

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

THOMAS L. TAYLOR, III, in his capacity  
as Court-appointed temporary receiver for  
Breitling Energy Corp. et al.,

Plaintiff

v.

ROTHSTEIN KASS & COMPANY, PLLC  
and BRIAN MATLOCK,

Defendants.

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NO. 3:19-cv-01594-D

**DEFENDANTS' ANSWER TO RECEIVER'S ORIGINAL COMPLAINT**

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**ROTHSTEIN, KASS & COMPANY, PLLC and BRIAN MATLOCK**

Defendants Rothstein Kass & Company, PLLC (“Rothstein Kass”) and Brian Matlock (“Matlock”) (collectively, “Defendants”), through undersigned counsel, hereby answer the Receiver’s Original Complaint (“Complaint”).

1. Defendants deny the allegations in paragraph 1 of the Complaint.

2. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 of the Complaint, and therefore deny those allegations on this basis.

3. Defendants deny the allegations in paragraph 3 of the Complaint. Defendants aver that Rothstein Kass was retained by BOG and BRC in April 2013 to conduct an audit of BOG and BRC’s 2011 and 2012 financial statements. However, the audit did not begin until October 2013.

4. Defendants deny the allegations in paragraph 4 of the Complaint.

5a. Defendants deny the allegations in paragraph 5a of the Complaint.

5b. Defendants deny the allegations in paragraph 5b of the Complaint.

5c. Defendants deny the allegations in paragraph 5c of the Complaint.

5d. Defendants deny the allegations in paragraph 5d of the Complaint.

5e. Defendants admit that Breitling personnel made misrepresentations to Defendants during the audit.

6. Defendants deny the allegations in paragraph 6 of the Complaint.

7. Defendants deny the allegations in paragraph 7 of the Complaint.

8. Paragraph 8 of the Complaint describes the Plaintiff and Orders entered in the *SEC v. Faulkner*, Case No. 3:16-cv-01735-D, ECF No. 108, as amended by ECF No. 142, as amended by ECF No. 320, as amended by ECF No. 418 (collectively referred to as the

“Receivership Order”). Defendants admit that Thomas L. Taylor was appointed to be a temporary receiver pursuant to the Receivership Order and refer the Court to the Receivership Order for a true and complete statement of its contents. Defendants deny any remaining allegations in paragraph 8.

9. Defendants admit the allegations in paragraph 9 of the Complaint.

10. Defendants admit the allegations in paragraph 10 of the Complaint.

11. Responding to the allegations of paragraph 11 of the Complaint, Defendants admit that this Court has jurisdiction over this action and that venue is proper. Defendants deny the remaining factual allegations in paragraph 11.

12. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first three sentences of paragraph 12 of the Complaint, and therefore deny those allegations on this basis. Defendants admit the Commission commenced the Enforcement Action on June 24, 2016.

13. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13 of the Complaint, and therefore deny those allegations on this basis.

14. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 14 of the Complaint, and therefore deny those allegations on this basis.

15. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 15 of the Complaint, and therefore deny those allegations on this basis.

16. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 16 of the Complaint, and therefore deny those allegations on this basis.

17. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17 of the Complaint, and therefore deny those allegations on this basis.

18. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 18 of the Complaint, and therefore deny those allegations on this basis.

19. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 19 of the Complaint, and therefore deny those allegations on this basis.

20. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 20 of the Complaint, and therefore deny those allegations on this basis.

21. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 21 of the Complaint, and therefore deny those allegations on this basis.

22. Responding to the allegations of paragraph 22 of the Complaint, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation that Faulkner conceived to take BOG and BRC public through a “reverse merger” transaction, and therefore deny this allegation on this basis. Defendants admit that a “reverse merger occurs when a private company merges into a shell company that is already publicly-traded; the private company

thereby becomes a public company.” Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 22 of the Complaint, and therefore deny those allegations on this basis.

23. Defendants deny the allegations in the first sentence of paragraph 23 of the Complaint and aver that Bering Exploration, Inc., acquired the assets of BOG and BRC through an Asset Purchase Agreement, dated December 9, 2013. Bering Exploration, Inc., changed its name to Breitling Exploration Company, effective December 23, 2013, and changed its ticker symbol to BECC. Defendants deny any remaining allegations in paragraph 23 of the Complaint.

24. Defendants deny the allegations in the first sentence of paragraph 24 of the Complaint. Defendants aver that Rothstein Kass was engaged in April 2013, but did not begin the audit of BOG and BRC until October 2013. Defendants admit that Matlock was the Rothstein Senior Manager / Principal in charge of the audit performed on behalf of the Audit Entities.

25. Defendants lack sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 25 of the Complaint, and therefore deny those allegations on this basis.

26. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 26 of the Complaint, and therefore deny those allegations on this basis.

27. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 27 of the Complaint, and therefore deny those allegations on this basis.

28. Defendants deny the allegations in the first sentence of paragraph 28 of the Complaint. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 28 of the Complaint, and therefore deny those allegations on this basis.

29. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 29 of the Complaint, and therefore deny those allegations on this basis.

30. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 30 of the Complaint, and therefore deny those allegations on this basis.

31. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 31 of the Complaint, and therefore deny those allegations on this basis.

32. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 32 of the Complaint, and therefore deny those allegations on this basis.

33. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of paragraph 33 of the Complaint, and therefore deny those allegations on this basis. Defendants admit the allegations in the second and third sentences of paragraph 33 of the Complaint.

34. Defendants deny the allegations in paragraph 34 of the Complaint.

35. The first sentence of paragraph 35 of the Complaint sets forth an auditing standard and does not require a reply. Defendants refer the Court to the Statement of Auditing

Standards No. 99 for a true and complete statement of its contents. Defendants deny the remaining allegations of paragraph 35 of the Complaint.

36. Defendants deny the allegations in paragraph 36 of the Complaint.

37. Defendants deny the allegations in paragraph 37 of the Complaint and refer the Court to the purported “Issues Memorandum” for a true and complete statement of its contents.

38. Defendants deny the allegations in paragraph 38 of the Complaint and refer the Court to the purported “Issues Memorandum” for a true and complete statement of its contents.

39. Defendants deny the allegations in paragraph 39 of the Complaint.

40. Defendants deny the allegations in paragraph 40 of the Complaint.

41. Defendants deny the allegations in paragraph 41 of the Complaint.

42. Defendants deny the allegations in paragraph 42 of the Complaint, except Defendants admit that Breitling deferred recognition of revenue until the wells at issue were completed.

43. Defendants deny the allegations in paragraph 43 of the Complaint.

44. Defendants deny the allegations in paragraph 44 of the Complaint.

45. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 45 of the Complaint, and therefore deny those allegations on this basis. Defendants refer the Court to the Confidential Information Memoranda (“CIMs”) for a true and complete statement of their contents.

46. Defendants deny the allegations in paragraph 46 of the Complaint.

47. Defendants deny the allegations in the first sentence of paragraph 47 of the Complaint. Defendants lack sufficient knowledge or information to form a belief as to the truth

of the remaining allegations in paragraph 47 of the Complaint, and therefore deny those allegations on this basis.

48. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of paragraph 48 of the Complaint and therefore deny those allegations on this basis. Defendants deny the remaining allegations in paragraph 48 of the Complaint.

49. Defendants deny the allegations in the first sentence of paragraph 49 of the Complaint. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 49 of the Complaint, and therefore deny those allegations on this basis.

50. Defendants deny the allegations in paragraph 50 of the Complaint.

51. Defendants deny the allegations in the first sentence of paragraph 51 of the Complaint. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 51 of the Complaint, and therefore deny those allegations on this basis.

52. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 52 of the Complaint, and therefore deny those allegations on this basis.

53. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 53 of the Complaint, and therefore deny those allegations on this basis.



54. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 54 of the Complaint, and therefore deny those allegations on this basis.

55. Defendants deny the allegations in paragraph 55 of the Complaint.

56. Defendants deny the allegations in paragraph 56 of the Complaint.

57. Defendants deny the allegations in paragraph 57 of the Complaint.

58. Defendants deny the allegations in paragraph 58 of the Complaint.

59. Defendants deny the allegations in paragraph 59 of the Complaint.

60. Defendants deny the allegations in paragraph 60 of the Complaint.

61. Defendants deny the allegations in paragraph 61 of the Complaint.

62. Defendants deny the allegations in paragraph 62 of the Complaint.

63. Defendants deny the allegations in paragraph 63 of the Complaint.

64. Defendants admit the allegations in paragraph 64 of the Complaint.

65. Defendants deny the allegations in paragraph 65 of the Complaint.

66. Defendants deny the allegations in paragraph 66 of the Complaint.

67. Defendants deny the allegations in paragraph 67 of the Complaint.

68. Defendants deny the allegations in paragraph 68 of the Complaint.

69. Defendants deny the allegations in paragraph 69 of the Complaint.

70. Defendants deny the allegations in paragraph 70 of the Complaint.

71. The first sentence of paragraph 71 of the Complaint characterizes an auditing standard and does not require a reply. Defendants deny the remaining allegations in paragraph 71 of the Complaint.

72. Defendants deny the allegations in paragraph 72 of the Complaint.

73. Defendants deny the allegations in the first sentence of paragraph 73 of the Complaint. The second sentence of paragraph 73 of the Complaint characterizes FASB Interpretation Nos. 46 and 46R and contains legal conclusions that do not require a reply. To the extent this paragraph purports to contain any factual assertions, Defendants deny the allegations contained therein.

74. Defendants deny the allegations in paragraph 74 of the Complaint.

75. Defendants deny the allegations in paragraph 75 of the Complaint.

76. Defendants deny the allegations in paragraph 76 of the Complaint.

77. Defendants deny the allegations in paragraph 77 of the Complaint.

78. Paragraph 78 of the Complaint characterizes the Receivership Order and contains legal conclusions that do not require a reply. Defendants refer the Court to the Receivership Order for a true and complete statement of its contents. To the extent this paragraph purports to contain any factual assertions, Defendants deny the allegations contained therein.

79. Paragraph 79 of the Complaint characterizes the Receivership Order and other Orders of the Court and contains legal conclusions that do not require a reply. Defendants refer the Court to the Receivership Order and its Orders for a true and complete statement of their contents. To the extent this paragraph purports to contain any factual assertions, Defendants deny the allegations contained therein, except Defendants admit that they executed a tolling agreement with Plaintiff effective May 7, 2019.

80. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 80 of the Complaint, and therefore deny those allegations on this basis.

81. Paragraph 81 of the Complaint reasserts the allegations in paragraphs 1–80, and does not require a response.

82. Paragraph 82 of the Complaint reasserts the allegations in paragraphs 1–81, and does not require a response.

83. Defendants deny the allegations in paragraph 83 of the Complaint.

84. Paragraph 84 of the Complaint reasserts the allegations in paragraphs 1–83, and does not require a response.

85. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 85 of the Complaint, and therefore deny those allegations on this basis.

86. In response to paragraph 86 of the Complaint, the Court has already dismissed the Receiver’s claim for aiding and abetting a breach of fiduciary duty. To the extent Defendants are required to respond to allegations contained in a dismissed claim, they deny the allegations in paragraph 86 of the Complaint.

87. In response to paragraph 87 of the Complaint, the Court has already dismissed the Receiver’s claim for aiding and abetting a breach of fiduciary duty. To the extent Defendants are required to respond to allegations contained in a dismissed claim, they deny the allegations in paragraph 87 of the Complaint.

88. Paragraph 88 of the Complaint reasserts the allegations in paragraphs 1–87, and does not require a response.

89. In response to paragraph 89 of the Complaint, the Court has already dismissed the Receiver’s claim for aiding and abetting or participation in Faulkner’s alleged fraudulent

scheme. To the extent Defendants are required to respond to allegations contained in a dismissed claim, they deny the allegations in paragraph 89 of the Complaint.

90. Paragraph 90 of the Complaint reasserts the allegations in paragraphs 1–89, and does not require a response.

91. In response to paragraph 91 of the Complaint, the Court has already dismissed the Receiver’s claim for avoidance of fraudulent conveyances. To the extent Defendants are required to respond to allegations contained in a dismissed claim, they lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 91 of the Complaint, and therefore deny those allegations on this basis.

92. In response to paragraph 92 of the Complaint, the Court has already dismissed the Receiver’s claim for avoidance of fraudulent conveyances. To the extent Defendants are required to respond to allegations contained in a dismissed claim, they deny the allegations in paragraph 92 of the Complaint.

93. In response to paragraph 93 of the Complaint, the Court has already dismissed the Receiver’s claim for avoidance of fraudulent conveyances. To the extent Defendants are required to respond to allegations contained in a dismissed claim, paragraph 93 of the Complaint contains legal conclusions that do not require a response. To the extent this paragraph purports to contain any factual allegations, Defendants deny those allegations.

94. In response to paragraph 94 of the Complaint, the Court has already dismissed the Receiver’s claim for avoidance of fraudulent conveyances. To the extent Defendants are required to respond to allegations contained in a dismissed claim, they deny the allegations in paragraph 94 of the Complaint.

95. In response to paragraph 95 of the Complaint, the Court has already dismissed the Receiver's claim for avoidance of fraudulent conveyances. To the extent Defendants are required to respond to allegations contained in a dismissed claim, they deny the allegations in paragraph 95 of the Complaint.

96. In response to paragraph 96 of the Complaint, the Court has already dismissed the Receiver's claim for avoidance of fraudulent conveyances. To the extent Defendants are required to respond to allegations contained in a dismissed claim, paragraph 96 of the Complaint contains legal conclusions that do not require a response. To the extent this paragraph purports to contain any factual assertions, Defendants deny those allegations.

97. Defendants deny the allegations in paragraph 97 of the Complaint.

98. Defendants deny the allegations in paragraph 98 of the Complaint.

99. Defendants deny the allegations in paragraph 99 of the Complaint.

100. Paragraph 100 contains the Receiver's demand for trial by jury and does not require a response. To the extent this paragraph purports to contain any factual allegations, Defendants deny those allegations.

#### **AFFIRMATIVE DEFENSES**

101. Receiver's claims are barred by the relevant statutes of limitation.

102. Receiver's claims are barred in whole or in part by the proportionate responsibility of Christopher Faulkner, Jeremy Wagers, Rick Hoover, Parker Hallam, Michael Miller, Gilbert Steedley, Beth Handkins, and/or Crude, and/or other individuals unknown to Defendants at this time, under chapter 33 of the Texas Civil Practice & Remedies Code, and any other applicable proportionate liability statute or principle.

103. Receiver's claims are barred because the actions and knowledge of Christopher Faulkner are imputed to the Receivership Entities.

104. Receiver's claims are barred by waiver and/or estoppel.

105. Receiver's claims are barred because the Receivership Entities failed to mitigate damages.

106. Receiver's claims are barred by the Receivership Entities' own contributory or comparative negligence.

107. Receiver's claims are barred by laches.

108. In the alternative, Receiver's claims are barred because the Receivership Entities and their principals engaged in criminal conduct.

109. Receiver's claims are barred in whole or in part for failure to state a claim upon which relief can be given.

110. Receiver's claims are barred in whole or in part because the Receivership Entities' disclaimed reliance on any representation, work, or matter performed by Rothstein Kass and/or Brian Matlock.

111. Receiver's claims are barred in whole or in part because the Receivership Entities' released Rothstein Kass and/or Brian Matlock from any liability.

112. Receiver's claims are barred in whole or in part because the Receiver lacks standing and/or capacity to bring those claims.

113. Rothstein Kass and/or Brian Matlock reserves their rights the right to amend this answer to include any affirmative defense or any other matter constituting an avoidance which may become apparent through the process of discovery.

**PRAYER**

Wherefore, Defendants Rothstein Kass and Brian Matlock respectfully request that Receiver's Original Complaint be dismissed with prejudice, that they be awarded its costs and attorneys' fees, and that the Court award such additional relief as may be warranted.

Date: February 28, 2020

Respectfully submitted,

*By: /s/ Nicolas Morgan*

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been served to all counsel of record in accordance with the Federal Rules of Civil Procedure on February 28, 2020 via ECF notification.

*/s/ Nicolas Morgan*

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**NICOLAS MORGAN**