

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROGER A. SALVATORA, *et al*

Plaintiff,

v.

XTO ENGERGY INC.,

Defendant.

Civil Action No. 2:19-cv-1097

Hon. Cynthia Reed Eddy

Hon. William S. Stickman IV

ORDER OF COURT

Plaintiff putative class members Roger A. Salvatora, Sandra E. Salvatora, D&M Marburger Family Enterprises, L.P., Heasley's Nurseries, Inc., Rodney L. Lang, and Bonita A. Lang (collectively "Plaintiffs") initiated this civil action in August of 2019 for alleged breaches of natural gas royalty leases against Defendant XTO Energy Inc. (ECF No. 1). Currently pending before the Court are the following motions: Plaintiffs' Amended Motion for Class Certification (ECF No. 86); Defendant's *Daubert* Motion to Exclude Testimony of John McArthur (ECF No. 91); Defendant's *Daubert* Motion to Exclude Testimony of Barry Pulliam (ECF No. 92); Defendant's Motion to Strike Portions of the Expert Declaration of Stephen L. Becker (ECF No. 117); Defendant's Motion to Strike Portions of the Expert Declaration of Angela L. Paslay (ECF No. 119); Defendant's Motion to Strike Portions of the Expert Declaration of Kris L. Terry (ECF No. 121); and Plaintiffs' Motion to Approve Confidential Designation (ECF No. 159). Magistrate Judge Cynthia Reed Eddy conducted a two-day class certification hearing. (ECF Nos. 157, 163 and 164). Thereafter, she issued a comprehensive

Report and Recommendation. (ECF No. 168). The parties were given the opportunity to file objections, and Defendant did so. (ECF No. 170).

After its independent *de novo* review of the record and consideration of the pleadings of the parties, the Court hereby ADOPTS Magistrate Judge Eddy's Report and Recommendation as its Opinion. The Court OVERRULES Defendants' Objections (ECF No. 170). It concurs with Magistrate Judge Eddy's thorough analysis of the pending motions and her legal conclusions.

AND NOW, this 22 day of June 2023, IT IS HEREBY ORDERED that:

- (1) Plaintiffs' Amended Motion for Class Certification (ECF No. 86) is GRANTED IN PART AND DENIED IN PART. Class certification is granted under Federal Rule of Civil Procedure 23(b)(3), but it is denied under Federal Rule of Civil Procedure 23(b)(2). Plaintiffs Roger A. Salvatora, Sandra E. Salvatora, D&M Marburger Family Enterprises, L.P., Heasley's Nurseries, Inc., and Rodney L. Lang and Bonita A. Lang are hereby appointed as Class Representatives for Count II of the Third Amended Complaint. Rodney L. Lang and Bonita A. Lang are hereby appointed as Class Representatives for Count III of the Third Amended Complaint. David A. Borkovic and Jones, Gregg, Creehan & Gerace, LLP are hereby appointed as class counsel.
- (2) Defendant's *Daubert* Motion to Exclude Testimony of John McArthur (ECF No. 91) is GRANTED IN PART AND DENIED IN PART. It is granted in that the Court has disregarded any legal opinions. However, it is denied in that the Court has considered opinions about the oil and gas industry and the practices therein. Defendant can reassert its motion, if necessary, at trial.

(3) Defendant's *Daubert* Motion to Exclude Testimony of Barry Pulliam (ECF No. 92) is DENIED.

(4) Defendant's Motions to Strike Portions of the Expert Declarations of Stephen L. Becker (ECF No. 117), Angela L. Paslay (ECF No. 119), and Kris L. Terry (ECF No. 121) are DENIED.

(5) Plaintiffs' Motion to Approve Confidential Designation (ECF No. 159) is GRANTED. ECF No. 111 will remain under seal. A redacted copy is filed at ECF No. 95-2.

BY THE COURT:

A handwritten signature in black ink, appearing to read "WILLIAM S. STICKMAN IV". The signature is written in a cursive, somewhat stylized font. The letters are dark and the ink is slightly blurred, suggesting it was written with a pen. The signature is positioned above a horizontal line.

WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE