

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

TAMYRA HUFFMAN, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

EQT PRODUCTION COMPANY,

Defendant.

Case No. 1:10-cv-00041

**ORDER APPROVING ISSUANCE OF NOTICE**

This matter comes before the Court on Plaintiff's unopposed motion for approval of the issuance of notice to the class, and initial approval of a proposed class action settlement ("Motion").

The Court, having reviewed and considered the Motion, the memorandum in support of the Motion, the Class Action Settlement Agreement ("Settlement Agreement"), the proposed Notice of Class Settlement, and pertinent portions of the entire record in this litigation to date, finds as follows:

1. The original Plaintiffs filed a Complaint on June 28, 2010, alleging a claims for the alleged underpayment of royalties based on Defendant's production of gas in the Commonwealth of Virginia. The Complaint included claims for breach of contract, breach of implied duties, breach of fiduciary duties, and conversion.

2. On September 28, 2011, the Court dismissed Plaintiffs' claims for breach of implied duties and breach of fiduciary duty, and allowed Plaintiffs' claims for breach of contract and conversion to remain in the case. ECF Nos. 60 (Report and Recommendation of January 11,

2011) and 96 (Order accepting Report and Recommendation). Plaintiff pursued the remaining claims of breach of contract and conversion as individual and class claims, ultimately moving for class certification; Plaintiff did not pursue the dismissed claims as either individual or putative class claims.

3. The parties have negotiated a class settlement (“Class Settlement Agreement,” Exhibit 1 to the Motion for Approval of Proposed Manner and Form of Notice to be Disseminated in Connection with Proposed Class Action Settlement (“Preliminary Motion”). Through this Class Settlement Agreement, Defendant will fully and completely satisfy the Settled Claims of Settlement Class Members relating to the prices on which EQT based royalty payments paid to Plaintiff and Settlement Class Members by making a total payment of \$152,500. Claims other than the Settled Claims, including those relating to the deductions from royalty payments of certain costs and expenses, are not included within the Settlement Agreement. Attorneys’ fees and costs of Class Counsel and Administrative Costs will be paid from the settlement amount. By entering into the Class Settlement Agreement, neither Plaintiff nor Defendant make any admissions relating to the claims and defenses raised in this lawsuit.

4. The Settlement Class, as defined in the Settlement Agreement (Ex. 1 at ¶ 1.30) and as reflected in the Appendix to the Settlement Agreement identifying members of the Settlement Class, includes the following:

Each person to whom EQT Production Company (“EQT”) has paid since June 8, 2005, or is currently paying royalties under a lease or leases on gas produced by EQT from the Nora Field in Virginia and whose lease or leases do not contain language expressly authorizing the lessee to deduct or expressly precluding the lessee from deducting the cost of gathering, treating, compression, dehydration, processing, and/or transportation when calculating royalty payments, and whose lease or leases are identical “Type A” leases as categorized by the plaintiff’s expert, according to business records maintained by EQT.

Excluded from the Class are: (a) EQT, (b) the federal government, (c) any person who serves as a judge in this civil action and his/her spouse, (d) any person who operates a CBM well in Virginia, and (e) any person who holds a working interest ownership in a CBM well operated by EQT in Virginia.

5. Pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, the Court finds that the Settlement Agreement between the Settlement Class and the Defendant appears likely to be found to be fair, reasonable, and adequate after a hearing.

6. In determining that the proposed Settlement Agreement appears to be fair, reasonable and adequate under Rule 23(e)(2), the Court has considered the following: (a) the class representative and class counsel have adequately represented the class; (b) the proposed Settlement Agreement has been fairly and honestly negotiated, including in several in-person and telephonic mediation sessions overseen by Magistrate Judge Sargent; (c) sufficient questions of law and fact exist that make the outcome of a trial on the merits uncertain; (d) the value of the proposed Settlement Agreement is reasonable, given the possible outcome of protracted and expensive litigation; (e) the parties and their attorneys, who are very experienced in class action royalty underpayment litigation, believe that the Settlement Agreement is fair and adequate, and recommend that the Settlement Agreement is fair and adequate and recommend that the Court approve the issuance of notice to the Settlement Class; (f) the net settlement proceeds can be distributed directly and efficiently to individual class members, with no claims process; (g) the settlement treats class members equitably relative to each other; and (h) Class Counsel's anticipated attorneys' fees and costs request appears reasonable.

7. The parties entered into the Settlement Agreement only after engaging in a meaningful exchange of information, and with full knowledge of the critical factual and legal issues. The Settlement Agreement is the product of non-collusive, arm's-length bargaining.

8. The Class Settlement avoids the time and expense of continuing this litigation for an indeterminate period of time, with attendant risks, costs, and delay for both sides.

9. Class members will receive substantial benefits from the Settlement Agreement. Defendant has agreed to make a Settlement Payment to the Settlement Class in the amount of One Hundred Fifty-Two Thousand Five Hundred Dollars (\$152,500.00).

10. Defendant also benefits from the Settlement Agreement, through the avoidance of protracted and expensive litigation, the final resolution of disputes with the Settlement Class members, and the promotion of a mutually productive business relationship with the Settlement Class members.

11. The Settlement Class is essentially identical to the class that this Court previously held, in the litigation context, satisfies the prerequisites of Rule 23 of the Federal Rules of Civil Procedure. Pursuant to Rule 23(e)(1), and for the purposes of effectuating the Settlement, the Court finds that it will be likely to find that the Settlement Class satisfies the requirements of Rule 23, and to certify the Settlement Class, and finds as follows.

12. The Settlement Class is sufficiently numerous to satisfy Rule 23(a)'s numerosity requirement because it includes more than one hundred people, and joinder of their claims would be impracticable.

13. Plaintiff's claims are typical of the Settlement Class Members' claims, in that he and all other Settlement Class members were allegedly subject to Defendant's alleged improper royalty payment practices. Plaintiff is an adequate class representative who has no conflicts with the Settlement Class members, and his counsel have significant experience litigating gas royalty class actions. Therefore, Plaintiff satisfies the typicality and adequacy requirements of Rule 23(a), and Class Counsel satisfy the requirements of Rule 23(g).

14. There are factual issues common to all Settlement Class members, and those common issues predominate over issues that are individual to the Settlement Class members. Plaintiff asserts that the common issues include, but are not limited to, whether EQT based royalty payments owed to Settlement Class Members on prices that were improperly low. The commonality requirement of Rule 23(a) and the predominance requirement of Rule 23(b)(3) are satisfied.

15. Treatment of this litigation as a class action is superior to resolution through hundreds of separate individual lawsuits, because important issues in the case are common to all Settlement Class members, and class treatment enhances judicial efficiency. Therefore, the superiority element of Rule 23(b)(3) is satisfied.

16. The Notice of Class Settlement to be mailed to the members of the Settlement Class (attached to the Motion as Exhibit 2 (“Settlement Notice”)) adequately informs the Settlement Class members of the following: (1) the nature of this class action lawsuit; (2) the definition of the proposed Settlement Class; (3) the subject of the Settlement Class members' claims; (4) that a Settlement Class member may enter an appearance through an attorney if the Settlement Class member so desires; (5) that the Court will exclude from the Settlement Class any member who timely requests exclusion; (6) the time and manner for requesting exclusion; (7) a description of the terms of the Settlement Agreement, including information about the Settlement Class members' right to obtain a copy of the Settlement Agreement; (8) the right of any Settlement Class member to object to the proposed Settlement Agreement, and the deadline for any such objections; and (9) the binding effect of the Settlement Agreement on Settlement Class members who do not elect to be excluded from the Settlement Class.

## ORDER

In light of the Court's findings, and pending further consideration of the proposed Class Settlement at the final approval hearing, **IT IS HEREBY ORDERED THAT:**

1. The Court approves the retention of JND Legal Administration to serve as Settlement Administrator.
2. Within ten calendar days after the proposed settlement is filed in Court, Defendant shall provide notice of the Settlement Agreement by first class mail to the appropriate federal and state officials, as required by the Class Action Fairness Act, 28 U.S.C. § 1715.
3. The Court approves as reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure the form and the content of the Settlement Notice attached to the Motion as Exhibit 2.
4. The Settlement Administrator shall complete the mailing of the Settlement Notice to the Settlement Class members no later than **30 days from the date of this Order**.
5. The parties shall file motions and memoranda in support of final approval of the Class Settlement, and Class Counsel shall file their request for attorneys' fees, expense reimbursements, and an Incentive Award Payment for the Plaintiff, no later than **60 days from the date of this order**.
6. Any member of the Settlement Class who wishes to object to or comment on the proposed Settlement Agreement, or to object to Class Counsel's request for attorneys' fees, expense reimbursements, and an Incentive Award Payment for the Plaintiff, must postmark and mail such objections or comments no later than **75 days from the date of this Order**. In accordance with the procedures set forth in the Settlement Notice, any such objections or comments must be mailed to Class Counsel, Defendant's counsel, and the Court.

7. Any member of the Settlement Class who wishes to exclude herself from the Settlement Agreement must postmark and mail the exclusion request to the Settlement Administrator no later than **75 days from the date of this Order**.

8. Any Settlement Class member who wishes to appear and be heard at the final approval hearing must postmark and mail notice of such intention on or before **ten days before the date of the final approval hearing**. Notice of such intention must be mailed to Class Counsel, to Defendant's counsel, and to the Court.

9. On or before a date **14 days after the deadline** to mail or submit objections or comments to the proposed Settlement, Class Counsel and Defendant may file a response to any Settlement Class member's objections or comments. A copy of such response shall be mailed to all Settlement Class members who have submitted timely objections or comments.

10. The Court will conduct a hearing to consider final approval of the proposed Settlement Agreement, and Class Counsel's request for attorneys' fees, expense reimbursements, and an Incentive Award Payment for Plaintiff, beginning at **10:30 a.m. on July 26, 2019**, or the next available time or date thereafter, at the United States Courthouse and Federal Building, 180 West Main Street, Abingdon, Virginia. The purpose of the final fairness hearing will be to determine whether the Settlement Agreement is fair, adequate, and reasonable; whether Class Counsel's application for an award of attorneys' fees, expense reimbursements, and an incentive award for Plaintiff should be approved; and whether this Court should approve the Settlement Agreement and enter a final judgment and order of dismissal.

11. All pending pleading, discovery, and case management deadlines in this action are stayed until further order of this Court.

**IT IS SO ORDERED.**

/s/ JAMES P. JONES  
UNITED STATES DISTRICT JUDGE

Enter: April 10, 2019