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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DANIELLE TRUJILLO, as Guardian Ad Litem for KADEN PORTER, a minor, on behalf of himself and others similarly situated; LACEY MORALES, as Guardian Ad Litem for ISABEL MORALES, a minor, on behalf of herself and others similarly situated; BEVERLY HOY, on behalf of herself and all others similarly situated;

Plaintiffs,

v.

AMETEK, INC., a Delaware corporation; SENIOR AEROSPACE KETEMA, a business entity; SENIOR OPERATIONS, LLC, a limited liability company; THOMAS DEENEY; and DOES 2 through 100, inclusive,

Defendants.

Case No.: 3:15-cv-01394-GPC-AGS

FINAL JUDGMENT AND ORDER GRANTING:

- 1) APPROVAL OF MINORS' COMPROMISES [Dkt. 206, 208]**
- 2) FINAL APPROVAL OF CLASS ACTION SETTLEMENT [Dkt. 181];**
- 3) MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS [Dkt. 180]; and**
- 4) JOINT MOTION FOR CONSENT TO EXERCISE JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE [Dkt. 201]**

Plaintiffs Kaden Porter, participating through his guardian ad litem Danielle Trujillo, Isabel Morales, participating through her guardian ad litem Lacey Morales, and Beverly Hoy are two former students and a former teacher, respectively, at Magnolia Elementary School ("Magnolia Elementary"), which is adjacent to a

1 manufacturing facility in El Cajon, California. They filed a Complaint in this action
2 (the “Litigation”) against a previous owner of the facility, Ametek, Inc., Ametek
3 officer Thomas Deeney, and a subsequent owner of the facility, Senior Operations
4 LLC.¹ Plaintiffs allege that Defendants contaminated the groundwater with waste
5 chemicals and then failed to remediate the resulting plume of polluted water,
6 exposing teachers and children at Magnolia Elementary to unsafe indoor air
7 concentrations of trichloroethylene (“TCE”). The operative pleading alleges causes
8 of action for negligence, gross negligence and public nuisance on behalf of a
9 putative class of those current and former teachers and students.

10 After arm’s-length settlement discussions between Plaintiffs and Defendants,
11 the Parties have entered into a Settlement Agreement (“Agreement”) with respect
12 to the Litigation, which, if approved, would resolve this certified class action.

13 The Parties entered into a Settlement Agreement that, following one
14 amendment and one modification, would resolve the action and settle the putative
15 class’s claims if the Court certifies the class and approves the Settlement. On
16 April 14, 2020, the Court entered its Preliminary Approval Order approving the
17 Settlement, certifying the Class, appointing Class representatives and Class
18 Counsel, and scheduling a final approval hearing. Dkt. 179. The Court conducted
19 two hearings to determine whether the Settlement is fair, reasonable, adequate, in
20 the best interests of the Class, and free from collusion, such that the Court should
21 grant Final Approval of the Settlement, and to consider Plaintiffs’ motion for an
22 award of attorneys’ fees, costs and litigation expenses, and incentives for the Class
23 Representatives (“Fairness Hearing”). Plaintiffs moved for approval of the minor
24 Plaintiffs’ compromises on January 6, 2021. Dkt. 206; Dkt. 208.

25
26 ¹ The initial Complaint also named Senior Aerospace Ketema (“Ketema”) as a
27 Defendant. Plaintiffs dismissed any claims against Ketema as a separate entity by
28 not naming them in the now-operative pleading, which alleges instead that Ketema
is a tradename of Senior Operations.

1 The Court has considered:

- 2 • Plaintiffs’ briefing in support of the Motion for an Order Granting Final
- 3 Approval of the Class Action Settlement (the “Final Approval Motion”);
- 4 • Plaintiffs’ briefing in support of the Motion for Attorneys’ Fees, Costs,
- 5 and Incentive Awards (the “Fee Motion”);
- 6 • Plaintiffs’ supplemental briefing in support of the Final Approval Motion;
- 7 • The declarations and exhibits submitted in support of each Motion and
- 8 the Settlement;
- 9 • The briefing and Magistrate Judge Schopler’s Report and
- 10 Recommendation on the Motions to Confirm Minor’s Compromises;
- 11 • The Settlement Agreement;
- 12 • The First Amended Settlement Agreement;
- 13 • The First Modification to the First Amended Settlement Agreement;
- 14 • The Second Modification to the First Amended Settlement Agreement
- 15 (collectively with the First Amended Settlement Agreement and the First
- 16 Modification, the “Amended Settlement Agreement”);
- 17 • The entire record in this proceeding, including but not limited to the
- 18 briefing, declarations, and exhibits submitted in support of preliminary
- 19 approval of the Settlement in its various iterations, including;
- 20 ○ The Notice Plan for providing full and fair notice to the Class;
- 21 ○ The lack of any Class Member objections to or requests for
- 22 exclusion from the Settlement;
- 23 ○ The absence of any objection or response by any official after the
- 24 provision of all notices required by the Class Action Fairness Act
- 25 of 2005, 28 U.S.C. § 1715; and
- 26 ○ Counsel’s oral presentations at the two hearings on the
- 27 Settlement’s fairness;

28 ///

1 **II. Definitions**

2 Any capitalized terms used but not defined in this Order shall have the
3 meanings given to them in the Amended Settlement Agreement.

4 **III. Jurisdiction**

5 The Court has subject matter jurisdiction over this action, including jurisdiction
6 over all claims alleged in the action, settlement of those claims on a class-wide
7 basis, and all claims released by the Settlement, and any objections submitted to
8 the Settlement.

9 The Court also has personal jurisdiction over the Parties. As discussed in
10 greater detail below and in the Court's Preliminary Approval Order, the Class
11 Members received adequate notice, had the right to opt out, and were adequately
12 represented by Porter, Isabel Morales, and Hoy. Accordingly, the Court can and
13 does exercise jurisdiction over those Class Members' claims. *See Phillips*
14 *Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1986) (adequate notice and
15 opportunity to be heard permits courts to exercise jurisdiction over claims of absent
16 class members).

17 **IV. Findings and Conclusions**

18 **A. Minors' Compromises**

19 Plaintiffs moved for approval of the minor Plaintiffs' compromises on
20 January 6, 2021. The Court has reviewed the briefing, Magistrate Judge Schopler's
21 Report and Recommendation, and (as described in greater detail *infra*) the terms
22 of the settlement agreement. The R&R recommended approval contingent upon
23 the parties' provision of proof that the parties modified their settlement to reflect
24 Defendants' agreement not to challenge incentive awards of \$5,000, rather than
25 the \$2,500 originally provided for. Dkt. 210. The parties provided that proof.
26 See Dkt. 213.

27 The Court agrees with the R&R's conclusion that the Amended Settlement
28 Agreement is in the best interests of the minor Plaintiffs and approves the

1 settlement as to Porter and Isabel Morales.

2 **B. Definition of Class and Class Members**

3 The Court adopts the Preliminary Approval Order’s definition of the “Class,”
4 comprised of the “Class Members,” and reproduces the class definition below:

5 Every person who: 1) attended Magnolia Elementary School as a
6 student for one or more school years between January 1, 1963,
7 and April 13, 2020; and/or 2) worked as staff at Magnolia
8 Elementary School for one or more school years between
9 January 1, 1963, and April 13, 2020.

10 **C. Class Certification**

11 The Court grants final certification of the Class. All Class Members are subject
12 to this Order and the Final Judgment.

13 **1. Numerosity**

14 The proposed Settlement consists of potentially thousands of claimants,
15 which can reasonably be inferred from the number of students and staff who
16 attended Magnolia Elementary from 1963 to 2020. For the purposes of this
17 Settlement, no party or objector contests numerosity. The Court finds that the Class
18 is sufficiently numerous that joinder of all class claims is impracticable. Fed. R.
19 Civ. P. 23(a)(1).

20 **2. Commonality**

21 The Court finds that there are questions of law and fact common to the Class,
22 including whether Defendants caused TCE contamination in groundwater, whether
23 the TCE contamination made its way to indoor air within Magnolia Elementary, and
24 whether and to what extent Class Members were exposed to the indoor air TCE
25 contamination. All Class Members allege the same injury: exposure to indoor air
26 TCE contamination resulting in increased risk of the onset of the disease/illness. All
27 Class Members were exposed to the same or substantially similar indoor air
28 contamination, and all allegedly suffered increased risk of disease or illness from

1 that exposure. Resolution of the common questions about whether Defendant’s
2 contamination of groundwater and indoor air caused exposure and increased risk
3 to all Class Members would resolve all of the claims in one stroke. Accordingly, the
4 Court affirms its prior determination that the Class satisfies the commonality
5 requirement.

6 **3. Typicality**

7 Plaintiffs’ claims are reasonably co-extensive with those of the other Class
8 Members and meet Rule 23(a)(3)’s requirements. Typicality is a “permissive”
9 standard under which “representative claims are ‘typical’ if they are reasonably co-
10 extensive with those of absent class members; they need not be substantially
11 identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998), *overruled*
12 *on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). Plaintiffs
13 are two former students at Magnolia Elementary School (represented by their
14 guardians ad litem) and one former teacher at the School. They allege that they
15 have suffered increased risk from the same or substantially similar indoor air
16 contamination as the other Class Members, they do not allege their increased risk
17 has matured into illness traceable to the contamination, and the Settlement does
18 not release any such claims for illness or death. No party or objector contests
19 typicality for the purposes of the Settlement. The Court finds that Plaintiffs’ claims
20 are reasonably co-extensive with those of the other Class Members.

21 **4. Adequacy of Class Representatives**

22 Having considered the factors set forth in Rule 23(g)(1), the Court finds that
23 Plaintiffs and Class Counsel are adequate to represent the Class. For the purposes
24 of this Settlement, no party or objector contends that the Class lacks adequate
25 representation. Class Counsel has fully and competently prosecuted all causes of
26 action, claims, theories of liability, and remedies reasonably available to the Class
27 Members. The Court affirms its appointment of the Law Offices of Baron & Budd
28 and Gomez Trial Attorneys as Class Counsel. The Court also affirms its

1 appointment of Plaintiffs Kaden Porter, through his guardian ad litem Danielle
2 Trujillo, Isabel Morales, through her as guardian ad litem Lacey Morales, and
3 Beverly Hoy as class representatives, finding that they possess no interests
4 adverse to the Class and are adequate to represent the Class.

5 **5. The Class Meets the Requirements of Rule 23(b)(3)**

6 For the purposes of this Settlement, the Parties contend that the elements of
7 Rules 23(b)(3) have been met. The Court finds that questions of law or fact common
8 to Class Members predominate over any questions affecting only individual
9 members and that class treatment is the superior means to adjudicate Plaintiffs'
10 claims. Plaintiffs allege a common injury on behalf of the Class, specifically that
11 Defendants' acts or omissions created a condition of contamination that resulted in
12 Class Members' general exposure to indoor air concentrations of TCE and an
13 increased risk of the onset of disease or illness. The Court also finds that resolution
14 on a class-wide basis is superior for purposes of judicial efficiency and to provide a
15 forum for absent Class Members, who are unlikely to bring individual suits to seek
16 the relief provided here. The Court affirms its prior ruling that the Class satisfies
17 Rule 23(b)(3).

18 **V. The Settlement**

19 "Because of the unique due process concerns relating to absent class
20 members and the inherent risk of collusion between class counsel and defense
21 counsel, Federal Rule of Civil Procedure 23(e) requires district courts to review
22 proposed class action settlements for fairness, reasonableness, and adequacy."
23 *Roes, 1-2 v. SFBSC Management, LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019).
24 Where the settlement comes prior to class certification, "settlement approval
25 requires a higher standard of fairness and a more probing inquiry than may normally
26 be required under Rule 23(e)." *Id.* at 1048-49 (internal marks and citation omitted).
27 The Court must look particularly for evidence of collusion or other conflicts of
28 interest to protect absent class members. *Id.*

1 Applying this standard, the Court finds that the Settlement is fair, reasonable,
2 and adequate to the Class, in light of the complexity, expense, and likely duration
3 of the litigation (including appellate proceedings), as well as the risks involved in
4 establishing liability, damages, and the appropriateness of class treatment through
5 trial and appeal. See *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 963
6 (9th Cir. 2009). The Settlement appears to be the result of arm's-length negotiation
7 and the record doesn't support a conclusion that the Settlement is the result of
8 either collusion among Plaintiffs, Class Counsel, and Defendants or conflicts of
9 interest between Plaintiffs and Class Counsel, on the one hand, and the Class
10 Members, on the other.

11 **A. Generally**

12 The Parties reached the proposed Settlement only after proceeding with
13 voluntary investigation and discovery in this action and following protracted
14 negotiations with oversight from Magistrate Judge Andrew G. Schopler and the
15 undersigned District Judge. Following resolution in principle, the Parties engaged
16 in extensive negotiations related to the specific terms of the original Settlement
17 Agreement, the Amended Settlement Agreement, the Preliminary Approval Motion,
18 and the notices to Class Members (the "Settlement Notices") in order to reach final
19 agreement on the specific terms of the proposed Settlement.

20 Plaintiffs and Class Counsel maintain that this action and the claims asserted
21 in it are meritorious and that Plaintiffs and the Class might have prevailed at trial.
22 Nevertheless, Plaintiffs and Class Counsel have agreed to settle the action
23 pursuant to the provisions of the Settlement, after considering, among other things:
24 (1) the benefits to Plaintiffs and the Class under the terms of the Settlement; (2) the
25 uncertainty of prevailing at trial; (3) the uncertainty of maintaining a class through
26 or after trial; (4) the attendant risks, difficulties, and delays inherent in litigation,
27 appeals and post-trial motions, especially in complex actions such as this; and
28 (5) the desirability of consummating this Settlement promptly in order to provide

1 substantive relief to Plaintiffs and the Class without unnecessary delay and
2 expense.

3 Plaintiffs and Class Counsel agree that the Settlement is fair, reasonable, and
4 adequate because it provides substantial benefits to the Class, is in the best
5 interests of the Class, and fairly resolves the claims alleged in this action. The Court
6 has received no objections to the Settlement.

7 Defendants expressly deny any wrongdoing alleged in the pleadings in the
8 action and do not admit or concede any actual or potential fault, wrongdoing, or
9 liability in connection with any facts or claims which have been or could have been
10 alleged against it in the action. Defendants nonetheless want to settle the action
11 because the proposed Settlement will: (1) avoid further expense and disruption of
12 the management and operation of Defendants' businesses due to the pendency
13 and defense of the action; (2) finally put Plaintiffs' and the Class' claims and the
14 underlying matters to rest; and (3) avoid the substantial expense, burdens, and
15 uncertainties associated with a potential finding of liability and damages on the
16 claims alleged in the Complaint.

17 The Parties engaged in thorough formal and informal discovery addressing,
18 among other things, claims and defenses on the issues of: (1) Defendants'
19 responsibility for the contamination at the former Ametek facility; (2) whether the
20 contamination at the facility resulted in contamination of groundwater; (3) the
21 natural fate and transport of contaminated groundwater and whether it resulted in
22 contamination underneath Magnolia Elementary; (4) whether the nature of the
23 contamination of the groundwater at Magnolia Elementary resulted in TCE being
24 present in soil vapor under the school; (4) whether the TCE in the soil vapor under
25 the school eventually made its way into indoor air in classrooms and offices;
26 (5) whether and to what extent the Class Members who worked at and attended
27 Magnolia Elementary were exposed to TCE in indoor air; (6) whether the level of
28 exposure presented a significant health risk to Class Members; (7) whether Class

1 Members suffered an actual increased risk of the onset of specific diseases
2 associated with TCE exposure at the levels purportedly observed and modeled
3 within the school; and (8) whether early clinical detection through medical
4 consultation was reasonable and appropriate. As a result of this investigation, the
5 Parties were well-versed in the merits of their claims and defenses, the risks of
6 continued litigation, and the likelihood of success at trial.

7 Thorough discovery and representation by attorneys with extensive
8 experience in toxic tort and complex class action litigation informed Plaintiffs and
9 Defendants of the legal bases for the claims and defenses in this litigation and
10 enabled them to balance the benefits of the Settlement relative to further litigation.

11 **B. The Settlement Affords Meaningful Relief in Exchange for the**
12 **Release of Class Members' Claims**

13 The Amended Settlement Agreement provides relief that is meaningful and
14 commensurate to the claims released by that Agreement. Through the Settlement,
15 Class Members release claims arising from this action, including claims for
16 attorneys' fees and expenses, costs or disbursements incurred by Class Counsel,
17 and claims that were or could have been set forth as part of the action based on
18 the facts alleged. It includes a waiver of all rights under Section 1542 of the
19 California Civil Code, except to the extent otherwise specified in the Amended
20 Settlement Agreement. However, Class Members do not release personal injury
21 and wrongful death claims arising out of illness traceable to the plume, any claims
22 arising from the mitigation systems installed pursuant to the Settlement, and any
23 claims arising from Defendants' future actions taken to mitigate or remediate the
24 plume (whether at a regulator's insistence or of Defendants' own accord).

25 In exchange for this release, Defendants confer a benefit of \$1.5 million on
26 the roughly 8,600-person class, in the form of medical consultations and
27 remediation and mitigation of the plume. Of that amount, \$1 million will be paid into
28 a Medical Consultation Fund. Each Class Member is entitled to one (1) medical

1 consultation with a doctor selected by Class Counsel to receive any or all of the
2 following procedures, according to the advice of a physician selected at the
3 Subclass Member's discretion:

- 4 • history and physical examination by board-certified physician;
- 5 • blood chemistry, blood count and microscopy urinalysis;
- 6 • kidney CT scan (in a follow-up appointment, if deemed necessary); and
- 7 • liver ultrasound or MRI (in a follow-up appointment, if deemed necessary).

8 These procedures are intended to screen for medical conditions including
9 those potentially associated with exposure to high concentrations of TCE, including
10 kidney cancer, liver cancer, and hematolymphatic cancer. All Medical Subclass
11 Members who submit a claim within two years of this Order will be entitled to these
12 services, which will be billed directly to the Claims Administrator and paid in full out
13 of the Medical Consultation fund until four years and six months after the date of
14 this Order or that fund is exhausted. Any amounts remaining in the Medical
15 Consultation fund after four years and six months pass into the
16 Remediation/Mitigation Fund described below.

17 Ametek will also pay \$500,000 into a fund (the "Remediation/Mitigation
18 Fund") dedicated to monitoring, remediation, and mitigation activities related to the
19 plume in accordance with and pursuant to directed or agreed response actions from
20 the Regional Water Quality Control Board, the Department of Toxic Substance
21 Control, or any other regulatory or governmental agency responsible for oversight
22 of the plume. Any amounts remaining in the Remediation/Mitigation fund after 20
23 years will be paid to the Cajon Valley Union School District.

24 In total, the benefit to the class, including both the Remediation/Mitigation
25 Fund and the Medical Consultation Fund, but subtracting the fees, costs, and
26 incentives the Court awards by this Order, comes to around \$65 per member of the
27 roughly 8,600-member class. The Court has considered the realistic range of
28 outcomes in this matter, including the amount Plaintiffs might receive if they

1 prevailed at trial, the risk that Plaintiffs' recovery at trial could be less than the
2 amount of the Settlement or nothing at all, the strength and weaknesses of the
3 case, the novelty and number of the complex legal issues involved, and the scope
4 of the claims that Class Members release by the Settlement. The magnitude of the
5 alleged harm in this case lends particular support to a finding that the Settlement
6 provides a meaningful and reasonable benefit to the Class. Plaintiffs allege that the
7 highest-measured level of TCE contamination at Magnolia Elementary was
8 associated with an additional lifetime cancer risk of 42 in a million, or 0.0042%
9 (although they allege that vapor intrusion was "[m]ost likely" more severe earlier in
10 the class period). Second Am. Compl., Dkt. 101, ¶¶ 51-62. Any damages that might
11 be recovered at trial for such a harm would doubtfully exceed the benefit provided
12 by the Settlement by much, if at all.

13 The Court has also considered the risk that, in the absence of Settlement
14 funds set aside for abatement, Defendants may not devote funds to that purpose.
15 See, e.g., *id.*, ¶ 44 (alleging Defendants' resistance to remediation and citing
16 Administrative Liability Complaint alleging Ametek's failure to comply with prior
17 abatement order); Dkt. 197 at 12:6-14:15 (discussing Class Counsel's view of
18 benefits of remediation to Class Members). Finally, the Court has reviewed and
19 considered the agreements made in connection with the Settlement and disclosed
20 to the Court pursuant to Rules 23(e)(3) and (e)(2)(c)(iv), finding nothing in those
21 agreements to suggest that the Settlement doesn't provide adequate relief.

22 The relief offered by the Settlement is fair, reasonable, and adequate in view
23 of each of these considerations.

24 **C. No Collusion or Conflicts of Interest**

25 The Court hasn't found evidence to support a conclusion that Plaintiffs and
26 Defendants colluded. Up to and through the Settlement, both Parties vigorously
27 litigated and negotiated this action, as evidenced by the docket in this action and
28 the Court's understanding of the proceedings in the related actions.

1 However, the Amended Settlement Agreement’s “clear sailing” provision,
2 under which Defendants agreed not to contest any request for fees exceeding 25%
3 of the Settlement funds, can be a “subtle sign of collusion.” *SFBSC Management*,
4 944 F.3d at 1049. The presence of such a provision requires the Court to look
5 closely at the reasonableness of the recovery and the reasonableness of fees to
6 confirm that Class Counsel haven’t negotiated a benefit for themselves using the
7 Class’s claims as leverage. *Id.*

8 That scrutiny doesn’t reveal evidence that Class Counsel bargained away a
9 Class benefit in exchange for clear sailing on an unreasonably large fee award. The
10 Settlement’s benefit to the Class is appropriate in relation to the likelihood of
11 success at trial and the magnitude of the Class claims. The alleged harm to Class
12 Members, in the form of marginally increased risk of illness or disease, renders the
13 Settlement’s benefit favorable even after subtracting fees, costs, and incentive
14 awards. Moreover, the minute marginal risk alleged to each individual Class
15 Member supports the conclusion that devoting the vast majority of the net recovery
16 to remediation rather than medical screening, as the Settlement does, is reasonable
17 and ensures efficient use of the Settlement funds to redress the Class’s shared
18 injury. Finally, the Amended Settlement Agreement conditions payment on
19 execution of settlement agreements in three related matters between Defendants
20 and, respectively, another class, three mobile home parks near the facility, and an
21 individual who lived in one of those mobile home parks. The Court has reviewed
22 those settlements and finds that their terms don’t unreasonably favor the other
23 class, the mobile home parks, or the individual in light of the claims remaining in
24 those cases at the time of settlement, remedies sought, and the amount of the
25 settlement in this case. Nor do any other provisions of those settlements suggest
26 that the Class’s recovery was reduced to enhance the other plaintiffs’ recovery.

27 Class Counsel’s requested fees withstand close scrutiny, too. They seek 20%
28 of the total—less than the 25% benchmark, less than the maximum the clear sailing

1 agreement allows without objection, and a bit lower even than Class Counsel's
2 lodestar. As discussed in greater detail *infra*, Section XII, these fees are
3 reasonable. The Court finds it unlikely that the clear sailing agreement provided a
4 non-negligible benefit to Class Counsel under these circumstances, making it
5 unlikely, too, that the Class's interests were sacrificed in securing the clear sailing
6 provision. Because both the Class benefit and the requested fees withstand close
7 scrutiny, the Court finds no apparent collusion.

8 **D. Response of Class**

9 The response of the Class after full, fair, and effective notice favors final
10 approval of the Settlement. Out of the estimated thousands who received notice,
11 no Class Member submitted a valid request for exclusion or filed an objection to the
12 Settlement.

13 **VI. Notice to Class**

14 The Class has received the best practicable notice under the circumstances
15 of this case. The Parties' selection and retention of Epiq Class Action & Claims
16 Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and
17 appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds
18 that the Settlement Notices were published to the Class Members in the form and
19 manner approved by the Court in its Preliminary Approval Order. See Dkt. 181-6.
20 The Settlement Notices provided fair, effective, and the best practicable notice to
21 the Class of the Settlement's terms. The Settlement Notices informed the Class of
22 Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the
23 date, time, and place of the Fairness Hearing, and explained Class Members' rights
24 to object to the Settlement or Fee Motion and to appear at the Fairness Hearing.
25 The Settlement and the Court's deadlines afforded Class Members reasonable time
26 to exercise such rights. See *Weeks v. Kellogg Co.*, 2013 WL 6531177, at *22-23
27 (C.D. Cal. Nov. 23, 2013) (class members' deadline to object or opt out must arise
28 after class counsel's fee motion is filed), *citing In re Mercury Interactive Corp. Secs.*

1 *Litig.*, 618 F.3d 988, 994 (9th Cir. 2010). The Settlement Notices fully satisfied all
2 notice requirements under the law, including the Federal Rules of Civil Procedure,
3 the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and
4 all due process rights under the U.S. Constitution and California Constitutions.

5 **VII. Notices Pursuant to 28 U.S.C. § 1715.**

6 The Court finds that Defendants satisfied all notice requirements of the Class
7 Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. See Hyte Decl., Dkt.
8 181-5. On April 7, 2020, at Defendants’ direction, Epiq subsidiary SSI Settlement
9 Services served the notices required by 28 U.S.C. § 1715(b), which included a copy
10 of the Settlement Agreement and other required documents, as well as notice of
11 the date, time, and place of the Fairness Hearing. The Court has received no
12 objection or response to the Settlement Agreement by any federal or state official,
13 including any recipient of the foregoing notices.

14 **VIII. Release**

15 The Release set forth in the Amended Settlement Agreement is incorporated
16 in this Order in all respects. That Release is effective as of the date of the entry of
17 this Order.

18 **IX. Binding Effect**

19 The Settlement and this Final Order and Judgment shall be forever binding
20 on Plaintiffs, Class Members, their heirs, executors and administrators, successors,
21 and assigns. The Settlement and the Final Order and Judgment will have res
22 judicata and other preclusive effect with respect to all claims subject to the
23 Judgment or released by the Settlement.

24 **X. Implementation of Settlement**

25 The Parties are directed to implement the Amended Settlement Agreement
26 according to its terms.
27
28

XI. Objections and Opt-Outs after Implementation

Any Class Member who failed to file a timely and valid objection to or opt out of the Settlement has waived the right to object or opt out. Any Class Member seeking to challenge the Court's rulings or opt out must: (a) move to intervene upon a showing of good cause sufficient to overcome the presumption that absent Class Members are bound by the judgment and the deadline to object or opt-out; (b) request a stay of implementation of the Settlement; and (c) post an appropriate bond. *See generally Silber v. Mabon*, 18 F.3d 1449, 1454-1455 (9th Cir. 1994) (discussing factors influencing trial court's discretion in addressing untimely requests to opt-out of class). Absent satisfaction of all three requirements, Defendants are authorized, at its sole option and in its sole discretion, to proceed with the implementation of the Settlement, including before the Effective Date, even if such implementation would moot any appeal.

XII. Attorneys' Fees and Litigation Expenses

Class Counsel is entitled to reasonable attorneys' fees incurred in connection with the action and in reaching this Settlement in the amount of \$300,000.00, to be paid at the time and in the manner provided in the Amended Settlement Agreement. Fee awards must "be reasonable under the circumstances," and where the award comes out of a common fund, "courts have discretion to employ either the lodestar method or the percentage-of-the-fund approach." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The latter approach is appropriate in a common-fund case "[b]ecause the benefit to the class [in such a case] is easily quantified." *Id.*

"[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." *Id.* The benchmark on its own doesn't establish reasonableness conclusively, but it's a "helpful starting point" that can be supplemented with consideration of factors including "the extent to which class

1 counsel achieved exceptional results for the class, whether the case was risky for
2 class counsel, whether counsel's performance generated benefits beyond the cash
3 settlement fund, the market rate for the particular field of law (in some
4 circumstances), the burdens class counsel experienced while litigating the case
5 (e.g., cost, duration, foregoing other work), . . . whether the case was handled on a
6 contingency basis[, . . . and] class counsel's lodestar summary figures." *In re Online*
7 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (internal marks
8 omitted).

9 The fee award sought in the present case is reasonable when judged by this
10 standard. Class Counsel requests a \$300,000 award, representing 20% of the
11 \$1.5 million directed to the Class's benefit and substantially less than the \$375,000
12 suggested by application of the 25% benchmark rate. Class Counsel took this case
13 on contingency, risking non-payment for 955 hours of attorney time, 250 hours of
14 paralegal time, and \$466,948.29 in other costs during the six-year course of this
15 litigation. That non-payment risk was substantial in this case. As discussed *supra*,
16 Section V(B), the alleged increased risk of illness—the harm for which Plaintiffs
17 sought recovery—is small, even accounting for the size of the Class. The likelihood
18 that Class Counsel wouldn't be able to recover some or all of its fees was
19 abnormally high as a result, even assuming away the difficulties of proving harm
20 and causation, which Defendants vigorously contested, the other elements of the
21 Class's claims, and the appropriateness of the class form. See, e.g., Dkt. 85-2 at
22 17-20 (defendants' expert report opining that plaintiffs' alleged increased risk from
23 plume isn't "significant" against background lifetime cancer risks around 40%). The
24 underlying risk that Plaintiffs wouldn't prevail confirms, too, that the benefits Class
25 Counsel secured in the Settlement are a strong result.

26 Class Counsel's lodestar calculation of \$729,000, while not the primary basis
27 for or necessary to the Court's conclusion, confirms that a \$300,000 award is
28 reasonable. The multiplier—the ratio of the award to the result of the lodestar

1 calculation—is less than 0.5. Percentage-of-recovery awards with a multiplier less
2 than one are the exception in common fund cases. Surveying percentage-based
3 fee awards from 1996 to 2001 in such cases where the total award was between
4 \$50 million and \$200 million, the Ninth Circuit found only one in twenty-four with a
5 multiplier less than one. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 Appx. (9th Cir.
6 2002). The comparison isn't apples-to-apples, since this case is substantially
7 smaller, but that size difference underscores the reasonableness of the multiplier
8 here. Courts generally award *larger* multipliers in smaller cases. *See, e.g., id.* at
9 1047-48 (noting that in large cases, courts must consider size of total fund before
10 calculating fees as percentage of that amount); *In re Washington Public Power*
11 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1297 (9th Cir. 1994) (observing that “the
12 percentage of an award generally decreases as the amount of the fund increases”).

13 Class Counsel's rates and fees used to arrive at the lodestar amount appear
14 reasonable, too. They charged the following rates for attorneys and staff in this
15 litigation:

- 16 • Scott Summy, an attorney with approximately 30 years' experience,
17 \$1,000.00 per hour;
- 18 • John Gomez, an attorney with approximately 27 years' experience,
19 \$1,000.00 per hour;
- 20 • John Fiske, an attorney with approximately 14 years' experience, \$750.00 per
21 hour;
- 22 • Deborah Dixon, an attorney with approximately 13 years' experience,
23 \$600.00 per hour;
- 24 • Jason Julius, an attorney with approximately 13 years' experience, \$550.00
25 per hour;
- 26 • Jennifer Hutchison, a senior paralegal, \$250 per hour;
- 27 • Kelly McDaniel, a senior paralegal, \$250 per hour.

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1 See Dkt. 180-2 at 121, 129, 131 (stating law school graduation dates for each Baron
2 & Budd attorney); Dkt. 180-3 at 8, 10 (same for attorneys at Gomez Trial Attorneys).
3 These rates are reasonable in this jurisdiction for similarly complex legal work.
4 *Cf. McKibben v. McMahon*, Case No. EDCV 14-2171, 2019 WL 1109683 at *4-*5
5 (C.D. Cal. Feb. 28, 2019) (finding rates between \$650 and \$900 reasonable for
6 experienced counsel in employment class action).

7 The time Class Counsel spent on this action is reasonable in view of the
8 complexity and subject matter of this litigation, the skill and diligence with which it
9 has been prosecuted and defended, and the quality of the result obtained for the
10 Class. For this case's share of a *Lone Pine* analysis, 31 fact witness depositions,
11 18 expert witness depositions, work with experts in anticipation of a class
12 certification motion, written discovery, and drafting of pleadings and briefing on
13 discovery disputes, motions to dismiss, and other tasks described in the Fiske
14 Declaration:

- 15 • Mr. Summy billed 80 hours;
- 16 • Mr. Gomez billed 60 hours;
- 17 • Mr. Fiske billed 300 hours;
- 18 • Ms. Dixon billed 365 hours;
- 19 • Mr. Julius billed 150 hours;
- 20 • Ms. Hutchison billed 150 hours; and
- 21 • Ms. McDaniel billed 100 hours.

22 These are reasonable sums for over five years of active litigation of a complex
23 matter.

24 Applying the benchmark method and taking into consideration the burden and
25 risk to Class Counsel, the quality of the result, the contingency fee arrangement,
26 and Class Counsel's lodestar summary, the Court finds a fee award of \$300,000
27 reasonable and orders that Class Counsel be compensated in that amount in the
28 manner specified in the Amended Settlement Agreement. No named Plaintiff or any

1 other Class Member shall have any obligation to pay Class Counsel any further
2 amounts for attorneys' fees, costs, or litigation expenses in this action. As no
3 objection was filed, no Class Member is entitled to seek or receive any further
4 payment of attorneys' fees or litigation expenses incurred in connection with this
5 action.

6 Class Counsel had incurred, at the time of the Fee Motion, \$466,948.29 in
7 out-of-pocket litigation expenses in connection with this litigation. These expenses
8 were of a nature typically billed to fee-paying clients and were reasonable and
9 necessary to the prosecution of this action in light of the extent of proceedings both
10 on and off the Court's docket, the complexity of the legal and factual issues in the
11 case, the necessity of extensive expert and fact discovery, the amount at stake in
12 this litigation, and the vigorous efforts of counsel for all Parties. Accordingly, the
13 Court awards these expenses to Class Counsel—\$259,249.98 to Baron & Budd
14 and \$207,698.31 to Gomez Trial Attorneys—paid according to the terms of the
15 Amended Settlement Agreement.

16 Epiq, as Claims Administrator, estimates total administration costs, between
17 both this settlement and the related Cox settlement, of \$179,283. This amount is
18 reasonable in light of the total settlement funds and the size of the classes—
19 together with the Cox settlement, Epiq will administer \$2,500,000 in settlement
20 funds for two classes, each of which is estimated to include over 7,000 members.
21 Epiq can reasonably be expected to continue to expend costs that are necessary
22 and appropriate for the administration of the Class claims. Those costs are
23 recoverable pursuant to the terms of the Amended Settlement Agreement. The
24 Court orders that Epiq shall be paid in the time and manner provided in the
25 Amended Settlement Agreement, according to Epiq's invoices in an amount up to
26 \$185,000. Any costs beyond that amount may be permitted pursuant to further
27 Court order.

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1 **XIII. Class Representative Incentive**

2 Plaintiffs in this action, whom the Court appointed Class Representatives in
3 its Preliminary Approval Order, have actively participated in and assisted Class
4 Counsel with this litigation for the substantial benefit of the Class despite facing
5 significant personal limitations. Trujillo, on behalf of Porter, Lacey Morales, on
6 behalf of Isabel Morales, and Hoy waived their right to pursue individual relief. Each
7 completed substantial discovery and had begun preparations for deposition, and
8 each was prepared to pursue this matter through trial. Apart from the requested
9 incentive, Porter, Trujillo, Isabel Morales, Lacey Morales, and Hoy will receive no
10 settlement payments or benefits of any nature other than the benefits available to
11 the Class generally.

12 The requested incentive awards of \$5,000 each are reasonable in proportion
13 to their efforts in this action. See Trujillo Decl., Dkt. 181-3; Hoy Decl., Dkt. 181-4;
14 L. Morales Decl., Dkt. 181-5. Those awards amount to 1% of the total settlement
15 value, a reasonable amount in proportion to the Settlement as a whole. See, e.g.,
16 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving
17 \$5,000 award to each of two representative plaintiffs in settlement of \$1.725
18 million). To compensate the Class Representatives for the burdens of their active
19 involvement in this action and their efforts on behalf of the Class, the Court
20 approves incentive awards in the amount of \$5,000 each for Porter, Isabel Morales,
21 and Hoy, paid in accordance with the terms of the Amended Settlement
22 Agreement.² The awards to Porter and Isabel Morales shall be handled in the
23 manner described in the Motions for Minor's Compromise, Dkt. 206, 208, and
24

25
26 ² The Amended Settlement Agreement originally provided for clear sailing for
27 incentive awards of up to \$2,500 per Class Representative. The parties
28 subsequently entered into a Second Modification of the Amended Settlement
Agreement to reflect the \$5,000 amount. The Settlement Notices reflected the
larger incentive, and the Court received no objection.

1 approved by this Order.

2 **XIV. Class Member Objections**

3 Having considered the lack of any written objections, oral argument at the
4 Fairness Hearing or the subsequent hearing, along with the documents and record
5 on file in this Action, the Court need not overrule any objections.

6 Even if there had been any objection, the Court finds no evidence of collusion.
7 Considering the weaknesses in Plaintiffs' case along with the strengths of
8 Defendant's defenses and the obstacles to class-wide recovery, the relief provided
9 by the Settlement appears adequate. Further, Defendants' agreement to fund
10 medical consultation for the Class Members, to fund further sampling and mitigation
11 at the mobile home coaches, and to fund remediation efforts for the plume existing
12 under Class Members' homes adequately addresses the claims raised in Plaintiffs'
13 Complaint and provides substantial value to the Class.

14 The Court finds that the notice provided was fair, reasonable, and adequate,
15 and provided the best practicable notice to the Class in compliance with all
16 applicable laws. The fact that the chosen Administrator could effectuate notice in a
17 manner widely approved for classes such as this one, where names of individual
18 Class Members are unknown, for a cost less than other more expensive
19 administrators, is a benefit to the Class, and not objectionable. The notice in this
20 case also included statutory newspaper publication within the State of California
21 pursuant to Cal. Civ. Code § 1781.

22 The Court also received no objections concerning the Fee Motion, and, as
23 discussed *supra*, considers the requested fees reasonable. The Court therefore
24 need not overrule any objections as to the Fee Motion.

25 **XV. No Modification of Settlement Agreement without Court Approval**

26 Plaintiffs' proposed order (but not their Motion or briefing) sought a provision
27 permitting amendment of the Settlement without further order of the Court. Rule 23
28 doesn't permit settlement of class claims unless the Court is apprised of the

1 settlement's terms and determines that those terms adequately protect the interests
2 of absent class members. Fed. R. Civ. P. 23(e)(2). This process would be futile if
3 the Court were to permit the parties to vary the terms of an already-approved
4 settlement. This Order approves the Settlement as memorialized in the Amended
5 Settlement Agreement only. No further amendments, modifications, or expansions
6 will be permitted without judicial approval. *See infra*, Section XVI.

7 **XVI. Enforcement of Settlement and Jurisdiction**

8 Nothing in this Final Order shall preclude any action to enforce or interpret
9 the terms of the Settlement.

10 The Court previously denied the Parties' request that the undersigned District
11 Judge retain jurisdiction over all matters relating to the Settlement. Dkt. 199. Their
12 separate Joint Motion for Consent to Exercise Jurisdiction by a United State
13 Magistrate Judge is **GRANTED**. Dkt. 201. Magistrate Judge Andrew G. Schopler,
14 or another assigned Magistrate Judge sitting in this District in the event of Judge
15 Schopler's unavailability, will exercise and retain jurisdiction over:

- 16 1) The interpretation and implementation of the Amended Settlement
17 Agreement;
- 18 2) Any matters arising out of or related to the interpretation or
19 implementation of the Agreement;
- 20 3) Resolution of any settlement disputes and enforcement of the terms of
21 the Agreement; and
- 22 4) Any requests to amend the settlement agreement, as discussed *supra*,
23 Section XV.

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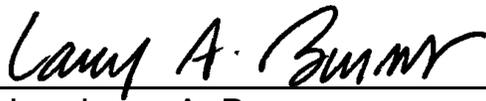
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1 **XVII. Dismissal of Action**

2 This action, including all individual and Class claims resolved in it, shall be
3 dismissed on the merits and with prejudice, without an award of attorneys' fees or
4 costs to any party except as provided in this Order.

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8 DATED: March 3, 2021



Hon. Larry A. Burns
United States District Judge

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