IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

BRYAN LATKANICH,
HUNTER LATKANICH,
COLTON LATKANICH, and
RYAN LATKANICH, a minor by and through natural guardian BRYAN LATKANICH,

Plaintiffs,

v.

CHEVRON CORP., CHEVRON U.S.A. INC., CHEVRON APPALACHIA, LLC, EQT CORP., EQT PRODUCTION COMPANY, EQT PRODUCTION MARCELLUS, EQT CHAP LLC, and JOHN DOE DEFENDANTS,

Defendants.

CIVIL DIVISION

Case No. 2022-6006

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Filed on Behalf of Defendants:
CHEVRON CORPORATION, CHEVRON U.S.A. INC., CHEVRON APPALACHIA, LLC, EQT CORP., EQT PRODUCTION COMPANY, EQT PRODUCTION MARCELLUS, and EQT CHAP LLC

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Certification of Compliance Regarding Confidential Information

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Joshua S. Snyder

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

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Defendants.		

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

Defendants Chevron Corporation, Chevron U.S.A. Inc., and Chevron Appalachia, LLC (collectively, the "Chevron Defendants") and Defendants EQT Corp., EQT Production Company, EQT Production Marcellus, and EQT CHAP LLC (collectively, the "EQT Defendants", and together with the Chevron Defendants, "Defendants"), submit this Brief in support of their Preliminary Objections to Plaintiffs' Second Amended Complaint.

I. Plaintiffs' Allegations

Plaintiff Bryan Latkanich is the owner of property in Washington County, Pennsylvania ("Property") for which he entered into oil and gas leases with Phillips Exploration, Inc. with an effective date of March 19, 2010 ("the Lease"). Exhibit A to Second Amended Complaint; Second Amended Complaint ¶ 79. Plaintiffs Hunter Latkanich and Colton Latkanich are Bryan's[1] adult children each of whom "lived on the Property as a minor child at various times[.]" Second Amendment Complaint ¶¶ 64, 66. Plaintiff Ryan Latkanich is Bryan's minor child, who currently resides on the Property. *Id.* ¶ 63. Plaintiffs claim that, pursuant to the Lease, the Chevron Defendants drilled two gas wells on the Property (the "Wells"). *Id.* at ¶ 90.

Plaintiffs bring the following causes of action related to the Lease and the development and operation of the Wells:

(1) breach of contract (Second Amended Complaint ¶¶ 185–199);

(2) fraudulent misrepresentation (Second Amended Complaint, ¶¶ 200–210);

(3) reckless misrepresentation (Second Amended Complaint ¶¶ 211–218);

(4) fraudulent concealment (Second Amended Complaint ¶¶ 219–224);

(5) fraudulent non-disclosure (Second Amended Complaint ¶¶ 225–232);

[1] Because all Plaintiffs have the same surname, Defendants refer to Plaintiffs by their first names for purposes of clarity.

(6) trespass (Second Amended Complaint ¶¶ 233–248);

(7) private nuisance (Second Amended Complaint ¶¶ 249–275);

(8) negligence (Second Amended Complaint ¶¶ 276–305);

(9) Hazardous Sites Cleanup Act (Second Amended Complaint ¶¶ 306–319);

(10) strict liability (Second Amended Complaint ¶¶ 320–346);

(11) medical monitoring trust funds (Second Amended Complaint ¶¶ 337–346); and

(12) intentional infliction of emotional distress (Second Amended Complaint ¶¶ 347–363).[2]

In their Second Amended Complaint, Plaintiffs do not include any factual allegations related to Hunter and Colton other than to allege that they are Bryan's adult children who each "lived on the Property as a minor child at various times"; were "exposed to the Operations when . . . present on the Property"; and "have been apprehensive about visiting the Property . . . because of the fear of ongoing exposure to the pollution . . . ." Second Amended Complaint ¶¶ 65–67, 77. Plaintiffs do not plead the substance of the alleged fraudulent representations, who made them, and when. Plaintiffs do not allege the specific negligent acts on which they base their claims nor the "number of steps to mitigate the other risks and hazards [*sic*] harms to Plaintiffs, their persons, property, and the environment" alleged in paragraph 163 of the Second Amended Complaint.

[2] Incorrectly designated as Count XI, instead of Count XII.

II. Argument

A. Preliminary Objection of Chevron Corporation for Lack of Personal Jurisdiction

This Court has neither general nor specific jurisdiction over Chevron Corporation, which is a Delaware corporation with its principal place of business in California, and which has never held any interest in the Lease nor the Wells, and has never held any assets in Pennsylvania. Affidavit of Kari H. Endries ("Endries Affidavit") ¶¶ 4,7-8.

Rule 1028(a)(1) of the Pennsylvania Rules of Civil Procedure allows a defendant to file a preliminary objection based on "lack of jurisdiction over the subject matter of the action or the person of the defendant." Pa. R. Civ. P. 1028(a)(1). Once a defendant supports its jurisdictional objection through evidence, the burden then shifts to the plaintiff to prove that there is a statutory and constitutional basis to exercise personal jurisdiction over the defendant. *Efford v. Jockey Club*, 796 A.2d 370, 373 (Pa. Super. Ct. 2002).

Courts may exercise two types of *in personam* jurisdiction over a nonresident defendant: general jurisdiction and specific jurisdiction. *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 262 (2017); *Fidelity Leasing, Inc. v. Limestone Cnty. Bd. of Educ.*, 758 A.2d 1207, 1210 (Pa. Super. Ct. 2000). Regardless of which type of jurisdiction is asserted, the propriety of jurisdiction must be measured against the Due Process Clause. *Id.* The Due

Process Clause "limits the authority of a state to exercise *in personam* jurisdiction over non-resident defendants." *Mendel v. Williams*, 53 A.3d 810, 817 (Pa. Super. Ct. 2012) (quoting *Burger King Corp. v. Rudzewicz*, 105 S. Ct. 2174, 2181-82 (1985)). "Where a defendant 'has established no meaningful contacts, ties or relations' with the forum, the Due Process Clause prohibits the exercise of personal jurisdiction." *Id.*

i. This Court does not have general jurisdiction over Chevron Corporation.

"[G]eneral jurisdiction extends to all claims brought against a foreign corporation; the claims 'need not relate to the forum State or the defendant's activities there.'" *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 548 (Pa. 2021) (quoting *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1024 (2021)). General jurisdiction may be exercised where the "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Id.* (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)) (alteration in original). However, only where those operations are "so continuous and systematic as to render [it] essentially at home in the forum State[,]" is general jurisdiction proper. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). "[M]erely 'continuous and systematic' contacts in the state would not result in the imposition of general personal jurisdiction." *Hammons v. Ethicon,*

Inc., 240 A.3d 537, 556 (Pa. 2020) (citing *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014)). Instead, absent exceptional circumstances, general jurisdiction is "limited to where corporations are headquartered or incorporated." *Id.* at 555.

This Court lacks general jurisdiction over Chevron Corporation because it does not have the "continuous or systematic" contacts necessary to render it "at home" in Pennsylvania. Chevron Corporation is a Delaware corporation with its principal place of business in California. Endries Affidavit ¶4. Additionally, Chevron Corporation:

i. is not registered or licensed to do business in Pennsylvania; (*Id.* ¶ 9);

ii. does not conduct business in Pennsylvania (*Id.* ¶ 10);

iii. does not have a registered agent for the service of process in Pennsylvania (*Id.* ¶ 11);

iv. has no bank accounts with a Pennsylvania bank (*Id.* ¶ 12); and

v. has no property or other assets in Pennsylvania and did not own any property or other assets in Pennsylvania at any point during the time frame averred in this lawsuit (December 7, 2009 through the present) (*Id.* ¶ 13).

Despite the above, Plaintiffs claim that this Court has general jurisdiction over Chevron Corporation because: (i) Chevron has been sued in unrelated cases in the Third Circuit, "which includes Pennsylvania courts" and (ii) Chevron Corporation has allegedly made public comments (including in its SEC filings) about an unrelated incident that occurred in Pennsylvania.[3] *Id.* at ¶14. Such allegations are irrelevant to whether this Court has general jurisdiction over Chevron Corporation. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984) (holding that general jurisdiction is established by "continuous and systematic general business contacts"); *see also Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 50 n.5 (2d Cir. 1991) ("A party's consent to jurisdiction in one case, however, extends to that case alone. It in no way opens that party up to other lawsuits in the same jurisdiction in which consent was given, where the party does not consent and no other jurisdictional basis is available."); *Fisher & Paykel Healthcare Ltd. v. ResMed Corp.*, No. 16CV2068 DMS (WVG), 2017 WL 3635105, at *3 (S.D. Cal. Jan. 11, 2017) (holding that press releases issued outside the judicial district could not establish jurisdiction over out-of-state defendant); *Cheatham v. ADT Corp.*, 161 F. Supp. 3d 815, 824 (D. Ariz. 2016) (holding that statements in an SEC filing could not establish jurisdiction).

[3] As described more fully in Section II(B), these allegations should be stricken as impertinent.

Accordingly, Chevron Corporation is not "at home" in Pennsylvania such that this Court could exercise general personal jurisdiction.

ii. This Court does not have specific jurisdiction over Chevron Corporation.

Specific jurisdiction is proper where "the defendant has sufficient minimum contacts with [the state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Hammons*, 240 A.3d at 556 (quoting *Int'l Shoe Co.*, 326 U.S. at 316) (internal quotations omitted) (alteration in original). The minimum contacts requirement satisfies due process such that a defendant may reasonably anticipate where it can be sued based on the forums where it has "purposefully avail[ed] itself of the privilege of conducting activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). "[T]his requirement ensures that a defendant will not be subject to jurisdiction solely as a result of random, fortuitous, or attenuated contacts." *Hammons*, 240 A.3d at 556 (quoting *Burger King Corp.*, 471 U.S. at 475) (internal quotations omitted). The Pennsylvania Supreme Court has described the specific jurisdiction question as a three-part test:

(1) Did the plaintiff's cause of action arise out of or relate to the out-of-state defendant's forum-related contacts?

(2) Did the defendant purposely direct its activities, particularly as they relate to the plaintiff's cause of action, toward the forum state or did the defendant purposely avail itself of the privilege of conducting activities therein?

(3) [W]ould the exercise of personal jurisdiction over the nonresident defendant in the forum state satisfy the requirement that it be reasonable and fair?

Hammons, 240 A.3d at 556-57 (quoting 4 Charles Alan Wright, Arthur R. Miller & Adam N. Steinman, *Federal Practice & Procedure Civil* § 1069 (4th ed. 2015 & Supp. 2020)).

Specific jurisdiction may not be exercised over Chevron Corporation in this matter where it does not have any forum-related contacts and, therefore, the Plaintiffs' causes of action cannot arise out of or relate to contacts with the forum that are non-existent. Endries Affidavit ¶ 8. Plaintiffs' causes of action each appear to arise out of the Lease for property in Washington County, Pennsylvania, and the Wells drilled and operated on portions of said property. Second Amended Complaint ¶¶ 79, 90. Chevron Corporation has never had any interest in the Lease or the Wells. Endries Affidavit ¶ 8. Plaintiffs make a blanket statement in their Complaint that the exercise of personal jurisdiction is proper because the alleged harms occurred in Pennsylvania. Second Amended Complaint ¶ 9. While Plaintiffs attempt to demonstrate Chevron Corporation's connection to Pennsylvania, they rely on impertinent information, *see* Section II(B) below, which does not support their assertion. Regarding this impertinent information, none of the allegations in the Second Amended Complaint demonstrate that a representative of Chevron *Corporation* attended the purported settlement meetings. Instead, they only

demonstrate that the attendees to the meeting listed "Chevron" as their affiliated company, which could have been any or none of the entities named as defendants to this lawsuit.

Additionally, the individuals listed in the Second Amended Complaint and referred to in Paragraph 13 of the Second Amended Complaint are not, and have never been, employed by Chevron Corporation. Endries Affidavit ¶ 14. All employees of Chevron subsidiaries have e-mail addresses with the Chevron.com domain name. The presence of the Chevron domain name in an e-mail address therefore does not necessarily mean the employee is employed by Chevron Corporation as opposed to one of its subsidiaries. *Id.* at ¶ 15. All Chevron subsidiaries use the Chevron logo and use of this logo does not reflect that the document is that of Chevron Corporation. *Id.* at ¶ 16.

Accordingly, this Court does not have specific personal jurisdiction over Chevron Corporation.

iii. Plaintiffs' conclusory assertions related to alter ego and enterprise liability are insufficient to establish personal jurisdiction over Chevron Corporation.

Plaintiffs also make conclusory assertions that this Court has jurisdiction over Chevron Corporation under "enterprise liability" because "Defendant Chevron Appalachia was the 'alter ego' for Defendant Chevron Corp." Second Amended Complaint ¶ 13(a). An alter ego claim must be supported by specific, exceptional

facts that show the necessary factors for this extraordinary relief are present. *Lumax Indus., Inc. v. Aultman*, 669 A.2d 893, 895 (Pa. 1995). The specific facts required to establish an alter ego claim relate to "undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud." *Id.* There are not facts pled in the Second Amended Complaint that could form the basis of an alter ego claim.

