

**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 CASE CONTRIBUTION AWARD**

Before the Court is Class Representative Michael Kernen’s Motion for Approval of Case Contribution Award (“Motion”) [Doc. No. 106] and Memorandum of Law in Support Thereof (“Memorandum”) [Doc. No. 107], wherein Mr. Kernen seeks a Case Contribution Award of up to \$15,000.00 to be paid from the Gross Settlement Fund. The Court has considered the Motion and Memorandum, all matters submitted in connection therewith, and the proceedings on the Final Fairness Hearing held November 17, 2021. Upon review, the Court finds the Motion should be **GRANTED**.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** 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 Short Form Notice and Long Form Notice stated that Mr. Kernén intended to seek a Case Contribution Award of up to \$15,000.00 to be paid from the Gross Settlement Fund. *See generally* Declaration of Jennifer M. Keough on Behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement (“JND Decl.”) [Doc. No. 113-4]. Notice of Mr. Kernén’s request for a Case Contribution Award was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the request for a Case Contribution Award is hereby determined to have been the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.

5. Mr. Kernén provided the Court with abundant evidence in support of his request for a Case Contribution Award, including: (1) the Motion and Memorandum; (2) the Declaration of Michael Kernén (“Kernén Decl.”) [Doc. No. 113-1]; and (3) the Affidavits of Absent Class Members [Doc. Nos. 113-6 through 113-10]. This evidence was submitted to the Court well before the objection and opt-out deadline, and none of the evidence was objected to or otherwise refuted by any Settlement Class Member.

6. Mr. Kernén is hereby awarded a Case Contribution Award of \$15,000.00 to

be paid from the Gross Settlement Fund. In making this Case Contribution Award, the Court makes the following findings of fact and conclusions of law:

(a) The Settlement provides for: (1) a cash payment of \$2,700,000.00 (the “Gross Settlement Fund”) to compensate the Settlement Class for past damages; and (2) Future Benefits to the Settlement Class consisting of binding changes to Defendant’s statutory interest payment practices and policies in Oklahoma. These Future Benefits are estimated to have a present value of at least \$5,000,000.00, bringing the total value of the Settlement to at least \$7,700,000.00, which is a significant benefit to the Settlement Class. 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. No. 113-4] ¶ 6. The Short Form Notice expressly stated that Class Representative intended to seek a Case Contribution Award of up to \$15,000.00 to be paid from the Gross Settlement Fund. The Short Form Notice also directed class members to a website for further information, including the Long Form Notice, and also provided the option of requesting a Long Form Notice be sent via U.S. Mail;

(c) Mr. Kernen filed his Motion approximately fourteen (14) days prior to the deadline for Settlement Class Members to object (November 3, 2021, *see* [Doc. No. 113-4 at 9]). No objections were filed regarding Class Representative’s

Request for a Case Contribution Award;

(d) The Parties here contractually agreed that the Settlement Agreement shall be governed by federal common law with respect to certain issues, including the case contribution award:

To promote certainty, predictability, the full enforceability of this Settlement Agreement as written, and 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.

See 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 controls and 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.”). Similar contractual language has been recognized and enforced in prior settlements in this district and in other

federal courts in Oklahoma. *See, e.g., Chieftain Royalty Co. v. SM Energy Co.*, No. CIV-18-1225-J (W.D. Okla. Apr. 27, 2021) [Doc. No. 117]; *McClintock v. Enterprise Crude Oil, LLC*, No. CIV-16-136-KEW (E.D. Okla. Mar. 26, 2021) [Doc. No. 122]; *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) [Doc. No. 119]; *Reirdon v. Cimarex Energy Co.*, No. CIV-16-00113-KEW (E.D. Okla. Dec. 18, 2018) [Doc. No. 103]; *Reirdon v. XTO Energy, Inc.*, No. CIV-16-00087-KEW (E.D. Okla. Jan. 29, 2018) [Doc. No. 126]; *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. CIV-11-00029-KEW (E.D. Okla. Mar. 27, 2018) [Doc. No. 230]; *Cecil v. BP America Production Co.*, No. CIV-16-00410-KEW (E.D. Okla. Nov. 19, 2018) [Doc. No. 260];

(f) The Memorandum cites numerous cases in which courts have granted incentive awards to compensate named plaintiffs for the work they performed. *See* [Doc. No. 107 at 5–8];

(g) The services for which incentive awards are given typically include “monitoring class counsel, being deposed by opposing counsel, keeping informed of the progress of the litigation, and serving as a client for purposes of approving any proposed settlement with the defendant.” 5 *Newberg on Class Actions* § 17:3 (5th ed.) (“*Newberg*”). The award should be proportional to the contribution of the plaintiff. *Cf. Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1081 (7th Cir. 2013) (noting that if the lead plaintiff’s services are greater, her incentive award likely will be greater);

(h) Here, Class Representative seeks a dollar-based award of

\$15,000.00. This request is supported by the substantial evidence submitted by Class Representative, including a declaration from Mr. Kernen, representations by Class Counsel, and the affidavits of numerous Absent Class Members. *See Newberg* at § 17:12 (evidence might be provided through “affidavits submitted by class counsel and/or the class representatives, through which these persons testify to the particular services performed, the risks encountered, and any other facts pertinent to the award”). The evidence demonstrates Mr. Kernen is seeking payment at a reasonable hourly rate for reasonable time expended on services that were helpful and non-duplicative to the litigation;

(i) Mr. Kernen’s experience and background in the oil and gas industry justify this request. *See* Kernen Decl. ¶ 3. In addition to his more than 45 years of experience as a geologist, Mr. Kernen owns and operates his own oil and gas company, Kepasa Corp., where he has conducted business as a royalty owner, overriding royalty owner, working interest owner, as well as a lessor and lessee. *Id.*

(j) Both the request and efforts of Mr. Kernen are reasonable. Specifically, at the time of his Declaration, Mr. Kernen had dedicated a total of approximately 190 hours to this Litigation. Kernen Decl. ¶ 19. These hours were spent collecting documents for discovery, reviewing emails, draft pleadings, briefs, depositions and other court documents from Class Counsel, consulting and/or meeting with Class Counsel, participating in the mediation process twice, and reviewing and discussing settlement documents, preliminary approval

documents, and final approval documents. *Id.* All of these efforts appear necessary and beneficial to the Litigation and the ultimate Settlement. And, Mr. Kernen will continue to work on behalf of the Settlement Class in the coming weeks and months, including through the administration of the Settlement. *Id.* Mr. Kernen will also incur additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. *Id.* However, even if Mr. Kernen never worked another hour on this case, the request of \$15,000.00 would be reasonable;

(k) Mr. Kernen was heavily involved in all aspects of the Litigation, even prior to the filing of the Petition in December 2017. Kernen Decl. ¶¶ 7–8. He actively and effectively fulfilled his obligations as a representative of the Settlement Class, complying with all reasonable demands placed upon him during the prosecution and settlement of this Litigation, and provided valuable assistance to Class Counsel. *Id.* ¶ 19;

(l) Mr. Kernen was never promised any recovery or made any guarantees prior to filing this Litigation, nor at any time during the Litigation. *Id.* ¶ 20. In fact, Mr. Kernen 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. *See id.* In other words, Mr. Kernen fully supports the Settlement as fair, reasonable, and adequate, even if he is awarded no case contribution award at all. *Id.* Mr. Kernen has no conflicts of interest with Class Counsel or any absent class member. *Id.*

Finally, Absent Class Members have executed affidavits supporting Mr. Kernens' request for a Case Contribution Award. *See* [Doc. Nos. 113-6 through 113-10];

(m) Because Mr. Kernens has dedicated his time, attention, and resources to this Litigation, the Court finds he is entitled to the requested Case Contribution Award of \$15,000.00 to reflect the important role that he played in representing the interests of the Settlement Class and in achieving the substantial result reflected in the Settlement;

(n) Thus, Mr. Kernens' request for a Case Contribution Award of \$15,000.00 is fair and reasonable under Oklahoma state law for the same reasons it is fair and reasonable under federal common law and supported by the same evidence of reasonableness.

7. Any appeal or any challenge affecting this Order Awarding Case Contribution Award shall in no way disturb or affect the finality of the Order and Judgment Granting Final Approval of Class Action Settlement, the Settlement Agreement or the Settlement contained therein.

8. 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 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.



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JODI W. DISHMAN  
UNITED STATES DISTRICT JUDGE