

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

(1) PAUPER PETROLEUM, LLC,
on behalf of itself and all others similarly
situated,

Plaintiff,

v.

Civil Action No. 19–CV–514–GKF–JFJ

(1) KAISER-FRANCIS OIL COMPANY,
a Delaware corporation,
(including affiliated predecessors and affili-
ated successors),

Defendant.

PLAINTIFF’S FIRST AMENDED CLASS ACTION COMPLAINT

Pauper Petroleum, LLC (“Plaintiff” or “Pauper”), on behalf of itself and the Classes of all other persons similarly situated, files this First Amended Class Action Complaint against Kaiser-Francis Oil Company (“Kaiser-Francis”), and alleges and states the following.

SUMMARY OF ACTION

1. Plaintiff and the Class bring claims against Kaiser-Francis concerning Kaiser-Francis’s actual, knowing and willful underpayment, late payment, or non-payment of royalties and oil-and-gas proceeds from wells through improper accounting methods (such as not paying on the starting price for gas products but instead taking improper deductions) and by failing to account for and pay royalties, all as more fully described below. For these unlawful acts by Kaiser Francis, Plaintiff and the Classes seek actual damages and all other damages provided by Oklahoma statute here, including punitive damages.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the claims asserted in this complaint pursuant to 28 U.S.C. § 1332(d) because the proposed class has more than 100 members, the parties are minimally diverse, and the amount in controversy exceeds \$5 million.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Kaiser-Francis maintains its principal place of business within this District.

PARTIES

4. Plaintiff is a limited liability company organized under the laws of Oklahoma. Plaintiff owns royalty interests in at least one Kaiser-Francis operated well that produces gas: the Meier 33-1 Well located at 33–18N–10W in Blaine County, Oklahoma. Plaintiff’s royalty interest stems from an oil-and gas-lease dated October 4, 1979 (recorded at Book 331, Pages 254–255 in the Blaine County, Oklahoma records), which is attached as **Exhibit 1**.

5. Plaintiff’s oil-and-gas lease includes royalty provisions, which have been violated by Kaiser-Francis as detailed herein.

6. Kaiser-Francis is a corporation organized under Delaware law with its principal place of business in Tulsa, Oklahoma, and it may be served with process by serving its registered agent, Frederic Dorwart, 124 E. 4th St., Suite 100, Tulsa, OK 74103.

7. Kaiser-Francis is in the business of producing and marketing oil-and-gas and constituent products from the wells in which the Class members hold interests.

8. Kaiser-Francis and its affiliated predecessors, successors, and current and past employees, agents, representatives, attorneys, or others acting on their behalf and all those to whose prior leasehold interests they have succeeded and for whom they are legally liable

whether by merger, assignment, or otherwise shall herein collectively be known as “Defendant” or “Kaiser-Francis.”

9. The acts charged in this Complaint as having been done by Kaiser-Francis were authorized, ordered, or done by officers, agents, affiliates, employees, or representatives, while actively engaged in the conduct or management of Kaiser-Francis’s business or affairs, and within the scope of their employment or agency with Kaiser-Francis.

CLASS I ALLEGATIONS
CLASS I – ROYALTY DEDUCTIONS

10. Plaintiff brings this action on behalf of itself and as a class action pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class and subclass (“Class I” and “Class I Subclass”):

CLASS I: All royalty owners in Oklahoma wells, from August 1, 2013, to present, where Defendant (including its affiliated predecessors and affiliated successors) are or were the operator (or a working interest owner who marketed its share of gas and directly paid royalties to the royalty owners). The Class claims relate to royalty payments for gas and its constituents (such as residue gas, natural gas liquids, helium, nitrogen, or drip condensate).

CLASS I SUBCLASS: All persons entitled to share in royalty proceeds, from August 1, 2013, to present, payable under any lease that contains an express provision stating that royalty will be paid on gas used off the lease premises (an Express Fuel Clause).

Excluded from the Class and Subclass are: (1) agencies, departments or instrumentalities of the United States of America, including but not limited to the U.S. Department of the Interior (the United States, Indian tribes, and Indian allottees); (2) the State of Oklahoma or any of its agencies or departments that own royalty interests; (3) Defendants, their affiliates, predecessors, and employees, officers, and directors; (4) any publicly traded company or their affiliated entity that produces, gathers, processes, or markets gas; (5) the claims of royalty owners to the extent covered by arbitration clauses or prior settlement agreements, if any, still in effect at the time suit was filed herein; (6) overriding royalty owners and others whose interest was carved out from the lessee’s interest; (7) royalty owners who have already filed and still have pending lawsuits

for underpayment of royalties against Defendants at the time suit is filed herein; (8) royalty owners only to the extent they take gas in-kind, if any; and, (9) royalty owners only to the extent receiving “Blanchard” payments.

11. The members of Class I and Class I Subclass are so numerous and geographically dispersed that joinder of all members is impracticable.

12. Kaiser-Francis operates or has operated hundreds of Class I Wells that produce gas. Kaiser-Francis holds a working interest in these Wells, with at least one, and usually multiple, royalty owners for each well.

13. Kaiser-Francis has within its possession or control records that identify all persons to whom it (including affiliated predecessors and those for whom it is legally responsible) has paid royalties from Class I Wells during the Class Period.

14. The questions of fact or law common to Plaintiff, Class I, and Class I Subclass include, without limitation, one or more of the following:

- a. Whether the Plaintiff and members of Class I are beneficiaries of the implied Marketable Condition Rule (MCR), which requires Kaiser-Francis to sever the gas from the ground and to prepare the gas for market at Kaiser-Francis’s sole expense.
 - i. If so, whether: 1) the Midstream Costs of gathering, compression, dehydration, treatment, and processing (GCDTP) are costs associated with preparing the gas for market such that none of them should have been deducted from royalties but all of them were; or 2) whether the market for gas occurs before GCDTP are incurred such that the Class’s claim is only for excessive deductions of Midstream Costs.
 - ii. If not, whether the Class members were party to a lease that expressly allows deduction of all of the GCDTP Midstream Costs (“Express Deduction Lease” or “ED Lease”), such that these Class I members have a claim only for excessive deductions of Midstream Costs, and if so, whether the Midstream Costs actually deducted were excessive in amount.

- b. Whether Kaiser-Francis paid royalty to Plaintiff and members of Class I for all valuable constituents coming from their wells and which inured to Kaiser-Francis's benefit either: 1) through credit toward the Midstream Costs; or 2) by contractual consideration in-kind to a midstream company (such as drip condensate, helium, liquefied nitrogen, some percentage of residue, some percentage of fractionated NGLs, plant fuel, or FL&U).
- c. Whether Kaiser-Francis (including any of its affiliates) paid royalty to Plaintiff and members of Class I based on a starting price below what Kaiser-Francis or its affiliates received in arm's-length sales transactions.
- d. Whether Class I Subclass leases have Express Fuel Clauses.
 - i. If so, whether Defendant failed to pay for the gas from Class I Subclass Wells used off the leased premises.
- e. Whether class-wide damages be calculated for Plaintiff's theories of liability.

15. Plaintiff is typical of other Class I members because Kaiser-Francis pays royalty to Plaintiff and other Class I members using a common method. Kaiser-Francis pays royalty based on the net revenue Kaiser-Francis receives under its gas contracts which terms royalty owners do not know or approve. The contracts are for services necessary to place the gas and its constituent parts into marketable condition so they can be sold into recognized, active, and competitive commercial markets.

16. Further, Plaintiff is typical of other Class I Subclass members because Plaintiff's oil-and-gas lease contains an Express Fuel Clause.

17. Plaintiff will fairly and adequately protect the interests of the members of Class I and Class I Subclass. Plaintiff is a royalty owner to whom Kaiser-Francis pays royalty. Plaintiff understands its duties as Class I and Class I Subclass representative. Plaintiff has retained counsel competent and experienced in class action and royalty owner litigation.

18. This action is properly maintainable as a class action. Common questions of law or fact exist as to all members of Class I and Class I Subclass, and those common questions predominate over any questions solely affecting individual members of such Class. *See supra*, ¶ 14. There is no need for individual Class I and Class I Subclass members to testify in order to establish Kaiser-Francis's liability to or damages sustained by Plaintiff and members of Class I and Class I Subclass.

19. Class action treatment is appropriate in this matter and is superior to the alternative of numerous individual lawsuits by members of Class I and Class I Subclass. Class action treatment will allow a large number of similarly situated individuals to prosecute their common claims in a single forum, simultaneously, efficiently, and without duplication of time, expense and effort on the part of those individuals, witnesses, the courts, and/or Kaiser-Francis. Likewise, class action treatment will avoid the possibility of inconsistent and/or varying results in this matter arising out of the same facts. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action and no superior alternative forum exists for the fair and efficient adjudication of the claims of all Class I and Class I Subclass members.

20. Class action treatment in this matter is further superior to the alternative of numerous individual lawsuits by all or some members of Class I and Class I Subclass. Joinder of all Class I and Class I Subclass members would be either highly impracticable or impossible. And the amounts at stake for individual Class I and Class I Subclass members, while significant in the aggregate, would be insufficient to enable them to retain competent legal counsel to pursue claims individually. In the absence of a class action in this matter, Kaiser-Francis will likely retain the benefit of its wrongdoing.

GAS INDUSTRY BACKGROUND

21. The members of Class I own royalty interests in wells that produce gas and constituents that are transformed into marketable products and sold into the established commercial markets for those products.

22. Kaiser-Francis's method for calculating royalty to the members of Class I is subject to uniform accounting procedures and implied marketable product law.

23. Oklahoma law requires the lessee to bear all of the costs of placing gas and its constituents into "Marketable Condition" products.

24. Gas and its constituent parts are marketable products only when they are in the physical condition to be bought and sold in a commercial marketplace.

25. Only after a given product is marketable does a royalty owner have to pay its proportionate share of the reasonable costs to get a higher enhanced value or price for that particular product.

The Lessor-Lessee Relationship

26. The lessor owns minerals, including oil and gas; the lessee has the money, labor, and know-how to extract, condition, and market those minerals. The lessor and lessee enter into a lease that allows the lessee to take the minerals from the lessor's land. The usual revenue split from a well was 1/8th to the lessor (royalty owner) and 7/8ths to the lessee. As the risk of finding oil and gas has diminished over time, due to the prevalence of wells delineating the field, better seismic technology, and increased efficiency of drilling rigs, royalty owners on more recent leases have received 3/16th or even 1/4th of the revenue.

27. But, the oil-and-gas companies have used undisclosed internal accounting practices to try to keep for themselves as much of the well revenue as possible. These accounting practices are at the heart of every oil-and-gas royalty case.

28. Rather than adopting transparency in its royalty calculation formula, Kaiser-Francis, like most lessees, has guarded its production and accounting processes as confidential or proprietary, thereby, depriving the royalty owners of information necessary to understand how Kaiser-Francis calculates royalties. Consequently, the royalty owner is unaware of the lessee's actual practices, thereby enabling the lessee to breach the oil-and-gas lease without accountability.

29. If and when one or more of the royalty owners learn of the "breach," the royalty owner has only three options—all of which are poor: (1) confront the lessee and maybe get paid while the lessee continues to retain improperly garnered gas revenues from thousands of other unknowing royalty owners; (2) do nothing since the "breach" only results in a modest yearly loss and the expense of individual litigation would exceed the recovery, if any; or (3) file a class action lawsuit which will persist for years and probably will not recover the full loss. In short, if the lessee breaches, it may never be held accountable; and if a royalty owner complains, the lessee will still come out ahead because an individual case is not worth much and a class action rarely requires 100% repayment to royalty owners plus prejudgment interest, plus attorneys' fees and expenses. The class action is the best of the three options, hence the filing of this class action lawsuit.

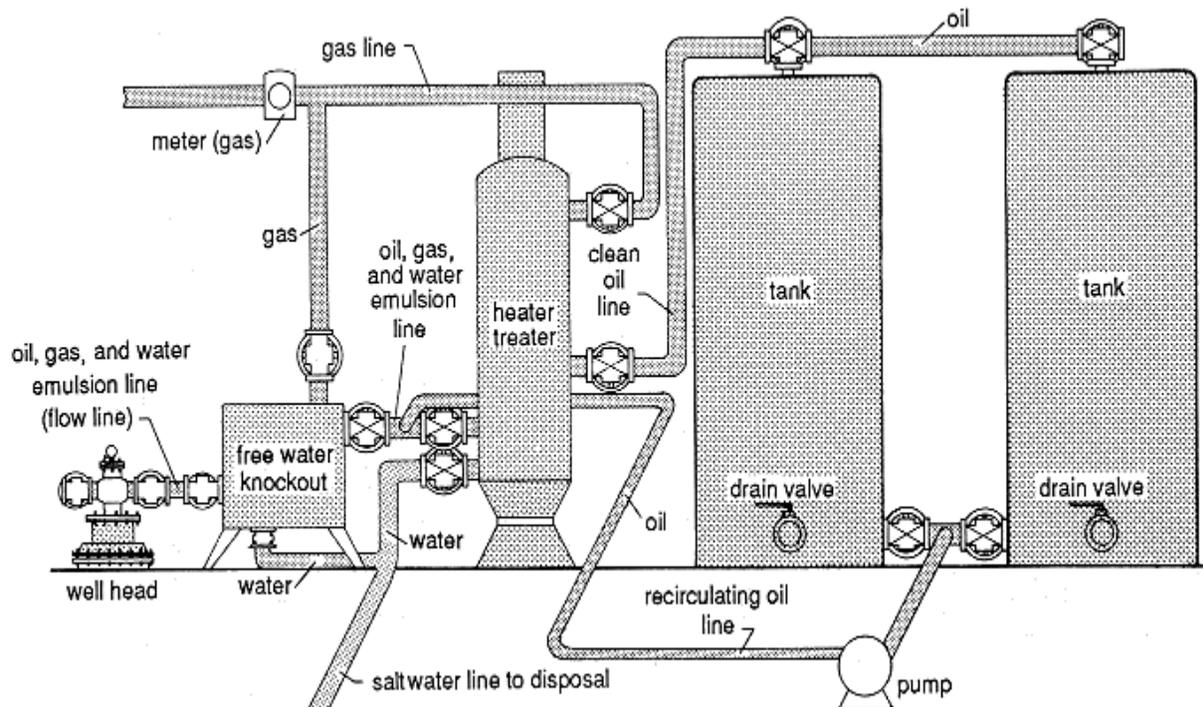
Residue Gas, Helium, Nitrogen and Natural Gas Liquids Production

30. The gas is gathered from each well, dehydrated and compressed, through underground gathering lines crossing many miles of land to processing plants where the raw gas

is transformed into two primary products: methane and fractionated natural gas liquids (“NGLs”). Once homogenized as fungible products, the residue gas and NGLs are sold in the commercial market.

Wellhead (Basic Separation and Gas Measurement)

31. The diagram below illustrates the gas conditioning process:



See <http://www.kgs.ku.edu/Publications/Oil/primer13.html> (last visited Sept. 11, 2019).

32. Wells produce oil, gas, and a host of other products, such as water, helium, nitrogen, etc., all mixed together in the gas stream.¹ After the stream comes out of the ground,

¹ Hydrocarbons can vary in chemical makeup (from simple methane to complex octane) and in form (from pure gaseous state to liquid condensate). The non-hydrocarbon makeup of the well-stream that includes natural gas can also include gases such as helium, sulfur, carbon dioxide, and nitrogen. This mixture of many gaseous elements and substances is often referred to as the “gas stream” or just “gas.”

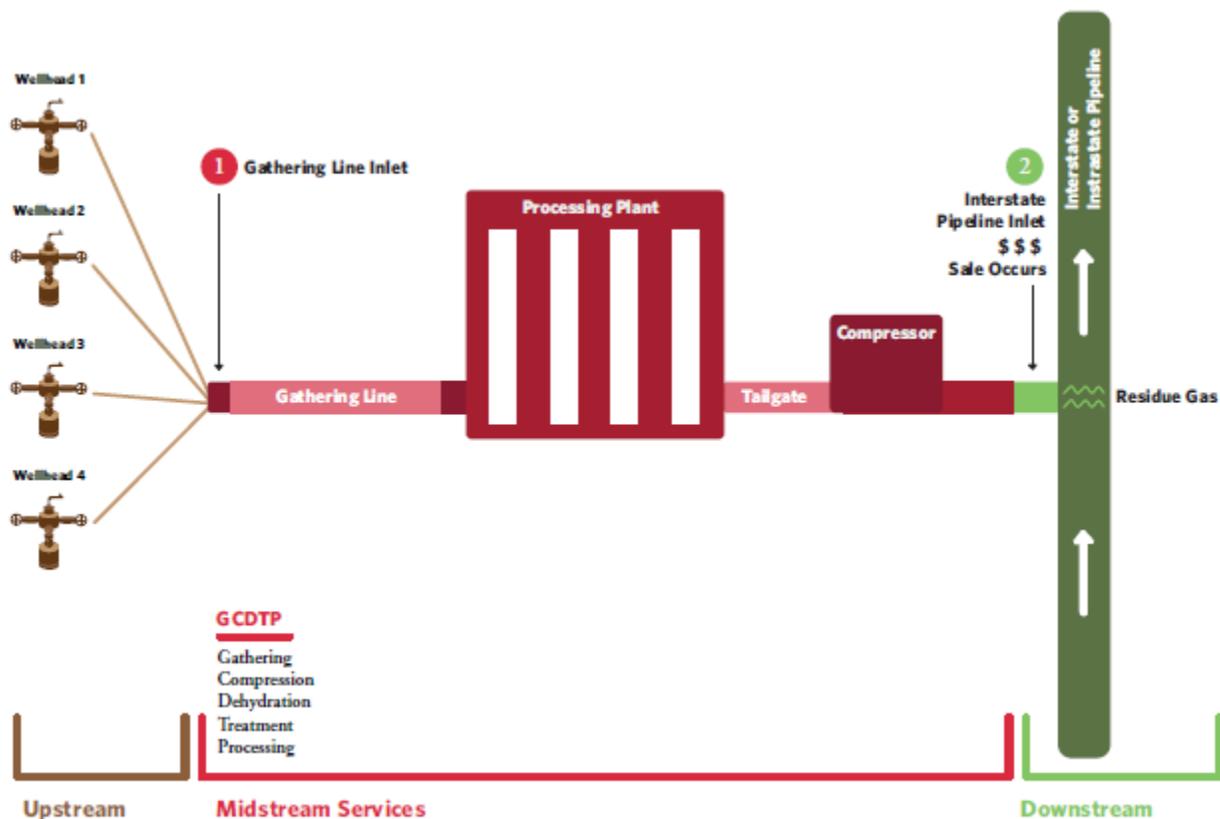
it enters the free water knockout (a/k/a three-phase separator) which separates the products by gravity, water at the bottom, oil in the middle, and gas going out the top. Due to the low technology, the separator is not expensive (the “separation cost”). The gaseous mixture (with helium, nitrogen, NGLs, and other gaseous substances) passes from the separator into the gas line.² The remaining fluid goes through the heater-treater where heat, gravity segregation, chemical additives and electric current break down the mixture more clearly in oil and water. The heater-treater is installed, maintained and takes fuel to operate (the “heater-treater cost”). The water is drained off and sent for salt water disposal. The oil that is separated at the well-head is collected in a tank, usually trucked out and sold (the payment of oil royalties is not at issue in this lawsuit).

33. Since production over time depletes the pressure of a well, on rare occasion, on-lease compressors are installed to suction gas out of the well or to move the gaseous mixture down the gathering lines. But when they are installed, their use requires fuel (the “on-lease compression” or “vacuum compression” cost).

34. The gaseous mixture produced from a single well cannot be processed economically, so the mixtures from many wells are “gathered” together through gathering lines and delivered to a processing plant for transformation into marketable products and sale into commercial markets. This results in a gathering cost (G). The below diagram provides an overview of the midstream services deduction process. Kaiser-Francis does not improperly deduct from royalty any of the costs before the gathering line inlet.

² A minute portion of this raw gas may be used on a few leased lands to heat the farm house pursuant to a free gas clause in the lease. Although title to the gas sometimes is purportedly transferred, this is not a true sale. Some producers sell less than 3% of the raw gas to a local irrigator during the summer months for agricultural purposes, but this is not the economic market for which the wells are drilled.

Midstream Services (GCDTP) Deductions



35. As the gaseous mixture from each well enters the gathering line, it flows into a meter run where the mixture is measured for both volume (in Mcf) and quality (Btu content) (combined, “gas measurement,” in MMBtu). The meter run must be constantly maintained to record accurate measurements.

36. Gathering pipelines are usually made of metal that could be corroded by water vapor (and other corrosive gases) in the gaseous mixture, so a glycol dehydrator is used to remove the water vapor. This results in a dehydration cost (D).

37. Gas will not move downstream from the well unless it is pressurized sufficiently to overcome the in-line back pressure and friction in the gathering line. So large gas compressors are installed to move the gas from the gathering line inlet to the processing plant. These compressors are expensive and require fuel to operate. This results in a compression cost (C).

38. The gathering pipelines themselves cost money to lay and maintain, though most have been in place for decades. Gas condensate (gas condensed into liquid as it cools and is pressurized) (“Drip Condensate”) is collected at points along the gathering lines as a result of cleaning or “pigging the line” and is captured for fractionation and sale later. Generally lessees pay no royalty on the revenue generated from the sale of the drip condensate.

39. Finally, gathering lines leak, especially as they age, resulting in lost and unaccounted for gas (“L&U”). Lessees pay no royalty on the volume of L&U.

Natural Gas Processing

40. Once a sufficient amount of the gas mixture from multiple wells (and often from multiple gathering systems) is gathered, the mixture enters the inlet of the processing plant where the mixture will be transformed into methane and mixed NGLs.

41. Lessees, such as Kaiser-Francis, use gas processing plants that either they or a third party own. Usually an unrelated third party owns the processing plant but the plant may also be owned in whole or in part by a lessee.

42. The plant removes impurities that remain in the mixture, such as carbon dioxide, nitrogen, or sulfur, before the mixture can be processed. This incurs a “treatment cost” (T).

43. The final cost, processing (P), involves services to transform the gas mixture into methane gas (also called “residue gas”), NGLs raw make, and in the Panhandle of Oklahoma, crude helium.

a. Methane must meet the quality standards for long-haul pipeline transmission set by the Federal Energy Regulatory Commission (“FERC”) which is called “pipeline quality gas”.

b. The raw make NGLs are used as a feedstock in the petrochemical and oil refining industries; they are a more valuable commodity than methane. To separate the NGLs from the gaseous mixture, they are cooled to temperatures lower than minus 150°F (the “Cryogenic or cooling process”). The NGLs move into a liquids pipeline and processed by a fractionator into their marketable products: ethane; propane; butanes; and pentanes plus. In the gas contracts, this process incurs a “T&F” or “fractionation” fee, even though lessees sometimes give away the NGLs in keep-whole agreements as consideration for other services the midstream company provides.

c. Helium is processed into Grade A helium at new processing plants or into crude helium (contaminated with nitrogen) at older plants which is then processed into Grade A helium at a nearby helium processor (often a few hundred feet away).

44. This total processing system involves expensive equipment and requires fuel to operate (collectively, the “processing charge” and/or “plant fuel”). Lessees do not pay royalty on plant fuel, even though it comes from Class Wells.

45. At the tailgate of the processing plant, at least two products emerge: (1) residue gas (or methane gas); and, (2) NGLs (usually a mixture of NGLs, known as “raw make” or

“Y” grade). In helium rich production areas, Grade A or crude helium, along with liquefied nitrogen also emerges. But none of these products are commercially marketable at that point.

Marketable Condition for the Products

46. *Methane Gas.* Methane gas (or residue gas) is commercial quality (a/k/a “pipe-line quality”) at the tailgate of the processing plant only after it is further pressurized to enter the transmission line by a booster compressor (the “booster compression” cost).

47. *NGLs.* The raw mixture of NGLs at the tailgate of the processing plant is not commercially marketable. It must be fractionated into commercially marketable products – ethane, propane, butane, isobutene, natural gasoline, etc. In computing royalty for NGLs, Kaiser-Francis improperly deducts processing fees and/or other costs (such as transportation and fractionation, T&F) needed to reach commercially marketable fractionated NGLs.

48. *Drip Condensate.* Drip Condensate is recovered on the gathering lines and at the inlet to the processing plant, and is essentially in marketable condition when collected.

49. *Other Products.* In some areas of the country (e.g., in the Hugoton Field, which stretches across Southwest Kansas, the Oklahoma Panhandle, the Texas Panhandle, and into parts of Wyoming), helium is produced in commercial quantities and recovered, along with liquefied nitrogen. Other areas of the country produce sulfur and carbon dioxide in commercial quantities. When such products are available in commercial quantities, processing and treatment plants recover these valuable constituents but lessees pay little or nothing to the royalty owners. Royalty owners should be paid for the gas and all constituents taken.

Sale of Products

50. To turn the marketable products into money, the producer sells them (or contracts to have them sold) in the commercial marketplace in an arm’s length transaction. No

money exchanges hands until the residue gas is sold at the Index pool, the fractionated NGLs at OPIS, and any other marketable products at the prices established by their respective commercial markets. Lessees attempt to obscure this fact with self-serving language in gas marketing contracts about title transfer or even by creating a wholly owned affiliate to manufacture a fictitious “sale” before the gas reaches commercial quality for sale.

51. The “starting price” for gas products is always achieved, as it must be, at a commercial market price. All of the gas contracts express the commercial market price in one of two ways: (a) a market price, called an “Index” price for residue gas and “OPIS” price for fractionated NGLs, or (b) a “weighted average sales price” or “WASP” achieved at the same residue Index market or OPIS market. The difference stems from Kaiser-Francis’s market power to, over time, obtain above “Index” or “OPIS” price in its arm’s length sale. Whichever starting price is used in an arm’s length transaction, that price is the highest and best reasonable price for the valuable gas products. If Other Products are also produced, they are and must be also priced in a commercial market.

52. Affiliate gas contracts are not arm’s-length sales in a commercial market. Instead, the later arm’s-length sale by the affiliate in the commercial market is the true sale that should be used as the “starting price” for marketable condition gas products.

- a. Some lessees contract with affiliated gathering companies or other affiliated gas service providers before the products (residue gas and/or NGLs) are in Marketable Condition in an effort to: (1) artificially, and improperly, create a commercial market where none truly exists so they may justify deducting costs from royalty, or not paying for all of the gas or constituent products produced; (2) charge “marketing fees” to royalty

owners even though the lessee is already obligated under the lease to prepare the gas for market and market the gas and constituent products; and/or (3) pay on the lower lessee/affiliate sale price and not the higher affiliate/third party price.

- b. WASP involves a pool of sales transactions to third parties (and/or affiliates) and combines the prices paid by those third parties (and/or affiliates) to arrive at a “weighted average sales price.” Lessees can manipulate this process by using lower lessee/affiliate sales prices for part of the pool price, rather than all third party arm’s length sale prices.

53. Fictitious “sales” (also known as sham sales or conditional sales) are created by lessees in an effort to pass off a non-commercial market sale as if it should be the starting point for royalty payments. But none of these efforts comport with economic reality or are in good faith with respect to royalty owners. For instance:

- a. Anything of value can be sold at any place and in any condition.
- b. Gas and other minerals can and are routinely sold in the ground, but they are not in marketable condition.
- c. Gas could be sold at the bottom of the hole when it is severed from the surrounding rock and enters the downhole pipe. Although a contract driller might be willing to accept some percentage of the future sale of oil or gas in the real marketplace as compensation for his drilling services, that agreement does not make the transaction a real market sale.
- d. Gas could be sold “at the wellhead” when the gas is severed from the surface. Although a contract operator might be willing to accept some

percentage of the future sale of oil or gas in the real marketplace as compensation for his well operating services, that transaction does not make it a real market sale.

- e. Gas also could be sold at the gathering line inlet when the gas enters the gathering line and changes custody. Although a contract gatherer might be willing to accept some percentage of the future sale of gas in the real marketplace as compensation for his gathering services, that transaction does not make it a real market sale.
- f. Gas also could be sold at the processing plant inlet when the gas changes custody to the processing plant. Although a contract processor might be willing to accept some percentage of the future sale of gas in the real marketplace as compensation for his processing services, that transaction does not make it a real market sale.
- g. The lessee could simply pay for all of these services with monetary fees or in-kind contributions of all or part of the valuable constituents. But the structure of the transaction does not change the fact that the services are necessary to prepare the gas and valuable constituents for the first real sale into the commercial market – Index or OPIS.
- h. Nor does a contract saying title transfers at a custody transfer point create a sale of marketable products in a real commercial market. Some gas contracts with Midstream companies that provide GCDTP services purport to do that, but other parts of the gas contract demonstrate that it is a poorly attempted legal sleight of hand as (i) the risk of loss that usually

passes with a true title transfer and market sale does not happen; (ii) the cost of future downstream services that usually passes with a true title transfer and market sale does not happen; (iii) the starting price that would occur with a true title transfer and market sale does not happen. Indeed, the paper title transfer is unnecessary to receiving the Midstream services as the gas could (and sometimes does) receive the exact same Midstream services without the paper title transfer.

- i. All of the gas contracts implicitly recognize this paper title transfer fiction, as the starting price for gas products always is at the Index and OPIS market pool as previously described.
- j. Midstream services providers are not buyers and resellers of raw gas. They are service providers that convert raw gas into pipeline quality gas so it can enter the Index or OPIS market pools. Indeed, they are called Midstream servicers, not Midstream purchasers.

Different Ways Kaiser-Francis Underpays Royalty Owners

54. The extraordinarily large dollars at stake and the one-sided nature of the gas lessor-lessee relationship are constant temptations to lessees to wrongfully retain gas revenues. All payment formulas, all affiliate and non-affiliate contractual relationships, and all calculations are firmly kept in the exclusive control of lessees, *and* they involve undisclosed accounting and operational practices. As a result, there are many ways that royalty owners are underpaid on their royalty interests, and they never know it. The common thread through all of these schemes is that they are typically buried in the internal lessee accounting systems or royalty-payment formulas.

55. Kaiser-Francis represents the royalty calculation on the form of a monthly check stub it sends each royalty owner. The check stub shows each royalty owner's interest and taxes (which are not in dispute here), and volume, price, deductions, and value, all of which are disputed.

56. Kaiser-Francis underpays royalty to Plaintiff and other Class I Members in one or more of the following ways:

- a. *Residue Gas*. The starting price paid for residue gas should be an arm's length, third party market sales price for residue gas at pipeline quality. All of Kaiser-Francis's gas contracts will show this to be true. But, instead of paying on that gross competitive price, Kaiser-Francis pays on a net price after directly taking or allowing midstream companies to indirectly take Midstream Services deductions (both monetary fees and in-kind volumetric deductions).
- b. *NGLs*. The starting price paid for fractionated NGLs should be an arm's length, third party market sales price for ethane, propane, normal butane, iso-butane, and pentane plus (a/k/a natural gasoline). All of Kaiser-Francis's gas contracts will show this to be true. But instead of paying on that gross competitive price, Kaiser-Francis pays royalty (i) for only some of the NGLs produced (some is lost and unaccounted for in the gathering process, lost in plant fuel or compression fuel); (ii) after deducting processing fees and expenses (often keeping in-kind a Percentage of the Proceeds ("POP") of the fractionated NGLs as payment for the processing services); and, (iii) after reducing payment by T&F.

- c. *Drip Condensate.* Plaintiff and Class I Members' wells produce heavy hydrocarbons that condense in the pipeline. Kaiser-Francis (or a third-party on behalf of Kaiser-Francis (gatherers and/or processors)) recovers those hydrocarbons for sale. Kaiser-Francis fails to pay any royalty for that Drip Condensate.
- d. *Other Products.* Helium is contained in the well-stream produced from Plaintiff's and many Class I Members' wells, but Kaiser-Francis: (i) fails to pay royalty for all of the helium produced (some is lost and unaccounted for in the gathering and processing process); (ii) deducts processing fees and costs even though the helium is not yet in commercial grade; and (iii) pays at a lower than commercial Grade A price. Often times, Kaiser-Francis does not pay any royalty at all for Helium, for liquid nitrogen, or other products taken from Plaintiff's and the Class I Members' wells.

57. Kaiser-Francis underpays all other Class I Members, from whom Kaiser-Francis is legally entitled to deduct post-production Midstream Services Costs, by taking excessive deductions under Midstream Services Contracts that allow excessive monopoly charges for GCDTP services.

58. Kaiser-Francis underpays Class I Subclass Members by failing to pay royalties on fuel used off the lease premises despite express contractual obligations to do so.

**ACTUAL, KNOWING AND WILLFUL
UNDERPAYMENT OR NON-PAYMENT OF ROYALTIES**

59. The underpayment and non-payment of royalties are done with Kaiser-Francis's actual and willful knowledge and intent.

60. Kaiser-Francis is well familiar with the fact that many other producers in Oklahoma have resolved the same claims for hundreds of millions, if not billions, of dollars or have changed their royalty payment practices to cease improperly deducting.

61. In fact, Kaiser-Francis has been a defendant multiple times for violating the implied duty to market.

62. In *Bridenstine v. Kaiser-Francis Oil Co., et al.*, No. CJ-2000-1 (Okla. Dist. Ct. Texas Cty.), Kaiser-Francis was forced to pay nearly \$74 million to a class of Oklahoma royalty owners following a substantial jury verdict, including for claims of fraud, and the Oklahoma Supreme Court upheld this verdict on appeal. *See Adam Wilmoth, \$74 Million Judgment Upheld Tulsa's Kaiser-Francis to Pay*, THE OKLAHOMAN (Mar. 11, 2004, 12:00 AM), <https://oklahoman.com/article/1893446/74-million-judgment-upheldbrtulsas-kaiser-francis-to-pay>.

63. Yet again, six years later, The Honorable Judge Russell certified a royalty-underpayment class against Kaiser Francis on June 9, 2010. *Hill v. Kaiser-Francis Oil Co.*, No. CIV-09-07-R, 2010 WL 2474051, at *7 (W.D. Okla. June 9, 2010). Kaiser-Francis ultimately settled that royalty-underpayment class action for approximately \$35 million.

64. Nevertheless, Kaiser-Francis continues its improper payment practices with actual and willful knowledge and intent.

**CLASS I CAUSE OF ACTION
COUNT I – BREACH OF LEASE**

65. The allegations set forth above are incorporated herein by reference.

66. Plaintiff and the other Class I Members entered into written, fully executed, oil-and-gas leases with Kaiser-Francis, and those leases include implied covenants requiring Kaiser-Francis to prepare the gas and its constituent parts for market at Kaiser-Francis's sole cost.

And, for Class I Subclass, the Express Fuel Clauses required Kaiser-Francis to pay royalty on fuel used off the leased premises. The leases also place upon Kaiser-Francis the obligation to properly account for and pay royalty interests to royalty owners under the mutual benefit rule and good faith and fair dealing.

67. At all material times, Plaintiff and Class I members have performed their terms and obligations under the leases.

68. Kaiser-Francis breached the terms of the leases, including the implied covenants, by its actions and/or inactions in underpaying royalty or not paying royalty on all products sold from the gas stream.

69. As a result of Kaiser-Francis's breaches, Plaintiff, the Class I members, and Class I Subclass members have been damaged through underpayment of the actual amounts due.

70. Further, Plaintiff, the Class 1 members, and the Class I Subclass members are entitled to other damages provided by Oklahoma statute, including compounding interest and punitive damages. *See* OKLA. STAT. tit. 52, §§ 570.1, *et seq.*

COUNT II – BREACH OF FIDUCIARY DUTY

71. The allegations set forth above are incorporated herein by reference.

72. The Class I members have interests in Oklahoma wells that have been unitized and/or pooled and spaced under 52 OKLA. STAT. tit., §§ 287.1-287.15 and/or 52 OKLA. STAT. tit., § 87.1.

73. Specifically, Plaintiff's royalty interest in the Meier 33-1 Well located at 33–18N–10W in Blaine County, Oklahoma, is subject to 52 OKLA. STAT. tit., § 87.1 pooling and spacing orders for common sources of supply of oil or natural gas. Order No. 178724 entered

by the Oklahoma Corporation Commission on November 3, 1980, notes the pooling of common sources of supply applicable to Plaintiff's interest, and further notes that prior Order Nos. 49360 and 111424 were also entered.

74. A fiduciary duty was created and vested when Kaiser-Francis (or its predecessor in interest) requested and received unitization and pooling and spacing orders from the Oklahoma Corporation Commission pursuant to those statutes.

75. Kaiser-Francis is the unit operator by appointment from the Oklahoma Corporation Commission for Class members, including Plaintiff.

76. Kaiser-Francis breached its fiduciary duty to the Class I members by failing to properly report, account for, and distribute gas proceeds to the Class I members for their proportionate royalty share of gas production.

77. As a direct and proximate result of Kaiser-Francis's conduct in breaching its fiduciary duties, Class I members are entitled to recover actual and punitive damages.

78. Plaintiff and Class I members are also entitled to and seek pre-judgment interest, post-judgment interest, attorneys' fees from the common fund, expenses, and costs.

CLASS II ALLEGATIONS
CLASS II – UNTIMELY PAYMENTS

79. The allegations set forth above are incorporated herein by reference.

80. Class II concerns Kaiser-Francis's willful and ongoing violations of Oklahoma law related to payment of oil-and-gas production proceeds ("O&G Proceeds") to persons with a legal interest in the mineral acreage under a well which entitles such person(s) (i.e., the "Owner") to payments of O&G Proceeds.

81. Plaintiff is an Owner in oil-and-gas wells in Oklahoma in which Kaiser-Francis has incurred an obligation to pay O&G Proceeds. Kaiser-Francis is the operator of the wells and pays royalty to Plaintiff and is statutorily obligated to pay interest to Plaintiff.

82. The oil-and-gas industry has historically been rife with abuse by lessees and operators who routinely delay and/or suspend payments to Owners to, among other things, obtain interest-free loans at the expense of Owners. Because of the lessee's or operator's control over the relationship, they are able to easily and successfully employ such schemes.

83. Oklahoma law attempts to redress and prevent such abuses by requiring companies, including Kaiser-Francis, to pay interest on "proceeds from the sale of oil or gas production or some portion of such proceeds [that] are not paid prior to the end of the applicable time periods provided" by statute ("Untimely Payments"). OKLA. STAT. tit. 52, § 570.10(D); *see generally*, OKLA. STAT. tit. 52, § 570, *et seq.* (the "Production Revenue Standards Act" or the "Act").

84. The Act gives Owners a uniform, absolute right to interest on Untimely Payments, regardless of whether such payments were previously suspended to address title marketability issues, or any other reason such payments were not made within the time limits required by the Act. The plain language of the Act imposes an obligation to include interest on Untimely Payments. Compliance with this statutory requirement is not optional and does not require a prior written or oral demand by Owners.

85. Kaiser-Francis is well aware of its obligations to pay the required interest on Untimely Payments. Nevertheless, in violation of Oklahoma law, Kaiser-Francis ignored its obligation to pay interest on Untimely Payments made to Plaintiff. Indeed, on information

and belief, Kaiser-Francis routinely delays payment of production proceeds and denies Owners the interest payments to which they are entitled as part of an overarching scheme to avoid its obligations under Oklahoma law.

86. Accordingly, Plaintiff files this Class II lawsuit against Kaiser-Francis to obtain relief on behalf of all similarly situated Owners who received any Untimely Payments for which Kaiser-Francis did not include payment of interest as required by the Act.

87. Plaintiff files this Class II lawsuit against Kaiser-Francis for breach of its statutory obligation to pay interest and fraud. Additionally, Plaintiff seeks an accounting, disgorgement, and injunctive relief against Kaiser-Francis.

88. Plaintiff brings this Class II action on behalf of itself and as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

All non-excluded persons or entities who: (1) received Untimely Payments from Kaiser-Francis (or Kaiser-Francis's designee) for O&G Proceeds from Oklahoma wells; and (2) whose payments did not include statutory interest.

Excluded from Class II are: (1) Kaiser-Francis, its affiliates, predecessors, and employees, officers, and directors; (2) agencies, departments, or instrumentalities of the United States of America or the State of Oklahoma; and (3) publicly traded oil-and-gas companies and their affiliates.

89. Upon information and belief, absent Class II members who are entitled to interest owing on Kaiser-Francis's Untimely Payments number in the thousands. Therefore, the Class is so numerous that joinder of all members is impracticable.

90. The questions of fact and law common to Class II members, include:

- a. Whether Plaintiff and Class II members own legal interests in the Oklahoma mineral acreage upon which Kaiser-Francis has an obligation to pay O&G Proceeds;

- b. Whether, under Oklahoma law, Kaiser-Francis owed interest to Plaintiff and Class II members on any Untimely Payments;
- c. Whether Kaiser-Francis's failure to pay interest to Plaintiff and Class II members on any Untimely Payments constitutes a violation of the Act;
- d. Whether Kaiser-Francis defrauded Plaintiff and Class II members by knowingly withholding statutory interest; and
- e. Whether Kaiser-Francis is obligated to pay interest on future Untimely Payments.

91. Plaintiff's claims are typical of Class II claims because the claims are identical for each Class member.

92. Kaiser-Francis treated Plaintiff and Class II members in the same way by failing to pay the required interest on Untimely Payments.

93. Plaintiff will fairly and adequately protect the interests of Class II. Plaintiff's interests do not conflict with the interests of Class II members. Plaintiff is represented by counsel who are skilled and experienced in oil-and-gas matters, accounting, and complex civil litigation, including class and mass actions.

94. The averments of fact and questions of law herein, which are common to the members of Class II, predominate over any questions affecting only individual members.

95. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for the following reasons:

- a. The questions of law and fact are so uniform across Class II that there is no reason why individual members of Class II would want to control the prosecution of their own actions, at their own expense;
- b. To Plaintiff's knowledge, there is no pending litigation by any individual Class II member, with the same scope of class membership of this lawsuit, against Kaiser-Francis relating to Kaiser-Francis's failure to pay interest owing on the Untimely Payments of O&G Proceeds as required by law;
- c. The interests of all parties and the judiciary in resolving these matters in one forum without the need for multiplicity of actions is great;

- d. The difficulties in managing this case as a class action will be slight in relation to the personal benefits to be achieved on behalf of each and every Class II member, and not just those who can afford to bring their own actions; and
- e. Absent a class action, Plaintiff and Class II members may never discover the wrongful acts of Kaiser-Francis, the extent of their respective financial losses, or the financial benefit they are unwittingly providing to Kaiser-Francis.

CLASS II GENERAL ALLEGATIONS AND FACTUAL BACKGROUND

96. The allegations set forth above are incorporated herein by reference.

97. Kaiser-Francis owned and/or operated (and/or Kaiser-Francis owned a working interest in) numerous oil and/or gas wells throughout Oklahoma. Kaiser-Francis owed payments of O&G Proceeds to Plaintiff and Class II members as a result of the mineral production from such wells.

98. “For decades, oil-and-gas producers or first purchasers would for various reasons delay or decline to distribute the proceeds from the first sale to interest owners and use those funds for their own purposes until they were ultimately distributed, if at all.” 2015 OK AG 6, ¶ 2 (Sept. 1, 2015) (citing Si M. Bondurant, *To Have and to Hold: The Use and Abuse of Oil and Gas Suspense Accounts*, 3 OKLA. CITY U. L. REV. 1, 4 (2006)). Holders of the production proceeds, however, frequently and intentionally avoided making any reasonable efforts to locate interest owners or notify them of their interest. *See id.* Instead, they would “suspend” their revenue payments until demanded and, in the meanwhile, gain the benefit of the possession of those funds. *See id.* Moreover, even when they eventually made the revenue payments, the holders often would not pay interest. *See id.* “[T]here was a great incentive to delay royalty payments” and “many producers routinely suspended royalties and delayed payment for many months and even years to take advantage of the interest earned during the float between

the receipt of sales proceeds and disbursement of royalties.” *See id.* (citing Bondurant at 18). This not only deprived interest owners of the time-value of the money owed to them, it also gave rise to “an ever increasing case load of litigation between royalty owners and purchasers . . . precipitated by the use of suspense accounts.” *Id.* (citing *Hull v. Sun Refining & Mktg. Co.*, 1989 OK 168, ¶ 9, 789 P.2d 1272, 1277).

99. As a result of this conduct, many states—including Oklahoma—enacted statutes to curtail this abuse. In Oklahoma, the Act requires Kaiser-Francis to make payments within certain time periods. Further, the Act requires Kaiser-Francis to pay interest on any Untimely Payments, regardless of the reasons why such payments were delayed. The Act gives Owners an absolute right to interest on Untimely Payments. The plain language of this statute imposes an obligation to include interest on Untimely Payments. Compliance with this statute is not optional and does not require a prior written or oral demand by royalty owners.

100. Plaintiff and Class II members were entitled to payment of O&G Proceeds from Kaiser-Francis and, pursuant to the Act, were further entitled to interest on any Untimely Payments from Kaiser-Francis.

101. Plaintiff and Class II members placed their trust and confidence in Kaiser-Francis to pay them the O&G Proceeds to which they were entitled, including any interest owed thereon. Kaiser-Francis had superior access to information regarding O&G Proceeds and the amounts it owed to Plaintiff and Class II members, including interest, on Untimely Payments.

102. When Kaiser-Francis made Untimely Payments to Plaintiff and Class II members, Kaiser-Francis failed to pay the interest owed pursuant to the Act. Indeed, on information and belief, Kaiser-Francis’s failure to pay the statutorily required interest on Untimely

Payments continues to this day as part of an ongoing scheme to avoid paying money clearly owed under Oklahoma law.

103. Kaiser-Francis is not permitted to take advantage of its relationship with Plaintiff and Class II members to realize unauthorized benefits or profits at the expense of Plaintiff and the Class II members. Kaiser-Francis has used its position as the holder of Plaintiff's and Class II's O&G Proceeds to avoid its statutory obligation to pay the statutory interest due to Plaintiff and Class II members in the event of Untimely Payments. As such, Kaiser-Francis has improperly treated Plaintiff's and the Class II members' O&G Proceeds as an interest-free loan without their consent.

104. Upon information and belief, Kaiser-Francis ignored its obligation under the Act to regard the O&G Proceeds it owed to Plaintiff and Class II members as separate and distinct from Kaiser-Francis's other cash assets. Rather, these proceeds were comingled with Kaiser-Francis's other cash assets. As such, Kaiser-Francis improperly, unfairly and in violation of the law profited from its deliberate refusal to pay statutory interest to Plaintiff and Class II members.

105. In short, Kaiser-Francis blatantly ignored Oklahoma law regarding the payment of interest on Untimely Payments. Further, Kaiser-Francis did not hold the O&G Proceeds for the benefit of the owners legally entitled thereto (*i.e.* Plaintiff and Class II members) and, instead, held the O&G Proceeds for its own benefit. Kaiser-Francis has abused its position with Plaintiff and Class II members.

106. Plaintiff and Class II members have been damaged by Kaiser-Francis's unlawful acts and omissions.

107. Kaiser-Francis's wrongdoing—which clearly violates Oklahoma law—is ongoing and continues to this day.

CLASS II CAUSES OF ACTION
COUNT I – BREACH OF STATUTORY OBLIGATION TO PAY INTEREST

108. The allegations set forth above are incorporated herein by reference.

109. Plaintiff brings this cause of action on behalf of itself and Class II members.

110. Plaintiff and Class II members were legally entitled to the payment of O&G Proceeds from Kaiser-Francis for wells owned and/or operated by Kaiser-Francis in Oklahoma.

111. Section 570.10 of the Act requires Kaiser-Francis to hold O&G Proceeds from the sale of oil and/or gas production for the benefit of the Owners legally entitled thereto.

112. Section 570.10 of the Act requires payment of O&G Proceeds to be made in a timely manner according to the applicable time periods set forth in the Act.

113. If the holder of any O&G Proceeds subject to the Act fails, for any reason, to make timely payments to persons entitled to receive such O&G Proceeds, the holder must pay interest on such O&G Proceeds when the payment is eventually made.

114. Kaiser-Francis held O&G Proceeds belonging to Plaintiff and Class II members and Kaiser-Francis failed to timely pay O&G Proceeds owing to Plaintiff and Class II members.

115. In violation of the Act, when Kaiser-Francis ultimately made its Untimely Payments to Plaintiff and Class II members, Kaiser-Francis did not pay the interest owing on the Untimely Payments.

116. Kaiser-Francis's failure to pay interest owing on its Untimely Payments of O&G Proceeds was knowing and intentional and/or the result of Kaiser-Francis's gross negligence.

117. Kaiser-Francis's failure to pay interest owing on its Untimely Payments of O&G Proceeds has caused Plaintiff and Class II members to suffer harm.

118. Plaintiff and Class II members are entitled to the interest owed on Untimely Payments, as well as other damages provided by statute, including punitive damages. *See* OKLA. STAT. tit. 52, §§ 570.1, *et seq.*

COUNT II – ACCOUNTING AND DISGORGEMENT

119. The allegations set forth above are incorporated herein by reference.

120. Plaintiff requests an accounting on behalf of itself and Class II members.

121. Plaintiff requests the Court enter an order directing Kaiser-Francis to provide an accounting to Plaintiff and Class II members which discloses: (a) the amount of accrued interest that Plaintiff and each Class II member should have been paid by Kaiser-Francis, and (b) the method for calculating such amounts.

122. Kaiser-Francis's payment of interest owed to Plaintiff and Class II members does not provide an adequate legal remedy for the wrongs committed by Kaiser-Francis because it will not deprive Kaiser-Francis of the ill-gotten gains it has obtained through its unlawful behavior.

123. The principles of equity and good conscience do not permit Kaiser-Francis to retain the benefits derived from its improper and unlawful use of interest owed on Untimely Payments made to Plaintiff and Class II members.

124. Thus, Plaintiff requests the Court enter an order directing Kaiser-Francis to disgorge itself of any benefits derived from its improper and unlawful use of Plaintiff's and the Class II members' interest payments, including but not limited to interest that has accrued on such interest since the time in which Kaiser-Francis made the Disputed Payments to Plaintiff and Class II members.

COUNT III – INJUNCTIVE RELIEF

125. The allegations set forth above are incorporated herein by reference.

126. Plaintiff seeks injunctive relief on behalf of itself and Class II members.

127. Unless enjoined by this Court, Kaiser-Francis will continue its pattern and practice of failing to pay interest owed on Untimely Payments to Plaintiff and Class II members.

128. Kaiser-Francis has utilized its superior knowledge and control of information regarding Plaintiff's and Class II members' entitlement to interest on Untimely Payments to engage in a fraudulent scheme with regard to its willful and intentional failure to pay such interest. As such, Kaiser-Francis's wrongdoing is ongoing, and injuries in the future by Plaintiff and the Class are irreparable in that the vast majority of Class II members remain unaware of their right to be paid interest on Untimely Payments.

129. No adequate remedy at law exists for continuing violations of the Act by Kaiser-Francis.

130. Plaintiff requests the Court enter a permanent injunction, ordering Kaiser-Francis to pay interest as required by law when Kaiser-Francis makes future Untimely Payments to Plaintiff and Class II members.

131. Kaiser-Francis will not suffer any harm as a result of granting the Class II members' request for injunctive relief because Kaiser-Francis's compliance with the Court's order

will be consistent with Kaiser-Francis's legal obligations and duties to Plaintiff and Class II members.

PRAYER FOR RELIEF

Wherefore, premises considered, Plaintiff seeks:

- a. An order certifying and allowing this case to proceed as a class action with Plaintiff as class representative for each class and the undersigned counsel as class counsel for each class;
- b. An order requiring Defendant to pay Plaintiff and all Class I and II members actual damages to fully compensate them for losses sustained as a direct, proximate, and/or producing cause of Defendant's breaches and/or unlawful conduct including, without limitation, the compounded interest on Untimely Payments as required by law;
- c. An order requiring Defendant to pay Plaintiff and the Classes all other damages provided by statute, including punitive damages.
- d. An order requiring Defendant to provide Plaintiff and the Class with an accounting where appropriate;
- e. An order requiring Defendant to disgorge itself of the ill-gotten gains it has obtained through the unlawful acts;
- f. An order requiring Defendant to pay interest in the future, as required by law, to Plaintiff and the Classes;
- g. An order awarding punitive damages as determined by the jury and in accordance with Oklahoma law on each of Defendant's wrongful acts, as alleged in this Complaint;
- h. An order requiring Defendant to pay the Class attorney's fees and litigation costs as provide by statute; and
- i. Such costs and other relief as this Court deems appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff requests a jury trial on all matters so triable.

Respectfully Submitted,

/s/ Reagan E. Bradford

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COUNSEL FOR PLAINTIFF

Form 38 - (Prod. Pooling (Oklahoma) (640 Shut In) (Revised 1963))

BOOK 331 PAGE 254

OIL AND GAS LEASE

AGREEMENT, Made and entered into this 4th day of October, 19 79

by and between Florence Lamie Bradley, formerly Florence Lamie
10119 Regal Park Lane, Apt. 204
Dallas, Texas 75230

and P. J. WILLIAMS, Okla. City, Oklahoma 73112 Party of the first part, hereinafter called lessor (whether one or more)
part Y of the second part, hereinafter called lessee.

WITNESSETH, That the said lessor, for and in consideration of Ten and More DOLLARS, cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee, for the sole and only purpose of exploring by geophysical and other methods, mining and operating for oil (including but not limited to distillate and condensate), gas (including casinghead gas and helium and all other constituents), and for laying pipe lines, and building tanks, powers, stations and structures thereon, to produce, save and take care of said products, all that certain tract of land, together with any reversionary rights therein, situated in the County of Blaine State of Oklahoma, described as follows, to-wit:
Northeast Quarter (NE 1/4)

of Section 33, Township 18 North, Range 10 West, and containing 160.00 acres, more or less

It is agreed that this lease shall remain in force for a term of Three years from date (herein called primary term) and as long thereafter as oil or gas, or either of them is produced from said land by the lessee.

- In consideration of the premises the said lessee covenants and agrees:
 - To deliver to the credit of lessor free of cost, in the pipe line to which it may connect its wells, the one-eighth (1/8) part of all oil (including but not limited to condensate and distillate) produced and saved from the leased premises.
 - To pay lessor for gas of whatsoever nature or kind (with all of its constituents) produced and sold or used off the leased premises, or used in the manufacture of products therefrom, one-eighth (1/8) of the gross proceeds received for the gas sold, used off the premises, or in the manufacture of products therefrom, but in no event more than one-eighth (1/8) of the actual amount received by the lessee, said payments to be made monthly. During any period (whether before or after expiration of the primary term hereof) when gas is not being sold or used and the well or wells are shut in and there is no current production of oil or operations on said leased premises sufficient to keep this lease in force, lessee shall pay or tender a royalty of One Dollar (\$1.00) per year per net royalty acre retained hereunder, such payment or tender to be made, on or before the anniversary date of this lease next ensuing after the expiration of ninety (90) days from the date such well is shut in and thereafter on the anniversary date of this lease during the period such well is shut in, to the royalty owners or to the royalty owner's credit in the rental depository bank hereinafter designated. When such payment or tender is made it will be considered that gas is being produced within the meaning of the entire lease. Lessor shall have the privilege at his risk and expense of using gas from any well, producing gas only, on the leased premises for stoves and inside lights in the principal dwelling thereon out of any surplus gas not needed for operations hereunder.
 - To pay lessor for gas produced from any oil well and used off the premises, or for the manufacture of casing-head gasoline or dry commercial gas, one-eighth (1/8) of the gross proceeds, at the mouth of the well, received by lessee for the gas during the time such gas shall be used, said payments to be made monthly.

If drilling operations or mining operations are not commenced on the leased premises on or before one year from this date, this lease shall then terminate as to both parties unless Lessee on or before the expiration of said period shall pay or tender to Lessor, or to the credit of Lessor in Northpark National bank, P. O. Box 12206, Dallas, Texas 75225 Acct # 17-0261-3 bank at Dallas, Texas 75225 or any successor bank, the sum of One Hundred Sixty and No/100

Dollars, (\$ 160.00), hereinafter called "rental" which shall extend for twelve months the time within which drilling operations or mining operations may be commenced. Thereafter, annually, in like manner and upon like payments or tenders the commencement of drilling operations or mining operations may be further deferred for periods of twelve months each during the primary term. Payment or tender of rental may be made by check or draft of Lessee delivered or mailed to the authorized depository bank or Lessor at address last known to Lessee) on or before such date for payment, and the payment or tender will be deemed made when the check or draft is so delivered or mailed. If said named or successor bank (or any other bank which may, as hereinafter provided have been designated as depository) should fail or liquidate or for any reason refuse or fail to accept rental, Lessee shall not be held in default for failure to make such payment or tender of rental until thirty days after Lessor shall deliver to Lessee a proper recordable instrument naming another bank to receive such payments or tenders. The above named or successor bank or any other bank which may be designated as depository shall be Lessor's agent. Drilling operations or mining operations shall be deemed to be commenced when the first material is placed on the leased premises or when the first work, other than surveying or staking the location, is done thereon which is necessary for such operations.

Should the first well drilled on the above described land, or on acreage pooled therewith, be a dry hole, then, and in that event, if a second well is not commenced on said land, or on acreage pooled therewith, within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payments of rentals, in the same amount and in the same manner as hereinbefore provided. And it is agreed that upon the resumption of the payment of rentals as above provided, that the provisions hereof governing the payment of rentals and the effect thereof, shall continue in force just as though there had been no interruption in the rental payments. If the lessee shall commence to drill a well or commence reworking operations on an existing well within the term of this lease or any extension thereof, or on acreage pooled therewith, the lessee shall have the right to drill such well to completion or complete reworking operations with reasonable diligence and dispatch, and if oil or gas, or either of them, be found in paying quantities, this lease shall continue and be in force with like effect as if such well had been completed within the term of years first mentioned.

Lessee is hereby granted the right at any time and from time to time to utilize the leased premises or any portion or portions thereof, as to all strata or any stratum or strata, with any other lands as to all strata or any stratum or strata, for the production primarily of oil or primarily of gas with or without distillate. However, no unit for the production primarily of oil shall embrace more than 40 acres, or for the production primarily of gas with or without distillate more than 640 acres; provided that if any governmental regulation shall prescribe a spacing pattern for the development of the field or allocate a producing allowable based on acreage per well, then any such unit may embrace as much additional acreage as may be so prescribed or as may be used in such allocation of allowable. Lessee shall file written unit designations in the county in which the leased premises are located. Operations upon and production from the unit shall be treated as if such operations were upon or such production were from the leased premises whether or not the well or wells are located thereon. The entire acreage within a unit shall be treated for all purposes as if it were covered by and included in this lease, except that the royalty on production from the unit shall be as below provided, and except that in calculating the amount of any rentals or shut in gas royalties, only that part of the acreage originally leased and then actually embraced by this lease shall be counted. In respect to production from the unit, Lessee shall pay Lessor, in lieu of other royalties thereon, only such proportion of the royalties stipulated herein as the amount of his acreage placed in the unit, or his royalty interest therein on an acreage basis bears to the total acreage in the unit.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided shall be paid to the lessor only in the proportion which his interest bears to the whole and undivided fee, however, such rental shall be increased at the next succeeding rental anniversary after any reversion occurs to cover the interest so acquired.

- Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells of lessor. When requested by the lessor, lessee shall bury his pipe lines below plow depth.
- No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.
- Lessee shall pay for all damages caused by its operations to growing crops on said land.
- Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns. However, no change or division in ownership of the lands, rentals or royalties shall enlarge the obligations or diminish the rights of Lessee. No change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessor until after the lessee has been furnished with a written transfer or assignment or a true copy thereof, and it is hereby agreed in the event this lease shall be assigned as to a part or parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rentals due from him or them, such default shall not operate to defect or affect this lease in so far as it covers a part or parts of the lands on which the said lessee or any assignee thereof shall make due payment of said rentals. In case Lessee assigns this lease, in whole or in part, Lessee shall be relieved of all obligations with respect to the assigned portion or portions arising subsequent to the date of assignment.

All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules and Regulations, and this lease shall not be terminated in whole or in part, nor Lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or such failure is the result of any such Law, Order, Rule or Regulation.

This lease shall be effective as to each lessor on execution hereof as to his or her interest and shall be binding on those signing, notwithstanding some of the lessors above named may not join in the execution hereof. The word "Lessor" as used in this lease means the party or parties who execute this lease at Lessor, although not named above.

Lessee may at any time and from time to time surrender this lease as to any part or parts of the leased premises by delivering or mailing a release thereof to lessor, or by placing a release of record in the proper County. After a partial surrender, the rentals specified above shall be proportionately reduced on an acreage basis.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor by payment any mortgages, taxes or other liens on the above described lands in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof.

All references herein to a 1/8 royalty are modified to read a 3/16 royalty.



IN TESTIMONY WHEREOF, we sign this the 4th day of October, 19 79
Florence Lamie Bradley
Florence Lamie Bradley, formerly
Florence Lamie
Soc. Sec. No. 446-03-1961

EAST HITCHCOCK 206-4830-G

BOOK 331 PAGE 255

TEXAS
STATE OF OKLAHOMA } ss.
County of Dallas

(ACKNOWLEDGMENT FOR INDIVIDUAL)

Before me, the undersigned, a Notary Public, in and for said County and State, on this 9th day of October, 1979, personally appeared Florence Lamie Bradley, formerly Florence Lamie
personally known to me to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed, for the uses and purposes therein set forth.
IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my official seal the day and year first above written.

My commission expires October 3, 1981 [Signature] Notary Public

STATE OF OKLAHOMA, } ss.
County of _____

(ACKNOWLEDGMENT FOR INDIVIDUAL)

Before me, the undersigned, a Notary Public, in and for said County and State, on this _____ day of _____, 19____, personally appeared _____
personally known to me to be the identical person who executed the within and foregoing instrument, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed, for the uses and purposes therein set forth.
IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my official seal the day and year first above written.

My commission expires _____ Notary Public

STATE OF OKLAHOMA, } ss.
County of _____

(ACKNOWLEDGMENT FOR INDIVIDUAL)

Before me, the undersigned, a Notary Public, in and for said County and State, on this _____ day of _____, 19____, personally appeared _____
personally known to me to be the identical person who executed the within and foregoing instrument, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed, for the uses and purposes therein set forth.
IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my official seal the day and year first above written.

My commission expires _____ Notary Public

No. 5304
Oil and Gas Lease
FROM
Florence Lamie Bradley
TO
P. J. Williams
Date _____, 19____
Section _____ Township _____ Range _____
County Oklahoma
No. of Acres _____
STATE OF OKLAHOMA, } ss.
County of Blaine
This instrument was filed for record on this 8th day of November, 1979, at _____ o'clock _____ M., and duly recorded in book _____ page _____ of the records of this office.
By [Signature] Notary Public
ANDOVER OIL COMPANY
4545 One Willoughby Center
TULSA, OKLAHOMA 74103

STATE OF OKLAHOMA, } ss.
County of _____

(ACKNOWLEDGMENT FOR CORPORATION)

On this _____ day of _____ A. D., 19____, before me, the undersigned, a Notary Public, in and for the County _____ State aforesaid, personally appeared _____
to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its _____ and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.
Given under my hand and seal of office the day and year last above written.

My commission expires _____ Notary Public

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