

**COMMONWEALTH OF KENTUCKY
2nd JUDICIAL CIRCUIT - DIVISION II
MCCRACKEN COUNTY**

SANDRA BANKS as EXECUTRIX of)
The ESTATE OF FAYE PURCELL, et al.,)

Plaintiffs,)

Case No. 14-CI-00729

vs.)

UNITED PROPANE GAS, INC. and)
its subsidiaries and affiliates,)

Defendant.)

SETTLEMENT AGREEMENT AND STIPULATION

Named Plaintiffs, Sandra Banks, as Executrix of the Estate of Faye Purcell, Carolyn Seay, and Richard Seay (“Named Plaintiffs”), individually and on behalf of all members of the Settlement Class defined herein, and Defendant, United Propane Gas, Inc., and its subsidiaries and affiliates (“UPG”) (Named Plaintiffs and UPG collectively referred to herein as the “Parties”), subject to the terms and conditions hereof and final approval by the Court, hereby enter into this stipulation of settlement (“Agreement”). This settlement, once approved by the Court, is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Agreement. The instant action shall be dismissed with prejudice upon final approval of this settlement by the Court.

I. RECITALS AND BACKGROUND

A. Definitions

As used throughout this Agreement, the following terms have the meanings specified below:

1. **“Authorized Claimant”** means any Settlement Class Member who is entitled to a Settlement Payment, as defined herein, provided he or she is an eligible Class Member and he or she timely submits a required claim form, as described herein. Settlement Class Members who are not entitled to monetary recovery are:

- a) Settlement Class Members who already received monetary payment from the case styled *Andy Beshear v. United Propane Gas, Inc., et al.*, 14-CI-00120;
- b) Settlement Class Members who received at least 50 gallons of propane at their prebuy rate between January 20 and January 27, 2014;
- c) Settlement Class Members who used all of their pre-purchased propane before January 27, 2014;
- d) Settlement Class Members who ordered pre-purchased propane before or after the suspension period, had the propane delivered at market rate during or after the suspension period (from January 27, 2014, until February 15, 2014, inclusive), but were credited with the difference in price by Defendant on or before June 15, 2014.

2. **“Defendant”** means United Propane Gas, Inc., including its past, present, or future officers, directors, shareholders, employees, agents, principals, heirs, assigns, representatives, accountants, auditors, consultants, attorneys, fiduciaries, both individually and in their official capacities, employee benefits plans, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, divisions, partners, and affiliated organizations.

3. **“Effective Date”** means the date by which both of the following have occurred: (i) this settlement has received final approval from the McCracken Circuit Court, or any other court taking jurisdiction over this Litigation, as defined herein; and (ii) the period for appealing the

Court's final order approving the settlement has expired without an appeal being filed or, if such an appeal is filed, the date on which the appeal is finally resolved, and, if discretionary review is granted, any final decision by the Kentucky Supreme Court has been entered. To the extent any appeal or discretionary review results in the settlement being found to be invalid, this Agreement will be null and void for all purposes in its entirety.

4. **"Final Settlement Hearing"** means the hearing to be conducted by the McCracken Circuit Court, or any other court taking jurisdiction over the Litigation, as defined herein, to determine whether to finally approve the settlement explained herein.

5. **"Gross Settlement Amount"** refers to the total amount which Defendant has agreed to pay to settle this action which shall be based on the number of Authorized Claimants who timely submit a required claim form to completely resolve and settle all the claims against Defendant in the Litigation (see below). The Gross Settlement Amount is \$665,000.00, unless Defendant opts to pay also the additional claims exceeding the participation limits set forth in Section E, hereinbelow. The Gross Settlement Amount expressly includes, but is not necessarily limited to, the following elements: (i) cash Settlement Payments to Authorized Claimants, as described in this Agreement; (ii) Credits provided to Authorized Claimants, as described in this Agreement; (iii) Named Plaintiffs' Service Awards, as described herein; (iv) Plaintiffs' Attorneys' Fees, payable as described herein; and (v) Plaintiffs' Litigation Expenses, as described herein; However, in the event the number of Authorized Claimants exceed the numbers set forth in Section II E, Defendant shall have the right in its sole discretion to either 1) pay the Authorized Claimants that exceed the limits set forth in Section II E, or 2) opt out of this Settlement Agreement as set forth in Section II E.

6. **"Litigation"** refers to the civil action filed on August 27, 2014, in the McCracken

Circuit Court, styled as *Faye Purcell, et al. v. United Propane Gas, Inc.*, No. 14-CI-00729.

7. **“Motion for Preliminary Approval”** refers to the motion for preliminary approval of this settlement and its supporting papers.

8. **“Named Plaintiffs”** are Sandra Banks, as Executrix of the Estate of Faye Purcell, Carolyn Seay, and Richard Seay.

9. **“Notice of Settlement”** refers to the official notice of settlement of class action and final fairness hearing, substantially in the form attached hereto as Exhibit 1.

10. **“Order Granting Preliminary Approval”** refers to the order or statement of decision in the Litigation granting preliminary approval of this settlement.

11. **“Plaintiffs”** are Sandra Banks, as Executrix of the Estate of Faye Purcell, Carolyn Seay, and Richard Seay and all members of the Settlement Class defined herein, and their past, present, or future agents, heirs, assigns, representatives, and their respective successors and predecessors in interests.

12. **“Plaintiffs’ Attorneys’ Fees and Litigation Expenses and Named Plaintiffs’ Service Awards”** refers to the fee and expense amount to be paid to Plaintiffs’ Attorneys to cover all fees and expenses under the terms of this Agreement and the service awards to be paid to Named Plaintiffs, as authorized by the McCracken Circuit Court or any other court taking jurisdiction over the Litigation, which Defendant has agreed to pay, totaling \$275,000. *Plaintiffs’ Attorneys’ Fees and Expenses and Named Plaintiffs Service Awards were negotiated and agreed upon only after all other relief for Plaintiffs was negotiated and agreed upon and are to be paid separately by the Defendant.* Plaintiffs’ Attorneys’ Fees are paid separately from money paid to Class Members, and do not impact what Class Members may recover in any way.

Litigation Expenses in this matter include deposition costs, appellate costs, postage, copying, filing fees, mediation costs, lodging, meals, printer's fees, and tele-conferencing costs.

13. **"Plaintiffs' Attorneys"** means the attorneys representing Plaintiffs in the Litigation, who are: (i) Robert W. "Joe" Bishop, John S. Friend, and Tyler Z. Korus of Bishop Korus Friend, P.S.C., 6520 Glenridge Park Place, Suite 6, Louisville, KY 40222; (ii) Frank H. Tomlinson of Tomlinson Law, L.L.C., 2100 First Avenue North, Suite 600, Birmingham, AL 35203; and (iii) Michael M. Pitman of Haverstock, Bell, and Pitman, 211 S. 12th Street, Murray, Kentucky 42071.

