

(Doc. 52), and the parties submitted various briefs in regard thereto. (Docs. 53, 64, 72, 79, 81, 102, 110, 116, 118, 119, 120). On January 5, 2011, the Magistrate Judge issued a Report and Recommendation (Doc. 99) in which the Magistrate Judge recommended that Defendants' motion to dismiss be denied in part and granted in part. Defendants filed objections to the Magistrate Judge's Report on January 19, 2011. (Doc. 102). On January, 31, 2011, Plaintiff filed her Motion for Class Certification and supporting brief. (Docs. 103 & 104).

2. Plaintiff's counsel and Defendants' counsel engaged in significant exchanges of information for the purpose of clarifying the factual and legal issues, including class certification and the merits of Plaintiff's claims, and also participated in numerous discussions regarding the litigation and the possibility of a class settlement.

3. On March 2, 2011, the parties filed a joint notice (Doc. 121) informing the Court that they had reached an agreement in principle to settle all claims in this case, and they moved to stay all pending deadlines in the case to allow the parties to finalize the settlement documents and to submit a motion for preliminary approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e). On March 3, 2011, the Court granted the parties' request, and ordered them to file settlement papers by April 15, 2011. (Doc. 122). The Court subsequently extended the due date for the filing of settlement papers by the parties.

4. Since their announcement of a settlement to the Court, the parties' attorneys have engaged in additional discussions regarding the language and terms of the Settlement Agreement. The proposed Settlement Agreement is attached to the

Motion as Exhibit 1. The definitions set forth in the Settlement Agreement are incorporated herein by reference.

5. The Settlement Agreement resolves the Settled Claims: any and all claims and causes of action related to the calculation, payment, and/or reporting of royalty payments made by Chesapeake Appalachia, LLC, and its predecessors Columbia Natural Resources, LLC, Columbia Energy Resources, LLC, Columbia Natural Resources, Inc., Columbia Energy Resources, Inc., Triana Energy Holdings, Inc., Triana Energy Inc., Triana Acquisition, LLC, Triana Finance, LLC, and Triana Energy Leases, Inc. (the "Producers") during the Class Period on Gas produced by the Producers from a well(s) located in Virginia and any and all claims and causes of action during the Class Period that were alleged and/or made in the First Amended Complaint, Docket No. 46 (August 18, 2010), in the *Healy* case. The Settled Claims do not include claims for royalties held in suspense, claims for the untimely payment of royalties, claims based on errors in determining ownership interests, claims related to oil or condensate recovered by mechanical separators at or near the wellhead, or claims outside the Class Period

6. The Settlement Class, as defined in the Settlement Agreement (Ex. 1 at 1.31), includes the following:

All individuals and entities to whom the Producers paid royalties during the Class Period on Gas produced by the Producers from a well(s) located in Virginia, according to the business records maintained by Defendants, and the successors-in-interest of all such individuals and entities. The Settlement Class excludes (i) the Defendants and their respective predecessors and successors; (ii) any person or entity who operates a gas well in Virginia; (iii) those persons or entities who have previously released Defendants from liability concerning or encompassing any or all claims that

are the subject of the *Healy* case; (iv) the federal government; (v) legally-recognized Indian Tribes; and (vi) any person who serves as a judge in this civil action and his/her spouse.

7. The Settlement Agreement between the Settlement Class and the Defendants appears, upon preliminary review, to be fair, reasonable, and adequate.

8. In determining that the proposed Settlement Agreement appears to be fair, reasonable and adequate, the Court has considered the following: (a) the proposed Settlement Agreement has been fairly and honestly negotiated; (b) sufficient questions of law and fact exist that make the outcome of a trial on the merits uncertain; (c) the value of the proposed Settlement Agreement is reasonable, given the possible outcome of protracted and expensive litigation; and (d) 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 be preliminarily approved.

9. 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.

10. 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.

11. Settlement Class Members will receive substantial benefits from the Settlement Agreement. The Defendants have agreed to make a Settlement Payment to the Settlement Class in the amount of \$3,400,000.00 (Three Million Four Hundred

Thousand Dollars). The Defendants have also agreed to pay up to \$50,000.00 (Fifty Thousand Dollars) for Settlement Administrative Costs. The Settlement Agreement provides a high level of economic relief to the Settlement Class Members. This outcome is the result of Class Counsel's hard work and equally hard bargaining.

12. The Defendants also benefit 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. By entering into the Settlement Agreement, the Defendants do not admit any fact, claim, assertion, matter, contention, fault, culpability, obligation, wrongdoing, or liability whatsoever.

13. The Settlement Class satisfies the prerequisites of Rule 23 of the Federal Rules of Civil Procedure, and the Settlement Class is certified.

14. 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.

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

16. There are factual issues common to all Settlement Class Members, and those common issues predominate over issues that may be individual to each

Settlement Class Member. Plaintiff asserts that the common issues include, but are not limited to, whether deductions on the Settlement Class members' royalty check stubs were incorrectly or not reported; whether costs were improperly deducted from the Settlement Class members' royalty payments; whether gas was sold at prices that were less than market value prices; and whether royalties on certain volumes of gas were not properly paid. The commonality requirement of Rule 23(a) and the predominance requirement of Rule 23(b)(3) are satisfied.

17. 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.

18. 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, and the deadline for

any such objections; and (9) the binding effect of the Settlement 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:

19. The Settlement Class is certified pursuant to Fed. R. Civ. P. 23(a) and (b)(3).
20. Plaintiff is appointed Class Representative for the Settlement Class.
21. Plaintiff's counsel are appointed Class Counsel for the Settlement Class;
22. The Settlement is preliminarily approved because it is fair, adequate, and reasonable.
23. Within fourteen calendar days after the Court enters this Order, the Defendants shall deposit the Settlement Payment of \$3,400,000 (Three Million Four Hundred Thousand Dollars) into the Escrow Account established pursuant to the Escrow Agreement, as provided for in paragraph 5.1 of the Settlement Agreement.
24. Within ten calendar days after the proposed settlement is filed in Court, Defendants shall provide notice of the Settlement by first class mail to the appropriate federal and state officials, as required by the Class Action Fairness Act, 28 U.S.C. §1715.

25. 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, with the revisions suggested by the Court.

26. The Settlement Administrator shall complete the mailing of the Settlement Notice to the Settlement Class Members no later than 45 days from the entry of this Order.

27. 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, on or before 60 days from the entry of this Order.

28. Any member of the Settlement Class who wishes to object to or comment on the proposed Settlement, 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 on or before 75 days from the entry of this Order. In accordance with the procedures set forth in the Settlement Notice, any such objections or comments must be mailed to Lead Class Counsel, Defendants' counsel, and the Court.

29. Any member of the Settlement Class who wishes to exclude herself from the Settlement Agreement must postmark and mail the exclusion request to Lead Class Counsel and Defendants' counsel no later than 75 days from the entry of this Order.

30. 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 75 days from the entry of this Order. Notice of such intention must be mailed to Lead Class Counsel, to Defendants' counsel, and to the Court.

31. On or before 90 days from the entry of this Order Class Counsel and Defendants 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.

32. The Court will conduct a hearing to consider final approval of the proposed Settlement, and Class Counsel's request for attorneys' fees, expense reimbursements, and an Incentive Award Payment for Plaintiff, beginning at 9:00 a.m. on October 4, 2011, at the United States Courthouse, 180 West Main Street, Abingdon, Virginia. The purpose of the final fairness hearing will be to determine whether the Settlement 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 the Court should approve the Settlement and enter a final judgment and order of dismissal.

33. All pending discovery and case management deadlines in this action are stayed until further order of the Court.

IT IS SO ORDERED.

/s/ JAMES P. JONES
JAMES P. JONES
UNITED STATES DISTRICT JUDGE

Dated: June 22, 2011.