UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

DEMCHAK PARTNERS LIMITED PARTNERSHIP; JAMES P. BURGER, JR. and BARBARA H. BURGER; WILLIAM A. BURKE, II and CLARA BURKE; WILLIAM A. BURKE, III; EDWARD J. BURKE; DONALD G. FULLER and KAREN M. FULLER; RANDY K. HEMERLY; LAMAR R. KING; LINDA J. SCHLICK; AND JANET C. YOUNG, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs v. CHESAPEAKE APPALACHIA, L.L.C., Defendant.	Case No. 3:13-cv-02289-MEM

MEMORANDUM IN SUPPORT OF
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs respectfully move for preliminary approval of the settlement of this class action (the "Settlement"), and for certification of the Settlement Class[1] described in Section II, below. The Settlement concerns royalty payments by Chesapeake Appalachia, L.L.C. ("Chesapeake" or "Defendant") on gas produced by Chesapeake under the

[1] "Settlement Class" and all other capitalized defined terms used throughout this memorandum have the same meanings ascribed to them in Section 1 of the Settlement Agreement, attached as Exhibit 1 to the accompanying Motion.

Settlement Class Members' leases in the Commonwealth of Pennsylvania, and provides for a lump sum repayment to Settlement Class Members of a significant portion of Post-Production Costs borne by the Settlement Class Members through the Effective Date of the Settlement, and for a reduction for Post-Production Costs deductions in the future, for the life of the leases. This Settlement, negotiated at arms' length between parties represented by experienced counsel and guided by Judge Edward N. Cahn (Ret.), acting as mediator, represents an excellent outcome for Settlement Class Members. In the face of substantial litigation risks, it provides substantial monetary benefits immediately, with none of the costs and delay attendant to protracted litigation.

For these reasons, and those detailed below, Plaintiffs respectfully request that the Court enter an order (1) granting preliminary approval of the proposed Settlement; (2) certifying the Class for settlement purposes and appointing Class Counsel and Class Representatives; (3) approving the proposed form and method of providing notice of the Settlement and directing that Notice be provided to the Settlement Class; and (4) scheduling a fairness hearing to consider final approval of the Settlement and Class counsel's application for an award of attorneys' fees and expenses.

I. FACTUAL BACKGROUND

Plaintiffs, along with the Settlement Class Members they seek to represent, and Chesapeake are parties to gas and oil leases in Pennsylvania. Chesapeake's leases with Plaintiffs and Settlement Class Members include a "Market Enhancement Clause" (hereinafter "MEC"), a provision that Plaintiffs allege precludes Chesapeake, as the lessee, from deducting any so-called "post-production costs" that are incurred to transform gas into marketable form or make the gas ready for sale or use. (An MEC does permit Chesapeake to deduct a pro rata share of costs incurred after the gas is marketable or ready for sale or use.)

Plaintiffs allege that Chesapeake underpaid royalties due to Plaintiffs and Settlement Class Members by deducting costs that were incurred prior to the Gas entering the interconnect point of a transmission pipeline, in breach of the MEC provisions of the leases. Plaintiffs contend that Chesapeake's Gas is not in marketable form until it meets the quality and pressure specifications of the interstate pipeline into which it is delivered. Plaintiffs contend, therefore, that the raw Gas produced by Chesapeake is not marketable at the well and that Chesapeake's deductions for gathering, dehydration and compression are improper and in breach of the Pennsylvania Leases, i.e., the deductions are for activities that are necessary to transform the Gas into marketable form. Chesapeake, on the other hand, contends that the Gas produced or to be produced under Plaintiffs' and

Settlement Class Members' leases is marketable at the wellhead, and thus, that Chesapeake is entitled to deduct the costs at issue. Significantly for Plaintiffs' claims, many of the leases at issue contain arbitration provisions, providing that Chesapeake may insist that lease-related disputes be resolved in arbitration.

Beginning in 2011, and continuing throughout 2012, a number of Pennsylvania gas interest owners/lessors began to approach various of the undersigned counsel, who investigated potential royalty underpayment claims against Chesapeake. After they were retained, Plaintiffs' counsel conducted factual investigations relating to the production, transportation and sale of gas in Pennsylvania, including production in Pennsylvania by Chesapeake; located and reviewed numerous leases on file in the land records of Bradford and other Pennsylvania counties; reviewed legal authorities relating to royalty underpayment claims that had been compiled by Plaintiffs' Counsel throughout their years of representing lessors in royalty underpayment litigation; located and reviewed legal authorities from Pennsylvania relating to the calculation of royalties and the duties that are owed by lessees to lessors under Pennsylvania law; and reviewed royalty payment check stubs, unit agreements, and division orders received by certain of the Plaintiffs from Chesapeake. (Declaration of Larry D. Moffett, attached as Exhibit 3 to the Motion (hereafter "Moffett Declaration") at ¶5).

In October 2012, Plaintiffs' counsel contacted Chesapeake's legal counsel and participated in telephonic discussions with them concerning the existence, nature and basis of Plaintiffs' claims against Chesapeake for royalty underpayments, and provided background information relating to those claims, including lease information, check stubs, division orders, and legal authorities. Plaintiffs' counsel had several follow-up telephonic conferences with Chesapeake's counsel and eventually agreed to schedule a face-to-face meeting to conduct further discussions. (*Id*. at ¶6).

On January 8, 2013, Plaintiffs' counsel met with Chesapeake's legal counsel at Chesapeake's headquarters in Oklahoma City, Oklahoma. During this conference, Chesapeake provided information relating to Chesapeake's Pennsylvania operations and royalty payments, including the marketing of its Pennsylvania gas production, the physical facilities utilized for the gathering and transportation of Chesapeake's production, and the methodology utilized to calculate Chesapeake's royalty payments. During the meeting, Plaintiffs' counsel interviewed a member of Chesapeake's revenue accounting department regarding Chesapeake's Pennsylvania royalty calculations and payments. (*Id*. at ¶7).

Subsequent to the Oklahoma City meeting, Chesapeake's legal counsel provided Plaintiffs' counsel with additional information and documents relating to Chesapeake's Pennsylvania operations, including a map of gathering facilities and

interconnect points with interstate pipelines, production volumes and gas quality analyses for sample wells, royalty payment histories for certain Plaintiffs, and gas marketing documents, including sales contracts and weighted average sales price information. (*Id*. at ¶8).

In early May 2013, the parties engaged Judge Edward N. Cahn (Ret.), the former Chief United States District Court Judge for the Eastern District of Pennsylvania, and now an active mediator with the firm of Blank Rome, LLP, to mediate the dispute. On June 18, 2013, Judge Cahn held an in-person mediation with the parties at his Philadelphia offices. Judge Cahn has submitted a Declaration (Exhibit 4 to the Motion) setting forth the presentations made by the parties through their counsel in joint and separate sessions, the obstacles to resolution, and the agreement in principle reached after the arms-length negotiation he mediated.

Following the mediation, for the next two months, the parties continued to negotiate and finalize the terms of the Settlement and continued to exchange additional information, resulting in the Settlement now before the Court.

II. SETTLEMENT TERMS

The Settlement provides immediate and tangible benefits to Settlement Class Members. The Settlement Class is defined as:

> [A]ll individuals and entities, including their predecessors and successors-in-interest, who are lessor parties to an oil and gas lease

> that (a) covers a leasehold located in Pennsylvania, (b) contains a Market Enhancement Clause, and (c) is or has been owned, in whole or in part, by Chesapeake as a lessee, according to the business records maintained by Chesapeake. The Settlement Class excludes (a) Chesapeake, Chesapeake's affiliates, and their respective predecessors and successors; (b) any person or entity who owns a working interest in or operates a gas well in Pennsylvania; (c) any person or entity who receives royalty in kind pursuant to a Pennsylvania Lease; (d) any person (i) whose lease contains a Market Enhancement Clause, (ii) to whom Chesapeake has made no Royalty payments as of the date of this Agreement, and (iii) whose lease has been sold, transferred, and/or assigned by Chesapeake in its entirety as of the date of this Agreement; (e) any person or entity who has previously released Chesapeake from liability concerning or encompassing any or all Settled Claims; (f) the federal government; (g) the Commonwealth of Pennsylvania; (h) legally-recognized Indian Tribes; and (i) any person who serves as a judge in this civil action and his/her spouse.[2]

The Settlement resolves the claims of the Settlement Class Members against Defendant based on the calculation, payment, and/or reporting of Gas Royalties paid by Defendant pursuant to the Pennsylvania Leases.[3] Under the Settlement, Chesapeake will make a payment to the Settlement Class in an amount equal to

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[2] Under the Settlement, "Market Enhancement Clause" means Royalty payment clauses or provisions in an oil and gas lease that preclude the lessee from deducting Post-Production Costs incurred to transform leasehold gas into marketable form or make such gas ready for sale or use but permit the lessee to deduct a pro rata share of Post-Production Costs incurred after the gas is marketable or ready for sale or use. Such clauses are often entitled or referred to as "Market Enhancement Clauses," "MECs" or "Ready for Sale or Use Clauses."

[3] Under the Settlement Agreement, "Pennsylvania Leases" means each and every oil and gas lease that (a) covers a leasehold located in Pennsylvania, (b) contains a Market Enhancement Clause, and (c) is or has been owned, in whole or in part, by Chesapeake as a lessee, according to the business records maintained by Chesapeake.

55% of all Post-Production Costs reflected as deductions from Gas Royalty payments made by Chesapeake to Settlement Class Members under the Pennsylvania Leases prior to September 1, 2013, plus 27.5% of all Post-Production Costs reflected as deductions from Gas Royalty payments made by Chesapeake to Settlement Class Members under the Pennsylvania Leases from September 1, 2013, through the Effective Date of the Settlement.[4] Class Counsel estimate Chesapeake's total payment will be in excess of $7,500,000.00. The payment will be distributed among the Class Members on a pro-rata basis, net of Court-awarded attorneys' fees and expenses and class representative incentive award payments, and in accordance with the Settlement Agreement's Plan of Distribution. In addition, the Settlement sets forth a Future Royalty Calculation Method under which Settlement Class Members will no longer bear 100% of Post-Production Costs, but will, after the Effective Date, only bear 72.5% of those costs. Settlement Class Members will continue to bear 100%, on a pro rata basis, of the transportation costs that are incurred after gas has entered the interconnect point of a transmission pipeline.

[4] Under the Settlement Agreement, "Post-Production Costs" means costs for gathering, compressing, transporting, or dehydrating Gas which are incurred before the interconnect point of a Transmission Pipeline. Post-Production Costs does not include transportation costs incurred after Gas has entered the interconnect point of a Transmission Pipeline.

In exchange for the benefits received by the Class, Chesapeake and its affiliates will be released from any and all claims the Settlement Class Members may have against Chesapeake or its affiliates based on the calculation, payment, and/or reporting of royalties pursuant to a Pennsylvania Lease. The Settlement affects only Chesapeake and/or its affiliates and does not affect how any other entity calculates and/or pays Royalties.

III. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE.

A. The Process for Preliminary Approval

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010); *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation and it should therefore be encouraged."). Where, as here, the parties propose to resolve class action litigation through a class-wide settlement, they must obtain the court's approval. *See* Fed. R. Civ. P. 23(e); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 295 (3d Cir. 2011) (en banc). Approval of a class action settlement involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. *See Manual for Complex Litigation*, § 21.632 (4th ed. 2004) (hereinafter "*MCL 4th*"); *see also* 4 Alba Conte &Herbert

Newberg, *Newberg on Class Actions* § 11:25, at 38-39 (4th ed. 2002) (hereinafter "*Newberg on Class Actions*") (endorsing two-step process). At the preliminary approval stage, courts determine only whether:

> the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.

Mehling v. New York Life Ins. Co., 246 F.R.D. 467, 472 (E.D. Pa. 2007) (quotation marks and citation omitted); *see also Harry M. v. Pa. Dep't of Pub. Welfare*, 2013 U.S. Dist. LEXIS 48758, at *3 (M.D. Pa. Apr. 4, 2013); MCL *4th* § 21.632. Under Rule 23, a settlement falls within the "range of possible approval" if there is a conceivable basis for presuming that the standard applied for final approval will be satisfied. A settlement merits final approval if it is fair, adequate and reasonable to the class. *Walsh v. Great Atlantic & Pacific Tea Co.*, 726 F.2d 956, 965 (3d Cir. 1983). The fairness, reasonableness, and adequacy of the settlement is assessed at a final hearing. *See In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d 442, 451 (E.D. Pa. 2008).[5]

[5] The factors considered for *final* approval of a class settlement include:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the

Plaintiffs now respectfully request that this Court take the first step in the settlement approval process and preliminarily approve the Settlement here.

B. A Review Of The Applicable Factors Favors Preliminary Approval.

At the preliminary approval stage, the Court considers whether:

> (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.

In re Imprelis Herbicide Mktg., Sales Pracs. & Prods. Liab. Litig., 2013 U.S. Dist. LEXIS 18332, at *7 (E.D. Pa. Feb. 11, 2013) (preliminarily approving settlement) (internal quotation and citation omitted); *see also In re General Motors Corp. Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995).[6] After considering those factors, if a court concludes that a settlement should be preliminarily approved, "an initial presumption of fairness" is established. *Imprelis*, 2013 U.S. Dist. LEXIS 18832, at *8 (quoting *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003)); *see also Newberg on Class*

> defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Sullivan, 667 F.3d at 319-20 (quotation marks and citation omitted).

[6] The last factor is more aptly applied at final settlement approval after the time for class members to object has expired. *Gates v. Rohm and Haas Co.*, 248 F.R.D. 434, 444 n. 8 (E.D. Pa. 2008).

Actions § 11:41 (noting that courts usually adopt "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval"). Here, applying those factors demonstrates that the Settlement should be preliminarily approved.

First, the negotiations were plainly conducted at arms' length. Plaintiffs were represented by numerous attorneys experienced in class action and oil and gas litigation. On the other side, Chesapeake was also represented by counsel well-versed in class action and oil and gas litigation. The negotiations were conducted by counsel on both sides known for vigorously representing their clients. The negotiations were intense, supervised by a former federal judge, and the Class was well represented. These facts are confirmed by the accompanying Declaration of Judge Cahn (attached as Exhibit 4 to the Motion).

Second, Class Counsel had access to a sufficient amount of information to thoroughly understand the factual and legal issues at stake before negotiating and finalizing this settlement. (See Moffett Declaration at ¶¶5-8). Early settlements are "favored," *see Simon v. KPMG, LLP, et al.*, 2006 U.S. Dist. LEXIS 35943, at *29 (D.N.J. Jun. 2, 2006), and formal discovery is not required before settlement. *See In re PNC Finan. Svcs. Group, Inc. Securs. Litig.*, 440 F. Supp. 2d 421, 433 (W.D. Pa. 2006) (granting final approval to settlement without provision of formal discovery); *In re Rite Aid Corp. Securs. Litig.*, 269 F. Supp. 2d 603, 608 (E.D. Pa.

2003) (same). Class Counsel had more than the "adequate appreciation of the merits" that is required in negotiating this settlement. *Simon*, 2006 U.S. Dist. LEXIS 35943, at *29 (quoting *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 319 (3d Cir. 1998)).

Third, the parties' counsel are well-experienced in similar litigation. Plaintiffs' counsel include attorneys who have handled and successfully resolved a number of significant royalty underpayment claims on a class basis, including the following class actions concerning the deduction of so-called "post-production" costs: *Aline Moye, et al. v. Exxon Corporation, et al.*, Case No. CV-98-20 on the docket of the Circuit Court of Monroe County, Alabama; *Peter H. McGowin, et al. v. Texaco Inc., et al.*, Case Nos. CV-1997-4127 and CV-2001-1516 on the docket of the Circuit Court of Mobile County, Alabama; *Larry Trice v. Union Oil Company of California*, Case Nos. CV-98-89 and CV-2001-1517 on the docket of the Circuit Court of Mobile County, Alabama; *Joseph Dennis Williams, et al. v. Phillips Petroleum Company*, Case No. CV-01-068-B on the docket of the Circuit Court of Washington County, Alabama; *Estate of Jack Holman, et al. v. Noble Energy, Inc., et al* (a/k/a *Holman v. Patina Oil & Gas Corporation)*, Case No. 03-cv-9 on the docket of the District Court, Weld County, Colorado; *Holman v. Petro-Canada Resources (USA), Inc.*, Case No. 07-cv-416 on the docket of the District Court, Weld County, Colorado; *Droegemueller v. Petroleum Development*

Corporation, Civil Action No. 07-cv-1362 on the docket of the United States District Court for the District of Colorado; *Anderson v. Merit Energy Company*, Civil Action No. 07-cv-00916 on the docket of the United States District Court for the District of Colorado; *Lucken Family Limited Partnership, LLP v. Ultra Resources, Inc.*, Case No. 09-cv-01543 on the docket of the United States District Court for the District of Colorado; and *Healy v. Chesapeake Appalachia, LLC, et al.*, Case No. 1:10-cv-23 on the docket of the United States District Court for the Western District of Virginia. (See Moffett Declaration at ¶4 and the firm resumes attached thereto).

Class Counsel have litigated not only numerous gas royalty class actions, but have undertaken leadership roles in numerous other class actions and complex litigation. (See Moffett Declaration and the firm resumes attached as exhibits thereto). As a result, Class Counsel were and are acutely aware of the factual and legal issues presented by this gas royalties dispute, as well as the attendant risks, delays, and expenses of complex litigation. Class Counsel also are acutely aware of recent Supreme Court decisions strictly enforcing arbitration provisions, whether or not one party to the contract was a sophisticated party, *see AT&T Mobility Co. LLC v. Concepcion*, 131 S. Ct. 1740 (2011), and whether or not the cost of arbitration would exceed an individual plaintiff's recovery. *See Am. Exp. Co. v. Ital. Colors Rest. Co.*, 133 S. Ct. 2304 (2013).

The parties reached this Settlement after extensive arm's-length negotiations between attorneys familiar with the legal and factual issues of the case and well-versed in litigating similar types of claims, and the Settlement falls well within the range of fair, reasonable, and adequate. There are many significant risks to pursuing the litigation, including the uncertain outcome of the factual and legal issues in dispute, the substantial expenses and delays that would be encountered in litigating the claims to (an uncertain) conclusion, the opposition the Class would face through an aggressive defense of Chesapeake's royalty calculation practices by Chesapeake's very experienced, highly competent counsel, and the specter of Class members being required to arbitrate their claims on an individual basis. The Settlement benefits the Class by not only paying them immediately for a significant portion of the damages they incurred in the past but, importantly, also protects them prospectively by limiting the deductions that can be imposed on them in the future, through the life of their leases.

The Settlement, a compromise representing an assessment of risk by all parties and guided by an experienced mediator and former judge, is plainly entitled to the presumption of fairness that application of the relevant factors dictates, and should be preliminarily approved.

IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED.

A. The Settlement Class Meets the Requirements of Rule 23 for Certifying a Settlement Class.

Courts may certify class actions for the purposes of settlement only. *See, e.g.*, *Sullivan*, 667 F.3d at 311; *In re Processed Egg Prods. Antitrust Litig.* ("*Eggs*"), 284 F.R.D. 249, 278 (E.D. Pa. 2012). Before preliminarily approving a settlement in a case where a class has not yet been certified, the court should determine whether the class proposed for settlement purposes is appropriate under Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *Sullivan*, 667 F.3d at 296. The *MCL 4th* advises:

> If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).

MCL 4th, § 21.632. However, when a court is "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems." *Eggs*, 284 F.R.D. at 264 (quotation marks and citation omitted); *see also Sullivan*, 667 F.3d at 322 n.56. Further, the practical purpose of provisional class certification is to facilitate dissemination of notice to the class of the terms of the proposed settlement and the date and time of the final settlement approval hearing. *See MCL 4th*, § 21.633.

In this case, all of the requirements of Rule 23(a) and Rule 23(b)(3) are readily met. Rule 23(a) requires that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defense of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

1. Numerosity.

Rule 23(a)(1) requires that a class be "so numerous that their joinder before the Court would be impracticable." *Eggs*, 284 F.R.D. at 259. According to Chesapeake's records, there are more than 1,000 lessors whose leases contain the MEC and thus qualify as Settlement Class Members. The numerosity requirement of Rule 23(a) is easily met here. *See Eggs*, 284 F.R.D. at 260 (quoting *Stewart v. Abraham*, 275 F.3d 220, 227-28 (3d Cir. 2001) (noting that there is no minimum number to satisfy numerosity and observing that generally the requirement is met if the potential number of plaintiffs exceeds 40).

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The Supreme Court has emphasized that "for purposes of Rule 23(a)(2), even a single common question will do." *Dukes*, 131 S. Ct. at 2556 (internal quotation and alterations omitted); *see also In re: Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 2013 U.S. App. LEXIS 14519, at *16 (6th Cir. July 18, 2013) ("We start from the premise that there need be only one common question to certify a class."); *see also Baby Neal v. Casey,* 43 F.3d 48, 56 (3d Cir. 1994) ("The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class."). The key inquiry for the commonality analysis is whether a common question can be answered in a classwide proceeding, such that the answer will "drive the resolution of the litigation." *Dukes*, 131 S. Ct. at 2551.

Applying these principles, Plaintiffs satisfy the commonality requirement of Rule 23(a)(2). The key question in this case is whether the gas produced by Chesapeake is marketable at the well and thus, whether Chesapeake may deduct the costs at issue. This is a question that can be answered on a classwide basis, satisfying Rule 23(a)(2)'s commonality requirement.

3. Typicality

Rule 23(a)(3) requires that the class representatives' claims be "typical of the claims . . . of the class." As the Third Circuit explained, "The typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." *Baby Neal*, 43 F.3d at 57-58. Where there is an allegation that the plaintiffs and other class members were targeted by the same wrongful course of conduct under a common legal theory, Rule 23(a)(3) does not mandate that they share identical claims, and "factual differences among the claims of the putative class members do not defeat certification." *In re Prudential*, 148 F.3d at 310. A finding of typicality will generally not be precluded even if there are pronounced factual differences where there is a strong similarity of legal theories. *Id.*

Plaintiffs' claims are typical of the Settlement Class Members' claims because they, like all other Settlement Class members, were allegedly subject to Chesapeake's alleged improper royalty payment practices. Therefore, Plaintiffs satisfy the typicality requirements of Rule 23(a)(3).

4. Adequacy of Representation

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy

this requirement, the named class representatives must "not possess interests which are antagonistic to the interests of the class." *In re Imprelis*, 2013 U.S. Dist. LEXIS 18332, at *12. The inquiry into the adequacy of the representative parties examines whether "the putative named plaintiff has the ability and the incentive to represent the claims of the class vigorously, that he or she has obtained adequate counsel, and that there is no conflict between the individual's claims and those asserted on behalf of the class." *Eggs*, 284 F.R.D. at 261. Plaintiffs have no conflicts with the Settlement Class members. *See Amchem Prods.*, 521 U.S. at 625 (holding that a class representative must have no interests antagonistic to the class). They meet the adequacy requirement of Rule 23(a)(4).

Rule 23(g) requires that the Court appoint class counsel who will "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4). The rule sets forth certain factors for the Court to consider, including:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
>
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
>
> (iii) counsel's knowledge of the applicable law; and
>
> (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A).

Class Counsel are experienced and knowledgeable in the prosecution of class actions, including gas royalty cases. (See Moffett Declaration and the firm resumes attached as exhibits thereto). Numerous courts across the country have appointed the undersigned firms as lead counsel in gas royalty and other class actions, which Class Counsel have successfully prosecuted. *Id.* The Court should appoint the undersigned firms as Class Counsel pursuant to Rule 23(g).

5. Predominance and Superiority

In order to satisfy Rule 23(b)(3)'s requirement that common questions of law and fact predominate, courts look at "whether the proposed class is sufficiently cohesive to warrant adjudication by representation." *In re Cmty. Bank of N. Va. Mortg. Lending Pracs. Litig.*, 2013 U.S. Dist. LEXIS 107048, at *36 (W.D. Pa. July 31, 2013); *see also Amchem*, 521 U.S. at 623; *Sullivan*, 667 F.3d at 297.

In this case, the class action vehicle is best suited for the resolution of Plaintiffs' and the other Settlement Class Members' claims. Plaintiffs allege common issues of fact and law that predominate over any individual issues that may arise. Plaintiffs' and Settlement Class Members' claims are based on the same legal theory and are based on the same nucleus of facts, including leases with common language.[7]

[7] Plaintiffs attached their leases to the complaint filed in this case.

Further, a class action suit is superior to any other form of adjudication because it provides the best way of managing and resolving the claims at issue here. "The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *Eggs*, 284 F.R.D. at 264 (quoting *In re Prudential*, 148 F.3d at 316). Consideration of judicial economy and prompt resolution of claims underscore the superiority of the class action in this case. By contrast, compensation resulting from hundreds of individually litigated cases or arbitrations is highly uncertain and may not be received before lengthy, and costly, trial and appellate proceedings are complete.

V. THE PROPOSED FORM AND PLAN OF NOTICE ARE APPROPRIATE.

Plaintiffs respectfully ask the Court to approve the proposed Settlement Notice to be mailed to the Settlement Class Members ("Mailed Notice"). The proposed Mailed Notice is attached as Exhibit 2 to the accompanying Motion. Rule 23(c)(2) requires that "for any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2). Additionally, Rule 23(e) requires that class members receive notice of any proposed settlement of claims

under Rule 23(b)(3). Rule 23(h) also requires that notice of class counsel's motion for attorney's fees and costs be provided to class members.

The Mailed Notice provides all of the information that Rule 23(c)(2)(B) and 23(e) require. It clearly and concisely states, in plain, easily understood language, the following: (1) the nature of the lawsuit; (2) the definition of the Settlement Class; (3) the claims alleged by the Settlement Class and the defenses asserted by the Defendants; (4) that a Settlement Class Member may enter an appearance through an attorney if he so desires; (5) that the Court will exclude from the Settlement Class any member who requests exclusion; (6) the time and manner for requesting exclusion; (7) a description of the terms of the Settlement, including information about the Settlement Class Members' right to obtain a copy of the Settlement Agreement; (8) the right of any Settlement Class Member to object to the Settlement; (9) the binding effect of the Settlement on Settlement Class Members who do not elect to be excluded; and (10) the date and time of the final fairness hearing.[8] The proposed notice also advises Settlement Class Members that Class Counsel will apply to the Court for, and Chesapeake has agreed not to

[8] Plaintiffs will fill in the date of the final fairness hearing on the Mailed Notice after the Court provides a date and time convenient to it via entry of the order granting preliminary approval or otherwise, as well as other dates in the notice that are tied to the date of the entry of the order granting preliminary approval and mailing of the notice.

oppose, an award of one-third of the Settlement Funds[9] and one-third of the future economic benefits, for a period not exceeding five years, that Settlement Class Members will receive as a result of the reduction in Post-Production Costs deductions.

Because the Mailed Notice provides the Settlement Class Members with all of the information required by Fed. R. Civ. P. 23(c)(2)(B) and 23(e) and 23(h), and because it is the best notice practicable under the circumstances, the Court should approve the Mailed Notice attached as Exhibit 2 to the accompanying Motion.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order preliminarily approving the Settlement, certifying the Settlement Class and appointing them as Class Representatives and their counsel as Class Counsel, and approving the form and plan of notice attached to this motion.

Respectfully submitted,

Dated: August 30, 2013

PLAINTIFFS

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[9] The Settlement Funds include the payment representing the 55% of Post-Production Costs reflected as deductions through September 1, 2013, plus 27.5% of such deductions between September 1, 2013, and the Effective Date of the Settlement.

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