

IN THE DISTRICT COURT OF HASKELL COUNTY, KANSAS

COOPER CLARK FOUNDATION,)	
on behalf of itself and all)	
others similarly situated,)	
)	
Plaintiff/Petitioner)	
)	
v.)	No. 2016-cv-000017
)	
OXY USA, Inc.,)	
)	
Defendant/Respondent)	

ANSWER TO FIRST AMENDED CLASS ACTION PETITION

Defendant OXY USA Inc. (“Oxy”) denies each and every allegation in Plaintiff’s First Amended Class Action Petition (“Petition”) except as specifically admitted herein, and, using the same paragraph numbering as the Petition, alleges and states as follows:

1. Oxy admits that a prior class action, *Littell, et al. v. OXY USA, Inc.*, No. 98-CV-51 (Kan. Dist. Ct. Stevens Cnty) settled certain claims brought by royalty owners. Oxy admits that Plaintiff brings this suit for the purposes described in Footnote 1 of Paragraph 1, but denies that Plaintiff is entitled to the requested relief and denies that class certification is appropriate. The allegations in Paragraph 1 are otherwise denied.

2. Oxy admits that a prior class action, *Littell, et al. v. OXY USA, Inc.*, No. 98-CV-51 (Kan. Dist. Ct. Stevens Cnty) settled certain claims brought by royalty owners. Oxy admits that Plaintiff brings this suit for the purposes described but denies that Plaintiff is entitled to the requested relief and denies that class certification is appropriate. Oxy denies the factual allegations contained in Paragraph 2.

3. Oxy admits that a prior class action, *Littell, et al. v. OXY USA, Inc.*, No. 98-CV-51 (Kan. Dist. Ct. Stevens Cnty) settled certain claims brought by royalty owners. The allegations in Paragraph 3 are otherwise denied.

4. The allegations in Paragraph 4 consist of legal argument and legal conclusions that Oxy is not required to admit or deny. Oxy also admits the factual allegations in Footnote 2 to Paragraph 4 regarding prior litigation, except that Oxy is not required to admit or deny the last two sentences in Footnote 2 regarding Plaintiff's counsel's opinion on the prior litigation. The allegations in Paragraph 4 are otherwise denied.

5. Oxy denies the allegations of Paragraph 5, including that a class should be certified.

6. Paragraph 6 contains legal conclusions to which no response is required. To the extent Paragraph 6 contains factual allegations, Oxy denies them.

7. Oxy admits that Plaintiff brings this suit for the purposes described but denies that Plaintiff is entitled to the requested relief and denies that class certification is appropriate. The allegations in Paragraph 7 are otherwise denied.

8. Oxy admits that Plaintiff brings this suit for the purposes described but denies that Plaintiff is entitled to the requested relief and denies that class certification is appropriate. The allegations in Paragraph 8 are otherwise denied.

9. Oxy admits that this Court has jurisdiction over this case and that Oxy is authorized to do business and during the period covered by Plaintiff's claims did business in Kansas. Oxy denies that it committed any wrongful acts or caused damages to Plaintiff or the purported Class. The allegations in Paragraph 9 are otherwise denied.

10. Oxy admits that it previously operated wells in Haskell County. Oxy additionally admits that wells associated with the December 1, 2004 Gas Processing Contract referenced in the Petition are located in Haskell County and various other counties in Kansas and Oklahoma. The allegations in Paragraph 10 are otherwise denied.

11. On information and belief, Oxy admits that Plaintiff is or previously was a royalty owner in wells located in Haskell County; that Oxy operated wells in which Plaintiff is or was a royalty owner until December 31, 2013; that gas from these wells was processed under a Gas Processing Contract (dated December 1, 2004); and that Oxy paid royalties to Plaintiff for production from those wells. The allegations in Paragraph 11 are otherwise denied.

12. Oxy admits that it is a Delaware corporation with its principal place of business in Texas; that it is authorized to do business in Kansas and did business in Kansas during the period covered by Plaintiff's claims; that it was served by its agent for service in Kansas; and that it has appeared in this action. The allegations in Paragraph 12 are otherwise denied (each subpart is addressed separately below).

a. Oxy admits the allegations in Paragraph 12(a) for the time period July 1, 2007 to December 31, 2013, except that Oxy denies that a class should be certified. Oxy otherwise denies the allegations in Paragraph 12(a).

b. Oxy admits that it operated natural gas wells in Kansas from July 1, 2007 to December 31, 2013. The allegations in Paragraph 12(b), including that a class should be certified, are otherwise denied.

c. Oxy admits that it sold a portion of the residue gas and NGLs produced from its Kansas operated wells to its affiliate Occidental Energy Marketing, Inc.

(“OEMI”) and that OEMI sold gas and NGL production to third parties. The allegations of Paragraph 12(c) are otherwise denied.

d. Oxy admits that it sold its Hugoton Basin assets to Merit Energy effective January 1, 2014, and that it paid royalties on behalf of Merit from January 1, 2014 through April 30, 2014. The allegations of Paragraph 12(d) are otherwise denied.

13. Oxy admits that the production stream from Oxy-operated wells in Haskell County contained various components, including gas and other components that were processed and then sold as NGLs. Oxy otherwise denies the allegations in Paragraph 13, including that a class should be certified.

14. Oxy admits that during at least a portion of the period from July 1, 2007 to December 31, 2013, Oxy held a working interest in wells in Haskell and other counties in Kansas, including the specific wells identified in Paragraph 11 of the Petition. The allegations of Paragraph 14, including that a class should be certified, are otherwise denied.

15. The allegations in Paragraph 15 consist of legal conclusions that Oxy is not required to admit or deny. To the extent Paragraph 15 contains factual allegations, Oxy denies them, including that a class should be certified.

16. The allegations in Paragraph 16 consist of legal conclusions that Oxy is not required to admit or deny. To the extent Paragraph 16 contains factual allegations, Oxy denies them, including that a class should be certified. Oxy further states that Plaintiff has failed to identify any of the leases in which Plaintiff or any purported class member claim an interest or any specific provisions of such leases.

17. Oxy denies the allegations of Paragraph 17, including that a class should be certified.

18. Oxy admits that gas from the Class Wells was sold as residue gas to OEMI and that OEMI then resold the residue gas. The remaining factual allegations are too vague for Oxy to admit or deny, and are therefore denied.

19. Oxy denies the allegations of Paragraph 19, including that a class should be certified.

20. Oxy denies that the quoted statement constitutes an admission by Oxy; the settlement agreement in *Littell* prohibited use of the Stipulation and Exhibits as evidence in any other proceeding, other than to enforce the settlement. Oxy denies the factual allegations contained in Paragraph 20 and Footnote 3 of Paragraph 20.

21. Oxy admits that it refunded the Conservation Fees but otherwise denies the allegations in Paragraph 21.

22. Oxy admits that Plaintiff appears to seek recovery only for a period beginning July 1, 2007. The remainder of Paragraph 22 contains legal conclusions to which no response is required. Oxy otherwise denies the allegations in Paragraph 22.

23. The heading of Paragraph 23 contains legal conclusions to which no response is required. To the extent Paragraph 23 contains factual allegations, Oxy denies them. Each subpart is addressed separately below.

a. Paragraph 23(a) contains legal argument and legal conclusions to which no response is required. To the extent Paragraph 23(a) contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

b. Paragraph 23(b) contains legal argument and legal conclusions to which no response is required. To the extent Paragraph 23(b) contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

c. Paragraph 23(c) contains legal argument and legal conclusions to which no response is required. To the extent Paragraph 23(c) contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

d. Paragraph 23(d) contains legal argument and legal conclusions to which no response is required. To the extent Paragraph 23(d) contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

e. Paragraph 23(e) contains legal argument and legal conclusions to which no response is required. To the extent Paragraph 23(e) contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

24. Oxy denies the allegations in Paragraph 24 and also denies that a class should be certified.

25. Oxy denies the allegations in Paragraph 25 and also denies that a class should be certified.

26. Oxy admits that Plaintiff has brought this lawsuit, that Plaintiff alleges that it represents a purported class, and that Plaintiff has set out a definition of a proposed class. Oxy denies that a class should be certified and denies any other factual allegations in Paragraph 26.

27. Oxy admits that it has marketed gas from at least 20 wells within the description of the purported class and that there is more than one royalty owner in many of the wells within the definition of the purported class. Oxy denies the remaining factual allegations in Paragraph 27, including that a class should be certified.

28. Paragraph 28 and its subparts contain legal conclusions and legal argument to which no response is required. Oxy denies that a class should be certified. Oxy otherwise denies the allegations in Paragraph 28 and its subparts.

29. Paragraph 29 contains legal conclusions to which no response is required. Oxy does not have information sufficient to admit or deny the factual allegations in Paragraph 29, and the allegations are therefore denied. Oxy denies that a class should be certified. Oxy further states that Plaintiff has failed to identify any of the leases in which Plaintiff or any member of the purported class claims an interest.

30. Oxy admits that Plaintiff is or previously was a royalty owner in certain wells for which Oxy was the operator and that Oxy paid royalties to Plaintiff. Oxy denies the remainder of Paragraph 30, including that a class should be certified.

31. Paragraph 31 contains legal conclusions to which no response is required. Oxy denies that a class should be certified and denies any factual allegations in Paragraph 31.

32. Paragraph 32 contains legal conclusions to which no response is required. Oxy denies that a class should be certified and denies any factual allegations in Paragraph 32.

33. Paragraph 33 contains legal conclusions to which no response is required. Oxy denies that a class should be certified, denies any wrongdoing, and denies any factual allegations in Paragraph 33.

34. Oxy reasserts its answer to Paragraphs 1-33.

35. Paragraph 35 contains legal conclusions to which no response is required. Oxy admits that it or its predecessor entered into a written oil and gas lease with Plaintiff or its predecessor. Oxy denies all other factual allegations in Paragraph 35, including that a class should be certified.

36. Paragraph 36 contains legal conclusions to which no response is required. Oxy admits that it or its predecessor entered into a written oil and gas lease with Plaintiff or its

predecessor. Oxy denies all other factual allegations in Paragraph 36, including that a class should be certified.

37. Paragraph 37 contains legal conclusions to which no response is required. To the extent Paragraph 37 contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

38. Oxy does not have sufficient information to admit or deny the allegations in Paragraph 38, and they are therefore denied. Oxy also denies that a class should be certified.

39. Paragraph 39 contains legal conclusions to which no response is required. To the extent Paragraph 39 contains factual allegations, Oxy denies them.

40. Oxy denies the allegations in Paragraph 40 and also denies that a class should be certified.

41. Oxy reasserts its answer to Paragraphs 1-40.

42. Oxy admits that a prior class action, *Littell, et al. v. OXY USA, Inc.*, No. 98-CV-51 (Kan. Dist. Ct. Stevens Cnty) settled certain claims brought by royalty owners. The allegations in Paragraph 42 are otherwise denied.

43. Oxy denies the allegations in Paragraph 43 and also denies that a class should be certified.

44. Oxy denies the allegations in Paragraph 44 and also denies that a class should be certified.

45. Paragraph 45 contains legal conclusions to which no response is required. To the extent Paragraph 45 contains factual allegations, Oxy denies them.

46. Oxy denies the allegations in Paragraph 46 and also denies that a class should be certified.

Oxy also denies that Plaintiff and the purported class are entitled to any of the relief sought in the Prayer for Relief, including all its paragraphs and subparts, and denies that a class should be certified.

AFFIRMATIVE DEFENSES

Oxy alleges the following affirmative defenses:

1. Plaintiff has failed to state claims upon which relief can be granted.
2. Plaintiff's claims and those of the putative class are barred in whole or in part by the statute of limitations and/or laches.
3. Plaintiff's claims are barred by estoppel, waiver, and/or ratification because Plaintiff (and/or putative class members) have accepted royalty payments from Oxy with knowledge of the method of calculation and any deductions taken.
4. Oxy has paid all sums due.
5. Plaintiff's claims are barred in whole or in part by previous settlement agreements, payment, release, or accord and satisfaction, in particular by the settlement in *Littell, et al. v. OXY USA, Inc.*, No. 98-CV-51 (Kan. Dist. Stevens Cnty), to which Plaintiff admits it was a party.
6. Plaintiff's claims are barred in whole or in part by the applicable lease agreements.
7. Plaintiff's claims for alleged breach of implied covenants of oil and gas leases are barred by the failure to make proper demand for performance of the implied covenant.
8. Plaintiff has failed to comply with all conditions precedent.
9. Plaintiff has failed to state a claim for breach of contract because Plaintiff failed to comply with KAN. STAT. ANN. § 60-209(h) by failing to reasonably identify the lease

at issue or stating its substance, reciting the contents of the lease, or attaching the lease as an exhibit.

WHEREFORE, OXY USA Inc. requests that Plaintiff take nothing from this suit, that the Court decline to certify a class, that judgment be entered in favor of OXY USA Inc., and that OXY USA Inc. be awarded its costs, attorney's fees, and any other relief to which it is entitled.

Respectfully Submitted,

FOULSTON SIEFKIN LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing (“NEF”) to the following ECF registrants:

Rex A. Sharp Barbara C. Frankland Ryan C. Hudson REX SHARP, P.A. 5301 W. 75 th Street Prairie Village, KS 66208 (913) 901-0505 (913) 901-0419 (fax) <i>Attorneys for Plaintiff</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Fax <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Overnight Mail
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s/ Mike L. Stout

Mike L. Stout