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STATE OF WYOMING	)	IN THE DISTRICT COURT
	) ss	
COUNTY OF CAMPBELL	)	SIXTH JUDICIAL DISTRICT

KENNETH B. GEER, Plaintiff, vs. ANADARKO E&P ONSHORE LLC, Successor to Lance Oil & Gas Company, Inc., a Delaware Corporation, Defendant.	)	Civil Action No. 32940

DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S RULE 26(a)(2) DESIGNATION OF JAMES STEVEN WILSON

Defendant Anadarko E&P Onshore LLC, formerly known as Lance Oil & Gas Company, Inc. (Lance), by and through its attorneys Holland & Hart, LLP, respectfully moves the Court for an order striking Plaintiff's Rule 26(a)(2) designation of James Steven Wilson (Mr. Wilson).

I. Introduction

Mr. Wilson only "was asked to calculate values associated with" Plaintiff's two tax claims in this case.[1] Not surprisingly then, that single effort is substantially all that Mr. Wilson's expert reports attempt, although Plaintiff bootstraps with a lofty designation to include an incorrect accounting methodology resulting in royalty underpayments to all royalty owners:

> Mr. Wilson has done a thorough examination of the data produced by Lance to demonstrate the incorrect accounting methodology employed by Lance which results in royalty underpayments to all Lance royalty owners in Campbell County. A complete explanation of his calculations and conclusions is contained in his report attached hereto under seal.[2]

Plaintiff therefore attempted to designate Mr. Wilson to say: 1) that Lance's tax methodology was contrary to Wyoming law; 2) that it caused classwide royalty underpayments to over 3000 Class Members; and 3) that his report contained reliable tax calculations. However, Mr. Wilson was unable to testify to any of these issues. Mr. Wilson's July 25, 2013 deposition testimony was so flawed, unreliable and contrary to Plaintiff's attempted expert designation that the flawed designation should be stricken in its entirety under Wyo. R. Civ. P. 37(c)(1).

Mr. Wilson has participated in this case since its inception. In fact, Mr. Wilson has been developing this very same argument since he worked for another royalty owner several years ago.[3] It appears that Mr. Wilson personally disagrees with Lance's tax methodology. However,

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[1] Transcript of Wilson Deposition, July 25, 2013 ("Wilson Dep."), 14: 11-25; 15:1-9. (excerpts attached as Ex. 1).

[2] Plaintiff's Designation of Expert Witness, March 21, 2013 (Report without exhibits attached as Ex. 2).

[3] Wilson Dep. 10: 12-25.

it is clear that Mr. Wilson fails to provide any qualified expert explanation of why his experience as an accountant renders his personal opinion reliable as expert opinion and fails to provide any support for his conclusory statement that Lance's tax methodology is improper. Further, contrary to his expert designation and the breach of contract claims raised in Plaintiff's complaint, Mr. Wilson testified during his deposition that he had no opinion whether royalty owners were "underpaid" (that is, received less than what their royalty contracts required).

Finally, Mr. Wilson further admitted numerous calculation and methodology errors that were so inaccurate that Mr. Wilson himself testified that the Court should not rely on his report. Plaintiff now tries to salvage Mr. Wilson's unreliable use of data and methodology with a post-deposition affidavit promising to correct the calculations and calling his errors "minor" despite six-figure errors and errors that he has still not quantified.

Mr. Wilson's deposition testimony and flawed reports establish that he cannot provide "scientific, technical, or other specialized knowledge" that will assist the Court. Plaintiff cannot cure this lack of expertise and fundamental lack of reliability with a supplemental report. To the extent the Court allows Mr. Wilson to supplement his admittedly flawed reports, Lance further moves the Court for sanctions under Wyo. R. Civ. P. 37(c)(1) for the expert and attorney time spent to identify Mr. Wilson's errors and lack of reliability.

II. Legal Standard

Wyoming Rule of Evidence 702 states that "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a

witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Wyo. R. Evid. 702.

Under Wyoming law, the trial court is tasked with a gatekeeper function to determine the reliability of proffered expert testimony. *Hoy v. DRM*, 2005 WY 76, ¶ 13, 114 P.3d 1268, 1276-77 (Wyo. 2005). This Court must first determine whether the methodology used by the expert is reliable, after which, the court must determine whether the proposed testimony "'fits' the particular case." *Id.* ¶ 13. For a proffered expert such as Mr. Wilson who is relying solely or primarily on experience, he must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinions, and how that experience is reliably tied to the facts.[4] Moreover, the Court cannot take Mr. Wilson's word for the reliability of his opinions, particularly in a case such as this where those opinions are highly subjective and controversial:

> The trial court's gatekeeping function requires more than simply "taking the expert's word for it." See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1319 (9th Cir.1995) ("We've been presented with only the experts' qualifications, their conclusions and their assurances of reliability. Under Daubert, that's not enough."). The more subjective and controversial the expert's inquiry, the more likely the testimony should be excluded as unreliable. See *O'Conner v. Commonwealth Edison Co.*, 13 F.3d 1090 (7th Cir.1994) (expert testimony based on a completely subjective methodology held properly excluded).[5]

Here, Mr. Wilson's expert testimony is unreliable and does not fit the present case. Mr. Wilson has never identified how his experience as an accountant provides the necessary

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[4] *Hoy*, ¶ 24.

[5] *Id.*

reliability to support his opinion about legality and appropriateness of Lance's tax methodology. Further, not only were Mr. Wilson's conclusions derived by analysis that was contrary to his normal accounting practices, but his analysis is contrary to Wyoming case law in underpayment claims brought under the Wyoming Royalty Payment Act (WRPA). Finally, his methods and calculations are admittedly unreliable, and his failure to disclose his knowledge of the flaws in his methods casts further doubt on the completeness and reliability of his methods.

Rule 37(c)(1) prohibits a party from using as evidence at trial, hearing or any motion information not properly or misleadingly disclosed under Rule 26(a). Plaintiff's disclosure of Mr. Wilson under Rule 26(a)(2) failed to disclose certain opinions by Mr. Wilson and failed to disclose Mr. Wilson's errors, and in some cases knowledge of those errors, in alleged damage calculations. Those failures are not harmless and have led to expert reports that Mr. Wilson candidly testified should not be relied on by the Court.[6]

III. Mr. Wilson Lacks a Qualified Basis for His Opinion on His Taxable Value Theory

Mr. Wilson's expert report summarily claims without explanation that Lance is using the wrong value to calculate taxes: "[t]he State of Wyoming allows, by statute and rule, certain deductions to determine Taxable Value which are not allowed to be deducted to calculate Royalty Value."[7] When asked to expound on this statement and actually identify the deductions that are allowed to be taken for taxable value that are not allowed to be deducted for royalty value, Mr. Wilson responded:

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[6] Wilson Dep. 122: 7-13.

[7] Wilson Supplemental Report, June 6, 2013 (Report without other exhibits attached as Ex. 3), p.7.

A: I guess I'd have to look at the rules.

Q: You can't explain the statement in your report?

A: Not without looking at the rules.[8]

Mr. Wilson has never identified the Wyoming statute or "rules" that allow deductions for Taxable Value and prohibit deductions for royalty. However, Mr. Wilson testified that his tax argument is supported by his review of an unspecified statute:

A: I believe the statute says taxes paid times interest ownership.

Q: Which statute is that?

A: The 39-14-200 something.

Q: Are you relying on that statute for any of your opinions in this case?

A: I believe that's the statute I'm relying on the taxable value versus royalty, Claim 2.

Q: Do you cite that statute anywhere?

A: No. I do not.

Q: Do you explain what that statute says or means anywhere?

A: I have not.

Q: Do you indicate at all your reliance on that statute anywhere in either report?

A: I may have placed it in my affidavit. I'm not sure.[9]

Mr. Wilson's 2012 affidavit likewise makes no reference to any statute or rules and simply relies on the same "take my word for it" statement contained in his reports: "The State of

[8] Wilson Dep. 71:13-19.

[9] *Id.* 69: 17-25; 70: 1-8.

