

**IN THE DISTRICT COURT OF GARVIN COUNTY
STATE OF OKLAHOMA**

MICHAEL KERNEN, and)
GLADYS MARIE WILKERSON,)
TRUSTEE of the GLADYS MARIE)
WILKERSON 1999 TRUST,)

Plaintiffs,)

v.)

CITIZEN ENERGY II, LLC, and)
CITIZEN ENERGY III, LLC,)

Defendants.)

Case No. CJ-2018-7

STATE OF OKLAHOMA }
GARVIN COUNTY } SS.
FILED
JUN - 8 2020
AT 10:45 O'CLOCK _____ M.
LAURA LEE, Court Clerk
BY DEPUTY

PLAINTIFFS' FIRST AMENDED PETITION

Plaintiffs, MICHAEL KERNEN, and GLADYS MARIE WILKERSON, Trustee of the Gladys Marie Wilkerson 1999 Trust, for themselves and all others similarly situated, file this First Amended Petition (the "Petition") and hereby allege and state as follows in support of the claims asserted against Citizen Energy II, LLC, and Citizen Energy III, LLC ("Defendants"):

SUMMARY OF THE ACTION

1. This class action suit concerns Defendants' ongoing violations of Oklahoma law related to payment of statutory interest on late payments 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.

2. Plaintiffs are Owners in one or more oil and/or gas wells in Oklahoma in which Defendants have incurred an obligation to pay O&G Proceeds (the "Oklahoma Wells"). Specifically, Plaintiff Michael Kernan is an Owner in Oklahoma Wells, the Nayro Wells, which are located in Section 11-4N-4W, Garvin County, Oklahoma. Plaintiff Gladys Marie Wilkerson

Trustee of the Gladys Marie Wilkerson 1999 Trust, is an Owner in Oklahoma Wells, the Leroy Coats 19-18-9-5 4MXH located in Section 18-9N-5W, Grady County, Oklahoma and the Leroy Coats 19-18-9-5 5MXH located in Section 18-9N-5W, Grady County, Oklahoma (collectively referred to herein as the "Leroy Coats Wells"). Defendants are the operator(s) of the Nayro Wells, the Leroy Coats Wells, as well as other Oklahoma Wells, and are obligated to pay O&G Proceeds to Plaintiffs within the time periods prescribed by statute and failing the same, to additionally pay interest at the rate prescribed by statute.

3. 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 and benefit from such schemes, to the detriment of Owners.

4. Oklahoma law attempts to redress and/or prevent such abuses by requiring companies, including Defendants, 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 ("Late Payments"), 52 O.S. § 570.10(D); *see generally*, 52 O.S. § 570, *et. seq.* (the "Production Revenue Standards Act" or the "PRSA"). Further, the PRSA states that "All proceeds from the sale of production shall be regarded as separate and distinct from all other funds of any person receiving or holding the same until such time as such proceeds are paid to the owners legally entitled thereto." *Id.* at § 570.10(A).

5. The PRSA gives Owners a uniform, absolute right to interest on Late 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

PRSA. The plain language of the PRSA imposes an obligation to include interest on Late Payments. Compliance with this statutory requirement is not optional and does not require a prior written or oral demand by Owners.

6. Defendants are well aware of their obligation to pay the required interest on Late Payments. Nevertheless, in violation of Oklahoma law, Defendants consistently ignore their obligation to pay interest on Late Payments made to Plaintiffs and other owners. Indeed, on information and belief, Defendants routinely delay payment of production proceeds and deny Owners the interest payments to which they are entitled as part of an overarching scheme to avoid their obligations under Oklahoma law.

7. Accordingly, Plaintiffs file this class action lawsuit against Defendants to obtain relief on behalf of all similarly situated Owners who received or were entitled to receive any Late Payments for which Defendants did not include payment of interest as required by the PRSA.

8. Plaintiffs file this class action lawsuit against Defendants for breach of their statutory obligation to pay O&G Proceeds and interest. Additionally, Plaintiffs seek an accounting, disgorgement, and injunctive relief against Defendants.

PARTIES

9. Plaintiff Michael Kernen is an Oklahoma citizen and resides in Oklahoma County.

10. Plaintiff Gladys Marie Wilkerson, Trustee of the Gladys Marie Wilkerson 1999 Trust, is an Oklahoma citizen and resides in Grady County.

11. Plaintiffs are Owners in Oklahoma Wells and are entitled to payment of O&G Proceeds therefrom.

12. Defendant Citizen Energy II, LLC is a domestic limited liability company organized under Oklahoma law and may be served with process by serving its registered agent, Gregory A. Augsburger, 320 S. Boston Avenue, Suite 1300, Tulsa, OK 74103.

13. Defendant Citizen Energy III, LLC is a domestic limited liability company organized under Delaware law and headquartered in Tulsa, Oklahoma, and may be served with process by serving its registered agent, The Corporation Company, 1833 South Morgan Road Oklahoma City, OK 73128.

14. At all times relevant to the claims asserted herein, Defendants were producing owners or operators of oil and/or gas wells in the State of Oklahoma. Defendants are obligated to pay O&G Proceeds to Plaintiffs and the Owners in the putative class within the time periods prescribed by the PRSA and failing that, to pay interest at the rates prescribed by the PRSA.

JURISDICTION AND VENUE

Plaintiffs incorporate by reference the allegations in all other paragraphs of this First Amended Petition as if fully set forth in this section.

15. This Court has jurisdiction to hear these matters pursuant to 52 O.S. § 570.14 (A).

16. This Court has jurisdiction over Defendants because Defendants are domestic limited liability companies who regularly transact business and own property in Oklahoma, including Garvin County, Oklahoma.

17. Venue is proper in this county pursuant to 12 O.S. §134 because Defendants are domestic companies that owns interests in Oklahoma Wells in Garvin County, Oklahoma, which is where this cause of action arose.

18. Venue is also proper in this county pursuant to 12 O.S. § 137 because Defendant, Citizen Energy III, LLC is a foreign entity headquartered in Oklahoma and who owns oil and gas mineral interests in Garvin County, Oklahoma.

19. Jurisdiction is properly laid in the District Court of Garvin County, Oklahoma because the amount in controversy, exclusive of attorneys' fees, litigation expenses, costs, and interest, exceeds the sum of \$10,000.00. However, the claims of the named Plaintiffs are less than \$75,000.00.

20. When examining the totality of the circumstances, the District Court of Garvin County is the proper forum to adjudicate the claims of Plaintiffs and the Class as Plaintiffs' claims do not involve matters of national or interstate interest, Plaintiffs' claims will be governed by the laws of the State of Oklahoma, the action was brought in Garvin County which has a distinct nexus with the class members, the alleged harm, and the Defendants, and the number of Class members who are citizens of the State of Oklahoma is believed to be substantially larger than the number of citizens from any other State.

CLASS ACTION ALLEGATIONS

21. Plaintiffs bring this action as the representatives of a Class pursuant to 12 O.S. § 2023(B)(2) and § 2023(B)(3). The Class is comprised of:

All non-excluded persons or entities:

- (1) who received or, during the pendency of this action will receive, Late Payments from Defendant for O&G Proceeds from Oklahoma Wells and whose payments did not also include the statutory interest prescribed by the Act; or
- (2) who currently are, or become during the pendency of this action, Owners legally entitled to O&G Proceeds held by Defendant(s) in Suspense Accounts (for reasons of failure to sign a division order, unmarketable title, unknown addresses, and/or other reasons), for more than the applicable time periods prescribed by the PRSA, without the payment by Defendant(s) or

earning/accruing of statutory interest prescribed by the PRSA for the benefit of such Owners.

The persons or entities excluded from the Class are: (1) agencies, departments, or instrumentalities of the United States of America or the State of Oklahoma; (2) Commissioners of the Land Office of the State of Oklahoma (CLO); (3) publicly traded oil and gas companies and their affiliates; (4) persons or entities (and their affiliates) who are the Oklahoma Corporation Commission (OCC) designated operator of more than fifty (50) Oklahoma wells in the month when this Class definition was originally filed; (5) persons or entities that Plaintiffs' counsel may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct; (6) officers of the court; (7) Owners who are entitled to O&G Proceeds from an Oklahoma Well of less than \$100.00 for a calendar year pursuant to 52 O.S. §570.10 §(B)(3)(a).

22. Upon information and belief, absent Class members entitled to interest under the PRSA owing from Defendants' Late Payments are estimated to be more than fifty (50) and total damages owing to such class members are unknown to Plaintiffs at this time. Therefore, the Class is so numerous that joinder of all members is impracticable.

23. The questions of fact and law common to the Class, include:

- a. Whether Plaintiffs and the Class own legal interests in the Oklahoma Wells upon which Defendants have an obligation to pay O&G Proceeds;
- b. Whether, under Oklahoma law, Defendants owed interest to Plaintiffs and the Class on any Late Payments, either received or not yet received;
- c. Whether Defendants had a duty to promptly investigate whether Plaintiffs and the Class were owed interest and, if so, to properly pay the interest owed to the Plaintiffs and the Class;
- d. Whether Defendants' failure to pay interest to Plaintiffs and the Class on any Late Payments, either received or not yet received, constitutes a violation of the PRSA;
- e. Whether Defendants are obligated to pay interest on future Late Payments, either received or not received.

24. Plaintiffs' claims are typical of the Class' claims because the claims are identical for each Class member.

25. Defendants treated Plaintiffs and the Class in the same way by failing to pay the required interest on Late Payments.

26. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' interests do not conflict with the interests of the Class. Plaintiffs are represented by counsel who are skilled and experienced in oil and gas matters, accounting, and complex civil litigation, including oil and gas royalty class actions.

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

28. 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 the Class that there is no reason why individual members of the Class would want to control the prosecution of their own actions, at their own expense;
- b. To Plaintiffs' knowledge, there is no pending litigation by any individual Class member, with the same scope of Class membership sought herein, against these Defendants relating to their failure to pay interest owing on the Late 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 member, and not just those who can afford to bring their own actions; and
- e. Absent a class action, Plaintiffs and the Class members may never discover the wrongful acts of Defendants, the extent of their respective financial losses, or the financial benefit they are unwittingly providing to Defendants.

GENERAL ALLEGATIONS AND FACTUAL BACKGROUND

Plaintiffs incorporate by reference the allegations in all other paragraphs of this First Amended Petition as if fully set forth in this section.

29. Defendants operate (and/or Defendants own a working interest in) numerous oil and/or gas wells throughout Oklahoma. Defendants owe payments of O&G Proceeds to Plaintiffs and Class members as a result of the mineral production from such wells.

30. Plaintiffs and the Class are entitled to rely on the Defendants to act as reasonably prudent operators and to diligently investigate their right to receive interest on Late Payments; and if its investigation concludes that interest is owed pursuant to the PRSA, to promptly pay the Plaintiffs and the Class such interest.

31. Plaintiffs and Class members are entitled to payment of O&G Proceeds from Defendants and, pursuant to the PRSA, are further entitled to interest from Defendants on any Late Payments, either received or not yet received.

32. Plaintiffs and Class members placed their trust, confidence and reliance in Defendants to pay them the O&G Proceeds to which they were entitled, including any interest owed thereon. Defendants had superior access to information regarding O&G Proceeds and the amounts they owed to Plaintiffs and the Class, including statutory interest on Late Payments. The Plaintiffs and the Class were unaware that Defendants had and continued to breach their duty to pay interest due under the PRSA.

32. When Defendants made Late Payments to Plaintiffs and Class Members, or held O&G Proceeds in Suspense Accounts for more than the interest free period allowed by law, Defendants failed to pay the interest owed pursuant to the PRSA. Indeed, on information and belief, Defendants' failure to pay the statutorily required interest on Late Payments continues to this day as part of an ongoing scheme to avoid paying money clearly owed under Oklahoma law.

33. Based on information and belief, Plaintiffs further allege that Defendants do not make reasonable and consistent efforts to locate and pay O&G Proceeds to Owners. Instead,

Defendants keep the O&G Proceeds in Suspense Accounts or their general operating account and make Late Payments of O&G Proceeds to various states as Unclaimed Property without also paying the statutory interest owed under the PRSA.

34. Defendants are not permitted to take advantage of their relationship with Plaintiffs and Class members and realize unauthorized benefits or profits at the expense of Plaintiffs and the Class. Defendants have used their position as the holder of Plaintiffs' and the Class' O&G Proceeds to avoid its statutory obligation to pay the statutory interest due to Plaintiffs and the Class in the event of a Late Payment. As such, Defendants have improperly treated Plaintiffs' and the Class' O&G Proceeds as an interest-free loan without their consent.

35. Upon information and belief, Defendants ignored their obligation under the PRSA to regard the O&G Proceeds it owed to Plaintiffs and the Class as separate and distinct from Defendants' other cash assets. Rather, these proceeds were commingled with Defendants' other cash assets. As such, Defendants improperly, unfairly, and illegally profited from their deliberate refusal to pay statutory interest to Plaintiffs and the Class.

36. In short, Defendants blatantly ignored Oklahoma law regarding the payment of interest on Late Payments. Further, Defendants did not hold the O&G Proceeds for the benefit of the owners legally entitled thereto (*i.e.* Plaintiffs and the Class) and, instead, held the O&G Proceeds for their own benefit. Defendants have abused their positions with Plaintiffs and the Class.

37. Plaintiffs and the Class have been damaged by Defendants' unlawful acts and omissions.

38. Defendants' wrongdoing—which is in clear violation of Oklahoma law—is ongoing and continues to this day.

39. To the extent Defendants rely on any statute of limitation as a defense, Plaintiffs and the putative Class plead that, under the facts at issue here, the doctrines of equitable estoppel or tolling, open account, the discovery rule and/or other defenses apply to toll the running of any statute of limitations.

CAUSES OF ACTION

I. BREACH OF STATUTORY DUTY TO PAY O&G PROCEEDS AND INTEREST

Plaintiffs incorporate by reference the allegations in all other paragraphs of this First Amended Petition as if fully set forth in this section.

40. Plaintiffs bring this cause of action on behalf of itself and the Class.

41. Plaintiffs and the Class were legally entitled to the payment of O&G Proceeds from Defendants for wells operated by Defendants in Oklahoma, or in which Defendants otherwise held O&G Proceeds.

42. The PRSA requires Defendants to hold O&G Proceeds from the sale of oil and/or gas production for the benefit of the Owners legally entitled thereto. 52 O.S. § 570.10

43. The PRSA requires payment of O&G Proceeds to be made in a timely manner according to the applicable time periods set forth in the Act. 52 O.S. § 570.10

44. The PRSA requires that if the holder of any O&G Proceeds 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 at the statutory rate. 52 O.S. § 570.10

45. Defendants held O&G Proceeds belonging to Plaintiffs and the Class and Defendants failed to timely pay O&G Proceeds owing to Plaintiffs and the Class.

46. In violation of the PRSA, when Defendants ultimately made Late Payments to Plaintiffs and the Class, or held O&G Proceeds in Suspense Accounts or paid O&G Proceeds to various states as Unclaimed property, Defendants did not pay the interest owing on the Late Payments.

47. Defendants' failure to pay statutory interest owing on its Late Payments of O&G Proceeds has caused Plaintiffs and the Class to suffer harm.

II. BREACH OF DUTY TO INVESTIGATE AND PAY

Plaintiffs incorporates by reference the allegations in all other paragraphs of this First Amended Petition as if fully set forth in this section.

48. Defendants have a duty to diligently investigate the identity and location of Owners and to timely pay O&G Proceeds and failing that, to pay statutory interest.

49. Defendants breached this duty when they failed to diligently investigate the rights of the Plaintiffs and the Class to receive interest on Late Payments and pay such interest to the Plaintiff and the Class when owed.

50. Plaintiffs and the Class have been damaged by Defendants' actions and violation of the law.

III. ACCOUNTING AND DISGORGEMENT

Plaintiffs incorporates by reference the allegations in all other paragraphs of this First Amended Petition as if fully set forth in this section.

51. Plaintiffs request an accounting on behalf of themselves and the Class.

52. Plaintiffs request the Court enter an order directing Defendants to provide an accounting to Plaintiffs and Class members which discloses: (a) the amount of accrued interest

that Plaintiffs and each Class member should have been paid by Defendants, and (b) the method for calculating such amounts.

53. Defendants' payment of interest owed to Plaintiffs and the Class does not provide an adequate legal remedy for the violations committed by Defendants because it will not deprive Defendants of the ill-gotten gains they have obtained through its unlawful behavior.

54. The principles of equity and good conscience do not permit Defendants to retain the benefits derived from their improper and unlawful use of interest owed on Late Payments made to Plaintiffs and the Class.

55. Therefore, Plaintiffs request the Court enter an order directing Defendants to disgorge themselves of any benefits derived from its improper and unlawful use of Plaintiffs' and the Class' interest payments, including interest that has accrued on such interest since the time in which Defendants made any Late Payments to Plaintiffs and the Class.

IV. INJUNCTIVE RELIEF

Plaintiffs incorporate by reference the allegations in all other paragraphs of this First Amended Petition as if fully set forth in this section.

56. Plaintiffs seek injunctive relief on behalf of themselves and the Class.

57. Unless enjoined by this Court, Defendants will continue their pattern and practice of failing to pay interest owed on Late Payments to Plaintiffs and the Class members.

58. Defendants have utilized their superior knowledge and control of information regarding Plaintiffs' and the Class' entitlement to interest on Late Payments to engage in a scheme with regard to its willful and intentional failure to pay such interest. As such, Defendants' wrongdoing is ongoing, and injuries in the future by Plaintiffs and the Class are irreparable in that the vast majority of Class members are unaware of their right to be paid interest.

59. There is no adequate and complete remedy at law for continuing violations of the PRSA by Defendants.

60. Plaintiffs request the Court enter a permanent injunction, ordering Defendants to pay interest as required by law when Defendants make future Late Payments to Plaintiffs and the Class.

61. Defendants will not suffer any harm as a result of granting the Class members' request for injunctive relief because Defendants' compliance with the Court's order will be consistent with Defendants' legal obligations and duties to Plaintiffs and the Class.

PRAYER FOR RELIEF

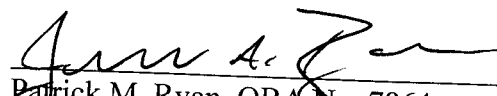
WHEREFORE, premises considered, Plaintiffs seek:

1. An order certifying and allowing this case to proceed as a class action with Plaintiffs as class representatives and the undersigned counsel as class counsel;
2. An order requiring Defendants to pay Plaintiffs and Class members actual damages to fully compensate them for losses sustained as a direct, proximate, and/or producing cause of Defendants' breaches and/or unlawful conduct including, without limitation, the compounded interest on Late Payments as required by law;
3. An order requiring Defendants to provide Plaintiffs and the Class with an accounting;
4. An order requiring Defendants to disgorge themselves of the ill-gotten gains it has obtained through the unlawful use of interest owed to Plaintiffs and the Class;
5. An order requiring Defendants to pay statutory interest in the future, as required by law, to Plaintiffs and the Class;

6. An order requiring Defendants to pay the Class attorneys' fees and litigation costs as provided by statute;
7. An order awarding pre- and post-judgment interest; and
8. Such costs and other relief as this Court deems appropriate.

ATTORNEYS' LIEN CLAIMED
JURY TRIAL DEMANDED

DATED: June 2, 2020


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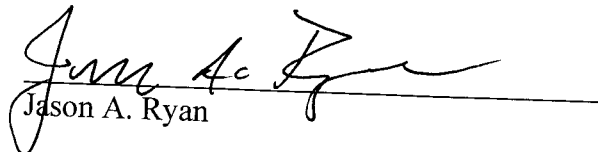
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that on this 2 day of June, 2020, a true and correct copy of the above and foregoing document was served via U.S. Mail, first-class, postage prepaid, to:

Travis P. Brown
Cody J. McPherson
Lincoln C. Hatfield
Mahaffey & Gore
300 N.E. 1st Street
Oklahoma City, OK 73104


Jason A. Ryan



Jason A. Ryan
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405.239.6040

June 2, 2020

Laura Lee, Court Clerk
Garvin County District Court
201 W. Grant Street
P.O. Box 239
Pauls Valley, OK 73075

Re: *Michael Kernen, et al. v. Citizen Energy II, LLC, et al.*; Case No. CJ-2018-7, District Court
of Garvin County, State of Oklahoma

Dear Ms. Lee:

Enclosed is the original plus one copy of Plaintiffs' First Amended Petition for filing in the referenced matter. Please return a file stamped copy in the enclosed envelope.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason A. Ryan', written in a cursive style.

Jason A. Ryan
FOR THE FIRM