

**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.)

BLAINE COUNTY, OKLAHOMA
F I L E D

SEP 18 2023

CHRISTY MATLI, CT. CLERK
BY _____
DEPUTY

Case No. CJ-2019-17

ORDER AWARDING CASE CONTRIBUTION AWARD

Before the Court is the August 18, 2023 Motion of Class Representatives, DDL Oil & Gas, LLC and Dustin M. Freeman, for Approval of Case Contribution Award (the “Motion”) and Memorandum of Law in Support Thereof (the “Memorandum”), wherein Class Representatives seek a Case Contribution Award of up to \$36,000.00 to be paid from the Gross Settlement Fund.¹ The Court has considered the Motion and Memorandum, all matters submitted in connection therewith, and the proceedings on the Final Fairness Hearing held September 18, 2023. For good cause shown, the Court finds the Motion should be **GRANTED**.

¹ Although the request for a case contribution award is being made by Mr. Freeman and DDL Oil & Gas, LLC (“DDL”) as the named Class Representatives in this case, the request is for a *single* award of \$36,000.00 for the work performed by Mr. Freeman in both his capacity as an individual and as the representative of DDL. Therefore, to avoid any confusion, references to work performed on behalf of the Class and the case contribution award will be made with regard to Mr. Freeman.

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

1. This Order incorporates by reference the definitions in the June 8, 2023, Stipulation and Agreement of Settlement (“Settlement Agreement”) and all terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court, for purposes of this Order, incorporates its findings of fact and conclusions of law from its Order and Judgment Granting Final Approval of Class Action Settlement as if fully set forth herein.

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

4. The Notice to the Class stated that Mr. Freeman intended to seek a Case Contribution Award of up to \$36,000.00 to be paid from the Gross Settlement Fund. *See generally*, Declaration of Jennifer M. Keough on Behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement (“JND Decl.”). Notice of Mr. Freeman’s request for a Case Contribution Award was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the request for a Case Contribution Award is hereby determined to have been the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of 12 O.S. § 2023 and due process.

5. Mr. Freeman has provided the Court with abundant evidence in support of his request for a Case Contribution Award, including: (1) the Motion and Memorandum; (2) the Declaration of Class Representative, Dustin M. Freeman (“Freeman Decl.”), submitted in his capacity as an individual and as the representative of DDL Oil & Gas, LLC; (3) the Declaration of

Jason A. Ryan and Drew Pate on Behalf of Class Counsel and exhibits thereto; (4) the Affidavit of Robert E. Gonce, Jr., on behalf of absent class member Castlerock Resources, Inc.; the Affidavit of Robert Abernathy, on behalf of absent class member Chieftain Royalty Company, LLC; the Affidavit of Dan Little, on behalf of absent class member Sagacity, Inc.; and (5) the applicable law, and all pleadings, declarations, and records on file in this matter. This evidence was submitted to the Court well before the objection and opt-out deadline, and none of the evidence was objected to or otherwise refuted by any Settlement Class Member.

6. Class Representative Dustin M. Freeman is hereby awarded a Case Contribution Award of \$36,000.00 to be paid from the Gross Settlement Fund. In making this Case Contribution Award, the Court makes the following findings of fact and conclusions of law:

(a) The Settlement provides for a cash payment of \$1,850,000.00 (the “Gross Settlement Fund”) to compensate the Settlement Class for past damages. Settlement Class Members will benefit from the Settlement that occurred because of the substantial efforts of Mr. Freeman and Class Counsel;

(b) On July 28, 2023, JND caused the Short Form Notice of Settlement to be mailed to the 11,418 potential Class Members from the initial Class Member Mailing List. *See* JND Decl. at ¶6, attached as Exh. 4 to Class Representatives’ August 18, 2023 Memorandum of Law in Support of Motion for Final Approval. The Notice expressly stated that Class Representatives intended to seek a Case Contribution Award of up to \$36,000.00 to be paid from the Gross Settlement Fund. The Short Form Notice also directed class members to a website for further information, including the Long Form Notice, and also provided the option of requesting a Long Form Notice be sent via U.S. Mail;

(c) Class Representatives filed their Motion approximately fifteen (15) days prior to the deadline for Settlement Class Members to object. No objections were filed regarding Class Representatives' Request for a Case Contribution Award;

(d) Oklahoma courts “regularly grant incentive awards to compensate named class representatives for the work they performed – their time and effort invested in the case.” *Strack v. Continental Resources, Inc.*, 507 P.3d 609, 620 (Okla. 2021). Decisions from Oklahoma courts demonstrate the state’s longstanding commitment to compensating class representatives for the valuable work they perform on behalf of class members. *See, e.g., Fitzgerald Farms, LLC v. Chesapeake Operating, LLC*, No. CJ-2010-38, 2015 WL 5794008 (Okla. Dist. Ct. Beaver County, July 2, 2015); *Drummond v. Range*, No. CJ-2010-510 (Okla. Dist. Ct. Grady County, September 9, 2013); *Sacket v. Great Plains Pipeline Co.*, No. CJ-2002-70 (Okla. Dist. Ct. Woods County, March 5, 2009); *Continental Resources, Inc. v. Conoco Inc.*, No. CJ-95-739; CJ-2000-356 (Okla. Dist. Ct. Garfield County, August 22, 2005); *Robertson/Taylor v. Sanguine, Ltd.*, No. CJ-2002-150 (Okla. Dist. Ct. Caddo County, July 11, 2003).

(e) “Courts should grant incentive awards to class representatives based on the actual time expended on services rendered and other factors similar to those outlined in Oklahoma’s class action attorney fee statute pertinent to an incentive award.” *See Strack* at ¶34 (citing 12 O.S. § 2023(G)(4)(e)); 5 William Rubenstein, *Newberg on Class Actions* § 17.12 (5th ed. 2021) (“*Newberg*”) (explaining incentive awards are based on evidence of the particular services performed, the risks encountered, and any other factors pertinent to the award). Oklahoma courts have authority to award amounts beyond a simple calculation of the time and labor expended by the class representative. *See id.*

(f) When considering a request for a case contribution award, courts often begin with the “time and labor required.” *See* 12 O.S. § 2023(G)(4)(e)(1). “[I]ncentive awards are justified as payment for reasonable services rendered by class representatives on behalf of the class that were helpful to the litigation.” *Strack* at ¶33. 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 Newberg* at § 17:3. 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 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”); *see also Newberg* at § 17:18.

(g) Mr. Freeman’s requested award comports with awards granted in similar oil and gas class actions in both state and federal courts in Oklahoma. *See, e.g., Fitzgerald Farms, LLC v. Chesapeake Operating, LLC*, No. CJ-2010-38, 2015 WL 2015 WL 5794008 (Okla. Dist. Ct. Beaver County, July 2, 2015); *Drummond v. Range*, No. CJ-2010-510 (Okla. Dist. Ct. Grady County, September 9, 2013); *Sacket v. Great Plains Pipeline Co.*, CJ-2002-70 (Okla. Dist. Ct. Woods County, March 5, 2009); *Continental Resources, Inc. v. Conoco Inc.*, No. CJ-95-739; CJ-2000-356 (Okla. Dist. Ct. Garfield County, August 22, 2005); *Rhea v. Apache Corp.*, No. 14-cv-00433-JH (E.D. Okla. June 23, 2022) (Dkt. No. 507); *Chieftain Royalty Co. v. BP America Production Co.*, No. CIV-18-54-JFH-JFJ (N.D. Okla. March 2, 2022) (Dkt. No. 179); *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).

(h) Mr. Freeman seeks a modest, dollar-based award of \$36,000.00. This request is supported by the abundant evidence submitted by Mr. Freeman, including the declaration from Mr. Freeman submitted in his individual capacity and as the representative of DDL Oil & Gas, LLC, representations by Class Counsel, and the affidavits of Absent Class Members. *See Newberg* at § 17:12 (evidence might be provided through “affidavits submitted by class counsel and/or the class representatives, through which these persons testify to the particular services performed, the risks encountered, and any other facts pertinent to the award.”). This evidence demonstrates Mr. Freeman is seeking payment at a reasonable hourly rate for reasonable time expended on services that were helpful and non-duplicative to the litigation, as well as the time he will have expended in the weeks leading up to the Final Fairness Hearing and thereafter, if necessary.

(i) Mr. Freeman’s experience in managing his family’s mineral interests, and his background in the oil and gas industry provide ample support for his requested incentive award. *See Freeman Decl.* at ¶¶4-5.

(j) As demonstrated by his Declaration, both the rate and efforts of Mr. Freeman are reasonable. Specifically, at the time of his Declaration, Mr. Freeman had dedicated at least 90 hours to this Litigation since its filing in 2019. *See Freeman Decl.* at

¶18. 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; and reviewing and discussing settlement documents, preliminary approval documents, and final approval documents. *Id.* at ¶¶ 11, 18. All of these efforts were necessary and beneficial to the Litigation and the ultimate Settlement. *Id.* Mr. Freeman spent additional time on this Litigation through the Final Fairness Hearing and Mr. Freeman will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the administration of the Settlement. Mr. Freeman will also incur additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. *Id.* at ¶ 18. These additional commitments are reasonably expected to add at least an additional 15-20 hours of time that Mr. Freeman will dedicate to this Litigation, if necessary. However, even if Mr. Freeman never worked another hour on this case, the request of \$36,000.00 is justified by a reasonable and modest hourly rate.

(k) Mr. Freeman was heavily involved in all aspects of the Litigation. He actively and effectively fulfilled his obligations as the representative of the Settlement Class, complying with all reasonable demands placed upon him during the prosecution and settlement of this Action, and he provided valuable assistance to Class Counsel. *See* Freeman Decl. at ¶¶11, 18. In addition, Mr. Freeman has produced documents, reviewed pleadings, motions, and other court filings, communicated regularly with Class Counsel, reviewed expert analysis on damages, and actively participated in the negotiations that led to the settlement of this Action. *See* Freeman Decl. at ¶¶11, 18. All of these efforts were necessary and beneficial to the Litigation and the ultimate Settlement. *Id.*

(l) Mr. Freeman was never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Litigation. *See* Freeman Decl. at ¶20. In fact, Mr. Freeman understands and agrees 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. Freeman fully supports the Settlement as fair, reasonable, and adequate, even if he is awarded no case contribution award at all. *Id.* Mr. Freeman does not have any conflicts of interest with Class Counsel or any absent class member. *Id.* Finally, multiple absent Class Members executed affidavits supporting Mr. Freeman's request for a Case Contribution Award. *See* Affidavit of Robert E. Gonce, Jr., on behalf of absent class member Castlerock Resources, Inc.; Affidavit of Robert Abernathy, on behalf of absent class member Chieftain Royalty Company, LLC; and Affidavit of Dan Little, on behalf of absent class member Sagacity, Inc.

(m) Because Mr. Freeman has dedicated his time, attention, and resources to this Litigation, he is entitled to the requested Case Contribution Award. *See* Joint Class Counsel Declaration at ¶¶72-77.

(p) Mr. Freeman's request for a Case Contribution Award of \$36,000.00 is supported by evidence showing it to be fair and reasonable under Oklahoma law.

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

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

9. There is no reason for delay in the entry of this Order and immediate entry by the Clerk of the Court is expressly directed pursuant to Oklahoma law.

IT IS SO ORDERED this 18th day of September 2023.

/S/ ALLISON M. LAFFERTY
ALLISON M. LAFFERTY
ASSOCIATE DISTRICT JUDGE