

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ADAM COX, individually, by and through his durable power of attorney, VICTOR COX, and on behalf of himself and others similarly situated; MARIA OVERTON, individually, and on behalf of herself and others similarly situated; JORDAN YATES, individually, and on behalf of himself and others similarly situated;

Plaintiffs,

v.

AMETEK, INC., a Delaware corporation; THOMAS DEENEY, individually; SENIOR OPERATIONS LLC, a limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 3:17-cv-00597-GPC-AGS

FINAL JUDGMENT AND ORDER GRANTING:

1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT, [Dkt. 129];

2) MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS [Dkt. 128]; and

3) JOINT MOTION FOR CONSENT TO EXERCISE JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE [Dkt. 148]

Plaintiffs Maria Overton owns and lives in a mobile home unit at Greenfield Mobile Estates in El Cajon, California. Plaintiff Jordan Yates (together with Overton, the "Class Representatives") is a former resident of a mobile home unit in the nearby Villa Cajon Mobile Home Estate. Those two mobile home parks and Starlight Mobile Home Park (collectively, the "Mobile Home Parks") are adjacent to a manufacturing facility formerly owned by Ametek, Inc. and later owned by Senior

1 Operations, LLC. Overton, Yates, and Adam Cox (collectively, “Plaintiffs”), filed an
2 Amended Complaint in this action against Ametek, former Ametek officer Thomas
3 Deeney, and Senior Operations.¹ Plaintiffs allege that Defendants contaminated
4 the groundwater with waste chemicals and then failed to remediate the resulting
5 plume of polluted water, exposing units and residents in the Mobile Home Parks to
6 unsafe indoor air concentrations of trichloroethylene (“TCE”). The Amended
7 Complaint asserts causes of action for negligence, gross negligence, and public
8 nuisance on behalf of a putative class of current owners and current and former
9 residents of units in the Mobile Home Parks.

10 The Parties entered into a Settlement Agreement that, following one
11 amendment and one modification, would resolve the action and settle the putative
12 class’s claims if the Court certifies the class and approves the Settlement. On
13 April 14, 2020, the Court entered its Preliminary Approval Order approving the
14 Settlement, certifying the Class, appointing Class representatives and Class
15 Counsel, and scheduling a final approval hearing. Dkt. 127. The Court conducted
16 two hearings to determine whether the Settlement is fair, reasonable, adequate, in
17 the best interests of the Class, and free from collusion, such that the Court should
18 grant Final Approval of the Settlement, and to consider Plaintiffs’ motion for an
19 award of attorneys’ fees, costs and litigation expenses, and incentives for the Class
20 Representatives (“Fairness Hearing”).

21 The Court has considered:

- 22 • Plaintiffs’ briefing in support of the Motion for an Order Granting Final
23 Approval of the Class Action Settlement (the “Final Approval Motion”);
 - 24 • Plaintiffs’ briefing in support of the Motion for Attorneys’ Fees, Costs,
25 and Incentive Awards (the “Fee Motion”);
- 26

27 ¹ The initial Complaint was filed by Cox only. Cox died during the pendency of this
28 action. Counsel doesn’t ask to appoint Cox as a class representative.

- 1 • Plaintiffs' Supplemental Briefing in support of the Final Approval Motion;
- 2 • The declarations and exhibits submitted in support of each Motion and
- 3 the Settlement;
- 4 • The Settlement Agreement;
- 5 • The First Amended Settlement Agreement;
- 6 • The First Modification to the First Amended Settlement Agreement
- 7 (together with the First Amended Settlement Agreement, the "Amended
- 8 Settlement Agreement");
- 9 • The entire record in this proceeding, including but not limited to the
- 10 briefing, declarations, and exhibits submitted in support of preliminary
- 11 approval of the Settlement in its various iterations, including;
- 12 ○ The Notice Plan for providing full and fair notice to the Class;
- 13 ○ The lack of any Class Member objections to or requests for
- 14 exclusion from the Settlement;
- 15 ○ The absence of any objection or response by any official after the
- 16 provision of all notices required by the Class Action Fairness Act
- 17 of 2005, 28 U.S.C. § 1715; and
- 18 ○ Counsel's oral presentations at the two hearings on the
- 19 Settlement's fairness;
- 20 • This Court's experiences, observations, and file developed in presiding
- 21 over resolution of this matter; and
- 22 • The relevant law.

23 Based upon these considerations and the Court's findings of fact and
24 conclusions of law as set forth in the Preliminary Approval Order and below, **IT IS**
25 **ORDERED:**

- 26 1) Final Approval of the Settlement is **GRANTED**;
- 27 2) The Settlement Class is **CERTIFIED**;
- 28

- 1 3) Maria Overton and Jordan Yates are appointed as Class Representatives
2 and the incentive awards requested in the Fee Motion are **APPROVED**;
- 3 4) Epiq Class Action & Claims Solutions, Inc. is appointed as Claims
4 Administrator and the payments to the Claims Administrator requested in
5 the Fee Motion are **APPROVED**;
- 6 5) The Law Offices of Baron & Budd are appointed as Class Counsel and the
7 attorneys' fees requested in the Fee Motion are **APPROVED**;
- 8 6) The Joint Motion for Consent to Exercise Jurisdiction by a United States
9 Magistrate Judge, Dkt. 148, is **GRANTED**; and
- 10 7) Plaintiffs' claims are **DISMISSED WITH PREJUDICE** in accordance with
11 the terms of this Order.

12 **DISCUSSION**

13 **I. Incorporation of Documents**

14 This Final Approval Order incorporates the Amended Settlement Agreement,
15 including each of its exhibits.

16 **II. Definitions**

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

19 **III. Jurisdiction**

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

24 The Court also has personal jurisdiction over the Parties. As discussed in
25 greater detail below and in the Court's Preliminary Approval Order, the Class
26 Members received adequate notice, had the right to opt out, and were adequately
27 represented by Yates and Overton. Accordingly, the Court can and does exercise
28 jurisdiction over those Class Members' claims. *See Phillips Petroleum Co. v.*

1 *Shutts*, 472 U.S. 797, 811-12 (1986) (adequate notice and opportunity to be heard
2 permits courts to exercise jurisdiction over claims of absent class members).

3 **IV. Findings and Conclusions**

4 **A. Definition of Class and Class Members**

5 The Court adopts the Preliminary Approval Order's definition of the "Class,"
6 comprised of the "Class Members," and reproduces the class definition below:

7 Medical Consultation Program Subclass:

8 Every person who resided in the following mobile home parks for
9 one or more calendar year between January 1, 1963, and April
10 13, 2020: 1) Greenfield Mobile Estates, 400 Greenfield Drive, El
11 Cajon, California 92021; 2) Starlight Mobile Home Park 351
12 E. Bradley Avenue, El Cajon, California 92021; 3) Villa Cajon
13 Mobile Home Estates, 255 E. Bradley Ave., El Cajon, California
14 92021.

16 Mobile Home Coach Mitigation System Subclass:

17 Every person who as of April 13, 2020, owns the mobile home
18 coach at the following locations: 1) Greenfield Mobile Estates,
19 400 Greenfield Drive, El Cajon, California 92021; Starlight Mobile
20 Home Park, 351 E. Bradley Avenue, El Cajon, California 92021;
21 Villa Cajon Mobile Home Estates, 255 E. Bradley Ave., El Cajon,
22 California 92021.

23 **B. Class Certification**

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

26 **1. Numerosity**

27 The proposed Settlement consists of potentially thousands of claimants,
28 which can reasonably be inferred from the number of mobile home coaches within

1 the three Mobile Home Parks, the average household size, the average length of
2 residence in a mobile home coach, and the nearly six-decade class period. For the
3 purposes of this Settlement, no party or objector contests numerosity. The Court
4 finds that the Class is sufficiently numerous that joinder of all class claims is
5 impracticable. Fed. R. Civ. P. 23(a)(1).

6 **2. Commonality**

7 There are questions of law and fact common to the Class, including whether
8 Defendants caused TCE contamination in groundwater, whether the TCE
9 contamination made its way to indoor air within the downgradient homes, and
10 whether and to what extent Class Members were exposed to the indoor air TCE
11 contamination. All Class Members allegedly suffered the same injury: exposure to
12 indoor air TCE contamination resulting in increased risk of disease or illness. All
13 Class Members were exposed to the same or substantially similar indoor air
14 contamination, and all allegedly suffered increased risk of disease or illness from
15 that exposure. Resolution of the common questions about Defendants' conduct and
16 its effects on Class Members' health would resolve all the claims in one stroke. The
17 Court affirms its prior determination that the Class satisfies the commonality
18 requirement.

