

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEIRS OF NOEL POPE;)
 Mary Pope, Robin Lynn Starr, Carl Pope,)
 John Harrison, Mark Harrison,)
 Stephen Akins, Margaret Rachel Akins,)
 Wednesday Shanel)
 Reed, Alfred Lee Pope III,)
 Dominique Earl, Juanita Miller,)
 Nashoba Harrison, Patsy Starr,)
 Alburey Doss, LaTavia Doss, and)
 John Pope;)
)
)
 Plaintiffs;)
)
 v.)
)
 UNITED STATES OF AMERICA;)
)
 Defendant.)

Case No.: 24-1873 L

COMPLAINT

COME NOW, the Heirs of Noel Pope, an identifiable group of American Indians residing within the territorial limits of the United States, and the following Individual Plaintiffs—all members of the aforementioned group—who also bring suit in their individual capacities: Mary Pope, Robin Lynn Starr, Carl Pope, John Harrison, Mark Harrison, Stephen Akins, Margaret Rachel Akins, Wednesday Shanel Reed, Alfred Lee Pope III, Dominique Earl, Juanita Miller, Nashoba Harrison, Patsy Starr, Alburey Doss, LaTavia Doss, John Pope (collectively “Plaintiffs”), by and through undersigned counsel, and hereby sue Defendant, the United States of America (“Defendant” or the “United States”) for damages not sounding in tort, and allege as follows.

I. INTRODUCTION

1. As set forth in detail below, Plaintiffs are Native Americans who own, or are expected to inherit, mineral interests in the restricted-fee allotment of their common ancestor, Noel Pope, a full-blood Choctaw Indian. Pursuant to federal statutes governing conveyances of certain restricted-fee Indian lands in eastern Oklahoma, this allotment has been the subject of multiple oil & gas leases.

2. With regard to such oil & gas leases, Defendant has breached its statutory trust duty in a number of ways. First, Defendant did not adequately represent the Plaintiffs during a 2022 oil & gas lease proceeding in the District Court for Pittsburg County. Second, during the same lease approval proceeding, Defendant failed to ensure that all of the mineral interest owners would benefit from the oil & gas payments stemming from the approved lease, resulting in a breach of trust, a taking without just compensation, and/or an illegal exaction. Third, for the full six years allowed by the statute of limitations, under the current and previous oil & gas leases, Defendant failed to comply with the trust and statutory requirements to ensure proper royalty and rent payments, to ensure proper payment methods, to make adequate investments, to provide proper accountings, and to make reports to the Plaintiffs. Instead, Defendant has allowed the lessee operating company to make no royalty or rent payments to Plaintiffs following lease execution; Defendant allowed direct bonus payments rather than requiring payments be made to Individual Indian Money (“IIM”) accounts; Defendant has not invested the payments that should have been made from oil & gas leasing on the subject allotment for the benefit of Plaintiffs; and Defendant has not provided accountings or otherwise reported on the status of IIM accounts to Plaintiffs. These failures of Defendant make it difficult for Plaintiffs to determine the status of their accounts, or even know if such accounts exist.

II. JURISDICTION

4. This Court has jurisdiction, and venue is proper, pursuant to both 28 U.S.C. § 1491(a)(1) (the “Tucker Act”) and 28 U.S.C. § 1505 (the “Indian Tucker Act”) because this action presents claims against the United States which arise from federal statutes and federal common law for damages not sounding in tort, and because such claims accrued after August 13, 1946 in favor of an identifiable group of American Indians residing within the territorial limits of the United States.

5. This Complaint does not assert any claim, nor seek to recover any damages with respect to any claim, which is now pending before this Court or any other court.

III. PARTIES

6. Plaintiffs are American Indians who are either enrolled members of the Choctaw Nation of Oklahoma (“Choctaw Nation”) or are eligible for enrollment in the Choctaw Nation. Each individually named Plaintiff either owns, or is expected to inherit, an interest in the mineral estate of a restricted Indian allotment in Pittsburgh County, Oklahoma, allotted in 1903 to Noel Pope (1879-1954), a full-blood Choctaw Indian (“Noel Pope Allotment”). Each member of the Plaintiff group called the Heirs of Noel Pope is a lineal descendant of Noel Pope.¹ All members of the Heirs of Noel Pope share a family and cultural connection to the Noel Pope Allotment. Because Plaintiffs all have an interest in the Noel Pope Allotment as descendants and heirs of Noel Pope, they are “an identifiable group of American Indians” for purposes of the Indian

¹ The group of Native Americans referred to herein as the “Heirs of Noel Pope” include each of the Individual Plaintiffs and the following additional members, all of whom are lineal descendants of Noel Pope and all of whom expressed a desire to join this lawsuit to advocate for their collective rights as an extended family: Stephen Hampton, Cameron Hampton, Candace Akins, Carli Pope, Caylen Pope, Darion Lewis, James Rucker, Jamya Pope, Janyla Pope, Jason Pope, Jerome Hughes, Jonica Kmonicek, Latoya Hughes, Martha Harrison, Melissa Harrison, Nakia Lewis, Ruby Starr, Shianetta Pope, Sonya Herrod, and Tracey L. Pope-Farabee.

Tucker Act, 28 U.S.C. § 1505. In addition to proceeding as the Heirs of Noel Pope under the Indian Tucker Act, the Individual Plaintiffs each bring the claims presented herein in their individual capacities pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1), and individually identify themselves as:

- 1) Mary Pope, whose primary residence is in El Reno, Oklahoma. Mary Pope is a granddaughter of Noel Pope. Mary Pope's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Lee Roy Pope (her father) > Embree Pope (her uncle) > Mary Pope. According to federal records, Mary Pope owns 1/528 or 0.00189 (0.189%) of the mineral estate associated with the Noel Pope Allotment.
- 2) Robin Lynn Starr, whose primary residence is in Wetumka, Oklahoma. Robin Starr is a granddaughter of Noel Pope. Robin Starr's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Mattie (Pope) Starr > Robin Starr. According to one record available to Plaintiffs, Robin Starr owns 1/968 or approximately 0.00103 (0.103%) of the mineral estate associated with the Noel Pope Allotment. According to a different record available to Plaintiffs, Robin Starr owns 7/2376 or approximately 0.00295 (0.295%) of the mineral estate associated with the Noel Pope Allotment.
- 3) Carl Pope, whose primary residence is in St. Louis, Missouri. Carl Pope is a grandson of Noel Pope. Carl Pope's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Alfred Lee Pope, Sr. > Carl Pope. According to federal records, Carl Pope owns 1/792 or approximately 0.00126 (0.126%) of the mineral estate associated with the Noel Pope Allotment. Carl Pope has an IIM account.
- 4) John Harrison, whose primary residence is in Denver, Colorado. John Harrison is a grandson of Noel Pope. John Harrison's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Frances (Pope) Harrison > John Harrison. According to federal records, John Harrison owns 1/792 or approximately 0.00126 (0.126%) of the mineral estate associated with the Noel Pope Allotment.
- 5) Mark Harrison, whose primary residence is in Kansas, Oklahoma. Mark Harrison is a grandson of Noel Pope. Mark Harrison's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Frances (Pope) Harrison > Mark Harrison. According to federal records, Mark Harrison owns 1/792 or approximately 0.00126 (0.126%) of the mineral estate associated with the Noel Pope Allotment.
- 6) Stephen Akins, whose primary residence is in St. Louis, Missouri. Stephen Akins is a great-grandson of Noel Pope. Stephen Akins's line of inheritance in mineral

rights to the Noel Pope Allotment is as follows: Noel Pope > Embree Pope (not a direct ancestor) > Gladys Dale Pope Akins > Stephen Akins. According to federal records, Stephen Akins owns 1/3168 or approximately 0.00032 (0.032%) of the mineral estate associated with the Noel Pope Allotment. Stephen Akins has an IIM account.

