

ENTERED

January 24, 2024

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SHANNAN WHEELER, et al.,

Plaintiffs,

VS.

ARKEMA FRANCE S.A., et al.,

Defendants.

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CIVIL ACTION NO. 4:17-CV-02960

PRELIMINARY APPROVAL ORDER

The Court, having considered Plaintiffs’ Unopposed Motion to Grant Preliminary Approval of the Class Action Settlement, Defendant’s lack of opposition and agreement with the relief requested, the pleadings on file, and all other relevant matter, determines that the motion should be **GRANTED**. It is **HEREBY ORDERED**:

1. **Capitalized Terms:** The capitalized terms used in this Preliminary Approval Order shall have the same meaning as defined in the Settlement Agreement, except as otherwise expressly provided.

2. **Certification of the Class:** Following a five-day evidentiary hearing, this Court granted in part Plaintiffs’ Renewed Motion for Class Certification and certified a class for property remediation and medical surveillance under Federal Rule of Civil Procedure 23(b)(2) defined as follows: “All residents and real property owners located within a 7-mile radius of the Crosby, Texas, Arkema Chemical Plant.” ECF No. 316 at 111.

3. **Amendment of Class Definition:** For the reasons stated in Plaintiffs’ unopposed motion, the Court hereby amends the definition of the Rule 23(b)(2) class certified for property remediation and medical surveillance. *See In re Monumental Life Ins. Co.*, 365 F.3d 408, 414 (5th

Cir. 2004) (“District courts are permitted to limit or modify class definitions to provide the necessary precision.”); *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982) (“Even after a certification order is entered, the judge remains free to modify [the class definition] in light of subsequent developments in the litigation.”); FED. R. CIV. P. 23(c)(1)(C) (“An order that grants or denies class certification may be altered or amended before final judgment.”). The amended Class definition is as follows: “All residents and real property owners located within a 7-mile radius of the Crosby, Texas, Arkema Inc. Chemical Plant at any time since August 30, 2017.” Excluded from the class are (a) the Honorable Keith P. Ellison and the Honorable Dena Palermo, any member of their staff who worked directly on this Litigation, and any member of their immediate families; (b) counsel for the Parties, any member of their respective staff who worked directly on this Litigation, and any member of their immediate families; (c) any government entity; (d) any entity or real property in which Defendant has a controlling interest; and (e) any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns.

4. **Limited Purpose of Amended Class Definition:** This amendment of the Class definition is solely for the purpose of effectuating the Settlement Agreement. If the Settlement Agreement is terminated or not consummated for any reason, the amended Class definition shall be null and void and of no further effect with respect to any Party to this Litigation, and the Parties to the Settlement Agreement shall be returned to the status each occupied before entry of this Preliminary Approval Order without prejudice to any legal argument or right that any of the Parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

5. **Class Counsel:** Michael G. Stag and Ashley Liuzza and the law firm of Stag Liuzza, LLC; Van Bunch and the law firm of Bonnett Fairbourn Friedman & Balint, P.C.; Mark F. Underwood and the law firm of Underwood Law Offices; and Kevin W. Thompson and the law firm of Thompson Barney shall continue to serve as Class Counsel and shall act on behalf of the Class Representatives and all members of the Class.

6. **Class Representatives:** Corey Prantil, Betty Whatley, Bevely Flannel, Roland Flannel, Larry Anderson, Tanya Anderson, Bret Simmons, and Phyllis Simmons shall serve as Class Representatives.

7. **Preliminary Approval of the Settlement:** The Court hereby preliminarily approves the Settlement Agreement and finds, pursuant to Federal Rule of Civil Procedure 23(e), that it likely will be able to grant Final Approval of the Settlement Agreement as being fair, reasonable, and adequate to the Class, subject to further consideration at the Final Approval Hearing. Considering the factors set forth in Rule 23(e)(2), the Court preliminarily finds as follows:

- a. The Class Representatives and Class Counsel have adequately represented the Class.
- b. The Settlement Agreement was negotiated at arm's length.
- c. The relief provided to the Class in the Settlement Agreement is adequate, given the risks and uncertainty of trial.
- d. The Settlement Agreement treats all Class Members equally relative to each other.

8. **Approval of the Class Notice and Notice Plan:** The Court approves the form and substance of the Class Notice and the Notice Plan set forth in the Settlement Agreement for

notifying the Class of the Settlement Agreement, provided that the Class Notice is updated to reflect the amended Class definition. The Court finds that the Class Notice clearly and accurately informs all members of the Class of all material terms of the Settlement Agreement, meets the requirements of Due Process, Federal Rule of Civil Procedure 23, and all other applicable laws, and constitutes the best notice practicable under the circumstances. The Parties shall have discretion to jointly make non-material, minor revisions to the Class Notice.

9. **Retention of Settlement Administrator for Class Notice:** The Court approves the appointment of Edgar C. Gentle, III, as the Settlement Administrator for the limited and sole purpose of causing the Class Notice to be distributed to the Class and published, pursuant to the Notice Plan in the Settlement Agreement, subject to the oversight of the Parties and this Court as described in the Settlement Agreement.

10. **Cost of Notice:** As provided in the Settlement Agreement, all Administrative Costs incurred in carrying out the Notice Plan shall be paid from the Expenses Escrow Account, and in no event shall any of the Released Parties bear any responsibility or liability for such Administrative Costs.

11. **CAFA Notice:** As provided in the Settlement Agreement, the Settlement Administrator shall effect service of the notice required under the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715, *et seq.*, no later than ten (10) calendar days following the entry of this Preliminary Approval Order. The fees, costs, and expenses of the CAFA notice and administering the CAFA notice shall be paid out of the Expenses Escrow Account. No later than seventy (70) calendar days after Preliminary Approval, the Settlement Administrator shall cause to be served on Class Counsel and filed with the Court proof, by affidavit or declaration, regarding compliance with 28 U.S.C. § 1715(b).

12. **Appearance of Class Members:** Any Class Member may enter an appearance in the Lawsuit, at their expense, individually or through counsel of their own choice. If any Class Member does not enter an appearance, they will be represented by Class Counsel.

13. **Form of Objections:** Class Members who wish to object must submit a written statement of objection to the Clerk of Court, United States District Court for the Southern District of Texas, 515 Rusk Avenue, Houston, TX 77002, postmarked or filed via the Court's electronic filing system (ECF), on or before the Objection Deadline. To be valid, an objection must include: (a) a reference to this case, *Shannan Wheeler, et al. v. Arkema Inc.*, Case No. 4:17- 2960-KPE (S.D. Tex), and the name of the presiding Judge, the Hon. Keith P. Ellison; (b) the name, address, telephone number, and, if available, the email address of the Class Member objecting, and if represented by counsel, their counsel's name, address, telephone number, email, and bar number; (c) a written statement of all grounds for the objection, accompanied by any legal support for such objection; (d) a statement of whether they intend to appear at the Final Approval Hearing, either with or without counsel; (e) a statement of their membership in the Class; (f) a detailed list of any other objections submitted by the Class Member, or their counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years; and (g) the Class Member's signature, even if the objection is submitted through counsel. If the Class Member or their counsel have not objected to any other class action settlement in any court in the United States in the previous five (5) years, they shall affirmatively state so in the written materials provided in connection with the objection to this Settlement. This information is material to the Court's consideration of the Settlement; failure to include this information and documentation may be grounds for overruling and rejecting the objection. Any Class Member who fails to timely submit a written objection prior to the Objection Deadline shall be deemed to have waived their objections, and those objections will not be considered by the Court.

14. **Appearance and Objection at the Final Approval Hearing:** Any Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Class Member's own expense. However, if the Class Member wishes to object to the Settlement Agreement at the Final Approval Hearing (either personally or through counsel), the Class Member must submit a timely written objection in compliance with the requirements in this Preliminary Approval Order. In addition, to appear in person or by counsel at the Final Approval Hearing, the objecting Class Member must include in their objection a Notice of Intention to Appear. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or their counsel) will present to the Court in connection with the Final Approval Hearing. Any Class Member who fails to submit a proper Notice of Intention to Appear will not be heard during the Final Approval Hearing. Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval of the Settlement Agreement.

15. **Failure to Object:** Any Class Member who does not object to the Settlement or Class Counsel's application for an award of Attorneys' Fees, Attorneys' Expenses, and/or an Incentive Award in the manner prescribed herein shall be deemed to have waived such objection, and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the Settlement, this Preliminary Approval Order, the Final Approval Order, and the Final Judgment to be entered approving the Settlement and/or the application by Class Counsel for an award of Attorneys' Fees, Attorneys' Expenses, and/or an Incentive Award.

16. **Settlement Procedures and Timeline:** The following settlement procedures and timeline will be followed:

a. **Notice Date.** By February 23, 2024, the Settlement Administrator shall send the Class Notice to Class Members pursuant to the Notice Plan set forth in the Settlement Agreement.

b. By April 2, 2024 , the Settlement Administrator shall file a declaration confirming compliance with the Notice Plan set forth in the Settlement Agreement.

c. **Objection Deadline.** All objections to the Settlement Agreement shall be filed by April 22, 2024.

d. All replies in support of Final Approval or for any award of Attorneys' Fees, Attorneys' Costs, or an Incentive Award (including responses to objections) must be filed by Plaintiffs by May 7, 2024. All such filings and supporting documentation shall be posted to the Settlement Website within one day of filing.

e. **Final Approval Hearing.** The Court shall hold the Final Approval Hearing for final approval of the settlement on June 6, 2024 , at 10 a.m. to address: (i) whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate, and whether the Final Approval Order should be entered; and (ii) whether Class Counsel's application for Attorneys' Fees, Attorneys' Expenses, and/or an Incentive Award should be approved.

f. The Court may, for good cause, extend any of the deadlines set forth in this Preliminary Approval Order without further notice to the Class Members, though such extensions shall be posted to the Settlement Website. The Final Approval Hearing may be continued by order of the Court from time to time and without further notice to

the Class Members beyond updates to the Court's docket and the Settlement Website.

17. **If The Settlement Is Not Finally Approved:** In the event the Final Approval Order or Final Judgment is not entered by the Court, or in the event that the Settlement Agreement becomes null and void or terminates pursuant to its terms, the Settlement, this Preliminary Approval Order, and all orders entered in connection herewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this Litigation or in any other case or controversy. In such event the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

18. **No Admissions:** This Preliminary Approval Order shall not be construed as an admission or concession by Defendant of the truth of any Allegations made by the Plaintiffs or of liability or fault of any kind.

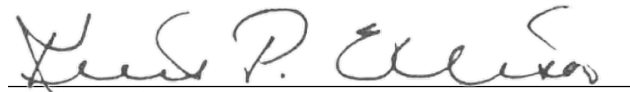
19. **Binding Effect:** All Class Members shall be bound by all determinations and judgments in the Lawsuit concerning the Settlement (including, but not limited to, the releases provided for therein), whether favorable or unfavorable to the Class.

20. **Authorization:** Counsel for the Parties are hereby authorized to use all reasonable procedures in connection with the administration of the Settlement that are not materially inconsistent with either this Preliminary Approval Order or the terms of the Settlement Agreement.

21. **Stay of Further Proceedings:** All further proceedings and deadlines in this action are hereby stayed except for those required to effectuate the Settlement Agreement and this Preliminary Approval Order.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this 24th day of January, 2024.

A handwritten signature in cursive script, appearing to read "Keith P. Ellison", written over a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE