

IN THE DISTRICT COURT OF MORTON COUNTY, KANSAS

PHILLIP FINK,)	
on behalf of himself and all)	
others similarly situated,)	
)	
Plaintiff/Petitioner)	
)	
v.)	No. 2016-cv-000013
)	
OXY USA, Inc.,)	
)	
Defendant/Respondent)	

ANSWER TO CLASS ACTION PETITION

Defendant OXY USA Inc. (“Oxy”) denies each and every allegation in Plaintiff’s 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 also admits the factual allegations in Footnote 1 to Paragraph 1 regarding prior litigation, except that Oxy is not required to admit or deny the last two sentences in Footnote 1 regarding Plaintiff’s counsel’s opinion on the prior litigation. 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 1 are otherwise denied.

2. 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 2 are otherwise denied.

3. Oxy admits that it previously operated wells in Morton County. Oxy additionally admits that wells associated with the September 1, 2003 Gas Processing Contract referenced in the Petition are located in Morton County and various other counties in Kansas and Oklahoma. The allegations in paragraph 3 are otherwise denied.

4. On information and belief, Oxy admits that Plaintiff is or previously was a royalty owner in wells located in Morton 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 September 1, 2003); and that Oxy paid royalties to Plaintiff for production from those wells. Oxy states that it understands Plaintiff Phillip Fink to be Phillip John Fink, a relative of now-deceased Phillip D. Fink, and that this suit is brought by Phillip John Fink on his own behalf, rather than as a representative of the estate of Phillip D. Fink. The allegations in Paragraph 4 are otherwise denied.

5. 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; and that it has an agent for service in Kansas. The allegations in Paragraph 5 are otherwise denied (each subpart is addressed separately below).

a. Oxy admits the allegations in Paragraph 5(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 5(a).

b. Oxy admits that it operated natural gas wells in Kansas from July 1, 2007 to December 31, 2013; 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 in paragraph 5(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 5(c) are otherwise denied.

d. Oxy admits that it produced gas from wells in Morton County during the period July 1, 2007 to December 31, 2013. The allegations of paragraph 5(d) are otherwise denied.

6. Oxy admits that the production stream from Oxy-operated wells in Morton County contained various components, including gas and other components that were processed and then sold as NGLs. Oxy otherwise denies the allegations in Paragraph 6, including that a class should be certified.

7. Oxy admits that during the period from July 1, 2007 to December 31, 2013, Oxy held a working interest in wells in Morton and other counties in Kansas. The allegations of Paragraph 7, including that a class should be certified, are otherwise denied.

8. The allegations in Paragraph 8 consist of legal conclusions that Oxy is not required to admit or deny. To the extent Paragraph 8 contains factual allegations, Oxy denies them, including that a class should be certified.

9. The allegations in Paragraph 9 consist of legal conclusions that Oxy is not required to admit or deny. To the extent Paragraph 9 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.

10. Oxy denies the allegations of Paragraph 10, including that a class should be certified.

11. Oxy admits that gas from wells covered by the September 1, 2003 Gas Processing Contract referenced in the Petition was sold but denies that a class should be certified. Each subpart of Paragraph 11 is addressed separately below.

a. Oxy admits that gas from the wells covered by the referenced Gas Processing Contract 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.

b. Oxy admits that gas from wells covered by the referenced Gas Processing Contract was sold as NGLs that were sold to a third party. Oxy otherwise denies the allegations in Paragraph 11(b).

12. Paragraph 12 contains legal conclusions that Oxy is not required to admit or deny. Oxy denies all factual allegations in Paragraph 12.

13. Oxy denies the allegations in Paragraph 13, including that a class should be certified.

14. The allegations in Paragraph 14 are too vague for Oxy to admit or deny and they are therefore denied.

15. Oxy denies the allegations in Paragraph 15, including that a class should be certified.

16. Oxy denies the allegations in Paragraph 16, including that a class should be certified.

17. Oxy denies the allegations in Paragraph 17. Each subpart is addressed separately below.

a. Oxy denies the allegations in Paragraph 17(a), including that a class should be certified.

b. Oxy denies the allegations in Paragraph 17(b), including that a class should be certified.

c. Paragraph 17(c) contains legal conclusions to which no response is required. To the extent Paragraph 17(c) contains factual allegations, Oxy denies them.

18. Paragraph 18 contains legal conclusions to which no response is required. To the extent Paragraph 18 contains factual allegations, Oxy denies them.

19. Oxy denies that a class should be certified but admits that Plaintiff appears to be seeking the relief stated in the first sentence of Paragraph 19 on behalf of a purported class. Oxy otherwise denies the factual allegations in Paragraph 19, including that Plaintiff is entitled to the relief he seeks.

