

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

CHIEFTAIN ROYALTY COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 QEP ENERGY COMPANY (including)
 predecessors, successors and affiliates),,)
)
 Defendant.)

Civil Action No. CIV-11-212-R

ANSWER TO SECOND AMENDED COMPLAINT

QEP Energy Company, (“QEP”) responds to the allegations in the Second Amended Complaint (“Amended Complaint”) filed by Chieftain Royalty Company and Jack Lancet (“Plaintiffs”). The paragraph numbers below correspond to the paragraph numbers in the Amended Complaint.

VENUE AND JURISDICTION

1. Denied for insufficient knowledge or information.
2. Denied for insufficient knowledge or information.
3. QEP states that it is a corporation incorporated in Texas with its principal place of business in Colorado and denies the remaining allegations of Paragraph 3.
4. QEP admits that it pays royalties to persons in Oklahoma and in other states for gas produced in Dewey County and other counties in Oklahoma and denies the remaining allegations of Paragraph 4.
5. Admit.

6. Admit.

7. Admit.

8. Admit.

CLASS ACTION ALLEGATIONS

The paragraphs set forth above are herein incorporated by reference.

9. QEP admits the allegations of Paragraph 9, but denies that the Class certified complies with 12 O.S. § 2023(b)(3).

10. QEP admits the allegations of Paragraph 10 concerning the number of its royalty owners, but denies that the case was properly certified as a statewide class action.

11. QEP admits that it is an owner of extensive oil and gas leasehold interests in Oklahoma, admits that it operates wells in Oklahoma, admits that it markets gas from wells in Oklahoma, and denies the remaining allegations in Paragraph 11.

12. Deny.

13. QEP admits that Plaintiffs are mineral interest owners in gas produced from certain wells operated by QEP, admits that QEP markets gas from those wells, and denies the remaining allegations in Paragraph 13.

14. QEP denies the first two sentences of paragraph 14, admits the second two sentences, and states that the Order of March 16, 2012 speaks for itself and no response to the last sentence is required.

15. Deny.

BACKGROUND FACTS AND CLAIMS

The paragraphs set forth above are herein incorporated by reference.

16. Deny.

17. QEP admits the first three sentences of Paragraph 17; states that based on information and belief the data in the rest of Paragraph 17 is accurate; and denies that the summaries contain all of the information and provisions relevant to royalty obligations.

18. Paragraph 18 states a legal conclusion to which no response is required; QEP denies the portions of Paragraph 18 that are inconsistent with the Oklahoma statutes cited.

19. Paragraph 19 states a legal conclusion to which no response is required; QEP denies the portions of Paragraph 19 that are inconsistent with the Oklahoma statutes cited.

20. Paragraph 20 states a legal conclusion to which no response is required; QEP denies the portions of Paragraph 20 that are inconsistent with the Oklahoma statutes cited.

21. QEP admits that its royalty owners expect QEP to properly pay royalty, and affirmatively states that it has properly paid royalty to them. QEP denies the remaining allegations of Paragraph 21.

22. QEP admits that it maintains information related to gas production and royalty payments and that it would naturally have superior access to that information; QEP denies the remaining allegations in Paragraph 22.

23. The allegations of Paragraph 23 purport to state a conclusion of law to which no response is required. To the extent a response is required, QEP denies the allegations.

24. The allegations of the first sentence of Paragraph 24 purport to state a conclusion of law to which no response is required. To the extent a response is required, QEP denies that it

owes a fiduciary or quasi-fiduciary duty to Plaintiffs or the certified class. QEP also denies that it has failed to act in good faith or has used its position to realize unauthorized benefits for its own interests at the expense of Plaintiffs or the certified class. With respect to the second sentence of Paragraph 24, QEP denies that there was ever any fiduciary or quasi-fiduciary duty to repudiate and denies the remaining allegations of Paragraph 24.

25. Deny.

26. Deny.

27. Deny.

28. Deny.

29. QEP states that it has made proper payment of royalty in compliance with its obligations and denies any remaining allegations in Paragraph 29 inconsistent with this statement.

30. QEP states that it is aware of and has complied with its duties and obligations and denies any remaining allegations in Paragraph 30 inconsistent with this statement.

31. Deny.

32. Deny.

33. Deny.

34. QEP denies that it has committed tortious acts and denies the remaining allegations in Paragraph 34.

35. Paragraph 35 purports to state what the Class claims and requires no response. To the extent a response is required, QEP denies the allegations in Paragraph 35.

BREACH OF CONTRACT

The paragraphs set forth above are herein incorporated by reference.

36. Admit.

37. Deny.

38. Deny.

39. Paragraph 39 purports to state what the claims of the Plaintiffs and the class are based on and requires no response. To the extent a response is required, QEP denies the allegations in Paragraph 39.

40. Deny.

UNJUST ENRICHMENT

The paragraphs set forth above are herein incorporated by reference.

41. QEP denies that it has underpaid royalty and denies the remaining allegations of Paragraph 41.

42. Admit.

43. QEP denies that it has underpaid royalty and denies the remaining allegations of Paragraph 43.

44. Paragraph 44 purports to state what the Plaintiffs and the class claim and requires no response. To the extent a response is required, QEP denies the allegations in Paragraph 44.

BREACH OF FIDUCIARY OR QUASI-FIDUCIARY DUTY

The paragraphs set forth above are herein incorporated by reference.

45. Deny.

46. QEP denies that there was any fiduciary or quasi-fiduciary duty to repudiate, and denies that its actions have led to the existence of such a duty. QEP further denies the remaining allegations of Paragraph 46.

47. Deny.

48. Deny.

FRAUD (ACTUAL AND CONSTRUCTIVE) AND DECEIT

The paragraphs set forth above are herein incorporated by reference.

49. Deny.

50. Deny.

51. Deny.

52. Deny.

ACCOUNTING

The paragraphs set forth above are herein incorporated by reference.

53. The first sentence of Paragraph 53 purports to state a conclusion of law to which no response is required. To the extent a response is required, QEP denies that it has failed to comply with any duty to disclose information concerning the value of the gas produced. QEP denies the second sentence of Paragraph 53.

54. QEP denies the first sentence of Paragraph 54. The second sentence of Paragraph 54 describes an order Plaintiffs are seeking and therefore requires no response; to the extent a response is required, however, QEP denies that such an order is either necessary or appropriate.

55. Unless specifically admitted, QEP denies each and every allegation of the Second Amended Complaint.

AFFIRMATIVE DEFENSES

1. The Second Amended Complaint fails to state a claim on which relief may be granted.
2. Plaintiffs' claims are neither suitable nor sustainable as class action claims, and Plaintiffs lack standing to bring these claims as representative of the certified class, as more fully set forth in QEP's briefs opposing class certification and its arguments at the class certification hearing.
3. To the extent Plaintiffs purport to assert claims previously released in the *Bridenstine* and *McIntosh* cases, those claims are barred by (i) the settlement dated November 15, 2000 in *Bridenstine v. Kaiser-Francis Oil Co., et al.*, No. CJ-2000-1 (Texas County, Okla), approved by the court on January 4, 2001; (ii) the judgment and notice of satisfaction of judgment entered July 7, 2010 in *Bridenstine v. Questar Corp. et al*, No. CJ-2000-1 (Texas County, Okla); and (iii) the judgment entered May 2, 2002 in *The Marjorie Laverne McIntosh Trust v. Questar Exploration and Production Co.*, No CJ-02-22 (Major County, Okla). (The Certified Class described in Paragraph 4 of the Second Amended Complaint excludes the claims released in the *Bridenstine* and *McIntosh* cases.)
4. To the extent Plaintiffs purport to assert claims on behalf of the royalty owners who are in the class certified in *Naylor Farms v. Anadarko OGC Co., et al.*, 2009 U.S. Dist. LEXIS 127516 (W.D. Okla. 2009), such claims are barred by the prior certification order entered in *Naylor Farms*. (The Certified Class described in Paragraph 4 of the Second Amended Complaint excludes the members of the class certified in *Naylor Farms* to the extent of their royalty interests in wells operated by QEP in Beaver and Texas counties, Oklahoma.)

5. Plaintiffs' claims are barred by the express terms of the leases and other written instruments governing the relationship between the parties, as well as the parties' course of performance under these instruments, their course of dealing, and usage of trade. QEP has paid royalty to Plaintiffs and individual members of the certified class in conformity with the express terms of these written contractual obligations.

6. QEP has paid royalty to Plaintiffs and members of the certified class in accordance with Oklahoma law.

7. To the extent QEP has underpaid any royalty, QEP has the right to offset any underpayments with overpayments as a recoupment or offset.

8. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations or, alternatively, by the doctrine of laches.

9. Plaintiffs' claims are barred, in whole or in part, by acquiescence and ratification, without objection, of a continuing course of performance by QEP.

10. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver and estoppel.

11. To the extent Plaintiffs seek to include force pooled mineral or royalty owners in the class, Plaintiffs' claims premised upon implied contractual obligations do not extend to such royalty owners.

12. To the extent Plaintiffs seek to include any state or local governmental entities within the class, it lacks standing or authority to do so.

13. Plaintiffs' request for an accounting is barred by their failure to make a proper and timely demand for an accounting, and by the existence of contracts that provide the remedy, if any.

14. Where QEP pays royalty as the operator on behalf of other working interest owners, QEP is acting in a ministerial capacity and is not liable for any alleged royalty underpayments.

WHEREFORE, Defendant QEP respectfully requests that the Court (i) deny the relief requested by Plaintiffs, (ii) enter judgment in its favor on Plaintiffs' claims, (iii) award it costs and attorneys' fees pursuant to the Production Revenue Standards Act and any other provision of Oklahoma law providing for the award of costs and attorneys' fees, and (iv) grant such other and further relief as the Court may deem proper.

Dated: September 4, 2012

Respectfully submitted,

s/ Barry C. Bartel

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 4th day of September 2012, I caused to be served a true and correct copy of the foregoing ANSWER TO SECOND AMENDED COMPLAINT by electronic transmission to the parties on electronic file and/or depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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Subject: Activity in Case 5:11-cv-00212-R Chieftain Royalty Company v. QEP Energy Company Answer to Amended Complaint

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Case Number: [5:11-cv-00212-R](#)

Filer: QEP Energy Company

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