**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF OKLAHOMA**

[1] DEBRA BOGGS, Individually and on Behalf of All Others Similarly Situated Persons,

Plaintiffs,

vs.

[1] CHESAPEAKE ENERGY CORPORATION,
[2] CHESAPEAKE ENERGY SAVINGS AND INCENTIVE STOCK BONUS PLAN,
[3] AUBREY McCLENDON,
[4] DOMENIC J. DELL'OSSO, JR.,
[5] MICHAEL A. JOHNSON,
[6] RICHARD K. DAVIDSON,
[7] KATHLEEN EISBRENNER,
[8] V. BURNS HARGIS,
[9] FRANK KEATING,
[10] CHARLES T. MAXWELL,
[11] MERRILL A. MILLER JR.,
[12] DON NICKLES,
[13] MARCUS BOWLAND
[14] FREDERICK B. WHITTEMORE, and
[15] LOUIS A. SAMPSON

Defendants,

Case No. CIV-12-688-M

**CLASS ACTION**

**COMPLAINT FOR BREACHES OF FIDUCIARY DUTIES UNDER ERISA**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

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# I. INTRODUCTION

Plaintiff Debra Boggs, individually and on behalf of a class similarly situated participants in and beneficiaries of Chesapeake Energy Corporation's ("Chesapeake" or the "Company") Savings and Incentive Stock Bonus Plan which includes, but is not limited to, a 401(k) savings plan, profit sharing plan, and employee stock ownership plan (collectively, the "Plan"), alleges the following based upon the investigation of Plaintiff's counsel, which included, among things, a review and analysis of filings made by Chesapeake with the Securities and Exchange Commission ("SEC"), press releases and other public statements by Chesapeake and the other Defendants, news articles, securities analysts' reports and other publications and media reports concerning Chesapeake, and other available information about the Company. Plaintiff believes further substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

## A. The Legal Claims Asserted

1. This action is brought civil action under Section 502 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132, on behalf of a class consisting of all current and former employees (excluding Defendants) participating in the Plans, which are defined contribution plans sponsored by Chesapeake for eligible employees and participating affiliate companies (and the beneficiaries of such participants), including those whose individual accounts in the Plans purchased, received or held Chesapeake common

stock at any time between July 31, 2008 through the present (the "Class Period"). Plaintiff brings this action pursuant to § 502(a)(2) of ERISA, 29 U.S.C. § 1132(a)(2).

2. As more fully set forth below, Defendants breached their fiduciary duties to the Participants, including the fiduciary duties of prudence and loyalty set forth in ERISA § 404(a) and 404(c), 20 U.S.C. §§ 1104(a) and 1104(c). During the Class Period, the Plans' fiduciaries, Chesapeake and certain of its senior officers and directors, breached their fiduciary duties owed to the Plan's participants and beneficiaries (collectively, the "Participants") by (i) failing to manage and administer the Plans' assets with the care, skill, prudence, and diligence of a prudent person under the circumstances; (ii) failing to disclose to Participants material information concerning Chesapeake and its common stock, information which was necessary to allow Participants to make informed judgments concerning their retirement savings; (iii) engaging in activities inconsistent and in conflict with, and detrimental to, the interests of Chesapeake and its Plans; and (iv) permitting Participants in the Plans to over-concentrate their accounts in Chesapeake common stock after Defendants knew that Chesapeake common stock had become an imprudent investment option for retirement savings.

3. Plaintiff was a Chesapeake employee and participant in the Plans during the Class Period. As described further herein, as a Plan Participant, Plaintiff, like other members of the Class, voluntarily agreed to have part of her compensation withheld by Chesapeake for the Company to invest, on Plaintiff's

behalf, in various investment options provided by the Plans. Among the investment options in the Plans was Chesapeake common stock. Plaintiff's investment portfolio in the Plans during the Class Period included investment of a significant portion in Chesapeake stock.

4. The Plans' 401(k) and profit sharing plans confer tax benefits on participating employees to incentivize saving for retirement and/or other long-term goals. An employee participating in a 401(k) or a deferred compensation plan may have the option of purchasing the common stock of his or her employer, often the sponsor of the plan, for part of his or her retirement investment portfolio. Common stock of Chesapeake was held by each of the Plans throughout the Class Period. Throughout the Class Period, the Plans invested heavily in Chesapeake common stock. Because the Plan's holdings in Chesapeake's common stock comprised a significant percentage of the overall value of the Plan's investments held on behalf of the Participants, the long-term retirement savings of Participants were dependent, to a substantial degree, on the performance of Chesapeake common stock. So too were Participants' retirement fortunes dependent on the related need for prudent fiduciary decisions by Defendants, concerning such a large, ongoing investment of the Plans' assets.

5. This action is brought on behalf of the Plans and seeks losses to the Plans for which Defendants are liable pursuant to ERISA § 502, 29 U.S.C. § 1132. Because Plaintiffs claims apply to the Plans, inclusive of all Participants with accounts invested in Company stock during the Class Period, and because ERISA

specifically authorizes Participants such as Plaintiff to sue for relief to the Plans for breaches of fiduciary duty such as those alleged herein, Plaintiff beings this as a class action on behalf of the Plans and all Participants and beneficiaries of the Plans during the proposed Class Period.

### B. <u>The Breaches of Fiduciary Duty, Self-Dealing And Non-Disclosures</u>

6. Chesapeake is the second largest producer of natural gas in North America. Since 1989, defendant Aubrey McClendon ("McClendon") has been Chesapeake's Chief Executive Officer ("CEO") and Chairman of the Board

Throughout the Class Period, McClendon leveraged his dominating position at the Company to convert over a $1 billion dollars of Company assets for himself at Chesapeake's and the Participants' expense. He further directed a business strategy and selected business partners, in order to increase the amount of Company assets transferred to him personally. These improper activities amounted to self-dealing, waste and a breach of fiduciary duty.

7. Chesapeake's pliant Board of Directors ("Board") or senior executives failed to stop and even concealed McClendon's improper activities by falsely representing the potential risks to the Company, the costs and expenses Chesapeake would incur as a result of the Company's business transactions and the Company's overall debt, which was, and remains, at stratospheric levels.

8. To accomplish this corporate piracy, McClendon installed an employment perk benefitting him, but no other Chesapeake executives. Under the

Company's Founders Well Participation Program ("FWPP"), McClendon had the option which he exercised every year to obtain, for free, a 2.5% interest in all the wells drilled by or on behalf of Chesapeake during the year. Since Chesapeake went public in 1993, McClendon has participated in almost every single one of the Company's wells, obtaining purported ownership interests in gas producing reserves valued at $852 million.

9. While the Company told investors that this program aligned the interests of McClendon and the Company, in fact, this has proven not to be true. Instead, the FWPP was distorted to enable McClendon to become unjustly personally enriched at the Company's expense and peril. Under the FWPP, McClendon was able to participate in all the wells that the Company decided to drill based on testing that demonstrated that the wells would produce oil and gas, while avoiding all the expenses of acquisition, exploration, and testing incurred by Chesapeake on land that was not drilled. Thus, under the FWPP, by participating only in the wells deemed to have sufficient reserves, McClendon is and was guaranteed to get better overall opportunities and returns than the Company. Similarly, McClendon suffers no downside from the Company's aggressive acquisition and exploration activities, as the costs related to land not drilled are borne by Chesapeake but not McClendon under the FWPP.

10. To increase the amount of well assets transferred to McClendon under the FWPP, McClendon significantly expanded the Company's land acquisition and exploration program. Under McClendon's stewardship,

Chesapeake has become the largest natural gas leaseholder in the United States, owning the drilling rights to about 15 million acres, and is second only to Exxon in the production of natural gas. He imprudently changed Chesapeake's business strategy to further his own personal ends.

11. McClendon's greed came with costs. Once McClendon assumed ownership of his 2.5% stake in the Company's new wells, he became responsible for his pro-rata share of the expenses associated with drilling and extracting the oil and gas from those wells. In order to pay those expenses, McClendon was forced to borrow against his well interests – a huge amount that recently ballooned to $1.55 billion. And in order to obtain that financing, i.e., as *quid pro quo*, McClendon offered "sweetheart" deals to the banks and private equity groups providing him the funds – McClendon made arrangements for those lenders to acquire Company assets and participate in the Company's business by investing in the Company's lucrative drilling operations. His arrangements of personal financing thus hurt Chesapeake as he gave away assets and shares of profits

12. These activities were concealed and hidden from investors and Participants. There was no disclosure by McClendon or the Board of the massive amount of well interests accumulated by McClendon, the size of his borrowings on those well interests, the fact that the Company's massive land acquisition and exploration program was designed to serve McClendon's interests but not Chesapeake's, and the fact that Chesapeake's business partners were chosen to advance McClendon's personal interests. Throughout the Class Period, the

Company described the key elements of its business strategy, but never disclosed that its aggressive expansion was driven by McClendon's desire to increase the amount of wells transferred to him, rather than to serve the best interests of the Company or the Plans.

13. The over-expansion of the Company's land acquisition and exploration program had profound adverse consequences for the Company. In order to finance this expansion, Chesapeake had to mortgage its future. It did so through volumetric production payment ("VPP") transactions in which the Company collected funds up front from banks and other investors in return for agreeing to deliver to them the oil and gas, or the related revenues, from certain wells for a certain period of time.

14. The Company's obligations under these VPPs grew to $1.4 billion. However, the Company's liabilities from these off-balance deals were concealed from investors and Participants. Chesapeake's public disclosures of its overall indebtedness were materially false and incomplete, as those disclosures did not include the Company's huge liability associated with its VPPs.

15. This was all perpetrated with full knowledge of the Company's Board and senior executives. The Board approved revisions of McClendon's employment agreement pursuant to which the well interests were transferred to McClendon under the FWPP, and the Company's Proxy Statements disclose amounts representing McClendon's use of Company staff for his "personal financing transactions." Moreover, the Company's General Counsel, Henry Hood,

recently admitted that the Board is aware that McClendon pledged his well interests to obtain personal financing.

16. Additionally, the Company's senior executives could not possibly be unaware of the extraction and delivery of huge amounts of the Company's oil and gas to third parties pursuant to VPPs entered into by McClendon and Chesapeake. Indeed, the extraction and delivery was not accomplished under the dark of night, and the VPP deals were no secret, as the Company mentioned VPP transactions in its public filings, but failed to disclose the Company's huge liability from those deals.

17. McClendon also obtained from the Board an obscene compensation package of $124 million in 2008 - the highest of any CEO at all S&P 500 companies - to "bail" him out financially. McClendon had borrowed against his shares of Chesapeake stock and, when the stock fell in October 2008, he was hit with margin calls which forced sales of stock that violated requirements in his employment agreement that he hold shares equal to 500% of his annual salary and cash bonuses. McClendon demanded and the Board approved of an amended compensation package which gave him a year to buy back Chesapeake stock, a $77 million bonus including a "well cost incentive award" structured as a net credit for past and future costs owed under the FWPP program, and a payment of $12.1 million for the purchase of a personal map collection he owned. This excessive compensation package was a "bail out" to McClendon of the financial mess he created for himself, had no basis in performance (as he previously had

received compensation of $20 million) and represented a breach of fiduciary duty by the Board.

18. Beginning April 18, 2012, news of these events was revealed to the market in a series of piecemeal disclosures. On that day, *Reuters* shocked the market with news that McClendon had acquired a huge stake in the Company's numerous oil and gas wells and had borrowed as much as $1.1 billion on those assets. *Reuters* later disclosed that McClendon's borrowings secured by his well interests had ballooned to $1.55 billion. Subsequent news reports revealed that the Company had $1.4 billion in previously undisclosed off-balance sheet liabilities related to VPP deals, putting Chesapeake in danger of violating its loan covenants.

19. Subsequent news reports also disclosed that McClendon had been running his own $200 million hedging business out of his Chesapeake offices, in distraction of his duties for the Company, taking bets on commodities produced by the Company. Despite the serious conflicts of interest, the Board also amended McClendon's employment agreement to make it easier for him to engage in these activities which were never disclosed.

20. As a result of these wrongful acts, pursuant to ERISA § 404(a) and 404(c), 20 U.S.C. §§ 1104(a) and 1104(c), Plaintiff and other Participants in the Plans have suffered millions of dollars in damages to their retirement savings that were proximately caused by these breaches of fiduciary duty, self-dealing, waste and fraud. Accordingly, pursuant to ERISA § 409(a), 29 U.S.C. §1109(a), Defendants are personally liable to make good to the Plans the losses resulting

from each such breach of fiduciary duty, including losses due to waste and impairments in the value of Chesapeake stock.

## II. JURISDICTION AND VENUE

21. This claims asserted herein arise under and pursuant to ERISA §§ 502(a)(2), 29 U.S.C. § 1132(a)(2); § 404(a) and 404(c), 20 U.S.C. §§ 1104(a) and 1104(c); and § 409(a), 29 U.S.C. §1109(a).

22. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

23. Venue is proper in this district pursuant to ERISA § 501 (e)(2), 29 U.S.C. § 1132(e)(2), because the Plans were administered in this district, some or all of the fiduciary breaches for which relief is sought occurred in this district, and/or some Defendants reside or maintain their primary place of business in this district.

24. More specifically, this district is an appropriate venue for this action because on recent Plan Form 5500 annual filings, the address listed for Defendant Chesapeake, the sponsor of the Plans, is in this district. Further, the principal executive offices of Chesapeake, the sponsor and administrator of the Plans, are located in this district. Additionally, it is likely that many of the parties and potential witnesses, including the Plans' administrative committee members, corporate executives and many plan participants, are located in or within close proximity to this district.

## III. THE PARTIES

### A. LEAD PLAINTIFF

25. Plaintiff Debra Boggs ("Boggs") is a citizen of the state of Oklahoma. She is a former employee of Chesapeake who worked for hourly pay cleaning offices. Plaintiff Boggs is a plan "participant," within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), in the Plan and held her retirement savings in Chesapeake stock during the Class Period. She has been damaged by the wrongful activities described herein.

### B. DEFENDANTS

**Corporate Defendants**

26. Defendant Chesapeake Energy Corporation Savings and Incentive Stock Bonus Plan ("Plan") is an employee pension benefit plan under ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A). Specifically, the Plan is a defined contribution plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34). The Plan includes all active, full and part time salaried employees of Chesapeake and certain affiliated companies, and includes a 401(k) plan, profit sharing plan, and employee stock option program. As of December 31, 2010, according to its 11-K filed with the SEC in 2011, the Plan had $474 million of investments, of which $236 million was invested in Chesapeake stock.

27. Defendant Chesapeake is an Oklahoma corporation with its principal place of business at 6100 North Western Avenue, Oklahoma City, Oklahoma. The Company was co-founded by Defendant McClendon in 1989 and had its initial

public offering in 1993. Currently, Chesapeake is the second-largest producer of natural gas, a top 15 producer of oil and natural gas liquids, and the most active driller of new wells in the U.S. It trades on the NYSE under the symbol "CHK." Upon information and belief, Defendant Chesapeake is a fiduciary of the Plans pursuant to ERISA § 3(21)(A), 29 U.S.C. §(21 )(A) in that it has discretionary authority and control regarding the administration and management of the Plans and/or the Plans' assets.

28. According to the Plans' Form 5500 submission to the IRS and Department of Labor for 2010 ("Form 5500"), Defendant Chesapeake is the Plans' sponsor within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B) and the Plans' administrator pursuant to ERISA § 3(l6)(A), 29 U.S.C. § 1002(l6)(A). Defendant Chesapeake is a fiduciary of the Plans pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) in that it has discretionary authority and control regarding the administration and management of the Plans and/or the Plans' assets.

**The Officer And Director Defendants**

29. Defendant Aubrey K. McClendon is Chesapeake's CEO and has served as both CEO and Chairman of the Board from 1989 until early May 2012, when the Board stripped McClendon of his Chairman position. McClendon signed all of the Company's relevant 10-Q and 10-K filings during the Class Period.

30. Defendant Domenic J. Dell'Osso, Jr. ("Dell'Osso") currently serves as Executive Vice President of Finance and Chief Financial Officer of Chesapeake. Dell'Osso also serves as Chief Financial Officer and Executive Vice

President of Finance of Chesapeake Midstream Development, L.P., a Chesapeake subsidiary. During the Class Period, Defendant Dell'Osso signed the following Chesapeake SEC filings: 10-K filed March 1, 2011 (the "March 2011 10-K"); 10-K filed February 29, 2012 (the "February 2012 10-K"); 10-Q filed November 9, 2010 (the "November 2010 10-Q"); 10-Q filed May 10, 2011 (the "May 2011 10-Q"); 10-Q filed August 9, 2011 (the "August 2011 10-Q"); 10-Q filed November 9, 2011 (the November 2011 10-Q"); and 10-Q filed May 11, 2012 (the "May 2012 10-Q").

31. Defendant Michael A. Johnson ("Johnson") has served as Senior Vice President of Accounting, Controller, and Chief Accounting Officer of the Company since 2000. During the Class Period, Johnson signed the following Chesapeake SEC filings: the 10-K filed March 1, 2010 (the "March 2010 10-K"); the March 2011 10-K; and the February 2012 10-K.

32. Defendant Richard K. Davidson ("Davidson") has been a member of Chesapeake's Board of Directors since March 2006 and is, and was during the Class Period, a member of the Company's Audit Committee. During the Class Period, Defendant Davidson signed the following Chesapeake SEC filings: the March 2010 10-K; the March 2011 10-K and the February 2012 10-K.

33. Defendant Kathleen Eisbrenner ("Eisbrenner") has been a member of Chesapeake's Board of Directors and its Company's Compensation Committee since December 2010. During the Class Period, Eisbrenner signed the following Chesapeake SEC filings: the March 2011 10K and the February 2012 10K.

34. Defendant V. Burns Hargis ("Hargis") has been a member of Chesapeake's Board of Directors since September 2008 and is, and was during the Class Period, a member of the Company's Audit Committee. Hargis has been President of Oklahoma State University since March 2008. From 2008 to the present, Defendant Hargis, in his capacity as President of Oklahoma State University, has received over $10 million from Chesapeake for his university. During the Class Period, Hargis signed the following Chesapeake SEC filings: the March 2010 10-K; the March 2011 10-K and the February 2012 10-K.

35. Defendant Frank Keating ("Keating") has been a member of Chesapeake's Board of Directors since June 2003 and is, and was during the Class Period, the Chair of the Company's Compensation Committee. During the Class Period, Defendant Keating signed the following Chesapeake SEC filings: the March 2010 10-K; the March 2011 10-K and the February 2012 10-K.

36. Defendant Charles T. Maxwell ("Maxwell") has been a member of Chesapeake's Board of Directors since 2002 and is, and was during the Class Period, a member of the Company's Compensation Committee. During the Class Period, Maxwell signed the following Chesapeake SEC filings: the March 2010 10-K; the March 2011 10-K and the February 2012 10-K.

37. Defendant Merrill A. Miller, Jr. ("Miller") has been a member of Chesapeake's Board of Directors since January 2007, is, and was during the Class Period, a member of the Company's Audit Committee, and has been designated as lead independent director by the Company since March 2010, according to

Chesapeake's website. Miller is also the lead director of National Oilwell Varco, Inc., a drilling company that has received $343 million from Chesapeake since 2009. During the Class Period, Defendant Miller signed the following Chesapeake SEC filings: the March 2010 10-K; the March 2011 10-K and the February 2012 10-K.

38. Defendant Don Nickles ("Nickles") has been a member of Chesapeake's Board of Directors since January 2005 and is, and was during the Class Period, a member of the Company's Nominating and Corporate Governance Committee. During the Class Period, Nickles signed the following Chesapeake SEC filings: the March 2010 10-K; the March 2011 10-K and the February 2012 10-K.

39. Defendant Marcus Rowland ("Rowland") served as Chesapeake's Chief Financial Officer and Executive Vice President of Finance until October 29, 2010. During the Class Period, Rowland was also a member of the Company's Compensation Committee. During the Class Period, Rowland signed the following Chesapeake SEC filings: the March 2010 10-K; the 10-Q filed May 11, 2009 (the "May 2009 10-Q"); the 10-Q filed August 10, 2009 (the "August 2009 10-Q"); the 10-Q filed November 9, 2009 (the "November 2009 10-Q"); the 10-Q filed May 10, 2010 (the "May 2010 10-Q"); the 10-Q filed July 30, 2010 (the "July 2010 10-Q"); the 10-Q filed August 9, 2010 (the "August 2010 10-Q") and the November 2010 10-Q.

40. Defendant Fredrick B. Whittemore ("Whittemore") was a member of Chesapeake's Board of Directors and its Compensation Committee from 1993 to 2011. During the Class Period, Defendant Whittemore signed the following Chesapeake SEC filings: the March 2010 10-K and the March 2011 10-K.

41. Defendant Louis A. Simpson ("Simpson") has been a member of Chesapeake's Board of Directors since June 2011 and is, and was during the Class Period, a member of the Company's Nominating and Corporate Governance Committee. During the Class Period, Simpson signed Chesapeake's February 2012 10-K.

42. Defendants McClendon, Dell'Osso, Johnson, Davidson, Eisenbrenner, Hargis, Keating, Maxwell, Miller, Nickles, Rowland, Whittemore and Simpson are herein referred to as the "Individual Defendants." Defendants McClendon, Dell'Osso, Rowland, and Johnson are referred to herein as the Senior Executive Defendants.

43. The Individual Defendants are each a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because each exercised discretionary authority or control over Plans' management and/or authority or control over management or disposition of Plan assets.

44. During the Class Period, the Senior Executive Defendants by virtue of their senior executive positions at Chesapeake, were in privy to confidential information concerning Chesapeake, its operation, finances, financial condition and present and future business prospects. The Senior Executive Defendants also

had access to materially adverse non-public information concerning McClendon's transactions with the Company, as discussed in detail below. Because of their possession of such information, the Senior Executive Defendants knew or recklessly disregarded that the adverse facts specified herein were misrepresented and/or had not been disclosed to, and were being concealed, from the Plan Participants.

45. As members of the Chesapeake Board and/or senior executives and controlling persons of a publicly traded company whose common stock was, and is registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the NYSE and governed by the federal securities laws, the Individual Defendants had a duty to promptly disseminate accurate and truthful information with respect to Chesapeake's financial condition and performance, operations, management, and relationship with McClendon. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

46. The Individual Defendants are liable as direct participants in the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior executive officers and/or directors, were "controlling persons" within the meaning of Section 20(a) of the Exchange Act and had the power to influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, the Individual

Defendants were able to and did, directly or indirectly, control the conduct of Chesapeake's business.

47. The Individual Defendants, because of their positions with the Company, controlled and/or possessed the authority to control the contents of its reports, press releases and presentations to securities analysts and through them, to the investing public. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading, prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the Individual Defendants had the opportunity to commit the acts and disclosure failures alleged herein.

48. The Individual Defendants are liable as participants in the course of conduct that operated as a breach of fiduciary duty to Plan Participants, and in the breach of fiduciary duty and material non-disclosure to Plan Participants, who purchased and held Chesapeake stock through the Plans, by disseminating materially false and misleading statements and/or concealing material adverse facts.

## IV. THE SELF-DEALING, WASTE AND BREACH OF FIDUCIARY DUTY AT CHESAPEAKE

49. The story of Chesapeake's huge growth as one of the largest developers of oil and gas wells in the United States is fraught with greed and deception. While investors naturally believed the Company's representations about its business activities and assumed that the Company's huge expansion in

exploration and drilling was in the Company's best interest, recent disclosures have revealed that the primary reason for the expansion was to increase the amount of Company assets that would be converted to McClendon personally (and for free), even though, as a result, the Company would be saddled with a crippling amount of debt. Investors further learned that McClendon appears to have chosen partners for Chesapeake's exploration and drilling program based on their willingness to do personal business with him, rather than whether a particular partner was best for the Company, and that McClendon had only upside in connection with well drilling, leaving him incentivized to overload the Company with debt.

### A. MCCLENDON HAS LONG DOMINATED THE COMPANY AND ITS BOARD

50. Since McClendon founded Chesapeake in 1989, he has completely dominated the Company and its Board. As the *Wall Street Journal* noted in an April 27, 2012 article, McClendon "has been involved in every aspect of the company, from its complex financial dealings to the music it offers at its campus gym."

51. McClendon's domination was evident in 2008, when the Company made him the highest-paid CEO of any S&P 500 company, paying him total compensation of $112 million, plus $12.1 million to purchase the antique maps in his personal art collection. This huge package was designed to bail McClendon out of the debt he accumulated by margining his Chesapeake stockholdings to obtain

personal loans over $600 million. When Chesapeake's stock price tanked in 2008 due to the Company's poor earnings and growing debt, McClendon was forced to sell over 31 million Chesapeake shares to cover $569 million in margin calls from his brokers (the "2008 Margin Call"). The Board further accommodated McClendon by suspending the requirement that McClendon own shares in the Company worth five times his annual salary.

52. Also that year, the Board lavished McClendon with other perks, including $600,000 for the private use of corporate jets, nearly $600,000 for accounting services, and $131,000 for personal "engineering support." McClendon also arranged for Chesapeake to pay $4.6 million to sponsor the NBA's Oklahoma City Thunder, of which McClendon owns one-fifth.

## B. BILLIONS OF DOLLARS OF COMPANY ASSETS ARE TRANSFERRED TO MCCLENDON UNDER THE FOUNDERS WELL PARTICIPATION PROGRAM

### 1. The FWPP Allows McClendon to Increase His Stake in Company Wells Without Incurring Any of the Up-Front Development Costs Which Are Borne by Chesapeake

53. While McClendon currently owns about 1.35 million shares of Chesapeake stock (presently with approximately $22 million), this interest is dwarfed by his share in Chesapeake's oil and gas wells. Those Company assets were transferred to McClendon, for free, pursuant to the FWPP. During the Class Period, this perk extended only to McClendon and facilitated the transfer of over a billion dollars of Company assets to him.

54. Under this program, McClendon may elect to obtain up to a 2.5% interest in all the wells drilled by or on behalf of Chesapeake during a calendar year. Since 1989, he has made the full election every year. As a part owner of the wells, McClendon is entitled to his proportionate share of the oil and gas and the revenues generated from sales of those commodities, but must pay a proportionate share of the related drilling, extraction and delivery costs. After McClendon pays his pro-rated share of the capital costs and expenses that go into these wells, the 2.5% of the oil and gas coming out of the wells, and the 2.5% of the reserves down in the ground, are his, free and clear.

55. The FWPP allows McClendon to participate in lucrative Company wells without incurring the up front exploration costs. Before the Company actually drills for oil or gas, it must first identify potential oil and gas reservoirs through the exploration process. Exploration of new wells includes the costs of drilling an "exploratory well," conducting and developing seismic analysis tests to uncover potential reservoirs, and the salaries and administrative costs associated with the geologists conducting the survey tests.

56. As part of this exploration and drilling process, Chesapeake pays billions of dollars to acquire land and drilling rights and determine whether there are sufficient oil or gas reserves to justify drilling. For example, as McClendon explained in the Company's July 29, 2011 earnings call with analysts, the Company spent "between $1.5 and $2 billion acquiring leasehold in Utica." He said that "[i]f we were a smaller company, we wouldn't have been able to take on

that risk." He further explained that the Company's "size and scale enables us to discover things that we wouldn't otherwise be able to do."

57. In many cases, the Company's analysis shows that the land is not worth drilling. For example, as explained in a May 1, 2012 *Forbes* article, the land Chesapeake acquired in Michigan "turned out to be virtually worthless for oil and gas" and "other tracts, like in the Haynesville shale … are not economic to drill now or at any time in the foreseeable future." In these cases, all of the Company's accumulated exploration costs are lost.

### 2. The Company Falsely Represented That The Interests of McClendon and The Company Are Aligned

58. Chesapeake's shareholders and Plan Participants necessarily care about the Company's sunk acreage and exploration costs because much of it represents capital going to waste. However, under the FWPP, McClendon is not similarly incentivized to care at all. On the contrary, it is in his direct financial interest for Chesapeake to grab as much land as possible in order to secure those "sweet spots" where the Company will drill and in which McClendon will personally "invest" under the FWPP. Where analysis shows that the land is flush with oil or gas deposits, the Company decides to drill, and does so in the choicest parts of a field to ensure the best return on its investment. The land that holds the "sweet spots" where the Company decides to drill is worth significantly more than less attractive surrounding acreage where the Company does not drill.

59. Under the FWPP, McClendon only participates in the good acreage where the Company drills – he does not incur any of the up-front costs of exploration and related analysis on land that is not drilled. Thus, he is guaranteed to get better overall opportunities and better returns than Chesapeake's shareholders.

60. However, Chesapeake did not disclose this divergence between the Company's and McClendon's interests. To the contrary, Chesapeake repeatedly emphasized that the purpose of the FWPP was to align the interests of McClendon and the Company, even though the FWPP in fact did the opposite. The conflicting interests between McClendon and the Company were concealed from investors and Plan Participants.

### 3. McClendon's Huge Borrowings on His Well Interests Are Concealed

61. Also concealed from Plaintiff and other class members was the size of the stake that McClendon had in the Company's wells and the fact that he had leveraged all of his FWPP interests in order to pay his proportionate share of the associated drilling, extraction and delivery costs.

62. On April 18, *Reuters* disclosed that, through the FWPP, McClendon had borrowed as much as $1.1 billion by pledging his personal interests in those oil and gas assets, including many wells that have not even been drilled, as collateral. On May 9, 2012, *Reuters* reported that McClendon's borrowings

secured by his well interests had ballooned to $1.55 billion (since 2009) as a result of an additional $450 million loan secured in the past few weeks.

63. Investors were shocked at the size of McClendon's stake in the Company's assets, the size of his borrowings, and the fact that his loans were from an entity that was also providing financing to the Company. The Company had previously concealed McClendon's loans and the risk that, to get that financing, McClendon compromised the Company's best interests in order to secure favorable terms on his personal loans.

## C. CHESAPEAKE'S BANKS AND BUSINESS PARTNERS ARE SELECTED BASED ON THEIR PROVISION OF PERSONAL FINANCING AND SERVICES TO MCCLENDON

### 1. McClendon Secretly Used Company Banks For His Personal Loans And Arranged For Those Banks to Participate in Lucrative Deals with the Company

64. Even though stakes in numerous Company wells were transferred to McClendon for free, and without the related exploration costs on lands that were not drilled, McClendon was still on the hook for his pro-rata share of the costs of tapping the reserves in those wells. In order to pay those expenses, McClendon had to borrow money in a difficult credit environment. In order to secure the needed financing, McClendon turned to banks and private equity groups that were also seeking to do business with the Company. Thus was born the *quid pro quo*: the banks and private equity groups would lend money and provide services to McClendon and, in return, those entities got the Chesapeake business and investment opportunities they coveted, at the expense of the Company.

65. The biggest lender to McClendon is the private equity group EIG Global Energy Holdings ("EIG"). According to recent reports, EIG recently lent McClendon $450 million. Counting that loan, McClendon's total financing from EIG since 2010 is $1.33 billion.

66. Recent news reports have revealed that, in two earlier loan deals, EIG provided financing to McClendon through entities he controlled. In the fall of 2008, McClendon did not have the liquidity needed to participate in the FWPP program, at which point EIG offered to assist him. EIG formed a special purpose vehicle called Larchmont Resources LLC ("Larchmont"). Through Larchmont, EIG acquired the rights to all of McClendon's well stakes for 2009 and 2010.

67. EIG then set up a new special purpose vehicle – Jamestown Resources LLC ("Jamestown") – to control McClendon's well shares in 2011, with rights to 2012. McClendon used these special purpose vehicles to borrow hundreds of millions of dollars from EIG. Through Larchmont, McClendon received $375 million, and through Jamestown, he received another $500 million.

68. The latest McClendon loan (for $450 million) was arranged in late March through a McClendon-controlled company called Pelican Energy LLC ("Pelican") which was formed on March 6, 2012. The $450 million financing from EIG is collateralized by all of Pelican's assets and include McClendon's interests in wells Chesapeake might drill in 2013 and the first half of 2014.

69. Through EIG, McClendon was able to raise cash for himself at a difficult time in the credit markets and a difficult time for the Company.

Additionally, at that time, Chesapeake was forced to shed some choice assets, including valuable Texas shale acreage slated for a third-quarter sale, to cope with decade-low gas prices – Chesapeake disclosed in May 2010 that it was selling its valuable Marcellus shale properties to raise $2 billion in cash in order to pay down part of its over $12 billion in debt.

70. The combined size of all of McClendon's loans – $1.55 billion – equals over a tenth of Chesapeake's total long-term debt, but these borrowings had been concealed from investors and Plan Participants. Additionally, Reuters recently disclosed that McClendon used the same deal team – Chesapeake executives, bankers and lawyers – for both his personal transactions and the Company's (including the Company's financings with EIG), but this information was concealed from investors and Plan Participants.

71. EIG's dealings with McClendon have been extremely profitable for that firm. According to an April 19, 2012 *Reuters* article, in exchange for financing from EIG, McClendon guaranteed EIG 100% of the revenues from McClendon's well stakes until EIG achieved a 13% return on investment. After the principal is paid off, EIG would receive a 42% share of production from those wells, in perpetuity.

72. In addition to lending McClendon hundreds of millions of dollars, EIG was able to leverage its position with McClendon to become a major investor in Chesapeake. EIG invested in units of Chesapeake through purchases of preferred shares in Chesapeake entities that control oil and gas rich land and pay

dividends and royalty interest from wells located there. In one of those transactions, EIG invested $100 million in Chesapeake subsidiary CHK Cleveland Tonkawa, which deal raised $1.25 billion for Chesapeake. As the *Wall Street Journal* reported on April 27, 2012, in the last six months alone, EIG "has participated in groups that have purchased about $2.5 billion in Chesapeake assets."

73. McClendon has also personally borrowed money from Bank of America Corp. and Goldman Sachs Group Inc. The *Wall Street Journal* disclosed that McClendon is listed on certain documents as a debtor to Bank of America and Goldman Sachs.

74. In return for this financing, Bank of America and Goldman Sachs each received the choice assignments as underwriters of the initial public offering of Chesapeake's oilfield services unit called Chesapeake Oilfield Services Inc. ("Chesapeake Oilfield"), announced by Chesapeake on April 16, 2012. In addition to receiving underwriter fees, Bank of America (through Merrill Lynch) and Goldman Sachs served as lenders under Chesapeake Oilfield's revolving credit facility and under Chesapeake's revolving credit facility and will thereby receive a portion of the net proceeds from the offering through the repayment of borrowings under the credit facilities. McClendon's personal dealings with EIG, Bank of America and Goldman Sachs and the conflict issues they raised were concealed from investors and Plan Participants.

### 2. McClendon Sold Rights to His Wells to Banks That He Selected to Participate in Various Transactions With the Company

75. In addition to borrowing money in order to pay his pro-rata share of the costs associated with the wells transferred to him, McClendon sold the future rights to the oil and gas reserves to banks to raise funds. Those banks were then selected to participate in business dealings with Chesapeake.

76. On April 18, 2012, *Forbes* published an article revealing new details about McClendon's use of his Chesapeake holdings to secure personal financings. According to that article, McClendon has entered into private transactions called volumetric production payments ("VPP"). Under two of these agreements alone, McClendon has collected over $130 million up front from banks and investors in return for agreeing to deliver to them set amounts of gas from his interests in Company wells for a certain period of time. In effect, McClendon has sold to third parties a temporary overriding interest in Company assets that were assigned only to him.

77. It was later revealed (on May 3 by *Bloomberg*) that McClendon had agreed to sell $88 million of his personal oil and gas interests under the VPPs to investment vehicles created by Wachovia Corp., just three weeks after Chesapeake used that bank in a similar $600 million deal. Wachovia had previously (in 2008) arranged two VPP transactions for McClendon and one for Chesapeake. McClendon's partnership, called Chesapeake Investments, LP, sold for $44 million the rights to future gas production from McClendon's well interests to an

entity called TW Investors LLC ("TW"), which shared an address with Wachovia's headquarters in Charlotte, North Carolina. Wachovia also set up commodity swap transactions to facilitate the deal. Later, Wachovia set up a $600 million VPP transaction with Chesapeake, known as the Sooner Gas Trust. Sooner's officers included Robert Christensen and William Eustis, two Wachovia bankers who were the people listed as officers of TW.

78. McClendon subsequently (in 2008) sold another VPP through Wachovia for $88 million. This sale was to an entity called Blue Devil Trust which designated Wells Fargo as the "owner trustee" and bankers Christensen and Eustis as officers. As the Wall Street Journal reported on April 27, 2012, Wells Fargo has served as a financial advisor to Chesapeake on 10 transactions since 2005 valued at nearly $9.9 billion combined. Additionally, Wells Fargo provided a loan to McClendon in 2010.

79. However, during the Class Period, the Company concealed McClendon's personal dealings with these banks and private equity groups, as well as the risk that Chesapeake's business partners such as EIG, Bank of America, Wells Fargo and Goldman Sachs were being chosen to advance McClendon's personal interests rather than the best interests of Chesapeake, and that those doing business with McClendon personally were able to extract positions in lucrative Chesapeake offerings and investment transactions with the Company.

## D. CHESAPEAKE ENTERS NUMEROUS VPPS WHICH SADDLE THE COMPANY WITH $1.4 BILLION IN UNDISCLOSED LIABILITIES

80. While McClendon was borrowing money and entering into his own VPP transactions to raise funds, the Company was struggling with it own debt which had mushroomed under McClendon's aggressive expansion program. In order to deal with that debt, the Company entered into its own VPP deals. However, the Company did not want the obligations from these deals to negatively impact its credit rating and thereby impair its ability to raise funds in the capital markets. Accordingly, Chesapeake concealed its huge liability under its VPP transactions.

81. On May 10, 2012, the *Wall Street Journal* reported that as a result of VPPs entered into by Chesapeake, the Company was saddled with about $1.4 billion of previously unreported liabilities over the next decade through these off-balance-sheet financial deals. Like McClendon's own VPPs, these deals by the Company are long-term commitments requiring it to deliver specific amounts of oil and gas each month. The Company's deals last until 2022.

82. A *Wall Street Journal* review of 10 VPP documents (filed in county courthouses in four states) shows that Chesapeake's liability is far larger than previously believed by investors and analysts (who had estimated a total value of around $600 million for the VPPs). According to the *Wall Street Journal*, the costs to Chesapeake amount to $300 million in 2012 and $270 million in 2013, plus another $800 million between 2014 and 2022. The amount of oil and gas it has

pledged for this year and next equals about 15% of Chesapeake's expected production through the end of 2013.

83. The recent disclosures about McClendon's and the Company's VPPs demonstrate that Chesapeake's Class Period representations about its debt were materially false and incomplete because the indebtedness figures did not include Chesapeake's liabilities under its VPP agreements. While Chesapeake periodically reported the amount of money it received in its VPPs, as well as the amount of oil and gas committed to the VPP counterparties, it did not disclose its costs to fulfill the VPPs, such as the costs to pump and deliver the oil and gas. The *Wall Street Journal* estimated these costs at $1.4 billion.

84. As explained below, Defendants' failure to disclose this information violated SEC regulations as well as ERISA duties to disclose material information to Plan Participants. The Company's concealment of its huge liability from the VPPs is material and renders its disclosures about its long-term debt false and misleading. The VPPs are essentially debts with interest payments made in fuel rather than cash, and the hidden operating costs constitute ten percent of the Company's total long-term debt. Indeed, it appears that these hidden costs jeopardized the Company's ability to comply with loan covenants, requiring Chesapeake to borrow another $4 billion.

85. Moreover, unbeknownst to investors, the reason the Company entered into the VPPs was to address its financial strain caused by business decisions designed to further McClendon's interests rather than Chesapeake's. The

Company was highly leveraged because it was in McClendon's personal interests to expand the Company's exploration and drilling activities, as the more oil and gas reserves worth drilling that the Company found, the more McClendon stood to gain personally through his participation in the FWPP. In order to address its current and burgeoning long-term debt, the Company was forced to mortgage its future through numerous VPPs, though it concealed the reason why it entered the VPPs, as well as its growing liability associated with those deals.

86. Plaintiff and Class Members have been harmed and damages in numerous ways by McClendon's excessive compensation through the FWPP, the aggressive expansion strategy, the conflicted loan and other transactions with lenders and the VPPs. These activities resulted in potentially lost revenues and income to Chesapeake, and/or the fees and revenues of the hedge fund should have been received by Chesapeake. As a result, Chesapeake's allocation to the Plans and contributions to the Participants were less than they otherwise may have been, and Plan Participants lacked material information to make informed decisions about investing in Chesapeake stock.

### E. McCLENDON'S SECRET HERITAGE MANAGEMENT COMPANY HEDGE FUND

87. On May 2, 2012, *Reuters* reported that for years, McClendon ran a lucrative \$200 million hedge fund that traded oil and gas futures—the same commodities produced by Chesapeake. The fund, Heritage Management Company LLC ("Heritage"), was founded by McClendon and Chesapeake co-

founder Tom Ward in 2004. Although it was registered in Delaware, Heritage listed its headquarters as the same Oklahoma City address where Chesapeake is headquartered. The two companies also shared employees; for example, John D. Garrison, Chesapeake's executive business manager was also Heritage's Chief Financial Officer.

88. *Reuters* has reported that McClendon engaged in "near daily" communications and "exhaustive" calls from his Chesapeake headquarters to direct and manage Heritage's hedging and trading operations. McClendon did not just use Heritage to trade for himself, but also for his friends and associates. *Reuters* reported that McClendon profited by charging a flat 2% of total asset value as a management fee and an additional 20% of any profits to investors.

89. The Company still allows McClendon to engage in hedging activities personally or through other entities. As reported by *Reuters* on May 8, 2012, McClendon's employment agreement with Chesapeake was revised in 2009 to ban McClendon from taking an active role in a hedge fund, but it still allows McClendon to trade in commodities. The 2009 contract (which extends for five years) permits McClendon to trade in a range of financial instruments, including commodities, "short positions, long positions or positions in options" in both futures and over-the-counter markets.

90. McClendon's contract gives him considerably more latitude for outside ventures than his subordinates are allowed – Chesapeake's contracts with at least four other senior executives say the executives may not "engage in other

business activities independent of" Chesapeake, and explicitly ban the executives from serving "as a general partner, officer, executive, director or member of any corporation, partnership, company or firm."

91. The 2009 employment agreement also states that McClendon could put cash into a "passive investment entity," including a hedge fund, provided it "does not actively engage in [exploration and production] activities," and "for which [McClendon] does not directly or indirectly provide input, advice or management."

92. These 2009 revisions to McClendon's employment agreement accomplish little, as hedge funds such as Heritage typically invest funds but do not actively manage or engage in the business of the entities in which they invest. It is unlikely that a hedge fund would itself engage in exploration or production activities, and Heritage is not reported to have engaged in any such activities. Moreover, the revisions to McClendon's employment agreement show that the Chesapeake Board was aware of McClendon's Heritage fund, or at least his interest to continue trading in gas and oil commodities. However, neither the Heritage fund nor McClendon's private hedging activities were disclosed in any of Chesapeake's prior public filings or to Plan Participants.

93. While the Company discussed its own hedging activities and derivative positions, it did not disclose that McClendon had been engaging, and was still permitted to engage, in hedging, had his own positions in derivatives, and

was (or had been) making personal trades in the same commodities that the Company was selling and hedging.

94. McClendon's trading presented risks to the Company and its shareholders in that the CEO and Chairman could direct the Company's derivative positions in a manner that would serve to benefit McClendon rather than the Company. In fact, there was a risk that McClendon could actually bet against the Company's interests. For example, McClendon's first-hand knowledge of Chesapeake's plans to trade would have allowed him to profit by trading ahead of Chesapeake, raising costs for the Company. This possibility was extremely problematic because hedging generated significant revenue for the Company. However, these risks were kept secret from investors.

95. Plaintiff and Class Members have been harmed and damages in numerous ways by McClendon's operation and management of this secreted hedge fund at Chesapeake. McClendon's distraction resulted in potentially lost revenues and income to Chesapeake, and/or the fees and revenues of the hedge fund should have been received by Chesapeake. Chesapeake may also have lost revenues and income from positions taken by the hedge fund against it. As a result, Chesapeake's allocation to the Plans and contributions to the Participants were less than they otherwise may have been, and Plan Participants lacked material information to make informed decisions about investing in Chesapeake stock.

## V. THE TRUTH IS REVEALED THROUGH A SERIES OF DISCLOSURES

96. During the Class Period, Defendants' scheme worked, as vast corporate wealth was transferred to McClendon, and McClendon was able to hedge the Company assets he obtained, and manipulate the Company's business, to serve his personal interests rather than those of the Company. However, through a series of disclosures beginning on April 18, 2012, investors gradually learned that the reason the Company had greatly expanded its exploration and driving activities was to provide increasing amounts of assets and profits to McClendon through the FWPP program, while burdening the Company with crippling amounts of debt and expenses. Investors likewise learned that the Board did nothing to stop this piracy, and instead allowed McClendon to run a competing hedging business out of his Chesapeake office, use Company bankers, lawyers and employees for his personal transactions, and obtain multi-hundred million dollar personal loans from banks that were, at the same time, chosen by McClendon to invest in Company operations.

97. The Defendants concealed those facts, the risks they posed to the Company, and the Company's resulting huge liabilities and overall debt, from investors.

98. On April 18, 2012, *Reuters* published the first of a series of articles that shocked the market with news about numerous conflicts of interest confronting McClendon and the Company's undisclosed debt levels. That day,

*Reuters* disclosed that McClendon had borrowed $1.1 billion on his FWPP well interests, an amount later revealed to be $1.55 billion. In response, the Company's stock sank 5.5%, going from $19.12 on April 17 to $18.06 on April 18.

99. On April 26, 2012, *Reuters* reported that the SEC commenced an informal inquiry of Chesapeake. That day, Chesapeake announced that its Board had "determined" not to extend the FWPP "beyond its present 10-year term ending December 31, 2015" and that the Board and McClendon "have committed to negotiate the early termination of the FWPP and the amendment to Mr. McClendon's employment agreement necessary to effectuate the early termination." The Company later disclosed that it had reached an agreement with McClendon on the early termination, agreeing to end the program on June 30, 2014.

100. On May 2, 2012, *Reuters* reported that McClendon had for years been running the Heritage hedge fund. The Company announced that day that it was separating the positions of Chairman of the Board and CEO, stripping McClendon of his Chairman position.

101. On May 10, 2012, the *Wall Street Journal* disclosed that the Company had an additional $1.4 billion in previously unreported liabilities through off-balance-sheet VPPs. And on May 11, 2012, Chesapeake disclosed in its Form 10-Q filed that day that it might delay asset sales to preserve cash flow needed to comply with the requirements of various loans.

102. Chesapeake later revealed that it had reached agreement with a unit of Goldman Sachs Group, Inc. and affiliates of Jefferies Group Inc. on a $4 billion loan to help ease a cash shortfall that, the Company said, threatens to curtail its development of oil and gas wells. The loan comes at a steep 8.5% interest rate that rises to more than 11% if the Company does not pay it off by the end of the year.

103. As Bonnie Baha, portfolio manager at DoubleLine (which oversees $34 billion in assets under management) commented, "Chesapeake is forced to issue debt at higher levels than ever with incredibly onerous terms in an interest rate environment that's the lowest most of us have ever seen in our lifetimes. … It's absolutely untenable." Similarly, Sabur Moini, manager of a $2.5 billion high-yield-bond portfolio at Payden & Rygel, stated that the $4 billion loan "was priced very attractively" for the lenders, rather than Chesapeake, adding that turmoil in Chesapeake's bonds was largely "self-inflicted."

104. This is the third time since 2011 that the Company has taken on debt to pay down a credit line, at an increasing cost. In February, Chesapeake issued $1.3 billion in senior notes due in 2019 for 6.78%, while a year earlier it sold $1 billion of senior notes due on 2021 for 6.13%.

105. The Company stated that it plans to repay the recent $4 billion short-term loan with part of the proceeds from as much as $11.5 billion in asset sales planned for the remainder of the year. Reportedly first in line is the Company's holdings in the West Texas Permian Basin, one of the most prolific U.S. energy regions, which could bring up to $7 billion, according to analysts from Canaccord

Genuity. As SunTrust Robinson Humphrey analyst Neal Dingmann commented, Chesapeake "is running out of financial options and everybody knows they need to do some deals, [and] the closer they get to that point the more nervous everybody is going to get."

106. As a result of these recent and various prior disclosures, Chesapeake's stock price has plunged to its lowest level in more than three years, dropping to close on May 11 at $14.81. Since April 17, 2012, when it closed at $19.12 per share, the stock has dropped about 23%. Additionally, the Company's previously-investment-grade level

debt rating dropped, as Moody's changed its rating outlook for the Company to negative, rated Chesapeake's "Corporate Family Ratings" at Ba2 (two levels below investment grade), and rated Chesapeake's senior unsecured debt at Ba3. Similarly, S&P and Fitch each cut their rating on the Company's credit another notch into non-investment, or junk status, to BB-. McClendon's $1.55 billion "loan scandal" has "severely tainted the company" said Marc Gross, a money manager at RS Investments in New York who oversees $3 billion in fixed-income funds, including Chesapeake bonds. "There is no chance of an IG rating" over the next three years, he said, adding that the Company is "more likely to get downgraded than upgraded."

## IV. DEFENDANTS' FALSE AND MISLEADING STATEMENTS AND/OR MATERIAL OMISSIONS DURING THE CLASS PERIOD

### A. CHESAPEAKE'S MISLEADING STATEMENTS REGARDING THE FWPP

107. During the Class Period, Chesapeake disclosed the existence of the FWPP but failed to disclose that McClendon had pledged his well assets to secure over a billion dollars in personal loans, and falsely represented that the FWPP aligned the interests of McClendon and the Company.

108. The Company disclosed the existence of the FWPP in its Form 10-K filings throughout the Class Period, stating:

> Mr. McClendon may elect to participate in all or none of the wells drilled by or on behalf of Chesapeake during a calendar year, but he is not allowed to participate only in selected wells. A participation election is required to be received by the Compensation Committee of Chesapeake's Board of Directors not less than 30 days prior to the start of each calendar year. His participation is permitted only under the terms outlined in the FWPP, which, among other things, *limits his individual participation to a maximum working interest of 2.5%* in a well and *prohibits participation in situations where Chesapeake's working interest would be reduced below 12.5% as a result of his participation.* In addition, the *company is reimbursed for costs associated with leasehold acquired by Mr. McClendon* as a result of his well participation.

These disclosures concerning the FWPP were made in the Company's March 2010 10-K; the March 2011 10-K and the February 2012 10-K.

109. The Company also stated in a section in the February 2012 10-K titled "Disclosures About Effects of Transactions with Related Parties," that: From time to time, Mr. McClendon has sold his FWPP interests in conjunction with sales by the Company of its interests in the same properties, and the proceeds related to those sales have been allocated between Mr. McClendon and the Company based on their respective ownership interests and on the same terms as those that applied to the Company's properties included in the sale.

110. The Company's statement that McClendon's sales of FWPP interests were "in conjunction with the sales by the Company of its interests in the same properties" was false and misleading because, at the time when Chesapeake made this disclosure, the Defendants knew or were extremely reckless in not knowing that McClendon had pledged his well assets to third parties as collateral for over a billion dollars in loans, and those third parties stood to take possession of those interests should McClendon default. Contrary to Chesapeake's public filings, McClendon's pledging of his well interests was not in conjunction with any sales by the Company.

111. During the Class Period, Chesapeake falsely stated that the FWPP served to align McClendon's interests with the interests of the Company. The Company stated in its Form 14A Proxy Statement filed April 30, 2009 (the "2009 Proxy Statement") and the Form 14A Proxy Statement filed April 30, 2010 (the "2010 Proxy Statement") that:

> The FWPP fosters and promotes the development and execution of the Company's business by (a) retaining and motivating our CEO who cofounded the Company; (b) aligning the financial rewards and risks of Mr. McClendon with the Company more effectively and directly than other performance incentive programs maintained by more of the Company's peers; and (c) imposing on Mr. McClendon the same risks incurred by the Company in its exploration and production operations. The Compensation Committee reviews Mr. McClendon's participation in the FWPP on a semiannual basis and periodically adjusts the acreage costs charged to Mr. McClendon to ensure his reimbursements reflect the Company's recent acreage activities.

Similar disclosures appear in the Company's Form 14A Proxy Statement filed April 29, 2011 (the "2011 Proxy Statement).

112. The Company also disclosed, in the February 2012 10-K, in a section titled "other commitments" that:

> Certain of our natural gas and oil properties are burdened by non-operating interests such as royalties, overriding royalties and volumetric production payments. As the holder of the working interest from which such interests have been carved, we have the responsibility to bear the cost of developing and producing the reserves attributable to such interests.

113. The Company's disclosures that the FWPP "fosters and promotes the development and execution of the Company's business" by "aligning the financial Rewards and risks of Mr. McClendon with the Company" were materially (and patently) false. Defendants knew, or were extremely reckless in not knowing, that in fact and practice, the FWPP advanced the personal interests of McClendon rather than the best interests of the Company, and facilitated the transfer of Company assets (obtained under the FWPP) to third parties whose interests were not the same as the Company's. Additionally, as Defendants knew or were extremely reckless in not knowing, the FWPP allows McClendon to participate in lucrative Company wells without incurring the up front exploration costs, guaranteeing him better overall opportunities and better returns than Chesapeake's shareholders; thus, the FWPP does not align the "financial rewards and risks of Mr. McClendon with the Company."

114. Similarly, the Company's statement that the FWPP "impos[es] on Mr. McClendon the same risks incurred by the Company in its exploration and production operations" is false, because as Defendants knew, or were extremely reckless in not knowing, the Company, but not McClendon, assumes the costs

associated with the exploration, development and testing of wells; McClendon only pays his pro-rata share of the costs to extract and deliver the oil and gas from drilled wells that are part of the FWPP program. The Company's statement that the Compensation Committee "periodically adjust the acreage costs charged to Mr. McClendon to ensure his reimbursements reflect the company's recent acreage activities" is false and misleading because McClendon is not charged for any acreage costs or activities related to the acquisition of land and exploration and testing activities where wells were not drilled.

115. Likewise, due to the misalignment of McClendon's and the Company's interests, the Defendants knew, or were extremely reckless in not knowing, that the FWPP does not "foster[] and promote[] the development and execution of the Company's business" because the FWPP gave McClendon an incentive to expand the Company's exploration and drilling program to increase the number of wells transferred to him, thereby serving his own interests rather than the best interests of the Company.

### B. DEFENDANTS' ATTEMPT TO CONCEAL McCLENDON's PARTICIPATION IN FWPP FROM THE SEC AND PLAN PARTICIPANTS

116. Defendants have gone to great lengths and effort to conceal information about McClendon's participation in the FWPP from the SEC and Plan Participants. For example, on August 21, 2007, the SEC wrote to Chesapeake seeking additional information in relation to its Proxy Statement on Form DEF

14A that the Company filed on August 30, 2007. The SEC requested additional information, including information whether McClendon's total compensation was significantly higher or lower than income earned prior to the implementation of the FWPP. The SEC noted that, due to the "material manner in which [the founding executives] have benefitted from working interests in properties drilled by the company", the Company should "consider revising [its] disclosure to provide greater balance and context." Chesapeake's response to this request on August 20, 2007, declared that it would be "inappropriate" to compare McClendon's compensation to the income he received from his FWPP interest, and that "[a]nother reason we have not disclosed Mr. McClendon's annual FWPP revenue is that it flows from property that belongs to him, not the company."

117. On May 30, 2008, the SEC wrote to Chesapeake regarding its Form 10-K for fiscal year ending December 31, 2007, again requesting additional information. For example, the SEC once again requested more detail regarding defendant McClendon's benefits from the FWPP. On June 13, 2008, the Company reiterated that "it was inappropriate to disclose revenues received by Mr. McClendon from his participation in the FWPP."

118. From July 26, 2008 to October 1, 2008, the SEC sent Chesapeake three more letters requesting additional information, including information related to defendant McClendon's participation in the FWPP. In fact, the SEC's letter from October 1, 2008, consisted solely of a request for more information regarding McClendon's revenues from the FWPP. The SEC declared that "[i]t is still

unclear whether the revenues that Mr. Aubrey McClendon receives from his FWPP participation constitute compensation for Item 402 of Regulation S-K purposes." It was only after these repeated attempts at obtaining additional disclosures that the SEC was successful in getting Chesapeake to provide some additional information. In the Company's response from November 7, 2008, the Company proposed that it would provide shareholders with a table of "annual revenues, lease operating expenses, the resulting net cash flow before capital expenditures and then capital expenditures."

119. Notwithstanding, the Company's tables disclosed minimal information and failed to sufficiently disclose the risks associated with FWPP. Chesapeake's communications with the SEC also demonstrate the materiality the benefits received by McClendon from participation under the FWPP.

### C. FALSE AND MISLEADING STATEMENTS REGARDING TRANSACTIONS WITH FINANCIAL INSTITUTIONS

120. During the Class Period, Chesapeake engaged in transactions with banks and private equity funds and other entities without disclosing that those entities were, or had been, also doing business with McClendon.

121. For example, in a November 4, 2011 press release, the Company discussed its Utica shale financing as involving the issuance of preferred shares that "are entitled to receive an initial annual distribution of 7%, payable Quarterly," such financing allowing Chesapeake to "drill a minimum of 50 net wells per year through 2016" in the area "up to a minimum cumulative total of 250

net wells." Additionally, during a third quarter 2011 earning conference call held on November 4, 2011, McClendon discussed and responded to questions concerning EIG's role in this transaction:

> In addition, we are very pleased to report our Utica financial transaction led by EIG. This is a $500 million preferred equity transaction in a subsidiary that holds about 45% of our Utica leasehold. By the end of the month, we expect this will have grown to become a $1.25 billion transaction.

122. The Company discussed the Utica financial transaction in its February 2012 10-K:

> CHK Utica, L.L.C. (CHK Utica) is an unrestricted, non-guarantor consolidated subsidiary we formed in October 2011 to develop a portion of our Utica Shale natural gas and oil assets. In exchange for all of the common shares, we contributed to CHK Utica approximately 700,000 net acres of leasehold within an area of mutual interest in the Utica Shale play covering 13 counties located primarily in eastern Ohio. During November and December 2011, in private placements, third-party investors contributed $1.25 billion in cash to CHK Utica in exchange for (i) 1.25 million CHK Utica preferred shares, and (ii) our obligation to deliver a 3% overriding royalty interest (ORRI) in up to 1,500 net wells to be drilled on certain of our Utica Shale leasehold. Dividends on the preferred shares are payable on a quarterly basis at a rate of 7% per annum based on $1,000 per share. This dividend rate is subject to increase in limited circumstances in the event that, and only for so long as, cash flow from the assets owned by CHK Utica are insufficient to fund the dividend in full in any quarter. We have committed to drill, for the benefit of CHK Utica, a minimum of 50 net wells per year through 2016 in the CHK Utica area of mutual interest, up to a minimum cumulative total of 250 net wells. As the managing member of CHK Utica, we may, at our sole discretion and election at any time after December 31, 2013, distribute certain excess cash of CHK Utica.

123. As Defendants knew, or were extremely reckless in not knowing, the disclosures about the Utica shale transaction and EIG's role were false and misleading because there was no disclosure that EIG was also separately loaning

McClendon hundreds of millions of dollars. As the "managing member of CHK Utica," Chesapeake ensured that the transaction was "led by EIG," but did not disclose that this arrangement was based in part on EIG's undisclosed role in providing hundreds of millions of dollars in financing to McClendon.

124. Similarly, Chesapeake made other disclosures about transactions that were false and misleading because Chesapeake disclosed the roles of Wells Fargo Bank, Bank of America and Goldman Sachs in those transactions but failed to disclose the roles those entities had in private business dealings with McClendon.

125. Chesapeake disclosed in an 8-K filed with the SEC on June 17, 2009 the role of Wells Fargo in a hedging facility, stating:

> On June 11, 2009, Chesapeake Energy Corporation ("Chesapeake") entered into a perpetual Multi-Counterparty Secured Hedging Facility (the "Hedge Facility") with 13 institutions, as Initial Hedge Counterparties ("Hedge Counterparties"), with Barclays Bank PLC serving as the Hedge Facility Calculation Agent and Wells Fargo Bank, National Association serving as the Hedge Facility Collateral Agent.

126. Chesapeake disclosed in a September 24, 2009 press release, later attached to an 8-K filed with the SEC on September 29, 2009, that it had entered into a joint venture with Global Infrastructure Partners and that Wells Fargo had served as a "lead arranger" for two related lending agreements with Chesapeake:

> Chesapeake Energy Corporation (NYSE:CHK) today announced it has entered into a definitive agreement to form a joint venture on a portion of its midstream assets with Global Infrastructure Partners (GIP), a New York-based private equity fund. As part of the transaction, Chesapeake will contribute certain natural gas gathering and processing assets into a new entity, Chesapeake Midstream Partners, L.L.C. (CMP), and GIP will purchase a 50% interest in CMP. Chesapeake will retain the remaining 50% interest in CMP and receive $588 million in cash from GIP.

> * * *
>
> Concurrent with GIP's funding of its interest in the joint venture, CMP is scheduled to close a new $500 million secured revolving bank credit facility agreement that matures in September 2012. CMP plans to utilize the facility to partially fund capital expenditures associated with the building of additional natural gas gathering systems and for general corporate purposes. Additionally, Chesapeake will amend and restate the existing lending agreement on its midstream assets to reduce the total capacity from $460 million to $250 million, among other changes. ***This separate secured revolving bank credit facility will support CMD's continuing midstream activities. Wells Fargo Bank and RBS Securities, Inc. served as lead arrangers for the two separate bank credit facilities....***

127. Chesapeake disclosed in an August 9, 2010 press release that was later attached to an 8-K filed with the SEC on August 12, 2010 that it was commencing a public offering of certain Senior Notes and that Bank of America and Wells Fargo would serve as joint book-running managers on the offering:

> The offering consisted of $600 million of Senior Notes due 2018, which carry interest at a rate of 6.875% per annum, and $1.4 billion of Senior Notes due 2020, which carry interest at a rate of 6.625% per annum. …Credit Suisse Securities (USA) LLC, Bank of America Securities LLC, Barclays Capital, Inc., Morgan Stanley & Co. Incorporated and Wells Fargo Securities, LLC acted as joint book-running managers for the senior notes offering.

128. In a press release on February 8, 2011, later attached to an 8-K filed with the SEC on February 9, 2011, Chesapeake announced a public offering of Senior Notes and that Wells Fargo would serve as a joint book-running manager for the offering: Chesapeake Energy Corporation (NYSE:CHK) today announced that it is commencing a public offering of $1.0 billion of Senior Notes due 2011. …Morgan Stanley & Co. Incorporated and Wells Fargo Securities, LLC will act as joint book-running managers for the offering.

129. Chesapeake disclosed in a May 9, 2011 press release, later attached to an 8- K filed with the SEC on May 12, 2011, that it had entered into a recapitalization of another company, Frac Tech Holdings, LLC, in a transaction in which Bank of America

> Merrill Lynch served as a financial advisor to Chesapeake: Chesapeake Energy Corporation (NYSE:CHK) today announced the completion of a recapitalization of privately held Frac Tech Holdings, LLC. In the transaction, Chesapeake supported a consortium of investors …. In the recapitalization, Chesapeake received a cash distribution of approximately $200 million and increased its ownership to 30%. Approximately $1.7 billion of debt financing was arranged to partially fund the consortium's acquisition and the distribution to Chesapeake. Bank of America Merrill Lynch and Citigroup served as financial advisors to Chesapeake ….

130. Chesapeake disclosed in an 8-K filed with the SEC on May 14, 2012 that it had received financing from Goldman Sachs, stating:

> On May 11, 2012, Chesapeake Energy Corporation (the "Company") entered into a Credit Agreement (the "Term Loan Credit Agreement") among the Company, as Borrower, Goldman Sacks Bank USA, as Administrative Agent, and Jefferies Finance LLC, as Syndication Agent, that provides for an aggregate term loan commitment of $3.0 billion.

131. In an 8-K filed with the SEC on Mary 17, 2012, Chesapeake stated that it had amended the Term Loan Credit Agreement with Goldman Sachs Bank USA still serving "as Administrative Agent."

132. In a November 2, 2011 press release, later attached to an 8-K filed with the SEC on November 4, 2011, Chesapeake announced an initial public offering of units in its affiliate, Chesapeake Granite Wash Trust, with Goldman,

Sachs & Co. and Wells Fargo Securities, LLC serving as joint book-running managers:

> Chesapeake Energy Corporation (NYSE:CHK) announced today that Chesapeake Granite Wash Trust (the "Trust") has commenced an initial public offering of 23,375,000 common units representing an approximate 50% beneficial interest in the Trust. … Goldman, Sachs & Co. and Wells Fargo Securities, LLC will serve as joint book-running managers.

133. In a February 13, 2012 press release, later attached to an 8-K filed with the SEC on February 17, 2012, Chesapeake announced an offering of certain Senior Notes, with Goldman, Sachs & Co. serving as a joint book-running manager:

> Chesapeake Energy Corporation (NYSE:CHK) today announced that it has priced its previously announced public offering of $1.3 billion principal amount Senior Notes due 2019, which will carry an interest rate of 6.775% per annum. … The notes were offered pursuant to an effective shelf registration statement filed August 3, 2010 with the U.S. Securities and Exchange Commission. … Bank of America Merrill Lynch, Deutsche Bank Securities Inc., Goldman Sachs & Co., Morgan Stanley & Co. LLC and RBS Securities Inc. acted as joint book-running managers for the offering.

134. In an April 16, 2012 press release, later attached to an 8-K filed with the SEC on April 20, 2012, Chesapeake announced "that its wholly owned service industry affiliate, Chesapeake Oilfield Services, Inc., has filed a registration statement relating to an initial public offering of shares of its Class A common stock."

135. The Form S-1 Registration Statement for the offering filed with the SEC on April 16, 2012 stated:

> Goldman, Sachs & Co., and Merrill Lynch, Pierce, Fenner & Smith Incorporated are the representatives of the underwriters.
>
> * * *
>
> [A]ffiliates of Goldman, Sachs & Co. and Merrill Lynch, Pierce, Fenner & Smith Incorporated are lenders under our revolving bank credit facility and under Chesapeake's corporate revolving bank credit facility and will, thus, receive a portion of the net proceeds from this offering through the repayment of borrowings outstanding under such credit facilities. In addition, an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated is a lessor under master lease agreements pursuant to which a portion of our drilling rig fleet is leased.

136. Additionally, the related prospectus listed Goldman Sachs and Bank of America as underwriters.

137. Each of these disclosures about the offerings and other transactions and the roles of EIG, Wells Fargo, Goldman Sachs and Bank of America (and their affiliates) were false and misleading because, as Defendants knew, or were extremely reckless in not knowing, there was no disclosure that those entities were lending money personally to McClendon and/or had engaged or were also engaging in private business dealings with McClendon, nor any disclosure of the risk that those entities had leveraged their roles in such private dealings with McClendon in order to obtain roles in transactions with the Company, or that McClendon had arranged for those entities to do business with Chesapeake as a *quid pro quo* for doing business with him.

138. As the Wall Street Journal disclosed, McClendon had received his own financing from EIG, Bank of America and Goldman Sachs. Additionally, as *Bloomberg* reported, McClendon had entered VPP deals with Wells Fargo (which served as the "owner trustee" of Blue Devil Trust, which purchased a VPP from

McClendon). Thus, all of the Company's disclosures about its transactions involving EIG, Wells Fargo, Goldman Sachs and Bank of America were false and misleading because, as Defendants knew, or were extremely reckless in not knowing, there was no disclosure that those entities were also lending to or doing business with McClendon, and that, in exchange for favorable terms in his personal dealings with those entities, McClendon appears to have arranged for those entities to participate in transactions with the Company, or any disclosure of the risk that this exchange occurred.

### D. FALSE AND MISLEADING STATEMENTS REGARDING THE HEDGING PROGRAM

139. During the Class Period, Chesapeake disclosed that it engaged in hedging activities and discussed the concomitant risks posed to the Company from such activities, but did not disclose that McClendon was also engaged in hedging oil and gas, nor the risks to the Company posed by McClendon's activities.

140. In the Company's February 2012 10-K, the Company disclosed:

> Our results of operations and operating cash flows are impacted by changes in market prices for oil and natural gas. To mitigate a portion of the exposure to adverse market changes, we have entered into various derivative instruments. Executive management is involved in all risk management activities and the Board of Directors reviews the Company's hedging program at its quarterly board meetings. . . . Hedging allows us to predict with greater certainty the effective prices we will receive for our hedged production.
>
> * * *
>
> We adjust our derivative positions in response to changes in prices and market conditions as part of an ongoing dynamic process.

141. The Company made substantially similar disclosures about its hedging activities in its other 10-Ks filed during the Class Period.

142. Additionally, in the "Risk Factors" section of its February 2012 10-K, the Company stated: "Our hedging activities may reduce the realized prices received for our natural gas and oil sales, require us to provide collateral for hedging liabilities and involve risk that our counterparties may be unable to satisfy their obligations to us." The Company added:

> Derivative transactions involve the risk that counterparties, which are generally financial institutions, may be unable to satisfy their obligations to us. Although the counterparties to our multi-counterparty secured hedging facility are required to secure their hedging obligations to us under certain scenarios, if any of our counterparties were to default on its obligations to us under the hedging contracts or seek bankruptcy protection, it could have an adverse effect on our ability to fund our planned activities and could result in a larger percentage of our future production being subject to commodity price changes. The risk of counterparty default is heightened in a poor economic environment.

143. McClendon affirmatively stated that he was not involved in any private hedging activities. As reported by *Reuters* (in a May 2, 2012 article), when McClendon was asked whether he traded for himself in energy markets, McClendon stated: "No, no, no. I am part of Chesapeake's hedging committee."

144. These disclosures were all false and misleading because they did not reveal that McClendon had been, and still is operating (or at least is permitted to operate) his own hedging business and/or making his own personal trades in the same commodities (oil and gas) that the Company was hedging. At the time these disclosures were made, the Defendants knew, or were extremely reckless in not

knowing, that McClendon had previously engaged in his own hedging business and was still hedging, or at least permitted to do so.

145. Similarly, these disclosures were false and misleading because the Company's own derivative contracts had been impacted and thereby "adjusted" as a result of McClendon's own personal trading in the same derivatives traded by the Company.

146. Moreover, the Company's discussion of the various risks by the Company's hedging and derivatives trading was false and misleading because there was no disclosure of the risks McClendon's trading presented to the Company, including the risks that McClendon could direct the Company's derivative positions in a manner that would serve to benefit McClendon rather than the Company, or that McClendon could actually bet against the Company's interests.

147. Likewise, the discussion of the possible ramifications from a default by the Company's hedging counterparties was materially false due to the failure to discuss the possible ramifications of the default by McClendon's own hedging counterparties. As Defendants knew, or were extremely reckless in not knowing, such a default could force McClendon to liquidate his Chesapeake stockholdings, potentially causing a decline in the Company's stock price, and/or force McClendon to liquidate his well interests, thereby placing the Company's assets in the hands of third parties whose interests are different and diverge from those of the Company.

## E. FALSE AND MISLEADING STATEMENTS REGARDING THE COMPANY'S BUSINESS STRATEGY

148. Throughout the Class Period, Chesapeake has represented that its business strategy is to greatly expand its oil and gas program through the acquisition of land and drilling rights and the drilling of new wells. What Chesapeake failed to disclose was that this business strategy was designed to benefit McClendon rather than serve the best interests of the Company.

149. In the Company's February 2012 10-K, the Company stated:

> Business Strategy
>
> Since our inception in 1989, Chesapeake's primary goal has been to create value for investors by building and developing one of the largest onshore natural gas and liquids-rich resource bases in the U.S. Key elements of this business strategy are further explained below.
>
> Growth through the Drillbits. We believe that our most distinctive characteristic is our commitment and ability to grow production and reserves organically through the drillbit in areas with large unconventional accumulations of natural gas, oil and NGLs. We are currently utilizing 161 operated drilling rigs and 100 non-operated drilling rigs to conduct the most active drilling program in the U.S. We are active in most of the nation's major unconventional plays, where we drill more horizontal wells than any other company in the industry. For many years, we have been actively investing large amounts of capital in leasehold, three-dimensional (3-D) seismic information and human resources to take full advantage of our capacity to grow through the drillbit. We are one of the few large-cap independent natural gas and oil companies that have been able to consistently increase production, which we have successfully achieved for 22 consecutive years. We believe the key elements of the success and scale of our drilling programs have been our recognition earlier than most of our competitors that advanced horizontal drilling and completion techniques would enable development of previously uneconomic natural gas and liquid-rich reservoirs and that, as a consequence, various unconventional formations could be recognized and developed as potentially prolific reservoirs. In response to our early recognition of these trends, we have proactively hired thousands of new employees and have built what we

believe is the largest combined inventory of onshore leasehold and 3-D seismic in the U.S. These are the building blocks of our successful large scale drilling program and the foundation of value creation for our company.

Control Substantial Land and Drilling Location Inventories. After we identified the trends discussed above, we initiated a plan to build and maintain the largest inventory of onshore drilling opportunities in the U.S. Recognizing that better horizontal drilling and completion technologies, when applied to various new unconventional reservoirs, would likely create a unique opportunity to capture decades worth of drilling opportunities, we embarked on an aggressive lease acquisition program, which we have referred to as the "gas shale land grab" of 2006 through 2008 and the "unconventional oil land grab" of 2009 through 2011. We believed that the winner of these land grabs would enjoy competitive advantages for decades to come as other companies would be locked out of the best new unconventional resource plays in the U.S. We believe that we have executed our land acquisition strategy with particular distinction. At December 31, 2011, we held approximately 15.3 million net acres of onshore leasehold in the U.S. and have identified approximately 39,200 drilling opportunities on this leasehold.

150. The Company made substantially similar disclosures in its March 2010 10-K and March 2011 10-K.

151. As the Company reported in its February 2012 10-K, the Company has grown significantly as a result of its business strategy, stating:

We are the second-largest producer of natural gas, a top 15 producer of liquids and the most active driller of new wells in the U.S. We own interests in approximately 45,700 producing natural gas and oil wells that are currently producing approximately 3.5 bcfe per day, net to our interest . . . . Since 2000, Chesapeake has built the largest combined inventories of onshore leasehold (15.3 million net acres) and 3-D seismic (30.8 million acres) in the U.S. We have accumulated the largest inventory of U.S. natural gas shale play leasehold (2.2 million net acres) and own a leading position in 11 of what we believe are the top 15 unconventional liquids-rich plays in the U.S. We are currently using 161 operated drilling rigs to further develop our inventory of approximately 39,200 net drillsites. The company is targeting to invest approximately $1.4 billion in net undeveloped leasehold expenditures in 2012, of which approximately 90% will be in

> liquids-rich plays and 100% will be in plays where the company is already active. This compares to net undeveloped leasehold expenditures of approximately $3.5 billion and $5.8 billion in 2011 and 2010, respectively.

152. The Company identified the "key elements" of its business strategy as the following:

> _growing production and proved reserves through the drillbit;
> _controlling substantial land and drilling location inventories and building operating focus and scale;
> _developing proprietary technological advantages;
> _focusing on achieving low costs through our focused activities, vertical integration and increasing scale;
> _mitigating natural gas and oil price risk through our hedging program;
> _entering into value-creating joint ventures;
> _improving our balance sheet through reduction of debt;
> _transforming the U.S. transportation fuels market and increasing demand for U.S. natural gas; and
> _maintaining an entrepreneurial culture.

153. The Company made similar disclosures in its prior 10-K filings during the Class Period.

154. In a May 5, 2010 earnings conference call, McClendon attempted to explain why Chesapeake continues to commit resources to drilling despite the risks. McClendon stated:

> Well, it's completely dependent upon gas prices, and to a lesser extent oil prices. I mean, right now, as I have stated on numerous occasions, at least half, and probably two–thirds or three-quarters of our gas drilling is what I would call involuntary. It's being incentivized by something other than the gas price. It might be the realization of a carry in the Eagle Ford – sorry, in the Marcellus or in the Barnett. It might be the need to hold acreage in the Haynesville, for example, or could be a combination of those 2 things. And I think that's in large part true across the industry, that there's an enormous amount of drilling today that is economic. It's just economic for reasons other than what current gas prices are.

155. On various investor calls, the Company stressed that its business would continue to expand by acquiring land and drilling more wells. In the Company's February 22, 2012 earnings call, Dominic Dell'Osso stated that the Company had decided to "stay the course" in "executing on two of [Chesapeake's] primary goals in 2012: increasing oil and liquids production and decreasing [the Company's] financial leverage."

156. The Company's disclosures of its business strategy, McClendon's explanation for the reasons why the Company engaged in gas drilling, Dell'Osso's articulation of the Company's goal to increase production, and the Company's statements about the number of its gas and oil wells and inventory, were all false and misleading, as there was no disclosure that a key element of the Company's business strategy was to expand its exploration and drilling program in order to transfer more Company assets to McClendon, and the reason the Company owned so much land and so many wells was to increase the size of McClendon's stake in Company wells. As Defendants knew, or were extremely reckless in not knowing, the disclosures were false and misleading because they failed to disclose that the FWPP program incentivized McClendon to over-extend the Company's exploration and drilling activities, and that the Company's huge growth (at considerable expense) was designed, at least in part, to benefit McClendon personally rather than advance the best interests of Chesapeake.

## F. FALSE AND MISLEADING STATEMENTS REGARDING CHESAPEAKE'S INDEBTEDNESS

157. In its public filings throughout the Class Period, the Company disclosed its level of indebtedness. For example, in the Company's March 2010 10-K, the Company stated:

> As of December 31, 2009, we had long-term indebtedness of approximately $12.3 billion, and our net indebtedness represented 49% of our total book capitalization. We had $1.936 billion and $1.250 billion of outstanding borrowings drawn under our revolving bank credit facilities at December 31, 2009 and February 26, 2010, respectively.

158. In the March 2011 10-K, the Company stated that:

> As of December 31, 2010, we had long-term indebtedness of approximately $12.6 billion, and our net indebtedness represented 45% of our total book capitalization, which we define as the sum of total Chesapeake stockholders' equity and total current and long-term debt less cash. We had $3.706 billion of outstanding borrowings drawn under our revolving bank credit facilities at December 31, 2010.

159. In the February 2012 10-K, the Company stated:

> As of December 31, 2011, we had long-term indebtedness of approximately $10.626 billion and unrestricted cash of $351 million, and our net indebtedness represented 38% of our total book capitalization, which we define as the sum of total Chesapeake stockholders' equity and total current and long-term debt less unrestricted cash. We had $1.749 billion of outstanding borrowings drawn under our revolving bank credit facilities at December 31, 2011.

160. In addition, each of these 10-Ks stated that:

> General economic conditions, natural gas and oil prices and financial, business and other factors affect our operations and our future performance. Many of these factors are beyond our control.

161. The February 2012 10-K also discussed various "Risk Factors," including the following:

> Our level of indebtedness may limit our financial flexibility [and] [t]he decline in general economic, business and industry conditions since 2008 and the current economic uncertainty may have a material adverse effect on our results of operations, liquidity and financial condition….

The Company made similar disclosures in its prior 10-Ks filed during the Class Period.

162. The Company's statements about indebtedness were false and misleading because, as Defendants knew, or were extremely reckless in not knowing, the indebtedness figures did not include Chesapeake's liabilities under its VPP agreements. As recently reported, these Chesapeake liabilities are approximately $1.4 billion.

163. The Company's disclosures about its long-term debt were also false and misleading because there was no disclosure that McClendon's personal interests and over-expansion of the Company's exploration and drilling program to benefit McClendon played a significant role in the Company's indebtedness. Similarly, the statements describing the factors that "affect" Company operations and future performance, or could cause a "material adverse effect" on Chesapeake's "results of operations, liquidity and financial condition" were all false and misleading because the Company did not disclose that McClendon's direction of the Company's business in order to increase his personal stake in Company assets had increased the Company's debt and liabilities and affected its operations and future performance.

164. The Company's statements that its "level of indebtedness may limit [its] financial flexibility" were false and misleading, because the Company's undisclosed liabilities on its VPPs did, once disclosed, cause a decline in the Company's credit rating, adversely affecting its ability to obtain financing.

165. The Company's disclosures about its VPP deals were false and misleading for the same reasons.

166. In the March 2011 10-K, Chesapeake stated:

> We completed three volumetric production payments (VPPs) in 2010, bringing the total of such transactions to eight. The company's sixth VPP was completed in February 2010 for proceeds of approximately $180 million, or $3.95 per mcfe. In June 2010, we completed our seventh VPP for proceeds of approximately $335 million, or $8.73 per mcfe. In September 2010, we completed our eighth VPP for proceeds of approximately $1.15 billion, or $2.93 per mcfe. The cash proceeds from these transactions are reflected as a reduction of natural gas and oil properties with no gain or loss recognized.

167. In the February 2012 10-K, the Company listed the VPP transactions it had completed since 2007, as follows:

We have completed the following volumetric production payment (VPP) transactions since 2007:

| Date of VPP | Region | Proceeds ($ in millions) | Proved Reserves (bcfe) (at time of sale) | $ / mcfe | Original Term (years) |
|---|---|---|---|---|---|
| May 2011 | Mid-Continent | $ 853 | 177 | $ 4.82 | 10 |
| September 2010 | Barnett Shale | 1,150 | 390 | $ 2.93 | 5 |
| June 2010 | Permian Basin | 335 | 38 | $ 8.73 | 10 |
| February 2010 | East Texas and the Texas Gulf Coast | 180 | 46 | $ 3.95 | 10 |
| August 2009 | South Texas | 370 | 68 | $ 5.46 | 7.5 |
| December 2008 | Anadarko and Arkoma Basins | 412 | 98 | $ 4.19 | 8 |
| August 2008 | Anadarko Basin | 600 | 93 | $ 6.38 | 11 |
| May 2008 | Texas, Oklahoma and Kansas | 622 | 94 | $ 6.53 | 11 |
| December 2007 | Kentucky and West Virginia | 1,100 | 208 | $ 5.29 | 15 |
| | | $ 5,622 | 1,212 | $ 4.64 | |

For accounting purposes, cash proceeds from these transactions were reflected as a reduction of natural gas and oil properties with no gain or loss recognized, and our proved reserves were reduced

168. These disclosures were false and misleading because there was no disclosure of the Company's liabilities associated with the VPPs.

## VII. CHESAPEAKE'S FINANCIAL STATEMENTS FAIL TO COMPLY WITH SEC REGULATIONS

169. During the Class Period, Chesapeake's reporting of its indebtedness was in violation of SEC Regulations.

170. As discussed above, in disclosing its indebtedness, the Company failed to include its operating cost liabilities associated with various VPPs entered into by the Company. This Chesapeake liability totals approximately $1.4 billion.

171. The failure to disclose this liability violated Item 303 of SEC Regulation SK.

172. Item 303 requires the disclosure of "information that the registrant believes to be necessary to an understanding of its financial condition, changes in

financial condition and results of operations," including "commitments … that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way." 17 C.F.R. 229.303(a)(1).

173. In addition, off-balance-sheet arrangements must be disclosed that "have or are reasonably likely to have a current or future effect on the registrant's financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources" if such would be material to investors. 17 C.F.R. 229.303(a)(4). The registrant is required to disclose all information necessary for investors to have an understanding of the off-balance-sheet arrangement, including the amounts of expenses arising from them. Here, the Company's concealment of its huge liability from the VPPs, representing 10% of the Company's total long-term debt, is material and renders its disclosures about its long-term debt false and misleading.

## VIII. FIDUCIARIES HAD ACTUAL KNOWLEDGE OF THE NON-DISCLOSURES

174. While actual knowledge is not required to established material non-disclosure or concealment under ERISA, Defendants had actual knowledge of the activities and transactions that caused conflicts of interest, created undisclosed material risks and misled investors and Plan Participants about the financial conditions of the Company.

**1. McClendon**

175. As the driving force behind the transactions that created conflicts of interest between himself and the Company, McClendon had actual knowledge of the fraud alleged in this Complaint. Specifically due to McClendon's active participation he knew about the conflicts and potential risks which resulted from his investments made through the FWPP, his huge borrowings on his well interests, his Heritage fund, his involvement in hedging activities, his use of the Company's bankers, lawyers, and employees for his personal business dealings, his expansion of Chesapeake's exploration and drilling program to advance his personal interests, the numerous VPPs entered into by the Company and the resulting liabilities to the Company from these deals, and the risks and conflict of interests issues surrounding his actions.

**2. Board and Senior Executives**

176. The Board and senior executives likewise knew about the key aspects of the fraud. The FWPP has existed, in some form, since 1993, and the Board has approved revisions to McClendon's employment agreement pursuant to which he participated in the FWPP.

177. Additionally, the Board knew that the FWPP allows McClendon to engage in personal financial transactions by utilizing his well interests as collateral. In fact, the FWPP agreement clearly states:

> This Founder Well Participation Program does not limit the sale, mortgage, gift or assignment by a Founder of an interest in a Program Well once the

interest has been assigned of record by the Company Entities.

178. Chesapeake's Compensation Committee's Charter requires that its members "[r]eview compliance with and make recommendations to the Board regarding the participation of the CEO in accordance with the Founder Well Participation Program." As members of the Company's Compensation Committee, Defendants Eisbrenner, Keating, Maxwell, Rowland, and Whittemore were tasked with ensuring that McClendon's use of the FWPP was appropriate.

179. In addition, the 2009 and 2010 Proxy Statements reveal, in a section titled "All Other Compensation Table" that McClendon could use his well interests to secure financing. Those Proxy Statements provide amounts that represent:

> Mr. McClendon's utilization of certain of the Company's reservoir engineering staff to provide reserve data and analysis related to personal financing transactions entered into by Mr. McClendon with respect to certain of his interests in the Company's wells acquired under the Founder Well Participation Program.

Those amounts are $131,226 (as reported in the 2009 Proxy Statement for 2008) and $62,303 (as reported in the 2010 Proxy Statement for 2009).

180. The Company made a similar disclosure in its 2011 Proxy Statement, although Chesapeake also noted that Mr. McClendon reimbursed the Company for the estimated $375,000 cost of using Chesapeake personnel for his personal financing transactions.

181. Thus, the Compensation Committee in particular, and the full Board, knew that McClendon had engaged in "personal financing transactions" using

"certain of his interests in the Company's wells," which transactions included the pledging of McClendon's well interests to obtain over a billion dollars in loans, and the use of those well interests in VPPs. Defendants likewise knew or recklessly disregarded the fact that the FWPP does not actually align McClendon's interests with the interests of the Company and that the sales of McClendon's interests were not in conjunction with the Company's sales.

182. The Company's senior executives also knew about McClendon's and the Company's VPPs. As part of a VPP transaction, both the Company and McClendon pledged to deliver to banks set amounts of gas or oil (from their respective well interests) for a certain period of time in exchange for large amounts of capital. The Senior Executive Defendants had to know about the VPPs, as the oil and gas was actually delivered to third parties.

183. Further, Chesapeake's Audit Committee Charter states that the Audit Committee's job is to oversee "(a) the integrity of the Corporation's financial statements, (b) the Corporation's compliance with legal and regulatory requirements, (c) the independent auditor's qualifications and independence, and (d) the performance of the Corporation's internal auditor and independent auditor." In order to accomplish these duties, the Audit Committee is required to maintain open lines of communication between the directors, auditors, and the financial management of the Company. Specifically, Audit Committee members are tasked, *inter alia*, to:

> Review and discuss with management and the independent auditor (a) significant financial reporting issues and judgments made in connection with the preparation of the Corporation's financial statements, including the effects of alternative GAAP methods on the financial statements, (b) major issues regarding accounting principles and financial statement presentations, including any significant changes in the Corporation's selection or application of accounting principles, (c) material issues on which audit team consulted the independent auditor's national office; (d) accounting adjustments that were noted or proposed by the independent auditors but were "passed" (as immaterial or otherwise); and (d) any management or internal control letter issued, or proposed to be issued, by the independent auditor to the Corporation.
>
> * * *
>
> Discuss with management and the independent auditor any major issues as to the adequacy of the Corporation's internal controls, any special audit steps adopted in light of material control deficiencies and the adequacy of disclosures about changes in internal control over financial reporting. Review and discuss with management, the internal auditor and the independent auditor management's annual internal control report and the independent auditor's attestation of the report prior to the filing of the Corporation's Form 10-K.
>
> Review and discuss with management and the independent auditor the annual audited financial statements, including the Corporation's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" and recommend to the Board whether the audited financial statements should be included in the Corporation's Form 10-K. Discuss with management and the independent auditor the effect of regulatory and accounting initiatives on the Corporation's financial statements.

184. In short, as members of the Company's Audit Committee, Defendants Davidson, Hargis, and Miller had access to all of Chesapeake's financial information, and were aware of the Company's financial condition well in advance of any public filing. Therefore, Defendants Davidson, Hargis, and Miller knew or recklessly disregarded the fact that the disclosures made in Chesapeake's public filings were false and/or misleading.

185. The Chesapeake Board was aware of McClendon's Heritage hedge fund and personal hedging activities, as the Board addressed these matters in their revisions to McClendon's employment agreements. As explained above, McClendon's employment contract was revised in 2009 to ban McClendon from providing input or advice to any "passive investment entity" (such as a hedge fund) in which he invests. Moreover, unlike the contracts for other Company executives, McClendon's contract permits him to become a general partner or member of a partnership or corporation, and allows him to trade in options and futures on commodities such as oil and gas. Thus, the Board specifically addressed McClendon's ability and right to engage in hedging activities, establishing a strong inference of scienter that the Board knew about McClendon's past hedging activities and his present, or right to presently engage, in hedging transactions.

186. The Company's General Counsel, Henry J. Hood, has admitted that the Board knew about McClendon's personal dealings. In Chesapeake's April 18, 2012 press release (attached to a Form 8-K filed with the SEC on April 18, 2012), Hood stated:

> The Board of Directors is fully aware of the existence of Mr. McClendon's financing transactions and the fact that these occur is disclosed in the proxy. Additionally, the total amount of his cost obligations and revenue attributable to the FWPP for each year are detailed in the proxy. The FWPP fully aligns the interests of Mr. McClendon with the company and the Board of Directors supports this program as does the majority of its shareholders.

187. In an attempt to clarify Hood's statements, the Company released an April 26, 2012 press release (attached to a Form 8-K filed with the SEC on April 26, 2012). In the press release, Hood explained:

> The statement that "the Board of Directors is fully aware of the existence of Mr. McClendon's financing transactions" was intended to convey the fact that the Board of Directors is generally aware the Mr. McClendon used interests acquired through his participation in the FWPP as security in personal financing transactions. The Board of Directors did not review, approve or have knowledge of the specific transactions engaged in by Mr. McClendon or the terms of those transactions.

188. This clarification did nothing to change the fact that the Board was at least generally aware of McClendon's personal financing dealings such as the use of his well interests to obtain personal loans, his hedging activities, and his own VPP transactions.

## IX. McCLENDON'S EXCESSIVE AND OBSCENE COMPENSATION WASTED CORPORATE ASSETS

### A. McClendon's Excessive 2008 Compensation Package

189. During 2004 through 2007, McClendon received total compensation of salary, bonus and stock awards between $10 to $19 million annually. Under the FWPP, he also received a participation percentage up to 2.5% of any well drilled by Chesapeake where the Company's working interest was greater than 12.5%. As described in a *Star-Telegram* article dated April 25, 2009, "[g]iving McClendon a share of gas revenue is akin to giving Steve Jobs a share of IPod sales or giving Michael Dell a percentage of computer shipments." According to Chesapeake's April 20, 2009 Proxy Statement, McClendon owned producing gas

reserves with an estimated present value of approximately $191 million as of December 31, 2008.

190. Additionally, McClendon was at most relevant times the largest shareholder of Chesapeake, who reportedly held 33.4 million shares in July 2008. In his 2008 Employment Agreement, McClendon was required to hold 500% of his annual base salary and bonus compensation in Chesapeake stock. This provision sought to align McClendon's interests with those of the Company.

191. McClendon also publicly touted on occasions that he never sold any of his Chesapeake stock. His statements signaled to the public that McClendon was confident in the Company and its future success. However, McClendon failed to disclose the truth about his stock which was that it was collateralized by credit arrangements with RBC Dain Rauscher, Inc., Lehman Brothers, Wachovia Securities, Morgan Stanley & Co., and Goldman Sachs & Co. According to the 2008 Proxy Statement dated April 14, 2008, McClendon had pledged 99% of his shares of Company stock.

192. This leveraging was reckless and in disregard of the best interest of the Company as well as a violation of his employment agreement. McClendon's leveraging led to a sell-off during Fall 2008 when Chesapeake's stock price fell substantially. In October 2008, McClendon was hit with margin calls and forced to sell $569 million of Chesapeake stock, or 33.5 million shares, which represented 94% of his stock ownership.

193. In a January 7, 2009 8-K filed with the SEC, Chesapeake disclosed that McClendon's forced liquidation of stock holdings caused his stock ownership to fall below the required amount.

194. Chesapeake also had a dismal year in 2008. Its earnings per share fell to $1.16 as compared to $2.69 in 2007, and the Company's EPS growth rate for year-end 2008 was -56.4%, significantly worse than the preceding two years. Chesapeake's income had fallen in 2008 to $723 million down from $1.45 billion in 2007 and $2 billion in 2006. Bloomberg.com dubbed Chesapeake the worst performing oil and gas producer in the S&P 500 for the year 2008. The stock price fell from $74 per share in July 2008 to less than $10 per share in December 2008.

195. Despite this performance, and his breach of employment agreement, Chesapeake awarded McClendon with a $124 million compensation package and new five-year employment contract that made him one of the highest, if not the highest, paid CEO in the country.

196. McClendon's existing 2008 Employment Agreement had been executed only one year earlier, and had another four years until December 31, 2012. The 2008 Employment Agreement provided for, inter alia: (i) an annual base salary of at least $975,000; (ii) bonuses at the discretion of the Compensation Committee; (iii) eligibility for equity awards under the Company's stock compensation plans; and (iv) unlimited use of the Company aircraft.

197. On January 7, 2009, Chesapeake announced a new employment agreement for McClendon to last until December 31, 2013 (the "2009 Employment Agreement"). The new agreement maintained McClendon's $975,000 in salary, but also provided for total 2008 "bonus" compensation of $76,950,000. This nearly $77 million bonus consisted of a semi-annual cash bonus of $1.95 million and a one-time $75 million "well cost incentive award." This $75 million was structured as a net credit against past and future billings from the Company for well costs owned by McClendon under FWPP. The incentive award was set forth as an after-tax credit of $43.5 million toward McClendon's costs in the FWPP (which may be paid in cash to McClendon at year-end 2014 if not fully utilized).

198. Further, the 2009 Employment Agreement provided for payment to McClendon of $12.1 million from Chesapeake based on the sale of his personal "extensive collection of historical maps of the American Southwest" to Chesapeake in December 2008 (which was approved by the Board).

199. Rather than penalize McClendon for violating the stock ownership provision in his 2008 Employment Agreement, Chesapeake reduced the percentage to 200% for 2009 and excluded the $75 million "incentive award" from the calculation. In a Form 8-K filed January 9, 2009, the Company stated that it was providing McClendon with one year of additional time to return to compliance with the requirement of the 2008 Employment Agreement.

200. The total compensation package awarded to McClendon was $124.6 million, consisting of (i) $975,000 in base salary; (ii) $76,950,000 in bonus, $75 million of which was in the form of the "well incentive award"; (iii) $32,737,7000 in stock option grants; (iv) $12,395,316 in stock option grants that had not yet vested; (v) $12.1 million from the sale of McClendon's personal maps to Chesapeake in December 2008; and (vi) $1,800,817 in other compensation. The Board also relaxed his stock ownership requirement.

201. The Board's approval of this excessive and obscene compensation package to McClendon was a breach of fiduciary duty, and utter waste of corporate assets. This 2008 compensation package was more than six times McClendon's 2007 compensation of $19 million, and bore no relation to Chesapeake's terrible performance in 2008. Rather, the Board sought to bail out McClendon from his self-imposed financial troubles.

202. The $75 million "well incentive bonus" also helped secure McClendon's participation in the FWPP and his ability to receive future returns from the program at no cost to himself. This was detrimental to the Company and violated the purpose of the FWPP which was to align McClendon's interests with those of the Company. The $75 million "bonus" would also be egregious if it covered the net after-tax $43.5 million in past unpaid costs of his participation in the FWPP. McClendon was supposed to be invoiced on a monthly basis by the Company, which was a term of the shareholder-approved program. Chesapeake's

waiver then subsidization of these costs during times where it lacked liquidity would be unjustifiable.

203. The $12.1 million paid by Chesapeake for McClendon's personal map collection was also unreasonable. The Audit Committed relied solely upon McClendon's personal art agent to value the maps and did not seek an independent appraisal. The map collection also remained on display at headquarters for years, and likely would have remained there without purchase.

204. McClendon's 2008 compensation was excessive compared to other executives at Chesapeake, as well as other CEOs at other competitors whose companies performed better than Chesapeake during 2008. According to *CNNMoney*, McClendon's $124 million made him the highest paid executive in the country.

205. In a May 4, 2009 article by Graef Crystal entitled "A $75 Million Consolation Prize?," a compensation expert analyzed McClendon's 2008 compensation. Crystal concluded that McClendon "did nothing to justify the lavish reward" he received. In addition, he found that McClendon also racked up $648,000 in personal air travel, $527,000 in accounting costs paid by the Company, $177,150 in food and beverage catering services to a restaurant in which McClendon had a 49.7 percent interest.

206. The Board violated its duties in granting McClendon his 2008 compensation, the $75 million "well incentive award" and 2009 Employment

Agreement. It failed to follow due and proper deliberation and procedure, and failed to act in the best interests of Chesapeake and the Plan Participants.

**B. McClendon's Continuing Excessive Compensation**

207. Since 2008, McClendon has continued to receive excessive compensation from Chesapeake, that is disproportionate and out of step with the Company's performance. Chesapeake has suffered from meager revenues and crushing expenses, while McClendon has been handsomely paid.

208. Since 2008, Chesapeake has raised approximately $30 billion by selling assets, joint ventures by selling stakes in Chesapeake-owned and operated wells, and VVPs. In 2011, Chesapeake raised twice as much cash as it did in 2010.

209. Chesapeake's performance is also down. In first quarter 2012, the Company reported a net loss of $71 million including all write-downs and extraordinary items. Chesapeake's performance has also paled in comparison to its peers.

210. Chesapeake's EBITDA (earnings before interest, taxes, depreciation and amortization) grew only 3% in 2011, as compared to an average of 31.23% among its peers[1]. Chesapeake's income shrank by 1.8% last year while its peers saw their income grow by an average of 98.23%. Chesapeake's 2011 debt-to-

[1] Its peers are Anadarko, Apache Corp., Conoco Phillips, Devon, EOG, Hess Corporation, Marathon Oil Corporation, and Occidental Petroleum Corporation, the same companies used by Chesapeake for purposes of addressing executive compensation.

equity ratio was 60.5% compared to an average of 39.25% among its competitors. The Company's total debt-to-EBITDA was almost two and a half times the average of its peers. At the end of December 2011, Chesapeake reported a debt load of $10.3 billion, or $.55 per thousand cubic feet of gas reserves, as compared to Exxon which had $4.37 billion in debt, $.29 per thousand cubic feet of reserves.

211. Despite its poor performance, McClendon continued to be overpaid. In 2001, he received total compensation of approximately $18 million, in 2010, he received total compensation of approximately $21 million and in 2009, he received total compensation of approximately $17 million. He also received enormous benefits under the FWPP.

212. Defendants' payment to McClendon of excessive compensation amounted to corporate waste and a breach of fiduciary duty. Plaintiff and Class Members have been harmed and damages in numerous ways by Chesapeake's payment of excessive compensation to McClendon. Chesapeake lost assets, revenues and income that could otherwise have been paid to Plan Participants. As a result, Chesapeake's allocation to the Plans and contributions to the Participants were less than they otherwise may have been, and Plan Participants lacked material information to make informed decisions about investing in Chesapeake stock.

## X. CLASS ACTION ALLEGATIONS

213. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure 23(a), (b)(l) and/or (b)(3) on behalf of herself and the following class of persons similarly situated (the "Class"):

> All individuals, excluding Defendants, who participated Chesapeake's Savings and Incentive Stock Bonus Plan, including any subsumed 401(k), profit sharing plans, and employee stock option plan, at any time, on or **after July 31, 2008** through the present date (the "Class Period") including those who purchased, received and/or held Chesapeake stock through the Plan.

214. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

215. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Chesapeake common stick was actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery. Plaintiff believes that there are at least 10,000 members in the proposed Class consisting of current and former employees according to the Form 5500 filed for the Plan as of December 31, 2010. Record owners and other members of the Class may be identified from records maintained by Chesapeake and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

216. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law complained of herein.

217. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action and securities litigation.

218. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. Whether Defendants each owed a fiduciary duty to the Plans, Plaintiff and members of the Class;

b. Whether Defendants breached their fiduciary duties to the Plans, Plaintiff and members of the Class by failing to act prudently and solely in the interests of the Plans and the Plans' participants and beneficiaries;

c. Whether Defendants failed to disclose to Participants in the Plan material information concerning Chesapeake and its common stock, information which was necessary to allow Participants to make informed investment decisions and judgments concerning their retirement savings;

d. Whether the Defendants violated ERISA; and

e. To what extent the members of the Class have sustained damages and the proper measure of damages.

219. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff and the other members of the Class each sustained damages and/or were negatively affected by Defendants' wrongful conduct in violation of federal law as complained of herein.

220. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel highly competent and experienced in class action and complex litigation, including actions involving ERISA employee pension plans. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

221. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impeded their ability to protect their interests.

222. Class action status is also warranted under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standard of conduct for Defendants and/or (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory or other appropriate equitable relief with respect to the Class as a whole.

## XI. FIDUCIARY DUTIES UNDER ERISA

**The Statutory Requirements:**

223. ERISA imposes strict fiduciary duties upon plan fiduciaries. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), states, in relevant part, that:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and – (A) for the exclusive purpose of (i) providing benefit to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan; (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and Title IV.

**The Duty of Loyalty:**

224. ERISA imposes on a plan fiduciary the duty of loyalty - that is, the duty to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of . .. providing benefits to participants and their beneficiaries .... ". ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

225. The duty of loyalty entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

**The Duty of Prudence:**

226. Section 404(a)(l)(B) also imposes on a plan fiduciary the duty of prudence - that is, the duty "to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims ... ".

**The Duty to Inform:**

227. The duties of loyalty and prudence include the duty to disclose and inform. These duties entail: (i) a negative duty not to misinform; (ii) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (iii) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries. These duties to disclose and inform recognize the disparity that may exist, and in this case did exist, between the training and knowledge of the fiduciaries, on the one hand, and the Participants, on the other.

228. Pursuant to the duty to inform, fiduciaries of the Plans were required under ERISA to furnish certain information to Participants. For example, ERISA § 101, 29 U.S.C. § 1021, requires that fiduciaries furnish a Summary Plan Description ("SPD") to Participants. ERISA § 102, 29 U.S.C. § 1022, provides that the SPD must apprise Participants of their rights under the Plan. The SPD and all information contained or incorporated therein constitutes a representation in a

fiduciary capacity upon which Participants were entitled to rely in determining the identity and responsibilities of fiduciaries under the Plans and in making decisions concerning their benefits and investment and management of assets allocated to their accounts:

> The format of the summary plan description must not have the effect of misleading, misinforming or failing to inform participants and beneficiaries. Any description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations. The description or summary of restrictive plan provisions need not be disclosed in the summary plan description in close conjunction with the description or summary of benefits, provided that adjacent to the benefit description the page on which the restrictions are described is noted. 29.F.R. § 2520.102-2(b).

229. Pursuant to Department of Labor Regulations under ERISA §404(c), 29 C.F.R. 2550.404c-1, which relate to plans that give Participants discretion to select investments, a plan fiduciary has the duty not to conceal "material non-public facts regarding the investment from the participant or beneficiary."

**The Duty to Investigate and Monitor Investment Alternatives:**

230. With respect to a pension plan such as the Plans, the duties of loyalty and prudence also entail a duty to conduct an independent investigation into, and continually to monitor, the merits of the investment alternatives in the Plans, including employer securities, to ensure that each investment is a suitable option for the Plans.

**The Duty to Monitor Appointed Fiduciaries:**

231. Fiduciaries who have the responsibility for appointing other fiduciaries have the further duty to monitor the fiduciaries thus appointed. The duty to monitor entails both giving information to and reviewing the actions of the appointed fiduciaries. In the Plans, the monitoring fiduciaries must therefore ensure that the appointed fiduciaries:

a. possess the needed credentials and experience, or use qualified advisors and service providers to fulfill their duties;
b. are knowledgeable about the operations of the Plans, the goals of the Plans, and the behavior of Plans' Participants;
c. are provided with adequate financial resources to do their jobs;
d. have adequate information to do their jobs of overseeing the Plans' investments with respect to company stock;
e. have access to outside, impartial advisors when needed;
f. maintain adequate records of the information on which they base their decisions and analysis with respect to Plans' investment options; and
g. report regularly to the monitoring fiduciaries. The monitoring fiduciaries must then review, understand, and approve the conduct of the hands-on fiduciaries.

**The Duty Sometimes to Disregard Plan Documents:**

232. A fiduciary may not avoid his fiduciary responsibilities by relying solely on the language of the plan documents. While the basic structure of a plan may be specified, within limits, by the plan sponsor, the fiduciary may not blindly follow the plan document if to do so leads to an imprudent result. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

**Co-Fiduciary Liability:**

233. A fiduciary is liable not only for fiduciary breaches within the sphere of his own responsibility, but also as a co-fiduciary in certain circumstances. ERISA § 405(a), 29 U.S.C. § 1105(a), states, in relevant part, that:

> In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances: (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; or (2) if, by his failure to comply with section 404(a)(l) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

**Non-Fiduciary Liability:**

234. Under ERISA non-fiduciaries who knowingly participate in a fiduciary breach may themselves be liable for certain relief under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

**Chesapeake's Fiduciary Status:**

235. Instead of delegating fiduciary responsibility for the Plans to external service providers, the Company chose to internalize certain vital aspects of this fiduciary function.

236. During the Class Period, Chesapeake was also a fiduciary of the Plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because, the Company, through its officers, directors or otherwise, exercised discretionary

authority with respect to management and administration of the Plan and/or management and disposition of the Plans' assets, and is therefore a fiduciary of the Plans. The Company also exercised discretionary authority with respect to the appointment, removal, and, thus, monitoring of other fiduciaries of the Plans that it appointed, or to whom it assigned fiduciary responsibility.

237. By failing to properly discharge their fiduciary duties under ERISA, the Individual Defendants breached fiduciary duties they owed to the Plans, their participants and their beneficiaries. Such individuals were appointed by the Company to perform Plan-related fiduciary functions in the course and scope of their employment. Accordingly, the actions of such employee fiduciaries are imputed to the Company under the doctrine of *respondeat superior,* and the Company is liable for these actions.

238. In addition, Chesapeake acted as a fiduciary in connection with the dissemination of communications to the Plans' Participants. Chesapeake made direct representations to Participants relating specifically to the business and financial condition of the Company, and the merits of investing the Plan's assets in Company’s common stock, and those representations were intended to communicate to Participants information necessary for Participants to manage their retirement accounts under the Plans.

**Additional Fiduciary Aspects of Defendants' Actions/Inactions:**

239. ERISA mandates that pension plan fiduciaries have a duty of loyalty to the plan and its participants which includes the duty to speak truthfully to the

Plans and its participants when communicating with them. A fiduciary's duty of loyalty to plan participants under ERISA includes an obligation not to materially mislead, or knowingly allow others to materially mislead, plan participants and beneficiaries. "[L]ying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in section 404(a)(1) of ERISA." *Varity Corp. v. Howe,* 516 U.S. 489, 506 (1996); *see also In re Unisys Corp. Retiree Medical Benefit ERISA Litig.,* 57 F.3d 1255, 1261 (3d Cir. 1995); *Fisher v. Philadelphia Elec. Co.,* 994 F.2d 130, 133 (3d Cir. 1993).

240. Moreover, an ERISA fiduciary's duty of loyalty requires the fiduciary to correct the inaccurate or misleading information so that plan participants will not be injured. *See, e.g., In re Unisys Corp., supra,* 994 F.2d at 133 ("a plan administrator has an affirmative duty to speak when it knows that silence might be harmful."); *see also Bixler v. Central Penn. Teamsters Health & Welfare Fund,* 12 F.3d 1292, 1300 (3rd Cir. 1993); *James v. Pirelli Armstrong Tire Corp.,* 305 F.3d 439, 449 (6th Cir. 2002); *Matthews v. Chevron Corp.,* 362 F.3d 1172, 1180 (9th Cir. 2004).

241. During the Class Period, upon information and belief, the Company and certain other Defendants made direct and indirect communications with the Plan's Participants including statements regarding investments in Company stock. These communications included, but were not limited to, SEC filings, annual reports, press releases, and Plans documents (including Summary Plans Descriptions ("SPDs") and/or prospectuses regarding Plans/participant holdings of

Company stock), which included and/or reiterated these statements. Upon information and belief, at all times during the Class Period, Chesapeake's SEC filings were incorporated into and part of the SPDs, and/or a prospectus and/or any applicable SEC Form S-8 registration statements. Defendants also acted as fiduciaries to the extent of this activity.

**All of the Defendants Were Co-Fiduciaries:**

242. Each defendant is liable for the breaches of fiduciary duty of the other defendants under ERISA § 405, 29 U.S.C. § 1105.

## XII. CLAIMS FOR RELIEF UNDER ERISA

243. At all relevant times, Defendants were and acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

244. ERISA § 502(a)(2), 29 U.S.C. § 1 132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. § 1109.

245. ERISA § 409(a), 29 U.S.C. § 1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part, that any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other

equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

246. ERISA § 404(a)(l)(A) and (B), 29 U.S.C. § 1104(a)(l)(A) and (B), provides, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

247. These fiduciary duties under ERISA § 404(a)(l)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and are the "highest known to the law." *Donovan v. Bierwirth,* 680 F.2d 263,272 n. 8 (2d Cir. 1982). They entail, among other things:

a. The duty to conduct an independent and thorough investigation into, and continually to monitor, the merits of all the investment alternatives of a plan;

b. A duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor; and

c. A duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

248. ERISA § 405(a), 29 U.S.C. § 1105 (a), "Liability for breach by co-fiduciary," provides, in pertinent part, that:

> [I]n addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances: (A) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (B) if, by his failure to comply with section 404(a)(l), 29 U.S.C. §1 104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (C) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

249. Plaintiffs therefore brings this action under the authority of ERISA §502(a) for relief under ERISA § 409(a) to recover losses sustained by the Plans arising out of the breaches of fiduciary duties by the Defendants for violations under ERISA §404(a)(l) and ERISA §405(a).

**COUNT I**

**Breach of Fiduciary Duty to Provide Complete and Accurate Information ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B)**

250. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

251. The fiduciary duties of loyalty and prudence also entail a duty to provide complete and accurate information concerning the Plans' investment options, including the financial performance of Chesapeake and its material risks, to plan participants and beneficiaries. This duty under ERISA requires fiduciaries to speak truthfully to participants, not to mislead them regarding the Plan or Plan assets, and to disclose information that the Participants need in order to exercise their rights and interests under the Plan. This duty to inform participants includes an obligation to provide participants and beneficiaries of the Plans with complete and accurate information, and to refrain from providing false information or concealing material information regarding Plan or its investment options, such that Participants can make informed decisions with regard to the prudence of investing in such options made available under the Plans. This duty applies to all Plan investment options, including investment in Chesapeake stock.

252. The Defendants breached their duty to provide truthful and accurate information to Participants and beneficiaries in the Plans by failing to provide truthful, complete and accurate information regarding Chesapeake stock by (i) failing to disclose material conflicts of interest between McClendon and Chesapeake; (ii) failing to disclose material risks and non-public information associated with McClendon's activities in connection with the FWPP; (iii) failing to disclose the excessive compensation provided to McClendon; (iv) failing to disclose substantial liabilities associated with the VVPs; (v) failing to disclose McClendon's operation of a hedge fund at Chesapeake; and (v) otherwise

misleading, concealing and failing to disclose material non-public facts about Chesapeake's financial condition and McClendon's activities.

253. Upon information and belief, Defendants conveyed false and misleading material information to the investing public and to the Plaintiff and the Class, regarding the soundness of Chesapeake stock and the prudence of investing retirement savings in Chesapeake stock. Because large percentages of the Plan's assets were invested in Chesapeake stock by Participants during the Class Period, losses there from materially affected the value of Participants' retirement assets.

254. Where a breach of fiduciary duty consists of, or includes, misrepresentations and omissions material to a decision by a reasonable plan participant that results in harm to the participant, the participant is presumed as a matter of law to have relied upon such misrepresentations and omissions to his or her detriment. Here, the above described statements, acts, and omissions of the Defendants in this Complaint constituted misrepresentations and omissions that were fundamentally deceptive concerning the prudence of investments in Chesapeake stock and were material to any reasonable person's decision about whether or not to invest or maintain any part of their invested plan assets in Chesapeake stock during the Class Period. Plaintiff and the other Class members are therefore presumed to have relied to their detriment on the misleading statements, acts, and omissions of the Defendants as described herein.

255. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiff and the Plans' other participants

and beneficiaries, have suffered harm and damage to their retirement benefits and investments.

256. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

## COUNT II

### Breach of Duty to Avoid Conflicts of Interest (Breaches of Fiduciary Duties in Violation of ERISA §§ 404 and 405 by All Defendants)

257. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

258. At all relevant times, as alleged above, Defendants were fiduciaries within the Plans within meaning of ERISA § 3(21)(A), 29 U.S.C. § l002(21)(A). Consequently, they were bound by the duties of loyalty, exclusive purpose and prudence.

259. ERISA § 404(a)(1)(A), 29 U.S.C. § 1 104(a)(1)(A), imposes on Plans fiduciaries a duty of loyalty, that is, a duty to discharge his duties with respect to a Plans solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries.

260. Defendants breached their duty to avoid conflicts of interest and to promptly resolve them by, *inter alia:*

a. Failing to timely engage independent fiduciaries who could make independent judgments concerning the Plans' investments; and by otherwise placing their own and/or the Company's interests above the interests of the Participants with respect to the Plans' investment in the Company's securities;

b. Failing to take such other steps as were necessary to ensure that the interests of Plaintiff and members of the Class were loyally and prudently served;

c. Failing to protect against waste, self-dealing and conflicted transactions between McClendon and Chesapeake which harmed and damaged the Plan and the Participants through waste of corporate assets;

d. Undertaking business strategies that were designed and intended to benefit McClendon rather than the best interests of the Plan and its Participants;

e. Approving excessive compensation to McClendon which harmed and damaged the Plan and the Participants through waste of corporate assets;

f. Failing to disclose the conflicts of interest, waste and self-dealing; and

g. By otherwise placing the interests the Company and themselves above the interests of the Participants with respect to the Plans' investment in the Company.

261. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiff and the Plans' other participants and beneficiaries, have suffered harm and damage to their retirement benefits and investments.

262. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

## COUNT III

### Co-Fiduciary Liability
### Breaches of Fiduciary Duties in Violation of ERISA § 405 (Against the Individual Defendants)

263. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as fully set forth herein.

264. At all relevant times, as alleged above, Chesapeake and/or the Individual Defendants were fiduciaries, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

265. ERISA § 405(a), 29 U.S.C. § 1105, imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if (a) he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (b) he fails to comply with § 1 104(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, by enabling such other fiduciary to commit a breach; or (c) he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

266. As alleged herein, Chesapeake, through its officers and employees, engaged in practices which breached fiduciary duties and failed to provide material information to the Participants, concealed material non-public facts and provided misleading disclosures, by the conduct set forth above, and profited from such practices to the detriment of Plaintiff and members of the Class, and, thus, knowledge of such practices is imputed to these defendants as a matter of law. In addition, as alleged herein on information and belief, Chesapeake and the Defendants named in this Count participated in and/or knew about material information that was concealed from investors.

267. Despite this knowledge, the Defendants named in this Count knowingly participated in their co-fiduciaries' failures, including the duty to provide complete and accurate information concerning the Plans' investment options, including the financial performance of Chesapeake and its risks, to plan participants and beneficiaries. Instead, they allowed the harm to continue and contributed to it throughout the Class Period in violation of ERISA § 405 (a)(l)(C).

268. In further violation of ERISA § 405(a)(1)(C), the Defendants named in this Count also knew that inaccurate and incomplete information had been provided to Participants, yet, they failed to undertake any effort to remedy this breach by ensuring that accurate disclosures were made to Participants and the market as a whole. Instead, they compounded the problem by further concealing Chesapeake’s improper practices from Participants and the market as a whole.

269. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiff and the Plans' other Participants, lost a significant portion of their retirement investments.

270. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

## **CAUSATION**

271. The Plans suffered tens of millions of dollars in losses because of Defendants' breaches of fiduciary duties under ERISA to the Participants. The Participants suffered harm and damage to their retirement benefits which were diminished as a result of the waste, elf-dealing and looting of Company assets. Participants also suffered losses from substantial imprudent investments in Company stock during the Class Period. As a result of Defendants' fiduciary duties, the Plan's participants have diminished retirement account balances, and likely will face diminished retirement benefits in the future.

272. Had Defendants properly discharged their fiduciary and/or co-fiduciary duties, the Plan and its Participants would have received larger retirement benefits and avoided losses suffered through the Plans' from continued investment in Company stock.

## REMEDY FOR BREACHES OF FIDUCIARY DUTY

273. As noted above, as a consequence of Defendants' breaches, the Plans suffered significant losses.

274. ERISA § 502(a), 29 U.S.C. § 1132(a) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary ... who breaches any of the ... duties imposed upon fiduciaries ... to make good to such plans any losses to the plans ...". Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate ...".

275. With respect to calculation of the losses to a plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the participants and beneficiaries in the plan would not have made or maintained its investments in the challenged investment and, where alternative investments were available, that the investments made or maintained in the challenged investment would have instead been made in the most profitable alternative investment available. In this way, the remedy restores the values of the Plan's assets to what they would have been had the Plans been properly administered.

276. Plaintiff, the Plans, and the Class are therefore entitled to relief from Defendants in the form of: (1) a monetary payment to the Plans to make good to the Plans the losses to the Plans resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a); (2) injunctive and

other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a) and 502(a), 29 U.S.C. §§ 1109(a) and 1132(a); (3) reasonable attorneys' fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (4) taxable costs and (5) interests on these amounts, as provided by law; and (6) such other legal or equitable relief as may be just and proper.

277. Each Defendant is jointly liable for the acts of the other Defendants as a co-fiduciary.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for:

A. A Determination that the instant action may be maintained as a class action under Rule 23, Federal Rules of Civil Procedure, appointing Plaintiff as class representative, and determining that Plaintiff s counsel satisfies the pre-requisites of Rule 23(g);

B. A Declaration that Defendants breached ERISA fiduciary duties owed to the Plans and Participants;

C. An Order compelling Defendants to make good to the Plans all losses to the Plans resulting from Defendants' breaches of their fiduciary duties, including losses to the Plans resulting from imprudent investment of the Plans' assets in Chesapeake stock, and to restore to the Plans all profits Defendants made through use of the Plans' assets, and to restore to the

Plans all profits which the Participants would have made if Defendants had properly fulfilled their fiduciary obligations;

D. Imposition a Constructive Trust on any amounts by which Defendants were unjustly enriched at the expense of the Plans as the result of breaches of fiduciary duty;

E. An Order enjoining Defendants from any further violations of their ERISA fiduciary obligations;

F. Actual damages in the amount of any losses the Plans suffered, to be allocated among the Participants' individual accounts in proportion to the accounts' losses;

G. An Order that Defendants allocate the Plans' recoveries to the accounts of all Participants who had any portion of their account balances invested in Chesapeake common stock maintained by the Plans in proportion to the accounts' damages attributable to investments in Chesapeake common stock;

H. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);

I. An order awarding attorneys' fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine; and

J. An Order for equitable restitution and other appropriate equitable monetary relief against Defendants.

K. Such other and further relief the Court deems just and equitable.

## DEMAND FOR JURY TRIAL

Plaintiff and the Class request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Dated: June 19, 2012

Respectfully submitted,

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