

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

PAULA PARKS McCLINTOCK,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:17-cv-00259-JHP
)	
CONTINUUM PRODUCER SERVICES,)	
L.L.C.,)	
)	
Defendant.)	

AMENDED ANSWER OF CONTINUUM PRODUCER SERVICES, L.L.C.

Continuum Producer Services, L.L.C. ("Continuum"), for its Answer to Plaintiff's Original Petition ("Petition"), denies generally and specifically each and every material allegation therein unless expressly admitted hereinafter:

1. Continuum denies the allegations contained in Paragraph 1 of the Petition.
2. Continuum admits that Plaintiff claims an interest in one or more oil and/or gas wells in Oklahoma. Continuum admits it has, in the past, been a first purchaser of the McCrory 1 and Sky No. 1 wells located in Section 5-5S-1E, Carter County, Oklahoma. The remaining allegations contained in Paragraph 2 of the Petition are denied.
3. Continuum is presently without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 3 of the Petition and therefore those allegations are denied.
4. Continuum denies the allegations contained in Paragraph 4 of the Petition.
5. With respect to the allegations contained in Paragraph 5 of the Petition, the Production Revenue Standards Act speaks for itself. Continuum denies the remaining allegations contained in Paragraph 5 of the Petition.

6. With respect to the allegations contained in Paragraph 6 of the Petition, the Production Revenue Standards Act speaks for itself. Continuum denies the remaining allegations contained in Paragraph 6 of the Petition.

7. Continuum denies the allegations contained in Paragraph 7 of the Petition.

8. Continuum denies the allegations contained in Paragraph 8 of the Petition.

9. Continuum denies the allegations contained in Paragraph 9 of the Petition.

10. Continuum is presently without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 10 of the Petition and therefore those allegations are denied.

11. Continuum is presently without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 11 of the Petition and therefore those allegations are denied.

12. The allegations contained in Paragraph 12 of the Petition are admitted.

13. With respect to the allegations contained in Paragraph 13 of the Petition, Continuum admits that it has been a first purchaser of production from oil and/or gas wells in the State of Oklahoma. Continuum denies the remaining allegations contained in Paragraph 13 of the Petition.

14. Continuum admits the allegations contained in Paragraph 14 of the Petition.

15. Continuum admits that this Court has jurisdiction over Continuum.

16. Continuum denies the allegations contained in Paragraph 16 of the Petition.

17. Continuum is presently without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 17 of the Petition and therefore those allegations are denied.

18. With respect to the allegations contained in Paragraph 18 of the Petition, Continuum admits that the amount in controversy, exclusive of interest and costs, exceeds \$10,000. Continuum denies the remaining allegations contained in Paragraph 18 of the Petition.

19. Continuum incorporates its responses to Paragraphs 1 through 18 of the Petition as if fully set forth herein.

20. Continuum denies the allegations contained in Paragraph 20 of the Petition and asserts that this action cannot be certified as a class action.

21. Continuum is presently without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 21 of the Petition and therefore those allegations are denied.

22. Continuum denies the allegations contained in Paragraph 22 of the Petition and asserts that this action cannot be certified as a class action.

23. Continuum denies the allegations contained in Paragraph 23 of the Petition and asserts that this action cannot be certified as a class action.

24. Continuum denies the allegations contained in Paragraph 24 of the Petition and asserts that this action cannot be certified as a class action.

25. Continuum denies the allegations in Paragraph 25 of the Petition and asserts that this action cannot be certified as a class action.

26. Continuum denies the allegations contained in Paragraph 26 of the Petition and asserts that this action cannot be certified as a class action.

27. Continuum denies the allegations contained in Paragraph 27 of the Petition and asserts that this action cannot be certified as a class action.

28. Continuum incorporates its responses to Paragraphs 1 through 27 of the Petition as if fully set forth herein.

29. Continuum admits it has, in the past, been the first purchaser from a number wells in Oklahoma. Continuum denies the remaining allegations contained in Paragraph 29 of the Petition.

30. Continuum denies the allegations contained in Paragraph 30 of the Petition.

31. With respect to the allegations contained in Paragraph 31 of the Petition, the Production Revenue Standards Act speaks for itself. Continuum denies the remaining allegations contained in Paragraph 31 of the Petition.

32. Continuum is presently without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 32 of the Petition and therefore those allegations are denied.

33. Continuum denies the allegations contained in Paragraph 33 of the Petition.

34. Continuum admits that there were circumstances in which it did not pay interest on payments of proceeds that were delayed due to various causes. Continuum denies the remaining allegations in Paragraph 34 of the Petition.

35. Continuum denies the allegations contained in Paragraph 35 of the Petition.

36. Continuum denies the allegations contained in Paragraph 36 of the Petition.

37. Continuum denies the allegations contained in Paragraph 37 of the Petition.

38. Continuum denies the allegations contained in Paragraph 38 of the Petition.

39. Continuum denies the allegations contained in Paragraph 39 of the Petition.

40. Continuum incorporates its responses to Paragraphs 1 through 39 of the Petition as if fully set forth herein.

41. Continuum denies the allegations contained in Paragraph 41 of the Petition and asserts that this action cannot be certified as a class action.

42. Continuum is presently without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 42 of the Petition and therefore those allegations are denied.

43. With respect to the allegations contained in Paragraph 43 of the Petition, the Production Revenue Standards Act speaks for itself.

44. With respect to the allegations contained in Paragraph 44 of the Petition, the Production Revenue Standards Act speaks for itself.

45. With respect to the allegations contained in Paragraph 45 of the Petition, the Production Revenue Standards Act speaks for itself.

46. Continuum admits that in certain instances it held proceeds in suspense at various points of time, and that in certain instances payments of proceeds were delayed due to various causes. Continuum denies the remaining allegations in Paragraph 46 of the Petition.

47. Continuum admits that there were circumstances in which it did not pay interest on payments of proceeds that were delayed due to various causes. Continuum denies the remaining allegations in Paragraph 47 of the Petition.

48. Continuum denies the allegations contained in Paragraph 48 of the Petition.

49. Continuum denies the allegations contained in Paragraph 49 of the Petition.

50. Continuum incorporates its responses to Paragraphs 1 through 49 of the Petition as if fully set forth herein.

51. Continuum denies the allegations contained in Paragraph 51 of the Petition and asserts that this action cannot be certified as a class action.

52. Continuum denies the allegations contained in Paragraph 52 of the Petition.

53. Continuum denies the allegations contained in Paragraph 53 of the Petition.

54. Continuum denies the allegations contained in Paragraph 54 of the Petition.

55. Continuum denies the allegations contained in Paragraph 55 of the Petition.

56. Continuum denies the allegations contained in Paragraph 56 of the Petition.

57. Continuum incorporates its responses to Paragraphs 1 through 56 of the Petition as if fully set forth herein.

58. Continuum denies the allegations contained in Paragraph 58 of the Petition, and asserts that this action cannot be certified as a class action and that neither Plaintiff nor the putative class is entitled to an accounting.

59. Continuum denies the allegations contained in Paragraph 59 of the Petition, and asserts that this action cannot be certified as a class action and that neither Plaintiff nor the putative class is entitled to an accounting.

60. Continuum denies the allegations contained in Paragraph 60 of the Petition.

61. Continuum denies the allegations contained in Paragraph 61 of the Petition.

62. Continuum denies the allegations contained in Paragraph 62 of the Petition.

63. Continuum incorporates its responses to Paragraphs 1 through 62 of the Petition as if fully set forth herein.

64. Continuum denies the allegations contained in Paragraph 64 of the Petition and asserts that this action cannot be certified as a class action.

65. Continuum denies the allegations contained in Paragraph 65 of the Petition.

66. Continuum denies the allegations contained in Paragraph 66 of the Petition.

67. Continuum denies the allegations contained in Paragraph 67 of the Petition.

68. Continuum denies the allegations contained in Paragraph 68 of the Petition.

69. Continuum denies the allegations contained in Paragraph 69 of the Petition.

ADDITIONAL DEFENSES

For its affirmative and additional defenses, Continuum alleges and states as follows as to Plaintiff, which term includes any putative class members:

70. The Petition fails to state a claim upon which relief may be granted.

71. The Petition fails to allege fraud with particularity or otherwise to meet the pleadings requirements of the Federal Rules of Civil Procedure for pleading a fraud claim. The Petition fails to specify the time, place, and content of the alleged false representation, and it fails to identify how Plaintiff or any other putative class member relied on such a representation to his or her detriment.

72. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

73. Plaintiff's claims are barred in whole or in part by settlement, payment, release, and/or accord and satisfaction.

74. Plaintiff's claims are barred in whole or in part by the doctrines of estoppel, waiver, illegality, and/or laches.

75. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

76. Plaintiff's claims are barred in whole or in part by the doctrines of res judicata, collateral estoppel, and/or claim-splitting.

77. Continuum conducted its activities at all times in accordance with any applicable agreements and amendments, industry standards, practices, customs, and usage.

78. Continuum's files may not be complete, but believes that its activities were conducted in accordance with leases, division orders, operating agreements, unit agreements, and

other applicable agreements and amendments to which it was a party or that were provided to it by a third party. Plaintiff's claims are barred, in whole or in part, by the foregoing agreements and other instruments.

79. Plaintiff has failed to satisfy all conditions precedent to filing suit, including providing the specified notice, included in the applicable leases, unit agreements, and other instruments.

80. Continuum is not liable for interest or other damages owed on payments that may have been unavoidably late and not due to any fault of Continuum, including any payments resulting from the acts, omissions, or delays of third parties, Plaintiff, or the putative class.

81. Plaintiff is not entitled to an accounting. Plaintiff has not alleged a claim that allows the remedy of accounting to be sought. Plaintiff has not pled, and cannot prove, that she has a right to some recovery but lacks an adequate remedy at law. Plaintiff cannot show that an accounting is an appropriate remedy in this case.

82. Continuum is not liable to Plaintiff for the acts of third parties.

83. Plaintiff's proposed class fails to satisfy the requirements of Fed. R. Civ. P. 23.

84. Plaintiff's claims are not typical of the claims of the putative class members, she is not an adequate class representative, individual questions of fact and law predominate over any common questions, and a class action is not the superior method of adjudicating this controversy.

85. Plaintiff has failed to mitigate her damages.

86. Plaintiff's claims are subject to set-off.

87. The relief sought by Plaintiff is barred in whole or in part by statute, including 52 O.S. § 903.

88. Plaintiff lacks capacity to sue, is not the real party in interest, and/or lacks standing to sue Continuum, including as to any claims for payments Plaintiff has received.

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

90. Plaintiff is not entitled to the remedy of disgorgement.

91. Plaintiff is not entitled to injunctive relief.

92. Pursuant to the Energy Litigation Reform Act, 52 O.S. §§ 901-903 ("ELRA"), Plaintiff's claims, other than those permitted by the Production Revenue Standards Act, 52 O.S. § 570.1 et seq, are barred.

93. The interest provisions of 52 O.S. § 570.10 are subject to constitutional challenge.

94. There is no conduct that would support any award of punitive damages in this case, and any such award would violate the Oklahoma and United States Constitutions.

95. The imposition of exemplary or punitive damages in this case would violate Continuum's due process rights secured by the United States Constitution, the Oklahoma Constitution, and the constitutions of other States whose interests are implicated by Plaintiff's allegations.

96. 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 him to punishment but also of the severity of the penalty that can be imposed.

97. Continuum affirmatively pleads that any award of punitive or exemplary damages violates the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution, in addition to the Due Process Clause of the Oklahoma Constitution, including because:

- (a) Continuum is without effective and adequate procedural protections against arbitrary or erroneous awards of such damages;
- (b) Continuum is 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) evidence of Continuum's net worth would invite the jury to award an arbitrary amount of punitive damages based on Continuum's status as an industrial enterprise; and
- (e) Continuum'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 Continuum.

98. Continuum affirmatively pleads that Plaintiff's claim for punitive damages is barred by the Due Process and Commerce Clauses 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 Continuum that occurred outside the State of Oklahoma.

99. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States and Oklahoma Constitutions, 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 reprehensibility factors set out in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 419 (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 Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436 (2001).

100. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States and Oklahoma Constitutions, 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*, 538 U.S. at 425 (“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 Industries*, 532 U.S. at 436.

101. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States and Oklahoma Constitutions, 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 Continuum for the conduct in question. *State Farm*, 538 U.S. at 428 (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 (1996) (holding that courts “should accord substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue” (internal quotation marks omitted));

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 Industries*, 532 U.S. at 436.

102. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States and Oklahoma Constitution, 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 Continuum's conduct and the specific injury suffered by Plaintiff. *Philip Morris USA v. Williams*, 549 U.S. 346, 355 (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*, 538 U.S. at 423 (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 Industries*, 532 U.S. at 436, to ensure that the award is based solely on the conduct that caused specific injury to the plaintiff[s].

103. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States and Oklahoma Constitutions, 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*, 538 U.S. at 426 (noting that “[t]he compensatory damages for the injury suffered here . . . likely were based on a component which 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 Industries*, 532 U.S. at 436, to ensure that items of compensatory damages are not impermissibly “double counted” in the quantum of punitive damages.

104. All defenses are asserted, as applicable, against Plaintiff as well as any putative class members.

105. The defenses raised herein are raised without any admission as to which party bears the burden of proof.

106. Continuum reserves the right to amend to plead additional affirmative defenses as discovery proceeds in this matter.

WHEREFORE, Continuum prays that judgment be entered in its favor on Plaintiff's claims and that Continuum be awarded its costs, attorneys' fees and such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/Michael J. Gibbens

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June, 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 the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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