IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Society of Professional Engineering Employees in Aerospace, IFPTE Local 2001, *et al.*,	)	
Plaintiffs,	)	Civil Action Nos. 05-CV-1251-MLB-KMH and 07-CV-1043-MLB-KMH
vs.	)	
The Boeing Company, *et al.*,	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR ORDER PRELIMINARILY APPROVING SETTLEMENT ON BEHALF OF THE HARKNESS CLASS

Plaintiffs David A. Harkness, William G. Hartig, Jr., David Lewandowski, JeNe Lewandowski, Ronald Owens, Richard Pullen, Tomey Shabshab, Donna Zagonel, and Michael Baker (collectively, "the Harkness Class Representatives"); the Society for Professional Engineering Employees in Aerospace, IFPTE Local 2001 ("SPEEA"); and the International Association of Machinists and Aerospace Workers and its District 70 ("IAM") hereby submit this memorandum in support of their motion for: (1) preliminary approval of the Settlement Agreement; (2) modification of the class definition and conditional certification of the Harkness Class as to damages; (3) approval of the class notices; and (4) entry of an order setting a date for a hearing on the fairness of the Settlement Agreement pursuant to Federal Rule of Civil Procedure 23(e). After nine years of hard-fought litigation, the proposed settlement provides the roughly 1,800-member class with a net recovery of approximately $85.6 million, after the deduction of settlement administration costs and proposed attorneys' fees and expenses. The settlement is fair, reasonable and adequate, and the Court should preliminarily approve it.

I. BACKGROUND

This case arose from Boeing's June 2005 sale of its commercial aircraft manufacturing facility in Wichita, Kansas to Spirit AeroSystems, Inc.[1] ("Spirit"). IAM, SPEEA, and the International Brotherhood of Electrical Workers Local 271 (collectively, "Unions") represented the Boeing employees at the time of the sale. Collective bargaining agreements ("CBAs") between Boeing and the Unions set forth certain rights of the employees.

The Unions contended that the CBAs contained the following promises from Boeing: (1) to provide an age-55 early retirement pension to employees, (2) to provide retiree health care for employees who took this early retirement (up to age 65), and (3) to allow laid-off employees a six-year opportunity to "bridge" to age 55 and to take advantage of those early retirement benefits, which were ordinarily only available to workers actively employed prior to their retirement. The early retirement "bridge" option allowed a participant to qualify for an age-55 pension, subject only to a 10% reduction from the amount he or she would have otherwise received at normal retirement. Without the "bridge," a participant was treated as "terminated vested" and suffered a 60% reduction for retirement at age 55. In addition, "terminated vested" employees did not have an entitlement to retiree health care.

Upon Boeing's sale of the commercial facility to Spirit, the entire workforce from the commercial operations of Wichita facility (as well as those of the Tulsa and McAlester, Oklahoma facilities) was terminated on June 16, 2005. Most of the former Boeing employees applied for jobs at Spirit, were hired by Spirit, and went to work for

[1] As discussed in Section II.B below, Spirit AeroSystems, Inc., was briefly known as Mid-Western Aircraft Systems.

Spirit on June 17, 2005. Those employees who were already 55 when they went to work for Spirit were allowed to begin collecting retirement benefits from Boeing, thus receiving their accrued pension from Boeing while working for Spirit.

Boeing declined to classify most employees under age 55 at the time of the sale as "laid off."[2] Thus, although some of them were within six years of turning 55 as of June 16, 2005, Boeing treated them as ineligible for the early retirement "bridge" option and retiree healthcare benefits they claim they would have received at age 55 had they been "laid off." Moreover, Boeing negotiated with Spirit to transfer its pension obligations for those former employees who started work at Spirit on Day One. The employees' accrued pension credit would be hosted in a frozen "mirror plan" that Spirit would administer. The affected individuals could access the pension benefits they had earned while working at Boeing once they reached age 55 and left their new jobs at Spirit. Boeing also negotiated with Spirit concerning retiree medical coverage, and Spirit agreed to provide such coverage, subject to the provisions of new collective bargaining agreements between Spirit and the Unions. Spirit and the Unions ultimately agreed that Spirit would provide retiree-medical coverage on different terms than the Boeing coverage.

SPEEA filed this lawsuit just weeks after the sale in August 2005. (Dkt. #1). The Complaint alleged claims against Boeing under the Labor Management Relations Act ("LRMA") and the Employee Retirement Income Security Act ("ERISA"). *Id*. The crux of the Complaint was that Boeing breached its CBAs with SPEEA by not treating former Boeing employees (those that immediately went to work for Spirit, those that did not seek employment from Spirit, or those that did not accept an offer of employment from Spirit)

[2] Boeing deemed as "laid off" only those terminated employees who applied for jobs at Spirit but did not receive offers. It deemed as not "laid off" all other former employees.

as "laid off" and by otherwise refusing to provide pension and medical benefits at age 55 to those SPEEA-represented employees who had at least 10 years of service in the Boeing pension plan and were within six years of turning 55 as of June 16, 2005. *Id*. The IAM, which represented the majority of former Boeing employees at the Wichita facility, joined as a Plaintiff in the case after Boeing refused to arbitrate related contractual grievances.

Boeing denied any wrongdoing.

In January 2007, the Court dismissed the Unions' ERISA claims against Boeing, holding that individual participants were necessary to bring such claims on behalf of the members. (Dkt. #63 at 2-9, 12). A group of individual participants, affected individual former Boeing employees from the Wichita facility, including the Harkness Class Representatives,[3] came into the litigation making the same allegations – that Boeing had violated the LMRA and ERISA by classifying them as "terminated subject to divestiture" rather than "laid off." (Case No. 07-1043). The Boeing defendants again denied any wrongdoing.

The Court consolidated the two cases in January of 2008, and a consolidated amended complaint was filed. (Dkt. #81). The Court granted class certification with respect to the issue of the Boeing defendants' liability to the Harkness Class under Rule 23(b)(1) and (b)(2) in July 2008. (Dkt. #118).

[3] The Harkness Class Representatives included former Boeing employees who had been represented by the IAM, SPEEA, and IBEW at the Wichita facility. These Plaintiffs had immediately gone to work for Spirit on June 17, 2005. The suit was also brought on behalf of employees who did not apply for or accept jobs with Spirit (the "McCartney-Boone Plaintiffs"). The claims of those individuals are not addressed by the Settlement Agreement and are not at issue in this motion.

Discovery commenced as to the issue of Boeing's liability in May of 2008. (Dkt. #91). Discovery in this case was both contentious and extensive. Discovery did not conclude until late 2011. In that time, the parties served numerous discovery requests on each other, including requests for production of documents and interrogatories, and took the depositions of dozens of witnesses. The discovery process also entailed disclosures, 30(b)(6) depositions of the entity parties, e-discovery, document review, and countless instances of conferral, which often preceded motions filed with the Court to compel or to quash discovery from the other parties.

Plaintiffs moved for summary judgment as to the Boeing defendants' liability in December 2011 (Dkt. #551), and the Boeing defendants moved for summary judgment in February 2012 (Dkt. #555). The parties' supporting briefs were each approximately 100 pages, and included numerous exhibits. After briefing of these motions was fully complete, the Court issued a 49-page opinion in December 2012, which mostly denied the parties' motions for summary judgment, including as to the issue of whether the Harkness class members should have been treated as "laid off" under the terms of the CBAs. (Dkt. #581).

Thereafter, at the Court's behest, Plaintiffs submitted briefing in support of their demand for a jury trial. (Dkt. #583). Boeing opposed the demand. (Dkt. #586). In January 2013, the Court rejected Boeing's argument that Plaintiffs were not entitled to a jury trial on the breach of contract claims. (Dkt. #588). The Court did not set a trial date in its January 2013 order, and instead directed the parties to first explore the possibility of settlement during a status conference held in February 2013.

The parties jointly selected David Geronemus of New York to serve as the mediator.[4]

Beginning in mid-2013, the parties engaged in damages discovery in preparation for mediation. This discovery included requests for production of documents and interrogatories, which were served on the Plaintiffs, on the Boeing defendants, and on the Spirit defendants.

After a number of scheduling delays, the parties attended a mediation conference over three days in April 2014 in Washington before mediator Geronemus. The parties returned for a final day of mediation in June 2014, at which the parties reached a tentative agreement that Boeing would pay $90 million to settle the claims brought against the Boeing defendants by (and on behalf of) the Harkness plaintiffs. The parties further agreed that the funds would be paid out of a settlement trust fund administered by a third party. In the months since the tentative settlement was reached, the parties have been negotiating over the many details associated with effectuating the settlement.

The Plaintiffs went to a great deal of effort to develop a formula of allocation that is designed to specifically address the harms the class members allegedly experienced based on the claims in the lawsuit. The formula divides distributions into two general categories: alleged pension losses and alleged medical losses. The pension distribution, constituting 80% of the total amount to be distributed to class members, is determined based on each class member's amount of credited service under the Boeing pension plans, and the number of months that class member did not receive benefits from the pension plan because he or she was actively employed by Spirit and thereby precluded

[4] David Geronemus is one of the country's most experienced and respected mediators. For a biography of Mr. Geronemus, see http://www.jamsadr.com/geronemus/.

from accessing the frozen benefit. Each class member's individual distribution is determined based on the ratio of the individual class member's alleged loss to the sum of the total alleged loss of all class members.

The other 20% of the settlement distribution will be allocated to reimburse class members for certain out-of-pocket medical expenses incurred after the class members turned 55 and separated employment from Spirit (and were thus no longer covered by Spirit health insurance). Any funds still remaining after the medical reimbursement will be distributed to all participating class members on an equal basis.

The parties' Settlement Agreement represents a hard-fought compromise between both sides to this case. After close to a decade of litigation and over 600 filings with the Court, resolution of the claims of the Harkness class members is imminent.

II. ARGUMENT

A. Preliminary Approval of the Settlement Agreement

Under Federal Rule of Civil Procedure 23(e), once a class is certified, the action may not be settled, dismissed or compromised without Court approval. The Court will ordinarily grant preliminary approval where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval. *In re Motor Fuel Temperature Sales Practices Litigation*, 258 F.R.D. 671, 675-76 (D. Kan. 2009) (citations omitted).

In deciding whether to approve a proposed settlement, the Court assesses the reasonableness of the compromise, taking into account the context in which the parties reached settlement. *Id.* Although the Court must assess the strength of plaintiffs' claims, it

should "not decide the merits of the case or resolve unsettled legal questions." *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). Furthermore, "[i]t is well-settled, as a matter of sound policy, that the law should favor the settlement of controversies." *Grady v. De Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969).

In determining whether a proposed settlement is fair, reasonable and adequate, the Court considers the following factors:

(1) whether the proposed settlement was fairly and honestly negotiated;

(2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

(3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

(4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002); *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). While the Court will consider these factors in depth at the final approval hearing, they are a useful guide at the preliminary approval stage as well. *In re Motor Fuel Temperature Sales Practices Litigation*, 258 F.R.D. at 680.

1. The Proposed Settlement Was Fairly and Honestly Negotiated

"As to the first factor, the court must first be concerned with the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations." *Belote v. Rivet Software, Inc.*, 2014 WL 3906205 at *3 (D. Colo. Aug. 11, 2014) (internal citations omitted). "Factors to be considered in this analysis include the experience of counsel, the vigor with which the case was prosecuted, and any coercion or collusion that may have marred the negotiations themselves." *Id.*

There can be no doubt that the Settlement Agreement is the product of fair and honest negotiation. The Settlement Agreement was reached after nine years of litigation by seasoned attorneys with a wealth of experience in litigating complex class actions, and provides that Boeing's payment (after the deduction of the costs of administering the settlement and proposed attorneys' fees and expenses) will be worth more than $85.6 million to the Harkness Class. This compromise was reached after several days of mediation conducted by a highly experienced and respected mediator.

Furthermore, the Court has witnessed the vigor with which this case has been litigated over the years. The first factor thus supports approval of the Settlement Agreement. See *Jackson v. Ash*, 2015 WL 751835 at *2 (D. Kan. Feb. 23, 2015) (approving agreement that was the cooperative and good faith result of arms'-length negotiation where both parties' counsel were familiar with issues litigated, the parties engaged in a time-consuming discovery process, aggressively litigated the action, and engaged in several mediation sessions); *Hershey v. ExxonMobil Corp.*, 2012 WL 5306260, at *2 (D. Kan. Oct. 26, 2012) (approving settlement where parties, represented by skilled counsel, engaged in lengthy and vigorous negotiations to reach compromise regarding claims and defenses which were the subject of extended litigation and exhaustive discovery).

