

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

CHIEFTAIN ROYALTY COMPANY,)

Plaintiff,)

v.)

Case No. CIV-18-1225-J

SM ENERGY COMPANY (including)

predecessors, successors and affiliates),)

Defendant.)

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

Class Representative Chieftain Royalty Company (hereinafter, “Class Representative”), by and through its counsel of record, submits the following memorandum of law in support of its Motion for Approval of Case Contribution Award.

I. SUMMARY OF THE ARGUMENT

In connection with Class Representative’s request for approval of the Settlement¹ in the above-captioned Litigation, Class Representatives respectfully moves the Court for a Case Contribution Award of \$50,000.00 from the Gross Settlement Fund, as compensation for its valuable time, effort, and assistance throughout this Litigation, which culminated in a Settlement with a total value of \$10 million. This award is supported by, among other things: (i) the Declaration of Robert Abernathy, President of Chieftain Royalty Company (“Chieftain Decl.”),² which demonstrates the number of hours and effort Class Representative devoted to this Litigation, as well as the risk and burden it incurred; (ii) the Declaration of Bradley E. Beckworth and Robert N. Barnes on Behalf of Class Counsel (“Joint Class Counsel Decl.”); (iii) the Declaration of Geoffrey P. Miller (“Miller Decl.”); and (iv) the Affidavits of Absent Class Members: Dan Little on behalf of Sagacity, Inc.; Mike J. Weeks on behalf of Pagosa Resources, LLC; Ben Barresi on behalf of Cosmo Energy LLC; and Robert E. Gonce, Jr. on behalf of Castlerock Resources, Inc.

¹ All capitalized terms not otherwise defined herein shall have the meaning given to them in the January 8, 2021 Stipulation and Agreement of Settlement (“Settlement Agreement”), a copy of which is attached as Exhibit 1 to Plaintiff’s Memorandum of Law in Support of Plaintiff’s 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 (the “Preliminary Approval Memorandum”) (Dkt. No. 96-1).

² The declarations and affidavits referenced herein are attached to the Final Approval Memorandum at Exhibits 1-9.

Therefore, and for the reasons below, Class Representative respectfully requests the Court grant its Motion for Approval of Case Contribution Award (the “Motion”).

II. FACTUAL AND PROCEDURAL SUMMARY

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

III. ARGUMENT

In recognition of the time, effort, risk, and burden Class Representative incurred over the past nine-plus years to produce such a significant result for the Settlement Class, Class Representative seeks a case contribution award of \$50,000.00 from the Gross Settlement Fund. This award is based on, and fully supported by, the number of hours it devoted and will continue to devote to this Litigation. It is further endorsed and supported by the testimony of Class Counsel, an expert witness, and numerous absent Class Members who have directly benefitted from Class Representative’s time and effort in obtaining this result. As demonstrated below, this request is fair, reasonable, and adequate and should, therefore, be granted.

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

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

To promote certainty, predictability, the full enforceability of this Settlement Agreement as written, and nationwide application, the Parties agree that this Settlement Agreement shall be *governed solely by any federal law* as to due process, class certification, judgment, collateral estoppel, res judicata, release, settlement approval, allocation, *case contribution award*, the right to and reasonableness of attorneys' fees and expenses, and all other matters for which there is federal procedural or common law, including federal law regarding federal equitable common fund class actions. For any such matters where there is no federal common law, Oklahoma state law will govern.

Settlement Agreement at ¶11.8.

The Parties' decision to contractually agree that federal common law controls the case contribution award should be enforced. *See* Miller Decl. at ¶¶30, 35, 85. Indeed, the Tenth Circuit has recognized parties' freedom to contract regarding choice of law issues and also the fact that courts typically honor the parties' choice of law:

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

Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency, 174 F.3d 1115, 1121 (10th Cir. 1999) (citing Restat. 2d of Conflict of Laws, § 187, cmt. e (2nd 1988)). Further expanding on this freedom to contract, the Restatement of Conflict of Laws states:

These objectives may best be attained in multistate transactions by letting the parties choose the law to govern the validity of the contract and the rights

created thereby. In this way, certainty and predictability of result are most likely to be secured. Giving parties this power of choice is also consistent with the fact that, in contrast to other areas of the law, persons are free within broad limits to determine the nature of their contractual obligations.

