

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Amaranth Natural Gas Commodities Litigation

MASTER FILE No. 07 CV 6377 (CM)

This Document Relates To:

All Actions

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
A SECOND DISTRIBUTION OF THE NET SETTLEMENT FUND**

Plaintiffs respectfully submit this motion, pursuant to Section 21 of the Stipulation and Agreement of Settlement (Dkt. No. 366-1) (“Settlement”)¹ between the parties herein, seeking approval for the second distribution of the remaining monies in the Net Settlement Fund.

Plaintiffs respectfully request that the Court enter the attached [Proposed] Order for a Second Distribution of the Net Settlement Fund (Exhibit 1 to Plaintiff’s Notice of Motion, “Proposed Order”) that, among other things, (i) directs distribution of the remaining monies in the Net Settlement Fund on a *pro rata* basis to the 365 claimants previously determined by the Court-appointed Settlement Administrator, Rust Consulting, Inc. (“Rust”), to be eligible to share in the Net Settlement Fund (“authorized claimants”) and (ii) authorizes a disbursement of \$20,884 from the Net Settlement Fund as payment to Rust for expenses to be incurred in connection with administering the second distribution of the Net Settlement Fund. Proposed Order, ¶¶ 1-3.

In support of the motion, Plaintiffs respectfully state as follows:

1. **Background.** On or about December 13, 2011, Plaintiffs entered into the Settlement with Defendants. *See* Dkt. No. 366-1. Defendants agreed to pay \$77,100,000 for the benefit of the Settlement Class in exchange for dismissal and release of the claims of Plaintiffs and the Settlement Class against Defendants. *Id.*

2. On April 9, 2012, the Court held a fairness hearing. On April 10, 2012, the Court entered a Final Order and Judgment approving the Settlement while retaining jurisdiction over the plan of allocation and distribution of the Net Settlement Fund and incentive awards. Dkt. No. 404. On May 23, 2012, the Court entered an Order approving an amended plan of allocation. Dkt. No. 413.

3. **The First Distribution.** On June 24, 2016, Plaintiffs filed a motion seeking an initial distribution of the Net Settlement Fund and approval of payment of incentive awards to the

¹ Capitalized terms used herein are defined in the Settlement Agreement.

four Class representatives. Dkt. No. 420.

4. On August 10, 2016, the Court entered an Order approving Plaintiffs' proposed initial distribution and the payment of incentive awards to the Class representatives. Dkt. No. 428. The Order provided for a distribution of \$45,248,992.64 to 365 authorized claimants and also approved a reserve fund of \$5,238,000 (approximately 10% of the Net Settlement Fund). *See id.*

5. Rust made the initial distribution pursuant to the Court's August 10, 2016 Order. *See* Affidavit of Jason Rabe ("Rabe Affidavit"), submitted herewith, at ¶¶ 6-8. All 365 authorized claimants deposited their checks from the initial distribution. *Id.*, ¶ 6. As of July 20, 2017, the Net Settlement Fund has a balance of \$5,246,248.43. *Id.*, ¶ 9.

6. **The Proposed Second Distribution.** The Court approved the creation of a reserve fund to be used to pay any additional late claims or to adjust errors in payments or to make other equitable adjustments. Dkt. No. 428, ¶ 3. No such adjustments were necessary as there were no additional late claims or adjustment to payments, so the entire reserve balance is available for distribution to authorized claimants.

7. Accordingly, Plaintiffs respectfully request that the Court approve a second distribution of the reserve monies in the Net Settlement Fund (*i.e.*, approximately \$5,225,364.43, net of Rust's fees and expenses to complete the second distribution, *see* ¶ 11 below) to the 365 claimants previously determined to be eligible to share in the Net Settlement Fund on a *pro rata* basis. Proposed Order, ¶ 3; *see also* Affidavit of Jason Rabe, Dkt. No. 422, Ex. G.

8. In order to encourage authorized claimants to promptly deposit their payments, Rust recommends that all distribution checks include the following notation: "This check will remain valid for 45 days. Please deposit this check promptly. If this check is not cashed within 45 days, you will forfeit your right to participate in the Net Settlement Fund and your *pro rata* share will revert

back to the Net Settlement Fund. No reissue requests will be honored after the 45 days.” Rabe Affidavit, ¶ 12.

9. In the event that the proposed second distribution results in a full and final distribution of all remaining monies in the Net Settlement Fund, Plaintiffs respectfully request that the Court approve certain steps to be taken by Rust in order to wind down the Settlement administration framework. Proposed Order, ¶¶ 5-6. This includes closing the Settlement Fund. *Id.*

10. Plaintiffs respectfully request that if any funds remain in the Net Settlement Fund by reason of un-cashed distributions or otherwise that total \$10,000 or less, then, after Rust has made reasonable and diligent efforts to have authorized claimants cash their second distributions, such balance remaining six (6) months after the distribution herein shall after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund be contributed to the Investor Protection Trust, a non-sectarian, not-for-profit 501(c)(3) organization. *Id.*, ¶ 6. If funds greater than \$10,000 remain in the Net Settlement Fund, then Class Counsel will seek Court approval for a final distribution of the remaining monies in the Net Settlement Fund.

11. **Rust’s Administrative Expenses and Fees.** The Settlement provides that expenses and costs incurred in connection with the administration of the Settlement may be paid from the Settlement Fund subject to approval by the Court. Settlement, Section 6. Rust’s estimate of the fees and expenses it will necessarily incur to complete the second distribution of the Net Settlement Fund, including filing the necessary tax returns and responding to claimant inquiries, is \$20,884. An invoice for these fees and expenses is attached as Exhibit B to the Rabe Affidavit. Plaintiffs respectfully request that the Court authorize payment from the Net Settlement Fund to Rust in the amount of \$20,884 for expected expenses and fees in administering the second distribution.

12. **Notice.** Class Counsel has instructed Rust to post this motion and its supporting documentation on the official Settlement website so that it may be viewed by members of the

Settlement Class.

13. **Conclusion.** Plaintiffs respectfully submit that this Court should enter the [Proposed] Order for a Second Distribution of the Net Settlement Fund attached as Exhibit 1 to Plaintiffs' Notice of Motion.

Dated: New York, New York
July 21, 2017

Respectfully submitted,

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