

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

CHIEFTAIN ROYALTY COMPANY)	
and CASTLEROCK RESOURCES, INC.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
BP AMERICA PRODUCTION COMPANY,)	
)	
Defendant.)	

Case No. 18-cv-00054-JFH-JFJ

**MEMORANDUM OF LAW IN SUPPORT OF CLASS REPRESENTATIVES’
MOTION FOR APPROVAL OF CASE CONTRIBUTION AWARD**

Class Representatives, Chieftain Royalty Company and Castlerock Resources, Inc. (“Class Representatives”), by and through their counsel of record, submit the following Memorandum of Law in Support of their Motion for Approval of Case Contribution Award.

I. SUMMARY OF ARGUMENT

In connection with Class Representatives’ request for approval of the Settlement in the above-captioned Litigation,¹ Class Representatives respectfully move the Court for a Case Contribution Award not to exceed \$150,000.00 from the Gross Settlement Fund, as compensation for their valuable time, effort, and assistance throughout this Litigation, which culminated in a Settlement providing for a cash payment of \$15,000,000.00 (the “Gross Settlement Fund”) to compensate the Settlement Class for past damages. The Case Contribution Award requested here is proportionate to the contributions of Mr. Robert S. Abernathy (on behalf of Chieftain Royalty

¹ All capitalized terms not otherwise defined herein shall have the meaning given to them in the August 16, 2021, Stipulation and Agreement of Settlement (“Settlement Agreement”), a copy of which is attached as Exhibit 1 to Plaintiffs’ Memorandum of Law in Support of Plaintiffs’ Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice, and Set Date for Final Approval Hearing (Dkt. No. 161).

Company, “Chieftain”) and Mr. Robert E. Gonce, Jr., (on behalf of Castlerock Resources, Inc., “Castlerock”), and it is supported by their respective Declarations demonstrating their time and effort, as well as the risk and burden they incurred. *See* Declaration of Robert S. Abernathy (“Abernathy Decl.”) and Declaration of Robert E. Gonce, Jr., (“Gonce Decl.”), attached as Exhibits 1 and 2 to Class Representatives’ Memorandum of Law in Support of Class Representatives’ Motion for Final Approval (“Final Approval Memorandum”); *see also* Declaration of Patrick M. Ryan, Andrew G. Pate, and Robert N. Barnes on Behalf of Class Counsel (“Joint Class Counsel Declaration”); and 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.

Therefore, and for the reasons below, Class Representatives respectfully request the Court grant their Motion for Approval of Case Contribution Award (the “Motion”).

II. FACTUAL AND PROCEDURAL SUMMARY

In the interests of time and judicial economy, Class Representatives will not recite the factual and procedural background of this Litigation. Instead, Class Representatives respectfully refer the Court to the Final Approval Memorandum, the Declarations and Affidavits referenced above, the pleadings on file, and any other matters of which the Court may take judicial notice, all of which are respectfully incorporated by reference as if set forth fully herein. *See New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 702 n. 21 (10th Cir. 2009) (court may take judicial notice of its own files and records).

III. ARGUMENT

In recognition of the time, effort, risk and burden Mr. Abernathy and Mr. Gonce incurred to produce such a significant result for the Settlement Class, Class Representatives seek a case

contribution award not to exceed \$150,000.00 from the Gross Settlement Fund. As demonstrated below, this request is fair, reasonable, and adequate and therefore, should be granted.

A. The Parties Have Agreed That Federal Common Law Controls the Case Contribution Award

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 Plaintiffs' 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 (Dkt. No. 161-1) (emphasis added). The Parties' decision to contractually agree that federal common law controls the case contribution award should be enforced, as it has been in recent analogous cases. 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); *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). Further, the Tenth Circuit has recognized parties' freedom to contract regarding choice of law issues and also the fact that courts typically honor the parties' choice of law:

Absent special circumstances, courts usually honor the parties' choice of law because two 'prime objectives' of contract law are 'to protect the justified expectations of the parties and to make it possible for them to foretell with accuracy what will be their rights and liabilities under the contract.'

Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency, 174 F.3d 1115, 1121 (10th Cir. 1999) (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 187, cmt. e (AM. L. INST. 1988) (the RESTATEMENT)); *Yavuz v. 61 MM, Ltd.*, 465 F.3d 418, 428 (10th Cir. 2006). Further expanding on this freedom to contract, the RESTATEMENT states:

These objectives may best be attained in multistate transactions by letting the parties choose the law to govern the validity of the contract and the rights created thereby. In this way, certainty and predictability of result are most likely to be secured. Giving parties this power of choice is also consistent with the fact that, in contrast to other areas of the law, persons are free within broad limits to determine the nature of their contractual obligations.

RESTATEMENT § 187, cmt. e (AM. L. INST. 1988); *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.").

Put simply, litigants are free to select the choice of law that will govern decisions regarding interpretation and enforcement of a settlement agreement and all matters relating to thereto. Here, in light of the fact that this is a multi-state class action, governed by Rule 23 of the Federal Rules of Civil Procedure, and a case over which this Court has jurisdiction because of the application of the Class Action Fairness Act, the parties contractually chose to apply federal common law to all matters regarding the reasonableness and fairness of the Settlement, including but not limited to, the issue of any class representative award.

B. The Case Contribution Award Is Reasonable Under Federal Common Law

Federal courts routinely grant incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case. In fact, this Court and other Oklahoma federal courts have awarded case contribution awards to class representatives in similar oil and gas class actions. *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. 17-cv-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); *Chieftain Royalty Co. v. XTO Energy, Inc.*, Case No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 230); *Reirdon v. XTO Energy Inc.*, No. 16-cv-00087-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 126); *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, Case No. CIV-12-1319-D (W.D. Okla. May 13, 2015) (Dkt. No. 52); *Chieftain Royalty Co. v. QEP Energy Co.*, Case No. CIV-11-212-R (W.D. Okla. May 31, 2013) (Dkt. No. 182); *see also, 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.”);² *Cobell v. Salazar*, 679 F.3d 909, 922-23, (D.C. Cir. 2012) (holding district court did not err in finding that

² In *Newmont*, the Tenth Circuit held the district court did not abuse its discretion in denying an incentive award to a *pro se* objector because: (1) his objections did not confer a benefit on the class, (2) he did not incur any risk, “nor could he, since his participation as an objector began after a settlement was reached and a common fund was created” (*id.* at 236), and (3) his objections to class counsel’s attorneys’ fees were “general and lacking in meaningful analysis” (*id.* at 237).

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 . . ."); *Fankhouser v. XTO Energy, Inc.*, No. CIV-07-798-L, 2012 U.S. Dist. LEXIS 147197, at *9-10 (W.D. Okla. Oct. 12, 2012) (incentive awards totaling \$100,000 from \$37 million fund); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010) (awarding case contribution award of \$15,000 to three named representatives, holding "[c]ase law in this and other circuits fully supports compensating class representatives for their work on behalf of the class, which has benefited from their representation.") (citing *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 124-25 (S.D.N.Y. 2001)); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) (1.5% of \$1.06 billion fund, equaling \$15,900,000 to be split amongst nine class representatives and stating "[t]here 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 WL 1221350, at *18-19 (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).

In *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455 (10th Cir. 2017), a two-judge panel of the Tenth Circuit reversed and remanded a district court order that granted an incentive award to the class representative to be paid out of the common fund, finding that the record did not contain sufficient evidence to support the percentage incentive award in that case of 0.5%. Regardless of the decision in *EnerVest*, the opinion is wholly inapplicable here because that case dealt with the application of state law choice of law principles while the parties here—unlike in *EnerVest*—contractually agreed that federal common law controls the case contribution award. Moreover, although incentive awards can be percentage-based or dollar-based, Class Representatives seek a flat dollar award based on the hours spent times a reasonable rate, and not a percentage-based award, as was requested and awarded by the district court in *EnerVest*. Indeed, Oklahoma federal courts have noted such distinction in awarding case contribution awards in similar oil and gas class action 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. 17-cv-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).

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.” *See* William B. Rubenstein, 5 *Newberg on Class Actions* § 17:3 (5th ed. 20) (“*Newberg*”). The award

should be proportional to the contribution of the plaintiff. *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”); *see also Newberg* at § 17:18.

Here, Class Representatives seek a dollar-based award not to exceed \$150,000.00. This request is supported by the abundant evidence submitted by Class Representatives, including their own declarations, representations by Class Counsel, Affidavits of Absent Class Members, and other evidence in the record. *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 Mr. Abernathy and Mr. Gonce are seeking reasonable payment for reasonable time expended on services that were helpful and non-duplicative to the litigation.

Mr. Abernathy has extensive experience on matters related to oil and gas mineral interests. *See Abernathy Decl.* at ¶4. Mr. Abernathy is the President and founder of Chieftain Royalty Company (“Chieftain”). Chieftain actively purchases producing and non-producing mineral and royalty interests in eleven states and owns hundreds of mineral and royalty interests in over 12,000 acres. Mr. Abernathy received a B.A. from Tulane University and a Juris Doctorate from Oklahoma City University School of Law. He is licensed to practice law in Oklahoma where he practiced for over 20 years, specializing in oil and gas, real estate, bankruptcy, and probate law. He is a nationally recognized speaker on royalty ownership issues, and he has spent over 11 years speaking to thousands of mineral interest owners around the country on all aspects of mineral

ownership, including estate planning and Oklahoma Corporation Commission rulings and regulations. He is a former board member of the National Association of Royalty Owners (NARO) and president of the Oklahoma chapter. Mr. Abernathy is also a founding member of the American Royalty Council, and he is a co-founder and Manager of Acorn Royalty Company, which is active in the SCOOP and STACK plays in Oklahoma. *Id.*

Mr. Gonce also has extensive experience in the oil and gas industry. *See* Gonce Decl. at ¶4. He began his career in the oil and gas industry as a Petroleum Landman while earning his BBA in Petroleum Land Management. Upon his graduation from the University of Oklahoma in 1982, he worked for several small Oklahoma oil companies as a consultant, until going solely independent in 1986. He continued consulting for others as he focused on building and managing his own portfolio for the next five years, at which time he started Castlerock Resources, Inc., (“Castlerock”). He proudly continues to serve as President/CEO and takes an active role in building relationships and fostering the company’s growth. Castlerock has over one-thousand five hundred producing wells in five states. Castlerock primarily focuses on participation in the drilling of oil and gas wells, as well as placing a heavy emphasis on acquiring producing and non-producing oil and gas properties with preference on mineral and royalty interests. Additionally, the company specializes in acquisitions and divestitures as other income revenue. Castlerock has been headquartered in Oklahoma City since its inception in 1991. *Id.*

As demonstrated by their Declarations, both the rates and efforts of Class Representatives are reasonable. Specifically, Mr. Abernathy and Mr. Gonce have each dedicated over 200 hours to this Litigation. *See* Abernathy Decl. at ¶19; Gonce Decl. at ¶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, preparing for and

presenting for a deposition, participating in the mediation process, 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.*

Indeed, 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 has worked with Class Counsel since before the inception of this Litigation, and his active participation has 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.

Furthermore, Class Representatives will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the Final Fairness Hearing and, if approved, will assist with administration of the Settlement. *See* Abernathy Decl. at ¶¶10, 19; Gonce Decl. at ¶¶10, 19. This will add at least an additional 25-50 hours that Class Representatives will dedicate to this Litigation. They will also incur additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. In total, Class Representatives will devote well over 400 hours to this Litigation. Class Representatives' time and effort in this Litigation more than justify an award of \$150,000.00, and also comports with awards granted in similar oil and gas

class actions. *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); *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. 17-cv-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).

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.

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. Mr. Abernathy and Mr. Gonce respectfully request the Court award them a Case Contribution Award of \$150,000.00 to reflect the important role that each

played in representing the interests of the Settlement Class and in achieving the substantial result reflected in the Settlement.

IV. CONCLUSION

For the foregoing reasons, Class Representatives respectfully request the Court enter an order granting approval of a Case Contribution Award not to exceed \$150,000.00.

DATED: January 21, 2022.

Respectfully submitted,

/s/ Bradley E. Beckworth

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CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2022, a true and correct copy of the above and foregoing document was served in accordance with the Local Rules on all counsel of record through the Court's CM/ECF filing system.

/s/ Bradley E. Beckworth

Bradley E. Beckworth

Subject: Activity in OKND case 4:18-cv-00054-JFH-JFJ Chieftain Royalty Company, et al v. BP America Production Company - Brief in Support of Motion

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U.S. District Court for the Northern District of Oklahoma

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Case Number: [4:18-cv-00054-JFH-JFJ](#)

Filer: Castlerock Resources, Inc.
Chieftain Royalty Company

Document Number: [174](#)

Docket Text:

BRIEF in Support of Motion (Re: [173] MOTION Class Representatives' Motion for Approval of Case Contribution Award) by Castlerock Resources, Inc., Chieftain Royalty Company ; (Beckworth, Bradley)

4:18-cv-00054-JFH-JFJ Notice has been electronically mailed to:

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