

CAUSE NO. _____

ALLEN LAWRENCE BERRY, AS
TRUSTEE OF THE ALLEN
LAWRENCE BERRY 2007 TRUST,
DANNY S. DAVIS, AND TAYLOR
MINERALS, LLC

Plaintiffs

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IN THE DISTRICT COURT OF

vs.

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HARRIS COUNTY, TEXAS

FURIE OPERATING ALASKA, LLC
(F/K/A ESCOPETA OIL OF ALASKA,
A TEXAS LLC),

Defendant.

____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Allen Lawrence Berry, as Trustee of the Allen Lawrence Berry 2007 Trust, Danny S. Davis, and Taylor Minerals, LLC (collectively, "Plaintiffs"), file this *Plaintiffs' Original Petition* against Defendant Furie Operating Alaska, LLC ("Defendant"), and in support thereof respectfully show the Court the following:

I.

RULE 47 STATEMENT

1. This is an oil and gas case concerning Defendant's refusal to pay Plaintiffs their proportionate share of production in accordance with the terms of the parties' contract (which was agreed to and accepted in federal bankruptcy court). Specifically, the agreement of the parties prohibits the deduction of certain costs and expenses. Despite the unambiguous language in the

agreement, Defendant persists in regularly deducting the prohibited costs and expenses in breach of the agreement.

2. Plaintiffs seek monetary relief exceeding \$1,000,000. The damages sought are within the jurisdictional limits of this Court, and Plaintiffs respectfully demand judgment for all relief to which they may show themselves justly entitled.

II. **DISCOVERY LEVEL**

3. Plaintiffs allege that discovery in this matter should be governed by Texas Rule of Civil Procedure 190.3.

III. **PARTIES**

4. Plaintiff Allen Lawrence Berry ("Berry") is a trustee of the Allen Lawrence Berry 2007 Trust (the "Trust") and resides at 829 Little John Lane, Houston, Texas 77024. Mr. Berry is authorized to file suit on behalf of the Trust.

5. Plaintiff Danny S. Davis ("Davis") is a natural person who resides at 11920 Taylor Crest, Houston, Texas 77024.

6. Plaintiff Taylor Minerals, LLC ("Taylor") is a Texas limited liability company with a principal place of business at 2040 North Loop West, Suite 104, Houston, Texas 77018.

7. Defendant Furie Operating Alaska, LLC (f/k/a Escopeta Oil of Alaska, a Texas limited liability company) ("Furie") is a Delaware limited liability company with a principal place of business at 188 W. Northern Lights Blvd, Ste 620, Anchorage, AK 99503. Furie may be served through its registered agent for service of process in Texas: C T Corporation System at 1999 Bryan St., Ste 900, Dallas, TX 75201.

8. Defendant Furie was originally a Texas limited liability company named Escopeta Oil Company, LLC with a principal place of business in Houston, Texas.

9. Escopeta, while a Texas limited liability company, changed its name to Furie.

10. In January 2018, Furie moved its state of incorporation to Delaware, enabling it to file for bankruptcy protection in Delaware federal court several months later.

IV. JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this matter because the relief requested herein is within the jurisdictional limits of the Court. This Court has personal jurisdiction over Furie because Furie contractually agreed to submit to the jurisdiction of Texas state courts and because the claims brought herein arise out of Furie's conduct of business in Texas with Texas citizens and companies.

12. Venue is proper in Harris County, Texas under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or part of the events or omissions giving rise to Plaintiffs' claims occurred in Harris County *Tex. Civ. Prac. & Rem. Code § 15.002(a)(1)*. Further, through the Assignment (as defined below), Furie contractually agreed to venue in state district court in Harris County, Texas.

V. FACTUAL BACKGROUND

Plaintiffs develop the Kitchen Lights Unit

13. Plaintiffs are in the business of finding and developing oil and gas prospects. Plaintiffs began working together in the late 1990s, and have developed oil and gas prospects in East Texas, South Texas, and Alaska.

14. In the late 1990s, Plaintiffs expanded their oil and gas operations in response to the dwindling supply of natural gas in the Cook Inlet Basin in Alaska.

15. Specifically, Plaintiffs launched an effort to find the natural gas necessary to keep the kitchen lights on in homes across Alaska and to service the needs of military bases in the region.

16. Plaintiffs identified, leased, developed, and “proved up” a prospect of nearly 129,000 acres in the Cook Inlet Basin that they named the “Kitchen Lights Unit.”

17. The Kitchen Lights Unit is the largest producing unit block in the Cook Inlet Basin of Southcentral Alaska.

Plaintiffs and Defendants Execute the Lease Assignment and Participation Agreement

18. In 2010, Defendant (through a predecessor entity known as Escopeta Oil of Alaska, LLC), expressed interest in purchasing a portion of the Kitchen Lights Unit.

19. Accordingly, on or about October 22, 2010, the predecessors-in-interest of Plaintiffs and Defendants executed that certain Lease Assignment and Participation Agreement (the “LAPA”) concerning the Cook Inlet Basin.

20. The LAPA was prepared and executed by the parties in Houston, Texas.

21. Per the terms of the LAPA, Plaintiffs’ predecessor assigned Defendant’s predecessor entity 79% of the working interest in certain leases making up the Kitchen Lights Unit.

22. Further, the LAPA established an area of mutual interest (the “AMI”) surrounding the leases.

23. Specifically, the AMI “shall be comprised of the area within two (2) miles of the borders of each of the” leases.

24. The LAPA requires Defendant to assign a proportionate share of any new leases taken within the AMI to Escopeta (Plaintiffs’ predecessor-in-interest).

Defendant Files for Bankruptcy

25. After beginning operations in the Kitchen Lights Unit, Defendant filed for bankruptcy.

26. As part of the bankruptcy proceeding, Plaintiffs (or their predecessors-in-interest) and Defendant entered into that certain June 18, 2020 Assignment.

27. The Assignment adopted certain agreements previously entered into by Plaintiffs, Defendants, and/or their respective predecessors-in-interest, including but not limited to the LAPA and the LAPA AMI.

28. Such accepted agreements were referred to in the Assignment as the “Assigned Agreements.”

29. In effect the LAPA was integrated in whole or in part into the Assignment.

30. In exchange, Plaintiffs conveyed additional working interests to Defendant.

31. Specifically, Berry conveyed all of his working interest save an undivided 3.94% working interest (subject to certain overriding royalty interests).

32. Berry subsequently conveyed his remaining interest to the Trust.

33. TM conveyed all of its working interest save an undivided 2.62% working interest (subject to certain overriding royalty interests).

34. Davis conveyed all of his working interest save an undivided 3.44% working interest (subject to certain overriding royalty interests) (collectively the working interests retained by Berry/the Trust, TM, and Davis are referred to herein as the “Retained Interests”).

35. The Assignment expressly provided that the Retained Interests were to be free and clear of enumerated capital expenses (the “Prohibited Expenses”) but subject to certain reasonable

lease operating expenses that were also subject to the terms of a joint operating agreement (the “Reasonable LOE Expenses”).

Defendant refuses to comply with the Agreements

36. Plaintiffs fully performed or tendered full performance per the LAPA and the Assignment.

37. Despite this, Defendant has failed to comply with the terms of either document.

38. Among other breaches, Defendant has: (a) failed to notify and/or assign a proportionate percentage of New Leases to Plaintiffs; (b) charged Prohibited Expenses to Plaintiffs (including, but not limited to, capital expenses); and (c) charged LOE Expenses that are neither reasonable nor allowed by the Assignment and/or associated joint operating agreement.

39. Further, Defendant has steadfastly refused to comply with reasonable requests and demands for information, including but not limited to requests for cost and financial data supporting charges made by Defendant to Plaintiffs’ proportionate share of production.

40. Defendant has also received new leases within the AMI (the “New Leases”).

41. Defendant has not assigned a proportionate share of any New Leases to Plaintiffs, or even provided notice to Plaintiffs of their existence.

42. Defendant has also admitted it will not comply with the Agreement as it pertains to Plaintiffs’ cost-free working interests.

**VI.
CONDITIONS PRECEDENT**

43. All conditions precedent to the maintenance of this action have occurred.

**VII.
FIRST CAUSE – BREACH OF CONTRACT (ASSIGNMENT)**

44. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

45. The Assignment constitutes an enforceable contract under Texas law.
46. Plaintiffs tendered or offered to tender performance pursuant to the Assignment.
47. The Assignment requires Defendant to pay Plaintiffs their proportionate share of production free and clear of the Prohibited Expenses, including but not limited to “any capital expenditures associated with drilling, completing and equipping operations” within the Kitchen Lights Unit.
48. Further, the Assignment requires that any lease operating expenses and overhead charged to Plaintiffs be “reasonable.”
49. Defendant has breached the Assignment by failing to pay Plaintiffs in accordance with the terms of the Assignment.
50. Among other things, Defendant has charged Prohibited Expenses to Plaintiffs’ proportionate share of production.
51. Additionally, Defendant has charged Plaintiffs unreasonable lease operating expenses and overhead in violation of both the Assignment and the associated joint operating agreement.
52. Plaintiffs have presented their claims to Defendant, and Defendant has rejected Plaintiffs’ claims.

VIII.

SECOND CAUSE – BREACH OF CONTRACT (AMI)

53. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.
54. In the alternative, if necessary, Plaintiffs allege breach of both the Assignment and the LAPA (to the extent that the LAPA was not integrated into the Assignment).
55. The Assignment (and the LAPA to the extent that the LAPA was not fully integrated into the Assignment) also require Defendant to notify Plaintiffs of New Leases and to

assign a proportionate percentage of New Leases to Plaintiffs, but Defendant has done neither, thereby breaching both agreements.

56. The LAPA constitutes an enforceable contract under Texas law.

57. Plaintiffs tendered or offered to tender performance pursuant to the LAPA.

58. Defendants' failure to comply with the LAPA has caused damage to Plaintiffs.

59. Plaintiffs have presented their claims to Defendant, and Defendant has rejected Plaintiffs' claims.

IX.

THIRD CAUSE – FRAUD (COMMON LAW)

60. Plaintiffs incorporate by reference the above and below paragraphs as if fully set forth herein.

61. In the alternative, if necessary, Plaintiffs allege a cause of action for fraud.

62. Through the course of its business dealings with Plaintiffs, Defendant made representations to Plaintiffs concerning what categories of costs Defendant expended on behalf of the working interest owners and the amount of such costs.

63. These representations were material in convincing Plaintiffs to pay a proportionate share of the costs, or to forego revenue that Plaintiffs otherwise would be entitled to except for the deduction of such costs.

64. The representations were false and Defendant either knew the representations were false or made the representations recklessly, as a positive assertion, and without knowledge of the truth of the assertions.

65. Defendant made the representations with the intent that Plaintiffs rely and act on them.

66. Plaintiffs relied on the representations in paying a share of the costs, or by otherwise foregoing revenue that Plaintiffs would be entitled to except for the deduction of such costs.

67. The representations caused injury and financial harm to Plaintiffs.

68. Defendant's actions described herein were committed with fraud and malice.

69. Plaintiffs seek economic damages, attorneys' fees, and exemplary damages to the extent allowed by law.

X.

FOURTH CAUSE – FRAUD (STATUTORY)

70. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

71. In the alternative, if necessary, Plaintiffs allege an action for statutory fraud under Chapter 27 of the Texas Business and Commerce Code.

72. Through the Assignment, Plaintiffs and Defendant agreed that Plaintiffs would convey a portion of their working interest to Defendant in exchange for their remaining working interest to be treated as free and clear of Prohibited Expenses.

73. Despite this agreement, Defendant never intended to treat Plaintiffs' reduced working interest as free and clear of Prohibit Expenses.

74. The Assignment concerns a transaction involving real estate.

75. During the transaction, Defendant made a false representation of fact, made a false promise, or benefited by not disclosing that a third party's representation or promise was false.

76. The false representation or promise was made for the purpose of inducing Plaintiffs to enter into the Assignment.

77. Plaintiffs relied on the false representation or promise by entering into the Assignment.

78. The representation caused injury to Plaintiffs.

79. Defendant's actions described herein were committed with fraud and malice.

80. Plaintiffs seek economic damages, attorneys' fees, and exemplary damages to the extent allowed by law.

XI.

FIFTH CAUSE – FRAUD (NONDISCLOSURE)

81. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

82. In the alternative, if necessary, Plaintiffs allege an action for fraud by nondisclosure.

83. Defendant concealed from Plaintiffs that it took or accepted leases within the AMI.

84. Defendant had a duty to disclose the fact of the leases taken or accepted within the AMI to Plaintiffs.

85. The fact that Defendant took or accepted leases within the AMI was material.

86. Defendant knew Plaintiffs were ignorant of the fact that Defendant took or accepted leases within the AMI and that Plaintiffs did not have an equal opportunity to discover the fact that Defendant took or accepted leases within the AMI.

87. By failing to disclose the fact that Defendant took or accepted leases within the AMI, Defendant was deliberately silent when it had a duty to speak.

88. By failing to disclose the facts, Defendant intended to induce Plaintiffs to take some action or refrain from acting to participate in the leases taken within the AMI on a proportionate basis.

89. Plaintiffs relied on Defendant's nondisclosure.

90. Plaintiffs were injured as a result of acting, or failing to act, without the knowledge of the undisclosed facts.

91. Defendant's actions described herein were committed with fraud and malice.

92. Plaintiffs seek economic damages, attorneys' fees, and exemplary damages to the extent allowed by law.

XII.
ATTORNEYS' FEES

93. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

94. Plaintiffs have hired the law firm of Harris, Finley & Bogle, P.C., including the undersigned counsel, to prosecute their claims in this matter. Accordingly, Plaintiffs have incurred and will continue to incur reasonable and necessary attorneys' fees as a result of Defendant's breach of contract and respectfully request recovery of such reasonable and necessary fees and costs of litigation.

XIII.
JURY DEMAND

95. Plaintiffs demand a trial by jury.

XIV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Defendant be cited to appear and answer this *Original Petition*, and that upon final hearing that Plaintiffs be awarded all relief requested herein, including, but not limited to economic damages, specific performance of the Assignment and LAPA, attorneys' fees, exemplary damages, pre-judgment and post-judgment interest, costs of court, punitive damages, and all such other and further relief, whether general or special, at law or in equity, to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

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Associated Case Party: Allen Lawrence Berry, As Trustee of the Allen Lawrence Berry 2007 Trust

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