

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

CHIEFTAIN ROYALTY COMPANY,)
KELSIE WAGNER TRUSTEE OF THE)
KELSIE WAGNER TRUST, AND)
KELSIE WAGNER SUCCESSOR)
TRUSTEE OF THE WADE)
COSTELLO TRUST)

Plaintiffs,)

v.)

MARATHON OIL COMPANY,)

Defendant.)

Case No. 6:17-cv-00334-SPS

*(Removed from District Court of
LeFlore County, State of
Oklahoma, Case No. CJ-17-146)*

CLASS REPRESENTATIVES’ MOTION FOR FINAL APPROVAL

Class Representatives, Chieftain Royalty Company, Kelsie Wagner as Trustee of the Kelsie Wagner Trust, and Kelsie Wagner as Successor Trustee of the Wade Costello Trust, on behalf of themselves and on behalf of the Settlement Class preliminarily certified by the Court’s Order dated December 17, 2018 (Dkt. No. 74), respectfully file this Motion for Final Approval, and hereby move the Court for final approval of the:

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

¹ All capitalized terms not otherwise defined herein shall have the meaning given to them in the December 11, 2018 Stipulation and Agreement of Settlement, a copy of which is attached as Exhibit 1 to Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice and Set Date for Final Approval Hearing. Doc. No. 70-1.

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

Class Representatives' Proposed Judgment Granting Final Approval of: (1) Class Action Settlement; (2) Form and Manner of Notice; and (3) Initial Plan of Allocation ("Final Approval Order") is attached as Exhibit 1. Class Representatives' Proposed Initial Plan of Allocation Order is attached hereto as Exhibit 2.

Class Representatives respectfully request the Court grant the relief listed above by entering the proposed Final Approval Order and the proposed Initial Plan of Allocation Order, and grant any further relief to which the Court finds Class Representatives and the Settlement Class are entitled to receive.

DATED: February 8, 2019

Respectfully submitted,

s/Patrick M. Ryan

Patrick M. Ryan, OBA No. 7864

Phillip G. Whaley, OBA No. 13371

Jason A. Ryan, OBA No. 18824

Paula M. Jantzen, OBA No. 20464

RYAN WHALEY COLDIRON

JANTZEN PETERS & WEBBER PLLC

900 Robinson Renaissance

119 North Robinson

Oklahoma City, OK 73102

Telephone: 405-239-6040

Facsimile: 405-239-6766

pryan@ryanwhaley.com

pwhaley@ryanwhaley.com

jryan@ryanwhaley.com

pjantzen@ryanwhaley.com

Robert N. Barnes, OBA No. 537
Patranell Lewis, OBA No. 12279
Emily Nash Kitch, OBA No. 22244
BARNES & LEWIS, LLP
208 N.W. 60th Street
Oklahoma City, OK 73118
Telephone: (405) 843-0363
Facsimile: (405) 843-0790
rbarnes@barneslewis.com
plewis@barneslewis.com
ekitch@barneslewis.com

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

Lawrence R. Murphy, Jr., OBA No. 17681
LAWRENCE R. MURPHY, JR., P.C.
624 South Boston, Floor 8
Tulsa, Oklahoma 74119
Telephone: (918) 592-3699
larrymurphypc@icloud.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2019, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Guy S. Lipe – glipe@velaw.com
Jay P. Walters – jwalters@gablelaw.com

s/Patrick M. Ryan

Patrick M. Ryan

EXHIBIT 1

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

**CHIEFTAIN ROYALTY COMPANY,)
KELSIE WAGNER, TRUSTEE OF THE)
KELSIE WAGNER TRUST AND)
KELSIE WAGNER, SUCCESSOR)
TRUSTEE OF THE WADE)
COSTELLO TRUST)**

Plaintiffs,

v.

MARATHON OIL COMPANY,

Defendant.

Case No. CIV-17-334-SPS

JUDGMENT

This is a class action lawsuit brought by Plaintiffs, Chieftain Royalty Company, Kelsie Wagner as Trustee of the Kelsie Wagner Trust, and Kelsie Wagner as Successor Trustee of the Wade Costello Trust, on behalf of themselves and as representatives of a class of owners (defined below), against Marathon Oil Company (“Marathon” or “Defendant”), for the alleged failure to pay statutory interest on payments made outside the time periods set forth in the Production Revenue Standards Act, 52 Okla. St. §570.1, *et seq.* (the “PRSA”) for oil and gas production proceeds from oil and gas wells in Oklahoma. On December 11, 2018, Plaintiffs and Defendant executed a Stipulation and Agreement of Settlement (the “Settlement Agreement”) and Supplemental Agreements, finalizing the terms of the Settlement.¹

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

On December 17, 2018, the Court preliminarily approved the Settlement 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 Settlement Class;

b. appointed Plaintiffs Chieftain Royalty Company, Kelsie Wagner as Trustee of the Kelsie Wagner Trust, and Kelsie Wagner as Successor Trustee of the Wade Costello Trust as Class Representatives;

c. appointed the following law firms as Plaintiffs’ Counsel: (i) Ryan Whaley PLLC and Barnes & Lewis, LLP as Class Counsel, and (ii) the law firms of Whitten Burrage and Lawrence R. Murphy, Jr. as liaison local counsel for the Settlement Class;

d. 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’ claims; (iii) Class Representatives and Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate; and (iv) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Settlement Class;

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

f. preliminarily approved the form and manner of the proposed Notice and Summary Notice to be communicated to the Settlement Class, finding specifically that such Notice and Summary Notice, among other information: (i) described the terms and effect of the Settlement; (ii) notified the Settlement Class that Plaintiffs' Counsel will seek attorneys' fees, reimbursement of Litigation Expenses, and a Case Contribution Award for Class Representatives' services; (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;

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

h. provided for the appointment of a Settlement Administrator;

i. provided for the appointment of an Escrow Agent;

j. set the date and time for the Final Fairness Hearing as March 8, 2019 at 2:00 P.M. in the United States District Court for the Eastern District of Oklahoma; and

k. 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 Notice and Summary Notice was given to the Settlement Class, notifying them of the Settlement and the upcoming Final Fairness Hearing. On March 8, 2019, in accordance with the Preliminary Approval Order and the Notice, 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, the Plan of Allocation, and distribution of the Net Settlement Fund 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 Defendant with prejudice and extinguishing, releasing, and barring all Released Claims against all Released Parties in accordance with the Settlement Agreement;

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

e. determine whether the applications for Plaintiffs' attorneys' fees, reimbursement for Litigation Expenses, and Case Contribution 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 Final Judgment (the "Judgment"), adopts all defined terms as set forth in the Settlement Agreement and incorporates them as if fully set forth herein.

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

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

a. All non-excluded persons or entities:

- i. who received working interest, royalty, and/or overriding royalty payments from Defendant for oil and/or gas proceeds from oil and/or gas wells located in the State of Oklahoma at any time up to and including August 31, 2018; or
- ii. whose oil and/or gas proceeds have been paid over by Defendant to various state agencies as unclaimed or abandoned property at any time up to and including August 31, 2018.

b. The persons or entities excluded from the class are: (1) agencies, departments, or instrumentalities of the United States of America or the State of Oklahoma; (2) Commissioners of the Land Office of the State of Oklahoma (CLO); (3) publicly traded oil and gas companies and their affiliates; (4) persons or entities (and their affiliates) who are the Oklahoma Corporation Commission (OCC) designated operator of more than fifty (50)

³ The Court will issue separate orders pertaining to Plaintiffs' Counsel's request for attorneys' fees and reimbursement of Litigation Expenses and Class Representatives' request for a Case Contribution Award.

Oklahoma wells in June 2018; (5) persons or entities that Plaintiffs' counsel may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct, including, but not limited to, Charles David Nutley, Danny George, Dan McClure, Kelly McClure Callant, and their relatives; and (6) officers of the court.

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

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

a. **“Released Claims”** means all claims and damages (statutory, contract, tort, equitable, punitive, interest, and other relief) that the Releasing Parties may have against the Released Parties arising out of or related to underpaid and unpaid statutory interest for payments on Oklahoma oil and gas production made or issued at any time prior to September 1, 2018. Without limiting the foregoing, the Released Claims include all claims and damages asserted in the Third Amended Complaint filed by Plaintiffs in the Litigation, except for claims excluded from the scope of Released Claims in the last paragraph of Section 1.32 of the Settlement Agreement; any and all claims that were, or that could have been, asserted in any forum or venue related to underpaid and unpaid statutory interest under the Production Revenue Standards Act, 52 Okla. St. §570.1, *et seq.* (the “PRSA”), whether known or unknown, whether at law or in equity, or under any applicable statute; and including any and all relief and remedies, except for claims excluded from the scope of Released Claims in the last paragraph of Section 1.32 of the Settlement Agreement.

The Released Claims do not include (a) claims related solely to underpaid or unpaid royalties for which payments were not made or issued by Defendant prior to September 1, 2018, (b) claims for breach of obligations to Class Members to develop Oklahoma oil and gas leases and failure to prevent offset drainage, (c) the “Class I” claims asserted in *Kunneman Properties LLC v. Marathon Oil Company*, No. 17-cv-456-JED-FHM, as described in the Original Complaint in that case, or (d) claims for unpaid statutory interest attributable to Oklahoma oil or gas proceeds held in suspense by Defendant on or after September 1, 2018.

b. **“Released Parties”** means Defendant; its predecessors, successors, heirs, assignors, and assignees; any past and present affiliates and subsidiaries; and any directors, officers, employees, attorneys, agents, consultants, servants, stockholders, members, representatives, subsidiaries, insurers, subsidiaries and affiliates of the foregoing persons or entities.

c. **“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 predecessors, successors, heirs, assignors, and assignees; and any past and present officers, employees, attorneys, agents, consultants, servants, stockholders, members, 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 payment from the Gross Settlement Fund 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.

d. **“Claim Period”** means any time up to and including August 31, 2018.

5. At the Final Fairness Hearing on March 8, 2019, 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 Defendant and their respective Counsel, but also the concerns of any objectors and the interests of all absent Class Members. In so doing, the Court considered arguments that could reasonably be made against, *inter alia*, approving the Settlement and the Notice of Settlement, even if such argument was not actually presented to the Court by pleading or oral argument.

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

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

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

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

9. The Court finds that on December 17, 2018, Defendant caused notice of the Settlement to be served on the appropriate state official for each state in which a Class Member resides, and the appropriate federal official, as required by and in conformance with the form and content requirements of 28 U.S.C. § 1715. In connection therewith, the Court has determined that, under 28 U.S.C. 28 § 1715, the appropriate state official for each state in which a Class Member resides was and is the State Attorney General for each such state, and the appropriate federal official was and is the Attorney General of the United States. Further, the Court finds it was not feasible for Defendant to include on each such notice the names of each of the Class Members who reside in each state and the estimated proportionate share of each such Class Members to the entire Settlement as provided in 28 U.S.C. § 1715(b)(7)(A); therefore, each notice included a reasonable estimate of the number of Class Members residing in each state and the estimated proportionate share of the claims of such Class Members to the Settlement. No appropriate state or federal official has entered an appearance or filed an objection to the entry of final approval of the Settlement. Thus, the Court finds that all requirements of 28 U.S.C. § 1715 have been met and complied with and, as a consequence, no Class Member may refuse to comply with or choose not to be bound by the Settlement and this Court's Orders in furtherance thereof, including this Judgment, under the provisions of 28 U.S.C. § 1715.

10. The Litigation and the Third Amended Complaint and all claims included therein, as well as all 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. The Court orders that Defendant shall be entitled to a refund of the Residual Unclaimed Funds pursuant to the procedures and at the time specified in the Settlement Agreement.

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

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

13. If it has not already occurred, the Settlement Administrator is directed to refund to Defendant the amount attributable to Class Members who timely and properly submitted a Request

for Exclusion or who were otherwise excluded from the Settlement Class by order of the Court in accordance with paragraph 6.4 of the Settlement Agreement, if applicable.

14. Neither this Settlement, the Settlement Agreement, any document referred to herein, the Supplemental Agreements, 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 Defendant 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 in 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 Defendant 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 collateral estoppel effect as to the certifiability of any class in any other proceeding.

15. As separately set forth in detail in the Court's Plan of Allocation Order(s), the Allocation Methodology, the Plan of Allocation, and distribution of the Net Settlement Fund among Class Members who were not excluded from the Settlement Class by timely submitting a valid Request for Exclusion or other order of the Court are approved as fair, reasonable, and adequate, and Class Counsel and the Settlement Administrator are directed to administer the Settlement in accordance with the Plan of Allocation Order(s) entered by the Court.

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

17. Neither Defendant nor Defendant's Counsel shall have any liability or responsibility to Plaintiffs, Plaintiffs' Counsel, or the Settlement Class with respect to the Gross Settlement Fund or its administration, including but not limiting to any distributions made by the Escrow Agent or Settlement Administrator. Except as described in paragraph 6.19 of the Settlement Agreement, no Class Member shall have any claim against Plaintiffs' 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 Court's Plan of Allocation Order(s), or other orders of the Court.

18. 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.

19. 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 Section 5 of the Settlement Agreement.

20. Any order approving or modifying any Plan of Allocation Order, the application by Class Counsel for an award of attorneys' fees or reimbursement of Litigation Expenses, or the request of Class Representatives for a Case Contribution Award shall be handled in accordance

with the Settlement Agreement and the documents referenced therein (to the extent the Settlement Agreement and documents referenced therein address such an order).

21. Plaintiffs' Counsel, Plaintiffs, and the Settlement Class will only be liable for loss of any portion of the Escrow Account as described in paragraph 6.19 of the Settlement Agreement. Defendant shall have no liability for any such loss.

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 Fund, 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 Defendant and the refund by Plaintiffs' Counsel into the Escrow Account of any amounts previously paid to them from the Escrow Account.

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 Fund, to issue additional orders pertaining to, *inter alia*, Class Counsel's

request for Plaintiffs' attorneys' fees and reimbursement of reasonable Litigation Expenses and Class Representatives' request for a Case Contribution Award, and to enforce this Final Judgment. Notwithstanding the Court's jurisdiction to issue additional orders in this Litigation, this Judgment fully disposes of all claims as to Defendant and is therefore a final appealable judgment. 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.

Dated this ____ day of _____, 2019.

STEVEN P. SHREDER
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 2

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

CHIEFTAIN ROYALTY COMPANY,)
KELSIE WAGNER TRUSTEE OF THE)
KELSIE WAGNER TRUST, AND)
KELSIE WAGNER SUCCESSOR)
TRUSTEE OF THE WADE)
COSTELLO TRUST)

Plaintiffs,)

v.)

MARATHON OIL COMPANY,)

Defendant.)

Case No. 6:17-cv-00334-SPS

*(Removed from District Court of
LeFlore County, State of
Oklahoma, Case No. CJ-17-146)*

PLAN OF ALLOCATION ORDER

Having held a Final Fairness Hearing in this Action on March 8, 2019, in which the Court fulfilled its duties to consider objections and independently evaluate the fairness, reasonableness, and adequacy of the Settlement, and having thereafter finally approved the Settlement, the Court now enters this Plan of Allocation Order to instruct the Parties and the Settlement Administrator on the manner in which the Net Settlement Fund shall be allocated and distributed to Class Members.¹ The Court finds, orders, and adjudges that the methodology set forth below (the “Allocation Methodology”) is fair, reasonable, and adequate and in the best interest of the Settlement Class. Accordingly, the Court hereby orders that, once the Judgment becomes final

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

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

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

2. At such time as the Judgment becomes final and non-appealable, Plaintiffs and Class Counsel will, as promptly as reasonably possible, but no later than sixty (60) days after the Effective Date, file a Final Plan of Allocation with the Court, which will reflect the proportionate amount of the Net Settlement Fund to be paid to each Class Member pursuant to the Allocation Methodology. Plaintiffs and Class Counsel will obtain the Court's approval of a list of the names, addresses, and tax identification numbers of Class Members who have not opted-out and to whom Distribution Checks are to be mailed, along with the amounts of the Distribution Check for each such Class Member. If necessary, such list of names may be provided in stages for purposes of efficiently distributing the Net Settlement Fund. To the extent distributions may be made to the

current operator of a well not currently operated by Defendant, for further distribution by the current operator, the list may show the distribution amount for the entire well that will be paid to the current operator for distribution by it. The Court specifically approves this method of distribution for wells not operated by Defendant. To the extent any of the foregoing information is unknown for any Class Members, despite reasonable commercial efforts to obtain it, the list may show that such information is unknown. The names, addresses, and amounts to be paid will be determined as described herein.

3. Class Counsel has allocated the estimated Net Settlement Fund to individual Class Members proportionately based on the data provided by Marathon, the amount of statutory interest owed on the original underlying payment that allegedly occurred outside the time periods required by the PRSA, with due regard for the production date, the date the underlying payment was made, the amount of the underlying payment, the time periods set forth in the PRSA, any applicable statute of limitation, any previously granted releases, whether or not Marathon records provided in this Litigation identify a late payment of Proceeds without payment of statutory interest, any additional statutory interest that Class Counsel believes has since accrued, and the amount of interest or returns that have accrued on the Class Member's proportional share of the Net Settlement Fund during the time such share was held in the Escrow Account. The preliminary allocation of the Net Settlement Fund among Class Members is shown on Exhibit 2 to the Affidavit of Barbara Ley (attached as Exh. 4 to Class Representatives' Memorandum of Law in Support of Class Representatives' Motion for Final Approval) and is approved by this Court. It is understood that this preliminary allocation will be updated when all opt-outs and excluded owners are known and identified. Thereafter, Plaintiffs and Class Counsel, with the aid of the Settlement Administrator, will allocate the Net Settlement Fund proportionately among all Class Members as

set forth in an updated allocation schedule. All such distributions will be subject to review and approval by Class Counsel, which shall not be unreasonably withheld, and the Court.

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

TO: Class Member: The enclosed check represents a share of the net settlement fund in the settlement of the Class Action *Chieftain v. Marathon Oil Co.*, Case No. 17-CV-334-SPS, in the United States District Court for the Eastern District of Oklahoma. You are receiving this distribution and check because you have been identified as a Class Member in this action. If you are not legally entitled to the proceeds identified on the check, the Court has entered an Order that requires you to pay these proceeds to persons legally entitled thereto or return this check uncashed to the sender.

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

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

5. The Settlement Administrator will make a diligent effort to mail the first Distribution Checks within ninety (90) days after the Effective Date and, within the subsequent ninety (90) days, will mail the Distribution Checks representing the remaining 95% of the Net Settlement Fund (such percentage to be calculated based upon the amount of payments shown in the Final Plan of Allocation). The remainder of the Net Settlement Fund will be distributed to Class Members within 6 months after the Effective Date. Any portion of the Net Settlement Fund

remaining in the Escrow Account 120 days after the Settlement Administrator sends the final wave of Distribution Checks will be considered Residual Unclaimed Funds that will be refunded to Defendant.

6. The Settlement Administrator will use commercially reasonable efforts, subject to review and approval by Plaintiff's Counsel, to distribute the Net Settlement Fund. If the information needed to send a Distribution Check cannot be obtained through such efforts, the portion of the Net Settlement Fund attributable to such Class Member will remain in the Escrow Account as Residual Unclaimed Funds and shall be refunded to Defendant.

7. If a Distribution Check is returned to the Settlement Administrator for incorrect or insufficient address, the Settlement Administrator and/or consultants working with the Settlement Administrator will use commercially reasonable methods to locate an updated address and will re-issue and re-mail the Distribution Check within thirty (30) days. If the second Distribution Check is returned and the Class Member cannot be located through commercially reasonable efforts, the portion of the Net Settlement Fund attributable to them will remain in the Escrow Account for ninety (90) days after the date the Second Distribution Check was returned and, thereafter, will be considered Residual Unclaimed Funds that shall be paid to Defendant.

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

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

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

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

12. To the extent not specifically addressed above, any other amount of the Net Settlement Fund that remains in the Escrow Account 150 days 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 Funds.

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

Distribution Costs paid from the Escrow Account. The Settlement Administrator must pay the total amount remaining in the Escrow Account to Defendant no later than ten (10) business days after sending a reconciliation of the Residual Unclaimed Funds to Defendant's and Plaintiff's Counsel.

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

15. The Mutual Release, Dismissal, and Covenant Not to Sue shall be effective as provided in the Settlement Agreement, regardless of whether or not particular members of the Settlement Class did or did not receive payment from the Net Settlement Fund and regardless of whether or not any 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 member of the Settlement Class. 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.

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

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

IT IS SO ORDERED this _____ day of March 2019.

STEVEN P. SHREDER
UNITED STATES MAGISTRATE JUDGE