

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

**SAGACITY, INC.; THE DUNCAN
GROUP, LLC; AND HITCH
ENTERPRISES, INC., on behalf of
themselves and a class of similarly
situated persons,**

Plaintiffs,

vs.

**CIMAREX ENERGY CO.;
MAGNUM HUNTER
PRODUCTION, INC.; PRIZE
ENERGY RESOURCES, INC.;
CIMAREX ENERGY COMPANY OF
COLORADO; KEY PRODUCTION
COMPANY, INC.,**

Defendants.

Case No. CIV-17-101-GLJ

**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**

This matter comes before the Court on the Plaintiffs' Unopposed Motion to Certify the Settlement Class for Settlement Purposes, to Preliminarily Approve the Class Action Settlement, to Approve the Form and Manner of Notice, and to Set a Date for a Final Fairness Hearing [Docket No. 129]. As discussed below, the Court finds the motion should be GRANTED.

This is a class action lawsuit brought by Plaintiffs Sagacity, Inc., The Duncan Group, LLC, and Hitch Enterprises, Inc. ("Plaintiffs"), on behalf of themselves and a class

of similarly situated persons described below (collectively, the “Settlement Class”) against Cimarex Energy Co., Magnum Hunter Production, Inc., Prize Energy Resources, Inc., Cimarex Energy Company of Colorado, and Key Production Company, Inc. (“Defendants”) for the alleged underpayment of royalties on natural gas, natural gas liquids, and associated hydrocarbons produced from wells located in Oklahoma during the Claim Period.¹ On February 2, 2024, the Parties executed a Settlement Agreement. The Settlement Agreement, together with the documents referenced therein and exhibits thereto, sets forth the terms and conditions for the proposed Settlement of the Litigation.

In accordance with the Settlement Agreement, Plaintiffs now present the Settlement to the Court for preliminary approval under Federal Rule of Civil Procedure 23.

After reviewing the pleadings and Plaintiffs’ Unopposed Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve the Class Action Settlement, Approve Form and Manner of Notice, and Set Date for Final Fairness Hearing (“Motion for Preliminary Approval”), the Court has preliminarily considered the Settlement to determine, among other things, whether the Settlement warrants the issuance of notice to the Settlement Class. Upon reviewing the Settlement and the Motion for Preliminary Approval, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. For purposes of this Order, the Court adopts all defined terms as set forth in the Settlement Agreement unless otherwise defined herein.

¹ Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Settlement Agreement.

2. The Court finds the Settlement Class should be certified at this stage for the purposes of this Settlement, as the Settlement Class meets all certification requirements of Federal Rule of Civil Procedure 23 for a settlement class. The Settlement Class is Certified for settlement purposes only, subject to the Court's final consideration at the Final Fairness Hearing. Because this case has been settled at this stage of the proceedings, the Court does not reach, and makes no ruling either way, as to the issue of whether the Settlement Class could have been certified in this case on a contested basis.

3. The certified Settlement Class is defined as follows:

All royalty owners in Oklahoma wells (a) operated and leased by Cimarex Energy Co., (b) operated by Cimarex Energy Co. of Colorado, Inc. and leased by Prize Energy Resources, Inc. or Magnum Hunter Production, Inc., and (c) operated or leased by Key Production Company, Inc. that have produced gas or gas constituents (such as residue gas or natural gas liquids) from January 1, 2013, to November 30, 2023.

Excluded from the Class are: (1) the Mineral Management Service (Indian tribes and the United States) and the State and Counties of Oklahoma; (2) Defendants, their affiliates, and employees, officers and directors; (3) Any NYSE or NASDAQ listed company (and its subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing; (4) royalty owners who have already filed and still have pending lawsuits for underpayment of royalties against Defendants, including: Fortis Minerals II, LLC, Fortis Sooner Trend, LLC, FMII STM, LLC, Sooner Trend Minerals, LLC, and Phenom Minerals, LLC; (5) all royalty owners that expressly authorized in their leases the deduction of processing costs from royalties; and (6) all royalty owners to the extent their wells are both subject to the class action settlement in *Chieftain Royalty Co. v. QEP Energy*, No. 5:11-cv-00212-R, and the well was subsequently acquired by Defendants or any of their affiliates.

