

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

SAGACITY, INC.; THE DUNCAN GROUP,
LLC; AND HITCH ENTERPRISES, INC., on
behalf of themselves and a class of similarly
situated persons,

Plaintiffs,

vs.

CIMAREX ENERGY CO.; MAGNUM
HUNTER PRODUCTION, INC.; PRIZE
ENERGY RESOURCES, INC.; CIMAREX
ENERGY COMPANY OF COLORADO; KEY
PRODUCTION COMPANY, INC.,

Defendants.

Case No. CIV-17-101-GLJ

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Agreement (hereinafter, including all exhibits attached hereto and/or provided for herein referred to collectively as the “Settlement Agreement”) is entered into by and between SAGACITY, INC., THE DUNCAN GROUP, LLC, and HITCH ENTERPRISES, INC. (“Plaintiffs”), on behalf of themselves and a class of similarly situated royalty owners (defined as the “Settlement Class” in paragraph 1.41 below), and CIMAREX ENERGY CO., MAGNUM HUNTER PRODUCTION, INC., PRIZE ENERGY RESOURCES, INC., CIMAREX ENERGY COMPANY OF COLORADO, and KEY PRODUCTION COMPANY, INC. (the “Cimarex Entities”). Plaintiffs and the Cimarex Entities may be referred to as a “Party” or collectively as “the Parties.” The Settlement expressed in this Settlement Agreement is conditioned upon the terms and conditions set forth herein, including but not limited to the Court (1) approving this

Settlement Agreement and (2) entering the orders and Judgment (as defined in paragraph 1.22 below) in material conformance with those proposed by the Parties, as more fully described below.

WHEREAS, the above-styled action was commenced on February 23, 2017, with the filing of Plaintiff's Class Action Petition in the District Court of Marshall County, Oklahoma [Dkt. #2-1], and thereafter removed to the United States District Court for the Eastern District of Oklahoma [Dkt. #2] (the "Eastern District Action");

WHEREAS, the action styled *Hitch Enterprises, Inc., on behalf of itself and all others similarly situated v. Key Production Company, Inc.*, Case No. CJ-2017-01 was commenced on January 3, 2017, with the filing of Plaintiff's Class Action Complaint in the District Court of Texas County, Oklahoma (the "State Court Action");

WHEREAS, the action styled *The Duncan Group, LLC, on behalf of itself and all others similarly situated v. Cimarex Energy Co.*, Case No. CIV-18-123-JD was commenced on February 8, 2018, with the filing of Plaintiff's Class Action Complaint in the United States District Court for the Western District of Oklahoma (the "Western District Action");

WHEREAS, Plaintiffs have made certain claims against the Cimarex Entities, as more fully described in the First Amended Class Action Complaint in this Eastern District Action [Dkt. #24], the Class Action Complaint in the State Court Action, and the Class Action Complaint in the Western District Action [Dkt. #1];

WHEREAS, the State Court Action has been stayed and the Western District Action has been administratively closed, both for the sole purpose of allowing for the resolution of those actions in this Eastern District Action;

WHEREAS, the Parties desire to resolve the Eastern District Action, the State Court Action, and the Western District Action (collectively, the “Litigation”), as more fully described herein;

WHEREAS, Plaintiffs will file a second amended complaint with the Court (defined below) to amend the Eastern District Action to include the parties and claims associated with the State Court Action and the Western District Action;

WHEREAS, Plaintiffs and Plaintiffs’ Counsel have vigorously prosecuted the Litigation for over six years, which has included the production of documents and data, motion practice, research, accounting review and analysis, the taking and defending of depositions, consultation by and with experts, settlement negotiations among counsel, damage modeling, mediation, and other investigations and preparation;

WHEREAS, Plaintiffs and Plaintiffs’ Counsel acknowledge that, during the course of their prosecution of the Litigation, they have received, examined, and analyzed information, documents, and materials they deem necessary and appropriate to enable them to enter into this Settlement Agreement on a fully-informed basis, and after such examination and analysis, and based on the experience of Plaintiffs’ Counsel and their experts and consultants, Plaintiffs and Plaintiffs’ Counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class and Plaintiffs;

WHEREAS, Plaintiffs agreed to settle the claims asserted against the Cimarex Entities in the Litigation pursuant to this Settlement Agreement after considering: (1) the substantial benefits Class Members will receive from resolution of such claims, (2) the risks of litigating those claims,

and (3) the desirability of permitting the Settlement to be consummated as provided by the terms of this Settlement Agreement;

WHEREAS, the Cimarex Entities agree that further prosecution and defense of the claims in this Litigation would be protracted and expensive. The Cimarex Entities have accounted for the uncertainty and risks inherent in such Litigation and have determined that it is desirable to compromise and settle the claims in the Litigation;

WHEREAS, the Cimarex Entities have adamantly denied, and continue to deny, Plaintiffs' claims and any and all liability to Plaintiffs and the Settlement Class, and have vigorously defended against those claims; and

WHEREAS, the Cimarex Entities enter into this Settlement Agreement without admitting any liability whatsoever, and solely to avoid further expense, inconvenience, and disruption of defending against the claims asserted in the Litigation and to be completely free of any further controversy with respect to the claims in the Litigation, as more fully described herein.

NOW THEREFORE, in consideration of the payments, mutual promises, agreements, undertakings, releases, and other terms and provisions of this Settlement Agreement, the sufficiency of which is hereby acknowledged by all Parties hereto, Plaintiffs, on behalf of themselves and the Settlement Class, and the Cimarex Entities, stipulate and agree as follows, subject to the approval of the Court, without admission of any liability or wrongdoing, and in consideration of the benefits set forth herein, that all Released Claims (defined in paragraph 1.35 below) shall be fully, finally, and forever compromised, settled, released, and discharged, and the Litigation shall be dismissed with prejudice, upon and subject to the following terms and conditions.

1. Definitions

As used throughout this Settlement Agreement and all other documents attached hereto, the following phrases and words will be given the meanings set forth below:

1.1. “**Administration, Notice, and Distribution Costs**” means the reasonable and necessary fees, costs, and expenses charged by the Settlement Administrator (or any consultant retained by the Settlement Administrator with approval from Plaintiffs’ Counsel) for fees, costs, and expenses generated or incurred in the administration, distribution, and notification of the Settlement, including: (a) fees, costs, and expenses of identifying the names, addresses, and tax identification numbers of Class Members (to the extent not contained in the records provided by the Cimarex Entities under paragraph 3.3 below); (b) fees, costs, and expenses incurred to publish and mail the Notice of Settlement to the Settlement Class (such as the cost to print the Notice of Settlement, mail the Notice of Settlement, and publish the Notice of Settlement pursuant to the Plan of Notice); (c) fees, costs, and expenses to prepare, issue, and mail (and reissue and re-mail, if necessary) the Distribution Checks to the Settlement Class; (d) fees, costs, and expenses to calculate the amount each Class Member will receive under any Distribution Schedule and to provide a reconciliation of the Residual Unclaimed Amount; and (e) fees, costs, and expenses to calculate the amount each Class Member who does not timely and properly submit a Request for Exclusion will receive under the Final Distribution Schedule. Administration, Notice, and Distribution Costs also include the costs described in (a) through (e) above incurred by Plaintiffs’ Counsel or Plaintiffs associated with experts, consultants, or other personnel retained for purposes of administration, distribution, and notification. Administration, Notice, and Distribution Costs also includes any fees or costs charged by the Escrow Agent related to the Escrow Account.

Administration, Notice, and Distribution Costs does not include any costs or fees incurred by the Cimarex Entities related to this Settlement or the Litigation or by Plaintiffs other than as described herein.

1.2. “**Allocation Methodology**” means the methodology Plaintiffs propose to use to calculate the Final Distribution Schedule.

1.3. “**Claim Period**” means checks or payments from the Cimarex Entities from January 1, 2013, to and including February 29, 2024, subject to the terms of this Settlement Agreement regarding Released Claims.

1.4. “**Class Member**” is a person, entity, or owner belonging to the Settlement Class.

1.5. Paragraph 1.5 is intentionally left blank.

1.6. “**Court**” means the Honorable Gerald L. Jackson in the United States District Court for the Eastern District of Oklahoma, or any successor judge presiding over the Litigation.

1.7. “**Cimarex Entities**” is separately defined on page 1 of this Settlement Agreement.

1.8. “**Cimarex Entities’ Counsel**” means the law firms of Snell & Wilmer L.L.P. and Crowe & Dunlevy.

1.9. “**Distribution Check**” means a check payable to a Class Member who does not timely and properly submit a Request for Exclusion, or who is not otherwise excluded from the Settlement Class by order of the Court, for the purpose of paying that Class Member’s share of the Settlement Amount pursuant to the Final Distribution Schedule.

1.10 “**Distribution Schedule**” means the preliminary and final distribution schedules filed with the Court to show the amount each Class Member may receive from the Gross or Net Settlement Amounts.

1.11. “**Effective Date**” means the first business day when all of the following have occurred: (a) the Cimarex Entities have fully paid, or caused to be fully paid, the Gross Settlement Amount, as required below; (b) the Settlement Agreement has not terminated under paragraphs 9.1 or 9.3 hereof; (c) the Court has approved the Settlement as described herein and entered the Judgment (as defined in paragraph 1.22 below) in substantially the same form and content attached hereto as Exhibit 2; and (d) such Judgment has become Final and Non-Appealable, as set forth in paragraph 1.16.

1.12. “**Escrow Account**” means an account maintained by the Escrow Agent.

1.13. “**Escrow Agent**” means the bank or financial institution mutually agreed upon by the Parties and appointed and approved by the Court to carry out the duties assigned to the Escrow Agent under this Settlement Agreement. The Parties have agreed to propose Citibank to serve as Escrow Agent.

1.14. “**Escrow Agreement**” means the agreement(s) between Plaintiffs’ Counsel (on behalf of Plaintiffs and the Settlement Class), the Cimarex Entities, and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account in accordance with this Settlement Agreement. The Escrow Agreement shall be in the form agreed to by the Parties.

1.15. Paragraph 1.15 is intentionally left blank.

1.16. “**Final and Non-Appealable**” means:

a) Thirty (30) days have elapsed following entry of the Judgment without the filing of:
(i) any appeal or original action in any court challenging or seeking reconsideration, modification, or vacation of the Judgment; or (ii) any motion before the Court that would extend the time to

appeal from the Judgment, or which challenges or seeks reconsideration, modification, or vacation of the Judgment; or

b) One of the kinds of proceedings or motions listed in subparagraph (a) above has been filed and has resulted in a final order or judgment by the court in which it was commenced; and that final order or judgment has itself become final and is no longer subject to further review in any court.

1.17. “**Final Fairness Hearing**” means the hearing set by the Court under Federal Rule of Civil Procedure 23(e)(2) to consider final approval of the Settlement.

1.18. “**Final Distribution Schedule**” means the final calculation of the Distribution Check that will be sent to each Class Member who has not timely and properly submitted a Request for Exclusion or has not been otherwise excluded from the Settlement Class by order of the Court and approved by order(s) of the Court authorizing and directing distribution of the Settlement Amount, in whole or part, to members of the Settlement Class.

1.19. “**Gross Settlement Amount**” means the total cash amount of Twenty Million, Five Hundred Thousand Dollars (\$20,500,000.00) to be paid by the Cimarex Entities. In no event shall the Cimarex Entities be required to pay more than the Gross Settlement Amount, excluding the cost of the notices described in paragraph 3.7 below. In other words, the Cimarex Entities’ financial obligation associated with this settlement shall be capped at Twenty Million, Five Hundred Thousand Dollars (\$20,500,000.00).

1.20. “**Incentive Award**” means the award ordered by the Court, if any, to Plaintiffs for their time, expense, risk, burden, and participation in this Litigation and in representing the Settlement Class.

1.21. “**Motion for Preliminary Approval**” means the Motion for Settlement Class Certification and Preliminary Approval of Class Action Settlement Agreement to be filed by Plaintiffs seeking certification of the Settlement Class and preliminary approval of this Settlement Agreement.

1.22. “**Judgment**” means the order and judgment approving the Settlement Agreement between the Settlement Class and the Cimarex Entities, which shall be in material conformance with Exhibit 2, attached hereto.

1.23. “**Litigation**” is separately defined on page 3 of this Settlement Agreement.

1.24. “**Litigation Expenses**” means the reasonable costs and expenses incurred by Plaintiffs’ Counsel in commencing and prosecuting the Litigation.

1.25. “**Net Settlement Amount**” means the Gross Settlement Amount less: (a) any of Plaintiffs’ Attorney’s Fees and Litigation Expenses awarded by the Court; (b) any Incentive Award awarded by the Court; (c) any Administration, Notice, and Distribution Costs awarded by the Court; (d) any other costs and expenses that the Court orders to be deducted from the Gross Settlement Amount; and (e) the gross amount of money under the Distribution Schedule attributable to Class Members who timely and properly submitted Requests for Exclusion or who were otherwise excluded from the Settlement Class by order of the Court.

1.26. “**Notice of Settlement**” means the notice in substantially the same form as Exhibit 3, which will be mailed in accordance with the Plan of Notice as described in Section 3 below, and the notice in substantially the same form as Exhibit 4, which will be posted on the website in accordance with the Plan of Notice as described in Section 3 below, and the notice in substantially

the same form as Exhibit 5, which will be published in accordance with the Plan of Notice as described in Section 3 below.

1.27. “**Objection Deadline**” means the deadline for any Class Member to object to this Settlement Agreement identified in the Court’s Preliminary Approval Order.

1.28. “**Opt Out Deadline**” means the deadline for any Class Member to submit a Request for Exclusion from the Settlement Class identified in the Court’s Preliminary Approval Order.

1.29. “**Party**” and “**Parties**” are separately defined on page 1 of this Settlement Agreement.

1.30. “**Plaintiffs**” is separately defined on page 1 of this Settlement Agreement.

1.31. “**Plaintiffs’ Attorneys’ Fees**” means the fees that may be awarded by the Court to Plaintiffs’ Counsel with respect to their work on the Litigation.

1.32. “**Plaintiffs’ Counsel**” means the law firm of Sharp Law, LLP.

1.33. “**Plan of Notice**” means the process described in Section 3 below for sending and publishing the Notice of Settlement.

1.34. “**Preliminary Approval Order**” means the order in substantially the form attached hereto as Exhibit 1 to be entered by the Court preliminarily approving the Settlement, certifying the class for settlement purposes only, and directing that Notice of Settlement be provided to the Settlement Class as set forth therein.

1.35. “**Released Claims**” means any and all claims, demands, actions, causes of action, allegations, rights, obligations, costs, losses, and damages arising in whole or in part at any time during the Claim Period from or in connection with acts or omissions of any of the Released Parties of any and every kind or nature, whether in law or in equity, in tort or contract, or arising under

any statute or regulation, that were, or could have been, asserted or made in the Litigation.. Also, without limiting the generality of the foregoing, Released Claims additionally mean and include all claims arising during the Claim Period for greater, additional, or unpaid amounts of royalty or interest for any reason whatsoever, including all acts and omissions related thereto, including, but not limited to, claims arising from: (a) the improper or unlawful deduction of processing, fractionation, and transportation costs (hereinafter “Post-Production Costs”), and all other costs based upon the factoring of such costs into the computation of royalties and potential interest owed on the same under the Production Revenue Standards Act, any other law, or in equity; (b) any alleged breach of express royalty clauses, implied covenants in oil and gas leases, or other express or implied duties with respect to the deduction of Post-Production Costs from or calculation of royalties; (c) any alleged failure to pay royalties on wellhead gas volumes or the correct volumes; (d) any alleged improper conduct associated with marketing or selling natural gas or constituent parts of the natural gas stream pursuant to wellhead, percent of proceeds, percent of index, keep whole, spot, or any other form of sales contract; (e) any alleged fraudulent concealment of any Released Claims; and (f) any alleged fraud, breach of fiduciary duty, breach of contract, or other unlawful conduct associated with the marketing of natural gas production or the calculation, payment, and accounting of royalties due on such production as a result of alleged deductions of Post-Production Costs. The Released Claims do not include: (a) any and all claims accruing before or after the Claim Period; (b) any and all claims against the Released Parties arising out of or related to proceeds from Oklahoma oil-and-gas production held in suspense, but not yet paid or issued by the Released Parties during the Claim Period; (c) claims arising out of or relating to

royalties paid on the production of oil; or (d) claims for breach of obligations to develop Oklahoma oil and gas leases and failure to prevent offset drainage.