Wyoming allows, by statute and rule, certain deductions to determine Taxable Value which are not allowed to be deducted to calculate Royalty Value."[10] His attempted statutory interpretation usurps this Court's authority to interpret the law.[11] In his deposition, Mr. Wilson provided similarly vague descriptions of the tax statute:

> A: I read the statute and it says taxes paid times interest ownership.
>
> Q. Is that a quote?
>
> A. I believe that's what one of the statutes says.[12]

Though Mr. Wilson references Wyoming law in general regarding the concept of taxable value, Mr. Wilson testified that he does not "know what the point of taxable value is currently under Wyoming law."[13] Moreover, Mr. Wilson assumed that Lance's royalty payment methodology was improper because he observed that the royalty values were not equal to the taxable value. It was only during Mr. Wilson's deposition that he was made aware that the difference in the royalty values and the taxable value was due to the fact that Lance does not deduct processing costs from the royalty owners,[14] although he acknowledged that, absent express language in a particular lease, Lance can properly deduct processing costs from the royalty owners' share

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[10] Wilson August 28, 2012 Affidavit without exhibits (attached as Ex. 4), ¶ 8(b).

[11] "[S]tatutory construction is a matter of law," *Adelizzi v. Stratton*, 2010 WY 148, ¶11, 243 P.3d 563, 566 (Wyo. 2010).

[12] Wilson Dep. 78: 19-23.

[13] *Id.* 68: 20-22.

[14] *Id.* 73: 19-25.

under the Wyoming Royalty Payment Act.[15] His lack of knowledge further erodes the reliability of his opinions.

Clearly, the lack of explanation in his report and inability to explain why Lance's tax methodology is "incorrect" runs afoul of Wyo. R. Civ. P. 26(a)(2)(B)'s requirement for his report to "contain a complete statement of all opinions to be expressed **and the basis and reasons therefor**..." (emphasis added). However, his lack of factual or legal basis and any reasons for Lance's tax methodology being "incorrect" is attributable to the fact that he was not asked to provide this opinion as an expert in the first place.[16] Mr. Wilson is not a tax expert by any stretch of the imagination: he is not a CPA; he is not a lawyer; he is not a tax specialist; he has no formal training on tax calculations for production taxes in Wyoming, he has not consulted with anyone at the State or anyone else on his theories in this case, he has never audited an oil and gas producer for tax compliance or production tax reporting; his deceased partner did more tax work than he did; and, he has done no tax consulting since his partner's death. Further, his one page resume has no mention of tax work or even the word "tax" in it; and he does no continuing education or training as an accountant at all.[17] Even if Mr. Wilson had some tax experience, there is no explanation for how it leads to the conclusion of an incorrect tax

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[15] *Id.*, 53: 7-22.

[16] *Id.* 14: 11-25; 15:1-9.

[17] *Id.* 29: 6-25; 30: 1-25; 31: 1-4; 36: 6-21; 39: 21-25; 40: 1-14. Wilson Resume Ex. A to March 21, 2013 Report (attached as Ex. 5).

methodology or why his experience is a sufficient basis for the opinion or how that experience can be **reliably** applied to the facts.[18]

Mr. Wilson's personal opinions about Lance's tax methodology that have made their way into his report without any explanation or qualified basis should be stricken.[19]

IV. Mr. Wilson Has No Reliable or Helpful Opinion on Whether Lance's Tax Methodology Resulted in a Royalty Underpayment to any Class Member

Plaintiff's Complaint alleges that Lance has breached the contracts of thousands of royalty owners in Campbell County by underpaying royalties owed under leases and other contracts. Mr. Wilson has spent years attempting to identify underpayments for royalty owners in other non-class action matters and is familiar with the hundreds of varying lease types and contracts that create specific royalty payment obligations.[20]

In this case, however, Mr. Wilson **deviated from his normal course** of actually reading the leases and other contracts to identify the particular royalty payment obligations in order to determine whether an underpayment and breach of contract occurred. Because of that deviation from his experience, Mr. Wilson testified he **had no opinion** on whether any royalty owner had been underpaid:

> Q: You're not saying they're [royalty owners] underpaid under their lease, are you?
>
> A: No.

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[18] *Hoy*, ¶24.

[19] Mr. Wilson's theory actually **increases taxes and the effective tax rate to a royalty owner** when royalty value is less than taxable value, an absurd result that he brushes off with the explanation that "it's what the statute says." Wilson Dep. 109: 11-25; 110: 1-19.

[20] Wilson Dep. 43: 11-25; 44: 1-15.

Q: Because you didn't look at that.

A: That's correct.

Q: If you compare the tax overwithholding to the royalty overpayment based on leases, you don't come up with underpayment for all royalty owners, do you?

A: I haven't looked at that.

Q: Right. So again, when you say underpayment -- I just want to make sure I understand this term underpayment -- you're not saying royalty owners are underpaid under their leases, are you?

A: No.

Q: Because you didn't look at that.

A: I didn't look at it.

Q: In fact, you were told not to look at that.

A: Yes.

Q: Contrary to your common practice of looking at that.

A: Yes.

* * *

Q: And you're not giving an opinion on the amount of royalty that Lance pays to any of its royalty owners, are you?

A: No.[21]

[21] *Id.* 55:13-25; 56: 1-11; 71: 1-4; *see also* 55:1-17; 59:1-4; 67:1-9.

In short, Mr. Wilson has no idea whether any royalty owner has been underpaid.[22] Mr. Wilson departed from his normal practice of reviewing the leases; therefore, his unsupported opinions about over-withholding taxes automatically causing an underpayment without considering royalty contract requirements are unreliable and inadmissible: "The expert's testimony must be grounded in an **accepted body of learning or experience in the expert's field**, and the expert must explain how the conclusion is so grounded."[23]

Moreover, Mr. Wilson's opinions about underpayment without considering the royalty contracts are not helpful in this breach of contract action and thus do not "fit" the Plaintiff's underpayment allegations to support the breach of contract claims in this case.[24] Mr. Wilson's analysis is plainly contrary to Wyoming jurisprudence related to the Wyoming Royalty Payment Act (WRPA). In all cases[25] in which the Wyoming Supreme Court held an award of statutory interest was warranted under the WRPA for an underpayment, the court first examined the

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[22] Instead, Mr. Wilson again uses the flawed "take my word for it" approach by saying all royalty owners have been underpaid simply because of tax over-withholding and not a true underpayment under their leases. Wilson Dep. 55: 3-15. This blanket statement comes despite his conceding that the royalty obligation to any particular royalty owner varies and will depend on the lease, Wilson Dep. 54: 10-17.

[23] *Hoy*, ¶ 24 (emphasis added).

[24] *Hoy*, ¶ 13; Wyo. R. Evid. 702.

[25] In *Indep. Producers Mktg. Corp. v. Cobb*, 721 P.2d 1106, 1107 (Wyo. 1986), the court affirmed an award of statutory interest but did not have to address lease language because the parties stipulated to lease underpayment.

governing contract language to determine the lessor's proper royalty entitlement and whether there has been a nonpayment or underpayment.[26]

Discovery closed on August 1, 2013, and Mr. Wilson has not identified a single instance of underpayment of royalties to any Class Member based on what the royalty contract required. In fact, Mr. Wilson testified repeatedly that Class Members whose leases allowed greater deductions from royalty than Lance took should not even be in the Class,[27] although he has not done the work to exclude them from the Class.[28] Thus, Mr. Wilson cannot reliably testify that any Class Member has suffered a breach of their royalty contract or has been underpaid. He does not even try to do so, even though this analysis would be his normal practice.

V. Mr. Wilson's Calculations and Methodology to Analyze Complex Data on a Scale He Has Never Seen are Admittedly and Hopelessly Unreliable

A. Mr. Wilson Did Not Know How to Use Lance's Data and Was Overwhelmed

Mr. Wilson admits that he has never done class action calculations as challenging or as big as this, and that this case caused him difficulties.[29] Although at times he tries to blame the complexity of the data and not knowing what the data represents, he admits his excuses do not

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[26] *Cities Serv. Oil & Gas Corp. v. State*, 838 P.2d 146 (Wyo. 1992) (analyzing lease language); *Ferguson v. Coronado Oil Co.*, 884 P.2d 971, 979 (Wyo. 1994) (examining language in net profits interest contract); *Moncrief v. Harvey*, 816 P.2d 97 (Wyo. 1991) (examining lease language to determine plaintiff's proper royalty share); *Ultra Res., Inc. v. Hartman*, 2010 WY 36, 226 P.3d 889 (Wyo. 2010) (examining language in net profits interest contract to determine operators' obligation to pay royalties).

[27] Wilson Dep. 110: 20-25; 111: 1-6; 13-24.

