

IN THE DISTRICT COURT OF GARVIN COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA  
GARVIN COUNTY  
**FILED**

DEC 17 2024

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

SS.

Wake Energy, LLC, on behalf of itself and all )  
others similarly situated, )

Plaintiff, )

v. )

Case No. CJ-2024-267

Devon Energy Production Company, L.P., )

Defendant. )

**MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S  
MOTION FOR APPROVAL OF ATTORNEYS' FEES**

Class Counsel<sup>1</sup>, Mahaffey & Gore, P.C., respectfully file this Memorandum in Support of Class Counsel's Motion for Approval of Attorneys' Fees, and hereby move this Court for entry of an Order approving Class Counsel's request for Attorneys' Fees in the amount of \$800,000.00. In support thereof, Class Counsel respectfully shows the Court as follows:

**INTRODUCTION**

Class Counsel have obtained an excellent recovery for the benefit of Class Members, which consists of a cash payment of \$2,000,000.00 to compensate the Settlement Class for past damages. In connection with approval of the Settlement, Class Counsel respectfully move the Court for an award of attorneys' fees of \$800,000.00 (the "Fee Request"), which will be paid from the \$2,000,000.00 Gross Settlement Fund. Class Counsel's Fee Request is fair and reasonable and should be approved.

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

Class Counsel's Fee Request is governed by Oklahoma's class action attorney fee statute, 12 O.S. § 2023(G). *See Strack v. Continental Res., Inc.*, 2021 OK 21, 507 P.3d 609. "Oklahoma's class action attorney fee statute gives courts flexibility and discretion in calculating fee awards under the lodestar method or the percentage-of-common-fund method (percentage method)." *Id.* at ¶ 2. "The goal in every attorney fee case is not to select a methodology but to arrive at a reasonable fee." *Id.* at ¶ 18.

In this case, Class Representative negotiated a contingency fee agreement with Class Counsel which authorizes Class Counsel to request a fee up to 40% of any recovery obtained on behalf of the Class. In Oklahoma oil and gas class actions, contingency fee awards of 40% are frequently granted in both federal and state courts. Consistent with that long-standing practice and applicable law, Class Counsel's Fee Request should be granted because it is supported by sufficient evidence, the particular facts of this case, the multi-factor analysis required by 12 O.S. § 2023(G), and any lodestar crosscheck the Court may wish to perform. *Strack*, 507 P.3d at 614-19. Therefore, in light of the exceptional work performed by Class Counsel and the circumstances of this case, the Fee Request is fair and reasonable and should be granted.

#### **FACTS & PROCEDURAL BACKGROUND**

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

## ARGUMENTS & AUTHORITIES

The reasonableness of attorney's fees "depends on the facts and circumstances of each case." *Strack*, 2021 OK 21, ¶ 10. "Historically, Oklahoma courts have used two primary methods for calculating attorney's fees: the lodestar method and the percentage method, *e.g.*, a contingency fee arrangement." *Id.* at ¶ 13. "Oklahoma's class action attorney fee statute gives courts flexibility and discretion in calculating fee awards under the lodestar method or the percentage-of-common fund method (percentage method)." *Id.* at ¶ 2. However, under either method, Oklahoma law mandates that the court analyze thirteen (13) factors. *See id.* at ¶ 16; *see also* 12 O.S. § 2023(G)(4)(e).

When considering an attorney fee request in a class action settlement, the Court must consider the following factors: (1) time and labor required, (2) the novelty and difficulty of the questions presented by the litigation, (3) the skill required to perform the legal service properly, (4) the preclusion of other employment by the attorney 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 attorney, (10) whether or not the case is an undesirable case, (11) the nature and length of the professional relationship with the client, (12) awards in similar causes, and (13) the risk of recovery in the litigation. 12 O.S. § 2023(G)(4)(e).

As demonstrated by the arguments and evidence presented herein, an analysis performed within the rubric of these factors shows that Class Counsel's Fee Request is fair and reasonable and should be approved.

**I. Class Counsel's Request for a Fee from the Gross Settlement Fund is Reasonable and Fair.**

Oklahoma authorizes attorneys' fees to be paid by the Class as beneficiaries of the creation or preservation of a common fund. *See Strack* at ¶¶ 1, 14. The goal under Oklahoma law is always the same: to arrive at a reasonable fee in light of the facts and circumstances of the particular case. *Id.* at ¶ 18.

Here, Class Counsel's right to an attorney fee from the common fund comes from the equitable "common fund doctrine." *Id.* at ¶ 14 ("When an action creates a common fund recovery, all the beneficiaries of the fund contribute to paying the attorneys who worked on their behalf by allowing counsel to take a percentage of the common fund."). This equitable concept is consistent with decades of state and federal law regarding the equitable powers of courts to ensure that beneficiaries of common-fund recoveries help bear the costs incurred in generating those recoveries. As the U.S. Supreme Court explained:

[T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. The common-fund doctrine reflects the traditional practice in courts of equity, and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees. The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

*Boeing Co. v. Van Gernert*, 444 U.S. 472, 478 (1980) (internal citations omitted). Oklahoma has a long history of recognizing the common fund doctrine and applying its equitable principles to award attorney fees. As explained by the Oklahoma Supreme Court:

When an individual's efforts succeed in creating or preserving a fund which benefits similarly situated non-litigants, equity powers may be invoked to charge that fund with attorney's fees for legal services rendered in its creation or preservation. The doctrine is rooted in historic equity jurisdiction, but owes its sudden appearance in

this country to U.S. Supreme Court jurisprudence of the last century. Oklahoma law has long recognized the doctrine.

*Oklahoma Tax Commission v. Ricks*, 1994 OK 115, ¶ 6, 885 P.2d 1336, 1339; *see also Sacket v. Great Plains Pipeline Co., et al.*, Case No. CJ-2002-70 (Woods County, Hon. Ray Dean Linder) (March 5, 2009 Order at ¶ 7) in which Judge Linder held:

The Oklahoma Supreme Court has recognized the long standing common law principal that a party or attorney who helps create a “common fund” is entitled to recover a fee from that common fund.

*See also Drummond v. Range*, Case No. CJ-1010-510 (Grady County, Hon. Richard Van Dyck) (Sept. 9, 2013 Order at ¶ 7(f), (citing *Gottlieb v. Barry*, 43 F.3d 474,482 (10th Cir. 1994) (“Class counsel who obtain a common fund settlement for a class are entitled to a reasonable attorneys’ fee awarded from that fund on the theory that ‘persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant’s expense.’”)) *and Robertson v. Sanguine, Ltd.*, Case No. CJ-02-150 (Caddo County, July 11, 2003 Order on Class Counsels’ Motion for Attorney’ Fees) which held:

An attorneys’ fee award of 40% of the Common Fund is a fair and reasonable amount of compensation to Class Counsel for establishing the Common Fund. The percentage fee has important advantages to the Class in that it provides self regulating incentives for efficiency. First, it compensates counsel on the real value of the services provided (the amount of benefit conferred). Second, the percentage approach awards efficiency. Not only is there no reward for inefficiency, there is a penalty due to the fact that, if the work is unnecessary, the lawyer has wasted his time. Third, the percentage method encourages counsel to go the extra mile. Counsel has an incentive to push beyond a ‘good’ recovery to an ‘excellent’ recovery.

There is no dispute that Class Counsel’s efforts generated a common fund for the benefit of the Class. Therefore, Class Counsel’s fee request is authorized by law, and Class Counsel are entitled to a reasonable fee from the common fund. Oklahoma law allows courts to calculate

common-fund, class-action fee awards under the percentage-of-the-fund or the lodestar approach. *See Strack*, at ¶¶ 1, 14.

**II. Class Counsel's Fee Request is Supported by the Multi-Factor Analysis Required by 12 O.S. § 2023(G)(4)(e).**

Although the Court is required to consider each of the thirteen (13) factors identified in 12 O.S. § 2023(G)(3)(e), no single factor is determinative. Indeed, the court has discretion to weigh the factors as it determines appropriate, as the reasonableness of attorney's fees "depends on the facts and circumstances of each case." *Strack*, at ¶ 10.

**a. The Time and Labor Required.**

The time and labor required to prosecute this Litigation and to negotiate the terms of the Settlement support the Fee Request. *See* 12 O.S. § 2023(G)(2)(e)(1). Before filing this Litigation in April 2021, Class Counsel engaged in extensive analysis of the factual and legal bases for Class Representative's claims against Defendant, and the potential for pursuing those claims as part of a class action for the benefit of similarly situated persons. Since the filing of this Litigation nearly four (4) years ago and, during that time, Class Counsel: conducted discovery; took multiple depositions; worked with accounting experts to analyze Defendant's voluminous payment data and to develop support for the Class's asserted damages; conducted legal research to support the Class claims and to refute Defendant's affirmative defenses; drafted motions, briefs, and memoranda in support of the Class's Litigation, mediation, and settlement activities; and worked with Class Representative to pursue its best interests, as well as the members of the Class.

Through these efforts on behalf of the Class, Plaintiff's Counsel have dedicated over 1,886.7,<sup>2</sup> hours of attorney and professional time to this Litigation and reasonably anticipate

---

<sup>2</sup> All time calculations contained herein are through November 30, 2024.

spending 105 more hours preparing for the Final Fairness Hearing and administering the Settlement Fund. *See* Class Counsel Declaration at ¶ 43. This factor supports the Fee Request.

**b. The Novelty and Difficulty of the Questions Presented.**

The difficulty of the questions presented in this Litigation supports the Fee Request. Class actions are known to be complex and vigorously contested. *See* 12 O.S. § 2023(G)(2)(e)(2). The legal and factual issues litigated in this case involved complex and highly technical issues. The claims involved difficult and highly contested issues of Oklahoma oil and gas law that are currently being litigated in multiple forums. The successful prosecution and resolution of the Settlement Class's claims required Class Counsel to work with experts to analyze complex data to support their legal theories and evaluate the amount of alleged damages. The fact that Class Counsel litigated such difficult issues against the vigorous opposition of skilled defense counsel and obtained a significant recovery for the Settlement Class further supports the Fee Request in this case. Moreover, Defendant asserted a number of significant defenses to the Settlement Class's claims that would have to be overcome if the Litigation continued to trial. 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.

**c. The Skill Required to Perform the Legal Services Properly and the Experience, Reputation and Ability of the Attorneys.**

The skill required to perform the legal services and the experience, reputation, and ability of the attorneys support the Fee Request. *See* 12 O.S. § 2023(G)(2)(e)(3) & (9). 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. Specifically, it required investigation and mastery of complex facts and highly technical issues regarding the payment of oil and gas

proceeds, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. *See* Class Counsel Declaration at ¶ 54.

Class Counsel have years of experience litigating oil and gas royalty claims in Oklahoma state and federal courts. Class Counsel are also highly experienced in class action, real property, commercial, and other complex litigation and have successfully prosecuted, defended, and settled numerous class actions, including oil and gas royalty underpayment class actions.

Specifically, Class Counsel was established in 1980 with a specific focus on oil and gas law. In addition to Class Counsel's vast knowledge and experience in the oil and gas industry as a whole, Class Counsel has routinely been involved in class actions, particularly class actions related to oil and gas payment claims under Oklahoma law. *See, e.g., Michael Kernan v. Citizen Energy II, LLC*, No. CJ-2018-7, McClain County, Oklahoma; *Hay Creek Royalties, LLC v. Roan Resources, LLC*, No. 19-CV-177-CVE-JFJ (N.D. Okla. 2019); *Craig Cowan v. Triumph Energy Partners, LLC*, No. CIV-23-300-JAR (E.D. Okla. 2023); *Marvin B. Dinsmore, et al., v. Staghorn Petroleum II, LLC*, No. CIV-24-369-JAR (E.D. Okla. 2024).

Moreover, the quality of representation by counsel on *both* sides of this Litigation was high. Defendants are represented by skilled class action defense attorneys who spared no effort in the defense of their client. *See, e.g., In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 634 (D. Colo. 1976) (competence of defense counsel was significant factor in awarding attorney's fee). Simply put, without the experience, skill, and determination displayed by *all* counsel involved, the Settlement would not have been reached. *See* Class Counsel Declaration at ¶ 54. These factors strongly support the Fee Request.



**d. The Preclusion of Other Employment by the Attorneys and the Time Limitations Imposed by the Client and the Circumstances.**

The Fee Request is also supported by considering the preclusion of other employment by Class Counsel and time limitations imposed by the client or circumstances. *See* 12 O.S. § 2023(G)(2)(e)(4) & (7). The declaration provided in support of the Fee Request shows that because the law firm comprising Class Counsel is relatively small, Class Counsel necessarily were limited in their ability to work on other cases and pursue otherwise available opportunities due to their dedication of time and effort to the prosecution of this Litigation. *See* Class Counsel Declaration at ¶ 49. This case was filed in April 2021, and it has required significant time, manpower, and resources from Class Counsel over that period. *Id.* Class Counsel have also spent substantial time and effort in negotiating and preparing the necessary paperwork related to the Settlement. *Id.* Numerous time limitations have been imposed on Class Counsel throughout the course of this Litigation. A case of the size and complexity of this one deserves and requires the commitment of a significant percentage of the total time and resources of firms the size of those of Class Counsel. *Id.* Accordingly, these factors support the Fee Request.

**e. The Customary Fee and Awards in Similar Cases.**

The customary fee and awards in similar cases further support the Fee Request. *See* 12 O.S. § 2023(G)(2)(e)(5) & (12). “In class actions, percentage or contingency fees have important advantages that provide self-regulating incentives for efficiency and compensates counsel on the real value of the services provided.” *Sacket*, Case No. CJ-2002-70 (Order at ¶ 5).

Class Counsel and Class Representative negotiated and agreed to prosecute this case based on a 40% contingent fee. *See* Class Representative Declaration at ¶¶ 6 & 16; *see also* Class Counsel Declaration at ¶ 43. This fee represents the market rate and is in the range of the customary fee in oil and gas class actions in Oklahoma state courts. *See* Class Counsel Declaration at ¶ 43; *see also*

*Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla.) (Dkt. No. 102 at ¶ 45) (Gensler Deel.) (collecting cases); *Reirdon v. Cimarex Energy Co.*, No. CIV-16-113-KEW (E.D. Okla.) (Dkt. No. 63 at ¶ 51) (same); *see also, e.g., Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C.*, No. CJ-2010-38, 2015 WL 5794008, at \*3 (Okla. Dist. Ct. Beaver Cty. 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).

Federal and state courts in Oklahoma have repeatedly approved similar fee awards in other oil and gas class actions, including statutory interest cases such as this. *See* Table of Decisions, *infra* at pp.13-15; *see also DDL Oil & Gas, LLC v. Diversified Production, LLC*, CJ-2019-17, Blaine County, Oklahoma (Sept. 18, 2023 Order awarding 40% fee); *Chieftain Royalty Co. v. BP America, Production Co.*, Case No. CIV-18-54-JFH-JFJ (N.D. Okla. March 2, 2022) (Dkt. No. 180); *Hay Creek Royalties, LLC v. Roan Resources LLC*, Case No. CIV-19-177-CVE-JFJ (N.D. Okla. April 28, 2021) (Dkt. No. 74); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) (Dkt. No. 120); *Reirdon v. Cimarex Energy Co.*, No. CIV-16-113-KEW (E.D. Okla. Dec. 18, 2018) (Dkt. No. 105); *Reirdon v. XTO Energy Inc.*, No. CIV-16-00087-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 124); *White Family Minerals, LLC v. EOG Resources, Inc.*, Case No. CIV-19-409-RA W (E.D. Okla. November 12, 2021) (Dkt. No. 59); *Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. Apr. 27, 2021) (Dkt. No. 115 at 13-14); *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. March 26, 2021) (Dkt. No. 120); *McClintock v. Continuum Producer Services, LLC*, No. CIV-17-259-JAG (E.D. Okla. June 4, 2020) (Dkt. No. 61); *Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 231); *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, No. CIV-12-1319-D, 2015 WL 2254606, at \*4 (W.D. Okla. May 13, 2015) (“Laredo Fee

Order”) (“Class Counsel’s request of forty percent (40%) of the \$6,651,997.95 Settlement Amount is within the acceptable range of attorneys’ fees approved by Oklahoma Courts as being fair and reasonable in contingent fee class action litigation . . .”); *Chieftain Royalty Co. v. QEP Energy Co.*, No. CIV-11-212-R (W.D. Okla. May 31, 2013) (“*QEP Fee Order*”) (Dkt. No. 182) (awarding a fee of \$46.5 million, which represented approximately 39% of the cash portion of a \$155 million settlement). Given the outstanding cash recovery obtained by Class Counsel here, the Fee Request is in line with typical fee awards granted in similar cases and supports its approval.

Moreover, the Fee Request is in line with the typical market rate for high quality legal services in royalty underpayment class actions like this. *See Laredo Fee Order* at 8 (“The market rate for Class Counsel’s legal services also informs the determination of a reasonable percentage to be awarded from the common fund as attorneys’ fees.”). The United States District Court for the Eastern District of Oklahoma has held that a contingency fee negotiated at arms’ length at the outset of the litigation “reflect[ s] the value the Class Representatives placed on the future success of [the] [a]ction.” *CompSource Oklahoma v. BNY Mellon, NA.*, No. CIV 08-469-KEW, 2012 WL 6864701, at \*8 (E.D. Okla. Oct. 25, 2012); *see also Laredo Fee Order* at 8 (“Class Representative negotiated at arm’s-length and agreed to a forty percent (40%) contingency fee at the outset of this litigation, reflecting the value Class Representatives placed on the future success of this Litigation.”). Here, Class Representative agreed Class Counsel would represent them on a contingency fee basis not to exceed 40%. *See Class Representative Declaration* at ¶ 6. Class Representative’s Declarations demonstrate its continued support of the fairness and reasonableness of the Fee Request. *See id.* at ¶ 2. Therefore, this factor supports the Fee Request.

**f. The Contingent Nature of the Fee and the Risk of Recovery.**

The contingent nature of the fee and the risk of recovery also support the Fee Request. *See* 12 O.S. § 2023(G)(2)(e)(6) & (13). “Although contingent fee contracts are subject to restrictions . . . such agreements have generally been enforced unless the contract is unreasonable. Often contingent fee agreements are the only means possible for litigants to receive legal services – contingent fees are still the poor man’s key to the courthouse door. The contingent fee system allows persons who could not otherwise afford to assert their claims to have their day in Court.” *Sneedv. Sneed*, 1984 OK 22, ¶ 3,681 P.2d 754, 756 (footnotes omitted); *accord Shaler v. State ex rel. Dept. of Public Safety*, 1999 OK CIV APP 100, ¶ 14, 990 P.2d 294, 299 (recognizing the propriety of contingent fee arrangements in class action cases).

Class Counsel undertook this Litigation on a purely contingent fee basis (with the amount of any fee being subject to Court approval), assuming a substantial risk that the Litigation would yield no recovery and leave them uncompensated. *See* Class Counsel Declaration at ¶¶ 43 & 64. Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys’ fees, and as Professor Miller has aptly noted, “the risk of no recovery in complex cases of this type is very real and is heightened when plaintiffs’ counsel press to achieve the very best results for those they represent.” *Reirdon v. Cimarex Energy Co.*, No. CIV-16-113- KEW (E.D. Okla.) (Dkt. No. 64 at ¶ 55); *Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18- 1225-J (W.D. Okla.) (Dkt. No. 115 at ¶ 60); *see also* Class Counsel Declaration at ¶¶ 43 & 64. 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 on the basis of normal hourly rates.

Class Counsel and Class Representative negotiated and agreed to prosecute this case on a 40% contingent fee. Coy Reed, in his capacity as Manager of Wake Energy, LLC, negotiated this fee and he believes that 40% was and is the market rate. *See* Class Representative Declaration at ¶ 6; *see also Sacket*, Case No. CJ-2002-70 (Order at ¶ 4) (“ . . . a system using such a fixed percent mimics the market, and is best for both the class and class counsel.”). Moreover, as demonstrated in the tables below, numerous Oklahoma state and federal courts have held that a 40% fee represents the market rate and is customary in oil-and-gas class actions.

State Case Name and Judge	Case No. & Court	Year Awarded	Common Fund	Attorney Fee
<i>Simmons v. Anadarko</i> Hon. Wyatt Hill	CJ-2004-57 Caddo Co.	2008	\$155,000,000	40%
<i>Lobo v. BP</i> Hon. Gerald Riffe	CJ-97-72 Beaver Co.	2005	\$150,000,000	40%
<i>Bank of America, NA. v. El Paso Natural Gas Co., et al.</i> Hon. Christopher S. Kelly	CJ-2004-45 Washita Co.	2017	\$127,660,000	40%
<i>Fitzgerald Farms, LLC v. Chesapeake Operating, LLC</i> Hon. Jon K. Parsley	CJ-2010-38 Beaver Co.	2015	\$119,000,000	40%
<i>Drummond v. Range</i> Hon. Richard Van Dyck.	CJ-2010-510 Grady Co.	2013	\$87,500,000	40%
<i>Sacket v. Great Plains Pipeline</i> Hon. Ray Dean Linder	CJ-2002-70 Woods Co.	2009	\$25,000,000	40%
<i>Continental v. Conoco</i> Hon. Richard Perry	CJ-95-739; 2000-356 Garfield Co.	2005	\$23,000,000	40%
<i>Laverty v. Newfield</i> Hon. P. Thomas Thorbrugh	CJ-2002-101 Beaver Co.	2007	\$17,250,000	40%
<i>Robertson/Taylor v. Sanguine</i> Hon. Richard Van Dyck	CJ-02-150 Caddo Co.	2003	\$13,250,606	40%
<i>Taylor v. ChevronTexaco</i> Hon. Gerald Riffe	CJ-2002-104 Texas Co.	2009	\$12,000,000	40%
<i>Cecil v. Ward Petro.</i> Hon. Wyatt Hill	CJ-2010-462 Grady Co.	2014	\$10,000,000	40%
<i>Brown v. Citation</i> Hon. Richard G. Van Dyck	CJ-2004-217 Caddo Co.	2009	\$5,250,000	40%
<i>Modrall v. Hamon Operating Co.</i> Hon. James R. Winchester	CJ-94-266 Caddo Co.	1995	\$475,000	40%

Federal Case Name and Judge	Case No. & Court	Year Awarded	Common Fund	Attorney Fee
<i>Chieftain Royalty Co. v. QEP Energy Co.</i> Hon. David Russell	No. 11-cv-212-R (W.D. Okla. May 31, 2013) (Dkt. No. 182)	2013	\$155,000,000	39%
<i>Cecil v. BP Am. Prod. Co.</i> Hon. Kimberly West	No. 16-CV-00410-KEW (E.D. Okla. Nov. 19, 2018) (Dkt. No. 260)	2018	\$147,000,000	40%
<i>Chieftain Royalty Co. v. XTO</i> Hon. Kimberly West	No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 231)	2018	\$80,000,000	40%
<i>Rhea v. Apache Corp.</i> Hon. Joe Heaton	No. 6: 14-cv-00433-JH (E.D. Okla. June 23, 2022) (Dkt. No. 505)	2022	\$25,000,000	40% <sup>3</sup>
<i>Hay Creek Royalties, LLC v. Roan Resources LLC</i> Hon. Claire Eagan	No. 19-cv-177-CVE-JFJ (N.D. Okla. April 28, 2021) (Dkt. No. 74)	2021	\$20,200,000	40%
<i>Reirdon v. XTO Energy Inc.</i> Hon. Kimberly West	No. 16-cv-00087-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 124)	2018	\$20,000,000	40%
<i>Allen v. Apache Corp.</i> Hon. Jason Robertson	No. 6:22-cv-00063-JAR (E.D. Okla. Nov. 16, 2022) (Dkt. No. 37)	2022	\$15,000,000	40%*
<i>Chieftain Royalty Co. v. BP Am. Prod. Co.</i> Hon. John Heil	No. 18-cv-54-JFH-JFJ (N.D. Okla. Mar. 2, 2022) (Dkt. No. 180)	2022	\$15,000,000	40%*
<i>Chieftain Royalty Co. v. Marathon Oil Co.</i> Hon. Steven Shreder	No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) (Dkt. No. 120)	2019	\$14,950,000	40%
<i>Chieftain Royalty Co. v. SM Energy Co.</i> Hon. Bernard M. Jones	No. 18-cv-1225-J (W.D. 2021 April 27, 2021) (Dkt. No. 115)	2021	\$10,000,000	40%*
<i>Donald D. Miller Revocable Family Trust v. DCP Operating Company, LP, et al.</i> Hon. Joe Heaton	No. CIV-18-0199-JH (E.D. Okla. May 26, 2021) (Dkt. No. 81)	2021	\$9,900,000	35%*

<sup>3</sup> This case, and all others indicated with an "\*" were decided after the Oklahoma Supreme Court's April 20, 2021 decision in *Strack*, 2021 OK 21.

<i>Reirdon v. Cimarex Energy Co.</i> Hon. Kimberly West	No. 16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (Dkt. No. 105)	2018	\$9,500,000	40%
<i>Kernen v. Casillas Operating, LLC</i> Hon. Jodi Dishman	No. CIV-18-00107-JD (W.D. Okla. Jan. 4, 2023) (Dkt. No. 125)	2023	\$2,700,000	40%*

“A contingent attorneys’ fee of at least forth percent (40%) of the common fund is normative for this type of royalty owner class litigation.” *Sacket*, Case No. CJ-2002-70 (Order at ¶ 17(h)). Class Representative negotiated and agreed Class Counsel would represent them on a contingency fee basis, not to exceed 40%. *See* Class Representative Declaration at ¶ 6; *see also* Class Counsel Declaration at ¶ 43. This agreed-upon fee reflects the value of this Litigation as measured when the risks and uncertainties of litigation still lay ahead. *See CompSource*, 2012 WL 6864701, at \*8; *Laredo* Fee Order at 8. If Class Counsel had not been successful, they would have received zero compensation (not to mention reimbursement for expenses). *See* Class Counsel Declaration at ¶¶ 43 & 64.

Class Counsel agreed to represent Class Representative and the putative Class without any guarantee they would achieve a successful result for the Class. This means Class Counsel put their time and financial resources at risk on behalf of Class Representative and the Class. Although the “rewards for Class Counsel can be great, so travels the path of loss for Class Counsel if defeat is the end result.” *Sacket*, Case No. CJ-2002-70 (Order at ¶ 19). Even if they possessed the necessary ability and financing, most attorneys would not assume the extensive out-of-pocket risk and time contribution associated with challenging large, well-funded oil corporations with well-educated, well-trained, and aggressive in-house counsel and unlimited outside counsel. *See, e.g., Deposit Guar. Nat’l Bank v. Roper*, 445 U.S. 326, 339 (1980). Class Counsel’s Fee Request is supported by

these statutory factors because the Fee Request reflects the contingent nature of their ability to recover any fee and the risks associated with this case.

**g. The Amount in Controversy and the Results Obtained.**

“The most critical factor in deciding the reasonableness of a fee award is the degree of success obtained.” *Tibbetts v. Sight’n Sound Appliance Centers, Inc.*, 2003 OK 72, ¶ 13, 77 P.3d 1042, 1050 (citing *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)); *see also* 12 O.S. § 2023(G)(2)(e)(8). Here, the results obtained strongly support the Fee Request. The Gross Settlement Fund of \$2,000,000.00 represents a significant recovery for the Class and bestows a substantial economic benefit under the circumstances presented here. Indeed, based on certain measures of damages, the Gross Settlement Fund represents approximately 100% of the Class’s principal damages.

Moreover, the Settlement represents significant, concrete monetary benefits to the Settlement Class. Unlike cases in which absent class members’ recovery is contingent upon their submission of information or some sort of complicated claims process, here, these benefits are *guaranteed* and automatically bestowed upon the Settlement Class as a result of the Settlement. *See Reirdon v. Cimarex Energy Co.*, No. CIV-16-113-KEW (E.D. Okla.) (Dkt. No. 63 at ¶ 46); *Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla.) (Dkt. No. 102 at ¶ 36). Accordingly, the “results obtained” factor strongly supports a fee award of \$800,000.00 to be paid from the immediate cash Settlement.

**h. Undesirability of the Case.**

Compared to most civil litigation, this Litigation clearly fits the “undesirable” test. *See* Class Counsel Declaration at ¶ 43. Few law firms would be willing to risk investing the time trouble, and expenses necessary to prosecute this Litigation for multiple years. *Id.* at ¶ 63. There



was no doubt from the beginning that this lawsuit would be a lengthy undertaking. The investment by Class Counsel of their time, money, and effort, coupled with the attendant potential of no recovery and loss of all the time and expenses advanced by Class Counsel, rendered the case sufficiently undesirable so as to preclude most law firms from taking a case of this nature. And, this Litigation involved a number of uncertain legal and factual issues. *Id.* at ¶ 14. For example, in another complex royalty 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*, 2015 WL 5794008, at \*8. The same principle holds true here. Class Counsel, in conjunction with their forensic accounting expert, George N. Keeney, III, reviewed large amounts of electronically produced data, organizational documents, well data, and historical proceeds payments for Oklahoma owners. *See* Class Counsel Declaration at ¶ 51. Class Counsel also advanced \$24,705.51<sup>4</sup> in litigation expenses to date. *See id.* at ¶ 64. And, Class Counsel expended substantial hours of time over the length of this Litigation. *See id.* at ¶ 61.

Class Counsel knew Defendant would retain highly capable attorneys to vigorously defend this case. Without knowing the full amount of the royalty underpayment that may have been owed to Class Members, Class Counsel agreed to work on behalf of the Class with the understanding that Class Counsel would pay the ongoing costs of experts required to review, compile, and analyze Defendant's pay data, and that prosecution of this case could take years and require the expenditure of tens of thousands of dollars with a risk of no recovery for many years, if ever. "Attorneys must have incentive to take undesirable cases in order to assure access to the courts for all people . . ."

---

<sup>4</sup> All expense calculations contained herein are through November 30, 2024.

*Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-H(M), 2003 WL 21277124, at\* 12 (N.D. Okla. May 28, 2003). Class Counsel's Fee Request is reasonable when considering the undesirability of this case. Therefore, this factor also supports the Fee Request. *See* 12 O.S. § 2023(G)(2)(e)(10).

**i. The Nature and Length of the Professional Relationship with the Client.**

The nature and length of the professional relationship with the client also supports the Fee Request. *See* 12 O.S. § 2023(G)(2)(e)(11). Class Representative has been and remains very active in this Litigation. *See* Class Representative Declaration at ¶¶ 7-10. Class Representative has worked with Class Counsel for nearly four (4) years to advance this case on behalf of Class Representative and members of the Class. *See id.* at ¶ 7. Class Representative negotiated a 40% fee when they agreed to represent other similarly situated persons in this litigation. *See id.* at ¶ 6; *see also* Class Counsel Declaration at ¶ 43. Class Representative supports the Fee Request. *See* Class Representative Declaration at ¶ 2. Accordingly, this factor supports Class Counsel's Fee Request.

**III. A Lodestar Cross-Check Confirms the Reasonableness of Class Counsel's Fee Request.**

In *Strack*, the Oklahoma Supreme Court held that trial courts may use either the percentage of the recovery or lodestar approach to determine "a reasonable [fee] award given the circumstances of the particular case." *Id.* at ¶ 17. When considering a fee request based on a percentage analysis, "courts should ensure the reasonableness of the fee award involving a common fund by comparing the fee based on a percentage calculation to what the lodestar approach would produce." *Id.* at ¶ 18. The lodestar method has two steps: (1) determine counsel's

base “lodestar” by multiplying the number of hours spent by the applicable hourly rate(s), and (2) determine an appropriate multiplier through consideration of the § 2023 factors. *Strack*, at ¶ 13.

To perform a lodestar check, the Court should look again at the time-and-labor factor, and each of the factors analyzed above, to ensure that the requested fee is reasonable. When conducting this type of analysis, “courts in nearly every circuit have held that . . . they need not scrutinize each individual billed hour, but may instead focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.” 5 *Newberg and Rubenstein on Class Actions* § 15:86 (6th ed.); see also *Report of the Third Circuit Task Force on Court Awarded Attorney Fees*, 108 F.R.D. 237, 246 (1986) (detailing the problems with the lodestar approach, including chiefly that it “increases the workload of an already overtaxed judicial system”). As discussed in detail above, the record here clearly demonstrates that the fee award appropriately reflects the degree of time and effort expended by Class Counsel.

Class Counsel have collectively spent over 1,886 hours of attorney and paraprofessional time prosecuting this litigation behalf of the Class. See Class Counsel Declaration at ¶ 43. Moreover, Class Counsel anticipate spending approximately 105 additional hours to assist with the distribution of the Net Settlement Fund to Class members.

Class Counsel’s hourly rates range from \$70.00 per hour for paralegals to \$500.00 per hour<sup>5</sup> for the most senior attorneys. These rates are in line with, or well below, those approved by the Oklahoma Supreme Court in *Strack* as commensurate with the “highly specialized legal services” required in oil-and-gas class actions like this. See *id.* at ¶ 23 n.10. Class Counsel’s rates are also in line with those approved in similar, complex litigation across the country. See *Cline v. Sunoco*, Case No. CIV-17-313-JAG (E.D. Okla.), Dkt. 613-7 at ¶¶ 93-99 and at Ex. C (approving rates

---

<sup>5</sup> The effective hourly rate for work performed by Class Counsel was \$294.86 per hour.

ranging from \$600-\$1000/hr); *see also Reirdon v. XTO Energy Inc.*, No. CIV-16-00087-KEW (Dkt. No. 124 at ¶ 6) (E.D. Okla. Jan. 29, 2018).

When conducting a cross-check to assess the reasonableness of the lodestar compared to the percentage requested, the court should look at the same statutory factors discussed in detail above. *See supra* § II (analyzing each of the factors set forth in 12 O.S. § 2023(G)(4)(e)). Class Counsel incorporate that analysis by reference here. That analysis demonstrates that the lodestar cross-check supports the percentage fee based on the facts and circumstances of this case. *See Newberg and Rubenstein on Class Actions* § 15:87 (6th ed.).

Based on the total combined time and the applicable hourly rates, the total combined lodestar for Class Counsel (including past and anticipated future hours) is \$587,281.78. *See* Class Counsel Declaration at ¶ 61. Class Counsel's Fee Request of \$800,000.00 represents a multiplier of 1.36. This analysis demonstrates the reasonableness of the Fee Request because a 1.36 multiplier is well within the range of general class action multipliers discussed in *Strack*, and it is below the range frequently approved by Oklahoma district courts in oil-and-gas class actions. *See* Class Counsel Declaration at ¶ 61.; *Fitzgerald Farms*, 2015 WL 5794008, at \*8 ("In a large common fund case such as this one, the lodestar multiplier in Oklahoma ranges from 5.25 to 8.7." (collecting cases)); *see also Chieftain Royalty Co. v. SM Energy Co.*, No. 18-cv-1225-J (Dkt., No. 102) (Gensler Deel.) at ¶ 45 (W.D. Okla. Mar. 29, 2021); Ex. 1 at Ex. B; *see also* Ex. 7 at ¶¶ 109-123.

Second, the multiplier is well deserved based on Class Counsel's work in this case, the contingent nature of the contract and case, and the results obtained. If the goal of a crosscheck is to compare the results of one method to the results of the other in order to arrive at a reasonable fee, then the enhancement required under the lodestar cross-check here yields a result in line with

the percentage-of-the-fund method. Therefore, a lodestar cross-check confirms the reasonableness of Class Counsel's Fee Request of \$800,000.00, calculated as 40% of the common fund.

**IV. The Notice Sent to the Settlement Class Regarding Class Counsel's Request for Attorney Fees Satisfied Applicable Law.**

In conformance with the Court's November 25, 2024 *Preliminary Approval Order*, notice of Class Counsel's intent to seek attorney fees of up to 40% of the Gross Settlement Fund of \$2,000,000.00 was sent to members of the Settlement Class and otherwise made available to the Settlement Class by means of publication in newspapers and through an Internet website dedicated to providing information about this Litigation. *See* Settlement Administrator Declaration at ¶¶ 5-9. This notice campaign provided the Settlement Class with reasonable notice of the Final Fairness Hearing and Class Counsel's Motion for an award of attorneys' fees. *See* 12 O.S. § 2023(B)(2).

**CONCLUSION**

The factors outlined in 12 O.S. § 2023(G)(4)(e) support the reasonableness of Class Counsel's Fee Request under both the percentage method and the lodestar cross-check. Therefore, for the foregoing reasons, Class Counsel respectfully request the Court enter an order granting approval of the Fee Request of \$800,000.00.

Respectfully submitted,

Dated: December 17, 2024.

By:



Travis P. Brown, OBA #20636

J. Matt Hill, OBA #33532

Scott R. Verplank, Jr., OBA #34041

**MAHAFFEY & GORE, P.C.**

300 N.E. 1<sup>st</sup> Street

Oklahoma City, OK 73104-4004

Telephone: (405) 236-0478

Facsimile: (405) 236-1840

tbrown@mahaffeygore.com

mhill@mahaffeygore.com

sverplank@mahaffeygore.com

**ATTORNEYS FOR PLAINTIFF AND CLASS  
MEMBERS**

**CERTIFICATE OF SERVICE**

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

Timothy J. Bomhoff, OBA #13172

Patrick L. Stein, OBA #30737

**MCAFFEE & TAFT**, a professional corporation

8<sup>th</sup> Floor, Two Leadership Square

211 North Robinson

Oklahoma City, OK 73102

Telephone: (405) 235-9621

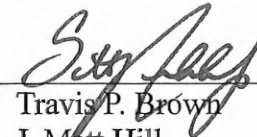
Facsimile: (405) 235-0439

tim.bomhoff@mcafeetaft.com

patrick.stein@mcafeetaft.com

**ATTORNEYS FOR DEFENDANT DEVON**

**ENERGY PRODUCTION COMPANY, LP**



Travis P. Brown

J. Matt Hill

Scott R. Verplank, Jr.