

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into effective January 3, 2020 (“Effective Date”), by and between GERALD ULIBARRI and BRENDA ATENCIO (the “Plaintiffs”), on behalf of themselves and a class of similarly situated royalty owners (defined as the “Class” in Section 1 below), and ENERGEN RESOURCES CORPORATION (“Energen”), an Alabama corporation. Plaintiffs and Energen may be referred to as a “Party” or collectively as “the Parties.”

### RECITALS

A. Plaintiffs, the Class, and Energen owned interests in oil and natural gas produced in New Mexico. Plaintiffs and the Class owned royalty interests in this production, and Energen owned working interests in this production. Energen also operated some of the wells from which the oil and natural gas is produced and sold. Energen subsequently sold its interests in these wells to Southland Royalty Company, LLC, and to LOGOS, LLC.

B. On March 29, 2018, Plaintiff Ulibarri sued Energen in the United States District Court for the District of New Mexico (Case No. 1:18-cv-00294-RB-SCY) for allegedly underpaying royalties and improperly deducting post-production costs on the sale of residue gas, natural gas liquids, and condensate from wells located in New Mexico (the “Federal Court Action”). Plaintiff Ulibarri brought his claims on behalf of himself and a class of similarly situated royalty owners. Energen denies that it underpaid Plaintiff Ulibarri’s royalties.

C. On October 7, 2019, Plaintiff Atencio sued Energen in the District Court for San Juan County, New Mexico (Case No. 1116-CV-2019-01603) for allegedly underpaying royalties and improperly deducting post-production costs on the sale of residue gas, natural gas liquids, and condensate from wells operated by Third Parties (“Non-Op Wells”) located in New Mexico (the “State Court Action”). Plaintiff Atencio brought her claims on behalf of herself and a class of similarly situated royalty owners. Energen denies that it underpaid Plaintiff Atencio’s royalties.

D. On January 2, 2020 Plaintiff Ulibarri and Plaintiff Atencio filed a Third Amended Complaint in the Federal Court Action, pursuant to which the claims asserted by Plaintiff Atencio in the State Court Action were added to the Federal Court Action. The State Court Action subsequently was dismissed without prejudice.

E. Over the past year, Plaintiff Ulibarri and Energen have been engaged in extensive information discovery and data production relevant to Energen’s payment of royalties since March 29, 2012. Plaintiffs’ attorney (“Class Counsel”) and Energen have engaged experienced royalty accounting experts to assist in reviewing the documents and data. Class Counsel and Energen also have engaged in extensive discussions between counsel and their accounting experts to evaluate the information and negotiate a full and final resolution of their dispute in order to avoid the cost, time, and uncertainty of continued litigation.

## AGREEMENT

1. Joint Motion for Class Certification: Within seven (7) days of executing this Agreement, Plaintiffs and Energen will file the Joint Motion for Settlement Class Certification and Preliminary Approval of Class Action Settlement Agreement (the “Joint Motion”) in the form attached as Exhibit A. The Joint Motion shall seek certification of the following class (the “Class”):

all persons and entities to whom Energen paid royalties on natural gas produced by Energen from wells located in the state of New Mexico since March 29, 2012, pursuant to leases which contain a royalty provision which obligated Energen to pay royalties based on a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a percentage of the greater of “(i) the market value of the product sold or used in a condition acceptable for delivery to a transmission pipeline, or (ii) the gross proceeds received by Lessee upon arms-length sale of such as conditioned for delivery to a transmission pipeline” (“greater of market value or gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage of the gross proceeds without “deduction from the value of Lessor’s royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter associated with marketing gas produced from the lands covered hereunder” (“gross proceeds without deduction of post-production costs royalty provision”);

and

all persons and entities who received royalties since October 1, 2013, from an entity other than Energen (“Third-Party Operator”) on the sale of natural gas products produced and sold by the Third-Party Operator from wells located in the State of New Mexico, pursuant to a lease in which Energen owned a portion or all of the lessee’s interests, and which lease contains a royalty provision obligating the lessee to pay royalties based on either: (i) a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”); or (ii) a royalty provision which obligates the lessee to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”).

The Joint Motion shall seek certification of the following two subclasses (the “Subclasses”) that together compose the Class:

Subclass 1: Gerald Ulibarri, and all persons and entities to whom Energen paid royalties on natural gas produced by Energen from wells located in the state of New Mexico since March 29, 2012, pursuant to leases which contain a royalty provision which obligated Energen to pay royalties based on a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a percentage of the greater of “(i) the market value of the product sold or used in a condition acceptable for delivery to a transmission pipeline, or (ii) the gross proceeds received by Lessee upon arms-length sale of such as conditioned for delivery to a transmission pipeline” (“greater of market value or gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage of the gross proceeds without “deduction from the value of Lessor’s royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter associated with marketing gas produced from the lands covered hereunder” (“gross proceeds without deduction of post-production costs royalty provision”).

Subclass 2: Brenda Atencio, and all persons and entities who received royalties since October 1, 2013, from an entity other than Energen (“Third-Party Operator”) on the sale of natural gas products produced and sold by the Third-Party Operator from wells located in the State of New Mexico, pursuant to a lease in which Energen owned a portion or all of the lessee’s interests, and which lease contains a royalty provision obligating the lessee to pay royalties based on either: (i) a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”); or (ii) a royalty provision which obligates the lessee to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”).

The Joint Motion also shall seek certification of the proposed class settlement set forth in this Agreement. The Parties shall cooperate with one another and make their best efforts to obtain certification of the settlement class and subclasses, and approval of this Agreement.

2. Settlement Amount: Within fourteen (14) days of the date of entry of the Preliminary Approval Order, as defined in Section 3(c) below, Energen shall deposit a total of Eight Hundred Fifty Thousand Dollars (\$850,000.00) (the “Settlement Amount”) in an interest-bearing account at BOKF, NA (the “Escrow Account”), to be held by BOKF, NA as the escrow agent (the “Escrow Agent”). The total shall represent payment to the Class in order to resolve all claims through the Effective Date of this Agreement. Of this Settlement Amount, Forty Thousand Dollars (\$40,000.00) shall be reserved as a fund for claims asserted by Class members as described in paragraph 5 below (the “Reserved Funds”).

3. Preliminary Approval Hearing:

a. As soon as practicable after the filing of the Joint Motion, the Parties shall seek to set a hearing with the Court (the “Preliminary Approval Hearing”).

b. At the Preliminary Approval Hearing, the Parties will request that the Court preliminarily approve this Agreement, certify the Class and Subclasses as settlement classes, order notice to be mailed in the form attached as Exhibit B, and order notice to be published in the form attached as Exhibit C. The Parties will submit a proposed order in the form attached as Exhibit D (the “Preliminary Approval Order”). The Parties also will request that the Court set a Final Fairness Hearing.

4. Notice, Opt Out, and Objection:

a. Prior to the Preliminary Approval Hearing, the Parties will cooperate on the preparation of a distribution schedule identifying the distribution of the Settlement Amount (less the Reserved Funds) to identified members included in Subclass 1 (the “Preliminary Distribution Schedule”).

b. Within seven (7) days after the Court enters the Preliminary Approval Order, Class Counsel shall mail notice to identified members of Subclass 1 in the form attached as Exhibit B. The notice shall set a sixty (60) day deadline for parties to request to exclude themselves from the Class (the “Opt Out Deadline”), and a seventy (70) day deadline to object to this Agreement (the “Objection Deadline”). Energen will cooperate with Class Counsel to provide addresses for the identified members of Subclass 1 to facilitate mailing the notice.

c. Within fourteen (14) days after the Court enters the Preliminary Approval Order, Class Counsel shall publish notice to the Class in the form attached as Exhibit C. The notice shall be published in *The Albuquerque Journal* and the *Daily Times* of Farmington, New Mexico and shall run for one Wednesday, Saturday, and Sunday edition of each respective newspaper. The publication notice shall describe the claims process set forth in paragraph 5 below.

d. Neither the Opt Out Deadline nor the Objection Deadline will be extended without the written consent of all Parties.

e. Class Counsel shall provide Energen with weekly reports on the names of owners requesting to exclude themselves from the Class and this Agreement. Within seven (7) days after the Opt Out Deadline, Plaintiffs shall submit to the Court a list of the names of owners requesting to exclude themselves from the Class and this Agreement.

f. Within seven (7) days after the Opt Out Deadline, Plaintiffs and Energen shall instruct the Escrow Agent to distribute to Energen that portion of the Settlement Amount identified on the Preliminary Distribution Schedule attributable to those owners who have requested to exclude themselves from the Class in this Settlement Agreement.

5. Reserved Funds:

a. With respect to any Class member not identified on the Preliminary Distribution Schedule, including but not limited to members of Subclass 2, the publication notice described in paragraph 4(c) shall instruct such members to submit a claim to Class Counsel if they believe they are Class members within sixty (60) days of the publication date (the “Claim Deadline”). The parties shall confer on any such claim and, within twenty-one (21) days, determine whether such claimant is a Class member.

b. If the parties determine that a claimant under paragraph 5(a) is a Class member, such claimant shall be entitled to a distribution from the Reserve Funds, not to exceed ninety percent (90%) of the total amount of post-production costs deducted from royalties paid by Energen (either directly or on its behalf), exclusive of any interest, since October 1, 2013, to be proportionately reduced to the extent such claims by all Class members paid under this paragraph 5 so that the aggregate claims do not exceed the total amount of the Reserved Funds.

c. If the parties are unable to agree on whether a claimant is a Class member, such disagreement shall be submitted to a third-party arbitrator for determination, and shall be the exclusive remedy for Plaintiffs, the Class, and Energen with respect to such claim.

d. The failure to submit a claim within the time period approved under paragraph 5(a) shall bar the recovery of any payment under this paragraph 5, but shall not avoid the effect of the release of claims set forth in paragraph 8 of this Agreement.

6. Final Approval:

a. Assuming the Agreement has not terminated for any other reason (as described in paragraph 12 below), the parties will prepare a joint motion for final approval of the Agreement and address any objections received prior to the Objection Deadline.

b. Plaintiffs and Energen will appear before the Court for a Final Fairness Hearing.

7. Distribution Procedure:

a. Along with the joint motion for final approval, Plaintiffs will prepare a final schedule for distributing the Settlement Amount (the “Final Distribution Schedule”) that (i) eliminates owners properly requested to be excluded from the Class and the Agreement, (ii) includes those remaining owners identified on the Preliminary Distribution Schedule, (iii) includes those owners who are determined to be Class members under paragraph 5, and (iv) adjusts the distribution to account for attorneys’ fees and costs requested by Plaintiffs pursuant to paragraph 11 below. The parties will submit the Final Distribution Schedule to the Court prior to the Final Fairness Hearing.

b. Provided that the Court enters an Order and Judgment approving the Agreement and Final Distribution Schedule without modification, and upon entry of a final non-appealable judgment (whether after appeal or after the deadline to appeal the Court's Order and Judgment has expired) (the "Approval Event"), Class Counsel shall distribute payment to the owners consistent with the Final Distribution Schedule within fourteen (14) days after the Approval Event (the "Final Distribution").

c. Class Counsel shall distribute all necessary tax documents for Class members, including but not limited to Form 1099s required by the Internal Revenue Service. Energen will provide Class Counsel with tax identification numbers for such Settlement Class members.

d. Within ninety (90) days after the Final Distribution, Class Counsel shall submit a report to the Court identifying all Class members who have not yet cashed the checks sent to them by Class Counsel, including a list of Class members whose checks have been returned as undeliverable. Class Counsel then shall have ninety (90) days to identify more current addresses and resend new checks to these Class members. Energen shall reasonably cooperate with Class Counsel to identify better addresses for affected Class members. Any portion of the Final Distribution unclaimed after seven hundred and twenty days (720) days after the date Class Counsel resends the checks to the affected Class members shall be returned to Energen, provided that Class Counsel will have the right to any necessary supplement expenses which are not covered by the Judgment.

e. Plaintiffs and the Class members shall be responsible for filing any tax returns and for paying any taxes that may be due on their proportionate share of the Final Distribution. Class Counsel shall distribute all necessary tax documents to the Settlement Class members, including but not limited to Form 1099s required by the Internal Revenue Service. Energen will provide Class Counsel with tax identification numbers for such Settlement Class members. Energen shall have no liability or responsibility for paying any taxes with respect to amounts paid under this Agreement.

8. Release: Upon the Approval Event, Plaintiffs and the Class release Energen and its predecessors, successors, assigns, and its past, present and future officers, directors, affiliates, employees, agents, servants, and representatives (collectively, the "Energen Released Parties") from any and all liabilities, rights, claims, demands, obligations, damages (including claims for or award of costs and/or expenses, court costs and attorneys' fees), losses, causes of action in law or in equity arising from the calculation and/or payment of royalties to Plaintiffs and the Class on the sale of natural gas, natural gas liquids, and associated hydrocarbons prior to the Effective Date (collectively, the "Class' Released Claims"). Notwithstanding the foregoing, the Class' Released Claims do not include the release of claims against parties to which Energen assigned the Class Leases prior to the Effective Date, including but not limited to Southland Royalty Company, LLC or LOGOS Resources, LLC (or their affiliates), provided that such claims arise from royalties paid by or on behalf of such parties after the assignment.

To the extent it is subsequently determined that a Settlement Class member receives a distribution of the Settlement Amount that is attributable to royalties paid under an agreement that is not a Class Lease, nothing in this Agreement shall prohibit Energen from claiming such an

amount as a set off to a subsequent claim for royalty underpayment during the class period by such Settlement Class member.

Energen releases Plaintiffs and the Class, as well as their predecessors, successors, assigns, and its past, present and future officers, directors, affiliates, employees, agents, servants, and representatives (collectively, the “Class Released Parties”) from any and all liabilities, rights, claims, demands, obligations, damages (including claims for or award of costs and/or expenses, court costs and attorneys’ fees), losses, causes of action in law or in equity arising from the calculation and/or payment of royalties to Plaintiffs and the Class on the sale of natural gas, natural gas liquids, and associated hydrocarbons prior to the Effective Date (collectively, “Energen’s Released Claims”).

9. Covenant Not to Sue: The Parties, for themselves and their officers, directors, agents, joint venturers, partners, members, parents, subsidiaries, affiliates, insurers, heirs, legal representatives, successors and assigns, covenant and agree that they will not commence, participate in, prosecute, or cause to be commenced or prosecuted against the other Party or any of the Energen Released Parties or Class Released Parties, any action or other proceeding based upon any of the Energen Released Claims or Class’ Released Claims released by the parties pursuant to this Agreement.

10. Unknown Facts: The Parties and the Class acknowledge that they may hereafter discover facts different from or in addition to those which they now know to be or believe to be true with respect to the Class’ Released Claims and Energen’s Released Claims and/or the damages and injuries suffered, and the releases contained herein shall be and remain effective in all respects, notwithstanding such difference or additional facts or the discovery thereof. The Parties and the Class expressly undertake and assume the risk that this Agreement was made on the basis of mistake, mutual or unilateral. The Parties and the Class expressly understand and agree that the signing of this Agreement will be forever binding on them and the Class, and that no rescission, modification, or release of any Party or Class member from the terms of this Agreement will be made because of any mistake in this Agreement.

11. Fees and Costs:

a. Class Counsel shall apply to the Court for (i) reimbursement of their reasonable litigation expenses; (ii) reimbursement of expenses associated with administering this Agreement, including compensation to the Escrow Agent as provided by Section III(5) of the parties’ Escrow Agreement; and (iii) an award of attorneys’ fees of up to forty percent (40%) of the Settlement Amount. Such award and reimbursements shall be paid out of the Settlement Amount.

b. Energen shall take no position regarding the award of fees and reimbursement of expenses. Energen will bear its own costs. Energen will have no obligation to bear the costs, fees, or expenses of the Class or Class Counsel.

c. This Agreement is not contingent upon the Court’s approval of Class Counsel’s application for attorneys’ fees and reimbursement of expenses.

12. Conditions and Termination Events:

a. This Agreement is conditioned upon the non-occurrence of the following events, and shall immediately terminate upon the occurrence of any of the following events:

i. The Court denies the entry of the Preliminary Approval Order substantially in the form attached as Exhibit D;

ii. The Court denies the entry of an Order and Judgment approving this Agreement;

iii. The Approval Event is not achieved; or

iv. Greater than twenty percent (20%) of the Class members request to exclude themselves from the Class and this Agreement, unless Energen waives this requirement in writing. For purposes of this Section, 20% shall be measured by (i) 20% of the total number of owners in the Class identified on the Preliminary Distribution Schedule; or (ii) 20% of the Settlement Amount attributable to owners requesting to exclude themselves, as identified on the Preliminary Distribution Schedule; or (iii) owners with interests attributable to at least 20% of the Reserved Fund.

b. Upon the occurrence of any of the events described in paragraph 12(a):

i. this Agreement shall terminate;

ii. the Escrow Agent shall immediately distribute to Energen all of the Settlement Amount (including the Reserved Funds);

iii. any Order and/or Judgment entered pursuant to this Agreement shall be vacated, certification of the Class shall be vacated, and the litigation shall proceed as if this Agreement had never been executed; and

iv. the Agreement may not be used in this action or otherwise for any purpose, including whether the case should be certified as a class action pursuant to Fed. R. Civ. P. 23.

13. Dismissal With Prejudice: Upon the occurrence of the Approval Event, Plaintiffs, the Class, and Energen shall be deemed to have dismissed the Federal Court Action with prejudice.

14. Other Matters:

a. Nothing in this Agreement shall be construed as an admission by or on behalf of any Party of any wrongful acts or liabilities whatsoever.

b. The Parties represent and warrant to one another that the individual who executes this Agreement has the right and legal authority to execute such document on behalf of the Party for whom it acts, and that the Party has not sold, assigned, conveyed or otherwise disposed of or transferred to another entity or individual any of such Party's Released Claims.



c. The Parties expressly acknowledge that they have had the opportunity to consult additional professionals of their choice, including lawyers, accountants, and others regarding any and all damages, losses, costs, expenses, liabilities, claims and the consequences thereof, of whatsoever kind and nature, which they may have incurred or which they may or will incur, whether suspected or unsuspected, known or unknown, foreseen or unforeseen. The Parties have relied upon their own counsel's advice in entering into this Agreement and not upon the advice of any other Party's counsel.

d. The Parties and their counsel have mutually contributed to the preparation of this Agreement and the Exhibits hereto. No provision of this Agreement or the Exhibits shall be construed for or against any Party because that Party or its counsel drafted the provision. No Party has made any representation, promise or agreement of any kind to do or refrain from doing any act or thing or pay any money or other consideration not expressly set forth herein.

e. All of the Exhibits to this Agreement are material and integral parts hereto, and the Exhibits are fully incorporated herein by reference.

f. This Agreement may be amended or modified only by a written agreement signed by or on behalf of the Parties or their successors in interest.

g. This Agreement may be executed in any number of counterparts, each of which when so executed shall constitute in the aggregate but one and the same document. Facsimile signatures and/or signatures transmitted by electronic mail shall be valid and binding as original signatures.

h. This Agreement constitutes the complete Agreement between the Parties relating to the subject matter hereof, and there are no written or oral understandings or agreements directly or indirectly connected with this Agreement that are not incorporated herein. Any prior negotiations, correspondence or understandings related to the subject matter of this Agreement shall be deemed to be merged into this Agreement.

i. The provisions of this Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability, except that the provisions of this Agreement cannot be severed, and rendering any portion of the Agreement to be unenforceable shall render the entire Agreement to be unenforceable.

j. This Agreement and its Exhibits shall be construed and interpreted under the laws of the State of New Mexico.

k. This Settlement Agreement and its Exhibits shall be binding upon, and inure to the benefit of, the Parties' and the Class' successors and assigns.

l. The Parties hereby execute this Agreement this 3rd day of January, 2020, effective as of the Effective Date.



***[Remainder of page intentionally blank – signature pages to follow]***

*Signature Pages for Settlement Agreement between Gerald Ulibarri and Brenda Atencio, on behalf of themselves and a class of similarly situated royalty owners, and Energen Resources Corporation, entered into effective January 3, 2020.*

**Gerald Ulibarri**

**Energen Resources Corporation**

\_\_\_\_\_

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

By: Travis D. Stice

Title: \_\_\_\_\_

Title: Chief Executive Officer

**Brenda Atencio**

\_\_\_\_\_

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

Title: \_\_\_\_\_

**APPROVED:**

**Counsel for Plaintiffs and Class**

**Counsel for Energen Resources Corporation**

\_\_\_\_\_

\_\_\_\_\_

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

By: Christopher A. Chrisman

# EXHIBIT A

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

GERALD ULIBARRI and BRENDA ATENCIO,  
on behalf of themselves and a class  
of similarly situated persons,

Plaintiff,

v.

No. 1:18-cv-00294-RB-SCY

ENERGEN RESOURCES CORPORATION,

Defendant.

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**JOINT MOTION FOR ORDER (1) PRELIMINARILY APPROVING CLASS SETTLEMENT, (2) PROVISIONALLY CERTIFYING OPT-OUT CLASS SETTLEMENT, (3) APPROVING NOTICE TO CLASS MEMBERS, (4) ESTABLISHING OPT-OUT AND OBJECTION PROCEDURES, AND (5) SETTING A FINAL HEARING DATE TO CONSIDER FINAL APPROVAL OF THE CLASS SETTLEMENT, ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS**

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Plaintiffs Gerald Ulibarri and Brenda Atencio (collectively “Plaintiffs”), and Defendant Energen Resources Corporation (“Energen”), respectfully request that the Court approve a class settlement agreement on a preliminary basis, provisionally certify a proposed Class (as defined in paragraph 10 below), and enter related procedural orders in anticipation of a final fairness hearing.

As grounds for this Joint Motion, Plaintiffs and Energen state as follows:

### **BACKGROUND**

1. Plaintiffs, the Class, and Energen own interests in oil and natural gas produced in New Mexico. Plaintiffs and the Class own royalty interests in this production, and Energen owns working interests in this production. Energen also operates some of the wells from which the oil and natural gas is produced and sold.

2. On March 29, 2018, Plaintiff Ulibarri sued Energen in the U.S. District Court for the District of New Mexico. Plaintiff Ulibarri, on behalf of himself and a class of similarly situated royalty owners, assert various claims against Energen for alleged royalty underpayments and improper deduction of post-production costs on the sale of residue gas, natural gas liquids, and condensate from wells located in New Mexico. Energen has denied those allegations.

3. On October 7, 2019, Plaintiff Atencio sued Energen in the District Court for San Juan County, New Mexico, styled as *Atencio v. Energen Resources Corp.*, Case No. D-1116-CV-2019-01603. Plaintiff Atencio, on behalf of herself and a class of similarly situated royalty owners, assert various claims against Energen for alleged royalty underpayments and improper deduction of post-production costs on the sale of residue gas, natural gas liquids, and condensate from wells operated by Third Parties (“Non-Op Wells”) located in New Mexico. Energen has denied those allegations.

4. On January 2, 2020, Plaintiff Ulibarri filed a Third Amended Complaint, adding Plaintiff Atencio’s claims to those of Plaintiff Ulibarri and seeking to certify two subclasses.

5. Since filing this action, the Plaintiffs and Energen have exchanged extensive information, discovery, and data production relevant to Energen’s payment of royalties since March 29, 2012. Plaintiffs’ attorneys (“Class Counsel”) and Energen’s attorneys have engaged experienced royalty accounting experts to assist them in reviewing the data, analyzing the relevant post-production costs and the New Mexico processor’s tax allocated to royalty owners, and determining the amount of damages at issue in the case. Class Counsel and Energen’s attorneys also have engaged in extensive discussions between counsel and their accounting experts to

evaluate the information and negotiate a full and final resolution of their dispute in order to avoid the cost, time, and uncertainty of continued litigation.

6. Class Counsel and Energen's attorneys have participated in continuous settlement discussions in order to resolve the claims of the Plaintiffs and the Class. The parties reached agreement on the basic terms of the settlement on November 24, 2019, subject to the negotiation of mutually agreeable settlement documents. The parties have completed the negotiation and drafting of those documents, and present them to the Court along with this Motion.

7. The parties have agreed upon a class settlement agreement (the "Settlement Agreement"), which is attached as Exhibit A.

8. The Parties and their counsel now are requesting that this Court enter an Order preliminarily approving the Settlement Agreement, provisionally certifying a Fed. R. Civ. P. 23(b)(3) opt-out Settlement Class, approving the proposed form of notice to Class members, establishing a deadline for Class member opt-out requests, establishing an objection procedure and deadline, and setting a date for final hearing on the issues of class certification, the Settlement Agreement, an award of attorneys' fees and litigation expenses to Class Counsel, and a proposed incentive award to each of the named Plaintiffs.

9. The Parties submit that, unless the Court's evaluation of the grounds and evidence discloses a basis to doubt the fairness of the proposed Settlement Agreement, then the Court may preliminarily approve the Settlement Agreement, provisionally certify the proposed Class, approve notice to Class members of the proposed settlement (including their rights to opt out or object), and set a date for a final fairness hearing.

## THE SETTLEMENT AGREEMENT

10. The Settlement Agreement defines a Fed. R. Civ. P. 23(b)(3) class (the “Class”) as follows:

all persons and entities to whom Energen paid royalties on natural gas produced by Energen from wells located in the state of New Mexico since March 29, 2012, pursuant to leases or overriding royalty agreements which contain a royalty provision which obligated Energen to pay royalties based on a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a percentage of the greater of “(i) the market value of the product sold or used in a condition acceptable for delivery to a transmission pipeline, or (ii) the gross proceeds received by Lessee upon arms-length sale of such as conditioned for delivery to a transmission pipeline” (“greater of market value or gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage of the gross proceeds without “deduction from the value of Lessor’s royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter associated with marketing gas produced from the lands covered hereunder” (“gross proceeds without deduction of post-production costs royalty provision”);

and

all persons and entities who received royalties since October 1, 2013, from an entity other than Energen (“Third Party Operator”) on the sale of natural gas products produced and sold by the Third Party Operator from wells located in the State of New Mexico, pursuant to a lease in which Energen owned a portion or all of the lessee’s interests, and which lease contains a royalty provision obligating the lessee to pay royalties based on either: (i) a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”); or (ii) a royalty provision which obligates the lessee to pay royalties based upon a specified percentage “of the gross proceeds each year,

payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”).

The Settlement Agreement divides the Class into two Subclasses (the “Subclasses”) as follows:

Subclass 1: Gerald Ulibarri, and all persons and entities to whom Energen paid royalties on natural gas produced by Energen from wells located in the state of New Mexico since March 29, 2012, pursuant to leases or overriding royalty agreements which contain a royalty provision which obligated Energen to pay royalties based on a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a percentage of the greater of “(i) the market value of the product sold or used in a condition acceptable for delivery to a transmission pipeline, or (ii) the gross proceeds received by Lessee upon arms-length sale of such as conditioned for delivery to a transmission pipeline” (“greater of market value or gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage of the gross proceeds without “deduction from the value of Lessor’s royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter associated with marketing gas produced from the lands covered hereunder” (“gross proceeds without deduction of post-production costs royalty provision”).

Subclass 2: Brenda Atencio, and all persons and entities who received royalties since October 1, 2013, from an entity other than Energen (“Third-Party Operator”) on the sale of natural gas products produced and sold by the Third-Party Operator from wells located in the State of New Mexico, pursuant to a lease in which Energen owned a portion or all of the lessee’s interests, and which lease contains a royalty provision obligating the lessee to pay royalties based on either: (i) a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”); or (ii) a royalty provision which obligates the lessee to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”).

11. For the purposes of the Settlement Agreement, each Plaintiff is deemed to be a member of the Class and one Plaintiff is a member of each Subclass.

12. In order to resolve the Class' claims for past royalty underpayments, Energen has agreed to pay a gross settlement amount of \$850,000 to the members of the Class, which would be paid into an interest-bearing escrow account within fourteen (14) days after the Court enters its Order granting preliminary approval of the Settlement Agreement (the "Settlement Amount"). Of the Settlement Amount, \$40,000 will be reserved as a fund for claims asserted by unidentified Class members, as described in paragraph 14 below (the "Reserved Funds").

13. In the event that one or more of the members of the Class elects to opt out of the Settlement Agreement, Energen is entitled to an opt-out credit against the \$850,000 settlement amount, which is determined based on each opt-out member's proportionate share of the Class Settlement Amount. The settlement amount being paid by Energen is in settlement of royalty underpayment claims asserted by the members of Subclass 1 on natural gas production sold by Energen since March 29, 2012. The distribution to the Class members who do not opt out of the proposed Settlement Agreement will be made *pro rata*, based upon each Class member's proportionate share of disputed post-production cost deductions. A projected proportionate distribution of the Settlement Amount (the "Final Distribution Schedule") will be presented to the Court prior to the Final Fairness Hearing.

14. With respect to any unidentified Class members, including but not limited to members of Subclass 2, the publication notice as described in paragraph 31 will instruct such members to submit a claim to Class Counsel if they believe they are Class members within sixty (60) days of the publication date. The parties will confer on all claims and, within twenty-one (21)



days, determine whether such claimant is a Class member. If the parties determine that a claimant is a Class member, such claimant will be entitled to a distribution from the Reserve Funds, not to exceed ninety percent (90%) of the total amount of post-production costs deducted from royalties paid by Energen (either directly or on its behalf) since October 1, 2013, not to exceed the total amount of the Reserved Funds.

15. Class Counsel will request an award of attorneys' fees and reimbursement of expenses that have been or will be incurred by Class Counsel, and an incentive award to each of the named Plaintiffs. Plaintiff Ulibarri's incentive award shall be paid from the Subclass 1 Settlement Amount. Plaintiff Atencio's incentive award shall be paid from the Subclass 2 Claims Fund. Energen takes no position on such requests, and is not responsible under the Settlement Agreement for any award of attorneys' fees, expense reimbursements, or named Plaintiff incentive awards.

16. All Class members who do not elect to exclude themselves from the Class shall be bound by the provisions of the Settlement Agreement.

17. Upon the Court's final approval of the proposed Settlement Agreement, the claims asserted in this lawsuit will be dismissed with prejudice.

18. Until and unless approved by the Court and it becomes effective under its terms, the Settlement Agreement shall not be deemed to waive, withdraw, resolve, or prejudice any Party's position, claims, defenses, or any other matter related to this action.

**THE REQUIREMENTS FOR PROVISIONAL CERTIFICATION OF A  
FED. R. CIV. P. 23(b)(3) SETTLEMENT CLASS ARE SATISFIED**

19. As the United States Supreme Court stated in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 621-23 (1997), "all Federal Circuits recognize the utility of Rule 23(b)(3) settlement

classes” as a means to facilitate the settlement of complex class actions. In *Amchem*, the Supreme Court confirmed that certification of a class for settlement purposes is consistent with Fed. R. Civ. P. 23, provided that the district court determines that the class certification requirements set forth in Rule 23(a) and 23(b) are satisfied. *Id.* at 621. Thus, if a settlement class appears to be certifiable under Fed. R. Civ. P. 23(a) and (b)(3), it may be certified provisionally, for settlement purposes only, pending further scrutiny at the final approval hearing. MANUAL FOR COMPLEX LITIGATION, § 21.632 (4th ed. 2005) (“MCL”) (the court “should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)”); *see also Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 111 (E.D. Pa. 2005) (recognizing that a settlement class may be provisionally certified at the preliminary approval stage). Thus, this Court should provisionally determine whether this case satisfies the following requirements for certification of a Rule 23(b)(3) settlement class: (1) the class is so numerous that joinder of the class members is impracticable (“numerosity”); (2) there are questions of law or fact common to the class (“commonality”); (3) the claims of the class representatives are typical of the claims of the class (“typicality”); (4) the class representatives will fairly and adequately protect the interests of the class (“adequacy of representation”); (5) the common questions of law or fact predominate over individual issues (“predominance”); and (6) a class action is superior to individual actions for resolving the claims of the class members (“superiority”). Fed. R. Civ. P. 23(a) and 23(b)(3). As demonstrated below, each of the requirements for certification of a Rule 23(b)(3) settlement class is satisfied.

20. Rule 23(a)(1) requires the class be “so numerous that joinder of all members is impracticable.” In this case, there are approximately 900 members of the Settlement Class, a

number which is more than sufficient to satisfy the numerosity requirement. *Pliago v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 126 (D. Colo. 2016) (finding that a class of 177 members satisfied the numerosity requirement); *Lockwood Motors, Inc. v. General Motors Corp.*, 162 F.R.D. 569, 574-75 (D. Minn. 1995) (where class consisted of 96 members, numerosity requirement was satisfied); *Mathis v. Bess*, 138 F.R.D. 390, 393 (S.D.N.Y. 1991) (joinder impracticable based solely on the fact that the class had 120 members). The numerosity requirement is therefore satisfied.

21. Rule 23(a)(2) requires questions of law or fact exist which are common to the class. The Tenth Circuit has recognized that “commonality requires only a single issue common to the class.” *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1288 (10th Cir. 1999); *DG ex rel. Stricklin v. DeV Vaughn*, 594 F.3d 1188, 1195 (10th Cir. 2010). However, this “common contention” must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). In this case, the named Plaintiffs have identified a common contention that is capable of classwide resolution. The success of each Class member’s claim depends on whether Energen engaged in a common course of conduct under which it deducted certain post-production costs in the calculation of royalties. Energen denies the named Plaintiffs’ claims for breach of contract, and likewise denies that it improperly calculated their royalties, but its denial is not based on individualized issues that would undermine a common question capable of a common resolution. Accordingly, the determination of whether Energen improperly deducted certain post-production costs in calculating the Class members’ royalties will “resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart*

*Stores*, 564 U.S. at 350. Accordingly, common contentions exist as to all of the Class members' claims against Energen.

22. Rule 23(a)(3) requires that “the claims of the representative parties are typical of the claims of the class.” Typicality is established if the claims of the plaintiff and the class arise from the same course of conduct and are based on the same legal theory. *Clark v. State Farm Mutual Auto Ins. Co.*, 245 F.R.D. 478, 484 (D. Colo. 2007). If there is a nexus between the named plaintiffs' claims and the common questions of fact or law that unite the class, the typicality requirement is satisfied. *Cook v. Rockwell Int'l Corp.*, 151 F.R.D. 378, 385 (D. Colo. 1993). Here, the Plaintiffs and the members of the Class claim to have been damaged by the same course of conduct, namely Energen's common practice of deducting certain post-production costs in the calculation and payment of royalties to the members of the Class. Energen denies the named Plaintiffs' claims for breach of contract, and likewise denies that it improperly calculated their royalties, but its denial is not based on distinctions between the claims asserted by the named Plaintiffs and those asserted on behalf of the proposed Class. The Plaintiffs' claims are based upon a common course of conduct by Energen, and the Plaintiffs' theories of liability are the same as those of the other Class members. The typicality requirement is therefore satisfied.

23. Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” The adequacy of representation requirement focuses on two issues: (1) whether the named plaintiffs and their counsel have any conflicts of interest with other class members; and (2) whether the named Plaintiffs and their counsel will prosecute the action vigorously on behalf of the class. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187-88 (10th Cir. 2002). Neither the named Plaintiffs nor their counsel have any conflicts of interest

with the other members of the Class. In addition, the named Plaintiffs and their counsel have continuously prosecuted this class action vigorously on behalf of all Class members, and will continue to do so in their requests for preliminary and final approval of the Settlement Agreement. Moreover, Class Counsel has very extensive experience successfully representing royalty owners in numerous other class action royalty underpayment cases against natural gas producers, and therefore is qualified to represent the Class in this case. The adequacy of representation requirement is therefore satisfied.

24. In order to certify a class under Rule 23(b)(3), the questions of law or fact which are common to the class members must predominate over any questions affecting only individual class members. Plaintiffs must show that the “common, aggregation-enabling issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *CGC Holding Co. v. Broad & Cassell*, 773 F.3d 1076, 1087 (10th Cir. 2014) (internal citations omitted). Here, the predominant issues are whether Energen was obligated to pay royalties to the members of the Class under the lease agreements at issue based upon the sale proceeds received by Energen on the sale of the residue gas and natural gas liquids to third-party purchasers, and if Energen breached its contractual obligations to the members of the Class, based upon Energen’s consistent practice of deducting certain post-production costs from the sale proceeds in the calculation and payment of royalties to the Class members. Energen has employed a common method of royalty accounting with respect to the royalties paid to the members of the Class, and the issue of whether Energen’s royalty accounting methods constitute a breach of Energen’s contractual obligations to the Class is the predominant issue in this litigation. Energen denies the named Plaintiffs’ claims for breach of contract, but its denial is not based on individualized issues

that would predominate over common questions of law and fact. There are no significant individual issues of fact or law which exist in this litigation. The common questions of fact and law for the Class members therefore predominate over any individual issues which might exist.

25. Rule 23(b)(3) also requires that a class action be the superior method of adjudicating the controversy. Rule 23(b)(3) identifies four factors pertinent to this issue:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

An evaluation of these four factors confirms that class adjudication is the superior method of resolving this controversy. First, there are no members of the Class who have expressed any interest in prosecuting a separate royalty underpayment lawsuit against Energen. Second, there have been no individual lawsuits filed by any of the Class members regarding the claims at issue, which weighs in favor of class action superiority. *In re Revco Sec. Litig.*, 142 F.R.D. 659, 669 (N.D. Ohio 1992). Third, concentrating this litigation in this Court is desirable, because all of the natural gas production at issue occurred in this judicial district, and most of the Class members reside in this judicial district. Finally, because this is a request for settlement-only certification, the manageability factor should not be considered in determining whether the superiority requirement has been satisfied. *Amchem*, 521 U.S. at 620. For these reasons, Rule 23(b)(3)'s superiority requirement is satisfied.

**THE PROPOSED SETTLEMENT AGREEMENT IS FAIR,  
REASONABLE AND ADEQUATE**

25. With respect to approval of a Rule 23 class settlement, courts engage in a two-step process to ensure the fairness of any class action settlement. *Pliego*, 113 F.R.D. at 128. This Joint Motion pertains to the first step of this process, in which the Court makes a preliminary determination regarding the fairness, reasonableness, and adequacy of the settlement terms. *Id.* The object of preliminary approval is for the Court “to determine whether notice of the proposed settlement should be sent to the class, not to make a final determination of the settlement’s fairness. Accordingly, the standard that governs the preliminary approval inquiry is less demanding than the standard that applies at the final approval phase.” *Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 666 (D. Colo. 2015). A district court will ordinarily grant preliminary approval where the proposed class 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, and falls within the range of possible approval. *Pliego*, 313 F.R.D. at 128; *In re Motor Fuel Temperature Sales Practices Litig.*, 2011 WL 4431090, at \*5 (D. Kan. Sept. 22, 2011).

26. Under Fed. R. Civ. P. 23(e)(2), a class action settlement must be “fair, reasonable and adequate.” The Tenth Circuit has instructed district courts to analyze the following factors to determine whether this standard is met: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, such that the ultimate outcome of the litigation is in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *Rutter*, 314 F.3d at 1188. An evaluation

of the above-referenced factors fully supports preliminary approval of the proposed Class Settlement. First, the settlement was fairly and honestly negotiated. Prior to reaching a settlement, the Parties engaged in extensive discovery, including an exhaustive analysis of Energen's royalty accounting data, natural gas sales invoices, plant statements, and midstream service contracts, the taking of numerous depositions, including the Rule 30(b)(6) deposition of Energen, and Plaintiffs' expert witnesses. The Parties also engaged in extensive negotiations before reaching agreement on the terms of a settlement for each of the two subclasses at issue. Second, serious questions of law and fact exist which place the ultimate outcome of this litigation in doubt, including whether, and to what extent, Energen (or an operator on its behalf) has taken improper post-production cost deductions in the calculation of royalties paid to the Class members. Energen denies that it breached its contracts with the Class members or has acted improperly, and would vigorously defend its rights if the case were litigated. Third, the value of an immediate recovery clearly outweighs the mere possibility of future relief after protracted and expensive litigation. The amount which Energen has agreed to pay the Class members to settle their claims constitutes a substantial percentage of the amount in controversy, and avoids the risk to the Class members that they might recover a substantially smaller amount at an uncertain date in the future. Finally, it is the judgment of the Parties and their counsel that the proposed Settlement Agreement is fair and reasonable. For these reasons, the Court should determine that the Settlement Agreement is fair, reasonable, and adequate, and should preliminarily approve the proposed Settlement Agreement.



**NOTICE TO THE CLASS AND PROCEDURE FOR CLASS MEMBER  
CLAIMS, OPT-OUTS AND OBJECTIONS**

27. The Parties have agreed on the form and content of the Notices to the Class members, attached as Exhibit B (the “Mailed Notice”), and Exhibit C (the “Publication Notice”).

28. The Mailed Notice advises the Class members of (a) the existence of this action; (b) the provisional certification of the Class pending final approval of the Settlement Agreement; (c) the amount that Energen has agreed to pay to resolve the past royalty underpayment claims of the Class; (d) the reservation of a portion of the Settlement Amount for unidentified Class members, how to submit a claim to obtain benefits from the Reserved Funds, and the deadline to submit such a claim; (e) Class Counsel’s anticipated request for payment of attorneys’ fees, litigation expense reimbursements, and for named Plaintiff incentive awards to be paid from the Settlement Amount; (f) the date, time, and place of the hearing to consider final approval of the proposed Settlement Agreement; (g) their right to object and be heard at the hearing to consider final approval of the Settlement Agreement; and (h) their right to opt out of the proposed Settlement Agreement and the deadline by which such opt-out right must be exercised. The Court should therefore approve the form and content of the Mailed Notice.

29. Class Counsel has agreed to be responsible for the mailing of the Exhibit B Mailed Notice to the members of the Settlement Class. The Court should therefore order that Class Counsel send the Exhibit B Mailed Notice to all members of the Settlement Class whose addresses are available from Energen’s accounting records within 7 days after the Court enters its Order granting preliminary approval of the Settlement Agreement.

30. The Publication Notice advises unidentified Class members of (a) the existence of the action; (b) the provisional certification of the Class pending final approval of the Settlement

Agreement; (c) the monetary amount that Energen has agreed to pay to resolve the past royalty underpayment claims of the Class; (d) the reservation of a portion of the Settlement Amount for unidentified Class members, how to submit a claim to obtain benefits from the Reserved Funds, and the deadline to submit such a claim; (e) the date of the hearing to consider final approval of the proposed Settlement Agreement; (f) their right to object and be heard at the hearing to consider final approval of the Settlement Agreement; (g) their right to opt out of the proposed Settlement Agreement and the deadline by which such opt-out right must be exercised; and (h) how to obtain a copy of the Settlement Agreement, a long form Notice, and more information about the Settlement Agreement. The Court should therefore approve the form and content of the Publication Notice.

31. Class Counsel has agreed to be responsible for the publishing of the Exhibit C Publication Notice in *The Albuquerque Journal* and the *Daily Times* of Farmington, New Mexico for one Wednesday, Saturday, and Sunday edition of each respective newspaper of each respective newspaper. The Court should therefore order that Class Counsel publish the Exhibit C Publication Notice in *The Albuquerque Journal* and the *Daily Times* of Farmington, New Mexico within fourteen (14) days after the Court enters its Order granting preliminary approval of the Settlement Agreement.

32. The Parties request that the Court enter an Order that any Class member seeking to obtain benefits from the Reserved Funds must submit a claim to Class Counsel by a deadline which is sixty (60) days after the publication date on which Class Counsel publishes the Publication Notice in *The Albuquerque Journal* and the *Daily Times* of Farmington, New Mexico.

The publication deadline for Class members to submit a claim for benefits from the Reserved Funds shall be reflected in both the Mailed and Publication Notices.

33. The Parties request that the Court enter an Order that any Class member wishing to opt-out of the Settlement Agreement must send a written opt-out request to Class Counsel by a deadline which is sixty (60) days after the postmark date on which Class Counsel mails the Mailed Notice to the proposed Class members by first class United States mail. The postmark deadline for Class members to mail their written opt-out requests to Class Counsel shall be reflected in both the Mailed and Publication Notices.

34. The Parties request that the Court enter an Order that any Class member wishing to object to, or comment on, any aspect of the proposed Class Settlement must file their written objection with the Court by a deadline which is seventy (70) days after the postmark date on which Class Counsel mails the Mailed Notice to the proposed Class members by first class United States mail, and that any member wishing to be heard at the final fairness hearing must file a written Notice of Intent to Appear at the final fairness hearing by a deadline which is 7 days before the scheduled date of the final fairness hearing.

35. The Parties will file their Joint Motion for Final Approval of the Settlement Agreement, and any papers in support, at least twenty-one (21) days prior to the scheduled date of the final fairness hearing. Class Counsel will file their motion for an award of attorneys' fees, litigation expense reimbursements, and for an incentive award to each of the named plaintiffs, at least twenty-one (21) days prior to the final fairness hearing. The Parties will file their response to any Class member objections to the Settlement Agreement at least 7 days prior to the final fairness hearing.

36. All costs and expenses associated with mailing the Notice to the Class members, and with the administration of the Settlement Agreement, shall be borne by Class Counsel, and reimbursed out of the Class Settlement Fund, as approved by the Court.

#### **PLAINTIFFS' POSITION ON LITIGATION EXPENSES AND ATTORNEYS' FEES**

37. Plaintiffs assert that, if the Settlement Agreement is approved, Class Counsel should be paid from the Settlement Fund for (a) the actual out-of-pocket expenses incurred by Class Counsel, including expenses which Class Counsel will incur in the further handling of this litigation and in the administration of the Class Settlement, and (b) attorneys' fees to Class Counsel. Class Counsel estimates that the out-of-pocket expense reimbursement request will not exceed the sum of \$140,000.00. Class Counsel intends to request an award of attorneys' fees that does not exceed forty percent of the Class Settlement Fund..

