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

JOHN CECIL, on behalf of himself and all others similarly situated, Plaintiff, vs. BP AMERICA PRODUCTION COMPANY (f/k/a Amoco Production Company) (including BP Amoco Corporation, ARCO, BP Exploration, Inc., BP Corporation North America, Inc., and BP Energy Company), Defendant.	Civil Action No. 16-CV-00410-KEW

MEMORANDUM OF LAW IN SUPPORT OF CLASS REPRESENTATIVE'S MOTION FOR APPROVAL OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES AND CASE CONTRIBUTION AWARD

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I. SUMMARY OF THE ARGUMENT

In connection with approval of the Settlement in the above-captioned Litigation, the Court appointed Plaintiff John Cecil as Class Representative and Plaintiff's Counsel The Lanier Law Firm (Reagan Bradford and Mark Lanier) and Rex A. Sharp, P.A. (Rex Sharp and Barbara Frankland) as Settlement Class Counsel for the Settlement Class and noted the appearance of Additional Counsel (collectively "Class Counsel").[1] Mr. Cecil as Class Representative respectfully moves the Court for an award of attorneys' fees of $58.8 million to Settlement Class Counsel, reimbursement of up to $1.6 million in reasonable Litigation Expenses, and for a Case Contribution Award of $450,000 to be shared among himself and the four named plaintiffs in the two other cases resolved by the Settlement[2] in this case, *Chockley v. BP* and *Chieftain v. BP*. As set forth in the Notice of Settlement, the requested awards will be paid from the Gross Settlement Fund and, as set forth below, meet the legal criteria for each award.

Class Counsel has obtained an excellent recovery for the benefit of the Settlement Class, consisting of: (1) a cash payment of $147 million (the "Gross Settlement Fund") to compensate the Settlement Class for past damages; (2) Defendant's past implementation of procedures and practices for calculating royalty on production from Class Wells that inured to the benefit of the Settlement Class as a result of the Litigation ("Past Benefits"), which Plaintiff's expert has valued at $38 million; and (3) Defendant's go forward agreement to continue using these procedures and practices for calculating royalty for a period of seven (7) years beginning May 1, 2018 and ending April 31, 2025 ("Future Benefits"), which Plaintiff's expert has valued at over $36 million.[3] The

[1] Preliminary Approval Order, Dkt. No. 224, at ¶3.d & n.3.

[2] All capitalized terms not otherwise defined herein shall have the meanings given to them in the Settlement Agreement dated April 13, 2018 (Dkt. No. 171-1).

[3] *See* Declaration of Daniel T. Reineke on Valuation of Past and Future Benefits ("Reineke Decl. on Valuation"), attached to the Combined Exhibit Index as Exhibit 9 at ¶¶4-7.a.

total value of the Settlement equals at least $221 million.[4] The $147 million cash payment alone exceeds the principal of damages and constitutes an outstanding recovery.[5]

In light of the work performed by Class Counsel, the circumstances of this case, including the risks of further litigation and the substantial recovery obtained, the Fee Request of 26.6% of the Gross Settlement Value is fair, reasonable, comports with fee awards granted in similar cases, and is fully appropriate under Tenth Circuit precedent. The Fee Request should be granted Gensler Decl. at ¶¶4, 39-65; Fitzpatrick Decl. at ¶25; Taylor Decl. at ¶14 ("A 27% contingency fee in this case is more than fair, reasonable and adequate. These plaintiff's lawyers have done historically good work for their clients."); *id.* at ¶15.

In order to achieve this remarkable recovery for the Class, Class Counsel was required to expend a significant amount out-of-pocket for necessary and reasonable expenses for the prosecution of this action. Class Counsel now seeks reimbursement of those reasonable expenses, in an amount not to exceed $1.6 million—the amount set forth in the Notice.[6] To date, Class Counsel have advanced more than $1.3 million in prosecuting and resolving this case. *See* Joint Counsel Decl. at ¶111. In addition to these expenses, Class Counsel will incur additional expenses

[4] Joint Declaration of Plaintiff's Counsel Reagan E. Bradford and Rex A. Sharp In Support of Class Representative's Motion for Final Approval of Class Action Settlement And Motion for Approval of Attorneys' Fees, Litigation Expenses, and Case Contribution Award ("Joint Counsel Decl."), attached to the Combined Exhibit Index as Exhibit 8 at ¶9; Declaration of Steven S. Gensler ("Gensler Decl."), attached to the Combined Exhibit Index as Exhibit 11 at ¶16; Declaration of Steven W. Taylor ("Taylor Decl."), attached to the Combined Exhibit Index as Exhibit 12 at ¶9; Declaration of Brian T. Fitzpatrick ("Fitzpatrick Decl."), attached to the Combined Exhibit Index as Exhibit 13 at ¶14 ("Altogether then, this settlement has already conferred or will confer some $221 million in real cash benefits on class members.").

[5] *See* Reineke Decl. on Valuation at ¶4 (total damages without interest equals $145,367,109).

[6] A copy of the Notice is attached as Exhibit A to the Declaration of Jennifer M. Keough on behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice Administration ("JND Decl."), attached to the Combined Exhibit Index as Exhibit 1. The notification to the Settlement Class about the amount of litigation expenses sought appears at page 4 of the Notice.

between now and the Final Approval Hearing on November 19, 2018. *See id.* at ¶112. As such, at the hearing, Class Counsel may seek reimbursement for expenses incurred after the date of this filing, not to exceed $1.6 million. *Id.* at ¶114. 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 $1.6 million 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.

Class Representative also respectfully moves the Court for a Case Contribution Award of $450,000 from the Gross Settlement Fund, as compensation for his valuable time, effort, and assistance throughout this Litigation, and for the valuable time, effort, and assistance of the three (3) named plaintiffs in the *Chockley v. BP Case,* Anne Chockley, Dwayne Sager, and Johnita Foster, and the named plaintiff in the *Chieftain v. BP Case,* Chieftain Royalty Company, all of whom support the Settlement.[7] If approved by the Court, the Settlement will resolve all three (3) putative class action cases pending against BP. Without the efforts of these Plaintiffs to seek recovery on behalf of all royalty owners in wells operated by BP or for whom BP separately marketed gas from the Class Wells during the Class Period, this Settlement with a total value of at least $221 million would not have occurred and would not be available to benefit the Settlement Class. The award sought is proportional to the contribution of each of the Plaintiffs, and is supported by the declarations submitted: (1) Declaration of John Cecil ("Cecil Decl."), attached to the Combined Exhibit Index as Exhibit 3; (2) Joint Declaration of the Plaintiffs in *Chockley v. BP* ("*Chockley* Decl."), attached to the Combined Exhibit Index as Exhibit 4; (3) Declaration of Robert

[7] All five of these named plaintiffs are collectively referred to as "Plaintiffs" unless the context requires reference by surname.

Abernathy on behalf of Chieftain Royalty Company ("*Chieftain* Decl."), attached to the Combined Exhibit Index as Exhibit 5; (4) Declaration of Joseph Hancock on behalf of the Baptist Foundation of Oklahoma ("Baptist Foundation Decl."), attached to the Combined Exhibit Index as Exhibit 6; (5) Declaration of Dan Little on behalf of Sagacity, Inc. ("Sagacity Decl."), attached to the Combined Exhibit Index as Exhibit 7; and (6) Joint Counsel Declaration at ¶117. *See also Chieftain v. XTO Energy Inc.*, Case No. 6:11-cv-00029-KEW (E.D. Okla. Mar. 27, 2018), Order Granting Case Contribution Award (Dkt. No. 230) ("*Chieftain* Case Contribution Award Order") attached to the Combined Exhibit Index as Exhibit 17.

II. PROCEDURAL HISTORY

In the interest of brevity, Class Representative will not recite the factual and procedural background of this Litigation again herein, but instead respectfully refers the Court to the Preliminary Approval Memorandum (Dkt. No. 171), the Final Approval Memorandum, the Joint Counsel Declaration, the Combined Exhibit Index, the pleadings on file, and any other matters of which the Court may take judicial notice, all of which are incorporated as if set forth fully herein.

III. ARGUMENT

Class Representative sets forth below his arguments in support of the Fee Request, Request for Reimbursement of Litigation Expenses, and Request for Case Contribution Award. For the reasons set forth in each section below, those requests should be granted. As a preliminary matter, Class Representative addresses the law—federal common law—that governs each request.

A. The Parties Have Agreed Federal Common Law Controls the Right to and Reasonableness of the Requests for Attorneys' Fees, Expenses, and Case Contribution Award.

The Parties contractually agreed that the Settlement Agreement shall be governed *solely* by federal common law with respect to certain issues, including the right to and reasonableness of attorneys' fees, reimbursement of Litigation Expenses, and Case Contribution Award:

> Any award of attorneys' fees, Case Contribution Award, or Litigation Expenses will be governed by federal common law, including federal equitable common fund class action law.

Settlement Agreement at ¶7.1. This contractual language removes any doubt regarding which body of law applies to certification, notice, and overall evaluation of the fairness and reasonableness of the Settlement and the associated requests for fees, expenses, and class representative contribution award. Such an agreement directly aligns with the principles of the Class Action Fairness Act ("CAFA"), which was passed with the intent to provide certainty, uniformity, and confidence in the application of the class device to cases involving interstate commerce. *See, e.g.*, 28 U.S.C. §1711(a)-(b). This statewide class action brings claims under federal statutory law as well as state common law and rests on federal question jurisdiction. Federal Rule of Civil Procedure 23 governs the certification of the action as a class action. The Parties contractually chose to apply federal common law to all matters regarding the reasonableness and fairness of the Settlement, including but not limited to, the issues of fees, expenses, and class representative awards. The Parties' contractual choice of law—the well-developed and consistent body of federal common law that applies to common fund class action settlements where no fee shifting occurs—should be given effect as written. *See Chieftain Royalty Co. v. XTO Energy Inc.*, No. 11-cv-29-KEW (E.D. Okla. Mar. 27, 2018), Order Awarding Attorneys' Fees (Dkt. No. 231) ("*Chieftain* Fee Order") at ¶¶6(d)-(e), attached to the Combined Exhibit Index as Exhibit 15; *see also Leritz v. Farmers Ins. Co.*,

2016 OK 79, ¶1, 385 P.3d 991, 992 ("Generally, '[t]he law of the state chosen by the parties to govern their contractual rights and duties will be applied . . ..'"); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165 (1939).

B. The Fee Request is Reasonable Under Federal Common Law.

Under Federal Rule of Civil Procedure 23(h), "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." *Chieftain* Fee Order at ¶6(f). An award of attorneys' fees is a matter uniquely within the discretion of the trial judge, who has firsthand knowledge of the efforts of counsel and the services provided. *Id.*; *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 453 (10th Cir. 1988). Such an award will only be reversed for abuse of discretion. *Chieftain* Fee Order at ¶6(f); *Brown*, 838 F.2d at 453; *Gottlieb v. Barry*, 43 F.3d 474, 486 (10th Cir. 1994). Here, the requested fees are authorized by an express agreement of the Parties. Indeed, pursuant to the Settlement Agreement, federal common law governs both the right to, and reasonableness of, attorneys' fees. Settlement Agreement at ¶7.1. The ultimate standard for awarding a fee under federal common law is whether the fee is reasonable. The Fee Request is fair and reasonable under federal law and should be approved.

1. Attorneys' Fees are Calculated as a Percentage of the Fund under Tenth Circuit Law.

"The court's authority for ... attorney fees stems from the fact that the class-action device is a creature of equity and the allowance of attorney-related costs is considered part of the historic equity power of the federal courts." 7B Wright & Miller § 1803. Under federal equitable law, the Tenth Circuit expressly prefers the percentage of the fund method in determining the award of attorneys' fees in common-fund cases. *See Gottlieb*, 43 F.3d at 483; *Brown*, 838 F.2d at 454;

Uselton v. Commercial Lovelace Motor Freight, 9 F.3d 849 (10th Cir. 1993).[8] This methodology calculates the fee as a reasonable percentage of the value obtained for the benefit of the class. *See Brown*, 838 F.2d at 454. This Court has acknowledged the Tenth Circuit's preference for the percentage method and rejected application of a lodestar analysis or lodestar cross check. *Chieftain* Fee Order at ¶6(g); *CompSource Oklahoma v. BNY Mellon, N.A.*, No. CIV 08-469-KEW, 2012 WL 6864701, at *8 (E.D. Okla. Oct. 25, 2012) ("A majority of circuits recognize that trial courts have the discretion to award fees based solely on a percentage of the fund approach and are not required to conduct a lodestar analysis in common fund class actions.") (citing *Union Asset Mgmt. Holding A. G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012)). Other Oklahoma federal district courts agree. *See, e.g., Northumberland County Ret. Sys. v. GMX Res. Inc.*, No. CIV-11-520, 2014 WL 12014020, at *3, n.1 (W.D. Okla. July 31, 2014) ("The Court is not required to conduct a lodestar assessment of the hours versus a reasonable hourly rate."); *see also Chieftain Royalty Co. v. Laredo Petro., Inc.*, No. CIV-12-1319, 2015 WL 2254606, at *3 (W.D. Okla. May 13, 2015) ("In the Tenth Circuit, the preferred approach for determining attorneys' fees in common fund cases is the percentage of the fund method."); *Naylor Farms, Inc. v. Anadarko OGC Co.*, No. CIV-08-668-R, (W.D. Okla. Oct. 5, 2012) (Dkt. 329).

Professors Gensler and Fitzpatrick also agree that the percentage of the fund approach is the correct approach here. Gensler Decl. at ¶ 42; Fitzpatrick Decl. at ¶¶11-12. Professor Gensler

[8] *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455 (10th Cir. 2017) is inapplicable for two reasons. First, unlike in *EnerVest*, the Parties here contractually agreed to a choice of law provision, selecting federal common law to control the right to and reasonableness of the attorneys' fee award. Second, and more significantly, *EnerVest* rested on the federal court's diversity jurisdiction. *Id.* at 460 ("Because federal jurisdiction in this common fund case is based on the diversity of the parties, ... the [*Erie* doctrine] requires us to apply Oklahoma law governing the award of attorney fees in common-fund cases."). This case rests on federal question jurisdiction. Second Amended Complaint, Dkt. No. 180, at ¶7; *See also* Gensler Decl. at ¶41, n.5.

teaches Civil Procedure and related classes at the University of Oklahoma College of Law and is the author of a leading treatise on federal procedure, FEDERAL RULES OF CIVIL PROCEDURE RULES AND COMMENTARY (Thomson Reuters), and a wide range of articles on federal practice and procedure. Gensler Decl. at ¶1. He also serves as the Consultant to the U.S. Judicial Conference Committee on Federal-State Jurisdiction. *Id.* Professor Fitzpatrick is also well-qualified on federal practice and procedure, especially when it comes to class actions. Among his many accomplishments are graduating from Harvard Law School, serving as a law clerk to The Honorable Antonin Scalia on the Supreme Court of the United States and to The Honorable Diarmuid O'Scannlain on the United Court of Appeals for the Ninth Circuit, and teaching at Vanderbilt University and Harvard Law School. Fitzpatrick Decl. at ¶ 1. His teaching and research have focused on class action litigation and he has authored several articles on class action litigation which have been cited by numerous courts. *Id.* at ¶¶ 2-3. He has also published an empirical study on class action settlements and fee awards and will be publishing a book entitled THE CONSERVATIVE CASE FOR CLASS ACTIONS next year. *Id.* at ¶¶4-6. Both Professor Gensler and Fitzpatrick analyze the Fee Request under the governing *Johnson* factors and conclude it is reasonable. Gensler Decl. at ¶¶4, 43-65; Fitzpatrick Decl. at ¶¶13, 15-25. Former Chief Justice of the Supreme Court of Oklahoma Steven W. Taylor concurs. Taylor Decl. at ¶¶12-15.

2. The Fee Request Is Reasonable under the Johnson Factors.

When determining attorneys' fees under the percentage method, the Tenth Circuit evaluates the reasonableness of the requested fee by analyzing the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See Brown*, 838 F.2d at 454-55; *Chieftain* Fee Order at ¶6(h). Not all of the factors apply in every case, and some deserve more

weight than others depending on the facts at issue. *Brown*, 838 F.2d at 456; *Chieftain* Fee Order at ¶6(h).

The twelve *Johnson* factors are: (l) the time and labor required, (2) the novelty and difficulty of the questions presented by the litigation, (3) the skill required to perform the legal services properly, (4) the preclusion of other employment by the attorneys 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 attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Gottlieb*, 43 F.3d at 482 n.4.

The *Johnson* factor that should be entitled to the most weight in this common fund case is the eighth factor—the amount involved in the case and the results obtained. Gensler Decl. at ¶45. *See Chieftain* Fee Order at ¶6(j); *Brown*, 838 F.2d at 456 (holding this factor may be given greater weight when "the recovery [is] highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class."); FED. R. CIV. P. 23(h) adv. comm. note (explaining for a "percentage" or contingency-based approach to class action fee awards, "results achieved is the basic starting point").

Here, the results obtained strongly support the Fee Request. Taylor Decl. at ¶13 ("As I reviewed and considered all the factors in determining a proper fee award, I kept coming back to the *results* achieved as my most important guide. The results achieved in this case are very significant in light of all the potential contested issues that loom..."); Gensler Decl. at ¶47; *see Chieftain* Fee Order at ¶6(k). There are four critical components of this Settlement: (1) the Gross Settlement Fund of $147 million, which alone represents more than a 100% recovery of the

damages without interest and is a significant recovery for the Class; (2) Defendant's past implementation of procedures and practices for calculating royalty on production from Class Wells that inured to the benefit of Class Members as a result of the Litigation ("Past Benefits"), which Plaintiff's expert has valued at $38 million; and (3) Defendant's go forward agreement to continue using these procedures and practices for calculating royalty for a period of seven (7) years beginning May 1, 2018 through April 31, 2025 ("Future Benefits"), which Plaintiff's expert has valued at over $36 million. Thus, the result obtained here through the Settlement bestows a total economic benefit of $221 million (the "Gross Settlement Value") upon the Class. *See* n.4, *supra.*

In valuing the result obtained for purposes of determining a reasonable fee to award under the Tenth Circuit's percentage of recovery method, it is well-established that the fee award should be based on the total economic benefit bestowed on the class. *See, e.g.*, *See Chieftain* Fee Order at ¶6(l); *Fager v. Centurylink Comm'cns*, No. 14-cv-00870, 2015 WL 13357867, at *3 (D.N.M. June 25, 2015) (collecting cases), *aff'd by* 854 F.3d 1167 (10th Cir. 2016); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 479 (1980) (explaining that, in common fund cases, the fee to be awarded should be based on "the full value of the benefit to each absentee member" obtained through the "entire judgment fund"). Thus, in making this assessment, "the court should take into account the value of any future relief under the settlement." *See Chieftain* Fee Order at ¶6(l); *Feerer v. Amoco Prod. Co.*, No. 95-0012 JC/WWD, 1998 U.S. Dist. LEXIS 22248, at *42-43 (D.N.M. May 28, 1998) (finding fee award of $20,542,665, which represented 41.9% of $49,000,000 cash portion of settlement and "approximately 27.7% to 29.5% of the current value of the settlement" based upon the agreed-upon future changes to royalty payment calculations, which had a present value

of $21,000,000 to $25,600,000) (collecting cases).[9] Professors Gensler and Fitzpatrick agree. Gensler Decl. at ¶¶53-55; Fitzpatrick Decl. at ¶14.

Here, each of the three components of the Settlement represent significant, concrete monetary benefits to the Settlement Class. Gensler Decl at ¶¶48-55, 62; Fitzpatrick Decl. at ¶14. And, as Professor Gensler has aptly opined, 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:

> Importantly, this is a cash recovery that will be distributed to Class Members automatically. There are no claim forms to fill out, no elections to make, and no documentation to scavenge out of old records. Indeed, Class Members do not have to take any action whatsoever to receive their benefits. The only thing Class

[9] *See also, e.g.*, *Principles of the Law of Aggregate Litigation*, §3.13(b) (American Law Institute, 2010) ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases, ***with the percentage being based on both the monetary and the nonmonetary value of the judgment or settlement***."); *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773-74 (11th Cir. 1991) (instructing that courts should consider, among other factors, "***any non-monetary benefits conferred upon the class by the settlement***" in determining reasonable attorneys' fees to be paid from common fund recovery); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (holding "where the value to individual class members of benefits deriving from injunctive relief can be accurately ascertained . . . courts may include such relief as part of the value of a common fund for purposes of applying the percentage method of determining fees") (citing *Boeing*, 444 U.S. at 478-79)); *Chieftain Royalty Co. v. QEP Energy Co.*, No. CIV-11-212-R, 2013 WL 12090676 (W.D. Okla. May 31, 2013) (awarding $46.5 million in attorneys' fees on a $155 million gross settlement fund, $40 million of which constituted future benefits); *Anderson v. Merit Energy Co.*, No. 07-cv-00916-LTB-BNB, 2009 WL 3378526 (D. Colo. Oct. 20, 2009) (finding, where settlement provided for up-front cash payment of $12,997,493.00 and future changes to royalty payment calculation methodology valued at approximately $10,400,00.00, the "Common Fund created" amounted to "approximately $23,397,493.00" and, thus, a fee award "in the amount of $5,900,000, which represent[ed] approximately 26% of the total economic benefit of the Class Settlement, net of litigation expenses, [which also represented 45% of the $12,997,493 initial cash payment]" was "warranted and reasonable" under Tenth Circuit law); *Droegemueller v. Petroleum Dev. Corp.*, No. 07-cv-1362-JLK-CBS, 2009 WL 961539, at *2-4 (D. Colo. Apr. 7, 2009) (finding "results obtained" factor was measured by "total economic benefit for the Class," which included cash payment for past royalty underpayment claims and present value of changes to "method for calculating future royalties").

> Members need to do is not opt out and wait for their checks to be distributed after the Court grants final approval of the Settlement.

Gensler Decl. at ¶51. Accordingly, the "results obtained" factor strongly supports a fee award of $58.8 million to be paid from the immediate cash portion of the Settlement, which represents no more than 26.6% of the Gross Settlement Value. Taylor Decl. at ¶13; Gensler Decl. at ¶48; Fitzpatrick Decl. at ¶¶14-15. *See Chieftain* Fee Order at ¶6(m).

The other *Johnson* factors also support the Fee Request. First, the time and labor involved supports the fee request. *See Chieftain* Fee Order at ¶6(n). The time and labor Class Counsel have expended in the research, investigation, prosecution, and resolution of this Litigation, including the *Chockley* and *Chieftain Cases* against BP, is set forth in the Joint Counsel Decl. at ¶¶10-47, 81, 85, 94 and Exhibits C-I thereto. This Litigation has required investigation and mastery of complex factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. To properly perform the legal services this Litigation required, Class Counsel called on their extensive knowledge of gas marketing, engineering, damages modeling, royalty payment practices, and the law. This Litigation involved substantial fact discovery, including reviewing millions of pages of documents and copious amounts of electronic data, taking multiple depositions, and engaging in third-party discovery. *See* Joint Counsel Decl. at ¶¶10-47. Plaintiff also engaged in substantial expert discovery, including consulting with and preparing expert witnesses, preparing expert reports, accounting review and analysis, land and lease examination and analysis, and engineering evaluation and analysis. *Id*. In addition, Plaintiff engaged in substantial motion practice including motions to dismiss, to compel discovery, a motion to reconsider, class certification, and briefing. *Id*.

Overall, Class Counsel, combined, dedicated over 10,000 hours of attorney and professional time to this Litigation and reasonably anticipate dedicating additional time and labor

through final approval and distribution, which increases significantly if there is an appeal. *See* Joint Counsel Decl. at ¶85.

Second, the novelty and difficulty of the questions presented in this action supports the Fee Request. Joint Counsel Decl. at ¶95; Gensler Decl. at ¶62-65; Fitzpatrick Decl. at ¶22. *See Chieftain* Fee Order at ¶6(o). Class actions are known to be complex and vigorously contested. The Declarations prove that this certainly was the case here. The claims involved difficult and highly contested issues of Oklahoma oil and gas law and class certification law that are currently being litigated in multiple forums. Class Counsel litigated such difficult issues against the vigorous opposition of highly skilled defense counsel for a defendant that had defeated class certification three times before. Gensler Decl. at ¶6; Fitzpatrick Decl. at ¶6; *see* Taylor Decl. at ¶¶5-6. Moreover, BP asserted a number of significant defenses to the Settlement Class' claims that would have to be overcome if the Litigation continued to trial. Despite these hurdles, Class Counsel obtained a significant recovery for the Settlement Class. 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.

The third and ninth *Johnson* factors—the skill required to perform the legal services and the experience, reputation, and ability of the attorneys—support the Fee Request. Joint Counsel Decl. at ¶¶96, 102; Gensler Decl. at ¶¶57, 65; Fitzpatrick Decl. at ¶24; Taylor Decl. at ¶¶7, 14. *See Chieftain* Fee Order at ¶6(p). The Declarations prove that 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, requiring investigation and mastery of complex facts, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. Class Counsel consists of some of the most experienced complex oil and gas class action litigation attorneys in

the country. *Id.* Utilizing creativity and zealous advocacy, these attorneys have achieved huge results for their clients.

The quality of representation by counsel on *both* sides of this Litigation was high. *See* Declaration of Robert G. Gum ("Gum Decl."), attached to the Combined Exhibit Index as Exhibit 2, at ¶¶11, 15. Defendant is represented by skilled class action defense attorneys who spared no effort in the defense of their client. This Litigation could have raged for years. Without the experience, skill, and determination displayed by *all* counsel involved, the Settlement would not have been reached. These factors strongly support the Fee Request.

The fourth and seventh *Johnson* factors—the preclusion of other employment by Class Counsel and time limitations imposed by the client or circumstances—support the Fee Request. Joint Counsel Decl. at ¶¶97, 100; Gensler Decl. at ¶62; Fitzpatrick Decl. at ¶¶22, 24. *See Chieftain* Fee Order at ¶6(s). The Declarations prove that because the law firms comprising Class Counsel are relatively small, Class Counsel necessarily were precluded from working on other cases and pursuing otherwise available opportunities due to their dedication of time and effort to the prosecution of this Litigation. This case has required the devotion of substantial time, manpower, and resources from Class Counsel—to date, more than 10,000 hours and $1.3 million. *See* Joint Counsel Decl. at ¶¶85, 111. A case of the size and complexity of this one deserves and requires the commitment of a large percentage of the total time and resources of firms the size of those of Class Counsel. Class Counsel had to forego taking on other cases because of this litigation and the burden it placed on their time and resources. Accordingly, these factors support the Fee Request.

The fifth *Johnson* factor—the customary fee and awards in similar cases—further supports the Fee Request. *Chieftain* Fee Order at ¶6(t). Plaintiff's Counsel and Mr. Cecil negotiated and agreed to prosecute this case based on a 40% contingent fee. *See* Cecil Decl. at ¶7; Joint Counsel

Decl. at ¶¶82, 84, 86-92, 98; Gensler Decl. at ¶¶58-61; Fitzpatrick Decl. at ¶16-21; Taylor Decl. at ¶¶12-14. 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 over the past 15 years. *See* Exhibit 3 attached to the Gensler Declaration; *see also Chieftain* Fee Order at ¶6(t); *see also, e.g., Fitzgerald Farms, LLC v. Chesapeake Operating, LLC*, No. CJ-2010-38, 2015 WL 5794008, at *3 (Okla. Dist. Ct., Beaver County, 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 often approve similar fee awards in similar cases. *See Chieftain* Fee Order at ¶6(u). For example, this Court recently awarded a fee in *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-29-KEW (E.D. Okla. Mar. 27, 2018) that represented 40% of the cash component of the settlement and approximately 20% of the total settlement value. *See Chieftain* Fee Order. Further, the Western District of Oklahoma recently approved a 40% fee and a 39% fee in similar royalty underpayment class cases. *Chieftain v. Laredo Petro., Inc.*, 2015 WL 2254606, at *4 ("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.*, 2013 WL 12090676, at *3 (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 plus the substantial past and future benefits obtained, the fact that the Fee Request is in line with the typical fee award granted in similar cases supports its approval.

Moreover, a 40% fee is consistent with the market rate for high quality legal services in royalty underpayment class actions like this. *See Chieftain* Fee Order at ¶6(v); *Chieftain v. Laredo*

Petro., Inc., 2015 WL 2254606, at *4 ("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."). This Court has held 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." *Chieftain* Fee Order at ¶6(v) (quoting *CompSource Oklahoma*, 2012 WL 6864701, at *8; *see also Chieftain v. Laredo Petro., Inc.*, 2015 WL 2254606, at *4 ("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 Representative placed on the future success of this Litigation."). Here, Class Representative agreed Class Counsel would represent him on a contingency fee basis, not to exceed 40%. *See* Cecil Decl. at ¶7; Joint Counsel Decl. at ¶¶82, 84, 86-92, 98; Gensler Decl. at ¶¶58-61; Fitzpatrick Decl. at ¶16-21; Taylor Decl. at ¶¶12-14. And, Cecil's declaration demonstrates his continued support of the fairness and reasonableness of the Fee Request. Cecil Decl. at ¶¶16-18. This factor supports the Fee Request.

The sixth *Johnson* factor—the contingent nature of the fee—also supports the Fee Request. Joint Counsel Decl. at ¶99; Gensler Decl. at ¶57-61; Fitzpatrick Decl. at ¶16; *see* Taylor Decl. at ¶13. *See Chieftain* Fee Order at ¶6(w). Plaintiff's 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* Joint Counsel Decl. at ¶99; *see also* Fitzpatrick Decl. at ¶22. Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Chieftain* Fee Order at ¶6(w). As Professor Gensler aptly notes, "Plaintiff's Counsel invested significant time and money over the years of litigation with no guarantee of reimbursement or recovery." Gensler Decl. at ¶63; *see also* Joint Counsel Decl. at ¶99. Indeed, plaintiff's counsel

have expended thousands of hours litigating royalty underpayment class actions where the courts denied class certification and, thus, plaintiff's counsel received no remuneration or reimbursement of expenses whatsoever despite their diligence and expertise.[10] Simply put, it would not have been economically prudent or feasible if Plaintiff's Counsel were to pursue the case under any prospect that the Court would award a fee on the basis of normal hourly rates. Joint Counsel Decl. at ¶84. *See Chieftain* Fee Order at ¶6(w).

Further, Class Representative negotiated and agreed Plaintiff's Counsel would represent him on a contingency fee basis, not to exceed 40%. *See* Cecil Decl. at ¶7; Joint Counsel Decl. at ¶¶82, 84, 86-92, 98; Gensler Decl. at ¶¶58-61; Fitzpatrick Decl. at ¶16-21; Taylor Decl. at ¶¶12-14. This agreed-upon fee reflects the value of this Litigation as measured when the risks and uncertainties of litigation still lay ahead. *See Chieftain* Fee Order at ¶6(x); *CompSource*, 2012 WL 6864701, at *8; *Chieftain v. Laredo Petro., Inc.*, 2015 WL 2254606, at *2. If Plaintiff's Counsel had not been successful, they would have received zero compensation (not to mention reimbursement for expenses). Joint Counsel Decl. at ¶99; *see also Chieftain* Fee Order at ¶6(x); *Tibbetts v. Sight 'n Sound Appliance Ctrs., Inc.*, 2003 OK 72, ¶¶11 & 15-23, 77 P.3d 1042. Prearranged fees, whether fixed or contingent, can be helpful in setting court awarded fees in class actions. Fitzpatrick Decl. at ¶16. *See, e.g., Chieftain* Fee Order at ¶6(x). Accordingly, this factor strongly supports the Fee Request.

The tenth *Johnson* factor—the undesirability of the case—also supports the Fee Request. Joint Counsel Decl. at ¶103; Gensler Decl. at ¶57; Fitzpatrick Decl. at ¶22; *see generally,* Taylor

[10] *See, e.g., Schell v. Oxy USA, Inc.*, 814 F.3d 1107, 1112 & 1125-26 (10th Cir. 2016) (despite winning summary judgment in favor of plaintiff class after seven years of litigation, no attorney's fee was awarded). *See also,* Joint Counsel Decl. at ¶18, n.7 (listing the three prior putative class actions in which BP defeated certification).

Decl. *See Chieftain* Fee Order at ¶6(y). Compared to most civil litigation, this Litigation clearly fits the "undesirable" test given BP's history of defeating class certification. Joint Counsel Decl. at ¶18, n.7. Few firms or plaintiffs have successfully asserted these claims against BP; and bringing those law firms that have asserted such claims together to resolve the claims in a near global settlement of currently pending royalty underpayment class actions against a defendant is laudable. *See* Joint Counsel Decl. at ¶44; Taylor Decl. at ¶¶7-9, 14 (describing Plaintiff's Counsel's efforts as "extraordinary," deserving of pride in the legal profession, "monumental," "historic," and "historically good work."); *Chieftain* Fee Order at ¶6(y). Few law firms would be willing to risk investing the time and expenses necessary to prosecute this Litigation for multiple years. *See* Joint Counsel Decl. at ¶87; *Chieftain* Fee Order at ¶6(y). Further, Defendant has proven itself to be a worthy adversary that will fight for years and years in bitter, adversarial litigation.[11] There was no doubt from the beginning that this lawsuit would be a lengthy, expensive, time-consuming, and arduous undertaking. Indeed, in another complex royalty class action that Rex Sharp settled, the 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; *see also Chieftain* Fee Order at ¶6(y). The same principle holds true here. This factor also supports the Fee Request.

The eleventh *Johnson* factor—the nature and length of the professional relationship with the client—also supports the Fee Request. *See Chieftain* Fee Order at ¶6(z). Cecil is a typical

[11] *See, e.g.*, Joint Counsel Decl. at ¶18, n.7 (listing the three prior putative class actions in which BP defeated certification).

royalty owner without much knowledge of oil and gas production, marketing, and royalty payment practices. *See* Cecil Decl. at ¶3. Cecil was and remains very active in this litigation. *Id.* at ¶¶5, 7-12, 14-15. Cecil negotiated a 40% fee when he agreed to be class representative in this litigation. And, Cecil, the named plaintiffs in the *Chockley* and *Chieftain* Cases, and absent class members support the Fee Request. Cecil Decl. at ¶¶16-18; Joint Decl. of *Chockley* Plaintiffs at ¶5; Chieftain Decl. at ¶5; Baptist Foundation Decl. at ¶5; Sagacity, Inc. Decl. at ¶5. Accordingly, this factor supports Class Counsel's fee request. *See Chieftain* Fee Order at ¶6(z).

In summary, analysis of the *Johnson* factors under federal common law strongly demonstrates that the Fee Request should be approved. *Id*. at ¶6(aa).

C. The Request for Reimbursement of Litigation Expenses is Reasonable Under Federal Common Law.

"As with attorney fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred…in addition to the attorney fee percentage." *Chieftain Royalty Co. v. XTO Energy Inc.*, No. 11-cv-29-KEW (E.D. Okla. Mar. 27, 2018), Order Awarding Litigation Expenses (Dkt. No. 232) ("*Chieftain* Litigation Expenses Order"), attached to the Combined Exhibit Index as Exhibit 16 at 6(f) (quoting *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 WL 1268824, at *4 (D. Colo. Mar. 9, 2000)); FED. R. CIV. P. 23(h) (authorizing the Court to reimburse counsel for "non-taxable costs that are authorized by law."). Applying the Parties' chosen law—federal common law—the Court may reimburse Class Counsel for its reasonable costs in delivering the Settlement—with a value of at least $221 million—to the Class.

Class Representative respectfully requests reimbursement of the more than $1.345 million in Litigation Expenses that have been and may be advanced or incurred by Class Counsel in prosecuting and resolving this Litigation up to $1.6 million—the amount specified in the Court-

approved Notice of Settlement. *See* Joint Decl. at ¶¶ 111-113.[12] The Court-approved Notice of Settlement informed the Class Members that Class Counsel would seek reimbursement of up to $1.6 million in Litigation Expenses. JND Decl., Ex. A. at 4. All expenses were reasonably and necessarily incurred by Class Counsel and are directly related to their prosecution and resolution of this Litigation. *See* Joint Counsel Decl. at ¶¶108-113. 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, and mediation, which are typical of large, complex class actions such as this.[13] *Id.* As such, the Expense Request is fair, reasonable and should be granted. *See, e.g.*, *Chieftain* Litigation Expenses Order at ¶6(g).

In addition, several Class Members executed declarations in support of the Expense Request. *See* Cecil Decl. at ¶18, *Chockley* Plaintiffs' Decl. at ¶7; Chieftain Decl. at ¶7; Baptist Foundation Decl. at ¶7; Sagacity, Inc. Decl. at ¶7.

[12] The Joint Counsel Declaration and its exhibits set forth the total amount of reasonable litigation expenses each firm has advanced in prosecuting the Settlement Class's claims as of the date of the declaration. Because additional expenses likely have been incurred after the date of the declaration executed by the respective law firm and because expenses will continue to be incurred through and after the Final Fairness Hearing on November 19, 2018, Class Counsel specifically request reimbursement of $1.345 million *plus* the ability to recover additional expenses up to $1.6 million—the noticed amount—to the extent such expenses are actually incurred. Joint Counsel Decl. at ¶¶112-115. At the Final Approval Hearing, Class Counsel will provide the Court with updated figures of Class Counsel's actual expenses incurred through the Final Fairness Hearing.

[13] Class Counsel's Expense Request does not include the Administration, Notice and Distribution Costs associated with effectuating the Settlement, for which Defendant has paid the initial $250,000. *See* Settlement Agreement at ¶1.1. If or when these Costs exceed the initial $250,000 advance, Plaintiff's Counsel will advance the next $250,000. *Id.* Thereafter, if needed, Defendant will advance another $125,000 and then Plaintiff's Counsel will advance the final $125,000. *Id.* The Settlement Agreement provides for the reimbursement for these advances from the Gross Settlement Fund after the Effective Date of the Settlement. *Id.*

Therefore, Class Representative respectfully requests the Court award the Expense Request in full and award any additional amount Class Counsel may incur after the filing of this Memorandum not to exceed $1.6 million, upon 14 days' written notice to the Court.

D. The Case Contribution Award is Reasonable Under Federal Common Law.

Federal courts regularly give incentive awards to compensate named plaintiffs for the work they performed—*i.e.*, their time and effort invested in the case. *See Chieftain* Case Contribution Award Order at ¶6(f); *see also, 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.");[14] *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, No. 12-cv-1319-D, 2015 WL 2254606, at *4-5 (W.D. Okla. May 13, 2015) (awarding 1% of the settlement amount and finding, "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 WL 4867715, at *3 (W.D. Okla. Oct. 12, 2012) (granting four plaintiffs 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 among nine class representatives and stating "[t]here is ample precedent for awarding incentive compensation to class representatives at the conclusion

[14] *Newmont* further held the district court did not abuse its discretion in denying an incentive award to a *pro se* objector because: (i) his objections did not confer a benefit on the class, (ii) he did not incur any risk, "nor could he, since his participation as an objector began after a settlement was reached and a common fund was created" (*id*. at 236), and (iii) his objections to class counsel's attorneys' fees were "general and lacking in meaningful analysis" (*id*. at 237).

of a successful class action."); *In re Linerboard Antitrust Litig.*, MDL 1261, 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, (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 . . . .").

Earlier this year, the Tenth Circuit issued an 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 to be paid out of the common fund, finding that the record did not contain sufficient evidence to support the percentage incentive award in that case of 0.5%. But, as the Gensler Declaration points out the *EnerVest* opinion is wholly inapplicable here because jurisdiction is based on federal question, not diversity, and the parties here, unlike in *EnerVest*, contractually agreed that federal common law controls the case contribution award. Gensler Decl. at ¶41, n.5.

Moreover, although incentive awards can be percentage-based or dollar-based,[15] Cecil seeks an award based on his contribution made, not on a percentage of the Gross Settlement Value basis, as was requested and awarded by the district court in *EnerVest.*

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." *Chieftain* Case Contribution Award Order at ¶6(g) (quoting Newberg § 17:3). The award should be proportional to the contribution of the plaintiff. *Id.* (citing *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).

Here, Cecil seeks a modest, dollar-based award of $450,000 out of a $221 million settlement, to be shared among the named plaintiffs in the class actions against BP based on the contribution each made to the prosecution of the royalty underpayment claims. Cecil is the Class Representative who pursued the class claims vigorously and whose case brought BP to the mediation table. Cecil Decl. at ¶¶5-15, 19-21. Cecil monitored the litigation, stayed in contact with Plaintiff's Counsel, reviewed documents as requested, traveled to and attended both days of the

[15] *EnerVest* noted that "the weight of authority apparently disfavors percentage-based awards." 861 F.3d at 1196. However, Oklahoma federal and state courts routinely award percentage-based incentive awards. *See, e.g., Chieftain* Case Contribution Award Order at ¶6(n) (citing cases); *Chieftain v. Laredo,* 2015 WL 2254606, at *4-5 (finding a 1% case contribution award "to be fair and reasonable"); Joint Counsel Decl., Ex. 8.O, Table of Cases (showing the percentage the incentive fee awarded bore to the settlement value); *EnerVest*, 861 F.3d at 1196 (recognizing that a percentage calculation can be used to check an award for excessiveness by reference to the percentage of the fund it represents). Here the .2%, two-tenths of one percent, is miniscule when compared to the $221 million Gross Settlement Value that has benefitted and will continue to benefit the Settlement Class for years.

mediation in the winter of 2018, remained available to discuss and advise as the settlement negotiations continued into the spring of 2018, and read and signed the Settlement Agreement, including its exhibits. *Id.* His declaration provides evidence of his involvement in and contribution to this case throughout the Litigation. *Id.* The declarations of the other four named plaintiffs and absent class members support his request. *Chockley* Plaintiffs' Decl. at ¶6; Chieftain Decl. at ¶6; Baptist Foundation Decl. at ¶6; Sagacity, Inc. Decl. at ¶6. *See Chieftain* Case Contribution Award Order at ¶6(h) (citing Newberg § 17:12).

And, Cecil will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the Final Fairness Hearing and, if approved, assisting with administration of the Settlement. Cecil Decl. at ¶20. Cecil also will likely spend additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. However, even if Cecil never worked another hour on this case after the Final Fairness Hearing, he has dedicated many hours to this Litigation on behalf of the Settlement Class. His active participation has contributed significantly to the prosecution and resolution of this case. Cecil Decl.; Joint Counsel. Decl. at ¶117.

Cecil was never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Litigation. Cecil Decl. at ¶21. In fact, Cecil 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, Cecil fully supports the Settlement as fair, reasonable and adequate, <u>even if he is awarded no Case Contribution Award at all</u>. *Id*. Cecil has no conflicts of interest with Class Counsel or any absent class member. *Id*.

Because Cecil, Chockley, Sager, Foster, and Chieftain Royalty Company have dedicated

their time, attention, and resources to this Litigation and to the recovery of underpaid royalty from BP on behalf of the Settlement Class, Cecil requests a Case Contribution Award to be shared among them. To reflect the important role that each played in representing the interests of the Settlement Class and in achieving the substantial result reflected in the Settlement, Cecil respectfully requests the Court award a Case Contribution Award of $450,000 to be distributed among him and the plaintiffs in *Chockley v. BP* and *Chieftain v. BP* as follows: John Cecil $350,000; Anne Chockley $25,000; Dwayne Sager $25,000; Johnita L. Foster $25,000; and Chieftain Royalty Company $25,000.

IV. CONCLUSION

The combined efforts of Class Counsel and Class Representative have resulted in one of the largest settlements in the history of Oklahoma royalty underpayment class actions. The Settlement has already changed how BP pays its royalty owners, provides substantial immediate recovery to tens of thousands of royalty owners, and will change how BP pays royalty for years to come.

For the foregoing reasons, Class Representative respectfully requests the Court enter an order granting approval of the request for Attorneys' Fees of $58.8 million, the request for reimbursement of Litigation Expenses not to exceed $1.6 million, and the request for a Case Contribution Award of $450,000 to be distributed as follows: John Cecil $350,000; Anne Chockley $25,000; Dwayne Sager $25,000; Johnita L. Foster $25,000; and Chieftain Royalty Company $25,000.

Respectfully submitted,

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PLAINTIFF'S COUNSEL AND
CO-LEAD COUNSEL FOR
THE SETTLEMENT CLASS

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2018, a true and correct copy of the above and foregoing document was served in accordance with the Local Rules on all counsel of record *via* the Court's electronic filing system.

s/ Rex A. Sharp_____
REX A. SHARP