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

HAY CREEK ROYALTIES, LLC, on behalf of itself and all others similarly situated, Plaintiff, v. ROAN RESOURCES LLC, Defendant.	Civil Action No. 19-CV-177-CVE-JFJ

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

Class Representative Hay Creek Royalties, LLC ("Class Representative") moves the Court for final approval of the:

1. proposed class action Settlement;
2. Notice campaign; and
3. proposed Initial Plan of Allocation.

Class Representative's proposed final Judgment is attached as **Exhibit 1**,[1] and Class Representative's proposed Initial Plan of Allocation Order is attached as **Exhibit 2**. With only one purported objection filed to date and only nineteen of the more than 18,000 class members purporting to opt-out as of this filing, Class Representative submits that the Settlement is fair, reasonable, and adequate, and should be finally approved. **Ex. 3**, Declaration of Randy Smith ("Class Rep. Decl.").[2]

[1] The proposed judgment was attached as Exhibit 2 to the Settlement Agreement ("SA"), Doc. 60-1. Plaintiff will also submit native versions of the proposed orders to the Court in advance of the Final Fairness Hearing.

[2] Capitalized terms not otherwise defined shall have the meaning ascribed to them in the SA.

BACKGROUND

In the interest of brevity, Class Representative will not recite the entire background of this case again. Rather, Class Representative refers the Court to the Motion for Preliminary Approval (Doc. 60), the Joint Declaration of Class Counsel ("Joint Counsel Decl.") (**Ex. 4**), the pleadings on file, and any other matters of which the Court may take judicial notice, all of which are incorporated as if fully set out in this memorandum.

On January 25, 2021, the Court issued an order preliminarily approving the settlement, approving the form of notice, and setting a date of April 28, 2021, for the Final Fairness Hearing. Doc. 61 at 7 ("Preliminary Approval Order"). The Court also approved the Notices of Proposed Settlement of Class Action ("Class Notices"), one form for mailing and one for publication. *Id.* at 6–7. The Court ordered that Notice be given to the Class members in accordance with the Plan of Notice, as outlined in the SA, and found that the Notices being provided are "the best notice practicable under the circumstances." *Id.* ¶¶ 8–9. Since preliminary approval, Notice was mailed, by first-class mail, as ordered by the Court, to 16,521 members of the Settlement Classes between February 23, 2021, and the present. **Ex. 5**, Declaration of Jennifer Keough Regarding Notice of Settlement ("Keough Decl.") ¶¶ 4–8. And Notice was published on February 23, 2021, in *The Oklahoman* and *The Tulsa World*, as directed in the Preliminary Approval Order. *Id.* ¶ 9.

The facts regarding certification haven't changed since the Court entered the Preliminary Approval Order—class certification remains proper. A general plan of allocation was described in the Class Notice sent to Class Members, along with the other material terms of the SA. *See id.* at Ex. A; SA, Doc. 60-1. Consistent with the Notice and the Plan of Allocation,

the preliminary allocation shows the proposed distributions to each member of the Settlement Classes and an amount of distribution. **Ex. 6**, Ley Declaration ("Ley Decl.") at Ex. 2.

Following mailing of the Notices and Publication, Members of the Settlement Classes had thirty-one (31) days to request exclusion from the Settlement and fifty (50) days to file an objection. Doc. 61 at 8–11. Only nineteen purported requests for exclusion and one purported objection have been received as of the time of this filing.[3] *See* **Ex. 5**, Keough Decl. ¶¶ 14–17. The small number of purported opt-outs and single purported objection to the Settlement support the conclusion that the Settlement and Plan of Allocation are fair, adequate, reasonable, and in the best interests of the Settlement Classes, such that final approval should be granted.

ARGUMENT & AUTHORITY

The procedure for reviewing a proposed class action settlement is a well-established two-step process. 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. 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. 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 notice was effectuated pursuant to the terms of the SA and in the form and manner approved by the Court. *See* **Ex. 5**, Keough Decl. ¶¶ 4–13. As to the final step, courts in the Tenth Circuit consider four factors when deciding whether to finally approve a class action settlement:

a. Whether the proposed settlement was fairly and honestly negotiated;

[3] Because this Motion is due prior to the objection deadline (April 14, 2021), Class Representative will subsequently submit a supplement detailing the requests for exclusion and objections.

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 Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002); *see also* **Ex. 7**, Gensler Decl. ¶¶ 13–15. As supported by the Declaration of Professor Steven S. Gensler,[4] each factor supports final approval of the Settlement. *See* **Ex. 7**, Gensler Decl. ¶¶ 12–36.

1. The Court Properly Certified the Settlement Classes and Should Confirm this Finding by Finally Certifying the Settlement Classes Under Rule 23

Before addressing the four factors, the Court must find class certification remains appropriate for settlement purposes. The Court certified the following Settlement Classes:

> **Class I:**
> All persons or entities, except as specifically excluded below, who are or were royalty owners in Class Wells, where Roan Resources, LLC or any of the Released Parties was the operator (or a working interest owner) who marketed its share of gas as to production on or before November 30, 2020, and royalties on such marketed gas was paid to such royalty owners or held in suspense by, or on behalf of, any of the Released Parties. The claims in this matter relate to royalty payments for gas and its constituents (such as residue gas, natural gas liquids, helium, nitrogen, or drip condensate).
>
> Excluded from Class I 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) the Released Parties and their affiliates, affiliated predecessors, and their employees, officers, and directors; (4) any publicly traded company or its affiliated entity that produces, gathers, processes, or markets gas; (5) persons or entities that Plaintiff's counsel are prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct; (6) Turtle Creek Exploration, LLC, Gary Shores, Virginia Shores, Michael Kernen, Gladys Marie Wilkerson, Gladys Marie Wilkerson 1999 Trust, Chieftain Royalty Company, White Family Minerals, LLC, Kelsie Wagner, Kelsie Wagner Trust, and each of their relatives, affiliates, and/or trusts; and (7) officers of the Court.

[4] Professor Gensler is the Associate Dean for Academic Affairs at the University of Oklahoma College of Law, as well as the Gene and Elaine Edwards Family Chair in Law and a President's Associates Presidential Professor. *See* **Ex. 7**, Gensler Decl. ¶¶ 1–2.

> **For Class II:**
> All persons or entities, except as specifically excluded below, who received royalty or overriding royalty payments from Roan Resources, LLC or any of the Released Parties for oil and/or gas proceeds from the Class Wells, or whose royalty or overriding royalty oil and/or gas proceeds from the Class Wells were held in suspense by Roan Resources, LLC or any of the Released Parties, on or before November 30, 2020.
>
> Excluded from Class II 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) the Released Parties and their affiliates, affiliated predecessors, and their employees, officers, and directors; (4) any publicly traded company or its affiliated entity that produces, gathers, processes, or markets gas; (5) persons or entities that Plaintiff's counsel are prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct; (6) Turtle Creek Exploration, LLC, Gary Shores, Virginia Shores, Michael Kernen, Gladys Marie Wilkerson, Gladys Marie Wilkerson 1999 Trust, Chieftain Royalty Company, White Family Minerals, LLC, Kelsie Wagner, Kelsie Wagner Trust, and each of their relatives, affiliates, and/or trusts; and (7) officers of the Court.

Doc. 61 at 2–3, ¶ 3. Class certification remains proper under Rule 23(a) and (b)(3) for settlement purposes for the reasons set forth in the Preliminary Approval Motion and Memorandum (*see* Doc. 60). Defendant also consents to certification of the Settlement Classes.

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 Classes consists of more than 18,000 owners, whose joinder would be impracticable. **Ex. 5**, Keough Decl. ¶ 4; *see also Trevizo v. Adams*, 455 F.3d 1155, 1161–62 (10th Cir. 2006). 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 common and statutory law of the State of Oklahoma. The

real property interests at issue are property located in the State of Oklahoma, and the payments at issue are governed by Oklahoma substantive 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 Defendant treated all owners the same for purposes of proceeds payments, 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. **Ex. 3**, Class Rep. Decl. ¶ 23; *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 the Litigation vigorously and Class Counsel is unquestionably qualified to represent the Class here. *See* **Ex. 4**, Joint Counsel Decl. ¶¶ 1–29.

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 ("[T]he 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)). 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, Defendant's common course of deductions from royalty and late payment of proceeds without interest to Class Members). The common questions under the shared law predominate over and are more important than any potential individual issues that theoretically could arise in the Litigation. And, the superiority requirement is satisfied because resolving the Litigation through the classwide Settlement is far superior to any other method for adjudicating these claims.

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

2. The Court Should Grant Final Approval of the Settlement

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."). As demonstrated below, each of the four factors identified by the Tenth Circuit weighs in favor of final approval.

A. 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. GM 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 negotiation process is to be examined with reference to the experience of counsel,

the vigor with which the case was prosecuted, and any potential coercion or collusion regarding the negotiations.

Here, the Settlement is the product of extensive arm's-length negotiations between the Parties' experienced counsel at a mediation presided over by the Hon. Bill Hetherington. *See* **Ex. 4**, Joint Counsel Decl. ¶ 35; **Ex. 7**, Gensler Decl. ¶ 18; **Ex. 8**, Hetherington Decl. ¶¶ 9–21. The use of a formal settlement process supports the conclusion that the Settlement was fairly and honestly negotiated. *See 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 "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). Here the parties engaged an experienced mediator whose involvement moved them closer to settlement.

Additionally, Class Counsel has unique experience with oil and gas royalty underpayment and late payment class actions. Bradford & Wilson PLLC regularly represent plaintiffs in oil-and-gas class actions, as well as other complex commercial and consumer class action litigation, and have obtained settlements in several underpayment or late payment class actions in Oklahoma state and federal courts. *See* **Ex. 4**, Joint Counsel Decl. ¶¶ 1–3; **Ex. 7**, Gensler Decl. ¶¶ 16–17. Class Counsel's experience positioned them well to comprehensively examine the massive amount of information and data produced in this litigation, enabling the them to make informed decisions about the strengths and weaknesses of the case. *See* **Ex. 4**, Joint Counsel Decl. ¶¶ 11–18; *Childs v. Unified Life Ins. Co.*, No. 10-CV-23-PJC, 2011 WL 6016486, at *12 (N.D. Okla. Dec. 2, 2011). Further, Class Representative was involved in the

negotiations and believes the settlement process resulted in an excellent Settlement for the Settlement Classes. *See* **Ex. 3**, Class Rep. Decl. ¶¶ 8–17; **Ex. 7**, Gensler Decl. ¶ 16. Class Representative expended time and resources prosecuting the Litigation, including producing documents, communicating regularly with Class Counsel, and participating in the negotiations that led to the Settlement. *Id.* The Parties and their lawyers were well prepared for the serious and intelligent negotiations that ultimately led to the Settlement.

These facts demonstrate the Settlement resulted from serious, informed, and non-collusive negotiations. The first factor supports final approval.

B. 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, and 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).

There are numerous factual and legal issues about which the Parties disagree—issues that would ultimately be decided by this Court or a jury. Despite Class Representative's optimism regarding its chances at trial, the Parties vehemently disagree on numerous factual and legal issues, and Defendant denies any wrongdoing giving rise to liability. Settlement renders the resolution of these issues unnecessary and provides a guaranteed recovery in the face of uncertainty. Because this Litigation presents serious issues of law and fact that place the ultimate outcome in doubt, the second factor supports final approval. *See* **Ex. 7**, Gensler Decl. ¶ 24 ("Whether Roan Resources underpaid royalty, whether Roan Resources violated the

PRSA and what damages might be recoverable were all contested questions placing the ultimate outcome of the litigation in doubt.").

C. 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 $20.2 million cash recovery alone outweighs the uncertainty, additional expense, and likely duration of further litigation. The Settlement Classes are "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 represents a meaningful recovery for the Settlement Classes without the risk or additional expense of further litigation. These immediate benefits must be compared to the risk that the Settlement Classes 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). Furthermore, the Settlement also provides Future Benefits to the Settlement Classes, which are estimated to have a value of $25 million, for a Gross Settlement Value of $45.2 million. *See* **Ex. 6**, Ley Decl. ¶ 11.

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, Defendant would have vigorously argued the Settlement Classes' damages are far less than the Settlement and raised a number of defenses to further whittle down the damages. Through the Settlement, the Settlement Classes are guaranteed a cash payment without the attendant risks of further litigation.

Class Counsel is intimately familiar with the risks of proceeding with the Litigation because they have extensive experience prosecuting royalty class actions. *See* **Ex. 4**, Joint Counsel Decl. ¶ 1–3. Class Counsel believes the value of the Settlement outweighs the risks of proceeding further with the Litigation. *Id.* ¶ 57. When the risks and uncertainties of continuing the 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. *See* **Ex. 7**, Gensler Decl. ¶¶ 19–36; *id.* ¶ 23 ("It was reasonable to accept the immediate and certain benefit of partial payment rather than face the risks that come with continued litigation.").

This case also presented an issue with respect to the financial condition of Defendant and the ability to collect a judgment, assuming all other hurdles could be overcome. *See* **Ex. 4**, Joint Counsel Decl. ¶ 51 ("In other words, the value of Defendant declined nearly 90% and the Settlement represents nearly 10% of the overall value of Defendant at the time it was purchased off the public market."). The one purported objection received to date, which doesn't comply with the terms of the SA for objections, actually *supports* the Settlement, recognizing that the financial condition of oil-and-gas companies has led to many bankruptcies. *See* Doc. 62 at 1 ("the defendant is or has been in the process of filing bankruptcy").

The third factor supports final approval of the Settlement.

D. Class Representative and Defendant agree the Settlement is fair and reasonable

The fact that Class Representative and Defendant believe the Settlement is fair and reasonable supports final approval. Class Counsel and Class Representative only agreed to

settle the Litigation after considering the substantial benefits the Settlement Classes will receive, the risks and uncertainties of continued litigation, and the desirability of proceeding under the SA.

Class Counsel's judgment as to the fairness of the Settlement also supports final approval. "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 Classes, and the Settlement is in the Settlement Classes Members' best interests. *See* **Ex. 4**, Joint Counsel Decl. ¶ 34; *see also* **Ex. 9**, Class Member Decls. This last factor fully supports the Court's final approval of the Settlement. Indeed, all four factors considered by the Tenth Circuit support final approval of the Settlement. *See* **Ex. 7**, Gensler Decl. ¶¶ 19–36; *id.* ¶ 34 ("In summary, it is my opinion that all of the Rule 23(e)(2) factors clearly point to the Settlement being fair, reasonable, and adequate.").

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

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 class actions approved by district courts in Oklahoma.

In its Preliminary Approval Order, the Court preliminarily approved the form and manner of the Notice disseminated by the Settlement Administrator, finding the Notice and Summary Notice are "the best notice practicable under the circumstances, constitute[s] 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 [Rule] 23." *See* Doc. 61 at 5, ¶ 8. The Court directed dissemination of the Notice Documents in accordance with the SA and the Preliminary Approval Order. *Id.* ¶ 9.

The Notice was mailed to 16,521 Class Members and further diligence was conducted to ascertain proper mailing addresses. **Ex. 5**, Keough Decl. ¶ 4–8. The Court-approved Summary Notice was also published on February 23, 2021, in two newspapers of local circulation, as directed in the Preliminary Approval Order. *Id.* ¶ 9. The Notice fully informed Class Members about the Litigation, the Settlement, and the facts needed to make informed decisions about their rights. Also, the Notice, along with other documents germane to the Settlement, were posted on the website created for and dedicated to this Litigation, www.haycreek-roan.com, beginning on February 19, 2021. *Id.* ¶¶ 10–11. This website is maintained by the Settlement Administrator and displays additional information regarding the Settlement. *Id.*

In sum, the form, manner, and content of the Notice campaign 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. *See* **Ex. 7**, Gensler Decl. ¶¶ 37–45; *id.* ¶ 44 ("It is my opinion that the form and content of the notice given, and manner in which notice was given, satisfied the requirement of giving the best notice that is practicable under the circumstances."). Therefore, the Court should grant final approval of the Notice given to the Settlement Classes here.

4. The Plan of Allocation Should Be Approved

The Court should also approve the proposed Plan of Allocation, which is attached as Exhibit 2 to the Ley Decl. (**Ex. 6**). 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.*

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 claims for deductions or late payment of proceeds. *See* **Ex. 6**, Ley. Decl. at ¶¶ 12–16. Importantly, this is not a claims-made settlement, nor is it a settlement where a Class Member must take further action to participate. Instead, every Class Member who did not effectively opt out of the Settlement will receive funds for their respective allocation. *See* **Ex. 7**, Gensler Decl. ¶ 30 ("Class Members do not need to fill out claim forms or locate old records to prove up their claims."). Specifically, the Net Settlement Amount will be allocated to individual Class Members based upon the industry standard and objective factors described in the SA.

See Doc. 60-1 at 22, ¶ 6.2. Pursuant to the SA, the Plan of Allocation further assumes a reduction for Class Counsel's Fees, Litigation Expenses, Administration, Notice, and Distribution Costs, and a potential Case Contribution Award, which amounts will ultimately be determined by the Court at the Final Hearing. *See* **Ex. 6**, Ley Decl. ¶ 14, n. 2.

Because the proposed Plan of Allocation 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.

CONCLUSION

Class Representative and Class Counsel respectfully request that the Court enter the proposed final Judgment, attached as **Exhibit 1**.[5] This Order grants: (1) final certification of the Settlement Classes; (2) final approval of the Settlement as fair, reasonable, and adequate, and in the best interests of the Settlement Classes; and (3) final approval of the Notice to Class Members. Class Representative and Class Counsel also respectfully request that the Court enter the proposed Initial Plan of Allocation Order, attached as **Exhibit 2**, to govern the allocation and distribution of the Net Settlement Amount to Class Members.

Respectfully Submitted,

/s/ Reagan E. Bradford

Reagan E. Bradford, OBA #22072
Ryan K. Wilson, OBA #33306
BRADFORD & WILSON PLLC
431 W. Main Street, Suite D
Oklahoma City, OK 73102
Telephone: (405) 698-2770
reagan@bradwil.com
ryan@bradwil.com

[5] **Exhibit 1** reserves space for the Court to rule on purported objections and to determine the approved requests for exclusion.

–and–

David R. Gleason, OBA #31066
Charles V. Knutter, OBA # 32035
Moricoli Kellogg & Gleason
211 N. Robinson
One Leadership Square, St. 1350
Oklahoma City, OK 73102
Telephone: (405) 235-3357
Fax: (405) 232-6515
dgleason@moricoli.com
knutter@moricoli.com

CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that, on April 7, 2021, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Reagan E. Bradford
Reagan E. Bradford