

IN THE DISTRICT COURT OF GARVIN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA }
GARVIN COUNTY } SS.

MICHAEL KERNEN and)
GLADYS MARIE WILKERSON,)
TRUSTEE OF THE GLADYS MARIE)
WILKERSON 1999 TRUST,)

Plaintiffs,)

v.)

CITIZEN ENERGY II, LLC and)
CITIZEN ENERGY III, LLC,)

Defendants.)

FILED

JUL 29 2024

AT 3:11 O'CLOCK P.M.

LAURA LEE, Court Clerk

BY [Signature] DEPUTY

Case No. CJ-2018-7

**CLASS COUNSEL’S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
APPROVAL OF REIMBURSEMENT OF LITIGATION EXPENSES AND
ADMINISTRATION, NOTICE, AND DISTRIBUTION COSTS**

I. SUMMARY OF ARGUMENT

In connection with approval of the Settlement¹ in the above-captioned Litigation, Class Counsel respectfully move the Court for reimbursement of expenses incurred in successfully prosecuting and resolving this Litigation in an amount not to exceed \$200,000.00 (the “Expense Request”) – *i.e.*, the amount set forth in the Notice.² Moreover, Class Counsel also respectfully

¹ All capitalized terms not otherwise defined herein shall have the meaning given to them in the June 12, 2024, Stipulation and Agreement of Settlement (“Settlement Agreement”), a copy of which was attached as Exhibit 1 to Plaintiffs’ June 17, 2024 *Memorandum of Law in Support of Plaintiffs’ Motion to Certify Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice, and Set Date for Final Approval Hearing* (“*Preliminary Approval Motion*”).

² Class Counsel’s Expense Request does not include Administration, Notice, and Distribution Costs associated with effectuating the Settlement. In the Notice, Class Counsel stated they would request approval of Administration, Notice, and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$250,000.00 to be paid from the Gross Settlement Fund. That request is discussed in more detail below.

move the Court for approval of reimbursement of Administration, Notice, and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$250,000.00. These requests are fair and reasonable, and, therefore, Class Counsel respectfully request that they be approved.

Class Counsel have obtained an excellent recovery for the benefit of Class Members, which consists of a cash payment of \$4,668,120.00 (the “Gross Settlement Fund”) to compensate the Settlement Class for past damages. The \$4,668,120.00 Gross Settlement Fund is an outstanding recovery for Class Members.³

To achieve this recovery for the Class, Class Counsel were required to expend out-of-pocket expenses that were necessary and reasonable for the prosecution of this action. Class Counsel now seek reimbursement of those reasonable expenses, in an amount not to exceed \$200,000.00—the amount set forth in the Notices.⁴ To date, Class Counsel have advanced \$132,528.00 in prosecuting and resolving this case. *See* Declaration of Drew Pate (“NP Decl.”), attached as Exhibit 2 to Class Counsel’s Motion for Approval of Attorneys’ Fees (“Motion for Fees”), at ¶ 11; Declaration of Patrick M. Ryan (“RW Decl.”), attached as Exhibit 1 to Motion for Fees, at ¶ 24; and Declaration of Robert N. Barnes, Patranell Britten Lewis, and Emily Nash Kitch (“BL Decl.”), attached as Exhibit 3 to Motion for Fees, at ¶ 18. In addition to these expenses,

³ *See* Declaration of Jason A. Ryan and Drew Pate on Behalf of Class Counsel at ¶¶ 5, 11, 13, & 36 (“Joint Class Counsel Declaration”), attached as Exhibit 3 to Class Representatives’ Memorandum of Law in Support of Class Representatives’ Motion for Final Approval (“Final Approval Memorandum”); *see also* Affidavit of Barbara A. Ley, CPA, CITP, CFF (“Ley Aff.”), attached as Exhibit 4 to the Final Approval Memorandum.

⁴ A copy of the Short Form and Long Form Notices (the “Notices”) are attached as Exhibits A & C to the Declaration of Jennifer M. Keough on behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement (“JND Decl.”), which is attached as Exhibit 5 to the Final Approval Memorandum.

Class Counsel may incur additional expenses between now and the Final Approval Hearing. *See id.* As such, at the hearing, Class Counsel may seek reimbursement for expenses incurred after the date of this filing, not to exceed \$200,000.00. *Id.* In addition, Class Counsel reserve their right to make additional expense requests following the Final Approval Hearing. However, in no event will Class Counsel's cumulative expense requests exceed the \$200,000.00 stated in the Notice. Because the Expense Request is fair and reasonable, and for the reasons set forth below, the Expense Request should be granted.

To facilitate the settlement, provide notice, and distribute funds, Notice to the Settlement Class stated Class Counsel would request approval of Administration, Notice, and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$250,000.00 to be paid from the Gross Settlement Fund. *See JND Decl.* at Exhibits A & C. These costs will include those of the Settlement Administrator JND, accounting expert Barbara Ley, and land experts. As with the Litigation Expenses, Class Counsel only seek approval of payment of Administration, Notice, and Distribution Costs actually incurred and not to exceed \$250,000.00.

II. FACTUAL AND PROCEDURAL SUMMARY

In the interest of brevity, Class Counsel will not recite the factual and procedural background of this Litigation again. Instead, Class Counsel respectfully refer the Court to the Final Approval Memorandum, the Joint Class Counsel Declaration, the pleadings on file, and any other matters of which the Court may take judicial notice, all of which are respectfully incorporated by reference as if set forth fully herein. *See* 12 O.S. § 2202.

III. ARGUMENT

- A. **The request for reimbursement of Litigation Expenses is reasonable and should be approved.**

Oklahoma's class action statute provides "the court may award . . . nontaxable costs that are authorized by law or by the parties' agreement." See 12 O.S. § 2023(G)(1). Class Counsel respectfully request reimbursement of Litigation Expenses that have been and may be advanced or incurred by Class Counsel in prosecuting and resolving this Litigation. See Joint Class Counsel Decl. at ¶¶ 70-72. Class Counsel set forth in the Class Notices that they would seek up to \$200,000.00 in reimbursement of expenses. See JND Decl. at Exhibits A & C. To date, Class Counsel's out-of-pocket expenses are \$132,528.00. See Joint Class Counsel Decl. at ¶ 72. All of these expenses were reasonably and necessarily incurred by Class Counsel and are directly related to their prosecution and resolution of this Litigation. *Id.* at ¶70. The costs include routine expenses related to copying, court fees, postage and shipping, phone charges, legal research, and travel and transportation, as well as expenses for experts, document production and review, which are typical of large, complex class actions such as this.

Moreover, the Expense Request is consistent with other litigation expense awards in Oklahoma state and federal courts. See, e.g., *Farrar Oil Company v. Conoco Inc., et al.*, CJ 2000-356, Garfield County, Oklahoma (approving Class Counsel's request for reimbursement of \$170,780.59 in litigation expenses); *Sacket v. Great Plains Pipeline Co.*, CJ-2002-70, Woods County, Oklahoma (approving reimbursement of \$350,000 in litigation expenses); *Drummond v. Range Resources Corp.*, CJ-2010-510, Grady County, Oklahoma (approving reimbursement of \$641,852.06 in litigation expenses); *Fitzgerald Farms, LLC v. Chesapeake Operating, LLC*, CJ-2010-38, Beaver County, Oklahoma (approving reimbursement of \$310,000 in litigation expenses); *DDL Oil & Gas, LLC v. Diversified Production, LLC*, CJ-2019-17, Blaine County,

Oklahoma (approving \$100,000 in litigation expenses).⁵ Therefore, the Expense Request should be granted because it is fair and reasonable.

In addition, absent Class Members have executed affidavits in support of Class Counsel's Expense Request. *See* Affidavits of Absent Class Members Castlerock Resources, Inc.; Kelsie Wagner; Pagosa Resources, LLC; Chieftain Royalty Company; and Sagacity, Inc., attached as Exhibits 6-10 to the Final Approval Memorandum.

B. The request for approval of Administration, Notice, and Distribution Costs is reasonable and should be approved.

In the Notice to the Settlement Class, Class Counsel stated they would request approval of Administration, Notice, and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$250,000.00 to be paid from the Gross Settlement Fund. *See* JND Decl. at Exhibits A & C. These costs will include those of the Settlement Administrator JND, accounting expert Barbara Ley, and land experts. As with the Litigation Expenses, Class Counsel will only seek approval of payment of Administration, Notice, and Distribution Costs actually incurred, and in no event will their request exceed the noticed amount of \$250,000.00. Such costs for the necessary administration, notice, and distribution have frequently been approved in analogous

⁵ The Eastern, Western, and Northern Districts of Oklahoma have approved similar amounts in other royalty actions. *See, e.g., Kernan v. Casillas Operating, LLC*, Case No. 18-CIV-107-JD (W.D. Okla. January 3, 2023) (awarding litigation expenses up to \$200,000.00) (Dkt. No. 123); *White Family Minerals, LLC v. EOG Resources, Inc.*, Case No. 19-cv-409-RAW (E.D. Okla. November 12, 2021) (awarding litigation expenses up to \$100,000.00) (Dkt. No. 60); *Donald D. Miller Revocable Family Trust v. DCP Operating Co., LP, et al.*, No. CIV-18-0199-JH (E.D. Okla. June 29, 2021) (awarding litigation expenses up to \$200,000.00 and notice, administration, and distribution expenses up to \$300,000.00) (Dkt. No. 97); *Hay Creek Royalties, LLC v. Roan Resources, LLC*, Case No. 19-CV-177-CVE-JFJ (N.D. Okla. April 28, 2021) (awarding past litigation expenses of \$263,586.63) (Dkt. No. 74); *Reirdon v. Cimarex Energy Co.*, No. 6:16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (awarding \$174,191.50 in past litigation expenses and future expenses up to \$250,000.00) (Dkt. No. 104); and *Reirdon v. XTO Energy Inc.*, No. 6:16-00087-KEW (E.D. Okla. Jan. 29, 2018) (awarding \$223,056.78 in past litigation expenses and future expenses up to \$300,000.00) (Dkt. No. 125).

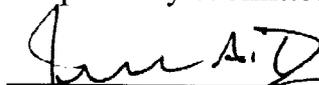
cases. *See, e.g. DDL Oil & Gas, LLC v. Diversified Production, LLC*, CJ-2019-17, Blaine County, Oklahoma (Sept. 18, 2023 Order awarding costs up to \$250,000.00); *White Family Minerals, LLC v. EOG Resources, Inc.*, Case No. 19-cv-409-RAW (E.D. Okla. November 12, 2021) (awarding costs up to \$150,000.00) (Dkt. No. 60); *Donald D. Miller Revocable Family Trust v. DCP Operating Co., LP, et al.*, No. CIV-18-0199-JH (E.D. Okla. June 29, 2021) (awarding costs up to \$300,000.00) (Dkt. No. 97); *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. March 26, 2021) (awarding costs up to \$225,000.00) (Dkt. No. 121); *Reirdon v. Cimarex Energy Co.*, No. 6:16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (awarding costs up to \$250,000.00) (Dkt. No. 104); *Reirdon v. XTO Energy Inc.*, No. 6:16-00087-KEW (E.D. Okla. Jan. 29, 2018) (awarding costs up to \$300,000.00) (Dkt. No. 125).

IV. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request the Court (1) award the Expense Request of \$132,528.00, *plus* any additional amount Class Counsel actually incur after the filing of this Memorandum, not to exceed the noticed amount of \$200,000.00, and (2) approve payment of Administration, Notice, and Distribution Costs in an amount not to exceed the noticed amount of \$250,000.00.

DATED: July 29, 2024.

Respectfully submitted,



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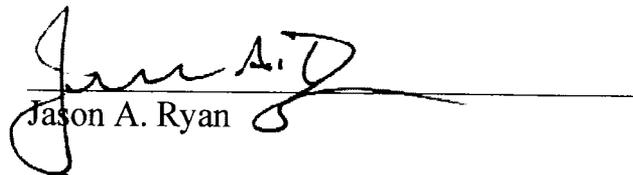
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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2024 a true and correct copy of the foregoing document was sent, via first class mail and/or electronic mail, to the following counsel of record:

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