Restat. 2d of Conflict of Laws, § 187, cmt. e (2nd 1988); *see also Williams v. Shearson Lehman Bros.*, 1995 OK CIV APP 154, 917 P.2d 998, 1002 (concluding that parties' contractual choice of law should be given effect because it does not violate Oklahoma's constitution or public policy); *Barnes Group, Inc. v. C & C Prods., Inc.*, 716 F.2d 1023, 1029 n.10 (4th Cir. 1983) ("Parties enjoy full autonomy to choose controlling law with regard to matters within their contractual capacity.").

Put simply, litigants are free to select the choice of law that will govern decisions regarding interpretation and enforcement of a settlement agreement and all matters relating thereto. Here, in light of the fact that this is a multi-state class action, governed by Federal Rule of Civil Procedure 23, and a case over which this Court has jurisdiction because of the application of the Class Action Fairness Act, the parties contractually chose to apply federal common law to all matters regarding the reasonableness and fairness of the settlement, including but not limited to, the issue of any Class Representative incentive or case contribution award. Oklahoma federal courts routinely enforce similar choice of law provisions when granting requests for case contributions awards in royalty underpayment cases such as this, including to Chieftain. *See, e.g., Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 17-cv-336-KEW (E.D. Okla. Mar. 3, 2020) (Dkt. No. 70 at ¶¶6(d)-(e)); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. 17-cv-334-SPS (E.D. Okla. Mar. 8, 2019) (Dkt. No. 119 at ¶¶6(d)-(e)); *Chieftain Royalty Co. v. XTO Energy*,

Inc., No. 11-cv-29-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 230 at ¶¶6(d)-(e)); *McClintock v. Enterprise Crude Oil LLC*, No. 6:16-cv-00136-KEW (E.D. Okla. Mar. 26, 2021) (Dkt. No. 122 at ¶¶6(d)-(e)); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (Dkt. No. 103 at ¶¶6(d)-(e)); *Reirdon v. XTO Energy, Inc.*, No. 16-cv-87-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 126 at ¶¶6(d)-(e)); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Dkt. No. 134 at ¶¶6(d)-(e)).

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

The granting of case contribution awards is nothing new or novel under federal common law. In addition to the foregoing recent Oklahoma federal cases approving case contribution awards, other federal courts historically grant incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case. *See, e.g., UFCW Local 880-Retail Food v. Newmont Mining Corp.*, 352 Fed. Appx. 232 (10th Cir. 2009) (“Incentive awards [to class representatives] are justified when necessary to induce individuals to become named representatives...Moreover, a class representative may be entitled to an award for personal risk incurred or additional effort and expertise provided for the benefit of the class.”);³ *Chieftain Royalty Co. v. Laredo Petro., Inc.*, Case No. 5:12-cv-01319-D (W.D. Okla. May, 13, 2015) (Dkt. No. 52 at 8-10) (case contribution

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

awards are meant to “compensate class representatives for their work on behalf of the class, which has benefited from their representation.”) (citing *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010)); *Fankhouser v. XTO Energy, Inc.*, No. CIV-07-798-L, 2012 U.S. Dist. LEXIS 147197, at *9-10 (W.D. Okla. Oct. 12, 2012) (incentive awards totaling \$100,000 from \$37 million fund); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) (incentive awards totaling \$15,900,000 from \$1.06 billion fund, and stating “[t]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action.”); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18-19 (E.D. Pa. June 2, 2004) (finding “ample authority in this district and in other circuits” for total incentive awards of \$125,000); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002) (“Incentive awards are not uncommon in class action litigation and particularly where . . . a common fund has been created for the benefit of the entire class.”); *Enter Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240 (S.D. Ohio 1991) (awarding \$300,000 to class representatives); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (\$215,000 incentive awards from \$18 million fund); *Cobell v. Salazar*, 679 F.3d 909, 922-23, (D.C. Cir. 2012) (district court did not err in finding that lead plaintiff’s “singular, selfless, and tireless investment of time, energy, and personal funds to ensure survival of the litigation [merited] an incentive award”); *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (“Incentive awards . . . are intended to compensate class representatives for work done on behalf of the class. . . .”); *see also* Miller Decl. at ¶87.

In *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, the Tenth Circuit reversed and remanded a district court order that granted a percentage-based incentive award to the class representative of 0.5% of the common fund, finding the record did not contain sufficient evidence to support the amount of the award. *See* 861 F.3d 1182, 1197 (10th Cir. 2017) (remanding “for further fact-finding” as to amount of incentive award). As this Court is aware, *EnerVest* is currently on remand to the District Court. However, the ultimate outcome in *EnerVest* does not impact the decision here.