The facts required to establish an alter ego claim are a threshold requirement for establishing enterprise liability, which is a doctrine used to impose liability upon sister corporations in circumstances where there is common ownership. *Mortimer v. McCool*, 255 A.3d 261, 284, 285 (Pa. 2021).

Here, Plaintiffs have not pled any facts related to (i) undercapitalization, (ii) failure to adhere to corporate formalities, (iii) substantial intermingling of corporate and personal affairs and (iv) the use of the corporate form to perpetrate a fraud, as required to establish an alter ego claim for Defendant Chevron Corporation. Because Plaintiffs have failed to plead alter ego liability, they have failed to meet the threshold requirement to establish enterprise liability. *Id.* Even if Plaintiffs had met this threshold, enterprise liability would not apply in this context where Plaintiffs seek to pierce the veil of the parent corporation, Chevron Corporation, not a sister corporation. Second Amended Complaint ¶ 13.

Accordingly, Plaintiffs' alter ego and enterprise liability allegations are insufficient to establish that this Court has personal jurisdiction over Chevron Corporation.

B. Preliminary Objection for the Inclusion of Impertinent Matter

Rule 1028(a)(2) permits a preliminary objection for "failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter[.]" Pa.R.C.P. 1028(a)(2). "In order to be scandalous or impertinent, 'the allegation must be immaterial and inappropriate to the proof of the cause of action.'" *Biros v. U Lock Inc.*, 255 A.3d 489, 497 (Pa. Super. Ct. 2021) (quoting *Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 822 (Pa. Super. Ct. 2017)). Inappropriate pleading includes "pleading evidence and not the facts upon which the specific Complaint is based." *Doe 203 v. Archdiocese of Philadelphia*, No. 1935 SEPT.TERM 2012, *slip op.*, 2013 WL 8338870, at *1 (Phil. Cnty., Pa. Com. Pl. June 13, 2013); *see also Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. Ct. 1974) ("Evidence from which such facts may be inferred not only need not but should not be alleged.").

Paragraphs 13(j) and (k) of the Second Amended Complaint contain averments regarding the Pennsylvania Department of Environmental Protection's ("DEP") purported settlement negotiations with Plaintiffs. These allegations are impertinent to this case because none of the allegations or the exhibit demonstrates

that a representative of Chevron *Corporation* attended the purported settlement meetings.[4] Instead, they only demonstrate that the attendees listed "Chevron" as their affiliated company, which could have been any or none of the entities named as defendants to this lawsuit.

Paragraphs 14(b)(iii)–(v), 179–183 reference what the Second Amended Complaint refers to as the "Lanco Incident". According to the Second Amended Complaint, the Lanco Incident related to a well in Dunkard Township, Green County, Pennsylvania that was operated by Chevron Appalachia, LLC. *Id.* The Lanco Incident is unrelated to any claim or cause of action asserted in the Second Amended Complaint.

Paragraphs 143 and 178 reference the Pennsylvania Attorney General's 43rd Grand Jury Report ("Grand Jury Report") as purported evidence of oil and gas operations that allegedly impact public health. The Grand Jury Report does not allege facts relevant to the claims asserted in the Second Amended Complaint. Instead, it references purported "evidence" that "not only need not but should not be alleged." *Id.*

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[4] In their First Amended Complaint, Plaintiffs alleged that these were "mediation/settlement meetings" First Amended Complaint ¶ 12. However, in their Second Amended Compliant, Plaintiffs "dispute" their own prior characterization of these meetings. Second Amended Complaint ¶ 13(k) ("Plaintiffs dispute whether these meetings were 'compromise negotiations under Rule 408[.]"). Plaintiffs' change of position is likely due to the fact that their initial characterization of these meetings further supports these allegations being stricken. *See* Pa.R.E. 408 (precluding evidence of settlement negotiations).

For the foregoing reasons, Paragraphs 13(j) & (k), 14(b)(iii)–(v), 143, 178–183 should be stricken from the Second Amended Complaint.

C. Preliminary Objections in the Nature of a Demurrer

The Pennsylvania Rules of Civil Procedure provide for "legal insufficiency of a pleading (demurrer)" to be raised by preliminary objection. Pa. R. Civ. P. 1028(a)(4). Preliminary objections in the nature of a demurrer admit as true all well-pleaded, factual averments and all inferences fairly deducible therefrom. *Lerner v. Lerner*, 954 A.2d 1229, 1234-35 (Pa. Super. Ct. 2008). However, conclusions of law, unjustified inferences, opinions, and argumentative allegations are not considered as true. *Am. Express Bank, FSB v. Martin*, 200 A.3d 87, 93 (Pa. Super. Ct. 2018). "[T]he court may consider only such matters as arise out of the complaint itself; it cannot supply a fact missing in the complaint." *Lerner*, 954, A.2d at 1234-35.

i. Oil and Gas Development Is Not an Ultra-Hazardous Activity Subject to Strict Liability.

For their tenth cause of action, Plaintiffs allege that Defendants are strictly liable for their injuries because they engaged in "abnormally dangerous and ultra-hazardous activities" during the operation of the Wells. Second Amended Complaint ¶¶ 333, 334. Whether an activity is abnormally dangerous to impose strict liability is a question of law for the Court, *Melso v. Sun Pipe Line Co.*, 502 A.2d 658, 663 (Pa. Super. Ct. 1985); and "courts have routinely declined to find that

activities relating to oil and gas drilling are abnormally dangerous." *Ely v. Cabot Oil & Gas Corp.*, 38 F. Supp.3d 518, 534 (M.D. Pa. 2014) (collecting cases) (rejecting the plaintiffs' contention that the use of "hazardous chemicals" and the hydraulic fracturing rendered natural gas operations ultra-hazardous). In a case involving alleged water contamination from natural gas operations, the United States District Court for the Middle District of Pennsylvania reviewed a substantial record of governmental reports, data analysis, and expert commentary across multiple states before finding a consensus that the risk from activities associated with natural gas operations can be mitigated with appropriate precautions, making those activities inappropriate for strict liability as a matter of law. *Ely*, 38 F. Supp.3d at 529-30; *see also Fredereck v. Allegheny Twp. Zoning Hr'g Bd.*, 196 A.3d 677, 689 n. 17 (Pa. Commw. Ct. 2018) (citing *Ely* for the principle that hydraulic fracturing is not an abnormally dangerous or ultrahazardous activity subject to strict liability); *United Ref. Co. v. Dep't of Envtl. Prot.*, 163 A.3d 1125, 1135 (Pa. Commw. Ct. 2017) (same). The oil and gas operations at issue here are therefore neither abnormally dangerous nor ultrahazardous under Pennsylvania law, and Plaintiffs' cause of action number eleven for strict liability must be dismissed.

ii. Plaintiffs Hunter Latkanich and Colton Latkanich Fail to Plead Facts Necessary to Sustain a Cause of Action for Nuisance, or Negligence.

The only allegation pled in the Complaint regarding Hunter and Colton Latkanich is that each "lived on the Property . . . at various times"; were "exposed to the Operations when . . . present on the Property"; and "have been apprehensive about visiting the Property . . . because of the fear of ongoing exposure to the pollution . . . ." Complaint ¶¶ 64–67, 77. The Complaint is devoid of any factual allegation of harm suffered by Hunter or Colton from any alleged negligence or nuisance, instead only making conclusory statements, and therefore they have failed to plead sufficiently either cause of action. *See Grove v. Port Auth.*, 218 A.3d 877, 888-89 (Pa. 2019) (requiring proof of "actual damages" to succeed on a claim for negligence), and *Liberty Place Retail Assocs., L.P. v. Israelite Sch. of Universal Practical Knowledge*, 102 A.3d 501, (Pa. Super. Ct. 2014) (requiring proof of actual "interfere[nce] with another's property rights." to prove a claim for nuisance).

D. Preliminary Objections in the Nature of a Motion for a More Specific Pleading

Under Pennsylvania Rule of Civil Procedure 1028(a)(3), any party may raise preliminary objections to "insufficient specificity in a pleading." The Pennsylvania Rules of Civil Procedure allow preliminary objections to be raised for "failure of a pleading to conform to law or rule of court." Pa. R. Civ. P. 1028(a)(2). Pennsylvania Rule of Civil Procedure 1019(a) states that "[t]he material facts on which a cause of

action or defense is based shall be stated in a concise and summary form." Pa. R. Civ. P. No. 1019(a). Pennsylvania Rule of Civil Procedure 1019(b) further provides that "[a]verments of fraud or mistake shall be averred with particularity."

As such, a plaintiff must plead with sufficient particularity and specificity those allegations that are contained within his complaint. Pennsylvania is a fact pleading jurisdiction, and so a complaint must do more than give the defendant fair notice of plaintiff's claims and the grounds upon which they rest; it should formulate the issues by fully summarizing the material facts, which are those facts that are essential to support the claim. *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. Ct. 1974); *see also Pincus v. Wolf*, Pa. D. & C.2d 389, 392 (Montgomery Cnty. Ct. Com. Pl. 1954) (opining that pleadings "should help to narrow the issues and apprise the defendant of what he will be required to meet at trial."). The alleged facts must be "sufficiently specific as to enable [a] defendant to prepare [its] defense." *Smith v. Wagner*, 588 A.2d 1308, 1310 (Pa. Super. Ct. 1991).

Complaint allegations may survive a Rule 1019(a) challenge if "(1) they contain averments of all the acts the plaintiff will eventually have to prove in order to recover[;] and (2) they are sufficiently specific so as to enable defendant to prepare his defense[.]" *Baker*, 324 A.2d at 506 (internal quotation and citations omitted). Plaintiffs' Complaint fails to satisfy this standard and is insufficiently specific in a number of ways.

i. Insufficient specificity for failure to plead which Defendants took which actions and Motion to Strike the "EQT Defendants" Catchall.

Plaintiffs fail to specify which Defendants took which actions that subject them to liability, instead painting them with a broad brush of "Chevron Defendants" and "EQT Defendants," with each category including multiple entities. Multi-defendant cases like this require greater specificity. In *Bouchon v. Citizen Care, Inc.*, 176 A.3d 244, 259-62 (Pa. Super. Ct. 2017), the plaintiff stated causes of action against groups of defendants. The Superior Court held that this practice made "it impossible to discern what conduct may be attributed to any of the parties." *Id.* at 262. So too here. Throughout the Second Amended Complaint, Plaintiffs treat Chevron Corporation, Chevron U.S.A. Inc., and Chevron Appalachia, LLC, as one entity (the "Chevron Defendants") (*see, e.g.,* Second Amended Complaint ¶¶ 83, 126, and 264), and EQT Corp., EQT Production Company, EQT Production Marcellus, and EQT CHAP LLC as one entity (the "EQT Defendants") (*see, e.g.,* Second Amended Complaint ¶¶ 184, 266). Plaintiffs do not, however, allege any facts which would explain why they believe it is appropriate to disregard that these companies are separate entities. Adding to the confusion, while Plaintiffs appear to assert certain causes of action against EQT Defendants—they are named in the headings to Counts IV, VI, VII, VIII, IX, X, and XI—they also attempt to improperly incorporate all causes of action against all EQT Defendants in the "As to the EQT

Defendants" catchall section contrary to the Pennsylvania Rules of Civil Procedure. Rule 1020(a) allows the pleading of more than one cause of action but requires that "[e]ach cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief." Pa.R.C.P. 1020(a). Therefore, none of the Defendants can determine from the Complaint the theory of liability against and the "As to the EQT Defendants" catchall section should be stricken for failure to conform to the Pennsylvania Rules of Civil Procedure.

ii. Insufficient specificity of allegations made by Hunter and Colton Latkanich

Plaintiffs fail to allege specific facts regarding Hunter and Colton such that Defendants may identify the causes of action being raised against them. The only Paragraphs of the Second Amended Complaint containing factual allegations about Hunter and Colton are Paragraphs 64–67 and 77 which simply state that each "lived on the Property . . . at various times"; were "exposed to the Operations when . . . present on the Property"; and "have been apprehensive about visiting the Property . . . because of the fear of ongoing exposure to the pollution . . . ." Second Amended Complaint ¶¶ 64–67, 77. No other facts specific to Hunter or Colton are alleged, including, but not limited to, any facts regarding how they have been allegedly harmed or the specific periods of time during which they allegedly lived on the Property. Without more specificity regarding the purported claims of Hunter and

Colton, Defendants cannot determine the acts or omissions for which they seek to hold Defendants responsible.

