

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

MCKNIGHT REALTY CO., on behalf of
itself and all others similarly situated,

Plaintiff,

v.

BRAVO ARKOMA, LLC; and BRAVO
NATURAL RESOURCES, LLC,

Defendants.

Case No. 6:17-cv-0308-SPS

JURY DEMANDED

DEFENDANTS' FIRST AMENDED ORIGINAL ANSWER

Defendants Bravo Arkoma, LLC (“Bravo Arkoma”) and Bravo Natural Resources, LLC (“BNR”) (collectively “Defendants”), file this Original Answer to Plaintiff’s Original Class Action Petition, and show as follows:

SUMMARY OF ACTION

1. Paragraph 1 contains a statement that does not require a response. To the extent that a response is required, Defendants deny the allegations in paragraph 1 and deny that Plaintiffs have a basis for any claim against Defendants.

JURISDICTION AND VENUE

2. Paragraph 2 contains a legal conclusions, to which no response is required. To the extent a response is required, Defendants admit that this Court has jurisdiction over Defendants and admit Defendants own real property in and maintain activity in Pittsburg County, Oklahoma. Defendants can neither admit nor deny the remaining allegations contained in paragraph 2 within the time to file an answer because Plaintiffs do not identify the “real property” or “the substantial activity throughout Pittsburg County, Oklahoma” with sufficient

particularity. Therefore, Defendants can neither admit nor deny the remaining allegations contained in paragraph 2 without further research. To the extent necessary, these allegations are denied.

3. Paragraph 3 contains a legal conclusion as to proper venue, to which no response is required. To the extent a response is required, Defendants admit this Court has jurisdiction in this case.

4. Paragraph 4 contains a legal conclusion as to proper venue, to which no response is required.

PARTIES

5. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 5, except that Defendants admit Bravo Arkoma is in possession of leases entered into by Plaintiff regarding gas wells operated by Bravo Arkoma, including the Yuma wells in Pittsburg County, Oklahoma, and Defendants deny the leases are in the possession of BNR and that BNR operates the wells.

6. Defendants deny the allegation in paragraph 6 that they have violated a lease and otherwise are without sufficient information to admit or deny the allegations contained in paragraph 6, as the quoted royalty language is illegible.

7. Defendants admit the allegations in paragraph 7.

8. Defendants admit the allegations in paragraph 8.

9. Paragraph 9 contains a statement that does not require a response.

10. Defendants deny the allegations in paragraph 10.

CLASS ACTION ALLEGATIONS

11. The allegations in paragraph 11 are a characterization of Plaintiff's Petition, and do not require a response.

12. Defendants deny the allegations in paragraph 12.

13. Defendants deny the allegation in paragraph 13, except Defendants admit Bravo Arkoma operates or has operated hundreds of wells in Oklahoma that produce gas and Bravo Arkoma holds a working interest in these wells with at least one and sometimes more than one royalty owner for each well.

14. Defendants deny the allegations in paragraph 14, except Defendants admit Bravo Arkoma has in its possession or control records that identify the persons to whom they have paid royalties from wells in Oklahoma.

15. Defendants deny the allegations in paragraph 15.

16. Defendants deny the allegations in paragraph 16.

17. Defendants deny the allegations in the first sentence of paragraph 17. Defendants admit the allegation in the second sentence of paragraph 17 that Plaintiff is a royalty owner to whom Bravo Arkoma pays royalty, but denies the remaining allegations in the second sentence. Defendants do not have sufficient information to admit or deny the allegations in the third and fourth sentences, and therefore deny same.

18. Defendants deny the allegations in paragraph 18.

19. Defendants deny the allegations in paragraph 19.

20. Defendants deny the allegations in paragraph 20.

GAS INDUSTRY BACKGROUND

21. The allegations in paragraph 21 are characterizations of the law and Plaintiff's claims and are broad generalizations that do not require a response. To the extent a response is required, they are denied.

22. The allegations in paragraph 22 are characterizations of the law and Plaintiff's claims and are broad generalizations that do not require a response. To the extent a response is required, they are denied.

23. The allegations in paragraph 23 are characterizations of the law and Plaintiff's claims and are broad generalizations that do not require a response. To the extent a response is required, they are denied.

24. The allegations in paragraph 24 are characterizations of the law and Plaintiff's claims and are broad generalizations that do not require a response. To the extent a response is required, they are denied.

25. The allegations in paragraph 25 are characterizations of the law and Plaintiff's claims and are broad generalizations that do not require a response. To the extent a response is required, they are denied.

The Lessor-Lessee Relationship

26. The allegations in paragraph 26 are broad generalizations without reference to the particular wells at issue and therefore are denied as written.

27. Defendants deny the allegations in paragraph 27.

28. Defendants deny the allegations in paragraph 28.

29. Defendants deny the allegations in paragraph 29.

Residue Gas, Helium, Nitrogen and Natural Gas Liquids Production

30. The allegations in paragraph 30 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

Wellhead (Basic Separation and Gas Measurement)

31. The allegations in paragraph 31 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

32. The allegations in paragraph 32 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

33. The allegations in paragraph 33 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

34. The allegations in the first three sentences of paragraph 34 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written. Defendants admit the allegations in the last sentence that they do not improperly deduct from royalty any of the costs before the gathering line inlet.

Midstream Services (GCDTP) Deductions

35. The allegations in paragraph 35 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

36. The allegations in paragraph 36 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

37. The allegations in paragraph 37 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

38. The allegations in paragraph 38 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

39. The allegations in paragraph 39 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

Natural Gas Processing

40. The allegations in paragraph 40 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

41. The allegations in paragraph 41 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

42. The allegations in paragraph 42 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

43. The allegations in paragraph 43, including a-c, include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

44. The allegations in paragraph 44 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

45. The allegations in paragraph 45 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

Marketable Condition for the Products

46. The allegations in paragraph 46 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

47. The allegations in the first two sentences after “NGLs” in paragraph 47 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written. Defendants deny the allegations in the last sentence of paragraph 47.

48. The allegations in paragraph 48 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

49. The allegations in paragraph 49 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

Sale of Products

50. The allegations in the first two sentences of paragraph 50 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written. Defendants deny the allegations in the last sentence of paragraph 50.

51. The allegations in paragraph 51 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

52. The allegations in paragraph 52, including a. and b., include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

53. The allegations in paragraph 53, including a. through j., include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

54. Defendants deny the allegations in the heading immediately before paragraph 54. The allegations in paragraph 54 include broad generalization without reference or application to Defendants or particular wells at issue and therefore are denied as written.

55. Defendants admit the allegations in the first sentence of paragraph 55 that Bravo Arkoma represents the royalty calculation on the form of a monthly check stub it sends each royalty owner and denies the remaining allegations of the first sentence. Defendants admit the

allegations in the second sentence that the check stub shows each royalty owner's interest and taxes, volume, price, deductions, and value. The remaining allegations are characterizations of Plaintiff's Petition, to which no response is required.

56. Defendants deny the allegations in paragraph 56, including a. through e.

57. Defendants deny the allegations in paragraph 57.

58. Defendants deny the heading immediately before paragraph 58 and deny the allegations in paragraph 58.

59. Defendants deny the allegations in paragraph 59

60. Defendants deny the allegations in paragraph 60.

61. Defendants deny the allegations in paragraph 61.

62. Defendants deny the heading immediately before paragraph 62 and Defendants re-allege and incorporate by reference all preceding paragraphs as if set out in full.

63. Paragraph 63 contains a legal conclusion to which no response is required. To the extent paragraph 63 purports to describe the contents of a written document, the document itself is the best evidence of its own contents. Defendants deny all allegations to the extent they differ from what is provided in the referenced document. Defendants can neither admit nor deny the first clause of the first sentence in paragraph 63 within the time required to file an answer because Plaintiffs allege Defendants are parties to leases with Plaintiffs, but do not identify the "leases" in question with sufficient particularity. Therefore, Defendants can neither admit nor deny the allegations contained in this portion of paragraph 63 without further research. To the extent necessary, these allegations are denied.

64. Defendants can neither admit nor deny the allegations in paragraph 64 within the time required to file an answer because Plaintiffs have not identified the "leases" in question

with sufficient particularity. Therefore, Defendants can neither admit nor deny the allegations contained in this portion of paragraph 64 without further research. To the extent necessary, these allegations are denied.

65. Defendants deny the allegations contained in paragraph 65.

66. Defendants deny the allegations contained in paragraph 66.

67. Defendants deny the heading immediately before paragraph 67 and Defendants re-allege and incorporate by reference all preceding paragraphs as if set out in full.

68. Defendants can neither admit nor deny the allegations in paragraph 68 within the time required to file an answer because Plaintiffs have not identified the “leases” in question with sufficient particularity. Therefore, Defendants can neither admit nor deny the allegations contained in this portion of paragraph 68 without further research. To the extent necessary, these allegations are denied.

69. The allegations in paragraph 69 are characterizations of the law and do not require a response. To the extent they do, they are denied.

70. Defendants admit the allegation in paragraph 70 that Bravo Arkoma is a unit operator by appointment from the Oklahoma Corporation Commission but otherwise deny the allegations in paragraph 70.

71. Defendants deny the allegations in paragraph 71.

72. Defendants deny the allegations in paragraph 72.

73. Defendants deny the allegations in paragraph 73.

74. Defendants deny the heading immediately before paragraph 74 and Defendants re-allege and incorporate by reference all preceding paragraphs as if set out in full.

75. Defendants deny the allegations in paragraph 75.

76. Defendants deny the allegations in paragraph 76.

77. Defendants deny the allegations in paragraph 77.

78. The allegations in paragraph 78 are characterizations of the law to which no response is required. To the extent a response is required, the allegations are denied.

79. Defendants deny the allegations in paragraph 79.

80. Defendants deny the allegations in paragraph 80.

81. Defendants deny the allegations in paragraph 81.

82. Defendants deny the allegations in paragraph 82.

83. Defendants deny the allegations in paragraph 83.

84. Defendants deny the allegations in paragraph 84.

85. Defendants deny the allegations in paragraph 85.

86. Defendants deny the allegations in paragraph 86.

87. Defendants deny the heading immediately before paragraph 87 and re-allege and incorporate by reference all preceding paragraphs as if set out in full.

88. Defendants deny the allegations in paragraph 88.

89. Defendants deny the allegations in paragraph 89.

90. Defendants deny the allegations in paragraph 90.

PRAYER FOR RELIEF

91. Defendants deny that Plaintiff is entitled to any relief, at law or in equity, as sought in Plaintiff's prayer and deny any factual allegations contained in the Prayer.

DEMAND FOR JURY TRIAL

92. Plaintiff's "Demand for Jury Trial" is a characterization of Plaintiff's Petition, and does not require a response.

93. To the extent not admitted or otherwise addressed above, all allegations and requests for relief of Plaintiff are denied.

GENERAL DENIAL

94. Except as specifically admitted herein, Defendants deny each and every material allegation contained in the Petition.

AFFIRMATIVE AND OTHER DEFENSES

For their further defense, Defendants allege and state as follows:

First Defense

95. Plaintiff has failed, in whole or in part, to state claims upon which relief may be granted.

Second Defense

96. Plaintiff's claims are barred or limited under Oklahoma statute title 12 sec. 682 (West 2014).

Third Defense

97. BNR does not operate or own an interest in any well in which Plaintiffs may own a mineral interest.

Fourth Defense

98. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations. The discovery rule and the defenses of fraudulent inducement and fraudulent concealment do not apply to Plaintiff's claims.

Fifth Defense

99. Plaintiff's claims are barred, in whole or in part, under the doctrines of payment, offset, credit and recoupment.

Sixth Defense

100. Plaintiff's claims are barred, in whole or in part, under the doctrines of release, settlement, and accord and satisfaction.

Seventh Defense

101. Plaintiff's claims are barred, in whole or in part, under the doctrines of ratification, waiver, estoppel, quasi-estoppel, equitable estoppel, promissory estoppel, laches, and/or the economic loss rule.

Eighth Defense

102. Defendants have properly performed any obligation owed to Plaintiff and have fully complied with applicable leases. The subject wells have, at all times, been prudently operated, and Bravo Arkoma has at all times carried out its operations in a reasonable and prudent manner.

Ninth Defense

103. Defendants' actions have been in accordance with applicable laws, industry standards and practices, and custom and usage.

Tenth Defense

104. Plaintiff's claims fail in whole or in part under the statute of frauds.

Eleventh Defense

105. Plaintiff's fraud/scheme to defraud claim fails, in whole or in part, to the extent Plaintiff's alleged damages arise from an alleged breach of contract. Under Oklahoma law,

Plaintiff must plead and prove tort claims separately from a breach of contract claim. And even an intentional breach of contract is not punishable by punitive damages.¹

Twelfth Defense

106. Plaintiff has failed to meet the pleading requirements for a fraud claim. Plaintiff has failed to plead fraud with the required particularity. Specifically, Plaintiff has failed to carry its burden of identifying any misrepresentation, false promise, or omission by the Defendants that would form the basis for such a claim or how Plaintiff (or any putative class member) relied on same to their detriment.

Thirteenth Defense

107. Plaintiff's claims fail because there is no fraudulent or sham sale of hydrocarbons at the well. A wellhead sale of hydrocarbons in and of itself is not a sham or fraudulent transaction.

Fourteenth Defense

108. Plaintiff's claims fail in whole or in part to the extent the Defendants are not the holders of interests in the leases. If any of the Defendants are found liable to Plaintiff under one or more of Plaintiff's claims, Defendants reserve all rights to seek contribution from any present or future parties to this lawsuit, as well as from parties designated as responsible third parties. The jury should be required to apportion percentages of responsibility for each claimant, each defendant, each settling person, and each responsible third party.

Fifteenth Defense

109. Defendants specifically deny any responsibility for punitive or exemplary damages. If this Court finds that such damages are recoverable, such exemplary damages are

¹ *Wilspec Techs., Inc. v. DunAn Holding Grp., Co., Ltd.*, 204 P.3d 69, 75 (Okla. 2009).

barred or limited by Oklahoma Statute, Title 23, Section 9.1. In addition, Plaintiff cannot recover any punitive damages that are constitutionally excessive. Defendants invoke all limitations, requirements, and protections provided in Oklahoma Statute, Title 23, Section 9.1, including, without limitation, the requirement that Plaintiff proves by clear-and-convincing evidence the right to recover and the elements of exemplary damages.

Sixteenth Defense

110. Plaintiff's claims sounds only in contract, and Plaintiff cannot recover tort damages of any kind, whether actual or exemplary. Further, punitive damages are not available in Oklahoma for breach-of-contract claims. Punitive damages are not available for breach of oil and gas leases, such as the ones in this case.²

Seventeenth Defense

111. Awarding punitive damages would violate Defendants' constitutional rights, including their rights to equal protection and due process under Article 2, Section 7 of the Oklahoma Constitution and the Fifth and Fourteenth Amendments of the United States Constitution. Awarding punitive damages would also be an unconstitutional taking under Article 2, Section 23 of the Oklahoma Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. In addition, awarding punitive damages would violate the prohibitions against excessive fines and cruel or unusual punishment under Article 2, Section 9 of the Oklahoma Constitution and the Eighth Amendment to the United States Constitution. Further, the punitive damages sought by Plaintiff are limited by constitutional due process, which requires that a person receive fair notice not only of the conduct that will subject it to punishment but also of the severity of the penalty that can be imposed.

² 23 Ok. Stat. § 9.1(A).

Eighteenth Defense

112. Defendants affirmatively plead that any award of punitive or exemplary damages violates the Due Process Clause of the Fifth Amendment and Fourteenth Amendment to the United States Constitution, in addition to the due process clause of the Oklahoma Constitution, because:

- (a) Defendants are without effective and adequate procedural protections against arbitrary or erroneous awards of such damages;
- (b) Defendants are being denied the requirement of adequate notice of the type of conduct or elements of the offense that could warrant such an award or the amount of such damages that could be awarded;
- (c) such an award does not bear a close relationship to appropriate civil fines or penalties established by the legislature, or by administrative agencies under authority delegated by the legislature;
- (d) such an award would impermissibly discriminate against corporate defendants, including Defendants, that are organized under the laws of other states;
- (e) evidence of Defendants' net worth would invite the jury to award an arbitrary amount of punitive damages based on Defendants' status as an enterprise; and
- (f) Defendant's conduct that is alleged to warrant punitive or exemplary damages is unrelated to Plaintiff's harm and, therefore, such damages are unlawfully intended to punish and deter Defendants.

Nineteenth Defense

113. Defendants affirmatively plead that Plaintiff's claim for punitive damages is barred by the Due Process Clause and the Commerce Clause of the United States Constitution and by principles of federalism embodied in the United States Constitution, to the extent that any claim is based on conduct by Plaintiff that occurred outside the State of Oklahoma.

Twentieth Defense

114. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of Oklahoma, because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to each of the five reprehensibility factors set out in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419, 123 S. Ct. 1513, 1521 (2003). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the de novo review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001).

Twenty-First Defense

115. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of Oklahoma, because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the constitutional factors that govern the permissible ratio of punitive damages to compensatory damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 1524 (2003) (holding that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process"). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the de novo review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001).

Twenty-Second Defense

116. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of Oklahoma, because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the comparable civil fine that could be imposed on Defendant for the conduct in question. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 428 123 S. Ct. 1513, 1531 (2003) (holding that civil fines are more appropriate benchmarks for punitive damages than criminal penalties); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 583, 116 S. Ct. 1589, 1603 (1996) (holding that courts "should accord substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue."); (O'Connor, J., concurring in part and dissenting in part) (quoting *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301, 109 S. Ct. 2909, 2934 (1989)); *Clark v. Chrysler Corp.*, 436 F. 3d 594, 607 (6th Cir. 2006) (rejecting potential for punitive damages award as a basis for comparison in favor of potential civil penalties under applicable federal statute). Such specific jury instructions and specific findings of fact on the comparable civil penalties are necessary for purposes of Due Process in order to permit the de novo review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001).

Twenty-Third Defense

117. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of Oklahoma, because the law of this State governing punitive damages does not require

that the jury be instructed upon, and make specific findings of fact with respect to, the direct relationship between Defendants' conduct and the specific injury suffered by Plaintiff. *Phillip Morris USA v. Williams*, 549 U.S. 346, 355, 127 S. Ct. 1057, 1064 (2007) (holding that "the Due Process Clause requires States to provide assurance that juries are not asking the wrong question, i.e., seeking, not simply to determine reprehensibility, but also to punish for harm caused strangers"); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 423, 123 S. Ct. 1513, 1523 (2003) (holding that "[D]ue process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under guise of the reprehensibility analysis."). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the de novo review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001), to ensure that the award is based solely on the conduct that caused specific injury to the plaintiff[s].

118. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of Oklahoma, because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the exclusion of all items of compensatory damage from the quantum of punitive damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 426, 123 S. Ct. 1513, 1525 (2003) (noting that "[t]he compensatory damages for the injury suffered here . . . likely were based on a component that was duplicated in the punitive award"). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the de novo review required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), to ensure that items of

compensatory damages are not impermissibly ‘double-counted’ in the quantum of punitive damages.

Twenty-Fourth Defense

119. Oklahoma law regarding punitive damages is unconstitutionally vague and does not provide sufficient notice of the conduct that could be punished and the severity of the punishment.

Twenty-Fifth Defense

120. The unconstitutional vagueness of Oklahoma law results in arbitrary and discriminatory awards.

Twenty-Sixth Defense

121. Oklahoma law does not provide adequate substantive and procedural safeguards to prevent arbitrary, excessive, and unconstitutional awards.

Twenty-Seventh Defense

122. Oklahoma law does not provide adequate and meaningful guidance to fact finders when they award punitive damages, leaving such awards to arbitrary determinations by the fact finders.

Twenty-Eighth Defense

123. Oklahoma law does not require that liability for and the amount of punitive damages be proven beyond a reasonable doubt.

Twenty-Ninth Defense

124. Punitive damages are a windfall to plaintiffs, making such damages an unconstitutional taking.

Thirtieth Defense

125. Punitive damages are not available for lawful conduct inside of Oklahoma, for conduct outside of Oklahoma, for conduct that has already been punished, for the conduct of another party, or for harm to others besides the plaintiff.

Thirty-First Defense

126. Defendants specifically deny that all conditions precedent have occurred or been performed, including proper presentment of claims.

Thirty-Second Defense

127. Adjudication of the claims of the putative class alleged by Plaintiff through generalized class wide proof would violate Defendants' right to trial by jury guaranteed by the Oklahoma and United States Constitution.

Thirty-Third Defense

128. Defendants allege that this suit may not properly be maintained as a class action. If a class is certified, they assert the affirmative defenses set forth herein against each and every member of the certified class.

Thirty-Fourth Defense

129. Plaintiff's claims in a representative capacity are barred, in whole or in part, by the doctrine of release because members of the putative class alleged by Plaintiff has entered into settlement and release agreements under which their alleged claims have been released.

Thirty-Fifth Defense

130. Plaintiff's claims in a representative capacity are barred, in whole or in part, by *res judicata* and collateral estoppel to the extent members of the putative class alleged by Plaintiff were parties in prior litigation in which they alleged some or all of the claims alleged in

this cause, and that prior litigation was dismissed with prejudice in an enforceable final judgment.

Thirty-Sixth Defense

131. Any other defense the existence of which is revealed in discovery in this lawsuit

Thirty-Seventh Defense

132. Plaintiff's claims for punitive damages are barred by Oklahoma Statutes, Title 52, Section 903.

Thirty-Eighth Defense

133. Defendants have fulfilled any and all obligations and duties, both legal and equitable, owed to Plaintiff.

Thirty-Ninth Defense

134. Defendants have properly accounted to their royalty interest payees and properly paid royalties on all products upon which they are obligated to do so under Oklahoma law.

Fortieth Defense

135. Defendants have acted in compliance with applicable state and federal laws, rules, and regulations.

Forty-First Defense

136. Plaintiff is not entitled to interest from Defendants.

Forty-Second Defense

137. Defendants are not liable to Plaintiff or any class member for the acts of third parties. For example, 52 Okla. St. § 570.10(E) provides that Defendants are not liable for interest related to payment delays caused by other parties (such as the first purchasers of production or other working interest owners) or for payments made within the time frames

provided in 52 Okla. St. § 570.10(E)(2). Nor are Defendants responsible for any delayed royalty payments caused or made by the previous operator of the wells for which Plaintiff (or any other putative class member) has received royalty payments. Furthermore, pursuant to 52 Okla. St. § 570.10(C)(2), after Defendants pay royalty proceeds from production to the operator of a well, Defendants have no liability related to those proceeds.

Forty-Third Defense

138. Plaintiff's proposed class fails to satisfy the requirements of Federal Rule of Civil Procedure 23(a) and 23(b).

Forty-Fourth Defense

139. Plaintiff has failed to mitigate its damages.

Forty-Fifth Defense

140. Plaintiff's alleged claims arise under a statute and Plaintiff is therefore not entitled to exemplary or punitive damages.

Forty-Sixth Defense

141. The Energy Litigation Reform Act bars all of Plaintiff's claims except its claim for interest pursuant to 52 Okla. St. § 570.10(D). Further, the Energy Litigation Reform Act explicitly prohibits Plaintiff from recovering "punitive or exemplary damages or disgorgement damages" unless it meets the evidentiary burden described in 52 Okla. St. § 903, which it cannot do.

Forty-Seventh Defense

142. Plaintiff fails to allege with particularity any specific acts and/or omissions taken by Defendants and Plaintiff fails to meet the prerequisites of Fed. R. Civ. P. 8 and 9.

Forty-Eighth Defense

143. Plaintiff's claims are barred in whole or in part by the doctrine of force majeure.

Forty-Ninth Defense

144. Plaintiff's claims are barred in whole or in part by the terms of the applicable lease agreements, transfer orders, and/or division orders applicable to the Plaintiff's property.

Fiftieth Defense

145. Plaintiff has failed to state a claim for breach of fiduciary duty and cannot state a valid claim for breach of fiduciary duty under Oklahoma law.

Fifty-First Defense

146. Plaintiff has failed to state a claim for tortious breach of implied covenant, fraud, deceit, and constructive fraud and cannot state a value claim for breach of implied covenant, fraud, deceit, and constructive fraud under Oklahoma law.

Fifty-Second Defense

147. Plaintiff has failed to state a claim for tortious breach of lease and cannot state a valid claim for tortious breach of lease under Oklahoma law.

Fifty-Third Defense

148. To the extent that the Plaintiff's claims are based on the breach of an implied covenant in an oil and gas lease, Plaintiff has waived those claims by not making a proper demand for performance of the covenant.

Fifty-Fourth Defense

149. Defendants are not liable to Plaintiff or any class member with whom Defendants have had no contractual relationship arising from an oil and gas lease.

Fifty-Fifth Defense

150. Plaintiff's damage claims are speculative, remote and not reasonably foreseeable.

Fifty-Sixth Defense

151. Defendants reserve the right to amend to plead additional affirmation defenses as discovery proceeds in this matter.

WHEREFORE, having fully answered, Defendants pray that Plaintiff take nothing by way of this action against Defendants, that Defendants recover all costs incurred in defending this action, including reasonable attorneys' fees, and for such other and further relief, including general relief, as the Court deems just and equitable.

Dated: January 26, 2018.

Respectfully submitted,

s/ Charles D. Neal, Jr.

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2018, I electronically transmitted the attached document to the Court Clerk using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

Reagan E. Bradford
The Lanier Law Firm
6810 FM 1960 West
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/s/ Charles D. Neal, Jr.

Charles D. Neal, Jr.
of Steidley & Neal, P.L.L.C.