

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

DASA INVESTMENTS, INC.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 6:18-cv-083-SPS
)	
ENERVEST OPERATING, L.L.C.;)	
ENERVEST ENERGY INSTITUTIONAL)	
FUND XIII-A, L.P.; ENERVEST ENERGY)	
INSTITUTIONAL FUND XIII-WIB, L.P.;)	
ENERVEST ENERGY INSTITUTIONAL)	
FUND XIII-WIC, L.P.; ENERVEST, LTD.;)	
and SM ENERGY COMPANY,)	
)	
Defendants.)	

CLASS COUNSEL’S MOTION FOR APPROVAL OF ATTORNEYS’ FEES

Class Counsel respectfully file this Motion for Approval of Attorneys’ Fees, and hereby move this Court for entry of an Order approving Class Counsel’s request for Attorneys’ Fees in the amount of \$3,200,000. Class Counsel base this Motion on:

- (1) the Declaration of Patrick M. Ryan on Behalf of Ryan Whaley (attached to this Motion as Exh. 1);
- (2) the Declaration of Michael Burrage on behalf of Whitten Burrage (attached to this Motion as Exh. 2);
- (3) the Memorandum of Law in Support of this Motion and Exhibits thereto;
- (4) the Declaration of Patrick M. Ryan and Jason A. Ryan on Behalf of Class Counsel and Exhibits thereto (attached to Final Approval Memorandum as Exh. 2);
- (5) the Declaration of Gene Hacker on behalf of Class Representative DASA Investments, Inc. (attached to Final Approval Memorandum as Exh. 1);

- (6) the Affidavit of Barbara A. Ley (attached to Final Approval Memorandum as Exh. 3);
- (7) the Declaration of Steven S. Gensler in Support of the Proposed Settlement, Notice of the Proposed Settlement, Class Counsel's Application for Attorney's Fees and Reimbursement of Litigation Expenses [Doc. No. 88];
- (8) the Declaration of Mediator Steven L. Barghols [Doc. No. 87];
- (9) the Affidavit of Michael J. Weeks on behalf of class member Pagosa Resources, LLC (attached to Final Approval Memorandum as Exh. 9);
- (10) the Affidavit of Robert Abernathy on behalf of class member Acorn Royalty Company, LLC (attached to Final Approval Memorandum as Exh. 8);
- (11) the Affidavit of absent class member Dan Little (attached to Final Approval Memorandum as Exh. 5);
- (12) the Affidavit of Robert E. Gonce, Jr. on behalf of class member Castlerock Resources, Inc. (attached to Final Approval Memorandum as Exh. 6);
- (13) the Affidavit of Phil Steffano on behalf of class member Clear Energy, Ltd. (attached to Final Approval Memorandum as Exh. 7);
- (14) the Affidavit of Kelsie Wagner on behalf of class members The Kelsie Wagner Trust and The Wade Costello Trust (attached to Final Approval Memorandum as Exh. 10); and
- (15) the applicable law and all pleadings, declarations, and records on file in this matter which are respectfully incorporated by reference as if set forth fully herein.

Accordingly, Class Counsel respectfully request the Court enter the Proposed Order granting the relief stated above and grant any further relief to which the Court finds Class Counsel entitled.

DATED: February 21, 2020

Respectfully submitted,

s/Patrick M. Ryan

Patrick M. Ryan, OBA No. 7864
Jason A. Ryan, OBA No. 18824
Paula M. Jantzen, OBA No. 20464
RYAN WHALEY
400 North Walnut Avenue
Oklahoma City, OK 73104
Telephone: 405-239-6040
Facsimile: 405-239-6766
pryan@ryanwhaley.com
jryan@ryanwhaley.com
pjantzen@ryanwhaley.com

Michael Burrage, OBA No. 1350
WHITTEN BURRAGE
512 N Broadway, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
mburrage@whittenburragelaw.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2020, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

J. Kevin Hayes – khayes@hallestill.com
Pamela S. Anderson – panderson@hallestill.com
Jay P. Walters – jwalters@gablelaw.com
Guy S. Lipe – glipe@velaw.com

s/Patrick M. Ryan

Patrick M. Ryan

Exhibit 1

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

DASA INVESTMENTS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:18-CIV-083-SPS
)	
ENERVEST OPERATING, L.L.C.;)	
ENERVEST ENERGY INSTITUTIONAL)	
FUND XIII-A, L.P.; ENERVEST)	
ENERGY INSTITUTIONAL FUND)	
XIII-WIB, L.P.; ENERVEST ENERGY)	
INSTITUTIONAL FUND XIII-WIC, L.P.;)	
ENERVEST, LTD.; AND SM ENERGY)	
COMPANY)	
)	
Defendants.)	