14. **"Pre-Buy Customer"** means any consumer, as that term is defined under KRS § 367, *et seq.*, who purchased a "Pre-Purchase 'PreBuy Keepfull' Gas Supply" Agreement with Defendant that was intended to cover the fall and winter of 2013-2014.

15. **"Settlement Class Members"** means those persons who are members of the Settlement Class, defined below, and who do not properly and timely opt out of the Litigation in accordance with the opt-out procedures as described herein, associated with the Notice of Settlement.

16. **"Settlement Class"** means all residential customers who purchased a 2013-2014 "PRE-PURCHASE 'PREBUY KEEPFULL' GAS SUPPLY AGREEMENT" from Defendant.

17. **"Settlement Payments"** means the amounts to be paid to individual Authorized Claimants in either the form of cash or account credits as provided in this Settlement Agreement.

B. Nature of the Claims

Defendant is a McCracken County, Kentucky based distributor and supplier of propane gas to consumers over 12 states. One of the services it provides is the option to prebuy propane gas at a lower guaranteed price during the summer months to be supplied to the customer during the

winter months. During the 2013-2014 winter, Defendant suspended or rationed all deliveries of prebuy propane gas from January 27, 2014, until February 15, 2014.

Named Plaintiffs were all PreBuy Customers of the Defendant, or a Representative of a PreBuy Customer's Estate. They asserted claims under the Kentucky Consumer Protection Act, KRS § 367, *et seq.*, as well as common law breach of contract and unjust enrichment. Those claims include allegations that Defendant did not have the right under the 2013-2014 PreBuy KeepFull Agreement to suspend or ration deliveries under the circumstances during the winter of 2013-2014. On these grounds, Plaintiffs have sought to recover on their own behalf, as well as on behalf of a class of similarly situated individuals, benefit of the bargain damages, punitive damages, pre- and post-judgment interest, and attorneys' fees and costs.

C. Procedural History of the Instant Action

1. On August 27, 2014, Faye Purcell filed a complaint in the McCracken County Circuit Court raising class action claims under Kentucky law against the Defendant.
2. On December 14, 2014, Named Plaintiffs filed an amended class action complaint, adding Carolyn Seay and Richard Seay as named representatives.
3. On February 4, 2015, the Defendant filed its answer.
4. The parties began engaging in extensive discovery and motion practice. On March 5, 2015, Plaintiffs served Plaintiffs' First Set of Discovery on Defendant.
5. On April 2, 2015, Defendant served Defendant's First Interrogatories and Requests for Production of Documents Propounded to Faye Purcell.
6. On April 2, 2015, Defendant served Defendant's First Interrogatories and Requests for Production of Documents Propounded to Carolyn and Richard Seay.
7. On April 21, 2015, Defendant served Defendant's Answers to Interrogatories and

Responses to Requests for Production on the Plaintiff.

8. On April 27, 2015, Plaintiffs' Attorneys took the deposition of Ms. Lottie Whitman, Office Manager of Defendant's store known as Big 3 Propane, at the offices of Bishop Korus Friend, P.S.C., in Louisville, Kentucky.

9. On April 29, 2015, Plaintiffs' Attorneys took the deposition of Ms. Brenda Parker, Office Manager of Defendant's store known as Calloway County Propane, at the offices of Haverstock, Bell, and Pitman, in Murray, Kentucky.

10. On May 5, 2015, Plaintiffs' Attorneys took the deposition of Ms. Deb Page, Office Manager of Defendant's store known as Golden Propane, at the offices of Fuller, Willingham, Fuller and Carter, in Cullman, Alabama.

11. On May 5, 2015, Plaintiffs' Attorneys served Carolyn and Richard Seay's Answers to Defendant's Requests for Admission on Defendant.

12. On June 12, 2015, Plaintiffs' Attorneys served Named Plaintiffs Carolyn Seay and Richard Seay's Responses to Defendant's First Interrogatories and Requests for Production on Defendant.

13. On August 10, 2015, Plaintiffs' Attorneys served Named Plaintiff Faye Purcell's Responses to Defendant's First Interrogatories and Requests for Production on Defendant.

14. On August 14, 2015, Plaintiffs' Attorneys served Plaintiffs' Second Set of Discovery Requests on Defendant.

15. On September 16, 2015, Defendant's Counsel served Defendant's Answers to Plaintiff's Requests for Admission on Plaintiffs' Attorneys.

16. On September 18, 2015, Plaintiffs' Attorneys served Plaintiffs' Amended Requests for Admission on Defendant's Attorneys.

17. On October 16, 2015, Defendant's Counsel served Defendant's Answers to Plaintiffs' Second Set of Discovery on Plaintiffs' Attorneys.

18. On October 29, 2015, Defendant's Attorneys served Defendant's Answers to Plaintiffs' Amended Requests for Admission on Plaintiffs' Attorneys.

19. On December 19, 2015, Plaintiffs' Attorneys deposed Tanya Young, Defendant's Area Supervisor for Alabama, Florida, Mississippi, and Georgia, at the offices of Keuler, Kelly, Hutchins, and Blankenship, LLP, in Paducah, Kentucky.

20. On December 19, 2015, Plaintiffs' Attorneys deposed Tammi Trogolo, Defendant's Area Supervisor for Missouri, parts of Kentucky, parts of Tennessee, and all of Illinois, at the offices of Keuler, Kelly, Hutchins, and Blankenship, LLP, in Paducah, Kentucky.

21. On December 19, 2015, Plaintiffs' Attorneys deposed Bridget Hollis, Defendant's Area Supervisor for parts of Kentucky, and all of Indiana, at the offices of Keuler, Kelly, Hutchins, and Blankenship, LLP, in Paducah, Kentucky.

22. On February 25, 2016, Plaintiffs' Attorneys filed Plaintiffs' Motion to Certify Class.

23. On April 11, 2016, Plaintiffs sought, and the Court granted, an order appointing a commissioner to authorize the issuance of a subpoena duces tecum to a third party propane pipeline company in the state of Texas.

24. On April 18, 2016, Plaintiffs filed a notice of their intent to serve a subpoena duces tecum on a third party propane supplier in the state of Minnesota.

25. On April 25, 2016, Defendant's Counsel filed their Response to Plaintiffs' Motion to Certify Class.

26. On May 18, 2016, Plaintiffs' Attorneys filed Plaintiffs' Reply in Support of

Plaintiffs' Motion to Certify Class.

27. On June 6, 2016, a hearing on class certification was held in McCracken County Circuit Court by the Honorable Craig Z. Clymer.

28. On June 6, 2016, after the said hearing, Judge Clymer certified the Class.

29. On July 8, 2016, Judge Clymer signed an agreed order vacating the July 6 order certifying the Class, as defense counsel had not received the prior order due to an error in the clerk's office.

30. On July 8, 2016, Judge Clymer signed a new order certifying the Class.

31. On July 13, 2016, Defendant's Counsel filed a Notice of Appeal.

32. On July 18, 2016, Defendant's Counsel filed a Motion to Alter, Amend, or Vacate the order certifying the Class.

33. On August 25, 2016, Plaintiff's Attorneys filed their Response to the Defendant's Motion to Alter, Amend, or Vacate. The court ordered the motion stayed until the Kentucky Court of Appeals ruled on the substantive appeal.

34. On November 3, 2016, Defendant's Counsel filed their brief, as Appellant, at the Kentucky Court of Appeals.

35. On November 4, 2016, the Kentucky Court of Appeals sent notice that the Defendant/Appellant's brief was untimely filed.

36. On November 7, 2016, the Defendant, as Appellant, filed a Motion for Leave to File Appellant's Brief After Deadline, or, Alternatively, for Extension of Time to File Appellant's Brief.

37. On November 17, 2016, the Plaintiffs, as Appellees, filed a Response to Appellant's Motion for Leave to File Appellant's Brief After Deadline, or, Alternatively, for Extension of Time to File Appellant's Brief.

38. On December 21, 2016, the Kentucky Court of Appeals denied the Defendant, as Appellant's, Motion to File Appellant's Brief After Deadline, but granted the Appellant's motion for Extension of Time to File Appellant's Brief.

39. On January 30, 2017, the Plaintiffs filed their Appellees' Brief.

40. On February 17, 2017, the Defendant, as Appellant, filed their Reply Brief.

41. On May 9, 2017, the matter was assigned to a Court of Appeals panel.

42. On May 22, 2017, the Defendant filed their Appellant's Motion to Recuse Judge Donna Dixon, based on Judge Dixon's husband representing the daughter of Craig Small, a majority shareholder and officer of UPG, in a collateral matter.

43. On May 30, 2017, the Plaintiff's filed their Response to the Recusal Motion of Defendant, as Appellant.

44. On July 26, 2017, Judge Donna Dixon ruled that, because of her daughter's close friendship to a daughter of a party in that litigation, she concluded that the Canon of Judicial Ethics necessitated her recusal and granted Defendant/Appellant's motion to recuse her.

45. On July 26, 2017, Judge Debra Lambert replaced Judge Donna Dixon on the Appellate Panel.

46. On September 15, 2017, the Kentucky Court of Appeals remanded the case for more fact-finding. This ruling became final on October 16, 2017.

47. On February 1, 2018, the Plaintiffs filed their Renewed Motion to Certify Class.

48. On March 12, 2018, the Defendant filed their Response to the Plaintiffs' Renewed

Motion to Certify Class.

49. On March 12, 2018, the Parties agreed to mediate, and selected John Van Winkle, Esquire, as their mediator.

50. A two-day mediation was held in Louisville, Kentucky, on June 21 and 22, 2018. This Agreement represents the mediated settlement reached by the Parties after said two-day mediation.

D. Parties' Statements and Recognition of the Benefits of Settlement

1. Plaintiffs' statement

Plaintiffs contend that the claims asserted in the Litigation have merit under KRS § 367, *et seq.*, and Kentucky common law. However, Plaintiffs recognize the cost and delay of continued proceedings necessary to prosecute the instant action against Defendant through discovery, contested re-certification and possible further interlocutory appeals, dispositive motions, trial, and appeal. Plaintiffs also have taken into account the uncertain outcome and risk of loss in any litigation, especially in a complex class-action such as this. Plaintiffs believe that the settlement set forth in this Agreement confers substantial benefits on Settlement Class Members. Based on their evaluation, Named Plaintiffs and Plaintiffs' Attorneys have determined that the settlement is in the best interest of the Settlement Class.

2. Defendant's statement

Defendant denies each and all of the claims alleged by Plaintiffs in the Litigation, including the claims in their proposed Second Amended Complaint. Defendant expressly denies any and all charges of wrongdoing or liability alleged in the instant action. To the contrary, Defendant believes Plaintiffs' claims will fail. Defendant also denies that the asserted claims are appropriate for class treatment under Ky. R. Civ. P. 23, except for purposes of settlement. Nevertheless, Defendant also

has taken into account the uncertainty and risk inherent in any litigation and the fact that the conduct of the Litigation would be protracted and expensive. Also, the McCracken Circuit Court has already certified this case as a class action once, and the Defendant recognizes the possibility of the case being certified again. Therefore, Defendant and its Counsel have determined it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Agreement.

II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs (for themselves and the Settlement Class defined below) and Defendant, by and through their respective counsel, subject to the approval of the Court, that the instant action will be finally and fully compromised, released, resolved, discharged, and settled, and will be dismissed with prejudice, subject to the terms and conditions of this Agreement, as follows:

A. Scope of Settlement

The settlement described herein, if finally approved, will resolve fully and finally all of the claims to be released as described herein.

B. Authority to Execute Settlement

The signatories to this Agreement hereby represent that they are fully authorized to enter into this Agreement and bind the parties to the terms and conditions hereof, as detailed below. Plaintiffs' Attorneys acknowledge that they have retainer agreements with the Named Plaintiffs. Pursuant to these retainer agreements, Plaintiffs' Attorneys represent that they have authority to negotiate and execute a settlement agreement on behalf of Plaintiffs. Upon approval by the Court, such settlement agreement shall bind the members of the Settlement Class to all terms set forth in this Agreement, regardless of whether any particular member of the Settlement Class timely

submits a required claim form or receives a Settlement Payment, as described herein, so long as such individual has not timely opted out of this settlement pursuant to the opt-out procedures.

It is agreed that because the members of the Settlement Class are so numerous, it is impossible or impracticable to have each member of the Settlement Class execute the Agreement. The Notice of Settlement, in the forms attached hereto as Exhibit 1, which shall be submitted to the McCracken Circuit Court for approval, will inform all members of the Settlement Class of the binding nature of the release of claims described in this Agreement (*see* Part II. I., *infra*), and that the release will have the same force and effect upon members of the Settlement Class as if the Agreement were executed by each member of the Settlement Class.

C. Court Approval of Settlement

The parties agree that Plaintiffs will move the McCracken Circuit Court for approval of the settlement described herein. Defendant will support Plaintiffs' motion seeking approval of this settlement.

Further, Plaintiffs' Attorneys will petition the Court for an award of Plaintiffs' Attorneys' Fees and Expenses and service awards, as set forth herein. Defendant agrees not to oppose such a petition and to pay such Fees and Expenses and service awards, so long as the total amount of Plaintiffs' Attorneys' Fees and Expenses and service awards sought do not exceed \$275,000 and provided that (i) the Settlement Agreement is not terminated as provided in Section X or (ii) unless Defendant exercises its right to opt out of the settlement under the conditions provided in Section II E.

In no event will Defendant be required to pay more than the Gross Settlement Amount. The parties' agreement to settle Plaintiffs' claims in the Litigation, as set forth in this Agreement, is contingent upon the McCracken Circuit Court, or any other court taking jurisdiction of the

Litigation, granting final approval of the settlement and, in the event such court grants final approval of the settlement and an appeal of the final approval order is filed, contingent upon the final approval order being affirmed on appeal in a form substantially similar to the form of the final approval order entered by the court with respect to all material terms. Should the McCracken Circuit Court, or any other court taking jurisdiction of this Litigation, decline to approve all material aspects of this Agreement or should it make rulings substantially altering the material terms of this Agreement, Defendant will have no obligation to make any payment pursuant to this Agreement, including payment of any portion of the Gross Settlement Amount.

D. Certification of the Class Solely for Settlement Purposes

Solely for purposes of settlement, the Parties' agree that Plaintiffs shall request, as part of the motion for preliminary approval, and the consent of the Defendant, that the McCracken Circuit Court, or any other court taking jurisdiction of this Litigation, certify the following Settlement Class pursuant to Kentucky Rule of Civil Procedure 23:

A residential customer who entered into a 2013-2014 "PRE-PURCHASE 'PREBUY KEEPFULL' GAS SUPPLY AGREEMENT" with United Propane Gas, Inc. or one of its above-named affiliates (collectively referred to as "UPG"), with the exception of:

- (a) those who received payment through the case styled *Andy Beshear v. United Propane Gas, Inc., et al.*, 14-CI-00120, which was filed in Franklin Circuit Court in Franklin County, Kentucky;**
- (b) any Class member who received a delivery from UPG of at least fifty (50) gallons of propane at his or her prebuy contract rate between January 20, 2014, and January 27, 2014;**
- (c) any Class member who had purchased and received all of his or her contract prebuy propane from UPG on or before January 27, 2014; and,**
- (d) any Class members who (i) ordered contracted-for prebuy propane before January 27, 2014, and received the propane during the suspension period (January 27 to February 13, 2014); or (ii) ordered the propane during the suspension period and received the propane after the suspension period; and (iii) were charged the current market rate for it rather than the prebuy contract rate; and (iv) had his or her account credited for this gas on or before June 15, 2014, with the difference between the market rate and the prebuy contract rate.**

The Agreement is contingent upon the approval of, and final certification by, the Court of this Settlement Class for settlement purposes only. Defendant expressly reserves its rights to challenge the propriety of the certification of such class for any purpose as if this Agreement had not been entered into by the parties should the Court, for any reason, not approve the settlement contained herein.

E. Defendant's Payment of Maximum Gross Settlement Amount

In order to settle the Litigation, and as consideration for Plaintiffs' release of claims, dismissal of the Litigation, and the other good and valuable consideration described herein that Plaintiffs are providing to Defendant, Defendant agrees to pay the Gross Settlement Amount which shall be used to provide for: (i) cash Settlement Payments to Authorized Claimants, as described in this Agreement; (ii) credits to Authorized Claimants, as described in this Agreement; (iii) Plaintiffs' Attorneys' Fees and Expenses; and (iv) service awards to the Named Plaintiffs.

However, the Defendant will have the option, in its sole and absolute discretion, to elect the following: (i) to opt out of this settlement in the event over 2,000 Class members claim the \$150 cash payment or credit, (ii) to opt out of this settlement in the event over 1,200 Class members claim the \$75 cash payment or credit and/or (iii) agree to pay the additional claims that exceed either of the participation limits set forth herein. The amount of payments the Defendant has committed to make to Class Members is \$390,000.00. This Agreement does not automatically dissolve should the total number of claims reach these figures, however. The Defendant, in its sole discretion, can elect not to opt out of this settlement and to pay the additional claims that exceed either of the said participation limits herein.

As additional valuable consideration, the Defendant has agreed to modify the language contained in paragraph 5 of the PRE-PURCHASE PREBUY GAS SUPPLY AGREEMENT.

Defendant maintains that the language in said agreement was not misleading or deceptive, but, as part of this settlement, has agreed to modify paragraph 5. Notwithstanding this provision, Defendant shall have the right at any time to modify and revise all or any portion of the PRE-PURCHASE PREBUY KEEPFUL GAS SUPPLY AGREEMENT in its sole and absolute discretion except that it agrees not to use the exact language of paragraph 5 contained in the 2013-2014 PRE-PURCHASE PREBUY KEEPFUL GAS SUPPLY AGREEMENT for future use.

F. Individual Settlement Awards and Minimum Settlement Awards

All Settlement Payments shall be paid from the Gross Settlement Amount. Each Authorized Claimant who has timely submitted the claim forms or is entitled to a credit, as described herein, shall be entitled to receive a minimum value of \$75 under this settlement. However, to the extent that Authorized Claimants do not timely or properly submit the claim forms, opt out of the settlement pursuant to the procedures specified herein, or otherwise elect not or fail to accept the payment of their designated share of the Gross Settlement Amount, their share of the Revised Gross Settlement Amount will remain the sole and exclusive property of Defendant.

G. Calculation of Settlement Awards

Settlement awards in this case and their mode of payment depend on the nature of the Settlement Class member's current relationship with Defendant and the Settlement Class member's course of action during the winter of 2013-2014.

1. Tier One - Tier One Settlement Class members are those members who meet the following criteria:

- a. Paid for a 2013-2014 "PRE-PURCHASE 'PREBUY KEEPFULL' GAS SUPPLY AGREEMENT" from Defendant;
- b. Sought shipments of pre-purchased propane gas during the 2013-2014 winter;

- c. At any point in time, the Defendant invoked as to the class member paragraph 5 of the 2013-2014 “PRE-PURCHASE ‘PREBUY KEEPFULL’ GAS SUPPLY AGREEMENT” and would not deliver gas to the member at the pre-purchased rate;
- d. After the Defendant invoked paragraph 5, the class member elected to pay market rate for propane during the 2013-2014 winter to either Defendant or another supplier and, if purchased from another supplier, can provide proof, via receipt, credit card statement, bank statement, check image, or similarly convincing record, that he, she, or they obtained propane from a different supplier at a rate higher than the prebuy price; and
- e. The class member has maintained an active account with Defendant within three years of the date of sending Notice to Class Members.

2. Tier Two - Tier Two Settlement Class members are those members who do not meet all of the criteria for Tier One, but do meet the following criteria:

- a. Paid for a 2013-2014 “PRE-PURCHASE ‘PREBUY KEEPFULL’ GAS SUPPLY AGREEMENT” from Defendant;
- b. Sought shipments of pre-purchased propane gas during the 2013-2014 winter;
- c. At any point in time, the Defendant invoked as to the class member paragraph 5 of the 2013-2014 “PRE-PURCHASE ‘PREBUY KEEPFULL’ GAS SUPPLY AGREEMENT” and would not deliver gas to the member at the pre-purchased rate;
- d. After the Defendant invoked paragraph 5, the class member elected to pay market rate for propane during the 2013-2014 winter to either Defendant or another supplier and, if purchased from another supplier, can provide proof, via receipt, credit card statement,

- bank statement, or check image, or similarly convincing record, that he, she, or they obtained propane from a different supplier at a rate higher than the prebuy price ; and,
- e. The class member has not maintained an active account with Defendant within three years of the date of sending Notice to Class Members.

3. Tier Three – Tier Three Settlement Class members are those members who do not meet all of the criteria for Tier One or Tier Two, but do meet the following criteria:

Paid for a 2013-2014 “PRE-PURCHASE ‘PREBUY KEEPFULL’ GAS SUPPLY AGREEMENT” from Defendant;

- b. The class member sought shipments of pre-purchased propane gas during the 2013-2014 winter;
- c. At any point in time, the Defendant invoked as to the class member paragraph 5 of the 2013-2014 “PRE-PURCHASE ‘PREBUY KEEPFULL’ GAS SUPPLY AGREEMENT” and would not deliver gas to the member at the pre-purchased rate.
- d. After the Defendant invoked paragraph 5, the class member requested gas at the pre-purchased rate and was denied such gas and/or the class member did not request the gas because he/she knew that Defendant would not provide the gas at the prebuy rate and rather than pay market price or purchase gas from another supplier, the class member elected to wait for the Defendant to stop invoking paragraph 5 before requesting any more propane; and,
- e. The class member has maintained an active account with Defendant within three years of the date of sending Notice to Class Members.

4. Tier Four - Tier Four Settlement Class members are those members who do not meet all of the criteria for Tier One, Tier Two, or Tier Three, but do meet the following criteria:

- a. A class member who paid for a 2013-2014 “PRE-PURCHASE ‘PREBUY KEEPFULL’ GAS SUPPLY AGREEMENT” from Defendant;
- b. The class member sought shipments of pre-purchased propane gas during the 2013-2014 winter;
- c. At any point in time, the Defendant invoked as to the class member paragraph 5 of the 2013-2014 “PRE-PURCHASE ‘PREBUY KEEPFULL’ GAS SUPPLY AGREEMENT” and would not deliver gas to the member at the pre-purchased rate;
- d. After the Defendant invoked paragraph 5, the class member requested gas at the pre-purchased rate and was denied such gas and/or the class member did not request gas because he/she knew that Defendant would not provide the gas at the prebuy rate and rather than pay market price or purchase gas from another supplier, rather than pay market price or purchase gas for a different supplier, the class member elected to wait for the Defendant to stop invoking paragraph 5 before requesting anymore propane; and,
- e. The class member has not maintained an active account with Defendant within three years of the date of sending Notice to Class Members.

7. Depending on which tier the Settlement Class member falls into, the Settlement Class member may qualify for the following awards:

- a. Tier One

\$150 credit towards UPG propane on the class member’s account.

- b. Tier Two

\$150 cash payment.

c. Tier Three

\$75 credit towards UPG propane on the class member's account.

d. Tier Four

\$75 cash payment.

H. Release of Claims

In order to settle the Litigation, and as consideration for Defendant's payment of the Gross Settlement Amount, which shall provide for cash Settlement Payments to Authorized Claimants, Credits, Service Awards, Plaintiffs' Attorneys' Fees, and Plaintiffs' Litigation Expenses, and the other good and valuable consideration described herein, Plaintiffs agree to release any claims they may have against Defendant only as described herein.

1. Description of released claims

As of the Effective Date, each and every Settlement Class Member who has not opted out as described herein, hereby forever completely settles, compromises, releases, and discharges Defendant from any and all past and present matters, disputes, claims, demands, rights, liabilities, expenses, damages, losses of any kind, which any Settlement Class member has or might have, known or unknown, asserted or unasserted, that is based in contract, equitable principles, or on the Kentucky Consumer Protection Act relating to the sale and or pre-purchase of propane from the Defendant for the 2013-2014 winter.

2. Agreement not to seek or accept relief in any other action

All Settlement Class members further covenant and agree that, since they are settling disputed claims, they will not accept, recover, or receive damages of any nature which may arise

out of, or in connection with any other individual, class, collective, representative, administrative, or arbitral proceeding pursued by any individual, class, or federal, state or local governmental agency against the Defendant relating to the pre-purchasing of propane for the 2013-2014 winter.

3. Recognition of binding nature of release

The Parties agree that as of the Effective Date all Authorized Claimants who have not opted out as described herein will be bound by the terms and conditions of this Agreement, the order by the McCracken Circuit Court, or any other court taking jurisdiction of the Litigation, granting final approval to the Agreement and this settlement, the final judgment in the Litigation, and the releases set forth herein.

I. Settlement Administrator and Notice Process

The Parties agree that a neutral third party, to be compensated by Defendant, shall serve as the Settlement Administrator for this settlement, if approved by the Court with jurisdiction over the Litigation. This shall include the timely issuance of the agreed Notice of Settlement, substantially in the forms attached hereto as Exhibit 1, to all members of the Settlement Class defined herein after entry of the Order Granting Preliminary Approval of the Settlement outlined in this Agreement.

1. Providing and updating contact information for members of the Settlement Class

Within fourteen (14) calendar days after the date the court enters an Order Granting Preliminary Approval of this Agreement, Defendant will provide the Settlement Administrator with the names and last known mailing address and email address, if known, for the Settlement Class members.

2. Mailing of the Notice of Settlement and related materials

Within 30 calendar days after the Court enters an Order Granting Preliminary Approval of the Agreement, the Claims Administrator will mail the Notice of Settlement. The Notice of Settlement shall consist of a single mailing to each of the last known mailing address and the email address, if known, provided by Defendant as described herein of all individuals who are members of the Settlement Class defined herein. The Settlement Administrator shall issue the Notice of Settlement by First Class U.S. Mail using envelopes that may include the name and/or logo of Plaintiffs' Attorneys' law firms, if Plaintiffs' Attorneys provide their logos in a format that the Settlement Administrator can use to print on the outside of the envelopes. Along with the Court-approved Notice of Settlement, the Settlement Administrator shall include a website address where the Settlement Class member can submit his or her claim form online.

Within 30 days of a Notice of Settlement being returned as undeliverable or whose listed address is found to be inaccurate, , the Settlement Administrator shall conduct trace/search efforts and send a follow up mailing to the individuals.

The Settlement Administrator shall also issue an electronic version of these materials to all class members with a known email address with instructions that they these materials can be printed out and mailed in or that the Settlement Class member can submit a claim form online.

3. Responses to the Notice of Settlement

Any Settlement Class Member wishing to be an Authorized Claimant must return a simple claim form, a copy of which is included as Exhibit 2, in order to receive a Settlement Payment. Claims Forms must be received by the Settlement Administrator within 30 calendar days following the mailing of notice. In the event a member of the Settlement Class submits the required claim form in a timely manner (*i.e.*, received by the Settlement Administrator within the 30 days of the

mailing and/or emailing of the Notice of Settlement), but the claim form is incomplete or otherwise deficient in one or more respects, the Settlement Administrator will (no later than 14 calendar days after receipt of the incomplete or deficient form). return the deficient document to the individual with a letter and, if the email address is known, email explaining the deficiencies and stating that the individual will have 14 calendar days from the date the deficiency notice was mailed to correct the deficiencies and resubmit the document.

The Settlement Administrator will copy counsel for the Parties on such deficiency notices so that Plaintiffs' Attorneys can assist class members in remedying any deficiency. The Settlement Administrator's decision on whether the deficiency has been remedied shall be binding on the Parties and the individual member of the Settlement Class. The Notice of Settlement will also explain the option for members of the Settlement Class to opt out of the settlement.

Members of the Settlement Class who wish to opt out of the settlement must submit a written statement expressly asserting that he or she wishes to be excluded from the settlement. Such written statements should state at the top of the letter "Request for Exclusion from Settlement in *Purcell, et al., v. United Propane Gas, Inc.*, 14-CI-00729," and should include the name, address, telephone number, and signature of the individual requesting exclusion from the settlement. All written requests for exclusion must be returned by First-Class U.S. Mail to the Settlement Administrator and must be received by the Settlement Administrator within 30 calendar days from the postmark of the Notice of Settlement sent to members of the Settlement Class.

Any member of the Settlement Class who requests exclusion from the settlement will not be eligible to receive a Settlement Payment and shall be precluded from objecting to the settlement. In the event that any member of the Settlement Class timely and properly submits a written request for exclusion, and also timely submits the required claim form necessary to receive a Settlement

Payment, or also timely submits an objection to the settlement, the Settlement Administrator shall contact such individual, inform the individual that he or she cannot request exclusion from the settlement and request a Settlement Payment and/or object to the settlement, and shall ask such individual which option he or she wishes to pursue. Any member of the Settlement Class who properly requests exclusion from the settlement will not be legally bound by the terms of the Agreement or the final order approving the settlement. However, any member of the Settlement Class who does not return a valid and timely written request for exclusion will be bound by all terms of the Agreement and the final order approving the settlement, regardless of whether the member has objected to the settlement.

Additionally, the Notice of Settlement will inform the Settlement Class members who have not opted out of their right to object to the settlement and that to do so they must file with the McCracken Circuit Court and serve on counsel for the parties, either a written statement objecting to the settlement or a written notice of their intention to appear and object at the Final Settlement Hearing. Such written statement or notice must be filed and served within 30 calendar days after the mailing date of the Notice of Settlement, subject to the deficiency procedures described in section I.3. Persons who are included in the Settlement Class who fail to timely file and serve written objections or notice of intention to appear and object in the manner specified above will be deemed to have waived any objections and will be foreclosed from making any objection to the settlement, whether to the trial court or by appeal or otherwise.

The Settlement Administrator shall provide to counsel for both parties, within 70 days of the mailing of the Notice of Settlement, a declaration from an appropriate agent or agents working for it, stating under penalty of perjury: (a) the names and addresses of all individuals to whom the Settlement Administrator mailed and/or emailed notice of the proposed settlement; (b) the form of notice sent to each such individual; (c) whether each such individual timely and properly submitted

the required forms to receive a Settlement Payment and, if so, the amount and manner of that payment; (d) the identity of all such individuals who validly and timely requested exclusion from the settlement, and (e) the identity of all such individuals who could not be located by the Settlement Administrator's trace/search efforts. The Defendant's business records shall be conclusive as to eligibility.

Plaintiffs will file a motion for final approval and for a Final Settlement Hearing within 30 days after the above declaration from the Settlement Administrator.

4. Settlement Administrator's website

In addition to mailing the Notice of Settlement, the Settlement Administrator shall maintain a simple website from the date that the Notice of Settlement is mailed until 60 calendar days following the mailing of the Notice of Settlement. The Settlement Administrator shall deactivate the site on the 61st calendar day following the mailing of the Notice of Settlement. This website shall: (i) provide a brief summary of who is to receive the Notice of Settlement and the purpose of the Notice of Settlement; (ii) provide members of the Settlement Class with access to downloadable copies of the Notice of Settlement and the claim forms they are required to submit in order to receive a Settlement Payment, as well as an application to allow a purely online submission; and (iii) contact information for the Settlement Administrator. The parties shall agree as to the URL for the Settlement Administrator's website, as well as the specific language and formatting of that website before it is operational.

K. Plaintiffs' Attorneys' Fees and Expenses

As stated hereinabove, *Plaintiffs' Attorneys' Fees and Expenses and Named Plaintiffs' Service Awards were negotiated and agreed upon only after all other relief for Plaintiffs had been negotiated and agreed upon. Plaintiffs' Attorneys' Fees, Litigation Expenses and*

Named Plaintiffs' Service Awards will be paid separately by Defendant, and will not reduce Class Members' recovery in any way.

Plaintiffs' Attorneys will make an application or applications to the McCracken Circuit Court or any other Court taking jurisdiction over the Litigation, for an award of Plaintiffs' Attorneys' Fees and an award of Plaintiffs' Litigation Expenses and Named Plaintiffs' service awards. The amount of the Plaintiffs' Attorneys' Fees and Expenses and Named Plaintiffs service awards will not exceed \$275,000, which the Defendant has agreed to pay separately, not as a part of any common fund. From this \$275,000, Ms. And Mr. Seay will be paid a total of \$3,500 jointly based on their service to the class, including Ms. Seay's representing the Class at both days of the mediation. Ms. Purcell's Estate shall be paid \$1,500 based on her service to the class. Such application or applications shall be filed in connection with the Motion for Final Approval of the Agreement and this settlement.

Payment of such Plaintiffs' Attorneys' Fees and Plaintiffs' Litigation Expenses to Plaintiffs' Attorneys and Named Plaintiffs Service Awards Named Plaintiffs, as set forth in this Agreement, and payment of a Third Party Administrator, shall constitute full satisfaction of any and all obligations by Defendant to pay any person, attorney, or law firm (including but not limited to Plaintiffs' Attorneys) for attorneys' fees, incentive awards, expenses, or costs (including, but not limited to, any fees, costs, and expenses related to any experts and/or consultants and any fees, costs, and expenses associated with mediation and settlement administration) incurred on behalf of all members of the Settlement Class, and shall relieve Defendant of any other claims or liability to any person for any attorneys' fees, expenses, and costs to which any person may claim to be entitled on behalf of any members of the Settlement Class for this Litigation.

L. Payments

Each Authorized Claimant who is entitled to receive a Settlement Payment will have 90 calendar days from the date on which the Settlement Payment is mailed to negotiate his or her settlement check. If any settlement check is not negotiated in that period of time, that settlement check will be voided, and a stop-payment may be placed on that settlement check.

Any individual Settlement Payments which remain unclaimed for any reason 90 calendar days following the mailing of the Settlement Payment shall be deemed unclaimed. In such event, the Authorized Claimants whose Settlement Payment is unclaimed will be deemed to have irrevocably waived any right in or claim to any Settlement Payment, but the Agreement and release of claims contained therein nevertheless will be binding upon them. Any unclaimed Settlement Payment shall revert to Defendant and shall remain the exclusive property of Defendant.

Neither Defendant, counsel for Defendant, Plaintiffs' Attorneys, Named Plaintiffs, nor the Settlement Administrator shall have any liability for lost or stolen settlement checks, for forged signatures on settlement checks, or for unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event an individual entitled to receive a Settlement Payment notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately attempt to stop payment on such check. If the settlement check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check, from which the fees associated with the stop payment order will first be deducted. Any individual entitled to receive a Settlement Payment who receives a re-issued check will have an additional 45 calendar days to negotiate such re-issued check from the date of its mailing. If any settlement check is not negotiated in that period of time, that settlement check will be voided and the funds shall revert to and remain the exclusive property of Defendant.

3. Defendant's Credit Payments

Defendant will pay the total amount of credit payments as contemplated herein directly into the accounts of Authorized Claimants who are still UPG customers within (7) calendar days after the Effective Date.

4. Plaintiffs' Attorneys' Fees and Expenses and Named Plaintiffs' Service Awards

Plaintiffs' Attorneys' Fees and Plaintiffs' Litigation Expenses and Named Plaintiffs' Service Awards, as authorized by the McCracken Circuit Court or any other court with jurisdiction over the Litigation, will be paid by the Defendant directly to Bishop Korus Friend, P.S.C., within seven (7) calendar days of the Effective Date of the settlement. Bishop Korus Friend, P.S.C. will distribute Named Plaintiffs' Service Awards within seven (7) calendar days of receipt.

6. Payment of the Settlement Administrator's Expenses

The charges and costs incurred by the Settlement Administrator in performing its duties under this Agreement will be paid directly to the Settlement Administrator by Defendant. The Settlement Administrator shall determine the final amount of such charges and costs prior to mailing the Notice of Settlement. Disputes of any kind relating to the Settlement Administrator will be resolved pursuant to the dispute resolution procedures set forth *infra*, if they cannot be resolved informally by the Parties. The Settlement Administrator will regularly report to the Parties, in written form, the substance of the work performed, including all amounts paid under this Agreement.

M. Dispute Procedure

Except as otherwise set forth herein, in the event of a dispute concerning the proper interpretation of the Agreement, the enforcement of this Agreement, the Parties' rights or obligations under the Agreement, or any alleged breach of the terms of the Agreement, notice must

be mailed to counsel for the opposing party as provided *infra*. After receipt of such notice, the Parties shall meet and confer in a good faith attempt to resolve the matter within ten (10) calendar days. In the event those efforts are unsuccessful, and one or more of the Parties institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees, expenses, and costs, including expert witness fees incurred in connection with any enforcement actions, and any damages incurred.

N. Assignment of Claims

Defendant and its counsel, and Plaintiffs' Attorneys and Named Plaintiffs represent, covenant and warrant that they have not directly or indirectly, assigned or transferred to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein. The parties further agree that this Agreement will be binding upon, and inure to the benefit of, the parties, and their respective heirs, trustees, executors, successors, legal administrators, and assigns.

O. Denial of Liability

Defendant denies that it has failed to comply with the law in any respect or has any liability under the claims asserted in the Litigation. The Parties acknowledge that this Agreement is entered into for the purpose of compromising disputed claims and that nothing herein is an admission of liability, wrongdoing, or the propriety of collective or class treatment outside of this settlement class. Neither the Agreement nor any document prepared in connection with the settlement may be admitted in any proceeding as an admission by Defendant.

Notwithstanding this paragraph, any and all provisions of this Agreement may be admitted in evidence and used in any proceeding to enforce the terms of this Agreement or in defense of any claims released or barred by this Agreement. Additionally, no party will be considered a prevailing party in this Litigation for any purpose, except with respect to the evaluation of Plaintiffs' motion for an award of attorneys' fees, for which Plaintiffs will be considered a prevailing party for purposes of this settlement only.

P. Construction and Interpretation

The parties hereto agree that the terms and conditions of the Agreement are the result of lengthy, intensive, arms-length negotiations among the Parties, through counsel, and the Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her, or its counsel participated in the drafting of the Agreement. Paragraph and section titles are inserted as a matter of convenience for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any of its provisions. With the exception of Part I, *supra*, each term of this Agreement is contractual and not merely a recital.

All exhibits attached to the Agreement, and referenced herein, are incorporated into the Agreement by such references and are a material part of this Agreement. Any notice or other exhibit that requires approval of the Court must be approved without material alteration from its current form in order for this Agreement to become effective.

This Agreement shall be governed by and enforced in accordance with the laws of the Commonwealth of Kentucky.

Q. Modification

This Agreement, and any of its parts, may be amended, modified, or waived only in writing, signed by all signatories below or their successors-in-interest.

R. Counterparts

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement. This Agreement may be signed electronically.

S. Return of Discovery

Named Plaintiffs and Plaintiffs' Attorneys agree to return to Defendant or destroy all discovery obtained from Defendant during the course of the Litigation within 150 calendar days of the Effective Date. This includes all copies of such discovery, whether in hardcopy or electronic format. However, Plaintiffs' Attorneys may retain a copy of all pleadings filed in this matter, including any exhibits thereto. Further, Plaintiffs' Attorneys may retain any work product which refers to or quotes from discovery documents. Plaintiffs' Attorneys will notify Defendant's counsel in writing if they or Named Plaintiffs elect to destroy discovery. Named Plaintiffs and Plaintiffs' Attorneys agree not to send or otherwise disseminate discovery to any other individual or entity before its return or destruction.

T. Notices, Demands, and Communications Concerning the Settlement

Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by email and First Class U.S. Mail, addressed as follows:
To Plaintiffs, Named Plaintiffs, members of the Settlement Class, and/or Plaintiffs' Attorneys:

John S. Friend
Robert W. "Joe" Bishop
Tyler Z. Korus
Bishop Friend, PSC
6520 Glenridge Park Place, Suite 6

Louisville, Kentucky 40222
(502) 425-2600
firm@bishoplegal.net

Michael M. Pitman
HAVERSTOCK, BELL & PITMAN
211 S. 12th Street
Murray, Kentucky 42071
(270) 753-1094
mike@haverstocklaw.com

Frank H. Tomlinson
TOMLINSON LAW, L.L.C.
2100 First Avenue North, Suite 600
Birmingham, Alabama 35203
(205) 326-6626
hilton@tomlawllc.com

To Defendant and/or Defendant's Attorneys:

David Kelly
Keuler, Kelly, Hutchins & Blankenship LLP
100 South Fourth Street, Ste 400
Paducah, KY 42001
(270) 448-8888
dkelly@kkhblaw.com

Eric Gibson
General Counsel
United Propane Gas, Inc.
4200 Cairo Road
Paducah, Kentucky 42003
(270)450-4145
egibson@upgas.com

U. Cooperation

The parties agree to fully cooperate with each other to accomplish the terms of the settlement and this Agreement, including, but not limited to, execution of such documents taking such other action as may reasonably be necessary to implement the terms of the Agreement.

The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the McCracken

Circuit Court, or any other court taking jurisdiction over the Litigation, or otherwise, to effectuate the Agreement and the terms set forth herein. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, the Parties agree to negotiate in good faith and will not withdraw from any aspect of the Agreement without first attempting to mediate the case with a mutually agreed upon mediator.

V. Dismissal

Upon entry of a final order approving this Agreement, Plaintiffs agree to execute all documents necessary to dismiss with prejudice any and all claims raised against Defendant in the Litigation, unless an appeal is taken from said final order of approval leading to reversal of approval of this Agreement. If an appeal leads to reversal of approval of this Agreement, then the Parties agree that the claims will be reinstated as if never dismissed, as described herein.

W. Reasonableness of Settlement

The Parties agree that this is a fair, reasonable, and adequate settlement and have arrived at this settlement through arms-length negotiations, taking into account all relevant factors, present and foreseeably potential.

X. Termination of the Settlement Agreement

1. Grounds for Settlement Termination:

Plaintiffs' Attorneys or Defendant's counsel may terminate the Agreement if the Court declines to enter an Order Granting Preliminary Approval, an order granting final approval of this settlement, or judgment in substantially the same form as that submitted by the parties, or the Agreement does not become final for any other reason, or a Court of Appeals reverses the entry of an order granting final approval to this settlement or a final judgment in this Litigation following such an order, provided that the parties agree to work cooperatively and in good faith, including mediating unresolved differences with a mutually agreed upon mediator for a period of at least two

(2) days, to address and resolve any concerns identified by the Court in declining to enter an Order Granting Preliminary Approval, an order granting final approval to this settlement, or judgment in the form submitted by the parties. In addition, Defendant has sole discretion to opt out of this settlement as provided in Section E.

2. Procedures for Termination:

To terminate this Agreement, the terminating Counsel (*i.e.*, Plaintiffs' Attorneys or counsel for Defendant, as the case may be) shall give written notice to the opposing counsel no later than 15 business days after the Court acts or no later than 15 business days after any event that gives any party the right to terminate this Agreement.

3. Effect of Termination:

In the event that this Agreement, pursuant to its terms, is canceled, rescinded, terminated, voided, or nullified, or the settlement of the Litigation is barred by operation of the law, is invalidated, is not approved or otherwise is ordered not to be carried out by final order of any court with jurisdiction over the Litigation:

- (a) The Agreement shall be terminated and shall have no force or effect, and no party shall be bound by any of its terms;
- (b) In the event the Agreement is properly terminated, Defendant shall have no obligation to make any payments hereunder to any Plaintiff, any member of the Settlement Class, or Plaintiffs' Attorneys, except that the Defendant shall be responsible for paying the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the Agreement has been terminated;
- (c) Any Order Granting Preliminary Approval, granting final approval to this settlement, and/or judgment, including any order of class certification, shall be vacated;

(d) The Agreement and all negotiations, statements, and proceedings relating thereto, shall be without prejudice to the rights of any of the parties, all of whom shall be restored to their respective positions in the action prior to the settlement;

(e) Neither this Agreement, nor any ancillary documents, actions, statements, or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Litigation or any other action for any purpose whatsoever;

(f) Defendant shall reserve the right to oppose class-action certification and to move to decertify Plaintiffs' previously certified settlement class action should the Agreement not become final.

Y. Integration Clause

After this Agreement is fully executed by all Parties, it will constitute the entire Agreement of the Parties and will fully supersede any and all prior agreements or understandings, written or oral, between the Parties pertaining to the subject matter hereof, including, but not limited to, any and all written and oral agreements reached between the Parties.

Agreed to:

Date:

August 6, 2018

s/ Robert W. "Joe" Bishop
Robert W. "Joe" Bishop
Bishop Korus Friend, P.S.C.
Attorney for Plaintiffs

s/John S. Friend
John S. Friend
Bishop Korus Friend, P.S.C.
Attorney for Plaintiffs

s/Tyler Z. Korus
Tyler Z. Korus
Bishop Korus Friend, P.S.C.
Attorney for Plaintiffs

s/Frank H. Tomlinson
Frank H. Tomlinson
Tomlinson Law, L.L.C.
Attorney for Plaintiffs

s/ Michael M. Pitman
Michael M. Pitman
Haverstock Bell and Pitman
Attorney for Plaintiffs

s/David Kelly
David Kelly
Kelly, Keuler, Hutchins, &
Blankenship, LLP
Attorney for Defendant

Eric Gibson
General Counsel United Propane Gas