1.36. “**Released Parties**” means the Cimarex Entities, and their respective predecessors, successors, parents, subsidiaries, affiliates, related entities, and assigns, and their respective past, present and future officers, directors, employees, insurers, agents, servants, attorneys, and representatives.

1.37. “**Releasing Parties**” means Plaintiffs and the Class Members who do not timely and properly submit Requests for Exclusion and who are not otherwise excluded from the Settlement Class by order of the Court; their successors, heirs, and assignees; and any past and present officers, employees, attorneys, agents, consultants, servants, stockholders, members, partners, owners, representatives, subsidiaries, and affiliates of such persons or entities. Releasing Parties includes all Class Members who do not timely and properly submit Requests for Exclusion and who are not otherwise excluded from the Settlement Class by order of the Court without regard to whether a member of the Settlement Class actually received a Distribution Check and without regard to whether any payment received was correctly determined. All members of the Settlement Class who do not timely and properly submit Requests for Exclusion and who are not otherwise excluded from the Settlement Class by order of the Court and their heirs, successors, and assigns will be enjoined by the Court in the Judgment from filing or prosecuting Released Claims.

1.38. “**Request for Exclusion**” means any request for exclusion from the Settlement Class pursuant to Federal Rule of Civil Procedure 23 that meets the requirements set by the Court for exclusion.

1.39. “**Residual Unclaimed Amounts**” means any portion of the Net Settlement Amount that has not been deposited, cashed, or otherwise claimed by a Class Member, including, but not limited to: (a) the total amount of Distribution Checks sent to Class Members who later cannot be located by the Settlement Administrator or Plaintiffs’ Counsel through reasonable efforts (as described in paragraph 6.9 below), along with any interest and returns that accrue on such amounts during the time they are in the Escrow Account, and which remain unused after final distributions and administrations have been made; and (b) the amount of Distribution Checks sent to Class Members that are voided because they are not cashed or deposited within the time specified on the Distribution Check, along with any interest and returns that accrue on such amounts during the time they are in the Escrow Account, and which remains unused after final distributions and administrations efforts have been made.

1.40. “**Settlement**” means the Parties’ agreement to resolve the Litigation as described herein.

1.41. “**Settlement Class**” shall mean the below-described class that the Parties have agreed should be certified for settlement purposes only pursuant to the entry of the Preliminary Approval Order to be entered by the Court in material conformance with the form attached hereto as Exhibit 1. The Settlement Class is to be substantially defined as follows:

All royalty owners in Oklahoma wells (a) operated and leased by Cimarex Energy Co., (b) operated by Cimarex Energy Co. of Colorado, Inc. and leased by Prize Energy Resources, Inc. or Magnum Hunter Production, Inc., and (c) operated or leased by Key Production Company, Inc. that have produced gas or gas constituents (such as residue gas or natural gas liquids) from January 1, 2013, to November 30, 2023.

Excluded from the Class are: (1) the Mineral Management Service (Indian tribes and the United States) and the State and Counties of Oklahoma; (2) Defendants, their affiliates, and employees, officers and directors; (3) Any NYSE or NASDAQ

listed company (and its subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing; (4) royalty owners who have already filed and still have pending lawsuits for underpayment of royalties against Defendants, including: Fortis Minerals II, LLC, Fortis Sooner Trend, LLC, FMII STM, LLC, Sooner Trend Minerals, LLC, and Phenom Minerals, LLC; (5) all royalty owners that expressly authorized in their leases the deduction of processing costs from royalties; and (6) all royalty owners to the extent their wells are both subject to the class action settlement in *Chieftain Royalty Co. v. QEP Energy*, No. 5:11-cv-00212-R, and the well was subsequently acquired by Defendants or any of their affiliates.

1.42. The phrases “oil and gas” and “oil-and-gas” as used herein shall not exclude situations involving only one or the other product. These phrases are understood to include oil alone, gas alone, and both oil and gas together.

2. Consideration

2.1. The Parties agree to settle the Litigation as set forth herein. The Cimarex Entities agree to provide Plaintiffs and the Class Members the Gross Settlement Amount in exchange for Plaintiffs’ and the Class Members’ releases, covenants, and agreements in the Settlement Agreement.

2.2. The Cimarex Entities shall pay the Gross Settlement Amount (\$20,500,000.00) into the Escrow Account no later than thirty (30) days following the date of entry of the Preliminary Approval Order.

2.3 Except for the Cimarex Entities’ obligation to make the payment called for by the preceding paragraph, neither the Cimarex Entities nor Cimarex Entities’ Counsel shall have any liability to Plaintiffs, Plaintiffs’ Counsel, or the Settlement Class, with respect to the Gross Settlement Amount or its administration, including, but not limited to, any distributions made by the Escrow Agent or Settlement Administrator.

2.4. The Parties agree that Settlement of the Released Claims is supported by adequate consideration and the Parties' agreements, releases, and covenants herein.

2.5. The Class Members who have not timely and properly submitted a Request for Exclusion and are not excluded from the Settlement Class by order of the Court agree, in consideration of the agreement of the Cimarex Entities in this Settlement Agreement, to give the release, dismissal and covenant not to sue described in paragraphs 4.1, 4.2, and 4.3, below.

3. Plan of Notice and Court Approvals

3.1 No later than fourteen (14) days following full execution of this Settlement Agreement, Plaintiffs will file, with the Cimarex Entities' written consent, a Second Amended Complaint with the Court that conditionally adds the parties to the Western District Action and the State Court Action to the Eastern District Action for settlement purposes only. No later than seven (7) days from and after the filing of the Second Amended Complaint, Plaintiffs will file the Motion for Preliminary Approval, which shall include the proposed Preliminary Approval Order, in the form attached hereto as Exhibit 1, which will, *inter alia*: (a) certify the Settlement Class for the purposes of this Settlement only; (b) preliminarily approve the Settlement as set forth in this Settlement Agreement; (c) approve the Notices of Settlement and Plan of Notice; and (d) direct the Settlement Administrator to provide the Notices of Settlement to the Settlement Class in accordance with the Plan of Notice or in any other manner the Court may direct in accordance with Federal Rule of Civil Procedure 23.

3.2. As soon as practicable after the filing of the Motion for Preliminary Approval, the Parties shall seek to set a hearing with the Court to request that the Court preliminarily approve this Settlement Agreement, certify the Settlement Class, order notice to be mailed in the form

attached hereto as Exhibit 3, posted on the website in the form attached hereto as Exhibit 4, and published in the form attached hereto as Exhibit 5. Plaintiffs will submit the proposed Preliminary Approval Order in the form attached hereto as Exhibit 1.

3.3. To the extent not already provided and to the extent reasonably available to the Cimarex Entities, and within fourteen (14) days after the entry of the Preliminary Approval Order by the Court, the Cimarex Entities shall provide the names, last known addresses, and taxpayer identification numbers for the Settlement Class. Such information will be treated as Confidential pursuant to the Stipulated Protective Order entered in the Litigation [Dkt. #34] and will only be used for purposes of effectuating this Settlement Agreement and any orders of the Court. Any other use of such information by Plaintiffs or Plaintiffs' Counsel shall be strictly prohibited. It is understood and agreed that the Cimarex Entities are under no obligation to verify the accuracy of such information or to obtain information the Cimarex Entities do not currently have in their records. The Cimarex Entities understand that the deadlines set forth in this Settlement Agreement are based in part on the timely provision of this data to Plaintiffs' Counsel.

3.4. 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 potential Class Members provided by the Cimarex Entities pursuant to paragraph 3.3 and (b) locate current addresses of any potential Class Members for whom the Cimarex Entities have not provided an address.

3.5. No later than thirty (30) days after entry of the Preliminary Approval Order, or at such time as is ordered by the Court, the Settlement Administrator will mail (or cause to be mailed) the Notice of Settlement (Exhibit 3) to all Class Members who have been identified after

reasonable efforts to do so and will post on the settlement website the Notice of Settlement (Exhibit 4). The Notice of Settlement (Exhibit 3) will be mailed to Class Members using the data described in paragraph 3.3 above and any updated addresses found by the Settlement Administrator. No later than ten (10) days after the Notice is mailed, or at such time as is ordered by the Court, the Settlement Administrator also shall publish (or cause to be published) the summary Notice of Settlement (Exhibit 5) 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.

3.6. Within ten (10) days after mailing the Notice of Settlement, and continuing through the date of the Final Fairness Hearing, the Settlement Administrator also will display (or cause to be displayed) on an Internet website dedicated to this Settlement the following documents: (a) the Notice of Settlement, (b) the original and amended pleadings filed in Eastern District Action, Western District Action, and State Court Action, (c) this Settlement Agreement, (d) the Preliminary Approval Order; and (e) other publicly filed documents related to approval of the Settlement. Neither the Cimarex Entities, Cimarex Entities' Counsel, Plaintiffs, the Settlement Class, nor Plaintiffs' Counsel shall have any liability for failure of the Notice of Settlement to reach any Class Member, nor shall such failure affect the validity and binding effect of this Settlement Agreement and all orders and Judgment related thereto on Class Members.

3.7. At their sole expense, the Cimarex Entities shall issue the notice of settlement contemplated by the Class Action Fairness Act of 2005 ("CAFA") in accordance with the deadlines provided by CAFA, but no later than ten (10) days after the Motion for Preliminary

Approval is filed. The Cimarex Entities shall have no liability for any costs associated with the administration of this Settlement other than issuing notice as contemplated by CAFA.

3.8. No later than twenty-eight (28) days before the Final Fairness Hearing and assuming this Settlement Agreement has not terminated for any reason (as described in paragraphs 9.1 and 9.3 below), Plaintiffs' Counsel and Plaintiffs will move for: (a) final approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e); (b) entry of a Judgment in substantially the same form as Exhibit 2 attached hereto; and (c) final approval of the Allocation Methodology and Final Distribution Schedule. Plaintiffs also will separately move for approval of Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award.

3.9. The Parties will request the Court to hold a Final Fairness Hearing as described in the Notice of Settlement, and to then enter Judgment, specifically approving all terms and provisions of the Settlement, including the Allocation Methodology and Final Distribution Schedule. The Parties will work cooperatively to ensure that the Final Fairness Hearing occurs in accordance with the deadlines provided by CAFA.

4. Release, Dismissal, and Covenant Not to Sue

4.1. Upon the Effective Date, the Released Parties, individually and collectively, shall be fully, finally, and forever released from the Released Claims of Plaintiffs, the Class Members, and other Releasing Parties who are not excluded from the Settlement Class by virtue of a timely and properly submitted Request for Exclusion or other Court order, and such Releasing Parties shall be enjoined from asserting or prosecuting any Released Claims against any Released Parties.

4.2. Upon the Effective Date and for the consideration provided for herein, each and every Class Member who has not timely and properly submitted a Request for Exclusion and who is not otherwise excluded from the Settlement Class (a) agrees and covenants that, in addition to the foregoing release of the Released Claims, he, she, or it shall not, at any time, directly or indirectly, on the Class Member's behalf, sue, institute, or assert against the Released Parties any Released Claims, and (b) acknowledges that the foregoing covenant shall apply and have effect by virtue of this Settlement Agreement and by operation of the Judgment. Each Class Member who has not timely and properly submitted a Request for Exclusion and who is not otherwise excluded from the Settlement Class by order of the Court further agrees and acknowledges that the covenants not to sue provided for in this paragraph are made to inure to the benefit of, and are specifically enforceable by, each of the Released Parties.

4.3. The Judgment approving the Settlement Agreement shall dismiss the Released Claims asserted in the Eastern District Action with prejudice, and the Parties shall thereafter take all steps necessary to ensure that the claims asserted in the State Court Action and Western District Action also are dismissed with prejudice. However, any continuing obligations under this Settlement Agreement shall survive the entry of the Judgment. The Court will retain exclusive and continuing jurisdiction over this Litigation for purposes of interpreting, administering, and enforcing this Settlement Agreement and any issues associated therewith, subject to provisions of paragraph 11.8.

5. Escrow Account and Payment of Taxes

5.1. All funds held by the Escrow Agent or Settlement Administrator shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such

time as the funds shall be distributed or returned pursuant to the terms of this Settlement Agreement or further order of the Court. Unless otherwise agreed to in writing between the Cimarex Entities and Plaintiffs' Counsel, the Escrow Agent shall deposit the funds in an interest-bearing account. All risks related to the investment of the Gross Settlement Amount and any risk of loss of the funds deposited in the Escrow Account shall be borne by the Gross Settlement Amount alone and not by Plaintiffs, Plaintiffs' Counsel, the Cimarex Entities, the Cimarex Entities' Counsel, or the Settlement Administrator.

5.2. The Parties agree that the Gross Settlement Amount transferred to the Escrow Agent or Settlement Administrator is intended to be a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1 and that the Settlement Administrator, as administrator of the Escrow Account within the meaning of Treasury Regulation §1.468B-2(k)(3), shall be solely responsible for timely filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation §1.468B-2(k)). All taxes on the income earned on the funds in the Escrow Account shall be paid out of the Escrow Account as provided herein and pursuant to the disbursement instructions set forth in the Escrow Agreement. The Settlement Administrator shall also be solely responsible for causing payment to be made from the Gross Settlement Amount of any taxes owed with respect to the Gross Settlement Amount. The Settlement Administrator shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation §1.468B-1(j), to cause the qualified settlement amount to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

5.3. Any tax returns prepared for the Gross Settlement Amount shall be consistent with the Settlement Agreement and in all events shall reflect that all taxes (including any interest or penalties) on the income earned by the Gross Settlement Amount shall be paid out of the Gross Settlement Amount as provided herein. The Gross Settlement Amount and Class Members shall indemnify and hold all Released Parties, the Cimarex Entities, Cimarex Entities' Counsel, Plaintiffs, and Plaintiffs' Counsel harmless for any taxes and related expenses of any kind whatsoever (including, without limitation, taxes payable by reason of any such indemnification) on income earned while the Gross Settlement Amount (or any portion thereof) is in the Escrow Account. The Parties shall notify the Escrow Agent promptly if they receive any notice of any claim for taxes relating to the Gross Settlement Amount.

5.4. All income taxes, if any, incurred on the part of the Class Members in connection with the implementation of this Settlement Agreement shall be reported and paid by the individual Class Members to the extent of their individual tax liability on proceeds they individually receive. Except for any amounts withheld for tax purposes by the Settlement Administrator, the individual Class Members are solely responsible for the payment of any taxes attributable to payments to them under this Settlement Agreement. Plaintiffs, Plaintiffs' Counsel, the Cimarex Entities, the Cimarex Entities' Counsel, the Gross Settlement Amount, and the Settlement Administrator shall have no responsibility or liability whatsoever for any such taxes. The Cimarex Entities, the Cimarex Entities' Counsel, and the Class Members will bear no responsibility for any taxes due on Plaintiffs' Attorneys' Fees, any reimbursement of Litigation Expenses or Administration, Notice, and Distribution Costs, or any Incentive Award, and such taxes will not be paid from the Escrow Account.

5.5. All distributions shall be subject to any required federal or state income tax withholding, which the Settlement Administrator shall be entitled to withhold and pay to the appropriate taxing authorities. The Settlement Administrator shall provide IRS Form 1099s or other explanations of payments to Class Members sufficient to allow Class Members to know that proper tax payments have been or can be made or to allow them to submit requests for refunds. In the event Distribution Checks are not cashed or are returned to the Settlement Administrator, such that the Class Members do not receive payment of the amounts distributed, the Settlement Administrator shall make reasonable efforts to identify a correct address for such Class Members and shall request a refund to the taxing authority to whom any withheld taxes were paid on behalf of the Class Member who did not receive payment. Plaintiffs, Plaintiffs' Counsel, the Cimarex Entities, and the Cimarex Entities' Counsel shall have no liability for any filed IRS Form 1099s. The Gross Settlement Amount and Class Members shall indemnify and hold all Released Parties, the Cimarex Entities, the Cimarex Entities' Counsel, Plaintiffs, and Plaintiffs' Counsel harmless for any penalties and related expenses of any kind whatsoever associated with any filed IRS Form 1099s. The Parties shall notify the Escrow Agent promptly if they receive any notice of any claim for penalties relating to a filed IRS Form 1099.

5.6. The Parties agree that the Cimarex Entities, the Cimarex Entities' Counsel, Plaintiffs, and Plaintiffs' Counsel have no responsibility or liability for any severance taxes or other taxes, if any, that may be due on the amounts disbursed to the Class Members from the Escrow Account.

5.7. In the event the Cimarex Entities are required to pay any taxes or assessments attributable to the Class Members, including any applicable interest or penalties, each Class

Member will indemnify, defend and hold the Cimarex Entities harmless as to the taxes, assessments, interest, and penalties attributable to such Class Member paid by the Cimarex Entities. Without limitation of the foregoing, the Cimarex Entities shall be entitled to recover from each Class Member that portion of such taxes or assessments, interest, and penalties attributable to the portion of the Net Settlement Amount allocated to such Class Member by any lawful means available to the Cimarex Entities, including deduction or offset from any future payments to the Class Member. The Cimarex Entities' Counsel shall not have any responsibility or liability whatsoever for any taxes or assessments, interest, or penalties on amounts distributed to a Class Member. Plaintiffs and Plaintiffs' Counsel shall not have any responsibility or liability whatsoever for any taxes or assessments, interest, or penalties on amounts distributed to a Class Member.

5.8. Plaintiffs, Plaintiffs' Counsel, the Cimarex Entities, the Cimarex Entities' Counsel, and the Settlement Administrator do not provide any tax advice whatsoever and shall have no liability whatsoever for any taxes or assessments due, if any, on the Gross Settlement Amount, and make no representation or warranty regarding the tax treatment of any amount paid or received under this Settlement. Any Class Member with tax questions or concerns is urged to immediately contact his/her/its own tax adviser. The Cimarex Entities will have no input in determining the amount of taxes payable by the Settlement Class or how the taxes will be paid from the Gross Settlement Amount and likewise will not be bound in any respect by such determination or be attributed with any agreement as to whether the taxes paid by the Settlement Class are due or payable.

5.9. The Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the maintenance, investment, or distribution of the Net Settlement

Amount, the establishment or maintenance of the Escrow Account, the payment or withholding of any taxes, or any other expenses or losses in connection with such matters.

5.10. Before making any distribution, the Settlement Administrator and Plaintiffs' Counsel must request and receive approval from the Court. The request for distribution shall include the amount of the distribution, a summary of the items included in the proposed distribution, and any supporting evidence necessary for the Court to verify that the amount comports with the terms of the Settlement and any applicable Court order.

6. Allocation and Distribution

6.1. The Allocation Methodology is a matter separate and apart from the proposed Settlement between Plaintiffs and the Cimarex Entities and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Settlement. Provided that none of the terms of the Settlement are modified by such decision, any decision by the Court concerning the Allocation Methodology shall not affect the validity or finality of the Settlement or operate to terminate or cancel this Settlement or affect the finality of the Judgment. Further, after the issuance of any notice contemplated by this Settlement Agreement or ordered by the Court, the Allocation Methodology may be modified without any further notice being required, provided the modification is approved by the Court.

6.2. Plaintiffs' Counsel shall, subject to Court approval, allocate the Net Settlement Amount to individual Class Members proportionately based primarily on the extent of the deduction of Post-Production Costs reflected in the Cimarex Entities' payment details for the Claim Period. No distributions will be made to Class Members who would otherwise receive a distribution of \$5.00 or less under the preliminary Distribution Schedule. This *de minimis*

threshold is set in order to preserve the overall value for Class Members from the costs of claims that are likely to exceed the value of those claims. It has been determined by Plaintiffs' Counsel that \$5.00 is a reasonable *de minimis* threshold. A Class Member that falls into this category will be bound by the Settlement Agreement and all provisions thereof despite receiving no payment under the Final Distribution Schedule. In the event the Court declines to approve the \$5.00 *de minimis* payment provision contained in this paragraph, such refusal will not be grounds to disturb or terminate the Settlement Agreement; instead, Plaintiffs' Counsel will submit an alternative Distribution Schedule that does not include the \$5.00 *de minimis* payment provision contained in this paragraph. Plaintiffs will utilize the information provided by the Cimarex Entities to direct any allocation to Class Members for the Claim Period. This allocation is subject to modification by Plaintiffs' Counsel and final approval by the Court. The Allocation Methodology shall not limit the scope of the Settlement Class. If an owner fits within the definition of the Settlement Class, that owner shall be considered a Class Member and shall be bound by the terms of this Settlement Agreement, including the waiver and release set forth herein and in the Judgment, regardless of whether that owner actually receives any portion of the Gross Settlement Amount. The Cimarex Entities and the Cimarex Entities' Counsel shall have no responsibility for the allocation and distribution of the Gross Settlement Amount, shall not be liable for any claims by, through or under any Class Member or any third party relating to the allocation or distribution of the Gross Settlement Amount, including, but not limited to, any claims that a Class Member should have been allocated and distributed a different amount of the Gross Settlement Amount than it actually received or than provided by any Distribution Schedule. The Cimarex Entities and the Cimarex Entities' Counsel will be indemnified, defended, and held harmless by any Class Member

asserting any such claims (or by, through or under whom such claims are asserted) from and against any losses, liabilities, costs, and expenses, including attorneys' fees, arising out of or relating to the assertion of any such claims.

6.3. No later than twenty-eight (28) days prior to the Final Fairness Hearing, Plaintiffs' Counsel will provide a preliminary Distribution Schedule to the Cimarex Entities, subject to extension if the Cimarex Entities have not provided all of the data it is obligated to provide pursuant to paragraph 3.3 above and this paragraph. The preliminary Distribution Schedule will reflect the amount of the Distribution Check to be sent to each Class Member based upon (a) data provided by the Cimarex Entities pursuant to paragraph 3.3 above; (b) the assumption that no Class Member timely and properly submits a Request for Exclusion from the Settlement Class or is excluded from the Settlement Class by other order of the Court; and (c) the assumption that Plaintiffs' Counsel's application for Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and Incentive Award will be approved. Plaintiffs' Counsel may rely on the data provided by the Cimarex Entities pursuant to paragraph 3.3 above for purposes of the preliminary Distribution Schedule and are under no obligation to independently verify such data. Plaintiffs will submit for approval by the Court the preliminary Distribution Schedule based on the provisions of this section as part of or in conjunction with the Final Fairness Hearing.

6.4. Within sixty (60) days after the Effective Date, Plaintiffs will file and seek approval of a distribution order with the Court assuming the Final Distribution Schedule has been approved by the Court ("Distribution Order"). The Distribution Order will indicate the proportionate amount of the Net Settlement Amount to be paid to each Class Member.

6.5. The gross amount identified in the preliminary Distribution Schedule for Class Members who timely and properly submitted a Request for Exclusion or who were otherwise excluded from the Settlement Class by order of the Court shall be refunded to the Cimarex Entities, to the extent practicable through reasonably diligent efforts by the Escrow Agent, within one (1) business day after the Effective Date. The Settlement Administrator will provide the Cimarex Entities with the detail necessary to verify the Settlement Administrator's calculation of the refund amount within one (1) business day after the Effective Date.

6.6. The Settlement Administrator shall administer the Settlement and distribute the Net Settlement Amount under Plaintiffs' Counsel's supervision in accordance with this Settlement Agreement and subject to the jurisdiction of the Court. Plaintiffs, the Cimarex Entities, and their respective Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms. The Net Settlement Amount shall be distributed to Class Members, except those who have timely and properly submitted a Request for Exclusion or are otherwise excluded from the Settlement Class, according to the Final Distribution Schedule, as determined by Plaintiffs' Counsel, or according to such other plan of allocation and orders authorizing distribution of the Net Settlement Amount as the Court approves. Further, to the extent the Cimarex Entities have not provided the taxpayer identification number for a Class Member, the Settlement Administrator shall make reasonable efforts to obtain the Class Member's tax identification number, including making reasonable inquiry and sending a form W-9 Request for Taxpayer Identification Number and Certification to the best reasonably obtainable address of the Class Member.

6.7. The Gross Settlement Amount shall not be distributed without Court approval. If the Court does not grant the Preliminary Approval Order, the entirety of the Gross Settlement Amount, with accrued interest, shall be returned to the Cimarex Entities within twenty (20) days of the Court's denial of approval at the Cimarex Entities' election. In the event the Settlement is not finally approved by the Court in substantially similar form as that jointly proposed by the Parties or the Judgment does not become Final and Non-Appealable, the Gross Settlement Amount, with accrued interest, shall be returned to the Cimarex Entities within twenty (20) days of the occurrence of such non-approval.

6.8. After Court approval of the Final Distribution Schedule and entry of a Distribution Order, the Settlement Administrator will make prompt distribution of funds to those ordered by the Court to receive those funds. The Settlement Administrator will only make distributions based on the Final Distribution Schedule and Distribution Order. It is contemplated that distributions may be made in waves, where using that approach is more efficient for the Settlement Administrator, so that payments to readily identified owners are not unduly delayed. The Settlement Administrator will make a diligent effort to mail the first Distribution Checks within ninety (90) days after the entry of the order authorizing distribution of the Net Settlement Amount. The Settlement Administrator will make a diligent effort to distribute the remainder of the Net Settlement Amount to Class Members who have not timely and properly submitted a Request for Exclusion and who are not otherwise excluded from the Settlement Class by order of the Court within six (6) months after the Distribution Order, but in no event shall the Settlement Administrator require more than twelve (12) months after the first distribution is made to distribute the remainder of the Net Settlement Amount, unless otherwise ordered by the Court for good cause

shown as to why final distribution could not occur within the timeframe contemplated by this Settlement Agreement. Any portion of the Net Settlement Amount remaining in the Escrow Account after the void date for each Distribution Check, and after all administration efforts are concluded, will be considered Residual Unclaimed Amounts.

6.9. The Settlement Administrator will use commercially reasonable efforts, subject to review and approval by Plaintiffs' Counsel, to distribute the Net Settlement Amount. The Cimarex Entities will provide reasonably accessible information in their possession to assist in locating Class Members who have not timely and properly submitted a Request for Exclusion and who are not otherwise excluded from the Settlement Class by order of the Court. If the information needed to send a Distribution Check cannot be obtained through such efforts, the portion of the Net Settlement Amount attributable to such Class Member will be considered Residual Unclaimed Amounts.

6.10. If a Distribution Check is returned to the Settlement Administrator under circumstances suggesting the Class Member did not receive the Distribution Check (e.g., a mailed item returned due to an incorrect, insufficient, or outdated address), the Settlement Administrator and/or consultants working with the Settlement Administrator will use commercially reasonable methods to locate an updated address and will re-issue and re-mail the Distribution Check. If the information needed to send a Distribution Check cannot be obtained through such efforts, the portion of the Net Settlement Amount attributable to such Class Member will be considered Residual Unclaimed Amounts.

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

Class Member: The enclosed check represents a share of the settlement fund in the settlement of the class action *Sagacity, Inc., et al. v. Cimarex Energy Co., et al.*, Case No. 6:17-cv-101-GLJ, United States District Court for the Eastern District of Oklahoma. You are receiving this distribution and check because you have been identified as a Class Member in this action. If you are not legally entitled to the proceeds identified on the check, the Court has entered an Order that requires you to pay these proceeds to persons legally entitled thereto or return this check uncashed to the sender.

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

This check shall be null and void if not endorsed and negotiated by the earlier of (a) the "Void Date" shown on the Distribution Check, or (b) ninety (90) days from the date of issue. The release of claims provided in the settlement shall be effective regardless of whether this check is cashed.

6.12. The Cimarex Entities, the Cimarex Entities' Counsel, the Settlement Administrator, Plaintiffs, and Plaintiffs' Counsel shall have no responsibility or liability to any Class Member for mispayments, overpayments, nonpayment, or underpayments of the Net Settlement Amount. If any Class Member has been paid any portion of the Net Settlement Amount for any period of time for which that Class Member was not entitled to receive that payment, and some other person or entity who owned or claims they owned the right to assert the Released Claims and asserts a claim against any of the Released Parties for payment of all or a portion of the Net Settlement Amount,

then the Class Member who received an excess share shall be liable for any overpayment amount to the person who is determined to have been properly owed that amount, and that Class Member shall indemnify, defend, and hold harmless any of the Released Parties, Plaintiffs' Counsel, the Cimarex Entities' Counsel, and any other Class Member.

6.13. Upon completing all distributions of the Net Settlement Amount (including any necessary supplemental distributions), complying with the Court's order(s) in furtherance of this Settlement, and distributing the Residual Unclaimed Amounts *cy pres* pursuant to the Court's order(s), the Settlement Administrator will have satisfied all its obligations.

6.14. To the extent not specifically addressed above, any other amount of the Net Settlement Amount that remains in the Escrow Account one year after the Settlement Administrator sends the final wave of Distribution Checks and for which further distribution is not economically reasonable shall be considered Residual Unclaimed Amounts and shall be distributed *cy pres* pursuant to the Court's order(s).

6.15. The Settlement Administrator shall provide notice to Plaintiffs' Counsel and Cimarex Entities' Counsel of its sending of the final wave of Distribution Checks within ten (10) days of said sending of Distribution Checks. Within ten (10) days after the twelve (12) month period described in paragraph 6.8, the Settlement Administrator shall additionally send a reconciliation of the Residual Unclaimed Amounts to Plaintiffs' and Cimarex Entities' Counsel. The reconciliation must include (a) a detail of each distribution made; (b) the detail of any interest or other returns earned; (c) the total Residual Unclaimed Amounts and detail sufficient to verify that total; (d) detail showing the total amount of the Administration, Notice, and Distribution Costs

paid; and (e) the void date for any checks that remain outstanding at the time the reconciliation is sent.

6.16. Residual Unclaimed Amounts shall, after completion of all distribution efforts by the Settlement Administrator and upon approval by the Court based on a motion to be prepared by Plaintiffs' Counsel, be distributed by the Settlement Administrator as *cy pres* to the University of Oklahoma and Oklahoma State University.

6.17. The Court shall retain exclusive and continuing jurisdiction to determine any issues relating to the payment and distribution of the Net Settlement Amount, and any claims relating thereto shall be determined by the Court alone, and shall be limited to a determination of the claimant's entitlement to any portion of the Net Settlement Amount, and no consequential, punitive, or other damages; fees; interest; or costs shall be awarded in any proceeding regarding any such determination, subject to paragraph 11.8.

6.18. The release, dismissal, and covenant not to sue, identified in paragraphs 4.1, 4.2, and 4.3 above, shall be effective as provided in this Settlement Agreement, regardless of whether or not a Class Member did or did not receive payment from the Net Settlement Amount and regardless of whether or not any Class Member who was obligated pursuant to the Judgment to pay some or all of the distributed funds to another Class Member in fact made such payment to such other Class Member. The failure of a Class Member to receive a payment from the Net Settlement Amount or the failure of a Class Member to make payment to another Class Member pursuant to the payment obligations of the Judgment shall not be a defense to enforcement of the release of the Released Claims against the Released Parties or the Covenant Not to Sue, as to any Class Member.

