EXHIBIT 8

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

JOHN CECIL, on behalf of himself and all others similarly situated, Plaintiff, vs. BP AMERICA PRODUCTION COMPANY (f/k/a Amoco Production Company) (including BP Amoco Corporation, ARCO, BP Exploration, Inc., BP Corporation North America, Inc., and BP Energy Company), Defendant.	Civil Action No. 16-CV-00410-KEW

JOINT DECLARATION OF PLAINTIFF'S COUNSEL REAGAN E. BRADFORD AND REX A. SHARP IN SUPPORT OF CLASS REPRESENTATIVE'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR APPROVAL OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND CASE CONTRIBUTION AWARD

Rex A. Sharp and Reagan E. Bradford jointly submit this declaration under penalty of perjury in support of the Class Representative's Motion for Final Approval of the Class Settlement and of the Class Representative's Motion for Approval of Plaintiff's Attorneys' Fees, Litigation Expenses, and Case Contribution Award, which are filed contemporaneously with this declaration.[1] This declaration was prepared with the assistance of other lawyers and staff at Sharp Law and The Lanier Law Firm, P.C. with knowledge of the matters reflected herein and reviewed in detail by us before signing. Except where otherwise stated, the statements made are based upon the personal knowledge and information of each of us.

[1] Capitalized terms used herein have the same meaning as those given to them in the Settlement Agreement (Dkt. No. 171-1).

I. Background --- Who's Who

1. We, and our firms, have litigated class actions and complex commercial litigation in the state and federal courts of Oklahoma and in numerous other state and federal courts for many years. Copies of our law firms' Summary Resumes, as well as brief biographies of the firm attorneys who worked on this Litigation, are attached hereto as **Exhibit A (Rex A. Sharp, P.A.);** and **Exhibit B (The Lanier Law Firm, P.C.).** *See also* **Exhibit C (Smolen Smolen & Roytman,** Plaintiff's local counsel).

2. With approval of the proposed Settlement of this *Cecil Case*, two additional royalty underpayment class actions against Defendant will also be resolved: *Chockley, et al. v. BP America Production Co.*, No. CJ-2002-84 pending in the District Court for Beaver County, State of Oklahoma ("*Chockley Case*") and *Chieftain Royalty Company v. BP America Production Company*, No. 16-cv-004444-JH pending in the United States District Court for the Eastern District of Oklahoma ("*Chieftain Case"*). The counsel in those cases have entered their appearances in the *Cecil Case* as "Additional Counsel." [2] The Summary Resumes for Additional Counsel are attached to the declarations of each firm: **Exhibit D (Burns & Stowers, P.C.); Exhibit E (Trippet, Kee, Trippet & Parsons, PLLC), Exhibit F (Barker, Woltz & Lawrence, APPC), Exhibit G (Barnes & Lewis, L.L.P.), Exhibit H (Nix Patterson, L.L.P.), and Exhibit I (Whitten Burrage).**

3. Rex A. Sharp, P.A., and The Lanier Law Firm, P.C. investigated, filed, and prosecuted this *Cecil Case*. We personally rendered legal services in *Cecil* and had responsibility for coordinating and leading the activity carried out by attorneys in *Cecil*. Smolen, Smolen & Roytman played a limited local counsel role.

[2] *See* Entries of Appearance, Doc. Nos. 181-183, 186, 190, 196-204.

4. Burns & Stowers, P.C., Trippet, Kee, Trippet & Parsons, PLLC, and Baker, Woltz & Lawrence, APPC, investigated, filed, and prosecuted the *Chockley Case*.

5. Barnes & Lewis, LLP, Nix Patterson, LLP, and Whitten Burrage investigated, filed, and prosecuted the *Chieftain Case*.

6. After the Settlement, but before preliminary approval, these nine (9) law firms agreed to jointly prosecute the *Cecil, Chockley,* and *Chieftain Cases* against BP. The *Chockley* and *Chieftain Cases* are presently stayed pending the Court's decision on final approval of this Settlement. If the Judgment approving the Settlement in *Cecil* becomes Final and Non-Appealable under the terms of the Settlement Agreement, then *Chockley* and *Chieftain* will be dismissed with prejudice. If the *Cecil* Settlement is terminated or the Judgment does not become Final and Non-Appealable, then we will jointly prosecute *Cecil, Chockley,* and *Chieftain.*[3]

7. By agreement among counsel, Rex A. Sharp, P.A. and The Lanier Law Firm, P.C. are Co-Lead Counsel for the *Cecil, Chockley,* and *Chieftain Cases* and have been appointed as Co-Lead Settlement Class Counsel with the other firms being additional class counsel in *Cecil.* The firms serving as "Additional Class Counsel" have entered their appearances as counsel on behalf of *Cecil* and the Settlement Class.[4]

8. The Court has appointed Rex A. Sharp of Rex A. Sharp, P.A. and Reagan E. Bradford of The Lanier Law Firm as co-lead Settlement Class Counsel.[5]

9. As Co-Lead Settlement Class Counsel and as counsel for Plaintiff John G. Cecil, Rex A. Sharp, P.A. and The Lanier Law Firm, P.C. have achieved an exceptional result,

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[3] The joint prosecution of *Cecil, Chockley,* and *Chieftain* does not extend to *Watts v. BP Am. Prod. Co.*, No. C-2001-73 pending in the District Court for Pittsburg County, State of Oklahoma. *See* Settlement Agreement, Doc. No. 171-1, at ¶1.42.

[4] *See* note 2, *supra.*

[5] Doc. No. 224 at 4, ¶3.d.

recovering more than $221 million in Gross Settlement Value. *See* Declaration of Daniel T. Reineke Valuation of Past and Future Benefits ("Reineke Decl. on Valuation"). Three components comprise the Gross Settlement Value: (1) $147,000,000 cash, which recovers more than the $145,367,109 in damages; (2) $38,000,000 in past benefits for BP's change in royalty methodology from 2009 to 2017 because of the *Chockley Case* and the *Cecil Case*; and (3) $36,216,351 in future benefits to secure BP's commitment to use that favorable methodology for the next seven years, from May 1, 2018 to April 31, 2025. *See* Reineke Decl. on Valuation, ¶¶4-7.a.

II. Work done before filing suit.

10. Rex A. Sharp began investigating the royalty payment practices of BP America Production Company in Oklahoma, before suit was filed. In fact, he had litigated a similar class action in Kansas against BP. *See Eatinger v. BP America Production Company,* 528 Fed. Appx. 859 (10th Cir. 2013). He suspected BP's royalty payment methodology also underpaid royalty owners in Oklahoma wells.[6]

11. In August 2016, former client John G. Cecil retained Rex A. Sharp, P.A. to investigate and pursue potential royalty underpayment claims against BP in Oklahoma.

12. Reagan E. Bradford of The Lanier Law Firm, P.C. agreed to work with the Sharp Law Firm in representing Mr. Cecil. As former Deputy General Counsel for Chesapeake Energy, Mr. Bradford brought valuable knowledge about royalty payment practices and familiarity with industry practices.

[6] The *Chockley Case* had been filed in the District Court of Beaver County in 2002. The work performed by the *Chockley* Plaintiffs and *Chockley* Counsel prior to the filing of the *Cecil Case* in 2016, including the "Prior Benefits" described in this Joint Declaration, has now fully inured to the benefit of the *Cecil Case* and the Settlement Class. *See* Stowers Decl. at ¶7.

13. We analyzed royalty check-stubs, leases, and publicly available information about the volume of gas production and gas sales by BP in Oklahoma, including general research about the operations and history of BP.

14. We investigated prior litigation against BP in Oklahoma and other states and hired consulting experts to evaluate the information we had gathered.

15. Because of the informal investigation and written communications with BP, we proceeded to the next step, hiring Daniel T. Reineke as a consulting expert to analyze the facts and issues related to BP's payment of royalty and sales of gas products. As Mr. Reineke's Declaration shows, he is a well-known petroleum engineer with extensive experience in gas operations and royalty payment practices. *See* Reineke Decl.

16. Based upon this consultation, our experience in gas class action litigation, our knowledge of the gas industry, royalty payment practices in Oklahoma, our analysis of the documents and information available, and a detailed legal analysis under Oklahoma law, we filed an Oklahoma royalty owner underpayment class action against BP in this Court on September 28, 2016.

III. Work done after suit is filed.

17. BP responded to the complaint by seeking double the amount of time in which to file a response. [Doc. No. 12]. Plaintiff opposed that motion. [Doc. No. 17]. This was the first salvo in a contentiously litigated case.

18. The First Motion to Dismiss. BP's motion for an extension of time to respond to the complaint was granted. [Doc. No. 19]. And, BP filed its motion to dismiss in November 2016, contending its success in defeating other class litigation against it should operate to preclude

Plaintiff's class action.[7] BP relied heavily on collateral estoppel from *Rees v. BP America Production Co.*, 211 P.3d 910 (Okla. Civ. App. 2009) and another federal court case following *Rees'* preclusive effect, *Consul Properties, LLC v. Unit Petro. Co.*, No. CIV-15-840-R (W.D. Okla. Feb. 2, 2016). But Co-Lead Plaintiff's Counsel realized before the filing of the *Cecil Case* that *Rees* rested on law that the United States Supreme Court unanimously overruled in *Smith v. Bayer Corp.*, 54 U.S. 299 (2011), and that plaintiff in *Consul Properties* had not raised the *Smith* reversal by implication. So, Plaintiff responded with these arguments. BP replied again touting its prior victories and *Rees v. BP*. With leave of Court, Plaintiff filed his sur-reply. [*See* Doc. Nos. 26, 30, and 33]. The Court thereafter granted BP's motion to file a response to Plaintiff's sur-reply, which BP did. [Doc. No. 36]. And, briefing was completed on January 11, 2017. The Court denied BP's motion to dismiss on March 20, 2017 and directed Plaintiff to file an amended complaint naming additional defendants, if necessary. [Doc. No. 48].

19. The Motions to Compel. That same day, March 20, 2017, Plaintiff filed the first of two motions to compel discovery. [Doc. No. 49]. Other than a current class well list and a few organizational charts, BP had produced none of the leases, gas analysis, gas contracts, plant statements, or other documents that Plaintiff had requested three (3) months earlier. *Id.* BP responded on April 4, 2017, throwing myriad obstacles to delay its providing class-wide discovery.

[7] *Gillespie v. Amoco Prod*. Co., No. 6:06-cv-000063-VML (E.D. Okla.) (filed Feb. 8, 1996, nationwide and state-wide class certification denied Jan. 11, 1999, case dismissed on Sept. 27, 2000); *Watts v. Amoco Prod. Co.*, No. C-2001-73 (Okla. Dist. Ct., Pittsburg County) (filed on 1/17/2001, Judge, later Justice Stephen W. Taylor denied seven (7) county class certification, mandate denying class certification issued on February 4, 2005); *Rees v. BP America Prod. Co*., 211 P.3d 910 (Okla. Civ. App. 2009) (denying class certification for a three (3) county class based on collateral estoppel from *Watts*); *Tucker v. BP*, CIV-08-619-M (W.D. Okla. 2011) (Judge Miles-LaGrange denying 28 well class on one gathering system).

[Doc. No. 51]. Plaintiff replied the very next day. [Doc. No. 53]. And Magistrate Judge Shreder set the motion for hearing. [Doc. No. 54].

20. Plaintiff's second motion to compel for documents related to other royalty underpayment class actions against BP in Oklahoma, Kansas, and Colorado. [Doc. No. 57]. It too was referred to Magistrate Judge Shreder, who set it for hearing on the same date as Plaintiff's first motion to compel. [Doc. No. 60]. BP responded to the second motion to compel.

21. With the exception of only one request, Magistrate Judge Shreder granted Plaintiff's first and second motions to compel discovery and set a date thirty days later for BP's compliance. [Doc. Nos. 68 & 69].

22. Meanwhile, hours before the in-person hearing on Plaintiff's motions to compel, BP filed a motion to limit discovery. [Doc. No. 66]. Plaintiff argued the orders compelling the discovery rendered BP's motion moot. [Doc. No. 72]. The Court denied BP's motion. [Doc. No. 87].

23. Rather than produce the documents on the date Magistrate Judge Shreder ordered them to be produced, BP filed status reports telling the Court that it had hired Squire Patton Boggs in Houston, Texas, to aid in the "huge" document production and asking for additional time to comply with the orders. [Doc. Nos. 74, 76 & 105]. Judge White granted BP's request for additional time given the "extensive amount of discovery." [Doc. No. 87]. Eventually, BP filed a "motion for clarification" seeking to shift its burden of production to Plaintiff's hunting for responsive documents among 200 boxes in a warehouse in Houston, Texas. [Doc. No. 113]. Plaintiff, once again, responded to the motion the very next day. [Doc. No. 116]. And, Judge White denied it shortly thereafter, noting "[c]ounsel have been before this court numerous times regarding the production of documents in this case." [Doc. No. 118].

24. After this drawn-out battle for discovery, BP finally provided detailed information regarding gas well identification, gas treatment on or near the lease, gathering, processing, marketing and sales of methane or residue gas and natural gas liquids (NGLs). Plaintiff also requested detailed information regarding the existence of midstream contracts, royalty payment software and calculations reflecting the royalty payment formula used, royalty "pay-decks," and raw data used to calculate royalties, direct or indirect charges, fees or in-kind payments associated with dehydration, treatment, gathering, processing, marketing, and sales of all components of the gas stream, and direct or indirect deductions from royalty payments. We then began the lengthy process of reviewing and organizing all of the documents and data produced, providing the entire production to our expert Mr. Reineke, and culling the production down. We reviewed over 5 million pages of documents, deposed BP's corporate designees, and reviewed every one of the 31,319 leases that BP produced and hired a landman to obtain leases that BP did not have because it had either sold the well and transferred the leases related to the or plugged its during the Class Period.

25. To clearly understand BP's gas operations in Oklahoma, the nature and scope of BP's royalty payment practices, and the nature and scope of BP's potential liability, we spent a substantial amount of time with Mr. Reineke and other experts or consultants on accounting, marketing, and lease and title analysis. We then formulated damage estimates from wellhead to transmission line.

26. Second Motion to Dismiss. While engaged in these discovery battles, Plaintiff also filed his First Amended Class Action Complaint ("FAC") on April 31, 2017 and served it on newly named defendants, all predecessors of BP. [Doc. No. 50]. While BP filed an answer to the FAC, the newly named defendants filed a motion to dismiss substantively identical to the one BP had

filed and that the Court had already denied. [Doc. Nos. 61, 80, 94]. Judge White too noted that the newly named defendants urged "the same arguments previously decided" in the prior order denying BP's motion to dismiss before again denying the motion to dismiss. [Doc. No. 143]. BP Corporation of North America, Inc. answered the FAC on September 11, 2017. [Doc. No. 144].

27. Discovery from Third Parties. Plaintiff also sought discovery from third parties. The record reflects Plaintiff served subpoenas on: (1) Centerpoint Energy Resources Corp.; (2) Continuum Energy Services, LLC; (3) DCP Operating Company, LP; (4) Enable Midstream Partners, LP; (5) Markwest Oklahoma Gas Company, LLC; (6) Natural Gas Pipeline Company of America, Inc.; (7) OGE Energy Corp.; (8) ONEOK Field Services Company, LLC; (9) Superior Pipeline Company, LLC; (10) Ozark Gas Gathering, LLC; (11) Enbridge G&P (Oklahoma), LP; (12) Enbridge Pipelines (Texas Gathering) Inc.; (13) Kinder Morgan, Inc.; and (14) Targa Pipeline Mid-Continent, LLC. [Doc. Nos. 96-104, 106-110].

28. The Battle for Depositions. Plaintiff also noticed the corporate representative deposition of BP, which BP moved to quash and to stay until a ruling on the motion to quash. [Doc. Nos. 119 & 120]. The motion was referred to Magistrate Judge Shreder and promptly set for hearing. [Doc. 124& 125]. Judge Shreder granted the stay until he could rule on BP's motion for protective order and ordered Plaintiff to file an expedited response to the motion to quash, which Plaintiff did. [Doc. No. 128]. BP replied. [Doc. No. 129]. Judge Shreder also order BP to produce a witness to testify about BP's completed discovery responses to-date. [Doc. No. 128]. That witness admitted that BP essentially did nothing when the documents were requested and began the bulk of its document collection efforts only after the Court ordered BP to produce documents. [Doc. No. 141-2]. BP resisted discovery at every turn.

29. BP also filed a motion for hearing on its motion to quash. [Doc. No. 130]. Plaintiff opposed stating: "Discovery has been delayed long enough already and this request will be highly prejudicial to plaintiff, with a motion for class certification due on August 17." [Doc. No. 131, filed July 26, 2017]. Magistrate Judge Shreder denied the motion for hearing but granted BP's motion to supplement the record on its motion to quash to support its claim of undue burden. [Doc. Nos. 132 & 133]. Plaintiff responded to BP's additional declarations within two days and noted that, despite a three-hour meet and confer session and narrowing the deposition topics to attempt a compromise, BP's motion practice had delayed the deposition more than six weeks and right up to one-week before plaintiff's deadline for filing his class certification motion. [Doc. 137]. Magistrate Judge Shreder granted BP's motion in part and denied it in part, so the deposition could finally proceed. [Doc. 138].

30. In addition to the corporate representative deposition discovery efforts, we also took depositions of numerous fact and third-party witnesses during the discovery period. We also reviewed the discovery and deposition testimony of dozens of Amoco and BP witnesses taken in other related cases that BP produced.

31. Given the delay in discovery, Plaintiff had to move to extend his filing deadlines by four months, which BP did not oppose. [Doc. No. 139]. Before granting the motion, however, Judge White ordered Plaintiff to provide a current status of discovery as the Local Rule 7.1 required. [Doc. No. 140]. So, Plaintiff provided the Court with a five-page table summarizing months of discovery disputes. [Doc. No. 141]. Shortly thereafter, the Court granted Plaintiff's until December 15, 2017 to file his motion for class certification. [Doc. No. 142].

32. Motion to Reconsider**.** Unwilling to accept the Court's denials of the motions to dismiss, Defendants filed a motion to reconsider those rulings. [Doc. No. 147]. For a third time, Plaintiff had to respond to the arguments. [Doc. No. 148].

33. Motion to File Second Amended Complaint. With over 1,000,000 pages of "Confidential" documents produced for the first time ever in Oklahoma royalty underpayment litigation against BP and Plaintiff's deadline to file his class certification motion just three (3) weeks away, Plaintiff moved for leave to file his Second Amended Class Action Complaint ("SAC"). Quoting extensively from many of the documents that BP had produced, Plaintiff detailed a decades-long scheme to underpay royalty owners and alleged a claim for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Judge White ordered BP to file its response to the motion for leave to amend under seal. [Doc. No. 155].[8]

34. Mediation Efforts. The next filing was a joint motion to stay the case and to extend deadlines by 90 days so the parties could mediate the dispute. [Doc. No. 156, filed Dec. 4, 2017]. Judge White granted the motion and ordered the parties to submit biweekly status reports on the settlement efforts. [Doc. Nos. 157 & 158]. Given the privilege attached to settlement negotiations, the parties submitted *in camera* ten such status reports between December 20, 2017 and April 4, 2018.

35. The parties turned their efforts to preparing for the mediation. They selected Bob Gum as mediator and set Saturday, January 20, 2018, as the date. Plaintiff's Counsel continued their review of BP's voluminous production of documents and provided many of them to Mr. Reineke, Plaintiff's expert, for evaluation and for calculation of damages. Between December 5, the date of filing of the joint motion to stay, and January 16, the date the parties submitted their

[8] Judge White later ruled this motion moot. [Doc. No. 179].

mediation statements and evidence to Mr. Gum, counsel spent many hours reviewing the documents and data produced, conferring with Mr. Reineke, requesting and receiving additional data related to refine the damages calculations, drafting and revising the mediation statement, drafting and revising a proposed settlement agreement with exhibits to frame the negotiations, and speaking with Mr. Gum by telephone.

36. An unforeseen circumstance arose on January 17, the day after the parties submitted their mediation statements to Mr. Gum. The upcoming mediation date drew an emergency motion to intervene from a competing class action against BP that sought to stop the mediation scheduled for January 20, 2018. [Doc. No. 160]. Judge White quickly denied that motion on several grounds. [Doc. No. 161].

37. The January 20 mediation session resulted in no settlement but the parties continued their negotiations and agreed to a second mediation session on February 12, 2018. Before that second session, the parties agreed to meet at BP America's offices in Houston, Texas to review accounting data for refinement of the damages calculations. Plaintiff's expert Mr. Reineke, Plaintiff's Counsel, and BP's revenue accounting personnel participated in that day-long meeting.

38. Despite agreement on many material terms and carrying over into the evening hours, the second mediation session was also unsuccessful. It adjourned with Mr. Gum suggesting he make a proposal on the remaining disputed terms.

39. Because the mediation sessions were unsuccessful and the class certification deadline was fast approaching, we redirected efforts from settlement to moving for class certification. Attorneys with our firms prepared Plaintiff's motion for class certification and moved for leave to file the memorandum in support under seal, along with working with experts to prepared extensive reports which would rely on a massive number of confidential documents to

be filed under seal. [Doc. No. 164]. But settlement discussions were on-going and progress was being made, so Plaintiff moved to extend the filing deadline for his class certification motion from March 22, 2018 to April 13, 2018. [Doc. No. 165]. Judge White granted that motion. [Doc. No. 166].

40. On March 21, 2018, the parties reached agreement in principle on all material terms and so advised the Court in its eighth joint status report submitted *in camera*. The parties' efforts shifted to documenting the settlement terms, which required multiple exchanges of drafts and ultimately took months to complete. We also began preparing the motion for preliminary approval of the settlement.

41. Meanwhile, BP informed the court in the *Chieftain Case* that the settlement of the *Cecil Case* would also settle the claims made in *Chieftain.* Chieftain responded to this news with another emergency motion to intervene in the *Cecil Case.* [Doc. Nos. 167 & 175]. Plaintiff and BP opposed that second emergency motion to intervene. [Doc. Nos. 168 & 172]. Judge White ruled that motion moot given the *Chieftain* court's ruling that "Chieftain's proposed class is within the class proposed in *Cecil*, that *Cecil* was first to file, and thus stayed that action [*Chieftain*]." [Doc. No. 176].

42. In preparing for the motion for preliminary approval of the settlement, Plaintiff moved to file his Second Amended Complaint, which Judge White took under advisement and later granted. [Doc. Nos. 169, 170 & 177]. Plaintiff filed his Second Amended Complaint. [Doc. No. 180].

43. Preliminary Approval of the Settlement. On April 13, 2018, after two in-person mediation sessions and extensive negotiations, the parties executed the Settlement Agreement. [Doc. No. 171-1]. That same day, Plaintiff moved for preliminary approval of the class action

settlement. [Doc. No. 171]. And BP moved to enjoin settlement class members from continuing to prosecute subsumed class actions against BP. [Doc. No. 173].[9]

44. While preliminary approval of the settlement was pending, we reached out to counsel in the *Chockley* and *Chieftain Cases* about joining us in representing Cecil and the proposed Settlement Class and, after many discussions and exchanges of revisions to agreements, achieved agreement on terms for joint representation in the *Cecil Case* and, if the Court does not approve the Settlement in *Cecil*, all three cases. *See* ¶¶1 through 7, *supra.* In June and July 2018, counsel in the *Chockley* and *Chieftain Cases* entered their appearances on behalf of Cecil and the proposed Settlement Class. *See* n.2, *supra.*[10]

45. On July 19, 2018, with the parties' consent, Judge White referred the *Cecil Case* to Magistrate Judge Kimberly E. West to conduct proceedings regarding the proposed class-wide settlement. [Doc. No. 187].

46. On September 5, 2018, Magistrate Judge West entered the Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class for Settlement Purposes, Approving Form and Manner of Notice and Setting Date for Final Fairness Hearing (the "Preliminary Approval Order"). [Doc. No. 224].

47. The Preliminary Approval Order set October 26, 2018, as the deadline for Class Members to opt-out of or object to the Settlement. [Doc. No. 224 at ¶¶13 and 14]. Class

[9] Much later, BP filed what it called a supplement to the motion to enjoin, but which sought to enjoin the prosecution of the excluded non-class *Watts Case* against BP, pending in Oklahoma state court. [Doc. No. 205]. That motion was fully briefed and set for hearing. [Doc. Nos. 211, 213, 216, 217, and 219]. Magistrate Judge West took the matter under advisement. [Doc. No. 223].

[10] The work performed by the *Chockley* Plaintiffs, *Chockley* Counsel, *Chieftain* Plaintiff and *Chieftain* Counsel has now fully inured to the benefit of the *Cecil Case* and the Settlement Class. *See* Stowers Decl. at ¶7.

Representative's Motion For Approval Of Attorneys' Fees, Expenses, And Class Representative Award is filed before this deadline.

IV. The Notice Campaign

48. After Judge West granted preliminary approval to the Settlement, including the form and manner of the Notice and Summary Notice, Plaintiff's Counsel and the Settlement Administrator began immediate preparation to provide Notice of the Settlement to Class Members. *See* Preliminary Approval Order [Doc. No. 224] at ¶¶7-8. The Notice and Summary Notice provided Class Members with all information needed to fully understand the terms of the Settlement and their rights thereunder. The Court stated in the Preliminary Approval Order that the Notice and Summary Notice "are the best notice practicable under the circumstances, constitute due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfy the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23." *Id.* at ¶7. Professor Stephen S. Gensler, an expert for Class Representative, agrees in finding the language in the Notices to be "clear, concise, plain, and easily understood. *See* Declaration of Steven S. Gensler in Support of the Settlement Agreement, Notice of the Proposed Settlement, and Award of Attorneys' Fees ("Gensler Decl.") at ¶36.

49. Since the Court issued its Preliminary Approval Order, Class Counsel has directed an extensive effort to send Notice to as many Class Members as possible. *See* Declaration of Jennifer M. Keough on behalf of Settlement Administrator, JND Legal Administration, Regarding Notice Administration ("JND Decl.") at ¶¶4 (submissions from 40 third-party operators). This campaign was necessary because there are tens of thousands of Class Members, including some who were paid royalty from companies other than Defendant that operated some of the Class wells.

50. To send Notice to the Settlement Class, the name and address of Class Members were researched. In addition, to properly distribute the Net Settlement Fund, each Class Member's royalty decimal interest and tax identification number were sought. Well operators maintain this information in the form of a "pay deck" for each well that is currently producing gas and its constituents. Well operators use pay decks to send monthly royalty payments to royalty owners. As such, Defendant maintains pay decks for the producing Class wells that they currently operate. For the majority of the Class wells at issue, Defendant was the operator and maintained the royalty payment history data, and provided that to Class Counsel as part of the Settlement Agreement. *See* Settlement Agreement at ¶3.3.

51. However, Defendant sometimes markets gas as a non-operating working-interest owner, and thus, third-party energy companies operate some of the Class wells. In such cases, the current third-party operator of the Class well maintains the pay deck. To get current pay decks from these operators, Class Counsel issued 72 subpoenas; and Defendant sent a letter in the form of Exhibit 7 to the Settlement Agreement to facilitate these operators' responses. Class Counsel communicated multiple times with most of these third-party operators to obtain the information and data necessary to ensure all efforts were used to send Notice to Class Members in a timely manner and that distribution to Class Members can be made. Class Counsel spent many hours obtaining updated and accurate information relating to these Class wells operated by third parties. Also, wells are frequently sold to other operators and, in some instances, Defendant had sold its interest in a Class well to another party. Thus, Class Counsel and its team had to track down the current operator of these wells. Class Counsel and its team searched the records of the Oklahoma Corporation Commission to determine who the operator was for many of the Class wells. Several

times, Class Counsel had to contact operators more than once as they failed to provide all of the data needed.

52. Class Counsel and its team asked the operators to provide the data in a searchable Microsoft Excel spreadsheet. However, they did not always comply with this request. Therefore, once the information was obtained, time was spent converting the data into a useable format so the data could be used by the Settlement Administrator to send out timely and proper Notice to Class Members. This data will also be used to later distribute the Net Settlement Fund to Class Members according to the Court-approved Initial Plan of Allocation.

53. On September 26, 2018, pursuant to the Court's Order, Notice was mailed to 33,002 unique mailing records identified in the mailing data. *See* JND Decl. at ¶6. For any Notice that was returned as undeliverable, the Settlement Administrator tracked them in an effort to deliver the Notice to each such Class Member *Id.* at ¶7. This includes re-mailing any such notices to any forwarding address provided or to anyone for whom the Settlement Administrator can obtain an updated address. *Id.* To date, approximately 3,119 Notices have been returned as undeliverable. *Id.* at ¶7. JND received new address information from the USPS for 205 and forwarded Notices to those addresses. *Id.* In addition, to ensure the best notice reasonably practicable under the circumstances, the Court-approved Summary Notice was published on September 26, 2018 in two papers of local circulation, *The McAlester News-Capital* (Pittsburg County), and *The Muskogee Phoenix*, and two papers of general circulation, *The Oklahoman*, and *The Tulsa World*. *Id.* at ¶8.

54. Also, the Notice and Summary Notice, along with other documents germane to the Settlement, were posted on the website created for and dedicated to this Action on September 25, 2018. *See id.* at ¶9; *see also* www.cecil-bp.com. This website is maintained by the Settlement

Administrator as a site where information regarding the Settlement can be found. *Id.* This website went live on September 25, 2018 and more than 526 unique persons have used it already. *Id.*

55. Class Counsel and its team, in conjunction with the Settlement Administrator, carried out the approved manner of disseminating the Notice and complied with all deadlines in the Preliminary Approval Order by executing the Notice campaign described above. Moreover, Class Counsel and the Settlement Administrator responded to any inquiries received from Class Members regarding the Notice and/or Settlement Agreement. To date, the Settlement Administrator has responded to at least 173 live phone calls from Class Members. *Id.* at ¶10.

56. The Notice campaign carried out by Class Counsel and its team is comparable to—if not exceeds—the highly successful notice campaigns completed in other oil and gas royalty cases approved by district courts in Oklahoma, including this Court. *See, e.g., Chieftain Royalty Company v. XTO Energy, Inc.*, No. 6:11-cv-00029-KEW, Dkt. No. 229 at ¶8 (E.D. Okla. Mar. 27, 2018); *Reirdon v. XTO Energy, Inc.*, No. 6:16-cv-00087-KEW, Dkt. No. 122 at ¶6 (E.D. Jan. 29, 2018). And, according to Professor Gensler, "[t]he practices employed in this case and carried out by JND are industry standard and are routinely approved as part of administering oil and gas royalty class action settlements." Gensler Decl. at ¶38.

57. Because of the extensive Notice campaign described above, Class Counsel anticipates the Settlement Administrator will begin mailing distribution checks to Class Members shortly after the Court's orders approving the Settlement and Plan of Allocation become final. Of course, some checks will be returned or will not be cashed for a variety of reasons, and immediate follow-up will be carried out in each such instance.

58. We believe this notice effort and campaign provided the most reasonable notice practicable under the circumstances including individual notice to all Class Members who could

be identified through reasonable effort and provided the information required by Federal Rule of Civil Procedure 23(c)(2)(B).

V. The Overwhelming Positive Reaction of the Settlement Class to the Settlement

59. Since Notice of the Settlement was disseminated, and at the time this Declaration was executed, only one purported opt-out request has been received from Class Members. JND Decl. at ¶12. Because this Declaration is required to be filed before the final deadline for filing objections and/or requests for exclusion, Class Representative and/or Class Counsel will update the Court regarding any requests for exclusion and/or objections filed after the Court imposed deadline, if any.

60. To date, we have received zero purported objections by Class Members to the Settlement.

61. Class Representative has filed a declaration with the Court in support of the Settlement.[11] In his declaration, John Cecil, states, "I, believe the negotiation process resulted in an excellent settlement and a significant benefit to the Class, which provides a cash payment of $147,000,000, which exceeds the actual amount of principal calculated as damages. ... The Settlement also delivers value to the Class Members by securing a change in BP's royalty payment methodology which eliminated or reduced deduction of midstream service fees and in-kind volumes for affiliate sales. As a result of the royalty owner litigation against it, BP also stopped taking other deductions, like gathering, compression, and dehydration in 2009 and increased royalty payments by $38,000,000 between 2009 and 2017. The Settlement also secures BP's contractual commitment to continue this royalty payment methodology for the next seven (7) years

[11] *See* Declaration of John Cecil, attached to the Exhibit Index filed in support of Class Representative's Motions as Exhibit 3.

from May 1, 2018 to April 31, 2025. The expert has valued this benefit at $36,216,351.00 to the Class. I believe this is a substantial recovery for the Class." *Id.* at ¶13 (internal citations omitted). He adds, "[m]y understanding of the facts as they pertain to this Litigation, as well as my extensive interaction with Plaintiff's Counsel, enables me to recommend approval of the Settlement." *Id.* at ¶15. Thus, Class Representative supports the Settlement and believes it should be finally approved.

62. Additionally, absent Class Members have filed declarations in support of the Settlement.[12] For example, Dan Little, President of Sagacity, Inc., states: "I have had an opportunity to review the Settlement Agreement in this case and other relevant documents made available on the website related to this Settlement. Following my review, I support all aspects of the Settlement[.]." *See* Declaration of Dan Little on behalf of Sagacity, Inc., attached to the Exhibit Index as Exhibit 7 at ¶3. Further, Mr. Little states "the Settlement is fair and reasonable and that it provides a great result for the Settlement Class." *Id.* at ¶4. Mr. Little, and another absent Class Member, Baptist Foundation of Oklahoma, indicated their support for all aspects of the Settlement, including the cash settlement amount, past benefit to Class Members, future benefits, Class Counsel's request for attorneys' fees and litigation expenses, as well as the Case Contribution Award requested by Class Representative. *Id.* at ¶5-7; Declaration of Joseph E. Hancock, on behalf of the Baptist Foundation of Oklahoma, attached to the Exhibit Index as Exhibit 6 at ¶¶5-7.

Additional Support for the Settlement

63. Professor Steven Gensler has opined that the Settlement is fair, adequate and reasonable. *See* Gensler Decl. at ¶¶4, 25. Professor Gensler is the Gene and Elaine Edwards Family Chair at the University of Oklahoma College of Law. *Id.* at ¶1. Professor Gensler teaches several

[12] *See* Declarations of Absent Class Members, attached to the Exhibit Index filed in support of Class Representative's Motions as Exhibits 4-7.

courses addressing the topic of class actions, including Civil Procedure. *See id.* He is the author of Federal Rules of Civil Procedure: Rules and Commentary (Thomson Reuters) and a wide range of articles on federal practice and procedure. *Id.*

64. Professor Gensler analyzes the factors Courts consider to determine whether the Settlement is fair, adequate and reasonable. *Id.* at ¶¶18-32. Professor Gensler states: "The most important consideration in whether a settlement is fair, reasonable, and adequate is whether the benefits provided by the settlement are commensurate with the present, uncertain value of the claims, taking into account the cost, delay, and risk of litigating to judgment." *Id.* at ¶20. "Applying the four factors identified by the Tenth Circuit, it is my opinion that the settlement in this case falls well within the range of compromises that would be fair, reasonable, and adequate." *Id.* at ¶25.

65. As the Court is aware, Professor Gensler has provided detailed expert reports, and offered extensive live testimony, in the *Chieftain v. XTO* and *Reirdon v. XTO* cases. The Court admitted Professor Gensler as an expert witness on several issues, including the fairness and reasonableness of attorneys' fees and expenses in class action litigation in Oklahoma and Oklahoma federal court. Professor Gensler also provided testimony detailing the status of attorneys' fee law in Oklahoma and the Tenth Circuit as well as contingent fee and hourly market rates. Rather than restate those reports and testimony again here, their reports and testimony in *Chieftain* and *Reirdon* are incorporated herein by reference.

66. Professor Gensler is not alone in his opinions. Former Oklahoma Supreme Court Justice Steven W. Taylor also supports the Settlement. Declaration of Steven W. Taylor in Support of the Settlement Agreement and Award of Attorneys' Fees ("Taylor Decl."), attached to the Exhibit Index as Exhibit 12. He states, "To cut to the chase, I will state my opinion at the beginning, I believe that the Settlement Agreement is reasonable and fair to all interested parties." Taylor

Decl. at ¶ 4. Notably, Justice Stevens denied class certification in *Watts v. Amoco Prod. Co. (now BP),* and admits having a conservative view of class actions. *Id.* at ¶5. But, in this case, he "concurs with and joins in Professor Gensler's analysis and conclusion that this settlement meets the four factors for consideration in approving a class action settlement proscribed by the Tenth Circuit." *Id.* at ¶10; *see id.* at ¶11.

Class Counsel Endorses the Settlement

67. An important factor in approving a proposed settlement is the opinion of experienced Class Counsel. Here, Class Counsel fully supports and endorses the $147 million cash Settlement that has a total value of at least $221,000,000 to the Settlement Class. Class Counsel believes the Settlement is fair, reasonable, and adequate and should be approved. More than anyone, Class Counsel is aware of the risks and uncertainties that accompany proceeding to trial in this Litigation. The Settlement avoids the risk of receiving no recovery after long, difficult litigation and provides the Settlement Class with a substantial recovery, as well as binding changes to Defendant's royalty payment policies and procedures on Class wells through April 31, 2025. The possibility of either no recovery at all or a limited recovery was very real, especially in light of Defendant's defenses to the Settlement Class' claims that would have to be overcome if the Litigation continued to trial. Through the $147 million cash Settlement plus the, past benefits conferred on Class Members (with an estimated $38 million value) and the future benefits agreed to by Defendant until April 31, 2025 (with an estimated $36 million net present value), Class Counsel and Class Representative not only obtained a significant benefit for the Class, but also avoided a negative outcome. Therefore, Class Counsel fully supports the Settlement.

The Settlement Is Comparable with Other Settlements Approved by Federal Courts in Oklahoma

68. As noted herein, the fairness, reasonableness and adequacy of the Settlement is comparable to that of other royalty underpayment class action settlements approved by federal courts in Oklahoma, including this Court. The Court recently approved the settlement in *Chieftain v. XTO Energy, Inc.*, a royalty and overriding royalty oil and gas class action. *See* No. 6:11-cv-00029-KEW, Dkt. No. 229 (E.D. Okla. Mar. 27, 2018). And another royalty underpayment class action was granted final approval in *Bollenbach Enterprises Limited Partnership v. Oklahoma Energy Acquisitions, L.P.*, No. 5:17-cv-00134-HE, Dkt. No. 69 (W.D. Okla. Mar. 12, 2018), where Plaintiff's Counsel in this case was also Class Counsel in *Bollenbach.*

69. Here, in addition to the large Gross Settlement Fund that is being distributed through a common fund, rather than through a claims-made process, the Settlement provides future benefits to the Class in the form of Defendant's binding agreement to continue to implement the procedures and policies for paying royalty on Class wells until April 30, 2025. Mr. Reineke, Plaintiff's oil and gas expert, has opined that these future benefits bestow a present value of at least $36 million on the Class. Reineke Decl. on Valuation at ¶6. This represents a truly outstanding recovery for the Class and is comparable to—if not exceeds—settlements approved by this Court in the past.

The Plan of Allocation

70. Upon final approval of the Settlement, the Settlement Administrator will distribute the Net Settlement Fund in accordance with a Court-approved Final Plan of Allocation.[13] Plaintiff's oil and gas expert, Dan Reineke opines, and Class Counsel submit, that the proposed Initial Plan of Allocation is fair, reasonable, and adequate and in the best interest of the Class. *See* Reineke Decl. on Allocation Methodology at ¶9.

[13] The Proposed Initial Plan of Allocation is attached to the Final Approval Motion as Exhibit 2.

71. Under the proposed Initial Plan of Allocation, the Net Settlement Fund (the portion of the Gross Settlement Fund remaining after deduction of fees and expenses allowed by the Court) will be allocated to individual Class wells proportionately, with due regard for the production marketed by Defendant on behalf of itself and/or others, the amount and date of claimed royalty underpayment, the time period when the claimed underpayment occurred. *Id.* at ¶¶4-5. Thereafter, Class Representative and Plaintiff's Counsel, with the aid of the Settlement Administrator will allocate the Net Settlement Fund for each Class well proportionately among all Class Members who hold royalty interests in the well based on their respective royalty decimal interest in such well using the December 2017 paydeck (or the most current available royalty pay deck). *Id.* at ¶4-9.

72. It is important to note that this is not a claims made settlement nor is it a settlement where a Class Member must take further action to participate. Although such settlements are common and entirely appropriate, here, if a Class Member is entitled to payment and does not opt out of the Settlement, a check for each Class Member's allocation of the Net Settlement Fund will be mailed to each Class Member's last known mailing address, using the payment history data produced under paragraph 3.3 of the Settlement Agreement (or the most current available address information). *See* Initial Plan of Allocation Order at 2. The data needed to make this distribution was obtained through Class Counsel's extensive efforts in gathering pay decks for notice purposes.

73. Returned or stale-dated Distribution Checks will be reissued as necessary to ensure delivery to the appropriate Class Members using commercially reasonable methods subject to review and approval by the Court. Initial Plan of Allocation Order at ¶4. The Settlement Administrator will perform all of these tasks as promptly as possible after the Court approves the Final Plan of Allocation.

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

The Settlement is Fair, Adequate and Reasonable

75. The Tenth Circuit has identified four factors that must be considered in determining whether to approve a settlement of a class action under Rule 23(e):

(1) whether the proposed settlement was fairly and honestly negotiated;
(2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
(3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
(4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (2002).

76. All four factors undoubtedly confirm the Settlement is fair, adequate, and reasonable and should be approved. First, we can attest that we as counsel, and Cecil and Defendant, engaged in extensive, arms-length and hard-fought negotiations regarding the Settlement Agreement. As discussed above, the Parties participated in a full day in-person mediation session on January 20, 2018, continued to have many settlement discussions thereafter, participated in a second full day in-person mediation session on February 12, 2018, continued settlement discussions thereafter, and actively negotiated the terms of the Settlement Agreement over the next few months, spending over a hundred hours attempting to reach an agreement on April 13, 2018. *See supra* ¶¶34-40. Mr. Gum, who mediated the Litigation, confirms the negotiations were fairly and honestly negotiated. *See* Gum Declaration at ¶¶7-16. The Settlement Agreement was fairly and honestly negotiated.

77. Second, Plaintiff and we acknowledge the difficult and complex questions of law and fact that exist in this case. *See* Cecil Decl. at ¶14. Defendant has consistently denied liability in this case and would have vigorously opposed class certification. While Plaintiff and Class

Counsel are confident the facts and law support class certification in this case, they face a considerable risk of not obtaining class certification. *See* Taylor Decl. at ¶5. Even if Class Representative were able to establish liability at trial, BP would have vigorously argued the Settlement Class' damages are far less than the $147 million Gross Settlement Fund and it is unlikely the future binding changes could even have been obtained through trial. Thus, the ultimate outcome of this Litigation remains in doubt.

78. Third, Plaintiff and Class Counsel have achieved an outstanding immediate recovery for the Settlement Class. Specifically, the Settlement Agreement provides for $147,000,000 in cash, the at least $38,000,000 past benefits conferred on Class Members from Defendant's change in royalty payment practices as a result of long-pending royalty owner class litigation, plus at least $36,000,000 in future benefits to Class Members from Defendant's agreement to maintain beneficial royalty payment practices through April 31, 2025. Reineke Decl. on Valuation at ¶¶4-7.a. We believe this is the largest royalty owner class action settlement in Oklahoma to-date. This is an outstanding immediate recovery for the Settlement Class, particularly when weighed against the risk of protracted and expensive litigation that could ultimately result in no recovery at all.

79. Fourth, the Parties support the Settlement and believe it is fair and reasonable and should be approved. *See* Settlement Agreement ¶2.1; *see also* Cecil Decl. at ¶15. We only agreed to settle this Litigation after considering the substantial benefits the Settlement Class will receive, the risks and uncertainties of continued litigation, and the desirability of proceeding under the terms of the Settlement Agreement.

80. All four factors support approval of the Settlement Agreement.

VI. Attorneys' Fees

81. We are the attorneys who oversaw and/or conducted the day-to-day activities of our respective law firms in the *Cecil Case*.

82. Plaintiff Cecil negotiated, and we agreed to, a contract to prosecute this case on a fully contingent basis, with a fee arrangement of 40% of any recovery obtained for the putative class before any appeal and 45% if appellate work was required. Numerous state and federal courts in Oklahoma have recognized that a 40% contingent fee is standard in Oklahoma royalty class action litigation. *See* ¶¶89-90, *infra*. *See also* Gensler Decl., Fitzpatrick Decl. and Taylor Decl., attached as Exhibits 11, 12 and 13 to the Combined Exhibit Index.

83. In a class action settlement like this one, where the claim is centered upon a federal cause of action (RICO), the equitable common fund doctrine controls. The absent class members share in payment of the attorneys' fee by assessing the appropriate percentage against the gross settlement fund created by the class action. The application of the federal equitable common fund doctrine is a bedrock principle of litigation in this country, as repeatedly shown by decisions from the United States Supreme Court, the Tenth Circuit, Oklahoma federal district courts, every federal circuit, and legal scholars. *See Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165 (1939); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988); COURT-AWARDED ATTORNEY FEES: REPORT OF THE THIRD CIRCUIT TASK FORCE, 108 F.R.D. 237, 250 (3d Cir. 1985). Otherwise, absent class members would get a windfall at the expense of Class Counsel and Cecil, by receiving benefits from the settlement without bearing any expense incurred to obtain the settlement. Federal common law in the Tenth Circuit clearly states that use of the percentage of the recovery is the preferred method for determining attorneys' fees in a common fund case based upon a federal claim. *See Gottlieb v. Barry*, 43 F.3d 474 (10th Cir.

1994); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451 (10th Cir. 1988); *Uselton v. Commercial Lovelace Motor Freight*, 9 F.3d 849 (10th Cir. 1993).[14] Thus, the contractually agreed 40% contingent fee is the expected payment/compensation under which Cecil and Plaintiff's Counsel worked at all times during this Litigation and is the amount by which the reasonableness of the fee request should be considered.

84. The application of hourly rates on a pay-as-you-go basis could not and would not work in a lawsuit like this one. Cecil's claim could not afford to pay for the fees and expenses incurred to litigate this matter to completion, not to mention the enormous additional cost were the case to go to trial. Few, if any, of the royalty owners could have afforded to pursue this case on an hourly basis plus actual expenses. And, our firms could not and would not have agreed to undertake this representation on an hourly basis, to advance the costs and expenses, and to accept the risk of non-payment, only to receive an hourly rate if, and only if, we obtained a recovery for the Settlement Class.

85. Rex A. Sharp, P.A. and The Lanier Law Firm, P.C. have invested over 10,000 hours and Additional Class Counsel event more in pursuing the royalty underpayment claims against BP, *see* Exhibits C-I, attached to this Declaration.

86. Further, even with a 40% contingent fee, only a few firms can advance an unknown amount of expenses (sometimes reaching into millions of dollars), only to be recovered if the litigation is successful. The cost of giving Class Notice alone can break the finances of some

[14] *Cf. Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P., et al.*, 888 F.3d 455 (10th Cir. 2018) (Oklahoma state law, rather than federal law, applied in determining award of attorney fees in common fund class action brought in diversity) *pet. for writ of certiorari pending.* Unlike *Chieftain v. Enervest*, this case asserts a federal claim and rests on a federal question, rather than diversity, jurisdiction; hence, federal law governs Plaintiff's application for fees, expenses, and case contribution award. *See* Gensler Decl. at ¶41.

plaintiff's firms. Worse yet, oil and gas defendants are often worth billions (as is the case here) and can and will test the staying power of plaintiff's firms known to be undercapitalized, inexperienced, or understaffed.

87. Plaintiff's Counsel in this case, and the few other firms that regularly do this type of class litigation, have the depth of capital and talent to work on a contingent basis and fund costs and expenses as needed to take a case to trial, obtain a judgment, and win on appeal. Sharp Law has carried royalty class cases all the way to the U.S. Supreme Court, argued the case before the U.S. Supreme Court, and later settled the case classwide. The Lanier Law Firm, P.C. has recovered billions of dollars for its clients in mass tort and class cases. The ability of Plaintiff's Counsel in this case is rare. That ability, combined with the considerable risk we take on, is one reason why the market rate for our services is 40%.

88. Further, as is the circumstance in this case, we often work on other related parallel matters that greatly benefit our clients (both direct and absent class members), but for which we cannot assess a charge to our clients.

89. Based upon our experience, knowledge, education, study, and professional qualifications, we believe that the 40% contingent fee we agreed to with Cecil is the market rate for this case and is fair and reasonable. *See* Decl. of [Former Judge] Layn R. Phillips, *Hitch Enterprises, Inc., et al. v. Cimarex Energy, Co.*, No. CIV-11-13-W (W.D. Okla. Dec. 28, 2012) (Doc. 82-2 at ¶19) ("Based on my experience as a former federal judge in the Western District of Oklahoma and as a mediator, it is my opinion that a request by, and award to, Class Counsel for an attorneys' fee in the range of 33 1/3-40%...."), a true and correct copy is attached as **Exhibit J**; Decl. of [Former Judge] Michael Burrage, *Reirdon v. XTO Energy, Inc.*, No. 6:16-cv-00087-KEW (E.D. Okla. Dec. 27, 2017) (Doc. 96-4 at ¶4) ("I believe, and numerous state and federal courts in

Oklahoma have determined that a 40% contingent fee is within the appropriate market range for cases of this nature [meaning royalty underpayment class actions]."), a true and correct copy is attached as **Exhibit K;** Decl. of Steven S. Gensler, *Reirdon v. XTO Energy, Inc.*, No. 6:16-cv-00087-KEW (E.D. Okla. Dec. 27, 2017) (Doc. 92 at ¶45) ("It is also my understanding that 40% is a typical contingent fee in oil and gas royalty class action litigation in Oklahoma."), a true and correct copy is attached as **Exhibit L**; Decl. of Geoffrey P. Miller, *Chieftain v. XTO,* No. 6:11-cv-0029-KEW, (E.D. Okla. Feb. 26, 2018) Doc. 206 at ¶57) ("I also find that an attorneys' fee of 40% is in line with awards in both federal and state courts in the Tenth Circuit and Oklahoma.") a true and correct copy is attached as **Exhibit M**; Decl. of Geoffrey P. Miller, *Reirdon v. XTO,* No. 6:16-cv-00087-KEW (E.D. Okla. Dec. 27, 2017) (Doc. 93 at ¶ 44) (same) a true and correct copy is attached as **Exhibit N**; Table of Oklahoma Cases awarding 40% contingency fee, attached to the Exhibit Index as **Exhibit O.** This Court has recently awarded relief similar to that requested here in *Chieftain Royalty, Inc. v. XTO Energy, Inc.*, No. 11-cv-00029-KEW (E.D. Okla. Mar. 27, 2018) (Doc. 231 at ¶¶6(a) & (tt)) (awarding 40% of the cash portion of the settlement) and in *Reirdon v. XTO Energy, Inc.*, No. 16-cv-87-KEW (E.D. Okla.) (Doc. 124 at ¶¶6(a) & (ss) (awarding 40% of cash portion of the settlement).

90. In a contingent class action, Oklahoma courts recognize the customary 40% fee reflects the extreme risk involved in class litigation concerning royalty payments. *Rudman v. Texaco*, Case No. CJ-91-1-E, District Court of Stephens Co., OK (approving 40% fee); *McIntoush v. Queststar*, Case No. CJ-02-22, District Court of Major Co., OK (same); *Robertson & Taylor v. Sanguine*, Case No. CJ-02-150, District Court of Grady Co., OK (same); *Simmons v. Anadarko*, Case No. CJ-04-57, District Court of Caddo Co., OK (same); *Velma-Alma v. Texaco*, Case No. CJ-02-101, District Court of Beaver Co., OK (same); *Laverty v. Newfield*, Case No. CJ-98-06012,

District Court of Tulsa Co., OK (same); *Continental v. Conoco*, Case No. CJ-95-739, consolidated with CJ-2000-356, District Court of Garfield Co., OK (same); *Lobo v. BP*, Case No. CJ-97-72, District Court of Beaver Co., OK (same). *See* The Table of Oklahoma Cases, attached to the Exhibit Index as **Exhibit O**. In a recent royalty owner class action handled by Sharp Law, the court awarded a 40% fee of the cash settlement where no past or future benefits were obtained. *Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C.*, No. CJ-2010-38, 2015 WL 5794008, at *3 (Okla. Dist. Ct. Beaver Cty. July 2, 2015) (finding that, under Oklahoma law, "[i]n the royalty underpayment class action context, the customary fee is a 40% contingency fee.") (collecting cases).

91. Because a contingent fee is set in the marketplace and is definitive evidence of the reasonable and fair percentage fee at the time the risk is undertaken and largely unknown, courts often focus on the contingent fee class action agreement to set the fee for the entire class. Of course, here, the risk was well known from the string of prior losses. *See supra* n. 7.

92. In an hourly or fee shifting lodestar case, which this case is not, courts also usually start with the fee agreement, but with the hourly rate set forth in the fee agreement. Class actions are never started or taken on this basis.

93. From the starting point of either an hourly rate or a contingent fee agreement, the court considers the twelve *Johnson* factors to determine whether the requested fee is reasonable.

94. The first consideration is the time and labor required, discussed at length in Sections II and III, *supra*. Suffice it to say, that immense time and labor was expended in this case. It was not a lay down winner. Quite the opposite. It consumed more than 10,000 hours of time and labor from our firms and more time and labor from Additional Class Counsel.

95. The novelty and difficulty of the questions presented by the litigation. While royalty

owner underpayment class actions are not novel in Oklahoma, they are difficult and complex enough that very few law firms undertake them. The continued difficulty of this area of the law, both in an oil and gas context and in a class action context, is also evident from the various positions taken by various judges in this District, some denying class certification altogether. Adding to the difficulty, the Oklahoma Legislature continues to change Oklahoma oil and gas law. Furthermore, Plaintiff's Counsel undertook this case in the face of multiple successful defeats of class certification by BP. Most importantly, the novel application of *Smith* in federal court to overcome the perennial bar of *Rees v. BP* was critical to the success of this case and was not employed in any prior royalty owner class action before it was done in this case. This factor strongly supports the fee request.

96. The skill required to perform the legal services properly. Hopefully the skill required to perform the legal service was apparent to this Court in briefings, as it was to mediator Gum during mediation briefing. *See* Gum Decl. Class actions are inherently difficult and generally hard fought. Gas royalty litigation is as well. Combined, the two areas of law require substantial skill and diligence. Very few firms even undertake such litigation. This factor supports the fee request.

97. The preclusion of other employment by the attorney due to the acceptance of the case. While not a critical factor, it is common knowledge that the longer a case goes on, the more other legal business it precludes since a lawyer and a law firm have only a finite amount of time to offer. This factor supports the fee request.

98. The customary fee. As shown above, the customary fee is 40%. Sometimes more is awarded if counsel must go through trial or handle the case on appeal. Here, far less than that is requested of the overall value obtained for the Settlement Class. This factor strongly supports the

fee request.

99. Whether the fee is fixed or contingent. This factor is the only one that has an either "or" proposition in it. It is important to preserve the parties' expectations in their representation agreement. In a contingent fee context, a poor result means a poor fee (regardless of how long or hard the attorney worked, or how good he was). A loss means no fee (and usually the attorney "eats" the out-of-pocket expenses too). When successful, a contingent fee must significantly exceed an hourly fee to recognize the risk of a substantial financial loss if the plaintiff is unsuccessful. Both types of fee structures are used in different settings, and both are ethical, legal, and reasonable. The fee in this case was a contingent fee case. This factor supports the fee request.

100. Time limitations imposed by the client or the circumstances. The client did not impose any time limits, but the Court did. The case proceeded quite fast for its size, and much of that was due to the time limits imposed by the scheduling order. This is not an important factor in most class cases, but it does support the fee request here.

101. The amount in controversy and the results obtained. The amount in controversy according to Plaintiff's expert was approximately $145 million in principal. *See* Reineke Decl. on Valuation at ¶4.

The result obtained in a contingent fee case is by far the most important factor in determining the fee to award. *See Hensley* v. *Eckerhart,* 461 U.S. 424, 436 (1983) (the "critical factor is the degree of success obtained"). The result obtained was a Settlement with a Gross Settlement Value of more than $221 million, with a cash recovery in excess of the principal damages. Reineke Decl. on Valuation at ¶4. This represents the largest royalty class action settlement in the history of Oklahoma. The Net Settlement Amount will be distributed directly to the Class Members once the Judgment becomes Final and Non-Appealable. Very few, if any, class actions have settled for

a higher percentage of actual damages. Most have settled for less, and in this District, some actions have failed altogether. This factor strongly supports the fee request.

102. The experience, reputation, and ability of the attorney. Plaintiff's Counsel, including Additional Class Counsel, has extensive experience with both class actions and royalty underpayment suits. *Freebird v. Cimarex Energy*, 264 P.3d 500, 509 (Kan. Ct. App. Oct. 7, 2011) ("The district court concluded that class counsel was well known and well respected, class counsel has been lead or co-lead counsel on numerous class action cases, and that class counsel was superb."). **Exhibits A** through **I** evidence Counsel's extensive experience, reputation, and ability.

The experience and skill of Plaintiff's Counsel served the Class well and so merits an award of fees as requested. Moreover, in this case, Plaintiff's Counsel faced opposition from experienced counsel from well-respected firms hired by large, sophisticated corporate defendants. This factor strongly supports the fee request.

103. Whether or not the case is an undesirable case. Very few attorneys have the desire to take the risk involved in class actions. That is even more so in oil and gas class actions, where a litigation battle is waged with a well-financed oil and gas company. *See, e.g.*, Decl. of Kimberly Hamilton, *Freebird, Inc. v. Merit Energy, Inc.*, No. 10-1154-KHV-JPO (D. Kan. Jan. 15, 2013) (Docket No. 199-3) (describing a royalty owner's challenge to find an attorney to prosecute royalty underpayment lawsuits), a true and correct copy of which is attached as **Exhibit P**. In addition, BP had previously defeated class certification on numerous occasions spanning decades. *See* Gensler Decl. at ¶6; Fitzpatrick Decl. at ¶6. This case was undesirable compared to other contingent fee litigation, other class actions, and other royalty owner class actions. This factor supports the fee request.

104. The nature and length of the professional relationship with the client. This factor

has little if any relevance here, but still supports the requested award. Plaintiff's Counsel met and worked with Mr. Cecil many times throughout the Litigation to prosecute these claims and Mr. Cecil zealously represented the Class. *See* Cecil Decl. This factor supports the fee request.

105. Awards in similar cases. As paragraphs 89 and 90, *supra*, show, the usual fee in the context of royalty underpayment class action litigation is 40%. *See also, Chieftain Royalty Co. v. Laredo Petro., Inc.*, No. CIV-12-1319, 2015 WL 2254606, at *2, ¶8 (W.D. Okla. May 13, 2015); *see also*, Table of Oklahoma Cases awarding 40% contingency fee, Exhibit O to this Declaration. This factor supports the fee request.

106. The risk of recovery in the litigation. The risk of no recovery was substantial. In this District, numerous royalty underpayment class actions have met with no class certification and, as a result, no recovery. And, of course, trial and the inevitable appeal is always risky. This factor supports the fee request.

107. Overall, most of the factors, and certainly the most important factors, strongly support a 40% fee of the cash, and less than 27% of the overall value.

Necessary Litigation Expenses

108. The books and records of Rex A. Sharp, P.A. reflect the expenses incurred for this case. It is Sharp Law's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of Sharp Law's work in connection with this Litigation and my review of these records, I, Rex A. Sharp, believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this Litigation, and that all of the expenses were necessary to the successful prosecution of this case. The total expenses paid by Sharp Law to date are approximately $315,000.00 through October 1, 2018.

109. The books and records of The Lanier Law Firm, P.C. reflect the expenses it has paid for this case. It is the Lanier Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of the Lanier Law Firm's work in connection with this Litigation and my review of these records, I, Reagan Bradford, believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this Litigation, and that all of the expenses were necessary to the successful prosecution of this case. The total expenses incurred by the Lanier Law Firm to date are approximately $730,000.00 through October 3, 2018.

110. The declarations of Additional Class Counsel reflect an additional $350,000 plus in reasonable and necessary litigation expenses. *See* Exhibits C through J.

111. Total expenses advanced by Class Counsel are more than $1.3 million.

112. The expenses will increase as Plaintiff's Counsel prepare for the Final Fairness Hearing and assist with the allocation and distribution processes. Also, expenses will increase to the extent that bills have not yet arrived and been catalogued into the presently available number.

113. Anticipating these circumstances, the Notice of Proposed Settlement of Class Action provided: "Plaintiff's Counsel will also seek reimbursement of the Litigation Expenses incurred in connection with the prosecution of this Litigation and that will be incurred through final distribution of the Settlement, which amount will not exceed $1,600,000.00, to be paid out of the Gross Settlement Fund." Exhibit A to the JND Decl. at 4. Plaintiff's Counsel also anticipate incurring an additional $8,000.00 in litigation expenses should an appeal be filed and prosecuted.

114. Consequently, we ask that the order awarding Litigation Expenses approve

payment of the actual reasonable litigation expenses that we and Additional Class Counsel have incurred in the approximate amount of $1.3 million and reserve the balance under the $1.6 million cap (less than $300,000) for Litigation Expenses not yet paid or to be incurred in the future. We will provide the Court with the figures at the Final Fairness Hearing.

115. In total, Plaintiff's Counsel and Additional Class Counsel have expended more than $1.3 million in reasonable and necessary expenses to date to prosecute litigation for royalty underpayment against BP. The amount of actual expenses will be provided to the Court at the Fairness Hearing on November 19, 2018.

Class Settlement Administration Expenses

116. Under ¶1.1 of the Settlement Agreement, BP and Plaintiff's Counsel will advance up to $750,000 in Administration Expenses, subject to later reimbursement from the Gross Settlement Fund within ten (10) days after the Effective Date of the Settlement. BP made the initial advance for Administration Expenses on September 10, 2018 as ¶1.1 required. Plaintiff's Counsel is obligated to make the next payment when the Settlement Administrator requests it. Settlement Agreement ¶1.1. So, no additional provision need be made for the payment of Administration, Notice and Distribution Costs.

VII. Case Contribution Award

117. The Class Representative in this lawsuit was indispensable, as the Declaration of Mr. Cecil shows. Mr. Cecil's determination to discover Defendants' royalty payment practices, his pursuit of experienced and skilled Plaintiff's Counsel, availability and persistence throughout the Litigation, provision of documents and information, presence at the mediation sessions, and anticipated presence at the Fairness Hearing deserves remuneration for the time spent and expenses incurred. Mr. Cecil provided information such as check stubs over the years and leases

to justify his claims. He remained in close contact with Plaintiff's Counsel and attended the mediation in Oklahoma City, by travelling there in person. Mr. Cecil participated in numerous telephone conferences during the investigation, litigation, mediation, and settlement process, and exchanged emails on all aspects of this lawsuit. He reviewed the discovery, litigation pleadings, mediation materials, and settlement materials, often raising specific issues that needed to be addressed. When reason and common sense suggested mediating a resolution, Mr. Cecil participated fully in the process to ensure it was fair, reasonable, fully adversarial, and non-collusive. Mr. Cecil has earned a fair incentive award and seeks $350,000 for himself and $100,000 to be divided equally among the four named plaintiffs in the *Chockley* and *Chieftain Cases,* or $450,000 total, which represents 0.2% of the Gross Settlement Value. Contribution awards ranging from 1-2% are common in royalty underpayment class actions in Oklahoma. *See Brown v. Citation*, No. CJ-04-217 (Okl. Dist. Ct., Caddo County, 2009) (awarding 1% of $5.25 million settlement fund); *Velma-Alma Indep. Sch. Dist. No. 15 v. Texaco,* Inc. No. CJ-2002-304, (Okl. Dist. Ct., Stephens County, 2005) (awarding 1-2% of total settlement amounts); *Robertson v. Sanguine, Ltd*., No. CJ-02-150 (Okl. Dist. Ct., Caddo County, 2003) (awarding 1% class representative fee); *Continental Resources, Inc. v. Conoco, In*c., No. CJ-95-739 (Okl. Dist. Ct., Garfield County, 2005) ("Court awards to Class Representatives of 1% of the common fund are typical in these types of actions, with some awards approaching 5% of the common fund."); *Hitch Enters., Inc. v. Cimarex Energy Co*., No. CIV-1 1-13-W (W.D. Okla. July 2, 2013) (awarding 1% of the settlement amount and holding "the incentive award sought by [class representatives] is consistent with incentive awards in other royalty owner class actions litigated in Oklahoma."). Here, the Class Representative only requests a 0.2% fee. As Plaintiff's Counsel, we support this request.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2018.

Rex A. Sharp

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2018.

Reagan E. Bradford