FIRST JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

DOYLE HARTMAN d/b/a DOYLE HARTMAN, OIL OPERATOR,	§	
Plaintiff,	§	
v.	§	No.
OXY USA, INC.,	§	
Defendant.	§	

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, DAMAGES FOR BREACH OF CONTRACT, BREACH OF GOOD FAITH DUTY, BREACH OF IMPLIED COVENANT, ACCOUNTING, TRESPASS AND PRIVATE NUISANCE

Plaintiff Doyle Hartman d/b/a Doyle Hartman, Oil Operator, for his claims, states as follows:

PARTIES, JURISDICTION AND VENUE

1. Doyle Hartman is a resident of Dallas, Texas. He conducts business in New Mexico as the owner and operator of various oil and gas interests under the name "Doyle Hartman, Oil Operator" (sometimes hereafter "Hartman").

2. Oxy USA, Inc. ("Oxy") is a Delaware corporation with its principal place of business in California. It is authorized to and is conducting business in New Mexico as an owner and operator of various oil and gas interests. Oxy has as its statutory agent for service of process the Prentiss Hall

Corporation Systems, Inc., 121 E. Palace Avenue, Santa Fe, New Mexico 87501.

3. Venue is appropriate in this district pursuant to NMSA 1978 § 38-3-1.F because the defendant is a foreign corporation authorized to do business in New Mexico and the statutory agent designated by defendants resides in Santa Fe County.

FACTS COMMON TO ALL CLAIMS

THE MYERS LANGLIE MATTIX UNIT

4. "Secondary recovery" refers to methods of oil extraction in which part of the energy used to move or flush the oil to the producing wells is by the injection of liquids or gases into a targeted hydrocarbon reservoir through injection wells. "Primary recovery" refers to hydrocarbon production accomplished by the natural reservoir energy.

5. In 1973, Skelly Oil Company ("Skelly") as the owner of working interests in various oil and gas leases in Township 23 and 24 South, Range 36 and 37 East in Lea County, New Mexico, formulated a Unit Agreement and Unit Operating Agreement for the development and operation of the MLMU "to enable institution and consummation of secondary recovery operations." Skelly sought the approval or joinder in such agreements by all working interest and royalty owners in the oil productive Langlie-Mattix Pool (lower 100 feet of the Seven Rivers formation and all of the Queen formation). The unitized area of the MLMU prior to statutory unitization covered approximately 9,923.68 surface acres, making the MLMU the largest (by surface acreage) waterflood unit in New

Mexico. A copy of the Unit Agreement as constituted in 1973 is attached as Exhibit A. The Exhibit does not reflect the revisions in that agreement resulting from the later statutory unitization proceedings.

6. As of 1973, primary recovery in the unitized area was considered to be 100% complete.

7. The waterflood development for secondary recovery in the MLMU was originally proposed by Skelly and approved by the New Mexico Oil Conservation Division ("NMOCD") and the New Mexico Oil Conservation Commission ("NMOCC") in late 1973. Skelly's plan of development called for 40-acre well spacing and a modified 80-acre five-spot water injection pattern. In the application to the NMOCD for approval of the MLMU, Skelly represented that the anticipated ratio of secondary oil recovery to primary oil recovery would be .8 (i.e. 8/10ths of a barrel of oil by secondary recovery for each barrel of oil that had been produced by primary recovery). Secondary recovery in the unit was estimated at 6.9 million stock tank barrels of oil with secondary oil recovery to occur over a projected project life of 15 years.

8. Waterflooding on a modified 80-acre 5-spot injection pattern was the prescribed secondary recovery method for the MLMU with the proposed plan of development designed to allow the interest owners to recover additional oil or gas reserves trapped in the formation, which had not been extracted during the primary production process, by means of a common project under a single operator. Unit participation factors were set based upon then-existing primary oil recovery volumes.

9. In November, 1973, the NMOCC approved the MLMU Unit Agreement, found that the wells in the area were in an advanced state of depletion, and authorized the proposed 80-acre 5-spot pattern waterflood project on 40-acre well spacing. Shortly after receiving NMOCC approval, Skelly also obtained the required approval of the Commissioner of Public Lands of New Mexico and the United States Geological Survey. By May, 1977, Skelly had received approval of almost all working interest owners and substantial, but not all royalty interest owners.

10. Skelly was the designated operator of the MLMU as initially proposed and approved. In about 1977, Getty Oil Co., by merger or acquisition of Skelly, succeeded Skelly as the operator and served in that capacity until about 1984. Thereafter, by merger or acquisition, Texaco Exploration and Production Co. ("Texaco") served as operator of the unit until succeeded by Oxy in early 1994.

11. The unit operating structure is such that the owners of the various oil and gas leases comprising the unit are to fairly and equitably share in unit production and expenses by a participation formula which allocates the produced hydrocarbons and expenses to the separately owned tracts forming the unit. The MLMU Unit Agreement provides that the phase II tract participation factor is weighted 85% by the anticipated ultimate tract primary oil recovery from the unitized formation, 10% by cumulative tract oil recovery as of July 1, 1966, and 5% by the number of acres in each tract.

12. The Unit Agreement, Section 24, further provides that upon termination of the agreement, the parties shall be governed by the terms and provisions of the original leases and contracts affecting such tracts.

13. In 1973, the laws of New Mexico did not include a provision for statutory unitization. Maintenance of a secondary recovery unit, such as the MLMU, was dependent, at that time upon voluntary agreement by all working interest owners and royalty owners who were affected.

14. In 1975, the New Mexico legislature enacted Laws 1975, Chapter 293, §§ 1-21, the Statutory Unitization Act, which went into effect in June, 1975. Under that Act, only if certain conditions are found by the NMOCD to exist, and upon an order for unitization that "shall include" certain terms and conditions making the unitization fair, reasonable and equitable, a unit may be operated upon approval of 75% of the working interest owners and a like percent of the royalty owners.

15. By 1980, the MLMU still contained 13 tracts for which there was not 100% ratification of the royalty owners and which required Getty to maintain separate production facilities resulting in less efficient operations. The unsigned royalty interests also stood in the way of Getty entering into essential lease-line agreements with offset lease operators thus prohibiting the conversion of certain producing wells to injection wells.

16. On June 21, 1980, Getty filed an application with the NMOCC pursuant to the New Mexico Statutory Unitization Act requesting statutorily unitized operations that permitted further implementation in a fair and

equitable manner of the previously approved 40-acre well spacing 80-acre five-spot unit plan. The application was assigned Case No. 6987 and heard by the NMOCC on August 5, 1980.

17. Getty represented to the NMOCC that it was familiar with the Statutory Unitization Act and that statutory unitization would result in increased economic efficiencies and greater ultimate oil recovery. Getty estimated that with the requested unitization and resulting increased secondary recovery, all depletion of secondary reserves would occur by 1993 instead of by 1991.

18. On the record made by witnesses and exhibits presented by Getty, the NMOCC on August 27, 1980, entered Order R-6447 in Case No. 6987, finding that each of the required six conditions specified in Section 70-7-6(A), supra, existed as to the MLMU. A copy of Order R-6447 is attached as Exhibit B.

19. Order R-6447 of the NMOCC further concluded that, pursuant to Section 70-7-7, supra, Getty's MLMU Unit Agreement "as revised" and the Unit Operating Agreement "as revised" were approved and provided for fair, reasonable and equitable terms for unit operations including, inter alia, the following:

> (d) a provision for carrying any working interest owner on a limited, carried, or net-profits basis, payable out of production, upon such terms and conditions which are just and reasonable, and which allow an appropriate charge for interest for such service payable out of production, upon such terms and conditions determined by the Commission to be just and reasonable, and allowing an appropriate charge for interest for such service payable out of such owner's share of production, providing that any

> nonconsenting working interest owner being so carried shall be deemed to have relinquished to the Unit Operator all of his operating rights and working interests in and to the unit until his share of the costs, service charge, and interest are repaid to the Unit Operator.

(Emphasis added).

20. Order R-6447 specifically finds that the Unit Agreement and Unit Operating Agreement for the MLMU shall contain the necessary provisions for statutory unitization pursuant to Section 70-7-7, supra, including a non-consent provision.

21. On January 5, 1981, the Director of the NMOCD acknowledged in writing to Getty that proof of written approval of the plan for unit operations by more than 75% of all owners had been established, and Order R-6447 was determined to be in full force and effect as of that date. In accordance with the Statutory Unitization Act, when owners of the required percentage of interest in the unit area have approved the plan, the interests of all owners are statutorily unitized. NMSA 1978 § 70-7-8(D.).

22. From 1981 to 1990, Getty and Texaco, as operators of the MLMU, and Oxy's predecessors in interest, submitted annual or periodic unit progress reports to the NMOCD. These reports clearly recognized the existence and effect of Order R-6447 and the fact that the MLMU was statutorily unitized and subject to the New Mexico Statutory Unitization Act.

HARTMAN'S OWNERSHIP AND WORKING INTEREST OWNERS RIGHTS

23. Doyle Hartman's 4.869074% overall interest in the MLMU stems from ownership in MLMU Tracts 19, 20, 21, 22, 23, 24, 25, 26, 29, 63 and 72.

24. Doyle and his wife, Margaret Hartman principally acquired their MLMU ownership as part of a package of oil and gas properties obtained from Sun Exploration and Production Company, on January 2, 1986. They acquired other small interests in 1985 and 1988. Margaret Hartman assigned her community property interest in the MLMU to Doyle Hartman in 1992. A copy of a table depicting Hartman's MLMU ownership is attached hereto as Exhibit C.

25. The central concept of the Unit Operating Agreement ("UOA") is that the operator is not a dictator, but rather that the supervision and control of all matters of unit operation are to be exercised by the working interest owners. UOA 3.1. The working interest owners are to decide, among other things, the method of operation, the drilling of wells, and the change in status of any wells. A copy of the Unit Operating Agreement as constituted in 1973 is attached as Exhibit D. The Exhibit does not reflect the revisions in that agreement resulting from the later statutory unitization proceedings.

26. The working interest owners are to exercise their authority by voting in proportion to their unit participation with the affirmative vote of three or more working interest owners having a voting interest of at least 65% being necessary to carry an issue. Should any one owner own more than 35% of the

working interest, its negative vote shall not defeat a motion if approved by a majority of the voting interest. Votes are to be cast at meetings or by writing if a proposal is sent to working interest owners. The unit operator must give prompt notice of the results of the voting to all working interest owners . UOA Article 4.

27. By law, a unit formed under the Statutory Unitization Act is deemed to include in its controlling agreements the provisions appearing in subsections A. through I. of Section 70-7-7, supra.

28. Section 16 of the Unit Agreement provides, in pertinent part, as follows:

> In the event any Working Interest Owner shall fail to take or otherwise adequately dispose of its proportionate share of the production from the Unitized Formation currently as and when produced, Unit operator, in order to avoid curtailing Unit Operations, may sell or otherwise dispose of such production to itself or to others on a day-to-day basis at not less than the prevailing market price in the area for like production, and the account of such Working Interest Owner shall be charged therewith as having received such production. The net proceeds, if any, of the Unitized Substantives so disposed of by Unit Operator shall be paid to the Working Interest Owner of the Tract or Tracts concerned or to a party designated in writing by such Working Interest Owner.

(Emphasis added).

29. The MLMU Unit Operating Agreement provides, in Section 7.2, as follows:

> 7.2 Workmanlike Conduct. Unit Operator shall conduct Unit Operations in a good and workmanlike manner as would a prudent

> operator under the same or similar circumstances. Unit Operator shall freely consult with Working Interest Owners and keep them informed of all matters which Unit Operator, in the exercise of its best judgment, considers important. Unit Operator shall not be liable to Working Interest Owners for damages, unless such damages result from its gross negligence or willful misconduct.

MARKETING OF HARTMAN'S SHARE OF OIL FROM THE MLMU

30. Soon after Skelly commenced operation of the MLMU in February 1974, Skelly requested each former tract operator to instruct its oil purchaser to remit 100% of all revenues, including taxes, to Skelly so that Skelly, the operator, would receive all proceeds, and pay taxes and any royalties to the State of New Mexico. Skelly would then remit the balance to the owners. By this procedure, in time, it became routine and customary for the operator to deal directly with the oil purchasers and to control or allocate the sale of unit oil on behalf of all, or most owners, and that practice was adopted and followed by each succeeding operator, including Oxy.

31. By 1986, when Hartman acquired his interest in the MLMU, different purchasers were purchasing crude oil from various tracts in the MLMU, including Hartman's, at the direction of the operators Texaco and then Oxy. From January, 1986 until September, 1995, the unit operators marketed or controlled the marketing of Hartman's share of oil production from the MLMU.

32. Following Hartman's acquisition from Sun of Hartman's working interest in the MLMU, Hartman executed division orders tendered by

purchasers selected or approved by Texaco, the operator of the MLMU. If Hartman did not sign the division orders issued by the selected oil purchasers, he would not have been able to receive payment for his crude oil produced through the secondary recovery operations. The initial division orders provided that Texaco, the operator of the MLMU, would purchase oil from tracts 20, 21, 22, 26, 29 and 72. As of 1986, oil from tracts 19, 23, 24 and 25 was being purchased by Sun, as had been the situation during the time that Sun owned interests in those MLMU tracts.

33. From 1986 until 1995, Hartman was lead to believe that all MLMU oil sellers received the same lease or unit value for their oil.

34. As of May, 1986, Texaco, as the MLMU operator, was receiving proceeds from the sale of numerous working interest owners' crude oil from the MLMU, then disbursing the proceeds to the working interest owners. Shortly thereafter, Texaco either began designating purchasers for Hartman's share of MLMU oil production or allowed some other party to do so.

35. Prior to February, 1987, CITGO Petroleum Corporation ("CITGO") was designated by someone other than Hartman to become the purchaser of Hartman's oil production from the E/2 of Tract 26 in the MLMU. Hartman received a letter from CITGO dated February 9, 1987, requesting that Hartman execute a Division/Transfer Order confirming CITGO as the purchaser.

36. Hartman did not initiate nor consent in 1987 to the designation of CITGO as oil purchaser for Hartman's share of production from the E/2 of Tract 26.

37. Hartman did not execute CITGO's Division Order until December, 1990, at which time CITGO held over $120,000 in suspense payable to Hartman. In December, 1990, Hartman executed CITGO's Division Order in order to receive payment for crude oil produced from and attributable to the E/2 of Tract 26 in the MLMU.

38. Prior to May, 1987, the Permian Corporation ("Permian") was designated by someone other than Hartman to become the purchaser of crude oil attributable to Hartman's interest corresponding to the W/2 of Tract 26 in the MLMU. By letter dated May 29, 1987, Permian wrote Hartman advising him that Permian had become the purchaser of crude oil from the W/2 of Tract 26.

39. Again, Hartman did not initiate the change in purchasers. Upon information and belief, Texaco, as the operator, was responsible for or approved the change of purchaser.

40. In December, 1990, Hartman executed Permian's Division Order so that he might continue to receive proceeds attributable to the sale of his share of crude oil from the W/2 of Tract 26 in the MLMU.

41. From 1986 until March, 1991, the various purchasers of Hartman's share of crude oil from the MLMU were:

A. Sun Oil Company (hereinafter "Sun") - January, 1986, through February, 1989;

B. Headington - March, 1989 through August, 1991;

C. ARCO - April, 1986 through February, 1991;

D. Permian - March, 1987 through February, 1991;

E. Chevron - September 1989 through February, 1991;

F. Texaco - February, 1986 through January, 1994;

G. CITGO - April, 1986 through August, 1995;

H. CITGO and or Oxy - April, 1993 and February, 1994 through August, 1995.

A chart depicting the purchasers of Hartman's MLMU production by tract is attached hereto as Exhibit E.

42. At no time from January, 1986, through August, 1995, did Hartman designate any of the companies identified in Exhibit E as the purchaser of crude oil attributable to Hartman's MLMU interest. Instead, Texaco or Oxy, as the operator, either made such designations or as operator allowed such designations to be made by other parties.

SIRGO ATTEMPTS TO BECOME MLMU OPERATOR

43. During the period of approximately November, 1990 until May, 1991, Hartman was in negotiations with Sirgo Brothers Operating Co., and affiliates (collectively "Sirgo"), and formulated an agreement with Sirgo to exchange his MLMU ownership for certain oil and gas leases. At that time, Sirgo was acquiring MLMU ownership with the objective of replacing Texaco as operator.

44. By December, 1990, Hartman and Sirgo had agreed in principle on a three-way swap, whereby Hartman's MLMU interest was valued at $400,000.

45. In December 1990, Sirgo represented to Texaco and various parties that it controlled Hartman's MLMU interest even though the proposed transaction was not consummated, and as it turned out, never would be.

46. As of November, 1990, Texaco was the operator of the MLMU, and was responsible for releasing or allocating crude oil from the MLMU to various purchasers based upon valid Division Orders and allocation schedules maintained and controlled by Texaco.

47. As a result of Sirgo's misrepresentations, Hartman's MLMU crude oil proceeds were put into suspense by various purchasers and again were controlled by the operator, or in the case of Sirgo, by a putative operator.

48. If it could become operator, Sirgo contemplated an expensive, but baseless, redevelopment scheme that would require the investment of approximately $44 million in the MLMU although the unit had already achieved its originally computed objective of 6.9 million barrels of secondary oil. Sirgo's redevelopment plans, based upon a study performed by T. Scott Hickman and Associates, were presented to Texaco. Texaco did not agree with the Hickman study and was not willing to resign as operator in favor of Sirgo until Sirgo cleared up almost $2 million in unpaid joint interest billings on the unit.

49. Sirgo's redevelopment plan for the MLMU was substantially beyond the scope of the work and operations originally contemplated in the originally approved unit plan, and was premised on the recovery of primary reserves in violation of the orders authorizing the waterflood Unit as provided in NMSA 1978 § 70-7-1 et. seq.

50. In September, 1991, Hartman informed Texaco, as unit operator, of his strong objection to Sirgo becoming operator and of his opposition to the redevelopment plan being advocated by Sirgo in their efforts to take over as MLMU operator.

51. In September, 1991, in order to reinstate his oil revenues, Hartman was forced to execute new Division Orders designating Enron as the purchaser of oil corresponding to Hartman's interest in Tracts 19, 23, 24, 25, 26 and 29 of the MLMU. Hartman signed the new Division Orders under protest in order to receive payment for Hartman's share of MLMU crude oil.

52. From April, 1991 to August, 1995, Texaco and then Oxy, at the relevant times, exercised control over the production, delivery, transportation and marketing of Hartman's share of lease production oil from the MLMU to various crude oil purchasers, at their Posted Prices, including purchasers not approved by Hartman.

53. In response to Hartman's written inquiry, Enron, by letter dated August 8, 1995, advised Hartman for the first time that CITGO, effective April 1, 1993, had become the purchaser of Hartman's production from tracts in the MLMU previously purchased by Enron. Enron indicated that its first notice that it was no longer the purchaser of Hartman's production from certain MLMU tracts was a letter from Texaco to Texas - New Mexico Pipe Line Company dated June 2, 1993. Enron's August 8, 1995 letter indicated that effective April 1, 1993, Oxy had seized control of that portion of Hartman's MLMU production

previously purchased by Enron. A copy of Enron's letter is attached hereto as Exhibit F.

POSTED PRICE SCHEME

54. From about April, 1993 to September, 1995, Oxy as an MLMU working interest owner and then as MLMU operator, continuously delivered a substantial volume of Hartman's MLMU crude oil production to various purchasers at Posted Prices.

55. In Southeast New Mexico, Oxy (through CITGO) and Texaco, among others, are ostensibly first purchasers of much of the lease production oil, including oil produced from the MLMU, at their "Posted Prices." The term "Posted Price" as used in the petroleum industry refers to the price that prospective purchasers, periodically publish, announce, or "post" that they pay for crude oil at the lease.

56. Beginning in the 1980s, many major oil companies, including Texaco and Oxy, lowered their Posted Prices to levels significantly below market value. Sub-market Value Posted Prices are financially beneficial for oil companies who trade in and/or refine crude oil. Sub-market-value Posted Prices maximize profit margin on resale of the oil or sale of products made from the oil, while allowing the minimization of royalty and tax burdens which are calculated upon the Posted Price at the lease.

57. Hartman alleges on information and belief that during the period January, 1986, through August, 1995, Hartman's share of crude oil production attributable to Hartman's working interest in the MLMU was either (a)

on paper transferred by Texaco, Sirgo and/or Oxy to the various purchasers at the Posted Price rather than at a true market price as part of a "barrels back" transaction by which the purchasers delivered to Texaco, Sirgo and/or Oxy equivalent quantities of crude oil at another location, or (b) Texaco, Sirgo and Oxy physically sold Hartman's share of crude oil from the MLMU under an arrangement whereby Texaco, Sirgo and/or Oxy received a bonus from those purchasers over and above the Posted Price, which bonuses were not shared with or accounted for to Hartman. Either of these or similar artifices to increase the profits of Texaco, Sirgo and/or Oxy is hereinafter referred to as the "Posted Price Scheme."

58. The Posted Price Scheme is a sham, having no relation to the economic reality of the transactions, and is employed for the purpose and with the effect of artificially depressing the prices which Texaco and Oxy pay for the ostensible purchase of crude oil from the MLMU, including Hartman's, and the payments due Hartman and others for that production under the terms of the Unit Agreement.

59. Hartman had no knowledge of the Posted Price Scheme nor of facts that might have led to the discovery thereof, until 1995. Hartman could not have discovered the violations at an earlier date by the exercise of due diligence because of the deceptive practices and techniques of secrecy employed by Texaco, Sirgo and Oxy, with the cooperation of their designated oil purchasers, to avoid detection of and to fraudulently conceal such conduct.

60. Texaco and Oxy fraudulently concealed the existence of the combination and conspiracy from Hartman by inter alia,

(a) misrepresenting that Hartman's share of crude oil from the MLMU was being "sold" at the lease at market value when, in fact, the "sales" were a sham not reflective of the market price in the area for like production or the crude oil was being bartered by Texaco and Oxy at non-competitive and artificially depressed "posted" prices;

(b) misrepresenting that "posted" prices were actual proceeds received by Texaco and Oxy for MLMU oil while hiding the real price and the receipt of the *quid pro quo* inherent in each reciprocal trade;

(c) misrepresenting that the Posted Prices on which Hartman was being paid were market prices or "prevailing field prices" while Texaco and Oxy knew that the same were neither; and

(d) failing to disclose the bonus payments that Texaco, Sirgo and Oxy were receiving for the sale of Hartman's oil.

HARTMAN OPPOSES AND ELECTS TO GO NON-CONSENT REGARDING OXY'S "REDEVELOPMENT PROGRAM"

61. In or about 1990 or 1991, prudent and economically justified secondary recovery by waterflood as authorized by the MLMU Unit Agreement, and by the NMOCC and NMOCD Orders approving such unit, had essentially been completed.

62. No annual or periodic progress reports were submitted by Texaco to the New Mexico Commissioner of Public Lands, the Bureau of Land Management or the NMOCC for the years 1991, 1992 and 1993, as had been

the practice since 1974 and as called for by the Unit Agreement, if secondary recovery operations were to continue.

63. Hartman alleges on information and belief, that sometime in or about 1990 or 1991, Texaco recognized that no further significant MLMU investment expenditures were prudent, justified or cost effective and that the unit should be terminated. To terminate the unit, however, would entail a significant expense to Texaco and an outlay of approximately $3-4 million to properly disconnect lines, remove tank batteries and plug and abandon wells. It was therefore economically advantageous to Texaco, instead, to locate another party who would purchase its 24.32% interest and step in as operator.

64. On January 12, 1993, Texaco advised the MLMU working interest owners that the limited drilling proposal issued in 1992 had failed to get the necessary 65% approval vote and was withdrawn. At that point, the unit was only on a monitor and maintenance level.

65. In 1993, Hartman learned that after the failed Sirgo attempt to become operator of the MLMU, Oxy had acquired all of Sirgo's working interest and that Oxy was in the market for additional working interest so as to be named unit operator.

66. In June 1993, Hartman informed Oxy that he viewed the unit to be in a later stage of recovery and that he opposed an extensive unit redevelopment plan. Hartman proposed to assign to Oxy his 4.869076% MLMU interest in exchange for Oxy's assignment to Hartman of a certain low-pressure 160-acre gas lease held by Oxy.

67. By letter dated July 30, 1993, and then by conversation on October 5, 1993, Oxy represented to Hartman that it was "very interested in your proposal," indicating the deal would be consummated, but that closing of the transaction would be delayed because of the press of other business. Unbeknownst to Hartman, Oxy was also negotiating to purchase Texaco's MLMU interest at or about the same time it was negotiating with Hartman.

68. Oxy, by letter dated December 13, 1993, backed out of the ongoing negotiations with Hartman regarding an exchange of properties. A copy of the letter is attached hereto as Exhibit G.

69. By letter dated December 21, 1993, Oxy announced that it had consummated a purchase of Texaco's MLMU interest and that, as a result of the purchase, Oxy would replace Texaco as the Operator of the MLMU.

70. On December 20, 1993, Texaco notified the working interest owners that Oxy had acquired its interest and that Texaco resigned as operator.

71. Hartman alleges upon information and belief that Oxy ultimately refused to close the transaction with Hartman because (a) it was already receiving the financial advantage of Hartman's MLMU interest by Oxy's control and manipulation of Hartman's share of crude oil proceeds from the MLMU, and/or (b) Oxy realized that, upon consummation of the transaction with Texaco, it was advantageous to have financially capable working interest owners other than itself, e.g., Hartman, in the Unit to bear some of the brunt of financing the proposed speculative redevelopment program for the MLMU, and/or (c) Oxy was aware of Hartman's objections to the proposed redevelopment program,

originally proposed by Sirgo in 1991, and believed it could coerce Hartman to assign his MLMU interest to Oxy for no consideration to avoid bearing large joint interest redevelopment costs.

72. Upon information and belief, Hartman alleges that Texaco sold its MLMU interest to Oxy because it did not believe the redevelopment program originally proposed by Sirgo, and which Oxy embraced, was economically viable, practical, or within the scope of the Unit Agreement or the Orders authorizing the MLMU. Texaco's position regarding the proposed redevelopment program was known by Oxy at the time it assumed the role of Operator of the MLMU.

73. When Oxy became operator in January, 1994, the MLMU waterflood unit had been substantially depleted of secondary oil reserves by 23 years of secondary recovery operations following 100% depletion by primary recovery.

74. In April 1994, without filing with NMOCD an application for and approval of an amended unit plan of development as required under NMSA 1978 § 70-7-9, and without following the provisions of Article 3 and Article 4 of the Unit Operating Agreement to seek the affirmative vote of the working interest owners, Oxy circulated to working interest owners a sketchy one-page Authority for Expenditure ("AFE") describing a redevelopment program, at a cost of $5,074,650., to inaugurate a 40-acre five spot "pilot project" in place of the approved 80-acre five spot method of operation in use since 1974.

75. The Oxy redevelopment program actually sought the recovery of both primary and secondary reserves.

76. Because Oxy's redevelopment program contemplated the recovery of additional primary reserves, Oxy was required to recalculate the tract participation factors and submit the recalculated factors to the other working interest owners for approval.

77. In undertaking its described redevelopment program, Oxy has never recalculated or proposed to recalculate the tract participation factors which are based on the MLMU primary oil recovery that occurred prior to the initiation of waterflood operations.

78. At no time did Oxy inform Hartman, in connection with the proposed redevelopment, of Hartman's right to go non-consent given the statutory unitization provisions and the amendment to the Unit Agreement and Unit Operating Agreement which resulted from the entry of Order No. R-6447 in August, 1980.

79. Hartman refused to approve Oxy's substantial AFE, again manifesting his intention to go non-consent with respect to the redevelopment program.

80. By letter dated August 15, 1994, Oxy circulated to working interest owners an uninformative one-page 1995 Operating Capital Expenditure Budget for the MLMU. A copy of the Budget is attached hereto as Exhibit H.

81. On August 19, 1994, Hartman again communicated to Oxy his decision to go non-consent with respect to Oxy's expenditures. Based upon

the decision to go non-consent, Hartman refused to pay Oxy's monthly unit billings corresponding to the redevelopment program subsequent to the May, 1994 billings.

82. Oxy recognized that Hartman elected to go non-consent, but misrepresented that Hartman did not have a non-consent option for the Oxy redevelopment program in order to coerce Hartman to assign his MLMU interest to Oxy for no consideration. See letters dated August 19 and September 13, 1994 from Oxy to Hartman, attached hereto as Exhibit s I and J.

83. By letters dated August 23 and 24, 1994, Hartman responded to Oxy's letter of August 15, 1994 again objecting to Oxy's proposal and reiterating that Hartman did not "desire to participate in the further development of the Myers Langie-Mattix Unit . . .". Hartman's August, 1994 correspondence clearly and unequivocally manifested his intention to go non-consent with respect to the redevelopment program. A copy of Hartman's correspondence is attached hereto as Exhibits K and L.

84. Under the terms of the Unit Agreement and Unit Operating Agreement, as amended by Order No. R-6447, once Hartman declared his intention to go non-consent with respect to the redevelopment program, Oxy was required to carry Hartman's interest with respect to the redevelopment plan, and was limited to recovery of Hartman's proportionate share of costs for the redevelopment program out of Hartman's share of production from the unit.

85. Oxy's substantial redevelopment program, commenced in 1994, is substantially outside the scope of the work and unit operations originally

contemplated in the Unit Agreement and Unit Operating Agreement, and is unauthorized pursuant to the Orders of the NMOCD and the NMOCC, as well as approvals of necessary state and federal regulatory agencies.

OXY SEEKS NMOCD APPROVAL FOR AN AMENDMENT TO THE UNIT PLAN BUT FAILS TO COMPLY WITH THE NEW MEXICO STATUTORY UNITIZATION ACT

86. On November 22, 1994, Oxy filed an application with the NMOCD requesting (a) expansion of the MLMU, and (b) qualification of a 760-acre section of the MLMU as an Enhanced Oil Recovery Project for the Recovered Oil Tax Rate ("1994 Application"). The 1994 Application was assigned Case No. 11168. Oxy's application, which sought to amend the MLMU unit plan of development and unit operations as approved by Order R-6447, does not reference Order R-6447 in violation of Rules and Regulations of the NMOCD. The proposed expansion of the MLMU sought approval of the redevelopment program which had never been submitted for approval by Oxy to the working interest owners as required by the Unit Operating Agreement and by the Statutory Unitization Act.

87. Oxy's application indicates that the redevelopment program would be for the purpose of recovering both primary oil reserves and secondary oil reserves. Oxy did not propose a modification of the Unit Agreement tract participation factor as required for a proposal which contemplated additional primary recovery. At no time has Oxy sought to amend the MLMU plan of unitization as required by NMSA 1978 § 70-7-9. Moreover, Oxy never solicited

approval of disapproval of working interest owners in connection with the redevelopment program as required by NMSA 1978 § 70-7-8.

88. Oxy's application and accordingly the notice of the application in Case No. 11168 omits crucial information that should have informed interested parties, such as Hartman, that the proceeding involved amendment of a unit plan subject to Order R-6447 and NMSA 1978 §§ 70-7-9 and 70-7-6(A)(1) through (6).

89. A hearing was held before NMOCD on December 15, 1994 on Oxy's Application. At the hearing, Oxy admitted that the redevelopment program represented a substantial amendment to the previously approved MLMU unit plan of operations. In testimony describing the history of the MLMU, Oxy's representative concealed from the NMOCD the fact of the statutory unitization of the MLMU, Order R-6447, and the attendant requirements of NMSA 1978 § 70-7-9.

90. Following hearing on December 15, 1994, NMOCD entered Order R-4680-A on March 31, 1995, approving the application to qualify the 760-acre section of the MLMU under the Enhanced Oil Recovery Act. A copy is attached as Exhibit M. That Order does not contain all of the necessary findings for amendment of the unit plan of operations approved by Order R-6447 as specified by NMSA 1978 § 70-7-6 (A)(1) through (6) and (B).

OXY BREACHES THE UNIT AGREEMENT AND UNIT OPERATING AGREEMENT

91. On February 5, 1997, Oxy filed a Notice of Lien under the New Mexico Oil and Gas Lien Act, NMSA 1978, § 70-4-1 et. seq. with the Lea County Clerk, Lea County, New Mexico, asserting a lien in the amount of $673,153.82 for unpaid and past due unit operating costs and expenses related to the MLMU and resulting from Oxy's failed redevelopment program. A copy of the Notice of Lien is attached hereto as Exhibit N.

92. On March 10, 1997, Oxy filed an action in the Dallas County District Court, Dallas, Texas, seeking to recover from Hartman the monies previously billed by Oxy as joint interest billings to Hartman in connection with the redevelopment program.

93. At no time from 1994 to the present has Oxy recognized Hartman's consistent and unequivocal manifestation of his decision to go non-consent with respect to the redevelopment program, or his right to do so under the agreement as amended and modified by Order R-6447 and NMSA 1978 § 70-7-7(F). In light of Hartman's non-consent, carried interest status, Oxy is precluded from seeking to recover allegedly due and owing joint interest billings from Hartman except out of production from Hartman's share of MLMU unitized substances.

94. Since Hartman went non-consent with respect to Oxy's redevelopment program, Hartman has maintained all revenues received in

connection with the sale of Hartman's share of crude oil from the MLMU in a segregated account.

OUT OF ZONE INJECTION WATER RUINS HARTMAN'S MYERS "B" FEDERAL NO. 30 LEASE

95. Hartman alleges on information and belief that the MLMU operators have injected water at excessive pressures and in excessive amounts causing water to escape from the authorized injection zone, which has resulted in the loss of large quantities of injected water, and has also caused increased and unnecessary charges to MLMU working interest owners.

96. In November, 1996, Hartman attempted to rework the Myers "B" Federal No. 30 ("Myers") Jalmat well in the NW/4 Section 5, Township 24 South, Range 37 East in Lea County, New Mexico. That location is within the exterior surface boundaries of the MLMU. The well was to have been returned to production as a gas well in the Jalmat Gas Pool from the Yates Formation. The gas productive portion of the Yates formation in the Myers well, is located at a depth of 3,020' to 3,220', which is several hundred feet above the authorized MLMU zone of injection.

97. During re-entry drilling of the Myers well, Hartman encountered large quantities of water in the gas productive Yates Formation. Water is not naturally occurring in the Yates Formation in this area, as demonstrated by the April 20, 1987 Myers all-gas pressure gradient attached hereto as Exhibit O.

98. Hartman pumped water from the Myers well until it was clear that the water was so extensive that it could not be feasibly removed and no economic quantity of gas could be produced. The well was shut-in December 19, 1996, after producing 3,829.02 net barrels of water between November 9, 1996 and December 19, 1996. A copy of a chart depicting the produced water and transportation charges is attached as Exhibit P.

99. Hartman is informed and believes that Texaco and Oxy, through their operation of the MLMU and practices of water injection, have flooded gas reserves in the Yates Formation, including valuable gas reserves which would have been successfully produced from the Myers well if not for the overinjection and flooding caused by the operation of the MLMU.

HARTMAN'S SHARE OF MLMU GAS

100. Apart from the circumstances concerning disposition of crude oil, Oxy has not accounted to Hartman for his share of gas, nor natural gas liquids, produced from the MLMU for the period March, 1989 to present as required (a) by the Unit Operating Agreement, (b) the New Mexico Oil and Gas Act, NMSA 1978, § 70-2-17 and 18, (c) the New Mexico Oil and Gas Proceeds Payment Act, NMSA 1978 § 70-10-3, and (d) common law principles.

101. Under the express terms of the Unit Agreement and Unit Operating Agreement, Texaco and Oxy, as Operators, were under a contractual duty to account to Hartman for Hartman's share of gas produced and sold from the MLMU, in the event Hartman did not have a separate contract for the sale of such gas. The Unit Agreement and Unit Operating Agreement and the statutes

of New Mexico do not provide or allow for working interest owners to be underproduced in the absence of a gas balancing agreement. There is no gas balancing agreement binding Hartman pertaining to gas production from the MLMU.

FIRST CLAIM FOR RELIEF - DECLARATORY JUDGMENT

102. Paragraphs 1 through 101 are incorporated herein by reference.

103. NMSA 1978 § 70-7-21 provides that once the MLMU was designated as an authorized unit under the New Mexico Statutory Unitization Act, the operation of the well and the unit must conform to the unit plan.

104. Oxy has operated the MLMU in an unlawful manner in the following respects:

A. Oxy sought to amend, and by concealing crucial law and fact from the NMOCD obtained a void order that approved an amended unit plan of operations by implementing its redevelopment program without complying with NMSA 1978 §§ 70-7-6 and 9;

B. Oxy sought to amend, and by concealing crucial law and facts from the NMOCD implemented its redevelopment program without recalculating the tract participation factors as required by the Unit Agreement and Unit Operating Agreement;

C. Oxy has incurred costs in connection with the redevelopment program which have exceeded the value of the additional oil and gas recovered, and because the expenditures associated with the redevelopment program have not produced a reasonable profit;

D. Oxy has failed and refused to recognize the statutorily requirement non-consent provision, refusing to recognize Hartman's right to go non-consent and become a carried interest with respect costs incurred in connection with Oxy's redevelopment program and by attempting to cause the forfeiture of Hartman's MLMU interest;

E. Oxy has continued to operate the MLMU and incur capital and operating expenses when, in or about 1991 or 1992, the lawfully authorized secondary recovery project was completed and the unit should have been terminated.

105. There is a justiciable controversy existing between Hartman and Oxy as to whether Oxy's operation of the MLMU is and has been unlawful.

106. This Court should adjudicate the rights and responsibilities as between Hartman and Oxy relating to the operation of the MLMU, and declaring Oxy's operation of the MLMU to be unlawful and in violation of the Unit Agreement, the Unit Operating Agreement, and the New Mexico Statutory Unitization Act.

SECOND CLAIM FOR RELIEF
INJUNCTION

107. Paragraphs 1 through 106 are incorporated herein by reference.

108. Oxy's unlawful operation of the MLMU as described, supra, will continue unabated into the future unless enjoined by Order of the Court.

109. Hartman has suffered, and will continue to suffer irreparable harm by virtue of the unlawful operation of the MLMU by Oxy.

110. Hartman has no adequate remedy at law.

111. The Court should enjoin the unlawful operation of the MLMU by Oxy.

THIRD CLAIM FOR RELIEF -
BREACH OF THE MLMU AGREEMENTS

112. Paragraphs 1 through 111 are incorporated herein by reference.

113. All conditions precedent to Oxy's obligations and duties under the Unit Agreement and Unit Operating Agreement have been satisfied or waived.

114. By conducting its redevelopment plan, by incurring the expenses for such plan, and by imposing a lien and bringing this collection action for a share of those expenses billed to Hartman, Oxy has breached and continues to breach the Unit Agreement and Unit Operating Agreement, as amended and modified by Order R-6447 and the New Mexico Statutory Unitization Act.

115. Hartman has been damaged as a proximate result of the breach of contract in an amount to be established by the evidence.

FOURTH CLAIM FOR RELIEF -
BREACH OF IMPLIED COVENANT

116. Paragraphs 1 through 115 are incorporated herein by reference.

117. Oxy is subject to contractual duties under the Unit Agreement and the Unit Operating Agreement, as revised by law and regulatory

order, which duties are and were to be performed in New Mexico. Under the law of New Mexico there is implied by law in all contracts a covenant that binds Oxy to act with utmost good faith and fair dealing.

118. By the described conduct, and by failing to recognize Hartman's right to be carried as a non-consenting working interest owner, Oxy has attempted and continues to seek to divest Hartman of his property ownership in the MLMU while also seeking to collect unjustified, unnecessary and unreasonable charges.

119. Oxy engaged in the Posted Price Scheme and did so as a matter of continuing business practices to the detriment of Hartman while Oxy knew full well the adverse economic consequences to Hartman and concealed the truth about such arrangements from Hartman.

120. Hartman has suffered damages as a result of the breaches of the implied covenant of utmost good faith and fair dealing by Oxy.

121. The conduct of Oxy in violating the implied duties has been undertaken intentionally, maliciously, and with conscious disregard of Hartman's rights, thus entitling Hartman to recover punitive damages.

FIFTH CLAIM FOR RELIEF -
BREACH OF CONTRACT AND BREACH
OF DUTY TO REASONABLY MARKET -

122. Paragraphs 1 through 121 are incorporated herein by reference.

123. The Posted Price Scheme is a breach by Oxy of Section 16 of the Unit Agreement, which obligates the Unit Operator to realize prevailing

market price when it undertakes to market a party's share of production from the MLMU. The Posted Price Scheme also constitutes a breach by Oxy of its statutory and implied-in-law obligations to reasonably market such production and to properly account to Hartman for his proportional share of all revenues derived by virtue of such marketing efforts.

124. Oxy's breaches of contract and breaches of its statutory and implied-in-law obligations have damaged Hartman in the amount of the difference between (a) the market value of Hartman's oil and (b) the amount Hartman has received for the oil.

125. Oxy's breaches have taken place in furtherance of the economic gain of Oxy at the expense of Hartman, and in conscious disregard of the rights of Hartman, constituting intentional, willful and malicious breach of contract, and breach of statutory and implied-in-law obligations, thereby entitling Hartman to punitive damages.

SIXTH CLAIM FOR RELIEF - BREACH OF CONTRACT - FAILURE TO ACCOUNT TO HARTMAN FOR GAS AND NATURAL GAS LIQUIDS

126. Paragraphs 1 through 125 are incorporated herein by reference.

127. Hartman is entitled to his proportional share of unitized substances produced from Unit operations as those unitized substances are produced and marketed.

128. Oxy, as MLMU Unit Operator, has completely failed to remit to Hartman payment for Hartman's share of natural gas production, and corresponding share of natural gas liquids, for the period March, 1989 to present.

129. Oxy has failed to account to Hartman for the gas in kind or the proceeds from the sale of Hartman's share of gas and natural gas liquids.

130. Oxy's actions and omissions are a breach of the Unit Agreement and Unit Operating Agreement and New Mexico statutes which require Oxy to account to and pay Hartman the amount to which his interest is entitled, thus causing damage to Hartman in the amount of the market value of the gas and natural gas liquids.

131. Oxy's breaches have been undertaken in furtherance of economic gain of Oxy at the expense of Hartman, and in conscious disregard of the rights of Hartman, constituting intentional, willful, and malicious breach of contract thereby entitling Hartman to punitive damages.

SEVENTH CLAIM FOR RELIEF - BREACH OF CONTRACT - FAILURE TO CONDUCT OPERATIONS IN GOOD AND WORKMANLIKE MANNER AND AS A REASONABLY PRUDENT OPERATOR

132. Paragraphs 1 through 131 are incorporated herein by reference.

133. Oxy has duties implied-in-law and under the Unit Agreement and the Unit Operating Agreement to conduct operations in a good and workmanlike manner, and as a reasonably prudent operator.

134. Oxy has breached its duties by, inter alia,

(a) implementing a redevelopment program which was outside the scope and contemplation of the Unit Agreement and without seeking proper approval for an amendment of the unit plan;

(b) processing a New Mexico regulatory proceeding in 1994 which concealed from the NMOCD the crucial knowledge of statutory unitization and existence of controlling Order R-6447 effective January 5, 1981;

(c) implementing a redevelopment program in such a way that all working interest owners, including Hartman, did not enjoy a mutually beneficial economic outcome;

(d) proposing and implementing an infill drilling program with the purpose to defray some of Oxy's share of the program costs by participating in the Posted Price Scheme described, supra;

(e) proposing and implementing a redevelopment program which was financially and technically risky and unsound;

(f) acquiescing and participating in the Posted Price Scheme which has resulted in a loss to Hartman of revenues which Hartman could have otherwise utilized to pay Oxy's joint interest billings;

(g) marketing Hartman's share of crude oil at Posted Prices; and

(h) operating the MLMU in such a manner as to allow injected water to escape the authorized injection zone or failing to abate that condition as it exists within the MLMU.

135. Oxy's breaches of its duties have proximately caused damage to Hartman.

136. Oxy's breach of the Unit Agreement and failure to perform as a reasonably prudent Operator was the result of gross negligence and/or willful misconduct.

137. Oxy's breaches have been undertaken in furtherance of the economic gain of Oxy at the expense of Hartman, and in conscious disregard of the rights of Hartman, constituting intentional, willful, and malicious breaches of contract and Oxy's implied-in-law duties thereby entitling Hartman to punitive damages.

EIGHTH CLAIM FOR RELIEF -
BREACH OF GOOD FAITH DUTY

138. Paragraphs 1 through 137 are incorporated herein by reference.

139. Oxy, as Operator of the MLMU and marketer of Hartman's share of crude oil production under the Unit Operating Agreement, owed a duty of good faith to Hartman in connection with operations of the MLMU and marketing of Hartman's share of crude oil production from the MLMU.

140. Oxy breached its duties to Hartman by, inter alia,

(a) conducting Unit operations in a manner that placed its own economic interests above those of Hartman;

(b) failing to faithfully account to Hartman for his share of gas produced from the MLMU;

(c) failing to pay Hartman all bonuses received in connection with the sale of Hartman's share of crude oil from the MLMU; and

(d) failing to obtain true market value in marketing Hartman's share of crude oil production from the MLMU.

141. Oxy has a duty of full and honest disclosure of all material information concerning the MLMU, but Oxy has concealed from Hartman the true facts surrounding its operations of the MLMU and the Posted Price Scheme, and other economic benefits that Oxy has failed to reveal to and share with the other working interest owners, including Hartman.

142. Oxy's breaches of its duty have proximately caused Hartman damages.

143. Oxy's breaches of duty have been undertaken intentionally, maliciously, and with conscious disregard of Hartman's rights, thus entitling Hartman to recover punitive damages.

NINTH CLAIM FOR RELIEF - ACCOUNTING

144. Paragraphs 1 through 143 are incorporated herein by reference.

145. Pursuant to the Unit Agreement and Unit Operating Agreement, Oxy as the operator of the MLMU has an affirmative duty to keep accurate records reflecting (A) expenses charged to and revenues due Hartman as a result of the operation of the MLMU, (B) all proceeds, including bonuses, paid for Hartman's share of crude oil from the MLMU, and (C) the disposition of Hartman's share of crude oil, gas, and natural gas liquid production from the MLMU.

146. Oxy has failed and refused Hartman's requests for an accurate accounting of Hartman's account which would establish amounts credited to Hartman for proceeds from Hartman's share of crude oil production from the MLMU and the prices Oxy received and paid for that oil.

147. Hartman is entitled to an accounting from Oxy as to Hartman's net MLMU joint interest billings balance reflecting all billings less revenue to which Hartman is entitled, which accounting should reflect all sums owed by Hartman to Oxy, as well as an accounting of the disposition of Hartman's share of crude oil production and related revenues from the MLMU from January, 1986 to the present, Hartman's share of gas production and natural gas liquids from the MLMU, and other revenues and credits due Hartman.

TENTH CLAIM FOR RELIEF -
TRESPASS AND PRIVATE NUISANCE

148. Paragraphs 1 through 147 are incorporated herein by reference.

149. Oxy, as the operator of the MLMU, has caused injection water from the MLMU to escape its authorized injection zone and enter and invade Hartman's Myers "B" Federal No. 30 lease, or has failed to abate the problem of MLMU out-of-zone water, thereby depriving Hartman of the use, profits and enjoyment of the oil and gas reserves underlying the Myers "B" Federal No. 30 lease and proximately causing Hartman to shut-in the Myers well rather than complete it and produce gas from it.

150. The condition described has resulted from one or all of the following: (a) negligence in the operation of the MLMU; (b) reckless operation of the MLMU; (c) res ipsa loquitor in that the natural occurrence of high volume water below the surface of the Myers "B" Federal No. 30 lease was of a kind which should not occur in the absence of negligence on the part of the party in control of the MLMU; (d) operation of the MLMU in violation of NMOCD rules and regulations, including Order R-4680 prohibiting the injection of water in any manner which causes the water to escape the authorized injection zone, which rules, regulations and orders have as their purpose the protection of a class of persons and property owners, which includes Hartman, constituting negligence per se.

151. The installation, maintenance and operation of the MLMU by Oxy, at injection pressures which approach and exceed the known lithostatic pressure gradient, and/or Oxy's failure to abate the out-of-zone water problem at the MLMU, has proximately resulted in the invasion of the subsurface of the Myers "B" Federal No. 30 lease making it economically unfeasible for Hartman to attempt to recover oil and gas reserves in hydrocarbon bearing formations which existed outside the authorized injection zone.

152. Oxy's operation of the MLMU, and Oxy's failure and refusal to abate out-of-zone water has proximately caused damage to Hartman.

PRAYER FOR RELIEF

Hartman respectfully requests that this Court enter judgment in favor of Hartman, and against Texaco and Oxy, as to the following:

A. Declaratory relief;

B. Injunctive relief;

C. All damages, including all actual and punitive damages;

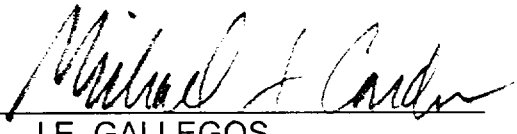
D. Granting a full accounting;

E. Pre-judgment and Post-judgment interest to the extent allowed by law;

F. Such other and further relief to which Hartman is determined to be entitled.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By 

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