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

MICHAEL KERNEN, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	Case No. CIV-18-00107-JD
CASILLAS OPERATING, LLC,	)	
Defendant.	)	

DECLARATION OF STEVEN S. GENSLER IN SUPPORT OF THE SETTLEMENT, NOTICE OF THE PROPOSED SETTLEMENT, AND AWARD OF ATTORNEY'S FEES

I, Steven S. Gensler, declare as follows:

1. I am the Gene and Elaine Edwards Family Chair in Law at the University of Oklahoma College of Law, where I teach Civil Procedure and related classes. I also currently serve as the Associate Dean for Academic Affairs.

2. I have been teaching and studying federal civil practice and procedure for over 20 years. For the last 14 years, I have been the principal author of a treatise on the Federal Rules of Civil Procedure, which my co-author and I revise and update annually. From 2005 to 2011, I served as a member of the Federal Civil Rules Advisory Committee. My curriculum vitae is attached as **Exhibit 1**.

3. I have been retained by Class Counsel to provide an opinion as to: (1) the fairness, reasonableness, and adequacy of the Stipulation and Agreement of Settlement

("Settlement Agreement"); (2) the adequacy of the Notice of Proposed Settlement; and (3) the reasonableness of Class Counsel's attorney's fee request.

4. In forming these opinions, I have reviewed, among other things: (1) pleadings, filings, and orders in this case; (2) the Settlement Agreement (the "SA"); (3) the Declaration of Mediator Bradley A. Gungoll ("Gungoll Decl."); (4) the Affidavit of Barbara Ley ("Ley Aff."); (5) the Declaration of Jennifer M. Keough on Behalf of Settlement Administrator JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement ("JND Decl."); (6) the Declaration of Robert N. Barnes, Andrew G. Pate, and Patrick M. Ryan on Behalf of Class Counsel ("Joint Class Counsel Decl." or "JCC"); (7) the Declaration of Robert N. Barnes, Patranell Britten Lewis, and Emily Nash Kitch ("BL Decl."); (8) the Declaration of Andrew G. Pate in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Nix Patterson, LLP ("NP" Decl."); (9) the Declaration of Patrick M. Ryan on Behalf of Ryan Whaley Coldiron Jantzen Peters & Webber PLLC ("RW Decl."); (10) the Declaration of Michael Kernan ("Kernan Decl."); and (11) the Affidavits of Class Members Robert E. Gonce, Jr., Robert Abernathy, Robert F. Odom, and Dan Little.

Summary of Opinions

5. It is my opinion that (a) the Settlement Agreement submitted for approval is fair, reasonable, and adequate; (b) the manner of distribution and form of the Notice of Proposed Settlement is fair and adequate; and (c) the requested fee award of $1,080,000 is consistent with federal and Oklahoma law and would be fair and reasonable.

The Litigation and Settlement

6. Plaintiff Michael Kernen initiated this lawsuit against Defendant Casillas Operating, LLC ("Casillas") in Garvin County, Oklahoma on December 22, 2017. The case was removed to federal court on February 2, 2018. Jurisdiction exists pursuant to 28 U.S.C. § 1332(d), the class-action jurisdictional provisions enacted by the Class Action Fairness Act of 2005 ("CAFA").

7. This case is about the interest producers owe when they are late paying oil and gas proceeds. The Oklahoma Production Revenue Standards Act ("PRSA") establishes time periods for the payment of oil and gas production proceeds. If payments are not made on time, the PRSA requires the producer to pay interest at rates set forth in the statute.

8. Plaintiff alleges that Casillas failed to pay statutory interest on late payments of oil and/or gas proceeds as required by the PRSA. Under the PRSA, interest accrues and should be paid automatically for most late payments. But Casillas did not do that. Rather, Casillas quietly followed a practice of paying interest only to owners who specifically demanded it. Plaintiff alleges that, by doing this, Casillas secretly withheld millions of dollars in owed interest.

9. Plaintiff asserts claims for breach of the PRSA, breach of duty to investigate and pay, fraud, and unjust enrichment. Plaintiff seeks money damages, disgorgement, accounting, punitive damages, and injunctive relief. As to the latter, Plaintiff seeks an order requiring Casillas to change its payment practices to pay statutory interest automatically as required by Oklahoma law.

10. Class Counsel investigated, analyzed, and litigated the claims against Casillas for almost fours years. *See* Joint Class Counsel Decl. at ¶¶12-13. This work included obtaining and reviewing gigabytes of documents and payment data, including gas production and marketing data, Casillas' communications with owners, and Casillas' internal accounting records showing how payments were made and when. *See* Joint Class Counsel Decl. at ¶11. In pursuing and evaluating the Class' claims, Class Counsel also worked extensively with experts on subjects including oil and gas accounting and marketing. *See* Joint Class Counsel Decl. at ¶12.

11. The settlement in this case was facilitated by mediation sessions with two experienced mediators. On October 7, 2019, the parties conducted an in-person mediation session with the late Mr. Steven Barghols. The parties were not able to reach a settlement at that time. A year later, on October 14, 2020, the parties conducted a Zoom mediation session with Mr. Bradley Gungoll. *See* Gungoll Decl. at ¶8. At that session, the parties were able to reach an agreement in principle. *Id.* at ¶10. Later that day, the parties filed a joint request to stay the case while they continued discussions on various terms and details. The Parties executed a settlement agreement on January 11, 2021. On August 12, 2021, following the preliminary approval hearing, the parties executed the Amended Settlement Agreement currently before the Court for final approval.

12. The Settlement Agreement provides two substantial benefits. First, Casillas will make an immediate cash payment to the Class Members in the amount of $2,700,000. SA at ¶2.3. Second, Casillas has agreed to implement, using its best reasonable efforts, new policies and procedures for paying statutory interest on late payments without requiring

demand by the owner, absent any change in the law. SA at ¶2.5. That change is estimated to have a present value of at least $5,000,000. Ley Aff. at ¶8. In sum, the total present value conferred by the Settlement Agreement is estimated to be at least $7,700,000. *Id.*

The Settlement is Fair, Reasonable, and Adequate

13. Under Federal Rule of Civil Procedure 23(e), the court must approve any settlement of a class action. Approval requires the court to find that the settlement is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). Because the trial court judge overseeing the case has the best vantage point to consider all of the myriad considerations, the determination of whether a proposed settlement is fair, reasonable, and adequate is committed to the discretion of the district court judge. *See Fager v. CenturyLink Communs., LLC*, 854 F.3d 1167, 1174-75 (10th Cir. 2016); *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1186-87 (10th Cir. 2002).

14. Historically, courts in the Tenth Circuit applied the *Rutter* factors when considering whether to approve a class action settlement:

> (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 (10th Cir. 2002).

15. In 2018, Rule 23(e) was amended to provide guidance on the factors courts should look to when determining whether a settlement is fair, reasonable, and adequate. Rule 23(e) currently provides that, when making that determination, courts must consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3), and

(D) the proposal treats class members equitably relative to each other.

16. The Tenth Circuit has yet to address what effect, if any, the 2018 amendments have on the application of the *Rutter* factors.[1] I don't think it matters which

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[1] In an unpublished opinion, the Tenth Circuit applied the *Rutter* factors without mentioning the 2018 amendments to Rule 23(e). *See Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 Fed. Appx. 752, 757 (10th Cir. 2020). The Tenth Circuit's most recent Rule 23(e) decision cites to both tests. *See In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litig.*, 997 F.3d 1077, 1087 (10th Cir. 2021).

test is applied as they both focus on the same core concerns,[2] and it is my opinion that the Settlement is fair, reasonable, and adequate under either approach. Following the guidance of the Committee Note accompanying the 2018 amendments, this declaration will track the current structure of Rule 23(e).[3]

17. *Kernen and Class Counsel have adequately represented the class.* First, it is my opinion that the Class Representative has adequately represented the class. FED. R. CIV. P. 23(e)(2)(A). Mr. Kernen took an active and informed role in the progress of the case and the major decisions, including the decision to settle. *See* Kernen Decl. at ¶8. To my knowledge, he has no conflicts with the Class Members that in any way prevented him from acting in the collective interest of the Class Members.

18. Class Counsel have also adequately represented the Class. FED. R. CIV. P. 23(e)(2)(A). The lawyers and law firms working for the Class are all experienced and highly regarded class action lawyers. They worked diligently on the case for over three years. They conducted timely and appropriate discovery. They analyzed gigabytes of data, contracts, payment records, and other documents in order to fully understand Casillas' practices and how they affected the Class Members. They retained appropriate experts to

[2] *See* FED. R. CIV. P. 23(e)(2) advisory committee's note (2018) ("The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.").

[3] *See* FED. R. CIV. P. 23(e)(2) advisory committee's note (2018) ("This amendment therefore directs the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.").

aid them in developing the case and putting it in a position of strength for settlement discussions. Their experience and skill in pursuing high-stakes oil-and-gas class actions undoubtedly contributed to their ability to reach the settlement they achieved.

19. *The Settlement was negotiated at arm's length.* Second, it is my opinion that the Settlement was negotiated at arm's-length. FED. R. CIV. P. 23(e)(2)(B). There is nothing about this case to suggest that it was anything other than an adversarial matter. The Parties litigated for several years. Settlement discussions were conducted with the assistance of two skilled and experienced mediators. The mediator at the session where the settlement was reached, Mr. Gungoll, had a front row seat and saw nothing to indicate collusion; just skilled advocates fully and vigorously representing their clients' interests. *See* Gungoll Decl. at ¶10. While not dispositive, the involvement of a neutral mediator strongly supports a finding that the settlement was negotiated at arm's length. *See In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litig.*, 997 F.3d 1077, 1091 (10th Cir. 2021).

20. *The relief provided to the class is adequate.* Third, it is my opinion that the relief provided for the Class is adequate. FED. R. CIV. P. 23(e)(2)(C).

21. The first factor listed in Rule 23(e)(2)(C) is whether the relief is adequate "taking into account (i) the costs, risks, and delay of trial and appeal." FED. R. CIV. P. 23(e)(2)(C)(i). This factor captures the fundamental dynamics of settlement. No settlement gives one side total victory. Plaintiffs take less than they would hope for; defendants pay more than they would like to. But in the process, they both avoid the risk of a bad loss

later. As the Tenth Circuit itself put it in the class-action approval setting, "[t]hat is the nature of a settlement." *Tennille v. Western Union Co.*, 785 F.3d 422, 435 (10th Cir. 2015).

22. The settlement provides the Class with two substantial benefits. First, under the settlement the Class receives a significant sum of money, $2,700,000 in cash, avoiding the risk that the Class might recover far less—and maybe nothing. Second, the settlement provides the Class Members with a substantial benefit going forward in the form of Casillas altering its practices regarding the payment of statutory interest and royalties.

23. The $2,700,000 cash component of the settlement reflects an amount that is in excess of 80% of the claimed principal and interest. *See* Ley Aff. at ¶4. That is a very significant factor indicating that the settlement was fair, reasonable, and adequate.[4]

24. It was reasonable to accept the immediate and certain benefit of partial payment rather than face the risks that come with continued litigation. First, the case would need to be certified for litigation, something Casillas indicated it would strenuously oppose. Indeed, the Settlement Agreement explicitly provides that "[b]y agreeing to settle the claims of the Settlement Class in the Litigation, Defendant does not admit that the Litigation could have been properly maintained as a contested class action." Settlement Agreement, ¶ 11.1. In a class action, uncertainty about whether a case will be certified for litigation (as opposed to settlement) is a factor placing the ultimate outcome of the litigation

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[4] I do not mean to suggest that only settlements that reach that level of recovery can be fair, reasonable, and adequate. The value of every settlement depends on a wide range of factors unique to each case. I mean only to say that, when a settlement does provide class members with such a high percentage of their claimed actual damages, one would be hard pressed to argue that the recovery achieved is unfair, unreasonable, or inadequate.

in doubt. FED. R. CIV. P. 23(e)(2) advisory committee's note (2018) ("If the class has not yet been certified for trial, the court may consider whether certification for litigation would be granted were the settlement not approved."); *see also Tennille*, 785 F.3d at 435 (listing obstacles to proceeding as a class action among those that placed the outcome of future litigation in doubt).

25. Then, the Class Members would need to prevail on their theory of liability. During the course of this case, Casillas steadfastly denied that it underpaid royalty or that it violated its interest payment obligations under the PRSA. In the Settlement Agreement, Casillas continues that denial. *See* SA at ¶11.1 ("Defendant expressly denies all allegations of wrongdoing or liability with respect to the claims and allegations in the Litigation."). Whether Casillas violated the PRSA and what damages might be recoverable were all contested questions placing the ultimate outcome of the litigation in doubt.

26. Continued litigation also carries with it the cost, risk, and delay of potentially two rounds of appeals. The first appeal risk would come after litigation certification, in the likely event that Casillas would seek an interlocutory appeal of the certification decision under Rule 23(f). The second appeal risk would come after entry of a final judgment awarding relief to the class.

27. The Settlement also provided the Class with a valuable future benefit in that Casillas has agreed to implement, using its best reasonable efforts, a new policy and new practices for automatically paying statutory interest under the PRSA (instead of only paying it when an individual royalty owner demands it). *See* SA at ¶2.5. According to

Barbara Ley, the expected present value of those changes to the Class is approximately $5 million. *See* Ley Aff. at ¶11.

28. It is well established that the value of future benefits should be included when determining the size of the recovery obtained for the class. *See* PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.13(b) (AM. LAW. INST. 2010). *See also Hay Creek v. Roan Resources LLC*, No. 4:19-cv-00177-CVE-JFJ (N.D. Okla. Apr. 28, 2021) (Doc. No. 74, at 4-5); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 6, 2019) (Doc. No. 120, at 8-9); *Reirdon v. Cimarex Energy Co.*, No. 16-CV-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105, at 8-9); *Cecil v. BP America Production*, No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (Doc. No. 260, at 9); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231, at 9-10); *Reirdon v. XTO Energy, Inc.*, No. 6:16- CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124, at 8-9); *Chieftain Royalty Company v. QEP Energy Company*, No. CIV-11-212-R (W.D. Okla. May 31, 2013).

29. The second "adequacy" factor under amended Rule 23(e) is "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." FED. R. CIV. P. 23(e)(2)(C)(i).

30. This factor strongly supports approval of the settlement. This is a cash settlement. The net recovery will be distributed to eligible class members automatically through a process implemented by JND, a professional claims administrator. Class Members do not need to fill out claim forms or locate old records to prove up their claims. Using Casillas' records and the allocation formula, JND will calculate what individual class

members are entitled to and send checks. The only thing Class Members need to do is not opt out and cash their checks once they arrive. In other words, the $2,700,000 face value of the Settlement is a real number. It is not puffed up by the value of claims that will never be filed or coupons that will never be redeemed.

31. The third "adequacy" factor is "the terms of any proposed award of attorney's fees, including timing of payment." *See* FED. R. CIV. P. 23(e)(2)(C)(iii). Plaintiff's Counsel is seeking an award of attorney's fees of $1,080,000, which reflects 40% of the cash component. As discussed below, Plaintiff's Counsel's fee request is well within the range of fee awards allowed under federal and Oklahoma law.

32. The fourth "adequacy" factor directs the court to consider "any agreement required to be identified under Rule 23(e)(3)." *See* FED. R. CIV. P. 23(e)(2)(C)(iv). To the best of my knowledge, upon inquiry, there are no agreements required to be identified under Rule 23(e)(3) that have not been disclosed.

33. Finally, the Settlement treats the Class Members equitably relative to each other. FED. R. CIV. P. 23(e)(2)(D). The Class Members will be paid according to a distribution scheme in accordance with a Court-approved Plan of Allocation. *See* SA at ¶6.2. The Plan of Allocation submitted for the Court's approval has been endorsed as fair and reasonable by Class Representative's oil-and-gas accounting expert, Barbara Ley. *See* Ley Aff. at ¶¶6-10.

34. In summary, it is my opinion that all of the Rule 23(e)(2) factors clearly point to the Settlement being fair, reasonable, and adequate.

35. Should the Court wish to analyze the Settlement under the four *Rutter* factors, it is my opinion that the first three factors are satisfied for the reasons detailed in paragraphs 17 through 33 above.

36. The fourth *Rutter* factor is "*the judgment of the parties that the settlement is fair and reasonable.*" It is evident that the parties believe that the Settlement they reached, after contested litigation and arm's-length negotiation, is fair and reasonable. Mr. Kernen explains his full support for the Settlement in his declaration. *See* Kernen Decl. at ¶13. Class Counsel also describe their full support for the Settlement in their declaration. *See* Joint Class Counsel Decl. Further, as of the time I executed this declaration, several absent Class Members had signed declarations supporting the Settlement. *See, e.g.,* Affidavit of Robert E. Gonce, Jr.; Affidavit of Robert Abernathy; Affidavit of Robert F. Odom; and Affidavit of Dan Little.

The Form and Manner of Notice

37. In a class certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c)(2)(B).

38. For known class members with a known address, it is both customary and sufficient to give individual notice by first-class mail. *See Fager v. CenturyLink Communications, LLC*, 854 F.3d 1167, 1173-74 (10th Cir. 2016). Courts often supplement first-class mail notice with other means, including publication in newspapers and the creation of websites providing information about the action and the proposed settlement.

Notice programs that use multiple methods of giving notice are recognized as good practice and are discussed favorably in the Committee Notes accompanying the 2018 amendments to Rule 23(c)(2)(B).

39. The parties retained JND Legal Administration to administer the Settlement. JND is an established class-action claims administrator with extensive experience and expertise in handling class-action settlement administration. *See* JND Decl. at ¶¶2-3.

40. In accordance with the Preliminary Approval Order, and at the direction of the parties, on September 13, 2021, JND mailed the Notice of Proposed Settlement, Motion for Attorneys' Fees, and Fairness Hearing via first-class mail to the last known mailing address (verified and updated for changes of address through the U.S. Postal Service's database) of each Class Member who could be identified from the payment history data provided by Casillas pursuant to ¶3.3 of the Settlement Agreement. *Id.* at ¶6. For notices returned as undeliverable, JND conducted follow-up investigation to try to get an updated address for re-mailing. *Id.* at ¶¶7-8.

41. On September 16, 2021, JND arranged for the Summary Notice to be published in *The Oklahoman* and the *Tulsa World*, the two largest general circulation papers in Oklahoma, and four local papers (*The Daily Ardmoreite*, the *Fairview Republican*, the *McAlester News-Capital*, and the *Holdenville Tribune*). *Id.* at ¶9.

42. On September 13, 2021, JND established a website dedicated to this litigation, which hosts copies of important case documents, gives answers to frequently asked questions, and provides Class Members with contact information. *Id.* at ¶10.

43. Rule 23(c)(2)(B) also lists seven topics that the notice "must clearly and concisely state in plain, easily understood language." The Notices identified above address all of the required topics and do so in language that, in my opinion, is clear, concise, plain, and easily understood.

44. It is my opinion that the form and content of the notice given, and manner in which notice was given, satisfied the requirement of giving the best notice that is practicable under the circumstances. It is also my opinion that the procedures for requesting exclusions and filing objections are fair and reasonable, as approved by the Court in the Preliminary Approval Order.

45. The 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. The combination of first-class mail with other methods of giving notice, including newspaper publication and the creation of a case-specific website, exemplifies the type of multi-modal notice program that represents best practice in the federal courts and has been implicitly endorsed by the Civil Rules Advisory Committee.

The Fee Request

Overview of Methodology and Analysis

46. Class counsel has requested a fee award of $1,080,000. It is my opinion that the requested fee is consistent with, and would be reasonable under, both federal and Oklahoma fee-award law.

47. I will begin by assessing the requested fee under federal law.

48. For decades, the Tenth Circuit followed its own fee-award standards in diversity class actions, as generally set out in Judge Deanell Tacha's opinion in *Brown v. Phillips Petroleum Co.*, 838 F.2d 451 (10th Cir. 1988). In 2017, however, a Tenth Circuit panel held that, under the *Erie* doctrine, federal courts must follow state fee-award practices in diversity class actions. *See Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P., et al.*, 888 F.3d 455 (10th Cir. 2017).

49. In the wake of the *EnerVest* decision, many class action attorneys in Oklahoma-based oil-and-gas diversity class actions began including choice-of-law provisions in their class action settlements, selecting federal law to control the award of attorney's fees. This is one such case. *See* SA at ¶¶7.1, 11.8. Numerous federal courts have approved these provisions and approved the requested fees.

50. At the time, Oklahoma class action fee-award law was unsettled because the Oklahoma Supreme Court had yet to interpret the 2009 amendments to the Oklahoma statute governing fee awards in class actions, with the result that lower courts had no clear guidance on several key questions.[5] By selecting federal fee-award law, the parties could avoid those unresolved questions, leaving the court to follow the well-developed methodology established in *Brown v. Phillips*. Federal courts in all three federal districts in Oklahoma have applied Tenth Circuit fee award law in diversity oil-and-gas class action settlements based on this type of choice-of-law clause. *See, e.g., Hay Creek Royalties, LLC*

[5] One of those questions was whether trial courts had discretion to choose between using the percentage method and the lodestar method. As discussed later, the Oklahoma Supreme Court recently confirmed that trial courts may use either method. *See Strack v. Continental Resources, Inc.*, 2021 OK 21, 2021 WL 1540516 (Okla. 2021).

v. Roan Resources, LLC, 4:19-cv-0177-CVE-JFJ (N.D. Okla. Apr. 28, 2021) (Docket No. 74, at 3) ("Here, the requested fees are specifically authorized by law, federal common law, which is specifically authorized by an express agreement of the parties."); *Chieftain Royalty Co. v. SM Energy Co.*, No. 18-CIV-1225-J (W.D. Okla. Apr. 27, 2021) (Docket No. 115, at 5-6) ("the parties here contractually agreed that the right to and reasonableness of attorneys' fees (among other things) shall be governed solely by federal common law…this choice of law provision should be and is hereby enforced…Oklahoma federal courts have enforced similar language in prior settlements." (citing cases)); *Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 17-cv-336-KEW (E.D. Okla. Mar. 3, 2020) (Doc. No. 71, at 3-4).[6]

51. Following the Parties' choice-of-law clause, I will assess Class Counsel's fee request under the federal common law standards developed by the Tenth Circuit over the last thirty years. As I will demonstrate later, however, the fee request in this case would also fall easily within the range allowed under Oklahoma law.

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[6] *See also Miller v. DCP Operating Co., L.P.*, No. CIV-18-0199-JH (E.D. Okla. June 29, 2021) (Doc. No. 98, at 3); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 132, at 4); *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. March 26, 2021) (Doc. No. 120, at 4-5); *McClintock v. Continuum Producer Services, L.L.C.*, No. 17-cv-00259-JAG (E.D. Okla. June 4, 2020) (Doc. No. 61, at 4-5); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. 17-cv-334-SPS (E.D. Okla. Mar. 8, 2019) (Doc. No. 120, at 4); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105, at 4); *Reirdon v. XTO Energy, Inc.*, No. 16-cv-87-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124, at 4); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231, at 5).

Application of Federal Fee-Award Law

52. This case involves a "common fund" fee request. In other words, Class Counsel is seeking attorney's fees out of the fund created by resolution of the case—in this case, the class-wide settlement with Casillas.

53. The common fund doctrine is a longstanding doctrine of equity. In a class action, the Court is authorized to make a fee award to Class Counsel to recognize the work done on behalf of, and the benefit conferred upon, all Class Members. *See Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980). The fee is paid out of the proceeds generated by the class action. At its core, the common fund doctrine implements the basic equitable principle against unjust enrichment. It would be unfair and inequitable for class members to be enriched by a class action settlement while leaving the named plaintiff to bear the cost of obtaining it. *Id.* ("The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense.").

54. Both well-settled case law and Rule 23(h) establish that the standard for setting a class-action fee award in federal court is reasonableness. *See Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 453 (10th Cir. 1988); FED. R. CIV. P. 23(h) advisory committee's note (2003) (stating that "reasonableness" is the customary measurement for common fund fees). The determination of what is reasonable in any particular case "is a matter uniquely within the discretion of the trial judge." *Brown*, 838 F.2d at 453.

55. In terms of general fee-award methodology, the Tenth Circuit has, since 1988, instructed district courts to analyze the reasonableness of fee awards under the

factors developed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See Brown*, 838 F.2d at 454-55. The *Johnson* factors are:

(1) the time and labor required;

(2) the novelty and difficulty of the questions presented by the case;

(3) the skill requisite to perform the legal services properly;

(4) the preclusion of other employment by the attorneys due to acceptance of the case;

(5) the customary fee;

(6) whether the fee is fixed or contingent;

(7) any time limitations imposed by the client or the circumstances;

(8) the amount involved and the results obtained;

(9) the experience, reputation and ability of the attorneys;

(10) the undesirability of the case;

(11) the nature and length of the professional relationship with the client; and

(12) awards in similar cases. *Id.*

56. Under the federal-law standards followed in the Tenth Circuit, the preferred method for determining the reasonableness of a fee award in a common fund case is the percentage of recovery method ("POF"). *See Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995); *Brown*, 838 F.2d at 454. *See also* PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.13(b) (AM. LAW. INST. 2010) (endorsing the percentage of recovery method for common fund cases); ALAN HIRSCH ET AL., AWARDING ATTORNEYS' FEES AND MANAGING FEE LITIGATION 82-83

(Federal Judicial Center, 3d ed. 2015) (discussing advantages of the percentage of recovery method for common fund cases).

57. Thus, when awarding fees in a common fund case, the general practice is for the district court to award a percentage-based fee using the *Johnson* factors as a guide to what percentage to award.

58. Because the *Johnson* factors were developed in the context of statutory fee-shifting, the Tenth Circuit held that the scheme should be modified when applied in a common fund case. *See Brown*, 838 F.2d at 453. Not all of the factors will apply in every case. *Id.* at 456; *Gudenkauf v. Stauffer Commc'ns, Inc.*, 158 F.3d 1074, 1083 (10th Cir. 1998) (trial courts need not specifically address each factor in every case). And the weight to be given each factor varies when the court is awarding fees from a common fund. *Brown*, 838 F.2d at 456.

59. *The Result Achieved*. In a common fund case, the result obtained is the most important factor and deserves the greatest weight. *Brown*, 838 F.2d at 456. As the Advisory Committee later put it when adopting the 2003 amendments to Rule 23, "[f]or a percentage fee approach to fee measurement, results achieved is the basic starting point." FED. R. CIV. P. 23(h) advisory committee's note (2003).

60. In my opinion, the result achieved supports Class Counsel's request for a fee award of $1,080,000.

61. The Settlement represents a substantial, guaranteed recovery for the class. Even when a party has strong claims, it is reasonable to accept the immediate and certain benefit of partial payment rather than face the risks already known—or expose itself to

future unexpected setbacks—that come with future litigation. As the Tenth Circuit appreciates, "[t]hat is the nature of a settlement." *Tennille v. Western Union Co.*, 785 F.3d 422, 435 (10th Cir. 2015).

62. As discussed earlier, the Settlement provides the class members with more than 80% of the claimed principal and interest. This is an excellent result in light of the cost, delay, and risk associated with future litigation.

63. The up-front component of the settlement is all cash with no reversion. We know exactly how much Casillas will be paying: $2,700,000. There is no risk that Casillas will end up paying less because some of it gets returned on the backend as unclaimed funds.

64. Class Members do not have to take any action whatsoever to receive their benefits. As explained above, there is no claims process in this Settlement. JND will cut checks to Class Members automatically using information obtained from the Defendants' paydecks. The only thing Class Members need to do to get their share of the Net Settlement Fund is not opt out and then cash their checks after they arrive in the mail.

65. The Settlement also provides a valuable future benefit in that Casillas has committed to implementing royalty payment reforms so that owners automatically receive statutory interest with late payments, without the need for a specific demand. *See* SA at ¶2.5. Expert Barbara Ley's conservative estimate of the net present value of this future benefit is at least $5,000,000. Ley Aff. at ¶8.

66. It is well established that the value of future benefits should be included when determining the size of the recovery obtained for the class. *See* PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.13(b) (AM. LAW. INST. 2010). *See also* cases cited in ¶28,

supra. Even though Class Counsel is not asking the Court to award a fee from the future benefit, the existence of the future benefit is still relevant to the fee request because it is a part of the Settlement recovery and therefore speaks to the overall quality of the result.

67. *Time and Labor*. The "time and labor" factor of the *Johnson* test supports approval of Class Counsel's fee request. Class Counsel litigated this case for over three years with no guarantee of reimbursement or recovery.

68. A lodestar analysis is not needed when assessing the "time and labor" factor in a common fund case. The Tenth Circuit made clear in *Brown* that a lodestar analysis is not required in a common fund case.[7] Rather, the court may make a general finding, based on the record, that class counsel instrumentally contributed to the result achieved for the Class Members. *See Brown*, 838 F.2d at 456 & n.3.[8]

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[7] The Tenth Circuit's use of a "crosscheck" in the *Samsung* decision earlier this year is not to the contrary. In *Samsung*, the Tenth Circuit wrote that "[a] district court, after carefully reviewing billing records and performing the traditional lodestar analysis, should crosscheck the fees and costs against both the value of the settlement and the estimated actual cost to the defendant." *In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litig.*, 997 F.3d 1077, 1091 (10th Cir. 2021). That case, however, did not involve a common fund fee. Rather, Samsung was paying class counsel's fees pursuant to their settlement. As is customary in the fee-shifting setting, the district court used the lodestar method to determine the fee that Samsung would have to pay. Because the settlement agreement had a "kicker" *and* a "clear sailing" clause, the Tenth Circuit held that the putative fee had to be "crosschecked" against the value *of the settlement* to make sure that class counsel hadn't used those devices to purchase the defendant's acquiescence about where the settlement money would go. The Tenth Circuit did not, however, order a *lodestar crosscheck* in the traditional sense of comparing a percentage-fee award to what class counsel's lodestar would have been.

[8] *See also, e.g.*, *Miller v. DCP Operating Co., L.P.*, No. CIV-18-0199-JH (E.D. Okla. June 29, 2021) (Doc. No. 98, at 3); *Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. Apr. 27, 2021) (Doc. No. 115, at 7); *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. March 26, 2021) (Doc. No. 120, at 5-6); *McClintock v. Continuum Producer Services, L.L.C.*, No. 17-cv-00259-JAG (E.D. Okla. June 4, 2020) (Dkt. No. 61, at 5-6); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. March 8, 2019) (Doc. No. 120, at 5-6); *Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 17-

69. Under the *Brown* test, it is clear that "the recovery [in this case] was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class." *Brown*, 838 F.2d at 456.

70. But even if a lodestar crosscheck is used, it confirms that Class Counsel's fee request is reasonable. Class Counsel's fee request of $1,080,000 is actually *less than* its calculated lodestar of $1,091,830. In a typical lodestar crosscheck, the analysis would turn to what enhancement ("multiplier") to apply to the lodestar to adjust for contingency risk and other factors. But here Class Counsel is not seeking any enhancement, and is instead seeking fees on a POF basis even though doing so will result in a slight discount compared to its lodestar.

71. *Awards in Similar Cases*. The fee request is also well within the range of awards in similar cases. In the *Samsung* decision from this summer, the Tenth Circuit wrote that a fee-and-costs award of one-third of the maximum value of the settlement was "well within the range of reasonable and permissible fees and costs awards in class action litigation." *In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litig.*, 997 F.3d 1077, 1095 (10th Cir. 2021). In addition, federal courts

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cv-336-KEW (E.D. Okla. Mar. 3, 2020) (Doc. No. 71, at 6); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 132, at 5-6); *Cecil v. BP America Production*, No. 16-CV-410- KEW (E.D. Okla. Nov. 19, 2018) (Doc. No. 260, at 6); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231 at 6); *Reirdon v. XTO Energy, Inc.*, No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124 at 5); *Chieftain Royalty Company v. QEP Energy Company*, No. CIV-11-212-R (W.D. Okla. May 31, 2013) (Doc. No. 182, at 4, n.3); *CompSource Okla. v. BNY Mellon, NA.*, 2012 WL 6864701, *8 (E.D. Okla. 2012) ("A majority of circuits recognize that trial courts have the discretion to award fees based solely on a percentage of the fund approach and are not required to conduct a lodestar analysis in common fund class actions.").

in Oklahoma have frequently approved fee awards of 40% of the cash component of the common fund in oil-and-gas royalty class actions. *See Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. Apr. 27, 2021) (Dkt. No. 115, at 14); *McClintock v. Enterprise Crude Oil LLC*, No. 6:16-cv-00136-KEW (E.D. Okla. Mar. 26, 2021) (Doc. No. 120, at 14); *Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 17-cv-336-KEW (E.D. Okla. Mar. 3, 2020) (Doc. No. 71); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 132); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 6, 2019) (Doc. No. 120); *Reirdon v. Cimarex Energy Co.*, No. 16-CV-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105); *Cecil v. BP America Production*, No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (Doc. No. 260); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231); *Reirdon v. XTO Energy, Inc.*, No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124); *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, No. CIV-12-1319-D (W.D. Okla. May 13, 2015) (Doc. No. 52); *Chieftain Royalty Co. v. QEP Energy Co.*, No. CIV-11-212-R (W.D. Okla. May 31, 2013) (Doc. No. 182, at 2) (39% of the cash component).

72. The Customary Fee. A fee agreement negotiated at arm's-length in advance is particularly relevant in a contingency case because it reflects the value of the service to be provided before the full difficulty and uncertainty of the case is known and while the risk of a loss still exists. *See Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, No. CIV-12-1319-D (W.D. Okla. May 13, 2015) (Doc. No. 52 at 8) ("Class Representative negotiated at arm's-length and agreed to a forty percent (40%) contingency fee at the outset of this

litigation, reflecting the value Class Representative placed on the future success of this Litigation."). The typical fee agreement in similar royalty class actions in Oklahoma is a contingency fee of 40%. *See Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. Apr. 27, 2021) (Doc. No. 115 at 15); *McClintock v. Enterprise Crude Oil LLC*, No. 6:16-cv-00136-KEW (E.D. Okla. Mar. 26, 2021) (Doc. No. 120 at 14); *Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 17-cv-336-KEW (E.D. Okla. Mar. 3, 2020) (Doc. No. 71, at 14); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 132, at 14-15); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 6, 2019) (Doc. No. 120, at 15-17); *Reirdon v. Cimarex Energy Co.*, No. 16-CV-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105, at 16); *Cecil v. BP America Production,* No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (Doc. No. 260, at 14); *Chieftain Royalty Co. v. XTO Energy, Inc.,* No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231, at 17); *Reirdon v. XTO Energy, Inc.,* No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124, at 16).

73. *The Other* Johnson *Factors*. The following other *Johnson* factors further support Class Counsel's request for a one-third fee award:

a. This case involved substantive and procedural issues that were complex and difficult (*Johnson* factor #2);

b. Class Counsel have been pioneers in oil and gas royalty litigation. They are skilled, experienced, and highly regarded class action litigators who possess the rare combination of resources and experience to take on a case

of this scale and pursue it to a successful end (*Johnson* factors #3, #9, and #10);

c. Dedicating the resources needed to litigate this case through the full pretrial gauntlet, and trial if needed, necessarily precluded Class Counsel from pursuing other employment (*Johnson* factor #4); and

d. Class Counsel worked on a contingency fee basis with no guarantee of any payment for years of work (*Johnson* factor #6).

Application of Oklahoma Fee-Award Standards

74. It is also my opinion that Class Counsel's requested fee award is consistent with and would be reasonable under Oklahoma fee-award law.

75. Class action fees are governed by 12 O.S. §2023(G). As the Oklahoma Supreme Court recently confirmed, Section 2023(G) gives judges discretion to use either the POF method or the lodestar method in common fund class actions. *See Strack v. Continental Resources, Inc.*, 2021 OK 21, 2021 WL 1540516, at *3-5. Regardless of which methodology is used, the goal is the same: "to arrive at a reasonable fee." *Id.* at *5.

76. In this case, Class Counsel's requested fee represents less than 15% of the total Settlement value, including the cash amount and the future benefits. That percentage is well below the 25% percentage range discussed by the Oklahoma Supreme Court in the *Strack* decision. *See id.* at *6.

77. In *Strack*, the Oklahoma Supreme Court also recommended Oklahoma trial courts conduct a lodestar crosscheck when using the POF method. *Id.* at *5. As discussed above, Class Counsel's requested fee award of $1,080,000 is actually *less than* its

calculated lodestar of $1,091,830.00. Thus, Class Counsel is not seeking any enhancement ("multiplier") of its lodestar amount, but is instead requesting fees on a POF basis even though doing so will result in a discount compared to its lodestar.

78. As the Oklahoma Supreme Court explained in *Strack*, "[a] court's goal in deciding attorney's fee awards is to award a reasonable fee, and a court should compare the results of both methods to ensure it is awarding a reasonable fee in a common fund class action." *Id.* at *5. Here, Class Counsel's requested fee would be reasonable under either the POF approach or the lodestar approach set forth in *Strack*.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Steven S. Gensler
October 20, 2021

EXHIBIT 1

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ACADEMIC APPOINTMENTS

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW
Gene and Elaine Edwards Family Chair in Law (2018-current)
Welcome D. & W. DeVier Pierson Professor (2009-2017)
President's Associates Presidential Professor (2006-current)
Professor (2005–current)
Associate Professor (2000-2005) (on leave 2003-2004)

Associate Dean for Academic Affairs (2020-current)
Associate Dean for Research and Scholarship (2012-2015)

UNIVERSITY OF ILLINOIS COLLEGE OF LAW
Visiting Assistant Professor (1998-2000)

UNIVERSITY OF NEVADA LAS VEGAS, WILLIAM S. BOYD COLLEGE OF LAW
Visiting Professor (Fall 2017)

JUDICIAL FELLOWSHIPS

UNITED STATES SUPREME COURT
Supreme Court Fellow, Administrative Office of the U.S. Courts (2003-2004)

JUDICIAL CLERKSHIPS

THE HONORABLE DEANELL REECE TACHA
U.S. Court of Appeals, Tenth Circuit (Lawrence, KS)
Law Clerk (1992-1993)

THE HONORABLE KATHRYN H. VRATIL
U.S. District Court, District of Kansas (Kansas City, KS)
Law Clerk (1993-1994)

LAW PRACTICE

MICHAEL, BEST & FRIEDRICH, LLP (Milwaukee, WI)
Associate (1996-1998)

REINHART, BOERNER, VAN DUREN, NORRIS & RIESELBACH S.C. (Milwaukee, WI)
Associate (1994-1996)

EDUCATION

UNIVERSITY OF ILLINOIS COLLEGE OF LAW, J.D. *summa cum laude*, May 1992
Valedictorian (Class Rank: 1/189)
Editor-in-Chief, University of Illinois Law Review

UNIVERSITY OF ILLINOIS (URBANA-CHAMPAIGN), B.S. (Biology), June 1988

PUBLICATIONS

Books:

FEDERAL RULES OF CIVIL PROCEDURE: RULES AND COMMENTARY (Thomson Reuters/West)
- Comprehensive two-volume practice treatise on the Federal Rules of Civil Procedure
- Revised and updated edition published annually
- Annual editions to date: 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021

MOORE'S FEDERAL PRACTICE, Volume 11 (3d. ed. 2012) (with Jeffrey W. Stempel)
- Covering Summary Judgment under Rule 56
- Updated quarterly

FEDERAL COURTS: CASES, COMMENTS AND QUESTIONS (9th ed. forthcoming Spring 2022) (with Martin H. Redish, Suzanna Sherry, James E. Pfander, and Adam Steinman)

GILBERT'S LAW SUMMARY ON CIVIL PROCEDURE (West Academic Publishing) (19th ed. forthcoming Summer 2022) (with Rick Marcus and Tom Rowe)

THE 2015 AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE (Lexis/Nexis 2015) (monograph prepared and distributed as part of MOORE'S FEDERAL PRACTICE)

Journal Articles:

The Million Dollar Diversity Docket, forthcoming 47 BYU L. REV. (Summer 2022) (with Roger Michalski)

The Privacy-Protection Hook in the Federal Rules, 105 JUDICATURE 77 (Summer 2021) (with the Honorable Lee H. Rosenthal)

Expedited Trial Programs in Federal Court: Why Won't Attorneys Get on the Fast Track?, 55 WAKE FOREST L. REV. 525 (Fall 2020) (with Jason A. Cantone)

Better by the Dozen: Bringing Back the Twelve-Person Civil Jury, 104 JUDICATURE 46 (Summer 2020) (with the Honorable Patrick E. Higginbotham and the Honorable Lee H. Rosenthal)

Form Fights: Battles Over Content and Proportionality, 26 PRETRIAL PRACTICE & DISCOVERY 15 (Spring 2018) (with the Honorable Xavier Rodriguez)

Breaking the Boilerplate Habit in Civil Discovery, 51 AKRON L. REV. 683 (2017) (with the Honorable Lee H. Rosenthal) (Symposium on the impact of the 2015 Civil Rules Amendments)

Discovery: What the Form Are We Fighting For?, 80 TEX. B.J. 774 (Dec. 2017) (with the Honorable Xavier Rodriguez)

A Report from the Proportionality Roadshow, 100 JUDICATURE 14 (Winter 2016) (with the Honorable Lee H. Rosenthal)

From Rule Text to Reality: Achieving Proportionality in Practice, 99 JUDICATURE 43 (Winter 2015) (with the Honorable Lee H. Rosenthal)

Four Years After Duke: Where Do We Stand on Calibrating the Pretrial Process?, 18 LEWIS & CLARK LAW REVIEW 643 (2014) (with the Honorable Lee H. Rosenthal) (Symposium honoring Judge Mark Kravitz)

Measuring the Quality of Judging: It All Adds Up to One, 48 NEW ENGLAND LAW REVIEW 475 (2014) (with the Honorable Lee H. Rosenthal) (Symposium on "Benchmarks: Measurements for Evaluating Judicial Productivity")

The Reappearing Judge, 61 KANSAS LAW REVIEW 849 (2013) (with the Honorable Lee H. Rosenthal) (Symposium on "Advocacy under the Federal Rules of Civil Procedure")

Ed Cooper, Rule 56, and Charles E. Clark's Fountain of Youth, 46 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 593 (2013)

Managing Summary Judgment, 43 LOYOLA UNIVERSITY CHICAGO LAW JOURNAL 517 (2012) (with the Honorable Lee H. Rosenthal) (Symposium on the 25th Anniversary of the Supreme Court's 1986 Summary Judgment trilogy)

- *Reprinted in* 62 DEF. L.J. 1 (2013)

Special Rules for Social Media Discovery? 65 ARKANSAS LAW REVIEW 7 (2012) (Symposium on "Facebook and the Law")

Judicial Case Management: Caught in the Crossfire, 60 DUKE LAW JOURNAL 669 (2010) (Symposium publishing papers selected from the 2010 Duke Conference on Civil Litigation)

Oklahoma's New E-Discovery Rules, 81 OKLAHOMA BAR JOURNAL 2427 (Nov. 2010)

Must, Should, Shall, 43 AKRON LAW REVIEW 1141 (2010) (Symposium issue publishing papers selected for presentation at the 2010 AALS Section on Litigation program on "The Future of Summary Judgment")

The Other Side of the CAFA Effect: An Empirical Analysis of Class Action Activity in the Oklahoma State Courts, 58 KANSAS LAW REVIEW 809 (2010) (Symposium on Class Actions)

A Bull's-Eye View of Cooperation in Discovery, 10 SEDONA CONFERENCE JOURNAL 363 (Fall 2009 Supp.) (invited contribution to Special Edition on The Sedona Conference Cooperation Proclamation)

Some Thoughts on the Lawyer's E-volving Duties in Discovery, 36 NORTHERN KENTUCKY UNIVERSITY LAW REVIEW 521 (2009) (invited contribution to Symposium on E-Discovery)

- *Reprinted in* 60 DEF. L.J. 1 (2011)

Justness! Speed! Inexpense! An Introduction to The Revolution of 1938 Revisited: The Role and Future of the Federal Rules, 61 OKLAHOMA LAW REVIEW 257 (2008) (Introduction to AALS Civil Procedure Section 2008 Annual Meeting Symposium)

Driving Misjoinder: The Improper Party Problem in Removal Jurisdiction, 57 ALABAMA LAW REVIEW 779 (2006) (with Laura J. Hines)

Diversity Class Actions, Common Relief, and the Rule of Individual Valuation, 82 OREGON LAW REVIEW 295 (2003)

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Bifurcation Unbound, 75 WASHINGTON LAW REVIEW 705 (2000)

Prejudice, Confusion, and the Bifurcated Civil Jury Trial: Lessons from Tennessee, 67 TENNESSEE LAW REVIEW 653 (2000) (invited contribution to Symposium: Communicating with Juries)

Wrongful Discharge for In-House Attorneys: Holding the Line Against Lawyers' Self-Interest, 1991 UNIVERSITY OF ILLINOIS LAW REVIEW 515 (Student Note)

Other Publications:

Better by the Dozen: Bringing Back the Twelve-Person Jury, Volume 4, Issue 7, NYU Civil Jury Project Newsletter (July 2020)

Survey Results: Why Won't Lawyers Get on the Fast Track?, Volume 4, Issue 8, NYU Civil Jury Project Newsletter (August 2019)

Second Circuit Distinguishes Abandonment from Default in Summary Judgment, 99 JUDICATURE 45 (2015) (brief case note)

A Tribute to Robert Spector: "It Started With Jurisdiction", 63 OKLAHOMA LAW REVIEW i (2011)

FEDERAL RULES OF CIVIL PROCEDURE: 2007 STYLE PROJECT COMPARISON CHARTS (West)

- Companion publication to the 2008 edition of treatise listed above

SEALED SETTLEMENT AGREEMENTS IN FEDERAL DISTRICT COURT, Federal Judicial Center (2004) (with Robert Timothy Reagan, Shannon R. Wheatman, Marie Leary, Natacha Blain, George Cort, and Dean Miletich)

Developments in the Federal Rules of Civil Procedure, Association of American Law Schools Civil Procedure Newsletter (2003, 2005, 2006, 2007, 2008)

PROFESSIONAL AND PUBLIC SERVICE

AMERICAN LAW INSTITUTE
- Council (2015 – present)
- Member (2006 – present)
- Adviser for Restatement (Third) of Conflict of Laws
- Members Consultative Group for the Principles of Aggregate Litigation Project
- Members Consultative Group for Restatement (Third) U.S. Law of International Arbitration

UNITED STATES JUDICIAL CONFERENCE ADVISORY COMMITTEE ON CIVIL RULES
- Member (2005 – 2011)
- Appointed June 2005 by Chief Justice William H. Rehnquist
- Reappointed August 2008 by Chief Justice John G. Roberts, Jr.

UNITED STATES JUDICIAL CONFERENCE FEDERAL-STATE JURISDICTION COMMITTEE
- Lead Academic Consultant (2017 – present)

NATIONAL CONFERENCE OF BAR EXAMINERS, MBE CIVIL PROCEDURE DRAFTING COMMITTEE
- Invited participant (Summer 2017, Winter 2017)
- Member (Spring 2018 – present)

LOCAL RULES COMMITTEE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA
- Member (2008 – present)

OKLAHOMA STATE BAR ASSOCIATION COMMITTEE ON CIVIL PROCEDURE
- Member (2005 - present)
- Vice-Chair (2009 - 2017)
- Chair, E-Discovery Subcommittee (2009)

OKLAHOMA UNIFORM JURY INSTRUCTION COMMITTEE (CIVIL)
- Appointed March 21, 2016 by Oklahoma Supreme Court Chief Justice John F. Reif

THE SEDONA CONFERENCE
- Member (2008 – present)
- Advisory Board (April 2012 – present)
- Working Group 1: Electronic Discovery
- Working Group 6: International Electronic Information Management, Discovery and Disclosure
- *Founding Member*: ROI Project for Information Asset Management (exploratory group to identify principles and best practices for maximizing "information assets")

CIVIL JURY PROJECT (NYU LAW SCHOOL)
- Academic Advisor (2016-present)

AMERICAN BAR FOUNDATION
- Fellow (2016-present)

JAMES F. HUMPHREYS COMPLEX LITIGATION CENTER
- Steering Committee Member and Board of Editors for Project on "Assessing Proportionate Relevancy and Cost ESI Model

GUIDELINES AND PRACTICES FOR IMPLEMENTING THE 2015 DISCOVERY AMENDMENTS TO ACHIEVE PROPORTIONALITY
- Co-Reporter (with the Honorable Lee H. Rosenthal) (2014-2017)
- Project Sponsored by the Duke Center for Judicial Studies

2010 CONFERENCE ON CIVIL LITIGATION ("DUKE CONFERENCE")
- Member, Planning Committee (2009-2010)

ASSOCIATION OF AMERICAN LAW SCHOOLS SECTION ON CIVIL PROCEDURE
- Executive Committee Chair (2007)
- Executive Committee Member (2005 - 2009)

PRESENTATIONS

The Million Dollar Diversity Docket
- Conference on Federal Diversity Jurisdiction
- Center on Federalism and Intersystemic Governance, Emory University School of Law
- March 19, 2021 (online)

Current Issues in Federal Procedure and Jurisdiction
- Judicial Retreat, U.S. District Court, W.D. Okla.
- October 21, 2019, Watonga, OK

Why Won't Lawyers Get on the Fast Track? The Persistent Failure of Expedited Trial Programs in Federal Court
- OU College of Law Work-in-Progress Series
- October 14, 2019, Norman, OK

Report From the Washington, D.C. Bench-Bar Group Meeting
- Bolch Judicial Institute (Duke Law) Program on "Evaluating the 2015 Rule 26 Discovery-Proportionality Amendments and Bolch-Duke Guidelines and Best Practices"
- June 20, 2019, Arlington, VA

Why Won't Lawyers Get on the Fast Track? The Persistent Failure of Expedited Trial Programs in Federal Court
- NYU Civil Jury Project Colloquium
- April 24, 2019, New York, NY

So You Want to Be a Class Action Lawyer? (Recent Changes to Fed. R. Civ. P. 23)
- Presenter and Program Moderator
- Federal Bar Association, OKC Chapter, Class Action Seminar
- December 12, 2018, Oklahoma City, OK

Electronic Discovery: Tips from a Professor
- OELA Annual Seminar
- December 7, 2018, Oklahoma City, OK

Special Focus Meeting: Bench-Bar Experiences with the 2015 Discovery Proportionality Amendments
- Program Facilitator
- Bolch Judicial Institute, Duke Law School
- July 13, 2018, Washington, D.C.

Breaking the Boilerplate Habit in Civil Discovery
- Akron Law Review Symposium on Civil Discovery
- April 6, 2018, Akron, OH

Sedona Conference eDiscovery Negotiation: Practical Cooperative Strategies
- Faculty Member
- February 22-23, 2018, New York, NY

Technology Assisted Review (TAR) Best Practices
- Program Moderator
- Duke Law Center for Judicial Studies, Bench-Bar-Academy Distinguished Lawyers' Series
- September 8-9, 2017, Arlington, VA

Federal Rules Update
- 2017 Judicial Conference of the Fifth Circuit
- May 9, 2017, Grapevine, TX

The Virtual Reality: Litigating in the 21st Century
- Kansas Legal Revitalization Conference
- February 2, 2017, Kansas City, MO

Big Deal or Big Distraction? Which Recent FRCP Developments Really Matter and Why
- Kansas Legal Revitalization Conference
- February 2, 2017, Kansas City, MO

The New Rules for E-Discovery: What Do They Impact?
- Kansas Legal Revitalization Conference
- February 1, 2017, Kansas City, MO

How E-*Discovery Brought* All *Discovery Back to Its Senses*
- University of Florida College of Law, E-Discovery Distinguished Speaker Series
- October 10, 2016, Gainesville, FL

The 2015 Amendments to the Federal Rules of Civil Procedure
- Westfield Insurance Annual Counsel Meeting
- August 9, 2016, Westfield Center, OH

The 2015 Amendments to the Federal Rules of Civil Procedure
- Eighth Circuit Judicial Conference
- May 4, 2016, Rogers, AR

Federal Rules Amendment Process: How Does It Work? Trends and Predictions.
- Wichita Bar Association Civil Practice CLE
- April 21, 2016, Wichita, KS

Sedona Conference eDiscovery Negotiation: Practical Cooperative Strategies
- Faculty Member
- March 1-2, 2016, Washington, D.C.

IAALS Fourth Civil Justice Reform Summit
- Panelist and Planning Committee Member
- February 24-25, 2016, Denver, CO

ABA "Roadshow" on Proportionality and the New 2015 Rules
- Fall 2015 through Spring 2016
- Presentations at U.S. Courthouses in 17 cities (New York, Philadelphia, Newark, St. Louis, Atlanta, Chicago, Washington D.C., Los Angeles, San Francisco, Denver, Phoenix, Dallas, Miami, San Diego, Seattle, Boston, Detroit)

What Do the 2015 Amendments to the Federal Rules of Civil Procedure Really Mean for Judges and Lawyers
- 2016 Southern District of Georgia Attorney Advisory Committee Meeting
- January 29, 2016, Amelia Island, FL

The 2015 Amendments to the Federal Rules of Civil Procedure
- Federal Bar Association, Federal Practice Series
- November 24, 2015, Oklahoma City, OK

Proportionality and the New 2015 Rules
- Judicial Training Symposium co-sponsored by Federal Judicial Center and the Electronic Discovery Institute
- October 14, 2015, New Orleans, LA

Proportionality and the New 2015 Rules
- ABA Section on Litigation Fall Leadership Meeting
- October 9, 2015, Memphis, TN

The 2015 Amendments to the Federal Rules of Civil Procedure
- Kansas City Metropolitan Bar Association Bench, Bar, & Boardroom Conference
- May 15, 2015, Branson, MO

Proportionality and the New 2015 Rules
- ▪ National Conference for U.S. Magistrate Judges
- ▪ April 21, 2015, Seattle, WA
- ▪ July 9, 2015, Boston, MA

Proportionality is Officially Part of Discovery: Now What?
- ▪ Washington & Lee University School of Law Faculty Speaker Series
- ▪April 6, 2015, Lexington, VA

Sedona Conference eDiscovery Negotiation: Practical Cooperative Strategies
- ▪ Faculty Member
- ▪ March 4-5, 2015, Atlanta, GA

Duke Center for Judicial Studies Conference on Implementing Discovery Proportionality Standard
- ▪ Faculty Member and Panelist
- ▪ November 13-14, 2014, Arlington, VA

Four Years After Duke: Where Do We Stand on Calibrating the Pretrial Process?
- ▪ Civil Rules Advisory Committee Meeting; Program Honoring Judge Mark Kravitz
- ▪ April 10, 2014, Portland, OR

Hot Topics in Discovery Sanctions: Spoliation and Rule 26(g)
- ▪ Judges Retreat, U.S. District Court for the Western District of Missouri
- ▪ March 7, 2014, Kansas City, MO

Sedona Conference Cooperation Training Program
- ▪ Faculty Member and Panelist
- ▪ February 12-13, 2014, Chicago, IL

Amendments to Rule 45
- ▪ Presentation to District Judges of the Western District of Oklahoma
- ▪ December 2, 2013, Oklahoma City, OK

Cooperation in Practice
- ▪ Georgetown Law Advanced eDiscovery Institute
- ▪ November 21, 2013, Washington, D.C.

Pretrial Bench Presence
- ▪ New England Law School Symposium: "Benchmarks: Evaluating Measurements of Judicial Productivity"
- ▪ November 8, 2013, Boston, MA

Unlocking E-Discovery: Educational Summit for State Court Judges
- ▪ Faculty member for e-discovery program for state-court judges from around the country.
- ▪ Co-hosted by the National Judicial College and the Institute for the Advancement of the American Legal System ("IAALS")
- ▪ September 19-20, 2013, Denver, CO

Cooperation and Professional Responsibility
- The Sedona Conference Cooperation Training Program
- February 21, 2013, Phoenix, AZ

Search Wars: Predictive Coding and the Battle for Control of the Search Process
- University of Kansas School of Law Symposium: "Advocacy Under the Federal Rules of Civil Procedure After 75 Years"
- November 9, 2012, Lawrence, KS

New Approaches to Civil Case Management from Around the Country
- Workshop for Judges of the Fifth Circuit
- May 10, 2012, Santa Fe, NM

Ed Cooper, Sherpa Guides, and Procedural Discretion
- Civil Rules Advisory Committee Meeting, Program Recognizing Reporter Ed Cooper
- March 22, 2012, Ann Arbor, MI

Effective Case Management
- Judges Retreat, U.S. District Court for the District of Kansas
- February 17, 2012, Topeka, KS

Closing the Guidance Gaps Under the Federal Rules
- Presented at the William S. Boyd School of Law, University of Nevada Las Vegas
- January 26, 2012, Las Vegas, NV

Electronic Discovery and the Sensible Harvest
- Boston E-Discovery Summit 2011
- December 8, 2011, Boston, MA

Social Media and the Continuing Evolution of the Discovery Rules
- University of Arkansas School of Law Symposium: "Facebook and the Law"
- November 4, 2011, Fayetteville, AR

Discovery After Iqbal: Where Do We Go From Here?
- Multidistrict Litigation Panel Transferee Judge's Conference
- November 1-2, 2011, West Palm Beach, FL

Summary Judgment and Case Management: Each in Service of the Other
- Seattle University School of Law Colloquium: "25th Anniversary of the Summary Judgment
Trilogy: Reflections on Summary Judgment"
- September 16, 2011, Seattle, WA

Civil Rules and Appellate Rules: What's New and What's on the Horizon
- Judicial Conference of the Fifth Circuit
- May 3-4, 2011, San Antonio, TX

The Rulemaking Response to Twombly *and* Iqbal
▪ University of Baltimore School of Law Colloquium Presentation
▪ April 15, 2011, Baltimore, MD

Knowledge in the Public Interest: Consideration of Incidents Where Scientific and Technical Knowledge Is Kept From the Public Because of Sealed Settlements and Other Restrictive Arrangements
▪ Panelist, National Academy of Science, Committee on Science, Technology, and Law
▪ April 11, 2011, Washington, DC

Complex Litigation XIII: The Future of Civil Litigation 2
▪ Panelist, 13th Annual Sedona Conference on Complex Litigation
▪ April 7-8, 2011, Del Mar, CA

The 2010 Amendments to Rule 26 and Rule 56
▪ Kansas Association of Defense Counsel Annual Meeting
▪ December 3, 2010, Kansas City, MO

The 2010 Amendments to Rule 56
▪ LEXIS/NEXIS Webinar
▪ November 23, 2010

Incorporating E-Discovery Rules Into State Practice
▪ Panelist, Tulsa County Bar Association CLE Program on Electronic Discovery
▪ November 12, 2010, Tulsa, OK

Federal Judicial Roundtable on Electronic Discovery
▪ Moderator, Oklahoma Bar Association Symposium on Electronic Discovery
▪ November 5, 2010, Oklahoma City, OK

Incorporating E-Discovery Rules Into State Practice
▪ Panelist, Oklahoma Bar Association Symposium on Electronic Discovery
▪ November 5, 2010, Oklahoma City, OK

Report from the 2010 Conference on Civil Litigation: Where We Are and Where We Are Going
▪ Panelist, Sedona Conference Webinar Series Presentation
▪ June 22, 2010

Cooperation in Discovery: A 90-Year View
▪ Northern Illinois University Law Review Symposium: "What It Means to Be a Lawyer in the Digital Age"
▪ April 16, 2010, DeKalb, IL

The Future of Civil Litigation: Legislative and Behavioral Changes
▪ Panelist, 12th Annual Sedona Conference on Complex Litigation
▪ April 8-9, 2010, Phoenix, AZ

Federal Rules of Civil Procedure: What's Coming in December 2010
▪ Co-presenter (with The Honorable Lee H. Rosenthal)

▪ DRI Product Liability Conference
▪ April 7, 2010, Las Vegas, NV

Codifying Mediation 2.0
▪ Panelist, The Ohio State Journal of Dispute Resolution Symposium 2010
▪ February 5, 2010, Columbus, OH

Must, Should, Shall
▪ AALS Section on Litigation Program
▪ January 10, 2010, New Orleans, LA

Procedure a la Carte
▪ AALS Section on Civil Procedure
▪ January 9, 2010, New Orleans, LA

E-Discovery: Searching the Virtual File Cabinets
▪ Presenter, NBI Seminar
▪ Forthcoming November 13, 2009, Oklahoma City, OK

Federal Rules of Civil Procedure: Changes Effective December 1, 2009
▪ OBA/CLE Webcast Seminar
▪ November 10, 2009

The First Year of the Cooperation Proclamation
▪ Panelist, The Sedona Conference Webinar
▪ November 4, 2009

The Other Side of the CAFA Effect: An Empirical Analysis of Class Action Activity in the Oklahoma State Courts
▪ Kansas Law Review 2009 Symposium: "Aggregate Justice: Perspectives 10 Years After *Amchem* and *Ortiz*"
▪ October 30, 2009, Lawrence, KS

Judicial Management Strategies to Encourage Cooperative, Non-Adversarial Discovery
▪ Workshop for U.S. Magistrate Judges II
▪ July 15 and 16, 2009, Milwaukee, WI

Some Thoughts on the Lawyer's E-volving Duties in Discovery
▪ Northern Kentucky Law Review Symposium on E-Discovery
▪ February 28, 2009, Cincinnati, OH

Privilege Waiver Under New Federal Rule of Evidence 502
▪ Presenter, NBI Seminar: *Keeping Up with E-Discovery*
▪ November 13, 2008, Oklahoma City, OK

E-discovery in Oklahoma
▪ Presented to the Kingfisher County Bar Association
▪ August 28, 2008, Kingfisher, OK

The Revolution of 1938 Revisited: The Role and Future of the Federal Rules
- Moderator, AALS Civil Procedure Section Program
- January 4, 2008, New York, NY

E-discovery: New Adventures in Client Babysitting?
- Presented at the Kansas University School of Law
- October 19, 2007, Lawrence, KS

Bell Atlantic v. Twombly: Pleading Standards and Court Access
- "Brown bag" presentation at the University of Oklahoma College of Law
- June 20, 2007, Norman, OK

What's Coming Next? A Look Into the Rules Amendment Pipeline
- Presented at *Winning the Federal Case Before Trial*
- December 15, 2006, Oklahoma City, OK

Recent Developments in Federal Subject Matter Jurisdiction
- Presented at *Winning the Federal Case Before Trial*
- December 9, 2005, Oklahoma City, OK

Driving Misjoinder: The Improper Party Problem in Removal Jurisdiction
- "Brown bag" presentation at the University of Oklahoma College of Law
- May 25, 2005, Norman, OK

The Relatively Underguided Erie Analysis
- University of Oklahoma College of Law
- February 9, 2005, Norman, OK

Federal Civil Rules Amendments: A Look Into the Pipeline
- Presented at *Winning the Federal Case Before Trial*
- January 14, 2005, Dallas, TX

Discretionary Dismissal Based on Post-Jurisdictional Events
- Presented to United States Judicial Conference Committee on Federal-State Jurisdiction
- June 10, 2004, New York City, NY

Oil and Gas Class Actions: Issues and Outcomes in Oklahoma
- Presented at the *Eugene Kunz Conference on Natural Resources Law and Policy*
- November 2002, Oklahoma City, OK

UNIVERSITY OF OKLAHOMA SERVICE

Member, Faculty Appeals Board (2012-2016)
Research Liaison, Office of the Vice President for Research (2012-2015)
Member, Small Executive Committee, Faculty Senate (2002-2003)
Member, Faculty Senate (2001-2002)
Chair, Campus Disciplinary Council I (2007-2009)

Chair, Campus Disciplinary Council II (2001-2002)

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW SERVICE

Chair, Committee A (2019-2020)
Member, Committee A (2018-2019)
Member, Committee on Endowed Positions (2017)
Chair, Scholarship and Creative Activity Strategic Planning Committee (2012-2015)
Member, New Programs Committee (2012-2015)
Chair, Foreign Studies Program Committee (2011-2015)
Director, Oxford Summer Program (2011-2015)
Chair, Curriculum Committee (2016-2017)
Member, Curriculum Committee (2013-2014)
Member, Curriculum Committee (2011-2012)
Member, Committee on Research and Scholarship (2011-2016)
Chair, Committee A (2009-2010)
Member, Dean Search Committee (2009-2010)
Member, Committee A (2008-2009)
Faculty Advisor, Oklahoma Law Review (2002-2003, 2004-2007, 2011-2018)
Chair, Mentoring Study Committee (2005-2006)
Chair, Code of Academic Responsibility Appeals Board (2004-2005; 2015-2017)
Chair, Academic Appeals Board (2015-2017)
Member, Externship Subcommittee (2004-2005)
Chair, Personnel Committee (2006-2007)
Member, Personnel Committee (2002-2003)
Member, Personnel Committee (2000-2001)
Member, Competitions Committee (2001-2003)
Member, Legal Writing Committee (2001-2002)
Member, Judicial Clerkships Program (2000-2010)
Faculty Advisor, Phi Alpha Delta (2001-2003)

BAR MEMBERSHIPS

United States Supreme Court (2003)
State of Wisconsin (1992)
Eastern District of Wisconsin (1992)
Western District of Wisconsin (1993)
District of Colorado (1995)

Subject: Activity in Case 5:18-cv-00107-JD Kernen v. Casillas Operating LLC et al Declaration
Date: Wednesday, October 20, 2021 at 6:27:45 PM Central Daylight Time
From: okwd_ecf_notice@okwd.uscourts.gov
To: okwdecf@okwd.uscourts.gov

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U.S. District Court

Western District of Oklahoma[LIVE]

Notice of Electronic Filing

The following transaction was entered by Barnes, Robert on 10/20/2021 at 6:27 PM CDT and filed on 10/20/2021

Case Name: Kernen v. Casillas Operating LLC et al
Case Number: 5:18-cv-00107-JD
Filer: Michael Kernen
Document Number: 105

Docket Text:
DECLARATION by Michael Kernen *Declaration of Steven S. Gensler in Support of the Settlement, Notice of the Proposed Settlement, and Award of Attorney's Fees*. (Barnes, Robert)

5:18-cv-00107-JD Notice has been electronically mailed to:

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Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1041971380 [Date=10/20/2021] [FileNumber=4623449-0] [58c0b60fa2189127bfeaae95eb6ad011c46b12dd66051ab472a5a169b1f0fb52eb e984eef9ef6eb62627f44094dcbf7c22653c790b9e38991ce8c432ba44a7bc]]