

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

BLAINE COUNTY, OKLAHOMA
FILED

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

AUG 18 2023

CHRISTY MATLI, CT. CLERK
BY  DEPUTY

Case No. CJ-2019-17

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

Class Representatives DDL Oil & Gas, LLC (“DDL”) and Dustin M. Freeman (collectively, “Class Representatives”), by and through Class Counsel, submit the following Memorandum of Law in Support of their *Motion for Approval of Case Contribution Award* (the “Motion”).

I. SUMMARY OF ARGUMENT

In connection with Class Representatives’ request for approval of the Settlement in the above-captioned Litigation,¹ Class Representatives respectfully move the Court for a Case Contribution Award not to exceed \$36,000.00 from the Gross Settlement Fund, as compensation for the valuable time, effort, and assistance Mr. Freeman has provided in his individual and

¹ All capitalized terms not otherwise defined herein shall have the meaning given to them in the June 8, 2023, Stipulation and Agreement of Settlement (“Settlement Agreement”), a copy of which is attached as Exhibit 1 to Plaintiffs’ June 23, 2023 *Memorandum of Law in Support of Plaintiffs’ Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice, and Set Date for Final Approval Hearing*.

representative capacity of DDL throughout this Litigation, which culminated in a Settlement providing for a cash payment of \$1,850,000.00 (the “Gross Settlement Fund”) to compensate the Settlement Class for past damages.²

The Case Contribution Award requested here is proportionate to the contributions of Mr. Freeman, and it is supported by his Declaration demonstrating the time and effort he devoted to this Litigation in both his personal capacity and as the representative of DDL, as well as the risk and burden he incurred in service to the Settlement Class. *See* Declaration of Dustin M. Freeman (“Freeman Decl.”), attached as Exhibit 1 to Class Representatives’ Memorandum of Law in Support of Class Representatives’ Motion for Final Approval (“Final Approval Memorandum”); *see also* Declaration of Jason A. Ryan and Drew Pate on Behalf of Class Counsel (“Joint Class Counsel Declaration”), attached as Exhibit 2 to Final Approval Memorandum; and Affidavits of Absent Class Members: Chieftain Royalty Company, Castlerock Resources, Inc., and Sagacity, Inc., attached as Exhibits 5 – 7 to Final Approval Memorandum

Therefore, for the reasons set forth below, Mr. Freeman respectfully requests the Court grant his Motion for Approval of Case Contribution Award.

II. FACTUAL AND PROCEDURAL SUMMARY

In the interests of time and judicial economy, Mr. Freeman will not recite the factual and procedural background of this Litigation. Instead, Mr. Freeman respectfully refers the Court to the Final Approval Memorandum, the declarations and affidavits referenced above, the pleadings on

² Although the request for a case contribution award is being made by Mr. Freeman and 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.

file, and any other matter of which the Court may take judicial notice, all of which are respectfully incorporated by reference as if set forth fully herein. *See* 12 O.S. § 2202.

III. ARGUMENT

In recognition of the time, effort, risk, and burden Mr. Freeman incurred to produce a great result for the Settlement Class, Mr. Freeman seeks a case contribution award not to exceed \$36,000.00 from the Gross Settlement Fund. As demonstrated below, this request should be granted because it is fair and reasonable and supported by Oklahoma law.

A. Oklahoma Law Governing Case Contribution Awards in Class Actions.

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).

In *Strack*, the Oklahoma Supreme Court provided guidance for calculating case contribution awards in class actions. *See Strack*, 507 P.3d at 620. There, the Oklahoma Supreme Court recognized certain affinities between attorney fee awards and case contribution awards: case contribution awards are justified as payment for valuable services rendered on behalf of the

class; must be supported by sufficient evidence in the record; and a variety of factors should be considered to determine an appropriate award in a particular case. *See id.*

Specifically, when determining the appropriate amount of a case contribution award, “[c]ourts 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 id.* (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.* The value a court places on the additional factors will differ in each case. *See id.* at 614.

B. Mr. Freeman’s request for a Case Contribution Award is reasonable and should be granted.

1. Mr. Freeman’s work on behalf of the Settlement Class.

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). 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.

Mr. Freeman, in his individual capacity and representative capacity of DDL, was heavily involved in all aspects of the Litigation. *See* Freeman Decl. at ¶¶8, 9, 11 and 18. He actively and effectively fulfilled his obligations as a 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 id.* As demonstrated in his Declaration, Mr. Freeman has dedicated over 90 hours to this Litigation. *See id.*, at ¶18.

In fulfillment of his duties as a Class Representative, Mr. Freeman has collected documents for production; reviewed discovery, pleadings, motions, and other court filings; communicated regularly with Class Counsel; reviewed expert analysis on damages; participated in mediation; and actively participated in the negotiations that led to the settlement of this Action. *See* Freeman Decl. at ¶¶9, 10, 11 and 18. All of these efforts were necessary and beneficial to the Litigation and the ultimate Settlement. *Id.*

Furthermore, Mr. Freeman will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the Final Fairness Hearing and, if approved, will assist with administration of the Settlement. *See* Freeman Decl. at ¶18. This will add at least an additional 15-20 hours that Mr. Freeman will dedicate to this Litigation. Mr. Freeman will also incur additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. In total, Mr. Freeman will devote well over one hundred (100) hours to this Litigation.

When determining an appropriate hourly rate to calculate a case contribution award, it is reasonable to consider the hourly rate the class representative would be paid in other settings,

based upon his or her skills and expertise. *See, e.g., UFCW Local 880-Retail Food v. Newmont Mining Corp.*, 352 F. App'x 232, 235 (10th Cir. 2009) (unpublished) (“... a class representative may be entitled to an award for personal risk incurred or additional effort and expertise provided for the benefit of the class.”); *see also, Chieftain Royalty Co. v. Enervest Energy Institutional Fund XII- A, L.P.*, No. CIV-11-177-D, 2022 WL 1301835, at *5 (W.D. Okla. March 31, 2022) (class representative’s compensation in other business or industry activities could have provided an “objective measure” of class representative’s time for purposes of determining his reasonable hourly rate for case contribution award). The time a class representative spends working on behalf of the class can be thought of as a financial loss suffered by the class representative because it is time the class representative could have spent earning personal income.

As set forth in his Declaration, Mr. Freeman has extensive experience in the oil and gas matters. He has spent years working for oil and gas companies, and as an owner of an oil and gas mineral management company focused on the acquisition and management of producing and non-producing mineral interests throughout Oklahoma. Freeman Decl. at ¶4. In addition to this extensive professional experience, Mr. Freeman has also personally owned over 1,000 net acres of oil and gas interests spanning over 30 of Oklahoma’s 77 counties and he has owned and managed oil and gas interests operated by most of the major oil and gas companies doing business in the state. Freeman Decl. at ¶5.

If the Court were to multiply Mr. Freeman’s \$ 400 hourly rate for his work as a professional manager of oil and gas mineral interests by the 90 hours he spent working on behalf of the Settlement Class, the value of his services is at least \$36,000 because this total does not take into account the time Mr. Freeman will spend working on behalf of the Class to prepare for the Final

Fairness Hearing, to assist with administration of the Settlement fund, and to work with Class Counsel if there is an appeal of this matter. Freeman Decl. at ¶¶18-19. Both the rate and efforts of Mr. Freeman are reasonable and Mr. Freeman's time and effort in this Litigation more than justify an award.

Here, Mr. Freeman seeks a dollar-based award not to exceed \$36,000.00. This request is supported by the abundant evidence submitted by Mr. Freeman, including his own declaration, representations by Class Counsel, Affidavits of Absent Class Members Chieftain Royalty Company, Castlerock Resources, Inc., and Sagacity, Inc., and other evidence in the record. *See Newberg* at § 17:12 (evidence might be provided through "affidavits submitted by class counsel and/or the class representatives, through which these persons testify to the particular services performed, the risks encountered, and any other facts pertinent to the award."). This evidence demonstrates Mr. Freeman is seeking reasonable payment for reasonable time expended on services that were helpful and non-duplicative to the litigation.

"[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*, 507 P.3d at 620. "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." *Id.* Indeed, Oklahoma federal courts have noted the distinction between dollar-based and percentage-based awards in awarding such case contribution awards in similar oil and gas class action settlements. *See, e.g., 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); *Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. April 27, 2021) (Dkt. No. 117); *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. Mar. 26, 2021) (Dkt. No. 122); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. 17-cv-334-SPS (E.D. Okla. Mar. 8, 2019) (Dkt. No. 119); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-00113-KEW (E.D. Okla. Dec. 18, 2018) (Dkt. No. 103); *Reirdon v. XTO Energy Inc.*, No. 16-cv-00087-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 126).

The requested award also 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).

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 the request for a Case Contribution Award. *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* Affidavits from Chieftain Royalty Company, Castlerock Resources, Inc., and Sagacity, Inc. attached as Exhibits 5-7 to Final Approval Memorandum.

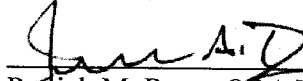
Because Mr. Freeman dedicated his time, attention, and resources to this Litigation, he is entitled to the requested Case Contribution Award. *See* Joint Class Counsel Declaration at ¶¶72-77. Mr. Freeman respectfully requests the Court award him a Case Contribution Award of \$36,000.00 to reflect the important role he played in representing the interests of the Settlement Class and in achieving the substantial result reflected in the Settlement.

IV. CONCLUSION

The requested Case Contribution Award is justified as payment for the valuable services Mr. Freeman rendered on behalf of the Settlement Class; the request is supported by sufficient evidence in the record; and the request is consistent with the factors that should be considered when determining an appropriate award in a particular case. Therefore, for the foregoing reasons, Mr. Freeman respectfully requests the Court enter an order granting approval of a total Case Contribution Award not to exceed \$36,000.00.

Dated: August 18, 2023

Respectfully submitted,



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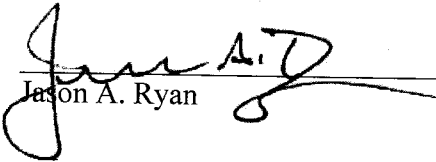
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CERTIFICATE OF SERVICE

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:

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