

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

MICHAEL KERNEN, on behalf of)
himself and all others similarly situated,)

Plaintiff,)

v.)

Case No. CIV-18-00107-JD

CASILLAS OPERATING, LLC,)

Defendant.)

ORDER AWARDING ATTORNEYS’ FEES

Before the Court is Class Counsel’s Motion for Approval of Attorneys’ Fees [Doc. No. 108] (“Motion”) and Memorandum of Law in Support Thereof [Doc. No. 109] (“Memorandum”), wherein Class Counsel seeks entry of an Order approving Class Counsel’s request for Attorneys’ Fees in the amount of \$1,080,000.00 (“Fee Request”). The Court has considered the Motion and Memorandum, all matters and evidence submitted in connection therewith, and the proceedings on the Final Fairness Hearing. As set forth more fully below, the Court finds the Motion should be **GRANTED**.

IT IS THEREFORE ORDERED as follows:

1. This Order incorporates by reference the definitions in the Amended Stipulation and Agreement of Settlement (“Settlement Agreement”) [Doc. No. 100-1] and all terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court, for purposes of this Order, incorporates its findings of fact and conclusions of law from its Order and Judgment Granting Final Approval of Class Action

Settlement [Doc. No. 121] 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 attorneys' fees up to \$1,080,000.00, to be paid from the Gross Settlement Fund. *See* Declaration of Jennifer M. Keough on Behalf of Settlement Administrator JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement [Doc. No. 113-4], including the supplement [Doc. No. 114] (together, "JND Decl."). Notice of Class Counsel's request for attorneys' fees 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 attorneys' fees is hereby determined to have been the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.

5. Class Counsel provided the Court with abundant evidence in support of their request for attorneys' fees, including but not limited to: (1) the Motion and Memorandum; (2) Declaration of Robert N. Barnes, Andrew G. Pate, and Patrick M. Ryan on behalf of Class Counsel ("Joint Class Counsel Decl.") [Doc. No. 113-2]; (3) Declarations of Barnes & Lewis; Nix Patterson, LLP; Ryan Whaley Coldiron Jantzen Peters & Webber PLLC; and Whitten Burrage [Doc. Nos. 108-1 through 108-4]; (4) Declaration of Michael Kernan ("Kernan Decl.") [Doc. No. 113-1]; (5) JND Decl. [Doc. Nos. 113-4 and 114]; (6) the Affidavits of Absent Class Members: Robert E. Gonce, Jr.;

Robert Abernathy; Robert Odom; Dan Little; and Mike Weeks [Doc. Nos. 113-6 through 113-10]; and (7) Declaration of Steven S. Gensler [Doc. No. 105]. 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 is hereby awarded Attorneys' Fees of \$1,080,000.00, 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 fund of (1) \$2,700,000.00 in cash (the "Gross Settlement Fund") to immediately compensate the Settlement Class for past damages; and (2) Future Benefits to the Settlement Class and Owners of Oklahoma wells consisting of binding changes to Defendant's statutory interest payment practices and policies in Oklahoma, which is estimated to have a present value of at least \$5,000,000.00. The total value of the Settlement equals at least \$7,700,000.00 (the "Gross Settlement Value"). Settlement Class Members will benefit from the Settlement that occurred because of the substantial efforts of Class Representative and Class Counsel;

(b) On September 13, 2021, JND caused the Short Form Notice of Settlement to be mailed to 6,433 unique mailing records identified in the mailing data. *See* JND Decl. [Doc. 113-4] ¶ 6. The Notice expressly stated that Class Counsel would seek attorneys' fees up to \$1,080,000.00. 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;

(c) Class Counsel filed the Motion approximately fourteen (14) days prior to the deadline for Settlement Class Members to object. No objections were filed in opposition to Class Counsel's Motion for Approval of Attorneys' Fees by the listed deadline and thus, any objections to the requested fees are waived;

(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 right to and reasonableness of attorneys' fees and reimbursement of expenses:

To promote certainty, predictability, the full enforceability of this Settlement Agreement as written, and its nationwide application, this Settlement Agreement shall be governed *solely by federal law*, both substantive and procedural, as to due process, class certification, judgment, collateral estoppel, res judicata, release, settlement approval, allocation, Case Contribution Award, the right to and reasonableness of Plaintiff's *Attorneys' Fees* and Litigation Expenses, and all other matters for which there is federal procedural or common law, including federal law regarding federal equitable common fund class actions.

Settlement Agreement ¶ 11.8 (emphasis added) [Doc. No. 100-1];

(e) The Parties cite the following cases in support of their position that this choice of law provision should be enforced: *Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency*, 174 F.3d 1115, 1121 (10th Cir. 1999) (citing *Restatement (Second) of Conflict of Laws* § 187, cmt. e (Am. Law Inst. 1988)); *see also Williams v. Shearson Lehman Bros.*, 1995 OK CIV APP 154, ¶ 17, 917 P.2d 998, 1002 (concluding that the 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) (“[P]arties enjoy full autonomy to choose controlling law with regard to matters within their contractual capacity.”). Courts in this district, and other federal courts in Oklahoma, have applied and enforced identical or similar choice of law provisions. *See, e.g., Miller v. DCP Operating Co., L.P.*, No. CIV-18-0199-JH (E.D. Okla. June 29, 2021) [Doc. No. 98 at 3]; *Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. Apr. 27, 2021) [Doc. No. 115 at 5–6]; *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. Mar. 26, 2021) [Doc. No. 120 at 4–5]; *McClintock v. Continuum Producer Services, L.L.C.*, No. CIV-17-00259-JAG (E.D. Okla. June 4, 2020) [Doc. No. 61 at 4–5]; *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) [Doc. No. 120 at 4–5]; *Reirdon v. Cimarex Energy Co.*, No. CIV-16-113-KEW (E.D. Okla. Dec. 18, 2018) [Doc. No. 105 at 4–5]; *Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) [Doc. No. 231 at 5]; *Reirdon v. XTO Energy Inc.*, No. CIV-16-00087-KEW (E.D. Okla. Jan. 29, 2018) [Doc. No. 124 at 4–5]. The Court is aware of the Tenth Circuit’s holding in *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455 (10th Cir. 2017). The Settlement Agreement in this case, however, specifically includes the choice of law language set forth above;

(f) Federal Rule of Civil Procedure 23(h) states “the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by

the parties' agreement." 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. *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 453 (10th Cir. 1988). Such an award will only be reversed for abuse of discretion. *Id.*; *Gottlieb v. Barry*, 43 F.3d 474, 486 (10th Cir. 1994). Here, the requested fees are specifically authorized by law, federal common law, which is specifically authorized by an express agreement of the Parties. *See* Settlement Agreement ¶¶ 7.1, 11.8. Under the Parties' chosen law (federal common law), district courts have discretion to apply either the percentage of the fund method or the lodestar method. *Brown*, 838 F.2d at 454; *Gottlieb*, 43 F.3d at 483;

(g) Courts have acknowledged the Tenth Circuit's approval of the percentage of fund method. *See, e.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)); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) [Doc. No. 120 at 21–24]; *Reirdon v. Cimarex Energy Co.*, No. CIV-16-113-KEW (E.D. Okla. Dec. 18, 2018) [Doc. No. 105]; *Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) [Doc. No. 231]; *Reirdon v. XTO Energy Inc.*, No. CIV-16-00087-KEW (E.D. Okla. Jan. 29, 2018) [Doc. No.

