

**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.)
)
CASILLAS OPERATING, LLC,)
)
Defendant.)

Case No. CIV-18-00107-JD

CLASS REPRESENTATIVE’S MOTION FOR FINAL APPROVAL

Class Representative, Michael Kernén, on behalf of himself and all others similarly situated, respectfully files this Motion for Final Approval, and hereby moves the Court for final approval of the following:

1. Proposed class action Settlement;
2. Form and manner of the Notice sent to the Class; and
3. Proposed Plan of Allocation.

Class Representative bases this Motion on the Settlement Agreement, the applicable law, and all pleadings and records on file in this matter, which are respectfully incorporated by reference as if set forth fully herein. Class Representative also bases this Motion on its Memorandum of Law in Support of the Motion, which is filed contemporaneously herewith.

Class Representative's Proposed Order and Judgment Granting Final Approval of Class Action Settlement ("Final Approval Order") is attached as Exhibit 1. Class Representative's Proposed Initial Plan of Allocation Order is attached hereto as Exhibit 2.

Class Representative respectfully requests the Court grant the relief listed above by entering the proposed Final Approval Order and the proposed Plan of Allocation Order and grant any further relief to which the Court finds Class Representative and the Settlement Class entitled.

DATED: October 20, 2021.

Respectfully submitted,

s/Robert N. Barnes

Robert N. Barnes, OBA No. 537
Patranell B. Lewis, OBA No. 12279
Emily Nash Kitch, OBA No. 22244
BARNES & LEWIS LLP
208 NW 60th Street
Oklahoma City, OK 73118
Telephone: (405) 843-0363
Facsimile: (405) 832-1007
rbarnes@barneslewis.com
plewis@barneslewis.com
ekitch@barneslewis.com

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Lisa P. Baldwin, OBA No. 32947
Drew G. Pate
Trey N. Duck, III
Cody L. Hill
Susan Whatley
NIX PATTERSON, LLP
3600 N. Capital of TX Hwy.

Bldg. B, Suite 350
Austin, TX 78746
Telephone: (512) 328-5333
Facsimile: (512) 328-5335
bbeckworth@nixlaw.com
jangelovich@nixlaw.com
lbaldwin@nixlaw.com
dpate@nixlaw.com
tduck@nixlaw.com
codyhill@nixlaw.com
swhatley@nixlaw.com

Patrick M. Ryan, OBA No. 7864
Jason A. Ryan, OBA No. 18824
Paula M. Jantzen, OBA No. 20464
**RYAN WHALEY COLDIRON JANTZEN
PETERS & WEBBER PLLC**
400 North Walnut Ave.
Oklahoma City, OK 73104
Telephone: (405) 239-6040
Facsimile:(405) 239-6766
pryan@ryanwhaley.com
pwhaley@ryanwhaley.com
jryan@ryanwhaley.com
pjantzen@ryanwhaley.com

CLASS COUNSEL

Michael Burrage, OBA No. 1350
WHITTEN BURRAGE
512 N. Broadway, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
mburrage@whittenburrage.com

LIASON LOCAL CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send email notification of such filing to all registered parties.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Robert N. Barnes
Robert N. Barnes

EXHIBIT 1

**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.)
)
CASILLAS OPERATING, LLC,)
)
Defendant.)

Case No. CIV-18-00107-JD

**ORDER AND JUDGMENT GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

This is a class action lawsuit brought by Class Representative, Michael Kernen, on behalf of himself and all others similarly situated (“Plaintiff”), against Casillas Operating, LLC (“Defendant”), for the alleged failure to pay statutory interest on payments made outside the time periods set forth in the Production Revenue Standards Act, OKLA. STAT. tit. 52, § 570.1, *et seq.* (the “PRSA”) for oil and gas production proceeds from oil and gas wells in Oklahoma. On August 12, 2021, Plaintiff and Defendant executed an Amended Stipulation and Agreement of Settlement (the “Settlement Agreement”) and Supplemental Agreements, finalizing the terms of the Settlement.¹

On August 17, 2021, the Court preliminarily approved the Settlement and issued an Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class

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

for Settlement Purposes, Approving Form and Manner of Notice, and Setting Date for Final Fairness Hearing (Dkt. No. 101) (the “Preliminary Approval Order”). In the Preliminary Approval Order, the Court, *inter alia*:

a. certified the Settlement Class for settlement purposes, finding all requirements of Federal Rule of Civil Procedure 23 have been satisfied, for settlement purposes only, with respect to the proposed Settlement Class;

b. appointed Plaintiff, Michael Kernen, as Class Representative and Plaintiff’s Counsel, Barnes & Lewis, LLP, Nix Patterson, LLP, and Ryan Whaley Coldiron Jantzen Peters & Webber, PLLC, as Class Counsel; and Plaintiff’s Counsel Whitten Burrage as liaison local counsel for the Settlement Class;

c. preliminarily found: (i) the proposed Settlement resulted from extensive arm’s-length negotiations; (ii) the proposed Settlement was agreed to only after Class Counsel had conducted legal research and discovery regarding the strengths and weaknesses of Class Representative’s and the Settlement Class’ claims; (iii) Class Representative and Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate; and (iv) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Settlement Class;

d. preliminarily approved the Settlement as fair, reasonable, and adequate and in the best interest of the Settlement Class;

e. preliminarily approved the form and manner of the proposed Short Form Notice, Long Form Notice, and Summary Notice to be communicated to the

Settlement Class, finding specifically that such Short Form Notice, Long Form Notice, and Summary Notice, among other information, fairly and adequately:

(a) described the terms and effect of the Settlement among other information;
(b) notified the Settlement Class of the time and place of the Final Fairness Hearing; (c) described the options for requesting exclusion from the Settlement or objecting to the Settlement or any part thereof; and (d) directed potential Class Members to where they may obtain more detailed information about the Settlement;

f. instructed the Settlement Administrator to disseminate the approved Short Form Notice by mail to potential members of the Settlement Class, to publish the Summary Notice, and to display the Long Form Notice and other documents related to the Settlement on an Internet website in accordance with the Settlement Agreement and in the manner approved by the Court;

g. provided for the appointment of a Settlement Administrator;

h. set the date and time for the Final Fairness Hearing as November 17, 2021 at 1:00 P.M. in the United States District Court for the Western District of Oklahoma; and

i. set out the procedures and deadlines by which Class Members could properly request exclusion from the Settlement Class or object to the Settlement or any part thereof.

After the Court issued the Preliminary Approval Order, due and adequate notice by means of the Short Form Notice, Summary Notice, and Long Form Notice was given

to the Settlement Class, notifying them of the Settlement and the upcoming Final Fairness Hearing. On November 17, 2021, in accordance with the Preliminary Approval Order and the Notices, the Court conducted a Final Fairness Hearing to, *inter alia*:

- 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 by the Settlement Administrator: (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 or any part thereof, 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, the state and federal Constitutions, and any other applicable law;
- c. determine whether to approve the Allocation Methodology, the Proposed Plan of Allocation, and distribution of the Net Settlement Fund to Participating Class Members;²
- d. determine whether a Judgment should be entered pursuant to the Settlement Agreement, *inter alia*, dismissing the Litigation against Defendant with

² The Court will issue a separate order pertaining to the allocation and distribution of the Net Settlement Proceeds among Class Members (the “Plan of Allocation Order”).

prejudice and extinguishing, releasing, and barring all Released Claims against all Released Parties in accordance with the Settlement Agreement;

e. determine whether the applications for Class Counsel’s Attorneys’ Fees, reimbursement for Litigation Expenses, and Case Contribution Award to Class Representative are fair and reasonable and should be approved;³ and

f. rule on such other matters as the Court deems appropriate.

The Court, having reviewed the Settlement, the Settlement Agreement, and all related pleadings and filings, and having heard the evidence and argument presented at the Final Fairness Hearing, now **FINDS, ORDERS, and ADJUDGES as follows:**

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

2. The Court has jurisdiction over the subject matter of this Litigation and all matters relating to the Settlement, as well as personal jurisdiction over Defendant and Class Members.

3. The Settlement Class, which was certified in the Court’s Preliminary Approval Order, is defined as:

All non-excluded persons or entities to whom: (1) Defendant (or Defendant’s designee) made a Late Payment of oil and/or gas proceeds from an Oklahoma well between July 28, 2016 and June 24, 2020, and (2) who have not been paid statutory interest on the Late Payment per the Production Revenue Standards Act. A “Late Payment” for purposes of this class definition means

³ The Court will issue separate orders pertaining to Class Counsel’s request for Attorneys’ Fees and reimbursement of Litigation Expenses and Class Representative’s request for a Case Contribution Award.

payment of proceeds from the sale of oil and/or gas production from an oil and/or gas well after the statutory periods identified in OKLA. STAT. tit. 52, § 570.10(B)(1) (i.e., commencing not later than six (6) months after the date of first sale, and thereafter not later than the last day of the 2nd succeeding months after the end of the month within which such production is sold). Late Payments do not include: (a) payments of proceeds to an owner under OKLA. STAT. tit. 52, § 570.10(B)(3) (minimum pay); (b) prior period adjustments; or (c) pass-through payments.

The persons or entities excluded from the Class are: (1) agencies, departments, or instrumentalities of the United States of America or the State of Oklahoma; (2) Commissioners of the Land Office of the State of Oklahoma (CLO); (3) publicly traded oil and gas companies and their affiliates; (4) persons or entities (and their affiliates) who are the Oklahoma Corporation Commission (OCC) designated operator of more than fifty (50) Oklahoma wells in the month when this Class definition was originally filed; (5) persons or entities that Plaintiff's counsel may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct; including, but not limited to, Charles David Nutley, Danny George, Dan McClure, Kelly McClure Callant, William L. Galbreath, Verdeen L. Slatten, Jack A. Slatten, Verdeen L. Slatten Family Limited Partnership, Neva M. Dorman, Ann Ellis Boles, Fischer-Jones, LLC, B.N. Taliaferro, Jr. individually and as Trustee of the B. N. Taliaferro Management Trust, Jack B. Searle, Tamara D. Searle, OGI, Inc., and their relatives; and (6) officers of the court.

The Court finds that the above-defined Settlement Class has been properly certified for the purposes of this Settlement. The Court finds that the persons and entities identified in the attached Exhibit 1 have submitted timely and valid Requests for Exclusion and are hereby excluded from the foregoing Settlement Class, will not participate in or be bound by the Settlement, or any part thereof, as set forth in the Settlement Agreement, and will not be bound by or subject to the releases provided for in this Judgment and the Settlement Agreement.

4. As used in this Judgment, the following terms shall have the following meanings:

- a. **“Released Claims”** include any and all claims arising from any legal or equitable theory related to earned statutory interest on Late Payments allegedly made by Defendant directly to Owners, and Late Payments allegedly made by Defendant in its role as operator on behalf of non-operating working interest owners, between July 28, 2016 and June 24, 2020 for O&G Proceeds from the Oklahoma Wells on Exhibit 6 to the Settlement Agreement, which alleged Late Payments did not also include the earned statutory interest prescribed by the PRSA, as well as all claims that could have been asserted in any forum or venue related to unpaid statutory interest under the PRSA for the Late Payments allegedly made by Defendant as described above, whether known or unknown, whether at law or in equity, or under any statute, and including all relief and remedies, except for claims excluded from the scope of Released Claims in the next sentence of this paragraph.

No other claims are released, including but not limited to: (1) any and all claims against Casillas Petroleum Corporation; (2) claims of Owners for earned statutory interest on any Late Payments allegedly made by Defendant prior to July 28, 2016 or after June 24, 2020; (3) claims of royalty owners for statutory interest on the underpayment of royalty based on breach of express and/or implied covenants of oil and gas leases and/or force pooling orders; and (4) any other claims that class members may have against the Released Parties other than the specific earned statutory interest claims under the PRSA set out in the first sentence of this paragraph.

- b. **“Released Parties”** means Casillas Operating, LLC, Casillas Petroleum Resource Partners, LLC, CPRP Services, LLC, Casillas Petroleum Resource Partners Holdings, LLC, Kayne Anderson Capital Advisors, L.P., a Delaware limited partnership, and each of its respective affiliates (including, without limitation, its and its affiliates’ various portfolio companies), and all of their respective successors-in-interest (the “Companies”), and all parents, affiliates and subsidiaries of the Companies, to the extent those Companies, parents, affiliates, and subsidiaries of said Companies directly or indirectly own interests in, or operate or have operated, the wells which have been studied and analyzed by Plaintiff’s and Defendant’s experts and are listed on Exhibit 6 to the Settlement Agreement, and only to the extent of the working interests reflected on Exhibit 6 to the Settlement Agreement and for which potential damages have been calculated by those experts. Specifically excluded from this release is Casillas Petroleum Corporation.

- c. **“Releasing Parties”** means Plaintiff and all Settlement Class members who do not timely and properly opt-out or submit a request for exclusion from the Settlement, and who are not otherwise excluded from the Settlement Class by order of the Court separate and apart from the individuals and entities excluded by virtue of the Settlement Class definition contained in Paragraph 1.46 of the Settlement Agreement, without regard to whether a member of the Settlement Class actually received a payment from the Net Settlement Fund, and without regard as to whether any payment was correctly determined.
- d. **“Claim Period”** means July 28, 2016 through June 24, 2020.

5. At the Final Fairness Hearing on November 17, 2021, the Court fulfilled its duties to independently evaluate the fairness, reasonableness, and adequacy of, *inter alia*, the Settlement and the Notice of Settlement provided to the Settlement Class, considering not only the pleadings and arguments of Class Representative and Defendant and their respective counsel, but also the concerns of any objectors and the interests of all absent Class Members. In so doing, the Court considered arguments that could reasonably be made against, *inter alia*, approving the Settlement and the Notice of Settlement, even if such argument was not actually presented to the Court by pleading or oral argument.

6. The Court further finds that due and proper notice, by means of the Short Form Notice, Long Form Notice, and Summary Notice, was given to the Settlement Class in conformity with the Settlement Agreement and Preliminary Approval Order. The form, content, and method of communicating the Short Notice mailed to the Settlement Class, the Long Form Notice published on the website, and the Summary Notice published pursuant to the Settlement Agreement and the Preliminary Approval Order:

(a) constituted the best practicable notice under the circumstances; (b) 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 or any part thereof, and their right to appear at the Final Fairness Hearing; (c) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, the Due Process protections of the State of Oklahoma, and any other applicable law. Therefore, the Court approves the form, manner, and content of the Short Notice, Long Form Notice, and Summary Notice used by the Parties. The Court further finds that all Class Members have been afforded a reasonable opportunity to request exclusion from the Settlement Class or object to the Litigation and Settlement.

7. The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Litigation as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, including that: the members of the Settlement Class are so numerous that joinder of all Class Members in the class action is impracticable; there are questions of law and fact common to the Settlement Class that predominate over any individual questions; the claims of Class Representative are typical of the claims of the Settlement Class; Class Representative and Plaintiff's Counsel have fairly and adequately represented and protected the interests of the Class Members; and, after considering the interests of the Class Members in individually controlling the prosecution of separate actions, the extent and nature of litigation already

commenced by members of the Settlement Class, the desirability or undesirability of continuing the litigation of these claims in this forum, and the difficulties likely to be encountered in the management of a class action – a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Pursuant to and in accordance with Federal Rule of Civil Procedure 23, the Settlement, including, without limitation, the consideration paid by Defendant, the covenants not to sue, the releases, and the dismissal with prejudice of the Released Claims against the Released Parties as set forth in the Settlement Agreement, is finally approved as fair, reasonable and adequate and in the best interests of the Settlement Class. The Settlement Agreement was entered into between the Parties at arm's-length and in good faith after substantial negotiations free of collusion. The Settlement fairly reflects the complexity of the claims, the duration of the Litigation, the extent of discovery, and the balance between the benefits the Settlement provides to the Settlement Class and the risk, cost, and uncertainty associated with further litigation and trial. Serious questions of law and fact remain contested between experienced counsel and parties alert to defend their interests. The Settlement provides a means of gaining immediate valuable and reasonable compensation and forecloses the prospect of uncertain results after many more months or years of additional discovery and litigation. The considered judgment of the Parties, aided by experienced legal counsel, supports the Settlement. The Parties and the Settlement Administrator are hereby authorized and directed to comply with and to cause the consummation of the Settlement in accordance with the Settlement Agreement, and the Clerk of this Court is directed to enter and docket this Judgment in the Litigation.

8. By agreeing to settle the Litigation, Defendant does not admit, and instead specifically denies, that the Litigation could have otherwise been properly maintained as a contested class action (as opposed to a settlement class), and specifically denies any and all wrongdoing and liability to the Settlement Class, Class Representative, and Class Counsel.

9. The Court finds that on August 18, 2021, Defendant caused notice of the Settlement to be served on the appropriate state official for each state in which a Class Member resides, and the appropriate federal official, as required by and in conformance with the form and content requirements of 28 U.S.C. § 1715. *See* Dkt. No. 102. In connection therewith, the Court has determined that, under 28 U.S.C. § 1715, the appropriate state official for each state in which a Class Member resides was and is the State Attorney General for each such state, and the appropriate federal official was and is the Attorney General of the United States. Further, the Court finds it was not feasible for Defendant to include on each such notice the names of each of the Class Members who reside in each state and the estimated proportionate share of each such Class Members to the entire Settlement as provided in 28 U.S.C. § 1715(b)(7)(A); therefore, each notice included a reasonable estimate of the number of Class Members residing in each state and the estimated proportionate share of the claims of such Class Members to the Settlement. No appropriate state or federal official has entered an appearance or filed an objection to the entry of final approval of the Settlement. Thus, the Court finds that all requirements of 28 U.S.C. § 1715 have been met and complied with and, as a consequence, no Class Member may refuse to comply with or choose not to be bound by the Settlement and this

Court's Orders in furtherance thereof, including this Judgment, under the provisions of 28 U.S.C. § 1715.

10. The Litigation and the First Amended Complaint and all claims included therein, as well as all Released Claims, are dismissed with prejudice as to the Released Parties. The Court orders that, upon the Effective Date, the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Participating Class Members. The Court finds that Defendant has agreed not to file a claim against Plaintiff or Plaintiff's Counsel based upon an assertion that the Litigation was brought by Plaintiff or Plaintiff's Counsel in bad faith or without a reasonable basis. Similarly, the Court finds that Plaintiff has agreed not to file a claim against Defendant or Defendant's Counsel based upon an assertion that the Litigation was defended by Defendant or Defendant's Counsel in bad faith or without a reasonable basis. The Releasing Parties are hereby deemed to have finally, fully, and forever conclusively released, relinquished, and discharged all of the Released Claims against the Released Parties to the fullest extent permitted by law. The Court thus hereby permanently bars and enjoins the Releasing Parties, and each of them (regardless of whether or not any such person or party shares in the Net Settlement Fund), and all persons acting on their behalf from, directly or indirectly, or through others, suing, instigating, instituting, or asserting against the Released Parties any claims or actions on or concerning the Released Claims. The Released Parties are discharged and/or released from all claims for contribution that have been or may be brought by or on behalf of any persons relating to the Settlement of the Released Claims. The releases and prohibitions of this paragraph apply equally to any

claim that relates to the subject matter of the Released Claims except as expressly excluded therefrom. The Court's approval of the Settlement and entry of judgment herein shall have the effect of barring each of the Releasing Parties from asserting any claim from which that party would be barred by a judgment resolving the certified claims herein had such claims been brought by such party individually. Neither Party will bear the other's Party's litigation costs, costs of court, or attorney's fees.

11. The Court also approves the efforts and activities of the Settlement Administrator, JND Legal Administration, in assisting with certain aspects of the administration of the Settlement, and directs them to continue to assist Class Representative in completing the administration and distribution of the Settlement in accordance with the Settlement Agreement, this Judgment, any Plan of Allocation approved by the Court, and the Court's other orders.

12. Nothing in this Judgment shall bar any action or claim by Class Representative or Defendant to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

13. This Judgment, the Settlement, the Supplemental Agreements, and the Settlement Agreement—including any provisions contained in or exhibits attached to the Settlement Agreement; any negotiations, statements, or proceedings in connection therewith; or any action undertaken pursuant thereto—shall not be used for any purpose or admissible in any action or proceeding for any reason, other than an action to enforce the terms of this Judgment, the Supplemental Agreements, or the Settlement (including, but not limited to, defending or bringing an action based on the release provided for

herein). The Judgment, the Settlement, the Supplemental Agreements, and the Settlement Agreement are not and shall not be deemed, described, or construed to be or offered or received as evidence of a presumption, concession, declaration, or admission by any person or entity of the truth of any allegation made in the Litigation; the validity or invalidity of any claim or defense that was, could have been, or might be asserted in the Litigation; the amount of damages, if any, that would have been recoverable in the Litigation; any liability, negligence, fault, or wrongdoing of any person or entity in the Litigation; or whether any other lawsuit should be certified as a class action pursuant to Federal Rule of Civil Procedure 23 or any applicable state rule of procedure.

14. As separately set forth in detail in the Court's Plan of Allocation Order(s), the Allocation Methodology, the Plan of Allocation, and distribution of the Net Settlement Fund among Participating Class Members are approved as fair, reasonable and adequate, and Class Counsel and the Settlement Administrator are directed to administer the Settlement in accordance with the Plan of Allocation Order(s) entered by the Court.

15. The Court finds that Class Representative, Defendant, and their Counsel have complied with the requirements of the Federal Rules of Civil Procedure as to all proceedings and filings in this Litigation. The Court further finds that Class Representative and Plaintiff's Counsel adequately represented the Settlement Class in entering into and implementing the Settlement.

16. Neither Defendant nor Defendant's Counsel has any liability or responsibility to Plaintiff, Plaintiff's Counsel, or the Settlement Class with respect to the Gross Settlement Fund or its administration, including but not limiting to any

distributions made by the Settlement Administrator. Except as described in paragraph 6.20 of the Settlement Agreement, no Class Member shall have any claim against Plaintiff's Counsel, the Settlement Administrator, or any of their respective designees or agents based on the distributions made substantially in accordance with the Settlement Agreement, the Court's Plan of Allocation Order(s), or other orders of the Court.

17. Any Class Member who receives a Distribution Check that he/she/it is not legally entitled to receive is hereby ordered to either: (a) pay the appropriate portion(s) of the Distribution Check to the person(s) legally entitled to receive such portion(s), or (b) return the Distribution Check uncashed to the Settlement Administrator.

18. All matters regarding the administration of the Settlement Account and the taxation of funds in the Settlement Account or distributed from the Settlement Account shall be handled in accordance with Section 5 of the Settlement Agreement.

19. Any order approving or modifying any Plan of Allocation Order, the application by Class Counsel for an award of Attorneys' Fees or reimbursement of Litigation Expenses, or the request of Class Representative for a Case Contribution Award, shall be handled in accordance with the Settlement Agreement and the documents referenced therein (to the extent the Settlement Agreement and documents referenced therein address such an order).

20. Plaintiff's Counsel, Plaintiff, and the Settlement Class will only be liable for loss of any portion of the Settlement Account as described in paragraph 6.20 of the Settlement Agreement. Defendant shall have no liability for any such loss.

21. Without affecting the finality of this Judgment in any way, the Court (along with any appellate court with power to review the Court's orders and rulings in the Litigation) reserves exclusive and continuing jurisdiction over the Litigation, Class Representative, the Settlement Class, Defendant, and the other Released Parties for the purposes of: (a) supervising and/or determining the fairness and reasonableness of the implementation, enforcement, construction, and interpretation of the Settlement, the Settlement Agreement (together with the documents referenced therein and the exhibits thereto), any Plan of Allocation Order entered by the Court, and this Judgment; (b) hearing and determining any application by Class Counsel for an award of Attorneys' Fees, and Litigation Expenses and/or a Case Contribution Award for Class Representative, if such determinations were not made at the Final Fairness Hearing; (c) supervising the distribution of funds from the Settlement Account; (d) resolving any dispute regarding a Party's right to terminate the Settlement pursuant to the Settlement Agreement or Supplemental Agreement 1; (e) enforcing the terms of the Settlement, including the entry of injunctive or other relief to enforce, implement, administer, construe and interpret the Settlement Agreement and Supplemental Agreements; and (f) exercising jurisdiction over any challenge to the Settlement on any basis whatsoever.

22. In the event the Settlement is terminated as the result of a successful appeal of this Judgment or does not become Final and Non-Appealable in accordance with the terms of the Settlement Agreement for any reason whatsoever, then this Judgment and all orders previously entered in connection with the Settlement shall be rendered null and void and shall be vacated to the extent provided by and in accordance with the Settlement

Agreement. The provisions of the Settlement Agreement and Supplemental Agreements relating to termination of the Settlement Agreement shall be complied with.

23. The claims asserted by Class Representative in this Litigation and all Released Claims of the Participating Class Members are hereby DISMISSED WITH PREJUDICE to the refiling of the same or any portion thereof by or against the Released Parties. The Court retains jurisdiction pursuant to paragraph 2 and 21 above to administer the Settlement distribution process as contemplated in the Court's separate Plan of Allocation Order(s), to administer other aspects of the Settlement as described in the Settlement Agreement, and to issue additional orders pertaining to, *inter alia*, Class Counsel's request for Attorneys' Fees and reimbursement of reasonable Litigation Expenses and Class Representative's request for a Case Contribution Award. Notwithstanding the Court's jurisdiction to issue additional orders in this Litigation, this Judgment fully disposes of all claims as to Defendant and is therefore a final appealable judgment. Regardless, there is no just reason to delay the finality of the Judgment. The Court further hereby expressly directs the Clerk of the Court to file this Judgment as a final order and final judgment in this Litigation.

IT IS SO ORDERED this _ day of _____, 2021.

JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

**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.)

INITIAL PLAN OF ALLOCATION ORDER

Having held a Final Fairness Hearing in this Action on November 17, 2021, in which the Court fulfilled its duties to consider objections and independently evaluate the fairness, reasonableness, and adequacy of the Settlement, and having thereafter finally approved the Settlement, the Court now enters this Plan of Allocation Order to instruct the Parties and the Settlement Administrator on the manner in which the Net Settlement Fund shall be allocated and distributed to Class Members.¹ The Court finds, orders, and adjudges that the methodology set forth below (the “Allocation Methodology”) is fair, reasonable, and adequate and in the best interest of the Settlement Class. Accordingly, the Court hereby orders that, once the Judgment becomes Final and Non-Appealable, the

¹ All capitalized terms not otherwise defined in this Order shall have the same meanings ascribed to them in the Stipulation and Agreement of Settlement (the “Settlement Agreement”).

Parties and the Settlement Administrator are to promptly carry out the terms of this Order and distribute the Net Settlement Fund as follows:

1. Subject to the jurisdiction of the Court, the Settlement Administrator shall administer the Settlement under Class Counsel's supervision in accordance with this Initial Plan of Allocation Order and the Settlement Agreement. Class Counsel and Defendant shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms. The Net Settlement Fund shall be distributed to Class Members according to this Order. The Court reserves the right to modify this Initial Plan of Allocation Order upon application of any Party hereto, without further notice to any Class Members who have not entered an appearance herein. The allocation of the Net Settlement Fund among Class Members and the Allocation Methodology is a matter separate and apart from the proposed Settlement between Plaintiff and Defendant, and any decision by the Court concerning allocation and distribution of the Net Settlement Fund among Class Members shall not affect the validity or finality of the Settlement or operate to terminate or cancel this Settlement.

2. At such time as the Judgment becomes Final and Non-Appealable, Plaintiff and Class Counsel will, as promptly as reasonably possible, but no later than sixty (60) days after the Effective Date, file a Final Plan of Allocation with the Court, which will reflect the proportionate amount of the Net Settlement Fund to be paid to each Class Member pursuant to the Allocation Methodology. Plaintiff and Class Counsel will obtain the Court's approval of a list of the names, addresses and tax identification numbers of Class Members who have not opted-out and to whom Distribution Checks are to be

mailed, along with the amounts of the Distribution Check for each such Class Member. If necessary, such list of names may be provided in stages for purposes of efficiently distributing the Net Settlement Fund. To the extent any of the foregoing information is unknown for any Class Members, despite reasonable commercial efforts to obtain it, the list may show that such information is unknown. The names, addresses and amounts to be paid will be determined as described herein.

3. Class Counsel has allocated the estimated Net Settlement Fund proportionately based on the amount of statutory interest owed on each original underlying proceeds payment that allegedly occurred outside the time periods required by the PRSA. The calculations were made with due regard for the production date, the date the underlying payment was made, the amount of the underlying payment made, the time periods set forth in the PRSA and any additional statutory interest that has since accrued. The preliminary allocation of the Net Settlement Fund among Class Members is shown in the Affidavit of Barbara A. Ley and exhibits thereto, attached to Class Representative's Memorandum of Law in Support of Class Representative's Motion for Final Approval and is approved by this Court. It is understood that this preliminary allocation will be updated when all opt-outs and excluded owners are known and identified. Thereafter, Class Representative and Class Counsel, with the aid of the Settlement Administrator, will allocate the Net Settlement Fund proportionately among all Class Members as set forth in an updated allocation schedule.

4. Included with each Distribution Check shall be an enclosure that contains the following notice (or, if a change is required by the Court, a notice substantially the same as the following):

TO: Class Member: The enclosed check represents a share of the net settlement fund in the settlement of the Class Action *McClintock v. Continuum Producer Services, L.L.C.*, Case No. 17-cv-00259-JAG, in the United States District Court for the Eastern District of Oklahoma. You are receiving this distribution and check because you have been identified as a Class Member in this action. If you are not legally entitled to the proceeds identified on the check, the Court has entered an Order that requires you to pay these proceeds to persons legally entitled thereto or return this check uncashed to the sender.

The person to whom this check was originally made payable, and anyone to whom the check has been assigned by that person, has accepted this payment pursuant to the terms of the Settlement Agreement, Notice of Settlement, and Judgment related thereto, which releases, *inter alia*, Defendant and the other Released Parties (as defined in the Settlement Agreement) from any and all Released Claims (as defined in the Settlement Agreement). Pursuant to the Order of the Court, it is the duty of the payee of the check to ensure that the funds are paid to the Class Member(s) entitled to the funds, and the release by Class Member(s) entitled to the funds shall be effective regardless of whether such Class Member(s) receive some, all, or none of the proceeds paid to a payee of a settlement check.

This check shall be null and void if not endorsed and negotiated within ninety (90) days after its date. The release of claims provided in the settlement shall be effective regardless of whether this check is cashed.

5. The Settlement Administrator will make a diligent effort to mail the first Distribution Checks within ninety (90) days after the Effective Date and, within the subsequent ninety (90) days, will mail the Distribution Checks representing the remaining 95% of the Net Settlement Fund (such percentage to be calculated based upon the amount of payments shown in the Final Plan of Allocation). The remainder of the Net Settlement

Fund will be distributed to Class Members within 6 months after the Effective Date. Any portion of the Net Settlement Fund remaining in the Settlement Account 120 days after the Settlement Administrator sends the final wave of Distribution Checks will be considered Residual Unclaimed Funds that will be that will be deposited into a *cy pres* fund for distribution as determined by Plaintiff's Counsel upon Court approval. No distributions will be made to Class Members who would otherwise receive a distribution of less than \$10.00. This *de minimis* threshold is set in order to preserve the overall Net Settlement Fund from the costs of claims that are likely to exceed the value of those claims.

6. The Settlement Administrator will use commercially reasonable efforts, subject to review and approval by Plaintiff's Counsel, to distribute the Net Settlement Fund. If the information needed to send a Distribution Check cannot be obtained through such efforts, the portion of the Net Settlement Fund attributable to such Class Member will remain in the Settlement Account as Residual Unclaimed Funds that will be deposited into a *cy pres* fund for distribution as determined by Plaintiff's Counsel upon Court approval.

7. If a Distribution Check is returned to the Settlement Administrator for incorrect or insufficient address, the Settlement Administrator and/or consultants working with the Settlement Administrator will use commercially reasonable methods to locate an updated address and will re-issue and re-mail the Distribution Check within thirty (30) days. If the second Distribution Check is returned and the Class Member cannot be located through commercially reasonable efforts, the portion of the Net Settlement Fund

attributable to them will remain in the Settlement Account for ninety (90) days after the date the Second Distribution Check was returned and, thereafter, will be considered Residual Unclaimed Funds that will be deposited into a *cy pres* fund for distribution as determined by Plaintiff's Counsel upon Court approval.

8. Within 30 days after the Final Fairness Hearing, the Settlement Administrator will (a) refund to Defendant the amount attributable to Class Members who timely and properly submitted a Request for Exclusion or who were otherwise excluded from the Settlement Class by order of the Court, separate and apart from the individuals and entities excluded by virtue of the Class definition contained in Paragraph 1.46 of the Settlement Agreement, in excess of the separately agreed-upon threshold under the Allocation Methodology, and (b) provide Defendant with the detail necessary for the Court and Defendant to verify the Settlement Administrator's calculation of the refund amount. The separate, Supplemental Agreement regarding the threshold amount for refunds shall not be filed with the Court, unless requested by the Court, and then shall only be filed under seal for *in camera* inspection by the Court. The terms of this provision may only be altered or amended by written agreement signed by Defendant and Plaintiff's Counsel.

9. The Settlement Administrator will only make distributions based on the Plan of Allocation and distribution order approved by the Court. It is contemplated that distributions may be made in waves, where using that approach is more efficient for the Settlement Administrator, so that payments to readily identified owners are not unduly delayed.

10. Defendant, Defendant's Counsel, the Settlement Administrator, Plaintiff, and Plaintiff's Counsel shall have no liability to any Class Member for mispayments, overpayments, or underpayments of the Net Settlement Fund.

11. If any Class Member has been paid any portion of the Net Settlement Fund for any period of time for which that Class Member was not entitled to receive that payment, and some other person or entity who owned or claims they owned the right to assert the Released Claims and asserts a claim against any of the Released Parties for payment of all or a portion of the Net Settlement Fund or any other Released Claim, then the Class Member who received an excess share shall be liable for any overpayment amount to the person who is determined to have been properly owed that amount, and that Class Member shall indemnify, defend, and hold harmless any of the Released Parties, Plaintiff's Counsel, Defendant's Counsel, or any other Class Member.

12. Upon completing all distributions of the Net Settlement Fund to Class Members (including any necessary supplemental distributions), complying with the Court's order(s) in furtherance of this Settlement, and distributing the Residual Unclaimed Funds to Plaintiff's Counsel, the Settlement Administrator will have satisfied all obligations relating to the payment and distribution of the Net Settlement Fund.

13. Within 120 days after the Settlement Administrator sends the final wave of Distribution Checks, the Settlement Administrator shall send a reconciliation of the Residual Unclaimed Funds to Defendant's and Plaintiff's Counsel. The reconciliation must include (a) a detail of each distribution or refund made from the Settlement Account; (b) the detail of any interest or other returns earned on the Settlement Account;

(c) the total Residual Unclaimed Funds and detail sufficient to verify that total; and (d) detail showing the total amount of the Administration, Notice, and Distribution Costs paid from the Settlement Account. The Settlement Administrator must pay the total amount remaining in the Settlement Account to Plaintiff's Counsel for deposit into a *cy pres* fund for distribution as determined by Plaintiff's Counsel upon Court approval no later than 10 business days after sending this reconciliation to Defendant's and Plaintiff's Counsel.

14. The Court shall retain jurisdiction to determine any issues relating to the payment and distribution of the Net Settlement Fund, and any claims relating thereto shall be determined by the Court alone, and shall be limited to a determination of the claimant's entitlement to any portion of the Net Settlement Fund, and no consequential, punitive, or other damages; fees; interest; or costs shall be awarded in any proceeding regarding any such determination.

15. The Mutual Release, Dismissal, and Covenant Not to Sue shall be effective as provided in the Settlement Agreement, regardless of whether or not particular members of the Settlement Class did or did not receive payment from the Net Settlement Fund and regardless of whether or not any person or entity who received a Distribution Check who was obligated pursuant to the Judgment to pay some or all of the distributed funds to another Class Member in fact made such payment to such other member of the Settlement Class. The failure of a person or entity who received a Distribution Check to make payment to another Class Member pursuant to the payment obligations of the

Judgment shall not be a defense to enforcement of the Release of the Released Claims against the Released Parties or the Covenant Not to Sue, as to any Class Member.

16. Except in the case of willful and intentional malfeasance of a dishonest nature directly causing such loss, Plaintiff's Counsel, Plaintiff, and the Settlement Class shall have no liability for loss of any portion of the Settlement Account under any circumstances and, in the event of such malfeasance, only the party whose malfeasance directly caused the loss has any liability for the portion of the Settlement Account lost.

17. The Court finds that all objections are overruled and hereby severed from this action for the purposes of appeal. In the event any objector appeals this Plan of Allocation Order or any other rulings of this Court, such objector is hereby ordered to post a cash bond in an amount sufficient to reimburse (a) the appellate fees of Plaintiff's Counsel and Defendant's Counsel and (b) the amount of lost interest to the non-objecting Class Members caused by any delay in distribution of the Net Settlement Fund that is caused by appellate review of the objection.

IT IS SO ORDERED this _ day of _____, 2021.

JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE

Subject: Activity in Case 5:18-cv-00107-JD Kernen v. Casillas Operating LLC et al Motion for Settlement
Date: Wednesday, October 20, 2021 at 7:20:54 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 7:20 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: [112](#)

Docket Text:

[MOTION for Settlement Class Representative's Motion fo Final Approval by Michael Kernen. \(Attachments: # \(1\) Exhibit 1 - \(Proposed\) Order and Judgement Granting Final Approval of Class Action Settlement, # \(2\) Exhibit 2 - \(Proposed\) Initial Plan of Allocation Order\)\(Barnes, Robert\)](#)

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

Andrew G Pate dpate@nixlaw.com, ncameron@nixlaw.com

Bradley E Beckworth bbeckworth@nixlaw.com, sprince@nixlaw.com, swhatley@nixlaw.com, tduck@nixlaw.com

Cody L Hill codyhill@nixlaw.com

Dawson A Brotemarkle dbrotemarkle@hallestill.com, lwest@hallestill.com, sbaccus@hallestill.com

Emily N Kitch ekitch@barneslewis.com

J Kevin Hayes khayes@hallestill.com, ghambrick@hallestill.com, lwest@hallestill.com

Jason A Ryan jryan@ryanwhaley.com, jmickle@ryanwhaley.com, rharrison@ryanwhaley.com

Jeffrey J Angelovich jangelovich@nixlaw.com, codyhill@nixlaw.com, ncameron@nixlaw.com, sprince@nixlaw.com

Lisa P Baldwin lbaldwin@nixlaw.com, ncameron@nixlaw.com, sprince@nixlaw.com

Michael Burrage mburrage@whittenburrage.com, cnorman@whittenburrage.com, docketing@whittenburrage.com

Pamela S Anderson panderson@hallestill.com, lwest@hallestill.com, ssmock@hallestill.com

Patranell Britten Lewis plewis@barneslewis.com, abarnes@barneslewis.com, lbeebe@barneslewis.com, lrosales@barneslewis.com

Patrick M Ryan pryan@ryanwhaley.com, jmickle@ryanwhaley.com

Paula M Jantzen pbuchwald@ryanwhaley.com, jmickle@ryanwhaley.com, mkeplinger@ryanwhaley.com

Robert N Barnes rbarnes@barneslewis.com, abarnes@barneslewis.com, lbeebe@barneslewis.com

Susan R Whatley swhatley@nixlaw.com, sprince@nixlaw.com

Trey N Duck, III tduck@nixlaw.com, sprince@nixlaw.com

5:18-cv-00107-JD Notice has been delivered by other means to:

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

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1041971380 [Date=10/20/2021] [FileNumber=4623499-0] [8aa80584c5b3e6d17482887fc876ab7dba8a5303a0361d1a806e900652f391a72a168f88140a0ed5d5437d2e3beac679a87a89150c5bfbdb60f40e9af76c84be]]

Document description:Exhibit 1 - (Proposed) Order and Judgement Granting Final Approval of Class Action Settlement

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1041971380 [Date=10/20/2021] [FileNumber=4623499-1] [48d4f4169cc0ec29ea83bb0e1cbc3fa5be5de41147a639e7ac4338336806fe5eece95b3001f64849ad3704ea2df26f0cfb7f2f1efe7049f863e8d21d37188fa5]]

Document description:Exhibit 2 - (Proposed) Initial Plan of Allocation Order

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1041971380 [Date=10/20/2021] [FileNumber=4623499-2] [8b875fe35cbe8217969e8a5b068fede21529248dfb289aff418f5a2146237727d68f40cd1c040938fd155b70b0b28197fa82a06753de818149f92c495795976c]]