Suite 1200
Pittsburgh, PA 15219

Dated: February 9, 2022

Elizabeth L. Tiblets