

Kate M. Fox  
Wyoming State Bar #5-2646  
John C. McKinley  
Wyoming State Bar #5-2635  
DAVIS & CANNON, LLP  
422 W. 26<sup>th</sup> Street  
Post Office Box 43  
Cheyenne, WY 82003  
307-634-3210  
307-778-7118 (Fax)  
Email: [kate@davisandcannonchey.com](mailto:kate@davisandcannonchey.com)  
[john@davisandcannonchey.com](mailto:john@davisandcannonchey.com)

STATE OF WYOMING     )  
                                          ) ss.  
COUNTY OF CAMPBELL )

IN THE DISTRICT COURT  
  
SIXTH JUDICIAL DISTRICT

Kenneth B. Geer,                     )  
                                          )  
                          Plaintiff,     )  
                                          )  
vs.                                     )  
                                          )  
Lance Oil & Gas Company, Inc.,    )  
A Delaware corporation,            )  
                                          )  
                          Defendant.    )

CIVIL ACTION NO. 32940

**BRIEF IN SUPPORT OF PLAINTIFF'S  
MOTION FOR CLASS CERTIFICATION**

Plaintiff Kenneth B. Geer, by and through his undersigned counsel, submits this Memorandum in Support of its Motion for Class Certification against Lance Oil & Gas Company, Inc. ("Lance"). For the reasons set forth below, the requirements of WRCP 23 are met, and the class should be certified.

## Background

Kenneth B. Geer (“Geer”) brings this action on behalf of himself and all similarly situated royalty interest owners and overriding royalty interests owners (collectively “Royalty Owners”) pursuant to which Lance is obligated to pay royalties on gas produced in Campbell County, Wyoming.<sup>1</sup> This action challenges three interrelated aspects of Lance’s accounting methodology which Lance has employed and continues to employ to improperly calculate and report its Royalty payments to Geer, as well as to all Royalty Owners to whom Lance makes royalty payments arising from production from wells in Campbell County. Lance: 1) regularly over estimates the ad valorem tax rate that will be imposed, then pays a lower ad valorem tax rate to the State without reimbursing the Royalty Owners for the over withholding; 2) calculates all ad valorem, severance and conservation tax (“Production Tax”) payments based on Royalty Value rather than Taxable Value, so that it again deducts more from royalty payments than it actually pays in taxes; and 3) fails to report the correct tax payment and tax deduction information to the Royalty Owners. Each of these practices is a violation of the Wyoming Royalty Payment Act, W.S. §§ 30-5-301 et seq. (“WRPA”) and triggers the Act’s penalty and interest provisions. Each of these practices, which are built into Lance’s accounting methodology, is applied by Lance to the entire class of Campbell County Royalty Owners.

On behalf of himself and the class, Geer seeks payment of the amounts improperly withheld, with interest; payment of the penalty for failing to accurately report the total amount of Production Taxes; judgment declaring that Lance’s challenged accounting methodology violates

---

<sup>1</sup> Plaintiff relinquishes any class claims for Lance production outside of Campbell County.

the WRPA; an injunction restraining Lance from continuing the challenged accounting and reporting practice; and fees and costs of this action.

### Facts

Plaintiff's expert witness, James Steven Wilson, has done a thorough examination of the data produced by Lance to demonstrate the incorrect accounting methodology employed by Lance. Mr. Wilson first analyzed 26 natural gas wells in which Lance makes royalty payments to Geer. The analysis is shown on Exhibit C to the *Affidavit of James Steven Wilson*, Exhibit 1, filed Under Seal ("*Wilson Affidavit*").

First, because ad valorem taxes are paid in Wyoming the year following the production year, the exact ad valorem tax rate is unknown at the time that Lance makes Royalty payments. Lance therefore estimates the amount to be deducted from Royalty payments, and in most years, the Lance estimate of ad valorem tax rate turns out to be higher than the ad valorem tax rate actually applied. *Wilson Affidavit*, ¶7. For example, for calendar year 2008, Lance used an ad valorem tax rate of .06495. The actual effective rate for 2008 was .058799. As a result, Lance over-withheld ad valorem taxes from Geer on the 26 wells analyzed in the amount of \$481.17 for the period 2001 through 2011 (the "Period<sup>2</sup>"). *Id.*, and Exhibit C to *Wilson Affidavit*.

Second, Lance calculates and deducts from Geer Royalty payments severance, ad valorem and conservation taxes ("Production Tax") based on values that exceed the Taxable Values actually used by Lance in its Production Tax reporting to the Wyoming Department of Revenue. The result, again, is over-deduction of taxes from the royalties paid to Geer. "Taxable

---

<sup>2</sup> A ten-year statute of limitations is applicable because the leases which establish the payment obligation are written contracts. *Wyoming Bd. of Land Comm'rs v. Antelope Coal Co.*, 2008 WY 60, ¶ 8, 185 P.3d 666, 668 (Wyo.2008). W.S. § 1-3-105(a)(i); Exhibit 2.

Value” is the value reported by Lance to the Wyoming Department of Revenue from which Production Taxes are calculated and assessed. Under Wyoming law, the operator may exclude from Taxable Value certain costs, such as for gathering and separating. W.S. 39-14-203(b)(iv); *Williams Production RMT Co. v. Wyoming Dept. of Revenue*, 2005 WY 28, ¶¶9-12, 107 P.3d 179, 183-84. In contrast, “Royalty Value” is the value Lance uses to calculate an individual Royalty Owner’s royalty. Wyoming law prohibits the operator from deducting “costs of production” from the Royalty payment (including, for example, costs of production such as gathering and separating). W.S. § 30-5-304(a); *Cabot Oil & Gas Corp v. Followill*, 2004 WY 80, ¶11, 93 P.3d 238, 242 (Wyo. 2004). Because there are fewer allowable deductions from Royalty Value than from Taxable Value, Royalty Value must exceed Taxable Value. Therefore, Lance’s use of the Royalty Value number for purposes of Production Tax deductions from Royalty payments results in deducting from Geer’s Royalty payments amounts for taxes in excess of what Lance actually pays to taxing authorities on Geer’s behalf. *Wilson Affidavit*, ¶8. For the Geer 26 wells in the Period, the amount Lance over-deducted for severance taxes was \$603.31. *Id.*, ¶9 and Exhibit C, column M. For the Geer 26 wells in the Period, the amount Lance over-deducted for ad valorem taxes is \$679.01. *Id.*, ¶10.<sup>3</sup>

The combined effect of these two incorrect calculations is an over-withholding by Lance of up to 13 cents per Royalty Owner mcf in some periods. *Id.*, ¶11.

Lance applies the same incorrect methodology for all Campbell County Royalty Owners. *Id.*, ¶¶12, 14, and Exhibit E. Although the amounts Lance over-withheld from each Royalty owner will vary, the methodology by which they calculated the Production Taxes and over-withheld from every Royalty Owner is the same as described for the Geer 26 wells.

---

<sup>3</sup> Information from which to calculate conservation taxes over-deducted has not yet been provided by Lance and is not included at this time. The same methodology will apply.

Finally, Lance's royalty check remittance statements do not contain sufficient information for the Royalty owner to discern that Lance is employing these two improper and incorrect methodologies. *Id.*, ¶13, Exhibit F.

Lance is liable to the Royalty Owners for the amount over-withheld, plus interest pursuant to W.S. 30-5-303(a). In addition, Lance is liable to the Royalty Owners for its failure to report these incorrect deductions, pursuant to W.S. 30-5-303(c).

Declaratory Judgment and injunctive relief are necessary so that Lance ceases to employ this incorrect methodology which results in over-deduction from Royalty payments to all Lance Royalty Owners in Campbell County.

### Discussion

#### *1. The Wyoming Royalty Payment Act*

The Wyoming Royalty Payment Act ("WRPA"), W.S. §§ 30-5-301 et seq., "is a remedial statute and, as such, is to be liberally construed to achieve its remedial purpose." *Cabot Oil & Gas*, 2004 WY 80, ¶11, 93 P.3d at 242. The intent of the statute is "to stop oil producers from retaining other people's money for their own use." *Ferguson v. Coronado Oil Co.*, 884 P.2d 971, 979, (Wyo. 1994), *citing Cities Serv. Oil & Gas Corp. v. State*, 838 P.2d 146, 156 (Wyo. 1992).

Lance is authorized to pay Royalty Owners' share of Production taxes to the taxing entities, and it "may deduct the taxes paid from any amounts due or to become due to the interest owners of such production in proportion to the interest ownership." W.S. § 39-14-203(c)(iii). Lance is not authorized to retain other people's money by deducting more than the interest owners' proportionate share of the taxes actually paid from their Royalty payments. By

deducting more than the interest owners' proportionate share of taxes paid, Lance has violated, and continues to violate, the WRPA.

Lance is liable to the Plaintiff, and to all non-governmental Royalty interest owners in Campbell County<sup>4</sup>, for the amounts it has over-deducted in the period 2001 through 2011. "The act takes effect when the lessee discovers a royalty payment deficiency." *Ultra Resources, Inc. v. Hartman*, 2010 WY 36, ¶71, 226 P.3d 889, 916. Further, "[u]nder the WRPA, a party obligated to make a payment is liable for 18% interest on payments not made in accordance with the act. Section 30-5-303(a)." *Id.*

Finally, Lance is liable to Geer and the class of Campbell County Royalty Owners for failure to accurately reports its deductions for taxes, as required by W.S. 30-5-305(b)(v). The penalty for that failure to report is One Hundred Dollars (\$100.00) per month.<sup>5</sup> Although there is a one-year statute of limitations for penalty imposition, "[t]he one year statute of limitations related to the penalty for failure to properly report under the Royalty Payment Act begins to run if, and when, the producer issues a proper report." *Cabot*, 2004 WY, ¶14, 93 P.3 at 243. A "proper report" in this case would be one which accurately reports the interest owner's proportionate share of "severance, ad valorem, and other production taxes" actually paid. Lance has yet to issue such a report.

---

<sup>4</sup> The class excludes governmental entities and Lance, its affiliates, predecessors, employees, officers and directors.

<sup>5</sup> Lance may contend that Geer has waived his right to raise this issue by joining the class which settled a "reporting claim" in the *Sandra K. Lange Trust v. Lance Oil & Gas Co., Inc*, Civ. # 29635, In the District Court, Sixth Judicial District. However, a release cannot be effective as to matters concealed by one of the parties. *In re Actrade Financial Technologies, Ltd.*, 424 B.R. 59, 69 (S.D. N.Y. 2009). And in any case, the merits of the case are not before the Court when reviewing a Rule 23 motion for class certification. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178-79 (1974).

## 2. Class Certification

Class Certification is the appropriate vehicle to provide redress to all Campbell County Royalty Owners in a manner that is efficient and uniform as to Lance's past, present and future obligations to accurately deduct and report Production Taxes from Royalty payments. Class certification requirements are liberally construed, and doubts may be resolved in favor of certification. See *Esplin v. Hirschi*, 402 F.2d 94, 99 (10<sup>th</sup> Circ. 1968), *cert. denied*, 394 U.S. 928.<sup>6</sup> Class certification requires the Plaintiff to satisfy all four elements of WRCP 23(a), and at least one of three requirements of WRCP 23(b). Those sections of the Rule provide:

(a) *Prerequisites to a class action.* -

One or more members of a class may sue or be sued as representative parties on behalf of all only if:

- (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 defenses of the class; and
- (4) The representative parties will fairly and adequately protect the interests of the class.

(b) *Class actions maintainable.* -

An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

- (1) The prosecution of separate actions by or against individual members of the class would create a risk of:
  - (A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
  - (B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
- (2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
- (3) The court 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

---

<sup>6</sup> This section of the brief relies primarily on law from other jurisdictions, as Wyoming has no reported class action cases since Rule 23 was amended effective 1971. However, WRCP 23 reflects the language of the Federal rule, and most other state's rules.

action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

- (A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- (D) The difficulties likely to be encountered in the management of a class action.

(a)(1) Numerosity

From the data made available to date by Lance, Mr. Wilson estimates “there are at least 1,178 Royalty owners in Campbell County affected by Lance’s incorrect tax calculations in 2011” alone. *Wilson Affidavit*, ¶15. Evidence of exact class size is not required. *Joseph v. General Motors Corp.*, 109 F.R.D. 635, 639 (D. Colo. 1986). To satisfy this requirement, the plaintiffs need to show that the joinder of all partes is impracticable, although they need not show that it would be impossible. *Trevizo v. Adams*, 455 F.3d 1155, 1162 (10th Cir.2006). Joinder of such a large number of Plaintiffs would clearly be impracticable. (“Certainly, when the class is very large, for example, numbering in the hundreds, joinder will be impracticable. . .” Conte and Newberg, *Newberg on Class Action* 4th ed. 2002, §3.5.) An additional factor for consideration of the numerosity element can arise, in cases such as this one, when each individual’s claim is relatively small. “Class actions also may permit the plaintiffs to pool claims which would be uneconomical to litigate individually. For example, this lawsuit involves claims averaging about \$100 per plaintiff; most of the plaintiffs would have no realistic day in court if a class action were not available.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985).



(a)(2) Commonality

This element requires that class members “possess the same interest and suffer the same injury.” *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 156 (1982). The plaintiff class must present a “common contention . . . of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each of one of the claims in one stroke.” *Wal-Mart Stores v. Dukes*, \_\_\_ U.S. \_\_\_, 131 S.Ct. 2541, 2551, 180 L.Ed.2d 374 (2011). The common question may be either an issue of law or of fact, and a single common issue of law or fact may be sufficient for certification. *J.B. ex rel. Hart v. Valdez*, 186 F. 3d 1280, 1288 (10<sup>th</sup> Cir. 1999).

In this case there exist three core fact issues, predicated on Lance’s common accounting methodology, that the entire class has in common:

- Over-deduction of each class member’s proportionate share of ad valorem taxes by using an excessive tax rate.
- Over-deduction of each class member’s proportionate share of all Production Taxes by using Royalty Value rather than Taxable Value.
- Failure to accurately report taxes withheld from Royalty payments to all class members.

The issues of law are very straightforward:

- As a result of its practices above, Lance is liable to each class member for reimbursement of the amounts over-deducted, interest, and the \$100 a month reporting penalty, as provided by the WRPA.

While each class member’s lease language may vary, that does not defeat commonality. First, the lease language does not alter the basic accounting methodology errors described. Second, operators’ arguments that variations in lease language are fatal to class certification have

been consistently rejected by the courts. *See Wallace B. Roderick Revocable Living Trust v. XTO Energy, Inc.*, 281 F.R.D. 477, 483 (D.Kan. 2012). Each of these common contentions is capable of classwide resolution, when Lance reimburses the Royalty owners for the amounts over-withheld, pays the interest and penalty, and corrects its accounting methodology going forward. The commonality requirement is satisfied under these facts.

(a)(3) Typicality

The typicality element requires a showing of a nexus between the plaintiff's claims and those of the class. "[D]iffering fact situations of class members do not defeat typicality ... so long as the claims of the class representative and class members are based on the same legal or remedial theory." *Adamson v. Bowen*, 855 F.2d 668, 675 (10th Cir.1988). "The commonality and typicality requirements of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Wal-Mart*, 131 S.Ct. at 2551 (citations omitted). Here, as discussed above, the claims of the plaintiff are typical of the claims of the class, and are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. The remedy for Geer, a correction in accounting methodology and payment under the WRPA, will be the same remedy for all class members. Although the amounts Lance over-withheld from each Royalty owner will vary, the methodology by which they calculated the production taxes and over-withheld from every Royalty owner is the same, and the reporting violation is the same. The only difference between the class members will be in the amount of the damages. As with commonality,

individual damage questions do not prevent class action certification. *In re Texas International Securities Litigation*, 114 F.R.D. 33, 44 (W.D.Okla.1987).

(a)(4) Fair and Adequate Protection of the Class Interests

Rule 23(a)(4) requires that the representative party fairly and adequately protect the interests of the class. To satisfy this requirement, the plaintiff must show that his interests are aligned with those of the persons they seek to represent, and that they will vigorously prosecute the case through qualified counsel. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187-88 (10th Cir.2002). Plaintiff Kenneth B. Geer is both a royalty interest owner and an overriding royalty interests owner in wells operated by Lance in Campbell County. As explained by Mr. Wilson, Lance's incorrect accounting methodology and reporting practices has injured Mr. Geer in the same way as it has injured the entire class. Mr. Geer's interests are clearly aligned with those of the class.

Geer's attorneys are qualified to vigorously prosecute the case. John McKinley has extensive experience and expertise in the field of Wyoming mineral taxation. *See McKinley CV* attached hereto as Exhibit 3. Kate Fox has extensive trial experience and is recognized as a leading litigator in Wyoming. *See Kate Fox CV* attached hereto as Exhibit 4. Their firm, Davis & Cannon, LLP, has the support staff and resources necessary for complex class action litigation.

This requirement is also met.

An action may be maintained as a class action if the prerequisites of Rule 23(a) are satisfied, and in addition, one of the elements of Rule 23(b) is established. In this case, all the Rule 23(b) elements are met.

(b)(1)(B) Adjudication Would as a Practical Matter be Dispositive of Interests of Other Members

Adjudication of Mr. Geer's claims would result not only in payment of the amounts wrongfully deducted, interest, and penalties; it would also result in correction of the accounting methodology going forward. This would necessarily affect the interests of the other Royalty Owners under the same lease and/or wells (Mr. Geer holds an interest in only a fraction of the royalty interest in the wells upon which Lance pays him Royalties).

(b)(2) Lance's Accounting Methodology and Reporting Practices are Generally Applicable to the Class, Making Appropriate Final Injunctive Relief or Declaratory Relief with Respect to the Class as a Whole

Rule 23(b)(2) imposes two independent but related requirements: (1) "the defendants' actions or inactions must be based on grounds generally applicable to all class members;" and (2) "final injunctive relief be appropriate for the class as a whole." *Shook v. Bd. of County Comm'rs*, 543 F.3d 397, 604 (10th Cir.2008). The second requirement "demands a certain cohesiveness among class members with respect to their injuries, the absence of which can preclude certification." *Id.* (quoting *Maldonado v. Ochsner Clinic Found.*, 493 F.3d 521, 524 (5th Cir.2007)).

Declaratory Judgment is appropriate pursuant to the Uniform Declaratory Judgment Act, W.S. §§ 1-37-101 through 1-37-115 (LexisNexis 2011). Section 1-37-102 of the Act gives Wyoming courts the power to "declare rights, status and other legal relations." Section 1-37-103 provides:

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose right, status or other legal relations are affected by the Wyoming constitution or by statute, municipal ordinance, contract or franchise, may have any question of construction or validity arising under the

instrument determined and obtain a declaration of right, status or other legal relations.

Plaintiff seeks to have the court construe his rights as a Royalty Owner under his leases with Lance, affected by the WRPA. His complaint, therefore, falls within the general scope of the Declaratory Judgment Act. Mr. Geer is an “interested” person who has raised a justiciable controversy.. *Cox v. City of Cheyenne*, 2003 WY 146, ¶¶8,9, 79 P.3d 500, 505 (Wyo.2003).

Likewise, injunctive relief is available to the Plaintiff and the class pursuant to W.S. § 1-28-102 and WRCP 65. Injunctive relief, although authorized by statute, is “by nature, [a] request for equitable relief,” and is granted at the Court’s discretion. *Wilson v. Lucerne Canal and Power Co.*, 2003 WY 126, ¶¶9 & 14, 77 P.3d 412, 416 (Wyo. 2003). Injunctions may only issue “when the harm is irreparable and no adequate remedy at law exists.” *Wilson* at ¶ 14. An injury is irreparable “where it is of a peculiar nature, so that compensation in money cannot atone for it.” *Id.* In this case, the injury to Plaintiff and the class of Lance’s continuing to employ its illegal methodology arises from the fact the only other remedy would be continued, periodic class action lawsuits, which are not an adequate remedy.

Plaintiff asks the court to: (1) enter a declaratory judgment that Lance’s Production Tax deduction methodology and reporting practice violates the WRPA (Complaint, ¶36 a-d); and (2) enjoin Lance from continuing to employ the Production Tax deduction methodology and reporting practices that violate the WRPA (Complaint, ¶38 a-d). Lance’s illegal accounting methodology and reporting practices injures every class member; likewise, the remedy sought through declaratory judgment and injunctive relief is a remedy applicable to all class members. This is the essence of the cohesiveness requirement at Rule 23(b)(2).

(b)(3) Predominance and Superiority

To certify a class under Rule 23(b)(3), the court must find that common questions “predominate over questions affecting only individual members” and that the class resolution is “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed.R.Civ.P. 23(b)(3); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997).

“The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods.*, 521 U.S. at 623. To determine whether the question is common or individual, the nature of the evidence must be examined. *In re Urethane Antitrust Litigation*, No. 04-1616, 2008 WL 4210780, at \*5 (D.Kan. July 28, 2008). “If the proposed class members will need to present evidence that varies from member to member in order to make out a prima facie case, then it is an individual question. If, on the other hand, the same evidence will suffice for each member to make out a prima facie case, then it is a common question.” *Id.* (internal citations omitted).

As discussed above in the context of the commonality and typicality elements, the core issues of this case are consistent across the class. The evidence necessary to make out a prima facie case for every class member is the same as the evidence analyzed for the 26 Geer wells. The ad valorem tax rate used by Lance and the actual ad valorem tax rate imposed in Campbell County are the same for each class member. Lance’s methodology for deducting Production Taxes from Royalty Value instead of Taxable Value is the same for each class member. Lance’s failure to accurately report the discrepancy between the taxes it deducts from Royalty payments and the taxes it actually pays is the same for each class member.

Class resolution is the superior method for fairly and efficiently adjudicating this controversy. Predominance and superiority are closely related: the number of individualized

issues affects the manageability of a class action. *Porcell v. Lincoln Wood Products, Inc.* 713 F.Supp.2d 1305, 1325 (D.N.M.2010) citing *Moore's Federal Practice* § 23.46[2][e][I] at 23–280.

In adding “predominance” and “superiority” to the qualification-for-certification list, the Advisory Committee sought to cover cases “in which a class action would achieve economies of time, effort, and expense, and promote ... uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.”

*Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615 (1997).

Rule 23(b)(3) includes a nonexhaustive list of factors pertinent to a court's scrutiny of the predominance and superiority criteria:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.”

(A) The interest of the class members in individually controlling the prosecution of the action is generally weighed on the basis of the extent of the damages.

The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.

*Amchem*, 521 U.S. at 612 (citations omitted). In this case, the damages for each class member are relatively small, and the interest in individually controlling the prosecution is commensurately low. Further, the costs and expenses of resolving the plaintiff's claims through hundreds of lawsuits would be prohibitive for both the class members and the courts.

(B) In response to discovery requests (Lance Response to Plaintiff's Request for Production #8, Exhibit 5), Lance has identified all WRPA litigation against it, and to the best of

Plaintiff's knowledge, none of these cases address the issues raised in this case.

(C) The Sixth Judicial District, Campbell County is the best forum in which to concentrate this litigation, as the issue relates to production in Campbell County and to the correct Production Tax rates for Campbell County production.

(D) There are no particular difficulties in managing this class action. The identity and contact information of each class member is easily ascertained in Lance's records. The class is not too large to be managed, and the issues are so cohesive as to simplify that management.

dismissal for management reasons is never favored. The vehicle of class action is meant to permit plaintiffs with small claims and little money to pursue a claim otherwise unavailable. A contrary rule would "essentially preclude class treatment whenever separate issues had to be tried."

*In re Workers' Compensation*, 130 F.R.D. 99, 110 (D.Minn.,1990)(citations omitted).

#### Conclusion

Plaintiff has met his burden of showing that the requirements of WRCP 23 for class certification have been met. This case is ideally suited to adjudication as a class, and the motion for class certification should be granted.

DATED this 31st day of August, 2012.



Kate M. Fox  
Wyoming State Bar #5-2646  
John C. McKinley  
Wyoming State Bar #5-2635  
DAVIS & CANNON, LLP  
422 W. 26<sup>th</sup> Street  
Post Office Box 43  
Cheyenne, WY 82003



**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of August 2012, the foregoing was served via U.S. Postal Mail to the following:

Mark R. Ruppert, P.C.  
Holland & Hart, LLP  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, WY 82003-1347

Jere C. Overdyke, III  
Holland & Hart, LLP  
25 South Willow Street, Suite 200  
P.O. Box 68  
Jackson, WY 83001

Cathleen D. Parker  
Senior Assistant Attorney General  
Wyoming Attorney General's Office  
123 State Capitol Building  
Cheyenne, WY 82002

  
\_\_\_\_\_  
Kate M. Fox