

IN THE DISTRICT COURT OF GARVIN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA }
GARVIN COUNTY } SS:
FILED

DEC 17 2024

AT _____ O'CLOCK _____ M.
LAURA LEE, Court Clerk
BY _____ DEPUTY

Wake Energy, LLC, on behalf of itself and all)	
others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Case No. CJ-2024-267
)	
)	
Devon Energy Production Company, L.P.,)	
)	
Defendant.)	

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

Class Representative¹, Wake Energy, LLC, by and through Class Counsel, submit the following Memorandum of Law in Support of its Motion for Approval of Case Contribution Award. In support thereof, Class Representative respectfully shows the Court as follows:

INTRODUCTION

In connection with Class Representative’s request for approval of the Settlement in the above-captioned Litigation, Class Representative respectfully moves the Court for a Case Contribution Award not to exceed \$40,000.00 from the Gross Settlement Fund, as compensation for the valuable time, effort, and assistance Class Representative has provided throughout this Litigation, which culminated in a Settlement providing for a cash payment of \$2,000,000.00 (the “Gross Settlement Fund”) to compensate the Settlement Class for past damages.

¹ All capitalized terms not otherwise defined herein shall have the meaning given to them in the September 30, 2024 Settlement Agreement, a copy of which is attached as Exhibit 1 to the *Memorandum of Law in Support of Plaintiff’s Unopposed Motion to Certify the Settlement Class for Settlement Purposes, Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice and Set Date for Final Approval Hearing* that was filed on October 17, 2024.

The Case Contribution Award requested here is proportionate to the contributions of Class Representative, and it is supported by its Declaration, and that of Class Counsel, 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* Class Representative Declaration at ¶¶ 7-10; *see also* Class Counsel Declaration at ¶¶ 66-70. Therefore, for the reasons set forth below, Class Representative respectfully requests the Court grant its Motion for Approval of Case Contribution Award.

FACTS & PROCEDURAL BACKGROUND

In the interest of brevity, Class Representative will not recite the background of this Litigation. Instead, Class Representative respectfully refer the Court to the Final Approval Memorandum, Class Counsel Declaration, the pleadings on file, and any other matters of which the Court may take judicial notice, all of which are incorporated fully herein. *See* 12 O.S. § 2202 (court may take judicial notice of “adjudicative facts” that are “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”).

ARGUMENTS & AUTHORITIES

In recognition of the time, effort, risk, and burden Class Representative incurred to produce a great result for the Settlement Class, Class Representative seeks a case contribution award not to exceed \$40,000.00 from the Gross Settlement Fund. As demonstrated below, this request should be granted because it is fair and reasonable and supported by Oklahoma law.

I. 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.*, 2021 OK 21, ¶ 33, 507 P.3d 609, 620. 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*, at ¶¶ 33-34. There, the Oklahoma Supreme Court recognized certain similarities between attorney fee awards and case contribution awards: case contribution awards are justified as payment for valuable services rendered on behalf of the class; they 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.* at ¶ 34 (citing 12 O.S. § 2023(G)(4)(e)); *see also* 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 ¶ 10.

II. Class Representative's 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.

Class Representative was heavily involved in all aspects of the Litigation. *See* Class Representative Declaration at ¶¶ 7-10. Class Representative actively and effectively fulfilled their obligations as representatives of the Settlement Class, complying with all reasonable demands placed upon it during the prosecution and settlement of this Litigation, and it provided valuable assistance to Class Counsel. *See id.* As demonstrated in its Declaration, Class Representative has dedicated over 100 hours to this Litigation. *See id.* at ¶ 19.

In fulfillment of its duties on behalf of the Class, Class Representative collected documents; reviewed pleadings, motions, and other court filings; communicated regularly with Class Counsel; reviewed expert analysis on damages; participated in two mediations; and actively participated in the negotiations that led to the settlement of this Litigation. *See id.* at ¶¶ 7-10 & 19. All these efforts were necessary and beneficial to the Litigation and the ultimate Settlement. *Id.*

Furthermore, Class Representative 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 id.* at ¶ 19. This will add at least an additional 30-40 hours that Class Representative will dedicate to this Litigation. Class Representative will also incur additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. In total, Class Representative will devote well over one hundred and thirty (130) hours to this Litigation.

When determining an appropriate case contribution award, it is reasonable to consider the financial loss suffered by the class representative as a result of the class representative fulfilling its duties to the class. *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.4th 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). Indeed, the time a class representative spends working on behalf of the class is time the class representative could have spent earning personal income.

As set forth in its Declaration, Class Representative has over 18 years of experience in the oil and gas industry and has successfully conducted business as a royalty owner, overriding royalty owner, working interest owner, as well as a lessor and lessee. *See* Class Representative Declaration at ¶ 3. Class Representative is well-respected and has been highly successful in the oil and gas

industry. Thus, Class Representative's devotion of over 100 hours to support the Class has undoubtedly resulted in a financial loss to Class Representative. *See id.* at ¶ 19.

Class Representative's requests a \$40,000.00 case contribution award, which is 2% of the \$2,000,000.00 Gross Settlement Fund. The requested case contribution award was included in the Notice provided to Class Members and is reasonable under the law. *See, e.g., Harris v. Chevron U.S.A., Inc., et al.*, No. 19-CV-355-SPS, Doc. 40 at 17 (E.D. Okla. Feb. 27, 2020) (The class representative's "request for an award of two percent is consistent with awards entered by Oklahoma state and federal courts, as well as federal courts across the country."); *Dinsmore, et al. v. Phillips 66 Co.*, No. 22-CV-44-JFH, Doc. 36 at 9 (E.D. Okla. Sept. 21, 2023) ("The request for an award of 2% is consistent with awards entered in similar cases."). Evidence supporting an award request may 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." *Newberg* at § 17:12. Moreover, having worked with Class Representative in the investigation, filing, prosecution, and settlement of this Litigation on behalf of the Settlement Class, Class Counsel fully supports the request. *See Class Counsel Declaration* at ¶ 67.

Furthermore, Class Representative was never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Litigation. *See Class Representative Declaration* at ¶ 20. In fact, Class Representative 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, Class Representative fully supports the Settlement as fair, reasonable, and adequate, even if they are awarded no case contribution award at all. *Id.* Finally, Class

Representative does not have any conflicts of interest with Class Counsel or any absent class member. *Id.* Accordingly, Class Representative's request for a case contribution award here is fair and reasonable and supported by the same evidence of reasonableness.

CONCLUSION

The requested case contribution award is justified as payment for the valuable services Class Representative 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 Representative respectfully requests the Court enter an order granting approval of a total Case Contribution Award of \$40,000.00.

Respectfully submitted,

Dated: December 17, 2024.

By: _____

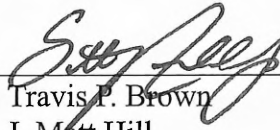

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2024, a copy of the forgoing was mailed to the following counsel:

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