

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

BRIAN RESENDEZ, RODICA ALINA
RESENDEZ, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

PRECISION CASTPARTS CORP., an Oregon
corporation, and PCC STRUCTURALS, INC.,

Defendants.

Case No. 16CV16164

PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTRY OF
JUDGMENT

DEBRA TAEVS; individually and on behalf
of all others similarly situated,

Plaintiff,

v.

PRECISION CASTPARTS CORP., an Oregon
corporation, and PCC STRUCTURALS, INC.,

Defendants;

Case No. 16CV21495

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4 William B. Rubenstein, <i>Newberg on Class Actions</i> (5th ed 2014)	8, 13, 14, 23

1 **I. UTCR 5.010 CERTIFICATION**

2 Counsel for Plaintiffs have conferred with Counsel for Defendants on issues requiring
3 conferral under UTCR 5.010. Defendants do not oppose the relief requested by this Motion for
4 Final Approval of Class Action Settlement and Entry of Judgment (“Motion”).

5 **II. FAIRNESS HEARING**

6 A Final Fairness hearing is set for this motion on May 26, 2022, at 9:00 a.m. Plaintiffs
7 estimate the hearing will take one hour. Plaintiffs do not request court reporting services.

8 **III. INTRODUCTION**

9 After years of difficult litigation, the Parties achieved a settlement on December 6, 2021
10 (“Settlement”).¹ That Settlement is the largest of its kind in Oregon history, providing
11 comprehensive relief to the class and the public. After this Court preliminarily approved that
12 Settlement, Class Counsel directed the Court-approved notice to Class Members. Class Member
13 response has been overwhelmingly positive, with a high claims rate, few opt outs, and just one
14 objection.

15 Now, pursuant to ORCP 32 D, Plaintiffs request this Court’s final approval of the
16 Settlement. Specifically, Plaintiffs request approval of:

- 17 • the Settlement’s substantial monetary relief, which as explained below should
18 result in the average claimant receiving several hundred to several thousand
19 dollars each;
20 • \$1.95 million in additional pollution control projects to be installed at Precision’s
21 Large Parts Campus in the next two years; and
22 • reasonable fees and costs for Class Counsel, which covers Class Counsel’s work
23 and expenses to date as well as substantial anticipated future work administering
24 the Settlement.

25 Additionally, Plaintiffs request that the Court order the payment of Case Contribution Awards
26 for Settlement Class Representatives; approve the Parties’ chosen recipients to receive any cy

26 ¹ Capitalized words and phrases used throughout this Motion carry the definitions set forth in the
Class Action Settlement Agreement and Release (“Settlement Agreement”) and exhibits, or the
declarations filed in support of this Motion.

1 *pres* funds; approve the more technical aspects of administering the Settlement, including
2 appointing A.B. Data, Ltd. as the settlement administrator, approving the plan of allocation,
3 approving the processing of late-filed claims, and approving the disbursement of funds from the
4 Qualified Settlement Fund to administer the Settlement; and enter final judgment while retaining
5 jurisdiction as necessary to effectuate the Settlement.

6 The Settlement is more than fair, reasonable, and adequate. It merits final approval.

7 **IV. BACKGROUND AND SETTLEMENT TERMS**

8 The Motion for Preliminary Approval explained the background of this case and the
9 Parties' negotiation of the Settlement. The Court granted Plaintiffs' motion, finding "the
10 proposed Settlement meets the standards for preliminary approval." Order re: Pls.' Mot.
11 Preliminary Approval 2 (citing Manual for Complex Litigation § 21.632 (4th ed 2013)).

12 Class Counsel and A.B. Data, Ltd., (the "Notice Provider"), subsequently completed the
13 Court-ordered Class Notice Program. Declaration of Matthew Preusch in Supp. of Pls.' Mot. for
14 Final Approval of Class Action Settlement and Entry of Judgment ("Preusch Decl.") ¶¶ 2-5;
15 Declaration of Mark Cowen in Supp. of Pls.' Unopposed Mot. for Approval of the Settlement
16 ("Cowen Decl.") ¶¶ 4-22. Class Members have enthusiastically responded to the Settlement.

17 **A. *The Parties completed the Court-ordered Class Notice Program.***

18 Class Counsel and the Notice Provider carried out the four primary prongs of the Court-
19 ordered Class Notice Program: direct mail notice of the long-form notice ("LFN"); publication
20 notice in local newspapers ("Publication Notice"); online advertising; and creating and hosting a
21 settlement website. *See generally* Cowen Decl. The successful efforts of Class Counsel and the
22 Notice Provider ensured that "some or all [class] members" were notified of their rights,
23 satisfying ORCP 32 F.

24 Direct Mail Notice: To date, the Notice Provider has mailed "Notice Packets"—including
25 the 7-page LFN, claim form, and exclusion form—to 7,790 names and mailing addresses. Cowen
26

1 Decl. ¶¶ 5-8.² To mail these packets, A.B. Data used a class mailing list provided by Class
2 Counsel, which it cross-referenced through the National Change of Address database, and an
3 additional list of multifamily unit addresses A.B. Data acquired. The U.S. Postal Service returned
4 only 1,107 Notice Packets as undeliverable without a forwarding address. *Id.* ¶ 9. The Notice
5 Provider successfully ascertained the current addresses of 297 of these people and re-mailed the
6 Notice Packets accordingly. *Id.* A.B. Data also responded to Class Member inquiries that it and
7 Class Counsel received on a rolling basis. *Id.* ¶¶ 21.

8 Publication Notice: On February 23, 2022, the Notice Provider published the Publication
9 Notice in *The Oregonian*. *Id.* ¶ 18, Ex. C. The Notice Provider also published the Publication
10 Notice in the March 2022 edition of *Southeast Examiner*. *Id.* ¶ 19, Ex. D.

11 Online Advertising: The Notice Provider also distributed notice through banner ads on
12 websites and social media platforms. *Id.* ¶¶ 14-17, Ex. B. Those online ads resulted in over
13 3,900 clicks to the Settlement website and case-specific Facebook page that was created as a
14 landing page for the links in the Facebook and Instagram newsfeed ads. *Id.*

15 Settlement Website Notice: On February 23, 2022, A.B. Data activated the Settlement
16 website, www.StructuralsSettlment.com. This website provided information about the
17 Settlement, an online claim form, a downloadable copy of the LFN (in English and Spanish), a
18 Frequently Asked Questions section, and a link to public court documents. Since its activation,
19 the Settlement website has received 17,210 visits. *Id.* ¶ 22.

20 Toll-Free Phone: To assist potential Settlement Class Members in understanding the
21 terms of the Settlement and their rights, A.B. Data established a case-specific toll-free telephone
22 number with an interactive voice response (“IVR”) system which provided summary information
23 to frequently asked questions. *Id.* ¶ 21. This also provided callers the opportunity to speak with a
24 live customer support representative. A.B. Data promptly responded to phone inquiries. *Id.*

25
26 ² In addition, on April 16, 2022, A.B. Data mailed 275 supplemental notices to Defendants’
current or past employees who may be Class Members. Cowen Decl. ¶ 13. *See also* Order re
Supplemental Notice (Mar. 31, 2022).

