IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

A&B CAMPBELL FAMILY LLC, *et al.*,	:	
	:	**Case No. 3:15-cv-00340**
Plaintiffs,	:	**Judge Malachy E. Mannion**
vs.	:	
	:	**Complaint filed: 02/17/15**
CHESAPEAKE ENERGY CORPORATION, *et al.*,	:	***Electronically Filed***
Defendants.	:	

ANADARKO E&P ONSHORE LLC'S BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6)

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In their original Complaint (Doc. 1), Plaintiffs alleged antitrust and RICO claims against certain Defendants but affirmatively chose not to claim Anadarko, Mitsui E&P USA, LLC ("Mitsui"), and Statoil USA Onshore Properties, Inc. ("Statoil"), were part of any alleged antitrust conspiracy or RICO enterprise. It was only when Anadarko argued in its Rule 12(b)(1) motion that this Court lacked subject matter jurisdiction over the claims against Anadarko, and when Anadarko and Mitsui moved for severance of the claims against them, that Plaintiffs were inspired to replead their case and include Anadarko, Mitsui and Statoil (collectively, the "Lessee Defendants") in their antitrust and racketeering claims.

The complete lack of substance behind Plaintiffs' tactical repleading becomes apparent when the 145-page Amended Complaint is stripped of its formulaic recitations of the various causes of action. The only factual allegations made with respect to Anadarko relate to its 2006 Joint Exploration Agreement with Chesapeake Energy Corporation ("Chesapeake") and its 2010 Participation Agreement with Mitsui, innocuous agreements prevalent in the energy industry that provide no evidence of an anti-competitive agreement or racketeering activity. Beyond alleging the mere existence of these contracts, Plaintiffs provide no facts to support their claims against Anadarko. Instead, they rely on conclusory allegations against "Defendants," without identifying specific actions taken by

Anadarko. These allegations fail to meet the pleading standards established by *Twombly* and *Iqbal.*

In addition to their newly asserted federal claims, Plaintiffs also re-assert their breach of contract claim along with various other state law claims. Plaintiffs' breach of contract claim fails for the same reasons set forth in Anadarko's original motion to dismiss. (Docs. 71, 72). Under the express terms of Plaintiffs' oil and gas leases, Anadarko is entitled to use a netback calculation to determine the amount of royalties that should be paid to Plaintiffs and is entitled to use the actual post-production costs it incurred in its calculation. It is not required to base Plaintiffs' royalty payments on costs that may have been incurred in a different, hypothetical market. Plaintiffs' remaining state law claims similarly fail as they are simply a restatement of Plaintiffs' breach of contract claim.

I. PROCEDURAL HISTORY

On February 17, 2015, Plaintiffs filed their original Complaint in which they asserted breach of contract claims against Anadarko and the other Lessee Defendants, and antitrust and RICO claims against Chesapeake, Access Midstream Partners, L.P.'s ("Access") and certain of their affiliates. (Doc. 1). Plaintiffs attempted to establish this Court's subject matter jurisdiction over the state-law claims brought against the Lessee Defendants by alleging that the Court had (1) supplemental jurisdiction under 28 U.S. § 1367 because all claims were part of the

same case or controversy and (2) diversity jurisdiction under 28 U.S. § 1332 because there was complete diversity between the parties.

In its brief filed in support of its motion to dismiss the original Complaint, Anadarko argued that the state law claims brought against it shared nothing in common with the federal antitrust and racketeering claims brought against Chesapeake and Access and, therefore, could not be part of the same case or controversy for the purpose of establishing supplemental jurisdiction. (Doc. 71). Anadarko also established that Plaintiffs had failed to properly plead complete diversity. *Id.* Based on these failings, Anadarko sought to be dismissed from the action pursuant to Rule 12(b)(1). *Id.* For similar reasons, Mitsui and Anadarko also sought to have the claims brought against them severed from the claims against Access and Chesapeake. (Docs. 76 & 79).

Rather than respond to these motions seeking dismissal or severance, Plaintiffs instead sought and obtained leave to file an Amended Complaint. In their effort to keep the Lessee Defendants in the case, Plaintiffs added federal law claims against the Lessee Defendants. (Doc. 94). Plaintiffs point to no facts explaining why they excluded the Lessee Defendants from the antitrust and RICO allegations in the original Complaint but now assert that the Lessee Defendants were part of the alleged antitrust conspiracy and RICO enterprise.

II. STATEMENT OF FACTS

According to Plaintiffs, "beginning in or about 2006, Anadarko acquired hundreds of oil and gas leases of properties in Bradford County, Pennsylvania and in surrounding counties." (Doc. 94 ¶ 135). Plaintiffs are royalty owners of gas produced under certain of those leases and Anadarko pays royalties to the Plaintiffs under those leases on the portion of the gas production Anadarko sells.

In addition to their state law claims grounded in the lease agreements, Plaintiffs assert antitrust and RICO claims related to several purported schemes in which the Defendants allegedly participated. The first two schemes in which Anadarko allegedly participated – schemes to allocate the geographic markets for Gas Mineral Rights and Operating Rights – were purportedly implemented via a 2006 Joint Exploration Agreement between Anadarko and Chesapeake, which created an Area of Mutual Interest or "AMI," and a 2010 Area Participation Agreement between Anadarko and Mitsui. (Doc. 94, ¶¶136, 140). However, agreements of the type the Plaintiffs allege that Anadarko has entered into are not anti-competitive and are as fundamental to the exploration and production of oil and gas in America as the pipeline or the drill bit. The terms of these agreements can vary, but they often involve companies that share in the costs and risks involved in investing in a particular well, property, or transportation system by agreeing to acquire, or conferring the right to acquire, a percentage interest in any

asset acquired in a geographic area. By entering into a series of these agreements with a diverse set of parties, oil and gas companies are able to spread the costs and risks associated with exploration and production across a larger geographic area and set of properties. This, in turn, allows for the faster development of oil and gas interests by a greater number of market participants.[1] These types of agreements are especially valuable in the current time period, where tight credit and increasingly-expensive horizontal drilling practices raise the costs of developing a particular asset.[2] Thus, the only factual allegations offered in support of Plaintiffs' claims against Anadarko – the existence of the Joint Exploration and Area Participation Agreements – relate to a series of proper, bilateral agreements, and fail to demonstrate the existence of an anticompetitive agreement between Anadarko and the other Defendants.

Plaintiffs go on to assert that Anadarko and the other Defendants engaged in two additional schemes to restrain competition in the market for Gathering Services and to bolster and extend Access' monopoly in the market for Gathering Services. With respect to this initial scheme, Plaintiffs' only allegation as to Anadarko is that it agreed, in its 2006 Joint Exploration Agreement with

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[1] *See* Debra J. Villarreal and Lucas LaVoy, "Oil and Gas Exploration and Development Agreements," 31 Energy & Min. L. Inst. 10, p. 325, 374-75 (2010) ("Such relationships allow companies to bring together their respective lands, leases, funds and expertise to achieve more in concert than either, acting alone, ever could.").

[2] *Id.*

Chesapeake, that Chesapeake would construct and operate gas gathering systems to serve the wells operated by Chesapeake under the agreement, and that, in turn, Anadarko or its affiliates would receive an ownership interest in those systems. Plaintiffs do not allege how the Joint Exploration Agreement between Anadarko and Chesapeake is tantamount to an agreement among all of the Defendants to restrain competition or how the Joint Exploration Agreement between Anadarko and Chesapeake resulted in a reduction in competition in the overall market for Gathering Services. Instead, Plaintiffs allege that this purportedly anti-competitive agreement resulted in Chesapeake possessing a monopoly with respect to gathering services provided to Chesapeake-operated wells. With respect to the latter scheme, in which the Defendants allegedly conspired to bolster Access' monopoly in the market for Gathering Services, Plaintiffs identify and detail various steps taken by both Chesapeake and Access that allegedly demonstrate the existence of a conspiracy. However, Plaintiffs are silent as to any agreement purportedly made by Anadarko or any action taken by Anadarko in support thereof.

Finally, Plaintiffs allege that all of the Defendants engaged in a scheme to defraud Plaintiffs of royalties through a pattern of racketeering activity. However, Plaintiffs have not alleged any facts concerning the predicate acts allegedly perpetrated by Anadarko.

III. STATEMENT OF QUESTIONS INVOLVED

Pursuant to Fed. R. Civ. P. 12(b)(6), have Plaintiffs stated a claim for which relief can be granted against Anadarko?

IV. LEGAL STANDARD

Rule 12(b)(6) provides for the dismissal of a complaint, in whole or in part, if the plaintiff fails to state a claim upon which relief can be granted. The moving party bears the burden of showing that no claim has been stated, *Hedges v. U.S.*, 404 F.3d 744, 750 (3d Cir. 2005), and dismissal is appropriate only if, accepting all of the facts alleged in the complaint as true, the plaintiff has failed to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1974 (2007).

Applying these principles, the Third Circuit has established a three-part analysis to be used in evaluating whether allegations in a complaint survive a Rule 12(b)(6) motion to dismiss: "(1) identifying the elements of the claim, (2) reviewing the complaint to strike conclusory allegations, and then (3) looking at the well-pleaded components of the complaint and evaluating whether all of the elements identified in part one of the inquiry are sufficiently alleged." *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). If, after this analysis, the claims in the plaintiffs' complaint fail to state a claim for relief, those claims must be dismissed.

V. ARGUMENT

A. The Plaintiffs Have Not Stated a Claim under the Sherman Act.

In their Amended Complaint, Plaintiffs have, for the first time, alleged that Anadarko was part of an agreement with the Defendants to restrain competition in the markets for Gas Mineral Rights, Gathering Services and Operating Rights.[3] Plaintiffs also now allege that Anadarko was part of a conspiracy with the Defendants to permit Access Midstream to acquire and maintain monopoly power in the market for Gathering Services.

Plaintiffs' attempts to transform their royalty underpayment claims against Anadarko into antitrust violations fall flat. Plaintiffs have failed to satisfy their burden to plead any facts that could show the existence of an anti-competitive agreement, as required by Section 1, or conspiracy to monopolize, as required by Section 2. Even if Plaintiffs had satisfied these burdens, they also have failed to make the necessary showings that they have standing to assert their claims, that they have suffered a cognizable antitrust injury, and that the geographic markets alleged in the Amended Complaint are proper for purposes of the Sherman Act. Plaintiffs' Sherman Act claims should be dismissed.

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[3] Plaintiffs define the market for Gas Mineral Rights as "the market for the lease of subsurface natural gas underlying specific land, together with the rights to explore for, develop, produce, measure and market gas from the leased premises." Doc. 94, ¶238. The market for Operating Rights is defined as "the market for the right to operate working interests in oil and gas leases to explore for, produce and market natural gas" while the market for Gathering Services is defined as "the market for natural gas gathering and midstream transportation services." *Id.*

1. The Plaintiffs Have Failed to Allege the Existence of an Anti-Competitive Agreement That Would Satisfy the *Twombly* and *Iqbal* Standards.

A violation of Section 1 of the Sherman Act requires allegations establishing a "contract, combination or conspiracy in restraint of trade." 15 U.S.C. § 1. In other words, the plaintiff must show a "conscious commitment to a common scheme." *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 220 (3d Cir. 2011). In order to avoid dismissal of their Section 1 claims against Anadarko, Plaintiffs must allege facts supporting a reasonable inference of an actual, illicit agreement between Anadarko, Chesapeake, and the "other oil and gas companies" referenced in the Amended Complaint. Plaintiffs have not done so.

At no point in the 145-page Amended Complaint do Plaintiffs provide any factual allegations concerning an actual agreement among all of the Defendants to restrain trade. Instead, Plaintiffs make conclusory assertions that the Defendants "willfully, knowingly and intentionally combined or conspired." Doc. 94, ¶ 240. These conclusory allegations, devoid of any facts, do not support the existence of an "actual, manifest agreement" establishing proof "that the defendants got together and exchanged assurances of common action or otherwise adopted a common plan." *In re Flat Glass Antitrust Litig.*, 385 F.3d 350, 361 (3d Cir. 2004). Plaintiffs' recitation of the first element of a Section 1 claim, is exactly the kind of

"threadbare recital[] of the elements of a cause of action" that the Supreme Court rejected as insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009).

In the absence of factual allegations regarding concerted action by *all* of the Defendants, Plaintiffs rely upon a recitation of various agreements between subgroups of the Defendants over a five-year period. By way of example, Plaintiffs allege:

- Anadarko and Chesapeake entered into a 50/50 Joint Exploration Agreement in 2006 pursuant to which Chesapeake served as operator of leases within a designated area and Anadarko agreed to assign 50% of its interest in leases within the same area to Chesapeake (Doc. 94, ¶ 136);

- In November 2008, Chesapeake sold Statoil a minority interest in Chesapeake's leaseholds in a certain area (*Id.*, ¶ 141);

- In January 2010, Anadarko assigned interests in Plaintiffs' leases to Mitsui (*Id.*, ¶ 140).

These individual agreements do not serve as evidence of a broader agreement among all of the Defendants to restrain trade in three different markets. *See, e.g., Loren Data Corp. v. GXS, Inc.*, 501 F. App'x 275, 280 (4th Cir. 2012) ("Merely pleading or pointing to an express contract is not enough to show that an actual conspiracy to restrain trade is afoot.").

Further, the Third Circuit has held that where a complaint alleges an agreement between a group of defendants, the plaintiff does not satisfy its burden by alleging numerous, smaller agreements between individual members of the

conspiracy. *See Howard Hess Dental Labs. Inc. v. Dentsply Int'l., Inc.*, 602 F.3d 237, 257 (3d Cir. 2010) (finding that "Plaintiffs are bound by the four corners of their amended complaint, which clearly seeks to allege one conspiracy" and refusing to sustain alternative theories of smaller conspiracies). Other than their conclusory assertion that Defendants "combined or conspired," Plaintiffs have offered no allegations to support their contention that an agreement to restrain trade in violation of Section 1 of the Sherman Act exists amongst Anadarko, Chesapeake, and the unidentified "other oil and gas companies."

Moreover, Plaintiffs have made no allegation as to how the agreements on which they rely were designed to "reduce, restrain, or eliminate competition" in the market for Gas Mineral Rights, Operating Rights, or Gathering Services. (Doc. 94, ¶ 240). Instead, the agreements upon which Plaintiffs rely are entirely innocuous and, by Plaintiffs' own allegations, consisted of sales of mineral interests in exchange for cash and other consideration. (*See* Doc. 94, ¶¶ 136, 140, 141). These agreements are extremely commonplace in the industry and undoubtedly are "just as much in line with a wide swath of rational and competitive business strategy unilaterally prompted by common perception of the market" as they are with the theories posited by Plaintiffs. *See Twombly*, 550 U.S. at 554.

2. The Plaintiffs Have Not Alleged the Existence of a Conspiracy to Monopolize the Market for Gathering Services.

To state a claim for conspiracy to monopolize, a plaintiff must plead facts showing (1) an agreement to monopolize; (2) an overt act in furtherance of the conspiracy; (3) a specific intent to monopolize; and (4) a causal connection between the conspiracy and the injury alleged. *Dentsply*, 602 F.3d at 253. Thus, as a threshold matter, Plaintiffs must allege the existence of an agreement among the Defendants. However, Plaintiffs' allegations in support of their Section 2 claim are no better than the deficient allegations made in support of their Section 1 claim.

According to Plaintiffs, "Defendants willfully, knowingly and intentionally combined or conspired among themselves and with others with the specific intent" to permit Access to exercise monopoly power in the market for Gathering Services. (Doc. 94, ¶ 260). However, Plaintiffs do not make a single factual allegation to support their contention that Anadarko entered into the alleged conspiracy. Instead, Plaintiffs' only allegations relate to the "Defendants" as a whole and unnamed "others."

This type of group pleading that fails to identify how each individual defendant was involved in the alleged conspiracy is not permissible. *See, e.g., Pierson v. Orlando Regional Healthcare Systems, Inc.*, 619 F. Supp. 2d 1260, 1273 (M.D. Fla. 2009) ("Because of the grouping together of these Defendants without differentiation or some sort of description of actions that could provide 'fair notice'

of the basis for the claims against them, the claims against the 'Peer Review Defendants' are not sufficiently pled."); *In re Processed Egg Products Antitrust Litig.*, 821 F. Supp. 2d 709, 746-47 (E.D. Pa. 2011) (rejecting group pleading and granting 12(b)(6) motion to dismiss where there were no factual allegations in the complaint to connect each, or any, of the group defendants, directly to the conspiracy); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 586 F. Supp. 2d 1109, 1117 (N.D. Cal. 2008) (the complaint "must allege that each individual defendant joined the conspiracy and played some role in it") (citation omitted). Because Plaintiffs have failed to allege facts supporting Anadarko's participation in a conspiracy to monopolize the market for Gathering Services, their Section 2 claim against Anadarko should be dismissed.

3. The Plaintiffs Lack Standing to Assert their Antitrust Claims.

The concept of standing in an antitrust action is a prudential limitation in both Section 1 and Section 2 cases, which asks whether the plaintiff is the "proper party to bring a private antitrust action." *See Ethypharm S.A. France v. Abbott Labs*, 707 F.3d 223, 232 & n.17 (3d Cir. 2013); *City of Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 264 (3d Cir. 1998). Antitrust standing is limited to consumers and competitors in the relevant market, and to those whose injuries are "inextricably intertwined" with the alleged antitrust agreement or conspiracy. *See, e.g., Ethypharm*, 707 F.3d at 233; *W. Penn Allegheny Health Sys., v. UPMC*, 627

F.3d 85, 102 (3d Cir. 2010). The Third Circuit has limited the phrase "inextricably intertwined" to refer to only those cases "in which both plaintiffs and defendants are in the business of selling goods or services *in the same relevant market*, though they may not directly compete against each other." *See Ethypharm,* 707 F.3d at 237 (*citing Broadcom Corp. v. Qualcomm, Inc.*, 501 F.3d 297, 320-21 (3d Cir. 2007)).

There is no dispute that Plaintiffs are neither consumers nor competitors in any of the three markets alleged in the Amended Complaint. Instead, the only market in which Plaintiffs play any role at all is the market for Gas Mineral Rights, which is defined as the "market for the lease of subsurface natural gas underlying specific land, together with the rights to explore for, develop, produce, measure and market gas from the leased premises." (Doc. 94, ¶238). In that market, Plaintiffs serve as sellers or suppliers of mineral rights to companies like Anadarko and others. However, in that capacity Plaintiffs do not compete with any of the Defendants, including Anadarko.

Plaintiffs' role as a mere supplier in the Gas Mineral Rights market is inadequate, taken alone, to confer antitrust standing. For example, in *SigmaPharm, Inc. v. Mut. Pharm. Co.*, 454 F. App'x 64, 69 (3d Cir. 2011), the Third Circuit found that even though the plaintiff provided a crucial input, it did not transform the plaintiff into a competitor or otherwise confer antitrust standing.

Moreover, there is no indication that Plaintiffs' alleged injuries are "inexplicably intertwined" with the alleged antitrust agreement or conspiracy. The only injury that Plaintiffs have alleged is that inflated or supra-competitive post-production costs were deducted from their royalties. As discussed in more detail below, there is simply no allegation explaining how an agreement to divide the market for Gas Mineral Rights resulted in Plaintiffs receiving the loss of royalties through unauthorized or artificially inflated post-production costs. Thus, Plaintiffs have failed to demonstrate how their purported injury and the alleged anticompetitive agreement are related in any way, much less inexplicably intertwined in a way to confer antitrust standing.

4. The Plaintiffs Have Failed to Allege the Existence of an Antitrust Injury.

It is axiomatic that the antitrust laws were enacted for "the protection of competition, not competitors." *Brown Shoe Co. v. U.S.*, 370 U.S. 294, 320 (1962). Accordingly, Plaintiffs must allege they have suffered an antitrust injury. *See W. Penn Power Co.,* 147 F.3d at 265. An antitrust injury is limited to the type that the antitrust laws were intended to prevent and that flows from that which makes the defendants' conduct unlawful under antitrust law. *See Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977). In other words, to constitute antitrust injury, the harm alleged must be to market-wide competition and must flow from

"a competition-*reducing* aspect or effect." *ARCO v. USA Petroleum Co.*, 495 U.S. 328, 344 (1990).

a. The Harm Alleged by the Plaintiffs is Not Harm to Market-Wide Competition.

In this case, the antitrust injury allegedly suffered by Plaintiffs is an injury to Plaintiffs and not an injury to market-wide competition. Plaintiffs claim to have been harmed by "the loss of royalties due to deductions by the Lessee Defendants of unauthorized or artificially inflated costs for gathering, transportation and other post-production costs." (Doc. 94, ¶¶ 253, 264). This injury is specific to Plaintiffs and does not constitute market-wide harm. Thus, it is insufficient to serve as the basis of a proper antitrust claim. *Perry v. Rado*, 343 Fed. Appx. 240 (9th Cir. 2009) (dismissing complaint because plaintiff, while alleging injury to himself, failed to allege injury to competition in the market at large); *McGlinchy v. Shell Chem. Co*., 845 F.2d 802, 811–12 (9th Cir. 1988) (holding plaintiffs failed to state a claim where plaintiffs "failed to allege the requisite antitrust injury to competition that is required under both sections 1 and 2 of the Sherman Act").

b. The Harm Alleged by the Plaintiffs is Not the Result of the Alleged Anti-Competitive Action.

(i) The Plaintiffs Fail to Allege a Connection Between their Injury and the Gas Mineral Rights and Operating Rights Markets.

Moreover, Plaintiffs' alleged injury bears no relationship to the anticompetitive conduct alleged in the Amended Complaint. With respect to Plaintiffs' claims

related to the market for Gas Mineral Rights, Plaintiffs have alleged that Anadarko and the other Defendants reached an agreement to divide the "market for the lease of subsurface natural gas underlying specific land, together with the rights to explore for, develop, produce, measure and market gas from the leased premises." (Doc. 94, ¶ 238). Plaintiffs point to this same agreement in support of their allegation that Anadarko agreed to divide the market for Operating Rights – the market for the right to operate working interests in oil and gas leases to explore for, produce and market natural gas. (*Id.*, ¶¶ 238, 242). However, there is simply no allegation explaining how an agreement to divide the market for the purchase of mineral rights or operating services resulted in a loss of royalties through unauthorized or artificially inflated post-production costs.

Plaintiffs' failure to allege the existence of an injury that bears any relationship to the anticompetitive agreement alleged in the Amended Complaint results in the failure of their claims. *See Am. Ad Mgmt., Inc. v. Gen. Tele. Co. of Cal.*, 190 F.3d 1051, 1057 (9th Cir. 1999); *Ass'n of Wash. Pub. Hosp. Dists. v. Phillip Morris, Inc.,* 241 F.3d 696, 704-705 (9th Cir. 2001); *Assoc. General Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 542-43 (1983).

(ii) The Plaintiffs' Alleged Injuries do not Result from the Purported Anti-Competitive Conduct in the Gathering Services Market.

Similarly, with respect to Plaintiffs' claims related to the market for Gathering Services, Plaintiffs' alleged injuries do not flow from "a competition-reducing aspect or effect." *ARCO,* 495 U.S. at 344. Plaintiffs' allegations with respect to the market for Gathering Services are two-fold. First, Plaintiffs claim that the Joint Exploration Agreement between Chesapeake and Anadarko (or other unidentified agreements) was anti-competitive because it provided that Chesapeake was to be the owner and operator of gathering systems to be constructed to service the wells Chesapeake would drill under the Joint Exploration Agreement. However, Plaintiffs have failed to allege any facts that would support Plaintiffs' assertion that this conduct resulted in the Defendants charging supracompetitive rates for post-production services.

Second, Plaintiffs allege that the Defendants conspired to bolster and maintain Access' monopoly in the market for Gathering Services. However, there is no allegation that Access' alleged monopoly power in the market for Gathering Services was unlawfully acquired or that the market became any less competitive as a result of its acquisition of a monopoly. *Cf. Brunswick v. Riegel Textile Corp.*, 752 F.2d 261, 267 (7th Cir. 1984) (recognizing that a rational profit-maximizer holding a monopoly would seek to earn "all the monopoly profits that the patent

made possible.”). Instead, Plaintiffs focus on Access’ acquisition of Chesapeake’s gathering systems and allege that, as a result of that acquisition and the “Defendants” involvement therein, Access acquired monopoly power in the market for Gathering Services.

However, nothing relevant to the amount of competition for Gathering Services is alleged to have changed as a result of the acquisition, and it did not alter any market or monopoly power that may or may not have existed prior to the transaction. Instead, according to Plaintiffs, Chesapeake “effectively conveyed” to Access “the monopoly power already possessed by Chesapeake Energy and its subsidiaries in the market for gathering services.” (Doc. 94, ¶ 211). Thus, Plaintiffs themselves have alleged that Access’ market power was not created by the transaction; it was merely transferred from one company to another. In light of these allegations, Plaintiffs have not pleaded the injury of the type that the antitrust laws were intended to prevent, *i.e.,* one that flows from a reduction in competition. *See Columbia River People’s Util. Dist. v. Portland Gen. Elec. Co.*, 217 F.3d 1187, 1190-91 (9th Cir. 2000) (noting that the transfer of monopoly power has no antitrust significance); *Riegel*, 752 F.2d at 266 (same); *Shah v. Harristown Dev. Corp.*, No. 12-2196, 2013 WL 6567764 at *28 (M.D. Pa. Dec. 13, 2013) (finding that “an existing monopoly's change of ownership is not, by itself, an antitrust violation.”).

5. The Plaintiffs Have Failed to Allege the Existence of a Proper Geographic Market.

In order to state a claim under the Sherman Act, a plaintiff must allege the existence of a valid geographic market. The relevant geographic market is the "area in which a potential buyer may rationally look for the goods or services he or she seeks." *Tunis Bros. Co., Inc. v. Ford Motor Co.*, 952 F.2d 715, 726-27 (3d Cir. 1991).

Plaintiffs' claims under both Section 1 and Section 2 should be dismissed because their artificially narrowed geographic markets are legally insufficient and entirely implausible under the well-settled standards governing the definition of the geographic market.[4] The geographic market for purposes of Plaintiffs' Section 1 claim has been alleged to be, in the alternative: (1) Bradford County, Pennsylvania and adjoining portions of Sullivan, Susquehanna and Wyoming Counties; (2) the AMI designated in the 2006 Joint Exploration Agreement between Chesapeake and Anadarko; and/or (3) the portion of the "Dedicated Area" located within Bradford, Sullivan, Susquehanna, or Wyoming Counties. (Doc. 94, ¶ 237). The first and

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[4] While defining the appropriate geographic market can sometimes be a question of fact, courts do not hesitate to dismiss antitrust complaints where, as here, the Plaintiffs' proposed geographic market is plainly too narrow. "[T]he alleged product market must be theoretically plausible," and "in the context of Rule 12 motions to dismiss, federal courts 'have not hesitated to reject market allegations that make no economic sense.'" *Theatre Party Assocs., Inc. v. Shubert Org., Inc.*, 695 F. Supp. 150, 154 (S.D.N.Y. 1988); *Apani Southwest, Inc. v. Coca-Cola Enterprises, Inc.*, 300 F.3d 620, 633 (5th Cir. 2002) (affirming Rule 12(b)(6) dismissal of antitrust complaint for failure to allege geographic market that corresponded to the "commercial realties of the industry").

third of these markets are alleged to be the relevant geographic markets for purposes of Plaintiffs' Section 2 claims. (Doc. 94, ¶ 258).

Plaintiffs' description of the proposed geographic markets is an astonishing 319 words long and references unidentified portions of three separate counties and at least three separate contracts, none of which are attached to the Amended Complaint. Plaintiffs' definition of these markets fails to give Anadarko (or any of the Defendants) sufficient notice of the geographic market Plaintiffs allege. For this reason alone, the Court may dismiss Plaintiffs' antitrust claims. *See Marchese v. Cablevision Systems, Corp.*, 2011 WL 3022529, at *7 (D.N.J. July 21, 2011); *Ticketmaster LLC v. RMG Technologies, Inc.*, 536 F. Supp. 2d 1191, 1195-96 (C.D. Cal. 2008).

Furthermore, Plaintiffs do not and cannot allege that their proposed geographic markets reflect the commercial realities of competition in the markets for Gas Mineral Rights, Operating Rights, or Gathering Services. Plaintiffs have not asserted any facts to support a theory that purchasers in the market for Gas Mineral Rights, such as Anadarko and others, would limit their search for "subsurface natural gas underlying specific land, together with the rights to explore for, develop, produce, measure and market gas from the leased premise" to a narrow geographical area in Pennsylvania. Similarly, Plaintiffs have not alleged why it would be plausible for operators of natural gas wells, such as Chesapeake,

or operators of gathering systems, such as Access, to limit their area of service to the geographic market proposed by Plaintiffs. Instead, the Plaintiffs have done exactly what the Fifth Circuit has cautioned is not proper in an antitrust case; they have attempted to "artificially narrow a broader economic market . . . to specific venues." *Apani Southwest, Inc.*, 300 F.3d at 633. "Such pleading maneuvers may not be used for the purpose of creating a fictitious market." *Id*. Because Plaintiffs are required to identify a plausible geographic market to support their Sherman Act claims, but have failed to do so, their claims should be dismissed.

B. The Plaintiffs Have Not Stated a Claim under RICO.

In addition to their antitrust claims, the Plaintiffs have also claimed that the "Defendants" were part of a RICO enterprise designed to defraud the Plaintiffs by overcharging them for post-production costs associated with the gathering, transportation, and marketing of natural gas. (Doc. 94, ¶ 272). These new allegations of a multi-party conspiracy to overcharge royalty owners for post-production costs stand in stark contrast to those in the original Complaint (as well as those the Court recently encountered in *The Suessenbach Family Ltd. Partnership, et al. v. Access Midstream Partners, L.P., et al*,. in which Access and Chesapeake were alleged to have been involved in a bilateral RICO scheme related to the formation of Access in 2012). *See* 3:14-cv-591, 2015 WL 1470863 (M.D.

Pa. March 31, 2015) (Mannion, J.). In making these new allegations, Plaintiffs have failed to adequately plead their claims.

1. The Plaintiffs Have Not Alleged the Existence of a Cognizable RICO Enterprise.

As part of their RICO claims, Plaintiffs have alleged that the Defendants were part of an association in fact enterprise (Doc. 94, ¶ 270), which is a "group of persons associated together for a common purpose of engaging in a course of conduct" and "must have at least three structural features: (1) a purpose, (2) relationships among those associated with the enterprise, and (3) longevity sufficient to permit these associates to pursue the enterprise's purpose." *Boyle v. U.S.*, 556 U.S. 938, 946 (2009). In other words, an association in fact enterprise is a group that functions as a "continuing unit" with a "common purpose." *Id.* at 948.

Plaintiffs allege that the Defendants were "associated for the common purpose of defrauding the leaseholders of the Lessee Defendants, including Plaintiffs, by . . . overcharging them for post-production costs . . . ." (Doc. 94, ¶ 272). However, Plaintiffs have not pleaded facts that plausibly imply the existence of an enterprise with the structural attributes identified by the Supreme Court in *Boyle*. There is no allegation that each of the Defendants knowingly agreed to participate together as an enterprise or that the Defendants functioned together as a "continuing unit" and with the "common purpose" alleged. Instead, at most, Plaintiffs' allegations establish a series of bilateral agreements among subsets of

the Defendants without showing that any of these agreements reflect a common purpose to defraud or overcharge leaseholders. Such allegations are not sufficient to support the existence of an association-in-fact enterprise. *See United Food & Commercial Workers Unions & Employers Midwest Health Benefits Fund*, 719 F.3d 849, 854-55 (7th Cir. 2013) (holding association-in-fact enterprise did not exist where interactions between defendants simply show that they had a commercial relationship).

In lieu of any factually supported allegations, Plaintiffs simply conclude that Defendants "knew and expressly or implicitly agreed that such artificially inflated gathering and transportation fees would be passed-on to holders of royalty interests in leases with the Lessee Defendants, including Plaintiffs, in the form of deductions from the royalties payable to them." (Doc. 94, ¶ 276). Such conclusory allegations are insufficient to satisfy Plaintiffs' pleading burden. *See, e.g., Allstate N.J. Ins. Co. v. Summitt Pharmacy, Inc.*, No. 13-5809, 2014 WL 1767528, at *10-11 (D.N.J. May 2, 2014).

Even if the Plaintiffs had pled the existence of a RICO enterprise, they have still not alleged how Anadarko participated in the "operation or management" of the enterprise, as is required to plead a violation of Section 1962(c). *Reves v. Ernst & Young*, 507 U.S. 170, 184 (1993). In order for a defendant to "conduct or participate" in the affairs of a RICO enterprise, a defendant must, in some capacity,

direct the affairs of the enterprise. *Id.* at 178-79. In other words, a defendant will not be liable simply because it provides services that benefit the enterprise; instead, there "must be a nexus between the person and the conduct in the affairs of an enterprise." *Univ. of Maryland at Baltimore v. Peat, Marwick, Main & Co.*, 996 F.2d 1534, 1539 (3d Cir. 1993).

Plaintiffs have not made any allegation as to how Anadarko directed the affairs of the enterprise. Instead, the Amended Complaint simply claims that the enterprise was primarily managed by Chesapeake and then makes the conclusory statement that the Defendants "agreed to, and did, participate in the conduct of the Enterprise." (Doc. 94, ¶ 271). These allegations are insufficient to demonstrate that Anadarko participated in the operation or management of the enterprise. *See Univ. of Maryland*, 996 F.2d at 1539.

2. The Plaintiffs Have Failed to Allege a Pattern of Racketeering Activity in Compliance with Rule 9(b).

In order to allege a RICO violation, a plaintiff must articulate a pattern of racketeering activity, *i.e.,* predicate acts. The predicate acts allegedly committed by Defendants are mail and/or wire fraud, which must be pled with particularity as required by Rule 9(b). *Warden v. McLelland*, 288 F.3d 105, 114 (3d Cir. 2002).

Specifically, Plaintiffs must "identify the purpose of the mailing within the defendant's fraudulent scheme and specify the fraudulent statement, the time, place, and speaker and content of the alleged misrepresentations." *Bonavitacola*

Elec. Contractor v. Boro Dev. Inc., 87 Fed. App'x. 227, 231 (3d Cir. 2003) (dismissing Section 1962(c) claim because it plead some, but not all, of these requirements). In other words, the Plaintiffs' pleading must contain the who, what, when and where details of the alleged fraud.

Plaintiffs have alluded to the existence of "frequent mail and/or wire transmissions" that constituted mail and/or wire fraud (Doc. 94, ¶ 279) but have not alleged when these transmissions occurred, the identity of who sent and received the transmissions, the content of the transmissions or how they were fraudulent or misleading. Indeed, not one of the more than 65 individual plaintiffs identify a specific royalty statement or payment distributed by Anadarko that contained a fraudulent statement, from whom that statement or payment was received or the date on which it was received. Instead, Plaintiffs "allege such transmission generally" and then reference the "periodic royalty statements and payments" they received. *Id.* These allegations, in the absence of any supporting detail, are wholly insufficient.

3. The Plaintiffs Have Not Alleged the Existence of a RICO Injury.

Finally, in order to sustain a RICO claim, a plaintiff must show that the defendant's actions were the proximate cause of their injuries. *In re Sunrise Sec. Litig.*, 916 F.2d 874, 883 (3d Cir. 1990); *see also Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006) ("When a court evaluates a RICO claim for proximate

causation, the central question it must ask is whether the alleged violation led directly to plaintiffs' injuries."). In this case, there is simply no alleged connection between the mailing of Plaintiffs' monthly royalty statements and their purported injury that supra-competitive post-production costs were deducted from their royalty payments. Instead, according to Plaintiffs' theory, their injury occurred when the Defendants reached their agreement to charge excessive post-production costs, not when Anadarko mailed statements providing information regarding the payments. Based on their allegations, Plaintiffs would have suffered their purported injury regardless of whether or not Anadarko distributed royalty statements to Plaintiffs. *See U.S. v. Cross*, 128 F.3d 145, 151 (3d Cir. 1997) (finding in part, that plaintiffs failed to establish a conspiracy to commit mail fraud because the mailings at issue were routine mailings and the objective of the conspiracy would have been achieved regardless of the mailings).

Moreover, Plaintiffs have failed to "link their own injuries to the alleged RICO enterprise by alleg[ing] what happened to them." *Rolo v. City Inv. Co. Liquidating Trust*, 155 F.3d 644, 659 (3d Cir. 1998). Absent from the Amended Complaint are any well-pleaded allegations as to the actual deductions taken from each Plaintiffs' royalties by Anadarko or the way in which those deductions changed as a result of the purported RICO scheme. This is in stark contrast to *Suessenbach*, where this Court denied the defendants' motion to dismiss on the

basis that the plaintiffs pleaded a specific percentage increase in their royalty deductions following the 2012 transactions that formed the basis of the alleged RICO scheme and attached documentation that they claimed supported these contentions. *See* 2015 WL 147806.3. Plaintiffs' failure to identify a link between their individual injuries to the alleged RICO enterprise warrants dismissal of their claims. *See Johnson v. Heimbach,* No. 03-2483, 2003 WL 22838476, at *4 (E.D. Pa. Nov. 25, 2003).

C. The Plaintiffs' RICO Conspiracy Claim Should Also be Dismissed.

The Amended Complaint also attempts to assert a claim under Section 1962(d), which provides that "[i]t shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c)." 18 U.S.C. §1962(d). Plaintiffs have made the conclusory allegation that "[e]ach of the Defendants was associated with the Enterprise and agreed and conspired to violate 18 U.S.C. §1962(c)." (Doc. 94, ¶ 295). However, Plaintiffs have not alleged facts to show that Anadarko "objectively manifested an agreement to participate, directly or indirectly, in the affairs of a RICO enterprise through the commission of two or more predicate acts," as is required to assert a Section 1962(d) claim. *See Knit With v. Knitting Fever, Inc.*, No. 08-4221, 2010 WL 4909929, at *4 (E.D. Pa. Dec. 1, 2010) (quoting *Smith v. Jones, Gregg, Creehan & Gerace, LLP*, No. CIV.A. 08-365, 2008 WL 5129916, at *7 (W.D. Pa. Dec. 5, 2008)).

Instead, Plaintiffs have made specific allegations as to Chesapeake and Access' involvement in the purported conspiracy while simultaneously making conclusory allegations against an undifferentiated group of "Defendants." As such, Plaintiffs' bare allegations of conspiracy as to Anadarko should be dismissed. *Id.* (finding that an allegation that a defendant "participated in and facilitated the racketeering scheme which has injured Plaintiffs' business" was nothing more than a legal conclusion which was not entitled to any deference or consideration by the court); *District 1199P Health & Welfare Plan v. Janssen, L.P.*, Nos. CIV.A.06-3044, 07-2224, 07-2608, 07-2860, 2008 WL 5413105, at *15 (D.N.J. Dec. 23, 2008) (dismissing RICO conspiracy claim where plaintiff failed to show how all of the alleged conspirators knew that their acts were part of a pattern of racketeering activity); *Emel v. Singleton*, No. CIV.A.09-664, 2010 WL 3221842, at *11 (M.D. Pa. July 6, 2010) (finding that Plaintiffs' failure to make specific allegations that defendants agreed to commit any predicate offenses under RICO was fatal to RICO conspiracy claim).

Additionally, if a plaintiffs' complaint fails to state a substantive RICO claim upon which relief may be granted, then an accompanying conspiracy claim also fails. *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1191 (3d Cir. 1993). For the reasons discussed above, Plaintiffs' Section 1962(c) claim should be dismissed and thus, Plaintiffs' conspiracy claim should also be dismissed.

D. The Plaintiffs' State Law Claims Should be Dismissed.

Each of Plaintiffs' four state law claims is premised upon the allegation that the Lessee Defendants improperly deducted post-production costs in calculating the amount of royalties that were to be paid to the Plaintiffs or, alternatively, that the Lessee Defendants charged Plaintiffs with "arbitrary, excessive and unreasonable" deductions. However, Plaintiffs have not alleged facts plausibly supporting these claims.

1. The Plaintiffs' Breach of Contract Claim Fails to State a Claim for Relief.

a. Anadarko is Permitted to Utilize a "Netback" Calculation to Determine the Market Value of Gas "at the well."

In support of their breach of contract claim, Plaintiffs allege that the "Lessee Defendants were not and are not entitled to deduct post-production costs from the proceeds received by it at the point of sale in calculating the royalties payable to Plaintiffs." (Doc. 94, ¶ 303). However, Plaintiffs allege that the Leases provide that Anadarko will pay royalties based on the "market value at the well of one-eighth (1/8th) of the gas . . . sold." (*Id.*, ¶145). The Leases further provide that "market value at the well shall not exceed the amount realized by LESSEE for such production computed at the well." *Id.*[5]

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[5] The lease between Anadarko and Plaintiff Clark H. Beebee is attached as Exhibit A. This lease is representative of all other leases at issue in this case and may be considered by the Court in ruling on Anadarko's motion to dismiss. *See Pension Ben. Guar. Corp. v. White Consol. Indus*., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) ("[A] court may consider an undisputedly

In *Kilmer v. Elexco Land Services, Inc*., 605 Pa. 413, 429, 990 A.2d 1147, 1157 (2010), the Pennsylvania Supreme Court resolved the issue of whether post-production costs like gathering and transportation costs are generally deductible in calculating royalties under Pennsylvania oil and gas law. The lease in *Kilmer* provided "[l]essor shall receive as its royalty one eighth (1/8th) of the sales proceeds actually received by Lessee from the sale of such production, less this same percentage share of all Post Production Costs." *Id.* at 417. The lessor claimed the lease was invalid under Pennsylvania's Guaranteed Minimum Royalty Act (GMRA), because it did not provide "at least one-eight royalty. . . ." *Id.* at 415.

The court found the validity of the lease depended on the meaning of the word "royalty." *Id.* at 1157. The court concluded that in the oil and gas industry "[a]lthough the royalty is not subject to costs of production, usually it is subject to costs incurred after production, *e.g*., production or gathering taxes, costs of treatment of the product to render it marketable, costs of transportation to market." *Id.* at 429. Applying this definition, the court held the [GMRA] should be read to permit the calculation of royalties ***at the wellhead,*** as provided by the net-back method in the Lease . . . ." *Id.* (emphasis added).

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authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document.").

In the Amended Complaint, Plaintiffs suggest that the *Kilmer* decision is applicable only to leases that expressly permit a netback calculation. (Doc. 94, ¶¶164-165). This narrow reading of *Kilmer* has been rejected by several federal courts in Pennsylvania. *See Pollock v. Energy Corp. of Am.*, CIV.A. 10-21553, 2011 WL 3667289, at *4 (W.D. Pa. June 27, 2011), report and recommendation adopted, CIV.A. 10-1553, 2011 WL 3667385 (W.D. Pa. Aug. 22, 2011) (citing *Ulmer v. Chesapeake Appalachia, LLC*, No. 4:08–cv–2062, 2011 WL 1344596 (M.D. Pa. April 8, 2011)). For example, in *Pollock*, two plaintiffs had leases that did not expressly permit deductions, while several other plaintiffs had leases that did. The silent leases provided that royalty was to be computed as "an amount equal to one-eighth of the price received from the sale of such gas . . . ***at the wellhead***." *Id.* at *4 n.2. The court held that "[a]lthough the [two] leases [were] worded differently from the other Plaintiffs' leases, all the leases contemplate[d] calculation of royalties by the net-back method." *Id.* at *5.

The court's decision in *Pollack* is undoubtedly correct. When a lease provides that royalties are payable on the value of gas "at the well," the lessee has to determine what *that value* is even if the lease does not expressly reference "deductions." As the *Kilmer* court observed, prior to the late 1980s the lessor's royalties were easily calculated "at the wellhead" because it was fixed at a federally regulated price. *Id.* at 425. As the sale of gas shifted to more

downstream markets, producers attempted to determine the value "at the wellhead" by looking to comparable sales at the wellhead, but in many markets such sales simply do not exist. *Abraham v. BP Am. Prod. Co*., 685 F.3d 1196, 1200 (10th Cir. 2012). When comparable sales are unavailable, "the market value at the well is determined by taking the market value of the gas at a point downstream where sufficient information is available, and then 'subtracting reasonable post-production marketing costs,' such as transportation and processing expenses." *Potts v. Chesapeake Expl., LLC,* 760 F.3d 470, 475 (5th Cir. 2014); *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 123 (Tex. 1996). This is called the "netback" method. *See Abraham*, 685 F.3d at 1200.

In *Kilmer*, the court understood that the "'netback" method, which it recognized as the majority rule in the United States, is simply a means to determine the value of gas "at the well" and that it does not alter the underlying royalty obligation. *See Kilmer*, 605 Pa. at 415. In light of *Kilmer*, and the longstanding precedent on which it is based, Plaintiffs' allegation that Anadarko improperly deducted post-production costs from their royalties fails as a matter of law.

b. The Plaintiffs' Alternative Allegation in Support of Their Breach of Contract Claim Fails to Plausibly State a Claim for Relief.

Throughout the Amended Complaint, Plaintiffs allege that the Lessee Defendants took deductions that were "unreasonable," "arbitrary," and "excessive"

in calculating the value of gas used to pay royalties to the Plaintiffs. With respect to Anadarko, however, Plaintiffs do not allege any facts plausibly showing that Anadarko had a lower-cost alternative to the post-production costs it actually incurred and deducted in calculating Plaintiffs' royalties. Plaintiffs never allege that Anadarko deducted more than its actual post-production costs, or that Anadarko could have contracted for lower gathering and transportation rates.

The theory behind Plaintiffs' conclusory "excessive deduction" allegations is clearly revealed in paragraph 336 of the Amended Complaint. There, Plaintiffs allege Anadarko cannot deduct, or allow for the deduction, of post-production costs and expenses in calculating the royalties to which Plaintiffs are and have been entitled *in any amounts in excess of the reasonable market price for the applicable service in a competitive market*." (Doc. 94, at ¶ 336) (emphasis added). That allegation makes it clear that Plaintiffs' entire challenge to the reasonableness of Anadarko's deductions is not based on the contention that Anadarko had lower-cost alternatives available to it; it is based on Plaintiffs' contention that a lower-cost alternative would have existed had a more competitive market existed than the market in which Anadarko actually operates. The law does not demand that Anadarko base its royalty payments on lower costs that might be available in a different, hypothetical market; instead, the reasonableness of Anadarko's costs must be judged based on the facts and circumstances in which it actually operates.

See, e.g., Williams & Meyers, Oil and Gas Law § 806 (2014) (discussing prudent-operator standard). The reasonableness of Anadarko's actual gathering and transportation costs (and associated deductions) must be assessed based on the actual facts and circumstances, not hypothetical facts and circumstances in a market different than the one in which Anadarko actually operates.

c. The Plaintiffs' Competitive-Market Theory Also Conflicts with the Leases.

The royalty clause in the oil and gas leases provides that "market value at the well shall not exceed the amount realized by LESSEE for such production computed at the well." (Doc. 94, at ¶ 145). In this context, "amount realized" means the same thing as net proceeds. *Tana Oil & Gas Corp. v. Cernosek*, 188 S.W.3d 354, 360-61 (Tex. App.—Austin 2006, pet. denied). If Anadarko pays royalties based on its *actual* sales proceeds minus its *actual* postproduction costs, then it has fulfilled its contractual obligations. If Anadarko were required to deduct less than its actual costs, then Plaintiffs would receive a greater royalty than they are entitled to under the oil and gas leases.

2. The Plaintiffs Are Not Entitled to A Legal or Equitable Accounting.

"In Pennsylvania, the right to an accounting at law is a form of relief that attaches only where the defendant *has breached* a valid contract with the plaintiff." *Lightman v. Marcus*, CIV.A. 12-97, 2012 WL 1344378, at *4 (E.D. Pa. Apr. 18,

2012) (citation and quotation omitted) (emphasis added). Because Plaintiffs have failed to plausibly allege that Anadarko breached the leases, their claim for a legal accounting also fails to state a claim on which relief may be granted.

Plaintiffs have also failed to state a claim for an equitable accounting. Pennsylvania courts have consistently held that "[a]n equitable accounting is improper where no fiduciary relationship exists between the parties, no fraud or misrepresentation is alleged, the accounts are not mutual or complicated, or the plaintiff possesses an adequate remedy at law." *McWreath v. Range Res.--Appalachia, LLC*, 81 F.Supp.3d 448, 468 (W.D. Pa. 2015). Plaintiffs have not alleged facts plausibly demonstrating any of these requirements are satisfied. For these reasons, Plaintiffs' claim for an equitable accounting also should be dismissed.

3. The Plaintiffs Fail to State a Claim for Conversion.

Plaintiffs have also alleged that "Defendants wrongfully and intentionally caused unauthorized or artificially inflated and unreasonable deductions to be taken from royalties otherwise payable to Plaintiffs" and that the retention of these funds amounts to the tort of conversion. Plaintiffs' allegations amount to nothing more than a claim that the Lessee Defendants withheld payments due to Plaintiffs under the terms of their leases. However, "[t]he right to payment of money under a contractual agreement does not constitute a property interest for purposes of

conversion." *It's Intoxicating, Inc. v. Maritim Hotelgesellshaft mbH*, No. 11-cv-2379, 2013 WL 3973975, at *21-22 (M.D. Pa. July 31, 2013) (Mannion, J.)

Additionally, Plaintiffs may not simply reiterate the same allegations made in support of their breach of contract claims under the guise of a different cause of action as this is barred by Pennsylvania's gist of the action doctrine. The gist of the action doctrine bars tort claims "(1) arising solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the liability stems from a contract; or (4) whether the tort claim essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of a contract." *Reed v. Dupuis*, 2007 PA Super 68, 920 A.2d 861, 864 (Pa. Super. Ct. 2007).

With respect to claims for conversion, the gist of the action doctrine bars such claims if their success depends "entirely on the obligations as defined by the contract." *Pittsburgh Constr. Co. v. Griffith*, 2003 PA Super 374, 834 A.2d 572 (Pa. Super. Ct. 2003); *see also Vives v. Rodriguez*, 849 F. Supp. 2d 507 (E.D. Pa. 2012) (dismissing Plaintiffs' conversion claim because she simply alleged that the defendant failed to turn over profits from a sale of property due under the agreement); *Bengal Converting Servs., Inc. v. Dual Printing, Inc.*, CIV.A. 11-6375, 2012 WL 831965 (E.D. Pa. March 13, 2012). The allegations Plaintiffs have made in support of their conversion claim are the same as those made in support of their

breach of contract claim and their conversion claim will rise or fall in the same way as their breach of contract claim. Accordingly, Plaintiffs' conversion claim is barred by the gist of the action doctrine.

Similarly, the economic loss doctrine provides that a plaintiff may not recover in tort for what is otherwise an allegation sounded in contract. *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 671 (3d Cir. 2002); *Montgomery v. Federal Ins. Co.*, 836 F. Supp. 2d 292, 301-302 (E.D. Pa. 1993) (dismissing conversion claim because "an action for conversion will not lie where damages asserted are essentially damages for breach of contract"). As Plaintiffs' conversion claim is a restatement of its breach of contract claim, and they are seeking the exact same damages under both causes of action, Plaintiffs' conversion claim is also barred by the economic loss rule and should be dismissed.

4. The Plaintiffs' Allegations Fail to State a Claim for Civil Conspiracy.

Plaintiffs also allege that the "Defendants" conspired "to convert Plaintiffs' property" and make wrongful deduction from Plaintiffs' royalties. (Doc. 94, ¶¶ 327, 329). In order to state a claim for civil conspiracy, a plaintiff must allege (1) a combination of two or more persons acting with a common purpose to do an illegal act or a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose, and (3) actual legal damages. *Estate of Werner ex rel. Werner v. Werner*, 2001 PA Super 220, 781 A.2d 188, 191

(Pa. Super. Ct. 2001). Additionally, a plaintiff must provide "[p]roof of malice, i.e., an intent to injure" as it is "essential in proof of a conspiracy." *Commerce Bank/Pennsylvania v. First Union Nat. Bank*, 2006 PA Super 305, 911 A.2d 133, 143 (Pa. Super. Ct. 2006).

Plaintiffs have failed to provide factual allegations to support any of the necessary elements of their conspiracy claim against Anadarko. Plaintiffs have not alleged the details of the purported agreement among Anadarko and the "Defendants," any of the overt acts that were allegedly undertaken by Anadarko, or that Anadarko acted with malice in participating in the purported conspiracy. Instead, Plaintiffs have simply made conclusory allegations that the "Defendants" conspired and that they undertook "numerous overt acts." These formulaic recitations of the elements of a claim for civil conspiracy are insufficient to satisfy Plaintiffs' pleading burden. *See, e.g., Adams v. Teamsters Local 115,* 214 F. App'x 167, 175-76 (3d Cir. 2007) (dismissing Plaintiffs' conspiracy claim because the "mere incantation of the words 'conspiracy' or 'acted in concert' does not talismanically satisfy" Rule 8's requirements); *Sayles v. Com. of Pennsylvania Dep't of Pub. Welfare, Cnty. of Monroe*, 24 F. Supp. 2d 393, 398-99 (M.D. Pa. 1997) (dismissing plaintiffs' conspiracy claim because the complaint contained no allegations of "communication, consultation, cooperation or command from which such agreement can be inferred").

Additionally, a claim for civil conspiracy requires the presence of an underlying tort. *Festa v. Jordan,* 803 F. Supp.2d 319, 326 (M.D. Pa. 2011) (citing *McGreevy v. Stroup*, 413 F.3d 359, 371 (3d Cir. 2005)). In this case, the underlying tort is alleged to be a claim for conversion. (Doc. 94, ¶ 329). Because Plaintiffs have failed to state a claim against Anadarko for the tort of conversion, they cannot pursue a claim for civil conspiracy to commit conversion. *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655, 660 (Pa. Super. 2000) (holding that, "because we have concluded that [dismissal] was properly granted with regard to the conversion claim, there can be no cause of action for civil conspiracy here based on that claim"); *Oldcastle Precast v. VPMC, Ltd.*, 2013 U.S. Dist. LEXIS 67481, at *30 (E.D. Pa. May 13, 2013) (dismissing civil conspiracy claim when underlying claims were barred by gist of the action doctrine).

5. The Plaintiffs' Declaratory Relief Claim is Duplicative of their Breach of Contract Claims.

Finally, Plaintiffs contend that they are entitled to a declaration that the Lessee Defendants cannot deduct post-production costs and expenses or, in the alternative, that the Lessee Defendants cannot deduct post-production costs and expenses in any amounts in excess of the reasonable market price for the applicable service in a competitive market. (Doc. 94, ¶ 336).

Although this claim has been couched as a request for declaratory relief, it is entirely duplicative of Plaintiffs' breach of contract claim. Courts have repeatedly

found that declaratory judgment claims should be dismissed under similar circumstances. *See., e.g., Nova Fin. Holdings, Inc. v. Bancinsure, Inc.*, No. 11-07840, 2012 WL 1322932, at *4 (E.D. Pa. April 17, 2012) (*citing Smithkline Beecham, Corp. v. Continental, Ins.,* No. 04-2252, 2004 WL 1773713, at *1 (E.D. Pa. Aug. 4, 2004); *see also Young v. Travelers, Ins. Co.*, No. 13-cv-02092, 2013 WL 5308289, at *3 (D. Md. Sept. 19, 2013); *Intellectual Capital Partner v. Inst. Credit Partners LLC*, No. 08 Civ. 10580, 2009 WL 1974392, at *6 (S.D.N.Y. July 8, 2009). As a result, Plaintiffs' request for declaratory relief should be dismissed.

VI. CONCLUSION

For the reasons stated herein, Anadarko respectfully requests that the Court grant its Motion to Dismiss and dismiss each of Plaintiffs' claims against Anadarko.

Dated: September 18, 2015

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

A&B CAMPBELL FAMILY LLC, ***et al.,***	:	
	:	**Case No. 3:15-cv-00340**
	:	
Plaintiffs,	:	**Judge Malachy E. Mannion**
vs.	:	
	:	**Complaint filed: 02/17/15**
CHESAPEAKE ENERGY	:	
CORPORATION*, et al.,*	:	***Electronically Filed***
	:	
Defendants.		

CERTIFICATE OF COMPLIANCE
with Local Rule 7.8(b)(2)

I, Guy Stanford Lipe, attorney for Defendant Anadarko E&P Onshore LLC, hereby certify that Defendant Anadarko's Brief in Support of Motion to Dismiss is in compliance with Middle District Local Rules and this Court's Order dated September 14, 2015 (Doc. 107).

Dated: September 18, 2015

Respectfully submitted,

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CHESAPEAKE ENERGY	:	
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	:	
Defendants.		

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Anadarko E&P Onshore LLC's Brief in Support of Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) in the above-captioned matter was served this 18th day of September, 2015, to the attorneys/parties of record via electronic filing as follows:

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