UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

In re SANDRIDGE ENERGY, INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	No. 5:12-cv-01341-G CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION

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SECONDARY AUTHORITIES

Plaintiffs and Class Representatives Laborers Pension Trust Fund for Northern Nevada ("Northern Nevada"), Construction Laborers Pension Trust of Greater St. Louis ("Greater St. Louis"), and Angelica Galkin (collectively, "Plaintiffs") respectfully submit this memorandum in support of their motion for final approval of the all-cash $21,807,500 proposed Settlement ("Settlement Amount"), approval of the Plan of Allocation, and final certification of the Class.[1]

I. INTRODUCTION

Plaintiffs have obtained a Settlement of this securities class action for $21,807,500 in cash. It is part of the $35,750,000 global settlement of this Action and the *Lanier* action.[2] It is a very good recovery for the Class and satisfies each of the Rule 23(e)(2) factors as well as the factors considered by the Tenth Circuit in deciding whether a settlement is fair, reasonable, and adequate. The Settlement represents a significant percentage of estimated recoverable damages and was negotiated by counsel with extensive experience in securities class actions who intelligently evaluated the merits of Plaintiffs' claims, including the risks to recovery and likelihood of ultimate success, based on their extensive litigation of this matter. The Settlement is particularly beneficial to the Class in light of the many risks Plaintiffs faced, including that: (i) SandRidge filed for bankruptcy during the Litigation; (ii) Defendants Ward, Bennett and Grubb could prevail with respect to their pending summary

[1] All capitalized terms that are not otherwise defined herein have the same meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of November 12, 2021 ("Stipulation"). ECF 564-1. Citations are omitted and emphasis is added throughout unless otherwise noted.

[2] *Duane & Virginia Lanier Trust v. SandRidge Mississippian Trust I*, No. 5:15-cv-00634-G (W.D. Okla.) (the "*Lanier* Litigation").

judgment motions, *Daubert* motions or on their motion for reconsideration; and (iii) protracted and expensive continued litigation, including trial and likely appeals, could ultimately lead to a much smaller recovery or no recovery at all.

Before agreeing to the Settlement, Lead Counsel had a thorough understanding of the strengths and weaknesses of the case. Indeed, the Settlement is the result of more than nine years of hard-fought litigation among sophisticated parties and experienced and well-informed counsel. Lead Counsel undertook a thorough investigation and filed three amended complaints, in response to which Defendants filed two rounds of motions to dismiss and another motion to dismiss by SandRidge after discovery. The parties completed fact, class and expert discovery. Discovery was contentious but resulted in the production, review and analysis of nearly 4 million pages of documents from Defendants and third parties as well as the completion of 34 depositions. The Settling Parties fully briefed Defendants' summary judgment motions, *Daubert* motions and Defendants' motion for reconsideration, which motions remain pending. Moreover, the Settling Parties participated in three formal mediation sessions and numerous additional informal settlement discussions with an experienced mediator, the Honorable Layn R. Phillips (Ret.).

On May 27, 2022, the Court granted preliminary approval of the Settlement, preliminarily certified the Class, and permitted notice to the Class ("Preliminary Approval Order"), finding that the Settlement was fair, reasonable, and adequate, subject to further consideration at the Settlement Hearing. ECF 568, ¶¶1-12. Nothing has changed to disturb the Court's assessment of the Settlement at preliminary approval.

In accordance with the Preliminary Approval Order, Lead Counsel ensured distribution of the robust Notice of Pendency and Proposed Settlement of Class Action ("Notice") and publication of the Summary Notice. *See* Declaration of Joseph Mahan Regarding Notice Dissemination, Publication, and Report on Objections or Requests for Exclusion Received to Date ("Mahan Decl."), ¶¶3-10, submitted herewith. On June 10, 2022, the Claims Administrator, Epiq Class Action and Claims Solution, Inc. ("Epiq"), commenced mailing copies of the Notice Packet (defined herein) by First-Class Mail to all Class Members who could be identified with reasonable effort and posted it on the Settlement website along with comprehensive information about the Settlement and how to submit a claim both electronically and by mail. *Id*., ¶¶6, 13-14. Further, on June 3, 2022, the Summary Notice was published in both *The Wall Street Journal* and over *PR Newswire*. *Id*., ¶10. To date, not a single objection to the proposed Settlement has been made, and two requests for exclusion have been received. *Id*., ¶¶16-18.

The Notice also includes the Plan of Allocation which governs how claims will be calculated and how Settlement proceeds will be allocated among Authorized Claimants. The Plan of Allocation was prepared with the assistance of Lead Counsel's in-house damages consultant and is based on the out-of-pocket measure of damages, *i.e.*, the difference between what Class Members paid for their SandRidge common stock during the Class Period and what they would have paid had the alleged misstatements not been made or the omitted information been disclosed. To date, not a single objection to the Plan of Allocation has been filed.

Lead Counsel has concluded that the Settlement and Plan of Allocation are fair, reasonable, and adequate, and in the best interest of the Class. *See generally* Declaration of Evan J. Kaufman in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation and Lead Counsel's Application for an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Kaufman Decl." or "Kaufman Declaration"), submitted herewith. The Settlement and Plan of Allocation warrant the Court's approval, and the Class satisfies the requirements for class certification under Rules 23(a) and (b)(3). Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement as set forth in the Stipulation and the proposed Plan of Allocation as fair, reasonable, and adequate.

II. FACTUAL AND PROCEDURAL BACKGROUND

This securities fraud class action alleges violations of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, against Defendants on behalf of a class of purchasers of SandRidge publicly traded common stock between February 24, 2011 and November 8, 2012, inclusive (with certain exceptions) ("Class"). Plaintiffs allege that, during the Class Period, Defendants knowingly or recklessly made materially false or misleading statements and omissions regarding the production, reserves, and economics of the Company's Mississippian holdings, portraying them as an extremely attractive area for the Company with large amounts of oil reserves and attractive rates of return. ECF 225, ¶¶2, 5-7, 132. Plaintiffs also allege that the price of SandRidge common stock was artificially inflated by Defendants' allegedly misleading statements and omissions, and that Plaintiffs and the Class suffered damages when SandRidge's true financial condition was revealed.

Id., ¶¶366, 370. Defendants deny, and continue to deny, Plaintiffs' allegations of wrongdoing. The Kaufman Declaration filed simultaneously herewith, and adopted by reference herein, fully describes the factual background and procedural history of the Litigation, the extensive efforts undertaken by Plaintiffs and Lead Counsel during the course of the Litigation, the risks of continued litigation, and the negotiations leading to the Settlement. *See* Kaufman Decl., §§I-II, IV.

As detailed more thoroughly in the accompanying Kaufman Declaration, Plaintiffs filed several detailed complaints and successfully opposed Defendants' two rounds of motions to dismiss the Litigation and a motion to dismiss by SandRidge after discovery. *See* Kaufman Decl., ¶¶8, 37, 97-100. Discovery was contentious, and at no point did Defendants concede the merit of Plaintiffs' allegations. *Id.*, ¶¶39-66. In addition, the Settlement was achieved as a result of extensive, arm's-length negotiations overseen by Judge Phillips, a neutral, third-party mediator. *Id.*, ¶¶5, 9. The three formal mediation sessions included detailed discussions regarding the parties' respective claims and defenses. *Id.*, ¶¶8-9. The parties were unable to reach a compromise at those mediations, but ultimately entered into a confidential term sheet on June 4, 2021 with Defendant Ward and an agreement in principle to settle the Litigation with Defendants Bennett and Grubb on June 18, 2021. *Id.*, ¶101.

Plaintiffs' and Lead Counsel's diligent prosecution of the Litigation has directly resulted in substantial, immediate relief. *See* Kaufman Decl., ¶12. Of particular note was their successful opposition to Defendants' motions to dismiss, allowing the Class' claims to proceed to discovery. *See id.*, ¶¶37-38. This resulted in the obtaining and analyzing of nearly 4 million pages of documents from Defendants and third parties and taking or

defending a total of 34 depositions. *See id*., ¶9. In addition, Plaintiffs successfully moved for class certification and fully briefed Defendants' motions for summary judgment, the parties' *Daubert* motions and Defendants' motion for reconsideration. Plaintiffs also successfully opposed SandRidge's motion to dismiss filed after discovery.

III. PLAINTIFFS HAVE PROVIDED SUFFICIENT NOTICE TO THE CLASS IN COMPLIANCE WITH RULE 23 AND DUE PROCESS

Under Rule 23(e)(1), a district court approving a class action settlement "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2)(B) also provides that notice of a class settlement must be "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)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (class notice designed to fulfill due process requirements). Notice "'must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Tennille v. W. Union Co*., 785 F.3d 422, 436 (10th Cir. 2015).

As explained in Plaintiffs' memorandum of law in support of preliminary approval (ECF 564, at §V), the Court-approved Notice and Proof of Claim (the "Notice Packet") satisfy these standards and amply inform Class Members of all relevant case and Settlement-related information. For these reasons, the Court's Preliminary Approval Order found that the form and content of the notice program here, as well as the methods for notifying the Class proposed on preliminary approval, "constitute the best notice to Class Members practicable

under the circumstances" and "satisfy all applicable requirements of the Federal Rules of Civil Procedure (including Rule 23(c)-(e)), the United States Constitution (including the Due Process Clause), Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the [PSLRA], the Rules of this Court, and other applicable law." Preliminary Approval Order, ¶8.

Here, the combination of: (i) individual First-Class Mail of more than 1,400 copies of the Notice Packet to all potential Class Members who could be identified with reasonable effort and known record holders, supplemented by mailed notice to brokers and nominees; and (ii) publication of the Summary Notice in a relevant, widely-circulated publication, transmission on a newswire and through a settlement website, has proven highly successful and is typical of notice plans approved in securities class action settlements.[3] It was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see, e.g.*, *Bennett v. Sprint Nextel Corp*., No. 2:09-cv-02122-EFM-KMH, ECF 286, slip op. at 2-3 (D. Kan. Apr. 10, 2015) (approving a substantially similar proposed notice and method for mailing, distributing, and publishing the notice) (attached as Ex. 1); *In re Molycorp, Inc. Sec. Litig.*, 2017 WL 4333999, at *2 (D. Colo. Mar. 6, 2017) (same); *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 693 (D. Colo. 2014) (approving proposed method of notice, consisting of mailing notice to class members identified through reasonable efforts and through posting a summary notice by press releases issued over leading business oriented newspapers).

[3] Mahan Decl., ¶¶6-7.

IV. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED

It is well established within this Circuit that the settlement of a complex class action, such as this, is both favored and encouraged. *See In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1227 (D.N.M. 2012) (approving class action settlement, noting that "'[i]t is well-settled, as a matter of sound policy, that the law should favor the settlement of controversies'") (quoting *Grady v. De Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969)). Because of this, when exercising their sound discretion to approve a settlement, courts are mindful "'not to decide the merits of the case or resolve unsettled legal questions.'" *Shaw v. Interthinx, Inc.*, 2015 WL 1867861, at *2 (D. Colo. Apr. 22, 2015).

Fed. R. Civ. P. 23(e)(2) provides that a class action settlement may be approved by the court "only after a hearing and only on finding that it is fair, reasonable, and adequate," and identifies the following factors to be considered by courts at final approval: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate; and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

Additionally, courts in the Tenth Circuit traditionally consider the following, which largely overlap with the Rule 23(e)(2) factors:

> (1) the settlement was fairly and honestly negotiated, (2) serious legal and factual questions placed the litigation's outcome in doubt, (3) the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation, and (4) the parties believed the settlement was fair and reasonable.

In re Syngenta AG MIR 162 Corn Litig., 357 F. Supp. 3d 1094, 1101 (D. Kan. Dec. 7, 2018) (citing *Tennille*, 785 F.3d at 434).

The Court preliminarily determined that the proposed Settlement for $21,807,500 meets these standards and is fair, reasonable, and adequate. ECF 568, ¶1. As discussed below, the Court's initial disposition was correct, as the Settlement easily satisfies each of the Rule 23(e)(2) and Tenth Circuit factors to support final approval.

A. Plaintiffs and Lead Counsel Have Adequately Represented the Class

To determine if the Class is adequately represented under Rule 23(e)(2), courts have utilized the standard for evaluating adequacy under Rule 23(a)(4) for class certification purposes: "whether (1) 'the named plaintiffs and their counsel have any conflicts of interest with other class members'; and (2) 'the named plaintiffs and their counsel [have] prosecute[d] the action vigorously on behalf of the class.'" *In re Samsung Top-load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 2020 WL 2616711, at *12 (W.D. Okla. May 22, 2020) (citing *Rutter & Wilbanks Corp. v. Shell Oil, Co.*, 314 F.3d 1180, 1187-88 (10th Cir. 2002)), *aff'd*, 997 F.3d 1077 (10th Cir. 2021). Lead Counsel and Plaintiffs readily meet this factor.

First, both Lead Counsel and Plaintiffs have no conflicts of interest with the Class. Plaintiffs' interests are fully aligned with the Class, and they have received no preferential treatment. *See, e.g.*, ECF 29-4 (demonstrating Plaintiffs' Class Period purchases of SandRidge common stock, and resulting damages).

Second, as described in Section II, above, Lead Counsel and Plaintiffs have vigorously prosecuted this action for over nine years on behalf of the Class. In addition to a thorough investigation, Plaintiffs filed three amended complaints and Defendants filed two

rounds of motions to dismiss and SandRidge filed a motion to dismiss after discovery. Kaufman Decl., ¶¶8, 97-100. Following the completion of fact, class and expert discovery, and successfully moving for class certification, the parties fully briefed Defendants' motions for summary judgment, the parties' *Daubert* motions and Defendants' motion for reconsideration. *Id.*, ¶¶80-96.

These vigorous efforts, among others, created a strong negotiating position and demonstrate Plaintiffs' and Lead Counsel's adequacy. *See Reiskin v. Reg'l Transp. Dist. Colo.*, 2017 WL 5990103, at *2 (D. Colo. July 11, 2017) ("The case involved intensive discovery, including the review of thousands of pages of documents . . . . Numerous motions were filed and responded to, including well-briefed dispositive motions."); *Thornburg*, 912 F. Supp. 2d at 1237 ("[T]he Plaintiffs have vigorously prosecuted this action on behalf of the class, as the Plaintiffs successfully defended their claims through a motion to dismiss, and successfully reached a settlement with the Settling Defendants.").

Throughout the Litigation, and as evidenced by the highly favorable Settlement, Plaintiffs and Lead Counsel have strenuously advocated for the best interests of the Class. Therefore, Plaintiffs and Lead Counsel respectfully submit that they have adequately represented the Class and satisfy Rule 23(e)(2)(A) for purposes of final approval.

B. The Proposed Settlement Was Negotiated at Arm's Length and With an Experienced Mediator

The second factor under Rule 23(e)(2)(B) overlaps with the first factor considered by the Tenth Circuit, which assesses whether "the settlement was fairly and honestly negotiated." *See Syngenta*, 357 F. Supp. 3d. at 1102. The Settlement was achieved as a result of extensive,

arm's-length negotiations by Judge Phillips, a neutral, third-party mediator. Kaufman Decl., ¶¶5, 9. The three formal mediation sessions involved thorough discussions regarding the parties' respective claims and defenses as well as the strengths and weaknesses of the Litigation. *Id*., ¶¶8-9. The parties were unable to reach a compromise at the mediations, but continued negotiating until Plaintiffs were able to reach a settlement with Defendant Ward. *Id.*, ¶101. Shortly thereafter, Plaintiffs were able to reach an agreement with Defendants Bennett and Grubb. *Id*. The global settlement of both actions with all Defendants totals $35,750,000, of which $21,807,500 has been allocated for this Action. *Id*., ¶¶102-104. This mediation process demonstrates that the Settlement was negotiated absent any collusion between the parties.[4]

Likewise, a strong presumption of fairness attaches to a class action settlement reached through arm's-length negotiations among able and well-versed counsel. *See Ogden v. Figgins*, 2017 WL 5068906, at *3 (D. Kan. Nov. 3, 2017) ("'When a settlement is reached by experienced counsel after negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable.'"); *Horton v. Molina Healthcare, Inc*., 2019 WL 2207676, at *1 (N.D. Okla. May 22, 2019) (finding a proposed class action settlement fair and reasonable because, *inter alia*, it was "negotiated in good faith at arms' length between experienced attorneys familiar with the legal and factual issues of this case aided by an experienced and neutral third-party mediator"). The Settlement was reached at an advanced

[4] *See Chavez Rodriguez v. Hermes Landscaping, Inc*., 2020 WL 3288059, at *3 (D. Kan. June 18, 2020) (determining that a settlement "negotiated through a formal mediation" with an experienced mediator supported the conclusion that the settlement "is a product of an arm's length negotiation").

stage of the case, following the completion of discovery, when Lead Counsel was certainly well-versed on the strengths and weaknesses of the case. Moreover, the fact that the Settlement was reached under the supervision and endorsement of Plaintiffs, which include sophisticated institutional investors, further bolsters its reasonableness.[5] *See In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 409 (S.D.N.Y. 2018) ("Settlement negotiations were carried out under the direction of Lead Plaintiffs, sophisticated institutional investors whose involvement suggests procedural fairness."), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020). As such, the Settlement was fairly and honestly negotiated and the requirements of Rule 23(e)(2)(B) are met.

C. The Costs, Risks, and Delay of Trial and Appeal

The third factor considered under Rule 23(e)(2) instructs courts to consider the adequacy of the settlement relief in light of "the costs, risks, and delay of trial and appeal." *See* Fed. R. Civ. P. 23(e)(2)(C)(i). This factor overlaps with the combined second and third factors considered by the Tenth Circuit – whether "serious legal and factual questions placed the litigation's outcome in doubt" and whether "the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation." *Tennille*, 785 F.3d at 434; *see Chavez Rodriguez*, 2020 WL 3288059, at *3. Taken together, these factors also weigh heavily in support of final approval of the Settlement.

[5] *See* Declaration of Don Willey in Support of Plaintiffs' Motion for Final Approval of Settlement ("Willey Decl."), ¶4; Declaration of James Mace in Support of Plaintiffs' Motion for Final Approval of Settlement ("Mace Dec."), ¶4.

1. Serious Legal and Factual Questions Placed the Litigation's Outcome in Doubt

If the Litigation were to continue, serious questions of law and fact would place the outcome in significant doubt. Courts within this Circuit and nationwide recognize that securities class actions are notoriously complex and present numerous hurdles at all stages of litigation.[6] This case is no exception.

While Plaintiffs were able to successfully overcome Defendants' two rounds of motions to dismiss, and SandRidge's motion to dismiss after discovery, "th[ose] ruling[s] provide[] no guarantee that [Plaintiffs] will ultimately prevail on the merits." *McNeely v. Nat'l Mobile Health Care, LLC*, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008); *see In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1261 (D. Kan. 2006) ("Although plaintiffs survived defendants' motion to dismiss, they did so only under the very narrow standard of review which the court must apply to Rule 12(b)(6) motions."). Defendants' dispositive motions, including motions for summary judgment, *Daubert* motions and motion for reconsideration, were fully briefed and remain pending, and if Plaintiffs' claims survived those pending motions, a trial would be lengthy, complicated and risky. *See id*. ("even if plaintiffs could have survived defendants' motions for summary judgment, additional serious

[6] *See, e.g.*, *Christine Asia Co. Ltd. v. Yun Ma*, 2019 WL 5257534, at *10 (S.D.N.Y. Oct. 16, 2019) ("'In evaluating the settlement of a securities class action, federal courts, including this Court, have long recognized that such litigation is notably difficult and notoriously uncertain.'"); *Crocs*, 306 F.R.D. at 691 (recognizing "a risk that plaintiffs would be unable to establish the required elements of their §10(b) claims" and that plaintiffs should "consider their likelihood of success certifying a relevant class, surviving summary judgment, and winning at trial"); *Thornburg*, 912 F. Supp. 2d at 1242 (recognizing difficulty associated with proving loss causation and establishing damages, and finding that the parties "disagree on many factual and legal issues, making the likelihood of prevailing at trial problematic").

questions of law and fact also would have placed in doubt the value of the recovery plaintiffs might have been able to obtain").

Defendants strenuously argued that they face no liability. Specifically, Defendants maintained that the majority of Plaintiffs' allegations are based on non-actionable, forward-looking statements and that certain other statements (the Mississippian's rate of return and overall economics) were non-actionable puffery. *See* Kaufman Decl., ¶81. Defendant Ward argued that certain statements were factually accurate. *Id.*, ¶83. Defendant Ward also claimed that Plaintiffs could not prove that any Defendant acted with the requisite state of mind. *Id*., ¶84.

Plaintiffs would face additional risk in establishing loss causation and damages. As to loss causation, Defendants disputed that the alleged fraud caused the price of SandRidge common stock to drop. Defendants argued that Plaintiffs' expert failed to disaggregate non-fraud related factors from his loss causation opinion and that there was no corrective disclosure regarding the geology of the Mississippian at the end of the Class Period. *Id.*, ¶82. Ultimately, these issues would come down to an unpredictable and hotly disputed "'battle of the experts,'" *see Thornburg*, 912 F. Supp. 2d at 1242, and Plaintiffs' claims were at risk because Plaintiffs' expert witness testimony was challenged by Defendants under *Daubert*. *See* Kaufman Decl., ¶¶90-95. Plaintiffs' case would become much more difficult to prove if the Court were to determine that even one of Plaintiffs' experts should be excluded from testifying at trial. As a result, "[t]he suggestion that the Court should force an experienced, seasoned Plaintiffs' class counsel to take the case to trial should not be made lightly, for

victory is not assured or even likely except in the very best of cases." *Thornburg*, 912 F. Supp. 2d at 1242.

Therefore, considering the complex legal and factual issues associated with continued litigation, there is an undeniable and substantial risk that, after years of continued litigation and additional delays, the Class could have received an amount significantly less than the Settlement Amount, or nothing at all.

2. The Recovery Is Particularly Significant in Light of the Delay in Further Litigation

The $21,807,500 relief offered by the proposed Settlement is substantial, approximately 11.3% to 14.1% of the estimated recoverable damages. *See* Kaufman Decl., ¶127. This percentage recovery is multiples of the 1.8% median ratio of settlement amount to estimated investor losses for securities class actions in 2021.[7] *Id*. Indeed, courts within this Circuit have found settlements representing less than 2% of estimated damages as appropriate for final approval. *See, e.g.*, *Crocs*, 306 F.R.D. at 691 n.20 (finding recovery of approximately 1.3% of amount of damages "is in line with the median ratio of settlement size to investor losses"). Further, there is something to be said about the additional value inherent in immediacy. *See Thornburg*, 912 F. Supp. 2d at 1244 ("'To most people, a dollar today is worth a great deal more than a dollar ten years from now.'") (quoting *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 284 (7th Cir. 2002)). This is particularly so where the

[7] Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review* (NERA Jan. 25, 2022) at 24, Fig. 22, available at https://www.nera.com/publications/archive/2022/recent-trends-in-securities-class-action-litigation--2021-full-y.html. "Investor Losses" are a NERA-defined proxy to measure the aggregate loss to investors from the purchase of a defendant's stock. *Id*. at 22.

size of any potential recovery would have been reduced by additional costs incurred by Lead Counsel in taking this case through trial and likely appeals. *Chavez Rodriguez*, 2020 WL 3288059, at *3 (observing that "the costs and time of moving forward in litigation would be substantial").

Indeed, while this Litigation has been pending for over nine years, absent Settlement there would likely be many more years of litigation ahead. The Settling Parties and the Court would expend significant time, resources, and costs to complete pre-trial proceedings, including a ruling on Defendants' pending summary judgment and *Daubert* motions. *See Thornburg*, 912 F. Supp. 2d at 1206 ("any insurance proceeds which remain could be depleted by covering the defense costs necessary to go to trial, including discovery, depositions, and time in court"). Even assuming Plaintiffs were successful at trial, Defendants could still appeal any verdict eventually obtained, which could take years to resolve and would unnecessarily expend judicial resources. *See, e.g.*, *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 694 (D. Colo. 2006) ("If this case were to be litigated, in all probability it would be many years before it was resolved.").

Courts routinely recognize the value of an immediate recovery in the face of delays and uncertainty. *See McNeely*, 2008 WL 4816510, at *13 ("The class . . . is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted."); *Crocs*, 306 F.R.D. at 691 ("[The] immediate recovery in this case outweighs the time and costs inherent in complex securities litigation, especially when the prospect is some recovery versus no recovery."); *In King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. 1976) ("In this

respect, 'it has been held proper "to take the bird in the hand instead of a prospective flock in the bush."'"); *accord Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014).

Considering the hurdles associated with continued litigation, the immediate, substantial relief offered by the $21,807,500 Settlement greatly outweighs the "mere possibility of a more favorable outcome after protracted and expensive litigation over many years in the future." *See In re Syngenta Ag Mir 162 Corn Litig.*, 2018 WL 1726345, at *2 (D. Kan. Apr. 10, 2018). Therefore, Plaintiffs respectfully submit that consideration of the costs, risks, and delay of trial and appeal strongly weighs in favor of the Settlement.

D. The Proposed Method for Distributing Relief Is Effective

As demonstrated above and discussed in more detail in the accompanying Mahan Declaration, the method of disseminating the notice and the claims administration process are both "effective" pursuant to Rule 23(e)(2)(C)(ii). As described in §III herein, Plaintiffs and Lead Counsel provided the best notice practicable under the circumstances in accordance with the Court's Preliminary Approval Order and the requirements of Rule 23, due process, and the PSLRA. The Notice and claims processes are similar to that commonly used in securities class action settlements and provide for straightforward cash payments based on the trading information provided. *See* §§III and V, *infra*; *see also* Kaufman Decl., ¶¶128-130. As described in §V herein, the proposed Plan of Allocation was formulated after analysis from Lead Counsel's in-house damages consultant. It is designed to fairly and rationally allocate the proceeds of this Settlement to the Class in a cost-effective manner.

Thus, Plaintiffs respectfully submit that they have demonstrated a thorough and effective method of distributing relief, further supporting final approval.

E. The Requested Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). As discussed in Lead Counsel's separate application, it seeks an award of attorneys' fees in the amount of one-third of the Settlement Amount, in addition to interest on such amount.

This request is in line with recent fee awards in this District. *See* Memorandum of Law in Support of Lead Counsel's Application for an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4), at 7-8. Further, this is an all-cash, non-reversionary settlement and the entire Net Settlement Fund will be distributed to Class Members until it is no longer economically feasible to do. As such, there is no risk that Plaintiffs' Counsel will be paid but Class Members will not. *Cf. Eubank v. Pella Corp.*, 753 F.3d 718, 726-27 (7th Cir. 2014) (rejecting settlement where attorneys would receive fees based on inflated settlement value, as defendants were likely to pay only a fraction of the purported settlement value to the class).[8]

F. The Settling Parties Have No Additional Agreement Other Than an Agreement to Address Requests for Exclusion

Rule 23(e)(2)(C)(iv) requires the consideration of any agreement required to be disclosed under Rule 23(e)(3). As disclosed in moving for preliminary approval, the Settling Parties have entered into a standard supplemental agreement providing that, in the event Class

[8] The Stipulation provides that any attorneys' fee award shall be paid to Lead Counsel after the Court executes the Judgment and Order awarding such fees. Stipulation, ¶6.2.

Members with Class Period purchases of SandRidge common stock that exceed a certain percentage of all SandRidge shares purchased during the Class Period validly request exclusion from the Class, Settling Defendants shall have the option to terminate the Settlement. Stipulation, ¶7.3(b). These types of agreements are "standard in securities class action settlements and [therefore] ha[ve] no negative impact on the fairness" of the Settlement. *See Christine Asia*, 2019 WL 5257534, at *15. The Settling Parties are willing to submit this agreement to the Court under seal at the Court's request.

G. Class Members Are Treated Equitably

Rule 23(e)(2)(D) considers whether Class Members are treated equitably. As discussed further below in §V, all Class Members are treated equitably under the terms of the Stipulation, including the Plan of Allocation set forth in the Notice. The Plan of Allocation provides that each Class Member that properly submits a valid Proof of Claim and Release form will receive his, her or its *pro rata* share of the Net Settlement Fund. *See* §V, *infra*. Indeed, Plaintiffs will be subject to the same formula for distribution of the Net Settlement Fund as every other Class Member. This factor therefore supports granting final approval of the Settlement.

H. The Judgment of the Settling Parties

The final, additional factor courts in the Tenth Circuit consider is whether the parties view the settlement as fair and reasonable. *Nieberding v. Barrette Outdoor Living, Inc.*, 129 F. Supp. 3d 1236, 1246 (D. Kan. 2015). Plaintiffs and Lead Counsel both strongly endorse the Settlement as fair and reasonable, and believe it is in the best interests of the Class. *See* Willey Decl., ¶5; Mace Decl., ¶5; Declaration of Angelica Galkin in Support of Plaintiffs'

Motion for Final Approval of Settlement, ¶5; Declaration of Vladimir Galkin in Support of Plaintiffs' Motion for Final Approval of Settlement, ¶5; Kaufman Decl., ¶4. Lead Counsel has extensive experience litigating securities class actions (*See* accompanying Declaration of Evan J. Kaufman Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, Ex. G (RGRD firm resume)) and considered the risks and delays of continued litigation and the range of possible recovery. Kaufman Decl., ¶¶110-127. As a result, this factor weighs heavily in favor of final approval. *See O'Dowd v. Anthem, Inc*., 2019 WL 4279123, at *14 (D. Colo. Sept. 9, 2019) (recognizing that "'the recommendation of a settlement by experienced plaintiff[s'] counsel is entitled to great weight'"); *Hapka v. CareCentrix, Inc.*, 2018 WL 1871449, at *5 (D. Kan. Feb. 15, 2018) ("'Counsels' judgment as to the fairness of the agreement is entitled to considerable weight.'").

Additionally, the reaction of the Class to date has been overwhelmingly positive. While 1,418 Notice Packets have been mailed, and the Summary Notice has been published, no objections and only two opt outs have been received. Mahan Decl., ¶¶6, 10, 15-18. This positive reaction further evidences the merit of the Settlement. *See Syngenta*, 357 F. Supp. 3d at 1103 ("The fact that the class members have reacted so overwhelmingly in favor of the settlement further supports a finding that the settlement is fair and reasonable and adequate.").

V. THE PROPOSED PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE

The proposed Plan of Allocation, set forth in the Notice, details how the Net Settlement Fund is to be allocated among Authorized Claimants. The standard for approval of a plan of allocation is the same as the standard for approving a settlement: whether it is "fair, reasonable, and adequate." *See Lucas*, 234 F.R.D. at 695. In making this determination, courts give great weight to the recommendation of experienced counsel. *See id*. ("An allocation formula need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel.").

Here, the Plan of Allocation was formulated after analysis from Lead Counsel's in-house damages consultant, utilizing damages calculations from Lead Counsel's damages expert. It is based on the out-of-pocket measure of damages and is consistent with Plaintiffs' allegations. Further, the Plan of Allocation will distribute the Net Settlement Fund on a *pro rata* basis, as determined by the ratio that the Authorized Claimant's Recognized Claim bears to the total Recognized Claims of all Authorized Claimants. Calculation of a Recognized Claim will depend upon several factors, including when the securities were purchased, acquired, sold, or held.

Lead Counsel submits that this method of distributing settlement funds is fair, reasonable, and adequate, and warrants this Court's approval. *See*, *e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *2 (N.D. Cal. Dec. 18, 2018), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020) (approving similar plan of allocation); *Crocs*, 306 F.R.D. at 692 (approving plan of allocation in securities class action settlement where funds

will be allocated "pro rata" based on similar factors and plaintiffs "consulted with damages experts"). Notably, there have been no objections to the Plan of Allocation to date, which further supports its merit at final approval. *See id*. at 691 ("The reaction of the class members further supports the conclusion that the Settlement Agreement is fair.").

VI. CERTIFICATION OF THE CLASS REMAINS APPROPRIATE

Under the terms of the Stipulation, the Settling Parties agreed, for the purposes of the Settlement only, to the certification of the Class, "[a]ll persons or entities who purchased or otherwise acquired SandRidge common stock between February 24, 2011 and November 8, 2012, inclusive, and were damaged thereby."[9] In its Preliminary Approval Order, the Court granted Plaintiffs' request and preliminarily certified the Class. Preliminary Approval Order, ¶2.

Since this decision, nothing has changed to disturb the Court's initial conclusion that class treatment for settlement purposes is appropriate. As such, there is no reason why the Court's decision should change at final approval.

VII. CONCLUSION

For the reasons set forth above and in the accompanying declarations, Plaintiffs respectfully request that this Court enter the proposed Final Judgment and Order of

[9] The following are excluded from the Class: (i) Defendants; (ii) the officers and directors of SandRidge at all relevant times; (iii) members of the immediate family of Defendants; (iv) any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest, or which is related to or affiliated with any of the Defendants; (v) Defendants' liability insurance carriers and any affiliates or subsidiaries thereof; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest, or assigns of any such excluded party. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to the requirements set forth in the Notice. Stipulation, ¶1.4.

Dismissal with Prejudice, approving the Settlement. Plaintiffs also request that the Court enter an order approving the Plan of Allocation, which will govern distribution of the Net Settlement Fund.

DATED: September 1, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2022, I electronically transmitted the attached Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation using the ECF system for filing, which will send notification of such filing to all counsel registered through the ECF System.

s/ Evan J. Kaufman
EVAN J. KAUFMAN

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CORA E. BENNETT, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. SPRINT NEXTEL CORPORATION, et al., Defendants.	Civil Action No. 2:09-cv-02122-EFM-KMH

ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE

WHEREAS, an action is pending before this Court entitled *Bennett v. Sprint Nextel Corporation, et al.*, Civil Action No. 2:09-cv-02122-EFM-KMH (the "Litigation");

WHEREAS, the parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Litigation, in accordance with a Stipulation of Settlement dated as of March 26, 2015 (the "Stipulation"), which, together with the Exhibits annexed thereto, set forth the terms and conditions for a proposed settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the Exhibits annexed thereto; and

WHEREAS, all defined terms herein have the same meanings as set forth in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve the Stipulation and the settlement set forth therein, subject to further consideration at the Settlement Hearing described below.

2. A hearing (the "Settlement Hearing") shall be held before this Court on August 5, 2015, at 2:00 p.m., at the United States District Court, District of Kansas Wichita U.S. Courthouse, 401 N. Market Street, Room 408, Wichita, KS 67202, to determine whether the proposed settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class and should be approved by the Court; whether a Judgment as provided in ¶1.11 of the Stipulation should be entered; whether the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved; to determine the amount of fees and expenses that should be awarded to Lead Counsel; and to determine the amount of expenses to be awarded to Lead Plaintiffs. The Court may adjourn the Settlement Hearing without further notice to the Members of the Class.

3. The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the "Proof of Claim"), and

Summary Notice annexed as Exhibits A-1, A-2, A-4 and A-5 hereto, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice substantially in the manner and form set forth in ¶¶4-5 of this Order meet the requirements of Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

4. The firm of The Garden City Group, Inc. ("Claims Administrator") is hereby appointed to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Lead Counsel shall make reasonable efforts to identify all Persons who are Members of the Class and, commencing not later than April 20, 2015 (the "Notice Date"), Lead Counsel shall cause a copy of the Notice and the Proof of Claim, substantially in the forms annexed as Exhibits A-1 and A-2 hereto, to be mailed by First-Class Mail to all Class Members who can be identified with reasonable effort;

(b) Not later than April 30, 2015, Lead Counsel shall cause the Summary Notice to be published once in *Investor's Business Daily* and on *Business Wire* substantially in the forms annexed as Exhibits A-4 and A-5 hereto; and

(c) At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall cause to be served on Defendants' counsel and filed with the Court proof, by affidavit or declaration, of such mailing and publishing.

5. Nominees who purchased or acquired Sprint Stock or Sprint Bonds for the beneficial ownership of Class Members during the Class Period shall send the Notice and the Proof of Claim to all such beneficial owners of Sprint Stock or Sprint Bonds within ten (10) days after receipt thereof, or, if they have not already done so in connection with the dissemination of the Notice of pendency of class action dated September 29, 2014, send a list of the names and addresses of such beneficial

owners to the Claims Administrator within ten (10) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim to such beneficial owners. Lead Counsel shall, if requested, reimburse banks, brokerage houses or other nominees solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners who are Class Members out of the Settlement Fund, which expenses would not have been incurred except for the sending of such notice, subject to further order of this Court with respect to any dispute concerning such compensation.

6. All Members of the Class shall be bound by all determinations and judgments in the Litigation concerning the settlement, whether favorable or unfavorable to the Class.

7. Class Members who wish to participate in the settlement shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked no later than ninety (90) days from the Notice Date. Any Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the proceeds of the Settlement Fund, unless otherwise ordered by the Court. Notwithstanding the foregoing, Lead Counsel may, in their discretion, accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby.

8. Any Member of the Class may enter an appearance in the Litigation, at their own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Lead Counsel.

9. Any Member of the Class may appear and show cause why the proposed settlement of the Litigation should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, why attorneys' fees and expenses should or should not be awarded to counsel for the

plaintiffs, or why the expenses of Lead Plaintiffs should or should not be awarded; provided, however, that no Class Member or any other Person shall be heard or entitled to contest such matters, unless that Person has delivered by hand or sent by First-Class Mail written objections and copies of any papers and briefs such that they are received, not simply postmarked, on or before May 25, 2015, by Robbins Geller Rudman & Dowd LLP, Tor Gronborg, 655 W. Broadway, Suite 1900, San Diego, CA 92101; Motley Rice LLC, James M. Hughes, 28 Bridgeside Blvd., Mount Pleasant, SC 29464; and Skadden, Arps, Slate, Meagher & Flom LLP, Scott D. Musoff, Four Times Square, New York, NY 10036, and filed said objections, papers, and briefs with the Clerk of the United States District Court, District of Kansas at Kansas City, Robert J. Dole United States Courthouse, 500 State Avenue, Room 259, Kansas City, KS 66101, on or before May 25, 2015. Any Member of the Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as set forth in the Stipulation, to the Plan of Allocation, or to the award of attorneys' fees and expenses to counsel for the plaintiffs or expenses of Lead Plaintiffs, unless otherwise ordered by the Court.

10. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

11. All opening briefs and supporting documents in support of the settlement, the Plan of Allocation, and any application by counsel for the plaintiffs for attorneys' fees and expenses or by Lead Plaintiffs for their expenses shall be filed and served by May 10, 2015. Replies to any objections shall be filed and served by June 9, 2015.

12. Neither the Defendants and their Related Parties nor Defendants' counsel shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or expenses

submitted by plaintiffs' counsel or Lead Plaintiffs, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the settlement.

13. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Lead Counsel and any application for attorneys' fees or payment of expenses shall be approved.

14. All Taxes, Tax Expenses, and Notice and Administration Expenses shall be paid from the Settlement Fund. In the event the settlement is not approved by the Court, or otherwise fails to become effective, neither Lead Plaintiffs nor any of their counsel shall have any obligation to repay any amounts incurred and properly disbursed pursuant to ¶¶2.6 or 2.7 of the Stipulation.

15. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Defendants of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind.

16. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

17. If the Stipulation and the settlement set forth therein is not approved or consummated for any reason whatsoever, the Stipulation and settlement and all proceedings had in connection therewith shall be without prejudice to the rights of the Settling Parties *status quo ante*.

18. Pending final determination of whether the proposed settlement should be approved, neither the Lead Plaintiffs nor any Class Member, directly or indirectly, representatively, or in any

other capacity, shall commence or prosecute against any of the Defendants, any action or proceeding in any court or tribunal asserting any of the Released Claims.

IT IS SO ORDERED.

DATED: April 10, 2015

Eric F Melgren

THE HONORABLE ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE