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

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| **MARY KATHERINE HARRIS, on behalf of herself and all persons or entities similarly situated,** | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **Case No. 6:19-cv-00355-SPS** |
| **CHEVRON U.S.A., INC., ET AL.,** | ) | |
| **Defendants.** | ) | |

**ORDER APPROVING CLASS COUNSEL FEES AND EXPENSES AND ADMINISTRATION EXPENSES**

Before the Court is Class Representative Mary Katherine Harris's Motion for Approval of Class Counsel Fees and Expenses and Administration Expenses (Dkt. No.32) (the "Motion") and Brief in Support Thereof (Dkt. No. 33) (the "Brief"). Class Representative seeks entry of an Order approving her request for (1) Attorneys' Fees of $1,915,639.15, which is forty percent of the Settlement Proceeds as adjusted for Monies Payable to Opt-Outs ($4,900,000 - $110,902.12 = $4,789,097.88); (2) reimbursement of Litigation Expenses in an amount of $56,881.81 plus a reserve of $20,000.00 for future Litigation Expenses to be reimbursed upon court order; (3) Class Representative Fee of two percent of the Settlement Proceeds as adjusted; and (4) a reserve of $50,000.00 to pay Administration Expenses to the court-appointed Settlement Administrator, JND Legal Administration, LLC. The Court has considered the Motion and Brief, all matters and evidence submitted in connection therewith, and the proceedings at the Settlement Fairness Hearing conducted on February 25, 2020. The Court finds the Motion should be granted.

IT IS THEREFORE ORDERED as follows:

1. This Order incorporates by reference the definitions in the Settlement Agreement (Dkt. No. 11-1) and all terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court, for purposes of this Order, incorporates herein its findings of fact and conclusions of law from its Order Approving Class Action Settlement and Final Judgment as if fully set forth.

3. The Court has jurisdiction to enter this Order and over the subject matter of the Litigation and all parties to the Litigation, including all Class Members.

4. The requests for Class Counsel Fees and Expenses and Administration Expenses were set forth in the Notice of Settlement which was mailed to all members of the Settlement Class and posted on the website for this Settlement. Notice of the requests for payment of Class Counsel Fees and Expenses and Administration Expenses from the Settlement Proceeds was given to all members of the Settlement Class who could be identified with reasonable effort. The form and method of notifying the members of the Settlement Class of the requests for Class Counsel Fees and Expenses and Administration Expenses was the best notice practicable under the circumstances; they constitute due and sufficient notice to all persons and entities entitled to receive such notice and fully satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

5. Class Counsel provided the Court with abundant evidence in support of their requests for Class Counsel Fees and Expenses and Administration Expenses, including but not limited to the Motion and Memorandum and the exhibits attached to the Combined Exhibit Index (Dkt. Nos. 32, 33 and 34).

6. For the reasons set forth in the findings of fact and conclusions of law below, the Court hereby awards the following:

(a) Class Counsel is awarded Attorneys' Fees of $1,915,639.15, which is 40% of the Settlement Proceeds as adjusted;

(b) Class Counsel shall be reimbursed for Litigation Expenses, in an amount of $56,881.81, to be paid from the Settlement Proceeds, and a reserve of $20,000.00 shall be set aside from the Settlement Proceeds to pay for future Litigation Expenses through the implementation and conclusion of the Settlement as approved by the Court;

(c) Class Representative is awarded a Class Representative Fee of $95,781.96, which is 2% of the Settlement Proceeds as adjusted; and

(d) To pay Administration Expenses, $50,000.00 shall be reserved from the Settlement Proceeds.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Federal Common Law Governs the Request for Attorneys' Fees, Reimbursement of Litigation Expenses, and Case Contribution Award.

7. The Parties contractually agreed that the Settlement Agreement shall be governed *solely* by federal common law with respect to certain issues, including the right to and reasonableness of attorneys' fees, reimbursement of expenses, and case contribution award:

> 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.

Settlement Agreement (Dkt. No. 11-1) at ¶2.8.