DECLARATION OF PATRICK M. RYAN ON BEHALF OF RYAN WHALEY

I, Patrick M. Ryan, of RYAN WHALEY (“RW”), declare under penalty of perjury as follows:

1. I am a partner at RW. I submit this declaration in support of Class Counsel’s Motion for Final Approval (“Approval Motion”), Class Counsel’s Motion for Approval of Attorneys’ Fees (“Fee Motion”), Class Counsel’s Motion for Approval of Reimbursement of Litigation Expenses (“Expense Motion”), and Class Representative’s Motion for Approval of Case Contribution Award (“Contribution Motion”), which are filed contemporaneously herewith. Unless otherwise stated, the statements made herein are made based upon my personal knowledge and information available to me to the best of my recollection, and while I do not believe there are any errors, omissions, incomplete or incorrect statements, to the extent any occur, they are wholly accidental and unintentional.

2. RW has litigated class actions and complex commercial litigations in the Eastern, Western, and Northern Districts of Oklahoma, the state courts of Oklahoma, and numerous other

state and federal courts around the country. The firm, and in particular, Patrick M. Ryan, Jason A. Ryan, and Paula Jantzen, have been lead counsel in multiple class actions cases, many of which were Oklahoma oil and gas class action cases.¹ The firm's litigators and regulatory attorneys have been involved in numerous large trials and cases, including all forms of complex business and white-collar litigation, energy and environmental litigation, regulatory work, and projects in more than 40 states and overseas. A copy of RW's Summary Resume, as well as a brief biography of the RW attorneys who worked on this Litigation, are attached hereto collectively as Exhibit A.

3. RW is the Court-appointed Class Counsel for Plaintiff and the Settlement Class (collectively, "Plaintiffs"). *See Order* at Doc. No. 72. I personally rendered legal services and had responsibility for coordinating and leading the activity carried out by attorneys at RW in this Litigation. As Lead counsel for Plaintiffs, RW significantly contributed to this Litigation and performed work on behalf of, and for the benefit of, Plaintiffs. Specifically, RW was intimately involved in all aspects of the Litigation on behalf of Plaintiffs both prior to filing Plaintiff's *Original Petition* and while the matter was pending. RW closely coordinated its work with that of Whitten Burrage ("WB"), the Court-appointed Liaison Local Counsel in this matter. *See id.* A summary of Class Counsel's work in this matter is set forth in more detail in the Joint Class Counsel Declaration, filed contemporaneously herewith.

4. I believe, and numerous state and federal courts in Oklahoma have determined, that a 40% contingent fee is within the appropriate market rate range for cases of this nature. I am personally experienced and qualified to offer evidence regarding what I believe are reasonable

¹ *Reirdon v. XTO Energy Inc.*, No. 6:16-cv-87-KEW (E.D. Okla.); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-113-KEW (E.D. Okla.); *Chieftain v. Marathon*, CIV-17-334-SPS (E.D. Okla.); *Cline v. Sunoco, Inc.*, No: 6:17-cv-313-JAG (E.D. Okla.); *Chieftain v. Newfield Exploration Mid-Continent, Inc.*, No 6:17-cv-336-KEW (E.D. Okla.); and *McClintock v. Continuum Producer Services, L.L.C.*, No. 6:17-cv-259-JAG (E.D. Okla.).

attorney rates in Oklahoma multi-state class actions. Among other things, my qualifications are as follows: I have been practicing law for more than 50 years in Oklahoma state and federal courts. I previously served as United States Attorney and prosecuted Oklahoma City bombing Defendants Timothy McVeigh and Terry Nichols. Not long ago, I secured the acquittal of a founder/CEO in one of the largest corporate fraud cases prosecuted by the U.S. Department of Justice. I have defended numerous corporations and financial institutions against class actions, including BNY Mellon in the matter *CompSource v. BNY Mellon* in the United States District Court for the Eastern District of Oklahoma. I have also prosecuted and defended numerous class action suits involving oil and gas, securities, accounting, environmental pollution, and other topics and industries. Moreover, I have prosecuted and defended major MDL cases, involving breast implants, pharmaceutical products, securities, tobacco products, and other types of cases assigned by the MDL panel. I am a Fellow of the American College of Trial Lawyers and a Fellow of the International Academy of Trial lawyers. I am also a former President of the Oklahoma Chapter of the American Board of Trial Advocates, a Master Emeritus of all three Inns of Court for the Western District of Oklahoma, and former Oklahoma County Bar President. I have tried more than 200 jury trials as well as countless bench trials. Through this experience, I have become experienced and familiar with the market rates for attorneys operating on various fee structures including contingent fees where expenses are advanced and hourly fees where expenses are not advanced.

