

**FILED ELECTRONICALLY**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF KENTUCKY**  
**SOUTHERN DIVISION AT PIKEVILLE**

APPALACHIAN LAND COMPANY,	)	
	)	
Plaintiff,	)	Civil Action No. 7:08-139-KKC
	)	
v.	)	
	)	
EQT PRODUCTION COMPANY f/k/a	)	
EQUITABLE PRODUCTION COMPANY,	)	
	)	
Defendants.	)	

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**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT, DIRECTING NOTICE TO THE CLASS,  
ENTERING OF A SCHEDULING ORDER AND SCHEDULING FAIRNESS  
HEARING**

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Plaintiff, Appalachian Land Company, individually and on behalf of the certified class, has reached a settlement with EQT Production Company f/d/a Equitable Production Company (hereafter referred to as “Defendant,” “EQT,” or “Equitable”) and herein moves for: preliminary approval of the proposed class action settlement, an order directing that notice of the proposed settlement be sent to the putative class, an order setting the deadlines for filing opt-out forms and objections to the settlement, and the scheduling of a fairness hearing on the proposed settlement. Support for this Motion is included in the attached Brief.

Dated: August 12, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 12<sup>th</sup> day of August 2019, a true and complete copy of the foregoing Motion was served to the following:

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EQT PRODUCTION COMPANY f/k/a	)	
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**BRIEF IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, DIRECTING  
NOTICE TO THE CLASS, ENTERING OF A SCHEDULING ORDER AND  
SCHEDULING FAIRNESS HEARING**

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Plaintiff, Appalachian Land Company, individually and on behalf of the certified class (hereinafter collectively referred to as “Plaintiff”), has reached a settlement with EQT Production Company f/d/a Equitable Production Company (hereafter referred to as “Defendant,” “EQT,” or “Equitable”), and seeks: preliminary approval of the proposed class action settlement, an order directing that notice of the proposed settlement be sent to the certified class, an order setting the deadlines for filing opt-out forms and objections to the settlement, and the scheduling of a fairness hearing on the proposed settlement. In support of its Motion, Plaintiff states as follows:

**I. INTRODUCTION**

On July 8, 2008, Plaintiff filed this putative class action and asserted claims against Defendant for breach of contract. This claim was based on the allegation that Defendant improperly deducted severance taxes from royalty payments owed to Plaintiff and putative class

members in breach of their lease agreements entered into between putative class members and Defendant. Plaintiff and the putative class sought payment of these full royalty payments. On May 26, 2011, Defendant filed its Motion for Judgment on the Pleadings which was granted in favor of Defendant on February 16, 2012.

Plaintiff appealed the portion of the ruling dismissing the litigation to the Sixth Circuit Court of Appeals. The Sixth Circuit certified a question regarding deduction of severance taxes to the Kentucky Supreme Court. On August 20, 2015, Plaintiff obtained a favorable ruling wherein the Kentucky Supreme Court held that absent a specific contractual provision apportioning severance taxes, lessees may not deduct severance taxes or any portion thereof prior to calculating a royalty value. The case was then reversed and remanded consistent with the Kentucky Supreme Court holding.

Following that ruling the parties continued litigating the case. On March 7, 2017, and admittedly as a direct result of the Kentucky Supreme Court ruling, Defendant tendered reimbursement to royalty owners from the time period 1995 to 2016 whose royalties had been reduced under market value at the well leases for severance taxes for whom Defendant had available owner information. Approximately 2,431 reimbursement checks were issued totaling \$1,398,167.71 of reimbursements. Defendant estimates that there is currently approximately \$292,261.39 of checks that are still outstanding (meaning that they have either been returned as undeliverable or not cashed) and \$71,772.64 of reimbursements placed in suspense as the rightful recipient is either unknown or disputed. Thus, approximately \$364,000 is still owed to the Settlement Class Members.

On June 22, 2018, the Court granted, in part, Plaintiff's Motion for Partial Summary Judgment and Motion to Certify Class. In essence, this Court certified the class of individuals whom have not received or cashed reimbursement checks for the damaged complained of herein.

Following Class Certification the parties engaged in arms-length negotiations both through an independent mediator and after the in-person mediation. Through continued efforts the parties have reached a Settlement Agreement, attached hereto as Exhibit A.

Plaintiff seeks preliminary approval of a settlement, wherein Defendant agrees to provide compensation to lease holders/landowners for the royalty payments withheld as a result of the deduction of severance taxes. As shown below, the terms of the settlement confer a fair, reasonable, and adequate settlement, and provide a substantial benefit upon the members of the Certified Class.

In accordance with Federal Rule of Civil Procedure 23(e), Plaintiff requests that the Court: (1) preliminarily approve the proposed settlement agreement pursuant to Fed. R. Civ. P. 23(e); (2) approve the proposed class notice; (3) set the deadlines for filing opt-out forms and objections to the settlement; and (4) schedule a fairness hearing to consider final approval of the proposed settlement and approval of attorneys' fees and costs.

The material terms of the settlement are as follows:

1. Defendant has agreed to pay a total lump sum of \$700,000.00 for settlement of the remaining claims, which will include any claim for attorney fees, costs, and incentive award.
2. Plaintiff seeks an incentive award in the amount of \$15,000 to named Plaintiff Appalachian Land Company, who provided substantial assistance in the litigation of the case.

3. Defendant will receive a release of claims through the date of Final Approval unless a Class Member submits a timely and valid Opt-Out Form. The release will apply to all claims arising from or related to the deduction of severance taxes from royalty payments, as fully outlined in the Settlement Agreement.
4. Plaintiff's Counsel collectively seeks an award of attorneys' fees, expenses and costs not to exceed the amount of \$350,000.00 to be paid out of the Settlement Amount.

## **II. GENERAL TERMS OF SETTLEMENT**

Plaintiff and Defendant have agreed and entered into a Settlement Agreement which is subject to approval by this Court.<sup>1</sup> The details of the settlement are contained therein which is attached hereto as Exhibit A. The proposed Settlement Agreement resolves all of Plaintiff's claims against Defendant for the Certified Class.

### **1. Class Definition**

The following Class has been certified pursuant to Fed. R. Civ. P. 23(b)(3). The Settlement Class is defined as follows:

All persons and entities that, during the period of January 1, 1995 through July 31, 2016, were lessors on Oil and Gas Leases with Equitable, or its predecessors in title, covering lands in Kentucky, which obligate the lessee to pay royalties on gas produced from wells at a rate of one-eighth of the market price received at the wellhead and which leases do not authorize the deduction of severances taxes, or other costs, and/or expense incurred to market such gas after it is severed from the wellhead. The defined class excludes: (1) the United States of America; (2) any Judge or Magistrate presiding over this action and members of their families; (3) Equitable, its affiliates, its predecessors-in-title, and its respective employees, officers and directors; and (4) potential members of the class who have been paid and accepted reimbursement for withheld severance taxes during the class period.

### **2. Settlement Consideration and Award to Class Members**

Subject to Court approval and the conditions specified herein, and in exchange for the release of all Settled Class Claims, Defendant agrees to a final Settlement Amount of Seven

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<sup>1</sup> Capitalized terms herein have the same meaning as defined in the Settlement Agreement.

Hundred Thousand and no/100 Dollars (\$700,000.00). Each Settlement Class Member who does not opt-out of the Settlement Class and who submits a valid claim form will receive a distribution of outstanding royalty payments from the Settlement Fund. The Settlement Fund shall be determined after deducting attorneys fees, costs and expenses (as approved by the Court); the class representative incentive award (as approved by the Court); and settlement implementation costs from the Settlement Amount.

The value remaining after the above deductions shall be the Settlement Fund. Awards to the Settlement Class shall be taken out of the Settlement Fund and distributed based upon the claims made. Settlement Class Members making a valid claim shall first be reimbursed up to 100% of the taxes withheld (“Principal”). Should there still be funds left in the Settlement Fund after paying the Principal to each valid claimant, all Settlement Class Members will also be entitled to interest (“Interest”). If, after paying the Principal, there is enough left in the Settlement Fund to pay each claimant Interest in the amount of 100% of the Principal received by such claimant, that shall be the Interest payment to each claimant. If the Settlement Fund cannot satisfy Interest payments in the amount of 100% of the Principal to each claimant, Interest payments shall be calculated by dividing the balance of the Settlement Fund pro rata to the claimants based upon the Principal paid to each claimant without regard to Settlement Class Members who did not make a claim. Should there still be funds left in the Settlement Fund after these payments, the remaining funds shall escheat to the Commonwealth of Kentucky.

### **3. Payment to Named Class Representatives**

Plaintiff seeks an enhancement award to the Class Representative for the time, expense and burden of stepping forward as class representative and prosecuting this class action in the amount of \$15,000. Plaintiff will brief this issue at the final approval stage.

#### **4. Fees and Expenses of the Notice**

The cost of Notice will be paid from the Settlement Amount. The proposed Notice Plan is attached hereto as Exhibit B. The Parties have agreed that Defendant will provide to Plaintiff and the Settlement Administrator a list of names, last known addresses, and principal allegedly owed to each Class Member to aid in the administration of the settlement. Plaintiff requests that Angeion be appointed as Settlement Administrator.

#### **5. Administration of Notice, Opt-Out and Objections Process**

The Settlement contemplated by the Parties' Settlement Agreement shall be administered in accordance with the following deadlines, subject to approval by order of the Court:

- (a) Within 30 days of the Preliminary Approval Order (the "Mailing Deadline"), the Settlement Administrator shall do initial address verification and mail the Detailed Notice, substantially in the form attached hereto as Exhibit C, by first class mail, postage prepaid, to each Class Member to the extent that the specific addresses of such Class Members are within the possession, custody, or control of Defendant or identified through skip-tracing. In addition, the Detailed Notice shall be mailed to each Class Member whose identity becomes actually known through the Notice process or who contacts Defendant within three (3) months after the entry of the Court's Preliminary Approval Order.
- (b) To object, an individual must submit a written objection to the Settlement Administrator, as set forth in the Class Notice, within 120 days of the Preliminary Approval Order. Plaintiff's Counsel will file any objections received by the Settlement Administrator with the Court prior to the Final Approval and Fairness Hearing. Similarly, Settlement Class Members wishing to Opt-Out must send written and signed notification to the Settlement Administrator.
- (c) The deadline for filing a valid claim ("Claims Period") to receive an award from the Settlement Fund shall be one year from the Order Granting Preliminary Approval.
- (d) Seven (7) days after the Opt-Out and Objection Deadline ("Report Date"), Plaintiff shall provide a report to Defense Counsel: (i) identifying all Settlement Class Members who have submitted valid opt-out requests and thus will not be included in the Settlement Class and (ii) identifying all Settlement Class Members who have submitted valid, timely objections.
- (e) Within fourteen (14) days after Final Judicial Approval, Defendant shall fund the Settlement Amount as directed by Plaintiff's Counsel. Following the Funding

Deadline, court approved attorney fees, costs, expenses, and any incentive award may be immediately satisfied.

- (f) The Settlement Fund shall remain open during the Claims Period. Upon the closing of the Claims Period, the Settlement Administrator shall distribute the funds in accordance with the procedure described in the Settlement Agreement.

#### **6. Attorneys' Fees and Costs**

Plaintiff's Counsel seeks Court approval of an award of attorneys' fees and reimbursement of litigation expenses incurred in the prosecution of the lawsuit and the finalization of this settlement. At the final approval stage, Plaintiff and Class Counsel will request that the Court award their requested fees and litigation costs of no more than \$350,00000. Affidavit(s) supporting Plaintiff's counsel's fee requests will accompany their motion during the final approval stage.

It is important to note that through this lawsuit Plaintiff's Counsel conferred a benefit on landowners in Kentucky of over \$2 million dollars (\$1.4 million already repaid and \$700,000 in this proposal) and clarified the law going forward so that additional damages do not continue to accrue. Plaintiff will further brief this issue at the final approval stage.

#### **7. Release of Claims**

Defendants will receive a release of claims through the date of Final Approval unless a Class Member submits a timely and valid Opt-Out Form in which case the Class Member exercising the right to opt out will not be included in the release. The release will apply to all claims arising from or related to the deduction of severance taxes from royalty payments since January 1, 1995 through the date of Final Approval.

### **III. LEGAL STANDARD**

Rule 23 of the Federal Rules of Civil Procedure governs class actions. Rule 23(e) of the Federal Rules of Civil Procedure provides that, "the claims, issues, or defenses of a certified

class – or a class proposed to be certified for purposes of settlement – may be settled, voluntarily dismissed, or compromised only with the court's approval.” Fed. R. Civ. P. 23(e). Approval under Rule 23(e) involves a two-step process: first, a preliminary approval order; and, second, a final approval order after notice has been provided to the class and a hearing has been held to demonstrate the fairness, reasonableness, and adequacy of the proposed settlement. *See* Manual for Complex Litigation (Fourth) § 13.14 (2004). “If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate...” Fed. R. Civ. P. 23(e)(2).

In determining whether the settlement is fair, reasonable and adequate, Courts must consider whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal; the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; the terms of any proposed award of attorney’s fees, including timing of payment; and any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. Pro. 23(e)(2)(A-D).

The procedure of providing notice to the class, followed by a hearing to consider approving a class settlement, has been accepted by numerous courts and is now standard practice. *Prudential II*, 148 F.3d at 326-27; *see also Bronson v. Board of Education of the City School District of the City of Cincinnati*, 604 F. Supp. 68 (S.D. Ohio 1984). There are three steps that must be taken by the court: (1) the court must preliminarily approve the proposed settlement; (2) members of the class must then be given notice of the proposed settlement; and (3) a hearing must be held, after which the Court must decide whether the proposed settlement is fair,

reasonable and adequate. *Bronson* at 71; *see Tenn. Ass'n of Health Maint. Orgs., Inc. v. Grier*, 262 F.3d 559 (6th Cir. 2001); *Williams v. Vukovich*, 720 F.2d 909, 921-922 (6th Cir. 1983); *Stotts v. Memphis Fire Department*, 679 F.2d 541, 551 (6th Cir. 1982); *see also, Prudential II*, 148 F.3d at 316-17; *In re GMC Pick Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3rd Cir. Pa. 1995); *see also Manual for Complex Litigation, Fourth* §§13.14 and 21.632-21.635 (Federal Judicial Center 2004).

The Court first makes a preliminary evaluation of the settlement. *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980) (The purpose of the pre-notification hearing is “to determine whether the proposed settlement is within the range of possible approval.”); *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 904 (S.D. Ohio 2001) (“The district court bases its preliminary approval of a proposed settlement upon its familiarity with the issues and evidence of the case as well as the arms-length nature of the negotiations prior to the settlement.”). If the Court determines at this phase that the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, does not provide excessive compensation to Class Counsel, and falls within the range of possible approval, then the Court should direct that notice be given to the class members of a formal fairness hearing, at which time evidence may be presented in support of and in opposition to the settlement. *See Bailey v. Great Lakes Canning, Inc.*, 908 F.2d 38, 40 (6th Cir. 1990); *Armstrong*, 616 F.2d at 314; *Bronson*, 604 F. Supp. at 71; *In re Baldwin-United Corp. Sec. Lit.*, 105 F.R.D. 475, 482 (S.D.N.Y. 1984)) (“Upon consideration of the proposed settlement presented to this Court for preliminary approval, the Court finds that it is at least

sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard.”);<sup>2</sup> see *Manual for Complex Lit.* 4th § 21.633.

Authorization to disseminate notice reflects recognition by the Court that the settlement is in the range of possible approval; the ultimate Rule 23 determination is reserved pending the completion of the notice and initial opt-out process, so the Court can consider input from the Class Members who will be bound by the Final Order and Judgment. See *Alvarado v. Memphis-Shelby County Airport Auth.*, 2000 U.S. App. LEXIS 21259 (6th Cir. 2000); *In re General Motors*, 55 F.3d 768 (3d Cir. 1995); *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195 (5th Cir. 1981).

Preliminary approval is not a definitive final finding on the fairness of the Settlement Agreement, and permitting notice to members of the Settlement Class does not mean that the Court has found the Settlement Agreement to be fair, reasonable, and adequate for purposes of final approval. See *Holden v. Burlington Northern, Inc.*, 665 F. Supp. 1398 (D. Minn. 1987). An initial analysis of the terms and features of the Settlement Agreement should give the Court confidence that it merits serious consideration by the Class Members, and that it will likely serve as the fair and comprehensive resolution of Class Members’ Claims.

District courts in the Sixth Circuit frequently look at seven factors in determining the fairness, reasonableness, and adequacy of a proposed settlement:

- (1) the risk of fraud or collusion;
- (2) the complexity, expense and likely duration of the litigation;
- (3) the amount of discovery engaged in by the parties;
- (4) the likelihood of success on the merits;
- (5) the opinions of class counsel and class representatives;
- (6) the reaction of absent class members; and
- (7) the public interest.

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<sup>2</sup> It is well-established that there is an overriding public interest in resolving litigation, and this is particularly true in class actions. See *General Motors*, 55 F.3d at 784; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268 (9th Cir. 1992); *In re Prudential Sec. Inc. Limited Partnership Litig.*, 163 F.R.D. 200 (S.D.N.Y. 1995).

*Gascho v. Global Fitness Holdings*, 822 F.3d 269, 276 (6<sup>th</sup> Cir. 2016) citing *Int'l Union, United Auto., Aerospace, & Agric. Implemet Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6<sup>th</sup> Cir. 2007).

As part of the preliminary approval process, the district court must also approve the notice of the settlement that the Parties propose be sent to Class Members. The Court must ascertain whether the notice complies with the standards of fairness, completeness, and neutrality required of a settlement class notice disseminated under authority of the Court. *See, e.g.*, 4 NEWBERG ON CLASS ACTIONS (Fourth) §§ 8.21, 8.39; *Manual Fourth* §§ 21.311-21.312.

#### **IV. ARGUMENT**

Plaintiffs' briefing establishes why the Court can: grant preliminary approval of the Parties' settlement; approve the Parties' forms giving Notice of Settlement; set deadlines for filing opt-out forms and objections to the settlement; and schedule a fairness hearing on the proposed settlement. Because the proposed settlement is fair, adequate, and reasonable, it meets the standards for preliminary approval. Further, the putative class subject to the proposed settlement has been certified under Fed. R. Civ. P. 23(b)(3). Given that the proposed notice form, attached herein as Exhibit C meets the requirements of due process and is accurate, informative, and easy to understand, Plaintiff seeks this Court's approval of the attached and asks the Court to schedule appropriate deadlines to object to the settlement. Plaintiff last requests that the Court schedule a fairness hearing given that Plaintiff has met the appropriate standards for preliminary approval of settlement, class certification, and notice of settlement.

##### **1. The Proposed Settlement Should Receive Preliminary Approval Because it is Fair, Adequate, and Reasonable.**

Whether the settlement falls within the range of possible approval under Rule 23, *et seq.*, turns upon whether there is a conceivable basis for presuming that the more rigorous standard applied for final approval will be satisfied. The standard for final approval of a settlement consists of showing that the settlement is fair, reasonable, and adequate. While the Court exercises its sound “discretion” in approving a settlement, *see Bailey*, 908 F.2d at 42 (6th Cir. 1990), the Court’s function is to determine that the settlement “. . . agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties, and . . . taken as a whole, is fair, reasonable and adequate to all concerned.” *Clark Equip. Co. v. International Union, et al.*, 803 F.2d 878, 880 (6th Cir. 1986).

Plaintiff submits that the Settlement Agreement before the Court in this case falls well within the “range of possible approval,” taking into consideration all relevant factors, and, therefore, preliminary approval of the Settlement Agreement should be granted.

**A. The Proposed Settlement Meets the Requirements of Fed. R. Civ. Pro. 23(e)(2)(A-D).**

Fed. R. Civ. Pro. 23(e)(2)(A-D) outlines four considerations for whether a proposed settlement is fair, reasonable, and adequate. The proposed settlement herein is favored through analyzing each of these factors.

**a. The class representative and class counsel have adequately represented the class.**

The first factor under the amended rules is whether “the class representatives and class counsel have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A). The Rules Advisory Committee suggested that courts consider “whether class counsel and plaintiffs ‘had an adequate information base’ before negotiating and entering into the settlement.” *Grant v. Ocwen Loan Servicing LLC*, No. 3:15-cv-01376, 2019 WL 367648 at \*5 (M.D. Fla. Jan 30, 2019). This

inquiry examines “whether the plaintiffs and class counsel engaged in enough discovery to afford them ‘an adequate appreciation of the merits of the case.’” *Id.* (internal quotation omitted). *See also Hale*, 2018 WL 6606079 at \*3 (counsel found adequate when they had no conflicts of interest, had extensive experience in complex litigation, and “invested significant time and resources in this litigation....”).

Both Appalachian Land Company and its counsel have vigorously and successfully represented the class since 2008. As detailed further in the introduction above, counsel pursued a successful appeal through both the Sixth Circuit Court of Appeals and the Kentucky Supreme Court. Because of this suit and accompanying appellate rulings the way royalties are calculated for landowners across the Commonwealth has been altered to the benefit of landowners.

Additionally, Plaintiff and Defendant have exchanged written discovery, taken depositions (including expert depositions), and engaged in informal discovery discussions. Plaintiffs and Class Counsel are well informed about the total damages, reimbursements, damages, and potential interest that are still outstanding.

Class Counsel has negotiated a class-wide settlement that provides Class members with extraordinary relief. Because of this suit over \$1.4 million has already been repaid by Defendant to lessors in Kentucky and this settlement confers an additional \$700,000.00 benefit. Through this litigation each lessor who contracted with Defendant and was harmed through Defendant’s deduction of severance taxes will have either received 100% reimbursement or have the opportunity to likely receive 100% reimbursement of the withheld taxes (and potentially more through interest payments) through this settlement and notice plan to receive 100% reimbursement.

Lastly, as discussed in more detail below, Class Counsel have extensive experience in complex litigation, invested significant time and resources into this litigation, and have no conflicts of interest with the Settlement Class. Class Counsel led this case through initial dismissal in the district court to reversal and remand at both the Sixth Circuit Court of Appeals and Kentucky Court of Appeals. There can be no doubt that the Settlement Class Members were adequately represented through each stage of this litigation. All of these facts demonstrate that Class Counsel and Appalachian Land Company adequately protected the interests of the Settlement Class.

**b. The proposal was negotiated at arm's length.**

The second factor under the amended rule is whether “the proposal was negotiated at arm's length.” Fed. R. Civ. P. 23(e)(2)(B). Settlement negotiations favor approval when they are conducted at arm's length between experienced attorneys familiar with the issues and overseen by experienced and respected mediators. *See Hale*, 2018 WL 6606079 at \*3, citing *Great Neck Capital Appreciation Inv. P'ship, L.P.*, 212 F.R.D. at 410; *accord, Grant*, 2019 WL 367648 at \*6 (negotiations at arm's length occurred after substantial discovery and overseen by well-regarded mediator). Arms-length negotiation between experienced counsel traditionally supports a presumption that a settlement is fair and adequate. *See, e.g., Goldsmith v. Tech. Solutions Co.*, No. 92 C 4374, 1995 WL 17009594 at \*3 n. 2 (N.D. Ill. Oct. 10, 1995).

The Settlement reached by the Parties was the product of arms' length negotiations by counsel. Each party was independently represented by counsel throughout this litigation, which began in 2008. As such, Counsel for each Party was obligated to and did vigorously represent their Clients' rights. The negotiations included several conference calls between the Parties' Counsel, countless e-mails, an in person mediation with a reputable mediator, and

several discussions post-mediation. The majority of these communications were contentious and different claims and defenses were discussed and argued at length. The settlement represents the compromise between arguments and carries the hallmarks of an arms-length agreement. Accordingly, the arms-length bargaining factor supports approval.

**c. The relief provided for the class is adequate.**

The third factor is whether “the relief provided for the class is adequate, taking into account” four sub-factors. Fed. R. Civ. P. 23(e)(2)(C). This factor and the next factor (class member treatment) focus on a “substantive review of the terms of the proposed settlement.” Fed. R. Civ. P. 23(e)(2)(C)&(D), Advisory Committee Note. In addition, whether “relief to the class is adequate” is analogous to traditional factors that consider “the likelihood of success and range of possible recovery for the class at trial, measured against the trial’s anticipated complexity, cost and duration.” *Grant*, 2019 WL 367648 at \*6. Both the new and traditional factors consider “whether the relief is reasonable when compared with the relief plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing.” *Id.* (internal quotation omitted). The opinion of class counsel, another traditional factor, also reflects the quality of the relief provided to the class.

The first sub-factor is “the costs, risks, and delay of trial and appeal.” Fed. R. Civ. P. 23(e)(2)(C)(i). This factor considers the hurdles plaintiffs must overcome to obtain a contested judgment. In a contentious case they would include proving all elements of the plaintiffs’ claims, overcoming defenses, and resulting appellate issues. *Hale*, 2018 WL 6606079 at \*\*3-4 (discussing risks); *Id.* at \*5 (based on case’s extensive history, “the relief secured by the proposed settlement is fair, adequate, and reasonable in light of the costs, risks, and delay of trial and appeal”).

This factor largely parallels key pre-amendment factors, including the strength of the plaintiff's case compared to the settlement, and the complexity, length, and expense of continued litigation. *See, e.g., Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015) (citing *Synfuel Techs.*, 463 F.3d at 653) (“When deciding whether to preliminarily approve a settlement, courts must consider “a number of factors, including: (1) the strength of the plaintiff's case compared to the defendant's settlement offer; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the settlement; (4) the opinion of experienced counsel; and (5) the stage of the proceedings and the amount of discovery completed.”). A court must also ensure that a proposed settlement is not the product of collusion.” *Id.* at 493 (citing *Eubank v. Pella*, 753 F.3d 718, 721 (7th Cir. 2014)).

These critical considerations – that is, the strength of the case along with the complexity, length, and expense of litigation – strongly favor preliminary approval. The relief that this settlement proposal provides to the class is adequate. The total Settlement Amount is almost double what is actually owed in Principal to the Settlement Class Members. Even once the Settlement Amount is reduced by costs and attorney fees (if approved by this Court) there should still be more than enough to satisfy all of the claims made in this case at 100% of the principal damages, plus additional interest. Risks of trial and appeal are not specifically applicable here since summary judgment has already been granted and an appeal on the major issue has already occurred. There is nothing additional that continued litigation could or would add to the relief provided to the Class.

The amended Rule's second sub-factor is “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” Fed. R. Civ. P. 23(e)(2)(C)(ii). The Advisory Committee noted that this consideration involves

evaluating the proposed claims process. A claims process should “ensure that it facilitates filing legitimate claims” without being “unduly demanding,” but should also “deter or defeat unjustified claims.” Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee note to 2018 amendment. Courts have recently found claims processes fair and effective where they provide sufficient information to calculate class members’ losses, *Hefler*, 2018 WL 6619983 at \*7. *See also Hale*, 2018 WL 6606079 at \*5 (part of settlement fund automatically distributed and remainder required “a relatively simple claim form” with basic questions).

In this case, the method of distribution is the best practical method the Parties can conceive. Plaintiff has recommended employing a Settlement Administrator (Angeion) to locate the class members and administer the claims from the last known addresses Defendant has on file. Angeion’s proposal for notice attached hereto as Exhibit B involves skip-tracing addresses, employing a private investigator to do additional searching, publishing notices in local newspapers, online advertisements, and providing direct mailing notice where available. Plaintiff has included every search option imaginable in an attempt to locate these Settlement Class Members to provide them their recovery. Further, the administration process above ensures that each Class Member is treated fairly and equitably throughout the entire process. Once the individual is located the method of relief is simple and straightforward. Plaintiff simply fills out a claim form with demographic information and a check is automatically sent to them. The proposed distribution of relief is effective for this Settlement.

The third sub-factor is “the terms of any proposed award of attorney’s fees, including timing of payments[.]” Fed .R. Civ. P. 23(e)(2)(C)(iii). Plaintiff proposes an award of attorney fees and costs of up to \$350,000.00. Angeion’s administration plan is budgeted for \$70,000.00 which must be deduced from this amount. Additionally, Whitfield Bryson & Mason has spent

almost \$20,000.00 on the litigation of this case. By deducting these costs, Plaintiff's counsel will receive at most \$260,000.00 in attorney fees for their 11 years of effort and over \$2 million dollars of benefit conferred. As of the filing of Plaintiff's Motion for Partial Summary Judgment and Partial Award of Attorney's Fees and Expenses (Doc. 90), which was filed two years ago, Plaintiff's counsel had collectively worked over 1,300 hours and generated a fee of over \$415,000.00. Since June 2017 Whitfield Bryson & Mason alone has worked an additional 400 hours with more to be expected as the case proceeds through the settlement phase. Thus, just considering the hours worked to date (1,700), Plaintiffs counsel is only receiving approximately \$150/hour, which is well below a reasonable rate in Kentucky and is expected to be further reduced as more time is put into this case through the settlement process. Plaintiff has proposed that this fee be paid after Final Approval of this proposal which will ensure that all necessary matters are handled prior to fee payment.

The proposed fee award is reasonable here in view of the work by Class Counsel, the results achieved, and the risks Class Counsel took in developing and litigating this case for over a decade. The fee proposal's timing is also procedurally appropriate. The substantive terms of the Settlement Agreement were established before the parties discussed the attorneys' fees, costs and expenses, and incentive awards. Such facts demonstrate the appropriateness of preliminary approval of the settlement.

The fourth sub-factor is "any agreement required to be identified under Rule 23(e)(3)[.]" Fed. R. Civ. P. 23(e)(2)(C)(iv). Side agreements have been used, for example, to set the number of opt-outs that terminate the proposed settlement, but should be disclosed to the Court. For example, a permissible side agreement allowed the defendant "to terminate the Settlement if a certain percentage of the class request[ed] exclusion." *Hefler*, 2018 WL 6619983 at \*7. In the

present case all agreements, including the ability of the Parties to terminate the proposed settlement due to opt-outs, have been memorialized in the Settlement Agreement and disclosed to this Court. As such, the relief provided to the Settlement Class is adequate.

**d. The proposal treats class members' equitably relative to each other.**

The fourth and last new Rule factor in evaluating approval is whether “the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). Matters of concern under this provision “could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e)(2)(C) and (D) Advisory Committee note to 2018 amendment. Traditionally, and consistent with the Advisory Committee’s comment, allocation of settlement benefits was fair and reasonable when it properly “provid[ed] that members of the class who submit acceptable proof of claim forms evidencing a loss in their transactions” were entitled to recovery. *Great Neck Capital Appreciation Investment P’ship, L.P.*, 212 F.R.D. at 410; *McKinnie*, 678 F. Supp.2d at 814 (approving use of claim form). Another court similarly approved a settlement that allocated more to claimants who were more directly injured, and to claimants with stronger claims. *In re Gulf Oil/Cities Service Tender Offer Litig.*, 142 F.R.D. 588, 596 (S.D.N.Y. 1992).

This settlement proposal treats all Settlement Class Members equitably relative to each other depending on the actual damages each sustained. As described in more detail above, this proposal allows Class Members to first obtain up to 100% of the Principal (the amount initially withheld by Defendant) owed to each of them. Should there not be enough money available in the Settlement Fund to satisfy 100% of the Principal claims, the distribution will be done on a pro-rata basis so that each Class Member is treated equitably with regards to their payments;

however, Plaintiff fully expects that each Class Member will in fact be able to receive 100% of the Principal. Additionally, should additional funds be available after all of the claims have been made, Class Members will also be entitled to an Interest payment of up to 100% of the Principal received, again calculated on a pro-rata basis if necessary.

This procedure is both fair and equitable as each Class Member is treated throughout the entire distribution process. Consequently, this factor favors approval.

**B. The Proposed Settlement Meets the Requirements Outlined Through Sixth Circuit Case Law.**

In addition to the requirements laid out in Fed. R. Civ. Pro. 23(e)(2)(A-D), Sixth Circuit case law also outlines factors to be considered in this Court's consideration of the settlement proposal, many of which mirror the intent behind the federal rules. Because the factors below indicate that the proposal is fair, reasonable and adequate, preliminary approval should be granted.

**a. Settlement was reached through arms-length bargaining without fraud or collusion.**

Because this element is so similar to Fed. R. Civ. P. 23(e)(2)(B), Plaintiff incorporates by reference its analysis related to the negotiations leading up to settlement. The settlement represents the compromise between the Parties and was reached only after contentious litigation and continued negotiations.

**b. The case complexity, expense and likely duration of this litigation favor settlement.**

One need only look at the file date of this Complaint (July 8, 2008) to understand this litigation has been a long and hard fought effort. This case has gone from this District Court, to the Sixth Circuit Court of Appeals, to the Kentucky Supreme Court, back to the Sixth Circuit Court of Appeals, and back to this District Court. Hundreds of hours have been spent through

briefing, arguments, and litigation. At this point, a class has been certified and summary judgment has been partially granted. Settlement at this stage assures that Class Members are entitled to funds which were previously withheld and gives the opportunity to also obtain interest on those funds without the cost of a damage trial.

**c. The discovery engaged in by the parties to date is sufficient to allow Counsel and the Court to Act Intelligently.**

This prong of the analysis “captures the degree of case development that class counsel have accomplished prior to settlement.” *Seidman v. Am. Mobile Sys.*, 965 F. Supp. 612, 619 (E.D. Pa. 1977). “The law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations.” *Ressler v. Jacobson*, 822 F. Supp. 1551, 1555 (M.D. Fla. 1992). However, the “[s]ufficiency of information does not depend on the amount of formal discovery which has been taken because other sources of information may be available to show the settlement may be approved even when little or no formal discovery has been completed.” *San Antonio Hispanic Police Officers’ Organization, Inc. v. City of San Antonio*, 188 F.R.D. 433, 459 (W.D. Tex. 1999).

Counsel has sufficiently advanced this case to the point that settlement is appropriate. Prior to reaching a settlement, the Parties engaged in written discovery and the parties conducted an extensive investigation relating to the class claims, the underlying events, and the applicable law with respect to the potential claims and defenses. The investigation and discovery conducted by the Parties in this case was comprehensive and time-consuming. Information and documents concerning the claims and defenses was exchanged, reviewed, and processed by each side. Indeed, there is no dispute that the Parties thoroughly investigated the relevant facts and legal issues through every means available. Such an undertaking

yielded substantial information, which allowed the Parties to discuss the scope of the suit and the necessary remedies so that the Parties could intelligently and accurately assess and discuss the pros and cons of settlement.

Based on the information provided by Defendant, the Parties know the exact amount of damages at issue in this case and the number of Settlement Class Members. Again, since summary judgment has already been granted and a class has already been certified, settlement at this stage is appropriate.

**d. Plaintiff's Likelihood of Success Lead to a Higher Settlement.**

Defendant's voluntary payment of royalties to hundreds of individuals who would have been class members indicates Plaintiff's likelihood of success. Further and as to the remaining Settlement Class Members, summary judgment has already been granted in favor of Plaintiff and the Settlement Class. As such, Plaintiff was able to leverage that success to obtain a Settlement Amount that was for more than 100% of the Settlement Class Members principle damages and close to 100% of the interest claimed.

However, even with liability established, continuing litigation would only increase expenses as the parties would have to brief and litigate a damage trial. Settlement at this phase gets the Settlement Class Members maximum value for the least amount of expenses.

**e. Plaintiffs' Counsel is Experienced in Similar Litigation and is of the opinion this is a fair and reasonable settlement.**

"The opinion of competent counsel is relevant to the question whether a settlement is fair, reasonable, and adequate under Rule 23." *Schulte*, 805 F. Supp. 2d at 586 (internal citation omitted). "In assessing the fairness of a proposed settlement, courts are 'entitled to rely heavily on the opinion of competent counsel.'" *Hale* at \*7 (holding that counsel's endorsement of the settlement supported its fairness, reasonableness, and adequacy particularly where counsel were

“experienced class action litigators whose knowledge of this case was built on years of intensive litigation.”). *See also In re Capital One Telephone Consumer Protection Act Litig.*, 80 F. Supp.3d 781, 792 (N.D. Ill. 2015) (experienced class counsels’ endorsement supports settlement approval).

Plaintiff’s Counsel has extensive experience and qualifications in both class action and oil and gas cases and are of the opinion that this settlement is fair, reasonable, and adequate. Plaintiff’s counsel, John C. Whitfield, was lead counsel and argued this case to the Kentucky Supreme Court which clarified the inability of oil and gas companies to deduct severance taxes. *See Appalachian Land Co. v. EQT Prod. Co.*, 468 S.W.3d 841 (Ky. 2015). Whitfield Bryson and Mason, LLP is a renowned firm dedicated to representing plaintiffs in class actions. Partners John C. Whitfield and Gary E. Mason have been representing plaintiffs in class action cases for over 30 years. George “Skip” Stigger spent his career representing Kentuckians with issues surrounding leases and land rights. All of Plaintiff’s Counsel have extensive complex litigation experience and are of the opinion that this is a fair and reasonable settlement for the Class Members.<sup>3</sup> Further, Plaintiff, as the Class Representative agrees to this settlement as well.

The fairness of the settlement process and the Settlement Agreement itself were also shaped by the experience and reputation of counsel, an important factor in final approval of class action settlements. “The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs . . . (however, the deference afforded counsel should correspond to the amount of discovery completed and the character of the evidence uncovered)”. *Williams*, 720 F.2d at 923; *see also, Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977); *Fisher Brothers v. Phelps Dodge Industries, Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985)

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<sup>3</sup> Firm Resumes for both WBM and Stigger Law are attached hereto as Exhibit D.

(“[T]he professional judgment of counsel involved in the litigation is entitled to significant weight.”); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659, 667 (D. Minn.1974) (“The recommendation of experienced antitrust counsel is entitled to great weight.”). The Settlement Agreement was specifically negotiated by experienced counsel to meet all the requirements of Rule 23, *et seq.*, and specifically to provide administrative procedures to ensure all Class Members equal and sufficient due process rights. Accordingly, the Settlement Agreement was not the product of collusive dealings, but, rather, was informed by the vigorous prosecution of the case by experienced and qualified counsel.

**f. The reaction of absent Settlement Class Members is anticipated to be favorable.**

The number of objectors is but a factor in the Court’s consideration. “A settlement can be fair notwithstanding a large number of class members who oppose.” *Berry v. LexisNexis Risk & Info. Analytics Group, Inc.*, 2014 U.S. Dist. LEXIS 124415, \*42 (E.D. Va. Sept. 5, 2014) (*quoting Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977)). Here, Plaintiff approves of the settlement. Further, the Parties are not aware of any current or potential objectors since the value to be conferred on Settlement Class Members will fully satisfy their damages.

**g. Public interest favors settlement.**

Public interest favors settlement at this time. Plaintiff has negotiated a settlement for over 100% of the actual damages at issue in this case. Public interests do not favor long and protracted litigation for little to no additional value. The settlement of this suit at this time promotes judicial economy and the public interests are served in holding Defendant liable for injuries it created.

Based on the foregoing, the Parties contend that the Settlement is fair, adequate and within the range of possible final approval such that it is reasonable. Accordingly, the standards for preliminary approval under Fed. R. Civ. P. 23(e) and Sixth Circuit case law are met and the Parties request preliminary approval of the Proposed Settlement by this Court.

**2. A Rule 23 Class Has Already Been Certified.**

On June 22, 2018, this Court certified the following class:

All persons and entities that, during the period of January 1, 1995 through July 31, 2016, were lessors on Oil and Gas Leases with Equitable, or its predecessors in title, covering lands in Kentucky, which obligate the lessee to pay royalties on gas produced from wells at a rate of one-eighth of the market price received at the wellhead and which leases do not authorize the deduction of severances taxes, or other costs, and/or expense incurred to market such gas after it is severed from the wellhead. The defined class excludes: (1) the United States of America; (2) any Judge or Magistrate presiding over this action and members of their families; (3) Equitable, its affiliates, its predecessors-in-title, and its respective employees, officers and directors; and (4) potential members of the class who have been paid and accepted reimbursement for withheld severance taxes during the class period.

Since this Court has already found Class Certification appropriate, we will turn to the proposed notice.

**3. Plaintiffs' Proposed Notice Forms Satisfy the Requirements of this Court.**

The Court should approve the proposed notice plan because it satisfies Rule 23(c)'s notice requirements. When a settlement class is certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "When class members' names and addresses are known or knowable with reasonable effort, notice can be accomplished by first-class mail." *Mullins*, 795 F.3d at 665 (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174–75 (1974)). See also Fed. R. Civ. P. 23(c)(2)(B) ("The notice may be by one or more of the following: United States mail, electronic

means, or other appropriate means.”). Furthermore, “[t]he notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B).

The proposed form of Class Action Settlement Notice (attached hereto as Exhibit C) and its proposed manner of distribution (Notice Plan attached hereto as Exhibit B) are consistent with due process and meet the requirements of Rule 23(c)(2)(B)(i-vii) of the Federal Rules of Civil Procedure. This rule specifies that for classes certified under Rule 23(b)(3) this court must direct the best practicable notice under the circumstances to individuals identified through reasonable effort. *Id.* That notice must explain the nature of the action; give a class definition; discuss the claims, issues and defenses; explain a class member may enter an appearance through an attorney, explain the opt-out process with specific dates and the manner for requesting exclusion; and explain the binding effect of the judgment. *Id.*

Here, the Parties propose that the Settlement Administrator shall provide direct mail notice to all Settlement Class Members for whom street addresses can be obtained with reasonable effort by Defendant and/or obtained through skip-tracing done by the Settlement Administrator. Thus, the Parties have endeavored to provide Notice of this potential settlement by direct mail to each Settlement Class Member. This Notice Plan is consistent with class certification notices approved by numerous state and federal courts, and is, under the circumstances of this case, the best notice practicable. *See, e.g., In re SPX Corp.*

*ERISA Litig.*, No. 3:04 cv 192, 2007 U.S. Dist. LEXIS 28072, at \*7 (W.D.N.C. Apr. 13, 2007) (finding that sending individual notice to all members of the Settlement Class who could be identified through reasonable efforts was best notice practicable under the circumstances). In addition to direct mailing and skip tracing, the Settlement Administrator has budgeted to employ a private investigator to do additional searching for Settlement Class Members, will publish notices in local newspapers, and will be providing online advertisements, a website, and a toll-free number to call for information.

This notice explains the nature of the action including the claims, issues and defenses raised therein. It also gives the definition of the class. The Notice explains the Class Members' rights, including their right to have an attorney appear on their behalf, to opt-out, or to object and includes the process for doing each, including deadlines related thereto. Further, the Notice explains the binding nature of the Settlement Agreement, particularly if the Settlement Class Member chooses to do nothing or does not opt-out. Accordingly, the Notice meets due process standards and satisfies Fed. R. Civ. P. 23(c)(2)(B)(i-vii).

Further, pursuant to Fed. R. Civ. P. 23(h), the proposed Notice also sets forth the maximum amount of attorneys' fees and costs that may be sought by Plaintiff and its counsel and gives the date and time of the Final Approval hearing.

Additionally, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, Defendant will serve notice of the proposed settlement to the Attorney General of the United States, the Attorney General of each State in which a class member resides, to the Secretary of the Kentucky Energy and Environment Cabinet, and to any other state or federal official, if necessary, within ten days after the Settlement Agreement is filed with the Court.

Because the proposed notice plan effectuates direct notice to all Settlement Class members and otherwise complies with the Class Action Fairness Act and Rule 23's requirements, the Court should approve the parties' proposed Notice Plan and Detailed Notice. The proposed Notice enables Class Members to exercise their rights and make an informed decision regarding their views of the fairness, adequacy, and reasonableness of the Settlement Agreement. It further makes clear that the Settlement Agreement does not constitute an admission of liability by Defendant. It also states that the final settlement approval decision has yet to be made. Thus, it meets the required standards of notice: the Notice gives full details of the Settlement Agreement and gives Class Members sufficient time to develop a response. *Bronson*, 604 F. Supp. at 72; 2 *Newberg* §§ 8.21, 8.3.

**4. Plaintiff Requests That the Court Enter the Following Schedule to Facilitate Settlement, Including the Scheduling of a Final Approval Hearing.**

Plaintiff requests that the Court schedule the forgoing deadlines to facilitate settlement. Plaintiff asks the Court to set a date for a final fairness hearing to determine that final approval of the settlement is proper approximately 5-6 months after the Preliminary Approval Order to allow adequate time to provide notice to Class Members and to provide Class Members with reasonable time within which to opt-out or object to the settlement if they so desire. The fairness hearing will provide a forum to explain, describe or challenge the terms and conditions of the settlement, including the fairness, adequacy and reasonableness of the settlement, including the attorneys' fees, reimbursement of costs, and an enhancement award to the Plaintiff.

**Proposed Timeline**

EVENT	ANTICIPATED DATE
Entry of Preliminary Approval Order (“Preliminary Approval”).	TBD by the Court
Deadline to mail the Detailed Notice to each Settlement Class Member whose name and address can be reasonably determined (hereinafter the “Mailing Deadline”).	30 days after Preliminary Approval
Deadline for Potential Claimants to post-mark Opt-Out Forms and Objections (hereinafter the “Objection/Exclusion Deadline”).	120 days from Preliminary Approval
Deadline for Plaintiff to serve a list of persons who have validly and timely opted out of the Settlement Class or objected on Defense Counsel	7 days after Objection/Exclusion Deadline
Deadline for Plaintiff to file a report of objections with the Court.	14 days after Objection/Exclusion Deadline
Deadline to file Motion for Final Approval, Enhancement Awards, and Attorneys’ Fees and Costs.	14 days after Objection/Exclusion Deadline
Final Fairness Hearing	TBD by the Court
Deadline for Defendant to Fund Settlement Amount	14 days after Final Judicial Approval.
Deadline for filing Valid Claims	1 year from Preliminary Approval
Deadline to provide award to Class Members	60 days after Claims Deadline or Final Approval, whichever is later

**V. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court: (1) preliminarily approve the proposed settlement agreement pursuant to Fed. R. Civ. P. 23(e); (2) approve the proposed class Notice; (3) set the deadlines for filing opt-out forms and objections to the settlement; and (4) schedule a fairness hearing to consider final approval of the proposed settlement, and approval of attorneys’ fees, costs, and enhancement awards.

Dated: August 12, 2019

Respectfully submitted,

/s/ John C. Whitfield  
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*Attorneys for Plaintiff and the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of August 2019, a true and complete copy of the foregoing Brief was served to the following:

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/s/ John C. Whitfield  
John C. Whitfield

*Attorney for Plaintiff and the Class*

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiff Appalachian Land Company (“Plaintiff”), individually, and in its representative capacity on behalf of the Class, as defined below, and Defendant EQT Production Company (“Defendant”) (collectively “Parties”).

### **RECITALS**

**WHEREAS**, on or about July 8, 2008, Plaintiff filed a putative class action in the United States District Court for the Eastern District of Kentucky in which it asserted claims against Defendant for alleged breach of contract on behalf of itself and others similarly situated (the “Litigation”);

**WHEREAS**, Plaintiff alleged in the Litigation that Defendant improperly deducted severance taxes from royalty payments owed to Plaintiff and putative class members in breach of the lease agreements entered into between putative class members and Defendant and sought payment of these full royalty payments;

**WHEREAS**, on May 26, 2011, Defendant filed its Motion for Judgment on the Pleadings, which was granted in favor of Defendant on February 16, 2012;

**WHEREAS**, on February 22, 2012, Plaintiff moved to alter the judgment which the Court denied on April 24, 2012;

**WHEREAS**, on May 22, 2012, Plaintiff appealed the portion of the ruling dismissing the Litigation regarding severance taxes to the Sixth Circuit Court of Appeals;

**WHEREAS**, on August 26, 2013, the Sixth Circuit certified a question regarding deduction of severance taxes to the Kentucky Supreme Court;

**WHEREAS**, on August 20, 2015, the Kentucky Supreme Court held that absent a specific contractual provision apportioning severance taxes, lessees may not deduct severance taxes or any portion thereof prior to calculating a royalty value;

**WHEREAS**, on October 27, 2015, the Sixth Circuit Court of Appeals reversed the Court’s judgment on the pleadings and remanded for further proceedings consistent with the Kentucky Supreme Court’s holding;

**WHEREAS**, the Parties exchanged factual information underlying the Claims and defenses, including information regarding the number of potential Class Members and the amount of severance taxes withheld over the fifteen (15) years prior to filing of the Litigation;

**WHEREAS**, on March 7, 2017, Defendant tendered reimbursement to royalty owners from the time period 1995 to 2016 whose royalties had been reduced under market value at the well leases for severance taxes for whom EQT had available owner information;

**WHEREAS**, a number of those royalty owners to whom EQT tendered payment cashed the reimbursement checks;

**WHEREAS**, the Parties conducted a factual investigation and analyzed the relevant legal issues with regard to the claims in, and potential defenses to, the Litigation. Plaintiff and its counsel contend that the Litigation has merit. Defendant and its Counsel contend that the Litigation does not have merit and that Defendant has defenses that could eliminate or reduce liability and monetary

recovery in the Litigation. The Parties also have each considered the uncertainties of trial and the benefits to be obtained under the proposed settlement and have considered the costs, risks, and delays associated with the continued prosecution of this time-consuming Litigation and the likely appeals of any rulings in favor of either Plaintiff or Defendant;

**WHEREAS**, on June 22, 2018, the Court granted, in part, Plaintiff's Motion for Partial Summary Judgment and Motion to Certify Class;

**WHEREAS**, the Parties engaged in arms-length negotiations and have reached a settlement, which is embodied in this Agreement;

**WHEREAS**, Defendant generally and specifically denies the allegations in the Litigation that Plaintiff or the putative class have been damaged in any sum whatsoever, and that Plaintiff or the putative class are entitled to any relief;

**WHEREAS** the Parties recognize and agree that it is in their mutual best interests to resolve their differences as set forth herein. The Parties also recognize and agree that none admit to any wrongdoing and that the agreements and releases set forth below represent the Parties' compromise of disputed matters in order to avoid the delay and uncertainties of litigation and the further disruption and expense of the Litigation;

**WHEREAS** the Parties wish to fully, finally, and completely resolve all claims, causes of action, demands, liabilities, losses and damages of any kind, known or unknown, as defined in this Agreement, including Plaintiff's and the Class's rights to be compensated for such claims.

**NOW, THEREFORE**, in exchange for the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **AGREEMENT**

In consideration of the covenants and agreements set forth herein, Plaintiff, the Settlement Class, and Defendant, themselves and through their undersigned counsel, agree to settle the Litigation and Claims, subject to Court approval, under the following terms and conditions.

**1. DEFINITIONS.** Unless otherwise indicated, the following shall be defined terms for purposes of this Agreement. Some definitions use terms that are defined later in the section.

**1.1.** The term "**Claims**" means the claims set out and the claims that could have been set out in the Complaint filed in the United States District Court Eastern District of Kentucky, Case No. 7:08-CV-139-KKC.

**1.2.** The term "**Class Member**" means any person who is included in the Settlement Class defined in 1.3 below.

**1.3.** The term "**Settlement Class**" means that class defined in the June 22, 2018 Opinion and Order of the Court, which specifically includes all persons and entities that, during the period of January 1, 1995 through July 31, 2016, were lessors on Oil and Gas Leases with Equitable, or its predecessors in title, covering lands in Kentucky, which obligate the lessee to pay royalties on gas produced from wells at a rate of one-eighth of the market price received at the wellhead and which leases do not authorize the deduction of severance taxes, or other costs, and/or expense incurred to market such gas after it is severed from the wellhead. The defined Class excludes: (1) the United States of America; (2) any Judge or Magistrate presiding over this action and members of their families; (3) Defendant, its affiliates, predecessors-in-interest, and its

respective employees, officers and directors; and (4) potential members of the class who have been paid and accepted reimbursement for withheld severance taxes during the class period.

**1.4.** The term “**Settlement Class Member**” means any person who is included in the Settlement Class.

**1.5.** The term “**Class Notice**” means the Class Notice of the proposed Settlement terms, as approved by Plaintiff’s Counsel, Defendant’s Counsel, and the Court to be provided pursuant to Section 3 of this Agreement.

**1.6.** The term “**Class Representative**” means Plaintiff Appalachian Land Company in its representative capacity on behalf of the Settlement Class.

**1.7.** The term “**Court**” means the United States District Court for the Eastern District of Kentucky.

**1.8.** The term “**Defendant’s Counsel**” means Kimberly S. McCann and the law firm of VanAntwerp Attorneys, LLP and Wade Massie and the law firm of Penn, Stuart & Eskridge.

**1.9.** The term “**Fairness Hearing**” means the hearing at or after which the Court will make a final decision whether to approve this Agreement as fair, reasonable and adequate.

**1.10.** The term “**Final Judicial Approval**” means the date upon which any of the following events occurs: (1) the expiration of the time for filing an appeal if there are any objections filed by any Settlement Class Member; (2) the conclusion of any appeal taken if there are any objections filed by any Settlement Class Member; (3) the withdrawal of the last objection to the Settlement; or (4) the entry of the Final Order if there are no objections filed by any Settlement Class Member.

**1.11.** The term “**Final Order**” means the order approving the Settlement and this Agreement.

**1.12.** The term “**Release**” means the release identified in Section 4.5 of this Agreement.

**1.13.** The term “**Parties**” means Defendant and Plaintiff, individually and in its representative capacity on behalf of the Class.

**1.14.** The terms “**Plaintiff’s Counsel**” and “**Class Counsel**” means John C. Whitfield, Esq., Gary E. Mason, Esq., and Caroline Ramsey Taylor, Esq. and the law firm of Whitfield, Bryson & Mason LLP and George Stigger of the Law Offices of George E. Stigger, P.S.C.

**1.15.** The term “**Preliminary Approval Order**” means the order certifying the Settlement Class for Settlement purposes only, approving the proposed Class Notice, and setting the date and time of the Fairness Hearing.

**1.16.** The term “**Released Claims**” shall mean the claims identified in Section 4.5 of this Agreement.

**1.17.** The term “**Released Parties**” shall mean the parties identified in Section 4.5 of this Agreement.

**1.18.** The term “**Settlement**” means the settlement of the Litigation and related claims effectuated by this Agreement.

**1.19.** The term “**Settlement Amount**” means the full consideration for the settlement of all Released Claims for Plaintiff and the Settlement Class Members in the Litigation totaling Seven Hundred Thousand and no/100 Dollars (\$700,000.00).

**1.20.** The term “**Settlement Fund**” means the amount remaining from the total Settlement Amount after the deduction of allowable items as outlined in Section 2.3.

**1.21.** The term “**Funding Deadline**” means fourteen (14) days from Final Judicial Approval.

## **2. SETTLEMENT TERMS.**

**2.1. Settlement Consideration.** In exchange for Defendant’s payment of a total settlement in the amount of Seven Hundred Thousand and no/100 Dollars (\$700,000.00), Plaintiff agrees to the Released Claims and dismissal of the Litigation as set forth in Section 4.5 below and to the other terms of this Agreement.

**2.2 Certification of the Settlement Class.** For the purposes of the Settlement only and the proceeding contemplated herein, the Parties stipulate and agree that: (1) the Settlement Class shall be certified in accordance with the definition contained in Section 1.3 above; (2) Plaintiff shall represent the Settlement Class for settlement purposes and shall be the Class Representative; and (3) Plaintiff’s Counsel shall be appointed as Class Counsel.

**2.3. Award to the Settlement Class.** Settlement Class Members who do not opt out of Settlement shall receive their proportionate share of payments owed from the Settlement Fund in the manner described below. The value of the Settlement Fund shall be determined after deducting the following:

- a. Attorneys’ fees, costs, and expenses as approved by the Court;
- b. The Class Representative Incentive Award (as outlined in Section 2.4) shall be deducted from the remaining amount; and
- c. Settlement Implementation Costs as described in Section 2.6 below.

The value remaining after the above deductions shall be the Settlement Fund. Awards to the Settlement Class shall be taken out of the Settlement Fund and distributed based upon the claims made. Settlement Class Members making a valid claim shall first be reimbursed up to 100% of the taxes withheld (“Principal”). Should there still be funds left in the Settlement Fund after paying the Principal to each valid claimant, all Settlement Class Members will also be entitled to interest (“Interest”). If, after paying the Principal, there is enough left in the Settlement Fund to pay each claimant Interest in the amount of 100% of the Principal received by such claimant, that shall be the Interest payment to each claimant. If the Settlement Fund cannot satisfy Interest payments in the amount of 100% of the Principal to each claimant, Interest payments shall be calculated by dividing the balance of the Settlement Fund pro rata to the claimants based upon the Principal paid to each claimant without regard to Settlement Class Members who did not make a claim. Should there still be funds left in the Settlement Fund after these payments, the remaining funds shall escheat to the state of Kentucky.

All Class Members shall receive Class Notice pursuant to Section 3.1 below.

**2.4. Incentive Award to Class Representative.** The Parties agree that the Class Representative shall be entitled to an incentive award of Fifteen Thousand Dollars (\$15,000.00) for the Litigation in recognition of the amount of time and effort spent by Plaintiff as the Class Representative. This amount was determined to be appropriate only after an agreement had been reached on the award to the Settlement Class and other terms of this Agreement. The Parties agree that Plaintiff will request an incentive award of no more than Fifteen Thousand Dollars (\$15,000.00) for the Litigation, to which

Defendant will not object, to be approved by the Court which would be funded from the Settlement Amount. In the event the incentive award is not approved by the Court, the rest of this Agreement shall remain in full force and effect.

**2.5. Attorneys' Fees and Costs.** Defendant agrees that it will not contest Class Counsel's request to the Court for approval of fees and costs for the Litigation up to the amount of Three Hundred Fifty Thousand and no/100 Dollars (\$350,000.00) to be paid out of the Settlement Amount (the "Fees Award"). This amount was determined to be appropriate only after an agreement had been reached on all Class Settlement terms and was the product of arms-length negotiations. In the event the attorneys' fees and costs are not approved by the Court, the rest of this Agreement shall remain in full force and effect. Class Counsel agree that it will not seek any fees or costs from Defendant except as may be awarded by the Court to be paid out of the Settlement Amount, and Defendant shall have no liability for attorneys' fees or costs beyond payment of the Settlement Amount.

**2.6. Settlement Implementation Costs.** All costs of providing Class Notice in the manner set forth in Section 3.1 below of this Agreement and all costs associated with administration of the Settlement shall be paid from the Settlement Amount, as Defendant shall have no liability outside of paying the Settlement Amount for such costs.

**2.7. Walk-Away Rights.** In the event the Settlement Administrator receives Requests for Exclusion from Settlement Class Members who collectively would have received under the Plan of Administration ten percent (10%) or more of the total principal amount of severance tax deductions still owed as of the signing of this Agreement, either party shall have the right, within ten (10) days after the Request for Exclusion deadline to terminate this Settlement Agreement. For purposes of this Agreement, Defendant represents the total amount of severance taxes is approximately \$285,000 as of the date of the signing of this Agreement. Therefore, the estimated threshold is \$28,500.

### **3. CLASS SETTLEMENT PROCEDURES.**

**3.1. Class Notice.** Subject to Court approval, the Parties agree that after entry of the Preliminary Approval Order, Plaintiff (or an agreed upon service provider) will provide the Class with Notice of the proposed Settlement by the following method:

The Notice Plan as approved in the Preliminary Approval Order shall be implemented within 30 days of entry of the Preliminary Approval Order. Defendant agrees to cooperate in providing names and last known contact information and/or mailing addresses for all Settlement Class members as currently shown on its books and records.

**3.2. Inclusion in the Settlement.** Class Members who wish to be included in the Settlement Class need not take action. Should a Class Member wish to opt-out or object, they must submit notice as detailed in Sections 3.3 or 3.4.

**3.3. Objections.** Any Class Member who wishes to object to the Settlement must mail a written objection to Plaintiff's Counsel (or the designated service provider) and serve a copy on Class Counsel by the Exclusion Deadline to be set by the Court (the "Objection/Exclusion Deadline"). Class Counsel (or the designated service provider) shall provide a copy of the objection by email to Defendant's counsel within 7 days of receipt of the objection. The objection must set forth, in clear and concise terms, the legal and factual arguments supporting the objection. Unless otherwise requested by the Court, Class Members shall not be entitled to speak

at the Fairness Hearing unless they have submitted a timely written objection pursuant to this paragraph and indicating their intent to appear at the Fairness Hearing. Counsel for the Parties will jointly file any objections they receive with the Court prior to the Final Approval and Fairness Hearing.

**3.4. Exclusion from the Class.** The Detailed Notice shall inform Class Members of their right to elect not to be part of the Settlement Class and not to be bound by this Agreement, provided that the affected person mails a request for exclusion to Plaintiff's counsel (or its designated notice provider) on or before the Objection/Exclusion Deadline ("Request for Exclusion"). No later than seven (7) days after the Objection/Exclusion Deadline, Plaintiff or its notice provider shall prepare a list of the persons who, pursuant to the Class Notice, have provided a valid and timely Request for Exclusion and shall deliver that list to Defendant's Counsel via email within such seven (7) days.

**3.5. No Solicitation of Settlement Objections or Exclusions.** The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or to request exclusion from the Settlement Class, or to encourage persons to appeal from the Court's Final Judgment.

#### **4. FINAL JUDGMENT AND RELEASES.**

**4.1. Preliminary Settlement Hearing.** Plaintiff will move the Court, unopposed by Defendant, for the entry of a Preliminary Approval Order consistent with the terms of this Agreement and for approval of proposed forms of all notices and other documents necessary to implement the Settlement.

**4.2. Approval of this Agreement.** The Parties will jointly take all necessary and appropriate steps to secure the Court's approval of this Agreement, with Class Counsel to prepare and submit all briefs to the Court. No later than fourteen (14) days after the objection/opt-out deadline (as dictated by the entry of the Preliminary Approval Order), Class Counsel shall file a motion for an Order granting final approval of this Agreement and a Judgment in favor of Plaintiffs and the Settlement Class, together with any supporting papers, all of which will be unopposed by Defendants provided the motion is consistent with this Agreement.

**4.3. Order and Judgment.** The Judgment shall provide for Plaintiff and the Settlement Class to take according to this Agreement and nothing else and shall include provisions that the Litigation is concluded pursuant to the entry of the Judgment. Notwithstanding the conclusion of the Litigation, the Parties stipulate that the Judgment will include a provision for the Court to retain jurisdiction to enforce this Agreement.

**4.4. Effect of Agreement if Settlement Is Not Approved.** This Agreement was entered into only for the purpose of Settlement. For whatever reason, should the Settlement not be approved, not be implemented in its entirety, or not become final, the fact that the Parties were willing to stipulate to class certification for purposes of this Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in this Litigation or any other action or proceeding. Defendant expressly reserves its right to oppose class certification should this Settlement not become final.

**4.5. Release of Defendant by All Settlement Class Members.** Effective upon the date of Final Judicial Approval, Plaintiff and each Settlement Class Member, and each of their, his, or her, as the case may be, respective successors, assigns, legatees, heirs, parents, divisions, subsidiaries,

affiliates, predecessors, partners, successors, assigns, officers, directors, shareholders, employees, investigators, attorneys, contractors, subcontractors, agents, insurers and representatives and all persons acting by, through, under or in concert with them, or any of them, releases and forever discharges Defendant, and each of its past and present parents, divisions, subsidiaries, affiliates, predecessors, partners, successors, assigns, officers, directors, shareholders, employees, investigators, attorneys, contractors, subcontractors, agents, insurers and representatives and all persons acting by, through, under or in concert with them, or any of them, and all other persons whether herein named and referred to or not (the “Released Parties”), from all claims arising from or related to the deduction of severance taxes from royalty payments as alleged in the Litigation, including, without limitation, from any and all claims, rights, demands, actions, obligations, damages, liabilities, and causes of action of any and every kind, nature and character whatsoever, whether based in tort, contract, statute or on any other theory of recovery, whether known or unknown, and whether for equitable relief, statutory penalties, compensatory or punitive damages, which Plaintiff or each Settlement Class Member ever had or could have asserted against the Released Parties arising out of or relating to the alleged deduction of severance taxes from royalty payments, including, but not limited to, breach of contract and all underlying claims for attorneys’ fees and costs (collectively, the “Released Claims”). This Agreement sets forth the sole and exclusive remedies for any Released Claims of the Settlement Class Members. No court or arbitrator may award damages of any kind, including compensatory, punitive or multiple damages, with respect to any such claim, and no Settlement Class Member may serve as a representative plaintiff with respect to such a claim or remain in any action or permit himself to be represented by a third party in any action in which such a claim is asserted. This release has no effect on claims accruing after the date of this Agreement.

**4.6. Defendant’s Release of Plaintiff, the Settlement Class, and Plaintiff’s Counsel.** Effective upon the date of Final Judicial Approval, Defendant releases and forever discharges Plaintiff, the Settlement Class, and Class Counsel and each of their, his, or her, as the case may be, respective successors, assigns, legatees, heirs, parents, divisions, subsidiaries, affiliates, predecessors, partners, successors, assigns, officers, directors, shareholders, employees, investigators, attorneys, contractors, subcontractors, agents, insurers and representatives and all persons acting by, through, under or in concert with them, or any of them from any and all claims relating to the institution or prosecution or settlement of the Litigation, as well as any and all claims for contribution, indemnification, or any other claims relating to the Award to the Settlement Class pursuant to Section 2.3 above. This release has no effect on claims arising after the date of this Agreement.

## **5. ADDITIONAL PROVISIONS.**

**5.1. No Admission of Liability or Wrongdoing.** This Agreement reflects the compromise and settlement of disputed claims between the Parties. Its constituent provisions, and any and all drafts, communications and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person or entity, and shall not be offered or received in evidence or requested in discovery in the Litigation or any other action or proceeding as evidence of an admission or concession. Defendant denied and continues to deny each of the claims and contentions alleged by Plaintiff in the Litigation. Defendant has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Litigation.

**5.2. Investigation.** The Parties have conducted significant investigation of the facts and law over the past 11 years and throughout the pendency of this Litigation. Counsel for the Parties have

further investigated the applicable law as applied to the facts discovered with respect to the alleged claims of the Class Members and potential defenses thereto, and the damages that could be claimed by the Class Members.

**5.3. Fair, Adequate and Reasonable Settlement.** The Parties believe this Settlement is fair, adequate, and reasonable, and arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential.

**5.4. Real Parties in Interest.** In executing this Agreement, the Parties warrant and represent that they, including Plaintiff in its representative capacity on behalf of the Settlement Class, are the only persons having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Litigation, and, except as provided herein, neither said claims nor any part thereof have been assigned, granted or transferred in any way to any other person, firm or entity.

**5.5. Voluntary Agreement.** This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm or entity.

**5.6. Binding on Successors.** This Agreement shall bind and inure to the benefit of the respective future successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

**5.7. Parties Represented by Counsel.** The Parties acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

**5.8. Authorization.** Each of the Parties warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the Claims or causes of action released herein and, further, that each party is fully entitled and duly authorized to give this complete and final general release and discharge.

**5.9. Construction and Interpretation.** Neither the Parties nor any of the Parties' respective Attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them.

**5.10. Headings.** The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement.

**5.11. Modifications and Amendments.** No amendment, change or modification of this Agreement or any part thereof shall be valid unless in writing and signed by the Parties.

**5.12. Entire Agreement/No Representations.** This Agreement and any attached Exhibits constitute the entire agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. In addition, the Parties represent and warrant that they are not relying on any representations, warranties or statements, oral or otherwise, not contained in this Agreement.

**5.13. Governing Law.** This Agreement is entered into in accordance with the laws of the Commonwealth of Kentucky and shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflict of law principle.

**5.14. Further Assurances.** The Parties shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts or things reasonably

necessary in connection with the performance of its, her, or his, as the case may be, obligations hereunder to carry out the express intent of the Parties.

**5.15. Execution Date.** This Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

**5.16. Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement.

**5.17. Counterpart.** This Agreement may be executed in two or more counterparts, which together shall constitute one and the same instrument.

**5.18. Severability.** Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of this Agreement.

**5.19. Class Representative's Waiver of Right to be Excluded and Object.** The Class Representative agrees to sign this Agreement and by signing this Agreement is bound by the terms herein stated, and further agrees not to request to be excluded from the Class and agrees not to object to any of the terms of this Agreement. Any such request for exclusion or objection shall therefore be void and of no force or effect.

**PLEASE READ THIS DOCUMENT CAREFULLY. THIS AGREEMENT INCLUDES A SPECIFIC RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

AGREED AND ACCEPTED:

Appalachian Land Company



By: President

Date: 7/22/19

AGREED AND ACCEPTED:

EQT Production Company

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

necessary in connection with the performance of its, her, or his, as the case may be, obligations hereunder to carry out the express intent of the Parties.

5.15. **Execution Date.** This Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

5.16. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement.

5.17. **Counterpart.** This Agreement may be executed in two or more counterparts, which together shall constitute one and the same instrument.

5.18. **Severability.** Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of this Agreement.

5.19. **Class Representative's Waiver of Right to be Excluded and Object.** The Class Representative agrees to sign this Agreement and by signing this Agreement is bound by the terms herein stated, and further agrees not to request to be excluded from the Class and agrees not to object to any of the terms of this Agreement. Any such request for exclusion or objection shall therefore be void and of no force or effect.

**PLEASE READ THIS DOCUMENT CAREFULLY. THIS AGREEMENT INCLUDES A SPECIFIC RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

AGREED AND ACCEPTED:

Appalachian Land Company

By: \_\_\_\_\_

Date: \_\_\_\_\_

 AGREED AND ACCEPTED:  
EQT Production Company

  
By: Michael Gavin  
Date: 7/16/2019

**Angeion Group Project Proposal**Case/Project Name: *Appalachian Land*Type of Case: **Environmental**Submission Date: **July 19, 2018 -- REVISED 6.20.19**Firm(s) Submitted to : **Whitfield Bryson & Mason LLP**Firm(s) Contact : **Gary Mason, Esq.**Angeion Representative: **Steven Weisbrot, Esq. & Christopher Chimicles, MBA**

	VOLUME		RATE (\$)	TOTAL (\$)
<b>Case Management Fee</b>				
Includes case set-up costs, data management fees, other applicable fees and coordination of a Private Investigator	1	One-Time Fee	7,500.00	2,500.00
				<i>Discounted Rate</i>
				<b>2,500.00</b>
				SUBTOTAL
<b>Notification Fees &amp; Costs</b>				
<b>Mail to class members</b>				
Set up, formatting and proofing the 6-page Notice with 1-page Claim Form	1.5	Per Hour	150.00	225.00
Pre-Notification Address Verification (Skip tracing) assuming a 60% hit rate	480	Per Hit	1.50	720.00
Generate the list of applicable addresses and standardizing the list	1	Per Hour	140.00	140.00
NCOA (National Change of Address)	1	One-Time Fee	295.00	295.00
Printing the 6-page Notice with 1-page Claim Form	800	Per Notice	1.75	1,400.00
Postage for the 6-page Notice with 1-page Claim Form	800	Per Notice	0.50	400.00
				SUBTOTAL
				<b>3,180.00</b>
<b>Processing Undeliverable Direct Mail Notices</b>				
Process notices returned as undeliverable (est. @ 10%)	80	Per Notice	0.75	60.00
Address Verification (Skip tracing) assuming a 5% hit rate	4	Per Hit	1.50	6.00
Print returned notices & notices that have a forwarding address (est. @ 1%)	5	Per Notice	3.50	17.50
Postage for remailing returned notices to a new address	5	Per Notice	0.50	2.50
				SUBTOTAL
				<b>86.00</b>
<b>Processing Notice Requests and Class Member Correspondence</b>				
Receive and respond to requests for Long Form Notice (includes printing and data entry)	2	Per Notice	3.50	7.00
Class member correspondence (returning emails and speaking to class members on the phone)	10	Per Hour	75.00	750.00
Special Letters to class members including postage and project management time	-	Per Letter	5.00	-
Postage for claimant responses & request for Notice	2	Per Notice/Letter	0.50	1.00
				SUBTOTAL
				<b>758.00</b>

**Angeion Group Project Proposal**

**Case/Project Name:** *Appalachian Land*

**Type of Case:** Environmental

**Submission Date:** July 19, 2018 -- REVISED 6.20.19

**Firm(s) Submitted to :** Whitfield Bryson & Mason LLP

**Firm(s) Contact :** Gary Mason, Esq.

**Angeion Representative:** Steven Weisbrot, Esq. & Christopher Chimicles, MBA

	VOLUME		RATE (\$)	TOTAL (\$)
<b>Enhanced Notice Campaign</b>				
Private Investigator-- <i>Estimated Rate</i>	60	Per Hour	175.00	10,500.00
Advanced people search component	48	Per Hour	75.00	3,600.00
				<b>SUBTOTAL</b>
				<b>14,100.00</b>
<b>Website Requirements</b>				
Set-up fee for Angeion Group website w/relevant case documents and online claims filing	1	One-Time Fee	4,950.00	4,950.00
Monthly maintenance/monthly hosting	8	Per Month	195.00	1,560.00
Revisions to website subsequent to set-up	-	Per Hour	160.00	-
Additional programming time for online claims filing if additional documentation needs to be uploaded or other programming requirements	-	Per Hour	200.00	-
				<b>SUBTOTAL</b>
				<b>6,510.00</b>
<b>Call Center Requirements</b>				
Set-up, design and implementation of IVR (Integrated Voice Response)	1	One-Time Fee	1,950.00	1,950.00
"IVR" Operating System (estimated number of minutes)	500	Per Minute	0.26	130.00
Monthly Maintenance Fee is \$125.00 if minimum usage time does not meet threshold	-	Per Month	125.00	-
Transcription Services (reporting once per week) for address updates, call backs and notice requests	-	Per Week	75.00	-
Per Transcription	-	Per Trans.	2.00	-
				<b>SUBTOTAL</b>
				<b>2,080.00</b>



**Angeion Group Project Proposal**

**Case/Project Name:** *Appalachian Land*

**Type of Case:** Environmental

**Submission Date:** July 19, 2018 -- REVISED 6.20.19

**Firm(s) Submitted to :** Whitfield Bryson & Mason LLP

**Firm(s) Contact :** Gary Mason, Esq.

**Angeion Representative:** Steven Weisbrot, Esq. & Christopher Chimicles, MBA

	VOLUME		RATE (\$)	TOTAL (\$)
<b>Distribution and Post Distribution</b>				
Generate Distribution list & Post Distribution Services	20	Per Hour	100.00	2,000.00
Checks to Eligible Class Members	152	Per Check	2.50	380.00
Postage for mailing checks	152	Per Check	0.50	76.00
Process checks returned as undeliverable (includes data entry)	5	Per Check	2.50	12.50
Address Verification (Skip tracing) assuming a 80% hit rate	4	Per Hit	1.50	6.00
Print reissued checks	4	Per Check	7.50	30.00
Postage for mailing reissued checks	4	Per Check	0.50	2.00
				<b>SUBTOTAL</b>
				<b>2,506.50</b>
<b>Tax Return</b>				
Tax return for the QSF (1 year)	1	Per Return	1,750.00	1,750.00
Cy pres Distribution (if required)	-	Per Hour	150.00	-
Issuing 1099s as needed (where distribution exceeds \$600)	-	Per Form	5.00	-
Postage for 1099s	-	Per Form	0.47	-
				<b>SUBTOTAL</b>
				<b>1,750.00</b>

**Angeion Group Project Proposal**

**Case/Project Name:** *Appalachian Land*

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**Submission Date:** July 19, 2018 -- REVISED 6.20.19

**Firm(s) Submitted to :** Whitfield Bryson & Mason LLP

**Firm(s) Contact :** Gary Mason, Esq.

**Angeion Representative:** Steven Weisbrot, Esq. & Christopher Chimicles, MBA

	VOLUME		RATE (\$)	TOTAL (\$)
<b>Other Relevant Costs</b>				
CAFA Notice	1	One-time Fee	2,000.00	2,000.00
Postage and FedEx charges for CAFA Notice	1	Estimated	395.00	395.00
Sales tax if applicable		Estimated		
P.O. Box for Opt Outs & Objections	2	Per Month	75.00	150.00
Photocopying			NO CHARGE	NO CHARGE
Scanning of all documents	163	Per Page	0.06	9.78
Document Storage (estimated for 12 months) (estimate 2500 documents per bankers box)	1	Per Box/Month	1.95	23.40
Image Storage (estimated for 12 months)	163	Per Image/Month	0.005	9.84
	SUBTOTAL			<b>2,588.02</b>
	ESTIMATED PROJECT FEES & COSTS (excl. postage)			<b>69,120</b>
	ESTIMATED POSTAGE COSTS			<b>881</b>
	TOTAL ESTIMATED COSTS			<b>70,000</b>

*All media/notification costs (includes media/printing/postage/email campaign) must be paid 14 days prior to the inception of the program.*

Notice and check printing costs are an estimate and are based upon volume, number of pages or other parameters. Pricing may increase or decrease if the volume, number of pages or other variable factors are altered.

The pricing for check printing in this proposal only accounts for printing on the front side of checks. If additional language is required to be printed on the back side of checks (i.e. release language) there will be additional costs.

The estimated hours listed in this proposal for services performed are minimum hourly estimates. Any additional time will be billed at the rates quoted in this proposal.

Postage is an estimate.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

Appalachian Land Company v. EQT Production Company f/k/a Equitable Production Company Case No. Case No. 7:08-139-KKC

LEASE HOLDERS OF CERTAIN OIL AND GAS LEASES WITH EQT PRODUCTION COMPANY MAY CLAIM SETTLEMENT BENEFITS

This Class Action Settlement May Affect Your Rights

A Court authorized this Notice. This is not a solicitation from a lawyer.

- This Settlement resolves a lawsuit over EQT's deduction of severance taxes from the royalty payments owed to lease holders. The two sides disagree on whether EQT did anything wrong but have reached a settlement through compromise and negotiation.
You are entitled to relief from the class action settlement if, during the period of January 1, 1995, through July 31, 2016, you were a lessor on oil and gas leases with EQT, or its predecessors in title, covering lands in Kentucky, which obligate the lessee to pay royalties on gas produced from wells at a rate of one-eighth of the market price received at the wellhead and which leases do not authorize the deduction of the severance taxes, or other costs, and/or expense incurred to market such gas after it is severed from the wellhead and you have not accepted reimbursement for withheld severance taxes during the class period.
To receive compensation you must submit a claim form.
To opt-out or object you must submit your request on or before <insert date 120 days from preliminary approval>.

Table with 2 columns: SUBMIT A CLAIM FORM BY [CLAIM FORM DEADLINE] TO BE ELIGIBLE FOR COMPENSATION; To be eligible for compensation, you must submit a claim form which is included with this mailing. Once submitted, an administrator will determine whether you are entitled to compensation and, if so, how much. Valid claimants will receive compensation within approximately sixty (60) days after the close of the claims period or after Final Judicial Approval occurs.

QUESTIONS?

Call [1-800-000-0000] Toll Free

Visit [www.website.com]

<b>DO NOTHING AND BE BOUND BY THE SETTLEMENT</b>	By doing nothing, if the Court approves the Settlement you give up rights to separately bring a lawsuit on your own against the Defendant for the same claims in this lawsuit but will not be entitled to compensation unless you submit a valid claim form.
<b>REQUEST TO BE EXCLUDED BY [EXCLUSION DEADLINE]</b>	You may exclude yourself from the Settlement by submitting a “Request for Exclusion” as detailed below, by <INSERT>. If you exclude yourself, you will not participate in these proceedings, nor will you receive any relief from this Settlement. You will retain the right to assert any claims you may have against Defendant for the deduction of severance taxes from your royalty payments. Note that you have a right to opt out of the Settlement only if your royalties were reduced by severance taxes and you have not objected to the Settlement.
<b>FILE AN OBJECTION BY [OBJECTION DEADLINE]</b>	<i>If you do not</i> submit a timely and complete Request for Exclusion, you can object to the terms of the Settlement, the attorneys’ request for fees and expenses, and/or the Settlement Class Representative’s request for Incentive Award. Any objections to the Settlement must be submitted to the Settlement Administrator by DATE. More details on objecting are set forth in the answers to questions 16 through 19 below. Note that if the Court approves the Settlement despite your or any other objections and you have not submitted a claim form, you will not receive any relief from the Settlement.

These rights and options – and the deadlines by which to exercise them – are explained in this Notice.

The Court that is supervising this case has granted preliminary approval of the Settlement, but still has to decide whether to grant final approval. The final approval hearing will take place on INSERT. Settlement benefits will be distributed only if and after the Court grants the final approval to the Settlement.

**QUESTIONS?**

Call [1-800-000-0000] Toll Free

Visit [www.website.com]

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**QUESTIONS?**

Call [1-800-000-0000] Toll Free

Visit [www.website.com]

## **BASIC INFORMATION**

### **1. Why was this Notice issued?**

The Court issued this Notice because you have a right to know about a proposed Settlement of a class action lawsuit that the Court has preliminarily approved. You also are entitled to know about all of your options. If the Court grants final approval and any appeals are resolved (this date will be referred to as “the Settlement Effective Date”), valuable benefits will be distributed to certain qualifying persons who submitted a Claim Form and did not opt out or object within the Claim Period.

### **2. What is this lawsuit about?**

The company who filed the class action is called the “Plaintiff” and EQT Production Company is the “Defendant.” A lawsuit was filed in Kentucky Federal court captioned *Appalachian Land Company v. EQT Production Company*, Case No. 7:08-139-KKC, which alleges that Defendant improperly deducted severance taxes from the royalty payments owed to lessors under certain oil and gas leases. Plaintiff asserted legal claims on behalf of itself and all members of the “Settlement Class,” defined below. Those claims include claims that Defendant breached its contract (lease) with lease holders. EQT denies these claims, as well as any wrongdoing in the payment of royalties and believes it has a defense. More information can be found by emailing [[info@website.com](mailto:info@website.com)], calling the toll free number [[1-800-000-0000](tel:1-800-000-0000)], or visiting the website [[www.website.com](http://www.website.com)].

### **3. Why is this a class action?**

In a class action, one or more person(s) called “Class Representatives” sue on behalf of themselves and others with similar claims. All of these people together are called a “Class,” and individually, are called “Class Members.” The Court appointed Plaintiff as Class Representative for purposes of this Settlement. The “Settlement Class Members” are all people who had severance taxes deducted from their royalty payments whose leases did not allow for this deduction, who have not already accepted reimbursement, and who do not properly or timely exercise their rights to opt out of the Settlement.

### **4. Why is there a Settlement?**

The Court did not decide in favor of either Plaintiff or Defendant. Instead, both sides agreed to a Settlement. The Class Representative and the attorneys that have been appointed by the Court to represent the Class believe that the Settlement is in the best interests of all Settlement Class Members.

## **QUESTIONS?**

Call [[1-800-000-0000](tel:1-800-000-0000)] Toll Free

Visit [[www.website.com](http://www.website.com)]

## **WHO IS IN THE SETTLEMENT?**

### **5. How do I know if I am part of the Settlement?**

You are believed to be entitled to Settlement benefits if you are receiving this notice. You qualified for notice if you were a lease holder to an oil and gas lease with EQT (or its predecessors), you received royalty payments between January 1, 1995 through July 31, 2016, your royalties were reduced by the deduction of severance taxes where your lease did not provide for this deduction, and you have not already accepted compensation from EQT.

### **6. What oil and gas leases are included in the Settlement?**

Lease holders of leases executed with EQT (or its predecessors) who received royalty payments between January 1, 1995 through July 31, 2016, whose leases did not provide for the deduction of severance taxes, and who have not already accepted compensation from EQT are eligible for compensation under this Settlement.

### **7. Are there exceptions to being included in the Settlement?**

Excluded from the Settlement Class is the United States of America; any Judge or Magistrate presiding over this action and members of their families; Defendant, its affiliates, predecessors-in-interest, and its respective employees, officers and directors; and potential members of the class who have been paid and accepted reimbursement for withheld severance taxes during the class period.

### **8. What if I am not sure whether I am included in the Settlement?**

If you are receiving this notice you are believed to be included in the Settlement. For more information call [(800) 000-0000]. If you are not sure whether you are a Settlement Class Member, or have any other questions about the Settlement Agreement, visit the settlement website at [www.website.com], contact the Settlement Administration by email at [info@website.com] or call toll-free at [1-800-000-0000]. You may also send questions to the Settlement Administrator at:

Appalachian Land Company v. EQT Production Company  
Attn: Settlement Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

## **QUESTIONS?**

Call [1-800-000-0000] Toll Free

Visit [www.website.com]

## **THE SETTLEMENT BENEFITS: WHAT YOU GET AND HOW YOU GET IT**

### **9. What does the Settlement provide?**

Each Class Member who does not opt out or object to the Settlement will get a *pro rata* reimbursement of royalty payments from the Settlement by EQT of up to 100% of the principal originally withheld. Depending on the number of claims, Class Members are also eligible for interest in an amount up to 100% of the principal originally withheld. The exact amount you will receive will depend on the amount of royalty payments previously withheld for the payment of severance taxes and the number of claims submitted by Class Members.

### **10. How do I submit a claim?**

To be eligible for compensation, you must fully fill out the Claim Form included with this notice and return it to the Settlement Administrator as described in the Claim Form or at [[www.website.com](http://www.website.com)]. Claim Forms must be submitted by **DATE**. Once the claims deadline has passed, the Settlement Administrator will determine whether you qualify for compensation and, if so, how much. Compensation will be paid within approximately sixty (60) days after the close of the claims period or after Final Judicial Approval occurs, whichever is later.

### **11. What claims against EQT am I releasing?**

If you are a Settlement Class Member, when the Settlement becomes final if you have not opted out of the Settlement you will be releasing Defendant and their officers, directors, employees, and related corporate entities, from any liability for all claims which were or could have been asserted within this case, and you will be bound by the release included in the Settlement Agreement.

## **THE LAWYERS REPRESENTING PLAINTIFFS**

### **12. Do I have a lawyer in this case?**

Yes. John C. Whitfield of Whitfield Bryson & Mason at 19 N. Main St., Madisonville, KY 42431; Gary E. Mason of Whitfield Bryson & Mason, LLP, 5101 Wisconsin Ave. NW, Ste. 305, Washington, DC 20016; Caroline Ramsey Taylor of Whitfield Bryson & Mason, LLP at 518 Monroe St., Nashville, TN 37208; and George “Skip Stigger” of the Law Offices of George E. Stigger at 330 Osprey Circle, Saint Marys, GA 31558 have been appointed by the Court to represent you and the other Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **QUESTIONS?**

Call [[1-800-000-0000](tel:1-800-000-0000)] Toll Free

Visit [[www.website.com](http://www.website.com)]

### **13. How will the lawyers be paid?**

Plaintiff's counsel will ask the Court to award attorneys' fees and costs of no more than \$350,000.00 which will be deducted from the Settlement Amount. The Court may award a different amount. No Settlement Class Member will pay anything out of pocket.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **14. What do I do if I do not want to be included in the Settlement?**

You have a right to exclude yourself or "opt out" of the Settlement. To opt out, you must personally sign and mail a request for exclusion to the following address:

Class Action Opt Out  
c/o Appalachian Land Company v. EQT Production Company  
P.O. Box 58220  
1500 John F. Kennedy Blvd., Suite C31  
Philadelphia, PA 19102

You must personally sign the exclusion request. You must also clearly state that you wish to be excluded from the Settlement Class. Your request must: (i) clearly express your desire to be excluded or to "opt out" from the Settlement Class and (ii) include your name, address and telephone number, and, if represented by counsel, counsel's name, address and telephone number.

**Your exclusion request must be mailed to the address set forth above and must be postmarked no later than **INSERT** or it will not be accepted. If you do not specifically request to be excluded by following these directions, you will automatically be a member of the Settlement Class.** If you opt out of the Settlement Class, you will not be eligible for any Settlement benefits, and will waive all rights to object to the Settlement. Similarly, if you file an objection to the Settlement with the Court (see Question 16 below), you will not be able to exclude yourself from the Settlement Class.

### **15. What happens if I don't opt out before **INSERT**?**

If the proposed Settlement is approved and you are a Settlement Class Member who does not properly and timely exclude yourself from the Settlement Class, all claims that you may have now or in the future against Defendant with respect to the deduction of severance taxes from your royalty payments will be barred, and you will be prohibited from bringing any such claims in the future on your own behalf. You will be included in the Settlement Class but will not receive reimbursement for previously reduced royalty payments (unless you submit a valid claim form).

### **QUESTIONS?**

Call [**1-800-000-0000**] Toll Free

Visit [**www.website.com**]

## **OBJECTING TO THE SETTLEMENT**

### **16. How do I tell the Court that I like or do not like the Settlement?**

If you are a Settlement Class Member, you can express your objection to the Settlement. The Court will consider your views. To object, you must send a letter to the Settlement Administrator at the address below saying that you object to the terms of the Settlement. Your objection must: (i) state in detail the legal and factual ground(s) for your objection; (ii) include your name, address and telephone number, and, if represented by counsel, counsel's name, address and telephone number; (iii) indicate whether you or your attorney intend to speak at the Fairness Hearing; and (iv) be signed by you. If you are represented by your own separate counsel, that attorney will also need to file his or her appearance with the Court by no later than **INSERT**.

Please include the phrase "*Appalachian Land Co. v. EQT Production Co.*, Case No. 7:08-139-KKC," below the Settlement Administrators address on the envelope containing your objection.

Your objection must be *postmarked* by no later than **INSERT**.

Appalachian Land Company v. EQT Production Company  
Attn: Settlement Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

If you send an objection to the Settlement Administrator, you will waive all rights to exclude yourself from the Settlement Class.

### **17. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing before the Honorable \_\_\_\_ at \_\_\_\_ a.m. on \_\_\_\_\_ in the United States District Court for the Eastern District of Kentucky, located at \_\_\_\_\_. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court also may decide how much to pay Plaintiff's Counsel. After the hearing, the Court will decide whether to grant final approval of the Settlement. We do not know how long these decisions will take.

### **18. Do I have to attend the hearing?**

No. Plaintiff's Counsel will answer any questions that the Judge may have. However, you are welcome to come at your own expense. You also may pay your own lawyer to attend the

## **QUESTIONS?**

Call [**1-800-000-0000**] Toll Free

Visit [**www.website.com**]

Fairness Hearing on your behalf. If you file an objection, you do not have to come to Court to discuss it. As long as your written objection is received before the deadline, and you have followed the directions contained in the Answer to Question 16 above, the Court will consider the information provided in your written objection.

**19. May I speak at the hearing?**

That will be up to the Judge. If you have submitted a timely written objection pursuant to Question 16 above and have indicated your intent to appear at the Fairness Hearing, you may ask the Court for permission to speak at the Fairness Hearing.

**IF YOU DO NOTHING**

**20. What happens if I do nothing at all?**

If you do nothing, you will be a Member of the Settlement Class but you will not get any Settlement benefits to which you are entitled. To receive compensation, you must submit a valid claim form. Moreover, any and all claims you have relating to EQT's deduction of severance taxes from your royalty payments will be released if you do not act.

**21. How do I get more information?**

If you would like more information about the lawsuit on the terms of the proposed Settlement, you may review the pleadings, records and other papers on file in this lawsuit, including the Court's Order regarding the Preliminary Approval of Class Settlement and the proposed Settlement Agreement, which may be inspected on weekdays, during normal business hours, at the Clerk's Office, ADDRESS. For information on any matters contained in this Notice, you may visit the settlement website at [www.website.com], or contact the Settlement Administrator by email at [info@website.com] or call toll-free at [1-800-000-0000]. You may also send questions to the Settlement Administrator at:

Appalachian Land Company v. EQT Production Company  
Attn: Settlement Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

**PLEASE DO NOT CONTACT THE COURT DIRECTLY WITH QUESTIONS ABOUT THE SETTLEMENT.**

<b>MUST BE SUBMITTED ONLINE OR POSTMARKED NO LATER THAN [DATE]</b>	<u><b>CLAIM FORM</b></u>  <b>Appalachian Land Company v. EQT Production Company, f/k/a Equitable Production Company, Case No. 7:08-cv-139-KKC (E.D. Ky.)</b>	<b>Appalachian Land</b>
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PLEASE FILL OUT EACH SECTION OF THE FORM AND SIGN WHERE INDICATED:

First Name

Last Name

Business Name (Optional)

Street Address (Mailing Address)

City

State

Zip Code

Email Address (Optional)

Current Phone Number

TO RECEIVE BENEFITS FROM THIS SETTLEMENT, YOU MUST PROVIDE ALL OF THE INFORMATION ABOVE, AND YOU MUST SIGN THIS CLAIM FORM.

YOUR CLAIM FORM MUST BE SUBMITTED ONLINE at [URL] BY 11:59 P.M. EASTERN TIME ON [DATE] OR SENT BY MAIL TO THE ADDRESS BELOW AND POSTMARKED BY [DATE]

*Appalachian Land Co. v. EQT Production Co. Settlement Administrator*  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

**CLASS MEMBER AFFIRMATION:** By submitting this Claim Form and checking the box below, I declare that I am a member of the Settlement Class and that the following statement is true (ALL boxes must be checked to receive payment):

- I affirm I was a lessor on Oil and Gas Lease with EQT Production Company (formerly known as Equitable Production Company), or its predecessors in title, during the period of January 1, 1995 through July 31, 2016, and am a member of the class as defined in the class notice.
- I affirm I am NOT any of the following: (1) the United States of America; (2) any Judge or Magistrate presiding over this action or a member of their families; (3) Defendant, its affiliate, predecessor-in-interest, or its respective employee, officer or director; or (4) a potential member of the class who has been paid or accepted reimbursement for withheld severance taxed during the Class Period (between January 1, 1995 and July 31, 2016).
- I declare under penalty of perjury under the laws of the State in which this affirmation is executed and the United States of America that all information provided in this Claim Form is true and correct to the best of my knowledge and belief.

<b>SIGNATURE:</b> _____	
<b>PRINTED NAME:</b> _____	<b>DATED:</b> ____/____/____

**If during the period of January 1, 1995, through July 31, 2016, you were a lessor on oil and gas leases with EQT Production Company, a class action lawsuit may provide you compensation.**

You may be entitled to compensation from a class action settlement involving EQT Production Company, formerly known as Equitable Production Company (“Defendant” or “EQT”) which alleged EQT improperly withheld Kentucky severance taxes from royalty payments during the class period. The lawsuit is in the United States District Court for the Eastern District of Kentucky and is *Appalachian Land Company v. EQT Production Company*, Case No. 7:08-00139. The Court decided this lawsuit should be a class action on behalf of a “Class” or group of people that could include you. The parties have reached a settlement agreement and you are likely entitled to compensation.

**Are you Affected?**

The lawsuit includes persons who during the period of January 1, 1995, through July 31, 2016, were lessors on oil and gas leases with EQT, or its predecessors in title, covering lands in Kentucky, which obligate the lessee to pay royalties on gas produced from wells at a rate of one-eighth of the market price received at the wellhead and which leases do not authorize the deduction of the severance taxes, or other costs, and/or expense incurred to market such gas after it is severed from the well head and have not accepted reimbursement for withheld severance taxes during the class period.

**What is the Case About?**

The lawsuit claims that EQT improperly withheld Kentucky severance taxes from royalty payments during the class period. The settlement provides for the withheld money to be refunded to Class Members. EQT denies all the claims and allegations in the lawsuit. The settlement was reached through negotiations and compromise.

**What Are Your Rights and Options?**

You have a choice about whether to stay in the Class or not. **To be compensated, you must fill out a claim form.** Claim forms can be found on the website below. If you fill out a claim, the Settlement Administrator will determine whether you qualify for compensation and the amount. If you do nothing, you are choosing to stay in the Class which means you will be legally bound by all orders and judgments of the Court and you will not be able to sue EQT about the legal claims in this case, but you will not receive compensation. If you do not want to stay in the Class, you must submit a request for exclusion. If you exclude yourself, you cannot get any money or benefits from this lawsuit, but you will keep any rights to sue EQT for the same claims in a different lawsuit, now or in the future. If you exclude yourself, you will not be bound by any orders or judgments in this case. If you wish to object to this settlement, you may do so. To ask to be excluded or to object, you must mail a written request for exclusion to the Settlement Administrator, to the address below, postmarked by **[Month 00, 0000]**. Your letter must state that you object or want to be excluded from *Appalachian Land Company v. EQT Production Company*, Case No. 7:08-00139 and include your name, address, telephone number, and signature.

**How Can You Get More Information?**

Visit the website, or contact the Settlement Administrator by emailing **[info@website.com]**, by calling toll-free **[1-800-000-0000]** or write to *Appalachian Land Co. v. EQT Production Co.* Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

**[1-800-000-0000]**  
**[www.website.com]**

**FILED ELECTRONICALLY**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF KENTUCKY**  
**SOUTHERN DIVISION AT PIKEVILLE**

APPALACHIAN LAND COMPANY,	)	
	)	
Plaintiff,	)	Civil Action No. 7:08-139-KKC
	)	
v.	)	
	)	
EQT PRODUCTION COMPANY f/k/a	)	
EQUITABLE PRODUCTION COMPANY,	)	
	)	
Defendants.	)	

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**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, DIRECTING NOTICE TO THE CLASS, ENTERING A SCHEDULING ORDER AND SCHEDULING FAIRNESS HEARING**

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Upon consideration of Plaintiffs' Unopposed Motion for Preliminary Approval and its supporting exhibits, it is ORDERED:

1. The Settlement Class as previously certified under Fed. R. Civ. P. 23(b)(3) is defined as follows:

All persons and entities that, during the period of January 1, 1995 through July 31, 2016, were lessors on Oil and Gas Leases with Equitable, or its predecessors in title, covering lands in Kentucky, which obligate the lessee to pay royalties on gas produced from wells at a rate of one-eighth of the market price received at the wellhead and which leases do not authorize the deduction of severances taxes, or other costs, and/or expense incurred to market such gas after it is severed from the wellhead. The defined class excludes: (1) the United States of America; (2) any Judge or Magistrate presiding over this action and members of their families; (3) Equitable, its affiliates, its predecessors-in-title, and its respective employees, officers and directors; and (4) potential members of the class who have been paid and accepted reimbursement for withheld severance taxes during the class period.

2. The Court conditionally approves Named Plaintiff Appalachian Land Company as Class Representative.

3. The Court conditionally appoints John C. Whitfield, Gary E. Mason and Caroline Ramsey Taylor of Whitfield Bryson & Mason LLP and George E. Stigger of the Law Offices of George E. Stigger as Class Counsel.

4. The proposed settlement set forth in the Settlement Agreement, attached as Exhibit A to the Memorandum in Support of the Plaintiffs' Unopposed Motion for Preliminary Approval, appears upon preliminary review to be fair, reasonable and adequate, negotiated and entered into at arm's length and in good faith, and within the range of possible judicial approval, and therefore is preliminarily approved for consideration at a final approval or fairness hearing.

5. Angeion is appointed as Settlement Administrator for the class and shall be responsible for sending Notice to the class members in accordance with the proposed Notice Plan and the Settlement Agreement.

6. The form and content of the Notice Plan submitted by Angeion and the Notice of Settlement of Class Action ("Notice"), attached as Exhibit B-C to the Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval, is approved. The Court finds that the foregoing plan for Class Notice is the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23.

7. Within 30 days of this Order, the Settlement Administrator shall mail the Detailed Notice as approved, by first class mail, postage prepaid, to each Settlement Class Member to the extent that the specific addresses of such Class Members are within the possession, custody, or control of Defendant or are found through skip-tracing. Further action shall be taken in accordance with the Notice Plan in an attempt to locate all Settlement Class Members.

8. Anyone in the Settlement Class who wishes to object to the settlement must serve on the Settlement Administrator an objection describing the reasons for objecting within 120 days after the Preliminary Approval Order. Anyone in the Settlement Class who wishes to opt-out of the Settlement must send a letter to the Settlement Administrator within 120 days after the date of the Preliminary Approval Order, signed by the member of the Class, explaining that he or she wants to be excluded from the Settlement Class. The letter should include the name, address, telephone number, and the last four digits of the putative opt-out's social security number. Those in the Settlement Class shall opt-out and lodge objections as set forth in the Notice.

9. Plaintiff shall serve a list of persons who validly and timely opted out of the Settlement Class within seven (7) days of the objection/exclusion deadline to Defendant. Plaintiff shall file a report of objections with the Court within fourteen (14) days after the objection/exclusion deadline.

10. Plaintiff shall file paperwork for final approval of this class action settlement within fourteen (14) days after the objection/exclusion deadline.

11. A final approval or fairness hearing will be held on \_\_\_\_\_, 2019, at \_\_\_\_:\_\_\_\_.m. in Courtroom \_\_\_\_\_. As provided in the Notice, this date and time may be changed without the need of further notice to the Class.

12. If the Court grants final approval of this class action settlement, Defendant shall fund the Settlement Amount within fourteen (14) days after Final Judicial Approval.

13. The claims period shall remain open for one (1) year from the entry of Preliminary Approval. Following the closing of the claims period or the granting of Final Approval, whichever occurs later, Class Members shall be compensated with their settlement award within sixty (60) days.

14. The Court hereby enjoins members of the Settlement Class from initiating any lawsuit and stays until final approval any pending lawsuits, asserting any claims relating to Defendant's deduction of severance taxes from royalty payments, including all claims that are or could be raised in the Complaint against Defendant on behalf of anyone in the Settlement Class.

15. Counsel for the parties are authorized to jointly use all reasonable procedures in connection with approval and administration of the settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice, and other exhibits that they jointly agree are reasonable and necessary.

SO ORDERED:

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Judge, United States District Court