

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

**DORSEY J. REIRDON,**

**Plaintiff,**

**v.**

**XTO ENERGY INC.,**

**Defendant.**

**Case No. 6:16-CV-00087-KEW**  
(Removed from District Court,  
Marshall County, Oklahoma  
Case No. CJ-16-08)

**FIRST AMENDED ANSWER OF XTO ENERGY INC.**

Defendant, XTO Energy Inc. (“XTO”), for its First Amended Answer to Plaintiff’s Original Petition (the “Petition”), denies the allegations set forth in the Petition, except where expressly admitted herein, and further answering states:

1. The allegations contained in Paragraph 1 of the Petition are denied.
2. XTO admits that it is currently the operator of the Flenniken 1-11H well and that Plaintiff has an interest in the well. The remaining allegations contained in Paragraph 2 of the Petition are denied.
3. XTO is 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. The allegations contained in Paragraph 4 of the Petition are denied.
5. The allegations contained in Paragraph 5 of the Petition are denied.
6. The terms of the Production Revenue Standards Act (“PRSA”) speak for themselves. To the extent the allegations contained in Paragraph 6 of the Petition conflict with those terms, those allegations are denied.
7. The allegations contained in Paragraph 7 of the Petition are denied.

8. The allegations contained in Paragraph 8 of the Petition are denied.

9. The allegations contained in Paragraph 9 of the Petition are denied.

10. XTO is 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. XTO admits that Plaintiff has an interest in the Flenniken 1-11H well. The remaining allegations contained in Paragraph 11 of the Petition are denied.

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

13. XTO admits that it is a working interest owner and operator of oil and gas wells in the State of Oklahoma. The remaining allegations contained in Paragraph 13 of the Petition are denied.

14. The allegations contained in Paragraph 14 of the Petition were mooted by XTO's removal of this lawsuit to United States District Court.

15. The allegations contained in Paragraph 15 of the Petition were mooted by XTO's removal of this lawsuit to United States District Court.

16. The allegations contained in Paragraph 16 of the Petition were mooted by XTO's removal of this lawsuit to United States District Court.

17. The allegations contained in Paragraph 17 of the Petition are denied.

18. The allegations contained in the first sentence of Paragraph 18 of the Petition are denied. XTO admits that the claims of the named Plaintiff are less than \$75,000.00.

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

20. XTO denies that this action can be properly certified as a class action.

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22. XTO denies that this action can be properly certified as a class action.
23. XTO denies that this action can be properly certified as a class action.
24. XTO denies that this action can be properly certified as a class action.
25. XTO denies that this action can be properly certified as a class action.
26. XTO denies that this action can be properly certified as a class action.
27. XTO denies that this action can be properly certified as a class action.
28. XTO incorporates its responses to Paragraphs 1 through 27 of the Petition as if fully set forth herein.

29. XTO admits that it is a working interest owner and operator of oil and gas wells in the State of Oklahoma. The remaining allegations contained in Paragraph 29 of the Petition are denied.

30. The allegations contained in Paragraph 30 of the Petition are denied.
31. The allegations contained in Paragraph 31 of the Petition are denied.
32. The allegations contained in Paragraph 32 of the Petition are denied.
33. The allegations contained in Paragraph 33 of the Petition are denied.
34. The allegations contained in Paragraph 34 of the Petition are denied.
35. The allegations contained in Paragraph 35 of the Petition are denied.
36. The allegations contained in Paragraph 36 of the Petition are denied.
37. The allegations contained in Paragraph 37 of the Petition are denied.
38. The allegations contained in Paragraph 38 of the Petition are denied.
39. The allegations contained in Paragraph 39 of the Petition are denied.

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

41. XTO denies that this action can be certified as a class action.

42. The allegations contained in Paragraph 42 of the Petition are denied.

43. The terms of the PRSA speak for themselves. To the extent the allegations contained in Paragraph 43 of the Petition conflict with those terms, those allegations are denied.

44. The terms of the PRSA speak for themselves. To the extent the allegations contained in Paragraph 44 of the Petition conflict with those terms, those allegations are denied.

45. The terms of the PRSA speak for themselves. To the extent the allegations contained in Paragraph 45 of the Petition conflict with those terms, those allegations are denied.

46. The allegations contained in Paragraph 46 of the Petition are denied.

47. The allegations contained in Paragraph 47 of the Petition are denied.

48. The allegations contained in Paragraph 48 of the Petition are denied.

49. The allegations contained in Paragraph 49 of the Petition are denied.

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

51. XTO denies that this action can be certified as a class action.

52. The allegations contained in Paragraph 52 of the Petition are denied.

53. The allegations contained in Paragraph 53 of the Petition are denied

54. The allegations contained in Paragraph 54 of the Petition are denied.

55. The allegations contained in Paragraph 55 of the Petition are denied.

56. The allegations contained in Paragraph 56 of the Petition are denied.

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

58. XTO denies that this action can be certified as a class action or that Plaintiff and the putative class are entitled to an accounting.

59. XTO denies that Plaintiff and the putative class are entitled to an accounting.

60. The allegations contained in Paragraph 60 of the Petition are denied.

61. The allegations contained in Paragraph 61 of the Petition are denied.

62. The allegations contained in Paragraph 62 of the Petition are denied.

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

64. XTO denies that this action can be certified as a class action or that Plaintiff and the putative class are entitled to injunctive relief.

65. The allegations contained in Paragraph 65 of the Petition are denied.

66. The allegations contained in Paragraph 66 of the Petition are denied.

67. The allegations contained in Paragraph 67 of the Petition are denied.

68. XTO denies that Plaintiff and the putative class are entitled to the injunctive relief they request.

69. The allegations contained in Paragraph 69 of the Petition are denied.

#### **AFFIRMATIVE DEFENSES**

For its affirmative defenses herein, XTO alleges as follows:

70. Plaintiff's Petition fails to state a claim upon which relief may be granted.

71. Plaintiff's Petition fails to meet the pleading requirements for a fraud claim. The Petition fails to allege fraud with particularity. Nor does it identify what statement was made by XTO, if any, was misleading or how Plaintiff (or any other putative class member) relied on that statement to their 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 accord and satisfaction.

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

75. Plaintiff's claims are barred in whole or in part by the doctrines of *res judicata* and/or collateral estoppel.

76. XTO conducted its activities at all times in accordance with the lease agreements, applicable laws, industry standards and practices, and custom and usage.

77. XTO has properly accounted to its royalty interest payees and properly paid royalties on all products upon which it is obligated to do so under Oklahoma law.

78. XTO has fulfilled any and all obligations and duties, both legal and equitable, owed to Plaintiff.

79. XTO has acted in compliance with applicable state and federal laws, rules and regulations.

80. Plaintiff is not entitled to interest from XTO.

81. Plaintiff is not entitled to an accounting. Plaintiff has not pled, and cannot prove, that he lacks an adequate remedy at law or that an accounting is an appropriate remedy in this case.

82. XTO is not liable to Plaintiff or any class member for the acts of third parties. For example, 52 Okla. St. § 570.10(E) provides that XTO is 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 is XTO 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 XTO pays royalty proceeds from production to the operator of a well, XTO has no liability related to those proceeds.

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

84. Plaintiff has failed to mitigate his damages.

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

86. Plaintiff is not entitled to disgorgement.

87. The Energy Litigation Reform Act bars all of Plaintiff's claims except his 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 Plaintiff meets the evidentiary burden described in 52 Okla. St. § 903, which he cannot do.

88. Plaintiff's claims for punitive damages are barred by 23 Okla. St. § 9.1.

89. Plaintiff is not entitled to injunctive relief.

90. The imposition of exemplary or punitive damages in this case would violate XTO'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.

91. 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.

92. XTO affirmatively pleads 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) XTO is without effective and adequate procedural protections against arbitrary or erroneous awards of such damages;
- (b) XTO 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) such an award would impermissibly discriminate against corporate defendants, including XTO, that are organized under the laws of other states and that maintain their principal places of business in other states;
- (e) evidence of XTO's net worth would invite the jury to award an arbitrary amount of punitive damages based on XTO's status as an industrial enterprise; and



- (f) XTO'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 XTO.

93. XTO affirmatively pleads 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 XTO that occurred outside the State of Oklahoma.

94. 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 Mutual Automobile Insurance 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).

95. 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).

96. 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 XTO 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).

97. 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 XTO's 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].

98. 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.

99. Plaintiff has brought this lawsuit pursuant to the PRSA, which provides the prevailing party shall be entitled to recover its costs for the lawsuit, including but not limited to, reasonable attorney and expert witness fees. XTO requests that the Court award it reasonable attorney and expert witness fees related to this lawsuit.

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

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

Dated: September 1, 2016.

Respectfully submitted,

/s/ Jeffrey C. King

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 1, 2016, I electronically transmitted the foregoing First Amended Answer of XTO Energy Inc. to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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U.S. District Court

Eastern District of Oklahoma

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