[28] Affidavit of Michael A. Zeeb, August 8, 2013, ¶12 (Zeeb Aff. Ex. 6). The withdrawal and change of opinions on this subject is yet another indication of unreliability. *Id.*

[29] Wilson Dep. 16: 13-19; 17: 4-11.

really hold either. For example, he claims to have been confused by accounting data for all three Powder River Basin Counties and not just Campbell County. But then he admits that he probably wanted data for all three counties initially when Plaintiff's claims were not limited to Campbell County.[30]

In addition, Mr. Wilson now claims in his July 30, 2013 Affidavit[31] that he needs to make corrections because he just received information from Lance that he needs (SAP journal entry data and Lance's July 25 responses to Requests for Production). In fact, as to the SAP journal entry data, he mistakenly assumed he did not need that data even though he used the same data for the Legacy accounting time period.[32] If an expert in accounting, Mr. Wilson clearly should have known that he needed SAP journal entry data to identify where wells are located. The pay history data that he used does not identify a well's location. Mr. Wilson should have clearly seen that and should have asked for journal entry data, showing the location of wells before he issued his June 7 report.[33] Even after Defendant's expert accountant Mr. Zeeb pointed this problem out in his June 21 report, Mr. Wilson did not attempt to use the SAP journal entry data before his deposition. According to Mr. Zeeb, "Not using journal entry data to eliminate non-Campbell County wells is a **fundamental flaw in his methodology**, one that he now understands.

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[30] *Id.* 20: 16-25; 21: 1-10.

[31] Attached to Pl.'s Rule 56.1 Statement of Facts (July 31, 2013).

[32] Wilson Dep. 21: 21-25; 22: 1-7. Even using Legacy journal entry data, Mr. Wilson still did not use it to build a county-well cross reference table even though he knew he had to. *Id.* 57: 1-25; 58: 1-9.

[33] Zeeb Aff. ¶8.

Therefore, to say that the methodology that he did use to develop his reports was 'sound and reliable' is not accurate."[34]

Further, as to Lance's July 25 responses to Requests for Production, these requests sought information to cross-reference wells with counties. The responses to these requests provided no new documents or data that was not already identified in Zeeb's June 21 expert report. Mr. Wilson had all of the data and documents that he needed to identify which wells were and were not located in Campbell County more than three weeks before his deposition.[35] He repeatedly stated in his deposition that he did not indicate anywhere in his June 7 report that he needed additional information from Lance, such as cross-reference information for wells and counties.[36] He had no idea he was missing anything he needed because he made faulty assumptions leading to wrong calculations. Even when he had the information he needed from Zeeb's June 21 report, he still did not review or use it before his deposition: "I'll be getting to it."[37] The June 28, 2013 Requests for Production and Mr. Wilson's deposition testimony illustrate that "Mr. Wilson **did not understand the data and how to use it** and that Mr. Wilson had not tried to use it to isolate Campbell County wells in his damages analysis."[38]

B. Mr. Wilson's Unreliable Methods are Repeatedly Manifested in His Admitted Errors – and How He Handled Those Errors

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[34] *Id.* (emphasis added).

[35] *Id.* ¶9.

[36] Wilson Dep. 24: 24-25; 25: 1-9; 26:21-25; 27: 1-2.

[37] *Id.* 24: 3-10.

[38] Zeeb Aff. ¶9 (emphasis added).

Mr. Wilson agrees that he committed at least three[39] errors that Mr. Zeeb's analysis and Lance's discovery have uncovered so far:

1. Mr. Wilson used the ad valorem tax rate for District 100 in Campbell County, although Lance has wells in other tax districts in Campbell County with a higher ad valorem tax rate than District 100. This error would overstate alleged damages.[40]

2. Mr. Wilson included wells outside of Campbell County, although the class is limited to Lance wells in Campbell County. This error existed both for the legacy and SAP accounting system timeframes. This error would overstate alleged damages.[41]

3. Mr. Wilson double counted alleged damages because he included the same number for both his ad valorem claim and his taxable value claim. This error would overstate alleged damages – Mr. Zeeb says by $417,691.80; Mr. Wilson still does not know.[42]

More troubling than the accumulation of calculation errors themselves is Mr. Wilson's apparent decision not to disclose at least one known error, not to mention that he was unaware of his other errors.

Besides his change of story that he now needs to analyze recent data used by Mr. Zeeb, and contrary to his previous report indicating no need for additional data or analysis, Mr. Wilson also appears to have been less than forthcoming with other aspects of his report and calculations.

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[39] Mr. Wilson also did not consider Lance tax settlements with the State resulting in more taxes to Lance not passed through to the royalty owner. This error would overstate alleged damages. Wilson Dep. 94: 20-25.

[40] *Id.* 61: 16-25; 62: 1-19; 83: 19-22; Zeeb Aff. ¶4a.

[41] Wilson Dep. 83: 13-25; Zeeb Aff. ¶4b.

[42] Wilson Dep. 91: 1-25; 92: 1-8; Zeeb Aff. ¶4c.

For example, as to the first error, Mr. Wilson says he knew there were wells in other tax districts that would overstate his calculations, but he failed to indicate a caveat or warning in his report to advise the parties and the Court.[43] Although he says he knew of this problem before Mr. Zeeb's report, then he says he only decided to do the corrections "[w]hen Zeeb pointed it out."[44] He attributes his actions to a fast approaching deadline and massive amounts of data for the largest royalty class he had ever attempted – "without a doubt" – "by far."[45] Mr. Wilson is displaying either his lack of competence or not disclosing his errors until and unless caught.

As to his second error that he allowed to happen by not filtering out blanks in the data, Mr. Wilson admits it is common for oil and gas producers to have blanks in their royalty payment data, but says he had only discovered the problem recently before his deposition. He says he saw blanks in the data but did not request more information to avoid a wrong assumption that caused errors.[46] Mr. Wilson acknowledged his third error that Mr. Zeeb calculated at over $417,000[47] but now minimizes saying his errors were "minor" without doing the work to calculate their significance.[48] How Plaintiff can minimize and promise to rehabilitate his report is a mystery when Mr. Wilson himself admits just how defective and unreliable his report is:

Q Would you rely on that report if you were the court?

A There -- there's some adjustments that need to be made.

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[43] Wilson Dep. 62: 20-25; 63: 1-21.

[44] *Id.* 65: 20-25; 66: 1-10.

[45] *Id.* 82: 2-19.

[46] *Id.* 86: 12-25; 87: 1-7; 88: 22-25; 89: 1-17; 90: 1-11.

[47] *Id.* 91: 1-9; 92: 1-12.

[48] Zeeb Aff. ¶10.

Q Are you having a problem answering my question yes or no?

A There -- I guess no.[49]

Mr. Wilson's methods are unreliable, his errors numerous, his approach unprofessional, and his abilities to analyze such massive and complex data overtaxed. Allowing Mr. Wilson to testify at all would be grossly unfair to Lance and the trier of fact. Plaintiff seeks leave from the Court for Mr. Wilson to supplement his flawed work now that discovery has closed. The Court in its decision should be guided by Mr. Zeeb's professional assessment of that speculative effort:

> Based on my review of his expert reports and my listening to Mr. Wilson's deposition, it is my professional opinion that the large amount of royalty accounting data in this case **cannot be reliably handled** by Mr. Wilson's methods for normally handling much smaller amounts of data in royalty owner cases. In particular, the journal entry accounting data (22.6 million records for the Legacy journal entry date versus the 4.2 million records of the SAP Paid History data) represents a massive amount of data that Mr. Wilson knew about and used but then made flawed assumptions about the SAP journal entry data he knew existed but did not use until I pointed out its importance. Additionally the SAP journal entry data contains 84.9 million records (four times larger than Legacy journal entry data that Mr. Wilson attempted to use in his calculations, but made errors in when he did). As a result, Mr. Wilson will face even more challenges when attempting to use Microsoft Excel and Microsoft Access to deal with the additional 84.9 million records for the SAP journal entry data and **based on his track record in producing his first two reports, I would not reasonably rely on Mr. Wilson's further adjustments** without a detailed analysis of his work.[50]

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[49] Wilson Dep. 122: 7-13.

[50] Zeeb Aff. ¶14 (emphasis added). *See also id.*, ¶13: "Without using an adequate database management tool like SQL Server and trying to complete the calculations required to compute the amounts as summarized in Mr. Wilson's report, **errors of the type he made are bound to happen, and I believe a high probability of these errors happening again exists, if he attempts to do another report.**" (emphasis added).