124]; *Cecil v. BP America Production Co.*, No. CIV-16-00410-KEW (E.D. Okla. Nov. 19, 2018) [Doc. No. 260].¹ See also *Chieftain Royalty Co. v. Laredo Petro., Inc.*, No. CIV-12-1319-D (W.D. Okla. May 13, 2015) [Doc. No. 52 at 5] (the “*Laredo Fee Order*”) (“In the Tenth Circuit, the preferred approach for determining attorneys’ fees in common fund cases is the percentage of the fund method.”); *Northumberland County Ret. Sys. v. GMX Res. Inc.*, No. CIV-11-520-D (W.D. Okla. July 31, 2014) [Doc. No. 150 at 6 n.1] (“The Court is not required to conduct a lodestar assessment of the hours versus a reasonable hourly rate.”);

(h) The percentage 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. When determining attorneys’ fees under this 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), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). See also *Brown*, 838 F.2d at 454–55 (holding that factors set forth in *Johnson* for making awards of attorney fees in civil rights action are also applicable when making a percentage fee award in a common-fund case). 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. Based on the required analysis, the

¹ The MANUAL FOR COMPLEX LITIGATION § 14.121 (4th ed. 2004) also approves of the percentage of the fund method for determining attorneys’ fees.

applicable law, and the evidence submitted to the Court, I have concluded that the requested fee of \$1,080,000.00 is reasonable;

(i) The twelve *Johnson* factors are: (1) 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. *Brown*, 838 F.2d at 454–55;

(j) I find that the eighth *Johnson* factor—the amount involved in the case and the results obtained—supports the requested fee. *See 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”);

(k) Here, the evidence shows that, under the results-obtained factor, the Fee Request is fair and reasonable under the circumstances. The Gross Settlement Fund of a cash payment of \$2,700,000.00, which alone is a significant recovery for the Class, represents approximately 80% of the Settlement Class’ alleged statutory interest underpayment for the principal claim asserted by the Class for

late payments made between July 28, 2016, and June 24, 2020. *See* Affidavit of Barbara A. Ley [Doc. No. 113-3] ¶ 4;

(l) In valuing the result obtained for purposes of determining a reasonable fee to award under the percentage of recovery method, courts can also look at the total economic benefit bestowed on the class. *See, e.g., Miller v. DCP Operating Co., L.P.*, No. CIV-18-0199-JH (E.D. Okla. June 29, 2021) [Doc. No. 98 at 4–5]; *Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. Apr. 27, 2021) [Doc. No. 115 at 8–9]; *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. March 26, 2021) [Doc. No. 120 at 8]; *McClintock v. Continuum Producer Services, L.L.C.*, No. CIV-17-00259-JAG (E.D. Okla. June 4, 2020) [Doc. No. 61 at 7]; *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) [Doc. No. 120 at 8–9]; *Reirdon v. Cimarex Energy Co.*, No. CIV-16-113-KEW (E.D. Okla. Dec. 18, 2018) [Doc. No. 105 at 7–8]; *Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) [Doc. No. 231 at 8]; *Reirdon v. XTO Energy Inc.*, No. CIV-16-00087-KEW (E.D. Okla. Jan. 29, 2018) [Doc. No. 124 at 8]; *Fager v. Centurylink Comm'cns, LLC*, No. 14-cv-00870 JCH/KK, 2015 WL 13357867, at *3–4 (D.N.M. June 25, 2015) (collecting cases), *aff'd* 854 F.3d 1167 (10th Cir. 2016). Courts can consider the value of any future relief under the settlement. *Feerer v. Amoco Prod. Co.*, No. 1:95-cv-0012-JEC-WD (D.N.M. May 28, 1998) [Doc. No. 832];

(m) Here, the Settlement represents a significant, concrete monetary benefit to the Settlement Class. 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. Additionally, the Future Benefits—estimated to have a present value of at least \$5,000,000.00—represent a benefit to the class. Accordingly, the “results obtained” factor strongly supports a fee award of \$1,080,000.00 to be paid from the Gross Settlement Fund. *See* Joint Class Counsel Decl. ¶ 6;

(n) I find other *Johnson* factors also support and weigh in favor of the Fee Request. First, I find the evidence of the time and labor involved weighs in favor of the Fee Request. The time and labor Class Counsel and Plaintiff's Counsel have expended in the research, investigation, prosecution, and resolution of this Litigation is set forth in detail in the Joint Class Counsel Declaration [Doc. No. 113-2]. In summary, this evidence shows that Class Counsel investigated and analyzed the Settlement Class' claims and conducted discovery, reviewing documents and a large amount of electronically produced data, including organizational documents, well data, and historical proceeds payments for Oklahoma owners. Class Counsel also deposed several of Defendant's employees on the issues in the case. Class Counsel spent significant time working with accounting experts in the prosecution and evaluation of the Settlement Class' claims and engaged in a lengthy and complex negotiation process to obtain this

outstanding Settlement. The process necessary to achieve this Settlement required several months of negotiations, two mediations, and extensive consultation with experts to evaluate and analyze damages. Overall, Class Counsel and Liaison Local Class Counsel dedicated approximately 1,561.35 past hours of attorney and professional time to this Litigation and reasonably anticipate dedicating an additional 123 hours through final distribution. The requested fee is \$1,080,000.00. Thus, the requested fee represents only 91% of counsel's current and future time, resulting in a negative (or fractional) multiplier;

(o) Second, I find that the evidence regarding the novelty and difficulty of the questions presented in this action weighs in favor of the Fee Request. Class actions are often complex and vigorously contested. The Court notes that in addition to the pleadings on file, Declarations and arguments of the Parties, the Court has presided over this case for nearly five years and finds that this case presented novel, difficult issues. The legal and factual issues litigated in this case involved complex issues. The successful prosecution and resolution of the Settlement Class' claims required Class Counsel to work with various experts to analyze complex data to support their legal theories and evaluate the amount of alleged damages. I find the fact that Class Counsel litigated such difficult issues against the vigorous opposition of highly skilled defense counsel and obtained a significant recovery for the Settlement Class further supports the fee request in this case. *See* Joint Class Counsel Decl. ¶ 51. Moreover, Defendant asserted a number of significant defenses to the Settlement Class' claims that would have to be

overcome if the Litigation continued to trial. Thus, the immediacy and certainty of this recovery, when considered against the very real risks of continuing to a difficult trial and possible appeal, weigh in favor of the Fee Request. *See* Joint Class Counsel Decl. ¶¶ 55–57;

(p) I find that 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. I find the Declarations and other undisputed evidence submitted prove that this Litigation called for Class Counsel’s skill and experience in oil and gas and complex class-action litigation to bring it to conclusion, requiring investigation and competency of complex facts, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. *See* Joint Class Counsel Decl. ¶¶ 55–57; *see also* Gensler Decl. ¶ 73.

(q) I find that the quality of representation by counsel on *both* sides of this Litigation was high. *See* Joint Class Counsel Decl. ¶¶ 51–63. Defendant also is represented by skilled class action defense attorneys who spared no effort in the defense of their client. Simply put, without the experience, skill, and determination displayed by *all* counsel involved, the Settlement might not have been reached. *See id.* ¶¶ 57–63. I find these factors support the Fee Request;

(r) I find that the evidence regarding the fourth and seventh *Johnson* factors—the preclusion of other employment by Class Counsel and time limitations imposed by the client or circumstances—weighs in favor of the Fee Request. The Declarations and other undisputed evidence support the position that

because the law firms comprising Class Counsel are relatively small, Class Counsel were to some degree 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. *See* Joint Class Counsel Decl. ¶ 69; Gensler Decl. ¶ 73. This case was originally filed in state court in December 2017 (and removed to federal court in February 2018), and has required the devotion of significant time, manpower, and resources from Class Counsel over that period. Joint Class Counsel Decl. ¶ 69. Class Counsel has spent substantial time and effort in negotiating and preparing the necessary paperwork related to the Settlement. *See id.* Accordingly, I find these facts support the Fee Request;

(s) I find the evidence regarding the fifth and twelfth *Johnson* factors—the customary fee and awards in similar cases—support the Fee Request. Class Counsel and Mr. Kernan negotiated and agreed to prosecute this case based on a contingent fee up to 40%. *See* Kernan Decl. ¶ 6; Joint Class Counsel Decl. ¶ 44; Gensler Decl. ¶¶ 71–72. This or a similar percentage has been awarded in other cases. *See* Joint Class Counsel Decl. ¶ 45; Gensler Decl. ¶¶ 71–72; *Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. Apr. 27, 2021) [Doc. No. 115 at 13–15]; *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) [Doc. No. 120]; *Reirdon v. Cimarex Energy Co.*, No. CIV-16-113-KEW (E.D. Okla. Dec. 18, 2018) [Doc. No. 105]; *Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) [Doc. No. 231]; *Reirdon v. XTO Energy Inc.*, No. CIV-16-00087-KEW (E.D.

Okla. Jan. 29, 2018) [Doc. No. 124]. Moreover, the Western District of Oklahoma approved a 40% fee in a similar royalty underpayment class action. *See Laredo Fee Order* at 7–8 (“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 . . .”); *but see Miller v. DCP Operating Co.*, No. CIV-18-0199-JH (E.D. Okla. June 29, 2021) [Doc. No. 98 at 8–9] (reducing fee from requested 40% to 35% in statutory interest case because “all cases are not ‘comparable’ just because they involve oil and gas. The court is unpersuaded that royalty and statutory interest cases are the same in terms of complexity or that the percentage rates in one are necessarily suggestive of a reasonable fee in the other.”). Given the recovery Class Counsel achieved on behalf of the Class under the circumstances, and the efforts Class Counsel dedicated to this action, the Court finds that this Fee Request is fair and reasonable;

(t) Mr. Kernen’s Declaration demonstrates his continued support of the fairness and reasonableness of the Fee Request. Kernen Decl. ¶¶ 15–16. This factor supports the Fee Request. Further, Class Counsel submitted significant evidence regarding the fee and market rate that supports this factor. Class Counsel have experience in the area of market value of attorneys’ fees in complex litigation, generally—and complex oil and gas litigation, specifically—and have submitted testimony in their Declarations demonstrating that the fee structure

negotiated with Mr. Kernen is the market rate for such cases. *See* Joint Class Counsel Decl. ¶ 45;

(u) I find the sixth *Johnson* factor—the contingent nature of the fee—also supports the Fee Request. Class 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 Class Counsel Decl. ¶ 44; Gensler Decl. ¶ 73. Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys’ fees. *See* Joint Class Counsel Decl. ¶ 44. Class Counsel have cited other cases that they litigated where the courts denied class certification and thus, Class Counsel received no remuneration whatsoever;²

(v) Further, as noted above, Class Representative negotiated and agreed Class Counsel would represent him on a contingency fee basis, not to exceed 40%. *See* Kernen Decl. ¶ 6; Joint Class Counsel Decl. ¶ 44. This agreed-upon fee reflects the value of this Litigation as measured against the risks and uncertainties. *See CompSource*, 2012 WL 6864701, at *8–9. If Class Counsel had not been successful, they would have received zero compensation. *See* Joint Class Counsel

² *See, e.g., Foster v. Apache Corp.*, 285 F.R.D. 632 (W.D. Okla. 2012); *Foster v. Merit Energy Co.*, 282 F.R.D. 541 (W.D. Okla. 2012); *Morrison v. Anadarko Petroleum Co.*, 280 F.R.D. 621 (W.D. Okla. 2012); *Tucker v. BP Am. Prod. Co.*, 278 F.R.D. 646 (W.D. Okla. 2011).

Decl. ¶¶ 14–15, 39, 44, 73. Accordingly, I find this factor supports the Fee Request;

(w) The evidence shows that the tenth *Johnson* factor—the undesirability of the case—is neutral. One 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 v. Chesapeake Operating, L.L.C., CJ-2010-38, 2015 WL 5794008, at *8 (Dist. Ct. Beaver Cty., Okla. July 2, 2015). However, the court in *Miller* concluded that “it seems doubtful that these firms view the [interest] case as ‘undesirable.’” No. CIV-18-0199 (E.D. Okla. June 29, 2021) [Doc. No. 98 at 5]. I find that this factor is neutral;

(x) I find the eleventh *Johnson* factor—the nature and length of the professional relationship with the client—supports the Fee Request. There is evidence that Mr. Kernen is an educated royalty owner with extensive experience dealing with royalty interests. *See* Kernen Decl. ¶¶ 4–5. He was and remains very active in this litigation. *Id.* ¶¶ 8–11. Mr. Kernen negotiated a 40% fee when he agreed to be class representative in this litigation. *Id.* ¶ 7; Joint Class Counsel Decl. ¶ 44. Mr. Kernen also supports the Fee Request. Kernen Decl. ¶¶ 15–16.

Accordingly, I find this factor supports Class Counsel's fee request;³

(y) In summary, upon consideration of the evidence, pleadings on file, arguments of the Parties, and the applicable law, I find that the *Johnson* factors under federal common law weigh in favor of the Fee Request, that the Fee Request is fair and reasonable, and that the Fee Request should be and is hereby approved.

7. Any appeal or any challenge affecting this Order Awarding Attorneys' Fees 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. The Court (along with any appellate court with power to review the Court's orders and rulings in the Litigation) reserves exclusive and continuing jurisdiction over the Litigation, Class Representative, the Settlement Class, Defendant, and the other Released Parties for the purposes of: (a) supervising and/or determining the fairness and reasonableness of the implementation, enforcement, construction, and interpretation of

³ The foregoing twelve *Johnson* factors are supported by the same evidence under Oklahoma state law. *See* 12 Okla. Stat. § 2023(G)(4)(e). The only additional factor under Oklahoma law—the risk of recovery in the litigation—further supports the fee award here. As discussed above, this Litigation involved complex issues of law and fact that placed the ultimate outcome in doubt. There was no guarantee Plaintiff and the Class would prevail on their legal theories at class certification, summary judgment, and/or trial. Defendant denies all allegations of wrongdoing or liability and that the Litigation could have been properly maintained as a class action. *See* Settlement Agreement ¶ 11.1. In the absence of the Settlement, the outcome of the complex issues in this case would remain uncertain until their ultimate resolution by the Court or a jury, thus placing substantial risk on both Parties. Accordingly, if Oklahoma law were applicable here, I find this factor also weighs in favor of the Fee Request. Because I find that the evidence submitted here supports approval of the Fee Request under each of the Oklahoma factors, I also find the Fee Request is fair, reasonable, and approved under Oklahoma law as well.

the Settlement, the Settlement Agreement (together with the documents referenced therein and the exhibits thereto), any Plan of Allocation Order entered by the Court, and this Judgment; (b) hearing and determining any application by Class Counsel for an award of Attorneys' Fees, and Litigation Expenses and/or a Case Contribution Award for Class Representative, if such determinations were not made at the Final Fairness Hearing; (c) supervising the distribution of funds from the Settlement Account; (d) resolving any dispute regarding a Party's right to terminate the Settlement pursuant to the Settlement Agreement or Supplemental Agreements; (e) enforcing the terms of the Settlement, including the entry of injunctive or other relief to enforce, implement, administer, construe, and interpret the Settlement Agreement and Supplemental Agreements; and (f) exercising jurisdiction over any challenge to the Settlement on any basis whatsoever.

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.

IT IS SO ORDERED this 3rd day of January 2023.



JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE