

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

**WEST MORGAN-EAST)
LAWRENCE WATER AND)
SEWER AUTHORITY, individually,)
and TOMMY LINDSEY, LANETTE)
LINDSEY, and LARRY WATKINS,)
individually, and on behalf of a class)
of persons similarly situated,)**

Plaintiffs,)

v.)

**3M COMPANY, DYNEON, L.L.C.,)
and DAIKIN AMERICA, INC.,)**

Defendants.)

Civil Action Number
5:15-cv-01750-AKK

FINAL APPROVAL ORDER

Before the court is the Joint Motion for Final Approval of *Pro Tanto* Class Action Settlement filed by West Morgan-East Lawrence Water and Sewer Authority (“the Authority”), the Class Representatives, and Daikin America, Inc. (“Daikin”) (collectively the “Parties”). Doc. 91. The Parties have moved the court, pursuant to Federal Rule of Civil Procedure 23, for a final order (1) certifying the Settlement Class pursuant to Rules 23(a) and 23(b)(2) and (2) granting final approval of the proposed Settlement Agreement as fair, reasonable, and adequate under Rule 23(e). The Parties’ *Pro Tanto* Individual and Class Settlement Agreement, dated November 15, 2016 (“Settlement Agreement”),

which was previously filed with the court (doc. 74-1), sets forth the terms and conditions for the settlement of the Class Claims, and was preliminary approved by the court on February 24, 2017. *See* doc. 79. The court also, on February 24, 2017, pursuant to Rule 23(b)(2), conditionally certified the Settlement Class.

WHEREAS, the court has considered the Settlement Agreement, accompanying exhibits and other documents;

WHEREAS, the Court held a Fairness Hearing on May 10, 2017, with the Parties present through Counsel, heard presentations by Counsel concerning the Settlement, certification of the Settlement Class, and the implementation of the Notice Plan, and has reviewed Class Counsels' Motion for Attorney Fees and Expenses, doc. 89; and

WHEREAS, the court considered objections filed with the court and the arguments of objectors,

It is hereby **ORDERED** that:

1. The court, pursuant to Rule 23(b)(2), certifies a Settlement Class defined as follows:

All owners and possessors of property as of February 21, 2017, who use water provided by the West Morgan-East Lawrence Water and Sewer Authority, the V.A.W. Water System, the Falkville Water Works, the Trinity Water Works, the Town Creek Water System, and the West Lawrence Water Cooperative.

2. The court has reviewed the Settlement Agreement and approves its terms.

- (a) The court finds that the Settlement Agreement is the product of informed, arm's length negotiation by counsel and is fair, just, reasonable, valid, and adequate, notwithstanding the objections that were raised at the Fairness Hearing.
- (b) The court finds that the Settlement Amount of \$5,000,000.00 (five million dollars) will be used to fund Class Benefits that will directly benefit the Class Members. Based on the court's analysis, the Class Benefits represent a reasonable compromise of the relief sought by the Class Members through the Rule 23(b)(2) Class Claims against Daikin. The court further finds that the provision of a safe water supply for the whole Class through the installation of a Granular Activated Carbon ("GAC") System provides significant benefits, as does the avoidance of the costs and interest charges for the Authority which would have been passed on to the Class Members. The payment of restitution to certain Class Members and to wholesale utility customers of the Authority, which is incidental to the injunctive relief, is also a significant benefit.
- (c) The court finds that the Class Settlement is fair, adequate, and reasonable, based on the court's consideration of the six *Bennett* factors:
- (1) the likelihood of success at trial;
 - (2) the range of possible recovery;
 - (3) the point on or below the range of possible recovery at which a

settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved. *See Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).

3. The court finds that the Class Notice and Notice Plan was appropriate under the circumstances and was reasonably calculated to inform Class Members of the proposed Settlement, afforded Class Members an opportunity to present their objections to the Settlement, and complied in all respects with the requirements of Rule 23 and the applicable due process requirements.
4. The court finds that Class Counsel implemented the Notice Plan in compliance with this court's Preliminary Approval Order.
5. The court finds that Daikin provided notice of the proposed Class Action Settlement to the appropriate federal and state officials pursuant to the requirements of the Class Action Fairness Act.
6. The court has considered the due process rights of absent Class Members and finds that such rights are adequately protected.
7. Class Counsel's Motion for Final Approval of Attorney Fees and Expenses, doc. 89, is hereby **GRANTED**, and Class Counsel are awarded \$550,000.00 for fees and expenses as part of this Settlement.

8. The Parties shall, pursuant to the terms of the Settlement Agreement, file with the court an agreed proposed Final Order that dismisses the Released Claims with prejudice, enjoins all further litigation by Named Plaintiffs and Class Members on the Released Claims, and enters judgment pursuant to Rule 54(b) on plaintiffs' claims against Daikin, with this court exercising continuing jurisdiction to administer the Settlement. Proceedings in this case as to Daikin continue to be stayed until a final judgment as referenced above is entered.

DONE the 10th day of May, 2017.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE