UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SEVERA, et al.,	:	
	:	
Plaintiffs,	:	Case No.: 1:20-cv-6906
	:	
v.	:	Civil Action
SOLVAY, et al.,	:	
	:	
Defendants	:	

Notice of Motion for Preliminary Approval of Class Action Settlement

PLEASE TAKE NOTICE that on the 4th day of March, 2024, the undersigned attorney for Plaintiffs shall move before the United States District Court for the District of New Jersey for an order preliminarily approving the stipulation of settlement in the above captioned matter and provisionally certifying the classes for settlement purposes only.

Plaintiffs will rely upon the supporting certifications, brief, and corresponding exhibits submitted herewith.

Dated: January 29, 2024

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Dated: January 29, 2024

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Memorandum of Law in Support of Motion for Preliminary Approval of Class Action Settlement

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I. INTRODUCTION

Plaintiffs Kenneth Severa, Carol Binck, Denise Snyder, Jennifer Stanton, and William Teti ("Plaintiffs"), through their undersigned counsel submit the following Memorandum of Law in support of the Motion for Preliminary Approval of the proposed class action settlement with Defendants Solvay Specialty Polymers USA, LLC and Solvay Solexis, Inc. (together "Solvay"), and Arkema Inc. ("Arkema") (collectively "Defendants," and Plaintiffs and Defendants are collectively referred to as the "Parties"), as set forth in the Stipulation and Agreement of Settlement (the "Settlement Agreement" or "Stipulation"), attached as Exhibit 1 to the Shauna L. Friedman Certification in Support of Motion for Class Certification ("Friedman Certification").

This Motion respectfully requests that the Court enter an Order:

1. Preliminarily approving the settlement of the above-captioned Action (the "Action");
2. Provisionally certifying the classes defined in the Settlement Agreement for settlement purposes;
3. Appointing class counsel;
4. Approving the form, content and manner of issuing notice of the proposed settlement to the Plaintiff class pursuant to the form of Notice as attached to the Settlement Agreement;
5. Setting deadlines for opt outs and objections to the proposed settlement; and
6. Scheduling a fairness hearing at which time the Court will be asked to finally approve the settlement and to approve class counsel's request for attorney's fees and reimbursement of costs, along with such other relief that may be necessary and just.

II. BRIEF BACKGROUND

This action arises from the presence of poly- and perfluoroalkyl substances ("PFAS"), including perfluorononanoic acid ("PFNA") and perfluorooctanoic acid ("PFOA"), within the municipal water system of the Borough of National Park ("National Park"). The residents of

National Park, whom Plaintiffs seek to represent, receive their drinking water from the municipal water system. Plaintiffs claim that ingesting PFAS-contaminated water has increased their risk of developing serious latent diseases. They also claim that the PFAS-contaminated water has caused a devaluation and a loss of enjoyment and use of their residential properties, and out-of-pocket costs for alternate water sources, water bottles, and/or filtration devices.

In 2018, the New Jersey Department of Environmental Protection ("NJDEP") established a Maximum Contaminant Level ("MCL") for PFNA of 13 parts per trillion, and required water utilities to begin testing for PFAS in their water beginning in the first quarter of 2019. The NJDEP has since established MCLs for other PFAS, including PFOA. From October 1, 2019 to March 31, 2020, the running annual average ("RAA") for PFNA in the quarterly samples taken from the National Park Water Department ("Treatment Plant") exceeded the MCL, resulting in violations of N.J.A.C. 7:10-5.5(2)a5. Other PFAS were also detected in National Park's quarterly samples. The PFAS has since been eliminated from National Park's water system following National Park's installation of a Granular Activated Carbon ("GAC") system at the Treatment Plant.

Plaintiffs claim that PFAS in National Park's water system originated from an industrial facility located in West Deptford that Defendants owned and operated at different times between 1985 and the present ("West Deptford facility"). Defendants manufactured polyvinylidene fluoride ("PVDF") at the West Deptford facility, and as part of the manufacturing process, used a fluorosurfactant known as "Surflon®," which contained PFNA.[1] Plaintiffs allege that, as a result,

[1] Specifically, Arkema's production of PVDF at the West Deptford facility commenced in August 1985. Neither Arkema nor Solvay manufactured Surflon® at the West Deptford facility, but rather purchased Surflon® for use in the manufacture of PVDF. Arkema (then known as Atochem North America, Inc.) sold the property and assets associated with the West Deptford facility to Ausimont U.S.A., Inc. n/k/a Solvay Specialty Polymers USA, LLC, with the sale being effective as of October 31, 1990. Following the sale of

PFNA and PFOA were discharged from the West Deptford facility, and eventually made their way into National Park's water system.

Defendants deny any liability or wrongdoing whatsoever regarding the operation of the West Deptford facility.

III. THE LITIGATION

On June 5, 2020, Plaintiffs filed a Class Action Complaint and Demand for Jury Trial in the United States District Court for the District of New Jersey. (D.I. 1). An Amended Complaint was subsequently filed on June 9, 2020. (D.I. 6). The Amended Complaint generally alleges, among other things, that Defendants negligently or knowingly caused the discharge of PFNA and PFOA from the West Deptford facility into the municipal water supply of National Park. The Amended Complaint asserts counts for private and public nuisance, trespass, negligence, violations of New Jersey's Spill Act, and punitive damages.

On July 28, 2020, Defendants filed motions to dismiss the Amended Complaint. (D.I. 23-24). In an order from March 10, 2021, the Court granted Defendants' motions with respect to Plaintiffs' punitive damages claim as a separate cause of action, and denied the motions as to the remaining claims for nuisance, trespass, negligence, and violations of the Spill Act. (D.I. 71-72).

For nearly two years, the Parties exchanged significant discovery relating to Plaintiffs' claims, which comprised detailed written discovery as well as the production of nearly one million pages of responsive documents. Prior to the initiation of depositions, the Parties engaged in settlement discussions over the course of several months.

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the West Deptford facility, Solvay continued to utilize Surflon® at the West Deptford facility from 1990 until 2010.

The Parties have conducted a significant examination and investigation of the facts and law relating to the matters in this Litigation. Plaintiffs and Defendants, through their respective counsel, engaged in significant efforts to reach a reasonable and fair compromise and settlement of this litigation, which included, among other things, mediation before Magistrate Judge Ann Marie Donio. Based upon their investigation and the voluminous discovery completed thus far, the Parties have concluded that the terms and conditions of the proposed settlement are fair, reasonable and adequate, and in the Parties' best interest, and have agreed to settle the claims raised in the Amended Complaint pursuant to the terms and provisions of this Settlement Stipulation after considering: (i) the substantial benefits Plaintiffs and the Class Members will receive from settlement of this litigation; (ii) the attendant risks and uncertainties, including class certification, trial and appeals, as well as the time and expense of continuing the litigation; and (iii) the desirability of permitting this Settlement to be consummated as provided by the terms of this Stipulation.

IV. THE PROPOSED SETTLEMENT

The proposed settlement will provide to the Classes monetary relief in the form of direct payments and non-monetary benefits in the form of blood testing. A summary of the proposed settlement is set forth below.

A. Settlement Classes

As set forth in the Settlement Agreement, solely for the purposes of settlement, the Parties agree to – and seek this Court's approval of – certification of the following Settlement Classes under F.R.C.P. 23(b)(3):

As to Class 1 ("Biomonitoring Class"):

> All individuals who resided in National Park, New Jersey for any period of time from January 1, 2019 through the date upon which this Settlement receives preliminary approval ("Date of Preliminary Approval").

As to Class 2 ("Nuisance Class"):

> All individuals who, during the period of January 1, 2019 through the Date of Preliminary Approval, are or were owners or lessees of real property located in National Park, New Jersey.

As to Class 3 ("Property Class"):

> All individuals, who, during the period of January 1, 2019 through the Date of Preliminary Approval, are or were owners of real property located in National Park, New Jersey.

B. Settlement Benefits

Under the terms of the Settlement Agreement, Defendants will pay a total settlement of $1,367,975 to the Classes, consisting of a Biomonitoring Class Fund of $784,380, a Property Class and Nuisance Class Fund of $200,000, an administration fund of $100,000, Attorneys' fees of $243,595, and class representative incentive awards of $8,000 per Lead plaintiff ($40,000 total).

The Biomonitoring Class Fund shall be used to pay for Biomonitoring Class Members to obtain a single blood test to determine the levels, if any, of PFAS in their blood. The Biomonitoring Fund will also pay for phlebotomist and testing site costs, oversight of and all lab and other diagnostic costs, and the costs of providing blood test results. Blood tests will be provided over a two-month period ("Testing Period") and will be administered on a first-come, first-served basis. Because PFAS have been phased out over the last decade or so, PFAS levels in blood have been decreasing over time. Therefore, having the option to get blood tests now, as opposed to in the future, is another benefit to the Biomonitoring Class. Based on current blood testing cost estimates, the Biomonitoring Class Fund should be

sufficient to pay for approximately 2,100 individual blood tests. Based upon public information, the Biomonitoring Class is estimated to be approximately 3,000 people. Based upon counsel's experience with class action litigation generally, and with the 2016 biomonitoring settlement in Thomas, et al. v. Solvay, et al., Civil Case No.: 1:14-cv-1870 (D. N.J.), this should be more than sufficient to accommodate all Biomonitoring Class Members who wish to take advantage of this benefit.

Within 45 business days after the expiration of the Testing Period, if any of the Biomonitoring Class Fund remains, those funds shall revert to Defendants.

Defendants shall pay the aggregate sum of $200,000 into a fund for payments to any persons who are Property Class Members and/or Nuisance Class Members (Property/Nuisance Class Fund). Payment shall be made within 45 business days of the Effective Date, as defined in Paragraph 22 of the Settlement Agreement. The Property/Nuisance Class Fund shall be distributed in accordance with Paragraphs 7(a) and (b) of the Settlement Agreement, which are summarized directly below. In no event shall Defendants be required to make any additional payment(s) to Property Class members or Nuisance Class Members. The Class Administrator shall compute the amount payable to each Nuisance Class Member and Property Class Member after the Effective Date. Any amount owed to a Property Class member or Nuisance Class Member that is unclaimed after six (6) months of the date the Property Class and Nuisance Class Payments were distributed shall revert to Defendants.

According to Paragraph 7(a) of the Settlement Agreement, $100,000 of the Property/Nuisance Class Fund shall be made payable to Property Class Members. The amount payable to each Property Class Member shall be the quotient of $100,000 divided by the total number of residential properties within National Park. It is currently estimated that the foregoing

computation will result in a payment of approximately $100 to each property. The amount payable shall be apportioned *pro rata* among owners of the property, whether jointly, in common, by the entireties, or otherwise. By way of example, if a property is owned jointly by two persons, each person shall be entitled to one-half of the amount payable. In no event shall Defendants be required to make any additional payment(s) if the property is owned by more than one Property Class Member or Nuisance Class Member. Further, if a residential property had a change in ownership interest at any time between January 1, 2019 and the Date of Preliminary Approval (e.g. the property was sold to another National Park resident), then the amount payable to each Property Class Member will be divided *pro rata* based on their respective duration of ownership during the class period.

According to Paragraph 7(b) of the Settlement Agreement, $100,000 of the Property/Nuisance Class Fund shall be made payable to Nuisance Class Members. The amount payable to each Nuisance Class Members shall be calculated by dividing $100,000 by the sum of the total number of residential properties within National Park and total number of leaseholders in National Park as determined by the timely-submitted Claims Forms. It is currently estimated that the foregoing computation will result in a payment of approximately $100 for each Nuisance Class Member, except that Payments to property-owning Nuisance Class Members shall be based on the property and apportioned *pro rata* among owners of the property, whether jointly, in common, by the entireties, or otherwise. Each Nuisance Class Member with a leasehold interest in residential property is entitled to a payment, except multiple leaseholders of a single property are to be treated collectively as a single Nuisance Class Member entitled to one payment apportioned *pro rata*. The identities of lease-holding Nuisance Class Members for purposes of payments shall be determined by a timely-submitted Claims Form that list the names of each

person or persons who have a leasehold interest in the property to which Notice is sent. Further, if a residential property had a change in ownership or leasehold interest at any time between January 1, 2019 and the Date of Preliminary Approval, then the amount payable to each Nuisance Class Member will be divided *pro rata* based on their respective duration of ownership or leasehold during the class period.

In addition, subject to Court approval, Defendants will not oppose a motion for Class Counsel's attorneys' fees and costs, including, for the avoidance of doubt, expert fees and costs, up to $243,595, which includes such costs and expenses, time already spent and time to be spent, exchanging discovery, finalizing the Settlement, preparing settlement documents, drafting briefs, attending hearings, and monitoring of the settlement and settlement administration ("Class Counsels' Fees and Expenses"). The Class Counsels' Fee and Expenses are in addition to the settlement benefits each Class Member will be receiving and recompense for such Fees and Expenses as are approved by the Court will be the sole property of Class Counsel, not Plaintiffs or the Class. Class Counsels' Fees and Expenses awarded by the Court in the Order and Final Judgment in accordance herewith shall be payable within 45 business days of the Effective Date.

Also, subject to Court approval, within 45 business days of the Effective Date, Defendants shall pay each Lead Plaintiff $8,000 as an incentive payment for serving as a class representative in this action.

C. Class Notice / Settlement Administrator

This proposed Settlement provides that the administration of the Settlement shall be subject to the jurisdiction of the Court. Defendants shall pay an aggregate amount of $100,000 into the Administration Fund, which shall be used to pay for all aspects of administration of this settlement including but not limited to, mailings of notices, tracking of claims, and processing of

claims.[2] Upon expiration of the Testing Period for the Biomonitoring Program and, and after one year from the date Nuisance and Property Class payments were distributed, any remaining funds from the Administration Fund shall revert back to the Defendants.

The Parties have selected Postlethwaite & Netterville, APAC to delegate the administration of the Settlement.

A proposed notice and claim form ("Notice") is attached as Exhibit A to the Stipulation and Settlement Agreement. This Notice was modeled after the approved notice and claim form in a prior approved and certified class action settlement before this Court involving the same Defendants and similar allegations of contamination in a neighboring town, Thomas, et al. v. Solvay, et al., Civil Case No.: 1:14-cv-1870 (D. N.J.).

D. Procedures for Objectors and Opt-Outs

The Parties propose that the Court establish the deadlines and procedures for objectors and/or intervenors to ensure that all interested persons are afforded a reasonable opportunity to be heard and that the Fairness Hearing may be conducted in an orderly, efficient and just manner.

Specifically, to object to this Settlement, the proposed Notice provides that an objecting Class Member must send a letter to: (i) the Clerk of Court for the United States District Court for the District of New Jersey at Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Room 1050, Camden, NJ 08101; (ii) Class Counsel, Shauna Friedman, Esq. of Barry, Corrado & Grassi, PC at 2700 Pacific Avenue, Wildwood, NJ 08260; (iii) Counsel for Solvay, Crystal Lohmann Parker, Esq. of Paul, Weiss, Rifkind, Wharton & Garrison, LLP at 1285 Avenue of the Americas, New York, NY 10019-6064; and (iv) Counsel for Arkema, John North,

[2] For the avoidance of doubt, oversight of and all phlebotomist, lab, testing site and other diagnostic costs, and the costs of providing blood test results to individual Biomonitoring Class Members, do not constitute administration costs and will be paid for out of the Biomonitoring Class Fund.

Esq. of Greenbaum, Rowe, Smith, & Davis LLP at Metro Corporate Campus One, PO Box 5600, Woodbridge, NJ 07095 by a deadline to be determined by this Court. The letter must indicate that the Class Member objects to the proposed settlement in *Severa, et al. v. Solvay Specialty Polymers USA, LLC, et al.* Case No. 1:20-cv-6909, and provide the basis of the objection.

In addition, the proposed Notice complies with Rule 23(c)(2)(B)(v) by providing an opportunity for class members to affirmatively opt-out. Specifically, to opt-out, a Class Member must send a signed request for exclusion by mail to: (i) the Settlement Administrator, Postlethwaite & Netterville, APAC at 8550 United Plaza Boulevard, Suite 1001, Baton Rouge, LA 70809; (ii) Class Counsel, Shauna Friedman, Esq. of Barry, Corrado & Grassi, PC at 2700 Pacific Avenue, Wildwood, NJ 08260; (iii) Counsel for Solvay, Crystal Lohmann Parker, Esq. of Paul, Weiss, Rifkind, Wharton & Garrison, LLP at 1285 Avenue of the Americas, New York, NY 10019-6064; and (iv) Counsel for Arkema, John North, Esq. of Greenbaum, Rowe, Smith, & Davis LLP at Metro Corporate Campus One, PO Box 5600, Woodbridge, NJ 07095 by a deadline to be determined by this Court.

V. THE CLASS SETTLEMENT MEETS THE STANDARD FOR PRELIMINARY APPROVAL

The Third Circuit recognizes a strong presumption in favor of voluntary settlement agreements. See, e.g., Penwalt Corp. v. Plough, 676 F.2d 77, 79-80 (3d Cir. 1982). This presumption is especially strong in "class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig., 55 F.3d 768, 784 (3d Cir. 1995). The Third Circuit has adopted the following four-factor test to determine the preliminary fairness of a class action settlement: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only

a small fraction of the class objected. Id. at 785.[3] If a court concludes that the settlement should be preliminarily approved after consideration of these factors, "an initial presumption of fairness" is established. In re Linerboard Antitrust Litig., 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).

In a class action, the "court plays the important role of protector of the [absent members'] interests, in a sort of fiduciary capacity." GM Trucks, 55 F.3d at 785. The ultimate determination whether a proposed class action settlement warrants approval resides in the Court's discretion. Protective Comm. For Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968). As discussed more fully below, at this stage of preliminary approval, there is clear evidence that the Settlement Agreement here is well within the range of possible approval and this should be preliminarily approved.

First, it is undeniable that the proposed settlement was the result of arm's length negotiations conducted by experienced counsel for all parties. As described above, the settlement was negotiated on behalf of Plaintiffs and the Classes by attorneys who have been vigorously prosecuting this case for years. This settlement was negotiated at arms-length between capable and experienced counsel, and both sides engaged in substantial litigation and discovery. See Friedman Certification. The settlement is the product of an arms-length

[3] For final approval, the Court reviews the settlement in light of the factors established by Girsh v. Jepson, 521 F.2d 1153, 1157 (3d Cir. 1975): (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. See also, In re Rite Aid Corp. Sec. Litig., 396 F.3d 294, 301 (3d Cir. 2005).

negotiation between resourceful adversaries and is based upon sufficient investigation, discovery and pre-trial litigation to assure that no collusion is present. *Id*. at ¶ 12.

Second, the Parties exchanged extensive and voluminous discovery regarding, *inter alia*, the alleged discharge of PFAS from the West Deptford facility, sampling and testing of the municipal water supply, and blood testing of certain Plaintiffs.

Third, as set forth in the Certifications of Shauna L. Friedman, Esq., Alan H. Sklarsky, Esq., Oliver T. Barry, Esq. and Gerald J. Williams, Esq., filed concurrently with this Motion, Plaintiffs' counsel is experienced in similar litigation.

Fourth, Class Members are free to object to and/or opt out of the proposed settlement.

Furthermore, according to Paragraph 23 of the Settlement Agreement, it is terminable upon 30 days written notice after the last to occur of the date upon which: (i) the Court declines to Preliminary Approve the Settlement or certify the Class for the purpose of Settlement and enter the Order Granting preliminary Approval of Class Action Settlement and Conditional Class Certification and for Notice and Hearing in a form substantially the same as Exhibit A to Exhibit 1, attached hereto; (ii) the Court refuses to approve the Stipulation or any material part of it, or otherwise modifies any term of the Stipulation, attached hereto as Exhibit 1; (iii) the Court declines to enter the Order and Final Judgment; (iv) the Court declines to approve this Settlement as to any minor Class Members; (v) the percentage of Biomonitoring Class Member who submit timely claims to opt out of the Biomonitoring Class exceeds 5%; (vi) the percentage of Nuisance Class Members who submit timely claims to opt out of the Nuisance Class exceeds 5%; (vii) the percentage of Property Class Members who submit timely claims to opt out of the Property Class exceeds 5%; or (viii) the Order and Final Judgment or any Alternative Judgment is modified or

reversed in any respect by the United Staes Court of Appeals for the Third Circuit or by the United States Supreme Court.

Thus, there is no reason to doubt the fairness of the proposed Settlement Agreement. The proposed Settlement Agreement does not grant any preferential treatment to the class representatives or to segments of the Settlement Class, and it does not provide excessive compensation to counsel. See In re Inter-Op Prosthesis Liability Litig., 204 F.R.D. 359, 379 (N.D. Ohio 2001).

As described above, the proposed settlement allows Class Members to opt out. For Class Members who do not opt out, this settlement will provide monetary benefits and biomonitoring to the Classes. Specifically, all members of the Property Class and Nuisance Class will receive a monetary payment. And approximately 2,100 Biomonitoring Class Members (out of a potential of approximately 3,000 Biomonitoring Class Members) will be eligible for a single blood test. In addition to these benefits to the Classes, the Defendants have agreed establish a Biomonitoring Fund and Administration Fund to bear the expense of notice and administration of the settlement, and subject to Court approval, to pay the reasonable counsel fees of Class Counsel, as well as class representative incentive awards for their efforts on behalf of the Classes.

In exchange for providing these benefits, the Defendants are released of liability relating to the Settled Claims, as defined in Paragraph 1(x) of the Settlement Agreement. However, the proposed settlement does not include a release of any bodily injury claims that meet the requirements of Paragraph 8(a)-(c). In sum, the limited release is commensurate with the benefits being obtained, and consistent with the Thomas class action settlement that was approved by this Court in 2016.[4]

[4] Thomas, et al. v. Solvay, et al., Civil Case No.: 1:14-cv-1870 (D. N.J.).

Further, continued litigation would be long, complex and expensive, and a burden on Court dockets. Lake v. First Nat'l Bank, 900 F. Supp. 726 (E.D. Pa. 1995) (expense and duration of litigation are factors to be considered in evaluating the reasonableness of a settlement); Weiss v. Mercedes-Benz of N. Am. Inc., 899 F. Supp. 1297 (D.N.J. 1995) (burden on crowded court dockets to be considered). Such continued litigation would include, for example, dozens of fact and expert witness depositions, extensive briefing on class certification, and dispositive motions.

For these reasons, preliminary approval of the proposed settlement should be granted as to all Class Members.

VI. THE CLASS SHOULD BE PROVISIONALLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

To certify a class under Fed. R. Civ. P. 23, the Court must determine whether, in its sound discretion, the four requirements of Rule 23(a) are met and, if so, whether the "class fits within one of the three categories of class actions in Rule 23(b)." In re Cmty. Bank of N. Va., 622 F.3d 275, 279 (3d Cir. 2010). As the United States Supreme Court explained, "Rule 23 does not set forth a mere pleading standard…" but rather "[a] party seeking class certification must affirmatively demonstrate his compliance with the Rule…." Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551 (2011). Further, as the Supreme Court explained, Plaintiffs "must also satisfy through evidentiary proof at least one of the provisions of Rule 23(b)." Comcast Corp. v. Beherend, 133 S. Ct. 1426, 1428 (2013). The Supreme Court has directed courts to undertake a "rigorous analysis" to determine whether Plaintiffs have established each element of Rule 23 at the time of certification. Wal-Mart, 131 S. Ct. at 2551. Here, Plaintiffs can sufficiently demonstrate satisfaction of each element of Rule 23 and Defendants do not challenge Plaintiffs' ability to satisfy these elements for settlement purposes only.

A. The Settlement Class Satisfies Rule 23(a)

Rule 23(a), which "[e]very putative class must satisfy," requires that:

> (1) the class must be so numerous that joinder of all members is impracticable (numerosity); (2) there must be questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties must be typical of the claims or defense of the class (typicality); and (4) the named plaintiffs must fairly and adequately protect the interests of the class (adequacy of representation . . .)

Community Bank II, 622 F.3d at 291 (citations and internal quotations omitted). It is submitted that the proposed Settlement Agreement for class members in this matter meets all four requirements.

i. Numerosity

There is no dispute that there are at least 3,000 members of the putative class that have already been identified — at minimum — as residents in the Borough of National Park. This number meets the requirements of Rule 23(a)(1). See Community Bank II, 622 F.3d at 284 (citing In re Cmty. Bank of N. Va., 418 F.3d 277, 303-10 (3d Cir. 2005); see also In re Ins. Brokerage Antitrust Litig., 579 F.3d 241, 273 (3d Cir. 2009) ("numbers in excess of forty, particularly those exceeding one hundred or one thousand have sustained the [numerosity] requirement").

ii. Commonality

Rule 23(a)(2) requires a showing that "there are questions of law or fact common to the class." F.R.C.P. 23(a)(2). The United States Supreme Court has noted that "[c]ommonality requires the plaintiff to demonstrate that the class members have suffered the same injury." Wal-Mart, 131 S. Ct. at 2551 (citation and internal quotation omitted). Moreover, "[class] claims must depend upon a common contention …[that], must be of such a nature that it is capable of class wide resolution—which means that determination of its truth

or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Id.

Here, the Plaintiffs' claims depend on the common contentions, each of which are capable of class wide resolution: (1) whether Defendants released PFNA and PFOA into the surrounding environment and ground water; and (2) whether PFNA and PFOA released by Defendants contaminated the municipal water supply of National Park. With respect to the biomonitoring relief, in addition to the common contentions previously noted, there is at least one additional common contention: whether the proposed form of biomonitoring (the blood sampling) can be used to detect the level of PFNA and PFOA in each Plaintiff's blood. Biomonitoring is appropriate and available here to collect blood samples to establish a baseline for Class Members. Such information can then be shared by them with their health care providers to determine the need for any special surveillance as scientific research evolves as to potential human health hazards due to such exposure. Thus, there are common issues of law and fact, and as such, Plaintiffs satisfy the commonality requirement.

iii. Typicality

With regard to typicality, "the concepts of commonality and typicality are broadly defined and tend to merge." Community Bank I, 418 F.3d at 303 (citation and internal quotation omitted). However, the typicality requirement considers whether "the claims or defenses of the representative parties are typical of the claims or defenses of the class." F.R.C.P. 23(a). "Factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members and if it is based on the same legal theory." Barnes v. Am. Tobacco Co., 161 F.3d 127, 141 (3d. Cir. 1998) (quoting Newberg on Class Actions § 315, at 3-78).

In the instant case, Plaintiffs' claims arise from the same course of conduct that has given rise to the claims of the Classes, *i.e.*, Defendants' alleged pollution of the groundwater serving the Borough of National Park and the Plaintiffs' alleged exposure to such polluted groundwater through the National Park municipal public well. Each of Plaintiffs' tort claims, including the biomonitoring claim, arise from the same alleged course of conduct by Defendants and are based on the same legal theories. Thus, Plaintiffs satisfy the typicality requirements.

iv. Adequacy of Representation

The Plaintiffs and their Class Counsel are adequate class representatives in this case. The final Rule 23(a) requirement, adequacy of representation, "encompasses two distinct inquiries designed to protect the interests of the absent class members: it considers whether the named plaintiffs' interests are sufficiently aligned with the absentees', and it tests the qualifications of the counsel to represent the class." Community Bank I, 418 F.3d at 303. The determination of whether representation is adequate is closely related to typicality. See Amchem Products, Inc. v. Windsor, 521 U.S. at 626 n.20 (Typicality and adequacy both look to "whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.") (quoting Gen. Tel.Co. Sw. v. Falcon, 457 U.S. 147, 157 n.13 (1982)).

In the present case, Plaintiffs' interests are aligned with the potential class members because, among other reasons, Plaintiffs allege that they own property served by the National Park water supply and/or actually consumed the same water as class members. As a result, there is no conflict between Plaintiffs and potential class members.

Moreover, as is evident by the supporting Certification of Shauna L. Friedman, Esq., Alan H. Sklarsky, Esq., Oliver T. Barry, Esq., and Gerald J. Williams, Esq., concurrently filed with this Motion, Class Counsel are experienced in complex litigation, and environmental class

actions, and therefore their competence should not be an issue. Indeed, competency of counsel is presumed at the outset of the litigation in the absence of specific proof to the contrary. See Lamphere v. Brown, 71 F.R.D. 641 (D.R.I. 1976), dismissed on other grounds, 553 F.2d 714 (1st Cir. 1977); Powers for Stuart James Co., 707 F. Supp. 499 (M.D. Fla. 1989); Lefrak v. Arabian Oil, 527 F.2d 1136 (2d Cir. 1975); Werfel v. Kramarsky, 61 F.R.D. 674 (S.D.N.Y. 1974).

Furthermore, there is no need to have separate counsel for each of the three classes in this case since there is no fundamental conflict between members of the Biomonitoring Class, Nuisance Class, and Property Class. In Dewey v. Volkswagen Akteingesellshaft, 681 F.3d 170 (3d Cir. 2012), the Court of Appeals discussed the circumstances under which multiple classes may be represented by the same counsel. In summary, a court is to analyze whether there is a "fundamental" conflict under the circumstances presented. Id. at 183-84. "A fundamental conflict exists where some class members claim to have been harmed by the same conduct that benefitted other members of the class." Id. at 184.

Here, in the present case, there is no fundamental conflict because there are no circumstances under which some potential class members may benefit from the same conduct that would harm other potential class members. In other words, the determination of the factual/legal issues in this case does not implicate any concern of a fundamental conflict because such determinations with respect to one potential class member do not affect other potential class members one way or the other.

As a result, all four requirements of Rule 23(a)(4) (numerosity, commonality, typicality and adequacy) have been satisfied in the present case.

B. The Settlement Class Satisfies Rule 23(b)(3)

To meet the requirements of Rule 23(b)(3), the Court "must find that questions of law or fact common to members of the class predominate over any questions affecting only individual

members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Community Bank I, 418 F.3d at 308.

i. Common Questions of Law or Fact Predominate

"The predominance inquiry tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation." Id. at 308-09. The predominance inquiry also "determine[s] whether the proposed class would achieve economies of time, effort and expense." In re National Football League Players' Concussion Injury Litigation, 307 F.R.D. 351, 379 (E.D. Pa. 2015) (citing Amchem, 521 U.S. at 615).

However, predominance does not require that all issues in the case be common ones. In re Mercedes-Benz Antitrust Litig., 213 F.R.D. 180, 186 (D.N.J. 2003) ("[t]he mere existence of individual issues will not of itself defeat class certification"). "The Third Circuit has observed that even a few common issues may satisfy the predominance requirement where the resolution of these issues greatly will advance the litigation." In re the Prudential Ins. Co. of Am., 962 F. Supp. 450, 511 (D.N.J. 1997), aff'd, 148 F.3d 283 (3d Cir.1998), cert. denied, 525 U.S. 1114 (1999) (citing In re School Asbestos Litig., 789 F.2d 996, 1010 (3d Cir. 1986), cert. denied, 479 U.S. 852, 107 S. Ct. 182, 93 L.Ed.2d 117, and by, 479 U.S. 915, 107 S. Ct. 318, 93 L.Ed.2d 291 (1986)).

As discussed above, there are common questions of law and fact affecting all Class Members. Central to all claims in this case are Plaintiffs' allegations that Defendants negligently handled, disposed of and/or released PFNA and PFOA resulting in their presence in the National Park water supply, and that Defendants' alleged conduct impacted Plaintiffs and Class Members. "A common scheme generates predominant legal and factual questions." Id. at 380 (citing Community Bank, 418 F.3d at 309; Warfarin, 391 F.3d at 528; Prudential, 148 F.3d

at 314-15).

Importantly, Plaintiffs allege that Defendants' alleged conduct injured the Class Members in the same way: the Biomonitoring Class was exposed to PFNA and PFOA through use and consumption of National Park public water which contains that contaminant because of Defendants' conduct; and the Property and Nuisance Classes allegedly suffered injury to their properties by Defendants' alleged improper disposal or release of PFNA and PFOA into their water supply, which led to devaluation and nuisance in requiring the use of temporary alternate water sources, and out of pocket costs for purchasing water bottles and filtration devices. Further, while resultant damages may vary among Class Members, such issues do not predominate and certainly do not preclude certification. See In re Nat'l Football League, 307 F.R.D. at 380 ("the calculation of damages on an individual basis does not prevent certification.") (citing Insurance Brokerage, 579 F.3d 269 (3d Cir. 2009); GM Trucks, 55 F.3d at 817).

While some courts have declined to certify medical monitoring classes finding that individual issues regarding the need for medical monitoring predominate, see, e.g., Rowe v. DuPont, No. 06-1810, 2008 WL 5412912, at *22 (D.N.J. Dec. 23, 2008) (finding certification of medical monitoring class under Rule 23(b)(3) was not appropriate in that case given the predominance of individual issues such as different susceptibilities and medical histories, which translate into different medical monitoring needs) (unpublished opinions attached hereto as Exhibit 2); Georgine v. Amchem Products, Inc., 83 F.3d 610, 627 (3d Cir. 1996), aff'd sub nom. Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997)), such is not the case here.

First, this Court previously approved the Thomas class action settlement in 2016, which involved the same defendants, alleged contamination, and the same claim for biomonitoring on

behalf of residents of the Borough of Paulsboro (Thomas, et al. v. Solvay, et al., Civil Case No.: 1:14-cv-1870 (D. N.J.)). For the same reasons this Court approved Thomas, it should also approve this settlement.

Next, each Class Member would have to confront the same causation issues in proving, for example, that Defendants' PFNA and PFOA entered the National Park public water supply, allegedly resulting in exposure of each Class Member to PFNA and PFOA.

Third, each class member would also have to prove that PFNA and PFOA is toxic to humans, *i.e.*, that PFNA and PFOA exposure can cause a medical condition, and early diagnosis is valuable.

Fourth, with respect to exposure, the Biomonitoring Class is defined only to include National Park residents having resided in National Park for at any time period between January 1, 2019, when the presence of PFNA above the MCL was first discovered in the National Park water supply, and the Date of Preliminary Approval. Thus, common issues predominate.

Moreover, PFNA and other PFAS has been recently eliminated from National Park's water supply due to the installation of a GAC system. Thus, further exposure to PFNA and PFOA from National Park's drinking water is unlikely, and the proposed monitoring will provide a reliable measure of PFAS levels in blood that will allow individual Class Members to provide such information to their physicians to decide on a path forward outside of the context of this proposed settlement. Therefore, even if the Biomonitoring Class Members' past exposure varied greatly, the availability of reliable blood testing for Biomonitoring Class Members will not raise individual issues.

Further, under the terms of the Settlement Agreement, personal injury claims are not released. Rather, they can be pursued in separate actions by individuals who meet the

requirements of Paragraph 8(a)-(c) of the Settlement Agreement. Thus, since such claims are not part of the classes to be certified as part of this settlement, they do not raise individual issues in this case which otherwise might create a roadblock to class certification.

Accordingly, the Court should find that questions of law or fact common to members of the class predominate in satisfaction of Rule 23(b)(3).

ii. Class Action is Superior to Other Available Methods

As to superiority, this "requirement asks a district court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." Community Bank I, 418 F.3d at 309 (internal citations omitted). The three non-exclusive factors the Court should consider in its analysis are: (1) the interest of individual class members in controlling the prosecution of the action; (2) the extent of litigation already begun by or against class members; and (3) the desirability of concentrating the litigation in the particular forum.[5] F.R.C.P. 23(b)(3)(A)-(C).

First, Class Counsel is not aware of any issues concerning individual Class Members wanting to control the action. Second, there is no other litigation that preceded this action,[6] nor is there any litigation pending against class members. Third, all proposed Class Members live in National Park, and would presumably file suit in New Jersey, although possibly in New

[5] The fourth factor, difficulties in managing a class action, is not relevant to certification of a class for settlement purposes. See Amchem, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems…for the proposal is that there be no trial.")

[6] Three years after the filing of this class action, another putative class action was filed by other counsel relating to the presence of PFNA in National Park's water system. See Nicholson v. Borough of National Park, Docket No. GLO-L-2-23. The action was brought on behalf of the Residents of National Park against the Borough of National Park alleging a breach of contract. That action is currently pending in New Jersey State Court. While Solvay and Arkema have been added as third-party defendants to the Nicholson action by National Park, this settlement will not impact the putative class that members of the putative Nicholson class have against National Park.

Jersey state court. Further, it is more efficient to adjudicate the claims here on a class basis rather than litigate each individual action. And given the complexity of the issues involved, and great expense involved to litigate these cases, it is reasonable to assume that few, if any, individual class members would commence an action for themselves. Accordingly, the Biomonitoring, Nuisance, and Property Classes should be provisionally certified for the purposes of settlement.

VII. THE COURT SHOULD APPROVE THE PROPOSED FORM AND METHOD OF CLASS NOTICE

As a matter of constitutional jurisprudence, in order for a class action settlement to be binding on absent class members, individual notice must be given to all class members who can be identified through reasonable effort. Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811-12, 105 S. Ct. 2965, 2974 (l985) (holding that a state court can exercise personal jurisdiction over and bind absent class members if proper notice and the right to object or opt-out is given). Where parties seek certification of a settlement class pursuant to Rule 23(b)(3) and approval of a settlement pursuant to Rule 23(e), notice of the class settlement must meet the requirements of both Rule 23(c)(2)(B) and Rule 23(e)(1). In re CertainTeed Roofing Shingle Prods. Liab. Litig., 269 F.R.D. 468, 480 (E.D. Pa. 2010).

Rule 23(c)(2)(B) requires the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The notice must include clear and concise statements regarding the nature of the action, the definition of the class, the class claims, issues or defenses, the binding effect of a class judgment, opt-out procedures, and that a class member may enter an appearance through an attorney. Id. Rule 23(e) simply requires that the court "direct notice in

a reasonable manner to all class members who would be bound by the [proposed settlement]." F.R.C.P. 23(e).

The notice plan in the Settlement Agreement meets these requirements and matches the notice plan approved and implemented in the Thomas settlement. Class Members will be identified through two sources. The primary source of class member names and addresses will be identified through tax assessment records made publicly available by Gloucester County, New Jersey. All residential property types within National Park, New jersey as identified by the County Tax Assessment Records will be included in the notice list, both the property itself as well as any non-resident owners where address information is included in the data set. The secondary sources, used to settlement and cross-reference the primary source, will be a name and address list for National Park, New Jersey, obtained through CoreLogic, a data and analytics leader within the housing and insurance industries.

Individual Notices will be sent to all residential properties within National Park as well as to any other class members identified through the gathered information. Given the potential overlap across the three Classes, one Notice has been prepared for all classes. The mailed Notice will be sent to the last known address shown on the list of actual and/or potential class members identified from the records. In addition to the Notice form, the parties agree to provide additional notice by way of a dedicated web site, publication in the South Jersey Times for Gloucester County (substantially in the form attached to the Settlement Agreement as Exhibit B to Exhibit 1) and the issuance of a joint press release (substantially in the form attached to the Settlement Agreement as Exhibit C to Exhibit 1).

Likewise, the form and content of the notices should be approved. The form of notice is generally committed to the court's discretion. Zimmer Paper Products, Inc. v. Berger &

Montague, 758 F.2d 86, 90 (3d Cir. 1985); In re: Prudential Company of America Sales Practices Litigation, 962 F. Supp. 450, 527 (D.N.J.1997).

Notice of a proposed settlement should provide sufficient basic information for the recipient to understand the nature of the claims asserted and the proposed settlement; that their rights may be affected; that they have the right to exclude themselves from or object to the settlement; the date, time and manner for doing so; and the date, time and place for the Fairness Hearing. In re: Prudential Insurance Company of American Sales Practices Litigation, 962 F. Supp. at 527 (and cases cited therein). In other words, the notice should give class members enough information to make an informed choice. See Carlough v. Amchem Products, Inc., 158 F. R. D. 314, 332 (E.D. Pa. 1993).

Here, the proposed mailed Notice contains all the requisite information – it includes a summary description of the nature of the case and the claims which have been asserted; it includes a summary of the terms of the settlement and proof of claim process; it explains how to request an exclusion or submit an objection and the deadline for doing so; it advises the recipient of the date, time and place of the Fairness Hearing and their right to be heard; it contains information on how to review the court file or contact the Settlement Administrator, class counsel or defense counsel; it directs the recipient to the court file for additional information; and it contains an easy-to-read summary of important dates. And, as previously indicated, it is modeled after the Thomas class action settlement that was approved by this Court in 2016. Thus, the form and content of the proposed notices should also be approved.

VIII. PROPOSED SCHEDULE

A. The Court Should Set the Objection and Opt-Out Date to be No Later than 30 Days from the Fairness Hearing.

At the time the settlement-in-principle was reached, notice of class certification had

not yet been issued to the class. Thus, Class Members have the right to either exclude themselves from the settlement or to object to the settlement. The proposed order provides that the approved notices must be issued to the class by the Notice Date, which is 30 days after the Preliminary Approval Order (i.e., the order preliminarily approving the settlement). The proposed order further provides that Class Members will have up until 30-days from the date of the Fairness Hearing to request exclusion or submit an objection. Plaintiff respectfully submits that this timeframe provides ample opportunity for class members to receive and review the Notices and decide what course of action, if any, should be taken. This time period is consistent with class action jurisprudence. Dasilva v. Esmore Correctional Services, Inc., 215 F.R.D. 477 (D.N.J. 2003) (approving notice giving class members 30 days to opt out).

Accordingly, the court should set the deadline for opt-outs and objections to be no later than 30 days from the date of the Fairness Hearing (i.e., up to 60 days from the entry of the Preliminary Approval Order).

B. The Fairness Hearing Should be Scheduled for the Earliest Possible Date Which Is At Least 90 Days After The Preliminary Approval Order.

Pursuant to the proposed order, the Fairness Hearing should be scheduled for the earliest possible date that is at least 90 days from the Preliminary Approval Order. This will allow sufficient time for notice to the class to be issued, for class members to decide whether to accept the benefits of the settlement, request to opt-out or object, and to allow the parties sufficient time to prepare for the Fairness Hearing. Plaintiff therefore requests that the Fairness Hearing be scheduled as requested.

IX. CONCLUSION

This proposed settlement readily passes muster for its preliminary approval. It is the result of arms-length negotiation between experienced counsel. The Court should therefore grant

preliminary approval of the settlement; provisionally certify the Classes for the purposes of settlement; approve the form, content and manner of issuing notice of the proposed settlement to the class; set the requested objection and opt-out date; and schedule the requested Fairness Hearing. In addition, the court's order should include the requested amendments to the class definition.

WILLIAMS CEDAR, LLC

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Dated: January 29, 2024

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

SEVERA, et al.,	:	
	:	
Plaintiffs,	:	Case No.: 1:20-cv-6906
	:	
v.	:	Civil Action
SOLVAY, et al.,	:	
	:	
Defendants	:	

Certification of Shauna L. Friedman, Esq. in Support of Motion for Preliminary Approval of Class Action Settlement

I, Shauna L. Friedman, Esq., hereby certifies to the Court as follows:

PRELIMINARY STATEMENT

1. I am an attorney at law admitted to the New Jersey Bar, and the United States District Court for the District of New Jersey.

2. I am co-counsel for Plaintiffs in the above-captioned matter.

3. I am personally familiar with the facts of this matter, and make this certification based on my personal knowledge.

4. I am providing this certification in support of Motion for Preliminary Approval of the Class Action Settlement.

SUMMARY OF THE STATUS OF LITIGATION

5. On June 5, 2020, Lead Plaintiffs filed a Class Action Complaint and Demand for Jury Trial in the United States District Court for the District of New Jersey, and subsequently filed an Amended Complaint on June 9, 2020.

6. The Amended Complaint generally alleges, among other things, that Defendants owned and operated a manufacturing facility at 10 Leonard Lane, West Deptford, New Jersey, and negligently or knowingly caused the discharge of perfluorinated compounds ("PFAS"), including but not limited to perfluorononanoic acid ("PFNA") and perfluorooctanoic acid ("PFOA") into the municipal water supply of the Borough of National Park, New Jersey.

7. On July 28, 2020, Defendants filed motions to dismiss the Amended Complaint and deny any liability or wrongdoing whatsoever regarding the operation of the West Deptford facility.

8. In an order from March 10, 2021, the Court granted Defendants' motions with respect to Plaintiffs' separate cause of action for punitive damages, and denied the motions as to the remaining claims for nuisance, trespass, negligence, and violations of the Spill Act.

9. For nearly two years, the Parties exchanged significant discovery relating to Plaintiffs' claims, which comprised of detailed written discovery as well as the production of nearly one million pages of responsive documents.

10. Prior to the initiation of dozens of depositions, the Parties engaged in settlement discussions over the course of several months.

11. The Parties have conducted a significant examination and investigation of the facts and law relating to the matters in this Litigation.

12. Lead Plaintiffs and Defendants, through their respective counsel, have engaged in significant efforts to reach a reasonable and fair compromise and settlement of this litigation, which included, among other things, a mediation before Magistrate Judge Ann Marie Donio. The Parties have endeavored to settle the issues in dispute and achieve a fair and equitable resolution of all Plaintiffs' claims consistent with the Parties' respective interests.

13. Based upon their investigation and the voluminous discovery completed thus far, I, along with my co-counsel and defense counsel, have concluded that the terms and conditions of the proposed settlement are fair, reasonable, and adequate to Lead Plaintiffs and the Classes, and have agreed to settle the claims raised in the Amended Complaint pursuant to the terms and provisions of this Settlement Stipulation after considering: (i) the substantial benefits Lead Plaintiffs and the Class Members will receive from settlement of this litigation; (ii) the attendant risks and uncertainties, including class certification, trial and appeals, as well as the time and expense of continuing the litigation; and (iii) the desirability of permitting this Settlement to be consummated as provided by the terms of this Stipulation.

SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT

14. The proposed Settlement would provide monetary relief as well as non-monetary benefits in the form of blood testing to Plaintiffs and Class Members. A summary of the proposed settlement is set forth below, and in more detail in the Stipulation attached hereto as Exhibit 1.

15. The Parties seek this Court's approval of, and certification of the following Settlement Classes under F.R.C.P. 23(b)(3):

As to Class 1 ("Biomonitoring Class"):

> All individuals who resided in National Park, New Jersey for any period of time from January 1, 2019 through the date upon which this Settlement receives preliminary approval ("Date of Preliminary Approval").

As to Class 2 ("Nuisance Class"):

> All individuals who, during the period of January 1, 2019 through the Date of Preliminary Approval, are or were owners or lessees of real property located in National Park, New Jersey.

As to Class 3 ("Property Class"):

> All individuals, who, during the period of January 1, 2019 through the Date of Preliminary Approval, are or were owners of real property located in National Park, New Jersey.

16. Under the terms of the Settlement Agreement, each Biomonitoring Class Member will be eligible for a single blood test to determine the levels, if any, of PFAS in their blood, during a 60 day period following entry of the Order and Final Judgment approving this Stipulation (hereinafter "the Testing period"). The blood test will be performed by AcuLabs and processed by NMS Labs, none of which are agents or affiliates of the Defendants. Defendants shall not be liable to Plaintiffs for any actions or inactions, whether negligent, reckless, or intentional of Aculabs or NMS Labs, their employees, agents, or affiliates. The identities of the Biomonitoring Class Members who have their blood tested and the blood test results will remain confidential. The blood test results will only be provided to the individual Biomonitoring Class Member who requested the test, or in the case of a minor Biomonitoring Class Member, to their legal guardian. Defendants shall pay an aggregate amount of $784,380 into the Biomonitoring Class Fund, which shall be used to pay for such blood tests, including phlebotomist and testing site costs, oversight of and all lab and other diagnostic costs, and the costs of providing blood test results to individual Biomonitoring Class members, on a first-come, first-served basis. Once the Biomonitoring Class Fund is depleted, no additional blood tests will be offered. Based on current blood testing cost estimates, the Biomonitoring Class Fund should be sufficient to pay for at least 2,100 individual blood tests, approximately. Based upon public information, the Biomonitoring Class is estimated to be approximately 3,000 people. Based upon counsel's experience with class action litigation generally, and with the 2016 biomonitoring settlement in *Thomas, et al. v. Solvay, et al.*, Civil Case No.: 1:14-cv-1870 (D. N.J.), this should be more than sufficient to accommodate all Biomonitoring Class Members who wish to take advantage of this benefit. Within 45 business days after the expiration of the Testing Period, if any of the Biomonitoring Class Fund remains, those funds shall revert to Defendants.

17. Under the Settlement Agreement, Defendants shall pay the aggregate sum of $200,000 to the Property Class Members and/or Nuisance Class Members (Property/Nuisance Class Fund). Payment shall be made within 45 business days of the Effective Date. The Property/Nuisance Class Fund shall be distributed in accordance with Paragraphs 7(a) and(b) of the Settlement Agreement. In no event shall Defendants be required to make any additional payment(s) to Property Class members or Nuisance Class Members. The Class Administrator shall compute the amount payable to each Nuisance Class Member and Property Class Member after the Effective Date. Any amount owed to a Property Class member or Nuisance Class Member that is unclaimed after six (6) months of the date the Property Class and Nuisance Class Payments were distributed shall revert to Defendants.

18. One hundred thousand dollars ($100,000) of the Property/Nuisance Class Fund shall be made payable to Property Class Members. The amount payable to each Property Class Member shall be the quotient of the aforesaid $100,000 sum divided by the total number of residential properties with National Park. It is currently estimated that the foregoing computation will result in a payment of approximately $100 for each property. The amount payable to each property shall be apportioned *pro rata* among owners, whether jointly, in common, by the entireties, or otherwise. By way of example, if a property is owned jointly by two persons, each person shall be entitled to one-half of the amount payable. In no event shall Defendants be required to make any additional payment(s) if the property is owned by more than one Property Class Member or Nuisance Class Member. Further, if a residential property had a change in ownership interest at any time between January 1, 2019 and the Date of Preliminary Approval, then the amount payable to each Property Class Member will be divided *pro rata* based on their respective duration of ownership during the class period.

19. One hundred thousand dollars ($100,000) of the Property/Nuisance Class Fund shall be made payable to Nuisance Class Members. The amount payable to each Nuisance Class Members shall be calculated by dividing the aforementioned $100,000 sum by the sum of the total number of residential properties within National Park and total number of leaseholders in National Park as determined by the timely-submitted Claims Forms. It is currently estimated that the foregoing computation will result in a payment of approximately $100 for each Nuisance Class Member, except that Payments to property-owning Nuisance Class Members shall be based on the property and apportioned *pro rata* among owners, whether jointly, in common, by the entireties, or otherwise. Each Nuisance Class Member with a leasehold interest in a residential property is entitled to a payment, except multiple leaseholders of a single property are to be treated collectively as a single Nuisance Class Member entitled to one payment apportioned *pro rata*. The identities of lease-holding Nuisance Class Members for purposes of payments shall be determined by timely-submitted Claims Form that list the names of each person or persons who have a leasehold interest in the property to which Notice is sent. Further, if a residential property had a change in ownership or leasehold interest at any time between January 1, 2019 and the Date of Preliminary Approval, then the amount payable to each Nuisance Class Member will be divided *pro rata* based on their respective duration of ownership or leasehold during the class period.

20. In addition, subject to Court approval, Defendants will not oppose a motion for Class Counsel's attorneys' fees and costs, including, for the avoidance of doubt, expert fees and costs, up to $243,595, which includes such costs and expenses, time already spent and time to be spent, exchanging discovery, finalizing the Settlement, preparing settlement documents, drafting briefs, attending hearings, and monitoring of the settlement and settlement administration ("Class Counsels' Fees and Expenses"). The Class Counsels' Fee and Expenses are in addition to the settlement benefits each Class Member will be receiving and recompense for such Fees and Expenses as are approved by the Court will be the sole property of Class Counsel, not Lead Plaintiffs or the Class. Class Counsels' Fees and Expenses awarded by the Court in the Order and Final Judgment in accordance herewith shall be payable within 45 business days of the Effective Date.

21. Also, subject to Court approval, within 45 business days of the Effective Date, Lead Plaintiffs shall receive $8,000.00 each as an incentive payment for serving as Lead Plaintiffs in this action.

22. Defendants will allocate an aggregate total of $100,000.00 towards class administration, as described in more detail below.

SUMMARY OF MONETARY PAYMENTS

23. Subject to Court Approval, within 45 business days of the Effective Date, Defendants shall contribute a total sum of $1,367,975.00 to this settlement to be allocated as follows (and as described in more detail herein):
    a. Administration Fund: $100,000
    b. Attorneys' Fees: $243,595
    c. Biomonitoring Fund: $784,380
    d. Class Representative Incentives: $40,000 ($8,000/each Lead Plaintiff)
    e. Property Fund: $200,000

CLASS NOTICE & SETTLEMENT ADMINISTRATION

24. This proposed Settlement provides that the administration of the Settlement shall be subject to the jurisdiction of the Court. Defendants shall pay an aggregate amount of $100,000.00 into the Administration Fund, which shall be used to pay for all aspects of administration of this settlement including but not limited to, mailings of notices, tracking of claims, and processing of claims. Upon expiration of the Testing Period for the Biomonitoring Program and, and after one year from the date Nuisance and Property Class payments were distributed, any remaining funds from the Administration Fund shall revert back to the Defendants.

25. For the avoidance of doubt, oversight of and all phlebotomist, lab, testing site and other diagnostic costs, and the costs of providing blood test results to individual Biomonitoring Class Members, do not constitute administration costs and will be paid for out of the Biomonitoring Class Fund.

26. The Parties have selected Postlethwaite & Netterville, APAC to delegate the administration of the Settlement.

27. A proposed notice and claim form ("Notice") is attached as Exhibit A to Exhibit 1, attached hereto. This Notice was modeled after the approved notice and claim form in a similar prior approved and certified class action settlement before this Court involving the same Defendants and same alleged contamination in a neighboring town, *Thomas, et al. v. Solvay, et al., Civil Case No.: 1:14-cv-1870* (D.N.J.).

REQUISITE CRITERIA FOR CERTIFICATION OF CLASS ACTION

28. Counsel hereby incorporates by reference the corresponding brief in support of the within motion for preliminary approval of class action settlement, which sets forth in detail how the requisite criteria for certification is met pursuant to F.R.C.P. 23.

PROCEDURE FOR OBJECTOR AND OPT-OUTS

29. The Parties also propose that the Court establish the deadlines and procedures for objectors and/or intervenors to ensure that all interested persons are afforded a reasonable opportunity to be heard and that the Fairness Hearing may be conducted in an orderly, efficient and just manner.

30. Specifically, to object to this Settlement, the proposed notice provides that an objecting Class Member must send a letter to: (i) the Clerk of Court for the United States District Court for the District of New Jersey at Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Room 1050, Camden, NJ 08101; (ii) Class Counsel, Shauna Friedman, Esq. of Barry, Corrado & Grassi, PC at 2700 Pacific Avenue, Wildwood, NJ 08260; (iii) Counsel for Solvay, Crystal Lohmann Parker, Esq. of Paul, Weiss, Rifkind, Wharton & Garrison, LLP at 1285 Avenue of the Americas, New York, NY 10019-6064; and (iv) Counsel for Arkema, John North, Esq. of Greenbaum, Rowe, Smith, & Davis LLP at Metro Corporate Campus One, PO Box 5600, Woodbridge, NJ 07095 by a deadline to be determined by this Court. The letter must indicate that the Class Member objects to the proposed settlement in *Severa, et al. v. Solvay Specialty Polymers USA, LLC, et al.* Case No. 1:20-cv-6909, and provide the basis of the objection.

31. In addition, the proposed notice complies with Rule 23(c)(2)(B)(v) by providing an opportunity for class members to affirmatively opt-out. Specifically, to opt-out, a Class Member must send a signed request for exclusion by mail to: (i) the Settlement Administrator, Postlethwaite & Netterville, APAC at 8550 United Plaza Boulevard, Suite 1001, Baton, Route, LA 70809; (ii) Class Counsel, Shauna Friedman, Esq. of Barry, Corrado & Grassi, PC at 2700 Pacific Avenue, Wildwood, NJ 08260; (iii) Counsel for Solvay, Crystal Lohmann Parker, Esq. of Paul, Weiss, Rifkind, Wharton & Garrison, LLP at 1285 Avenue of the Americas, New York, NY 10019-6064; and (iv) Counsel for Arkema, John North, Esq. of Greenbaum, Rowe, Smith, & Davis LLP at Metro Corporate

Campus One, PO Box 5600, Woodbridge, NJ 07095 by a deadline to be determined by this Court.

QUALIFICATIONS FOR CLASS COUNSEL APPOINTMENT

32. As described in more detail above, this case involves allegations of the groundwater pollution and well contamination. Given the facts set forth below, I hold myself out as being qualified to be appointed as Class Counsel in this matter, along with the other proposed attorneys, Alan H. Sklarsky, Esq., Oliver T. Barry, Esq., and Gerald J. Williams, Esq.

33. I am a graduate of Rutgers University School of Law, and a member of the Bars of the State of New Jersey, Commonwealth of Pennsylvania, and State of New York.

34. I am also admitted to practice law in the United States District Court for the District of New Jersey, the United States Court for the Eastern District of Pennsylvania, and the United States Court for the Middle District of Pennsylvania.

35. I have focused my practice of law on representing victims of catastrophic personal injuries and complex torts, including civil class action claims in the field of toxic tort and environmental law, professional malpractice, constitutional law, consumer law, and products liability.

36. I have vast experience in environmental contamination and toxic tort cases, handling them both as a paralegal before graduating law school, and as an attorney afterward.

37. Before becoming an attorney, I was the lead paralegal in a mass action lawsuit involving the individual litigation of nearly 2,000 cases against several railroad Defendants after a train derailed and leaked toxic chemicals in a residential town. [In Re Paulsboro Chemical Spill, GLO-L-1128-13].

38. After becoming an attorney, I continued to work on the mass action lawsuit, and brought those cases to successful and final resolution.

39. Also, before becoming an attorney, I was the lead paralegal on the similar class action matter that this Court approved in 2016, Thomas, et al. v. Solvay, et al., 1:14-cv-1870 (D. N.J.).

40. I have handled and settled multiple high-profile personal injury cases, including hundreds of cases involving victims of institutional child sexual abuse.

41. I was one of the lead attorneys handling and successfully settling a class action against the State of New Jersey for a case involving sexual abuse and harassment perpetrated against female inmates. [Nobles, et al. v. Anderson, et al., HNT-L-145-19].

42. I have never been the subject of any disciplinary action.

43. I am fully familiar with the factual allegations, legal theories, and scope of the proposed class, and am committed to prosecuting the within matter.

44. Accordingly, I respectfully request that this Court grant preliminary approval of this class action, and appoint me as co-lead Class Counsel.

I certify that the foregoing statements made by me are true and correct to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 29, 2024

BARRY,CORRADO & GRASSI, PC
/s/ Shauna L. Friedman
Shauna L. Friedman, Esq.
2700 Pacific Avenue
Wildwood, NJ 08260
(609) 729-1333
Sfriedman@capelegal.com
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

SEVERA, et al.,	:	
	:	
Plaintiffs,	:	Case No.: 1:20-cv-6906
	:	
v.	:	Civil Action
SOLVAY, et al.,	:	
	:	
Defendants	:	

Certification of Oliver T. Barry, Esq. in Support of Motion for Preliminary Approval of Class Action Settlement

I, Oliver T. Barry, Esq., hereby certifies to the Court as follows:

1. I am an attorney at law admitted to the New Jersey Bar, and the United States District Court for the District of New Jersey.

2. I am co-counsel for Plaintiffs in the above-captioned matter.

3. I am personally familiar with the facts of this matter, am make this certification based on my personal knowledge.

4. I am providing this certification in support of my appointment as co-lead Class Counsel.

5. As described in more detail in Shauna L. Friedman's certification in support of the Motion for Preliminary Approval of the Class Action Settlement, this case involves allegations of the groundwater pollution and well contamination. Given the facts set forth below, I hold myself out as being qualified to be appointed as Class Counsel in this matter, along with the other proposed

attorneys, Shauna L. Friedman, Esq., Alan H. Sklarsky, Esq., and Gerald J. Williams, Esq.

6. I am a graduate of Rutgers University School of Law, and a member of the Bar of the State of New Jersey and the Commonwealth of Pennsylvania.

7. I am also admitted to practice law in the United States District Court for the District of New Jersey.

8. I am a shareholder and managing member of the law firm of Barry, Corrado & Grassi, P.C. with a practice focus as a civil trial attorney in the fields of personal injury, civil rights, and class action type litigation.

9. I have handled multiple civil class action and/or mass tort type cases including being appoint class counsel in the consolidated Edna Mahan Sex Abuse Litigation, A.F. v. State of New Jersey Department of Corrections, Docket No. HNT-359-17, which resulted in a 20.7 million dollar settlement as well as injunctive relief involving the institution of body cameras at the subject facility, and being appointed class counsel in the ongoing matter of Parrish v. Cumberland County, Docket No. CUM-L-293-20, involving violations of state constitutional and statutory rights based on the practices of a county correctional facility.

10. I have never been the subject of any disciplinary action.

11. I am fully familiar with the factual allegations, legal theories, and scope of the proposed class, and am committed to prosecuting the within matter.

12. Accordingly, I respectfully request that this Court grant preliminary at approval of this class action, and appoint me as co-lead Class Counsel.

I certify that the foregoing statements made by me are true and correct to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 29, 2024

BARRY, CORRADO & GRASSI, PC

/s/ Oliver T. Barry

Oliver T. Barry, Esq.
2700 Pacific Avenue
Wildwood, NJ 08260

(609) 720-1333
obarry@capelegal.com
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

SEVERA, et al.,	:	
	:	
Plaintiffs,	:	Case No.: 1:20-cv-6906
	:	
v.	:	Civil Action
SOLVAY, et al.,	:	
	:	
Defendants	:	

Certification of Gerald J. Williams, Esq. in Support of Motion for Preliminary Approval of Class Action Settlement

I, Gerald J. Williams, Esq., hereby certifies to the Court as follows:

1. I am an attorney at law admitted to the New Jersey Bar, and the United States District Court for the District of New Jersey.

2. I am co-counsel for Plaintiffs in the above-captioned matter.

3. I am personally familiar with the facts of this matter, am make this certification based on my personal knowledge.

4. I am providing this certification in support of my appointment as co-lead Class Counsel.

5. As described in more detail in Shauna L. Friedman's certification in support of the Motion for Preliminary Approval of the Class Action Settlement, this case involves allegations of the groundwater pollution and well contamination. Given the facts set forth below, I hold myself out as being qualified to be appointed as Class Counsel in this matter, along with the other proposed

attorneys, Shauna L. Friedman, Esq., Alan H. Sklarsky, Esq., and Oliver T. Barry, Esq.

6. I am a graduate of Temple University School of Law, and a member of the Bar of the State of New Jersey, the Commonwealth of Pennsylvania, and the State of New York.

7. I am also admitted to practice law in the United States District Court for the District of New Jersey, the United States District Court for the Eastern District of Pennsylvania, the United States District Court for the Middle District of Pennsylvania, the United States Third Circuit Court of Appeals, and the United States Supreme Court.

8. I have won significant verdicts and settlements for Plaintiffs in civil rights and environmental tort cases in many courts including Merry v. Westinghouse (1:18-cv-1673), which established medical monitoring as a remedy under Pennsylvania common law, and Ambrogi v. Gould (1:91-cv-1403), the first case to hold medical monitoring available under Pennsylvania's Hazardous Sites Cleanup Act.

9. I have been lead or co-lead counsel in the handling of dozens of complex cases including but not limited to:

   a. Arbogast v. Owens; 1:cv-91-1403 – A certified class action case involving Eighth Amendment violations and prisoner's rights;

   b. Tracy v. Aamco, Phila, CCP; Oct. Term, 1990; No. 4840 – A certified class action case involving consumer protection;

   c. Snodgradd v. Mayerfield, et al.; SLM-L-250-91 – A certified class action case involving real estate fraud and toxic torts;

   d. Mauger v. Home Shopping Network; Berks County 91-9698-14-1 – A certified class action case involving consumer protection;

   e. Fry v. Leech Tool & Dye Co.; Crawford County 1990-403 – A certified class action case involving water well contamination;

   f. Slioupkidis v. CVS; Cumberland County 1990-403 – A

certified class action case involving consumer protection;

g. Vadino v. American Home Products Corp.; MID-L-425-98 – A certified class action case involving product liability.

h. Burdick v. Tonoga, Inc.; Index No. 253835 – An environmental tort case involving polyfluorinated compounds similar, related or identical to those involved in the present case. It was certified as a class action by the court for the Third Department of the Supreme Court of New York, and settled with court approval.

i. Baker v. St. Gobain Performance Plastics, et al.; 19-mc-181 – A certified class action brought on behalf of residents in and around Hoosick Falls, New York who asserted claims arising from drinking water contamination with polyfluorinated compounds similar, related, or identical to those involved in this case. A settlement with 3 of 4 defendants has been approved by the U.S. District Court for the Northern District of New York, with ongoing litigation of claims against the 4th defendant on a class basis.

j. Nobles, et al. v. Anderson, et al.; HNT-L-145-19 – A class action against the State of New Jersey for a case involving sexual abuse and harassment perpetrated against female inmates.

10. I have also handled hundreds of cases all over the country representing victims of institutional child sexual abuse.

11. I have never been the subject of any disciplinary action.

12. I am fully familiar with the factual allegations, legal theories, and scope of the proposed class, and am committed to prosecuting the within matter.

13. Accordingly, I respectfully request that this Court grant preliminary at approval of this class action, and appoint me as co-lead Class Counsel.

I certify that the foregoing statements made by me are true and correct to the best of my knowledge. I am aware that if any of

the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 29, 2024

WILLIAMS CEDAR, LLC
/s/ Gerald J. Williams
Gerald J. Williams, Esq.
8 Kings Highway West, Suite B
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(856) 470-9777
gwilliams@williamscedar.com
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

SEVERA, et al.,	:	
	:	
Plaintiffs,	:	Case No.: 1:20-cv-6906
	:	
v.	:	Civil Action
SOLVAY, et al.,	:	
	:	
Defendants	:	

Certification of Alan H. Sklarsky, Esq. in Support of Motion for Preliminary Approval of Class Action Settlement

I, Alan H. Sklarsky, Esq., hereby certifies to the Court as follows:

1. I am an attorney at law admitted to the New Jersey Bar, and the United States District Court for the District of New Jersey.

2. I am co-counsel for Plaintiffs in the above-captioned matter.

3. I am personally familiar with the facts of this matter, am make this certification based on my personal knowledge.

4. I am providing this certification in support of my appointment as co-lead Class Counsel.

5. As described in more detail in Shauna L. Friedman's certification in support of the Motion for Preliminary Approval of the Class Action Settlement, this case involves allegations of the groundwater pollution and well contamination. Given the facts set forth below, I hold myself out as being qualified to be appointed as Class Counsel in this matter, along with the other proposed

attorneys, Shauna L. Friedman, Esq., Oliver T. Barry, Esq., and Gerald J. Williams, Esq.

6. I am a graduate of Rutgers University School of Law, and a member of the Bar of the State of New Jersey.

7. I am also admitted to practice law in the United States District Court for the District of New Jersey, the United States Third Circuit Court of Appeals, and the United States Supreme Court.

8. I have focused my practice of law on representing victims of catastrophic personal injuries and complex torts, including mass tort and individual cases in the field of toxic tort and environmental law, professional malpractice, products liability, and pharmaceutical litigation.

9. I have handled numerous complex litigated toxic exposure, personal injury matters and other matters, several of which have been precedent setting. Several examples of such cases include but are not limited to the following:

   a. Bahrle v Exxon; 145 NJ 144 (1996) -co-tried groundwater contamination case on behalf of the 30 families in Ocean County. NJ Supreme court case addressed the liability of major oil companies from independently owned but branded stations. The case also facilitated the expansion and clarification of the doctrine of judicial estoppel.

   b. Madden v Shieldalloy; Docket W-15394-88 (Cumberland County,3.28.2001)-represented 58 families over a period of 11 years arising out of groundwater contamination of volatile organics(case delayed by bankruptcy).

   c. Adams v Pine Baron Realty, et al, Docket No. L-001404-89; co-tried five month toxic tort/medical monitoring case on behalf of 36 families in Atlantic County arising out of groundwater contamination.

   d. Carter v Reynolds, 345 NJ Super 67 (2001) expanded employer liability in this NJ Supreme Court opinion with respect to the "going and coming rule" enabling substantial recovery for seriously injured plaintiff.

e. Galletta v New Jersey Department of Human Resources, 2003 WL 6002978; successfully resolved class action on behalf of persons denied Medicaid benefits by improperly counting certain veteran's benefits as income. Class settlement resulted in rule changes by DMAHS as to how to properly compute income requirements.

f. Capriotti v Buena Vista Township, et al, Docket No. ATL L-2878-19; represented 16 families arising out of groundwater contamination resulting in settlement for medical monitoring, nuisance and property diminution, as well as individual kidney cancer case.

g. Battista v Enviro Tech International, et al; Docket L-681-10 (Essex County) successfully established causal relationship between new unregulated solvent marketed as a safe alternative to PERC used in the dry-cleaning industry and plaintiff's development of lymphoma; case resulted in substantial seven figure settlement.

h. Biniek, et al v Exxon, et al, Docket L-619-00; defense of environmental /toxic tort action filed on behalf of 50 plaintiffs alleging contamination from gasoline station.

i. Para v Safety Kleen Systems, case No:213 cv-381-FtM-38CM; represented estate in wrongful death action arising out of exposure to Benzene in manufacturing facility.

j. Denson v Penn National Insurance, Docket L-731-96; NJ Spill Act Contribution action against responsible parties for contamination and dec action for insurance coverage; appellate division reversed trial court's denial of coverage; summary judgment granted after remand to trial court.

10. I am fully familiar with the factual allegations, legal theories, and scope of the proposed class, and am committed to prosecuting the within matter.

11. Accordingly, I respectfully request that this Court grant preliminary at approval of this class action, and appoint me as co-lead Class Counsel.

I certify that the foregoing statements made by me are true and correct to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 29, 2024

WILLIAMS CEDAR, LLC
/s/ Alan H. Sklarsky
Alan H. Sklarsky, Esq.
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(856) 470-9777
asklarsky@williamscedar.com
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

SEVERA, et al.,	:	
	:	
Plaintiffs,	:	Case No.: 1:20-cv-6906
	:	
v.	:	Civil Action
SOLVAY, et al.,	:	
	:	
Defendants	:	

Certification of Exhibits

I, Shauna L. Friedman, Esq., hereby certifies to the Court as follows:

1. Attached hereto as Exhibit 1 is a true and correct copy of the Stipulation and Agreement of Settlement.

    a. Attached as Exhibit A to Exhibit 1 is a true and correct copy of the Proposed Notice and Claim Form.

    b. Attached as Exhibit B to Exhibit 1 is a true and correct copy of the Publication in the South Jersey Times for Gloucester County.

    c. Attached as Exhibit C to Exhibit 1 is a true and correct copy of a Joint Press Release

    d. Attached as Exhibit D to Exhibit 1 is a true and correct copy of the Proposed Order.

2. Attached hereto as Exhibit 2 is a true and correct copy of the following unpublished opinion: Rowe v. DuPont, No. 06-1810, 2008 WL 5412912 (D.N.J. Dec. 23, 2008).

I certify that the foregoing statements made by me are true and correct to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 29, 2024

BARRY,CORRADO & GRASSI, PC
/s/ Shauna L. Friedman
Shauna L. Friedman, Esq.
2700 Pacific Avenue
Wildwood, NJ 08260
(609) 729-1333
Sfriedman@capelegal.com
Attorney for Plaintiffs

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KENNETH SEVERA, *et al.*, *Plaintiffs*, v. SOLVAY SPECIALTY POLYMERS, USA, LLC, SOLVAY SOLEXIS, INC., and ARKEMA INC., *Defendants*.	Civil No. 1:20-cv-06906-NLH-KMW **STIPULATION AND AGREEMENT OF SETTLEMENT**

Subject to the approval of the Court, this Stipulation and Agreement of Settlement (this "Stipulation"), which is submitted pursuant to Fed. R. Civ. P. 23(e), is entered into among named Plaintiffs Kenneth Severa, Carol Binck, William Teti, Denise Snyder, and Jennifer Stanton ("Lead Plaintiffs"), on behalf of themselves and the Classes (as defined below); and Defendants Solvay Specialty Polymers USA, LLC and Solvay Solexis, Inc. (together, "Solvay"), and Arkema Inc. ("Arkema") (collectively, "Defendants"), by and through their respective counsel. Certain capitalized terms in this Stipulation have meanings given to them in Paragraph 1, below.

WHEREAS

A. On June 5, 2020, Lead Plaintiffs filed a Class Action Complaint in the United States District Court for the District of New Jersey;

B. On June 9, 2020, Lead Plaintiffs filed an Amended Complaint ("FAC") in this action;

C. The FAC generally alleges, among other things, that Defendants owned and operated a manufacturing plant (the "Plant") at 10 Leonard Lane, West Deptford, Gloucester County, New Jersey, and negligently or knowingly caused the discharge of per- and

polyfluoroalkyl substances (commonly referred to as "PFAS"), which allegedly entered the municipal water supply of the Borough of National Park, Gloucester County, New Jersey (the "Borough"), and was subsequently supplied to the residents of the Borough;

D. Defendants filed motions to dismiss the FAC and deny any wrongdoing whatsoever regarding the operation of the Plant and more particularly deny that their respective operation of the Plant is the cause of any PFAS (as defined below) in the Borough municipal water supply, deny that any PFAS present in the Borough municipal water supply have caused any harm to Lead Plaintiffs or any member of the Class, and this Stipulation shall in no event be construed or deemed to be evidence of, or an admission or concession on the part of, Defendants with respect to any claim, or of any fault or liability or wrongdoing or damage whatsoever, or of any insufficiency or infirmity in any defense that Defendants may have asserted in this Litigation. Lead Plaintiffs and Defendants recognize, however, that the FAC has been filed by Lead Plaintiffs and defended against by Defendants in good faith, and to conserve resources and avoid the expense and disruption of continued litigation, the Parties have agreed to enter into this Settlement and acknowledge that the terms of this Stipulation are fair, adequate and reasonable. This Stipulation shall not be construed or deemed to be a concession by Lead Plaintiffs of any insufficiency or infirmity in the claims asserted in the FAC; nor shall this Stipulation be construed or deemed to be an admission by Defendants of any responsibility, liability or fault whatsoever of the claims asserted in the FAC as more particularly described in the section of this Stipulation entitled "No Admission of Wrongdoing";

E. Class Counsel has investigated the claims and the underlying events and transactions alleged in the FAC. Class Counsel has analyzed the evidence adduced during their investigation and have researched the applicable law with respect to the claims of the Lead

Plaintiffs and the Class against Defendants and with respect to Defendants' potential defenses thereto;

F. The Parties have engaged in extensive factual discovery relating to the claims in the FAC, including discovery regarding the discharge of PFAS from the Plant, sampling and testing of the municipal water supply, and blood testing of certain Lead Plaintiffs and members of the potential classes, all in order to permit Lead Plaintiffs, Class Counsel, and Defendants to evaluate more fully the scope of the claims in the FAC;

G. The Parties have engaged in lengthy settlement discussions over the course of several months under the guidance of the Honorable Magistrate Judge Ann Marie Donio;

H. The Parties have conducted a significant examination and investigation of the facts and law relating to the matters in this Litigation;

I. Lead Plaintiffs and Defendants, through their respective counsel, have conducted discussions and arm's length negotiations with respect to a compromise and settlement of this Litigation, and, on May 8, 2023, engaged in a mediation before the Honorable Magistrate Judge Ann Marie Donio, with a goal to amicably settle the issues in dispute and achieve the best relief possible consistent with the interest of the Class;

J. Based upon their investigation, Class Counsel has concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiffs and the Class, and in their best interests, and have agreed to settle the claims raised in the FAC pursuant to the terms and provisions of this Stipulation, after considering: (i) the substantial benefits Lead Plaintiffs and the Class Members will receive from settlement of this Litigation; (ii) the attendant risks of litigation; and (iii) the desirability of permitting this Settlement to be consummated as provided by the terms of this Stipulation; and

K. This Stipulation and Settlement Agreement is made and entered into by and among Solvay, Arkema, and Lead Plaintiffs, individually and on behalf of the Classes of similarly situated persons defined as follows:

- **Class #1 – Biomonitoring Class: All Individuals who resided in National Park, New Jersey for any period of time from January 1, 2019 through the date upon which this Settlement receives preliminary approval ("Date of Preliminary Approval").**
- **Class #2 – Municipal Water Nuisance Class: All individuals who, during the period of January 1, 2019 to the Date of Preliminary Approval, are or were owners or lessees of real property located in National Park, New Jersey.**
- **Class #3 – Municipal Water Property Class: All Individuals who, during the period of January 1, 2019 to the Date of Preliminary Approval, are or were owners of real property located in National Park, New Jersey.**

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective counsel, that, subject to approval by the Court, and in consideration of the benefits contained in the terms and conditions of this Stipulation, all Settled Claims as against the Released Parties shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions.

CERTAIN DEFINITIONS

1. As used in this Stipulation, the following terms shall have the following meanings:

a. "Biomonitoring Class" means, for purposes of this Settlement only, all persons who resided in the Borough of National Park, Gloucester County, New Jersey during the period from January 1, 2019 to the Date of Preliminary Approval, excluding any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice, and anyone who signed a release of claims related to the subject matter at issue in this Litigation.

b. "Biomonitoring Class Member" means a person who fits within the scope of the Biomonitoring Class.

c. "Biomonitoring Class Fund" means the fund created by Defendants to pay for PFAS blood testing for members of the Biomonitoring Class, including the administration and oversight thereof and all lab and other diagnostic costs, and the costs of providing blood test results to individual members of the Biomonitoring Class. In addition, to the extent the Court decides to appoint a guardian ad litem to represent the interests of members of the Biomonitoring Class who are of the minority (under 18 years old), the Biomonitoring Class Fund will also pay the guardian ad litem's costs and fees.

d. "Class Administrator" means Postlethwaite & Netterville, APAC.

e. "Classes" means, for purpose of this Settlement only, the Biomonitoring Class, Nuisance Class, and Property Class, individually and collectively.

f. "Class Counsel" means Gerald J. Williams, Esquire, and Alan Sklarsky, Esquire, of the law firm of Williams Cedar, LLC, and Oliver T. Barry, Esquire, and Shauna L. Friedman, Esquire of the law firm of Barry Corrado & Grassi PC, individually and collectively.

g. "Class Member" means a member of the Biomonitoring Class, Nuisance Class, and/or Property Class, individually and collectively.

h. "Effective Date" means the date upon which the Settlement shall become effective, as set forth in Paragraph 22 below.

i. "Litigation" means the lawsuit captioned *Severa, et al. v. Solvay Specialty Polymers USA, LLC, et al.*, No. 20-cv-06906 (D.N.J.).

j. "Notice" means the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees, and Settlement Fairness Hearing together with the Claim Form,

substantially in the form attached hereto as **Exhibit A**, which shall be deemed sufficient for purposes of this Stipulation and this Settlement if mailed to potential Class Members at their last known address. In addition to the Notice form, the parties agree to provide additional notice by way of a dedicated web site, publication in the South Jersey Times – Gloucester County during the notice period, substantially in the form attached hereto as **Exhibit B**, and a joint press release substantially in the form attached hereto as **Exhibit C**.

k. "Nuisance Class" means, for purposes of this Settlement only, all persons who, during the period of January 1, 2019 to the Date of Preliminary Approval, are or were owners or lessees of a Parcel of Property within the Borough of National Park, Gloucester County, New Jersey, according to the most recent version of the Gloucester County tax assessment records for the Borough of National Park, excluding any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice. The Nuisance Class includes persons whose interest in Property in the Borough of National Park is by lease or, for owners of Property, whose interest in the Property is joint, in common, by the entireties, subject to lien, and/or subject to mortgage. All such persons with ownership interests in a single parcel shall be deemed a single class member for purposes of distributions made under Paragraph 7(b) hereof. Similarly, all such persons whose interests in a single parcel are by lease shall be deemed a single class member for purposes of distributions made under Paragraph 7(b) hereof. The Nuisance Class does not include persons whose only interest in Property in the Borough of National Park is as a mortgagee, lien holder, contract purchaser, or beneficiary of any easement or covenant. The Nuisance Class also does not include anyone who signed a release of claims related to the subject matter at issue in this Litigation.

l. "Nuisance Class Member" means a person who fits within the scope of the Nuisance Class.

m. "Order and Final Judgment" means the final order entered by the Court approving this Settlement on terms substantially identical to the terms of this Settlement Agreement and dismissing the FAC with prejudice.

n. "Order Granting Preliminary Approval of Class Action Settlement and Conditional Class Certification and for Notice and Hearing" means the proposed order preliminarily approving this Settlement and directing notice thereof to the Classes substantially in the form attached hereto as **Exhibit D**.

o. "Parcel" means, for purposes of this Settlement only, a tax lot shown as such on the most recent version of the Official Tax Map of the Borough of National.

p. "Party" or "Parties" means Lead Plaintiffs, on their own behalf and on behalf of the Classes, and Defendants, where appropriate to the text.

q. "Person" means a natural person.

r. "Personal Injury Claims" means any and all claims, debts, demands, rights, or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees and disbursements, expert or consulting fees and disbursements, and any other costs, expenses, or liability whatsoever), whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, that any Lead Plaintiffs or Class Members have, now or in the future, against Defendants relating to allegations of personal injury, including, but not limited to, bodily injury, death, emotional distress, mental anguish, anxiety, psychological injury, and psychiatric injury,

caused by exposure to PFAS, or any other chemical, resulting, directly or indirectly, from the ownership or operation of the Plant and/or the responsibility or liability (alleged or otherwise) of Defendants. Notwithstanding the foregoing, Personal Injury Claims do not include claims for biomonitoring or medical monitoring, which have been released as Settled Claims.

s. "PFAS" means per- and poly-fluoroalkyl substances (inclusive of any of their precursors and degradants), including without limitation perfluorooctanoic acid (PFOA), perfluorononanoic acid (PFNA), perfluorooctane sulfonic acid (PFOS), ammonium perfluorooctanoate (APFO), and any compound that contains, breaks down into, or may cause the formation in the environment of PFAS, in all forms, including, but not limited to, PFOA, PFNA, PFOS, or APFO. It is the intention of this Agreement that the definition of "PFAS" be as broad, expansive, and inclusive as possible.

t. "Property" means realty used exclusively for residential purpose owned or occupied by at least one Class Member within the Borough of National Park, Gloucester County, New Jersey, classified as Property Tax Class 2, 3A, or 4C within the most recent version of the Gloucester County tax assessment records for the Borough of National Park. For the avoidance of doubt, "Property" does not include commercial property or mixed commercial/residential property unless the mixed commercial/residential property is owned or occupied by at least one Class Member.

u. "Property Class" means, for purposes of this Settlement only, all persons who owned a Property in the Borough of National Park, Gloucester County, New Jersey, during the period of January 1, 2019 to the Date of Preliminary Approval, according to the most recent version of the Gloucester County tax assessment records for the Borough of National Park, excluding any putative Class Members who exclude themselves by filing a request for exclusion in accordance

with the requirements set forth in the Notice. The Property Class includes persons whose interest in Property in the Borough of National Park is joint, in common, by the entireties, subject to lien, and/or subject to mortgage, but all such persons with interests in a single parcel shall be deemed a single class member for purposes of distributions made under Paragraph 7(a) hereof. Without limiting the generality of the foregoing, the Property Class does not include persons whose only interest in Property in the Borough of National Park is as a mortgagee, lien holder, contract purchaser, long or short-term lessee, or beneficiary of any easement or covenant. The Property Class also does not include anyone who signed a release of claims related to the subject matter at issue in this Litigation.

v. "Property Class Member" means a person who fits within the scope of the Property Class.

w. "Released Parties" means Defendants Arkema, Solvay, their past or present subsidiaries, parents, successors, affiliates, and predecessors, their distributors, wholesalers, suppliers, resellers, and retailers, their past or present officers, directors, members, agents, employees, attorneys, advisors, investment advisors, auditors, accountants and insurance carriers or any of them, any person, firm, trust, corporation, officer, director, owner, indemnitor, or other individual or entity in which Defendants have a controlling interest or which is related to or affiliated with Defendants; and the legal representatives, successors in interest or assigns of Defendants. For the avoidance of doubt, the Parties expressly acknowledge that Solvay's corporate family including the Solvay Group is undergoing broad corporate changes and is entering into a series of transactions pursuant to which its entities or assets may be assigned, allocated, or otherwise transferred in separation, split-up, de-merger or similar transactions that yield two

separate corporate groups, all of which, including but not limited to Syensqo Group, will be considered Released Parties.

x. "Settled Claims" means any and all claims, debts, demands, costs, expenses, rights, subrogated rights, remedies, or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees and disbursements, expert or consulting fees and disbursements, and any other costs (including costs for bottled water or alternative water sources), expenses, or liability whatsoever), whether based on or arising from federal, state, local, statutory, contract, or common law, including, but not limited to, claims under the New Jersey Spill Act ("NJSA"), the New Jersey Industrial Site Recovery Act ("NJISRA"), the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), or any other federal, state, or local law, rule, or regulation, whether now or in the future, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (i) that have been asserted in this Litigation by the Lead Plaintiffs, the Classes, Class Members, or any of them against the Released Parties; or (ii) that can be or could have been asserted in this or any other forum by the Lead Plaintiffs, the Classes, Class Members, or any of them against any of the Released Parties, which arise out of or are based upon the actual or alleged presence of PFAS, or any other chemical, in the water supplied to or used by residents of the Borough, *provided* that Settled Claims do not include Personal Injury Claims defined herein.

y. "Settlement" means the settlement contemplated by this Stipulation.

z. "Unknown Claims" means any and all Settled Claims which either or both Lead Plaintiffs or any Class Member does not know or suspect to exist in his or her favor at the time of

the release of the Released Parties, which if known by her, him or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Settled Claims, the Parties stipulate and agree that, upon the Effective Date, Lead Plaintiffs and Defendants shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Final Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or of any principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiffs and Defendants acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims was separately bargained for and was a key element of this Settlement.

SCOPE AND EFFECT OF SETTLEMENT

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Settled Claims as against all Released Parties. Lead Plaintiffs, Class Members, and each of them, agree that they shall not seek anything further from the Released Parties.

3. Upon the Effective Date, Lead Plaintiffs, Class Members, and each of them, on behalf of themselves, their heirs, executors, administrators, successors, and assigns, shall, with respect to each and every Settled Claim, release and forever discharge, covenant not to sue, and shall forever be enjoined from prosecuting, any and all Settled Claims against any of the Released Parties.

4. By operation of this Settlement, any Person or entity who may assert a claim against any of the Released Parties, or any Released Party who may assert a claim against any other

Released Party, based upon, relating to, or arising out of the Settled Claims shall be permanently barred, enjoined, and restrained from commencing, prosecuting, maintaining, or asserting any such claim or claims for contribution or indemnity or otherwise denominated, against the Released Parties as claims, cross-claims, or third-party claims in any proceeding, whether before a court, in arbitration, or in any other manner. All such claims are hereby extinguished, discharged, satisfied, and unenforceable.

5. Notwithstanding Paragraph 4, nothing herein shall be construed as affecting the rights of any Person or entity who is or may be liable to the Lead Plaintiffs or Class Members, or any of them, for damages based upon, relating to, or arising out of a Settled Claim to a finding of apportionment based on fault and to a setoff as would otherwise be permitted by applicable law, unless the parties have otherwise contracted.

THE SETTLEMENT CONSIDERATION

6. Each Biomonitoring Class Member will be eligible for a single blood test to determine the levels, if any, of PFAS in their blood, during a 2-month period following entry of the Order and Final Judgment approving this Settlement (the "Testing Period"). The blood draws will be performed by Aculabs, Inc. and their employees, agents, and contractors and the blood analysis will be performed by NMS Labs and their employees, agents, and contractors, none of which are agents or affiliates of the Defendants. **Defendants shall not be liable to any Class Member for any actions or inactions, whether negligent, reckless, or intentional of Aculabs, Inc. or NMS Labs, their employees, agents, contractors, or affiliates.** The identities of the Biomonitoring Class Members who have their blood tested, and the blood test results, will remain confidential. The blood test results will only be provided to the individual Biomonitoring Class Member who requested the test, or in the case of a minor Biomonitoring Class Member, to their

legal guardian. Defendants shall pay an aggregate amount of $784,380.00 into the Biomonitoring Class Fund, which shall be used to pay for such blood tests, including phlebotomist and testing site costs, oversight thereof and all lab and other diagnostic costs, and the costs of providing blood test results to individual Biomonitoring Class Members, on a first-come, first-served basis. Once the Biomonitoring Class Fund is depleted, no additional blood tests will be offered. Within 45 business days after the expiration of the Testing Period, if any of the Biomonitoring Class Fund remains, those funds shall revert to Defendants in the proportion each Defendant funded the Biomonitoring Class Fund.

7. Defendants shall pay the aggregate sum of $200,000.00 in to a fund for payments to any persons who are Property Class Members and/or Nuisance Class Members (the "Property/Nuisance Class Fund"). Payment shall be made within 45 business days of the Effective Date. The Property/Nuisance Fund shall be distributed in accordance with Paragraphs 7(a) and (b). In no event shall Defendants be required to make any additional payment(s) to Property Class Members or Nuisance Class Members. The Class Administrator shall compute the amount payable to each Nuisance Class Member and Property Class Member after the Effective Date. Any amount owed to a Property Class Member or Nuisance Class Member that is unclaimed after six (6) months of the date the Property Class and Nuisance Class payments were distributed shall revert to Defendants in the proportion each Defendant funded the Property/Nuisance Class Fund.

a. $100,000 of the Property/Nuisance Class Fund shall be made payable to Property Class Members. The amount payable to each Property Class Member shall be the quotient of the aforesaid aggregate sum divided by the total number of Parcels of Property. It is currently estimated that the foregoing computation will result in a payment of approximately $100 for each Parcel. The amount payable to each Parcel shall be apportioned *pro rata* among owners, whether

jointly, in common, by the entireties, or otherwise. By way of example, if a Parcel of Property is owned jointly by two persons, each person shall be entitled to one-half of the amount payable. In no event shall Defendants be required to make any additional payment(s) for any Parcel of Property because the Property is owned by more than one Property Class Member or Nuisance Class Member. Further, if a Parcel of Property had a change in ownership interest at any time between January 1, 2019 and the Date of Preliminary Approval, then the amount payable to each Property Class Member will be divided *pro rata* based on their respective duration of ownership during the class period.

b. $100,000 of the Property/Nuisance Class Fund shall be made payable to Nuisance Class Members. The amount payable to each Nuisance Class Member shall be calculated by dividing the aforementioned aggregate sum by the sum of the total number of Parcels of Property and total number of leaseholders in National Park as determined by timely-submitted Claims Forms. It is currently estimated that the foregoing computation will result in a payment of approximately $100 for each Nuisance Class Member, except that Payments to property-owning Nuisance Class Members shall be based on the Property and apportioned *pro rata* among owners, whether jointly, in common, by the entireties, or otherwise. Each Nuisance Class Member with a leasehold interest in Property is entitled to a payment, except that multiple leaseholders of a single Property are to be treated collectively as a single Nuisance Class Member entitled to one payment apportioned *pro rata*. The identities of lease-holding Nuisance Class Members for purposes of payment shall be determined by timely-submitted Claims Forms that list the names of each person or persons who have a leasehold interest in the Property to which Notice is sent. Further, if a Parcel of Property had a change in ownership or leasehold interest at any time between January 1, 2019 and the Date of Preliminary Approval, then the amount payable to each Nuisance Class Member

will be divided *pro rata* based on their respective duration of ownership or leasehold during the class period.

LIMITATION ON FUTURE PERSONAL INJURY CLAIMS

8. Neither Lead Plaintiffs nor Class Members shall bring any Personal Injury Claims against any Released Parties unless the Lead Plaintiff or Class Member who seeks to bring such a claim (a "Personal Injury Claimant") satisfies all of the following:

a. The Personal Injury Claimant obtains an affidavit from a physician licensed to practice medicine in the United States ("Physician") averring that, to a reasonable degree of medical certainty (or other prevailing standard in New Jersey State Court for the admission of medical expert testimony at the time such affidavit is obtained), the Personal Injury Claimant has suffered a specific, identifiable physical injury due to exposure to a particular PFAS; and

b. The Personal Injury Claimant obtains an affidavit from a Toxicologist who is a Diplomate of the American Board of Toxicology, a Diplomate of the American Board of Applied Toxicology, or a Fellow of the American Board of Forensic Toxicology averring that, to a reasonable degree of scientific certainty, the injury identified by the aforesaid Physician is one that can be caused by the particular PFAS at a specific dose (the amount of chemical to which the Personal Injury Claimant has been exposed); and

c. The Personal Injury Claimant obtains an affidavit from a Licensed Site Remediation Professional duly licensed as such in the State of New Jersey or someone with at least a master's degree in geology or hydrogeology from an accredited U.S. or Canadian college or university, averring that, to a reasonable degree of scientific certainty, the Plant was a substantial cause of the contamination by the particular PFAS that the Toxicologist deemed sufficient to cause the specific, identifiable physical injury claimed and that the Personal Injury Claimant was

exposed to such PFAS by an identifiable exposure pathway from the Plant at the specific dose averred by the Toxicologist pursuant to subparagraph b hereof.

9. Any Personal Injury Claims brought without meeting the requirements of Paragraph 8(a)-(c) shall be barred by the terms of this Stipulation and Settlement. Satisfaction of the requirements of Paragraph 8(a)-(c), however, shall not relieve a Personal Injury Claimant from the burden of proving each element of the Personal Injury Claimant's claim for relief, including both general and specific causation. Any Personal Injury Claim that meets the requirements of Paragraph 8(a)-(c) shall nonetheless be subject to all proofs and all applicable defenses or avoidances which may be applicable to such Personal Injury Claim, including without limitation any evidentiary challenges or objections to proffered expert testimony.

ADMINISTRATION OF SETTLEMENT

10. This Settlement shall be administered by Postlethwaite & Netterville, APAC, the administration of which shall be subject to the jurisdiction of the Court. Defendants shall pay the aggregate amount of $100,000.00 into the Administration Fund, which shall be used to pay for all aspects of administration of this settlement including but not limited to, mailings of notices, tracking of claims, and processing of claims. For the avoidance of doubt, oversight of and all phlebotomist, lab, testing site and other diagnostic costs, and the costs of providing blood test results to individual Biomonitoring Class Members, do not constitute administration costs and will be paid for out of the Biomonitoring Class Fund. Upon expiration of the Testing Period for the Biomonitoring and, and after one year from the date Nuisance Class and Property Class payments were distributed, any remaining funds from the Administration Fund shall revert to Defendants.

ATTORNEYS' FEES AND EXPENSES

11. Subject to Court approval, Defendants agree to pay Class Counsels' attorneys' fees and costs, including, for the avoidance of doubt, expert fees and costs, and shall not oppose a fee application of up to $243,595.00, which amount includes such costs and expenses, time already spent and time to be spent, finalizing the Settlement, preparing settlement documents, drafting briefs, attending hearings, and monitoring of the settlement and settlement administration ("Class Counsels' Fees and Expenses"). The Class Counsels' Fees and Expenses are in addition to the settlement benefits each Class Member will be receiving and recompense for such Fees and Expenses are the sole property of Class Counsel, not Lead Plaintiffs or the Class. Class Counsels' Fees and Expenses awarded by the Court in the Order and Final Judgment in accordance herewith shall be payable within 45 business days of the Effective Date. Class Counsel represent and warrant that they will not pay Lead Plaintiffs any portion or percentage of Class Counsels' Fees and Expenses or anything of value from this settlement in addition to that which Lead Plaintiffs are entitled as a Class Members, unless approved by the Court in the Judgment and Order of Final Approval, or except as set forth in this Stipulation.

12. Within 45 business days of the Effective Date, Defendants shall pay Lead Plaintiffs $8,000.00 each as an incentive payment for serving as Lead Plaintiffs in this Litigation. Lead Plaintiffs represent and warrant that they will not receive anything of value from this settlement beyond this incentive payment and the benefits they are entitled to as Class Members.

CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

13. The Parties stipulate to certification, for settlement purposes only, of three Classes pursuant to Federal Rule of Civil Procedure 23(b)(3), the Biomonitoring Class, Nuisance Class, and Property Class.

14. The Parties also stipulate, for settlement purposes only, to appointing Lead Plaintiffs as class representatives for the Biomonitoring Class, Nuisance Class, and Property Class.

15. The Parties also stipulate for settlement purposes only to appointing Class Counsel as counsel for the Biomonitoring Class, Nuisance Class, and Property Class.

16. The Parties agree that, in connection with the approval of this Settlement, the Court may make findings respecting class certification which, absent the existence of the Settlement and the terms of this Stipulation, would be contested. The Parties agree that the Settlement contemplated by this Stipulation provides for Defendants' agreement as to relief in this Stipulation and that the agreements for certification of the Classes are fully dependent upon the terms and conditions of this Stipulation. Accordingly, while the agreements provided for in this Stipulation should give rise to a finding that classes may be certified in accordance with the requirements of Rule 23(b)(3) of the Federal Rules of Civil Procedure, any such finding is for settlement purposes only and may not be used in this or any other proceeding as an admission of any act, matter, fact, or proposition or for any other purpose.

17. The certification of the Classes for settlement purposes, appointment of Lead Plaintiffs as the class representatives of the Biomonitoring Class, Nuisance Class, and Property Class, and appointment of Class Counsel as counsel for the Biomonitoring Class, Nuisance Class, and Property Class, shall be effective and binding only with respect to settlement of this Litigation. If this Stipulation is not approved by the Court or if this Settlement is terminated or canceled under the terms of this Stipulation, (a) this Stipulation, and the certification of the settlement class provided for herein shall be vacated and the Litigation shall proceed as though the Classes had never been certified, without prejudice to any Party's position on the issue of class certification; (b) the Parties shall be returned to the status quo ante with respect to every issue of fact and law

as they stood on the date of signing of this Stipulation as if this Stipulation had not been entered into; (c) any Order entered pursuant to this Stipulation shall be vacated and of no further force or effect; (d) neither this Stipulation nor any provision thereof nor any Order entered on or pursuant to this Stipulation shall be used or relied on in the Litigation or any other proceedings for any purpose; and (e) all negotiations, proceedings, motions, briefing and statements made in connection with this Stipulation shall be without prejudice to any person, entity or Party and shall not be deemed an admission by any person, entity or Party of any act, matter, fact or proposition and may not be used in this or any other proceeding for any purpose.

APPLICATION FOR ORDER FOR NOTICE AND HEARING

18. Within fourteen (14) days after this Stipulation has been fully executed by the Parties, Class Counsel shall move the Court under Federal Rule of Civil Procedure 23(b) for an order certifying the Classes for settlement purposes only, and under Federal Rule of Civil Procedure 23(e) for the entry of the Order for Preliminary Approval of the Settlement, and Notice and Hearing, which Defendants will not oppose.

APPLICATION FOR ORDER AND FINAL JUDGMENT

19. Once this Settlement as contemplated by this Stipulation has been preliminarily approved by the Court, Class Counsel and Defendants' Counsel jointly shall request that the Court enter the Order and Final Judgment.

APPLICATION FOR APPROVAL OF SETTLEMENT AS TO MINORS

20. If deemed necessary by the Court, a Guardian Ad Litem shall be nominated by the Parties and approved by the Court under Fed. R. Civ. P. 17(c) to examine this Settlement and make a recommendation to the Court regarding the fairness, reasonableness and adequacy of this Settlement to determine whether the relief agreed to and provided is in the best interest of such

minor Class Members. The Guardian Ad Litem shall investigate the potential claims for minor Class Members, and shall, following such investigation, report the results of his or her independent investigation to the Parties, and make a recommendation to the Court as to the fairness, reasonableness and adequacy of this Agreement to determine whether the Settlement is in the best interest of such minor Class Members. Compensation of the Guardian Ad Litem will be paid out of the Biomonitoring Class Fund.

21. After this Settlement as contemplated by this Stipulation has been preliminarily approved by the Court, Class Counsel and Defendants' Counsel jointly shall request that the Court approve this Settlement as to all minor Class Members, if any, pursuant to Rule 4:44 of the New Jersey Rules of Court.

EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

22. The "Effective Date" of Settlement shall be the date of the expiration of the time for appeal or review of the Order and Final Judgment, or, if any appeal is filed and not dismissed, after the Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by petition for certification, or, in the event that the Court enters an order and final judgment in a form other than that provided above (the "Alternative Judgment") and none of the Parties elects to terminate this Settlement, the date that the Alternative Judgment becomes final and no longer subject to appeal or review.

23. Both Defendants' Counsel and Class Counsel shall have the right to terminate this Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other Parties within thirty (30) days after the last to occur of the date upon which: (i) the Court declines to Preliminarily Approve the Settlement or certify the Class for the purpose of Settlement and enter the Order Granting Preliminary Approval of Class Action Settlement and

Conditional Class Certification and for Notice and Hearing in a form substantially the same as **Exhibit D**; (ii) the Court refuses to approve this Stipulation or any material part of it, or otherwise modifies any term of this Stipulation; (iii) the Court declines to enter the Order and Final Judgment; (iv) the Court declines to approve this Settlement as to any minor Class Members; (v) the percentage of Biomonitoring Class Members who submit timely claims to opt out of the Biomonitoring Class exceeds 5%; (vi) the percentage of Nuisance Class Members who submit timely claims to opt out of the Nuisance Class exceeds 5%; (vii) the percentage of Property Class Members who submit timely claims to opt out of the Property Class exceeds 5%; or (viii) the Order and Final Judgment or any Alternative Judgment is modified or reversed in any respect by the United States Court of Appeals for the Third Circuit or by the United States Supreme Court. For purposes of determining whether a putative Class Member has opted out, a putative Case Member eligible for all Classes shall be deemed to have opted out of each of them if the putative Class Member opts out of one of them.

24. Except as otherwise provided herein, in the event this Settlement is terminated as provided in Paragraph 23, above, then the Parties shall be deemed to have reverted to their respective status in this Litigation immediately prior to the execution of this Stipulation and, except as otherwise expressly provided to the contrary, the Parties shall proceed in all aspects as if this Stipulation and all related orders had not been entered.

NO ADMISSION OF WRONGDOING

25. This Stipulation, whether or not consummated, and all proceedings conducted pursuant to it:

a. Shall not be offered or received against the Released Parties as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by the

Released Parties with respect to the truth of any fact alleged by the Lead Plaintiffs in the FAC or the validity of any claim that has been or could have been asserted in this Litigation or in any other litigation, or the deficiency of any defense that has been or could have been asserted in this Litigation or in any litigation, or of any liability, negligence, fault, or wrongdoing of, by or on behalf of the Released Parties;

b. Shall not be offered or received against the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties;

c. Shall not be offered or received against the Released Parties as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against the Released Parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate or enforce the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, the Released Parties may refer to it to effectuate the terms of the Settlement, including the liability protections granted them hereunder;

d. Shall not be construed against the Released Parties as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

e. Shall not be construed as, or received in evidence as, an admission, concession or presumption against Lead Plaintiffs or any of the Class Members that any of their claims are without merit or that any defenses asserted by the Defendants have any merit.

NON-DISPARAGEMENT

26. Lead Plaintiffs, the Class Members, each of them, and Class Counsel agree not to defame, disparage, or impugn (i) this Stipulation and Settlement, or any Party's motivations, reasons, or decisions to enter into this Stipulation and Settlement; and/or (ii) the reputation of Defendants. "Disparage," as used in this Stipulation, means to make any statement, written or oral, including but not limited to electronic versions of writing and/or writings posted on electronic websites and/or social networking forums and/or blogs, that casts in a negative light of any kind or implies or attributes any negative quality to the Parties and/or any entity and/or organization that the Parties associate and/or consult with, is employed by, volunteers for and/or serves on the Board of Trustees of, as well as any such entities' corporations, representatives, employees, affiliates, members, officers, directors, agents, attorneys, successors, predecessors or assigns. Lead Plaintiffs, the Class Members, and each of them agree that compliance with this non-disparagement provision is a material term of this Stipulation and are continuing obligations that survive the performance of all other aspects of this Stipulation, and that failure to comply with the terms shall constitute a material breach of this Stipulation and Settlement. Lead Plaintiffs, the Class Members, and each of them further understand and agree that Defendants would be immediately and irreparably harmed by violation of this provision, and notwithstanding any provision herein, Defendants maintain all claims, rights, and/or remedies as a result of a breach of this non-disparagement provision, whether equitable or sounding in damages.

NON-SOLICITATION

27. Lead Plaintiffs, the Class Members, and each of them, shall not solicit or encourage any other person or entity to, or suggest that any person or entity could, initiate, make, pursue, or issue any request, demand cause of action, or claim against any Released Parties, or any current or

former corporate offices, directors, agents, or employees of any Released Parties, with regard to the actual or alleged presence of PFAS, or any other chemical, in the water supplied to or used by residents of the Borough of National Park, except that Lead Plaintiffs and Class Members may communicate with other Lead Plaintiffs and Class Members regarding participation in this Settlement.

DESTRUCTION OF DOCUMENTS

28. Lead Plaintiffs, the Class Members, Class Counsel, and each of them, must destroy all Confidential Information, Highly Confidential Information, or Export Control Information belonging to Defendants pursuant to Paragraph 18 of the Discovery Confidentiality Order entered on December 2, 2020, and must otherwise comply with the requirements of that Paragraph.

REPRESENTATIONS & WARRANTIES

29. Lead Plaintiffs, and each of them, represent and warrant the following:

a. Lead Plaintiffs have been counseled and represented by Class Counsel in connection with negotiating and entering into this Settlement;

b. Before signing this Stipulation, Lead Plaintiffs had the opportunity to have any questions regarding the terms or effect of this Settlement answered by Class Counsel;

c. Lead Plaintiffs have been advised of the legal consequences of entering into this Settlement;

d. Lead Plaintiffs, with the assistance of Class Counsel, have investigated the facts and law relating to his/her/their Settled Claims;

e. Lead Plaintiffs have carefully read and fully understand the terms of this Settlement;

f. Lead Plaintiffs understand that the terms of this Settlement were negotiated at arm's length in good faith by the Parties and reflect a settlement that was reached voluntarily after consultation by each Party with their own experienced legal counsel;

g. Lead Plaintiffs understand that the sums to be paid to them pursuant to this Settlement are reasonable and comprise the only payment she/he/they will ever receive regarding the Settled Claims;

h. Lead Plaintiffs are not relying on any statement, representation, omission, inducement, or promise of any Defendants or Defendants' Counsel besides what is in this Stipulation and Agreement of Settlement;

i. Lead Plaintiffs are competent and have the right and authority to enter into this Settlement and execute this Stipulation;

j. Lead Plaintiffs enter into this Settlement by her/his/their own free will and without duress;

k. Lead Plaintiffs' obligations, waivers, releases, representations, and warranties pursuant to this Settlement are in exchange for good and valuable consideration as contemplated herein;

l. Lead Plaintiffs understand that any and all prior agreements, understandings, promises, and representations between the Parties identified herein are superseded by and merged into this Stipulation, and no such prior agreements, understandings, promises, or representations shall be admissible in any suit, action or other proceeding that may arise or be filed after the date on which they sign this Stipulation;

m. Lead Plaintiffs have not transferred or assigned to any other person, firm, corporation or other legal entity any claims, rights, or causes of action which are in any way relevant to the Settled Claims;

n. Lead Plaintiffs have no present plans to sue or otherwise institute legal action against Defendants, together or independently, for any harm that it believes is attributable to Defendants;

o. Lead Plaintiffs are not aware of any persons (other than the Class Members) who have had, now have, or may acquire against Defendants any action, cause of action, claim, demand, damage, or controversy whatsoever arising out of or relating in any manner to the Settled Claims.

MISCELLANEOUS PROVISIONS

30. All of the Exhibits attached to this Stipulation are hereby incorporated by reference as through fully set forth herein.

31. Class Counsel and Defendants' Counsel shall advise the Court and request that Final Judgment not be entered any earlier than 90 days after service of all necessary CAFA notices.

32. Within 10 days after moving for entry of the Preliminary Approval Order, Notice and Hearing, Defendants' counsel shall serve all necessary CAFA Notices pursuant to 28 U.S.C. § 1715.

33. Class Counsel and Defendants' Counsel will cooperate and undertake all reasonable actions in order to accomplish the entry of Final Judgment.

34. Plaintiffs shall compile and provide to Defendants, and Defendants shall file with the Court on or before the hearing for Order and Final Judgment a list containing the names and addresses of all Class Members who submitted timely claims to opt out of the Biomonitoring Class, Nuisance Class, and/or Property Class.

35. The Parties intend this Settlement to be a final and complete resolution of all disputes asserted or which could have been asserted by the Class Members against the Released Parties with respect to the Settled Claims. Accordingly, Lead Plaintiffs and Defendants agree not to assert in any forum that this Litigation was brought by Lead Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The Parties shall assert no claims of any violation of the applicable Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Litigation. The Parties agree that the amount paid and the other terms of this Settlement were negotiated at arm's length in good faith by the Parties and reflect a settlement that was reached voluntarily after consultation by each Party with their own experienced legal counsel.

36. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their respective successors-in-interest.

37. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

38. The administration and consummation of this Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction solely for the purpose of entering orders enforcing the terms of this Stipulation.

39. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

40. This Stipulation and the attached Exhibits constitute the entire agreement among the Parties concerning this Settlement and no representations, warranties, or inducements have been made by any Party concerning this Stipulation and its Exhibits other than those contained and memorialized in such documents.

41. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one of the same instrument.

42. This Stipulation shall be binding upon, and inure to the benefit of, the heirs, administrators, successors, and assigns of the Lead Plaintiffs, Class Members, and Released Parties.

43. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New Jersey without regard to principles of conflict of laws.

44. This Stipulation shall not be construed more strictly against one Party than any other Party merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's length negotiations between the Parties and that all Parties have contributed substantially and materially to the preparation of this Stipulation.

45. All counsel and any other person executing this Stipulation and any of the Exhibits or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

46. All communications related to this Stipulation and Settlement sent by any of the Parties to another shall be directed to the addresses specified below, unless one of the Parties gives written notice of a change in their designated recipient for notice to the other Parties:

With respect to Lead Plaintiffs:

Alan Sklarsky, Esq.
Williams Cedar, LLC
8 Kings Highway North, Suite B
Haddonfield, NJ 08033
asklarsky@williamscedar.com

Shauna L. Friedman, Esq.
Barry, Corrado & Grassi, PC
2700 Pacific Avenue
Wildwood, NJ 08260
sfriedman@capelegal.com

With respect to Solvay Specialty Polymers USA, LLC (successor by merger to Solvay Solexis, Inc.):

Crystal Parker, Esq.
Theodore V. Wells, Jr., Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-1064
cparker@paulweiss.com
twells@paulweiss.com

With respect to Arkema Inc.:

John D. North, Esq.
Greenbaum, Rowe, Smith, & Davis, LLP
99 Wood Avenue South
Iselin, NJ 08830
jnorth@greenbaumlaw.com

Robert L. Shuftan, Esq.
Steptoe LLP
227 W. Monroe Street, Ste. 4700
Chicago, IL 60606
rshuftan@steptoe.com

47. Class Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Preliminary Approval by the Court of the settlement and approval of the Notice, the Order for Notice and Hearing, the Order and Final Judgment, this Stipulation and this Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the terms and conditions of this Settlement.

DATED: January 29, 2024

Class Counsel:

BARRY, CORRADO & GRASSI, PC

By: */s/ Shauna L. Friedman*
Shauna L. Friedman, Esq.
Oliver T. Barry, Esq.
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Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KENNETH SEVERA, *et al.*, *Plaintiffs*, v. SOLVAY SPECIALTY POLYMERS, USA, LLC, SOLVAY SOLEXIS, INC., and ARKEMA INC., *Defendants*.	Civil No. 1:20-cv-06906-NLH-AMD **CLASS ACTION**

NOTICE OF PROPOSED SETTLEMENT OF
CLASS ACTION AND FINAL SETTLEMENT HEARING

A federal court authorized this Notice. This is not a solicitation from a lawyer.

This notice ("Notice") is being mailed pursuant to an Order of the United States District Court of the District of New Jersey (the "Court"). It describes the proposed settlement (the "Settlement") of this class action (the "Action" or "Litigation"), which has been brought against Solvay Specialty Polymers USA, LLC, Solvay Solexis, Inc. (collectively, "Solvay") and Arkema Inc. ("Arkema") (collectively "Defendants"). Subject to Court approval, the parties to the Action have entered into a Stipulation and Agreement of Settlement dated January 29, 2024 (the "Stipulation") that sets forth the terms and conditions of the Settlement.

A hearing (the "Settlement Hearing") will be held on [_____, at _____] before Judge Noel L. Hillman in Courtroom 3A, at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets Camden, NJ 08101, for the purpose of determining: (1) whether to approve the Settlement of this Action, and (2) if the Settlement is approved, to consider an application by Class Counsel for an award of their reasonable attorneys' fees and expenses. This Notice describes the nature of the Action, the terms of the Settlement and what you need to do in case you wish to object to the terms of this Settlement.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE.

YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER OR NOT YOU ACT.

IF YOU ARE A MEMBER OF ONE OR MORE OF THE SETTLEMENT CLASSES DEFINED BELOW, YOU AUTOMATICALLY RELEASE THE CLAIMS COVERED BY THIS SETTLEMENT UNLESS YOU EXCLUDE YOURSELF.

TO CLAIM YOUR SHARE OF THIS SETTLEMENT, YOU MUST REVIEW, COMPLETE, AND SUBMIT THE ENCLOSED CLAIM FORM – ONLY INDIVIDUALS CORRECTLY IDENTIFIED ON THE CLAIM FORM WILL RECEIVE MONETARY SETTLEMENT BENEFITS.

IF ANY CHANGES OR ADDITIONS ARE MADE TO THE CLAIM FORM, IT MUST BE SUBMITTED AND **POSTMARKED ON OR BEFORE [_____.]**

You may be a member of one or more of the Settlement Classes if you:

Were a resident of the Borough of National Park, Gloucester County, New Jersey for any period of time, consecutive or otherwise, during the period from January 1, 2019 through the date upon which this Settlement receives preliminary approval ("Date of Preliminary Approval");

Or

Owned or rented residential property located in the Borough of National Park, Gloucester County, New Jersey during the period of January 1, 2019 to the Date of Preliminary Approval;

Or

Owned residential property located in the Borough of National Park, Gloucester County, New Jersey during the period of January 1, 2019 to the Date of Preliminary Approval.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	**A. If after reading the Claim Form you do not need to complete Section One and Section Two, then you do not need to return a Claim Form to receive any settlement benefits to which you are entitled**. You will receive Settlement benefits as specified below and give up your right to sue Defendants over the claims resolved by this Settlement. You will be bound by any judgment entered by the Court. **B. If the information on the enclosed Claim Form is incorrect or incomplete**, **you should file the enclosed Claim Form with the correct and complete information.** If a corrected claim form is not filed you will give up your right to sue Defendants over the claims resolved by this Settlement and will be bound by any judgment entered by the Court.
SUBMIT A CLAIM FORM IF ANY INFORMATION ON THE ENCLOSED CLAIM FORM IS INCORRECT OR INCOMPLETE	The way to get Class benefits if you qualify but **the information on the enclosed Claim Form was incorrect or incomplete**, you must fill out and return the enclosed Claim Form using the enclosed pre-paid business reply envelope or first class mail, postmarked no later than [_____].
ASK TO BE EXCLUDED	Get no Class benefits. The only option that allows you to individually sue Defendants over the claims resolved by this Settlement ("Settled Claims" as defined below in this Notice) is to ask to be excluded from, or "opt out" of, the Settlement.
OBJECT	Write to the Court about why you do not agree with the Settlement. Note: You must remain a member of the Class to file an objection and you will be included in the Settlement and will be bound by any judgment entered by the Court. If you ask to be excluded, you may not also object to the Settlement.

GO TO A HEARING	The Court is holding a public hearing to decide if the Settlement is fair to all members of the Settlement Classes. The hearing will be held on [_____], at [time]. If you wish, you may attend the hearing. If you wish to speak at the hearing, you must request permission in writing, as set forth in detail below.

NONE OF THE INFORMATION IN THIS NOTICE DOCUMENT CONSTITUTES FINDINGS OF THE COURT. IT IS BASED ON THE STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY ANY OF THE PARTIES.

WHAT THIS NOTICE CONTAINS

Basic Information

1. Why did I get this notice package?

You have received this Notice of Class Action Settlement because you have been identified as a potential member of the Class on whose behalf claims for nuisance, battery, trespass, strict liability, property damage/devaluation, and biomonitoring (the "Class Claims") will be settled, if the Court approves the proposed Settlement. The class action is called *Severa, et al. v. Solvay Specialty Polymers USA, LLC et al.,* Case No. 1:20-cv-06906-NLH-AMD (D.N.J.). The Court in charge of this case is the United States District Court for the District of New Jersey, Camden Vicinage, the Honorable Noel L. Hillman presiding. The people who sued are called the "Plaintiffs," and the companies they sued, Arkema and Solvay, are together called the "Defendants."

2. What is this lawsuit about?

The Action that is the subject of this Notice is brought by Plaintiffs Kenneth Severa, Carol Binck, William Teti, Denise Snyder, and Jennifer Stanton ("Class Representatives" or "Lead Plaintiffs"). Lead Plaintiffs generally allege that Defendants each separately owned and operated a manufacturing plant (the "Plant") at 10 Leonard Lane, West Deptford, Gloucester County, New Jersey, and caused the discharge of per- and poly-fluoroalkyl substances ("PFAS"), including but not limited to perfluorononanoic acid ("PFNA") and perfluorooctanoic acid ("PFOA"), which allegedly entered the municipal water supply of the Borough of National Park, Gloucester County, New Jersey. Defendants deny these allegations and assert that there are no scientific studies concluding that PFAS from the Plant entered the municipal water supply.

3. Why is this case a class action?

In a class action, one or more people, called Class Representatives or "Lead Plaintiffs" (for example, the Class Representatives or Lead Plaintiffs identified above), sue on behalf of people who may have similar claims. A judge can determine that people who have similar claims are members of a class, except for those who exclude themselves from the class. U.S. District Judge Noel L. Hillman in the United States District Court for the District of New Jersey is in charge of this class action.

4. Why is there a settlement?

Lead Plaintiffs, through their counsel, Williams Cedar, LLC and Barry, Corrado & Grassi, P.C. ("Class Counsel") have conducted a thorough investigation relating to the claims and the underlying events alleged in the Action, and analyzed the legal principles applicable to Lead Plaintiffs' claims and the potential defenses thereto. As a result, Lead Plaintiffs and Class Counsel have concluded that they have obtained adequate information to enter into the Settlement on a fully informed basis.

Class Counsel engaged in extensive arm's-length negotiations with counsel for the Defendants. Although Lead Plaintiffs believe their claims have merit, they recognize the risk, expense and length of continued proceedings necessary to prosecute such claims through trial. Class Counsel also have considered the costs, risks, and uncertainties inherent in proceeding further in this Action. Lead Plaintiffs and Class Counsel also have considered

the difficulty in establishing that PFAS, including PFNA and PFOA, originated from the Plant, entered the National Park water supply, or caused Lead Plaintiffs or Class Members any harm. Lead Plaintiffs and Class Counsel therefore desire to enter into the Settlement, believing it to be reasonable, adequate and in the best interests of the Class Members.

Defendants have denied, and continue to deny, each and every allegation of liability and wrongdoing on their part and assert that the claims asserted against them in the Action are without merit and fail to state a cause of action; deny that they breached any duty, violated law, or engaged in wrongdoing of any form; and believe that they have strong factual and legal defenses to all claims alleged. Defendants have agreed to the Settlement in order to fully and finally settle and dispose of all claims that have been or could have been raised in the Action and to avoid the continuing burden, expense, inconvenience and distraction of this litigation. In short, the Parties disagree on the merits of this litigation, including whether or not damages have been suffered or are recoverable.

There has been no trial. The Court did not decide in favor of the Class Representatives or Defendants in this case. The Class Representatives, with the advice of Class Counsel, and the Defendants have agreed to the terms of this Settlement to avoid the cost, delay and uncertainty that would come with additional litigation and trial. The Class Representatives and Class Counsel think the Settlement is best for Class Members because it provides certain relief now as opposed to uncertain relief in the potentially distant future. The agreement to settle is not an admission of fault by either Solvay or Arkema. In fact, Defendants specifically dispute the claims asserted in this case.

Who Is In the Settlement

In order to be included in this Settlement, you must be a Class Member.

5. How do I know if I am a part of the settlement?

The people covered by the proposed Settlement (the "Class Members") are:

A. All residents of the Borough of National Park, Gloucester County, New Jersey for any period of time, consecutive or otherwise, during the period from January 1, 2019 through the Date of Preliminary Approval, as further explained below ("Biomonitoring Class Members").

Everyone who fits the following description is a Biomonitoring Class Member:

> "Biomonitoring Class" means, for purposes of this Settlement only, all persons who resided in the Borough of National Park, Gloucester County, New Jersey during the period from January 1, 2019 to the Date of Preliminary Approval, excluding any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice, and anyone who signed a release of claims related to the subject matter at issue in this Litigation.

B. All owners or lessees of residential property located within the Borough of National Park as of the Date of Preliminary Approval ("Nuisance Class Members").

Everyone who fits the following description is a Nuisance Class Member:

> "Nuisance Class" means, for purposes of this Settlement only, all persons who, during the period of January 1, 2019 to the Date of Preliminary Approval, are or were owners or lessees of a Parcel of Property within the Borough of National Park, Gloucester County, New Jersey, according to the most recent version of that Gloucester County tax assessment records for the Borough of National Park, excluding any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice. The Nuisance Class includes persons whose interest in Property in the Borough of National Park is by lease or, for owners of Property, whose interest in the Property is joint,

in common, by the entireties, subject to lien, and/or subject to mortgage. All such persons with ownership interests in a single parcel shall be deemed a single class member for purposes of distributions made under Paragraph 7(b) of the Stipulation. Similarly, all such persons whose interests in a single parcel are by lease shall be deemed a single class member for purposes of distributions made under Paragraph 7(b) of the Stipulation. The Nuisance Class does not include persons whose only interest in Property in the Borough of National Park is as a mortgagee, lien holder, contract purchaser, or beneficiary of any easement or covenant. The Nuisance Class also does not include anyone who signed a release of claims related to the subject matter at issue in this Litigation.

C. All owners of residential property located within the Borough of National Park as of January 1, 2019 ("Property Class").

Everyone who fits the following description is a Property Class Member:

"Property Class" means, for purposes of this Settlement only, all persons who owned a Property in the Borough of National Park, Gloucester County, New Jersey, during the period of January 1, 2019 to the Date of Preliminary Approval, according to the most recent version of the Gloucester County tax assessment records for the Borough of National Park, excluding any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice. The Property Class includes persons whose interest in Property in the Borough of National Park is joint, in common, by the entireties, subject to lien, and/or subject to mortgage, but all such persons with interests in a single parcel shall be deemed a single class member for purposes of distributions made under Paragraph 7(a) of the Stipulation. Without limiting the generality of the foregoing, the Property Class does not include persons whose only interest in Property in the Borough of National Park is as a mortgagee, lien holder, contract purchaser, long or short-term lessee, or beneficiary of any easement or covenant. The Property Class also does not include anyone who signed a release of claims related to the subject matter at issue in this Litigation.

Because you have received this Notice of Class Action Settlement, you may be a member of one or more of the Classes described above.

6. What should I do if I move?

If you move after receiving this notice and before the Settlement is finalized, in order to receive additional important notices regarding Settlement benefits, including your payment if you are eligible for one, you must contact the Claims Administrator at 1-###-###-#### or info@settlement.com and give your new address.

The Settlement Benefits

7. What does the Settlement provide?

Certain provisions of the proposed Settlement are described in this Notice, but the documents on file with the Court set forth the Settlement and its terms more fully. Those documents are available for you to review. The proposed Settlement is subject to Court approval.

The total value of the Settlement is $1,367,975. Attorneys' fees and litigation-related expenses (not to exceed $243,595) for Class Counsel, fees to administer the Settlement (not to exceed $100,000), and incentive payments to Class Representatives (not to exceed $8,000 for each), will be paid out of the total Settlement amount, subject to approval by the Court.

The Settlement provides for benefits to the prospective Class Members to resolve the respective Class Claims. Specifically, the Settlement provides for total Settlement Amounts of $784,380.00 for persons who are Biomonitoring Class Members (the "Biomonitoring Class Fund") and $200,000 for persons who are Property

Class Members and/or Nuisance Class Members (the "Property/Nuisance Class Fund"). The Settlement Amounts will be used to make payments to respective Class Members and pay for other Settlement benefits. All of the benefits a respective Class Member can receive are described below.

(A) Biomonitoring Class Payments:

If you are a Biomonitoring Class Member, as defined herein, you are eligible for one blood test for PFAS during a 2-month period following entry of the Order and Final Judgment approving the Stipulation (the "Testing Period"), which will be paid for by the Biomonitoring Class Fund, on a first-come, first-served basis. The blood test is intended to identify the possible presence or absence of PFAS and their relative current concentrations only. All blood draws will be performed by AcuLabs, Inc. and analyzed by NMS Labs, neither of which are agents or affiliates of Defendants. Additional detailed information about the blood tests, including when and where the test will be made available, will be provided by mail in advance of the Testing Period, as well as will be made available on the Settlement website [(INSERT SETTLEMENT WEBSITE ADDRESS)]. The cost of any potential interpretation of the blood test result by medical or health professionals is not included. Defendants shall not be liable for any actions or inactions, whether negligent, reckless or intentional, of AcuLabs, Inc. or NMS Labs, their employees, agents or affiliates. Additional information regarding the specific dates testing will be available and how to request a blood test will be provided after the Court approves the Settlement. The identities of the Biomonitoring Class Members who have their blood tested and the results of the blood test will be confidential. The blood test results will only be provided to the individual Biomonitoring Class Member who requested the test. Once the Biomonitoring Class Fund is depleted, no additional blood tests will be offered. The Biomonitoring Class Fund will be capable of funding a minimum of 2,100 blood tests. Upon expiration of the Testing Period, if any of the Biomonitoring Class Fund remains, those funds shall revert to Defendants within 45 business days after the closure of the Testing Period.

(B) Nuisance Class Payments:

If you are a member of the Nuisance Class, as defined herein, you are eligible to receive a payment. The payments to Nuisance Class Members are currently estimated to be approximately $100 to each class member. Note that payments to property-owning Nuisance Class Members shall be based on the Property and apportioned *pro rata* among owners, whether jointly, in common, by the entireties, or otherwise. All Nuisance Class Members with a leasehold interest in Property are entitled to a payment, except that multiple leaseholders of the same Property at the same time are to be collectively treated as one Nuisance Class Member for purposes of payment. The identities of lease-holding Nuisance Class Members for purposes of payment shall be determined by timely-submitted Claims Forms that list the names of each person or persons who have a leasehold interest in the Property to which Notice is sent. Also note that if you purchased or sold your Property, or if someone leased the Property before or after you did, the payment will be divided *pro rata* with the prior or subsequent owner or leaseholder of the Property based on the duration of ownership. The exact amount of the payments to Nuisance Class Members will be calculated by the Class Administrator, and will depend on the number of eligible Nuisance Class Members participating in this Settlement.

(C) Property Class Payments:

If you are a member of the Property Class, as defined herein, you are eligible to receive a payment. The payments to Property Class Members are currently estimated to be approximately $100 per Parcel. Note that if there are multiple owners of your Parcel of Property at the same time, then the payment for that Parcel will be made collectively as one payment to all property owners. Also note that if you purchased or sold your Parcel at any point during the period between January 1, 2019 and the Date of Preliminary Approval, the payment will be divided *pro rata* with the prior or subsequent owner of that Parcel based on the duration of ownership. The exact amount of the payments to Property Class Members will be calculated by the Class Administrator, and will depend on the number of eligible Property Class Members participating in this Settlement.

To participate in the blood test and possibly receive a Nuisance Class Payment or Property Class Payment, you must make sure that your information on the enclosed Claim Form is correct and complete. If not, you must submit a timely, valid Claim Form.

Release of Claims by Lead Plaintiffs and Class Members

If the Settlement is approved, Lead Plaintiffs on behalf of the themselves, their heirs, executors, administrators, successors and assigns, the Class, and all other Class Members on behalf of themselves, their executors, administrators, successors and assigns (the "Releasors"), shall be deemed to have fully, finally and forever released, relinquished and discharged any and all claims, debts, demands, costs, expenses, rights, subrogated rights, remedies, or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees and disbursements, expert or consulting fees and disbursements, and any other costs (including costs for bottled water or alternative water sources), expenses, or liability whatsoever), whether based on or arising from federal, state, local, statutory, contract, or common law, including, but not limited to, claims under the New Jersey Spill Act ("NJSA"), the New Jersey Industrial Site Recovery Act ("NJISRA"), the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), or any other federal, state, or local law, rule, or regulation, whether now or in the future, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (as defined below) (i) that have been asserted in this Litigation by the Lead Plaintiffs, the Classes, Class Members, or any of them against the Released Parties (as defined below); or (ii) that can be or could have been asserted in this or any other forum by the Lead Plaintiffs, the Classes, Class Members, or any of them against any of the Released Parties, which arise out of or are based upon the actual or alleged presence of PFAS (as defined below), or any other chemical, in the water supplied to or used by residents of the Borough, provided that Settled Claims do not include Personal Injury Claims (as defined below).

Limitation on Future Personal Injury Claims

Neither Lead Plaintiffs nor Class Members shall bring any Personal Injury Claims against any Released Parties unless the Lead Plaintiff or Class Member who seeks to bring such a claim (a "Personal Injury Claimant") satisfies all of the following:

a. The Personal Injury Claimant obtains an affidavit from a physician licensed to practice medicine in the United States ("Physician") averring that, to a reasonable degree of medical certainty (or other prevailing standard in New Jersey State Court for the admission of medical expert testimony at the time such affidavit is obtained), the Personal Injury Claimant has suffered a specific, identifiable physical injury due to exposure to a particular PFAS; and

b. The Personal Injury Claimant obtains an affidavit from a Toxicologist who is a Diplomate of the American Board of Toxicology, a Diplomate of the American Board of Applied Toxicology, or a Fellow of the American Board of Forensic Toxicology averring that, to a reasonable degree of scientific certainty, the injury identified by the aforesaid Physician is one that can be caused by the particular PFAS at a specific dose (the amount of chemical to which the Personal Injury Claimant has been exposed); and

c. The Personal Injury Claimant obtains an affidavit from a Licensed Site Remediation Professional duly licensed as such in the State of New Jersey or someone with at least a master's degree in geology or hydrogeology from an accredited U.S. or Canadian college or university, averring that, to a reasonable degree of scientific certainty, the Plant was a substantial cause of the contamination by the particular PFAS that the Toxicologist deemed sufficient to cause the specific, identifiable physical injury claimed and that the Personal Injury Claimant was exposed to such PFAS by an identifiable exposure pathway from the Plant at the specific dose averred by the Toxicologist pursuant to subparagraph b hereof.

Release of Unknown Claims

"Unknown Claims" means any and all Settled Claims which either or both Lead Plaintiffs or any Class Member does not know or suspect to exist in his or her favor at the time of the release of the Released Parties, which if known by her, him or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Settled Claims, the Parties stipulate and agree that, upon the Effective Date, Lead Plaintiffs and Defendants shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Final Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or of any principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiffs and Defendants acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims was separately bargained for and was a key element of this Settlement.

If the Court approves the Settlement, then the Action will be dismissed with prejudice and without costs other than as provided in the Stipulation.

The foregoing is only a summary of the terms of the Settlement. If you are interested in additional information, copies of the Stipulation and any other submissions in the Action are on file with the Clerk of the Court, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101.

8. What do I have to do to receive class benefits?

If you want to participate in the Settlement and the information on the enclosed Claim Form is accurate and complete, you do not need to do anything. However, if any of the information is inaccurate or incomplete you must submit a Claim Form with the correct information to the Class Administrator. The Claim Form is also available on the Settlement website [(INSERT SETTLEMENT WEBSITE ADDRESS)].

If you are required to submit a Claim Form to correct inaccurate or missing information, it must be postmarked or electronically submitted no later than [_____.]

The Lawyers Representing You

9. Do I have a lawyer in this case?

The Court approved the law firms of Williams Cedar, LLC and Barry, Corrado & Grassi, P.C. to represent you and other Class Members. Together, the lawyers are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How will the lawyers be paid?

As part of the final approval of this Settlement, Class Counsel will ask the Court to approve payment of their reasonable Attorneys' Fees and Expenses related to their work in this case, in the approximate amount of $243,595.00.

Class Counsel will make their request for Attorneys' Fees and Expenses through a motion that will be filed with the Court prior to the date of the Settlement Hearing and prior to the deadline for Class Members to file their Objections.

The Court will determine whether the payments and the specific amounts requested at the time are appropriate. These amounts will come out of the Settlement Amount. Defendants have agreed that they will not oppose Class Counsel's request for fees and expenses as long as it does not exceed $243,595.00.

Opting Out of the Settlement

11. Do I have to participate in the settlement?

No. If you do not want to participate in and be bound by the terms of the Class Settlement Agreement, you may elect to exclude yourself or "opt out" of the Settlement. If you choose to opt out of the Settlement, you will be giving up any right to claim any of the benefits being provided to Class Members under the Settlement. To opt out of the Settlement, you must send a signed request for exclusion by mail stating: (a) your name and address, and (b) a statement that you wish to be excluded from the Class. Your request must be mailed to the following:

Settlement Administrator
PO Box 2790
Baton Route, LA 70821
Settlement Administrator

Shauna L. Friedman, Esq.
Barry, Corrado & Grassi, PC
2700 Pacific Avenue
Wildwood, NJ 08260
sfriedman@capelegal.com
One of Plaintiffs' Counsel

Crystal Lohmann Parker, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Counsel for Solvay

John D. North, Esq.
Greenbaum, Rowe, Smith, & Davis LLP
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, NJ 07095
Counsel for Arkema

Your request for exclusion must be postmarked no later than [_____].

Objecting to the Settlement

12. How do I tell the Court if I don't like the settlement?

If you don't agree with the Settlement or some part of it, you do not have to opt out. You can simply tell the Court that you do not agree with some or all of the proposed Settlement.

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the *Severa et al. v. Solvay Specialty Polymers, USA, LLC, et al.* Settlement and you must specifically state your objections. Be sure to include your name, address, telephone number, and your signature; indicate whether you are a current or former employee, agent, or contractor of Solvay, Arkema, or Class Counsel; and provide a detailed statement of the reason why you object to the Settlement. Mail the objection to each of the four places listed below, postmarked no later than [_____]:

William T. Walsh, Clerk of Court
United States District Court for the
District of New Jersey at Camden
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets, Room 1050
Camden, NJ 08101

Shauna L. Friedman, Esq.
Barry, Corrado & Grassi, PC
2700 Pacific Avenue
Wildwood, NJ 08260
sfriedman@capelegal.com
One of Plaintiffs' Counsel

Crystal Lohmann Parker, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Counsel for Solvay

John D. North, Esq.
Greenbaum, Rowe, Smith, & Davis LLP
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, NJ 07095
Counsel for Arkema

The Court's Settlement Hearing

13. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing (the "Settlement Hearing") at [____ a.m. on ____], , at the United States District Court for the District of New Jersey at Camden, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101 in Courtroom 3A. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate to the members of the Respective Classes. If there are objections, the Court will consider them. The Court may also address Class Counsel's and Plaintiffs' and Class Representatives' Motion for Attorneys' Fees and Expenses, and, if granted, in what amounts. After the hearing, the Court will decide whether to approve the Settlement and enter the Judgment in the form attached to the Stipulation. We do not know how long these decisions will take.

14. Do I have to come to the hearing?

You do not have to come to the Settlement Hearing. Class Counsel will answer questions Judge Hillman may have, but you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may retain and pay for your own lawyer to attend.

15. May I speak at the hearing?

You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Severa, et al. v. Solvay Specialty Polymers, USA, LLC, et al.*, 1:20-cv-06906-NLH-AMD." Be sure to include your name, address, telephone number, and your signature. Your "Notice of Intention to Appear" must be postmarked no later than [_____], and must be sent to the four addresses listed above in the "Objecting to the Settlement" section of this Notice, which includes direct notice to William T. Walsh, Clerk of Court, United States District Court for the District of New Jersey at Camden, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Room 1050, Camden, NJ 08101.

If You Do Nothing

16. What happens if I do nothing at all?

If you do not opt out and the Court approves the terms of the Settlement:

1. **IF AFTER READING THE CLAIM FORM YOU DO NOT NEED TO COMPLETE SECTION ONE AND SECTION TWO, THEN YOU DO NOT NEED TO RETURN A CLAIM FORM TO RECEIVE ANY SETTLEMENT BENEFITS TO WHICH YOU ARE ENTITLED.**

2. **IF THE INFORMATION ON THE ENCLOSED CLAIM FORM IS INCORRECT OR INCOMPLETE, YOU MUST RETURN THE CLAIM FORM FULLY-ANSWERED TO ENSURE RECEIPT OF SETTLEMENT BENEFITS.**

In either event, you will forever be barred from bringing Settled Claims (as described in this Notice) because those claims are resolved under this Class Settlement and your ability to bring Personal Injury Claims will be subject to certain conditions described herein.

Conditions for Settlement

The settlement is conditioned upon the occurrence of certain events described in the Stipulation. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Stipulation; and (2) expiration of the time to appeal from the Judgment or to move to alter or amend the Judgment, or the determination of any such appeal of motion in a manner to permit the consummation of the settlement substantially as provided for in the Stipulation. Regardless of whether the Court approves the Settlement, both Defendants' Counsel and Class Counsel have the right to terminate the settlement for several reasons, including, but not limited to, if the percentage of either the Biomonitoring Class Members, Nuisance Class Members, or Property Class Members who submit timely claims to opt out of their respective classes exceeds 5%. If, for any reason, any one of the conditions described in the Stipulation is not met, the Stipulation might be terminated and, if terminated, will become null and void, and the parties to the Stipulation will be restored to their respective positions as of May 8, 2023. In that event, the Settlement will not proceed and no payments or benefits will be made to Class Members.

Definitions Used In This Notice

As used in this Notice, the following terms shall have the following meanings:

A. "Biomonitoring Class" means, for purposes of this Settlement only, all persons who resided in the Borough of National Park, Gloucester County, New Jersey for any period of time from January 1, 2019 to the Date of Preliminary Approval, excluding any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice, and anyone who signed a release of claims related to the subject matter at issue in this Litigation.

B. "Biomonitoring Class Member" means a person who fits within the scope of the Biomonitoring Class.

C. "Biomonitoring Class Fund" means the fund created by Defendants to pay for PFAS blood testing for members of the Biomonitoring Class, including the administration and oversight thereof and all lab and other diagnostic costs, and the costs of providing blood test results to individual members of the Biomonitoring Class. In addition, to the extent the Court decides to appoint a guardian ad litem to represent

the interests of members of the Biomonitoring Class who are of the minority (under 18 years old), the Biomonitoring Class Fund will also pay the guardian ad litem's costs and fees.

D. "Class Administrator" means Postlethwaite & Netterville, APAC.

E. "Classes" means, for purpose of this Settlement only, the Biomonitoring Class, Nuisance Class, and Property Class, individually and collectively.

F. "Class Counsel" means Gerald J. Williams, Esquire, and Alan Sklarsky, Esquire, of the law firm of Williams Cedar, LLC, and Oliver T. Barry, Esquire, and Shauna L. Friedman, Esquire of the law firm of Barry Corrado & Grassi PC, individually and collectively.

G. "Class Member" means a member of the Biomonitoring Class, Nuisance Class, and/or Property Class, individually and collectively.

H. "Effective Date" means the date upon which the Settlement shall become effective, as set forth in Paragraph 22 of the Stipulation.

I. "Litigation" means the lawsuit captioned *Severa, et al. v. Solvay Specialty Polymers USA, LLC, et al.*, No. 20-cv-06906 (D.N.J.).

J. "Nuisance Class" means, for purposes of this Settlement only, all persons who, during the period of January 1, 2019 to the Date of Preliminary Approval, are or were owners or lessees of a Parcel of Property within the Borough of National Park, Gloucester County, New Jersey, according to the most recent version of the Gloucester County tax assessment records for the Borough of National Park, excluding any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice. The Nuisance Class includes persons whose interest in Property in the Borough of National Park is by lease or, for owners of Property, whose interest in the Property is joint, in common, by the entireties, subject to lien, and/or subject to mortgage. All such persons with ownership interests in a single parcel shall be deemed a single class member for purposes of distributions made under Paragraph 7(b) of the Stipulation. Similarly, all such persons whose interests in a single parcel are by lease shall be deemed a single class member for purposes of distributions made under Paragraph 7(b) of the Stipulation. The Nuisance Class does not include persons whose only interest in Property in the Borough of National Park is as a mortgagee, lien holder, contract purchaser, or beneficiary of any easement or

covenant. The Nuisance Class also does not include anyone who signed a release of claims related to the subject matter at issue in this Litigation.

K. "Nuisance Class Member" means a person who fits within the scope of the Nuisance Class.

L. "Order and Final Judgment" means the final order entered by the Court approving this Settlement on terms substantially identical to the terms of this Settlement Agreement and dismissing the FAC with prejudice.

M. "Order Granting Preliminary Approval of Class Action Settlement and conditional Class Certification and for Notice and Hearing" means the proposed order preliminarily approving this Settlement and directing notice thereof to the Classes substantially in the form attached as **Exhibit D** to the Stipulation.

N. "Parcel" means, for purposes of this Settlement only, a tax lot shown as such on the most recent version of the Official Tax Map of the Borough of National.

O. "Party" or "Parties" means Lead Plaintiffs, on their own behalf and on behalf of the Classes, and Defendants, where appropriate to the text.

P. "Person" means a natural person.

Q. "Personal Injury Claims" means any and all claims, debts, demands, rights, or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees and disbursements, expert or consulting fees and disbursements, and any other costs, expenses, or liability whatsoever), whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, that any Lead Plaintiffs or Class Members have, now or in the future, against Defendants relating to allegations of personal injury, including, but not limited to, bodily injury, death, emotional distress, mental anguish, anxiety, psychological injury, and psychiatric injury, caused by exposure to PFAS, or any other chemical, resulting, directly or indirectly, from the ownership or operation of the Plant and/or the responsibility or liability (alleged or otherwise) of Defendants. Notwithstanding the foregoing, Personal Injury Claims do not include claims for biomonitoring or medical monitoring, which have been released as Settled Claims.

R. "PFAS" means per- and poly-fluoroalkyl substances (inclusive of any of their precursors and degradants), including without limitation perfluorooctanoic acid (PFOA), perfluorononanoic acid (PFNA), perfluorooctane sulfonic acid (PFOS), ammonium perfluorooctanoate (APFO), and any compound that contains, breaks down into, or may cause the formation in the environment of PFAS, in all forms, including, but not limited to, PFOA, PFNA, PFOS, or APFO. It is the intention of this Agreement that the definition of "PFAS" be as broad, expansive, and inclusive as possible.

S. "Property" means realty used exclusively for residential purpose owned or occupied by at least one Class Member within the Borough of National Park, Gloucester County, New Jersey, classified as Property Tax Class 2, 3A, or 4C within the most recent version of the Gloucester County tax assessment records for the Borough of National Park. For the avoidance of doubt, "Property" does not include commercial property or mixed commercial/residential property unless the mixed commercial/residential property is owned or occupied by at least one Class Member.

T. "Property Class" means, for purposes of this Settlement only, all persons who owned a Property in the Borough of National Park, Gloucester County, New Jersey, during the period of January 1, 2019 to the Date of Preliminary Approval, according to the most recent version of the Gloucester County tax assessment records for the Borough of National Park, excluding any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice. The Property Class includes persons whose interest in Property in the Borough of National Park is joint,

in common, by the entireties, subject to lien, and/or subject to mortgage, but all such persons with interests in a single parcel shall be deemed a single class member for purposes of distributions made under Paragraph 7(a) of the Stipulation. Without limiting the generality of the foregoing, the Property Class does not include persons whose only interest in Property in the Borough of National Park is as a mortgagee, lien holder, contract purchaser, long or short-term lessee, or beneficiary of any easement or covenant. The Property Class also does not include anyone who signed a release of claims related to the subject matter at issue in this Litigation.

U. "Property Class Member" means a person who fits within the scope of the Property Class.

V. "Released Parties" means Defendants Arkema, Solvay, their past or present subsidiaries, parents, successors, affiliates, and predecessors, their distributors, wholesalers, suppliers, resellers, and retailers, their past or present officers, directors, members, agents, employees, attorneys, advisors, investment advisors, auditors, accountants and insurance carriers or any of them, any person, firm, trust, corporation, officer, director, owner, indemnitor, or other individual or entity in which Defendants have a controlling interest or which is related to or affiliated with Defendants; and the legal representatives, successors in interest or assigns of Defendants. For the avoidance of doubt, the Parties expressly acknowledge that Solvay's corporate family including the Solvay Group is undergoing broad corporate changes and is entering into a series of transactions pursuant to which its entities or assets may be assigned, allocated, or otherwise transferred in separation, split-up, de-merger or similar transactions that yield two separate corporate groups, all of which, including but not limited to Syensqo Group, will be considered Released Parties.

W. "Settled Claims" means any and all claims, debts, demands, costs, expenses, rights, subrogated rights, remedies, or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees and disbursements, expert or consulting fees and disbursements, and any other costs (including costs for bottled water or alternative water sources), expenses, or liability whatsoever), whether based on or arising from federal, state, local, statutory, contract, or common law, including, but not limited to, claims under the New Jersey Spill Act ("NJSA"), the New Jersey Industrial Site Recovery Act ("NJISRA"), the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), or any other federal, state, or local law, rule, or regulation, whether now or in the future, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (i) that have been asserted in this Litigation by the Lead Plaintiffs, the Classes, Class Members, or any of them against the Released Parties; or (ii) that can be or could have been asserted in this or any other forum by the Lead Plaintiffs, the Classes, Class Members, or any of them against any of the Released Parties, which arise out of or are based upon the actual or alleged presence of PFAS, or any other chemical, in the water supplied to or used by residents of the Borough, provided that Settled Claims do not include Personal Injury Claims defined herein.

X. "Settlement" means the settlement contemplated by this Stipulation.

Y. "Unknown Claims" means any and all Settled Claims which either or both Lead Plaintiffs or any Class Member does not know or suspect to exist in his or her favor at the time of the release of the Released Parties, which if known by her, him or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Settled Claims, the Parties stipulate and agree that, upon the Effective Date, Lead Plaintiffs and Defendants shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Final Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or of any

principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Dismissals and Releases

If the proposed settlement is approved, the Court will enter a Final Judgment and Order of Dismissal with Prejudice (the "Judgment"). In addition, upon the Effective Date, the Lead Plaintiff, Class Representatives and each of the Class Members, for themselves and for any other Person claiming (now or in the future) through or on behalf of them, and regardless of whether any such plaintiff or Class Member ever seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim, any distribution from a Settlement Fund, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Settled Claims against the Released Parties, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Settled Claim against the Released Parties except to enforce the releases and other terms and conditions contained the Stipulation or the Judgment entered pursuant thereto.

Getting More Information

17. How do I get more information?

DO NOT CALL the Court, Solvay, or Arkema with questions about this Settlement. If you have questions about this Settlement you may visit the settlement website at [INSERT SETTLEMENT WEBSITE ADDRESS] or you may contact the Class Administrator by phone at 1-###-###-#### or by email at [INSERT SETTLEMENT EMAIL ADDRESS].

The court record for this case includes all documents that have been filed to date. This information is publicly available to you. You may review the court file in person during normal business hours at the Camden federal courthouse located at:

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets, Room 1050
Camden, NJ 08101

DATE:_____

BOROUGH OF NATIONAL PARK WATER SETTLEMENT
CLASS MEMBER CLAIM FORM

Which Class or Classes could I be eligible for?

Biomonitoring Class Member	You are a Biomonitoring Class Member if you physically dwelled in the Borough of National Park, Gloucester County, New Jersey at any time from January 1, 2019 to [the date of preliminary approval].	If you are a Biomonitoring Class Member, you are eligible for one blood test for PFAS during a 2-month period following entry of the Order and Final Judgment approving the Class Action Settlement (the "Testing Period"), which will be paid for by the Biomonitoring Class Fund, on a first-come, first-served basis.
Property Class Member	You are a Property Class Member if you owned a residential property in the Borough of National Park, Gloucester, County, New Jersey, during the period of January 1, 2019 to [the date of preliminary approval], according to the most recent version of the Gloucester County tax assessment records.	If you are a Property Class Member, you are eligible for a monetary payment from an aggregate sum divided by the total number of properties within the Borough of National Park that are owned by Property Class Members. and multiplied, where applicable, for Property Class Members who own more than one property within the Borough of National Park. It is currently estimated that the foregoing computation will result in a payment of approximately $100 for each property.
Nuisance Class Member	You are a Nuisance Class Member if you owned or had a leasehold interest in a residential property in the Borough of National Park, Gloucester County, New Jersey, during the period of January 1, 2019 to [the date of preliminary approval], according to the most recent version of the Gloucester County tax assessment records.	If you are a Nuisance Class Member, you are eligible for a monetary payment from an aggregate sum divided by the sum of the total number of Parcels of Property and total number of leaseholders in National Park as determined by timely-submitted Claims Forms. It is currently estimated that Nuisance Class Members will receive a payment of approximately $100.

PLEASE REVIEW BOTH SIDES OF THIS CLAIM FORM AND, IF NECESSARY, RETURN THE COMPLETED FORM TO THE ADDRESS LISTED FURTHER BELOW. YOUR CLAIM FORM **MUST BE POSTMARKED ON OR BEFORE [DATE]**.

SECTION ONE

[Resident]
[Address Line 1]
[City][State][Zip code]

PLEASE READ – *You do not need to complete Section One if: (a) you have been the sole owner of the property identified above since January 1, 2019; and (b) you have occupied that property at any time between January 1, 2019 and the [date of preliminary approval]. Please continue to Section Two.*

1. Were you a resident of National Park at any time between January 1, 2019 and the [date of preliminary approval]? Yes: ____ No: ____

2. Do you currently own the property identified above? Yes: ____ No: ____

3. *If you answered "No" to #2*, please identify the current owner of the property, if known: _____

4. *If you answered "Yes" to #2*, do you share an ownership interest in this property with anyone else? Yes: ____ No: ____

5. *If you answered "Yes" to #4*, please identify the individual(s) with whom you share an ownership interest in this property:

_____ _____
Name Name

ATTACH ADDITIONAL PAGES IF NECESSARY

List any additional individuals who have previously owned this property between January 1, 2019 and [the date of preliminary approval], and identify the duration of their ownership, if known:

_____ _____
Name Duration of ownership

_____ _____
Name Duration of ownership

ATTACH ADDITIONAL PAGES IF NECESSARY.

SECTION TWO

PLEASE READ - *If you answer "No" to #1 below, you do not need to complete Section Two.*

1. Do you currently lease any residential property that you own in the Borough of National Park, including your current residence, to someone who pays you rent? Yes: ____ No: ____

2. *If you answered "Yes" to #1*, what is the address of that property? _____

Please identify the individual(s) to whom you currently lease your property or have leased your property between January 1, 2019 and [the date of preliminary approval], and identify the duration of the lease:

_____ _____
Name Duration of lease

_____ _____
Name Duration of lease

ATTACH ADDITIONAL PAGES IF NECESSARY.

!! YOU DO NOT NEED TO RETURN THIS CLAIM FORM IF:

(1) You did not need to complete Section One; *and*
(2) You did not need to complete Section Two.

CLAIMANT INFORMATION

I. Name and Address Information - Please provide your name and current home address below.

Claimant Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

II. Phone and Email Contact Information – Please provide your phone numbers and email address below

Preferred Phone Number: _____ Alternate Phone Number: _____

Email Address: _____

CERTIFICATION AND CLAIMANT SIGNATURE

By executing this Claim Form I certify, under penalty of law, that the information provided in this Claim Form is true and correct.

_____ _____ _____
Claimant Name (Print) *Claimant Signature* *Date*

Please return your completed Claim Form
Postmarked on or before [Deadline]

[INSERT ADMINSTRATOR ADDRESS]

Exhibit B

LEGAL NOTICE

If you were a resident of the Borough of National Park, New Jersey, owned residential property there, or rented residential property there, you may be eligible for a payment and/or blood test for PFAS

Several individuals ("Plaintiffs") have filed a lawsuit (the "Suit") alleging that Solvay Specialty Polymers USA, LLC and Arkema Inc. ("Defendants") owned and operated a manufacturing plant which discharged per- and poly-fluoroalkyl substances ("PFAS"), including but not limited to perfluorononanoic acid ("PFNA") and perfluorooctanoic acid ("PFOA"), which allegedly entered the municipal water supply of the Borough of National Park, Gloucester County, New Jersey ("Borough of National Park"). PFAS so discharged, the suit alleges, could be harmful to human health. Defendants deny these allegations and assert that there are no scientific studies concluding that PFAS from the manufacturing plant entered the municipal water supply.

The Plaintiffs brought these claims as a class action on behalf of all persons who physically dwelled in the Borough of National Park, from January 1, 2019 to the date upon which this Settlement receives preliminary approval ("Biomonitoring Class"), all persons who between January 1, 2019 and the date upon which this Settlement receives preliminary approval, owned or rented residential real property within the Borough of National Park ("Nuisance Class"), as well as all persons who owned residential real property ("Property") in the Borough of National Park during the period of January 1, 2019 to the date upon which this Settlement receives preliminary approval ("Property Class"). Property ownership will be determined according to the most recent version of the Gloucester County tax assessment records for the Borough of National Park. Plaintiffs and Defendants have recently entered into a settlement agreement ("Settlement Agreement") embodying the proposed settlement of the Suit (the "Settlement") to avoid burdensome and costly litigation. The settlement is not an admission of liability or wrongdoing.

Am I affected by the Settlement? Your rights are affected by the Settlement, and you are entitled to obtain the benefits of the Settlement Agreement if you meet the definitions of the Biomonitoring Class, Nuisance Class, and/or Property Class. You are considered a member of one or more of the respective Classes unless you fit certain exclusions in the detailed Class definitions or you file a timely request for exclusion as described below.

What Can I Get From the Settlement? Biomonitoring Class Members may be eligible, on a first-come, first-served basis, to receive one blood test conducted by an independent lab intended to identify the possible presence or absence of PFAS and their relative current concentrations in their blood. Nuisance Class Members may be eligible to receive a payment of approximately $100. Property Class Members may be eligible to receive a payment of approximately $100. A detailed Class Notice Describing these benefits is available at [INSERT SETTLEMENT WEBISTE] or by calling [1-8xx-xxx-xxxx.]

What are My Options? If after reading the Claim Form you do not need to complete Section One and Section Two, then you do not need to do anything in order to receive settlement benefits for which you are eligible. If the Claim Form is incorrect or incomplete, you must return the Claim Form with correct information postmarked no later than [DATE]. If you do not wish to participate in the settlement, you may exclude yourself by [DATE] by submitting a written request to do so. If you exclude yourself, you will not receive any benefits from this settlement. If you're a Class Member, you may object to any part of the settlement you don't like, and the Court will consider your views. Your written objection must be postmarked by [DATE] and must provide the reasons why you object. Additional information about all of your options is set out in the detailed notice available at [INSERT SETTLEMENT WEBSITE] or by calling [1-8xx-xxx-xxxx].

The Court will hold a Settlement Hearing at [TIME] a.m./p.m. on [DATE] in Camden, New Jersey. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and consider any objections. The Court may also address Class Counsel's Motion for Attorneys' Fees and Expenses in the approximate amount of $243,595. You may attend the hearing and/or hire your own lawyer at your own expense, but you are not required to do either. The Court will consider timely written objections and will listen to people who have made a prior written request to speak at the hearing postmarked by [DATE]. After the hearing, the Court will decide whether to approve the settlement.

What If I Have Questions? This Notice is just a summary. A detailed Class Notice, as well as the Class Settlement Agreement and other documents filed in

this lawsuit can be found online at [INSERT SETTLEMENT WEBSITE].

For more information, you may call, write, or email the Settlement Administrator at:

[1-8xx-xxx-xxxx], or

[INSERT SETTLEMENT ADMIN ADDRESS/EMAIL]

DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE

QUESTIONS? VISIT [INSERT SETTLEMENT WEBSITE] OR CALL [1-8XX-XXX-XXXX]

Exhibit C

Joint Press Release

The parties in *Severa, et al. v. Solvay Specialty Polymers USA, LLC, et al.,* announce that the United States District Court for the District of New Jersey has preliminarily approved a class action settlement. The hearing on final approval of the settlement is scheduled for [date], at [_____a.m.] at the United States District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse 4th & Cooper Streets, Camden, NJ 08101.

The lawsuit was brought on behalf of residents of the Borough of National Park, NJ and alleges that Solvay Specialty Polymers USA, LLC, successor by merger to Solvay Solexis, Inc. (Solvay), and Arkema Inc. (Arkema) each separately owned and operated a manufacturing plant at 10 Leonard Lane, West Deptford, New Jersey and caused the discharge of per- and poly-fluoroalkyl substances, which allegedly entered the municipal water supply of the Borough of National Park. Solvay and Arkema deny these allegations, but have agreed to resolve the class action to avoid the burden and expense of continued litigation. The Court has not ruled on the merits of the claims.

The settlement sets aside money for all persons who resided in the Borough of National Park from January 1, 2019 to the date of preliminary approval of the Settlement to have their blood analyzed for the presence of PFAS. The settlement also provides monetary payouts to all persons who have owned or rented residential property within the Borough of National Park during the period of January 1, 2019 to the date of preliminary approval of the Settlement.

Additional information, including the deadline for submitting any objections to the settlement, is available at [website address].

The proposed settlement will be reviewed by Judge Noel L. Hillman of the United States District Court for the District of New Jersey, where the consolidated class action lawsuit is pending. Further information concerning the details of the settlement is available from the Court's docket, Case No.1:20-cv-06906-NLH-AMD.

Exhibit D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SEVERA, et al.,	:	
	:	
Plaintiffs,	:	Case No.: 1:20-cv-6906
	:	
v.	:	Civil Action
SOLVAY, et al.,	:	
	:	
Defendants	:	

[Proposed] Order Granting Motion for Preliminary Approval of Class Action Settlement

THIS MATTER having been opened to the Court on the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and Plaintiffs, acting through Class Counsel, as defined below, and Defendants Solvay Specialty Polymers USA, LLC and Solvay Solexis, Inc. (together "Solvay") and Arkema Inc. ("Arkema") (Solvay and Arkema together herein referred to as "Defendants") (collectively, the "Parties") have entered into a Stipulation and Agreement of Settlement dated January 29, 2024 (the "Settlement Agreement"), to settle the above-captioned lawsuit (the "Action"), conditioned on the Court's final approval of the settlement. The Settlement Agreement sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the Action.

Plaintiffs have moved under Federal Rules of Civil Procedure 23(b) and (e) for an order: (1) preliminarily approving a class settlement on the terms and conditions set forth in the Settlement Agreement; (2) provisionally certifying three settlement classes ("Settlement Classes") for the purpose of settlement; (3) approving the form, content and manner of issuing notice of the proposed settlement to the Class Members; (4) appointing Class Counsel; (5) setting deadlines for exclusion from the Settlement Classes and for making any objection to the proposed settlement; and (6) scheduling a hearing at which time the Court will be asked to

finally approve the settlement and to approve Class Counsel's request for attorney's fees; and the Court having carefully considered the Motion for Preliminary Approval and supporting Memorandum of Law, the Settlement Agreement (including all exhibits), and the record in this case, and good cause appearing, IT IS, on this _____day of _____, 2024, the Court finds and declares that this Court has jurisdiction over this action and each of the Parties under 28 U.S.C. § 1332, as amended by the Class Action Fairness Act, and that venue is proper in this district; that the Settlement Agreement is sufficiently fair, reasonable, and adequate to allow dissemination of notice of the proposed class settlement to Class Members and to hold a fairness hearing; and that the Settlement Agreement was entered into after negotiations at arm's length among experienced counsel.

IT IS THEREFORE HEREBY ORDERED AS FOLLOWS:

1. For settlement purposes only, this action may be maintained provisionally as a class action under Federal Rule of Civil Procedure 23 on behalf of the Biomonitoring Class, Nuisance Class, and the Property Class (collectively, the "Settlement Classes"), defined as follows:

- Biomonitoring Class:
  All individuals who resided in National Park, New Jersey for any period of time from January 1, 2019 through the date upon which this Settlement receives preliminary approval ("Date of Preliminary Approval").

- Nuisance Class:
  All individuals who, during the period of January 1, 2019 through the Date of Preliminary Approval, are or were owners or lessees of real property located in National Park, New Jersey.

- Property Class:
  All individuals, who, during the period of January 1, 2019 through the Date of Preliminary Approval, are or were owners of real property located in National Park, New Jersey.

2. If the Settlement Agreement is not finally approved by the Court or for any reason

does not become effective, the Settlement Classes shall not be certified, all Parties' rights to litigate all class issues will be restored to the same extent as if the Settlement Agreement had never been entered into, and no Party shall assert that another Party is estopped from taking any position relating to class certification.

3. The Court preliminarily appoints Plaintiffs Kenneth Severa, Carol Binck, Denise Snyder, Jennifer Stanton, and William Teti as representatives for the Settlement Classes.

4. The Court preliminarily finds that Shauna L. Friedman, Esq, Alan H. Sklarsky, Esq., Oliver T. Barry, Esq. and Gerald J. Williams, Esq., fairly and adequately represent the interests of Plaintiffs and the Class and hereby appoints them as Class Counsel to represent the Class pursuant to F.R.C.P. 23(g).

5. The terms of the parties' Settlement Agreement are hereby provisionally approved pending a Fairness Hearing, as defined below.

6. The Court directs that Notice be sent to Class Members in accordance with the Settlement Agreement and this Order within 30 days.

7. A hearing (the "Fairness Hearing") shall be held on _____ day of_____, 2024 at _____.m. before the undersigned in Courtroom No. _____, at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101.

8. The date of the Fairness Hearing will be included in the Notice of Proposed Class Action Settlement. The purpose of the Fairness Hearing will be to:

A. Determine whether the proposed Settlement Agreement is fair, reasonable, and adequate, and should be finally approved;

B. Determine whether an order and judgment should be entered dismissing with prejudice the Action, and permanently barring Class Members from bringing any lawsuit or other action based on the Released Claims; and

C. Consider other Settlement-related matters and appropriate attorneys' fees.

9. The Court may adjourn, continue, and reconvene the Fairness Hearing pursuant to oral announcement without further notice to eligible members of the Settlement Classes, and the Court may consider and grant final approval of the Settlement Agreement, with or without minor modification, and without further notice to eligible members of the Settlement Classes.

10. The Court appoints Postlethwaite & Netterville, APAC to serve as Claims Administrator to implement, perform, and oversee notice of the Settlement Agreement to Class Members; to process and pay Settlement Benefits to Class Members; and to otherwise carry out the settlement administration responsibilities under the Settlement Agreement.

11. The Court has reviewed the Notice of Proposed Settlement of Class Action and Final Settlement Hearing (the "Notice"), as well as the Claim Form, which are attached to the Settlement Agreement as Exhibit A, the publication for the South Jersey Times for Gloucester County attached to the Settlement Agreement as Exhibit B, and the Joint Press Release attached to the Settlement Agreement as Exhibit C. The Court approves as to form the Notice and Claim Form, the publication, and the Joint Press Release. The Court also approves the method of directing notice to eligible members of the Settlement Classes, as set forth in paragraph 12 below.

12. Within 30 days of this Order, the Claims Administrator shall prepare and cause individual copies of the Notice to be sent by United States First Class Mail to eligible members of the Settlement Classes whose mailing addresses can be determined through reasonable effort. The Claims Administrator also shall mail copies of the Notice to any other potential members of the Settlement Classes that request copies or that otherwise come to its attention. The Claims Administrator shall also make the Notice available on the website

dedicated to this Settlement.

13. The Court finds that the foregoing plan for notice to eligible members of the Settlement Classes will provide the best notice practicable under the circumstances, and complies with the requirements of Rule 23 and applicable standards of due process.

14. Prior to the Fairness Hearing, counsel for Defendants and Class Counsel shall jointly file with the Court an affidavit from a representative of the Claims Administrator confirming that the plan for disseminating the Notice and the Publication Notice has been accomplished in accordance with the provisions of paragraph 12 above.

15. Members of the Settlement Classes who wish to opt-out from the Class must request exclusion no later than thirty (30) days before the date of the Fairness Hearing, and in accordance with the instructions set forth in the Notice. Settlement Class Members who do not submit timely and valid requests for exclusion pursuant to such instructions will be bound by the terms of the Settlement Agreement in the event it is approved by the Court and becomes effective, and by any orders and judgments subsequently entered in the Action, whether favorable or unfavorable, regardless of whether they submit a Claim Form to the Claims Administrator. Members of the Settlement Classes who submit timely and valid requests for exclusion will not be bound by the terms of the Settlement Agreement or by any orders or judgments subsequently entered in the Action, and they may not submit a Claim Form to the Claims Administrator.

16. Members of the Settlement Classes who do not request exclusion may submit written comments or objections to the Settlement Agreement or other Settlement-related matters (including attorneys' fees) no later than thirty (30) days before the date of the Fairness Hearing.

17. Any Member of the Settlement Classes who has not requested exclusion may also attend the Fairness Hearing, in person or through counsel, and if the Member of the Settlement Classes has submitted written objections, may pursue those objections.

18. No Member of the Settlement Classes, however, shall be entitled to contest the foregoing matter in writing and/or at the Fairness Hearing unless the Member of the Settlement Classes has specifically complied with the objection requirements indicated in the Notice. Unless otherwise directed by the Court, any Class Member who does not submit a statement of objection in the manner specified above will be deemed to have waived any such objection.

19. Any attorneys hired or retained by Settlement Class Members at Settlement Class Members' expense for the purpose of objecting to the Settlement are required to serve a notice of appearance on Class Counsel and Defense Counsel and file such notice with the Clerk of the Court, not later than twenty-one (21) days prior to the Fairness Hearing.

20. Any Settlement Class Member who serves and files a written objection and who intends to make an appearance at the Fairness Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, in order to object to the fairness, reasonableness or adequacy of the Proposed Settlement, is required to serve a notice of intention to appear on Class Counsel and Defense Counsel and file such notice with the Court, not later than twenty-one (21) days prior to the Fairness Hearing.

21. Respective Defendants' Counsel and Class Counsel are directed to furnish promptly to each other and any counsel who filed a notice of appearance with copies of any and all objections or written requests for exclusion that might come into their possession.

22. During the Court's consideration of the Settlement Agreement and pending

further order of the Court, all proceedings in this Action, other than proceedings necessary to carry out the terms and provisions of the Settlement Agreement, or as otherwise directed by the Court, are hereby stayed.

23. If the proposed Settlement Agreement is not approved by the Court or for any reason does not become effective, the Settlement Agreement will be nullified, the Settlement Classes for settlement purposes will not be certified, and the steps and actions taken in connection with the proposed Settlement (including this Order (except as to this paragraph) and any judgment entered herein) shall become void and have no further force or effect. In such event, the parties and their counsel shall take such steps as may be appropriate to restore the pre-motion status of the litigation.

24. Neither the Settlement Agreement nor the provisions contained therein, nor any negotiations, statements, or proceedings in connection therewith shall be construed, or deemed to be evidence of, an admission or concession on the part of any of the respective Parties, their counsel, or any other person, of any liability or wrongdoing by any of them, or of any lack of merit in their claims or defenses, or of any position on whether any claims may or may not be certified as part of a class action for litigation purposes.

25. The court retains jurisdiction over this Action, the Parties, and all matters relating to the Settlement Agreement.

26. The Parties' submissions in support of final approval of the settlement shall be filed on or before _____, 2024.

27. Class Counsel shall file their application for award of attorneys' fees on or before _____, 2024. A copy of the application shall be posted on the settlement website.

28. The Court may, for good cause, extend, but not reduce in time, any of the deadlines set forth in this Preliminary Approval Order without further notice to Class Members.

SO ORDERED this _____day of _____, 2024.

_____
Honorable Noel L. Hillman, U.S.D.J

Exhibit 2

2008 WL 5412912
Only the Westlaw citation is currently available.
United States District Court, D. New Jersey.

Richard A. ROWE, et al., individually and on behalf of themselves and all others similarly situated, Plaintiffs,
v.
E.I. DUPONT DE NEMOURS AND COMPANY, Defendant.
Misty Scott, on behalf of herself and all others similarly situated, Plaintiffs,
v.
E.I. DuPont de Nemours and Company, Defendant.

Civil Nos. 06-1810 (RMB), 06-3080(RMB).
|
Dkt. No. 162.
|
Dec. 23, 2008.

West KeySummary

1 **Federal Civil Procedure** Particular Classes Represented

Residents who sought medical monitoring due to the alleged contamination of their air and water supply by a factory were not entitled to class certification. Although there were some elements of medical monitoring relief that might be subject to common proof, the elements of significant exposure, increased risk of disease, and necessity of medical monitoring posed numerous individualized issues. The residents did not demonstrated how these elements could be proven on a class-wide basis. The presence of so many individualized issues precluded a finding of cohesiveness, which rendered certification inappropriate. Fed.Rules Civ.Proc.Rule 23, 28 U.S.C.A.

Attorneys and Law Firms

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Roy Alan Cohen, Porzio, Bromberg & Newman, PC, Morristown, NJ, for Defendant DuPont.

OPINION

BUMB, District Judge.

I. INTRODUCTION

***1** This matter comes before the Court upon two motions for class certification filed by the plaintiffs in each case. Although the Rowe and Scott classes each seek separate certification, the Court will address both motions together because they involve nearly identical legal issues. However, where necessary, the Court will set forth the differences between the classes, their claims, and their motions for class certification.

II. FACTUAL BACKGROUND

These cases arise from Defendant E.I. du Pont de Nemours and Company's ("DuPont") release of certain perfluorinated materials, known as "C-8" or "PFOA", from its Chambers Works Plant in Salem County, New Jersey. (Rowe Sec. Am. Compl. ¶ 1; Scott Sec. Am. Compl. ¶ 14). Plaintiffs[1] allege that the PFOA released

from the Chambers Works Plant has contaminated the drinking water supply of the Penns Grove Water Supply Company ("PGWS").[2] (Rowe Sec. Am. Compl. ¶ 1; Scott Sec. Am. Compl. ¶ 14). Specifically, Plaintiffs claim that the levels of PFOA detected in the PGWS water supply are higher than the .04 parts per billion ("ppb") preliminary safety guideline established by the New Jersey Department of Environmental Protection ("NJDEP"). (Rowe Sec. Am. Compl. ¶¶ 59, 60; Scott Sec. Am. Compl. ¶¶ 11, 12).

As described by the NJDEP, "PFOA is a synthetic (man-made) chemical used in the manufacture of several commercially important products." (Determination of Perfluorooctanoic Acid (PFOA) in Aqueous Samples, Final Report, NJDEP Division of Water Supply (January 2007) at 1, DuPont Opp., Ex. B8). It is "very persistent in the environment and has been found at very low levels both in the environment and in the blood of the general U.S. population." (*Id.*).

DuPont has used PFOA in its manufacturing operations at its Chambers Works plant since the 1950s. (Rowe Sec. Am. Compl. ¶ 27). Specifically, DuPont has created PFOA "as an unintended by-product in trace quantities as a result of certain chemical reactions in the various processes for manufacturing fluorotelemor-based products." (DuPont Responses to Rowe Interrogs. 3-8, Ex. 101 to Blecher Aff. in support of Rowe Motion (hereinafter "First Blecher Aff.")). As a result of these operations, DuPont has released PFOA from its Chambers Works plant into the surrounding air and water. (*See* DuPont Responses to Rowe Requests for Admissions 6-11, Ex. 99 to First Blecher Aff.). Recent testing of the PGWS water wells has revealed PFOA levels as high as .190 ppb. (Rowe Sec. Am. Compl. ¶ 59).

At this point, the human health effects of PFOA appear to be uncertain. However, some studies have shown that exposure to PFOA may cause adverse health effects, such as liver disease, cancers, and cholesterol abnormalities. (*See* Rowe Motion at 14; Rowe Reply at 3, n. 7; Supplemental Expert Report of David G. Gray, Ph.D., dated Nov. 4, 2008, ("Gray Report") Rowe Hearing Ex. 9; Second Supplemental Expert Report of Barry S. Levy, M.D., M.P.H. ("Levy Report"), Ex. 56 to First Blecher Aff.). Additionally, the evidence indicates that PFOA is biopersistent and bioaccumulative, meaning that it is eliminated very slowly from the blood and, thus, will accumulate in an exposed person's blood over time. (*See* Gray Report at 23-24; Levy Report at 8). Given these concerns, the NJDEP conducted its own research and ultimately recommended that ".04 ppb be used as preliminary health-based guidance for PFOA in drinking water."[3] (NJDEP Memo re: Guidance for PFOA in Drinking Water at Pennsgrove Water Supply Company ("NJDEP Memo"), DuPont Opp., Ex. B18).

III. PROCEDURAL BACKGROUND

A. Rowe Class

***2** On April 18, 2006, Richard Rowe, Nicholas Dagostino, Mary Carter, Michelle Tomarchio, Regina Trout, Allen Moore, Marva Johnson, Catherine Lawrence, and Kathleen Lemke (the "Rowe Plaintiffs") filed a class action complaint against DuPont in this Court. The Rowe Plaintiffs filed an Amended Complaint on April 28, 2006, and a Second Amended Complaint on February 27, 2007 [Dkt. No. 27]. The Second Amended Complaint contains six counts against DuPont: (1) negligence; (2) gross negligence, reckless, willful and wanton conduct; (3) private nuisance; (4) past and continuing trespass; (5) past and continuing battery; and (6) medical monitoring. The Rowe Plaintiffs seek relief in the form of medical monitoring, compensatory and punitive damages, attorneys' fees, pre-judgment and post-judgment interest, and appropriate equitable and injunctive relief including "providing notice and medical monitoring relief to the Plaintiffs and the class and to abate and/or prevent the release and/or threatened release of [PFOA]." (Rowe Sec. Am. Compl. at 31).

After a lengthy discovery period, the Rowe Plaintiffs filed the present motion for class certification on April 30, 2008. [Dkt. No. 162].

B. Scott Class

The Scott class action was originally filed against DuPont in the Superior Court of New Jersey, Chancery Division, Salem County, on June 16, 2006, by former Plaintiff Donald Coles. DuPont removed the action to this Court on July 7, 2006, and the Rowe and Scott actions were then consolidated for discovery purposes only on September 25, 2006. [Dkt. No. 26]. On January 22, 2007, Plaintiff Donald Coles filed an Amended Complaint adding a second named Plaintiff, Misty Scott, to the class action complaint. [Dkt. No. 36]. On April 19, 2007, the Coles/Scott Plaintiffs filed a motion for class certification. [Dkt. No. 54]. After a hearing on May 15, 2007, this

Court denied that certification motion as premature. [Dkt. No. 69].

After several months of discovery, Plaintiff Coles filed a motion for voluntary dismissal on August 16, 2007. [Dkt. No. 92]. Plaintiff Coles was subsequently dismissed from the case on September 24, 2007. Ms. Scott, the sole remaining named Plaintiff (the "Scott Plaintiff"), filed a Second Amended Complaint on behalf of the proposed class on Oct 18, 2007 [Dkt. No. 123]. The Second Amended Complaint contains six counts against DuPont: (1) medical monitoring; (2) strict liability; (3) private nuisance; (4) public nuisance; (5) negligence; and (6) a violation of the New Jersey Environmental Rights Act. The Scott Plaintiff seeks relief in the form of abatement, installation of community-wide filtration systems, medical monitoring, "damages incurred as a result of the conduct alleged herein, to include pre-judgment and post-judgment interest," and attorneys' fees. (Scott Sec. Am. Compl. at 16-17). The Scott Plaintiff filed the present motion for class certification on April 30, 2008. [Dkt. No. 162].

C. Certification Hearing

***3** After reviewing the parties' submissions, the Court ordered oral argument and requested that the parties present their expert witnesses for questioning by the Court. Accordingly, on November 10 and 20, 2008, the Court heard argument from counsel as well as the testimony of Dr. David Gray and Dr. Barry Levy (experts for the Rowe Plaintiffs), and Dr. Philip Guzelian (expert for DuPont). The Scott Plaintiff did not present any expert at the certification hearing.

IV. LEGAL STANDARD

Class certification is governed by Rule 23 of the Federal Rules of Civil Procedure. In order to be certified, "a class must satisfy the prerequisites of Rule 23(a) and the 'parties seeking certification must also show that the action is maintainable under Rule 23(b)(1), (2), or (3).' " *Barnes v. American Tobacco Co.,* 161 F.3d 127, (3d Cir.1998) (quoting *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). The party seeking class certification bears the burden of proving that each of the requirements under Rule 23 has been met. *Baby Neal v. Casey,* 43 F.3d 48, 55 (3d Cir.1994).

The district court must perform "a rigorous analysis" to satisfy itself that the prerequisites of Rule 23 have been met. *Beck v. Maximus, Inc.,* 457 F.3d 291, 297 (3d Cir.2006). However, ultimately, the court has discretion under Rule 23 to certify a class. *Id.* Moreover, in the Third Circuit, courts are instructed to give Rule 23 a liberal construction. *Eisenberg v. Gagnon,* 766 F.2d 770, 785 (3d Cir.1985) ("the interests of justice require that in a doubtful case ... any error, if there is to be one, should be committed in favor of allowing a class action").

In addition to the requirements of Rule 23(a) and (b), part (c) of Rule 23 states that any certification order entered by the Court must "define the class and the class *claims, issues, or defenses ...*" Fed.R.Civ.P. 23(c)(1)(B) (emphasis added). Specifically, the district court's certification order must include "a clear and complete summary of those claims, issues or defenses subject to class treatment." *Wachtel v. Guardian Life Ins. Co. of America,* 453 F.3d 179, 184 (3d Cir.2006). In *Wachtel,* the Third Circuit noted that "current practice often falls short of that standard." *Id.* at 185. Specifically, the Court of Appeals stated,

> [a]lthough examples of common claims, issues, or defenses presented by the case may be discussed as part of the court's commonality, typicality, or predominance analysis, certification orders are most often devoid of any clear statement regarding the full scope and parameters of the claims, issues or defense to be treated on a class basis as the matter is litigated.

Id. at 185.

To avoid this common pitfall, a district court must set forth a clear and complete summary of the claims, issues or defenses subject to class treatment. However, "a court cannot do so in a vacuum-engaging in superficial analysis of facts and issues and identifying which facts and issues appear to be, broadly speaking, 'common' versus 'individual.' " *Hohider v. United Parcel Serv., Inc.,* 243 F.R.D. 147, 185-86 (W.D.Pa.2007). Instead, a court must scrutinize "the Rule 23 certification requirements *in light of the specific legal claims* at issue in the case and what adjudication of those claims would require." *Id.* at 186 (emphasis added).

V. ANALYSIS

A. Plaintiff's Claims

***4** In this case, neither the Rowe Plaintiffs nor the Scott Plaintiff have offered any analysis to assist this Court in setting forth the actual claims, issues, or defenses that are subject to common proof, with the exception of medical monitoring. It seems that both potential classes have focused all their attention on the medical monitoring aspect of the case and completely ignored the other claims listed in their complaints: negligence, nuisance, trespass, battery, strict liability, and the New Jersey Environmental Rights Act. Despite the abundance of paper they have submitted, Plaintiffs have failed to provide any analysis of these claims. Although Plaintiffs are not required to prove the underlying merits of their claims at this juncture, they are at least required to show that these claims are subject to common proof. This they have not done. Handicapped by Plaintiffs' failure to address these claims, the Court is unable to perform a rigorous analysis of them, as it must. Accordingly, the Court will deny certification on these claims without prejudice and discuss only the medical monitoring issue and whether class treatment is proper as to that issue.[4]

A claim for medical monitoring "seeks to recover the cost of periodic medical examinations intended to monitor plaintiffs' health and facilitate early diagnosis and treatment of disease caused by plaintiffs' exposure to toxic chemicals." *Ayers v. Twp. of Jackson,* 106 N.J. 557, 599, 525 A.2d 287 (1987). It is appropriate where a plaintiff "exhibits no physical injury, but nevertheless requires medical testing as a proximate result of defendant's negligent conduct." *Player v. Motiva Enterprises, LLC,* 2006 WL 166452 at *9 (D.N.J. Jan.20, 2006).

Under New Jersey law, in order to hold DuPont liable for the cost of Plaintiffs' medical monitoring, Plaintiffs must demonstrate,

> through reliable expert testimony predicated upon the significance and extent of exposure to chemicals, the toxicity of the chemicals, the seriousness of the diseases for which individuals are at risk, the relative increase in the chance of onset of disease in those exposed, and the value of early diagnosis, that such surveillance to monitor the effect of exposure to toxic chemicals is reasonable and necessary.

Ayers v. Twp. of Jackson, 106 N.J. 557, 606, 525 A.2d 287 (1987). As the New Jersey Supreme Court further explained, medical monitoring expenses "may only be awarded if a plaintiff reasonably shows that medical surveillance is required because the exposure caused a distinctive increased risk of future injury, and would require a course of medical monitoring independent of any other that the plaintiff would otherwise have to undergo." *Theer v. Philip Carey Co.,* 133 N.J. 610, 628, 628 A.2d 724 (1993). Thus, in this case, to obtain medical monitoring on a class-wide basis, Plaintiffs must show the following:

> (1) class members suffered significant exposure to PFOA;
>
> (2) PFOA is toxic;
>
> (3) the diseases caused by exposure to PFOA are serious;
>
> ***5** (4) class members are at a distinctive increased risk of disease due to their exposure to PFOA;
>
> (5) early diagnosis of these diseases is valuable; and
>
> (6) medical monitoring is reasonable, necessary and different than any other monitoring the class members would otherwise have to undergo.

As discussed above, at the certification stage, Plaintiffs do not have to prove that they will succeed on each of these elements. Rather, to warrant class certification for purposes of medical monitoring, Plaintiffs must show that these elements can be proven on a class-wide basis.

B. Rule 23(a) Requirements

Rule 23(a) contains four requirements: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation.[5] The Court will discuss each of these in turn with respect to Plaintiffs' requests for medical monitoring.

1. Numerosity

The numerosity element requires that the class be "so numerous that joinder of all members is impracticable." Fed.R.Civ.P. 23(a). Here, the proposed Rowe class definition covers thousands of residential PGWS water customers and will include approximately 14,000 to 15,000 people in total. (Rowe Motion at 35; *see also* Nov. 10, 2008 Hearing Tr. 19:4-9). Similarly, the proposed Scott class numbers over 10,000 people. (Scott Motion at 27). DuPont does not dispute the numerosity of either class. Although there is no minimum number required, "generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong

of Rule 23(a) has been met." *Stewart v. Abraham,* 275 F.3d 220, 226-27 (3d Cir.2001). Given the evidence presented in this case, the Court finds that both the Rowe Plaintiffs and the Scott Plaintiff have satisfied the numerosity requirement.

2. Commonality

The second prerequisite is commonality, which requires that there be "questions of law or fact common to the class." Fed.R.Civ.P. 23(a). This does not mean that all the factual and legal questions in the case must be identical for all proposed class members. To the contrary, "[t]he commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Baby Neal,* 43 F.3d at 56. Although the commonality requirement is often thought to be easily met, the Court notes that "the commonality barrier is higher in a personal injury damages class action ... that seeks to resolve all issues, including noncommon issues, of liability and damages." *Georgine v. Amchem Prods., Inc.,* 83 F.3d 610, 627 (3d Cir.1996).

Here, Plaintiffs claim that there is "an abundance of common factual and legal issues, including DuPont's tortious release of C-8 from its NJ Plant, contamination of PGWS and private residential well water resulting in significant Class-wide exposure, the hazardous nature of C-8, the increased risk of disease from exposure, the availability of biomonitoring and medical monitoring for diseases linked to C-8 exposure, DuPont's obligation to cease releasing C-8, and DuPont's obligation to remediate the contaminated water supply." (Rowe Motion at 37; *see also* Scott Motion at 29).

***6** In response, DuPont argues that there are numerous individual issues which preclude fulfillment of the commonality prerequisite. For instance, DuPont contends that Plaintiffs cannot show significant PFOA exposure on a class-wide basis because of variations in individuals' water consumption habits and background exposure form other sources, as well as variations in the level of PFOA within the PGWS distribution system (both physically and temporally). (DuPont Opp. at 41-45). Similarly, DuPont argues, Plaintiffs cannot demonstrate on a class-wide basis that class members have a distinctive increased risk of disease because of the variations in individuals' susceptibility to PFOA and background risk of disease. (*Id.* at 45-49).

While there are individualized issues, as DuPont has pointed out, "the existence of individualized issues in a proposed class action does not per se defeat commonality." *Brooks v. Educators Mut. Life Ins. Co.,* 206 F.R.D. 96, 101 (E.D.Pa.2002) (citing *Johnston v. HBO Film Mgt., Inc.,* 265 F.3d 178, 191 (3d Cir.2001). Indeed, the commonality requirement "may be satisfied by a single common issue ..." *Baby Neal,* 43 F.3d at 56. In this case, the Court finds that the following issues (relevant to medical monitoring) are common to all class members: whether DuPont released PFOA from its Chambers Works Plant in New Jersey into the surrounding air and water; whether PFOA is hazardous to human health; and whether medical monitoring is available for the diseases linked to PFOA exposure. Therefore, Plaintiffs have met their burden of demonstrating that there is at least one common issue of law or fact. The commonality prerequisite is satisfied.

3. Typicality

Although " '[t]he concepts of commonality and typicality are broadly defined and tend to merge[,]' " the Court will address typicality separately. *Barnes,* 161 F.3d at 141 (quoting *Baby Neal,* 43 F.3d at 56). The typicality prerequisite considers whether "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed.R.Civ.P. 23(a). This inquiry "is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." *Baby Neal,* 43 F.3d at 57. However, the typicality requirement "does not mandate that all putative class members share identical claims." *Barnes,* 161 F.3d at 141. Indeed, it is well settled that " '[f]actual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory.' " *Id.* (quoting Newberg on Class Actions § 3.15, at 3-78).

Both the Rowe Plaintiffs and the Scott Plaintiff assert that the claims of their respective named plaintiffs are typical of the claims of the entire proposed classes in that they arise from the same course of conduct committed by DuPont and involve the same legal theories. (Scott Motion at 32; Rowe Motion at 41). More specifically, as contended by the Rowe Plaintiffs, the claims of the named plaintiffs and the entire proposed class "all arise from the releases of C-8 from DuPont's NJ Plaint into the drinking water supply, are based on the same tortious conduct by DuPont, involve the same increased risk of illness, and

seek the same equitable and injunctive forms of relief." (Rowe Motion at 41-42).

***7** DuPont argues that the named plaintiffs' claims are not typical of the class for a number of reasons. First, Dupont contends that the named plaintiffs' water consumption habits differ from the proposed class members' habits, since Ms. Scott and most of the Rowe named plaintiffs now drink bottled water as opposed to the unfiltered PGWS water. (DuPont Opp. at 43-44). Additionally, DuPont claims, the medical monitoring needs of the Rowe named plaintiffs and Ms. Scott are not typical of those of the proposed class members, as all of the Rowe named plaintiffs and Ms. Scott either already manifest one or more of the conditions sought to be monitored or have a family history of such conditions. (*Id.* at 52). As DuPont argues, "[plaintiffs alleging physical injuries cannot represent uninjured plaintiffs ... because the interests of the two groups are different and conflict." (*Id.* at 53 (citing *Amchem v. Windsor,* 521 U.S. at 626)). Third, DuPont claims that although the Rowe named plaintiffs "purport to not seek certification of any claims for monetary damages[,]" many of them "have testified that they seek damages for personal injury and property damage from PFOA exposure and all have specifically preserved their rights to bring such claims." (*Id.* at 53). Finally, DuPont asserts that the claims of the Rowe named plaintiffs are at odds with the claims of Ms. Scott, as "[t]he Rowe Named Plaintiffs seek medical monitoring for the same conditions that Ms. Scott has admitted are not attributable to PFOA exposure." (*Id.* at 54).

In this Court's view, resolution of the typicality element is similar to that of the commonality element-even though DuPont is correct that there are factual differences among the named plaintiffs and the proposed class members, such differences do not overcome the facts that all plaintiffs' medical monitoring claims arise from the same course of conduct by DuPont and are based on the same legal theory (i.e., an *Ayers* claim/remedy). Accordingly, applying a liberal interpretation of Rule 23 as it must, this Court finds that Plaintiffs have satisfied the typicality requirement.

4. Adequacy of Representation

The final prerequisite under Rule 23(a), adequacy of representation, questions whether "the representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a). This requirement "depends on two factors: (a) the plaintiff's attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class." *Hoxworth v. Blinder, Robinson & Co., Inc.,* 980 F.2d 912, 923 (3d Cir.1992) (internal citation omitted). Unlike the other requirements, when it comes to adequacy, "[t]he party challenging representation bears the burden to prove that representation is not adequate." *In re Prudential Ins. Co. of America Sales Practices Litigation,* 962 F.Supp. 450, 519 (D.N.J.1997).

***8** Here, there appears to be no dispute as to the qualification of counsel for either proposed class of plaintiffs. Rowe Plaintiffs' counsel are experienced litigators, specifically in the areas of personal injury and environmental contamination. (Rowe Motion at 42 (citing Blecher Aff. at Ex. 16, p. 3)). Likewise, Scott counsel has sufficient experience in class actions to merit his representation of the proposed Scott class. (Scott Motion at 34).

However, the parties do dispute the second part of the adequacy requirement, which concerns the named plaintiffs themselves. This part of the inquiry addresses whether the named plaintiffs have "the ability and the incentive to represent the claims of the class vigorously" and whether there is any "conflict between the individual[s'] claims and those asserted on behalf of the class." *Hassine v. Jeffes,* 846 F.2d 169, 179 (3d Cir.1988). DuPont claims that the named plaintiffs in both the Rowe and Scott cases have conflicts of interest with the other class members which prevent them from being adequate representatives of their respective classes. In support of this argument, DuPont relies on the same alleged conflicts set forth under the typicality analysis-namely, differences in water consumption habits, variations in medical monitoring needs (due to present manifestation and/or family histories), discrepancies in types of damages sought, and distinctions between the Rowe and Scott theories.

The Court finds that none of these alleged conflicts of interest demonstrates that the named plaintiffs are inadequate representatives of their respective classes. First, the fact that the named plaintiffs drink primarily bottled water as opposed to the unfiltered PGWS water is a distinction without a difference, as this would not pit the named plaintiffs and the other class members against one another. "[D]ifferences in the interests of the class representatives and the other class members is not dispositive under Rule 23(a)(4). The key question is whether their interests are antagonistic." *Steiner v. Equimark Corp.,* 96 F.R.D. 603, 610 (W.D.Pa.1983) (citing *Wetzel v. Liberty Mut. Ins. Co.,* 508 F.2d 239, 247 (3d Cir.1975)). The same reasoning undermines DuPont's

argument concerning medical monitoring needs-even though there may be variations in the individuals' specific needs, their interests are still aligned in that they all desire some type of monitoring to afford them the opportunity for early detection of potential diseases.

As to the damages argument, both the Rowe class and the Scott class have explicitly represented that they do not seek any money damages for personal injuries, but only injunctive relief (and only in the form of medical monitoring, for purposes of this Court's discussion). (*See, e.g.,* Rowe Reply at 10; Scott Motion at 39). Where the plaintiffs "seek only medical monitoring relief on behalf of themselves and the class, and do not advance claims for present injuries, there is no conflict of interest ..." *In re Welding Fume Prods. Liability Litigation,* 245 F.R.D. 279, 301 (N.D.Ohio 2007). Finally, any differences between the Rowe Plaintiffs and Ms. Scott are irrelevant for purposes of determining whether the named plaintiffs are adequate representatives of their own respective classes.

***9** Because DuPont has not met its burden of demonstrating that the named plaintiffs are inadequate representatives of their respective classes, the Court finds the adequacy of representation element satisfied.

C. Rule 23(b) Requirements

Having found that Plaintiffs have met the requirements of 23(a), the Court must now proceed to the requirements of 23(b). Pursuant to this section, Plaintiffs must demonstrate that certification is appropriate under part (b)(1), (b)(2), or (b)(3). Both the Rowe Plaintiffs and the Scott Plaintiff assert that certification is proper under either (b)(1) or (b)(2); additionally, the Scott Plaintiff argues that certification is proper under (b)(3). Thus, the Court will address all three parts.

1. Certification under 23(b)(1)

Under part (b)(1) of Rule 23, a class action may be certified if

> prosecuting separate actions by or against individual class members would create a risk of
>
> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests[.]

Fed.R.Civ.P. 23(b)(1).

Plaintiffs claim that the circumstances here satisfy the requirements of (b)(1)(A) because separate actions could create a risk of inconsistent judgments and establish incompatible standards of conduct for DuPont. (Rowe Motion at 44; Scott Motion at 36). In support of their argument, Plaintiffs assert that "DuPont has previously agreed that the existence of more than one proceeding to consider common factual and legal issues 'creates a real danger of inconsistent rulings' in this very situation." (Rowe Motion at 44 (quoting *Leach v. E.I. du Pont de Nemours & Co.,* 2002 WL 1270121 at *13 (W.Va.Cir.Ct., April 10, 2002)); *see also* Scott Motion at 36-37). Plaintiffs also cite a number of other decisions outside this jurisdiction in which courts have certified medical monitoring classes under (b)(1)(A). (Rowe Motion at 44; Scott Motion at 37-38).

As an initial matter, the Court notes that Plaintiffs, throughout their briefs, have relied heavily on the West Virginia state court's decision in *Leach.* While it is clear that Plaintiffs believe the *Leach* decision to be analogous to the current case, this Court finds Plaintiffs' reliance misplaced. First, the West Virginia medical monitoring law and facts concerning the contamination in *Leach* are different than those in the case at bar; this makes the arguments in *Leach* of little relevance to the present case. Moreover, the *Leach* case was ultimately resolved through voluntary settlement. Accordingly, DuPont's statements cannot be considered admissions of liability, causation, or appropriate damages. Furthermore, the other decisions Plaintiffs cite are from other jurisdictions and, thus, are not binding on this Court. As DuPont has noted, "there is no [published] precedent under New Jersey law or in the Third Circuit for certification of a class seeking medical monitoring relief under *Ayers."* (DuPont Motion at 23).[6]

***10** Beyond the lack of relevant authority supporting Plaintiffs' position, DuPont also correctly points out that under (b)(1)(A), inconsistent adjudications are significant only insofar as they impose "incompatible standards of conduct" on the defendant. (DuPont Opp. at 56-57). As the Third Circuit explained, "[s]ubsection (b)(1)(A) addresses possible prejudice to the party opposing the

class and is intended to eliminate the possibility of separate actions imposing inconsistent courses of conduct on the defendant." *Beck v. Maximus, Inc.,* 457 F.3d 291, 301 (3d Cir.2006); *see also* 7AA C. Wright, A. Miller & R. Kane, Federal Practice and Procedure [hereinafter Wright & Miller] § 1773, at 22 (2005) ("subsection (b)(1)(A) is applicable when practical necessity forces the opposing party to act in the same manner toward the individual class members and thereby makes inconsistent adjudications in separate actions unworkable or intolerable"). The "incompatible standards of conduct" language of (b)(1)(A) "requires more than a risk that separate judgments would oblige the opposing party to pay damages to some class members but not to others or to pay them different amounts ..." 7AA Wright & Miller § 1773, at 13.

In this case, the fact that some individual plaintiffs may succeed in their claims against DuPont for medical monitoring while others may not does not translate into "incompatible standards of conduct" for DuPont under 23(b)(1)(A). *See, e.g. Abbent v. Eastman Kodak Co.,* 1992 WL 1472751 at *12 (D.N.J.1992) (" 'individual adjudication of medical monitoring claims would not expose defendants to a risk of conflicting obligations") (quoting *Brown v. SEPTA,* 1987 WL 9273 at *13 (E.D.Pa.1987)). Were such inconsistent adjudications to occur, DuPont would simply pay for the monitoring of the successful plaintiffs and not for those plaintiffs who failed in their claims-this does not amount to conflicting obligations. *See id.* (" '[a]t most, defendants may be ordered to pay for medical testing in some cases and not in others-a scenario not intended for class treatment' "). As there is no danger of DuPont being exposed to conflicting obligations in terms of Plaintiffs' medical monitoring claims, certification under Rule 23(b)(1)(A) is not appropriate here.

2. Certification under 23(b)(2)

Part (b) (2) of Rule 23 provides that a class action may be maintained if

> the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]

Fed.R.Civ.P. 23(b)(2). Thus, to merit certification under section (b)(2), Plaintiffs must show that DuPont's conduct or refusal to act is "generally applicable" to the class and that the relief they seek is primarily injunctive. 7AA Wright & Miller § 1775, at 41. Additionally, for certification under (b)(2), "it is well established that the class claims must be cohesive." *Barnes,* 161 F.3d at 143. In fact, "a (b)(2) class may require more cohesiveness than a(b)(3) class ... because in a(b)(2) action, unnamed members are bound by the action without the opportunity to opt out." *Id.* at 142.

***11** Moreover, "the district court has the discretion to deny certification in Rule 23(b)(2) cases in the presence of disparate factual circumstances." *Id.* at 143. (internal quotation omitted). The determination of whether a class involves individualized issues is important for two reasons: (1) "unnamed members with valid individual claims are bound by the action without the opportunity to withdraw and may be prejudiced by a negative judgment in the class action[;]" and (2) "the suit could become unmanageable and little value would be gained in proceeding as a class action ... if significant individual issues were to arise consistently." *Id.* (finding that the case presented "too many individual issues to permit certification").

It is clear that the first two of these requirements is satisfied here. First, DuPont's conduct is "generally applicable" to both classes, as DuPont has allegedly released PFOA into the water sources used by (or at least intended for the use by) members of both classes. Second, both classes' requests for medical monitoring in this case can be considered requests for injunctive relief. *See, e.g., Barnes* (noting district court's conclusion that "under certain circumstances medical monitoring could constitute the injunctive relief required by Rule 23(b)(2)") (citing *Arch v. American Tobacco Co., Inc.,* 175 F.R.D. 469, 483 (E.D.Pa.1997)).

The more difficult issue is whether Plaintiffs can demonstrate the requisite cohesiveness among the class members. To determine whether the presence of individualized issues precludes a finding of cohesiveness, this Court must examine the elements of Plaintiffs' claim. As one New Jersey court has succinctly explained,

> [i]n order to determine if the class meets the requirement of cohesiveness under (b)(2), the court must analyze the legal and factual issues involved in the specific case, and determine if the claims of class members can more sensibly be adjudicated as a group or if the case would essentially break down into litigation of individual claims due to the presence of significant individual issues.

Goasdone v. American Cyanamid Corp., 354 N.J.Super. 519, 808 A.2d 159, 169 (N.J.Super. Ct. June 7, 2002). Thus, Plaintiffs must demonstrate that their respective classes are cohesive by showing that all class members can prove the elements of medical monitoring through

common evidence:

> (1) class members suffered significant exposure to PFOA;
>
> (2) PFOA is toxic;
>
> (3) the diseases caused by exposure to PFOA are serious;
>
> (4) class members are at a distinctive increased risk of disease due to their exposure to PFOA;
>
> (5) early diagnosis of these diseases is valuable; and
>
> (6) medical monitoring is reasonable, necessary and different than any other monitoring the class members would otherwise have to undergo.

The Court finds that three of these elements could be proven by common evidence-namely, the toxicity of PFOA, the seriousness of the diseases caused by PFOA exposure, and the value of early diagnosis of these diseases. The evidence needed to prove each of these elements would be the same for every plaintiff (presumably, objective scientific evidence by experts); there would be no individualized issues. However, the Court finds that the other three elements-significant exposure, increased risk of disease, and need for medical monitoring different than any monitoring than otherwise required-are problematic in this regard.

a. Significant Exposure to PFOA

***12** To obtain medical monitoring, Plaintiffs must demonstrate that all class members suffered "significant exposure" to PFOA. However, neither the Rowe Plaintiffs nor the Scott Plaintiff have offered any evidence of what constitutes "significant exposure." Nor have they provided any proof that *any* class member (let alone *all* class members) has reached that level of significant exposure.

Instead, the Rowe Plaintiffs rely on the use of a standard "risk assessment" method to demonstrate class-wide significant exposure. By using the risk assessment process, the Rowe Plaintiffs claim they are able to show significant exposure across the entire class "without the need to consider any individual exposure, use, medical, or other 'individualized' issues." (Rowe Reply at 20). The Court will discuss the use of risk assessments in detail below.

As to the Scott Plaintiff, the Court must initially note that she offers no analysis or evidence as to any of the specific elements of medical monitoring. Rather, she relies on the broad principle that "no class can be perfectly homogenous." (Scott Motion at 18 (internal citation omitted)). According to the Scott Plaintiff,

> if the personal health characteristics of class members could defeat class certification of an *Ayers* claim, then no class for medical monitoring could ever be certified under *Ayers* because there are always such differences in any group greater than one. Yet, the courts of New Jersey have had no problem certifying medical monitoring classes under *Ayers.*

(*Id.* (citation omitted)). As the Court has already explained, the New Jersey authorities upon which the Scott Plaintiff relies are unpublished decisions from lower courts and, thus, they are not binding on this Court.[7] Additionally, as discussed below, personal health characteristics are just one of many individualized issues that pose a problem for the cohesiveness of the Scott class.

Despite the Scott Plaintiff's failure to address the specific elements of medical monitoring, it appears that her theory of significant exposure rests on the same type of risk assessment theory relied on by the Rowe Plaintiffs. However, in sharp contrast to the Rowe Plaintiffs, the Scott Plaintiff offers no explanation of risk assessment methodology, nor any analysis or expert opinion as to why it is useful in this case. She alleges that the PFOA level found in the PGWS water supply is up to "five times higher than the 0.04 ppm PFOA level that the New Jersey Departmental [sic] of Environmental Protection says is safe for human drinking water." (Scott Motion at 5). By referring to the NJDEP preliminary safety guideline of .04 ppb, it seems that the Scott Plaintiff is necessarily relying on a risk assessment theory because the NJDEP level itself was developed based on the risk assessment method, albeit a different risk assessment than the one developed by Dr. Gray.[8] (*See* NJDEP Memo); Hearing Tr. at 166:16-20).

***13** Moreover, the Scott Plaintiff acknowledges the role of a risk assessment in this case, noting that "as a practical matter, a PFOA risk assessment could be done for the entire Scott class as part of a court-supervised medical monitoring program." (Scott Motion at 18). Thus, while she recognizes that a risk assessment specific to the Scott class might be helpful, she admits that she has done nothing herself on this front. Having offered no evidence of the potential class members' exposure (nor even a reasonable argument on this subject), the Scott Plaintiff has failed to demonstrate class-wide significant exposure.

Turning back to the Rowe risk assessment, the Rowe

Plaintiffs explain in their papers that the risk assessment method determines "what level of chemical in the community's water presents an unreasonable risk of harm to all members of the community." (Rowe Reply at 19-20). In this case, Rowe's expert, Dr. Gray, calculated a "safe level" of .02 ppb[9], meaning that "if exposure is held below that concentration, the likelihood of ... adverse disease outcomes is unlikely, and if the exposure is greater than that, the risk of adverse outcomes is increased." (Hearing Tr. at 81:10-13). The risk assessment is calculated by using "certain routine accepted variables (referred to as 'default values' and uncertainty factors')" to account for variations in individuals' characteristics, such as age, sex, weight, medical history, water consumption patterns, etc.. (Rowe Reply at 19). In other words, the risk assessment is based on the reported averages of these characteristics within the general population. Here, Dr. Gray testified that he "used the standard risk assessment assumptions for [individuals' size and water consumption habits] that's used by the EPA risk assessment framework[,]" specifically, the EPA Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000) (DuPont Opp., Ex. B32). (Hearing Tr. at 82:9-11; *see also* 83:24-84:1). Thus, in calculating the .02 ppb level, Dr. Gray assumed that each individual class member weighs 70 kilograms and consumes two liters of tap water per day. (*Id.* at 83:18-20, 808 A.2d 159).

While the Rowe Plaintiffs tout the risk assessment method as the ideal means of proving common exposure among the class members, the Court finds that this method establishes nothing more than an assumption of common exposure. The risk assessment method requires the Court to assume that all class members weigh 70kg and consume 2 liters of tap water per day. Once this assumption is made, the Court can conclude that all class members suffer significant exposure when the PFOA concentration level is .02 ppb. Of course, the problem is that the underlying assumptions are not necessarily true for all class members-indeed, they are undoubtedly false, as the class contains thousands of individuals who are different sizes and have different water consumption habits.[10]

***14** The testimony elicited by the Court from Dr. Gray at the hearing demonstrates that an individual's exposure does in fact change based on the exact variables for which the Plaintiffs seek to make assumptions:

> THE COURT: Well, let's just say that the 300-pound person only took showers and drank bottled water and ate out. In Pennsylvania.
>
> THE WITNESS: Then their exposure would be much lower.

(*Id.* at 103:7-10, 808 A.2d 159).

Rather than relying on assumptions about exposure, the Rowe Plaintiffs should have conducted more extensive research concerning the proposed class members' characteristics related to their exposure (and in the case of the Scott class, *any* research would have been better than nothing). For example, as the Court suggested during the hearing, Plaintiffs could have asked proposed class members to complete "a questionnaire or something looking at various individuals' habits and weights, and etcetera ..." (*Id* . at 103:23-24, 808 A.2d 159). Additionally, Plaintiffs could have conducted blood serum tests of the proposed class members to determine whether they indeed have elevated levels of PFOA above the general population, which is useful in determining historical exposure.[11] (*Id.* at 108:4-16, 808 A.2d 159). Dr. Gray testified that both a questionnaire and blood testing would be useful, even though they would not present the complete story. (*Id.* at 108:21, 808 A.2d 159). Dr. Levy (the Rowe Plaintiffs' second expert) gave similar testimony. (*Id.* at 207:23-25, 808 A.2d 159). But Plaintiffs have neither questioned nor tested the proposed class members. Instead, they rely on the assumptions underlying the risk assessment method.[12]

At the hearing, Dr. Gray explained the reason for relying on these types of assumptions as follows:

> what you necessarily have to do is make an assumption regarding water consumption. You can't-it would be a very detailed, intensive and huge undertaking to try to go out and assess what everybody's water use was, what their real exposure to water use was, because it's not just asking them how many glasses of water they drink from the tap, it's asking them about what foods they eat and how they prepare them and what beverages they drink. And for a large population, I mean, it could be done, but, you know, we don't do that in public health, we make assumptions about that.

(*Id.* at 97:5-14, 808 A.2d 159). Although the Court recognizes that it would take significant investigative efforts to obtain information specific to each individual in the proposed class, the difficulty of this task does not excuse Plaintiffs from doing it. A class action is not intended to be an easy way around research problems. While the public health sector may rely on assumptions, our tort litigation system does not operate in the same way. Plaintiffs have the burden of proving that each class member has suffered significant exposure to PFOA-they cannot circumvent this requirement by simply relying on assumptions about the general population.

***15** The risk assessment method provides no evidence of

actual common exposure; instead, it attempts to characterize exposure as common by glossing over the many individualized issues underlying this element. The reality is that the element of significant exposure is fraught with individualized issues. These issues weigh heavily against a finding of cohesion.

In addition to the problems created by the use of "default values" for class members' size and water consumption habits, the Court finds the Rowe Plaintiffs' reliance on the risk assessment method problematic because the .02 ppb level is based on long-term exposure. At the hearing, Dr. Gray testified that "this type of analysis is meant to be protective for long term exposure." (*Id.* at 88:24-25, 808 A.2d 159; *see also* Gray Report at 10 ("0.02 ppb is meant to be protective of human health for long-term chronic exposures"). He stated that in calculating the risk assessment, "[t]he exposure duration is consider[ed] to be long term, essentially lifetime ..." (Hearing Tr. at 82:13-17). While Dr. Gray explained that it is difficult to define long term exposure, he also stated that he "wouldn't consider long term exposure one year." (*Id.* at 88:21-22, 808 A.2d 159; *see also* 99:13-16 ("[by long period of time] I mean years. I mean greater than a year").

Yet, despite Dr. Gray's testimony, the Rowe class is defined as "all individuals who have consumed for at least *one year* water from a Contaminated Source" and the Scott class has no temporal limitation whatsoever. (Rowe Sec. Am. Compl. ¶ 22 (emphasis added); *see* Scott Sec. Am. Compl. ¶ 1). In the view of this Court, Plaintiffs' positions are internally inconsistent-both classes rely on risk assessments which are based on long term exposure but define their classes without any regard for long term exposure. Plaintiffs cannot have it both ways. If they want to demonstrate class-wide significant exposure by using a risk assessment method based on long term exposure, then they must also define their classes using this same long term exposure criteria.

However, even if the class definition were defined to include only those individuals with long term exposure (consistent with the assumption underlying the .02 or .04 risk assessment level), this would not resolve the problem because long term exposure sufficient to reach the "significant exposure" level is different for each individual depending on their characteristics. Dr. Gray testified that for a 300-pound person who took showers in the contaminated water, but drank bottled water and ate out in Pennsylvania, "[i]f any effects would occur at all, it would take longer [than the one year it might take for a 70kg person who consumed 2 liters per day] ..." (*Id.* at 103:7-14, 808 A.2d 159). Thus, it appears there is no such thing as a class-wide duration of exposure that would constitute "significant exposure" for all class members.[13] This is yet another individualized issue weighing against cohesion.

***16** In an attempt to find a class-wide durational component, the Rowe Plaintiffs selected one year as the temporal restriction for their class definition. This is undoubtedly based on Dr. Gray's conclusion that a person may begin to exhibit effects after just one year of exposure to water with a PFOA level of .02 ppb. (*Id.* at 86:25-87:1, 808 A.2d 159). During the hearing, Dr. Gray explained that this conclusion was based on his analysis of toxicological data from a rat study, which showed that rats exposed to PFOA (at the rat equivalent of the .02 level) began to show effects such as liver toxicity after only three months of exposure. (*Id.* at 86:19-23, 808 A.2d 159). Dr. Gray stated that he did "a physiologic time scaling between the rat and the human[,]" meaning he multiplied the three-month period that it took for affects to occur in the rats by the number four, which is the factor of difference between a 250 gram rat and a 70 kg human. (*Id.* at 100:20-21, 101:8-13, 808 A.2d 159). The result was 12 months, or one year.[14]

The Court is troubled by the Rowe Plaintiffs' use of the one-year time period for two reasons. First, Dr. Gray's calculations concerning the rat study are premised on the same risk assessment level (.02) which, as discussed above, is based on impermissible assumptions. Second, the rat study illustrates the basic goal underlying risk assessments, which is to determine a level that will protect the most sensitive members of the population. (DuPont Opp. at 34-35). Dr. Gray testified that his one year estimate signifies "when affects [sic] *might start to occur* in humans." (*Id.* at 101:12-13, 808 A.2d 159). Accordingly, one year represents the lower bound at which the most sensitive member in the class might be affected; it is not a threshold at which all or even most members might be affected. As explained in a publication by the Federal Judicial Center and the National Center for State Courts,

> [b]ecause a number of protective, often "worst case" assumptions ... are made in estimating allowable exposures for large populations, these criteria and the resulting regulatory levels ... generally overestimate potential toxicity levels for nearly all individuals.

David E. Eaton, Ph.D., DABT, FATS, "Scientific Judgment and Toxic Torts-A Primer in Toxicology for Judges and Lawyers," 12 J.L. & Pol'y 1, 34 (2003) (DuPont Opp. Ex. B31). Given the protective goal and conservative nature of risk assessments, this Court finds that reliance on them for purposes of defining the classes in this case is inappropriate, as it would result in overinclusive classes. (*See* DuPont Opp. at 34).

In sum, the Court finds that both Plaintiffs have failed to show how significant exposure is subject to common proof. Rather than conducting in-depth research and meaningfully identifying a group of individuals who have *actually* suffered "significant exposure," Plaintiffs have relied on risk assessments and superficially identified a group of individuals who have *potentially* suffered "significant exposure." This is insufficient for purposes of class certification. The lack of a common durational component only adds to the deficiency. Plaintiffs must show that they can prove class-wide significant exposure through relevant facts and research, not perfunctory similarities and assumptions. Although such research may cost significant time and resources and may even outweigh the costs of medical monitoring (*see, e.g.,* Hearing Tr. at 104:2-4), this fact does not alleviate Plaintiffs of their burden to show that significant exposure can be proven on a class-wide basis. Given the record before this Court, Plaintiffs have not met their burden. Thus, there is no cohesion among class members in terms of demonstrating significant exposure to PFOA.[15]

b. Increased Risk of Disease

***17** Beyond the element of significant exposure, Plaintiffs must also demonstrate that each class member's "exposure caused a *distinctive increased risk of future injury." Theer,* 133 N.J. at 628, 628 A.2d 724 (emphasis added). While "[t]he risk of injury need not be quantified[,] ... the plaintiff must establish that the risk of serious disease is 'significant.' " *Player,* 2006 WL 166542 at *9 (citing *Ayers,* 106 N.J. at 599-600, 525 A.2d 287 ("medical science may necessarily and properly intervene where there is a significant but unquantified risk of serious disease")).

The Rowe Plaintiffs claim that "the whole class is at increased risk based on the level of C-8 in their common water source and the minimum period of exposure required by the class definition." (Rowe Reply at 18). In support of this argument, the Rowe Plaintiffs rely on the same risk assessment theory and physiologic time scaling done by Dr. Gray, both of which the Court has already rejected. They also rely on the testimony and statistical analysis of Dr. Levy.

As for the Scott class, the Plaintiff has failed even to address this element, let alone present any scientific evidence. Therefore, the Court is prevented, once again, from performing a "rigorous analysis."

DuPont argues that Plaintiffs cannot prove this element on a class-wide basis because each individual's risk of disease will vary depending on his/her actual PFOA exposure as well as his/her background risk of disease absent PFOA exposure. (DuPont Opp. at 47). This Court agrees.

Many of the individualized issues precluding a class-wide finding of significant exposure also preclude a class-wide finding of increased risk of disease. As the Court explained above, there is no proof of common significant exposure among the class; rather, class members' actual exposure will vary depending on their size and water consumption habits, not to mention their duration of use of the PGWS water supply. The amount of exposure a person has experienced will affect his/her level of risk of disease. (*See, e .g.,* Gray Report at 13 ("[i]n general, toxicity is considered to be related to dose level and dose duration")). Dr. Gray testified that "[e]xposure is certainly very important and somebody who is not exposed to PFOA in water doesn't have that component of PFOA in their PFOA body burden and so their risk is less." (Hearing Tr. at 126:22-25; *see also* 145:16-17 ("any increase in the body burden of a toxic compound is going to increase the risk of toxic effects")). Dr. Levy's testimony supports this notion as well. (*Id.* at 208:21-209:3, 525 A.2d 287).[16]

Additionally, each class member's risk of disease will differ depending on his/her background risk of disease and susceptibility to PFOA. Both of these factors depend largely on individual circumstances, such as gender, age, drug/alcohol use, nutrition, body mass index, physiology, behavior, medical history (including conditions such as hyperlipodemia and liver diseases), and general state of health. (*Id.* at 136:7-137:6, 525 A.2d 287; 140:17). Indeed, as Dr. Gray explained, "the risk [of disease] is not proportional to the difference in [consumption amounts] because certain individuals have a varying susceptibility to PFOA based on their medical conditions and other behavioral factors." (*Id.* at 129:16-20, 525 A.2d 287). Recognizing the highly individualized nature of people's medical circumstances, Dr. Gray testified that "a study on every person, basically probably getting a serum PFOA level, as well as a questionnaire that describes their medical conditions and a whole bunch of things, would be the best way to determine [who is at risk for an adverse health consequence.]" (*Id.* at 130:3-6, 525 A.2d 287).

***18** The following colloquy between the Court and Dr. Gray further illustrates the various individualized issues underlying an individual's risk of disease and the need for other research techniques such as questionnaires:

THE COURT: ... Do you agree that looking at

> individuals' habits, weight, age, all of those individual factors and getting an idea through a questionnaire ... you could then determine which individuals are really at an increased risk, health risk, that that would be-put costs aside-that that would be a better way of determining who really needs medical attention and monitoring? Do you agree with that?
>
> THE WITNESS: It would, it would. But in doing so, you'd also have to consider the fact that people have conditions, medical conditions-
>
> THE COURT: Yes.
>
> THE WITNESS:-that make them more susceptible to the action of a chemical like this. So you would need to collect information, medical information about things like that as well if you were going to truly assess what their vulnerability to the-
>
> THE COURT: That would all have to be taken into consideration and you may not be able to do it with precision, but it's the best model that you have, putting aside costs?
>
> THE WITNESS: Costs and time. It would probably be a superior-yes I think that's true.

(*Id.* at 104:6-105:2, 525 A.2d 287).

In addition to the problem of pervasive individualized issues, the risk assessment, as discussed above, does not serve the function Plaintiffs would like it to-it does not identify the "danger" point above which individuals are at a distinctive increased risk. Rather, the risk assessment serves to identify the "safe" level that will protect the most sensitive members of the population. As Dr. Gray explained, when calculating a risk assessment, "you want to make the assumption that protects most people." (*Id.* at 128:13-14, 525 A.2d 287; *see also* 139:7-10). The NJDEP risk assessment relied on by the Scott Plaintiff is likewise designed to be protective of the population. (*See, e.g.,* NJDEP Memo at 9 ("[t]his drinking water concentration [of .04 ppb] is expected to be protective for both non-cancer effects and cancer at the one in a million risk level")). While reliance on risk assessments may very well be appropriate for regulatory purposes where the goal is protection of the public, such methodology does not work in the tort litigation context, where a plaintiff must prove that he has suffered an actual increased risk of disease in order to merit recovery in the form of medical monitoring.

Moreover, Plaintiffs have not demonstrated to this Court at what point the risk of increased disease becomes "significant" or "distinctive," as required by the language in *Ayers* and *Theer.* In fact, Dr. Gray explained that he's never characterized the risk as significant because "the term 'significant' is not something that [he] normally use[s] in doing a risk assessment, it's not part of the risk assessment paradigm to say that the risk is significant at a certain point." (*Id.* at 145:21-24, 628 A.2d 724). Dr. Levy likewise refused to "draw[ ] a bright line" but attempted to define the term qualitatively, as "substantially above the national norms." (*Id.* at 205:19-20, 628 A.2d 724). The Court does not find Dr. Levy's definition helpful in the context of determining when an individual should be monitored for disease.

***19** Finally, the Rowe Plaintiffs rely on Dr. Levy's expert report and testimony to show that they are at an increased risk of disease based on their exposure to PFOA in the PGWS water. In his report, Dr. Levy discussed numerous studies that show a higher incidence of various diseases among people who have been exposed to PFOA. (*See generally* Levy Report). Specifically, Dr. Levy stated that, in his opinion, based on his analyses of various epidemiological studies,

> PFOA causes or increases the risk of the following categories of diseases and disorders in human beings:
>
> 1. Liver damage and dysfunction
> 2. Abnormalities in lipids and lipoproteins
> 3. Coronary artery disease and cerebrovascular disease
> 4. Certain endocrine and metabolic disorders
> 5. Certain categories of cancer
> 6. Reproductive and developmental disorders.

(*Id.* at 23, 628 A.2d 724). He further opined that all the potential Rowe class members are at an increased risk of these diseases based on their consumption of drinking water with a PFOA level higher than .02 ppb for at least 1 year. (*Id.*). However, his opinion rests on the same risk assessment that the Court has already deemed insufficient for purposes of showing significant exposure. Accordingly, while Dr. Levy's report may show a connection between PFOA exposure and risk of disease, it does not support the contention that all the class members have been significantly exposed to PFOA and are, therefore, at an increased risk of disease.

Similarly, at the hearing, Dr. Levy presented a number of graphs and statistical analyses which showed a correlation between serum PFOA levels and various liver enzymes associated with liver disease. (*See* Rowe Hearing Ex. 12). He also presented two charts which showed that six of the Rowe Plaintiffs had serum PFOA levels that were much higher than those of the general population.[17] (*Id.*).

However, this evidence suggests only that six of the Rowe Plaintiffs may be at an increased risk of disease; it does not prove that all potential class members are at an increased risk of disease because it says nothing about the actual serum PFOA levels of the proposed class members. To reach the conclusion the Rowe Plaintiffs desire, the Court must make the assumption that all the proposed class members suffered the same amount of exposure (or more) to PFOA as these six Rowe Plaintiffs. As stated in great detail above, the Court cannot make this assumption. If the Rowe Plaintiffs wanted to rely on Dr. Levy's serum PFOA analysis to prove class-wide increased risk of disease, then they needed to submit evidence of class-wide heightened serum PFOA levels, which they have not done.[18]

Even if they had submitted such evidence, however, this would not resolve the entire problem because Dr. Levy's analysis does not establish any threshold serum PFOA level that signifies a person is at a distinctive increased risk of disease. Therefore, in the Court's view, Dr. Levy's testimony is more relevant to the issue of whether PFOA is hazardous in that it causes disease in general, not whether the proposed class members are at a distinctive increased risk of disease based on their exposure to PFOA.

***20** Given the plethora of individualized issues underlying the risk of disease issue, as well as the problems associated with reliance on risk assessments and the difficulty in determining when the risk becomes significant, Plaintiffs have not and cannot demonstrate through common proof that all class members are at a distinctive increased risk of disease.

c. Medical Monitoring is Reasonable, Necessary and Different than Otherwise Required

Finally, Plaintiffs must demonstrate that each class member's need for medical monitoring can be shown on a class-wide basis. Under New Jersey law, a plaintiff must "reasonably show[ ] that medical surveillance is required because the exposure caused a distinctive increased risk of future injury, and would require a course of medical monitoring independent of any other that the plaintiff would otherwise have to undergo." *Theer,* 133 N.J. at 628, 628 A.2d 724.

The problem underlying Plaintiffs' task here is that the necessity for medical monitoring is not a common issue for all class members and, thus, is not subject to common proof. Plaintiffs must show that each class member needs medical monitoring above and beyond what he/she would ordinarily need absent the exposure to PFOA. *See Goasdone,* 808 A.2d at 170 (citing *Barnes,* 161 F.3d at 146). This requirement implicates the background exposure to other PFOA sources, health history and medical needs of each individual class member. Undoubtedly, this element raises numerous individual issues.

In sum, although there are some elements of medical monitoring relief that may be subject to common proof, the Court finds that the elements of significant exposure, increased risk of disease, and necessity of medical monitoring pose numerous individualized issues. Neither class of plaintiffs has demonstrated to this Court how these elements can be proved on a class-wide basis. The presence of so many individualized issues precludes a finding of cohesiveness, which renders certification under 23(b)(2) inappropriate.

3. Certification under 23(b)(3)

The Scott Plaintiff also requests certification under Rule 23(b) (3). That part of the rule provides that a class action may be maintained if

> the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Fed.R.Civ.P. 23(b)(3). The inquiry under this subsection is twofold: first, the Court must determine whether common questions predominate over individual questions, and second, the Court must decide whether a class action is the superior means of adjudicating this case.

Turning to the first part of (b)(3), the "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Products, Inc. v. Windsor,* 521 U.S. 591, 623, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997) (citing 7A Wright & Miller at 518-519). The Court recognizes that "the presence of individual questions does not per se rule out a finding of predominance." *In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions,* 148 F.3d 283, 315 (3d Cir.1998). However, certification under 23(b)(3) is inappropriate "if the main issues in a case require the separate adjudication of each class member's individual claim or defense ..." 7AA Wright & Miller § 1778, at 134. This is because "when individual rather than common issues predominate, the economy and efficiency

of class-action treatment are lost and the need for judicial supervision and the risk of confusion are magnified." *Id.* at 141.

***21** As the Court explained in its discussion of the requirements under Rule 23(a), there are some common issues in this case-DuPont's release of PFOA, the hazardous nature of PFOA, and the availability of medical monitoring for diseases linked to PFOA exposure. However, the Court has also set forth in great detail the litany of individualized issues that pervade Plaintiffs' requests for medical monitoring. To summarize, the Court finds that three of the essential elements of medical monitoring relief-namely, significant exposure, increased risk of disease, and necessity of medical monitoring-implicate numerous individualized issues. Just as the plaintiffs in *Amchem,* class members here have been exposed to different amounts of PFOA, for different amounts of time, in different ways, and over different periods. *Amchem,* 521 U.S. at 624. They have different water consumption habits, different levels of background exposure to PFOA, and different susceptibilities to PFOA. Moreover, they have different medical histories and different background risks of disease, which translate into different monitoring needs. Given all of these differences, the Court cannot find that the common questions predominate.

Moving to the second part of (b)(3), the Court must determine whether the class action would be "superior to other available methods for the fair and efficient adjudication of the controversy." 7AA Wright & Miller § 1779, at 151. This inquiry requires the Court to "balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *Georgine v. Amchem Prods., Inc.,* 83 F.3d 610, 632 (3d Cir.1996), aff'd sub nom *Amchem Prods., Inc.,* 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). The four nonexclusive factors the Court should consider in its analysis are: (1) the interest of individual class members in controlling the prosecution of the action; (2) the extent of litigation already begun by or against class members; (3) the desirability of concentrating the litigation in the particular forum; and (4) the likely difficulties in managing a class action. Fed.R.Civ.P. 23(b)(3)(A)-(D).[19]

Here, the Scott Plaintiff has presented no argument as to any of these factors. Rather, she argues that "class actions are not only the 'superior' method, but the only practical method to pursue the claims of asymptomatic toxic exposure victims ..." (Scott Motion at 47). According to the Scott Plaintiff, "[t]he cost of retaining the necessary medical and scientific experts needed would exceed the costs of monitoring any one person or testing his or her water." (*Id.*).

The Scott Plaintiff fails to recognize that despite the presence of some common issues, full adjudication of the medical monitoring claim/remedy would involve resolving many individualized issues. In other words, if the Scott class succeeded in demonstrating that DuPont is liable for releasing PFOA into the PGWS water supply, that PFOA is hazardous, and that medical monitoring is available for diseases linked to PFOA exposure, each class member would still have to demonstrate his/her specific exposure, how that exposure has increased his/her risk of disease, and his/her corresponding need for medical monitoring, all of which would require medical expert testimony specific to each individual. Thus, contrary to the Scott Plaintiff's contention, class certification would not alleviate the problem of extraordinary expense.

***22** As to the four factors listed in Rule 23(b)(3), the Court finds that factors (1) and (3) are not particularly relevant in this case, as the Court is not aware of any issues concerning individual class members wanting to control the action, and all proposed class members live in the same area and would presumably file suit in this forum (though perhaps in state court). The second factor, however, militates against certification, as the Rowe class membership would likely include many of the proposed Scott class members. The Court sees no reason for duplicative class actions and, in light of the disparity between the Rowe Plaintiffs' efforts and the Scott Plaintiff's lack thereof, if any class action were to proceed in this case, the Rowe Plaintiffs would clearly be more deserving. Additionally, the fourth factor weighs heavily against certification. As the Court has thoroughly explained, the presence of so many individualized issues would make managing a class action for medical monitoring inordinately difficult. The problems inherent in managing the individual issues of thousands of class members would certainly outweigh any advantages gained by allowing the class action to proceed. Accordingly, a class action is not the superior means of adjudication in this case.

In summary, the Court finds that certification under (b)(3) is not appropriate in this case.

D. Certification of Particular Issues under Rule 23(c)(4)

Although Plaintiffs have not demonstrated that their request for medical monitoring should be certified,

pursuant to Rule 23(c)(4) the Court has the power to certify a class with respect to particular issues. Specifically, Rule 23(c)(4) provides in relevant part, "[w]hen appropriate, an action may be brought or maintained as a class action with respect to particular issues ..." Fed.R.Civ.P. 23(c)(4). While the court may act on its own initiative in this regard, it "has no independent obligation to utilize Rule 23(c)(4) sua sponte." *Id.* at 587 (citing *U.S. Parole Comm'n v. Geraghty,* 445 U.S. 388, 100 S.Ct. 1202, 63 L.Ed.2d 479 (1980)). Indeed, the Plaintiffs bear the burden of submitting proposals to the court. *See Geraghty,* 445 U.S. at 408.

The rationale of Rule 23(c)(4) is "that the advantages and economies of adjudication issues that are common to the entire class on a representative basis may be secured even though other issues in the case may need to be litigated separately by each class member." 7AA Wright & Miller § 1790, at 589. However, "courts have been cautioned against the class certification of common issues within a single claim by splitting the elements of a claim into class and individual components." *Stephenson v. Bell Atlantic Corp.,* 177 F.R.D. 279, 290 n. 4 (D.N.J.1997) (citing *In re Rhone-Poulenc Rorer, Inc.,* 51 F.3d 1293 (7th Cir.1995) (reversing order for nationwide class certification of negligence issues relating to HIV contamination of defendant's products, leaving causation and damages to individual case determinations); *Castano v. American Tobacco Co. .,* 84 F.3d 734 (5th Cir.1996) (reversing order for nationwide class certification of certain core tobacco liability issues, to be followed by individual trials on comparative negligence and individualized harm)). Nonetheless, a class action may be proper even when it contains both common and uncommon issues "so long as the uncommon questions are not significant compared with the magnitude and weight of the common issues." *Id.*

***23** In this case, Plaintiffs have not sufficiently delineated the specific issues within their request for medical monitoring that are appropriate for class treatment. The Court has labored to discern some common issues, as set forth above; however, in light of the Third Circuit's ruling in *Wachtel* that any certification order entered by the Court must include "a clear and complete summary of those claims, issues or defenses subject to class treatment[,]" the Court will leave to Plaintiffs the task of identifying "clear[ly] and complete [ly]" the specific issues that they believe merit class certification consistent with the Court's opinion. *Wachtel,* 453 F.3d at 184; *see also* Fed.R.Civ.P. 23(c)(1)(B).

VI. CONCLUSION

Based on the Court's analysis above, both the Rowe Plaintiffs' and the Scott Plaintiff's motions for class certification are denied. Because Plaintiffs have failed to provide any analysis of their claims based on negligence, nuisance, trespass, battery, strict liability, and the New Jersey Environmental Rights Act, the Court will deny certification on these claims without prejudice. In the event Plaintiffs desire to seek certification of these claims, they will be required to seek leave of the Court to file a motion for class certification out of time and make a sufficient showing of good cause.

As to their claims/remedy requests for medical monitoring, certification is not proper under any part of Rule 23(b). However, Plaintiffs will be permitted to make a brief submission (no longer than ten pages) identifying the precise issues relevant to medical monitoring that they believe are appropriate for class treatment consistent with this opinion. Plaintiffs' submissions shall be due thirty days from the date of this opinion and DuPont shall have thirty days thereafter in which to file a brief response (no longer than ten pages). No further replies from Plaintiffs will be permitted.

All Citations

Not Reported in F.Supp.2d, 2008 WL 5412912

Footnotes

1 "Plaintiffs" refers to both the Rowe Plaintiffs and the Scott Plaintiff (which are defined *infra* at 5 and 7).

2 Rowe Plaintiffs allege that the release of C-8 has also contaminated the drinking water of certain private residential wells in the Penns Grove area. (*See* Rowe Motion for Cert. at Ex. A).

3 The Court notes that the NJDEP's preliminary guidance level of .04 ppb is not an official, legally binding regulation because it has not gone through the regulatory vetting process. (*See* hearing Tr. at 166:9-10).

4 The Court notes that both the Rowe Plaintiffs and the Scott Plaintiff have listed medical monitoring in their complaints as both a claim and a form of relief. Whether medical monitoring is more properly understood as a cause of action or an item of damages remains unanswered. A review of the *Ayers* decision and its progeny sheds little light on this issue. *See e.g., Ayers v. Twp. of Jackson,* 106 N.J. 557, 606, 525 A.2d 287 (1987) ("we hold that the cost of medical surveillance is a compensable *item of damages"*) (emphasis added); *but see Theer v. Philip Carey Co.,* 133 N.J. 610, 627, 628 A.2d 724 (1993) (noting "the *Ayers* cause of action"); *Vitanza v. Wyeth, Inc.,* 2006 WL 462470 at * 8, n. 3 (N.J.Super.2006) (*"Ayers,* as clarified by *Theer,* holds that medical monitoring as a cause of action or remedy ..."). Regardless of whether medical monitoring is a claim or a remedy, Plaintiffs have set forth the elements that must be shown to obtain medical monitoring. Accordingly, the Court will examine each of these elements.

5 The exact language of Rule 23(a) provides: "One or more members of a class may sue or be sued as representative parties on behalf all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a).

6 The New Jersey cases cited by the Scott Plaintiff are unpublished decisions from lower courts that are not binding on this Court. (Scott Motion at 23).

7 *Wilson v. Lipari Landfill,* No. GLO-L-1375-95 (N.J.Super. Law Div. Jan. 20, 2000); *Vadino v. American Home Products,* No. MID-L-425-98, (N.J.Super. Ct. Law Div. Jan. 25, 1999); *Mignan v. Sullivan et al,* No. GLO-L-1309-06, (N.J.Super. Ct., Gloucester County, Law Div. June 1, 2007).

8 The NJDEP's risk assessment approach for developing the PFOA preliminary safety guideline of .04 ppb was "based on a target human blood PFOA level rather than on a target external (ingested) dose of PFOA, the approach used for assessing most other chemicals." (NJDEP Memo at 2). This is because "a given external dose (in mg/kg/day) of PFOA results in very different internal doses (as indicated by blood levels) in humans and animals." (*Id.*). The NJDEP noted that the USEPA 2005 draft PFOA risk assessment uses the same approach "based on blood levels in the animals rather than on the external dose they received, and this approach was endorsed by the Science Advisory Board (2006) report reviewing the USEPA draft PFOA risk assessment." (*Id.*).

> While the NJDEP risk assessment does not rely on the same assumptions as Dr. Gray's risk assessment, it does rely on other types of assumptions, such as a default value of 20% for a relative source contribution "(meaning that non-drinking water sources are assumed to provide 80% of total exposure)" (*Id.* at 3). It also "assumes that the daily drinking water intake in the population of concern is similar to the intake in the population study by Emmett et al., 2006." (*Id.* at 9). Indeed, the NJDEP memo states that its approach "involves more assumptions than the traditional risk assessment approach based upon administered dose." (*Id.* at 8). The NJDEP risk assessment suffers from the same basic deficiencies as Dr. Gray's risk assessment. (*See infra*).

9 This is in contrast with the .04 ppb preliminary safety guideline established by the NJDEP.

10 In fact, upon cross-examination, Dr. Gray admitted that he did not know whether even the named plaintiffs' water consumption patterns were consistent with the variables assumed by his risk assessment model. (*Id.* at 130:13-131:3). As counsel for DuPont

revealed, the water consumption for seven of the eight Rowe Plaintiffs do not comport with Dr. Gray's assumptions. (*Id.* at 134:15-135:5; DuPont Hearing Ex. 27).

11 This type of testing could also have been useful in overcoming another issue concerning variations in exposure-apparently, the levels of PFOA in the PGWS water have varied over time and within the distribution system. (*See* DuPont Opp. at 41). Given the complexity of this variation, it would be impossible to determine an individual's exact amount of PFOA exposure based solely on his/her water consumption habits. However, blood serum testing could help alleviate this problem.

12 Significantly, at the hearing, counsel for the Rowe Plaintiffs stated that the information that could be obtained from questionnaires and blood testing is "exactly the type of information that we were requesting through our biomonitoring relief ." (Hearing Tr. at 106:16-18). He further admitted to the Court that "it would be very helpful to know, indeed, what the blood level is for each person in the proposed class and to survey them." (*Id.* at 106:18-20). However, counsel appears to have it backwards-under basic principles of tort law, the claim must be successful before the remedy can be rewarded, not the other way around.

13 Again, the Scott Plaintiff offered no analysis in this regard.

14 Once again, the Scott Plaintiff presented nothing on this issue.

15 To be clear, although the Court's rejection of the risk assessment method in this case has been discussed largely in the context of the testimony offered by the Rowe Plaintiffs' expert, the same reasoning applies to the Scott Plaintiff's theory, which also relies on the risk assessment method. Moreover, the Court must point out that it could not discuss the Scott Plaintiff's theory in any detail because, unlike the Rowe Plaintiffs who have earnestly attempted to support their claim for certification, the Scott Plaintiff has offered nothing to explain its theory of significant exposure and how this element is subject to common proof.

16 Dr. Levy's testimony concerning his statistical analysis of the Rowe Plaintiffs' serum PFOA levels as compared with those of the general population showed that the amount of contaminated water consumed will affect serum PFOA levels. (Rowe Hearing Ex. 12). He testified that, unlike the female Rowe Plaintiffs, plaintiff Mr. Rowe has a blood serum level that is "lower than the national average and far lower than the 90th percentile" and that, at least in part, this is because he has "been using bottled water for the last eight years." (*Id.* at 208:21-25). While the Court recognizes that blood serum levels do not present the complete picture of a person's risk of disease, when supplemented with a questionnaire, serum levels can still be helpful in understanding a person's exposure and risk. (*Id.* at 209:1-3).

17 For example, Plaintiff Lemke's PFOA serum level was charted as being six times the geometric mean. (Rowe Hearing Ex. 12).

18 This is equally true for the Scott class, as their risk assessment is based on blood serum levels. (*See* NJDEP Memo at 2).

19 The Court notes that in light of its determination that the predominance factor has not been met, it need not address at length the remaining superiority requirement, "as failure to meet any one of [the Rule 23 requirements] precludes class certification." *Danvers Motor Co., Inc., v. Ford Motor Co.,* 543 F.3d 141, 149 (3d Cir.2008).

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SEVERA, et al.,	:	
	:	
Plaintiffs,	:	Case No.: 1:20-cv-6906
	:	
v.	:	Civil Action
SOLVAY, et al.,	:	
	:	
Defendants	:	

[Proposed] Order Granting Motion for Preliminary Approval of Class Action Settlement

THIS MATTER having been opened to the Court on the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and Plaintiffs, acting through Class Counsel, as defined below, and Defendants Solvay Specialty Polymers USA, LLC and Solvay Solexis, Inc. (together "Solvay") and Arkema Inc. ("Arkema") (Solvay and Arkema together herein referred to as "Defendants") (collectively, the "Parties") have entered into a Stipulation and Agreement of Settlement dated January 29, 2024 (the "Settlement Agreement"), to settle the above-captioned lawsuit (the "Action"), conditioned on the Court's final approval of the settlement. The Settlement Agreement sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the Action.

Plaintiffs have moved under Federal Rules of Civil Procedure 23(b) and (e) for an order: (1) preliminarily approving a class settlement on the terms and conditions set forth in the Settlement Agreement; (2) provisionally certifying three settlement classes ("Settlement Classes") for the purpose of settlement; (3) approving the form, content and manner of issuing notice of the proposed settlement to the Class Members; (4) appointing Class Counsel; (5) setting deadlines for exclusion from the Settlement Classes and for making any objection to the proposed settlement; and (6) scheduling a hearing at which time the Court will be asked to

finally approve the settlement and to approve Class Counsel's request for attorney's fees; and the Court having carefully considered the Motion for Preliminary Approval and supporting Memorandum of Law, the Settlement Agreement (including all exhibits), and the record in this case, and good cause appearing, IT IS, on this _____day of _____, 2024, the Court finds and declares that this Court has jurisdiction over this action and each of the Parties under 28 U.S.C. § 1332, as amended by the Class Action Fairness Act, and that venue is proper in this district; that the Settlement Agreement is sufficiently fair, reasonable, and adequate to allow dissemination of notice of the proposed class settlement to Class Members and to hold a fairness hearing; and that the Settlement Agreement was entered into after negotiations at arm's length among experienced counsel.

IT IS THEREFORE HEREBY ORDERED AS FOLLOWS:

1. For settlement purposes only, this action may be maintained provisionally as a class action under Federal Rule of Civil Procedure 23 on behalf of the Biomonitoring Class, Nuisance Class, and the Property Class (collectively, the "Settlement Classes"), defined as follows:

- Biomonitoring Class:
  All individuals who resided in National Park, New Jersey for any period of time from January 1, 2019 through the date upon which this Settlement receives preliminary approval ("Date of Preliminary Approval").

- Nuisance Class:
  All individuals who, during the period of January 1, 2019 through the Date of Preliminary Approval, are or were owners or lessees of real property located in National Park, New Jersey.

- Property Class:
  All individuals, who, during the period of January 1, 2019 through the Date of Preliminary Approval, are or were owners of real property located in National Park, New Jersey.

2. If the Settlement Agreement is not finally approved by the Court or for any reason

does not become effective, the Settlement Classes shall not be certified, all Parties' rights to litigate all class issues will be restored to the same extent as if the Settlement Agreement had never been entered into, and no Party shall assert that another Party is estopped from taking any position relating to class certification.

3. The Court preliminarily appoints Plaintiffs Kenneth Severa, Carol Binck, Denise Snyder, Jennifer Stanton, and William Teti as representatives for the Settlement Classes.

4. The Court preliminarily finds that Shauna L. Friedman, Esq, Alan H. Sklarsky, Esq., Oliver T. Barry, Esq. and Gerald J. Williams, Esq., fairly and adequately represent the interests of Plaintiffs and the Class and hereby appoints them as Class Counsel to represent the Class pursuant to F.R.C.P. 23(g).

5. The terms of the parties' Settlement Agreement are hereby provisionally approved pending a Fairness Hearing, as defined below.

6. The Court directs that Notice be sent to Class Members in accordance with the Settlement Agreement and this Order within 30 days.

7. A hearing (the "Fairness Hearing") shall be held on _____ day of_____, 2024 at _____.m. before the undersigned in Courtroom No. _____, at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101.

8. The date of the Fairness Hearing will be included in the Notice of Proposed Class Action Settlement. The purpose of the Fairness Hearing will be to:

A. Determine whether the proposed Settlement Agreement is fair, reasonable, and adequate, and should be finally approved;

B. Determine whether an order and judgment should be entered dismissing with prejudice the Action, and permanently barring Class Members from bringing any lawsuit or other action based on the Released Claims; and

C. Consider other Settlement-related matters and appropriate attorneys' fees.

9. The Court may adjourn, continue, and reconvene the Fairness Hearing pursuant to oral announcement without further notice to eligible members of the Settlement Classes, and the Court may consider and grant final approval of the Settlement Agreement, with or without minor modification, and without further notice to eligible members of the Settlement Classes.

10. The Court appoints Postlethwaite & Netterville, APAC to serve as Claims Administrator to implement, perform, and oversee notice of the Settlement Agreement to Class Members; to process and pay Settlement Benefits to Class Members; and to otherwise carry out the settlement administration responsibilities under the Settlement Agreement.

11. The Court has reviewed the Notice of Proposed Settlement of Class Action and Final Settlement Hearing (the "Notice"), as well as the Claim Form, which are attached to the Settlement Agreement as Exhibit A, the publication for the South Jersey Times for Gloucester County attached to the Settlement Agreement as Exhibit B, and the Joint Press Release attached to the Settlement Agreement as Exhibit C. The Court approves as to form the Notice and Claim Form, the publication, and the Joint Press Release. The Court also approves the method of directing notice to eligible members of the Settlement Classes, as set forth in paragraph 12 below.

12. Within 30 days of this Order, the Claims Administrator shall prepare and cause individual copies of the Notice to be sent by United States First Class Mail to eligible members of the Settlement Classes whose mailing addresses can be determined through reasonable effort. The Claims Administrator also shall mail copies of the Notice to any other potential members of the Settlement Classes that request copies or that otherwise come to its attention. The Claims Administrator shall also make the Notice available on the website

dedicated to this Settlement.

13. The Court finds that the foregoing plan for notice to eligible members of the Settlement Classes will provide the best notice practicable under the circumstances, and complies with the requirements of Rule 23 and applicable standards of due process.

14. Prior to the Fairness Hearing, counsel for Defendants and Class Counsel shall jointly file with the Court an affidavit from a representative of the Claims Administrator confirming that the plan for disseminating the Notice and the Publication Notice has been accomplished in accordance with the provisions of paragraph 12 above.

15. Members of the Settlement Classes who wish to opt-out from the Class must request exclusion no later than thirty (30) days before the date of the Fairness Hearing, and in accordance with the instructions set forth in the Notice. Settlement Class Members who do not submit timely and valid requests for exclusion pursuant to such instructions will be bound by the terms of the Settlement Agreement in the event it is approved by the Court and becomes effective, and by any orders and judgments subsequently entered in the Action, whether favorable or unfavorable, regardless of whether they submit a Claim Form to the Claims Administrator. Members of the Settlement Classes who submit timely and valid requests for exclusion will not be bound by the terms of the Settlement Agreement or by any orders or judgments subsequently entered in the Action, and they may not submit a Claim Form to the Claims Administrator.

16. Members of the Settlement Classes who do not request exclusion may submit written comments or objections to the Settlement Agreement or other Settlement-related matters (including attorneys' fees) no later than thirty (30) days before the date of the Fairness Hearing.

17. Any Member of the Settlement Classes who has not requested exclusion may also attend the Fairness Hearing, in person or through counsel, and if the Member of the Settlement Classes has submitted written objections, may pursue those objections.

18. No Member of the Settlement Classes, however, shall be entitled to contest the foregoing matter in writing and/or at the Fairness Hearing unless the Member of the Settlement Classes has specifically complied with the objection requirements indicated in the Notice. Unless otherwise directed by the Court, any Class Member who does not submit a statement of objection in the manner specified above will be deemed to have waived any such objection.

19. Any attorneys hired or retained by Settlement Class Members at Settlement Class Members' expense for the purpose of objecting to the Settlement are required to serve a notice of appearance on Class Counsel and Defense Counsel and file such notice with the Clerk of the Court, not later than twenty-one (21) days prior to the Fairness Hearing.

20. Any Settlement Class Member who serves and files a written objection and who intends to make an appearance at the Fairness Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, in order to object to the fairness, reasonableness or adequacy of the Proposed Settlement, is required to serve a notice of intention to appear on Class Counsel and Defense Counsel and file such notice with the Court, not later than twenty-one (21) days prior to the Fairness Hearing.

21. Respective Defendants' Counsel and Class Counsel are directed to furnish promptly to each other and any counsel who filed a notice of appearance with copies of any and all objections or written requests for exclusion that might come into their possession.

22. During the Court's consideration of the Settlement Agreement and pending

further order of the Court, all proceedings in this Action, other than proceedings necessary to carry out the terms and provisions of the Settlement Agreement, or as otherwise directed by the Court, are hereby stayed.

23. If the proposed Settlement Agreement is not approved by the Court or for any reason does not become effective, the Settlement Agreement will be nullified, the Settlement Classes for settlement purposes will not be certified, and the steps and actions taken in connection with the proposed Settlement (including this Order (except as to this paragraph) and any judgment entered herein) shall become void and have no further force or effect. In such event, the parties and their counsel shall take such steps as may be appropriate to restore the pre-motion status of the litigation.

24. Neither the Settlement Agreement nor the provisions contained therein, nor any negotiations, statements, or proceedings in connection therewith shall be construed, or deemed to be evidence of, an admission or concession on the part of any of the respective Parties, their counsel, or any other person, of any liability or wrongdoing by any of them, or of any lack of merit in their claims or defenses, or of any position on whether any claims may or may not be certified as part of a class action for litigation purposes.

25. The court retains jurisdiction over this Action, the Parties, and all matters relating to the Settlement Agreement.

26. The Parties' submissions in support of final approval of the settlement shall be filed on or before _____, 2024.

27. Class Counsel shall file their application for award of attorneys' fees on or before _____, 2024. A copy of the application shall be posted on the settlement website.

28. The Court may, for good cause, extend, but not reduce in time, any of the deadlines set forth in this Preliminary Approval Order without further notice to Class Members.

SO ORDERED this _____day of _____, 2024.

_____
Honorable Noel L. Hillman, U.S.D.J

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

SEVERA, et al.,	:	
	:	
Plaintiffs,	:	Case No.: 1:20-cv-6906
	:	
v.	:	Civil Action
SOLVAY, et al.,	:	
	:	
Defendants	:	

Certification of Service

I, Shauna L. Friedman, Esq., hereby certifies to the Court as follows:

1. I am an attorney at law and a member of Barry, Corrado & Grassi, PC.

2. I hereby certify that on the 29th day of January, 2024, the within Notice of Motion for Preliminary Approval of Class Action Settlement; Certifications of Shauna L. Friedman, Esq., Oliver T. Barry, Esq., Alan H. Sklarsky, Esq., and Gerald J. Williams, Esq. in Support of Motion; Memorandum of Law in Support of Motion; Corresponding Exhibits; Proposed Order; and Certification of Service was filed electronically using the PACER electronic filing system.

3. I further certify that a courtesy copy of same was served electronically upon all counsel of record.

4. I further certify that a courtesy copy was mailed by United States Postal Service postage prepaid to:

Honorable Noel L. Hillman, U.S.D.J.
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets, Room 1050

Camden, NJ 08101

I certify that the foregoing statements made by me are true and correct to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 29, 2024

BARRY,CORRADO & GRASSI, PC

/s/ Shauna L. Friedman

Shauna L. Friedman, Esq.
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Attorney for Plaintiffs