

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

BRIAN EATON and CYNTHIA EATON,  
individually and on behalf of a class of all  
others similarly situated,

and

CUNNINGHAM PROPERTY  
MANAGEMENT TRUST, individually and  
on behalf of a class of all others similarly  
situated,

Plaintiff,

v.

ASCENT RESOURCES – UTICA, LLC

Defendant.

Case No. 2:19-cv-3412

Chief Judge Edmund A. Sargus, Jr.

Magistrate Judge Chelsey M. Vascura

**DEFENDANT ASCENT RESOURCES – UTICA, LLC’S  
PARTIAL ANSWER AND AFFIRMATIVE DEFENSES TO FIRST  
CONSOLIDATED CLASS ACTION COMPLAINT**

Defendant Ascent Resources – Utica, LLC (“Ascent”) files the following Partial Answer and Affirmative Defenses to Plaintiff’s First Consolidated Class Action Complaint.<sup>1</sup>

**ANSWER**

1. Paragraph 1 of the First Consolidated Class Action Complaint is a summary of the claims asserted to which no response is required. Ascent denies that it underpaid royalties to the named plaintiffs, Brian Eaton and Cynthia Eaton (collectively, the “Eatons”) and Cunningham Property Management Trust (“Cunningham”), or to the putative class.

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<sup>1</sup> Ascent is contemporaneously filing a partial motion to dismiss certain claims in the First Consolidated Complaint, and this Partial Answer is directed only at those allegations not subject to the partial motion to dismiss.

2. Ascent admits that Paragraph 2 of the First Consolidated Class Action Complaint seeks certification of a class action but denies that certification is proper.

3. Paragraph 3 of the First Consolidated Class Action Complaint states conclusions of law to which no response is required.

4. Paragraph 4 of the First Consolidated Class Action Complaint states conclusions of law to which no response is required.

5. Paragraph 5 of the First Consolidated Class Action Complaint states conclusions of law to which no response is required.

6. Admitted upon information and belief.

7. Admitted upon information and belief.

8. The allegations of Paragraph 8 of the First Consolidated Class Action Complaint are admitted.

9. Paragraph 9 of the First Consolidated Class Action Complaint states how Ascent is referred to in the First Consolidated Class Action Complaint and no response is required.

10. The allegations in Paragraph 10 are denied. By way of further answer, Ascent's ultimate parent company is Ascent Resources, LLC, a Delaware limited liability company, whose equity owners include, among others, the estate of Aubrey McClendon and investment funds managed by The Energy and Minerals Group and First Reserve Corporation.

**A. The heading in Section IV.A is denied.**

11. Admitted.

12. The allegations in Paragraph 12 of the First Consolidated Class Action Complaint are denied.

13. The allegations in Paragraph 13 of the First Consolidated Class Action Complaint are denied.

14. The allegations of Paragraph 14 of the First Consolidated Class Action Complaint purports to describe a written article, which speaks for itself.

15. The allegations of Paragraph 15 of the First Consolidated Class Action Complaint purports to describe a written article, which speaks for itself.

16. The allegations of Paragraph 16 of the First Consolidated Class Action Complaint are denied.

17. The allegations of Paragraph 17 of the First Consolidated Class Action Complaint are denied.

18. The allegations of Paragraph 18 of the First Consolidated Class Action Complaint are denied.

19. The allegations of Paragraph 19 of the First Consolidated Class Action Complaint state a legal conclusion to which no response is required. To the extent a response is required, denied.

20. The allegations of Paragraph 20 of the First Consolidated Class Action Complaint relate to what unnamed “developers” “typically desire” and how royalties are calculated on unspecified leases. Ascent is without knowledge or information as to the truth or falsity of those allegations.

21. The allegations of Paragraph 21 of the First Consolidated Class Action Complaint are denied.

22. The allegations of Paragraph 22 of the First Consolidated Class Action Complaint are denied.

23. The allegations of Paragraph 23 of the First Consolidated Class Action Complaint are denied.

**B. The heading in Section IV.B is denied.**

24. The allegations of Paragraph 24 of the First Consolidated Class Action Complaint, to the extent they relate to Ascent, are denied. Allegations as to other unspecified operators do not require a response from Ascent.

25. The allegations of Paragraph 25 of the First Consolidated Class Action Complaint involve unspecified lawsuits involving unspecified parties in a different jurisdiction. To the extent a response is required to such allegations, Ascent is without information or knowledge sufficient to form a belief as to the truth of the allegations.

26. The allegations of Paragraph 26 of the First Consolidated Class Action Complaint purport to describe allegations in an unrelated lawsuit against a third party not named in this litigation. To the extent a response is required to such allegations, Ascent is without information or knowledge sufficient to form a belief as to the truth of the allegations.

27. The allegations of Paragraph 27 of the First Consolidated Class Action Complaint purport to describe allegations in an unrelated lawsuit against a third party not named in this litigation. To the extent a response is required to such allegations, Ascent is without information or knowledge sufficient to form a belief as to the truth of the allegations.

28. The allegations of Paragraph 28 of the First Consolidated Class Action Complaint purport to describe allegations in an unrelated lawsuit against a third party not named in this litigation. To the extent a response is required to such allegations, Ascent is without information or knowledge sufficient to form a belief as to the truth of the allegations.

29. The allegations of Paragraph 29 of the First Consolidated Class Action Complaint purport to describe allegations in an unrelated lawsuit against a third party not named in this litigation. To the extent a response is required to such allegations, Ascent is without information or knowledge sufficient to form a belief as to the truth of the allegations.

**C. The Heading in Section IV.C is denied.**

30. Admitted. The Lease attached at Exhibit 1 is a written document that speaks for itself.

31. It is admitted that Ascent is the lessee under the Lease. The remaining allegations in Paragraph 31 of the First Consolidated Class Action Complaint are legal conclusions to which no response is required.

32. The allegations in Paragraph 32 purport to describe the contents of the Lease attached as Exhibit 1, which is a written document that speaks for itself. The allegations are denied to the extent they are at variance with Exhibit 1.

33. The allegations in Paragraph 33 purport to describe the contents of the Lease attached as Exhibit 1, which is a written document that speaks for itself. The allegations are denied to the extent they are at variance with Exhibit 1.

34. The allegation that the Addendum “controls” is a legal conclusion to which no response is required. The remaining allegations in Paragraph 34 purport to describe the contents of the Lease attached as Exhibit 1, which is a written document that speaks for itself. The allegations are denied to the extent they are at variance with Exhibit 1.

35. Denied as stated. During the last six and a half years prior to the date of the filing of the First Consolidated Class Action Complaint, Ascent did actively lease mineral rights within areas of eastern Ohio.

36. It is admitted that Ascent included the Eatons' property within oil and gas drilling units in accordance with the terms of the parties' leases.

37. Admitted.

38. The allegations in Paragraph 38 purport to describe the contents of the Lease attached as Exhibit 1, which is a written document that speaks for itself. The allegations are denied to the extent they are at a variance with Exhibit 1.

39. Admitted.

40. Ascent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 40 of the First Consolidated Class Action Complaint as to what Plaintiffs noticed or how Plaintiffs characterized the deductions identified on the royalty statements.

41. The allegations of Paragraph 41 of the First Consolidated Class Action Complaint purport to describe the contents of a written document which speaks for itself. The allegations are denied to the extent they are at variance with the written document.

42. Ascent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 42 of the First Consolidated Class Action Complaint as to what Plaintiffs noticed. Ascent denies that deductions were taken "without any explanation or apparent good cause."

43. The allegations of Paragraph 43 of the First Consolidated Class Action Complaint are denied.

44. The allegations of Paragraph 44 of the First Consolidated Class Action Complaint are denied.

45. The allegations of Paragraph 45 of the First Consolidated Class Action Complaint are denied.

46. The allegations of Paragraph 46 of the First Consolidated Class Action Complaint are denied.

47. The allegations of Paragraph 47 of the First Consolidated Class Action Complaint are denied.

48. The allegations of Paragraph 48 of the First Consolidated Class Action Complaint are denied.

49. The allegations of Paragraph 49 of the First Consolidated Class Action Complaint are denied.

50. The allegations of Paragraph 50 of the First Consolidated Class Action Complaint are denied.

51. The allegations of Paragraph 51 of the First Consolidated Class Action Complaint are denied.

52. The allegations of Paragraph 52 of the First Consolidated Class Action Complaint are denied.

53. The allegations of Paragraph 53 of the First Consolidated Class Action Complaint are denied.

54. The allegations of Paragraph 54 of the First Consolidated Class Action Complaint are denied.

55. The allegations of Paragraph 55 of the First Consolidated Class Action Complaint purport to describe the contents of royalty check statements, which are written documents that speak for themselves. The allegations in Paragraph 55 are denied to the extent they are at variance

with the written documents. By way of further response, the Eatons' total monthly royalty payment from Ascent for all constituent products produced under the Lease has never been a negative value.

56. Ascent admits that an Affidavit of Mr. Hart is attached to the First Consolidated Class Action Complaint as Exhibit 6. Ascent is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 56 of the First Consolidated Class Action Complaint.

57. The allegations in Paragraph 57 of the First Consolidated Class Action Complaint purport to describe the Affidavit, which is a written document that speaks for itself. Ascent is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 57 of the First Consolidated Class Action Complaint.

58. The allegations of Paragraph 58 of the First Consolidated Class Action Complaint purport to describe the Affidavit, which is a written document that speaks for itself. Ascent is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 58 of the First Consolidated Class Action Complaint.

59. The allegations of Paragraph 59 of the First Consolidated Class Action Complaint purport to describe the Affidavit, which is a written document that speaks for itself. Ascent denies the conclusions set forth in the Affidavit.

60. The allegations in Paragraph 60 state conclusions of law to which no response is required.

61. The allegations of Paragraph 61 of the First Consolidated Class Action Complaint are denied.



62. The allegations of Paragraph 62 of the First Consolidated Class Action Complaint are denied.

63. The allegations of Paragraph 63 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 63 are denied.

64. Ascent is without information or knowledge as to the form leases used by “companies such as Ascent” and therefore denies those allegations. The remaining allegations of Paragraph 64 contain conclusions of law to which no response is required. To the extent a response is required, the remaining allegations of Paragraph 64 are denied.

65. The allegations of Paragraph 65 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 65 are denied.

66. The allegations of Paragraph 66 of the First Consolidated Class Action Complaint are denied.

67. The allegations of Paragraph 67 of the First Consolidated Class Action Complaint are denied.

68. The allegations of Paragraph 68 of the First Consolidated Class Action Complaint are denied.

**D. The heading in Section IV.D is denied.**

69. The allegations of Paragraph 69 of the First Consolidated Class Action Complaint are denied.

70. It is admitted that a lease is attached as Exhibit 2 to the First Consolidated Class Action Complaint. The remaining allegations of Paragraph 70 of the First Consolidated Class

Action Complaint purport to describe the contents of Exhibit 2, which is a written document which speaks for itself. The allegations are denied to the extent they are at variance with the written document.

71. It is admitted that a lease is attached as Exhibit 3 to the First Consolidated Class Action Complaint. The remaining allegations of Paragraph 71 of the First Consolidated Class Action Complaint purport to describe the contents of Exhibit 3, which is a written document which speaks for itself. The allegations are denied to the extent they are at variance with the written document.

72. The allegations of Paragraph 72 of the First Consolidated Class Action Complaint purport to describe the contents of a written document which speaks for itself. The allegations in Paragraph 72 are denied to the extent they are at variance with the written document.

73. The allegations in Paragraph 73 of the First Consolidated Class Action Complaint are legal conclusions to which no response is required.

74. The allegations in Paragraph 74 of the First Consolidated Class Action Complaint are legal conclusions to which no response is required.

75. It is admitted that Ascent is a lessee under the leases. The remaining allegations in Paragraph 75 of the First Consolidated Class Action Complaint are legal conclusions to which no response is required.

76. Denied as stated. During the three years prior to the date of the filing of the First Consolidated Class Action Complaint, Ascent did actively lease mineral rights within areas of eastern Ohio.

77. Admitted.

78. It is admitted that Ascent included the Cunningham property within oil and gas drilling units in accordance with the terms of the parties' leases.

79. Admitted, except that the "PETTAY" wells are identified in Cunningham's royalty statements using the following nomenclature: "RHF PETTAY S NTG HR 2H," RHF PETTAY S NTG HR 4H," "RHF PETTAY S NTG HR 6H," RHF PETTAY S NTG HR 8H," and "RHF PETTAY S NTG HR 10H." In addition to the wells identified in Paragraph 79 of the First Consolidated Class Action Complaint, Ascent's records reflect that the Cunningham property is included in drilling units associated with the following additional wells: RH TARBERT MRF HR 1H, RH TARBERT MRF HR 3H, RH TARBERT HR 5H, and RH CONOTTON W MRF HR2H.

80. The allegations in Paragraph 80 of the First Consolidated Class Action Complaint are legal conclusions to which no response is required. The allegations of Paragraph 80 also purport to describe the contents of a written document which speaks for itself. The allegations are denied to the extent they are at variance with the written document.

81. It is admitted that Ascent began issuing royalty payments and accompanying royalty statements to Cunningham on or around March 2016.

82. Ascent is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 82 of the First Consolidated Class Action Complaint as to what Cunningham noticed or how Cunningham characterized the deductions identified on the royalty statements.

83. The allegations of Paragraph 83 purport to describe the contents of a written document which speaks for itself. The allegations are denied to the extent they are at a variance with the written document.

84. Ascent is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 84 of the First Consolidated Class Action Complaint as to what Cunningham noticed. Ascent denies the deductions were taken “without any explanation or apparent good cause.”

85. The allegations of Paragraph 85 of the First Consolidated Class Action Complaint are denied.

86. The allegations of Paragraph 86 of the First Consolidated Class Action Complaint are denied.

87. The allegations of Paragraph 87 of the First Consolidated Class Action Complaint are denied.

88. The allegations of Paragraph 88 of the First Consolidated Class Action Complaint are the subject of Ascent’s contemporaneously filed partial motion to dismiss, because they have been rejected by the Court’s Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied.

89. The allegations of Paragraph 89 of the First Consolidated Class Action Complaint are the subject of Ascent’s contemporaneously filed partial motion to dismiss, because they have been rejected by the Court’s Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied.

90. The allegations of Paragraph 90 of the First Consolidated Class Action Complaint are denied.

91. The allegations of Paragraph 91 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 91 are denied.

92. The allegations of Paragraph 92 of the First Consolidated Class Action Complaint are the subject of Ascent's contemporaneously filed partial motion to dismiss, because they have been rejected by the Court's Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied.

93. The allegations of Paragraph 93 of the First Consolidated Class Action Complaint are the subject of Ascent's contemporaneously filed partial motion to dismiss, because they have been rejected by the Court's Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied.

94. The allegations of Paragraph 94 of the First Consolidated Class Action Complaint are the subject of Ascent's contemporaneously filed partial motion to dismiss, because they have been rejected by the Court's Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied.

95. The allegations of Paragraph 95 of the First Consolidated Class Action Complaint are the subject of Ascent's contemporaneously filed partial motion to dismiss, because they have been rejected by the Court's Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied.

96. The allegations of Paragraph 96 of the First Consolidated Class Action Complaint are the subject of Ascent's contemporaneously filed partial motion to dismiss, because they have been rejected by the Court's Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied.

