

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

STATE OF OKLAHOMA }  
GARVIN COUNTY } **SS.**

**FILED**

JUL 29 2024

AT: 3:12 O'CLOCK P M.

LAURA CEE, Court Clerk

BY: [Signature] DEPUTY

MICHAEL KERNEN and )  
GLADYS MARIE WILKERSON, )  
TRUSTEE OF THE GLADYS MARIE )  
WILKERSON 1999 TRUST, )

Plaintiffs, )

v. )

CITIZEN ENERGY II, LLC and )  
CITIZEN ENERGY III, LLC, )

Defendants. )

Case No. CJ-2018-7

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

Class Representatives Michael Kernen (“Mr. Kernen”) and Gladys Marie Wilkerson, Trustee of the Gladys Marie Wilkerson 1999 Trust (“Ms. Wilkerson”) (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,<sup>1</sup> Class Representatives respectfully move the Court for a Case Contribution Award not to exceed \$30,000.00 from the Gross Settlement Fund, as compensation for the valuable time, effort, and assistance Mr. Kernen and Ms. Wilkerson have provided

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning given to them in the June 12, 2024, Stipulation and Agreement of Settlement (“Settlement Agreement”), a copy of which is attached as Exhibit 1 to Plaintiffs’ June 17, 2024 *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*.

throughout this Litigation, which culminated in a Settlement providing for a cash payment of \$4,668,120.00 (the “Gross Settlement Fund”) to compensate the Settlement Class for past damages.<sup>2</sup>

The Case Contribution Award requested here is proportionate to the contributions of Mr. Kernan and Ms. Wilkerson, and it is supported by their respective Declarations demonstrating the time and effort they devoted to this Litigation, as well as the risk and burden they incurred in service to the Settlement Class. *See* Declaration of Michael Kernan (“Kernan Decl.”) and Declaration of Gladys Marie Wilkerson (“Wilkerson Decl.”), attached as Exhibits 1 and 2 to Class Representatives’ Memorandum of Law in Support of Class Representatives’ Motion for Final Approval (“Final Approval Memorandum”); *see also* Declaration of Jason A. Ryan and Drew Pate on Behalf of Class Counsel (“Joint Class Counsel Declaration”), attached as Exhibit 3 to Final Approval Memorandum; and Affidavits of Absent Class Members Castlerock Resources, Inc.; Kelsie Wagner; Pagosa Resources, LLC; Chieftain Royalty Company; and Sagacity, Inc., attached as Exhibits 6-10 to Final Approval Memorandum

Therefore, for the reasons set forth below, Class Representatives respectfully request the Court grant their Motion for Approval of Case Contribution Award.

## II. FACTUAL AND PROCEDURAL SUMMARY

In the interests of time and judicial economy, Class Representatives will not recite the factual and procedural background of this Litigation. Instead, Class Representatives respectfully refer the Court to the Final Approval Memorandum, the declarations and affidavits referenced

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<sup>2</sup> Although the request for a case contribution award is being made by Mr. Kernan and Ms. Wilkerson as the named Class Representatives in this case, the request is for a *single* award of \$30,000.00 for the work performed by Mr. Kernan and Ms. Wilkerson.

above, the pleadings on 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 Class Representatives incurred to produce a great result for the Settlement Class, Class Representatives seek a case contribution award not to exceed \$30,000.00 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 Res., 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., DDL Oil & Gas, LLC v. Diversified Production, LLC*, No. CJ-2019-17 (Okla. Dist. Ct. Blaine County, Sept. 18, 2023); *Fitzgerald Farms, LLC v. Chesapeake Operating, LLC*, No. CJ-2010-38 (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 Res., 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.” *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. Class Representatives’ request for a Case Contribution Award is reasonable and should be granted.**

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. Kernen and Ms. Wilkerson were heavily involved in all aspects of the Litigation. *See* Kernen Decl. at ¶¶8, 9, 10, 19; Wilkerson Decl. at ¶¶8, 9, 10, 19. Class Representatives actively and effectively fulfilled their obligations as representatives of the Settlement Class, complying with all reasonable demands placed upon them during the prosecution and settlement of this Action, and they provided valuable assistance to Class Counsel. *See id.* As demonstrated in their Declarations, Mr. Kernen has dedicated over 150 hours to this Litigation and Ms. Wilkerson has dedicated over 30 hours to this Litigation. *See* Kernen Decl. at ¶19; Wilkerson Decl. at ¶19.

In fulfillment of their duties as Class Representatives, Mr. Kernen and Ms. Wilkerson collected documents; reviewed 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* Kernen Decl. at ¶¶8, 10, 19; Wilkerson Decl. at ¶¶8, 10, 19. All these efforts were necessary and beneficial to the Litigation and the ultimate Settlement. *Id.*

Furthermore, Class Representatives will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the Final Fairness Hearing and, if approved, will assist with administration of the Settlement. *See* Kernen Decl. at ¶19; Wilkerson Decl. at ¶19. This will add at least an additional 30-40 hours that Mr. Kernen and Ms. Wilkerson will dedicate to this Litigation. Class Representatives will also incur additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. In total, Mr. Kernen and Ms. Wilkerson will devote well over two hundred and ten (210) 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), *Aff'd* at 100 F.4<sup>th</sup> 1147 (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. Kernen has over 45 years’ experience in the oil and gas industry as a geologist. *See* Kernen Decl. at ¶3. He has conducted business as a royalty owner, overriding royalty owner, working interest owner, as well as a lessor and lessee, and currently manages Kepsa Corp., which also conducts business in the oil and gas industry. *See Id.* Mr. Kernen’s knowledge and experience as a geologist and professional manager of oil and gas mineral interests calls for an hourly rate of at least \$125 per hour.

If the Court were to multiply an hourly rate of \$125 to Mr. Kernen’s work by the 150 hours he spent working on behalf of the Settlement Class, the value of his services is at least \$18,750. This total does not take into account the time Mr. Kernen 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. *See* Kernens Decl. at ¶¶18-19. Both the requested rate and the efforts of Mr. Kernens are reasonable and Mr. Kernens's time and effort in this Litigation more than justify an award.

As set forth in her Declaration, Ms. Wilkerson has been a mineral owner in Oklahoma for more than 60 years. *See* Wilkerson Decl. at ¶3 Throughout that time, she has negotiated oil and gas leases and managed her minerals, including the review of options for such minerals. *See* Id. Ms. Wilkerson's knowledge and experience as a manager of oil and gas mineral interests calls for an hourly rate of at least \$125 per hour.

If the Court were to multiply an hourly rate of \$125 for Ms. Wilkerson's work by the 30 hours she spent working on behalf of the Settlement Class, the value of her services is at least \$3,750.00. This total does not take into account the time Ms. Wilkerson will spend working on behalf of the Class to prepare for the Final Fairness Hearing, to assist with the administration of the Settlement Fund, and to work with Class Counsel if there is an appeal of this matter. *See* Wilkerson Decl. at ¶¶18-19. Both the requested rate and the efforts of Ms. Wilkerson are reasonable and Ms. Wilkerson's time and effort in this Litigation more than justify an award.

Here, Class Representatives seek a dollar-based award of \$30,000.00. This request is supported by the abundant evidence submitted by Mr. Kernens and Ms. Wilkerson, including their own declarations, representations by Class Counsel, Affidavits of Absent Class Members Castlerock Resources, Inc.; Kelsie Wagner; Pagosa Resources, LLC; Chieftain Royalty Company; 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 Class Representatives are 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., DDL Oil & Gas, LLC v. Diversified Production, LLC*, No. CJ-2019-17 (Okla. Dist. Ct. Blaine County, Sept. 18, 2023); *Fitzgerald Farms, LLC v. Chesapeake Operating, LLC*, No. CJ-2010-38, (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).

Class Representatives were never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Litigation. *See* Kernan Decl. at ¶20; Wilkerson Decl. at ¶20. In fact, Class Representatives understand and agree that such an award, or rejection thereof, has no bearing on the fairness of the Settlement and that it will be approved and go forward no matter how the Court rules on the request for a Case Contribution Award. *Id.* In other words, Class Representatives fully support the Settlement as fair, reasonable, and adequate, even if they are awarded no case contribution award at all. *Id.* Mr. Kernan and Ms. Wilkerson do not have any conflicts of interest with Class Counsel or any absent class member. *Id.*

Finally, multiple absent Class Members executed affidavits supporting Class Representatives' request for a Case Contribution Award. *See* Affidavits from Castlerock Resources, Inc.; Kelsie Wagner; Pagosa Resources, LLC; Chieftain Royalty Company; and Sagacity, Inc., attached as Exhibits 6-10 to Final Approval Memorandum.

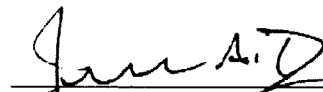
Because Class Representatives dedicated their time, attention, and resources to this Litigation, they are entitled to the requested Case Contribution Award. *See* Joint Class Counsel Declaration at ¶¶73-78. Class Representatives respectfully request the Court award them a single Case Contribution Award of \$30,000.00 to reflect the important role they 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 Class Representatives 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, Class Representatives respectfully request the Court enter an order granting approval of a total Case Contribution Award of \$30,000.00.

Dated: July 29, 2024

Respectfully submitted,



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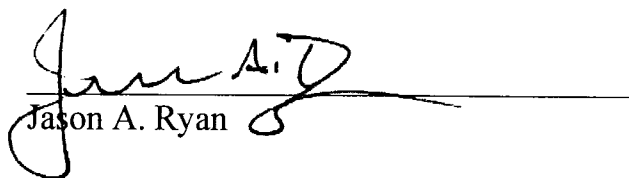
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 29, 2024 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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