UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HENRY SEELIGSON, JOHN M. SEELIGSON, SUZANNE SEELIGSON NASH, and SHERRI PILCHER, Individually And On Behalf Of All Others Similarly Situated, *Plaintiffs*, vs. DEVON ENERGY PRODUCTION COMPANY, L.P., *Defendant*.	Case No. 3:16-cv-00082-K

DECLARATION OF JOSEPH H. MELTZER IN SUPPORT OF: (A) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (B) CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO NAMED PLAINTIFFS

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I, Joseph H. Meltzer, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner in the law firm of Kessler Topaz Meltzer & Check, LLP ("KTMC") and, together with Wick Phillips Gould & Martin, LLP, Seidel Law Firm, P.C., and Mattingly & Roselius, PLLC ("Class Counsel"),[1] represent Plaintiffs Henry Seeligson, John M. Seeligson, Suzanne Seeligson Nash, and Sherri Pilcher ("Plaintiffs" or "Named Plaintiffs") and the certified Class. I have personal knowledge of the matters set forth herein based on my active participation in the prosecution and settlement of the above-captioned class action (the "Litigation" or "Action").

2. I respectfully submit this Declaration in support of: (a) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (the "Final Approval Motion"); and (b) Class Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to Named Plaintiffs (the "Fee and Expense Motion").

I. INTRODUCTION

3. The proposed Settlement, if approved by the Court, will resolve all claims in this Action in exchange for a cash payment of $28 million from Defendant Devon Energy Production Company, L.P. ("Defendant" or "DEPCO") for the benefit of the Class.[2] The Settlement was

[1] All capitalized terms that are not defined herein have the same meanings ascribed to them in the Stipulation and Agreement of Settlement dated December 30, 2020 (the "Stipulation"). Exhibit A to the Appendix [App. 1-40].

[2] The Court-certified Class consists of: All persons or entities who, between January 1, 2008 and February 28, 2014, (i) are or were royalty owners in Texas wells producing natural gas that was processed through the Bridgeport Plant by DGS; (ii) received royalties from DEPCO on such gas; (iii) had oil and gas leases that were on one of the following forms: Producers 88-198(R) Texas Paid-Up (2/93); MEC 198 (Rev. 5/77); Producers 88 (Rev. 10-70 PAS) 310; Producers 88 Revised 1-53—(With Pooling Provision); Producers 88 (2-53) With 640 Acres Pooling Provision; Producers 88 (3-54) With 640 Acres Pooling Provision; Producers 88 (4-76) Revised Paid Up with 640 Acres Pooling Provision; Producers 88 (7-69) With 640 Acres Pooling Provision; and Producers 88 (Rev. 3-42) With 40 Acres Pooling Provision (the "Class Lease Forms"); and (iv)

achieved after six years of highly contested litigation, during which time Class Counsel expended significant efforts and resources on behalf of the Class. These efforts included: (i) a thorough investigation of the claims against Defendant; (ii) briefing on a motion to dismiss and motions for class certification; (iii) several rounds of briefing before the Fifth Circuit Court of Appeals ("Fifth Circuit"); (iv) preparing for and conducting an evidentiary hearing on the motion for class certification; (v) extensive fact and expert discovery, including depositions of DEPCO employees and two Named Plaintiffs, analysis of over 125,010 pages of documents produced by Defendant and third parties, and consultation with various experts; and (vi) arm's-length negotiations between Named Plaintiffs and Defendant (the "Parties" or "Settling Parties") under the supervision of retired United States District Chief Judge David Folsom, a highly-experienced mediator.

4. The Settlement was the product of a day-long mediation over videoconference with Judge Folsom, after which an agreement in principle was reached to resolve this Action for $28 million in cash.

5. Class Counsel respectfully submit that the proposed Settlement—achieved following an immense litigation effort undertaken in the face of vigorous opposition and substantial risks—represents an excellent result for Plaintiffs and the Class in light of the risks and challenges of continued litigation and trial. Notably, the Settlement Amount represents close to a 50% recovery of the Class's alleged damages and likely verdict amount (i.e., approximately $58.6 million) based on estimates provided to Plaintiffs by their damages experts.

6. The gravamen of this Action is that DEPCO underpaid millions of dollars in royalties for processing gas extracted from Texas wells at the Bridgeport Gas Processing Plant

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had one or more of the oil and gas leases listed on the "Class Lease List." Certain persons and entities are excluded from the Class by definition. *See* Stipulation, § II(1).

("Bridgeport Plant") owned by DEPCO's affiliate, Devon Gas Services ("DGS") from January 1, 2008 through February 28, 2014 in violation of Plaintiffs' and Class Members' leases and the implied duty to market under Texas law.

7. Proving these claims was no simple matter. Throughout the course of this Action, DEPCO vehemently denied, and continues to deny, liability, that its conduct was in any way wrongful and, ultimately, that the royalty owners were entitled to any recovery at all. According to Defendant, DEPCO did not breach any express obligation in Plaintiffs' or Class Members' leases, improperly deduct any post-production costs from Plaintiffs' royalties, or breach its implied duty to market.

8. As a consequence, Plaintiffs and Class Counsel faced substantial risks and challenges in developing the factual record necessary to overcome Defendant's defenses to Plaintiffs' claims. If Defendant had succeeded on any one of the multitude of defenses it pursued (or succeeded on one of its defenses at summary judgment or trial), the Class's recovery could have been substantially reduced or even zero.

9. As such, Class Counsel had to devote substantial time and resources to the prosecution of this Action. For example, Class Counsel had to obtain, analyze, and digest a vast number of documents from Defendant and third parties in order to educate themselves on the complexities of Devon's operations in the natural gas industry and its calculation of related royalties.

10. In total, Defendant as well as various third parties subpoenaed by Plaintiffs and Class Counsel, including Defendant's affiliates, Devon Energy Co., Devon Gas Services, and Enlink Midstream Holdings, produced over 125,010 pages of documents. The review and analysis of this extensive document production was critically important to the ability of Class Counsel to

effectively prosecute this Action. Thus, Class Counsel had to assemble a significant team of attorneys to assist in completing this task.

11. Deposition testimony was likewise important both from a fact-gathering perspective as well as in terms of fleshing out the Parties' respective positions. In that regard, Class Counsel prepared for, defended, took, or otherwise participated in 13 depositions, including depositions of Named Plaintiffs, DEPCO employees, and the Parties' experts. These depositions were conducted primarily in Oklahoma and Texas.

12. Class Counsel also retained and worked extensively with multiple subject-matter experts, including energy and natural gas industry experts and damages experts.

13. This Litigation was made even more challenging by Defendant's multiple appeals to the Fifth Circuit with respect to Plaintiffs' motion for class certification, which required several rounds of briefing. Plaintiffs were ultimately successful. This Court granted Plaintiffs' renewed Motion for Class Certification and Defendant's second 23(f) appeal was denied by the Fifth Circuit. Shortly thereafter, the Parties participated in mediation and were able to resolve this dispute.

14. Given this effort, by the time the Parties reached an agreement in principle to resolve this matter in October 2020, Class Counsel were well aware of the merits of the proposed Settlement and fully understood the strengths and risks of the claims asserted in the Action.

15. To be sure, had the Action continued, Plaintiffs and Class Counsel faced significant risks to obtaining a recovery larger than the Settlement Amount. Indeed, at the time the Settlement was reached, Defendant was due to file a motion for summary judgment or other dispositive motion. An adverse ruling for Plaintiffs at summary judgment could have result in a smaller recovery for the Class—*or no recovery at all*. In addition, Plaintiffs also anticipated presenting

expert testimony on multiple issues at trial, which would have been subject to *Daubert* motions before being able to be admitted. In light of these risks (and others) as well as the considerable cost and delay of taking a complex case, such as this, through summary judgment, trial, and the inevitable post-trial appeals, Plaintiffs and Class Counsel believe that the $28 million Settlement is an excellent result for the Class.

16. Class Counsel are proud of the hard-fought result obtained in this Action. For all of the foregoing reasons and those discussed below and in the accompany memoranda, Plaintiffs and Class Counsel strongly endorse the Settlement and believe that it provides an excellent recovery for the Class.[3]

17. Set forth below is a description of the history of this Action, a summary of the efforts of Class Counsel in achieving the proposed Settlement, and a description of the risks and challenges posed by continued litigation. Also set forth below are the reasons why the Settlement and Plan of Allocation should be finally approved as fair, reasonable, and adequate, and why Class Counsel's request for attorneys' fees, reimbursement of Litigation Expenses, and Service Awards to the Named Plaintiffs should be granted in full.

II. HISTORY AND PROSECUTION OF THE ACTION

A. The *Shoop* Action

18. In 2010, Glenn Paul Shoop and several other DEPCO royalty owners sued DEPCO in the Northern District of Texas challenging the propriety of DEPCO's royalty payments made under the Gas Purchasing and Processing Agreement ("GPPA"). *See Shoop, et al v. Devon Energy*

[3] In addition to this Declaration, Plaintiffs and Class Counsel are submitting: (i) the Memorandum in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation ("Settlement Memorandum"); and (ii) the Memorandum in Support of Class Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to Named Plaintiffs ("Fee Memorandum").

Prod. Co., L.P., No. 3:10-cv-00650-P (N.D. Tex.) ("*Shoop*"). *Shoop* is instructive because the claims asserted therein against DEPCO are similar to the claims asserted in this Action by Plaintiffs and the Class. In *Shoop*, the parties filed competing motions for summary judgment, and the Honorable Jorge A. Solis entered an Order finding, among other things:

- "[DEPCO] may have agreed to certain terms in order to benefit itself and other Devon affiliates. This creates a fact issue related to self-dealing. Importantly, while [DEPCO] argues that no other purchaser would or even could pay a higher price than DGS, this contention does not address its actual conduct or the suspect peripheral circumstances surrounding the GPPA arrangement. . . . [DEPCO] cannot resolve or tie up the fact issues surrounding this request for summary judgment that implicates *both* self-dealing and negligence." *See Shoop* Order, p. 29 (emphasis in original).

- "[A] fact issue remains that [DEPCO] may have violated its implied covenant to market." *See Shoop* Order, p. 28.

- "[T]here is a genuine issue of material fact that the GPPA was not discoverable and [DEPCO] attempted to conceal how the royalty calculations were established." *See Shoop* Order, p. 40.

19. In June 2013, a few months after Judge Solis entered the Order, the parties in *Shoop* reached a confidential settlement.

20. Thereafter, in March 2014, Devon's midstream assets in the Barnett Shale (including the Bridgeport Plant) were transferred to EnLink Midstream Holdings ("EnLink"). In connection with this transfer to EnLink, the GPPA was replaced by a March 1, 2014 Gas Purchase and Sales Contract between DEPCO and DGS ("GPSC"). The prices established under the new GPSC (as opposed to the old GPPA) are equal to 100% of the value of the residue gas and natural gas liquids ("NGLs") produced from the Class wells. The processing fee ultimately passed through to royalty owners under the new GPSC is $0.41/MMBtu. The GPSC processing fee borne by royalty owners is significantly lower than the processing fee passed through to royalty owners under the old GPPA, which amounted to $0.99/MMBtu, on average, from January 2008 through

February 2014. And during the relevant period, Plaintiffs have evidence of processing fees as low as 0.08/MMBtu (based on tariffs filed by DGS) and processing fees charged to another company (EnerVest) of 10% (versus the 17.5% that burdened Plaintiffs and the Class).

B. Commencement of the Action and Summary of Plaintiffs' Claims

21. This Litigation commenced on October 24, 2014, with the filing of the complaint in *Seeligson v. Devon Energy Production Co., L.P.*, No. 2:14-cv-00996, in the United States District Court for the Eastern District of Texas. ECF No. 1. The Action alleged that from January 1, 2008 through the date of the filing, DEPCO breached its express and implied obligations to Plaintiffs and the Class by systematically and intentionally underpaying royalties owed to Plaintiffs and other Class Members.

22. In 2014, Plaintiffs and Class Counsel began analyzing and researching the claims at issue in the Litigation. In addition to factual research, Class Counsel thoroughly researched Fifth Circuit law applicable to the claims asserted and Defendant's counterclaims and potential defenses thereto.

C. The First Amended Complaint and Defendant's Motion to Dismiss

23. Plaintiffs filed the operative complaint, the First Amended Class Action Complaint (the "FAC"), on June 10, 2015. ECF No. 49. The FAC asserted a breach of contract claim and breach of implied covenant to market claim against Defendant. Plaintiffs alleged Defendant improperly calculated and intentionally underpaid millions of dollars in royalties owed to Plaintiffs and lessors for the extraction of gas from Texas wells that was processed through the Bridgeport Plant from January 1, 2008 through February 28, 2014 (the "Class Period").

24. The FAC also alleged that DEPCO and DGS were parties to the GPPA, which according to its terms established a pricing scheme where DEPCO ultimately received 82.5% of the weighted average prices of the residue gas and NGLs processed by DGS, while DGS retained

a fee of 17.5%. DEPCO did not include this pricing scheme in royalty statements to Plaintiffs and Plaintiffs were unable to determine how their royalty was calculated by DEPCO. ECF No. 49.

25. As discussed below, throughout the Litigation, Defendant vehemently denied these allegations or that they entitled the Class to recover damages.

26. On July 21, 2015, Defendant filed a Motion to Dismiss Plaintiffs' FAC under seal. ECF No. 56. In its Motion to Dismiss, Defendant denied any wrongdoing and argued that Plaintiffs' allegations failed to state a claim of breach of implied covenant of market. Defendant also claimed that Plaintiffs did not have standing to dispute DEPCO's and DGS's performance of the GPPA and transfer pricing guidelines. Defendant also argued that Plaintiffs' claims were barred by the statute of limitations.

27. On the same day, Defendant also answered the FAC and denied the claims. ECF Nos. 57-58.

D. The Parties' Discovery Efforts and Plaintiffs' Motion for Class Certification

28. The Parties engaged in significant discovery during the course of the Action, including voluntary Federal Rule of Civil Procedure 26(a) disclosures, review of the productions by DEPCO and third parties, including DGS and EnLink, of over 125,010 pages of documents, written discovery requests, depositions of DEPCO employees and two of the Named Plaintiffs, and extensive expert discovery. Below is a chart including the depositions taken and defended by Class Counsel:

Deponent	Role	Date	Location
Dodd, Gregory	DEPCO Representative	09/09/2015	Oklahoma City, Oklahoma
Harper, Jr., W.R.	Expert (Plaintiffs)	07/30/2015	Dallas, Texas
Kelly, Debbie	DEPCO Representative	09/10/2015	Oklahoma City, Oklahoma
Kidd, Jane	Expert (Plaintiffs)	06/04/2019	Houston, Texas
Pearson, Kyle	Expert (Defendant)	09/18/2015	Dallas, Texas
Pearson, Kyle	Expert (Defendant)	07/02/2019	Dallas, Texas

Reineke, Daniel	Expert (Plaintiffs)	11/27/2015	Oklahoma City, Oklahoma
Reineke, Daniel	Expert (Plaintiffs)	05/30/2019	Oklahoma City, Oklahoma
Seeligson, Henry	Plaintiff	07/23/2015	Dallas, Texas
Seeligson, John	Plaintiff	07/23/2015	Dallas, Texas
Smith, S. Timothy	Expert (Defendant)	09/15/2015	Dallas, Texas
Tannehill, Carter	Expert (Plaintiffs)	07/20/2015	Austin, Texas
Terry, Kris	Expert (Defendant)	09/17/2015	Dallas, Texas

29. While discovery efforts were ongoing, Plaintiffs moved to certify the Action as a class action on June 11, 2015. ECF No. 51.

E. Transfer from the Eastern District of Texas to the Northern District of Texas, Denial of Defendant's Motion to Dismiss the FAC, and Denial of Plaintiffs' Motion for Class Certification

30. This Action was transferred to the Northern District of Texas on January 12, 2016. ECF No. 114. Prior to the transfer, the Parties fully briefed Defendant's Motion to Dismiss the FAC (ECF No. 56), Plaintiffs' Motion for Class Certification (ECF No. 51), Plaintiffs' Motion to Compel DEPCO to Produce the *Shoop* Settlement Agreement and Related Lease Amendments (ECF No. 70), as well as several opposed and unopposed procedural motions. As noted above, Defendant also answered Plaintiffs' FAC, denied the claims, and counterclaimed. ECF Nos. 57, 58, and 238.

31. On February 4, 2016, this Court denied Defendant's Motion to Dismiss the FAC in its entirety. ECF No. 126. Shortly thereafter, on February 11, 2016, this Court denied Plaintiffs' Motion for Class Certification based on an incomplete record from the transferring court. ECF No. 139.

F. Grant of Plaintiffs' Motion for Reconsideration of Order Denying Class Certification and Defendant's Appeals

32. On February 25, 2016, Plaintiffs filed a Motion to Reconsider Order Denying Class Certification and Motion for Leave to File Second Class Certification Motion (ECF No. 151)

("Motion to Reconsider"), and concurrently filed a Motion for Leave to File Additional Evidence in Support of Motion for Class Certification (ECF No. 154). Defendant responded to the motions on March 24, 2016. ECF No. 165.

33. The Court held a hearing on May 4, 2016 on Plaintiffs' Motion to Reconsider. ECF No. 170. After careful review, the Court granted Plaintiffs' Motion to Reconsider and issued an opinion certifying the Class and appointing Plaintiffs as Class Representatives on January 6, 2017 ("Class Certification Ruling"). ECF No. 194.

34. Defendant appealed the Court's Order Granting Class Certification to the Fifth Circuit.

G. Defendant's Interlocutory Appeal and Plaintiffs' Success before the Fifth Circuit

35. Defendant received permission to appeal the Class Certification Ruling pursuant to Federal Rule of Civil Procedure 23(f) on March 20, 2017. ECF No. 198. *See also Seeligson v. Devon Energy Prod. Co., L.P.*, No. 17-10320 (5th Cir.).

36. This Court stayed the Action pending the appeal. ECF No. 200.

37. Defendant/Appellant filed its brief on June 27, 2017. Document No. 00514051243. After receiving a short extension, Plaintiffs filed their response brief on August 11, 2017. Document No. 00514113529. Defendant submitted its reply brief on September 8, 2017. Document No. 00514148956.

38. On appeal, Defendant challenged the Court's Class Certification Ruling on commonality and predominance only, and did not challenge the Court's decisions regarding numerosity, typicality, adequacy of representation, or superiority.

39. Oral argument on Defendant's appeal was held before a Fifth Circuit three-judge panel in New Orleans, Louisiana on March 7, 2018. Mr. David J. Drez, III of Wick Phillips Gould & Martin, LLP argued on behalf of Plaintiffs.

40. On October 16, 2018, the Fifth Circuit issued an unpublished opinion, reversing and remanding on a narrow predominance issue, and largely affirming the lower court's Class Certification Ruling. *See* Opinion, No. 17-10320 (5th Cir. Oct. 16, 2018).

41. Defendant petitioned for a Panel Rehearing and Rehearing *En Banc* on October 30, 2018. Plaintiffs filed a response in opposition on November 19, 2018.

42. Both Defendant's petitions were denied, and the Fifth Circuit substituted a new, unanimous, unpublished opinion on February 20, 2019. *See* Opinion, No. 17-10320 (5th Cir. Feb. 20, 2019).

H. The Action Is Remanded to the District Court and Plaintiffs File Supplemental Class Certification Briefing

43. On March 22, 2019, Plaintiffs submitted a Motion for Entry of Scheduling Order for Supplemental Class Certification Proceedings, moving the Court in agreement with Defendant to schedule supplemental briefing in accordance with the Fifth Circuit's opinion. ECF No. 204.

44. In accordance with the Court's Scheduling Order (ECF No. 205), Plaintiffs filed supplemental briefing in support of their second Motion to Certify the Class on May 7, 2019. ECF No. 209.

45. After full briefing by the Parties, the Court once again granted Plaintiffs' Motion to Certify the Class on February 11, 2020 (the "Second Class Certification Ruling"). ECF No. 220.

I. Defendant Requests Rule 23(f) Appeal of the Second Class Certification Ruling and Is Denied; The Action Is Set for Trial

46. After the Court's Second Class Certification Ruling, Defendant once again requested an appeal to the Fifth Circuit pursuant to Rule 23(f). On May 15, 2020, the Fifth Circuit denied Defendant's request for interlocutory appeal.

47. On the same day, the Court entered an Order Requiring Scheduling Conference and Report for Contents of Scheduling Order. ECF No. 222.

48. The Parties filed a Joint Status Report on June 4, 2020, outlining their claims and defenses and proposed schedule for filing dispositive motions and trial. ECF No. 225.

49. On June 12, 2020, the Court entered a Scheduling Order, ordering, *inter alia*, that the Parties complete mediation by no later than October 9, 2020, and file a Mediation Report by no later than October 16, 2020. ECF No. 226.

50. The Scheduling Order also scheduled this Action for a jury trial beginning on December 6, 2021. *Id.*

J. Defendant Files a Third Amended Answer and Counterclaim and the Parties Reach Settlement

51. The Parties agreed to mediate before retired Judge David Folsom of Jackson Walker, LLP and informed the Court on July 13, 2020. ECF No. 230.

52. On August 18, 2020, Defendant filed a Third Amended Answer and Counterclaim. ECF No. 238. Plaintiffs filed a response on September 1, 2020, denying the counterclaim. ECF No. 241.

53. As detailed below, the Parties began settlement negotiations shortly thereafter, and came to an agreement in principle after a one-day, videoconference mediation.

III. THE SETTLEMENT NEGOTIATIONS AND TERMS OF THE SETTLEMENT

54. The Scheduling Order entered by the Court on June 12, 2020 (ECF No. 226) included a deadline of October 9, 2020 for the Parties to complete mediation.

55. As noted above, on July 13, 2020, the Parties submitted a Joint Designation of Mediator, agreeing to mediate before Judge Folsom. ECF No. 230. The Parties participated in a mediation session via Zoom video conference with Judge Folsom on October 7, 2020. In advance of that session, Class Counsel prepared and submitted a detailed mediation statement outlining the strengths of Plaintiffs' claims. Defendant likewise submitted a detailed mediation statement highlighting the weaknesses of Plaintiffs' claims and underscoring the significant risks inherent in the Action. The Parties then held a full-day, in-person mediation session with Judge Folsom. The Parties were able to resolve the Action after this mediation, and subsequently submitted a Joint Mediation Report (ECF No. 242), informing the Court that the Parties had reached an agreement in principle.

56. Following their agreement in principle, Class Counsel began working on various documents to be submitted with Plaintiffs' motion for preliminary approval of the Settlement. Over the following weeks, counsel for the Parties negotiated the specific terms of the Settlement, including the Stipulation (and the exhibits thereto) as well as a confidential supplemental agreement regarding requests for exclusion ("Supplemental Agreement"),[4] and exchanged multiple drafts of these documents. During this time, Class Counsel worked with Plaintiffs' damages experts to develop the proposed Plan of Allocation. Class Counsel also worked closely

[4] The Supplemental Agreement sets forth the conditions under which Defendant can exercise a right to withdraw from the Settlement in the event that requests for exclusion—i.e. opt-outs—exceed certain agreed-upon conditions stated in the Supplemental Agreement. Pursuant to its terms, the Supplemental Agreement is not being made public, but may be submitted to the Court in camera or under seal.

with the then-proposed Settlement Administrator, Heffler Claims Group, now Kroll Settlement Administration ("Kroll"), on the best means to provide notice of the Settlement to the Class.

57. Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement on December 30, 2020. ECF Nos. 247-49. Plaintiffs' motion was granted by the Court on January 14, 2021. ECF No. 251.

58. Pursuant to the terms of the Stipulation, Defendant has made a cash payment of $28 million into escrow for the benefit of the Class. Upon the Settlement becoming effective, the Parties will provide mutual releases, as defined in the Stipulation.

IV. THE SIGNIFICANT RISKS OF CONTINUED LITIGATION

59. The proposed Settlement provides a benefit to the Class in the form of a $28 million cash payment. The merits of the $28 million Settlement must be considered in the context of the risks presented by continued litigation of the Action, including, as discussed below, the risks of establishing Defendant's liability and damages. Having considered the risks of continued litigation, and based on all proceedings and discovery performed in the Action, it is the informed judgment of Plaintiffs and Class Counsel that the proposed Settlement is fair, reasonable, and adequate, and in the best interest of the Class.

60. As summarized below, Class Counsel respectfully submit that they assumed significant risk in prosecuting this Action on an entirely contingent basis. From the time that Class Counsel agreed to take on the case, settlement was by no means inevitable and certainly not at the high level ultimately achieved. Further, due to the length of the litigation, Plaintiffs also faced significant risk that key witnesses could experience fading memories or be unavailable at trial.

A. Plaintiffs Faced a Number of Substantial Risks in Proving Defendant's Liability and Damages

61. As noted above, Plaintiffs prevailed at the motion to dismiss stage on their claims asserted against Defendant. Plaintiffs also prevailed on two rounds of class certification briefing and several rounds of briefing at the appellate level. As the case continued through discovery, Plaintiffs and the Class faced a substantial risk that the Court would find that they had failed to establish liability or damages as a matter of law in adjudicating Defendant's summary judgment motion. In addition, if the Court were to permit the claims to proceed to trial, Plaintiffs and the Class faced a substantial risk that a jury would find against Plaintiffs or that, even if Plaintiffs prevailed at trial, the verdict would be overturned by an appellate court.

62. While, again, Plaintiffs believed they had legitimate responses to Defendant's arguments and were committed to litigating this case through trial and beyond, Plaintiffs recognize that it was far from certain that a trier of fact would accept their view, particularly given the complexities of the issues involved in the Action, which would require expert testimony from each side.

63. In sum, the Parties were deeply divided on several key factual issues central to the Action, and there was no guarantee Plaintiffs' position on these issues would prevail at either summary judgment or at trial. If Defendant had succeeded on any of its substantial defenses, Plaintiffs and the Class would have recovered nothing at all or, at best, would likely have recovered far less than the Settlement Amount.

B. Plaintiffs Faced Additional Risk Due to Defendant's Counterclaim

64. On August 18, 2020, included in Defendant's Third Amended Answer, Defendant asserted its First Amended Counterclaim against Plaintiffs, alleging that Plaintiffs had actually

been paid more royalties than the amounts due under Texas law and Plaintiffs' leases. ECF No. 238.

65. Although Plaintiffs were confident that Defendant's overpayment counterclaim was without merit, if upheld, the counterclaim also raised the potential to completely diminish Plaintiffs' recovery as an offset.

C. Plaintiffs Faced Appellate Risk

66. As previously noted, even if Plaintiffs prevailed at summary judgment and trial, Defendant would likely have appealed any judgment in favor of the Class—leading to many additional months, if not years, of further litigation. On appeal, Defendant likely would have renewed their host of arguments as to why Plaintiffs had failed to establish liability and damages, thereby exposing Plaintiffs to the risk of having any favorable judgment reversed or reduced below the Settlement Amount. *See, e.g.*, *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant). Defendant would likely challenge class certification post-judgment as well, creating another significant risk for the Class on appeal.

V. PLAINTIFFS' COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE

67. The Court's January 14, 2021 Preliminary Approval Order directed the Court-approved Settlement Administrator, Kroll, to: (i) disseminate the Summary Notice, by first-class mail and/or email, to each royalty owner identified in the information provided by Defendants pursuant to the Stipulation or who may be identified with reasonable effort; and (ii) post the Long-Form Class Notice on a website developed for the Settlement. ECF No. 254, at ¶ 4. Per the Notice Plan set forth in the Stipulation, Kroll was also directed to publish the Summary Notice, which it did, in the *Denton Record*, the *Fort Worth Star*, the *Dallas Morning News*, and the *Wise County*

Messenger. *See* Declaration of James Prutsman ("Kroll Decl."), at ¶¶ 7-11 [App. 191-192]. The Preliminary Approval Order set a deadline of March 29, 2021 to request exclusion from the Class, a May 11, 2021 deadline for Class Members to submit objections to the Settlement, the Plan of Allocation and/or Class Counsel's request for attorneys' fees, and set the final Fairness Hearing for June 15, 2021, at 10:00 a.m. via videoconference, or another method later selected and ordered by the Court. ECF No. 254, at ¶¶ 2, 8, and 11.

68. The mailed and published Summary Notice contains important information concerning the Settlement and directs recipients to the Settlement Website for additional information regarding the Settlement, including the Long-Form Class Notice and Plan of Allocation. The Long-Form Class Notice contains, among other things, a description of the Action, the specific terms of the Settlement, Class Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed one-third of the Settlement Fund, reimbursement or payment of Litigation Expenses incurred by Class Counsel, and Service Awards to Named Plaintiffs, and Class Members' rights to object to any aspect of the Settlement or exclude themselves from the Class. The notices also advise Class Members that they do not need to take any action to remain part of the Class and, if eligible, receive a payment from the Settlement (unless they owned a royalty interest in wells producing natural gas processed at the Bridgeport Plant, and transferred their interest).

69. In accordance with the Preliminary Approval Order, Kroll began disseminating the Summary Notice to Class Members by first-class mail and/or e-mail on February 10, 2021. Kroll Decl., at ¶ 10 [App. 191]. As of April 23, 2021, Kroll has disseminated a total of 7,836 Summary Notices. *Id.* ¶ 10 [App. 191].

70. Kroll also established and currently maintains the dedicated Settlement Website, www.SeeligsonSettlement.com, to provide information concerning the Settlement and access to downloadable copies of the Long-Form Class Notice and Plan of Allocation, as well as copies of other relevant documents, including the Stipulation and Preliminary Approval Order. Kroll Decl., ¶ 7 [App. 191]. Additionally, Kroll maintains a toll-free telephone number and interactive voice-response system to respond to inquiries regarding the Settlement. *Id.* ¶ 9 [App. 191]. Class Members with questions regarding the Settlement can also contact Kroll by sending an e-mail to info@SeeligsonSettlement.com. *Id.* ¶ 8. [App. 191]

71. As noted above and set forth in the notices, the deadline for Class Members to file objections to the Settlement, the Plan of Allocation and/or Class Counsel's request for attorneys' fees and expenses is May 11, 2021. To date, no requests for exclusion from the Class (*see* Kroll Decl. ¶ 14 [App. 192]) and no objections to any aspect of the Settlement, Plan of Allocation, or Class Counsel's request for attorneys' fees and expenses have been received. Class Counsel will file reply papers on or before June 8, 2021 that will address any objections that may be received after this submission.

VI. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

72. Pursuant to the Preliminary Approval Order, and as set forth in the Summary Notice and Long Form Class Notice, eligible Class Members will receive a distribution from the Net Settlement Fund (i.e., the Gross Settlement Fund less (a) Plaintiffs' Counsel's attorneys' fees and expenses awarded by the Court, (b) any Service Awards awarded by the Court, (c) all of the Administration Expenses, (d) any other costs and expenses that the Court orders to be deducted

from the Gross Settlement Fund; and (e) the amount of money attributable to the interests of Putative Class Members who have timely and properly opted out of the Class).[5]

73. The Initial Plan of Allocation proposed by Plaintiffs and Class Counsel (the "Plan of Allocation" or "Plan") is posted on the Settlement Website. If the Settlement is approved, and following the Effective Date, Class Counsel will file a Final Plan of Allocation with the Court, which will reflect the actual amounts paid to each Class Member.

74. Class Counsel developed the Plan of Allocation in consultation with Plaintiffs' damages experts—Jane Kidd and James Gray. Under the Plan, allocations to Class Members will be made based on the royalty payments made by DEPCO during the Class Period. To this end, the Plan relies on owner-side check stub data provided by DEPCO, including owner gross values paid and/or suspended for production months January 2008 through February 2014 (i.e., the duration of the Class Period).

75. The Net Settlement Fund will be allocated to Class Members in four steps. *First*, there will be an allocation to the wells—i.e., the Net Settlement Fund will be proportionately allocated to each well by the ratio of (1) the sum of the Class Members' gross value for each well for production months from January 2008 through February 2014, divided by (2) the sum of the total Class Members' gross value for all wells for production months from January 2008 through February 2014. *Second*, there will be an allocation to the Class Members in each well—i.e., each

[5] As noted above, Class Members do not need to take any additional action to be included in the distribution of the Net Settlement Fund. The exception to this is if the Class Member no longer owns their royalty interest. In that case, the Class Member must have notified Kroll and advised whether they retained any rights to the proceeds of the Action by no later than March 29, 2021. Settlement proceeds for any Class Members who no longer owns their royalty interest and retains rights to proceeds of the Action and fails to notify Kroll will be paid to the royalty owner as reflected in DEPCO's pay histories for such interest as of the February 2014 production month, or last production month in time prior thereto.

well's allocated amount will be allocated among the Class Members that held an interest in the respective well's last production month within the Class Period. *Third*, Class Members' allocated amounts will be aggregated and those Class Members with an allocation less than a pre-tax amount of $5.00 will not receive a check. Those amounts will be ratably re-allocated across the remaining Class Members. *Finally*, any amounts allocated to Class Members who have requested exclusion from the Class will be returned to Defendants.

76. In sum, the Plan of Allocation was designed to fairly allocate the proceeds of the Net Settlement Fund among Class Members based on the losses they suffered due to Defendant's underpaying Plaintiffs' and Class Members' royalties, and violations of Class Members' leases and the implied duty to market under Texas law. Accordingly, Class Counsel respectfully submit that the Plan is fair and reasonable and should be approved by the Court.

77. The Plan of Allocation has been posted on the Settlement Website since February 10, 2021. *See* Kroll Decl. ¶ 7 [App. 191]. The notices advise Class Members of the Plan as well as their right to object to it. As of the date of this submission, there have been no objections to the Plan.

VII. THE FEE AND LITIGATION EXPENSE APPLICATION

78. In addition to seeking final approval of the Settlement and Plan of Allocation, Class Counsel are applying to the Court for an award of attorneys' fees and Litigation Expenses.

79. Specifically, in accordance with the fee agreements entered into between Plaintiffs and Class Counsel at the outset of the Litigation, Class Counsel are applying to the Court, on behalf of all counsel representing Plaintiffs in the Action, for an award of attorneys' fees in the amount of one-third of the Settlement Fund ($9,333,332), plus interest earned at the same rate as earned by the Settlement Fund. Class Counsel also request reimbursement or payment for the Litigation Expenses incurred in connection with the prosecution and resolution of the Action in the amount

of $614,210.75. As noted, both the requested one-third fee and the reimbursement or payment of Litigation Expenses are made pursuant to agreements between Class Counsel and Plaintiffs that were reached at the outset of the Action and Plaintiffs support such request. *See* Exs. H-K [App. 296-319].

80. Class Counsel's Fee and Expense Application is fully justified given the facts of this case. Class Counsel have vigorously prosecuted this Action against DEPCO for six years. Indeed, Class Counsel have devoted substantial time and advanced the funds necessary to prosecute this case with no assurance of compensation or repayment. To date, none of the firms that have assisted in the prosecution of this Action have been paid for their efforts. Instead, their compensation has been entirely contingent upon obtaining a recovery.

81. As noted above, during the course of this Action, Class Counsel have: (i) conducted a thorough investigation into the Class's claims; (ii) drafted the detailed FAC; (iii) successfully opposed Defendant's motion to dismiss the FAC; (iv) engaged in extensive fact discovery, including the review of documents produced by Defendant and third parties and participation in 13 depositions; (v) briefed two motions for class certification, participated in an evidentiary hearing at class certification and briefed related appeals to the Fifth Circuit; (vi) consulted with various experts; and (vii) engaged in arm's-length negotiations with Defendant under the supervision of an experienced mediator, Judge Folsom. Moreover, Class Counsel will continue to perform legal work on behalf of the Class through the Fairness Hearing and beyond. Additional resources will be expended working with Kroll and damages experts to ensure the smooth progression of the distribution of the Net Settlement Fund.

82. Class Counsel are comprised of experienced plaintiffs' class action firms with decades of experiences prosecuting such complex actions. Here, Class Counsel applied their

knowledge and experience to obtain a favorable result for the Class, taking into consideration the risks of further litigation against Defendant.

83. Class Counsel's efforts against Defendant have required a substantial investment of time. Class Counsel have necessarily expended thousands of hours over more than six years of litigation, including negotiating the Settlement. As detailed below, the substantial amount of time (and resulting lodestar) devoted to this Action through April 23, 2021 clearly supports Class Counsel's fee request. Additional plaintiffs' counsel litigated the Action with Class Counsel and will receive a portion of any Court-approved fees.

84. As detailed in the accompanying individual firm declarations ("Fee Declarations"), Class Counsel have devoted over 13,500 hours to the prosecution and resolution of the Action, resulting in a lodestar of $7,990,358.25. *See* Exs. C-G [App. 212-295]. The below table summarizes the aggregate time and lodestar of the firms that have submitted detailed time submissions in connection with the Settlement.

Firm	Total Hours	Lodestar
Kessler Topaz	8,539.60	$4,516,293.25
Mattingly & Roselius	2,090.00	$1,410,750.00
Hedrick Kring	279.80	$153,490.00
Seidel Law Firm	1,975.00	1,481,250.00
Wick Phillips	663.80	$428,575.00
TOTAL	13,548.20	$7,990,358.25

85. Class Counsel also seek reimbursement or payment of the expenses that were reasonably incurred in the Action in the amount of $614,210.75. Reimbursement of such expenses was fully contingent on a successful outcome.

86. As set forth in its accompanying Fee Declarations, Class Counsel has incurred a total of $614,210.75 in out-of-pocket in connection with the Action and is seeking reimbursement of this amount from the Settlement Fund. The below chart provides a breakdown of the expense request by category. Paragraphs ¶¶ 87 to 90 below provide additional detail regarding certain of these expenses.

Expense Description	**Total**
Conference Calls	$41.58
Court Reporting	$30,736.07
Document Delivery (FedEx, Postage)	$1,049.10
Document Review/Hosting Vendor	$138,616.41
Expert	$382,029.46
Filing Fees	$1,172.00
Internal Document Reproduction (19,618 @ 10¢)	$1,961.80
Mediation	$17,370.60
Process Server	$1,335.00
Research (Case Specific)	$7,345.81
Travel, Meals & Lodging	$28,870.45
Vendor Copy Bills	$3,682.47
Expense Totals:	**$614,210.75**

87. The cost of Plaintiffs' experts and consultants (totaling $382,029.46) represents the largest component of Class Counsel's expenses, encompassing approximately 62% of the total expense request. Class Counsel worked with several experts and consultants at different stages of the Action and their assistance and expertise was crucial to the prosecution of this Action and its resolution.

88. Another large component of Class Counsel's expenses relates to document productions. To effectively and efficiently review and analyze the documents produced by Defendant and third parties in this Action, Class Counsel retained an outside vendor, Issus

Discovery LLC, to host a document database. The amount paid to Issus Discovery, $138,616.41, represents approximately 23% of Class Counsel's total expense request.

89. Class Counsel's expenses also include the costs of online research in the amount of $7,345.81. It is standard practice for attorneys to use online services to assist them in researching legal and factual issues, and indeed, courts recognize that these tools create efficiencies in litigation and ultimately save money for clients and the class. Class Counsel also paid $17,370.60 for charges related to mediation.

90. The other expenses for which Class Counsel seeks payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, travel, court fees, process servers, court reporters, document-reproduction costs, and postage and delivery services.

91. Class Counsel also seek Service Awards of $20,000 for each Named Plaintiffs (an aggregate of $80,000) for their work in representing the Class in the Action. Each of the Named Plaintiffs has been committed to pursuing the Class's claims since they became involved in the Action in October 2014. Specifically, each Named Plaintiff provided information necessary for filing the initial and FAC, reviewed pleadings, produced their own documents in response to Defendant's document requests, participated in settlement discussions with Class Counsel, and attended the class certification hearing and two Named Plaintiffs sat for depositions. *See* Exs. H-K. The efforts expended by Named Plaintiffs during the course of the Action are precisely the types of activities courts have found to support Service Awards.

92. To date, no objection to Class Counsel's request for attorneys' fees, Litigation Expenses, or Service Awards to Named Plaintiffs has been received. Any objections that may be

received will be addressed in Class Counsel's reply papers, which will be filed on or before June 8, 2021.

93. Moreover, based on the legal authorities set forth in the Fee Memorandum being filed contemporaneously herewith, we respectfully submit that Class Counsel's Fee and Expense Motion should be granted.

VIII. CONCLUSION

For the reasons set forth above, Class Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Class Counsel further submit that the requested fee in the amount of one-third of the Settlement Fund in the amount of $9,333,332 and the request for reimbursement or payment of Litigation Expenses in the amount of $614,210.75 should be approved as fair and reasonable. Class Counsel also submit that the requested Service Awards to Named Plaintiffs in the aggregate amount of $80,000 are warranted and should be approved.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 27, 2021

JOSEPH H. MELTZER

CERTIFICATE OF SERVICE

On April 27, 2021, I caused to be electronically submitted the foregoing document with the clerk of court for the U.S. District court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Joshua L. Hedrick
Joshua L. Hedrick