

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

CHRISTOPHER SNIDER, on behalf of the)
Seventy Seven Energy Inc. Retirement &)
Savings Plan and a class of similarly situated)
participants of the Plan,)

Plaintiff,)

v.)

ADMINISTRATIVE COMMITTEE, SEVENTY)
SEVEN ENERGY, INC. RETIREMENT &)
SAVINGS PLAN, CARY BAETZ, KARL)
BLANCHARD, CHRISTIN BORDEN, LINDA)
CLARK, CLINT CLOVER, GINO DEMARCO,)
LANCE HAFFNER AND JEROME)
LOUGHRIDGE.)

Defendants.)

Case No. CIV-20-977-D

**PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS
SETTLEMENT AND INCORPORATED MEMORANDUM IN SUPPORT**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 3

III. ERISA FIDUCIARY OBLIGATIONS 4

IV. PROCEDURAL BACKGROUND 5

V. THE TERMS OF THE SETTLEMENT 6

 A. The Settlement Class 6

 B. The Plan of Allocation 6

 C. The Settlement Should Be Approved..... 7

 D. Identification of Class Members 7

 E. Notice and Administration 7

 F. Attorneys’ Fees and Expenses..... 8

 G. Case Contribution Award..... 8

VI. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS..... 9

VII. THE COURT SHOULD ENTER AN ORDER OF FINAL APPROVAL
OF THE SETTLEMENT AND JUDGMENT 9

 A. Standard And Process for Approval 10

 B. The Settlement Should Be Approved..... 11

 1. The Class Representative and Class Counsel Adequately
 Represented the Class..... 11

 2. The Proposed Settlement Was Negotiated at Arm’s Length. 12

 3. The Relief Provided for The Class Is More Than Adequate..... 15

 a. The Costs, Risks, and Delay of Trial and Appeal..... 15

b.	The Effectiveness of Distribution to The Settlement Class ..	17
c.	The Terms of Any Proposed Award of Attorneys’ Fees, Including Timing of Payment.....	21
4.	The Settlement Treats Class Members Equitably Relative to Each Other.....	21
a.	Notice to Class Members Was Adequate.....	22
VIII.	OBJECTIONS	20
IX.	CONCLUSION	20

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Chiefton Royalty Co. v. Enervest Energy Institutional Fund</i> , 888 F.3d 455 (10th Cir. 2017)	19
<i>Deem v. Ames True Temper, Inc.</i> , No. 10-01339, 2013 WL 2285972 (S.D. W.Va. May 23, 2013)	13
<i>DeJulius v. New England Health Care Emps. Pension Fund</i> , 429 F.3d 935 (10th Cir. 2005)	19
<i>Donovan v. Bierwirth</i> , 680 F.2d 263 (2d Cir. 1982).....	4
<i>Donovan v. Mazzola</i> , 716 F.2d 1226 (9th Cir. 1983)	4
<i>Ehrheart v. Verizon Wireless</i> , 609 F.3d 590 (3d Cir. 2010).....	10
<i>Figas v. Wells Fargo</i> , No. 08–4546 (D. Minn.).....	17
<i>Gould v. Alleco, Inc.</i> , 883 F.2d 281 (4th Cir. 1989)	10
<i>Great-West Life & Annuity Ins. Co.</i> , 534 U.S. 204, 209 (2002)	4
<i>In re Jiffy Lube Sec. Litig.</i> , 927 F.2d 155 (4th Cir. 1991)	13
<i>Jones v. Nuclear Pharmacy, Inc.</i> , 741 F.2d 322 (10th Cir. 1984)	10, 15
<i>Kayes v. Pacific Lumber Co.</i> , 51 F.3d 1449 (9th Cir. 1995), <i>cert. denied</i> 516 U.S. 914 (1995).....	4
<i>Mass. Mutual Life Ins. Co. v. Russell</i> , 473 U.S. 134 (1985).....	4
<i>Mertens v. Hewitt Assoc.</i> , 508 U.S. 248 (1993).....	4

Montgomery v. Continental Intermodal Group-Trucking LLC,
 No. 19–940, 2021 WL 1339305 (D.N.M. Apr. 9, 2021) 13, 15

Nachman Corp. v. Pension Benefit Guar. Corp.,
 446 U.S. 359 (1980) 4

Phillips Petroleum Co. v. Shutts,
 472 U.S. 797 (1985) 20

Prince v. Eaton Vance Corp.,
 No. 18–12098, Dkt. 57 (D. Mass Sept. 24, 2019)..... 17

Ramos v. Banner Health,
 325 F.R.D. 382 (D. Col. 2018) 9

Richards-Donald v. Teachers Insurance & Annuity Ass’n of Amer.,
 No. 15–8040 (S.D.N.Y.) 17

Rutter & Wilbanks Corp. v. Shell Oil Co.,
 314 F.3d 1180, 1188 (10th Cir. 2002) 15

*In re Samsung Top-Load Washing Machine Marketing, Sales Practice and
 Products Liability Litig.*,
 No. 17–2792, 2020 WL 2616711 (W.D. Okla. May 22, 2020)..... 11, 12, 13, 15

Sims v. BB&T Corp.,
 No. 15–732, 2019 WL 1993519 (M.D.N.C. May 6, 2019) 17

Stanspec Corp. v. Jelco, Inc.,
 464 F.2d 1184 (10th Cir. 1972) 10

Tussey v. ABB, Inc.,
 746 F.3d 327 (8th Cir. 2014) 16

Tussey v. ABB, Inc.,
 850 F.3d 951 (8th Cir. 2017) 16

Tussey v. ABB, Inc.,
 No. 06-4305, Dkt. 869 (W.D. Mo. Aug. 16, 2019) 16

United States v. Hardage,
 750 F. Supp. 1460 (W.D. Okla. 1990)..... 13

Urakhchin v. Allianz Asset Mgmt. of Amer., L.P.,
 No. 15–1614, 2018 WL 8334858 (C.D. Cal. July 30, 2018)..... 17

In re Williams Cos. ERISA Litig.,
231 F.R.D. 416 (N.D. Okla. 2005) (Kern, J.) 5

Statutes

28 U.S.C. § 1715 7
29 U.S.C. § 1001 *et seq.* (“ERISA”) *passim*

Other Authorities

Fed. R. Civ. P. 23(b)(1) 6, 9
Fed. R. Civ. P. 23(g) 20
Fed. R. Civ. P. 23(a) 9
Fed. R. Civ. P. 23(c)(2) 19, 20
Fed. R. Civ. P. 23(e) *passim*

Plaintiff Christopher Snider, individually and on behalf of the Plan¹ and the putative class, moves for the entry of an order and final judgment substantially in the form of the [Proposed] Order and Final Judgment, previously submitted as Exhibit 2 to the Parties' Settlement Agreement, Dkt. 40-2.² On May 19, 2022, the Court entered an order preliminarily approving the settlement, preliminarily certifying the settlement class, and ordering the form and manner of notice. Dkt. 41. All the post-preliminary approval notice and other requirements have been satisfied as detailed below. There have been no fact or legal developments affecting preliminary approval or class certification. And to date, there have been no objections. Accordingly, the Court should enter the [Proposed] Order and Final Judgment.

I. INTRODUCTION

The proposed Settlement is an excellent result for the Settlement Class,³ with the Settlement Class receiving \$15 million, or 26.5% of the reasonable best-case, class-wide damages calculated by Plaintiff's expert during the litigation. The Settlement is offered to all members of the Settlement Class ("Class Members") without the need to fill out a claim

¹ Collectively, the Seventy Seven Energy Inc. Retirement & Savings Plan, which became the Seventy Seven Energy LLC Retirement & Savings Plan and was merged into the Patterson-UTI Energy, Inc. 401(k) Profit Sharing Plan.

² Defendants are not opposed to the relief requested in this motion, without taking a position on Plaintiff's specific arguments and representations. As provided in the Settlement Agreement, the Settlement Agreement and these related motions are made in compromise of disputed claims and are not admissions by Defendants of any liability of any kind, whether legal or factual. Defendants specifically deny any liability or wrongdoing with respect to the claims and damages alleged in this action.

³ Capitalized terms not otherwise defined herein shall have the same meaning as ascribed to them in the Settlement Agreement.

form, and Class Members have the option of receiving their distributions as direct rollovers into tax-qualified accounts, further increasing the value of the settlement through tax-preferred treatment.

The Employee Retirement Income Security Act of 1974 (“ERISA”) requires fiduciaries to discharge their duties with respect to the Plan “with the care, skill, prudence, and diligence under the circumstances then prevailing” of a prudent fiduciary expert, and to “diversify[] the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.” 29 U.S.C. § 1104(a)(1)(B) and (C). This case is about whether Defendants breached their fiduciary duties owed to the Plan and all Class Members who were Plan participants. Plaintiff contends that the Plan’s large holding in Chesapeake common stock (referred to hereafter by its ticker symbol, “CHK”) exposed the Plan and Class Members to an unnecessary and imprudent risk of large losses, especially taking into consideration the Plan’s equally undiversified investment in Seventy Seven Energy, Inc. (“SSE”) stock which was in a similar business with similar systemic risks.

The value of the proposed Settlement must be considered in light of the substantial litigation risks in this cutting-edge and complex case. For this reason, and others discussed in more detail below, the Settlement should be finally approved, and Plaintiff requests that the Court grant this motion. All the conditions of the Court’s preliminary approval order necessary to final approval have been satisfied: notice was timely sent via first class mail on June 9, 2022 and the Settlement Administrator took all reasonable steps to deliver notice to class members whose initial notice addresses were incorrect; the Settlement

Administrator caused a website containing various case and settlement information and documents to become active on June 9, 2022;⁴ and contemporaneous to this motion, Plaintiff filed a motion for attorneys' fees. See Declaration of Alex Thomas, on behalf of KCC, Inc., ("Thomas Decl.") at 3–6.

To date, the Parties are not aware of any objections and none have been filed. *See*, Thomas Decl. ¶ 7.

II. FACTUAL BACKGROUND

On June 30, 2014, Chesapeake Energy Corporation ("Chesapeake") spun off SSE, and the Plan was established the following day. SSE was the Plan administrator and named fiduciary and Delaware Charter Guarantee & Trust Company, d/b/a Principal Trust Company ("Principal Trust") was the Plan's directed trustee. On July 1, 2014, Chesapeake's 401(k) plan transferred \$196,210,229 in assets to the Plan corresponding to the 401(k) accounts of the employees who had been transferred to SSE in the spin-off. Over 44% of the transferred assets, worth \$87,038,874, was invested in CHK stock.

Plaintiff filed this proposed class action on September 28, 2020, on behalf of participants in the Plan whose retirement assets were invested in Chesapeake stock. *See* Dkt. 1, generally. As Plaintiff alleged in the Complaint, ERISA requires that a plan's fiduciaries must meet their fiduciary duties by prudently selecting investments, monitoring those investments, and removing imprudent investments. Plaintiff also alleged that Defendants breached their fiduciary duties by failing to evaluate and remove Chesapeake

⁴ Additionally, Defendants have represented that they sent CAFA notices within the time limits imposed by CAFA.

stock as a plan investment option. Dkt. 1, ¶¶ 29–32. Plaintiff further alleged that due to Defendant’s fiduciary breaches, the Plan’s participants lost tens of millions of dollars in retirement savings when the share price of CHK stock declined. Dkt. 1, ¶¶ 2–5.

III. ERISA FIDUCIARY OBLIGATIONS

ERISA was adopted in 1974 to encourage private retirement plans to substantially supplement their retirement benefits under the Social Security System. *Great-West Life & Annuity Ins. Co.*, 534 U.S. 204, 209 (2002); *Mertens v. Hewitt Assoc.*, 508 U.S. 248, 251 (1993); *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361–62 (1980). The duties of an ERISA fiduciary are codified in ERISA § 404(a), 29 U.S.C. § 1104(a), and are “the highest known to the law.” *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982). ERISA § 404(a) requires fiduciaries to discharge their duties with respect to the plan “with the care, skill, prudence, and diligence under the circumstances then prevailing” of a prudent expert, and to “diversify[] the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.” 29 U.S.C. § 1104(a)(1)(B) and (C); *see also Donovan v. Mazzola*, 716 F.2d 1226, 1231 (9th Cir. 1983) (“[I]n enacting ERISA[,] Congress made more exacting the requirements of the common law of trusts relating to employee benefit trust funds.”).

Under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), plan participants and beneficiaries can sue for breach of fiduciary duties. Suits under Section 502(a)(2) are brought “in a representative capacity on behalf of the plan as a whole.” *Mass. Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 142 n.9 (1985). Accordingly, a breach of fiduciary duty claim is automatically representative in nature. *Kayes v. Pacific Lumber Co.*, 51 F.3d 1449,

1462 (9th Cir. 1995), *cert. denied* 516 U.S. 914 (1995). Thus, if the Plaintiff prevails in recovering money damages on account of the Defendants' breaches of fiduciary duties, the entire recovery will flow to the Plan, to be held, allocated, and ultimately distributed in accordance with the requirements of the Plan and ERISA itself. *In re Williams Cos. ERISA Litig.*, 231 F.R.D. 416, 425 (N.D. Okla. 2005) (Kern, J.).

IV. PROCEDURAL BACKGROUND

On September 28, 2020, Plaintiff filed the class action Complaint (Dkt. 1). On December 18, 2020, Defendants moved to dismiss (Dkt. 24), which this Court granted in part and denied in part on October 8, 2021. The Court held that Plaintiff's Complaint adequately stated "claims against Defendants for breaching fiduciary duties under 29 U.S.C. § 1104(a)(1)(B) and (C) to act with prudence and to diversify the Plan's investments but that the Complaint fails to state a separate claim that they breached a duty to monitor the Plan's investments." Dkt. 28 at 18. The Court entered a scheduling order (the "Scheduling Order") on January 25, 2022. Dkt. 38. Based on the Scheduling Order, the Parties conducted class certification discovery.

The Parties participated in a mediation on February 15, 2022, and Defendants produced additional documents to Plaintiff ahead of that mediation in order to facilitate a productive settlement process. The Parties retained Robert Meyer, a recognized and respected mediator with national experience in ERISA cases generally and cases concerning the selection of 401(k) investment options in particular, as mediator. During the mediation, the Parties moved toward an agreement in principle. Over the weeks that

followed, the Parties negotiated the details of the settlement and reached a Settlement on April 18, 2022.

As part of the Settlement, Plaintiff sought and the Court preliminarily granted class certification for settlement purposes under Fed. R. Civ. P. 23(b)(1), defining the Class as follows:

All persons, except Defendants and their Immediate Family Members, who were or are participants in or beneficiaries of the Plan (including the Patterson Plan) at any time during the Class Period and whose accounts included any investment in Chesapeake Stock at any time during such period.

The Class Period begins on July 1, 2014, when CHK stock entered the Plan, and ends on February 28, 2021, when Chesapeake's bankruptcy concluded, ending all investment in CHK stock by last plan involved in the case.

V. THE TERMS OF THE SETTLEMENT

The full Settlement Agreement was attached as Exhibit A to Plaintiff's Motion for Preliminary Approval. Dkt. 40-2. The material terms of the Agreement are summarized below:

A. The Settlement Class: The Settlement Class is the proposed Settlement Class set forth above.

B. Plan of Allocation: Under the Plan of Allocation, Class Members will automatically receive (without requiring a claim form) a portion of the Settlement Fund based on a formula which considers how much CHK stock the Class Member owned and when, if ever, the Class Member removed some or all of their CHK stock investment from the Plan. Dkt. 40-2 at Ex. A-3.

C. Release: The Released Claims cover “any and all past, present, and future claims, demands, rights, liabilities, causes of action, damages, costs, expenses, and compensation of every nature or description whatsoever, fixed or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, now existing or that might arise hereafter, at law or in equity, matured or unmatured, whether class or individual in nature, asserted or that might or could have been asserted in any forum by Releasing Parties against any or all of the Released Parties that: (a) were brought or could have been brought in the Action and arise out of the same or substantially similar facts, circumstances, situations, transactions, or occurrences as those alleged in the Action; or (b) were brought or could have been brought under ERISA with respect to Chesapeake Stock in the Plan (including the Patterson Plan).”

D. Identification of Class Members: Class Members were identified using the Plan’s records.

E. Notice and Administration: Defendants prepared and served the notices required by the Class Action Fairness Act (“CAFA”), as specified by 28 U.S.C. § 1715, on April 27, 2022. Defendants paid the cost and expense associated with providing CAFA notices.

The costs of Settlement Administration to date, to be paid from the Settlement Fund, are estimated to be below \$35,000. Boyko Decl. ¶ 14. On June 9, 2022, KCC, Inc., the Settlement Administrator, mailed 4,563 notices, one to each class member. Thomas Decl. at ¶ 3. Of these, 311 notices have been returned to date as undeliverable and KCC is in the process of performing address searches and will re-mail notices to updated addresses. *Id.* at

¶ 4. Also on June 9, KCC established the settlement website, www.seventysevensettlement.com, which provides additional information about the settlement including the Class Notice, an address change/rollover request form, a Spanish language translation of the Class Notice, and other case-related documents. *Id.* at ¶ 5. To date, the Settlement Website has received 255 visits. Finally, KCC established a 24-hour toll free number class members can call if they need assistance or have questions. *Id.* at ¶ 6. As of July 1, 2022, KCC has received 7 calls to the hotline. *Id.* The phone number and settlement website address are included in the mailed notices. *Id.* at ¶ 5.

F. Attorneys' Fees and Expenses: The Settlement Agreement provides that proposed Class Counsel IZARD, KINDALL & RAABE, LLP ("IKR"), BAILEY & GLASSER, LLP ("B&G"), and LATHAM STEELE LEHMAN⁵ will request that this Court award attorneys' fees of up to \$5 million, (33.33% of the \$15 million Settlement Amount) plus expert and other litigation expenses and costs subject to Court approval, which shall be paid from the Settlement Fund. Settlement Agmt. Section 10.1. The Settlement expressly provides that the Settlement is not conditioned upon the Court approving the requested amounts for fees, expenses or the Case Contribution Award. *Id.* Section 9.1.7. Plaintiff's motion for attorney's fees and expenses has been filed on the same day as the instant motion and will be the subject of a separate order.

G. Case Contribution Award: The Settlement Agreement provides that

⁵ In the Settlement Agreement, this law firm is listed as Latham, Wagner, Steel & Lehman. The firm name has since been changed to Latham Steele Lehman, thus this document uses that name.

proposed Class Counsel intends to request that this Court award a case contribution award to Mr. Snider of up to \$20,000, subject to Court approval.

VI. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Court preliminarily certified the Settlement Class. Dkt. No. 41. There have been no subsequent events indicating the Settlement Class should not be finally certified. Therefore, for all of the reasons set forth in Plaintiff's Memorandum In Support of Unopposed Motion for Preliminary Approval of Class Settlement and Certification of a Class for Settlement Purposes, Dkt. 40 at 8–18, and this Court's Order Granting Preliminary Approval of Class Action Settlement, Certifying Class for Settlement Purposes, Approving Form and Manner of Notice, and Setting Date for Fairness Hearing, Dkt. 41 at 2–4, the Court should finally certify the Class for settlement purposes. Specifically, the Class of over 4,000 plan participants meet the requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation. Dkt. 41 at 2–3. In addition, the class should be certified under Rule 23(b)(1) because claims under ERISA brought by one or more participants or beneficiaries on behalf of a Plan and seeking Plan-wide relief are “a paradigmatic example of a (b)(1) class.” *Ramos v. Banner Health*, 325 F.R.D. 382, 395 (D. Col. 2018) (quoting *Trout v. Oracle*, 325 F.R.D 373 at 376 (D. Col. 2018)); Dkt. 41 at 3.

VII. THE COURT SHOULD ENTER AN ORDER OF FINAL APPROVAL OF THE SETTLEMENT AND JUDGMENT

Federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued

litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Stanspec Corp. v. Jelco, Inc.*, 464 F.2d 1184, 1187 (10th Cir. 1972) (“The law actively encourages compromise and settlement of disputes.” citing *Tulsa City Lines v. Mains*, 107 F.2d 377 (10th Cir. 1939)); *see also Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989) (noting “the unassailable premise that settlements are to be encouraged”); *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594–95 (3d Cir. 2010) (recognizing that there is a “strong presumption in favor of voluntary settlement agreements” and that the “presumption is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation” (internal quotation marks omitted)).

A. Standard And Process for Approval

The approval of a class action settlement is left within the “sound discretion of the trial court.” *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). The Court entered a preliminary approval order, Dkt. 41, indicating it was “likely be able to” approve the settlement. Fed. R. Civ. P. 23(e)(1). In other words, the Court preliminarily found the Settlement to be “fair, reasonable, and adequate.” *See* Fed. R. Civ. P. 23(e)(1)(B)(i) and 23(e)(2).

As with preliminary approval, the Court must determine if the Settlement is fair, reasonable, and adequate based on the following factors:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;

- (C) the relief provided for the class is adequate taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2). Rule 23(e)’s amendment was designed to “focus[]” the parties “on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the [settlement].” Committee Notes on 2018 Amendment.

The Court considered all these factors when preliminarily approving the Settlement. Nothing has changed to affect that preliminary conclusion.

B. The Settlement Should Be Approved

Consideration of all relevant factors demonstrates that the Settlement should be finally approved under Rule 23(e)(2).

1. The Class Representative and Class Counsel Adequately Represented the Class.

The adequacy determination under Rule 23(e)(2)(A) looks to whether the interests of the class representatives do not conflict with the interests of any of the Class Members and that Plaintiffs’ counsel are qualified and experienced and provided vigorous representation in this case, as detailed in the motion for preliminary approval. Dkt. 40 at 20–22; *In re Samsung Top-Load Washing Machine Marketing, Sales Practice and Products Liability Litig.*, No. 17–2792, 2020 WL 2616711 at *12 (W.D. Okla. May 22,

2020). Where, as here, the injuries suffered by the named Plaintiff are the same as those that the class is alleged to have suffered, the adequacy requirement is usually satisfied. *See id.*

Mr. Snider has been an exemplary representative. He has spent significant time on behalf of the class in this litigation, gathering his relevant documents and providing them to counsel, responding to counsel's requests, reviewing documents, and sitting for a deposition. *See* Boyko Decl. in Support of Fee Petition, ("Boyko Decl.") ¶ 35. His claims are the same as the claims of all Class Members, and the relief that he is seeking is calculated using exactly the same formula used for all Class Members.

In addition, Class Counsel are well-qualified and have vigorously prosecuted this class action. Bailey & Glasser ("B&G") and IZARD KINDALL & RAABE ("IKR") are active class action practitioners whose long experience in ERISA and class action litigation is demonstrated by the declarations of Mr. Boyko and Mr. IZARD, attached to Plaintiff's Memorandum in Support of Unopposed Motion for Attorneys' Fees, Costs and Service Awards. They are experienced in successfully litigating ERISA class actions and have prosecuted cases across the country involving defined contribution retirement plans and investments. As this Court determined in certifying the class, the "adequacy of representation" factor of Rule 23(e)(2)(A) is met.

2. The Proposed Settlement Was Negotiated at Arm's Length.

Rule 23(e)(2)(B) instructs the Court to consider whether the proposed settlement was negotiated at arm's length. There is typically an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations

between experienced, capable counsel after meaningful discovery. *See United States v. Hardage*, 750 F. Supp. 1460, 1491 (W.D. Okla. 1990) (“Settlements achieved through extensive arms-length negotiations, and approved by all counsel . . . enjoy a strong presumption of validity.”).

Courts look at whether the parties “have engaged ‘in sufficient investigation of the facts to enable the court to intelligibly make an appraisal’ of the fairness of a proposed class settlement.” *Deem v. Ames True Temper, Inc.*, No. 10-01339, 2013 WL 2285972, at *2 (S.D. W.Va. May 23, 2013) (citation omitted). Courts consider the extent of discovery conducted to ensure that a plaintiff had access to sufficient material to evaluate the case on an informed basis and to assess the adequacy of the settlement in light of its strengths and weaknesses. *See In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991). Moreover, “[t]he presence of the mediator weighs heavily in favor of this requirement being met.” *In re Samsung*, 2020 WL 2616711, at *13; *Montgomery v. Continental Intermodal Group-Trucking LLC*, No. 19-940, 2021 WL 1339305, at *5 (D.N.M. Apr. 9, 2021) (“A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.”).

Here, the case was thoroughly litigated between the two pending cases against Defendants before the Parties engaged in settlement discussions. With the *Snider* case in class certification discovery and the *Myers* case in merits discovery, the Parties completed extensive fact and expert discovery. Defendants produced over 89,000 pages of documents, including transactional records showing the Plan participants’ sales/purchases of the CHK fund, and the fiduciary committees’ meeting minutes and meeting agendas. Boyko Decl.,

¶ 8. Plaintiffs produced reports from two experts, Samuel Halpern and Steven Pomerantz. Halpern opined that a reasonable fiduciary should have completed liquidating CHK stock by December 2014. *Id.* Dr. Pomerantz made damages calculations based on sales that would have occurred based on a sale during that period. *Id.* In response, Defendants offered the expert testimonies of Lucy P. Allen and Charles E. Wert. Allen performed an empirical analysis to conclude that similarly situated retirement plans would reach the same decision as Defendants and not divest legacy stock. Wert opined on the diversity of investment options in the Plan. Plaintiff's counsel deposed Defendants' expert Allen, while Defendants deposed Plaintiff's experts, Halpern and Pomerantz. *Id.* at ¶ 9. See also, Izard Decl. ¶ 4.

As a result of their thorough initial investigation, their review of Defendants' documents, their work with their own experts and deposition of Defendants' expert, their briefing of various motions and their review of this Court's rulings, Class Counsel had ample information to understand the strengths and weaknesses of the case, which involved a battle of the experts, prior to engaging in settlement discussions.

The settlement process itself was mediated by Robert Meyer, who was intimately familiar with the claims, the defenses, and the work of the Parties' respective witnesses. Plaintiff sent Defendants a detailed settlement proposal and demand letter in October 2021, and the Parties engaged in further settlement correspondence before the mediation on February 15, 2022. Boyko Decl. ¶¶ 12–13. At the mediation, the Parties reached an agreement in principle on the key terms of the Settlement. *Id.* In the weeks that followed, they negotiated the details and finalized the Settlement Agreement. *Id.*

The extent of this litigation, the hard-fought negotiations between experienced

attorneys for both sides, the use of a neutral mediator, and the excellent result for the Settlement Class are all testaments to the non-collusive nature of the settlement. *See, e.g., Montgomery*, 2021 WL 1339305, at *5 (citing the completion of discovery and the use of a neutral mediator as sufficient evidence to support a finding that the settlement was negotiated at arm's length).

3. The Relief Provided for The Class Is More Than Adequate.

To approve a settlement, a court must determine that the “settlement is fair, reasonable, and adequate.” *Jones*, 741 F.2d at 324; *see also In re Samsung*, 2020 WL 2616711, at *14 (“[T]he relief provided for the Settlement Class must be adequate, and the Settlement must treat Class Members equitably.”). As discussed below, the proposed Settlement provides meaningful, immediate and continuing benefits to the Settlement Class, while avoiding potentially years more of costs and delays, and the risks inherent in all class action litigation if the case were to go to trial.

a. The Costs, Risks, and Delay of Trial and Appeal

Rule 23(e)(2)(C)(i) requires the court to consider the adequacy of class relief in light of the costs, risks, and delay of trial and appeal. The Court must consider “whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt” and “whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation.” *Rutter*, 314 F.3d 1180, 1188 (10th Cir. 2002).

While delay is a risk in all litigation, it is a particularly serious risk in a case that involves retirees in their 60s and 70s. ERISA class actions over novel theories of liability

like this one tend to have significant life-cycles even after trial. For example, in *Tussey v. ABB, Inc.*, the first ERISA fiduciary breach class action trial was conducted in January 2010. *See, Tussey v. ABB, Inc.*, 746 F.3d 327 (8th Cir. 2014). The participants received a trial verdict in 2012, saw that verdict reduced by the court of appeals in 2014 and eventually settled in 2019 — a decade after trial. *Tussey v. ABB, Inc.*, 850 F.3d 951 (8th Cir. 2017) (remanding on damages); *Tussey v. ABB, Inc.*, No. 06-4305, Dkt. 869 (W.D. Mo. Aug. 16, 2019) (granting final approval of settlement). Such delays significantly harm class members already in retirement. In contrast, if this Settlement is approved, the Class will receive their payment now, instead of years later if the case were ultimately successful after trial.

The litigation risks in the case are also high. Plaintiff and Defendants have vastly different views about Defendants' potential liability and the likely outcome of the litigation. The key question—whether the Defendants, as prudent fiduciaries, should have divested CHK stock by the end of 2014—is one that will likely be determined through expert testimony. Plaintiff and Defendants each retained experts that provided radically different opinions on this issue.

A Settlement that provides 26.5% of the damages that Plaintiff's expert calculated in his litigation report is an outstanding result in light of the likelihood of further lengthy, expensive litigation and the risk that the Class would recover less—or possibly nothing at all. ERISA class settlements involving statutory claims that have been litigated much more frequently (and, thus, have more of a track-record) often settle for lower percentages of plaintiffs' asserted damages. *See, e.g., Prince v. Eaton Vance Corp.*, No. 18–12098, Dkt.

57 (D. Mass Sept. 24, 2019) (approving settlement for 23% of total damages); *Richards-Donald v. Teachers Insurance & Annuity Ass'n of Amer.*, No. 15–8040 (S.D.N.Y.) (\$5 million settlement representing 11.6% of alleged damages); *Figas v. Wells Fargo*, No. 08–4546 (D. Minn.) (\$17.5 million settlement representing 19.5% of alleged damages); *Sims v. BB&T Corp.*, No. 15–732, 2019 WL 1993519, *2 (M.D.N.C. May 6, 2019) (\$24 million settlement representing 19% of alleged damages); *Urakhchin v. Allianz Asset Mgmt. of Amer., L.P.*, No. 15–1614, 2018 WL 8334858, *4 (C.D. Cal. July 30, 2018) (\$12 million settlement representing 17.7% of maximum alleged damages).

Ultimately, if approved by the Court, Class Members will receive a significant percentage of the total possible recovery as calculated by Plaintiff's expert without the burden, risks and delay of further litigation. This “adequate relief” factor of Rule 23(e)(2)(C) weighs in favor of preliminary approval.

b. The Effectiveness of Distribution to The Settlement Class

The Advisory Committee's Notes to the 2018 amendments to Rule 23(e) indicate that “[m]easuring the proposed relief may require evaluation of any proposed claims process. . . .” Here, the Settlement Administrator has last known addresses and social security numbers for all Class Members, which will be kept confidential under the Court's protective order. Class Members do not need to do anything to receive their shares of the Settlement; the Administrator will simply mail them a check. In addition, if the Class Notice or Distribution Check are returned as undeliverable, the Settlement Administrator will be able to use the social security numbers to trace the Class Member to a new address. Class Members may, if they wish, request that the distribution be made directly into a tax-

qualified retirement account, but all Class Members will receive their portion no matter if they submit such a request or not. In addition, the Plan of Allocation calls for a second distribution to all Class Members of any funds remaining in the Settlement Account after the first distribution. Thus, the Notice, Claim, and Plan of Allocation are imminently reasonable and likely to successfully distribute the settlement funds to the Class.

c. The Terms of Any Proposed Award of Attorneys' Fees, Including Timing of Payment

Rule 23(e)(2)(C)(iii) directs the Court to consider, as part of its evaluation of the fairness of the Settlement, provisions related to payment of attorneys' fees, including the timing of the payment. The Advisory Committee's Notes on the 2018 Amendment indicates that "[u]ltimately, any award of attorney" fees must be evaluated under Rule 23(h), and no rigid limits exist for such awards. Nonetheless, the relief actually delivered to the class can be a significant factor in determining the appropriate fee award." The grounds for Plaintiff's motion for attorney's fees and expenses are detailed in Plaintiff's contemporaneously filed motion.

4. The Settlement Treats Class Members Equitably Relative to Each Other.

The Settlement treats Class Members equitably relative to each other.⁶ The dollar amount of the benefit that Class Members will receive from the Settlement will vary based

⁶ Plaintiff will, in addition, request that the Court approve an additional amount for his services on behalf of the Class. Such a service award does not create a conflict or a situation where Plaintiff is treated more favorably than other members of the Class. Rather, modest service awards to a named plaintiff are simply intended to "compensate named plaintiff for the work they performed—their time and effort invested in the case." *Chiefton Royalty Co. v. Enervest Energy Institutional Fund*, 888 F.3d 455, 468 (10th Cir. 2017). "These services

on how much CHK stock each Class Member had in the Plan and how quickly they divested their CHK stock holdings. Thus, Class Members who suffered the largest damages (those with large amounts of CHK stock and those who did not sell before progressive drops in CHK stock's value) will receive the most, while those who avoided most of the harm by quickly divesting their CHK stock will receive less.

a. Notice to Class Members Was Adequate

Class Members are entitled to notice of any proposed settlement and an opportunity to object before it is finally approved by the Court. *See* Manual for Complex Litig. (Fourth), § 21.31. The Court should “direct notice in a reasonable manner to all class members who would be bound by a proposed settlement.” *DeJulius v. New England Health Care Emps. Pension Fund*, 429 F.3d 935, 943 (10th Cir. 2005) (quoting Fed. R. Civ. P. 23(e)(1)(B)). Typically, this means “individual notice in the manner required by Rule 23(c)(2)(B).” *Id.*

Here notice was adequate. The Court-approved Notice, Doc. 41-1, is clear and straightforward, providing Class Members with enough information to evaluate whether to object to the Settlement, as well as directions to the Settlement Website that includes further information and the opportunity to request a direct rollover into a tax qualified account if they so choose, although no claim form submission is required to participate in the settlement distribution. Notices were mailed to the addresses on record with the Plan's recordkeeper, and the Settlement Administrator used social security numbers to trace new

typically include monitoring class counsel, being deposed by opposing counsel, keeping informed of the progress of the litigation, and serving as a client for purposes of approving any proposed settlement with the defendant.” *Id.* (quotations omitted).

addresses when notices were returned as undeliverable. This proposed method of providing notice is adequate under Rule 23(c)(2). *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985) (holding that individual mailed notice which clearly describes the case and Class Members' rights meets due process requirements).

As discussed above, the notice plan has been followed, with mailed notices going to all 4,563 Class Members, as well as the provision of a website with case documents, more information, forms to change address or request a roll-over, and a spanish-language version of the Notice. Thomas Decl. ¶¶ 3–5. Class Members have also had access to, and taken advantage of, a 24/7 toll free number. *Id.* at ¶ 6.

VIII. OBJECTIONS

As described above, the notice process included mailing notices directly to over 4,500 class members. To date, no objections have been received or filed. Boyko Decl. 33. The deadline for objections is July 28.

IX. CONCLUSION

The proposed class action Settlement Agreement is fair, reasonable, and adequate. For the foregoing reasons, Plaintiff requests that this Court certify the Settlement Class and name Gregory Porter and Mark Boyko of Bailey & Glasser LLP and Robert IZARD and Douglas Needham of IZARD, Kindall & Raabe LLP as Lead Class Counsel and pursuant to Fed. R. Civ. P. 23(g) and Robert Latham of Latham Steele Lehman as Local Class Counsel, and that the Court grant final approval of the Settlement substantially in the form of the [Proposed] Order and Final Judgment, previously submitted as Exhibit 2 to the Parties' Settlement Agreement.

Dated: July 3, 2022

Respectfully submitted,

/s/ Mark G. Boyko

Mark G. Boyko (admitted *pro hac vice*)
BAILEY & GLASSER LLP
34 N. Gore Ave. – Suite 102
Webster Groves, MO 63119
Telephone: (314) 863-5446
Facsimile: (314)-863-5483

Gregory Y. Porter (admitted *pro hac vice*)
Ryan T. Jenny (admitted *pro hac vice*)
BAILEY & GLASSER LLP
1055 Thomas Jefferson Street, NW, Suite 540
Washington, DC 20007
Tel: (202) 463-2101
Fax: (202) 463-2103
E-mail: gporter@baileyglasser.com
E-mail: rjenny@baileyglasser.com

IZARD KINDALL & RAABE LLP
Robert A. Izard (admitted *pro hac vice*)
Douglas P. Needham (admitted *pro hac vice*)
29 South Main Street, Suite 305
West Hartford, CT 06107
Tel: (860) 493-6292
Fax: (860) 493-6290
E-mail: rizard@ikrlaw.com
E-mail: dneedham@ikrlaw.com

**LATHAM, STEELE, LEHMAN, KEELE,
RATCLIFF, FREIJE & CARTER, P.C**

Bob L. Latham, OBA No. 15799

James Colvin, OBA No. 20654

1515 E. 71st Street, Suite 200

Tulsa, OK 74136

Telephone: (918) 970-2000

Facsimile: (918) 970-2002

E-mail: blatham@law-lsl.com

E-mail: jcolvin@law-lsl.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2022, I electronically transmitted the foregoing document to the Clerk of Court using ECF System for filing and transmittal of a Notice of Electronic Filing to the counsel of record for the Defendants.

/s/ Mark G. Boyko
Mark G. Boyko

CERTIFICATE OF CONFERENCE

I hereby certify that on July 3, 2022, I conferred with counsel for the Defendants. Defendants are not opposed to the relief requested in this motion. Defendants take no position on Plaintiff's specific arguments and representations.

/s/ Mark G. Boyko
Mark G. Boyko

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHRISTOPHER SNIDER, on behalf
of the Seventy Seven Energy Inc.
Retirement & Savings Plan and a class
of similarly situated participants of
the Plan,

Plaintiff,

vs.

ADMINISTRATIVE COMMITTEE,
SEVENTY SEVEN ENERGY INC.
RETIREMENT & SAVINGS PLAN; et

Defendant.

Case No. CIV-20-977-D

CLASS ACTION

**DECLARATION OF ALEX THOMAS RE:
NOTICE PROCEDURES**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Alex Thomas, declare and state as follows:

1. I am a Senior project manager with KCC Class Action Services, LLC (“KCC”), located at 462 S. 4th Street, Louisville KY, 40202. Pursuant to the Order granting preliminary approval of class action settlement, certifying class for settlement purposes, approving form and manner of notice, and setting date for fairness hearing (the “Preliminary Approval Order”) dated May 19, 2022, the Court appointed KCC as the Settlement Administrator in connection with the proposed Settlement of the above-captioned Action.¹ I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

CLASS LIST

2. On May 24, 2022, KCC received from counsel for defendants a list of 30,681 records identified as the Class List. The Class List included names, addresses, date of birth, account numbers, and account transaction information. KCC formatted the list for mailing purposes, removed 26,010 duplicate records from mailing, excluded 8 bad addresses, and processed the names and addresses through the National Change of Address Database (“NCOA”) to update any addresses on file with the United States Postal Service (“USPS”). A total of 533 addresses were found and updated via NCOA. KCC updated its proprietary database with the Class List.

MAILING OF THE NOTICE

3. On June 9, 2022, KCC caused the Class Notice to be printed and mailed to the 4,563 names and mailing addresses in the Class List. A true and correct copy of the Class Notice is

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement , and/or the Preliminary Approval Order.

1 attached hereto as Exhibit A.

2 4. Since mailing the Class Notice to the Settlement Class Members, KCC has received
3 311 notices returned by the USPS with undeliverable addresses. Through credit bureau and/or
4 other public source databases, KCC is in the process of performing address searches for these
5 undeliverable notices and will remail notices to updated addresses.

6
7 **SETTLEMENT WEBSITE**

8 5. On or about June 9, 2022, KCC established the Settlement Website
9 www.seventysevensettlement.com dedicated to this matter to provide information to the Settlement
10 Class Members and to answer frequently asked questions. The website URL was set forth in the
11 Class Notice. Visitors of the Settlement Website can download copies of the Class Notice, the
12 Class Notice in Spanish, an address change/rollover request form, and other case-related
13 documents. As of July 1, 2022, the Settlement Website has received 255 visits.

14
15 **TELEPHONE HOTLINE**

16 6. KCC established and continues to maintain a toll-free telephone number **1-888-876-**
17 **0781** for potential Settlement Class Members to call and obtain information about the Settlement,
18 request a Class Notice, and/or seek assistance from a live operator during regular business hours.
19 The telephone hotline became operational on June 9, 2022, and is accessible 24 hours a day, 7 days
20 a week. As of July 1, 2022, KCC has received a total of 7 calls to the telephone hotline.

21
22
23 **OBJECTIONS TO THE SETTLEMENT**

24 7. The deadline for Settlement Class Members to object to the settlement is July 28,
25 2022. As of the date of this declaration, KCC has received zero objections to the settlement.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed on July 1, 2022.

4 Handwritten signature of Alex Thomas in blue ink.

5
6 Alex Thomas

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

A7S

«arcode»

Postal Service: Please do not mark barcode

A7S-«Claim8»-«CkDig»

«FirstNAME» «LastNAME»

«Addr1» «Addr2»

«City», «State»«FProv» «Zip»«FZip»

«FCountry»

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

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

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

You are receiving this notice (the “Notice”) because our records indicate that you have been a participant in a 401(k) Plan involved in the lawsuit summarized below and invested some or all of your Plan account in Chesapeake Energy Corporation stock (“Chesapeake Stock”). As such, your rights may be affected by a proposed settlement of the class action litigation in the U.S. Federal Court for the Western District of Oklahoma titled *Christopher Snider v. Administrative Committee, Seventy Seven Energy Inc. Retirement & Savings Plan, et al.*, Case No. CIV-20-977-D, in the United States District Court for the Western District of Oklahoma (the “Action”). The plans involved in the Action are the Seventy Seven Energy Inc. Retirement & Savings Plan, Seventy Seven Energy LLC Retirement & Savings Plan, and the Patterson-UTI Energy, Inc. 401(k) Profit Sharing Plan (collectively, the “Plan”).

This Notice summarizes the proposed Settlement. Capitalized terms not defined in this Notice are defined in the Settlement Agreement. The complete terms and conditions of the Settlement are described in the Settlement Agreement, which is available at <http://www.seventysevensettlement.com>, by contacting Class Counsel, Mark G. Boyko at mboyko@baileyglasser.com, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.okwd.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Western District of Oklahoma, during public service hours, provided the office is not closed to the public.

DO NOT CONTACT THE COURT, THE COURT CLERK’S OFFICE, DEFENDANTS, OR DEFENDANTS’ COUNSEL TO INQUIRE ABOUT THIS SETTLEMENT.

What This Litigation Is About

This class action litigation is brought on behalf of participants in the Plan. Plaintiff Christopher Snider is the named plaintiff and the representative on behalf of all members of the Settlement Class in the Action. The lawsuit was originally filed on September 28, 2020. The Settlement Class is generally defined as all participants in the Plan at any time during the period from July 1, 2014 to February 28, 2021 and whose accounts included any investment in Chesapeake Stock at any time during such period.

The lawsuit alleges that Defendants¹ violated their fiduciary duties by continuing to offer the Chesapeake Stock in the Plan after it received Chesapeake Stock as the product of Chesapeake Energy Corporation spinning off Seventy Seven Energy Inc. in 2014. Plaintiff alleges that Chesapeake Stock is undiversified and imprudent and that the Plan's investment in Chesapeake Stock renders the Plan imprudently undiversified as well. Plaintiff alleges that the fiduciary duty of prudence and duty to diversify plan investments, as required by the Employee Retirement Income Security Act of 1974 ("ERISA"), were therefore violated.

Defendants deny all allegations of wrongdoing, fault, liability, or damages to Plaintiff and the Settlement Class and deny that they engaged in any wrongdoing or violation of law or breach of fiduciary duties. Defendants maintain that they acted in the best interests of Plan participants at all times and complied with their fiduciary obligations to the Plan and its participants. Among other things, Defendants contend that the Plan fiduciaries employed a robust and thorough process for selecting, monitoring, and removing Plan investment options, informed Plan participants of the risk of investing in Chesapeake Stock, did not allow new investments in Chesapeake Stock after the Plan was established, and allowed Plan participants the ability to choose for themselves whether to continue to invest their Plan accounts in Chesapeake Stock.

The Terms of the Settlement

To avoid the time and expense of further litigation, Plaintiff and Defendants have agreed to resolve the litigation. The Settlement is the product of extensive negotiations between the parties, who were assisted in their negotiations by a neutral private mediator. The parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. If the Settlement is approved by the Court, the Settlement Class will obtain the benefits of the Settlement without the further delay and uncertainty of additional litigation. The Settlement resolves all issues regarding the Plan's inclusion of Chesapeake Stock.

The terms of the Settlement are set forth in the Class Action Settlement Agreement dated April 18, 2022 (the "Settlement Agreement"), which is available on the Settlement Website at <http://www.seventysevensettlement.com>. Those terms are summarized below. This Notice is a summary, and in the event of any inconsistency, the Settlement Agreement controls. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability, nor is it an admission or concession on Plaintiff's part that his claims lacked merit.

1. Who Is Covered by the Settlement?

Plaintiff will request that the Court certify a class, and the Settlement will apply to, and be binding on, that class. The Settlement Class is defined as:

All persons, except Defendants and their Immediate Family Members, who were or are participants in or beneficiaries of the Plan (including the Patterson Plan²) at any time during the Class Period (July 1, 2014 to February 28, 2021) and whose accounts included any investment in Chesapeake Stock at any time during such period.

Plan records indicate that you may be a member of the Settlement Class because you are a current or former participant in the Plan who invested in Chesapeake Stock at some time during the Class Period.

2. Relief Provided to the Settlement Class by the Settlement.

Under the proposed Settlement, Defendants will arrange for \$15,000,000 to be paid into a Settlement Fund. After payment of Settlement Expenses (such as the cost of distributing this Notice), Class Counsel's attorneys' fees and costs, and other expenses, the remaining Settlement Proceeds will be paid to the Settlement Class.

¹ Collectively, the Administrative Committee of the Seventy Seven Energy Inc. Retirement and Savings Plan, Cary Baetz, Karl Blanchard, Christin Borden, Linda Clark, Clint Cover, Gina DeMarco, Lance Haffner, and Jerome Loughridge.

² The Patterson-UTI Energy, Inc. 401(k) Profit Sharing Plan.

The Settlement Proceeds will be distributed to eligible Settlement Class members pursuant to a Plan of Allocation to be approved by the Court.³ Individual payments under the Settlement for each Settlement Class member will be determined in accordance with that Plan of Allocation and cannot be quantified with certainty for any individual Settlement Class member at this time. That is in part because the exact Settlement Proceeds amount and number of Settlement Class members are not known at this time, although a preliminary review of Plan records suggests that approximately 4,000 individuals will be included in the Settlement Class. The proposed Plan of Allocation and other case and settlement documents are available at <http://www.seventysevensettlement.com>.

On a summary level, the Plan of Allocation will work as follows: The Settlement Administrator will determine the Settlement Proceeds to be allocated to Settlement Class members. The Settlement Administrator will then calculate the portion of the Settlement Proceeds to be allocated to each Settlement Class member, utilizing available Plan records, based on the harm each Settlement Class member allegedly suffered and the relative strength of the Plan's claim during the time each Settlement Class member invested in Chesapeake Stock. To do so, each Settlement Class member will have their "Net Proportion" of the Settlement calculated using the formula "Net Proportion" = (Class Member's proportion of Plan's CHK investment on 7/1/2014) * 0.3 + (Class Member's proportion of Plan's CHK investment on 12/31/2014) * 0.4 + (Class Member's proportion of the Plan's CHK investment on 12/31/2015) * 0.1 + (Class Member's proportion of the Plan's CHK investment on 12/28/2017) * 0.2.

Thus, a Settlement Class member's allocation will depend on the amount he or she had invested in Chesapeake Stock at the start of the Class Period and whether and when the Settlement Class member divested their account of Chesapeake Stock before it was removed from the Plan. To ensure that no Settlement Class member receives less than \$10, any Settlement Class member entitled to receive less than \$10 will be allocated \$10, and the remaining allocations will be adjusted proportionally. If enough assets remain in the Settlement Fund following the initial distribution, a subsequent distribution may be made pursuant to the Plan of Allocation.

Settlement benefits will be distributed by check to the address provided to the Settlement Administrator (generally, the address where this notice has been mailed). The distribution may be treated for tax purposes like a distribution from your 401(k) and, therefore, your distribution may be subject to withholdings as provided for by law. Some or all of these withholdings can be avoided by directing that the distribution be made into another qualified retirement account, like an IRA. If you would like to do that, or if you need to change your address, a form is provided on the settlement website, <http://www.seventysevensettlement.com>. You do not need to fill out a form to receive your benefits, but it is an optional form which you should use if you would like your distribution to be directly rolled into a tax qualified account.

Your distribution will be automatically mailed to you personally at this address unless you request a direct rollover or a change-of-address through the settlement website, <http://www.seventysevensettlement.com>. If you do nothing, you will still receive your distribution as a check personally to you.

Actual allocation amounts will depend on the final Settlement Proceeds, the final number of Settlement Class members, and the individual Settlement Class member's Chesapeake Stock investment during the Class Period. It is possible that some Settlement Class members may receive the minimum recovery of \$10.

³ The Settlement Proceeds are the balance of the Settlement Fund after satisfaction of attorneys' fees, costs, and expenses pursuant to Section 10.1 of the Settlement Agreement, Case Contribution Award pursuant to Section 10.2 of the Settlement Agreement, and any other Settlement Expenses pursuant to Section 8.1 of the Settlement Agreement.

All inquiries related to distributions should be addressed solely to the Settlement Administrator at the contact information provided below:

Snider v. Seventy Seven Energy Settlement Administrator
P.O. Box 8060
San Rafael, CA 94912-8060

3. Summary of the Claims Released by the Class.

In exchange for the Settlement Amount and other terms of the Settlement, if the Settlement is approved, all members of the Settlement Class will release the “Released Claims,” which are defined in the Settlement Agreement as any and all past, present, and future claims, demands, rights, liabilities, causes of action, damages, costs, expenses, and compensation of every nature or description whatsoever, fixed or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, now existing or that might arise hereafter, at law or in equity, matured or unmatured, whether class or individual in nature, asserted or that might or could have been asserted in any forum by Releasing Parties against any or all of the Released Parties that: (a) were brought or could have been brought in the Action and arise out of the same or substantially similar facts, circumstances, situations, transactions, or occurrences as those alleged in the Action; or (b) were brought or could have been brought under ERISA with respect to Chesapeake Stock in the Plan (including the Patterson Plan).

Settlement Class members will not have the right to bring any Released Claims against the Defendants or other Released Parties. “Released Parties” is defined in the Settlement Agreement and means each and all of Defendants, the Company, the Plan’s (including the Patterson Plan’s) trustees, fiduciaries, and committee members, and each of their respective past, present, and future directors, officers, fiduciaries, participants, beneficiaries, employees, employers, partners, principals, agents, members, managers, independent contractors, Representatives, underwriters, issuers, insurers, co-insurers, insureds, reinsurers, controlling shareholders, attorneys, accountants, auditors, investment bankers, advisors, consultants, trustees, investment managers, fiduciaries, committee members, personal representatives, predecessors, service providers, Successor-in-Interest, parents, subsidiaries, divisions, affiliates, assigns, heirs, executors, administrators, associates, related or affiliated persons or entities, Immediate Family Members, all other persons and firms for whom they could be legally responsible, and anyone else who could be deemed a fiduciary of the Plan (including the Patterson Plan).

The entire release is set forth in the Settlement Agreement, which can be viewed online at <http://www.seventysevensettlement.com>, or requested from the Settlement Administrator or Class Counsel.

The Settlement Approval Process

The Court has granted preliminary approval of the proposed Settlement and approved this Notice. The Settlement will not take effect, and there will be no benefits distributed under the Settlement, however, if the Court does not enter an Order and Final Judgment or the Settlement otherwise does not become effective. The Court will hold a hearing on August 18, 2022, at 10:00 A.M. to consider whether the Settlement is fair, reasonable, and adequate (the “Final Approval Hearing”). The Court and the Parties anticipate the hearing will be conducted in at the United States District Court for the Western District of Oklahoma, 200 NW 4th St., Oklahoma City, OK 73102, but the Court may, by order filed on the public record, change the format, time, or place of the hearing. Class Counsel will attend the hearing to answer any questions the Court may have. You are not required to attend the Final Approval Hearing.

The date, format, and location of the Final Approval Hearing are subject to change by order of the Court without further notice to the Settlement Class. If you would like to attend the Final Approval Hearing, you should check the Settlement Website, <http://www.seventysevensettlement.com>, or the Court's online docket to confirm that the date, format, or location has not been changed. Prior to the Final Approval Hearing, an Independent Fiduciary will be asked to approve the Settlement and Released Claims on behalf of the Plan, as may be required by ERISA Prohibited Transaction Exemption 2003-39 or any other applicable class or statutory exemptions. The Court will be informed as to whether the Independent Fiduciary approved the Settlement and Released Claims on behalf of the Plan prior to ruling on the application for final approval of the Settlement.

The Opportunity to Object to the Settlement

As a Settlement Class member, you can ask the Court to deny approval of the Settlement by filing an objection. You cannot, however, ask the Court to order a settlement on different terms; the Court can approve or reject the Settlement only on the terms reached by the Parties. If the Court denies approval, the Settlement Amount will not be distributed and the litigation will resume.

Any objection to the proposed Settlement must be made in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must be (i) served upon Class Counsel and counsel for Defendants, and (ii) submitted to the Court either by mailing to the Clerk of the Court, United States District Court for the Western District of Oklahoma, 200 NW 4th St., Oklahoma City, OK 73102, or by filing in person at the same location. The objection must be filed (actually received by the Court) on or before July 28, 2022. Each objection must contain: (a) the name and case number of the Action (*Christopher Snider v. Administrative Committee, Seventy Seven Energy Inc. Retirement & Savings Plan, et al.*, Case No. CIV-20-977-D, in the United States District Court for the Western District of Oklahoma); (b) the objector's full name, address, and telephone number; (c) whether the objector is a Settlement Class member and an explanation of the basis upon which the objector claims to be a Settlement Class member; (d) all grounds for the objection, accompanied by any legal support known to the objector or his or her counsel; (e) a statement as to whether the objector or his or her counsel intends to personally appear and/or testify at the Final Approval Hearing; (f) a list of any persons the objector or his or her counsel may call to testify at the Final Approval Hearing in support of the objection; and (g) the signature of the objector or the signature of a duly authorized attorney or other duly authorized representative for the objector. **Any member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred absent an Order from the Court.**

Those Settlement Class members or their attorneys intending to appear at the Final Approval Hearing must give notice of their intention to appear setting forth, among other things, the name, address, and telephone number of the Settlement Class member (and, if applicable, the name, address, and telephone number of that Settlement Class member's attorney) to Class Counsel and Defendants' Counsel and file it with the Court Clerk on or before July 28, 2022. **Anyone who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except by Order of the Court for good cause shown. Any comment or objection that is timely filed will be considered by the Court even in the absence of a personal appearance by the Settlement Class member or that Settlement Class member's counsel.**

If the Court approves the Settlement, you will be bound by it and will receive whatever benefits you are entitled to under its terms. You cannot exclude yourself (or “opt out”) from the Settlement. The Court has conditionally certified the Settlement Class under Federal Rule of Civil Procedure 23(b)(1), which does not permit Settlement Class members to opt out of the Class.

Attorneys’ Fees and Case Contribution Award for Named Plaintiff

The Class is represented by Class Counsel, which may be contacted as follows:

Gregory Y. Porter
Mark G. Boyko
BAILEY & GLASSER LLP
1055 Thomas Jefferson Street NW
Suite 540
Washington, DC 20007
mboyko@baileyglasser.com
314-863-5446

Class Counsel and Plaintiff have devoted many hours to investigating the claims, bringing this litigation, and pursuing it for three years. The case presents a legal theory concerning the duty to diversify investments in company stock of a former employer which was untested and, therefore, involves an unusually high level of risk for Class Counsel. During the case, Class Counsel incurred litigation expenses in addition to the time spent by attorneys, paralegals, and others. Class Counsel also took the risk of litigation and have not been paid for their time and expenses while this litigation has been pending before the Court.

Class Counsel will file a motion with the Court seeking approval of reasonable attorneys’ fees and reimbursement of the expenses they incurred in prosecuting the litigation, to be paid from the Settlement Fund. Their request will not exceed (1) attorneys’ fees of one-third of the Settlement Amount, or \$5,000,000, and (2) reimbursement of expenses of up to \$240,000.

Plaintiff will also request that the Court approve a Case Contribution Award of up to \$20,000 for Plaintiff Snider from the Settlement Fund.

Plaintiff’s preliminary approval motion and supporting papers were filed on April 21, 2022, and the final approval motion and fee and expense motion will be filed on or before July 4, 2022. You may review these filings at <http://www.seventysevensettlement.com>. Any award of attorneys’ fees, costs, and expenses and Case Contribution Award approved by the Court, in addition to the administration costs, Independent Fiduciary fees and costs, and taxes and tax-related costs, will be paid from the Settlement Fund.

Getting More Information

You do not need to do anything to be a part of this Settlement Class or, if the Settlement is approved, to be eligible to receive your share of the Settlement Fund. If you are eligible for a distribution, a check will be mailed to you.

You can visit the Settlement Website at <http://www.seventysevensettlement.com>, where you will find the full Settlement Agreement, the Court’s order granting preliminary approval, this Notice, and other relevant documents. If there are any changes to the deadlines identified in this Notice, the date of the Final Approval Hearing, or the Settlement Agreement, those changes will be posted to the Settlement Website. You will not receive an additional mailed notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on the Settlement Website, you may also contact **1-888-876-0781** for more information. Please do not contact the Court, Defendants, or counsel for Defendants to get additional information.

Dated: June 9, 2022

By Order of the United States District Court