IN THE DISTRICT COURT OF PAWNEE COUNTY
STATE OF OKLAHOMA

JAMES ADAMS, on behalf of himself and other Oklahoma citizens similarly situated,	
Plaintiff,	**Case No. CJ-2016-00078**
v.	**Judge Patrick Pickerill**
(1) EAGLE ROAD OIL LLC, **(2) CUMMINGS OIL COMPANY,** **(3) TERRITORY RESOURCES, LLC,** **(4) ENERVEST OPERATING, L.L.C.,** **(5) EAGLE ROAD, L.L.C.,** **(6) PETROQUEST ENERGY, LLC,** **(7) TRINITY OPERATING (USG), LLC,** **(8) TARKA ENERGY, LLC**	
Defendants.	

**** AGREED AND UNOPPOSED ****

PLAINTIFFS' MOTION TO FINALLY APPROVE CLASS ACTION SETTLEMENT WITH TERRITORY AND INCORPORATED MEMORANDUM OF LAW

COMES NOW the Plaintiff and Class Representative James Adams and the Settlement Class ("Plaintiffs"), and move, unopposed, for the Court to provide final settlement approval of a class resolution with Territory Resources, LLC ("Territory").

Pursuant to 12 O.S. §2023 E., Plaintiffs and Territory have negotiated a Settlement Agreement (provided as **Exhibit 1** here), which gained preliminary settlement approval from this Court on December 15, 2022. In accordance with the Court's order of that day,

the Settlement Class was notified of the terms of the Settlement and of its rights to either opt out or object to the Settlement. No objections and no exclusions were filed or received by Class Counsel, Territory, or the KCC, LLC, the Settlement's Administrator (hereafter, "KCC"). Thus, this motion for final settlement approval is being filed unopposed.

Provided as **Exhibit 1** to this Motion, is the Parties' negotiated and agreed Final Judgment and Order of Dismissal With Prejudice as to Plaintiff, the Settlement Class and Territory. In accordance with this Motion and the terms of the Settlement Agreement, **Exhibit 1** has filled in the unopposed amounts for attorneys' fees, reimbursement of expenses, the Class Representative's Award, and the appropriate dates.

MEMORANDUM OF LAW

Under 12 O.S. §2023 E., this Court must now determine whether the Settlement is fair, adequate, and reasonable, and thus, deserving of final approval. Further, this Court must also separately determine whether to approve the negotiated attorneys' fees and expenses, and the Class Representative's Award.

I: FACTUAL INTRODUCTION

The operative petition alleges that a swarm of seismicity occurring near Pawnee on or about September 3, 2016, through on or about November 14, 2016, was caused by the Defendants' wastewater disposal operations and devastated properties in Oklahoma. Plaintiffs further contend that science shows that this induced seismicity was part of a

sequence of wastewater disposal induced earthquakes that began much earlier, and still occur in present times.

Further, within the settlement the parties are also resolving several individual actions involving this seismicity near Pawnee, and seismicity occurring closer to Cushing, Oklahoma. Within the Settlement Agreement, all earthquakes, foreshocks, and aftershocks arising from the 5.8m earthquake near Pawnee on September 3, 2022, and the 5.0m earthquake near Cushing, and all earthquake with epicenters within 50 miles of Pawnee, Oklahoma, from April 16, 2013, until the Settlement is approved by this Court and receives finality are being resolved.

Plaintiffs allege that these sequences of earthquakes near Pawnee and Cushing did not occur naturally, but instead were caused by wastewater disposal operations nearby and caused Plaintiffs to suffer continuing damages. Territory disputes all these allegations.

The Settlement Class is defined as follows:

> The Class Representative, Plaintiffs, and all persons, municipalities, county governments, or tribal governments, who own or owned real property within the borders Oklahoma or have or had a property interest therein between April 16, 2013 through the Effective Date (the "Settlement Class Period"), and which suffered earthquake damages from earthquakes, foreshocks and aftershocks occurring within the State of Oklahoma during that time period.
>
> Excluded from the Settlement Class are the following:
>
> a) Any of the Settling Defendant or its owners, directors, officers, employees, and/or agents, the judge presiding over this action and his immediate family members;
>
> b) Any person that timely and properly excludes himself/herself/itself pursuant to the orders of the Court.

II: LAW AND ARGUMENT

With this motion, Plaintiffs seek the following:

1. Certification of the Settlement Class for purposes of the Settlement;
2. Final approval of the Notice and Notice plan, as conducted by the Settlement Administrator KCC and attested to in **Exhibit 2**, as the best notice practicable under the circumstances and constituted due and sufficient notice to the Settlement Class Members, and thus, satisfied the requirements of Oklahoma law and due process of law; and,
3. Final approval of the $2,075,000.00 cash Settlement and finding all the Settlement's terms to be in all respects fair, reasonable, adequate and in the best interests of the Settlement Class.

Further, and to be separately considered, Class Counsel and the Class Representative move, consistent with the Settlement's terms, for approval of the following:

1. The approval and provision of a negotiated 40% attorneys' fee to Class Counsel of $830,000.00;

2. The approval and reimbursement of litigations expenses of $5,162.08[1]; and,

3. The approval and provision of a $7,500.00 Incentive Award to the Class Representative James Adams.

[1] As provided in Class Counsel's declaration filed in support of this motion (**Exhibit 4**), these expenses relate to costs of mediation, travel related expenses and scientific consulting service fees not previously reimbursed through other settlements.

1. <u>Legal Standards for Final Settlement Approval</u>.

In determining whether a settlement is reasonable, the trial court's primary task is to evaluate the terms of the settlement in relation to the strength of the plaintiff's case. *Bayhylle v. Jiffy Lube Intern., Inc.,* 2006 OK CIV APP 130, ¶11, 146 P.3d 856, 859. Courts also examine the fairness, adequacy, and reasonableness of a class settlement in light of four factors: (1) whether the proposed settlement was fairly and honestly negotiated, (2) whether serious questions of law and fact exist, placing the ultimate outcome of litigation in doubt, (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation, and (4) the judgment of the parties that the settlement is fair and reasonable. *Velma-Alma Indep. Sch. Dist. No. 15 v. Texaco, Inc.*, 2007 OK CIV APP 42, 162 P.3d 238, 243, citing *Wal–Mart Stores, Inc. v. Visa U.S.A., Inc.,* 396 F.3d 96 (2ndCir.2005), *certiorari denied* by *Leonardo's Pizza by the Slice v. Wal–Mart Stores, Inc.,* 544 U.S. 1044, 125 S.Ct. 2277, 161 L.Ed.2d 1080 (2005).

2. <u>Certification of the Settlement Class for Settlement Purposes is Appropriate</u>.

12 O.S. §2023 certification is warranted with respect to this Settlement and the Settlement Class. Each of the four elements of §2023 A. are met as demonstrated in those incorporated documents. Indeed, the Settlement Class includes hundreds of thousands of potential members, and thousands of members are expected to file claims before the May 30, 2023, claim deadline. Further, the questions of fact and law in this action are demonstrably common, and moreover, the Plaintiffs' claims will all hinge on the same scientific proof and legal theories of recovery. All the claims of each class member are all typical of one another in that each claim is principally based upon the same wrongful

conduct of Territory and the other non-settling Defendant. And lastly, the final element of §2023 A. is also met because Mr. Adams as the Class Representative has fairly and adequately represented the Settlement Class by being knowledgeable of the claims, participating in the action and in the discovery process, and by hiring counsel skilled in complex class action litigation. *Gentry v. Cotton Elec Co-op, Inc.*, 2011 OK CIV APP 24, 268 P.3d 534.

Further, the requirements of §2023 B. 3. have also been met. The overriding and prevailing common question of fact and law is whether the Defendants, including Territory, contributed to the seismicity at issue and would be liable for the resulting damages, and the class mechanism is far more superior that mass amounts of individual litigation all based upon the same scientific proof and legal theories. *Id.*

3. The Settlement Administrator Has Provided Notice to the Settlement Class that Meets Oklahoma's Legal Standards and Constitutional Due Process.

The Notice and Notice Plan met the legal standards of 12 O.S. §2023 C. and constitutional due process, and for this reason the Court approved the Notice and Notice plan with its Preliminary Approval Order.

The Settlement Administrator has carried out its duties with respect to the Court's Preliminary Approval Order. See **Exhibit 2**, the Declaration of Janeth Antonio of the Settlement Administrator KCC.

4. The Settlement is Fair, Reasonable, and Adequate.

The Settlement is fair, reasonable, and adequate, and deserving of final approval. Although, Plaintiffs developed scientific proof through geophysicists that the seismicity

at issue near Pawnee and Cushing were not acts of God, but instead were induced by wastewater disposal operations, they also understand that this litigation is novel, and therefore, is risky and uncertain. Further, Territory has highly experienced and skilled counsel and there is no question that, absent this Settlement, further litigation would be extremely challenging, expensive, and drawn out. On the other hand, the Settlement provides certainty for the Settling Parties, and moreover, provides substantial and immediate cash relief to the Settlement Class. Under *Jiffy Lube*, the settlement is reasonable and warrants approval. Further, the reasonableness and adequacy of the Settlement is established under the factors discussed in *Velma-Alma*.

First, the Settlement was negotiated in good-faith and at arms-length. In fact, the Settlement's terms were agreed to in mediation with a highly skilled, independent, and experienced mediator Tom Cordell of Dispute Resolution Consultants. See **Exhibit 3**, Letter from Tom Cordell. As demonstrated within Mr. Cordell's letter, the Settlement was fairly and honestly negotiated.

Second, there were serious questions of law and fact that placed the ultimate outcome of the litigation in doubt. As discussed above, induced seismicity litigation is extremely novel, and therefore, the scientific facts are difficult to manage and, certainly, doubt exists as to such proof – particularly when it will be countered with Defendants' anticipated expert witnesses. This factor also weighs heavily in favor of final settlement approval.

Third, the factor of whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation also weighs

heavily in favor of final approval. To prepare this case through class certification, interlocutory appeals, development of more facts through multiple experts on both sides, trial preparation, the trial, and most certain appeals thereafter, would undoubtedly increase risk and expense. But the Settlement provides immediate certainty, and substantial cash relief for the Settlement Class.

Finally, the last *Velma-Alma* element is also met. As the Settlement provides the parties and their skilled and experienced counsel also believe in their best judgment that the mediated Settlement is fair and reasonable.

Thus, all the elements to be considered under *Jiffy Lube* and *Velma-Alma* in considering the Settlement have been met.

III: FEE APPLICATION OF CLASS COUNSEL

Class Counsel's Requested Attorneys' Fee and Expense Reimbursement Are Reasonable, and the Class Representative's Incentive Award is also Reasonable.

Pursuant to the terms of the Settlement Agreement, the Class Representative and Class Counsel apply for approval of a 40% attorneys' fee, reimbursement of $5,162.08 in litigation costs, and a $7,500.00 Incentive Award for Mr. Adams. These amounts are warranted, reasonable, and deserving of this Court's approval. In fact, no member of the Settlement Class has voiced an objection to these items. In support of these requests, Plaintiffs have provided the Declaration of Class Counsel, which is also fully incorporated herein by reference. **Exhibit 4.**

This is a "Common Fund" contingent fee case. Complicated class actions are never taken on an hourly basis for fair access to our courts. Here, as in other contingency fee cases, the Settlement Class only benefits from the result Class Counsel obtains.

Indeed, Oklahoma's appellate courts have repeatedly approved contingency fees in class action cases, and moreover, the negotiated percentage of 40% falls within the range of reasonableness by courts in Oklahoma. In these matters, Oklahoma law recognizes any attorneys' fee award must account for the risks inherent in contingency class cases by allowing for a "risk-litigation" premium. *Morgan v. Galilean Health Enters., Inc*. 1998 OK 130, n.30, 977 P.2d 357 (*citing Brashier v. Farmers Ins. Co. Inc*., 1996 OK 86, ¶11, 925 P.2d 20, 25).

Pursuant to 12 O.S. § 2023(G), the court must consider thirteen "Burk" factors. *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659. These factors are the (1) time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) the time limitations by client or circumstances, (8) the amount involved 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.

Each of these factors weigh favorably to approval of the negotiated 40% contingency fee provided in the Settlement Agreement. See Declaration of Class Counsel at **Exhibit 4**. As the Court knows, Class Counsel previously settled a class action case

with several defendants in Lincoln County known as *Cooper v. New Dominion, et al.* (the "Cooper Class Action") and assigned to Judge Lori Walkley by special appointment of the Supreme Court, and the class settlement with Eagle Road presided over by this Court. There, as here, the settling parties negotiated an attorneys' fee of 40% of the settlement fund, and it was approved without objection by Judge Walkley in *Cooper* and by this Court with respect to the Eagle Road settlement.

The requested expense reimbursement is also fair and reasonable. Such incurred expenses are related to costs of mediation and travel expenses incurred by Class Counsel and some costs associated with continued work with consulting geophysicists, which have not been reimbursed in prior settlements.

The negotiated Class Representative Award of $7,500.00 is also fair and reasonable. Such awards are allowed routinely by courts in class action cases. *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006). *See also* Judge DeGiusti's ruling approving class representative case contribution fees as being appropriate in *Chieftain Royalty Co. v. SM Energy Co.*, CIV-11-177-D (W.D. Okla. Dec. 23, 2015)).

In *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) the Court allowed payment from the common fund because the assumption of risk, inconvenience, and commitment of time by a class representative has conferred a benefit on the entire class. In the end, the *Allapattah* Court approved a 1.5% incentive award to eight class representatives in equal amounts of $1.76 million each. Here, a 1.5% incentive award would be $12,500.00, which is well above the negotiated $7,500.00 award.

IV: CONCLUSION

When weighed against the merits of Plaintiffs' claims and the uncertainty of this unique litigation, the Settlement, and all its terms, including the attorneys' fees, expenses, and Class Representative Award provisions, is clearly fair and reasonable and deserving of final settlement approval.

DATED: February 9, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on the day of February 9, 2023, I caused to be served a copy of the foregoing document upon the following counsel by electronic mail and with a request that anyone wishing a hard copy to follow by first-class mail to so advise. Counsel in this matter communicate by email regularly.

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