IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
SHERIDAN HOLDING COMPANY I, LLC, *et al.*,[1]	§	Case No. 20-31884 (DRJ)
Reorganized Debtors.	§	(Jointly Administered)
	§	**Re: Docket No. 30**

CLASS REPRESENTATIVES' SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR ENTRY OF (A) A PRELIMINARY APPROVAL ORDER (I) DIRECTING THE APPLICATION OF BANKRUPTCY RULE 7023, (II) PRELIMINARILY APPROVING THE SETTLEMENT, (III) APPOINTING THE SETTLEMENT ADMINISTRATOR, (IV) APPROVING FORM AND MANNER OF NOTICE TO CLASS MEMBERS, (V) CERTIFYING A CLASS, DESIGNATING CLASS REPRESENTATIVES, AND APPOINTING CLASS COUNSEL FOR SETTLEMENT PURPOSES ONLY, (VI) SCHEDULING A SETTLEMENT FAIRNESS HEARING, AND (B) A JUDGMENT FINALLY APPROVING THE SETTLEMENT[2]

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, include: Sheridan Holding Company I, LLC (7648); Sheridan Investment Partners I, LLC (8607); Sheridan Production Partners I, LLC (8094); Sheridan Production Partners I-A, L.P. (8100); Sheridan Production Partners I-B, L.P. (8104); Sheridan Production Partners I-M, L.P. (8106); and SPP I-B GP, LLC (8092). The location of the Reorganized Debtors' service address is: 1360 Post Oak Blvd., Suite 2500, Houston, Texas 77056. "Debtors" refers to these same entities before the Effective Date of the *Amended Joint Prepackaged Plan of Reorganization of Sheridan Holding Company I, LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [ECF 11] (the "Plan").

[2] Hereinafter referred to as the "Joint Motion" [ECF 30].

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Introduction

The Class Representatives, Tony R. Whisenant, Kyle Allan Taylor, Stanley Ray Born and Ronda Jean Born, on behalf of themselves and the Settlement Class (collectively, the "Class Representatives"), by and through Settlement Class Counsel, submit this Supplemental Memorandum of Law in support of the Joint Motion [ECF 30].[3] Per the *Preliminary Order (I) Directing the Application of Bankruptcy Rule 7023, (II) Preliminarily Approving the Class Settlement, (III) Appointing the Settlement Administrator, (IV) Approving Form and Manner of Notice to Class Members, (V) Certifying a Class, Designating Class Representatives, and Appointing Class Counsel for Settlement Purposes Only, (VI) Scheduling a Final Fairness Hearing to Consider Final Approval of the Settlement, and (VII) Granting Related Relief* (the "Preliminary Approval Order") [ECF 123], the only remaining issue is whether the settlement should be approved by entry of final judgment.[4]

Here, the Parties present supplemental evidence and authority supporting their request for entry of final judgment affirming the Settlement Agreement as fair, reasonable, and adequate in accordance with Rule 23(e) of the Federal Rules of Civil Procedure ("Rule 23"). Critically, no objections to the Settlement were filed with the Court by the May 29, 2020 Objection Deadline, and only two persons out of more than 17,800 Class Members timely opted-out of the Settlement

[3] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Settlement Agreement dated as of March 20, 2020 (the "Settlement Agreement"), which is attached as Exhibit 1 to the Preliminary Approval Order [ECF 123].

[4] The issue of fees and expenses is addressed separately in Class Representatives and Settlement Class Counsel's *Motion for Approval of: (I) Administration Expenses; (II) Class Counsel Fees and Expenses; and (III) Class Representatives Fee* ("Fees and Expenses Motion") [ECF 182]. Per the Settlement Agreement, the Reorganized Debtors do not object the Fees and Expenses Motion. Settlement Agreement ¶ 3.5 ("Defendants shall not object to the request for approval of Class Fees and Expenses…").

Class.[5] If no Federal or State Official objects to the Settlement by June 30, 2020, which is 90 days after service of the CAFA notice required by 28 U.S.C. §1715, the Parties intend to file a Certificate of No Objection per the *Procedures for Complex Chapter 11 Cases in the Southern District of Texas* in early July 2020.

Legal Standard

Rule 23(e) provides in pertinent part:

> **Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class--or a class proposed to be certified for purposes of settlement--may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> **(1) *Notice to the Class.***
>
> **(A)** *Information That Parties Must Provide to the Court.* The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.
>
> **(B)** *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:
>
> **(i)** approve the proposal under Rule 23(e)(2); and
>
> **(ii)** certify the class for purposes of judgment on the proposal.
>
> **(2) *Approval of the Proposal.*** If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering 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.

[5] The Settlement Administrator received a third opt-out on June 4, 2020. The gross allocation to this third opt-out would be $58.89. *See Supplemental Declaration of Jennifer Keough* ("Keough Supp. Decl."), filed contemporaneously on the date hereof as **Exhibit 1** and incorporated by reference herein, at ¶¶ 7-8.

> **(3)** ***Identifying Agreements.*** The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

Fed. R. Civ. P. 23(e).[6]

Original Facts – Approval of the Proposal

1. The relevant facts of this Class Lawsuit were previously set forth in the Joint Motion [ECF 30] at ¶¶ 10-18 and in the Joint Declaration of Settlement Class Counsel (Jt. Counsel Decl.), submitted as Exhibit 6 to the Fees and Expenses Motion [ECF 182-6] at ¶¶ 7-15. These filings address the adequacy of the Class Representatives' and Class Counsels' representation of the Settlement Class, the arm's-length negotiations of the settlement, the essential terms of the Settlement, and the costs, risks, and delay of trial and appeal, all of which are relevant considerations in the approval of the proposed Settlement under Rule 23(e)(2).

Supplemental Facts – Notice to the Class, Disclosure of All Agreements, and Equitable Treatment of Class Members

2. Since entry of the Preliminary Approval Order and pursuant to its requirements, the Settlement Administrator, JND Legal Administration ("JND") mailed the Court-approved Notice of Settlement to 17,843 members of the Settlement Class.[7] The initial mailing took place on April 14, 2020 and returned notices were re-mailed shortly thereafter.[8]

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[6] Subparagraphs (4) and (5) of Rule 23(e) are omitted because the Settlement Class was not certified under Rule 23(b)(3) apart from the Settlement so subparagraph (4) does not apply and because no Class Member objected to the Settlement so subparagraph (5) does not apply.

[7] *See Declaration of Jennifer Keough*, Chief Executive Officer of JND ("Keough Decl."), attached as Ex. 1 to the Fees and Expenses Motion [ECF 182-1], at ¶¶ 3-6.

[8] *Id*.

3. Along with the initial physical mailing, JND also caused the Notice of Settlement to be published in *The Oklahoman* and on *PR Newswire* on April 14, 2020, effectuating the publication notice.[9]

4. A dedicated website for the Class Litigation and proposed Settlement (www.taylorsheridanfund1settlement.com) also went live on April 14, 2020.[10] And, a toll-free number was also established, at which JND answered and addressed calls concerning the Settlement.[11]

5. JND posted the Class Counsel's Fees and Expenses Motion on the dedicated class website on the date it was filed, May 15, 2020, where it became immediately accessible and viewable to all 17,843 potential Settlement Class members and other interested persons. The website has tracked 583 unique users, who registered 1,329 pageviews.[12]

6. The Court set May 29, 2020 at 5:00 pm (CST) (the "Objection Deadline") as the deadline for a party to opt-out of the Settlement Class or to object to final approval of the Settlement Agreement and/or to the Fees and Expenses Motion, or to respond to same.[13]

7. Only two persons who received the Notice of Settlement timely opted-out of the Settlement Class.[14] The sum of the gross allocations for the two opt-outs is $1,447.94, which is less than the threshold for opt-outs amount necessary for Defendants' exercise of the right to

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[9] *Id*. at ¶¶ 7-8.

[10] *Id*. at ¶ 9.

[11] *Id*. at ¶ 10.

[12] Keough Supp. Decl. at ¶ 5.

[13] Preliminary Approval Order at ¶¶ 14 & 17.

[14] A third opt-out was received after the Objection Deadline. *See* note 5, *supra*. The Settlement Administrator disclosed this third opt-out in its report to all counsel on June 5, 2020 under 7.1 of the Settlement Agreement. Were this opt-out given effect, the Monies Payable to Opt-Outs would increase by $58.89 to $1,506.83.

terminate the Settlement Agreement under ¶ 7.1 of the Settlement Agreement.[15] The threshold to terminate is 10% of the Settlement Proceeds of $5,000,000 million, *i.e.* $500,000.[16]

8. No Class Member objected to the Settlement.[17] And, to date, no Federal or State Official to whom the CAFA Notice was mailed has objected to the Settlement.[18]

9. For the eventual allocation of the Settlement Proceeds, Class Representatives served Notices of Rule 2004 Examinations on a dozen successor third-party operators for data for Class Wells that Defendants operated during the Class Period.[19]

10. The proposed Settlement treats class members equitably relative to each other.[20] The Class's expert prepared a preliminary allocation, showing the estimated amount to be distributed to each Class Member under the methodology in the court-approved Plan of Allocation and Distribution.[21] Within 45 days of the Effective Date of the Settlement, the benefits of the Settlement will be mailed directly to the Class Members.[22]

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[15] The first member of the Settlement Class to opt-out was identified in the Keough Decl. [ECF 182-1 at ¶ 12, Ex. E]. The second member of the Settlement Class to opt-out did so after the Preliminary Approval Order and is identified in Keough Supp. Decl. at ¶¶ 7-8, Ex. A. Excluding the late opt-out request, the total Monies Payable to Opt-Outs is $1,447.94. *Id*.

[16] Settlement Agreement ¶ 7.1.

[17] *See* Docket for Case No. 20-31884 (Bankr. S.D. Tex.).

[18] *See Declaration of John J. Griffin, Jr.* [ECF 182] attesting to compliance with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, et seq. and the Docket for Case No. 20-31884 (Bankr. S.D. Tex.); *see also,* Settlement Agreement ¶ 5.2.

[19] *See Notices of Rule 2004 Examinations* [ECF 143 through 151 and 157 through 161].

[20] *See Declaration of Daniel T. Reineke* ("Reineke Decl."), attached as Ex. 5 to the Fees and Expenses Motion [ECF 182-5] at 5 ("The Plan of Allocation and Distribution…was designed to distribute the benefits of the settlement proportionately in relation to each Class Member's individual claim for underpaid royalty and their respective decimal interest in the ownership of the royalty interests in each Class Well and the volume of gas and constituents sold from the producing Class Wells during the Class Period.").

[21] *Id.* at 5-6; Preliminary Approval Order at ¶ 2.

[22] Settlement Agreement at ¶¶ 1.7 & 1.8.

11. Within five (5) business days of the Effective Date of the Settlement or entry of the order approving Class Fees and Expenses, whichever is later, any approved Class Counsel Fees and Expenses shall be paid by the Settlement Administrator from the Settlement Proceeds.[23]

12. No other agreements related to the Settlement exist.[24]

Issue Presented

> Is the proposed Settlement Agreement fair, reasonable, and adequate, such that it warrants final approval by the Court under Rule 7023 of the Federal Rules of Bankruptcy Procedure, and, by incorporation, Rule 23(e)?

With *zero* objections and only two individuals out of a possible 17,843 timely opting out of the Settlement, the Settlement Agreement is certainly fair, adequate, reasonable and in the best interests of the Settlement Class and should be approved.

Supplemental Argument and Authority

Reviewing a proposed class action settlement involves a well-established three-stage process. *See* 4 *Newberg on Class Actions* § 13.10 (5th ed.). First, the court conducts a preliminary analysis to determine if the settlement should be preliminarily approved and the class conditionally certified. *Id.* Second, if the court grants preliminary approval, the court directs notice of the settlement be provided to the members of the settlement class which includes the opportunity for them to opt-out of or object to the settlement. Third, the court holds the final fairness hearing which considers all the information learned during the first two stages and decides whether to finally approve the settlement. *See id.* Here, the first stage was satisfied in March 2020 with entry of the Preliminary Approval Order. The second stage has also been satisfied as Ms. Keough's two

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[23] *Id.* at ¶ 1.3.

[24] *See Declaration of Rex A. Sharp* ("Sharp Decl."), filed contemporaneously on the date hereof as **Exhibit 2** and incorporated by reference herein, at ¶ 4. *See also, Declaration of Allan DeVore* ("DeVore Decl."), filed contemporaneously on the date hereof as **Exhibit 3** and incorporated by reference herein, at ¶ 4.

declarations about notice to the Settlement Class show.[25] And this Supplemental Memorandum supports the third stage where the Court considers finally approving the Settlement. As no one has filed any objection to the Settlement, no Class Member has standing to assert an objection at the Settlement Fairness Hearing.

When deciding whether to grant final approval to a class action settlement, courts in the Tenth Circuit consider four factors. *See Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002); *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984).[26] The four factors are:

> 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. Whether, in the parties' judgment, the settlement is fair and reasonable.

Rutter, 314 F.3d at 1188.

A. The Court Properly Certified the Settlement Class for Settlement Purposes and Should Confirm this Finding by Finally Certifying the Settlement Class Under Rule 23.

Before addressing the four factors, however, the Court must find class certification remains appropriate for settlement purposes. The Court already certified the following Settlement Class:

> All royalty owners who received or who were entitled to receive royalty payments from Sheridan Production Company, LLC, attributable to production from Oklahoma wells that are or have been operated (or marketed and directly paid to royalty owners) by Sheridan Production Company, LLC and produced gas (such as residue gas, natural gas liquids, or helium) prior to the Petition Date.

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[25] *See generally*, Keough Decl. [ECF 182-1] & Keough Supp. Decl., Ex. 1.

[26] *See* Settlement Agreement ¶ 2.8.

> Excluded from the Settlement Class are: (1) the Office of Natural Resources Revenue f/k/a the Mineral Management Service (Indian tribes and the United States); (2) Defendants and their employees, officers, and directors; (3) any NYSE or NASDAQ listed company (and its subsidiaries) engaged in oil and gas exploration, production, gathering, processing, or marketing.[27]

Class certification remains proper under Rule 23(a) and (b)(3) for settlement purposes for the reasons set forth in the Joint Motion [ECF 30] at pgs. 11-39. Reorganized Debtors also consent to final certification of the Settlement Class for the purpose of settlement. And the Court has already determined that the prerequisites for class certification under Rule 23(a) and (b)(3) are satisfied. Preliminary Approval Order [ECF 123] at ¶ 13. This decision is supported by Tenth Circuit authority and need not be revisited at the Settlement Fairness Hearing. *See Trevizo v. Adams*, 455 F.3d 1155, 1161-62 (10th Cir. 2006) (citing Rule 23(a)(1)); *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (class consisting of 100 to 150 members is "within the range that generally satisfies the numerosity requirement."); *Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 914 (10th Cir. 2018) ("A finding of commonality requires only a single question of law or fact common to the entire class" (internal citations omitted)). *See also*, Joint Motion [ECF 30] at ¶ 33 and Declarations of Class Representatives, stating that they are aware of no conflicts between themselves and the Settlement Class.[28] *See also*, *Tennille v. Western Union Co.*, 785 F.3d 422, 430 (10th Cir. 2015) ("Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status.") (internal citation omitted). *See also, Gonzales v. Cassidy*, 474 F.2d 67, 72 (5th Cir. 1973) (insisting that "it must appear that the representative[s] will vigorously prosecute the interests of the class through qualified counsel."). The Class

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[27] Preliminary Approval Order [ECF 123] at ¶ 9.

[28] *See* Declaration of Stanley Ray Born and Ronda Jean Born ("Born Decl."), attached as Ex. 7 to the Fees and Expenses Motion [ECF 182-7], at ¶ 23; Declaration of Tony R. Whisenant ("Whisenant Decl."), attached as Ex. 8 to the Fees and Expenses Motion [ECF 182-8], at ¶ 27; and Declaration of Kyle Allan Taylor ("Taylor Decl."), attached as Ex. 9 to the Fees and Expenses Motion [ECF 182-9], at ¶29.

Representatives and Class Counsel have prosecuted this Class Lawsuit vigorously[29] and Class Counsel are unquestionably qualified to represent the Class here.[30]

Additionally, Rule 23(b)(3)'s predominance and superiority requirements are satisfied here. *Menocal*, 882 F.3d at 914-15 ("[T]he predominance prong asks whether the common, aggregation-enabling issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues" (citations omitted)); *In re Urethane Antitrust Litig.*, 768 F.3d 1245, 1255 (10th Cir. 2014); *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014). The predominance requirement is met because the substantive claims are all common—Oklahoma law under Oklahoma choice-of-law principles—as are the aggregation-enabling issues of fact—chiefly, Defendants' common course of royalty underpayment to every Class Member. The common questions under the shared law predominate over and are more important than any potential individual issues that theoretically could arise in this Class Lawsuit. And the superiority requirement is easily satisfied because resolving this Class Lawsuit through the classwide Settlement is far superior to any other method for fairly and efficiently adjudicating these claims.

As such, the Court properly certified the Settlement Class in the Preliminary Approval Order and, because the Class Representatives have proven that each of the requirements for certification under Rule 23(a) and (b)(3) remain satisfied, this finding supports entry of final judgment.

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[29] Born Decl. [ECF 182-7] at ¶¶ 9-22; Whisenant Decl. [ECF 182-8] at ¶¶ 11-26; and Taylor Decl., [ECF 182-9] at ¶¶ 13-28. *See also*, Joint Declaration of Settlement Class Counsel ("Jt. Counsel Decl."), attached as Ex. 6 to the Fees and Expenses Motion [ECF 182-6], at ¶¶ 7-15.

[30] Jt. Counsel Decl. [ECF 182-6] at ¶¶ 1-3, 22, 38-39, and Ex. A.

B. Final Approval of the Settlement Should be Granted.

The Court should finally approve the Settlement as fair and reasonable. Under Rule 23(e), the Court has broad discretion in deciding whether to grant approval of a class action settlement. *See generally, Cecil* Order. S*ee also Jones*, 741 F.2d at 324. As demonstrated below, each of the four factors identified by the Tenth Circuit weighs in favor of final approval.

1. The Settlement is the product of extensive arm's-length negotiations between experienced counsel.

The fact that the Settlement was fairly and honestly negotiated for over a year by qualified, experienced counsel supports final approval. *See Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiating at arm's length cannot be gainsaid."). The fairness of the negotiation process is to be examined with reference to the experience of counsel, the vigor with which the case was prosecuted, and any coercion or collusion that may have affected the negotiations.

Here, the Settlement is the product of extensive and informed arm's-length negotiations between the Parties' experienced counsel. *See* Jt. Counsel Decl. [ECF 182-6] at ¶ 12; Joint Motion [ECF 30] at ¶ 6. The Debtors and Sheridan Production Company, LLC have been engaged in ongoing discussions with the Class Representatives regarding the potential of settlement in the Class Lawsuit and the Born Action for over one year. Jt. Counsel Decl. [ECF 182-6] at ¶ 12. The Parties exchanged significant amounts of information during their negotiations, and the Class Representatives were represented by their own legal counsel in the negotiations.

Additionally, Class Counsel has unique experience with oil and gas royalty underpayment class actions. Sharp Law, LLP and DeVore Law Firm, PLC regularly represent plaintiffs in royalty owner class actions, as well as other complex commercial and consumer class action litigation, and have obtained impressive settlements in a multitude of royalty underpayment class actions in

Oklahoma and Kansas state and federal courts, including: *McKnight Realty v. Bravo Arkoma, LLC,* No. 17-CV-308-KEW (E.D. Okla. Dec. 21, 2018) (Dkt. No. 69) (class settlement approved); *Cecil v. BP America Production Company,* No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (class settlement approved); *Chieftain Royalty Co. v. XTO Energy, Inc.,* No. 11-CV-00029-KEW (E.D. Okla. Mar. 27, 2018) (class settlement approved); *Bollenbach Enterprises, LP v. Oklahoma Energy Acquisitions LP*, No. 5:17-CV-0134-HE (W.D. Okla. Mar. 12, 2018) (Dkt. No. 58) (class settlement approved); *Fitzgerald Farms, Inc. v. Chesapeake Operating Co.*, No. CJ-10-38 (Okla. Dist. Ct., Beaver Cty.) (class settlement approved); *Hitch v. Cimarex Energy Co.*, No. CIV-11-13-W (W.D. Okla.) (class settlement approved); *Hershey v. ExxonMobil*, No. 07-1300-JTM (D. Kan.) (class certified and class settlement approved); *Freebird v. Cimarex Energy Co*., No. 08-CV-93 (Kan. Dist. Ct., Finney Cty.) (class settlement approved and upheld on appeal), *aff'd* 46 Kan. App. 2d 631, 264 P.3d 500 (2011); *Eatinger v. BP America Production Co*., No. 07-1266-EFM-KMH (D. Kan.) (class certified and class settlement approved), *aff'd,* 528 Fed. Appx. 859 (10th Cir. 2013) (unpub); *Freebird v. Merit Energy Co.*, No. 10-1154-KHV, 2013 WL 1151264 (D. Kan. March 19, 2013) (class certified and later settlement approved); *Owens v. Dart Cherokee Basin Op. Co., LLC*, No. 12-4157-JAR-JPO (D. Kan.) (after Tenth Circuit and U.S. Supreme Court rulings, class settlement approved). *See generally,* Jt. Counsel Decl. [ECF 182-6]. Class Counsel are experienced and qualified counsel and represented the Settlement Class honestly and fairly during settlement negotiations.

Class Counsel's combined experience positioned them well to comprehensively examine the massive amount of information and data produced in this litigation, enabling the Parties to make informed decisions about the strengths and weaknesses of their respective cases. *See* Jt.

Counsel Decl. at ¶¶ 1-3, 10-11; *Childs v. Unified Life Ins. Co.*, No. 10-CV-23-PJC, 2011 WL 6016486, at *12 (N.D. Okla. Dec. 2, 2011).

Further, the Class Representatives were intimately involved in the negotiations and believe that the settlement process resulted in an excellent Settlement for the Settlement Class, especially where the claims were settled in the process of the Debtors' bankruptcy reorganization.[31] Messrs. Whisenant and Taylor have been dedicated to serving as Class Representatives in this Class Lawsuit since before its filing.[32] Although their lawsuit was on brought on behalf of themselves, individually, Mr. and Mrs. Born always contemplated amendment of the Born Action to allege class claims and discussed those potential claims with Sheridan's counsel. The Borns agreed to joinder of their individual claims for purposes of the class settlement and are also able and willing Class Representatives for purposes of settlement.[33] Collectively, the Class Representatives have expended time and resources prosecuting this Class Lawsuit and their claims against Sheridan Production Company, LLC for more than ***eight years***, from producing documents, meeting and communicating regularly with Class Counsel, travel, participating in the negotiations that led to the Settlement, and reviewing pleadings in consultation with the Class' experts and Class Counsel. As such, Class Representatives and their lawyers were well prepared for the serious and intelligent negotiations that ultimately led to the Settlement. These facts demonstrate the Settlement resulted from serious, informed, and non-collusive negotiations between skilled and dedicated attorneys. Therefore, the first factor supports final approval.

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[31] *See* Born Decl. [ECF 182-7] at ¶¶ 12-16; Whisenant Decl. [ECF 182-8] at ¶¶ 13-18; and Taylor Decl. [ECF 182-9] at ¶¶ 15-20.

[32] Whisenant Decl. [ECF 182-8] at ¶¶ 4-9; Taylor Decl. [ECF 182-9] at ¶¶ 4-11.

[33] Born Decl. [ECF 182-7] at ¶¶ 9-16; Jt. Counsel Decl. [ECF 182-6] at ¶ 10.

2. Serious questions of law and fact exist, placing the ultimate outcome in doubt.

The existence of serious questions of law and fact place the ultimate outcome of this Class Lawsuit in doubt. Such doubt "tips the balance in favor of settlement because settlement creates a certainty of some recovery and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation." *McNeely v. Nat'l Mobile Health Care, LLC*, No. 07-CV-933-M, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008) (internal citations omitted). This is especially true when the case is moved into bankruptcy.

There are numerous factual and legal issues about which the Parties disagree. *See, e.g., Naylor Farms, LLC v. Chaparral Energy Co.,* 923 F.3d 779, 786-88 (10th Cir. 2019) (noting that a "whole host of other questions" remain unresolved about the meaning of "marketable" under the marketable-product rule in Oklahoma law gas and the impropriety of deducting costs from royalty). Despite the Class Representatives' optimism regarding their chances at trial, the Class Representatives would have to overcome several significant obstacles. For example, before reaching the merits of this Class Lawsuit, the Court and the Parties would be required to examine a number of complex legal issues concerning Oklahoma oil and gas law, such as the application of particular royalty provisions and the implied duty to market under the oil and gas leases. Further, once these questions of law are addressed, many questions of fact would remain, including when the gas became marketable, whether there was an enhancement of the value of already marketable products, whether the costs of enhancement were reasonable and necessary, and whether the value of the enhancements proportionately increased the royalty payments, such that Defendants might be legally permitted under Oklahoma law to share costs with Class Members. There are also mixed questions of law and fact that would have to be addressed, namely whether and to what extent the statute of limitations applies to the Class Lawsuit—an issue that could have an impact on the Class'

damages. Even if the Class prevailed following a trial and any appeal, the threat of bankruptcy would make collection of a judgment uncertain.

To this day, Defendants deny they committed any acts or omissions giving rise to any liability or violation of law. *See* Settlement Agreement, attached as Ex. 1 to the Preliminary Approval Order [ECF 123] at ¶ E. Defendants entered this Settlement solely to eliminate the risk and expense of further litigation. Settlement Agreement [ECF 123] at ¶¶ G & H. The Settlement renders the resolution of the "whole host of other questions" unnecessary and provides a guaranteed recovery in the face of uncertainty. Because this royalty underpayment claims at issue present serious questions of law and fact that place the ultimate outcome in doubt, the second factor supports final approval of the Settlement.

3. The value of immediate recovery outweighs the mere possibility of future relief after long and expensive litigation.

The complexity, uncertainty, expense, and likely duration of further litigation and appeals also support approval of the proposed Settlement. The immediate value of the $5,094,000.00 cash recovery, alone, outweighs the uncertainty, additional expense, and likely duration of further litigation. The Settlement Class is "better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted," *see McNeely*, 2008 WL 4816510, at *13, or being unable to receive compensation due to the financial issues which resulted in this Bankruptcy Proceeding. The Settlement Proceeds represent a recovery of more than 54% of principal actual damages.[34] The Settlement represents a meaningful recovery for the Settlement Class without the risk or additional expense of further litigation. These immediate benefits must be compared to the risk that the Settlement Class may

[34] Fees and Expenses Motion [ECF 182] at p. 19; Declaration of Daniel T. Reineke, attached as Ex. 5 to the Fees and Expenses Motion [ECF 182-5] at pp. 4-5; Jt. Counsel Decl. [ECF 182-6] at ¶¶ 36-37.

recover nothing after summary judgment, trial, and likely appeals, possibly years into the future. *See In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1261 (D. Kan. 2006).

While Class Counsel is confident in their ability to prove the claims asserted, they also recognize liability is far from certain and many potential obstacles to obtaining a final, favorable verdict exist. Even if the Class Representatives were able to establish liability at trial, Defendants would vigorously argue the Settlement Class' damages are far less than the Settlement Proceeds and would undoubtedly raise a number of defenses to further whittle down the damages. Even if Class Counsel were to obtain a judgment in favor of the Class at trial, this Bankruptcy Proceeding presents a risk that the Class could not collect on the judgment. Through the Settlement, the Settlement Class is guaranteed a cash payment without the attendant risks of further litigation, and the Reorganized Debtors obtain resolution of longstanding litigation.

Class Counsel is intimately familiar with the risks of proceeding with this Class Lawsuit because they have extensive experience prosecuting royalty class actions. *See* Jt. Counsel Decl. [ECF 182-6] at ¶ 38. Class Counsel believes the value of the Settlement outweighs the risks of proceeding further with this Class Lawsuit. *Id.* at ¶ 43. When the risks and uncertainties of continuing this Class Lawsuit are compared to the immediate benefits of the Settlement, it is clear the Settlement is fair, reasonable, and in the best interests of the Settlement Class. The third factor supports final approval of the Settlement.

4. The Class Representatives and Defendants agree the Settlement is fair and reasonable.

The fact that Class Representatives and Defendants believe the Settlement is fair and reasonable supports final approval.[35] Class Counsel and Class Representatives only agreed to settle

[35] *See* Born Decl. [ECF 182-7] at ¶ 14; Whisenant Decl. [ECF 182-8] at ¶ 17; Taylor Decl. [ECF 182-9] at ¶ 19.

this Class Lawsuit after considering the substantial benefits the Settlement Class will receive, the risks and uncertainties of continued litigation, the unpredictability of whether they could collect a judgment due to threat of bankruptcy, and the desirability of proceeding under the terms of the Settlement Agreement.

Class Counsel's judgment as to the fairness of the Settlement also supports final approval. "Counsels' judgment as to the fairness of the [settlement] agreement is entitled to considerable weight." *Childs*, 2011 WL 6016486, at *14 (citation omitted). Class Counsel believes the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and the Settlement is in the Settlement Class Members' best interests. *See* Jt. Counsel Decl. at ¶¶ 36-37. And this Court reached a similar conclusion when issuing its Preliminary Approval Order in favor of preliminary approval of the Settlement. [ECF 123], at ¶ 1. This last factor fully supports the Court's final approval of the Settlement. Indeed, all four factors support final approval of the Settlement.

Conclusion

For all of the foregoing reasons, Class Representatives and Class Counsel respectfully request that the Court enter the proposed *Judgment (I) Directing the Application of Bankruptcy Rule 7023, (II) Certifying the Settlement Class for Settlement Purposes Only, (III) Finally Approving the Settlement Agreement, and (IV) Granting Related Relief*, substantially in the form attached as Exhibit B to the Joint Motion [ECF 30-2].

Dated: June 16, 2020

Respectfully submitted,

/s/ Charles Rubio

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Settlement Class Counsel

CERTIFICATE OF SERVICE

I certify that, on June 16, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ *Charles Rubio*
Charles Rubio

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
SHERIDAN HOLDING COMPANY I, LLC, et al.	§	Case No. 20-31884 (DRJ)
Debtors:	§	(Jointly Administered)

SUPPLEMENTAL DECLARATION OF JENNIFER M. KEOUGH

I, Jennifer M. Keough, declare as follows:

1. I am the Chief Executive Officer ("CEO") of JND Legal Administration LLC ("JND"). This Declaration is based on my personal knowledge, as well as upon information provided to me by experienced JND employees, and if called upon to do so, I could and would testify competently thereto.

2. On May 14, 2020, I executed my Declaration of Jennifer M. Keough (ECF 182-1.) I submit this Supplemental Declaration to update the Court regarding developments since that time.

NOTICE MAILING

3. As of the date of this Supplemental Declaration, JND has received 2,605 Notices returned as undeliverable and was able to locate a new address for 1,085 of the returned Notices. Of the Notices that were re-mailed, 250 have been returned as undeliverable.

WEBSITE

4. On May 15, 2020, JND posted the Class Counsel's Fees and Expenses Motion on the dedicated class website.

5. As of the date of this Supplemental Declaration, the settlement website has tracked 583 unique users who registered 1,329 pageviews. A single visitor to the website can register multiple views.

TOLL-FREE NUMBER

6. As of the date of this Supplemental Declaration, JND has received a total of 104 telephone calls on the toll-free number and handled 55 live calls.

REQUESTS FOR EXCLUSION

7. As of the date of this Supplemental Declaration, in addition to the request for exclusion reported in my earlier Declaration, JND has received one (1) further timely request for exclusion from a Class Member and one (1) late request for exclusion. A list of the additional requests for exclusion received to date is attached as **Exhibit A**.

8. Were the late request for exclusion to be included in the Monies Payable to Opt-Outs calculation (as defined in paragraph 1.14 of the Settlement Agreement), the gross allocation to James and Stephanie Cochran would be $58.89, which would increase the Monies Payable to Opt-Outs from $1,447.94 to $1,506.83. The aggregate percentage of the three requests for exclusion received is 0.030% of the Settlement Proceeds, which is less than the 10% required to invoke the Defendants' right to terminate the Settlement Agreement under paragraph 7.1 of the Settlement Agreement.

OBJECTIONS

9. As of the date of this Supplemental Declaration, JND has not received any objections to the proposed Settlement.

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

Executed on June 16, 2020, at Seattle, Washington.

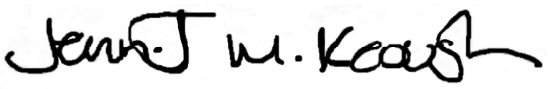
By: 
Jennifer M. Keough

Exhibit A

JND LEGAL ADMINISTRATION

In re: Sheridan Holding Company I, LLC, et al.

Case No. 20-31884 (DRJ)

Additional Requests for Exclusion Received

TIMELY

ID	Name	Date Received
902077	CAROL SMITH	5/28/2020

LATE

ID	Name	Date Received
908230	JIM COCHRAN AKA JAMES COCHRAN AND STEPHANIE COCHRAN	6/4/2020

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
SHERIDAN HOLDING COMPANY I, LLC, *et al.*,[1]	§	Case No. 20-31884 (DRJ)
Reorganized Debtors.	§	(Jointly Administered)

DECLARATION OF REX A. SHARP
IN SUPPORT OF CLASS REPRESENTATIVES' SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR ENTRY OF (A) A PRELIMINARY APPROVAL ORDER (I) DIRECTING THE APPLICATION OF BANKRUPTCY RULE 7023, (II) PRELIMINARILY APPROVING THE SETTLEMENT, (III) APPOINTING THE SETTLEMENT ADMINISTRATOR, (IV) APPROVING FORM AND MANNER OF NOTICE TO CLASS MEMBERS, (V) CERTIFYING A CLASS, DESIGNATING CLASS REPRESENTATIVES, AND APPOINTING CLASS COUNSEL FOR SETTLEMENT PURPOSES ONLY, (VI) SCHEDULING A SETTLEMENT FAIRNESS HEARING, AND (B) A JUDGMENT FINALLY APPROVING THE SETTLEMENT

I, Rex A. Sharp, of lawful age, upon personal knowledge, and pursuant to 28 U.S.C. § 1746, declare the following under penalty of perjury:

1. I am the managing partner of Sharp Law, LLP ("Sharp Law"), located at 5301 West 75th Street, Prairie Village, Kansas, 66208. I am the lead attorney in the Class Lawsuit and am co-counsel with the DeVore Law Firm, PLC in the Born Action. My firm is one of the four firms appointed as Settlement Class Counsel in this case.

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, include: Sheridan Holding Company I, LLC (7648); Sheridan Investment Partners I, LLC (8607); Sheridan Production Partners I, LLC (8094); Sheridan Production Partners I-A, L.P. (8100); Sheridan Production Partners I-B, L.P. (8104); Sheridan Production Partners I-M, L.P. (8106); and SPP I-B GP, LLC (8092). The location of the Reorganized Debtors' service address is: 1360 Post Oak Blvd., Suite 2500, Houston, Texas 77056. "Debtors" refers to these same entities before the Effective Date of the *Amended Joint Prepackaged Plan of Reorganization of Sheridan Holding Company I, LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [ECF No. 11] (the "Plan").

2. I am a member in good standing of the Bars of the States of Oklahoma, Texas, Kansas, Missouri, and Colorado, and have been admitted *pro hac vice* in this matter. There are no disciplinary proceedings pending against me.

3. I have read the *Class Representatives' Supplemental Memorandum of Law in Support of Joint Motion for Entry of (A) A Preliminary Approval Order (I) Directing the Application of Bankruptcy Rule 7023, (II) Preliminarily Approving the Settlement, (III) Appointing the Settlement Administrator, (IV) Approving Form and Manner of Notice to Class Members, (V) Certifying a Class, Designating Class Representatives, and Appointing Class Counsel for Settlement Purposes Only, (VI) Scheduling a Settlement Fairness Hearing, and (B) a Judgment Finally Approving the Settlement* (the "Supplemental Memorandum of Law"). To the best of my knowledge, information and belief, the statements in the Supplemental Memorandum of Law are true and correct.

4. As per the requirements of Federal Rule of Civil Procedure 23(e), I hereby declare that the only agreement made in connection with the settlement proposal is the Settlement Agreement attached as Exhibit 1 to the Preliminary Approval Order entered in this case [ECF 123-1].

DECLARATION UNDER PENALTY OF PERJURY UNDER *28 U.S.C. § 1746*

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 15, 2020.

Rex A. Sharp

EXHIBIT3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
SHERIDAN HOLDING COMPANY I, LLC, *et al.*,[1]	§	Case No. 20-31884 (DRJ)
Reorganized Debtors.	§	(Jointly Administered)

DECLARATION OF ALLAN DEVORE IN SUPPORT OF CLASS REPRESENTATIVES' SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR ENTRY OF (A) A PRELIMINARY APPROVAL ORDER (I) DIRECTING THE APPLICATION OF BANKRUPTCY RULE 7023, (II) PRELIMINARILY APPROVING THE SETTLEMENT, (III) APPOINTING THE SETTLEMENT ADMINISTRATOR, (IV) APPROVING FORM AND MANNER OF NOTICE TO CLASS MEMBERS, (V) CERTIFYING A CLASS, DESIGNATING CLASS REPRESENTATIVES, AND APPOINTING CLASS COUNSEL FOR SETTLEMENT PURPOSES ONLY, (VI) SCHEDULING A SETTLEMENT FAIRNESS HEARING, AND (B) A JUDGMENT FINALLY APPROVING THE SETTLEMENT

I, Allan DeVore, of lawful age, upon personal knowledge, and pursuant to 28 U.S.C. § 1746, declare the following under penalty of perjury:

1. I am the managing member of the DeVore Law Firm, PLC, located at 5709 N.W. 132nd Street, Oklahoma City, OK 73142. I am lead counsel in *Born v. Sheridan Production Company*, No. 2012-47, in the District Court of Caddo County, Oklahoma (the "Born Action") and co-counsel with Sharp Law, LLP in the Class Lawsuit. Jandra

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, include: Sheridan Holding Company I, LLC (7648); Sheridan Investment Partners I, LLC (8607); Sheridan Production Partners I, LLC (8094); Sheridan Production Partners I-A, L.P. (8100); Sheridan Production Partners I-B, L.P. (8104); Sheridan Production Partners I-M, L.P. (8106); and SPP I-B GP, LLC (8092). The location of the Reorganized Debtors' service address is: 1360 Post Oak Blvd., Suite 2500, Houston, Texas 77056. "Debtors" refers to these same entities before the Effective Date of the *Amended Joint Prepackaged Plan of Reorganization of Sheridan Holding Company I, LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [ECF No. 11] (the "Plan").

Cox is my fellow attorney in the DeVore Law Firm, PLC, and is co-counsel in the Born Action and the action at bar.

2. Jandra Cox and I are members in good standing of the Oklahoma Bar and have been admitted *pro hac vice* in this matter. There are no disciplinary proceedings pending against either of us.

3. I have read the *Class Representatives' Supplemental Memorandum of Law in Support of Joint Motion for Entry of (A) A Preliminary Approval Order (I) Directing the Application of Bankruptcy Rule 7023, (II) Preliminarily Approving the Settlement, (III) Appointing the Settlement Administrator, (IV) Approving Form and Manner of Notice to Class Members, (V) Certifying a Class, Designating Class Representatives, and Appointing Class Counsel for Settlement Purposes Only, (VI) Scheduling a Settlement Fairness Hearing, and (B) a Judgment Finally Approving the Settlement* (the "Supplemental Memorandum of Law"). To the best of my knowledge, information and belief, the statements in the Supplemental Memorandum of Law are true and correct.

4. Pursuant to the requirements of Federal Rule of Civil Procedure 23(e), I hereby declare that the only agreement made in connection with the settlement proposal is the Settlement Agreement attached as Exhibit 1 to the Preliminary Approval Order entered in this case [ECF 123-1].

DECLARATION UNDER PENALTY OF PERJURY UNDER *28 U.S.C. § 1746*

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 16, 2020.

Allan DeVore