IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

William Eastham, et al.,	:	
Plaintiffs,	:	
v.	:	Case No. 2:12-cv-615
	:	JUDGE GREGORY L. FROST
Chesapeake Appalachia, LLC,	:	Magistrate Judge Kemp
Defendant.		

OPINION AND ORDER

This matter is before the Court to consider the remaining issue raised in the renewed motion for leave to file an amended complaint filed by plaintiffs William Eastham and Frostie Eastham. In an Opinion and Order filed July 23, 2013, the Court denied, in part, the renewed motion and deferred judgment, until further briefing was completed, on whether plaintiffs may be permitted to withdraw the class action allegations. Plaintiffs were directed to file a brief addressing whether putative class members are likely to be prejudiced by the dismissal of the class action allegations. Although in its original response Defendant Chesapeake Appalachia, LLC indicated it had no objection to the withdrawal of the class action allegations, it was provided an opportunity to respond to plaintiffs' supplemental brief. The Easthams filed their brief on August 13, 2013. Chesapeake has not responded and the time for doing so now has passed. For the following reasons, the renewed motion for leave to file an amended complaint (Doc. No. 34) will be granted, in part, to the extent it seeks to withdraw the claims for class certification.

I.

The complete background of this case was set forth in the Court's previous Opinion and Order and will not be repeated here. For purposes of addressing the current issue, however, plaintiffs

provide the following information in their brief. According to the Easthams, they filed this case as a class action under Fed.R.Civ.P. 23 seeking declaratory relief and to quiet title. The complaint defined the putative class as follows:

> All persons or entities present in Ohio who entered into an oil and gas lease with Great Lakes Energy Partners, LLC, which was subsequently sold, conveyed and/or assigned to Chesapeake Appalachia, LLC, with terms providing for "an option to extend or renew under similar terms a like lease." Excluded from the class are all persons or entities whose property is currently held by production, governmental entities, Defendants and their subsidiaries and affiliates.

(Compl. ¶ 21.)

During the discovery process, counsel for the Easthams concluded that their claims were not appropriate for a class action. Specifically, counsel concluded that the Easthams' claims were not typical of the putative class and that there was no typicality among any of the putative class members. The Easthams contend that no typicality exists because putative class members differ with respect to their understanding of the lease and the representations made to them upon signing. As a result, the Easthams assert that there are differences in both the legal theories available and the potential damage claims. Accordingly, they explain that they did not seek to certify the class, they so informed opposing counsel, and they sought to amend the complaint to, among other things, withdraw the class action allegations.

II.

As the Court previously explained, Rule 23(e) provides the following:

> **(e) Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or

compromise:

> (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
>
> (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
>
> (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
>
> (4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
>
> (5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

Fed. R. Civ. P. 23.

The Court noted that, in accordance with Doe v. Lexington-Fayette Urban Cnty. Gov't,407 F.3d 755, 764 (6th Cir. 2005), it must determine whether putative class members are likely to be prejudiced by the dismissal of the class action allegations. See also In re Cardizem CD Antitrust Litigation, 2000 WL 33180833 (E.D. Mich. September 21, 2000) (discussing that Rule 15 amendments to complaints to delete class action allegations are subject to Rule 23 in certain situations). As other courts have recognized, that may depend on how much publicity the filing of the case has received, and whether absent class members may have relied on the filing of this case as having tolled the statute of limitations for their claim. See In re Behr Dayton Thermal Products, LLC Litigation, No. 3:08-cv-326, 2012 WL 559913 (S.D. Ohio Feb. 21, 2012).

III.

In their supplemental brief, the Easthams address the issues of both prejudice and notice. Turning to the issue of prejudice first, they contend that there is no potential for prejudice here because putative class members still have a significant amount of time to assert any claims. According to the Easthams, under current Ohio law, any claims by putative class members would not be barred by the statute of limitations any earlier than eight years following the extension of the leases. They contend that this fact, coupled with the fact that the statute of limitations was tolled during the pendency of this action as a class action, precludes any finding of prejudice.

Beyond this, however, the Easthams assert that they already have provided notice to putative class members in an effort to avoid any potential prejudice. As they explain, they obtained the identity of all putative class members during discovery. Further, they state that, once they decided not to pursue class certification, their counsel provided notice by letter to all identified putative class members. The Easthams have provided a copy of an example of the letter dated April 24, 2013. This sample letter states, in relevant part:

> Due to the individual facts and circumstances surrounding each lease, this lawsuit will not be certified as a class action. Therefore, you must take action in order to protect your oil and gas rights and prevent Chesapeake from unilaterally extending your lease for a fraction of market value. Each individual landowner must now bring his or her individual lawsuit to attempt to invalidate Chesapeake's purported extension of his or her oil and gas lease containing paragraph 19.
>
> Please note that the law limits the time within which individuals may file lawsuits. Since this lawsuit will not proceed as a class action, the statute of limitations as to your claims will not be tolled by the action we have already filed. If your

> claims are not filed against adverse parties before the statute of limitations expires, your claims may be subject to the limitations defense. The period when your statute of limitations will expire can depend on a number of factors. Therefore, we are not able to provide you with our opinion as to when your statute of limitations will expire at this time.

Based on the information provided in the Easthams' supplemental brief, the Court concludes that it is unlikely that any putative class members will suffer prejudice from an amendment to the complaint abandoning the claims for class certification. See Doe v. Lexington–Fayette Urban Cnty. Gov't, 407 F.3d at 764. Plaintiffs are correct that the statute of limitations has been tolled during the pendency of this action as a class action, see In re Behr, 2012 WL 559913, at *4, and the Court is satisfied that the notice serves to adequately inform putative class members of the impact of the withdrawal of the class action allegations on their potential claims. As noted above, Chesapeake has no objection to the withdrawal of the class allegations and, therefore, has not presented any information supporting a different conclusion. Consequently, the renewed motion for leave to file an amended complaint will be granted, in part, to the extent it seeks to withdraw the claims for class certification.

IV.

For the reasons set forth above, the renewed motion for leave to file an amended complaint (#34) is granted, in part, to the extent that it seeks to withdraw the claims for class certification. Plaintiffs shall filed an amended complaint consistent with this Opinion and Order within seven days.

V. Procedure for Reconsideration

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for

reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 91-3, pt. I., F., 5. The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect, notwithstanding the filing of any objections, unless stayed by the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.4.

/s/ Terence P. Kemp
United States Magistrate Judge