UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

IN RE ANADARKO BASIN OIL AND GAS LEASE ANTITRUST LITIGATION	Case No. CIV-16-209-HE

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Plaintiffs Edward Clark, Inc., Curtis Crandall, Amy Herzog, Mahony-Killian, Inc., Ida Powers, and Brian Thieme (collectively, "Plaintiffs"), individually and on behalf of the proposed Settlement Class ("Settlement Class" or "Class"), submit this Memorandum in support of their Motion seeking final approval of a class settlement with defendants Chesapeake Energy Corp., Chesapeake Exploration, L.L.C., ("Chesapeake"), and Tom L. Ward, and their affiliates (collectively, "Defendants").

I. INTRODUCTION

Having obtained preliminary approval of a $6.95 million lump-sum cash settlement and provided notice to more than 13,000 members of the Settlement Class, not a *single Class member* has objected to the Settlement or requested exclusion. The reason for this is clear: the Settlement reflects an excellent result for the Class, providing immediate and certain resolution to hard-fought litigation that involved numerous potential obstacles had it proceeded to trial, yet concerned very real injury to the Class in need of redress. Accordingly, the Settlement is fair and reasonable, and Plaintiffs move for the Court's final approval.

The process leading to the Settlement agreement was fair and protected the Class's interests. Experienced counsel vigorously negotiated the Settlement, during two separate, full-day mediation sessions before retired Oklahoma federal Judge Michael Burrage and in continued discussions thereafter. Co-Lead Counsel knew the challenges they were up against in gathering the evidence needed to support Plaintiffs' claims and ultimately sway a jury in their favor, the complexity of federal antitrust cases, the difficulty of proving conspiracy, and the particularities of oil and gas law, each of which created inherent

challenges to the successful prosecution of the case. Given all of this, the $6.95 million Settlement represents a fair and reasonable resolution of Plaintiffs' claims.

The wealth of information about this case available to Counsel at the time of Settlement further informed their assessment that the Settlement represents a strong result for the Class. At the time of settlement negotiations, Plaintiffs had received and reviewed thousands of documents produced by Defendants; conducted and defended multiple depositions of key witnesses and Class Representatives; interviewed high-level Chesapeake employees; acquired expert economic analysis of Defendants' lease agreements; and, perhaps most notably, received a full-day proffer from Chesapeake of the anticompetitive conduct it believed it did or did not engage in with respect to Plaintiffs' claims. Class Counsel understood this case's strengths and weaknesses, and the Settlement negotiated on behalf of the Class reflects their skillful balancing of those factors.

Finally, Class Counsel considered all of the information acquired throughout this case in light of the numerous additional challenges created by the specific circumstances of this case. Chesapeake's CEO and a central figure in the alleged conspiracy, Aubrey McClendon, passed away without leaving many documents behind (and without any sworn testimony), which made it difficult to obtain evidence regarding the full scope of the alleged collusion. SandRidge, an alleged co-conspirator and former defendant, declared bankruptcy shortly after Plaintiffs filed their Complaint, creating further evidentiary challenges. And Defendant Chesapeake actively sought out potential Class members that the Department of Justice identified as victims of Defendants' conspiracy and entered into individual settlements and releases with them, adding yet another obstacle to Plaintiffs'

ability to leverage compelling evidence of Defendants' anticompetitive conduct. Each of these challenges added further uncertainty to the successful vindication of Plaintiffs' rights and rendered the certainty of the proposed Settlement a substantial benefit to the Class.

For all of these reasons, Plaintiffs respectfully submit that the Settlement is fair and reasonable as required for final approval under Rule 23 of the Federal Rules of Civil Procedure. Accordingly, Plaintiffs respectfully request that the Court approve the settlement and enter a final judgment.

II. BACKGROUND

A. Factual Background and Procedural History

A grand jury indicted Aubrey McClendon, the former founder, president and CEO of Chesapeake Energy, alleging that he and unknown co-conspirators conspired to suppress and eliminate competition by rigging bids for certain leasehold interests and producing properties, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The DOJ released the indictment in March 2016, and Plaintiffs filed their initial complaints shortly thereafter alleging Chesapeake, SandRidge Energy Corp. ("SandRidge"), and Tom L. Ward violated the Sherman Antitrust Act, 15 U.S.C. § 1 by conspiring to fix, raise, maintain, or stabilize lease bonuses and royalty payments to lessors in the Mississippi Lime Play area of the Anadarko Basin Region. *See* Doc. 1. In April 2016, the Court consolidated each Plaintiff's action into this matter. *See* Doc. 38.

About a month later, SandRidge and its subsidiaries and affiliates filed voluntary petitions for bankruptcy under Chapter 11 of the Bankruptcy Code. *See* Doc. 96. The Court

stayed the matter during SandRidge's bankruptcy until Plaintiffs filed an unopposed motion to reopen the case (Doc. 138), which the Court granted (Doc. 162).

From that point on, the remaining parties vigorously litigated the merits of the case. For the better part of a year, Plaintiffs conducted significant discovery to support their claims. Plaintiffs participated in a full-day proffer session in which Chesapeake's counsel gave a detailed factual accounting its conduct—which included a detailed factual accounting of why the company believed no broader conspiracy existed. Plaintiffs also reviewed and cataloged documents; performed economic analysis; took and defended depositions; conducted witness interviews; engaged in written discovery; and subpoenaed the phone records of the companies' key employees.

Plaintiffs and Chesapeake sat down for their first mediation session with retired federal judge, the Honorable Michael Burrage, on January 31, 2018, in Oklahoma City, Oklahoma. The mediation began at 9:00 AM and lasted all day. Mediation was productive but unsuccessful, and the parties jointly moved to extend the deadline to mediate until April 16, 2018, so they could schedule a second mediation that all Defendants could attend.

Counsel for Plaintiffs, Chesapeake, and Mr. Ward attended the second mediation, again before Judge Burrage (ret.), in April 2018. Once again, the mediation was lengthy and hotly contested. The parties ultimately agreed to the material terms of a proposed settlement and executed a Memorandum of Understanding outlining those terms by the day's end. *See* Doc. 204. The parties spent months negotiating the settlement's final details.

B. The Settlement Agreement

The key terms of the settlement, which provides $6.95 million to the class and contains other provisions beneficial to the class, are discussed below.

i. The Settlement Fund

Defendants have agreed to a lump-sum payment of $6,950,000. This payment is the full amount owed under the settlement agreement, and is inclusive of any attorneys' fees, expenses, and incentive awards. Doc. 220-2. ("Settlement Agreement") ¶ 24.

ii. Release of Claims

The Settlement would release and discharge the Settlement Class's claims against Defendants as follows:

> Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, that Releasors, or any one of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasees, relating in any way to any alleged conduct by Releasees and/or any joint and several liability arising from the alleged conduct of any of the Defendants in the Class Action from the beginning of time until the Effective Date that could have been brought under any federal or state antitrust, unfair competition, unfair practices, fraud, racketeering, price discrimination, unjust enrichment, unitary pricing or trade practice law concerning Defendants' leasing practices in the Mississippi Lime Play (the "Released Claims"). The Released Claims include all claims asserted or which could have been asserted in the Class Action relating to or arising out of the facts, occurrences, transactions, or other matters alleged or otherwise raised during the proceedings by Plaintiffs and/or Defendants in the above-captioned actions. However, nothing herein shall release unrelated claims arising in the ordinary course of business relating to, for example, breach of contract, personal injury, property damage or diminution in property value. The Releasors covenant and agree that they, and each of them, shall not, after the

> Effective Date of this Settlement Agreement, assert any claim or commence or continue any proceeding seeking to recover against any of the Releasees for any of the Released Claims.

Settlement Agreement ¶ 23.

iii. Plan of Allocation

The Settlement Fund, net any attorney's fees, expenses, of incentive awards approved by the Court, will be distributed *pro rata* among all members of the Settlement Class who submit valid and timely claim forms based on the proportion a Class Member's bonus payments bears to the total value of the bonus payments submitted by all Class Members who submit valid claims. Declaration of Warren T. Burns ("Burns Decl.") ¶ 15.[1]

C. Preliminary Approval of the Settlement

The Court preliminarily approved the settlement on November 11, 2018. Doc. 222, amended by Doc. 231 (Dec. 12, 2018). The Court certified the proposed Class and found the class met "all certification requirements of Federal Rule of Civil Procedure 23 for a settlement class." Doc. 231 ¶ 2. The Court also found the proposed long- and short-form notices "satisf[ied] the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23. Doc. 231 ¶ 9. In addition to approving the notices, the Court approved the "proposed manner of communicating the [notices] to the putative Settlement Class…and f[ound] it is the best notice practicable under the circumstances, constitutes sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies

[1] The Declaration of Warren T. Burns is attached to Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Payment of Incentive Awards, which will be filed contemporaneously with this motion.

the requirement of applicable laws, including due process and Federal Rule of Civil Procedure 23." Doc. 231 ¶ 10.

The Court set a Final Fairness Hearing for April 25, 2019. Doc. 231 ¶ 13.

D. Notice and Claims Administration Since Preliminary Approval

Class Counsel filed proof of notice to the Class on February 21, 2019. Doc. 234. The proof of notice detailed that KCC, the Claims Administrator, mailed direct notice to each of the 13,424 known class members, and published notice of the settlement online and in 22 of the leading newspapers in counties comprising the Mississippi Lime Play. *See* Exhibit 1, Declaration of Rachel Christman re: Claims Administration ("Christman Decl.) ¶¶ 3–6. The notices, in plain language, inform the class about the material terms of the settlement. They define the Class, describe the allegations and procedural history of this class action, outline the terms of the proposed settlement, provide notice of the fairness hearing and how to object to the proposed settlement, warn that Class members will be bound by the settlement absent objection or request for exclusion, and explain how Class members may obtain more information about the settlement and a copy of the settlement agreement. *See* Christman Decl., Ex. A–D.

KCC developed a website—www.anadarkosettlement.com—that provides visitors with the notices, filings in this case, and the preliminary approval order. Christman Decl. ¶ 8. The website also contains KCC's contact information and allows Class Members to file their claims. Christman Decl. ¶ 8. KCC has also established a toll-free telephone number dedicated to answering inquiries from Class Members. Christman Decl. ¶ 7.

To date, Class Members have filed 904 claims with KCC. Christman Decl. ¶ 9. KCC has received no objections to the settlement or requests to be excluded. Christman Decl. ¶¶ 10–11.

III. ARGUMENT

A. The settlement agreement satisfies Rule 23(e)'s requirement that the settlement be "fair, reasonable, and adequate."

Both the process through which the Settlement was reached, and the nature of the claims and factual background of the case indicate that this Settlement is fair, reasonable, and adequate under Rule 23(e). Procedurally, the agreement was reached after multiple days of mediation facilitated by former Oklahoma federal Judge the Honorable Michael Burrage, as well as further continued negotiations by experienced counsel on behalf of the Class. Moreover, these negotiations occurred after meaningful merits discovery and Chesapeake's proffer in connection with the Department of Justice's own investigation into Defendants' anticompetitive conduct, putting Plaintiffs in a strong position to evaluate the strengths and weaknesses of their case.

Substantively, Plaintiffs believe the evidence revealed to date fully supports their claim that Defendants engaged in a large-scale conspiracy affecting all members of the Class; but convincing a jury of that based largely on circumstantial evidence posed an uncertain prospect, and litigating this case through trial would have required an enormous outlay of time and resources without any guarantee of successful recovery. Accordingly, and as set forth below, all factors relevant to determining whether a settlement is fair, reasonable, and adequate are satisfied here.

i. Legal Standard Governing Settlement Approval

A district court can approve a proposed settlement only after "finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Fager v. CenturyLink Commc'ns, LLC*, 854 F.3d 1167, 1174 (10th Cir. 2016) To assess whether a settlement is fair, reasonable and adequate, the Tenth Circuit identifies four factors that the trial court should consider:

> (1) whether the proposed settlement was fairly and honestly negotiated;
>
> (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
>
> (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
>
> (4) the judgment of the parties that the settlement is fair and reasonable.

Fager, 854 F.3d at 1174; *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002); *Jones v. Nuclear Pharmacy, Inc*., 741 F.2d 322, 324 (10th Cir. 1984). In addition to the four factors above, the court also weighs the class members' reaction to the proposed settlement. *Shaw v. Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 WL 1867861, at *4 (D. Colo. Apr. 22, 2015); *Make A Difference Found., Inc. v. Hopkins*, No. 10-CV-00408-WJM-MJW, 2012 WL 917283, at *3 (D. Colo. Mar. 19, 2012). Each factor weighs in favor of approval here.

ii. The settlement is the product of informed, arm's-length negotiations between experienced counsel.

All the parties to this action possessed sufficient information to reach a fair, reasonable, and adequate settlement given the wealth of information available to them and the significant work conducted by Class Counsel as of the time of the parties' negotiations. *See McNeely v. Nat'l Mobile Health Care, LLC*, CIV-07-933-M, 2008 WL 4816510, at

*12 (W.D. Okla. Oct. 27, 2008) (a "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery") (citation and quotation marks omitted)).

Plaintiffs' counsel conducted substantial merits discovery before settling this case. They reviewed thousands of documents provided to the DOJ, took depositions of fact witnesses, defended Plaintiffs' depositions and interviewed important management-level employees of Chesapeake directly connected to the alleged conspiracy. Burns Decl. ¶¶ 6–8. Plaintiffs' expert economist had begun reviewing lease data to support class certification. Burns Decl. ¶ 6. Plaintiffs also attended a full-day proffer in which Chesapeake detailed its potentially anticompetitive actions during the class period. Burns Decl. ¶ 8. As a result, the parties were well informed by the time they agreed to a settlement.

The fairness of the Settlement's terms is further demonstrated by the fact that they were vigorously negotiated by counsel and included two full-day mediation sessions. Burns Decl. ¶¶ 9–13. The extensive participation of an experienced mediator like the Honorable Michael Burrage "reinforces that the Settlement Agreement is non-collusive." *Johnson v. Brennan*, 10-CV-4712 CM, 2011 WL 1872405, at *1 (S.D.N.Y. May 17, 2011). Nothing about the settlement negotiations suggests collusion and facts indicate "the parties extensively negotiated the settlement at arm's length." *Fager*, 854 F.3d at 1175. In short, the parties' negotiations constituted a fair process to reach a fair settlement.

iii. Questions of law and fact pose risks in the litigation.

This matter faced an uncertain future had it proceeded to dispositive motions and trial. Absent settlement, Plaintiffs would have faced the legal complexity inherent in

antitrust cases and the evidentiary problems common to proving conspiracy, as well as challenges particular to the facts here. While Plaintiffs believe ultimate recovery was (and is) warranted, absent settlement, it was by no means certain. By contrast, the Settlement provides certainty and finality, weighing in favor of finding it fair and reasonable.

To this day, Mr. Ward denies the existence of any conspiracy, and all Defendants contest the scope and impact of the alleged conspiracy. While the Plaintiffs contend there is a broader conspiracy outside of the handful of transactions that Chesapeake has admitted to, the Defendants deny this. Moreover, Defendants would almost certainly appeal any adverse finding from the Court or jury. "[T]he presence of such doubt tips the balance in favor of settlement because 'settlement creates a certainty of some recovery[] and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.'" *Childs v. Unified Life Ins. Co*., 10-CV-23-PJC, 2011 WL 6016486, at *13 (N.D. Okla. Dec. 2, 2011) (citation omitted); *see Tripp v. Rabin*, No. 14-CV-2646-DDC-GEB, 2016 WL 3615572, at *3 (D. Kan. July 6, 2016) (defendants' vigorous denials of liability weighted in favor of approving the settlement). Overall, the risks Plaintiffs face here remain significant and support the reasonableness of the Settlement.

iv. The settlement's value outweighs the possibility of future relief.

The common Settlement Fund negotiated by Class Counsel consists of a cash payment of $6,950,000.00, *see* Settlement Agreement ¶ 24, and represents an efficient resolution of the case before the deadline for class certification and dispositive motions.

Litigating Plaintiffs' claims through trial would have required a tremendous amount of time of resources expended by Plaintiffs, Defendants, and the Court. As one court

acknowledged, "[a]n antitrust class action is arguably the most complex action to prosecute." *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000). While Plaintiffs have completed substantial discovery, they faced a long—and expensive—road to trial, including more depositions, additional expert discovery, and complex summary judgment briefing. And at the end of this process, they would face a jury trial that would likely last for weeks, and from which the losing party would have the right to appeal. Thus, even if Plaintiffs prevailed at trial, post-verdict and appellate litigation *alone* could have lasted for years. *See Johnson v. City of Tulsa*, No. 94-CV-39-H(M), 2003 WL 24015151, at *9 (N.D. Okla. May 12, 2003), *aff'd sub nom. Johnson v. Lodge #93 of Fraternal Order of Police*, 393 F.3d 1096 (10th Cir. 2004) (approving a settlement where continuing litigation would be expensive, lengthy, and complex).

Plaintiffs' successful settlement avoids this uncertainty, delay, and expense. It ensures recovery for the Class as soon as possible, guaranteeing a beneficial result and bringing final closure to their claims. "The class will be well compensated, relatively speaking, and is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted." *McNeely*, 2008 WL 4816510, at *13.

"It has been held prudent to take 'a bird in the hand instead of a prospective flock in the bush.'" *See Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 547 (D. Colo. 1989)) (citation omitted). The Settlement does precisely that, further supporting final approval.

v. Class Counsel recommends settlement.

Class Counsel believes that this settlement is fair, reasonable, and adequate. Burns Decl. ¶ 17. Courts give great weight to counsel's view of a settlement as fair and reasonable. *Wilkerson v. Martin Marietta Corp*., 171 F.R.D. 273, 288 (D. Colo. 1997); *see In re Dep't of Energy Stripper Well Exemption Litig.*, 653 F. Supp. 108, 116 (D. Kan. 1986), *aff'd*, 855 F.2d 865 (Temp. Emer. Ct. App. 1988) (giving "the professional judgment of counsel involved" in the litigation "significant weight."); *see also. Mehta*, 723 F. Supp. at 548 ("Courts have consistently refused to substitute their business judgment for that of counsel and the parties.").

Class Counsel have extensive experience in antitrust and class action litigation and at the time of the settlement had a full picture of the factual and legal issues at play. Counsel diligently and vigorously prosecuted the Class's claims, conducted substantial discovery, and engaged economic experts. Burns Decl. ¶¶ 6–8. Class Counsel, with their experts, also reviewed extensive transactional information relating bonus payments in the relevant area. *Id.* Plaintiffs received a detailed, full-day proffer from Chesapeake about the alleged conspiracy and interviewed some of Chesapeake's key decision makers with knowledge of the core conduct at issue. *Id.* Based on all this, Class Counsel believe the settlement is fair and are confident that approval is in the best interests of the Class.

vi. The reaction of the class members supports final approval.

Courts evaluating whether to give final approval to a class action settlement consider the class members' reaction to the proposed settlement. *Make A Difference Found.,* 2012 WL 917283, at *3. Here, class members appear to overwhelmingly approve the settlement. On January 22, 2019, KCC, the claims administrator, mailed notice directly

to the 13,424 persons or entities on the known class member list. Christman Decl. ¶¶ 3–4. KCC also published notice in more than 20 print publications and issued a press release online via PR Newswire. Christman Decl. ¶¶ 5–6. But as of March 21, 2019, there have been no requests for exclusion or objections to the settlement. Christman Decl. ¶¶ 10–11. The absence of objections and requests for exclusion "is a strong indication that the [s]ettlement is fair, reasonable, and adequate." *Shaw*, 2015 WL 1867861, at *4.

* * *

Plaintiffs have strong evidence that anticompetitive conduct occurred: Chesapeake itself acknowledged as much in its response to the DOJ's investigation. Furthermore, Plaintiffs and their experts found circumstantial evidence that the conspiracy was wider than the limited number transactions admitted by Chesapeake and are confident in the merits of their classwide claims. However, Plaintiffs' best evidence is circumstantial, and Defendants all vigorously contest that any classwide harm occurred. Consequently, the prolonged litigation that would be necessary to prove the scope of the conspiracy would result in tremendous litigation expenses, with an uncertain potential for recovery. Accordingly, the parties' successful early settlement, before trial and the deadline for dispositive motions, inures to the benefit of the Settlement Class. Plaintiffs therefore seek the Court's final approval of the proposed settlement.

B. This settlement satisfies the requirements for certifying a Settlement Class under Rule 23(a).

i. Legal Standard Governing Class Certification

A court may certify a class that, as here, satisfies the four requirements of Rule 23(a) and at least one subsection of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 621, 117 S. Ct. 2231, 2248 (1997); *Anderson v. City of Albuquerque*, 690 F.2d 796, 799 (10th Cir. 1982). The requirements of Rule 23(a) are numerosity, commonality, typicality, and adequacy of representation. FED. R. CIV. P. 23(a).

The Settlement Class consists of:

> All persons and entities who sold, leased or otherwise assigned or transferred to Chesapeake or SandRidge, or any of their respective predecessors, subsidiaries, agents (such as landmen) or affiliates, mineral rights and/or working interests on lands within the Mississippi Lime Play, at any time between December 27, 2007 and April 1, 2013. For purposes of this Settlement Class, the Mississippi Lime Play includes all depths and formations within the Oklahoma counties of Alfalfa, Blaine, Creek, Dewey, Ellis, Garfield, Grant, Harper, Kay, Kingfisher, Logan, Lincoln, Major, Noble, Osage, Pawnee, Payne, Tulsa, Washington, Woods, and Woodward, and the Kansas counties of Barber, Butler, Chase, Chautauqua, Cheyenne, Clark, Coffey, Comanche, Cowley, Dickinson, Edwards, Elk, Finney, Ford, Gove, Grant, Gray, Greenwood, Harper, Harvey, Haskell, Hodgeman, Kearny, Kingman, Kiowa, Lane, Logan, Lyon, Marion, McPherson, Meade, Montgomery, Morris, Ness, Pawnee, Pratt, Rawlins, Reno, Rice, Rush, Saline, Scott, Sedgwick, Seward, Sheridan, Sherman, Stafford, Stevens, Sumner, Thomas, Trego, Wallace, Wichita, Wilson, and Woodson.

See id. ¶ 1. As reflected in the Court's order granting preliminary approval, this Class satisfied the Rule 23(a) requirements. *See* Doc. 231 ¶¶ 3–4.

1. The class is so numerous that joinder is impracticable.

Rule 23(a) requires that "the class is so numerous that joinder of all members is impracticable . . ." FED. R. CIV. P. 23(a) (1). "The Tenth Circuit does not prescribe any set

formula to satisfy the numerosity element, nor has it said numerosity may be presumed by a specific number of class members." *McNeely*, 2008 WL 4816510, at *5.

Here, the alleged conspiracy lasted over half a decade, beginning as early as December 2007 and lasting until April 2013. During this time more than *ten thousand* class members sold leaseholds or working interests to Chesapeake and SandRidge. *See* Christman Decl. ¶ 3 ("13,424 persons or entities on the known Class Member List."). Joinder of all class members thus impracticable.

The geographical diversity of the Class further renders joinder impractical. *Home-Stake Prod.*, 76 F.R.D. at 361 (geographic diversity among potential claimants adds to impracticability of joinder). Plaintiffs' allege a conspiracy covering leases in over 40 counties across Oklahoma and Kansas. In total, the number of individuals and entities living in different states who sold their leasehold interest to Chesapeake and SandRidge during the five-and-a-half-year span of the alleged conspiracy makes joinder impracticable. Accordingly, the settlement class meets the numerosity requirement.

2. Common questions of law and fact exist.

As is almost always true in antitrust conspiracy cases, the Settlement Class satisfies Rule 23's "commonality" requirement. Indeed, "courts have consistently held that the nature of an antitrust conspiracy action compels a finding of commonality." *In re Urethane Antitrust Litig.*, 237 F.R.D. 440, 447 (D. Kan. 2006). Further, "[t]hat the claims of individual class members may differ factually should not preclude certification under Rule 23(b)(2) of a claim seeking the application of a common policy." *Adamson v. Bowen*, 855 F.2d 668, 676 (10th Cir. 1988); *see also Naylor Farms v. Anadarko OGC Co*., CIV-08-

668-R, 2009 WL 8572026, at *5 (W.D. Okla. Aug. 26, 2009), *order clarified sub nom.* 2011 WL 7267850 (W.D. Okla. June 15, 2011) ("While determining damages will require individual calculations, this does not preclude a finding of commonality.").

As set forth in Plaintiffs' Motion for Preliminary Approval of the Settlement Class, this matter contains numerous questions common to the class, including the duration and existence of the conspiracy, whether this alleged conspiracy constituted a *per se* violation of Section 1 of the Sherman Act, whether defendants fraudulently concealed the existence of the Conspiracy; the appropriate measure of any damages; and many others. *See* Doc. 220 at 12. Thus, for all of the reasons previously considered and as stated by the Court, "[t]here are common questions of law or fact common to the class." Order Granting Prelim. Approval, ECF. No. 231 at 3. The Settlement Class thus satisfies commonality.

3. The Named Plaintiffs' claims are typical of the claims of the Class.

The typicality requirement rarely poses any issue in a price fixing suit. *See Universal Serv. Fund*, 219 F.R.D. at 666 (noting the typicality requirement is generally satisfied in antitrust disputes because the Named Plaintiffs need to prove a conspiracy, its effectuation, and damages, which the absentee class members must also prove). Here, "the claims…of the representative parties are typical of the claims…of the class…." FED. R. CIV. P. 23(a) (3). Typicality, however, does not require that the claims be identical. *Milonas v. Williams*, 691 F.2d 931, 938 (10th Cir. 1982). Rather, the class representatives must have

the "same interests and suffer the same injuries as the proposed class members." *Heartland Commc'ns, Inc. v. Sprint Corp*., 161 F.R.D. 111, 116 (D. Kan. 1995).

Each of the named Plaintiffs alleges the same legal theories and fact issues that underlie the rest of the Settlement Class's claims—that Defendants engaged in a common course of conduct to deprive them of market-based prices and fair bonus payments for their leasehold interests. *See* Doc. 164. Plaintiffs alleged that they and the members of the settlement class were all victims of the same alleged conspiracy to fix prices and allocate markets and customers through illegal bid-rigging. *Id.* Plaintiffs thus allege that each member of the settlement class suffered the same type of injury arising out of the same factual scenario and type of evidence that could be used to establish Defendants' liability. Accordingly, the Settlement Class meets the typicality requirement.

4. The Named Plaintiffs have and will fairly and adequately protect the Class's interests.

Adequacy of representation requires that the "representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a) (4). This factor, in turn, necessitates a two-step inquiry into whether: (1) "the Named Plaintiffs and their counsel have any conflicts of interest with other class members; and (2) [ ] the Named Plaintiffs and their counsel prosecute the action vigorously on behalf of the class[.]"; *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187–88 (10th Cir. 2002).

The Settlement Class meets both requirements. First, there is no evidence of a conflict of interest between the Named Plaintiffs and members of the Class. *McNeely*, 2008 WL 4816510, at *7 (holding the conflict of interest must be "more than merely speculative

or hypothetical"). Each Named Plaintiff is a leaseholder in the Mississippi Lime Play area and was accordingly subject to the same alleged anticompetitive collusion as the rest of the class. Thus, the Named Plaintiffs' interests and those of the Class are aligned: As with all Class members, the Named Plaintiffs have a genuine interest in achieving the best possible outcome on their claims.

Second, the Named Plaintiffs have actively demonstrated their interest in this action and their capable representation of the Class through their dedicated prosecution of classwide claims: They have reviewed and produced documents, responding to discovery, and sat for depositions. Burns Decl. ¶¶ 6–8; *see also* Doc. 231 ¶ 7. Furthermore, they are represented by seasoned counsel who are thoroughly familiar with class action and antitrust litigation. Burns Decl. ¶ 27; *see also* Doc. 231 ¶ 7. This Court acknowledged as much when it appointed Interim Co-Lead Counsel and Class Counsel for the proposed class. *See* Doc. 163; Doc. 231 ¶ 4; *McNeely*, 2008 WL 4816510, at *7. (applying presumptions of competence and experience of class counsel); *Zapata v. IBP, Inc*., 167 F.R.D. 147, 161 (D. Kan. 1996) ("In the absence of proof to the contrary, courts presume that class counsel is competent and sufficiently experienced to vigorously prosecute the action on behalf of the class."). Accordingly, the Named Plaintiffs will fairly and adequately protect the Settlement Class's interests.

C. The proposed Settlement Class satisfies the requirements of Rule 23(b)(3).

Upon finding a proposed class satisfies the requirements of Rule 23(a), a court should certify a class if it additionally "finds that the questions of law or fact common to

the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods…." Fed. R. Civ. P. 23(b)(3). Antitrust actions, such as this one, readily satisfy these requirements because "proof of the *conspiracy* is a common question that is thought to predominate over the other issues of the case." *In re Scrap Metal Antitrust Litig*., 527 F.3d 517, 535 (6th Cir. 2008) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997)) (emphasis in original). As the Court found in its preliminary approval order, the proposed Settlement Class meets the requirements of Rule 23(b)(3). Doc. 231 ¶ 5.

i. Questions of law or fact common to the Class predominate questions affecting individual members.

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 622–23; *see Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013) (predominance requires that "*questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class") (emphasis in original). Though commonality and predominance are similar fact inquiries, commonality under Rule 23(a)(2) requires only "a single common issue of fact or law shared by the class," while "the predominance and superiority requirements of Rule 23(b)(3) are far more demanding." *Naylor Farms v. Anadarko OGC Co*., CIV-08-668-R, 2009 WL 8572026, at *4 (W.D. Okla. Aug. 26, 2009), *order clarified sub nom.* 2011 WL 7267850 (W.D. Okla. June 15, 2011); *In re Universal Serv. Fund Tel. Billing Practices Litig.*, 219 F.R.D. 661, 666 (D. Kan. 2004).

Plaintiffs satisfy the predominance inquiry. The question of whether a conspiracy existed may, standing alone, warrant class treatment under Federal Rule of Civil Procedure 23(b)(3): The Tenth Circuit has indeed held that "courts have regarded the existence of a conspiracy as the overriding issue" in antitrust class actions. *In re Urethane Antitrust Litig*., 768 F.3d 1245, 1255 (10th Cir. 2014) (collecting cases).

Furthermore, Plaintiffs also would have used common fact evidence and expert economic and statistical analysis to show that the alleged conspiracy inflicted widespread harm on the class. *See, e.g.*, *In re Optical Disk Drive Antitrust Litig*., No. 3:10-md-2143, 2016 WL 467444, at *1, 5–7 (N.D. Cal. Feb. 8, 2016). If "plaintiffs can establish that the defendants conspired to interfere with the free-market pricing structure," as Plaintiffs would have here through fact evidence and expert analysis, then "even where there are individual variations in damages, the requirements of Rule 23(b)(3) are satisfied." *Urethane*, 768 F.3d at 1255 (quoting *In re Scrap Metal Antitrust Litig.*, 527 F.3d at 536).

The evidence in support of antitrust violation, impact, and damages, would apply on a class-wide basis. Accordingly, the settlement class meets the predominance requirement to certify the class.

ii. A class action is superior to other available methods of adjudication.

The Court must balance the advantages of class action with other available methods of adjudication by examining:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;

> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

FED. R. CIV. P. 23(b)(3). In a settlement-only class certification, a court "need not inquire whether the case, if tried, would present intractable management problems." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620, 117 S. Ct. 2231 (1997); FED. R. CIV. P. 23(b)(3)(D).

Any potential interest a Class member might have in individually prosecuting its claims is outweighed by the efficiency of classwide resolution. *See Universal Serv.*, 219 F.R.D. at 679 (finding individual suits against defendants would be "grossly inefficient, costly, and time consuming because the parties, witnesses, and courts would be forced to endure unnecessarily duplicative litigation" while a "class action is by far the more superior method").

Finally, the Western District of Oklahoma is appropriate for adjudicating the Settlement Class' claims. *See XTO Energy, Inc.*, 2009 WL 764500, at *7 (finding forum appropriate since the majority of wells involved in the class action are located in the Western District of Oklahoma). Chesapeake, as part of its ACPERA cooperation, admitted to 10 potentially anticompetitive transactions with SandRidge. Each of the counties in which those transactions took place—Woods, Grant, and Alfalfa counties—are in this district. Accordingly, the Settlement Class meets the Rule 23(b)(3) requirements of predominance and superiority.

D. The notice plan meets the strictures of Rule 23(c)(2)(B).

Rule 23(c)(2)(B) requires that class members receive the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable efforts." Notice is sufficient if it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *DeJulius v. New England Health Care Employees Pension Fund*, 429 F.3d 935, 944 (10th Cir. 2005) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)) (quotation marks omitted). Rule 23(c)(2)(B) contains specific requirements for the notice, namely, that the notice state in easily understood language:

> (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; [and] (vii) the members under Rule 23(c)(3).

KCC, has provided the best notice practicable under the circumstances. KCC mailed notice to all 13,424 reasonably identifiable class members (the "Mailed Notice"). Christman Decl. ¶ 3. Christman Decl. ¶ 4. For the notices that were returned as undeliverable, KCC searched databases for that information, and if KCC could find updated contact information, KCC mailed the Mailed Notice to that address. Christman Decl. ¶ 4.

Because SandRidge did not maintain a centralized database that could identify individual class members, KCC published the information in the Mailed Notice in the following 22 publications:

> Abilene Reflector-Chronicle, Bartlesville Examiner-Enterprise, Buffalo Weekly News, Clark County Gazette, Colby Free Press, Council Grove Republican, Dewey County Record, Dodge City Globe, Emporia Gazette, Enid News & Eagle, Garden City Telegram, Hays Daily News, Hutchinson News, Independence Daily Reporter, Oklahoma City Oklahoman, Prairie Star, Salina Journal, Stillwater News Press, The Western Times, Topeka Capital-Journal, Tulsa World, and Wichita Eagle.

See Doc. 234-1 & Doc. 234-3. These publications are the leading daily circulating in the Mississippi Lime Play and have a total circulation of more than 300,000. Christman Decl. ¶ 5. KCC also published the information in the Mailed Notice online at PRNewswire.com, where it was reported on by media outlets 153 times and reached a potential audience of 10,500.000. Christman Decl. ¶ 6.[2] And finally, KCC created the website anadarkosettlement.com, which allows visitors to download copies of, among other documents, the detailed notice, the claim form, the settlement agreement, and the preliminary approval order. Christman Decl. ¶ 8. To date, the settlement website has received 32,285 total hits. Christman Decl. ¶ 8.

Further, the content of the Mailed Notice meets the requirements in Rule 23(c)(2)(B)(i)–(vii). The notice, in plain language, defines the Class, describes the allegations and procedural history of this class action, outlines the terms of the proposed settlement, provides notice of the fairness hearing and how to object to the proposed settlement, warns that Class members will be bound by the settlement if the class member

[2] *See also Friedman v. Quest Energy Partners LP*, No. CIV-08-1025-M, 2010 WL 4925133, at *6 (W.D. Okla. Nov. 29, 2010) (granting final approval of a settlement when the settlement was published on PRNewswire.com)

does nothing, and explains how Class members may obtain additional information about the settlement. *See* Christman Decl., Ex. A–D.

Accordingly, Class Counsel respectfully request that the Court approve the form and plan of dissemination of notice.

E. The plan of allocation is fair and reasonable.

The Settlement Fund, net any attorney's fees, expenses, of incentive awards approved by the Court, will be distributed *pro rata* among all members of the Settlement Class who submit valid and timely claim forms based on the proportion a Class Member's bonus payments bears to the total value of the bonus payments submitted by all Class Members who submit valid claims. This plan of allocation is a straightforward and fair method similar to those that this Court has approved before. *See Friedman v. Quest Energy Partners LP*, No. CIV-08-1025-M, 2010 WL 4925133, at *6 (W.D. Okla. Nov. 29, 2010) (approving the allocation of a net settlement fund to those who file timely and valid claims); *Chieftain Royalty Co. v. QEP Energy Co.*, No. CIV-11-212-R, 2013 WL 12090345, at *8 (W.D. Okla. May 31, 2013) (approving the allocation of a net settlement fund to each class member proportionately based on their royalty decimal interest); *see also Cook v. Rockwell Int'l Corp.*, 618 F.3d 1127, 1138 (10th Cir. 2010) (approving a plan of allocation that distributed funds based on "a fraction of the total value of all properties within the same category"). In addition, there will be no reversion of the funds back to any defendant.

IV. CONCLUSION

The proposed settlements represent a fair and reasonable resolution of the class members' claims and are supported by the Named Plaintiffs and experienced class counsel.

Plaintiffs respectfully request that the Court approve the settlements and enter a Final Judgment.

Dated: March 21, 2019

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was duly served electronically on all known counsel of record through the Court's Electronic Filing System on March 21, 2019.

By: /s/ *Warren T. Burns*
Warren T. Burns