

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

**CHIEFTAIN ROYALTY COMPANY and
CASTLEROCK RESOURCES, INC.,**

Plaintiffs,

v.

Case No. 18-CV-54-JFH-JFJ

**BP AMERICA PRODUCTION
COMPANY,**

Defendant.

ORDER AWARDING CASE CONTRIBUTION AWARD

Before the Court is the Motion of Class Representatives, Chieftain Royalty Company and Castlerock Resources, Inc., for Approval of Case Contribution Award (the “Motion”) [Dkt. No. 173] and Memorandum of Law in Support Thereof (the “Memorandum”) [Dkt. No. 174], wherein Class Representatives seek a Case Contribution Award of up to \$150,000.00 to be paid from the Gross Settlement Fund. The Court has considered the Motion and Memorandum, all matters submitted in connection therewith, and the proceedings on the Final Fairness Hearing held February 25, 2022. For good cause shown, the Court finds the Motion should be **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. This Order incorporates by reference the definitions in the August 16, 2021, Stipulation and Agreement of Settlement (“Settlement Agreement”) [Dkt. No. 161-1] and all terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.
2. The Court, for purposes of this Order, incorporates its findings of fact and conclusions of law from its Order and Judgment Granting Final Approval of Class Action Settlement as if fully set forth herein.

3. The Court has jurisdiction to enter this Order and over the subject matter of the Litigation and all parties to the Litigation, including all Settlement Class Members.

4. The Short Form Notice and Long Form Notice stated that Class Representatives intended to seek a Case Contribution Award of up to \$150,000.00 to be paid from the Gross Settlement Fund. *See generally* Declaration of Jennifer M. Keough on Behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement (“JND Decl.”). Notice of Class Representatives’ request for a Case Contribution Award was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the request for a Case Contribution Award is hereby determined to have been the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.

5. Class Representatives have provided the Court with abundant evidence in support of their request for a Case Contribution Award, including: (1) the Motion and Memorandum; (2) the Declaration of Robert S. Abernathy; (3) the Declaration of Robert E. Gonce, Jr.; (4) the Declaration of Patrick M. Ryan, Andrew G. Pate, and Robert N. Barnes on Behalf of Class Counsel and exhibits thereto; (5) the Affidavits of Absent Class Members: Pagosa Resources, LLC; Wentz Production, LLC; Kelsie Wagner, Trustee of the Kelsie Wagner Trust and Successor Trustee of the Wade Costello Trust; Citadel Energy, Inc.; Dwayne Sager; and Sagacity, Inc.; and (6) the applicable law, and all pleadings, declarations, and records on file in this matter. This evidence was submitted to the Court well before the objection and opt-out deadline, and none of the evidence was objected to or otherwise refuted by any Settlement Class Member.

6. Class Representatives, Chieftain Royalty Company and Castlerock Resources, Inc.,

are hereby awarded a Case Contribution Award of \$150,000.00 to be paid from the Gross Settlement Fund. In making this Case Contribution Award, the Court makes the following findings of fact and conclusions of law:

(a) The Settlement provides for a cash payment of \$15,000,000.00 (the “Gross Settlement Fund”) to compensate the Settlement Class for past damages. Settlement Class Members will benefit from the Settlement that occurred because of the substantial efforts of Class Representatives and Class Counsel;

(b) On December 15, 2021, JND caused the Short Form Notice of Settlement to be mailed to the 43,714 potential Class Members from the initial Class Member data with a mailing address. *See* JND Decl. at ¶6. On December 17, 2021, JND caused the Notice of Settlement to be mailed via USPS first-class mail to the 51 potential Class Members identified in the supplemental Class Member data. *Id.* In total, JND caused the Notice of Settlement to be mailed to 43,765 potential Class Members. *Id.* The Notice expressly stated that Class Representative intended to seek a Case Contribution Award of up to \$150,000.00 to be paid from the Gross Settlement Fund. The Short Form Notice also directed class members to a website for further information, including the Long Form Notice, and also provided the option of requesting a Long Form Notice be sent via U.S. Mail;

(c) Class Representatives filed their Motion approximately fourteen (14) days prior to the deadline for Settlement Class Members to object. No objections were filed regarding Class Representatives’ Request for a Case Contribution Award;

(d) The Parties here contractually agreed that the Settlement Agreement shall be governed *solely* by federal common law with respect to certain issues, including the case contribution award:

To promote certainty, predictability, the full enforceability of this Settlement Agreement as written, and its nationwide application, this Settlement Agreement shall be governed *solely by federal law*, both substantive and procedural, as to due process, class certification, judgment, collateral estoppel, res judicata, release, settlement approval, allocation, *Case Contribution Award*, the right to and reasonableness of Plaintiff's Attorneys' Fees and Litigation Expenses, and all other matters for which there is federal procedural or common law, including federal law regarding federal equitable common fund class actions.

See Settlement Agreement at ¶11.8 (emphasis added) [Dkt. No. 161-1];

(e) This choice of law provision should be and is hereby enforced. *See Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency*, 174 F.3d 1115, 1121 (10th Cir. 1999) (citing *Restatement 2d of Conflict of Laws*, § 187, cmt. e (Am. Law. Inst. 1988)); *Yavuz v. 61 MM, Ltd.*, 465 F.3d 418, 428 (10th Cir. 2006); *see also Williams v. Shearson Lehman Bros.*, 1995 OK CIV APP 154, ¶ 17, 917 P.2d 998, 1002 (concluding that parties' contractual choice of law should be given effect because it does not violate Oklahoma's constitution or public policy); *Barnes Group, Inc. v. C & C Prods., Inc.*, 716 F.2d 1023, 1029 n.10 (4th Cir. 1983) ("Parties enjoy full autonomy to choose controlling law with regard to matters within their contractual capacity."). This Court and other Oklahoma federal courts have enforced similar language in prior settlements. *See, e.g., Hay Creek Royalties, LLC v. Roan Resources LLC*, No. CIV-19-177-CVE-JFJ (N.D. Okla. April 28, 2021) [Dkt. No. 74]; *Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. April 27, 2021) [Dkt. No. 117]; *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. Mar. 26, 2021) [Dkt. No. 122]; *Chieftain Royalty Co. v.*

Marathon Oil Co., No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) [Dkt. No. 119]; *Reirdon v. Cimarex Energy Co.*, No. 16-cv-00113-KEW (E.D. Okla. Dec. 18, 2018) [Dkt. No. 103]; *Reirdon v. XTO Energy, Inc.*, No. 16-cv-00087-KEW (E.D. Okla. Jan. 29, 2018) [Dkt. No. 126]; *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-00029-KEW (E.D. Okla. Mar. 27, 2018) [Dkt. No. 230]; *Cecil v. BP America Production Co.*, No. 16-cv-00410-KEW (E.D. Okla. Nov. 19, 2018) [Dkt. No. 260];

(f) Applying federal common law,¹ federal courts regularly grant incentive awards to compensate named plaintiffs for the work they performed. *See, e.g., UFCW Local 880-Retail Food v. Newmont Mining Corp.*, 352 F. App'x 232, 235 (10th Cir. 2009) (unpublished) (“Incentive awards [to class representatives] are justified when necessary to induce individuals to become named representatives...Moreover, a class representative may be entitled to an award for personal risk incurred or additional effort and expertise provided for the benefit of the class.”) (citations omitted); *Cobell v. Salazar*, 679 F.3d 909, 922-23 (D.C. Cir. 2012) (district court did not err in finding that lead plaintiff’s “singular, selfless, and tireless investment of time, energy, and personal funds to ensure survival of the litigation [merited] an incentive award[.]”); *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (“Incentive awards . . . are intended to compensate class representatives for work done on behalf of the class”); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010); *Fankhouser v. XTO Energy, Inc.*, No. CIV-07-798-L,

¹ Because the Parties here contractually agreed that federal common law controls the Case Contribution Award, I find that the opinion in *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455 (10th Cir. 2017), in which the Tenth Circuit reversed and remanded a district court order that granted an incentive award to the class representative of 0.5%, is wholly inapplicable. Moreover, Class Representatives here seek a flat award based on their hours spent times a reasonable rate, and not a percentage-based award, as was requested and awarded by the district court in *EnerVest*.

2012 U.S. Dist. LEXIS 147197, at *9-10 (W.D. Okla. Oct. 12, 2012) (incentive awards totaling \$100,000 from \$37 million fund); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) (“There is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action.”); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at *56 (E.D. Pa. June 2, 2004) (finding “ample authority in this district and in other circuits” for total incentive awards of \$125,000); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002) (“Incentive awards are not uncommon in class action litigation and particularly where . . . a common fund has been created for the benefit of the entire class.”); *Enter Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240 (S.D. Ohio 1991) (awarding \$300,000 to class representatives, equaling .93% of current cash portions of settlement and approximately .53% of estimated present value); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (\$215,000 in incentive awards from \$18 million fund); *see also Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. April 27, 2021) [Dkt. No. 117]; *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. Mar. 26, 2021) [Dkt. No. 122]; *Hay Creek Royalties, LLC v. Roan Resources LLC*, No. CIV-19-177-CVE-JFJ (N.D. Okla. April 28, 2021) [Dkt. No. 74]; *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) [Dkt. No. 119]; *Reirdon v. Cimarex Energy Co.*, No. 16-cv-00113-KEW (E.D. Okla. Dec. 18, 2018) [Dkt. No. 103]; *Reirdon v. XTO Energy, Inc.*, No. 16-cv-00087-KEW (E.D. Okla. Jan. 29, 2018) [Dkt. No. 126]; *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-00029-KEW (E.D. Okla. Mar. 27, 2018) [Dkt. No. 230]; *Cecil v. BP America Production Co.*, No. 16-cv-00410-KEW (E.D. Okla. Nov. 19,

2018) [Dkt. No. 260];

(g) The services for which incentive awards are given 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.” 5 *Newberg on Class Actions* § 17:3 (5th ed.) (“*Newberg*”). The award should be proportional to the contribution of the plaintiff. See *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1081 (7th Cir. 2013) (noting that if the lead plaintiff’s services are greater, her incentive award likely will be greater); *Rodriguez*, 563 F.3d at 960 (incentive award should not be “untethered to any service or value [the lead plaintiff] will provide to the class”); *Newberg* at § 17:18;

(h) Here, Class Representatives seek a modest, dollar-based award of \$150,000.00. This request is supported by the abundant evidence submitted by Class Representatives, including declarations from Mr. Abernathy and Mr. Gonce, representations by Class Counsel, and the affidavits of numerous Absent Class Members. See *Newberg* at § 17:12 (evidence might be provided through “affidavits submitted by class counsel and/or the class representatives, through which these persons testify to the particular services performed, the risks encountered, and any other facts pertinent to the award.”). This evidence demonstrates Class Representatives are seeking payment at a reasonable hourly rate for reasonable time expended on services that were helpful and non-duplicative to the litigation, as well as the time they will expend in the coming weeks leading up to the Final Fairness Hearing and thereafter if necessary;

(i) Mr. Abernathy’s and Mr. Gonce’s respective experience and background in the oil and gas industry more than justify their hourly rate. See *Abernathy Decl.* at ¶ 4;

Gonce Decl. at ¶ 4. In addition to their extensive experience in the oil and gas industry, both Mr. Abernathy and Mr. Gonce own and operate their own oil and gas companies, where they routinely conduct business as royalty owners, overriding royalty owners, working interest owners, as well as lessor and lessee. *Id.*

(j) As demonstrated by their Declarations, both the rate and efforts of Mr. Abernathy and Mr. Gonce are reasonable. Specifically, at the time of their Declaration, Class Representatives had dedicated a combined total of at least 400 hours to this Litigation. *See* Abernathy Decl. at ¶¶ 10, 19; Gonce Decl. at ¶¶ 10, 19. These hours were spent collecting documents for discovery, reviewing emails, draft pleadings, briefs, depositions and other court documents from Class Counsel, consulting and/or meeting with Class Counsel, participating in the mediation process, preparing for, and presenting for depositions, and reviewing and discussing settlement documents, preliminary approval documents, and final approval documents. *Id.* All of these efforts were necessary and beneficial to the Litigation and the ultimate Settlement. *Id.* The additional time Mr. Abernathy and Mr. Gonce spent on this Litigation through the Final Fairness Hearing is at least 30 hours. *Id.* And, they will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the administration of the Settlement. Mr. Abernathy and Mr. Gonce will also incur additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. However, even if Mr. Abernathy and Mr. Gonce never worked another hour on this case, the request of \$150,000.00 would justify a reasonable and modest hourly rate;

(k) Mr. Abernathy and Mr. Gonce were heavily involved in all aspects of the Litigation. They actively and effectively fulfilled their obligations as representatives of the

Settlement Class, complying with all reasonable demands placed upon them during the prosecution and settlement of this Action, and they provided valuable assistance to Class Counsel. *See* Abernathy Decl. at ¶¶ 7-10; Gonce Decl. at ¶¶ 7-10. Mr. Abernathy worked with Class Counsel since before the inception of this Litigation, and his active participation contributed significantly to the prosecution and resolution of this case. Abernathy Decl. at ¶¶ 5, 7. In addition, Mr. Abernathy and Mr. Gonce have produced documents, reviewed pleadings, motions and other court filings, communicated regularly with Class Counsel, reviewed expert analysis on damages, attended the formal mediation session, and actively participated in the negotiations that led to the settlement of this Action. *See* Abernathy Decl. at ¶¶ 7-10; Gonce Decl. at ¶¶ 7-10. All of these efforts were necessary and beneficial to the Litigation and the ultimate Settlement. *Id.*;

(1) Mr. Abernathy and Mr. Gonce were never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Litigation. *See* Abernathy Decl. at ¶20; Gonce Decl. at ¶20. In fact, Mr. Abernathy and Mr. Gonce understand and agree that such an award, or rejection thereof, has no bearing on the fairness of the Settlement and that it will be approved and go forward no matter how the Court rules on their request. *Id.* In other words, Mr. Abernathy and Mr. Gonce fully support the Settlement as fair, reasonable, and adequate, even if they are awarded no case contribution award at all. *Id.* Neither Mr. Abernathy nor Mr. Gonce have any conflicts of interest with Class Counsel or any absent class member. *Id.* Finally, multiple absent Class Members executed affidavits supporting Class Representatives' request for a Case Contribution Award. *See* Affidavits of Absent Class Members: Pagosa Resources, LLC; Wentz Production, LLC; Kelsie Wagner, Trustee of the Kelsie Wagner Trust and Successor

Trustee of the Wade Costello Trust; Citadel Energy, Inc.; Dwayne Sager; and Sagacity, Inc.;

(m) Because Mr. Abernathy and Mr. Gonce have dedicated their time, attention, and resources to this Litigation, they are entitled to the requested Case Contribution Award. *See* Joint Class Counsel Declaration at ¶¶ 73-78;

(n) Class Representatives' request for a Case Contribution Award of \$150,000.00 is fair and reasonable under Oklahoma state law for the same reasons it is fair and reasonable under federal common law and supported by the same evidence of reasonableness.

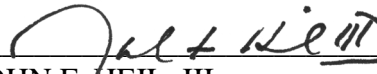
7. Any appeal or any challenge affecting this Order Awarding Case Contribution Award shall in no way disturb or affect the finality of the Order and Judgment Granting Final Approval of Class Action Settlement, the Settlement Agreement or the Settlement contained therein.

8. Any appeal or any challenge affecting this Order Awarding Case Contribution Award shall in no way disturb or affect the finality of the Order and Judgment Granting Final Approval of Class Action Settlement, the Settlement Agreement or the Settlement contained therein.

9. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Litigation, including the administration, interpretation, effectuation or enforcement of the Settlement Agreement and this Order.

10. There is no reason for delay in the entry of this Order and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b), Federal Rules of Civil Procedure.

IT IS SO ORDERED this 2nd day of March, 2022.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE