

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

**REPLY MEMORANDUM IN FURTHER SUPPORT OF (I) PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF
ALLOCATION; AND (II) CLASS COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES,
AND SERVICE AWARDS TO NAMED PLAINTIFFS**

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT1

II. THE FAVORABLE REACTION OF THE CLASS PROVIDES ADDITIONAL
SUPPORT FOR APPROVAL OF THE MOTIONS2

 A. The Court-Approved Notice Program2

 B. The Class’s Reaction Supports Approval of the Settlement, Plan of
 Allocation, and Class Counsel’s Request for Fees and Expenses3

III. CONCLUSION.....4

TABLE OF AUTHORITES

	Page(s)
Federal Cases	
<i>Bethea v. Sprint Commc 'ns Co.</i> , 2013 WL 228094 (S.D. Miss. Jan. 18, 2013)	4
<i>Erica P. John Fund, Inc. v. Halliburton Co.</i> , 2018 WL 1942227 (N.D. Tex. Apr. 25, 2018)	3, 4
<i>Melby v. Am. 's MHT, Inc.</i> , 2018 WL 10399004 (N.D. Tex. June 22, 2018)	4
<i>In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.</i> , 986 F. Supp. 2d 207 (E.D.N.Y. 2013)	4
<i>Schwartz v. TXU Corp.</i> , 2005 WL 3148350 (N.D. Tex. Nov. 8, 2005).....	4
<i>Turner v. Murphy Oil USA, Inc.</i> , 472 F. Supp. 2d 830 (E.D. La. 2007).....	4

Named Plaintiffs Henry Seeligson, John M. Seeligson, Suzanne Seeligson Nash, and Sherri Pilcher, on behalf of the certified Class, and Class Counsel respectfully submit this Reply Memorandum In Further Support of (i) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF No. 253); and (ii) Class Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to Named Plaintiffs (ECF No. 255) (the "Motions").¹

I. PRELIMINARY STATEMENT

Named Plaintiffs and Class Counsel are pleased to advise the Court that, following the extensive Court-approved notice campaign—including the mailing of notice to 7,836 potential Class Members, publication of notice in four local newspapers, and posting relevant information and documents on the dedicated Settlement Website—*not a single member of the Class has objected to any aspect of the Settlement, the Plan of Allocation, or the requested fees, expenses, or service awards for Named Plaintiffs*. This represents a significant endorsement by the Class of all aspects of the proposed Settlement and the fee and expense request. The Class's reaction is a further indication that the proposed Settlement, the Plan of Allocation, and the request for attorneys' fees and expenses are fair and reasonable and should be approved.

¹ Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated December 30, 2020 (the "Settlement Agreement"), attached as Ex. A [App. 1-40] to the Appendix to (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 (ECF No. 257) (the "Appendix"), or in the 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 (ECF No. 254-1) (the "Meltzer Declaration" or "Meltzer Decl.").

II. THE FAVORABLE REACTION OF THE CLASS PROVIDES ADDITIONAL SUPPORT FOR APPROVAL OF THE MOTIONS

Named Plaintiffs' and Class Counsel's opening final approval papers, filed with the Court on April 27, 2021 (ECF Nos. 253-258) ("Opening Papers"), provide comprehensive support demonstrating why the Motions should be granted in full. Plaintiffs further submit that the complete absence of any objection provides additional support for approval of the Motions.

A. The Court-Approved Notice Program

Pursuant to the Court's Preliminary Approval Order, 7,836 settlement notices were mailed to potential Class Members. *See* Supplemental Declaration of James Prutsman (the "Suppl. Kroll Decl."), filed herewith, at ¶ 2. In addition, a summary notice was published in the *Denton Record*, the *Fort Worth Star*, the *Dallas Morning News*, and the *Wise County Messenger*, and the long-form Notice, along with other relevant information and documents, were posted on the Settlement Website, www.SeeligsonSettlement.com. *See* Declaration of James Prutsman ("Kroll Decl.") (ECF No. 257), at ¶¶ 10-11 [App. 191-192].

The notices informed Class Members of the terms of the Settlement and Plan of Allocation, and that Class Counsel would apply for an award of attorneys' fees in an amount not to exceed one-third of the Settlement Fund plus Litigation Expenses. The notices also apprised Class Members of their right to object to the Settlement, the Plan of Allocation, and/or the request for fees and expenses, and that the deadline to do so was May 11, 2021. In addition, Named Plaintiffs and Class Counsel's Opening Papers—filed 14 days prior to the objection deadline—have been available on the public docket and on the Settlement Website. Suppl. Kroll Decl., ¶ 6. The Settlement Website has also been updated to inform Class Members that the Fairness Hearing scheduled for June 15, 2021 at 10:00 a.m. will be held via Zoom video conference, and that the information to access the hearing will be posted to the Settlement Website in advance of the

hearing. *Id.* As noted above, following this extensive notice program, *not a single Class Member* has objected to any aspect of the Settlement.

In addition, only 20 individuals and entities—representing *less than 0.003%* of the number of notices mailed to Class Members—have validly requested exclusion from the Class. *See id.* at ¶ 4. The Opening Papers previously reported that there were no requests for exclusion; however, following the filing of the Opening Papers and upon a routine quality assurance control audit, Kroll found timely exclusion requests that had been inadvertently overlooked. *Id.* at ¶¶ 3-4. Kroll is submitting the Supplemental Kroll Declaration, filed herewith, to explain this discrepancy. *Id.*² Contemporaneously with this filing, Plaintiffs have also submitted a revised Judgment Approving Class Action Settlement which includes a list of Class Members that timely requested exclusion from the Settlement. This revised Final Judgment is substantially identical to the previously submitted Judgment Approving Class Action Settlement (ECF No. 261-1), with the differences being that (i) the previously submitted form of judgment did not include a list of opt-outs and (ii) the paragraph denying any objections has been removed to account for the fact that no objections were filed.

B. The Class’s Reaction Supports Approval of the Settlement, Plan of Allocation, and Class Counsel’s Request for Fees and Expenses

The absence of *any* objections from Class Members strongly supports a finding that the Settlement is fair, reasonable, and adequate. *See Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018) (“Receipt of few or no objections can be viewed as

² After extensive analysis by Class Counsel and its experts, it has been determined that the requests for exclusion comprise a mere fraction of the Termination Threshold established by the Parties’ confidential Supplemental Agreement and provide no basis for termination. Nonetheless, in an abundance of caution, and because Defendant learned of the exclusion requests only last week, Defendant has asked Plaintiffs’ Counsel to advise the Court in this brief that it is not waiving any rights under the Settlement Agreement until it has had more time to conduct its own analysis of the exclusion requests.

indicative of the adequacy of the settlement.”); *Melby v. Am. ’s MHT, Inc.*, 2018 WL 10399004, at *11 (N.D. Tex. June 22, 2018) (“[O]ne indication of the fairness of a settlement is the lack of or small number of objections.”); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 853 (E.D. La. 2007) (“The absence or small number of objections may provide a helpful indication that the settlement is fair, reasonable, and adequate.”); *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *22-23 (N.D. Tex. Nov. 8, 2005) (finding, where there were eight objections, that “the overwhelming response of absent Class Members overall . . . strongly supports approval of the settlement”).

In addition, there have been no objections to the Plan of Allocation or Class Counsel’s request for attorneys’ fees and expenses, which provides additional, strong support for their approval. See *Schwartz*, 2005 WL 3148350, at *24 (finding the plan of allocation fair, reasonable, and adequate where, “[m]ost importantly, there has only been one objection to the Plan of Allocation”); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 240-41 (E.D.N.Y. 2013) (conclusion that the proposed plan of allocation was fair and reasonable was “buttressed by the . . . absence of objections from class members”); *Halliburton*, 2018 WL 1942227, at *12 (finding that “lack of objections” was “relevant in considering the reasonableness and fairness of the [fee] award”); *Bethea v. Sprint Commc’ns Co.*, 2013 WL 228094, at *5 (S.D. Miss. Jan. 18, 2013) (“The absence of objection by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.”).

Accordingly, the uniformly favorable reaction of the Class strongly supports approval of the Settlement, Plan of Allocation, and the fee and expense request.

III. CONCLUSION

For the foregoing reasons, and those set forth in their Opening Papers, Named Plaintiffs and Class Counsel respectfully request the Court approve the Settlement, the Plan of Allocation,

and the request for attorneys' fees, reimbursement of Litigation Expenses, and service awards to Named Plaintiffs.

Dated: June 8, 2021

Respectfully submitted,

/s/ Joshua L. Hedrick

HEDRICK KRING PLLC

Joshua L. Hedrick

Texas Bar No. 24061123

1700 Pacific Ave., Suite 4650

Dallas, TX 75201

Tel: (214) 880-9600

Fax: (214) 481-1844

Email: Josh@HedrickKring.com

Local Counsel for Plaintiffs and the Certified Class

WICK PHILLIPS GOULD & MARTIN, LLP

David Drez

Texas Bar No. 24007127

100 Throckmorton Street, Suite 500

Fort Worth, TX 76102

Tel: (817) 332-7788

Fax: (817) 332-7789

Email: david.drez@wickphillips.com

SEIDEL LAW FIRM, P.C.

Brad E. Seidel

Texas Bar No. 24008008

6 Hedge Lane

Austin, TX 78746

Tel: (512) 537-0903

Email: bradseidel@me.com

KESSLER TOPAZ MELTZER & CHECK, LLP

Joseph H. Meltzer (*pro hac vice*)

Pennsylvania Bar No. 80136

Melissa L. Troutner (*pro hac vice*)

Pennsylvania Bar No. 202183

280 King of Prussia Road

Radnor, PA 19087

Tel: (610) 667-7706
Fax: (610) 667-7056
Email: jmeltzer@ktmc.com
Email: mtroutner@ktmc.com

MATTINGLY & ROSELIUS, PLLC

Jack Mattingly Jr.
215 East Oak Avenue
Seminole, OK 74868
Tel: (405) 382-3333
Email: jackjr@mroklaw.com

*Class Counsel for Plaintiffs and the Certified
Class*

CERTIFICATE OF SERVICE

On June 8, 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