

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

STEPHEN HEARN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	4:11-cv-00474 JLH (Lead)
)	4:11-cv-00475 JLH
BHP BILLITON PETROLEUM)	4:11-cv-00477 JLH
(FAYETTEVILLE) LLC, <i>et al.</i>)	
)	
Defendants)	

**ANSWER OF SEPARATE DEFENDANT CHESAPEAKE OPERATING, INC. TO
PLAINTIFFS’ FIRST AMENDED AND CONSOLIDATED
FIRST AMENDED AND CONSOLIDATED COMPLAINT**

Separate Defendant, Chesapeake Operating, Inc. (“Chesapeake”), by its attorneys, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., for its Answer to Plaintiffs’ First Amended and Consolidated Complaint (“First Amended and Consolidated Complaint”), states:

I. INTRODUCTION

1. Chesapeake denies the allegations contained in paragraph 1 to the First Amended and Consolidated Complaint.

2. Chesapeake denies the allegations contained in paragraph 2 to the First Amended and Consolidated Complaint and that this is a proper class action.

II. PARTIES

3. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 3 of the First Amended and Consolidated Complaint, and therefore denies the same.

4. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 4 of the First Amended and Consolidated Complaint, and therefore denies the same.

5. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 5 of the First Amended and Consolidated Complaint, and therefore denies the same.

6. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 6 of the First Amended and Consolidated Complaint, and therefore denies the same.

7. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 7 of the First Amended and Consolidated Complaint, and therefore denies the same.

8. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 8 of the First Amended and Consolidated Complaint, and therefore denies the same.

9. In response to paragraph 9 of the First Amended and Consolidated Complaint, Chesapeake admits that it is an Oklahoma corporation doing business in Arkansas; that it formerly explored, developed and produced gas within the Fayetteville Shale in Arkansas; and that it owned an interest in certain saltwater disposal wells in Faulkner County, Arkansas until January 1, 2011. Chesapeake denies the remaining allegations in paragraph 9 of the First Amended and Consolidated Complaint.

10. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 10 of the First Amended and Consolidated Complaint, and therefore denies the same.

III. JURISDICTION

11. Chesapeake admits that jurisdiction in this matter lies with the U.S. District Court for the Eastern District of Arkansas, Western Division. Chesapeake denies the remaining allegations of paragraph 11.

IV. VENUE

12. Chesapeake admits that venue in this matter lies within this district. Chesapeake denies the remaining allegations of paragraph 12.

V. FACTUAL ALLEGATIONS

13. Chesapeake denies the allegations in paragraph 13 of the First Amended and Consolidated Complaint.

14. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 14 of the First Amended and Consolidated Complaint, and therefore denies the same.

15. Chesapeake denies the allegations in paragraph 15 of the First Amended and Consolidated Complaint.

16. Chesapeake denies the allegations in paragraph 16 of the First Amended and Consolidated Complaint.

17. Chesapeake admits that natural gas is removed from an area commonly recognized as the Fayetteville Shale, including from land situated in Faulkner County, Arkansas. Chesapeake is without knowledge or information sufficient to admit or deny the remaining

allegations in paragraph 17 of the First Amended and Consolidated Complaint, and therefore denies the same.

18. In response to paragraph 18 of the First Amended and Consolidated Complaint, Chesapeake admits that the majority of its gas drilling and production activities occurred in Conway, Van Buren, Faulkner Cleburne and White Counties, Arkansas. Chesapeake is without knowledge or information sufficient to admit or deny the remaining allegations in paragraph 18 of the First Amended and Consolidated Complaint, and therefore denies the same.

19. In response to paragraph 19 of the First Amended and Consolidated Complaint, Chesapeake admits that a hydraulic fracturing process, sometimes referred to as “fracking,” was utilized in its drilling operations in the Fayetteville Shale, and that this process includes injecting pressurized water, sand and additives to create fractures in underground formations to allow natural gas to flow. Chesapeake denies the remaining allegations in paragraph 19 of the First Amended and Consolidated Complaint.

20. Chesapeake denies the allegations contained in paragraph 20 of the First Amended and Consolidated Complaint.

21. Chesapeake denies the allegations contained in paragraph 21 of the First Amended and Consolidated Complaint.

22. Chesapeake denies the allegations contained in paragraph 22 of the First Amended and Consolidated Complaint.

23. To the extent that an answer is required, Chesapeake denies the allegations contained in paragraph 23 of the First Amended and Consolidated Complaint.

24. Chesapeake admits that the Chesapeake SRE and Chesapeake Trammel wells are located in Faulkner County, Arkansas. Chesapeake is without knowledge or information

sufficient to admit or deny the remaining allegations in paragraph 24 of the First Amended and Consolidated Complaint, and therefore denies the same.

25. In response to paragraph 25 of the First Amended and Consolidated Complaint, Chesapeake admits that for all of 2010 that it owned an interest in both the Chesapeake SRE and Chesapeake Trammel disposal wells and that it operated both. Chesapeake denies the remaining allegations contained in paragraph 25 of the First Amended and Consolidated Complaint.

26. In response to paragraph 26 of the First Amended and Consolidated Complaint, Chesapeake admits that BHP purchased all of Chesapeake's interest in the two saltwater disposal wells along with all of Chesapeake's interest in the Fayetteville Shale. Chesapeake denies the remaining the allegations contained in paragraph 26 of the First Amended and Consolidated Complaint.

27. Chesapeake admits the allegations contained in paragraph 27 of the First Amended and Consolidated Complaint.

28. In response to paragraph 28 of the First Amended and Consolidated Complaint, Chesapeake admits that all of its interest in the Chesapeake SRE and Chesapeake Trammel disposal wells were transferred effective January 1, 2011 to BHP. Chesapeake denies the remaining allegations contained in paragraph 28 of the First Amended and Consolidated Complaint.

29. In response to paragraph 29 of the First Amended and Consolidated Complaint, Chesapeake admits that it conveyed all of its interest in the Chesapeake SRE and Chesapeake Trammel saltwater disposal wells effective January 1, 2011. Chesapeake denies the remaining allegations in paragraph 29 of the First Amended and Consolidated Complaint.

30. Chesapeake admits the allegations contained in paragraph 30 of the First Amended and Consolidated Complaint.

31. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 31 of the First Amended and Consolidated Complaint, and therefore denies the same.

32. Chesapeake denies the allegations contained in paragraph 32 of the First Amended and Consolidated Complaint.

33. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 33 of the First Amended and Consolidated Complaint, and therefore denies the same.

34. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 34 of the First Amended and Consolidated Complaint, and therefore denies the same.

35. In response to paragraph 35 of the First Amended and Consolidated Complaint, Chesapeake denies the first sentence. In response to the second sentence of paragraph 35, Chesapeake admits the graph speaks for itself. The remaining allegations in paragraph 35 are denied.

36. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 36 of the First Amended and Consolidated Complaint, and therefore denies the same.

37. In response to paragraph 37 of the First Amended and Consolidated Complaint, Chesapeake admits that the United States Geological Survey's 2010-2011 Arkansas Earthquake Swarm poster speaks for itself. The remaining allegations in paragraph 37 are denied.

38. In response to paragraph 38 of the First Amended and Consolidated Complaint, Chesapeake admits that the Emergency Request attached as Exhibit B speaks for itself. The remaining allegations of paragraph 38 are denied.

39. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 39 of the First Amended and Consolidated Complaint, and therefore denies the same.

40. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 40 of the First Amended and Consolidated Complaint, and therefore denies the same.

41. In response to paragraph 41 of the First Amended and Consolidated Complaint, Chesapeake admits that the Order attached as Exhibit C speaks for itself. The remaining allegations of paragraph 41 are denied.

42. In response to paragraph 42 of the First Amended and Consolidated Complaint, Chesapeake admits that the Amended Request for Immediate Moratorium attached as Exhibit D speaks for itself. The remaining allegations of paragraph 42 are denied.

43. In response to paragraph 43 of the First Amended and Consolidated Complaint, Chesapeake admits that the Order attached as Exhibit E speaks for itself. The remaining allegations of paragraph 43 are denied.

44. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 44 of the First Amended and Consolidated Complaint, and therefore denies the same.

45. In response to paragraph 45 of the First Amended and Consolidated Complaint, Chesapeake admits that the United States Geological Survey earthquake distribution poster attached as Exhibit F speaks for itself. The remaining allegations of paragraph 45 are denied.

46. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 46 of the First Amended and Consolidated Complaint, and therefore denies the same.

47. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 47 of the First Amended and Consolidated Complaint, and therefore denies the same.

48. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 48 of the First Amended and Consolidated Complaint, and therefore denies the same.

49. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 49 of the First Amended and Consolidated Complaint, and therefore denies the same.

50. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 50 of the First Amended and Consolidated Complaint, and therefore denies the same.

51. In response to paragraph 51 of the First Amended and Consolidated Complaint, Chesapeake admits that the Consent Order attached as Exhibit G speaks for itself. The remaining allegations of paragraph 51 are denied.

52. In response to paragraph 52 of the First Amended and Consolidated Complaint, Chesapeake admits operations of the Chesapeake Trammel disposal well ceased in June or July of 2011. The remaining allegations are denied.

53. In response to paragraph 53 of the First Amended and Consolidated Complaint, Chesapeake admits that the Request for an Order attached as Exhibit H speaks for itself. The remaining allegations of paragraph 53 are denied.

54. Chesapeake denies the allegations in paragraph 54 of the First Amended and Consolidated Complaint.

55. In response to paragraph 55 of the First Amended and Consolidated Complaint, Chesapeake admits that the bulletins referenced therein speak for themselves. The remaining allegations of paragraph 55 are denied.

56. Chesapeake admits that it agreed to voluntarily cease operations of the Chesapeake SRE well, and to plug and abandon it. Chesapeake is without knowledge or information sufficient to admit or deny the remaining allegations in paragraph 56 of the First Amended and Consolidated Complaint, and therefore denies the same.

57. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 57 of the First Amended and Consolidated Complaint, and therefore denies the same.

58. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 58 of the First Amended and Consolidated Complaint, and therefore denies the same.

59. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 59 of the First Amended and Consolidated Complaint, and therefore denies the same.

60. Chesapeake denies the allegations in paragraph 60 of the First Amended and Consolidated Complaint.

61. In response to paragraph 61 of the First Amended and Consolidated Complaint, Chesapeake admits that the Orders attached as Exhibit I and Exhibit J speak for themselves. The remaining allegations of paragraph 61 are denied.

VI. CLASS ALLEGATIONS

62. Chesapeake hereby re-states the responses set forth in the foregoing paragraphs, as if set forth herein, word-for-word.

63. Chesapeake denies the allegations set forth in paragraph 63 of the First Amended and Consolidated Complaint.

64. Chesapeake denies the allegations set forth in paragraph 64 of the First Amended and Consolidated Complaint.

65. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 65 of the First Amended and Consolidated Complaint, and therefore denies the same.

66. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 66 of the First Amended and Consolidated Complaint, and therefore denies the same.

67. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 67 of the First Amended and Consolidated Complaint, and therefore denies the same.

68. Chesapeake denies the allegations set forth in paragraph 68 of the First Amended and Consolidated Complaint.

69. Chesapeake denies the allegations set forth in paragraph 69 of the First Amended and Consolidated Complaint.

70. Chesapeake denies the allegations set forth in paragraph 70 of the First Amended and Consolidated Complaint.

71. Chesapeake denies the allegations set forth in paragraph 71 of the First Amended and Consolidated Complaint, including its subparts (a) through (g).

72. Chesapeake denies the allegations set forth in paragraph 72 of the First Amended and Consolidated Complaint.

73. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 73 of the First Amended and Consolidated Complaint, and therefore denies the same.

74. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 74 of the First Amended and Consolidated Complaint, and therefore denies the same.

75. Chesapeake is without knowledge or information sufficient to admit or deny the allegations in paragraph 75 of the First Amended and Consolidated Complaint, and therefore denies the same.

76. Chesapeake denies allegations in paragraph 76 of the First Amended.

77. Chesapeake denies the allegations in paragraph 77 of the First Amended.

78. Chesapeake denies the allegations in paragraph 78 of the First Amended and Consolidated Complaint.

79. Chesapeake denies the allegations in paragraph 79 of the First Amended and Consolidated Complaint.

80. Chesapeake denies the allegations in paragraph 80 of the First Amended and Consolidated Complaint.

81. Chesapeake denies the allegations in paragraph 81 of the First Amended and Consolidated Complaint.

82. Chesapeake denies the allegations in paragraph 82 of the First Amended and Consolidated Complaint.

83. Chesapeake denies the allegations in paragraph 83 of the First Amended and Consolidated Complaint.

84. Chesapeake denies the allegations in paragraph 84 of the First Amended and Consolidated Complaint, including its subparts (a) through (d).

85. Chesapeake denies the allegations set forth in paragraph 85 to the First Amended and Consolidated Complaint.

86. Chesapeake denies allegations in paragraph 86 of the First Amended and Consolidated Complaint.

87. Chesapeake denies the allegations set forth in paragraph 87 to the First Amended and Consolidated Complaint, including its subparts (a) through (g).

**VII: CAUSES OF ACTION
COUNT I:
PUBLIC NUISANCE**

88. Chesapeake hereby re-states the responses set forth in the foregoing paragraphs, as if set forth herein, word-for-word.

89. Chesapeake denies the allegations set forth in paragraph 89 to the First Amended and Consolidated Complaint.

90. Chesapeake denies the allegations set forth in paragraph 90 to the First Amended and Consolidated Complaint.

91. Chesapeake denies the allegations set forth in paragraph 91 to the First Amended and Consolidated Complaint.

92. Chesapeake denies the allegations set forth in paragraph 92 to the First Amended and Consolidated Complaint.

**COUNT II:
PRIVATE NUISANCE**

93. Chesapeake hereby re-states the responses set forth in the foregoing paragraphs, as if set forth herein, word-for-word.

94. Chesapeake denies the allegations set forth in paragraph 94 to the First Amended and Consolidated Complaint.

95. Chesapeake denies the allegations set forth in paragraph 95 to the First Amended and Consolidated Complaint.

96. Chesapeake denies the allegations set forth in paragraph 96 to the First Amended and Consolidated Complaint.

97. Chesapeake denies the allegations set forth in paragraph 97 to the First Amended and Consolidated Complaint.

**COUNT III:
ABSOLUTE LIABILITY**

98. Chesapeake hereby re-states the responses set forth in the foregoing paragraphs, as if set forth herein, word-for-word.

99. Chesapeake denies the allegations set forth in paragraph 99 to the First Amended and Consolidated Complaint.

100. Chesapeake denies the allegations set forth in paragraph 100 to the First Amended and Consolidated Complaint.

101. Chesapeake denies the allegations set forth in paragraph 101 to the First Amended and Consolidated Complaint.

**COUNT IV:
NEGLIGENCE**

102. Chesapeake hereby re-states the responses set forth in the foregoing paragraphs, as if set forth herein, word-for-word.

103. Chesapeake denies the allegations set forth in paragraph 103 to the First Amended and Consolidated Complaint.

104. Chesapeake denies the allegations set forth in paragraph 104 to the First Amended and Consolidated Complaint.

105. Chesapeake denies the allegations set forth in paragraph 105 to the First Amended and Consolidated Complaint.

**COUNT V:
TRESPASS**

106. Chesapeake hereby re-states the responses set forth in the foregoing paragraphs, as if set forth herein, word-for-word.

107. Chesapeake denies the allegations set forth in paragraph 107 to the First Amended and Consolidated Complaint.

108. Chesapeake denies the allegations set forth in paragraph 108 to the First Amended and Consolidated Complaint.

109. Chesapeake denies the allegations set forth in paragraph 109 to the First Amended and Consolidated Complaint.

VIII: DAMAGES

110. Chesapeake denies the allegations set forth in paragraph 110 to the First Amended and Consolidated Complaint.

111. Chesapeake denies the allegations set forth in paragraph 111 to the First Amended and Consolidated Complaint.

112. Chesapeake denies the allegations set forth in paragraph 112 to the First Amended and Consolidated Complaint.

113. Chesapeake denies the allegations set forth in paragraph 113 to the First Amended and Consolidated Complaint.

114. Chesapeake denies the allegations set forth in paragraph 114 to the First Amended and Consolidated Complaint.

115. Chesapeake denies the allegations set forth in paragraph 115 to the First Amended and Consolidated Complaint.

116. Chesapeake denies the allegations set forth in paragraph 116 to the First Amended and Consolidated Complaint.

117. Chesapeake denies the allegations set forth in paragraph 117 to the First Amended and Consolidated Complaint.

118. Chesapeake denies the allegations set forth in paragraph 118 to the First Amended and Consolidated Complaint.

119. Chesapeake denies the allegations set forth in paragraph 119 to the First Amended and Consolidated Complaint.

120. Chesapeake denies the allegations set forth in paragraph 120 to the First Amended and Consolidated Complaint.

121. Chesapeake denies the allegations set forth in paragraph 121 to the First Amended and Consolidated Complaint.

122. Chesapeake denies the allegations set forth in paragraph 122 to the First Amended and Consolidated Complaint.

123. Chesapeake denies the allegations set forth in paragraph 123 to the First Amended and Consolidated Complaint.

124. Chesapeake denies the allegations set forth in paragraph 124 to the First Amended and Consolidated Complaint.

IX: PUNITIVE DAMAGES

125. Chesapeake denies the allegations set forth in paragraph 125 to the First Amended and Consolidated Complaint.

X. DECLARATORY AND INJUNCTIVE RELIEF

126. Chesapeake denies the allegations set forth in paragraph 126 to the First Amended and Consolidated Complaint.

127. Chesapeake denies the allegations set forth in paragraph 127 to the First Amended and Consolidated Complaint.

XI. REQUEST FOR JURY TRIAL

128. To the extent a response is required, Chesapeake denies the allegations in paragraph 128.

XII. PRAYER FOR RELIEF

Chesapeake denies each and every allegation and request contained in Plaintiffs' "Prayer for Relief," and states affirmatively that Plaintiffs are not entitled to any money, relief, or damages from Chesapeake.

Chesapeake denies each and every allegation contained in Plaintiffs' First Amended and Consolidated Complaint that is not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. Chesapeake affirmatively allege that class certification is improper and that Plaintiffs' suit may not properly be maintained or certified as a class action because: (a) membership in the putative class is not reasonably ascertainable; (b) Plaintiffs and class counsel will not fairly and adequately protect the interests of the putative class; (c) Plaintiffs' claims are not typical of those of the putative class; (d) there are no questions of law or fact common to the putative class, but rather the questions are individualized and specific and will vary from person to person; (e) any common issues of law or fact do not predominate over questions affecting only individual putative class members; (f) a class action is not the superior or appropriate method for the fair and efficient adjudication of this controversy; and (g) the other requirements of maintaining this action as a class action, whether under Federal Rule of Civil Procedure 23(b)(1), (b)(2), or (b)(3), have not been met and cannot be met.

2. Chesapeake affirmatively allege that damages sought by Plaintiffs on behalf of any putative class members may not be recovered absent a separate determination as to whether

each alleged class member has sustained damage, regardless of whether Plaintiffs prevail on their individual claims.

3. Chesapeake deny that Plaintiffs are entitled to recover damages under any theories of liability alleged in the First Amended and Consolidated Complaint or any other theories of liability that may hereafter be asserted in amended pleadings.

4. Plaintiffs' First Amended and Consolidated Complaint fails to state facts or causes of action upon which relief can be granted.

5. Pending discovery, Chesapeake affirmatively pleads all affirmative defenses set forth in Rule 8(c) of the Federal Rules of Civil Procedure, including but not limited to, accord and satisfaction, release, laches, settlement, payment, waiver, set-off, estoppel, the statute of limitations, assumption of risk, and the statute of frauds.

6. Pending discovery, Chesapeake pleads and preserves all defenses set forth by Rule 12(b) of the Federal Rules of Civil Procedure, including but not limited to, improper venue, failure to join indispensable parties, and all defenses outlined in other paragraphs of this Answer.

7. Should Chesapeake be held liable to Plaintiffs and/or members of the putative class, which liability is specifically denied, Chesapeake would be entitled to a set-off for all sums of money received or available from or on behalf of any tortfeasors for the same injuries alleged in the First Amended and Consolidated Complaint pursuant to the Uniform Contribution Among Tortfeasors Act, Ark. Code Ann. § 16-61-201 et seq.

8. The recovery of Plaintiffs and/or members of the putative class, if any, should be reduced by the comparative negligence, fault, responsibility, or causation of others pursuant to Ark. Code Ann. § 16-64-122.

9. Chesapeake specifically pleads all defenses available to it under the Arkansas Civil Justice Reform Act of 2003, codified at Ark. Code Ann. § 16-55-201 et. seq.

10. Chesapeake affirmatively pleads, pursuant to Rule 9 of the Federal Rules of Civil Procedure, that Plaintiffs failed to specifically plead special damages and, therefore, they should be denied.

11. Chesapeake affirmatively pleads that if Plaintiffs and/or members of the putative class were injured or damaged, then such injuries and damages were caused in whole or in part by the acts, omissions or negligence of others for whose acts Chesapeake is not responsible, and which acts constitute an intervening and superseding proximate cause so as to relieve Chesapeake of any liability herein.

12. Chesapeake affirmatively pleads that if Plaintiffs and/or members of the putative class were injured or damaged, then any such injuries or damages were the result of their own assumption of the risk, which constitute a complete bar of the right of any recovery.

13. Plaintiffs' and putative class members' claims are barred to the extent that they seek to impose liability retroactively for conduct that was not actionable at the time it occurred.

14. The class action allegations of Plaintiffs' First Amended and Consolidated Complaint are barred in that trying Plaintiffs' claims through a class action or other aggregate proceeding would violate Chesapeake'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 Chesapeake of its right to defend itself with respect to individual claims.

15. The claims of Plaintiffs and some members of the putative class are barred because they lack standing or capacity, or both, to bring some or all of the claims alleged in Plaintiffs' First Amended and Consolidated Complaint.

16. For each claim in Plaintiffs' First Amended and Consolidated Complaint, Plaintiffs have failed to allege facts sufficient to support a claim for compensatory damages, punitive damages, declaratory relief, injunctive relief, attorneys' fees, statutory penalties, and/or any other damages or remedies, and Chesapeake has not engaged in any conduct that would warrant such damages or other relief.

17. Plaintiffs and the putative class members are not entitled to any relief, because they have sustained no injury or damages, or any injury or damages they sustained have not been caused or proximately caused by Chesapeake.

18. Any award of punitive damages would be improper under Arkansas law and would violate Chesapeake's constitutional rights to due process and equal protection.

19. The claims of Plaintiffs and/or members of the putative class are barred by their failure to mitigate damages, if any, as required by law.

20. The claims of Plaintiffs and/or members of the putative class are barred by the doctrine of unclean hands.

21. The claims of some putative class members are barred because the claims have been resolved, including but not limited to consent, settlement, prior court judgments, or other adjudications, and/or accord and satisfaction.

22. The claims of some putative class members are barred or limited by the defenses of res judicata, collateral estoppel, the prohibition on splitting a cause of action, and the doctrines of merger and bar.

23. Chesapeake states affirmatively that Plaintiffs' claim for punitive damages cannot be sustained because an award of punitive damages under Arkansas law by a jury does not provide constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages award.

24. Chesapeake states affirmatively that Plaintiffs' claim for punitive damages is barred, in whole or in part, because an award of punitive damages under Arkansas law would violate Chesapeake's due process rights and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, & 8 of the Arkansas Constitution.

25. Chesapeake states affirmatively that Plaintiffs' claim for punitive damages cannot be sustained because Arkansas law regarding the standards for determining liability for and the amount of punitive damages fail to give Chesapeake prior notice of the conduct for which punitive damages may be imposed, and the severity of the penalty that may be imposed, and are void for vagueness in violation of Chesapeake's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, and 8 of the Arkansas Constitution.

26. Chesapeake states affirmatively that Plaintiffs' claims for punitive damages cannot be sustained, because an award of punitive damages under Arkansas law, subject to no predetermined limit, such as a maximum multiple of compensatory damages, or a maximum amount on the amount of punitive damages that may be imposed, would violate Chesapeake's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, and 8 of the Arkansas Constitution.

27. Chesapeake states affirmatively that Plaintiffs' claims for punitive damages against it cannot be sustained, because an award of punitive damages under Arkansas law which allows Plaintiffs to prejudicially emphasize the corporate status of Chesapeake violates Chesapeake's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, and 8 of the Arkansas Constitution, and would be improper under the common law and public policy of Arkansas.

28. Chesapeake states affirmatively that Plaintiffs' claim for punitive damages against it cannot be sustained because any award of punitive damages made under a process which fails to bifurcate the issue of punitive damages from the remaining issues would violate Chesapeake's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, and 8 of the Arkansas Constitution, and would be improper under the common law and public policy of Arkansas.

29. Chesapeake states affirmatively that Plaintiffs' claim for punitive damages cannot be sustained by a jury that (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award for punitive damages, in whole or in part on the basis of invidiously discriminatory characteristics, including without limitation the residence, wealth and corporate status of Separate Defendants, (4) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part directly on the basis of injury upon non-parties, (5) is not provided constitutionally adequate procedures to protect against the risk of an award of punitive damages

that seeks to punish a defendant for having caused injury to others, (6) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, (7) is not properly instructed regarding Plaintiffs' burden of proof with respect to each and every element of a claim for punitive damages, and (7) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards. This would violate Chesapeake's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and Article II, Sections 2, 3 and 8 of the Arkansas Constitution, and would be improper under the common law and public policy of Arkansas.

30. Chesapeake states affirmatively that Plaintiffs' claim for punitive damages against it cannot be sustained because any award of punitive damages made under a process which fails to protect against the risk of a jury awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, to punish Chesapeake for having caused injury to non-parties would violate Chesapeake's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, and 8 of the Arkansas Constitution, and would be improper under the common law and public policy of Arkansas. *See Philip Morris USA v. Williams*, 127 S. Ct. 1057 (2007).

31. Chesapeake states affirmatively that Plaintiffs' claim for punitive damages against it cannot be sustained, because an award of punitive damages in this case, combined with any prior, contemporaneous, or subsequent judgments against Chesapeake for punitive damages, would constitute impermissible multiple punishments in violation of Chesapeake's due process

and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Article II, Sections 2, 3 and 8 of the Arkansas Constitution.

32. Chesapeake adopts all of the denials and defenses which are asserted in responsive pleadings filed on behalf of any other Defendant in this action to the extent those denials and defenses inure to the benefit of Chesapeake and protect it from having any liability or responsibility in this action.

33. Chesapeake reserves the right to assert all additional defenses that are available to them under Fed. R. Civ. P. 8, 12, and 23.

34. Chesapeake affirmatively reserves the right to plead further including the reservation of all affirmative defenses required to be plead in its initial pleading.

WHEREFORE, Chesapeake Operating, Inc. prays that this Court dismiss Plaintiffs' First Amended and Consolidated Complaint, deny the requested relief, award Chesapeake its costs and attorneys' fees, and provide all other just and proper relief to which it is entitled.

Respectfully submitted,

/s/ Lyn P. Pruitt

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- and -

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

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