8. 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. *See Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165 (1939); *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. 3 (2nd 1988)); *Cecil v. BP America Production Co.*, No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018), Order Awarding Attorneys' Fees (Dkt. No. 260) at ¶¶12-13; *Chieftain Royalty Co. v. XTO Energy Inc.*, No. 11-cv-29-KEW (E.D. Okla. Mar. 27, 2018), Order Awarding Attorneys' Fees (Dkt. No. 231) at ¶¶6(d)-(e); *see also Leritz v. Farmers Ins. Co.*, 385 P.3d 991, 992 (Okla. 2016) ("Generally, '[t]he law of the state chosen by the parties to govern their contractual rights and duties will be applied . . ..'").

**B. The Fee Request Is Reasonable Under Federal Common Law.**

9. Under Federal Rule of Civil Procedure 23(h), "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." 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. *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 453 (10th Cir. 1988). Here the requested fees are authorized by federal common law and express agreement of the Parties.

10. Based on the evidence submitted and the law, the Court approves Class Representative's calculation of the Fee Request as a percentage of the Settlement Proceeds. 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 clearly preferred. *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988); *Uselton v. Commercial Lovelace Motor Freight*, 9 F.3d 849 (10th Cir. 1993); *Chieftain Royalty Co. v. Laredo Petro., Inc.*, No. CIV-12-1319, 2015 WL 2254606, at *3 (W.D. Okla. May

13, 2015) ("In the Tenth Circuit, the preferred approach for determining attorneys' fees in common fund cases is the percentage of the fund method."). 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 analysis nor a lodestar cross check is required. *Brown*, 838 F.2d at 456 & n.3; *Cecil* Fee Order at ¶15 (neither lodestar analysis nor lodestar cross-check is required); *Reirdon v. XTO Energy, Inc.*, No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. 124) at ¶6(f) (same); *Chieftain Royalty Company v. QEP Energy Company*, No. CIV-11-212-R (W.D. Okla. May 31, 2013) (Doc. 182) (lodestar analysis is not required); *CompSource Okla. v. BNY Mellon, N.A.*, 2012 WL 6864701, *8 (E.D. Okla. 2012) ("A majority of circuits recognize that trial courts have the discretion to award fees based solely on a percentage of the fund approach and are not required to conduct a lodestar analysis in common fund class actions."). Rather, the court may make general findings regarding the expenditure of time and labor based on the record as a whole. *See, e.g., Northumberland County Ret. Sys. v. GMX Res. Inc.*, No. CIV-11-520, 2014 WL 12014020, at ¶7 (W.D. Okla. July 31, 2014). Courts prefer the percentage of the recovery method because it eliminates disputes about the reasonableness of rate and hours, conserves judicial resources, and aligns the interest of class counsel and the class members to maximize recovery.

11. When determining attorneys' fees under the percentage 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 Brown*, 838 F.2d 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 456. Based on the evidence and the law, the Court finds the requested fee of $1,918,261.77 of the $4,795,654.44 recovered for the benefit of the Settlement Class is

reasonable under the applicable *Johnson* factors.

12. 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. *Gottlieb*, 43 F.3d at 482 n.4.

13. Here, the evidence shows that, under the most important results obtained factor, the Fee Request is fair and reasonable. The Settlement here represents a recovery of more than 94% of the actual damages calculated. *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").

14. In valuing the result obtained for purposes of determining a reasonable fee to award under the Tenth Circuit's percentage of recovery method, it is well-established that the fee award should be based on the total economic benefit bestowed on the class. *See, e.g.*, *Fager v. Centurylink Comm'cns*, No. 14-cv-00870, 2015 WL 13357867, at *3 (D.N.M. June 25, 2015) (collecting cases), *aff'd by* 854 F.3d 1167 (10th Cir. 2016); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 479 (1980) (explaining that, in common fund cases, the fee to be awarded should be based on "the

full value of the benefit to each absentee member" obtained through the "entire judgment fund").[1] Here, the results obtained is a monetary recovery of $4,795,654.44, i.e. the Settlement Proceeds as adjusted. The benefits of this Settlement are guaranteed and will be automatically bestowed on the Settlement Class. This provides real value to the Settlement Class:

> Importantly, this is a cash recovery that will be distributed to Class Members automatically. There are no claim forms to fill out, no elections to make, and no documentation to scavenge out of old records. Indeed, Class Members do not have to take any action whatsoever to receive their benefits. The only thing Class Members need to do is not opt out and wait for their checks to be distributed after the Court grants final approval of the Settlement.

*See Cecil* Fee Order at ¶21. There are no claim forms to fill out, no elections to make, and no supporting documentation to find. Indeed, Class Members do not have to take any action whatsoever to receive their benefits, except remain in the Class. Accordingly, the "results

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[1] *See also, e.g.*, *Principles of the Law of Aggregate Litigation*, §3.13(b) (American Law Institute, 2010) ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases, *with the percentage being based on both the monetary and the nonmonetary value of the judgment or settlement*."); *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773-74 (11th Cir. 1991) (instructing that courts should consider, among other factors, "*any non-monetary benefits conferred upon the class by the settlement*" in determining reasonable attorneys' fees to be paid from common fund recovery); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (holding "where the value to individual class members of benefits deriving from injunctive relief can be accurately ascertained . . . courts may include such relief as part of the value of a common fund for purposes of applying the percentage method of determining fees") (citing *Boeing*, 444 U.S. at 478-79)); *Chieftain Royalty Co. v. QEP Energy Co.*, No. CIV-11-212-R, 2013 WL 12090676 (W.D. Okla. May 31, 2013) (awarding $46.5 million in attorneys' fees on a $155 million gross settlement fund, $40 million of which constituted future benefits); *Anderson v. Merit Energy Co.*, No. 07-cv-00916-LTB-BNB, 2009 WL 3378526 (D. Colo. Oct. 20, 2009) (finding, where settlement provided for up-front cash payment of $12,997,493.00 and future changes to royalty payment calculation methodology valued at approximately $10,400,00.00, the "Common Fund created" amounted to "approximately $23,397,493.00" and, thus, a fee award "in the amount of $5,900,000, which represent[ed] approximately 26% of the total economic benefit of the Class Settlement, net of litigation expenses, [which also represented 45% of the $12,997,493 initial cash payment]" was "warranted and reasonable" under Tenth Circuit law); *Droegemueller v. Petroleum Dev. Corp.*, No. 07-cv-1362-JLK-CBS, 2009 WL 961539, at *2-4 (D. Colo. Apr. 7, 2009) (finding "results obtained" factor was measured by "total economic benefit for the Class," which included cash payment for past royalty underpayment claims and present value of changes to "method for calculating future royalties").

obtained" factor strongly supports the requested fee.

15. I find that the other *Johnson* factors also support and weigh strongly in favor of the fee request. The findings with respect to each factor are set forth below:

a. **Time and Labor**. The Joint Declaration of Class Counsel shows the law firms invested substantial time in researching, investigating, prosecuting, and resolving this case. Joint Counsel Decl. at ¶¶4–26, 48; Agee Decl. at ¶2. I find that this factor supports the Fee Request.

b. **Novelty and Difficulty**. Class actions are known to be complex and vigorously contested. The claims involve difficult and highly contested issues of Oklahoma oil and gas law and class certification law that are currently being litigated in multiple forums. *See Chieftain Royalty Co., et al. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019), Doc. 120 at 12 ("Class actions are known to be complex and vigorously contested . . . The legal and factual issues litigated in this case involved complex and highly technical issues."). Class Counsel litigated such difficult issues against the vigorous opposition of highly skilled defense counsel. Moreover, Defendants asserted a number of defenses to the Settlement Class' claims that would have to be overcome if the Class Lawsuit continued to trial. Despite these hurdles, Class Counsel obtained a significant recovery 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. Joint Counsel Decl. at ¶¶32, 49. I find that this factor strongly supports the Fee Request.

c. **Skill required.** Only a few firms handle royalty 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. Joint Counsel Decl. at ¶50. The Declarations prove that this Class Lawsuit called for Class Counsel's considerable skill and experience in oil and gas and complex class action litigation to bring it to such a successful conclusion. *See Chieftain Royalty Co., et al. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019), Doc. 120 at 12-13 ("I find the Declarations prove that this Litigation called for Class Counsel's considerable skill and experience in oil and gas and complex class action litigation to bring it to such a successful conclusion, requiring investigation and mastery of complex facts, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses."). Defendants are also represented by skilled class action defense attorneys. The quality of representation by counsel on *both* sides of this Class Lawsuit was high. This Lawsuit could have raged for years. Without the experience, skill, and determination displayed by *all* counsel involved, the Settlement would not have been reached. I find that this factor strongly supports the Fee Request.

d. **Preclusion of Other Cases**. The Joint Counsel Declaration shows that counsel has only a finite number of hours to invest in class action cases and must turn away other opportunities to pursue cases in which they have already accepted representation. Jt. Decl. of Class Counsel at ¶51. Class Counsel necessarily were precluded from working on other cases and pursuing otherwise available opportunities due to their dedication of time and effort to the prosecution of this Class Lawsuit. I find that this factor supports the Fee Request.

e. **Customary Fee.** Mary Katherine Harris and Class Counsel negotiated and agreed to prosecute this case based on a 40% contingent fee. *See* Harris Decl. at ¶7; Joint Counsel

Decl. at ¶¶43-44, 52. As this Court has previously recognized, the 40% contingency fee represents the market rate and is in the range of the "customary fee" in oil and gas class actions in Oklahoma courts over the past 15 years. *See Chieftain Royalty Co., et al. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019), Doc. 120 at 16-17 ("This fee [40%] represents 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 15 years."); *id.* ("I find a 40% fee is consistent with the market rate for high quality legal services in royalty underpayment class actions like this."); *see also* Exhibits 3.C-L & 3.O; *see also, e.g., Fitzgerald Farms, LLC v. Chesapeake Operating, LLC,* No. CJ-2010-38, 2015 WL 5794008, at *3 (Okla. Dist. Ct., Beaver County, July 2, 2015) (collecting Oklahoma cases to find in "the royalty underpayment class action context, the customary fee is a 40% contingency fee" and awarding 40% fee of $119 million common fund). The Fee Request is in line with the typical fee award granted in similar cases supports its approval; and the Class Representative's declaration demonstrates her support of the fairness and reasonableness of the Fee Request. Harris Decl. at ¶¶17–18. I find that this factor supports the Fee Request.

f. **Fixed Hourly or Contingent Fee**. As set forth above, Plaintiff's Counsel undertook this Class Lawsuit on a purely contingent fee basis (with the amount of any fee being subject to Court approval), assuming a substantial risk that the it would yield no recovery and leave them uncompensated. *See* Joint Counsel Decl. at ¶¶35-45, 53. Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Chieftain Royalty Co., et al. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019), Doc. 120 at 19 ("If

Class Counsel had not been successful, they would have received zero compensation (not to mention reimbursement for expenses)."); *see also, Cecil* Fee Order at ¶26. Indeed, plaintiff's counsel may expend thousands of hours litigating royalty underpayment class actions where the courts denied class certification and, thus, plaintiff's counsel received no remuneration or reimbursement of expenses whatsoever despite their diligence and expertise.[2] The Court finds 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 on the basis of normal hourly rates. Joint Counsel Decl. at ¶39; *see Cecil* Fee Order at ¶26. This agreed-upon contingent fee reflects the value of this Class Lawsuit as measured when the risks and uncertainties of litigation still lay ahead. *See Cecil* Fee Order at ¶26; *CompSource*, 2012 WL 6864701, at *8; *Chieftain v. Laredo Petro., Inc.*, 2015 WL 2254606, at *2. If Class Counsel had not been successful, they would have received zero compensation (not to mention no reimbursement for expenses). Joint Counsel Decl. at ¶40; *see also Cecil* Fee Order at 26; *Tibbetts v. Sight 'n Sound Appliance Ctrs., Inc.*, 2003 OK 72, ¶¶11 & 15-23, 77 P.3d 1042. Prearranged fees, whether fixed or contingent, can be helpful in setting court awarded fees in class actions. *See* Fitzpatrick Decl. at ¶16. *See, e.g., Cecil* Fee Order at ¶26. Accordingly, I find that this factor strongly supports the Fee Request.

g. **Time Limitations**. This was not a factor in this case and does not influence the Court one way or the other. Joint Class Decl. at ¶54.

[2] *See, e.g., Schell v. Oxy USA, Inc.*, 814 F.3d 1107, 1112 & 1125-26 (10th Cir. 2016) (despite winning summary judgment in favor of plaintiff class after seven years of litigation, no attorney's fee was awarded). *See also*, Ex. 3.I, Gensler Decl. at ¶6 (listing the three prior putative class actions in which BP defeated certification); Ex. 3.K, Fitzpatrick Decl. at ¶6 (same).

h. **Amount in Controversy and Result Obtained**. Amount in controversy was approximately $5.2 million. Ex. 2, Reineke Decl. The recovery was about 94% of the total. *Id.* As detailed above, this is the most significant factor in awarding attorneys' fees in the class action context and strongly supports the Fee Request here. Joint Counsel Decl. at ¶¶55–56.

i. **Experience, Reputation, and Ability of Counsel**. Class counsel has extensive experience, stellar reputations, and demonstrated ability. Joint Counsel Decl. at ¶¶50, 57-58. They have shown the ability to win where others either have failed or left the case for dead. *See, e.g., Cecil v. BP Am. Prod. Co.,* No. 16-CV-410-KEW (Class Counsel was able to settle *Chockley v. BP Am. Prod. Co., et al.,* CJ-2002-84 (Okla. Dist. Ct. Beaver Cty.), which had been filed in 2002 and was inactive for more than ten years, to skillfully obtain a global settlement of royalty underpayment claims back to 1985).

j. **Undesirability**. Defendants are worthy adversaries that proved they were willing to fight in bitter, adversarial litigation. There was no doubt from the beginning that this lawsuit would be a lengthy, expensive, time-consuming, and arduous undertaking. Very few attorneys have the desire to take on the risk involved in class actions, much less a class action against a well-financed oil and gas company such as Chevron. Joint Counsel Decl. at ¶59; *see also,* Declaration of Kimberly Hamilton, *Freebird, Inc. v. Merit Energy, Inc.*, No. 10-1154-KHV-JPO (D. Kan. Jan. 15, 2013) (Dkt. No. 199-3), attached as Exhibit 3.M to the Combined Exhibit Index, at 2 (describing a royalty owner's challenge to find an attorney to prosecute royalty underpayment lawsuits).

Indeed, in another complex royalty class action that Rex Sharp settled, the 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*, 2015 WL 5794008, at *8. Even firms that are willing to accept the risk of royalty underpayment class actions usually will not invest the time and expenses necessary to prosecute smaller cases like this Class Lawsuit. Joint Counsel Decl. at ¶59. Nevertheless, Class Counsel did so, and ultimately achieved an excellent recovery of the Settlement Class. In find this factor supports the Fee Request.

k. **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 met and worked with Ms. Harris many times throughout the Class Lawsuit, to prosecute the claims. Joint Counsel Decl. at ¶60. She negotiated a forty percent contingency fee when she agreed to be class representative in this Class Lawsuit. Harris Decl. at ¶7. Ms. Harris zealously represented the Class and remained active throughout the Class Lawsuit and its resolution. Harris Decl. at ¶¶19-20; Joint Counsel Decl. at ¶72. And, Mary Katherine Harris supports the Fee Request. Harris Decl. at ¶¶17-18.

l. **Awards in Similar Cases**. As addressed above under the "Customary Fee" factor, forty percent is the usual fee award and supports the Fee Request in this case. *See* ¶15(e), *supra*; *see also,* Joint Counsel Decl. at ¶¶61-63; *see also,* Table of Oklahoma Cases awarding 40% contingency fees.

16. In summary, upon consideration of the evidence, pleadings on file, arguments of the parties, and the applicable law, I find that the *Johnson* factors under federal common law weigh heavily in favor of the Fee Request and that the Fee Request is fair and reasonable and should be and is hereby approved.

**C. The Expenses Request Is Reasonable Under Federal Common Law.**

17. "As with attorney 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." *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 WL 1268824, at *4 (D. Colo. Mar. 9, 2000) (citing *Blum*, 465 U.S. at 573); FED. R. CIV. P. 23(h) (authorizing the Court to reimburse counsel for "non-taxable costs that are authorized by law."). *See Cecil* Fee Order at ¶30.

18. The Court finds that, as of January 30, 2020, Class Counsel has advanced or incurred $56,881.81 in reasonable and necessary Litigation Expenses and anticipates incurring another $20,000.00 in implementing the Settlement through its conclusion. Joint Counsel Decl. ¶¶64-69. The costs include routine expenses related to copying, court fees, postage and shipping, phone charges, legal research, and travel and transportation, as well as expenses for experts, document production and review, and settlement administration, which are typical of large, complex class actions such as this. The Court finds these expenses were reasonably and necessarily incurred by Class Counsel and are directly related to the prosecution and resolution of this Class Lawsuit.

19. In addition to Litigation Expenses, Class Representative requests $50,000.00 be reserved from the Settlement Proceeds to pay the Administration Expenses of the Settlement. Joint Counsel Decl. at ¶¶70-71. These expenses relate to provision of Notice of Settlement by direct

mail and publication, maintenance of the Settlement website and call-center, implementation of the Plan of Allocation and Distribution, payment of costs incurred to establish and maintain the Harris Settlement Account, distribution of the Net Settlement Amount, tax-reporting, and payment of the Settlement Administrator for its services. The Settlement Agreement provides that the costs of administering the Settlement will be paid from the Settlement Proceeds upon the Court's approval. Where a settlement agreement calls for the costs of administration to be borne by the settlement fund, the court should approve 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"). The Court finds these Administration Expenses, incurred and anticipated, are reasonable in light of the number of Class Members involved and the amount of money to be distributed.

20. Therefore, Class Counsel is awarded $56,881.81 in past expenses and may request any additional amount Class Counsel may incur after the entry of this Order, not to exceed $20,000.00, upon 10 days' written notice to the Court. If, upon receipt of any such future request, the Court has not ruled within 10 days thereof, such request shall be deemed granted.

21. Additionally, $50,000.00 shall be reserved from the Settlement Proceeds to pay the Administration Expenses of the Settlement upon motion to and order of the Court.

**D. The Requested Class Representative Fee Is Reasonable Under Federal Common Law.**

22. Federal courts regularly give incentive awards to compensate named plaintiffs. *See Cecil* Fee Order at ¶34 (incentive awards are meant to compensate class representatives for "the work they performed – their time and effort invested in the case and the risks they take."); *see also, 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."); *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 benefited from their representation.'") (*citing In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010)); *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 . . . ."). An incentive award is not just hourly compensation, rather it is intended to be an incentive for one or more class members to step outside their comfort zone, enter the fray of litigation, be burdened with document discovery, be embroiled in the constant stress of litigation, expose themselves to the scrutiny of a deposition, sit as a litigant in open court, and face the threat of retaliation from a defendant company with more power and money than they will ever know. Mary Katherine Harris accepted that challenge, and the Class owes her a tremendous debt of gratitude, which the incentive award is but a small token.

23. 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." *Cecil* Order at ¶35 (quoting Newberg § 17:3). The award should be proportional to the contribution of the plaintiff. *Id.* (citing *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).

24. Mary Katherine Harris seeks an award of two percent of the Settlement Proceeds based on the demonstrated risk and burden as well as compensation for time and effort. *See* Harris Decl. at ¶¶19-20; Joint Counsel Decl. at ¶72. Her 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. Joint Counsel Decl. at ¶72. *See, e.g., 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 Cnty.) (2005) (awarding 1-2% of total settlement amounts); *Robertson v. Sanguine, Ltd.*, No. CJ-02-150 (Okla. Dist. Ct., Caddo Cnty.) (2003) (awarding 1% class representative fee); *Continental Resources, Inc. v. Conoco, Inc.*, No. CJ-95-739 (Okla. Dis. Ct., Garfield Cnty.) (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."); *Fankhouser v. XTO Energy, Inc.*, No. CIV-07-798- L, 2012 WL 4867715, at *3 (W.D. Okla. Oct. 12, 2012) (incentive awards totaling $100,000); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) (1.5% of $1.06 billion fund, equaling $15,900,000 to be split among nine class representatives 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).

25. Ms. Harris pursued the class claims vigorously. The Declaration of Mary Katherine Harris shows she monitored the litigation, stayed in contact with Class Counsel, reviewed documents as requested, traveled to and attended the unsuccessful mediation session, remained available to discuss and advise as the settlement negotiations continued, and read and signed the Settlement Agreement, including its exhibits. Harris Decl. at ¶20. Her declaration provides evidence of her involvement in and contribution to this case throughout the Class Lawsuit. And, Ms. Harris will continue to work on behalf of the Settlement Class in the coming weeks and months, including through administration of the Settlement. *Id.* Ms. Harris will also spend additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. *Id.* The Court agrees with Class Counsel that Mary Katherine Harris's active participation has contributed significantly to the prosecution and resolution of this case. Joint Counsel. Decl. at ¶72.

26. The Court further finds that Mary Katherine Harris was never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Class Lawsuit. Harris Decl. at ¶21. In fact, if the Court determines that no award is appropriate, Ms. Harris 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 its request. *Id*. In other words, Mary Katherine Harris fully supports the Settlement as fair, reasonable and adequate, even if she is awarded no case contribution fee at all. *Id*. Ms. Harris has no conflicts of interest with Class Counsel or any absent class member. *Id*.

27. Because Mary Katherine Harris has dedicated time, attention, and resources to this Class Lawsuit and to the recovery of underpaid royalty on behalf of the Settlement Class from Defendants, I find she is entitled to a Class Representative Fee to reflect the important role that

she played in representing the interests of the Settlement Class and in achieving the substantial result reflected in the Settlement. The Court finds Mary Katherine Harris's request for an award of two percent of the Settlement Proceeds to be fair and reasonable and supported by the evidence. The Court therefore awards a Class Representative Fee in the amount of $95,781.96, which is 2% of the Settlement Proceeds as adjusted, to Class Representative Mary Katherine Harris.

**E. Finality Of Order**

28. Any appeal or any challenge affecting this Order Awarding Class Counsel Fees and Expenses shall not disturb or affect the finality of the Order Approving Class Action Settlement and Final Judgment, the Settlement Agreement, or the Settlement contained therein.

29. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Litigation, including the administration, interpretation, effectuation, or enforcement of the Settlement Agreement and this Order.

30. There is no reason for delay in the entry of this Order and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

31. Two purported objections to the Settlement were filed with the Court but neither complied with the provisions of the Amended Settlement Agreement or Notice of Settlement. As stated in the Notice of Settlement, failure to provide the required information means the Court will treat the objection as not filed at all. The invalid objections (Dkt. Nos. 25 &26) are overruled in their entirety.

32. If considered substantively, however, the objections are overruled in their entirety. Neither filing objected to the requested Class Counsel Fees and Expenses or Administration Expenses. Neither cited any legal authority or submitted any evidence that the requested amounts

are unreasonable.

33. If any Class Member appeals this Order Awarding Class Counsel Fees and Expenses, and Administration Expenses, or the Order Approving Class Action Settlement and Final Judgment, or any other rulings of this Court, such Class Member is hereby ordered, pursuant to the Settlement Agreement (Dkt. No. 11-1) at ¶10.3, to which no objection was made, to post a cash bond in an amount to be set by the Court sufficient to reimburse Class Counsel's appellate fees, Class Counsel's expenses, and the lost interest to the Class caused by the delay, at a rate not less than two percent (2%) per annum.[3]

**IT IS SO ORDERED**

Dated this 27th day of February, 2020.

Steven P. Shreder
United States Magistrate Judge
Eastern District of Oklahoma

[3] This appeal bond order is consistent with the Order Awarding Attorneys' Fees that was entered in *Cecil v. BP America Production Co.*, No. 16-CV-410-KEW (Dkt. No. 260) and in other similar royalty owner class action settlements.