

IN THE DISTRICT COURT OF BLAINE COUNTY  
STATE OF OKLAHOMA

BLAINE COUNTY, OKLAHOMA  
FILED

AUG 18 2023

CHRISTY MATLI, CLERK  
BY:  DEPUTY

DDL OIL & GAS, LLC )  
and DUSTIN M. FREEMAN, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DIVERSIFIED PRODUCTION, LLC )  
successor by merger with )  
TAPSTONE ENERGY, LLC, )  
 )  
Defendant. )

Case No. CJ-2019-17

**CLASS COUNSEL'S MOTION FOR APPROVAL OF ATTORNEYS' FEES**

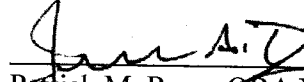
Class Counsel respectfully file this Motion for Approval of Attorneys' Fees, and hereby move this Court for entry of an Order approving Class Counsel's request for Attorneys' Fees in the amount of \$740,000.00.

Class Counsel base this Motion on: (1) the Declarations submitted as Exhibits 1 - 4 to this Motion; (2) the Memorandum of Law in Support of this Motion; (3) the Declaration of Jason A. Ryan and Drew Pate on Behalf of Class Counsel; (4) the Declaration Dustin M. Freeman; (5) the Affidavit of Barbara A. Ley; (6) the Affidavits of Absent Class Members Castlerock Resources, Inc., Chieftain Royalty Company, and Sagacity, Inc.; and (7) the applicable law, and all pleadings, declarations, and records on file in this matter, which are respectfully incorporated by reference as if set forth fully herein.

Accordingly, Class Counsel respectfully request the Court enter the Proposed Order granting the relief stated above and such further relief to which the Court finds Class Counsel entitled.

DATED: August 18, 2023.

Respectfully submitted,



Patrick M. Ryan, OBA No. 7864

Jason A. Ryan, OBA No. 18824

Paula M. Jantzen, OBA No. 20464

Chance L. Pearson, OBA No. 22269

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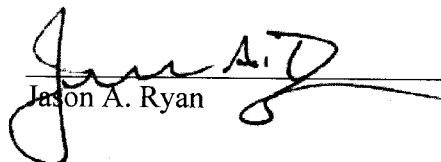
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**LIAISON LOCAL COUNSEL**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2023 a true and correct copy of the foregoing document was sent, via first class mail and/or electronic mail, to the following counsel of record:

Robert P. Costello, OBA No. 12621  
Paul D. Trimble, OBA No. 13790  
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Jason A. Ryan

# **Exhibit 1**

## **Declaration of Ryan Whaley Coldiron Jantzen Peters & Webber PLLC**

**IN THE DISTRICT COURT OF BLAINE COUNTY  
STATE OF OKLAHOMA**

DDL OIL & GAS, LLC )  
and DUSTIN M. FREEMAN, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DIVERSIFIED PRODUCTION, LLC )  
successor by merger with )  
TAPSTONE ENERGY, LLC, )  
 )  
Defendant. )

Case No. CJ-2019-17

**DECLARATION OF PATRICK M. RYAN  
IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND  
REIMBURSEMENT OF EXPENSES ON BEHALF OF  
RYAN WHALEY COLDIRON JANTZEN PETERS & WEBBER, PLLC**

I, Patrick M. Ryan, of Ryan Whaley Coldiron Jantzen Peters & Webber PLLC ("RW"), declare, pursuant to 12 Okla. Stat. § 426 as follows:

1. I am a partner at RW. I submit this declaration in support of Class Counsel's Motion for Approval of Attorneys' Fees ("Fee Motion"), Class Counsel's Motion for Approval of Reimbursement of Litigation Expenses ("Expense Motion"), and Class Representatives' Motion for Case Contribution Award ("Case Contribution Award Motion"), which are filed contemporaneously herewith. Unless otherwise stated in this declaration, the statements made herein are based upon my personal knowledge and information available to me to the best of my recollection, and while I do not believe there are any errors, omissions, incomplete or incorrect statements, to the extent any occur, they are wholly accidental and unintentional.

2. I, and my law firm, have litigated class actions and complex commercial litigation in the United States District Courts for the Eastern District of Oklahoma, the Western District of

Oklahoma, and the Northern District of Oklahoma, the state courts of Oklahoma, and numerous other state and federal courts around the country. A copy of RW's Summary Resume, as well as a brief biography of the RW attorneys who worked on this litigation, are attached hereto as Exh. A.

3. RW, along with Nix Patterson, LLP, and Barnes & Lewis, LLP, are court-appointed Class Counsel for Plaintiffs DDL Oil & Gas, LLC and Dustin M. Freeman, on behalf of themselves and all others similarly situated ("Plaintiffs" or "Class Representatives"), and the Certified Class. I personally rendered legal services and had co-responsibility for coordinating and leading the activity carried out by attorneys at RW in this litigation. RW significantly contributed to this litigation and performed work on behalf of and for the benefit of the Class.

4. The information in this declaration regarding RW's time and expenses is based upon records maintained by RW in the ordinary course of business. I am one of the partners who provided oversight and conducted the day-to-day activities in the litigation. This declaration was prepared with the assistance of other lawyers and staff at RW with knowledge of the matters reflected herein and reviewed in detail by me before signing.

5. This case was filed over four (4) years ago, on June 5, 2019. Because RW is a relatively small firm, prosecution of this litigation required the devotion of substantial time, manpower, and resources from Class Counsel over that extensive period. Moreover, RW was limited in its ability to work on other cases as a result of the time and effort this litigation required.

6. Thus, RW has expended considerable time and effort in advancing the claims of the Class in this matter and, as a result of substantial time and labor, obtained an outstanding Settlement for the Class. With this background, and based on the below information, I believe the fee request is fair and reasonable and should be approved.

7. We were retained by Class Representatives to prosecute this case on a fully contingent basis. Class Representatives negotiated, and we agreed to, a contract to prosecute this case on a fully contingent basis with a fee arrangement of 40% of any recovery obtained for Class Representatives and/or the Class. I believe, and numerous state and federal courts in Oklahoma have determined, that a 40% contingent fee is within the appropriate market rate range for cases of this nature. Under Oklahoma law, the percentage of the common fund method is permitted as long as the resulting fee is reasonable. *See Strack v. Continental Resources, Inc.*, 2021 OK 21, ¶19, 507 P.3d 609, 617. Indeed, the application of the equitable common fund doctrine is a bedrock premise of litigation in this country and has repeatedly been applied by the United States Supreme Court, the Tenth Circuit, Oklahoma federal and state courts, every federal circuit, and legal scholars. Otherwise, the absent class members would get a windfall at the expense of Class Counsel and Mr. Freeman. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165 (1939); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988); *Court-Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 237, 250 (3d Cir. 1985).

8. The application of hourly rates on a pay as you go basis could not and would not work here. Class Representatives could not afford to pay for the fees and expenses it took to litigate this matter. And, as a professional matter, neither myself, my firm, nor my partners could or would have agreed to take on this litigation on an hourly basis where we advanced costs and expenses and worked at risk of non-payment only to be paid an hourly rate if, and only if, we obtained a full recovery for our client and absent class members. This fact of business is a troublesome one for most firms and their clients, and that trouble is compounded by the fact that

the defendants in most royalty cases, including this one, are well-funded oil companies with their own internal legal department and a cadre of top outside counsel lawyers who work by the hour.

9. Nevertheless, in addition to the contractually agreed upon 40% contingent fee market rate, Class Representatives also negotiated an hourly rate that Class Counsel and additional Plaintiffs' Counsel would bill at in the event this Court determined that it was appropriate to consider Plaintiffs' Counsel's hourly rates to determine whether any fee request is fair and reasonable. To be clear, Class Representatives did not agree to pay these rates, nor could they afford to. The use of an hourly rate in a contingent fee case is an inefficient endeavor and, to put it simply, patently unreasonable in the context of commercial litigation. This is so because unlike our adversaries, who work by the hour, with no out of pocket expenses, we advance all costs and expenses, work entirely at risk, lose the ability to take on other paying work, and run the risk that we will lose both the value of our time and expenses if we lose. Further, our goal is always to achieve the best result possible for the class under the circumstances at the time, and if possible, resolve all claims as quickly and efficiently as possible. If that means we can obtain a fair and reasonable settlement the day we file the case, we will do so; if that means we must get a case certified, uphold that certification on appeal, then try the case to verdict and judgment, and then uphold that judgment on appeal, we will do so. Put simply, we will prosecute a case through trial and all appeals, completely at risk of non-payment and total and utter loss.

10. Based upon my experience, knowledge, education, study, and professional qualifications, I believe that the 40% contingent fee we agreed to with Class Representatives is the market rate for this case and is fair and reasonable and, further, that the hourly rates Class Representatives agreed upon for me, NP, and our co-counsel are below market rate for cases



prosecuted on a contingent basis and approved by Oklahoma state and federal courts for this type of case.

11. I am personally experienced and qualified to offer evidence regarding what I believe are reasonable attorney rates in Oklahoma multi-state class actions. I have testified at least 20 times in state and federal courts on the reasonableness of attorney fees.

12. I have been practicing law for more than 53 years in Oklahoma state and federal courts, as well as in military courts during my first four years of practice.

13. I graduated from the University of Oklahoma College of Law in 1969, where I was Order of the Coif and an editor of the Oklahoma Law Review. After graduating from law school, I served for four years in the United States Air Force, including serving for two years as the Chief Military Justice for Southeast Asia. I then returned to Oklahoma and practiced for several years at an Oklahoma City law firm before establishing my own civil litigation firm in Oklahoma City in 1981. In 1995, I was appointed United States Attorney for the Western District of Oklahoma, where I served until 1999. During that time, I prosecuted Oklahoma City Bombing Defendants Timothy McVeigh and Terry Nichols.

14. In 1999, I returned to private practice as President/Director of RW. As a partner at RW, I have prosecuted and defended numerous class actions and complex commercial actions in the United States District Courts for the Eastern, Northern, and Western Districts of Oklahoma, the state courts of Oklahoma, and numerous other state and federal courts around the country. During the course of my career, I have tried more than 200 jury trials and countless bench trials, specializing in all forms of business litigation, defense of bad faith insurance claims, pharmaceutical and medical device claims, oil and gas royalty claims, and high-profile criminal defense matters, including securing the acquittal of a founder/CEO in one of the largest corporate

fraud cases prosecuted by the U.S. Department of Justice. My practice has included working both against and with some of the preeminent attorneys in the country.

15. My class action experience includes suits involving oil and gas, securities accounting, environmental pollution, and other topics and industries. In many of those cases, I have defended corporations and financial institutions against class actions, including BNY Mellon in the matter *Compsource v. BNY Mellon* in the United States District Court for the Eastern District of Oklahoma. I defended that case against Nix Patterson, LLP (“NP”) and Michael Burrage, who acted as Class Counsel. RW has also served as court-appointed class counsel for plaintiffs and settlement classes in oil and gas royalty litigation, and in those cases and others, have submitted many fee applications in Oklahoma courts. For example, RW was appointed Class Counsel with NP in a contingent fee royalty class action, *Reirdon v. XTO Energy, Inc.*, Case No. 16-cv-00087, in the United States District Court for the Eastern District of Oklahoma. There, we achieved a common fund settlement for the Class. Since that case, NP and RW have been appointed as Class Counsel in no fewer than eight similar class actions in Oklahoma federal courts. I have also prosecuted and defended major MDL cases, involving breast implants, pharmaceutical products, securities, tobacco products, and other types of cases assigned by the MDL panel.

16. I am an active member of the Oklahoma Bar. I have served on the Board of Governors for the Oklahoma Bar Association, as President of the Oklahoma County Bar Association, Vice-President of the Oklahoma Bar Foundation, and President of the Oklahoma Young Lawyers. I am a Master Emeritus of all three Inns of Court for the Western District of Oklahoma. I was elected to the American College of Trial Lawyers, am a Fellow in the International Academy of Trial Lawyers, and the Americans Board of Trial Advocates, where I served as President of the Oklahoma chapter. Through my leadership roles in these organizations,

I have interacted with trial attorneys practicing not only throughout Oklahoma, but throughout the country, and through those relationships, have become familiar with the rate and fee structures utilized by attorneys in a wide range of matters.

17. My experience litigating on both sides of the docket—representing both plaintiffs and defendants in a variety of fee arrangements, including billing by the hour—gives me special expertise in what constitutes reasonable attorney rates in Oklahoma in complex class actions, like this one. Through my experience as an expert witness regarding attorneys' fees in Oklahoma, I have become familiar with the market rates for attorneys operating on various fee structures, including contingent fees where expenses are advanced, as well as hourly fees where expenses are not advanced.

18. Based upon my own personal experiences, and the knowledge, skill and experience I have gained from my own work and study on this issue, I believe I am qualified to testify regarding the reasonableness of attorneys' fees in a contingent fee class action such as this one. Based on my qualifications and experience, I can attest that a 40% contingent rate is the market rate for a complex, multistate royalty class action like this one. In my opinion, there are very few Oklahoma firms who have the skill, ability, and funding to prosecute a case like this one. In my opinion, the vast majority of law firms could not and would not take such a case on a contingent basis. Moreover, in my experience, I am not aware of a single law firm that would agree to take on a case like this at an hourly rate and also agree that they would (1) advance all costs and expenses and (2) would only get paid that straight hourly rate if they obtained a settlement or judgment and, even then, (3) could only get paid upon judicial review and approval.

19. I have instructed the attorneys and staff at my firm working on this matter to keep records regarding their time, even though we are working on a fully contingent basis. For the

motions at issue, I asked each attorney and staff member at the firm to report to me regarding the time they spent prosecuting this matter. I have been provided with access to material information supporting the fee and expense requests that are the subject of this declaration, and have reviewed such materials. As a result of this review, reductions were made to both time and expenses in the exercise of “billing judgment.” As a result of the review and the adjustments made, I believe the time and expenses set forth below are reasonable in amount, and were necessary for the effective and efficient prosecution and resolution of the litigation.

20. Based on the work performed and this review of information reflecting work performed by RW attorneys in this litigation, I directed preparation of the chart set forth below identifying RW partners and paraprofessionals who undertook litigation activities in connection with the litigation, each individual’s hourly rate, and the total number of hours each individual expended in connection with work on this litigation.

21. As set forth below, RW’s total number of hours in this litigation to date is at least 443 hours. Further, we anticipate working approximately 90 additional hours preparing for the September 18 Final Fairness Hearing and working with Class Members and the Settlement Administrator on distribution. This would result an additional value of approximately \$58,000 in hours worked.

Name	Title	Hours	Rate	Lodestar
Patrick Ryan	Sr. Partner	40.2	\$1075	\$43,215.00
Paula Jantzen	Partner	165.7	\$700	\$115,990.00
Jason Ryan	Partner	134.8	\$700	\$94,360.00
Chance Pearson	Partner	79.5	\$700	\$55,650.00
JoAnn Mickle	Sr. Paralegal	23.1	\$275	\$6,352.50
<b>TOTAL</b>		443.3		\$315,567.50

22. In my judgment, the number of hours expended, and the services performed by the attorneys at RW were reasonable and provided a benefit to the Class. I believe this total number

of hours is a conservative and understated amount because, among other things, all of our attorneys work extensively on many matters in a collaborative context where it is not possible to record every hour worked and/or not possible to reduce any given hour to only one case. Therefore, I believe my firm worked more hours on this case than the hours listed above.

23. RW's hourly figures are based on its billing rates, which do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the billing rates.

24. As set forth in the chart below, RW has incurred a total of \$552.38 in unreimbursed expenses in connection with this litigation as of the date of this declaration. In my judgment, these expenses were reasonable, necessary, and critical to the prosecution of this litigation:

**Ryan Whaley Coldiron Jantzen Peters & Webber PLLC  
Expense Report**

	<b>Total Category Expense</b>
<b>Administrative Expenses</b>	
AT&T/Conferencing	\$11.16
FedEx/ Postage	\$95.14
Court Fees/ Filing/ Reporting/Deposition Transcripts/Witness Fees	\$242.14
Copies	\$16.20
<b>Travel/Meals</b>	
Mileage	\$110.04
Meals	\$48.38
<b>Research &amp; Investigation</b>	
Westlaw/Lexis Nexis	\$29.32
<b>TOTAL LITIGATION EXPENSES</b>	<b>\$552.38</b>

25. These expenses are reflected on the books and records of RW. It is RW's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of RW work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

26. Finally, Mr. Freeman is seeking a Case Contribution Award. I and other members of my firm have worked with Mr. Freeman for years on this case both prior to its filing and throughout its prosecution. Mr. Freeman has been instrumental in the successful pursuit of this case, and he has diligently worked with Class Counsel to pursue the best interests of the Class. Mr. Freeman has identified and collected relevant documents, reviewed discovery and filings submitted in the Litigation and used during mediation, and he was directly involved in the negotiation process that led to the excellent settlement for the Class. Therefore, we believe the Case Contribution Award he is seeking is more than fair and reasonable and should be granted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 18, 2023.

*Patrick M. Ryan*

# Exhibit A

# Patrick Ryan

## *Director*

With more than 35 years of experience in civil litigation, Pat Ryan is best known for successful high-profile cases including his work as U.S. Attorney in the prosecution and conviction of Oklahoma City Bombing defendants Timothy McVeigh and Terry Nichols in Denver, and just recently securing the acquittal of a founder/CEO in one of the largest corporate fraud cases prosecuted by the U. S. Dept. of Justice. After serving four years in the United States Air Force, including two years as the Chief Military Justice for Southeast Asia, Ryan practiced at a local Oklahoma City law firm before establishing his own civil litigation firm in Oklahoma City in 1981. Ryan is former president of the Oklahoma County Bar Association and the Oklahoma Chapter of the American Board of Trial Advocates and former member of the Board of Governors of the Oklahoma State Bar Association.

## **Education/Military**

- J.D., University of Oklahoma
- United States Air Force, Chief of Military Justice for Southeast Asia, 1972 - 1974

## **Professional Activities**

- Fellow in the American College of Trial Lawyers
- Fellow in the International College of Trial Lawyers
- Oklahoma County Bar Association, Former President
- Oklahoma Chapter of the American Board of Trial Advocates, Former President
- Oklahoma State Bar Association, Former Governor

## **Honors/Awards**

- Attorney General of the United States Gold Medallion
- President's Victim Rights Award
- Oklahoma County Bar Association's Leadership Award
- Excellence awards from the City of Oklahoma City, the FBI and multiple federal and state agencies.
- Listed in Every Edition of "Best Lawyers in America"
- Listed as one of Oklahoma's 10 "Super Lawyers"
- Listed in "Chambers" as one of Oklahoma's Top 3 Business Litigators



**PAULA M. JANTZEN**

Ph: 405-228-2131

Email: [pjantzen@ryanwhaley.com](mailto:pjantzen@ryanwhaley.com)

Ms. Jantzen attended the University of Oklahoma where she earned a B.A. in Philosophy. After receiving a Masters Degree in Classics from St. John's College in Santa Fe, New Mexico, she worked as a policy analyst with the New Mexico Office of the Governor and Department of Public Safety. She received her J.D. from Cornell School of Law and she is a Director at the Firm.

Ms. Jantzen's practice experience includes administrative proceedings and litigation involving: the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the Resource Conservation and Recovery Act (RCRA); the Clean Water Act (CWA); the federal Natural Gas Act (NGA); the Archaeological Resources Protection Act (ARPA); the Native American Graves Protection and Repatriation Act (NAGPRA); and various state counterparts to these federal statutes.

Ms. Jantzen is admitted to practice in Oklahoma and New Mexico and, in addition to her experience in administrative matters and litigation, Ms. Jantzen also has experience on appellate matters in the States of Oklahoma, New Mexico, Kansas, and Texas, as well as the United States Court of Appeals for the Tenth Circuit and the United States Supreme Court. Ms. Jantzen has represented a variety of commercial, industrial, and agricultural clients on matters that involve:

- environmental contamination and natural resource damages issues;
- remediation of contaminated properties;
- oil and gas royalties;
- the underground storage of natural gas;
- agricultural and industrial permitting and compliance (both state and federal);
- solid and hazardous wastes;
- water quality, stormwater runoff, and wastewater treatment;
- environmental torts;
- sale and transfer of contaminated properties;
- work with technical consultants and expert witnesses;
- class actions;
- development of permit applications, site plans, and consent decrees;
- soil, sediment, and groundwater contamination;
- responding to EPA CERCLA 104 requests; and
- business transaction disputes such as breach of contract, indemnity obligations, and insurance coverage disputes.

# Jason A. Ryan

*Director*

Jason A. Ryan graduated from the Oklahoma City University School of Law in 2000.

Mr. Ryan was admitted to practice in Oklahoma in 2000 and since that time has focused on civil litigation. Mr. Ryan has successfully handled numerous cases involving death and serious injuries resulting from automobile or trucking accidents, medical errors, defective products, nursing home neglect, construction negligence, insurance bad faith, and a host of other wrongful conduct. Many of these cases have resulted in million dollar and multi-million dollar recoveries for his clients.

Mr. Ryan was recently selected by The National Trial Lawyers to be part of its list of Top 100 Trial Lawyers for the State of Oklahoma. Mr. Ryan has also been selected by the National Trial Lawyers for its Top 40 Under 40 list, and as a Rising Star by Oklahoma Super Lawyers Magazine.

Mr. Ryan is admitted to practice in the State Courts of Oklahoma, the United States District Courts, Western, Eastern and Northern Districts of Oklahoma, and the Tenth Circuit Court of Appeals. He is a member of the Oklahoma County, Oklahoma and American Bar Associations.

## **Exhibit 2**

### **Declaration of Nix Patterson**

**IN THE DISTRICT COURT OF BLAINE COUNTY  
STATE OF OKLAHOMA**

DDL OIL & GAS, LLC	)	
and DUSTIN M. FREEMAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CJ-2019-17
	)	
DIVERSIFIED PRODUCTION, LLC	)	
successor by merger with	)	
TAPSTONE ENERGY, LLC,	)	
	)	
Defendant.	)	

**DECLARATION OF DREW PATE IN SUPPORT OF  
MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES  
FILED ON BEHALF OF NIX PATTERSON, LLP**

I, Drew Pate, of Nix Patterson, LLP ("NP") declare as follows:

1. I am a partner at NP. I submit this declaration in support of Class Representatives' Motion for Final Approval ("Approval Motion"), Class Counsel's Motion for Approval of Attorneys' Fees ("Fee Motion"), and Class Counsel's Motion for Approval of Reimbursement of Litigation Expenses ("Expense Motion"), which are filed contemporaneously herewith. Unless otherwise stated herein, the statements made herein are based upon my personal knowledge and information available to me to the best of my recollection, and while I do not believe there are any errors, omissions, incomplete or incorrect statements, to the extent any occur, they are wholly accidental and unintentional.

2. I, and my law firm NP, have litigated class actions and complex commercial litigation in the United States District Courts for the Eastern District of Oklahoma, the Western District of Oklahoma, and the Northern District of Oklahoma, the state courts of Oklahoma, and

numerous other state and federal courts around the country. A copy of NP's Summary Resume, as well as a brief biography of the NP attorneys who worked on this Litigation, is attached hereto as Exhibit 1.

3. NP, along with Ryan Whaley Coldiron Jantzen Peters & Webber PLLC ("RW") and Barnes & Lewis, LLP ("BL"), are court-appointed Class Counsel for Class Representatives and the Settlement Class. See July 7, 2023 *Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class for Settlement Purposes, Approving Form and Manner of Notice, and Setting Date for Final Fairness Hearing* at p. 6. I personally rendered legal services and had co-responsibility for coordinating and leading the activity carried out by attorneys at NP in this Litigation. NP significantly contributed to this Litigation and performed work on behalf of and for the benefit of the Settlement Class. NP was intimately involved in all aspects of the Litigation, both prior to filing and while the matter was pending.

4. The information in this declaration regarding NP's time and expenses is based upon records maintained by NP in the ordinary course of business. I am one of the partners who oversaw and/or conducted the day-to-day activities in the Litigation. This declaration was prepared with the assistance of other lawyers and staff at NP with knowledge of the matters reflected herein and reviewed in detail by me before signing.

5. This case was filed over three years ago, in June 2019. Because NP is a relatively small firm, prosecution of this litigation required the devotion of substantial time, manpower and resources from Class Counsel over that period. Further, NP has spent a substantial amount of time and effort in negotiating and preparing the necessary paperwork related to the Settlement with Defendant.

6. I have instructed the attorneys and staff at my firm working on this matter to keep records regarding their time, even though we are working on a fully contingent basis. At the close of this case, I asked each attorney and staff member at the firm to report to me regarding the time they spent prosecuting this matter. I have been provided with access to material information supporting the fee and expense requests that are the subject of this Declaration, and have reviewed such materials. As a result of this review, reductions were made to both time and expense in the exercise of “billing judgment.” As a result of the review and the adjustments made, I believe the time and expenses set forth below are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Litigation.

7. Based on the work performed and this review of information reflecting work performed by attorneys at NP in this Litigation, I directed preparation of the chart set forth below identifying NP’s partners and associates who undertook litigation activities in connection with the Litigation, each individual’s hourly rate, and the total number of hours each individual expended in connection with work on this Litigation.

8. As set forth below, NP’s total number of hours in this Litigation to date is at least 227.9 hours.

<b>Nix Patterson, LLP</b>			
	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
<b>Partners</b>			
Brad Beckworth	40	\$ 1,075.00	\$ 43,000.00
Drew Pate	169	\$ 700.00	\$ 118,300.00
Susan Whatley	12	\$ 700.00	\$ 8,400.00
<b>Associates</b>			
James Warner	6.9	\$ 500.00	\$ 3,450.00
<b>TOTAL</b>			<b>\$ 173,150.00</b>

In addition to these past hours, we reasonably anticipate expending at least an additional 20 future hours through Final Approval and distribution of the Net Settlement Fund, for an estimated future lodestar of \$12,000.00, and a total lodestar of \$185,150.00.<sup>1</sup>

9. In my judgment, the number of hours expended and the services performed by the attorneys at NP were reasonable and expended for the benefit of the Settlement Class in this Litigation. If the Court deems it necessary, NP can provide additional detail regarding the hours expended during this Litigation. I believe this total number of hours is a conservative and understated amount because, among other things, all of our attorneys work extensively on many matters in a collaborative context where it is not possible to record every hour worked and/or not possible to reduce any given hour to only one case. Therefore, I believe my firm worked more hours on this case than the hours listed above.

10. NP's hourly figures are based on its billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the billing rates.

11. As set forth in the chart below, NP has incurred a total of \$85,021.92 in unreimbursed expenses in connection with this Litigation as of the date of this Declaration. In my judgment, these expenses were reasonable, necessary, and critical to the prosecution of this Litigation.

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<sup>1</sup> This total does not include any future hours devoted to any potential appeal. In the event of an appeal, NP reserves the right to seek additional fees associated with any such appeal.

**NIX PATTERSON, LLP**  
**Expense Report**

	<b>Total Category Expense</b>
<b>Litigation Support</b>	
Matlin Petroleum Co.	412.50
<b>Expert/Consulting Expenses</b>	
Barbara A. Ley	83,490.29
<b>Research &amp; Investigation</b>	
Lexis Nexis	280.09
<b>Travel Expenses</b>	
Lodging, Meals and Transportation	839.04
<b>TOTAL SUBMITTED EXPENSES</b>	<b>\$85,021.92</b>

12. These expenses are reflected on the books and records of NP. It is NP's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of NP's work in connection with this Litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this Litigation.

I declare under penalty of perjury, pursuant to 12 Okla. Stat. § 426, that the foregoing is true and correct.

DATED: August 14, 2023.



Drew Pate  
Nix Patterson, LLP





# NIX PATTERSON, LLP

## SUMMARY RESUME

Detailed information regarding Nix Patterson, LLP (“Nix Patterson” or “NP”) may be found on the firm’s website: [www.nixlaw.com](http://www.nixlaw.com). The firm’s website contains a wide variety of information, including the history of the firm, highlights of current and previous successes, photographs of facilities, and biographies of each attorney.

For convenience, a *concise* overview of the firm is as follows:

Nix Patterson is a national contingency fee law firm providing litigation strategies and solutions for individuals, companies, investors, whistleblowers, and sovereigns. We have extensive experience handling large-scale, complex cases that require creative and bold action. Nix Patterson’s skilled, innovative and hardworking attorneys have achieved record-breaking litigation success. Because Nix Patterson only works on a contingency fee basis, our clients pay us nothing unless we win.

Although Nix Patterson may be best known as one of the firms who obtained a \$17.2 billion settlement for the State of Texas in the historic tobacco litigation, we have also recovered billions more in jury verdicts and settlements in diverse and complex cases across a wide range of practice areas. Across the United States, we handle almost every type of complex and critical litigation and arbitration for consumers, investors, whistleblowers, governmental entities and business entities. Our successful and uniquely diverse litigation practice has been driven by one constant: our talented attorneys achieve extraordinary results through hard work and innovation. Our clients choose us because they know we devote all resources necessary to achieve their goals.

Born in Texas over 40 years ago, Nix Patterson has long been at the forefront of the small group of firms with nationwide contingency practices. We have a well-deserved reputation for excellence and innovation in groundbreaking litigation. Every day, each attorney at Nix Patterson strives to be second to none. We believe there is no better place to achieve justice for our clients than the courtroom—and no better lawyers to pursue your claims and maximize your recovery than Nix Patterson.

Below is a representative sample of some of the most recent matters and results Nix Patterson has achieved on behalf of its clients:

***State of Oklahoma v. Purdue Pharma, L.P., et al.***

On June 30, 2017, Nix Patterson, led by lead trial attorney, Brad Beckworth, and co- counsel, filed a lawsuit in Cleveland County, Oklahoma on behalf of the State of Oklahoma and Oklahoma Attorney General Mike Hunter against several major pharmaceutical companies that manufacture highly addictive and often deadly opioid painkillers. The lawsuit alleged that the defendants—including Purdue Pharma, Johnson & Johnson, and Teva—intentionally misled Oklahoma healthcare providers and residents about the addictive and harmful nature of opioid medications to increase sales of their drugs in the State. These companies advertised opioids as being essentially non- addictive and harmless, which caused massive volumes of unnecessary drugs to be prescribed to Oklahomans, creating a severe public health nuisance.

On January 11, 2018, Cleveland County District Court Judge Thad Balkman ordered that the trial in this matter would begin on May 28, 2019, marking the first state lawsuit against opioid manufacturers to go to trial in the Nation.

On June 13, 2018, the Purdue defendants filed a Notice of Removal, removing the case from Cleveland County to the United States District Court for the Western District of Oklahoma. The remaining manufacturer defendants consented to the removal. The very next day, on June 14, the State of Oklahoma filed its Motion to Remand the case. The State argued in its Motion that the defendants breached a written agreement to not remove the case, waived any opportunity to remove the case, lacked any basis for asserting federal court jurisdiction, and removed the case solely as a delay tactic to avoid ongoing discovery in the state court case. Due to the urgency and unprecedented scope of the opioid addiction epidemic, the State argued the Motion should be expedited. As such, the State filed its reply brief in support of the Motion overnight, within six hours of the defendants filing their opposition to the State's Motion. On August 3rd, after considering the extensive briefing by the parties, the Honorable Judge Vicki Miles-LaGrange, granted the State's Motion to Remand.

On March 25, 2019, the Oklahoma Supreme Court denied Defendants' request to delay the start of the trial in this matter by 100 days.

On March 26, 2019, the State of Oklahoma announced that Purdue Pharma had agreed to pay \$270 million to settle the claims brought against it in this matter. Under the terms of the settlement, Purdue immediately contributed \$102.5 million to establish a world class foundation for addiction treatment and research at Oklahoma State University, with additional payments of \$15 million each year for the next five years beginning in 2020. The company will also provide \$20 million of addiction treatment and opioid rescue medications to the center over the same five-year time frame. And, \$12.5 million from the settlement will be used directly to help cities and counties struggling with the opioid crisis. The Sackler family, who founded and own Purdue Pharma, will also contribute \$75 million over the next five years to the treatment and research center. Lead Nix Patterson attorney, Brad Beckworth, said the model here is that "the money needs to go to fixing the problem." "This is a major step in trying to turn this ship," he said. "The only way you can fix the problem is treat addiction, destigmatize addiction and educate doctors and the public." He believes that the settlement will set a precedent. "I hope other states will use this as a model to deal with the problem in their respective communities."

On May 26, 2019, and on the eve of trial, Teva agreed to pay \$85 million to settle the claims brought against it in this matter. In a news release announcing the settlement, Attorney General Mike Hunter stated that the money from the Teva settlement will be “used to abate the opioid crisis in Oklahoma.” Hunter further stated that the Teva settlement is a testament to the state’s legal team’s “dedication and resolve to hold the defendants in this case accountable for the ongoing opioid overdose and addiction epidemic that continues to claim thousands of lives each year.”

On May 28, 2019, this case proceeded to a bench trial against Johnson & Johnson on the sole equitable claim of public nuisance. The trial spanned approximately seven weeks, and included testimony from 43 witnesses, 935 exhibits admitted into evidence, and numerous hearings.

Following trial, the trial court found Johnson & Johnson had created a public nuisance and ordered it to pay \$465,026,711.00 to abate the nuisance. NP was named 2019 Trial Team of the Year by The National Trial Lawyers in recognition of this verdict. Although the Oklahoma Supreme Court reversed the verdict on a legal ground, NP continues to pursue other claims against J&J and certain opioid distributors in Oklahoma, as well as in the State of Washington.

#### ***Cline v. Sunoco***

On August 27, 2020, Nix Patterson and Co-Counsel Ryan Whaley obtained a final judgment following the verdict of more than \$150 million on behalf of Oklahoma royalty owners. The Honorable Judge John Gibney ruled in favor of the Plaintiff, Perry Cline, and the Class of owners he represented following a four-day bench trial led by NP partners Brad Beckworth and Drew Pate. Judge Gibney awarded the Plaintiff and Class in the amount of \$80,691,486.00 in actual damages and \$75,000,000.00 in punitive damages.

The lawsuit alleged Sunoco violated Oklahoma law by withholding interest owed on late royalty payments unless an owner specifically requests it. In October 2019, the Court certified the case as a class action. Nix Patterson then strategically filed a motion for partial summary judgment that, if granted, would substantially narrow the issues for trial. The Court granted the motion one week before trial and ruled that Sunoco must pay the interest automatically under Oklahoma law. This verdict is the largest class action verdict in Oklahoma history.

#### ***British Petroleum/Deepwater Horizon Oil Spill Litigation***

In 2015, Nix Patterson obtained a historic settlement for the State of Florida against British Petroleum arising out of the Deepwater Horizon oil spill. Nix Patterson represented the State of Florida in its effort to recover economic losses from this disaster. Ultimately, the firm recovered \$2 billion for the State of Florida.

In addition, Nix Patterson represented more than 20 other governmental entities in litigation against BP, and more than 1,000 businesses, ranging from small restaurants to publicly traded corporations, in their claims against BP related to the Deepwater Horizon oil spill. To date, the total settlements obtained by Nix Patterson in this matter exceed \$3 billion.

***Pummill, et al. v. Cimarex Energy Co., et al.***

Nix Patterson, led by lead trial attorney, Brad Beckworth, served as co-counsel in this declaratory judgment action requesting the court declare the rights of royalty owners and the obligations of lessees on four key issues of Oklahoma royalty law relating to oil and gas lease interpretation, payment of royalty on gas used as fuel off the lease, payment of royalty under different form gas marketing agreements and payment of statutory interest on late royalty payments. In 2012, NP and its co-counsel achieved favorable declaratory summary judgment rulings for the plaintiffs on all four issues. The court's declaratory summary judgment ruling on the payment of statutory interest was affirmed by the Oklahoma Court of Appeals, Division 1, and the Oklahoma Supreme Court. In October 2015, NP and its co-counsel successfully tried the remaining three declaratory judgments and the defendants' counterclaim to the court in a full bench trial and achieved a favorable judgment for the plaintiffs on all four issues. The Oklahoma Court of Civil Appeals, Division 4, issued a 31-page published decision affirming the trial court's judgment on January 5, 2018. The Oklahoma Supreme Court denied the oil company's petition for certiorari on May 21, 2018. NP is one of the only firms to try a case to judgment concerning these critical issues of Oklahoma royalty law—a judgment that will benefit over a million Oklahoma royalty owners.

***The Chickasaw Nation and The Choctaw Nation v. United States Dept. of Interior, et al.***

NP partners Brad Beckworth, Lisa Baldwin, Susan Whatley, and Trey Duck represented the Chickasaw Nation and the Choctaw Nation in an historic settlement with the federal government. This litigation involved allegations that the federal government mismanaged over 1.3 million acres of the timber lands belonging to the Chickasaw and Choctaw Nations. Along with co-counsel, NP conducted comprehensive fact and expert discovery—including analyzing millions of pages of historical trust-related documents and taking or defending 37 depositions across the country. NP also played an integral role in settlement negotiations and the mediation process, which was overseen by court-appointed Special Master and former federal judge, John Robertson (Ret.). Ultimately, the case settled for \$186 million, the fifth largest settlement out of 86 tribal trust actions that have been filed. The settlement also represented a significant milestone in the tribal trust relationship between the United States and the Chickasaw and Choctaw Nations.

***In re MGM Mirage Securities Litigation***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin, served as Co-Lead Counsel in this action, representing a class of investors in MGM securities in the United States District Court for the District of Nevada. The class alleged MGM falsely misled the market regarding MGM's ability to survive and thrive during the U.S. financial crisis and obtain adequate capital to finance its unprecedented CityCenter project. After zealously litigating this action for almost six years, NP obtained a settlement of \$75 million on behalf of the class. The settlement was the largest securities class action recovery in the history of the District of Nevada at the time—exceeding the combined amount of the next three largest class action recoveries. This result is particularly notable because it was obtained in the absence of a financial restatement by MGM or a regulatory or governmental agency investigation related to the same conduct.

***Chieftain Royalty Co. v. SM Energy Co., et al.***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin, represented a class of underpaid royalty owners in this action against SM Energy Co. and its successors, EnerVest and FourPoint. After vigorously prosecuting this action as class co-counsel for over four years, NP obtained a partial settlement with respect to the claims against EnerVest and FourPoint totaling nearly \$55 million on behalf of the class. This settlement consisted of a \$52 million cash payment (which alone represents approximately 100% of the class' principle claim for royalty underpayment) and contractually guaranteed future benefits that ensure EnerVest and FourPoint will not deduct certain specific costs from royalty payments for a period of 36 months. These binding changes to the Settling Parties' royalty payment methodology have a present value of at least \$2.9 million. On December 23, 2015, the United States District Court for the Western District of Oklahoma granted final approval of the settlement.

***Chieftain Royalty Co. v. QEP Energy Co.***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin, served as co-class counsel in this action alleging QEP, an energy company with oil and gas operations in Oklahoma, secretly and systematically made unlawful deductions from a class of royalty owners' monthly royalty payments. After more than two years of litigation, NP and its co-counsel obtained a \$155 million settlement for the class. This settlement consisted of a \$115 million cash payment (which alone represents more than 100% of the class' principle claim for royalty underpayment) and contractually guaranteed future benefits that ensure QEP will not resume its previous practice of improper cost deductions. On May 31, 2013, the United States District Court for the Western District of Oklahoma granted final approval of the settlement.

***Drummond et al. v. Range Resources-Midcontinent, LLC, et al.***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin, represented a class of royalty owners in this action against Range Resources, an energy company with substantial interests in Oklahoma oil and gas wells. As in *QEP*, the class members in this case alleged Range unlawfully deducted certain pre-marketing costs from the class members' royalty payments. NP prosecuted this action for over two years, overcoming Range's initial dispositive motions, conducting comprehensive fact and expert discovery—such as analyzing the thousands of oil and gas leases involved—and obtaining class certification. As Range was preparing to appeal the court's class certification order, the parties began settlement negotiations and a mediation process with highly respected mediator and former federal judge, Layn Phillips. After multiple mediation sessions in Oklahoma City and New York City, NP and its co-counsel achieved an \$87.5 million cash settlement for the class, which has been approved by the Court.

***CompSource et al. v. BNY Mellon, N.A. et al.***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin, filed suit in the Eastern District of Oklahoma on behalf of CompSource Oklahoma—a

statutorily-created state workers compensation insurance company—and other participants in BNY Mellon’s securities lending program, alleging that BNY Mellon breached its fiduciary duties (under both common law and ERISA), breached its securities lending agreements, and was negligent in connection with its investment of its clients’ funds in medium-term notes of Sigma Finance, Inc. After three and a half years of hard fought, intense litigation, which included nearly five million pages of documents produced and reviewed; a total of 59 depositions taken or defended (which took place in seven different states and resulted in 16,483 pages of recorded testimony and the inclusion of 1,738 exhibits), the parties reached a settlement in this matter for \$280,000,000. The Court has granted final approval of this settlement.

### ***AFTRA v. JPMorgan***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin, filed suit in the Southern District of New York on behalf of AFTRA and other participants in JPMorgan’s securities lending program alleging that JPMorgan violated its fiduciary duties (under both common law and ERISA) to AFTRA and the class in connection with the same investments in Sigma as those at issue in *CompSource*. On the eve of trial, and after the Court granted class certification, the parties reached a settlement in the amount of \$150,000,000. The Court has granted final approval of this settlement.

### ***MoneyGram Securities Litigation***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, and Susan Whatley, served as Lead Counsel for Lead Plaintiff, Oklahoma Teachers Retirement System, in this matter filed in the United States District Court for the District of Minnesota. This litigation involved alleged false and misleading statements surrounding the quality and nature of asset-backed securities held in MoneyGram’s investment portfolio. This case was unique in the fact that it is only one of a few “subprime” cases brought against an entity that is neither a bank, Wall Street investment bank, nor originator of asset backed securities. Indeed, this is one of the few cases brought—and we believe the first case successfully resolved—based upon a company’s failure to properly disclose the quality and nature of the asset-backed securities it purchased. NP reached an \$80 million settlement with MoneyGram and the individual defendants, which has been granted final approval by the Court. The settlement ranks as one of the top settlements in all “subprime” cases.

Below is biographical information of the Nix Patterson attorneys who were involved in this matter:

#### **Bradley E. Beckworth**

Bradley E. Beckworth, Partner, graduated *magna cum laude* from Texas A&M University (B.A. 1994) and *cum laude* from Baylor Law School (J.D. 1997). Brad is the Co-Head of Nix Patterson’s Complex Litigation Group. He focuses primarily on securities fraud and other complex litigation, but also has successfully tried lawsuits in a diverse range of cases, including the opioid litigation, oil and gas litigation, commercial disputes and intellectual property infringement. For example, Brad just recently completed a seven- week trial as the lead trial attorney in Cleveland County, Oklahoma against pharmaceutical giant, Johnson & Johnson, regarding the opioid crisis. In 2015, Brad was the lead trial attorney in *Pummill v. Cimarex*, where

Nix Patterson won a judgment for the plaintiff in one of the most significant oil and gas cases ever tried in the State of Oklahoma; and, in 2012, Brad was lead counsel in successfully defending the 2012 Heisman Trophy winner against the NCAA Enforcement Division. Brad has given presentations to numerous boards of trustees of public funds and has been quoted in news articles by several publications, including *The Wall Street Journal*, *New York Times*, and *Bloomberg*. He has served as a member of the Rules Committee of the United States District Court for the Eastern District of Texas and served several terms as an adjunct trial advocacy professor for Baylor Law School. An article written by Steve Stecklow, *Setting the Date: How One Tech Company Played With the Timing of Stock Options*, WALL ST. J, July 20, 2006 at A1, featured one of Nix Patterson's securities litigation cases (referencing Brad's and Nix Patterson's role in the case) and received the Pulitzer Prize for Public Service Journalism. Prior to joining Nix Patterson, Brad served as judicial law clerk to Judge Richard Schell, Chief Judge for the United States District Court for the Eastern District of Texas. Areas of Concentration: Securities Fraud Litigation; Commercial Class Action Litigation; Business Litigation, Intellectual Property Litigation; Oil & Gas Litigation; Strategic Planning and Crisis Management. Professional Activities and Memberships: State Bar of Texas; Oklahoma Bar Association; Arkansas Bar Association; New York Bar Association; American Association for Justice; American Bar Association. Professional Honors: Law Clerk to the Hon. Richard A. Schell, Chief Justice, USDC Eastern District of Texas; *Adjunct* Professor, Baylor University School of Law. Bar Admissions: Texas; Oklahoma; Arkansas; New York; U.S Court of Appeals for the Fifth, Ninth and the Tenth Circuits, USDC Eastern District of Texas; USDC Eastern District of Arkansas; USDC Western District of Arkansas; USDC Western District of Oklahoma; USDC Eastern District of Oklahoma; USDC Northern District of Illinois.

### **Susan Whatley**

Susan Whatley, Partner, graduated with academic distinction from Texas A&M University at Commerce (B.S. 2000). Susan graduated cum laude from Baylor Law School (J.D. 2004). While at Baylor, Susan was a member of the Baylor Law Review, serving as both an Associate Editor and an Editor of the Texas Practice and Procedure Edition. Susan also was a member of the winning team in the Bob and Karen Wortham Practice Court Competition. Susan has a broad range of experience representing the firm's public and private investor clients. She is admitted to practice in all state courts in the State of Texas, the State of Oklahoma, U.S. District Court for the Eastern, Western, and Northern Districts of Oklahoma; the U.S. District Court for the Eastern District of Texas.

### **Drew Pate**

Drew Pate, Partner, graduated summa cum laude from Trinity University (B.A. 2008) and magna cum laude from Baylor Law School (J.D. 2011). While at Baylor, Drew was a member of the Baylor Law Review, serving as the Editor-in-Chief from Fall 2010 through Spring 2011. Prior to serving as Editor-in-Chief, Drew served as an Associate Editor and the Business Editor. Drew was also the Evidence Coach of the 2011 Baylor Law National Trial Competition Mock Trial Team. He is admitted to practice in all state courts in the States of Texas and Oklahoma.

### **James E. Warner III**

James Warner, Associate, is a trial attorney with nearly twenty years of experience representing clients in a wide variety of complex civil litigation. James joined Nix Patterson in 2018. Prior to joining the firm, James clerked for the Honorable Timothy D. DeGiusti and Robin J. Cauthron of the United States District Court, Western District of Oklahoma. James' previous work experience also includes thirteen years in private practice at Holladay & Chilton, PLLC, an esteemed civil litigation boutique firm in Oklahoma City. James attended the University of Oklahoma College of Law, where he served as Executive Editor of the American Indian Law Review. During law school, James interned for Magistrate Judge Shon T. Erwin of the Western District of Oklahoma, the Honorable Charles Johnson of the Oklahoma Court of Criminal Appeals, and the Oklahoma State Senate. In 2014, James was awarded the Oklahoma Bar Association's Fern Holland Courageous Lawyer Award and Pro Bono Award.



## **Exhibit 3**

### **Declaration of Barnes & Lewis, LLP**

**IN THE DISTRICT COURT OF BLAINE COUNTY  
STATE OF OKLAHOMA**

DDL OIL & GAS, LLC	)	
and DUSTIN M. FREEMAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CJ-2019-17
	)	
DIVERSIFIED PRODUCTION, LLC	)	
successor by merger with	)	
TAPSTONE ENERGY, LLC,	)	
	)	
Defendant.	)	

**DECLARATION OF ROBERT N. BARNES, PATRANELL BRITTEN LEWIS,  
AND EMILY NASH KITCH**

Robert N. Barnes (“Barnes”), Patranell Britten Lewis (“Lewis”), and Emily Nash Kitch (“Kitch”) of Barnes & Lewis, LLP (“BL”) declare as follows:

1. We submit this declaration in support of Class Representatives’ Motion for Final Approval (“Approval Motion”), Class Counsel’s Motion for Approval of Attorneys’ Fees (“Fee Motion”), Class Counsel’s Motion for Approval of Reimbursement of Litigation Expenses (“Expense Motion”), and Class Representatives’ Motion for Approval of Case Contribution Award (“Contribution Motion”) (collectively, the “Motions”).

2. BL has been lead counsel in at least fourteen (14) Oklahoma oil and gas class action cases that have been concluded and resulted in combined Common Funds approaching \$700 million – far more than any other law firm in Oklahoma. BL holds the distinction of having been lead counsel in the first oil and gas class action nationwide to have been successfully tried to a jury. That jury verdict was upheld on appeal and resulted in a total Common Fund of approximately

\$110 million. See *Bridenstine v. Kaiser Francis*, Case No. 97,117 (unpublished) August 22, 2003, *cert. denied*, June 26, 2006, Okla. Sup. Ct., Case No. DF-01569.

3. Robert Barnes has practiced law in state and federal court for over 46 years. He grew up in the oil and gas industry (his father was an exploration geologist) and the legal community (two uncles were well known lawyers). He graduated from the University of Oklahoma College of Law in 1974. By the time he was 28 years old, he had tried numerous jury trials and taken hundreds of depositions while based in Tulsa. By age 30, he had two years of experience as district counsel for Texas Oil & Gas Corp (the most active driller in Oklahoma at the time). By age 31, he was the vice-president of land and general counsel for Texas International Petroleum Corporation, an Oklahoma City-based company with offices in numerous states. By age 32, he was president of Carson Petroleum Corp. in Oklahoma City. In 1982, he co-founded the oil and gas law firm of Stack & Barnes in Oklahoma City. By that time, he was AV-rated by Martindale Hubbell based on his experience as an oil and gas lawyer. Over the next 10 years, Barnes represented primarily large independent oil and gas companies in major litigation such as: Samson Resources, Lear Petroleum, and Kaiser-Francis. During that time, Barnes was a frequent lecturer on oil and gas law-related topics at Bar sponsored events. In 1991, Barnes co-founded BL with Ms. Lewis. Through the remainder of the 1990s, BL continued to represent oil and gas companies, but also took on more and more contingent fee litigation for landowners and mineral owners against oil and gas companies. By the time that BL became lead class counsel in *Bridenstine vs Kaiser-Francis* in the late 1990s, Barnes was well-known as an expert litigator in all facets of the oil and gas industry.

4. Patranell Lewis has practiced law in state and federal court for over thirty (30) years. She began her career working in the oil and gas area working for Dwight's Energy Data

(now known as IHS Energy Group). Ms. Lewis graduated from the University of Oklahoma College of Law in 1987 and earned top honors in various courses, including top honors in the Oil and Gas law course. She joined Mr. Barnes in 1986 and three years later was AV-rated by Martindale Hubbell. Ms. Lewis became a partner in 1991. She has represented both oil companies and mineral owners in complex litigation. She has served as class counsel in the oil and gas royalty owner class actions in which BL has been involved.

5. Emily Kitch has been practicing law for over ten (10) years in Oklahoma state and federal courts. She graduated from the University of Oklahoma College of Law in 2008 and joined BL in 2017. She has litigated, among other matters, multiple class action suits involving, among other things, oil and gas royalty matters, bad faith, breach of contract, and other topics and industries.

6. The statements made herein are made based upon our personal knowledge and information available to us to the best of our recollection, and while we do not believe there are any errors, omissions, incomplete or incorrect statements, to the extent any occur, they are wholly accidental and unintentional.

7. BL, Nix Patterson, LLP (“NP”), and Ryan Whaley Coldiron Jantzen Peters & Webber, PLLC (“RW”) have been appointed by the Court as Class Counsel for Class Representatives and the Settlement Class. We personally rendered legal services and had co-responsibility for coordinating and leading the activity carried out by attorneys at BL in this Litigation. As Co-Lead counsel for Class Representatives, DDL Oil & Gas, LLC and Dustin M. Freeman (“Class Representatives”), BL contributed to this Litigation and performed work on behalf of, and for the benefit of, the Settlement Class. Specifically, BL was appropriately involved in all aspects of the Litigation on behalf of Plaintiffs, both prior to filing and while the matter was

pending. We have read the Joint Class Counsel Declaration regarding Class Representatives' and Class Counsel's efforts, which have resulted in a Settlement with Defendant that has a total value of \$1,850,000.00. We concur with those statements made in the Joint Class Counsel Declaration and incorporate those statements herein by reference.

8. BL has been involved in and served as lead class counsel in many oil and gas class actions as described in more detail herein. Based on the decades of oil and gas class action litigation experience of BL, the Settlement reached in this case is an extraordinary result for the Settlement Class. We believe the terms and conditions of the Settlement are fair, reasonable, and adequate and in the Settlement Class's best interests. These types of cases bear risks and uncertainties. The Settlement avoids these risks and provides the Settlement Class with a substantial recovery.

9. We have also reviewed the initial Plan of Allocation and been involved with cultivating the Plan of Allocation with class expert, Barbara Ley. We incorporate by reference the Affidavit of Barbara Ley regarding the details of the Plan of Allocation and concur that the proposed Plan of Allocation is fair, reasonable, adequate, and in the best interests of the Class.

***The Fee Request is Reasonable***

10. Class Counsel is seeking an award of Attorneys' Fees of \$740,000.00 (the "Fee Request"). Class Counsel has been successful in obtaining a Cash Settlement of \$1,850,000.00. This fee request is consistent with the amounts approved by Oklahoma federal courts and Oklahoma state courts in many oil and gas class actions that have occurred since the mid-1990's, which can be seen from the chart below:

Statistics Maintained by Coalition of Oklahoma Surface & Mineral Owners Inc. as updated on recent cases by Barnes & Lewis				Percentage of Common Fund Awarded			
Case Name	Case No. & Court	Year Awarded	Common Fund	Lodestar Multiplier	Attorney Fee	Litigation Costs	Class Rep. Fee
<i>Duke v. Samson</i> Honorable Robert Collier	CJ-94-31 Dewey Co.	1996	\$1,454,375	undetermined	30%	.21%	00%
<i>Greghol v. Barrett</i> Honorable Edward Cunningham	CJ-96-166-1 Canadian Co.	1996	\$180,000	undetermined	30%	undetermined	00%
<i>Black Hawk v. Exxon</i> (Oil-WI only) Honorable Deborah C.Shallcross	CJ-93-02226 Tulsa Co.	1999	\$9,000,000	undetermined	31.80%	7.35%	3.72%
<i>Rudman v Texaco</i> Honorable William Hetherington	CJ-97-1E Stephens Co.	2001	\$25,000,000	4	40%	3.27%	1%
<i>Bridenstine v. Kaiser-Francis</i> (After Full Jury Trial & Appeal) Honorable Ronald Kincannon <b>Barnes &amp; Lewis Lead Counsel</b>	CJ-2000-1 Texas Co.	2001-04	\$109,974,437	5.25	30%	3%	.81%
<i>Duke v. Apache</i> Honorable Joe Jackson	CJ-94-32 Dewey Co.	2002	\$1,967,500	undetermined	33 %	3.69%	00%
<i>Fazekas v. Arco</i> Honorable Bill Welch	C-98-65 Latimer Co.	2002	\$6,250,000	undetermined	35%	10%	6.4%
<i>McIntosh v. Questar</i> Honorable N. Vinson Barefoot	CJ-02-22 Major Co.	2002	\$1,500,000	3	40%	3%	.33%
<i>Barnaby v. Marathon</i> Honorable Bill Welch	C-96-40 Latimer Co.	2003	\$3,645,241	undetermined	33%	1.8%	.33%
<i>Booth v. Cross Timbers</i> Honorable Robert Collier	CJ-98-16 Dewey Co.	2003	\$2,500,000	undetermined	33%	1.6%	.40%
<i>Kouns v. Louis Drefus</i> Honorable Robert Collier	CJ-98-20 Dewey Co.	2003	\$2,778,125	undetermined	33%	.79%	.43%
<i>Robertson/Taylor v. Sanguine</i> Honorable Richard Van Dyck	CJ-02-150 Grady Co.	2003	\$13,250,606	10	40%	.08%	1%
<i>Kouns v. ConocoPhillips</i> Honorable Ray Dean Linder <b>Barnes &amp; Lewis Co Lead Counsel</b>	CJ-98-61 Dewey Co	2004	\$4,300,000	undetermined	42.56%	3%	.47%
<i>Mayo v Kaiser-Francis</i> (WI only) Honorable Richard Van Dyck	CJ-93-348 Grady Co.	2004	\$5,000,000	5	40%	.85%	00%
<i>Velma-Alma v. Chesapeake</i> Honorable Joe Enos	CJ-2002-331-E Stephens Co.	2004	\$10,500,000	3.25	34.95%	3%	2%
<i>Velma-Alma v. Texaco</i> Honorable C. Allen McCall, Jr.	CJ-2002-304 Stephens Co.	2005	\$27,000,000	undetermined	40%	4.5%	1.07%
<i>Brumley v. ConocoPhillips</i> Honorable Greg Zigler <b>Barnes &amp; Lewis Lead Counsel</b>	CJ-2001-5 Texas Co.	2005	\$30,761,379 cash portion \$6,990,000 future benefits	3.85	36% of cash	2.4%	.88%
<i>Continental v. Conoco</i> Honorable Richard Perry	CJ-95-739 w/ CJ-2000-356 Garfield Co.	2005	\$23,000,000	undetermined	40%	.74%	.50%

<i>Cactus Petrol v. Chesapeake</i> (WI only) Honorable Greg Zigler	CJ-2004-4 Harper Co.	2005	\$6,500,000	undetermined	26.37%	3%	.35%
<i>Lobo v. BP</i> (WI only) Honorable Gerald Riffe	CJ-97-72 Beaver Co.	2005	\$150,000,000	8.7	40%	.50%	.50%
<i>Shockey v. Chevron</i> (Multi State-OK portion \$28.3 mil.) Honorable Ellis Cabaniss	CJ-2001-7 Washita Co.	2005	\$28,300,000	4-6.6	33%	4%	.42%
<i>Bank of America v. El Paso</i> (take-or-pay issues not post production) Honorable Ellis Cabaniss	CJ-97-68 Washita Co.	2006	\$66,000,000	undetermined	37%	2.5%	.34%
<i>Lawrence v. Cimarex</i> Honorable Richard G. Van Dyck	CJ-2004-391 Caddo Co.	2006	\$6,475,000	5.25	33%	2%	.39%
<i>Lavery v. Newfield</i> Honorable P Thomas Thombrugh	CJ-98-06012 Tulsa Co.	2007	\$17,250,000	4.2	40%	2.9%	.4%
<i>McNeely v. National Mobile Health Care</i> Honorable Vicki Mile LaGrange	CIV-07-933-M Western Dist.	2008	\$2,000,000	undetermined	33.5%		
<i>Simmons v. Anadarko</i> Honorable Wyatt Hill <b>Barnes &amp; Lewis Lead Counsel</b>	CJ-2004-57 Caddo Co.	2008	\$155,000,000	4.5	40%	.56%	.5%
<i>Taylor v. ChevronTexaco</i> Honorable Gerald Riffe	CJ-2002-104 Texas Co.	2009	\$12,000,000	1.76	40%	5%	1%
<i>Brown v. Citation</i> Honorable Richard G. Van Dyck <b>Barnes &amp; Lewis Lead Counsel</b>	CJ-04-217 Caddo Co.	2009	\$5,250,000	1.28	40%	2%	1%
<i>Adkinsson v. Koch</i> Honorable John H. Scaggs Mitchell, CJ & Joplin, J. concur	Appeal from Seminole Co OK	2009	\$30,000,000	5.22	25.4%		\$63,000
<i>Hill v. Marathon</i> Honorable David Russell	CIV-08-37-R Western Dist.	2011	\$40,000,000	undetermined	33.3%	1%	.0025%
<i>Eatinger v. BP America Production Co.</i> Honorable Eric F. Melgren	07-1266- EFM- KMH Kan Dist. Ct	2012	\$19,000,000	undetermined	33.3%		1%
<i>Mitchusson v. Exco</i> Honorable Wyatt Hill <b>Barnes &amp; Lewis Lead Counsel</b>	CJ-2010-32 Caddo Co.	2012	\$23,500,000	6.3	40%	.81%	.64%
<i>Tatum v. Devon Energy</i> Honorable Carl G. Gibson	CJ-10-77 Nowata Co.	2013	\$3,800,000	undetermined	45%	.7986%	\$5,000
<i>Chieftain v. QEP</i> Honorable David L. Russell <b>Barnes &amp; Lewis Lead Counsel</b>	CIV-11-212-R Western Dist.	2013	\$115,000,000 cash portion \$40,000,000 future benefits	undetermined	33.3% of cash	.68%	.50%
<i>Hill v. Kaiser-Francis</i> Honorable David L. Russell <b>Barnes &amp; Lewis Counsel</b>	CIV-09-07-R Western Dist.	2013	\$35,000,000	undetermined	35%	2.8%	.57%

<b><i>Drummond v. Range</i></b> Honorable Richard G. Van Dyck <b>Barnes &amp; Lewis Lead Counsel</b>	CJ-2010-510 Grady Co., OK	2013	\$87,500,000	undetermined	40%	.73%	1%
<b><i>Cornett v. Sampson</i></b> Honorable Ray Dean Linder	CJ-2009-00081 Dewey Co., OK	2013	\$15,200,000	undetermined	40%	1.78%	1% to 2
<b><i>Cecil v. Ward</i></b> Honorable Wyatt Hill <b>Barnes &amp; Lewis Lead Counsel</b>	CJ-2010-462 Grady Co., OK	2014	\$10,000,000	undetermined	40%	2%	1%
<b><i>Chieftain v Laredo</i></b> Honorable Timothy D. DeGiusti <b>Barnes &amp; Lewis Lead Counsel</b>	CIV-23-2429-D Western District	2015	\$6,651,997.95	undetermined	40%	5%	1%
<b><i>Bank of America, N.A. v El Paso &amp; Burlington</i></b> Honorable Christopher S. Kelly	CJ-2004-45 Washita Co., OK	2017	\$115,000,000 cash portion	3-3.6	40%	1.85%	\$75,000 x 4 reps
<b><i>Strack v. Continental Resources</i></b> Honorable Dennis Hladik	CJ-2010-75 Blaine Co., OK	2018	\$49,800,000 cash portion \$57,500,00 future benefit	3.17	40%		\$100,000 x 4 reps
<b><i>Reirdon v. XTO Energy, Inc.</i></b> Honorable Kimberly West	No. 6:16-CV-00087-KEW Eastern District	2018	\$20,000,000.00 cash portion \$20,000,000.00 future benefit	2.55	40%	1.5%	\$30,000 (1 rep)
<b><i>Chieftain Royalty Co. v. XTO Energy, Inc.</i></b> Honorable Kimberly West <b>Barnes &amp; Lewis Co Lead Counsel</b>	No. CIV-11-29-KEW Eastern District	2018	\$80,000,000.00 cash portion \$80,000,000.00 future benefit	2.6	40%	1.51%	\$225,000 (1 rep)
<b><i>Reirdon v. Cimarex Energy Co.</i></b> Honorable Kimberly West	No. 16-CV-113-KEW Eastern District	2018	\$9,500,000.00 cash portion \$11,000,000.00 future benefit	3.12	40%	2.63%	\$15,000 (1 rep)
<b><i>Chieftain Royalty Co., et al. v. Marathon Oil Co.</i></b> Honorable Steven Shreder <b>Barnes &amp; Lewis Co Lead Counsel</b>	No. CIV-17-334-SPS Eastern District	2019	\$14,950,000.00 cash portion \$17,100,000.00 future benefit	2.57	40%	2.34%	\$50,000 (1 rep) \$25,000 (1 rep)

11. Class Representatives agreed to a contingency fee of 40%. In our experience, a 40% contingency fee is a market rate for this type of case. Initially, there is no way to know the exact amount of the claims involved. Through discovery and work with experts, the dollar amount of the claim was developed over the course of the Litigation. Additionally, when the 40% contingent fee was agreed to, Counsel could not have known what jurisdiction this case would



have been removed to or transferred to or what future changes to Oklahoma oil and gas law would affect the outcome of the case. Therefore, a 40% contingent fee is fair and reasonable.

12. Successfully resolving this Litigation also required Class Counsel to expend considerable time and resources consulting with a key forensic accounting expert, Barbara Ley, who specializes in oil and gas matters. Ms. Ley’s first significant trial experience was as an expert witness for the Class in *Bridenstine v. Kaiser-Francis*.

13. This Litigation was filed in 2019 and required substantial time and labor. As set forth in the table below, the total number of hours expended by BL in this Litigation, from investigation through August 16, is at least 75 hours. The total lodestar for BL for this time period is at least \$62,625.00. The hours spent were necessary and benefitted the Class as a whole.

<b>Barnes &amp; Lewis, LLP</b>			
	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
<b>Partners</b>			
Robert Barnes	8	\$ 1,075.00	\$ 8,600.00
Patranell Lewis	19	\$ 1,075.00	\$ 20,425.00
Emily Kitch	48	\$ 700.00	\$ 33,600.00
<b>TOTAL</b>	<b>75</b>		<b>\$ 62,625.00</b>

14. It is estimated that BL will spend an additional 5 hours through the time of the Final Fairness Hearing on September 18, 2023. Further, based on prior experience in other oil and gas class actions, BL may spend at least an additional 5 hours in the distribution phase of the case. The total estimated lodestar for BL for this additional time period is approximately \$8,875.00. It goes without saying that BL would never agree to represent a client in an oil and gas class action using these hourly rates if payment of our fee was contingent upon successful recovery of our fees in a settlement or judgment. As the Court knows, defense counsel in oil and gas class actions are paid on a monthly basis their entire hourly rate and are reimbursed any litigation costs monthly. It

simply would not be economically feasible for BL to ever represent a client on a straight hourly fee basis unless we were also paid monthly for our fees and expenses.

15. BL's hourly rates are reasonable when compared to those of other law firms in complex litigation. Numerous firms involved in complex litigation charge hourly rates for senior partners well in excess of \$1,000/hour. And, of course, these hourly rates are paid monthly and are certainly not contingent on the results achieved. If we were asked to represent a class involving complex oil and gas matters such as this, we would always require a 40% contingent fee contract. If pressed to represent a class on an hourly rate to be paid only out of the final settlement or judgment, our hourly rates would be at least six times the standard hourly rates set out above to account for the uncertainty and risk of recovering nothing.

16. As can be seen from the first chart above, numerous Oklahoma courts have used a lodestar times multiplier as a cross check on the reasonableness of a percentage fee. Commonly those multipliers are in the neighborhood of four to six times the lodestar (reasonable hours times reasonable rate). The attorney fee requested in this case is far lower than the fees requested in those cases because it represents a lodestar multiplier well below two. However, we wish to stress to the Court that the most reasonable method of calculating a fee is by extending the contingent attorney fee contract signed between Class Counsel and Class Representatives to the Class at large. Doing anything less effectively gives absent class members a free look at the results of litigation before having to pay their part of the attorney time and labor expended. The absent class member should get no better deal than the standard contingent fee contract agreed to by Class Representative. Likewise, the attorney should get no more than 40% of the common fund that has been developed through his time, labor, and expertise. If the attorney loses the case, then he recovers nothing for his time and labor. On the other hand, if the attorney is extremely successful,

then there is no reason why he should not recover the full 40% of the common fund that his time, labor, and expertise created. To do otherwise would effectively penalize the lawyer for his success.

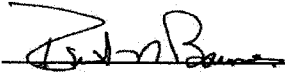
17. Historically, oil and gas class actions have always been pursued on a contingent fee basis with counsel bearing all expenses. In our experience, we have never found a plaintiff with the financial wherewithal to pursue an oil and gas class action on an hourly fee basis with the client also bearing all the expenses. Thus, we have never had the opportunity to represent a class in oil and gas matters on an hourly fee basis. As a matter of fact, we have never found a client even able to bear the out-of-pocket expenses of the case.

18. All Counsel are seeking recovery of litigation expenses in an amount not to exceed \$100,000.00. In our judgment, these expenses were reasonable, necessary, and critical to the prosecution of this Litigation. Details of those expenses are available for review at the Court's direction. To date, the total Litigation Expenses are over \$85,000. Class Counsel anticipates additional billings from the Class Experts that have not yet been received. Class Counsel may request reimbursement of those additional incurred expenses but, only up to the maximum requested amount of \$100,000.00. Additionally, administrative and distribution costs in an amount not to exceed \$300,000.00 are being sought by all Counsel. In our experience, these expenses are reasonable, necessary, and critical to the final distribution of this matter. Details of those expenses are available for review at the Court's direction.

We declare under penalty of perjury, under the laws of Oklahoma and 12 Okla. Stat. § 426, that the foregoing is true and correct.

**DATED:** August 16, 2023

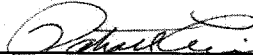
Robert N. Barnes, OBA No. 537



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## **Exhibit 4**

# **Declaration of Whitten Burrage**

**IN THE DISTRICT COURT OF BLAINE COUNTY  
STATE OF OKLAHOMA**

DDL OIL & GAS, LLC )  
and DUSTIN M. FREEMAN, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DIVERSIFIED PRODUCTION, LLC )  
successor by merger with )  
TAPSTONE ENERGY, LLC, )  
 )  
Defendant. )

Case No. CJ-2019-17

**DECLARATION OF MICHAEL BURRAGE**

I, Michael Burrage of Whitten Burrage (“WB”) declare under penalty of perjury, as follows:

1. I am a partner at WB. I submit this declaration in support of Class Counsel’s Motion for Final Approval (“Approval Motion”), Class Counsel’s Motion for Approval of Attorneys’ Fees (“Fee Motion”), and Class Counsel’s Motion for Approval of Reimbursement of Litigation Expenses (“Expense Motion”), which are filed contemporaneously herewith. Unless otherwise stated, the statements made herein are made based upon my personal knowledge and information available to me to the best of my recollection, and while I do not believe there are any errors, omissions, incomplete, or incorrect statements, to the extent any occur, they are wholly accidental and unintentional.

2. I, and my law firm, have litigated class actions and complex commercial litigation in the United States District Courts for the Eastern District of Oklahoma, the Western District of

Oklahoma, and the Northern District of Oklahoma, the state courts of Oklahoma, and numerous other state and federal courts around the country.

3. I am personally experienced and qualified to offer evidence regarding what I believe are reasonable attorney rates in Oklahoma multi-state class actions.

4. I have been practicing law for more than 48 years in Oklahoma state and federal courts. I graduated with honors and Order of the Coif from University of Oklahoma College of Law in 1974, where I also served as editor of the Oklahoma Law Review. I began my career as a partner in the law firm of Stamper & Burrage from 1974 to 1994, where I represented clients on both civil and criminal matters throughout state and federal courts, at both the trial and appellate level. My clients included individuals who had sustained injuries through defective products, medical negligence, or vehicle accidents. I also represented insurance companies, oil and gas companies, banks, companies involved in wood processing and the paper industry, and hospitals in matters involving securities litigation, breach of contract, insurance law, and oil and gas law. During that time, I was named Outstanding Young Lawyer in Oklahoma, served as Vice President and President of the Oklahoma Bar Association, and received the Neil E. Bogan Professionalism Award by the Oklahoma Bar.

5. In 1994, I was appointed to serve as the United States District Judge for the Eastern District of Oklahoma. During my tenure as a federal district court judge, I served as the Chief Judge of the Eastern District of Oklahoma for approximately five years. During that time, I also served on the Tenth Circuit Court of Appeals by designation on approximately 40 cases.

6. In 2001, I resigned as a federal judge and returned to private practice, first as a senior partner in the Burrage Law Firm, and then in 2007, as a founding/managing partner in the Whitten Burrage Law Firm. During my time in private practice, I have litigated against and with

some of the most preeminent attorneys in the country. My practice has included bad faith insurance claims, oil and gas class actions, representation of state governments in litigation involving the nation's opioid crisis, wrongful death cases, securities litigation, stockholder derivative suits, and product liability cases, among many others. In 2008, my partner Reggie Whitten and I obtained what was then the largest jury verdict in Oklahoma history in a bad faith insurance case. In 2016, I served as co-lead counsel in settling the historic and unprecedented federal lawsuit brought by the Chickasaw and Choctaw nations against the federal government to preserve their water rights within the Tribes' original treaty territories. Nix Patterson, LLP ("NP") and WB also sued the federal government on behalf of the Choctaw and Chickasaw Nation for mismanagement of their unallotted lands That resulted in a settlement of approximately \$190,000,000.00. Along with NP, I have co-led the State of Oklahoma's and Indian Nation's opioid litigation against opioid manufacturers and distributors, recovering over \$1 billion for the State and Oklahoma tribes.

7. I have also served as a mediator in multiple class action cases, including in cases involving royalty underpayment disputes. And I have represented the Choctaw Nation as its General Counsel since 1974, except for the seven-year period during which I served as a federal district court judge. I am a fellow of the American Bar Foundation, was inducted into the American College of Trial Lawyers in 1993 and given the Order of the Owl honor by the University of Oklahoma College of Law in 2013. Through my involvement in the Oklahoma Bar Association, and in other professional associations, I have interacted with trial attorneys practicing not only throughout Oklahoma, but throughout the country, and through those relationships, have become familiar with the rate and fee structures utilized by attorneys in a wide range of matters.



8. During the course of my career, I have personally entered into many fee agreements with clients, including agreements based on hourly compensation at an hourly rate, contingent fee agreements and, as is particularly relevant here, contingent fee agreements with putative class representatives in class actions, including royalty owner underpayment litigation. My experience litigating on both sides of the docket—representing both plaintiffs and defendants in a variety of fee arrangements, including billing by the hour—gives me special expertise in what constitute reasonable attorney rates in Oklahoma in complex class actions like this one.

9. Due to my experience and knowledge of reasonable attorneys' fees in common fund class actions in Oklahoma, I have served as an expert witness on the reasonableness of attorneys' fees in numerous cases, including in oil and gas class actions in both state and federal court. For example, I served as an expert witness in *Hill v. Marathon Oil Company*, No. CIV-08-37-R, a royalty underpayment class action in the Western District of Oklahoma. I also submitted declarations in similar royalty underpayment cases, including *Chieftain Royalty Company v. QEP Energy Co.*, No. CIV-11-212-R (W.D. Okla.), and *Hitch Enterprises, Inc. v. Cimarex Energy Co.*, No. CIV-11-13-W (W.D. Okla.).

10. Through my experience as a federal district court judge, my own private practice, and my work as an expert witness, I have become familiar with the market rates for attorneys operating on various fee structures, including contingent fees where expenses are advanced and hourly fees where expenses are not advanced. I have also become familiar with the typical awards granted to class counsel and class representatives by Oklahoma courts in this type of case.

11. WB is court-appointed Liaison Local Counsel for Plaintiffs and the Settlement Class. See July 7, 2023 *Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class for Settlement Purposes, Approving Form and Manner of Notice, and Setting*

*Date for Final Fairness Hearing (“Preliminary Approval Order”)* at p. 6. I personally rendered legal services in this Litigation. As Liaison Local Counsel for Plaintiffs, I worked with the court-appointed Class Counsel law firms of Nix Patterson, LLP, Ryan Whaley, PLLC, and Barnes & Lewis, LLP, to contribute to this Litigation and to perform work on behalf of and for the benefit of the Settlement Class. A summary of Class Counsel’s work in this matter is set forth in the Declaration of Jason A. Ryan and Drew Pate on behalf of Class Counsel (“Joint Class Counsel Declaration”), filed contemporaneously herewith.

12. The information in this declaration regarding WB’s time is based upon a review of WB records maintained by WB in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in the Litigation. This declaration was prepared by me, with the assistance of staff members at WB, and reviewed in detail by me before signing.

13. We were retained by Class Representatives to prosecute this case on a fully contingent basis. Class Representatives negotiated, and we agreed to, a contract to prosecute this case on a fully contingent basis with a fee arrangement of 40% of any recovery obtained for Class Representatives and/or the Class. I believe, and numerous state and federal courts in Oklahoma have determined, that a 40% contingent fee is within the appropriate market rate range for cases of this nature. Under Oklahoma law, the percentage of the common fund method is permitted as long as the resulting fee is reasonable. *See Strack v. Continental Resources, Inc.*, 2021 OK 21, ¶19, 507 P.3d 609, 617. Indeed, the application of the equitable common fund doctrine is a bedrock premise of litigation in this country and has repeatedly been applied by the United States Supreme Court, the Tenth Circuit, including Oklahoma federal and state courts. Otherwise, the absent class members would get a windfall at the expense of Class Counsel and Mr. Freeman. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Sprague v. Ticonic Nat’l Bank*, 307 U.S. 161, 165

(1939); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988); *Court-Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 237, 250 (3d Cir. 1985).

14. As discussed in the Joint Class Counsel Declaration, as well as the Declaration of Class Representative Dustin M. Freeman, in his capacity as an individual and as the representative of DDL Oil & Gas, LLC, we were retained by Mr. Freeman to prosecute this case on a fully contingent basis.

15. In the present case, the contractually agreed 40% contingent fee amount is the amount under which the Class Representatives and Class Counsel worked at all times and that is the amount by which the reasonableness of the fee request should be considered. In addition to the contractually agreed upon 40% contingent fee market rate, Class Representatives also negotiated an hourly rate that Class Counsel and additional Plaintiffs' Counsel would bill at in the event this Court determined that it was appropriate to consider Plaintiff's Counsel's hourly rates to determine whether any fee request is fair and reasonable.

16. Based upon my experience, knowledge, education, research, and professional qualifications, I believe that the 40% contingent fee we agreed to with the Class Representatives is the market rate for this case and is fair and reasonable and further, that the hourly rates Class Representatives approved for me and Class Counsel are below market rate for cases prosecuted on a contingent basis and approved by Oklahoma state and federal courts for this type of case. *See Strack*, 2021 OK 21, ¶19, 507 P.3d 609, 617.

17. I have been provided with access to material information supporting the fee request that is the subject of this declaration and have reviewed such materials. As a result of this review, reductions were made in the exercise of "billing judgment." As a result of the review and

adjustments made, I believe the amount of time set forth below is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of the Litigation.

18. The total number of hours expended by WB in this Litigation, from investigation through the date of this declaration, is 6 hours. The total lodestar for WB for this time period is \$5,250.00 in connection with this Litigation.

19. In my judgment, the number of hours I expended and the services I performed were reasonable and expended for the benefit of the Settlement Class in this Litigation. I believe this total number of hours is a conservative and understated amount because, among other things, all of our attorneys work extensively on many matters in a collaborative context where it is not possible to record every hour worked and/or not possible to reduce any given hour to only one case. Therefore, I believe my firm worked more hours on this case than the hours listed above.

20. Additionally, WB has performed a reasonable and good faith estimate of its anticipated hours and services that it will devote to this Litigation through the Final Fairness Hearing, currently scheduled for September 18, 2023. The total number of hours WB anticipates devoting to this Litigation during this time period is 1.5 hours. The total estimated lodestar for WB for this time period is \$1,312.50 consisting entirely of attorney time.

21. WB lodestar figures are based on its billing rates, which do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the billing rates.

I declare under penalty of perjury, pursuant to Okla. Stat., tit. 12, § 426, that the foregoing is true and correct.

Dated: August 18, 2023.

  
\_\_\_\_\_  
Michael Burrage  
WHITTEN BURRAGE