iii. Insufficient specificity and particularity of fraud claims

Plaintiffs fail to plead their fraud claims (Counts two, three, four and five) with sufficient particularity as required by Pennsylvania Rule of Civil Procedure 1019(b). Rule 1019(b) requires that "[a]verments of fraud or mistake shall be averred with particularity." This standard requires two conditions to be met: "(1) the pleadings must adequately explain the nature of the claim to the opposing party so as to permit the preparation of a defense, and (2) they must be sufficient to convince the court that the averments are not merely subterfuge." *Martin v. Lancaster Battery Co., Inc.*, 606 A.2d 444, 448 (Pa. 1992). Pennsylvania courts have found Rule 1019(b) not satisfied in a number of circumstances, including where the alleged misrepresentations are not supported by facts in the Complaint. *Rollinson v. Clarke-DeMarco*, 83 Pa. D. & C.4th 467, 471-72 (Mercer Cnty. Ct. Com. Pl. Jan. 22, 2007). Complaints also run afoul of Rule 1019(b) where it simply contains conclusory language parroting the elements of fraud. *Pezzano v. Mosesso*, 2014 WL 5421587, *5 (Pa. Commw. Ct. 2014). Moreover, where the complaint alleges general facts, but does not set forth with particularity "facts showing how the Defendant made representations with knowledge of their falsity, how the Defendant made representations with the intent to mislead, and how the Plaintiff relied on the

Defendant's misrepresentations[,]" Rule 1019(b) is not satisfied. *Premium Assignment Corp. v. City Cab Co.*, 2005 WL 1706976, *1 (Phila. Ct. Com. Pl. July 15, 2005). "[S]imply averring that 'Plaintiff justifiably relied on Defendant's misrepresentation' is not enough to comply with the specificity requirements of pleading fraud." *Id.*

Here, Plaintiffs have only made conclusory allegations related to their fraud claims. Plaintiffs claim that misrepresentations were made of "certain material facts and omitted other material facts, including those made with respect to the Gas Lease and described in ¶¶81-83 herein, and risks and resulting injuries to Plaintiffs, the Property and the Home as a result of the Chevron Defendants' Operations." Second Amended Complaint ¶ 201. Plaintiffs, however, have not alleged any facts with particularity identifying what the alleged misrepresentations are, by whom they were made, or when they were made. Plaintiffs also offer no particular facts in support of their conclusory statements that Bryan justifiably relied on the alleged misrepresentations in Paragraph 207 of the Second Amended Complaint. Additionally, although Plaintiffs allege that the Chevron Defendants "actively concealed" facts regarding their operations, (Second Amended Complaint ¶ 220, 221), Plaintiffs fail to set forth specific facts with regard to how these facts were "actively concealed."

Finally, under Pennsylvania law the tort of fraudulent non-disclosure requires that the party alleged to have acted fraudulently have had a duty to disclose facts to the other party. *Youndt v. First Nat. Bank of Port Allegany*, 868 A.2d 539, 550 (Pa. Super. Ct. 2005) (quoting Restatement (Second) Torts § 551(2)). Some Pennsylvania courts have recognized that such a duty may exist where the contract that is the subject of the purported fraud was not negotiated at arms-length and therefore a "special relationship" exists between the parties. *See Marcum v. Columbia Gas Transmission, LLC*, 423 F.Supp.3d 115, 121 (E.D. Pa. Nov. 20, 2019). In *Marcum*, the plaintiffs and Columbia Gas Transmission entered into an easement to add a fiberoptic cable to a prior easement. *Id.* at 120. Plaintiffs alleged that construction pursuant to the easement resulted in water and mud runoff damaging their home and sinkholes in the easement zone. *Id.* Plaintiffs claimed that Columbia had a duty to disclose the risk of subsidence and sinkholes associated with the construction to be performed on the easement, and that failure to make the disclosure amounted to fraud. *Id.* at 121. The court disagreed. It observed that while a business transaction where "one party surrenders substantial control over some portion of its affairs to the other" may give rise to a special relationship imposing the duty to disclose, the typical arms-length transaction will not. *Id.* (quoting *Gaines v. Krawcyk*, 354 F. Supp.2d 573, 586 (W.D. Pa. Nov. 18, 2004)). The court determined that the plaintiffs' bald assertion of the existence of a fiduciary

duty was insufficient to show that the easement was not negotiated at arms-length. *Id.* at 122 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice to state a viable claim.") (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Similarly, Plaintiffs here simply make a conclusory statement that the Lease was not negotiated at arms-length, without any facts to support the allegation. (Second Amended Complaint ¶ 82). Without facts specifying why Plaintiffs believe the Lease was not negotiated at arms-length, the Defendants cannot formulate a defense to this allegation.

iv. Insufficient specificity of allegation that Lease was breached by failure to pay royalties in agreed upon quantities

In their breach of contract claim, in addition to other alleged breaches, Plaintiffs claim that "payments to [Bryan] under the Gas Lease were less than warranted and were presented without opportunity or mechanism to verify their correctness and accuracy." Second Amended Complaint ¶ 193. Plaintiffs, however, offer no specific facts or any allegations as to what amount in royalties were paid, what amounts should have been paid, and why the royalties were allegedly underpaid. Without further specificity as to the facts supporting this portion of Plaintiffs' breach of contract claim, Defendants cannot respond to the claim.

v. Insufficient specificity of allegations that the Chevron Defendants had a duty to mitigate

Plaintiffs allege that "[t]he Chevron Defendants could and reasonably should have taken any number of steps to mitigate the other risks and hazards [*sic*] harms to Plaintiffs, their persons, property, and the environment." Second Amended Complaint ¶ 163. Plaintiffs appear to allege that the Chevron Defendants had a duty to "take[] any number of steps to mitigate" risks, but they allege no specific facts about what those steps would have been.

vi. Insufficient specificity of cause of action for negligence

Plaintiffs raise a cause of action for negligence and negligence *per se*. Allegations asserting negligence or violation of duties generally are not sufficiently specific under Pennsylvania law. *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600, 602 n.3 (Pa. 1983). "It is generally accepted that open ended or catch-all allegations of negligence in a complaint are inappropriate where they leave the door open to amendment raising new claims or new theories of liability after expiration of the statute of limitations." *Ray v. Sasso*, No. CI-17-07043, 2018 Pa. Dist. & Cnty. Dec. LEXIS 4965, *13 (Lancaster Cnty. Pa. Ct. Com. Pl. May 25, 2018) (citing *Connor*, 461 A.2d 600 (Pa. 1983)).

Plaintiffs claim that "[s]ome or all of the acts and/or omissions of the Chevron Defendants were grossly, knowingly, recklessly and wantonly negligent, and were done with utter disregard for the consequences to Plaintiffs and other persons[.]"

(Second Amended Complaint ¶ 294). Moreover, the harms Plaintiffs allege are not specific enough in that Hunter and Colton do not allege any harms, and Bryan and Ryan generally plead that they suffered "other medical conditions," without specification. Second Amended Complaint ¶¶ 178(j) & (l). Plaintiffs' allegations relating to negligence and gross negligence are nothing more than boilerplate allegations, which are insufficiently specific under Pennsylvania law. These allegations are not specific enough such that they leave the door open for Plaintiffs to raise new claims and theories throughout the litigation, and prevent the Defendants from determining the actions that Plaintiffs contend were negligent or grossly negligent and from responding to the claims.

For the foregoing reasons, the Court should order Plaintiffs to file a more specific pleading pursuant to Rule 1028(a)(3) rectifying the lack of specificity identified above.

III. Conclusion

For the foregoing reasons, Defendants Chevron Corporation, Chevron U.S.A. Inc., and Chevron Appalachia, LLC, EQT Corp., EQT Production Company, EQT Production Marcellus, and EQT CHAP LLC request that the Court sustain their Preliminary Objections, and enter an Order:

- Dismissing all causes of action against Chevron Corporation for lack of personal jurisdiction;

- Striking Paragraphs 13(j) & (k), 14(b)(iii)–(v), 143, 178–183 for the inclusion of impertinent matter;
- Dismissing Plaintiffs' tenth cause of action for strict liability with prejudice for failure to state a claim for which relief can be granted;
- Dismissing Hunter Latkanich's and Colton Latkanich's seventh and eighth causes of action for negligence and nuisance with prejudice for failure to state a claim for which relief can be granted;
- Striking the "As to EQT Defendants" catchall provision for failure to comply with rule of court;
- Ordering Plaintiffs to file a more specific pleading:
    - As to all causes of action to specify which Defendants took which actions;
    - As to all causes of action to specify which Plaintiffs are bringing which causes of action;
    - As to all causes of action to specify the facts supporting Hunter Latkanich's and Colton Latkanich's claims;
    - As to the second, third, fourth, and fifth causes of action to plead their fraud claims with the requisite particularity;
    - As to the first cause of action to specify the facts supporting their claim that royalties due under the Lease were underpaid;
    - As to all causes of action to specify facts supporting their claim that a duty to mitigate existed; and

- As to the eighth cause of action to specify the facts supporting their claim for negligence.

Respectfully submitted,

BABST, CALLAND, CLEMENTS
AND ZOMNIR, PC.

Date: June 1, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT** was served upon counsel via electronic mail, this 1st day of June, 2023.

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