

**IN THE DISTRICT COURT OF BLAINE COUNTY  
STATE OF OKLAHOMA**

DDL OIL & GAS, LLC, and DUSTIN M. FREEMAN, )  
)  
)  
Plaintiffs, )  
)  
v. )  
)  
DIVERSIFIED PRODUCTION LLC, )  
successor by merger with TAPSTONE )  
ENERGY, LLC, )  
)  
Defendant. )

BLAINE COUNTY, OKLAHOMA  
**FILED**

**JUN 22 2023**

CHRISTY MATLI, CT. CLERK  
BY *[Signature]*  
DEPUTY

Case No. CJ-2019-17

**DEFENDANT DIVERSIFIED PRODUCTION LLC'S ANSWER TO PLAINTIFFS'  
AMENDED PETITION**

Defendant, Diversified Production LLC, as successor by mergers and corporate name changes which include Tapstone Energy, LLC (“Diversified”) for its Answer (“Answer”) to Plaintiffs’, DDL Oil & Gas, LLC, and Dustin M. Freeman’s (collectively, “Plaintiffs”) Amended Petition (“Amended Petition”), denies all allegations contained herein unless specifically admitted herein and further responds as follows:

**ANSWER TO SUMMARY OF THE ACTION ALLEGATIONS**

1. Paragraph 1 of the Amended Petition contains a conclusory description of Plaintiffs’ claims to which no response is required. Diversified denies any allegations in Paragraph 1.

2. In response to Paragraph 2 of the Amended Petition, Diversified admits that, upon information and belief, Plaintiffs are, or were, owners of royalty interests in one or more oil and/or gas wells in Oklahoma, that Diversified is an operator of certain oil and/or gas wells in Oklahoma, and that Diversified has certain obligations to make payments with regard to

production from certain wells. Paragraph 2 states legal conclusions to which no response is required. Diversified denies any other allegations in Paragraph 2.

3. Diversified denies the allegations contained in Paragraph 3 of the Amended Petition and denies that they apply to Diversified.

4. Paragraph 4 of the Amended Petition states legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 4.

5. Paragraph 5 of the Amended Petition states legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 5.

6. In response to Paragraph 6 of the Amended Petition, Diversified states that it is aware of the Production Revenue Standards Act (“PRSA”). Paragraph 6 states legal conclusions to which no response is required. Diversified denies all other allegations in Paragraph 6.

7. Paragraph 7 of the Amended Petition contains a conclusory description of Plaintiffs’ claims or legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 7.

8. Paragraph 8 of the Amended Petition contains a conclusory description of Plaintiffs’ claims or legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 8.

#### **ANSWER TO PARTIES ALLEGATIONS**

9. Upon information and belief, Diversified admits the allegations in Paragraph 9 of the Amended Petition.

10. In response to Paragraph 10 of the Amended Petition, Diversified states that Plaintiff DDL may own royalty interests in one or more Oklahoma Wells and that, under the terms of any applicable leases, contractual documents, or orders, Plaintiff DDL may be entitled

to payment of certain proceeds as provided in those instruments. Diversified denies any other allegations in Paragraph 10.

11. Upon information and belief, Diversified admits the allegations in Paragraph 11 of the Amended Petition.

12. Upon information and belief, Diversified denies the allegations contained in Paragraph 12 of the Amended Petition.

13. Diversified denies the allegations contained in Paragraph 13 of the Amended Petition. Diversified is a foreign limited liability company organized under Pennsylvania law and is duly authorized to do business in the State of Oklahoma.

14. In response to Paragraph 14 of the Amended Petition, Diversified states that it is a working interest owner in certain oil and/or gas wells in the State of Oklahoma and that it is an operator of some of those wells and pays proceeds on certain wells. Paragraph 14 states legal conclusions to which no response is required. Diversified denies any other allegations in Paragraph 14.

#### **ANSWER TO JURISDICTION AND VENUE ALLEGATIONS**

15. Paragraph 15 of the Amended Petition contains legal conclusions to which no response is required. Diversified agrees that the Court has jurisdiction to hear these matters.

16. Paragraph 16 of the Amended Petition contains legal conclusions to which no response is required. Diversified agrees that the Court has jurisdiction to hear these matters.

17. With regard to the allegations contained in Paragraph 17 of the Amended Petition, Diversified admits that it is a foreign limited liability company. Diversified denies that it owns minerals in Blaine County, but admits that it owns oil and gas leasehold interests therein. Diversified denies the remaining allegations contained in Paragraph 17 of the Amended Petition.

18. Diversified admits that the Court has jurisdiction and that the Plaintiffs acknowledge that their individual claims are each less than \$75,000.00. Diversified denies the remaining allegations contained in Paragraph 18 of the Amended Petition.

19. In response to Paragraph 19 of the Amended Petition, Diversified admits that the Plaintiffs' individual claims are governed by the laws of the State of Oklahoma and that Plaintiffs have filed this action in Blaine County. Diversified denies the remaining allegations contained in Paragraph 19.

### **ANSWER TO CLASS ACTION ALLEGATIONS**

Diversified incorporates by reference its responses contained in all other paragraphs of this Answer as if fully set forth in this section.

20. Paragraph 20 of the Amended Petition contains a conclusory description of Plaintiffs' legal claims or legal conclusions to which no response is required. Diversified denies that the allegations are sufficient to adequately identify the putative class members and asserts that this action cannot be maintained or certified as a class action. Diversified denies any allegations in Paragraph 20.

21. Paragraph 21 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies the allegations in Paragraph 21.

22. Paragraph 22 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies the questions of law and fact purportedly identified in Paragraph 22 are common to the purported Class or that they satisfy the requirements for class certification. Diversified denies the allegations in Paragraph 22

23. Paragraph 23 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies the allegations in Paragraph 23.

24. Diversified denies the allegations contained in Paragraph 24 of the Amended Petition.

25. Paragraph 25 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies the allegations in Paragraph 25.

26. Paragraph 26 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies the allegations in Paragraph 26.

27. Paragraph 27 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies the allegations in Paragraph 27.

#### **ANSWER TO GENERAL ALLEGATIONS AND FACTUAL BACKGROUND**

Diversified incorporates by reference its responses contained in all other paragraphs of this Answer as if fully set forth in this section.

28. In response to Paragraph 28 of the Amended Petition, Diversified states that it is a working interest owner in certain oil and/or gas wells in Oklahoma, that it is the operator of some of those wells, and that it pays and/or has paid proceeds due on certain of those wells, including to certain Plaintiffs. Diversified denies that it is responsible for the actions of any other entity. Diversified denies any other allegations in Paragraph 28.

29. Paragraph 29 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies the allegations in Paragraph 29.

30. Paragraph 30 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies the allegations in Paragraph 30.

31. Diversified is presently without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Amended Petition regarding the

state of mind of the Plaintiffs and, therefore, denies same. Diversified denies the allegations in Paragraph 31.

32. Paragraph 32 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies the allegations in Paragraph 32.

33. Diversified denies the allegations in Paragraph 33 of the Amended Petition.

34. Diversified denies the allegations in Paragraph 34 of the Amended Petition.

35. Paragraph 35 of the Amended Petition states legal conclusions to which no response is required. Diversified states, to the extent it holds money or proceeds attributable to others, they are regarded as separate and distinct funds, which are recorded by owner as liabilities in accounts payable in Diversified's accounting records. Diversified denies all other allegations in Paragraph 35 of the Amended Petition.

36. Diversified denies the allegations in Paragraph 36 of the Amended Petition.

37. Diversified denies the allegations in Paragraph 37 of the Amended Petition.

38. Paragraph 38 of the Amended Petition states legal conclusions to which no response is required. Diversified denies the allegations in Paragraph 38 of the Amended Petition.

39. In response to Paragraph 39 of the Amended Petition, Diversified states that Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations or repose, and/or by laches. Paragraph 39 of the Amended Petition states legal conclusions to which no response is required. Diversified denies any other allegations in Paragraph 39 of the Amended Petition.

**ANSWER TO BREACH OF STATUTORY DUTY TO PAY O&G PROCEEDS  
AND INTEREST ALLEGATIONS**

Diversified incorporates by reference its responses contained in all other paragraphs of this Answer as if fully set forth in this section.

40. Paragraph 40 of the Amended Petition contains a conclusory description of Plaintiffs' claims or legal conclusions to which no response is required. Diversified denies any and all allegations in Paragraph 40.

41. Paragraph 41 of the Petition contains legal conclusions to which no response is required. Diversified states that it has paid proceeds to certain Plaintiffs for oil and/or gas wells in the State of Oklahoma. Diversified denies any other allegations in Paragraph 41.

42. Paragraph 42 of the Amended Petition contains legal conclusions to which no response is required, and Diversified denies any allegations inconsistent with the PRSA.

43. Paragraph 43 of the Amended Petition contains legal conclusions to which no response is required, and Diversified denies any allegations inconsistent with the PRSA.

44. Paragraph 44 of the Amended Petition contains legal conclusions to which no response is required, and Diversified denies any allegations inconsistent with the PRSA.

45. Paragraph 45 of the Amended Petition contains legal conclusions to which no response is required. Diversified states that it held proceeds for various persons at various times relating to production from Oklahoma wells and that, on occasion, certain payments were delayed due to various causes. Diversified denies any other allegations contained in Paragraph 45 of the Amended Petition.

46. Paragraph 46 of the Amended Petition contains legal conclusions to which no response is required. Diversified states that, in certain circumstances, it did not pay interest with certain payments of proceeds. Diversified denies any allegations in Paragraph 46.

47. Diversified denies the allegations contained in Paragraph 47 of the Amended Petition.

48. Diversified denies the allegations contained in Paragraph 48 of the Amended Petition.

**ANSWER TO BREACH OF DUTY TO INVESTIGATE AND PAY  
ALLEGATIONS**

Diversified incorporates by reference its responses contained in all other paragraphs of this Answer as if fully set forth in this section.

49. Paragraph 49 of the Amended Petition contains a conclusory description of Plaintiffs' claims or legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 49.

50. Paragraph 50 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 50.

51. Paragraph 51 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 51.

52. Paragraph 52 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 52.

53. Diversified denies the allegations contained in Paragraph 53 of the Amended Petition.

**ANSWER TO FRAUD, DECEIT, AND CONSTRUCTIVE FRAUD  
ALLEGATIONS**

Diversified incorporates by reference its responses contained in all other paragraphs of this Answer as if fully set forth in this section.

54. Paragraph 54 of the Amended Petition contains a conclusory description of Plaintiffs' claims or legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 54.



55. Diversified denies the allegations contained in Paragraph 55 of the Amended Petition.

56. In response to Paragraph 56 of the Amended Petition, Diversified states that it is a working interest owner in certain oil and/or gas wells in the State of Oklahoma and that it is an operator of some of those wells. Paragraph 56 states legal conclusions to which no response is required. Diversified denies all other allegations in Paragraph 56 of the Amended Petition.

57. Diversified denies the allegations contained in Paragraph 57 of the Amended Petition.

58. Paragraph 58 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 58.

59. Diversified denies the allegations contained in Paragraph 59 of the Amended Petition.

60. Diversified is presently without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 of the Amended Petition regarding the state of mind of Plaintiffs and, therefore, denies the same. Diversified denies the allegations in Paragraph 60.

61. Diversified is without sufficient information to admit or deny the allegations contained in Paragraph 61 of the Amended Petition and, therefore, denies the same.

62. In response to Paragraph 62 of the Amended Petition, Diversified states that it provides checks and check stubs to persons to whom it pays proceeds on oil and/or gas wells in the State of Oklahoma and that these checks and check stubs provide information to such persons. Diversified denies all other allegations in Paragraph 62 of the Amended Petition.

63. Diversified denies the allegations contained in Paragraph 63 of the Amended Petition.

64. Diversified denies the allegations contained in Paragraph 64 of the Amended Petition.

65. Diversified denies the allegations contained in Paragraph 65 of the Amended Petition.

66. Diversified denies the allegations contained in Paragraph 66 of the Amended Petition.

67. Diversified denies the allegations contained in Paragraph 67 of the Amended Petition.

#### **ANSWER TO ACCOUNTING AND DISGORGEMENT ALLEGATIONS**

Diversified incorporates by reference its responses contained in all other paragraphs of this Answer as if fully set forth in this section.

68. Paragraph 68 of the Amended Petition contains a conclusory description of Plaintiffs' claims or legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 68.

69. Paragraph 69 of the Amended Petition contains a conclusory description of Plaintiffs' claims or legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 69.

70. Paragraph 70 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 70.

71. Diversified denies the allegations contained in Paragraph 71 of the Amended Petition.

72. Paragraph 72 of the Amended Petition contains a conclusory description of Plaintiffs' claims or legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 72.

#### **ANSWER TO INJUNCTIVE RELIEF ALLEGATIONS**

Diversified incorporates by reference its responses contained in all other paragraphs of this Answer as if fully set forth in this section.

73. Paragraph 73 of the Amended Petition contains a conclusory description of Plaintiffs' claims or legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 73.

74. Diversified denies the allegations contained in Paragraph 74 of the Amended Petition.

75. Diversified denies the allegations contained in Paragraph 75 of the Amended Petition.

76. Paragraph 76 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 76.

77. Paragraph 77 of the Amended Petition contains a conclusory description of Plaintiffs' claims or legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 77.

78. Paragraph 78 of the Amended Petition contains legal conclusions to which no response is required. Diversified denies any allegations in Paragraph 78.

#### **ANSWER TO PRAYER FOR RELIEF ALLEGATIONS**

79. The Prayer for Relief contains a conclusory description of Plaintiffs' claims or legal conclusions to which no response is required. Diversified denies any allegations contained

in any of the paragraphs of the Prayer for Relief and denies that Plaintiffs are entitled to any of the relief requested.

### **ADDITIONAL DEFENSES**

For its affirmative and other defenses herein, raised without any admission as to which party bears the burden of proof, Diversified realleges and incorporates by reference its responses to the allegations in all other paragraphs of its Answer to the Amended Petition and further states as follows:

80. Plaintiffs have failed to state a claim upon which relief may be granted or to plead fraud with particularity.

81. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations or repose and/or by laches.

82. Plaintiffs' claims are barred, in whole or in part, by settlement, payment, release, accord and satisfaction and/or set off.

83. Plaintiffs' claims are barred, in whole or in part, by claim or issue preclusion (res judicata or collateral estoppel).

84. Plaintiffs' claims are barred, in whole or in part, by estoppel, waiver and/or unclean hands.

85. Diversified conducted its activities in accordance with the leases, division orders, operating agreements, unit agreements, and other applicable agreements and amendment. Plaintiffs' claims are barred, in whole or in part, by such instruments.

86. Plaintiffs have failed to satisfy all conditions precedent to filing suit, including providing the specified notice included in any applicable leases, unit agreements, or other instruments governing the relationship between them and Diversified.

87. Diversified owed no duties to Plaintiffs.
88. Plaintiffs failed to mitigate their damages.
89. Oklahoma law prohibits joint liability for damages on causes of action asserted by Plaintiffs. For actions based in fault, Diversified can only be held liable for the amount of damages, if any, allocated to it.
90. Plaintiffs' damages, if any, must be reduced, in whole or in part, by the comparative fault of Plaintiffs and/or third parties.
91. Plaintiffs have failed to join necessary and indispensable parties.
92. Diversified is not liable to Plaintiffs for interest or other damages owed on untimely payments that may have been unavoidably late and/or not due to the fault of Diversified, including any interest or damages resulting from the acts, omissions, or delays of third parties, Diversified's predecessors in interest, and/or Plaintiffs.
93. Plaintiffs' claims or remedies are barred, in whole or in part, by the Energy Litigation Reform Act, Okla. Stat. tit. 52 § 901, *et seq.* (the "ELRA").
94. Plaintiffs are not entitled to the remedies of disgorgement, injunctive relief, or equitable accounting under the common law and such claims are barred by the ELRA.
95. The proposed class fails to satisfy the requirements for class certification.
96. Plaintiffs are not entitled to punitive and/or exemplary damages ("punitive damages"), because their claims arise under a statute, such damages are barred by the ELRA, and/or this action arises from breach of an obligation arising under contract, for which such damages are not awardable under applicable law, including Okla. Stat. tit. 23, § 9.1.

97. The imposition of punitive damages in this case would violate Diversified's due process or other rights as secured by the constitutions of the United States, Oklahoma and/or other States whose interest are implicated by Plaintiffs' allegations.

98. The punitive damages sought by Plaintiffs 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.

99. Any award of punitive damages would violate the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution, and the due process clause of the Oklahoma Constitution and any other applicable constitutions, because, among other reasons:

- a. Diversified is without effective and adequate procedural protections against the arbitrary or erroneous awards of such damages;
- b. Diversified 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 Diversified, that are organized under the laws of other state and/or that maintain their principal places of business in other states;

- e. evidence of Diversified's net worth would invite the jury to award an arbitrary amount of punitive damages based on Diversified's status as an industrial enterprise; and/or
- f. Diversified's conduct alleged to warrant punitive damages is unrelated to Plaintiffs' harm and, therefore, such damages are unlawfully intended to punish and deter Diversified.

100. Any award of punitive damages would violate the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution, and the due process clause of the Oklahoma Constitution and any other applicable constitutions, because, among other reasons, the law governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to:

- a. Each of the five reprehensibility factors set out in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 419 (2003);
- b. The constitutional factors that govern the permissible ratio of punitive damages to compensatory damages, *see 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");
- c. The comparable civil fine that could be imposed on Diversified for the conduct in question, *see State Farm*, U.S. 538 at 428; *B.N.W. of N. Am., Inc. v. Gore*, 517 U.S. 559, 583 (1996) ("A reviewing court engaged in determining whether an award of punitive damages is excessive should accord substantial deference to legislative judgments

concerning appropriate sanctions for thee conduct at issue” (internal quotation marks omitted)); *Clark v. Chrysler Corp.*, 436 F.3d 594, 607 (6<sup>th</sup> Cir. 2006) (finding punitive damages award excessive in light of comparable civil penalties);

- d. The direct relationship between Diversified’s conduct and the specific injury suffered by Plaintiffs, *see Phillip Morris USA v. Williams*, 549 U.S. 346, 355 (2007) (“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 (“Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties’ hypothetical claims against a defendant under the guise of the reprehensibility analysis”); and/or
- e. The execution of all items of compensatory damage from the quantum of punitive damages, *see State Farm*, 538 U.S. at 426 (“The compensatory damages for the injury suffered here . . . likely were based on a component which was duplicated in the punitive award.”).

Such specific jury instruction and specific findings of fact are necessary in order to permit the *de novo* review off the quantum of any award of punitive damages required by *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436 (2001).

101. Plaintiffs’ claim for punitive damages is barred by the Due Process and Commerce Clauses of the Unites States Constitution and by principles of federalism embodied in



the United States Constitution, to the extent that any claim is based on conduct by Diversified that occurred outside the State of Oklahoma.

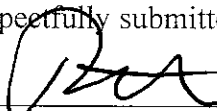
102. Diversified cannot adequately determine its defense to each of the claims of each of the purported class members included as “Plaintiffs” or “Class” above, because the Petition fails to identify the alleged class members and there may be individualized circumstances applicable to individual Plaintiffs (including purported class members).

103. Diversified reserves the right to amend this Answer to assert additional affirmative defenses.

WHEREFORE, Defendant Diversified Production LLC requests that Plaintiffs take nothing by virtue of the Petition, that Diversified be dismissed from the proceedings, and that Diversified be awarded its costs, including attorney’s fees and expert fees, and such other relief as the Court deems just and proper.

DATED this 14 day of June, 2023.

Respectfully submitted,



Robert P. Costello, OBA No. 12621

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**Attorneys for Defendant, Diversified  
Production LLC as successor by merger  
with Tapstone Energy, LLC  
("Diversified")**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of June 2023, a true and correct copy of the above and foregoing was mailed, postage prepaid, to the following:

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