VI. If the Court Does Not Strike Mr. Wilson's Reports and Testimony, the Court Should at a Minimum Require Plaintiff to Pay Lance's Reasonable Expenses to Uncover Plaintiff's Failed and Misleading Disclosure of Mr. Wilson

As detailed above, the disclosure of Mr. Wilson as an expert is hopelessly flawed, incomplete and misleading, such that striking his reports and testimony under Wyo. R. Civ. P. 37(c)(1) and Wyo. R. Evid. 702 is the appropriate remedy. However, if the Court does not strike this designation,[51] Lance moves the Court in the alternative to require payment of Lance's expenses, including expert fees and attorney fees, to perform the work necessary to identify Mr. Wilson's flawed methodology, errors, and false opinions. Lance will of course provide the court a list of expenses for the portion of the Zeeb expert report to review and critique the Wilson reports and Lance's attorney fees to review the Wilson reports and prepare for and take Mr. Wilson's deposition. In addition, should the Court allow Mr. Wilson to try to supplement his report despite the obvious problems in doing so,[52] Lance additionally requests its expenses, including attorney fees, to review and critique his new report and to re-depose Mr. Wilson to identify new opinions, accounting and tax methodology flaws, and calculation errors that are almost certain to exist.

Not to order sanctions is to make a mockery of Rule 26(a)(2)'s disclosure requirements and the Court's scheduling order in this case, not to mention unfairly requiring Lance to pay for Plaintiff's failures regarding Mr. Wilson's designation. Plaintiff is asking the Court to allow a

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[51] Lance suggests that the failures and unreliability of Plaintiff's only expert on alleged damages is yet another reason to decertify the damages class in this case. *See* Def.'s Mot. to Decertify, filed August 1, 2013.

[52] Zeeb Aff. ¶¶ 13-14.

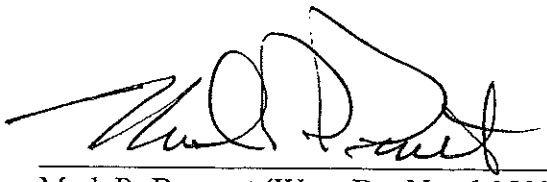
designation of Mr. Wilson after the August 1, 2013 discovery cutoff date. Mr. Wilson's first report and supplement do not constitute a valid expert designation in the first place. By no later than June 21, 2013 when Lance designated Mr. Zeeb, Plaintiff and Mr. Wilson knew that his reports did not qualify as a proper expert report. Plaintiff had plenty of time to file a proper report before the discovery cutoff. Plaintiff knew well before Mr. Wilson's deposition that his reports were unreliable and not in compliance with Rule 26(a)(2). However, Plaintiff allowed Lance to go to the time and expense of having to prepare for and take Mr. Wilson's deposition.

VII. Conclusion

Mr. Wilson's expert reports and deposition testimony demonstrate that he cannot proffer reliable testimony to assist the Court to resolve this case. Mr. Wilson's lack of tax and accounting expertise precludes him from providing any reliable opinions concerning the propriety of Lance's calculation and deduction of production taxes or whether any royalty owner has been underpaid. To the extent the Court attempts to rely on Mr. Wilson's conclusions, Mr. Wilson himself testified they are not reliable, and Mr. Zeeb has explained why they will remain unreliable even if supplemented. Mr. Wilson should not be allowed to take an unqualified shot at his unfounded opinions and erroneous calculations in this case, only to request a "do-over" when Lance uncovers his unreliable methods, some of which Mr. Wilson knew but chose not to disclose.

WHEREFORE, Lance requests the Court strike Plaintiff's Expert Designation of Mr. Wilson. In the alternative, Lance requests the Court order Plaintiff to pay Lance's expenses to uncover the errors and flaws in Mr. Wilson's designation and supplement if permitted.

DATED August 8, 2013.



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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2013, I served the foregoing **DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S RULE 26(a)(2) DESIGNATION OF JAMES STEVEN WILSON** by hand-delivery to the following:

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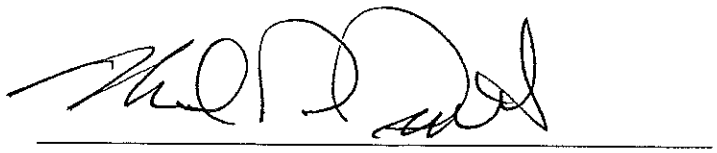
Cheyenne, WY 82002



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