19 **3. Typicality**

20 The Class Representatives' claims are reasonably co-extensive with those of
21 the other Class Members and meet Rule 23(a)(3)'s requirements. Typicality is a
22 "permissive" standard under which "representative claims are 'typical' if they are
23 reasonably co-extensive with those of absent class members; they need not be
24 substantially identical." *Hanlon v. v. Chrysler Corp.*, 150 F.3d 1011, 1020
25 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*,
26 564 U.S. 338 (2011). Overton and Yates each resided in one of the Mobile Home
27 Parks at issue for at least a year during the Class period and alleges that he or she
28 has suffered increased risk from the same or substantially similar indoor air

1 contamination as the other members of the Medical Consultation Program
2 Subclass. Overton also owns a unit in one of the Mobile Home Parks and alleges
3 that she has suffered the same or substantially similar contamination of her property
4 as other members of the Mobile Home Coach Mitigation Subclass. The Class
5 Representatives do not allege that their increased risk has matured into illness
6 traceable to the contamination, and the Settlement does not release any such
7 claims for illness or death.² No Party or Class Member contests typicality for the
8 purposes of the Settlement. The Court finds that the Class Representatives' claims
9 are reasonably co-extensive with those of the other Class and Subclass Members.

10 **4. Adequacy of Class Representatives**

11 Having considered the factors set forth in Rule 23(g)(1), the Court finds that
12 the Class Representatives and Class Counsel are adequate to represent the Class.
13 For the purposes of this Settlement, no Party or objector contends that the Class
14 lacks adequate representation. Class Counsel has fully and competently
15 prosecuted all causes of action, claims, theories of liability, and remedies
16 reasonably available to the Class Members. The Court affirms its appointment of
17 the Law Offices of Baron & Budd as Class Counsel. The Court also affirms its
18 appointment of Maria Overton and Jordan Yates as Class Representatives, finding
19 that they possess no interests adverse to the Class and are adequate to represent
20 the Class.

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

22 For the purposes of this Settlement, the Parties contend that the elements of
23 Rules 23(b)(3) have been met. The Court finds that questions of law or fact common
24

25 ² Cox died of cancer during while this action was pending. The Court did not
26 preliminarily approve Cox as a Class representative nor does it so appoint him by
27 this Order. Class Counsel, who represents Cox in both this action and in his related
28 individual action, affirmed that Cox does not allege here that his cancer resulted
from the contamination at issue. Dkt. 136 at 16:3-20. Moreover, the claims released
by the Settlement are limited to claims for the typical injury of increased risk.

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

11 **V. The Settlement**

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

22 Applying this standard, the Court finds that the Settlement is fair, reasonable,
23 and adequate to the Class, in light of the complexity, expense, and likely duration
24 of the litigation (including appellate proceedings), as well as the risks involved in
25 establishing liability, damages, and the appropriateness of class treatment through
26 trial and appeal. See *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 963
27 (9th Cir. 2009). The Settlement appears to be the result of arm's-length negotiation
28 and the record doesn't support a conclusion that the Settlement is the result of

1 either collusion among Plaintiffs, Class Counsel, and Defendants or conflicts of
2 interest between Plaintiffs and Class Counsel, on the one hand, and the Class
3 Members, on the other.

4 **A. Generally**

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

13 Plaintiffs and Class Counsel maintain that this action and the claims asserted
14 in it are meritorious and that Plaintiffs and the Class might have prevailed at trial.
15 Nevertheless, Plaintiffs and Class Counsel have agreed to settle the action
16 pursuant to the provisions of the Settlement, after considering, among other things:
17 (1) the benefits to Plaintiffs and the Class under the terms of the Settlement; (2) the
18 uncertainty of prevailing at trial; (3) the uncertainty of maintaining a class through
19 or after trial; (4) the attendant risks, difficulties, and delays inherent in litigation,
20 appeals and post-trial motions, especially in complex actions such as this; and
21 (5) the desirability of consummating this Settlement promptly in order to provide
22 substantive relief to Plaintiffs and the Class without unnecessary delay and
23 expense.

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

28 ///

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

11 The Parties engaged in thorough formal and informal discovery addressing,
12 among other things, claims and defenses on the issues of: (1) Defendants'
13 responsibility for the contamination at the former Ametek facility; (2) whether the
14 contamination at the facility resulted in contamination of groundwater; (3) the
15 natural fate and transport of contaminated groundwater and whether it resulted in
16 contamination underneath the Mobile Home Parks; (4) whether the contamination
17 of the groundwater at the Mobile Home Parks resulted in TCE being present in soil
18 vapor under the residences at the Mobile Home Parks; (4) whether the TCE in the
19 soil vapor under the Mobile Home Parks eventually made its way into indoor air in
20 the mobile home coaches owned and/or occupied by Plaintiffs and Class Members;
21 (5) whether and to what extent the Class Members who lived in the mobile home
22 coaches were exposed to TCE in indoor air; (6) whether the level of exposure
23 presented a significant health risk to Class Members; (7) whether Class Members
24 suffered an actual increased risk of the onset of specific diseases associated with
25 TCE exposure at the levels purportedly observed and modeled within the mobile
26 home coaches; and (8) whether early clinical detection through medical
27 consultation was reasonable and appropriate. As a result of this investigation, the

28 ///

1 Parties were well-versed in the merits of their claims and defenses, the risks of
2 continued litigation, and the likelihood of success at trial.

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

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

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

21 In exchange for this release, Defendants confer a benefit of \$3.5 million on
22 the roughly 7,000-person class, in the form of medical consultations and
23 remediation and mitigation of the plume. Of that amount, \$1.5 million will be paid
24 into a Medical Consultation Fund. Each member of the Medical Consultation
25 Subclass is entitled to one (1) medical consultation with a doctor selected by Class
26 Counsel to receive any or all of the following procedures, according to the advice
27 of a physician selected at the Subclass Member's discretion:

28 ///

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

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

14 Ametek will also pay \$1 million into a fund (the “Remediation/Mitigation
15 Fund”) dedicated to monitoring, remediation, and mitigation activities related to the
16 plume, including sampling and mitigation in the homes of members of the
17 Sampling/Mitigation Program Subclass. Those Subclass Members are each
18 entitled to receive two indoor air samples per year for two years, to be conducted
19 in a manner consistent with and according to sampling protocols approved by the
20 California Department of Toxic Substances Control (“DTSC”). The results of that
21 sampling and any necessary confirmation sampling will be shared with DTSC (or
22 other appropriate regulatory or governmental agency) for review and to assess
23 both: 1) whether further sampling is needed; and 2) whether the installation of
24 mitigation measures is appropriate and warranted. Where the regulator determines
25 that installation of mitigation measures is necessary and appropriate, the affected
26 Subclass Member will be entitled to installation of a mitigation system consisting of
27 passive venting of the crawlspace beneath their mobile home coach.
28 Sampling/Mitigation Program Subclass benefits claimed within a year of this Order

1 will be billed directly to the Claims Administrator and paid in full out of the
2 Remediation/Mitigation fund until twenty years after the date of this Order or that
3 fund is exhausted.

4 Beyond the sampling and mitigation described above, the
5 Remediation/Mitigation fund is available only for monitoring, remediation, and
6 mitigation activities related to the plume originating from the Former Ametek
7 Facility, in accordance with and pursuant to directed or agreed response actions
8 from the Regional Water Quality Control Board, the Department of Toxic Substance
9 Control, and/or any other regulatory or governmental agency responsible for
10 oversight of the plume. Any amounts remaining in the Remediation/Mitigation fund
11 after 20 years will be paid to the Cajon Valley Union School District.

12 In total, the benefit to the class, including both the Remediation/Mitigation
13 Fund and the Medical Consultation Fund, but subtracting the fees, costs, and
14 incentives the Court awards by this Order, comes to around \$300 per member of
15 the roughly 7,000-member class. The Court has considered the realistic range of
16 outcomes in this matter, including the amount Plaintiffs might receive if they
17 prevailed at trial, the risk that Plaintiffs' recovery at trial could be less than the
18 amount of the Settlement or nothing at all, the strength and weaknesses of the
19 case, the novelty and number of the complex legal issues involved, and the scope
20 of the claims that Class Members release by the Settlement. The magnitude of the
21 alleged harm in this case, in particular, supports a finding that the Settlement
22 provides a meaningful and reasonable benefit to the Class. Plaintiffs allege that the
23 highest-measured level of TCE contamination on another property adjacent to the
24 manufacturing facility was associated with an additional lifetime cancer risk of 42 in
25 a million, or 0.0042%. Am. Compl., Dkt. 5, ¶¶ 67-79. Any damages that might be
26 recovered at trial for a harm in that range would doubtfully exceed the benefit
27 provided by the Settlement by much, if at all.

28 ///

1 The Court has also considered the risk that, in the absence of Settlement
2 funds set aside for abatement, Defendants may not devote funds to that purpose.
3 See, e.g., *id.*, ¶ 44 (alleging Defendants' resistance to remediation and citing
4 Administrative Liability Complaint alleging Ametek's failure to comply with prior
5 abatement order); Dkt. 143 at 12:6-14:15 (discussing Class Counsel's view of
6 benefits of remediation to Class Members). Finally, the Court has reviewed and
7 considered the agreements made in connection with the Settlement and disclosed
8 to the Court pursuant to Rules 23(e)(3) and (e)(2)(c)(iv), finding nothing in those
9 agreements to suggest that the Settlement doesn't provide adequate relief.

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

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

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

17 However, the Amended Settlement Agreement's "clear sailing" provision,
18 under which Defendants agreed not to contest any request for fees exceeding 25%
19 of the Settlement funds, is a "subtle sign of collusion." *SFBSC Management*,
20 944 F.3d at 1049. The presence of such a provision requires the Court to look
21 closely at the reasonableness of the recovery and the reasonableness of fees to
22 confirm that Class Counsel haven't negotiated a benefit for themselves using the
23 Class's claims as leverage. *Id.*

24 That scrutiny doesn't reveal evidence that Class Counsel bargained away a
25 Class benefit in exchange for clear sailing on an unreasonably large fee award. The
26 Settlement's benefit to the Class is appropriate in relation to the likelihood of
27 success at trial and the magnitude of the Class claims. The alleged harm to Class
28 Members, in the form of marginally increased risk of illness or disease, renders the

1 Settlement's benefit favorable even after subtracting fees, costs, and incentive
2 awards. Moreover, the minute marginal risk alleged to each individual Class
3 Member supports the conclusion that devoting the vast majority of the net recovery
4 to remediation rather than medical screening, as the Settlement does, is reasonable
5 and ensures efficient use of the Settlement funds to redress the Class's shared
6 injury. Finally, the Amended Settlement Agreement conditions payment on
7 execution of settlement agreements in three related matters between Defendants
8 and, respectively, another class, the Mobile Home Parks, and Cox. The Court has
9 reviewed those settlements and finds that their terms don't unreasonably favor the
10 other class, the Mobile Home Parks, or Cox in light of the claims remaining in those
11 cases at the time of settlement, remedies sought, and the amount of the settlement
12 in this case. Nor do any other provisions of those settlements suggest that the
13 Class's recovery was reduced to enhance the other plaintiffs' recovery.

14 Class Counsel's requested fees withstand close scrutiny, too. They seek 20%
15 of the total—less than the 25% benchmark, less than the maximum the clear sailing
16 agreement allows without objection, and a bit lower even than Class Counsel's
17 lodestar. As discussed in greater detail *infra*, Section XII, these fees are
18 reasonable. The Court finds it unlikely that the clear sailing agreement provided a
19 non-negligible benefit to Class Counsel under these circumstances, making it
20 unlikely, too, that the Class's interests were sacrificed in securing the clear sailing
21 provision. Because both the Class benefit and the requested fees withstand close
22 scrutiny, the Court finds no apparent collusion.

23 **D. Response of Class**

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

28 ///

1 **VI. Notice to Class**

2 The Class has received the best practicable notice under the circumstances
3 of this case. The Parties' selection and retention of Epiq Class Action & Claims
4 Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and
5 appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds
6 that the Settlement Notices were published to the Class Members in the form and
7 manner approved by the Court in its Preliminary Approval Order. See Dkt. 129-6.
8 The Settlement Notices provided fair, effective, and the best practicable notice to
9 the Class of the Settlement's terms. The Settlement Notices informed the Class of
10 Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the
11 date, time, and place of the Fairness Hearing, and explained Class Members' rights
12 to object to the Settlement or Fee Motion and to appear at the Fairness Hearing.
13 The Settlement and the Court's deadlines afforded Class Members reasonable time
14 to exercise such rights. See *Weeks v. Kellogg Co.*, 2013 WL 6531177, at *22-23
15 (C.D. Cal. Nov. 23, 2013) (class members' deadline to object or opt out must arise
16 after class counsel's fee motion is filed), citing *In re Mercury Interactive Corp. Secs.*
17 *Litig.*, 618 F.3d 988, 994 (9th Cir. 2010). The Settlement Notices fully satisfied all
18 notice requirements under the law, including the Federal Rules of Civil Procedure,
19 the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and
20 all due process rights under the U.S. Constitution and California Constitutions.

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

22 The Court finds that Defendants satisfied all notice requirements of the Class
23 Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. See Hyte Decl., Dkt. 129-
24 5. On April 7, 2020, at Defendants' direction, Epiq subsidiary SSI Settlement
25 Services served the notices required by 28 U.S.C. § 1715(b), which included a copy
26 of the Settlement Agreement and other required documents, as well as notice of
27 the date, time, and place of the Fairness Hearing. The Court has received no
28

1 objection or response to the Settlement Agreement by any federal or state official,
2 including any recipient of the foregoing notices.

3 **VIII. Incorporation of Release**

4 The Release set forth in the Amended Settlement Agreement is incorporated
5 in this Order in all respects. That Release is effective as of the date of the entry of
6 this Order.

7 **IX. Binding Effect**

8 Any Class Member who failed timely and validly to object to or opt out of the
9 Settlement has waived the right to object or opt out. See Dkt. 127 at 5. Any Class
10 Member seeking to challenge the Court's rulings or opt out must: (a) move to
11 intervene upon a showing of good cause sufficient to overcome the presumption
12 that absent Class Members are bound by the deadline to object or opt-out and the
13 subsequent judgment; (b) request a stay of implementation of the Settlement; and
14 (c) post an appropriate bond. See, generally, *Silber v. Mabon*, 18 F.3d 1449, 1454-
15 1455 (discussing factors influencing trial court's discretion in addressing untimely
16 requests to opt-out of class). Absent satisfaction of all three requirements,
17 Defendant is authorized, at its sole option and in its sole discretion, to proceed with
18 the implementation of the Settlement, including before the Effective Date, even if
19 such implementation would moot any appeal.

20 **X. Implementation of Settlement**

21 The Parties are directed to implement the Amended Settlement Agreement
22 according to its terms.

23 **XI. Objections and Opt-Outs after Implementation**

24 Any Class Member who failed to file a timely and valid objection to or opt out
25 of the Settlement has waived the right to object or opt out. Any Class Member
26 seeking to challenge the Court's rulings or opt out must: (a) move to intervene upon
27 a showing of good cause sufficient to overcome the presumption that absent Class
28 Members are bound by the judgment and the deadline to object or opt-out;

1 (b) request a stay of implementation of the Settlement; and (c) post an appropriate
2 bond. See generally *Silber v. Mabon*, 18 F.3d 1449, 1454-1455 (9th Cir. 1994)
3 (discussing factors influencing trial court's discretion in addressing untimely
4 requests to opt-out of class). Absent satisfaction of all three requirements,
5 Defendants are authorized, at its sole option and in its sole discretion, to proceed
6 with the implementation of the Settlement, including before the Effective Date, even
7 if such implementation would moot any appeal.

8 **XII. Attorneys' Fees and Litigation Expenses**

9 Class Counsel is entitled to reasonable attorneys' fees incurred in connection
10 with the action and in reaching this Settlement in the amount of \$700,000.00, to be
11 paid at the time and in the manner provided in the Amended Settlement Agreement.
12 Fee awards must "be reasonable under the circumstances," and where the award
13 comes out of a common fund, "courts have discretion to employ either the lodestar
14 method or the percentage-of-the-fund approach." *In re Bluetooth Headset Prods.*
15 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The latter approach is appropriate in
16 a common-fund case "[b]ecause the benefit to the class [in such a case] is easily
17 quantified." *Id.*

18 "[C]ourts typically calculate 25% of the fund as the 'benchmark' for a
19 reasonable fee award, providing adequate explanation in the record of any 'special
20 circumstances' justifying a departure." *Id.* The benchmark on its own doesn't
21 establish reasonableness conclusively, but it's a "helpful starting point" that can be
22 supplemented with consideration of factors including "the extent to which class
23 counsel achieved exceptional results for the class, whether the case was risky for
24 class counsel, whether counsel's performance generated benefits beyond the cash
25 settlement fund, the market rate for the particular field of law (in some
26 circumstances), the burdens class counsel experienced while litigating the case
27 (e.g., cost, duration, foregoing other work), . . . whether the case was handled on a
28 contingency basis[, . . and] class counsel's lodestar summary figures." *In re Online*

1 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (internal marks
2 omitted).

3 The fee award sought in the present case is reasonable when judged by this
4 standard. Class Counsel requests a \$700,000 award, representing 20% of the \$3.5
5 million directed to the class's benefit and substantially less than the \$875,000
6 suggested by application of the 25% benchmark rate. Class Counsel took this case
7 on contingency, risking non-payment for 975 hours of attorney time, 150 hours of
8 paralegal time, and \$552,511.92 in other costs during the three-year course of this
9 litigation. That non-payment risk was substantial in this case. As discussed *supra*,
10 Section V(B), the alleged increased risk of illness—the harm for which Plaintiffs
11 sought recovery—is small, even in relation to the size of the Class. The likelihood
12 that Class Counsel wouldn't be able to recover some or all of its fees was
13 abnormally high as a result, even assuming away the difficulties of proving
14 causation, which Defendants vigorously contested, the other elements of the
15 Class's claims, and the appropriateness of the class form. *See, e.g., Trujillo v.*
16 *Ametek*, Case No. 15-cv-1394, Dkt. 85-2 at 13-16 (Jan. 3, 2017) (Defendants'
17 expert report in related litigation opining that plaintiffs' alleged increased risk from
18 plume isn't "significant" against background lifetime cancer risks around 40%). The
19 underlying risk that Plaintiffs wouldn't prevail confirms, too, that the benefits Class
20 Counsel secured in the Settlement are a strong result.

21 Class Counsel's lodestar calculation of \$711,250, while not the primary basis
22 for or necessary to the Court's conclusion, confirms that a \$700,000 award is
23 reasonable. The multiplier—the ratio of the award to the result of the lodestar
24 calculation—is less than one. Percentage-of-recovery awards with a multiplier less
25 than one are the exception in common fund cases. Surveying percentage-based
26 fee awards from 1996 to 2001 in such cases where the total award was between
27 \$50 million and \$200 million, the Ninth Circuit found only one in twenty-four with a
28 multiplier less than one. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 Appx. (9th Cir.

1 2002). The comparison isn't apples-to-apples, since this case is substantially
2 smaller. That size difference, though, underscores the reasonableness of the
3 multiplier here, because Courts generally award *larger* multipliers in smaller cases.
4 See, e.g., *id.* at 1047-48 (noting that in large cases, courts must consider size of
5 total fund before calculating fees as percentage of that amount); *In re Washington*
6 *Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1297 (9th Cir. 1994) (observing
7 that "the percentage of an award generally decreases as the amount of the fund
8 increases").

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

- 12 • Scott Summy, an attorney with approximately 30 years' experience,
13 \$1,000.00 per hour;
- 14 • John Fiske, an attorney with approximately 14 years' experience, \$750.00 per
15 hour;
- 16 • Jason Julius, an attorney with approximately 13 years' experience, \$550.00
17 per hour; and
- 18 • Jennifer Hutchison, a senior paralegal, \$250 per hour.

19 See Dkt. 128-2 at 120, 128, 130 (stating law school graduation dates for each
20 attorney). These rates are reasonable in this jurisdiction for similarly complex legal
21 work. Cf. *McKibben v. McMahon*, Case No. EDCV 14-2171, 2019 WL 1109683 at
22 *4-*5 (C.D. Cal. Feb. 28, 2019) (finding rates between \$650 and \$900 reasonable
23 for experienced counsel in employment class action).

24 The time Class Counsel spent on this action is reasonable in view of the
25 complexity and subject matter of this litigation, the skill and diligence with which it
26 has been prosecuted and defended, and the quality of the result obtained for the
27 Class. For this case's share of 31 fact witness depositions, 18 expert witness
28 depositions, work with experts in anticipation of a class certification motion, written

1 discovery, and drafting of pleadings and briefing on discovery disputes, motions to
2 dismiss, and other tasks described in the Fiske Declaration, Mr. Summy billed
3 150 hours, Mr. Fiske billed 350 hours, Mr. Julius billed 475 hours, and
4 Ms. Hutchison billed 150 hours. These are reasonable sums for three years of
5 active litigation of a complex matter.

6 Applying the benchmark method and taking into consideration the burden and
7 risk to Class Counsel, the quality of the result, the contingency fee arrangement,
8 and Class Counsel's lodestar summary, the Court finds a fee award of \$700,000
9 reasonable and orders that Class Counsel be compensated in that amount in the
10 manner specified in the Amended Settlement Agreement. No named Plaintiff or any
11 other Class Member shall have any obligation to pay Class Counsel any further
12 amounts for attorneys' fees, costs, or litigation expenses in this action. As no
13 objection was filed, no Class Member is entitled to seek or receive any further
14 payment of attorneys' fees or litigation expenses incurred in connection with this
15 action.

16 Class Counsel had incurred, at the time of the Fee Motion, \$552,611.92 in
17 out-of-pocket litigation expenses in connection with this litigation. These expenses
18 were of a nature typically billed to fee-paying clients and were reasonable and
19 necessary to the prosecution of this action in light of the extent of proceedings both
20 on and off the Court's docket, the complexity of the legal and factual issues in the
21 case, the necessity of extensive expert and fact discovery, the amount at stake in
22 this litigation, and the vigorous efforts of counsel for all Parties. Accordingly, the
23 Court awards these expenses to Class Counsel, paid in accordance with the terms
24 of the Amended Settlement Agreement.

25 Epiq, as Claims Administrator, estimates total administration costs of
26 \$179,283. This amount is reasonable in light of the total settlement funds and the
27 size of the class. Epiq's can reasonably be expected to continue to expend costs
28 that are necessary and appropriate for the administration of the Class claims. Those

1 costs are recoverable pursuant to the terms of the Amended Settlement
2 Agreement. The Court orders that Epiq shall be paid in the time and manner
3 provided in the Amended Settlement Agreement, according to Epiq's invoices in an
4 amount up to \$185,000. Any costs beyond that amount may be permitted pursuant
5 to further Court order.

6 **XIII. Class Representative Incentive**

7 Maria Overton and Jordan Yates, whom the Court preliminarily appointed
8 Class Representatives in its Preliminary Approval Order, have actively participated
9 in and assisted Class Counsel with this litigation for the substantial benefit of the
10 Class. Overton and Yates waived their right to pursue potential individual relief.
11 Each completed substantial discovery and had begun preparations for deposition,
12 and each was prepared to pursue this matter through trial. Apart from the requested
13 incentive, Overton and Yates will receive no settlement payments or benefits of any
14 nature other than the benefits available to the Class generally.

15 The requested incentive awards of \$5,000 each are reasonable in proportion
16 to their efforts in this action. See Overton Aff., Dkt. No. 129-3; Yates Aff., Dkt. No.
17 129-4. Those awards amount to 0.28% of the total Settlement value, a reasonable
18 amount in proportion to the Settlement as a whole. See, e.g., *In re Mego Fin. Corp.*
19 *Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving \$5,000 award to each of
20 two representative plaintiffs in settlement of \$1.725 million). To compensate the
21 Class Representatives for the burdens of their active involvement in this action and
22 their efforts on behalf of the Class, the Court approves incentive awards in the
23 amount of \$5,000 each for Overton and Yates, paid in accordance with the terms
24 of the Amended Settlement Agreement.³

25
26 ³ The Amended Settlement Agreement provides for clear sailing for incentive
27 awards of up to \$2,500 per Class Representative. Class Counsel represents that
28 Defendants later agreed not to object to \$5,000 each. The Settlement Notices
reflected the larger incentive, and the Court received no objection.

1 **XIV. Class Member Objections**

2 No Class Member filed an objection to the Settlement, an omission that can't
3 be attributed to inadequate notice on the record before the Court. See *infra*,
4 Section VI. The Court also received no objections concerning the Fee Motion, and,
5 as discussed *supra*, considers the requested fees reasonable. As discussed
6 throughout this Order, the Court finds the Settlement and the requests for fees,
7 costs, and incentive awards reasonable.

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

9 Plaintiffs' proposed order (but not their Motion or briefing) sought a provision
10 permitting amendment of the Settlement without further order of the Court. Rule 23
11 doesn't permit settlement of class claims unless the Court is apprised of the
12 settlement's terms and determines that they adequately protect the interests of
13 absent class members. Fed. R. Civ. P. 23(e)(2); see also *SFBSC Management*,
14 944 F.3d at 1048. This process would be reduced to a charade if the Court were to
15 permit the parties to vary the approved Settlement terms without Court supervision.
16 This Order approves the Settlement as memorialized in the Amended Settlement
17 Agreement only. No further amendments or modifications will be permitted without
18 Court approval.

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

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

22 The Parties filed a Joint Motion for Consent to Exercise Jurisdiction by a
23 United States Magistrate Judge—that Motion is **GRANTED**.⁴ Magistrate Judge
24 Andrew G. Schopler, or another assigned Magistrate Judge sitting in this District in
25 the event of Judge Schopler's unavailability, will retain jurisdiction over:
26

27 _____
28 ⁴ The Court previously denied the Final Approval Motion's request that the undersigned District Judge retain jurisdiction over the Settlement. Dkt. 146.

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

XVII. Dismissal of Action

Plaintiffs' claims in this action are **DISMISSED WITH PREJUDICE**, without any award of attorneys' fees or costs except as provided in this Order.

The Court will address the pending third-party claims by separate order.

DATED: December 15, 2020

Hon. Larry A. Burns
Chief United States District Judge