APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 18-6006
(D.C. No. 5:16-CV-01073-M)
(W.D. Okla.)

BILL G. NICHOLS, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,
Plaintiff-Appellant,

v.

CHESAPEAKE OPERATING, LLC;
CHESAPEAKE EXPLORATION, LLC,
Defendants-Appellees.

[Filed: March 7, 2018]

Before LUCERO, BALDOCK, and BACHARACH, Circuit Judges.

ORDER AND JUDGMENT[*]

Carlos F. Lucero, Circuit Judge:

Bill Nichols appeals from a district court order denying his motion to abstain and remand to state court in this putative class-action suit against Ches-

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[*] After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

apeake Operating, LLC and Chesapeake Exploration, LLC (collectively, "Chesapeake"). Exercising jurisdiction under 28 U.S.C. § 1453(c)(1), we affirm.

I

Nichols is a royalty owner in Oklahoma natural gas wells owned in part or operated by Chesapeake. In August 2016, he sued Chesapeake in Oklahoma state court for underpayment or non-payment of royalties. He sought class certification of certain "Oklahoma Residents," which he defined using a four-part test:

> Persons to whom, from January 1, 2015 to the date suit was filed herein, (a) Chesapeake mailed or sent each monthly royalty check on an Oklahoma well to an Oklahoma address (including direct deposit); (b) Chesapeake mailed or sent a 1099 for both 2014 and 2015 to an Oklahoma address; (c) the Settlement Administrator in *Fitzgerald Farms, LLC v. Chesapeake Operating, Inc.*, Case No. CJ-10-38, Beaver County, Oklahoma mailed or sent a distribution check and 1099 to an Oklahoma address; and[] (d) except for charitable institutions, were *not* subject to the Oklahoma Withholding Tax for Nonresidents on royalties paid in 2014 to the date suit was filed.

Chesapeake removed the case to federal court based on the Class Action Fairness Act ("CAFA"), which grants district courts original jurisdiction over class actions involving at least 100 proposed class members, more than $5,000,000 in controversy, and the presence of any plaintiff class member who is a citizen of a State different from any defendant. *See* 28 U.S.C. § 1332(d)(2)(A), (d)(5)(B). In regard to citizenship, Chesapeake pointed out that its principal place of business is in Oklahoma, thereby making it

an Oklahoma citizen, *see* § 1332(d)(10), and that there was a class member that met Nichols' resident definition—Austin College, a Texas citizen.

Nichols soon filed a motion arguing that CAFA's home-state exception required the district court to remand the case to state court. This exception requires a district court to decline jurisdiction if "two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." § 1332(d)(4)(B). Nichols proffered evidence to show that at least two-thirds of the proposed class members shared Chesapeake's Oklahoma citizenship, including the declaration of statistician Joseph Kadane, Ph.D., who randomly selected 100 royalty owners from "a spreadsheet containing 28,929 unique records of royalty owners paid from Oklahoma wells and who have an Oklahoma address." Of the 100 royalty owners comprising Kadane's sample, there were 13 trusts, 7 entities, and 80 individuals.

To obtain citizenship information about those royalty owners, Nichols employed a marketing research firm and a private investigator. The research firm successfully surveyed 54 of the sample's royalty owners. It asked individuals whether they considered themselves to be Oklahoma citizens and whether they planned to move from Oklahoma in the near future. And it asked businesses whether they were organized or headquartered in Oklahoma. The firm did not propose any questions about trustees or trust beneficiaries.

Based on the survey results, Nichols' counsel determined that 95% of the sample's royalty owners were Oklahoma citizens "because the data shows

indicia of Oklahoma citizenship with no conflicting data of citizenship elsewhere." Based on that 95% determination, Kadane performed a statistical analysis and concluded that "it is more likely than not that more than 67% of the members of the [entire] proposed plaintiff class are Oklahoma citizens."

The district court was not persuaded, finding three significant flaws in the evidence. First the district court noted that neither the survey data nor the skip-trace investigation provided information as to the citizenship of trust beneficiaries or trustees—important components of a trust's citizenship.[1] Second, the district court found that a number of individuals identified as Oklahoma citizens were actually deceased, with no information provided as to heirs' citizenship. Finally, the district court found that Nichols' counsel had an "insufficient basis" for determining that some members of the random sample were Oklahoma citizens.[2] Accordingly, the district court denied Nichols' motion to abstain and remand, finding he had not shown the applicability of CAFA's home-state exception by a preponderance of the evidence. Nichols now appeals.

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[1] *See Conagra Foods, Inc. v. Americold Logistics, LLC*, 776 F.3d 1175, 1181 (10th Cir. 2015) (explaining that "[w]hen a trustee is a party to litigation, it is the trustee's citizenship that controls for purposes of diversity jurisdiction" as long as the trustee is a real party in interest, and "[w]hen the trust itself is party to the litigation, the citizenship of the trust is derived from all the trust's 'members,'" which "includes the trust's beneficiaries"), *aff'd sub nom. Americold Realty Trust v. Conagra Foods, Inc.*, —— U.S. ——, 136 S. Ct. 1012, 194 L.Ed.2d 71 (2016).

[2] For instance, the skip-trace reports indicated that only 35 of the sample's class members had Oklahoma driver's licenses and that 37 members had non-Oklahoma addresses.

II

We review de novo the district court's interpretation of CAFA's home-state exception to jurisdiction. *See Woods v. Standard Ins. Co.*, 771 F.3d 1257, 1262 (10th Cir. 2014). "CAFA was enacted to respond to perceived abusive practices by plaintiffs and their attorneys in litigating major class actions with interstate features in state courts." *Id.* (quotation omitted). Thus, "once a defendant establishes [CAFA] removal is proper, a party seeking remand to the state court bears the burden of showing jurisdiction in federal court is improper under one of CAFA's exclusionary provisions." *Id.* Because Nichols concedes the propriety of removal, he must show the applicability of a CAFA exception by a preponderance of the evidence. *See Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 884 (9th Cir. 2013); *Vodenichar v. Halcón Energy Props., Inc.*, 733 F.3d 497, 503 (3d Cir. 2013); *In re Sprint Nextel Corp.*, 593 F.3d 669, 673 (7th Cir. 2010); *see also Dutcher v. Matheson*, 840 F.3d 1183, 1189, 1190 (10th Cir. 2016).[3] "The pre-

[3] Nichols suggests that in order to meet his burden, he must make only "some minimal showing" that at least two thirds of the proposed class members are Oklahoma citizens. *Reece v. AES Corp.*, 638 Fed.Appx. 755, 769 (10th Cir. 2016) (unpublished). In *Reece*, a panel of this court observed, in the context of CAFA's local-controversy exception, 28 U.S.C. § 1332(d)(4)(A), that although "[s]everal of our sister circuits have required plaintiffs to establish the elements of a CAFA jurisdictional exception by a preponderance of the evidence[,] [s]ome district courts[] . . . have required *less proof*, embracing a reasonable-probability standard or something akin to it." 638 Fed.Appx. at 768 (emphasis added; citations omitted). The *Reece* panel declined to embrace either approach, and instead selected a burden it found common to both, which, as Nichols posits, requires "some minimal showing of the citizenship of the proposed class at the time that suit was filed." *Id.* at 769 (quo-

ponderance of the evidence standard requires the party with the burden of proof to support its position with the greater weight of the evidence." *Nutraceutical Corp. v. Von Eschenbach*, 459 F.3d 1033, 1040 (10th Cir. 2006) (footnote omitted).

Nichols contends that a rebuttable presumption of citizenship arises from his allegation that the proposed class members are Oklahoma residents. And because Chesapeake did not offer evidence that more than one-third of the proposed class members are not Oklahoma residents, Nichols says, the district court was required to abstain. To support this contention, he cites the Sixth Circuit's majority opinion in *Mason v. Lockwood, Andrews & Newnam, P.C.*, 842 F.3d 383 (6th Cir. 2016), *cert. denied*, —— U.S. ——, 137 S. Ct. 2242, 198 L.Ed.2d 678 (2017). The *Mason* majority reasoned that because "the law affords a rebuttable presumption that a person's residence is his domicile," *id.* at 390, and because state citizenship is based on domicile, citizenship could be presumed from residence—a transitive proposition (i.e., if A = B and B = C, then A = C). The majority stated that this proposition was compelling from a policy standpoint: "Affording the moving party a rebuttable presumption of citizenship based on residency avoids the exceptional difficulty of proving the citizenship of a class of over 100 individuals, given the nature and timing of the citizenship inquiry under the local controversy exception." *Id.* at 392-93.

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tations omitted). We conclude, however, that a more definitive standard is warranted, and we choose to follow our sibling circuits in their use of the more exacting preponderance-of-the-evidence standard. That standard is consistent with the "strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant." *Dutcher*, 840 F.3d at 1190 (quotation omitted).

The dissent pointed out that triggering a CAFA exception based on the mere allegation of residence conflicted with the federal courts' "strict duty to exercise the jurisdiction that is conferred upon them by Congress." *Id.* at 397 (Kethledge, J., dissenting) (quotation omitted). And given that abstention had long been considered "an extraordinary and narrow exception to that duty," *id.* (quotation omitted), the dissent concluded the better approach was to follow other circuits and require "at least some facts in evidence from which the district court may make findings regarding the class members' citizenship." *Id.* at 397-98 (quotation omitted). It cited, among other cases, the Tenth Circuit's unpublished decision in *Reece v. AES Corp.*, in which a panel of this court applied in the CAFA-exception context the longstanding view that "allegations of mere residence may not be equated with citizenship." 638 Fed.Appx. at 769 (unpublished) (quotations omitted). Thus, the *Reece* panel said, such allegations must be accompanied by "some persuasive substantive evidence (extrinsic to the amended petition) to establish the [requisite] citizenship of the class members." *Id.*

The Eighth Circuit has similarly "read the historical citizenship/residency distinction into" the CAFA mandatory exception statute and rejected the assertion that "presumptions alone may transform a challenged allegation of residency into the establishment of citizenship." *Hargett v. RevClaims, L.L.C.*, 854 F.3d 962, 966 & n.2 (8th Cir. 2017) (citing *Mason*, 842 F.3d at 397-99 (Kethledge, J., dissenting); *Reece*, 638 Fed.Appx. at 769-70; and *Mondragon*, 736 F.3d at 884).

We agree with the dissent in *Mason*, this court's non-precedential decision in *Reece*, and the other

circuits that reject the applicability of a rebuttable presumption of citizenship in the context of a CAFA exception invoked based on the mere allegation of residence. There is a "strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant." *Dutcher*, 840 F.3d at 1190 (quotation omitted). Further, "[a]n individual's residence is not equivalent to his domicile and it is domicile that is relevant for determining citizenship." *Siloam Springs Hotel, L.L.C. v. Century Sur. Co.*, 781 F.3d 1233, 1238 (10th Cir. 2015); *see, e.g.*, *Bingham v. Cabot*, 3 U.S. (3 Dall.) 382, 383, 1 L.Ed. 646 (1798) ("A citizen of one state may reside for a term of years in another state, of which he is not a citizen; for, citizenship is clearly not coextensive with inhabitancy.").[4] Congress no doubt "mean[t] to incorporate the established meaning of these terms," *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329, 101 S. Ct. 2789, 69 L.Ed.2d 672 (1981), into the CAFA exceptions premised on "citizenship," 28 U.S.C. § 1332(d)(4). *See Hargett*, 854 F.3d at 966. We therefore turn to the evidence Nichols submitted to show that two-thirds or more of the proposed plaintiff class members were Oklahoma citizens.

III

We review for clear error the district court's factual findings concerning the applicability of CAFA's home-state exception. *See Mondragon*, 736 F.3d at 886; *see also Middleton v. Stephenson*, 749 F.3d 1197, 1201 (10th Cir. 2014) (indicating that domicile and citizenship findings are reviewed for clear error). Under the clear-error standard, "we may reverse only

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[4] Domicile requires both residence in a State and intent to remain there indefinitely. *Middleton v. Stephenson*, 749 F.3d 1197, 1200 (10th Cir. 2014).

if the district court's finding lacks factual support in the record or if, after reviewing all the evidence, we have a definite and firm conviction that the district court erred." *Middleton*, 749 F.3d at 1201.

Nichols maintains that he provided enough evidence of the putative class members' Oklahoma citizenship to require remand. He presented business records provided by Chesapeake of its royalty owners along with their Oklahoma addresses; identified class members as being exempt from non-resident withholding tax; selected a representative sample of class members and obtained citizenship data on those members; and employed a statistician to draw conclusions about the composition of the class based on a random sample. Further, he stresses that his evidence was unrebutted.

We acknowledge the significant effort Nichols employed to show that at least two-thirds of the class members shared Chesapeake's Oklahoma citizenship. But we note that the need for this evidence was of Nichols' own making: he chose to define the class in terms of residence rather than citizenship. *See In re Sprint Nextel Corp.*, 593 F.3d at 676 (stating that CAFA's home-state exception would have been satisfied had the plaintiffs simply limited the class to Kansas citizens because "it doesn't take any evidence to establish that Kansas citizens make up at least two-thirds of the members of a class that is open only to Kansas citizens"). By defining the class in terms of residence, Nichols saddled himself with an evidentiary burden, one which he sought to meet through admittedly imperfect evidence.

In particular, Kadane reached his conclusion that two-thirds or more of the class members are Oklahoma citizens by extrapolating from a flawed sample.

As the district court observed, trusts—which make up nearly 15% of the sample—were not properly accounted for. Further, the sample included deceased individuals without providing further identifying citizenship information. And finally, the district court alluded to information in the skip-trace reports inconsistent with Oklahoma citizenship for some of the sample's members. Nichols does not dispute these problems or otherwise explain how Kadane's evidentiary extrapolation remains statistically viable.

Given the clear-error standard of review, we must affirm the district court's conclusion that Nichols failed to prove at least two-thirds of the proposed plaintiff class members were Oklahoma citizens by a preponderance of the evidence. The district court, therefore, properly determined that CAFA's home-state exception to exercising jurisdiction did not apply.

IV

AFFIRMED.

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

Case No. CIV-16-1073-M

BILL G. NICHOLS, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,
Plaintiff,

v.

CHESAPEAKE OPERATING, LLC,
CHESAPEAKE EXPLORATION, LLC,
Defendants.

[Filed Sept. 13, 2017]

ORDER

VICKI MILES-LaGRANGE, UNITED STATES DISTRICT JUDGE

Before the Court is plaintiff's Motion to Abstain under the Home-State Mandatory Abstention Exception to CAFA, filed October 14, 2016. On April 12, 2017, plaintiff filed his Supplement to His Motion to Abstain under Home State Exception to CAFA. On June 27, 2017, the parties filed a Joint Stipulation. On July 14, 2017, defendants filed their response, and on September 5, 2017, plaintiff filed his reply. Based upon the parties' submissions, the Court makes its determination.

Plaintiff filed this proposed class action for breach of lease, breach of fiduciary duty, fraud, deceit and constructive trust against defendants in the District

Court of Beaver County, Oklahoma on August 9, 2016. In the Class Action Petition, plaintiff defines the proposed class as follows:

> All persons who are (a) an "*Oklahoma Resident*"; and, (b) a royalty owner in Oklahoma wells where Chesapeake Operating, LLC (f/k/a Chesapeake Operating, Inc.) and/or Chesapeake Exploration, LLC is or was the operator (or a working interest owner who marketed its share of gas and directly paid royalties to the royalty owners) from January 1, 2015 to the date Class Notice is given. The Class claims relate to royalty payments for gas and its constituents (such as residue gas, natural gas liquids, helium, nitrogen, or drip condensate).
>
> Excluded from the Class are: (1) agencies, departments or instrumentalities of the United States of America, including but not limited to the U.S. Department of the Interior (the United States, Indian tribes, and Indian allottees); (2) Defendants, their affiliates, predecessors, and employees, officers, and directors; (3) Any NYSE or NASDAQ listed company (and its subsidiaries or affiliates) engaged in oil and gas exploration, gathering, processing, or marketing; (4) the claims of royalty owners to the extent covered by arbitration clauses or prior settlement agreements, if any, still in effect on or after January 1, 2015; (5) overriding royalty owners and others whose interest was carved out from the lessee's interest; (6) royalty owners and others who opted out or objected of record in *Fitzgerald Farms, LLC v. Chesapeake Operating, Inc.*, Case No. CJ-10-38, Beaver County, Oklahoma; (7) royalty owners who have already filed and still have

> pending lawsuits for underpayment of royalties against Chesapeake at the time suit is filed herein; (8) royalty owners taking gas in-kind, if any.
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> "*Oklahoma Resident*" means: Persons to whom, from January 1, 2015 to the date suit was filed herein, (a) Chesapeake mailed or sent each monthly royalty check on an Oklahoma well to an Oklahoma address (including direct deposit); (b) Chesapeake mailed or sent a 1099 for both 2014 and 2015 to an Oklahoma address; (c) the Settlement Administrator in *Fitzgerald Farms, LLC v. Chesapeake Operating, Inc.*, Case No. CJ-10-38, Beaver County, Oklahoma mailed or sent a distribution check and 1099 to an Oklahoma address; and, (d) except for charitable institutions, were *not* subject to the Oklahoma Withholding Tax for Nonresidents on royalties paid in 2014 to the date suit was filed.

Class Action Petition [docket no. 1-1] at ¶ 13.

On September 15, 2016, defendants removed this action to this Court. On October 13, 2016, plaintiff filed a motion to remand. On February 23, 2017, this Court denied plaintiff's motion to remand.

Plaintiff now moves this Court for an order abstaining from jurisdiction over this putative class action and remanding this case to the District Court of Beaver County, Oklahoma, under the home state exception to diversity jurisdiction under the Class Action Fairness Act ("CAFA").[1] The home state exception provides:

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[1] In his supplement, plaintiff alternatively notes in footnote 1 that this Court can exercise its discretion to remand under the Interest of Justice exception in 28 U.S.C. § 1332(d)(3). As this issue was not briefed by the parties, the Court declines to

> A district court shall decline to exercise jurisdiction under paragraph (2)—
>
> * * *
>
> (B) [when] two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

28 U.S.C. § 1332(d)(4)(B). It is undisputed that the two defendants in this case are citizens of Oklahoma for purposes of CAFA and that this action was originally filed in Oklahoma state court. The only disputed issue is whether two-thirds or more of the members of the proposed class are citizens of Oklahoma.

Further, the parties do not dispute that as the party seeking remand, plaintiff bears the burden of establishing by a preponderance of the evidence that the home state exception to CAFA jurisdiction applies in this case. Plaintiff cannot rely solely on the allegations in his Class Action Petition to establish that two-thirds or more of the members of the proposed class are citizens of Oklahoma, but "must make some minimal [evidentiary] showing of the citizenship of the proposed class at the time that suit was filed." *Reece v. AES Corp.*, 638 F. App'x 755, 769 (10th Cir. 2016) (internal quotations and citation omitted). In other words, plaintiff has "to marshal and present some persuasive substantive evidence (extrinsic to the amended petition) to establish the Oklahoma citizenship of the class members." *Id.*

There are three general categories of proposed class members implicated in this case: (1) individuals,

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address whether the Interest of Justice exception would apply in this case.

(2) entities, and (3) trusts. Each category has its own, unique citizenship test. For diversity jurisdiction purposes, individuals are deemed citizens of the state where they are domiciled, i.e., the last state in which he or she resided with an intent to remain indefinitely. *See id.* For entities, corporations are deemed to be citizens of both the state where they are incorporated and the place where they maintain their principal place of business. *See* 28 U.S.C. § 1332(c)(1). For limited liability companies, limited partnerships, and other "unincorporated associations," CAFA deems each "to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized." 28 U.S.C. § 1332(d)(10). Trusts are a bit more complicated. When the trust itself is a party to the case, the citizenship of the trust is derived from all of the trust's members, which would include its beneficiaries, *see Conagra Foods, Inc. v. Americold Logistics, LLC*, 776 F.3d 1175, 1181 (10th Cir. 2015), and when a trustee brings a case in his or her own name as trustee, it is the trustee's citizenship that controls for purposes of diversity jurisdiction, *see id.*

In support of his motion, plaintiff has submitted the following evidence: (1) a declaration of Joseph B. Kadane, plaintiff's expert, attesting to his generation of a random sample of the proposed class, to his statistical analysis of the data provided by plaintiff's counsel, and to his conclusion that more than two-thirds of the proposed class are citizens of Oklahoma[2]; (2) survey data regarding the random sample

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[2] Mr. Kadane's analysis and conclusion are based upon the data provided by plaintiff's counsel and plaintiff's counsel's conclusions regarding whether a particular member of the random sample of the proposed class was an Oklahoma citizen.

of the proposed class; (3) a skip-trace investigation of the random sample of the proposed class; and (4) plaintiff's counsel's data compilation and conclusions regarding whether a particular member of the random sample of the proposed class was an Oklahoma citizen. Having carefully reviewed the parties' submissions, and particularly the evidence submitted by plaintiff, the Court finds that plaintiff has failed to establish by a preponderance of the evidence that two-thirds or more of the members of the proposed class are citizens of Oklahoma such that the home state exception to CAFA jurisdiction applies in this case. Specifically, the Court finds there are significant flaws in the evidence provided. First, neither plaintiff's data nor plaintiff's counsel's conclusions regarding whether a particular member of the random sample was an Oklahoma citizen properly addresses the requisite analysis for determining the citizenship of a trust.[3] Neither the survey data[4] nor the skip-trace investigation documents provide any information as to either the trustee's citizenship or the trust beneficiaries' citizenship. Second, upon a comparison of plaintiff's counsel's data compilation and conclusions with the skip-trace investigation documents, the Court found a number of individuals that were found to be Oklahoma citizens on plaintiff's counsel's data compilation that the skip-trace investigation documents indicated were deceased. If an individual is deceased, an additional analysis would necessarily need to be conducted to determine the citizenship of any heirs, etc. Finally, upon review of the data compilation and conclusions and the skip-trace investigation documents, the Court found

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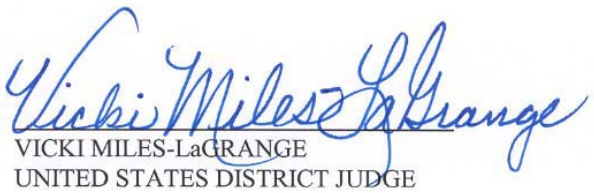
[3] Trusts make up approximately 14% of the proposed class.

[4] The survey did not specifically address trusts.

there was an insufficient basis for plaintiff's counsel's determination of Oklahoma citizenship for a few of the members of the random sample. In light of the above flaws, the Court finds that Mr. Kadane's conclusion cannot be relied upon by this Court and that without Mr. Kadane's conclusion, and without sufficient reliable data, this Court cannot find by a preponderance of the evidence that two-thirds or more of the members of the proposed class are citizens of Oklahoma. Accordingly, the Court finds that the home state exception to CAFA jurisdiction does not apply in this case.

The Court, therefore, DENIES plaintiff's Motion to Abstain under the Home-State Mandatory Abstention Exception to CAFA and plaintiff's Supplement to His Motion to Abstain under Home State Exception to CAFA [docket nos. 12 and 25].

IT IS SO ORDERED this 13th day of September, 2017.



VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1332(d) provides:

§ 1332. Diversity of citizenship; amount in controversy; costs

* * *

(d)(1) In this subsection—

(A) the term "class" means all of the class members in a class action;

(B) the term "class action" means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

(C) the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims

on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A)(i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which—

(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim-

(A) concerning a covered security as defined under 16(f)(3)[1] of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)[2]) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

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[1] So in original. Probably should be preceded by "section".

[2] So in original. Probably should be "77p(f)(3)".

(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)(i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which—

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

(ii) This subparagraph will not apply—

(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

* * *

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

SCOTT S. HARRIS
Clerk of the Court
(202) 479-3011

May 29, 2018

Mr. Kevin Johnson Miller
Kellogg, Hansen, Todd,
Figel & Frederick, P.L.L.C.
1615 M Street, NW
Suite 400
Washington, DC 20036

Re: Bill G. Nichols
v. Chesapeake Operating, LLC, et al
Application No. 17A1314

Dear Mr. Miller:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Sotomayor, who on May 29, 2018, extended the time to and including August 3, 2018.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk
by /s/ JACOB A. LEVITAN

Jacob A. Levitan
Case Analyst

[attached notification list omitted]