

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

| | | |
|-----------------------------|---|------------------------|
| WHITE FAMILY MINERALS, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 19-cv-409-KEW |
| |) | |
| EOG RESOURCES, INC., |) | |
| |) | |
| Defendant. |) | |

ORDER AWARDING CASE CONTRIBUTION AWARD

Before the Court is Class Representative White Family Minerals, LLC’s (“White Family Minerals”) Motion for Approval of Case Contribution Award (the “Motion”) (Dkt. No. 51) and Memorandum of Law in Support Thereof (the “Memorandum”) (Dkt. No. 52), wherein Class Representative seeks a Case Contribution Award of up to \$35,000.00. The Court has considered the Motion and Memorandum, all matters submitted in connection therewith, and the proceedings on the Final Fairness Hearing held November 10, 2021. For good cause shown, the Court finds the Motion should be **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. This Order incorporates by reference the definitions in the Settlement Agreement 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 its findings of fact and conclusions of law from its Order and Judgment Granting Final Approval of Class Action Settlement as if fully set forth herein.

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 Settlement Class Members.

4. The Short Form Notice and Long Form Notice stated that Class Representative intended to seek a Case Contribution Award of up to \$35,000.00. *See* Declaration of Jennifer M. Keough on Behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement (“JND Decl.”) at Exhibits A and C (Dkt. No. 46-4). Notice of Class Representative’s request for a Case Contribution Award was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the request for a Case Contribution Award is hereby determined to have been the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.

5. Class Representative provided the Court with abundant evidence in support of its request for a Case Contribution Award, including: (1) the Motion and Memorandum; (2) the Declaration of Jerry N. White (“White Decl.”) (Dkt. No. 46-1); and (3) the Affidavits of Absent Class Members (Dkt. Nos. 46-6, 46-7, and 46-8). This evidence was submitted to the Court well before the objection and opt-out deadline, and none of the evidence was objected to or otherwise refuted by any Settlement Class Member.

6. Class Representative is hereby awarded a Case Contribution Award of \$35,000.00 to be paid from the Gross Settlement Fund. In making this Case Contribution Award, the Court makes the following findings of fact and conclusions of law:

- (a) The Settlement has created a fund of \$4,000,000.00 in cash, which is a significant benefit to the Settlement Class. Settlement Class Members will benefit from the

Settlement that occurred because of the substantial efforts of Class Representative and Class Counsel;

(b) On September 13, 2021, JND caused the Short Form Notice to be mailed via first-class mail using the USPS to the 5,129 Class Members included in the Class Mailing List. *See* JND Decl. at ¶6. The Short Form Notice expressly stated Class Representative intended to seek a Case Contribution Award of up to \$35,000.00 to be paid from the Gross Settlement Fund. The Short Form Notice also directed class members to a website for further information, including the Long Form Notice, and also provided the option of requesting a Long Form Notice be sent via U.S. Mail;

(c) Class Representative filed its Motion approximately fourteen (14) days prior to the deadline for Settlement Class Members to object. No objections were filed regarding Class Representative's Request for a Case Contribution Award;

(d) The Parties here contractually agreed that the Settlement Agreement shall be governed *solely* by federal common law with respect to certain issues, including the case contribution award:

To promote certainty, predictability, the full enforceability of this Settlement Agreement as written, and its nationwide application, this Settlement Agreement shall be governed *solely by federal law*, both substantive and procedural, as to due process, class certification, judgment, collateral estoppel, res judicata, release, settlement approval, allocation, *Case Contribution Award*, the right to and reasonableness of Plaintiff's Attorneys' Fees and Litigation Expenses, and all other matters for which there is federal procedural or common law, including federal law regarding federal equitable common fund class actions.

See Settlement Agreement at ¶11.8 (emphasis added);

(e) This choice of law provision should be and is hereby enforced. *See Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency*, 174 F.3d 1115, 1121 (10th Cir. 1999)

(citing *Restatement 2d of Conflict of Laws*, § 187, cmt. e (Am. Law. Inst. 1988)); *Yavuz v. 61 MM, Ltd.*, 465 F.3d 418, 428 (10th Cir. 2006); *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); *Barnes Group, Inc. v. C & C Prods., Inc.*, 716 F.2d 1023, 1029 n. 10 (4th Cir. 1983) ("Parties enjoy full autonomy to choose controlling law with regard to matters within their contractual capacity."). This Court has enforced similar language in prior settlements. *See, e.g., McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. Mar. 26, 2021) (Dkt. No. 122); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) (Dkt. No. 119); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-00113-KEW (E.D. Okla. Dec. 18, 2018) (Dkt. No. 103); *Reirdon v. XTO Energy, Inc.*, No. 16-cv-00087-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 126); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-00029-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 230); *Cecil v. BP America Production Co.*, No. 16-cv-00410-KEW (E.D. Okla. Nov. 19, 2018) (Dkt. No. 260);

(f) Applying federal common law,¹ federal courts regularly grant incentive awards to compensate named plaintiffs for the work they performed. *See, e.g., UFCW Local 880-Retail Food v. Newmont Mining Corp.*, 352 F. App'x 232, 235 (10th Cir. 2009) (unpublished) ("Incentive awards [to class representatives] are justified when necessary to

¹ Because the Parties here contractually agreed that federal common law controls the Case Contribution Award, I find that the opinion in *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455 (10th Cir. 2017), in which the Tenth Circuit reversed and remanded a district court order that granted an incentive award to the class representative of 0.5%, is wholly inapplicable. Moreover, Class Representative here seeks a flat award based on the hours spent times a reasonable rate, and not a percentage-based award, as was requested and awarded by the District Court in *EnerVest*.

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.”) (citations omitted); *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”); *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 U.S. Dist. LEXIS 147197, at *9-10 (W.D. Okla. Oct. 12, 2012) (incentive awards totaling \$100,000 from \$37 million fund); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) (“There is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action.”); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at *56 (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.”); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251 (S.D. Ohio 1991) (awarding \$300,000 to class representatives, equaling .93% of current cash portions of settlement and approximately .53% of estimated present value); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (\$215,000 in incentive awards from \$18 million fund); *see also Chieftain Royalty Co. v. Marathon Oil*

Co., No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) (Dkt. No. 119); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-00113-KEW (E.D. Okla. Dec. 18, 2018) (Dkt. No. 103); *Reirdon v. XTO Energy, Inc.*, No. 16-cv-00087-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 126); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-00029-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 230); *Cecil v. BP America Production Co.*, No. 16-cv-00410-KEW (E.D. Okla. Nov. 19, 2018) (Dkt. No. 260);

(g) 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.” 5 *Newberg on Class Actions* § 17:3 (5th ed.) (“*Newberg*”). The award should be proportional to the contribution of the plaintiff. *See Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1081 (7th Cir. 2013) (noting that if the lead plaintiff’s services are greater, her incentive award likely will be greater); *Rodriguez*, 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* at § 17:18;

(h) Here, Class Representative seeks a modest, dollar-based award not to exceed \$35,000.00, which includes compensation for Class Representative’s time and effort. This request is supported by the abundant evidence submitted by Class Representative, including declarations from Jerry N. White and Absent Class Members. *See Newberg* at § 17:12 (evidence might be provided through “affidavits submitted by class counsel and/or the class representatives, through which these persons testify to the particular services performed, the risks encountered, and any other facts pertinent to the award.”);

(i) Mr. White's education and work history background more than justify this award. *See* White Decl. at ¶¶4-5. Mr. White attended Oklahoma State University and graduated with a degree in Animal Science. *Id.* at ¶4. After college, he spent six years working in the banking industry and then he purchased the Farm Service Company in 1977. *Id.* at ¶5. Mr. White continued the Farm Service Company's long history of managing farms, ranches, and mineral interests in central and southwest Oklahoma. *Id.* In 2012, Mr. White established White Family Minerals with his wife, Michelle, to manage the mineral rights they had accumulated over several decades. *Id.* at ¶4. In his capacity as an individual or as the manager of White Family Minerals, Mr. White has owned and/or managed multiple mineral interests in Oklahoma for several years. *Id.* at ¶5;

(j) As demonstrated by his Declaration, both the rate and efforts of Mr. White are reasonable. Specifically, at the time of his Declaration, Mr. White had dedicated approximately 120 hours to this Litigation. White Decl. at ¶20. These hours were spent reviewing draft pleadings and motions; searching for and producing records; reviewing discovery; communicating regularly with Plaintiff's Counsel; and maintaining a continuous oversight and involvement in the litigation, settlement, and post-settlement process. *Id.* All of these efforts were necessary and beneficial to the Litigation and the ultimate Settlement. Mr. White anticipates spending an additional 25-30 hours working on this case in the future, including participation in the Final Fairness Hearing. *Id.* And, he will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the administration of the Settlement. *Id.* Mr. White will also incur additional time in the event of an appeal, conferring with Class Counsel, and reviewing

additional pleadings. *Id.* In total, Mr. White will devote approximately 140 -150 hours to this Litigation.;

(k) Mr. White was heavily involved in all aspects of the Litigation, even prior to the filing of the Petition in October 2019. White Decl. at ¶¶8-9. Prior to filing the Petition in 2019, he worked with Plaintiff's Counsel by participating in meetings, reviewing files, locating information related to White Family Minerals' mineral interests, reviewing the draft Petition, and engaging in multiple communications regarding each of these activities. *Id.* at ¶9. Mr. White actively and effectively fulfilled his obligations as a representative of the Settlement Class, complying with all reasonable demands placed upon him during the prosecution and settlement of this Litigation, and provided valuable assistance to Class Counsel. *Id.* at ¶20;

(l) Class Representative was never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Litigation. *Id.* at ¶21. In fact, Class Representative understands and agrees that such an award, or rejection thereof, has no bearing on the fairness of the Settlement and that it will be approved and go forward no matter how the Court rules on Class Representative's request. *Id.* In other words, Class Representative fully supports the Settlement as fair, reasonable, and adequate, even if it is awarded no case contribution award at all. *Id.* Class Representative has no conflicts of interest with Class Counsel or any absent class member. *Id.* Finally, Absent Class Members have executed affidavits supporting Class Representative's request for a Case Contribution Award. *See* Dkt. Nos. 46-6, 46-7, and 46-8;

(m) Because Class Representative has dedicated time, attention, and resources to this Action, the Court finds Class Representative is entitled to the requested Case

Contribution Award of \$35,000.00 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;

(n) Thus, Class Representative's request for a Case Contribution Award of \$35,000.00 is fair and reasonable under Oklahoma state law for the same reasons it is fair and reasonable under federal common law and supported by the same evidence of reasonableness.

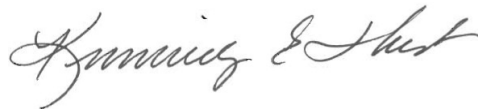
7. Any appeal or any challenge affecting this Order Awarding Case Contribution Award shall in no way disturb or affect the finality of the Order and Judgment Granting Final Approval of Class Action Settlement, the Settlement Agreement or the Settlement contained therein.

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

9. 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), Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated this 12th day of November, 2021.



Kimberly E. West
United States Magistrate Judge
Eastern District of Oklahoma