1 Throughout the notice period, Class Counsel also promptly responded to Class Member
2 and non-Class Member inquiries about the Settlement. In total, since the outset of the Class
3 Notice Program, Class Counsel have responded to over 200 email and phone inquiries. *See*
4 Preusch Decl. ¶ 3. Declaration of Eric “Knoll” Lowney in Supp. of Pls.’ Mot. for Final Approval
5 (“Lowney Decl.”) ¶ 7; Declaration of Karl G. Anuta in Supp. of Pls.’ Mot. for Final Approval
6 (“Anuta Decl.”) ¶ 1.

7 In addition to those formal notice tools, Class Members received notice through widely
8 distributed print, radio, and television news reports about the settlement. *E.g.*, Cassandra Profita,
9 *Court approves \$22.5 million settlement in Precision Castparts air pollution lawsuit*, OPB
10 (Mar. 2, 2022, 8:11 p.m.), [https://www.opb.org/article/2022/03/02/court-approves-225-million-](https://www.opb.org/article/2022/03/02/court-approves-225-million-settlement-in-precision-castparts-air-pollution-lawsuit/)
11 [settlement-in-precision-castparts-air-pollution-lawsuit/](https://www.opb.org/article/2022/03/02/court-approves-225-million-settlement-in-precision-castparts-air-pollution-lawsuit/).³

12 The Class Notice Program therefore met ORCP 32 F’s directive that “some or all” class
13 members received notice.

14 **B. The Class Notice Program resulted in a high claims rate and very low exclusion and**
15 **objection percentages.**

16 The class has responded favorably to the Settlement. The claims rate has been high, few
17 Class Members have opted out, and only one Class Member has objected. These are all signs of a
18 fair and reasonable settlement:

- 19 • **High Claims Rate:** Out of 7,790 Notice Packets mailed to date, Class Members
20 have submitted an estimated 3,650 timely Claim Forms.⁴ Cowen Decl. ¶ 23. This
21 equates to a rate of 47%. This is an excellent claims rate. *See infra*, Part. VI.B.1.

22
23 ³ *See also, e.g.*, Mike Rogoway, *Precision Castparts air pollution settlement could average*
24 *\$3,500 per household in parts of Southeast Portland*, The Oregonian/OregonLive (Mar. 3,
25 2022, 5:46 a.m.), [https://www.oregonlive.com/business/2022/03/precision-castparts-air-](https://www.oregonlive.com/business/2022/03/precision-castparts-air-pollution-settlement-will-average-3500-per-household-in-parts-of-southeast-portland.html)
26 [pollution-settlement-will-average-3500-per-household-in-parts-of-southeast-portland.html](https://www.oregonlive.com/business/2022/03/precision-castparts-air-pollution-settlement-will-average-3500-per-household-in-parts-of-southeast-portland.html);
Precision Castparts settles lawsuit over polluting SE Portland neighborhood, KGW (Mar. 3,
2022, 4:11 p.m.), [https://www.kgw.com/video/news/local/precision-castparts-settles-lawsuit-](https://www.kgw.com/video/news/local/precision-castparts-settles-lawsuit-over-polluting-se-portland-neighborhood/283-c1356589-e5ea-4ea4-b7f2-b9c4a1bec710)
[over-polluting-se-portland-neighborhood/283-c1356589-e5ea-4ea4-b7f2-b9c4a1bec710](https://www.kgw.com/video/news/local/precision-castparts-settles-lawsuit-over-polluting-se-portland-neighborhood/283-c1356589-e5ea-4ea4-b7f2-b9c4a1bec710).

⁴ These claims are under review, and the final count has not yet been determined and is subject to
change until all claims have been finalized after the claims deadline. Cowen Decl. ¶ 23.

- **Low Opt-Out Percentage:** There have been 16 opt outs via Exclusion Request Forms. Cowen Decl. ¶ 26; Preusch Decl. ¶ 5, Ex. 3.⁵ This means the opt-out percentage is 0.2%. This a low opt-out percentage. *See infra*, Part. VI.B.2.
- **Low Objection Percentage:** Only one Class Member has objected. Preusch Decl. ¶ 4, Ex. 2. This equates to an objection rate of 0.01%. This is a negligible objection percentage, particularly in the tort context. *See infra*, Part. VI.B.3.

Of the 3,650 claims filed, 90 were filed after the April 9, 2022 postmarked date deadline. Cowen Decl. ¶ 24. Plaintiffs request—and Precision does not oppose—treating as timely any late-filed claims and Exclusion Request Forms received by Class Counsel or the Notice Provider on or before May 16, 2022.

C. *The Settlement provides Class Members significant cash payments and other relief.*

In addition to benefitting from the \$1.95 million in new pollution control equipment and over \$8 million in pollution controls and air monitoring instituted since this litigation began, Class Members can expect to receive average cash payments of several hundred to several thousand dollars if the Settlement is approved.

The following table shows the approximate breakdown of how the \$12.5 million Settlement Cash Payment would be distributed:

Description	Amount
Settlement Cash Payment	\$12.5 million
Requested Fees	-\$4.125 million
Requested Costs	- \$680,257.27
Requested Case Contribution Awards	- \$22,500
Notice and Claims Administration Costs	-\$109,880.52 ⁶
Remainder for Plan of Allocation	\$7,562,362.21

⁵ Two additional class members filed both exclusion requests and claims form, and A.B. Data is reaching out to those class members to confirm their intent. Cowen Decl. ¶ 26.

⁶ *See* Cowen Decl. ¶ 28.

The amounts remaining in the fund after the deductions outlined above, or roughly \$7.5 million, will be divided among Class Members according to the plan of allocation's *pro rata* distribution on a per-share basis. Settlement Agreement § 5.6.

“Generally, a plan of allocation that reimburses class members based on the type and extent of their injuries or the strength of their claims on the merits is presumptively reasonable.” Joseph M. McLaughlin, *McLaughlin on Class Actions: Law and Practice* § 6:23 (15th ed 2018) “The judgment of competent and experienced class counsel that a settlement and plan of allocation is fair and reasonable is entitled to substantial weight.” *Id.* (citing cases). Here, under the Settlement's allocation each claiming household is assigned a number of “shares” based on whether they own or rent their property, how many properties they own, the type of property (single- or multifamily), and whether they lived at a Class Property in February 2016. Settlement Agreement § 5.6.

Based on A.B. Data's preliminary analysis of the claims filed, Class Members are claiming a total of 11,180 shares among which the \$7.5 million fund remainder would be divided. Cowen Decl. ¶ 25. Thus, each share could be worth about \$676.41.

Applying that estimated per-share value of \$676.41 to the plan of allocation, the table below provides examples what Class Members with different circumstances can expect to receive.