4. The Court finds, subject to the Court's final consideration at the Final Fairness Hearing, the above-defined Settlement Class satisfies all prerequisites of Federal

Rule of Civil Procedure 23(a) for purposes of the proposed class settlement:

a. **Numerosity.** Plaintiffs have demonstrated “[t]he class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Tenth Circuit has not adopted a set number as presumptively sufficient to meet this burden, and there is “no set formula to determine if the class is so numerous that it should be so certified.” *Trevizo v. Adams*, 455 F.3d 1155, 1162 (10th Cir. 2006). Here, the Settlement Class consists of several thousand royalty owners. Therefore, the Court finds the numerosity prerequisite is met.

b. **Commonality.** Plaintiffs have also demonstrated that, for settlement purposes and on a preliminary basis, “[t]here are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).

c. **Typicality.** Plaintiffs have also shown “[t]he claims or defenses of the representative parties are typical of the claims or defenses of the class” for settlement purposes and on a preliminary basis. Fed. R. Civ. P. 23(a)(3).

d. **Adequacy.** Plaintiffs and Plaintiffs’ Counsel have demonstrated “[t]he representative parties will fairly and adequately protect the interests of the class” for settlement purposes and on a preliminary basis. Fed. R. Civ. P. 23(a)(4).

In addition, because the Court finds Plaintiffs and Plaintiffs’ Counsel to be adequate representatives of the Settlement Class, the Court hereby appoints Plaintiffs as Class Representatives and Plaintiffs’ Counsel Rex A. Sharp and Scott B. Goodger of Sharp Law, LLP as Class Counsel.

5. The Court also finds the requirements of Federal Rule of Civil Procedure

23(b)(3) are met at this stage of the proceedings:

a. **Predominance.** Plaintiffs have shown “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” for settlement purposes and on a preliminary basis. Fed. R. Civ. P. 23(b)(3).

b. **Superiority.** Plaintiffs also have established “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy” for settlement purposes and on a preliminary basis. Fed. R. Civ. P. 23(b)(3).

In sum, the Court finds all prerequisites and requirements of Federal Rule of Civil Procedure 23(a)-(b) are satisfied for purposes of certifying a class for settlement purposes, subject to the Court’s final consideration at the Final Fairness Hearing.

6. The Court preliminarily finds (a) the proposed Settlement resulted from extensive arm’s-length negotiations; (b) the proposed Settlement was agreed to only after Class Counsel had conducted legal research and discovery regarding the strengths and weakness of Class Representatives’ and the Settlement Class’s claims; (c) Class Representatives and Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate; and (d) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Settlement Class.

7. Having considered the essential terms of the Settlement under the recognized standards for preliminary approval as set forth in the relevant jurisprudence, the Court preliminarily approves the Settlement, subject to the right of any member of the

Settlement Class to challenge the fairness, reasonableness, and adequacy of any part of the Settlement, Settlement Agreement, Allocation Methodology, or any proposed Distribution Schedule, and to show cause, if any exists, why the Judgment dismissing the Released Claims in the Litigation based on the Settlement Agreement should not be ordered after adequate notice to the Settlement Class has been given in conformity with this Order. As such, the Court finds that those Class Members whose claims would be settled, compromised, dismissed, and released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

8. The Court further preliminarily approves the form and content of the proposed Notices of Settlement, which are attached to the Settlement Agreement, and finds the Notices of Settlement 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. The Court finds the form and content of the Notices of Settlement fairly and adequately: (a) describe the terms and effect of the Settlement; (b) notify the Settlement Class that Class Counsel will seek Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award for Class Representatives' representation; (c) notify the Settlement Class of the time and place of the Final Fairness Hearing; (d) describe the procedure for requesting exclusion from the Settlement; and (e) describe the procedure for objecting to the Settlement or any part thereof.

9. The Court also preliminarily approves the proposed manner of communicating the Notices of Settlement to the Settlement Class, as set out below, and finds it is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23:

a. No later than thirty (30) days after entry of this Preliminary Approval Order, the settlement administrator will mail (or cause to be mailed) the postcard Notice of Settlement to all Class Members who have been identified after reasonable efforts to do so and will post the long-form Notice of Settlement to the settlement website. The postcard Notice of Settlement will be mailed to Class Members using the data described in paragraph 3.3 of the Settlement Agreement, the last known addresses for each payee, and any updated addresses found by the settlement administrator. For any Class Members who received more than one payment, the Notice of Settlement will be mailed to the payee's last-known address (or any updated address found by the settlement administrator). The settlement administrator will also publish the Notice of Settlement as described below. It is not reasonable or economically practical for the Parties to do more to determine the names and addresses of Class Members.

b. No later than ten (10) days after mailing the postcard Notice of Settlement, or at such time as is ordered by the Court, the settlement administrator also shall publish (or cause to be published) the summary Notice of Settlement one time in each of the following newspapers: (a) *The Oklahoman*, a paper of general circulation in

Oklahoma; and (b) *The Tulsa World*, a paper of general circulation in Oklahoma.

c. Within ten (10) days after mailing the postcard Notice of Settlement and continuing through the Final Fairness Hearing, the settlement administrator will also display (or cause to be displayed) on an Internet website dedicated to this Settlement the following documents: (i) the Notice of Settlement, (ii) the original and amended pleadings filed in Eastern District Action, Western District Action, and State Court Action, (iii) the Settlement Agreement, (iv) this Order, and (v) other publicly-filed documents related to the Settlement.

10. Class Counsel is authorized to act on behalf of the Settlement Class with respect to all acts required by, or which may be given pursuant to, the Settlement Agreement, or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Settlement Agreement.

11. The Court appoints JND Legal Administration to act as settlement administrator and perform the associated responsibilities set forth in the Settlement Agreement. The settlement administrator will receive and process any Requests for Exclusion and, if the Settlement is finally approved by the Court, will supervise and administer the Settlement in accordance with the Settlement Agreement, the Judgment, and the Court's order(s) authorizing distribution of the Net Settlement Amount to the Class Members. The Parties and their Counsel shall not be liable for any act or omission of the settlement administrator.

12. The Court appoints Citibank as the Escrow Agent. The Escrow Agent is authorized and directed to act in accordance with the Settlement Agreement and Escrow

Agreement. The Parties and their Counsel shall not be liable for any act or omission of the Escrow Agent or loss of funds in the Escrow Account.

13. Pursuant to Federal Rule of Civil Procedure 23(e), a Final Fairness Hearing shall be held on Friday, June 7, 2024, at 10:30 a.m. in Courtroom 4. in the United States District Court for the Eastern District of Oklahoma, the Honorable Gerald L. Jackson presiding to:

- a. determine whether the Settlement should be approved by the Court as fair, reasonable, and adequate and in the best interests of the Settlement Class;
- b. determine whether the notice method utilized: (i) constituted the best practicable notice under the circumstances; (ii) constituted notice reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Litigation, the Settlement, their right to exclude themselves from the Settlement, their right to object to the Settlement, and their right to appear at the Final Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;
- c. determine whether a final Judgment should be entered pursuant to the Settlement Agreement, *inter alia*, dismissing the Released Claims in the Litigation against Defendants with prejudice and extinguishing, releasing, and barring all Released Claims against all Released Parties in accordance with the Settlement Agreement;
- d. determine the proper method of allocation and distribution of the Net Settlement Amount among Class Members who are not excluded from the Settlement Class

by virtue of a timely and properly submitted Request for Exclusion or other order of the Court;

e. determine whether the applications for Plaintiffs' Attorneys' Fees, reimbursement for Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award to Class Representatives are fair and reasonable and should be approved; and

f. rule on such other matters as the Court may deem appropriate.

14. The Court reserves the right to adjourn, continue, and reconvene the Final Fairness Hearing, or any aspect thereof, including the consideration for the application for Plaintiffs' Attorneys' Fees and reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award to Class Representatives without further notice to the Settlement Class. The settlement administrator will update the website maintained pursuant to this Order to reflect the current information about the date and time for the Final Fairness Hearing.

15. Class Members wishing to exclude themselves from the Settlement Class pursuant to Federal Rule of Civil Procedure 23(e)(4) must submit a valid and timely Request for Exclusion. Requests for Exclusion must include: (i) the Class Member's name, address, telephone number, and notarized signature; (ii) a statement that the Class Member wishes to be excluded from the Settlement Class in *Sagacity v. Cimarex*; and (iii) a description of the Class Member's interest in any wells for which the Defendants remitted oil-and-gas proceeds, including the name, well number, county in which the well is located, and the owner identification number. Requests for Exclusion must be served on the

settlement administrator, Class Counsel, and Defendants' Counsel by certified mail, return receipt requested and received no later than 5 p.m. CT by the deadline of twenty-one (21) days prior to the Final Fairness Hearing at the addresses for the settlement administrator, Class Counsel, and Defendants' Counsel listed immediately below. Requests for Exclusion may be mailed as follows:

Settlement Administrator:

Sagacity v. Cimarex Settlement
c/o JND Legal Administration, Settlement Administrator
P.O. Box 91420
Seattle, WA 98111

Class Counsel:

Rex A. Sharp
Scott B. Goodger
Sharp Law, LLP
4820 W. 75th Street
Prairie Village, KS 66208

Defendants' Counsel:

Nathan K. Davis
Snell & Wilmer L.L.P.
1200 17th Street, Suite
1900
Denver, CO 80202

Bradley W. Welsh
Crowe & Dunlevy
222 North Detroit Avenue,
Suite 600
Tulsa, OK 74120

Requests for Exclusion may not be submitted through the website or by phone, facsimile, or e-mail. Any Class Member that has not timely and properly submitted a Request for Exclusion shall be included in the Settlement and shall be bound by the terms of the Settlement Agreement in the event it is finally approved by the Court.

16. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, any term of the Settlement, the Allocation Methodology, any Distribution Schedule, the request for Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, or the request for an Incentive Award to Class Representatives may file an objection. The written objection must contain the following: (a) a heading referring to *Sagacity v. Cimarex Energy Co.*, Case No. 6:17-cv-101-GLJ, United States District Court for the Eastern District of Oklahoma; (b) a statement as to whether the objector intends to appear at the Final Fairness Hearing, either in person or through counsel, and, if through counsel, counsel must be identified by name, address, and telephone number; (c) a detailed statement of the specific legal and factual basis for each and every objection; (d) a list of any witnesses the objector may call at the Final Fairness Hearing, together with a brief summary of each witness's expected testimony (to the extent the objector desires to offer expert testimony or an expert report, any such evidence must fully comply with the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the Local Rules of the Court); (e) a list of and copies of any exhibits the objector may seek to use at the Final Fairness Hearing; (f) a list of any legal authority the objector may present at the Final Fairness Hearing; (g) the objector's name, current address, current telephone number, and all owner identification numbers with the Defendants; (h) the objector's signature executed before a Notary Public; (i) identification of the objector's interest in wells for which the Defendants remitted oil-and-gas proceeds (by well name, well number, payee name, payee number, and county in which the well is located) during the Claim Period and identification of any payments by

date of payment, date of production, and amount; and (j) if the objector is objecting to any portion of Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses or Administration, Notice, and Distribution Costs, or an Incentive Award sought by Class Representatives or Class Counsel on the basis that the amounts requested are unreasonably high, the objector must specifically state the portion of such requests he/she/it believes is fair and reasonable and the portion that is not. Such written objection must be filed with the Court and served on Class Counsel and Defendants' Counsel, via certified mail return receipt requested, and received no later than 5 p.m. CT by the deadline of twenty-one (21) days prior to the Final Fairness Hearing at the addresses for the settlement administrator, Class Counsel, and Defendants' Counsel as set forth in paragraph 15 above. Any Class Member who fails to timely file and serve such written statement and provide the required information will not be permitted to present any objections at the Final Fairness Hearing and such failure will render any such attempted objection untimely and of no effect. All presentations of objections will be further limited by the information listed. Either or both Parties' counsel may file any reply or response to any objections prior to the Final Fairness Hearing. The procedures set forth in this paragraph do not supplant, but are in addition to, any procedures required by the Federal Rules of Civil Procedure.

17. Any objector who timely files and serves a valid written objection in accordance with the above paragraph may also appear at the Final Fairness Hearing, either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to present any objection at the Final Fairness Hearing must comply with the Local Rules of this Court and the requirements set forth in paragraph 16

above.

18. No later than twenty-eight (28) days prior to the Final Fairness Hearing, if the Settlement has not been terminated pursuant to the Settlement Agreement, Class Counsel and Plaintiffs shall move for: (a) final approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e); (b) entry of a Judgment in substantially the same form as Exhibit 2 to the Settlement Agreement; (c) final approval of the Allocation Methodology and Final Distribution Schedule; and (d) Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award.

19. If the Settlement is not approved by the Court, is terminated in accordance with the terms of the Settlement Agreement, or otherwise does not become Final and Non-Appealable for any reason whatsoever, the Settlement, Settlement Agreement, and any actions to be taken in connection therewith (including this Order and any Judgment entered herein), shall be terminated and become void and of no further force and effect as described in the Settlement Agreement. Any obligation or provision in the Settlement Agreement that expressly pertains to the termination of the Settlement or events to occur after the termination shall survive termination of the Settlement Agreement and Settlement.

20. All proceedings in the Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final approval of the Settlement, Class Representatives and all Class Members are barred, enjoined, and restrained from commencing, prosecuting, continuing, or asserting in any forum, either directly or

indirectly, on their own behalf or on the behalf of any other person or class, any Released Claim against the Released Parties.

21. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related thereto, is not, and shall not be construed as, or deemed to be evidence of, an admission or concession by any of the Parties to the Settlement Agreement and shall not be offered or received as evidence in any action or proceeding by or against any Party in any court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement between the Defendants and any Class Member(s), the provisions of the Settlement Agreement, or the provisions of any related agreement, judgment, or release. This Order shall not be construed or used as an admission, concession, or declaration by or against the Defendants of any fault, wrongdoing, breach, liability, or the propriety of maintaining this Litigation as a contested class action or of class certifiability, and the Defendants specifically deny any such fault, wrongdoing, breach, liability, and allegation regarding certification. This Order shall not be construed or used as an admission, concession, or declaration by or against Class Representatives or the Settlement Class that their claims lack merit or that the relief requested in the Litigation is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any Party of any arguments, defenses, or claims he, she, or it may have with respect to the Litigation or class certifiability in the event the Settlement is terminated.

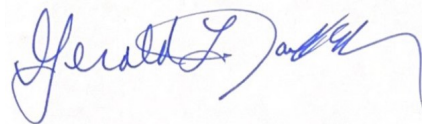
22. The Court, along with any appellate court with power to review the Court's orders and rulings in the Litigation, hereby retains jurisdiction over this Litigation to

consider all further matters arising out of or connected with the Settlement reflected in the Settlement Agreement, including enforcement of the releases provided for in the Settlement Agreement. The Court, along with any appellate court with power to review the Court's orders and rulings in the Litigation, also hereby retains jurisdiction over this Litigation to administer all other matters related to the enforcement of the Settlement Agreement and Settlement and the orders of the Court related thereto.

23. The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further written notice to the Settlement Class.

24. Accordingly, Plaintiffs' Unopposed Motion to Certify the Settlement Class for Settlement Purposes, to Preliminarily Approve the Class Action Settlement, to Approve the Form and Manner of Notice, and to Set a Date for a Final Fairness Hearing [Docket No. 129] is hereby GRANTED, with the terms provided above.

IT IS SO ORDERED this 4th day of March, 2024.



GERALD L. JACKSON
UNITED STATES MAGISTRATE JUDGE