THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHIEFTAIN ROYALTY COMPANY	)	
and JACK LANCET	)	
Plaintiffs	)	
	)	
v.	)	Civil Action No. CIV-11-212-R
	)	
QEP ENERGY COMPANY	)	
Defendant	)	
	)	

CLASS REPRESENTATIVES' MEMORANDUM OF LAW IN SUPPORT OF THE SETTLING PARTIES' JOINT MOTION FOR FINAL APPROVAL

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I. INTRODUCTION

Plaintiffs, Chieftain Royalty Company and Jack Lancet (collectively "Class Representatives"), respectfully submit this memorandum of law in support of the Settling Parties' Motion for Final Approval (the "Motion"). The Motion requests: (1) final approval of the $155,000,000 Settlement[1] as fair, reasonable, and adequate and in the best interests of the Class; (2) final approval of Notice provided to Class Members; and (3) approval of the proposed Plan of Allocation. Based on their investigation, research, comprehensive fact discovery, and expert analysis, Class Representatives and Class Counsel believe the Settlement is fair, reasonable, and adequate and in the best interests of the Class. As such, Class Representatives and Class Counsel request that the Court grant final approval of the Settlement and all other relief requested.[2]

II. THE SETTLEMENT CONFERS AN IMMEDIATE $155 MILLION BENEFIT ON THE CLASS

Class Counsel and Class Representative[3] have achieved a $155 million Settlement with Defendant QEP Energy Company ("QEP"). In fact, as discussed below, $155 million is the most conservative estimate of the value of the Settlement. Under this

[1] All capitalized terms not otherwise defined herein shall have the meaning given to them in the Stipulation and Agreement of Settlement (the "Stipulation"), attached as Exhibit 1 to Class Representatives' Memorandum of Law in Support of Settling Parties' Joint Motion to Approve Class Action Settlement, Approve Form and Manner of Notice and Set Date for Final Fairness Hearing (the "Preliminary Approval Memorandum") (Docket No. 119), and which is incorporated by reference as if set forth fully herein.

[2] A Proposed Order Granting Final Approval of: (1) Class Action Settlement; (2) Form and Manner of Notice; and (3) Plan of Allocation (the "Proposed Final Approval Order") is attached to the Motion as Exhibit 1.

[3] The Court appointed Chieftain Royalty Company and Jack Lancet as Class Representatives and Nix, Patterson & Roach, LLP and Barnes & Lewis, LLP as Class Counsel in its Order granting class certification dated March 16, 2012. Docket No. 87.

conservative estimate, the Settlement consists of a cash payment of $115 million and changes to QEP's fee-deduction and royalty-calculation policies that began in March 2013 (the "Binding Benefits") estimated to have a *minimum* present value of $40 million.[4] However, the value of these Binding Benefits carried out over 30 years likely exceeds $138 million in present value, brining the total estimated net present value of the Settlement to over $253 million. *Id.* In addition to this excellent recovery, the Settlement also requires QEP to pay the costs of notice and administration, which is an additional benefit to the Class that has totaled approximately $275,000 thus far and will likely double by final distribution. Even looking at the most conservative valuation of the Settlement, which is at least $155 million not including the value of the administration and notice benefits (the "Settlement Amount"), the Settlement represents an excellent recovery for the Class and was only reached after sophisticated Class Representatives and experienced Class Counsel engaged in grueling litigation for two years and a difficult mediation process[5] overseen by mediator/Special Master Francis McGovern.[6]

The $115 million Settlement Cash Amount alone is an outstanding recovery for Class Members, representing over 100% of the Class' claimed principal in past royalty underpayment, plus a substantial amount of interest and other litigation claims. Indeed, if the Class' recovery were limited to the five-year statute of limitations period, the Class'

[4] *See* Affidavit of Scott Gutberlet ("QEP Affidavit"), Docket No. 148-1, at ¶13; Declaration of Barbara Ley ("Ley Declaration"), Docket No. 149, at ¶5.
[5] *See* Declaration of Bradley E. Beckworth and Robert N. Barnes on Behalf of Class Counsel ("Class Counsel Declaration"), attached hereto as Exhibit 1, at ¶¶9-52.
[6] On January 17, 2013, the Court appointed well-respected mediator and professor Francis McGovern as Special Master to oversee the Settling Parties' continued negotiations in this Action. *See* Docket No. 117.

entire claim would be a principal amount of approximately $20.4 million in past royalty underpayment. *See* Ley Declaration at ¶2. If the five-year statute of limitations did not apply, the Class' claim for past royalty underpayment would be approximately $43.5 million. *See id.* Yet, the Settlement provides $115 million in cash. Without even considering the present value of the substantial Binding Benefits discussed below, this $115 million Settlement Cash Amount is the second largest gas royalty settlement in Oklahoma history and, to Class Counsel's knowledge, the third largest nationwide. *Id.* And, even after the requested attorneys' fees and expenses are paid out of the $115 million Settlement Cash Amount,[7] the cash left over to distribute to Class Members will be no less than $61,213,500.[8] This amount is nearly three times more than the five-year estimated past royalty underpayment of $20.4 million and almost $18 million more than the uncapped estimated past royalty underpayment of $43.5 million. *Id.* Plus, the Class will receive millions more in cash over the life of the Class Leases as a result of the Binding Benefits. *See* QEP Affidavit at ¶13l; Ley Declaration at ¶5. In addition, QEP has agreed to pay for administration and notice costs, which are normally paid out of the gross settlement fund.

The Binding Benefits provided by the Settlement are estimated to have a present value of *at least* $40 million. These Binding Benefits consist primarily of changes in QEP's fee-deduction and royalty-calculation policies. *See* Stipulation at ¶2.2(a)-(f). In

[7] Class Counsel and Class Representatives are submitting contemporaneously herewith a Motion for Approval of Attorneys' Fees, Litigation Expenses, and Case Contribution Award and Memorandum of Law in Support thereof.

[8] *See* Declaration of Steven S. Gensler in Support of Award of Attorneys' Fees ("Gensler Declaration"), Docket No. 154, at ¶18.

fact, QEP has agreed to adopt practices that are, to a large degree, what Class Representatives and Class Counsel argue should have been used all along. Specifically, the Settlement provides the following Binding Benefits to the Class:

- QEP will discontinue its deductions from Class Members' royalty payments for fees associated with a number of midstream gas processing services—the core issue at dispute in this litigation. *See id.* at ¶2.2; Complaint at ¶16. QEP will no longer deduct costs for:
    - Gathering,
    - Dehydration,
    - Compression, or
    - Treating.
- QEP will not charge POP fees to royalty owners. *Id.*
- QEP will pay royalty at agreed index-type prices for the gas it uses as fuel off of the lease premises and in gas plants—"fuel gas." *Id*. at ¶2.2(c).
- QEP will cap gas-processing fees where it receives natural gas liquid (or "NGL") value. *Id.* at ¶2.2(a).
- QEP's royalty check stubs will show in detail true prices, gross value before deduction and deductions. *Id.* at ¶2.3.
- QEP will seek better gas marketing terms from midstream companies to maximize value to royalty owners. *Id.* at ¶2.2(a).
- QEP will apply all of these benefits to all Class Member royalty owners no matter what the terms of leases or force pooling order might provide. *Id.* at ¶2.2(h).
- Class Representative Chieftain will be permitted to conduct bi-annual audits, at QEP's expense, to ensure that these changes are made and consistently provided to the Class. *Id.* at ¶2.2(f).
- QEP has agreed to an arbitration provision under which any failure of QEP to make or maintain these changes can be resolved by arbitration,

> at QEP's expense, in lieu of additional litigation, which will save the Class and the Court considerable time and resources. *Id.* at ¶2.2(g).

These policy changes, which began in March 2013, apply to current and future wells and will continue without limitation for the life of each well, regardless of transfer or assignment of interest from QEP to other oil companies. *See id.* at ¶2.2. Thus, the Binding Benefits of the Settlement will *instantly* increase the value of every Class Lease.[9] If a Class Lease is sold, assigned, devised or transferred, the Binding Benefits run with the lease or interest, and the requirement to provide these benefits will apply to any successor, assignee, or transferee of QEP.

QEP's Vice President of Commercial and Technical Services, Scott Gutberlet, states, "I believe it is fair and reasonable to conclude that the estimated net present value of the increased royalty from the binding changes in the Settlement Agreement is at least $40 million." QEP Affidavit at ¶13. This calculation "shows an estimated net present value of over $40 million after 16 years of production." *Id.* at ¶12. When these same calculations are carried out to 30 years, which, according to Mr. Gutberlet, "is a conservative period to estimate the life of production," the benefits to the Class will accumulate to a sum of over $206 million ($138 million when discounted to presented value). *See id.* at ¶11, Exhibit A. Class Representatives' experts have verified these

[9] *See* Declaration of Francis McGovern (the "McGovern Declaration"), Docket No. 141, ¶11; Declaration of Geoffrey P. Miller in Support of the Stipulation and Agreement of Settlement, Class Counsel's Application for Attorneys' Fees, Reimbursement of Litigation Expenses and Request For Case Contribution Awards, and Notice of Proposed Settlement (the "Miller Declaration"), Docket No. 152, at ¶24.

calculations.[10] Class Representatives' experts have verified these calculations. *See* Ley Declaration at ¶5. Thus, the $155 million Settlement Amount, which is based on the $40 million calculation, is a conservative estimate of the total present value of the Settlement.

Moreover, these Binding Benefits are real, substantial and concrete and provide *immediate* value to the Class. In his declaration, Special Master McGovern states:

> I observed each side's discussions regarding this [royalty payment] methodology and the underlying data used to value these future benefits, and I am confident that they not only provide an estimated present value of at least $40 million to the Class, but also achieve this result immediately without the need for or risk and expense of future litigation.

McGovern Declaration at ¶11. And these real and material Binding Benefits could not have been obtained at trial. *See* Miller Declaration at ¶24.

In sum, the entire Settlement, consisting of the $115 million Settlement Cash Amount and at least $40 million in Binding Benefits, is an outstanding recovery, confers an immediate value of at least $155 million on the Class, and is equal to the largest gas royalty settlement in Oklahoma history.

In accordance with the Stipulation, on or about February 27, 2013, QEP paid $115 million into an Escrow Account, which is currently on deposit and earning interest for the benefit of the Class. Class Counsel Declaration at ¶43. In exchange, upon final approval, Class Representatives and the Class will dismiss their Complaints and all related claims in the Action. *See* Stipulation at ¶4.1(a). The Stipulation further provides for the ability of Class Counsel to seek payment of attorneys' fees, reimbursement of Litigation

[10] *See* Ley Declaration at ¶5; Declaration of Daniel T. Reineke in Support of Agreement of Settlement ("Reineke Declaration"), Docket No. 158, at ¶¶2-3.

Expenses, and Case Contribution Awards for Class Representatives from the Gross Settlement Fund, subject to the Court's approval. *Id.* at ¶7.1.[11]

On February 13, 2013, the Settling Parties filed their Joint Motion to Preliminarily Approve Settlement, Approve Form and Manner of Notice and Set Final Fairness Hearing Date (the "Preliminary Approval Motion") (Docket No. 118), and Class Representatives filed the Preliminary Approval Memorandum. Docket No. 119. On February 20, 2013, the Court granted the Preliminary Approval Motion and, among other things, preliminarily approved the Settlement and the form and manner of notice to the Class.[12] Since then, the approved form of notice was sent to the Class in the manner approved by the Court, and to date no Class Members have objected to the Settlement.[13] Also, since Notice was disseminated to the Class, only eleven Class Members—representing .0006% of the Net Settlement Fund—have elected to opt out[14] of the Settlement.[15]

With their Joint Motion for Final Approval, the Settling Parties request that the Court grant final approval of the Settlement, the form and manner of Notice, and the proposed Plan of Allocation and Distribution.

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[11] Again, Class Representatives and Class Counsel are submitting, contemporaneously herewith, a separate Motion for Approval of Attorneys' Fees, Litigation Expenses and Case Contribution Awards, and a Memorandum of Law in Support thereof.

[12] *See* Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice and Setting Date for Hearing on Final Approval of Settlement (the "Preliminary Approval Order") (Docket No. 123).

[13] The deadline for objections to the Settlement is May 14, 2013. *See* Preliminary Approval Order at ¶12.

[14] The deadline for opting out of the Settlement is May 14, 2013. *Id.* at ¶14.

[15] *See* Affidavit of Tore Hodne on Behalf of Settlement Administrator Rust Consulting, Inc. ("Rust Affidavit"), Docket No. 153, at ¶21.

III. SUMMARY OF THE ARGUMENT

The Court should grant final approval of the Settlement. Courts in the Tenth Circuit consider four reasonableness factors when determining whether to finally approve a class action settlement. *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. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1088 (10th Cir. 2002); *Jones*, 741 F.2d at 324. Here, all four of these factors support final approval of the Settlement.

First, the Settlement was fairly and honestly negotiated by qualified and knowledgeable Counsel through an extensive mediation process conducted by Special Master Francis McGovern. *See* McGovern Declaration at ¶¶5-10. Class Counsel is experienced in prosecuting class actions, and oil and gas royalty class actions in particular, making them uniquely prepared to represent the Class in settlement negotiations. Special Master McGovern, a well-respected mediator and professor at Duke Law School, has endorsed the Settlement as fair, reasonable, and free of collusion. *See id*. at ¶¶13, 18. Additionally, Class Representatives—Chieftain Royalty Company, represented by its President, Robert Abernathy, who is also an attorney, and Jack Lancet, an individual royalty owner—were involved in the settlement negotiations and support

the Settlement as fair and reasonable.[16] Also, a number of absent Class Members—including former Judge Michael Burrage and accomplished class action attorney Dan Little—support the Settlement as fair and reasonable.[17] Thus, the first factor weighs in favor of final approval of the Settlement.

Second, serious questions of law and fact still existed in this litigation, placing the ultimate outcome in doubt. Although Plaintiffs defeated QEP's Motion for Judgment on the Pleadings and engaged in extensive, complex fact discovery, this Action still involved difficult issues of proof prior to settlement. QEP has consistently denied any wrongdoing whatsoever with respect to the Class Leases. *See* Stipulation at ¶11.1. Additionally, even assuming that Class Representatives could defeat QEP's inevitable summary judgment motions and obtain a finding of liability at trial, QEP would have strenuously argued that any damages awarded to the Class should amount to far less than the $115 million cash recovery—not to mention the minimum $40 million in Binding Benefits—obtained through the Settlement. Again, the Binding Benefits could not have been obtained at trial at all. *See* Miller Declaration at ¶24. Because serious questions of law and fact would place the ultimate outcome of this Action in doubt, the second factor supports final approval of the Settlement.

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[16] *See* Declaration of Robert S. Abernathy on Behalf of Chieftain Royalty Company ("Abernathy Declaration"), Docket No. 140, at ¶15; Declaration of Jack Lancet ("Lancet Declaration"), Docket No, 139 at ¶13.

[17] *See* Declaration of Michael Burrage in Support of Case Contribution Awards, Attorneys' Fees and Expenses ("Burrage Declaration"), Docket No. 138, at ¶5; Declaration of Dan Little in Support of Attorneys' Fees, Expenses, and Case Contribution Awards ("Little Declaration"), Docket No, 137 at ¶8.

Third, the value of an immediate $155 million recovery outweighs the mere possibility of future relief after protracted and expensive litigation. The Settlement provides the Class with over 100% of their past royalty due, plus substantial interest and other relief. In addition, the Settlement's Binding Benefits—which will continue for the life of every Class Member's lease or force-pooled royalty interest (collectively, the "Class Leases")—provide immediate value to the Class by enhancing the worth of each of the Class Leases. *See* McGovern Declaration at ¶11; Ley Declaration at ¶5. In contrast, continuing this litigation would be expensive and uncertain. *See* Miller Declaration at ¶24. Again, even if Class Representatives overcame QEP's inevitable summary judgment motions, a trial may be necessary. And, a trial and appellate victory still would not have provided the concrete, contractual Binding Benefits that the Settlement provides. *See id.* As such, the $155 million recovery—which provides for immediate cash payments to Class Members and multiple Binding Benefits for the life of every Class Lease—outweighs the mere possibility of recovery after a lengthy, complex trial and inevitable appeals. *See* McGovern Declaration at ¶13. The third factor weighs in favor of final approval.

Fourth, the Settling Parities agree that the Settlement is fair and reasonable and that it should be approved. Class Representatives entered into this Settlement with a full and complete understanding of the strengths and weaknesses of their claims. *See* Abernathy Declaration at ¶14; Lancet Declaration at ¶12. This understanding comes from Class Representatives' direct involvement in this Action and the extensive legal research and fact and expert discovery conducted by Class Counsel. Also, at least ten

absent Class Members, including Judge Burrage and Mr. Little, have filed declarations in support of the Settlement. *See* Docket Nos. 131-138, 155-57. Additionally, QEP agrees that the Settlement is fair and reasonable and is entering into the Settlement to eliminate the burden, expense, and distraction of further litigation years into the future. *See* Stipulation at ¶11.1. Thus, the Parties agree that the Settlement is fair and reasonable. As such, all four reasonableness factors support final approval of the Settlement.

Also, settlements in other litigation involving claims similar to those asserted here have been consistently approved in courts in Oklahoma. For example, just last year, the Western District of Oklahoma approved three settlements in similar royalty underpayment cases. Specifically, the Court approved: (1) the $40 million settlement in *Hill v. Marathon Oil Co.*, No. CIV-08-37-R, Dkt. No. 233 (W.D. Okla. Oct. 3, 2012); (2) the $42 million settlement in *Fankhouser v. XTO Energy, Inc.*, Case No. CIV-07-798-L, 2012 U.S. Dist. LEXIS 147197 (W.D. Okla. Oct. 12, 2012); and (3) another settlement involving QEP in *Naylor Farms, Inc. v. Anadarko OGN Company, et al*., Case No. CIV-08-668-R, Docket No. 329 (W.D. Okla. Oct. 5, 2012). Each of these cases involved claims asserted by a class of royalty owners alleging royalty underpayment due to the defendants' improper deduction of midstream processing fees from royalty payments, as well as nonpayment of royalty on gas used as fuel off the lease. In other words, *Hill*, *Fankhouser*, and *Naylor Farms* all involved similar parties and dealt with claims nearly identical to the claims asserted in this Action, and the court approved the settlement in each of those cases. However, unlike the settlement in *Hill*, which provided uncertain, contingent future benefits, the Binding Benefits in this action are real, substantial, and

concrete. *See* CIV-08-37-R, Dkt. No. 233 (W.D. Okla. Oct. 3, 2012); Miller Declaration at ¶44. And, the settlement in *Naylor Farms* did not provide any benefits to the class other than cash. *See* Case No. CIV-08-668-R, Docket No. 329 (W.D. Okla. Oct. 5, 2012). Here, however, QEP itself has estimated the value of these Binding Benefits to be *at least* $40 million. *See* QEP Affidavit at ¶13. These cases and others support final approval of the Settlement here.

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. Docket No. 123 at 3. Specifically, the Court preliminarily approved the proposed long-form Notice that was sent to the Class and the Summary Notice that was published in newspapers of general circulation in Oklahoma. *Id.* The Notice and Summary 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. Specifically, these Notice Documents fully informed Class Members about the Action, the Settlement, and the facts needed to make informed decisions about their rights. Further, as discussed more fully below, Class Counsel engaged in an extensive effort to direct the Notice Documents to as many Class Members as possible—deploying a team of over twenty attorneys, landmen, and support staff to carry out this project—and believe they have been able to provide notice to Class Members representing at least 97% of the settlement value at issue. *See* Class Counsel Declaration at ¶¶44-52.

In addition, the Notice Documents provided Class Members with a toll-free number, an email address for Settlement-related inquiries, and a URL address for the dedicated Settlement website where Class Members may obtain further information. *See* Rust Affidavit at ¶¶15-18. In addition to the Notice being sent to the Class, QEP chose to send timely CAFA notice to the attorney general in all fifty states and Attorney General of the United States. *See* Docket No. 145. For these reasons, and as demonstrated further below, the Court should grant final approval of the form and manner of notice given to the Class.

Finally, the Court should approve the Plan of Allocation and Distribution ("Plan of Allocation"). Class Representatives and Class Counsel submit that the 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* Class Counsel Declaration at ¶¶66-68; Ley Declaration at ¶9. Additionally, Class Representatives' experts endorse the Plan of Allocation as fair and reasonable. *See* Ley Declaration at ¶9. Therefore, the Court should also approve the Plan of Allocation.

IV. SUMMARY OF THE LITIGATION

Plaintiff, Chieftain Royalty Company, initiated this Action over two years ago by filing a class action complaint against Defendant, QEP Energy Company, in Dewey County, Oklahoma, on January 20, 2011. Since then, the parties have engaged in hard-fought litigation, including extensive discovery and document production (consisting of approximately 12 gigabytes, 30,300 files, and 782,000 pages of digital data); taking multiple depositions; preparing expert reports; briefing and arguing numerous motions,

including class certification; reviewing and analyzing accounting and financial statements; examining and analyzing royalty owners' lands and leases; evaluating oil and gas engineering infrastructure; consulting with and preparing expert witnesses; engaging in multiple formal mediation sessions over the course of several months; participating in ongoing settlement negotiations; and preparing complex, detailed damages models. *See* Class Counsel Declaration at ¶12. As described in more detail below, this litigation led to the $155 million Settlement now before the Court for final approval.

Starting with its Original Petition, Chieftain alleged that QEP used it position as an operator or working interest owner in Oklahoma oil and gas wells to secretly underpay royalty owed to Class Representatives and Class Members on the production of gas and its constituents. *See* Class Counsel Declaration at ¶9. Based on these allegations, the Original Petition alleged a number of causes of action, including breach of contract, unjust enrichment, breach of fiduciary or quasi-fiduciary duty, conversion, conspiracy, and fraud and deceit. *Id.* On February 18, 2011, QEP filed its answer in Dewey County, Oklahoma. *Id.* at ¶11. Thereafter, on February 28, 2011, QEP, a Texas corporation with its principle place of business in Colorado, filed its Notice of Removal in this Court based on diversity jurisdiction. Docket No. 1.

Prior to removal, on January 27, 2011, Chieftain served QEP with Plaintiff's First Request for Production of Documents, First Set of Interrogatories and First Request for Admissions. *See* Class Counsel Declaration at ¶13. On April 18, 2011, Chieftain served its Second Request for Production of Documents and Second Set of Interrogatories on QEP in state court. *Id.* After removal, the parties resumed discovery, with Plaintiffs

serving QEP with additional requests for production and interrogatories on March 13, 2011, January 31, 2012, and April 19, 2012. *Id.*

The parties also took multiple depositions, beginning with Plaintiff's Notice to Take Video Deposition of QEP Designated Representative(s). *See* Docket No. 12. Thereafter, Class Counsel took the depositions of: (1) Michael Hall, Supervisor of QEP's Production Administration and Contracts Group; (2) Carson Long, a Senior Contract Negotiation Specialist for QEP; (3) John Ruskauff, General Manager of Marketing for QEP; and (4) Keith Walker, an employee in the revenue section of QEP's accounting department. *See* Class Counsel Declaration at ¶14. On September 1, 2011, Class Counsel took the deposition of Thomas Jepperson, an officer of QEP, as well as second depositions of Carson Long and Keith Walker. *Id.* From these depositions, Class Representatives and Class Counsel gained an understanding of QEP's royalty calculation and payment methodologies, which go to the heart of this Action. *Id.*

Class Counsel also expended considerable time and resources consulting with and preparing key expert witnesses, including: (1) Alyce Hoge, an attorney and professional lease and title analyst and division order analyst; (2) Barbara Ley, a forensic accountant specializing in oil and gas matters; (3) Steve Reese, an oil and gas industry consultant specializing in gas marketing; (4) Dan Reineke, a petroleum engineer with experience as a well operator, drilling engineer, and production engineer, and several undisclosed consulting only experts. *Id.* at ¶81. Each of these experts reviewed and analyzed various components of the approximately 782,000 pages of digital data produced by QEP and prepared reports that were made available to QEP in September of 2011. *Id.* at ¶82.

Also, Class Counsel, in conjunction with experts, reviewed and analyzed over 7,700 leases. *Id.* Some of these experts also have filed declarations explaining their damages calculations and supporting the $155 million Settlement, which provides over 100% of the past royalty allegedly owed to the Class. *See e.g.*, Ley Declaration ¶5; Reineke Declaration at ¶3.

On November 1, 2011, after completing the discovery described above, Chieftain filed its Motion for Class Certification and Brief in Support thereof. Docket Nos. 43-44. QEP filed its response on December 1, 2011, Docket No. 54, and Chieftain filed its reply on December 9, 2011. Docket No. 61. While the parties were briefing Plaintiff's Motion for Class Certification, QEP also filed a Motion and Brief for Judgment on the Pleadings. Docket No. 53. In its motion, QEP advanced a number of arguments against some of the Class' claims. *Se id*. Specifically, QEP moved for a judgment on the Class' claims for breach of fiduciary duty, unjust enrichment, tortious breach of contract, and conversion. *See id*. Chieftain responded to QEP's Motion on January 9, 2012, Docket No. 70, and QEP filed its reply on January 17, 2012. Docket No. 71. On January 27, 2012, the Court denied QEP's Motion for Judgment on the Pleadings as to the Class' breach of fiduciary duty and unjust enrichment claims. *See* Order, Docket No. 74, at 5-6. However, the Court granted QEP's Motion as to the Class' claims for tortious breach of contract and conversion. *Id.* at 6-8.

On January 30, 2012, the Court heard argument from Counsel concerning class certification. *See* Class Counsel Declaration at ¶19. On March 16, 2012, the Court issued an Order certifying Plaintiff's breach of contract and breach of fiduciary duty

claims and denying certification of the remaining claims. *See* March 16, 2012 Order ("Certification Order"), Docket No. 87. Additionally, the Court certified an unjust enrichment claim against QEP. *Id.* The Court also appointed Chieftain and Jack Lancet, an individual royalty owner and Class Member, as Class Representatives. *Id.* at 11. Additionally, the Court ordered Chieftain to submit a revised class definition to reflect the Court's finding that the Class should be divided into appropriate subclasses. *Id.* at 15. Pursuant to this directive, Chieftain filed a Proposed Agreed Amended Class Definition, Docket No. 90, which the Court approved on April 5, 2012. Docket No. 91. Chieftain then amended its original state court Petition to include this new Class definition, add the newly certified unjust enrichment claim, and name Jack Lancet as a named plaintiff. *See* First Amended Complaint ("FAC"), Docket No. 96. However, to fully respond to the Court's Orders granting in part and denying in part QEP's Motion for Judgment on the Pleadings and Plaintiff's Motion for Certification, Class Representatives amended the FAC to provide more detail concerning the royalty interests of each plaintiff in wells where QEP marketed gas. *See* Class Counsel Declaration at ¶25. With the Court's leave, on July 16, 2012, Class Representatives filed their Second Amended Complaint ("Complaint"), which is the operative complaint in this Action. Docket No. 109.

After class certification, the Settling Parties began discussions regarding potential mediation and settlement negotiations. *See* Class Counsel Declaration at ¶26. The mediation process was a complex, highly technical, and involved process. *Id.* Both sides worked extensively with experts and exchanged and studied considerable amounts of production and well data. *Id.* Both sides also exchanged briefing on many substantive

issues that impacted both sides' views of the strengths and weaknesses of their respective positions on factual, legal, and damages arguments. *Id.* The Settling Parties also participated in several phone calls and meetings during which consulting experts from both sides exchanged arguments and calculations designed to evaluate and analyze each side's damages positions. *Id.* at ¶27.

On September 19, 2012, Class Counsel and QEP's Counsel met in Oklahoma City to discuss the possibility of settlement. *Id.* at ¶28. Special Master McGovern presided over this initial meeting of the Settling Parties. *Id.* On October 22, 2012, the Settling Parties exchanged mediation briefs and, on November 1, 2012, met for a mediation session in Denver, Colorado, which was conducted by Special Master McGovern. *Id.* at ¶28-29. As negotiations continued, experts for the Settling Parties met with Special Master McGovern in Oklahoma City and via telephone on December 6, 2012. *Id.* at ¶30. Class Counsel and QEP's Counsel agreed to allow the experts to meet with Special Master McGovern without lawyers present in order to promote a full exchange of information and to help each side to (1) determine what additional information was needed to conduct their damage calculations and (2) challenge the other side's experts' methodology and calculations. *Id.* Then, on December 14, 2012, the Settling Parties met again in Denver for a mediation session. *Id.* at ¶31.

Throughout this period of time, Special Master McGovern consistently communicated with the lawyers and experts for both parties by phone and email. *Id.* at ¶32. Further, throughout this entire period of time, the experts and attorneys from both sides engaged in extensive discussions and exchanged numerous position statements and

briefs on the legal, factual and damages issues relevant to each side's position for trial and appeal. *Id.* Finally, on January 9, 2013, the Settling Parties met in Oklahoma City for a two-day mediation session with Special Master McGovern, during which the Parties, their experts, and the Special Master engaged in extensive negotiations, analysis of damages and legal issues, and arguments regarding the strengths and weaknesses of the Parties' respective claims and defenses. *Id.* at ¶33. A large contingent from QEP attended this mediation session, including engineers, accounting personnel and QEP's CEO, Charles B. Stanley, who was directly involved in the negotiations. *Id.* The Parties were able to reach an agreement on major terms of settlement on January 10, 2013. *Id.*

Due to the extensive changes in QEP's royalty payment methodology, finalizing the terms of the Settlement was an extremely technical and cumbersome process that took an additional month to complete. *Id.* at ¶34. However, with additional assistance from Special Master McGovern, the Parties finalized the Settlement in the Stipulation and Agreement of Settlement on February 13, 2013. *Id.*

On February 13, 2013, the Settling Parties' filed their Joint Motion to Preliminarily Approve Settlement, Approving Form and Manner of Notice and Setting Final Fairness Hearing Date ("Preliminary Approval Motion") (Docket No. 118), and Class Representatives filed their Preliminary Approval Memorandum. Docket No. 119. On February 20, 2013, the Court held a hearing on the Settling Parties' Motion for Preliminary Approval, which the Court granted in the Preliminary Approval Order of the same date. *See* Class Counsel Declaration at ¶35; Docket No. 123. In the Preliminary Approval Order, the Court, among other things, preliminarily approved the Settlement

and the form and manner of the notice campaign, directed the Settling Parties to disseminate the Notice to the Class, and appointed Rust Consulting, Inc. as Settlement Administrator and Wells Fargo, N.A. as Escrow Agent. *See generally* Preliminary Approval Order.

Having carried out the directives contained in the Court's Preliminary Approval Order, the Settling Parties now seek final approval of the form and manner of notice, the terms of the Settlement itself, and the Plan of Allocation so that the Settlement may be completely executed. As demonstrated below, the Court should grant the Settling Parties' Motion and enter the Proposed Final Approval Order, attached to the Motion as Exhibit 1.

V. ARGUMENT

First, 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. *In re Motor Fuel Temperature Sales Practices Litig*., 258 F.R.D. 671, 675 (D. Kan. 2009); *see* MANUAL FOR COMPLEX LITIGATION § 13.14 (4th ed. 2004). First, the Court conducts a preliminary approval hearing to determine if the settlement should be preliminarily approved such that the class should be notified of the pendency of a proposed settlement. *In re Motor Fuel*, 258 F.R.D. at 675; *accord*, *Manual for Complex Litigation* § 1.46 (4th ed. 2004). Second—after the district court preliminarily approves the settlement—the class is notified and provided an opportunity to be heard at a fairness hearing before the settlement is finally approved. *In re Motor Fuel*, 258 F.R.D. at 675; *accord*, Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.25, at 38 (4th ed. 2002).

The Court already carried out this first step when its Preliminary Approval Order approved the Settlement as fair and reasonable. Preliminary Approval Order at ¶3. Notice was then sent to the Class pursuant to the terms of the Stipulation and in the form and manner approved by the Court. *See* Rust Affidavit at ¶¶10-14. Class Representatives now request that the Court grant final approval of the Settlement.[18]

As discussed above, the Tenth Circuit has identified four factors to consider when deciding whether to finally approve a class action settlement. *See Rutter & Wilbanks*, 314 F3d at 1088; *Jones*, 741 F.2d at 324. As demonstrated below, each of these factors supports final approval of the Settlement.

The Court also should approve the form and manner of notice sent to the Class. As required by Rule 23 and due process,[19] the form and manner of the notice were the best practicable notice, and their contents were reasonably calculated to, and did, apprise the interested parties of the pendency and nature of the Settlement and afforded them an opportunity to opt out or object. Therefore, as demonstrated below, the Court should approve the notice sent to the Class.

Finally, the Court should approve the Plan of Allocation. As with settlements, a plan of allocation generally should 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). "When formulated by competent and experienced class

[18] Because the Court already certified the Class, there is no need to evaluate the propriety of class certification for settlement purposes. *See* FED. R. CIV. P. 23(e).

[19] "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 1187 quoting *Kowalczyk v. INS*, 245 F.3d 1143, 1147 (10th Cir. 2001).

counsel, as is the case here, an allocation 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*. As explained in detail below, the proposed Plan of Allocation in this Action was formulated by competent and experienced Class Counsel and experts to reimburse Class Members according to their individual losses. *See* Ley Declaration at ¶9. Therefore, the Court should approve the Plan of Allocation.

A. 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) ("there is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *Childs v. Unified Life Ins. Co.*, Case No. 10-CV-23-PJC, 2011 US Dist. LEXIS 138818, at *29 (N.D. Okla. Dec. 2, 2011).

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 ¶3. Notice was then sent to the Class pursuant to the

terms of the Stipulation and in the form and manner approved by the Court. *See* Rust Affidavit at ¶¶10-14. With this current Motion, Class Representatives now request that 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. The fairness of the negotiating 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. *Childs*, 2011 U.S. Dist. LEXIS 138818, at *32.

Here, the Settlement is the product of extensive arm's-length negotiations between the Settling Parties' experienced counsel. *See* Class Counsel Declaration at ¶¶26-34; Miller Declaration at ¶22. Comprehensive fact discovery and expert analysis provided the Settling Parties with more than sufficient knowledge and evidence to allow them to make informed decisions about the strengths and weaknesses of their respective cases. *See* Class Counsel Declaration at ¶87; *Childs*, 2011 U.S. Dist. LEXIS 138818, at *34.

Additionally, Class Counsel has unique experience with oil and gas royalty underpayment class actions. The Court appointed Barnes & Lewis, L.L.P. ("B&L") and Nix, Patterson & Roach, LLP ("NPR") as Class Counsel on March 16, 2012. B&L has actively represented royalty owners for over sixteen years, and has served as lead counsel

in, among other actions, *Brumley v. ConocoPhillips*, CJ-2001-5 (D.C. Texas Co. Okla. 2005) (settled after certification hearing in 2005); *Kouns v. ConocoPhillips* (certified 2004); *Bridenstine v. Kaiser-Francis*, CJ-2000-1 (D.C. Texas Co. Okla. 2004) (certified in 1999, jury verdict affirmed in 2002); *Simmons v. Anadarko*, CJ-2004-57 (D.C. Caddo Co. Okla. 2008) (settled while case on appeal after class certified); *Mitchusson v. EXCO*, CJ-2010-32 (D.C. Caddo Co Okla. 2012) (certified for settlement purposes 2011). *See* Class Counsel Declaration at ¶90. Likewise, NPR regularly represents plaintiffs in royalty owner class actions, and other complex commercial and consumer class action litigation, and has served as counsel in several cases involving oil and gas issues. *Id.* at ¶91. Speaking of NPR's efforts in a recently settled class action, Judge West of the Western District of Oklahoma stated:

> [T]he legal work on this case has just been absolutely spectacular, and I want to brag on all of you for the work that you put into it. I know that, for every little bit of iceberg that I saw above the water, there was a whole big ice cube down below it that I didn't see. I know you all put all the work in on behalf of your respective clients that they deserved, and that you both did outstanding work on this case.

CompSource Okla., et al. v. BNY Mellon, N.A., et al., No. CIV-08-469-KEW (W.D. Okla. October 25, 2012) (Transcript of Final Fairness Hearing, Page 9, line 21 through Page 10, line 7), attached hereto as Exhibit 2.

B&L and NPR are experienced and qualified counsel and represented the Class honestly and fairly during settlement negotiations and mediation. *See* Class Counsel Declaration at ¶¶90-91. Further, Class Representatives were intimately involved in the negotiations and believe that the mediation process resulted in an excellent Settlement for

the Class. *See* Abernathy Declaration at ¶¶11-12; Lancet Declaration at ¶¶10-11. As such, the Settling Parties and their lawyers were well prepared for the serious and intelligent negotiations that led to the Settlement. *See* Class Counsel Declaration ¶87; McGovern Declaration at ¶¶5, 14; *In re Motor Fuel*, 258 F.R.D. at 675-76.

Additionally, the use of a formal mediation process supports the conclusion that the Settlement was fairly and honestly negotiated. *See Ashley v. Reg'l Transp. Dist*., Civil Case No. 05-CV-01567-WYD-BNB, 2008 U.S. Dist. LEXIS 13069, at *17 (D. Colo. Feb. 11, 2008); Miller Declaration at ¶21. 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); *see also D'Amato v. Deutsch Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (noting that a "mediator's involvement in. . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure").

Here, the Settlement resulted from multiple mediation sessions with qualified and respected mediator and court-appointed Special Master, Francis E. McGovern. *See* McGovern Declaration at ¶¶5-8; Class Counsel Declaration at ¶¶26-34. In addition to being an experienced mediator, Special Master McGovern also is a professor of law at Duke University, where he teaches classes related to alternative dispute resolution. *See* McGovern Declaration at ¶2. He has also served as a professor, visiting professor, or fellow at Berkeley School of Law, Stanford Law School, Harvard Law School, the Massachusetts Institute of Technology, Boston University School of Law, University of Alabama Law School, and Cumberland School of Law, among others. *Id.* Special

Master McGovern has also served as a special master, court expert, mediator, or neutral in over seventy-five cases, including several significant cases in Oklahoma. *Id.* Accordingly, his opinions regarding the settlement negotiations in this Action and the qualifications of Counsel should be accorded great weight.

After multiple telephonic and face-to-face mediation sessions overseen by Special Master McGovern—in addition to the parties' independent communications with Special Master McGovern—the Settling Parties were able to reach an agreement in principle on January 9-10, 2012. *See* McGovern Declaration at ¶8; Class Counsel Declaration at ¶33. Having carefully read many of the Court's orders, deposition transcripts, and the Settling Parties' litigation briefs, Special Master McGovern is intimately familiar with this Action. *See* McGovern Declaration at ¶¶12-13. In his declaration, Special Master McGovern states, "[i]t is my opinion that the proposed settlement was reached at arm's-length, is fair and reasonable, and should be approved." *Id.* at ¶11. Additionally, Special Master McGovern endorses the efforts of Counsel for both sides, stating:

> Throughout the mediation and negotiation process, counsel for both parties exhibited the highest degree of professionalism and represented their respective clients with integrity and diligence. This high-quality representation in the mediation setting ensured that the negotiations occurred at arm's-length and in good faith, which to led to the fair, reasonable, and adequate settlement of this action.

Id. at ¶14. Special Master McGovern's unbiased support of the Settlement and his endorsement of the efforts of Counsel should be accorded great weight.

These facts demonstrate that the Settlement resulted from serious, informed, and non-collusive negotiations between skilled and dedicated attorneys. Therefore, the first factor—that the settlement be fairly and honestly negotiated—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 Action 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 *31-41 (W.D. Okla. Oct. 27, 2008 (citing *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, Civil Case No. 01-CV-01451-REB-CBS, 2006 U.S. Dist. LEXIS 71039, at *16-18 (D. Colo. Sept. 28, 2006).

In this Action, there are numerous factual and legal issues about which the Settling Parties disagree—issues that would ultimately be decided by this Court or a jury. *See* Miller Declaration at ¶23; Class Counsel Declaration at ¶85. To this day, QEP denies that it committed any act or omission giving rise to liability or a violation of law. *See* Stipulation at ¶11. Indeed, QEP has presented numerous defenses that Class Representatives would have to overcome if this Action were to proceed to trial. For example, QEP claims that this Action is barred by (1) the express terms of the Class Leases; (2) collateral estoppel; (3) acquiescence and ratification; and/or (4) the statute of limitations. *See* Defendants' Answer, Docket No. 1-5, at pp. 7-9. As such, QEP entered

into this Settlement solely to eliminate the burden, expense, and distraction of further litigation. *See* Stipulation at ¶11.

In addition, despite Class Representatives' optimism regarding their chances at trial, they would have to overcome a number of obstacles. First, the Court and the Parties would be required to resolve a variety of complex legal questions concerning Oklahoma oil and gas law. *See* Miller Declaration at ¶23. As Special Master McGovern points out, "significant differences still exist between the parties on both liability and damages," and "[t]he parties also had numerous disputes regarding a number of legal issues concerning Oklahoma oil and gas law." McGovern Declaration at ¶9. These issues, along with QEP's defenses, place the ultimate outcome of the Action in doubt.

Because this Action 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 immediate value of the minimum $155 million recovery outweighs the uncertainty, additional expense, and likely duration of further litigation. The 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 U.S. Dist. LEXIS 86741, at *37. Here, the Settlement represents a significant and meaningful recovery for the Class without the risk or additional expense of further litigation. *See* McGovern Declaration at ¶11; Miller Declaration at ¶24. These immediate benefits must be compared to the risk that the Class may recover nothing after

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 that liability is far from certain and that many potential obstacles to obtaining a final, favorable verdict exist. *See* Section V.B.2, *supra.* Even if Class Representatives were able to establish liability at trial, QEP would have vigorously argued that the Class' damages are far less than the $115 million cash amount received in the Settlement. *See* McGovern Declaration at ¶9. And, these Binding Changes would not have been obtained through trial at all. *See* Miller Declaration at ¶24; Class Counsel Declaration ¶42.

Class Counsel is intimately familiar with the risks of proceeding with this Action because Class Counsel has extensive experience prosecuting class actions involving gas royalty underpayment. *See* Section IV.B.1., *supra*; Class Counsel Declaration at ¶64. Class Counsel submits that the value of the $155 million recovery outweighs the risks of proceeding further with this litigation. Special Master McGovern agrees with this position. In his Declaration, Special Master McGovern states, "I believe the immediate value of the $115 million cash recovery and the minimum present value of $40 in binding changes obtained in the face of substantial legal and factual disputes, outweigh the mere possibility of some recovery in the future." McGovern Declaration at ¶13. Also, Class Representatives and Class Members are aware of the risks and uncertainties involved in

proceeding with further litigation and, as such, approve of the Settlement. *See* Abernathy Declaration at ¶¶14-15; Lancet Declaration at ¶¶12-13; Little Declaration at ¶13.

When the risks and uncertainties of continuing this Action are compared to the immediate and substantial benefits of the Settlement, it is clear that the Settlement is fair and reasonable and in the best interests of the Class. Therefore, this third factor supports final approval of the Settlement.

4. *The Parties agree that the Settlement is fair and reasonable*

The fact that the Settling Parties believe the Settlement is fair and reasonable supports final approval. Class Counsel and Class Representatives only agreed to settle this Action after considering the substantial benefits that the Class will receive, the risks and uncertainties of continued litigation, and the desirability of proceeding under the terms of the Stipulation. *See* Abernathy Declaration at ¶¶14-15; Lancet Declaration at ¶¶12-13; Class Counsel Declaration at ¶64. Class Representatives agree that the Settlement should be approved as fair and reasonable. *See* Class Counsel Declaration at ¶64.

Class Counsel's judgment as to the fairness of the Settlement also supports final approval. *Id.*; Miller Declaration at ¶26. "Counsels' judgment as to the fairness of the [settlement] agreement is entitled to considerable weight." *Childs v. United Life Ins. Co.*, No. 10-CV-23-PJC, 2011 U.S. Dist. LEXIS 138818, at *37 (N.D. Okla. Dec. 2, 2011) (citation omitted); *see also McNeely*, 2008 U.S. Dist. LEXIS 86741, at *37; *Trief v. Dun & Bradstreet Corp.,* 840 F. Supp. 277 (S.D.N.Y. 1993) ("Absent evidence of fraud or overreaching, courts consistently have refused to act as Monday morning quarterbacks in

evaluating the judgment of counsel."). Here, Class Counsel believes that the terms and conditions of the Settlement are fair, reasonable, and adequate to Class Representatives and the Class, and in their best interests. *See* Class Counsel Declaration at ¶64.

As explained above, Class Counsel has extensive experience in complex class action litigation and oil and gas litigation in Oklahoma. *See* Section IV.B.1., *supra.*; Class Counsel Declaration at ¶¶90-91; Miller Declaration at ¶¶71-72. Both Class Counsel and Class Representatives submit that the Settlement is fair, reasonable, and adequate and should be approved, and QEP agrees. 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. For these reasons, Class Representatives and Class Counsel respectfully request that the Court grant final approval of the Settlement as fair, reasonable, and adequate and in the best interests of the Class.

B. The Notice Method Used was Adequate and Should be Approved

The Court should approve the notice given to the 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 of the circumstances, to apprise the interested parties of the

pendency of the settlement proposed and to afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

In its Preliminary Approval Order, this Court preliminarily approved the form and manner of the Notice Documents disseminated by the Settling Parties,[20] 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 satisfy the requirements of due process and Federal Rule of Civil Procedure 23." *See* Preliminary Approval Order at ¶4-5. The Court then directed the Settling Parties to disseminate the Notice Documents in accordance with the Stipulation and the Preliminary Approval Order. *See id.*

Class Counsel, in conjunction with Counsel for QEP, conducted an extensive campaign to distribute the Notice to the Class. *See* Class Counsel Declaration at ¶¶44-52; Rust Affidavit at ¶¶10-14. This campaign was necessary because there are numerous Class Members in each Class Well, and many Class Wells are operated by energy companies other than QEP. *See* Class Counsel Declaration at ¶45. In order to send Notice to the Class—and eventually distribute the Net Settlement Proceeds—the Settling Parties needed the name, address, royalty decimal interest, and tax identification number of each Class Member. *Id*. at ¶46. Well operators maintain this information in the form of "pay decks," which are used to send monthly royalty payments to royalty owners. *Id.* QEP maintains pay decks for the producing Class Wells that it currently operates. *Id.*

[20] The Notice of Proposed Settlement, Motion for Attorneys' Fees and Fairness Hearing (the "Notice") and the Summary Notice are attached to the Rust Affidavit as Exhibits C and D respectively and are referred to collectively herein as the "Notice Documents."

However, because QEP often markets gas as a non-operating working interest owner, third-party operators maintain the pay decks for a great number of Class Wells. *Id.* Also, many Class Wells were sold or plugged during the Claim Period. *See id.* If no pay deck is available for a particular Well, then the county records must be searched to obtain the names and contact information of the current royalty owners in that Well. *Id.* Thus, the Settling Parties were set with the task of tracking down all of the Class Member information needed to disseminate the Notice.

Of the 2,129 Class Wells in this case, about half of the wells are or were operated by QEP and the remaining wells are or were operated by third parties. *Id.* at ¶47. Specifically, there are 221 third-party operators in the QEP non-operated Class Wells. *Id.* In order to obtain current pay decks from the operators of these Class Wells, Class Counsel, in conjunction with landmen, staff members, and QEP's Counsel, conducted an extensive campaign to contact the 221 operators to ensure that the Notice was properly sent to the Class members in a timely manner. *Id.*

Over the course of approximately six weeks, this team, working under Class Counsel's supervision, spent hundreds of hours, including evenings, weekends, and the Easter holiday weekend, working on this project. *Id.* Class Counsel went to great lengths to obtain updated and accurate information relating to these QEP non-operated Class Wells. *Id.* Class Counsel and its team searched the records of the Oklahoma Corporation Commission to determine the operator of many of the Wells. *Id.* And on many occasions, it was necessary to contact operators more than once as they failed to provide all of the data needed. *Id.*

The operators were asked to provide the data in a searchable Microsoft Excel spreadsheet. *Id.* at ¶48. Very rarely did any operator provide the data in this format. *Id.* Therefore, once the information was obtained, persons under Class Counsel's supervision spent many weeks converting the data into a useable format so that the data could be used by the Settlement Administrator to send the Notice to Class Members. *Id.* This same data will be used later to distribute the Net Settlement Fund to Class Members according to the Court-appoved Plan of Allocation and Distribution. *Id.*

The Notice was sent in waves: 18,776 Notices were mailed on March 22, 2013; 21,337 were mailed on April 8, 2013; 1,958 were mailed on April 12, 2013; and 2,446 were mailed on April 15, 2013. *See* Rust Affidavit at ¶13. Through this effort, Class Counsel was able to mail Notices to Class Members whose claims represent approximately 97% of the Net Settlement Fund. *See* Class Counsel Declaration at ¶49. In the event any Class Member's mailed Notice was returned, the Settlement Administrator used all reasonable secondary efforts to deliver the Notice to such Class Members. *See* Rust Affidavit at ¶14. In addition, to further ensure that the Class receives notice, the Summary Notice was published on April 5, 2013 in the *Tulsa World* and *Daily Oklahoman*.[21] *Id.* at ¶¶19-20. Class Counsel also is continuing to contact the remaining operators to obtain pay decks for distribution purposes and oversee efforts to run title on some of the Wells where there is no available pay deck. *See* Class Counsel Declaration at ¶ 49.

[21] Examples of actual publications of the Summary Notice are attached to the Rust Affidavit as Exhibits D and E.

Also, prior to dissemination, the Notice and Summary Notice, along with other documents germane to the Settlement, were posted on the website created for and dedicated to this Action. *See* Rust Affidavit at ¶¶15-17; *see also* www.chieftain-QEP.com. This website is maintained by the Settlement Administrator as a site where information regarding the Settlement can be found. *Id*. at ¶16. In the words of Class Representative's expert, Geoffrey Miller, "it is apparent the parties not only utilized their best efforts to distribute Notice…in a reasonable manner, but went well above and beyond the norm." Miller Declaration at ¶85.

The Notice Documents fully informed Class Members about the Action, the Settlement, and the facts needed to make informed decisions about their rights. According to the Preliminary Approval Order, "the Notice fairly and adequately: (i) described the terms and effect of the Settlement; (ii) notified the Class that Class Counsel will seek attorneys fees, reimbursement of Litigation Expenses, and Case Contribution Awards for Class Representatives' services; (iii) notified the Class of the time and place of the Final Fairness Hearing; (iv) described the procedure for requesting exclusion from the Settlement; and (v) described the procedure for objecting to the Settlement or any part thereof." Preliminary Approval Order at ¶4. The Notice and Summary Notice also provided Class Members with a toll-free number, an email address for Settlement-related inquiries, and a URL address for the dedicated Settlement website where Class Members may obtain further information. *See* Rust Affidavit at Exhibits D-E.

Since Counsel completed the Notice efforts described above, there has been overwhelming support for the Settlement from the Class. Specifically, to date only

eleven Class Members—representing .0006% of the Net Settlement Fund—have elected to opt out[22] of the Settlement.[23] These Class Members were not included in the Settlement. *Id.* at ¶21. Additionally, to date no Class Members have filed objections[24] to the Settlement. These numbers support final approval of the Settlement as fair and reasonable.

In sum, the form, manner and content of the Notice and Summary Notice were the best practicable notice, and their contents were reasonably calculated to, and did, apprise the interested parties of the pendency and nature of the Settlement and afford them an opportunity to opt out or object. Such notice surpasses the requirements of both Rule 23 and due process. Therefore, the Court should grant final approval of the Notice given to the Class.

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[22] Again, the deadline for opting out of the Settlement is May 14, 2013. *See* Preliminary Approval Order at ¶12.

[23] *See* Rust Affidavit at ¶21. After certification, Class Counsel, in conjunction with Rust Consulting, Inc. (now the Settlement Administrator), disseminated a Notice of Pendency of Class Action, which explained that any judgment entered in this Action would be binding on the Class and provided an opportunity to opt out. *Id.* at ¶¶7-9. After this initial notice, Rust received approximately 111 Requests for Exclusion, and these Class Members have not been included in the Settlement Class. *Id.* at ¶9. Then, after the Settlement was reached, Class Counsel provided a *second* opportunity to opt out, as the Class has now been made aware of the specific terms of the Settlement. *Id.* at ¶13. Class Counsel was not required to provide this second opportunity but did so anyway. *See* Gensler Declaration at ¶¶33-34. The eleven Class Members that opted out in this second opportunity are in addition to the initial 111 Requests for Exclusion that Rust received after disseminating the Notice of Pendency of Class Action. *See* Rust Affidavit at ¶9.

[24] The deadline for objecting to the Settlement is May 14, 2013. *See* Preliminary Approval Order at ¶14.

C. The Plan of Allocation Should be Approved

The Court also should approve the proposed Plan of Allocation.[25] 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). When a plan of allocation is formulated by competent and experienced class counsel, as is the case here, 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 has formulated a Plan of Allocation in which Class Members will be reimbursed in relation to their individual claimed royalty underpayment. *See* Class Counsel Declaration at ¶¶65-69; Ley Declaration at ¶9. Specifically, the Net Settlement Proceeds will be allocated to individual Class Wells proportionately, with due regard for the production marketed by QEP on behalf of itself and/or other well owners, the amount of claimed royalty underpayment to Class Members, and the time period when the claimed underpayment occurred. *See* Proposed Final Approval Order ¶11.a.; Ley Declaration at ¶9. The Plan of Allocation also is based on a detailed evaluation of the strengths and weaknesses of the Class' claims, and Class Counsel deems the plan to be fair and reasonable to all Class Members. Thereafter, QEP will distribute the Net Settlement Proceeds allocated for each Class Well proportionately among all Class Members based on their royalty decimal interest in each such well using the December

[25] The proposed Plan of Allocation is incorporated in paragraph 11 of the Proposed Final Approval Order, which is attached to the Motion as Exhibit 1.

2012 production month royalty pay deck (or the most current available royalty pay deck before that date). *See* Proposed Final Approval Order ¶11.b. Thus, the proposed Plan of Allocation is based on each Class Member's particular loss. *See* Ley Declaration at ¶9.

A check for each Class Member's allocation of the Net Settlement Proceeds will then be mailed to each respective Class Member's last known mailing address, using the December 2012 production month royalty pay deck (or the most current available division order data before then). *See id*. 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. *Id.* at ¶11.b.iv. The Settlement Administrator will perform all of these tasks as promptly as possible after the Court enters the Class Distribution Order, and QEP will bear all administration costs. *Id.* at ¶11.b.i, v.

Because this 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 the Plan of Allocation as fair, reasonable, and adequate. *See* Class Counsel Declaration at ¶¶65-69; Ley Declaration at ¶9.

VI. CONCLUSION

The Settlement—which has a minimum present value of $155 million—is an extraordinary recovery for the Class, representing over 100% of the Class' past unpaid royalty principal, plus substantial interest and other litigation claims. Considering the risks and uncertainties associated with this Action, the value of the Settlement clearly outweighs the mere possibility of recovery after long and expensive litigation and trial,

not to mention appeals. Indeed, Class Counsel already has advanced nearly $1 million in expenses prosecuting this action. Moreover, Class Representatives, Class Counsel, QEP, and Special Master McGovern all agree that the Settlement is fair, reasonable, and adequate and should be approved. In short, all four of the *Johnson* factors to be considered by courts in approving class action settlements support final approval in this Action.

For all of these reasons, Class Representatives and Class Counsel respectfully request that the Court enter an order granting (1) final approval of the $155,000,000 Settlement as fair, reasonable, and adequate, and in the best interests of the Class; (2) final approval of the Notice to Class Members; and (3) approval of the Plan of Allocation.

Dated: May 7, 2013

Respectfully submitted,

/s/ *Bradley E. Beckworth*

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CLASS COUNSEL AND
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2013, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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Dated: May 7, 2013 /s/ *Bradley E. Beckworth*

EXHIBIT 1

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

CHIEFTAIN ROYALTY COMPANY and JACK LANCET,	)	
Plaintiffs,	)	**No. CIV-11-212-R**
v.	)	
QEP ENERGY COMPANY,	)	
Defendant.	)	

DECLARATION OF BRADLEY E. BECKWORTH AND
ROBERT N. BARNES ON BEHALF OF CLASS COUNSEL

Bradley E. Beckworth of Nix, Patterson & Roach ("NPR") and Robert N. Barnes of Barnes & Lewis ("B&L"), on behalf of Class Counsel, declare under penalty of perjury as follows:

1. We, Bradley E. Beckworth, a partner at NPR, and Robert N. Barnes, a partner at B&L, have been deeply involved in this case. We respectfully submit this Declaration in support of Class Representatives' Memoranda of Law in Support of the Settling Parties' Joint Motion for Final Approval ("Final Approval Memorandum") and the Motion for Approval of Attorneys' Fees, Litigation Expenses, and Case Contribution Award ("Fees and Expenses Memorandum") (collectively, the "Memoranda"), which are filed contemporaneously herewith.

2. The purpose of this Declaration is to (a) submit and identify for the Court true and correct copies of certain documents and evidence referenced in the Memoranda

and (b) describe in detail the history of the extensive litigation efforts in this case, as referenced in the Memoranda.

3. Attached as Exhibit 1 to Class Representatives' Memorandum in Support of Settling Parties' Joint Motion to Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice and Set Date for Final Fairness Hearing ("Preliminary Approval Memorandum"), Docket No. 119, is a true and correct copy of the Stipulation and Agreement of Settlement ("Stipulation"), which contains numerous sub-parts, such as the proposed form of the Notice sent to the Class (Exhibit 1 to the Stipulation). All capitalized terms not otherwise defined in this Declaration shall have the same meaning as ascribed to them in the Stipulation.

4. The statements made herein are made based upon our personal knowledge and information available to us to the best of our recollection. To the extent there are any errors or omissions contained herein, they are unintentional.

Introduction—Summary of Benefits Provided to the Class

5. The result of the efforts of Class Representatives and Class Counsel is a Settlement with a minimum present value of $155 million ("Settlement Amount"). The Settlement Amount consists of a $115 million cash fund (the "Settlement Cash Amount") and immediate, binding changes made to QEP Energy Company's royalty calculation and payment methodology with a minimum present value of an additional $40 million (the "Binding Benefits").[1] As discussed below, and as explained in the Declarations of Scott

[1] *See* Declaration of Barbara Ley ("Declaration"), Docket No. 149, at ¶2; Affidavit of Scott Gutberlet ("QEP Affidavit"), Docket No. 148-1, at ¶13.

Gutberlet, on behalf of QEP, and Barbara Ley, an expert for Class Representatives, the value of the Binding Benefits is actually much greater $40 million. *See id.* That is, the $40 million value is based upon calculations carried out to approximately 15 years; however, over a 30-year period, the value obtained by the Class due to the Binding Benefits will likely exceed $138 million in present value.

6. The Settlement Cash Amount alone is an outstanding recovery for Class Members, representing over two and one-half times the Class' claimed past royalty underpayment, plus a substantial amount of interest and other litigation claims. Indeed, if the Class' recovery were limited to the five-year statute of limitations period, the Class' entire Claim would be approximately $20.4 million in principal for past royalty underpayment. *See* Ley Declaration at ¶2. And, if the five-year statute of limitations does not apply, the Class' claim for principal on past royalty underpayment would be approximately $43.5 million. *See id.* This $115 million Settlement Cash Amount—without even considering the Binding Benefits—is the second largest gas royalty settlement in Oklahoma history and, to Class Counsel's knowledge, the third largest such settlement nationwide.

7. In addition, QEP Energy Company ("QEP") has agreed to pay for administration and notice costs, which are normally paid out of the gross settlement fund. Because these costs will not be taken out of the Settlement Cash Amount, the funds saved will be distributed to Class Members. As of the date of filing this Declaration, the cost of administration paid on top of the $155 million Settlement Amount already amounts to approximately $275,000 (and is expected to at least double as the notice and distribution

process continues)—a tremendous additional benefit to the Class that is not normally provided in class action settlements.

8. Explained in detail below, the Settlement is an extraordinary recovery for the Class. Class Counsel believes the terms and conditions of the Settlement are fair, reasonable, and adequate to the Class and in their best interest.

Summary of the Litigation

9. Plaintiff Chieftain Royalty Company ("Chieftain") initiated this lawsuit (the "Action") over two years ago by filing a class action complaint against QEP in Dewey County, Oklahoma, on January 20, 2011. Chieftain's complaint alleged that QEP used it position as an operator or working interest owner in Oklahoma oil and gas wells to underpay royalty owed to Class Representatives and Class Members on the production of gas and its constituents. The complaint alleged a number of causes of action, including breach of contract, unjust enrichment, breach of fiduciary or quasi-fiduciary duty, conversion, conspiracy, fraud, and deceit.

10. Chieftain's complaint defined the proposed Class as:

> All non-excluded persons or entities who are or were royalty owners in Oklahoma wells where QEP Energy Company, including its predecessors, successors and affiliates, is or was the operator (or, as a non-operator, QEP separately marketed gas). The Class Claims relate only to payment for gas and its constituents (helium, residue gas, natural gas liquids, nitrogen and condensate) produced from the wells. The Class does not include overriding royalty owners or other owners who derive their interest through the oil and gas lessee.
>
> The persons or entities excluded from the Class are: (I) agencies, departments or instrumentalities of the United States of America and the State of Oklahoma; (2) publicly traded oil and gas exploration companies and their affiliates; and (3) persons or entities that Plaintiffs' counsel is, or

> may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional conduct.

11. On February 18, 2011, QEP filed its answer in Dewey County, Oklahoma. Thereafter, on February 28, 2011, QEP, a Texas corporation with its principle place of business in Colorado, filed its Notice of Removal in this Court based on diversity jurisdiction. *See* Docket No. 1.

12. Since Chieftain initiated this Action, the parties have engaged in hard-fought litigation, including extensive discovery and document production (consisting of approximately 12 gigabytes, 30,300 files, and 782,000 pages of digital data); taking multiple depositions; preparing expert reports; briefing and arguing numerous motions (including QEP's Motion for Judgment on the Pleadings, Docket No. 53, and Chieftain's Motion for Class Certification, Docket No. 43); reviewing and analyzing accounting and financial statements; examining and analyzing royalty owners' lands and leases; evaluating oil and gas engineering infrastructure; consulting with and preparing expert witnesses; engaging in multiple formal mediation sessions over the course of several months; participating in ongoing settlement negotiations; and preparing proprietary, detailed damages models.

13. Prior to removal, on January 27, 2011, Chieftain served QEP with Plaintiff's First Request for Production of Documents, First Set of Interrogatories and First Request for Admissions. On April 18, 2011, Chieftain served its Second Request for Production of Documents and Second set of Interrogatories. After removal, the parties resumed discovery, with Plaintiffs serving QEP with additional requests for

production and interrogatories on March 13, 2011, January 31, 2012, and April 19, 2012. Class Counsel reviewed with experts tens of thousands of individual documents and uncovered information critical to the proof of Class claims. This information was then used in depositions and in briefs to the Court.

14. Class Counsel took multiple depositions, beginning with Plaintiff's Notice to Take Video Deposition of QEP Designated Representative(s). *See* Docket No. 12. Thereafter, Class Counsel took the depositions of: (1) Michael Hall, Supervisor of QEP's Production Administration and Contracts Group; (2) Carson Long, a Senior Contract Negotiation Specialist for QEP; (3) John Ruskauff, General Manager of Marketing for QEP; and (4) Keith Walker, an employee in the revenue section of QEP's accounting department. On September 1, 2011, Class Counsel took the deposition of Thomas Jepperson, an officer of QEP, as well as second depositions of both Carson Long and Keith Walker. From these depositions, Class Representatives and Class Counsel gained an understanding of QEP's royalty calculation and payment methodologies, which go to the heart of this Action. This understanding allowed Class Counsel to negotiate the changes to QEP's royalty calculation methodology provided in the Binding Benefits. All of these depositions were of QEP officers or designated representatives. The depositions uncovered key evidence supporting the Class position on both the merits and for class certification purposes. For example, Class Counsel was able to establish: (1) that since 2005 QEP had not been charging royalty owners with 'cash' midstream service fees because of the results obtained by Class Counsel in *Bridenstine v Kaiser-Francis*; (2) that QEP had not repaid (or even disclosed) such cash fees charged before 2005; (3) that QEP

still charged royalty owners for POP fees even though QEP designated representatives admitted that those fees were for the same services covered by cash fees; (4) that QEP still did not pay royalty owners for gas consumed as fuel off the lease even though a QEP designated representative admitted that the "fuel gas clause" in virtually all leases required that royalty be paid on such gas; (5) that QEP treated all leases and royalty owners the same. Most of these points had not been discovered in related cases against QEP.

15. On November 1, 2011, after completing substantial fact discovery, Chieftain filed its Motion for Class Certification and Brief in Support thereof. Docket Nos. 43-44. QEP filed its response on December 1, 2011, Docket No. 54, and Chieftain filed its reply on December 9, 2011. Docket No. 61.

16. While the parties were briefing Plaintiff's Motion for Class Certification, QEP also filed a Motion and Brief for Judgment on the Pleadings. Docket No. 53. In its brief in support, QEP advanced a number of arguments against some of the Class' claims. *See id*. Specifically, QEP sought a judgment on the Class' claims for breach of fiduciary duty, unjust enrichment, tortious breach of contract and conversion.

17. Chieftain responded to QEP's Motion on January 9, 2012, Docket No. 70, and QEP filed its reply on January 17, 2012. Docket No. 71.

18. On January 27, 2012, the Court denied QEP's request for judgment on the pleadings as to the Class' breach of fiduciary duty and unjust enrichment claims. *See* Order dated January 27, 2012, Docket No. 74, at 5-6. However, the Court granted QEP's

request for judgment on the pleadings as to the Class' claims for tortious breach of contract and conversion. *Id.* at 6-8.

19. On January 30, 2012, the Court heard argument from Counsel concerning class certification. Obtaining class certification in this Action presented numerous obstacles. As the Court knows, a number of similar cases have recently been denied certification on commonality and predominance grounds. For example, in *Foster v. Merit Energy Company*, Judge Friot denied certification. *See* Case No. CIV-10-758-F, Docket No. 77 (W.D. Okla. 2012). And in *Foster v. Apache Corporation*, Judge Heaton denied certification. *See* Case No. CIV-10-0573-HE, Docket No. 190, at *13 (W.D. Okla. Aug. 20 2012.).

20. Here, QEP likewise argued that certification was improper due to the differences in the language of Class Member's particular leases. However, after Class Counsel's extensive research, briefing and argument on the issues surrounding certification, the Court held that class treatment of certain claims in this Action would be appropriate with the creation of subclasses. On March 16, 2012, the Court issued an Order certifying Plaintiff's breach of contract and breach of fiduciary duty Claims and denying certification of the remaining claims. *See* March 16, 2012 Order ("Certification Order"), Docket No. 87. The Court also certified an unjust enrichment claim. *Id.*

21. The Court also appointed Chieftain and Jack Lancet, an individual royalty owner and Class Member, as Class Representatives. *Id.* at 11. Additionally, the Court ordered Chieftain to submit a revised class definition to reflect the Court's finding that the Class should be divided into appropriate subclasses. *Id.* at 15. After meeting and

conferring with QEP's Counsel on April 3, 2012, Chieftain filed a Proposed Agreed Amended Class Definition, Docket No. 90, which the Court approved on April 5, 2012. Docket No. 91.

22. The approved Agreed Amended Class Definition modified the original class definition by adding sub-classes and expressly excluding additional persons and entities. Specifically, the approved Agreed Amended Class Definition defines the Class as:

> All non-excluded persons or entities who are or were royalty owners in Oklahoma wells where QEP Energy Company is or was the operator (or, as a non-operator, QEP separately marketed gas). The Class Claims relate only to payment for gas and its constituents (helium, residue gas, natural gas liquids, nitrogen and condensate) produced from the wells. The Class does not include overriding royalty owners or other owners who derive their interest through the oil and gas lessee. The Class is divided into the following subclasses:
>
> Subclass 1: All Class members who have or had a direct lessor-lessee relationship with QEP
>
> Subclass 1(a): where QEP is or was the Operator of Oklahoma wells.
>
> Subclass 1(b): where QEP, as non-operator of Oklahoma wells, separately marketed gas.
>
> Subclass 2: All Class members who do not or did not have a direct lessor-lessee relationship with QEP
>
> Subclass 2(a): where QEP is or was the operator of the Oklahoma wells.
>
> Subclass 2(b): where QEP, as non-operator of Oklahoma wells, separately marketed gas.
>
> The persons or entities excluded from the Class are: (1) agencies, departments or instrumentalities of the United States of America and the State of Oklahoma; (2) publicly traded oil and gas exploration companies

> and their affiliates; (3) the claims of royalty owners to the extent previously released by settlement in the case styled McIntosh v. Questar, Case No. CJ-02-22, District Court for Major County; (4) members of the class certified in Bridenstine v. Kaiser Francis, Case No. 97, 117 (unpublished) August 22, 2003, cert. denied, June 26, 2006, Okla. Sup. Ct., Case No. DF-01569, but only to the extent of their respective royalty interests in wells connected to the Beaver Gathering System in Beaver and Texas counties, Oklahoma; (5) members of the class certified in Naylor Farms v. Anadarko OGC Co., No. CIV-08-668-R, 2009 U.S. Dist. LEXIS 127516 (W.D. Okla. Aug. 26, 2009), but only to the extent of their respective royalty interests in wells operated by QEP in Beaver and Texas counties, Oklahoma; and (6) persons or entities that Plaintiffs' counsel is, or may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional conduct.

Docket No. 90.

23. On April 16, 2012, Chieftain amended its original Petition to include this new Class definition, plead the newly certified unjust enrichment claim, and add Jack Lancet as a named plaintiff. *See* First Amended Complaint ("FAC"), Docket No. 96.

24. After certifying the Class, the Court approved the Parties Agreed Form of Notice of Pendency of Class Action ("Notice of Class Action") on May 24, 2012. The Notice of Class Action was then sent to the more than 40,000 Class Members in the newly defined Class.[2] Class Counsel and the Settlement Administrator went to great lengths to identify the Class Members and ensure that they received notice of this Action. *Id.* at ¶¶7-9. Thereafter, the Settlement Administrator received approximately 111 Requests for Exclusion. *Id.* at ¶9. A list of the Class Members that excluded themselves from the Class prior to the Settlement is attached to the Rust Affidavit as Exhibit B.

[2] *See* Affidavit of Tore Hodne on Behalf of Settlement Administrator Rust Consulting, Inc. ("Rust Affidavit"), Docket No. 153, at ¶7.

25. To fully respond to the Court's Orders granting in part and denying in part QEP's Motion for Judgment on the Pleadings and Plaintiff's Motion for Certification, Class Representatives found it necessary to amend the FAC. With the Court's leave, on July 16, 2012, Class Representatives filed their Second Amended Complaint ("Complaint"), which is the operative pleading in this Action. Docket No. 109.

26. Thereafter, the Settling Parties began discussions regarding potential mediation and settlement negotiations. The mediation process was a complex, highly technical, and involved process. The Parties had to work extensively with experts and exchange and study considerable amounts of production and well data. Both sides also exchanged briefing on many substantive issues that impacted both sides' views of the strengths and weaknesses of their respective positions on factual, legal and damages arguments.

27. The Settling Parties also participated in several phone calls and meetings during which consulting experts from both sides exchanged arguments and calculations designed to evaluate and analyze each side's damages positions. As the Court knows, Class Counsel and their experts developed a proprietary damages model that appropriately calculates the royalty underpayment attributable to each Class Well, taking into consideration the production marketed by QEP on behalf of itself and/or other well owners and the time period when the claimed underpayment occurred. From these allocations, each Class Member's particular underpayment damages are determined based on the Class Member's royalty decimal interest.

28. On September 19, 2012, Class Counsel and QEP's Counsel met in Oklahoma City to discuss the possibility of settlement. Special Master McGovern presided over this initial meeting. On October 22, 2012, the Settling Parties exchanged comprehensive mediation briefs. This briefing process required substantial time and labor as Class Counsel researched the issues in dispute, consulted with experts, and analyzed thousands of documents relevant to both liability and damages.

29. On November 1, 2012, the Settling Parties met for a mediation session in Denver, Colorado, which was conducted by Special Master McGovern. This mediation session was helpful but not ultimately successful.

30. As negotiations continued, experts for the Settling Parties met with Special Master McGovern in person in Oklahoma City and via telephone on December 6, 2012. Class Counsel and QEP's Counsel agreed to allow the experts to meet with Professor McGovern without lawyers present in order to promote a full exchange of information and to help each side (1) determine what additional information was needed to conduct their damage calculations and (2) challenge the other side's experts' methodology and calculations. Again, the nature of the damages calculations in this Action required the constant involvement of oil and gas accounting experts, who worked together to explore each side's respective damages claims and defenses.

31. Then, on December 14, 2012, the Settling Parties met again in Denver for a second mediation session. This session was helpful and moved negotiations forward, but it was ultimately unsuccessful.

32. Throughout this period of time, Special Master McGovern consistently communicated with the lawyers and experts for both Parties by phone and email. Further, throughout this entire period of time, the experts and attorneys from both sides engaged in extensive discussions and exchanged numerous position statements and briefs on the legal, factual and damages issues relevant to each side's position for trial and appeal. This case also involved an extensive effort in "mediation by e-mail," as the Parties exchanged position statements, replies, and rebuttals on a series of disputed issues.

33. On January 9, 2013, the Settling Parties met in Oklahoma City for another mediation session with Special Master McGovern. During this third session, the Parties, their experts, and the Special Master engaged in extensive negotiations, analysis of damages and legal issues, and arguments regarding the strengths and weaknesses of the Parties' respective claims and defenses. This mediation session was attended by a large contingent from QEP, including engineers, accounting personnel and QEP's CEO, Charles B. Stanley, who was directly involved in the negotiations. As a result, the Parties were able to reach an agreement on the major terms of settlement on January 10, 2013.

34. Due to the extensive changes in QEP's royalty payment methodology, finalizing the terms of the Settlement was an extremely technical and cumbersome process that took an additional month to complete. With further assistance from Professor Francis McGovern, who the Court appointed as Special Master after the January 9-10 mediation session, the Parties finalized the Settlement in the Stipulation and

Agreement of Settlement on February 13, 2013.[3] Counsel for both Settling Parties worked diligently to resolve any remaining issues and finalize the Stipulation on behalf of their respective clients.

35. On February 13, 2013, the Settling Parties' filed their Joint Motion to Preliminarily Approve Settlement, Approving Form and Manner of Notice and Setting Final Fairness Hearing Date ("Preliminary Approval Motion") (Docket No. 118), and Class Representatives filed their Preliminary Approval Memorandum. Docket No. 119. On February 20, 2013, the Court held a hearing on the Preliminary Approval Motion and then issued its Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice and Setting Date for Hearing on Final Approval of Settlement ("Preliminary Approval Order") on the same date. Docket No. 123. In the Preliminary Approval Order, the Court, among other things, preliminarily approved the Settlement and the form and manner of the notice campaign, directed the Settling Parties to disseminate the notice to the Class, and appointed Rust Consulting, Inc. as Settlement Administrator and Wells Fargo, N.A. as Escrow Agent. *Id*.

What the Settlement Provides—$155 Million Present Value

36. As discussed above, the Settlement provides a minimum present value of $155 million to the Class, which included *at least* $40 million Binding Benefits. *See* Ley Declaration at ¶5; QEP Affidavit at ¶13. The cash portion of the Settlement provides a payment of $115 million. This money, which is already on deposit in the Escrow

[3] *See* Declaration of Francis McGovern ("McGovern Declaration"), Docket No. 141, ¶11.

Account and is drawing interest for the Class, constitutes more than two and one-half times the actual amount of past royalty allegedly owed to the Class.

37. The Settlement also provides substantial, binding changes to the manner in which QEP will calculate and pay royalty to the Class for the lifetime of the Class Leases and any additional wells drilled on the Class Leases. The minimum estimated present value of these Binding Benefits is $40 million. *See* QEP Declaration at ¶12; Ley Declaration at ¶5. After 30 years, the minimum estimated net present value is over $138 million. *Id.* Importantly, QEP has agreed to adopt most of the practices Class Representatives and Class Counsel argue should have been used all along.

38. Specifically, these Binding Benefits are:

- QEP will discontinue its deductions from Class Members' royalty payments for fees associated with gathering, dehydration, treating, and compressing the gas in gathering systems and through the gas plants. Stipulation at ¶2.2.

- QEP will not charge POP fees to royalty owners. *Id.* at ¶2.2(b)

- QEP will pay royalty at agreed index-type prices for the gas it uses as fuel off of the lease premises and in gas plants – 'fuel gas'. *Id*. at ¶2.2(c).

- QEP will cap gas-processing fees where it receives natural gas liquid (or "NGL") value. *Id.* at ¶2.2(a).

- QEP's royalty check stubs will show in detail true prices, gross value before deduction and deductions. *Id.* at ¶2.3.

- QEP will seek better gas marketing terms from midstream companies to maximize value to royalty owners. *Id.* at ¶2.2(a).

- QEP will apply all of these benefits to all Class Member royalty owners no matter what the terms of leases or force pooling order might provide. *Id.* at ¶2.2(h).

- Class Representative Chieftain will be permitted to conduct bi-annual audits, at QEP's expense, to ensure that these changes are made and consistently provided to the Class. *Id.* at ¶2.2(f).

- QEP has agreed to an arbitration provision under which any failure of QEP to make or maintain these changes can be resolved by arbitration, at QEP's expense, in lieu of additional litigation, which will save the Class and the Court considerable time and resources. *Id.* at ¶2.2(g).

39. QEP began the above changes in March 2013. These Binding Benefits apply to current and future wells and will continue without limitation for the life of each well, regardless of transfer or assignment of interest from QEP to other oil companies. *See id.* at ¶2.2.

40. These changes, which are already underway, *instantly* increased the value of every Class Lease. *See* McGovern Declaration at ¶11; Ley Declaration at ¶¶5-7. If a Class Lease is sold, assigned, devised or transferred, these Binding Benefits run with the lease or interest. As such, the requirement to provide these benefits will bind any successor, assignee, or transferee of QEP, preserving Class Members rights as royalty owners. Class Counsel believes the concrete nature of QEP's changes to its royalty calculation and payment methodology, valued at over $40 million, make the Settlement an even more outstanding recovery for the Class. Indeed, the Binding Benefits give certainty to the Class, QEP, and the Court regarding how QEP is to calculate and pay royalty for the lifetime of the Class Leases. Accordingly, there will be no more litigation over these issues for the life of the Class Leases and, as a result, the Class will get the

royalty they are owed every year without the risk, cost, burden and uncertainty of litigating to recover damages.

41. Professor Francis McGovern, whom the Court appointed as Special Master on January 17, 2013, is familiar with the details of the Settlement, including these binding royalty calculation and payment methodology changes. In his Declaration, Special Master McGovern states:

> I observed each side's discussions regarding this [royalty payment] methodology and the underlying data used to value these future benefits, and I am confident that they not only provide an estimated present value of at least $40 million to the Class, but also achieve this result immediately without the need for or risk and expense of future litigation.

Id. at ¶11.

42. These Binding Benefits could not have been obtained at trial. Thus, presuming the Class prevailed at trial, if QEP were to resume its improper deductions in the future, the Class would have to initiate new litigation. And intervening changes in statutory and/or case law could decrease their chance of success in such litigation. However, unlike other cases where future benefits or changes are uncertain or not binding, here, under the Settlement, Chieftain will be permitted to audit QEP to enforce its compliance with these Binding Benefits, and if noncompliance is found, the issues will be resolved through arbitration according to the Stipulation. *See* Stipulation at ¶2.2(f)-(g). Both the auditing process and any arbitration will be conducted at QEP's expense. *Id.* The arbitration provision will save the Class and the Court considerable time and resources.

43. In accordance with the Stipulation, on or about February 27, 2013, QEP paid $115 million into an Escrow Account, which is currently on deposit and earning interest for the benefit of the Class. And, as mentioned above, QEP began implementing the Binding Changes effective March 2013. In exchange, upon final approval, Class Representatives and the Class will dismiss their Complaints and all related claims in the Action. *Id.* at ¶4.1(a).

The Notice Campaign

44. Even before the Court issued its Preliminary Approval Order, Class Counsel had been conducting an extensive effort to get notice out to as many Class Members as possible. This effort is in addition to the effort Class Counsel made to provide Notice of Class Action to as many Class Members as possible after the Court granted Class Certification, which in itself was a huge undertaking by Class Counsel and the Rust Consulting, Inc. *See* Rust Affidavit at ¶¶7-9. Again, after the initial Notice of Class Action was sent to the Class, approximately 111 Class Members opted out and, thus, are not part of this Action for Settlement purposes.

45. After the Court preliminarily approved the Settlement and the form and manner of notice, Class Counsel, in conjunction with Counsel for QEP, conducted an extensive campaign to distribute notice to the Class. This campaign was necessary because there are numerous Class Members in each Class Well, and many Class Wells are operated by energy companies other than QEP.

46. In order to send notice to the Class, the name and address of each Class Member are needed. In addition, to properly distribute the Net Settlement Fund, each

Class Member's royalty decimal interest and tax identification number are needed. Well operators maintain this information in the form of a "pay deck" for each well that is currently producing gas and its constituents. Well operators use pay decks to send monthly royalty payments to royalty owners. As such, QEP maintains pay decks for the producing Class Wells that it currently operates. However, QEP often markets gas as a non-operating working interest owner, and, thus, third party energy companies operate many of the Class Wells. In such cases, the current third-party operator of the Well maintains the pay deck. For Class Wells that have been plugged, the last known operator may have a pay deck available. However, if no pay deck is available for a particular Well, then the county records must be searched to obtain the names and contact information of the current royalty owners in that Well.

47. Of the 2,129 Class Wells in this case, appoximatley 45% of the wells are QEP operated and 55% are operated by third parties. *See* Ley Declaration at ¶3. Specifically, there are 221 separate operators in the QEP non-operated Class Wells. In order to get current pay decks from the operators in the QEP non-operated wells, Class Counsel, in conjunction with landmen, staff members, and QEP's Counsel, conducted an extensive campaign to contact the 221 operators to ensure that notice was properly sent to Class Members in a timely manner. Patranell Lewis, a partner at B&L, supervised this effort, which required a team of more than twenty lawyers, landmen, and support staff. Over the course of approximately six weeks, this team, working under Class Counsel's supervision, spent hundreds of hours, including evenings, weekends, and the Easter holiday weekend, working on this project. Class Counsel went to great lengths to obtain

updated and accurate information relating to these QEP non-operated Class Wells. Some of the Class Wells had been plugged and, through extensive effort, Counsel obtained the last available pay deck for those Wells to the extent such decks were available. Because the Claim Period goes back to 1988, QEP's records were not always current. Also, Wells are frequently sold to other operators and, in some cases, QEP had sold its interest in a Well to another party during the Claim Period. Thus, Class Counsel had to track down the current operator of these wells. Class Counsel and its team searched the records of the Oklahoma Corporation Commission to determine who the operator was for many of the Wells. On many occasions, it was necessary to contact operators more than once as they failed to provide all of the data needed. In other instances, Class Counsel had to contact operators numerous times because QEP had sold its interest in the Well during the Claim Period.

48. The operators were asked to provide the data in a searchable Microsoft Excel spreadsheet. Very rarely did any operator comply. Therefore, once the information was obtained, persons under Class Counsel's supervision spent many weeks converting the data into a useable format so the data could be used by the Settlement Administrator to send out timely and proper notice to Class Members. This same data will be used later to distribute the Net Settlement Fund to Class Members according to the Plan of Allocation.

49. The long-form notice ("Notice") was sent in four "waves."[4] The first Notice was mailed on March 22, 2013 (18,669 notices were mailed). The second Notice was mailed on April 8, 2013 (21,320 notices were mailed). The third Notice was mailed on April 12, 2013 (1,935 notices were mailed). The fourth Notice was mailed on April 15, 2013 (2,445 notices were mailed). Through this effort, Class Counsel was able to mail Notices to Class Members whose claims represent approximately 97% of the Net Settlement Fund. In addition, to ensure that as close to 100% of the Class as possible receives notice, additional notice was published on April 5, 2013 in the *Tulsa World* and the *Oklahoman*.[5] Class Counsel also is continuing to contact the remaining operators to obtain pay decks for distribution purposes and oversee efforts to run title on some of the Wells where there is no available pay deck.

50. Again, the Court already has preliminarily approved the form and manner of the Notice and Publication Notice. *See* Preliminary Approval Order at ¶5. The Court stated the proposed form and manner of notice "is the best notice practicable under the circumstances, constitutes due and sufficient notice to all person and entities entitled to receive such notice, and fully satisfies the requirements of due process and Rule 23…." *Id.* The Notice and Publication Notice provided Class Members with all of the information they needed to fully understand the terms the of the Settlement and their rights thereunder. As Professor Geoffrey Miller, an expert for Class Representatives, notes, "[t]he Notice clearly informs the Class about the nature of the litigation, the

[4] The Notice is attached to the Rust Affidavit as Exhibit C.
[5] Examples of actual published Notices are attached to the Rust Affidavit as Exhibits D and E.

proposed Settlement, and provides instructions for the Class Members to object or opt out."[6]

51. Also, Class Counsel and its team, in conjunction with QEP's Counsel, carried out the approved manner of disseminating the Notice and complied with all deadlines in the Preliminary Approval Order by executing the notice campaign described above. According to Professor Miller, "it is apparent the parties not only utilized their best efforts to distribute Notice…in a reasonable manner, but went well above and beyond the norm." *Id.* at ¶77. As such, Class Counsel submits that the Notice and Publication Notice, and the manner in which they were disseminated to the Class, should be finally approved.

52. Because of the notice campaign described above, Class Counsel anticipates that distribution checks representing more than 97% of the Net Settlement Fund can be mailed to Class Members within sixty days of the Court's orders approving the Settlement and plan of allocation becoming final. Class Counsel is not aware of any other royalty owner class action in which such a rapid distribution has be made. Of course, some checks will be returned or will not be cashed for a variety of reasons, and follow up will be done in each such instance.

[6] *See* Declaration of Geoffrey P. Miller in Support of the Stipulation and Agreement of Settlement, Class Counsel's Application for Attorneys' Fees, Reimbursement of Litigation Expenses and Request For Case Contribution Awards, and Notice of Proposed Settlement ("Miller Declaration"), Docket No. 152, at ¶78.

The Overwhelming Positive Reaction of the Class to the Settlement

53. After class certification, the Settlement Administrator received approximately 111 Requests for Exlsuion. *See* Rust Affidavit at ¶7. These opt-outs were excluded from the Settlement. *Id.* Since Notice of the Settlement was disseminated, only eleven additional Class Members have elected to opt out of the Settlement.[7] The payments that would have been made to these opt-outs represent less than .0006% of the Settlement Cash Amount. The proceeds that would have been allocated to these opt-out Class Members—approximately $71,380.00—will be shared by the Class Members who did not exclude themselves from the Settlement.

54. To date, no Class Members have objected to the Settlement.

55. Class Representatives, Chieftain and Jack Lancet, have filed declarations with the Court in support of the Settlement.[8] Chieftain's president and attorney, Robert S. Abernathy, was intimately involved in this litigation and participated in the negotiations and mediation that led to the Settlement. *See* Abernathy Declaration at ¶¶8-11. Mr. Abernathy, on behalf of Chieftain, states in his declaration, "I believe that my understanding of the facts as they pertain to this litigation, as well as my extensive

[7] *Id.* at ¶21. Again, after Class Counsel disseminated the Notice of Class Action, the Settlement Administrator received approximately 111 Requests for Exclusion. These persons were not part of the Settlement. The eleven additional Class Members that opted out of the *Settlement*, refers only to those Class Members that remained a part of the Class after certification, but who opted out of the Class *after* the Notice of Settlement was sent out.

[8] *See* Declaration of Robert S. Abernathy on Behalf of Chieftain Royalty Company ("Abernathy Declaration"), Docket No. 140, at ¶15; Declaration of Jack Lancet ("Lancet Declaration"), Docket No. 139, at ¶13.

interaction with Class Counsel, enables me to recommend approval of the Settlement." *Id.* at ¶15.

56. Mr. Lancet also endorses the Settlement. *See* Lancet Declaration at ¶13. Like Mr. Abernathy, Mr. Lancet was actively involved in the litigation and stayed informed of all developments regarding the proceedings and the Settlement. *Id.* at ¶¶7-10. He states in his declaration, "I believe the Settlement is a substantial recovery for the Class under circumstances where it was possible that no recovery at all would be obtained." *Id.* at ¶13. Thus, both Class Representatives support the Settlement and believe it should be finally approved.

57. Additionally, at least ten absent Class Members have filed declarations in support of the Settlement. *See* Docket Nos. 131-38, 155-57. For example, former federal Judge Michael Burrage, who is a Class Member in this Action, filed a declaration stating, "I believe Class Counsel achieved an extraordinary and unprecedented Settlement in this case," and "I fully support approval of the Settlement."[9] Judge Burrage has vast experience in Oklahoma class actions as a judge, class counsel, and defense attorney and has practiced law in Oklahoma since 1974. *Id.* at ¶3.

58. Also, Dan Little, an absent Class Member in this Action, supports the Settlement as fair and reasonable.[10] Mr. Little is licensed to practice law in Oklahoma and is admitted to practice in the Western District of Oklahoma. *Id.* at ¶3. He has

[9] Declaration of Michael Burrage in Support of Case Contribution Awards, Attorneys' Fees and Expenses ("Burrage Declaration"), Docket No. 138, at ¶6.
[10] *See* Declaration of Dan Little in Support of Attorneys' Fees, Expenses, and Case Contribution Awards ("Little Declaration"), Docket No. 137, at ¶8.

practiced law in Oklahoma for over forty years, focusing extensively on oil and gas litigation. *Id.* Mr. Little states, "I believe the Settlement is fair and provides a great result for me and other Class members," and, "the value conferred by [the] Future Benefits is real, measurable, and fully transferrable." *Id.* at ¶¶8-9.

Additional Support for the Settlement

59. Additionally, Special Master McGovern endorses the Settlement. Special Master McGovern is a professor of law at Duke University, where he teaches classes related to alternative dispute resolution. McGovern Declaration at ¶2. He also has served as a professor, visiting professor, or fellow at Berkeley School of Law, Stanford Law School, Harvard Law School, the Massachusetts Institute of Technology, University of Alabama Law School, Boston University School of Law and Cumberland School of Law, among others. *Id.* Moreover, he has served as a special master, court expert, mediator, or neutral in over seventy-five cases. *Id.* He is intimately familiar with Oklahoma state and federal courts and has helped facilitate settlements in large class actions involving Oklahoma businesses and energy companies. *Id.* Notably, he recently served as mediator and special master in front of Judge Lee West in *Chickasaw Nation and Choctaw Nation of Oklahoma v. Mary Fallin et al*, Case No. 5:11-CV-00927 (W.D. Okla.). Special Master McGovern also recently mediated the $119 million settlement in *Coffey, et al. v. Freeport Mc-Moran, et al.*, which involved property contamination claims brought by the residents of Blackwell, Oklahoma, against a large zinc smelting operation. *Id.* And, he mediated a substantial settlement in *United States of America ex rel. Harold Wright v. Agip Petroleum, et al.*, a federal qui tam action alleging royalty

underpayment claims against oil and gas companies, many of which were based in or worked in Oklahoma. *Id.*

60. Having presided over the entire mediation process and communicated extensively with the Parties and their experts, Special Master McGovern developed a complete understanding of this case. He is familiar with the strengths and weaknesses of the Parties' respective positions, the risks and rewards of continued litigation and inevitable appeal, and the costs and benefits of settlement. *Id.* at ¶12. Thus, Special Master McGovern's opinion regarding the Settlement should be given considerable weight.

61. In his declaration, Special Master McGovern states:

> Based on my understanding of this case, my review of the court filings and legal briefing, and the rigorous arm's-length mediation process, I believe that the terms of the settlement are fair, reasonable, and adequate and in the best interests of the Class. I believe the immediate value of the $115 million cash recovery and the minimum present value of $40 in binding changes obtained in the face of substantial legal and factual disputes, outweigh the mere possibility of some recovery in the future.

Id. at ¶13.

62. Moreover, Professor Geoffrey P. Miller has executed a declaration in support of the Settlement. *See* Miller Declaration. Professor Miller is the Stuyvesant P. Comfort Professor of Law at New York University, where he teaches classes related to class action litigation, including Civil Procedure, Complex Litigation, and other courses. *Id.* at ¶¶1, 3. He is a member of the Board of Advisors for the American Law Institute's project on "Principles of the Law of Aggregate Litigation." *Id.* Professor Miller also has served as counsel in class actions and shareholders derivative litigation and has written

approximately a dozen research articles dealing with class action law and practice. *Id.* at ¶¶4-5.

63. Professor Miller has opined that the Settlement is fair, adequate, and reasonable. *Id.* at ¶9. After analyzing the factors courts consider when granting final approval, Professor Miller states, "[b]ased upon my experience, expertise and analysis of the Settlement…it is my opinion that the proposed Settlement is fair, reasonable and adequate." *Id.* at ¶27.

Class Counsel Endorses the Settlement

64. An important factor in approving a proposed Settlement is the opinion of experienced Class Counsel. Here, Class Counsel fully supports and endorses the Settlement. Class Counsel believes the Settlement is fair, reasonable, and adequate and should be approved. More than anyone, Class Counsel is aware of the risks and uncertainties that accompany proceeding to trial in this Action. The Settlement avoids the risk of receiving no recovery after more than two years of intense, expensive litigation and provides the Class with an excellent recovery, offering more than two and one-half of the Class' alleged past royalty underpayment and substantial, concrete changes to QEP's methodology for calculating and paying royalty with a present value of at least $40 million. The possibility of either no recovery at all or a limited recovery was very real. For example, there is currently pending at the Tenth Circuit an attack on certification of a royalty owner class action. *See Chieftain Royalty Co. v. XTO Energy Inc.*, No. 12-7047 (10th Cir.). Therefore, Class Counsel submits that the Settlement should be finally approved.

Class Counsel also Endorses the Plan of Allocation

65. Upon final approval of the Settlement, the Settling Parties will fully execute the terms of the Stipulation and distribute the Net Settlement Proceeds in accordance with a Court-approved Plan of Allocation and Distribution ("Plan") that is included in the proposed Final Approval Order. Class Counsel and Class Representative's expert, Barbara Ley, submit that the proposed Plan is fair, reasonable, and adequate and in the best interest of the Class. *See* Ley Declaration at ¶9.

66. Under the proposed Plan, Class Members will be paid based on their respective individual claimed royalty underpayment with due regard to when that royalty underpayment occurred. The Plan is based on a detailed evaluation of the strengths and weaknesses of the Class' claims. The Net Settlement Proceeds will be allocated to individual Class Wells proportionately, with due regard for (1) the production marketed by QEP on behalf of itself and/or other well owners, (2) the amount of claimed royalty underpayment to Class Members and (3) the time period when the claimed underpayment occurred. *See* Plan of Allocation at ¶2.a. Thereafter, QEP will distribute the Net Settlement Proceeds allocated to each Class Well proportionately among all Class Members based on their royalty decimal interest in each such Well using the December 2012 royalty pay deck (or the most current available royalty pay deck). *Id.*[11]

[11] Reference to the December, 2012 pay deck means the royalty ownership that existed for gas production in the month of December, 2012 that would have been used to generate royalty distribution in February, 2013. In Oklahoma, royalty is paid two months after the end of the production month either directly to royalty owners in the case of wells that QEP operates or to the well operator for further distribution to royalty owners in wells where QEP is a non-operator who marketed its own gas.

67. A check for each Class Member's allocation of the Net Settlement Proceeds will be mailed to each Class Member's last known mailing address, using the December 2012 production pay deck (or the most current available pay deck or division order data). *See id.* at ¶3. The data needed to make this distribution was obtained through Class Counsel's extensive efforts in gathering pay decks and Class Members' contact information for notice purposes.

68. Returned or stale-dated Distribution Checks will be reissued as necessary to ensure delivery to the appropriate Class Members using commercially reasonable methods subject to review and approval by the Court. *Id.* at ¶4. The Settlement Administrator will perform all of these tasks as promptly as possible after the Court approves the Plan. QEP will bear all administration costs. *Id.* at ¶6.

69. In sum, Class Counsel believes the proposed Plan of Allocation is fair, reasonable, adequate, and in the best interests of the Class.

Attorneys' Fees and Expenses

70. Class Counsel is seeking an award of Attorneys' Fees of one-third of the $155 million Settlement Amount to be paid out of the cash proceeds of the Settlement ("Fee Request"). Given the incredible recovery Class Counsel achieved on behalf of the Class and the extensive efforts Class Counsel dedicated to this action, this Fee Request is fair and reasonable. Indeed, even after a deduction for the full amount of fees and expenses from the cash portion of the Settlement, the Class will recover well over 100% of the past royalty they are allegedly owed. Further, for the lifetime of the Class Leases, including current Class Wells and any new wells drilled on any Class Lease, the Class

will get the benefit of the material binding changes to QEP's royalty calculation and payment methodology—and a free audit every two years—without the need for or uncertainty of further litigation. And, if necessary, the Class will have a right to arbitrate over any failure to abide by these binding requirements at QEP's expense. The Class will thus get—at a minimum—an additional $40 million in discounted present value. There will be no uncertainty or risk of litigation to obtain this value, and the courts—neither this Court nor any other Oklahoma court—will be burdened by any further royalty litigation with QEP over the Class Leases.

71. The Fee requested is admittedly a very large sum of money if viewed with 20/20 hindsight. However, when Class Counsel agreed to take on this case the only thing certain was that, at a minimum, thousands of hours of uncompensated work and hundreds of thousands of dollars of uncompensated expense would necessarily have to be incurred. Very few law firms have the expertise and financial wherewithal to take on such risk on a contingent fee basis. And those firms that do agree to take on such cases almost always do so on a 40% contingent fee basis. That is the deal that Class Counsel made in this case. When the case was filed, Class Counsel had no way of knowing the amount of royalty that had been underpaid by QEP—that was a closely guarded secret. Also, there was no way to know if QEP witnesses would make damning admissions in depositions or if "smoking gun" documents would be found among the hundreds of thousands of documents reviewed. Additionally, when the 40% contingent fee was agreed to, Class Counsel could not have known what jurisdiction this case would have been removed or transferred to, if any, or what future decisions in the Tenth Circuit would affect the

outcome of the case. Also, the Oklahoma legislative changes enacted at the behest of large oil companies in May, 2012 were unknowable when the fee was agreed to. It would be both unfair and chilling to other lawyers who might consider taking on similar cases to discount the percentage fee simply because the result was exceptional in dollar terms.

72. The Fee Request is below market rate for the quality representation provided in a case like this one. This is evidenced by the fact that Class Representatives negotiated a 40% fee with Class Counsel at the outset of this Action. Yet, Class Counsel is only seeking a fee of one-third. As Robert Abernathy states in his Declaration:

> Based on my evaluation of this complex Action, the risks associated with litigating the Action, the potentially significant expenses Class Counsel could be required to incur and the high level representation to be provided by Class Counsel, Class Counsel and I agreed that Class Counsel would represent Chieftain on a contingency fee not to exceed 40%. At the time this agreement was reached, I believed the ceiling of a 40% contingency fee to be at or below the market rate. Class Counsel and I executed a written agreement that Class Counsel could seek a fee of 40% of any gross recovery.

Abernathy Declaration at ¶7.

73. Jack Lancet echoes this sentiment in his declaration:

> Class Counsel negotiated the amount of their request with me prior to my entry into the litigation and, as a result of their extensive, efficient and excellent work, I have approved Class Counsel's application for a fee award equal to thirty-three and one-third (33 1/3%) of the total settlement value of $155 million, which is less than the 40% I approved before entering the Action.

Lancet Declaration at ¶15.

74. Indeed, in our experience, the typical range in similar class actions is more than the Fee Request here. Importantly, even after the requested Attorneys' Fees are paid

out of the Settlement Cash Amount, the Class will receive 100% of its claims for past royalty underpayment. Indeed, even after the Fee Request and other fees and expenses are paid out of the Settlement Cash Amount, the Class will receive more than $17.5 million more than the estimated past royalty underpayment of $43.5 million.[12] And this amount is only for the *past* royalty owed to the Class. That is, it does not account for the more the $138 million the Class will recover over the next 30 years as a result of the Binding Benefits. *Id.*

75. Based on the foregoing, Class Counsel submits that the fee percentage should be paid based upon a total value of $155 million. Class Counsel is not requesting a fee based on any additional value, such as the value of the cost of administration that is being paid separately by QEP (rather than from the Settlement Fund) or the likely greater value of the binding changes to QEP's royalty calculation and payment methodology.

76. Class Counsel has dedicated countless time, labor, and resources to successfully litigating and resolving this Action. As a threshold matter, Class Counsel researched and drafted the Complaint in late 2010, and filed this Action against QEP on January 20, 2011. The Parties have litigated this matter for over two years. And Class Counsel has represented the Class on a wholly contingent basis, advancing considerable expenses in the process.

77. The work Class Counsel has done includes extensive motion practice (including defeating QEP's Motion for Judgment on the Pleadings and obtaining class

[12] *See* Declaration of Steven S. Gensler in Support of Award of Attorneys' Fees ("Gensler Declaration"), Docket No. 154, at ¶18.

certification), filing hundreds of docket entries, taking numerous depositions, exchanging comprehensive fact and expert discovery, and participating in a thorough mediation process before reaching a settlement. Counsel produced and/or analyzed approximately 12 gigabytes, 30,300 files, and 782,000 pages of digital data. Additionally, throughout the entire discovery period, Class Counsel was required to meet and confer with Defendants' counsel regarding discovery issues. Many of these meet and confer sessions took several hours to complete, and often took place in multiple sessions over several days.

78. As the Court is aware, Class Counsel engaged in extensive pleading and substantive motion practice, which is described above and will not be recounted here.

79. The comprehensive fact discovery conducted in this case allowed the Settling Parties to approach settlement negotiations with a realistic perspective of the viability of the Class' claims and the alleged damages.

80. In addition to Class Counsel's work in this Action, Class Counsel has worked hard behind the scenes on behalf of the Class. Specifically, Class Counsel actively advocated for the rights of royalty owners in other forums throughout the State of Oklahoma on issues that affected this case. For example, Class Counsel briefed and argued a Motion to Dismiss several energy companies' request to the Oklahoma Corporation Commission to determine whether operators in a drilling and spacing unit owe a fiduciary duty to royalty owners in that unit—an issue before the Court in this case. The Commission granted Class Counsel's Motion and dismissed the request. *See* OCC Report Granting Motion to Dismiss Applications of Cimarex Energy Co., Unit

Petroleum Co., New Dominion LLC, & Range Prod. Co. (Aug. 23, 2012). During calendar year 2011 Class Counsel devoted a substantial amount of time and energy supporting the efforts of the plaintiffs in *Naylor Farms, Inc. v. Anadarko OGC Co., et al.*, CIV-08-668-R (W.D. Okla.), a related royalty owner class action pending before this Court. Class Counsel provided extensive legal and factual research to the *Naylor Farms* plaintiff counsel in response to numerous motions filed by both sides to that controversy. Class Counsel shared with the *Naylor Farms* plaintiff counsel what had been learned from depositions and what Class Counsel otherwise knew about QEP royalty payment practices. Class Counsel also has contributed their time, expertise, and resources to other royalty underpayment class actions in Oklahoma to attempt to ensure that positions were not taken in other cases that could be adverse to the Class. Class Counsel was not compensated for any of the work it performed in these other cases.

81. Successfully litigating this Action also required Class Counsel to expend considerable time and resources consulting with and preparing key experts. These experts include: (1) Alyce Hoge, an attorney and professional lease and title analyst and division order analyst; (2) Barbara Ley, a forensic accountant specializing in oil and gas matters; (3) Steve Reese, an oil and gas industry consultant specializing in gas marketing; (4) Dan Reineke, a petroleum engineer with experience as a well operator, drilling engineer, and production engineer; and (5) consulting only experts.

82. Each of these experts reviewed and analyzed various parts of the approximately 782,000 pages of digital data produced by QEP and prepared reports that were made available to QEP in September of 2011. Also, Class Counsel, in conjunction

with these experts, reviewed and analyzed over 7,700 leases, consisting of more than 18,400 pages, to determine Class Member's rights under their respective leases and to categorize the leases for the purposes of class treatment. This analysis allowed Class Counsel to formulate a new Class definition that included subclasses, which was submitted to and approved by the Court. *See* Docket Nos. 90-91.

83. Class Counsel has worked with and continues to work with several consulting-only experts throughout this litigation. Class Counsel uses these experts for assistance with the oil and gas accounting required for calculation of damages and distribution of the Net Settlement Proceeds.

84. Class Counsel worked hard to develop the uniform damages model for the Class' past royalty underpayment claims. This proprietary model is a uniform damages theory that is far more precise than other damages models used in similar cases and it has not been advanced by plaintiffs in other cases. Also, because royalty interests in Oklahoma are pooled, royalty owners are paid their respective interests out of a "royalty pot." This means that if the royalty attributed to any royalty owner in a particular pot is under-calculated, then all of the royalty owners in that pot will be proportionately underpaid. Class Counsel worked diligently to create a damages model based on this royalty pot theory, which was used during settlement negotiations. Class Counsel believes this damages model uniformly, fairly, and adequately reflected the damages alleged by the Class.

85. When Class Counsel agreed to take on this Action, there were many disagreements between plaintiffs and defendants regarding Oklahoma oil and gas law that

affected the Class' claims. These issues go to the heart of the Class' claims, and the Settling Parties maintain differing views. As Special Master McGovern points out, "significant differences still exist between the parties on both liability and damages," and "[t]he parties also had numerous disputes regarding a number of legal issues concerning Oklahoma oil and gas law and the proper calculation of royalty." McGovern Declaration at ¶9. Even if the Court ruled in favor of the Class on these legal issues, the Settling Parties would have inevitably disputed damages.

86. Class Counsel also engaged in a comprehensive mediation process overseen by Special Master McGovern. This mediation process, which led to the Settlement now before the Court, is described in detail above. And, in addition to all of this work, Class Counsel engaged in the extensive efforts regarding notice that are discussed above.

87. Moreover, Class Counsel will continue to dedicate its time and effort on behalf of the Class even after the Net Settlement Proceeds are distributed. That is, Class Counsel will assist Chieftain with its responsibility to audit QEP for compliance with the Binding Benefits. Again, the Settlement allows biannual audits at QEP's expense to be conducted to ensure that QEP is complying with the binding changes to QEP's royalty calculation and payment methodology.

88. Robert Abernathy, on behalf of Class Representative Chieftain, says in his declaration, "Chieftain is very pleased with the efforts of Class Counsel who at all times conducted themselves with professionalism and diligence while effectively advocating the interests of the Class, Chieftain and Jack Lancet." Abernathy Declaration at ¶16.

89. Likewise, Class Representative Jack Lancet states, "I believe that without the skill of Class Counsel, this resolution would not have been achieved." Lancet Declaration at ¶14. Thus, Class Representatives approve of Class Counsel efforts in prosecuting this Action.

90. Class Counsel is comprised of highly skilled and dedicated attorneys with experience prosecuting large class actions such as this one. Class Counsel has unique experience with oil and gas royalty underpayment class actions in particular. This Action required investigation and mastery of complex factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. To properly perform the legal services this Action called for, Class Counsel developed extensive knowledge of gas marketing, engineering, lease and title analysis, damages modeling and royalty payment practices through these lawsuits. During his career, Mr. Barnes has gained industry experience as a landman, oil company executive, oil and gas title lawyer, and litigator. He has worked with and against oil industry experts in all aspects of engineering, gas marketing, accounting, geology and geophysics for over 35 years in hundreds of cases. Patranell Lewis has worked with him in all of those cases for the past 25 years. Mr. Barnes successfully tried, and defended on appeal, the *Bridenstine v Kaiser-Francis* royalty owner class action. QEP, which also was one of the defendants in that case, settled shortly before trial. Mr. Barnes spent thousands of hours in the *Bridenstine* reviewing QEP business practices and deposing QEP witnesses. As a direct result of the *Bridenstine* case being affirmed, QEP changed its royalty payment practices

in 2005. Mr. Barnes' background knowledge of QEP was of great benefit in pursuing the royalty claims in this action.

91. NPR regularly represents plaintiffs in royalty owner class actions, and other complex commercial and consumer class action litigation, and has served as counsel in several cases involving oil and gas issues. NPR attorneys Brad Beckworth, Jeff Angelovich and Susan Whatley, each of whom were integrally involved in this litigation, are licensed to practice in Oklahoma state courts and the Eastern and Western Districts of Oklahoma. NPR served as Lead Attorneys in *Johnson, et al v. Shell, et al* (E.D. Tex.)—a *qui tam* action that ultimately settled in excess of $400 million—the second largest qui tam recovery in history for the United States in an oil and gas royalty case. Additionally, NPR served as class counsel in *In Re: Triton Energy Limited Securities Litigation*, which was one of the first cases involving the fraudulent accounting of oil and gas reserves successfully brought to conclusion. There, NPR obtained a settlement of $49.5 million for shareholders of Triton Energy, a Dallas-based oil company. NPR also has extensive experience representing Oklahoma clients in complex commercial cases, such as representing CompSource Oklahoma in the $280 million settlement against Bank of New York Mellon, the Oklahoma Teacher Retirement System in the $80 million settlement against MoneyGram, OTRS, and the Oklahoma Law Enforcement Retirement System in the $322 million settlement against Delphi, and the citizens of Blackwell in the $119 million settlement against Freeport Mc-Moran. Class Counsel's skill and experience was required in this action, especially considering the quality of lawyers that make up QEP's Counsel.

92. Robert Abernathy for Class Representative Chieftain states:

> I, on behalf of Chieftain, retained B&L and NPR because I believed these firms possessed the requisite expertise in complex, nationwide litigation and had sufficient legal and financial resources to vigorously prosecute this Action on behalf of all Class Members against a well-funded and well-defended opponent.

Abernathy Declaration at ¶7.

93. Based upon a good-faith estimate, Class Counsel estimate they have collectively expended over 10,000 hours of attorney and professional time on the prosecution of this matter. In short, Class Counsel has expended considerable time, talent, and resources in advancing the claims of the Class in this matter and, as a result of our time and labor, we obtained a recovery for the Class that ranks at the very top of all recoveries ever obtained in an royalty class action in Oklahoma or anywhere else in the nation.

94. With this expertise and background, Class Counsel believes the Fee Request is fair and reasonable and should be approved. Therefore, Class Counsel requests that the Court grant its Fee Request of one-third of the $155 million Settlement Amount to be paid out of the Cash Settlement Amount.

95. In prosecuting this Action, to date Class Counsel has advanced nearly $1 million is expenses. And Class Counsel litigated this case on a wholly contingent basis, without deriving any revenue from this case to date. Here, the prospect of long, expensive litigation was clear from the beginning, and the risk of no recovery that comes with contingent fee representation only added to the case's undesirability. If Class Representatives had not been successful, Class Counsel would have received zero

compensation (not to mention no reimbursement for expenses). And, the time and expense dedicated to this Action necessarily precluded Class Counsel from taking on other cases. Indeed, for much of the period between late 2010 and April 2013, the lead attorneys for Class Counsel were required to dedicate substantial time and resources to this litigation.

96. The costs and expenses that Class Counsel advanced on behalf of the Class were reasonable and necessary and include routine expenses related to copying, court fees, postage and shipping, phone charges, legal research, and travel and transportation, as well as expenses for experts and document production and review, which, in Class Counsel's experience, are typical of large, complex class actions such as this one. All of these costs and expenses were reasonable and necessary and were critical to the prosecution of this Action.

97. In the Notice to Class Members, Class Counsel stated it would seek reimbursement of up to $1,350,000 in Litigation Expenses. Class Counsel's actual out-of-pocket expenses to date are just under $ 1 million. However, Counsel has elected not to seek reimbursement for certain expenses and has capped the amount of travel-related expenses for which it will seek reimbursement. For example, from time to time members of Class Counsel utilized private aircraft for transportation related to this case. Class Counsel believes the use of such transportation provides a significant benefit to our clients and the Class because it allows us to prosecute a case more quickly and efficiently, and saves us the time and cost of wasting extra days out of town to make a commercial flight. For example, NPR lawyers can fly directly from their primary offices in

Daingerfield, Texas to Oklahoma City in less than one hour; however, it takes over 5 hours to drive to Oklahoma City and to fly commercially, one must either catch a series of flights or drive 2 and ½ hours to Dallas to catch a flight to Oklahoma City, which results in a round trip of ten hours or more. Thus, we are able to avoid lost time, extra hotel stays and other inefficiencies. Additionally, we are able to access experts and witnesses on short notice. However, although we believe the use of private aircraft provides such benefits, we have not submitted the actual costs of such trips in this matter. Instead, for trips when a private aircraft was utilized and there was a commercial flight alternative, we have compared the cost of a refundable economy full fare for each passenger to the cost of using private aircraft and have submitted the lesser of the two. Thus, if it would have cost less to fly on a commercial flight, we have submitted the cost of such a commercial ticket and have written off the additional actual cost. In other words, we are writing off these additional charges even though we believe they provide an advantage to the Class.

98. To date, Class Counsel has incurred $903,502.79 in Litigation Expenses. In addition to the expenses Class Counsel has already advanced, Class Counsel may incur future expenses related to administration, distribution, litigation, and appeal after the May 7, 2013 filing of the Memoranda and this Declaration. As such, at the May 28, 2013 Final Fairness Hearing, Class Counsel intends to seek reimbursement for expenses incurred up to $1,350,000. However, Class Counsel will only recover such expenses in excess of $903,502.79 if they are actually incurred in the future. And, in no event will Class Counsel's cumulative Expense Request exceed the $1,350,000 stated in the Notice.

99. A chart demonstrating the costs for which Class Counsel, NPR and B&L seeks reimbursement from the Settlement Cash Amount is set forth below. Class Counsel will also provide the Court with updated expense charts at the Final Fairness Hearing.

NIX, PATTERSON & ROACH, LLP
Chieftain Royalty Co. & Jack Lancet v. QEP Energy Co.
Expense Report

	Total Category Expense
Administrative Expenses	**14,925.49**
FedEx	392.86
AT Conference	254.94
Library Materials	22.36
Document Production/Copying	3,453.56
Court Filing /Reporting	10,801.77
Expert Expenses	**545,799.72**
Barbara A. Ley	246,511.78
Daniel T. Reineke	47,325.00
Professor Geoffrey P. Miller	*23,333.34
Consulting Expert #1	152,029.01
Consulting Expert #2	38,850.00
Consulting Expert #3	3,450.00
Consulting Expert #4	6,478.90
Consulting Expert #5	27,821.69
Litigation Support	**86,336.03**
Epic Litigation Support	84,125.00
Litigation Solution Inc.	2,211.03
Research & Investigation	**15,245.37**
Land work /Lease Analysis	7,662.82
Lexis Nexis	6,917.20
Pacer / West Law	665.35
Document Review/Database *Creation, Maintenance, Admin., Licensing and Video Support*	**5,612.32**
Clarity Legal	250.00
Mathew Bender & Co., Inc.	150.30
Red Earth Data Server	1,716.77
QEP Resources	3,495.25
Mediator Fees	**95,234.10**
Professor Francis McGovern	95,234.10
Travel Expenses	**54,050.21**
Lodging	6,139.61
Meals	2,401.91
Transportation	45,508.69

Notice of Class Certification	**76,366.19**
Rust Consulting	76,366.19
TOTAL SUBMITTED NPR EXPENSES	**893,569.43**
TOTAL WRITE OFF NPR EXPENSES	**50,516.76**
ESTIMATE OF FUTURE EXPENSES	**200,000.00**
Barbara A. Ley	75,000.00
Daniel T. Reineke	25,000.00
Consulting Expert #1	50,000.00
Class Counsel	50,000.00

* Class Counsel is not seeking reimbursement for that part of Professor Geoffrey P. Miller's work spent solely on issue of attorneys' fees.

BARNES AND LEWIS, LLP
Chieftain Royalty Co. & Jack Lancet v. QEP Energy Co.
Expense Report

	Total Category Expense
Administrative Expenses	**1,813.64**
FedEx & Postage	1,141.16
Library Materials	71.43
Document Production/Copying	601.05
Expert Expenses	**825.00**
Consulting Expert #1	825.00
Research & Investigation	**2,437.86**
Pacer / West Law	2,437.96
Document Review/Database *Creation, Maintenance, Admin., Licensing and Video Support*	**1,236.27**
IHS Global, Inc.	611.27
Red Earth Data Server	625.00
Travel Expenses *Lodging, Meals and Transportation*	**3,620.59**
TOTAL BARNES & LEWIS, LLP EXPENSES	**9,933.36**

100. Even after Class Counsel is reimbursed for these Litigation Expenses from the Settlement Cash Amount, the Class will receive 100% of its claims for past royalty principal underpayment, plus substantial interest and other litigation claims.

101. Again, in the Notice the Class was informed that Class Counsel would request reimbursement for expenses up to $1,350,000. Therefore, the expenses for which we are seeking reimbursement are less than our actual expenses and will not exceed the amount set forth in the Notice.

Class Counsel Supports Class Representatives' Request for a Case Contribution Award

102. Class Representatives have been dedicated to this Action at all times. Again, this litigation was hard fought for over two years. During that time, Class Representatives expended extensive time and resources prosecuting this action, from meeting with Class Counsel to providing, reviewing and editing documents. In our opinion and experience, each Class Representative fully understood its duties as a class representative and at all times were, and continue to be, fully committed to this Action.

103. Class Representatives pursued their claims vigorously in the face of strong and dedicated opposition. They did not decide to settle this case until they were able to achieve a result they believe to be not only fair and reasonable, but truly an outstanding recovery for the Class in the face of the very real risk of receiving nothing.

104. Moreover, this is not a case where the Class Representatives merely signed the Complaint and then had little or no involvement. Each Class Representative actively and effectively fulfilled its obligations as a representative of the Class, complying with all

reasonable demands placed upon them during the prosecution and settlement of this Action, and provided invaluable assistance to Class Counsel. Indeed, Robert Abernathy, the President of Chieftain, has worked with Class Counsel nonstop since the inception of this litigation. *See* Abernathy Declaration at ¶¶8-11. Mr. Abernathy's experience, knowledge, and skill in the oil and gas field, and as an attorney, contributed significantly to the prosecution of this case. He reviewed pleadings, motions, and other court filings, communicated regularly with Class Counsel, responded to document requests and interrogatories, searched for and produced documents, and attended mediation sessions and hearings. *Id.* Class Counsel and Mr. Abernathy, have a long-standing professional relationship lasting over several years, and Class Counsel approves of his efforts in this Action.

105. Also, Chieftain has accepted the responsibility of auditing QEP's practices to ensure QEP is complying with the future royalty calculation methodology and other Binding Benefits. *Id.* at ¶13. This auditing task may occur every two years for the foreseeable future. As such, Chieftain, with assistance from Class Counsel, will dedicate its valuable time and resources on behalf of the Class to ensure that Class Members' rights as royalty members are not being violated.

106. Mr. Lancet also has been a valuable asset to the resolution of this Action on behalf of the Class. *See* Lancet Declaration at ¶6-10. He provided certain Class Members with additional representation when the Court required the Class to be divided into sub-classes. Mr. Lancet also made himself available and communicated regularly with Class Counsel during the six-month period of settlement negotiations. *Id.* In his

declaration, Mr. Lancet states, "I also actively supervised and monitored Class Counsel's work in this case and participated in all significant decisions since joining the Action, including the decision to enter into the Settlement." *Id.* at ¶7.

107. Neither Class Representative has been compensated for their efforts in representing the Class. The Notice sent to the Class stated that Class Representatives may seek Case Contribution Awards not to exceed 0.5% of the Settlement Cash Amount in aggregate as compensation for their time and efforts in this Action. This award will be split among Chieftain and Mr. Lancet appropriately.

108. Again, even after the Case Contribution Award is paid out of the Settlement Cash Amount—in addition to the Fee Request and the Expense Request—the Class will still receive 100% of its past royalty underpayment damages, plus substantial interest and other litigation claims, and many millions more as Class Members are paid as a result of the Binding Benefits over the life of the Class Leases.

109. It is the opinion of Class Counsel that Class Representatives should be awarded the full aggregate amount of 0.5% of the Settlement Cash Amount. Due to Class Representatives efforts on behalf of the Class, this Case Contribution Award is fair and reasonable.

Dated: May 7, 2013

Bradley E. Beckworth
Nix, Patterson & Roach, LLP

Robert N. Barnes
BARNES & LEWIS, LLP

EXHIBIT 2

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

COMPSOURCE OKLAHOMA, BOARD OF TRUSTEES OF THE ELECTRICAL WORKERS LOCAL NO. 26 PENSION TRUST FUND, in its capacity as a fiduciary of the Electrical Workers Local No. 26 Pension Trust Fund, CHILDREN'S HOSPITAL OF PHILADELPHIA FOUNDATION, and CHILDREN'S HOSPITAL OF PHILADELPHIA, individually and in its capacity as fiduciary of the Children's Hospital of Philadelphia Defined Benefit Master Trust, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	No: CIV 08-469-KEW
vs.	)	
BNY MELLON, N.A. and THE BANK OF NEW YORK MELLON,	)	
Defendants.	)	

* * * * *

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE

OCTOBER 25, 2012

* * * * *

REPORTED BY: KEN SIDWELL, CSR-RPR
United States Court Reporter
P.O. Box 3411
Muskogee, Oklahoma 74402

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. BRAD SEIDEL, MR. BRADLEY E. BECKWORTH, MR. JEFFREY J. ANGELOVICH, Nix Patterson & Roach, 205 Linda Drive, Daingerfield, Texas, 75638;

MR. PETER H. LeVAN, Jr., MR. SEAN M. HANDLER, Kessler Topaz, Meltzer & Check, LLP, 280 King of Prussia Road,Radnor, Pennsylvania, 19087;

MR. LAWRENCE R. MURPHY, Jr., MS. PANSY MOORE-SHRIER, Robinett & Murphy, 624 South Boston, Suite 900, Tulsa, Oklahoma, 74119;

MR. MICHAEL BURRAGE, Whitten Burrage, 1215 Classen Drive, Oklahoma City, Oklahoma, 73103.

FOR THE DEFENDANTS:

MR. DAMIEN MARSHALL, Boies, Schiller & Flexner, 575 Lexington Avenue, New York, New York, 10022;

MR. PHILLIP G. WHALEY, Ryan, Whaley, Coldiron & Shandy, 119 North Robinson Avenue, Suite 900, Oklahoma City, Oklahoma, 73102;

MR. WELDON STOUT, Wright, Stout & Wilburn, P.O. Box 707, Muskogee, Oklahoma, 74402.

Appearing by telephone, MS. MARLA ALHADEFF, defendant representative.

OCTOBER 25, 2012 PROCEEDINGS

(On the record at 1:30 p.m.)

THE COURT: Good afternoon. This is in case number CIV-08-469-KEW. I'm going to shorten the style. It's CompSource Oklahoma versus Bank of New York Mellon.

We have a number of attorneys here today. Brad Seidel, Bradly Beckworth, Joseph Angelovich, Michael Burrage, Larry Murphy. Is Pansy -- Pansy Moore, Peter LeVan, Sean Handler for the plaintiffs.

Damien Marshall appears for the defendants, as well as Phil Whaley, Weldon Stout. Appearing by phone is -- and I apologize for this in advance, I'm probably going to butcher this -- Martha Alhadeff -- is that correct -- by phone.

MS. ALHADEFF: That's close enough. Thank you.

THE COURT: I think we have the spelling so we'll just put it down phonetically as if I said it correctly, how about that?

We are set today on the basis of two motions that have been filed. The first motion is the motion for final approval of settlement, and then the motion for approval of attorneys' fees, expenses, and case contribution awards to the class representatives.

Who wishes to make the record on this, gentlemen?

MR. BECKWORTH: Your Honor, Brad Beckworth for the plaintiffs. If you'd like me to begin.

THE COURT: Okay. Go ahead.

MR. BECKWORTH: Here or back there?

THE COURT: Either way.

MR. BECKWORTH: Thank you, Your Honor. Brad Beckworth on behalf of the class representatives and the class. I'll do my best to keep this very short because I think we don't have too much new information for you.

As Your Honor knows, we submitted our preliminary approval papers back at the end of June when the Court granted preliminary approval on July 6th and gave pretty express instructions about how you wish for us to proceed with notice and the filing of all of our motions.

Pursuant to your order, we started the notice program to the class in August before the deadline that you had set for that. We mailed notice to all 353 domestic class member accounts, as well as the 24 foreign accounts. We had very few returned for improper addresses or any other reason, and we continued to re-mail and re-issue those to get everybody noticed.

Also, as you know, we maintained a case website throughout the period of the case. It encouraged all the clients that we knew of throughout the case to pay regular attention to that website. Once the case was

settled, we put all the settlement documents and notices on that website as well. We had quite a few clients or class members that would ask us questions about the settlement, we'd refer them to that website so they could download any of the documents.

Also, during the notice period, the Bank of New York gave notice to its regulators required under CAFA, so that has been done.

On September 27th -- or September 20th, we were required to file our motions, the two that you referenced. We filed those on time. September 27th was the deadline for any class member to request an exclusion or to object to the settlement. And also, if you'll recall, there were a limited number of foreign claimants that actually had to take the affirmative step of electing to participate in the case. We had an overwhelming, I would say unanimous, approval of the settlement by the class in the sense that there were zero objections. Zero objections to the settlement, zero objections to certification for final purposes, zero objections to the request for fees, expenses, and case contribution awards.

In addition to that, we had, I believe at the time, 19 of the 24 foreign accounts that affirmatively asked to be included in the settlement. I believe the number in a percent of damages analysis is somewhere in the high 80

percent of the foreign claimants that had damages have already elected to participate.

In addition to that, there were only two entities that requested exclusion. One was the Commonwealth of Pennsylvania for two small funds that they had that were participatory in the class, and also the University of Michigan. Other than that, everybody was on board. And just in our conversations with various class members, we felt like we had very affirmative support by the class for the settlement.

We have proposed an order that we submitted to the Court a week or so ago. Mr. Marshall can speak to this, but my understanding is that order is not opposed. They only take a position on certain issues. You know, they were only taking a position on the fees, expenses, and case contribution awards. But there's no opposition to any of the motions. Class has uniformly supported them.

Your Honor, if I can take just a minute, the one thing I would like to address, because our clients are here today, at least the CompSource contingency is here, and if I could just introduce them and say a few things. We have Mr. John McCormick who's just joined CompSourse recently this year as general counsel; Donna Romberg, who is one of the investment officers; and Steve Hardin, who's the chief financial officer. What I'd like to say about them,

Your Honor, as you know, we have requested a $50,000 case contribution award for each of the three class representatives. Personally I think that's a very modest sum for what they did. This case was really originated due to the relationship that we've had for quite some time with CompSource. We've worked for them in different capacities over the years. But Mr. Hardin and Ms. Romberg were involved in working with the Bank of New York here. And without getting into the substance of the case or, you know, responsibility of either side, I will just say that they paid very careful attention to what happened. They felt very strongly about taking action on behalf of CompSource, and those two spent a tremendous amount of time working with us before the case was filed, and throughout the case. Their former general counsel was also very, very involved. And since Mr. McCormick has been there, he's been involved. Everyone at CompSource, from the staff at the executive level to their support staff to the board was integral to our prosecution of this case. They were heavily involved. And just like the Court to know they put a ton of time in this case. Just, by way of example, Mr. Hardin was very often a 30(b)(6) designee in the case. I know, for one deposition, he spent somewhere between 70 and 100 hours himself preparing for that deposition. We've represented a lot of clients across the country, and these folks were just

a real treat to work with. And so we appreciate them, and I wanted them to hear that from us, and I just wanted Your Honor to know that, because, although we've burdened this Court with a lot of filings, you haven't had the ability to see what was going on sometimes behind, you know, the different sides of the works.

THE COURT: I'm not going to complain about that.

MR. BECKWORTH: Yes. I wouldn't either. So we appreciate them. And finally, Your Honor, just would like to say again how much we appreciate your time and your staff's time in this case. I know that we had 400 something docket entries. I know that it was a very hard-fought case, and we put a lot of burden -- or I don't know if that's the right word. But we put a lot of tough decisions and very good briefing I think by both sides to Your Honor, and we appreciate the way you handled this case in putting up with all of us. And I'd say the same thing for our opponents here. I know you know this has been, in some instances, very bitterly fought, but I feel like we've all worked very well together, especially in the end part of the case and working through the settlement issues together. We're ready to put it all behind us.

So with that, I'd sit down and ask Your Honor to approve everything and, if you're willing to, to sign the order that we submit.

THE COURT: Do you have any response from the defendants? Anybody else want to brag on me? That's always welcome. I'm kidding. I'm kidding.

MR. MARSHALL: Your Honor, just briefly. This is Damien Marshall for the Bank of New York Mellon defendants. And as Mr. Beckworth said, we don't have any -- we either don't take a position or don't object to the positions asserted in the proposed order.

I just want to put on the record that our position with regards to class certification is that it would only be appropriate for settlement purposes, not for litigation purposes. And with regard to the CAFA notice provided to our regulators, that was provided in accordance with the statutes. And we are taking no position with regard to the fees or fee awards or the awards for the plaintiffs.

You know, we thank Your Honor for your time and the Court's time. It was a burdensome case on the Eastern District of Oklahoma. And that's where the Bank of New York stands.

THE COURT: Okay. Well, let me just say, I appreciate everybody's kind words. This is, you know, why we all draw checks over here and they give us robes to wear and big courtrooms to do our job. It was a hard-fought case, and I think that the legal work on this case has just

been absolutely spectacular, and I want to brag on all of you for the work that you put into it. I know that, for every little bit of iceberg that I saw above the water, there was a whole big ice cube down below it that I didn't see. I know you all put all the work in on behalf of your respective clients that they deserved, and that you both did outstanding work on this case.

And I also want to congratulate the parties, even though it was a hard-fought case, to come together in what I think was in the best interest of the parties to resolve this case rather than -- and not worried about my time, but just worried about the economics of going forward with it. I think that this settlement was a good settlement.

I do want to find that the settlement was fair and reasonable, and that the requested 25 percent of settlement funds is fair and reasonable in light of the benefit that was conferred to the class in this case.

Do you have anything in particular that you wish to -- I asked specifically for the final approvement -- final approval of the settlement. I assume your comments also are inclusive of the motion for approval of attorneys' fees and costs, and there's not anything else you wish to add. Is that correct?

MR. BECKWORTH: Right.

THE COURT: Other than please approve them; right?

MR. BECKWORTH: Please approve them.

THE COURT: Okay.

MR. BECKWORTH: I will say one thing for the record that I think is important. We did notice that any class members could have an opportunity to appear today, and I've looked in the courtroom and see none, and I think that's something we should put on the record.

THE COURT: Well, we have some special guests here, but I don't think we have any class members. This is your time now to speak up if you are a class member that wishes to object. I don't see anybody, so this is kind of -- I guess it's kind of like a marriage ceremony where nobody stands up and objects.

So I do find that the reimbursement for amounts, expenses that is outlined in the paperwork is reasonable. The motions are approved. And I have signed a copy of the final order and judgment to be filed in this case. Good luck to you all. Thank you.

(Off the record at 1:41 p.m.)

C E R T I F I C A T E

I, Ken Sidwell, Certified Shorthand Reporter for the Eastern/Northern Districts of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in the above-captioned case.

I further certify that I am not employed by nor related to any party to this action, and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 26th day of October, 2012.

s/Ken Sidwell
Ken Sidwell, CSR-RPR
United States Court Reporter

Other Documents

5:11-cv-00212-R Chieftain Royalty Company v. QEP Energy Company

U.S. District Court

Western District of Oklahoma[LIVE]

Notice of Electronic Filing

The following transaction was entered by Beckworth, Bradley on 5/7/2013 at 2:49 PM CDT and filed on 5/7/2013

Case Name:	Chieftain Royalty Company v. QEP Energy Company
Case Number:	5:11-cv-00212-R
Filer:	Chieftain Royalty Company Jack Lancet
Document Number:	160

Docket Text:

BRIEF IN SUPPORT re [159] JOINT MOTION for Settlement *Settling Parties' Joint Motion for Final Approval Class Representatives' Memorandum of Law in Support of the Settling Parties' Joint Motion for Final Approval* by All Plaintiffs. (Attachments: # (1) Exhibit 1 - Declaration of Bradley E. Beckworth and Robert N. Barnes on Behalf of Counsel, # (2) Exhibit 2 - Compsource v. BNY Transcript, Oct. 25, 2012)(Beckworth, Bradley)

5:11-cv-00212-R Notice has been electronically mailed to:

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5:11-cv-00212-R Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1041971380 [Date=5/7/2013] [FileNumber=2512355-0] [33c8f6bf8fc73ecaaca9af78a0d9cdaeaeabe7e51444ffb75 77244a2f518152a9792 66d0d46c36bfaca2bbd36718d5b7f52cb6e7a0f88a516d851d205e37ba63]]
Document description: Exhibit 1 - Declaration of Bradley E. Beckworth and Robert N. Barnes on Behalf of Counsel
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1041971380 [Date=5/7/2013] [FileNumber=2512355-1] [53595db458f9bb418f1d8cd55d73ac98972de753839e5bdda9058056e664f2c1749e d8ba010758816b7c2c2f7f49b3bc7ff60a8e661a6c5a17ae63050278f5e7]]
Document description: Exhibit 2 - Compsource v. BNY Transcript, Oct. 25, 2012
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1041971380 [Date=5/7/2013] [FileNumber=2512355-2] [3a6f4099c76359309fb01cb11786b13c1c141b72c962a739a55b8c1acd48cf7e6088 1b87288b16aee90a382921131007f0c359f8be99b295de1004e6a4d32d18]]