IN THE CIRCUIT COURT OF ST. FRANCIS COUNTY, ARKANSAS
CIVIL DIVISION

**SARA STEWMON** **PLAINTIFF**

**vs.** **Case No. 62CV-13-00141-1**

**SEECO, Inc., DESOTO GATHERING COMPANY, LLC. and SOUTHWESTERN MIDSTREAM SERVICES COMPANY** **DEFENDANTS**

## PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING CLASS CERTIFICATION

On Sepember 30th, 2014, this Court certified this class action. The parties having thoroughly briefed the issue of class certification, and the Court having heard arguments of counsel at a hearing held on September 17, 2014. Upon consideration, based on the pleadings and filings of record, and the arguments of counsel, the Court finds the Plaintiff's Class Certification Motion is well-taken and should be, and hereby is, granted.

The following class of persons is hereby certified pursuant to Rule 23 of the *Arkansas Rules of Civil Procedure*:

> All residents of the State of Arkansas who entered into leases with Defendant SEECO (up through September 27, 2013) for the development and operation of natural gas wells on property located in the State of Arkansas and who signed leases allowing for deduction of reasonable costs for gathering, compression, treatment and marketing. Specifically excluded are any leases which have non-Arkansas residents as parties to the lease.

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## FINDINGS OF FACT

The allegations of the Class Action Complaint center on Defendants' alleged scheme and course of conduct through which Defendants allegedly lessened royalty payments to the Plaintiffs. The allegations explicitly center on inflated gathering, compression, treatment and marketing charges, Defendants' manipulation of gas sales prices and the unauthorized use of Plaintiffs' gas. The actions complained of by Plaintiff are alleged to be the result of master agreements between SEECO and DeSoto Gathering and Southwestern Midstream Services which resulted in inflated costs for gathering, compression, treatment and marketing being charged to royalty owners. (Pl. Ex. 6 - Class Action Complaint, *generally*, ¶¶ 18-21; 50(a), ¶50(b) specifically; Pl. Ex. 13 – Depo of John Conrad Gargani at pp.214-217; Pl.Ex. 13 – Depo of John Gargani, Ex. 13, *generally*, pp. 7, and 14-15 specifically.)

Plaintiff's allegations do not include improper up-charging for "transportation" or "processing" costs. (Pl. Ex. 6 - Class Action Complaint, *generally*.)

Defendants SEECO, Inc., Desoto Gathering Company, LLC and Southwestern Midstream Services Company are affiliate companies. (Pl. Ex. 7- Defendants' Objections and Responses to Plaintiff's First Requests for Admission, Interrogatories, and Requests for Production, Response to Interrogatory No. 9.)

Plaintiff Stewmon on behalf of herself and the putative class members seeks damages against these Defendants on the theories of (1) breach of contract; (2) unjust enrichment; (3) breach of statutory duty of good faith prudent operator standard, A.C.A. § 15-73-207; (4) unfair and deceptive practices in violation of the Arkansas Deceptive Trade Practices Act, A.C.A §4-88-



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101, *et seq*; and (5) underpayment of royalties in violation of A.C.A. § 15-74-708 (Pl. Ex. 6 – Class Action Complaint, *generally*.)

This definition establishes the following criteria for determining inclusion in the class:

(1) Residents of the State of Arkansas;

(2) Who entered into Leases with SEECO on or before September 27, 2013;

(3) The Lease was for the development and operation of natural gas wells on property located in the State of Arkansas;

(4) The Lease language must allow for the deduction of reasonable costs for gathering, compression, treatment and marketing; and

(5) Any Leases which have non-Arkansas residents as parties to the Leases are excluded.

Defendant SEECO has demonstrated the ability to ascertain the exact number of Leases covering property within the State of Arkansas, the exact number of Leases where one or more lessors has a current address outside the State of Arkansas, and the exact number of Leases where one or more lessors have current addresses in Arkansas AND one or more lessors have current addresses outside of Arkansas. (Pl.Ex. 5 – Affidavit of Stephen M. Guidry at ¶¶2-6 and Defendants' Response to Plaintiff's Motion for Remand.)

Defendant SEECO possesses all necessary information to determine (1) the current addresses of the Lessors; (2) the date the Leases were entered into; (3) whether the Lease was for the development and operation of natural gas wells on property located in the State of Arkansas; (4) whether the Leases contain language which allows for the deduction of reasonable costs for gathering, compression, treatment and marketing. (Pl.Ex. 5 – Affidavit of Stephen M. Guidry at ¶¶2-6 and



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Defendants' Response to Plaintiff's Motion for Remand; Pl.Ex. 14 – Stewmon check stub and "Statement of Oil & Gas Payments" with deductions indicated.)

Plaintiff is a citizen of the state of Arkansas and was as of the date of the filing of the Complaint, September 27, 2013. (Pl. Ex. 9 – Depo. of Plaintiff Sara Stewmon, p. 9, ll. 8; and Pl. Ex. 6 – Class Action Complaint.)

Defendants SEECO, Inc., Desoto Gathering Company, LLC, and Southwestern Midstream Services Company were all citizens of the state of Arkansas as of the date of the filing of the Complaint, September 27, 2013. (Pl. Ex. 3 – Defendants' Answer; and Pl. Ex. 6 – Class Action Complaint.)

The number of Oil and Gas Leases between Defendant SEECO, Inc., and citizens of the State of Arkansas exceeds 10,000. (Pl. Ex. 5 – Affidavit of Stephen M. Guidry at ¶¶ 3-5 and Defendants' Response to Plaintiff's Motion for Remand, p. 5.)

All class members have leases which allow for the deduction of gathering, compression, treatment and marketing costs which are the subject of the Class Action Complaint. (Pl.Ex. 6 – Class Action Complaint; Plaintiff's Motion for Class Certification.)

The parties have operated under the subject leases for years and continue to do so presently. (Pl. Ex. 6, attachment – Oil and Gas Lease between Plaintiff Sara Stewmon and Defendant SEECO; Pl. Ex. 14 – check stub and "Statement of Oil & Gas Payments" of Plaintiff Sara Stewmon.)

The existence and language of the leases which allow for deduction of gathering, compression, treatment and marketing costs are not at issue. (Pl. Ex. 3 – Defendants' Answers,



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¶¶16, 26, 27; Pl. Ex.14 – Stewmon check stub and "Statement of Oil & Gas Payments" with deductions indicated.)

All royalty owners with lease terms allowing for deduction of gathering, compression, treatment and marketing costs are treated in the same manner by SEECO with regard to deductions for expenses. ( Pl.Ex. 13 – Depo. of John Conrad Gargani with attached "Amended and Restated Dedicated Field Services Agreement" between DeSoto Gathering and SEECO, pp. 7 and 14-15; Pl.Ex. 7, Defendants' Objections and Responses to Plaintiff's First Requests for Admission, Interrogatories, and Requests for Production, Response No. 21.)

All class members' royalties are alleged to be deducted pursuant to the same scheme between SEECO, Desoto Gathering and Southwestern Midstream Services as evidenced by the "Dedicated Field Services Agreement". Deductions from Plaintiffs' royalty checks are allegedly made pursuant to the formula derived from these Agreements which is then uniformly applied to all class members. (Pl.Ex. 13 – Depo. of John Conrad Gargani with attached "Amended and Restated Dedicated Field Services Agreement" between DeSoto Gathering and SEECO, pp. 7 and 14-15.; Pl.Ex. 7, Defendants' Objections and Responses to Plaintiff's First Requests for Admission, Interrogatories, and Requests for Production, Response No. 21.)

The alleged scheme through which Defendants charge inflated costs to members of the class is based, in part, upon the "Dedicated Field Services Agreement." (Pl.Ex. 13 – Depo of John Gargani, Ex. 13, pp.7, 14-15; Pl.Ex. 7, Defendants' Objections and Responses to Plaintiff's First Requests for Admission, Interrogatories, and Requests for Production, Response No. 21.)

