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

MCKNIGHT REALTY CO., on behalf of itself and all others similarly situated, Plaintiff, v. BRAVO ARKOMA, LLC, and BRAVO NATURAL RESOURCES, Defendants.	Case No. 17-CV-00308-KEW

MEMORANDUM IN SUPPORT OF CLASS REPRESENTATIVE'S
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Anticipating the Settlement Fairness Hearing set for December 21, 2018, at 9:30 a.m., the Class Representative McKnight Realty Company asks the Court to: (1) enter the Order Approving Class Action Settlement and Final Judgment ("Final Approval Order"), attached as Exhibit A to the Motion;[1] (2) enter the Plan of Allocation and Distribution Order ("Plan of Allocation"), which describes how the Net Settlement Amount will be distributed to the class members, attached as Exhibit B to the Motion;[2] and (3) approve the preliminary allocation which implements the Plan of Allocation and Distribution Order, which is attached as Exhibit A to the Declaration of Daniel T. Reineke.[3] With no objections to the Settlement and only one of more than 11,000 class members opting-out, Class Representative McKnight Realty Co. submits that the Settlement is fair, reasonable, and adequate and should be finally approved.[4] Declaration of Gary McKnight, attached as Exhibit 1 to the Combined Exhibit Index.

I. ISSUE PRESENTED

Is the proposed class action settlement fair, reasonable, and adequate such that it warrants the Court's approval under Rule 23(e) of the Federal Rules of Civil Procedure?

II. BACKGROUND FACTS

[1] The Final Approval Order is also Exhibit C to the Settlement Agreement, Dkt. No. 50-1.

[2] The Plan of Allocation and Distribution Order is also Exhibit A to the Settlement Agreement, Dkt. No. 50-1.

[3] The Reineke Declaration is Exhibit 2 to the Combined Exhibit Index filed contemporaneously with the motion for final approval, which this memorandum supports, and the separately filed motion for Class Counsels Fees and Expenses.

[4] In addition to seeking final approval of the Settlement, Class Representative McKnight Realty has filed a separate motion for attorneys' fees, litigation expenses, class representative fee, and settlement administration expenses, which motion includes the submission of a proposed Order Approving Class Counsel Fees and Expenses, and Administration Expenses. Class Representative will also request the Court enter this proposed order at the Settlement Fairness Hearing on December 21.

On June 20, 2018, the parties agreed to settle the Class Lawsuit after a Settlement Conference before Magistrate Judge Kimberly E. West. Dkt. No. 46. Following the Settlement Conference, the parties consented to have Magistrate Judge West conduct all proceedings in this case, including trial, the entry of final judgment, and all post-trial proceedings. Dkt. No. 47.

On September 6, 2018, the Court issued an order preliminarily approving the settlement, approving the form of notice, and setting a date of December 21, 2018, for the Settlement Fairness Hearing. "Preliminary Approval Order," Dkt. No. 53. The Court also approved the Notices of Proposed Settlement of Class Action ("Class Notices"), one form for mailing and one for publication. *Id.* The Court ordered that Notice be given to the Class members in accordance with the Plan of Notice as outlined in the Settlement Agreement and found that the Notices being provided "constitute the best notice practicable under the circumstances." *Id.* at ¶¶3-5. Since preliminary approval, Notice was mailed, by first class mail, as ordered by the Court, to 11,416 members of the Settlement Class between October 4, 2018 and the present. Keough Decl., Dkt. No. 58-1 at ¶¶5-6; *see also* Mailing List filed under seal, Dkt. No. 56. And Notice was published on October 4, 2018 in *McAlester News-Capital* and *Muskogee Phoenix,* as directed in the Preliminary Approval Order. Keough Decl., Dkt. No. 58-1 at ¶8.

The facts regarding certification are unchanged since the Court's entry of the Preliminary Approval Order. And, the law for class certification, especially in the Tenth Circuit, has strengthened. *See CGC Holding Co., LLC v. Broad and Cassel*, 773 F.3d 1076 (10th Cir. 2014) (affirming certification of class action); *Menocal v. GEO Group, Inc*., 2018 WL 797165 (10th Cir. Feb. 9, 2018) (affirming and extending *CGC*). Class certification was and is proper.

A general plan of allocation and distribution was described in the Class Notice, and a more detailed plan consistent with the Notice was filed with the Court as Exhibit A to the Settlement

Agreement. *See* Keough Decl., Dkt. No. 58-1 at ECF 11, Sec. IV; Settlement Agreement, Dkt. No. 50-1 at 22. Consistent with the Notice and the Plan of Allocation, the preliminary allocation shows the proposed distributions to each Class for whom an address and an amount of distribution of the Settlement Proceeds can be determined. Exhibit A to the Reineke Decl.

Members of the Settlement Class had 45 days between the mailing of the Notice on October 4, 2018 and the date set by the Court for the filing of objections to and requests for exclusion from the Settlement on November 19, 2018. *See* Keough Decl., Dkt. No. 58-1 at ¶¶5, 11, 13. No Class Member objected to the Settlement or Plan of Allocation. Keough Decl., Dkt. No. 58-1 at ¶14. Only one Class Member has opted out. *Id.* at ¶12; Robertson Opt-Out, Dkt. No. 55. The lack of objection and the single opt-out of the Settlement support the conclusion that the Settlement and Plan of Allocation are fair, adequate, reasonable and in the best interests of the Settlement Class such that final approval should be granted.

III. ARGUMENT AND AUTHORITIES

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* Order Granting Approval of Class Action Settlement and Final Judgment at 1-5, *Cecil v. BP America Production Co.*, No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (the "*Cecil* Order"), attached to the Combined Exhibit Index as **Exhibit 3.O**; *see also* 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. *See Cecil* Order at 2-3. Manual for Complex Litigation § 21.632 (4th ed. 2004). Second, the class is notified and provided an opportunity to be heard at a fairness hearing before the

settlement is finally approved. *See Cecil* Order at 3-5; *see also* Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 11.25, at 38 (4th ed. 2002).

The Court already carried out this first step with its Preliminary Approval Order, and the Settlement Class should be finally certified under Rule 23 for the reasons found therein and set forth below. Notice was effectuated pursuant to the terms of the Settlement Agreement and in the form and manner approved by the Court. *See* Keough Decl., Dkt.58-1 at ¶¶5-6, 8. As for the second step, courts in the Tenth Circuit consider four factors when deciding whether to finally approve a class action settlement. *See, e.g.*, *Cecil* Order at ¶8; *Rutter & Wilbanks Corp. v. Shell Oil Co*., 314 F.3d 1180, 1188 (10th Cir. 2002); *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). The four factors are:

> a. Whether the proposed settlement was fairly and honestly negotiated;
>
> b. Whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
>
> c. Whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
>
> d. Whether, in the parties' judgment, the settlement is fair and reasonable.

See, e.g., Rutter, 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 and Should Confirm this Finding by Finally Certifying the Settlement Class Under Rule 23.

The Court already certified the following Settlement Class for the purposes of this Settlement:

> All persons who are royalty owners in Oklahoma wells where Bravo Arkoma LLC or Bravo Natural Resources, LLC (including their affiliated predecessors and affiliated successors) are or were the operator (or a working interest owner, which marketed its share of gas and directly paid royalties to the royalty owners).

> Excluded from the Class are: (1) agencies, departments or instrumentalities of the United States of America, including but not limited to the U.S. Department of the Interior (the United States, Indian tribes, and Indian allottees); (2) the State of Oklahoma or any of its agencies or departments that own royalty interests; (3) Defendants, their affiliates, predecessors, and employees, officers, and directors; (4) any company or its affiliated entities that produces, gathers, processes or markets gas; and (5) royalty owners only to the extent receiving "Blanchard" payments.

Class certification is proper under Rule 23(a) and (b)(3) for settlement purposes for the reasons set forth in the Preliminary Approval Memorandum (Dkt. No. 50 at 3-11), which is respectfully incorporated by reference as if set forth fully herein; and (2) Defendants consent to certification of the Settlement Class for the purpose of settlement.

Indeed, for the same reasons set forth in Plaintiff's Preliminary Approval Memorandum, the prerequisites for class certification under Rule 23(a) and (b)(3) are satisfied. First, Rule 23(a)(1)'s numerosity requirement is satisfied because the Settlement Class consists of more than 11,000 royalty owners, whose joinder would be impracticable. Keough Decl., Dkt. No. 58-1 at ¶¶5-6 (Notice mailed to 11,416 possible class members); *see also Trevizo v. Adams*, 455 F.3d 1155, 1161-62 (10th Cir. 2006) (citing Rule 23(a)(1)). Second, Rule 23(a)(2)'s commonality requirement is met because "many questions of law and fact exist that could be answered uniformly for the Settlement Class using common evidence." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016); *see also Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 914 (10th Cir. 2018) ("A finding of commonality requires only a single question of law or fact common to the entire class" (internal citations omitted)). Each of these common issues stems from a common body of law—the statutory and common law of the State of Oklahoma. The Class Wells at issue are property located in the State of Oklahoma, and the royalty payments at issue are governed by Oklahoma law. Thus, any choice of law analysis would result in the application of Oklahoma law to the legal claims and, as such, there are no other states' laws implicated by this action, nor any other choice

of law issues that could affect the Court's commonality analysis here. *See id.* Third, Rule 23(a)(3)'s typicality requirement is satisfied because Defendants treated all royalty owners the same for purposes of paying royalties, the same legal theories and fact issues underlie each Class Member's claims, and all Class Members suffered the same injury arising out of the same facts that can be proven by the same, common evidence. *DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1198-99 (10th Cir. 2010). Finally, Rule 23(a)(4)'s adequacy of representation requirement is satisfied because there are no conflicts—minor or otherwise—between Class Representative and the other Class Members. *See Tennille v. Western Union Co.*, 785 F.3d 422, 430 (10th Cir. 2015) ("Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status.") (internal citation omitted). Class Representative and Class Counsel have prosecuted this Litigation vigorously and Class Counsel is unquestionably qualified to represent the Class here. *See* Joint Declaration of Class Counsel at ¶¶2-20.

Additionally, Rule 23(b)(3)'s predominance and superiority requirements are satisfied here. *Tyson Foods*, 136 S. Ct. at 1045; *Menocal*, 882 F.3d 905, 914-15 ("the predominance prong asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues" (citations omitted)); *In re Urethane Antitrust Litig.*, 768 F.3d 1245, 1255 (10th Cir. 2014); *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014). The predominance requirement is met because the substantive claims are all common—Oklahoma law under Oklahoma choice-of-law principles—as are the aggregation-enabling issues of fact—chiefly, Defendants' common course of royalty underpayment to every Class Member. The common questions under the shared law predominate over and are more important than any potential individual issues that theoretically could arise in this Class Lawsuit. And, the superiority requirement is easily satisfied because

resolving this Class Lawsuit through the classwide Settlement is far superior to any other method for fairly and efficiently adjudicating these claims.

As such, the Court properly certified the Settlement Class and, because Class Representative has proven that each of the requirements for certification under Rule 23(a) and (b)(3) are satisfied, this finding should be confirmed with the final certification of the Settlement Class under Rule 23.

B. The Court Should Grant Final Approval of the Settlement.

The Court should finally approve the Settlement as fair and reasonable. Rule 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. *See generally Cecil* Order; *see also 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, Dkt. No. 53. Notice was effectuated pursuant to the terms of the Settlement Agreement and in the form and manner approved by the Court. *See* Keough Decl., Dkt. No. 58-1 at ¶¶5-10. Class Representative now requests 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 Cecil* Order at ¶8; *see also 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 at a Settlement Conference before this Court. *See* Joint Counsel Decl. at ¶¶10, 18, 22. Comprehensive examination of the massive amount 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, e.g.*, Joint Counsel Decl. at ¶¶11-18; *Childs v. Unified Life Ins. Co.*, No. 10-CV-23-PJC, 2011 WL 6016486, at *12 (N.D. Okla. Dec. 2, 2011).

Additionally, Class Counsel has unique experience with oil and gas royalty underpayment class actions. Rex A. Sharp, P.A. ("RAS") and The Lanier Law Firm ("LLF") regularly represent plaintiffs in royalty owner class actions, as well as other complex commercial and consumer class action litigation, and have obtained impressive settlements in a multitude of royalty underpayment class actions in Oklahoma and Kansas state and federal courts, including: *Cecil v. BP America Production Company*, No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (class settlement approved); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-CV-00029-KEW (E.D. Okla. Mar. 27, 2018) (class settlement approved); *Bollenbach v. Oklahoma Energy Acquisitions LP*, No. 5:17-CV-00134-HE (W.D. Okla.) (class settlement approved); *Fitzgerald Farms, Inc. v. Chesapeake Operating Co.*, No. CJ-10-38 (Okla. Dist. Ct., Beaver Cty.) (class settlement approved); *Hitch v.*

Cimarex Energy Co., No. CIV-11-13-W (W.D. Okla.) (class certified for settlement purposes); *Hershey v. ExxonMobil*, No. 07-1300-JTM (D. Kan.) (class certified and class settlement approved); *Freebird v. Cimarex Energy Co.*, No. 08-CV-93 (Kan. Dist. Ct., Finney Cty.) (class settlement approved and upheld on appeal), *aff'd* 46 Kan. App. 2d 631, 264 P.3d 500 (2011); *Eatinger v. BP America Production Co.*, No. 07-1266-EFM-KMH (D. Kan.) (class certified and class settlement approved), *aff'd*, 528 Fed. Appx. 859 (10th Cir. 2013) (unpub); *Freebird v. Merit Energy Co.*, 2013 WL 1151264 (D. Kan. March 19, 2013) (contested class certified and later settlement approved); *Owens v. Dart Cherokee Basin Op. Co., LLC*, No. 12-4157-JAR-JPO (D. Kan.) (after Tenth Circuit and U.S. Supreme Court rulings, class settlement approved). *See* Joint Counsel Decl., Ex. 3.A & 3.B. Class Counsel are experienced and qualified counsel and represented the Settlement Class honestly and fairly during settlement negotiations and the Settlement Conference before this Court.

Further, Class Representative was intimately involved in the negotiations and believes the settlement process resulted in an excellent Settlement for the Settlement Class. *See* McKnight Decl. at ¶¶8-13. McKnight has been dedicated to serving as Class Representative in this Litigation at all times. *Id.* at ¶¶5-15, 19. McKnight expended time and resources prosecuting this Class Lawsuit, from producing documents, meeting and communicating regularly with Class Counsel, attending the Settlement Conference, participating in the negotiations that led to the Settlement, and reviewing pleadings in consultation with the Class' experts and Class Counsel. *Id.* As such, the Parties and their lawyers were well prepared for the serious and intelligent negotiations that led to the Settlement.

Additionally, the use of a formal settlement process supports the conclusion that the Settlement was fairly and honestly negotiated. *Ashley v. Reg'l Transp. Dist.*, No. 05-CV-01567-

WYD-BNB, 2008 WL 384579, at *6 (D. Colo. Feb. 11, 2008) (finding settlement fairly and honestly negotiated where the parties engaged in formal settlement mediation conference and negotiations over four months). And, the assistance of an experienced mediator or, as here, a judicial officer "in the settlement negotiations strongly supports a finding that they were conducted at arm's-length and without collusion." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008).

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. *See Cecil* Order at ¶8. 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 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008) (internal citations omitted).

In this Class Lawsuit, there are numerous factual and legal issues about which the Parties disagree—issues that would ultimately be decided by this Court or a jury. Joint Counsel Decl. at ¶39; *see also,* Ex. 3.I, Gensler Decl. in *Cecil v. BP* at ¶¶27-28. To this day, Defendants deny they committed any acts or omissions giving rise to any liability or violation of law. *See* Settlement Agreement, Dkt. No. 50-1 at ¶10.1. Indeed, Defendants have always maintained their royalty calculation and payment methodologies—which form the basis of the Class' claims—are entirely

appropriate under the Class' oil and gas leases and Oklahoma law. *See id.* Thus, Defendants have entered into this Settlement solely to eliminate the risk and expense of further litigation. *See id.*

In addition, despite Class Representative's optimism regarding its chances at trial, Class Representative would have to overcome a number of significant obstacles. *See* Joint Counsel Decl. at ¶¶49, 52. For example, before reaching the merits of this Class Lawsuit, the Court and the Parties would be required to resolve a number of complex legal questions concerning Oklahoma oil and gas law and the meaning of particular royalty provisions in the Class' leases. Such disputed questions of law include when the gas becomes marketable and what exactly the implied duty to market requires of oil and gas lessees. Further, once these questions of law are resolved, many serious questions of fact would remain, including when the gas from a particular well became marketable in the past such that Defendants might be legally permitted to share costs with Class Members. There are also mixed questions of law and fact that would have to be resolved, namely whether and to what extent the statute of limitations applies to the Class Lawsuit—an issue that would have an impact on the Class' damages. However, the Settlement renders the resolution of these issues unnecessary and provides a guaranteed recovery in the face of uncertainty.

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 support approval of the proposed Settlement. The immediate value of the $1,300,000.00 cash recovery alone outweighs the uncertainty, additional expense, and likely duration of further litigation. *See, e.g.*, *Cecil* Order at ¶8. 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." *See McNeely*, 2008 WL 4816510, at *13. The Settlement Proceeds represent a recovery of more than 83% of actual damages. Reineke Decl. at ¶2. The Settlement represents a meaningful recovery for the Settlement Class without the risk or additional expense of further litigation. Joint Counsel Decl. at ¶¶46, 52. These immediate benefits must be compared to the risk that the Settlement Class may recover nothing after 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 Representative were able to establish liability at trial, Defendants would have vigorously argued the Settlement Class' damages are far less than the Settlement Proceeds and raised a number of defenses to further whittle down the damages. 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 Class Lawuit because they have extensive experience prosecuting royalty class actions. Joint Counsel Decl. Class Counsel believes the value of the Settlement outweighs the risks of proceeding further with this Class Lawsuit. *See id.* When the risks and uncertainties of continuing this Class Lawsuit 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 Representative and Defendants agree the Settlement is fair and reasonable.

The fact that Class Representative and Defendants believe the Settlement is fair and reasonable supports final approval. *See* Ex. 3.I, Gensler Decl. at ¶32; McKnight Decl. at ¶14 ("I

fully support this Settlement as fair, reasonable and adequate for the Settlement Class."). Class Counsel and McKnight 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.

Class Counsel's judgment as to the fairness of the Settlement also supports final approval. *See Cecil* Order at ¶8. "Counsels' judgment as to the fairness of the [settlement] agreement is entitled to considerable weight." *Childs*, 2011 WL 6016486, at *14 (citation omitted). Class Counsel believes the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and the Settlement is in the Settlement Class Members' best interests. *See* Joint Counsel Decl. at ¶¶22-25.

This last factor fully supports the Court's final approval of the Settlement. Indeed, 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 v. CenturyLink Comm'ns, LLC*, 854 F.3d 1167, 1171 (10th Cir. 2016) (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. Here, the Notice campaign carried out by Class Counsel and the Settlement Administrator is substantially comparable to and perhaps exceeds the highly successful notice campaigns completed in other oil and gas royalty cases approved by district courts in Oklahoma, including this Court. *See, e.g. Cecil* Order at ¶7.

In its Preliminary Approval Order, the Court preliminarily approved the form and manner of the Notice Documents disseminated by the Settlement Administrator, stating the Notice and Summary 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 satisf[y] the requirements of applicable laws, including due process and [Rule] 23." *See* Preliminary Approval Order, Dkt. No. 53 at ¶5. The Court directed dissemination of the Notice Documents in accordance with the Settlement Agreement and the Preliminary Approval Order. *Id.* at ¶4.

On October 4, 2018, Notice was mailed to 11,416 Class Members. Keough Decl., Dkt. No. 58-1 at ¶¶5-6. In addition, the Court-approved Summary Notice was published on October 4, 2018, in two (2) newspapers of local circulation: *Muskogee Phoenix* and *McAlester News Capital & Democrat*, as directed in the Preliminary Approval Order. *Id.* at ¶8; Preliminary Approval Order, Dkt. No. 53 at ¶4.

Also, the Notice, along with other documents germane to the Settlement, were posted on the website created for and dedicated to this Litigation, www.bravosettlement.com, on October 2, 2018. *See* Keough Decl., Dkt. No. 58-1, at ¶9. This website is maintained by the Settlement Administrator, where additional information regarding the Settlement can be found. *Id.*

The Notice Documents fully informed Class Members about the Class Lawsuit, the Settlement and the facts needed to make informed decisions about their rights. *See* Preliminary

Approval Order, Dkt. No. 53, at ¶¶3-6; *see also Cecil* Order at ¶7; Ex. 3.I, Gensler Decl. at ¶36. The Notice of Settlement also provided Class Members with a URL address for the dedicated Settlement website where Class Members could obtain further information regarding the Settlement, as well as their rights and options as they relate to the Settlement. *See* Keough Decl., Dkt. No. 58-1 at ¶¶9-10; *see also*, Exhibits A & B to Keough Decl., which are the Notice and tear sheets evidencing publication of Notice.

In sum, the form, manner, and content of the Notice of Settlement 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 Plan of Allocation Should be Approved.

The Court should also approve the proposed Plan of Allocation and Distribution Order, which is Exhibit A to the Settlement Agreement (Dkt. No. 50-1 at 22). 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.*; *see also, e.g.*, Initial Plan of Allocation Order (Dkt. No. 233), *Chieftain Royalty Company v. XTO Energy, Inc.*, No. 11-CV-00029-KEW (E.D. Okla. Mar. 27, 2018).

Class Counsel, together with Plaintiff's expert, have formulated the Plan of Allocation by which Class Members will be reimbursed proportionately in relation to their individual claim for underpaid royalty and their respective royalty decimal interest in a given Class Well. *See* Reineke

Decl. at ¶6. Importantly, this is not a claims-made settlement, nor is it a settlement where a Class Member must take further action to participate. Ex. 3.I, Gensler Decl. at ¶51. Instead, every royalty owner who does not opt out of the Settlement will receive a check for their allocation of the Net Settlement Amount.

Specifically, the Net Settlement Amount will be allocated to individual Class Wells and individual Class Members based primarily upon the Class Member's decimal interest in the ownership of the royalty interests in each Class Well and the volume of gas and constituents sold from the producing Class Well or Class Wells in which the Class Member has a royalty interest. Plan of Allocation, Dkt. No. 50-1 at 22; Reineke Decl. at ¶6. Thereafter, Class Representative and Class Counsel, with the aid of the Settlement Administrator, will allocate the Net Settlement Amount for each Class Well proportionately among all Class Members who hold royalty interests in the Well, according to their respective royalty decimal interest in such Well, using the April 2018 royalty paydeck (or the most current available royalty pay deck). Plan of Allocation, Dkt. No. 50-1 at 23. A Distribution Check for each Class Member's allocation of the Net Settlement Amount will then be mailed to each respective Class Member's last known mailing address, using the payment history data produced. Plan of Allocation, Dkt. No. 50-1 at 23-25. Returned or stale-dated Distribution Checks shall be reissued as necessary to ensure delivery to the appropriate Class Members using commercially reasonable methods.

Because the proposed Plan of Allocation and Distribution Order was formulated by competent and experienced Counsel and is based on the type and extent of each Class Member's particular loss, the Court should approve it as fair, reasonable, and adequate.

IV. CONCLUSION

For all of the foregoing reasons, Class Representative and Class Counsel respectfully request that the Court enter the proposed Order Approving Class Action Settlement and Final Judgment, attached to the Final Approval Motion as Exhibit A. This Order grants: (1) final certification of the Settlement Class; (2) final approval of the Settlement as fair, reasonable, and adequate, and in the best interests of the Settlement Class; and (3) final approval of the Notice to Class Members. Class Representative and Class Counsel also respectfully request that the Court enter the proposed Plan of Allocation and Distribution Order to govern the allocation and distribution of the Net Settlement Amount to Class Members.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2018, a true and correct copy of the above and foregoing document was served in accordance with the Local Rules on all counsel of record via the Court's electronic filing system.

/s/Rex A. Sharp