

IN THE DISTRICT COURT OF GARVIN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
GARVIN COUNTY
FILED

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.)

FEB - 7 2025
AT _____ O'CLOCK _____ M.
LAURA LEE, Court Clerk
BY _____ DEPUTY

ORDER AWARDING ATTORNEYS' FEES

Before the Court are Class Counsel's¹ December 17, 2024 Motion for Approval of Attorneys' Fees (the "Motion") and Memorandum of Law in Support thereof (the "Memorandum"), wherein Class Counsel seeks entry of an Order approving Class Counsel's request for Attorney's Fees in the amount of \$800,000.00. The Court has considered the Motion and the Memorandum, all matters and evidence submitted in connection therewith, and the proceedings on the Final Fairness Hearing held February 7, 2025. As set forth more fully below, the Court finds the Motion should be **GRANTED**. It is therefore **ORDERED** as follows:

1. The Court, for purposes of this Order, incorporates herein 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.
2. 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.

¹ 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.

3. The Notices stated that Class Counsel would seek attorneys' fees up to \$800,000.00 to be paid from the Gross Settlement Fund. *See* Declaration of Settlement Administrator, attached as Exhibit 3 to Class Representative's Memorandum of Law in Support of Motion for Final Approval ("Settlement Administrator Declaration"). Notice of Class Counsel's request for attorneys' fees 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 attorneys' fees 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 12 O.S. § 2023, Oklahoma law governing civil procedure, and due process.

4. Class Counsel provided the Court with sufficient evidence in support of their request for attorneys' fees, including, but not limited to: (1) the Motion and Memorandum; (2) the Declaration of Class Counsel, attached as Exhibit 2 to Class Representative's Memorandum of Law in Support of Motion for Final Approval ("Class Counsel Declaration"); (3) the Declaration of Class Representative, attached as Exhibit 1 to Class Representative's Memorandum of Law in Support of Motion for Final Approval ("Class Representative Declaration"); and (4) the applicable law, and all pleadings, declarations, and records on file in this matter.

5. Class Counsel are hereby awarded Attorneys' Fees of \$800,000.00 to be paid from the Gross Settlement Fund. In making this award, the Court makes the following findings of fact and conclusions of law:

a. The Settlement has created a fund of \$2,000,000.00 in cash for immediate payment to the Settlement Class. The Settlement is not a "claims-made settlement," meaning that Settlement Class Members who do not opt out will automatically receive individual distribution payments. Settlement Class Members will benefit from the

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

b. On December 16, 2024, JND caused the Postcard Notice to be mailed to 6,376 potential Class Members in the initial Class Member Mailing List. *See* Settlement Administrator Declaration, at ¶ 5. The Notice expressly stated that Class Counsel would seek attorneys' fees up to \$800,000.00. *See id.*, at Exhibit "A". The Postcard Notice also directed class members to a website for further information, including the Long Notice, and provided the option of requesting the Long Notice to be sent via U.S. Mail. *See id.*;

c. Class Counsel seek an award of attorneys' fees in the amount of \$800,000.00 (the "Fee Request") to be paid out of the \$2,000,000.00 Gross Settlement Fund that Class Counsel obtained for the Settlement Class;

d. Class Counsel timely filed their Motion prior to the deadline for Settlement Class Members to object. No Class Member filed an objection to Class Counsel's Fee Request or otherwise appeared before the Court to assert an objection to Class Counsel's Fee Request;

e. Class Counsel's right to an attorney fee comes from the equitable "common fund doctrine." *Strack v. Continental Resources, Inc.*, 2021 OK 21, ¶ 14, 507 P.3d 609, 614. 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.

f. “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.” *Strack*, 2021 OK 21, ¶ 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 Strack*, 507 P.3d at 615-16; *see also* 12 O.S. § 2023(G)(4)(e).

g. 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. *See* 12 O.S. § 2023(G)(4)(e). Although the Court is required to consider each of these thirteen (13) factors, no single factor is determinative, and the Court has discretion to weigh the factors as it determines appropriate. *Strack*, at ¶ 10. As more fully set forth below, the Court finds that Class Counsel’s Fee Request is supported by this multi-factor analysis and is otherwise fair and reasonable and should be approved.

h. **The Fee Request is supported by the time and labor required of Class Counsel to prosecute this Litigation and to negotiate the terms of the Settlement.** *See*

12 O.S. § 2023(G)(2)(e)(1). Class Representative filed this Litigation 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, Class Counsel dedicated over 1,886 hours of attorney and professional time to this Litigation and reasonably anticipated spending 105 more hours preparing for and attending the Final Fairness Hearing and administering the Settlement Fund. *See* Class Counsel Declaration at ¶ 42. This factor supports the Fee Request.

i. **The Fee Request is supported by the novelty and difficulty of the questions presented in this case.** *See* 12 O.S. § 2023(G)(2)(e)(2). Class actions are known to be complex and vigorously contested. The legal and factual issues litigated in this case involved complex and highly technical issues. 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.

j. **The Fee Request is supported by 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 ¶ 53. 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. *See generally* Class Counsel Declaration. 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). Therefore, statutory factors 3 and 9 support the Fee Request.

k. **The Fee Request is supported by 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 ¶ 48. 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.

1. **The Fee Request is supported by the customary fee and awards in similar cases.** *See* 12 O.S. § 2023(G)(2)(e)(5), (12). 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 ¶ 42. 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 ¶ 42; *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 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.

m. **The Fee Request is supported by the contingent nature of the fee and the risk of recovery.** *See* 12 O.S. § 2023(G)(2)(e)(6), (13). 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 ¶¶ 42 & 63. 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 ¶¶ 42 & 63. 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.

Accordingly, 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.

n. **The Fee Request is supported by the amount in controversy and the results obtained.** See 12 O.S. § 2023(G)(2)(e)(8). This factor is the "most critical factor" in deciding the reasonableness of a fee award. *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)). 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. As a result, the "results obtained" factor strongly supports a fee award of \$800,000.00 to be paid from the immediate cash Settlement.

o. **The Fee Request is supported by the undesirability of the case.** See 12 O.S. § 2023(G)(2)(e)(10). Compared to most civil litigation, this Litigation clearly fits the "undesirable" test. Few law firms would be willing to risk investing the time and expenses necessary to prosecute this Litigation for multiple years. 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.

Additionally, 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. 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).

p. **The Fee Request is supported by the nature and length of the professional relationship with the client.** *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 people in this litigation. *See id.* at ¶ 6; *see also* Class Counsel Declaration at ¶ 42. Class Representative supports the Fee Request. *See* Class Representative Declaration at ¶ 2. Accordingly, this factor supports Class Counsel's Fee Request.

q. The Court finds a lodestar cross-check confirms the reasonableness of Class Counsel's Fee Request. *Strack*, 2021 OK at ¶ 18 (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.”). 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. *See Strack*, 507 P.3d at 614.

r. As described in further detail above, and as more fully set forth in the materials filed in support of Class Counsel's Fee Request, the record demonstrates that the Fee Request appropriately reflects the degree of time and effort expended by Class Counsel. Class Counsel collectively spent over 1,886 hours of attorney and paraprofessional time prosecuting this litigation behalf of the Class. *See Class Counsel Declaration* at ¶ 42. 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 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 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).

s. As part of the Court's cross-check to assess the reasonableness of the lodestar compared to the percentage requested, the Court considered the same statutory factors discussed in detail above in its percentage-of-the-fund analysis. *See* 12 O.S. §

2023(G)(4)(e)); *Strack*, 2021 OK 21, ¶ 17. Based on the total combined time and the applicable hourly rates, Class Counsel's total combined lodestar (including past and anticipated future hours) is \$587,281.78. See Class Counsel Declaration at ¶ 60. 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 ¶ 60. Moreover, 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.

t. The goal of a cross-check is to compare the results of one method to the results of the other in order to arrive at a reasonable fee. The Court has performed this dual analysis and determined the enhancement required under the lodestar cross-check here yields a result in line with the percentage-of-the-fund method. Therefore, the Court's lodestar cross-check confirms the reasonableness of Class Counsel's Fee Request of \$800,000.00, calculated as 40% of the common fund.

6. For the reasons set forth above, the Court finds 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.

7. 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 \$800,000.00 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 ¶¶ 7 & 8. 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).

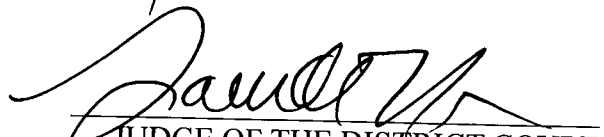
8. Class Counsel filed evidence in support of their Fee Request well before the objection and opt-out deadline. No Class Member filed an objection to Class Counsel's Fee Request or otherwise appeared before the Court to assert an objection to Class Counsel's Fee Request.

9. Any appeal or any challenge affecting this Order Awarding Attorneys' Fees 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.

10. 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.

11. 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 Oklahoma law.

IT IS SO ORDERED this 7 day of February 2025.


JUDGE OF THE DISTRICT COURT