

**DISTRICT COURT,  
COUNTY OF GARFIELD, COLORADO**

109 8th Street, Suite 104  
Glenwood Springs, CO 81601

**Plaintiffs:**

LANA SCOTT, *et al.*

v.

**Defendant:**

TEP ROCKY MOUNTAIN LLC

Stacy A. Burrows, Colo. Bar. No. 49199

George A. Barton

BARTON AND BURROWS, LLC

5201 Johnson Drive, Suite 110

Mission, Kansas 66205

Phone: (913) 563-6250

Facsimile: (913) 563-6259

george@bartonburrows.com

stacy@bartonburrows.com

***Attorneys for Plaintiffs and the  
Proposed Class***

Christopher A. Chrisman, #33132

Michelle R. Seares, #54455

HOLLAND & HART LLP

555 17th Street, Suite 3200

P.O. Box 8749

Denver, CO 80201-8749

Telephone: (303) 295-8000

Facsimile: (303) 295-8261

cachrisman@hollandhart.com

mrseares@hollandhart.com

***Attorneys for Defendant TEP Rocky  
Mountain LLC***

DATE FILED: April 26, 2023 3:28 PM  
FILING ID: D69307DD6F8C8  
CASE NUMBER: 2022CV30079

▲ COURT USE ONLY ▲

Case Number: 2022-CV-30079

Div.: B

Ctrm.:

**JOINT MOTION FOR AN ORDER  
PRELIMINARILY APPROVING PROPOSED  
CLASS ACTION SETTLEMENT**

Plaintiffs Lana Scott (“Scott”) and Dwight Cook (“Cook”), individually and on behalf of those similarly situated royalty owners (collectively “Plaintiffs” or “Class Representatives”), and Defendant TEP Rocky Mountain LLC (“TEP”) (collectively, the “Parties”), move this Court, pursuant to C.R.C.P. 23(e), for its order preliminarily approving the Parties’ proposed class action settlement.

The Parties seek entry of an order: (1) preliminarily approving the class settlement agreement (“Settlement Agreement”) attached hereto as Exhibit A; (2) appointing Plaintiffs Scott and Cook as Class Representatives for the Class (as defined herein and in the Settlement Agreement); (3) appointing Plaintiffs’ attorneys as Class Counsel for the Class; (4) provisionally determining that the Class meets the requirements for certification of a C.R.C.P. 23(b)(3) class, for settlement purposes; (5) approving the proposed class settlement notice to be mailed to the Class members; (6) establishing the deadline and manner for members’ submission of any elections to opt out of the Class; (7) establishing the deadline and manner for the Class members to submit objections to the proposed Settlement Agreement, Class Counsels’ request for attorneys’ fees and expense reimbursements, and the request for \$7,500 incentive awards to each Class Representative; (8) establishing the deadline for the Parties’ submission of motions in support of final approval of the Settlement Agreement, Class Counsels’ request for an award of attorneys’ fees and expenses, and the request for \$7,500 incentive awards to each Class Representative; and (9) setting a hearing date to consider the motions for final approval of the proposed Settlement Agreement, Class Counsels’ attorneys’ fees and expenses, and \$7,500 incentive awards to each Class Representative.

As grounds for this Joint Motion, the Parties state as follows:

## **I. BACKGROUND**

1. On June 22, 2022, Plaintiff Lana Scott filed her class action complaint against TEP in the District Court of Garfield County, Colorado. Subsequently, on April 18, 2023, Plaintiffs filed an amended class action complaint adding Dwight Cook as an additional Plaintiff.

2. Plaintiffs, individually and on behalf of themselves and other similarly situated royalty owners, assert claims for alleged royalty underpayments related to TEP's production and sale of natural gas and natural gas liquids from August 1, 2020, to December 31, 2022.

3. On June 29, 2022, the Parties filed a joint motion requesting the Court stay the proceedings of this case for ninety days pending settlement negotiations. The Parties made similar joint requests for a ninety-day stay and sixty-day stay, for settlement negotiation purposes, on October 7, 2022, and December 23, 2022, respectively. The Court granted each of these requests.

4. After this nearly seven-month settlement negotiation process, the Parties have reached a class settlement on the terms set forth in the Settlement Agreement, attached as Exhibit A.

