

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

**PAUPER PETROLEUM, LLC, on behalf of
itself and all others similarly situated,**

Plaintiff,

v.

KAISER-FRANCIS OIL COMPANY,

Defendant.

Case No. 19-CV-514-JFH-JFJ

**AMENDED ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT, CERTIFYING THE CLASS
FOR SETTLEMENT PURPOSES, APPROVING FORM AND MANNER
OF NOTICE, AND SETTING DATE FOR FINAL FAIRNESS HEARING**

This is a class action lawsuit brought by Plaintiff Pauper Petroleum, LLC, on behalf of itself and as representative of a class of owners (defined below), against Kaiser-Francis Oil Company (“Defendant”), for, *inter alia*, the alleged underpayment of royalty on gas and gas constituents from oil-and-gas wells in Oklahoma. On July 22, 2022, the Parties executed a Stipulation and Agreement of Settlement (the “Settlement Agreement”) finalizing the terms of the Settlement.¹ The Settlement Agreement, together with the documents referenced therein and exhibits thereto, set forth the terms and conditions for the proposed Settlement of the Litigation. In accordance with the Settlement Agreement, Plaintiff now presents the Settlement to the Court for preliminary approval under Federal Rule of Civil Procedure 23.

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

After reviewing the pleadings and Plaintiff's Motion to Certify the Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice, and Set Date for Final Fairness Hearing ("Motion for Preliminary Approval"), the Court has preliminarily considered the Settlement to determine, among other things, whether the Settlement warrants the issuance of notice to the Class I Settlement Class. Upon reviewing the Settlement and the Motion for Preliminary Approval, it is hereby ORDERED:

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

2. The Court finds the Class I Settlement Class should be certified for the purposes of this Settlement, as the Class I Settlement Class meets all certification requirements of Federal Rule of Civil Procedure 23 for a settlement class.

3. The certified Class I Settlement Class is defined as follows:²

All non-excluded persons or entities who are or were royalty owners where Kaiser-Francis Oil Company is or was the operator (or a working interest owner who marketed its share of gas and directly paid royalties to the royalty owners) for the Class Wells during the production months of August 2013, through and including December 2021, and royalties on such gas were paid to such royalty owners; and including such persons entitled to share in royalty proceeds during the production months of August 2013, through and including December 2021, under any lease that contains an express provision stating that royalty will be paid on gas used off the lease premises (an Express Fuel Clause). The claims in this matter relate to royalty payments for gas and its constituents (residue gas, natural gas liquids, helium, nitrogen, or condensate).

The persons, entities, or interests excluded from the class are: (1) agencies, departments or instrumentalities of the United States of America, including but not limited to the U.S. Department of the Interior (the United States, Indian tribes, and Indian allottees); (2) the State of Oklahoma or any of its agencies or departments that own royalty interests; (3) any publicly traded company or their affiliated entities that produce, gather, process, or market

² This definition includes the Class I and Class I Subclass as defined in the *First Amended Complaint*. Dkt. No. 12 at 3.

gas; (4) overriding royalty owners and others whose interest was carved out from the lessee's interest; and (5) the Released Parties.

4. The Court finds the above-defined Class I Settlement Class satisfies all prerequisites of Federal Rule of Civil Procedure 23(a) for purposes of the proposed class settlement:

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

b. Commonality: Plaintiff has also demonstrated “[t]here are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).

c. Typicality: Plaintiff has also shown “[t]he claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3).

d. Adequacy: Plaintiff and Plaintiff's Counsel have demonstrated “[t]he representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4).

In addition, because the Court finds Plaintiff and Plaintiff's Counsel to be adequate representatives of the Class I Settlement Class, the Court hereby appoints Plaintiff Pauper Petroleum, LLC as Class Representative and Plaintiff's Counsel Reagan E. Bradford and Ryan K. Wilson (of Bradford & Wilson PLLC) as Co-Lead Class Counsel and Rex Sharp (of Sharp Law LLP) as Additional Class Counsel.

5. The Court also finds the requirements of Federal Rule of Civil Procedure 23(b)(3) are met:

a. Predominance: Class Representative has shown “questions of law or fact common to the members of the class predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3).

b. Superiority: Class Representative has also established “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3).

In sum, the Court finds all prerequisites and requirements of Federal Rule of Civil Procedure 23(a)-(b) are satisfied, and the Class I Settlement Class is hereby certified for the purposes of this Settlement.

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

7. Having considered the essential terms of the Settlement under the recognized standards for preliminary approval as set forth in the relevant jurisprudence, the Court preliminarily approves the Settlement, subject to the right of any member of the Class I Settlement Class to challenge the fairness, reasonableness, and adequacy of any part of the Settlement, Settlement Agreement, Allocation Methodology, or proposed Plan of Allocation (or any other Plan of Allocation), and to show cause, if any exists, why a Final Judgment dismissing the Released Claims in the Litigation based on the Settlement Agreement should not be ordered after adequate notice to

the Class I Settlement Class has been given in conformity with this Order. As such, the Court finds that those Class I Members whose claims would be settled, compromised, dismissed, and released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

8. The Court further preliminarily approves the form and content of the proposed Notices, which are attached to the Settlement Agreement as Exhibits 3-5, and finds the Notices are the best notice practicable under the circumstances, constitute due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfy the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23. The Court finds the form and content of the Notices fairly and adequately: (a) describe the terms and effect of the Settlement; (b) notify the Class I Settlement Class that Class Counsel will seek Plaintiff's Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and a Nominal Case Contribution Award for Class Representative's services; (c) notify the Class I Settlement Class of the time and place of the Final Fairness Hearing; (d) describe the procedure for requesting exclusion from the Settlement; and (e) describe the procedure for objecting to the Settlement or any part thereof.

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

a. No later than 20 business days after entry of this Preliminary Approval Order, the Settlement Administrator will mail (or cause to be mailed) the Notice [Dkt. No.

65-1 at 77], as described in the Settlement Agreement, by mail to all Class I Members who have been identified after reasonable efforts to do so. The Notice [Dkt. No. 65-1 at 77] will be mailed to Class I Members using the data described in paragraph 3.3 of the Settlement Agreement, the last known addresses for each payee, and any updated addresses found by the Settlement Administrator. For any Class I Members who received more than one payment, the Notice [Dkt. No. 65-1 at 77] will be mailed to the payee's last-known address (or any updated address found by the Settlement Administrator). The Settlement Administrator will also publish the Notice [Dkt. No. 65-1 at 68-76] as described below. It is not reasonable or economically practical for the Parties to do more to determine the names and addresses of Class I Members.

b. No later than 20 business days after entry of this Preliminary Approval Order, or at such time as is ordered by the Court, the Settlement Administrator also shall publish (or cause to be published) the Notice [Dkt. No. 65-1 at 75-76] one time in each of the following newspapers: (a) The Oklahoman, a paper of general circulation in Oklahoma; and (b) the Tulsa World, a paper of general circulation in Oklahoma.

c. Within 10 days after mailing the first notice and continuing through the Final Fairness Hearing, the Settlement Administrator will also display (or cause to be displayed) on an Internet website dedicated to this Settlement the following documents: (i) the Notice [Dkt. No. 65-1 at 68-74], (ii) the Complaint, (iii) the Settlement Agreement, (iv) this Order, and (v) other publicly-filed documents related to the Settlement.

10. Class Counsel is authorized to act on behalf of the Class I Settlement Class with respect to all acts required by, or which may be given pursuant to, the Settlement Agreement, or

such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Settlement Agreement.

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

12. The Court appoints Signature Bank as the Escrow Agent. The Escrow Agent is authorized and directed to act in accordance with the Settlement Agreement and Escrow Agreement. Except as set forth in paragraph 6.18 of the Settlement Agreement, the Parties and their Counsel shall not be liable for any act or omission of the Escrow Agent or loss for the funds in the Escrow Account.

13. Pursuant to Rule 23(e), a Final Fairness Hearing shall be held on January 23, 2023, at 9:00 a.m. in the United States District Court for the Northern District of Oklahoma, the Honorable John F. Heil, III presiding, to:

- a. determine whether the Settlement should be approved by the Court as fair, reasonable, and adequate and in the best interests of the Class I Settlement Class;
- b. determine whether the notice method utilized: (i) constituted the best practicable notice under the circumstances; (ii) constituted notice reasonably calculated, under the circumstances, to apprise Class I Members of the pendency of the Litigation, the Settlement, their right to exclude themselves from the Settlement, their right to object to the

Settlement, and their right to appear at the Final Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

c. determine whether a final Judgment should be entered pursuant to the Settlement Agreement, *inter alia*, dismissing the Released Claims in the Litigation against Defendant with prejudice and extinguishing, releasing, and barring all Released Claims against all Released Parties in accordance with the Settlement Agreement;

d. determine the proper method of allocation and distribution of the Net Settlement Fund among Class I Members who are not excluded from the Class I Settlement Class by virtue of a timely and properly submitted Request for Exclusion or other order of the Court;

e. determine whether the applications for Plaintiff's Attorneys' Fees, reimbursement for Litigation Expenses and Administration, Notice, and Distribution Costs, and a Nominal Case Contribution Award to Class Representative are fair and reasonable and should be approved; and

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

14. The Court reserves the right to adjourn, continue, and reconvene the Final Fairness Hearing, or any aspect thereof, including the consideration for the application for Plaintiff's Attorneys' Fees, a Nominal Case Contribution Award, and reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, without further notice to the Class I Settlement Class. The Settlement Administrator will update the website maintained pursuant to paragraph

9(c) of this Order to reflect the current information about the date and time for the Final Fairness Hearing.

15. Class I Members wishing to exclude themselves from the Class I Settlement Class pursuant to Rule 23(e)(4) must submit to the Settlement Administrator a valid and timely Request for Exclusion. Requests for Exclusion must include: (i) the Class I Member's name, address, telephone number, and notarized signature; (ii) a statement that the Class I Member wishes to be excluded from the Class I Settlement Class in *Pauper Petroleum, LLC v. Kaiser-Francis Oil Company*; and (iii) a description of the Class I Member's interest in any wells for which it has received payments from Defendant, including the name, well number, county in which the well is located, and the owner identification number. Requests for Exclusion must be served on the Settlement Administrator, Defendant's Counsel, and Plaintiff's Counsel by certified mail, return receipt requested and received no later than 5 p.m. CDT on January 9, 2023. Requests for Exclusion may be mailed as follows:

Settlement Administrator:

Pauper-Kaiser-Francis Settlement
c/o JND Class Action Administration, Settlement Administrator
P.O. Box 91244
Seattle, WA 98111-9332

Class Counsel:

Reagan E. Bradford
Ryan K. Wilson
BRADFORD & WILSON PLLC
431 W. Main Street, Suite D
Oklahoma City, OK 73102

Defendant's Counsel:

Paul DeMuro
Frederic Dorwart
FREDERIC DORWART LAWYERS PLLC
124 East Fourth Street
Tulsa, Oklahoma 74103

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

16. Any Class I Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, any term of the Settlement, the Allocation Methodology, the Plan of Allocation, the request for Plaintiff's Attorneys' Fees and Litigation Expenses and Administration, Notice, and Distribution Costs, or the request for a Nominal Case Contribution Award to Class Representative may file an objection. An objector must file with the Court and serve upon Class Counsel and Defendant's Counsel a written objection containing the following: (a) a heading referring to *Pauper Petroleum, LLC v. Kaiser-Francis Oil Company*, Case No. 19-cv-514-JFH-JFJ, United States District Court for the Northern District of Oklahoma; (b) a statement as to whether the objector intends to appear at the Final Fairness Hearing, either in person or through counsel, and, if through counsel, counsel must be identified by name, address, and telephone number; (c) a detailed statement of the specific legal and factual basis for each and every objection; (d) a list of any witnesses the objector may call at the Final Fairness Hearing, together with a brief summary of each witness's expected testimony (to the extent the objector desires to offer expert testimony and/or an expert report, any such evidence must fully comply with the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the Local Rules of the Court); (e) a list of and copies of

any exhibits the objector may seek to use at the Final Fairness Hearing; (f) a list of any legal authority the objector may present at the Final Fairness Hearing; (g) the objector's name, current address, current telephone number, and all owner identification numbers with Defendant; (h) the objector's signature executed before a Notary Public; (i) identification of the objector's interest in wells from which the objector has received payments by or on behalf of Defendant (by well name, payee well number, and county in which the well is located) during the Claim Period and identification of such payments by date of payment, date of production, and amount; and (j) if the objector is objecting to any portion of Plaintiff's Attorneys' Fees, a Nominal Case Contribution Award, or Litigation Expenses or Administration, Notice, and Distribution Costs sought on the basis that the amounts requested are unreasonably high, the objector must specifically state the portion of such requests he/she/it believes is fair and reasonable and the portion that is not. Such written objections must be filed with the Court and served on Plaintiff's Counsel and Defendant's Counsel, via certified mail return receipt requested, and received no later than 5 p.m. CDT by the deadline of 14 calendar days prior to the Final Fairness Hearing at the addresses set forth in paragraph 15 above.

Any Class I Member who fails to timely file and serve such written statement and provide the required information will not be permitted to present any objections at the Final Fairness Hearing and such failure will render any such attempted objection untimely and of no effect. All presentations of objections will be further limited by the information listed. Either or both Party's Counsel may file any reply or response to any objections prior to the Final Fairness Hearing. The procedures set forth in this paragraph do not supplant, but are in addition to, any procedures required by the Federal Rules of Civil Procedure.

17. Any objector who timely files and serves a valid written objection in accordance with the above paragraph may also appear at the Final Fairness Hearing, either in person or through

qualified counsel retained at the objector's expense. Objectors or their attorneys intending to present any objection at the Final Fairness Hearing must comply with the Local Rules of this Court in addition to the requirements set forth in paragraph 16 above.

18. No later than 28 calendar days prior to the Final Approval Hearing, if the Settlement has not been terminated pursuant to the Settlement Agreement, Plaintiff's Counsel and Plaintiff shall move for: (a) final approval of the Settlement pursuant to Rule 23(e); (b) entry of a Judgment in substantially the same form as Exhibit 2 [Dkt. No. 65-1 at 56-67]; (c) final approval of the Allocation Methodology and Plan of Allocation; and (d) Plaintiff's Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and/or a Nominal Case Contribution Award.

19. If the Settlement is not approved by the Court, is terminated in accordance with the terms of the Settlement Agreement, or otherwise does not become Final and Non-Appealable for any reason whatsoever, the Settlement, Settlement Agreement, and any actions to be taken in connection therewith (including this Order and any Judgment entered herein), shall be terminated and become void and of no further force and effect as described in the Settlement Agreement. Any obligations or provisions relating to the refund of Plaintiff's Attorney's Fees, Litigation Expenses, the payment of Administration, Notice, and Distribution Costs already incurred, and any other obligation or provision in the Settlement Agreement that expressly pertains to the termination of the Settlement or events to occur after the termination, shall survive termination of the Settlement Agreement and Settlement.

20. All proceedings in the Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final approval of the Settlement, Class Representative and all

Class I Members are barred, enjoined, and restrained from commencing, prosecuting, continuing, or asserting in any forum, either directly or indirectly, on their own behalf or on the behalf of any other person or class, any Released Claim against Released Parties.

21. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related thereto, is not, and shall not be construed as an admission or concession by any of the Parties to the Settlement Agreement. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the propriety of maintaining this Litigation as a contested class action or of class certifiability, and Defendant specifically denies any such fault, wrongdoing, breach, liability, and allegation regarding certification. This Order shall not be construed or used as an admission, concession, or declaration by or against Class Representative or the Class I Settlement Class that their claims lack merit or that the relief requested in the Litigation is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any Party of any arguments, defenses, or claims he, she, or it may have with respect to the Litigation or class certifiability in the event the Settlement is terminated.

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

IT IS SO ORDERED this 4th day of October 2022.



JOHN F. HEILL, III
UNITED STATES DISTRICT JUDGE