Class Member Circumstance	Shares	Estimated Payment
Owner and resident of a single-family home	4	\$2,705.67
Renter in a multi-family unit	1	\$676.41
Non-resident owner of fourplex	4	\$2,705.67

V. LEGAL STANDARD

Class actions “shall not be voluntarily dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to some or all members of the class in such manner as the court directs[.]” ORCP 32 D. While Oregon’s Rules of Civil Procedure do not provide a standard for courts to apply in considering whether to approve a class action settlement, ORCP 32 D’s federal counterpart, Federal Rules of Civil Procedure 23(e), requires the court to determine whether a proposed class action settlement is “fair, reasonable and adequate.” *Redican v. Horizon Realty Advisors LLC*, No. 16LT01674, 2016 WL 8604452, at *2 (Aug 3, 2016, Or Cir). “It is appropriate for this Court to apply those standards in considering the parties’ proposed settlement.” *Id.*; *see also Froeber v. Liberty Mut Ins Co*, 222 Or App 266, 275, 193 P3d 999 (2008) (noting that “federal courts evaluating proposed class action settlements under ORCP 32 D’s federal counterpart, FRCP 23(e) * * * have noted that the ‘universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable.’”) (quoting *Class Plaintiffs v. City of Seattle*, 955 F2d 1268, 1276 (9th Cir), *cert den*, 506 US 953, 113 S Ct 408, 121 L Ed 2d 333 (1992)). “To determine whether a proposed settlement is fair, reasonable, and adequate, the court must examine whether the interests of the class are better served by the settlement than by further litigation.” Manual for Complex Litigation § 21.61 (4th ed 2013).

VI. ARGUMENT

The Court should grant final approval to this Settlement because it provides substantial monetary and non-monetary benefits for Class Members following years of contentious litigation and months of difficult negotiations. The result here is fair, reasonable, and adequate for three primary reasons. First, (A) the Settlement provides comprehensive relief to the class, particularly considering the trial risks; second, (B) the Settlement has received a truly positive reaction from

1 the class; and third, (C) the Settlement was the product of arms-length negotiations that were
2 well-informed by extensive discovery and aided by a neutral mediator.⁷

3 In conjunction with approving the Settlement, the Court should also: (D) approve Class
4 Counsel's request for reasonable fees and costs; (E) approve reasonable Case Contribution
5 Awards for the Settlement Class Representatives; (F) approve the Parties' chosen recipient of
6 any residual funds under ORCP 32 O; and (G) approve the more technical aspects of
7 administering the Settlement.

8 **A. *The Settlement provides substantial value and comprehensive relief to the class,***
9 ***particularly considering the trial risks.***

10 The Settlement provides substantial value and comprehensive relief to the class,
11 particularly when the potential risks of trial are considered. In reaching this Settlement, Class
12 Counsel and Plaintiffs weighed Class Members' recovery under the Settlement against a
13 potential recovery at trial. *See* 4 William B. Rubenstein, *Newberg on Class Actions* § 13:15 (5th
14 ed 2014) ("Newberg") ("[I]n ascertaining whether a settlement fell 'within the range of possible
15 approval,' courts would compare the settlement amount to the relief the class could expect to
16 recover at trial."). Based on this evaluation, the Settlement is a clear win for the Class.

17 Substantial Value and Comprehensive Relief: The Settlement is the largest of its kind in
18 Oregon history. It provides over \$22 million in total relief. This includes a \$12.5 million
19 Settlement Cash Payment, \$1.95 million in new pollution controls, and \$8.1 million in pollution
20 control improvements and air monitoring since this case began. Settlement Agreement §§ 2.4,
21 4.1, 4.2.

22
23
24 ⁷ When evaluating the adequacy of a proposed settlement in the class action context, courts often
25 evaluate these and similar factors, none of which are dispositive. *See* 4 William B. Rubenstein,
26 *Newberg on Class Actions* § 13:48 (5th ed 2014). Additional factors include whether counsel on
both sides endorse the settlement and the defendant's ability to withstand a larger judgment.
Both these factors also favor finding the Settlement fair and reasonable in this case.

1 The Settlement Cash Payment alone is more than five times the largest fine ever levied
2 against a polluter by the Oregon Department of Environmental Quality.⁸ It is also generous when
3 compared to another recent neighborhood air pollution class settlement in Oregon. *See* Final
4 General Judgment, *Meeker et al. v. Bullseye Glass Co.*, No. 16CV07002 (Mult. Co Cir Ct May
5 10, 2019) (approving \$6.5 million settlement). This Settlement also measures favorably to others
6 outside Oregon. *See, e.g.*, Final Judgment and Order, *Dykehouse et al. v. The 3M Co. et al*, No.
7 1:18-cv-01225 (WD Mich Sept 1, 2021), ECF 125 (\$11.9 million in water pollution case).

8 Under the Settlement’s reimbursement and allocation scheme, *see supra* Part IV.C., Class
9 Members will receive hundreds or potentially thousands of dollars in cash payments if the
10 Settlement is approved. While these average payments will not be as high as Class Counsel
11 predicted due to the extraordinary claims rate—over twice the claims rate in the *Meeker v.*
12 *Bullseye Glass Co.* matter—the per-household payments are still generous when compared to
13 comparable settlements. *See Moulton v. U.S. Steel Corp.*, 581 F3d 344, 351 (6th Cir 2009) (\$4.45
14 million settlement in air pollution class action that provided \$300 to each class member); *See*
15 Pl.’s Mot. Final Approval Class Settlement, *Connors v. Amerities West, LLC*, No. 16-cv-25390,
16 at 3-4 (Wasco Cty Cir Ct Aug. 17, 2018) (seeking final approval of \$1.25 million settlement on
17 behalf of potentially more than 5,000 residents).

18 In addition to those cash payments, Class Members (and the public) will benefit from
19 \$1.95 million of additional pollution control equipment at the Large Parts Campus. That is a
20 fantastic outcome, especially after considering the numerous risks presented by trial.

21 Trial Outcome: The value of this Settlement becomes even more apparent when
22 juxtaposed against the risks associated with ongoing litigation and trial. Plaintiffs and Class
23
24

25 ⁸ *See* Oregon DEQ, *DEQ enforcement fines Malarkey Roofing \$2.1 million for failing to*
26 *appropriately control its emissions* (Oct. 20, 2021),
<https://www.oregon.gov/newsroom/pages/NewsDetail.aspx?newsid=64494#:~:text=Portland%2C%20OR%E2%80%9494Today%2C%20the,quality%20violations%20spanning%2010%20years.> (“This is the largest fine DEQ has ever issued.”).

Counsel evaluated the substantial value and comprehensive relief of the Settlement against three potential negative outcomes:

- **Class Certification:** While courts regularly certify environmental class actions, Plaintiffs bore the risk that the Court would not—after years of litigation—certify a class here. Even if the Court certified the class, Plaintiffs faced the risk of interlocutory appeal of that ruling. *See* ORS 19.225 (providing for potential appeal of pretrial orders in class cases).
- **Expert-Intensive Trial:** Trial would be long and costly, involving complicated legal and factual questions and battles between the experts. Plaintiffs believe this would have been the first environmental class trial of its kind in Oregon history. And despite the merits of their claims, Plaintiffs have no guarantee a jury would find in their favor.
- **Delay and Dilution of Relief:** Even if Plaintiffs won at trial, the inevitable delay stemming from numerous anticipated post-trial appeals, actions for declaratory relief with respect to insurance coverage, or both, could postpone and dilute the impact of any payment or injunctive relief. This is particularly important in the context of the Settlement’s injunctive relief, which is intended to control and mitigate the impact of Precision’s pollution in the near term.

B. *The Settlement has generated a positive reaction from the class.*

Class Members’ positive reaction to the Settlement “demonstrates that the Settlement Agreement is fair and reasonable.” *Arnett v. Bank of Am., N.A.*, No. 3:11-CV-1372-SI, 2014 WL 4672458, at *10 (D Or Sept 18, 2014) (citing cases).

A high claims rate coupled with low opt-out and objection percentages indicates a positive reaction to a settlement. *See Arnett*, 2014 WL 4672458, at *10 (citing cases); *accord Hanlon v. Chrysler Corp.*, 150 F3d 1011, 1027 (9th Cir 1998) (“[T]he fact that the overwhelming majority of the class [members] * * * stayed in the class presents at least some objective positive commentary as to its fairness.”); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F3d 768, 812 (3d Cir 1995) (“In an effort to measure the class’s own reaction to the settlement’s terms directly, courts look to the number and vociferousness of the objectors.”). In response to notice in this case, there has been (1) a high claims rate, (2) a low

percentage of opt-outs, and (3) just one objection. Also, (4) the sole objection received should be overruled for reasons provided below.

1. *There has been a high claims rate among the Class.*

The extraordinary claims rate in this case is compelling evidence that the settlement is fair, reasonable, and adequate. A claims rate of more than 15% is considered “positive.” See *Arnett*, 2014 WL 4672458 at *14. Indeed, “[s]ingle-digit claims rate settlements also are routinely approved.” See *Lee v. Ocwen Loan Servicing, LLC*, No. 14-CV-60649, 2015 WL 5449813, at *22 (SD Fla Sept 14, 2015) (approving settlement, citing *In re Online DVD—Rental Antitrust Litig.*, 779 F3d 934, 944-45 (9th Cir 2015) (less than 4% filed claims)); *Sullivan v. DB Invs., Inc.*, 667 F3d 273, 329 n.60 (3d Cir 2011) (claims rates in consumer class settlements “rarely” exceed 7%). Here, based on the total number of Notice Packets mailed, the Settlement’s claim rate is an estimated 47%. This is a positive reaction from the class.

2. *There is a low opt-out percentage among the class.*

The opt-out percentage is low, about 0.2%. An opt-out percentage of around 1% is generally considered low. *Arnett*, 2014 WL 4672458 at *14; see also *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F3d 410, 438 (3d Cir 2016), as amended (May 2, 2016) (noting that “only approximately 1% of class members objected and approximately 1% of class members opted out. We agree with the District Court that these figures weigh in favor of settlement approval.”), *cert denied*, 137 S Ct 607 (2016); *In re Processed Egg Prods. Antitrust Litig.*, 284 FRD 249, 269 (ED Pa 2012) (opt-out rate of 1.14% of class members was “virtually di minimis” and “weigh[ed] in favor of the proposed settlement’s fairness and adequacy”). A less than 1% opt-out rate is particularly low in the mass tort context. See Theodore Eisenberg and Geoffrey Miller, *The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 Vand L Rev 1529, 1549 (2004) (noting that the average opt-out percentage in mass tort class actions was 4.6% as of 2004). The low percentage of opt-outs in this case

reflects a positive reaction from the class—another indication that the Settlement is fair, reasonable, and adequate.

3. *Almost no Class Members objected to this high-profile Settlement.*

“[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of [the] proposed class settlement are favorable to the class members.” *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 FRD 523, 529 (CD Cal 2004) (citing cases). Here, there has only been one objection. Preusch Decl. ¶ 4. This means that, at most, the percentage of objectors is 0.01% (one out of 7,790). Such a low objection percentage indicates a positive reaction from the class to the high-value Settlement—yet another indication that it is fair, reasonable, and adequate.

4. *The Court should not reject the Settlement based on the objector’s arguments.*

The Court should not reject a Settlement that will benefit thousands based on the objection of one. Brianna Tarnower objects to the scope of the release of the settlement because, in the objector’s view, it provides a “blanket protections shielding PCC from future litigation” over health concerns. Preusch Decl. Ex. 2 at 1. This objection does not merit rejecting this settlement for two reasons.

First, while the scope and preclusive effect of the release may need to be resolved in a future dispute, it does not bar “future litigation.” The release is limited to claims “as of the date of this Agreement.” Settlement Agreement § 7.2. If a Class Member’s hypothetical personal injury claim accrues *after* this agreement, that Class Member’s claim should not be barred. If the Class Member already has a personal injury claim, they may opt out and pursue that claim. The Settlement is no impediment. *See DeSantis v. Snap On Tools Co., LLC*, No. 06-cv-2231, 2006 WL 3068584 at *6 (DNJ Oct 27, 2006) (“Additionally, the lack of merit of the objectors’ arguments also weighs in favor of approving the Settlement.”).

Second, even though Plaintiffs did not bring personal injury claims, it is common for class settlements to release claims not brought. “A final judgment precludes later litigation

1 between the same parties over any claims arising out of the transaction and occurrence that was
2 the subject of the initial lawsuit, *whether or not those claims were made part of the initial*
3 *litigation.*” Newberg § 18:19. A release is not overbroad so long as it “does not release claims
4 outside the factual predicate of the class’s claims.” *Id.* This rule “is widely followed and not
5 terribly controversial[.]” *Id.* § 18:21.

6 The Oregon Court of Appeal discussed this common occurrence in *Froeber v. Liberty*
7 *Mutual Insurance Co.*, 222 Or App 266, 193 P3d 999 (2008), a case where a class of insureds
8 alleged their insurers did not properly compensate them under their policies. There, the release
9 covered “any and all claims * * * which have been alleged or which could have been alleged” in
10 the action, and even extended to “Unknown Claims” “arising out of newly discovered facts
11 and/or facts found hereafter to be other than or different from the facts now believed to be true.”
12 222 Or App at 271-72.

13 The Court of Appeals adopted the rule from federal courts as set out by the Ninth Circuit:
14 a court “may release not only those claims alleged in the complaint, but also a claim ‘based on
15 the identical factual predicate as that underlying the claims in the settled class action even though
16 the claim was not presented and might not have been presentable in the class action.’” *Id.* at 276
17 (quoting *Class Plaintiffs v. City of Seattle*, 955 F2d 1268, 1278 (9th Cir)). It held that the trial
18 court did not abuse its discretion in approving a settlement that released claims not brought
19 because those claims arose from the same predicate insurance claims, even though proving the
20 additional claims would have likely required the class “to establish additional facts as to
21 defendants’ alleged wrongdoing.” *Id.* at 278.

22 Here, the notice advised class members that if they do not opt out, they will release “all
23 claims that arise from, relate to, or are in connection with airborne emissions from the PCC
24 facility” and that if they “wish to further evaluate the Settlement Agreement’s release of claims
25 in light of your personal circumstances, you should immediately consult a lawyer to discuss your
26 situation.” Preusch Decl. Ex. 1 (LFN Question 23). The “factual predicate” in this case is the

1 particulate emissions from the Large Parts Campus, but—as in *Froeber*—a Class Member would
2 be required to prove additional facts, like specific causation, to prove any personal injury claims.

3 For these reasons, this objection should be overruled.

4 **C. *The Settlement was the product of arms-length negotiations, well informed by***
5 ***extensive discovery.***

6 The Settlement merits approval because it comes after extensive discovery and lengthy,
7 arms-length negotiations.

8 Courts typically approve settlements where “the proposed settlement was preceded by a
9 lengthy period of adversarial litigation involving substantial discovery” and “when settlement
10 negotiations are conducted by a third-party mediator.” Newberg § 13:14; *see also Ellis v. Les*
11 *Schwab Tire Ctrs. of Portland, Inc.*, No. 0809-12701, 2013 WL 5293976, at *1 (Or Cir June 18,
12 2013) (approving settlement that was “the product of good faith, arm’s-length negotiations
13 between the parties”); Robert H. Klonoff, *Class Actions and Other Multi-Party Litigation in a*
14 *Nutshell* § 9.1, at 257 (3rd ed 2007) (“Courts have generally applied a presumption that a
15 settlement negotiated at arms’ length is fair and reasonable.”).

16 Both factors are present here. The Parties engaged in years of adversarial litigation before
17 negotiating this Settlement with the oversight of an experienced mediator. Settlement Agreement
18 § 2.6.

19 Plaintiffs filed this case in mid-2016. Since then, the Parties have spent significant funds
20 to research, develop, and argue this case, engaging in extensive motion practice, including a
21 motion to dismiss, motion for summary judgment, and a motion for class certification. The
22 Parties also reached this Settlement with the benefit of a thorough factual record. The parties
23 engaged in 13 fact witness and organization depositions, sent 20 document subpoenas to third
24 parties, and collectively produced over 170,000 documents. *See* Settlement Agreement § 2.3
25 (detailing litigation history). Through this discovery, the Parties created a strong factual record
26 on which to evaluate their claims and inform their negotiations. *See Rodriguez v. W. Publ’g*

1 *Corp.*, 563 F3d 948, 967 (9th Cir 2009) (“Extensive discovery had been conducted * * *. From
2 this the district court could find that counsel had a good grasp on the merits of their case before
3 settlement talks began.”).

4 Following those years of discovery and adversarial litigation, the Parties engaged in
5 months of intensive mediation efforts with the assistance of a skilled mediator. *See* Settlement
6 Agreement § 2.6. “During that time, the Parties conducted numerous video and telephonic
7 conferences with the mediator, and exchanged various information related to their claims and
8 defenses.” *Id.* Those efforts resulted in the Parties accepting a mediator’s proposal. *Id.* The
9 robust, arms-length negotiations helped the Parties achieve a fair and reasonable Settlement.

10 **D. *The Court should approve Class Counsel’s reasonable fees and costs.***

11 Class Counsel and Plaintiffs labored for years on this challenging, complicated case. That
12 work has resulted in a Settlement that provides genuine, lasting relief for Class Members and the
13 public. Class Counsel’s zeal, diligence, and creativity in achieving these results merits granting
14 Class Counsel’s request for attorneys’ fees and reimbursement of expenses. Notably, no one has
15 objected to the portion of the notice explaining Class Counsel would request up to one third of
16 the Settlement Cash Payment to cover their fees. *See* Preusch Decl. Ex. 1 (LFN Question 20).

17 “Under ORCP 32 M the court has broad authority to award fees in a class action lawsuit.”
18 *Scharfstein v BP West Coast Prods., LLC*, No. 1112-17046, 2015 WL 1255571, at *4 (Or Cir
19 Mar 11, 2015). Here, Class Counsel, after six years of unpaid, expert-intensive litigation with no
20 guarantee of recovery, request \$4.125 million in fees and \$680,257.27 in costs. Preusch Decl. ¶
21 10 (detailing costs). The \$4.125 million fee request—a reasonable percentage of the \$12.5
22 million fund—is *less* than Class Counsel’s total fees based on reasonable rates and hours
23 worked, which total over \$5.7 million. Preusch Decl. ¶ 7; Lowney Decl. ¶ 3; Anuta Decl. ¶ 3.

24 The Court should grant Class Counsel’s fees and expenses reimbursement request for two
25 reasons. First, the request is reasonable under the percentage-of-fund approach Oregon courts use
26 to gauge fee requests in the class action context, especially when compared to Class Counsel’s

1 “lodestar” of more than \$5.7 million. *See Strawn v. Farmers Ins. Co. of Oregon*, 353 Or 210,
2 219-20, 297 P3d 439 (2013). Second, this request is reasonable when evaluated under ORCP 32
3 M’s factors.

4 **1. *Plaintiffs’ fee request is reasonable as a percentage-of-fund.***

5 Plaintiffs’ fee request of \$4.125 million—which in addition to covering six years of
6 litigation must also cover Class Counsel’s future work administering this Settlement—is a
7 reasonable percentage of the fund Class Counsel recovered for the class.

8 A normal percentage in a “complex class action[] * * * tend[s] to be between 20 to 30
9 percent of the recovered fund,” and “circumstances” may even justify an “upward * * *
10 adjustment.” *Strawn*, 353 Or at 229-30. Here, the \$4.125 million requested in fees—
11 approximately 33% of the \$12.5 million fund—is close to the typical range and justified by the
12 facts of this case.⁹

13 In addition to the percentage-of-fund approach, courts sometimes use the lodestar method
14 to cross-check the reasonableness of a fee request. *See id.*, 353 Or at 220-21. Under the lodestar
15 method, an attorney is awarded a “fee based on a reasonable hourly rate, multiplied by a
16 reasonable number of hours devoted to work on the case.” *Id.* at 217 (also discussing possible
17 adjustments). Here, when evaluated against Class Counsel’s lodestar of over \$5.7 million, the
18 \$4.125 million request is similarly reasonable. As of March 31, 2022, Class Counsel had
19 dedicated over 10,789 hours to this litigation. Preusch Decl. ¶ 7; Lowney Decl. ¶ 3; Anuta Decl.
20 ¶ 3. At Class Counsel’s usual and customary hourly rates, Class Counsel could claim over \$5.73
21 million in fees, *id.*, over a third *more* than the reasonable fee Class Counsel is requesting.

22 And this lodestar calculation does not even include an estimate of future work, which the
23 Court should consider. *Cf. Reyes v. Bakery & Confectionary Union & Indus. Int’l Pension Fund*,
24 No. 14-CV-05596-JST, 2017 WL 6623031, at *14 (ND Cal Dec 28, 2017) (including estimated
25 hours for “future work” related to, inter alia, “managing class members’ claims”). For example,

26 ⁹ Measured against the full value of the Settlement, \$22.5 million, Class Counsel’s requested fee
is 18.3%.

1 in the analogous *Bullseye* matter, Keller Rohrbach attorneys and staff spent an additional 274
2 hours from the date of final approval through the end of March 2022 administering the
3 settlement in that case. Preusch Decl. ¶ 13.

4 A sample of the future work that Class Counsel here must perform or oversee following
5 Final Approval includes:

- 6 • overseeing A.B. Data's review of Class Member claim forms, including following
7 up with Class Members as necessary for additional information, and in general
8 assisting with the claims administration process, Settlement Agreement § 6.2;
- 9 • ensuring completion of the future pollution control projects, *id.* § 4.1.2;
- 10 • after claims are paid, providing a report to this Court confirming the purpose of
11 the Settlement fund has been fulfilled and seeking an order that the fund be
12 closed, *id.* § 10; and
- 13 • more generally, ensuring "the timely and expeditious implementation of the
14 Settlement Agreement[.]" *Id.* § 15.2.

15 This has been a complex case that Class Counsel has efficiently litigated, and more work
16 remains to be done for which Class Counsel will not receive any additional compensation or cost
17 reimbursement. Nonetheless, Class Counsel is asking for fees far less than Class Counsel's
18 lodestar. On those facts, Class Counsel's \$4.125 million request is reasonable.

19 **2. *Class Counsel's fee and expenses are reasonable under ORCP 32 M's factors.***

20 Class Counsel's fee request is also reasonable when evaluated under ORCP 32 M's five
21 factors for evaluating fee requests in class actions. These factors, none of which are controlling,
22 include: (a) time and effort spent by Class Counsel on the litigation, coupled with quality of
23 service; (b) results achieved and benefits conferred on the class; (c) magnitude, complexity, and
24 uniqueness of the litigation; (d) contingent nature of success; and (e) whether the fees are
25 "excessive" under Oregon Rule of Professional Conduct 1.5. *See Scharfstein*, 2015 WL 1255571,
26 at *4. Notably, many of these factors overlap with considerations that support finding the
Settlement itself fair, reasonable, and adequate, particularly the substantial relief secured for the
class considering the trial risks.

1 a. **Class Counsel spent significant time and effort on this litigation,**
2 **providing highly specialized, extensive, and high-quality service to the**
3 **class.**

4 Under ORCP 32 M(1)(e)(i), when deciding the reasonableness of a request for fees and
5 costs, courts should evaluate the time and effort expended by the attorney in the litigation,
6 including the nature, extent, and quality of the services rendered. Here, Class Counsel have spent
7 a great deal of time and effort on this case and provided excellent service to the class.

8 **Time and Effort:** Class Counsel have spent over 10,789 hours prosecuting this case on
9 behalf of the Class. Preusch Decl. ¶ 7; Lowney Decl. ¶ 3; Anuta Decl. ¶ 3. These hours were
10 dedicated to intensive fact discovery, responding to Class Member inquiries, taking and
11 defending depositions, and numerous, vigorously contested motions, including Plaintiffs' motion
12 for class certification, which was accompanied by three expert reports.

13 The time and effort Class Counsel invested in this case support a finding that the request
14 for fees and costs is reasonable. This request's reasonableness is further sustained by the quality
15 of the work done, and Class Counsel's ability to apply complex legal and scientific theories to
16 this property-based environmental class action.

17 **Nature, Extent, and Quality of Service:** The environmental issues at the heart of this
18 class action made it compelling and necessary but also complicated and challenging. Similar to
19 the situation in *Connors v. Amerities*, here it was "unlikely that a class member could've
20 obtained the results individually, given what the likely calculation of damages is versus the cost
21 and expense of getting there[.] [A]nd so [a] class [action] really is the only way to do this[.]"¹⁰
22 From day one, this case presented numerous challenges, and complicated factual, scientific, and
23 legal issues. Class Counsel rose to every challenge.

24 For example, on the factual and scientific front, Class Counsel identified the proper
25 methodology for determining the extent of Precision's pollution, using AERMOD modeling. On

26 ¹⁰ Audio: *Amerities lawsuit settlement accepted by Circuit Court*, Gorge Country Media at 30:22-
36 (Sept. 7, 2018), <https://gorgenewscenter.com/2018/09/07/amerities-lawsuit-settlement-accepted-by-circuit-court/>.

1 the legal front, Class Counsel determined how best to calculate and fix the damage Precision
2 wrought, and to apply Oregon's procedural rules to this novel and complex action.

3 The time, effort, and quality of service provided by Class Counsel support finding the
4 requested fees and costs reasonable.

5 **b. The Settlement achieves a substantial result and confers numerous**
6 **benefits upon the class.**

7 Under ORCP 32 M(1)(e)(ii), when determining whether fees and costs are appropriate,
8 courts should evaluate the "results achieved and benefits conferred upon the class." Here, the
9 results achieved are found in the substantial relief provided by the Settlement, including \$22.5
10 million in total relief that confers numerous benefits upon the class. These benefits include
11 substantial cash payments to class members and \$1.95 million in additional pollution controls.
12 The Settlement may also provide a deterrent effect for other companies. As one prominent local
13 air advocate said in response to the Settlement, "It's a really great signal to companies that it's
14 going to cost them to pollute."¹¹

15 These latter benefits to the "public at large" are an additional factor to consider when
16 deciding whether a proposed fee award is reasonable. *See Strawn v. Farmers Exchange*, No.
17 9908-09080, 2004 WL 5308664 (Or Cir Dec 22, 2004) (noting that it is important to provide a
18 large fee award when there are benefits conferred on the "public at large"). Thousands of Class
19 Members, their neighbors, and Portlanders will reap the reward of having better particulate
20 filtration in place at the Large Parts Campus.

21 The Settlement's substantial Class Member and public benefits justify Class Counsel's
22 fee request.

23 **c. This litigation was complex, involving complicated legal and scientific**
24 **issues.**

25 Under ORCP 32 M(1)(e)(iii), courts should consider the magnitude, complexity, and
26 uniqueness of the litigation when deciding whether to award fees and costs. Here, there is no

¹¹ Rogoway, *supra* note 3 (quoting Mary Peveto of Neighbors for Clean Air).

1 question that this case was complex: The litigation has lasted over six years, it involved
2 thousands of Class Members spread out over multiple neighborhoods; there were numerous
3 complicated factual, scientific, and legal questions; and it applied innovative real estate appraisal
4 methodology to determine damages. Considering the nature of this case, the requested fee award
5 is reasonable. *See Strawn*, 2004 WL 5308664 (declaring that where “the challenge was great, the
6 risks were many * * * the reward now must be meaningful. It must reflect reasonable
7 compensation to Plaintiff’s counsel in this case.”).

8 **d. The outcome of this case was never assured.**

9 Under ORCP 32 M(1)(e)(iv), courts must evaluate the “contingent nature of success”
10 when deciding whether fees and costs are warranted. When a case is particularly risky, but also
11 significant to the public and/or community at large, it is important to incentivize plaintiffs and
12 lawyers to take the risk and pursue the case. *See generally, e.g., State ex rel Young v. Crookham*,
13 290 Or 61, 68, 618 P2d 1268 (1980) (acknowledging “the desirability of inducing citizens to act
14 as private attorneys general” in certain cases and noting “it is far from certain that compensatory
15 awards alone serve a serious deterrent function even in mass litigation.”).

16 The initial willingness to assume risk associated with complex legal theories must also be
17 compensated, both to encourage plaintiffs to act as private attorneys general, and also to act as an
18 effective deterrent to misconduct. *See, e.g., Bower v. Cycle Gear, Inc.*, No. 14-CV-02712-HSG,
19 2016 WL 4439875, at *6-7 (ND Cal Aug 23, 2016) (awarding 30% of common fund for fees and
20 noting that counsel had litigated the action for almost two years with no payment and no
21 guarantee of recovery).

22 This litigation was challenging and risky throughout, from litigating a first-of-its kind in
23 Oregon “*Lone Pine*” issue to class certification and attendant motions to exclude Plaintiffs’
24 experts. “Every case is different. Some cases have low risk and the fee award should reflect that.
25 But, in this case, there was high risk from all perspectives.” *Strawn*, 2004 WL 5308664. Class
26

1 Counsel took on such a risk here and were able to reach an excellent recovery for the class and
2 the community at large.

3 The constant challenges, riskiness, and significance of this case warrant Class Counsel's
4 fee award. Such an award will both simultaneously compensate Class Counsel for their work on
5 this matter, incentivize future citizens and lawyers to pursue similar litigation, and deter similar
6 misconduct as that alleged against Precision.

7 **e. The fees and costs are reasonable under ORPC 1.5.**

8 Under ORCP 32 M(1)(e)(v), courts should consider appropriate criteria under Oregon
9 Rule of Professional Conduct 1.5 ("ORPC 1.5"). ORPC 1.5's overriding concern is that fees not
10 be "excessive," which is to be evaluated under the following individual considerations, many of
11 which substantially overlap with the first four Rule 32 M factors discussed above:

- 12 • **ORPC 1.5(b)(1):** Focuses on the time and labor required, the novelty and
13 difficulty of the questions involved, and the skill requisite to perform the legal
14 service properly. These considerations substantially overlap with Rule 32
15 M(1)(e)(i), which focused on the "time and effort expended" and the "nature,
16 extent, and quality of the services rendered." Under the same arguments advanced
17 above, this factor favors finding the fees and costs are not excessive.
- 18 • **ORPC 1.5(b)(3):** Looks at "the fee customarily charged in the locality for similar
19 legal services." This consideration is properly addressed by the percentage-of-
20 fund and lodestar cross-check calculations, which are performed above. *See infra*.
21 These calculations demonstrate that the fees and costs are not excessive.
- 22 • **ORPC 1.5(b)(4):** Focuses on the "amount involved and the results obtained."
23 This consideration is addressed under Rule 32 M(1)(e)(ii) and (iii), which looks at
24 the results achieved and the magnitude of the litigation. Pursuant to the same
25 arguments advanced above in support of finding the Settlement fair and
26 reasonable, this factor favors finding the fees and costs are not excessive.
- **ORPC 1.5(b)(7):** Looks at the "experience, reputation, and ability of the lawyer
or lawyers performing the services." This consideration is already addressed by a
combination of Rule 32 M(1)(e)(i), which looks at the "nature, extent, and quality
of the services rendered" and Rule 32 A's adequacy requirement, which evaluates
the adequacy of class counsel. The former is addressed above, while the latter has
implicitly been recognized by the Court, which has already appointed Class
Counsel for settlement purposes. *See also* Declaration of Matthew Preusch in

Support of Plaintiffs' Motion for Class Certification, Exs.62-65 (firm resumes).
This factor also favors finding the fees and costs are not excessive.¹²

The requested fee here is less than the fees incurred, for complex and novel legal work with an excellent outcome. Under these circumstances, there is no concern that Class Counsel's fee request is "excessive."

Because that fee request is more than reasonable, Class Counsel asks this Court to approve it.

E. *The Court should approve Case Contribution Awards for Settlement Class Representatives.*

Case Contribution Awards for the Settlement Class Representatives are warranted in this case. "Incentive fees [or 'Contribution Awards'] are intended to address a cost burden that class actions disproportionately impose on the class representative. * * * [T]hose representatives incur costs—monetary and otherwise—that the other members of the class do not. Those costs may include spending time learning about the case; being subject to the time, expense, and intrusiveness of discovery[.]" *Strawn*, 353 Or at 242 (citing Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L Rev 1303, 1305 (2006)).

¹² The additional ORPC 1.5 considerations either support approving fees and costs or are not relevant in the class action context:

- **ORPC 1.5(b)(2):** Looks at the "likelihood, if apparent, that the acceptance of the particular employment will preclude other employment by the lawyer." This factor favors approving fees because it required Class Counsel to commit time and resources that they necessarily could not commit to other cases;
- **ORPC 1.5(b)(5):** Focuses on "the time limitations imposed by the client or by the circumstances." It is not clear how this factor is relevant in the class action context;
- **ORPC 1.5(b)(6):** Looks at the "nature and length of the professional relationship with the client." It is not clear how this factor is relevant in the class action context, where most attorney-client relationships do not pre-exist or continue beyond the particular litigation;
- **ORPC 1.5(b)(8):** Asks whether the fee is "fixed or contingent." It is not clear that this factor is relevant in a class action, where the fee will always be contingent.

1 These awards to the class representatives—whether called incentive, contribution, or
2 service awards—“aim to compensate class representatives for their service to the class and
3 simultaneously serve to incentivize them to perform this function.” Newberg § 17:1. *See also id.*
4 § 17:7 (noting that as of 2011, incentive awards are awarded in over 80% of class actions). This
5 is particularly true in the case of class actions involving common funds. *Cf. Op. re Pet. Att’ys*
6 *Fees, Costs and Incentive Awards, Liborio v. Del Monte Fresh Produce N.A., Inc.*, No. 0710-
7 11657, at 11 (Mult Cty Cir Ct Jan 1, 2018) (Bushong, J.) (declining to award Contribution
8 Awards because “[t]his case does not involve a common fund” and there was no statute requiring
9 the award).

10 This class action involved years of effort from the Settlement Class Representatives and
11 resulted in a common fund, warranting Case Contribution Awards for Settlement Class
12 Representatives Rodica Resendez, Brian Resendez, and Debra Taevs. Plaintiffs request awards
13 of \$7,500 each. These amounts are “warranted” in this case based on Plaintiffs’ contributions to
14 the litigation. *See Dyer v. Wells Fargo Bank, N.A.*, 303 FRD 326 (ND Cal 2014); *see also*
15 *Strawn*, 353 Or at 242 (adding additional \$5,000 award on top of \$20,000 already awarded).

16 When deciding whether a Case Contribution Award is appropriate, courts often focus on
17 two factors: the time and effort the class representatives dedicated to protecting the interests of
18 the class and the degree to which the class benefited from those efforts. *See Ann K. Wooster,*
19 *J.D., Propriety of Incentive Awards or Incentive Agreements in Class Actions*, 60 ALR 6th 295
20 (Originally published in 2010) (collecting cases, such as *In re Heartland Payment Systems, Inc.*
21 *Customer Data Sec. Breach Litigation*, 851 F Supp 2d 1040 (SD Tex 2012), *Tuten v. United*
22 *Airlines, Inc.*, 41 F Supp 3d 1003 (D Colo 2014), *Torchia v. W.W. Grainger, Inc.*, 304 FRD 256
23 (ED Cal 2014), *Good v. Nationwide Credit, Inc.*, 314 FRD 141 (ED Pa 2016)). Both factors
24 support approving Case Contribution Awards for the Settlement Class Representatives.

1 **1. *Settlement Class Representatives dedicated significant time and effort to***
2 ***protecting the interests of the Class.***

3 As the record confirms, the Settlement Class Representatives have dedicated significant
4 time and effort to protecting the interests of the class. Settlement Class Representatives
5 conducted research, attended meetings, met with counsel, searched for and provided documents,
6 sat for depositions, and otherwise invested substantial time and effort to work with counsel to
7 prosecute these claims on behalf of the class. *See, e.g.*, Declaration of Matthew Preusch in
8 Support of Plaintiffs' Motion for Class Certification, Exs. 11-13 (deposition excerpts). This
9 extraordinary generosity and effort of the Settlement Class Representatives should be recognized
10 and rewarded by Case Contribution Awards.

11 **2. *The class benefited significantly from Settlement Class Representatives' efforts.***

12 The Settlement provides \$22.5 million in total relief for the class. This covers \$1.95
13 million in new pollution control equipment, estimated cash payments ranging from several
14 hundred to several thousands of dollars for Class Members, and litigation fees and costs.
15 Settlement Agreement §§ 2.4, 4.1, 4.2, 5.5. These are all significant benefits. Compared to the
16 settlements of similar cases, these benefits are quite generous. *See supra*, Part VI.A.. The class
17 would not have received any of these benefits without Settlement Class Representatives' efforts.
18 This favors Case Contribution Awards.

19 **F. *The Court should approve the Parties' chosen recipient of residual funds.***

20 Under ORCP 32 O, "[i]f any amount awarded as damages is not claimed * * * , the court
21 shall order that (1) At least 50 percent of the amount not paid to class members be paid or
22 delivered to the Oregon State Bar for the funding of legal services provided through the Legal
23 Services Program established under ORS 9.572; and (2) The remainder of the amount not paid to
24 class members be paid to any entity for purposes that the court determines are directly related to
25 the class action or directly beneficial to the interests of class members." Here, the Parties have
26 agreed to split any such residual between two organizations serving the Class Area: the Johnson

1 Creek Watershed Council and the Brentwood-Darlington Neighborhood Association. *See*
2 Settlement Agreement § 5.7; Preusch Decl. ¶ 14.

3 **G. *The Court should approve the technical aspects of the Settlement’s administration.***

4 The Court should also approve the more technical aspects of administering the
5 Settlement. These include certifying the class subject to final judgment, appointing A.B. Data as
6 the settlement administrator, approving the plan of allocation, and approving the disbursement of
7 funds from the Qualified Settlement Fund (“QSF”) to Class Counsel and A.B. Data for allocation
8 among the Class Members.

9 Class certification: “The judgment in an action ordered maintained as a class action * * *
10 must generally describe the members of the class and must specifically identify any persons who
11 requested exclusion from the class and are not bound by the judgment.” ORCP 32 L. Here, the
12 Court’s preliminary approval order already certified the Settlement class, and Exhibit 3 of the
13 Preusch Declaration identifies those who have requested exclusion.

14 A.B. Data: Class Counsel retained A.B. Data, Ltd. to provide settlement notice and
15 administer claims in this Action. A.B. Data has been appointed as “Notice, Claims, and/or
16 Settlement Administrator in hundreds of class actions, administering some of the largest and
17 most complex notice and settlement programs of all time.” Declaration of Eric Schachter in
18 Supp. of Mot. for Preliminary Approval of Class Settlement ¶ 3.

19 Plan of Allocation: Section 5.6 of the Settlement lays out the plan for allocating
20 Settlement funds among the Class Members, based on the number of “settlement shares” per
21 household, distributed on a *pro rata* basis among the total number of claiming households.
22 Settlement § 5.6. Plaintiffs request that the Court formally approve that allocation plan.

23 Disbursement of Funds: Under the terms of the Settlement Agreement, all funds—
24 whether Class Member payments, Case Contribution Awards for Class Representatives, and
25 attorney fees and costs—are to be dispersed from the Qualified Settlement Fund or “QSF.”
26 Settlement Agreement § 5.6. Plaintiffs ask the Court to approve disbursement of these funds

1 from the QSF under the terms of the Settlement Agreement. Following disbursement of those
2 funds, Class Counsel will report back to the Court confirming the QSF may be closed. *Id.* § 10.

3 VII. CONCLUSION

4 For the foregoing reasons, the Court should approve the Settlement as fair, reasonable,
5 and adequate, including approving the substantial relief afforded to the class; the fees and costs
6 for Class Counsel; and the Case Contribution Awards for Settlement Class Representatives. The
7 Court should also approve the more technical aspects of administering the Settlement, including
8 describing those bound, appointing A.B. Data as the Settlement Administrator, approving the
9 plan of allocation, approving the ORCP 32 O residual recipients, approving the processing of
10 late-filed claims, and approving the disbursement of funds from the QSF to administer the
11 Settlement. Lastly, the Court should enter final judgment.

12 DATED this 29th day of April, 2022.

13 KELLER ROHRBACK L.L.P.

14
15 By s/ Matthew J. Preusch

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24 *Attorneys for Plaintiffs and the Class*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true copy of the foregoing Plaintiffs' Motion for Final
3 Approval of Class Action Settlement and Entry of Judgement by electronic transmission of a
4 notice of filing by the electronic filing system provided by the Oregon Judicial Department for
5 the electronic filing and the electronic service of a document via the Internet to the electronic
6 mail (email) address of a party who has consented to electronic service under UTCR 21.100(1)
7 and email upon the following:

8 David H. Angeli
9 Kristin L. Tranetzki
10 Colin Hunter
11 Angeli Law Group, LLC
12 121 SW Morrison Street, Suite 400
13 Portland, OR 97294
14 david@angelilaw.com
15 kristen@angelilaw.com
16 colin@angelilaw.com
17 *Attorneys for Defendants*

18 I hereby declare that the above is true to the best of my knowledge and belief. I
19 understand that this document is made for use as evidence in court and is subject to penalty of
20 perjury.

21 DATED: April 29, 2022.

22 Signed: s/ Matthew J. Preusch
23 Matthew J. Preusch
24 Attorney for Plaintiffs
25
26