5. The Parties and their counsel now request this Court enter an Order preliminarily approving the Settlement Agreement; provisionally certifying a C.R.C.P. 23(b)(3) settlement class; approving the proposed form of the notice to be mailed to the 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 proposed \$7,500 incentive awards to each Class Representative.

6. 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, the Court may preliminarily approve the Settlement Agreement, provisionally certify the proposed Class, approve the proposed notice to the Class members of the proposed class settlement (including their rights to opt-out or object), and set a date for a final fairness hearing.

## **II. THE PARTIES' SETTLEMENT AGREEMENT**

The Settlement Agreement defines the C.R.C.P. 23(b)(3) Class as follows:

### **THE CLASS**

Lana Scott and Dwight Cook, and all persons and entities, including their respective successors and assigns, to whom TEP or its affiliates, have paid royalties since August 1, 2020, on natural gas, including natural gas liquids, produced from wells located in the State of Colorado which are subject to the oil and gas leases identified on Table 1 of the Settlement Agreement.

To resolve the claims of the Class for past royalty underpayments, TEP has agreed to pay \$197,261.00 to the members of the Class (the "Class Settlement Fund"). If one or more members elect to opt-out of the Settlement Agreement, TEP will be entitled to an opt-out credit against the \$197,261.00 settlement amount, which will be determined based on each opt-out member's proportionate share of the Class Settlement Fund. The settlement amount being paid by TEP is in settlement of royalty and overriding royalty underpayment claims asserted by members of the Class based on TEP's sales of natural gas production, including natural gas liquids, from August 1, 2020, through December 31, 2022 (the "Relevant Time Period"). 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 amounts allegedly retained by TEP under the agreements at issue in this case during the Relevant Time Period. If more than twenty

percent (20%) of the Class members request to exclude themselves from the Settlement Agreement, it may terminate. A projected proportionate distribution of the Class Settlement Fund (the “Final Distribution Schedule”) will be presented to the Court along with the Parties’ Motion for Final Approval of the Settlement Agreement.

Class Counsel will request an award of attorneys’ fees and reimbursement of expenses that have been or will be incurred by Class Counsel, and \$7,500 incentive awards to each of the two Class Representatives, which shall be paid from the Class Settlement Fund. Class Counsel will seek attorneys’ fees totaling one-third of the gross Class Settlement Fund in addition to reimbursement of approximately \$10,000 in expenses. TEP takes no position on such requests, and TEP is not responsible under the Settlement Agreement for any award of attorneys’ fees, expense reimbursements, or the Class Representative incentive awards.

As part of the Settlement Agreement, the Parties also agreed, upon the effective date, TEP will utilize revised future royalty payment methodologies in the calculation of royalty payments to the members of the Class. Specifically, TEP shall pay the members of the Class based upon one hundred percent (100%) of the sales price actually received by TEP for the sale of natural gas and natural gas liquids from their leases, and will not deduct any costs of gathering, fuel, or fifty percent (50%) of processing costs. TEP shall be entitled to deduct fifty percent (50%) of processing costs, as well as one hundred percent (100%) of the costs of natural gas mainline transportation, and one hundred percent (100%) of the costs of transporting and fractionating natural gas liquids.

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

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

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.

### **III. THE REQUIREMENTS FOR PROVISIONAL CERTIFICATION OF THE C.R.C.P. 23(b)(3) SETTLEMENT CLASS ARE SATISFIED**

Certification of a C.R.C.P. 23(b)(3) class has six requirements: (1) the class is so numerous that the joinder of all members is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims of the representative plaintiffs are typical of the claims of the class ("typicality"); (4) the representative plaintiffs will fairly and adequately protect the interests of the class ("adequacy"); (5) the common questions of law or fact predominate over individual questions ("predominance"); and (6) the class action is superior to individual actions for resolving the class members' claims ("superiority"). C.R.C.P. 23(a) and 23(b)(3).

As demonstrated below, each of the requirements for certification of the C.R.C.P. 23(b)(3) Class are satisfied in this case. The Supreme Court of Colorado has confirmed that C.R.C.P. 23 should be liberally construed in light of its policy favoring the maintenance of class actions. *Jackson v. Unocal Corp.*, 262 P.3d 874, 883 (Colo. 2011) (citing *Farmers Ins. Exch. v. Benzing*, 206 P.3d 812, 818 (Colo. 2009)).

#### **A. Numerosity**

"The requirement of numerosity means that a class must be large enough to make joinder of all its members impractical." *Garcia v. Medved Chevrolet, Inc.*, 540 P.3d 371, 377 (Colo. App.

2009); *Cherry Hills Farms, Inc. v. City of Cherry Hills Vill.*, 670 P.2d 779, 783 (Colo. 1983) (92 class members satisfied the C.R.C.P. 23(a)(1) numerosity requirement). The Parties have identified more than 100 individuals in the putative class. The numerosity requirement is therefore satisfied.

## **B. Commonality**

C.R.C.P. 23(a)(2) requires that questions of fact or law exist that are common to the proposed class as a whole. The commonality requirement does not demand that all questions of law or fact at issue be common but instead requires only that significant common issues of law or fact exist. *Queen Uno Ltd. P'ship v. Coeur D'Alene Mines Corp.*, 183 F.R.D. 687, 691 (D. Colo. 1998). Courts recognize that varying fact situations among individual class members may exist as long as the plaintiffs' claims and other class members are based on the same legal or remedial theory. *LaBrenz v. Am. Family Mut. Ins. Co.*, 181 P.3d 328, 338 (Colo. App. 2007).

In their first amended class action complaint, Plaintiffs assert a breach of contract claim against TEP for its alleged failure to pay royalties to the Plaintiffs and the Class members consistent with its obligations under certain oil and gas leases since August 1, 2020. Plaintiffs allege that TEP engaged in a common course of conduct regarding its royalty payment methodology that affected the Class royalty owners who were parties to certain oil and gas leases. Because the claims of the Class members arise out of the same operative facts and are based on the same legal theory as others in the Class, there are common questions of law and fact, for purposes of settlement, including: (1) whether TEP has a common contractual obligation to pay royalties to the Plaintiffs and the Class members based upon prices received at the location of the first commercial market for marketable residue gas and marketable natural gas liquid products; (2)

whether the location of the first commercial market for the residue gas sold by TEP was beyond the tailgate of the gas processing plant, and at the location where TEP sold the residue gas to third party purchasers; (3) whether the location of the first commercial market for the natural gas liquid products, which were produced from the gas wells at issue, was at the location where the natural gas liquid mix was fractionated into five marketable natural gas liquid products – ethane, propane, butane, isobutane and pentane – and then sold to third party purchasers; (4) whether TEP breached its contractual obligations by calculating and paying royalties to Plaintiffs and the Class members on the residue gas sales based on a dollar figure which was far less than the sales proceeds for the residue gas which TEP sold to third party purchasers; and (5) whether TEP breached its contractual obligations to Plaintiffs and the Class members by calculating and paying royalties for the marketable natural gas liquid products based upon a dollar figure which was less than the prices received by TEP on the sale of the five marketable natural gas liquid products to third party purchasers. These issues of law and fact are common to all putative Class members and are the central issues to be decided in this case. The commonality requirement is therefore satisfied.

### **C. Typicality**

C.R.C.P. 23(a)(3) requires that the claims of the named plaintiff be typical of the claims of the class. The typicality requirement is satisfied if there is a nexus between the named plaintiff's claims and the common questions of fact or law that unite the class. *Patterson v. BP Am. Prod. Co.*, 240 P.3d 456, 462 (Colo. App. 2010), *aff'd sub nom., BP Am. Prod. Co. v. Patterson*, 263 P.3d 103 (Colo. 2011). The positions of the potential class members need not be identical; so long as there is a nexus between the Class Representatives' claims and common questions of fact or



law unite the class, the typicality requirement is satisfied. *Schwartz v. Celestial Seasonings, Inc.*, 178 F.R.D. 545, 551 (D. Colo. 1998).

Plaintiffs' claims are typical of the claims of the proposed Class members they represent. TEP utilized the same royalty payment methodology for the Plaintiffs Scott and Cook and the Class members when it calculated the amounts of royalties owed to royalty owners. The typicality requirement is therefore satisfied.

#### **D. Adequacy of Representation**

Finally, C.R.C.P. 23(a)(4) requires that the named plaintiff fairly and adequately protect the interests of the class. To satisfy this requirement, plaintiffs should have no conflicting interests with the class it seeks to represent and be represented by competent counsel. *Kuhn v. State Dept. of Revenue*, 817 P.2d 101, 106 (Colo. 1991). Criteria for assessing adequacy of representation include whether the plaintiffs have common interests with the class members and whether the representative will vigorously prosecute the interests of the class through qualified counsel. *Joseph v. Gen. Motors Corp.*, 109 F.R.D. 635, 652 (D. Colo. 1986); *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187–88 (10th Cir. 2002). Absent evidence to the contrary, a presumption of adequate representation is invoked. *Joseph*, 109 F.R.D. at 652. Any doubt regarding the adequacy of representation should be resolved in favor of upholding the class, subject to later possible reconsideration or the creation of subclasses. *Id.*

Plaintiffs' counsel in this case have substantial experience in both class actions and royalty underpayment litigation, including the successful handling of several other class action royalty underpayment cases against gas producers in Colorado. Plaintiffs' attorneys are therefore well qualified to represent the Class in this case.

Plaintiffs have no conflicting interests with the Class they seek to represent. They have acted in the best interest of all the Class members throughout this litigation and will continue to do so. Thus, the adequacy of representation is satisfied.

#### **E. Predominance**

To certify the C.R.C.P. 23(b)(3) Class, this Court must also find that the questions of law or fact predominate over any questions affecting only individual class members. C.R.C.P. 23(b)(3). The predominance inquiry rests on “whether the plaintiff advances a theory by which to prove or disprove an element on a simultaneous, class-wide basis since such proof obviates the need to examine each class member’s individual position.” *BP Am. Prod. Co.*, 263 P.3d at 109 (quoting *Benzing*, 206 P.3d at 820). The predominance inquiry also focuses on “whether the proof at trial will be predominantly common to the class or primarily individualized.” *Jackson*, 262 P.3d at 889 (quoting *Medina v. Conseco Annuity Assur. Co.*, 121 P.3d 345, 348 (Colo. App. 2005)).

In this case, the Plaintiffs’ and the proposed Class members’ theory of royalty underpayments predominate over any individual issue for purposes of settlement.

In addition, the common issues in this case predominate over the individual issues because, as evidenced by the Settlement Agreement, the claims of the Class can be resolved on a uniform basis. The common questions of fact and law for the Class, therefore, predominate over any individual issues that might exist.

#### **F. Superiority**

Class certification under C.R.C.P. 23(b)(3) also requires a finding that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. A class action is generally considered superior to individual litigation where, as here, the claims of

many class members are too small to justify the time and expense of individual action, particularly where proof of their claims may depend upon obtaining substantial discovery, so long as the other requirements of Rule 23 are satisfied. *Jackson*, 231 P.3d at 28; *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (superiority exists where claims would be “uneconomical to litigate individually” leaving most of the class with “no realistic day in court if a class action were not available”). For most Class members identified, the dollar amount of their royalty underpayment claim is below \$1,000, thus making it uneconomical for them to litigate their royalty underpayment claim against TEP individually.

The class action procedure is also the most efficient use of judicial resources to address TEP’s underpayment of royalties to Plaintiffs and the members of the Class. Given the nature of the claims in this case, requiring separate cases for individual royalty owners to assert royalty underpayment claims would be highly inefficient and would unduly burden this state’s judicial resources. By maintaining this case as a class action, uniform relief can be granted in a single proceeding that provides relief to all affected Colorado royalty holders.

C.R.C.P. 23(b)(3)(A)–(D) sets forth four factors that a court should consider in determining whether a class action is superior to individual lawsuits for the resolution of the claims at issue. An evaluation of those four factors further demonstrates that the superiority requirement is satisfied in this case for settlement purposes. Pursuant to C.R.C.P. 23(b)(3)(A), this Court should consider the interests of the class members in individually controlling the prosecution or defense of separate actions. The prosecution of separate royalty underpayment lawsuits would not further the interests of the class members in this case, particularly because most of them have relatively small claims. A class action is a superior method to adjudicate their claims because class-wide

litigation can be prosecuted much more efficiently and more economically than individual lawsuits. The Court should also consider, pursuant to C.R.C.P. 23(b)(3)(B), the extent and nature of any litigation concerning the controversy already commenced by or against members of the class.

Pursuant to C.R.C.P. 23(b)(3)(C), this Court should also consider the desirability of concentrating the litigation of these claims in this forum. In this case, all of TEP's natural gas production at issue occurred in the State of Colorado. The majority of the Class members also reside in Colorado. The claims at issue are governed by Colorado substantive law. Therefore, concentrating the litigation of these claims in this Court is the most efficient and economical method of resolving this royalty underpayment dispute.

The final factor that should be considered in evaluating the issue of superiority, as set forth in C.R.C.P. 23(b)(3)(D), is the difficulty likely to be encountered in the management of this class action. In this case, the issues of liability and damages can be resolved on a class-wide basis through this Settlement Agreement. Thus, there are unlikely any manageability issues that would prevent this Court from determining that the superiority requirement for certification of the C.R.C.P. 23(b)(3) settlement Class is satisfied.

For these reasons, C.R.C.P. 23(b)(3)'s six requirements are satisfied.

#### **IV. THE PROPOSED SETTLEMENT AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE**

The standard for evaluating settlements of class actions under C.R.C.P. 23 is whether the proposed settlement agreement is fair, reasonable, and adequate. *Thomas v. Rahmani-Azar*, 217 P.3d 945, 947 (Colo. App. 2009). So long as the negotiated agreement appears fair, reasonable, and adequate, it should be approved in accordance with the strong public policy favoring the

settlement of complex litigation. *Helen G. Bonfils Found. v. Denver Post Emps. Stock Trust*, 674 P.2d 997, 998 (Colo. App. 1983); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 551 (D. Colo. 1989). As a practical matter, courts typically presume that a class action settlement is fair and reasonable based on the parties' recommendation and counsel. Thus, "the overwhelming majority of settlements are approved when the court is satisfied that arms-length bargaining took place during settlement negotiations and experienced class counsel recommended approval of the settlement." NEWBERG ON CLASS ACTIONS, § 11.41 at 11-95 (3rd ed. 1992).

In evaluating class action settlements, courts agree on a nonexclusive list of factors that should be considered in assessing whether a settlement agreement is fair, adequate, and reasonable: the strength of the plaintiff's case; risk and expense of further litigation; the amount of the settlement; extent of discovery completed; experience and views of counsel; and the reaction of interested parties to the settlement. *Thomas*, 217 P.2d at 948.

The proposed Settlement Agreement meets all of the required elements for preliminary approval. First, if Plaintiffs and TEP were not able to resolve Plaintiffs' claims now, the Parties would have to conduct additional expensive and time-consuming liability and damages discovery, likely complete briefing on dispositive motions and a motion for class certification, prepare for trial, and ultimately try this case to a jury. Second, the proposed settlement amount, \$197,261.00, represents a significant portion of the alleged damages calculated by the Parties. Third, the proposed future royalty payment methodology substantially benefits members of the Class going forward. Fourth, the settlement amount was negotiated extensively by the Parties' counsel, who are very experienced in oil and gas royalty underpayment class action litigation.

Counsel believe that it is in the best interest of all parties to enter into the attached Settlement Agreement. The Parties and their attorneys have agreed to the Settlement Agreement terms with full knowledge of the critical factual and legal issues in this case and only after conducting extensive discovery and a comprehensive evaluation of voluminous royalty payment data. Based upon the information obtained throughout this litigation, the attorneys for Plaintiffs, who have extensive experience in royalty underpayment litigation, strongly recommend approval of this Settlement Agreement. Moreover, the proposed Settlement Agreement avoids the extensive risk, time, and expense of continuing this class-action litigation with an uncertain outcome. The Class members will receive substantial benefits from the proposed Settlement Agreement. Each Class member will receive a payment in compensation for the claim for royalty underpayments for production from August 1, 2020, through December 31, 2022, and benefit from a future royalty payment methodology. The Class members will benefit from a reasonable and fair resolution of this litigation, avoiding additional risk, expense, and delay.

**V. THE COURT SHOULD APPROVE THE PROPOSED NOTICE TO THE CLASS AND THE PROPOSED PROCEDURE FOR A CLASS MEMBER TO OPT-OUT OR TO FILE OBJECTIONS**

The Parties have agreed on the form and content of the Notice to Class members, attached as Exhibit B to the Settlement Agreement (the “Notice”). The 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 monetary amount that TEP has agreed to pay to resolve the alleged past royalty underpayment claims of the Class; (d) Class Counsels’ anticipated request for payment of attorneys’ fees, litigation expense reimbursements, and the Class Representative incentive awards to be paid from the Class Settlement Fund; (e) the date, time, and

place 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; and (g) 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 Notice.

Class Counsel has agreed to be responsible for mailing the Notice to the members of the Class. Therefore, the Court should order that Class Counsel send the Notice to all members of the Class whose addresses are available from TEP's accounting records within fourteen (14) days after the Court enters its Order granting preliminary approval of the Settlement Agreement.

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 thirty (30) days after the postmark date on which Class Counsel mails the 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 the mailed Notice.

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 that is forty (40) days after the postmark date on which Class Counsel mails the Notice to the proposed Class members by First-Class United States mail, and 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 that is seven (7) days before the scheduled date of the final fairness hearing.

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

All costs and expenses 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.

### **CONCLUSION**

For the foregoing reasons, the Parties request that the Court enter an Order:

- (1) preliminarily determining the Settlement Agreement is fair, reasonable, and adequate, and granting the Parties' joint motion for preliminary approval of the Settlement Agreement;
- (2) appointing named Plaintiffs Scott and Cook as the Class Representatives for the Class;
- (3) appointing Plaintiffs' attorneys Stacy Burrows and George Barton as Class Counsel for the Class;
- (4) provisionally determining that the Class meets the requirements for class certification under C.R.C.P. 23(b)(3);
- (5) scheduling a final fairness hearing date after the Court enters its Order preliminarily approving the proposed Class Settlement to consider final approval of the proposed Settlement



Agreement, Class Counsels' request for an award of attorneys' fees, and expense reimbursements, and the request for incentive awards for the Class Representatives;

(6) approving the form and content of the Notice that is attached to this joint motion for preliminary approval as Exhibit B to the Settlement Agreement;

(7) directing that Class Counsel be responsible for mailing the Notice to the members of the Class by First-Class U.S. Mail within fourteen (14) days after the Court enters its Order granting preliminary approval of the Settlement Agreement;

(8) establishing a deadline for any members of the Class to mail a written election to Class Counsel to be excluded from the Class, which deadline will be thirty (30) days after the postmark date on which Class Counsel mails the Notice to the proposed Class members by First-Class United States mail;

(9) establishing a deadline for any member of the Settlement Class to submit objections or comments regarding the proposed Settlement Agreement, Class Counsels' request for attorneys' fees and expense reimbursements, or Class Counsels' request for Class Representative incentive awards, which deadline will be forty (40) days after the postmark date on which Class Counsel mails the Notice to the proposed Class members by First-Class United States mail;

(10) 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 seven (7) days before the scheduled date of the final fairness hearing;

(11) establishing a deadline for the Parties' attorneys to file motions and memoranda in support of final approval of the Settlement Agreement, for Class Counsels' motion for an award of attorneys' fees, expense reimbursements, and \$7,500 incentive awards to each Class

Representative which deadline should be twenty-one (21) days before the scheduled date for the final fairness hearing; and

(12) establishing a deadline for the Parties' attorneys to file responses, objections, or comments, if any, to: (a) the proposed Settlement Agreement; (b) Class Counsels' request for attorneys' fees and expenses; or (c) the request for Class Representative incentive awards, seven (7) days before the date of the final fairness hearing.

Dated: April 26, 2023

/s/ Stacy A. Burrows

Stacy A. Burrows, CO Bar No. 49199  
George A. Barton, Mo. Bar No. 26249  
Barton Burrows, LLC  
5201 Johnson Drive, Suite 110  
Mission, KS 66208  
Phone: (913) 563-6253  
Fax: (913) 563-6259  
Email: stacy@bartonburrows.com  
george@bartonburrows.com

*Attorneys for Plaintiffs and the Proposed  
Class*

/s/ Christopher A. Chrisman

Christopher A. Chrisman (No. 33132)  
Michelle R. Seares (No. 54455)  
Holland & Hart LLP  
555 Seventeenth Street, Suite 3200  
PO Box 8749  
Denver, CO 80201-8749  
Phone: (303) 295-8000  
E-mail: CAChrisman@hollandhart.com  
MRSeares@hollandhart.com

*Attorneys for Defendant TEP Rocky Mountain  
LLC*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 26th day of April, 2023, a true and correct copy of the foregoing **Joint Motion for an Order Preliminarily Approving Proposed Class Action Settlement** was served on the following via the Colorado Courts E-Filing system:

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Fax
- ☒ Electronic Service

Stacy A. Burrows  
George A. Barton  
Barton and Burrows, LLC  
5201 Johnson Dr., Suite 110  
Mission, KS 66205  
stacy@bartonburrows.com  
george@bartonburrows.com

/s/ Julia Cross Lingsang