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Respectfully submitted,

**ANDERSON ALEXANDER, PLLC**

By: /s/ Clif Alexander

**Clif Alexander**

Federal I.D. No. 1138436

Texas Bar No. 24064805

[clif@a2xlaw.com](mailto:clif@a2xlaw.com)

**Austin W. Anderson**

Federal I.D. No. 777114

Texas Bar No. 24045189

[austin@a2xlaw.com](mailto:austin@a2xlaw.com)

**Lauren E. Braddy**

Federal I.D. No.

Texas Bar No. 24071993

[lauren@a2xlaw.com](mailto:lauren@a2xlaw.com)

819 N. Upper Broadway

Corpus Christi, Texas 78401

Telephone: (361) 452-1279

Facsimile: (361) 452-1284

**LILES WHITE PLLC**

By: /s/ Stuart R. White

**Stuart R. White**

Federal I.D. No. 11448833

Texas Bar No. 24075268

[stuart@lileswhite.com](mailto:stuart@lileswhite.com)

**Kevin W. Liles**

Federal I.D. No. 21501

Texas Bar No. 00798329

[kevin@lileswhite.com](mailto:kevin@lileswhite.com)

500 N. Water Street, Suite 800

Corpus Christi, Texas 78401

Telephone: (361) 826-0100

Facsimile: (361) 826-0101

**FRAZER PLC**

By: /s/ T. Roe Frazer II

**T. Roe Frazer II** (Admitted *Pro Hac Vice*)

Tennessee Bar No. 35785

[roe@frazerlaw.com](mailto:roe@frazerlaw.com)

1 Burton Hills Blvd., Suite 215

Nashville, Tennessee 37215

Telephone: (615) 647-0990

*Attorneys in Charge for Plaintiffs and the Class Members*

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**I.  
INTRODUCTION**

By Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion"), Representative Plaintiffs<sup>1</sup> seek entry of a Preliminary Approval Order finding that: (1) the Agreement is fair, reasonable and adequate and thus sufficient to promulgate notice of settlement to the Class; (2) the Agreement is within the range of possible judicial approval; (3) the Agreement was negotiated and entered into at arm's-length, in good faith, and free of collusion; (4) the requirements for certifying the Class under Rule 23(a) and Rule 23(b)(3) have been met; and (5) Class Members shall be notified of the terms of the Agreement and of their rights in connection therewith.

In addition, Plaintiffs respectfully request that the Court: (1) approve the form and method of providing Class Members notice of settlement; (2) approve the appointment of the Special Master and the Claims administrator, and the Claims Program to be utilized by the Special Master in allocating the settlement proceeds to the Participating Class Members; (3) approve the proposed Claim Form; (4) schedule a fairness hearing to determine whether the Agreement should be given final approval ("Fairness Hearing"); (5) establish dates for the dissemination of the Notice Packet, opt-outs, and objections to the Agreement and other relevant deadlines; and (6) continue the stay of litigation of claims pending final approval of the Agreement.

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<sup>1</sup> Capitalized terms used in this Motion have the same meaning as those defined in the Agreement.

## II. STATEMENT OF FACTS

### A. OVERVIEW OF VOESTALPINE’S BUSINESS OPERATIONS<sup>2</sup>

Approximately five (5) years ago, a new industrial plant—Defendants’ La Quinta Plant—made Portland, Texas its home. Defendants are related entities that are part of a family of companies based in Austria that are world leaders in the manufacture, processing, and development of steel products.<sup>3</sup> The Plant is a 360-ton-per-hour and 2,205,000 ton-per-year Direct Reduced Iron (“DRI”)/Hot Briquette Iron (“HBI”) production plant located near the La Quinta Ship Channel (the “Ship Channel”) at 2800 La Quinta Terminal Road, Portland, Texas (“La Quinta Plant”). The La Quinta Plant was built to be the largest and most advanced plant in the world for manufacturing HBI—a sophisticated “pre material” used in steel production—and is to date, voestalpine’s largest ever foreign investment. It is the only facility in the United States that manufactures HBI.

### B. THE ORIGINS OF THE LITIGATION

On May 22, 2017, Class Counsel filed the first of three lawsuits against Defendants for damages allegedly caused by Dust migrating from Defendants’ La Quinta Plant.<sup>4</sup> *See Chapman, et al. v. voestalpine Texas LLC, et al.*, No. 2:17-cv-00174, ECF No. 1 (S.D. Tex.) (“*Chapman* Litigation”). While the *Chapman* Litigation was initially filed as a class action, the representative claims were dropped in the Third Amended Complaint filed January 24, 2018. *See id.* at ECF Nos. 1 and 40. On January 29, 2019, Class Counsel filed a separate class action against Defendants seeking injunctive relief along

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<sup>2</sup> Defendants are Delaware limited liability companies ultimately wholly owned by Austrian entities. Defendants and the other entities operating under the voestalpine umbrella will be collectively referred to as “voestalpine.”

<sup>3</sup> *See* <http://www.voestalpine.com/texas/en/Company>

<sup>4</sup> Class Counsel also filed *Ocean View Development, Ltd., et al. v. voestalpine Texas LLC, et al.*, No. 2:17-cv-00332, ECF No. 1 (S.D. Tex.) on behalf of commercial business owners. Those entities are not included within this Class and that matter has been separately resolved.

with individual claims for damages to real and personal property on behalf of 149 individuals residing in Portland, Texas and Gregory, Texas. *Abben, et al. v. voestalpine Texas LLC, et al.*, No 2:19-cv-32, ECF No. 1 (S.D. Tex. 2019). The next day, on January 30, 2019, Class Counsel filed a third lawsuit, *Thurmond, et al. v. voestalpine Texas LLC, et al.*, No. 2:19-cv-34, ECF No. 1 (S.D. Tex.), as a representative action alleging vehicle damage caused by Defendants' activities at the La Quinta Plant, along with individual claims for injunctive relief. These three filings have now been consolidated into one action before this Court, for settlement purposes only.

### **C. DISCOVERY AND CASE DEVELOPMENT**

During the pendency of these Consolidated Actions, counsel for both Plaintiffs and Defendants to the lawsuits (hereinafter referred to as the "Parties") engaged in significant factual discovery and expert investigations. Specifically, the Parties exchanged over 360,343 pages of documents through formal written discovery, over 82,611 documents were subpoenaed from third parties, and an additional 1,677 documents were obtained through Freedom of Information Act requests from third-party entities. The Parties also scheduled a site inspection of Defendants' La Quinta Plant, whereby Class Counsel and Plaintiffs' experts were granted access to the Plant. During that site inspection, Plaintiffs' experts took considerable sampling and documented production activities. In addition to inspecting Defendants' La Quinta Plant, Class Counsel arranged for regular and extensive inspection and sampling from residences and vehicles located within the Class Area over a one-year period. Defendants likewise retained experts who performed their own independent investigations and sampled evidence from residences and vehicles within the Class Area. In total, the Parties retained twenty-two (22) experts—Plaintiffs retained ten (10) and Defendants retained twelve (12). These experts each subsequently provided comprehensive reports on the issues of liability and damages.

In addition to fully engaging in written and expert discovery, both parties took multiple depositions. Plaintiffs deposed five (5) of Defendants' representatives, including executive officers and department managers of the facility and including one manager of the voestalpine steel division company from Austria, and Defendants deposed thirteen (13) individual plaintiffs from the *Chapman* Matter. It was only after both sides provided their expert reports (and after Class Counsel filed the Opposed Motion for Class Certification in the *Thurmond* Matter) that the Parties agreed to participate in mediation.

**D. HISTORY OF SETTLEMENT NEGOTIATIONS AND MEDIATION**

The Parties selected John W. Perry, Jr. with Perry, Balhoff, Mengis, and Burns, L.L.C. to serve as the neutral third-party mediator. Mr. Perry has served as a Special Master and Court-Appointed Mediator in federal and in state court. For instance, in federal court, Judge Carl J. Barbier in the Deepwater Horizon case chose Mr. Perry to recommend a plan to allocate a settlement totaling \$2.3 billion, and then appointed him as Special Master to allocate the common benefit fee; Judge Eldon E. Fallon appointed him as Special Master to implement the class settlement in the Chinese Drywall litigation; and Judge Jesse M. Furman appointed him as Special Master to implement the settlement in the General Motors LLC Ignition Switch litigation, a case which Mr. Perry had previously mediated.<sup>5</sup>

The Parties' initial call with Mr. Perry occurred on June 18, 2019. During that call the Parties appraised Mr. Perry of the current case posture and created a plan whereby they would work toward formal mediation. Both Plaintiffs and Defendants subsequently had one-on-one meetings with Mr. Perry to discuss the outstanding legal issues they respectively believed would impact the mediation and future case settlement. Finally, during September 17–18, 2020 the Parties engaged in a two-day formal mediation with Mr. Perry in Houston, Texas. Although the Parties did not resolve the pending

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<sup>5</sup> <http://www.pbmbllc.com/attorneys/john-w.-perry-jr/>

matters during mediation, they continued to maintain further settlement discussions. On September 24, 2020, Mr. Perry provided a Mediator’s Proposal to the Parties, which the Parties accepted on September 29, 2020—since that time the Parties have worked together diligently to craft the Agreement and its corresponding exhibits that are currently before this Court.

### III. SUMMARY OF SETTLEMENT TERMS

#### A. INDIVIDUALS INCLUDED IN THE PROPOSED SETTLEMENT CLASS

The class is defined to include “all Persons who Reside<sup>6</sup> in the Class Area as of the date the Court enters the Preliminary Approval Order, or who formerly Resided within the Class Area for a period of at least one (1) month during the Class Period,<sup>7</sup> and had a legal right to occupy the Residence, through property ownership or residential lease agreement.” *See* Exhibit 1, p. 5. The Class Area is defined to include the geographic area within San Patricio County, TX, largely within the City of Portland and the City of Gregory as depicted and delineated in the map below.



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<sup>6</sup> According to the Agreement, “Reside” means to occupy and/or own a Residence as a rightful property owner, or under a valid residential lease agreement, or as an authorized domiciled occupant for a period of at least one (1) month. Reside shall not include any commercial or business occupant or occupancy. Exhibit 1, pg. 14.

<sup>7</sup> “Class Period” means the time that is between August 1, 2016 (the day Defendants began Operations) and the date the Court enters its Preliminary Approval Order.

*See* Exhibit D to Exhibit 1.<sup>8</sup> The Class Area is further subdivided into seven (7) Weighted Class Zones that take into account the degree of exposure to the Dust as it migrates from Defendants’ La Quinta Plant.

Specifically excluded from the above defined class are: (a) any and all legal representatives, employees, corporate officers, heirs, successors, or assigns of Defendants; (b) the Judge to whom this matter is assigned, any member of the Judge’s immediate family, and any other judicial officer who is or was assigned to this action; and (c) any attorneys who are employees, partners, members, or shareholders of Class Counsel. *See* Exhibit 1, § 3.1(a)–(c).

The scope of the Class Area was negotiated by the Parties both during mediation and while drafting the Agreement before the Court. In deciding upon the proposed Class Area and the seven (7) weighted zones within the Class Area, the Parties took into account the findings issued by the Texas Center for Environmental Quality (“TCEQ”), the testing and investigation performed by both Representative Plaintiffs’ and Defendants’ experts, and the prevailing weather patterns in the area.

## **B. TOTAL SETTLEMENT VALUE**

The Total Settlement Value is \$88,413,036.00 and includes both a monetary benefit (Total Cash Settlement Amount) and a non-monetary benefit (Remedial Measure Value) to the Class Members. *See* Exhibit 1, pgs 13, 16. The Total Cash Settlement Amount is \$16,825,000.00. *See id.* at p. 16. The Remedial Measure Value includes “those past, present, and future improvements, modifications, and procedures that Defendants have taken, are taking, and/or will continue to take to minimize, mitigate or eliminate the migration of Dust from the Facility offsite, including to the Class Area” through December 31, 2023. *Id.* at p. 16.

The Remedial Measure Value is divided into two categories, and includes: (1) \$50,740,967.00, for remedial actions taken from May 2017, and continuing through June 30, 2021; and (2) an additional

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<sup>8</sup> Defendants’ La Quinta Plant is depicted in green with the star.

\$20,847,069.00 of continuing remedial actions that Defendants will take through December 31, 2023. Beginning in 2017, Defendants have undertaken and implemented a variety of improvements, modifications and procedures to mitigate or eliminate fugitive Dust in its operations and at its facility, and by extension, off-site. These changes include both the acquisition, installation and deployment of new equipment and changes in operational practices, including additional maintenance of equipment and monitoring of weather conditions. Defendants have also begun the implementation of multi-year capital projects involving new technologies that require performance of complicated engineering, procurement, and construction to incorporate these technologies at Defendants' La Quinta Plant. Several of these capital projects are on-going and will be completed over the next several years. Further, equipment purchased and incorporated into facility operations require upkeep and maintenance that will also continue into future years beyond 2023.

Remedial Measures instituted, acquired, installed, deployed and/or initiated since 2017 have included:

**Polymer Surfactant:** An eco-safe, biodegradable, liquid polymer, combined with a hydro-mulch and a color additive is sprayed on outdoor stockpiles of by-products, including HBI and iron oxide fines and chips, and Remet. Once applied, the surfactant creates a light surface crust that remains water permeable and is effective in controlling dust and suppressing fugitive emissions from the storage pile. The hydro-mulch additive is an additional binding agent to help the polymer to adhere to the stock piles. The color additive aides in identifying treated piles and in assessing the need for further application of the sprayed surfactant.

**Dust Bosses:** Powerful, portable dust-suppressing water cannons that have the capability of dispersing a water mist up to 1100 meters in elevation and covering an area of up to 31,000 square meters. Defendants have acquired eight units throughout the facility to assist in material handling operations. These are placed strategically at locations where materials are being transferred or moved, including to or from piles, and other locations. These cannons are routinely moved to high-work areas and are redirected as needed to knock down fugitive dust that may be generated by movement of materials and working in stockpiles.

**Paving and Curbing:** Defendants undertook a several-phased project to pave and curb roadways and other high-traffic areas throughout the facility that had not initially been paved and curbed in the original plant construction. Paving was focused on areas of high vehicle traffic, particularly heavy machinery traffic. Phase 1 included an

additional estimated 203,000 square feet of roads and surfaces throughout the facility. Phase 2 consisted of another estimated 88,000 square feet of roads and surfacing. Paving and curbing allows for much better control of dust from vehicle traffic through use of street sweepers and water trucks.

**Water Trucks:** Defendants acquired and deployed two Ford 150 Water Trucks (2000-2999 gallons). These are available and are utilized on a 24/7 basis. Initially, these were deployed principally on applying water on unpaved gravel road surfaces; later, as paving and curbing moved forward, deployment was transitioned principally to paved roads and surfaces as well as areas around by-products stockpiles throughout the facility.

**Street Sweepers:** Defendants acquired and deployed large street sweepers (TYMCO Model DST-6, Regenerative Air Sweepers) on a daily basis on paved road surfaces throughout the facility. These are available and are utilized on a 24/7 basis to address soils and other debris that get tracked onto road surfaces through movement of heavy machinery and other vehicle traffic.

**Conveyor Covers:** Defendants utilize conveyors to transport raw feedstock, final product and off-spec materials throughout the La Quinta Plant. The conveyor system is fitted with covers to minimize the impact of wind and rain on the materials being transported and to minimize fugitive dust emissions. Conveyor covers are routinely maintained and repaired. Additionally, the facility investigated, engineered and installed upgraded covers that are easier to remove and replace.

**Baghouses:** Defendants utilize baghouses to capture potential fugitive dust emissions from various transfer points along conveyors that move iron ore pellets used in the process areas. Baghouse compressors were upgraded to address local environmental conditions and to ensure increased reliability.

**Wind Breaks:** Temporary constructed wind breaks are installed and utilized in material handling areas and around transfer points throughout the facility, including at transfer towers and truck loading stations. These are used to shield material handling operations and to divert wind around such operations. They are often utilized in conjunction with Dust Bosses.

**Dry Fog:** This is a multi-phased, multi-year project to engineer, design and install a series of dry fog installations near material transfer areas where baghouses cannot be utilized and to capture potential black metallic dust from the movement of HBI product. The facility has consulted with Dust Solutions, Inc. (DSI) to install their unique Dry Fog product in several locations throughout the facility. Dry Fog is a manufactured fog made through air-atomizing nozzles that create water droplets between 1 and 10 microns in diameter. These droplets impact and agglomerate to fine airborne dust particles, making the dust particles heavy enough to fall back into the process and thus be removed from the air. To date, one project has been pilot tested and ultimately was completed and is in use, and another is soon to be completed. Several other projects are in engineering and/or planning stages, and still others are being investigated for engineering feasibility.

**Perimeter Wind Fence:** After a detailed engineering feasibility investigation and computer modeling exercises, Defendants are in the process of constructing a unique 70-foot Wind Fence in an “L” configuration along a large portion of the eastern facility boundary and extending westward along the southern boundary of the main facility processing area. The Wind Fence is an engineered and site-specific installation, utilizing a unique mesh fencing material sold by DSI that, as designed, is intended to reduce wind velocities downwind of the fence location. This installation is geared to address winds from the south and east, the majority wind directions at the La Quinta Plant. The project underwent computerized wind modeling to determine optimal sizing (height) and location placement (ground orientation and length) of the Wind Fence to best optimize wind reduction in operating areas within the facility.

*See* Exhibit H to Exhibit 1. In addition to the specific actions and projects identified above, Defendants have also retained consultants to address the possibility of future feasible dust mitigation projects upon the completion of the current capital projects. Defendants have also begun construction on the By-Products Management Improvements Project, a new multi-year capital project intended to implement better methods to separate, store, handle and re-use by-products (such as oxide fines and chips, and Remet) and lump ore used in the production of HBI. The By-Products Management Improvements Project reduces the Dust by causing a reduction in the volume of by-product material in stockpiles. Eventually, the By-Products Management Improvements Project will lead to the elimination, over time, of stockpiles. The project was engineered and designed to minimize dust generation from movement of these materials from stockpiles to the processing tower, and to reduce front-end loader traffic and open movement of stored materials. Some of the design features include cladded transfer towers with dust collection systems, covered conveyors, enclosed screening stations (one for handling oxides and another for handling lump ore and Remet), and new storage locations each partially surrounded with three concrete walls and a roof. *See id.*

A breakdown of expenses is included below:

<u>Project</u>	<u>Costs through June 30, 2021</u>	<u>Estimated Costs through 2023</u>
Polymer Surfactant	\$894,659 <sup>i</sup>	\$392,900*
Dust Bosses	\$2,312,747 <sup>ii</sup>	\$599,125*
Paving/Curbing	\$3,611,064	none currently planned
Water Trucks	\$392,725 <sup>iii</sup>	\$254,250*
Street Sweepers	\$2,172,870 <sup>iv</sup>	\$989,500*
Conveyor Covers	\$20,211	TBD
Baghouses	\$64,089	TBD
Wind Breaks	\$286,034 <sup>v</sup>	\$180,000*
Dry Fog	\$1,469,817	\$2,457,155
Perimeter Wind Fence	\$4,650,411	\$3,244,589
Consulting	\$75,890	TBD
By-Products Management	\$34,790,450	\$12,729,550
TOTAL	\$50,740,967	\$20,847,069
TOTAL -- All Remedial Measures anticipated through 2023: \$71,588,036		

*See id.* at pgs. 3–4 (internal footnotes are not reproduced here). The costs associated with these Remedial Measures are significant. As previously noted, additional upkeep and maintenance costs, operating costs associated with these projects, and costs associated with investigating and possibly implementing new installations and other dust mitigation measures, will continue in the years beyond 2023.

### C. SCOPE OF APPLICABLE RELEASE

The Released Parties means the Defendants voestalpine USA Holding LLC f/k/a voestalpine Texas Holding LLC, voestalpine Texas Holding LLC and voestalpine Texas LLC, and each of their past, present and future members, officers, directors, shareholders, employees, joint venturers, managers, representatives, adjusters, attorneys, agents, consultants, insurers, excess insurers, reinsurers, indemnitors, contractors, affiliates, divisions, partnerships, independent contractors, parents, subsidiaries, related entities, predecessors, successors, assigns, and including but not limited to, successors or predecessors by merger, and any other person or entity acting on their behalf or who has, had or could have any legal responsibility relating to the Released Claims. *See* Exhibit 1, pg. 13.

The Released Claims under this Agreement include any and all claims, demands, actions, causes of action, whether individual actions and/or class actions, seeking damages or relief of any nature or kind, past, present and future, including those that that have occurred, that currently exist, that are of a continuing and ongoing nature, and/or which may arise in the future, including but not limited to claims for compensatory damages, punitive or exemplary damages, costs, pre-judgment interest, post-judgment interest, attorney fees, damages, obligations, liabilities, appeals, reimbursements, replacement costs, expenses, liens, interest, penalties or fines, and including claims which were asserted or which could have been asserted in the Consolidated Action based on the facts alleged in the Consolidated Action, accrued or not yet accrued, legal or equitable, under any theory, at law or equity, including specifically, but not limited to all claims of past or present nuisance, continuing nuisance, permanent and/or temporary nuisance, and/or trespass, and/or other claims of fault, including negligence, gross negligence, ultra-hazardous liability, strict liability, vicarious liability, related to Dust (but excluding claims for personal injury); as well as, claims based on environmental laws and/or regulations, including the federal Clean Air Act, and all other federal, state, county, city or local statutes, rules, regulations and ordinance of every kind and nature, seeking relief based on facts or events that have occurred, and/or that currently exist, and/or that are of a continuing and ongoing nature, and/or which may arise in the future, related to Dust; as well as, claims related to Dust arising out of, caused or contributed by or relating to the siting, construction, existence of or operation of the Facility from the time of construction and from the start-up of the Facility, whether before, on, or after the Effective Date of this Agreement and continuing hereafter; and as well as, any injunctive relief seeking protection from or to prevent, reduce, mitigate or eliminate, Dust; all of which claims and causes of action Releasing Parties expressly waive and relinquish to the fullest extent permitted by law. Such Released Claims specifically include, but are not limited to, claims seeking or asserting:

1. Damages, past, present and/or future for damage or injury to Personal Property of any kind or nature, including cleaning, repair, replacement or restoration costs or expenses;
2. Damages, past, present and/or future for damage or injury to Real Property, including cleaning, repair, replacement or restoration costs or expenses;
3. Damages, past, present and/or future for damage or injury to Vehicles, including cleaning, repair, replacement or restoration costs or expenses;
4. Damages, past, present and/or future for loss of use and enjoyment of Real Property or Personal Property;
5. Damages, past, present and/or future for inconvenience;
6. Damages, past, present and/or future for emotional distress, or fear or fright;
7. Damages, past, present and/or future for diminution of value of Real Property or Personal Property, or for “stigma” damages;
8. Damages, past, present and/or future for temporary or permanent nuisance, private nuisance or inconvenience, negligence, negligence per se, trespass, or gross negligence, including of a continuing nature;
9. Exemplary or punitive damages;
10. Equitable or injunctive relief;
11. Damages, past, present and/or future for business interruption loss, loss of business opportunity, loss or profits, loss of rents, loss of income and/or other economic loss relating to any commercial conduct performed at or relating to a Residence within the Class Area (including but not limited to commercial conduct while working from the Residence during the COVID-19 pandemic);
12. Expenses for investigation, engineering services, cleanup, restoration, response or removal actions, or remediation with respect to Personal Property or Real Property, or for Vehicles;
13. Any private attorney general enforcement actions or “citizen suits” and/or any other private cause of action under any federal and/or state statute, pending or threatened, past, present and/or future, with respect to Dust, including but not limited to claims for damages, penalties, fines, injunctive or equitable relief, investigation, remediation, monitoring, testing, cleanup, remedial action, removal actions, remedial costs and/or restoration;
14. Violation of any federal, state or local statute, law, ordinance, order or regulation.

It is expressly understood that Released Claims include claims related to Dust that have not yet occurred but which may arise in the future, **provided, however**, that Released Claims do not include, and that nothing herein shall bar, any claims for relief based solely on the incremental emissions or releases of Dust from future Facility operations that exceed 100 percent of the currently permitted maximum annual production capacity (as referenced in the air emission permits NSR Permit No. 108113 and PSDTX1344M1, issued by the Texas Commission on Environmental Quality to voestalpine Texas LLC, and applications related thereto); and, **further provided**, that Released Claims do not include, and that nothing herein shall bar any claims for relief based solely on a future catastrophic release from the Facility (i.e., an unexpected, accidental incident resulting in releases of Dust atypical in nature and dramatically greater in amount than those historically associated with regular plant operations), which causes substantial real or personal property damages that are significant and measurable to a Plaintiff or Class Member seeking such relief. *See* Exhibit 1, § V.

**D. SETTLEMENT ADMINISTRATION PROCESS**

To aid in the administration of the settlement, pending approval by this Court, the Parties have agreed to utilize the services of Dan Balhoff, a law partner of mediator John W. Perry, Jr., as Special Master (including members of his law firm, Perry, Balhoff, Mengis & Burns, LLC, to whom he may delegate tasks) in the effectuation of this Agreement. Mr. Balhoff, as the Special Master, shall be responsible for overseeing the settlement administration process, from the issuance of notice through the allocation of the settlement proceeds. The Parties have also selected Postlethwaite & Netterville of Baton Rouge, Louisiana to serve as the Claims Administrator under the direction and oversight of the Special Master. The Claims Administrator may contract with various third-party companies to effectively fulfill its duties as the Claims Administrator.

**1. Class Member Identification Plan**

In order to ensure that notice of this settlement reaches the Class Members, the Claims Administrator shall, subject to Court-approval, implement the Property Identification Plan (“PIP”) outlined in the Agreement. *See* Exhibit 1, at Exhibit G. The PIP describes the efforts to be undertaken by the Claims Administrator to (a) identify the physical addresses of all Residences in the Class Area; (b) attempt to locate the addresses for Persons who own the Residences, if they do not reside at the Residence; and (c) attempt to locate individuals who no longer reside at and/or previously owned a Residence within the Class Area during the Class Period.

To do this, the Claims Administrator will engage a vendor with the applicable working knowledge of geospatial data to utilize the “shapefiles” made publicly available by the San Patricio County Appraisal District. These shapefiles will allow them to identify the properties located within the seven (7) Weighted Class Zones within the Class Area. The data available within these files includes: Parcel ID, Site Address, Owner Name, and Owner Mailing Address. This data is available for each appraisal year from 2016 through 2021. Using that data output, the Claims Administrator will aggregate a list of *all* properties identified within the Class Area for each year of the Class Period (the “Property Database”). For each residential property within the Property Database, the Claims Administrator will identify all Owners (and their respective mailing addresses) within the Class Period, according to the San Patricio County Appraisal District records.<sup>9</sup>

Additionally, the Claims Administrator will obtain from CoreLogic (a data and analytics leader within the housing and insurance industries) a list of all properties with complete mailing addresses within zip codes 78359 (Gregory, TX) and 78374 (Portland, TX) where the property type is identified as “Residential.” This data will be used to cross reference and reasonably filter the Property Database

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<sup>9</sup> The Claims Administrator may utilize skip-tracing as needed to update mailing address information for non-Resident Owners within the Property Database.

records to include only Residences and remove records associated with other property types (such as Vacant Land, Agricultural, Industrial, Commercial, Recreational, Public, etc.) which may be included in the county appraiser data set. Finally, the Claims Administrator will obtain a list of all multi-family dwelling (apartment) addresses within zip codes 78359 (Gregory, TX) and 78374 (Portland, TX) to add to the Property Database from Alesco Data, a consumer and resident data provider. The Claims Administrator may also utilize tools available through the United States Postal Service, such as the National Change of Address (“NCOA”) Database to “pre-screen” the Property Database records for mail deliverability and adjust its records accordingly.

## **2. Notice Distribution Plan**

The Parties have created a detailed a comprehensive Notice Plan<sup>10</sup> to provide comprehensive notice of the settlement to the Class Members. *See* Exhibit I to Exhibit 1. Specifically, the Notice Plan contemplates having three methods of notice distribution: (1) direct First-Class U. S. Mail to the addresses identified in the Property Database; (2) a comprehensive settlement website; and (3) Newspaper Notice to run in one or more newspapers of wide distribution that include Portland, Texas and Gregory, Texas.

Within sixty (60) days of an order preliminarily approving the settlement, the Claims Administrator will send individual Notice Packets to each Class Member/Residence identified in the Property Database (“Notice Issuance Deadline”). These Notice Packets will contain the Short-Form Class Notice (Exhibit A to Exhibit 1), Claim Form (Exhibit C to Exhibit 1), and a pre-paid return envelope. The Short-Form Class Notice consists of approximately one page and provides: an overview of the settlement process with instructions for how to participate, object, or opt out; how to obtain additional information; and the date and time of the fairness hearing.

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<sup>10</sup> The full Notice Plan out outlined in Exhibit I to Exhibit 1.

The Short-Form Class Notice also directs Class Members to the settlement website where they may access the Long-Form Class Notice (Exhibit B to Exhibit 1). The Long-Form Class Notice provides more comprehensive information about the lawsuit(s) and the settlement, and details the process for submitting a Claim Form, objecting to the settlement, or opting out of the Class. In addition to the Long-Form Class Notice, the settlement website will also have available the relevant case documents, including: downloadable Claim Forms, the live pleading in the Consolidated Action, the Agreement, this Motion, and the Order granting preliminary approval.

The Claims Administrator will set up a settlement call center where Class Members may call to obtain additional information about the Settlement and ask questions about submitting a Claim Form, objecting, or opting out of the settlement. Depending on the nature of the questions asked, the Claims Administrator may direct the Class Member to the Special Master for further discussions. The contact information for the call center will be included in both the Short-Form and Long Form Notices and will be prominently placed on the settlement website. The Claims Administrator will also provide an email address the Class Members may use to communicate and provide documentation.

In addition to the individuals/residences identified in the Property Database, the Parties also intend to circulate a Newspaper Notice through the Corpus Christi Caller Times, a local newspaper with distribution across the Corpus Christi, Texas and Gregory/Portland, Texas area. This Newspaper Notice will contain substantially the same information as is contained in the Short-Form Notice and is principally (but not exclusively) intended for *former* Residents who are not likely to have been identified in the Property Database to receive the Notice Packet via mail. The Claims Administrator will arrange for the Newspaper Notice to be published in the Corpus Christi Caller Times beginning on the Notice Issuance Deadline and bi-weekly thereafter during the Notice Period. The Newspaper Notice will include information on how a Resident who believes he or she may qualify as Class Member can obtain a Notice Packet and file a Claims Form in order to qualify as a Participating Class

Member. Included in the Newspaper Notice will be the Settlement website address and the phone number for the Settlement call center.

**3. Notice Period**

The Notice Period shall run sixty (60) days from the Notice Issuance Deadline. *See* Exhibit 1, pg. 8. During the Notice Period, Class Members may return their Claim Form (and any required supporting documentation) to the Claims Administrator to become a Participating Settlement Member and receive monetary compensation (“Settlement Sum”) out of the Net Settlement Fund. Likewise, a Class Member may object to the terms of the settlement or opt-out of the settlement during the Notice Period.

a. Procedure to Return Claim Form and Documentation.

In order for a Class Member to become a Participating Class Member and be eligible to receive a Settlement Sum, they must properly and timely complete and submit a Claim Form. The completed Claim Form (and any necessary documentation) must be postmarked or otherwise received by the Claims Administrator by the end of the Notice Period. The Claim Form must: (1) be signed by the Class Member; (2) identify whether the Class Member (i) owns/owned but does/did not occupy the Residence, (ii) owns/owned and occupies/occupied the Residence, or (iii) Resides in the Residence by virtue of a residential lease; (3) state the dates during the Class Period that the Class Member owned and/or Resided in the Residence; and (4) state their email address and telephone number to aid future communication. In the event of a non-marital co-tenancy, each such Resident must provide the requested information on individual Claim Forms.

Class Members must also submit a Proof of Residence. Proof of Residence may consist of: a utility bill showing the Class Member’s name, the residential address, and a date within the Class Period; a lease agreement identifying Class Member and the property address at issue with the term of the lease; a letter from a property owner or leasing agent acknowledging the address and dates of

occupancy and identifying the Class Member as the tenant or an individual with a right to reside at the residence; a driver's license or state identification card issued by the State of Texas showing the Class Member's name and address; or any other such documentation that may be accepted by the Settlement Master at his discretion.

Upon receipt of each Claim Form, the Claims Administrator shall verify that it is completely filled out and timely received. In the event a Claim Form contains inaccurate or conflicting information on its face or is otherwise incomplete, the Claims Administrator shall contact the Class Member to obtain the required information or otherwise correct the Claim Form. The Claims Administrator will then compile all Claims Forms into the Claim Form Database. The Claim Form Database will be organized by zone and will identify all Claim Forms received per Residence within the Class Area.

b. Procedure to object to, or opt-out of, the settlement.

Each Class Member wishing to object to the settlement shall file with the Claim Administrator a timely written notice of objection delivered or postmarked during the Notice Period. *See* Exhibit 1, § 3.4. The objection must contain the following information to be valid: (1) the name and cause number of the Consolidated Action; (2) the Class Member's name, address, and telephone number; (3) the factual basis for the claim of qualifying for the status of class membership, including whether the objector is a current or former Resident of a property in the Class Area, and for what period of time during the Class Period, and including Proof of Residence or proof of ownership of Real Property within the Class Area; (4) state whether the Class Member plans to appear, either individually or through an attorney at the Fairness Hearing; (5) each specific objection or objections to the Settlement with the complete factual basis for each such objection, along with whatever legal authority, if any, the objector asserts regarding the objection; (6) a statement advising if the Class Member has objected to other class action settlements, and if so, identifying each such settlement, the date of such objection and the basis for the objection; and (7) their Personal Signature on the form under penalty of perjury

in the presence of at least one adult witness. No “mass” or “class” Objections shall be valid, and each Class Member who wishes to object must file their own objection that satisfies the above requirements. Failure of the Objector to comply with each of the above requirements for the Objection or to properly and timely serve copies on all the parties listed above will invalidate the objection. Additionally, Class Members who fail to file and serve timely written objections in accordance with these provisions shall be deemed to have waived any objections, shall not be heard at the Fairness Hearing, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the settlement.

Each Class Member who does not file an objection to the Settlement may exclude themselves from the Settlement by filing a timely written opt-out request with the Claims Administrator. *See* Exhibit 1, § 3.5. To be timely, the opt-out request must be delivered or postmarked within the Notice Period. The written opt-out request must state or include the following to be valid: (1) the name and cause number of the Consolidated Action; (2) the Class Member’s name, address, and telephone number; (3) a clear statement that the Class Member desires to opt out of the Settlement; (4) a clear statement explaining the reason or reasons why the Class Member is choosing to opt out of the Settlement; (5) whether the Class Member has or intends to retain legal counsel to represent him or her further, and whether the Class Member has or intends to file a lawsuit against Defendants; and (6) include their Personal Signature on the form under penalty of perjury in the presence of at least one adult witness. No “mass” or “class” opt-out requests shall be valid, and no Class Member may submit an opt-out request on behalf of any other Class Member.

The Claims Administrator will serve any objection or opt-out request on Class Counsel within fifteen (15) days of the close of the Notice Period, and Class Counsel shall file any such documents with the Court within twenty (20) days of the close of the Notice Period. The Claims Administrator shall collect and tabulate all opt out notices and all objections and report to Class Counsel and

Defendants' Counsel at least weekly identifying each opt out person and each objector along with information identifying the location and zone of each such opt out or objector. The Special Master may, at his sole discretion, contact any individual who submits a written objection or opt-out request to further ascertain the rationale for the objection or opt-out request and to answer any questions about this Agreement.

#### **4. Allocation Method for Distribution of Net Settlement Amount**

After the close of the Notice Period, the Claims Administrator shall provide the Special Master with the Claim Form Database. The Special Master shall thereafter have full and final authority to determine the amount to be paid to each Class Member who timely submitted a valid Claim Form according to the provisions below. *See* Exhibit 1, § IV.

Each Residence in the Class Area for which one or more Claim Forms is received shall be considered one (1) Residential Unit for purposes of administering the Settlement Agreement. The Special Master shall review the Claim Forms submitted during the Class Period for the purpose of determining the total number of Residential Units and setting the Weighted Zone Value. The Special Master has the discretion to set the Weighted Zone Value within the parameters set in the Settlement Agreement, such that the Residential Unit Value, when multiplied by the respective Weighted Zone Value for each Residential Unit equals the Net Settlement Amount. In establishing the Weighted Zone Value, the Special Master should consider the respective exposure to Dust based on proximity to the Facility, dominant weather patterns, and other factors to be discussed in consultations with Class Counsel and Counsel for Defendants. The Residential Unit Value shall be separated into two amounts: (1) an amount for damages to Real Property ("Real Property Amount"); and (2) an amount for damages to Personal Property ("Personal Property Amount").

In the event multiple Participating Class Members return Claim Forms for the same Residence, those Participating Class Members shall each receive a divided share of the Residential Unit Value.

The Special Master shall have full discretion in proportioning the Residential Unit Values between Participating Class Members who may have resided at the same residence during the Class Period and may consider factors such as the status as an Owner and/or Tenant, the duration of time and period of time within the Class Period that each owned and/or rented the Residence, and other factors at his discretion.

Within ninety (90) days of the close of the Notice Period, the Special Master shall set the Weighted Zone Values and apportion the Net Settlement Amount to reflect his determination of each Participating Class Member's individual Settlement Sum according to the Agreement. This apportionment shall be referred to as the Settlement Distribution Plan and it shall be filed with this Court in advance of the Fairness Hearing.

**E. Attorneys' Fees**

Pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel will file a motion for an award of attorneys' fees and litigation expenses. By that motion, Class Counsel will request an amount that does not exceed 7.63% of the Total Settlement Value. The motion for fees and expenses shall be filed contemporaneously with the Motion for Final Approval, or by the deadline set by this Court.

**F. Service Awards**

Class Counsel shall likewise seek service awards, subject to Court Approval, for the Representative Plaintiffs named herein. Class Counsel will recommend a service award of \$1,000.00 for each Representative Plaintiff, for a total service award amount of \$7,000.00.

**IV.  
ARGUMENT & AUTHORITIES**

**A. JUDICIAL POLICY FAVORS PRE-TRIAL SETTLEMENT OF CLASS ACTION LAWSUITS**

Federal Rule of Civil Procedure 23(e) requires court approval for any compromise of a class action. *Evans v. Jeff D.*, 475 U.S. 717, 727–28 (1986) ; *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997) . In determining whether to approve a settlement, the Court should be guided by the

strong judicial policy favoring pretrial settlement of complex class action lawsuits. *See, e.g., Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983) ; *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 843 (E.D. La. 2007). This is, in part, because of the complexity and size of class actions:

Particularly in class action suits, there is an overriding public interest in favor of settlement . . . . It is common knowledge that class action suits have a well deserved reputation as being most complex. The requirement that counsel for the class be experienced attests to the complexity of the class action . . . . In these days of increasing congestion within the federal court system, settlements contribute greatly to the efficient utilization of our scarce judicial resources.

*Cotton*, 559 F.2d at 1331 (citing *United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826 (5th Cir. 1975)); *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (recognizing courts are mindful of the “strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.”).

Courts should “give Rule 23 a liberal rather than a restrictive construction, adopting a standard of flexibility in application which will in the particular case best serve the ends of justice for the affected parties and . . . promote judicial efficiency.” *Gunnells v. Health Plan Services, Inc.*, 348 F.3d 417, 424 (4th Cir. 2003) cert. den., *Healthplan Services, Inc. v. Gunnells*, 542 U.S. 915 (2004) (citing *In re A.H. Robins*, 880 F.2d 709, 740 (4th Cir. 1989), cert. den., 493 U.S. 959 (1989)); *see also Kidwell v. Transportation Communications International Union*, 946 F.2d 283, 305 (4th Cir. 1991), cert. den., 503 U.S. 1005 (1992) (“[t]rend is to give Rule 23 a liberal construction.”); *Rodger v. Electronic Data Systems Corp.*, 160 F.R.D. 532, 535 (E.D.N.C. 1995).

## **B. STANDARD FOR PRELIMINARY APPROVAL OF THE CLASS SETTLEMENT**

When a settlement is reached prior to Rule 23 certification, the law permits a class to be certified solely for the purposes of settlement. FED. R. CIV. P. 23(e); *Gonzalez v. O.J. Smith Farms, Inc.*, No. 5:20-CV-00086-FL, 2020 WL 7388435, at \*2 (E.D.N.C. Dec. 16, 2020). Although Rule 23(e) does

not delineate a procedure for court approval of settlements of class actions, courts have generally followed a multi-step process. *See* FED. R. CIV. P. 23(e)(2).

There are typically three stages applicable to the review of a proposed class action settlement. *See* MANUAL FOR COMPLEX LITIGATION (4th) § 21.632–.634 (4th ed. 2004). First, the court conducts a preliminary fairness evaluation and, if applicable, considers class certification. *See id.* at § 21.632 (noting that if the parties move for both class certification and preliminary approval, the certification hearing and preliminary fairness evaluation can usually be combined). Second, if the court makes a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms, the parties are directed to prepare the notice of certification and proposed settlement to the class members. *Id.* at § 21.633. Third, the court holds a final fairness hearing to determine whether to approve the settlement. *Id.* at § 21.634 .

At the preliminary approval stage, courts must both ensure that all of the requirements of Rule 23(a) and one of the sections of 23(b) are satisfied and determine that the settlement falls within the range of possible approval. *See* FED. R. CIV. P. 23(a)–(b); *Winingear v. City of Norfolk*, No. 2:12CV560, 2014 WL 12526327, at \*1 (E.D. Va. June 5, 2014). Federal courts generally find that preliminary approval of settlement and notice to the proposed class is appropriate if the proposed settlement “appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” NEWBERG ON CLASS ACTIONS § 13:13 (5th ed. 2011). Preliminary approval requires an exacting and thorough examination of the settlement at issue, not merely a “judicial rubber-stamp” of the parties’ agreement. *Id.* The Court must be provided with the necessary information “to evaluate the fairness or adequacy of a proposed settlement.” *Id.* (citing *Martin v. Cargill, Inc.*, 295 F.R.D. 380, 383–84 (D. Minn. 2013)).

For preliminary approval, “the standards are not as stringent as those applied to a motion for final approval. *See In re OCA, Inc. Secs & Derivative Litig.*, Civ. A. No. 5-2165, 2008 WL 4681369, at \*11 (E.D. La. Oct. 17, 2008); *see also Manual for Complex Litigation*, § 21.63 (“At the stage of preliminary approval, the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final review.”). On a motion for preliminary approval, courts consider the following factors: whether the settlement (1) discloses any reason to doubt its fairness, (2) has any obvious deficiencies, (3) proposes to grant preferential treatment to class representatives or segments of the class, (4) proposes excessive compensation to attorneys, and (5) appears to fall within the range of possible approval. *See OCA, Inc.*, 2008 WL 4681369, at \*11.

### **C. THE PROPOSED SETTLEMENT MERITS PRELIMINARY APPROVAL**

Although this Court will make its final determination that the settlement is fair, reasonable, and adequate after the Fairness Hearing (should the agreement be preliminarily approved), it is required to evaluate the settlement at issue to ensure that it is appropriate to move to the next step—notice to the Class Members. The Agreement contains the material economic terms of the Settlement, the manner of notice to be given to the Class, the contingencies or conditions to the Settlement’s final approval, and other terms. Accordingly, Plaintiffs will show that the Agreement at issue satisfies all fairness concerns such that preliminary approval is appropriate.

#### **1. There Is No Reason to Doubt the Fairness of the Settlement**

Class Counsel—experienced complex action litigators accustomed to resolving claims on class action bases across the United States—are convinced that this settlement is fair and reasonable. *See* Declaration of Austin Anderson, attached as Exhibit 2; and Declaration of Kevin Liles, attached as Exhibit 3. The extensive settlement negotiations were conducted fairly and at arm’s-length with the assistance of John W. Perry, Jr., a nationally-renowned mediator, and only after engaging in extensive discovery and motion practice. *C.f., Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001)

(recognizing that arm’s-length negotiations conducted by competent counsel constitute *prima facie* evidence of a fair settlement); *Bert v. AK Steel Corp.*, No. 1:02-CV-467, 2008 WL 4693747, at \*2 (S.D. Ohio Oct. 23, 2008) (“The participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties.”). Indeed, the Parties worked with Mr. Perry, both together and separately, for over a year before participating in formal mediation. Moreover, both Parties’ counsel support the Agreement as fair and reasonable, and all certify that it was reached at arm’s length.

Courts often note that a proposed settlement reached through arms-length negotiations is entitled to a judicial presumption of fairness. *See DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 287 (W.D. Tex. 2007) (“[T]here is a strong presumption in favor of finding the settlement fair, adequate and reasonable.”) (collecting cases); *see also Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 650 (N.D. Tex. 2010), as modified (June 14, 2010), judgment entered (June 18, 2010), enforcement denied, No. 7:03-CV-102-D, 2011 WL 2413318 (N.D. Tex. June 15, 2011) (“[C]ourts are to adhere to a strong presumption that an arms-length class action settlement is fair—especially when doing so will result in significant economies of judicial resources—absent evidence weighing against approval.”).

## **2. There Are No Deficiencies in the Settlement**

The Agreement at issue fully complies with the requirements of Federal Rule of Civil Procedure 23. The Parties have negotiated a reasonable settlement and created a program to provide notice of the settlement to the class members that complies with Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure. The Rule 23 Class Members identifiable in the Property Database will receive the Notice Packet in a hard copy via regular mail. Included with the Short-Form Class Notice will be a Claim Form they can elect to return in the included pre-paid return envelope to participate in the settlement. The Notice Packet will also direct the Class Members to the settlement website where they can download additional Claim Forms, review the Long-Form Class Notice, the Agreement, the

live pleading, and this Motion. The Parties have also arranged for the dissemination of Newspaper Notice through the Corpus Christi Call Times—a newspaper of general dissemination throughout the Class Area.

The settlement provides ample time and reasonable procedures for class members to exclude themselves from the settlement or to object to the settlement if they choose to do so. Specifically, the deadline for the Class Members to return their Claim Forms and supporting documentation, written objections, or requests to opt-out, is sixty (60) days from the date the Claims Administrator mails the notice. In short, this is an arms-length settlement achieved at mediation and by attorneys who are, on both sides, experienced in class action litigation. The settlement terms and the process for approval are designed to avoid “obvious deficiencies,” and the Plaintiffs respectfully submit that there are no deficiencies in this settlement.

**3. The Settlement Does Not Improperly Grant Preferential Treatment to Representative Plaintiffs or any Segment of the Class**

The settlement does not improperly grant preferential treatment to any Class Members or any segment of the class. While there are no sub-classes at issue the Class Area itself is divided into seven (7) Weighted Class Zones. The purpose of these zones, however, is to ensure that the Agreement is applied fairly to the Class Members—it recognizes that all Class Members in the Class Area are not equally affected by the migration of the Dust. Instead, certain areas that are both closer in proximity and/or otherwise regularly downwind of Defendants’ La Quinta Plant are exposed to a greater amount of Dust. The zones at issue were not created arbitrarily, but instead were based on the extensive work performed by the retained experts—both Plaintiffs’ and Defendants’. Moreover, it will be the Special Master who is ultimately responsible for reviewing the Claim Forms, setting the Weighted Zone Values, and assigning each Participating Class Member’s Individual Settlement Sum. This removes any potential for bias or unfairness in the settlement distribution.

The Parties have also agreed to provide small service awards to the seven (7) Representative Plaintiffs. These awards will come, if at all, only by motion to this Court after notice to the other class members is provided, as contemplated by the Agreement. Federal courts consistently approve service/enhancement awards in class/collective action lawsuits to compensate the named plaintiffs for the services that they provide and the burdens that they shoulder during litigation. *See, e.g., DeHoyos*, 240 F.R.D. at 340 (collecting cases). The total sum of the enhancement awards requested herein does not exceed \$7,000.00, to be paid from the settlement fund. This modest request compares favorably to other service awards in the Fifth Circuit. *See, e.g., King v. United SA Fed. Credit Union*, 5:09-cv-00937-NSN, ECF No. 31 (W.D. Tex. Oct. 8, 2010) (awarding \$15,000 to each of the two class representatives).

#### **4. The Agreement Does Not Excessively Compensate Class Counsel**

The reasonableness of attorneys' fees will be decided by this Court after Class Counsel files a separate motion for attorneys' fees and expenses. By that motion, Class Counsel will request no more than 7.63% of the Total Settlement Value as compensation for their fees, in addition to their incurred litigation expenses. It is not unusual for courts in the Fifth Circuit to award percentages of approximately 40% of the common fund. *See Wolfe v. Anchor Drilling Fluids USA Inc.*, No. 4:15-cv-1344, 2015 WL 12778393, \*3 (S.D. Tex. Dec. 7, 2015) (awarding 40%).

#### **5. The Settlement is Within the Range of Reasonableness**

The settlement is well within the range of reasonableness. The value achieved in this litigation is extraordinary—in addition to the Total Cash Settlement Amount of \$16,825,000.00, every Class Member has benefited (and will continue to benefit) from the remedial measures that Defendants have undertaken to reduce the migration of Dust from their La Quinta Plant. Indeed, since this litigation was filed in May of 2017, Defendants have incurred \$50,740,967.00 in expenses through June 30, 2021, working to reduce (if not eliminate) the Dust from their facility. As discussed above,

those remedial measures have been extensive and involve modifications from simple construction projects and the implementation of wind breaks, to significant investment in capital expenditures. Defendants have also committed to continuing their remediation efforts and have pledged to complete the cited projects, which are estimated to cost \$20,847,069.00 from July 1, 2021 through December 31, 2023, and additional costs beyond then. These remediation efforts benefitted and enriched the Class as a whole and have significantly lessened (if not wholly eradicated) the initially complained of harm.

In addition to the remedial benefits conveyed by Defendants, the Participating Class Members will also receive a cash award, their Individual Settlement Sum, for their damages. Because the amount of each Class Member's Individual Settlement Sum can only be determined after the close of the Notice Period, and after the Special Master sets the Weighted Zone Values and makes his decisions regarding disbursement, it is difficult to calculate the monetary amount each Class Member may obtain. However, Plaintiffs believe that the Participating Class Members will receive a significant Settlement Sum for damages that were ultimately determined to be substantially related to the value of enhanced cleaning measures.<sup>11</sup> *See* Exhibit 2, ¶ 20; and Exhibit 3, ¶ 11.

Moreover, it is uncertain that the Class Members would be entitled to legally recover for their alleged damages should they proceed to trial on the merits. Because of the nature of the claims at issue, Class Members would face significant legal hurdles establishing their entitlement to any recovery, at all. *See id.* If the litigation were to continue, the Class Members would face significant risk that could limit—or eliminate—their claims, including the denial of Rule 23 class certification, and dispositive motions on liability. Despite these real and significant risks, the Participating Class Members will

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<sup>11</sup> While Plaintiffs initially believed that the Dust was causing permanent damage to their real and personal property, through the course of discovery they determined that the damage was (and is) remediated with enhanced cleaning, and was not in fact causing lasting harm.

receive meaningful compensation based on their location in relationship to Defendants' La Quinta Plant.

Weighing the risks against the benefits of a settlement, the Agreement is fair and reasonable.

**D. The Class Certification Requirements of Rule 23 Are Satisfied**

Plaintiffs seek class certification under Rule 23(b)(3), and the certification requirements of Rule 23 generally apply even when certification is for settlement purposes. *See Amchem Prods. Inc.*, 521 U.S. 591 ; *see also* FED. R. CIV. P. 23(b)(3). The one exception is that, because no trial is contemplated, the court need not consider “whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.” *Id.* at 620; *accord In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1058–60 (S.D. Tex. 2012). The party seeking certification bears the burden of establishing these requirements by a preponderance of the evidence. *Id.* at 1052.

To be certified, the class must first satisfy the four threshold requirements of Rule 23(a), which provide that:

- (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.

*See* FED. R. CIV. P. 23(a).

If the prerequisites of Rule 23(a) are met, a proposed class seeking damages must also satisfy the requirement of Rule 23(b)(3). Rule 23(b)(3) requires the district court to make a finding that (1) questions of law or fact common to class members predominate over questions affecting only individual members, and (2) that a class action is superior to the other methods for fairly and efficiently adjudicating the controversy. *See id.* at 23(b)(3).

**1. The Proposed Class Satisfies the Rule 23(a) Factors**

To be certified as a class action, the proposed class must first satisfy all four threshold conditions of Rule 23(a)—namely, that “(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”—conditions commonly known as “numerosity, commonality, typicality, and adequacy of representation.” *Flecha v. Mediacredit, Inc.*, 946 F.3d 762, 766 (5th Cir. 2020) (internal citations omitted) (quoting FED. R. CIV. P. 23(a)). Plaintiffs will address each in turn.

**a. Numerosity**

To satisfy Rule 23(a)(1)’s numerosity requirement, Plaintiffs must put forward evidence showing that the number of class members is so large that joinder is impracticable. FED. R. CIV. P. 23(a)(1); *Rougier v. Applied Optoelectronics, Inc.*, No. 4:17-CV-02399, 2019 WL 6111303, at \*5 (S.D. Tex. Nov. 13, 2019), *report and recommendation adopted*, No. 4:17-CV-2399, 2019 WL 7020349 (S.D. Tex. Dec. 20, 2019). Plaintiffs seek to certify a class composed of: “all Persons who Reside in the Class Area as of the date the Court enters the Preliminary Approval Order, or who formerly Resided within the Class Area for a period of at least one (1) month during the Class Period, and had a legal right to occupy the Residence, through property ownership or residential lease agreement.” The Plaintiffs have provided a map of the Class Area that details the neighborhoods included in the Class. While the precise number of Class Members is not yet known, it is certain that the class will include several thousand Class Members. *See* Exhibit D to Exhibit 1.

While no definite standard has been established as to what size class satisfies the numerosity requirement, classes consisting of 100 to 150 class members have been found to be within the “range that generally satisfies the numerosity requirement.” *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620,

624 (5th Cir. 1999). Recognizing that minimum standards are not applicable, classes much smaller than Plaintiffs' proposed class have been found sufficient. See *Silva–Arriaga v. Tex. Express, Inc.*, 222 F.R.D. 684, 688–89 (M.D. Fla. 2004) (finding numerosity based on the extreme burden of joining over 200 migrant lemon pickers); *McMiller v. Bird & Son, Inc.*, 68 F.R.D. 339, 341 (W.D. La. 1975) (finding that joinder of 121 class members would be impracticable). Accordingly, Plaintiffs have satisfied Rule 23(a)(1)'s numerosity requirement.

**b. Commonality**

Rule 23(a)(2) requires that the class members' claims depend on a common issue of law or fact whose resolution "will resolve an issue that is central to the validity of each one of the [class member's] claims in one stroke."<sup>12</sup> *M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832, 840 (5th Cir. 2012) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). To satisfy the commonality requirement, a plaintiff should "specifically delineate how a class proceeding would allow the court to resolve a discrete question of law [or fact] whose determination will resolve an issue that is central to the validity of each of the [individual plaintiff's] claims in one stroke." *Id.* (quoting *Wal-Mart*, 564 U.S. at 2545 (internal quotations omitted)).

Here, the Class Members easily satisfy the commonality requirement of Rule 23(a)(2) as the trespass, nuisance, and negligence claims for each of the Class Members at issue will depend on the resolution of common questions of law and fact and each is complaining of the same injury. Essentially, the following questions apply uniformly to all Class Members:

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<sup>12</sup> Put another way, commonality requires the plaintiff to demonstrate that the class members "have suffered the same injury" such that their claims depend upon a common contention that 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. See *In re Deepwater Horizon*, 785 F.3d 1003, 1016 (5th Cir. 2015) (quoting *Wal-Mart*, 131 S.Ct. at 2551).

- Whether Defendants were the source of the iron PM found on Representative Plaintiffs' and Class Members' homes, vehicles, and other personal property;<sup>13</sup>
- Whether Defendants' actions and/or failures to act caused contaminants, in the form of iron PM, to enter the atmosphere;
- Whether Defendants' iron PM causing actions and/or failures to act were reasonable under the circumstances;
- Whether Defendants have been guilty of negligence, negligence *per se*, and/or gross negligence in their operation and emissions;
- Whether Defendants' operations have violated applicable air pollution standards, limits, permits, or other laws;
- Whether the iron particulate is capable of causing damage to homes, vehicles, and other personal property;
- Whether Plaintiffs and the Class Members have a remedy under substantive federal law for the wrongs complained of;
- Whether Plaintiffs and the Class Members have a remedy under substantive state law for the wrongs complained of;
- Whether Plaintiff and the Class Members sustained damages and are entitled to compensation as a consequence of Defendants' acts or omissions, and, if so, what is the proper measure and appropriate formula to be applied in determining such damages and compensation;
- The appropriate remedy for Plaintiffs and its value as recoverable damages.
- Whether the Court should issue injunctive relief to prevent future injury and damages to Plaintiffs and the Class Members that, in reasonable probability, they would suffer in the future as a result of Defendants' tortious conduct.

The answers to the above questions will allow the Court to determine discrete questions of law and fact that will resolve an issue central to each individual Representative Plaintiffs' and Class Members' claims. *See M.D. ex rel. Stukenberg*, 675 F.3d at 840. If the answer is "yes" to any of the above questions, that answer will apply to, and thus resolve an issue, for the entire class. *See Sterling*, 855 F.2d

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<sup>13</sup> This is a question of general causation, as discussed in *Sterling v. Veliscol*, 855 F.2d 1188, 1200 (6th Cir. 1988), and has been found as a valid basis to certify a class under Federal Rule of Civil Procedure 23(b)(3).

at 1197 (recognizing that when a defendant’s liability can be determined on a class-wide basis as a result of defendant’s common course of conduct, a class action may be the best vehicle to resolve the controversy).

Moreover—while Representative Plaintiffs contend that each individual Class Member has had Defendants’ Dust on, and adhere to, their homes, vehicles, and/or other personal property—that determination is not one that must be addressed at the certification stage because it would amount to a “determination of the truth or falsity of the parties’ contentions, rather than an evaluation of those contentions’ commonality.” See *In re Deepwater Horizon*, 739 F.3d 790, 812 (5th Cir. 2014) (“This [merits-based finding] was not required by *Wal-Mart*, and was expressly ruled out in *Amgen*.”).

### c. Typicality

Rule 23(a)(3) provides that “the claims or defenses of the representative parties [must also be] typical of the claims or defenses of the class.” *Ibe v. Jones*, 836 F.3d 516, 528 (5th Cir. 2016). The typicality inquiry rests “less on the relative strengths of the named and unnamed plaintiffs’ cases than on the similarity of legal and remedial theories behind their claims.” *Id.* at 528–29. “Typicality exists when the representative plaintiff’s claims arise out of the same event or course of conduct as the other class members’ claims, and all claims are based on the same legal theories.” *Rougier v. Applied Optoelectronics, Inc.*, No. 4:17-CV-02399, 2019 WL 6111303, at \*6 (S.D. Tex. Nov. 13, 2019), *report and recommendation adopted*, No. 4:17-CV-2399, 2019 WL 7020349 (S.D. Tex. Dec. 20, 2019) (citing *Krogman v. Sterritt*, 202 F.R.D. 467, 472 (N.D. Tex. 2001)).

“The test for typicality is not particularly demanding.” *Booth v. Galveston Cty.*, No. 3:18-CV-00104, 2019 WL 1129492, at \*5 (S.D. Tex. Mar. 12, 2019), *report and recommendation adopted*, No. 3:18-CV-00104, 2019 WL 1411664 (S.D. Tex. Mar. 28, 2019). The Supreme Court has recognized that “commonality and typicality . . . tend to merge,” because both requirements “serve as guideposts for determining . . . 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.” *Id.* (quoting *Wal-Mart*, 564 U.S. at 350 n.5.).

Here, Representative Plaintiffs and the Class Members’ claims arise from the same events and are based on the same legal theories. First, Representative Plaintiffs and the Class Members claim to have suffered from the exact same actions, omissions, and conduct by Defendants that have allowed Defendants’ Dust to contact (and damage) their homes, vehicles, and/or other personal property. *See id.* Second, the claims alleged by Representative Plaintiffs on behalf of the Class Members are based on the same legal theories—trespass, nuisance, and negligence. This satisfies Rule 23(a)(3)’s typicality requirement because the representative Plaintiffs’ claims and the claims of the Class Members are so interrelated that the class members’ claims will be adequately protected in their absence. *See id.*

**d. Adequacy of Representation**

The final requirement under Rule 23(a) requires that “the representative parties will fairly and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4). Since class members are bound by the judgment, “the court must be especially vigilant to ensure that the due process rights of all class members are safeguarded through adequate representation at all times.” *See Berger v. Compaq Corp.*, 257 F.3d 475, 480 (5th Cir. 2001) (collecting cases). To do so, Plaintiffs must affirmatively prove that they are adequate class representatives. *See id.* at 481. The adequacy requirement also “serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Amchem Prods.*, 521 U.S. at 625 (internal citation omitted).

The adequacy analysis encompasses two separate inquiries: “(1) the willingness and ability of the named plaintiff[s] ‘to take an active role in and control the litigation and to protect the interests of absentees’; and (2) ‘the zeal and competence of the representative’s counsel.’” *Booth*, 2019 WL 1129492, at \*6 (quoting *Berger*, 257 F.3d at 479).

i. Adequacy of Representative Plaintiffs

“The Fifth Circuit has identified a ‘generic standard’ for the adequacy requirement, noting that ‘class representatives [must] possess a sufficient level of knowledge and understanding to be capable of ‘controlling’ or ‘prosecuting’ the litigation.” *Id.* (quoting *Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125, 131–32 (5th Cir. 2005). Class representatives “need not be legal scholars” and instead “are entitled to work with, and rely upon, their counsel in pursuing their claims and navigating the complicated legal and factual issues associated with” complex litigation. *Id.* (quoting *Stoffels v. SBC Commc’ns, Inc.*, 238 F.R.D. 446, 455 (W.D. Tex. 2006)). “A class representative is considered adequate when he has familiarity with the complaint and the concept of a class action.” *Id.* (internal quotations omitted).

The Representative Plaintiffs identified herein easily satisfy the adequacy requirement. They have volunteered their time to serve as the class representatives and have stated a genuine willingness to vigorously prosecute the interests of the class. Before agreeing to be included as representative plaintiffs, those individuals had in-depth discussions with class counsel identifying the responsibilities involved and expressed a willingness to respond to written discovery, provide deposition testimony, and testify at trial on the merits—and some of them have done so. Moreover, each class representative possesses a fundamental understanding of the case sufficient to allow them to actively participate in the lawsuit as it progresses. The Representative Plaintiffs’ interests are completely aligned with those of the class such that there is no conflict of interest between the representative Plaintiffs and the class they seek to represent. *See ODonnell v. Harris Cty., Texas*, No. CV H-16-1414, 2017 WL 1542457, at \*6 (S.D. Tex. Apr. 28, 2017) (“Each named plaintiff is a member of the class he or she seeks to represent, does not have claims in conflict with those of other class members, and adequately represents the class.”).

The Representative Plaintiffs included herein adequately represent the interests of the absent Class Members as they hail from the different zones identified in the Class Area, have been involved

in each of the individuals Actions before this Court, prior to consolidation, and have varying degrees of interest in their respective residential property. For instance:

**Blake Chapman:** Mr. Chapman has been a plaintiff in the *Chapman* Matter and has been actively involved in this litigation since 2017. Mr. Chapman previously owned a residence located in Zone 4.

**Ricky Stephens:** Mr. Stephens has been a plaintiff in the *Chapman* Matter and has been actively involved in this litigation since 2017. Mr. Stevens owns his residence in the Bay Ridge Subdivision, located in Zone 1.

**Gary Thurmond, Jr.:** Mr. Thurmond has been a Representative Plaintiff in the *Thurmond* Matter and has been actively involved in this litigation since 2019. Mr. Thurmond rents an apartment in Zone 6.

**Carolyn Thurmond:** Ms. Thurmond has been a Representative Plaintiff in the *Thurmond* Matter and has been actively involved in this litigation since 2019. Ms. Thurmond owns a home in Zone 7.

**Hortensia Martinez:** Ms. Martinez has been a Representative Plaintiff in the *Thurmond* Matter and has been actively involved in this litigation since 2019. Ms. Martinez occupies a home in the Bay Ridge Subdivision, located in Zone 1.

**Charles Garrett:** Mr. Garrett has been a plaintiff in the *Abben* Matter and has been actively involved in this litigation since 2020. Mr. Garrett occupies a home in Zone 2.

**Roel Garcia:** Mr. Garcia has been a Representative Plaintiff in the *Thurmond* Matter and has been actively involved in this litigation since 2019. Mr. Garcia owns a home in Gregory, Portland, located in Zone 3.

This proof shows that they are representative of the Class as a whole, have the willingness and ability to take an active role in and control the litigation, and protect the interests of the absent Class Members.

ii. Adequacy of Class Counsel

In determining whether class counsel is adequate under Federal Rule of Civil Procedure 23(a)(4), courts must evaluate the zeal and competence of class counsel. *See Stirman v. Exxon Corp.*, 280 F.3d 554, 563 (5th Cir. 2002). Plaintiffs are represented by attorneys from Anderson Alexander, PLLC (“Anderson Alexander”), Liles White PLLC (“Liles White”) and Frazer PLC (“Frazer Firm”).

Plaintiffs will show that these attorneys specialize in complex multi-party collective, class, and mass actions on a nation-wide basis. *See* Exhibit 2, ¶¶ 4–15; and Exhibit 3, ¶¶ 3–9. Anderson Alexander is well equipped to handle the complex procedural and legal issues involved in representative actions and is prepared to (and has) invested significant time and resources in this litigation. *See* Exhibit 2, at ¶¶ 4–17. Liles White is likewise well versed in handling complex lawsuits involving significant personal injuries and property damages, and has extensive experience litigating such claims through trial on the merits. *See* Exhibit 3, at ¶ 3–9. The Frazer Firm specializes in toxic mass torts involving claims of pollution affecting large populations and understands the rigorous methodology implicit in such litigation. *See* Exhibit 2, at ¶ 11 and Ex. A.

Moreover, these firms have been actively litigating against Defendants since 2017, when the Dust complaints against Defendants began and have shown that they are capable of representing the interests of the absent class members. The zeal and competence of class counsel is sufficient, and Rule 23(a)(4) is satisfied.

## **2. Representative Plaintiffs Satisfy the Rule 23(b)(3) Factors**

Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individuals, 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). Taken together, these two requirements ensure that a proposed class has “sufficient unity, so that absent class members can fairly be bound by decisions of the class representatives.” *See Amchem Products, Inc.*, 521 U.S. at 615. Determining whether common issues predominate and whether the class action is a superior procedural vehicle requires an understanding of the relevant claims, defenses, facts, and substantive law presented in the case. *See Berger*, 255 U.S. at 483.

**a. Predominance**

The predominance analysis requires that the Court identify “the substantive issues that will control the outcome, assess which issues will predominate, and then determine whether the issues are common to the class.” *Madison v. Chalmette Ref., LLC*, 637 F.3d 551, 555 (5th Cir. 2011). In order to “predominate,” common issues must constitute a significant part of the individual cases. *See Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 472 (5th Cir. 1986). The standard “does not require that all issues be common to all parties,” but instead mandates that “resolution of the common questions affect all or a substantial number of the class members.” *Watson v. Shell Oil Co.*, 979 F.2d 1014, 1022 (5th Cir. 1992).

The common issues of fact and law herein surely predominate over individual issues. *See* FED. R. CIV. P. 23(c)(4); Newberg, § 4.23 (4th ed.) (stating that the predominance test of Rule 23(b)(3) must be read with a recognition of the power of the court to uphold a class with respect to particular issues under Rule 23(c)(4)). First, each Class Members’ alleged damages flow from a single source—Defendants’ La Quinta Plant. Second, Representative Plaintiffs plead the same legal and remedial theories under the same state laws with respect to Defendants’ conduct, requiring class-wide proof of the significant common elements of recovery. Third, Representative Plaintiffs claim only property damages on behalf of themselves and the Class Members. Fourth, the case does not involve extensive conflicts of law analysis as there are no nationwide class management problems.

Further, Representative Plaintiffs sought compensatory damages based upon the same legal theories under Texas state law with respect to Defendants’ conduct. This assures class-wide proof and resolution of all significant, common elements of compensatory damage recovery, including in this case, individual causation. The specific legal theories pled are: (1) trespass; (2) nuisance; and (3) negligence/negligence per se.

The substantive issues that would control the outcome are the same for all class members, and do not involve individual inquiry. This is true, in part, because of the limited scope of the geographic class. Here, Representative Plaintiffs are seeking certification of a class of plaintiffs who are all located within a three-mile radius of Defendants' La Quinta Plant. This, taken together with the air modeling performed by Representative Plaintiffs' experts and Defendants' experts, the investigations performed by those experts and the TCEQ, and voestalpine's own admissions, reduce if not eliminate questions related to significant disparities in terms of exposure, location, and mitigative steps. *See id.* at 557. Determinations relative to liability would be made using representative evidence applicable to the Class as a whole.

In mass tort accidents, the factual and legal issues of a defendant's liability do not differ dramatically from one plaintiff to the next. No matter how individualized the issue of damages may be, these issues may be reserved for individual treatment with the question of liability tried as a class action. Consequently, the mere fact that questions peculiar to each individual member of the class remain after the common questions of the defendant's liability have been resolved does not dictate the conclusion that a class action is impermissible.

*Sterling*, 855 F.2d at 1197.

#### **b. Superiority**

Finally, courts must compare and “assess the relative advantages of alternative procedures for handling the total controversy” to decide if a class action is superior to other forms of litigation. *See In re TWL Corp.*, 712 F.3d 886, 896 (5th Cir. 2013) (quoting FED. R. CIV. P. 23(b)(3) Advisory Committee's Note to 1966 Amendment). “The superiority analysis is fact-specific and varies depending on the circumstances of each case.” *Ibe*, 836 F.3d at 530. The four factors courts consider are “(a) the interests of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already begun by or against class members; (c) the desirability or undesirability of concentrating the litigation of the

claims in the particular forum; and (d) the likely difficulties encountered in managing a class action.” *Amchem Prods., Inc.*, 521 U.S. at 615–16.

i. Interest in Individually Controlling Separate Actions

The “interest” factor requires more than the desire of certain individuals to have their own separate lawsuits. Rather, such an interest exists where the individual has “special issues which require separate litigation.” 7A, Wright, Miller & Kane, *Federal Practice & Procedure*, § 1780. Presumably, this factor pertains to the interests of most or all class members, rather than the interests of a few individual members—when a small segment of class members has a strong interest in individual litigation, that interest may be served by opting out. *See* Newberg, § 4.29 (4th ed.). Here, although a small percentage of homeowners initially brought individual claims in the *Thurmond* Matter and the *Abben* Matter, those causes have been consolidated (with the *Chapman* Matter) into one action before this Court. Thus, there is no known or foreseeable “interest” on behalf of a significant number of class members to individually prosecute their claims sufficient to defeat class certification. In fact, the opposite is true.

ii. Extent of Litigation Already Begun and Desirability of Concentrating Claims in the Corpus Christi Division of the Southern District of Texas.

There are three cases pending before this Court involving voestalpine’s iron PM emissions that have been consolidated into this cause—and will be resolved via the same Agreement. There is one other pending individual lawsuit against Defendant voestalpine Texas LLC, styled *Myron Rodrigue v. voestalpine Texas LLC*, Cause No. S-20-5902CV-B, pending in the 56th Judicial District Court, San Patricio County, Texas. However, should Mr. Rodrigue choose to continue his individual action against Defendant, he may do so by exercising his right to opt-out of the class. Likewise, Mr. Rodrigue may choose to return his Claim Form and benefit from the Agreement without necessitating further litigation. Accordingly, this factor supports a finding that class-action treatment is superior.

iii. Difficulties Managing a Class Action

The third factor, manageability, addresses the “difficulties likely to be encountered in the management of a class action.” FED. R. CIV. P. 23(b)(3)(D). Because the Parties are seeking certification of a settlement class, the future manageability of the proposed class action is not at issue, and “the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement.” *Welsb v. Navy Fed. Credit Union*, No. 5:16-CV-1062-DAE, 2018 WL 7283639, at \*19 (W.D. Tex. Aug. 20, 2018).

**E. THE NOTICE, AND NOTICE PLAN, CONSTITUTE THE BEST PRACTICAL NOTICE**

Rule 23(e) requires district courts to “direct notice in a reasonable manner to all class members who would be bound by the proposal” before approving a settlement. Fed. R. Civ. P. 23(e)(1). “Under Rule 23(e), a settlement notice need only satisfy the ‘broad reasonableness standards imposed by due process.’” *In re Katrina Canal Breaches Litig.*, 628 F.3d 185, 197 (5th Cir. 2010) (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir.1999); 3 NEWBERG § 8:18 at 223 (“[T]he court's formulation of an adequate notice procedure under Rule 23(e) is limited only by constitutional due process considerations.”). “The minimum of due process, as interpreted by the Supreme Court, is that ‘deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.’” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). Moreover, “[f]or classes certified under Rule 23(b)(3), the law demands ‘the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.’” *Vaughn v. Am. Honda Motor Co.*, 627 F. Supp. 2d 738, 744 (E.D. Tex.), *stay granted, order amended sub nom. Vaughn v. Am. Honda Motor Co.*, 507 F.3d 295 (5th Cir. 2007) (citing Fed. R. Civ. P. 23(c)(2); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–74 (1974) (due process requires best notice practicable)).

Here, the notice given to absent class members comports with the Federal Rules of Civil Procedure as well as due process. The Claims Administrator will identify every residence (and every residence owner) in the Class Area for the duration of the Class Period. The Notice Packet will be mailed by First Class U. S. Mail to each residence and/or individual owner identified. The Parties have also arranged to have a Newspaper Notice published in the Corpus Christi Caller Times bi-monthly, for the duration of the Notice Period. The notice will also be published on the settlement website, along with the Agreement and other important case-related documents. The Notices are targeted to reach all identifiable Class Members and are reasonably targeted (through the Newspaper Notice) to reach those Class Members not identified in the Property Identification Plan.

The proposed Notices satisfy Rule 23(c)(2) because they contain sufficient information (i) to the nature of the action; (ii) to the definition of the class certified; (iii) to the class claims and issues; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) to the time and manner for requesting exclusion; and (vii) to the binding effect of a class judgment on members under Rule 23(c)(3). FED. R. CIV. P. 23(c)(2); *see also* Exhibits A, B, and I. The Notices include sufficient information to allow the Class Members to make an informed choice whether to approve or disapprove of the settlement, object, or opt-out. *C.f., In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 224 (5th Cir. 1981). Moreover, the Notices advise the Class Members of the time, date, and location of the scheduled Fairness Hearing, advise them that they may attend, and provide instructions by which the Class Members may be heard, if they choose to object.

The Parties in their Agreement have agreed to utilize “the best notice practicable under the circumstances” and the Notices satisfy the requirements of Federal Rule of Civil Procedure 23(c)(2). *See Vaughn*, 627 F. Supp. 2d at 744.

**V.  
CONCLUSION**

Preliminary approval of the Agreement is appropriate because Plaintiffs have shown, at least preliminarily, that the settlement is fair, reasonable, and adequate. Moreover, certification of a class action, for settlement purposes only, is also warranted. This case satisfies the prerequisites of Rule 23(a) and the criteria of Rule 23(b)(3). Plaintiffs accordingly ask the Court to preliminarily approve the settlement agreement and certify the matter as a class action for settlement purposes only, appoint the undersigned as Class Counsel, authorize notice to be sent to Class Members as outlined herein, and grant all other proper relief as set forth in the Plaintiffs' Proposed Order.

Date: October 15, 2021

Respectfully submitted,

**ANDERSON ALEXANDER, PLLC**

By: /s/ Austin Anderson  
Austin W. Anderson  
Federal I.D. No. 777114  
Texas Bar No. 24045189  
[austin@a2xlaw.com](mailto:austin@a2xlaw.com)  
Clif Alexander  
Federal I.D. No. 1138436  
Texas Bar No. 24064805  
[clif@a2xlaw.com](mailto:clif@a2xlaw.com)  
819 N. Upper Broadway  
Corpus Christi, Texas 78401  
Telephone: (361) 452-1279  
Facsimile: (361) 452-1284

**LILES WHITE PLLC**

By: /s/ Stuart R. White  
Stuart R. White  
Federal I.D. No. 11448833  
Texas Bar No. 24075268  
[stuart@lileswhite.com](mailto:stuart@lileswhite.com)  
Kevin W. Liles  
Federal I.D. No. 21501  
Texas Bar No. 00798329  
[kevin@lileswhite.com](mailto:kevin@lileswhite.com)  
500 N. Water Street, Suite 800  
Corpus Christi, Texas 78401  
Telephone: (361) 826-0100  
Facsimile: (361) 826-0101

**FRAZER PLC**

By: /s/ T. Roe Frazer II  
T. Roe Frazer II (*admitted Pro Hac Vice*)  
Tennessee Bar No. 35785  
[roe@frazerlaw.com](mailto:roe@frazerlaw.com)  
1 Burton Hills Blvd., Suite 215  
Nashville, Tennessee 37215  
Telephone: (615) 647-0990

**ATTORNEYS IN CHARGE FOR PLAINTIFFS  
AND THE PUTATIVE CLASS MEMBERS**

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have conferred with Defendants’ counsel of record and they are not opposed to the filing of this Motion or the relief requested herein.

/s/ Austin Anderson  
Austin Anderson

**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2021, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Austin Anderson  
Austin Anderson

**Index of Exhibits**

1. Class Action Settlement and Release Agreement
2. Declaration of Austin Anderson
3. Declaration of Kevin Liles

# **Exhibit 1**

**CLASS SETTLEMENT AND RELEASE AGREEMENT**

This Class Settlement and Release Agreement<sup>1</sup> (“Agreement”) is entered into by Plaintiffs Blake Chapman, Ricky Stephens, Gary Thurmond, Jr., Carolyn Thurmond, Hortensia Martinez, Charles Garrett, and Roel Garcia, individually and on behalf of all others similarly situated (“Plaintiffs” or “Representative Plaintiffs”), as set forth in the three lawsuits currently pending in the United States District Court for the Southern District of Texas, identified as *Chapman, et al. v. voestalpine Texas, LLC, et al.*, No. 2:17-cv-174 (S.D. Tex.) (“*Chapman Matter*”), *Thurmond, et al. v. voestalpine Texas, LLC, et al.*, No. 2:19-cv-00034 (S.D. Tex.) (“*Thurmond Matter*”), and *Abben, et al. v. voestalpine Texas, LLC, et al.*, No. 2:19-cv-00032 (S.D. Tex.) (“*Abben Matter*”), acting by and through Class Counsel, and Defendants voestalpine US Holding LLC f/k/a voestalpine Texas Holding LLC,<sup>2</sup> voestalpine Texas Holding LLC and voestalpine Texas LLC (collectively “Defendants”) (together, the “Parties”).

**RECITALS**

WHEREAS, the Parties intend that this Agreement resolve the three causes currently pending as *Chapman, et al. v. voestalpine Texas, LLC, et al.*, No. 2:17-cv-174 (S.D. Tex.) (“*Chapman Matter*”), *Thurmond, et al. v. voestalpine Texas, LLC, et al.*, No. 2:19-cv-00034 (S.D. Tex.) (“*Thurmond Matter*”), and *Abben, et al. v. voestalpine Texas, LLC, et al.*, No. 2:19-cv-00032 (S.D. Tex.) (“*Abben Matter*”).

WHEREAS, upon execution of this Agreement, Plaintiffs will move for the *Chapman Matter*, the *Thurmond Matter*, and the *Abben Matter* to be consolidated under one cause number in the *Chapman Matter*, for settlement purposes only, and a Fifth Amended Complaint will be filed in that

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<sup>1</sup> Unless defined elsewhere in this Agreement, capitalized terms have the meaning specified in Section 1.

<sup>2</sup> In August 2021, the entity formerly known as voestalpine Texas Holding LLC changed its name to voestalpine US Holding LLC. A new entity was then created using the voestalpine Texas Holding LLC name. After the execution of this Agreement, and the consolidation of the *Chapman Matter*, the *Thurmond Matter*, and the *Abben Matter*, Plaintiffs’ will file an amended complaint officially noting the name change and naming the newly formed voestalpine Texas Holding LLC as a Defendant. For clarity, the newly formed voestalpine Texas Holding LLC is referred to as one of the Defendants herein, although it will not be formally named until the filing of the amended complaint.

Consolidated Action that aligns the plead facts and legal claims within the provisions of this Agreement.

WHEREAS, Plaintiffs Reside or have Resided in the Class Areas during the Class Period;

WHEREAS, Plaintiffs have asserted claims for damages and injunctive relief against Defendants in the above identified Actions individually on their own behalf and on behalf of similarly situated Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure;

WHEREAS, Plaintiffs allege in substance that Dust from Defendants' Facility has migrated onto their Real Property and/or Personal Property on account of Defendants' intentional, negligent and/or grossly negligent conduct and which constitutes an actionable trespass;

WHEREAS, Plaintiffs also contend that the migration of Dust from Defendants' Facility constitutes a temporary or permanent nuisance condition that began in or about August 2016 and has continued, on an ongoing basis, through the present, and is expected to continue into the future;

WHEREAS, Plaintiffs recognize and acknowledge that conditions have improved as a result of Remedial Measures taken by Defendants, but have not fully abated;

WHEREAS, Plaintiffs contend, on behalf of themselves and the Class Members, that they have suffered damage to Real Property and/or Personal Property due to Defendants' intentional, negligent and/or grossly negligent conduct, trespass and/or temporary or permanent nuisance conditions;

WHEREAS, Defendants have denied and continue to deny Plaintiffs' and Class Members' allegations in the Actions seeking damages or injunctive relief, or of any wrongdoing with regard to the siting, design, construction, and operation of the Facility, and specifically deny and dispute the scientific, factual, legal, and other bases asserted in support of Plaintiffs' claims for damages or injunctive relief;

WHEREAS, Defendants have denied and continue to deny Plaintiffs' and Class Members' allegations that Defendants have caused and are continuing to cause a trespass and temporary or permanent nuisance.

WHEREAS, after carefully considering the facts and applicable law, and the risks and uncertainty of continued litigation, and as a result of having engaged in extensive negotiations, including mediations, the Parties desire to settle the claims in the Actions on the terms and conditions stated herein, which the Representative Plaintiffs and Class Counsel believe are fair, reasonable adequate, and beneficial to and in the best interests of the Class Members;

WHEREAS, the Parties agree that by entering into this Settlement, no Defendant is admitting any liability, fault, or violation of the law, but that Defendants deny all allegations and claims asserted against them; and

WHEREAS, in consideration of the promises and the mutual covenants hereinafter set forth, the Parties, acting by and through their counsel of record, have entered into this Agreement to settle and resolve all of the claims of the Plaintiffs and Class Members that have been or could have been made in the Actions, including claims that the alleged conditions involving Dust that they have described are ongoing and are expected to continue, against the Released Parties, which shall be resolved and dismissed with prejudice in accordance with the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party hereto, IT IS HEREBY AGREED by the Parties, subject to Court approval, as follows:

**I.  
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the meanings set forth below:

**“Actions”** means the *Chapman* Matter, the *Thurmond* Matter, and the *Abben* Matter, pending in the United States District Court for the Southern District of Texas, Corpus Christi Division, the Honorable Nelva Gonzales Ramos presiding. To the extent applicable, each individual matter described above is referred to as an “Action.”

**“Agreement”** or **“Settlement Agreement”** means this Class Settlement and Release Agreement, including all Exhibits attached hereto.

**“Claim Form”** means the document attached as Exhibit C to this Agreement that each Class Member must execute and return to participate in the Settlement Fund.

**“Claim Form Database”** means the electronic database compiled by the Claims Administrator that organizes the Claim Forms received from the Participating Class Members according to zone and Residential Unit.

**“Claims Administration”** means the work of (a) preparing a Property Identification Plan; (b) providing information about this Agreement to the Class Members, including, without limitation, mailing the Class Notice and Claim Forms required under the terms of this Agreement or any court order, and responding to any inquiries from Class Members; (c) receiving Claim Forms from Participating Class Members and creating and maintaining a Claim Form Database; (d) establishing, managing, reporting on, receiving the Total Cash Settlement Amount and other funds into, and paying the Total Cash Settlement Amount and other funds out of, an appropriate Qualified Settlement Fund, which will be created and will be exclusively dedicated to holding funds paid by Defendants under this Agreement that does not commingle funds from other sources; and (e) disbursing the Total Cash Settlement Amount from the Qualified Settlement Fund in the manner set forth in this Agreement and pursuant to the Claims Program and the Settlement Distribution prepared by the Special Master.

**“Class Area”** means the geographic area within San Patricio County, TX, largely within the City of Portland and the City of Gregory as depicted and delineated in the map attached as Exhibit D

to this Agreement. The Class Area is subdivided into seven (7) Weighted Class Zones, also clearly delineated in the map attached as Exhibit D to this Agreement.

**“Claims Administrator”** means the firm Postlethwaite & Netterville of Baton Rouge, Louisiana, mutually selected by the Parties and retained by the Special Master to conduct Claims Administration, including development of the Property Identification Plan.

**“Claims Program”** means the program as approved by the Court to create the Settlement Distribution to distribute a Settlement Sum to Participating Class Members as described in Part IV herein. Such program shall be prepared by the Special Master, in consultation with the Claims Administrator.

**“Class Counsel”** means ANDERSON ALEXANDER, PLLC; LILES WHITE, PLLC; and FRAZER PC.

**“Class Members”** means all Persons who Reside in the Class Area as of the date the Court enters the Preliminary Approval Order, or who formerly Resided within the Class Area for a period of at least one (1) month during the Class Period, and had a legal right to occupy the Residence, through property ownership or residential lease agreement.

**“Class Notice”** means the notice documents to be provided to the Class Members advising them of this Settlement Agreement and providing the information required by Federal Rule of Civil Procedure 23(e). The Short Form Notice and Long Form Notice are attached as Exhibits A and B, respectively, to this Agreement. The Short Form Notice will be sent to each Class Member via First Class Mail and the Long Form Notice will be available to the Class Members through the settlement website, in accordance with Federal Rule of Civil Procedure 23(b)(3), (e), and the Notice Plan.

**“Class Period”** means the time that is between August 1, 2016 (the day Defendants began Operations) and the date the Court enters its Preliminary Approval Order.

**“Consolidated Action”** means the remaining action after the Parties move to consolidate the *Chapman* Matter, the *Thurmond* Matter, and the *Abben* Matter for settlement purposes, consistent with the terms of this Agreement.

**“Court”** means the United States District Court for the Southern District of Texas, Corpus Christi Division, the Honorable Nelva Gonzales Ramos, presiding.

**“Dust”** means all dust, as commonly understood, and particulate matter, as that term is defined under the Clean Air Act, 42 U.S.C § 7401, *et seq.*, and regulations promulgated by the United States Environmental Protection Agency (EPA) relating thereto and found at 40 CFR § 58.1 (including particles referred to as PM 10, PM 2.5 and TSP), and the Texas Clean Air Act, Tex. Health and Safety Code § 382.002 *et seq.*, and regulations promulgated by the Texas Commission on Environmental Quality (TCEQ) (including particles referred to as PM 10, PM 2.5 and TSP) found at 30 TAC Chapter 111, Subchapter A, relating in any manner to the activities and operations conducted or which occur or have occurred at the Facility, including dust or particulate matter relating to loading or unloading of shipments at the Facility, via water-borne vessels, barges, trucks or rail, as well as the transportation, handling, movement or conveyance of materials within the Facility (including the Facility’s dock and any vessels moored thereto), and including the generation or emission of dust or particulate matter from the manufacturing process at the Facility, or emanating or escaping from the Facility. Dust shall include, but not be limited to, dust, or particulate matter of any kind or nature, relating to the receipt, storage, handling, movement, screening, shipment, processing or manufacturing of (i) iron oxide pellets, nuggets, lump ore and/or iron oxide fines (ii) Hot Briquetted Iron (HBI), (iii) HBI fines and/or HBI chips, (iv) iron oxide sludges and/or HBI sludges, (v) cold briquetted iron and/or (vi) Remet (partially processed iron oxide materials), emanating or escaping from the Facility, whether in the form of fugitive dust emissions or emissions from any stack, emission point, pile, or area source identified in any air emission permit issued by the EPA or the TCEQ, relating to the Facility, and whether or

not such emissions are in compliance with any such air emission permit, or are specifically identified in any permit application for an air emission permit submitted to EPA or to TCEQ relating to the Facility. This definition does not include dust related to transportation of the product once the product leaves the Facility.

**“Effective Date”** means the date on which the time for any appeals of the Court’s Final Approval Order has expired, with no appeal filed. In the case that any appeal is filed, the date on which all appeals are finally dismissed or decided in affirming the Agreement, without modification, if there are any timely objections filed. If there are no timely objections filed, then the Effective Date is the date the Court enters a Final Approval Order.

**“Facility”** means the Direct Reduced Iron (“DRI”)/Hot Briquette Iron (“HBI”) production plant owned and/or operated by the Defendants located near the La Quinta Ship Channel (the “Ship Channel”) at 2800 Kay Bailey Hutchison Road, Portland, Texas, and depicted on a map attached as Exhibit D. The Facility includes all property leased, operated and/or controlled by the Defendants whether coextensive or not.

**“Fairness Hearing”** means the hearing at which the Court will consider whether to give final approval to this Agreement; approve, modify, or deny a petition for an award of attorneys’ fees and expenses; enter the Final Approval Order; and make such other final rulings as are contemplated by this Agreement.

**“Final Approval Order”** means the Court’s entry of the final order approving this Agreement following the Fairness Hearing in substantially the form attached hereto as Exhibit F.

**“Long Form Notice”** means Exhibit B, which will be published on the settlement website established by the Claims Administrator.

**“Net Settlement Amount”** means the portion of the Total Cash Settlement Amount after deductions for court-approved attorneys’ fees and costs, any service awards for one or more Plaintiffs, and the Reserve Fund.

**“Newspaper Notice”** means the advertisement to be posted in the local newspaper(s) advising of this Settlement and providing information on how a Class Member can obtain a Notice Packet, in substantially the same form as the Short Form Notice attached hereto as Exhibit A.

**“Notice Packet”** means the Short Form Notice, along with a Claim Form, and a pre-paid return envelope that will be mailed to the Class Members pursuant to preliminary Court-approval of this Agreement.

**“Notice Period”** means the 60-day period, beginning on the Notice Issuance Date, during which the Class Members may return their Claim Forms to become Participating Plaintiffs, opt out of the settlement, or object to the settlement.

**“Notice Issuance Date”** means the date not more than forty-five (45) days after the Court grants the Parties’ Preliminary Approval Order by which the Notice Packets must be mailed to the Class Members, and the date by which the initial Newspaper Notice must be posted in a local newspaper with distribution in Portland, Texas; Gregory, Texas; and Corpus Christi, Texas.

**“Notice Plan”** means the plan as contained in this Agreement (and set forth in Exhibit I) and approved and ordered by the Court, that describes the method(s) by which notice is to be provided to Class Members. Such Notice Plan is expected to include a Notice Packet which would be sent to all identifiable Class Members by First Class Mail to the physical address of the Residences and record property owners within the Class Area, as identified by the Claims Administrator. The Notice Plan is also expected to include the posting of a Newspaper Notice and the creation of a website containing relevant settlement data and documents.

**“Participating Class Members”** means those Settlement Class Members who timely return a Claim Form and are entitled to receive their Settlement Sum as set forth in this Agreement.

**“Person”** means a natural person.

**“Personal Property”** means any and all property (excepting Real Property) of any kind or nature, including without limitation, Vehicles, indoor or outdoor furnishing, fixtures, appliances, decorations or possessions, which are or which can be or which will be subjected to the alleged migration of Dust from the Facility by one or more Releasing Parties to a Residence in the Class Area, as alleged in the Consolidated Action.

**“Personal Signature”** means the actual signature by the person whose signature is required on the document. Unless otherwise specified in this Agreement, a document requiring a Personal Signature may be submitted by an actual original “wet ink” signature on hard copy, or a PDF or other electronic image of an actual signature provided under authorization of the person required to sign.

**“Preliminary Approval Order”** means the Court’s order preliminarily approving this agreement pursuant to Federal Rule of Civil Procedure 23, where such approval is in substantially the same form as the Proposed Preliminary Approval Order, attached as Exhibit E hereto, or as otherwise agreed upon by the Parties.

**“Proof of Residence”** means one or more documents intending to demonstrate that a Class Member resides and/or resided at a Residential Unit during the Class Period. Such documentation can take the form of a lease agreement identifying the property address at issues and including the lease term; or a letter from the landlord or leasing agent acknowledging the address and dates of occupancy and identifying the Class Member as the tenant or an individual with a right to reside at the Residence; or a utility bill showing the name of the Class Member, the address of the Residence and the date; or a driver’s license or state identification card issued by the State of Texas and showing the

name of the Class Member and address of the Residence; or other such documentation that may be accepted by the Special Master at his discretion.

**“Property Identification Plan”** means the efforts undertaken by the Claims Administrator to (i) identify the physical addresses of all Residences in the Class Area, including the physical addresses for Apartment Residents; (ii) to attempt locate the addresses for Persons who own the Residences, if they do not reside at the Residence; and (iii) to attempt locate individuals who previously resided at and/or owned a Residence within the Class Area during the Class Period. The proposed scope of the Property Plan is hereby attached as Exhibit G.

**“Real Property”** means improved real estate containing one or more structures constructed for and intended for dwelling by Persons, and which is subject to local real estate property taxes by a local taxing authority. Real Property shall also include the structure and all appertences thereto, including without limitation, attached or detached garages and out-buildings, patios, decks, walkways, fences, as well as any attached fixtures, and other things that are affixed to the land or the structure.

**“Released Claims”** means any and all claims, demands, actions, causes of action, whether individual actions and/or class actions, seeking damages or relief of any nature or kind, past, present and future, including those that that have occurred, that currently exist, that are of a continuing and ongoing nature, and/or which may arise in the future, including but not limited to claims for compensatory damages, punitive or exemplary damages, costs, pre-judgment interest, post-judgment interest, attorney fees, damages, obligations, liabilities, appeals, reimbursements, replacement costs, expenses, liens, interest, penalties or fines, and including claims which were asserted or which could have been asserted in the Consolidated Action, and/or in any Action, based on the facts alleged in the Consolidated Action, and/or any Action, accrued or not yet accrued, legal or equitable, under any theory, at law or equity, including specifically, but not limited to all claims of past or present nuisance, continuing nuisance, permanent and/or temporary nuisance, and/or trespass, and/or other claims of

fault, including negligence, gross negligence, ultra-hazardous liability, strict liability, vicarious liability, related to Dust (but excluding claims for personal injury); as well as, claims based on environmental laws and/or regulations, including the federal Clean Air Act, and all other federal, state, county, city or local statutes, rules, regulations and ordinance of every kind and nature, seeking relief based on facts or events that have occurred, and/or that currently exist, and/or that are of a continuing and ongoing nature, and/or which may arise in the future, related to Dust; as well as, claims related to Dust arising out of, caused or contributed by or relating to the siting, construction, existence of or operation of the Facility from the time of construction and from the start-up of the Facility, whether before, on, or after the Effective Date of this Agreement and continuing hereafter; and as well as, any injunctive relief seeking protection from or to prevent, reduce, mitigate or eliminate, Dust; all of which claims and causes of action Releasing Parties expressly waive and relinquish to the fullest extent permitted by law. Such Released Claims specifically include, but are not limited to, claims seeking or asserting:

1. Damages, past, present and/or future for damage or injury to Personal Property of any kind or nature, including cleaning, repair, replacement or restoration costs or expenses;
2. Damages, past, present and/or future for damage or injury to Real Property, including cleaning, repair, replacement or restoration costs or expenses;
3. Damages, past, present and/or future for damage or injury to Vehicles, including cleaning, repair, replacement or restoration costs or expenses;
4. Damages, past, present and/or future for loss of use and enjoyment of Real Property or Personal Property;
5. Damages, past, present and/or future for inconvenience;
6. Damages, past, present and/or future for emotional distress, or fear or fright;
7. Damages, past, present and/or future for diminution of value of Real Property or Personal Property, or for “stigma” damages;

8. Damages, past, present and/or future for temporary or permanent nuisance, private nuisance or inconvenience, negligence, negligence per se, trespass, or gross negligence, including of a continuing nature;
9. Exemplary or punitive damages;
10. Equitable or injunctive relief;
11. Damages, past, present and/or future for business interruption loss, loss of business opportunity, loss or profits, loss of rents, loss of income and/or other economic loss relating to any commercial conduct performed at or relating to a Residence within the Class Area (including but not limited to commercial conduct while working from the Residence during the COVID-19 pandemic);
12. Expenses for investigation, engineering services, cleanup, restoration, response or removal actions, or remediation with respect to Personal Property or Real Property, or for Vehicles;
13. Any private attorney general enforcement actions or “citizen suits” and/or any other private cause of action under any federal and/or state statute, pending or threatened, past, present and/or future, with respect to Dust, including but not limited to claims for damages, penalties, fines, injunctive or equitable relief, investigation, remediation, monitoring, testing, cleanup, remedial action, removal actions, remedial costs and/or restoration;
14. Violation of any federal, state or local statute, law, ordinance, order or regulation.

It is expressly understood that Released Claims include claims related to Dust that have not yet occurred but which may arise in the future, **provided, however**, that Released Claims do not include, and that nothing herein shall bar, any claims for relief based solely on the incremental emissions or releases of Dust from future Facility operations that exceed 100 percent of the currently permitted maximum annual production capacity (as referenced in the air emission permits NSR Permit No. 108113 and PSDTX1344M1 issued by the Texas Commission on Environmental Quality to voestalpine Texas, LLC, and applications related thereto); and, **further provided**, that Released Claims do not include, and that nothing herein shall bar any claims for relief based solely on a future catastrophic release from the Facility (i.e., an unexpected, accidental incident resulting in releases of Dust atypical in nature and dramatically greater in amount than those historically associated with

regular plant operations), which causes substantial real or personal property damages that are significant and measurable to a Plaintiff or Class Member seeking such relief.

**“Released Parties”** means the Defendants voestalpine US Holding LLC f/k/a voestalpine Texas Holdings LLC, voestalpine Texas Holdings LLC, and voestalpine Texas LLC, and each of their past, present and future members, officers, directors, shareholders, employees, joint venturers, managers, representatives, adjusters, attorneys, agents, consultants, insurers, excess insurers, reinsurers, indemnitors, contractors, affiliates, divisions, partnerships, independent contractors, parents, subsidiaries, related entities, predecessors, successors, assigns, and including but not limited to, successors or predecessors by merger, and any other person or entity acting on their behalf or who has, had or could have any legal responsibility relating to the Released Claims.

**“Releasing Parties”** means the Representative Plaintiffs, the Settlement Class Members, and their respective past, present or future agents, servants, representatives, successors, heirs, assigns, agents, attorneys, trustees, executors, insurers, including any Person or entity who or that is entitled to assert any claim on behalf of them, and/or any Person or entity who or which derives or obtains any right or claim by, from or through any of them, including but not limited to subrogation claims.

**“Remedial Measures”** means those past, present, and future improvements, modifications, and procedures that Defendants have taken, are taking, and/or will continue to take to minimize, mitigate or eliminate the migration of Dust from the Facility offsite, including to the Class Area. The Remedial Measures are reflected on Exhibit H hereto. The Remedial Measures are valued at \$50,740,967.00 through June 30, 2021, and are estimated to include an additional \$20,847,069 through December 31, 2023.

**“Representative Plaintiffs”** means the named plaintiffs in the Consolidated Action, after amendment, and who will be: Blake Chapman, Ricky Stephens, Gary Thurmond, Jr., Carolyn

Thurmond, Hortensia Martinez, Charles Garrett, and Roel Garcia. Representative Plaintiffs may also be referred to as “Plaintiffs.”

**“Reserve Fund”** means the amount of money that will be held in reserve, to be used at the Special Master’s discretion, to resolve any disputes regarding Class Members, including but not limited to disputes relating to the Notice Packet, any responses thereto, including timeliness and/or sufficiency of responses, the Settlement Sums to be awarded to Participating Class Members, or other disputes relating to this Settlement. The Reserve Fund will be an amount to be determined by the Special Master, at his sole discretion, to be deducted from the Total Cash Settlement Amount and held in the Qualified Settlement Fund that is created from the Settlement Fund. The Special Master may add to the Reserve Fund the amount of any Settlement Checks voided under this agreement. Any amounts remaining in the Reserve Fund shall be distributed in accordance with the discretion of the Special Master as set forth herein at Section 4.3.

**“Reside”** means to occupy and/or own a Residence as a rightful property owner, or under a valid residential lease agreement, or as an authorized domiciled occupant for a period of at least one (1) month. Reside shall not include any commercial or business occupant or occupancy.

**“Residence”** means a structure intended for residential use within the geographically defined Class Area, occupied by one or more Class Members with a legal right to do so through Real Property ownership and/ or residential lease agreement for a period of at least one (1) month, or longer, during the Class Period. A Residence includes single-family homes as well as apartments and multi-family dwellings. A Residence does not include Real Property that is zoned for commercial use only or which is primarily used for commercial purposes.

**“Resident”** means a Person who Resides in or owns real property in the Class Area during the Class Period.

**“Residential Unit”** means each individual Residence for which a Claim Form is returned by a Participating Class Member

**“Residential Unit Value”** means the maximum amount a Residential Unit is entitled recover under the Settlement based on the Weighted Zone Value assigned by the Special Master.

**“Service Award”** means the amount paid to one or more Plaintiffs from the Total Cash Settlement Amount as compensation for services provided.

**“Settlement”** means the class settlement to be consummated under this Agreement pursuant to the Final Approval Order as described herein, including Court’s Order certifying a class for settlement purposes.

**“Settlement Administration Expenses”** means those expenses reasonably incurred and/or fees reasonably earned by the Claims Administrator and Special Master (including members of his law firm, Perry, Balhoff, Mengis & Burns, LLC, to whom he may delegate tasks) in the effectuation of this Agreement, and as described in Section 4.6, herein.

**“Settlement Class”** or **“Settlement Class Members”** means those individuals who fall within the definition of a Class Member and who do not properly opt out of the Class.

**“Settlement Distribution”** or **“Settlement Distribution Plan”** means the plan for allocation of the Net Settlement Amount prepared by the Special Master setting the Settlement Sum for each Participating Class Member.

**“Settlement Fund”** means the account, established by the Claims Administrator under this Agreement, for purposes of receiving the Total Cash Settlement Amount for the Settlement Distribution. Such account shall be established and maintained as a “Qualified Settlement Fund” (QSF) in accordance with and within the meaning of Treas. Reg. § 1.468B-1, et seq., and all regulations or rulings thereunder. The Claims Administrator shall be the administrator of the Settlement Fund and shall be responsible for the timely and proper performance of the undertakings set forth in the

applicable regulations for maintaining the Settlement Fund as a QSF, including but not limited to the filing of tax returns and the withholding of and payment of any taxes or associated penalties, interest or additions.

**“Settlement Sum”** or **“Individual Settlement Sum”** means the amount each respective Participating Class Member will receive according to the terms of this Agreement and as determined by the Special Master pursuant to the Claims Plan.

**“Short Form Notice”** means Exhibit A, and which will be included as part of the Notice Packet.

**“Special Master”** means Dan Balhoff. (including members or representatives of his firm, Perry, Balhoff, Mengis & Burns, LLC to whom he may delegate tasks), the third party agreed to by Class Counsel and counsel for Defendants, subject to Court approval, who will perform the work of settlement administration and will allocate the Settlement Sum for each Participating Class Members, according to the terms of this Agreement.

**“Total Residence Number”** means the total number of Residences identified within the Class Area, during the Class Period, and for which a Participating Class Member submits a Claim Form.

**“Total Cash Settlement Amount”** shall mean the maximum total monetary amount that will be paid by Defendants as consideration for the Releases and the other benefits to Defendants attached to this Settlement pursuant to this Agreement. It is agreed that the Total Cash Settlement Amount is Sixteen Million, Eight Hundred Twenty-Five Thousand Dollars and No Cents (\$16,825,000.00).

**“Total Settlement Value”** means the sum of Total Cash Settlement Amount, together with the Remedial Measure Value.

**“Vehicles”** means motor vehicles (including but not limited to cars, trucks, sport utility vehicles) recreational vehicles, motorcycles, motor scooters, motorized bicycles, motorized carts, golf

carts, boats or vessels, jet skis, as well as trailers, and/or any such transportation device, with or without a motor, capable of being driven, steered or towed on public or private roads or off-road, or on water.

**“Weighted Zone Value”** means the lump sum allocated to each of the seven (7) zones, as determined by the Special Master, based on both the proximity to the Facility, prevailing weather conditions, and evidence collected during the pendency of the Actions.

## II. EFFECT OF SETTLEMENT

2.1 The obligations incurred pursuant to this Agreement shall be in full and final disposition of the Released Claims and of this Consolidated Action, as well as each Action, as against all Released Parties.

2.2 Upon the Effective Date, all Representative Plaintiffs and Settlement Class Members, and each of them on behalf of themselves, their heirs, executors, successors and assigns, shall, with respect to each and every one of the Released Claims, release and forever discharge, and shall forever be enjoined from prosecuting, any and all Released Claims against any of the Released Parties.

2.3 Nothing in this Agreement, or in any final judgment or order of dismissal entered in the Consolidated Action and in each Action pursuant to this Agreement, constitutes an admission or concession by the Defendants of any liability or wrongdoing by the Defendants, that there is any validity to any allegation in the complaint filed in any Action or to be filed in the Consolidated Action, or that the Class Claims could be certified for class treatment for purposes of litigation as opposed to settlement. The Defendants have not admitted or conceded any liability or wrongdoing, acknowledged any validity to the claims or issues in the Consolidated Action or in each Action, or acknowledged any weakness in their defenses in the Consolidated Action or in each Action. The Defendants have denied and continue to deny any wrongdoing alleged in the complaint filed in any Action or to be filed in the Consolidated Action, and specifically deny and dispute the scientific, factual, legal, and other bases

asserted or alleged to support claims or allegations of Plaintiffs and Class Members. Nothing contained in this Agreement, or any related documents filed in connection therewith is intended to be or shall be interpreted by anyone as in any way suggesting anything to the contrary in this Consolidated Action, any individual Action or in any other actions. Neither this Agreement, the Final Approval Order, the fact of Settlement, the settlement negotiations, nor any related documents or facts related to the Settlement or Settlement negotiations, shall be offered or received in evidence against any Party for any purpose in any proceeding other than (i) in such proceedings as may be necessary to consummate or enforce this Agreement, or (ii) in any action against or by Representative Plaintiffs or Settlement Class Members against or by any of the Released Parties in connection with a defense of *res judicata*, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense.

2.4 If this Agreement terminates for any reason and litigation of the Consolidated Action otherwise resumes, either Party may seek to sever the Consolidated Action. Defendants shall have the right to oppose or otherwise challenge class certification on any grounds, notwithstanding any provision of this Agreement. Likewise, Defendants agree that the statutes of limitations for all Plaintiffs previously named are been tolled to the extent authorized by applicable law, and they will remain in the same position as if the Amended Complaint in the Consolidated Action had never been filed.

### **III. SETTLEMENT CLASS & COURT APPROVAL**

#### **3.1 Settlement Class.**

Within the timeframe set out in Section 3.3, Representative Plaintiffs, through Class Counsel, shall move the Court to certify, for purposes of this Settlement Agreement only, the following Class of:

All Persons who Reside in the Class Area as of the date the Court enters the Preliminary Approval Order, or who formerly Resided in a Residence within the Class Area for a period of at least one (1) month during the Class Period, and had a legal

right to occupy the Residence, through property ownership or residential lease agreement.

Defendants shall not oppose the motion. The following are excluded from the Class to the extent they fall within the definition above:

- a. Any and all legal representatives, employees, corporate officers, heirs, successors, or assigns of Defendants;
- b. The Judge to whom this Consolidated Action is assigned, any member of the Judge's immediate family, and any other judicial officer who is or was assigned to this action; and
- c. Any attorneys who are employees, partners, members, or shareholders of Class Counsel.

3.2 **Class Representatives**

Plaintiffs, through Class Counsel, shall propose the following individuals as Class Representatives of the Settlement Class: Blake Chapman, Ricky Stephens, Gary Thurmond, Jr., Carolyn Thurmond, Hortensia Martinez, Charles Garrett, and Roel Garcia. Class Counsel believe that the individuals listed above are appropriate Representative Plaintiffs for purposes of this Settlement Agreement and Settlement Class, and Defendants agree not to dispute or challenge such appropriateness solely for purposes of this Agreement.

3.3 **Parties' Efforts to Obtain Settlement Approval Order.**

Based on an analysis of the facts and the law and taking into account the burden and expense of litigation, as well as the fair, cost-effective, and assured method of resolving the Class Claims, Representative Plaintiffs and Class Counsel have concluded that this Agreement provides benefits to the Class Members and is fair, adequate, reasonable, and in the best interest of the Class Members. The Representative Plaintiffs and Class Counsel agree to recommend approval of this Agreement by the Court, and to support approval of this Settlement as fair, adequate, and reasonable. The

Defendants will agree not to oppose the Plaintiffs' motions seeking preliminary and final approval of this Settlement. The Parties further agree to undertake all reasonable and proper steps and efforts to effectuate the terms and purposes of this Agreement, to secure the Court's approval, and to oppose any challenges to the fairness of the Settlement Agreement and any appeals from or challenges to the Final Approval Order. Those steps shall include the following:

- a. **Execution of Agreement.** The Parties, through their respective counsel, shall execute this Agreement. Execution by electronic signature is expressly permitted.
- b. **Moving for Consolidation.** Within three (3) business days of the execution of this Agreement, Plaintiffs shall file an Unopposed Motion for Consolidation, for settlement purposes only. The Parties shall confer and agree on the form of the motion and Defendants agree not to oppose the Motion for Consolidation.
- c. **Amending Pleadings.** Within seven (7) business days of an order granting the Parties' Motion for Consolidation, Representative Plaintiffs shall file an Unopposed Motion for Leave to Amend the Pleadings and file an amended pleading that comports to the terms of this Agreement. Such motion for leave shall ask that the Court not require any responsive pleadings from Defendants while the Court entertains class settlement issues. Defendants agree not to oppose the Motion for Leave to Amend and hereby authorize undersigned Defense Counsel to accept service of the amended pleading on behalf of the newly formed entity, voestalpine Texas Holding LLC.
- d. **Preliminary Approval of Settlement.** Within seven (7) business days of filing an amended pleading in the Consolidated Action, the Representative Plaintiffs

shall file a motion with the Court for entry of a Preliminary Approval Order. The motion shall seek an order, substantially similar to the order attached as Exhibit E, that:

- (1) Conditionally certifies the Settlement Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure;
- (2) Preliminarily approves the terms and conditions of the Settlement embodied in this Agreement subject to the Fairness Hearing and final approval by the Court in the Final Approval Order;
- (3) Finds that the Notice Plan, as submitted to the Court by Class Counsel, is approved by the Court, including the Notice Packet, which includes the Class Notice, and the Claim Form (or such other form(s) otherwise approved by the Court) fairly and adequately describes the terms and effect of this Agreement and the Settlement; gives notice of Class Members' right to opt out of the Class Settlement; describes how Class Members may object to approval of the Settlement; gives notice of the time and place of the Fairness Hearing for final approval of the Settlement; and satisfies the requirements of FED. R. CIV. P. 23(e), due process, and Fifth Circuit law regarding notice to Class Members of the Settlement;
- (4) Appoints and designates Class Counsel as the counsel for the Settlement Class under FED. R. CIV. P. 23(g).

- (5) Appoints and designates Plaintiffs as the representatives for the Settlement Class;
- (6) Preliminarily approves the Claims Program for distributing the Settlement Fund to Participating Class Members;
- (7) Appoints and designates Dan Balhoff of the law firm Perry, Balhoff, Mengis & Burns, LLC as the Special Master
- (8) Authorizes the filing of the Settlement Distribution Plan under seal; and
- (9) Appoints and designates Postlethwaite & Netterville as Claims Administrator.

**e. Notice Plan.**

- (1) Plan Summary.

The Parties agree that notice to Class Members should be conducted at several levels.

The first level includes individual written mail notice. The Claims Administrator, shall, to the extent practicable, pursuant to the Property Identification Plan (Exhibit G), identify Residents within the Class Area. Individual written mail notice should be sent to each such identified Resident within the Class Area. Pursuant to such Property Identification Plan, the Claims Administrator shall utilize available public records and other resources reasonably within its disposal, to seek to identify record owners of Residences within the Class Area, and, where available, former record

owners during the Class Period. Notice, consisting of the Notice Packet, containing the Short Form Class Notice (Exhibit A) would then be mailed by U. S. Mail to each such identified Resident. A Notice Package may also be mailed by U. S. Mail to each identified former owner if forwarding information is reasonably available and trustworthy. The Notice Packet will also contain a Claim Form (Exhibit C) for each identified Class Member to review and return to the Claims Administrator as outlined herein to qualify as a Participating Class Member.

The Claims Administrator shall also set up a settlement website link where Class Members may seek additional information regarding the Settlement, including the Long Form Class Notice (Exhibit B), where they may obtain and download a copy of the Claim Form and where they may review this Agreement and other relevant case documents.

The Claims Administrator shall further set up a settlement call center, and publish its telephone number, where Class Members may call to obtain additional information about the Settlement.

The second level is Newspaper Notice, principally but not exclusively intended for former Residents who are not likely to have been identified as a Resident to receive mail notice.

(2) Mail Notice

The Claims Administrator, pursuant to the Property Identification Plan, shall develop the list of addresses applicable to the Residences in the Class Area and Class Member names (where available) through the date of the Preliminary Approval Order as soon as practicable, but not later than forty-five (45) days of the issuance of the Preliminary Approval Order. The Claims Administrator may be authorized to begin work on the Property Identification Plan upon the latter of being retained or the execution of this Agreement. The list of addresses prepared by the Claims Administrator shall identify the Residences in apartment buildings, separately, and provide the total number of units applicable for each apartment complex as well as names of Class Members, if practicable.

Prior to mailing the Notice Packet to the identified Class Members, the Claims Administrator shall search the National Change of Address Database (“NCOA”) for a forty-eight (48) month period to obtain any updated mailing addresses. The Claims Administrator shall then mail by, First Class Mail, the Notice Packet to those addresses developed pursuant to the Property Identification Plan and as updated by the NCOA search, within sixty (60) days of the Preliminary Approval Order, which shall be deemed the Notice Issuance

Deadline. The Claims Administrator shall perform address-tracing for any mail returned as undeliverable, to the extent practicable.

Unless the Claims Administrator receives a Notice Packet returned from the United States Postal Service for reasons discussed below in this paragraph, each Notice Packet shall be deemed mailed and received by the Class Member upon mailing. In the event that, within thirty (30) days of being mailed, a Notice Packet is returned to the Claims Administrator by the United States Postal Service with a forwarding address for the recipient, the Claims Administrator shall re-mail that Notice to the forwarding address. That Notice will be deemed mailed and received at that point, and the forwarding address shall be deemed the Updated Address for that Class Member.

In the event that, within thirty (30) days of being mailed, a Notice Packet is returned to the Claims Administrator by the United States Postal Service because the address of the recipient is no longer valid, i.e., the envelope is marked "Return to Sender," the Claims Administrator shall undertake an address skip-trace to attempt to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Claims Administrator shall re-send that Notice Packet within seven (7) days of

receiving such information; if no Updated Address is obtained for that Class Member, the Notice shall be sent again to the last known address, and in either event, the Notice shall be deemed received once it is mailed for the second time.

In the event that any subsequently mailed Notice Packet is returned to the Claims Administrator before the end of the Notice Period by the United States Postal Service because the address of the recipient is no longer valid, i.e., the envelope is marked "Return to Sender," the Claims Administrator shall be required to take no further action with that Notice and it shall be deemed to have been delivered. The Claims Administrator shall not be required to take any further action on any Notice or Claims Form returned after the end of the Notice Period.

(3) Newspaper Notice

The Claims Administrator shall ensure that the Newspaper Notice (in a form substantially as the Short Form Notice, Exhibit A) is published beginning on the Notice Issuance Deadline, and continuing to run, bi-weekly, through the duration of the Notice Period. Such notice shall be published in one or more local newspapers of wide distribution that must include Portland, TX, Gregory, TX, as well as Corpus Christi, TX. The Newspaper Notice includes information on how a Resident who believes he or she may qualify as Class Member

can obtain a Notice Packet and seek to file a Claim Form within the Notice Period in order to qualify as a Participating Class Member. Included in the Newspaper Notice will be the Settlement website address and the phone number for the Settlement call center.

(4) Providing Notice Pursuant to CAFA

Within ten (10) days after the Parties file the Preliminary Approval Motion with the Court, Defendants shall provide the notice required by the Class Action Fairness Act, 28 U.S.C. § 1715, to the Appropriate Federal Official and Appropriate State Official, as defined in 28 U.S.C. § 1715(a). Defendants agree to provide copies to Class Counsel at the same time.

- e. **Motion for Final Approval of Class Settlement.** At least twenty-one (21) days prior to the Fairness Hearing, or according to the deadline set by the Court, the Representative Plaintiffs shall file a motion seeking a final approval of the Settlement and the entry of a Final Approval Order that (i) certifies the Settlement Class; (ii) approves the Settlement as fair, adequate, and reasonable under Federal Rule of Civil Procedure 23(e); (iii) approves the plan of distribution of the Net Settlement Amount to Participating Class Members according to the plan described in Section 4 below; (iv) dismisses the Consolidated Action and/or each individual Action, with prejudice; (v) rules that each of the Releasing Parties has released, waived, compromised, settled, and discharged all Released Claims; (vi) enjoins all further litigation by the Representative Plaintiffs and Settlement Class Members with respect to the

Released Claims; (vii) awards any service awards for Representative Plaintiffs; and (viii) reserves the Court's exclusive and continuing jurisdiction over the interpretation, performance, enforcement, and administration of this Agreement and the Court's orders in the Consolidated Action. Defendants agree not to oppose the motion.

f. **Motion for Award of Attorneys' Fees and Litigation Expenses.**

Contemporaneously with the filing of the Motion for Final Approval, Class Counsel shall file a separate Motion for Award of Attorneys' Fees and Litigation Expenses seeking approval of an awards any attorneys' fees, costs, and expenses as provided in this Agreement. Defendants agree not to oppose the motion to the extent it does not conflict with the provisions of this Agreement.

g. **The Fairness Hearing.** On the date and time set by the Court, Class Counsel and counsel for Defendants shall participate in the Fairness Hearing. Class Counsel and counsel for Defendants will reasonably cooperate with one another to obtain a Final Approval Order.

3.4 **Objection Procedure.**

Each Class Member wishing to object to the Settlement shall file with the Claims Administrator a timely written notice of objection delivered or postmarked no later than sixty (60) days after the Notice Issuance Date, the exact calendar date to be specified in the Class Notice. The objection must state or contain the following information to be valid: (i) the name and cause number of the Consolidated Action; (ii) the Class Member's name, address, and telephone number; (iii) the factual basis for the claim of qualifying for the status of class membership, including whether the objector is a current or former Resident of a property in the Class Area, and for what period of time

during the Class Period, and including Proof of Residence or proof of ownership of Real Property within the Class Area; (iv) whether the Class Member plans to appear, either individually or through an attorney at the Fairness Hearing; (v) each specific objection or objections to the Settlement with the complete factual basis for each such objection, along with whatever legal authority, if any, the objector asserts regarding the objection, (vi) a statement advising if the Class Member has objected to other class action settlements, and if so, identifying each such settlement, the date of such objection and the basis for the objection; and (vii) their Personal Signature on the form under penalty of perjury in the presence of at least one adult witness subject to approval by the Court. No “mass” or “class” Objections shall be valid and each Class Member who wishes to object must file their own objection that satisfies the requirements of Section 3.4.

The objection shall be filed with the Claims Administrator as follows:

Black Dust Settlement Claims  
c/o Postlethwaite & Netterville  
P.O. Box #####  
Baton Rouge, Louisiana 70821

The Claims Administrator shall provide all valid and timely objections, if any, to Class Counsel and Counsel for Defendants within fifteen (15) days of the close of the Notice Period. Class Counsel will file the objections with the Court within twenty (20) days of the close of the Notice Period. Failure of the Objector to fully and completely comply with each of the above-stated requirements for the Objection or to properly and timely submit the objection may result in the Objection not being considered by the Court.

The Claims Administrator shall collect and tabulate all objections and report to Class Counsel and Defendants’ Counsel at least weekly identifying each objecting person along with information identifying the location and zone of each such objector.

The Special Master may, at his sole discretion, contact any individual who submits a written objection to further ascertain the rationale for the objection and to answer any questions about this Agreement.

3.5 **Opt Out Procedure.**

Prior to final approval of this Settlement, Class Members who do not file an objection to the Settlement pursuant to Section 3.4 may exclude themselves from the Settlement by following the procedure outlined in this section and stated in the Class Notice. A Class Member who desires to opt out of the Settlement shall file with the Claims Administrator a timely written notice of opt out, delivered or postmarked no later than sixty (60) days after the Notice Issuance Date, the exact calendar date to be specified in the Class Notice. The notice of opt out must state or include the following to be valid: (i) the name and cause number of the Consolidated Action; (ii) the Class Member's name, address, and telephone number; (iii) a clear statement that the Class Member desires to opt out of the Settlement; (iv) a clear statement explaining the reason or reasons why the Class Member is choosing to opt out of the Settlement; (v) whether the Class Member has or intends to retain legal counsel to represent him or her further, and whether the Class Member has or intends to file a lawsuit against Defendants; and (vi) include their Personal Signature on the form under penalty of perjury in the presence of at least one adult witness subject to approval by the Court. No "mass" or "class" opt out requests shall be valid, and no Class Member may submit an opt out request on behalf of any other Class Member.

The written notice of opt out shall be filed with the Claims Administrator as follows:

Black Dust Settlement Claims  
c/o Postlethwaite & Netterville  
P.O. Box #####  
Baton Rouge, Louisiana 70821

The Claims Administrator shall provide all valid and timely written notices of opt out, if any, to Class Counsel and Counsel for Defendants within fifteen (15) days of the close of the Notice

Period. Class Counsel will file the written notices of opt out with the Court within twenty (20) days of the close of the Notice Period. Failure of the Class Member seeking to opt out to fully and completely comply with each of the above-stated requirements for the written notice of opt-out, or to properly and timely serve a copy with the Claims Administrator may result in the notice of opt out not being considered by the Court.

The Special Master may, at his sole discretion, contact any individual who submits a written notice of opt out to further ascertain the rationale for exclusion and to answer any questions about this Agreement.

All Class Members who do not timely and properly opt out shall be Settlement Class Members and shall in all respects be bound by all of the terms of this Agreement and the Final Approved Order with respect to the Class defined herein, and shall be bound by the Release set forth in this Agreement.

Class Counsel agrees not to represent any Opt Outs to this Agreement.

The Claims Administrator shall collect and tabulate all opt out notices and report to Class Counsel and Defendants' Counsel at least weekly identifying each opt out person along with information identifying the location and zone of each such opt out.

### 3.6 **Claim Form Procedure**

(a) In order for a Class Member to be eligible to receive a Settlement Sum, such Class Member must properly and timely complete and submit a Claims Form as directed in the Notice Packet and settlement website, and thereby become a Participating Class Member. Only Participating Class Members are entitled to any award by the Special Master of an Individual Settlement Sum.

To be considered a Participating Class Member, the Class Members must return the Claim Form, which is to be part of the Notice Packet sent to a Residence, in accordance with the directions contained in the Notice Packet and available at the settlement website. The Class Member must properly complete the Claims Form and return the completed Claims Form to the Claim

Administrator postmarked or otherwise received by the end of the Notice Period, the exact calendar date to be specified in the Class Notice. As will be described in the Notice Packet, the Claim Form must: (1) be signed by the Class Member, (2) identify whether the Class Member (i) owns/owned but does/did not occupy the Residence, (ii) owns/owned and occupies/occupied the Residence; or (ii) Resides in the Residence by virtue of a residential lease; (3) state the dates during the Class Period that the Class Member owned and/or Resided in the Residence and (4) state their email address and telephone number to aid future communication. Additionally, Class Members who resided in a Residence must also submit Proof of Residence. In the event of a non-marital co-tenancy, each such Resident must provide the requested information and individually sign the Claim Form. They may also contact the Claims Administrator at the phone number provided in the Notice Packet and Newspaper Notice to request an additional Claim Form.

A failure to submit a timely and properly completed Claim Form constitutes a waiver of entitlement to obtain a Settlement Sum under this Agreement. All Class Members who do not opt out and who do not timely and properly submit a timely Claims Form and who do not become a Participating Class Member, shall in all respects be bound by all of the terms of this Agreement and the Final Approved Order with respect to the Class defined herein, and shall be bound by the Release set forth in this Agreement and be permanently and forever barred from commencing, instituting, maintaining or prosecuting any action subject to the Release against any Released Parties in any court, arbitration tribunal, or administrative or other forum.

(b) The Claims Administrator shall verify that the Claim Form is properly filled out and timely received upon receipt of the same. In the event a Claim Form is improperly filled out in that it contains inaccurate or conflicting information on its face or is otherwise incomplete, the Claims Administrator shall contact the Class Member, at the phone number or email address or mailing address provided, to obtain the required information. If the Claims Administrator is unable to obtain

the corrected information or otherwise contact the Class Member within the time frame set forth for return of Claims Forms in the Notice Packet, the incomplete/inaccurate Claim Form will not be considered and the Class Member will not become a Participating Class Member. However, the Special Master may, at his sole discretion, contact any individual who submits a Claims Form regarding any deficiencies in any submitted Claims Form to determine, in his discretion, if it can be or has been cured.

(c) By submitting a timely and complete Claim Form, Each Participating Class Member will be entitled to receive his or her respective Settlement Sum, based on the information he or she has provided in their Claim Form, subject to verification by the Special Master, and as determined by the Special Master consistent with the Claims Program.

**IV.  
SETTLEMENT FUNDS AND DISTRIBUTION OF SETTLEMENT SUMS**

**4.1 Settlement Amount and Benefits Promised in Exchange for Releases:**

In consideration of all the promises and covenants set forth in this Agreement, and of the release and dismissal of the Released Claims against the Released Parties as contemplated in this Agreement, Defendants shall provide the following:

- a. **Total Cash Settlement Amount to be paid by Defendants:** Collectively, Defendants shall pay \$16,825,000.00. After deductions for attorneys' fees, litigation expenses, the Reserve Fund, and any service awards, the Net Settlement Amount shall be distributed to the Participating Class Members in accordance with this Section.
- b. **Funding of Settlement Fund:** The Total Cash Settlement Amount shall be placed in the Settlement Fund established pursuant to the terms of Section 6.1.

**4.2. Allocation of Net Settlement Amount.** Consistent with the Claims Program, the Special Master shall have full and final authority to determine the amount to be paid to each

Participating Class Member. The Claims Program shall take into account the location of the Residence and the zone in which the Residence is located relative to the location of the Facility and considering established predominant weather patterns, the nature of the Residence (i.e., whether it is a single-family or multi-family dwelling), the status of the Resident (e.g., whether a current or former owner or tenant), the number of Residents who have resided in each Residence over the entire Class Period, the duration and time period of residence of each Resident during the Class Period, and other special circumstances at the discretion of the Special Master, as well as the formula and considerations set forth in this section.

The Parties establish following minimal parameters for distribution of the Net Settlement Amount to be considered by the Special Master is devising the Claims Program;

1. Each Residence in the Class Area for which one or more Claim Forms is received shall be considered one (1) Residential Unit for purposes of administering this Agreement.
2. The Claims Administrator shall work with the Special Master and the Claims Administrator shall provide the Claim Forms and Claim Form Database to the Special Master.
3. The Special Master shall review the Claim Forms submitted during the Class Period for the purpose of determining the total number of Residential Units and setting the Weighted Zone Value. The Special Master has the discretion to set the Weighted Zone Value within the parameters set in this Agreement, such that the Residential Unit Value, when multiplied by the respective Weighted Zone Value for each Residential Unit equals the Net Settlement Amount. In establishing the Weighted Zone Value, the Special Master should consider the

respective exposure to Dust based on proximity to the Facility, dominant weather patterns, and other factors to be discussed in consultations with Class Counsel and Counsel for Defendants.

4. The Residential Unit Value shall be separated into two amounts: (1) an amount for damages to Real Property (“Real Property Amount”); and (2) an amount for damages to Personal Property (“Personal Property Amount”).
5. The Special Master shall give great weight to the Property Identification Plan in identifying the Residences included in this Settlement.
6. The Residential Unit Value shall include claims for Real and Personal Property, for the entirety of the Class Period.
7. In the event multiple Participating Class Members return Claim Forms for the same Residence, those Participating Class Members shall each receive a divided share of the Residential Unit Value. The Special Master will determine each such Participating Class Member’s share based on factors such as the status as an Owner and/or Tenant and the duration of time and period of time within the Class Period that each owned and/or rented the Residence. The Special Master shall have discretion in proportioning the Residential Unit Values between Participating Class Members who may have resided at the same residence during the Class Period.
8. The Special Master shall have complete discretion on distributing to Participating Class Members the Residential Unit Value.

9. **Settlement Distribution Plan.** After receipt of the Claim Form Database from the Claims Administrator, the Special Master shall, consistent with the Claims Plan, and according to the provisions of this Settlement, set the Weighted Zone Values and apportion the Net Settlement Amount to reflect the Special Master's determination of each Participating Class Member's individual Settlement Sum according to the provisions of Section 4 of this Agreement, and complete the Settlement Distribution Plan. The Special Master shall have ninety (90) calendar days after the end of the Notice Period to make his determinations to be contained in the Settlement Distribution Plan. The Settlement Distribution Plan shall be served on Class Counsel and Defendants' Counsel and submitted to the Court for approval in the Final Approval Motion; the Parties agree that such Settlement Distribution Plan may be treated as confidential and request that it be submitted under seal.

4.3 **Check Cashing Period and Void Checks.**

All payments made to Participating Class Members shall be made by check which check shall include an inscription that it is valid only for a period not to exceed one hundred twenty (120) days from issuance, after which it shall be deemed void and not able to be cashed. Each Participating Class Member receiving a check must cash such check within 120 days of issuance or he/she will forfeit any payment. The Special Master may, at his discretion, direct the Claims Administrator to reissue any voided check one time with an inscription that it is valid only for a period not to exceed forty-five (45) days from issuance. As to funds relating to any check that has become void and is not cashed, those funds shall be included in the Reserve Fund, to be used at the Special Master's discretion for issues arising after the Settlement Distribution Plan has been finalized.

Should funds remain in the Reserve Fund 210 days after the date the Settlement Checks are issued, such remaining funds shall be distributed promptly thereafter as otherwise directed by the Special Master, after consultation with Class Counsel and Defendants' Counsel. However, the Special Master does not have discretion to return, or revert, any remaining funds directly to Defendants, but the Special Master may allocate funds to projects performed and/or sponsored by one or more of the Defendants related to Dust mitigation, or for community projects.

Participating Class Members whose checks are deemed void and cannot be cashed, shall continue to be bound by the Release set forth in this Agreement and shall be permanently and forever barred from commencing, instituting, maintaining or prosecuting any action subject to the Release against any Released Parties in any court, arbitration tribunal, or administrative or other forum.

4.4 **Attorneys' Fees and Expenses.**

Pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel may file a motion for an award of attorneys' fees and litigation expenses relying upon and consisting of some portion of the Total Settlement Value. The motion for fees and expenses shall be filed contemporaneously with the Motion for Final Approval, or by the Court-ordered deadline. The amount of the attorneys' fees and expenses to be awarded shall be determined by the Court and shall be limited by and funded exclusively from the Settlement Fund and shall not exceed the Total Cash Settlement Amount. Defendants agree not to oppose the motion for fees, to the extent it does not request as attorneys' fees more than 40% of the Total Cash Settlement Amount. Defendants shall not have any obligation to add to or subsidize the Settlement Fund after its payment of the Total Cash Settlement Amount in any way including to allow for the payment of fees and expenses awarded to Class Counsel. Class Counsel will not seek any other attorneys' fees or expenses in connection with this Agreement and will not seek or accept any fees or expenses relative to this Agreement other than as awarded by the Court.

4.5 **Service Awards.**

Subject to Court discretion and approval, one or more Plaintiffs may be entitled to a Service Award of not to exceed \$1,000.00 each for their services rendered in the prosecution of this Consolidated Action. Defendants shall not oppose the requested service awards.

4.6 **Settlement Administration Expenses.**

All reasonable expenses associated with the administration of this Settlement up through the Effective Date, including expenses for the Claims Administrator, and Special Master (including for work performed by members of his law firm to whom he may delegate tasks) shall be considered Settlement Administrative Expenses. Defendants agree to fund such Settlement Administrative Expenses in an amount not to exceed \$250,000.00. This amount shall be paid by Defendants in addition to the Total Cash Settlement Amount, by the Funding Deadline described in Section 6.1. Defendants shall not be liable for, or otherwise be responsible for, any administration expenses in excess of \$250,000.00. To the extent Settlement Administrative Expenses exceed \$250,000.00, such expenses shall be borne by the Settlement Fund (including any funds remaining from the Reserve Fund).

In the event this Agreement terminates, as described in Sections 7.1 or 7.2 herein, the Claims Administrator shall, within five (5) business days of termination, determine the amount of all Settlement Administrative Expenses incurred as of the date of termination (plus the cost to complete this tabulation) (the "Termination Settlement Administrative Expenses") and present that total to Class Counsel and Defendants' Counsel.

In the event the Court declines to approve this Settlement, and subject to the provisions of Section 7.1, each of Class Counsel and Defendants' Counsel shall be responsible for payment of one-half of that Termination Settlement Administrative Expenses. To the extent Defendants' Counsel has paid more than its one-half share of such Termination Settlement Administrative Expenses, Class

Counsel shall reimburse the Defendants' Counsel for all amounts it has paid over its one-half share within ten (10) business days of presentment by the Claims Administrator of the Termination Settlement Administrative Expenses.

In the event any Defendant chooses to terminate the settlement pursuant to Section 7.2, Defendants shall be solely responsible for the payment of Termination Settlement Administrative Expenses.

**V.  
RELEASES**

5.1 In consideration of the payment by Defendants (or any one of them) of the Total Cash Settlement Amount, as well as the Remedial Measures undertaken and to be undertaken by Defendants, all of which comprise the Total Settlement Value, as of the Effective Date the Releasing Parties agree to fully release and forever discharge the Released Parties from all Released Claims.

It is expressly understood and acknowledged by Releasing Parties that Released Claims include claims related to Dust that have not yet occurred but which may arise in the future, **provided, however,** that Released Claims do not include, and that nothing herein shall bar, any claims for relief based solely on the incremental emissions or releases of Dust from future Facility operations that exceed 100 percent of the currently permitted maximum annual production capacity (as referenced in the air emission permits NSR Permit No. 108113 and PSDTX1344M1 issued by the Texas Commission on Environmental Quality to voestalpine Texas, LLC, and applications related thereto); and, **further provided,** that Released Claims do not include, and that nothing herein shall bar any claims for relief based solely on a future catastrophic release from the Facility (i.e., an unexpected, accidental incident resulting in releases of Dust atypical in nature and dramatically greater in amount than those historically associated with regular plant operations), which causes substantial real or personal property damages that are significant and measurable to a Plaintiff or Class Member seeking such relief.

5.2 Releasing Parties recognize that even if they later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon the Effective Date, Released Parties fully, finally and forever settle and release any and all of the Released Claims, and that they are forever barred from asserting such Released Claims against the Released Parties. The Parties acknowledge that the foregoing release was bargained for and is an essential and material element of this Agreement.

5.3 The Releasing Parties acknowledge and understand that they may have suffered damages or may incur damages or liabilities that are unknown at the present time, which if known, might have affected their decision to enter into this release. The Releasing Parties considered such uncertainties in the course of negotiations leading to this Agreement, and the Releasing Parties have determined the Total Settlement Value to be fair and adequate compensation with due regard for such uncertainties. In making this waiver, the Releasing Parties understand and acknowledge that they may hereafter discover facts in addition to or different from those that are currently known or believed to be true with respect to the subject matter of the foregoing release, but agree that they have taken that possibility into account in reaching this Agreement and that, notwithstanding the discovery or existence of any such additional or different facts, as to which the Releasing Parties expressly assume the risk, they fully, finally, and forever settle and release any and all claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts.

5.4 It is hereby understood and agreed that this Agreement is intended to constitute a full and final release by the Releasing Parties of all Released Claims against the Released Parties. Pursuant to this Agreement, the Released Parties are, and shall in the future be, discharged from any and all liability whatsoever to the Releasing Parties for the Released Claims released in Section 5.1 above.

5.5 The distribution described in Section 4.1 of this Agreement is the exclusive monetary consideration provided by Defendants for and on behalf of the Released Parties to the Releasing Parties for the Released Claims against the Released Parties. Accordingly, the Released Parties shall not be subject to liability or expense of any kind to the Releasing Parties with respect to any Released Claims, other than as set forth in this Agreement.

5.6 The Releasing Parties shall not at any time hereafter, whether directly or indirectly or individually or as a member or representative of a class, commence, assign, or prosecute any claim, demand, or cause of action at law, equity or otherwise for damages, loss or injury, or for injunctive or statutory relief, arising out of or relating to any act, error, omission, event or thing within the scope of the releases set forth in Section 5.1 above, against the Released Parties. The Releasing Parties consent to the jurisdiction of this Court to enter an injunction barring them from commencing or prosecuting any action or other proceeding, or seeking other benefits, based upon the Released Claims.

5.7 Participating Class Members, as Releasing Parties, upon selling, assigning, transferring, donating or leasing any Real property or Personal Property for which such Participating Class Member received (or are scheduled to or expect to receive) any Settlement Sum, to any other Person, shall have an affirmative obligation to provide notice to any such Person regarding the existence of this Settlement and the Participating Class Member's receipt (or expected receipt) of payment of a Settlement Sum, including any requirement to provide notice consistent with all applicable laws of the state of Texas. IF A PARTICIPATING CLASS MEMBER FAILS TO PROVIDE THE FOREGOING NOTICE, SUCH PARTICIPATING CLASS MEMBER, AS A RELEASING PARTY, AGREES TO INDEMNIFY AND HOLD HARMLESS THE RELEASED PARTIES FROM ANY LIABILITY, CLAIM OR DAMAGE THE RELEASED PARTIES MAY SUFFER AS A RESULT OF ANY CLAIMS, DEMANDS, CAUSES OF ACTION, COSTS OR JUDGMENTS AGAINST THE RELEASED PARTIES ARISING OUT OF THE RELEASED

CLAIMS OR CLAIMS REGARDING ANY DUST OR PARTICULATE MATTER FROM DEFENDANTS' FACILITY WHICH MAY CONSTITUTE RELEASED CLAIMS ASSERTED BY ANY TRANSFEREE(S) (OR THEIR AGENTS, REPRESENTATIVES OR ASSIGNS) OF SUCH PARTICIPATING CLASS MEMBER. THIS INDEMNITY AND HOLD HARMLESS SHALL BE LIMITED TO THE AMOUNT OF THE PARTICIPATING CLASS MEMBER'S INDIVIDUAL SETTLEMENT SUM RECEIVED AS A RESULT OF THIS AGREEMENT.

**VI.  
SETTLEMENT FUNDS AND PAYMENTS**

6.1 **Funding Deadline.**

(a) Within ten (10) business days after the Effective Date, Defendants shall wire transfer the Total Settlement Fund Amount to the Claims Administrator in accordance with instructions from the Claims Administrator as specified in this Section, to be maintained in the Settlement Fund for ultimate distribution according to the terms of this Agreement. In no event shall any Defendant have any liability whatsoever with respect to the Total Cash Settlement Amount once it is paid to the Claims Administrator for the Settlement Fund. If the Settlement Fund has not been established or approved by the Court by the deadline for payment specified herein, Defendants shall not be obligated to pay the Total Cash Settlement Amount until ten (10) business days after the Settlement Fund is established and approved by the Court.

(b) With respect to the Settlement Fund:

(i) The Settlement Fund shall indemnify Defendants for all taxes imposed on the income earned, if any, or with respect to the Settlement Fund, as well as any interest, penalties, or additions associated therewith.

(ii) Without limiting the foregoing, the Claims Administrator shall reimburse Defendants from the Settlement Fund for any taxes, interest, penalties, or additions to the

extent they are imposed on or paid by Defendants or any period during which the Settlement Fund does not qualify as a Qualified Settlement Fund.

(iii) Defendants shall have no responsibility whatsoever for the establishment or maintenance of the Settlement Fund; the Claims Administrator is solely responsible for all aspects of the Settlement Fund, including for establishing and treating the Settlement fund as a “Qualified Settlement Fund”.

6.2 **Distribution Deadlines**

The Claims Administrator may not distribute any monies to any Person, including any Participating Class Member, before the Effective Date.

- a. **Payment of Attorneys’ Fees and Service Awards.** Within (15) fifteen business days after the Effective Date, or another time frame as may be ordered by the Court, the Claims Administrator shall issue from the Settlement Fund payment for the Court-approved attorneys’ fees and litigation expenses. The Claims Administrator shall wire the funds for attorneys’ fees and litigation expenses to Anderson Alexander, PLLC IOLTA. The Claims Administrator shall include any Court-approved Service Awards with the Settlement Sums due to the Plaintiffs (if any) according to the Settlement Distribution Timeline discussed below.
- c. **Settlement Distribution Timeline.** The Special Master shall direct the Claims Administrator to distribute the Settlement Sums in accordance with the Settlement Distribution Plan, as approved by the Court in its Final Approval Order. Such distribution shall commence not later than thirty (30) days after the Effective Date, or in a time frame otherwise ordered by the Court.

- d. **Disputes Regarding Payments to Participating Class Members.** The Special Master's decisions with respect to amounts awarded to Participating Class Members under the Claims Program as set forth in the approved Settlement Distribution Plan, and the Claims Administrator's actions in preparing and mailing any checks to Participating Class Members for Settlement Distributions, are final, and neither the Special Master nor the Claims Administrator shall bear any responsibility or liability whatsoever to any Participating Class Member or any Class Member. The Special Master, may, at his sole discretion, utilize the Reserve Fund to account for any untimely Claim Forms or to resolve any disputes regarding the Settlement Distribution Plan.

**VII.  
TERMINATION OF AGREEMENT AND APPEALS**

**7.1 Failure to obtain Court Approval.**

If the Court declines to approve this Agreement and Settlement without modification, this Agreement shall automatically terminate and become null and void, without prejudice to ability of the Parties, at each of their respective sole option and discretion, to agree to any proposed modifications or attempt to negotiate a settlement on different terms. Notwithstanding the preceding sentence, the Court's entry of an order awarding Class Counsel an amount for attorneys' fees or expenses less than the amounts requested by Class Counsel shall not be grounds to void this Agreement.

**7.2 Termination by Defendants; Blow-Up Provision.**

(a) Any Defendant may, at its option and sole discretion, terminate the Settlement, and it shall be void as if it were never executed, in the event that Class Members elect to opt out of the Settlement in the following numbers in any one or more of the geographic zones within the Class Area identified below and on Exhibit D:

- (i) Zone 1 – More than three (3) Residential Unit opt outs.
- (ii) Zone 2 – More than six (6) Residential Unit opt outs.
- (iii) Zone 3 – More than six (6) Residential Unit opt outs.
- (iv) Zone 4 – More than 15 Residential Unit opt outs.
- (v) Zone 5 – More than 30 Residential Unit opt outs.
- (vi) Zone 6 – More than 25 Residential Unit opt outs.
- (vii) Zone 7 – More than 30 Residential Unit opt outs.

In all cases above, if at least one Resident within a Residential unit opts out, the entire Residential unit is counted.

(b) If any Defendant exercises its right to terminate this Settlement under this Agreement, this Agreement shall automatically terminate and become null and void, without prejudice to ability of the Parties, at each of their respective sole option and discretion, to attempt to negotiate a settlement on different terms.

7.3 **Appeal.**

(a) **Waiver of Appeal.** Defendants and Representative Plaintiffs agree to waive all appeals arising out the approval of this Agreement and/or the entry of Judgment by the court.

(b) **Appeal of Final Approval Order.**

(i) In the event of any appeal by a party other than Defendants or Representative Plaintiffs, all dates in the Agreement triggered after the date of the Final Approval Order are stayed until fourteen (14) days after all opportunities for any further appellate review have ended, including by any waiver of rights. If any Person appeals the Court's Final Approval Order, the Parties will use their best efforts to defeat the appeal.

(ii) If an appeal challenging the approval of this Settlement results in an order reversing or vacating the Final Approval Order as to the approval of the Settlement or the

certification of the Settlement Class, any Party may undertake, at its sole option, discretion, and expense, to pursue further review (including panel rehearing, en banc rehearing, or a petition for certiorari) of that appellate order. If no Party timely pursues such further review, or if pursuit of such further review fails to secure reinstatement of the Final Approval Order without modification, the Agreement shall automatically terminate and become null and void, without prejudice to ability of the Parties, at each of their respective sole option and discretion, to attempt to negotiate a settlement on different terms.

## **VIII. MISCELLANEOUS**

### **8.1 Entire Agreement.**

This Agreement constitutes the entire agreement among the Parties, and it supersedes all prior agreements or understandings between or among them, oral or written, relating to the Settlement of the Consolidated Action.

### **8.2 Construction.**

The Parties acknowledge that this Agreement was jointly drafted and agree that if any of its terms are ambiguous, then the rule of construction construing the ambiguity against the drafting party shall not be employed in the interpretation of this Agreement.

### **8.3 Governing Law.**

The Agreement shall be governed and construed by the substantive law of the State of Texas, without application of Texas's choice-of-law rules. Jurisdiction and venue for all proceedings in connection with the Agreement, or arising as a result of any matter relating to this Settlement, or addressed in the Agreement, shall be in the United States District Court for the Southern District of Texas.

### **8.4 Reasonable Extensions.**

The Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Agreement, subject to approval by the Court if required.

8.5 **Amendment.**

This Agreement may be amended only by a writing executed by all signatories hereto, provided that after entry of the Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed on behalf of the Parties and approved by the Court.

8.6 **Retention of Jurisdiction.**

The United States District Court for the Southern District of Texas shall retain jurisdiction over the Parties to resolve any dispute that may arise regarding this Agreement.

8.7 **Waiver.**

The provisions of this Agreement may be waived only by written agreement signed by the waiving party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneous with this Agreement.

8.8 **Force Majeure.**

The failure of any Party to perform any of its obligations hereunder shall not subject any Party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by Acts of God, fires, accidents, other natural disasters, diseases, pandemics, or other wide-spread infectious disease events, interruptions or delays in communications or transportation, labor disputes or shortages, shortages of material or supplies, governmental laws, rules or regulations of other governmental bodies or tribunals, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such Party.

8.9 **No Liability.**

No Person shall have any claim against any Plaintiff, Class Member, Class Counsel, Released Parties, Defendants' Counsel, the Special Master or the Claims Administrator based on actions that any Plaintiff, Class Member, Class Counsel, Released Persons, Defendants' Counsel, the Special Master or the Claims Administrator was required or permitted to take under this Agreement.

8.10 **Execution.**

This Agreement may be executed in counterparts and shall be binding upon each Party and all Parties executing this or any counterpart.

8.11 **Notices.**

Any notice, demand, or other communication required to be given to a Party under this Agreement shall be in writing and shall be deemed duly given upon receipt if it is addressed to the intended recipient as set forth below and personally delivered, emailed, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

**Class Counsel:**

**Austin W. Anderson**

[austin@a2xlaw.com](mailto:austin@a2xlaw.com)

**Clif Alexander**

[clif@a2xlaw.com](mailto:clif@a2xlaw.com)

**ANDERSON ALEXANDER PLLC**

819 N. Upper Broadway  
Corpus Christi, Texas 78401  
Telephone: (361) 452-1279  
Facsimile: (361) 452-1284

**Stuart R. White**

[stuart@lileswhite.com](mailto:stuart@lileswhite.com)

**Kevin W. Liles**

[kevin@lileswhite.com](mailto:kevin@lileswhite.com)

**LILES WHITE PLLC**

500 N. Water Street, Suite 800  
Corpus Christi, Texas 78401  
Telephone: (361) 826-0100  
Facsimile: (361) 826-0101

**T. Roe Frazer II**

[roe@frazerlaw.com](mailto:roe@frazerlaw.com)

**FRAZER PLC**

1 Burton Hills Blvd., Suite 215

Nashville, Tennessee 37215

Telephone: (615) 647-0990

**Counsel for Defendants:**

**Michael A. Chernekoff**

[mchernekoff@joneswalker.com](mailto:mchernekoff@joneswalker.com)

**Lara D. Pringle**

[lpringle@joneswalker.com](mailto:lpringle@joneswalker.com)

**JONES WALKER PLLC**

811 Main, Suite 2900

Houston, Texas 77002

Telephone: 713.437.1800

Facsimile: 713.437.1810

**J. A. "Tony" Canales**

[tonycanales@canalessimonson.com](mailto:tonycanales@canalessimonson.com)

**Patricia Canales Bell**

[pmcanales@canalessimonson.com](mailto:pmcanales@canalessimonson.com)

**Canales & Simonson, P.C.**

2601 Morgan Ave.

Corpus Christi, Texas 78405

Office: 361-883-0601

Fax: 361-884-7023

Executed and Agreed as to form, this 28th day of September, 2021.

Austin Anderson

Austin Anderson (Sep 28, 2021 14:33 CDT)

\_\_\_\_\_  
Class Counsel

\_\_\_\_\_  
Counsel for Defendants

Executed and Agreed as to form, this 11<sup>th</sup> day of October, 2021.

\_\_\_\_\_  
Class Counsel

  
\_\_\_\_\_  
Counsel for Defendants

Agreed to by:

Dated: Sep 22, 2021

By:   
Blake A Chapman (Sep 22, 2021 15:54 CDT)  
\_\_\_\_\_  
Blake Chapman

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ricky Stephens

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Thurmond, Jr.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Carolyn Thurmond

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Hortensia Martinez

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Garrett

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Roel Garcia

Agreed to by:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Blake Chapman

Dated: Sep 23, 2021

By:  \_\_\_\_\_  
Ricky Stephens (Sep 23, 2021 19:27 CDT)  
Ricky Stephens

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Thurmond, Jr.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Carolyn Thurmond

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Hortensia Martinez

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Garrett

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Roel Garcia

Agreed to by:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Blake Chapman

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ricky Stephens

Dated: **Sep 24, 2021**  
\_\_\_\_\_

By: *Gary Thurmond*  
Gary Thurmond (Sep 24, 2021 10:44 CDT)  
\_\_\_\_\_ Gary Thurmond, Jr.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Carolyn Thurmond

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Hortensia Martinez

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Garrett

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Roel Garcia

Agreed to by:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Blake Chapman

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ricky Stephens

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Thurmond, Jr.

Dated: **Sep 27, 2021**  
\_\_\_\_\_

By:   
Carolyn Thurmond (Sep 27, 2021 15:20 CDT)  
\_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Hortensia Martinez

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Garrett

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Roel Garcia

Agreed to by:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Blake Chapman

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ricky Stephens

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Thurmond, Jr.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Carolyn Thurmond

Dated: Sep 24, 2021

By:   
Hortensia Martinez (Sep 24, 2021 17:32 CDT)  
Hortensia Martinez

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Garrett

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Roel Garcia

Agreed to by:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Blake Chapman

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ricky Stephens

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Thurmond, Jr.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Carolyn Thurmond

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Hortensia Martinez

Dated: **Sep 22, 2021**  
\_\_\_\_\_

By:   
\_\_\_\_\_  
Charles A Garrett (Sep 22, 2021 11:53 CDT)  
Charles Garrett

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Roel Garcia

Agreed to by:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Blake Chapman

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ricky Stephens

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Thurmond, Jr.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Carolyn Thurmond

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Hortensia Martinez

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Garrett

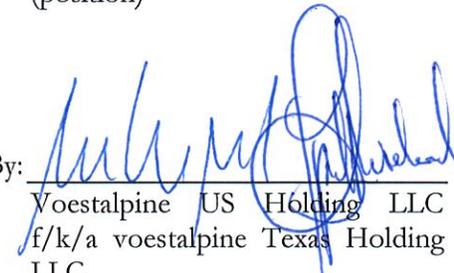
Dated: Sep 27, 2021

By:   
Roel Garcia (Sep 27, 2021 20:54 CDT)  
Roel Garcia

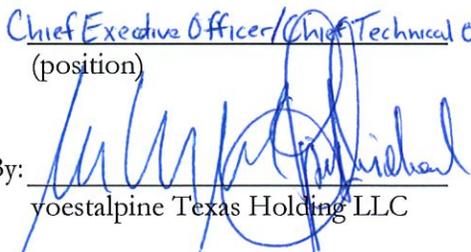
Dated: October 11, 2021

By:   
voestapine Texas LLC  
Chief Executive Officer/Chief Technical Officer  
(position)

Dated: October 11, 2021

By:   
Voestapine US Holding LLC  
f/k/a voestapine Texas Holding  
LLC  
Chief Executive Officer/Chief Technical Officer  
(position)

Dated: October 11, 2021

By:   
voestapine Texas Holding LLC  
Chief Executive Officer/Chief Technical Officer  
(position)

# **Exhibit A**

Case 2:17-cv-00174 Document 84-1 Filed on 10/15/21 in TXSD Page 62 of 105  
**If You Owned or Occupied Residential Property Within Certain Areas of Portland and Gregory, Texas Between August 1, 2016 and Month ##, 2021, You Could Receive Compensation From a Class Action Settlement**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

Read this notice carefully. Your legal rights may be affected whether you act or don't act.

This lawsuit was brought by a group of residents in Gregory/Portland, Texas ("Plaintiffs") against the defendants voestalpine Texas LLC, voestalpine US Holding LLC, and voestalpine Texas Holding LLC ("Defendants") and is currently pending in the U.S. District Court for the Southern District of Texas—Corpus Christi Division before Judge Nelva Gonzales Ramos (Blake Chapman et al. v. voestalpine Texas LLC; Case No. 2:17-cv-174) (the "Litigation"). This class action lawsuit claims that Dust escaped from Settling Defendants' facility at 2800 Kay Bailey Hutchinson Road, Portland Texas, and caused damage to the real and personal property of individuals residing within the class area.

### **Who is Included?**

The Settlement Class includes individuals who have owned and/or occupied residential property in the Class Area, including portions of Gregory/Portland, Texas, from August 2016 through [Preliminary Approval Date] ("Class Period"). To see a map of the Class Area, please go to [www.DustSettlement.com](http://www.DustSettlement.com). If you need further assistance determining if you are a Class Member, contact the Claims Administrator at 844-707-8895 or email [info@DustSettlement.com](mailto:info@DustSettlement.com).

### **What Does the Settlement Provide?**

Under the proposed Settlement, Class Members who submit a valid claim by [deadline] are entitled to monetary compensation for damage to their homes and/or other property. The Court has appointed a neutral third-party to serve as the Special Master to apportion the Settlement Fund among the Class Members and to oversee the Settlement administration. This document only provides a general summary—the full or "Long-Form" Notice explains the Settlement, advises you of your options, and provides full instructions for filing a claim, excluding yourself from the lawsuit, or objecting to the settlement. You can also review the Settlement Agreement itself. Both documents are available at [www.DustSettlement.com](http://www.DustSettlement.com).

### **Do I Need Documentation to Submit a Claim?**

Yes, you will likely need to provide documentation to support your claim that you owned and/or occupied residential property within the Class Area during the relevant time period. For more information, see the Documentation Guidance section of the Claim Form instructions, or the Long Form Notice, available on the case website.

### **What are My Rights and Options?**

**Submit a Claim:** To receive a Settlement payment, you must submit a Claim Form. To obtain a Claim Form (if one was not provided to you), visit the case website at [www.DustSettlement.com](http://www.DustSettlement.com) where you may download a blank Claim Form. A valid, completed Claim Form must be mailed by U. S. Mail and postmarked by **Month ##, 2022**.

**Do Nothing:** You will be included in the Settlement Class and bound by the Court's decision, but you will not receive a payment. You will give up your rights to sue the Settling Defendants about the claims in this case.

**Exclude Yourself:** You can exclude yourself ("opt out") of the Settlement by submitting an exclusion request to the Claims Administrator that is mailed by U. S. Mail and **postmarked no later than Month ##, 2022**. If you do so, you will not be part of the Settlement and will not be eligible to receive a settlement payment and you will not release any claims under the Settlement Agreement. The instructions for excluding yourself are included in the Long Form Notice at FAQ#13.

**Object:** You may also object to any part of this Settlement. Objections must be mailed to the Claims Administrator by U. S. Mail and **postmarked no later than Month ##, 2022**. The instructions for objecting are also included in the Long-Form Notice at FAQ#14.

Details about how to exclude yourself, object, and submit your Claim Form are available on the Settlement Website. If you seek to exclude yourself or to object, you may be contacted by the Special Master who may ask for additional information and clarifications.

### **Has the Court Approved the Settlement?**

No, the Court has set a Final Approval Hearing for **Month ##, 2022** at **##:00 #.m** to determine whether the Settlement is fair, reasonable, and adequate. At this hearing, the Court will decide whether to approve the Settlement, Class Representative service awards not to exceed \$7,000 total, attorney's expenses not to exceed \$750,000.00, and attorneys' fees not to exceed 7.63% of the Total Settlement Value. If there are objections, the Court will consider them at that time. You or your lawyer may appear at the hearing at your expense. The hearing may be moved to a different date or time without additional notice. Check the Settlement Website or call 1-844-707-8895 for current information.

### **How Can I Get More Information?**

This Notice summarizes the Settlement Agreement. You can get a copy of the Settlement Agreement, important Court documents, Claim Form, and more information about the settlement on [www.DustSettlement.com](http://www.DustSettlement.com). If you have questions, you may contact the Claims Administrator (see below) or Class Counsel (see case website for contact information).

# **Exhibit B**

*Blake Chapman et al. v. voestalpine Texas LLC, et al., Case No. 2:17-cv-00174*  
United States District Court for the Southern District of Texas

**You May Be Entitled to Benefits From A Class Action Settlement**

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

- A proposed settlement has been reached in Blake Chapman et al. v. voestalpine Texas LLC, et al., Case No. 2:17-cv-00174, pending in the U.S. District Court for the Southern District of Texas (the “Court”) and consolidated with two related cases, Abben, et al. v. voestalpine Texas LLC, et al., Case No. 2:19-cv-32 and Thurmond, et al. v. voestalpine Texas LLC, et al., Case No. 2:19-cv-34.
- The Lawsuit alleges that beginning in August 2016, Dust escaped from the voestalpine Texas LLC, voestalpine US Holding LLC f/k/a voestalpine Texas Holding LLC, and voestalpine Texas Holding LLC’s (“Defendants” or “Settling Defendants”) facility at 2800 La Quinta Terminal Road, Portland, Texas, and caused damage to the real and personal property of individuals residing within the Class Area. Specifically, Representative Plaintiffs alleged that Defendants were liable for creating a permanent or temporary nuisance, and/or causing a trespass onto their property. Although Defendants have agreed to settle this lawsuit, they do not agree that they engaged in any wrongdoing or are liable or owe any money or benefits to Plaintiffs. The Court has not decided who is right.
- You are a settlement Class Member if you owned and/or occupied a Residence in the Class Area as for a period of at least one (1) month between August 2016 and [date of Preliminary Approval Order] (“Class Period”), and had a legal right to occupy the Residence, through property ownership or residential lease agreement during the Class Period.
- Capitalized terms used in this Notice, other than those defined in this Notice, shall have the same meaning as set forth in the Settlement Agreement.
- **Your Legal Rights Are Affected Even If You Do Not Act. Please Read This Notice Carefully.** To obtain more details, please read the Settlement Agreement and/or contact the Claims Administrator.

<b>Your Legal Rights and Options:</b>		<b>Due Date:</b>
<b>Submit a Claim Form</b>	<p><b>This is the only way to get a payment from the Settlement.</b> You can submit a valid and timely Claim Form by mailing it by U. S. Mail to Dust Settlement Administrator, P.O. Box ####, Baton Rouge, LA 708##.</p> <p>After the Settlement's Effective Date and the Court's final approval of the Settlement, individuals that submit a valid claim will then receive payment for an amount that shall be determined by the Special Master based on your claim's pro-rata share of the settlement. See below and the Settlement Agreement for more details.</p>	[Valid Claim Form must be mailed by U. S. Mail postmarked by 60 days after the Class Notice Date]
<b>Do Nothing</b>	You will be included in the Settlement Class, but you will not receive a payment. You will give up your rights to sue the Settling Defendants about the claims that are part of the Settlement.	No Deadline
<b>Ask to Be Excluded</b>	You can opt out of the settlement by submitting a Valid Exclusion Request to the Claims Administrator. If you do so, you will not be part of the Settlement and will not be eligible to receive a settlement payment. But you will retain the right to sue on your own regarding any claims that are part of the Settlement.	[Valid Exclusion Form must be mailed by U. S. Mail postmarked by 60 days after the Class Notice Date]
<b>Submit an Objection</b>	<p>If you do not exclude yourself, you may remain a part of the Settlement and write to the Claims Administrator and explain why you disagree that the Settlement is fair and want the court to disallow it.</p> <p>You may appear and speak at the Final Approval Hearing on your own or through a lawyer hired by you at your own expense. If the Settlement is approved over your objection, however, you will receive payment for any valid claim submitted timely, provided you also submitted a valid and timely Claim Form. You will be bound by the Settlement and give up your right to sue on your own regarding any claims that are part of the Settlement.</p>	[60 days after the Class Notice Date]
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the Settlement if you file a valid and timely objection and indicate that you wish to speak.	[Final Approval Hearing Date]

## NOTICE OF CLASS ACTION SETTLEMENT

*Blake Chapman, et al. v. voestalpine Texas LLC, et al.*

**THIS NOTICE SUMMARIZES THE TERMS OF THE SETTLEMENT AND  
EXPLAINS YOUR RIGHTS UNDER THE SETTLEMENT.**

**CLAIMS DEADLINE EXPIRES [60 DAYS FROM NOTICE DATE]**

### 1. Why is there a Notice?

The purpose of this Notice is to inform potential class members about the proposed settlement of a class action lawsuit. Read below to find out how your rights may be affected and how to claim monies you may be entitled to under this Settlement. Should you have questions regarding this Notice of Settlement, please contact the Claims Administrator at 1-844-707-8895 or [info@DustSettlement.com](mailto:info@DustSettlement.com).

This litigation was brought by groups of residents in the Portland and Gregory areas of San Patricio County, Texas (“Plaintiffs”) against the defendants voestalpine Texas LLC, voestalpine Texas Holding LLC and voestalpine US Holding LLC (“Defendants”) and remains pending in the U.S. District Court for the Southern District of Texas—Corpus Christi Division before Judge Nelva Gonzales Ramos (*Blake Chapman, et al. v. voestalpine Texas LLC, et al.*; Case No. 2:17-cv-00174) (the “Litigation”). The U.S. District Court for the Southern District of Texas has authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to grant final approval of the settlement.

### 2. What Is a Class Action?

In a class action, one or more individuals called “Representative Plaintiffs” or “Class Representatives” sue on behalf of themselves and other individuals or companies with similar claims in the specific class action. All of these individuals together are the “Class” or “Class Members.” In this Class Action Settlement, there are seven (7) Class Representatives. In a class action, one court may resolve the issues for all Class Members, except for those who exclude themselves from the Class.

### 3. What Is this Lawsuit About?

This class action lawsuit claims that beginning in August 2016 Dust escaped from Settling Defendants’ facility at 2800 La Quinta Terminal Road, Portland, Texas, and caused damage related to the real and personal property of individuals residing within the Class Area. Specifically, Representative Plaintiffs alleged that Defendants were liable for creating a permanent or temporary nuisance, and/or causing a

trespass onto their property relating to Dust. Class Counsel began litigating these claims in May 2017. Over the past four years, the Parties engaged in discovery, exchanged hundreds of thousands of documents, took multiple depositions, performed numerous site inspections and investigations, and engaged multiple subject-matter experts to perform testing and address the claims at issue in the Class Area. During the course of litigation, Class Counsel has incurred over \$750,000.00 in litigation expenses. Although Defendants have agreed to settle this lawsuit, they do not agree that they engaged in any wrongdoing or are liable or owe any money or benefits to Plaintiffs. The Court has not decided who is right.

#### 4. Who Is Included in the Proposed Settlement Class?

The Court has preliminarily certified a class action involving individuals who have owned and/or resided in real property for one month or more, for residential purposes, at any time from August 1, 2016 through [Preliminary Approval Date] (“Class Period”) in the geographic area as depicted on the map, below. Only owners or renters of residential properties are included. Owners or renters of non-residential, commercial property, are not included.



Persons who are members of the Class and who do not exclude themselves will be bound by the Settlement Agreement, if approved by the Court, whether or not they submit their Claim Form, and will be prevented from bringing other Claims covered by the Settlement. Those who exclude themselves from the Class will not be part of the Settlement and **will not receive any payments** from the Settlement but will not be bound by the Settlement or release any Claims.

#### 5. Who Is Not Included in the Settlement Class?

The Settlement Class does not include:

- The legal representatives, employees, corporate officers, heirs, successors, or assigns of Settling Defendants;

- The Judge to whom this lawsuit is assigned, any member of the Judge’s immediate family, and any other judicial officer who is or was assigned to this action; and
- Any attorneys who are employees, partners, members, or shareholders of Class Counsel.

#### **6. Who Are the Settling Defendants?**

voestalpine Texas LLC

voestalpine Texas Holding LLC

voestalpine US Holding LLC

#### **7. What Does the Settlement Agreement Provide?**

The Settlement Agreement provides benefits to the Class Members that includes both monetary benefits and non-monetary benefits resulting from remediation/mitigation efforts that have been, and will continue to be, undertaken by Settling Defendants since this Lawsuit was filed. The Settlement Agreement was negotiated between Representative Plaintiffs and Settling Defendants, through their attorneys, and has been preliminarily approved by the Court.

The Settlement Agreement confers a Total Settlement Value of \$88,413,036.00 on the Class Members. Included in the Total Settlement Value is the Total Cash Settlement Amount (“Settlement Amount”) and the Remedial Measures Amount. Settling Defendants have agreed to pay \$16,825,000.00 in as the Settlement Amount. In addition to this amount, Settling Defendants have and will incur costs totaling \$71,588,036.00 relating to remedial measures/mitigation efforts they have undertaken, and will continue to undertake, to prevent and limit the migration of Dust from the Facility through at least 2023. These efforts confer further value on the Class Members.

Class Counsel will seek an award of attorneys’ fees and litigation expenses and service awards to each of the Class Representatives of \$1,000.00. These amounts will be deducted from the Settlement Amount. Settling Defendants are paying costs of settlement administration, up to \$250,000.00. In the event the settlement administration expenses exceed \$250,000.00, those expenses will also be deducted from the Settlement Amount. The remaining funds, the Net Settlement Amount, will be distributed to Class Members who timely file valid claims.

#### **8. How will the Attorneys be Paid?**

The Court has appointed the law firms of Anderson Alexander PLLC, Liles White PLLC, and Frazer PLC as Class Counsel in this matter. More information about Class Counsel can be found at their respective websites: <https://a2xlaw.com>; <https://lileswhite.com>; and <http://frazer.law>.

Class Counsel will seek approval from the Court for payment of attorneys’ fees not to exceed 7.63% percent of the Total Settlement Value and approximately \$750,000.00 for their litigation expenses, which will be paid out of the Settlement Amount.

You will not be charged for services rendered by these lawyers and you are welcome to call them with any questions about the lawsuit or Settlement, or to otherwise discuss the Settlement. You may also consult your own lawyer at your own expense.

Attorneys for the Settling Defendants are being paid by the Settling Defendants.

### 9. How Do I Submit a Claim?

You may be entitled to a portion of the Net Settlement Fund when a distribution is made to the Class Members who participated in the Settlement by returning a valid and timely Claim Form and supporting documentation. If you opt out, or exclude yourself, from the Settlement Class, you will not be part of the Settlement and you will not receive a payment.

You will be required to submit your Claim Form and supporting documentation to be eligible to receive a payment from the Net Settlement Fund. Your Claim Form, and any supporting documentation, must be returned to the Claims Administrator by {60 days after Notice date}. If you fail to timely return your Claim Form and supporting documentation, or you do not fully and properly fill out your Claim Form, you will not be entitled to a Settlement Payment, but will still be bound by the Settlement and you will release any claims you may have against the Settling Defendants relating to Dust.

To submit the Claim Form to obtain your settlement payment, you must do the following: (1) fully and accurately complete the Claim Form; (2) gather and attach the requested documentation, if any; and (3) timely provide the completed Claim Form and supporting documentation to the Claims Administrator via U.S. Mail. The contact information for the Claims Administrator is below.

Dust Settlement Claims  
c/o Postlethwaite & Netterville  
P.O. Box #####  
Baton Rouge, Louisiana 70821

Only one Claim Form needs to be submitted per married couple, per residence, in the Class Area. If you lived with someone other than a marital spouse, you and your co-tenant may be entitled to separate settlement payments and you will each need to submit a Claim Form. If you lived in multiple residences within the Class Area within the Class Period, you may be entitled to multiple settlement payments, but will need to complete a Claim Form (and submit the required documentation) for each residence.

**If you are renting a single-family residence within the Class Area, you must provide the owner of the residence and/or property management company with a copy of this Notice.** The owner of the residence may have a separate claim for a settlement payment and your settlement payment will not be reduced as a result of their claim.

A Claim Form may be obtained online at [www.DustSettlement.com](http://www.DustSettlement.com). If you have any questions about completing the Claim Form, or the documentation required, please contact the Claims Administrator at 844-707-8895 or by email at [info@DustSettlement.com](mailto:info@DustSettlement.com).

## 10. What Documentation Do I Need to Provide with My Claim Form?

### Property Owners:

If you are properly identified in the tax records as the owner of the residential property, you do not need to provide any further documentation with your Claim Form. However, if you recently purchased your residential property and are not yet shown in the tax records as the owner, you must provide documentation to establish your status as a Class Member. You can find out if you are properly identified in the tax records as the owner of the residence by visiting [tax assessor website].

For an owner not shown correctly on the tax records, such documentation can take the form of,

- A closing statement or a mortgage statement (redacted to remove dollar amounts), or
- A property tax statement.

### For Tenants and/or Occupants (including Owners who also occupied the property)

You can establish your status as a Class Member by providing,

- A utility bill showing your name, the residential address, and a date within the Class Period, or
- A driver's license or state identification card issued by the State of Texas showing your name and address, or
- A lease agreement identifying the property address at issue with the term of the lease, or
- A letter from the property owner or leasing agent acknowledging the address and dates of occupancy and identifying you as the tenant or an individual with a right to reside at the residence, or
- Any other such documentation that may be accepted by the Special Master at his discretion.

The Claims Administrator may contact you with questions regarding the documentation provided and may request additional documentation to substantiate your status as a Class Member. If you have questions about how to document your claim, please visit the case website at [www.DustSettlement.com](http://www.DustSettlement.com). If you still have questions, you may also contact the Claims Administrator for assistance.

## 11. How Are the Individual Settlement Payments Calculated?

Settlement payments will be available only if the Settlement is finally approved by the Court. Consistent with the Claims Program set forth in the Settlement Agreement, the Special Master appointed by the Court as a third-party neutral shall have full and final authority to determine the

amount to be paid to each Class Member who timely submitted a valid Claim Form according to the provisions below.

1. Each Residence in the Class Area for which one or more Claim Forms is received shall be considered one (1) Residential Unit for purposes of administering the Settlement Agreement.
2. The Special Master shall review the Claim Forms submitted during the Class Period for the purpose of determining the total number of Residential Units and setting the Weighted Zone Value. The Special Master has the discretion to set the Weighted Zone Value within the parameters set in the Settlement Agreement, such that the Residential Unit Value, when multiplied by the respective Weighted Zone Value for each Residential Unit equals the Net Settlement Amount. In establishing the Weighted Zone Value, the Special Master should consider the respective exposure to Dust based on proximity to the Facility, dominant weather patterns, and other factors to be discussed in consultations with Class Counsel and Counsel for Defendants.
3. The Residential Unit Value shall be separated into two amounts: (1) an amount for damages to Real Property (“Real Property Amount”); and (2) an amount for damages to Personal Property (“Personal Property Amount”). The Residential Unit Value shall include claims for Real and Personal Property, for the entirety of the Class Period.
4. In the event multiple Participating Class Members return Claim Forms for the same Residence, those Participating Class Members shall each receive a divided share of the Residential Unit Value. The Special Master will determine each such Participating Class Member’s share based on factors such as the status as an Owner and/or Tenant and the duration of time and period of time within the Class Period that each owned and/or rented the Residence, and other factors at his discretion. The Special Master shall have full discretion in proportioning the Residential Unit Values between Participating Class Members who may have resided at the same residence during the Class Period.

## **12. What Claims am I Giving Up to Stay in the Class?**

If you resided (or owned residential real property) within the Class Period, and if you do not exclude yourself, you are automatically a Class Member. If you stay in the Class, you cannot sue or be a part of any other lawsuit against the Settling Defendants for the claims alleged in this Lawsuit. In addition, if you remain in the Class, all of the Court’s orders pertaining to the Class will apply to you.

By staying in the Class, you become a Class Member and you are agreeing to fully, finally and forever releasing, relinquishing, and discharging any current or future Claims you have or might have against the Settling Defendants (and their related parties, all as identified in the Settlement Agreement) related to real and/or personal property damage under any theory at law or equity, as well as claims based on environmental laws and/or regulations, as a result of Dust migrating from the Facility (“Released Claims”). To review the full definition of Released Claims, you may access the full text of the Settlement Agreement online at [www.DustSettlement.com](http://www.DustSettlement.com).

However, Released Claims do not include claims for relief based solely on the incremental emissions or releases of Dust from future Facility operations that exceed 100% of the currently permitted

maximum annual production capacity or any claims for relief based solely on a future catastrophic release from the Facility (i.e., an unexpected, accidental incident resulting in releases of Dust atypical in nature and dramatically greater in amount than those historically associated with regular plant operations), that causes substantial real or personal property damages that are significant and measurable.

Claims for personal injury are also not included in this Lawsuit, nor are they subject to release by the Settlement Agreement.

### 13. How Can I Opt-Out, or Exclude Myself, from the Class?

You can exclude yourself (or opt out) of the Class by following the instructions provided in this section. If you exclude yourself from the Class, you will not be part of this Settlement. That means, you will not receive ANY benefits or payments under the Settlement and you cannot object to the Settlement. However, you keep all of your rights, including to do nothing, to hire other attorneys, to file your own lawsuit, or join another lawsuit, against Settling Defendants. You will no longer be represented by Class Counsel and you cannot retain Class Counsel to assert claims that are resolved by the Settlement Agreement.

To exclude yourself from the Class, you must send your written exclusion request on or before [date] by U.S. mail to:

Dust Settlement Claims  
c/o Postlethwaite & Netterville  
P.O. Box #####  
Baton Rouge, Louisiana 70821

The written exclusion request **must** state or include the following information to be valid:

1. The name and cause number of this action, *Chapman, et al. v. voestalpine Texas LLC, et al.*, No. 2:17-cv-00174 (S.D. Tex.).
2. Your name, address, and telephone number.
3. A clear statement that you desire to exclude yourself from the Settlement.
4. A clear statement explaining the reason or reasons why you are choosing to exclude yourself from the Settlement. A non-exclusive list of examples include the following: (a) I do not wish to participate in the lawsuit; (b) I have not experienced any Dust on my property; (c) I do not wish to be subject to disclosing the lawsuit upon the future sale of my home; or (d) I do not agree with the terms of the settlement.
5. A statement of whether you have (or intend to retain) legal representation and whether you intend to file a separate lawsuit against Settling Defendants; and
6. Include your personal signature, or your lawyer's signature, verifying the information provided under penalty of perjury, in the presence of at least one adult witness.

No “mass” or “class” exclusion requests shall be valid, and no Class Member may submit an exclusion request on behalf of any other Class Member. An exclusion request by a married Class Member will likewise exclude their spouse, and any Claim Form submitted for their claim will be disregarded.

Failure to fully comply with each of the above-stated requirements or to properly and timely serve the written notice to the parties identified above will render your written exclusion request invalid, and you will remain a Class Member. If you do not timely and properly exclude yourself from the class you will be bound by all of the terms of the Settlement and the final approval order with respect to the Class defined herein, and shall be bound by the Release set forth in the Settlement and be permanently and forever barred from commencing, instituting, maintaining or prosecuting any action subject to the Release against Settling Defendants in any Court, arbitration tribunal, or administrative or other forum.

If you seek to exclude yourself, you may be contacted by the Special Master who may ask for additional information and clarifications.

#### 14. How Can I Object to the Settlement?

If you are a member of the Class and do not exclude yourself, you can object to the Settlement or any part of it by filing and serving a written objection as detailed herein. By filing an objection you can ask the Court to deny approval of the Settlement. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the proposed settlement. If the Court denies approval, no settlement payments will be made to *any* Class Member and the parties to the lawsuit will return to their positions before settlement and return to court to further litigate the disputes. If that is what you wish to happen, you must follow the procedures below to object.

To object to the Settlement, you must send your written objection to the Claims Administrator on or before [date], by U.S. mail to:

Dust Settlement Claims  
c/o Postlethwaite & Netterville  
P.O. Box #####  
Baton Rouge, Louisiana 70821

Your written objection **must** state or include the following information to be valid:

1. The name and cause number of this action, *Chapman, et al. v. voestalpine Texas LLC, et al.*, No. 2:17-cv-00174 (S.D. Tex.).
2. Your name, address, and telephone number.
3. The factual basis supporting your claim that you are a Class Member, including a statement identifying whether you are a current or former resident of a property in the Class Area and during the Class Period, and your dates of residence within the Class Area during the Class Period.
4. Proof of Residence and/or Proof of Ownership of real residential property within the Class Area and during the Class Period, as described above.

5. Identify whether you intend to appear and/or be heard at the Final Fairness Hearing, and if so, whether you will be appearing on your own behalf or through an attorney. If your counsel wishes to make an appearance and speak at the Final Fairness Hearing, they must file a Notice of Appearance in advance of the Final Fairness Hearing.
6. A specific objection, or objections, to the settlement with the complete factual basis for the objection(s) along with whatever legal authority, if any, you believe supports your objection.
7. A statement advising if you have previously objected to other class action settlements, and if so identifying each such settlement and the basis for the objection; and
8. Include your personal signature, or your lawyer's signature, verifying the information provided under penalty of perjury, in the presence of at least one adult witness.

No "mass" or "class" objections shall be valid, and no Class Member may submit an objection request on behalf of any other Class Member.

Failure to fully comply with each of the above-stated requirements or to properly and timely serve the objection to the individuals/entities identified above will render your objection invalid, and the Court will not consider it.

If you properly submit a timely objection, you may be heard at the Final Fairness Hearing, if you indicate a desire to do so. If the Court overrules your objection, you will still be bound by the terms of the settlement, will be entitled to recover your settlement payment, and will release claims identified herein. If you do not object in the manner described above, you will be deemed to have waived any objections and will be unable to object to this Settlement in the future.

If you seek to object, you may be contacted by the Special Master who may ask for additional information and clarifications.

**15. What Is the Difference Between Excluding Myself and Objecting?**

Objecting is telling the Court that you do not like something about the Settlement and want the Settlement in its current form disapproved and thus not go forward. You may only object to the Settlement if you do not exclude yourself from the Class. If you exclude yourself from the Class, you cannot object because you are not part of the Settlement, the Class and the case any longer and the Settlement and its terms no longer affect you.

Excluding yourself is telling the Court that you do not want to be part of the Class, do not want to participate in the Settlement, and do not want to receive your share of the Net Settlement Fund. If you have any questions about excluding yourself from the Class, or objecting to the Settlement, you can contact Class Counsel. Their contact information is provided below.

**16. What Happens if I do Nothing at All?**

You may do nothing. You are not required to file a claim form or an opt-out request or an objection. Some reasons why you may choose to do nothing are if you have no interest in the lawsuit or the

Settlement (or any money from the Settlement) and you have no plans to file a separate lawsuit and are not concerned about the release.

If you do nothing, you will remain a Class Member and all of the Court's orders pertaining to the Class will apply to you. You will not be able to sue any Released Party or join a new lawsuit against any of the Released Parties for any non-personal injury damages that you may have sustained as a result of Settling Defendants' Dust. Without returning the Claim Form, and choosing to do nothing, you will be bound by the Settlement (if approved), you will have released your claims, and you will NOT receive a monetary award.

#### **17. How Will This Settlement Affect My Future Home Sale if I Remain a Class Member?**

The Settlement Agreement and the Texas Real Estate Commission's Seller Disclosure Notice both require sellers of real property who are Class Members to disclose the existence of this lawsuit to potential home buyers. Sellers will need to advise potential buyers of the existence of this lawsuit should you sell your home in the future. Under Texas law, failure to disclose the existence of this lawsuit in the Seller Disclosure Notice as part of a real estate transaction could subject you to liability to the property buyer. It may also subject you to liability to the Settling Defendants. The Settlement Agreement includes an indemnity provision that could require you to forfeit the money you receive under this Settlement back to the Settling Defendants if you fail to disclose the existence of this lawsuit to future homeowners who then file a lawsuit against Settling Defendants relating to Dust claims that are covered by the Settlement.

#### **18. When (and what) Is the Final Fairness Hearing?**

The Court will hold a Fairness Hearing for final approval of the fairness and adequacy of the Settlement on [Date] at [Time]. The Fairness Hearing will be held at 1133 North Shoreline Boulevard, Corpus Christi, Texas 78401. You may attend the hearing, but you are not required to do so.

At the Fairness Hearing, the Court will decide whether the Settlement is fair, reasonable, and adequate. If there are objections to the Settlement, the Court will consider them at this hearing. If you timely file an objection and indicate that you intend to appear and/or be heard, you may ask to speak, but you are not required to do so.

#### **19. Where Can I Get More Information?**

Questions concerning this Notice of Settlement, the Settlement, the Lawsuit, the attached Claim Form, or the instruction provided herein may be directed to the Claims Administrator, at the contact information provided above, or to Class Counsel.

Anderson Alexander PLLC  
819 North Upper Broadway  
Corpus Christi, Texas 78401  
P: 361-452-1279  
[team@a2xlaw.com](mailto:team@a2xlaw.com)

Liles White PLLC  
500 N. Water Street, Suite 800  
Corpus Christi, Texas 78401  
P: 361-826-0100  
[info@lileswhite.com](mailto:info@lileswhite.com)

Frazer PLC  
1 Burton Hills Blvd., Ste. 215  
Nashville, Tennessee 37215  
P: 615-647-0990  
[roe@frazerlaw.com](mailto:roe@frazerlaw.com)

**THIS NOTICE OF SETTLEMENT AND ITS CONTENT HAVE BEEN AUTHORIZED BY THE HONORABLE NELVA GONZALES RAMOS, THE UNITED STATES DISTRICT JUDGE PRESIDING OVER THIS MATTER. THE COURT HAS TAKEN NO POSITION REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR OF DEFENDANT'S DEFENSES AND YOU SHOULD NOT INTERPRET THE COURT'S AUTHORIZATION OF THIS NOTICE OF SETTLEMENT AS ANY INDICATION THAT THE COURT AGREES OR DISAGREES WITH THE CLAIMS AND DEFENSES ASSERTED IN THIS CASE.**

# Exhibit C

United States District Court for the Southern District of Texas (Case No. 2:17-CV-00174)

# CLAIM FORM

CLAIM SUBMISSION DEADLINE: ##/##/2021

Claim Form ID: ### - #####

## Section 1: Claimant Information

**\*Complete Section 1 with your current contact information and current mailing address, even if it is not in the Class Area. This is the address that will be used for all correspondence, including payment, if your claim is accepted.**

First Name

Last Name

Suffix

Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)

City

State

Zip Code

Email Address (Required)

(  )  -

Phone Number (Required)

-  -

Social Security Number/Tax Identification Number (Required)

## Section 2: Property Information

**\*Complete Section 2 for the property you owned or rented within the Class Area. For more than one address/property, please submit a separate claim form for each address. Please visit the case website to download an additional claim form.**

Property Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)

City

State

Zip Code

Property Type (Choose One)

Single Family Residence

Multi-Family Residence (duplex, quadplex, etc.)

Apartment Complex

Other. Please Specify: \_\_\_\_\_

Ownership Status (Choose all that apply)

Property Owner that Resided at the Property

Property Owner that Did **NOT** Reside at the Property

Tenant (Renter) / Occupant

**\*IMPORTANT:** If you were a **tenant**, it is your responsibility to contact your landlord or property management company and provide them with the Settlement Website so they may have notice of this Settlement.

Property Ownership/Residency Timeframe

Dates of Residency:  /  /  to  /  /

Dates of Ownership:  /  /  to  /  /

**Claim Form ID: ### - #####**

### Section 3: Documentation

Please describe the documents that are being submitted to support your claim of ownership and/or residency. All documents submitted will be maintained confidentially and used strictly for settlement purposes. Please DO NOT submit original documents, only copies, as the documents will not be returned to you. For all document types submitted, it is not necessary to send the entire document, only the portion that includes your name, the property address, the date and all completed signatures.

Is Property Ownership Documentation Provided (Mortgage or Closing Statement, Property Tax Notice, etc.)?

- Yes Document Type : \_\_\_\_\_
- No - I did not own the Property
- No - I am accurately recorded on the tax records

Is Residency Documentation Provided (Utility Bill, Drivers License Copy, Lease Agreement, etc.)?

- Yes Document Type : \_\_\_\_\_
- No - I owned the Property, but did not reside there

### Section 4: Additional Residents

Please identify other individuals over the age of eighteen (18) who resided at the residence at the same time as you. If there are more than 3 additional residents, download the Claim Form Addendum from the case website and attach to your claim submission. IF NON-MARRIED CO-TENANTS/CO-OCCUPANTS WISH TO FILE A CLAIM, THEY MUST DO SO ON A SEPARATE CLAIM FORM. ADDITIONAL CLAIM FORMS CAN BE FOUND AT [WWW.DUSTSETTLEMENT.COM](http://WWW.DUSTSETTLEMENT.COM).

Full Name	Age	Relationship to You
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

### Section 5: Certification

I affirm under the laws of the United States and the State of Texas that the information supplied in this Claim Form by the undersigned is true and correct to the best of my recollection, and that this form was executed on the date set forth below. I understand that I may be asked to provide supplemental information to the Claims Administrator and/or Special Master before my claim will be considered complete and valid.

*Each Claim Form must be signed by the Class Member seeking to participate in the Settlement. In the case of a marital co-tenancy, each spouse must separately sign and date the Claim Form. Otherwise, each co-tenant must complete and return their own Claim Form.*

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date:   /   / 2 0

Date:   /   / 2 0

### REMINDER CHECKLIST

1. Complete all sections of this Claim Form.
2. Sign and date the Claim Form in Section 5. In the case of married co-tenants/co-occupants/owners, both spouses must sign the Claim Form and will receive one payment. All other co-tenants/co-occupants must submit separate Claim Forms.
3. Enclose documentation supporting your ownership and/or residency, as needed. Please do not include original documents, as these will not be returned to you.
4. Mail your completed Claim Form to the Claims Administrator. Please keep a copy of your completed Claim Form for your records.
5. It is your responsibility to notify the Claims Administrator of any changes to your contact information after the submission of your Claim Form. You can update your contact information at [www.DustSettlement.com](http://www.DustSettlement.com).

# Exhibit D



# **Exhibit E**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

BLAKE CHAPMAN, <i>et al.</i> ,	§	
	§	
individually and on behalf of all others	§	
similarly situated,	§	<b>C.A. No. 2:17-cv-00174</b>
	§	
<b>Plaintiffs</b>	§	
	§	
vs.	§	
	§	
voestalpine Texas Holding, LLC, <i>et al.</i>	§	
	§	
<b>Defendants</b>	§	

**[PROPOSED] ORDER**

On \_\_\_\_\_, 2021, the Court heard an unopposed motion by Plaintiffs Blake Chapman, Ricky Stephens, Gary Thurmond, Jr., Carolyn Thurmond, Hortensia Martinez, Charles Garrett, and Roel Garcia (“Representative Plaintiffs”) for preliminary approval of a class action settlement (the “Motion”), related to Representative Plaintiff’s claims against Defendants voestalpine Texas, LLC, voestalpine Texas Holding, LLC, and voestalpine US Holding, LLC (collectively “Defendants”). The Court has considered the Motion, the Class Action Settlement Agreement<sup>1</sup> (“Settlement” or “Settlement Agreement”), the proposed Notice Plan, including the Short Form Notice (which will also be used for the Newspaper Notice), Long Form Notice, Claim Form, Property Identification Plan, and Notice Plan, and the submissions of counsel, and hereby finds and orders as follows:

<sup>1</sup> All capitalized terms shall be given their defined meaning as set forth in the Settlement Agreement.

1. The Court finds on a preliminary basis that the class settlement memorialized in the Settlement Agreement, filed with the Court, falls within the range of reasonableness and, therefore, preliminarily approves its terms as it meets the requirements for preliminary approval of a class action.

2. The Court conditionally certifies, for settlement purposes only, the following Class for settlement purposes only:

All Persons who Reside in the Class Area as of the date the Court enters the Preliminary Approval Order, or who formerly Resided within the Class Area<sup>2</sup> for a period of at least one (1) month during the Class Period, and had a legal right to occupy the Residence, through property ownership or residential lease agreement.

3. The Court finds that, for settlement purposes only, the requirements of Federal Rule of Civil Procedure 23(a), and Federal Rule of Civil Procedure 23(b)(3) are satisfied, with the exception of the manageability requirement of Rule 23(b)(3), which the Court need not address for purposes of settlement.

4. The Court appoints, for settlement purposes only, Blake Chapman, Ricky Stephens, Gary Thurmond, Jr., Carolyn Thurmond, Hortensia Martinez, Charles Garrett, and Roel Garcia as Representative Plaintiffs.

5. The Court appoints, for settlement purposes only, Anderson Alexander PLLC, Liles White, PLLC, and Frazer Law, PC as Class Counsel.

6. The Court appoints Postlethwaite & Netterville as the Claims Administrator.

7. The Court appoints Dan Balhoff (including members or representatives of his firm, Perry, Balhoff, Mengis & Burns, LLC, to whom he may delegate tasks) as Special Master, for the purpose of overseeing the settlement administration and allocating the Net Settlement Amount amongst the Class Members, according to the terms of the Agreement.

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<sup>2</sup> The Class Area is set forth in Exhibit D to the Agreement.

8. The Court approves, as to form and content, the Notice Plan, including the Short Form Notice, Long Form Notice, Claim Form, and Property Identification Plan, attached to the Agreement as Exhibits A, B, C, and J. The Claims Administrator is ordered to disseminate the Notice Packet, containing the Short Form Notice, Claim Form, and pre-paid return envelope to all Residences/Persons identified in the Property Identification Plan. The Notice documents fairly and adequately describe the terms and effect of the Agreement and give adequate notice of Class Members' right to opt-out of, or object to, the Settlement.

9. The Claims Administrator is likewise ordered to post the Newspaper Notice in the Corpus Christi Caller Times according to the terms of the Agreement, and set up a settlement website and toll-free hotline for the use of the Class Members.

10. Each Class Member will have sixty (60) days after the date on which the Claims Administrator disseminates the Notice to submit a Claims Form to be entitled to receive a Settlement Sum, as described in the Settlement Agreement and the Notices.

11. Each Class Member (other than the Representative Plaintiffs) will have sixty (60) days after the date on which the Claims Administrator disseminates the Notice to submit a written request for exclusion (written opt-out request) from the Class, or to object to the Settlement, as described in the Settlement Agreement and the Notices.

12. The Parties are authorized to file the Settlement Distribution Plan under Seal in conjunction with their Motion for Final Approval of the Settlement. The Settlement Distribution Plan will contain the Settlement Sum each Participating Class Member will receive pursuant to the terms of the Settlement, and the Participating Class Members are entitled to privacy in their financial dealings.

13. The Court will conduct a Final Approval Hearing on \_\_\_\_\_, 2022, at \_\_\_\_\_ a.m./p.m., or as soon thereafter as the matter may be heard,<sup>3</sup> to confirm the overall fairness of the settlement and to set the amount of reasonable attorneys' fees and costs to Class Counsel and enhancement payments to the Class Representatives. The Final Approval Hearing may be continued without further notice to members of the Class/Collective. Class Counsel shall file their motion for reasonable attorneys' fees, costs, expenses, and the Class Representative payment sought in the Settlement, on or before \_\_\_\_\_, 2022. Class Counsel shall file their motion for final settlement approval, on or before \_\_\_\_\_, 2022.

14. The Court enjoins Class Members under the All Writs Act, 28 U.S.C. § 165, up to the date of entry of a Final Approval Order or the voiding of the Settlement Agreement, from filing or prosecuting any claims, suits, or administrative proceedings regarding claims released by them under the Settlement unless and until such Class Members have submitted valid and timely Requests for Exclusion with the Claims Administrator and the Claim Deadline has elapsed.

15. The Court authorizes and approves the establishment of a Qualified Settlement Fund ("QSF") related to this Settlement and to maintain jurisdiction over the QSF during the pendency of the settlement administration process.

IT IS SO ORDERED the \_\_\_\_ day of \_\_\_\_\_, 2021.

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Nelva Gonzales Ramos  
United States District Court Judge

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<sup>3</sup> The Final Approval Hearing should take place at least 165 days after the issuance of the Preliminary Approval Order.

# Exhibit F



WHEREAS, on \_\_\_\_\_, a hearing was held on whether the settlement set forth in the Agreement was fair, reasonable, adequate, and in the best interests of the Class, such a hearing date being a due and appropriate number of days after such notice to the Class;

NOW THEREFORE, having reviewed and considered the submissions presented with respect to the settlement set forth in the Agreement and the record in these proceedings, having heard and considered the evidence presented by the parties and the argument of counsel, having determined that the settlement set forth in the Agreement is fair, reasonable, adequate, and in the best interests of the Class, and noting that, as set forth in the Agreement, and good cause appearing therefore orders as follows,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

1. The Court incorporates by reference the definitions set forth in the Agreement.
2. This Court has personal jurisdiction over all Representative Plaintiffs and Class Members, and has subject matter jurisdiction over all claims asserted in the Fifth Amended Complaint. In addition, venue in the Southern District of Texas is proper.
3. The Agreement is approved as fair, reasonable, and adequate, consistent and in compliance with the applicable provisions of the United States Constitution and the Federal Rules of Civil Procedure, and in the best interest of the Class. The Agreement is binding on, and will have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Agreement and the Release maintained either by or on behalf of Representative Plaintiffs and all other Settlement Class Members, as well as their past, current, and future heirs, representatives, executors, administrators, attorneys, predecessors, successors, and assigns.
4. The Class and Collective Notice provided pursuant to the Agreement and the Order Granting Preliminary Approval of Class Settlement:

- (a) Constituted the best practicable notice, under the circumstances;
- (b) Constituted notice that was reasonably calculated to apprise the Class Members of the pendency of this lawsuit, their right to object or exclude themselves from the proposed settlement, and to appear at the Fairness Hearing;
- (c) Was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and
- (d) Met all applicable requirements of the Federal Rules of Civil Procedure and the Due Process Clause of the United States Constitution because it stated in plain, easily understood language the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through an attorney if the member so desires; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on members under Rule 23(c)(3).

5. For settlement purposes only, that the Class satisfies the applicable standards for certification under Fed. R. Civ. P. 23.

6. The Agreement in this action warrants final approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure because it is fair, adequate, and reasonable to those it affects, and resulted from vigorously contested litigation, including meaningful discovery, motion practice and additional merits discovery, and extensive good-faith arm's length negotiations between the parties, and is in the public interest considering the following factors:

- (a) the strength of the plaintiffs' case;
- (b) the risk, expense, complexity and likely duration of further litigation;

- (c) the risk of litigation through trial;
- (d) the amount offered in settlement;
- (e) the extent of discovery completed, and the stage of the proceedings;
- (f) the experience and views of counsel; and
- (g) the reaction of the class members to the proposed settlement.

7. Class Counsel and the Representative Plaintiffs adequately represented the Class for purposes of entering into and implementing the settlement.

8. Class Counsel's requested fees and expenses under the Agreement, and as set out in their Motion for Fees and Costs (ECF No. \_\_\_\_), are fair and were reasonably and necessarily incurred.

9. The Service Awards for the Recipients, as set forth in the Agreement, are approved and the Representative Plaintiffs shall each be entitled to receive \$1,000.00 to compensate them for their unique services in initiating and/or maintaining this litigation.

10. Nothing relating to this Order, or any communications, papers, or orders related to the Agreement, shall be cited to as, construed to be, admissible as, or deemed an admission by any of the Defendants or the Defendant Releasees of any liability, culpability, negligence, or wrongdoing toward the Representative Plaintiffs, the Class Members, or any other person, or that class action certification is appropriate in this or any other matter. There has been no determination by any Court as to the merits of the claims asserted by Representative Plaintiffs against Defendants or as to whether a class should be certified, other than for settlement purposes only. Furthermore, nothing in the parties' Agreement shall be cited to as, construed to be, admissible as, or considered any form of waiver of any alternative dispute resolution agreements, provisions, or policies by Defendants or Defendant Releasees.

11. In consideration of the Individual Settlement Sums, and for other good and valuable consideration, each of the Class Members shall, by operation of this Judgment, have fully, finally, and forever released, relinquished, and discharged all Released Claims against Defendants in accordance with the terms of the Agreement.

12. In the event that the Effective Date does not occur, this Judgment shall be rendered null and void and shall be vacated, nunc pro tunc, and without prejudice to the status quo ante rights of Plaintiffs, Class Members, and Defendant.

13. All Class Members and/or their representatives who have not been excluded from the Class are permanently barred and enjoined from bringing, filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any other lawsuit (including putative class action lawsuits), arbitration, administrative, regulatory, or other proceeding, order, or cause of action in law or equity in any jurisdiction that is in any way related to the lawsuit and the Released Claims.

14. The Court retains jurisdiction over all proceedings arising out of or related to the Agreement.

15. This lawsuit (including all individuals claims and Class claims presented thereby) is dismissed on the merits and with prejudice, without fees or costs to any party, except as provided above and/or in the Agreement.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2022

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The Honorable Nelva Gonzales Ramos  
United States District Judge

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# Exhibit G

## EXHIBIT G

### PROPERTY IDENTIFICATION PLAN

**Summary:** This Property Identification Plan (PIP) describes the efforts to be undertaken by the Claims Administrator to (a) identify the physical addresses of all Residences in the Class Area; (b) attempt to locate the addresses for Persons who own the Residences, if they do not reside at the Residence; and (c) attempt to locate individuals who no longer reside at and/or owned a Residence within the Class Area during the Class Period.

#### **Property Identification Procedures:**

- **Step 1:** The Claims Administrator shall engage a vendor with applicable working knowledge of geospatial data to utilize the “shapefiles” made publicly available by the San Patricio County Appraisal District to identify the properties located within the seven (7) Weighted Class Zones within the Class Area.
  - The data available within these files includes: Parcel ID, Site Address, Owner Name, and Owner Mailing Address.
  - This data is available for each appraisal year from 2016 through 2021.
- **Step 2:** Using the data output from Step #1, the Claims Administrator shall aggregate a list of all properties identified within the Class Area for each year of the Class Period (the “Property Database”).
- **Step 3:** For each property record within the Property Database, the Claims Administrator shall document all Owners (and their respective mailing addresses) identified within the Class Period according to the San Patricio County Appraisal District records.
- **Step 4:** The Claims Administrator shall analyze and remove duplicative records within the Property Database.
- **Step 5:** The Claims Administrator shall obtain from CoreLogic, a data and analytics leader within the housing and insurance industries, a list of all properties with complete mailing

addresses within zip codes 78359 (Gregory, TX) and 78374 (Portland, TX) where the property type is identified as “Residential.” This data will be used to cross reference and reasonably filter the Property Database records to only Residences and remove records associated with other property types (such as Vacant Land, Agricultural, Industrial, Commercial, Recreational, Public, etc.) which may be included in the county appraiser data set.

- **Step 6:** The Claims Administrator shall obtain from Alesco Data, a consumer and resident data provider, a list of all multi-family dwelling (apartment) addresses within zip codes 78359 (Gregory, TX) and 78374 (Portland, TX) to add to the Property Database.

**Notification Procedures:**

- **Step 7:** The Claims Administrator may utilize skip-tracing as needed to update mailing address information for non-Resident Owners within the Property Database.
- **Step 8:** For each Residence record in the Property Database, the Claims Administrator shall send a Notice Packet to (a) the property address (for current residents) and (b) the mailing address identified for each current and prior Owner.
  - The Claims Administrator may also utilize tools available through the United States Postal Service to “pre-screen” the Property Database records for mail deliverability and adjust its records accordingly.

# Exhibit H

## EXHIBIT “H”

### REMEDIAL MEASURES

Pursuant to Section I of the Settlement Agreement, the term “Remedial Measures” means, in part:

“... those past, present, and future improvements, modifications, and procedures that Defendants have taken, are taking, and/or will continue to take to minimize, mitigate or eliminate the migration of Dust from the Facility offsite, including to the Class Area.”

Dating back to 2017, Defendants voestalpine Texas LLC, voestalpine US Holding LLC and voestalpine Texas Holding LLC have undertaken and implemented a variety of improvements, modifications and procedures to mitigate or eliminate fugitive dust in its operations and at its facility, and by extension, off-site. These include the acquisition, installation and deployment of new equipment. Further, these include changes in operational practices, including additional maintenance of equipment and monitoring of weather conditions. These also include multi-year capital projects involving new technologies, requiring performance of complicated engineering, procurement and construction to incorporate these technologies into the physical facility and its operations. Several of these capital projects are on-going and will be completed over the next several years. Further, equipment purchased and incorporated into facility operations require upkeep and maintenance that will also continue into future years.

Remedial Measures instituted, acquired, installed, deployed and/or initiated since 2017 have included:

1. **Polymer Surfactant:** An eco-safe, biodegradable, liquid polymer, combined with a hydro-mulch and a color additive that is sprayed on outdoor stockpiles of by-products, including HBI and iron oxide fines and chips, and Remet. Once applied, the surfactant creates a light surface crust that remains water permeable and is effective in controlling dust and suppressing fugitive emissions from the storage pile. The hydro-mulch additive is an additional binding agent to help the polymer to adhere to the stock piles. The color additive aids in identifying treated piles and in assessing the need for further application of the sprayed surfactant.
2. **Dust Bosses:** Powerful, portable dust-suppressing water cannons that have the capability of dispersing a water mist up to 1100 meters in elevation and covering an area of up to 31,000 square meters. The facility has acquired and employs currently eight units throughout the facility to assist in material handling operations. These are placed strategically at locations where materials are being transferred or moved, including to or from piles, and other locations. These cannons are routinely moved to high-work areas and are redirected as needed to knock down fugitive dust that may be generated by movement of materials and working in stockpiles.
3. **Paving and Curbing:** After initial start up, the facility undertook a several-phased project to pave and curb roadways and other high-traffic areas throughout the facility that had not initially been paved and curbed in the original plant construction. Paving was focused on areas of high vehicle traffic, particularly heavy machinery traffic. Phase 1 included an

additional estimated 203,000 square feet of roads and surfaces throughout the facility. Phase 2 consisted of another estimated 88,000 square feet of roads and surfacing. Paving and curbing allows for much better control of dust from vehicle traffic through use of street sweepers and water trucks.

4. **Water Trucks:** The facility acquired and deployed two Ford 150 Water Trucks (2000-2999 gallons). These are available and are utilized on a 24/7 basis. Initially, these were deployed principally on applying water on unpaved gravel road surfaces; later, as paving and curbing moved forward, deployment was transitioned principally to paved roads and surfaces as well as areas around by-products stockpiles throughout the facility.
5. **Street Sweepers:** The facility acquired and deployed large street sweepers (TYMCO Model DST-6, Regenerative Air Sweepers) on a daily basis on paved road surfaces throughout the facility. These are available and are utilized on a 24/7 basis to address soils and other debris that get tracked onto road surfaces through movement of heavy machinery and other vehicle traffic.
6. **Conveyor Covers:** The facility utilizes conveyors to transport raw feedstock, final product and off-spec materials throughout the facility. The conveyor system is fitted with covers to minimize the impact of wind and rain on the materials being transported and to minimize fugitive dust emissions. Conveyor covers are routinely maintained and repaired. Additionally, the facility investigated, engineered and installed upgraded covers that are easier to remove and replace.
7. **Baghouses:** The facility utilizes baghouses to capture potential fugitive dust emissions from various transfer points along conveyors that move iron ore pellets used in the process areas. Baghouse compressors were upgraded to address local environmental conditions and to ensure increased reliability.
8. **Wind Breaks:** Temporary constructed wind breaks are installed and utilized in material handling areas and around transfer points throughout the facility, including at transfer towers and truck loading stations. These are used to shield material handling operations and to divert wind around such operations. They are often utilized in conjunction with Dust Bosses.
9. **Dry Fog:** This is a multi-phased, multi-year project to engineer, design and install a series of dry fog installations near material transfer areas where baghouses cannot be utilized and to capture potential black metallic dust from the movement of HBI product. The facility has consulted with Dust Solutions, Inc. (DSI) to install their unique Dry Fog product in several locations throughout the facility. Dry Fog is a manufactured fog made through air-atomizing nozzles that create water droplets between 1 and 10 microns in diameter. These droplets impact and agglomerate to fine airborne dust particles, making the dust particles heavy enough to fall back into the process and thus be removed from the air. To date, one project has been pilot tested and ultimately was completed and is in use, and another is soon to be completed. Several other projects are in engineering and/or planning stages, and still others are being investigated for engineering feasibility.
10. **Perimeter Wind Fence:** After a detailed engineering feasibility investigation and computer modeling exercises, the facility currently is in the process of constructing a unique 70-foot high Wind Fence in an "L" configuration along a large portion of the eastern facility boundary and extending westward along the southern boundary of the main facility processing area. The Wind Fence is an engineered and site-specific installation, utilizing a unique mesh fencing material sold by DSI that, as designed, is intended to reduce wind

velocities downwind of the fence location. This installation is geared to address winds from the south and east, the majority wind directions at the facility. The project underwent computerized wind modeling to determine optimal sizing (height) and location placement (ground orientation and length) of the Wind Fence to best optimize wind reduction in operating areas within the facility.

In addition to the specific actions and projects identified above, Defendants have also retained consultants to assist Defendants with the possibility of adding additional feasible dust mitigation projects that could be assessed upon the completion of the current capital projects. One site-wide assessment was conducted in 2019 prior to the start of some of the ongoing capital projects.

Further, Defendants have begun and have made substantial progress on a multi-year new-construction capital project intended to implement better methods to separate, store, handle and re-use by-products (such as oxide fines and chips, and Remet) and lump ore used in the production of HBI, referred to as the By-Products Management Improvements Project. A major benefit of these improvements is the reduction in the volume of by-product material in stockpiles and thus the elimination over time of stockpiles. The project was engineered and designed to minimize dust generation from movement of these materials from stockpiles to the processing tower, and to reduce front-end loader traffic and open movement of stored materials. Some of the design features include cladded transfer towers with dust collection systems, covered conveyors, enclosed screening stations (one for handling oxides and another for handling lump ore and Remet), and new storage locations each partially surrounded with 3 concrete walls and a roof. Additionally, a wind fence is planned near the project location to further reduce the potential for generating fugitive dust within the project area.

The costs associated with Remedial Measures are significant. Below are the costs incurred through June 30, 2021, for the projects identified above, along with estimates of costs to be incurred on these projects through December 31, 2023. As previously noted, additional upkeep and maintenance costs, operating costs associated with these projects, and costs associated with investigating and possibly implementing new installations and other dust mitigation measures, will continue in the years beyond 2023.

<u>Project</u>	<u>Costs through June 30, 2021</u>	<u>Estimated Costs through 2023</u>
Polymer Surfactant	\$894,659 <sup>i</sup>	\$392,900*
Dust Bosses	\$2,312,747 <sup>ii</sup>	\$599,125*
Paving/Curbing	\$3,611,064	none currently planned
Water Trucks	\$392,725 <sup>iii</sup>	\$254,250*
Street Sweepers	\$2,172,870 <sup>iv</sup>	\$989,500*
Conveyor Covers	\$20,211	TBD
Baghouses	\$64,089	TBD
Wind Breaks	\$286,034 <sup>v</sup>	\$180,000*
Dry Fog	\$1,469,817	\$2,457,155
Perimeter Wind Fence	\$4,650,411	\$3,244,589
Consulting	\$75,890	TBD

By-Products Management	\$34,790,450	\$12,729,550
TOTAL	\$50,740,967	\$20,847,069

TOTAL -- All Remedial Measures anticipated through 2023: \$71,588,036

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<sup>i</sup> Includes \$695,659 in equipment and chemicals, plus estimate of \$199,000 in operational, maintenance and material costs.

<sup>ii</sup> Includes \$1,458,391 in equipment rental and purchase costs, plus estimate of \$844,356 in operational, maintenance and material costs.

<sup>iii</sup> Includes \$95,625 in equipment costs, plus estimate of \$297,100 in operational, maintenance and material costs.

<sup>iv</sup> Includes \$651,190 in equipment costs, plus estimate of \$1,521,860 in operational, maintenance and material costs.

<sup>v</sup> Includes \$83,390 in materials rental and contract labor, plus estimate of \$202,644 in operational, maintenance and material costs.

\* Estimates for additional operational, maintenance and material costs through end of 2023.

# Exhibit I



## Notice Plan

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### CASE OVERVIEW

The parties have agreed to a proposed settlement in the case captioned *Blake Chapman, et al. v. voestalpine Texas, LLC, et al.*, (Case No. 2:17-cv-00174). The proposed Class Action Settlement and Release Agreement (“Agreement”) resolves claims brought by Plaintiffs that Dust escaped from Settling Defendants’ facility and caused damage to the real and personal property of individuals residing within the class area.

### CLASS DEFINITION

The Settlement Class is defined as:

All Persons who Reside in the Class Area as of the date the Court enters the Preliminary Approval Order, or who formerly Resided in a Residence within the Class Area for a period of at least one (1) month during the Class Period, and had a legal right to occupy the Residence, through property ownership or residential lease agreement.

The following are excluded from the Class to the extent they fall within the definition above:

- a. Any and all legal representatives, employees, corporate officers, heirs, successors, or assigns of Defendants;
- b. The Judge to whom this Action is assigned, any member of the Judge’s immediate family, and any other judicial officer who is or was assigned to this action; and
- c. Any attorneys who are employees, partners, members, or shareholders of Class Counsel.

### METHODS OF CLASS NOTICE & IMPLEMENTATION STRATEGY

P&N has determined the most reasonable and practicable way to reach and communicate with Class Members is through a multifaceted approach, employing a combination of (1) direct mailed notice, (2) newspaper publication, (3) a toll-free settlement hotline, and (4) a Settlement Website.

#### Direct Mailed Notice

1. The Claims Administrator shall identify Class Members and associated mailing addresses utilizing the property identification procedures outlined in the *Property Identification Plan* which is attached to the Agreement as **Exhibit G**.
2. The Claims Administrator shall then mail a Notice Packet to Class Members which contains a Short Form Class Notice, a Claim Form, and a pre-paid return envelope. The proposed Short Form Class Notice is attached to the Agreement as **Exhibit A**.
3. The Notice Packet will be mailed via United States Postal Service (“USPS”). Prior to mailing, the addresses of prior property owners will be checked against the National Change of Address (“NCOA”) database maintained by USPS to ensure Class Member address



information is up-to-date and accurately formatted for mailing. In addition, the addresses will be certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code, and will be verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. Should NCOA provide a more current mailing address for a former property owner, P&N will update the address accordingly. If a Notice Packet is returned with forwarding address information within thirty (30) days, P&N will re-mail to the forwarded address. For Notice Packets to former property owners that are returned as undeliverable, P&N will use standard skip-tracing to obtain forwarding address information and, if skip-tracing provides a different forwarding mailing address, P&N will re-mail the notice to the address identified by the skip-trace. If no updated address is obtained for that Class Member, the Notice shall be sent again to the last known address, and in either event, the Notice shall be deemed received once it is mailed for the second time. P&N anticipates that the mailed Notice Packet delivery rate will exceed the minimum standard as outlined by the Federal Judicial Center’s (“FJC”) guidelines<sup>1</sup>.

4. First-class mail is appropriate in the current Litigation and is the best notice practicable under the circumstances. “When class members’ names and addresses are known or knowable with reasonable effort, notice by first-class mail is appropriate.” *Mullins v. Direct Dig., LLC*, 795 F.3d 654 (7th Cir. 2015)<sup>2</sup>. “First-class mail ensures, at the outset, that the appropriately targeted audience receives the intended notification and maximizes the integrity of the notice process.” *Reab v. Electronic Arts, Inc.*, 214 F.R.D. 623, 631 (D. Colo. 2002). “First-class mail will generally satisfy Rule 23(c)(2)’s requirement of the best notice practicable under the circumstances.” *In re VMS Ltd. Partnership Sec. Litig.*, No. 90 C 2412, 1995 WL 355722, at \*1 (N.D. Ill. June 12, 1995).

#### **Newspaper Publication**

5. In conjunction with the Notice Packet mailings described above, a supplemental newspaper publication campaign (Newspaper Notice) is proposed. P&N will arrange for Newspaper Notice to be published in one or more local newspapers of wide distribution that must include Portland, TX, Gregory, Texas and Corpus Christi, TX. Such notice should be published beginning on the Notice Issuance Deadline and bi-weekly thereafter during the Notice Period. Newspaper Notice placement is subject to publisher’s approval. Notice may appear in substantially similar form to the Short Form Class Notice (**Exhibit A** to the Agreement).

#### **Dedicated Toll-Free Hotline**

6. A dedicated toll-free informational hotline will be available 24 hours per day, seven days per week. The hotline will utilize an interactive voice response (“IVR”) system where class members can obtain essential information regarding the lawsuit and be provided responses to frequently asked questions. Class members will also have the option to leave a voicemail

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<sup>1</sup> FJC 2010 *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*

<sup>2</sup> See, e.g., *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174–75, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974)



and receive a call back from the call center representative.

### **Informational Website**

7. P&N will create and maintain a website to host relevant settlement data and documents. The Long Form Notice, along with other relevant documents, will be posted on the informational website for Class Member reference. The informational website will also include relevant dates, other case-related information, instructions for how to be excluded from the Settlement, and contact information for the Administrator and Class Counsel. The proposed Long Form Class Notice is attached to the Agreement as **Exhibit B** and will be posted to the website in English as well as a Spanish translated version.

### **Requests for Exclusion**

8. Class members wishing to exclude themselves may submit their request for exclusion by mail to a dedicated Post Office Box that P&N will maintain. P&N will monitor all mail delivered to that Post Office Box and will track all exclusion requests received, which will be provided to the Parties.

### **Conclusion**

9. The proposed Notice Plan includes individual direct mailed notice to all members of the class who can be identified through reasonable efforts; a supplemental newspaper publication program; an informational website; and a toll-free hotline. It is my opinion, based on my expertise and experience and that of my team, that this method of focused notice dissemination provides effective notice in this Litigation, will provide the best notice that is practicable, adheres to Fed. R. Civ. P. 23, follows the guidance set forth in the Manual for Complex Litigation 4th Ed. and FJC guidance, and exceeds the requirements of due process, including its “desire to actually inform” requirement<sup>3</sup>.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this \_\_\_ day of \_\_\_\_\_, 2021 in Baton Rouge, Louisiana.

\_\_\_\_\_  
Dustin Mire

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<sup>3</sup> *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950)

# **Exhibit 2**



6. I received my J.D. from Saint Mary's School of Law in 2003 and subsequently received my L.L.M. in trial advocacy from California Western in 2004. I am licensed to practice law in the state of Texas and am admitted to practice before the U.S. Court of Appeals for the Fifth Circuit, the Southern, Eastern, and Northern Districts of Texas, the District of New Mexico, and the Eastern District of Michigan. I have litigated cases, either as an admitted attorney, or *pro hac vice*, in the federal district courts of Arizona, Arkansas, California, Washington, New Mexico, Oklahoma, Iowa, Pennsylvania, Ohio, Kentucky, Illinois, Texas, Louisiana, Georgia, Alabama, Florida, South Carolina, Tennessee, North Carolina, Missouri, Utah, Wisconsin, Minnesota, and Virginia.

7. I am involved in many professional organizations and am a member of the National Employment Lawyers Association ("NELA"), the Texas Employment Lawyers Association ("TELA") and the Texas Trial Lawyers Association ("TTLA") and regularly attend their conferences. I am also active in my local bar associations and participate in multiple plaintiff-specific listservs.

8. Clif Alexander, co-founding member of ANDERSON ALEXANDER, PLLC has also taken a role in the litigation of this matter. Mr. Alexander has spent his career litigating complex civil representative lawsuits and has been lead counsel in hundreds of individual, collective, and class action cases across the United States. Mr. Alexander has been licensed for over twelve (12) years and focuses his practice on representing his clients throughout the United States.

9. Mr. Alexander received his J.D. from South Texas College of Law—Houston in 2008. Mr. Alexander is licensed to practice law in the state of Texas and is admitted to practice before U.S. Court of Appeals for the Fifth Circuit, the Southern, Western, Eastern, and Northern Districts of Texas, the Court of Federal Claims, the District of Colorado, the Central District of Illinois, District of New Mexico, and the Eastern District of Michigan. Mr. Alexander has litigated cases, either as an admitted attorney, or *pro hac vice*, in the federal district courts of Arizona, Utah, Washington, New Mexico, Colorado, Oklahoma, Iowa, Kansas, Kentucky, Missouri, Pennsylvania, Ohio, Texas, Louisiana, Georgia, Alabama, Florida, Tennessee, South Carolina, North Carolina, Minnesota, Wisconsin, and Virginia.

10. Mr. Alexander is involved in many professional organizations and is a member of the Texas Trial Lawyers Association ("TTLA"), National Employment Lawyers Association ("NELA"), and the Texas Employment Lawyers Association ("TELA") and regularly attends and speaks at their conferences. Mr. Alexander is very active in his local bar associations and had long served as a director for the Corpus Christi Young Lawyers Association and is now a director for the Corpus Christi Bar Association. Mr. Alexander also participates in multiple plaintiff-specific listservs.

11. Roe Frazer, founding principal of FRAZER PLC, has also taken a lead role in this litigation and has brought his unique experience litigation class and mass action toxic torts to bare in favor of Plaintiffs and the Class Members. Indeed, Mr. Frazer is a trial lawyer with 35 years of experience in complex litigation and has served in the lead counsel/executive committee role in multiple nation-wide Multi District Litigations ("MDLs"), especially those related to environmental hazards, environmental toxicity, and pharmaceutical litigation. *See Curriculum Vitae* of T. Roe Frazer, II, attached as Exhibit A. Indeed, Mr. Frazer is lead counsel for over 40 federally recognized Indian Tribal Governments across the United States. Mr. Frazer graduated from Cumberland School of Law in 1985 and served as the Editor-in-Chief of the Cumberland Law Review. He is a member of the state bars of Tennessee, Mississippi, and Alabama, and is admitted to practice law before U.S. Supreme

Court, Mississippi Supreme Court, Alabama Supreme Court, Tennessee Supreme Court, Fourth, Fifth, and Sixth U.S. Circuit Courts of Appeals, U.S. Court of Claims, and U.S. District Courts for the Northern District of Wisconsin, Southern and Northern Districts of Mississippi, Northern, Middle, and Southern Districts of Alabama, Western, Middle and Eastern Districts of Tennessee, Northern District of Florida, District of New Jersey, and Southern District of Texas.

12. Cliff Gordon, a senior attorney with ANDERSON ALEXANDER, PLLC, has also performed work on behalf of Plaintiffs and Class Members in this matter. Mr. Gordon has been a practicing attorney for almost twenty-five years and has worked in complex civil litigation as both a defense and plaintiffs' attorney. Mr. Gordon began working with ANDERSON ALEXANDER, PLLC in 2016 and since that time has practiced almost exclusively in complex representative civil litigation, including class and collective actions. Mr. Gordon works diligently to ensure that his clients receive the compensation legally owed to them and to effectively communicate with the clients through all phase of the litigation. Mr. Gordon obtained his undergraduate degree from Yale University and is a 1995 graduate of the University of Houston Law Center. Mr. Gordon is licensed in the state of Texas and is admitted to practice before all of the federal districts in Texas, and the Eastern District of Michigan.

13. Lauren Braddy, a senior attorney with ANDERSON ALEXANDER, PLLC, has also performed work on behalf of Plaintiffs and Class Members in this matter. Ms. Braddy has been licensed for over ten (10) years and graduated with honors from Baylor University School of Law in 2010. Early in her career, Ms. Braddy served as defense counsel representing large and small corporations with a nation-wide docket in federal and state courts and subsequently worked as a staff attorney for the 13th Court of Appeals. Ms. Braddy joined ANDERSON ALEXANDER, PLLC in 2015 and since that time, has focused on in representing plaintiffs across the United States in complex representative actions, including class and collective alleging violations of federal and state laws. Ms. Braddy is admitted to practice before the Fifth Circuit Court of Appeals, the Southern, Western, Eastern, and Northern Districts of Texas, the Court of Federal Claims, the District of Colorado, the Central District of Illinois, the District of New Mexico, and the Eastern District of Michigan. Ms. Braddy has litigated cases, either as an admitted attorney, *or pro hac vice*, in the federal district courts of Arizona, California, New Mexico, Colorado, Oklahoma, Iowa, Pennsylvania, Ohio, Texas, Louisiana, Virginia, Utah, and Alabama. Ms. Braddy is involved in many professional organizations and is a member of the Trial Lawyers Association ("TTLA"), the National Employment Lawyers Association ("NELA"), the Texas Employment Lawyers Association ("TELA") and has been a speaker for multiple events, both at national conferences and locally within her community. Ms. Braddy is very active in her local bar associations and had long served as a director for the Corpus Christi Young Lawyers Association and is the current Vice President for the Coastal Bend Women Lawyers Association.

14. Carter Hastings, an attorney with ANDERSON ALEXANDER, PLLC, has also performed significant work on behalf of Plaintiffs and Class Members in this matter. Mr. Hastings has diligently represented plaintiffs in class actions, collective actions, and individual lawsuits across the United States. Mr. Hastings graduated from Southern Methodist University's Dedman School of Law in 2016, and since returning to Corpus Christi, Texas, has become an active member in the local bar association, and is currently serving as President of the Corpus Christi Young Lawyers' Association. Mr. Hastings is licensed in Texas and is admitted to practice in all four federal districts in Texas and the Central District of Illinois. Mr. Hastings has also litigated cases, either as an admitted attorney, *or*

*pro hac vice*, in the federal district courts of Ohio, Oklahoma, Kansas, Kentucky, Louisiana, Wisconsin, Tennessee, Illinois, and Minnesota.

15. Specifically, the above attorneys with the law firm of ANDERSON ALEXANDER, PLLC have represented millions of plaintiffs across the United States. As such, I can verify that I am familiar not only with the complexities of class action litigation, but that I am also familiar with the claims alleged herein.

16. I represent that the settlement agreement reached herein was fair and reasonable, and I believe it constitutes an exceptional result. This lawsuit has been pending since May of 2017, and since that time I, and my fellow Class Counsel, have invested significant time and expenses in this litigation. The Parties engaged in extensive discovery including multiple rounds of written discovery served by Plaintiffs, third-party discovery, and depositions. In addition to discovery, the Parties also engaged in extensive motion practice across the three consolidated cases, including an opposed motion for class certification and multiple motions to dismiss.

17. Moreover, the Parties began working toward resolution well in advance of formal mediation and engaged John Perry, Jr., a mediator with a national reputation for resolving large and complex lawsuits. The Parties worked with Mr. Perry, both together and separately, for almost a year before formally mediating this matter in September 2020. Although the mediation lasted for two full days, the Parties did not enter into a Memorandum of Understanding (“MOU”) until months later, and then worked diligently for almost a year to craft the comprehensive Class Action Settlement Agreement currently before the Court. I further represent that the Plaintiffs were satisfied with the result reached and promptly executed the Settlement Agreement once it was presented to them.

18. I represent that the settlement agreement reached herein is fair, reasonable, and adequate, and I believe it constitutes an exceptional result for the Class Members. The Total Cash Settlement Amount consists of \$16,825,000.00, of which the Net Settlement Amount will be divided among the participating class members, according to the findings of the proposed Special Master, Dan Balhoff, pending Court approval. However, in addition to the significant cash portion of the Settlement, Defendants have also incurred remedial expenses totaling over \$70,000,000.00 to ensure that the underlying cause of the complained of Dust is ameliorated, if not removed.

19. I also represent that the Notice Plan created by the Parties, with the assistance of the Claims Administrator and Special Master will ensure that the Class Members receive the best notice practicable, as required by Federal Rule of Civil Procedure 23(c). It directs that the notice documents be delivered directly to each class member for which an address can be reasonably ascertained, and provides for both a Newspaper Notice (scheduled to circulate bi-weekly in Corpus Christi, Portland, Gregory, and the surrounding Coastal Bend, throughout the Notice Period) and a settlement website for those Class Members for which no address can be discovered.

20. Each of the members of the class is eligible to receive meaningful value for the release of their wage related claims, should they choose to participate in this settlement. Moreover, they will receive that monetary relief now, instead of some uncertain future date. Accordingly, the settlement provides them substantial relief, promptly and efficiently, and augments the benefits of that relief through the economies of collective resolution. Further litigation through trial, and the potential for appeal, requires substantial risk—and additional time. Importantly, the scope of the release is also narrowly tailored to the claims alleged in the live pleading—by this class action settlement no class

member will release any claims for personal injury or for any damages for a catastrophic-type event at Defendants' facility that would create significantly greater exposure than the currently permitted amount.

21. Based on the foregoing, I respectfully request that this Court preliminarily approve the Class Action Settlement and Release Agreement between the parties, and authorize the manner and method of the distribution of the Notice, as well as the method for determining the individual settlement amounts for each participating class member, as discussed therein.

22. I declare under the penalty of perjury that the foregoing information is true and correct.

Executed on: Oct 15, 2021

Signed by: *Austin Anderson*  
Austin Anderson (Oct 15, 2021 16:06 CDT)  
Austin W. Anderson

# **Exhibit A**



**T. ROE FRAZER II**  
**FRAZER PLC**  
**30 BURTON HILLS BLVD.**  
**SUITE 450**  
**NASHVILLE, TENNESSEE 37215**  
**615-647-0990 (OFFICE DIRECT)**  
**615-618-9198 (MOBILE)**  
[ROE@FRAZER.LAW](mailto:ROE@FRAZER.LAW)  
[WWW.FRAZER.LAW](http://WWW.FRAZER.LAW)



**ROE FRAZER** is a trial lawyer with 35 years of experience in complex litigation, with over four billion dollars in trial verdicts and settlements on behalf of plaintiffs. He is a principal in Frazer PLC, a leading litigation law firm handling complex litigation. Frazer PLC collaborates with many law firms in order to meet the needs and demands of its clients and their cases.

With a *Martindale* AV+ rating, Roe is a speaker and writer on a variety of legal and technology topics, serving on the Evolving Legal Market Committee of the Tennessee Bar Association and the CLE Committee of the Nashville Bar Association. Roe is keen on the strategic use of legal technology and artificial intelligence in litigation, having started two e-discovery software companies, CaseLogistix and Cicayda.

### **Pending Cases**

- Plaintiffs' Executive Committee, Co-Chair of the Private Water Providers Committee, and Co-Lead Discovery Counsel, *In Re: Aqueous Film-Forming Foam Litigation*, MDL No. 2873, U.S. District Court for the District of South Carolina (appointed by Honorable Richard Gergel, U.S. District Judge).
- National Lead Counsel for American Water Company in its drinking water litigation against industrial polluters and chemical manufacturers for broad range of contaminants – PFAS, PFOA, PFOS, PFNA, PFCs, 1,4-dioxane, and other pollutants.
- Lead Counsel for various public municipal water providers in several states in their drinking water litigation against industrial polluters and chemical manufacturers for broad range of contaminants – PFAS, PFOA, PFOS, PFNA, PFCs, 1,4-dioxane, and other pollutants.

- Lead Counsel for school districts in multiple states in the Juul Vaping Litigation.
- Lead Counsel for several companies and businesses in the Business Interruption Insurance Litigation relating to COVID-19.
- Lead Counsel for over 40 federally recognized Indian Tribal Governments in Wisconsin, Minnesota, Massachusetts, New York, Louisiana, Nevada, Utah, Arizona, California, Oregon, and Oklahoma, *In re Prescription Opiates Litigation*, MDL No. 2804, U.S. District Court for the Northern District of Ohio.
- Member, Indian Tribe Leadership Committee, Indian Tribe Track, MDL No. 2804, *In re Prescription Opiates Litigation*.
- Lead Counsel for a number of health care organizations, hospitals, union health and welfare funds, and city and county governments, *In re Prescription Opiates Litigation*, MDL No. 2804, U.S. District Court for the Northern District of Ohio.
- Member *ex officio*, Unsecured Creditors Committee, Purdue Pharma Bankruptcy (U.S. Bankruptcy Court, S.D.N.Y.).
- Lead trial counsel for the St. Regis Mohawk Nation in a PCB case in Missouri state court.
- Lead trial counsel in numerous individual personal injury dioxin actions in Illinois state court.
- Co-Lead class counsel for debenture holders in a securities class action in state court in Pittsburgh, Pennsylvania.
- Co-Lead counsel for plaintiffs in individual and class action air pollution cases pending in U.S. District Court for the Southern District of Texas.
- Lead Counsel for three Indian Tribes, *In Re: Equifax Customer Data Security Breach Litigation*, MDL No. 2800, U.S. District Court for the Northern District of Georgia.

### **Representative Cases, Historically**

- Counsel for individual plaintiffs in various product liability MDLs.
- Lead counsel in numerous state court actions involving thousands of plaintiffs and claims against the manufacturers of the pharmaceutical drug Rezulin resulting in a multi-million-dollar verdict and settlements for over 2,500 individuals.

- Lead trial plaintiffs' counsel in hundreds of cases against Monsanto for airborne and water borne PCB contamination (S.D. Miss.) resulting in settlements in all cases.
- Lead Counsel in *Branch v. Weyerhaeuser*, resulting in a multi-million-dollar Alabama class action settlement in case involving paper mill water pollution and the claims of riparian property owners.
- Co-Lead Class Counsel in *In Re Polybutylene Pipe Litigation (Spencer vs. Shell Oil Co. et al.)*, a consumer fraud, nationwide litigation resulting in \$970 million nationwide class action settlement.
- Lead trial counsel in hundreds of individual pharmaceutical drug and medical devices cases against pharmaceutical drug and medical device manufacturers.
- Lead trial counsel in numerous individual products liability actions against automobile manufacturers.
- Co-Lead Class Counsel in \$1 Billion settlement in *Pigford v. Glickman and U.S. Department of Agriculture ("The Black Farmers Case")* (D.D.C).
- Plaintiffs' counsel in *In Re Sunset Limited Train Crash Litigation*, MDL No. 1003 (S.D. Ala.).
- Lead trial counsel in numerous individual asbestos lawsuits.

### **Education**

- J.D., Cumberland School of Law (1985), Samford University, Birmingham, Alabama – Editor-in-Chief, *Cumberland Law Review*; Co-Captain, National Moot Court Team; Member, Order of Barristers.
- B.A., Politics, Wake Forest University (1982), Winston-Salem, North Carolina.

### **Other Law-Related Items of Interest**

- U.S. Circuit Court of Appeals Judge Delegate, Honorable John K. Bush, Sixth Circuit Annual Judicial Conference, 2018
- Author: four law review articles and numerous periodicals
- Speaker: numerous CLEs and legal conferences
- Member, Dean's Advisory Board, Cumberland School of Law, Samford University, Birmingham, Alabama

- Member, American Bar Association, Tennessee Bar Association, Nashville Bar Association, Mississippi Bar Association, and Alabama Bar Association
- Admitted to practice before the U.S. Supreme Court, Mississippi Supreme Court, Alabama Supreme Court, Tennessee Supreme Court, Fourth, Fifth, and Sixth U.S. Circuit Courts of Appeals, U.S. Court of Claims, and U.S. District Courts for the Northern District of Wisconsin, Southern and Northern Districts of Mississippi, Northern, Middle, and Southern Districts of Alabama, Western, Middle and Eastern Districts of Tennessee, Northern District of Florida, District of New Jersey, and Southern District of Texas
- “Top 100 Technology Thought Leaders in the World”, named by *City Tech Magazine*, London, U.K. (2006-07)
- Co-Founder, CaseLogistix e-discovery software, now owned by Thomson Reuters
- Co-Founder, Cicayda, e-discovery software and services, Nashville, Tennessee
- Outstanding Trial Lawyer of the Year, Mississippi Trial Lawyers Association (1993)

# Exhibit 3



and/or federal district courts of Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Missouri, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Utah, Virginia, and Wyoming.

5. I am Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization. I am involved in many professional organizations and stay informed of changing law and practice as it pertains to litigation and trial of complex matters. I am a member of the American Board of Trial Advocates (“ABOTA”), the Texas Trial Lawyers Association (“TTLA”), the Texas Bar Foundation, the New Mexico Trial Lawyers Association (“NMTLA”), and the American Association of Justice (“AAJ”) and regularly attend, and make presentations at, conferences through these and other organizations.

6. Stuart R. White, co-founding member of Liles White, PLLC, has also taken a lead role in the litigation of this matter. Mr. White has been licensed for over ten (10) years and has spent his career litigating complex personal injury and commercial litigation lawsuits as lead counsel in hundreds of individual cases across the United States.

7. Mr. White received his J.D. from Baylor University School of Law in 2010. Mr. White is licensed to practice law in the states of Texas, California, and New Mexico and is admitted to practice before the U.S. Courts of Appeals for the Fifth and Tenth Circuits, the Northern, Southern, Eastern, and Western U.S. District Courts of Texas, the Southern and Central U.S. District Courts of California, and the U.S. District Court of New Mexico.

8. Mr. White is involved in many professional organizations and is a frequent lecturer on litigation practice matters at conference events through his membership in various organizations, including the Texas Trial Lawyers Association (“TTLA”), the New Mexico Trial Lawyers Association (“NMTLA”), and the American Association of Justice (“AAJ”).

9. I can verify that I am familiar not only with the complexities of complex litigation, but that I am also familiar with the claims alleged herein.

10. I represent that the settlement agreement reached herein was fair and reasonable, and I believe it constitutes an exceptional result. This lawsuit has been pending for over four (4) years, and since that time I, my firm, and my fellow Class Counsel, have invested significant time and expenses in this litigation. I believe the settlement agreement constitutes an exceptional result for the Class Members. The Total Cash Settlement Amount consists of \$16,825,000.00, of which the Net Settlement Amount will be divided among the participating class members, according to the findings of the proposed Special Master, Dan Balhoff, pending Court approval. However, in addition to the significant cash portion of the Settlement, Defendants have also incurred remedial expenses totaling over \$70,000,000.00 to ensure that the underlying cause of the complained of Dust is remediated, if not removed, entirely.

11. Each of the members of the class is eligible to receive meaningful value for the release of claims, should they choose to participate by returning a claim form. This will entitle them to monetary relief now, instead of some uncertain future date. The settlement provides them substantial relief, promptly and efficiently, and augments the benefits of that relief through the economies of class resolution. Through the course of the litigation, we have determined that the damages were substantially related to enhanced cleaning measures. Further litigation through trial, and the potential

for appeal, requires substantial risk—and substantial additional time. Importantly, the scope of the release is also narrowly tailored to the claims alleged in the live pleading—by this class action settlement no class member will release any claims for personal injury or for any damages for a catastrophic-type event at Defendants’ facility that would create significantly greater exposure.

12. Based on the foregoing, I respectfully request that this Court preliminarily approve the Class Action Settlement and Release Agreement between the parties and authorize the manner and method of the distribution of the Notice, as well as the method for determining the individual settlement amounts for each participating class member, as discussed therein.

13. I declare under the penalty of perjury that the foregoing information is true and correct.

Executed on: Oct 15, 2021

Signed by: *Kevin Liles*  
Kevin Liles (Oct 15, 2021 16:30 CDT)  
Kevin Liles

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

BLAKE CHAPMAN, <i>et al.</i> ,	§	
	§	
individually and on behalf of all others	§	
similarly situated,	§	<b>C.A. No. 2:17-cv-00174</b>
	§	
<b>Plaintiffs</b>	§	
	§	
vs.	§	
	§	
voestalpine Texas Holding, LLC, <i>et al.</i>	§	
	§	
<b>Defendants</b>	§	

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**[PROPOSED] ORDER**

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On \_\_\_\_\_, 2021, the Court heard an unopposed motion by Plaintiffs Blake Chapman, Ricky Stephens, Gary Thurmond, Jr., Carolyn Thurmond, Hortensia Martinez, Charles Garrett, and Roel Garcia (“Representative Plaintiffs”) for preliminary approval of a class action settlement (the “Motion”), related to Representative Plaintiff’s claims against Defendants voestalpine Texas, LLC, voestalpine Texas Holding, LLC, and voestalpine US Holding, LLC (collectively “Defendants”). The Court has considered the Motion, the Class Action Settlement Agreement<sup>1</sup> (“Settlement” or “Settlement Agreement”), the proposed Notice Plan, including the Short Form Notice (which will also be used for the Newspaper Notice), Long Form Notice, Claim Form, Property Identification Plan, and Notice Plan, and the submissions of counsel, and hereby finds and orders as follows:

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<sup>1</sup> All capitalized terms shall be given their defined meaning as set forth in the Settlement Agreement.

1. The Court finds on a preliminary basis that the class settlement memorialized in the Settlement Agreement, filed with the Court, falls within the range of reasonableness and, therefore, preliminarily approves its terms as it meets the requirements for preliminary approval of a class action.

2. The Court conditionally certifies, for settlement purposes only, the following Class for settlement purposes only:

All Persons who Reside in the Class Area as of the date the Court enters the Preliminary Approval Order, or who formerly Resided within the Class Area<sup>2</sup> for a period of at least one (1) month during the Class Period, and had a legal right to occupy the Residence, through property ownership or residential lease agreement.

3. The Court finds that, for settlement purposes only, the requirements of Federal Rule of Civil Procedure 23(a), and Federal Rule of Civil Procedure 23(b)(3) are satisfied, with the exception of the manageability requirement of Rule 23(b)(3), which the Court need not address for purposes of settlement.

4. The Court appoints, for settlement purposes only, Blake Chapman, Ricky Stephens, Gary Thurmond, Jr., Carolyn Thurmond, Hortensia Martinez, Charles Garrett, and Roel Garcia as Representative Plaintiffs.

5. The Court appoints, for settlement purposes only, Anderson Alexander PLLC, Liles White, PLLC, and Frazer Law, PC as Class Counsel.

6. The Court appoints Postlethwaite & Netterville as the Claims Administrator.

7. The Court appoints Dan Balhoff (including members or representatives of his firm, Perry, Balhoff, Mengis & Burns, LLC, to whom he may delegate tasks) as Special Master, for the purpose of overseeing the settlement administration and allocating the Net Settlement Amount amongst the Class Members, according to the terms of the Agreement.

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<sup>2</sup> The Class Area is set forth in Exhibit D to the Agreement.

8. The Court approves, as to form and content, the Notice Plan, including the Short Form Notice, Long Form Notice, Claim Form, and Property Identification Plan, attached to the Agreement as Exhibits A, B, C, and J. The Claims Administrator is ordered to disseminate the Notice Packet, containing the Short Form Notice, Claim Form, and pre-paid return envelope to all Residences/Persons identified in the Property Identification Plan. The Notice documents fairly and adequately describe the terms and effect of the Agreement and give adequate notice of Class Members' right to opt-out of, or object to, the Settlement.

9. The Claims Administrator is likewise ordered to post the Newspaper Notice in the Corpus Christi Caller Times according to the terms of the Agreement, and set up a settlement website and toll-free hotline for the use of the Class Members.

10. Each Class Member will have sixty (60) days after the date on which the Claims Administrator disseminates the Notice to submit a Claims Form to be entitled to receive a Settlement Sum, as described in the Settlement Agreement and the Notices.

11. Each Class Member (other than the Representative Plaintiffs) will have sixty (60) days after the date on which the Claims Administrator disseminates the Notice to submit a written request for exclusion (written opt-out request) from the Class, or to object to the Settlement, as described in the Settlement Agreement and the Notices.

12. The Parties are authorized to file the Settlement Distribution Plan under Seal in conjunction with their Motion for Final Approval of the Settlement. The Settlement Distribution Plan will contain the Settlement Sum each Participating Class Member will receive pursuant to the terms of the Settlement, and the Participating Class Members are entitled to privacy in their financial dealings.

13. The Court will conduct a Final Approval Hearing on \_\_\_\_\_, 2022, at \_\_\_\_\_ a.m./p.m., or as soon thereafter as the matter may be heard,<sup>3</sup> to confirm the overall fairness of the settlement and to set the amount of reasonable attorneys' fees and costs to Class Counsel and enhancement payments to the Class Representatives. The Final Approval Hearing may be continued without further notice to members of the Class/Collective. Class Counsel shall file their motion for reasonable attorneys' fees, costs, expenses, and the Class Representative payment sought in the Settlement, on or before \_\_\_\_\_, 2022. Class Counsel shall file their motion for final settlement approval, on or before \_\_\_\_\_, 2022.

14. The Court enjoins Class Members under the All Writs Act, 28 U.S.C. § 165, up to the date of entry of a Final Approval Order or the voiding of the Settlement Agreement, from filing or prosecuting any claims, suits, or administrative proceedings regarding claims released by them under the Settlement unless and until such Class Members have submitted valid and timely Requests for Exclusion with the Claims Administrator and the Claim Deadline has elapsed.

15. The Court authorizes and approves the establishment of a Qualified Settlement Fund ("QSF") related to this Settlement and to maintain jurisdiction over the QSF during the pendency of the settlement administration process.

IT IS SO ORDERED the \_\_\_\_ day of \_\_\_\_\_, 2021.

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Nelva Gonzales Ramos  
United States District Court Judge

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<sup>3</sup> The Final Approval Hearing should take place at least 165 days after the issuance of the Preliminary Approval Order.