38. Plaintiffs and Class Counsel request that the Court consider Class Counsel's request for attorneys' fees and expense reimbursements, and Class Counsel's request for an incentive award to each of the named Plaintiffs, at the final fairness hearing.

39. The Parties agree that the payment of any and all attorneys' fees and expenses that may be awarded to Class Counsel, as well as all expenses of administering the Settlement Agreement, are to be made from the Class Settlement Fund. Energen believes that the monetary settlement and other consideration being offered to the Class are fair and reasonable. Energen takes no position on Class Counsel's request for an award of attorneys' fees and expense reimbursements, or on the request for an incentive award to each of the named Plaintiffs.

#### **CONCLUSION**

For the foregoing reasons, the Court should enter its Order:

(1) preliminarily determining that the Settlement Agreement is fair, reasonable, and adequate, and granting the Parties' Joint Motion for Preliminary Approval of the Class Settlement;

(2) appointing the named Plaintiffs as the Class Representatives;

(3) appointing Plaintiffs' attorneys as Class Counsel for the Settlement Class;

(4) provisionally determining that the Settlement Class meets the requirements for certification of a Fed. R. Civ. P. 23(b)(3) class;

(5) approving the form and content of the Mailed Notice which is attached to this Joint Motion for Preliminary Approval as Exhibit B;

(6) directing that Class Counsel be responsible for mailing the Exhibit B Mailed Notice of Class Settlement to the members of the Class by first class U.S. Mail within 7 days after the Court enters its Order granting preliminary approval of the Class Settlement;

(7) approving the form and content of the Publication Notice which is attached to this Joint Motion for Preliminary Approval as Exhibit C;

(8) directing that Class Counsel be responsible for publishing the Exhibit C Publication Notice of Class Settlement in *The Albuquerque Journal* and the *Daily Times* of Farmington, New Mexico for one Wednesday, Saturday, and Sunday edition of each respective newspaper, within 14 days after the Court enters its Order granting preliminary approval of the Class Settlement;

(9) establishing a deadline for any potential member of the Class to submit a claim to Class Counsel to obtain benefits from the Reserved Funds, which deadline will be 60 days after the publication date of Class Counsel's publishing of the Exhibit C Publication Notice;

(10) establishing a deadline for any member of the Class to mail a written election to Class Counsel to be excluded from the Class, which postmark deadline will be 60 days after the postmark date of Class Counsel's mailing of the Exhibit B Mailed Notice to the members of the Class;

(11) establishing a deadline for any member of the Settlement Class to submit objections or comments regarding the proposed Class Settlement, Class Counsel's request for attorneys' fees and expense reimbursements, or Class Counsel's request for named Plaintiff incentive awards, which deadline will be 70 days after the postmark date of Class Counsel's mailing of the Exhibit B Mailed Notice to the members of the Class;

(12) establishing a deadline for members of the Class to give written notice of intent to appear at the final fairness hearing, which deadline will be 7 days before the scheduled date of the final fairness hearing;

(13) establishing a deadline of the date which is 21 days before the final fairness hearing for the Parties' attorneys to file motions and memoranda in support of final approval of the Class Settlement, for Class Counsel's motion for award of attorneys' fees, expense reimbursements, and for an incentive award to each of the named Plaintiffs;

(14) establishing a deadline of 7 days before the date of the final fairness hearing for the Parties' attorneys to file responses, if any, to Class member objections or comments regarding the proposed Class Settlement, Class Counsel's request for attorneys' fees and expenses, or the request for named Plaintiff incentive awards;

(15) scheduling a final fairness hearing date to consider final approval of the proposed Class Settlement, Class Counsel's request for an award of attorneys' fees and expense reimbursements, and the request for named Plaintiff incentive awards; and

(16) staying all case management deadlines until further order of the Court.

A proposed form of Order is attached.

Dated: \_\_\_\_\_, 2020

s/ George A. Barton

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**Attorneys for Plaintiff Gerald Ulibarri,  
Brenda Atencio, and the proposed Class**

Respectfully submitted,

s/ Bradford C. Berge

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**Attorneys for Defendant  
Energen Resources Corporation**

**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_\_\_, 2020, I filed the foregoing electronically with the Clerk of the Court using the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

George A. Barton  
Stacy Burrows  
Law Offices of George A. Barton, P.C.  
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gab@georgebartonlaw.com  
stacy@georgebartonlaw.com

*s/ Bradford C. Berge* \_\_\_\_\_  
Bradford C. Berge



# EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

## There is a Proposed Settlement in a class action brought against Energen Resources Corporation on behalf of certain royalty owners.

**You may be able to obtain benefits**

*A court authorized this notice. This is NOT a solicitation from an attorney.*

A Proposed Settlement (“Energen Settlement”) has been reached in a class action lawsuit against Energen Resources Corporation (“Energen”). The lawsuit is about the alleged underpayment of royalty payments made by Energen on the production of natural gas in New Mexico. This Notice is being sent to you because you may be a member of the Energen Settlement Class who is eligible to receive monetary benefits from the Energen Settlement. Please read this Notice carefully.

A SUMMARY OF YOUR RIGHTS AND CHOICES	
<b>REMAIN A ENERGEN SETTLEMENT CLASS MEMBER</b>	To remain a member of the Energen Settlement Class, you do not need to take any action. Energen Settlement Class Members will receive money from the Energen Settlement as outlined in Section 4 of this Notice.  <b>Due Date: <u>Automatic Distribution</u></b>
<b>EXCLUDE YOURSELF FROM THE PROPOSED ENERGEN SETTLEMENT</b>	You can exclude yourself from (opt out of) the Energen Settlement and not be bound by the Court’s rulings. You will also not share in the distribution of monetary relief. You may bring your own lawsuit. <i>See</i> Section 8 of this Notice.  <b>Due Date: <u>Post-marked on or before _____, 2020</u></b>
<b>OBJECT OR COMMENT ON THE PROPOSED ENERGEN SETTLEMENT</b>	If you are a Class Member, you can object to or comment on the Energen Settlement on your own or through your attorney. <i>See</i> Section 9 of this Notice.  <b>Due Date: <u>Post-marked on or before _____, 2020</u></b>

## 1. WHY YOU RECEIVED THIS NOTICE.

Records show that you have received a royalty payment from Energen since March 29, 2012, or a Third-Party Operator since October 1, 2013, from wells located in the state of New Mexico. This Notice is sent to you to inform you about the proposed settlement of a class action lawsuit, captioned *Gerald Ulibarri and Brenda Atencio, individually and on behalf of all others similarly situated, Plaintiffs v. Energen Resources Corporation, Defendant*, Civil Action No. 1:18-cv-00294-RB-SCY, in the United States District Court for the District of New Mexico (the “Lawsuit”), brought on behalf of certain royalty payees who received royalty payments from Energen for natural gas or natural gas liquids (“Gas”) produced in the state of New Mexico. The settlement has been preliminarily approved by the Court as being fair, reasonable and adequate. As explained below, you will be entitled to monetary benefits under this Energen Settlement if you do not opt out of the Energen Settlement and the Energen Settlement is finally approved by the Court.

You may or may not be a member of the class of royalty payees defined below who are covered by a proposed settlement of the Lawsuit. The Energen Settlement Class includes the following:

All persons and entities to whom Energen paid royalties on natural gas produced by Energen from wells located in the state of New Mexico since March 29, 2012, pursuant to leases or overriding royalty agreements which contain a royalty provision which obligated Energen to pay royalties based on a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a percentage of the greater of “(i) the market value of the product sold or used in a condition acceptable for delivery to a transmission pipeline, or (ii) the gross proceeds received by Lessee upon arms-length sale of such as conditioned for delivery to a transmission pipeline” (“greater of market value or gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage of the gross proceeds without “deduction from the value of Lessor’s royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter associated with marketing gas produced from the lands covered hereunder” (“gross proceeds without deduction of post-production costs royalty provision”);

and

All persons and entities who received royalties since October 1, 2013, from an entity other than Energen (“Third-Party Operator”) on the sale of natural gas products produced and sold by the Third-Party Operator from wells located in the State of New Mexico, pursuant to a lease in which Energen owned a portion or all of the lessee’s interests, and which lease contains a royalty provision obligating the lessee to pay royalties based on either: (i) a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”); or (ii) a royalty provision which obligates the lessee to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”).

The Court has appointed the Plaintiffs in the Lawsuit as class representatives for the Energen Settlement Class, and the Plaintiffs’ attorneys as counsel for the Energen Settlement Class (“Class Counsel”).

This Notice outlines the terms of the Energen Settlement, who is a Energen Settlement Class member, your right to remain a member of the Energen Settlement Class, how Energen Settlement monies will be paid, how to comment on or object to the proposed Energen Settlement, and how to exclude yourself from the Energen Settlement Class. This Notice also explains that the Court will hold a Final Fairness Hearing to decide whether to approve the Energen Settlement on \_\_\_\_\_, 2020, at \_\_\_\_\_.m., in Courtroom \_\_\_\_ of the United States District Court of the District of New Mexico, 100 N Church Street, Las Cruces, NM 88001.

## **2. WHAT IS A CLASS ACTION?**

A class action is a type of lawsuit in which a named Plaintiff brings a suit on behalf of all of the members of a similarly-situated group to recover damages and other relief for the entire group, without the necessity of each member filing an individual lawsuit, incurring expenses, or appearing as an individual plaintiff. Class actions are used by the courts when the claims raise issues of law or fact that are common, making it fair to bind all class members to the orders and judgments in the case, without the necessity of multiple lawsuits involving hearing the same claims over and over.

## **3. THE LAWSUIT.**

Plaintiff Ulibarri, on behalf of himself and all other similarly situated royalty payees, filed the Lawsuit against Energen on March 29, 2018, in the United States District Court for the District of New Mexico. This Lawsuit seeks monetary relief against Energen for a class of royalty payees. The Lawsuit has been pending before the Honorable Robert C. Brack, Senior District Court Judge of the United States District Court for the District of New Mexico.

Plaintiff Ulibarri has alleged that, at various times since March 29, 2012, Energen deducted from royalties certain charges for costs that should not have been deducted. Specifically, Plaintiffs have asserted that Energen improperly deducted post-production costs on the sale of residue gas, natural gas liquids, and condensate from wells located in New Mexico. These deductions are referred to in this Notice as “Disputed Deductions.”

The Lawsuit has been consolidated with another lawsuit filed by Plaintiff Atencio, on behalf of herself and all other similarly situated royalty payees, against Energen on October 7, 2019 in the District Court for San Juan County, New Mexico, seeking monetary relief against Energen for a related class of Gas royalty payees. Plaintiff Atencio has alleged that, at various times since October 1, 2013, Energen improperly deducted post-production costs of the sale of residue gas, natural gas liquids, and condensate from wells operated by Third Parties (“Non-Op Wells”) located in New Mexico. These deductions are also Disputed Deductions.

Class Counsel has extensively reviewed and analyzed information and documents regarding Energen’s calculation of royalties paid to the members of the Energen Settlement Class. The Parties also have engaged in continuous negotiations over the resolution of the claims alleged by the Plaintiffs (the “Claims”). The Energen Settlement described in this Notice is the result of those negotiations.

Class Counsel and the Plaintiffs believe that the issues before the Court are complex, and there is uncertainty as to the outcome of the Energen Litigation should it proceed to trial. Energen denies all of the Plaintiffs’ Claims and continues to deny any wrongdoing or liability to Plaintiffs or any member of the Energen Settlement Class in connection with the Claims. Energen contends that the Claims have no merit, and that Energen would prevail at trial in the Lawsuit, including any necessary appeal.

Class Counsel and the Plaintiffs have considered both the monetary benefits of the proposed Energen Settlement and the risks of proceeding if the Energen Settlement was rejected. Class Counsel and the Plaintiffs have concluded that the proposed Energen Settlement provides members of the Energen Settlement Class with substantial monetary benefits, resolves disputed issues without prolonged litigation and expense, avoids the delay and expense of likely appeals, eliminates inherent risks of litigation, and is in the best interests of the Energen Settlement Class. Plaintiffs and Class Counsel have concluded that the proposed Energen Settlement is fair, reasonable, and adequate.

## **4. THE SETTLEMENT.**

Energen has agreed to pay the sum of \$850,000 in order to settle the Lawsuit (the “Settlement Fund”), to be paid into an interest-bearing escrow account on or before \_\_\_\_\_, 2019 [14 days after the Court enters its Order granting preliminary approval of the Energen Settlement Agreement]. Of the Settlement Fund, \$40,000 has been reserved as a fund for claims asserted by unidentified Class members (the “Reserved Funds”).

The amount of the Settlement Fund that will be available for distribution to each member of the Energen Settlement Class (*i.e.*, the members who do not “opt out” of the Energen Settlement Class) will be determined by each member’s designated subclass and each member’s proportionate share of Disputed Deductions within that subclass.

The Court has preliminarily approved the Energen Settlement for two subclasses:

Subclass 1 is composed of all persons and entities to whom Energen paid royalties on natural gas produced by Energen from wells located in the state of New Mexico since March 29, 2012, pursuant to leases or overriding royalty agreements which contain a royalty provision which obligated Energen to pay royalties based on a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a percentage of the greater of “(i) the market value of the product sold or used in a condition acceptable for delivery to a transmission pipeline, or (ii) the gross proceeds received by Lessee upon arms-length sale of such as conditioned for delivery to a transmission pipeline” (“greater of market value or gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage of the gross proceeds without “deduction from the value of Lessor’s royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter associated with marketing gas produced from the lands covered hereunder” (“gross proceeds without deduction of post-production costs royalty provision”).

Subclass 2 is composed of all persons and entities who received royalties since October 1, 2013, from an entity other than Energen (“Third-Party Operator”) on the sale of natural gas products produced and sold by the Third-Party Operator from wells located in the state of New Mexico, pursuant to a lease in which Energen owned a portion or all of the lessee’s interests, and which lease contains a royalty provision obligating the lessee to pay royalties based on either: (i) a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”); or (ii) a royalty provision which obligates the lessee to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”).

The expenses and attorneys’ fees of the Plaintiffs and Class Counsel (“Litigation Expenses”) and any incentive awards to class representatives, as approved by the Court, will be subtracted from the Settlement Fund to determine the amount available for distribution to the members of the Energen Settlement Class. Class Counsel will request that the Court award Litigation Expenses up to \$340,000 of the Class Settlement Fund. You may receive a copy of Class Counsel’s Application regarding Litigation Expenses by contacting Class Counsel as identified in Section 11 of this Notice.

Upon final Court approval, all members of the Energen Settlement Class who choose not to timely exclude themselves from the Energen Settlement Class (*i.e.*, who do not “opt out” of the Energen Settlement Class) will receive the monetary benefits of the Energen Settlement and will be bound by the resulting Order in the Lawsuit, barring them from bringing any claim against Energen related to royalty calculations that are covered by the Energen Settlement Agreement (“Settled Claims”). If a member of the Energen Settlement Class does not opt out, that member will receive payment of a portion of the Settlement Fund as described above, and may not thereafter bring Claims. If you sell or transfer your interest, the new owner or transferee also will be entitled to receive and be bound to accept payment of royalties on future production calculated in accordance with the applicable method.

For more detailed information regarding the terms of the Energen Settlement, please read the Energen Settlement Agreement, which you may review online at [www.georgebartonlaw.com](http://www.georgebartonlaw.com), or you may obtain a copy of the Energen Settlement Agreement by contacting Class Counsel as identified in Section 11 of this Notice.

## 5. THE COURT HAS CONDITIONALLY APPROVED THE SETTLEMENT.

The Court has provisionally determined that the Energen Settlement is fair, reasonable and adequate. The Court has also ordered that, for purposes of the proposed Energen Settlement only, this case may proceed as a class action and that the Energen Settlement Class shall be conditionally certified. This does not mean that Plaintiffs would be successful if the case went to trial. The Court has made no final determination as to the merits of the Lawsuit, and this Notice and the proposed Energen Settlement do not imply that Energen is liable to Plaintiffs or to any member of the Energen Settlement Class for any of the Claims. Furthermore, if the Energen Settlement is not finally approved or is withdrawn at any time, the Parties have agreed that the conditional class certification shall be void and of no effect. There are also other circumstances under which the Parties may cancel the Energen Settlement. In any such event, the Lawsuit would proceed as though no class had been certified previously.

## 6. REMAINING A MEMBER OF THE SETTLEMENT CLASS.

**If you chose to remain a Energen Settlement Class member, you do not need to take any action whatsoever.** Plaintiffs and Class Counsel will represent your interests as a member of the Energen Settlement Class. You will not be charged for their services or any expenses other than the payment of Litigation Expenses from the Settlement Fund that are approved by the Court. You may enter an appearance in the Lawsuit by yourself or through your attorney, at your own expense. You will be bound by the judgment and final disposition of the Lawsuit, and you should receive a distribution check for your share of the Settlement Fund approximately 14 days after the Approval Event specified in the Energen Settlement Agreement (as defined by the Energen Settlement Agreement). If you are an Energen Settlement Class member, you will be barred from bringing any further legal action against Energen, its affiliates, and its predecessors, as described in Section 6 of this Notice.

Should you remain in the Energen Settlement Class, and the Energen Settlement is approved, you will:

- 1) Receive your allocated share of the Settlement Fund.
- 2) Release all Settled Claims.

## 7. OBTAINING BENEFITS FROM THE RESERVED FUNDS.

If you believe you are eligible to obtain benefits from the Reserved Funds, you must submit a claim online at [www.georgebartonlaw.com](http://www.georgebartonlaw.com) or by mail to **George Barton, Sharp Barton, LLP, 7227 Metcalf Ave. Suite 301, Overland Park, Kansas 66204**. The claim must contain the full name, current address, telephone number, and signature of the claimant, as well as any and all documents supporting the claim. **The written claim must be submitted or postmarked on or before \_\_\_\_\_, 2020.**

Energen and Class Counsel shall determine whether each claimant is a Class Member. If the parties are unable to agree on whether a claimant is a Class member, such disagreement shall be submitted to a third-party arbitrator for determination, and shall be the exclusive remedy for Plaintiffs, the Class, and Energen with respect to such claim.

## 8. REQUEST TO BE EXCLUDED FROM THE ENERGEN SETTLEMENT CLASS.

You may elect to be excluded from the Energen Settlement Class. If you elect to be excluded from the Energen Settlement Class, you will not be bound by any judgment, disposition, or settlement of the Lawsuit, nor will you receive any monetary benefits of the Energen Settlement. You will retain, and will be free to pursue, any claims you may have on your own behalf against Energen. Energen will be free to assert any defenses or counterclaims it may have against you.

To be excluded from the Class, you must mail a written election to be excluded from the Energen Settlement Class to **George Barton, Sharp Barton, LLP., 7227 Metcalf Ave. Suite 301, Overland Park, Kansas 66204**. The election must contain the full name, current address, telephone number, and signature of the person requesting exclusion. **The written election must be postmarked on or before \_\_\_\_\_, 2020 [60 days after the**

**postmarked date on the Mailed Class Notice]**. If your spouse or anyone else shares your interest in the royalty payments, they must also follow this procedure if they want to be excluded from the Class.

Any potential Energen Settlement Class member may revoke that member's election to be excluded from the Energen Settlement Class. If you wish to revoke your request to be excluded from the Energen Settlement Class, you must mail a written signed statement that you request to revoke your election to be excluded from the Energen Settlement Class to George Barton, Law Offices of George A. Barton, P.C. by \_\_\_\_\_, **2020 [60 days after the postmarked date on the Mailed Class Notice]**. By revoking the election to be excluded, the potential Energen Settlement Class member becomes a Energen Settlement Class member with all rights of a Energen Settlement Class member at the time of the revocation.

Class Counsel will provide the Court a compilation of all potential Class members who request to be excluded from the Energen Settlement Class.

#### **9. RIGHT TO OBJECT TO THE ENERGEN SETTLEMENT.**

If you do not opt out of the Energen Settlement Class, you may object to the proposed Energen Settlement, Class Counsel's Application for Litigation Expenses, or the request for class representative incentive awards. **All objections shall be in writing and must be filed on or before \_\_\_\_\_, 2020 [70 days after the postmarked date on the Mailed Class Notice]**, with the Court at the address of the District Court Clerk as it appears below. Your objection must set forth your full name, current address, and telephone number. In addition, your objection must include **a written statement of the position that you wish to assert**. Your objection also must be mailed to each of the following and postmarked on or before \_\_\_\_\_, 2019 **[70 days after the postmarked date on the Mailed Class Notice]**:

***Class Counsel***

George A. Barton  
Stacy A. Burrows  
SHARP BARTON, LLP.  
7227 Metcalf Ave. Suite 301  
Overland Park, KS 66204

***Counsel for Energen***

Bradford Berge  
Christopher A. Chrisman  
HOLLAND & HART LLP  
P.O. Box 2208  
Santa Fe, NM 87504-2208

You or your attorney may appear at the Final Fairness Hearing, but are not required to do so. **In order to be heard at the Final Fairness Hearing you must file a Notice of Intent to Appear at the Final Fairness Hearing with the Court on or before \_\_\_\_\_, 20120 [7 days before the date of the Final Fairness Hearing]**. Any Energen Settlement Class member who does not file a notice of intent to appear at the Final Fairness Hearing may be prohibited from participating at that Hearing.

#### **10. FINAL FAIRNESS HEARING.**

**A Final Fairness Hearing will be held on \_\_\_\_\_, 2020, at \_\_\_\_\_m. in Courtroom \_\_\_\_ of the United States District Court for the District of New Mexico, located at 100 N Church Street, Las Cruces, NM 88001.** The purpose of the Hearing will be to finally determine whether the proposed Energen Settlement is fair, reasonable, and adequate, and whether a final judgment approving the Energen Settlement Agreement should be entered. The amount of the Litigation Expenses to be paid from the Settlement Fund to Class Counsel, and the requested incentive awards to the class representatives, will also be considered at the Final Fairness Hearing. The Hearing may be continued or adjourned without further notice to the Energen Settlement Class.

If the Energen Settlement is approved, Plaintiffs and each member of the Energen Settlement Class who has not properly and timely elected to be excluded from the Energen Settlement Class will be bound by the Energen Settlement. Additionally, the respective heirs, executors, administrators, representatives, agents, successors, and assigns of the Energen Settlement Class members will be deemed bound by the Energen Settlement as to that member's interests. Likewise, the Energen Settlement will bind Energen and its successors and assigns.

## 11. ATTORNEYS FOR THE PARTIES.

### *Attorneys for the Plaintiffs and the Energen Settlement Class (“Class Counsel”)*

George A. Barton  
Stacy A. Burrows  
SHARP BARTON, LLP  
7227 Metcalf Ave. Suite 301  
Overland Park, KS 66204  
Phone: (913) 563-6250  
Fax: (913) 563-6259  
gab@georgebartonlaw.com  
stacy@georgebartonlaw.com

### *Attorneys for Energen Resources Corporation*

Bradford Berge  
Christopher A. Chrisman  
HOLLAND & HART LLP  
P.O. Box 2208  
Santa Fe, NM 87504-2208  
Phone: (505) 954-7284  
Fax: (800) 565-6693  
bberge@hollandhart.com  
cachrisman@hollandhart.com

### ***ANY QUESTIONS CONCERNING THE SETTLEMENT SHOULD BE DIRECTED TO CLASS COUNSEL.***

In any written correspondence with the attorneys or submissions to the Court, it is important that the envelope and any documents inside contain the following case name and identifying number:

*Ulibarri v. Energen Resources Corporation*  
Civil Action No. 1:18-cv-00294-RB-SCY

In addition, you must include your full name, address, and telephone number.

## 12. IF YOU WANT TO INSPECT THE COURT FILE.

The complaints, answers, pleadings, court orders, and other documents, including the Energen Settlement Agreement, are available online at [www.georgebartonlaw.com](http://www.georgebartonlaw.com). In addition, all pleadings are on file in this case and may be inspected at the following address:

United States District Court of the District of New Mexico  
440 Guadalupe Courtroom, North Tower  
100 North Church Street  
Las Cruces, NM 88001

**DO NOT WRITE OR TELEPHONE THE CLERK’S OFFICE** if you have any questions about this Notice or the Energen Settlement. Please address any questions regarding this Notice or the proposed Energen Settlement in writing to Class Counsel, at the address identified in Section 11 of this Notice, or by telephone to Class Counsel, at the telephone number identified in Section 11 of this Notice.

***DO NOT CALL THE COURT OR THE COURT CLERK***

# EXHIBIT C

## LEGAL NOTICE

### If you are a royalty owner that received royalties on wells owned by Energen Resources Corporation in New Mexico between October 2013 and April 2015, you may be eligible for benefits from a Class Action Settlement

A Proposed Settlement (“Energen Settlement”) has been reached in a class action lawsuit against Energen Resources Corporation (“Energen”), captioned *Gerald Ulibarri and Brenda Atencio, individually and on behalf of all others similarly situated, Plaintiffs v. Energen Resources Corporation, Defendant*, Civil Action No. 1:18-cv-00294-RB-SCY, in the United States District Court for the District of New Mexico (the “Lawsuit”). The Lawsuit is about the alleged underpayment of royalty payments made by Energen on the production of natural gas in New Mexico.

If you received royalties since March 29, 2012, or since October 1, 2013, from Energen or a Third-Party Operator on the sale of natural gas products produced and sold by Energen (or by an operator on Energen’s behalf) from wells located in the State of New Mexico, you may be eligible for benefits from the Energen Settlement after it becomes final. A long form Notice and Settlement Agreement is available at [www.georgebartonlaw.com](http://www.georgebartonlaw.com).

#### ARE YOU ELIGIBLE?

The Court has preliminarily approved the Energen Settlement. You are a class member and eligible for settlement benefits if you received royalties since March 29, 2012 or October 1, 2013, from Energen (either directly or by an operator on Energen’s behalf) on the sale of natural gas products produced and sold by Energen (or by an operator on Energen’s behalf) from wells located in the State of New Mexico. If you are unsure of whether you are a class member, visit [www.georgebartonlaw.com](http://www.georgebartonlaw.com).

#### BENEFITS

Energen has agreed to pay \$850,000 in order to settle the Lawsuit (the “Settlement Fund”), to be paid into an interest-bearing escrow account on or before \_\_\_\_\_, 2020. Energen has agreed to reserve \$40,000 for claims asserted by unidentified Class members (the “Reserve Funds”).

If you are a Class member, you are eligible to receive a distribution from the Reserve Funds, not to exceed 90% of the total amount of post-production costs deducted from royalties since October 1, 2013, not to

exceed a proportionate share of the total amount claimed by the class.

#### HOW TO GET BENEFITS

To obtain benefits from the Reserve Funds, you must submit a claim online at [www.georgebartonlaw.com](http://www.georgebartonlaw.com) or by mail to **George Barton, Sharp Barton, LLP, 7227 Metcalf Ave., Suite 301, Overland Park, Kansas 66204**.

**You must submit a claim by \_\_\_\_\_, 2020 [60 days after the publication date]. Certain claims may require supporting documents.**

Energen and Class Counsel will review the claim and make an eligibility determination. The eligibility and distribution process is available in the Settlement Agreement at [www.georgebartonlaw.com](http://www.georgebartonlaw.com).

#### UNDERSTANDING YOUR OPTIONS

If you want the court to **exclude** you from the Energen Settlement Class, you must mail a written election to be excluded from the settlement class to **George Barton, Sharp Barton, LLP, 7227 Metcalf Ave., Suite 301, Overland Park, Kansas 66204**. The election must contain the full name, current address, telephone number, and signature of the person requesting exclusion. **The written election must be postmarked on or before \_\_\_\_\_, 2020 [60 days after the publication date]**. If your spouse or anyone else shares your interest in the royalty payments, they must also follow this procedure if they want to be excluded from the Class.

If you do not opt out of the Energen Settlement Class, you may object to the Energen Settlement. **All objections shall be in writing and must be filed on or before \_\_\_\_\_, 2020 [70 days after the publication date]**, with the Court. For detailed instructions about the process of objecting, visit [www.georgebartonlaw.com](http://www.georgebartonlaw.com).

**You must file a claim if you want to receive settlement benefits.** If you do nothing, you will not receive a cash payment, will not be able to sue Energen for the claims being resolved in the settlement, and will be legally bound by all orders of the Court.



The Court will hold a hearing on \_\_\_\_\_, 2020 to consider any objections, and decide whether to approve the settlement, award attorneys' fees and expenses, and grant incentive awards to the named Class representatives. You may enter an appearance through an attorney but do not have to. The Court has appointed lawyers to represent you and the Class, but you can hire another lawyer at your own expense.

**This is only a summary of the settlement. For more information, visit [www.georgebartonlaw.com](http://www.georgebartonlaw.com).**

*This is a Court-authorized notice, not a lawyer advertisement.*

# EXHIBIT D

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

GERALD ULIBARRI and BRENDA ATENCIO,  
on behalf of themselves and a class  
of similarly situated persons,

Plaintiff,

v.

No. 1:18-cv-00294-RB-SCY

ENERGEN RESOURCES CORPORATION,

Defendant.

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### ORDER PRELIMINARILY APPROVING THE PARTIES PROPOSED CLASS SETTLEMENT

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This matter comes before the Court on Plaintiffs' and Defendant Energen Resources Corporation's ("Energen") joint motion for an order: (1) preliminarily approving the proposed Class Settlement; (2) appointing the named Plaintiffs as the Class Representatives for the Settlement Class; (3) appointing Plaintiffs' attorneys as Class Counsel for the Settlement Class; (4) provisionally determining that the Settlement Class meets the requirements for certification of a Fed. R. Civ. P. 23(b)(3) Class; (5) approving the proposed Mailed Notice and proposed Publication Notice to the Class members; (6) establishing the deadline and manner for any potential Class member to submit a claim for benefits from the Reserved Funds; (7) establishing the deadline and manner for the Class members' submission of any elections to opt out of the Settlement Class; (8) establishing the deadline and manner for Class members to submit objections to the proposed Class Settlement, Class Counsel's request for attorneys' fees and expense reimbursements, and the request for incentive awards to the three Class Representatives; (9) establishing the deadline for the Parties' submission of motions in support of final approval of the Class Settlement, Class Counsel's request for an award of attorneys' fees and expenses, and the

request for Class Representative incentive awards; and (10) setting a hearing date to consider the motions for final approval of the proposed Class Settlement, Class Counsel's attorneys' fees and expenses, and the Class Representative incentive awards.

The Court, having reviewed and considered the Parties' Joint Motion, the proposed Class Settlement Agreement, the proposed Mailed Notice and Publication Notice, pertinent portions of the entire record in this litigation to date, and after hearing the arguments of the Parties' attorneys at the hearing to consider the Joint Motion, finds as follows:

1. On March 29, 2018, Plaintiff Ulibarri sued Energen in the U.S. District Court for the District of New Mexico. Plaintiff Ulibarri, on behalf of himself and a class of similarly situated royalty owners, assert various claims against Energen for alleged royalty underpayments and improper deduction of post-production costs on the sale of residue gas, natural gas liquids, and condensate from wells located in New Mexico. Energen has denied those allegations.

2. On October 7, 2019, Plaintiff Atencio sued Energen in the District Court for San Juan County, New Mexico, styled as *Atencio v. Energen Resources Corp.*, Case No. D-1116-CV-2019-01603. Plaintiff Atencio, on behalf of herself and a class of similarly situated royalty owners, assert various claims against Energen for alleged royalty underpayments and improper deduction of post-production costs on the sale of residue gas, natural gas liquids, and condensate from wells operated by Third Parties ("Non-Op Wells") located in New Mexico. Energen has denied those allegations.

3. On January 2, 2020, Plaintiff Ulibarri filed a Third Amended Complaint, adding Plaintiff Atencio's claims to those of Plaintiff Ulibarri and seeking to certify two subclasses.

4. Since this litigation was commenced, the Plaintiffs' attorneys ("Class Counsel") have engaged in extensive informal discovery. Class Counsel have requested, received, and

reviewed very voluminous documents and electronic data regarding Energen's calculation and payment of royalties to the Plaintiffs and the Class since March 2012. Both Parties have retained royalty accounting experts to assist in the evaluation and analysis of the electronic royalty accounting data maintained by Energen. Class Counsel, with the assistance of a qualified royalty accounting expert, have been able to thoroughly analyze the full amount of alleged royalty underpayments by Energen to all of the Class members, based upon Energen's deduction of certain post-production costs in the calculation of royalties paid to the Class members.

5. The terms of the proposed Class Settlement are set forth in the Settlement Agreement which is attached to the Joint Motion as **Exhibit A**. The definitions set forth in the Settlement Agreement are incorporated herein by reference. The Settlement Agreement resolves the claims of the Class against Energen for natural gas royalty underpayments through \_\_\_\_\_, 2020.

6. The Settlement Class, as defined in the Parties' Settlement Agreement, includes the following persons:

all persons and entities to whom Energen paid royalties on natural gas produced by Energen from wells located in the state of New Mexico since March 29, 2012, pursuant to leases or overriding royalty agreements which contain a royalty provision which obligated Energen to pay royalties based on a specified percentage of "the proceeds of the gas, as such, for gas from wells where gas only is found," ("proceeds royalty provision"), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage "of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found" ("gross proceeds royalty provision"), or a royalty provision which obligates Energen to pay royalties based upon a percentage of the greater of "(i) the market value of the product sold or used in a condition acceptable for delivery to a transmission pipeline, or (ii) the gross proceeds received by Lessee upon arms-length sale of such as conditioned for delivery to a transmission pipeline" ("greater of market value or gross proceeds royalty provision"), or a royalty provision which obligates Energen to pay royalties based upon a

specified percentage of the gross proceeds without “deduction from the value of Lessor’s royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter associated with marketing gas produced from the lands covered hereunder” (“gross proceeds without deduction of post-production costs royalty provision”);

and

all persons and entities who received royalties since October 1, 2013, from an entity other than Energen (“Third Party Operator”) on the sale of natural gas products produced and sold by the Third Party Operator from wells located in the State of New Mexico, pursuant to a lease in which Energen owned a portion or all of the lessee’s interests, and which lease contains a royalty provision obligating the lessee to pay royalties based on either: (i) a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”); or (ii) a royalty provision which obligates the lessee to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”).

The Settlement Agreement divides the Class into two Subclasses (the “Subclasses”) as follows:

Subclass 1: Gerald Ulibarri, and all persons and entities to whom Energen paid royalties on natural gas produced by Energen from wells located in the state of New Mexico since March 29, 2012, pursuant to leases or overriding royalty agreements which contain a royalty provision which obligated Energen to pay royalties based on a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a percentage of the greater of “(i) the market value of the product sold or used in a condition acceptable for delivery to a transmission pipeline, or (ii) the gross proceeds received by Lessee upon arms-length sale of such as conditioned for delivery to a transmission pipeline” (“greater of market value or gross proceeds royalty provision”), or a royalty provision which obligates Energen to pay royalties based upon a specified percentage of the gross proceeds without “deduction from the value of Lessor’s royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter associated with marketing gas produced from the lands covered

hereunder” (“gross proceeds without deduction of post-production costs royalty provision”).

Subclass 2: Brenda Atencio, and all persons and entities who received royalties since October 1, 2013, from an entity other than Energen (“Third-Party Operator”) on the sale of natural gas products produced and sold by the Third-Party Operator from wells located in the State of New Mexico, pursuant to a lease in which Energen owned a portion or all of the lessee’s interests, and which lease contains a royalty provision obligating the lessee to pay royalties based on either: (i) a specified percentage of “the proceeds of the gas, as such, for gas from wells where gas only is found,” (“proceeds royalty provision”); or (ii) a royalty provision which obligates the lessee to pay royalties based upon a specified percentage “of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found” (“gross proceeds royalty provision”).

7. For purposes of the Settlement Agreement, each Plaintiff is a member of the Class, and one or more Plaintiffs is a member of each Subclass.

8. The Settlement Agreement between the Class and Energen appears, upon preliminary review, to be fair, reasonable, and adequate.

9. In determining that the proposed Class Settlement appears to be fair, reasonable and adequate, the Court has considered the following: (a) the proposed Class Settlement has been fairly and honestly negotiated; (b) serious questions of law and fact exist which put the ultimate outcome of a trial on the merits in doubt; (c) the amount of the proposed Class Settlement outweighs the possibility of further relief after protracted and expensive litigation; and (d) the Parties and their attorneys, who are very experienced in class action royalty underpayment litigation, believe that the Class Settlement is fair and adequate, and are requesting that the Class Settlement be preliminarily approved.

10. The Parties have entered into the Settlement Agreement after conducting extensive discovery and fact gathering, and with full knowledge of the relevant factual and legal issues. The

Settlement Agreement is the product of non-collusive, arm's-length bargaining between the Parties and their Counsel.

11. The Settlement Class benefits from the Settlement Agreement because Energen has agreed to pay \$850,000 to settle the Class members' claims in this litigation. Of the Settlement Amount, \$40,000 will be reserved as funds for claims asserted by unidentified Class members.

12. The benefits provided to the Class under the terms of the Settlement Agreement provide a reasonable resolution of the claims of the Class, considering the risk of litigation, likelihood of protracted and expensive litigation in the absence of the Settlement Agreement, and the Parties' various claims and defenses.

13. Energen also benefits from the Settlement Agreement through the avoidance of protracted and expensive litigation, the elimination of risk of an adverse judgment, the final resolution of disputes with the Class members, and the promotion of a mutually productive business relationship with the Class members.

14. The Court also provisionally determines that each of the requirements for certification of a Fed. R. Civ. P. 23(b)(3) Settlement Class is satisfied, as set forth below.

15. Because there are approximately 900 members of the defined Settlement Class, the numerosity requirement of Rule 23(a)(1) is satisfied.

16. Because there is at least one question of law and fact which is common to the claims of each of the Class members, the commonality requirement of Rule 23(a)(2) is satisfied.

17. Because the claims of the named Plaintiffs are typical of the claims of the other Class members, the typicality requirement of Rule 23(a)(3) is satisfied.

18. Because the Class Representatives and Class Counsel have vigorously prosecuted this litigation on behalf of the named Plaintiffs and the Class, because the Class Representatives

and Class Counsel do not have any conflicts of interest with the other members of the Class, and because Class Counsel have had extensive experience in litigating class action royalty underpayment cases, the adequacy of representation requirement of Rule 23(a)(4) is satisfied.

19. Common questions of law and fact predominate over individual questions regarding the Class members' claims against Energen. The overreaching issue binding the Class, and mooted by the Settlement Agreement, is the question of whether Energen breached its legal obligation to the class members by engaging in a common course of conduct under which it deducted certain post-production costs in the calculation of royalties. The predominance requirement of Rule 23(b)(3) is therefore satisfied.

20. A class action is superior to other available methods for fairly and efficiently adjudicating the Class members' claims against Energen. The fact that none of the Class members have expressed interest in individually controlling the prosecution of separate litigation against Energen further supports the Court's finding that the superiority requirement for certification of a Rule 23(b)(3) Settlement Class is satisfied. The Court makes no finding, however, whether this case, if litigated as a class action, would present intractable case management problems, because evaluation of the manageability factor is unnecessary in cases where class certification is sought only for a Settlement Class.

21. Accordingly, the Court finds that the proposed Class and its two Subclasses may be provisionally certified, for settlement purposes only, under Fed. R. Civ. P. 23(a) and (b)(3) as an opt-out Class.

22. The Notice of Class Settlement to be mailed to the members of the Class, which is attached to the Joint Motion as Exhibit B ("Mailed Notice"), adequately informs the Class members of the following: (1) the nature of this Class action lawsuit; (2) the definition of the



proposed Settlement Class and each of the Subclasses; (3) the Class members' claims, the issues, and Energen's denial of the Class members' claims; (4) a description of the terms of the Class Settlement, including information about the Class members' right to obtain a copy of the Settlement Agreement from Class Counsel; (5) the reservation of a portion of the Settlement Amount for unidentified Class members, how to submit a claim to obtain benefits from the Reserved Funds, and the deadline to submit such a claim; (6) that the Court will exclude from the Class any member who requests exclusion; (7) the deadline and manner for requesting exclusion; (8) the right of any Class member to object to the proposed Class Settlement, Class Counsel's request for reimbursement of expenses and for attorneys' fees, or to the requested incentive awards for the Class Representatives, and the deadline for any such objections; and (9) the binding effect of the Class Settlement on Class members who do not elect to be excluded from the Class.

23. The Notice of Class Settlement to be published in the in *The Albuquerque Journal* and the *Daily Times* of Farmington, New Mexico for one Wednesday, Saturday, and Sunday edition of each respective newspaper, which is attached to the Joint Motion as Exhibit C ("Publication Notice") adequately informs Class members of the following: (1) the nature of this Class action lawsuit; (2) a description of the terms of the Class Settlement, including information about the Class members' right to obtain a copy of the Settlement Agreement from Class Counsel; (3) the reservation of a portion of the Settlement Amount for unidentified Class members, how to submit a claim to obtain benefits from the Reserved Funds, and the deadline to submit such a claim; (4) that the Court will exclude from the Class any member who requests exclusion; (5) the deadline and manner for requesting exclusion; (6) the right of any Class member to object to the proposed Class Settlement, Class Counsel's request for reimbursement of expenses and for attorneys' fees, or to the requested incentive awards for the Class Representatives, and the deadline

for any such objections; (7) how to obtain a long form Notice and more information about the Settlement Agreement from Class Counsel.

### **ORDER**

In light of the Court's findings and conclusions, and pending further consideration at a final fairness hearing, IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement is preliminarily approved as being fair, adequate, and reasonable.

2. The named Plaintiffs are appointed as the Class Representatives for the Settlement Class, and Plaintiff Gerald Ulibarri is appointed as the Class Representative for Subclass 1, and Plaintiff Brenda Atencio is appointed as the Class Representative for Subclass 2.

3. The Plaintiffs' attorneys are appointed as Class Counsel for the Settlement Class, and for each of the two Subclasses.

4. The Court provisionally determines that each of the required for certification of a Fed. R. Civ. P. 23(b)(3) Settlement Class is satisfied.

5. Within 14 days of the date of this Order preliminarily approving the Class Settlement, Energen shall deposit the settlement payment of \$850,000 into the Escrow Account established pursuant to the Escrow Agreement, as provided for in Paragraph 2 of the Settlement Agreement, and subject to the conditions set forth in the Settlement Agreement and the Escrow Agreement.

6. The Court approves the form and content of the Mailed Notice attached to the Joint Motion as Exhibit B.

7. Class Counsel shall be responsible for mailing the Mailed Notice, by first class United States mail, to the Settlement Class members within seven days after the date of this Order preliminarily approving the Class Settlement.

8. The Court approves the form and content of the Publication Notice attached to the Joint Motion as Exhibit C.

9. Class Counsel shall be responsible for publishing the Publication Notice in the *The Albuquerque Journal* and the *Daily Times* of Farmington, New Mexico for one Wednesday, Saturday, and Sunday edition of each respective newspaper, within fourteen (14) days after the date of this Order preliminarily approving the Class Settlement.

10. Any member of the Settlement Class who wishes to submit a claim to obtain benefits from the Reserved Funds must submit a claim to class counsel, which must be submitted on or before the date which is sixty (60) days after the publication date of Class Counsel's publishing of the Publication Notice. Any such claim must be submitted in accordance with the procedures set forth in the Publication Notice.

11. Any member of the Settlement Class who wishes to request exclusion ("Opt Out") from the Settlement Class must submit a written Opt Out election, which must be postmarked on or before the date which is sixty (60) days after the postmark date of Class Counsel's mailing of the Mailed Notice to the members of the Class, or sixty (60) days after the Publication Notice, which date shall be specified in the Mailed Notice and Publication Notice. In accordance with the procedures set forth in the Mailed Notice, any such Opt Out election must be in writing, and must be mailed to Class Counsel at the address provided in the Notice.

12. On or before the date which is 21 days before the scheduled date for the final fairness hearing, the Parties shall file motions in support of final approval of the Class Settlement,

and Class Counsel shall file their request for attorneys' fees and expense reimbursements, and for Class Representative incentive awards.

13. Any member of the Class who wishes to make objections to, or comment on, the proposed Class Settlement, Class Counsel's request for attorney's fees and expenses reimbursements, or the request for Class Representative incentive awards, shall postmark and mail such objections or comments on or before the date which is seventy (70) days after the postmark date on which Class Counsel mails the Mailed Notice to the proposed Class members, or within seventy (70) days after the Publication Notice. In accordance with the procedures set forth in the Mailed Notice and Publication Notice, any such objections or comments must be mailed to Class Counsel, Energen's counsel, and the Court.

14. Any Class member who wishes to appear and be heard at the final approval hearing must postmark and mail notice of such intention at least 7 days before the scheduled date for the final fairness hearing. Notice of such intention must be mailed to Class Counsel, Energen's counsel, and the Court.

15. At least 7 days before the scheduled date for the final fairness hearing, Class Counsel and Energen may file a response to any Class member's objections or comments. A copy of such response shall be mailed to all Class members who have submitted timely objections or comments.

16. The Court will conduct a hearing to consider final approval of the proposed Class Settlement, Class Counsel's request for attorneys' fees and expense reimbursements, and the request for Class Representative incentive awards, beginning at \_\_\_\_\_ .m, on \_\_\_\_\_, in Courtroom \_\_\_\_\_ of this Court.

17. All pending discovery and case management deadlines in this action are stayed until further order of this Court.

IT IS SO ORDERED.

Dated this \_\_\_ day of \_\_\_\_\_, 2020

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United States District Judge

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