

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

DORSEY J. REIRDON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:16-cv-00087-KEW
)	
XTO ENERGY INC.,)	
)	
Defendant.)	

ORDER AWARDING CASE CONTRIBUTION AWARD

Before the Court is Class Representative’s Motion for Approval of Case Contribution Award (Dkt. No. 100) (the “Motion”) and Memorandum of Law in Support Thereof (Dkt. No. 101) (the “Memorandum”), wherein Mr. Reirdon seeks a Case Contribution Award of \$30,000 to be paid from the Gross Settlement Fund. The Court has considered the Motion and Memorandum, all matters submitted in connection therewith and the proceedings on the Final Fairness Hearing conducted on January 24, 2018. The Court finds the Motion should be granted.

IT IS THEREFORE ORDERED as follows:

1. This Order incorporates by reference the definitions in the Settlement Agreement and all terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.
2. The Court, for purposes of this Order, incorporates herein its findings of fact and conclusions of law from its Order and Judgment Granting Final Approval of Class Action Settlement as if fully set forth.
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 Notice stated that Mr. Reirdon intended to seek a Case Contribution Award of up to \$30,000 to be paid from the Gross Settlement Fund. Notice of Mr. Reirdon'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 of the Federal Rules of Civil Procedure and due process.

5. Mr. Reirdon provided the Court with abundant evidence in support of his request for a Case Contribution Award, including: (1) the Motion and Memorandum; (2) the Declaration of Geoffrey P. Miller ("Miller Decl.") (Dkt. No. 93); (3) the Declaration of Dorsey J. Reirdon ("Reirdon Decl.") (Dkt. No. 95-1); and (4) the affidavits of numerous absent Class Members (Dkt. Nos. 95-7 – 95-9). 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. Mr. Reirdon is hereby awarded a Case Contribution Award of \$30,000 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 \$20,000,000 in cash, material binding changes to XTO's statutory interest payment practices and policies in Oklahoma, having a present value of at least \$20 million, and \$750,000 in administration, notice and distribution costs, which is a significant benefit to the Settlement Class as such funds would otherwise be paid from the Gross Settlement Fund. Settlement Class Members

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

(b) On December 1, 2017, JND caused the Notice of Settlement to be mailed via first-class regular mail using the United States Postal Service to 37,147 unique mailing records identified in the mailing data. *See* Dkt. No. 95-5 (Declaration of Jennifer M. Keough on behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement) (“JND Decl.”) at ¶8. The Notice expressly stated that Class Representative intended to seek a Case Contribution Award of up to \$30,000 to be paid from the Gross Settlement Fund. *Id.* at Exhibit A;

(c) Mr. Reiridon filed his Motion 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 nationwide application, the Parties agree that this Settlement Agreement shall be governed solely by any federal law as to due process, class certification, judgment, collateral estoppel, res judicata, release, settlement approval, allocation, case contribution award, the right to and reasonableness of attorneys’ fees and expenses, and all other matters for which there is federal procedural or common law, including federal law regarding federal equitable common fund class actions. For any such matters where there is no federal common law, Oklahoma state law will govern.

Settlement Agreement at ¶11.8;

(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 Restat. 2d of Conflict of Laws, § 187, cmt. e (2nd 1988)); *see also Williams v. Shearson Lehman Bros.*, 917 P.2d 998, 1002 (Okla. Ct. App. 1995) (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."); Miller Decl. at ¶30;

(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 Fed. Appx. 232 (10th Cir. 2009) ("Incentive awards [to class representatives] are justified when necessary to induce individuals to become named representatives...Moreover, a class representative may be entitled to an award for personal risk incurred or additional effort and expertise provided for the benefit of the class."); *Laredo Fee Order* at 9 (case contribution awards are meant to "compensate class representatives for their work on behalf of the class, which has benefited from their representation.") (citing *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010)); *Fankhouser v. XTO Energy, Inc.*, No. CIV-07-798-L, 2012 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) (1.5% of \$1.06 billion fund, equaling \$15,900,000 to be split

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.*, 861 F.3d 1182 (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 dollar-based award on his hours spent times a reasonable rate, and not a percentage-based award, as was requested and awarded by the district court in *EnerVest*.

amongst nine class representatives and stating “[t]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action.”); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18-19 (E.D. Pa. June 2, 2004) (finding “ample authority in this district and in other circuits” for total incentive awards of \$125,000); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002) (“Incentive awards are not uncommon in class action litigation and particularly where . . . a common fund has been created for the benefit of the entire class.”); *Enter Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240 (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); *Cobell v. Salazar*, 679 F.3d 909, 922-23, 400 U.S. App. D.C. 428 (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”);

(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.” Newberg § 17:3. 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) (if the lead plaintiff’s services are greater, her incentive award likely will

be greater); *Rodriguez*, 563 F.3d at 960 (incentive award should not be “untethered to any service or value [the lead plaintiff] will provide to the class”); *Newberg* § 17:18;

(h) Here, Class Representative seeks a modest, dollar-based award of \$30,000. This request is supported by the abundant evidence submitted by Class Representative, including a declaration from Mr. Reirdon, Professor Geoffrey Miller, and numerous absent class members. *See Newberg* § 17:12 (evidence might be provided through “affidavits submitted by class counsel and/or the class representatives, through which these persons testify to the particular services performed, the risks encountered, and any other facts pertinent to the award.”). This evidence demonstrates Mr. Reirdon is seeking payment at a reasonable hourly rate of \$100 for reasonable time expended on services that were helpful and non-duplicative to the litigation;

(i) Mr. Reirdon has an extensive education and work history background justifying this hourly rate. *Reirdon Decl.* at ¶¶4-5. Mr. Reirdon attended Oklahoma State University, and obtained a B.A. and a Master’s degree in Education and a Master’s Degree in Education from Southeastern Oklahoma State University. *Id.* at ¶4. Mr. Reirdon spent several years teaching all levels of students and undergoing further postgraduate studies. *Id.* Further, Mr. Reirdon was a member of numerous professional associations, including being the Charter President of the Oklahoma Track Coaches Association. *Id.*;

(j) As demonstrated by his Declaration, both the rate and efforts of Mr. Reirdon are reasonable. Specifically, at the time of his Declaration on December 18, 2017, Mr. Reirdon had dedicated a total of 275 hours to this Litigation. *Reirdon Decl.* at ¶19. These hours were spent collecting documents for production, reviewing emails and

draft pleadings from Class Counsel, consulting and/or meeting with Class Counsel, traveling to and from meetings, hearings and mediation, and attending mediation. *Id.* All of these efforts were necessary and beneficial to the Litigation and the ultimate Settlement. *Id.* Mr. Reirdon also anticipated spending additional time working on this case, including attending the Final Fairness Hearing, and did attend the Final Fairness Hearing on January 24, 2018. The additional time Mr. Reirdon spent on this Litigation through the Final Fairness Hearing is at least 25 hours. And, Mr. Reirdon will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the administration of the Settlement. He will also incur additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. However, even if Mr. Reirdon never worked another hour on this case, the request of \$30,000 would come out to a reasonable and modest hourly rate of \$100;

(k) Mr. Reirdon was heavily involved in all aspects of the Litigation, even prior to the filing of the Petition in January 2016. *Id.* at ¶¶8-9. He 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 ¶19. Mr. Reirdon has worked with Class Counsel since before the inception of this Litigation, and his active participation has contributed significantly to the prosecution and resolution of this case. *Id.* In addition, Mr. Reirdon produced documents, reviewed pleadings, motions and other court filings, communicated regularly with Class Counsel, reviewed expert analysis on damages, attended the formal mediation session in person, and actively participated in the negotiations that led to the Settlement of this Action. *See id.* Mr.

Reirdon also has communicated with one of Class Representative's experts regarding the Settlement and approval process and procedure. Miller Decl. at ¶¶55, 79;

(l) Mr. Reirdon was never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Litigation. Reirdon Decl. at ¶20. In fact, Mr. Reirdon 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 his request. *Id.* In other words, Mr. Reirdon fully supports the Settlement as fair, reasonable and adequate, even if he is awarded no case contribution award at all. *Id.* Mr. Reirdon has no conflicts of interest with Class Counsel or any absent class member. *Id.* Finally, several absent Class Members executed affidavits supporting Mr. Reirdon's request for a Case Contribution Award. *See* Affidavits of Michael J. Weeks (on behalf of three class members: Pagosa Resources, LLC; Legacy Royalty, LLC; and Michael J. Weeks Revocable Trust) (Dkt. No. 95-7); Earl Dwayne Sager (Dkt. No. 95-8); and Robert Lovelace (Dkt. No. 95-9);

(m) Because Mr. Reirdon has dedicated his time, attention and resources to this Action, I find that he is entitled to the requested Case Contribution Award of \$30,000 to reflect the important role that he played in representing the interests of the Settlement Class and in achieving the substantial result reflected in the Settlement;

(n) Assuming, *arguendo*, that Oklahoma state law governs the Case Contribution Award despite the express language to the contrary in the Settlement Agreement, I find that Oklahoma law strongly supports incentive awards, particularly in royalty underpayment class actions such as this. In fact, Oklahoma state courts routinely grant percentage-based incentive awards to class representatives, which historically are

much larger than the modest flat amount sought here. *See, e.g., Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C.*, No. CJ-2010-38, 2015 WL 5794008, at *9 (Okla. Dist. Ct. Beaver Cty. July 2, 2015) (“The incentive award sought is consistent with such awards in other cases. Oklahoma courts have typically awarded class representatives in royalty owner class actions approximately 1-2% of the settlement. . . . [Collecting cases] . . .”); *Velma-Alma Indep. Sch. Dist. No. 15, v. Texaco, Inc.* No. CJ-2002-304, District Court of Stephens County, Oklahoma (2005) (awarding 1-2% of total settlement amounts); *Robertson v. Sanguine, Ltd.*, No. CJ-02-150, District Court of Caddo County, Oklahoma (2003) (awarding 1% class representative fee); *Continental Resources, Inc. v. Conoco, Inc.*, No. CJ-95-739, District Court of Garfield County, Oklahoma (2005) (“Court awards to Class Representatives of 1% of the common fund are typical in these types of actions, with some awards approaching 5% of the common fund.”); and

(o) Thus, Class Representative’s request for a Case Contribution Award of \$30,000 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. *See generally* Reirdon Decl.; Miller Decl.; Affidavits of Michael J. Weeks, Earl Dwayne Sager, and Robert Lovelace.

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.

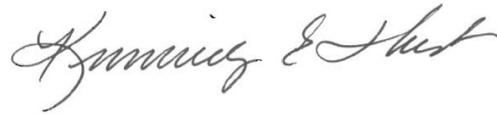
8. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Litigation, including the administration, interpretation,

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) of the Federal Rules of Civil Procedure.

10. To the extent any objections remain, all objections to Class Representative's Request for a Case Contribution Award are hereby overruled in their entirety.

IT IS SO ORDERED this 29th day of January, 2018.



KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE