IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

SAGACITY, INC.; THE DUNCAN GROUP, LLC; AND HITCH ENTERPRISES, INC., on behalf of themselves and a class of similarly situated persons, Plaintiffs, v. CIMAREX ENERGY CO.; MAGNUM HUNTER PRODUCTION, INC.; PRIZE ENERGY RESOURCES, INC.; CIMAREX ENERGY CO. OF COLORADO; KEY PRODUCTION COMPANY, INC., Defendants.	Case No. CIV-17-101-GLJ

CLASS REPRESENTATIVES' MOTION FOR APPROVAL OF: (1) PLAINTIFFS' ATTORNEYS' FEES; (2) LITIGATION EXPENSES, (3) ADMINISTRATION, NOTICE, AND DISTRIBUTION COSTS; AND (4) INCENTIVE AWARD

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Having obtained a cash settlement of $20,500,000.00, Sagacity, Inc., The Duncan Group, LLC, and Hitch Enterprises, Inc. ("Class Representatives") respectfully move the Court for an award of Plaintiffs' Attorneys' Fees in the amount of forty percent of the Gross Settlement Amount, for Litigation Expenses to date of $618,053.09, for Administration, Notice, and Distribution Costs to date of $32,692.43, and for an Incentive Award totaling one percent of the Gross Settlement Amount for service of the three Class Representatives in prosecuting this Litigation for the Settlement Class. In addition, Class Representatives seek a reserve of $140,938.57 for anticipated future Litigation Expenses and Administration, Notice, and Distribution Costs incurred between the filing of this motion and the complete administration of the Settlement. Class Counsel will apply to the Court for approval of the payment of any such future expenses as they are incurred.

The requests for Plaintiffs' Attorneys' Fees and an Incentive Award are based on the going rates for such fees in prior class action litigation of this type. The requests for Litigation Expenses and Administration, Notice, and Distribution Costs are based on the actual amounts incurred by Class Counsel in prosecuting the action and incurred or expected to be incurred in administering the Settlement. As set forth in the Notices and the Settlement Agreement, the requested awards will be paid from the Gross Settlement Amount. For the reasons set forth in this Motion, the requested awards are fair and reasonable, and therefore should be approved.

BACKGROUND

In the interest of brevity, Class Representatives will not recite the entire background of this Litigation on behalf of the Settlement Class. Rather, Class Representatives refer the

Court to the Motion for Preliminary Approval (Doc. 129), the Declaration of Class Counsel ("Class Counsel Decl.") (Doc. 137-6), the pleadings on file, and any other matters of which the Court may take judicial notice, all of which are incorporated as if fully set out in this memorandum.

ARGUMENT & AUTHORITY

Each request is warranted considering the work done and result achieved. They are also in line with similar requests recently granted by courts within this district and in other districts.

1. Federal Common Law Controls the Right to and Reasonableness of the Requests in this Motion

The Parties contractually agreed that federal common law governs the awards requested in this Motion. Doc. 129-1 at 45, ¶ 11.7. This contractual language removes any doubt about the applicable body of law as to class certification, notice, and overall evaluation of the fairness and reasonableness of the Settlement and the associated requests in this Motion. This choice of law provision should be enforced. *See Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency*, 174 F.3d 1115, 1121 (10th Cir. 1999) (citing *Restatement (Second) of Conflict of Laws* § 187, cmt. e (Am. Law Inst. 1988)); *see also Williams v. Shearson Lehman Bros.*, 1995 OK CIV APP 154, ¶ 17, 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). Courts within this district, as well as other Oklahoma federal courts, have enforced similar language in prior class action settlements. *See, e.g., Ritter v. Foundation Energy Mgmt.,* No. 22-CV-246-JFH (E.D. Okla.

Dec. 15, 2023) (Doc. 51 at ¶ 5.c) ("This choice of law provision should be and is hereby enforced."); *Cook Children's Health Foundation v. Diamondback E&P, LLC,* No. CIV-21-359-D (W.D. Okla. May 3, 2024) (Doc. 61 at 3-4) (same); *Lee v. PetroQuest Energy, L.L.C., et al.,* No. 16-CV-516-KEW, 2023 WL 2989948, at *2 (E.D. Okla. April 17, 2023) (same); *Hoog v. PetroQuest Energy, L.L.C.,* No. 16-CV-463-KEW, 2023 WL 2989947, at *2 (E.D. Okla. Apr. 4, 2023) (same); *Kunneman Props. LLC v. Marathon Oil Co.*, No. 22-cv-274-KEW (E.D. Okla. Feb. 16, 2023) (Docket No. 24 at 3-4) (same); *Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 17-CV-336-KEW, 2020 WL 8339215, at *2 (E.D. Okla. Mar. 3, 2020) (same); *Reirdon v. Cimarex Energy Co.*, No. CIV-16-445-SPS, 2020 WL 12814801, at *2 (E.D. Okla. Jan. 29, 2020) (same); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS, 2019 WL 7758915, at *2 (E.D. Okla. Mar. 8, 2019) (same); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. 105 at 4-5) (same); *Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW, 2018 WL 2296588, at *2 (E.D. Okla. Mar. 27, 2018) ("The Court finds that this choice of law provision complies with Oklahoma choice of law and/or conflicts of laws principles and should be and is hereby enforced.") (citations omitted); *Reirdon v. XTO Energy Inc.*, No. 16-cv-00087- KEW (E.D. Okla. Jan. 29, 2018) (Doc. 124 at 4-5) ("This choice of law provision should be and is hereby enforced."); *see also, Pauper Petroleum, LLC v. Kaiser-Francis Oil Co.,* No. 19-CV-514-JFH-JFJ (N.D. Okla. Jan. 23, 2023) (Doc. 75 at 3) (same); *Chieftain Royalty Co.. et al v. BP America Prod. Co.,* No. 18-CV-54-JFH-JFJ (N.D. Okla. Mar. 2, 2022) (Doc. 180 at 5) (same).

2. The Request for Plaintiff's Attorneys' Fees Is Reasonable Under Federal Common Law

The forty percent fee request for Class Counsel is reasonable. The market rate for these types of class actions is forty percent as reflected in myriad federal and state court oil-and-gas class actions[1] and as reflected in the contingent fee agreements in this case, executed before Class Representatives and Class Counsel knew how the litigation would progress and whether any recovery would be obtained. *See* Doc. 137-6, Class Counsel Decl. at ¶¶ 33-35.

Under Rule 23(h), "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). An award of attorneys' fees is a matter uniquely within the discretion of the trial judge, who has firsthand knowledge of the efforts of counsel and the services provided. *Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1265 (10th Cir. 2023) ("We [The Tenth Circuit] customarily defer to the district court's [fee awards] because an appellate court is not well suited to assess the course of litigation and the quality of counsel."). Such an award will only be reversed for abuse of discretion. *Id.* at 1262. Here, the requested fees are specifically authorized by federal common law, which is specifically authorized by an express agreement of the parties. *See* Doc. 129-1 at 45, ¶ 11.7.

[1] *See, e.g., Chieftain*, No. 17-CV-336-KEW, 2020 WL 8339215, at *6 (E.D. Okla. Mar. 3, 2020) ("I find this fee [40%] is consistent with the market rate and is in the range of the 'customary fee' in oil and gas class actions in Oklahoma state courts over the past fifteen (15) years.").

a. Attorneys' Fees Are Calculated as a Percentage of the Fund under Tenth Circuit Law

"The court's authority for . . . attorney fees stems from the fact that the class-action device is a creature of equity and the allowance of attorney-related costs is considered part of the historic equity power of the federal courts." 7B Wright & Miller § 1803; *Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 165 (1939). Under federal common law, district courts have discretion to apply either the percentage of the fund method or the lodestar method—but, in the Tenth Circuit, the percentage of the fund method is preferred. *Voulgaris,* 60 F.4th at 1263. Further, in the Tenth Circuit, in a percentage-of-the-fund recovery case such as this, where federal common law is used to determine the reasonableness of the attorneys' fee under Rule 23(h), neither a lodestar nor a lodestar cross check is required. *Id.* at 1265 ("The district court was not required to perform a lodestar cross-check.") (citing *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988) Courts within this district have acknowledged the Tenth Circuit's preference for the percentage method and rejected application of a lodestar analysis or lodestar cross check. *See, e.g.*, *Hoog*, 2023 WL 2989947, at *2; *Kunneman Props. LLC v. Marathon Oil Co.*, No. 22-cv-274-KEW (E.D. Okla. Feb. 16, 2023) (Docket No. 24 at 3-4); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) (Doc. 120 at 21-24); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. 105); *Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. 231); *Reirdon v. XTO Energy Inc.*, No. 16-cv-00087 KEW (E.D. Okla. Jan. 29, 2018) (Doc. 124); *Cecil v. BP America Production Co.*, No. 16-cv-00410-KEW (E.D. Okla. Nov. 19, 2018)

(Doc. 260). Other Oklahoma federal courts agree. *See, e.g.*, *Cook Children's Health Foundation v. Diamondback E&P, LLC,* No. CIV-21-359-D (W.D. Okla. May 3, 2024) (Doc. 61 at 5-6); *Naylor Farms, Inc. v. Anadarko OGC Co.*, No. CIV-08-668-R (W.D. Okla. Oct. 5, 2012) (Doc. 329).

The percentage methodology calculates the fee as a reasonable percentage of the value obtained for the benefit of the class. *See Voulgaris,* 60 F.4th at 1263 (citing *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.,* 888 F.3d 455, 458 (10th Cir. 2017) (The percentage-of-the-fund method "awards class counsel a share of the benefit achieved for the class.")).

b. The Fee Request is Reasonable under the *Johnson* Factors

When determining attorneys' fees under the preferred percentage-of-the-fund method, the Tenth Circuit evaluates the reasonableness of the requested fee by analyzing the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See Voulgaris,* 60 F.4th at 1263 (citing *Brown,* 838 F.3d at 454-55). Not all factors apply in every case, and some deserve more weight than others depending on the facts at issue. *Brown*, 838 F.2d at 454-55.

The twelve *Johnson* factors are: (l) the time and labor required, (2) the novelty and difficulty of the questions presented by the litigation, (3) the skill required to perform the legal services properly, (4) the preclusion of other employment by the attorneys due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount in controversy and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10)

the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Voulgaris,* 60 F.4th at 1263 n.1 (citation omitted).

The *Johnson* factor entitled to the most weight in this common fund case is the eighth factor—the amount involved in the case and the results obtained. *See Brown*, 838 F.2d at 456 (holding this factor may be given greater weight when "the recovery [is] highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class."); Fed. R. Civ. P. 23(h), adv. comm. note (explaining for a "percentage" or contingency-based approach to class action fee awards, "results achieved is the basic starting point"); *see also Voulgaris,* 60 F.4th at 1264 (comparing the settlement recovery in the case before it to the average recoveries in similar class actions to evaluate the results obtained by class counsel).

Here, the result is exceptional—$20.5 million in cash to the Settlement Class. *See* Doc. 129-1 at ¶ 1.19; *see also* Class Counsel Decl. at ¶ 4. And these benefits are guaranteed and automatically bestowed upon the Settlement Class. There are no claim forms to fill out, no elections to make, and no documentation to scavenge out of old records. Class Members do not have to take any action whatsoever to receive their benefits. The only thing Class Members must do is remain in the Settlement Class, *i.e.*, not opt out, and wait for distribution of their checks after the Court grants, if it does grant, final approval of the Settlement. Accordingly, the "results obtained" factor strongly supports a fee award of forty percent of the Gross Settlement Amount.

The other *Johnson* factors also support approval of the fee request. Although these factors do not merit as much weight as the results-obtained factor, the Class Counsel Decl. (Doc. 137-6), incorporated by reference, addresses each of them. To summarize:

(1) Time and Labor. The Class Counsel Declaration shows Class Counsel invested substantial time in researching, investigating, prosecuting, and resolving the Litigation on behalf of the Settlement Class. *Id.* at ¶¶ 5-27, 38.

(2) Novelty and Difficulty. Class actions are known to be complex and vigorously contested. The claims involve difficult and highly contested issues of oil-and-gas law and class certification law that are currently being litigated in multiple fora. Class Counsel litigated such difficult issues against the vigorous opposition of highly skilled defense counsel. Moreover, Defendants asserted numerous defenses to the claims that needed to be overcome if the Litigation continued to trial. Despite these hurdles, Class Counsel obtained a significant up-front cash recovery of $20.5 million for the Settlement Class. Thus, the immediacy and certainty of this recovery, when considered against the very real risks of continuing to a difficult trial and possible appeal, support the fee request. *Id.* at ¶ 39.

(3) Skill required. Only a few firms handle oil-and-gas class litigation because of the nuanced intersection of class action and oil-and-gas law and the expense of funding such a large and potentially long-lasting endeavor. *Id.* ¶ 40. Defendants are represented by experienced class action defense attorneys who can expend significant effort and expense in the defense of their client. This factor strongly supports the fee request. *See Voulgaris,* 60 F.4th at 1265.

(4) Preclusion of Other Cases. Class Counsel has only a finite number of hours to invest in class action cases. Often, they must decline opportunities to pursue other cases because they have committed time and expense to cases, such as this one, where they have already accepted representation. *Id.* at ¶ 41.

(5) Customary Fee. Class Representatives negotiated agreements with Class Counsel to prosecute the Litigation on a fully contingent basis, with a fee arrangement of 40% of any recovery obtained for the putative class after the filing of the Litigation on behalf of the Settlement Class. *Id.* at ¶ 33; Docs. 137-3, 137-4, and 137-5, Class Representative Decls. at ¶ 8. This fee represents the market rate. *See, e.g., Hoog,* No. 16-CV-463-KEW, 2023 WL 2989947, at *4 (E.D. Okla. Apr. 4, 2023) (finding that a "40% fee is consistent with the market rate for high quality legal services in class actions like this"); *Kunneman Props. LLC v. Marathon Oil Co.*, No. 22-cv-274-KEW (E.D. Okla. Feb. 16, 2023) (Docket No. 24 at 8-9) (same); *see also Chieftain*, No. 17-CV-336-KEW, 2020 WL 8339215, at * 6 (E.D. Okla. Mar. 3, 2020) ("I find this fee [40%] is consistent with the market rate and is in the range of the 'customary fee' in oil and gas class actions in Oklahoma state courts over the past fifteen (15) years.")

(6) Fixed Hourly or Contingent Fee. As set forth above, Class Counsel undertook this Litigation on a purely contingent fee basis (with the amount of any fee being subject to Court approval) and assumed a substantial risk that the Litigation would yield no recovery, leaving them uncompensated and without the ability to recover expenses. *See* Doc. 137-6, Class Counsel Decl. at ¶ 43. Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See, e.g.,*

Chieftain, No. 17-CV-336- KEW, 2020 WL 8339215, at * 7 (E.D. Okla. Mar. 3, 2020) ("If Class Counsel had not been successful, they would have received zero compensation (not to mention reimbursement for expenses)."). Simply put, it would not have been economically prudent or feasible if Class Counsel were to pursue the case under any prospect that the Court would award a fee based on normal hourly rates. Accordingly, this factor strongly supports the fee request.

(7) Time Limitations. This was not a factor in this case and should not influence the Court one way or the other. *See* Doc. 137-6, Class Counsel Decl. at ¶ 44.

(8) Amount in Controversy and Result Obtained. In negotiating the Settlement, the Parties had varying damage models, as is customary in this type of litigation. The $20,500,000.00 up-front cash settlement represents a significant amount of the potential damages calculated by the parties' experts. *Id.* at ¶ 45. Of course, Defendants argued they had *zero* liability for the claims asserted in the Litigation. The result obtained in a contingent fee case is by far the most important factor in determining the fee to award, as noted above. Many class actions have settled near or for a lower proportionate recovery of actual damages than here, and in Oklahoma, some actions have failed altogether. *Id.* This factor supports the fee request.

(9) Experience, Reputation, and Ability of Counsel. Class Counsel have extensive experience and demonstrated ability in these types of class actions. *Id*. at ¶¶ 1-2.

(10) Undesirability. There was no doubt from the beginning that this Litigation would be a lengthy, expensive, time-consuming, and arduous undertaking. *Id.* at ¶ 47. The investment by Class Counsel of their time, money, and effort, in a complex case such as

this, coupled with the attendant potential of no recovery and loss of all the time and expenses advanced by Class Counsel, rendered this case sufficiently undesirable so as to preclude many law firms from taking a case of this nature. And this Litigation involved a number of uncertain legal and factual issues. Indeed, in another complex royalty underpayment class action, one Oklahoma state court explained:

> Few law firms are willing to litigate cases requiring review of tens of thousands of pages of detailed contracts and accounting records, advance payment of hundreds of thousands of dollars in consultants and expert witness fees, and investment of substantial time, effort, and other expenses throughout an unknown number of years to prosecute a case with high risk, both at the trial and appellate levels.

Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C., No. CJ-2010-38, 2015 WL 5794008, at *8 (Okla. Dist. Ct. July 2, 2015). Very few attorneys have the desire to take on the risk involved in class actions, much less a class action against well-financed oil-and-gas companies such as Defendants. *See, e.g., Chieftain*, No. 17-CV-336-KEW, 2020 WL 8339215, at *8 (E.D. Okla. Mar. 3, 2020) ("Compared to most civil litigation, this Litigation clearly fits the "undesirable" test and no other firms or plaintiffs have asserted these claims against Newfield . . . Few law firms would be willing to risk investing the time, trouble and expenses necessary to prosecute this Litigation[.]"). Nevertheless, Class Counsel did so and achieved an excellent recovery. This factor supports the fee request.

(11) Nature and Length of Professional Relationship with Client. Although of little relevance in a case where the client does not engage regularly in litigation to warrant a discounted hourly rate, this factor supports the requested fee. Class Counsel worked extensively with Class Representatives throughout the Litigation to prosecute the claims

on behalf of the Settlement Class. *See* Doc. 137-6, Class Counsel Decl. at ¶ 48; Docs. 137-3, 137-4, and 137-5, Class Representative Decls. at ¶¶ 7-9. And Class Representatives support the Fee Request. *Id.* at ¶ 16. This factor supports the fee request.

(12) Awards in Similar Cases. Forty percent is a customary fee award in royalty underpayment class action litigation and supports the Fee Request in this case. *See supra* at 9; s*ee also Chieftain*, No. 17-CV-336-KEW, 2020 WL 8339215, at * 7 (E.D. Okla. Mar. 3, 2020) (citing seven oil and gas class actions awarding a 40% fee).

The analysis of the *Johnson* factors under federal common law strongly demonstrates approval of the fee request is warranted.

3. The Request for Reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs Is Reasonable under Federal Common Law

In connection with approval of the Settlement of the Litigation, and in accord with the Notice to the Settlement Class, Class Representatives respectfully move the Court for reimbursement of expenses incurred in successfully prosecuting and resolving this Litigation and administering the Settlement (the "Expense Request"). Rule 23(h) of the Federal Rules of Civil Procedure allows courts to reimburse counsel for "nontaxable costs that are authorized by law." Fed. R. Civ. P. 23(h). To this end, district courts have noted, "[a]s with attorneys' fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred . . . in addition to the attorney fee percentage." *Ritter,* No. 22-CV-246-JFH (E.D. Okla. Dec. 15, 2023), Doc. 51 at ¶ 6.d (quoting *Vaszlavik v. Storage Corp.*, No. 95-B-2525, 2000 WL 1268824, *4 (D. Colo. Mar. 9, 2000)). And where a settlement agreement calls for the

costs of administration to be borne by the settlement fund, the court should approve the same. *See, e.g., In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-2509-LHK, 2013 WL 6328811, at *5 (N.D. Cal. Oct. 30, 2013) (permitting all costs incurred in disseminating notice and administering the settlement to shall be paid from the settlement fund, pursuant to the terms of a settlement agreement).

As described above, Class Counsel has obtained an excellent recovery for the benefit of Class Members, which necessitated incurring expenses that Class Counsel paid or will be obligated to pay. To date, Class Counsel has incurred $618,053.09 in prosecuting and resolving this case. *See* Doc. 137-6, Class Counsel Decl. at ¶ 52. All the expenses incurred have been reasonable and necessary to the prosecution of the Litigation. *Id.* Class Counsel will incur an estimated $35,000.00 in additional expenses, primarily related to the allocation and distribution of settlement benefits to the Class Members and to prepare for the Final Fairness Hearing. *Id.* at ¶ 53. Class Representatives will seek the Court's approval of future expenses before their payment from the Settlement.

In addition, the Settlement Agreement directs payment of the Administration, Notice, and Distribution Costs from the Gross Settlement Amount. Doc. 129-1 at 9, ¶ 1.25. The Settlement Administrator has incurred such costs in the amount of $32,692.43 as of the date of this Motion and anticipates an additional $105,938.57 in such costs to complete the settlement process, for an overall total cost of $138,631.00. *See* Doc. 137-7, Settlement Administrator Decl. at ¶ 18.

The total of the Expense Request is $791,684.09, which is consistent with the amount estimated in the Notices. *See* Doc. 137-7, Settlement Administrator Decl. at Ex. C

("Class Counsel will seek also seek reimbursement of litigation and administration expenses incurred in connection with the prosecution of this Litigation and that will be incurred through final distribution of the Settlement, which is estimated to be approximately $795,000."). All such expenses were reasonably and necessarily incurred and were related to the prosecution and resolution of this Litigation. The costs include, for example, routine expenses related to court fees, postage and shipping, and legal research, as well as expenses for experts, document production and review, database and information costs, and settlement administration, which are typical of large, complex class actions such as this. As such, the Expense Request is fair and reasonable and should be approved.

4. The Incentive Award Is Reasonable Under Federal Common Law

Class Representatives also request a $205,000.00 Incentive Award, which is 1% of the $20,500,000.00 cash payment, to be to be equally divided among them. *See* Doc. 136-7, Class Counsel Decl. at ¶¶ 56-57. The requested 1% Incentive Award was included in the Notice provided to Class Members and is reasonable under the case law.

Federal courts regularly give incentive awards to compensate named plaintiffs. *See, e.g., Hoog v. PetroQuest Energy, L.L.C.*, No. 16-CV-463-KEW, 2023 WL 2989947, at *6 (E.D. Okla. Apr. 4, 2023) (citing *UFCW Local 880-Retail Food v. Newmont Mining Corp.,* 352 F. App'x 232, 235 (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.") (cleaned up); *Kunneman Props. LLC v. Marathon Oil Co.*, No. 22-cv-274-KEW (E.D. Okla. Feb. 16,

2023) (Docket No. 24 at 12) (same); *Chieftain Royalty Co. v. Laredo Petroleum, Inc.,* No. 12-cv-1319-D, 2015 WL 2254606, at *4-5 (W.D. Okla. May 13, 2015) ("Case contribution awards are meant to compensate class representatives for their work on behalf of the class, which has benefitted from their representation.").

The request here is consistent with, and even less than, awards entered in similar cases. *See, e.g., Hoog*, 2023 WL 2989947, at *6 (E.D. Okla. Apr. 4, 2023) (awarding 1% of the Gross Settlement Fund as an incentive award); *Kunneman Props. LLC v. Marathon Oil Co.*, No. 22-cv-274-KEW (E.D. Okla. Feb. 16, 2023) (Docket No. 24 at 12-13) (awarding 2% of the Gross Settlement Fund as an incentive award); *Harris v. Chevron U.S.A., Inc., et al.*, No. 19-CV-355-SPS (E.D. Okla. Feb. 27, 2020) (Doc. 40 at 17) (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."); *Underwood v. NGL Energy Partners, LP,* No. 21-CV-1135-CVE-SH (N.D. Okla. June 15, 2023) (Doc. 73 at 11) ("I find Class Representatives' request for an award of 2% of the Gross Settlement Fund to be fair and reasonable and supported by the evidence."); *Hay Creek Royalties, LLC v. Mewbourne Oil Co.*, No. 20-CV-1199-F (W.D. Okla. July 11, 2022), Doc. 38 at 14 (awarding 2% of the up-front $3,950,000.00 cash settlement value).

Class Representatives seek an Incentive Award based on the demonstrated risk and burden as well as compensation for time and effort, as more fully set forth in the Class Representative Declarations. *See* Docs. 137-3, 137-4, and 137-5, Class Representative Decls. Having worked with Class Representatives in the investigation, filing, prosecution,

and settlement of this Litigation on behalf of the Settlement Class, Class Counsel fully supports the request. *See* Doc. 137-6, Class Counsel Decl. at ¶ 57. As such, Class Representatives' request for an Incentive Award is fair and reasonable and supported by the same evidence of reasonableness.

CONCLUSION

For the reasons set forth in this Motion, Class Representatives and Class Counsel move the Court to grant this Motion and enter an Order approving the following, in accord with the Settlement Agreement and the Notices, to be deducted from the Gross Settlement Amount before Distribution Checks are mailed to the class from the remaining Net Settlement Amount: 1) Plaintiff's Attorneys' Fees in the amount of forty percent of the Gross Settlement Amount; 2) an Incentive Award in the amount of $205,000.00 (1% of the Gross Settlement Amount), to be equally divided among the Class Representatives; 3) Litigation Expenses in the amount of $618,053.09 to date; 4) Administration, Notice, and Distribution Costs in the amount of $32,692.43 to date; and 5) a reserve of up to $140,938.57 for future Litigation Expenses and Administration, Notice, and Distribution Costs through the Final Fairness Hearing and full implementation of the Settlement. Class Representatives will submit a proposed order to the Court for the relief requested in this Motion after the objection deadline passes on May 17, 2024 and prior to the Final Fairness Hearing.

Dated: May 10, 2024.

Respectfully Submitted,

/s/ Rex A. Sharp

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CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that, on May 10, 2024, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Rex A. Sharp
Rex A. Sharp