6.19. Except in the case of willful and intentional malfeasance of a dishonest nature directly causing such loss, Plaintiffs' Counsel, Plaintiffs, the Settlement Class, the Cimarex Entities' Counsel, and the Cimarex Entities shall have no responsibility or liability for loss of any portion of any funds under any circumstances and, in the event of such malfeasance, only the Party whose malfeasance directly caused the loss has any liability for the portion of funds lost.

7. Plaintiffs' Attorneys' Fees, Incentive Award, and Litigation Expenses

7.1. No later than twenty-eight (28) days prior to the Final Fairness Hearing, Plaintiffs' Counsel may apply to the Court for an award of Plaintiffs' Attorneys' Fees, an Incentive Award to Plaintiffs, and for reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs. The Cimarex Entities have no obligation for Plaintiffs' Attorneys' Fees, an Incentive Award, or Litigation Expenses and Administration, Notice, and Distribution Costs, which shall be paid from the Gross Settlement Amount, except as set forth in paragraph 6.7 above. The Cimarex Entities shall take no position with respect to the applications, the amount of Plaintiffs' Attorneys' Fees, Incentive Award, or Litigation Expenses and Administration, Notice, and Distribution Costs sought, or with respect to whether the Court should make any or all such awards. Any award of Plaintiffs' Attorneys' Fees will be governed by federal common law as set forth in paragraph 11.7. Plaintiffs and Plaintiffs' Counsel agree to seek any award of Plaintiffs' Attorneys' Fees, an Incentive Award to Plaintiffs, and Litigation Expenses and Administration, Notice, and Distribution Costs exclusively from the Gross Settlement Amount. The Released Parties shall have no responsibility for and shall take no position with respect to Plaintiffs' Attorneys' Fees, Litigation Expenses or Administration, Notice, and Distribution Costs, or an Incentive Award, nor will they encourage anyone to object thereto.

7.2. Subject to the conditions and qualifications set forth below, any Plaintiffs' Attorneys' Fees and reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs that are awarded to Plaintiffs' Counsel by the Court shall be paid to Plaintiffs' Counsel from the Gross Settlement Amount, to the extent practicable through reasonably diligent efforts by the Escrow Agent, within one (1) business day after the Effective Date. The terms of this provision may only be altered or amended by written agreement signed by the Cimarex Entities and Plaintiffs' Counsel.

7.3. Any Incentive Award that is awarded by the Court shall be paid to Plaintiffs from the Gross Settlement Amount, to the extent practicable through reasonably diligent efforts by the Escrow Agent, within one (1) business day after the Effective Date.

7.4. An award of Plaintiffs' Attorneys' Fees, an Incentive Award, or Litigation Expenses and Administration, Notice, and Distribution Costs is not a necessary term of this Settlement Agreement and is not a condition of this Settlement Agreement. No decision by the Court or any court on any application for an award of Plaintiffs' Attorneys' Fees, an Incentive Award, or Litigation Expenses and Administration, Notice, and Distribution Costs shall affect the validity or finality of the Settlement. Plaintiffs and Plaintiffs' Counsel may not cancel or terminate the Settlement Agreement or the Settlement based on the Court's or any other court's ruling with respect to Plaintiffs' Attorneys' Fees, an Incentive Award, or Litigation Expenses and Administration, Notice, and Distribution Costs.

8. Requests for Exclusion

8.1. Plaintiffs shall not submit a Request for Exclusion and neither Plaintiffs, Plaintiffs' Counsel, the Cimarex Entities, the Cimarex Entities' Counsel, nor anyone acting on behalf of said

persons or entities, shall encourage anyone else to submit a Request for Exclusion. Nevertheless, this Settlement Agreement does not prohibit Plaintiffs' Counsel from counseling any Class Member as to his, her, or its legal rights under this Settlement Agreement or prohibit any Class Member who seeks such counsel from Plaintiffs' Counsel from electing to file a Request for Exclusion from the Settlement Class in accordance with the Court's Preliminary Approval Order.

8.2. Any Class Member who timely and properly submits a valid Request for Exclusion, as described in paragraphs 8.3 and 8.4 below, shall have no right to object to the Settlement in any way, including but not limited to, the fairness, reasonableness, or amount of any aspect of the Settlement, Notice of Settlement, Plaintiffs' Attorneys' Fees and Litigation Expenses and Administration, Notice, and Distribution Costs, an Incentive Award, the Allocation Methodology, any Distribution Schedule using the Allocation Methodology, or any distribution of the Net Settlement Amount, or Residual Unclaimed Amounts.

8.3. All Requests for Exclusion must be served on Plaintiffs' Counsel, Cimarex Entities' Counsel, and the Settlement Administrator by United States Certified Mail, Return Receipt Requested, in compliance with any and all requirements imposed on Requests for Exclusion as contained in the Preliminary Approval Order and the Notice of Settlement, in the manner set by the Court at least twenty-one (21) days prior to the Final Fairness Hearing, unless such deadline is changed or altered by order of the Court.

8.4. All Requests for Exclusion must include: (a) the Class Member's name, address, telephone number, and notarized signature; (b) a statement that the Class Member wishes to be excluded from the Settlement Class in *Sagacity, Inc., et al. v. Cimarex Energy Co., et al.*, Case No. 6:17-cv-101-GLJ, and (c) a description of the Class Member's interest in any wells for which the

Cimarex Entities remitted oil-and-gas proceeds, including the name, well number, county in which the well is located, and the owner identification number. Requests for Exclusion may not be submitted through the website or by telephone, facsimile or e-mail.

9. Termination

9.1. This Settlement Agreement is conditioned upon the non-occurrence of the following events and shall immediately terminate upon the occurrence of any of the following events:

(a) The Court denies entry of the Preliminary Approval Order substantially in the form attached as Exhibit 1;

(b) The Court refuses to approve this Settlement Agreement;

(c) The Court denies entry of an Order and Judgment finally approving this Settlement Agreement; or

(d) The Court modifies or reverses the Judgment and such modification or reversal becomes Final and Non-Appealable.

9.2. Any court decision, ruling, or order solely with respect to an application for Plaintiffs' Attorneys' Fees, an Incentive Award, or Litigation Expenses and Administration, Notice, and Distribution Costs, or to the Allocation Methodology (or any Distribution Schedule using the Allocation Methodology), shall not be grounds for termination.

9.3. The Cimarex Entities shall have the right and option, in their sole discretion, to terminate this Settlement Agreement if Class Members who have claims which, in the aggregate, exceed twenty percent (20%) under the preliminary Distribution Schedule elect to opt-out of this Settlement. For purposes of this paragraph 9.3, twenty percent (20%) shall be measured by

(i) twenty percent (20%) of the total number of owners in the Settlement Class identified in the preliminary Distribution Schedule; or (ii) twenty percent (20%) of the Gross Settlement Amount attributable to owners who properly submit a Request for Exclusion, as identified on the preliminary Distribution Schedule. Within five (5) days after the opt-out period ends, the Settlement Administrator shall determine whether the aforesaid threshold for opt-outs has been met and will notify Plaintiffs' Counsel and the Cimarex Entities' Counsel in writing regarding the results of that determination and simultaneously provide a list of the Class Members who have opted out and the percent of the Gross Settlement Amount attributable to those owners. The Cimarex Entities must elect to terminate this Settlement Agreement by written notice delivered to Plaintiffs' Counsel on or before the expiration of five (5) business days following the date on which the Cimarex Entities actually received the above-referenced written notice of the threshold for opt-outs from the Settlement Administrator. If the Cimarex Entities do not exercise their right to terminate on or before the expiration of that five (5) business day period, the Cimarex Entities' right to terminate shall expire. If the Cimarex Entities timely and properly exercise their option to terminate this Settlement Agreement, this Settlement Agreement shall become null and void, subject to the provisions of paragraph 9.4 below, and all orders of the Court preliminarily or otherwise certifying the Settlement Class shall be vacated and the Parties shall be returned to the status quo that existed in the Eastern District Action, the State Court Action, and the Western District Action before the Parties agreed to the filing of the Second Amended Complaint and preliminarily agreed to propose this Settlement (subject to appropriate extensions of deadlines to enable the Litigation to proceed).

9.4. If the Settlement Agreement terminates under paragraphs 9.1 or 9.3 hereof:

(a) the Effective Date shall not occur;

(b) Plaintiffs and the Cimarex Entities shall be restored to their respective positions prior to the Settlement, with the Second Amended Complaint being dismissed and the Parties resuming the litigation of the Eastern District Action, the State Court Action, and the Western District Action as they were doing prior to this Settlement;

(c) the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to Plaintiffs, the Cimarex Entities, or any Class Member and shall not be used in the Eastern District Action, the State Court Action, the Western District Action, or for any purpose, including but not limited to, whether the case should be certified as a class action pursuant to Fed. R. Civ. P. 23, or in any other proceeding;

(d) any Judgment or other order, including any order certifying the Settlement Class for settlement purposes only, entered by the Court in accordance with the terms of this Settlement Agreement, shall be treated as vacated and voided, *nunc pro tunc*;

(e) the Gross Settlement Amount will be returned to the Cimarex Entities within twenty (20) days; and

(f) the Litigation shall proceed as if the Settlement Agreement and any orders or motions entered to further the Settlement were never entered, including any order approving the filing of the Second Amended Complaint with the Court adding the Parties to the Western District Action and the State Court Action to the Eastern District Action.

9.5. For the avoidance of any doubt, if the Settlement Agreement terminates under paragraphs 9.1 or 9.3 hereof, the Parties presently participating in the State Court Action shall not further pursue any claims in this Eastern District Action and shall, instead, resume litigating such

claims in the State Court Action. Likewise, and for the avoidance of any doubt, if the Settlement Agreement terminates under paragraphs 9.1 or 9.3 hereof, the Parties presently participating in the Western District Action shall not further pursue any claims in this Eastern District Action and shall, instead, resume litigating such claims in the Western District Action. Although the Parties have agreed to amend the Eastern District Action to provide for the resolution of the State Court Action and Western District Action in the Eastern District Action, it is the Parties' intent for all orders consolidating the State Court Action and Western District Action in the Eastern District Action to be null and void in the event the Settlement Agreement terminates, and the Parties agree to perform all necessary actions to effectuate this agreement.

10. Objections

10.1. The Notice of Settlement shall require that any objection to the Settlement, this Settlement Agreement, or to the application for Plaintiffs' Attorneys' Fees, Litigation Expenses, Administration, Notice, and Distribution Costs, or Incentive Award be in writing and comply with all the requirements set forth herein and by the Court in the Preliminary Approval Order and Notice of Settlement.

10.2. If the Court determines that the Settlement, including the Allocation Methodology, the Distribution Schedule, and the awards of Plaintiffs' Attorneys' Fees, Incentive Award, and Litigation Expenses and Administration, Notice, and Distribution Costs are fair, adequate and reasonable to the Settlement Class, Plaintiffs and Plaintiffs' Counsel shall represent the Settlement Class as a whole in all future proceedings in district court or on appeal, even if Class Members have objected to the Settlement and those objectors are severed for purposes of appeal, consistent with paragraph 10.3.

10.3. The Parties entered into the Settlement to provide certainty and finality to ongoing disputes. Any Class Member wishing to remain a Class Member, but objecting to any part of the Settlement, can do so only as set forth herein and in the Notice of Settlement in substantially the same form as Exhibits 3 through 5, attached hereto. If, after hearing the objection(s), the Court determines that the Settlement, including but not limited to, the Allocation Methodology, the Distribution Schedule, and the awards of Plaintiffs' Attorneys' Fees, any Incentive Award, and reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, is fair, adequate, and reasonable to the Settlement Class as a whole, then either or both Plaintiffs and the Cimarex Entities (each in their sole discretion) may request that the Court require each objecting Class Member to preserve their appellate rights as follows (prior to filing a Notice of Appeal): move for severance and separate appellate review of the Court's rulings on objections relating solely to one or more of the following: (a) the Distribution Schedule, (b) the award of Plaintiffs' Attorneys' Fees, (c) Incentive Award, or (d) Litigation Expenses and (e) Administration, Notice, and Distribution Costs; provided, however, that none of the Parties shall file a motion for severance and separate appellate review of any objections to the fairness or approval of the Settlement.

10.4. If the Court determines that the Settlement, including, but not limited to, the Allocation Methodology, the Distribution Schedule, and the awards of Plaintiffs' Attorneys' Fees, any Incentive Award, and reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, is fair, adequate and reasonable to the Class as a whole, as may be modified by the Court, then either or both Plaintiffs and the Cimarex Entities (each in their sole discretion) may request the Court to require any objecting Class Member, as a prerequisite to pursuing appeal, to put up a cash bond in an amount sufficient to reimburse (a) the appellate fees of Plaintiffs' Counsel

and the Cimarex Entities' Counsel and (b) the amount of lost interest to the nonobjecting Class Members caused by any delay in distributing the Net Settlement Amount that is caused by appellate review of the objection.

10.5. Only a person or entity who remains a member of the Settlement Class shall have the right to object to the Settlement, the Settlement Agreement, or the application for Plaintiffs' Attorneys' Fees, Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award. In order for an objection to be valid, the written objection must be (a) filed with the Court and served on Plaintiffs' Counsel and the Cimarex Entities' Counsel by United States Certified Mail, Return Receipt Requested at least twenty-one (21) days prior to the Final Fairness Hearing, unless such deadline is extended or altered by order of the Court and (b) contain the following:

- i. A heading referring to *Sagacity, Inc., et al. v. Cimarex Energy Co., et al.*, Case No. 6:17-cv-101-GLJ and to the United States District Court for the Eastern District of Oklahoma;
- ii. 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;
- iii. A detailed statement of the specific legal and factual basis for each and every objection;
- iv. A list of any witnesses the objector wishes to call at the Settlement Fairness Hearing, together with a brief summary of each witness's expected testimony (to the extent the objector desires to offer expert testimony 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);
- v. A list of and copies of any exhibits the objector may seek to use at the Final Fairness Hearing;
- vi. A list of any legal authority the objector may present at the Final Fairness Hearing;

- vii. The objector's name, current address, current telephone number, and all owner identification numbers with the Cimarex Entities;
- viii. The objector's signature executed before a Notary Public or other officer authorized by law to administer oaths in the jurisdiction where the objector executes the signature;
- ix. Identification of the objector's interest in wells for which the objector has received payments made by or on behalf of the Cimarex Entities (by well name, well number, payee name, payee 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
- x. If the objector is objecting to any portion of the Plaintiffs' Attorneys' Fees, Litigation Expenses or Administration, Notice, and Distribution Costs, or Incentive Award sought by Plaintiffs or Plaintiffs' Counsel 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.

Any Class Member who fails to timely file such written statement and provide the required information shall 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. A Class Member's compliance with the foregoing requirements does not in any way guarantee a Class Member the ability to present evidence or testimony at the Final Fairness Hearing. The decision whether to allow any testimony, argument, or evidence, as well as the scope and duration of any and all presentations of objections at the Final Fairness Hearing, will be in the sole discretion of the Court, and subject to Plaintiffs' and the Cimarex Entities' objections.

10.6. The Parties will not object to the fairness, adequacy, or reasonableness of the Settlement on appeal. Nor will the Cimarex Entities take any position, including on appeal, regarding Plaintiffs' Attorneys' Fees, any Incentive Award, any reimbursement of Litigation

Expenses and Administration, Notice, and Distribution Costs, or the Allocation Methodology (or any Distribution Schedule using the Allocation Methodology).

11. Other Terms and Conditions

11.1. The Cimarex Entities expressly deny all allegations of wrongdoing or liability with respect to the claims and allegations in the Litigation and deny that the Litigation could have been properly maintained as a class action. It is expressly agreed that neither this Settlement, the Settlement Agreement, any document referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may be used as, evidence against the Cimarex Entities of an admission or concession by the Cimarex Entities of any fault, wrongdoing or liability whatsoever with respect to the claims and allegations in the Litigation, or class certifiability. There has been no determination by any court, administrative agency or other tribunal regarding the claims and allegations made in this Litigation. By agreeing to settle the claims of the Settlement Class in the Litigation, the Cimarex Entities do not admit that the Litigation could have been properly maintained as a contested class action and the Settlement Class does not admit any deficiency in the merits of its claims. The Cimarex Entities assert they have valid defenses to Plaintiffs' and the Class Member's claims and are entering into the Settlement solely to compromise the disputed claims and avoid the risk and expense of continued litigation.

11.2. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related thereto, and the Settlement Agreement itself, are not, and shall not be construed as, or deemed to be evidence of, an admission or concession by any of the Parties to the Settlement Agreement and shall not be offered or received in evidence in any action or proceeding against any Party hereto in any court, administrative agency, or other tribunal for any purpose

whatsoever other than to enforce the provisions of the Settlement between the Cimarex Entities and any Class Member(s), the provisions of the Settlement Agreement, or the Judgment, or to seek an Order barring or precluding the assertion of Released Claims in any proceeding. Further, Plaintiffs and the Cimarex Entities agree that any Judgment approving this Settlement Agreement shall not give rise to any collateral estoppel effect as to the certifiability of any class in any other proceeding not involving the Released Claims.

11.3. Plaintiffs and the Cimarex Entities shall use reasonable, good faith efforts to encourage and obtain approval of the Settlement. Plaintiffs and the Cimarex Entities also agree to use reasonable, good faith efforts to promptly prepare and execute all documentation as may be reasonably required to obtain final approval by the Court of this Settlement and to carry out the terms of this Settlement Agreement.

11.4. Except as otherwise provided herein or by a writing signed by all the signatories hereto, the Settlement Agreement shall constitute the entire agreement among Plaintiffs and the Cimarex Entities related to the Settlement of the Litigation, and no representations, warranties, or inducements have been made to any Party concerning the Settlement other than the representations, warranties, and covenants contained and memorialized in the Settlement Agreement. Further, none of the Parties have relied upon any representations, warranties, or covenants made by any other Party other than those expressly contained and memorialized in the Settlement Agreement. This Settlement Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all signatories hereto or their successors-in-interest.

11.5. This Settlement Agreement may be executed in one or more counterparts, including by e-mailed signatures, which shall have the same force and effect as original signatures. All executed counterparts taken together shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts of this Settlement Agreement and Plaintiffs will file a complete copy of the Settlement Agreement that has been executed by all Parties with the Court.

11.6. Plaintiffs and the Cimarex Entities and their respective Counsel have mutually contributed to the preparation of the Settlement Agreement. Accordingly, no provision of the Settlement Agreement shall be construed against any Party on the grounds that one of the Parties or its respective counsel drafted the provision. Plaintiffs and the Cimarex Entities are each represented by competent counsel who have advised their respective clients as to the legal effects of this Settlement, and neither Plaintiffs nor the Cimarex Entities have received or relied upon advice from opposing counsel. Except as otherwise provided herein, each Party shall bear its own costs in connection with the Settlement and preparation of the Settlement Agreement.

11.7. To promote certainty, predictability, the full enforceability of this Settlement Agreement as written, and its nationwide application, this Settlement Agreement shall be governed solely by federal law, both substantive and procedural, as to due process, class certification, judgment, collateral estoppel, res judicata, release, settlement approval, allocation, incentive award, the right to and reasonableness of attorneys' fees, expenses, costs, and all other matters for which there is federal procedural or common law, including federal law regarding federal equitable common fund class actions.

11.8. For settlement purposes only, the Parties unequivocally submit to the jurisdiction of the United States District Court for the Eastern District of Oklahoma and associated appellate court or courts with jurisdiction to review actions of the Court. Should it be determined that the United States District Court for the Eastern District of Oklahoma is not a court of competent jurisdiction, the Parties agree to seek approval of this Settlement Agreement from, and further agree to the administration and enforcement of this Settlement Agreement in, any court of competent jurisdiction.

11.9. The provisions of this Settlement Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability, except that the provisions of this Settlement Agreement cannot be severed, rendering any portion of this Settlement Agreement unenforceable shall render the entire Settlement Agreement to be unenforceable.

11.10. The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, trustees, and assigns of the Parties hereto, the members of the Settlement Class, and the Released Parties.

11.11. Plaintiffs and the Cimarex Entities intend this Settlement to be a final and complete resolution of all disputes asserted or that could be asserted with respect to the Released Claims. Accordingly, the Cimarex Entities agree not to file a claim against Plaintiffs or Plaintiffs' Counsel based upon an assertion that the Litigation was brought by Plaintiff or Plaintiffs' Counsel in bad faith or without a reasonable basis. Similarly, Plaintiffs agree not to file a claim against the Cimarex Entities or the Cimarex Entities' Counsel based upon an assertion that the Litigation was defended by the Cimarex Entities or the Cimarex Entities' Counsel in bad faith or without a reasonable basis. Plaintiffs and the Cimarex Entities agree that the Gross Settlement Amount and

the other terms of this Settlement were negotiated at arm's length and in good faith, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel. Neither Plaintiffs nor the Cimarex Entities shall assert any claims that the other violated the Oklahoma or Federal Rules of Civil Procedure or any other law or rule governing litigation conduct in the maintenance or defense of the Litigation.

11.12. The headings in the Settlement Agreement are used for the purpose of convenience only and are not meant to have legal effect.

11.13. All disputes and proceedings with respect to the administration of the Settlement and enforcement of the Judgment shall be subject to the jurisdiction of the Court. Plaintiffs, the Settlement Class, and the Cimarex Entities waive any right to trial by jury of any dispute arising under or relating to this Settlement Agreement or the Settlement.

11.14. To the extent non-material modifications of this Settlement Agreement are necessary, such modification may be made by written agreement among Plaintiffs and the Cimarex Entities after the Execution Date without further notice to the Settlement Class as provided herein. This Settlement Agreement and attached exhibits represent the entire, fully integrated agreement between the Parties with respect to the Settlement of the Litigation and may not be contradicted by evidence of prior or contemporaneous oral or written agreements between the Parties. This Settlement Agreement cancels and supersedes any and all prior agreements, understandings, representations, and negotiations concerning this Settlement. No additional obligations or understandings shall be inferred or implied from any of the terms of this Settlement Agreement, as all obligations, agreements, and understandings with respect to the subject matter hereof are solely and expressly set forth herein. It is understood and agreed that the Parties rely wholly on

their own respective judgment, belief and knowledge of the facts relating to the making of this Settlement, which is made without reliance upon any statement, promise, inducement, or consideration not recited herein.

11.15. All counsel and any other persons executing this Settlement Agreement and any of the exhibits hereto or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms. Plaintiffs and each member of the Settlement Class are deemed to represent and warrant that he, she, or it holds the Released Claims being released in the Settlement and that he, she, or it has full authority to release the Released Claims.

11.16. Plaintiff and the Cimarex Entities stipulate and agree that (a) all activity in the Litigation, except that contemplated in the Settlement Agreement, the Preliminary Approval Order, the Notice of Settlement, and the Judgment shall be stayed and (b) all hearings, deadlines, and other proceedings, except the preliminary approval hearing (if any) and the Final Fairness Hearing, shall be taken off the Court's calendar.

11.17. If any Party is required to give notice to the other Party under this Settlement Agreement, such notice shall be in writing and shall be deemed to have been duly given upon receipt by hand delivery, facsimile transmission, or electronic mail to the individuals named in the signature blocks below.

11.18. The Parties agree that the settlement terms reached following mediation are superseded in their entirety by this Settlement Agreement.

11.19. The Parties agree the Litigation and the Settlement do not relate to the offering of goods or services to persons in the European Union or the monitoring of behavior of persons residing in the European Union; thus, the Parties and their Counsel are not subject to the General Data Protection Regulation (“GDPR”) by virtue of anything related to this Settlement.

11.20. The Parties agree that for purposes of this Settlement Agreement, the Stipulated Protective Order entered in the Litigation [Dkt. #34] continues to apply to this Litigation. Documents previously produced subject to that Protective Order remain subject to its terms, and any additional documents or information provided by the Cimarex Entities in connection with this Settlement Agreement may be designated as Confidential according to the terms of that Protective Order. The Parties will treat all such information as Confidential under the terms of that Protective Order.

IN WITNESS WHEREOF, the Parties and Counsel have executed this Settlement Agreement this 2nd day of February, 2024.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

Signature Page for Settlement Agreement between Sagacity, Inc., The Duncan Group, LLC, Hitch Enterprises, Inc., on behalf of themselves and a class of similarly situated royalty owners, and Magnum Hunter Production, Inc., Cimarex Energy Co., Cimarex Energy Company of Colorado, Prize Energy Resources, Inc., and Key Production Company, Inc.

Sagacity, Inc.

The Duncan Group, LLC

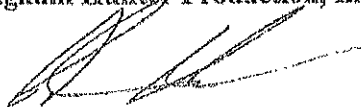
By: _____
Title: _____

By: _____
Title: _____

Hitch Enterprises, Inc.

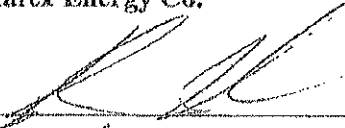
Magnum Hunter Production, Inc.


By: _____
Title: _____


By: Adam Vela
Title: SVP - General Counsel

Cimarex Energy Co.


Cimarex Energy Company of Colorado



By: Adam Vela
Title: SVP - General Counsel


By: Adam Vela
Title: SVP - General Counsel

Prize Energy Resources, Inc.

Key Production Company, Inc.


By: Adam Vela
Title: SVP - General Counsel


By: Adam Vela
Title: SVP - General Counsel

Signature Page for Settlement Agreement between Sagacity, Inc., The Duncan Group, LLC, Hitch Enterprises, Inc., on behalf of themselves and a class of similarly situated royalty owners, and Magnum Hunter Production, Inc., Cimarex Energy Co., Cimarex Energy Company of Colorado, Prize Energy Resources, Inc., and Key Production Company, Inc.

Sagacity, Inc.

_____ Dan Little

By: Dan Little
Title: President

The Duncan Group, LLC

By: _____
Title: _____

Hitch Enterprises, Inc.

By: _____
Title: _____

Magnum Hunter Production, Inc.

By: _____
Title: _____

Cimarex Energy Co.

By: _____
Title: _____

Cimarex Energy Company of Colorado

By: _____
Title: _____

Prize Energy Resources, Inc.

By: _____
Title: _____

Key Production Company, Inc.

By: _____
Title: _____

Signature Page for Settlement Agreement between Sagacity, Inc., The Duncan Group, LLC, Hitch Enterprises, Inc., on behalf of themselves and a class of similarly situated royalty owners, and Magnum Hunter Production, Inc., Cimarex Energy Co., Cimarex Energy Company of Colorado, Prize Energy Resources, Inc., and Key Production Company, Inc.

Sagacity, Inc.

By: _____
Title: _____

The Duncan Group, LLC

The Duncan Group, LLC
By: *David D. Duncan*
Title: *Manager*

Hitch Enterprises, Inc.

By: _____
Title: _____

Magnum Hunter Production, Inc.

By: _____
Title: _____

Cimarex Energy Co.

By: _____
Title: _____

Cimarex Energy Company of Colorado

By: _____
Title: _____

Prize Energy Resources, Inc.

By: _____
Title: _____

Key Production Company, Inc.

By: _____
Title: _____

Signature Page for Settlement Agreement between Sagacity, Inc., The Duncan Group, LLC, Hitch Enterprises, Inc., on behalf of themselves and a class of similarly situated royalty owners, and Magnum Hunter Production, Inc., Cimarex Energy Co., Cimarex Energy Company of Colorado, Prize Energy Resources, Inc., and Key Production Company, Inc.

Sagacity, Inc.

By: _____
Title: _____

The Duncan Group, LLC

By: _____
Title: _____

Hitch Enterprises, Inc.

By: JASON HITCH
Title: CEO

Magnum Hunter Production, Inc.

By: _____
Title: _____

Cimarex Energy Co.

By: _____
Title: _____

Cimarex Energy Company of Colorado

By: _____
Title: _____

Prize Energy Resources, Inc.

By: _____
Title: _____

Key Production Company, Inc.

By: _____
Title: _____

APPROVED:

Counsel for Plaintiffs and the Settlement Class



By: Scott B. Goodger
Sharp Law, LLP

Counsel for Cimarex Energy Co., Magnum Hunter Production, Inc.; Prize Energy Resources, Inc., Cimarex Energy Company of Colorado, and Key Production Company, Inc.



By: Nathan K. Davis
Snell & Wilmer L.L.P.

EXHIBIT 1

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

SAGACITY, INC.; THE DUNCAN
GROUP, LLC; AND HITCH
ENTERPRISES, INC., on behalf of
themselves and a class of similarly situated
persons,

Plaintiffs,

vs.

CIMAREX ENERGY CO.; MAGNUM
HUNTER PRODUCTION, INC.; PRIZE
ENERGY RESOURCES, INC.; CIMAREX
ENERGY COMPANY OF COLORADO;
KEY PRODUCTION COMPANY, INC.,

Defendants.

Case No. CIV-17-101-GLJ

**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 Plaintiffs Sagacity, Inc., The Duncan Group, LLC, and Hitch Enterprises, Inc. (“Plaintiffs”), on behalf of themselves and a class of similarly situated persons described below (collectively, the “Settlement Class”) against Cimarex Energy Co., Magnum Hunter Production, Inc., Prize Energy Resources, Inc., Cimarex Energy Company of Colorado, and Key Production Company, Inc. (“Defendants”) for the alleged underpayment of royalties on natural gas, natural gas liquids, and associated hydrocarbons produced from wells located in Oklahoma during

the Claim Period.¹ On February 2, 2024, the Parties executed a Settlement Agreement. The Settlement Agreement, together with the documents referenced therein and exhibits thereto, sets forth the terms and conditions for the proposed Settlement of the Litigation.

In accordance with the Settlement Agreement, Plaintiffs now present the Settlement to the Court for preliminary approval under Federal Rule of Civil Procedure 23.

After reviewing the pleadings and Plaintiffs' Unopposed Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve the 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 Settlement Class. Upon reviewing the Settlement and the Motion for Preliminary Approval, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

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 Settlement Class should be certified at this stage for the purposes of this Settlement, as the Settlement Class meets all certification requirements of Federal Rule of Civil Procedure 23 for a settlement class. The Settlement Class is

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

certified for settlement purposes only, subject to the Court's final consideration at the Final Fairness Hearing. Because this case has been settled at this stage of the proceedings, the Court does not reach, and makes no ruling either way, as to the issue of whether the Settlement Class could have been certified in this case on a contested basis.

3. The certified Settlement Class is defined as follows:

All royalty owners in Oklahoma wells (a) operated and leased by Cimarex Energy Co., (b) operated by Cimarex Energy Co. of Colorado, Inc. and leased by Prize Energy Resources, Inc. or Magnum Hunter Production, Inc., and (c) operated or leased by Key Production Company, Inc. that have produced gas or gas constituents (such as residue gas or natural gas liquids) from January 1, 2013, to November 30, 2023.

Excluded from the Class are: (1) the Mineral Management Service (Indian tribes and the United States) and the State and Counties of Oklahoma; (2) Defendants, their affiliates, and employees, officers and directors; (3) Any NYSE or NASDAQ listed company (and its subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing; (4) royalty owners who have already filed and still have pending lawsuits for underpayment of royalties against Defendants, including: Fortis Minerals II, LLC, Fortis Sooner Trend, LLC, FMII STM, LLC, Sooner Trend Minerals, LLC, and Phenom Minerals, LLC; (5) all royalty owners that expressly authorized in their leases the deduction of processing costs from royalties; and (6) all royalty owners to the extent their wells are both subject to the class action settlement in *Chieftain Royalty Co. v. QEP Energy*, No. 5:11-cv-00212-R, and the well was subsequently acquired by Defendants or any of their affiliates.

4. The Court finds, subject to the Court's final consideration at the Final Fairness Hearing, the above-defined Settlement Class satisfies all prerequisites of Federal Rule of Civil Procedure 23(a) for purposes of the proposed class settlement:

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 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 Settlement Class consists of several thousand royalty owners. Therefore, the Court finds the numerosity prerequisite is met.

b. **Commonality.** Plaintiffs have also demonstrated that, for settlement purposes and on a preliminary basis, “[t]here are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).

c. **Typicality.** Plaintiffs have also shown “[t]he claims or defenses of the representative parties are typical of the claims or defenses of the class” for settlement purposes and on a preliminary basis. Fed. R. Civ. P. 23(a)(3).

d. **Adequacy.** Plaintiffs and Plaintiffs’ Counsel have demonstrated “[t]he representative parties will fairly and adequately protect the interests of the class” for settlement purposes and on a preliminary basis. Fed. R. Civ. P. 23(a)(4).

In addition, because the Court finds Plaintiffs and Plaintiffs’ Counsel to be adequate representatives of the Settlement Class, the Court hereby appoints Plaintiffs as Class Representatives and Plaintiffs’ Counsel Rex A. Sharp and Scott B. Goodger of Sharp Law, LLP as Class Counsel.

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

a. **Predominance.** Plaintiffs have shown “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” for settlement purposes and on a preliminary basis. Fed. R. Civ. P. 23(b)(3).

b. **Superiority.** Plaintiffs also have established “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy” for settlement purposes and on a preliminary basis. 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 for purposes of certifying a class for settlement purposes, subject to the Court’s final consideration at the Final Fairness Hearing.

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 Representatives’ and the Settlement Class’ claims; (c) Class Representatives 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 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

Settlement Class to challenge the fairness, reasonableness, and adequacy of any part of the Settlement, Settlement Agreement, Allocation Methodology, or any proposed Distribution Schedule, and to show cause, if any exists, why the Judgment dismissing the Released Claims in 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.

8. The Court further preliminarily approves the form and content of the proposed Notices of Settlement, which are attached to the Settlement Agreement, and finds the Notices of Settlement 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 of Settlement fairly and adequately:

(a) describe the terms and effect of the Settlement; (b) notify the Settlement Class that Class Counsel will seek Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award for Class Representatives' representation; (c) notify the 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 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 thirty (30) days after entry of this Preliminary Approval Order, the settlement administrator will mail (or cause to be mailed) the postcard Notice of Settlement to all Class Members who have been identified after reasonable efforts to do so and will post the long-form Notice of Settlement to the settlement website. The postcard Notice of Settlement will be mailed to Class 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 Members who received more than one payment, the Notice of Settlement 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 of Settlement as described below. It is not reasonable or economically practical for the Parties to do more to determine the names and addresses of Class Members.

b. No later than ten (10) days after mailing the postcard Notice of Settlement, or at such time as is ordered by the Court, the settlement administrator also shall publish (or cause to be published) the summary Notice of Settlement 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 ten (10) days after mailing the postcard Notice of Settlement 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 of Settlement, (ii) the original and amended pleadings filed in Eastern District Action, Western District Action, and State Court Action, (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 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 Legal 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 order(s) authorizing distribution of the Net Settlement Amount to the Class Members. The Parties and their Counsel shall not be liable for any act or omission of the settlement administrator.

12. The Court appoints Citibank as the Escrow Agent. The Escrow Agent is authorized and directed to act in accordance with the Settlement Agreement and Escrow

Agreement. The Parties and their Counsel shall not be liable for any act or omission of the Escrow Agent or loss of funds in the Escrow Account.

13. Pursuant to Federal Rule of Civil Procedure 23(e), a Final Fairness Hearing shall be held on [Month] [Date], [Year], at _____M. in the United States District Court for the Eastern District of Oklahoma, the Honorable Gerald L. Jackson 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 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 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 Defendants 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 Amount among Class Members who are not excluded from the 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 Plaintiffs' Attorneys' Fees, reimbursement for Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award to Class Representatives 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 Plaintiffs' Attorneys' Fees and reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award to Class Representatives without further notice to the Settlement Class. The settlement administrator will update the website maintained pursuant to this Order to reflect the current information about the date and time for the Final Fairness Hearing.

15. Class Members wishing to exclude themselves from the Settlement Class pursuant to Federal Rule of Civil Procedure 23(e)(4) must submit a valid and timely Request for Exclusion. Requests for Exclusion must include: (i) the Class Member's name, address, telephone number, and notarized signature; (ii) a statement that the Class Member wishes to be excluded from the Settlement Class in *Sagacity v. Cimarex*; and (iii) a description of the Class Member's interest in any wells for which the Defendants remitted oil-and-gas proceeds, 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, Class Counsel, and Defendants' Counsel by certified mail,

return receipt requested and received no later than 5 p.m. CT by the deadline of twenty-one (21) days prior to the Final Fairness Hearing at the addresses for the settlement administrator, Class Counsel, and Defendants' Counsel listed immediately below.

Requests for Exclusion may be mailed as follows:

Settlement Administrator:

Sagacity v. Cimarex Settlement
c/o JND Legal Administration, Settlement Administrator
PO Box #####
Seattle, WA 98111

Class Counsel:

Rex A. Sharp
Scott B. Goodger
Sharp Law, LLP
4820 W. 75th Street
Prairie Village, KS 66208

Defendants' Counsel:

Nathan K. Davis
Snell & Wilmer L.L.P.
1200 17th Street, Suite
1900
Denver, CO 80202

Bradley W. Welsh
Crowe & Dunlevy
222 North Detroit Avenue,
Suite 600
Tulsa, OK 74120

Requests for Exclusion may not be submitted through the website or by phone, facsimile, or e-mail. Any Class 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 Member who wishes to object to the fairness, reasonableness, or

adequacy of the Settlement, any term of the Settlement, the Allocation Methodology, any Distribution Schedule, the request for Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, or the request for an Incentive Award to Class Representatives may file an objection. The written objection must contain the following: (a) a heading referring to *Sagacity v. Cimarex Energy Co.*, Case No. 6:17-cv-101-GLJ, United States District Court for the Eastern 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 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 the Defendants; (h) the objector's signature executed before a Notary Public; (i) identification of the objector's interest in wells for which the Defendants remitted oil-and-gas proceeds (by well name, well number, payee name, payee number, and county in which the well is located) during the Claim Period and identification of any payments by date of payment, date of production, and amount; and (j) if the objector is objecting to any portion

of Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses or Administration, Notice, and Distribution Costs, or an Incentive Award sought by Class Representatives or Class Counsel 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 objection must be filed with the Court and served on Class Counsel and Defendants' Counsel, via certified mail return receipt requested, and received no later than 5 p.m. CT by the deadline of twenty-one (21) days prior to the Final Fairness Hearing at the addresses for the settlement administrator, Class Counsel, and Defendants' Counsel as set forth in paragraph 15 above. Any 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 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 and the requirements set forth in paragraph 16 above.

18. No later than twenty-eight (28) days prior to the Final Fairness Hearing, if the Settlement has not been terminated pursuant to the Settlement Agreement, Class Counsel and Plaintiffs shall move for: (a) final approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e); (b) entry of a Judgment in substantially the same form as Exhibit 2 to the Settlement Agreement; (c) final approval of the Allocation Methodology and Final Distribution Schedule; and (d) Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive 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 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 Representatives and all Class 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 the 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, or deemed to be evidence of, an admission or concession by any of the Parties to the Settlement Agreement and shall not be offered or received as evidence in any action or proceeding by or against any Party in any court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement between the Defendants and any Class Member(s), the provisions of the Settlement Agreement, or the provisions of any related agreement, judgment, or release. This Order shall not be construed or used as an admission, concession, or declaration by or against the Defendants of any fault, wrongdoing, breach, liability, or the propriety of maintaining this Litigation as a contested class action or of class certifiability, and the Defendants 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 Class Representatives 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.

22. The Court, along with any appellate court with power to review the Court's orders and rulings in the Litigation, hereby retains jurisdiction over this Litigation to consider all further matters arising out of or connected with the Settlement reflected in the

Settlement Agreement, including enforcement of the releases provided for in the Settlement Agreement. The Court, along with any appellate court with power to review the Court's orders and rulings in the Litigation, also hereby retains jurisdiction over this Litigation to administer all other matters related to the enforcement of the Settlement Agreement and Settlement and the orders of the Court related thereto.

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 ____ day of _____, 2024.

GERALD L. JACKSON
United States Magistrate Judge

EXHIBIT 2

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

SAGACITY, INC.; THE DUNCAN
GROUP, LLC; AND HITCH
ENTERPRISES, INC., on behalf of
themselves and a class of similarly situated
persons,

Plaintiffs,

vs.

CIMAREX ENERGY CO.; MAGNUM
HUNTER PRODUCTION, INC.; PRIZE
ENERGY RESOURCES, INC.; CIMAREX
ENERGY COMPANY OF COLORADO;
KEY PRODUCTION COMPANY, INC.,

Defendants.

Case No. CIV-17-101-GLJ

JUDGMENT

This is a class action lawsuit brought by Plaintiffs Sagacity, Inc., The Duncan Group, LLC, and Hitch Enterprises, Inc. (“Plaintiffs”), on behalf of themselves and a class of similarly situated persons described below (collectively, the “Settlement Class”) against Cimarex Energy Co., Magnum Hunter Production, Inc., Prize Energy Resources, Inc., Cimarex Energy Company of Colorado, and Key Production Company, Inc. (collectively, “Defendants”) for the alleged underpayment of royalties on natural gas, natural gas liquids, and associated hydrocarbons produced from wells located in Oklahoma during the Claim

Period.¹ On February 2, 2024, the Parties executed a Settlement Agreement. The Settlement Agreement, together with the documents referenced therein and exhibits thereto, sets forth the terms and conditions for the proposed Settlement of the Litigation.

On [Month / Date], 2024, the Court preliminarily approved the Settlement Agreement and issued an 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 (the “Preliminary Approval Order”).

In the Preliminary Approval Order, the Court, *inter alia*:

- a. certified the Settlement Class for settlement purposes, finding all requirements of Federal Rule of Civil Procedure 23 have been satisfied with respect to the proposed class settlement;
- b. appointed Plaintiffs as Class Representatives and Plaintiffs’ Counsel, Rex A. Sharp and Scott B. Goodger of Sharp Law, LLP, as Class Counsel;
- c. preliminarily found: (i) the proposed Settlement resulted from extensive arm’s-length negotiations; (ii) the proposed Settlement was agreed to only after Class Counsel had conducted legal research and discovery regarding the strengths and weaknesses of Class Representatives’ and the Settlement Class’s claims; (iii) Class Representatives and Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate; and (iv) the

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

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

- d. preliminarily approved the Settlement as fair, reasonable, and adequate and in the best interest of the Settlement Class;
- e. preliminarily approved the form, content, and manner of the proposed Notices of Settlement to be communicated to the Settlement Class, finding specifically that such Notices of Settlement, among other information: (i) described the terms and effect of the Settlement; (ii) notified the Settlement Class that Class Counsel will seek Plaintiffs' Attorneys' Fees, reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, and an Incentive Award for Class Representatives' representation of the Settlement Class; (iii) notified the Settlement Class of the time and place of the Final Fairness Hearing; (iv) described the procedure for requesting exclusion from the Settlement; and (v) described the procedure for objecting to the Settlement or any part thereof;
- f. instructed the Settlement Administrator to disseminate the approved Notices of Settlement to potential members of the Settlement Class in accordance with the Settlement Agreement and in the manner approved by the Court;
- g. provided for the appointment of a Settlement Administrator;
- h. provided for the appointment of an Escrow Agent;

- i. set the date and time for the Final Fairness Hearing as [Month] [Date], [Year], at _____.M. in the United States District Court for the Eastern District of Oklahoma; and
- j. set out the procedures and deadlines by which Class Members could properly request exclusion from the Settlement Class or object to the Settlement or any part thereof.

After the Court issued the Preliminary Approval Order, due and adequate notice by means of the Notices of Settlement was given to the Settlement Class, notifying them of the Settlement and the upcoming Final Fairness Hearing. On [Month] [Day], [Year], in accordance with the Preliminary Approval Order and the Notices of Settlement, the Court conducted a Final Fairness Hearing to, *inter alia*:

- a. determine whether the Settlement should be approved by the Court as fair, reasonable, and adequate and in the best interests of the Settlement Class;

- b. determine whether the notice method utilized by the Settlement Administrator: (i) constituted the best practicable notice under the circumstances; (ii) constituted notice reasonably calculated under the circumstances to apprise Class Members of the pendency of the Litigation, the Settlement, their right to exclude themselves from the Settlement, their right to object to the Settlement or any part thereof, and their right to appear at the Final Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

c. determine whether to approve the Allocation Methodology, and the Distribution Schedule of the Net Settlement Amount to Class Members who did not timely submit a valid Request for Exclusion or were not otherwise excluded from the Settlement Class by order of the Court;²

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

e. determine whether the applications for Plaintiffs' Attorneys' Fees, reimbursement for Litigation Expenses and Administration, Notice, and Distribution Costs, and Incentive Award to Class Representatives are fair and reasonable and should be approved,³ and

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

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

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

² The Court will issue a separate order on the allocation and distribution of the Net Settlement Amount among the Class Members (the "Final Distribution Schedule").

³ The Court will issue separate orders on Plaintiffs' Counsel's request for Attorneys' Fees, reimbursement of Litigation Expenses, and Administration, Notice, and Distribution Costs, and the Class Representatives' request for an Incentive Award.

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

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

All royalty owners in Oklahoma wells (a) operated and leased by Cimarex Energy Co., (b) operated by Cimarex Energy Co. of Colorado, Inc. and leased by Prize Energy Resources, Inc. or Magnum Hunter Production, Inc., and (c) operated or leased by Key Production Company, Inc. that have produced gas or gas constituents (such as residue gas or natural gas liquids) from January 1, 2013, to November 30, 2023.

Excluded from the Class are: (1) the Mineral Management Service (Indian tribes and the United States) and the State and Counties of Oklahoma; (2) Defendants, their affiliates, and employees, officers and directors; (3) Any NYSE or NASDAQ listed company (and its subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing; (4) royalty owners who have already filed and still have pending lawsuits for underpayment of royalties against Defendants, including: Fortis Minerals II, LLC, Fortis Sooner Trend, LLC, FMII STM, LLC, Sooner Trend Minerals, LLC, and Phenom Minerals, LLC; (5) all royalty owners that expressly authorized in their leases the deduction of processing costs from royalties; and (6) all royalty owners to the extent their wells are both subject to the class action settlement in *Chieftain Royalty Co. v. QEP Energy*, No. 5:11-cv-00212-R, and the well was subsequently acquired by Defendants or any of their affiliates.

4. For substantially the same reasons as set out in the Court's Preliminary Approval Order, [Dkt. # ___], the Court finds that the above-defined Settlement Class should be and is hereby certified for the purposes of entering this Judgment pursuant to the Settlement Agreement. Specifically, the Court finds that all requirements of Rule 23(a)

and Rule 23(b)(3) have been satisfied for settlement purposes. Because this case has been settled at this stage of the proceedings, the Court does not reach, and makes no ruling either way, as to the issue of whether the Settlement Class could have been certified in this case on a contested basis.

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

6. At the Final Fairness Hearing on [Month] [Date], 2024, the Court fulfilled its duties to independently evaluate the fairness, reasonableness, and adequacy of, *inter alia*, the Settlement and the Notice of Settlement provided to the Settlement Class, considering not only the pleadings and arguments of Class Representatives and Defendants and their respective Counsel, but also the concerns of any objectors and the interests of all absent Class Members. In so doing, the Court considered arguments that could reasonably be made against, *inter alia*, approving the Settlement and the Notice of Settlement, even if such argument was not actually presented to the Court by pleading or oral argument.

7. The Court further finds that due and proper notice, by means of the Notices of Settlement, was given to the Settlement Class in conformity with the Settlement Agreement and Preliminary Approval Order. The form, content, and method of communicating the Notices of Settlement disseminated to the Settlement Class and published pursuant to the Settlement Agreement and the Preliminary Approval Order: (a)

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

8. Pursuant to and in accordance with Federal Rule of Civil Procedure 23, the Settlement, including, without limitation, the consideration paid by Defendants, the covenants not to sue, the releases, and the dismissal with prejudice of the Released Claims against the Released Parties as set forth in the Settlement Agreement, is finally approved as fair, reasonable, and adequate and in the best interests of the Settlement Class. The Settlement Agreement was entered into between the Parties at arm's length and in good faith after substantial negotiations free of collusion. The Settlement fairly reflects the complexity of the Claims, the duration of the Litigation, the extent of discovery, and the balance between the benefits the Settlement provides to the Settlement Class and the risk, cost, and uncertainty associated with further litigation and trial. Serious questions of law

and fact remain contested between the Parties. The Settlement provides a means of gaining immediate, valuable and reasonable compensation and forecloses the prospect of uncertain results after many more months or years of additional discovery and litigation. The considered judgment of the Parties, aided by experienced legal counsel, supports the Settlement.

9. By agreeing to settle the Litigation, the Defendants do not admit, and instead specifically deny, that the Litigation could have otherwise been properly maintained as a contested class action, and specifically deny any and all wrongdoing and liability to the Settlement Class, Class Representatives, and Class Counsel.

10. The Court finds that on [Month] [Date], 2024, the Defendants caused notice of the Settlement to be served on the appropriate state official for each state in which a Class Member resides, and the appropriate federal official, as required by and in conformance with the form and content requirements of 28 U.S.C. § 1715. In connection therewith, the Court has determined that, under 28 U.S.C. § 1715, the appropriate state official for each state in which a Class Member resides was and is the State Attorney General for each such state, and the appropriate federal official was and is the Attorney General of the United States. Further, the Court finds it was not feasible for Defendants to include on each such notice the names of each of the Class Members who reside in each state and the estimated proportionate share of each such Class Member to the entire Settlement as provided in 28 U.S.C. § 1715(b)(7)(A); therefore, each notice included a reasonable estimate of the number of Class Members residing in each state and the value of the Gross Settlement Amount. No appropriate state or federal official has entered an

appearance or filed an objection to the entry of final approval of the Settlement. Thus, the Court finds that all requirements of 28 U.S.C. § 1715 have been met and complied with and, as a consequence, no Class Member may refuse to comply with or choose not to be bound by the Settlement and this Court's Orders in furtherance thereof, including this Judgment, under the provisions of 28 U.S.C. § 1715.

11. The Litigation and Released Claims are dismissed with prejudice as to the Released Parties. All Class Members who have not validly and timely submitted a Request for Exclusion to the Settlement Administrator as directed in the Notice of Settlement and Preliminary Approval Order (a) are hereby deemed to have finally, fully, and forever conclusively released, relinquished, and discharged all of the Released Claims against the Released Parties and (b) are barred and permanently enjoined from, directly or indirectly, on any Class Member's behalf or through others, suing, instigating, instituting, or asserting against the Released Parties any claims or actions on or concerning the Released Claims. Neither Party will bear the other's Party's litigation costs, costs of court, or attorney's fees.

12. The Court also approves the efforts and activities of the Settlement Administrator and the Escrow Agent in assisting with certain aspects of the administration of the Settlement, and directs them to continue to assist Class Representatives and Class Counsel in completing the administration and distribution of the Settlement in accordance with the Settlement Agreement, this Judgment, any Distribution Schedule approved by the Court, and the Court's other orders.

13. Nothing in this Judgment shall bar any action or claim by Class Representatives or Defendants to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

14. The Settlement Administrator is directed to refund to Defendants the gross amounts attributable to Class Members under the preliminary Distribution Schedule who timely and properly submitted a Request for Exclusion or who were otherwise excluded from the Settlement Class by order of the Court in accordance with the timing, terms, and process detailed in the Settlement Agreement.

15. Neither this Settlement, the Settlement Agreement, any document referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may be used as, evidence of or an admission or concession by Defendants of any fault, wrongdoing, or liability whatsoever with respect to the claims and allegations in the Litigation, or class certifiability. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related thereto, and the Settlement Agreement itself, are not, and shall not be construed as, or deemed to be evidence of, an admission or concession by any of the Parties to the Settlement Agreement and shall not be offered or received as evidence in any action or proceeding by or against any Party hereto in any court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement between Defendants and any Class Member(s), the provisions of the Settlement Agreement, or the Judgment, or to seek an Order barring or precluding the assertion of Released Claims in any proceeding. Further, this final Judgment shall not give rise to any

admission or collateral estoppel effect as to the certifiability of any class in any other proceeding.

16. The Allocation Methodology and the Final Distribution Schedule are approved as fair, reasonable and adequate, and Class Counsel and the Settlement Administrator are directed to administer the Settlement Agreement accordingly.

17. The Court finds that Class Representatives, Defendants, and their Counsel have complied with the requirements of the Federal Rules of Civil Procedure as to all proceedings and filings in this Litigation. The Court further finds that Class Representatives and Class Counsel adequately represented the Settlement Class in entering into and implementing the Settlement.

18. Neither Defendants nor their Counsel shall have any liability or responsibility to Plaintiffs, Class Counsel, or the Settlement Class with respect to the Gross Settlement Amount or its administration, including but not limiting to any distributions made by the Escrow Agent or Settlement Administrator. No Class Member shall have any claim against Plaintiffs, Class Counsel, the Settlement Administrator, the Escrow Agent, or any of their respective designees or agents based on the distributions made substantially in accordance with the Settlement Agreement, the Final Distribution Schedule, or other orders of the Court.

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

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

21. Any order approving or modifying any Distribution Schedule, the application by Class Counsel for an award of Plaintiffs' Attorneys' Fees or reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs, or the request of Class Representatives for an Incentive Award shall be handled in accordance with the Settlement Agreement and the documents referenced therein.

22. Without affecting the finality of this Judgment in any way, the Court (along with any appellate court with power to review the Court's orders and rulings in the Litigation) reserves exclusive and continuing jurisdiction to enter any orders as necessary to administer the Settlement Agreement, including jurisdiction to determine any issues relating to the payment and distribution of the Net Settlement Amount and to enforce the Judgment.

23. In the event the Settlement is terminated as the result of a successful appeal of this Judgment or does not become Final and Non-Appealable in accordance with the terms of the Settlement Agreement for any reason whatsoever, then this Judgment and all orders previously entered in connection with the Settlement shall be rendered null and void and shall be vacated. The provisions of the Settlement Agreement relating to termination of the Settlement Agreement shall be complied with, including the refund of amounts in the Escrow Account to Defendants.

24. Without affecting the finality of this Judgment in any way, the Court (along with any appellate court with power to review the Court's orders and rulings in the Litigation) reserves exclusive and continuing jurisdiction to enter any orders as necessary to administer the Settlement Agreement, including jurisdiction to determine any issues relating to the payment and distribution of the Net Settlement Amount, to issue additional orders pertaining to, *inter alia*, Class Counsel's request for Plaintiffs' Attorneys' Fees and reimbursement of reasonable Litigation Expenses and Administration, Notice, and Distribution Costs, and Class Representatives' request for an Incentive Award, and to enforce this Judgment. Notwithstanding the Court's jurisdiction to issue additional orders in this Litigation, this Judgment fully disposes of all claims as to Defendants and is therefore a final appealable judgment. The Court further hereby expressly directs the Clerk of the Court to file this Judgment as a final order and final judgment in this Litigation.

25. [IF OBJECTION(S) ARE MADE – ADDITIONAL LANGUAGE TO BE DETERMINED BASED ON OBJECTION(S)]

IT IS SO ORDERED this ___ day of _____, 2024.

GERALD L. JACKSON
United States Magistrate Judge

EXHIBIT 3

*A federal court authorized this notice.
This is **not** a solicitation from a lawyer.*

If You Are or Were a Royalty Owner Paid by Cimarex Energy Co. from an Oklahoma Oil-and-Gas Well, You Could Be Part of a Proposed Class Action Settlement.

Who Is Included?

You may be a member of the Settlement Class if you are or were a royalty owner in the Class Wells located in Oklahoma where Cimarex Energy Co. is or was the operator or remitted royalties to you directly. The Settlement Class has been preliminarily approved for settlement only. There are exclusions.

Sagacity v. Cimarex Settlement
c/o JND Legal Administration
PO Box XXXXX
Seattle, WA 98111

[OWNER NUMBER]

[OWNER NAME 1]
[OWNER NAME 2]
[CARE OF NAME]
[ADDRESS 1]
[ADDRESS 2]
[CITY, STATE ZIP]
[COUNTRY]

There is a proposed Settlement in a putative class action lawsuit called *Sagacity, Inc., et al. v. Cimarex Energy Co., et al.*, No. 6:17-cv-101-GLJ, in the U.S. District Court for the Eastern District of Oklahoma. The Lawsuit claims Cimarex Energy Co., Magnum Hunter Production, Inc., Prize Energy Resources, Inc., Cimarex Energy Company of Colorado, and Key Production Company, Inc. (collectively, "Cimarex" or "Defendants") underpaid royalties on natural gas production from Class Wells in Oklahoma.

Why am I receiving this notice?

Cimarex's records indicate you may be a member of the Settlement Class.

What does the settlement provide?

The proposed Settlement provides monetary benefits of \$20,500,000 that will be distributed according to the terms of the Settlement Agreement, the documents referenced in and exhibits to the Settlement Agreement, and orders from the Court. Plaintiffs' Counsel will seek attorneys' fees up to 40% of the Settlement, plus reimbursement of litigation expenses and administration costs, all to be paid from the Gross Settlement Amount. Plaintiffs will seek an incentive award of up to 1% of the Settlement, also to be paid from the Gross Settlement Amount.

What are my legal rights?

You do not have to do anything to stay in the Settlement Class and receive the benefits of the proposed Settlement. If you stay in the Settlement Class, you may also object to the proposed Settlement by following the instructions from the Court (available on the website) by [OBJECTION DEADLINE]_____. If you stay in the Settlement Class, you will be bound by all orders and judgments of the Court, and you will not be able to sue, or continue to sue, Defendants or others identified in the Settlement Agreement from claims described herein. You may appear through an attorney if you so desire.

What are my other options?

If you do not wish to participate in or be legally bound by the proposed Settlement, you may exclude yourself by opting out no later than [REQUEST FOR EXCLUSION DEADLINE]_____, by following the instructions from the Court (available on the website). If you opt out, you will not receive any benefits from the Settlement and will not be bound by it or the judgment in this case.

When will the Court decide whether to approve the proposed Settlement?

A Final Fairness Hearing has been scheduled for _____ at ____:00 ____m. CT at the United States District Court for the Eastern District of Oklahoma, 101 North 5th Street, Room 208, Muskogee, OK 74401. You are not required to attend the hearing, but you or your lawyer may do so if you wish.

**THIS IS ONLY A SUMMARY. TO GET A COPY OF THE LONG-FORM NOTICE OR FOR MORE INFORMATION, VISIT
WWW.SAGACITY-CIMAREX.COM OR CALL TOLL-FREE 1-XXX-XXX-XXXX**

EXHIBIT 4

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

SAGACITY, INC.; THE DUNCAN
GROUP, LLC; AND HITCH
ENTERPRISES, INC., on behalf of
themselves and a class of similarly situated
persons,

Plaintiffs,

vs.

CIMAREX ENERGY CO.; MAGNUM
HUNTER PRODUCTION, INC.; PRIZE
ENERGY RESOURCES, INC.; CIMAREX
ENERGY COMPANY OF COLORADO;
KEY PRODUCTION COMPANY, INC.,

Defendants.

Case No. CIV-17-101-GLJ

**NOTICE OF PROPOSED SETTLEMENT,
MOTION FOR ATTORNEYS' FEES AND COSTS,
INCENTIVE AWARD, AND FAIRNESS HEARING**

A court authorized this Notice. This is not a solicitation from a lawyer.

***If you belong to the Settlement Class and this Settlement is approved,
your legal rights will be affected.***

Read this Notice carefully to see what your rights are in connection with this Settlement.

Because you may be a member of the Settlement Class in the Litigation captioned above and described below (the "Litigation"), the Court has directed this Notice to be provided for you. The records of Cimarex Energy Co., Magnum Hunter Production, Inc., Prize Energy Resources, Inc., Cimarex Energy Company of Colorado, and/or Key Production Company, Inc. (collectively, the "Cimarex Entities") show you are a royalty owner in Oklahoma well(s) for which Cimarex remitted oil-and-gas royalties. Capitalized terms not otherwise defined in this Notice shall have the meanings attributed to those terms

in the Settlement Agreement referred to below and available for free at www.sagacity-cimarex.com.¹

This Notice generally explains the claims being asserted in the Litigation, summarizes the Settlement, and tells you about your rights to remain a Class Member or to timely and properly submit a Request for Exclusion (also known as an “opt out”) so that you will be excluded from the Settlement. This Notice provides information so you can decide what action you want to take with respect to the Settlement before the Court is asked to finally approve it. If the Court approves the Settlement and after the final resolution of any objections or appeals, the Court-appointed Settlement Administrator will issue payments to Class Members, without any further action from you. This Notice describes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Settlement Class in the Litigation consists of the following individuals and entities:

All royalty owners in Oklahoma wells (a) operated and leased by Cimarex Energy Co., (b) operated by Cimarex Energy Co. of Colorado, Inc. and leased by Prize Energy Resources, Inc. or Magnum Hunter Production, Inc., and (c) operated or leased by Key Production Company, Inc. that have produced gas or gas constituents (such as residue gas or natural gas liquids) from January 1, 2013, to November 30, 2023.

Excluded from the Class are: (1) the Mineral Management Service (Indian tribes and the United States) and the State and Counties of Oklahoma; (2) Defendants, their affiliates, and employees, officers and directors; (3) Any NYSE or NASDAQ listed company (and its subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing; (4) royalty owners who have already filed and still have pending lawsuits for underpayment of royalties against Defendants, including: Fortis Minerals II, LLC, Fortis Sooner Trend, LLC, FMII STM, LLC, Sooner Trend Minerals, LLC, and Phenom Minerals, LLC; (5) all royalty owners that expressly authorized in their leases the deduction of processing costs from royalties; and (6) all royalty owners to the extent their wells are both

¹ This Notice is a summary of the terms of the Settlement Agreement in this matter. Please refer to the Settlement Agreement for a complete description of the terms and provisions thereof. The terms, conditions, and definitions in the Settlement Agreement qualify this Notice in its entirety.

subject to the class action settlement in *Chieftain Royalty Co. v. QEP Energy*, No. 5:11-cv-00212-R, and the well was subsequently acquired by Defendants or any of their affiliates.

Claim Period means checks or payments from the Cimarex Entities January 1, 2013, to and including February 29, 2024, subject to the terms of the Settlement Agreement regarding Released Claims. If you are unsure whether you are included in the Settlement Class, you may contact the Settlement Administrator at:

Sagacity v. Cimarex Settlement
c/o JND Legal Administration, Settlement Administrator
P.O. Box XXXXX
Seattle, WA 98111
Call Toll-Free: 1-XXX-XXX-XXXX
Email: info@sagacity-cimarex.com

TO OBTAIN THE BENEFITS OF THIS PROPOSED SETTLEMENT, YOU DO NOT HAVE TO DO ANYTHING.

I. General Information About the Litigation

The Litigation seeks damages for Defendants' alleged underpayment of royalties paid to Plaintiffs and the Settlement Class or their predecessors on natural gas, natural gas liquids, and associated hydrocarbons produced during the Claim Period. Defendants expressly deny all allegations of wrongdoing or liability with respect to the claims and allegations in the Litigation. The Court has made no determination with respect to the merits of any of the Parties' claims or defenses. A more complete description of the Litigation, its status, and the rulings made in the Litigation are available in the pleadings and other papers maintained by the United States District Court for the Eastern District of Oklahoma in the file for the Litigation.

II. The Settlement, Plaintiffs' Attorneys' Fees, Litigation Expenses, Administration, Notice, and Distribution Costs, an Incentive Award, and the Settlement Allocation and Distribution to the Settlement Class

On [Month] [Date], [Year], the Court preliminarily approved a Settlement in the Litigation between Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants. This approval and this Notice are not an expression of opinion by the Court as to the merits of any of the claims or defenses asserted by any of the Parties to the Litigation, or of whether the Court will ultimately approve the Settlement Agreement.

In settlement of the Litigation, Defendants have agreed to pay Twenty Million, Five Hundred Thousand Dollars (\$20,500,000.00) in cash ("Gross Settlement Amount"). In

exchange for the payment of the Gross Settlement Amount and other considerations stated in the Settlement Agreement, the Settlement Class shall release the Released Claims against the Released Parties. The Gross Settlement Amount, less Plaintiffs' Attorneys' Fees and Litigation Expenses and Administration, Notice, and Distribution Costs, and other costs approved by the Court, including an Incentive Award to the named Plaintiffs (the "Net Settlement Amount"), will be distributed to Class Members pursuant to the terms of the Settlement Agreement.

Class Counsel intends to seek an award of Attorneys' Fees of not more than 40% of the Gross Settlement Amount. Class Counsel have been litigating this case since 2017 without any payment whatsoever, advancing significant funds in expenses. At the Final Fairness Hearing, Class Counsel will also seek reimbursement of the litigation and administration expenses incurred in connection with the prosecution of this Litigation and that will be incurred through final distribution of the Settlement, which is estimated to be approximately \$XXX,XXX. In addition, Plaintiffs intend to seek an Incentive Award for their representation of the Class, specifically Plaintiffs' time, expense, risk, and burden in serving as Class Representatives, which amount will not exceed 1% of the Gross Settlement Amount.

The Court must approve the Allocation Methodology, which describes how the Net Settlement Fund will be allocated to Class Members. The Settlement Administrator will distribute the benefits of the Net Settlement Fund after the Effective Date of the Settlement. The Effective Date requires the exhaustion of any appeals, which may take a year or more after the entry of Judgment. The Settlement may be terminated on several grounds, including if the Court does not approve, or materially modifies, the terms of the Settlement. If the Settlement is terminated, the Litigation will proceed as if the Settlement had not been reached.

This Notice does not and cannot set out all the terms of the Settlement Agreement, which is available for review at www.sagacity-cimarex.com. This website will eventually include this Notice, the proposed Allocation Methodology, and Class Counsel's application for Attorneys' Fees and Litigation Expenses, Administration, Notice, and Distribution Costs, and any other costs awarded by the Court. You may also receive information about the progress of the Settlement by visiting the website, or by contacting the Settlement Administrator at the address set forth above.

III. Class Settlement Fairness Hearing

The Final Fairness Hearing will be held on [Month] [Date], [Year], beginning at ___.m., before the Honorable Gerald L. Jackson, United States Magistrate Judge for the Eastern District of Oklahoma, 101 North 5th Street, Room 208, Muskogee, OK 74401. Please note that the date of the Final Fairness Hearing is subject to change without further notice. You should check the website at www.sagacity-cimarex.com to confirm no change

to the date and time of the hearing. At the Final Fairness Hearing, the Court will consider: (a) whether the Settlement is fair, reasonable, and adequate; (b) any timely and properly raised objections to the Settlement; (c) the Allocation Methodology; (d) the application for Attorneys' Fees and Litigation Expenses and Administration, Notice, and Distribution Costs; and (e) the application for an Incentive Award for the Class Representatives.

A CLASS MEMBER WHO WISHES TO PARTICIPATE IN THE SETTLEMENT AND DOES NOT SUBMIT A VALID REQUEST FOR EXCLUSION DOES NOT NEED TO APPEAR AT THE FINAL FAIRNESS HEARING OR TAKE ANY OTHER ACTION TO PARTICIPATE IN THE SETTLEMENT.

IV. What Are Your Options as a Class Member?

A. You Can Participate in the Settlement by Doing Nothing

By taking no action, your interests will be represented by Plaintiffs as the Class Representatives and Class Counsel. As a Class Member, you will be bound by the outcome of the Settlement, if finally approved by the Court. The Class Representatives and Class Counsel believe that the Settlement is in the best interest of the Settlement Class, and, therefore, they intend to support the proposed Settlement at the Final Fairness Hearing. As a Class Member, if you are entitled to a distribution pursuant to the Allocation Methodology and Final Distribution Schedule, you will receive your portion of the Net Settlement Amount, and you will be bound by the Settlement Agreement, all orders, and the Judgment entered by the Court regarding the Settlement. If the Settlement is approved, unless you exclude yourself from the Settlement Class, neither you nor any other Releasing Party will be able to start a lawsuit or arbitration, continue a lawsuit or arbitration, or be part of any other lawsuit against any of the Released Parties based on any of the Released Claims.

B. You May Submit a Request for Exclusion to Opt Out of the Settlement Class

If you do not wish to be a member of the Settlement Class, then you must exclude yourself from the Settlement Class by complying with the requirements set forth in Section 8 of the Settlement Agreement and summarized here. All Requests for Exclusion must include: (a) the Class Member's name, address, telephone number, and notarized signature; (b) a statement that the Class Member wishes to be excluded from the Settlement Class in *Sagacity v. Cimarex Energy Co.*; and (c) a description of the Class Member's interest in any wells for which Cimarex remitted oil-and-gas proceeds, including the well name, well number, county in which the well is located, and the owner identification number. Requests for Exclusion may not be submitted through the website or by telephone, facsimile, or e-mail. Requests for Exclusion must be served on Class Counsel, the Settlement Administrator, and Defendants' Counsel by certified mail, return receipt

requested and received no later than 5 p.m. CT on [Month] [Date], [Year]. Requests for Exclusion may be mailed as follows:

Settlement Administrator:

Sagacity v. Cimarex Settlement

c/o JND Legal Administration, Settlement Administrator

P.O. Box XXXXX

Seattle, WA 98111

Class Counsel:

Rex A. Sharp

Scott B. Goodger

Sharp Law, LLP

4820 W. 75th Street

Prairie Village, KS 66208

Defendants' Counsel:

Nathan K. Davis

Snell & Wilmer L.L.P.

1200 17th Street, Suite 1900

Denver, CO 80202

Bradley W. Welsh

Crowe & Dunlevy

222 North Detroit Avenue, Suite 600

Tulsa, OK 74120

If you do not follow these procedures—including mailing the Request for Exclusion so that it is received by the deadline set out above—you will not be excluded from the Settlement Class, and you will be bound by all of the orders and the Judgment entered by the Court regarding the Settlement, including the release of claims. If you validly request exclusion as described above, you will not receive any distribution from the Net Settlement Fund, you cannot object to the Settlement, and you will not have released any claim against the Released Parties. You will not be legally bound by anything that happens in the Litigation.

- C. You May Remain a Member of the Settlement Class, but Object to the Settlement, Allocation Methodology, Distribution Schedule, Plaintiffs' Attorneys' Fees, Litigation Expenses, Administration, Notice, and Distribution Costs, or Incentive Award**

Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, any term of the Settlement Agreement, the Allocation

Methodology, the Distribution Schedule, the request for Plaintiffs' Attorneys' Fees and Litigation Expenses and Administration, Notice, and Distribution Costs, or the request for an Incentive Award to the Class Representative may file an objection as set forth in Section 10 of the Settlement Agreement. An objector must file with the Court and serve upon Class Counsel and Defendants' Counsel by certified mail, return receipt requested a written objection containing the following: (a) a heading referring to *Sagacity, et al. v. Cimarex Energy Co., et al.*, Case No. 6:17-cv-101-GLJ, United States District Court for the Eastern 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 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 Cimarex; (h) the objector's signature executed before a Notary Public; (i) identification of the objector's interest in wells for which Cimarex has remitted oil and gas proceeds (by well name, well number, payee name, payee number, and county in which the well is located) during the Claim Period and identification of any payments by date of payment, date of production, and amount; and (j) if the objector is objecting to any portion of the Plaintiffs' Attorneys' Fees or Litigation Expenses and Administration, Notice, and Distribution Costs, or an Incentive Award sought by Class Representatives or Class Counsel 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 at the address below:

Clerk of the Court
United States District Court for the Eastern District of Oklahoma
101 North 5th Street, Room 208
Muskogee, OK 74401

The same written objection must be served on Class Counsel and Defendants' Counsel, via certified mail return receipt requested, and received no later than 5 p.m. CT by [Month] [Date], [Year], at the addresses set forth above for Class Counsel, Defendants' Counsel, and the Court.

UNLESS OTHERWISE ORDERED BY THE COURT, ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER

FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT (OR ANY PART THEREOF) AND WILL NOT BE ALLOWED TO PRESENT ANY OBJECTIONS AT THE FINAL FAIRNESS HEARING.

D. You May Retain Your Own Attorney to Represent You at the Final Fairness Hearing

You have the right to retain your own attorney to represent you at the Final Fairness Hearing. If you retain separate counsel, you will be responsible to pay his or her fees and expenses out of your own pocket.

V. Availability of Filed Papers and More Information

This Notice summarizes the Settlement Agreement. You may obtain a free copy of the Settlement Agreement with its exhibits, as well as other relevant documents, from the settlement website at www.sagacity-cimarex.com, or you may request copies by contacting the Settlement Administrator. In addition, the pleadings and other papers filed in the Litigation, including the Settlement Agreement, are available for inspection at the Office of the Clerk of the Court, whose address is set forth above, and may be obtained from the Clerk's office directly. The records are also available online for a fee through the PACER service at www.pacer.gov. If you have any questions about this Notice, you may consult an attorney of your own choosing at your own expense or Class Counsel. Do not contact Defendants' Counsel.

PLEASE DO NOT CONTACT THE JUDGE OR THE COURT CLERK ASKING FOR INFORMATION REGARDING THIS NOTICE.

GERALD L. JACKSON
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 5

If You Are or Were a Royalty Owner Paid by Cimarex Energy Co. from an Oklahoma Oil-and-Gas Well, You Could Be Part of a Proposed Class Action Settlement.

The Settlement Class includes:

All royalty owners in Oklahoma wells (a) operated and leased by Cimarex Energy Co., (b) operated by Cimarex Energy Co. of Colorado, Inc. and leased by Prize Energy Resources, Inc. or Magnum Hunter Production, Inc., and (c) operated or leased by Key Production Company, Inc. that have produced gas or gas constituents (such as residue gas or natural gas liquids) from January 1, 2013, to November 30, 2023.

Excluded from the Class are: (1) the Mineral Management Service (Indian tribes and the United States) and the State and Counties of Oklahoma; (2) Defendants, their affiliates, and employees, officers and directors; (3) Any NYSE or NASDAQ listed company (and its subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing; (4) royalty owners who have already filed and still have pending lawsuits for underpayment of royalties against Defendants, including: Fortis Minerals II, LLC, Fortis Sooner Trend, LLC, FMII STM, LLC, Sooner Trend Minerals, LLC, and Phenom Minerals, LLC; (5) all royalty owners that expressly authorized in their leases the deduction of processing costs from royalties; and (6) all royalty owners to the extent their wells are both subject to the class action settlement in *Chieftain Royalty Co. v. QEP Energy*, No. 5:11-cv-00212-R, and the well was subsequently acquired by Defendants or any of their affiliates.

Claim Period means checks or payments from Defendants from January 1, 2013, to and including February 29, 2024, subject to the terms of the Settlement Agreement regarding Released Claims.

The Litigation seeks damages for alleged underpayment of royalties on natural gas, natural gas liquids, and associated hydrocarbons produced during the Claim Period. Defendants expressly deny all allegations of wrongdoing or liability with respect to the claims and allegations in the Litigation. The Court did not decide which side is right.

On [Month] [Date], [Year], the Court preliminarily approved a Settlement in which Defendants have agreed to pay Twenty Million, Five Hundred Thousand Dollars (\$20,500,000.00) in cash (the “Gross Settlement Amount”). From the Gross Settlement Amount, the Court may deduct Plaintiffs’ Attorneys’ Fees and Litigation Expenses, an Incentive Award, and Administration, Notice, and Distribution Costs, all terms as defined in the Settlement Agreement. The remainder (the “Net Settlement Amount”) will be distributed to participating Class Members as provided in the Settlement Agreement. Complete information on the benefits of the Settlement, including information on distribution of benefits, can be found in the Settlement Agreement posted on the website listed below. In exchange, Class Members will release Defendants and others identified in the Settlement Agreement as Released Parties from the claims described in the Settlement Agreement as Released Claims.

The attorneys and law firm who represent the Settlement Class as Plaintiffs’ Counsel are Rex A. Sharp and Scott B. Goodger of Sharp Law, LLP. You may hire your own attorney, if you wish. However, you will be responsible for that attorney’s fees and expenses.

What Are My Legal Rights?

- **Do Nothing, Stay in the Class, and Receive Benefits of the Settlement:** If the Court approves the proposed Settlement, you or your successors, if eligible, will receive the benefits of the proposed Settlement.
- **Stay in the Settlement Class, But Object to All or Part of the Settlement:** You can file and serve a written objection to the Settlement and appear before the Court. Your written objection must contain the information described in Section 10 of the Settlement Agreement and in the Notice of Settlement, both of which can be found at the website listed below. Your objection must be filed with the Court and served on Plaintiffs’ Counsel and Defendants’ Counsel no later than [Month] [Date], [Year], at 5 p.m. CT.
- **Exclude Yourself from the Settlement Class:** To exclude yourself from the Settlement Class, you must submit a written request to be excluded. Your Request for Exclusion must contain the information described in Section 8 of the Settlement Agreement and in the Notice of Settlement, both of which can be found at the website listed below. Your Request for Exclusion must be received no later than [Month] [Date], [Year], at 5 p.m. CT. You cannot exclude yourself on the website, by telephone, or by email.

The Court will hold a Final Fairness Hearing on [Month] [Date], [Year], at _____.m. CT at the United States District Court for the Eastern District of Oklahoma. At the Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will also consider the application for Plaintiffs’ Attorneys’ Fees and Litigation Expenses and other costs, including an Incentive Award. If comments or objections have

been submitted in the manner required, the Court will consider them as well. Please note that the date of the Final Fairness Hearing is subject to change without further notice. If you plan to attend the Hearing, you should check with the Court and the website www.sagacity-cimarex.com to confirm no changes to the date and/or time of the Hearing have been made.

This notice provides only a summary. For more detailed information regarding the rights and obligations of Class Members, read the Notice of Settlement, Settlement Agreement and other documents posted on the website or contact the Settlement Administrator.

Visit: www.sagacity-cimarex.com

Call Toll-Free: 1-XXX-XXX-XXXX

Or write to: *Sagacity v. Cimarex Settlement*

c/o JND Legal Administration, Settlement Administrator

P.O. Box XXXXX

Seattle, WA 98111

Email: info@sagacity-cimarex.com