97. The allegations of Paragraph 97 of the First Consolidated Class Action Complaint are denied.

98. The allegations of Paragraph 98 of the First Consolidated Class Action Complaint are denied.

99. The allegations of Paragraph 99 of the First Consolidated Class Action Complaint are denied.

100. Ascent admits that the Declaration of Dr. Thomas is attached to the First Consolidated Class Action Complaint as Exhibit 8. Ascent is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 100 of the First Amended Complaint.

101. The allegations of Paragraph 101 of the First Consolidated Class Action Complaint purport to describe the Declaration, which is a written document that speaks for itself. Ascent is without information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 101 of the First Amended Complaint.

102. The allegations of Paragraph 102 of the First Consolidated Class Action Complaint purport to describe the Declaration, which is a written document that speaks for itself. Ascent is without information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 102.

103. The allegations of Paragraph 102 of the First Consolidated Class Action Complaint purport to describe the Declaration, which is a written document that speaks for itself. Ascent denies the conclusions set forth in the Declaration.

104. The allegations of Paragraph 104 of the First Consolidated Class Action Complaint purport to describe the Declaration, which is a written document that speaks for itself. Ascent denies the conclusions set forth in the Declaration.

105. The allegations of Paragraph 105 of the First Consolidated Class Action Complaint, purport to describe the Declaration, which is a written document that speaks for itself. Ascent denies the conclusions set forth in the Declaration. The remaining allegations in Paragraph 105 are denied.

106. The allegations of Paragraph 106 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required.

107. The allegations of Paragraph 107 of the First Consolidated Class Action Complaint that state that deductions are “not allowed as a matter of law” are the subject of Ascent’s contemporaneously filed partial motion to dismiss, because they have been rejected by the Court’s Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied. The remaining allegations of Paragraph 107 are denied.

108. The allegations of Paragraph 108 of the First Consolidated Class Action Complaint are denied.

109. Ascent admits that the May 13, 2016 letter is attached to the First Consolidated Class Action Complaint as Exhibit 9. The remaining allegations of Paragraph 109 purport to describe the contents of the May 13, 2016 letter, which is a written document that speaks for itself.

110. The allegations of Paragraph 110 of the First Consolidated Class Action Complaint are denied.

111. It is admitted that the September 1, 2016 letter is attached to the First Consolidated Class Action Complaint as Exhibit 10. The remaining allegations of Paragraph 111 purport to describe the contents of the September 1, 2016 letter, which is a written document that speaks for itself.

112. It is admitted that the September 6, 2016 letter is attached to the First Consolidated Class Action Complaint as Exhibit 11. The remaining allegations of Paragraph 112 purport to describe the contents of the September 6, 2016 letter, which is a written document that speaks for itself.

113. It is admitted that the September 23, 2016 letter is attached to the First Consolidated Class Action Complaint as Exhibit 12. The remaining allegations of Paragraph 113 purport to describe the contents of the September 23, 2016 letter, which is a written document that speaks for itself.

114. The allegations concerning Ohio law regarding futility contain conclusions of law to which no response is required. The remaining allegations of Paragraph 114 of the First Consolidated Class Action Complaint are denied.

115. Admitted.

116. The allegations of Paragraph 116 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 116 are denied.

117. The allegations of Paragraph 117 of the First Consolidated Class Action Complaint that “[t]aking certain deductions from these royalty payments is prohibited as a matter of law” are the subject of Ascent’s contemporaneously filed partial motion to dismiss, because they have been rejected by the Court’s Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied. Ascent is without information or knowledge as to the form leases used by “companies such as Ascent” and therefore denies those allegations. The remaining allegations of Paragraph 117 contain conclusions of law to which no response is required. To the extent a response is required, the remaining allegations of Paragraph 117 are denied.



118. The allegations of Paragraph 118 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 118 are denied.

119. The allegations of Paragraph 119 of the First Consolidated Class Action Complaint are denied.

120. The allegations of Paragraph 120 of the First Consolidated Class Action Complaint are denied.

121. The allegations of Paragraph 121 of the First Consolidated Class Action Complaint are denied.

122. Paragraph 122 of the First Consolidated Class Action Complaint is an incorporation Paragraph to which no response is required.

123. The allegations of Paragraph 123 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 123 are denied.

124. The allegations of Paragraph 124 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 124 are denied. Ascent denies that the proposed “class” constitutes a class for the purposes of any of the subsections of Fed. R. Civ. P. 23.

125. The allegations of Paragraph 125 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 125 are denied. Ascent denies that the proposed “subclasses” constitute a class for the purposes of any of the subsections of Fed. R. Civ. P. 23.

126. The allegations of Paragraph 126 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 126 are denied. Ascent denies that the proposed “subclasses” constitute a class for the purposes of any of the subsections of Fed. R. Civ. P. 23.

127. The allegations of Paragraph 127 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 127 are denied.

128. The allegations of Paragraph 128 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 128 are denied. Ascent denies that the proposed “class” may be brought or maintained under any of the subsections of Fed. R. Civ. P. 23.

129. The allegations of Paragraph 129 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 129 are denied.

130. The allegations of Paragraph 130 of the First Consolidated Class Action Complaint and its subparts contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 130 and its subparts are denied.

131. The allegations of Paragraph 131 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 131 are denied.

132. The allegations of Paragraph 132 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 132 are denied.

133. The allegations of Paragraph 133 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 133 are denied.

134. The allegations of Paragraph 134 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 134 are denied.

**CLAIM ONE**  
**REQUEST FOR ACCOUNTING**

135. Paragraph 135 of the First Consolidated Class Action Complaint is an incorporation Paragraph to which no response is required.

136. The allegations of Paragraph 136 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 136 are denied.

137. The allegations of Paragraph 137 of the First Consolidated Class Action Complaint contain conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 137 are denied.

138. Ascent denies that Plaintiffs or the putative class are entitled to any of the relief sought at Paragraph 138 of the First Consolidated Class Action Complaint.

WHEREFORE, Ascent requests that the Court enter judgment in its favor on Claim One and against Plaintiffs, all at Plaintiffs' cost.

**CLAIM TWO**  
**BREACH OF CONTRACT**

139. Paragraph 139 of the First Consolidated Class Action Complaint is an incorporation Paragraph to which no response is required.

140. The allegations of Paragraph 140 of the First Consolidated Class Action Complaint are admitted.

141. The allegation of Paragraph 141 that certain deductions are “not allowed as a matter of law” as to Plaintiff Cunningham is the subject of Ascent’s contemporaneously filed partial motion to dismiss, because that allegation has been rejected by the Court’s Order of November 16, 2018 (Doc. No. 40). To the extent a response is still required, denied. The remaining allegations of Paragraph 141 are denied.

142. The allegations of Paragraph 142 of the First Consolidated Class Action Complaint are denied.

WHEREFORE, Ascent requests that the Court enter judgment in its favor on Claim Two and against Plaintiffs, all at Plaintiffs’ cost.

**CLAIM THREE**  
**UNJUST ENRICHMENT**

143. Paragraph 143 of the First Consolidated Class Action Complaint is an incorporation Paragraph to which no response is required.

144. The allegations of Paragraph 144 of the First Consolidated Class Action Complaint are denied.

145. The allegations of Paragraph 145 of the First Consolidated Class Action Complaint are denied.

WHEREFORE, Ascent requests that the Court enter judgment in its favor on Claim Three and against Plaintiffs, all at Plaintiffs’ cost.

**CLAIM FOUR**  
**FRAUD**

146 – 157. The allegations of Paragraphs 146 through 157 are the subject of Ascent’s contemporaneously filed partial motion to dismiss, and therefore no response is required.

**CLAIM FIVE**  
**REQUEST FOR INJUNCTIVE AND DECLARATORY RELIEF**

158. Paragraph 158 is an incorporation paragraph to which no response is required.

159. The allegations of Paragraph 159 of the First Consolidated Class Action Complaint are denied.

160. The allegations of Paragraph 160 of the First Consolidated Class Action Complaint characterize relief sought by Plaintiffs and the putative class. No response is required. Ascent denies that any relief is due to Plaintiffs or the putative class.

161. The allegations of Paragraph 161 of the First Consolidated Class Action Complaint are denied.

162. The allegations of Paragraph 162 of the First Consolidated Class Action Complaint are denied.

163. The allegations of Paragraph 163 of the First Consolidated Class Action Complaint characterize relief sought from the Court. No response is required. Ascent denies that Plaintiffs or the putative class are entitled to an accounting.

164. The allegations of Paragraph 164 of the First Consolidated Class Action Complaint characterize relief sought from the Court. Ascent denies Plaintiffs or the putative class are entitled to an accounting.

WHEREFORE, Ascent requests that the Court enter judgment in its favor on Claim Five and against Plaintiffs, all at Plaintiffs’ cost.

**AFFIRMATIVE DEFENSES**

1. Ascent incorporates its responses to Paragraphs 1 through 164 of the First Consolidated Class Action Complaint above.
2. Ascent incorporates its arguments set forth in its contemporaneously filed partial motion to dismiss and memorandum in support.
3. All allegations not expressly admitted above are denied.
4. The First Consolidated Class Action Complaint fails to state a claim upon which relief may be granted.
5. At all times Ascent has complied with the language of the oil and gas leases of Plaintiffs and the putative class.
6. At all times Ascent acted reasonably, prudently, in good faith, and in conformance with applicable statutes, regulations, and standards of the industry.
7. The claims of Plaintiffs and the putative class are barred, in whole or in part, by the provisions of their respective oil and gas leases that govern the payment of royalties.
8. The claims of Plaintiffs and the putative class may be barred, in whole or in part, by the applicable statute of limitations.
9. The claims of Plaintiffs and the putative class may be barred, in whole or in part, by the doctrines of laches, waiver, consent, and estoppel.
10. The claims of Plaintiffs and the putative class may be barred, in whole or in part, by the doctrines of payment, settlement, release, ratification, accord and satisfaction, and performance.

11. The claims of some members of the putative class may be barred because they lack standing to bring some or all of the claims alleged in the First Consolidated Class Action Complaint.

12. The claims of some of the members of the putative class may be barred because there is no actual and justiciable controversy between them and Ascent.

13. The claims of some members of the putative class may be barred for failure to provide and/or comply with any applicable notice requirements set forth in the leases of the putative class.

14. Without assuming the burden of proof, Plaintiffs' lawsuit 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 no 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.

15. The class action allegations of the First Consolidated Class Action Complaint are barred in that trying Cunningham's and Eaton's claims through a class action or other aggregate proceeding would violate Ascent'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 Ascent of its right to defend itself with respect to individual claims.

16. Ascent affirmatively alleges 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.

17. Plaintiffs and the punitive class are not entitled to recover attorneys' fees.

18. Plaintiffs and the punitive class are not entitled to recover punitive damages.

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

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

Dated: August 20, 2020

REED SMITH LLP

/s/ Nicolle R. Snyder Bagnell

Nicolle R. Snyder Bagnell (0091442)

Trial Attorney

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Attorney for Defendant



**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing Defendant Ascent Resources -Utica, LLC's Partial Answer And Affirmative Defenses To First Consolidated Class Action Complaint has been served via the Court's ECF Filing System on the following:

Ethan Vessels  
Fields, Dehmlow & Vessels  
309 Second St.  
Marietta, OH 45750

Mark H. Troutman  
Gregory M. Travalio  
Shawn Judge  
Isaac Wiles Burkholder & Teetor, LLC  
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Dated: August 20, 2020

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