All class members are allegedly charged substantially more than actual costs incurred by Defendants. (Pl.Ex. 13 – Depo. of John Conrad Gargani, p. 214-217.)



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The inflated rates allegedly charged by the Defendants to the Plaintiffs for gathering, compression, treatment and marketing are alleged to be the same for all Plaintiffs. (Pl.Ex. 6 – Class Action Complaint; Pl.Ex. 7, Defendants' Objections and Responses to Plaintiff's First Requests for Admission, Interrogatories, and Requests for Production, Response No. 21; Pl.Ex. 13 – Depo. of John Conrad Gargani with attached "Amended and Restated Dedicated Field Services Agreement" between DeSoto Gathering and SEECO, pp. 7 and 14-15.)

The inflated rates allegedly charged by the Defendants to the Plaintiffs for gathering, compression, treatment and marketing are alleged to result from the same agreements made by and between these Defendants. (Pl.Ex. 6 – Class Action Complaint; Pl.Ex. 7, Defendants' Objections and Responses to Plaintiff's First Requests for Admission, Interrogatories, and Requests for Production, Response No. 21; Pl.Ex. 13 – Depo. of John Conrad Gargani with attached "Amended and Restated Dedicated Field Services Agreement" between DeSoto Gathering and SEECO, pp. 7 and 14-15.)

Plaintiff Stewmon's claims are identical to those asserted on behalf of the class members. (Pl.Ex. 6 – Class Action Complaint.)

The alleged harm suffered by Mrs. Stewmon, the wrongful deduction of inflated costs from her royalty proceeds and the unauthorized use of her gas, is identical to the harm allegedly suffered by all members of the class. (Pl.Ex. 14 – Stewmon check stub and "Statement of Oil & Gas Payments" with deductions indicated; Pl.Ex. 6 – Class Action Complaint; Pl.Ex. 7, Defendants' Objections and Responses to Plaintiff's First Requests for Admission, Interrogatories, and Requests for Production, Response No. 21; Pl.Ex. 13 – Depo. of John Conrad Gargani with attached "Amended and Restated Dedicated Field Services Agreement" between DeSoto Gathering and SEECO, pp. 7 and 14-15.)



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Plaintiff's counsel are qualified, experienced and able to conduct this litigation. (Pl.Ex. 8 – curriculum vitae of Plaintiffs' counsel; Court Record, *generally.*)

Mrs. Stewmon has exhibited a strong interest in pursuing this action by attending hearings, consulting with her attorneys, and reading documents. (Pl.Ex. 9 – Depo. of Sara Stewmon, pp. 25, 47, 52, 202, 242.)

Mrs. Stewmon is familiar with the challenged practices raised in the Class Action Complaint. (Pl.Ex. 9 – Depo. of Sara Stewmon at p.112-3, 141, 147-9, 155, 175, 181, 184-5, 201, 211, 212, 235.)

Mrs. Stewmon is willing to serve as the class representative, understands her duties as a class representative and has demonstrated a willingness to consult with her attorneys. (Pl.Ex. 9 – Depo. of Sara Stewmon, pp. 159, 167-70, 201, 203-4, 208-9, 230, 232-3, 243-7.)

The resolution of the allegations concerning Defendants' alleged common scheme to defraud Plaintiffs of royalty interest will materially advance this litigation.

## CONCLUSIONS OF LAW

When ruling on a Motion for Class Certification, the Court "does not delve into the merits of the underlying claims at this stage, as the issue of whether to certify a class is not determined by whether the plaintiff has stated a cause of action for the proposed class that will prevail." *Firstplus Home Loan Owner v. Bryant*, 372 Ark. 466, 277 S.W.3d 576, 580 (2008).

