

ENTERED

December 09, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RAYANNE REGMUND, et al.

Plaintiffs,

v.

TALISMAN ENERGY USA INC.

Defendant.

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CIVIL ACTION NO. 4:16-cv-02960

**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 lawsuit in which Plaintiffs Rayanne Regmund Chesser and Gloria Janssen, individually and on behalf of all others similarly situated (“Plaintiffs”), allege that Defendant Talisman Energy USA, Inc., which effective December 30, 2016 by Certificate of Conversion filed with the Secretary of State of Texas became Repsol Oil & Gas USA, LLC, (“Defendant” or “Talisman”) improperly calculated and paid royalties in the Eagle Ford Area to the Class Members for Production occurring during the Claim Period of January 1, 2013 and June 1, 2016. On 10/15/20, 2020, Plaintiffs filed a *Motion for Preliminary Approval of Class Action Settlement Agreement, Plan of Allocation, and Class Notice* (ECF No. 202) and a *Motion for Class Certification Pursuant to Class Action Settlement Agreement* (ECF No. 204) (collectively, the “Motions”). In these Motions, Plaintiffs have moved the Court for preliminary approval of a proposed class action Settlement, as set forth in the Stipulation and Agreement of Settlement filed with the Court and in

the exhibits attached thereto (“Settlement Agreement”),¹ and for certification of the Settlement Class under Federal Rule of Civil Procedure 23.

Having reviewed the Motions, including the Settlement Agreement, and all related pleadings and filings, the Court has preliminarily considered the Settlement to determine, among other things, whether the Settlement warrants the issuance of notice to the Settlement Class, and has evaluated whether the proposed Settlement Class meets the criteria for certification. It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

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

- a. All persons who received or were entitled to receive Royalty payments from Talisman attributable to Production within the Eagle Ford Area occurring during the Claim Period (*i.e.*, between January 1, 2013 and June 1, 2016) that was commingled with Production from one or more other wells, and to whom Talisman paid such Royalties using a volumetric allocation methodology on net production sold and/or estimated “shrunk” production volumes.
- b. Excluded from the class are (a) all governmental entities, including federal, state, and local governments and their respective agencies, departments, or instrumentalities; (b) any foreign citizens, states, territories, or entities; (c) owners of any interests and/or leases located on or within any federally created units; (d) owners of any non-operating working interest for which Talisman or its agents or representatives, as operator, disburses royalty; (e) Talisman, Statoil, and any entity in which Talisman or Statoil has a controlling interest, and their officers, directors, legal representatives, and assigns; and (f) members of the judiciary and their staff to whom this action is assigned.

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

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

a. Numerosity. Plaintiffs have demonstrated “[t]he class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Fifth Circuit has not adopted a set number as presumptively sufficient to meet this burden, but “a putative class of 100 to 150 members ‘is within the range that generally satisfies the numerosity requirement.’” *In re TWL Corp.*, 712 F.3d 886, 894 (5th Cir. 2013) (citing *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999)). “[N]umerosity also entails consideration of ‘the geographical dispersion of the class, the ease with which class members may be identified, the nature of the action, and the size of each plaintiff’s claim.’” *Id.* (citing *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1038 (5th Cir. 1981)). Whether a class satisfies the numerosity requirement is a fact-specific inquiry. *Gen. Tel. Co. of the Nw., Inc. v. Equal Employment Opportunity Comm’n*, 446 U.S. 318, 330 (1980) (“The numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations.”). Further, “the district court has great discretion on the numbers involved and the practicality of joinder.” *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975), *abrogated on other grounds by Gardner v. Westinghouse Broad. Co.*, 437 U.S. 478 (1978)). Here, as demonstrated by Plaintiffs, the Settlement Class consists of 2,792 individuals. These Royalty owners are located in Texas and elsewhere throughout the United States, are identifiable through records maintained by Defendant, and have Royalty payment claims of a size amenable to treatment as a class. Therefore, the Court finds the numerosity prerequisite is met.

b. Commonality. This Court previously found Plaintiff identified at least five common questions that satisfy the commonality requirement. ECF No. 172 at 8. Plaintiffs have demonstrated “[t]here are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).

c. Typicality. “Rule 23(a) requires that the named representatives’ claims be typical of those of the class.” *Langbecker v. Elec. Data Sys. Corp.*, 476 F.3d 299, 314 (5th Cir. 2007). The analysis focuses on whether the named representative’s claims are typical, not whether the representative is. *See Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002). The Settlement itself, together with the submissions of Plaintiffs in support of their Motion, satisfy the Court’s previously expressed concerns for purposes of certifying a Settlement Class. ECF No. 172 at 9. Indeed, the Settlement removes any potential conflict among Settlement Class members. First, it eliminates the possibility of recoupment or clawback of overpayments with Defendant’s release of those claims under the Settlement. Second, it provides all Participating Class Members compensation for alleged underpayments calculated based on a single EOS compositional model in exchange for a release of Royalty claims on their leases attributable to Production within the Eagle Ford Area occurring during the Claim Period. Plaintiffs have 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. The adequacy inquiry can be broken up into three subcategories: (1) “the zeal and competence of the representative[s]’ counsel”; (2) “the willingness and ability of the representative[s] to take an active role in and control the litigation and to protect the interests of absentees”; and (3) the risk of “conflicts of interest between the named plaintiffs and the class they seek to represent.” *Slade v. Progressive Sec. Ins. Co.*, 856 F.3d 408, 412 (5th Cir. 2017). To meet the adequacy requirement, “the court must find that class representatives, their counsel, and the relationship between the two are adequate to protect the interests of absent class members.” *Unger v. Amedisys Inc.*, 401 F.3d 316, 321 (5th Cir. 2005). The Settlement eliminates any potential conflict for the reasons discussed above which fully

address the Court's previously expressed concerns. ECF No. 172 at 9-13. Plaintiffs have shown a willingness and ability to take an active role in and control the litigation and to protect the interests of absentees by pursuing this action for over four years through various stages resulting in the proposed Settlement. Likewise, Plaintiffs' Counsel Bryan O. Blevins Jr. and W. Michael Hamilton of Provost Umphrey Law Firm, L.L.P. and Joseph N. Kravec, Jr. and Wyatt A. Lison of Feinstein Doyle Payne & Kravec, LLC have decades of trial and class action litigation experience and have zealously and competently represented Plaintiffs and the proposed Settlement Class in this complex case through numerous motions and hearings before this Court over the past four years. Plaintiffs have demonstrated "[t]he representative parties [and their counsel] will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4).

Because the Court finds Plaintiffs Rayanne Regmund Chesser and Gloria Janssen and Plaintiffs' Counsel to be adequate representatives of the Settlement Class, the Court hereby appoints Plaintiffs Rayanne Regmund Chesser and Gloria Janssen and Plaintiffs' Counsel Bryan O. Blevins Jr. and W. Michael Hamilton of Provost Umphrey Law Firm, L.L.P., and Joseph N. Kravec, Jr. and Wyatt A. Lison of Feinstein Doyle Payne & Kravec, LLC to represent the Settlement Class.

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

a. Predominance. The standard for establishing that common issues "predominate" is less stringent when certification is sought for the purpose of settlement, rather than litigation. In such cases, "the existence of a settlement agreement allows the district court to dispense altogether with considering at least one of the Rule 23(b)(3) concerns . . . a district court need not inquire whether the case, if tried, would present intractable management problems

... for the proposal is that there be no trial.” *In re Deepwater Horizon*, 739 F.3d 790, 818 (5th Cir. 2014) (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Instead, “[t]he Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation*, 851 F. Supp. 2d 1040, 1058 (S.D. Tex. 2012) (quoting *Amchem*, 521 U.S. at 623). “So long as there is sufficient commonality to establish that the class is generally cohesive, the propriety of a settlement need not depend on satisfaction of a ‘predominance’ requirement.” *Id.* (citing *Aggregate Litigation* § 3.06 cmt. A); see also *Welsh v. Navy Federal Credit Union*, No. 5:16-CV-1062-DAE, 2018 WL 7283639, at *7 (W.D. Tex. Aug. 20, 2018) (same). Accordingly, where a settlement provides “voluntary payments,” a court need not find that common *damages* issues predominate. See *In re Deepwater Horizon*, 739 F.3d at 818 (“payments made under [a settlement] formula” need be “‘attributable’ to the class action’s theory of liability” in litigation to meet the predominance requirement of Rule 23(b)(3)). As discussed above, the Settlement eliminates inquiries into differences in leases or calculation of Royalty payments that previously concerned the Court. ECF No. 172 at 13-17. Moreover, the voluntary payments provided by the Settlement, and the release of Defendant’s claims for overpayments of Royalties eliminates the need to find common damages predominate. Accordingly, Plaintiffs have 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. Rule 23(b)(3) requires a determination that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy,” based upon factors including the interests of the members of the class in individually controlling the prosecution, the extent and nature of any litigation concerning the controversy already

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commenced by members of the class, the desirability of concentrating the litigation in a particular forum, and the management difficulties likely to be encountered. Fed. R. Civ. P. 23(b)(3). “The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.” *Amchem*, 521 U.S. at 617 (citation omitted). This Court has agreed that the total amount of Royalties owed may be large, but individual recovery will be small. ECF No. 172 at 18. Moreover, “the existence of a settlement agreement allows the district court to dispense altogether with considering at least one of the Rule 23(b)(3) concerns: ‘the likely difficulties in managing a class action.’” *In re Deepwater Horizon*, 739 F.3d at 818. Lastly, the Settlement provides compensation for the Settlement Class and a release of overpayment claims, and any Settlement Class member who does not like the Settlement may protect their interests by opting out or objecting. Accordingly, Plaintiffs have 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 Settlement Class is hereby certified for the purposes of this Settlement.

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

sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Settlement Class.

6. 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 and its Plan of Allocation, which attached to the Settlement Agreement as Exhibit 1, subject to the right of any member of the Settlement Class to challenge the fairness, reasonableness, and adequacy of any part of the Settlement and to show cause, if any exists, why a Final Judgment dismissing the Litigation based on the Settlement Agreement should not be ordered after adequate notice to the Settlement Class has been given in conformity with this Order. As such, the Court finds that those Class Members whose claims would be settled, compromised, dismissed, and released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

7. The Court further preliminarily approves the form and content of the proposed Notice of Settlement, which is attached to the Settlement Agreement as Exhibit 4, and finds the Notice of Settlement 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 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 Notice of Settlement fairly and adequately: (a) describes the terms and effect of the Settlement; (b) notifies the Settlement Class that Plaintiffs' Counsel will seek Attorneys' Fees, reimbursement of Litigation Expenses, and Case Contribution Awards for Plaintiffs' services; (c) notifies the Settlement Class of the time and place of the Final Fairness Hearing; (d) describes the procedure for requesting exclusion from the Settlement; and (e) describes the procedure for objecting to the Settlement or any part thereof.

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

a. No later than seven (7) days after the Preliminary Approval Order is entered, Defendant shall provide Plaintiffs' Counsel in electronic format data sufficient to identify all Royalty Owners in the Settlement Class, including the names and last known addresses. The electronic pay data may be used only for purposes related to the identification and location of Class Members, providing the Notice of Settlement to Class Members, and implementing the Plan of Allocation among Class Members, and may not be otherwise used or disclosed.

b. After the Preliminary Approval Order is entered and prior to sending the Notice of Settlement, the Settlement Administrator shall make reasonable efforts to: (a) verify the last-known addresses of Class Members reflected in the information provided by Defendant pursuant to paragraph 4.1 of the Settlement Agreement; and (b) locate current addresses of any Class Members for whom Defendant has not provided an address or a current address.

c. No later than twenty-one (21) days after the issuance of this Order, the Settlement Administrator will mail (or cause to be mailed) the Notice of Settlement (attached as Exhibit 4 to the Settlement Agreement) by first class mail to all potential Class Members who have been identified after reasonable efforts to do so. The Notice will be mailed to potential Class Members using the information described in paragraph 4.1 of the Settlement Agreement and any updated addresses found by the Settlement Administrator. Contemporaneous with the

mailing of the Notice of Settlement and continuing through the date of 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: (a) the Notice of Settlement, (b) the First Amended Complaint, (c) the Settlement Agreement with exhibits, (d) this Order, (e) the Heirship Form (Exhibit 6 to the Settlement Agreement), and (f) Answers to Frequently Asked Questions. An approximation of each Class Member's potential allocation from the Gross Settlement Fund will be made available.

d. It is not reasonable or economically practical for the Parties to do more to determine the names and addresses of Class Members. Neither Defendant, Defendant Released Parties, Defendant's Counsel, Plaintiffs, the Settlement Class, nor Plaintiffs' Counsel shall have any liability for failure of the Notice of Settlement to reach any Class Member.

9. Plaintiffs' Counsel are authorized to act on behalf of the Settlement Class with respect to all acts required by, or which may be given pursuant to, the Settlement Agreement, or such other acts that are reasonably necessary to consummate the Settlement.

10. The Court appoints BrownGreer to act as Settlement Administrator. The Settlement Administrator is authorized and directed to act in accordance with the Settlement Agreement and all orders of the Court relating to the Settlement. The Parties, Defendant Released Parties, and the Parties' Counsel shall not be liable for any act or omission of the Settlement Administrator or for any mis-payments, overpayments, or underpayments of the Net Settlement Fund.

11. The Court appoints Western Alliance Bank as the Escrow Agent. The Escrow Agent is authorized and directed to act in accordance with the Settlement Agreement, the Escrow Agreement, and all orders of the Court relating to the Settlement. Except as set forth in paragraph

8.16 of the Settlement Agreement, the Parties, Defendant Released Parties, and the Parties' Counsel shall not be liable for any act or omission of the Escrow Agent or loss for the funds in the Escrow Account.

12. Pursuant to Federal Rule of Civil Procedure 23(e), a Final Fairness Hearing shall be held on May 12, 2021 at 11:00 in the United States District Court for the Southern District of Texas, the Honorable Keith P. Ellison presiding, to:

a. determine whether the Settlement embodied in the Settlement Agreement, including the Plan of Allocation, should be finally approved by the Court as fair, reasonable, and adequate and in the best interests of the Participating Class Members within the meaning of Federal Rule of Civil Procedure 23;

b. determine whether the notice method utilized: (i) constituted the best practicable notice under the circumstances; (ii) constituted notice reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Litigation, the Settlement, their right to exclude themselves from the Settlement, their right to object to the Settlement 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) met 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 all claims in the Litigation with prejudice and extinguishing, releasing, and barring all Class Claims against all Defendant Released Parties in accordance with the Settlement Agreement;

d. determine whether any applications for Plaintiffs' Attorneys' Fees, reimbursement for Litigation Expenses, and Case Contribution Awards to Plaintiffs are fair and reasonable and should be approved; and

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

13. The Court reserves the right to adjourn, continue, and reconvene the Final Fairness Hearing, or any aspect thereof, including for the consideration of any application for Plaintiffs' Attorneys' Fees and reimbursement of Litigation Expenses, to a later date than the date provided for in the Notice of Settlement to the Settlement Class, and to approve the Settlement at or after the Final Fairness Hearing without further notice to the Settlement Class. The Settlement Administrator will update the website maintained pursuant to paragraph 8 of this Order to reflect the current information about the date and time for the Final Fairness Hearing.

14. Class Members wishing to exclude themselves from the Settlement Class pursuant to Federal Rule of Civil Procedure 23(e)(4) must submit to the Settlement Administrator a valid and timely Request for Exclusion. A Request for Exclusion is not timely and properly submitted unless it is in writing, is signed by the person or entity requesting exclusion, is mailed in a postage-paid envelope to the Settlement Administrator, postmarked within eighty (80) days of this Order, and otherwise complies with the instructions contained in the Notice of Settlement. The Request for Exclusion must be personally signed by any natural person requesting exclusion; it cannot be signed by that person's lawyer or other agent, unless the person is incapacitated. Requests for Exclusion may not be made on a class or representative basis. If the entity requesting exclusion is a corporation, partnership, or other legal entity, the request must be personally signed by a duly-authorized officer, partner, or managing agent. A Request for Exclusion is also not properly submitted or valid if it requests a qualified or partial exclusion or

any other qualification. Requests for Exclusion may not be submitted through the website or by telephone, facsimile, or e-mail. A Request for Exclusion that is not in substantial compliance with these requirements will be deemed ineffective, as determined by the Settlement Administrator. Plaintiffs' Counsel and Defendant's Counsel shall be provided a copy of all Requests for Exclusion by the Settlement Administrator within one business day following receipt.

15. Any Class Member who has not timely and properly submitted a Request for Exclusion, or is not otherwise excluded from the Settlement under the Settlement Agreement or by court order, shall be considered a Participating Class Member included in the Settlement and bound by the terms of the Settlement Agreement in the event it is finally approved by the Court.

16. Any Participating Class Member who wishes to object to the Settlement, including the Settlement Agreement, the Plan of Allocation, the request for Plaintiffs' Attorneys' Fees and Litigation Expenses, or the request for Case Contribution Awards to Plaintiffs, may file an objection. An objector must file with the Court and serve on Plaintiffs' Counsel and Defendant's Counsel by United States Certified Mail, Return Receipt Requested at least fourteen (14) days prior to the Final Fairness Hearing a written objection containing the following:

a. A heading referring to *Regmund v. Talisman Energy USA Inc.*, Case No. 4:16-cv-02960, in the United States District Court for the Southern District of Texas;

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, identifying counsel by name, address, and telephone number;

c. A detailed statement of the specific legal and factual basis for each and every objection, and whether it applies only to the objector, to a specific subset of the class, or to the entire class;

d. A list of any witnesses the objector wishes to 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. Identification of the objector's interest in wells for which the objector has received payments made 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

i. If the objector is objecting to any portion of the Plaintiffs' Attorneys' Fees, Case Contribution Awards, and Litigation Expenses sought by Plaintiffs' Counsel on the basis that the amounts requested are unreasonably high, the objector must specifically state the portion of Plaintiffs' Attorneys' Fees, Case Contribution Awards, and/or Litigation Expenses he/she believes is fair and reasonable and the portion that is not.

17. Any Participating Class Member who fails to timely file and serve such written statement and provide the required information will not be permitted to present any objections at the Final Fairness Hearing and such failure will render any such attempted objection untimely and of no effect. All presentations of objections will be further limited by the information listed. Either or both Parties' Counsel may file any reply or response to any objections no later than seven (7) days 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.

18. Except for an Excluded Class Member that wishes to file an objection to its exclusion, a Non-Participating Class Member shall have no right to object to the Settlement in any way, including but not limited to the fairness, reasonableness, amount, and/or any aspect of the Settlement, including the Notice of Settlement, Plaintiffs' Counsel's request for Plaintiffs' Attorneys' Fees, Case Contribution Awards, or Litigation Expenses, the Plan of Allocation, or any distribution of the Net Settlement Fund or Residual Unclaimed Funds. An Excluded Class Member who objections to its exclusion may also assert any other objection that will be considered by the Court if the objection to its exclusion is granted, provided all objections asserted by the Excluded Class Member comply with the timing and other requirements of paragraphs 16 and 17 of this Order.

19. Within sixty (60) days following the conclusion of the Exclusion Period and no later than thirty (30) days prior to the Final Fairness Hearing, if the Settlement has not been terminated pursuant to the Settlement Agreement, Plaintiffs and Plaintiffs' Counsel shall move for: (a) entry of a Judgment in substantially the same form as Exhibit 3 attached hereto; and

(b) any award of Plaintiffs' Attorneys' Fees, Case Contribution Awards, and/or Litigation Expenses.

20. 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 (including, but not limited to paragraph 10.4 of the Settlement Agreement). Any obligations or provisions relating to the refund of the Gross Settlement Fund to Defendant 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.

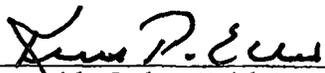
21. All proceedings in the Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final approval of the Settlement, Plaintiffs, Class Members, and Class Releasing Parties 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 Class Claim against Defendant Released Parties.

22. The Settlement Agreement and any and all negotiations, documents, opinions, discussions, or proceedings associated with it shall not be deemed or construed to be an admission or evidence of anything, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, in this Litigation or any other action or proceeding whatsoever other than to enforce the provisions of the Settlement between Defendant Released Parties and any Class

Member, the provisions of the Settlement Agreement, or the Judgment, or to seek an Order barring or precluding the assertion of Class Claims in any proceeding. 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 deny any such fault, wrongdoing, breach, liability, and allegation regarding certification. This Order shall not be construed or used as an admission, concession, or declaration by or against Plaintiffs or the Settlement Class that their claims lack merit or that the relief requested in the Litigation is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any Party of any arguments, defenses, or claims he, she, or it may have with respect to the Litigation or class certifiability in the event the Settlement is terminated. Moreover, the Settlement and any proceedings taken pursuant to the Settlement are for settlement purposes only.

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

IT IS SO ORDERED this 9th day of December, 20 .



Honorable Judge Keith P. Ellison