5. The information in this declaration regarding RW's time and expenses is based upon records maintained by RW in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in the Litigation. This declaration was prepared by, or

with the assistance of, other lawyers and staff at RW with knowledge of the matters reflected herein and reviewed in detail by me before signing.

6. As discussed in the Joint Class Counsel Declaration, as well as the Declaration of Class Representative DASA Investments, Inc. (“DASA”), we were retained by DASA to prosecute this case on a fully contingent basis. The Class Representative negotiated, and we agreed, to prosecute this case on a fully contingent basis with a fee arrangement of 40% of any recovery obtained for DASA and/or the putative class. Based upon my experience, knowledge, education, study, and professional qualifications, I believe, and numerous state and federal courts in Oklahoma have determined, that a 40% contingent fee is within the appropriate market range for cases of this nature.

7. Further, in the present case, the Defendants and the Class Representative have contractually agreed that all fee determinations shall be governed by federal common law. Federal common law, in the Tenth Circuit, clearly states that use of the percentage of the recovery is the preferred method. *See Gottlieb v. Barry*, 43 F.3d 474 (10th Cir. 1994); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451 (10th Cir. 1988); *Useton v. Commercial Lovelace Motor Freight*, 9 F.3d 849 (10th Cir. 1993). Thus, the contractually agreed 40% contingent fee amount is the amount under which the Class Representative and Class Counsel worked at all times, and that is the amount by which the reasonableness of the fee request should be considered.

8. In the event that this Court determined it appropriate to consider Class Counsel’s hourly rates to determine whether a fee request is fair and reasonable, such rates are set forth in paragraph 11 below and in Joint Class Counsel Declaration at ¶¶47-50, attached as Exhibit 2 to Class Counsel’s *Motion in Support of Final Approval*. To be clear, DASA did not agree to pay these rates, nor could it afford to. Nevertheless, having been on the defense side in many of these

cases, I can attest that these rates are commensurate with the rates charged by defense firms with a national practice who bill by the hour, advance no expenses, and get paid on a monthly basis regardless of the outcome.

9. I have instructed the attorneys and staff at my firm working on this matter to keep records regarding their time, even though we are working on a fully contingent basis. Throughout this case, RW's attorneys and staff kept contemporaneous time records for the time and expenses devoted to this litigation. I have been provided with access to material information supporting the fee and expense requests that are the subject of this declaration and have reviewed such materials. As a result of this review, reductions were made to both time and expense in the exercise of "billing judgment." As a result of the review and the adjustments made, I believe the time and the expenses set forth below are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Litigation.

10. Based on the work performed and this review of information reflecting work performed by attorneys at RW in this Litigation, I directed preparation of the chart set forth below identifying the names and positions of RW's attorneys and paraprofessionals who undertook litigation activities in connection with the Litigation, each individual's hourly rate, and the total number of hours each individual expended in connection with work on the Litigation.

11. As set forth below, the total number of hours expended by RW in this Litigation, from investigation through February 20, 2020, is 1,365 hours. The total lodestar for RW for this time period is \$984,697.50.

Name	Title	Hours	Rate	Lodestar
Patrick Ryan	Sr. Partner	366.20	\$875	\$320,425.00
Jason Ryan	Partner	442.20	\$700	\$309,540.00
Paula Jantzen	Partner	480.60	\$700	\$336,420.00
JoAnn Mickle	Sr. Paralegal	41.50	\$275	\$11,412.50
Anna Jantzen	Intern	34.50	\$200	\$6,900.00

12. In my judgment, the number of hours expended and the services performed by the attorneys at RW were reasonable and expended for the benefit of the Settlement Class in this Litigation. I believe this total number of hours is a conservative and understated amount because, among other things, all of our attorneys work extensively on many matters in a collaborative context where it is not possible to record every hour worked. Therefore, I believe my firm worked many more hours on this case than the hours listed above.

13. Additionally, RW has performed a reasonable and good faith estimate of its anticipated hours and services that it will devote to this Litigation through the Final Fairness Hearing, currently scheduled for March 23, 2020, continuing through the final administration of the settlement. The total number of hours RW anticipates in this Litigation from now through final administration of the settlement, is 250 hours for attorneys and 40 for Senior Paralegals. The total estimated lodestar for RW for this time period is \$214,125.00.

14. RW's lodestar figures are based on its billing rates, which do not include charges for expense items. Expense items are recorded separately, and such charges are not duplicated in the billing rates.

15. Because RW is a relatively small law firm, RW was necessarily precluded from working on other cases and pursuing otherwise available opportunities due to its dedication of time and effort to the prosecution of this Litigation against Defendants. This case was filed on February 7, 2018, and it has required the devotion of substantial time, manpower, and resources from Class Counsel over that period. Further, RW has spent a substantial amount of time and effort in negotiating and preparing the necessary paperwork related to the Settlement with Defendants. Moreover, numerous time limitations have been imposed on RW throughout the course of this Litigation. The schedules of the courts, experts, and clients were accommodated on a regular basis

by RW. Cases of this size and complexity deserve and require the commitment of a large percentage of the total time and resources of firms the size of those of Class Counsel and work a significant hardship on them over the course of over multiple years. Further, RW had to forego taking on numerous additional cases because of this litigation and the burden it placed on RW's time and resources. While I cannot identify the specific cases without violating attorney client and work product privileges, I can state that, during the period this case has been pending, RW investigated and considered pursuing multiple cases that it ultimately was not able to pursue due to the time and resource constraints imposed by this case, including several oil and gas cases where we were asked to represent oil and gas operators but we were required to decline the representations due not only to time restraints, but also from concern that taking positions in these statutory interest cases for owners would conflict with the general interests of these operators.

16. As set forth in the chart below, RW has incurred a total of \$114,916.89 in unreimbursed expenses in connection with this Litigation as of February 20, 2020 for expenses such as postage, copying, court filing fees, litigation support, research, and travel. In my judgment, these expenses were reasonable, necessary, and critical to the prosecution of this Litigation.


**RYAN WHALEY
Expense Report**

	Total Category Expense
Administrative Expenses	
FedEx/Postage	\$436.53
Copy Expenses	\$63.80
Court Fees/Filing/Agency Fees	\$292.35
Litigation Support	
Matlin Petroleum Co.	\$264.58
Mediation	
Hampton Barghols Pierce, PLLC	\$1817.00
Expert/Consulting Expenses	
Barbara A. Ley	\$111,416.94
Research & Investigation	

Lexis Nexis/Westlaw/Briefcase	\$562.35
Travel Expenses	\$63.34
<i>Lodging, Meals and Transportation</i>	
TOTAL SUBMITTED EXPENSES	\$114,916.89
ESTIMATE OF FUTURE EXPENSES	\$85,000.00²

17. RW's expenses are reflected on the books and records of RW. It is RW's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of RW's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by RW in connection with this Litigation.

Dated: February 21, 2020.


Patrick M. Ryan
RYAN WHALEY

² Due to the nature of invoicing and payment cycles, Class Counsel's current Litigation Expenses do not include any payments for expert work performed by Barbara Ley since December 2019. This dollar amount includes the estimated expense of Ms. Ley's work from January 2020 through the Final Fairness Hearing on matters related to, *inter alia*, analysis of Defendants' pay data to support class notice and the plan of allocation.

Exhibit 2

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

DASA INVESTMENTS, INC.,)
)
Plaintiff,)
)
v.)
)
ENERVEST OPERATING, LLC)
ENERVEST ENERGY INSTUTIONAL)
FUND XIII-A, L.P., ENERVEST)
ENERGY INSTITUTIONAL FUND)
XIII-WIB, L.P., ENERVEST ENERGY)
INSTITUTIONAL FUND XIII-WIC, L.P.)
AND ENERVEST, LTD.,)
)
Defendant.)

Case No. 18-CV-00083-sps

DECLARATION OF MICHAEL BURRAGE

I, Michael Burrage of Whitten Burrage (“WB”) declare under penalty of perjury, as follows:

1. I am a partner at WB. I submit this declaration in support of Class Counsel’s Motion for Final Approval (“Approval Motion”), Class Counsel’s Motion for Approval of Attorneys’ Fees (“Fee Motion”), Class Counsel’s Motion for Approval of Reimbursement of Litigation Expenses (“Expense Motion”), and Class Representative’s Motion for Approval of Case Contribution Award (“Contribution Motion”), which are filed contemporaneously herewith. Unless otherwise stated herein, the statements made herein are made based upon my personal knowledge and information available to me to the best of my recollection, and while I do not believe there are any errors, omissions, incomplete or incorrect statements, to the extent any occur, they are wholly accidental and unintentional.

2. I have litigated class actions and complex commercial and tort litigation in the federal and state courts of Oklahoma and other courts around the country.

3. WB is court-appointed Liaison Local Counsel for Plaintiff and the Settlement Class. I personally rendered legal services in this Litigation. As Liaison Local Counsel for Plaintiff, I contributed to this Litigation and performed work on behalf of and for the benefit of the Settlement Class. Specifically, I was involved in many aspects of the Litigation on behalf of Plaintiff while the matter was pending. A summary of Class Counsel's work in this matter is set forth in the Declaration of Patrick M. Ryan and Jason A. Ryan on behalf of Class Counsel ("Joint Class Counsel Declaration"), filed contemporaneously herewith.

4. I believe, and numerous federal and state courts in Oklahoma have determined, that a 40% contingent fee is within the appropriate market rate range for cases of this nature. I am personally experienced and qualified to offer evidence regarding what I believe are reasonable attorney rates in Oklahoma multi-state class actions. Among other things, my qualifications are as follows: I have been practicing law for approximately forty-three (43) years in Oklahoma state and federal courts. I am a member of the American College of Trial Lawyers. I sat as a United States District Court Judge for approximately seven (7) years, serving as the Chief Judge in the Eastern District of Oklahoma for approximately five (5) years. During the time I was a United States District Judge, I served on the Tenth Circuit Court of Appeals by designation. I also served as local counsel for plaintiff in the matter of *CompSource Oklahoma v. BNY Mellon* in the United States District Court for the Eastern District of Oklahoma. I also served as lead counsel for the State of Oklahoma in its action against the opioid manufacturers. Through this experience, I have become experienced and familiar with the market rates for attorneys operating on various fee structures

including contingent fees where expense are advanced and hourly fees where expenses are not advanced.

5. The information in this declaration regarding WB's time is based upon a review of WB records maintained by WB in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in the Litigation. This declaration was prepared by me, with the assistance of staff members at WB, and reviewed in detailed by me before signing.

6. As discussed in the Joint Class Counsel Declaration, as well as the Declaration of Class Representative, Gene Hacker, we were retained by Mr. Hacker to prosecute this case on a fully contingent basis. Class Representative negotiated, and we agreed, to prosecute this case on a fully contingent basis with a fee arrangement of 40% of any recovery obtained for Mr. Hacker and/or the putative class. Based upon my experience, knowledge, education, research, and professional qualifications, I believe that the 40% contingent fee we agreed to with Mr. Hacker is the market rate for this case and is fair and reasonable.

7. Further, in the present case, Defendants and Class Representative have contractually agreed that all fee determinations shall be governed by federal common law. Federal common law, in the Tenth Circuit, clearly states that use of the percentage of the recovery is the preferred method. Thus, the contractually agreed 40% contingent fee amount is the amount under which the Class Representative and Class Counsel worked at all times and that is the amount by which the reasonableness of the fee request should be considered.

8. I have been provided with access to material information supporting the fee request that is the subject of this declaration and have reviewed such materials. As a result of this review, reductions were made in the exercise of "billing judgment." As a result of the review and

adjustments made, I believe the amount of time set forth below is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of the Litigation.

9. The total number of hours expended by WB in this Litigation, from investigation through the date of this declaration, is 19.2 hours. The total lodestar for WB for this time period is \$16,800.00 in connection with this Litigation.

10. In my judgment, the number of hours I expended and the services I performed were reasonable and expended for the benefit of the Settlement Class in this Litigation. I believe this total number of hours is a conservative and understated amount because, among other things, all of our attorneys work extensively on many matters in a collaborative context where it is not possible to record every hour worked and/or not possible to reduce any given hour to only one case. Therefore, I believe my firm worked many more hours on this case than the hours listed above.

11. Additionally, WB has performed a reasonable and good faith estimate of its anticipated hours and services that it will devote to this Litigation through the Final Fairness Hearing, currently scheduled for March 23, 2020. The total number of hours WB anticipates devoting to this Litigation during this time period is 6.5 hours. The total estimated lodestar for WB for this time period is \$5,687.50 consisting entirely of attorney time.

12. WB lodestar figures are based on its billing rates, which do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the billing rates.

13. Because WB is a relatively small law firm, WB was necessarily precluded from working on other cases and pursuing otherwise available opportunities due to its dedication of time and effort to the prosecution of this Litigation against Defendant. This case was filed in 2018, and

has required the devotion of time, manpower, and resources from Class Counsel over that period. Further, WB has spent time and effort in negotiating and preparing the necessary paperwork related to the Settlement with Defendant. Moreover, numerous time limitations have been imposed on WB throughout the course of this Litigation. The schedules of the court, experts, and client were accommodated on a regular basis by WB.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: February 18, 2020.



Michael Burrage
WHITTEN BURRAGE