Plaintiff Sara Stewmon has satisfied the elements of Rule 23 of the *Arkansas Rules of Civil Procedure* as set forth herein below:



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**Class Definition**

The Arkansas Supreme Court has consistently held:

> [T]he class description must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed class. Furthermore, for a class to be sufficiently defined, the identity of the class members must be ascertainable by reference to objective criteria.

*Ferguson v. The Kroger Co.*, 343 Ark. 627, 37 S.W.3d 590, 593 (*quoting* 5 Jeremy C. Moore, *Moore's Federal Practice* § 23.2(1)(Matthew Bender 3d ed. 1997)).

In *Lender Title Co. v. Chandler*, 358 Ark. 66, 186 S.W.3d 695 (2004), the Arkansas Supreme Court addressed a challenge to the class definition based on a Defendant's claim that the definition was "too broad and thus impermissibly require[d] the trial court to inquire into the facts of each individual case in order to determine whether the person is a class member." *Id.* At 699. The Defendant further contended "there [was] no administratively feasible way of identifying the class members, because that would require a manual review of more than 50,000 of its closing files." *Id.* The Trial Court "defined the class in a precise, objective way as all persons who paid Lenders a document-preparation fee in any transaction after October 23, 1997." *Id.* at 700. On Appeal, the Supreme Court found the class was "identifiable from objective criteria, namely the payment of a document-preparation fee in a closing transaction with Lenders." *Id.* The Court held the following:

> We are not persuaded by the argument that it is not administratively feasible for Lenders to have to manually review each of the more than 50,000 closing files to identify the class members. Instead, we agree with Chandler that Lenders should not be allowed to defeat class certification by relying on its inadequate filing and record system. The fact that Lenders cannot discover such information by the push of a button on a computer does not render the class identification any less administratively feasible. Administratively



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> feasible does not mean convenient. Were Lenders to succeed on this point, it would undoubtedly encourage other businesses to keep bad records for the purpose of avoiding class actions. We thus affirm on this point.

*Id.* at 700-1.

In the case before this Court, class is defined as:

> **All residents of the State of Arkansas who entered into leases with Defendant SEECO (up through September 27, 2013) for the development and operation of natural gas wells on property located in the State of Arkansas and who signed leases allowing for deduction of reasonable costs for gathering, compression, treatment and marketing. Specifically excluded are any leases which have non-Arkansas residents as parties to the lease.**

This definition establishes the following criteria for determining inclusion in the class:

(1) Residents of the State of Arkansas;

(2) Who entered into Leases with SEECO on or before September 27, 2013;

(3) The Lease was for the development and operation of natural gas wells on property located in the State of Arkansas;

(4) The Lease language must allow for the deduction of reasonable costs for gathering, compression, treatment and marketing; and

(5) Any Leases which have non-Arkansas residents as parties to Lease are excluded.

The class in this case is identifiable from these five (5) objective criteria. Further, the determination of what individuals may fit the criteria, and therefore be class members, is



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administratively feasible. In this litigation, Defendant SEECO has previously demonstrated the ability to ascertain the exact number of Leases covering property within the State of Arkansas, the exact number of Leases where one or more lessors has a current address outside the State of Arkansas and the exact number of Leases where one or more lessors have current addresses in Arkansas AND one or more lessors have current addresses outside of Arkansas.

Defendant SEECO possesses all necessary information to determine (1) the residence of the Lessors; (2) the date the Leases were entered into; (3) whether the Lease was for the development and operation of natural gas wells on property located in the State of Arkansas; (4) whether the Leases allow for the deduction of reasonable costs for gathering, compression, treatment and marketing. Consequently, the class definition is sufficiently defined, the class members are ascertainable by objective criteria and sufficiently definite as to be administratively feasible. The class definition requirements have been met.

**Rule 23(a)(1) of the *Arkansas Rules of Civil Procedure* – Numerosity**

"The first criterion, numerosity, requires that 'the class is so numerous that joinder of all members is impracticable.' ARK. R. CIV. P. 23(a)(1). The exact size of the proposed class and the identity of the class members need not be established to certify the class; instead the numerosity requirement may be supported by common sense. . . . . Thus, there is no bright-line rule for determining how many class members are required to meet the numerosity factor. . . . Suffice it to say that '[w]here the numerosity question is a close one, the balance should be struck in favor of finding of numerosity in light of the trial court's option to later decertify.'" *Lenders Title Co.*



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*v. Chandler*, 358 Ark. 66, 186 S.W.3d 695, 699 (Ark. 2004)(internal citations omitted).[1] By way of example, in *Cooper Communities, Inc. v. Sarver*, 288 Ark. 6, 701 S.W.2d 364 (1986), the Arkansas Supreme Court held that 184 potential class members was enough to satisfy the numerosity requirement.

While the exact number of class members in this case has not been determined, it is clear that joinder would be difficult, inconvenient and impracticable. Based on the representations in pleadings filed in this matter by Defendants, as well as the Affidavit of Stephen M. Guidry offered by Defendants, the number of Oil and Gas Leases between Defendant SEECO and residents of the State of Arkansas exceeds 10,000 in number. Thus, the numerosity requirement is met in this case.

**Rule 23(a)(2) of the *Arkansas Rules of Civil Procedure* – Commonality**

In the factually-similar case of *SEECO, Inc., et al. v. Hales*, the Arkansas Supreme Court upheld class certification against Defendant SEECO. *SEECO, Inc., et al. v. Hales*, 330 Ark. 402, 954 S.W.2d 234 (1997). In *SEECO, Inc. v. Hales*, gas royalty owners alleged Defendants SEECO and Arkansas Western Gas Company – both wholly owned subsidiaries of Southwestern – engaged in "a single course of fraudulent conduct perpetrated by the [Defendants] and directed at the royalty owners, with each plaintiff depending on the same facts and legal arguments for

1 *See also Chequnet Sys. V. Montgomery*, 322 Ark. 742, 911 S.W.2d 956, 959 (1995)(holding numerosity requirement may be supported by common sense and no bright-line rule adopted); *Int'l Union of Elec. Radio. & Mach. Workers v. Hudson*, 295 Ark. 107, 747 S.W.2d 81 (1988)(declaring that "at least several hundred" class members were sufficient).



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recovery. The issue of an alleged fraudulent scheme is central to the instant case and a common starting point for all class members." *Id.* at 240.

"Rule 23(a)(2) does not require that all questions of law or fact raised in the litigation be common. The test or standard for meeting Rule 23(a)(2) prerequisite is ... that is there need be only a single issue common to all members of the class.... When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected." *Firstplus Home Loan Owner v. Bryant*, 372 Ark. 466, 277 S.W.3d 576, 581 (2008).[2]

In this case, Plaintiffs have alleged Defendants SEECO, Desoto Gathering and Southwestern Midstream have engaged in a fraudulent scheme for the purpose of depriving Plaintiffs of royalty payments leading to increased profits for the Defendants as well as the Defendants' unauthorized use of Plaintiffs' gas. Defendants have admittedly engaged in a course of conduct involving the deduction of costs for gathering, compression, treatment and marketing from Plaintiffs' royalty payments pursuant the application of a formula derived from "agreements" reached between the Defendants. Common questions of law and fact that stem from the alleged common wrong of wrongfully deducting Plaintiffs' royalties and the unauthorized use of Plaintiffs' gas must be determined. These include, but are not limited to:

1. Whether the Defendants have improperly deducted monies owed to the class members;

2. Whether the lease language allows Defendants to make the monetary deductions complained of;

2 *See also Rosenow v. Alltel Corp.* 358 S.W.3d 879 (2010) (holding commonality not required on every question raised in a class action. Only single issue common to all class members is needed).



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3. Whether the Defendants have breached the contracts with the class members by improperly reducing royalty payments;

4. Whether the Defendants have been unjustly enriched by improper deductions from payments due under the lease agreements;

5. Whether the Defendants have breached the statutory duty of the Good Faith Prudent Operator Standard;

6. Whether the Defendant SEECO, as party to the leases, owes a fiduciary duty to the members of the class;

7. Whether the agreements between the Defendants were negotiated at arms length; and

8. Whether the Defendants' alleged incestuous corporate structure creates a conflict of interest with SEECO's fiduciary duty to the members of the class.

Considering these facts and the evidence in the record, this Court finds that the commonality requirement has been met. The fraudulent scheme alleged by Plaintiffs "is central to the instant case and a common starting point for all class members." *SEECO v. Hales*, 954 S.W.2d at 240. Further, the above questions are common to every class member. Therefore, the commonality requirement is met in this case.

**Rule 23(a)(3) of the *Arkansas Rules of Civil Procedure* – Typicality**

To satisfy the typicality requirement, Arkansas law merely requires that a "class representative's claim arises from the same wrong allegedly committed against the members of the class." *DirecTV, Inc. v. Murrary*, 2012 Ark. 366, 423 S.W.3d 555, 563 (2012). "Thus, when analyzing this factor, we focus upon the defendant's conduct and not the injuries or damages



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suffered by the plaintiffs." *Firstplus Home Loan Owner v. Bryant*, 277 S.W.2d at 584 *citing Direct Gen. Ins. Co. v. Lane*, 944 S.W.2d 528 (1977). A class representative's claim is typical if it arises from the same event, practice or course of conduct that gives rise to the claims of the other class members, and if his or her claims are based on the same legal theory. *Mega Life & Health Ins. Co. v. Jacola*, 954 S.W.2d at 907. Varying fact patterns of the individual claims do not destroy typicality when the same conduct affected both the proposed class representative and the putative class members. *DirecTV, Inc. v. Murrary*, 423 S.W.3d at 564.

In this case, the claims of representative plaintiff Sara Stewmon are identical to claims of all putative class members. Mrs. Stewmon's claim for damages arises from the same wrongs allegedly committed by the Defendants through their deduction of costs pursuant to the exact same formula applied to all leases which allow for deductions which was derived from their alleged common scheme. Defendants' alleged common scheme and common course of conduct also purportedly allowed Defendants to use Plaintiffs' gas without authorization. Representative Plaintiff Stewmon's claims are based on the same legal theories as each of the class members, and further, she was injured in the same way as all other class members. Therefore, the typicality requirement has been met.

**Rule 23(a)(4) of the *Arkansas Rules of Civil Procedure* – Adequacy**

Adequacy of representation depends on whether the plaintiffs' attorneys are "qualified, experienced and generally able to conduct the litigation." *The Money Place, LLC v. Barnes*, 349 Ark. 518, 78 S.W.3d 730, 735 (2002). Plaintiffs' counsel are qualified, experienced and able to conduct this litigation. "[A]bsent a showing to the contrary, [a Court] may presume that the



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representative's attorney will vigorously and competently pursue the litigation." *Advance America Servicing of Arkansas, Inc. v. McGinnis*, 2009 Ark. 151, 300 S.W.3d 487, 492 (2009). Defendants have made no such showing in this case. Defendants have not contested the adequacy of representation. Consequently, the requirement of adequacy of Plaintiffs' counsel is met.

As to the Plaintiff, a class representative must demonstrate he or she "will fairly and adequately protect the interests of the class." ARK. R. CIV. P. 23(a)(4). The Arkansas Supreme Court holds the "adequacy of representation" element is satisfied if the class representative displays a minimal level of interest in the action, familiarity with the challenged practices and a comprehension of the duties and responsibilities of a class representative. *Id.* at 494-6. Mrs. Stewmon has exhibited a strong interest in pursuing this action. She is familiar with the challenged practices, understands her duties as a class representative and has demonstrated a willingness to consult with her attorneys. The requirement of adequacy of class representation is met.

**Rule 23(b) of the *Arkansas Rules of Civil Procedure* – Predominance and Superiority**

**A. Predominance**

Rule 23(b) of the *Arkansas Rules of Civil Procedure* requires that common issues of law or fact predominate over individual issues as a prerequisite for class certification. "The starting point in examining the predominance issue is whether a common wrong has been alleged against the defendant." *DirecTV*, 423 S.W.3d at 564 *citing ChartOne, Inc. v. Raglon*, 373 Ark. 275, 283 S.W.3d 576 (2008). "If a case involves preliminary, common issues of liability and wrongdoing



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that affect all class members, the predominance requirement of Rule 23 is satisfied even if the circuit court must subsequently determine individual damage issues in bifurcated proceedings." *Id.* "[T]he question becomes whether there are overarching issues that can be addressed before resolving individual issues." *Id.*

In this case, as it did in *SEECO v. Hales*, Defendant SEECO asserts predominance cannot be met because each prospective class member's proof will rest on different sources. The Arkansas Supreme Court has already addressed these exact arguments in affirming class certification in *SEECO v. Hales*, 954 S.W.2d at 240. The Court held that issues which "go to the right of a class member to recover, in contrast to underlying common issues of the defendant's liability" will not bar predominance. *Id.* "[T]hese challenges will not override the common question relating to the allegation of a scheme perpetrated by the [Defendants]. The overarching issue which must be the starting point in the resolution of this matter relates to the existence of the alleged scheme." *Id.*

The questions of law and fact in this case are identical between all members of the class. All the claims arise from the fraudulent scheme allegedly perpetrated by these Defendants in allegedly colluding to wrongfully reduce Plaintiffs' royalty payments through the uniform deduction of inflated costs as to all class Plaintiffs. All claims asserted by Plaintiffs can be addressed by the resolution of the common question of whether Defendants participated in a wrongful scheme to defraud Plaintiffs. The common issues of law and fact predominate in this action. If necessary, a bifurcated approach can be subsequently considered if necessary to determine class members' individual damages. *GMC v. Bryant*, 374 Ark. 38, 285 S.W.3d 634, 642 (2008).



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**B. Superiority**

Lastly, Rule 23(b) of the *Arkansas Rules of Civil Procedure* requires that a class action be superior to other methods of adjudication of the controversy. The Arkansas Supreme Court has recognized that the "avoidance of multiple duplicative lawsuits is at the heart of any class action decision." *Diamante LLC v. Dye*, 2013 Ark. 501, 430 S.W.3d 710, 722 (2013). The Court also holds that "the superiority requirement is satisfied if a class action is the more 'efficient' way of handling the case, and it is fair to both sides." *Id.*

In this case, all class members are litigating against the Defendants concerning the same lease language, the same uniform deductions from their royalty payments and alleged scheme by which Defendants made those deductions, as well as Defendants' alleged unauthorized use of Plaintiffs' gas. If Defendants are absolved of liability for these claims, "the class litigation would end with minimal expenditure of judicial resources." *See Beverly Enterprises-Arkansas, Inc. v. Thomas*, 370 Ark. 310, 259 S.W.3d 445, 451 (2007)(affirming class action certification).

Clearly, resolution of the issues of law and fact common to these Defendants is a more efficient and fair method of litigation to all parties as well as conserving judicial resources. The requirement of superiority is met in this case.

Having found the class proposed meets the requirements of Rule 23(a) and Rule 23(b) of the *Arkansas Rules of Civil Procedure*, this Court hereby certifies this case as a class action and will proceed on that basis.

**Appointment of Class Counsel**



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E. Dion Wilson of The Wilson Law Firm PA, B. Michael Easley of Easley and Houseal, and Timothy R. Holton of Deal, Cooper & Holton are hereby appointed as counsel for the class. As demonstrated by their resumes, these attorneys are qualified to represent the class.

For these reasons, the Court grants Plaintiff's Motion for Class Certification.

IT IS SO ORDERED, this the 21 day of October, 2014.

Honorable L.T. Simes
Circuit Court Judge



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