In making its “prediction” about Oklahoma law, the *EnerVest* panel did not find, state or suggest that Oklahoma law does not allow incentive awards. *See id.* at 1196-97.⁴ Rather, the panel found such awards appropriate to compensate class representatives “at a reasonable rate for reasonable time expended on services rendered that were helpful to the litigation” that is “supported by sufficient evidence in the record.” *Id.* “This evidence,” the panel stated, “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’” or “‘by live

⁴ In fact, the *EnerVest* panel specifically acknowledged that federal “courts regularly give incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case” and “have recognized that an award may be appropriate to provide an incentive to act as a named plaintiff.” 861 F.3d at 1194-95 (collecting cases). The *EnerVest* panel further stated that “the weight of authority apparently disfavors percentage-based awards.” 861 F.3d at 1196. However, Oklahoma federal and state courts routinely award percentage-based incentive awards. *See, e.g., Chieftain Royalty Co. v. Laredo Petro., Inc.*, Case No. 5:12-cv-01319-D (W.D. Okla. May, 13, 2015) (Dkt. No. 52 at 8-10) (finding a 1% case contribution award “to be fair and reasonable”); Miller Decl. at ¶90; *EnerVest*, 861 F.3d at 1196 (recognizing percentage calculation can be used to check an award for excessiveness by reference to the percentage of the fund it represents).

testimony at the fairness hearing.” *Id.* (quoting Newberg §17:12). And the Oklahoma Court of Civil Appeals subsequently expressed the same sentiment in *Strack v. Continental Res., Inc.*, No. 117,276, 2020 Okla. Civ. App. LEXIS 3, at *22-23 (Okla. Ct. App. Feb. 21, 2020, *pet. for cert. granted* Sept. 28, 2020).⁵

Although incentive awards can be percentage-based or dollar-based as long as the amount awarded is supported by evidence in the record, Class Representative here seeks a flat dollar-based, hourly award for its time reasonably spent on this Litigation, and not a percentage-based award, as was at issue in *EnerVest*.⁶ And most importantly, the amount of the Case Contribution Award requested here is amply “supported by sufficient evidence in the record[,]” specifically including the number of hours Class Representative has

⁵ Citing federal cases, the *Strack* panel found incentive awards are “a matter of discretion” for Oklahoma trial courts (2020 Okla. Civ. App. LEXIS 3, at *21), and held that the trial court there “did **not** commit error by determining Class Representatives are entitled to an award to compensate them for their expenditure of time service the class[,]” but “abused its discretion when it entered an award that was **not** based on evidence of the actual work performed by the Class Representatives in this case.” *Id.* at *23; *see also id.* at *22-23 (finding the “requested [incentive] award of \$400,000 was not calculated according to the number of hours expended by the Class Representatives,” but instead, according only to “a statistical comparison” to “a compilation of awards” in other cases).

⁶ Moreover, the *EnerVest* panel cited and relied upon studies by Class Representative’s expert here, Professor Geoffrey P. Miller, and specifically acknowledged that incentive awards are viable, and in fact, are “not uncommon.” 861 F.3d at 1192 (citing Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006)). The panel even recognized a “marked increase in the frequency of incentive awards, with the rate approaching 80% by 2011.” *Id.* at 1192 (citing Newberg § 17:7). And the panel relied on federal common law (e.g., *Cobell*, 679 F.3d at 922-23) because it found the “Oklahoma Supreme Court has not addressed incentive awards nor have we been directed to or found any opinions by lower courts of that state.” 861 F.3d at 1195-96. As such, the result under federal common law or Oklahoma state law is the same: a reasonable dollar-based incentive award to compensate a class representative for their time is entirely appropriate, when it is supported by evidence in the record. *Id.* at 1196-97; *Strack*, 2020 Okla. Civ. App. LEXIS 3, at *22-23.

devoted and will devote to this Litigation. *See, e.g., EnerVest*, 861 F.3d at 1196-97 (“This 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.”).

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

Here, Class Representative seeks a modest, dollar-based award of \$50,000.00. This request is supported by the abundant evidence submitted by Mr. Abernathy, including his own declaration, the Miller Declaration, and the Affidavits of Absent Class Members. *See* Newberg § 17:12 (evidence might be provided through “affidavits submitted by class counsel and/or the class representatives, through which these persons testify to the particular services performed, the risks encountered, and any other facts pertinent to the award.”). This evidence demonstrates Class Representative is seeking reasonable payment at a very modest hourly rate of approximately \$142 for approximately 350 hours reasonably expended on services that were helpful and non-duplicative to the Litigation to-date. *See, e.g., Chieftain Decl.* at ¶16. In fact, Courts in the Eastern District have approved higher

awards to Chieftain that equated to an hourly rate of up to \$400. *See, e.g., Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 17-cv-336-KEW (E.D. Okla. Mar. 3, 2020) (Dkt. No. 70 at ¶¶6(h)-(i)) (granting award of \$75,000 to Chieftain based on 190 hours worked, and finding the “education and work history background of Chieftain’s president and owner (Robert Abernathy) more than justify this hourly rate [of \$400].”); *see also Chieftain Royalty Co. v. Marathon Oil Co.*, No. 17-cv-334-SPS (E.D. Okla. Mar. 8, 2019) (Dkt. No. 119 at ¶¶6(i), (k), (m)) (granting award of \$50,000 to Chieftain based on 175 hours worked, equating to an approximate hourly rate of \$285); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-29-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 230 at ¶6(j)) (granting award of \$225,000.00 to Chieftain based on 750 hours worked, equating to an hourly rate of \$300).

As the foregoing opinions demonstrate, Mr. Abernathy has extensive experience on matters related to oil and gas mineral interests. *See* Chieftain Decl. at ¶3. Mr. Abernathy is the President and founder of Chieftain. *Id.* Chieftain actively purchases producing and non-producing mineral and royalty interests in eleven states and owns hundreds of mineral and royalty interests in over 12,000 acres. *Id.* Mr. Abernathy received a B.A. from Tulane University and a Juris Doctorate from Oklahoma City University School of Law. *Id.* He is licensed to practice law in Oklahoma where he practiced for over 20 years, specializing in oil and gas, real estate, bankruptcy, and probate law. *Id.*⁷ He is a nationally recognized

⁷ To be clear, Class Representative is not seeking compensation for Mr. Abernathy’s time on the basis that he is a practicing lawyer. Nor does Class Representative in any way seek compensation for legal services provided by Mr. Abernathy in connection with this

speaker on royalty ownership issues and he has spent over 11 years speaking to thousands of mineral interest owners around the country on all aspects of mineral ownership, including estate planning and Oklahoma Corporation Commission rulings and regulations. *Id.* He is a former board member of the National Association of Royalty Owners (NARO) and president of the Oklahoma chapter. *Id.* Mr. Abernathy is also a founding member of the American Royalty Council, and he is a co-founder and Manager of Acorn Royalty Company, which is active in the SCOOP and STACK plays in Oklahoma. *Id.*

As demonstrated by his Declaration, Mr. Abernathy dedicated approximately 350 hours to this Litigation. *See* Chieftain Decl. at ¶16. These hours were spent collecting documents for production, reviewing emails and draft pleadings from Class Counsel, consulting and/or meeting with Class Counsel, traveling to and from meetings and hearings, reviewing depositions, preparing for, and attending his own deposition, and participating in multiple settlement conferences and negotiations. *Id.* at ¶¶6, 16. These efforts were necessary and beneficial to the Litigation and the ultimate Settlement. *Id.* at ¶16. Moreover, Mr. Abernathy will continue to work on behalf of the Settlement Class in the coming weeks and months, by making himself available to participate in the final fairness hearing by telephone or as otherwise directed by the Court; assisting the Court and Class Counsel in administrating the Settlement; and, if there is an appeal in this case,

Litigation. Rather, Mr. Abernathy's professional qualifications, including that he is an attorney, president, and chief officer of Chieftain Royalty Company, merely provide context for, and evidence of, the value of the time he devoted to this Litigation and demonstrate the conservative and reasonable nature of the hourly rate for which the requested Case Contribution Award would compensate Class Representative for its time devoted to this Litigation.

remaining involved throughout the proceedings to continue his work as Class Representative. *Id.* However, even if Mr. Abernathy never worked another hour on this case, the request of \$50,000.00 would still be reasonable.

Indeed, Mr. Abernathy was heavily involved in all aspects of the Litigation. *Id.* He actively and effectively fulfilled his obligations as representative of the Settlement Class, complying with all reasonable demands placed upon him during the prosecution and settlement of this Action, and they provided valuable assistance to Class Counsel. *Id.* Mr. Abernathy has worked with Class Counsel since before the inception of this Litigation, and his active participation has contributed significantly to the prosecution and resolution of this case. *Id.* at ¶¶5, 16. In addition, Mr. Abernathy has produced documents, reviewed pleadings, motions, and other court filings, communicated regularly with Class Counsel, reviewed expert analysis on damages, prepared for and attended his own deposition, was personally involved in the numerous settlement conferences, and actively participated in the negotiations that led to the settlement of this Action. *Id.* at ¶6.

Mr. Abernathy was never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Litigation. *See* Chieftain Decl. at ¶17. In fact, Mr. Abernathy 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 his request. *Id.* In other words, Mr. Abernathy fully supports the Settlement as fair, reasonable, and adequate, even if he is awarded no case contribution award at all. *Id.* Mr. Abernathy does not have any conflicts of interest with Class Counsel or any absent class member. *Id.* Finally, multiple Absent Class Members executed

affidavits supporting Class Representative's request for a Case Contribution Award. *See generally*, Exhibits 6-9 to the Final Approval Memorandum. As have Class Counsel, who have testified to the material assistance and contribution that Mr. Abernathy has provided in the prosecution and resolution of this case in the best interests of the Settlement Class. *See* Joint Class Counsel Decl. at ¶¶94-100.

Because Class Representative has dedicated its time, attention, and resources to this Litigation, Class Representative respectfully requests the Court award it a Case Contribution Award of \$50,000.00 to reflect the important role that it played in representing the interests of the Settlement Class and in achieving the Settlement.

C. The Case Contribution Award Is Reasonable Under Oklahoma State Law

Even if this Court decided not to enforce the Parties' express agreement that federal common law controls the case contribution award and apply Oklahoma state law instead, Oklahoma law strongly supports incentive awards, particularly in royalty underpayment class actions such as this. "In fact, Oklahoma state courts routinely grant percentage-based incentive awards to class representatives, which historically are much larger than the modest flat amount sought here." Miller Decl. at ¶90 (citing *Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C.*, No. CJ-2010-38, 2015 WL 5794008, at *9 (Okla. Dist. Ct. Beaver Cty. July 2, 2015) ("The incentive award sought is consistent with such awards in other cases. Oklahoma courts have typically awarded class representatives in royalty owner class actions approximately 1-2% of the settlement. . . [collecting cases] . . ."); *Velma-Alma Indep. Sch. Dist. No. 15, v. Texaco, Inc.* No. CJ-2002-304 (Okla. Dist. Ct. Stephens Cty. Dec. 22, 2005) (awarding 1-2% of total settlement amounts); *Robertson v. Sanguine, Ltd.*,

No. CJ-02-150 (Okla. Dist. Ct. Caddo Cty. July 11, 2003) (awarding 1% class representative fee); *Continental Resources, Inc. v. Conoco, Inc.*, No. CJ-95-739 (Okla. Dist. Ct. Garfield Cty. Aug. 22, 2005) (“Court awards to Class Representatives of 1% of the common fund are typical in these types of actions, with some awards approaching 5% of the common fund.”); *Cecil v. Ward Petroleum Corp.*, CJ-2010-462 (Okla. Dist. Ct. Grady Cty.) (Judge Hill awarding 1% case contribution award); *Drummond v. Range Res.*, CJ-2010-510 (Okla. Dist. Ct. Grady Cty.) (Judge Van Dyck awarding 1% case contribution award)). In contrast, here Class Representative is seeking a modest award based not on a percentage, but on the number of hours he devoted to this Litigation at an hourly rate much lower than it has been awarded in past similar cases.

As such, Class Representative’s request for an incentive award of \$50,000.00 is fair and reasonable under Oklahoma state law for the same reasons it is fair and reasonable under federal common law and supported by the same evidence of reasonableness. *See generally* Chieftain Decl.; Miller Decl.; Joint Class Counsel Decl. at ¶¶94-100.

IV. CONCLUSION

For the foregoing reasons, Class Representative respectfully requests the Court enter an order granting approval of a Case Contribution Award in the amount of \$50,000.00.

DATED: March 29, 2021.

Respectfully submitted,

/s/ Bradley E. Beckworth

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CERTIFICATE OF SERVICE

I hereby certify that I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send email notification of such filing to all registered parties.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: March 29, 2021.

/s/ Bradley E. Beckworth

Bradley E. Beckworth