

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**MATTIE HALLEY and LETICIA
MALAVÉ,**

**On Behalf of Themselves
and all Others Similarly Situated,**

Plaintiffs,

v.

PPG INDUSTRIES, INC.,

Defendant.

Civil Action No. 2:10-cv-3345 (ES) (JAD)

**ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY
APPROVING CLASS-ACTION SETTLEMENT, AND APPROVING FORM AND
MANNER OF NOTICE**

Counsel for Plaintiffs and PPG have moved under Federal Rules of Civil Procedure 23(b) and (e) for an order: (1) certifying a settlement class comprised of three subclass zones; (2) preliminarily approving a class settlement on the terms and conditions set forth in the Class Settlement Agreement (the “Settlement Agreement”); (3) appointing Settlement Class Counsel; (4) appointing a Claims Administrator; and (5) approving forms and the procedures for class notice. Terms capitalized herein and not defined shall have the meanings ascribed to them in the Settlement Agreement. The Court has reviewed and considered all papers filed in connection with the motion, including the Settlement Agreement, and all exhibits attached thereto, and has heard the presentations of counsel appearing with respect thereto. On the basis thereof, and on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. This Court has jurisdiction over the subject matter of this Action and jurisdiction over

the Parties.

2. For settlement purposes only, this action may be maintained as a class action under Federal Rule of Civil Procedure 23 on behalf of Settlement Class B members under the Settlement Agreement (collectively, the “Settlement Class”), defined as follows:

Settlement Class B:

Persons who, on or after May 17, 2010 and up to and including June 5, 2019, own or owned any real property identified as Class 2 Residential Property (1-4 Family) located within the area identified as “Class B” on the attached map. Settlement Class B is generally bounded by Ocean Avenue between Bayview Avenue and Grand Street; Grand Street between Ocean Avenue and Communipaw Avenue; Communipaw Avenue between Grand Street and before Communipaw turns northeast; Suydam Avenue, Pine Street, and Whiton Street southwest of Communipaw Avenue; Distillery Drive; Pacific Avenue from Communipaw Avenue to Caven Point Avenue; Caven Point Avenue between Pacific Avenue and Garfield Avenue; Garfield Avenue between Caven Point Avenue and Bayview Avenue; and Bayview Avenue between Garfield Avenue and Ocean Avenue. Settlement Class B includes Class 2 Residential Property (1-4 Family) properties located on both sides of the boundary streets contained in the class definition.¹

Settlement Class B Subclass Zone 1: Persons who, at any time during the Class Ownership Period, owned or own real property identified as Class 2 Residential Property (1-4 Family) located within the area identified as “Class B Subclass Zone 1” on the attached map.

Settlement Class B Subclass Zone 2: Persons who, at any time during the Class Ownership Period, owned or own real property identified as Class 2 Residential Property (1-4 Family) located within the area identified as “Class B Subclass Zone 2” on the attached map.

Settlement Class B Subclass Zone 3: Persons who, at any time during the Class Ownership Period, owned or own real property identified as Class 2 Residential Property (1-4 Family) located within the area identified as “Class B Subclass Zone 3” on the attached map.

¹ The geographic boundaries of Settlement Class B and Subclass Zones 1, 2, and 3 are depicted on the maps attached to the Parties’ Joint Motion.

In light of the agreement of the Parties to settle the Action and the resulting elimination of individual issues that may otherwise have precluded certification of a litigation class, the prerequisites to class certification under Rule 23(a) are satisfied, to-wit:

- a. The Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law and fact common to members of the Settlement Class;
- c. The claims of the Settlement Class Representatives in the Seventh Amended Complaint meet the numerosity, commonality, typicality and adequacy requirements of Rule 23(a); and
- d. The Settlement Class Representatives, represented by counsel experienced in complex litigation, will fairly and adequately protect the interests of the Settlement Class.

3. In light of the agreement to settle the Action and the resulting elimination of individual issues that PPG contends preclude certification of a litigation class, the questions of law and fact common to all members of the Settlement Class predominate over questions affecting only individual members of that Class, and certification of the Settlement Class is superior to other available methods for the fair and efficient resolution of this controversy, satisfying Rule 23(b)(3).

4. If the Settlement Agreement is not finally approved by the Court or for any reason does not become effective, the Settlement Class shall be decertified, all Parties' rights to litigate all class issues will be restored to the same extent as if the Settlement Agreement had never been entered into, and no Party shall assert that another Party is estopped from taking any position relating to class certification.

5. Mattie Halley and Leticia Malave are hereby designated as Settlement Class Representatives for the Class B Settlement Class.

6. The following counsel is designated and authorized to act as Settlement Class Counsel:
Steven J. German and Joel Rubenstein of GERMAN RUBENSTEIN LLP.

7. The Settlement Agreement contains one Settlement Class: Settlement Class B, with three Subclass Zones: 1, 2, and 3, which together comprise the Settlement Class.

8. The members of the Settlement Class who have not exercised their right to exclude themselves from the Settlement Class agree to release PPG from any and all claims stemming from Released Claims. "Released Claims" means any and all manner of actions, causes of action, suits, debts, judgments, rights, demands, damages, compensation, loss of use and enjoyment of property, expenses, attorneys' fees, litigation costs, other costs, rights or claims for reimbursement of attorneys' fees, and claims of any kind or nature whatsoever arising out of the ownership of Class 2 Residential Property (1-4 Family) in Settlement Class B in the Seventh Amended Complaint, including without limitation punitive damages, in either law or equity, under any theory of common law or under any federal, state, or local law, statute, regulation, ordinance, or executive order that any Class Member ever had or may have in the future, whether directly or indirectly, that arose from the beginning of time through execution of this Agreement, WHETHER FORESEEN OR UNFORESEEN, OR WHETHER KNOWN OR UNKNOWN TO ALL OR ANY OF THE PARTIES, that arise out of the claimed release, migration, deposition, or impacts or effects of COPR, hexavalent chromium, or any other chemical contamination present on, originating from or released, emanating, or migrating at or from: (a) the Garfield Avenue Facility; (b) Hudson County Chromium Sites 114, 121, 132, 133, 135, 137, 143, 186, and 207; or (c) the following properties: 33 Pacific Avenue, 800 Garfield Avenue, 816 Garfield Avenue, 78-104 Halladay Street; 84, 86-90, 98-100 and 108 Forrest Street, 457 Communipaw Avenue, Pacific Avenue/Caven Point Avenue, North and South Halladay Street, Carteret Avenue, Forrest Street, or Garfield Avenue, at any time through the date of this Agreement, including but not limited to property damage, remediation costs, diminution of value to property, including stigma damages,

loss of use and enjoyment of property, fear, anxiety, or emotional distress as a result of the alleged contamination. Released Claims also include claims for civil conspiracy asserted by the members of Settlement Class B. Personal injury, bodily injury, and medical monitoring claims (if any) are not included in Released Claims.

9. The terms and conditions set forth in the Settlement Agreement place the Settlement Agreement within the range of fair and reasonable settlements, making appropriate further consideration at a hearing held pursuant to notice to the Settlement Class. The Court therefore preliminarily approves the Settlement Agreement and directs the parties to perform and satisfy the terms and conditions of the Settlement Agreement that are thereby triggered.

10. A hearing (the “Fairness Hearing”) shall be held on **January 13, 2021 at 2:00 p.m.** before the undersigned in Courtroom No. 5A, United States Courthouse, United States District Court for the District of New Jersey.

11. The date of the Fairness Hearing will be included in the Notice of Proposed Class Action Settlement. The purpose of the Fairness Hearing will be to: (a) determine whether the proposed Settlement Agreement is fair, reasonable, and adequate, and should be finally approved; (b) determine whether an order and judgment should be entered dismissing with prejudice all claims against PPG, bringing the litigation to a conclusion, forever releasing PPG from all Released Claims, and permanently barring Class Members from bringing any lawsuit or other action based on the Released Claims; and (c) consider other Settlement-related matters and appropriate attorneys’ fees.

12. The Court may adjourn, continue, and reconvene the Fairness Hearing pursuant to oral announcement without further notice to eligible members of the Settlement Class, and the Court

may consider and grant final approval of the Settlement Agreement, with or without minor modification, and without further notice to eligible members of the Settlement Class.

13. The Court appoints Epiq Class Action and Claims Solutions, Inc. to serve as Claims Administrator.

14. The Court has reviewed the “Notice of Proposed Class Action Settlement and Your Rights” (the “Notice”), attached to the Settlement Agreement, as Exhibits D, and the Publication Notice, attached to the Settlement Agreement as Exhibit E. The Court approves as to form the Notice and the Publication Notice. The Court also approves the method of directing notice to eligible members of the Settlement Class, as set forth in paragraph 15 below.

15. Within 30 days of this Order, the Claims Administrator shall prepare and cause individual copies of the Notice to be sent by United States First Class Mail to eligible members of the Settlement Class whose mailing addresses can be determined through reasonable effort. The Claims Administrator also shall mail copies of the Notice to any other potential members of the Settlement Class that request copies or that otherwise come to its attention. The Claims Administrator shall also cause the Publication Notice, the content of which shall be substantially as set forth in Exhibit E to the Settlement Agreement, to be published in the Jersey Journal once a week for four consecutive weeks and will also make the Notice available on the website dedicated to this Settlement in both English and Spanish.

16. The Court finds that the foregoing plan for notice to eligible members of the Settlement Class will provide the best notice practicable under the circumstances, and is in compliance with the requirements of Rule 23 and applicable standards of due process.

17. Prior to the Fairness Hearing, counsel for PPG and Settlement Class Counsel shall jointly file with the Court an affidavit from a representative of the Claims Administrator confirming that

the plan for disseminating the Notice and the Publication Notice has been accomplished in accordance with the provisions of paragraph 15 above.

18. Members of the Settlement Class who wish to exclude themselves from the Class must request exclusion within sixty (60) days of the date of the initial mailing of Notice, and in accordance with the instructions set forth in the Notice. Settlement Class Members who do not submit timely and valid requests for exclusion will be bound by the terms of the Settlement Agreement in the event it is approved by the Court and becomes effective, and by any orders and judgments subsequently entered in the Action, whether favorable or unfavorable, regardless of whether they submit a Claim and Release Form to the Claims Administrator. Members of the Settlement Class who submit timely and valid requests for exclusion will not be bound by the terms of the Settlement Agreement or by any orders or judgments subsequently entered in the Action, and they may not submit a Claim and Release Form to the Claims Administrator.

19. Members of the Settlement Class who do not request exclusion may submit written comments on or objections to the Settlement Agreement or other Settlement-related matters (including attorneys' fees) within sixty (60) days of the date of the initial mailing of Notice. Any Member of the Settlement Class who has not requested exclusion may also attend the Fairness Hearing, in person or through counsel, and if the Member of the Settlement Class has submitted written objections, may pursue those objections. No Member of the Settlement Class, however, shall be entitled to contest the foregoing matter in writing and/or at the Fairness Hearing unless the Member of the Settlement Class has served and filed by first-class mail, postage prepaid and postmarked within sixty (60) days of the date of the initial mailing of Notice, copies of the statement of objection, together with any supporting brief and all other papers the Member of the Settlement Class wishes the Court to consider (which must include the name and number of this

case), and a notice of appearance from any counsel for the Class Member who intends to appear at the Fairness Hearing, provided, however, that counsel is not necessary as the Settlement Class Member may appear and personally object. Any such objection, brief, notice of appearance, or other related document must be mailed to the Court at the following address: Martin Luther King Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101.

20. Unless otherwise directed by the Court, any Class Member who does not submit a statement of objection in the manner specified above will be deemed to have waived any such objection.

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

22. If the proposed Settlement Agreement is not approved by the Court or for any reason does not become effective, the Settlement Agreement will be regarded as nullified, certification of the Settlement Class for settlement purposes will be vacated, and the steps and actions taken in connection with the proposed Settlement (including this Order (except as to this paragraph, paragraph 4, and paragraph 23) and any judgment entered herein) shall become void and have no further force or effect. In such event, the parties and their counsel shall take such steps as may be appropriate to restore the pre-settlement status of the litigation.

23. Neither the Settlement Agreement nor the provisions contained therein, nor any negotiations, statements, or proceedings in connection therewith shall be construed, or deemed to be evidence of, an admission or concession on the part of any of the Plaintiffs, Settlement Class Counsel, PPG, any Settlement Class Member, or any other person, of any liability or wrongdoing

by any of them, or of any lack of merit in their claims or defenses, or of any position on whether any claims may or may not be certified as part of a class action for litigation purposes.

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

IT IS SO ORDERED:

Date: September 16, 2020 s/Esther Salas

The Honorable Esther Salas
United States District Judge