UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SHANNAN WHEELER, *et al.*,	)	**CIVIL ACTION NO.: 4-17-cv-2960**
Plaintiffs,	)	
v.	)	**The Hon. Keith P. Ellison**
ARKEMA, INC.,	)	
Defendant.	)	

PLAINTIFFS' UNOPPOSED MOTION IN SUPPORT OF AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES AND INCENTIVE AWARDS, AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Plaintiffs Corey Prantil, Betty Whatley, Bevely Flannel, Roland Flannel, Bret Simmons, Phyllis Simmons, Larry Anderson, and Tanya Anderson ("Plaintiffs"), by Class Counsel,[1] hereby submit this Motion ("Fee Motion") pursuant to Rule 54(d)(2) of the Federal Rules of Civil Procedure, subject to the provisions of Rule 23(h), that as part of the Court's preliminary approval of the Settlement and the terms of the Settlement Agreement, the Court also preliminarily approve an award of attorneys' fees in the amount of $8,500,000.00 and reimbursement of expenses incurred in connection with the prosecution of this action in the amount of $1,862,175.06. Plaintiffs also respectfully move for preliminary approval of a $25,000.00 incentive award paid to each of the eight Class Representatives.

Pursuant to the Settlement Agreement, the expense reimbursement is to be paid out of the Expenses Escrow Account established under the Settlement Agreement; the Incentive Award is to be paid out of the Incentive Awards Escrow Account established under the Settlement Agreement; and the Attorneys' Fees are to be paid by Defendant Arkema Inc. ("Arkema") separate from the funds dedicated to provide the relief afforded to the Class under the Settlement Agreement.

Arkema does not oppose the relief requested in this Motion and agreed to pay these amounts only after hard-fought negotiations, pending Court approval.

[1] The six law firms collectively hereinafter referred to as "Class Counsel" in this Motion and Memorandum are the firms that have represented Plaintiffs to date in this litigation and who seek to serve as Class Counsel. These firms include the four law firms who have served as Lead Counsel for the class previously certified and who are identified in the Settlement Agreement filed with the Court in connection with the Motion for Preliminary Approval (Stag Liuzza LLC; Underwood Law Offices; Thompson Barney; and Bonnett Fairbourn Friedman & Balint, P.C.) and two other law firms who have diligently represented Plaintiffs in this litigation (The Law Offices of P. Rodney Jackson; and Dennis D. Spurling & Associates). Attached as Exhibits B to G to the Unopposed Preliminary Approval Motion are Declarations from Class Counsel supporting the request for an award of fees, costs and expenses, and incentive awards.

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BACKGROUND AND SUMMARY OF ARGUMENT

As discussed in Plaintiffs' Unopposed Motion for Approval of Class Settlement ("Approval Motion") and in Plaintiffs' Memorandum of Law in Support of the Approval Motion filed concurrently herewith, a proposed Settlement has been reached in this certified class action that will provide for the payment of settlement benefits by Defendant of $20,100,000.00 into a Property Characterization/Remediation Escrow Account; another $1,700,000.00 to create an Anonymized Epidemiological Study Fund; a third amount of $2,000,000.00 to go into an Expenses Escrow Account; and finally, a sum of $200,000.00 to be paid into an Incentive Awards Escrow Account. Additionally, as part of the proposed Settlement, Arkema has agreed that Class Counsel should be paid attorneys' fees in an amount not exceeding $8,500,000.00 in compensation for their successful efforts on behalf of the Class. This attorneys' fees figure was negotiated separately and Arkema has agreed to pay it apart from the relief afforded to the Class.

As part of the Settlement (*see* section 5.2), Arkema has agreed not to oppose Class Counsel's application to the Court for an award of litigation expenses, past, present, and future incurred to prosecute this action, to be paid out of the $2,000,000.00 funded into the Expenses Escrow Account. Accordingly, Plaintiffs hereby request, and Arkema does not oppose, the Court's approval of $1,862,175.06 in previously paid expenses in the prosecution of the litigation, as supported by the Declarations of counsel attached to the unopposed Approval Motion as Exhibits B to G. Plaintiffs and Class Counsel respectfully submit that these expenses sought are reasonable and were necessarily incurred by each of the law firms to successfully prosecute and settle this action.

Finally, Arkema has agreed to pay $200,000.00 total into an Incentive Awards Escrow Account for the purpose of providing any Incentive Awards awarded by the Court. *See* Settlement Agreement § 5.5 Incentive Awards are warranted in recognition of each of Plaintiffs' efforts

expended in this litigation on behalf of all of the Class Members. Plaintiffs submit that the Incentive Awards are reasonable and consistent with applicable case law and should be approved.

Class Counsel's fee request is supported by the time and effort they have expended, the significant risks undertaken, the quality of the services offered, and most importantly, the outstanding results achieved in favor of the Class. Additionally, the fee request is fully supported by the case law of the United States Supreme Court and the Fifth Circuit Court of Appeals.

Class Counsel vigorously prosecuted this action on behalf of Plaintiffs and the Class members for nearly six years. Class Counsel, among other things, won two sharply contested class-certification motions, conducted extensive discovery, worked with numerous expert witnesses in preparation for trial including comprehensive defense against Arkema's own experts, and spent considerable time preparing for a complex, multi-phased trial. Class Counsel were all also involved in the lengthy negotiations that allowed the parties to reach the Settlement.

Plaintiffs' and Class Counsel's requests are consistent with the amount, time, and manner of fees and expenses provided for in the Settlement Agreement, and all such terms are the product of non-collusive, arm's-length negotiations. Class Counsel has advanced all expenses in advance on behalf of the Class and has received no compensation for their labor to date. Plaintiffs submit that they are entitled to "reasonable attorneys' fees" that "are authorized" by "the parties' agreement," as reflected in the Settlement Agreement. *See* Fed. R. Civ. P. 23(h); *id.* at 2003 adv. comm. notes (Rule 23(h) "authorizes an award of 'reasonable' attorney fees"). Plaintiffs' and Class Counsel's requests are fair and reasonable given the circumstances of the litigation and are appropriate under all governing standards and procedures, including United States Supreme Court and Fifth Circuit standards on how "reasonable" attorneys' fees are to be determined.

Accordingly, Plaintiffs' Fee Motion should be preliminarily granted for the reasons set forth herein. Plaintiffs and Class Counsel respectfully submit that (1) the attorneys' fees

requested are fair and reasonable and should be preliminarily approved by the Court, pending further analysis after Notice to the Class and at the Final Approval Hearing; (2) the expenses requested are reasonable and should be preliminarily approved, again pending further evaluation at the Final Approval Hearing; and (3) the proposed Incentive Awards to each of the Plaintiffs are reasonable and appropriate and should be preliminarily approved by the Court in recognition of Plaintiffs' significant contributions to the success of this case. Final approval of the issues raised in this Fee Motion can be finally resolved at the time of final approval, after the Court has conducted a full Final Approval Hearing to evaluate the fairness of the Settlement. This final evaluation of the fairness of the Settlement will take place following Notice to the Class, who will have an opportunity to be heard on the matter, including the fee issue.

STANDARD OF REVIEW

In a certified class action, the Court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement. *See* Fed. R. Civ. P. 23(h). The following procedures apply:

> (1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.
> (2) A class member, or a party from whom payment is sought, may object to the motion;
> (3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a);
> (4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

Id. Rule 54(d)(2)(B) sets forth the necessary contents of a motion for attorneys' fees as follows:

> (B) *Timing and Contents of the Motion*. Unless a statute or a court order provides otherwise, the motion must: (i) be filed no later than 14 days after the entry of judgment; (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award; (iii) state the amount sought or provide a fair estimate of it; and (iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which

the claim is made.

Fed. R. Civ. P. 54(d)(2)(B).

When a claim for attorneys' fees is made pursuant to Rules 23(h) and 54(d)(2)(B), the Court must first preliminarily determine that the proposed attorneys' fees are reasonable. *Strong v. Bellsouth Telecomms.*, 137 F.3d 844, 849-50 (5th Cir. 1998). At this stage, the Court's task is preliminary approval of the attorneys' fee request, which is governed by a lesser standard as it is subject to additional review following Notice to the Class and at the Final Approval Hearing, at which time the Class will have had the opportunity to weigh in on the request. *See Harlan v. Transworld Sys., Inc.*, 302 F.R.D. 319, 328 (E.D. Pa. 2014) (preliminarily approving fee request as "within the range of reasonableness" finding it "presumptively fair for purposes of preliminary approval"); *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 477 (E.D. Cal. 2009) ("While the Court will revisit the matter at the Final Fairness Hearing, at present the proposal appears fair and reasonable for purposes of preliminary approval").

ARGUMENT

I. THE COURT SHOULD PRELIMINARILY APPROVE AN AWARD OF ATTORNEYS' FEES PAID PURSUANT TO THE PARTIES' AGREEMENT.

A. The Requested Fees are Reasonable Under the Lodestar Method.

"An agreed upon award of attorneys' fees and expenses is proper in a class action settlement, so long as the amount of the fee is reasonable under the circumstances." *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322 (W.D. Tex. 2007). As the United States Supreme Court has explained, a "request for attorney's fees should not result in a second major litigation," and, "[i]deally," the "litigants will settle the amount of the fee." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Consistent with that principle, the Fifth Circuit has "encourage[d] counsel on both sides to utilize their best efforts to understandingly, sympathetically, and professionally arrive at a

settlement as to attorneys' fees." *Johnson v. Ga. Hwy. Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974). Accordingly, courts "are authorized to award attorneys' fees and expenses where all parties have agreed to the amount, subject to court approval, particularly where the amount is in addition [to] and separate from the defendant's settlement with the class." *DeHoyos*, 240 F.R.D. at 322 (internals omitted); *accord* Fed. R. Civ. P. 23(h).

In determining "reasonable" attorneys' fees, according to the Supreme Court and the Fifth Circuit, the "lodestar figure has, as its name suggests, become the guiding light." *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992); *McClain v. Lufkin Indus., Inc.*, 649 F.3d 374, 381 (5th Cir. 2011) (lodestar calculation is the "linchpin of the reasonable fee"). In this Circuit, after a long pendency of a suit where plaintiffs are subject to an "unyielding and vigorous defense," as here, a fee award using lodestar calculations "should provide Plaintiff's counsel with a fair, reasonable and substantial fee." *Humphrey v. United Way of Texas Gulf Coast*, 802 F. Supp.2d 847, 859 (S.D. Tex. 2011) (Harmon, J.).

The law firms working as Class Counsel in this case have a collective lodestar figure of $16,032.304.65, based on appropriate hourly rates determined according to prevailing rates consistent with those used in the relevant local legal market. *See McClain*, 649 F.3d at 383 ("unbroken and consistent line" of precedents require courts to consider customary fees for similar work "prevailing in the community"). Class Counsel's usual billing rates are presumptively the rates that are "normally charged by counsel of comparable standing, reputation, experience and ability in the community where counsel practices." *In re Vioxx Prods. Liab. Litig.*, 760 F. Supp.2d 640, 660 n. 23 (E.D. La. 2010). Here, Class Counsel's collective lodestar is further detailed in the Declarations attached to the unopposed Approval Motion as Exhibits B to G.

Under the lodestar method, the Court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Union Asset Management*

Holding A.G. v. Dell, Inc., 669 F.3d 632, at 642-43 (5th Cir. 2012). The first step in computing the lodestar is determining the reasonable hourly rate. To do this, courts look to the prevailing market rate for similar services by similarly trained and experienced lawyers in the relevant legal community. *Tollett v. City of Kemah*, 285 F.3d 357, 368 (5th Cir. 2002); *In re Heartland Payment Sys. Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp.2d 1040, 1087-88 (S.D. Tex. 2012) (Rosenthal, J.) (an attorney's hourly rates should be judged in relation to "prevailing market rates for lawyers with comparable experience and expertise" in complex class litigation). To establish the reasonable hourly rate, Class Counsel rely on their rates billed and paid in similar lawsuits. *Altier v. Worley Catastrophe Response LLC*, 2012 WL 161824 (E.D. La. Jan. 18, 2012) (attorneys' requested rates are prima facie reasonable when they request lodestar be computed as customary billing rate, rate is within range of prevailing market rates, and rate is not contested). Accordingly, Class Counsel's respective hourly rates are reasonable considering the skill and expertise of the attorneys involved, the fact that they have calculated lodestar at their customary billing rates, and applicable case authority regarding prevailing market rates. *See C.C. & L.C. v. Baylor Scott & White Health*, 2022 WL 4477316 (E.D. Tex. Sept. 26, 2022) (approving rates comparable to rates used to calculate lodestar here); *Blackmon v. Zachary Holdings, Inc.*, 2022 WL 3142362 (W.D. Tex. Aug. 5, 2022) (same). Class Counsel's rates are not contested by Arkema.

Class Counsel have reasonably spent over 28,430.09 hours in the investigation and prosecution of this matter in support of Plaintiffs' claims against Arkema and have a collective lodestar to date of $16,032,304.65. The requested fee of $8,500,000.00, therefore, represents about 53% of Class Counsel's lodestar, despite the enormous risks of this litigation and the long delay between the filing of this action and the payment being received by Class Counsel.

Moreover, and importantly, the lodestar presented here is conservative because it is based only on work of Class Counsel calculated through October 13, 2023, and thus excludes additional

work that Class Counsel have engaged and will engage in for the benefit of the Class, including supervising the Claims Administrator and responding to the inquiries of the Class Members. If this time had been included in the Declarations supporting this fee request, the amount of attorneys' fees requested would be even further below the total lodestar in the case. Class Counsel will continue to spend additional hours following the approval of the Settlement but will not seek any further fees. Practically speaking, therefore, given the totality of circumstances, Class Counsel will be paid, even pending the Court's full approval of the requested fees, well below their current billing rates, collective time expenditures, and billing lodestars.

B. The *Johnson* Factors Confirm that the Requested Fee is Reasonable.

After calculating the lodestar, the Court must consider whether to adjust the fee upward or downward based upon its analysis of twelve factors enumerated in *Johnson*, 488 F.2d at 717-19. The *Johnson* factors include: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id.* at 717-19.

1. The Time and Labor Required.

The time and effort expended by Class Counsel in prosecuting this action and achieving the Settlement establishes that the requested fee is justified. Class Counsel engaged in substantial work to prosecute Plaintiffs' claims over nearly six years of litigation, including conducting an extensive investigation; drafting pleadings; working with experts; conducting discovery; winning

two hard-fought motions for class certification; preparing for trial on the merits; and engaging in successful mediation and resolution of claims in the Settlement. Class Counsel spent more than 28,430.09 hours investigating, prosecuting, and resolving this action through October 13, 2023, with a total lodestar of $16,032.304.65. The substantial time and effort devoted to this case by Class Counsel, and their efficient and effective management of the litigation, was critical in obtaining the favorable result achieved by the Settlement and confirms the fee request here is reasonable.

2. The Novelty and Difficulty of the Issues.

This action involved novel and difficult issues that required the experience of Class Counsel. Although Plaintiffs believe that the allegations of the Complaint would ultimately translate into a strong case for liability, Plaintiffs are also aware that this action involves difficult issues of law and fact and that many risks are involved in establishing the requisite elements to their claims. Here, Plaintiffs faced numerous hurdles to establishing liability. The risk of failing to establish the elements of Plaintiffs' causes of action, and receiving no recovery at all, was significant.

3. The Skill Required to Perform the Legal Services Properly, and the Experience, Reputation and Ability of the Attorneys.

The third and ninth *Johnson* factors, the skill required, and the experience, reputation and ability of the attorneys also support the requested fee award. The first of these factors is "evidenced where counsel performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze this case and reach a resolution." *King v. United SA Fed. Credit Union*, 744 F. Supp.2d 607, 614 (W.D. Tex. 2010). "The trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work" are also "highly

important in this consideration." *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp.2d 732, 789 (S.D. Tex. 2008) (Harmon, J.).

Considerable litigation skills were required for Class Counsel to achieve the Settlement in this action. As the Court is aware, this is a complex case involving difficult factual and legal issues on the merits. There were many contested issues, and therefore it took highly skilled counsel to represent the Class and bring about the substantial recovery that has been obtained. Class Counsel has many years of experience in complex federal civil litigation, as set forth in the firm resumes previously submitted as part of Plaintiffs' class-certification papers. Class Counsel's experience enabled it to assess whether a larger settlement could be recovered, and to see that, under the circumstances of this case, the proposed Settlement represented an excellent recovery for the Class.

4. The Preclusion of Other Employment.

The considerable amount of time that Class Counsel spent prosecuting this action – 28,430.09 hours since the inception through October 13, 2023 – was time that Counsel could not spend pursuing other matters. Class Counsel dedicated this substantial time to the prosecution of the action despite the very significant risks of no recovery and while deferring any payment on their fees and expenses until a settlement was reached. Accordingly, this factor supports the requested fee. *See, e.g., Burford v. Cargill, Inc.*, 2012 WL 5471985 at *3 (W.D. La. Nov. 8, 2012); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp.2d 942 (E.D. Tex. 2000).

5. The Customary Fee.

In determining "reasonable" attorneys' fees, the lodestar figure is "the guiding light." *Dague*, 505 U.S. at 562; *McClain*, 649 F.3d at 381 (lodestar the "linchpin of the reasonable fee"). The Fifth Circuit has stressed that where a suit has had long pendency and where plaintiffs have been subjected to a vigorous defense, Plaintiffs' counsel should receive a "substantial fee." *Humphrey*, 802 F. Supp.2d at 859. Since Class Counsel have requested a fee well below their

collective lodestars, this factor strongly favors preliminary approval.

6. The Contingent Nature of the Fee.

The fully contingent nature of Class Counsel's fee and the substantial risks posed by the litigation are important factors supporting the requested fee. As noted above and in the Declarations attached to the Unopposed Preliminary Approval Motion as Exhibits B to G, Class Counsel faced very significant challenges to establishing liability and damages in this action. Arkema vigorously contested every aspect of this case, including strong opposition to class certification that led to Rule 23 issues twice being presented to the Fifth Circuit Court of Appeals. In the face of these uncertainties regarding the outcome of the case, Class Counsel prosecuted this action on a wholly contingent basis, knowing that the litigation could last for years and would require devotion of a substantial amount of attorney time and a significant advance of litigation expenses with no guarantee of compensation. Counsel's assumption of this contingency fee risk strongly supports the reasonableness of the requested fee. *See Klein v. O'Neal, Inc., 705 F. Supp.2d at 678 (N.D. Tex 2010)*

7. The Amount Involved and the Results Achieved.

As discussed above, the proposed Settlement will provide for the payment of settlement benefits by Defendant of $20,100,000.00 to create a Property Characterization/Remediation Fund and $1,700,000.00 into an Anonymized Epidemiological Study Fund, as well as reimbursement of expenses and amounts paid to the named Plaintiffs as incentive awards. This is a substantial recovery for the Class, which was uncertain when the case began. Class Counsel submits that the result achieved, considering the substantial risks posed in the action, is significant and wholly supports the requested fee.

8. The Undesirability of the Case.

In certain instances, the "undesirability" of a case can be a factor in justifying the award of

a requested fee. There are risks inherent in financing and prosecuting contingent litigation of this type. Class Counsel knew that they would have to spend substantial time and money and face stiff opposition without any assurance of being compensated for their efforts. Thus, the "undesirability" of the case also weighs in favor of the requested fee. *See e.g. Billitteri v. Securities Am., Inc.*, 2011 WL 3585983 (N.D. Tex. Aug. 4, 2011) (where difficult case included risk of no recovery whatsoever, this factor supported fee request); *Braud v. Transport Serv. Co.*, 2010 WL 3283398, at *13 (E.D. La. Aug. 17, 2010) (given the risk of non-recovery, burdens of "undertaking expensive litigation against . . . well-financed corporate defendants on a contingent fee," the court found undesirability of case favor supported fees requested).

In view of the analysis set forth above, Plaintiffs and Class Counsel maintain that the recovery constitutes not only a fair, reasonable and adequate recovery, but also an excellent recovery under the circumstances, at the conclusion of a lengthy and costly litigation. When this recovery is viewed against the difficulties Plaintiffs would face in proving liability and establishing Plaintiffs' entitlement to injunctive relief, the Court would find that it would have been very difficult for Plaintiffs to obtain a greater recovery. *See Smith v. Crystian*, 91 F. App'x 952, 955 (5th Cir. 2004) (holding that district court properly approved settlement when settlement was compared to relief available after full litigation, discounting by risk of losing); *In re Agent Orange Prod. Liab. Litig.*, 611 F. Supp. 1396, 1405 (E.D.N.Y. 1985), *aff'd in part, rev'd in part o/o gds*, 818 F.2d 179 (2d Cir. 1987) (much of value of settlement lies in ability to make relief available promptly).

II. AN AWARD OF EXPENSES AND COSTS IN THE REQUESTED AMOUNT IS WARRANTED.

Class Counsel have also requested that the Court preliminarily approve their Motion for reimbursement of $1,862,175.06 in litigation expenses incurred in connection with the prosecution

of this litigation. Courts within the Fifth Circuit routinely approve the awarding of expenses, in addition to fees, to counsel who obtain a recovery for the class. *See, e.g. Spegele v. USAA Life Ins. Co.*, 2021 WL 4935978 (W.D. Tex. Aug. 26, 2021); *City of Omaha Police & Fire Retirement System v. LHC Group*, 2015 WL 965696 (W.D. La. Mar. 3, 2015); *Zagami v. Natural Health Trends Corp.*, 2009 WL 10703665 (N.D. Tex. Jul. 21, 2009).

In determining whether the requested expenses are compensable, the Court considers whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases, and which were reasonably necessary to the prosecution or resolution of the action. Here, each law firm that participated in the litigation has submitted separate Declarations attesting to the accuracy and reasonableness of its expenses, which amount to date to $1,862,175.06 in out-of-pocket expenses in the prosecution of this action. *See* Attorney Declarations attached as Exhibits B to G to the Unopposed Preliminary Approval Motion. These expenses were reasonably necessary to successfully prosecute this matter. The expenses are therefore due to be paid by the Class and should be reimbursed. Moreover, application for payment of these expenses has been agreed to by Arkema, and Arkema has agreed to pay $2,000,000 to fund the Expenses Escrow Fund, which in no way detracts from the value of the Settlement to the Class.

III. THE PROPOSED INCENTIVE AWARDS TO BE PAID TO THE PLAINTIFFS SHOULD BE PRELIMINARILY APPROVED.

In the exercise of its discretion, the Court may award special compensation to class representatives to compensate them for the services they provided and the risks they incurred during the course of the class action litigation. Incentive awards are routinely approved in class actions to encourage socially beneficial litigation by compensating named plaintiffs for their personal time spent advancing the litigation on behalf of the Class and for any personal risk they undertook. *Humphrey v. United Way of Texas Gulf Coast*, 802 F. Supp.2d 847, 868 (S.D. Tex.

2011) (Harmon, J.).

Here, the personal involvement of each of the Plaintiffs is indisputable and their efforts are exhaustively detailed in the Declaration of Class Counsel Kevin Thompson in Support of Class Representative Incentive Awards, attached as Exhibit I to the Unopposed Preliminary Approval Motion. Each of the eight named Plaintiffs remained dedicated to the prosecution of this matter for nearly six years, contributing to the litigation and benefitting the Class by, among other things: (1) reviewing the pleadings and other materials in connection with this litigation; (2) staying informed of the case and making themselves available to discuss the case with Class Counsel; (3) responding to Arkema's discovery and document requests; (4) preparing and sitting for lengthy depositions; (5) attending hearings and mediation sessions; and (6) reviewing and ultimately approving the terms of the Settlement.

At the outset of the case, each of the Class Representatives not only met and consulted with counsel but allowed multiple experts on to their properties for testing and arranged access to other class members' properties for testing to secure a broader geographic distribution of sampling results. *See* Exh. I at ¶4. Not only were the Plaintiffs compliant with all discovery obligations, including producing documents and providing sworn testimony, but some of them were deposed on two occasions. *Id*. at ¶7. Plaintiffs went beyond the scope of their minimum obligations in a wide variety of ways, including assisting in investigations and collecting of ash samples from their own properties, attending community meetings about the case, and making themselves available for media interviews. *Id*. at ¶8. They allowed experts into their homes as needed for additional sampling. *Id*. Some even allowed use of their homes as a base of operations for Plaintiffs' experts. *Id*. The pendency of the litigation for six years, including two visits to the United States Court of Appeals for the Fifth Circuit, has caused considerable stress and hardship, as related to counsel.

Id. at ¶7.[2]

As a result of these personal commitments made by the named Plaintiffs, Class Counsel request that in addition to the fee award, and pursuant to the terms of the Settlement, the Court preliminarily approve Incentive Awards to the Plaintiffs in the total amount of $200,000.00, to be evenly divided between the eight named Plaintiffs in recognition of their time and efforts on behalf of the Class in this litigation (or $25,000 each). This incentive award request is in line with awards granted in similar class action cases and other complex litigation and represents a fair and reasonable amount considering the benefits that Plaintiffs helped achieve for the Class. *See, e.g.*, *McCoy v. Health Net, Inc.*, 569 F. Supp.2d 448, 479-80 (D. N.J. 2008) (awards of $60,000 each to representatives who "spent a significant amount of their own time" litigating cases for benefit of absent class members); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) ($50,000 award to individual plaintiff just and reasonable under circumstances); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240 (S.D. Ohio 1991) (awards of $50,000 each to representatives was "earned" due to time and effort spent); *Glass v. UBS Fin. Serv., Inc.*, 2007 WL 221862 (N.D. Cal. Jan. 26, 2007) ($25,000 to each named plaintiff); *see also McBean v. City of N.Y.*, 233 F.R.D. 377, 391-92 (S.D.N.Y. 2006) (stating incentive awards of $25,000 to $30,000 are "solidly in the middle of the range"); *In re Dun & Bradstreet Credit Serv. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (in estimated $18 million settlement where plaintiffs each "spent a good deal of time and effort", incentive awards ranged from $35,000 to

[2] This impressive summary does not do full justice to the extraordinary efforts made by the named Plaintiffs in this case. The Thompson Declaration attached as Exhibit I to the Unopposed Preliminary Approval Motion details many other examples of their remarkable assistance to the prosecution, including such examples as Plaintiff Larry Anderson meeting with and accompanying a University of Texas veterinary toxicologist while investigating potential agricultural claims, while also withholding large amounts of hay from commerce and limiting sale of such hay to agricultural customers so that a proper investigation could be made in the litigation. Exh. I at ¶8.

$55,000 each among five named representatives).

The requested Incentive Awards are within a normal and acceptable range if the Court balances "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). Here, importantly, the amount of the Incentive Awards has been agreed to be paid by Arkema separately into the Incentive Awards Escrow Fund and will not diminish from the amounts being made available to effectuate relief on behalf of the Class. Thus, the Incentive Award payments will not reduce the amounts available for the Class.

The named Plaintiffs have diligently cooperated with Class Counsel to investigate and bring this action. This matter would not have been resolved favorably without their substantial assistance. Service as a class representative is a burdensome task, and without Plaintiffs' participation, the Class would have received nothing. Here, the service from the named Plaintiffs for the Class has been exemplary, making the payments for each representative justified.

CONCLUSION

Based on the foregoing, an attorneys' fee award in the amount of $8,500,000, and reimbursement of actual out-of-pocket expenses of $1,862.175.06 advanced by Class Counsel, is reasonable and should be preliminarily approved by the Court, pending further analysis at the final approval stage. The requested Incentive Awards are also reasonable and should be preliminarily approved, pending further review on final approval of the Settlement, after a Final Fairness Hearing is held.

[Signature block on following page]

DATED: December 29, 2023

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2023, I served a true and correct copy of the foregoing document upon counsel of record by using the email addresses listed below. The document was filed under seal using the Court's ECF service in compliance with Federal Rule of Civil Procedure 5 and Local Rule 5.1:

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