

**IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA**

DDL OIL & GAS, LLC)
and DUSTIN M. FREEMAN,)
)
Plaintiffs,)
)
v.)
)
DIVERSIFIED PRODUCTION, LLC)
successor by merger with)
TAPSTONE ENERGY, LLC,)
)
Defendant.)

Case No. CJ-2019-17

BLAINE COUNTY, OKLAHOMA
F I L E D

SEP 18 2023

CHRISTY MATLI, CT. CLERK
BY _____
DEPUTY

**ORDER AWARDING REIMBURSEMENT
OF LITIGATION EXPENSES AND
ADMINISTRATION, NOTICE, AND DISTRIBUTION COSTS**

Before the Court is Class Counsel’s August 18, 2023 Motion for Approval of Reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs (the “Motion”) and Memorandum of Law in Support thereof (the “Memorandum”), wherein Class Counsel seek entry of an Order approving Class Counsel’s request for reimbursement of Litigation Expenses, which were incurred in successfully prosecuting and resolving this Litigation, in an amount not to exceed \$100,000.00—the amount set forth in the Notice. Class Counsel also seek approval of Administration, Notice, and Distribution Costs in an amount not to exceed \$250,000.00, which is less than the \$300,000.00 amount set forth in the Notice. The Court has considered the Motion and Memorandum, all matters submitted in connection therewith, and the proceedings on the Final Fairness Hearing. Upon review, 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 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 Notice stated that Class Counsel would seek reimbursement of Litigation Expenses, which were incurred in successfully prosecuting and resolving this Litigation, in an amount not to exceed \$100,000.00. The Notice also stated Class Counsel would request approval of Administration, Notice, and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$300,000.00 to be paid from the Gross Settlement Fund. Notice of Class Counsel's request for reimbursement of Litigation Expenses and approval of Administration, Notice, and Distribution Costs 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 reimbursement of Litigation Expenses and approval of Administration, Notice, and Distribution Costs is hereby determined to have been the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of 12 O.S. § 2023 and due process.
5. Class Counsel provided the Court with abundant evidence in support of their request for reimbursement of Litigation Expenses, including but not limited to: (1) the Motion and

Memorandum; (2) the Declaration of Drew Pate on Behalf of Nix Patterson, LLP (“NP Decl.”); (3) the Declaration of Patrick M. Ryan on Behalf of Ryan Whaley Coldiron Jantzen Peters & Webber PLLC (“RW Decl.”); (4) the Declaration of Class Representative Dustin Freeman; (5) the Declaration of Jennifer M. Keough on behalf of the Court-appointed Settlement Administrator, JND Legal Administration LLC (“JND Decl.”); (6) the Affidavit of Robert E. Gonce, Jr., on behalf of absent class member Castlerock Resources, Inc.; the Affidavit of Robert Abernathy, on behalf of absent class member Chieftain Royalty Company, LLC; the Affidavit of Dan Little, on behalf of absent class member Sagacity, Inc.; and (7) the applicable law, and all pleadings, declarations, and records on file in this matter. 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. Class Counsel are hereby awarded reimbursement of Litigation Expenses in an amount not to exceed \$100,000.00, to be paid from the Gross Settlement Fund. In making this award, the Court makes the following findings of fact and conclusions of law:

(a) The Settlement has created a Gross Settlement Fund of \$1,850,000.00 in cash. Class Members will benefit from the Settlement that occurred because of the substantial efforts of Class Representatives and Class Counsel;

(b) On July 28, 2023, JND caused the Short Form Notice of Settlement to be mailed to the 11,418 potential Class Members in the initial Class Member Mailing List. *See* JND Decl. at ¶6, attached as Exh. 4 to Class Representatives’ August 18, 2023 Memorandum of Law in Support of Motion for Final Approval. The Short Form Notice expressly stated that Class Counsel would seek Reimbursement of Litigation Expenses in an amount not to exceed \$100,000.00, and approval of Administration, Notice, and

Distribution Costs in an amount not to exceed \$300,000.00. The Short Form Notice also directed Class Members to a website for further information, including the Long Form Notice, and provided the option of requesting a Long Form Notice be sent via U.S. Mail. There were no objections to the requested reimbursement of Litigation Expenses;

(c) Class Counsel filed their Motion approximately fifteen (15) days prior to the deadline for Settlement Class Members to object. No objections were filed regarding Class Counsel's Motion for Approval of Reimbursement of Litigation Expenses;

(d) 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).

(e) The Settlement Agreement authorizes Class Counsel to apply for reimbursement of Litigation Expenses. *See id.* at ¶ 7.1.

(f) Class Counsel 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 ¶¶69-71.

(g) To date, Class Counsel's out-of-pocket expenses are \$85,574.30. *See* Joint Class Counsel Decl. at ¶71. Class Counsel's 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).¹

(h) The Court finds that the Litigation Expenses were reasonably and necessarily incurred by Class Counsel and are directly related to their prosecution and resolution of this Litigation. 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, and document production and review, which are typical of large, complex class actions such as this. *See* RW Decl. at ¶¶ 24-25; NP Decl. at ¶¶ 11-12. As such, the request for reimbursement of these Litigation Expenses is fair, reasonable, and is hereby granted;

(i) Therefore, Class Counsel are awarded \$85,574.30 in past Litigation Expenses and may request any additional amount Class Counsel may incur after the entry of this Order not to exceed \$100,000.00, upon fourteen (14) days' written notice to the Court.

¹ The Eastern, Western, and Northern Districts of Oklahoma have approved similar amounts in other royalty actions. *See, e.g., Kernen 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).

7. Although the Notice stated that Class Counsel would request approval of Administration, Notice, and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$300,000.00, at the Final Fairness Hearing, Class Counsel informed the Court that, based upon updated cost estimates and information from the Settlement Administrator and consultants, Class Counsel will seek no more than \$250,000.00 in Administration, Notice, and Distribution Costs. This change will result in an extra \$50,000.00 in the Net Settlement Fund to be distributed to Class Members.

8. Class Counsel's request for approval of Administration, Notice, and Distribution Costs is well-supported by Class Counsel's Motion and Memorandum and evidence in the record.

9. The Administration, Notice, and Distribution Costs will include, but not necessarily be limited to, those of the Settlement Administrator, 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 approved amount of \$250,000.00. Such costs for the necessary administration, notice, and distribution costs have frequently been approved in analogous cases. *See, e.g. 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).

10. Therefore, the Court hereby approves Class Counsel's request for 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.

11. Any appeal or any challenge affecting this Order Awarding Reimbursement of Litigation Expenses and Administration, Notice, and Distribution Costs 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.

12. 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.

13. There is no reason for delay in the entry of this Order and immediate entry by the Clerk of the Court is expressly directed pursuant to Oklahoma law.

IT IS SO ORDERED this 18th day of September 2023.

/S/ ALLISON M. LAFFERTY

ALLISON M. LAFFERTY
ASSOCIATE DISTRICT JUDGE