2. The Ultimate Outcome of the Litigation Would be Uncertain

The second factor also favors preliminary approval of the Settlement Agreement. The resolution of the Harkness Class Representatives' claims (and thus the claims of the entire Harkness Class) rested in part on the interpretation of the terms "lay off" or "laid off," neither of which were expressly defined in the relevant CBAs. As the Court noted in

its December 2012 summary judgment order, the parties disagreed on not only the meaning of the terms, but on the relevant evidence that the Court must consider in making their meaning clear. (Dkt. #581 at 37-39). There were also a number of other issues in dispute, including the impact of Boeing's transfer of the class members' pension obligations to Spirit. The Court denied summary judgment to both parties, ultimately noting that the "Harkness Class' damages are dependent on their success on the layoff claim. If the fact finder determines that they were in fact 'laid off' from their employment with Boeing, their damages would presumably equal the amount of benefits they should have received if they were able to retire under the [Boeing Company Employee Retirement Plan] as an eligible participant. However, the court presumes that the damages would be nonexistent if the Harkness Class was not 'laid off.'" *Id*. at 42.

Given that the Harkness Class' chances to recover anything at all at trial was resting in part on a jury's finding of the meaning of the contractual terms "lay off" and "laid off," as well as resolution of other issues, and that Boeing was vigorously contesting Plaintiffs' positions, the ultimate resolution of the case was uncertain. Even if the Plaintiffs prevailed before the jury, the Court of Appeals could still overturn the verdict if it agreed with Boeing that it was entitled to summary judgment.

Apart from the legal merits of Boeing's liability, Plaintiffs expected extensive litigation over the quality and quantity of damages afforded to the class members. Plaintiffs developed a solid damage model to present at trial. Nevertheless, Boeing indicated that it would present a radically different damage model at trial, under which – Boeing would argue – the Plaintiffs had suffered relatively little or no damages.

"The presence of … doubt tips the balance in favor of settlement because 'settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.'" *Childs v. Unified Life Insurance Co.*, 2011 WL 6016486 at *13 (N.D. Okla. Dec. 2011) (citing *In re Qwest Communications Intern., Inc.*, 625 F.Supp.2d 1133, 1138 (D. Colo. 2009)). The second factor thus weighs in favor of approval of the Settlement. *See In re Thornburg Mortgage Inc. Securities Litigation*, 912 F.Supp.2d 1178, 1243 (D.N.M. 2012) ("The suggestion that the Court should force an experienced, seasoned Plaintiffs' class counsel to take the case to trial should not be made lightly, for victory is not assured or even likely except in the very best of cases.").

3. The Value of Immediate Recovery Outweighs the Mere Possibility of Further Relief After Protracted and Expensive Litigation

"[T]he value of an immediate recovery" is "to be weighed not against the net worth of the defendant, but against the possibility of some greater relief at a later time, taking into consideration the additional risks and costs that go hand in hand with protracted litigation." *Gottlieb v. Wiles*, 11 F.3d 1004, 1015 (10th Cir. 1993).

The Settlement Agreement here provides the Harkness Class with payments (after the deduction of the costs of administering the settlement and proposed attorneys' fees and expenses) that are worth more than $85.6 million. This is a significant recovery that constitutes "substantial, guaranteed relief" for a Class of approximately 1,800 members. *See In re Thornburg*, 912 F.Supp.2d at 1243. This litigation has been ongoing for over nine years and could take several more years if litigated to trial, not to mention the time taken to exhaust the almost inevitable appeals. Considering the uncertainty inherent in the case, as well as the age of the Harkness class members (who are now between the ages of

58 and 64), it would have been a tremendous gamble for Plaintiffs to forgo a "bird in the hand" in the hopes of bagging "a prospective flock in the bush." *Alvarado Partners L.P. v. Mehta*, 723 F.Supp. 540, 547 (D. Colo. 1989). *See Millsap v. McDonnell Douglas Corp.*, 2003 WL 21277124 at *13 (N.D. Okla. May 28, 2003) ("Avoiding delay is particularly important in this case due to the length of the litigation to date and the presence of an aging class," where "the average age of the Plaintiff class is approximately 59 years old"); *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 288 (D. Colo. 1997) (stating that the "ages of many class members also weigh heavily in favor of immediate recovery" and that "monetary provisions of the Consent Decree are more valuable if implemented now than if victims must wait an additional number of years").

As such, the third factor weighs heavily in favor of the fairness of the Settlement Agreement. *See Jackson*, 2015 WL 751835 at *2 (approving settlement and holding that "perhaps most significantly, the Agreement provides meaningful, immediate recovery to all class members that might otherwise be unrecoverable after a decision on the merits"); *Hershey*, 2012 WL 5306260, at *2 ("Given the huge amount of information which must be produced, the complex arguments to consider in deciding the summary judgment motions, trial, and likely appeals, the ultimate resolution of the action is likely to be years away. The court finds that the value of an immediate recovery outweighs the possibility of future relief after protracted and expensive litigation.").

4. The Parties Believe the Settlement to be Fair and Reasonable

Finally, Class Counsel, who are experienced in complex class action litigation, believe the Settlement reached here to be a fair and reasonable result. As Senior Judge Rogers has noted: "When a settlement is reached by experienced counsel after

negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable. Counsels' judgment as to the fairness of the agreement is entitled to considerable weight." *Marcus v. Kansas Department of Revenue,* 209 F.Supp.2d 1179, 1183 (D. Kan. 2002) (Rogers, J.). *See also Alvarado Partners,* 723 F. Supp. at 548 ("Courts have consistently refused to substitute their business judgment for that of counsel and the parties.").

Furthermore, the Settlement Agreement proceeds will be distributed in a fair and non-discriminatory manner to individual class members based on their alleged losses associated with the lawsuit's claims, including the individual Harkness Class Representatives themselves. Under the Plan of Allocation and Distribution Order, attached as Exhibit C to the Settlement Agreement, the total monetary settlement (after the deduction of the costs of administering the settlement and attorneys' fees) will be distributed to class members as follows: 80% of the fund shall be distributed to class members based on a calculation of their alleged actual individual lost pension benefits and 20% shall be distributed for reimbursement of actual out-of-pocket medical costs that would have been covered (capped at $40,000 per class member). If any money remains after these distributions, it is to be divided equally among the members of the class.

Because the distribution formula calls for class members to receive payment in a similar manner to how they were allegedly injured, with no one treated any better, it is a very reasonable means of distribution. As such, the fourth factor is satisfied, and supports a finding that the Settlement Agreement is fair and adequate. *See Ashley v. Regional Transportation District and Amalgamated Transit Union Division 1001 Pension Trust Fund,* 2008 WL 384579 at *7 (D. Colo. Feb. 11, 2008).

B. Conditional Certification of the Harkness Class Under Rule 23(b)(1)

This Court previously certified the Harkness Class with respect to liability, finding that the class met all of the requirements of Rule 23(a) and Rule 23(b)(1) and (b)(2). (Dkt. #118). Plaintiffs now seek to conditionally certify the Harkness Class under Rule 23(b)(1) with respect to damages. The proposed class definition is as follows:

> IAM-, SPEEA-, and IBEW-represented Boeing workers in Wichita who were participants in The Boeing Company Employee Retirement Plan ("Boeing Pension Plan") as of June 16, 2005, who had at least ten years of vesting service on that date, who were at least 49 years old but not yet 55 on that date, who went to work at Spirit or its predecessor, Mid-Western Aircraft Systems, on or around June 17, 2005, and who lived to at least age 55.

The parties have slightly modified the class definition from the one the Court previously approved at Dkt. #118. The modification consists of four minor changes that provide greater clarity for the already certified Harkness Class. The first difference is that the revised class definition simply includes "IAM-, SPEEA-, and IBEW-represented Boeing workers" in one class rather than individual subclasses. *Compare* (Dkt. #118) ("Union-represented Boeing workers"). The second change is that the class members are now described as being those "who were at least 49 years old but not yet 55," which phrase replaces the original, but less accurate phrase "who were between the ages of 49 and 55." The third change is that the definition now describes workers "who went to work at Spirit **or its predecessor, Mid-Western Aircraft Systems,** on or around June 17, 2005" (emphasis added to new language). This change is simply to address the fact that the Mid-Western Aircraft Systems was a "working title" used by the investment group that purchased the Wichita facility from Boeing in 2005. The name was changed

from "Mid-Western" to "Spirit" within two days of June 17, 2005, the date most of the class members went to work for the new company.[5]

The fourth change is the addition of the phrase "and who lived to at least age 55," which limits the class to those who survived to their 55th birthday. This phrase creates a more accurate definition of the class that is only possible because of the passage of time. The bridge benefit – the sole benefit at issue in this lawsuit – entitled a laid-off, former employee to take her retirement at age 55, as though she were still actively employed. If someone died before reaching age 55, she (and her heirs) would not be entitled to anything under the bridge benefit because reaching age 55 was a necessary prerequisite.

When the lawsuit was filed in 2005, Plaintiffs had no idea which of the former employees would ultimately reach age 55 by June 16, 2011. Likewise, when the Court certified the class in 2008, it was still impossible to know which of them would reach age 55 within the six-year period. Today, however, more than six years have passed since June 16, 2005 and it is possible to know which former employees reached age 55 and thus have actually aged into the alleged bridge benefit that was the sole subject of the lawsuit.

It is appropriate to make this clarification now and it results in no prejudice. *First*, individuals who did not reach age 55 would never have qualified for the bridge benefit anyway and thus did not lose anything. *Second*, in keeping with that fact, the allocation formula would not have provided them with any remedy under this settlement.

Because the new definition has not changed the actual meaning of the Harkness Class, the Court should grant conditional certification under Rule 23(b)(1) for the same

[5] Ken Vandruff, *Mid-Western Now Spirit Aerosystems*, Wichita Business J. (Jul 19, 2005, 12:29 pm), http://www.bizjournals.com/wichita/stories/2005/07/18/daily15.html.

reasons that it previously identified in its prior order at Dkt. #118. As before, (a) the Harkness Class is so numerous that joinder of all class members is impracticable; (b) there are questions of law or fact common to the Harkness Class; (c) the claims of the Harkness Class Representatives are typical of the claims of the Harkness Class; and (d) the Harkness Class Representatives will fairly and adequately protect the interests of the class. Rule 23(b)(1) also remains satisfied.

C. Notice

With respect to a proposed class settlement, Rule 23(e) requires the Court to direct notice "in a reasonable manner to all class members who would be bound by the proposal." In addition to the requirements of Rule 23, the Due Process Clause of the United States Constitution guarantees unnamed class members the right to notice of class certification or settlement. *See* U.S. Const., amend. V; *DeJulius v. New England Health Care Employees Pension Fund*, 429 F.3d 935, 943-44 (10th Cir. 2005). This due process right does not require actual notice to each party intended to be bound by adjudication of a class action. *See DeJulius*, 429 F.3d at 944. The Court must give "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Id.* (quoting *In re Integra Realty Resources, Inc.*, 262 F.3d 1089, 1110-11 (10th Cir. 2001)). While due process and Rule 23(e) require notice of a settlement, the content and form of that notice are left to the Court's discretion. *In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1110-11 (10th Cir. 2001). "'The standard for the settlement notice under Rule 23(e) is that it must 'fairly apprise' the class members of the terms of the proposed settlement and of their options.'" *Id.* (quoting *Gottlieb*, 11 F.3d at 1013). As one Court in this district has explained, class

notice is sufficient if it "provides a means of generally alerting class members of the terms of the settlement." *Hershey*, 2012 WL 5306260, at *5.

The proposed Notice is contained in exhibit A to the attached Settlement Agreement. The proposed Notice will advise class members of the nature of the case, the definition of the affected class, the date of the Fairness Hearing, their right to participate in the hearing and/or object to the Settlement, and how they can obtain more information online or via a toll-free telephone number. The Settlement Agreement provides for the following notice procedure: the Notice will be mailed to the last known addresses of all members of the Harkness Class.

In addition, an effort will be made to reach affected individuals who do not receive the mailed notice. A general notice, in the form set forth as Exhibit D, will also be published in the Sunday edition of the Wichita Eagle for four consecutive Sundays, and will be distributed on the PR Newswire (newspaper and news wire publication) state-specific distribution lists for the states of Colorado, Kansas, Missouri, North Carolina, Oklahoma, and Washington. See Settlement Agreement at § 1.20.

The proposed Notice provided for in the Settlement Agreement is more than sufficient to satisfy the requirements of Rule 23(e) and Due Process. See *Hershey*, 2012 WL 5306260, at *5.

III. CONCLUSION

For the reasons stated above, Plaintiffs ask the Court to grant their unopposed motion for preliminary approval of the Settlement Agreement, conditional certification of the Harkness class as to damages, and approval of the proposed Notice and notice procedure, and to set dates for objections to the proposed settlement and for a fairness

hearing on the proposed settlement. A proposed order is submitted herewith in the form of Exhibit B from the Settlement Agreement.

Dated: May 8, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May 2015 I electronically filed the foregoing with the clerk of court via the ECF system, which will send a notice of electronic filing to the following:

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