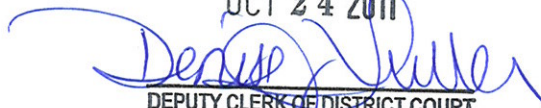


Steven F. Freudenthal
 Attorney No. 5-1468
 Freudenthal & Bonds, P.C.
 129 East Carlson Street
 P.O. Box 387
 Cheyenne, WY 82003
 Ph. (307) 634-2240
 Fax (307) 634-0336

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 DEPUTY CLERK OF DISTRICT COURT

STATE OF WYOMING)
) ss
 COUNTY OF CAMPBELL)

IN THE DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 Civil Action No. 32720

Cosner Minerals Limited Partnership,)
 a Wyoming limited partnership;)
 Scorpio Resources, Inc., a Colorado)
 corporation, authorized to do business)
 in Wyoming; and Maurice W. Brown,)
 individually,)

Plaintiffs,)

vs.)

Coleman Oil & Gas, Inc., a New Mexico)
 corporation authorized to conduct)
 business in Wyoming,)

Defendant.)

**MOTION FOR CONDITIONAL CONSIDERATION OF SETTLEMENT AGREEMENT
 AND PROVISIONAL CERTIFICATION OF THE COLEMAN SETTLEMENT CLASS**

Plaintiffs, on their behalf and as representative of all similarly situated persons, by and through one of their attorneys, moves this Court for an "Order on Plaintiff's Motion for Preliminary Approval, Hearing and Provisional Certification of Coleman Settlement Class," and respectfully requests this Court to order that:

1. The above entitled action involving Coleman Oil and Gas Company, Inc. ("Coleman") can and should proceed as a settlement class action pursuant to Wyo.R.Civ.P. 23 on a provisional basis;
2. The settlement of the potential class claims, including those brought under the Wyoming Royalty Payment Act (W.S. § 30-5-301, et seq.), in accordance with the Settlement Agreement dated effective October 15, 2011 ("Settlement Agreement") together with all exhibits thereto (a copy of which is attached hereto as Exhibit 1), appears to be fair, reasonable and equitable; and

3. Dates shall be set by which class members may opt out of the class, file objections and revoke prior elections to opt out as well as for a final hearing.

In support of this Motion, the Plaintiffs present to the Court as evidence in this matter: (1) the Settlement Agreement - Exhibit 1; and (2) a copy of the proposed Notice of Proposed Class Action Settlement to be sent to class members - Exhibits 2A and 2B.

I. INTRODUCTION AND BACKGROUND

Plaintiffs, on behalf of themselves and on behalf of those similarly situated, filed a Complaint on October 11, 2011 against Coleman, the Defendant in this action, challenging valuation for royalty calculation purposes, deductions in volume and deductions of costs from their royalties on natural gas and associated hydrocarbons from coal bed seams ("Shallow Gas") in Campbell County, Wyoming.

In the Complaint, the Plaintiffs, on behalf of themselves and a class of royalty payees, sought declaratory and injunctive relief as well as monetary damages for Coleman's alleged violations of leases, instruments and the Wyoming Royalty Payment Act.

Commencing in 2010, Coleman and the Plaintiffs began settlement negotiations. Subsequent to the execution of a Confidentiality Agreement and receipt from Coleman of substantial data and information, those settlement negotiations accelerated. In July 2011, attorneys for the parties reached a proposed settlement framework for the compromise of disputed claims, which the attorneys then presented to their respective clients for consideration and general approval. Plaintiffs' counsel presented the proposed settlement framework to the named plaintiffs both by letter and telephone conferences. Without exception, the named plaintiffs directed Plaintiffs' counsel to go forward with the proposed settlement framework.

The Settlement Agreement, as presented to the Court:

- (1) establishes the potential class members;

(2) settles all past Gas Royalty Claims (including Valuation and Disputed Deductions), Reporting Claims and Interest Claims by providing for each class member's recovery of substantially all of the underpayment of royalty resulting from the alleged Valuation Claims and Disputed Deductions as defined in the Settlement Agreement; and

(3) provides for Coleman to pay an additional amount in settlement of attorneys fees, costs, and settlement administration costs.

In addition to the benefits to class members stated in the Settlement Agreement, the agreement also contains provisions for all members of the class to release Coleman and Additional Released Parties as defined in the Settlement Agreement for Settled Claims, excluding certain reserved claims which mainly consist of claims that could arise out of any clerical errors in accounting for the volumes, price, value or decimal interest reported by Coleman. The entire terms of the release are contained in the Settlement Agreement. However, the release may be summarized as releasing Coleman for: (1) all past Gas Royalty Claims; and (2) past Reporting Claims.

Plaintiffs and Coleman have agreed that One Million Eight Hundred Seventy-Six Thousand and Eighty-Seven Dollars and Fifty-Nine Cents (\$1,876,087.59) shall be the settlement amount consisting of: (1) One Million Five Hundred Ninety-Four Thousand Six Hundred Seventy-Four Dollars and Forty-Five Cents (\$1,594,674.45) to be distributed to class members ("Distribution Amount"), and (2) Two Hundred Eighty-One Thousand Four Hundred Thirteen Dollars and Fourteen Cents (\$281,413.14) to be distributed to Class Counsel in complete payment of attorneys fees, costs and settlement administration expenses ("Litigation Expenses"). The Distribution Amount consists of additional royalty based on Disputed Deductions per field which shall be distributed pro rata to the class members with an interest in each field based on the quantity on which royalties were originally paid to such class members. For certain class members

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for which Coleman was entitled to deduct high pressure gathering costs after the Market Point, but did not do so, Coleman shall be entitled to a credit in these amounts, provided however, that in no event shall any such class member be required to pay any amount to Coleman (identified as Group II members on the proposed Settlement Class, Exhibit A). The amount payable from the settlement proceeds to any class member shall be no less than \$25.00.

Upon final approval of the Settlement Agreement, the Settlement Amount (less any amounts attributable to Opt-Out Claimants) shall be paid by wire transfer to a trust account designated by class counsel. The distribution to class members shall be done by class counsel, and the costs of check preparation and mailing shall be paid by class counsel. All interest earned in the escrow, if any, shall be treated as interest earned on an IOLTA account and distributed accordingly. Should there be a change in the law regarding the interpretation of the *Wyoming Royalty Payment Act* either by the Wyoming Legislature or the Wyoming Supreme Court, Coleman can not recover retroactively any Disputed Deductions or other Settled Claims.

II. POTENTIAL MEMBERS OF THE SETTLEMENT CLASS AND JURISDICTION

With regards to the identity of potential members of the Settlement Class, counsel for Plaintiffs obtained from Coleman a list of royalty payees that Coleman has paid for production from February 1, 2000 through February 28, 2010. That list was reviewed by the parties to remove: (a) governmental entities; (b) royalty payees also having working interests deemed to be potentially antagonistic to the other class members; and (c) royalty payees whose leases or overriding royalty instruments contain provisions regarding deductions which are more stringent than those contained in the *Wyoming Royalty Payment Act*. A list of the royalty payees constituting the proposed Settlement Class is attached to the settlement agreement as Exhibit A. Coleman also provided electronic information concerning the historical

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quantity, value and deductions for each class member. Coleman has represented and warranted that the electronic data that it has produced is true and accurate to the best of Coleman's knowledge. Should the Court grant Plaintiffs' Motion, notices substantially in the form of Exhibits 2A and 2B to this Motion will be sent to each potential class member by priority mail with provision for electronic confirmation that the article has been delivered to the specified address.

III. THE REQUIREMENTS OF RULE 23(a) AND (b).

A. Numerosity

Wyo.R.Civ.P. 23(a)(1) requires "[t]he class [be] so numerous that joinder of all members is impracticable." As identified in Exhibit A to the Settlement Agreement, there are over two hundred (200) potential members of the Settlement Class. This number of potential members of the Settlement Class meets the numerosity requirement. There is no fixed number of class members that is *per se* "numerous," but it was held that a class of only 11 mineral owners was sufficiently numerous. Jones Oil Corp. v. Claro, 459 P.2d 858, 862 (Okla. 1969). On the other hand, 3 HERBERT B. NEWBERG AND ALBA CONTE, NEWBERG ON CLASS ACTIONS ' 3.05 (3rd ed. 1992) advises that the numerosity test is satisfied by numbers alone when the size of the class is in the hundreds. See also Rex v. Owens, ex. rel State of Oklahoma, 585 F.2d 432, 436 (10th Cir. 1978) (citing Arkansas Educational Ass'n. v. Board of Education, 446 F.2d 763 (8th Cir 1971) (17 to 20 persons are identified as a class), Afro American Patrolmen's League v. Duck, 503 F.2d 294 (6th Cir. 1974) (35 members are a class), McCown v. Heidler, 527 F.2d 204 (10th Cir. 1975) (262 lot purchasers are a class), or Penn v. San Juan Hospital, Inc., 528 F.2d 1181 (10th Cir. 1975)).

B. Commonality

Wyo.R.Civ.P. 23(a)(2) requires that "[t]here are questions of law or fact common to the class." The Rule 23(a)(2) "commonality" requirement is merely that there are common questions of law and fact, not that all issues need to be

identical or even that the common issues predominate. As cases have stated, the Rule 23(a)(2) commonality requirement is satisfied if at least one question of law or fact is shared by the named plaintiff and the prospective class members. Baby Neal v. Casey, 43 F.3d 48, 56 (3d Cir. 1994); Krell v. The Prudential Insurance Company of America, 148 F.3d 283, 300 (1998); and Tana Oil and Gas Corporation v. Bates, 978 S.W.2d 735 (Tex. App. 1998).

Here, Coleman acknowledges treating royalty owners in the Settlement Class similarly for the purposes of settlement. There are also common questions of law that have governed the settlement. Lease Oil Antitrust Litigation, 186 F.R.D. 403, 420-421 (S.D. Tex. 1999). For a class to be certified, the legal and remedial theories for the class representatives and the proposed class members' claims must be similar, i.e., there must be a nexus between the injuries suffered by the representative and the injuries suffered by other members of the class. Lobo Exploration Company v. Amoco Production Company, 991 P.2d 1048 (Ok. App. 1999); Dresser Industries, Inc. v. Snell, 847 S.W.2d 367, 372 (Tex. App. 1993).

As part of the settlement, each member's claims are being resolved in a similar manner. Recoveries for Gas Royalties Claims are computed and distributed among class members based upon the quantities on which each class member was originally paid and the Disputed Deductions previously taken from each class member. Distribution is done on a proportionate basis. Therefore, for settlement purposes, Plaintiffs claims are common and typical.

C. Adequacy of the Named Class Representatives

Another requirement under Rule 23(a) is that the representative parties fairly and adequately protect the interests of the class. The "adequacy" element is comprised of essentially two parts: (1) class counsel must be qualified and experienced; and (2) the proposed representative(s) must not have interests antagonistic to the proposed class members. 1 HERBERT
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B. NEWBERG AND ALBA CONTE, NEWBERG ON CLASS ACTIONS AT ' 3.21 AT 1-113 (3rd ed. 1992).

1. The Named Plaintiffs and Designated Class Representatives

Some or all of the named Plaintiffs in this case own royalty interests in Coleman Wells. The named Plaintiffs are receiving their settlement under the same formula that will be employed to determine payments due to any other potential class member. Two of the named Plaintiffs are also subject to the offset in favor of Coleman with respect to high pressure gas.

The Designated Class Representatives are the owners of mineral royalties and/or overriding royalties, the individual plaintiff resides within Wyoming, the business entities are all qualified to do business within Wyoming, and are fairly representative of the Settlement Class.

2. Plaintiffs' Counsel

Plaintiffs' attorneys have each been admitted to practice in Wyoming in excess of thirty years, and have been extensively involved in oil and gas valuation issues for more than twenty years. Freudenthal & Bonds, P.C. has represented numerous governmental entities in tax valuation disputes with oil and gas producers. Mr. Freudenthal was an active participant in the statutory class action proceedings for the Big Horn Adjudication. Mr. Freudenthal has been designated Class Counsel in at least six prior coal bed methane class action settlements before this Court. The Plaintiffs request that their attorneys be designated as Class Counsel.

D. The Superiority of a Class Action as a Fair and Effective Means of Settlement and Adjudication of This Controversy

Since the Plaintiffs have sought class certification against Coleman both under Rule 23(b)(2) and Rule 23(b)(3), and the settlement provides for the distribution of the proceeds of the settlement, it is important to discuss the requirements of Rule 23(b)(3). The important considerations here are whether common issues predominate and whether a class action is superior to

alternative methods of adjudication. As noted above, the distribution of settlement funds based on each member's Disputed Deductions and checks received necessarily involves an equitable resolution of the common issues from which the common settlement funds were developed. These benefits extend to two hundred plus royalty payees. A class settlement is simply the only way such results can be obtained for such a significant group of individuals.

The questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members. A settlement class action under Wyo.R.Civ.P. 23 is superior to other available methods for the fair and effective settlement and adjudication of the controversy. For the purposes of this Motion, the Parties would ask that the Court find this matter meets the numerosity, commonality, adequacy and typicality requirements of Wyo.R.Civ.P. 23(a) as well as the requirements set forth in Rule 23(b)(3).

IV. FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

Plaintiffs' counsel believes the issues before the Court are complex, and there is an uncertainty as to the outcome of the litigation should it proceed to trial or to the Wyoming Supreme Court. Should this matter proceed to trial, it is believed that many issues will be contested making the litigation of this matter extremely time consuming and costly. Pursuant to the terms of the Settlement Agreement, each potential member of the Settlement Class who elects to participate in the Settlement will receive amounts for the Gas Royalties Claims that approximate almost all of the portions of the alleged Disputed Deductions that reduced that member's royalty payments; this amount will not be reduced by attorneys fees, costs or settlement administration expenses which are being paid by Coleman in settlement of attorneys fees, costs, statutory interest and statutory penalties. For purposes of achieving settlement, Plaintiffs' attorneys have reduced the thirty percent (30%) contingent fee to an amount less than fifteen percent of the total recovery (after

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deducting costs and settlement administration expenses). While a number of class members in the Coleman Settlement Class will receive a minimal amount of damages as their interest are either very small, or such individuals only owned an interest for a short periods of time since and others have succeeded to their interests, in the absence of a class settlement, they would be unlikely to recover anything because no single member's interest is large enough to justify the time and expense involved in pursuing the matter. The class members will receive their settlement amount after attorneys' fees, costs and settlement administration expenses which are stated in the Settlement Agreement and shall not exceed 15% of the Coleman Settlement Amount.

As set forth above, the Plaintiffs and Coleman believe the settlement is fair and reasonable considering the inherent risks of litigation and the probable delays to be encountered.

The certification of the Settlement Class and the Settlement Agreement, however, is only for the purpose of settlement and not for any other purpose in this litigation. This Court's certification would be subject to its further review of objections, if any, filed with regard to the class settlement. If settlement of the class claims is not finalized, the certification shall be void and have no further effect. As a result, Plaintiffs and Coleman would ask the Court to recognize the contingent effect of the Settlement.

V. NOTICE TO POTENTIAL MEMBERS OF THE SETTLEMENT CLASS

Attached as Exhibits 2A and 2B are two proposed versions of a "Notice of Proposed Class Action Settlement" ("Notice") for the Court's review and approval. The first version (Exhibit 2A) reflects the standard royalty valuation method without variation and would be sent to potential Settlement Class members designated on Exhibit A to the Settlement Agreement as being in Group 1. The second version (Exhibit 2B) reflects the allowable credit to Coleman for high pressure transportation costs after the Market Point to be deducted from royalties payable to certain

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class members under the Settlement Agreement's Royalty Valuation Method and would be sent to potential Settlement Class members designated on Exhibit A to the Settlement Agreement as being in Group 2. Should the Court enter the Order sought by Plaintiff, Wyo.R.Civ.P. 23 requires each potential member of the Settlement Class receive the "best notice practicable under the circumstances." The Notices attached hereto as Exhibits 2A and 2B assures that each potential class member will receive the individual information necessary to effectuate proper notice. The notice, among other things, (1) describes the terms of the settlement as well as provides an opportunity for class members to receive relevant documents either electronically or in paper copy; (2) describes the release that Coleman and the Additional Released Parties will be given; (3) provides class members an opportunity to either opt out of the class or object to the settlement; and (4) provides that attorney's fees, costs and settlement administration expenses will be 15% of the gross Coleman Settlement Amount. Plaintiffs submit that the proposed Notice complies with Wyo.R.Civ.P. 23 and should be sent via priority mail to all potential members of the Settlement Class as identified in Exhibit A to the Settlement Agreement.

VI. CONCLUSION

For the reasons described herein, the Plaintiffs respectfully requests that the Court find and order as follows:

1. Plaintiffs filed a suit against Coleman alleging individual claims and class action claims. After extensive negotiations and exchange of information, the parties agreed to settle this action on the terms now memorialized in the Settlement Agreement, executed by and between the parties (the "Settlement Agreement"). The Settlement Agreement shall be attached to the Order as Exhibit 1, and incorporated fully therein. All capitalized terms used in the Order and not defined therein shall have the meanings set forth in the Settlement Agreement. In the event of any conflict between the descriptions

in these paragraphs and the more detailed terms of the Settlement Agreement, the Settlement Agreement shall govern.

2. This suit involves claims brought under Leases, other instruments and the Wyoming Royalty Payment Act, Wyo. Stat. § 30-5-301 et seq. for Disputed Deductions, Valuation Claims, Statutory Interest, Statutory Reporting Assessments and Attorneys' Fees, as those terms are defined in the Settlement Agreement.

3. The Court has jurisdiction and venue over this suit and the Settlement Class. Under Wyo.R.Civ.P. 23(e), this Court's approval of any settlement is required.

4. The Settled Claims as defined in the Settlement Agreement all arise from the same nucleus of operative facts and form part of the same case or controversy as alleged against Coleman in Plaintiffs' Complaint so that all of the claims approved for settlement by this Order were or could have been asserted as class claims in this Action.

5. There are in excess of 200 Settlement Class Members and they are so numerous that joinder is impractical.

6. There are questions of law and fact common to the Settlement Class Members and Plaintiffs.

7. The questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual members, and in the context of this settlement only, the settlement of Settlement Class Members' claims by a class action under Wyo. R. Civ. Proc. 23 is superior to other available methods for the fair and effective settlement and adjudication of this controversy.

8. Plaintiffs' claims are typical of the Settlement Class Members' claims.

9. Plaintiffs and Designated Class Representatives are appropriate representatives of the Settlement Class and have and will adequately represent the interests of the Settlement Class Members.

10. Settlement Class Members have no special interest in individually controlling the prosecution of separate actions.

11. Class Counsel is experienced and fully qualified.

12. No significant difficulties are likely to be encountered in the management of the action as a class action for settlement purposes only.

13. Coleman has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

14. Subject to the provisions of Paragraph 17 and in accordance with the provisions of Wyo.R.Civ.P. 23, the Court certifies as potential members of the Coleman Settlement Class the Royalty Payees as set forth in Exhibit A to the Settlement Agreement ("Settlement Class").

15. The Court approves the Designated Class Representatives as representative of this Settlement Class and appoints Plaintiffs counsel to represent the Settlement Class ("Class Counsel").

16. The Court finds that the proposed settlement as provided in the Settlement Agreement is fair and reasonable under the circumstances. This finding and determination is subject to the Court's further review of objections, if any, filed with regard to the class settlement according to the terms of the Settlement Agreement.

17. The certification of the Settlement Class is only for the purpose of settlement and not for any other purpose in this litigation. This certification is subject to the Court's further review of objections, if any, filed with regard to the class settlement according to the terms of the Settlement Agreement. If the settlement is not finalized, the certification provided herein shall be void and have no further effect.

18. The Court finds that reasonable and adequate notice will be given to potential Settlement Class Members by providing

the notices found in Exhibits 2A and 2B attached to this Motion ("Notice(s)").

19. The Court finds that reasonable and adequate notice of the settlement will be given to potential members of the Settlement Class if the Notice is sent by priority mail (with electronic confirmation of delivery) to each Potential Class Member's last known address.

20. A hearing to consider objections, if any, to the Settlement Class and to finally determine if the Settlement Agreement is fair and equitable shall be heard at the Campbell County Courthouse, Gillette, Wyoming on a time and date set by the Court ("Final Settlement Hearing").

21. Any Potential Class Member who desires to be excluded from the Settlement Class shall deliver in writing that Member's election to be excluded to Class Counsel and Coleman Counsel on or before November 23, 2011 ("Deadline for Exclusion"). Any Potential Class Member may revoke that Member's election to be excluded from the Settlement Class by delivering such written revocation to Class Counsel and Coleman Counsel in writing at least four (4) days prior to the Final Settlement Hearing. Class Counsel shall file with the Court a report ("Class Counsel's Report") two (2) days before the Final Settlement Hearing to provide to the Court a compilation of (a) all Potential Class Members who have opted out of the Settlement Class ("Opt Out Claimants"), (b) all Opt Out Claimants who have properly revoked their election to opt-out and (c) those Potential Class Members who shall constitute the Settlement Class if finally approved by the Court at the Final Settlement Hearing.

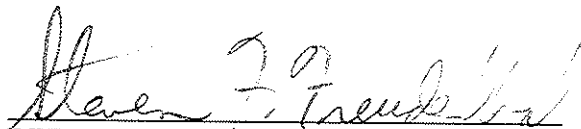
22. Any objections to the Settlement Agreement or the Settlement Class shall be in writing and delivered to Class Counsel and Coleman Counsel on or before November 23, 2011. Class Counsel shall file with the Court as part of Class Counsel's Report a compilation of the objections and Class Counsel's responses to the objections, if any.

WHEREFORE, the Plaintiffs respectfully request that the Court grant this motion and enter its "Order on Plaintiff's Motion for Conditional Consideration of Settlement Agreement and Provisional Certification of the Coleman Settlement Class."

DATED this 24th day of October, 2011.

Plaintiffs:

BY:



STEVEN F. FREUDENTHAL
Attorney No. 5-1468
Freudenthal & Bonds, P.C.
129 East Carlson Street
P. O. Box 387
Cheyenne, WY 82003-0387
(307) 634-2240

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2011 I served the foregoing by hand-delivering a true and correct copy thereof to the following:

Randall B. Reed
Dray, Dyekman, Reed & Healey, P.C.
204 East 22nd Street
Cheyenne, WY 82001-3799

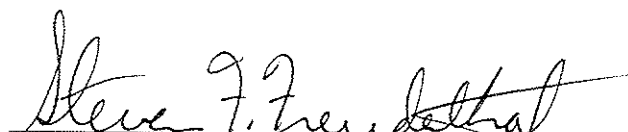

Steven F. Freudenthal

Exhibit 1: Settlement Agreement with Exhibits A, B and C

Exhibits 2A and 2B: Forms of Notice of Proposed Class Action Settlement