IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHIEFTAIN ROYALTY COMPANY and CASTLEROCK RESOURCES, INC.,	)	
Plaintiffs,	)	
v.	)	Case No. 18-cv-00054-JFH-JFJ
BP AMERICA PRODUCTION COMPANY,	)	
Defendant.	)	

CLASS REPRESENTATIVES' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL

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I. INTRODUCTION

Class Representatives,[1] Chieftain Royalty Company and Castlerock Resources, Inc. ("Plaintiffs" or "Class Representatives"), on behalf of themselves and all others similarly situated, respectfully submit this Memorandum of Law (the "Final Approval Memorandum") in support of and in conjunction with Class Representatives' Motion for Final Approval (the "Final Approval Motion"). Class Representatives and Class Counsel have reached an outstanding Settlement with Defendant BP America Production Company ("Defendant"). Pursuant to the terms set forth in the Settlement Agreement, the Settlement provides for a cash payment of $15,000,000.00 (the "Gross Settlement Fund") to compensate the Settlement Class for past damages.

On November 23, 2021, the Court entered its Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class for Settlement Purposes, Approving Form and Manner of Notice, and Setting Date for Final Fairness Hearing (Dkt. No. 164) (the "Preliminary Approval Order"). Having carried out the instructions in the Preliminary Approval Order, Class Representatives now seek final approval of the Settlement. As demonstrated below, the Settlement is fair, adequate, and reasonable and therefore, should be finally approved. Indeed, the Settlement here was reached only after extensive arm's-length negotiations among competent counsel. The Settlement provides certain recovery in the face of unanswered and hotly disputed questions of law and fact, and it avoids prolonged and expensive litigation of the complex issues at hand. As such, Class Representatives respectfully request the Court enter: (1) the proposed Order and Judgment Granting Final Approval of Class Action Settlement (the "Final Approval Order"), a

[1] All capitalized terms not otherwise defined herein shall have the meaning given to them in the August 16, 2021, Stipulation and Agreement of Settlement ("Settlement Agreement"), a copy of which was attached as Exhibit 1 to Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion to Certify Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice and Set Date for Final Approval Hearing (Dkt. No. 161).

copy of which is attached to the Final Approval Motion as Exhibit 1; and (2) the proposed Initial Plan of Allocation Order, a copy of which is attached to the Final Approval Motion as Exhibit 2.

II. SUMMARY OF THE ARGUMENT

Class Representatives and Class Counsel obtained an outstanding Settlement for the Settlement Class. The Net Settlement Fund will be used to establish a common fund to be allocated and distributed to Class Members in accordance with a Court-approved Plan of Allocation. *See* Settlement Agreement at ¶6.2. In exchange for these benefits, the Settlement Class will release the Released Claims against Defendant.

In its Preliminary Approval Order, the Court certified the Settlement Class for settlement purposes, and preliminarily approved the Settlement. *See* Preliminary Approval Order at ¶¶2-6. Following the Court's Preliminary Approval Order, and in accordance therewith, Notice of the Settlement was sent to the Settlement Class. With the Final Approval Motion, Class Representatives now ask the Court to grant final approval of the Settlement so that the Net Settlement Fund may be distributed to the Settlement Class.

Courts in the Tenth Circuit consider four reasonableness factors when determining whether to finally approve a class action settlement. *See Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). Those factors are whether: (1) the proposed settlement was fairly and honestly negotiated; (2) serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) in the judgment of the parties, the settlement is fair and reasonable. *Id.*; *Fager v. CenturyLink Commc'ns., LLC*, 854 F.3d 1167, 1174 (10th Cir. 2016); *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002).

Here, all four factors support final approval of the Settlement.[2]

First, the Settlement was fairly and honestly negotiated through an arm's-length negotiation process between experienced, well-informed counsel. Second, to this day, serious questions of law and fact exist that would place the ultimate outcome of this Litigation in doubt. Specifically, the Parties still disagree as to whether Defendant's practices and policies with respect to statutory interest—which form the basis of Plaintiffs' and the Settlement Class's claims—comply with Oklahoma law and whether the Class could be certified for litigation purposes under Rule 23. In addition, the cash recovery paid by Defendant far outweighs the mere possibility of future relief after long, expensive litigation, including class certification, an intricate trial, and likely appeals. Finally, Class Representatives, Defendant, and their respective Counsel believe the Settlement is fair, adequate, reasonable and should be approved. *See* Declaration of Robert S. Abernathy, President of Chieftain Royalty Company ("Abernathy Decl."), attached hereto as Exhibit 1 at ¶13; Declaration of Robert E. Gonce, Jr., President of Castlerock Resources, Inc. ("Gonce Decl."), attached hereto as Exhibit 2 at ¶13; Declaration of Patrick M. Ryan, Andrew G. Pate, and Robert N. Barnes on Behalf of Class Counsel ("Joint Class Counsel Decl."), attached hereto as Exhibit 3 at ¶7.

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[2] Amendments to Rule 23(e), effective December 1, 2018, provide a list of certain factors courts should consider when determining whether a settlement is fair, reasonable, and adequate. Due to the obvious and significant overlap between the new statutory factors and the *Rutter* factors listed above, and because the Tenth Circuit has yet to address what effect, if any, the amendments have on the application of the *Rutter* factors, the *Rutter* factors are addressed herein. *See In re Samsung Top-load Washing Mach. Mktg., Sales Pracs. & Prod. Liab. Litig*., No. 17-ML-2792-D, 2020 U.S. Dist. LEXIS 90759, at *46 n.11 (W.D. Okla. May 22, 2020) (DeGiusti, C.J.) ("Although the *Rutter* factors predate the 2018 amendments to Rule 23, the considerations largely overlap, and the amended rule does not displace the earlier guidance."), *aff'd sub nom. In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prod. Liab. Litig*., 997 F.3d 1077 (10th Cir. 2021); *see also Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 F. App'x 752, 757-62 (10th Cir. 2020) (affirming approval of class action settlement).

The Court also should grant final approval of the form and manner of Notice. As noted above, the Court preliminarily approved the proposed form and manner of Notice in its Preliminary Approval Order at ¶¶7-8. Specifically, the Court preliminarily approved the proposed Short Form Notice that was sent to the Class, the Summary Notice that was published in newspapers of general and local circulation in Oklahoma, and the Long Form Notice that was made available on the website and in response to any potential Class Member request. *Id.* The Short Form Notice, Summary Notice, and Long Form Notice (collectively, the "Notice Documents") are the best notice practicable under the circumstances, constitute due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfy the requirements of due process and Federal Rule of Civil Procedure 23.[3]

Finally, the Court should approve the proposed Initial Plan of Allocation, which is attached to the Final Approval Motion as Exhibit 2. Class Representatives and Class Counsel submit that the Initial Plan of Allocation is fair and reasonable as it was formulated by competent counsel and is based on each Class Member's particular loss. *See generally* Joint Class Counsel Declaration, attached hereto as Exhibit 2. Additionally, Class Representatives' oil and gas accounting expert, Barbara A. Ley, endorses the Allocation Methodology as fair, adequate, and reasonable, and in the best interest of the Class. *See* Affidavit of Barbara A. Ley, CPA, CITP, CFF ("Ley Affidavit"), attached hereto as Exhibit 4.

III. PROCEDURAL HISTORY

In the interest of brevity, Class Representatives will not recite the factual and procedural

[3] For details regarding the Settlement Administrator's efforts in disseminating the Short Form Notice and publishing the Summary Notice, *see* Declaration of Jennifer M. Keough on Behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement ("JND Decl."), attached hereto as Exhibit 5.

background of this Litigation again herein, but instead respectfully refer the Court to the Preliminary Approval Memorandum (Dkt. No. 161), the Joint Class Counsel Declaration, the pleadings on file, and any other matters of which the Court may take judicial notice, all of which are incorporated as if set forth fully herein.

IV. ARGUMENT

The Court should grant final approval of the Settlement. The procedure for review of a proposed class action settlement is a well-established two-step process. *See Manual for Complex Litigation* § 13.14 (4th ed. 2004). First, the Court conducts a preliminary analysis to determine if the settlement should be preliminarily approved such that the class should be notified of the pendency of a proposed settlement. *Id.* at § 21.632. Second, the class is notified and provided an opportunity to be heard at a fairness hearing before the settlement is finally approved. Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.25 at 38 (4th ed. 2002).

The Court already carried out the first step with its Preliminary Approval Order. Notice was then sent to the Settlement Class pursuant to the terms of the Settlement Agreement and in the form and manner approved by the Court. *See generally* JND Decl. As for the second step, courts in the Tenth Circuit consider four factors when deciding whether to finally approve a class action settlement. *See Rutter & Wilbanks*, 314 F.3d at 1188; *Jones*, 741 F.2d at 324. Each factor supports final approval of the Settlement here.

A. The Court Properly Certified the Settlement Class for Settlement Purposes

The Court already certified the following Settlement Class for settlement purposes:

All non-excluded persons or entities:

(1) who received during the Claim Period a Late Payment from Defendant (or Defendant's designee) of Oklahoma Proceeds and whose payments did not also include the statutory interest prescribed by the PRSA;

> (2) whose Oklahoma Proceeds were, during the Claim Period, paid over by Defendant (or Defendant's designee) to various state agencies as unclaimed or abandoned property without the payment of statutory interest prescribed by the PRSA; or
>
> (3) who, during the Claim Period, were legally entitled to Oklahoma Proceeds held by Defendant (or Defendant's designee) in suspense accounts for more than the applicable time periods prescribed in the PRSA without the payment by Defendant (or Defendant's designee) or earning/accruing of statutory interest prescribed by the PRSA for the benefit of such owners.
>
> The persons or entities excluded from the Class are: (1) agencies, departments, or instrumentalities of the United States of America; (2) Commissioners of the Land Office of the State of Oklahoma (CLO); (3) publicly traded oil and gas companies and their affiliates; (4) persons or entities (and their affiliates) who are the Oklahoma Corporation Commission (OCC) designated operator of more than fifty (50) Oklahoma wells in September 2018; (5) persons or entities that Plaintiffs' counsel ethically are prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct, which Plaintiffs affirmatively represent includes, but is not limited to, Charles David Nutley, Danny George, Dan McClure, Kelly McClure Callant, William L. Galbreath, Verdeen L. Slatten, Jack A. Slatten, Verdeen L. Slatten Family Limited Partnership, Neva M. Dorman, Ann Ellis Boles, Fischer-Jones, LLC, B.N. Taliaferro, Jr. individually and as Trustee of the B. N. Taliaferro Management Trust, Jack B. Searle, Tamara D. Searle, OGI, Inc., and their relatives; (6) officers of the Court; and (7) owners in regard to whom Defendant is required by the PRSA to pay proceeds annually for the 12 month accumulation of proceeds totaling less than $100.00, provided however, this exclusion of so-called "minimum pay" owners does not apply to interest claims for other 12 month period accumulations of proceeds when the same owner was entitled to $100 or more and thus not in a "minimum pay" status.

See Preliminary Approval Order at ¶2. Class certification is proper under Federal Rule of Civil Procedure 23(a) and (b)(3) for settlement purposes because: (1) Defendant consents to certification of the Settlement Class for settlement purposes; and (2) Class Representatives set forth extensive evidence and arguments establishing each element of Rule 23 in their Preliminary Approval Memorandum, which is respectfully incorporated by reference as if set forth fully herein. As such, the Court properly certified the Settlement Class and may now proceed to final approval of the Settlement.

B. The Court Should Grant Final Approval of the Settlement

The Court should finally approve the Settlement as fair and reasonable. Federal Rule of Civil Procedure 23(e) requires judicial approval of class action settlements. FED. R. CIV. P. 23(e). The Court has broad discretion in deciding whether to grant approval of a class action settlement. *Jones*, 741 F.2d at 324. "As a general policy matter, federal courts favor settlement, especially in complex and large-scale disputes, so as to encourage compromise and conserve judicial and private resources." *In re Global Crossing Sec. & ERISA Litig*., 225 F.R.D. 436, 455 (S.D.N.Y. 2004); *see also In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged").

In the Preliminary Approval Order, the Court took the first step in this two-step process by preliminarily approving the Settlement as fair, reasonable, and adequate. Preliminary Approval Order at ¶¶5-6. Notice was then sent to the Settlement Class pursuant to the terms of the Settlement Agreement and in the form and manner approved by the Court. *See generally* JND Decl. Class Representatives now request the Court take the second step—granting final approval of the Settlement. As demonstrated below, each of the four factors identified by the Tenth Circuit weighs in favor of final approval.

1. The Settlement is the Product of Extensive Arm's-length Negotiations Between Experienced Counsel

The fact that the Settlement was fairly and honestly negotiated by qualified, experienced counsel supports final approval. *See Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiating at arm's length cannot be gainsaid."). The fairness of the negotiation process is to be examined with reference to the experience of counsel, the vigor with which the case was prosecuted, and any coercion or collusion that may have affected the negotiations.

Here, the Settlement is the product of extensive arm's-length negotiations between the Parties' experienced counsel. *See* Joint Class Counsel Declaration at ¶38; *see also* Declaration of Mediator William C. Hetherington, Jr. at ¶11. Comprehensive examination of the massive amounts of information and data produced in this litigation enabled the Parties to make informed decisions about the strengths and weaknesses of their respective cases. *See id.*; *Childs v. Unified Life Ins. Co.*, No. 10-CV-23-PJC, 2011 U.S. Dist. LEXIS 138818, at *34 (N.D. Okla. Dec. 2, 2011).

Additionally, Class Counsel has unique experience with oil and gas royalty underpayment class actions and statutory interest class actions. Nix Patterson, LLP ("NP"), Ryan Whaley Coldiron Jantzen Peters and Webber PLLC ("RW"), and Barnes & Lewis, LP ("BL"), regularly represent plaintiffs in royalty owner class actions, and other complex commercial and consumer class action litigation, and have obtained impressive results in a multitude of royalty underpayment class actions in Oklahoma state and federal court, including, but not limited to, the following: *White Family Minerals, LLC v. EOG Resources, Inc.*, Case No. 19-cv-409-RAW (E.D. Okla.) ($4 million cash settlement for class of royalty owners approved November 12, 2021); *Donald D. Miller Revocable Family Trust v. DCP Operating Co., LP, et al.*, Case No. 6:18-cv-00199-JH (E.D. Okla.) ($9.9 million cash settlement for class of royalty owners approved June 29, 2021); *McClintock v. Enterprise Crude Oil LLC*, Case No. CIV-16-136-KEW (E.D. Okla.) ($5.9 million cash settlement for class of royalty owners approved March 26, 2021); *Cline v. Sunoco*, Case No. 17-cv-313-JAG (E.D. Okla. 2020) ($155,691,486.00 judgment for class of royalty owners); *Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 17-cv-336-KEW (E.D. Okla.) ($19.5 million cash settlement for class of royalty owners); *Chieftain Royalty Co. v. Marathon Oil Co.*, Case No. CIV-17-334-SPS (E.D. Okla.) ($14.95 million cash settlement for class of royalty owners and at least $17.1 million in future benefits); *Reirdon v. Cimarex Energy*

Co. & Cimarex Energy Co. of Colo., No. 6:16-cv-00445-SPS (E.D. Okla.) ($10 million settlement approved for class of royalty owners); *Rhea v. Apache Corp.*, No. CIV-14-0433-JH, 2019 U.S. Dist. LEXIS 65381 (E.D. Okla., Feb. 15, 2019) (granting contested class certification motion for royalty class action); *Reirdon v. Cimarex Energy Co*., No. 16-cv-113-KEW (E.D. Okla.) ($9.5 million cash settlement and at least $11 million in future benefits for class of royalty owners); *Chieftain Royalty Co. v. XTO Energy, Inc*., No. 6:11-cv-29-KEW (E.D. Okla.) ($80 million cash settlement for class of underpaid royalty owners, with at least $60 million in past benefits and $74 million in future benefits); *Reirdon v. XTO Energy, Inc*., No. 16-cv-87-KEW (E.D. Okla.) ($20 million cash settlement for class of royalty owners); *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, No. CIV-12-1319-D, 2014 U.S. Dist. LEXIS 177692, at *6-7 (W.D. Okla.) ($6.6 million cash settlement for class of royalty owners); *Cecil v. Ward Petroleum Corp.*, Case No. CJ-2010-462 (Okla. Dist. Ct., Grady Cty.) ($10 million settlement for class of royalty owners); *Drummond, et al. v. Range Resources Corp., et al.*, Case No. CJ-2010-510 (Okla. Dist. Ct., Grady Cty.) ($87.5 million settlement for class of royalty owners); *Chieftain Royalty Co. v. QEP Energy Co.*, Case No. CIV-11-212-R (W.D. Okla.) ($155 million settlement for class of royalty owners); *see also CompSource Okla., et al. v. BNY Mellon, N.A., et al.*, No. CIV-08-469-KEW (E.D. Okla. Oct. 25, 2012). *See* Joint Class Counsel Declaration at ¶¶56-59.

The law firm of Ryan Whaley Coldiron Jantzen Peters & Webber PLLC ("RW") is a litigation, energy, and environmental law firm based in Oklahoma City with national, regional, and state clients. *See* Joint Class Counsel Declaration at ¶60. Ryan Whaley has been involved in numerous large trials and cases, including all forms of complex business and white-collar litigation, energy, and environmental litigation, regulatory work, and projects in more than 40 states and overseas. *Id*. With more than 48 years of experience in civil litigation, Pat Ryan is best

known for successful high-profile cases including his work as U.S. Attorney in the prosecution and conviction of Oklahoma City Bombing defendants Timothy McVeigh and Terry Nichols in Denver, Colorado, and securing the acquittal of a founder/CEO in one of the largest corporate fraud cases prosecuted by the U.S. Department of Justice. *Id*.

The law firm of Barnes & Lewis ("BL") has been lead counsel in at least fourteen (14) Oklahoma oil and gas class action cases that have been concluded and resulted in combined Common Funds exceeding $700 million. *See* Joint Class Counsel Declaration at ¶58. BL holds the distinction of having been lead counsel in the first oil and gas class action nationwide to have been successfully tried to a jury. *Id.* That jury verdict was upheld on appeal and resulted in a total Common Fund of approximately $110 million. *See Bridenstine v. Kaiser Francis*, Case No. 97, 117 (unpublished) August 22, 2003, *cert. denied*, June 26, 2006, Okla. Sup. Ct., Case No. DF-01569.

Moreover, Liaison Local Counsel for the Settlement Class, Michael Burrage, is a founding partner of Whitten Burrage, one of the most accomplished trial firms in Oklahoma, and a former federal judge with substantial experience in complex litigation, including class actions generally and oil and gas royalty underpayment class actions in particular. *Id.* at ¶61.

In short, the legal team forming Class Counsel and Liaison Local Counsel are experienced and qualified counsel and represented the Settlement Class honestly and fairly during settlement negotiations. *Id.* at ¶¶56-61.

Further, Class Representatives were intimately involved in the negotiations and believe the process resulted in an excellent Settlement for the Settlement Class. *See* Abernathy Decl. at ¶¶7-8, 10, 19; Gonce Decl. at ¶¶7-8, 10, 19. Mr. Abernathy and Mr. Gonce devoted extensive time to prosecuting this Litigation for over four years, including the production of documents, meeting

and communicating regularly with Class Counsel, participating in the mediation and negotiations that led to the Settlement, and reviewing pleadings, briefs, and other court documents. *See* Abernathy Decl. at ¶¶7-8, 10, 19; Gonce Decl. at ¶¶7-8, 10, 19. As such, the Parties and their lawyers were well prepared for the serious and intelligent negotiations that led to the Settlement.

Plaintiffs, through counsel, conducted extensive investigation and research into the claims asserted, reviewed extensive data, and consulted with numerous experts. Further, the Settlement is the product of arm's-length negotiations between Plaintiffs and Defendant and their experienced counsel at a point when Plaintiffs and Defendant possessed more than sufficient evidence and knowledge to allow them to make informed decisions about the strengths and weaknesses of their respective cases. The Settlement is the product of serious and informed negotiations among experienced counsel.

These facts demonstrate the Settlement resulted from serious, informed, and non-collusive negotiations between skilled and dedicated attorneys. Therefore, the first factor supports final approval.

2. Serious questions of law and fact exist, placing the ultimate outcome in doubt

The existence of serious questions of law and fact place the ultimate outcome of this Litigation in doubt. Such doubt "tips the balance in favor of settlement because settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation." *McNeely v. Nat'l Mobile Health Care, LLC*, No. 07-CV-933-M, 2008 U.S. Dist. LEXIS 86741, at *36 (W.D. Okla. Oct. 27, 2008) (internal citations omitted).

In this Litigation, there are numerous factual and legal issues about which the Parties disagree—issues that would ultimately be decided by this Court or a jury. *See* Joint Class Counsel Declaration at ¶14. To this day, Defendant denies it committed any acts or omissions giving rise

to any liability or violation of law. *See* Settlement Agreement at ¶11.1. Defendant has always maintained its statutory interest policies—which form the basis of Plaintiffs' and the Settlement Class' claims—comply with Oklahoma law. Thus, Defendant has entered this Settlement solely to eliminate the burden and expense of further litigation. *See id.*

In addition, despite Class Representatives' optimism regarding their chances at trial, Class Representatives would have to overcome several significant obstacles. First, before reaching the merits of this Litigation, the Court and the Parties would be required to resolve complex legal questions concerning Oklahoma oil and gas law and its impact on Defendant's statutory interest payment practices and policies. Once these questions of law are resolved, many serious questions of fact would remain, including, *inter alia*, whether Defendant's conduct violates Oklahoma law and/or rises to the level of fraud. Because this Litigation still presents serious issues of law and fact that place the ultimate outcome in doubt, the second factor supports final approval of the Settlement.

3. The value of immediate recovery outweighs the mere possibility of future relief after long and expensive litigation

The complexity, uncertainty, expense, and likely duration of further litigation and appeals also supports approval of the proposed Settlement. The immediate value of the $15,000,000.00 cash recovery outweighs the uncertainty, additional expense, and likely duration of further litigation. The Settlement Class is "better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted." *McNeely*, 2008 U.S. Dist. LEXIS 86741, at *37. Here, the Settlement represents a meaningful recovery for the Settlement Class without the risk or additional expense of further litigation. *See id*. These immediate benefits must be compared to the risk that the Settlement Class might recover nothing, and even considering the possibility of a contested class certification

process, summary judgment, trial, and likely appeals, possibly years into the future. *See In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1261 (D. Kan. 2006).

While Class Counsel is confident in their ability to prove the claims asserted, they also recognize liability is far from certain and many potential obstacles to obtaining a final, favorable verdict exist. Even if Class Representatives were able to establish liability at trial, Defendant would have vigorously argued the Settlement Class' damages are far less than the $15,000,000.00 Gross Settlement Fund. *See* Joint Class Counsel Declaration at ¶16. Through the Settlement, the Settlement Class is guaranteed a cash payment without the attendant risks of further litigation.

Class Counsel is intimately familiar with the risks of proceeding with this Litigation because they have extensive experience prosecuting royalty class actions. *See* Section IV.B.1 *supra*; Joint Class Counsel Declaration at ¶32. Indeed, Class Counsel recently tried a similar certified class and is intimately familiar with the risks and costs associated with doing so. Class Counsel believes the value of the Settlement outweighs the risks of proceeding further with this Litigation. Although not submitted as part of these proceedings, Professors Steven Gensler and Geoffrey Miller—experts in class action litigation and settlements—have also provided testimony in support of previous class action settlements in Oklahoma federal courts involving similar claims and settlement amounts far greater than that at issue here. *See, e.g.*, *Chieftain Royalty Co. v. Marathon Oil Co.,* No. CIV-17-334-SPS (E.D. Okla.) (Dkt. Nos. 81-82); *Chieftain Royalty Co. v. XTO Energy, Inc*., No. 11-cv-29-KEW (E.D. Okla.) (Dkt. Nos. 206, 209); *Reirdon v. XTO Energy, Inc*., No. 16-cv-87-KEW (E.D. Okla.) (Dkt. Nos. 92-93); *Reirdon v. Cimarex Energy Co*., No. 6:16-cv-113-KEW (E.D. Okla.) (Dkt. Nos. 63-64).

When the risks and uncertainties of continuing this Litigation are compared to the immediate benefits of the Settlement, it is clear the Settlement is fair, reasonable, and in the best

interests of the Settlement Class. The third factor supports final approval of the Settlement.

4. Class Representatives and Defendant agree the Settlement is fair and reasonable

The fact that Class Representatives and Defendant believe the Settlement is fair and reasonable supports final approval. Class Counsel and Class Representatives only agreed to settle this Litigation after considering the substantial benefits the Settlement Class will receive, the risks and uncertainties of continued litigation, and the desirability of proceeding under the terms of the Settlement Agreement. *See* Abernathy Decl. at ¶¶11-13; Gonce Decl. at ¶¶11-13; Joint Class Counsel Declaration at ¶¶32, 71.

Class Counsel's judgment as to the fairness of the Settlement supports final approval. "Counsels' judgment as to the fairness of the [settlement] agreement is entitled to considerable weight." *Childs*, 2011 U.S. Dist. LEXIS 138818, at *37 (citation omitted). Here, Class Counsel believe the terms and conditions of the Settlement are fair, reasonable, and adequate to Class Representatives and the Settlement Class, and in their best interests. *See* Joint Class Counsel Declaration at ¶7.

As explained above, Class Counsel have extensive experience in complex class action litigation and oil and gas litigation in Oklahoma. *See* Section IV.B.1, *supra*. Both Class Counsel and Class Representatives submit that the Settlement is fair, reasonable, and adequate and should be approved, and Defendant agrees.

In addition, absent Class Members have signed affidavits and/or declarations supporting the Settlement. *See* Exhibits 6-11 attached hereto. Therefore, this last factor supports the Court's final approval of the Settlement.

In sum, all four factors considered by courts in the Tenth Circuit support final approval of the Settlement.

C. The Notice Method Used was the Best Practicable Under the Circumstances and Should be Approved

The Court should approve the Notice given to the Settlement Class. Rule 23(c)(2)(B) requires that notice of a settlement be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c)(2)(B). Also, Rule 23(e)(1) instructs courts to "direct notice in a reasonable manner to all class members who would be bound by the proposal." FED. R. CIV. P. 23(e)(1). In terms of due process, a settlement notice need only be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Fager*, 854 F.3d at 1171 (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). "The Supreme Court has consistently endorsed notice by first-class mail" holding "a fully descriptive notice…sent first-class mail to each class member, with an explanation of the right to 'opt out,' satisfies due process." *Id.* at 1173.

As set forth more fully below, the Short Form Notice was mailed to all potential Class Members who had been identified through reasonable efforts using the pay data provided by Defendant and described in ¶3.3 of the Settlement Agreement. *See* JND Decl. at ¶6. The Summary Notice was also published in six newspapers: (a) *The Oklahoman*, a paper of general circulation in Oklahoma; (b) the *Tulsa World*, a paper of general circulation in Oklahoma; (c) *The Daily Ardmoreite*, a paper of local circulation; (d) the *Fairview Republican*, a paper of local circulation; (e) the *McAlester News-Capital*, a paper of local circulation; and (f) the *Holdenville Tribune*, a paper of local circulation. *Id.* at ¶9. And, the Long Form Notice was made available on the settlement website and directly mailed to any potential Class Member upon request. *Id.* at ¶10. The Notice campaign carried out by Class Counsel and its team is comparable to the highly successful notice campaigns completed in other oil and gas royalty cases approved by district courts in

Oklahoma. *See, e.g.*, *Reirdon v. XTO Energy Inc.*, Case No. 16-cv-87-KEW (E.D. Okla.) (Dkt. No. 122 at ¶6); *Chieftain Royalty Co. v. XTO Energy Inc.*, Case No. 16-cv-29-KEW (E.D. Okla.) (Dkt. No. 229 at ¶8); *Reirdon v. Cimarex Energy Co.*, Case No. 6:16-cv-113-KEW (E.D. Okla.) (Dkt. No. 102 at ¶6); *McClintock v. Enterprise Crude Oil, LLC*, Case No. 16-CIV-136-KEW (E.D. Okla.) (Dkt. No. 119 at ¶6).

In its Preliminary Approval Order, the Court preliminarily approved the form and manner of the Notice Documents disseminated by the Settlement Administrator, stating the Short Form Notice, Summary Notice, and Long Form Notice are "the best notice practicable under the circumstances, constitute due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfy the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23." *See* Preliminary Approval Order at ¶7. The Court then directed the Parties and the Settlement Administrator to disseminate the Notice Documents in accordance with the Settlement Agreement and the Preliminary Approval Order. *Id.* at ¶8.

Class Counsel conducted an extensive campaign to distribute the Notice to the Class. *See* Joint Class Counsel Declaration at ¶¶17-25. This campaign was necessary because there are 43,765 potential Class Members. *Id.* at ¶18; *see also* JND Decl. at ¶6. To send Notice to the Settlement Class, the Parties needed the name and address of each Class Member. Joint Class Counsel Declaration at ¶19. In addition, to properly distribute the Net Settlement Fund, each Class Member's tax identification number was needed, as well as information regarding their prior proceeds payments from Defendant. *Id*. Defendant maintained and provided the necessary payment history data. *See* Settlement Agreement at ¶3.3. Class Counsel, in conjunction with the Settlement Administrator, were able to distribute the Short Form Notice through the direct notice

campaign to a high percentage of Class Members in a commercially reasonable manner. *See* JND Decl. at ¶8 (attached as Exhibit 4 to Final Approval Memorandum).[4]

On December 15, 2021, the Short Form Notice was mailed via USPS first-class mail to the 43,714 potential Class Members from the initial Class Member data with a mailing address. *See* JND Decl. at ¶6. On December 17, 2021, JND caused the Short Form Notice to be mailed via USPS first-class mail to the 51 potential Class Members identified in the supplemental Class Member data. *Id*. In total, JND caused the Short Form Notice to be mailed to 43,765 potential Class Members. *Id*.;[5] Joint Class Counsel Decl. at ¶20. In addition, to ensure that as close to 100% of the Class as possible received Notice, the Court-approved Summary Notice was published on December 16, 2021, in the following newspapers: *Fairview Republican, Hughes County Tribune, McAlester News-Capital, Oklahoman, Tulsa World,* and *The Ardmoreite*. *See* JND Decl. at ¶9.

Also, the Notice Documents, along with other documents germane to the Settlement, were posted on the website created for and dedicated to this Litigation, https://www.chieftain-bp.com. *See id.* at ¶10. This website is maintained by the Settlement Administrator, where information regarding the Settlement can be found. *Id.*

The Notice Documents fully informed Class Members about the Litigation, the Settlement, and the facts needed to make informed decisions about their rights. *See* Preliminary Approval Order at ¶7. The Notice Documents also provided Class Members with information where Class

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[4] To date, JND has tracked 7,988 Notices that have been returned to JND as undeliverable at the address provided. *See* JND Decl. at ¶8. JND re-mailed a total of 592 Notices to forwarding addresses provided by USPS. For the remaining undeliverable notices, JND conducted advanced address research through TransUnion's TLO service, which located updated addresses for 2,816 Class Members. *Id*. JND re-mailed Notices to these Class Members, and none have been returned as undeliverable to date. *Id*.

[5] *See* fn. 4, *supra*.

Members may obtain further information regarding the Settlement contained in the Long Form Notice, as well as their rights and options as they relate to the Settlement. *See generally* JND Decl.

In sum, the form, manner, and content of the Short Form Notice, Summary Notice, and Long Form Notice were the best practicable notice, and their contents were reasonably calculated to, and did, apprise Class Members of the pendency and nature of the Settlement and afford them an opportunity to opt out or object. Therefore, the Court should grant final approval of the Notice given to the Settlement Class here.

D. The Initial Plan of Allocation Should be Approved

The Court should also approve the proposed Initial Plan of Allocation. Like the settlement itself, a plan of allocation must also be approved as fair and reasonable. *See In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d at 1262 (citing *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. at 462). Where, as here, a plan of allocation is formulated by competent and experienced class counsel, the plan need only have a reasonable, rational basis. *Id.* As a general rule, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable. *Id.*

Here, Class Counsel, together with their experts, have formulated an Initial Plan of Allocation in which Class Members will be reimbursed proportionately in relation to their individual claim for untimely payments that did not include the full amount of statutory interest owed. *See* Joint Class Counsel Declaration at ¶¶33-36; *see also* Ley Aff. Importantly, this is not a claims-made settlement, nor is it a settlement where a Class Member must take further action to participate. *See* Joint Class Counsel Declaration at ¶6. Instead, here, every Member of the Settlement Class allocated a portion of the Net Settlement Fund who does not opt out of the

Settlement and is not subject to the *de minimis* provisions of the Settlement, will receive a check. *Id.*

Specifically, the Net Settlement Fund will be allocated to individual Participating Class Members based on the amount of statutory interest allegedly owed on each original underlying proceeds payment that allegedly occurred outside the time periods required by the PRSA, with due regard for the production date, the date the underlying payment was made, the amount of the underlying payment made, the time periods set forth in the PRSA any additional statutory interest that has since accrued, and potential defenses for different time periods. *See* Ley Aff. at ¶¶7-8; Joint Class Counsel Declaration at ¶34; Settlement Agreement at ¶6.2.

A check for each Class Member's allocation of the Net Settlement Fund will then be mailed to each respective Class Member's last known mailing address, using the payment history data produced under paragraph 3.3 of the Settlement Agreement (or the most current available address information). Initial Plan of Allocation Order at ¶¶2, 7 (Ex. 2 to Motion for Final Approval); Joint Class Counsel Declaration at ¶¶19-20. Returned or stale-dated Distribution Checks shall be reissued as necessary to ensure delivery to the appropriate Class Members using commercially reasonable methods subject to review and approval by the Court. Initial Plan of Allocation Order at ¶7; Joint Class Counsel Declaration at ¶35. No distributions will be made to Class Members who would otherwise receive a distribution of less than $10.00. Settlement Agreement at ¶6.3. This *de minimis* threshold is set in order to preserve the overall Net Settlement Fund from the costs of claims that are likely to exceed the value of those claims. *Id.*

Because the Initial Plan of Allocation was formulated by competent and experienced Counsel and utilizes a reasonable methodology frequently utilized for settlement allocations in royalty class actions and that has been approved by both state and federal courts, the Court should

approve the Initial Plan of Allocation as fair, adequate, and reasonable, and in the best interest of the Class.

V. CONCLUSION

For the foregoing reasons, Class Representatives and Class Counsel respectfully request that the Court enter an order granting: (1) final approval of the Settlement as fair, reasonable, and adequate, and in the best interests of the Settlement Class; (2) final approval of the Notice to Class Members; and (3) approval of the Initial Plan of Allocation.

DATED: January 21, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2022, a true and correct copy of the above and foregoing document was served in accordance with the Local Rules on all counsel of record through the Court's CM/ECF filing system.

/s/ Bradley E. Beckworth
Bradley E. Beckworth

Subject: Activity in OKND case 4:18-cv-00054-JFH-JFJ Chieftain Royalty Company, et al v. BP America Production Company - Brief in Support of Motion

Date: Friday, January 21, 2022 at 5:57:06 PM Central Standard Time

From: CM-ECFMail_OKND@oknd.uscourts.gov

To: Courtmail@oknd.uscourts.gov

U.S. District Court

U.S. District Court for the Northern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered by Beckworth, Bradley on 1/21/2022 at 5:57 PM CST and filed on 1/21/2022

Case Name: Chieftain Royalty Company, et al v. BP America Production Company

Case Number: 4:18-cv-00054-JFH-JFJ

Filer: Castlerock Resources, Inc.
Chieftain Royalty Company

Document Number: 168

Docket Text:

BRIEF in Support of Motion (Re: [167] MOTION Class Representatives' Motion for Final Approval) by Castlerock Resources, Inc., Chieftain Royalty Company ; (With attachments) (Beckworth, Bradley)

4:18-cv-00054-JFH-JFJ Notice has been electronically mailed to:

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