- 7) Margaret Rachel Akins, whose primary residence is in St. Louis, Missouri. Margaret Rachel Akins is a great-granddaughter of Noel Pope. Margaret Rachel Akins's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Embree Pope (not a direct ancestor) > Gladys Dale Pope Akins > Margaret Rachel Akins. According to federal records, Margaret Rachel Akins owns 1/3168 or 0.000032 (0.032%) of the mineral estate associated with the Noel Pope Allotment. Margaret Rachel Akins has an IIM account.
- 8) Wednesday Shanel Reed, whose primary residence is in St. Louis, Missouri. Wednesday Reed is a great-granddaughter of Noel Pope. Wednesday Shanel Reed's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Embree Pope (not a direct ancestor) > Gladys Dale Akins > Wednesday Shanel Reed. According to federal records, Wednesday Shanel Reed owns 1/3168 or approximately 0.00032 (0.032%) of the mineral estate associated with the Noel Pope Allotment. Wednesday Shanel Reed has an IIM account.
- 9) Alfred Lee Pope III, whose primary residence is Normandy, Missouri. Alfred Lee Pope III is a great-grandson of Noel Pope. Alfred Lee Pope III's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Alfred Lee Pope, Sr. > Alfred Lee Pope, Jr. > Alfred Lee Pope III. According to federal records, Alfred Lee Pope III owns 1/3960 or approximately 0.00025 (0.025%) of the mineral estate associated with the Noel Pope Allotment. Alfred Lee Pope III has no knowledge of an IIM account in his name. He once directly received a \$25 check from the mineral company, which contained no explanation, but has received no other payments.
- 10) Dominique "Nicholas" Earl, whose primary residence is in St. Louis, Missouri. Dominique Earl is a great-grandson of Noel Pope. Dominique Earl's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Alfred Lee Pope, Sr. > Alfred Lee Pope, Jr. > Dominique Earl. According to federal records, Dominique Earl owns 1/3960 or approximately 0.00025 (0.025%) of the mineral estate associated with the Noel Pope Allotment.
- 11) Juanita R Miller, whose primary residence is in St. Louis, Missouri. Juanita Miller is a great-granddaughter of Noel Pope. Juanita Miller's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Alfred Lee Pope, Sr. > Alfred Lee Pope, Jr. > Juanita R Miller. According to federal records, Juanita R Miller owns 1/3960 or approximately 0.00025 (0.025%) of the mineral estate associated with the Noel Pope Allotment.

- 12) Nashoba Harrison, whose primary residence is in Gladewater, Texas. Nashoba Harrison is a great-granddaughter of Noel Pope. Nashoba Harrison's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Frances (Pope) Harrison > Gary Wayne Harrison > Nashoba Harrison. According to federal records, Nashoba Harrison's late father, Gary Wayne Harrison, owned 1/792 or approximately 0.00126 (0.126%) of the mineral estate associated with the Noel Pope Allotment. Gary Wayne Harrison's estate has not yet been probated.
- 13) Patsy Starr, whose primary residence is in Wichita Falls, Texas. Patsy Starr is a great-granddaughter of Noel Pope. Patsy Starr's line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Mattie (Pope) Starr > Reuben Starr > Patsy Starr. According to federal records, Patsy Starr's late father, Reuben Starr, owned approximately 1/968 or 0.00103 (.103%) of the mineral estate associated with the Noel Pope Allotment.
- 14) Alburey Doss, whose primary residence is in St. Louis, Missouri. Alburey Doss is a great-great grandson of Noel Pope. His line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Embree Pope (not a direct ancestor) > Gladys Dale Pope Akins > Tonya Regina Akins > Alburey Doss. According to federal records, Alburey Doss's late mother, Tonya Regina Akins, owned 1/3168 or 0.000032 (0.032%) of the mineral estate associated with the Noel Pope Allotment. Tonya Regina Akins's estate has not yet been probated.
- 15) LaTavia Doss, whose primary residence is in St. Louis, Missouri. LaTavia Doss is a great-great granddaughter of Noel Pope. Her line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Embree Pope (not a direct ancestor) > Gladys Dale Pope Akins > Tonya Regina Akins > LaTavia Doss. According to federal records, LaTavia Doss's late mother, Tonya Regina Akins, owned 1/3168 or 0.000032 (0.032%) of the mineral estate associated with the Noel Pope Allotment. Tonya Regina Akins's estate has not yet been probated.
- 16) John Pope, whose primary residence is in Florissant, Missouri. John Pope is a great grandson of Noel Pope. His line of inheritance in mineral rights to the Noel Pope Allotment is as follows: Noel Pope > Alfred Lee Pope > Lisa Dianne Pope > John Pope. According to federal records, John Pope's late mother, Lisa Dianne Pope, owned approximately 1/792 or 0.00126 (0.126%) of the mineral estate associated with the Noel Pope Allotment. Lisa Dianne Pope's estate has not yet been probated.

7. Defendant United States of America is a body politic existing pursuant to the Constitution of the United States, and which bears overall responsibility for the acts and omissions of its departments, agencies, instrumentalities, officials, and employees.

IV. FACTS APPLICABLE TO ALL COUNTS

8. Indian allotments date from the Allotment and Assimilation Era, beginning in the late 1800s and lasting until 1934, when it was the policy of the United States to break up tribally held lands and encourage Native Americans to adopt non-Indian lifestyles, including individual ownership of tracts of land, called allotments. In implementation of such policy, on many reservations, the bulk of tribal land was divided into allotments, normally from 80 to 160 acres, and patented to individual Indians. Outside of eastern Oklahoma, legal title to most allotments was retained by the United States as trustee for the allottee. For Indians of the so-called “Five Civilized Tribes,” however, which included the Choctaw Nation, the individual allottees received legal title to the allotments, but with a federally enforceable restriction against alienation. These restricted-fee allotments are included in the federal definition of “Indian country” for purposes of federal criminal jurisdiction, which includes “all Indian allotments, the Indian titles to which have not been extinguished[.]” 25 U.S.C. § 1151. Other statutes similarly include restricted-fee allotments under the federal government’s concept of Indian lands and territory, and courts have recognized that the federal government has a trust duty to individual Indians who own restricted-fee allotments.

A. Noel Pope’s Allotment and Early Oil & Gas Activity

9. Noel Pope was a full-blood Choctaw Indian who was born in 1879 and listed in the Approved Roll of Choctaw by Blood as No. 9004. He married Judy (Sexton) Pope, also a citizen-by-blood of the Choctaw Nation.

10. On July 17, 1903, Noel Pope applied before the Commission to the Five Civilized Tribes to receive a particular homestead allotment in Section 8 of Township 7 North, Range 18

East, consisting of 79.13 acres, being 80 acres less 0.87 acres for a railroad right-of-way (“Noel Pope Allotment”).

11. On the same day, July 17, 1903, the Chairman of the Commission to the Five Civilized Tribes signed a Daily Report to the Commission, stating: “You are hereby notified that the following described lands in the Choctaw Nation have this day been allotted to Noel Pope.” The Report was stamped “Patent Prepared” and “Certificate Issued and Delivered” “Aug 2, 1904.”

12. Plaintiffs do not have many records of the early oil & gas activity on the Noel Pope Allotment. The first oil and gas lease on the Noel Pope Allotment may have been a 10-year lease entered between Noel and Judy Pope and R.P. Lester, approved by the First Assistant to the Secretary of the Interior on August 11, 1930. The lease referred to an “officer in charge” whom the Secretary of the Interior designated to represent the lessor. The lessee agreed to pay the officer in charge, for the lessor, a royalty of 12.5% of the gross proceeds, whether from crude oil or natural gas.

13. Oil & gas activity on the Noel Pope Allotment certainly was taking place by July 1974. The Chief Geologist for the Oklahoma Natural Gas Company made a record to indicate that drilling for natural gas started on “Well No. 2-A” in July 1974 and that the initial production test occurred on August 29, 1974. The date of first production from this well occurred on August 30, 1974.

14. By 1988, the oil and gas operator on the Noel Pope Allotment was Oneok Resources. The Manager, Drilling & Production, for Oneok Resources signed an Oklahoma Corporation Commission form called a Plugging Record for Gas Well No. 1, associated with “Lease Name: Noel Pope” on July 7, 1988.

B. BIA Letter of 2003

15. Effective April 30, 2003, Well Number 2-A on the Pope Lease in Section 8 was transferred from Oneok Resources Company to Chesapeake Operating Inc. of Oklahoma City, Oklahoma.

16. On June 24, 2003, the Bureau of Indian Affairs, Eastern Oklahoma Regional Office, Real Estate Services, Minerals Section, wrote an “Authorization of Payment” letter to Chesapeake ORC, LLC of Oklahoma City, Oklahoma. The letter stated that it “is in regard to Lease 601-8844 (54878), Noel Pope, Choctaw 9004, W1/2NW1/4; less .87 acres for Fort Smith and Western Railroad of Section 8, Township 7 North, Range 18 East, Pittsburg County, Oklahoma.” The letter states: “Until otherwise directed in writing, you are ordered to make payments for rental and royalties for a restricted 696960/3136320 of 1/8 royalty under the above lease.” The letter then instructs Chesapeake ORC to make checks payable to the Department of the Interior, Royalty Management Program, for the following 40 people, each with a specific fractional interest associated with their name:

Mary E. Pope [a Plaintiff in this lawsuit]
Elizabeth (Pope) Lopez, Estate
Shelley A. Pope
Joyce K. Pope
Jeanie M. (Pope) Columbus
Kristy (Pope) Barber, Estate
George Effinger, Jr.
Norma J. (Effinger) Gafford
Kenneth D. Effinger
Terry A. Effinger
Janet G. Effinger
Ralph Pope, Estate
Judy A. Pope, Estate
William R. Pope
Frances (Pope) Harrison, Estate [deceased; heirs are Plaintiffs in this lawsuit]
Mattie (Pope) Starr
Mary (Amos) Clymer
Mable (Amos) Houck

Charles E. Pope
Alfred L. Pope, Jr. [deceased; heirs are Plaintiffs in this lawsuit]
Carl E. Pope [a Plaintiff in this lawsuit]
Jake T. Pope
Gladys D. Pope [deceased; heirs are Plaintiffs in this lawsuit]
Phillip R. Pope
Phyllis A. Pope
Robert S. Pope
Lisa D. Pope
Clara L. (James) Aguero, Estate
Rita S. (James) Jordan
Wanda R. (Kemp) Atkins
Jacob J. James, aka S. Jessie James
Larry J. James
Jodas L. Kemp
Warren J. James
Noel G. Kemp, Estate
Cora M. Carney, Estate
Serena J. (Kemp) Washington, Estate
Jackson James, Jr., aka Warren Jackson
Rosa M. (Pulcher) Carney
Judy (Silmon) Newport

C. Approval Proceeding for the Current Lease

17. On March 14, 2022, in the District Court of Pittsburgh County, Oklahoma, an attorney named Jennifer E. Krieg with the law firm St. John, Griffin & Krieg, P.L.L.C. filed a document titled: “Petition for the Approval of Oil and Gas Leases” concerning a lease on the Noel Pope Allotment. Ms. Krieg’s document purported to be filed on behalf of 58 Petitioners, as follows:

- 1) Alfred Lee Pope, III [a Plaintiff in this lawsuit]
- 2) Alvin Harrison
- 3) Amanda Ward
- 4) Andreana Daniel
- 5) Andrew Daniel
- 6) Anna Hulsey
- 7) Carl Eugene Pope [a Plaintiff in this lawsuit]
- 8) Charles Edward Pope
- 9) Clara Lou Aguero
- 10) Connie Gale Jones
- 11) Cora Mae Carney

- 12) Earl Harrison
- 13) Eugene Herrod
- 14) Elizabeth Pope Lopez
- 15) Gary Harrison
- 16) George Effinger, Jr.
- 17) Jackson Jessie James, Jr.
- 18) Jacob Jesse James
- 19) Jake Troy Pope
- 20) Janet Gail Effinger
- 21) Jennie Pope Columbus
- 22) Jodas Leo Kemp
- 23) John Harrison [a Plaintiff in this lawsuit]
- 24) Joyce Pope
- 25) Juanita R. Miller [a Plaintiff in this lawsuit]
- 26) Judy (Silmon) Newport
- 27) Kristy Pope Barber
- 28) Lisa Dianne Pope [deceased; heir John Pope is a Plaintiff in this lawsuit]
- 29) Mable Houck
- 30) Matthew James
- 31) Margaret Akins [a Plaintiff in this lawsuit]
- 32) Mark Daniel
- 33) Mark Harrison [a Plaintiff in this lawsuit]
- 34) Mary Pope [a Plaintiff in this lawsuit]
- 35) Mattie Starr [deceased; heir Patsy Starr is a Plaintiff in this lawsuit]
- 36) Miranda Daniel
- 37) Nicholas Earl
- 38) Nicolas Gibson Melendez
- 39) Noel Eugene Kemp
- 40) Norma Gafford
- 41) Phillip Ray Pope
- 42) Phyllis Ann Pope
- 43) Ramona (Daniel) Johnson
- 44) Rita Sue Williams
- 45) Robert Sydney Pope
- 46) Roger Herrod
- 47) Rose (Pulcher) Carney
- 48) Serena Washington
- 49) Shelley Pope
- 50) Stanton Atkins
- 51) Stephen Atkins [sic – should have been Akins; corrected in First Amended Petition; a Plaintiff in this lawsuit]
- 52) Steve Daniel
- 53) Terry Allen Effinger, Jr.
- 54) Tonya Regina Atkins [sic – should have been Akins; corrected in First Amended Petition; deceased; heirs are Plaintiffs in this lawsuit]
- 55) Victoria Lynn Pope

- 56) Warren Jesse James
- 57) Wednesday Reed [a Plaintiff in this lawsuit]
- 58) William Ray Pope

18. Attorney Krieg's Petition appended a notarized Verification averring that "the facts and matters therein contained are true and correct" signed by only one of the 58 Petitioners – Mr. Jacob J. James.

19. From the face of the Petition, Attorney Krieg was purporting to represent the Petitioners. Attorney Krieg signed and apparently wrote and filed the Petition in the District Court of Pittsburg County. However, according to a later-filed Proof of Delivery and other documents in the case, Attorney Krieg was representing Reagan Smith, Inc., the oil & gas industry company that ultimately obtained a lease for production on the Noel Pope Allotment. Therefore, Attorney Krieg could not have been ethically representing the Petitioners she listed in her Petition. Rather, the duty to represent the Petitioners was on the United States as trustee, or private counsel. Plaintiffs, however, did not have private counsel at the time and they were not contacted by any federal official before this Petition was filed on their behalf, and no federal official appears on the face of the Petition.

20. On the same day, March 14, 2022, the Honorable Judge Michael Hogan of the District Court of Pittsburg County signed a Notice of Hearing that had been prepared by Attorney Krieg. This Notice states: "Notice is hereby given that on the 14th day of March, 2022, the Heirs of Noel Pope, Full Blood Choctaw Indian, Roll No. 9004, being of the Five Civilized Tribes, filed their verified Petitions herein praying for the approval of their executed Oil and Gas Lease for a term of three years and as long thereafter as oil, gas and other minerals are produced in paying quantities, upon all his right, title and interest in and to the oil, gas and other minerals

and mineral rights in, to and under the following described lands, said lands being a portion of the allotment of Noel Pope, Full Blood Choctaw Indian, Roll No. 9004, deceased, to-wit: [Legal Land Description] to Reagan Smith, Inc. for a cash bonus consideration of \$200.00 per acre, paid-up, which Lease provides for a 3/16th royalty for Petitioner's interest and a three year term, and said Petition has been set for hearing on the 22 day of June, 2022, at 9:00 a.m. in the District Courtroom of the Pittsburg County Courthouse, McAlester, Oklahoma, at which time and place competitive bidding will be had thereon in open court and the Oil and Gas Leases, as above described, will be approved in the above named lessee, or in the name of the person paying the highest and best cash sum therefore, plus attorney fees and court costs." The only names on this Notice are Judge Michael Hogan and Attorney Jennifer Krieg.

21. Also on the same day, March 14, 2022, the Leasing Manager of Reagan Smith, Inc., Kendra Bennett, sent a letter to at least some—perhaps all—of the mineral owners of the Noel Pope Allotment who were on file with the BIA at the time. The letter enclosed an oil and gas lease, a verification form, and a W-9 form, and it informed the recipients that the amount of the bonus consideration was \$200.00 per mineral acre they owned, including paid-up rental, for a three year term and providing for a 3/16th royalty. The letter stated: "*Please understand that this is only an initial offer as we must meet the Bureau of Indian Affairs's [sic] fair market appraisal, as it pertains to **restricted** property.*" The letter also stated: "Please sign the enclosed documents and return the lease, verification and W-9 form to our office in the postage paid envelope."

22. On April 4, 2022, Attorney Krieg filed a First Amended Petition for the Approval of Oil and Gas Leases. This time, the Petition named 70 Petitioners, deleting Anna Hulsey, Mattie Starr, Stanton Atkins, and William Ray Pope from the original list, and adding the following Petitioners:

- 1) Autumn Starr
- 2) Darleen Fields
- 3) Dominique Earl [a Plaintiff in this lawsuit]
- 4) Janell Effinger-Cross
- 5) Keith Alexander
- 6) Mack Anthony Daniel
- 7) Matthew James
- 8) Ramona Lee Starr
- 9) Regana Lou Starr
- 10) Reuben Leroy Starr [deceased; heir Patsy Starr is a Plaintiff in this lawsuit]
- 11) Richard L. Starr
- 12) Robert Leroy Starr, Jr.
- 13) Robin Lynn Starr [a Plaintiff in this lawsuit]
- 14) Shannon Pope
- 15) Sheena Effinger
- 16) Shirley Kay Fields
- 17) Wanda Ruth Akins

23. On April 12, 2022, Valery O. Giebel, Trial Attorney for the U.S. Department of the Interior, filed a Combined Entry of Appearance and Acknowledgment of Notice, which stated: “COMES NOW Valery O. Giebel, Trial Attorney, Office of the Field Solicitor, U.S. Department of the Interior, Tulsa, Oklahoma, (successor to the Probate Attorney), pursuant to [the Stigler Act], Sec. 1(b) of the Act of August 4, 1947, 61 Stat. 731, as amended by the [Stigler Act Amendments] of December 31, 2018, 132 Stat. 5331, and hereby enters her appearance on behalf of the Secretary of the Interior to protect the interests of the Indian Petitioners owning restricted land, and acknowledges receipt of written notice of the pendency of this proceeding on the 4th day of April, 2022, being ten days or more prior to the date of the hearing.”

24. On April 28, 2022, Attorney Giebel sent a letter to at least some—possibly all—of the mineral owners of the Noel Pope Allotment on file with the BIA. That letter stated: “I am a trial attorney with the U.S. Department of the Interior Department [sic], Office of the Solicitor, Tulsa Field Solicitor’s Office, and I have been assigned to protect your restricted Indian interests in the above-referenced case. You recently signed, or are in the process of

signing, an oil and gas lease to your mineral interest in the property described below to Reagan Smith, Inc. All mineral leases signed by restricted Indian owners must be approved in state court in the county where the property is located. Although you have signed a lease, it is not valid until approved by the judge. The purpose of this letter is to explain the court-approval process and your rights in the proceeding.” The letter then provided details about the hearing date/time and provided the legal land description of the subject property, then it stated: “Enclosed for your review is a copy of an appraisal of your property performed by the Department of Minerals Evaluation, dated April 19, 2022. The appraisal shows the value of the mineral interest in this tract to be \$200/acre, with a 3/16 royalty, for a 3-year term. The appraised amount is equal [to] the offer you were given by the oil company. However, on your behalf, I have successfully negotiated with the oil company, and they have agreed to increase the bonus payment to \$500/acre.” “From the court documents we received, it appears that you are a mineral interest owner in this tract. However, you may not have signed a verification of the petition or a lease for this property. These documents *must be signed* by you in order to be included in the case as a valid petitioner. While you are not obligated to lease your minerals, if you desire to share in a lease bonus payment, as well as royalties for future production (if any), you must execute both documents (before a notary) for the court to approve your interest. If you have not already done so, *I urge you to complete those forms so that you could be included in the approval hearing.* If you haven’t received your documents or have misplaced them, please contact the attorney for Reagan Smith, Inc, Ms. Jennifer E. Krieg, as soon as possible.” “Your prompt attention to this matter is necessary if you desire to be included in the lease approval proceedings. If you do not want to lease your interest along with the other owners, please call me so that we can discuss the possible consequences of deciding not to lease when your co-owners have executed leases.”

“You have the right to consult with a private attorney regarding these matters but you will be responsible for the attorney’s fees as the federal government will not pay for the services of a private attorney.”

25. On June 3, 2022, Attorney Krieg filed a Second Amended Petition for the Approval of Oil and Gas Leases. This time, Attorney Krieg named 82 Petitioners, including the following 14 new individuals:

- 1) Ann McCraw
- 2) Anna M. Hulsey
- 3) Bill Newport
- 4) Henry Newport
- 5) Jeffery Newport
- 6) Jerry Alden Harrison
- 7) John Newport
- 8) Kimberlee Ott
- 9) Larry Newport
- 10) Mary Harmon
- 11) Nancy Barton
- 12) Paul Newport
- 13) Ronnie Lee Silmon Jr.
- 14) Stanton D Atkins

26. The Second Amended Petition also appended 11 additional Verifications from the following Petitioners: Shelley Pope, Amanda (Ward) Holt, George Effinger, Jr., Janelle Effinger-Cross, Alfred L. Pope III, Mable Houck, Mary Pope, Wednesday Shanel Reed, Juanita R. Miller, Victoria Lynn Pope, and Stanton Atkins.

27. On June 22, 2022, U.S. Trial Attorney Valery Giebel signed a Consent to Hearing by Trial Attorney, which stated: “Pursuant to the authority included in [the Stigler Act] Sec. 1(b) of the Act of August 4, 1947, 61 Stat. 731, as amended by the [Stigler Act Amendments] of December 31, 2018, 132 Stat. 5331, the under signed Trial Attorney, Office of the Solicitor, United States Department of the Interior (Successor to the Probate Attorney), hereby gives her written consent to a hearing on the Petition for approval of conveyance filed herein and to the

approval by the Court of the requested conveyances, on behalf of those individuals whose names are listed below. Dated this 22nd day of June, 2022. I consent for: See Page Two for the names of those petitioners for whom consent is provided this date.” Page Two contains a table with the following 17 names:

- 1) Alfred Lee Pope, III [a Plaintiff in this lawsuit]
- 2) Amanda (Ward) Lynn James Holt
- 3) Carl Eugene Pope [a Plaintiff in this lawsuit]
- 4) Dominique “Nicholas” Earl [a Plaintiff in this lawsuit]
- 5) George Effinger, Jr.
- 6) Jacob Jesse James
- 7) Jannell Effinger-Cross
- 8) Janet Gail Effinger
- 9) Juanita R. Miller [a Plaintiff in this lawsuit]
- 10) Mable Houck
- 11) Mary Pope [a Plaintiff in this lawsuit]
- 12) Matthew Wade James
- 13) Norma Gafford
- 14) Sheena Effinger
- 15) Shelly Pope [sic – should have been Shelley Pope]
- 16) Victoria Lynn Pope
- 17) Wednesday Reed [a Plaintiff in this lawsuit]

28. On June 22, 2022, Judge Hogan signed an Order Approving Oil and Gas Lease and Authorizing Delivery. The Order was also signed by Attorney Krieg and U.S. Trial Attorney Giebel. The Order begins by stating: “Now on this 22nd day of June, 2022, this matter comes on for hearing upon the verified Petitions of” The Order then lists 84 people, but the following 64 people from that list are crossed-out, by hand:

- 1) Alvin Harrison
- 2) Andreana Daniel
- 3) Andrew Daniel
- 4) Ann McCraw
- 5) Autumn Starr
- 6) Bill Newport
- 7) Charles Edward Pope
- 8) Clara Lou Aguero
- 9) Connie Gale Jones
- 10) Cora Mae Carney
- 11) Darlene Fields

- 12) Earl Harrison
- 13) Eugene Herrod
- 14) Elizabeth Pope Lopez
- 15) Gary Harrison
- 16) Henry Newport
- 17) Jake Troy Pope
- 18) Jeffery Scott Folsom
- 19) Jeffery Newport
- 20) Jennie Pope Columbus
- 21) Jerry Alden Harrison
- 22) Jodas Leo Kemp
- 23) John Harrison [a Plaintiff in this lawsuit]
- 24) John Newport
- 25) Joyce Pope
- 26) Keith Alexander
- 27) Kimberlee Ott
- 28) Kristy Pope Barber
- 29) Larry Newport
- 30) Lisa Dianne Pope [deceased; heir John Pope is a Plaintiff in this lawsuit]
- 31) Mack Anthony Daniel
- 32) Margaret Akins [a Plaintiff in this lawsuit]
- 33) Mark D. Daniel
- 34) Mark Harrison [a Plaintiff in this lawsuit]
- 35) Mary Harmon
- 36) Miranda Daniel
- 37) Nancy Barton
- 38) Nicolas Gibson Melendez
- 39) Noel Eugene Kemp
- 40) Paul Newport
- 41) Phillip Ray Pope
- 42) Phyllis Ann Pope
- 43) Ramona (Daniel) Johnson
- 44) Ramona Lee Starr Ward
- 45) Regana Lou Starr Sellars
- 46) Regina Sue Mabray
- 47) Reuben Leroy Starr [deceased; heir Patsy Starr is a Plaintiff in this lawsuit]
- 48) Richard James
- 49) Richard L. Starr
- 50) Robert Leroy Starr Jr.
- 51) Robert Sydney Pope
- 52) Robin Lynn Starr [a Plaintiff in this lawsuit]
- 53) Roger Herrod
- 54) Ronnie Lee Silmon Jr.
- 55) Rose (Pulcher) Carney
- 56) Serena Washington
- 57) Shannon Pope

- 58) Shirley Kay Fields
- 59) Stephen Lamont Akins [a Plaintiff in this lawsuit]
- 60) Steve Daniel
- 61) Terry Allen Effinger, Jr.
- 62) Tonya Regina Akins [deceased; heirs are Plaintiffs in this lawsuit]
- 63) Wanda Ruth Atkins
- 64) Warren Jesse James

29. Only the following 20 individuals from the list of 84 original Petitioners remain not crossed out, to-wit:

- 1) Alfred Lee Pope, III [a Plaintiff in this lawsuit]
- 2) Amanda (Ward) Lynn James Holt
- 3) Anna M Hulsey
- 4) Carl Eugene Pope [a Plaintiff in this lawsuit]
- 5) Dawn McLaughlin
- 6) Dominique Earl [a Plaintiff in this lawsuit]
- 7) George Effinger, Jr.
- 8) Jacob Jesse James
- 9) Janell Effinger-Cross
- 10) Janet Gail Effinger
- 11) Juanita R. Miller [a Plaintiff in this lawsuit]
- 12) Mable Houck
- 13) Mary Pope [a Plaintiff in this lawsuit]
- 14) Matthew James
- 15) Norma Gafford
- 16) Sheena Effinger
- 17) Shelly Pope [sic – should have been Shelley Pope]
- 18) Stanton D Atkins
- 19) Victoria Lynn Pope
- 20) Wednesday Reed [a Plaintiff in this lawsuit]

30. A logical reading of the Order, containing 84 names but with 64 of those names crossed-out, is that the remaining 20 individuals listed in the preceding paragraph were the only Petitioners made subject to Judge Hogan's Order, and that the 64 crossed-out names were not then—if they ever were—considered Petitioners before that court.

31. Judge Hogan's Order stated: "The Petitioners heretofore requested this Court to hear this matter whether or not the Petitioners are present, and approve their Oil and Gas Lease

by and with the consent of the United States trial Attorney, acting on the behalf of the Secretary of the Interior to protect their restricted interests, all as set forth in the petitions on file herein.”

32. Judge Hogan’s Order set forth a detailed history of the ownership of the Noel Pope Allotment, starting with Mr. Pope’s death in 1954 and a subsequent Sheriff’s sale in 1959, which resulted in the Pope family losing all of the surface interest and a portion of the mineral interest, with the remainder of the mineral interest going to five of Noel Pope’s heirs. From there, Judge Hogan’s Order traced each death and inheritance, until setting forth a list of 84 mineral interest owners, stating: “The tract ownership is encumbered by the title documents which have been approve[d] by a properly delegated Federal official. Ownership is in unity and interests are owned in the following manner: [listing 84 names with associated fractional and decimal interests].”

33. The Order further stated: “The Court further finds the Petitioners have executed their Oil and Gas Leases covering all their right, title and interest in and to the lands here involved in favor of Reagan Smith, Inc., for a primary term of three years from date of approval, and as long thereafter as oil, gas and other minerals are produced in paying quantities, for a cash bonus consideration of \$200.00 per acre, paid-up, and a 3/16th royalty to lessor as provided in the Oil and Gas Lease. Said Oil and Gas lease was offered for sale at public auction in open court and that Reagan Smith, Inc. was the highest and best bidder therefor, having bid the sum of \$502.00 per acre, including delayed rental, for said Oil and Gas Lease for a term of three years from date of approval, and in addition thereto, the costs of this approval proceeding and attorney fees.”

34. The Order further stated: “The Court further finds that said sale was conducted fairly and the sum bid is not disproportionate to the value of the leased interests, that a great[er]

sum could not be obtained therefore, and the U.S. Trial Attorney for the Department of the Interior offered no objections to said approval and recommends the same.”

35. The Order further stated: “This Court hereby finds that the bonus payment checks to the restricted Indian mineral owners in this cause of action constitute monies directly derived from the use of restricted fee lands that are paid directly to the Secretary on behalf of the account holder as contemplated by 25 C.F.R. 115.702. Further, this court having been advised that certain of the restricted Indian mineral owners may wish to have their bonus payment checks deposited in their 25 C.F.R. 115.701 Individual Indian Money Accounts, pursuant to 25 C.F.R. 115.702 the Secretary of the Interior is hereby ordered to accept for deposit those bonus payment checks so designated on the fact thereof.”

36. The Order concludes: “IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT that the Oil and Gas Leases for a term of three years from date of approval, covering the interests of the Petitioners in and to the lands above described, should be and the same are hereby in all things ratified, confirmed and approved. If any of the above listed petitioners have not executed all documents necessary to vest the Court with jurisdiction or to satisfy the requirements of the Field Solicitor, their leases are conditionally approved subject to furnishing the required documentation. Their leases will be deemed finally approved upon a filing of a consent to hearing in the absence of those petitioners by the Field Solicitor. For the purpose of identification, the Court has endorsed on the original Oil and Gas Leases: ‘APPROVED IN OPEN COURT THIS 22ND DAY OF JUNE, 2022. DISTRICT JUDGE’ and Petitioners and the lessors are authorized to deliver said Oil and Gas Leases to the above named lessees.”

37. On September 8, 2022, Attorney Krieg filed a Proof of Delivery, certifying proof of payment directly to the following fifteen (15) people:

- 1) Sheena Effinger of Norman, OK;
- 2) Matthew W James of McAlester, OK;
- 3) Shelley Pope of Oklahoma City, OK;
- 4) Victoria L Pope of Warren, MI;
- 5) Mabel Houck of Oklahoma City, OK;
- 6) Juanita R Miller of St. Louis, MO; [a Plaintiff in this lawsuit]
- 7) George Effinger Jr. of Wanette, OK;
- 8) Carl E. Pope of St. Louis, MO; [a Plaintiff in this lawsuit]
- 9) Amanda L. Holt of McAlester, OK;
- 10) Janet G. Effinger of Oklahoma City, OK;
- 11) Norma Gafford of Oklahoma City, OK;
- 12) Janell Effinger-Cross of Bethany, OK;
- 13) Dominique Earl of East St. Louis, IL; [a Plaintiff in this lawsuit]
- 14) Wednesday S. Reed of St. Louis, MO; [a Plaintiff in this lawsuit] and
- 15) Alfred L. Pope III of Normandy, MO [a Plaintiff in this lawsuit] – copy of check for \$25.00.

38. On June 16, 2023, Attorney Krieg filed a Proof of Delivery, certifying proof of payment directly to the following two additional individuals: 1) Jacob Jesse James for a bonus payment of \$41.04; and 2) Mary Pope [a Plaintiff in this lawsuit] for a bonus payment of \$75.23.

D. Trustee Obligations of Defendant United States

39. In its conduct with Indian tribes and Native American people, the United States has assumed the obligations of a trustee. *See U.S. v. Mitchell*, 463 U.S. 206, 225 (1983); *Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001). The United States has charged itself with a moral obligation of the highest responsibility and trust in its conduct with Indians and Indian tribes and its conduct should therefore be judged by the most exacting fiduciary standards. *Cobell*, 240 F.3d at 1099 (quoting *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942)).

40. All of the monies involved in the present litigation are “trust funds” under 31 U.S.C. § 1321(a)(20), (66) and (67) as lease payments and/or permit payments derived from

restricted fee lands; and royalty and/or other payments derived from natural resources on such restricted fee lands.

41. The United States, as trustee, has a fiduciary relationship with the Plaintiffs and an obligation to administer the trust assets with the greatest skill and care possessed by the trustee. The trust obligations of the United States to Indian owners of restricted-fee allotments include, but are not limited to, the duty to: (1) exercise opportunities to obtain maximum investment returns or other monetary benefits from the land; enter into reasonable contracts and lease agreements to advance those opportunities; and collect trust funds that come due to the beneficiaries under those agreements; (2) create trust accounts to hold the beneficiaries' trust funds; (3) ensure that the monies owed or paid for the benefit of the beneficiaries are placed in those accounts in a timely manner; (4) maintain adequate records with respect to the beneficiaries' trust funds and non-monetary trust assets; (5) maintain adequate systems and controls to guard against errors and dishonesty; (6) provide regular and accurate accountings to the trust beneficiaries; (7) ensure the federal government's compliance with the protections afforded the beneficiaries under the Constitution of the United States and other applicable laws; (8) consult with the beneficiaries regarding the management of their trust funds and non-monetary trust assets, including the leasing thereof; and (9) ensure that the beneficiaries' trust funds and non-monetary trust assets are protected, preserved and managed so as to produce the highest rate of return. *See* 25 U.S.C. § 161; 161a; 162(a); 162d and the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. §§ 4001-4061.

COUNT I

BREACH OF TRUST -- FAILURE TO ADEQUATELY REPRESENT AND PROTECT THE INTERESTS OF THE RESTRICTED ALLOTMENT OWNERS DURING OIL AND GAS LEASE APPROVAL PROCEEDING

41. Plaintiffs reallege and incorporate by reference all the allegations contained in the preceding paragraphs as if written in full in this Count I.

42. The Petition, First Amended Petition and Second Amended Petition filed in *In the Matter of the Approval of Oil and Gas Leases by Restricted Indian Heirs of Noel Pope, Full Blood Choctaw Indian, Roll No. 9004, Deceased*, in the District Court of Pittsburg County, Oklahoma, Case No. FB-2022-1 were purportedly filed on behalf of the Indian owners of the Noel Pope Allotment. However, these documents were prepared and filed by legal counsel for Reagan Smith, Inc., who had a direct conflict of interest as the attorney for the proposed oil & gas lessee. No federal attorney or other federal trustee appears on the face of these documents, and upon information and belief, no federal attorney was involved in their preparation.

43. In addition, none of the Plaintiffs in this action recall meeting Attorney Krieg or giving her permission to include their names on the Petition, Amended Petition, or Second Amended Petition. Furthermore, none of the Plaintiffs in this action recall meeting or speaking with Attorney Valery Giebel prior to the filing of the Petition, and none of the Plaintiffs recall ever having a discussion with Attorney Valery Giebel about making the most of their ownership interest in the Noel Pope Allotment.

44. The letter dated April 28, 2022, that Attorney Giebel sent to some—possibly all—of the mineral interest owners came at least six (6) weeks after the Petition was filed on their behalf by the oil & gas operator's attorney and a letter was sent to the owners by Reagan Smith, Inc.'s leasing agent.

45. Federal statute provides: “[S]aid representatives of the Secretary of the Interior [now the U.S. Trial Attorneys] are further authorized and it is made their duty, to counsel and advise all allottees, adult or minor, having restricted lands of all of their legal rights with reference to their restricted lands, without charge, and to advise them in the preparation of all leases authorized by law to be made” 35 Stat. 312, 314 (1908).

46. Contrary to this statutory duty, Plaintiffs had no interaction with any federal official concerning the preparation and filing of the Petition, Amended Petition, and Second Amended Petition, and Plaintiffs did not give their informed consent for the Petition to be filed on their behalf.

47. Moreover, when the U.S. Trial Attorney sent her letter dated April 28, 2022, to the mineral interest owners, she informed them: “[O]n your behalf, I have successfully negotiated with the oil company, and they have agreed to increase the bonus payment to \$500/acre.” However, the bonus payment in the Petition and the Court’s final order was \$200/acre. Plaintiffs’ records do not include an explanation for this serious discrepancy.

48. Furthermore, Defendant United States knew, or should have known, that the Petition, Amended Petition, and Second Amended Petition were prepared and filed by counsel to an adverse party to the proceeding—an attorney with a direct conflict of interest. Defendant United States did nothing to correct the record or ensure that all owners of the Noel Pope Allotment either consented to the Petition or were removed as Petitioners; Defendant United States did not sufficiently advise Plaintiffs as to their property rights and procedural options; did not recommend a course of action and obtain approval from Plaintiffs before acting; and did not insist that the Petition documents contain the \$500/acre bonus figure that the U.S. Trial Attorney

reportedly negotiated on behalf of the mineral owners; and instead agreed to a \$200/acre bonus figure in the final order.

COUNT II

BREACH OF TRUST – FAILURE TO ENSURE PROPER AND TIMELY OIL AND GAS LEASE PAYMENTS TO ALL OWNERS OF THE RESTRICTED INDIAN ALLOTMENT

48. Plaintiffs reallege and incorporate by reference all the allegations contained in the preceding paragraphs as if written in full in this Count II.

49. The U.S. Trial Attorney and the District Court Judge, acting by federal designation, were both officials with federal trust duties to be exercised for the benefit of Plaintiffs and the other owners of the Noel Pope Allotment. *See Springer v. G.L. Townsend*, 336 F.2d 397, 400 (10th Cir. 1964) (collecting cases); *In the Matter of the Estate of Cully*, 276 P.2d 250, 254 (Okla. 1954) (“In the approval of conveyances by such Indians, the county court is acting upon no independent jurisdiction, but is merely exercising the jurisdiction granted it by Federal law and—as a Federal agency—for that particular purpose.”).

50. Despite the fact that the proposed lease was accepted and signed by only 20 of the 84 landowners—a clear minority—and despite the presence and participation of two federal officials, the United States failed to either disapprove the lease or ensure that the approved lease would provide at least some type of just compensation to all of the allotment owners. Instead, the Judge’s Order directs payments only to those owners who became “Petitioners” by executing all necessary documents.

51. The individual Plaintiffs include those, such as John Harrison, Margaret Rachel Akins, Mark Harrison, and Stephen Akins, who are current part-owners of the Noel Pope Allotment but did not sign Reagan Smith Inc.’s lease (“Non-Consenting Plaintiffs”). Despite the

non-concurrence of approximately 64 of such mineral owners, the oil and gas lease was approved by a federal official (Judge Mike Hogan), with the knowledge, participation and acquiescence of a second federal official (U.S. Trial Attorney Valery Giebel), based on the concurrence of only 20 individuals.

52. The Non-Consenting Plaintiffs have received no payments of any kind, at any time, from Reagan Smith, Inc. or any other oil & gas operator associated with oil & gas leasing or production on the Noel Pope Allotment. Nor have the Non-Consenting Plaintiffs received any information from Defendant indicating that Defendant is demanding, collecting, depositing, managing, investing, accounting, and reporting on any payments made to, or on behalf of, the Non-Consenting Plaintiffs associated with oil & gas leasing or production on the Noel Pope Allotment. It is a breach of trust and a violation of federal statute for the United States to approve and allow oil & gas leasing and production on a restricted Indian allotment without the provision for any payments to be made to the Non-Consenting Plaintiffs.

53. Plaintiffs also include those, such as Alfred Lee Pope III, Mary Pope, Dominique Earl, Juanita R. Miller, and Wednesday Shanel Reed (“Consenting Plaintiffs”) who signed the lease documents with Reagan Smith, Inc. Each Consenting Plaintiff thereafter received one (1) direct payment check, believed to be what the Order approving the lease describes as a “cash bonus consideration of \$200.00 per acre” adjusted according to the individual Consenting Plaintiff’s ownership share. These checks were sent directly to the Consenting Plaintiffs rather than to the Defendant United States in trust for the Consenting Plaintiffs. Consenting Plaintiffs have received no other payment of any kind, at any time, from Reagan Smith, Inc. or any other oil & gas operator associated with oil & gas leasing or production on the Noel Pope Allotment. Nor have the Non-Consenting Plaintiffs received any information from Defendant United States

indicating that Defendant United States is investigating, demanding, collecting, depositing, managing, investing, accounting, and reporting on any payments made to, or on behalf of, the Consenting Plaintiffs associated with oil & gas leasing or production on the Noel Pope Allotment.

54. It is a breach of trust and a violation of federal statute for the United States to approve and allow oil & gas leasing and production on a restricted allotment without ensuring that bonus payments are placed into the Consenting Plaintiffs' IIM accounts established with Defendant United States, where those funds were to be invested and managed by Defendant. It is also a breach of trust and a violation of federal statute for Defendant to approve the oil & gas lease at issue here and then fail to ensure that the oil & gas operator makes the required rent and royalty payments to the mineral owners.

COUNT III

BREACH OF TRUST – FAILURE TO PROPERLY MANAGE OIL AND GAS LEASE PAYMENTS FROM THE RESTRICTED INDIAN ALLOTMENT

55. Plaintiffs reallege and incorporate by reference all the allegations contained in the preceding paragraphs as if written in full in this Count III.

56. There has been oil and gas activity on the Noel Pope Allotment since at least 1930. Plaintiffs have not received any information from Defendant United States indicating that Plaintiffs, or their lineal relatives/ancestors, have materially benefitted from such oil and gas activity, including during the last six (6) years, during which time Defendant United States should have been managing, investing, accounting, reporting and disbursing such funds for the benefit of Plaintiffs. Therefore, Plaintiffs allege that Defendant United States has breached its trust duty to collect payments, establish IIM accounts for all eligible Plaintiffs, and manage such

IIM accounts for Plaintiffs' benefit, including the duty to keep Plaintiffs informed regarding Plaintiffs' accounts, for every day within the applicable statute of limitations.

57. Since at least 1982, royalty, rent and bonus payments, and accompanying reports, should have been made to the Minerals Management Service ("MMS") at the Department of the Interior, which is charged with the responsibility under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701-1759, for accounting for payments on Indian lands. *See id.* at § 1711(a); 1714. Upon information and belief, during the past six years (and more), Defendant United States has failed to ensure that royalty, rent and bonus payments were made to the MMS for oil and gas production activity on the Noel Pope Allotment. Instead, to the extent that there have been payments made, the United States has allowed those payments to be made directly to the restricted Indian landowners. A direct payment system is difficult to monitor and susceptible to abuse by the oil & gas operators and does little to encourage maximum investment return by the landowners. Therefore, Plaintiffs allege that Defendant United States has breached its trust duty to ensure that oil & gas operators leasing the Noel Pope Allotment send all associated payments to the MMS to be deposited into IIM accounts and managed there for Plaintiffs' benefit. Plaintiffs make this allegation for every day within the applicable statute of limitations for all oil & gas payments that were made or should have been made to any Plaintiff.

COUNT IV

UNCONSTITUTIONAL TAKING

58. Plaintiffs reallege and incorporate by reference all the allegations contained in the preceding paragraphs as if written in full in this Count IV.

59. Each of the Plaintiffs own, or are in line to inherit, a partial interest in the natural gas and other mineral resources located below the surface of the Noel Pope Allotment.

60. The Honorable Judge Michael Hogan of the District Court of Pittsburg County, Oklahoma, acted pursuant to federal statute and on behalf of Defendant United States when, on June 22, 2022, he signed the Order Approving Oil and Gas Lease and Authorizing Delivery in Case No. FB-2022-1. *See* Act of Aug. 4, 1947, 61 Stat. 731, as amended. Although Judge Hogan normally serves as a state-court judge, the referenced Order and lease approval was a federal action. The Order was signed by an official designated to act on such orders by Congress through federal statute, which purpose was to authorize private oil & gas activity on Indian lands—activity which otherwise would be prohibited by federal law.

61. Through the Act of August 4, 1947, as amended, known as the Stigler Act, and many other federal statutes, Congress has evinced a public policy of encouraging domestic oil & gas exploration and production. Therefore, actions taken pursuant to these statutes serve a public purpose.

62. The subject Order of June 22, 2022, authorized Reagan Smith, Inc., the lessee, to conduct oil & gas activities on the Noel Pope Allotment, thus serving the public purpose of increasing domestic oil & gas supplies.

63. The subject Order of June 22, 2022, authorized Reagan Smith, Inc. to produce natural gas and other mineral resources, and remove the same from the Noel Pope Allotment for the purpose of selling the natural gas and other mineral resources on the open market, without requiring Reagan Smith, Inc. to make any payments whatsoever to the Non-Consenting Plaintiffs who owned an undivided, partial interest in the natural gas and other mineral resources.

64. Upon information and belief, Reagan Smith, Inc. has initiated oil & gas activity on the Noel Pope Allotment. The Non-Consenting Plaintiffs have received no payments from Reagan Smith, Inc. Upon information and belief, Defendant has received no payments from Reagan Smith, Inc. for the benefit of the Non-Consenting Plaintiffs.

65. As to each of the Non-Consenting Plaintiffs, the Order of June 22, 2022, was an unconstitutional taking of private property without just compensation.

COUNT V

ILLEGAL EXACTION

66. Plaintiffs reallege and incorporate by reference all the allegations contained in the preceding paragraphs as if written in full in this Count V.

67. In the alternative to Count IV, if the actions alleged in this Complaint are not an unconstitutional taking, then they constitute an illegal exaction.

68. As alleged in the preceding paragraphs, Judge Hogan's Order of June 22, 2022, approving an oil & gas lease on the Noel Pope Allotment, divested the Non-Consenting Plaintiffs of their property interest without their consent and without compensation. No statute or federal regulation allows this uncompensated divestiture. Therefore, the federal government (Judge Hogan acting in his federal capacity under the Stigler Act) illegally required the Non-Consenting Plaintiffs to provide their property (mineral interests) without just compensation to a third party (Reagan Smith, Inc.). Such actions constitute an illegal exaction.

RELIEF REQUESTED

69. Plaintiffs respectfully request a judgment in favor of Plaintiffs and the relief requested below:

- a. A determination and declaration that the Defendant is liable to Plaintiffs in damages for the injuries and losses caused through violations of the Defendant's statutory trust responsibilities to the Plaintiffs;
- b. An order requiring Defendant to produce an accounting of the monies derived from oil & gas activity on the Noel Pope Allotment and the disposition of all such monies;
- c. A determination of the amount of damages due to the Plaintiffs; and an Order directing Defendant to pay such damages, plus interest;
- d. Reasonable attorneys' fees and costs incurred in this litigation; and
- e. Such further relief as this Court may deem just and proper.

Respectfully submitted,

Date: 11/14/2024

/s/ Jeffrey Nelson

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