

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

RUTH ANN MCNEILL, as Trustee of the
VICKREY FAMILY TRUST,
on behalf of herself in her representative
capacity and all others similarly situated,

Plaintiff,

v.

CITATION OIL & GAS CORP.
(including affiliated predecessors and affiliated
successors),

Defendant.

Case No. 17-CIV-121-KEW

**ORDER APPROVING CLASS COUNSEL FEES AND EXPENSES
AND CASE CONTRIBUTION AWARD**

Before the Court is Class Representative Ruth Ann McNeill's Motion for Approval of Attorneys' Fees, Reimbursement of Litigation Expenses, and Case Contribution Award and Memorandum of Law in Support Thereof (Dkt. No. 77) (the "Motion"), wherein Class Representative seeks entry of an Order approving its request for (1) Attorneys' Fees in the amount of \$1,200,000; (2) reimbursement of Litigation Expenses of \$31,388.97 and a reserve of an additional \$43,611.03 (so that total Litigation Expenses will not exceed \$75,000); and (3) a Case Contribution Award in the amount of \$50,000. The Court has considered the Motion, all matters and evidence submitted in connection therewith, and the proceedings at the Settlement Fairness Hearing conducted on January 14, 2019. 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 (Dkt. No. 61-1) 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 herein its findings of fact and conclusions of law from its Order Approving Class Action Settlement and Final Judgment as if fully set forth.

3. The Court has jurisdiction to enter this Order and over the subject matter of the Class Lawsuit and all parties to the Class Lawsuit, including all Class Members.

4. The requests for Class Counsel Fees and Expenses were set forth in the Notice of Settlement. The Court finds that the form of the Notice of Settlement and the method in the Plan of Notice was the best notice practicable under the circumstances; they constitute due and sufficient notice to all persons and entities entitled to receive such notice and fully satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

5. The Court has been provided with evidence to support the requests for Class Counsel Fees and Expenses as shown in the Exhibits to the Motion (Dkt. No. 77).

6. For the reasons set forth in the findings of fact and conclusions of law below, the Court hereby awards the following:

(a) Class Counsel is awarded Attorneys' Fees of \$1,200,000 to be paid from the Settlement Proceeds;

(b) Class Counsel shall be reimbursed for Litigation and Administration Expenses, in an amount of \$31,388.97, to be paid from the Settlement Proceeds, and a reserve of \$43,611.03 shall be set aside from the Settlement Proceeds to pay for future

Litigation and Administration Expenses through the implementation and conclusion of the Settlement; and

(c) Class Representative is awarded a Case Contribution Award of \$50,000 to be paid from the Settlement Proceeds.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Fee Request Is Reasonable Under Oklahoma Law.

7. 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.” 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). Here the requested fees are authorized by an express agreement of the Parties. Based on the Court’s knowledge of the efforts and results of Class Counsel, the Court finds that the Fee Request is fair and reasonable.

8. Based on the evidence submitted and the law, the Court approves Class Representative’s calculation of the Fee Request as a percentage of the Settlement Proceeds.

9. Oklahoma law controls the Court’s analysis of the amount and reasonableness of the requests for attorneys’ fees, expenses, and case contribution award. *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 460–62 (10th Cir. 2017). 12 O.S. Supp. § 2023 controls the calculation of attorneys’ fees in common fund cases.

10. I find that Section 2023 permits an award of attorneys’ fees to be calculated as a percentage of the common fund.

11. Section 2023 lists thirteen factors that “shall” be considered in awarding attorneys’ fees in class action cases. These statutory factors include the *Johnson* factors considered under federal law, with the only material difference being that the Oklahoma

statutory factors include the risk of recovery in the litigation.¹

12. 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. *Gottlieb v. Barry*, 43 F.3d 482 n.4 (10th Cir. 1994). The thirteenth factor—the risk of recovery in the litigation—does not appear in *Johnson*, but is required under the statute. *See* 12 O.S. § 2023(G)(4)(e)(13).

13. Based on the evidence and the law, the Court finds the requested fee of \$1,200,00 is reasonable under the applicable factors.

14. Here, the evidence shows that, under the results obtained factor, the Fee Request is fair and reasonable. *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.”); *cf.* 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”).

15. Here, the results obtained is a monetary recovery of \$3,000,000.00 minus a small

¹ When determining attorneys’ fees under the percentage method, the Tenth Circuit evaluates the reasonableness of a requested fee by analyzing the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Not all of the factors apply in every case, and some deserve more weight than others depending on the facts at issue. *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988)

amount attributable to Monies Payable to Opt-Outs. The benefits of this Settlement are guaranteed and will be automatically bestowed on the Settlement Class. This provides real value to the Settlement Class:

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 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.

See Cecil Fee Order at ¶21. There are no claim forms to fill out, no elections to make, and no supporting documentation to find. Indeed, Class Members do not have to take any action whatsoever to receive their benefits, except remain in the Class. Accordingly, the “results obtained” factor strongly supports the requested fee.

16. I find that the other *Johnson* factors also support and weigh strongly in favor of the fee request. The findings with respect to each factor is set forth below:

- a. **Time and Labor.** The Joint Declaration of Class Counsel shows the law firms invested substantial time in researching, investigating, prosecuting, and resolving this case. Joint Counsel Decl. at ¶¶5-24, 58. I find that this factor supports the Fee Request.
- b. **Novelty and Difficulty.** Class actions are known to be complex and vigorously contested. The claims involve difficult and highly contested issues of Oklahoma oil and gas law and class certification law. Class Counsel litigated such difficult issues against the vigorous opposition of highly skilled defense counsel. Moreover, Citation asserted a number of defenses to the Settlement Class’ claims that would have to be overcome if the Class Lawsuit 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. Joint Decl. of Class Counsel at ¶68. I find that this factor strongly supports the Fee Request.
- c. **Skill required.** Only a few firms handle royalty class litigation because of the nuanced intersection of class action and oil and gas law and the expense of funding such a large and potentially long-lasting endeavor. Joint Decl. of Class Counsel at ¶¶69, 76. The Declarations prove that this Class Lawsuit 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. Defendants are also represented by skilled class action defense attorneys. The quality of representation by counsel on *both* sides of this Class Lawsuit was high. Without the experience, skill, and determination displayed by *all* counsel involved, the Settlement would not have been reached. I find that this factor strongly supports the Fee Request.
- d. **Preclusion of Other Cases.** The Joint Counsel Declaration shows that counsel has only a finite number of hours to invest in class action cases and must turn away other opportunities to pursue cases in which they have already accepted representation. Joint Decl. of Class Counsel at ¶70. 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 Class Lawsuit. I find that this factor supports the Fee Request.
- e. **Customary Fee.** McNeill and Class Counsel negotiated and agreed to prosecute this case based on a 40% contingent fee. *See* McNeill Decl. at ¶8; Joint Counsel Decl. at ¶56. The declarations show that the 40% contingency 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* Order Awarding Attorneys’ Fees, Reimbursement of Litigation Expenses, and Case Contribution Award, *Cecil v. BP America Production Co.*, No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (the “*Cecil* Fee Order”) at ¶25; *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). The Fee Request is in line with the typical fee award granted in similar cases supports its approval; and the Class Representative’s declaration demonstrates her support of the fairness and reasonableness of the Fee Request. McNeill Decl. at ¶17-19. I find that this factor supports the Fee Request.

- f. **Fixed Hourly or Contingent Fee.** As set forth above, Plaintiff’s Counsel undertook this Class Lawsuit on a purely contingent fee basis (with the amount of any fee being subject to Court approval), assuming a substantial risk that the Class Lawsuit would yield no recovery and leave them uncompensated. *See* Joint Counsel Decl. at ¶¶59-60, 63. Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys’ fees. *See Cecil* Fee Order at ¶26. Indeed, plaintiff’s counsel may expend 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.² The Court finds it would not have been economically prudent or feasible if Class 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 ¶57; *see Cecil Fee Order* at ¶26. This agreed-upon contingent fee reflects the value of this Class Lawsuit as measured when the risks and uncertainties of litigation still lay ahead. *See Cecil Fee Order* at ¶26; *Chieftain v. Laredo Petro., Inc.*, No. CIV-12-1319-D, 2015 WL 2254606, at *2 (W.D. Okla. May 13, 2015). If Class Counsel had not been successful, they would have received zero compensation (not to mention no reimbursement for expenses). Joint Counsel Decl. at ¶29; *see also Cecil Fee Order* at ¶26; *Tibbetts v. Sight 'n Sound Appliance Ctrs., Inc.*, 2003 OK 72, ¶¶11 & 15-23, 77 P.3d 1042. Accordingly, I find that this factor strongly supports the Fee Request.

- g. **Time Limitations.** This was not a factor in this case and does not influence the reasonableness of the fee one way or the other.
- h. **Amount in Controversy and Result Obtained.** As detailed above, this is the most significant factor in awarding attorneys' fees in the class action context and strongly supports the Fee Request here. Joint Counsel Decl. at ¶¶74.
- i. **Experience, Reputation, and Ability of Counsel.** Class counsel has extensive experience, stellar reputations, and demonstrated ability. Joint Decl. of Class Counsel at ¶75.

² *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).

j. **Undesirability.** Most class counsel will not take on a smaller case such as this. Joint Decl. of Class Counsel at ¶¶69, 76; *see also*, Decl. of Kimberly Hamilton, *Freebird, Inc. v. Merit Energy, Inc.*, No. 10-1154-KHV-JPO (D. Kan. Jan. 15, 2013) (Dkt. No. 199-3) (p. 2, describing a royalty owner's challenge to find an attorney to prosecute royalty underpayment lawsuits). Few law firms would be willing to risk investing the time and expenses necessary to prosecute this Class Lawsuit for multiple years with only an uncertain prospect of recovery. *See* Joint Counsel Decl. at ¶69; *Cecil Fee Order* at ¶27. Further, Defendants have shown themselves to be worthy adversaries that will fight in bitter, adversarial litigation. It seemed this lawsuit would be a lengthy, expensive, time-consuming, and arduous undertaking. Indeed, in another complex royalty class action, 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. The same principle holds true here. I find that this factor also supports the Fee Request. Joint Counsel Decl. at ¶76.

k. **Nature and Length of Professional Relationship with Client.** Although of little relevance in a case where the client does not engage regularly in litigation to warrant a discounted hourly rate, this factor supports the requested fee. Class Counsel met and worked with Ms. McNeill many times throughout the Class Lawsuit, including before the lawsuit was filed, to prosecute the claims. Joint Decl. of Class Counsel at ¶77. McNeill negotiated a forty percent contingency fee when she agreed to be class representative in this Class Lawsuit. McNeill Decl. at ¶8. McNeill zealously

represented the Class and remained active throughout the Class Lawsuit and its resolution. McNeill Decl. ¶¶6-16. And, McNeill supports the Fee Request. McNeill Decl. at ¶¶18-19.

1. **Awards in Similar Cases.** As addressed under the “Customary Fee” factor, forty percent is the usual fee award and supports the Fee Request in this case.

17. The thirteenth factor—the **risk of recovery in the litigation**—also supports the fee request here. *See* 12 O.S. 2013 § 2023(G)(4)(e)(13). As detailed above, Class Counsel bore a very real risk of obtaining no fee for their efforts on behalf of the class. As with any contingency case, Class Counsel faced significant litigation risk here that could have led to zero recovery for the class at the cost of thousands of dollars and hours of time for which they could potentially have received no reimbursement. Few law firms would be willing to incur the risk of investing the time, trouble and expenses necessary to prosecute this Litigation. I find that this factor also supports the Fee Request.

18. I also find that the fee request is reasonable when considered under the *Burk* “lodestar” framework. *State ex rel. Burk v. City of Okla. City*, 598 P.2d 659, 660 (Okla. 1979). Under *Burk*, the Court undertakes a two-step process by first performing a lodestar analysis before considering the application of the “enhancement factors” listed in § 2023. *Id.* at 660–61.

- a. **Time Compensation Factor:** The first *Burk* step is the determination of the lodestar, or “time compensation factor.” *Id.* at 661. In addition to all the time through approval of the Settlement, this also includes reasonable time spent on (1) the fee application, (2) appeal, and (3) any appeal of the fee award. *Id.* at 662. I find that Class Counsel collectively spent over 1,000 hours to prosecute this case. *See* Joint Decl. ¶58. Counsel reasonably anticipate spending another 100 hours through the end

of the Litigation and distribution. *See id.* Counsel calculated these hours based on contemporaneous time records and reasonable expected hours anticipated. *Id.*

b. **Hourly Rates:** Class Counsel have also provided hourly rates for attorneys and staff members. *See* Joint Decl. ¶58. I find that these rates are based on prevailing standards in Counsel’s legal community. *Burk*, 598 P.2d at 663. That legal community consists of national complex litigation firms. *Reirdon v. XTO Energy Inc.*, No. 6:16-cv-00087-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 124) (“*Reirdon* Fee Order”) ¶6(jj); *Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 231) (“*Chieftain-XTO* Fee Order”) ¶6(jj); *Missouri v. Jenkins*, 491 U.S. 274, 286 (1989) (describing relevant comparison as the rates “prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation” (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984))).

19. When multiplied by the total hours per attorney spent on this case, Class Counsel’s baseline lodestar is approximately \$825,615.00.

20. *Burk* next requires the Court to apply the enhancement factors listed in § 2023 to the facts of the case. “Fees cannot fairly be awarded on the basis of time alone. The use of time as the sole criterion is of dubious value because economy of time could cease to be a virtue; and inexperience, inefficiency, and incompetence may be rewarded to the detriment of expeditious disposition of litigation. The litigation risk factor must be considered.” *See Oliver’s Sports Center, Inc. v. Nat’l Std. Ins. Co.*, 615 P.2d 291, 294 (Okla. 1980).

21. As noted above, each Section 2023 factor supports the requested fee award here. Taken collectively, the Section 2023 enhancement factors support an enhancement of Class

Counsel's lodestar by a multiple of at least 1.45, which is the minimum multiplier necessary to support the total fees requested of \$1,200,000.

22. In summary, upon consideration of the evidence, pleadings on file, arguments of the parties, and the applicable law, I find that the thirteen factors listed in Section 2023 weigh heavily in favor of the Fee Request and that the Fee Request is fair and reasonable and should be and is hereby approved.

C. The Expenses Request Is Reasonable Under Oklahoma Law.

23. "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") at 6(f) (quoting *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 WL 1268824, at *4 (D. Colo. Mar. 9, 2000)). Applying Oklahoma law, the Court may reimburse Class Counsel for its reasonable costs in delivering the Settlement to the Class.

24. The Court finds that, as of January 14, 2019, Class Counsel has advanced or incurred \$31,388.97 in reasonable and necessary Litigation Expenses and anticipates incurring no more than an additional \$43,611.03 in implementing the Settlement through its conclusion.³ 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 settlement administration, which are typical of large, complex class

³ In the Motion, Class Counsel originally sought reimbursement for up to \$200,000 in expenses per the Settlement Agreement and Notice. *See* Dkt. 77. At the Final Fairness Hearing, Counsel updated the Court that Class Counsel's total expenses were not expected to exceed \$75,000.

actions such as this. The Court finds these expenses were reasonably and necessarily incurred by Class Counsel and are directly related to the prosecution and resolution of this Class Lawsuit.

25. Therefore, Class Counsel is awarded \$31,388.97 in past expenses and may request any additional amount Class Counsel may incur after the entry of this Order, not to exceed \$43,611.03, upon 10 days' written notice to the Court. If, upon receipt of any such future request, the Court has not ruled within 10 days thereof, such request shall be deemed granted.

D. The Requested Class Representative Fee Is Reasonable.

26. Federal courts regularly give incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case and the risks they take. *Cecil Fee Order* at ¶34 (incentive awards are meant to compensate class representatives for “the work they performed – their time and effort invested in the case and the risks they take.”); *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.”); *Fankhouser v. XTO Energy, Inc.*, No. CIV-07-798- L, 2012 WL 4867715, at *3 (W.D. Okla. Oct. 12, 2012) (incentive awards totaling \$100,000); *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 of a successful class action”); *In re Linerboard Antitrust Litig.*, 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.”); *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 . . .”).

27. 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.” *Cecil Order* at ¶35 (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).

28. McNeill seeks an award of \$50,000 based on her demonstrated burden as well as compensation for time and effort. *See* McNeill Decl. ¶¶20-22 *See also* *Newberg* § 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.”). *See, e.g., Velma-Alma Indep. Sch. Dist. No. 15 v. Texaco, Inc.*, No. CJ-2002-304 (Okla. Dist. Ct., Stephens Cnty.) (2005) (awarding 1-2% of total settlement amounts); *Continental Resources, Inc. v. Conoco, Inc.*, No. CJ-95-739 (Okla. Dis. Ct., Garfield Cnty.) (2005) (“Court awards to Class Representatives of 1% of the common fund are typical in these types of actions, with some awards approaching 5% of the common fund.”).

29. McNeill pursued the class claims vigorously. The Declaration of Ruth Ann

McNeill shows she monitored the Class Lawsuit, stayed in contact with Class Counsel, reviewed documents as requested, traveled to and attended the Settlement Conference before this Court, remained available to discuss and advise as the settlement negotiations continued, and read and signed the Settlement Agreement, including its exhibits. McNeill Decl. at ¶¶21. Her declaration provides evidence of his involvement in and contribution to this case throughout the Class Lawsuit. *Id.* And, McNeill will continue to work on behalf of the Settlement Class in the coming weeks and months, including through administration of the Settlement. *Id.* McNeill will also spend additional time in the event of an appeal, conferring with Class Counsel and reviewing additional pleadings. *Id.* The Court agrees with Class Counsel that McNeill's active participation has contributed significantly to the prosecution and resolution of this case. Joint Counsel. Decl. at ¶90.

30. The Court further finds that McNeill was never promised any recovery or made any guarantees prior to filing this Class Lawsuit, nor at any time during the Class Lawsuit. McNeill Decl. at ¶22. In fact, if the Court determined that no award is appropriate, McNeill understood and agreed 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 ruled on her request. *Id.* In other words, McNeill fully supports the Settlement as fair, reasonable and adequate, even if it is awarded no case contribution award at all. *Id.* McNeill has no conflicts of interest with Class Counsel or any absent class member. *Id.*

31. Because McNeill has dedicated time, attention, and resources to this Class Lawsuit and to the recovery of underpaid royalty on behalf of the Settlement Class from Defendants, I find she is entitled to a Class Representative Fee to reflect the important role that she played in representing the interests of the Settlement Class and in achieving the substantial

result reflected in the Settlement. The Court finds McNeill's request for an award of \$50,000 to be fair and reasonable and supported by the evidence. The Court therefore awards a Class Representative Fee in the amount of \$50,000 to Class Representative Ruth Ann McNeill.

E. Finality Of Order

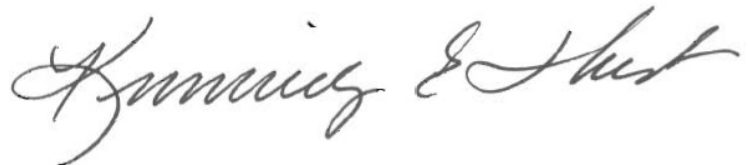
32. Any appeal or any challenge affecting this Order Awarding Class Counsel Fees and Expenses shall not disturb or affect the finality of the Order Approving Class Action Settlement and Final Judgment, the Settlement Agreement, or the Settlement contained therein.

33. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Class Lawsuit, including the administration, interpretation, effectuation, or enforcement of the Settlement Agreement and this Order.

34. 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

Dated this 14th day of January, 2019.



KIMBERLY E. WEST
MAGISTRATE JUDGE