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, including that a class should be certified.

21. The allegations in Paragraph 21 are too vague for Oxy to admit or deny them, and they are therefore denied. Oxy further states that the Gas Processing Contract referenced in the Petition speaks for itself.

22. 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 22.

23. Oxy denies that a class should be certified but admits that Plaintiff appears to be making the claims stated in Paragraph 23. The allegations in Paragraph 23, including that Plaintiff is entitled to the relief he seeks, are otherwise denied.

24. Oxy admits that it refunded the Conservation Fees but otherwise denies the allegations in Paragraph 24.

25. Oxy admits that Plaintiff appears to seek recovery only for a period beginning July 1, 2007. The remainder of Paragraph 25 contains legal conclusions to which no response is required. Oxy otherwise denies the allegations in Paragraph 25.

26. Each subpart is addressed separately below.

a. Paragraph 26(a) contains supposition about legal theories, to which no response is required. To the extent Paragraph 26(a) contains factual allegations, Oxy denies them, including that a class should be certified.

b. Paragraph 26(b) contains legal conclusions to which no response is required. To the extent Paragraph 26(b) contains factual allegations, Oxy denies them, including that a class should be certified.

27. The heading of Paragraph 27 contains legal conclusions to which no response is required. To the extent Paragraph 27 contains factual allegations, Oxy denies them. Each subpart is addressed separately below.

a. Paragraph 27(a) contains legal argument and legal conclusions to which no response is required. To the extent Paragraph 27(a) contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

b. Paragraph 27(b) contains legal argument and legal conclusions to which no response is required. To the extent Paragraph 27(b) contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

c. Paragraph 27(c) contains legal argument and legal conclusions to which no response is required. To the extent Paragraph 27(c) contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

d. Paragraph 27(d) contains legal argument and legal conclusions to which no response is required. To the extent Paragraph 27(d) contains factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

e. Paragraph 27(e) and its subparts contain legal argument and legal conclusions to which no response is required. To the extent Paragraph 27(e) and its subparts contain factual allegations, Oxy denies them. Oxy also denies that a class should be certified.

28. Oxy denies the allegations in Paragraph 28. In Footnote 2, to the extent Plaintiff attempts to characterize Oxy's legal arguments in this case, no response is required. Oxy denies the factual allegations in Footnote 28 and also denies that a class should be certified.

29. Oxy denies the allegations in Paragraph 29 and also denies that a class should be certified.

30. Oxy denies the allegations in Paragraph 30 and also denies that a class should be certified.

31. Oxy denies the allegations in Paragraph 31 and also denies that a class should be certified.

32. Oxy admits that Plaintiff has brought this lawsuit, that Plaintiff alleges that he 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 32.

33. 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 33, including that a class should be certified.

34. Paragraph 34 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 34 and its subparts.

35. Paragraph 35 contains legal conclusions to which no response is required. Oxy does not have information sufficient to admit or deny the factual allegations in Paragraph 35, 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. Oxy also states that Plaintiff appears to have been a member of the purported class for, at most, a very short time period.

36. 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, but that Plaintiff appears to have been a member of the purported class for a short time period compared to other potential members of the purported class. Plaintiff's financial interest in this litigation may be minimal. Oxy denies the remainder of Paragraph 36, including that a class should be certified.

37. Paragraph 37 contains legal conclusions to which no response is required. Oxy denies that a class should be certified and denies any factual allegations in Paragraph 37.

38. Paragraph 38 contains legal conclusions to which no response is required. Oxy denies that a class should be certified and denies any factual allegations in Paragraph 38.

39. Paragraph 39 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 39.

40. Oxy reasserts its answer to Paragraphs 1-39.

41. Paragraph 41 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 his predecessor. Oxy denies all other factual allegations in Paragraph 41, including that a class should be certified.

42. Oxy does not have sufficient information to admit or deny the allegations in Paragraph 42, and they are therefore denied. Oxy also denies that a class should be certified.

43. Paragraph 43 contains legal conclusions to which no response is required. To the extent Paragraph 43 contains factual allegations, Oxy denies them.

44. Oxy denies the allegations in Paragraph 44 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.
10. Plaintiff's identity is ambiguous. Accordingly, Oxy asserts that Plaintiff does not have standing and/or capacity to sue, and Plaintiff does not adequately represent the purported class.

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 22nd day of February, 2017, I presented the foregoing to the Clerk of the Court for filing and uploading to the Kansas Courts e-Filing system that will send notice of electronic filing to the following:

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