

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

PAULA PARKS MCCLINTOCK,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-16-136-KEW
)	
ENTERPRISE CRUDE OIL LLC,)	
)	
Defendant.)	

ORDER AWARDING CASE CONTRIBUTION AWARD

Before the Court is Class Representative Paula McClintock’s Motion for Approval of Case Contribution Award (the “Motion”) (Dkt. No. 113) and Memorandum of Law in Support Thereof (the “Memorandum”) (Dkt. No. 114), wherein Ms. McClintock seeks a Case Contribution Award of up to \$24,000.00. The Court has considered the Motion and Memorandum, all matters submitted in connection therewith, and the proceedings on the Final Fairness Hearing held March 24, 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 Ms. McClintock intended to

seek a Case Contribution Award of up to \$24,000.00. *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 & C (Dkt. No. 108-4). Notice of Ms. McClintock’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. Ms. McClintock provided the Court with abundant evidence in support of her request for a Case Contribution Award, including: (1) the Motion and Memorandum; (2) the Declaration of Paula Parks McClintock (“McClintock Decl.”) (Dkt. No. 108-1); and (3) the Affidavits of Absent Class Members (Dkt. Nos. 108-6 – 108-9). 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. Ms. McClintock is hereby awarded a Case Contribution Award of \$24,000.00 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 \$5,900,000.00 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 January 27, 2021, JND caused the Short Form Notice to be mailed via

first-class mail using the USPS to the 11,521 Class Members included in the Class Mailing List. *See* JND Decl. at ¶6. The Short Form Notice expressly stated Ms. McClintock intended to seek a Case Contribution Award of up to \$24,000.00 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) Ms. McClintock filed her Motion approximately fourteen (14) days prior to the deadline for Settlement Class Members to object. No objections were filed regarding Ms. McClintock'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., 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 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,

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 her hours spent times a reasonable rate plus her out-of-pocket expenses, and not a percentage-based award, as was requested and awarded by the district court in *EnerVest*.

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 \$24,000.00, which includes compensation for Ms. McClintock’s time and effort and reimbursement of her out-of-pocket expenses. This request is supported by the abundant evidence submitted by Class Representative, including a declaration from Ms. McClintock and numerous 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) Ms. McClintock’s education and work history background more than justify this award. *See McClintock Decl.* at ¶¶4-5. Ms. McClintock attended Tulsa University where she obtained a Bachelor of Science degree in 1975. *Id.* at ¶4. After college, she worked for Merrill Lynch. *Id.* She continues to manage investments in commercial real

estate and several royalty interests. *Id.* Indeed, she has both owned, and previously managed a trust that owned, multiple royalty interests in Oklahoma for several years. *Id.* at ¶5;

(j) As demonstrated by her Declaration, both the rate and efforts of Ms. McClintock are reasonable. Specifically, at the time of her Declaration, Ms. McClintock had dedicated approximately 350 hours to this Litigation. McClintock Decl. at ¶20. These hours were spent reviewing draft pleadings and motions; searching for and producing records, which included the time-consuming effort to collect documents and information necessary to refute Defendant's challenge to her ownership of certain mineral interests; 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. Ms. McClintock anticipates spending an additional 25-50 hours working on this case in the future, including participation in the Final Fairness Hearing. *Id.* And, she will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the administration of the Settlement. *Id.* Ms. McClintock will also incur additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. *Id.* In total, Ms. McClintock will devote at least 400 hours to this Litigation. Additionally, Ms. McClintock seeks recovery of \$3,224.43 to compensate for her out-of-pocket expenses. McClintock Decl. at ¶19. These expenses were reasonable and necessary in order for Ms. McClintock to respond to Defendant's challenge to her ownership interest in certain wells at issue in this Litigation. *Id.*;

(k) Ms. McClintock was heavily involved in all aspects of the Litigation, even

prior to the filing of the Petition in March 2016. McClintock Decl. at ¶¶8-9. Prior to filing the Petition in 2016, she worked with Plaintiff's Counsel by participating in meetings, reviewing files, locating information related to my mineral interests, reviewing the draft Petition, and engaging in multiple communications regarding each of these activities. *Id.* at ¶9. She actively and effectively fulfilled her obligations as a representative of the Settlement Class, complying with all reasonable demands placed upon her during the prosecution and settlement of this Litigation, and provided valuable assistance to Class Counsel. *Id.* at ¶20;

(l) Ms. McClintock 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, Ms. McClintock 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 her request. *Id.* In other words, Ms. McClintock fully supports the Settlement as fair, reasonable and adequate, even if she is awarded no case contribution award at all. *Id.* Ms. McClintock has no conflicts of interest with Class Counsel or any absent class member. *Id.* Finally, Absent Class Members have executed affidavits supporting Ms. McClintock's request for a Case Contribution Award. *See* Dkt. Nos. 108-6 – 108-9;

(m) Because Ms. McClintock has dedicated her time, attention and resources to this Action, the Court finds she is entitled to the requested Case Contribution Award of \$24,000.00 to reflect the important role that she played in representing the interests of the Settlement Class and in achieving the substantial result reflected in the Settlement;

(n) Thus, Ms. McClintock's request for a Case Contribution Award of

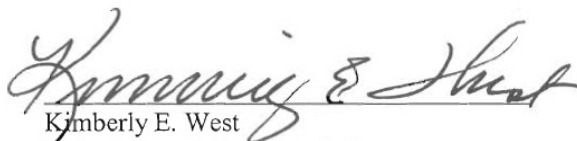
\$24,000.00 is fair and reasonable under Oklahoma state law for the same reasons it is fair and reasonable under federal common law and supported by the same evidence of reasonableness.

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 this 26th day of March 2021.


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