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

MCKNIGHT REALTY CO., on behalf of itself and all others similarly situated, Plaintiff, v. BRAVO ARKOMA, LLC, and BRAVO NATURAL RESOURCES, Defendants.	Case No. 17-CV-00308-KEW

ORDER APPROVING CLASS COUNSEL FEES AND EXPENSES AND ADMINISTRATION EXPENSES

Before the Court is Class Representative McKnight Realty Company's Motion for Approval of Class Counsel Fees and Expenses (Dkt. No. 64) (the "Motion") and Memorandum of Law in Support Thereof (Dkt. No. 65) (the "Memorandum"), wherein Class Representative seeks entry of an Order approving its request for (1) Attorneys' Fees in the amount of $519,954.46, which represents forty percent of the Settlement Proceeds as adjusted for Monies Payable to Opt-Outs; (2) reimbursement of Litigation and Administration Expenses in an amount of approximately $100,000; and (3) Class Representative Fee in the amount of $25,997.72, which represents two percent of the Settlement Proceeds. The Court has considered the Motion and Memorandum, all matters and evidence submitted in connection therewith, and the proceedings at the Settlement Fairness Hearing conducted on December 21, 2018. 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. 50-1) 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 Class Lawsuit and all parties to the Class Lawsuit, including all Class Members.

4. The requests for Class Counsel Fees and Expenses were set forth in the Notice of Settlement. The Court finds that the form of the Notice of Settlement and the method in the Plan of Notice 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. The Court has been provided with evidence to support the requests for Class Counsel Fees and Expenses as shown on the Combined Exhibit Index (Dkt. No. 66).

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 $519,954.465 to be paid from the Settlement Proceeds;

(b) Class Counsel shall be reimbursed for Litigation and Administration Expenses, in an amount of $87,483.73, to be paid from the Settlement Proceeds, and a reserve of $11,000 shall be set aside from the Settlement Proceeds to pay for future

Litigation and Administration Expenses through the implementation and conclusion of the Settlement; and

(c) Class Representative is awarded a Class Representative Fee of $25,997.72 to be paid 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 also 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. 50-1) at ¶2.6.

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 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. 244-31) at ¶¶6(d)-(e); *see also Leritz v. Farmers Ins. Co.*, 2016 OK 79, ¶1, 385 P.3d 991, 992 ("Generally, '[t]he law of the state chosen by the parties to govern their contractual rights and duties will be applied . . ..'"); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165 (1939).

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 an express agreement of the Parties. Based on the Court's knowledge of the efforts and results of Class Counsel, the Court finds that the Fee Request is fair and reasonable.

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).

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 $519,954.46 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 results obtained factor, the Fee Request is fair and reasonable. The Settlement here represents a recovery of more than 83% 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]

[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").

Here, the results obtained is a monetary recovery of $1,300,000.00 minus the Monies Payable to Opt-Outs, i.e. the Settlement Proceeds. 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 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 is 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 ¶¶4-20, 38. 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. Class Counsel litigated such difficult issues against the vigorous opposition of highly skilled defense counsel. Moreover, Bravo 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. Jt. Decl. of Class Counsel at ¶39. 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. Jt. Decl. of Class Counsel at ¶40. 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. 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 Class 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 ¶41. 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.** McKnight Realty and Class Counsel negotiated and agreed to prosecute this case based on a 40% contingent fee. *See* McKnight Decl. at ¶7; Joint Counsel Decl. at ¶27. *See* Gensler Decl. at ¶¶58-61; Fitzpatrick Decl. at ¶16-21; Taylor

Decl. at ¶¶12-14. The declarations show that 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 state courts over the past 15 years. *See* Exhibit 3 attached to the Gensler Declaration; *see also Cecil* Fee Order at ¶25; *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 its support of the fairness and reasonableness of the Fee Request. McKnight Decl. at ¶15-16. 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 Class Lawsuit would yield no recovery and leave them uncompensated. *See* Joint Counsel Decl. at¶¶27, 43; *see also* Fitzpatrick Decl. at ¶22. Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Cecil* Fee Order at ¶26. As Professor Gensler aptly notes, "Plaintiff's Counsel invested significant time and money over the years of litigation with no guarantee of reimbursement or recovery." Gensler Decl. at ¶63; *see also* Joint Counsel Decl. at ¶43. 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 ¶29. *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 ¶29; *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 should not influence the Court one way or the other. Jt. Decl. of Class Counsel at ¶44.

h. **Amount in Controversy and Result Obtained**. Amount in controversy was approximately $1.56 million. Ex. 2, Reineke Decl. The recovery was about 83% of the total. *Id.* As detailed above, this is the most significant factor in awarding attorneys'

[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,* Gensler Decl. at ¶6 (listing the three prior putative class actions in which BP defeated certification); Fitzpatrick Decl. at ¶6 (same); Taylor Decl. at ¶5 (skepticism toward class actions generally and denial of certification in many cases).

fees in the class action context and strongly supports the Fee Request here. Joint Counsel Decl. at ¶¶45-46.

i. **Experience, Reputation, and Ability of Counsel**. Class counsel has extensive experience, stellar reputations, and demonstrated ability. Jt. Decl. of Class Counsel at ¶¶40, 47.

j. **Undesirability**. Most class counsel will not touch a smaller case such as this. Jt. Decl. of Class Counsel at ¶¶4, 49; *see also*, Decl. of Kimberly Hamilton, *Freebird, Inc. v. Merit Energy, Inc.*, No. 10-1154-KHV-JPO (D. Kan. Jan. 15, 2013) (Dkt. No. 199-3) (p. 2, describing a royalty owner's challenge to find an attorney to prosecute royalty underpayment lawsuits). Few law firms would be willing to risk investing the time and expenses necessary to prosecute this Class Lawsuit for multiple years with only an uncertain prospect of recovery. *See* Joint Counsel Decl. at ¶49; *Cecil* Fee Order at ¶27. Further, Defendants have shown themselves to be worthy adversaries that will fight in bitter, adversarial litigation. It seemed this lawsuit would be a lengthy, expensive, time-consuming, and arduous undertaking. 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. The same principle holds true here. I find that this factor also supports the Fee Request. Joint Counsel Decl. at ¶49. *See also* Gensler Decl. at ¶57; Fitzpatrick Decl. at ¶22; *see generally*, Taylor Decl.

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 Mr. McKnight many times throughout the Class Lawsuit, including before the lawsuit was filed, to prosecute the claims. Jt. Decl. of Class Counsel at ¶50. He negotiated a forty percent contingency fee when he agreed to be class representative in this Class Lawsuit. McKnight Decl. at ¶7. McKnight Royalty zealously represented the Class and remained active throughout the Class Lawsuit and its resolution. McKnight Decl. And, McKnight Royalty supports the Fee Request. McKnight Decl. at ¶¶15-16.

l. **Awards in Similar Cases**. As addressed under the "Customary Fee" factor, forty percent is the usual fee award and supports the Fee Request in this case. *See* ¶13(g), *supra*; *see also,* Ex. L, Table of Oklahoma Cases awarding 40% contingency fee.

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 December 21, 2018, Class Counsel has advanced or incurred $87,483.73 in reasonable and necessary Litigation Expenses and anticipates incurring another $11,000.00 in implementing the Settlement through its conclusion. 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. Included in the Expense Request is Class Counsel's payment of $50,000 as Administration Expenses, which relate to the provision of Notice of Settlement by direct mail and publication, to the maintenance of the Settlement website and call-center, to the implementation of the Plan of Allocation and Distribution, to costs incurred to establish and maintain the McKnight Settlement Account, to distribution of the Net Settlement Amount, to tax-reporting, and to payment of the Settlement Administrator for its services. The Settlement Agreement provides that the costs of administering the Settlement will be reimbursed to Class Counsel 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 $87,483.73 in past expenses and may request any additional amount Class Counsel may incur after the entry of this Order, not to exceed $11,000.00, 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.

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

21. Federal courts regularly give incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case and the risks they take. *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) (awarding 1% of the settlement amount and finding, "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)); *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); *In re Lorazepam & Clorazepate Antitrust Litig.,* 205 F.R.D. 369, 400 (D.D.C. 2002) ("Incentive awards are not uncommon in class action litigation and particularly where . . . a common fund has been created for the benefit of the entire class."); *In re Dun & Bradstreet Credit Servs. Customer Litig.,* 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) ($215,000 in incentive awards); *Cobell v. Salazar*, 679 F.3d 909, 922-23 (D.C. Cir. 2012) (district court did not err in finding that lead plaintiff's "singular, selfless, and tireless investment of time, energy, and personal funds to ensure survival of the litigation [merited] an incentive award"); *Rodriguez v. West Publ'g Corp.,* 563 F.3d 948, 958 (9th Cir. 2009) ("Incentive awards . . . are intended to compensate class representatives for work done on behalf of the class . . . .").

22. 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).

23. McKnight Realty seeks an award of two percent of the Settlement Proceeds based on its demonstrated risk and burden as well as compensation for time and effort. *See* McKnight Decl. *See also* Newberg § 17:12 (evidence might be provided through "affidavits submitted by class counsel and/or the class representatives, through which these persons testify to the particular

services performed, the risks encountered, and any other facts pertinent to the award."). *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.").

24. McKnight Realty pursued the class claims vigorously. The Declaration of Gary McKnight shows he monitored the Class Lawsuit, stayed in contact with Class Counsel, reviewed documents as requested, traveled to and attended the Settlement Conference before this Court, remained available to discuss and advise as the settlement negotiations continued, and read and signed the Settlement Agreement, including its exhibits. *Id.* His declaration provides evidence of his involvement in and contribution to this case throughout the Class Lawsuit. *Id.* And, McKnight Realty will continue to work on behalf of the Settlement Class in the coming weeks and months, including through administration of the Settlement. McKnight Decl. at ¶¶19-20. McKnight 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 McKnight Realty's active participation has contributed significantly to the prosecution and resolution of this case. Joint

Counsel. Decl. at ¶60.

25. The Court further finds that McKnight Realty was never promised any recovery or made any guarantees prior to filing this Class Lawsuit, nor at any time during the Class Lawsuit. McKnight Decl. at ¶20. In fact, if the Court determines that no award is appropriate, McKnight Realty 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, McKnight Realty fully supports the Settlement as fair, reasonable and adequate, even if it is awarded no case contribution award at all. *Id*. McKnight has no conflicts of interest with Class Counsel or any absent class member. *Id*.

26. Because McKnight Realty 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 it is entitled to a Class Representative Fee to reflect the important role that it played in representing the interests of the Settlement Class and in achieving the substantial result reflected in the Settlement. The Court finds McKnight Realty'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 $25,997.72 to Class Representative McKnight Realty Company.

E. Finality Of Order

27. 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.

28. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Class Lawsuit, including the administration, interpretation,

effectuation, or enforcement of the Settlement Agreement and this Order.

29. 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.

IT IS SO ORDERED

Dated this 21st day of December 2018.

KIMBERLY E. WEST
MAGISTRATE JUDGE