UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

In re SANDRIDGE ENERGY, INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	No. 5:12-cv-01341-G CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARDS TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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Lead Counsel respectfully submits this memorandum in support of its application for an award of attorneys' fees and expenses and awards to Plaintiffs and Class Representatives Laborers Pension Trust Fund for Northern Nevada ("Northern Nevada"), Construction Laborers Pension Trust of Greater St. Louis ("Greater St. Louis"), and Angelica Galkin (collectively, "Plaintiffs") pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class.

I. INTRODUCTION

Lead Counsel aggressively litigated this highly complex securities litigation for nearly a decade, overcame obstacles throughout the case, and achieved a commendable result for the Class. In awarding fees, courts consider several factors, including the quality and quantity of work as reflected in the results obtained. Here, Plaintiffs' Counsel worked tirelessly in devoting over 25,800 hours without pay in order to obtain a very favorable Settlement for the Class. The Settlement Fund consists of $21,807,500, plus interest thereon. For all the reasons set forth herein and in the accompanying Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Final Approval Brief") and Declaration of Evan J. Kaufman in Support Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation and Lead Counsel's Application for an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Kaufman Decl."), the Settlement is an outstanding result.

The $21,807,500 all-cash recovery was achieved through the skill, experience, and effective advocacy of Lead Counsel in the face of highly complex factual and legal issues,

considerable risk, and an aggressive defense. The Settlement was reached only after Lead Counsel overcame Defendants' motions to dismiss by sufficiently alleging, and arguing the legal merits of, Plaintiffs' claims and prevailing on Plaintiffs' motion for class certification. Absent the Settlement, and assuming Plaintiffs prevailed on Defendants' fully briefed and pending summary judgment, *Daubert* and reconsideration motions, the claims against Defendants could have continued for many years through trial, and likely appeals. The Settlement provides Class Members with a substantial cash benefit now, rather than a potential recovery after several years of continued litigation, and eliminates the possibility of no recovery at all or of the costs of litigation diminishing the recovery.

As compensation for its efforts, Lead Counsel respectfully requests an award of attorneys' fees of one-third of the Settlement Amount and payment of litigation expenses of $2,399,866.02, plus interest on both amounts at the same rate and for the same period of time as that earned on the Settlement Fund. Lead Counsel's efforts to date have been without compensation of any kind and the fee has been wholly contingent upon the result achieved. Faced with complex issues, and opposed by experienced defense counsel, Lead Counsel nevertheless succeeded in securing a favorable result for the Class. Lead Counsel believes its reputation as a leader in this field, its diligent efforts, and its dedication to the interests of the Class substantially contributed to obtaining the Settlement. The requested fee is well within the range of percentages normally awarded in securities class action and other common fund settlements in this District and Circuit, and it is the appropriate method of compensating counsel.

The Litigation could have been settled at a far lesser amount earlier in the litigation, but Lead Counsel continued to incur risk and expense by litigating to a more favorable resolution. Through amended complaints, lengthy briefing on successive motions to dismiss, 34 depositions, lengthy summary judgment, *Daubert* and motion for reconsideration briefing, and mediations that did not result in an agreement, Lead Counsel demonstrated it was prepared to take this case through trial and beyond to achieve a terrific result for the Class. Since fee awards are designed to encourage counsel to get the best possible result for the class, the amount requested in this case is warranted given the exceptional recovery obtained and the significant obstacles and risks Lead Counsel faced in bringing and prosecuting this case.

Plaintiffs, including two institutional investors, Northern Nevada and Greater St. Louis, who have overseen the Litigation, approve of and endorse the requested fee. The endorsement by the Court-appointed Lead Plaintiffs is particularly significant because the PSRLA was passed to encourage more diligent institutional investors to seek lead plaintiff status and oversee securities class actions. Lead Counsel respectfully requests that this Court approve the requested amount of fees and litigation expenses as justified under the particular facts of this case.

Separately, Plaintiffs seek awards of $5,902.35, $3,709.00, $3,360.00 and $5,162.50 pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class. Plaintiffs support their applications with declarations setting forth the basis for the awards, which are substantially lower than awards in other similar cases. Plaintiffs respectfully request that the Court approve the requested awards.

II. LEAD COUNSEL IS ENTITLED TO A REASONABLE PERCENTAGE OF THE COMMON FUND

Fee awards in meritorious cases promote private enforcement of, and compliance with, the federal securities laws, which "seek to maintain public confidence in the marketplace. They do so by deterring fraud, in part, through the availability of private securities fraud actions." *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345 (2005); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). For over fifty years, the Supreme Court has repeatedly emphasized that private securities actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)).

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (in common fund cases, "a reasonable fee is based on a percentage of the fund bestowed on the class"). The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered on the theory "'that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense.'" *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994) (awarding fees based on percentage of settlement fund) (quoting *Boeing*, 444 U.S. at 478).

In 1995, Congress passed the PSLRA and codified the percentage-of-recovery approach for awarding fees in common fund securities fraud cases. 15 U.S.C. §78u-4(a)(6). Under the PSLRA, "Congress plainly contemplated that percentage-of-recovery would be the primary measure of attorneys' fees awards in federal securities class actions." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y. 2008); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). Indeed, by its plain terms, the PSLRA sets the "award of attorneys' fees and expenses to 'a reasonable percentage' of any recovery." *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006).

The Tenth Circuit has generally adhered to the percentage of the fund method for awarding attorneys' fees in common-fund cases such as this.[1] In *Gottlieb*, for instance, the Tenth Circuit explained that a percentage method for setting a fee "is less subjective than the lodestar plus multiplier approach," matches the marketplace most closely thus providing better incentive to counsel, and is better suited where class counsel "was initially retained on a contingent fee basis." 43 F.3d at 484; *see also Uselton v. Com. Lovelace Motor Freight,*

[1] *See, e.g.*, *Gottlieb*, 43 F.3d at 482 ("the more recent trend has been toward utilizing the percentage method in common fund cases"); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1269 (D. Kan. 2006) (noting that percentage of fund analysis is preferred method for awarding fees in common fund cases); *McKinley v. Mid-Continent Well Logging Serv., Inc.*, No. 5:14-cv-00649-M, ECF 48, slip op. at 8-9 (W.D. Okla. Mar. 2, 2016) (same) (Ex. 1); *Vaszlavik v. Storage Tech. Corp.*, 2000 U.S. Dist. LEXIS 21140, at *4 (D. Colo. Mar. 9, 2000) ("[w]hile enhanced lodestar cases remain instructive, the Tenth Circuit has expressed 'a preference for the percentage of the fund method'"); *Anderson v. Merit Energy Co.*, 2009 U.S. Dist. LEXIS 100681, at *13 (D. Colo. Oct. 20, 2009) (applying percentage method); *Lewis v. Wal-Mart Stores, Inc.*, 2006 U.S. Dist. LEXIS 87681, at *2-*3 (N.D. Okla. Dec. 4, 2006) (same); *Millsap v. McDonnell Douglas Corp.*, 2003 U.S. Dist. LEXIS 26223, at *21 (N.D. Okla. May 28, 2003) (same); *Ramah Navajo Chapter v. Norton*, 250 F. Supp. 2d 1303, 1316 (D.N.M. 2002) (same).

Inc., 9 F.3d 849, 853 (10th Cir. 1993) (accepting the propriety of the percentage approach "rather than lodestar" in the awarding of attorneys' fees).

"There are strong policy reasons behind the judicial and legislative preference for the percentage of recovery method of determining attorney fees in these cases." *In re Xcel Energy, Inc., Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005); *see also Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 254 (3d Cir. 1985). ***First***, "[the percentage] methodology rewards efficiency and provides plaintiffs' counsel with a strong incentive to effectuate the maximum possible recovery under the circumstances." *In re St. Paul Travelers Sec. Litig.*, 2006 WL 1116118, at *1 (D. Minn. Apr. 25, 2006); *see also In re N.M. Indirect Purchasers Microsoft Corp. Antitrust Litig.*, 149 P.3d 976, 993 (N.M. Ct. App. 2006) ("The percentage method is preferred in some jurisdictions, including the Tenth Circuit, because this method rewards efficient and prompt resolutions of class actions . . . .").[2] ***Second***, the percentage method is consistent with the practice in the private marketplace where contingent fee attorneys are customarily compensated on a percentage-of-the-recovery method. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992). ***Third***, use of the percentage method decreases the burden imposed upon courts by the "lodestar" method, and assures that class members do not experience undue delay in receiving their share of the settlement. *See Telik*, 576 F. Supp. 2d

[2] *See also Shaw v. Interthinx, Inc.*, 2015 WL 1867861, at *5 (D. Colo. Apr. 22, 2015) ("'The Tenth Circuit favors the common fund approach, as opposed to the lodestar method, because a percentage of the common fund is less subjective than the lodestar plus multiplier approach, matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis . . . .'") (awarding one third of common fund).

at 585 ("the 'primary source of dissatisfaction' with the lodestar methodology 'was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits'").

III. LEAD COUNSEL SEEKS A PERCENTAGE CONSISTENT WITH WHAT COURTS IN THIS DISTRICT AND CIRCUIT HAVE FOUND TO BE REASONABLE

As the Supreme Court has recognized, an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for their services in the open marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285 (1989). In complex cases, such as this one: "a fee award of one-third of the common fund [is] 'well within the range typically awarded in class actions.'" *Nakamura v. Wells Fargo Bank, N.A.*, 2019 WL 2185081, at *2 (D. Kan. May 21, 2019); *see Shaw*, 2015 WL 1867861, at *6 ("customary fee . . . in a common fund settlement is approximately one third of the total economic benefit").

Lead Counsel's request for attorneys' fees of one-third is consistent with fee percentages awarded by courts in this District and in the Tenth Circuit in common fund cases. *See, e.g.*, *Gundrum v. Cleveland Integrity Servs., Inc.*, 2017 WL 3503328, at *5 (N.D. Okla. Aug. 16, 2017) ("[C]ontingent fees in the range of one-third of a common fund are frequently awarded in Rule 23 class settlements."); *McKinley*, slip op. at 9 (Ex. 1) (awarding 40% of settlement fund which "is in the range of acceptable fee awards in common fund cases"); *Fankhouser v. XTO Energy, Inc*., 2012 WL 4867715, at *3 (W.D. Okla. Oct. 12, 2012) (awarding "nearly 36 percent" of settlement fund); *Cimarron Pipeline Constr., Inc. v. Nat'l Council on Comp. Ins.*, 1993 U.S. Dist. LEXIS 19969, at *4-*5 (W.D. Okla. June 8, 1993) ("[f]ees in the range of 30-40% of any amount recovered are common in complex and

other cases taken on a contingent fee basis"); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. and Antitrust Litig.*, 2022 WL 2663873, at *4 (D. Kan. July 11, 2022) (awarding one-third on $264 million recovery); *Nakamura*, 2019 WL 2185081, at *1 (awarding attorneys' fees of 33% of the gross settlement fund and citing fee awards in Tenth Circuit based on 40% of the common fund); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d at 1110-14 (D. Kan. Dec. 7, 2018) (awarding attorneys' fees of one-third and stating the "Court finds that a one-third fee is customary in contingent-fee cases").[3] Notably, Lead Counsel's fee request is also in line with other settlements involving similar securities fraud allegations. *McNeely v. Nat. Mobile Health Care, LLC*, 2008 WL 4816510, at *15 (W.D. Okla. Oct. 27, 2008) (awarding 33% and noting that "[f]ees in the range of at least one-third of the common fund are frequently awarded in class action cases of this general variety"); *Lewis*, 2006 U.S. Dist. LEXIS 87681, at *4-*5 (fee award of 33% of the settlement fund); *In re Boston Chicken, Inc. Sec. Litig.*, 2006 U.S. Dist. LEXIS 56267, at *5-*6 (D. Colo. Aug. 10, 2006) (fee award of 32% of the settlement fund). Based on the fees routinely awarded in common fund settlements like this, Lead Counsel's one-third fee request is both fair and reasonable.

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[3] *See also Chavez Rodriguez v. Hermes Landscaping, Inc.*, 2020 WL 3288059, at *4 (D. Kan. June 18, 2020) (awarding attorneys' fees of 33% of the settlement amount after costs); *Bailes v. Lineage Logistics, LLC*, 2017 WL 4758927, at *3 (D. Kan. Oct. 20, 2017) (approving attorneys' fees of 33% of the total settlement payment); *In re Universal Serv. Fund Tel. Billing Pracs. Litig.*, 2011 WL 1808038, at *2 (D. Kan. May 12, 2011) (finding a fee of one-third of the total amount of the settlement fund to be "a reasonable and appropriate fee"); *Barnwell v. Corr. Corp. of Am.*, No. 2:08-cv-02151-JWL-DJW, ECF 230, slip op. at 2 (D. Kan. Feb. 12, 2009) (Ex. 2) (approving award of 33% of gross settlement amount).

IV. THE "*JOHNSON* FACTORS" SUPPORT THE REASONABLENESS OF LEAD COUNSEL'S FEE REQUEST

Courts in this jurisdiction consider the factors set forth in *Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714 (5th Cir. 1974) for added guidance on setting reasonable fees. *See Brown v. Phillips Petroleum Co*., 838 F.2d 451, 454 (10th Cir. 1988) (noting that "federal courts have relied heavily on the factors articulated . . . in [*Johnson*] in calculating and reviewing attorneys' fees awards"). The *Johnson* factors are: (1) time and labor required; (2) novelty and difficulty of the issues; (3) skill required to perform the legal services properly; (4) preclusion of other employment; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) amount involved and results obtained; (9) experience, reputation, and ability of the attorneys; (10) undesirability of the case; (11) nature and length of professional relationship with the client; and (12) awards in similar cases. *Johnson*, 488 F.2d at 717-19. The weight to be given to each of the *Johnson* factors varies from case to case, and each factor is not always applicable. The factors applicable to this Litigation are addressed below.[4]

When evaluated under the *Johnson* factors, Lead Counsel's fee request is reasonable.

A. The Amount Involved and the Results Obtained

"While other criteria in determining reasonable attorney fees are legitimate considerations, the amount of the recovery, and end result achieved, is of primary

[4] The following factors do not pertain to this Litigation: time limitations imposed by the client or the circumstances, and the nature and length of the professional relationship with the client. Thus, Lead Counsel will not analyze these factors. *See Uselton*, 9 F.3d at 854 (recognizing that "'rarely are all of the *Johnson* factors applicable'").

importance." *Oppenlander v. Standard Oil Co.*, 64 F.R.D. 597, 605 (D. Colo. 1974). In addition, this factor "'may be given greater weight [in a common fund case when the court] determines that the recovery was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class.'" *Millsap*, 2003 U.S. Dist. LEXIS 26223, at *29 (quoting *Brown*, 838 F.2d at 456). Through its extensive efforts during the prosecution and settlement of this Litigation for nearly ten years, Lead Counsel has obtained a substantial recovery for the Class of $21,807,500.

With the assistance of Plaintiffs' damages expert, Lead Counsel estimates that the Class's reasonable recoverable damages, if successful on all claims at trial, were between approximately $154.6 million and $193.4 million. The Settlement represents approximately 11.3% to 14.1% of this estimated amount. Kaufman Decl., ¶127. And it does so while avoiding the substantial risks Plaintiffs faced in establishing the Class's damages at trial. Indeed, the recovery here is multiples above the median recovery of 1.8% in securities class actions in 2021.[5] That Lead Counsel has secured such a result in the face of significant risks demonstrates that the requested fee of one-third is reasonable and fair.

[5] *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full Year Review*, at 24, Fig. 22 (NERA Economic Consulting Jan. 25, 2022), available at https://www.nera.com/publications/archive/2022/recent-trends-in-securities-class-action-litigation--2021-full-y.html.

B. The Customary Fee – the Percentage Requested Is Consistent with Those Typically Awarded in This District and This Circuit

As discussed above, Lead Counsel's request for one-third of the Settlement Amount is consistent with percentages routinely approved as fair and reasonable by this and other courts in this District and in this Circuit in other complex class actions. *See* §III, *supra*.

C. Time and Labor Required

1. The Amount of Time and Labor Dedicated by Lead Counsel Justifies the Requested Fee

The amount of time and labor Lead Counsel dedicated to the prosecution and settlement of the Litigation also demonstrates the reasonableness of the one-third fee request. As detailed in the Kaufman Declaration, Lead Counsel vigorously prosecuted this Litigation for more than nine years. This case was settled only after Lead Counsel: (i) conducted an extensive investigation, including investigative interviews of relevant third-party witnesses; (ii) filed a total of three amended complaints; (iii) successfully opposed two rounds of Defendants' motions to dismiss and another motion to dismiss by SandRidge after discovery; (iv) identified, retained and consulted with a market efficiency, causation and damages expert and experts and consultants on the issues of geotechnical and economic analysis of energy and mineral exploration and petroleum engineering; (v) completed fact, class and expert discovery, which involved numerous contentious meet and confer sessions with defense counsel and motions to compel; (vi) reviewed and analyzed nearly 4 million pages of documents produced by Defendants and third parties; (vii) successfully moved for class certification supported by an expert report; (viii) fully briefed Defendants' motions for summary judgment, the parties' *Daubert* motions and Defendants' motion for

reconsideration; and (ix) engaged in vigorous and protracted settlement negotiations with Defendants' counsel, with the continued assistance of an experienced mediator.[6] *See generally* Kaufman Decl. These significant efforts over a more than nine-year period, paved the way for Lead Counsel to obtain a substantial financial recovery for the Class, and Lead Counsel should now be appropriately compensated for its efforts.

2. A Lodestar Cross-Check Also Supports Lead Counsel's Fee Request

The requested fee not only represents a reasonable percentage of the benefit obtained, but also reasonably reflects the work invested by Lead Counsel. As demonstrated by Plaintiffs' Counsel's fee declarations, after the review of all billing entries and the exercise of billing judgment, over 25,800 hours, resulting in an aggregate lodestar of $18,107,528.75, have been invested in this Litigation. *See* Declaration of Evan J. Kaufman Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("RGRD Fee Decl."), ¶4; Declaration of Darren B. Derryberry Filed on Behalf of Derryberry & Naifeh, LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Derryberry Fee Decl."), ¶4; Declaration of Michael S. Etkin Filed on Behalf of Lowenstein Sandler, LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Lowenstein Fee Decl."), ¶4; Declaration of Amber L. Eck Filed on Behalf of Haeggquist & Eck, LLP in Support of Application for Award of Attorneys' Fees and

[6] Lead Counsel has and will continue to perform legal work on behalf of the Class should the Court approve the proposed Settlement and Plan of Allocation. Additional resources will be expended assisting Class Members with their Proof of Claim and related inquiries and working with the Claims Administrator, Epiq, to ensure the smooth progression of claims processing.

Expenses ("HAE Fee Decl."), ¶4. As a result, Lead Counsel's request for an award of one-third of the Settlement Amount ($7,269,166.67) – a 0.40 ***negative*** lodestar multiplier – is a significant discount on the time actually spent litigating the matter.

While courts in this Circuit regularly approve positive multipliers,[7] courts have repeatedly recognized that the reasonableness of a fee request under the percentage method is reinforced where the requested percentage fee would represent a negative multiplier of the lodestar, as is the case here. *See Bennett v. Sprint Nextel Corp.*, 2015 WL 13648083, at *1 (D. Kan. Aug. 12, 2015) (fee award resulted in significant negative multiplier); *Cox v. Spring Commc'ns Co. L.P.*, 2012 WL 5512381, at *3 (D. Kan. Nov. 14, 2012) (finding that the Kansas-only portion of a cumulative $41,500,000 attorneys' fee request was reasonable, in part because it was "subject to a ***negative*** multiplier") (emphasis in original); *Barr v. Qwest Commc'ns Co., LLC*, 2013 WL 141565, at *5 (D. Colo. Jan. 11, 2013) ("the fee-and-expense award is far from excessive" as it represents a negative multiplier); *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1259 (D.N.M. 2012) ("The attorneys' fees represent a negative multiplier of the total lodestar amount and are an acceptable percentage of the Class' award.").

[7] *See, e.g.*, *In re Miniscribe Corp.*, 309 F.3d 1234, 1245 (10th Cir. 2002) (affirming application of a 2.57 multiplier); *In re Crocs., Inc. Sec. Litig.*, 2014 U.S. Dist. LEXIS 134396, at *12-*13 (D. Colo. Sept. 18, 2014) (holding that the 1.23 multiplier was "well below" other approved multipliers that range from 2.5 to 4.6); *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *7-*8 (noting that "[c]ourts in common fund cases regularly award multipliers of two to three times the lodestar or more to compensate for risk and to reflect the quality of the work performed"); *Brewer v. S. Union Co.*, 607 F. Supp. 1511, 1535 (D. Colo. 1984) (applying a multiplier of 3).

Accordingly, the reasonableness of Lead Counsel's one-third fee request is confirmed by a lodestar cross-check analysis.

D. The Novelty and Difficulty of the Legal and Factual Questions Support Lead Counsel's Fee Request

An analysis of the novelty and difficulty of the issues involved in the Litigation also favors granting Lead Counsel's request for attorneys' fees. "Securities fraud class actions are by their nature, complex and difficult to prove." *In re Charter Commc'ns, Inc.*, 2005 U.S. Dist. LEXIS 14772, at *47-*48 (E.D. Mo. June 30, 2005). This Litigation focused on highly complex factual and legal issues involving the calculation of oil and gas reserves, decline curve analysis, ratios of gas to oil, and the economics of SandRidge's assets in the Mississippian. Lead Counsel required the assistance of experts and consultants to understand the science and the operation of SandRidge's business and the materiality of Defendants' statements during the Class Period. Not only were Plaintiffs faced with the inherent complexities involved in this type of action, but there were also additional complexities presented here, including the admissibility of Plaintiffs' damages expert's event study establishing a Company-specific, statistically significant stock price decline on November 9, 2012, following certain disclosures, and whether that would have significantly affected damages. *See* Kaufman Decl., ¶88; *see In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 632 (D. Colo. 1976) (finding novelty and difficulty of issues supported requested fees where "[t]he litigation . . . involved unique and substantial issues of law in the technical area of SEC Rule 10b-5 . . . difficult, complex and oft-disputed class action questions, and difficult questions regarding computation of damages").

1. Risk in Establishing Liability

As just discussed above and in the Final Approval Brief (at 12-17), Plaintiffs faced substantial risks in moving forward with the Litigation. For instance, in their summary judgment motions, Defendants strenuously argued that the majority of Plaintiffs' allegations are based on non-actionable forward-looking statements, opinions, or puffery or that the statements are in fact accurate. Kaufman Decl., ¶¶81-83. Defendant Ward further argued that Plaintiffs could not establish scienter because no deponent testified that he lied to investors. In fact, he argued that the evidence showed he believed the geology of SandRidge's holdings in the Mississippian yielded uniform production. *Id.*, ¶84. While Plaintiffs disagree with Defendants' contentions, there was a substantial risk of recovering limited or no damages if the Court or jury agreed with any of Defendants' arguments. *Id*., ¶¶118-119. In addition, all Defendants directly challenged their status as "control persons" subject to liability under Section 20(a). *Id*., ¶¶82, 84. Again, Plaintiffs disagreed, but recognized that Defendants would be able to present testimony from numerous fact and/or expert witnesses that could call into question Defendants' liability.

2. Risk in Establishing Causation and Damages

Even if Plaintiffs ultimately succeeded in overcoming each and every defense Defendants could raise regarding liability, Plaintiffs also faced risks in establishing causation and damages. Plaintiffs would be required to prove that Defendants' alleged false statements and omissions of material fact inflated the price of SandRidge common stock during the Class Period, and that, upon the disclosures relating to such misinformation, the price of SandRidge shares dropped, damaging Plaintiffs and the Class. *See Dura*, 544 U.S. at 341-

42. Plaintiffs also would be required to prove the disclosure of information relating to the geology of the Mississippian at the end of the Class Period and the amount of the artificial inflation that came out of that disclosure.

Even though Lead Counsel worked extensively with a causation and damages expert and believed it would be able to present expert testimony to meet Plaintiffs' burden on loss causation and establish damages with respect to the alleged corrective disclosure, Defendants sought to exclude that expert's testimony through a *Daubert* motion and, even if unsuccessful, Defendants undoubtedly would advocate at trial for a substantially smaller damages figure, or zero. The jury would have been presented with expert testimony on the portions of SandRidge's securities price decline related to the disclosure of the alleged fraud and tasked with determining what amount, if any, of the price decline was fraud-related. As a result, the crucial element of damages would almost certainly have been reduced at trial to a "battle of the experts." *See* Kaufman Decl., ¶123; *see also, e.g.*, *In re EVCI Career Coll. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *8 (S.D.N.Y. July 27, 2007) (noting unpredictability of battle of damage experts); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001) ("establishing damages at trial would lead to a 'battle of experts' . . . with no guarantee whom the jury would believe"). Accounting for the foregoing risks, the Class would by no means be assured of a ruling in its favor. Accordingly, the novelty and difficulty of these legal and factual questions further support the Settlement achieved and the requested attorneys' fees.

E. The Skill Required and the Experience, Reputation, and Ability of Lead Counsel Support the Requested Fee

The skill required and the experience, reputation, and ability of the attorneys also support the requested fee award. *See Johnson*, 488 F.2d at 717-19. Lead Counsel is among the nation's preeminent law firms in class action securities litigation and has successfully litigated and tried numerous class actions on behalf of major institutional investors. *See* RGRD Fee Decl., Ex. G (RGRD firm resume). Local Counsel, Derryberry & Naifeh, LLP, is a similarly skilled complex litigation firm that, consistent with Local Rule 5.4.2(c)(3), meaningfully participated in the successful prosecution of this matter. *See* Derryberry Fee Decl., Ex. C.

The quality of opposing counsel is also important in evaluating the quality of services rendered by Lead Counsel. *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986). Defendants are represented by experienced and skilled defense counsel, Latham & Watkins LLP, Covington & Burling LLP, as well as the Oklahoma City firms Corbyn Law Firm and Crowe & Dunlevy, which spared no effort in the defense of their clients' claims. In the face of this formidable opposition, Lead Counsel developed its case so as to persuade Defendants to agree to a substantial $21,807,500 financial recovery for the Class. The skill, experience, reputation, and ability of both Plaintiffs' and Defendants' counsel further support the requested fee award.

F. The Contingent Nature of the Fee Weighs in Favor of the Requested Award

Courts in this Circuit have found that "the risk of non-recovery" weighs heavily in considering an award of attorneys' fees. *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *9-*10; *see also Shaw*, 2015 WL 1867861, at *7 (contingent fee "'is designed to reward counsel for taking the risk of prosecuting a case without payment during the litigation, and the risk that the litigation may be unsuccessful'"). Lead Counsel has prosecuted this Litigation on a wholly contingent basis for over nine years and has borne all the risks, including surviving a series of motions to dismiss and obtaining class certification. Surviving a motion to dismiss in a securities class action is particularly difficult. As the Fifth Circuit has recognized, "[t]o be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009) (O'Connor, A.J., sitting by designation).

Lead Counsel understood from the outset that it was embarking on a complex, expensive, and lengthy litigation, which would require a significant investment of attorney time and expenses, with no guarantee of ever being compensated for the investment of such time and money. Lead Counsel also understood that Defendants would (and, in fact, did) retain large and highly experienced corporate defense firms to mount a strong defense. In undertaking this risk, Lead Counsel was obligated to, and did, ensure that sufficient resources were dedicated to the prosecution of this Litigation. *See generally* Kaufman Decl. When this case settled, Plaintiffs were faced with Defendants' summary judgment motions,

Daubert motions and motion for reconsideration, all of which were fully briefed and pending.

Litigation of these cases can be extremely protracted and yet salaries, leases, and other expenses must be paid, while counsel waits for several years to be paid, if at all. For example, in another case handled by Lead Counsel, *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 1:02-cv-05893 (N.D. Ill.), Lead Counsel litigated the case through trial and appeal for 14 years before reaching a settlement. In Lead Counsel's view, it is their hard earned reputation and willingness to go all the way to get the best possible result that benefits the Class and makes it a highly sought out firm for clients. Nevertheless, in every case the risk of losing and not being paid at all remains, as there are numerous class actions in which plaintiffs' counsel expended thousands of hours and lost, receiving no compensation. *See Xcel*, 364 F. Supp. 2d at 994 ("Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy.").

The risks of contingent litigation are also highlighted by the fact that a dramatic change in the law can result in the dismissal of a claim after a great deal of time and effort has been expended on the case. *See, e.g.*, *In re Vivendi Universal, S.A. Sec. Litig.*, 842 F. Supp. 2d 522 (S.D.N.Y. 2012) (granting judgment on the pleadings following change of law in *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010)); *In re Williams Sec. Litig.-WCG Subclass*, 558 F.3d 1130, 1143 (10th Cir. 2009) (affirming grant of summary judgment for energy company in PSLRA case based on Supreme Court decision in *Dura*). Thus, there existed a real risk that Lead Counsel (and the Class) would invest substantial resources and

efforts and receive nothing. *See Eatinger v. BP Am. Prod. Co.*, No. 6:07-cv-01266-EFM-KMH, ECF 375, slip op. at 14 (D. Kan. Sept. 17, 2012) (Ex. 3) ("Finally, the contingent nature of the case meant that at the end of the day, Class Counsel could have been left with no fee and no recovery of the enormous expenses that it had paid and carried for years."). As such, this factor further supports the requested fee award.

G. The Preclusion of Other Employment by Plaintiffs' Counsel Supports the Requested Fee

As demonstrated by the 25,847 hours incurred in prosecuting this Litigation, Plaintiffs' Counsel were precluded from other employment – including hourly or other contingent fee litigation – due to their acceptance of this Litigation. *See* Kaufman Decl., ¶¶134, 138-142. Accordingly, this factor weighs in favor of approving the fee request. *See Lucas v. Kmart Corp.*, 2006 U.S. Dist. LEXIS 51420, at *18 (D. Colo. July 27, 2006) ("Large-scale class actions . . . necessarily require a great deal of work, and a concomitant inability to take on other cases.").

H. The Undesirability of the Case Supports the Requested Attorneys' Fees and Expenses

Securities class action cases have often been recognized as "undesirable" due to the financial burden on counsel, and the time demands required to litigate cases of such size and complexity. *See, e.g.*, *Eatinger*, slip op. at 13 (Ex. 3) ("The time, effort, and out-of-pocket investment makes a class action undesirable to most attorneys."); *Millsap*, 2003 U.S. Dist. LEXIS 26223, at *41 ("This case is . . . undesirable, in the way that all contingent fee cases are undesirable, because it produced no income, but has required significant

expenditures . . . ."). Like the rest of the relevant *Johnson* factors, this factor too supports the approval of Plaintiffs' Counsel's requested fees.

V. THE REACTION OF THE CLASS TO THE REQUESTED FEE FURTHER SUPPORTS ITS REASONABLENESS

Although not specifically cited as a factor for consideration by the Tenth Circuit, courts also recognize the significance of the class members' reaction to the request for attorneys' fees and expenses. *See Sprint*, 443 F. Supp. 2d at 1262. Plaintiffs fully support the Settlement and Lead Counsel's request for its fees and expenses. *See* Declaration of Don Willey in Support of Plaintiffs' Motion for Final Approval of Settlement ("Willey Decl."), ¶¶5, 6; Declaration of James Mace in Support of Plaintiffs' Motion for Final Approval of Settlement ("Mace Decl."), ¶¶5, 6; Declaration of Angelica Galkin in Support of Plaintiffs' Motion for Final Approval of Settlement ("A. Galkin Decl."), ¶¶5, 6; Declaration of Vladimir Galkin in Support of Plaintiffs' Motion for Final Approval of Settlement ("V. Galkin Decl."), ¶¶5, 6. Here, over 1,400 copies of the notice of the proposed Settlement were mailed to potential Class Members and nominees, advising them that Lead Counsel would be requesting an award of attorneys' fees not to exceed one-third of the Settlement Amount and litigation expenses not to exceed $2.7 million, plus interest on both amounts at the same rate as earned by the Settlement Fund, all to be paid from the Settlement Fund. *See* Declaration of Joseph Mahan Regarding Notice Dissemination, Publication, and Report on Objections or Requests for Exclusion Received to Date, Ex. A (Notice at 3). As of the filing of this memorandum, not one Class Member has objected to these requests, further bolstering the reasonableness of fee request.

VI. PLAINTIFFS' COUNSEL ARE ENTITLED TO AN AWARD OF THEIR REASONABLE LITIGATION EXPENSES

"As with attorneys' fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred." *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *11. Here, Lead Counsel requests an award of litigation expenses and charges in the amount of $2,399,866.02 incurred by Plaintiffs' Counsel to date in connection with the prosecution of the Litigation on behalf of the Class, plus interest on such amount at the same rate as earned by the Settlement Fund. A large portion of these expenses was used to pay for Plaintiffs' experts, the investigation, document duplication and database management, on-line research, and mediation fees. These expenses and other expenses were directly related to the prosecution of this Litigation and are all the type of expenses that would be paid by a fee-paying client. *See* RGRD Fee Decl., Ex. B; Derryberry Fee Decl., Ex. B; Lowenstein Decl., Ex. B; HAE Fee Decl., ¶¶6-8. To date, no objections have been received regarding this expense request. Accordingly, Lead Counsel respectfully requests an award of $2,399,866.02 for these expenses and charges.

VII. THE REQUESTED PSLRA AWARDS FOR PLAINTIFFS SHOULD BE APPROVED

The PSLRA limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but also provides that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15

U.S.C. §78u-4(a)(4).[8] Here, as set forth in the Willey Declaration, ¶¶7, 8, Mace Declaration, ¶¶7, 8, the A. Galkin Declaration, ¶¶7, 8, and the V. Galkin Declaration, ¶¶7, 8, Plaintiffs are seeking $3,709.00, $5,902.35, $3,360.00 and $5,162.50, respectively, pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class.

Plaintiffs have been fully committed to pursuing their claims against Defendants since before moving for appointment as Lead Plaintiffs. Plaintiffs have actively and effectively fulfilled their obligations as representatives for the Class, complying with all of the many demands placed on them during the prosecution and settlement of the Litigation, and providing invaluable assistance to Lead Counsel. Among other things, Plaintiffs reviewed and approved the filing of significant pleadings and briefs, engaged in conferences and correspondence with Lead Counsel regarding the Litigation, participated in discovery by searching for and collecting responsive documents, and consulted with Lead Counsel regarding mediation and settlement strategy. *See* Willey Decl., ¶4; Mace Decl., ¶4; A. Galkin Decl., ¶4; and V. Galkin Decl., ¶4. These are precisely the types of activities courts have found to support awards to class representatives. *See Sprint*, 2015 WL 13648083, at *1 (granting awards to lead plaintiffs where they reviewed pleadings, communicated with counsel and kept informed of settlement negotiations); *Xcel*, 364 F. Supp. 2d at 1000 (same); *see also In re Am. Int'l Grp., Inc.*, 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) (granting PSLRA award of $30,000 to institutional lead plaintiffs "to compensate them for the time and effort they devoted on behalf

[8] In enacting the PSLRA, Congress intended to grant courts discretion in this regard. *See* H.R. Conf. Rep. No. 104-369, at 35 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 734 (lead plaintiffs should be compensated for activities "associated with service as lead plaintiff . . . and [the committee] grants the courts discretion to award fees accordingly").

of a class"), *aff'd*, 452 F. App'x 75 (2d Cir. 2012); *In re Marsh & McLennan Cos., Inc. Sec. Litig*., 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding over $200,000 to lead plaintiffs for their time spent supervising lead counsel's work).

Lead Counsel respectfully submits that Plaintiffs' participation in the Litigation fully warrants the Court's approval of awards to Plaintiffs in the aggregate amount of $18,133.85.

VIII. CONCLUSION

For the reasons set forth above, Lead Counsel respectfully requests that the Court enter an order awarding attorneys' fees of one-third of the Settlement Amount, expenses of $2,399,866.02 and awards to Plaintiffs totaling $18,133.85 pursuant to 15 U.S.C. §78u-4(a)(4).

DATED: September 1, 2022

Respectfully submitted,

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Additional Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2022, I electronically transmitted the attached Memorandum of Law in Support of Lead Counsel's Application for an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) using the ECF system for filing, which will send notification of such filing to all counsel registered through the ECF System.

s/ Evan J. Kaufman
EVAN J. KAUFMAN

EXHIBIT 1

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

JOHN McKINLEY, on Behalf of Himself and Others Similarly Situated, Plaintiffs, v. MID-CONTINENT WELL LOGGING SERVICE, INC., Defendant.	)	Case No. CIV-14-649-M

FINAL ORDER AND JUDGMENT

Before the Court is Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, filed February 24, 2016. Having reviewed plaintiffs' unopposed motion and having heard from the parties in this matter at a fairness hearing held March 3, 2016, the Court GRANTS is Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement [docket no. 46] and FINDS as follows:

WHEREAS, the Named Plaintiff John McKinley (Plaintiff or McKinley) on behalf of himself and the members of the Class, and Defendant Mid-Continent Well Logging Service, Inc. (Mid-Continent) entered into a Class and Collective Action Settlement Agreement dated November 13, 2015 (the Settlement Agreement), that provides for the payment of $1,400,000.00 and a complete dismissal with prejudice of the claims asserted in the above-referenced litigation ("Action") against Mid-Continent on the terms and conditions set forth in the Settlement Agreement, subject to the approval of this Court;

WHEREAS, by Order dated December 7, 2015 (the "Preliminary Approval Order"), this Court (a) preliminarily certified, for settlement purposes only, the Class; (b) preliminarily

approved the Settlement Agreement; (c) ordered that notice of the proposed Settlement Agreement be provided to members of the Class; (d) provided Class Members with the opportunity to exclude themselves from the proposed Settlement Agreement, (e) provided Class Members with the opportunity to object to the proposed Settlement Agreement, and (f) scheduled a hearing regarding final approval of the Settlement Agreement;

WHEREAS, due and adequate notice has been given to the Class;

WHEREAS, notice was mailed and emailed to 193 Class Members;

WHEREAS, one hundred twenty (120) Class Members (62.76% of the total) submitted a claim form making them part of the Fair Labor Standards Act ("FLSA") Sub-Class;

WHEREAS there were no objections filed regarding the Settlement Agreement;

WHEREAS one class member timely filed a Request for Exclusion; and

WHEREAS, the Court conducted a hearing on March 2, 2016 ("Final Approval Hearing) to (a) determine whether the Settlement Agreement should be approved by the Court as fair, reasonable and adequate; (b) determine whether judgment should be entered pursuant to the Settlement Agreement, *inter alia*, dismissing the Action against Mid-Contient with prejudice and extinguishing and releasing all Settled Claims (as defined therein) against all Mid-Continent Releasees and all Class Member Releasees ("Released Parties"); (c) determine whether the Class should be finally certified for settlement purposes pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3); (d) rule on Class Counsel's application for an award of attorneys' fees and the reimbursement of litigation expenses; (e) rule on the Named Plaintiff's request for a Case Service Award; and (f) rule on such other matters as the Court may deem appropriate.

The Court has considered all matters submitted to it at the Fairness Hearing and otherwise, the pleadings on file, the applicable law, and the record.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court, for purposes of this Final Order and Judgment (the "Judgment") adopts all defined terms as set forth in the Settlement Agreement, and incorporates them herein by reference as if fully set forth.

2. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement Agreement, as well as personal jurisdiction over all of the Settling Parties and each of the Class Members.

3. The Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied in that: the number of Class Members is so numerous that joinder of all Class Members is impracticable; there are questions of law and fact common to the Class; the claims of the Named Plaintiff are typical of the claims of the Class he seeks to represent; the Named Plaintiff and Class Counsel have at all times fairly and adequately represented the interests of the Class; and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: the interests of the Class Members in individually controlling the prosecution of the separate actions, the extent and nature of any litigation concerning the controversy already commenced by members of the Class, the desirability or undesirability of continuing the litigation of these claims in this particular forum, and the difficulties likely to be encountered in the management of the class action.

4. Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court has certified, for settlement purposes only, two sub-classes:

a. <u>FLSA Settlement Class</u>

> All persons who were employed by Mid-Continent or any subsidiary as a mudlogger at any time from June 20, 2011 through October 26, 2014.

b. Rule 23 Settlement Class

> All persons who were employed by Mid Continent or any subsidiary as a mudlogger within the State of Oklahoma at any time from June 20, 2011 through October 26, 2014.

5. The Notice (i) constituted the best notice practicable under the circumstances to all persons within the definition of the sub-Classes, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of the Stipulation, including releases, of their right to object to the proposed Settlement, of their right to participate in the Settlement, of their right to exclude themselves from the Class, and of their right to appear at the Final Approval Hearing, (iii) were reasonable and constituted due, adequate and sufficient notice to all persons or entities entitled to receive notice and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Local Court Rules, and any other applicable law.

6. Pursuant to and in accordance with Rule 23, the Settlement Agreement, including, without limitation, the Settlement Amount, the releases set forth therein, and the dismissal with prejudice of the Settled Claims against the Released Parties set forth therein, is finally approved as fair, reasonable and adequate. The Settling Parties are hereby authorized and directed to comply with and to consummate the Settlement Agreement in accordance with its terms, and the Clerk of this Court is directed to enter and docket this Judgment in the Action.

7. The Action and the Complaint and all claims included therein, as well as all Settled Claims (defined in the Settlement Agreement and in Paragraph 8(c) below), which the Court finds was filed against Mid-Continent on a good faith basis by the Named Plaintiff and

Class Counsel in accordance with Federal Rule of Civil Procedure 11, are dismissed with prejudice as to the Class Member Releasees (defined in the Settlement Agreement and Paragraph 8(b) below), and as against each and all of the Mid-Continent Releasees (defined in the Settlement Agreement and in Paragraph 8(a) below). The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

8. As used in this Judgment, the term "Mid-Continent Releasees shall mean Mid-Continent and each of its respective past, present, and future owners, stockholders, parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Mid-Continent.

9. "Settled Claims" means all claims, rights, demands, liabilities and causes of action of every nature and description whatsoever, whether known or unknown, that were asserted in the Lawsuit or that otherwise relate in any way to the payment, non-payment, underpayment, and/or delayed payment of wages during the Class Period, including but not limited to claims under the FLSA and the Oklahoma Protection of Labor Act.

10. Notwithstanding Paragraphs 7 & 8 herein, nothing in this Judgment shall bar any action or claim by any of the Settling Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. This Judgment and the Settlement Agreement, including any provisions contained in the Settlement Agreement, any negotiations, statements, or proceedings in connection therewith, or any action undertaken pursuant thereto:

(a) shall not be admissible in any action or proceeding for any reason, other than an action to enforce the terms hereof; and

(b) is not, and shall not be deemed, described, construed, offered or received as evidence of any presumption, concession, or admission by any person or entity of the truth of any fact alleged in the Action; the validity or invalidity of any claim or defense that was or could have been asserted in the Action or in any litigation; the amount of damages, if any, that would have been recoverable in the Action; or any liability, negligence, fault, or wrongdoing of any person or entity.

12. Mid-Continent shall make all payments into the Qualified Settlement Fund as set forth in the Settlement Agreement.

13. The Administrator shall make payments to Class Members in installments on March 31, 2016, September 30, 2016, March 31, 2017, and September 31, 2017.

14. (a) In the event of a default by Mid-Continent for failure to make any timely payment according to the schedule set forth in the Settlement Agreement, Bruckner Burch PLLC shall issue written notice to Mid-Contient through its counsel, William A. Johnson, at the following address: Hartzog, Conger, Cason & Neveille, 201 Robert S Kerr Avenue, 1600 Bank of Oklahoma Plaza, Oklahoma City, OK 73012. The notice shall state that Mid-Continent is in default and that Mid-Continent must cure the default within fifteen (15) business days of receipt of the notice.

(b) If the default is not cured within this fifteen-day period, Mid-Continent will be deemed to be in violation of the Settlement Agreement and this Order. Upon any such violation, Mid-Continent agrees to allow Bruckner Burch PLLC to file a motion before this Court to seek a confession of judgment against it for the full amount of the unpaid balance that is due and owing as of the date of the default. Mid-Continent agrees to waive service of process in connection with any action to obtain the confession of judgment against it as provided by this provision. In addition, Mid-Continent agrees to pay the reasonable attorneys' fees and costs incurred by Bruckner Burch PLLC in connection with securing a confession of judgment and collecting any such unpaid balance under this provision.

15. The Court finds that the Settling Parties and their counsel have complied with the requirements of Rule 11 as to all proceedings herein, and that Named Plaintiffs and Class Counsel at all times acted in the best interests of the Class and had a good faith basis to bring, maintain and prosecute this Action as to Mid-Continent in accordance with Rule 11. The Court further finds that the Named Plaintiffs and Class Counsel adequately represented the Class Members in entering into and implementing the Settlement.

16. No Class Member shall have any claim against Class Counsel, the Claims Administrator, or other agent designated by Class Counsel based on the distributions made substantially in accordance with the Settlement and Plan of Allocation as approved by the Court and further orders of the Court.

17. Any order approving or modifying the application by Class Counsel for an award of attorneys' fees and reimbursement of expenses, or any request of the Named Plaintiffs for reimbursement of reasonable costs and expenses shall not disturb or affect the Finality of this Judgment, or the Settlement Agreement.

18. The Notice stated that Class Counsel would move for attorneys' fees and costs in an amount not to exceed 40% of the Gross Settlement Fund. In their Motion for Final Approval, Class Counsel requested a total amount of attorneys' fees and costs equal to 40% of the Gross Settlement Fund.

19. Class Counsel is hereby awarded a total of $560,000.00 in reimbursement of fees and expenses, which sum the Court finds to be fair and reasonable. The foregoing award of fees and expenses shall be paid to Bruckner Burch PLLC from the Gross Settlement Fund, and such payment shall be made at the time and in the manner provided in the Settlement Agreement. The appointment and distribution among Plaintiffs' Counsel of any award of attorneys' fees shall be within Bruckner Burch LLP's sole discretion.

20. Named Plaintiff John McKinley is hereby awarded $5,000.00 for his costs and expenses directly relating to the representation of the Class, which the Court finds is fair and reasonable. The foregoing awards of costs and expenses shall be paid to the Named Plaintiff from the Gross Settlement Fund, and such payment shall be made at the time and in the manner provided in the Settlement Agreement

21. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court makes the following findings of fact and conclusions of law:

(a) Tenth Circuit's preferred approach for determining attorneys' fees in common fund cases is the percentage of the fund method. *See, e.g., Gottlieb v. Barry*, 43 F.3d 486 (10th Cir.1994);

(b) Under this approach the Court evaluates the reasonableness of the requested percentage by analyzing the applicable factors contained in *Johnson v. Ga. Highway Express,*

Inc., 488 F.2d 714 (5th Cir.1974); *see Brown v. Phillips Petroleum Co.*, 838 F.2d 451 (10th Cir.1988);

(c) A majority of circuits recognize that trial courts have the discretion to award fees based solely on a percentage of the fund approach and are not required to conduct a lodestar analysis in common fund class actions. *See, e. g.*, *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir.2012);

(d) An award of 40% is within the range of acceptable fee awards in common fund cases. *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, 2015 WL 2254606, at *3 (W.D. Okla. May 13, 2015) ("An award of forty percent (40%) of the settlement value is well within the range of acceptable fee awards in common fund cases."); *Vaszlavik v. Storage Corp.*, 2000 WL 1268824, at *2 (D. Colo. Mar. 9, 2000) ("Fees for class action settlements generally range from 20%-50%."); *Cimarron Pipeline Const., Inc. v. Nat'l Council on Comp. Ins.*, 1993 WL 355466, at *2 (W.D. Okla. June 8, 1993) ("Fees in the range of 30–40% of any amount recovered are common in complex and other cases taken on a contingent fee basis.");

(e) Over 193 copies of the Notice were disseminated to putative Class Members stating that Class Counsel were moving for attorneys' fees not to exceed 40% of the Gross Settlement Fund. Zero (0) objections were filed by Class Members against the terms of the proposed Settlement Agreement or the fees and expenses contained in the Notice and Class Counsel's application;

(f) Class Counsel has conducted the litigation and achieved the Settlement in good faith and with skill, perseverance and diligent advocacy;

(g) Had Class Counsel not achieved the Settlement there would remain a significant risk that the Named Plaintiffs and the Class may have recovered less or nothing from the Mid-Continent; and

(h) The amount of attorneys' fees awarded and expenses reimbursed from the Gross Settlement Fund are fair and reasonable under all of the circumstances and consistent with awards in similar cases.

22. Without affecting the finality of this Judgment in any way, the Court reserves exclusive and continuing jurisdiction over the Action, the Class Member Releasees and the Mid-Continent Releasees for purposes of: (a) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Plan of Allocation, and this Judgment; (b) hearing and determining any application by Class Counsel for an award of attorneys' fees, costs, and expenses and/or reimbursement to the Named Plaintiffs, if such determinations were not made at the Fairness Hearing; (c) supervising the distribution of the Gross Settlement Fund and/or the Net Settlement Fund; and (d) resolving any dispute regarding a party's right to terminate pursuant to the terms of the Settlement Agreement.

23. In the event that the Settlement Agreement is terminated or does not become Final in accordance with the terms of the Settlement Agreement for any reason whatsoever, then this Judgment shall be rendered null and void and shall be vacated to the extent provided by and in accordance with the Settlement Agreement, including with respect to the repayment by Class Counsel of attorneys' fees and costs that are awarded by the Court, and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

24. In the event that, prior to the Effective Date, the Named Plaintiffs or Mid-Continent institutes any legal action against the other to enforce any provision of the Stipulation or this Judgment or to declare rights or obligations thereunder, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any such action.

25. There is no reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Federal Rule of Civil Procedure 54(b)

IT IS SO ORDERED this 2nd day of March, 2016.

Vicki Miles-LaGrange

VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY

KEITH E. BARNWELL, et al., Plaintiffs, v. CORRECTIONS CORPORATION OF AMERICA, Defendant.	)	CASE NO. 2:08-CV-02151-JWL-DJW Judge John W. Lungstrum Magistrate Judge David J. Waxse

ORDER APPROVING SETTLEMENT AGREEMENT

AND NOW, THIS 12th DAY OF February, 2009, upon consideration of the Parties' Joint Motion to Approve Settlement and Dismiss Action with Prejudice, it is **ORDERED**, **ADJUDGED** and **DECREED** that the Parties' motion is **GRANTED:**

A. Terms in this APPROVAL ORDER that appear in "all caps" shall have the meaning assigned to them in the SETTLEMENT AGREEMENT.

B. The COURT finds that it has jurisdiction over the claims asserted in the LITIGATION and over the PARTIES to the LITIGATION.

C. The COURT has reviewed the SETTLEMENT AGREEMENT executed by REPRESENTATIVE PLAINTIFFS Keith Barnwell and Feanja Smith (on behalf of themselves and the other PLAINTIFFS and OPT-IN PLAINTIFFS) and DEFENDANT, and their respective counsel. The SETTLEMENT AGREEMENT appears to be adequate, fair and reasonable. Accordingly, the COURT hereby **APPROVES** the SETTLEMENT AGREEMENT on the terms provided therein.

D. The COURT appoints PLAINTIFFS Keith Barnwell and Feanja Smith as REPRESENTATIVE PLAINTIFFS who, together with CLASS COUNSEL, shall be

authorized to act on behalf of all PLAINTIFFS and OPT-IN PLAINTIFFS with respect to the LITIGATION and this SETTLEMENT AGREEMENT.

E. The COURT approves the CLASS NOTICE and CLAIM FORMS and authorizes the mailing of the CLASS NOTICE and CLAIM FORMS to all members of the SETTLEMENT CLASS following the procedures set forth in the SETTLEMENT AGREEMENT.

F. The COURT appoints Class Action Administration, Inc. as the CLAIMS ADMINISTRATOR.

G. The COURT establishes the date that is sixty (60) days after the date on which the CLAIMS ADMINISTRATOR first mails the CLASS NOTICE and CLAIM FORMS to members of the SETTLEMENT CLASS as the BAR DATE (the date on which the CLAIMS ADMINISTRATOR must receive an individual SETTLEMENT CLASS member's CLAIM FORM, SUBSTITUTE W-9 FORM, and/or CURRENT EMPLOYEE CERTIFICATION in order for such documents to be considered timely).

H. The COURT has reviewed CLASS COUNSELS' application for an award of CLASS COUNSELS' FEES AND COSTS and hereby **APPROVES** CLASS COUNSELS' application as follows: The total amount of CLASS COUNSELS' attorneys' fees, costs, and expenses approved by the COURT as CLASS COUNSELS' FEES AND COSTS shall be thirty-three percent (33%) of the MAXIMUM GROSS SETTLEMENT AMOUNT, subject to the terms, conditions and limitations set forth in the SETTLEMENT AGREEMENT.

I. The COURT has reviewed PLAINTIFFS' application for an award of SERVICE PAYMENTS to SETTLEMENT CLASS members Keith Barnwell, Feanja D. Smith, Melissa Salazar, Carleen Madrid, Mark Montoya, Silvia Apodaca, and Nathan Gumke in recognition for

their efforts on behalf of the SETTLEMENT CLASS in the LITIGATION. The amount of SERVICE PAYMENTS approved by the COURT shall be $2,500 each (for a total of $17,500) subject to the terms, conditions and limitations set forth in the SETTLEMENT AGREEMENT.

J. Effective as of the FINAL EFFECTIVE DATE, the RELEASING PERSONS shall be deemed to forever completely release and discharge CCA, and release and hold harmless the RELEASED PERSONS, from any and all wage-related claims of any kind, including but not limited to claims pursuant the FLSA, 29 U.S.C. § 201, *et. seq.*, of any kind, that any of the RELEASING PERSONS has, had, might have or might have had against any of the RELEASED PERSONS based on any act or omission that occurred prior to and including the date of this APPROVAL ORDER, in any way related to any of the facts or claims that were alleged or that could have been alleged in the LITIGATION or by reason of the negotiations leading to this settlement, even if presently unknown and/or un-asserted (the "RELEASED CLAIMS"). The RELEASED CLAIMS released by the RELEASING PERSONS as of the FINAL EFFECTIVE DATE includes any retaliation claims under the FLSA and/or state law regulating hours of work, wages, the payment of wages, and/or the payment of overtime compensation that could be brought by SETTLEMENT CLASS MEMBERS against CCA or any RELEASED PERSONS based on any act or omission that occurred up to and including the date of this APPROVAL ORDER; any breach of contract claims; and any state common law wage claims, including, but not limited to claims of unjust enrichment and quantum meruit; and any and all claims pursuant to or derived from The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*; that arise from any alleged failure to pay wages, including any claims for benefits under any benefit plans subject to ERISA that arise from any such alleged failure; and any wage-and-hour laws or wage-related claims under other laws, including but

not limited to any and all such claims pursuant to state law, and any other claims of any kind related to CCA's alleged failure to pay wages to the SETTLEMENT CLASS MEMBERS up to and including the date the COURT enters an APPROVAL ORDER.

K. All members of the FINAL SETTLEMENT CLASS will be bound by the terms and conditions of the SETTLEMENT AGREEMENT, this APPROVAL ORDER, the final judgment in this LITIGATION, and the releases set forth in the SETTLEMENT AGREEMENT.

L. PLAINTIFFS, OPT-IN PLAINTIFFS and CLASS COUNSEL shall not: (a) issue a press release or otherwise notify the media about the terms of the SETTLEMENT AGREEMENT; and/or (b) advertise any of the terms of the SETTLEMENT AGREEMENT through written, recorded or electronic communications. To the extent that PLAINTIFFS, OPT-IN PLAINTIFFS and/or CLASS COUNSEL are contacted by the media about the SETTLEMENT AGREEMENT, however, they are permitted to respond to such inquiries so long as they do not disclose any of the terms of the SETTLEMENT AGREEMENT. PLAINTIFFS, OPT-IN PLAINTIFFS and CLASS COUNSEL are permitted to communicate directly with members of the SETTLEMENT CLASS about the terms of the SETTLEMENT AGREEMENT.

M. The LITIGATION is dismissed on the merits and with prejudice.

N. The COURT retains jurisdiction to enforce the SETTLEMENT AGREEMENT.

SO ORDERED.

s/ John W. Lungstrum
Hon. John W. Lungstrum

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Gene R. Eatinger, on behalf of himself and all similarly situated royalty owners, Plaintiffs, v. BP America Production Company, Defendant.	)	Case Number 07-1266-EFM-KMH

ORDER APPROVING SETTLEMENT AGREEMENT, AWARDING FEES AND EXPENSES TO CLASS COUNSEL, AND AWARDING INCENTIVE

This matter came before the Court for hearing pursuant to an Order dated August 3, 2012 (Dkt. 346), setting a hearing to determine whether or not to approve a Settlement in this class action case. Due and adequate notice was given of the Settlement as required in that Order. The Court has considered all papers filed and all proceedings in this case, the applicable law, and is well informed about this matter. The Court finds and orders as stated herein.

1. This Order incorporates by reference the definitions in the Settlement Agreement (herein "Agreement") (Dkt. 340-1), and all capitalized terms used herein shall have the same meanings as assigned to them in the Agreement except as expressly stated herein. The term "Class" means the Class defined by this Order. The term "Class Member" shall mean any member of the Class defined by the Agreement and this Order, but excludes those persons and entities who were excluded by the definition of the Class or by this Order which lists those who validly exercised their right to opt-out of the Class.

2. This Court has jurisdiction over the subject matter of the case and over the Defendant, Class Representative, and all Class Members.

3. The parties shall bear their own costs, except as otherwise provided in the Agreement. The persons or entities that validly and properly opted-out of the Class and are, therefore, not Class Members, are: 1) Pioneer Natural Resources USA, Inc.; 2) Devon Energy Production Company, L.P.; 3) Anadarko E&P Company, L.P.; 4) ExxonMobil Oil Corporation and Exxon Mobil Corporation; and 5) Osborn Heirs Company. (Dkt. 359)

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court approves the settlement set forth in the Agreement and the Class as defined by the Agreement. The Court finds that settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of the Class Representative, the Class, and each of the Class Members. This Court further finds the settlement set forth in the Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of the Class on the one hand, and Defendant BP on the other. Accordingly, the settlement embodied in the Agreement is hereby approved in all respects and shall be consummated in accordance with its terms and provisions. The parties are hereby ordered to perform the terms of the Agreement.

5. On August 2, 2010, pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certified a class that was substantially similar to the Class, found that all requisites for class certification had been specifically satisfied, and appointed Class Counsel and a Class Representative. That Order (Dkt. 166 and 168 – modified class definition) is incorporated by reference.

In the Pretrial Order (Dkt. 327), the time frame of the class was extended to December 31, 2011, after which Defendant BP was no longer the working interest owner legally responsible for paying royalties to Class Members under Class Leases.

6. The Class is:

> All royalty owners of BP America Production Company (and its predecessors and successors) from wells located in Kansas that have been paid royalties for gas and/or gas constituents (such as residue gas or methane, natural gas liquids, helium, nitrogen, or condensate) before January 1, 2012 and whose gas was processed at BP's Jayhawk Processing plant.
>
> Excluded from the Class are: (1) the Mineral Management Service (Indian tribes and the United States); (2) Chesapeake Energy Corp., Chesapeake Operating Inc., Chesapeake Royalty, and any Chesapeake affiliated entity; (3) Defendant BP, its affiliates, predecessors, and employees, officers and directors; and (4) any claims for Gathering Charges.

With respect to the Class, this Court finds that: (a) the persons in the Class are so numerous that joinder of all persons in the Class is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual questions; (c) the claims of the Class Representative are typical of the claims of the Class; (d) the Class Representative and Class Counsel have fairly and adequately represented and protected the interests of all of the persons in the Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the persons in the Class in individually controlling the prosecution of the separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by persons in the Class; (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum; and (iv) the difficulties likely to be encountered in the management of the case. (Dkt. 166). The findings and reasons for certifying the original class apply equally to the Class as defined by the Agreement and this Order. The Class satisfies all requirements for class certification under Rule 23.

7. Upon entry of this Order, the Class Representative does, and each of the Class Members shall be deemed to have, and by operation of this Order shall have, fully, finally, and

forever released, relinquished and discharged all Released Claims against the BP Released Parties. Any and all Released Claims are permanently barred, enjoined, and finally discharged.

8. Upon entry of this Order, each and every Class Member is deemed to have accepted and ratified the Agreement.

I. Findings of Fact and Conclusions of Law on Due Process of Settlement Class Notice

9. The distribution of the Notice of Proposed Settlement of Class Action was the same distribution approved by this Court of a prior notice advising of the certification of the class (Dkt. 172, 346) and again constituted the best notice practicable under the circumstances to all persons entitled to such notice, including individual notice to all persons in the Class who could be identified through reasonable effort, and said Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, and any other applicable law.

10. The Notice was written in plain English and included (i) a description of the Settlement Class; (ii) a description of the proposed settlement; (iii) the names of Class Counsel; (iv) a statement of the maximum amount of attorneys' fees that may be sought by Class Counsel; (v) a statement of the maximum amount of an incentive award that may be sought by the Class Representative; (vi) the fairness hearing date; (vii) a description of eligibility to appear at the hearing; (viii) a statement of the deadlines for filing objections to the settlement, for submitting a claim, and for filing requests for exclusion; (ix) the consequences of exclusion; (x) the consequences of remaining in Settlement Class; and (xi) how to obtain further information. (Dkt. 358-1).

11. BP provided from its records of persons or entities to which it was making, or had made, royalty payments, a mailing list of Class Members to be used in giving Notice. BP also

provided BP Payment Information (as defined in the notice sent to the settlement class) containing payment information only for Class Members plus payment information for the opt-outs listed above and 4 entities (identified with BP royalty numbers) that were excluded from the Class by the definition of the Class. Notice was provided to all Class Members by first class mail at the address on BP's initial list. Some mailings were returned, and both BP, by providing another updated list, and Class Counsel, through various means described below, engaged in, and Class Counsel continues to engage in, efforts to identify and locate these people. Class Counsel hired a private investigator to conduct skip traces to locate, or attempt to locate those whose addresses had changed, traced Social Security numbers through the U.S. Social Security Death Index database and US Info Search, and determined that many on the list, or their predecessor, had received Notice or were deceased. Many more have been and were in BP's suspense account list. As a result, the Notice reached approximately 95% of the Class Members. Moreover, there was information about this case on the internet and the Agreement, Notice, and Preliminary Distribution Plan were posted on a website hosted by the Notice Administrator.

12. Adequate notice of the settlement of the Class Action Litigation has been given as required by law to the members of the Settlement Class. All members of the Settlement Class have been afforded a reasonable opportunity to opt out of the Settlement Class and to object to the settlement.

13. Those persons who are not Class Members are free to pursue or not pursue their own claims in other litigation as they see fit at their own cost and expense. No claims by anyone who is not a Class Member are being asserted in this case against BP.

II. Findings of Fact and Conclusions of Law on Class Settlement Factors

14. This Court approved Notice to the Class after its terms were announced and presented to Court by the filing of the Settlement Agreement, Joint Motion (Dkt. 340) and after a telephonic hearing held by the Court (Dkt. 336).

15. In its prior order, this Court set a final approval hearing to determine whether the settlement was fair, reasonable, and adequate. (Dkt. 346).

16. In determining whether a settlement should be approved as fair, reasonable, and adequate, the following factors may be examined: (a) whether the settlement was fairly and honestly negotiated; (b) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (c) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; (d) the opinion of the parties that the settlement is fair and reasonable. *Gottlieb v. Wiles,* 11 F.3d 1004, 1014 (10th Cir.1993); *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984); *Newberg on Class Actions* §18.58 (factors to be considered at fairness hearing include: (1) likelihood of recovery; (2) recommendations and experience of counsel; (3) amount and nature of discovery; (4) future expense and likely duration of litigation; and (5) number of objectors and quality of objections). The Court considered all relevant factors in determining to approve the Settlement.

17. *The Settlement Was Fairly Negotiated.* The Settlement was achieved after hard fought litigation, mediation, more litigation, more mediation, more litigation, and further settlement discussions among experienced and adversarial attorneys. There is no evidence of collusion. The Settlement was fairly negotiated.

18. *The Outcome of the Litigation Was Not Assured.* Both parties were convinced of their legal and factual positions. The litigation was not assured one way or the other. Although

the Kansas Marketable Condition Rule was consistent with the Class's theory, the case involved primarily processing deductions which in Kansas had not been pursued in other prior royalty owner class actions.

19. *The Value of Immediate Recovery Outweighed the Possibility of Future Relief After Protracted and Expensive Litigation.* BP made it clear that it would vigorously pursue the litigation, and if not successful, appeal. It did so recently in a royalty owner class action in New Mexico federal court, and, after a jury verdict against BP, obtained a reversal on appeal. Any future relief to the Class was literally years away. The Settlement is substantial and outweighs the possibility of future relief.

20. *The Opinions of the Parties.* Both parties are represented by experienced counsel who opine that the Agreement is fair, reasonable, and adequate for the Class. And the Class Representative concurs.

21. The Court is satisfied that Agreement was the product of arm's-length negotiations in which the Class and BP were both represented by experienced counsel who diligently represented the interests of their respective clients. The Agreement was reached after vigorous litigation as reflected by the record. This Court had made several rulings including a ruling about affirmative defenses asserted by BP as to the effect of prior class action settlements on the vast majority of the claims in this case. At the time of settlement, extensive briefing had been filed by the parties as to a motion for summary judgment that was pending. Each side also had the benefit of experts of their own choosing in assessing matters about the case and with regard to settlement. The Class Members were all paid royalties by BP and information on BP's royalty payments to Class Members was provided on a hard-drive that comprised some 65 gigabytes of information. So, given the common method of payment used by BP to pay Class

Members for royalties with respect to Class Wells, Class Counsel and experts for the Class had access to detailed information about what was paid and not paid to Class Members by BP during most of the class period, particularly with respect to royalty payments on NGLs and helium, the alleged underpayment for which comprised virtually all of the damages claims sought by the Class. The settlement process was lengthy, arduous, fair, unbiased, and, ultimately, productive.

22. The extensive record and briefing on file establish that BP strongly contested liability and damages. It was prepared and had the resources to try the case and appeal any adverse ruling that it felt could be appealed. Though very ably represented by Class Counsel, there was no assurance that Class Members would recover anything or that, if they did, it would be anything like amounts requested. Virtually all of the alleged damages sought by the Class involved BP's alleged underpayment of royalties on NGLs and Helium by allegedly wrongfully deducting various fees or deducting unreasonably high fees, assuming that some fees were deductable. BP claimed that such claims, and others as well, were barred by a prior class action settlement. The Class contended otherwise. Both parties moved for summary judgment on such affirmative defenses by BP. The Court ruled that there were fact issues on BP's defenses that would have to be resolved at trial, not by competing summary judgment motions.

23. The class experts had opinions about damages under two different theories, and, BP's experts had opinions that such damages claims were far too high even if liability was assumed. BP also presented experts and arguments contending that there was no liability whatsoever. The issues regarding liability and the proper calculation of damages, if any, were never resolved by the Court.

24. While the Class may have recovered more of the damages years from now after trial and appeal, the risk existed that the Class would recover nothing at all or far less than what

was obtained in settlement. The amount obtained in settlement is substantial. Further, no Class Member voiced any objection to the settlement, indicating wide-spread approval. (Dkt. 359). Balanced against myriad of litigation and appellate risks, risks of statutory changes or enactments affecting the case, and other risks to recovery and of the risk of delay in payment and in the event of any recovery, the Court finds the settlement is fair, reasonable and adequate in all respects and that should be, and is, approved by the Court in accordance with Rule 23. The Court bases its approval upon its review of the file and information presented and the *cumulative* written and testimonial evidence presented and the Court's assessment of that evidence, and not based upon any *single* witness, document, or other piece of evidence.

III. Findings of Fact and Conclusions of Law on Plan of Allocation and Distribution

25. The plan of allocation and distribution must be fair, adequate, and reasonable. *Law v. National Collegiate Athletic Ass'n*, 108 F.Supp.2d 1193, 1196 (D.Kan. 2000). The Plan of Allocation and Distribution Order is found at Docket Number 363-8. The Plan here is based upon the NGLs and helium that BP paid royalties upon to Class Members. This is appropriate as the NGLs and helium claims are virtually all of the Class claims asserted against BP for alleged underpayments by BP of royalties. The assumptions about who should receive distributions are reasonable and proper and are bolstered by the requirement that anyone receiving funds that rightfully belong to another must pay any such amount to the rightful owner. The practical result of the Plan is that amounts from BP wells are being distributed in proportion to the underpayment claims that were asserted with regard to such wells and the monies appropriately distributed so that Class Members entitled to receive the distributions with respect to alleged underpayments do so on a proportionate basis that reflects the actual production of such wells. Based on the evidence submitted, the Court finds that the Plan of Allocation and Distribution

Order (Dkt. 363-8) is fair, adequate, and reasonable. Accordingly, the Plan of Allocation and Distribution Order is incorporated by reference and approved and ordered. The Claims Administrators, previously appointed by Dkt. 357 (incorporated herein), shall follow the Plan of Allocation and Distribution approved by this Court in making distributions to Class Members. In cases where there is some question about who should receive a distribution, the matter shall be determined by the Claims Administrators and the party receiving such distribution shall be responsible to make payment to any rightful owner in any event. In addition, the Claims Administrators are to be paid reasonable fees and expenses out of the Net Settlement Fund as set forth in the Agreement. (Dkt. 340-1 at 4, 7).

IV. Findings of Fact and Conclusions of Law on Class Counsels' Fees and Expenses and Incentive Award to Class Representative

26. In a diversity case, like this case, the award of attorneys' fees is governed by Kansas law. *See, e.g., Combs v. Shelter Mut. Ins. Co.*, 551 F.3d 991, 1001 (10th Cir. 2008) ("In diversity cases, attorney fees are a substantive matter controlled by state law."); *Boyd Rosene & Associates, Inc. v. Kansas Mun. Gas Agency*, 123 F.3d 1351, 1352-53 (10th Cir. 1997) ("in this circuit, the matter of attorney's fees in a diversity suit is substantive and is controlled by state law.") Kansas law permits the award of attorneys fees in a class action based upon a percentage of total recovery calculated in accordance with KRPC 1.5(a)(1-8). Many Kansas class action cases have done so. *See, e.g., Shutts v. Phillips Petroleum Co.*, 235 Kan. 195, 679 P.2d 1159 (1984), *aff'd in part and rev'd in part on other grounds*, 472 U.S. 797, 105 S.Ct. 2965, 86 L.Ed. 2d 628 (1985); and *Freebird, Inc. v. Cimarex Energy Co.*, 46 Kan.App.2d 631, 264 P.3d 500, (2011), *rev. denied* (Kan. June 13, 2012) (awarding one-third fee in royalty owner underpayment class settled before class certification and merits discovery). The Court has considered the

applicable Kansas law and factors set forth in KRPC 1.5(a)(1-8) and finds that the law and all of the factors support the award that the Court makes herein.

27. *Contingent Fee*. Certain factors are more applicable to contingent class litigation than other factors. The starting point is the contingent nature of such engagements. Given that the case was taken on a contingent fee basis, it should be analyzed for fee reasonableness on that basis. The Kansas law recognizes this when awarding class action fees under a percentage of the common fund approach. *Hawkins v. Dennis,* 258 Kan. 329, 349-50, 905 P.2d 678 (1995) (holding that a contingent fee award was reasonable despite defendant's protest that it represented four times the usual hourly rate).

28. *The Results Obtained*. This is the most important factor in contingent fee litigation. "[T]he consideration of the benefit the lawsuit has produced" is "[o]f major importance" in deciding the reasonableness of attorneys' fees in the class action context. *Shutts*, 235 Kan. at 223. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Here, $19 million was obtained for the Class that it would not have otherwise received.

29. *Fee Customarily Charged.* There really are few plaintiff class action firms in Kansas, especially those with oil and gas expertise. Those that do class action litigation routinely command a one-third fee, especially in gas royalty litigation. *See Littell et. al. v. OXY USA, Inc*., Case No. 98 CV 51 (Stevens Co. Dist. Ct.) (awarding "one-third" fee) (March 4, 2008); *Alford v. Pioneer Natural Resources USA, Inc.*, 93-CV-37 (Stevens Co. Dist. Ct.) (awarding "one-third" fee) (Feb. 9, 2007); and *Coulter v. Anadarko Petroleum Corporation,* No. 98-CV-40 (Stevens Co. Dist. Ct.) (awarding "one-third" fee) (Sept. 17, 2009). *See also, Premier Pork, Inc. v. Rhone-Poulene S.A.,* 2006 WL 1388464 n. 3 at *5 (Kan. Dist. Ct., January 31, 2006) (*citing* numerous royalty owner class actions awarding one-third fees). Courts in Oklahoma have similarly ordered a one-

third or higher contingent attorney fee in royalty underpayment class actions. *See Cimarron Pipeline Const., Inc., v. National Council on Compensation Ins.,* Nos. 89-822 & 89-1186 (W. D. Okla. 1993) (34.9% of $35 million); *Kouns v. Conoco,* Inc., No. CJ-98-61, Dist. Ct. for Dewey County, Oklahoma (order approving fees filed December 2, 2004); and *Velma-Alma Independent School District No. 15 v. Texaco, Inc*., Consolidated Case Nos. CJ-2002-304, CJ-04-581-E and CJ-2005-496M, Dist. Ct. for Stephens County, Oklahoma (awarding 40% of the $27 million common fund, order approving fees filed Dec. 22, 2005). Thus, a one-third fee is a reasonable starting point.

30. In addition, it is customary in contingent fee litigation for the percentage to be higher in the event of an appeal, usually 40% or more. If the Settlement requires appellate work to defend the Settlement or any part thereof contained in this Order, Class Counsel would be entitled to a higher fee, perhaps the usual 40%, but Class Counsel has only requested an additional 5% which is eminently reasonable. However, if the appeal does not involve or delay the Settlement payout, Class Counsel would not be entitled to additional compensation from the Settlement Fund.

31. *Experience, Reputation, and Ability of Counsel*. Class Counsel is not a neophyte in complex civil litigation or class actions. Class Counsel has been lead or co-lead Class Counsel in cases all over the country, including some of the most recent Kansas appellate class action decision. *See* Sharp Affidavit. The reputation and ability of Class Counsel is well known and well respected. This factor would weigh in favor of enhancing the usual one-third contingent fee.

32. *Time and Labor Required.* This is of lesser importance in a non-hourly case, but the evidence shows that this case took substantial time and labor to complete. The novelty and difficulty of the questions involved was high as Class Counsel pursued theories on Conservation Fees, non-gathering

deductions, and other difficult questions. The expert presentations and arguments by BP were not matters that had been tried and decided by any Kansas court. The skill requisite to perform the legal service properly as Class Counsel is likewise high. Thus, the fee could be enhanced over the usual one third fee.

33. *Novelty and Difficulty*. The questions presented contained many novel issues mentioned above and even the ones that were not novel were difficult against a formidable opponent, BP, which is a large participant in the oil and gas industry, having industry expertise and knowledge, and supported by experienced and talented attorneys. The core issue actually involved processing deductions arguably not pursued by other class action lawyers against BP's predecessor in a prior class action, and has never been pursued in Kansas except by Class Counsel in this case and other cases like it.

34. *Skill Required*. This factor overlaps with the factor above as well as the experience and skill of class counsel. *In re Qwest Communication Int'l Sec. Litig*., 625 F.Supp.2d 1143, 1150 (D.Colo. 2009) (considering some factors together). The novelty and difficulty of the issues made the skill required high. There are "few simple class action cases". *In re Qwest Communication Int'l Sec. Litig*., 625 F.Supp.2d 1143, 1149 (D.Colo. 2009). This case required a high degree of skill. In a similar royalty underpayment class action, the court stated that "Class Counsel's knowledge and experience ... significantly contributed to a fair and reasonable settlement". *Anderson v. Merit Energy Co.*, 2009 WL 3378526, at *3. The same is true here. This factor supports a one-third fee, and more if an appeal is necessary.

35. *Undesirability of the Case*. The time, effort, and out-of -pocket investment makes a class action undesirable to most attorneys. The record reflects that over three million dollars in attorney and paralegal time was expended, for which Class Counsel was not being paid as the

case progressed. Indeed, without a recovery, no fee at all would have been received for the enormous investment of time. Moreover, the litigation expenses that Class Counsel was expected to bear, and did bear without any assurance of recovery, were likewise enormous, topping a half million dollars. The Defendant had deep pockets and could be expected, and did, hire talented attorneys to contest the litigation at every turn. Finally, the contingent nature of the case meant that at the end of the day, Class Counsel could have been left with no fee and no recovery of the enormous expenses that it had paid and carried for years. Class Counsel only requests a one-third fee after litigation expenses and 5% more if the Settlement is appealed. Those litigation expenses, totaling $573,387.90, were reasonable and necessary for the successful completion of the class case and are hereby approved. The fee of one-third of the Settlement Fund after netting out litigation expenses is also approved. If the case requires appellate work regarding this Order, Class Counsel should be compensated an additional 5% of the Settlement Fund for the added risk, labor, and expenses associated therewith. Such expenses and such one-third fee (and additional appellate fee if necessary) are hereby ordered to be paid from the Settlement Fund of $19 million plus accrued interest.

36. Kansas courts have adopted a three part test for considering incentive awards: "(1) the actions the class representative took to protect the interests of the class; (2) the level of benefit that the class received from the class representative's actions; and (3) the quantity of time and effort the class representative spent in pursuing the litigation." *Freebird, Inc. v. Cimarex Energy Co.*, 46 Kan.App.2d 631, 644, 264 P.3d 500, 510 (2011), *rev. denied* (Kan. June 13, 2012) (approving a 1% incentive award over an objection in another royalty underpayment case). Here, the Class Representative, Gene Eatinger was especially vigilant in investigating royalty owner claims and securing competent Class Counsel. The Class Representative was thereafter

actively and continuously involved in the discovery and settlement process on behalf of the Class. Mr. Eatinger requests an incentive award of one half of one percent of the Settlement Amount of $19 million plus accrued interest. The incentive award in this case which is less than 1% approved in *Freebird*. Case law from analogous jurisdictions where gas class actions occur confirms the reasonableness and appropriateness of granting an incentive award of one percent or more of the common fund. *See Velma-Alma Independent School District No. 15 v. Texaco, Inc*., Consolidated Case Nos. CJ-2002-304, CJ-04-581-E and CJ-2005-496M, Dist. Ct. for Stephens County, Oklahoma (awarded 1-2% of the respective total settlement amounts, filed December 22, 2005); and *Robertson v. Sanguine, Ltd.*, Case No. CJ-02-150, Dist. Ct. for Caddo County, Oklahoma (approved 1% Class Representative fee, filed July 11, 2003). The requested incentive award under the law and circumstances is fair and reasonable. A class representative incentive award of 1/2 of one percent of the Settlement Fund with interest is hereby ordered and shall be paid to the Class Representative by the Claims Administrators in accordance with the Agreement.

37. The Court approves payment of Class Counsel's Fees and Expenses, including the Class Representative's incentive award, as set forth above.

38. Neither the Agreement nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the settlement: (a) is or may be deemed to be or may be offered, attempted to be offered, or used in any way by the parties as a presumption, a concession, or an admission of or evidence of, any fault, liability or wrongdoing by the BP Released Parties or of the validity of any Released Claims against the BP Released Parties; or (b) is or may be offered or received as evidence or otherwise used by any person in these or any other actions or proceedings, whether civil,

criminal, or administrative, against any parties to the Agreement other than to enforce the terms of the Agreement or orders or Orders issued by the Court in connection with the settlement. Class Representative, Class Counsel, BP , or any Class Member may file the Agreement or Order in any action (a) that may be brought against any of them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, order bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or (b) to enforce or otherwise effectuate the terms of the Agreement or orders or Orders issued by the Court in connection with the settlement, such Claims being excluded from the releases contained herein.

39. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; and (c) all parties hereto for the purpose of construing, enforcing, and administering the injunction set forth in paragraph 7 of this Order.

40. In the event that the settlement does not become effective in accordance with the terms of the Agreement or the Order does not become Final, then this Order shall be rendered null and void to the extent provided by and in accordance with the Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

IT IS SO ORDERED.

SIGNED this 17th day of September, 2012.

Eric F Melgren

Honorable Eric F. Melgren
UNITED STATES DISTRICT JUDGE