UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Lawrence G. Farber

versus

Case Number: 4:15−cv−01367
Judge Vanessa D Gilmore

Crestwood Midstream Partners LP, et al.

NOTICE OF THE FILING OF AN APPEAL

An appeal has been filed by David G Duggan. The following appeal and related motions are pending in the District Court:

Notice of Appeal − #72

If the appellant fails to comply with the following requirements, then the Clerk of Court will submit a certificate of noncompliance to the Fifth Circuit Court of Appeals.

FILING FEE:
A filing fee is required to proceed on appeal. If the filing fee has not already been paid, then it must be paid or a motion to proceed *in forma pauperis* must be filed, unless appellant is an United States government agency.

TRANSCRIPTS:
If hearings were held in this case and the transcripts were not already produced, then transcripts must be ordered. Pursuant to FRAP 10(b)(1), a transcript order form must be filed within 14 days of the filing of the notice of appeal. Under Fifth Circuit Rule 10, the appellant's order of the transcript must be made on a DKT−13 Transcript Order form. The DKT−13 must be filed regardless of whether there were hearings or transcripts needed. A link to the DKT−13 form and instructions for ordering transcripts are available on the court's website at www.txs.uscourts.gov/page/OrderingTranscripts.

If there were no hearings or no transcripts are needed, file the DKT−13 form with the appropriate box marked to indicate so. For cases where transcripts are needed, prepare a separate DKT−13 for each reporter from whom you are ordering transcripts. All transcripts for electronically recorded proceedings may be ordered on one form. Each form should indicate the exact dates of the proceedings to be transcribed by that reporter.

This case had hearings. Reporter(s): Laura Wells; Kathy Metzger.

EXHIBITS:
The Fifth Circuit requires exhibits admitted into evidence be included in the electronic record for transmission to the Fifth Circuit. Exhibits in the custody of the court will be electronically filed by court staff. Exhibits previously returned to the parties must be immediately electronically filed in this case by the attorney, using event Exhibits in the Trial Documents category in ECF.

Date: November 8, 2016.

David J. Bradley, Clerk

United States District Court
Southern District of Texas
Houston Division

ISAAC ARON, individually and on behalf of all others similarly situated, Plaintiff, v. CRESTWOOD MIDSTREAM PARTNERS LP, *et al.*, Defendants.	Case 4:15-cv-01367

Objector David G. Duggan's Notice of Appeal

Objector David G. Duggan appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered by the Court on October 14, 2016 (Dkt. 70), and the orders that merged into it, including the October 14, 2016, order certifying the settlement class, giving final approval to the class-action settlement, and awarding attorneys' fees and expenses (Dkt. 69).

Respectfully submitted,

THE OLSON FIRM, PLLC

/s/ Leif A. Olson

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Certificate of Service

On November 7, 2016, a copy of this notice of appeal was served on all counsel of record by electronic filing.

/s/ Leif A. Olson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ISAAC ARON, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:15-CV-1367
	§	
CRESTWOOD MIDSTREAM PARTNERS LP, *et al*,	§	
	§	
	§	
Defendants.	§	

FINAL JUDGMENT

In accordance with the Order of this Court entered on October 14, 2016, Judgment is entered as follows:

1. This Judgment incorporates by reference the definitions in the Stipulation. All capitalized terms other than proper nouns that are not defined herein shall have the meanings set forth in the Stipulation.

2. Notice has been given to the Settlement Class, pursuant to and in the manner directed by the Order and Final Judgment; proof of the mailing of the Notice, and a full opportunity to be heard has been offered to all Parties, the Settlement Class, and Persons in interest. The form and manner of the Notice of Pendency of Class Action, Proposed Settlement of Class Action, and Settlement Hearing (the "***Notice***") is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and applicable law, including without limitation Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C., § 78u-4, as amended by the Private Securities Litigation Reform Act of 1995, the Constitution of

the United States, and any other applicable law. It is further determined that all members of the Settlement Class are bound by the Judgment herein. Defendants further caused to be served on the United States Attorney General and all State Attorneys General the notice of the proposed Settlement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711 *et seq.* (the "CAFA"), and the form and manner of that notice is hereby determined to be in full compliance with CAFA.

3. The parties to the Stipulation are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Clerk of the Court is directed to enter and docket this Judgment.

4. The Lawsuit and the Released Claims (as defined below) are hereby dismissed on the merits and with prejudice, and without costs.

5. The "***Effective Date***" shall mean the date by which all of the following have occurred: (i) the Settlement has been approved in all material respects by the Court; (ii) this Judgment has been entered by the Court; and (iii) the time to appeal the Judgment has expired without the filing of any appeals, or, in the event of any appeal, an order has been entered dismissing the appeal or affirming the Judgment, and any time period for further appeal, including a petition for writ of certiorari, has expired. The Effective Date shall occur even if an appeal is taken from or review is sought of the Judgment, if such appeal(s) or petition(s) for review concerns solely any award to Plaintiff's counsel of attorneys' fees and expenses or the allocation of said attorneys' fees and expenses among counsel.

6. As of the Effective Date, Plaintiff and each of the Settlement Class members shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever released, remised, relinquished, and discharged all Defendants (including all current

directors and officers of Crestwood Midstream, whether named as defendants or not) and any of their present or former parents, affiliates, subsidiaries, and their respective directors, officers, general partners, limited partners, partnerships, managing directors, employees, agents, attorneys, advisors, insurers, accountants, auditors, trustees, financial advisors, lenders, investment bankers, associates, representatives, heirs, executors, personal representatives, estates, administrators, successors, and assigns (all, collectively, the "***Released Persons***") from any and all claims of every nature and description whatsoever against the Released Persons that have been or could have been asserted of any nature, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims that Plaintiff or any or all other members of the Settlement Class, in their capacity as Crestwood Midstream unitholders, ever had, now have, or may have, whether direct, derivative, individual, class, representative, legal, equitable, or of any other type, or in any other capacity, against any of the Released Persons, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule (including, but not limited to, any claims under federal securities laws or state disclosure law or any claims that could be asserted derivatively on behalf of Crestwood Midstream), which, now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, relate to any of the following: (i) the Simplification Transaction, including but not limited to the terms and conditions thereof; (ii) any and all occurrences or matters mentioned or referred to in the Preliminary Proxy, the Final Proxy, or the Supplemental Disclosures concerning the Simplification Transaction; (iii) the process conducted, and decisions made and actions taken or not taken in connection

therewith and in connection with the Simplification Transaction; (iv) negotiations in connection with the Simplification Transaction and with any actual or potential acquirer of Crestwood Midstream; (v) the consideration to be received by Settlement Class members or by any other Crestwood Midstream unitholder in connection with the Simplification Transaction; (vi) the Preliminary Proxy or Final Proxy, any other disclosures, public filings, periodic reports, press releases, proxy statements, or other statements issued, made available or filed relating, directly or indirectly, to the Simplification Transaction; (vii) the fiduciary obligations of the Released Persons in connection with the Simplification Transaction or any of the matters mentioned or referred to in the Preliminary Proxy, Final Proxy, or Supplemental Disclosures; (viii) claims for fees, expenses, or costs incurred in prosecuting or settling the Lawsuit, or in connection with any claim for benefits conferred on the Settlement Class, except as set forth in Section IV of the Stipulation; (ix) any of the matters referred to or alleged, or which could have been alleged relating to the Simplification Transaction, in any complaint or amendment(s) thereto filed in the Lawsuit (all of the foregoing, including both the foregoing subparts and the text preceding those subparts, being collectively referred to as the "***Released Claims***"); provided, however, that the Released Claims shall not include (i) the right of any Settlement Class member or any of the Defendants to enforce the terms of the Settlement, (ii) the claims asserted by plaintiff Kenneth C. Halter Trust, in the Books and Records Lawsuit, and (iii) any claims that have been or may be asserted by the Intervenors, on behalf of themselves. For the avoidance of doubt, Released Persons includes without limitation TPH and Citigroup Global Markets Inc.

7. As of the Effective Date, Plaintiff and each of the Settlement Class members shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever released, remised, relinquished, and discharged the Released Claims, including any and all claims that Plaintiff or any member of the Settlement Class do not know or suspect exist in their or its favor at the time of the release of the Released Claims as against the Released Persons, including without limitation those which, if known, might have affected the decision to enter into the Settlement (the "***Unknown Claims***"). Plaintiff acknowledges, and the members of the Settlement Class by operation of law shall be deemed to have acknowledged, that he may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Plaintiff, and by operation of law the members of the Settlement Class, to completely, fully, finally, and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. With respect to any and all of the Released Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiff shall expressly and each member of the Settlement Class shall be deemed to have, and by operation of the Judgment by the Court shall have, expressly waived, relinquished, and released any and all provisions, rights, and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,

WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiff acknowledges, and the members of the Settlement Class by operation of law shall be deemed to have acknowledged, that Unknown Claims are expressly included in the definition of Released Claims and that such inclusion was separately bargained for and was a material element of the Settlement and was relied upon by each and all Defendants in entering into the Stipulation.

8. Plaintiff and all Settlement Class members, and their respective heirs, executors, administrators, estates, predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns of any of them, and anyone claiming through or on behalf of any of them, are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any of the Released Claims against any of the Released Persons.

9. As of the Effective Date, Defendants and the Released Persons shall be deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiff, members of the Settlement Class, and Lead Counsel from all claims arising out of the institution, prosecution, settlement, or resolution of the Lawsuit; provided, however, that Defendants and the Released Persons shall retain the right to enforce this Judgment, the terms of the Stipulation, or the Settlement.

10. None of the Settlement, the Memorandum of Understanding executed by Plaintiff and Defendants on September 22, 2015, (the "***MOU***"), or the Stipulation shall be deemed a presumption, concession, or admission by any of the parties as to the merits, or lack thereof, of any allegations, claims, or defenses that have been or might be alleged or asserted in the Lawsuit or any other action or proceeding that has been, will be, or could be

brought, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Lawsuit or in any other action or proceeding, whether civil, criminal, or administrative, for any purpose other than as provided expressly herein; provided, however, that the Stipulation and/or Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue that the Stipulation and/or Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or Judgment.

11. Lead Counsel are hereby awarded attorneys' fees and expenses in the amount of $575,000 in connection with the Lawsuit, which amount the Court finds to be fair, reasonable, and adequate. Such attorneys' fees and expenses shall be paid by Crestwood Midstream (or its successor(s) and/or insurer(s)) pursuant to the relevant provisions of the Stipulation. No counsel representing the Plaintiff or member of the Settlement Class in the Lawsuits shall make any further or additional application for fees and/or expenses to the Court or any other court.

12. If the Effective Date does not occur, this Judgment shall be rendered null and void and shall be vacated, and, in such event, all orders entered and releases delivered in connection herewith shall be null and void, and the parties shall be returned, without prejudice in any way, to their respective litigation positions immediately prior to the execution of the MOU on September 22, 2015.

13. The binding effect of this Judgment and the obligations of Plaintiff and Defendants under the Settlement shall not be conditioned upon or subject to the resolution

of any appeal from this Judgment that relates solely to the issue of Lead Counsel's (or any other counsel's) application for an award of attorneys' fees and expenses.

14. Without affecting the finality of this Judgment in any way, the Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement.

ORDERED this 14th day of October, 2016.

VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ISAAC ARON,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
CRESTWOOD MIDSTREAM PARTNERS LP, CRESTWOOD MIDSTREAM GP, LLC, ROBERT G. PHILLIPS, ALVIN BLEDSOE, MICHAEL G. FRANCE, PHILIP D. GETTIG, WARREN H. GFELLER, DAVID LUMPKINS, JOHN J. SHERMAN, DAVID WOOD, CRESTWOOD EQUITY PARTNERS LP, CRESTWOOD EQUITY GP LLC, CEPQ ST SUB LLC, MGP GP, LLC, CRESTWOOD MIDSTREAM HOLDINGS LP, and CRESTWOOD GAS SERVICES GP, LLC,	§	**CASE NO. 4:15-CV-1367**
	§	
Defendants.	§	

ORDER

Pending before the Court is Plaintiff's Motion for Final Approval of Class Action Settlement, Certification of the Settlement Class, and an Award of Attorneys' Fees and Expenses ("Motion for Final Approval"). (**Instrument No. 59**).

I.

A.

On May 6, 2015, Crestwood Midstream Partners LP ("Midstream") announced that it had entered into a definitive merger agreement with Crestwood Equity Partners LP ("Equity"). (Instrument No. 3 at 2). Under this agreement, Midstream would become a wholly-owned subsidiary of Equity, and holders of Midstream common units would receive 2.75 common units

of Equity in exchange for each unit of Midstream. *Id.* On June 16, 2015, Equity filed a preliminary proxy statement/prospectus on Form S-4 with the U.S. Securities and Exchange Commission ("SEC"). (Instrument No. 59 at 11). Lead Plaintiff Isaac Aron ("Plaintiff") claims that this proxy statement omitted material information in violation of Section 14(a) of the Securities Exchange Act and that Midstream directors breached their fiduciary duty in approving the merger. (Instrument No. 3 at 3).

On May 20, 2015, Plaintiff filed suit on behalf of himself and other unitholders of Midstream common stock against 16 named defendants (collectively, "Defendants"). (Instrument No. 3). At all relevant times, Plaintiff has been a Midstream shareholder. (Instrument No. 50). Plaintiff brings claims against Midstream and Crestwood Midstream GP, LLC ("Midstream GP")—the general partner of Midstream—as well as eight members of the boards of directors of Midstream, Equity, and Midstream GP. (Instrument No. 3 at 4-6).[1] The remaining defendants are Crestwood Equity Partners LP, Crestwood Equity GP LLC, CEQP ST SUB LLC, MGP GP, LLC, Crestwood Midstream Holdings LP, and Crestwood Gas Services GP, LLC. *Id.*

According to Plaintiff, there is substantial overlap between the Midstream and Equity boards of directors. (Instrument No. 3 at 11). Midstream GP is the general partner of both entities and six of Midstream's eight board members also serve on Equity's board. (Instrument No. 3 at 12). The two remaining board members serve on Midstream's conflicts committee, which is tasked with screening potential conflicts of interest among the directors. *Id.* The Midstream and Equity boards hold their quarterly meetings jointly because the boards are nearly identical. *Id.*

Starting in August 2014, the Midstream board began exploring merger options, which resulted in the proposed sale to Equity. (Instrument No. 3 at 12). According to Plaintiff,

[1] These directors/defendants include Robert G. Phillips, Alvin Bledsoe, Michael G. France, Philip D. Gettig, Warren H. Gfeller, David Lumpkins, John J. Sherman, and David Wood.

Midstream board members authorized Midstream's sale to Equity below market value. (Instrument No. 3 at 15). Plaintiff alleges that Defendants sought to maximize the merger's value to Equity instead of obtaining the full market value for Midstream shareholders. *Id.* The Midstream board allegedly failed to advertise the sale to any other entity and only evaluated merger options between Midstream and Equity. *Id.* The merger agreement also contained a "no solicitation" clause that barred other entities from bidding against Equity. (Instrument No. 3 at 18). Based on this agreement, Plaintiff alleges that Midstream directors breached their fiduciary duties of loyalty and due care. (Instrument No. 3 at 3). Plaintiff also claims that the proxy statement filed by Midstream on June 16, 2015 omitted material information that was required for shareholders to properly evaluate the proposed merger. *Id.*

B.

After the merger agreement was announced on May 6, 2015, the shareholder vote was set for September 30, 2015. (Instrument No. 59 at 12). Plaintiff filed suit on May 20, 2015. (Instrument No. 1). Plaintiff also filed a motion for a preliminary injunction on September 3, 2015 (Instrument No. 12), and a motion for a temporary restraining order, expedited preliminary injunction hearing, and preliminary injunction on September 17, 2015. (Instrument No. 19). This Court scheduled a hearing to consider Plaintiff's motions for September 23, 2015.

The parties reached a settlement agreement on September 22, 2015, the day before the scheduled hearing. (Instrument No. 29). Defendants agreed to disclose financial projections that were omitted from the proxy statement and to allow Plaintiff to conduct discovery to confirm the fairness of the merger. (Instrument No. 54-1). Financial projections containing the "upside" scenario for the company's highest possible value were disseminated to Midstream shareholders and filed with the SEC on September 23, 2015. *Id.* Equipped with this new information, a

majority of Midstream shareholders voted on September 30, 2015 to approve the merger as proposed by the Midstream board. (Instrument No. 59 at 15).

After the merger vote, Plaintiff's counsel conducted discovery to confirm the reasonableness of Equity's acquisition of Midstream. (Instrument No. 59 at 15). Plaintiff's counsel deposed two members of the Midstream Board Conflicts Committee as well as Equity's Chief Financial Officer. *Id.* Based on counsel's experience with shareholder class actions, Plaintiff determined that the merger and settlement agreement were fair, adequate, and reasonable for Midstream shareholders. *Id.*

On June 21, 2016, this Court issued a preliminary order ("Preliminary Order") granting preliminary approval of the settlement agreement and certification of a settlement class of Midstream unitholders between May 5, 2015 and September 30, 2015. (Instrument No. 56). The Preliminary Order also directed Defendants to give notice to members of the settlement class. *Id.* Pursuant to the Preliminary Order, Defendants obtained A.B. Data to serve as Notice Administrator. (Instrument No. 64 at 2). A.B. Data identified 50,145 unit holders of Midstream stock between May 5, 2015 and September 30, 2015. (Instrument No. 64 at 5). A.B. Data then mailed a total of 50,145 notices to Midstream unit holders. *Id.* The deadline to object to settlement was September 23, 2016. (Instrument No. 56 at 7). There were no objections filed prior to September 23, 2016 and only one objection that was subsequently filed on October 3, 2016. (Instrument No. 65). Plaintiff supplemented the Motion for Final Approval on September 26, 2016 (Instrument No. 63) and on October 7, 2016 (Instrument No. 66). A Final Approval Hearing took place on October 14, 2016 at 9:30 a.m.

II.

A.

Federal Rule of Civil Procedure 23(e) requires court approval for settlements of class actions. *Parker v. Anderson*, 667 F.2d 1204, 1208 (5th Cir. 1982). The Fifth Circuit has consistently held that settlements "are highly favored in the law and will be upheld wherever possible because they are a means of amicably resolving doubts and preventing lawsuits." *D.H. Overmyer Co. v. Loflin*, 440 F.2d 1213, 1215 (5th Cir. 1971). The Fifth Circuit has also stated that in class action suits "there is an overriding public interest in favor of settlement," because such suits "have a well-deserved reputation as being most complex." *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977).

In determining whether to approve a proposed settlement, the Fifth Circuit has identified a "cardinal rule," which is "that the District Court must find that the settlement is fair, adequate, and reasonable and is not the product of collusion between the parties." *Id.*, at 1330. The District Court enjoys broad discretion in determining whether or not the settlement is fair, reasonable, and adequate. *See Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983). In evaluating whether a settlement is fair, adequate, and reasonable, the Court looks to:

(1) Whether the settlement was a product of fraud or collusion;

(2) The complexity, expense, and likely duration of the litigation;

(3) The stage of the proceedings and the amount of discovery completed;

(4) The factual and legal obstacles [to] prevailing on the merits;

(5) The possible range of recovery and the certainty of damages; and

(6) The respective opinions of the participants, including class counsel, class representative, and the absent class members.

Parker, 667 F.2d at 1209. "The district court's approval of a proposed settlement may not be overturned on appeal absent an abuse of discretion." *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983).

B.

1.

The fact that a class-action settlement is reached after arms-length negotiations by experienced counsel generally gives rise to a presumption that the settlement is fair, reasonable, and adequate. *See In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1064 (S.D. Tex. 2012) (Rosenthal, J.).

In this case, the settlement is the product of *bona fide* negotiations, and there is no evidence of collusion between counsel for Plaintiff and Defendants. Prior to the settlement on September 22, 2015, Plaintiff filed a complaint, an amended complaint, a motion for a preliminary injunction, and a motion for a temporary restraining order (TRO). The parties settled on the day before the Court's TRO hearing and eight days before the shareholder vote scheduled for September 30, 2015. Given this time pressure, both parties had an incentive to reach an agreement.

Once the settlement was reached, Plaintiff's counsel conducted limited discovery to examine the reasonableness of the proposed merger. Plaintiff deposed two members of the Midstream board and one member of the Equity board, and Plaintiff also examined non-public documents. This discovery was conducted after the parties had already reached an agreement on settlement and attorneys' fees. (Instrument No. 54-1). However, the parties' agreement was conditioned on Plaintiff's counsel reviewing the reasonableness of the settlement. (Instrument No. 54-1 at 10). If Plaintiff's counsel could have obtained a greater recovery for the class, then

Plaintiff could have abrogated the agreement. *Id.* Accordingly, there is no evidence of fraud or collusion and the arms-length negotiations between Plaintiff and Defendants weigh in favor of approving the settlement.

2.

The time and cost of further litigation also favors approving the settlement. *See In re: Enron Corp. Securities, Derivative & ERISA Litigation*, 228 F.R.D. 541, 565 (S.D. Tex. 2005) (Harmon, J.) (approving class-action settlement because "the settlement avoids the risks and additional great expense inherent in these challenges in a vigorously litigated action"). This case involves mixed federal and state law claims concerning financial disclosures and fiduciary duties during a merger. By settling on the eve of the Court's hearing on the temporary restraining order (TRO), the parties saved substantial litigation costs, including preliminary injunction hearings, class certification hearings, expert witnesses, a complex trial, and appeals.

Plaintiff asserts that the settlement agreement provides the class with the same relief that was initially sought: the disclosure of material information about the merger agreement. (Instrument No. 59 at 18). In Section 14(a) cases concerning non-disclosure in proxy statements, plaintiffs are made whole where the company fully and adequately discloses material facts before the shareholder vote. *See Nowling v. Aero Servs. Int'l, Inc.*, 734 F. Supp. 733, 741 (E.D. La. 1990) (finding that injunctive relief is appropriate for Section 14(a) claims involving omissions from a proxy statement).

In this case, Plaintiff also alleged that Midstream board members breached their fiduciary duties by supporting a merger that understated the value of Midstream. (Instrument No. 3 at 15). Despite the disclosure of additional financial forecasts, a majority of Midstream shareholders still voted to approve the merger as proposed by Midstream directors. After this vote, Plaintiff

conducted limited discovery and determined that the merger was fair and reasonable. Even though Plaintiff alleged in the Complaint that Midstream was undervalued, Plaintiff would need to prove this at trial in light of the shareholder vote. If this case were to proceed, the parties would likely produce expert reports with complex financial modeling. By reaching a settlement early on in the litigation process, the parties avoided these expenses, and this factor weighs in favor of approving the settlement.

3.

The Court must also ask "whether the parties have obtained sufficient information to evaluate the merits of the competing positions." *In re Educ. Testing Serv. Praxis Principles of Learning and Teaching, Grades 7–12 Litigation,* 447 F.Supp.2d 612, 620 (E.D. La. 2006). This question is not "whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed." *Id.* at 620–21.

Here, the parties reached a settlement the day before the TRO hearing and a week before the shareholder vote on the merger. The parties admit that the settlement was reached before they could fully explore the merits of the case, which is why the agreement permitted Plaintiff's counsel to conduct depositions and access non-public documents. (Instrument No. 59 at 13). In conducting this discovery, Plaintiff's counsel relied on an independent financial expert, who has extensive experience in valuing companies like Midstream. *Id.* After completing discovery, Plaintiff has chosen to affirm the settlement agreement because Plaintiff has determined that the merger and settlement agreements are fair, reasonable, and in the best interests of Midstream shareholders. Accordingly, this factor supports granting final approval of the settlement.

4.

The Court must also compare the settlement terms with the likely rewards the class would receive at trial. *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983). When making this comparison, "the district court's 'evaluation is not and cannot involve a trial on the merits,' because the policy of encouraging settlements is effected by 'the very uncertainty of the outcome of the litigation and the avoidance of wasteful litigation and expense.'" *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195 (5th Cir. 1981).

Here, the settlement resulted in financial disclosures to Midstream shareholders prior to a vote on the merger with Equity. Although the settlement did not obtain any financial award for the shareholders, they were placed in the same position had the disclosures been made in the first place. In *Mills v. Electric Auto-Lite Company*, the Supreme Court found that "fair and informed corporate suffrage" is itself a form of vindication; and that by attaining full disclosure prior to a shareholder vote, a plaintiff "render[s] a substantial service to the corporation and its shareholders." 396 U.S. 375, 396 (1970). Because this relief was obtained prior to the shareholder vote, Plaintiff's claims under Section 14(a) were rendered moot since the shareholders obtained the alleged material information prior to voting. *See Mills v. Electric Auto–Lite Co.*, 396 U.S. 375, 385 (1970) (imposing Section 14(a) liability when a shareholder suffers an injury by voting without knowing material facts). It is therefore unlikely that Plaintiff would be entitled to damages for Section 14(a) claims if this case proceeded to trial.

Plaintiff also brought breach of fiduciary claims under Delaware state law. In the Complaint, Plaintiff alleged significant overlap between the Midstream and Equity boards. (Instrument No. 3 at 15). Based on conflicts of interest, Plaintiff alleged that Midstream board members agreed to sell the partnership to Equity at less than market value. *Id.* By settling this

claim without any monetary recovery for the class, Plaintiff has essentially abandoned this claim. In the Motion for Final Approval, Plaintiff's counsel wrote that "after conducting discovery, Plaintiff's counsel determined that the probability of succeeding on any remaining claims related to the [merger] is exceedingly low." (Instrument No. 59 at 23).

Plaintiff's counsel based this assessment on Delaware state law, where it is difficult to prove a breach of fiduciary duty when a board of directors relies on a conflicts committee and independent counsel to assess a prospective merger. *See Dieckman v. Regency GP LP*, 2016 WL 1223348, at *1 (Del. Ch. Mar. 29, 2016) (holding that "a potentially conflicted transaction . . . shall not constitute a breach" if approved by a conflicts committee or any other "safe harbor" provision in the partnership agreement). Recent cases from the Delaware Court of Chancery have insulated board members from liability when they go through the formal process of having a conflicts committee with independent directors. *See id.* Even though only two of the eight Midstream directors are independent of Equity, this is sufficient to form a conflicts committee under Delaware law. *See In re Volcano Corp. Stockholder Litig.,* 143 A.3d 727, 748 (Del. Ch. 2016). In other words, it appears that Midstream directors complied with the legal formalities of approving a merger, even though their actions initially seemed suspect. As a result, Plaintiff determined that it "would be exceedingly difficult to establish an underlying claim for breach of fiduciary duty or breach of contract," and also that "any potential aiding and abetting claims against . . . other entities would also be unlikely to succeed." (Instrument No. 59 at 18). The legal obstacles to recovery therefore weigh in favor of approving the settlement.

5.

To assess the reasonableness of a proposed settlement seeking monetary relief, a district court must "contrast settlement rewards with likely rewards if the case goes to trial." *In re*

Chicken Antitrust Litig. Am. Poultry, 669 F.2d 228, 239 (5th Cir 1982). "[T]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved. In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Parker v. Anderson*, 667 F.2d 1204, 1210 n.6 (5th Cir.), *cert. denied*, 459 U.S. 828 (1982).

In this case, Plaintiff failed to obtain monetary damages for the class but nevertheless compelled financial disclosures prior to a shareholder vote. Prior to the settlement, Plaintiff sought a preliminary injunction and temporary restraining order to stop the shareholder vote until material disclosures took place. By quickly consenting to these disclosures, Defendants mooted Plaintiff's claims. After conducting limited discovery, Plaintiff determined that the merger and settlement agreement were fair and reasonable. Even though a zero-dollar settlement is not ideal for the class members, Plaintiff has determined that it is the best possible recovery under existing law and that litigation resources would be unnecessarily expended if the case were to proceed to trial. This factor therefore supports approving the settlement.

6.

The opinion of counsel and other participants also supports approving the settlement. "[W]here the parties have conducted an extensive investigation, engaged in significant fact finding and Lead Counsel is experienced in class-action litigation, courts typically 'defer to the judgment of experienced trial counsel who has evaluated the strength of his case.'" *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *21 (N.D. Tex. Nov. 8, 2005). In this case, attorneys for Plaintiff and Defendants are experienced in class-action litigation and have a substantial amount of information available to evaluate, negotiate, and make well-informed judgments about the

adequacy of the settlement. Counsel for all parties agree that the settlement is fair, reasonable, and adequate, which therefore supports granting final approval.

Out of 50,145 notices sent to putative class members, there was only one objection filed after the objection deadline. (Instrument No. 65). The Court-ordered deadline to object to the settlement was three weeks prior to the hearing date on September 23, 2016. (Instrument No. 56 at 7). On October 3, 2016, putative class member David G. Duggan filed an objection *pro se*. (Instrument No. 65). Duggan's objection takes issue with what he calls the "'racket' of plaintiffs' lawyers' [sic] collecting 6-figure fees for 'disclosure only' merger cases (in which only new 'disclosures' are made, and no 'sweetening of the pot' for investors in the form of money or other consideration.)" (Instrument No. 65 at 2). Duggan cited a recent opinion from the Seventh Circuit in which Judge Richard Posner criticized a disclosure-only, zero-dollar class action settlement as a "racket" for plaintiffs' lawyers. *In re Walgreen Co. Stockholder Litig.*, 2016 WL 4207962, at *5 (7th Cir. Aug. 10, 2016). Duggan did not cite any Fifth Circuit precedent or point out any other deficiency with the settlement. The Court acknowledges Duggan's frustrations with disclosure-only recoveries but is mindful that this frustration must be balanced against the need for companies to make full and adequate disclosures. Accordingly, although the Court notes Duggan's objection, the Court must also consider the opinion of counsel and other class members who did not object to the settlement.

In light of the foregoing analysis, final approval of the class action settlement is **GRANTED**.

III.

Plaintiff has also moved for certification of a non-opt-out class of Midstream unitholders during the period from May 5, 2015 to September 30, 2015. (Instrument No. 59). A district court

must conduct a rigorous analysis of the Rule 23 prerequisites before certifying a class. *Castano v. American Tobacco Co.*, 84 F.3d 734, 740 (5th Cir. 1996). The party seeking the class certification bears the burden of proof. *Id.*, at 740. To be certified, the class must meet all the requirements of Rule 23(a), as well as the requirements of one of the subsections of Rule 23(b). 5 *Moore's Federal Practice* § 23.61[1]. The district court has broad discretion in deciding to certify, and will be reversed on appeal only for abuse of discretion. *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999); *Castano*, 84 F.3d at 740; 5 *Moore's Federal Practice* § 23.61[1]. In determining whether a class should be certified, a court may not inquire into the merits of the suit, but may "look past the pleadings" to assess whether the Rule 23 requirements have been met. *Castano,* 84 F.3d at 744.

A.

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Impracticable does not mean impossible, rather that joinder would be "extremely difficult or inconvenient." 5 *Moore's Federal Practice* § 23.22[1], [2]; *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1038 (5th Cir. 1981). Relevant factors include: geographic dispersion of the class members; the ease of identification of the class members; the nature of the action; the size of each individual plaintiff's claim; and the effect of injunctive relief on future class members. *Zeidman,* 651 F.2d at 1038. In order to prove numerosity, the moving party must proffer some evidence of the number of class members, or a reasonable estimate. *Id.*; 5 *Moore's Federal Practice* § 23.22[3][b].

As of May 4, 2015, Midstream had over 188 million common units outstanding, and Defendants sent notice to 50,145 putative class members who are geographically dispersed. (Instrument No. 59 at 26). This vast class size meets the numerosity requirements of Rule

23(a)(1). *See Mullen v. Treasure Chest Casino LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (finding a class of 100 to 150 members satisfies numerosity and any more than 40 members should raise a presumption that joinder is impracticable).

B.

Rule 23(a)(2) states that there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The commonality requirement tests the sufficiency of the class itself. 5 *Moore's Federal Practice* § 23.23 [3]. The test for commonality is not stringent; the class need only share one common question of law or fact to satisfy the requirement. *See Forbush v. J.C. Penny Co.*, 994 F.2d 1101, 1106 (5th Cir. 1993) ("The interests and claims of the various plaintiffs need not be identical. Rather, the commonality test is met when there is 'at least one issue whose resolution will affect all or a significant number of the putative class members.'").

In this case, every member of the putative class owned Midstream units between May 5, 2015 and September 30, 2015, and therefore had the ability to vote on the proposed merger. There is a common question of law as to whether Defendants violated Section 14(a) by omitting material facts from the original proxy statement. Because the claims among class members arise from the same nucleus of operative facts and raise identical legal questions, the commonality requirement of Rule 23(a)(2) is satisfied.

C.

The Court must also determine whether "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The typicality requirement focuses on the relationship between the interests of the representative parties and the interests of the class as a whole. 5 *Moore's Federal Practice* § 23.24[1] ("if the legal theories of the class representative conflict with those of the absent class members, that lack of typicality

precludes certification of the class"). Typicality is satisfied if the representative's claims arise from the same events, practice, or conduct as the class plaintiffs. 5 *Moore's Federal Practice* § 23.24[2]. In this case, Plaintiff was a Midstream unitholder between May 5, 2015 and September 30, 2015. Plaintiff's claims arise under the same legal theories and from the same nucleus of operative facts. Plaintiff's claims are therefore typical for purposes of Rule 23(a)(3).

D.

The Court must also determine whether "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy test functions to reveal conflicts between the representatives and the class members they claim to represent. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). Adequacy of representation is tied to both commonality and typicality. *Amchem*, 521 U.S. at 626 n.20. The adequacy requirement of Rule 23(a)(4) applies both to the class representative and the representative's counsel. *In re Asbestos Litigation*, 90 F.3d 963, 977 (5th Cir. 1996). First, the class representative must not have interests adverse to the class. Courts also consider whether the named representative will "vigorously prosecute" the interests of the class. *In re American Med. Sys., Inc.*, 75 F.3d 1069, 1083 (6th Cir. 1996). Second, class counsel must be qualified, experienced, and generally able to conduct the litigation. 5 *Moore's Federal Practice* § 23.25[5][a]. In assessing the adequacy of class counsel, the court may consider the counsel's prior litigation experience and expertise. *See Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 472 (5th Cir. 1986).

In this case, Plaintiff is a shareholder of Midstream units and was the largest shareholder to move for lead plaintiff. (Instrument No. 31). Plaintiff has a financial stake in the outcome of the litigation and was motivated to seek the maximum possible benefit for himself and other

class members. There are no alleged conflicts of interest between Plaintiff or Plaintiff's counsel, who has extensive experience litigating class-action securities cases. In this case, Plaintiff's counsel fairly and adequately represented Plaintiff and the members of the class. Accordingly, the adequacy requirement of Rule 23(a)(4) is satisfied.

E.

A class action may be maintained if it meets the four prerequisites of Rule 23(a) and falls within one of the three categories of Rule 23(b). In this case, Plaintiff alleges that the action satisfies the requirements for Rule 23(b)(1) and Rule 23(b)(2). Rule 23(b)(1) authorizes class certification if:

> prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

Fed. R. Civ. P. 23(b)(1). Rule 23(b)(2) authorizes class certification if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

Here, there is a substantial risk of varying or inconsistent results if the settlement class is not certified. Because there are some 50,145 shareholders who are geographically dispersed, it would be impractical to individually adjudicate every claim. Individual adjudication would likely lead to contradictory results for identical claims. Thus, the requirements of Rule 23(b)(1) are met in this case. *See Langbecker v. Elec. Data Sys. Corp.,* 476 F.3d 299, 318 (5th Cir. 2007) (finding

that Rule 23(b)(1) class certification is appropriate where "incompatible standards" could result from separate actions).

Rule 23(b)(2) class certification is appropriate where injunctive or declaratory relief is warranted for the class as a whole. *Rodriguez v. Countrywide Home Loans, Inc.*, 695 F.3d 360, 365 (5th Cir. 2012). In this case, Plaintiff sought injunctive relief for material omissions in a proxy statement on behalf of similarly situated unitholders. By filing motions for a preliminary injunction and a temporary restraining order, Plaintiff sought to force public disclosure of material facts. (Instruments No. 12; 19). The resulting disclosure benefited the entire class and was the exact form of relief sought by the Plaintiff. As a result, the class can be appropriately certified under Rule 23(b)(2).

In light of the foregoing analysis, final certification of a Rule 23 class of Midstream unitholders between May 5, 2015 and September 30, 2015 is **GRANTED**.

IV.

A.

Rule 23(h) authorizes the District Court to "award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement" in class actions. Fed. R. Civ. P. 23(h). Unless the Court provides otherwise, the request for attorney's fees must be made by motion no later than 14 days after entry of judgment. Fed. R. Civ. P. 54(d)(2)(B)(i). The Fifth Circuit has "encouraged litigants to resolve fee issues by agreement," *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322 (W.D. Tex. 2007), but the Court is not bound by parties' agreement, *Piambino v. Bailey*, 610 F.2d 1306, 1328 (5th Cir. 1980). "To fully discharge its duty . . . a district court must assess the reasonableness of the attorneys' fees." *Strong v. BellSouth Telecommunications, Inc.*, 137 F.3d 844, 849 (5th Cir. 1998).

In a class action, there is "greater need for the judge to act as a fiduciary for the beneficiaries (who are paying the fee) . . . because few if any of the action's beneficiaries actually are before the court at the time the fees are set." *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 744–45 (S.D. Tex. 2008) (Harmon, J.). Judicial scrutiny is needed when the fee "will be paid out of the fund established by the litigation, in which the defendant no longer has any interest, and the plaintiff's attorney's financial interests conflict with those of the fund beneficiaries." *Id.*

Courts typically use one of two methods for calculating attorneys' fees: "(1) the percentage method, in which the court awards fees as a reasonable percentage of the common fund; or (2) the lodestar method, in which the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier." *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012).

Even where the common fund is zero, attorneys' fees may still be awarded based on the "common benefit doctrine." Under this doctrine, "the vindication of the class' rights . . . is the common benefit conferred on the class that justifies an award of attorneys' fees." *Pawlak v. Greenawalt*, 713 F.2d 972, 983 (3d Cir. 1983). In *Mills v. Electric Auto-Lite Company*, the Supreme Court explained that "[i]n many suits under § 14(a), particularly where the violation does not relate to the terms of the transaction for which proxies are solicited, it may be impossible to assign monetary value to the benefit." 396 U.S. 375, 396 (1970). Nevertheless, the Court held that attorneys' fees could still be awarded because of "the stress placed by Congress on the importance of fair and informed corporate suffrage." *Id.*

When calculating attorneys' fees for non-monetary recoveries, courts analyze the lodestar and whether the *Johnson* framework supports the reasonableness of the award. In *Johnson v. Georgia Highway Express*, the Fifth Circuit outlined twelve factors that courts should use to assess the reasonableness of attorneys' fees, including:

(1) The time and labor required;
(2) The novelty and difficulty of the questions;
(3) The skill requisite to perform the legal service properly;
(4) The preclusion of other employment by the attorney due to acceptance of the case;
(5) The customary fee;
(6) Whether the fee is fixed or contingent;
(7) Time limitations imposed by the client or the circumstances;
(8) The amount involved and the results obtained;
(9) The experience, reputation, and ability of the attorneys;
(10) The 'undesirability' of the case;
(11) The nature and length of the professional relationship with the client;
(12) Awards in similar cases.

488 F.2d 714, 717-19 (5th Cir. 1974). "After calculating the lodestar, the court may decrease or enhance the amount based on the relative weights of the twelve factors set forth in *Johnson*." *Saizan v. Delta Concrete Prod. Co.*, 448 F.3d 795, 799 (5th Cir. 2006).

B.

Plaintiff has requested an overall award of $575,000 for attorneys' fees and expenses, which is unopposed by Defendants. (Instrument No. 59 at 24). Plaintiff's Counsel has expended a total of 863.40 hours of attorney and paralegal time in prosecuting this action, which results in a lodestar of $512,723.75. *Id.* The lodestar was calculated from the work of two law firms, which have submitted their resumes to the Court. (Instruments No. 60-2 and 60-3). Faruqi & Faruqi incurred expenses totaling $27,807.86 and Bilek Law Firm, LLP incurred expenses totaling $870.49. (Instruments No. 60-4 and 60-5). The attorneys and paralegals for Faruqi & Faruqi worked a total of 744.65 hours for a requested amount of $438,461.25. The attorney and paralegal at Bilek worked a total of 118.75 hours for a requested amount of $74,262.50.

To support the requested fee award, Plaintiff's counsel submitted an article from the *National Law Journal* entitled "Billing Rates at the Nation's Priciest Law Firms." (Instrument No. 60-6). This article lists the partner and associate rates at the country's top law firms, which bill between $715 and $1,055 for partners and $290 and $678 for associates. *Id.* Plaintiff's counsel has not submitted any evidence that these rates are comparable to what law firms charge in Houston. Plaintiff has also failed to address each of the *Johnson* factors in turn. Instead, Plaintiff asserts that this case differs from most common fund cases because the recovery is not monetary. Unlike the typical common fund settlement, where attorneys' fees are awarded from the class fund, these fees are paid directly by the Defendants. Because Defendants have agreed to pay the total amount of $575,000, Plaintiff has not addressed every *Johnson* factor.

A shortened analysis of the *Johnson* factors nonetheless supports the reasonableness of the attorneys' fees. Under the first factor, there was significant time and labor expended on the case. For the second factor, the case involved novel and difficult questions, including a hybrid action brought under Section 14(a) of the Securities Exchange Act and claims under Delaware state law. Under the third factor, this case required significant expertise to perform the legal services properly, including seeking an injunction and temporary restraining order prior to a shareholder vote. Under the fourth factor, Plaintiff's counsel was precluded from other employment while working on this case.

The fifth factor—the customary fee—calls into question the reasonableness of the fee award. Apart from the *National Law Journal* article on the nation's top 50 law firms, Plaintiff's counsel has not submitted any evidence of hour billing rates in the Houston area or for similar cases. *See Johnson v. Georgia Highway Exp., Inc.,* 488 F.2d 714, 718 (5th Cir. 1974) (basing the "customary fee" on "similar work in the community"). As previously discussed, Defendants

agreed to the attorneys' fee award, including hourly rates. Because the fees will not be deducted from a common fund, this factor alone does not undermine the overall reasonableness of the award.

The sixth factor—whether the fee is fixed or contingent—is not relevant here. The seventh factor—time limitations imposed by the circumstances—weighs in favor of the fee award because the attorneys acted quickly to secure relief before the shareholder vote on September 30, 2015. The attorneys billed most of their hours over the span of only four months between May 20, 2015 and September 30, 2015.

Under the eighth factor—the amount involved and the results obtained—Plaintiff's counsel secured financial disclosures that helped the shareholders make an informed vote about the merger. Although Plaintiff attempted to secure a monetary recovery for the class, Plaintiff was unable to do so in the settlement. Accordingly, this factor weighs in favor of approving the fee award.

Under the ninth factor—the experience, reputation, and ability of the attorneys—Attorney Thomas Bilek for Bilek Law Firm, LLP has practiced law in Texas for 30 years. (Instrument No. 60-3 at 4). He is a life fellow of the Texas Bar Foundation and has litigated many securities class actions. *Id.* Juan Monteverde is the founder and managing partner of a securities class action law firm and has also litigated numerous cases. (Instrument No. 60-2 at 4). This factor also supports the reasonableness of the fee award.

The tenth factor—the undesirability of the case—is not relevant here, nor is the eleventh—the nature and length of the relationship with the client. The twelfth factor—the awards in similar cases—is the only factor that Plaintiff's counsel addressed extensively in the Motion for Final Approval. (Instrument No. 59 at 27-28). Plaintiff cited seven cases involving

non-disclosure of proxy statements in which the fee award was greater than $540,000. Although these cases are unpublished, Plaintiff submitted them in an appendix to the Court. (Instrument No. 61). Taken together, these cases support the reasonableness of the fee award. A total award for Plaintiff's counsel of $575,000 including expenses is reasonable based on the lodestar and the *Johnson* factors.

In light of the foregoing analysis, Plaintiff's request for an award of attorneys' fees and expenses is **GRANTED**.

V.

IT IS HEREBY ORDERED that Plaintiff's Motion for Final Approval of Class Action Settlement, Certification of the Settlement Class, and an Award of Attorneys' Fees and Expenses is **GRANTED**. **(Instrument No. 59)**.

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this the 14th day of October, 2016.

VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE

APPEAL,APPEAL_NAT,LEAD

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:15-cv-01367
Internal Use Only

Aron v. Crestwood Midstream Partners LP et al
Assigned to: Judge Vanessa D Gilmore
Related Case: 4:15-cv-02101
Cause: 28:1332 Diversity-Breach of Fiduciary Duty

Date Filed: 05/20/2015
Jury Demand: Plaintiff
Nature of Suit: 850 Securities/Commodities
Jurisdiction: Federal Question

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TERMINATED: 09/18/2015

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/20/2015	1	COMPLAINT against All Defendants (Filing fee $ 400 receipt number 0541-14885130) filed by Lawrence G. Farber.(Bilek, Thomas) (Entered: 05/20/2015)
05/21/2015	2	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for

		9/18/2015 at 01:30 PM in Courtroom 9A before Judge Vanessa D Gilmore(Signed by Judge Vanessa D Gilmore) (Attachments: # 1 Judge's Procedure) Parties notified.(ckrus, 4) (Entered: 05/21/2015)
07/06/2015	3	AMENDED COMPLAINT with Jury Demand against All Defendants filed by Lawrence G. Farber.(Bilek, Thomas) (Entered: 07/06/2015)
07/16/2015	4	Memorandum and Order Regarding Discovery Motions, Motions for Summary Judgment and Analogous Motions to Dismiss (Signed by Judge Vanessa D Gilmore) Parties notified.(bthomas, 4) (Entered: 07/16/2015)
07/17/2015	5	CERTIFICATE OF INTERESTED PARTIES by Lawrence G. Farber, filed.(Bilek, Thomas) (Entered: 07/17/2015)
07/21/2015	6	STIPULATION re: Service and Filings by All parties, filed. (Attachments: # 1 Proposed Agreed Order)(Bilek, Thomas) (Entered: 07/21/2015)
07/31/2015	7	ORDER granting 6 Stipulation re: Service and Filings. (Signed by Judge Vanessa D Gilmore) Parties notified.(bthomas, 4) (Entered: 07/31/2015)
08/12/2015	8	NOTICE of Appearance by Michael Holmes on behalf of Alvin Bledsoe, Crestwood Midstream GP, LLC, Crestwood Midstream Partners LP, Michael G. France, Warren H. Gfeller, Robert G. Phillips, John J. Sherman, David Wood, filed. (Howe, Olivia) (Entered: 08/12/2015)
08/12/2015	9	NOTICE of Appearance by Elizabeth C. Brandon on behalf of Alvin Bledsoe, Crestwood Midstream GP, LLC, Crestwood Midstream Partners LP, Michael G. France, Warren H. Gfeller, Robert G. Phillips, John J. Sherman, David Wood, filed. (Howe, Olivia) (Entered: 08/12/2015)
08/12/2015	10	NOTICE of Appearance by Olivia D. Howe on behalf of Alvin Bledsoe, Crestwood Midstream GP, LLC, Crestwood Midstream Partners LP, Michael G. France, Warren H. Gfeller, Robert G. Phillips, John J. Sherman, David Wood, filed. (Howe, Olivia) (Entered: 08/12/2015)
08/12/2015	11	NOTICE *of Related Case, Motion to Consolidate, and Notice of Mandatory Statutory Deadlines Under the Private Securities*

		Litigation Reform Act, 15 U.S.C. § 78u-4, et seq. by Alvin Bledsoe, CEQP ST SUB LLC, Crestwood Equity GP LLC, Crestwood Equity Partners LP, Crestwood Gas Services GP, LLC, Crestwood Midstream GP, LLC, Crestwood Midstream Holdings LP, Crestwood Midstream Partners LP, Michael G. France, Philip D. Gettig, Warren H. Gfeller, David Lumpkins, MGP GP, LLC, Robert G. Phillips, John J. Sherman, David Wood, filed. (Attachments: # 1 Appendix, # 2 Appendix, # 3 Proposed Order)(Howe, Olivia) Modified on 8/28/2015 (bthomas, 4). (Entered: 08/12/2015)
09/03/2015	12	MOTION for Preliminary Injunction by Lawrence G. Farber, filed. Motion Docket Date 9/24/2015. (Attachments: # 1 Summary of motion, # 2 Proposed order)(Bilek, Thomas) (Entered: 09/03/2015)
09/03/2015	13	APPENDIX re: 12 MOTION for Preliminary Injunction by Lawrence G. Farber, filed. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Bilek, Thomas) (Entered: 09/03/2015)
09/04/2015	14	ORDER TO CONSOLIDATE CASES: Lead Case No. 4:15-cv-1367 and Member Case No. 4:15-cv-2101 granting 11 MOTION to Consolidate (Signed by Judge Vanessa D Gilmore) Parties notified. (cfelchak, 4) (Entered: 09/08/2015)
09/15/2015	15	NOTICE of Appearance by Michael T. Murphy on behalf of Alvin Bledsoe, Crestwood Midstream GP, LLC, Crestwood Midstream Partners LP, Michael G. France, Warren H. Gfeller, Robert G. Phillips, John J. Sherman, David Wood, filed. (Murphy, Michael) (Entered: 09/15/2015)
09/16/2015	16	NOTICE of Dismissal as to All Defendants by Lawrence G. Farber, filed. (Bilek, Thomas) (Entered: 09/16/2015)
09/16/2015	17	JOINT DISCOVERY/CASE MANAGEMENT PLAN by All parties, filed.(Bilek, Thomas) (Entered: 09/16/2015)
09/16/2015	18	MOTION for Juan E. Monteverde to Appear Pro Hac Vice by Isaac Aron, filed. Motion Docket Date 10/7/2015. (Bilek, Thomas) (Entered: 09/16/2015)
09/16/2015	23	ORDER granting 18 Motion for Attorney Juan Monteverde to Appear Pro Hac Vice.(Signed by Judge Vanessa D Gilmore) Parties notified.(arrivera, 4) (Entered: 09/17/2015)

09/17/2015	19	MOTION for Temporary Restraining Order by Isaac Aron, filed. Motion Docket Date 10/8/2015. (Attachments: # 1 Proposed order)(Bilek, Thomas) (Entered: 09/17/2015)
09/17/2015	20	SUPPLEMENT to 19 MOTION for Temporary Restraining Order by Isaac Aron, filed.(Bilek, Thomas) (Entered: 09/17/2015)
09/17/2015	21	AFFIDAVIT of Juan E. Monteverde re: 19 MOTION for Temporary Restraining Order, filed.(Bilek, Thomas) (Entered: 09/17/2015)
09/17/2015	22	APPENDIX re: 19 MOTION for Temporary Restraining Order by Isaac Aron, filed. (Attachments: # 1 Exhibit A, # 2 Exhibits B-D)(Bilek, Thomas) (Entered: 09/17/2015)
09/17/2015	24	CERTIFICATE OF INTERESTED PARTIES by Alvin Bledsoe, Crestwood Midstream GP, LLC, Crestwood Midstream Partners LP, Michael G. France, Warren H. Gfeller, Robert G. Phillips, John J. Sherman, David Wood, filed.(Howe, Olivia) (Entered: 09/17/2015)
09/18/2015	25	CERTIFICATE OF INTERESTED PARTIES by Philip D. Gettig, filed.(Held, Kenneth) (Entered: 09/18/2015)
09/18/2015	26	ORDER granting 16 Notice of Dismissal. The claims of Lawrence G. Farber against all Defendants are dismissed without prejudice. (Signed by Judge Vanessa D Gilmore) Parties notified. (bthomas, 4) (Entered: 09/18/2015)
09/18/2015		Minute Entry for proceedings held before Judge Vanessa D Gilmore. SCHEDULING CONFERENCE held on 9/18/2015. Responses to 19 the Motion for Temporary Restraining Order to be filed by the close of business on 9/21/2015. A TRO hearing is set for 9/23/2015 at 9:30 a.m.. Appearances: Thomas Bilek, Juan Monteverde, Michael Holmes, Elizabeth Brandon, Michael Murphy, Kelly Sandill, Kenneth Held.(Court Reporter: Laura Wells), filed.(bthomas, 4) (Entered: 09/18/2015)
09/18/2015	27	NOTICE of Setting re: 19 MOTION for Temporary Restraining Order. Parties notified. TRO Hearing set for 9/23/2015 at 09:30 AM in Courtroom 9A before Judge Vanessa D Gilmore, filed. (bthomas, 4) (Entered: 09/18/2015)
09/21/2015	28	NOTICE of Appearance by Charles Hampton on behalf of

		Crestwood Equity Partners LP, filed. (Hampton, Charles) (Entered: 09/21/2015)
09/22/2015	29	NOTICE of Settlement by Isaac Aron, filed. (Bilek, Thomas) (Entered: 09/22/2015)
09/25/2015	30	ORDER. Status Report due by 12/1/2015. (Signed by Judge Vanessa D Gilmore) Parties notified.(bthomas, 4) (Entered: 09/25/2015)
09/28/2015	31	MOTION for Appointment of Lead Plaintiff(Motion Docket Date 10/19/2015.), MOTION for Approval of Lead Counsel by Isaac Aron, filed. (Attachments: # 1 Proposed Order)(Bilek, Thomas) (Entered: 09/28/2015)
09/28/2015	32	SUPPLEMENT to 31 MOTION for Appointment of Lead Plaintiff MOTION for Approval of Lead Counsel by Isaac Aron, filed.(Bilek, Thomas) (Entered: 09/28/2015)
09/28/2015	33	DECLARATION of Juan E. Monteverde re: 31 MOTION for Appointment of Lead Plaintiff MOTION for Approval of Lead Counsel, filed. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Bilek, Thomas) (Entered: 09/28/2015)
09/28/2015	34	APPENDIX re: 31 MOTION for Appointment of Lead Plaintiff MOTION for Approval of Lead Counsel by Isaac Aron, filed. (Attachments: # 1 Unreported Cases)(Bilek, Thomas) (Entered: 09/28/2015)
11/12/2015	35	MOTION to Intervene by Glenda S. Moore, Kenneth C. Halter Trust, filed. Motion Docket Date 12/3/2015. (Attachments: # 1 Appendix Appendix to Mtn to Intevene, # 2 Exhibit Ex. A, # 3 Exhibit Ex. B, # 4 Exhibit Ex. C, # 5 Exhibit Ex. D, # 6 Exhibit Ex. E, # 7 Exhibit Ex. F, # 8 Exhibit Ex. G, # 9 Exhibit Ex. H, # 10 Exhibit Ex. I, # 11 Exhibit Ex. J, # 12 Exhibit Ex. K, # 13 Exhibit Ex. L, # 14 Exhibit Ex. M, # 15 Exhibit Ex. N, # 16 Exhibit Ex. O, # 17 Exhibit Ex. P, # 18 Exhibit Ex. Q, # 19 Exhibit Ex. R, # 20 Exhibit Ex. S, # 21 Exhibit Ex. T, # 22 Exhibit Ex. U, # 23 Exhibit Ex. V, # 24 Exhibit Ex. W, # 25 Exhibit Ex. X, # 26 Exhibit Ex. Y, # 27 Proposed Order Prop. Order Granting Mtn to Intervene)(Jones, David) (Entered: 11/12/2015)
11/12/2015	36	MOTION for Michael C. Wagner to Appear Pro Hac Vice by

		Kenneth C. Halter Trust, Glenda S. Moore, filed. Motion Docket Date 12/3/2015. (Jones, David) (Entered: 11/12/2015)
11/12/2015	37	MOTION for Lee D. Rudy to Appear Pro Hac Vice by Kenneth C. Halter Trust, Glenda S. Moore, filed. Motion Docket Date 12/3/2015. (Jones, David) (Entered: 11/12/2015)
11/12/2015	38	ORDER granting Lee D Rudy 37 Motion to Appear Pro Hac Vice. (Signed by Judge Vanessa D Gilmore) Parties notified. (cfelchak, 4) (Entered: 11/13/2015)
11/12/2015	39	ORDER granting 36 Motion for Michael Wagner to Appear Pro Hac Vice.(Signed by Judge Vanessa D Gilmore) Parties notified. (arrivera, 4) (Entered: 11/13/2015)
11/13/2015	40	MOTION for Justin O. Reliford to Appear Pro Hac Vice by Kenneth C. Halter Trust, Glenda S. Moore, filed. Motion Docket Date 12/4/2015. (Jones, David) (Entered: 11/13/2015)
11/13/2015	41	ORDER granting 40 Motion for Justin O. Reliford to Appear Pro Hac Vice.(Signed by Judge Vanessa D Gilmore) Parties notified. (bthomas, 4) (Entered: 11/13/2015)
11/19/2015	42	*Correspondence to Judge Gilmore Requesting Pre-Motion Conference on a Motion to Stay of Confirmatory Discovery* by Kenneth C. Halter Trust, Glenda S. Moore, filed.(Jones, David) (Entered: 11/19/2015)
12/01/2015	43	STATUS REPORT by All parties, filed.(Bilek, Thomas) (Entered: 12/01/2015)
12/03/2015	44	PROPOSED ORDER *Regarding Confidentiality*, filed. (Attachments: # 1 Exhibit A to Stipulated Protective Order Regarding Confidentiality)(Howe, Olivia) (Entered: 12/03/2015)
12/03/2015	45	RESPONSE in Opposition to 35 MOTION to Intervene, filed by Isaac Aron. (Attachments: # 1 Summary)(Bilek, Thomas) (Entered: 12/03/2015)
12/03/2015	46	DECLARATION of Juan E. Monteverde re: 45 Response in Opposition to Motion, filed. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Bilek, Thomas) (Entered: 12/03/2015)
12/03/2015	47	APPENDIX re: 45 Response in Opposition to Motion by Isaac Aron, filed. (Attachments: # 1 Cases)(Bilek, Thomas) (Entered: 12/03/2015)

12/03/2015	48	NOTICE of Change of Address by Faruqi & Faruqi, LLP, counsel for Isaac Aron, filed. (Bilek, Thomas) (Entered: 12/03/2015)
12/04/2015	49	STIPULATED PROTECTIVE ORDER REGARDING CONFIDENTIALITY granting 44 . (Signed by Judge Vanessa D Gilmore) Parties notified.(bthomas, 4) (Entered: 12/04/2015)
12/08/2015	50	ORDER granting 31 Motion to Appoint Isaac Aron as Lead Plaintiff for the Class; granting 31 Motion for Approval of Faruqi & Faruqi, LLP to serve as Lead Counsel for the Class and the Bilek Law Firm, LLC is approved to serve as Liaison Counsel for the Class. (Signed by Judge Vanessa D Gilmore) Parties notified. (bthomas, 4) (Entered: 12/08/2015)
12/08/2015	51	REPLY in Support of 35 MOTION to Intervene, filed by Kenneth C. Halter Trust, Glenda S. Moore. (Attachments: # 1 Appendix Appendix to Reply Brief, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17, # 19 Exhibit 18, # 20 Exhibit 19, # 21 Exhibit 20, # 22 Exhibit 21, # 23 Exhibit 22, # 24 Exhibit 23, # 25 Exhibit 24, # 26 Exhibit 25, # 27 Exhibit 26, # 28 Exhibit 27, # 29 Exhibit 28, # 30 Exhibit 29, # 31 Exhibit 30, # 32 Exhibit 31, # 33 Exhibit 32, # 34 Exhibit 33) (Jones, David) (Entered: 12/08/2015)
12/09/2015	52	ORDER denying 35 Motion to Intervene.(Signed by Judge Vanessa D Gilmore) Parties notified.(bthomas, 4) (Entered: 12/09/2015)
06/09/2016	53	NOTICE *OF CHANGE OF FIRM AFFILIATION OF JUAN E. MONTEVERDE AND ASSOCIATION OF COUNSEL* by Isaac Aron, filed. (Bilek, Thomas) (Entered: 06/09/2016)
06/15/2016	54	Unopposed MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT by Isaac Aron, filed. Motion Docket Date 7/6/2016. (Attachments: # 1 Declaration with exhibits, # 2 Proposed order)(Bilek, Thomas) (Entered: 06/15/2016)
06/15/2016	55	APPENDIX re: 54 Unopposed MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT by Isaac

		Aron, filed. (Attachments: # 1 Cases)(Bilek, Thomas) (Entered: 06/15/2016)
06/21/2016	56	ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE granting 54 Unopposed Motion for Preliminary Approval of Class Action Settlement. (Settlement Conference set for 10/7/2016 at 09:30 AM in Courtroom 9A before Judge Vanessa D Gilmore) (Signed by Judge Vanessa D Gilmore) Parties notified.(bthomas, 4) (Entered: 06/22/2016)
06/22/2016	57	NOTICE of Resetting as to 56 Order. Parties notified. Settlement Conference set for 10/14/2016 at 09:30 AM in Courtroom 9A before Judge Vanessa D Gilmore, filed. (bthomas, 4) (Entered: 06/22/2016)
09/16/2016	58	Unopposed MOTION for Leave to File Excess Pages by Isaac Aron, filed. Motion Docket Date 10/7/2016. (Attachments: # 1 Proposed order)(Bilek, Thomas) (Entered: 09/16/2016)
09/16/2016	59	Unopposed MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF THE SETTLEMENT CLASS, AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES by Isaac Aron, filed. Motion Docket Date 10/7/2016. (Attachments: # 1 Proposed order and final judgment)(Bilek, Thomas) (Entered: 09/16/2016)
09/16/2016	60	DECLARATION of Juan E. Monteverde re: 59 Unopposed MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF THE SETTLEMENT CLASS, AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES, filed. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6)(Bilek, Thomas) (Entered: 09/16/2016)
09/16/2016	61	APPENDIX re: 59 Unopposed MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF THE SETTLEMENT CLASS, AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES by Isaac Aron, filed. (Attachments: # 1 Authorities)(Bilek, Thomas) (Entered: 09/16/2016)
09/26/2016	62	ORDER granting 58 Motion for Leave to File Excess Pages. (Signed by Judge Vanessa D Gilmore) Parties notified.(bthomas,

		4) (Entered: 09/26/2016)
09/26/2016	63	BRIEF IN FURTHER SUPPORT re: 59 Unopposed MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF THE SETTLEMENT CLASS, AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES by Isaac Aron, filed.(Bilek, Thomas) (Entered: 09/26/2016)
10/03/2016	65	OBJECTION to Class Action Settlement and Payment of Attorneys' Fees, filed by David G Duggan. (srussell, 2) (Entered: 10/05/2016)
10/04/2016	64	AFFIDAVIT of Eric J. Miller, filed. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C, # 4 Exhibit Exhibit D)(Holmes, Michael) (Entered: 10/04/2016)
10/07/2016	66	REPLY in Support of 59 Unopposed MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF THE SETTLEMENT CLASS, AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES, filed by Isaac Aron. (Bilek, Thomas) (Entered: 10/07/2016)
10/07/2016	67	APPENDIX re: 66 Reply in Support of Motion by Isaac Aron, filed. (Attachments: # 1 Authorities)(Bilek, Thomas) (Entered: 10/07/2016)
10/13/2016	68	NOTICE of Appearance by Meriwether T. Evans on behalf of Alvin Bledsoe, Crestwood Midstream GP, LLC, Crestwood Midstream Partners LP, Michael G. France, Warren H. Gfeller, Robert G. Phillips, John J. Sherman, David Wood, filed. (Evans, Meriwether) (Entered: 10/13/2016)
10/14/2016		Minute Entry for proceedings held before Judge Vanessa D Gilmore. SETTLEMENT CONFERENCE held on 10/14/2016 regarding 59 Motion for Final Approval of Class Settlement, Certification of the Settlement Class and an Award of Attorney's Fees and Expenses. Appearances: Thomas Bilek, Juan Monteverde, Kenneth Held, Meriwether Evans, Kelly Sandill. (Court Reporter: Kathy Metzger), filed. (bthomas, 4) (Entered: 10/14/2016)
10/14/2016	69	ORDER granting 59 Unopposed MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF THE SETTLEMENT CLASS, AND AN

		AWARD OF ATTORNEYS' FEES AND EXPENSES (Signed by Judge Vanessa D Gilmore) Parties notified.(jdav, 4) (Entered: 10/14/2016)
10/14/2016	70	FINAL JUDGMENT (Signed by Judge Vanessa D Gilmore) Parties notified.(jdav, 4) (Entered: 10/14/2016)
11/07/2016	71	NOTICE of Appearance by Leif A. Olson on behalf of David G Duggan, filed. (Olson, Leif) (Entered: 11/07/2016)
11/07/2016	72	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 69 Order, 70 Final Judgment by David G Duggan (Filing fee $ 505, receipt number 0541-17486286), filed.(Olson, Leif) (Entered: 11/07/2016)