

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

[Submitting Counsel on Signature Page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC.  
NATIONAL PRESCRIPTION OPIATE  
CONSULTANT LITIGATION

Case No. 21-md-02996-CRB (SK)

**CLASS ACTION**

This Document Relates to:  
  
ALL SCHOOL DISTRICT ACTIONS

**PLAINTIFF SCHOOL DISTRICTS’  
NOTICE OF MOTION AND MOTION FOR  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT, CLASS  
REPRESENTATIVE INCENTIVE  
AWARDS, AND ATTORNEYS’ FEES AND  
EXPENSES; AND MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT**

Date: February 2, 2024  
Time: 10:00 a.m.  
Courtroom: 6, 17th Floor

Judge: The Honorable Charles R. Breyer

**TABLE OF CONTENTS**

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

	<b><u>Page</u></b>
NOTICE OF MOTION AND MOTION .....	1
MEMORANDUM OF POINTS AND AUTHORITIES .....	1
I. INTRODUCTION .....	1
II. THE SUCCESS OF THE NOTICE PROGRAM .....	3
III. ARGUMENT .....	4
A. The School District Settlement Class should be certified. ....	4
1. The requirements of Rule 23(a) have been met. ....	4
2. The requirements of Rule 23(b)(3) have also been met. ....	6
a. Common issues of law and fact predominate. ....	6
b. A class action is superior to other available methods for fairly and efficiently adjudicating School District claims. ....	6
B. Because the proposed settlement is fair, reasonable, and adequate, satisfying the considerations in Rule 23(e)(2), the Court should approve the settlement. ....	7
1. Plaintiffs and class counsel have more than adequately represented the class, and they will continue to do so. Rule 23(e)(2)(A).....	7
2. This settlement followed arduous and arm’s-length negotiations. Rule 23(e)(2)(B). 8	8
3. The relief obtained for the class is adequate, taking into account the Rule 23(e)(2)(C) factors. ....	9
4. School Counsel’s request for attorney’s fees is reasonable. Rule 23(e)(2)(C)(iii). 10	10
C. The Ninth Circuit’s prescribed factors likewise support approving this settlement. ....	11
1. The class members are governmental entities. ....	11
2. Class members’ initial reactions have been positive. ....	11
D. The Court should appoint Mr. Mehri, Mr. Hogan, and Mr. Henrichsen to be Settlement Class Counsel under Rule 23(g)(1). ....	12
E. The Court should award School District counsels their fees and expenses in the amounts requested. ....	12
F. The Court should also award the requested incentive awards to the class representatives, in the amounts that counsel have requested. ....	14
IV. CONCLUSION .....	15

**TABLE OF AUTHORITIES**

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

**Page(s)**

**Cases**

*Amchem Prods. v. Windsor*,  
521 U.S. 591 (1997)..... 4, 7

*Butler v. Sears, Roebuck & Co.*,  
702 F.3d 359 (7th Cir. 2012)..... 6

*Dyer v. Wells Fargo Bank, N.A.*,  
303 F.R.D. 326 (N.D. Cal. 2014)..... 13

*Hanlon v. Chrysler Corp.*,  
150 F.3d 1011 (9th Cir. 1998)..... 5, 6, 7

*Hernandez v. Dutton Ranch Corp.*,  
No. 19-cv-00817-EMC, 2021 WL 5053476 (N.D. Cal. Sept. 10, 2021) ..... 10

*In re Bluetooth Headset Prods. Liab. Litig.*,  
654 F.3d 935 (9th Cir. 2011)..... 11

*In re Napster, Inc. Copyright Litig.*,  
Nos. 00-md-01369 MHP, 04-md-01671 MHP, 2005 U.S. Dist. LEXIS 11498 (N.D. Cal. May  
31, 2005)..... 7

*In re Volkswagen “Clean Diesel” Mktg., Sales Prac. & Prods. Liab. Litig.*,  
No. 15-md-02672-CRB (JSC), 2018 U.S. Dist. LEXIS 201681 (N.D. Cal. Nov. 28, 2018). 4, 12

*Linney v. Cellular Alaska P’ship*,  
151 F.3d 1234 (9th Cir. 1998)..... 8

*Officers for Justice v. Civil Serv. Com.*,  
688 F.2d 615 (9th Cir. 1982)..... 11

*Powers v. Eichen*,  
229 F.3d 1249 (9th Cir. 2000)..... 12

*Tyson Foods, Inc. v. Bouaphakeo*,  
577 U.S. 442 (2016)..... 6

*Wal-Mart Stores, Inc. v. Dukes*,  
564 U.S. 338 (2011)..... 4

*Wolin v. Jaguar Land Rover N. Am., L.L.C.*,  
617 F.3d 1168 (9th Cir. 2010)..... 5

**Rules**

Fed. R. Civ. P. 23(e)(2)(B) ..... 8

Fed. R. Civ. P. 23(a)(4) ..... 8

Fed. R. Civ. P. 23(b)(3)(A)-(D)..... 7

Fed. R. Civ. P. 23(e)(2)(C)(i) ..... 9

Fed. R. Civ. P. 23(e)(2)(C)(iii) ..... 10

Fed. R. Civ. P. 23(e)(2)(D) ..... 9

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

**Other Authorities**

<https://www.maine.gov/ag/docs/MOU-with-School-Districts.pdf>..... 1

1 **NOTICE OF MOTION AND MOTION**

2 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

3 PLEASE TAKE NOTICE that, on February 2, 2024, at 10:00 a.m., in Courtroom 6 of the  
4 United States District Court for the Northern District of California, located at 450 Golden Gate  
5 Avenue, San Francisco, California, Plaintiff School Districts will move for an order and judgment  
6 granting final approval of the Class Action Settlement and their motion for attorneys’ fees and  
7 costs, and appointing Settlement Class Counsel and Class Representatives under Rule 23(g)(1) of  
8 the Federal Rules of Civil Procedure. This Motion is supported by the following memorandum of  
9 points and authorities; the Declaration of Cyrus Mehri, Interim Settlement Class Counsel; and  
10 exhibits attached thereto, including the Declaration of Cameron R. Azari, Esq., regarding the  
11 settlement notice.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 Several topics addressed in this memorandum have been covered in more detail in School  
15 Districts’ memorandum supporting preliminary approval. *See* ECF No. 599.

16 The opioid crisis is a significant problem for school district budgets across the country,  
17 but earlier opioid settlements have done little to nothing to address the problem. Except in  
18 bankruptcy proceedings and because of an agreement with the state of Maine, for school districts  
19 in Maine, *no* money has been earmarked for schools *in any other major opioid settlement*—not in  
20 the settlements with manufacturers (Johnson & Johnson, Teva, and Allergan), nor in the  
21 settlements with distributors (AmerisourceBergen, Cardinal Health, and McKesson), nor in the  
22 settlements with pharmacies (Walgreens, CVS, Walmart, and Krogers).<sup>1</sup> This is the first major  
23 opioid settlement to earmark money for schools. That is a substantial achievement. McKinsey has  
24 agreed to pay \$23 million, inclusive of class counsel’s attorneys’ fees and expenses, to resolve  
25

26  
27 <sup>1</sup> Maine’s school districts are receiving three percent of Maine’s recovery from the Distributor and  
28 Janssen (Johnson & Johnson) settlements. *See* <https://www.maine.gov/ag/docs/MOU-with-School-Districts.pdf>.

1 School Districts' claims. Although no settlement could fully remediate the effects of the opioid  
2 crisis on public schools, this settlement is among the first even to try.

3 There are, however, nearly 14,000 public elementary, middle, and secondary school  
4 districts nationwide, and all of them, with only minor exceptions, are included within the  
5 proposed class.<sup>2</sup> As a result, under a traditional pro rata distribution, the value of each school  
6 district's share of a \$23 million settlement would be quickly diluted, providing each district only  
7 about \$1,500 (net of attorneys' fees and costs). For that reason, the proposed settlement here takes  
8 a different and innovative approach. Rather than dividing the settlement funds 14,000 ways, the  
9 settlement calls for McKinsey to pay settlement funds into a Public School District Opioid  
10 Recovery Trust. That Trust will be overseen by an independent trustee, Dr. Andrés Alonso,<sup>3</sup> who  
11 will be charged with inviting and soliciting, receiving, and reviewing applications for funding  
12 from all class members. (Every Class Member will be eligible to apply.) Then, from among the  
13 requests and proposals received, Dr. Alonso will award grants to a limited number of school  
14 districts or school systems—directing the settlement funds to school districts or school systems  
15 where the money can be expected to have the greatest effect. Consistent with that purpose, the  
16 trustee will give priority, for example, to:

- 17 (a) Applications for funding from school districts (or consortia of school districts) in  
18 areas most affected by Neonatal Opioid Withdrawal Syndrome births and the opioid  
19 crisis.
- 20 (b) Applications from underfunded school districts or school districts with low per-  
21 pupil spending.

22 \_\_\_\_\_  
23 <sup>2</sup> The class definition covers: “All elementary, middle, or secondary Public School Districts in the  
24 United States except those in Indiana, American Samoa, the Commonwealth of Guam, the  
25 Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands. The foregoing shall  
26 specifically include but not be limited to the Public School Districts listed on Schedule A [ECF No.  
599-2] and the litigating School Districts listed on Schedule B [ECF No. 599-2, starting at page  
337].”

27 <sup>3</sup> Dr. Alonso was formerly the chief executive officer of the Baltimore City Public School System  
28 and, before that, deputy chancellor of the New York Public School System. He has also been the  
former chair and a former trustee of the Carnegie Foundation for the Advancement of Teaching. A  
copy of his C.V. was previously filed as ECF No. 599-4.

- 1 (c) Applications that target services to children under the age of 8, where the  
2 potential gains are likely to be the highest.
- 3 (d) Applications showing that funds received will be used to leverage matching funds  
4 from other sources, increasing their impact.
- 5 (e) Applications showing how programs funded by the grant will become self-  
6 sustaining once the grant money has been spent. And,
- 7 (f) Applications for projects that are innovative or designed to be replicated  
8 elsewhere.

9 Because this Settlement is an unprecedented success for School Districts, and because Class  
10 Counsel’s requests for attorneys’ fees, expenses, and service awards are reasonable, the Court  
11 should approve the Settlement and award the requested fees, expenses, and service awards.

12 **II. THE SUCCESS OF THE NOTICE PROGRAM**

13 In the weeks since preliminary approval, class members have been notified of the terms of  
14 the settlement by four means: (a) directly, through a long-form notice mailed to each class  
15 member; (b) through a short-form notice, published in *Education Week* and in *School*  
16 *Administrator* magazine; (c) through materials mailed to the top officials in each state having  
17 responsibility for public education, who have been encouraged to notify the public schools in  
18 their states; and (d) by a National School District Opioid Settlement website,  
19 [www.McKinseySchoolDistrictOpioidSettlement.com](http://www.McKinseySchoolDistrictOpioidSettlement.com).

20 As noted in the accompanying Declaration of Cyrus Mehri and its attached Exhibit A, the  
21 Declaration of Cameron Azari, this notice plan was rolled out on schedule. Published notice  
22 started on October 25, 2023, and mailed notice was completed on October 27, 2023.

23 Initial responses from school districts have been positive and encouraging. To date, no  
24 school district has objected to the settlement, and two school districts have opted out. *See Azari*  
25 Decl. ¶ 18.

26  
27  
28

1 **III. ARGUMENT**

2 **A. The School District Settlement Class should be certified.**

3 **1. The requirements of Rule 23(a) have been met.**

4 Rule 23(a) imposes four “class-qualifying criteria.” *Amchem Prods. v. Windsor*, 521 U.S.  
5 591, 597 (1997). They are numerosity, commonality, typicality, and adequacy. Fed. R. Civ. Proc.  
6 23(a)(1-4). They are satisfied here.

7 Numerosity is not contestable here. There are nearly 14,000 elementary, middle, and  
8 secondary school districts nationwide, and almost all of them are class members. A joinder of so  
9 many “thousands of class members” is “clearly impractical,” which is the standard for  
10 numerosity. *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs. & Prods. Liab. Litig.*, No. 15-  
11 md-02672-CRB (JSC), 2018 U.S. Dist. LEXIS 201681, \*4 (N.D. Cal. Nov. 28, 2018) (cleaned  
12 up).

13 Commonality is also satisfied. For purposes of Rule 23(a)(2), commonality can be  
14 established by “even a single common question” if it is “likely to drive resolution of the lawsuit,”  
15 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011), which is true here. McKinsey’s  
16 knowledge, duties, and actions were the same toward all public schools. As a result, every the  
17 class members’ claims present the same core questions, and those common questions will have  
18 common answers. They will be answered the same way for every class member. These common  
19 questions include: (a) whether McKinsey’s actions in developing, urging, and implementing  
20 strategies for promoting and selling opioids caused or contributed to an increase in opioid  
21 addiction and abuse; (b) whether McKinsey’s actions in these regards were negligent, grossly  
22 negligent, reckless, or intentional; (c) whether exposure to opioids in utero causes deficits in  
23 children’s cognitive, social, and emotional development, which make those children eligible for  
24 special education services; (d) whether, in addition, students’ exposures to their family members’,  
25 friends’, or neighbors’ opioid use disorders are also causing them to experience dysregulated  
26 emotions and behaviors in school settings; (e) what and when McKinsey knew, or should have  
27 known, about opioids’ effects on children’s cognitive, social, or emotional development  
28 (f) whether opioid-related increases in special education services and students’ dysregulated



1 emotions and behaviors in school settings are causing school districts to incur more expenses; and  
2 (g) whether McKinsey has affirmative defenses, including res judicata and release, that would  
3 entitle it to a judgment in its favor.

4 The third class-qualifying criterion in Rule 23(a)(3) is typicality, which is also established  
5 here. Typicality is measured by whether “the interest[s] of the named representative[s] align[ ]  
6 with the interests of the class” and, in particular, by whether the named plaintiffs and other class  
7 members “have the same or similar injury . . . based on . . . the same course of conduct.” *Wolin v.*  
8 *Jaguar Land Rover N. Am., L.L.C.*, 617 F.3d 1168, 1175 (9th Cir. 2010). Here, the alignment  
9 between named plaintiffs’ and absent class members’ interests is tight. The representative  
10 plaintiffs assert the same claims, arising from the same course of conduct. They rely on the same  
11 legal theories, and they allege the same types of injuries as absent class members. All class  
12 members thus allege that McKinsey injured them by designing and implementing strategies to  
13 turbocharge opioid sales (or conspiring or aiding and abetting Purdue and opioid manufacturers to  
14 do that). And they all also allege that McKinsey’s strategies led to increasing rates of opioid use  
15 disorder that have roughly doubled the costs of educating opioid-affected children. The standard  
16 for typicality has been met.

17 Finally, the Rule 23(a)(4) requirement of adequacy is also satisfied here. “Resolution of two  
18 questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any  
19 conflicts of interest with other class members and (2) will the named plaintiffs and their counsel  
20 prosecute the action vigorously on behalf of the class?” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,  
21 1020 (9th Cir. 1998). There should be no cause for concern on either point here. There are neither  
22 any apparent intraclass conflicts nor any reason to anticipate them. And School District class  
23 counsel are experienced and qualified. They have prosecuted and will continue to vigorously  
24 prosecute this action, and they have demonstrated their commitment to the case by the substantial  
25 time and financial resources they have already devoted to it. *See Mehri Decl.* ¶¶ 7-12.

1                   **2.     The requirements of Rule 23(b)(3) have also been met.**

2                   **a.     Common issues of law and fact predominate.**

3                   The “predominance” inquiry required by Rule 23(b)(3) “asks whether the common,  
4 aggregation-enabling, issues in the case are more prevalent or important than the non-common,  
5 aggregation-defeating, individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453  
6 (2016) (internal quotation marks and citation omitted).

7                   At its core, “[p]redominance is a question of efficiency.” *Butler v. Sears, Roebuck & Co.*,  
8 702 F.3d 359, 362 (7th Cir. 2012). More particularly, “[w]hen common questions present a  
9 significant aspect of the case, and they can be resolved for all members of the class in a single  
10 adjudication,” then predominance is satisfied, and “there is clear justification for handling the  
11 dispute on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022 (internal  
12 quotation marks and citation omitted).

13                   Predominance is amply satisfied here. For School Districts, McKinsey’s liability mainly  
14 turns on four questions: (1) whether McKinsey conspired with opioid manufacturers to  
15 unlawfully increase opioid sales; (2) whether those unlawful increases in opioid sales caused or  
16 contributed to harms to children, including children exposed to opioids in utero; (3) whether  
17 opioid exposure has caused students to have deficits in their cognitive, social, and emotional  
18 development; and (4) whether those opioid-related deficits, among students, have added to School  
19 Districts’ costs. The answers to these questions for one School District plaintiff class member will  
20 be the answer for all. Common issues of law and fact predominate.

21                   **b.     A class action is superior to other available methods for fairly**  
22                   **and efficiently adjudicating School District claims.**

23                   Rule 23(b)(3) also requires asking whether a class action is “superior” to other available  
24 methods for “fairly and efficiently” adjudicating a controversy. The Rule instructs that the  
25 “matters pertinent to” this finding include: (A) class members’ possible “interests in individually  
26 controlling the prosecution” of their claims through “separate actions”; (B) “the extent and  
27 nature” of any rival or overlapping litigation they have filed; (C) the “desirability or  
28 undesirability” of “concentrating” litigation in this forum; and (D) any “likely difficulties” in

1 “managing” a class action. Fed. R. Civ. P. 23(b)(3)(A)-(D). The fourth of these factors—  
 2 “difficulties” in managing” a trial—is not relevant here because, at settlement, “the proposal is  
 3 that there be no trial.” *Amchem*, 521 U.S. at 620. The remaining three factors all favor class-wide  
 4 adjudication here.

5 *First*, “from either a judicial or litigant viewpoint, there is no advantage in individual  
 6 members controlling the prosecution of separate actions [here]. There would be less litigation or  
 7 settlement leverage, significantly reduced resources and no greater prospect for recovery.”  
 8 *Hanlon*, 150 F.3d at 1023. Aggregating claims here will save time, effort, and expense, and will  
 9 promote uniformity without sacrificing procedural fairness. The alternative of individual litigation  
 10 would: (a) burden the judiciary, (b) risk inconsistent results, and (c) prove uneconomical for  
 11 many individual school districts, who either could not spend or would choose not to spend the  
 12 substantial sums required to support litigation like this, with its foreseeably large costs for fact  
 13 and expert discovery.

14 *Second*, class member responses so far—there have been only two opt outs—suggest  
 15 strong support for the settlement.

16 *Third*, the question of the desirability of concentrating litigation in this forum may be said  
 17 to have been substantially resolved already by the Judicial Panel on Multidistrict Litigation. *In re*  
 18 *Napster, Inc. Copyright Litig.*, Nos. 00-md-01369-MHP, 04-md-01671-MHP, 2005 U.S. Dist.  
 19 LEXIS 11498, at \*32 (N.D. Cal. May 31, 2005) (“With respect to . . . the desirability  
 20 of concentrating the litigation of the claims in a particular forum, the transfer of the instant action  
 21 to this district by the Judicial Panel on Multidistrict Litigation attests to the advantages of  
 22 litigating all Napster-related claims in this court.”).

23 **B. Because the proposed settlement is fair, reasonable, and adequate, satisfying**  
 24 **the considerations in Rule 23(e)(2), the Court should approve the settlement.**

25 **1. Plaintiffs and class counsel have more than adequately represented the**  
 26 **class, and they will continue to do so. Rule 23(e)(2)(A).**

27 Although the parties reached a settlement in principle at a relatively early stage in this  
 28 case, that agreement was reached against the backdrop of years of litigation with other opioid  
 defendants, brought by many of these same school districts and these same lead counsel for

1 School Districts. Mehri Decl. ¶¶ 8, 11. By the time of this case, School District counsel here,  
 2 through the relevant plaintiffs’ committees, had received millions of pages of documents,  
 3 terabytes of data, hundreds of depositions, expert reports, and testimony presented at several  
 4 trials. On top of that, the McKinsey defendants produced or made available hundreds of  
 5 thousands of documents, including those previously produced to the AGs in connection with that  
 6 settlement. Baig Decl. ¶ 13. (Ms. Baig’s declaration is being submitted with Subdivisions’ Final  
 7 Approval papers.) As a result, School District counsel had sufficient information to make  
 8 informed decisions and to confidently evaluate the value, strengths, and vulnerabilities of their  
 9 claims and the adequacy of McKinsey’s settlement offers. *See also Linney v. Cellular Alaska*  
 10 *P’ship*, 151 F.3d 1234, 1239-40 (9th Cir. 1998) (noting formal discovery is not required for  
 11 settlement approval and, “[i]n particular, the district court and plaintiffs may rely on discovery  
 12 developed in prior or related proceedings” (citations omitted)).

13 The adequacy of School District counsel’s representation is also evident from the precedent-  
 14 setting result they achieved here. In other cases, subdivisions have received money, but schools  
 15 have not; and, in the AG settlements, the AGs did not even designate funding for special  
 16 education services for opioid-affected students as an “approved use.” Schools were overlooked.

17 At the same time, the “representative parties,” the 14 settlement class representatives, have  
 18 also more than demonstrated their adequacy. Fed. R. Civ. P. 23(a)(4). They have actively  
 19 participated here, and they have made important contributions, including collecting providing  
 20 information about the structure of state government and Attorney General powers in their states,  
 21 relevant to McKinsey’s Rule 12 motions; participating in mediation; and helping to develop the  
 22 class notice program. Mehri Decl. ¶¶ 24-27.

23 **2. This settlement followed arduous and arm’s-length negotiations. Rule**  
 24 **23(e)(2)(B).**

25 Settlement negotiations here were conducted at arm’s length, arduous, protracted, and  
 26 with help from experienced neutral mediators. ECF No. 599-1 ¶¶ 5-7 (Mehri Decl.). The  
 27 involvement of neutral and nationally recognized mediators provides additional functional and  
 28

1 structural assurances that negotiations were serious and non-collusive,<sup>4</sup> as does the fact that the  
 2 settlement amount is non-reversionary and that the settlement agreement does not propose to give  
 3 School District counsel a disproportionate share of the settlement funds.

4 **3. The relief obtained for the class is adequate, taking into account the**  
 5 **Rule 23(e)(2)(C) factors.**

6 In School District counsel’s considered view, \$23 million approximates what they could  
 7 have negotiated for public schools in a but-for world where schools had been included rather than  
 8 excluded from the AG settlement. It is not just fair, reasonable, and adequate, but also substantial.

9 *First*, the amount is substantial in light of “the costs, risks, and delay of trial and appeal.”  
 10 Fed. R. Civ. P. 23(e)(2)(C)(i). Those risks were serious here. They included:

- 11 (1) Potentially adverse rulings (by this Court or on appeal) on a host of  
 12 potentially case-dispositive questions with no controlling precedent,  
 13 such as *res judicata* or release arising from the AGs’ million-dollar  
 14 settlements with McKinsey; the scope of AG authority over other units  
 15 of local government; the scope of McKinsey’s duties to third-parties;  
 16 causation; and the uncertain scope of the public nuisance cause of  
 17 action; and  
 18 (2) The delays attendant to continuing to litigate, which would postpone  
 19 recovery at a time when Public Schools need funds *now* to help them  
 20 abate the very serious effects of the opioid crisis in the schools.

21 *Second*, the trust mechanism at the center of the settlement enhances the value of the  
 22 settlement. It will distribute relief effectively, *see id.* at 23(e)(2)(C)(ii), and it will also distribute  
 23 relief while “treat[ing] class members equitably relative to each other,” *id.* at 23(e)(2)(D). One of  
 24 the challenges of this case has been how to equitably and *meaningfully* distribute \$23 million

25 \_\_\_\_\_  
 26 <sup>4</sup> *See* Fed. R. Civ. P. 23(e)(2)(B) advisory committee’s note to 2009 amendment (“[T]he  
 27 involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear  
 28 on whether they were conducted in a manner that would protect and further the class interests.”);  
*G.F. v. Contra Costa County*, No. 13-cv-03667-MEJ, 2015 WL 4606078, at \*13 (N.D. Cal. July  
 30, 2015) (“[T]he assistance of an experienced mediator in the settlement process confirms that the  
 settlement is non-collusive.” (internal quotation marks and citation omitted)).

1 (minus fees and expenses) for the benefit of a class of more than 14,000 school districts—in a  
 2 way that can make a difference in abating the opioid crisis. Dividing the settlement money 14,000  
 3 ways would not accomplish that goal. Either equal or pro rata shares would provide each district  
 4 only about \$1,500, on average. So, instead, School District counsel have built the proposed  
 5 settlement around a Public School District Opioid Recovery Trust, to be administered by a  
 6 supremely qualified independent trustee, Dr. Andrés Alonso, who will accept funding requests  
 7 from class members if the settlement is approved, and then direct settlement funds to school  
 8 districts or school systems where those funds can be expected to have the greatest effect.

9 All class member districts will be eligible to apply for funds, and the trustee will consider  
 10 all requests for funding using the *same* criteria, giving preferences independent of those criteria to  
 11 no district—thus upholding the no-preferential-treatment, “equitably relative to each other”  
 12 standard embodied by Rule 23(e)(2)(D).<sup>5</sup>

13 The trust mechanism embodied in the School District Settlement is an appropriate and  
 14 effective method of distributing limited funds to a large class. Equally importantly, judging by the  
 15 currently low rate of objection or opt-outs, the trust mechanism is being accepted and consented  
 16 to by the class. Their informed consent provides another assurance of the fairness of handling  
 17 relief in this case in this way.

18 **4. School Counsel’s request for attorney’s fees is reasonable. Rule**  
 19 **23(e)(2)(C)(iii).**

20 School District counsel are requesting an attorney’s fee award equal to 10% of the  
 21 settlement amount. That is well below the range regularly approved in common fund settlements  
 22 in this Circuit. *See Hernandez v. Dutton Ranch Corp.*, No. 19-cv-00817-EMC, 2021 WL  
 23 5053476, at \*6 (N.D. Cal. Sept. 10, 2021) (collecting cases and finding that “[d]istrict courts

24 \_\_\_\_\_  
 25 <sup>5</sup> The only “unequal” treatment that might arise involves the requested incentive awards (discussed  
 26 below), which do not offend Rule 23(e)(2)(D). *See Habberfield v. Boohoo.com USA, Inc.*, No. 22-  
 27 cv-03899-GW-JEMx, 2023 U.S. Dist. LEXIS 201114, at \*23 (C.D. Cal. Nov. 8, 2023) (“[T]he only  
 28 ‘unequal treatment of class members that might arise here has to do with the requested  
 incentive/service awards, . . . [which] have long been established as legitimate in the Ninth Circuit,  
 and there is no decision post-dating the amendments to Rule 23 which suggests that such  
 compensation is no longer appropriate due to the terms of Rule 23(e)(2)(D).”)

1 within this circuit . . . routinely award attorneys’ fees that are one-third of the total settlement  
2 fund. Such awards are routinely upheld by the Ninth Circuit” (citations omitted)). A ten percent  
3 award is not disproportionate and should not affect the case for approving this settlement.

4 **C. The Ninth Circuit’s prescribed factors likewise support approving this**  
5 **settlement.**

6 For many years, the Ninth Circuit has advised that in considering a settlement courts  
7 “generally must weigh” and balance seven factors: “(1) the strength of the plaintiff’s case; (2) the  
8 risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining  
9 class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of  
10 discovery completed and the stage of the proceedings; (6) the experience and views of counsel;  
11 (7) the presence of a governmental participant; and (8) the reaction of the class members of the  
12 proposed settlement.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir.  
13 2011); *Officers for Justice v. Civil Serv. Com.*, 688 F.2d 615, 625 (9th Cir. 1982) (same).

14 Many of these factors overlap with the revised Rule 23(e) and have already been  
15 discussed. Two do not, and we cover them here.

16 **1. The class members are governmental entities.**

17 School districts are governmental entities. As a result, and almost without exception, they  
18 have their own counsel, sometimes both in-house and outside counsel, and those counsel have  
19 provided monitoring of class counsel’s work here in ways not always common in class litigation.  
20 The sophistication of many school districts and their counsel provides additional assurances of the  
21 fairness, reasonable, and adequacy of this settlement.

22 **2. Class members’ initial reactions have been positive.**

23 The deadline for opting out or objecting is January 5, 2024, which has not yet passed. But  
24 the reactions of class members so far suggest their support for the settlement. As of today’s date,  
25 only two class members have opted out of the settlement or filed an objection. After January 5,  
26 2024, and before the February 2, 2024 Final Approval Hearing, School District counsel will  
27 provide updated totals and information on opt-outs or objectors.

28

1           **D. The Court should appoint Mr. Mehri, Mr. Hogan, and Mr. Henrichsen to be**  
 2           **Settlement Class Counsel under Rule 23(g)(1).**

3           Cyrus Mehri has served on the Plaintiffs’ Steering Committee, appointed to that position  
 4 by this Court as a representative of School Districts’ interests. Wayne Hogan and Neil Henrichsen  
 5 have been his co-counsel in representing schools, and they have participated very actively. The  
 6 Court should appoint the three of them as Settlement Class Counsel under Rule 23(g)(1).

7           **E. The Court should award School District counsels their fees and expenses in**  
 8           **the amounts requested.**

9           In awarding attorneys’ fees and expenses at the conclusion of a class action, courts  
 10 “typically consider” these factors: “(1) the results achieved for the class; (2) the risks of the  
 11 litigation; (3) whether there are benefits to the class beyond the immediate generation of a cash  
 12 fund; (4) whether the percentage rate is above or below the market rate; (5) the contingent nature  
 13 of the representation and the opportunity cost of bringing the suit; (6) reactions from the class;  
 14 and (7) a lodestar cross-check.” *Volkswagen*, 2022 U.S. Dist. LEXIS 204422, at \*25-26 (N.D.  
 15 Cal. Nov. 9, 2022). Applying these factors here supports granting School District counsel’s  
 16 request for fees equal to 10 percent of the \$23 million recovery and for reimbursement of their  
 17 expenses of \$176,002.

18           *First*, the results achieved for the class here are precedent-setting. In other major opioid  
 19 settlements, schools have been excluded.

20           *Second*, the risks of this litigation were considerable—particularly given the meager  
 21 precedent addressing the relationship between AG and local government authority, and the  
 22 uncertain scope of public nuisance law, among other issues.

23           *Third*, counsel’s requested fee percentage is below benchmark. The benchmark for fee  
 24 recovery in this Circuit is 25% of a common fund. *See Powers v. Eichen*, 229 F.3d 1249, 1256  
 25 (9th Cir. 2000). School District counsel are requesting 10% of the fund, plus \$176,002 to  
 26 reimburse them for litigation expenses. Their expenses include their \$50,000 contribution to the  
 27 PSC Litigation Fund, an estimated \$70,000 for Epiq’s settlement administration and for Notice  
 28 Costs, and expert costs of \$48,961. Mehri Decl. ¶¶ 21-22. These fees (10%) and expenses



1 (\$176,002) account for class members' common benefit obligations under PTO 9 (ECF No. 567),  
2 as well as any contingent fee interest school district counsel may have. The requested Rule 23(h)  
3 fees and expenses are all that class members will be responsible for paying.

4 *Fourth*, a lodestar cross-check confirms the reasonableness of this fee request. School  
5 District counsel's lodestar fees are \$841,717. Mehri Decl. ¶ 19. Their requested fee of \$2.3  
6 million (ten percent of the recovery) thus currently reflects a multiplier of 2.73. *Id.* ¶ 20. In this  
7 Circuit, lodestar cross-checks resulting in multipliers in the 1.0-4.0 range are "presumptively  
8 acceptable." *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014). School  
9 District counsel's lodestar will increase, and the multiplier will go down, as they continue to  
10 facilitate the notice program and then, also, as requested by the trustees, monitor and facilitate the  
11 operation of the Public School District Opioid Recovery Trust. *See* Mehri Decl. ¶ 20.

12 *Fifth*, School District class counsel should also be recognized here for the quality of  
13 representation. They were the first in the country to identify the claims schools have against  
14 opioid industry defendants by focusing the rising special education costs attributable to neonatal  
15 opioid exposure, which, until they came along, had been an overlooked issue in opioid litigation.  
16 Working with nationally renowned experts, they were the first group in the country to recognize,  
17 marshal, and develop evidence to prove the causal connection between neonatal opioid exposure  
18 and neonatally exposed children's disproportionate likelihood of requiring special education  
19 services, which roughly doubles the cost of their education. The facts, science, and theories  
20 supporting School Districts' claims had apparently been overlooked by the Attorneys General and  
21 by school districts themselves. Without School District counsel's work, these claims would very  
22 likely still be unrecognized or latent. Working with experts, School District counsel also  
23 developed a damages model ("Damages Model"), making it possible for school districts to  
24 effectively present their damages. Mehri Decl. ¶ 8.

25  
26  
27  
28

1           **F.     The Court should also award the requested incentive awards to the class**  
2           **representatives, in the amounts that counsel have requested.**

3           School District counsel’s request for incentive payments of \$10,000 per plaintiff for each  
4 of the 14 named Plaintiffs is appropriate and deserved. These awards are warranted for these  
5 plaintiffs’ time, efforts, leadership, and vanguard role in prosecuting claims on behalf of the class.

6           These Plaintiffs came forward against a strong headwind from many State Attorneys  
7 General. In the Purdue bankruptcy proceeding, a top representative of an influential State  
8 Attorney General warned Mr. Mehri, point blank, “your clients will be facing knives in every  
9 direction.” And that turned out to be true. In state after state, the State Attorneys General went to  
10 their state capitals to pass laws extinguishing the claims of School Districts in opioid litigation  
11 against manufacturers and distributors. They succeeded in ten states. And in virtually all states  
12 (except Maine) the State Attorneys General allocated opioid settlement funds without earmarking  
13 any funds for school districts. The Attorneys General also excluded educational supports from  
14 their definitions of “approved uses.” On top of that, Attorneys General in most states also  
15 pressured litigating School Districts to sign participation agreements to release their claims  
16 against distributors and manufacturers (while providing no money for school districts in  
17 exchange). Many school districts succumbed to this pressure. *But the proposed class*  
18 *representatives here did not.* The risk run by these class representatives is also illustrated by  
19 events in Florida. The Florida Attorney General sued Putnam County (one of the named plaintiffs  
20 here) and Miami Dade School District in a declaratory action to try to extinguish their right to sue  
21 opioid defendants. *See Mehri Decl.* ¶ 27.

22           A \$10,000 incentive award for each of the 14 named plaintiff school districts is a modest  
23 recognition for their distinctive and commendable courage, conviction, and commitment.

24  
25  
26  
27  
28

1 **IV. CONCLUSION**

2 For all the reasons stated above, Plaintiff School Districts ask the Court to approve this  
3 proposed class action settlement, including their requested attorneys' fees, expenses, and service  
4 awards.

5 Dated: November 15, 2023

6 Respectfully submitted,

7 By: /s/ Cyrus Mehri

8 Cyrus Mehri  
cmehri@findjustice.com

9 Joshua Karsh  
jkarsh@findjustice.com

10 MEHRI & SKALET, PLLC  
11 2000 K Street NW, Suite 325  
12 Washington, DC 20006  
Telephone: (202) 822-5100

13 Wayne Hogan  
14 hogan@terrellhogan.com  
15 TERRELL HOGAN YEGELWEL, P.A.  
16 233 E. Bay Street, Suite 800  
17 Jacksonville, FL 32202  
18 Telephone: (904) 722-2228

19 Neil Henrichsen  
nhenrichsen@hslawyers.com  
HENRICHSEN LAW GROUP  
301 W Bay Street, Suite 1400  
Jacksonville, FL 32202  
Telephone: (904) 381-8183

20 **Filing Authorized by Plaintiffs' Lead Counsel**  
21 **Pursuant to PTO 2:**

22 By: /s/ Elizabeth J. Cabraser

23 Elizabeth J. Cabraser  
ecabraser@lchb.com

24 LIEFF CABRASER HEIMANN & BERNSTEIN,  
25 LLP

26 275 Battery Street, 29th Floor  
27 San Francisco, CA 94111-3339  
28 Telephone: (415) 956-1000

1 Cyrus Mehri  
cmehri@findjustice.com  
2 MEHRI & SKALET, PLLC  
3 2000 K Street NW, Suite 325  
4 Washington, DC 20006  
5 Telephone: (202) 822-5100  
6  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 IN RE: MCKINSEY & CO., INC.  
12 NATIONAL PRESCRIPTION OPIATE  
13 CONSULTANT LITIGATION

Case No. 21-md-02996-CRB (SK)

14 This Document Relates to:  
15 ALL SCHOOL DISTRICT ACTIONS

**DECLARATION OF CYRUS MEHRI IN  
SUPPORT OF PLAINTIFF SCHOOL  
DISTRICTS’ MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT, ATTORNEYS’ FEES, AND  
REIMBURSEMENT OF EXPENSES**

Date: February 2, 2024  
Time: 10:00 a.m.  
Courtroom: 6, 17th Floor

Judge: The Honorable Charles R. Breyer

16  
17  
18  
19  
20  
21 I, Cyrus Mehri, declare and state that:

22 1. I am an attorney licensed to practice in the District of Columbia and the State of  
23 Connecticut. In 2001, I co-founded the law offices of Mehri & Skalet (“M&S”). Most of my  
24 practice has involved class actions and other forms of complex litigation. In August 2021, this  
25 Court appointed me to the Plaintiff Steering Committee (“PSC”) in this MDL, representing  
26 Independent Public School Districts. *See* ECF No. 211. On October 5, 2023, the Court also  
27 appointed me as one of the Interim Settlement Class Counsel for Public School Districts. *See* ECF  
28 No. 609.

1           2.       I have filed an earlier declaration in support of School Districts’ motion for  
2 preliminary approval. *See* ECF No. 599-1. I assume the Court’s familiarity with that declaration.  
3 Before the Final Approval Hearing, I also expect to file a supplementary declaration, updating the  
4 Court on any further developments concerning class notice or class member responses.

5 **I.       Progress on the Court-Approved Notice Plan**

6           3.       On October 25, 2023, the Court preliminarily approved School Districts’  
7 settlement with McKinsey. ECF No. 610. On November 6, 2023, the Court entered a corrected  
8 preliminary approval order, in which the Court also selected me and two of my co-counsel,  
9 Wayne Hogan and Neil Henrichsen, as Interim Settlement Class Counsel. ECF No. 622.

10          4.       The Court has also approved Epiq Class Action & Claims Solutions, Inc. (“Epiq”)  
11 to handle notice and claims administrative services for this settlement. As noted in the attached  
12 declaration from Epiq representative Cameron Azari (**Exhibit A**), Epiq has started and completed  
13 most of the Court approved notice plan:

14           (a)      On October 27<sup>th</sup>, Epiq mailed 14,598 class notices directly to all Class Members  
15 with available and valid mailing addresses.

16           (b)      Also on October 27<sup>th</sup>, Epiq sent 51 Class Notices with an accompanying cover  
17 letter to the top education official in each state, with instructions to share the letter’s content with  
18 the school districts in their states.

19           (c)      On October 25<sup>th</sup>, Epiq published notice in a half page ad in *Education Week*, a  
20 nationwide publication with about 19,000 subscribers. A second, identical insertion is planned for  
21 the Nov. 15, 2023 edition of *Education Week*. In addition, a published notice in the form of a half  
22 page ad is also scheduled to appear in the December issue of *School Administrator*, a publication  
23 of the School Superintendents Association with a readership of about 42,000. Our school district  
24 clients recommended these publications as efficient and cost-effective means to reach the school  
25 district leadership community.

26           (d)      On October 23<sup>rd</sup>, Epiq launched a website for class members,  
27 [www.mckinseyschooldistrictopioidsettlement.com](http://www.mckinseyschooldistrictopioidsettlement.com).

1 (e) Epiq has also established a call center to field calls from class members and a post  
2 office address for mailed inquiries. More details on implementing the notice plan can be found in  
3 the Azari Declaration (**Exhibit A**).

4 5. My firm's contact information was included in the notice materials, and so my  
5 office has already fielded calls from school district leaders. I am responding to calls and talking  
6 directly to school district leaders as much as possible to answer their questions. The feedback we  
7 have received so far from the school district community has been positive.

8 6. In my opinion, the Court-approved notice plan, as implemented by Epiq, satisfies  
9 due process and also gives ample opportunities for school districts to decide whether to opt out or  
10 object by the January 5<sup>th</sup>, 2024 deadline. Only two school districts have opted out as of today.

11 **II. Background on the Lawyers and Law Firms Requesting Fees and Expenses**

12 7. Most of the work representing school districts in opioid cases has been performed  
13 by three firms: (a) my firm, (b) Terrell Hogan Yegelwel, and (c) The Henrichsen Law Group.  
14 Along with me, Wayne Hogan and Neil Henrichsen are the court-appointed Interim Settlement  
15 Class Counsel.

16 8. Mr. Hogan, Mr. Henrichsen, I, and our firms have represented Public School  
17 Districts in opioid litigation since 2019, when we filed a nationwide class complaint on behalf of  
18 Chicago Public Schools. Our complaint was the first in the country to focus on the rising special  
19 education costs attributable to neonatal opioid exposure, which, until we came along, had been an  
20 overlooked issue in opioid litigation. Working with nationally renowned experts, we were the first  
21 group in the country to identify the claims that schools have against opioid industry defendants.  
22 We were the first group in the country to recognize, marshal, and develop evidence to prove the  
23 causal connection between neonatal opioid exposure and neonatally-exposed children's  
24 disproportionate likelihood of requiring special education services, which roughly doubles the  
25 cost of their education. The facts, science, and theories supporting School Districts' claims had  
26 apparently been overlooked by the AGs and by school districts themselves. Without our work,  
27 these claims would very likely still be unrecognized or latent. Working with experts, our three  
28

1 law firms also developed a damages model (“ Damages Model”), making it possible for school  
2 districts to effectively present their damages.

3 9. Wayne Hogan is a nationally recognized trial attorney. His firm joined with other  
4 firms, including the predecessor to Motley Rice, to lead tobacco litigation for the State of Florida.  
5 He has received countless awards, including the American Association for Justice’s Lifetime  
6 Achievement Award and the American Board of Trial Advocates 2023 Champion of Justice  
7 Award. He has also served as the President of the Florida Justice Association.

8 10. Neil Henrichsen is a successful and skilled trial attorney with offices in New York,  
9 Washington DC, and Jacksonville Florida. He has been honored as a 2021 Super Lawyer and  
10 recognized by ALM Media as one of Washington DC’s and Baltimore’s Top-Rated Lawyers.

11 11. Additional background on my firm (Mehri & Skalet) has been filed as ECF No.  
12 559-1. Representing school districts, I have served as an Ex Officio Member on the creditor  
13 committees advocating for opioid creditors in Purdue, Mallinckrodt, and Endo. And in MDL  
14 2804, I led an effort to contact certain state Attorneys Generals, at Judge Dan Aaron Polster’s  
15 request, which resulted in the State of Maine earmarking abatement monies for school district  
16 special education efforts.

17 12. In working on this case, Mr. Hogan, Mr. Henrichsen, and I have also worked with  
18 and coordinated efforts with local school district counsel from around the country, who have also  
19 participated here. Those counsel include Melissa A. Hewey of Drummond Woodsum,  
20 representing Maine school districts; Karl Kristoff of Hodgson Ross representing New York  
21 school districts; Ronald Johnson of Hendy Johnson Vaughn and Emery representing school  
22 districts in Kentucky; David Eldridge and Tasha Blackney of Eldridge & Blackney representing  
23 school districts in Tennessee; James Humphreys of James F. Humphreys & Associates and  
24 Benjamin Bailey of Bailey Glasser representing school districts in West Virginia; and Marc Gertz  
25 of Gertz & Rosen representing school districts in Ohio. Working under my direction, these local  
26 counsel have made important contributions to this matter. They regularly updated class members  
27 in their states about the status of the case. They collected pertinent information about the structure  
28 of state government in their states (relevant to McKinsey’s res judicata motions to dismiss). They

1 participated in mediation. They helped develop the class settlement notice program. They  
2 provided me with invaluable insights that helped me fulfill my role as the Plaintiff Steering  
3 Committee Member for School Districts.

4 **III. Time-keeping and the Exercise of Billing Judgment**

5 13. All school district counsel here have recorded their time in 6-minute increments.  
6 They typically shared their time with me monthly. I reviewed the entries of all school district  
7 counsel for billing judgment, including my firm's entries, and I regularly reduced or eliminated  
8 time entries as appropriate. All Interim Settlement Class Counsel and School District Counsel  
9 adhered to the Court's orders regarding time records, including using their regular local billing  
10 rates. After my billing judgment review, my office submitted the time to lead counsel for another  
11 review by their staff, and they sent us back further revisions, as appropriate, ensuring the  
12 consistency of billing categories.

13 14. I personally undertook efforts to maximize efficiency in the School District case,  
14 coordinating all work (though regular calls and emails) and controlling and allocating work by all  
15 counsel working on this matter. I believe I accomplished our goal of efficient prosecution of this  
16 case. I also regularly attended PSC meetings and shared information with School District counsel,  
17 as appropriate.

18 **IV. Requested Fees**

19 15. After arduous arm's length negotiations, School Districts and Subdivisions  
20 reached a settlement in principle with McKinsey for \$230 million—to resolve all claims.  
21 Subdivisions and School Districts agreed to allocate \$23 million (of the \$230 million) to School  
22 Districts and \$207 million to subdivisions nationwide, with both parties also accepting the  
23 following proposal made by the mediator, which thus also became part of the agreement:

- 24 (i) Attorneys for schools would recover their contingency fees  
25 (meaning all non-common benefit fees derived from client  
26 contracts and/or time spent on schools-related issues) and costs of  
27 litigation, cost of notice to class, and cost of trust administration  
28 from the schools allocation; and



1 (ii) Attorneys for schools could apply to recover common benefit  
2 fees (for any work non-duplicative of work sought to be  
3 compensated via contingent or class fees that was authorized as  
4 common benefit work and performed for the common benefit of all  
5 plaintiffs pursuant to the Court's common benefit-related Orders)  
6 from the 15% pot for fees; and

7 (iii) Attorneys for schools will pay their pro rata share (10%) of  
8 common benefit MDL expenses from the schools allocation.

9 16. Collectively, all School District counsel seek an award of 10% (\$2.3 million) of  
10 the \$23 million recovery here, plus reimbursement of our reasonable expenses. Under this  
11 proposal, over 20 million will be available for the School District Recovery Trust for Grant-  
12 making purposes.

13 17. Among school district counsel, my firm (M&S), has the most time in the case.  
14 M&S is based in Washington, DC. We use the Laffey Matrix in setting billing rates. *See DL v.*  
15 *D.C.*, 924 F.3d 585 (D.C. Cir. 2019) (describing the history of Laffey Matrix, as a basis for D.C.  
16 firms' local rates and rejecting an alternative fee schedule proposed by U.S. Attorney's Office ).  
17 Courts, both in Washington, DC and in other parts of the country, have awarded my firm our  
18 requested attorneys' fees using Laffey Rates. *See Borders v. Walmart Stores, Inc.*, No. 17-cv-506-  
19 SMY, 2020 U.S. Dist. LEXIS 26300, at \*7 (S.D. Ill. Apr. 29, 2020); *McNeely v. Metro. Life Ins.*  
20 *Co.*, No. 1:18-CV-00885-PAC, slip op. at 5-6 (S.D.N.Y. Jan. 15, 2020); *Roberts v. TJX Cos.*, No.  
21 13-cv-13142-ADB, 2016 U.S. Dist. LEXIS 136987, at \*43-45 (D. Mass. Sept. 30, 2016); *In re*  
22 *MagSafe Apple Power Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 U.S. Dist. LEXIS 11353, at  
23 \*39 (N.D. Cal. Jan. 30, 2015).

24 18. M&S mainly represents clients—mostly employees and consumers—who cannot  
25 afford to pay attorneys' fees or litigation expenses, and so almost all of our litigation is performed  
26 on a contingent basis. But when we represent an entity or individual in a position to pay by the  
27 hour, M&S typically charges Laffey Matrix rates. That is, the Laffey rates we are using here are  
28 our market rates, also paid by paying clients.

1           19.     The lodestar value for all School District counsel for work specific to schools on  
 2 this matter is \$841,717 (the result of multiplying hours by rates, using current and local rates).  
 3 This does not include an additional \$1,007,454 in that M&S contributed, \$118,680 in time that  
 4 Terrell Hogan contributed, and \$8,600 in time that Hendy Johnson contributed to common benefit  
 5 work approved by lead counsel. Summary reports showing hours and rates by timekeeper for  
 6 school district work are attached as **Exhibit B**, and an overall summary of school district-specific  
 7 time by law firm is attached as **Exhibit C**. The blended hourly rate is approximately \$652.

8           20.     Based on this lodestar of \$841,717, the requested fee of \$2.3 million reflects a  
 9 multiplier of approximately 2.73. Not included in those figures are the substantial work that  
 10 Interim Settlement Counsel will undertake in the coming months to work with Epiq and to  
 11 respond to questions by class members or the work that we will undertake over the next few  
 12 years, to the extent requested by the trustees, to facilitate the trust grant-making process. As a  
 13 result, it is likely that the multiplier will ultimately be substantially lower than 2.73. However,  
 14 even a 2.73 multiplier is well justified here by:

15           (a)     The risks of this case, including the number of issues for which there is little or  
 16 no controlling precedent, making the outcome more uncertain than in many other cases (such as  
 17 cases, for example, where the primary risk is factual not legal); and

18           (b)     The quality of representation we have provided. As described in paragraph 8  
 19 above, without our pioneering and creative work, the facts, science, and theories supporting  
 20 school districts' claims against opioid defendants, overlooked by AGs and even by school  
 21 districts themselves, would very likely *still* be unrecognized or latent.

## 22     **V. Requested Expenses**

23           21.     School District expenses come to \$176,002. A summary of those expenses is  
 24 attached as **Exhibit D**. The expenses include my firm's \$50,000 contribution to the PSC  
 25 Litigation Fund; an estimated \$70,000 for the Claims Administrator (Epiq) for administration and  
 26 for Notice Costs, such as mailing and publication costs; and expert costs of \$48,961.

27           22.     The \$48,961 for expert costs has two components: (1) \$15,140 of that amount  
 28 reflects expert work undertaken *exclusively* for school district claims *against McKinsey*; and

1 (2) the remaining \$33,821 is an allocation of the expert costs incurred to create the Damages  
2 Model that has supported School District claims not only in this case but also in MDL 2804 and  
3 in various opioid defendants' bankruptcy proceedings (e.g., Purdue, Mallinckrodt, and Endo). We  
4 have allocated these costs in thirds—charging 1/3 to this case, 1/3 to MDL 2804, and 1/3 to the  
5 bankruptcy cases. The amount of \$33,821 is the 1/3 allocated to this case, for expert damages  
6 work developing the Damages Model benefiting all three sets of cases. We have not received  
7 reimbursement for expenses or a fee award yet either from MDL 2804 or the bankruptcy  
8 proceedings. If the Court grants our requested expense reimbursement, we will not seek  
9 reimbursement for that same amount either in MDL 2804 or in the various bankruptcy  
10 proceedings.

11 23. The expert work going into the shared damages model (which School Districts  
12 have relied on here, in MDL 2804, and in various opioid defendants' bankruptcies) has been a  
13 team project by a group of nationally renown researchers. That team has consisted of Dr. Ira  
14 Chasnoff, one of the world's leading experts on prenatal substance exposure and their subsequent  
15 educational needs; Professor Tammy Kolbe of the University of Vermont, a leading expert on  
16 education costs and budgeting; noted Cornell University biostatistician Dr. Marty Wells; and  
17 health economist Doug Leslie. Their body of work has supported all three School District  
18 litigation tracks: MDL 2804, bankruptcy proceedings, and this matter against McKinsey.

## 19 **VI. Incentive Awards**

20 24. Fourteen school districts serve as court-appointed representatives for the  
21 nationwide school class. They are a diverse group, geographically and size-wise. They are  
22 Putnam County School District in Florida; Jefferson, Martin, Estill, Larue, Breathitt, Fayette, and  
23 Bullitt County Public Schools in Kentucky; Regional School Units of 34 and 68 in Maine;  
24 Southwestern Central and Rochester City School District in New York; and Hamblen and  
25 Hancock County Boards of Education in Tennessee as Settlement Class Representatives.

26 25. School District leaders and their counsel from each of these school districts have  
27 been actively engaged in this and other opioid proceedings. Interim Settlement Class Counsel is  
28 requesting modest incentive awards, in the amount of \$10,000 for each of these 14 school

1 districts, for their service to the class. Fourteen awards of \$10,000 each, or \$140,000 in total,  
2 amounts to only six-tenths of one percent of the total recovery.

3 26. Incentive awards are appropriate here. These School District Class Representatives  
4 have participated in periodic telephone updates; reviewed and responded to email updates; helped  
5 to identify, interview, and select the School District Trust Special Trustee; helped shape an  
6 effective notice program; and they have provided invaluable insights to me and the other Interim  
7 Settlement Class Counsel. Local counsel for the Florida, Kentucky, and Maine school districts'  
8 also had meaningful roles in negotiating the allocation of funds between Subdivision and School  
9 Districts and participated in that mediation.

10 27. At least as importantly, these 14 School District Class Representatives came  
11 forward against a strong headwind from many State Attorneys General. The State Attorneys  
12 General in state after state went to their legislatures to pass laws extinguishing the claims of  
13 School Districts in opioid litigation. They succeeded in ten states. And in virtually all states  
14 (except Maine) the State Attorneys General both designed plans that allocated opioid settlement  
15 funds without earmarking any funds for School Districts and excluded educational supports from  
16 their definitions of "approved uses." On top of that, Attorneys General in most states pressured  
17 litigating School Districts to sign participation agreements to release their claims (while providing  
18 no money for school districts in exchange). Many school districts succumbed to this pressure. *But*  
19 *the School District Class Representatives here did not.* The risk these class representatives have  
20 run is illustrated by events in Florida, where the Florida Attorney General sued the Miami Dade  
21 School District and Putnam County (one of the named plaintiffs here) in a declaratory action to  
22 try to extinguish their right to sue opioid defendants.

23 28. A \$10,000 incentive award for each of the 14 named plaintiff School Districts is a  
24 modest recognition for their distinctive and commendable courage, conviction, and commitment.

## 25 **VII. Conclusion**

26 29. I believe the result achieved here for school districts is commendable. It is  
27 unprecedented. Outside of bankruptcy proceedings, in none of the other major opioid settlements  
28 so far have schools recovered comparable amounts. Tragically, given the harms caused by the

1 opioid crisis, as in other opioid settlements the amount inevitably is not enough. Because  
2 kindergartners affected by opioids and in school now will likely be in school for another 12 years,  
3 schools will contend with the opioid crisis for many years to come, even if the crisis were  
4 otherwise to end today. The money provided by this settlement will help address the harm. The  
5 Public School District Opioid Recovery Trust that this settlement will help fund is designed to  
6 deliver the money where it is likely to have the most impact under the supervision of a Trustee  
7 exquisitely qualified to accomplish that.

8  
9 I declare under penalty of perjury under the laws of the United States that the above  
10 statements are true and of my own personal knowledge.

11  
12 Executed in Washington, D.C., this 15th day of November, 2023.

13  
14  
15  
16  
17 

18 Cyrus Mehri  
19 cmehri@findjustice.com  
20 MEHRI & SKALET, PLLC  
21 2000 K Street NW, Suite 325  
22 Washington, DC 20006  
23 Telephone: (202) 822-5100  
24  
25  
26  
27  
28

# EXHIBIT A

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  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC.  
NATIONAL PRESCRIPTION OPIATE  
CONSULTANT LITIGATION

This Document Relates To:  
ALL SCHOOL DISTRICT ACTIONS

Case No. 3:21-md-02996-CRB (SK)

**DECLARATION OF CAMERON R.  
AZARI, ESQ. REGARDING  
COMMENCEMENT OF SETTLEMENT  
NOTICE PLAN**

Judge: Honorable Charles R. Breyer

1 I, Cameron R. Azari, Esq., declare as follows:

2 1. I have personal knowledge of the matters set forth herein, and I believe them to be  
3 true and correct.

4 2. I am a nationally recognized expert in the field of legal notice, and I have served as  
5 an expert in hundreds of federal and state cases involving class action notice plans.

6 3. I am a Senior Vice President with Epiq Class Action & Claims Solutions, Inc.  
7 (“Epiq”) and the Director of Legal Notice for Hilsoft Notifications (“Hilsoft”), a firm that  
8 specializes in designing, developing, analyzing, and implementing large-scale legal notification  
9 plans. Hilsoft is a business unit of Epiq.

10 4. The facts in this declaration are based on my personal knowledge, as well as  
11 information provided to me by my colleagues in the ordinary course of my business.

12 **OVERVIEW**

13 5. This declaration confirms the commencement of the Settlement Notice Plan  
14 (“Notice Plan”) and Notices (“Notice” or “Notices”) for *In re: McKinsey & Co., Inc. National*  
15 *Prescription Opiate Consultant Litigation*, No. 21-md-02996-CRB, in the United States District  
16 Court for the Northern District of California. Epiq designed and is implementing the Notice Plan  
17 based on our extensive prior experience and research into the notice issues particular to this case.

18 6. I previously executed my *Declaration of Cameron R. Azari, Esq. Regarding*  
19 *Settlement Notice Plan and Notices* (“Notice Plan Declaration”) on September 28, 2023, which  
20 described the proposed Notice Plan, detailed Hilsoft’s class action notice experience, and attached  
21 Hilsoft’s *curriculum vitae*. I also provided my educational and professional experience relating to  
22 class actions and my ability to render opinions on overall adequacy of notice plans.

23 **NOTICE PLAN DETAIL**

24 7. On October 5, 2023, the Court approved the Notice Plan designed by Hilsoft and  
25 appointed Epiq as the Settlement Administrator in the *Order Granting Preliminary Approval of*  
26 *Class Settlement and Direction of Notice Under Federal Rule of Civil Procedure 23(e)*  
27 (“Preliminary Approval Order”).

28





1 Superintendents Association, which is a professional association for school system leaders. *School*  
2 *Administrator* has a circulation of approximately 20,000 and a total readership of approximately  
3 42,000. Additional insertions may run in either publication based on availability and timing.

#### 4 **Settlement Website**

5 15. On October 23, 2023, Epiq established a Settlement Website  
6 ([www.mckinseyschooldistrictopioidsettlement.com](http://www.mckinseyschooldistrictopioidsettlement.com)) to allow Class Members to obtain additional  
7 information about the Settlement, including the Long Form Notice, Publication Notice, Settlement  
8 Agreement, Motion for Preliminary Approval, Preliminary Approval Order, and Amendment  
9 Complaint. In addition, the Settlement Website includes answers to frequently asked questions  
10 (“FAQs”), instructions for how Class Members may opt out (request exclusion) or object, contact  
11 information for the Settlement Administrator, and how to obtain other case-related information.  
12 The Settlement Website address is prominently displayed in all notice documents.

#### 13 **Toll-free Telephone Number and Postal Mailing Address**

14 16. On October 23, 2023, Epiq established a toll-free telephone number (1-888-318-  
15 4391), which is available to Class Members. Callers hear an introductory message and have the  
16 option to learn more about the Settlement in the form of recorded answers to FAQs. Callers also  
17 have an option to request a Class Notice by mail. The toll-free telephone number is prominently  
18 displayed in all notice documents. The automated telephone system is available 24 hours per day,  
19 seven days per week.

20 17. A postal mailing address was also established, allowing Class Members to request  
21 additional information or ask questions.

#### 22 **Requests for Exclusion and Objections**

23 18. The deadline to request exclusions from the Settlement or to object to the  
24 Settlement is January 5, 2024. As of November 7, 2023, Epiq is aware of one request for exclusion.  
25 As of November 7, 2023, I am aware of no objections to the Settlement.

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

**CONCLUSION**

19. The Notice Plan provides the best notice practicable under the circumstances of this case; conforms to all aspects of Federal Rule of Civil Procedure 23 regarding notice, as well as the N.D. Cal. Procedural Guidance for Class Action Settlements; comports with the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed. and FJC guidance; and satisfies the requirements of due process, including its “desire to actually inform” requirement.

20. At the conclusion of implementing the Notice Plan, I will provide a final report verifying the effective implementation of the Notice Plan.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 8, 2023.



---

CAMERON R. AZARI, ESQ.

# EXHIBIT B

School District Counsel  
Bailey and Glasser LLP

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>Partners</b>			
Bailey, Benjamin L.	12.8	\$990.00	\$12,672.00
Brueckner, Leslie A.	14.2	\$770.00	\$10,934.00
Bryant, Arthur H.	8.3	\$1,375.00	\$11,412.50
<b>Paralegals</b>			
Kittinger, Jason E.	0.2	\$345.00	\$69.00
<b>Grand Total</b>	<b>35.5</b>		<b>\$35,087.50</b>

PSC Member

Bryant Law Center

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>Partners</b>			
Roark, Emily	10.1	\$625.00	\$6,312.50
<b>Grand Total</b>	<b>10.1</b>		<b>\$6,312.50</b>

School District Counsel  
Drummond Woodson

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>Partners</b>			
Hewey, Melissa A.	2.5	\$400.00	\$1,000.00
<b>Grand Total</b>	<b>2.5</b>		<b>\$1,000.00</b>

School District Counsel  
Eldridge & Blakney

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>Partners</b>			
David Eldridge	6.5	\$425.00	\$2,762.50
Tasha Blakney	7.3	\$300.00	\$2,190.00
<b>Associates</b>			
Zachary Walden	4.8	\$250.00	\$1,200.00
<b>Grand Total</b>	<b>18.6</b>		<b>\$6,152.50</b>



School District Counsel

Gertz & Rosen

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>Partners</b>			
Gertz, Marc P	6.8	\$395.00	\$2,686.00
<b>Grand Total</b>	<b>6.8</b>		<b>\$2,686.00</b>

School District Counsel

Hendy Johnson

Name	Hours	Rate	Total
<b>Partners</b>			
Emery, Sarah	32.3	\$400.00	\$12,920.00
Ronald Johnson	10.0	\$500.00	\$5,000.00
<b>Paralegals</b>			
McMullen, Anna	1.2	\$95.00	\$114.00
<b>Grand Total</b>	<b>43.5</b>		<b>\$18,034.00</b>

School District Counsel

Hodgson Ross

Name	Hours	Rate	Total
<b>Partners</b>			
Kristoff, Karl	25.1	\$457.00	\$11,470.70
Muto, Pauline	7.4	\$300.00	\$2,220.00
<b>Grand Total</b>	<b>32.5</b>		<b>\$13,690.70</b>

School District Counsel  
Hughes Socol Piers

Name	Hours	Rate	Total
<b>Partners</b>			
Piers, Matthew	6.2	\$745.00	\$4,619.00
<b>Associates</b>			
Brown, Emily	71.6	\$480.00	\$34,368.00
Miller, Lauren	120.5	\$300.00	\$36,150.00
Truesdale, Margaret E.	3.1	\$310.00	\$961.00
Wysong, Charlie D.	0.4	\$380.00	\$152.00
<b>Grand Total</b>	<b>201.8</b>		<b>\$76,315.00</b>

## Lead Counsel

Lieff Cabraser Heimann & Bernstein, LLP

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>Partners</b>			
FASTIFF, ERIC	63.8	\$1,140.00	\$72,732.00
KAUFMAN, ANDREW	9.1	\$745.00	\$6,779.50
KOHLMAIER, KAYLEE	6.6	\$425.00	\$2,805.00
VETESI, OLIVIA	3.5	\$525.00	\$1,837.50
<b>Grand Total</b>	<b>83</b>		<b>\$84,154.00</b>

PSC Member

Martzell, Bickford & Centola, APC

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>Partners</b>			
Bickford, Scott	1.5	\$700.00	\$1,050.00
<b>Grand Total</b>	<b>1.5</b>		<b>\$1,050.00</b>

## PSC Member and Interim Settlement Class Counsel

Mehri & Skalet, PLLC

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>Partners</b>			
Eardley, Ellen L.	0.5	\$997.00	\$498.50
Karsh, Joshua	75.9	\$1,055.00	\$80,074.50
Mehri, Cyrus	185.0	\$1,055.00	\$195,175.00
<b>Associates</b>			
Bronstein, Ezra	148.1	\$875.00	\$129,587.50
Clarke, Autumn	92.1	\$380.00	\$34,998.00
Cottrell, Brett	8.7	\$760.00	\$6,612.00
Rich, Aisha	2.8	\$460.00	\$1,288.00
<b>Paralegals</b>			
Charles, Dominic	148.8	\$235.00	\$34,968.00
Foster, LeeAnn	11.0	\$225.00	\$2,475.00
Keri, Adil	4.2	\$225.00	\$945.00
Shan, Paris	13.5	\$225.00	\$3,037.50
Smith, Jennifer	16.3	\$205.00	\$3,341.50
<b>Grand Total</b>	<b>706.9</b>		<b>\$493,000.50</b>

Interim Settlement Counsel and School District Counsel

Terrell Hogan Yegelwel

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>Partners</b>			
Goller, Leslie	119.8	\$500.00	\$59,900.00
Hogan, Wayne	51.1	\$850.00	\$43,435.00
<b>Paralegals</b>			
Hack, Laura	6.0	\$150.00	\$900.00
<b>Grand Total</b>	<b>176.90</b>		<b>\$104,235.00</b>



# EXHIBIT C

Summary of Report By Law Firm

<b>Name</b>	<b>Hours</b>		<b>Total</b>
Bailey and Glasser	35.5		\$35,087.50
Bryant Law Center	10.1		\$6,312.50
Drummond Woodson	2.5		\$1,000.00
Eldridge & Blakney	18.6		\$6,152.50
Gertz & Rosen	6.8		\$2,686.00
Hendy Johnson	43.5		\$18,034.00
Hodgson Ross	32.5		\$13,690.70
Hughes Socol Piers	201.8		\$76,315.00
Lieff Cabraser Heimann & Bernstein	83		\$84,154.00
Martzell, Bickford & Centola	1.5		\$1,050.00
Mehri & Skalet PLLC	706.9		\$493,000.50
Terrell Hogan Yegelwel	322.30		\$104,235.00
<b>Grand Total</b>	<b>1465</b>		<b>\$841,717.70</b>

# EXHIBIT D

McKinseySummary of School District Expenses

<b>Category</b>	<b>Amount</b>
<b>Claims Administrator (estimated)</b>	\$70,000.00
<b>Experts</b>	\$48,961.00
<b>Lexis Nexis/Pacer</b>	\$3541.00
<b>PSC Litigation Fund</b>	\$50,000.00
<b>Travel (estimated)</b>	\$3500.00
<b>Expense Total</b>	<b>\$176,002.00</b>

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  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC.  
NATIONAL PRESCRIPTION OPIATE  
CONSULTANT LITIGATION

Case No. 21-md-02996-CRB (SK)

**CLASS ACTION**

This Document Relates to:

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL OF CLASS SETTLEMENT AND  
AWARD OF ATTORNEYS’ FEES AND  
COSTS AND INCENTIVE AWARDS**

ALL SCHOOL DISTRICT ACTIONS

Before the Court is School Districts’ Unopposed Motion for Final Approval of Class Action Settlement and Award of Attorneys’ Fees and Costs (“Motion”). The background, procedural history, and Settlement terms were summarized in the Court’s Order Granting Preliminary Approval of Class Settlement and Direction of Notice Under Rule 23(e), familiarity with which is presumed. *See* ECF No. 621 (“Preliminary Approval Order”). In brief, the Settlement provides \$23 million to compensate a national class of Public School Districts with net proceeds of the funds earmarked for opioid remediation through the use of a grant-making trust.

Following the Court’s Preliminary Approval Order, Class Counsel has sent notice to the Class via a Court-approved notice program, and the Class has had an opportunity to respond. The

1 Court has considered the Parties' briefs and accompanying submissions, the reactions of Class  
2 Members, and presentations at the Final Approval Hearing on these matters, and the Court hereby  
3 **GRANTS** the Motion.

4 **I. CLASS CERTIFICATION AND SETTLEMENT APPROVAL**

5 School District Plaintiffs propose a Settlement Class of all elementary, middle, and  
6 secondary public school districts in the United States, except those in Indiana, American Samoa,  
7 the Commonwealth of Guam, the Commonwealth of the Northern Mariana Islands, and the U.S.  
8 Virgin Islands. *See* ECF No. 621 ¶ 3. The Court certifies this Settlement Class for settlement  
9 purposes only.

10 When presented with a motion for final approval of a class action settlement, a court first  
11 evaluates whether certification of a settlement class is appropriate under Federal Rule of Civil  
12 Procedure 23(a) and (b). Rule 23(a) provides that a class action is proper if four requirements are  
13 met: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See* Fed.  
14 R. Civ. P. 23(a)(1)-(4). In addition, certification of a Rule 23(b)(3) settlement class requires that  
15 (1) "the questions of law or fact common to class members predominate over any questions  
16 affecting only individual members," and that (2) "a class action [be] superior to any other  
17 available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P.  
18 23(b)(3).

19 The Court concluded that the Class and its representatives were likely to satisfy these  
20 requirements in its Preliminary Approval Order and finds no reason to disturb its earlier  
21 conclusions. *See* ECF No. 621 ¶ 7. The requirements of Rules 23(a) and (b) were satisfied then  
22 and remain so now. As such, the Court concludes that certification of the Settlement Class is  
23 appropriate.

24 Assuming a proposed settlement satisfies Rules 23(a) and (b), the Court must then  
25 determine whether it is fundamentally "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2);  
26 ECF No. 621 ¶ 7; *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556-67 (9th Cir.  
27 2019); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 15-md-  
28 02672-CRB (JSC), ECF No. 6764 (N.D. Cal. Oct. 4, 2019) (Am. Order Granting Preliminary

1 Approval of Class Settlement & Direction of Notice Under Rule 23(e) (Audi CO<sub>2</sub> Cases)). In  
2 preliminarily approving the Settlement, the Court applied these standards and concluded that this  
3 Settlement appeared to be “fair, reasonable, and adequate.” ECF No. 621 ¶ 1.

4 Those conclusions stand and are bolstered by the Class’s favorable reaction to the  
5 Settlement. Indeed, \_\_\_ Class Members have objected to any aspect of the Settlement or the  
6 request for attorneys’ fees and costs, and \_\_\_ Class Members have submitted valid opt-out  
7 requests. This factor further supports final approval. *See, e.g., Churchill Vill., L.L.C. v. Gen.*  
8 *Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming district court’s approval of settlement where  
9 “only 45 of the approximately 90,000 notified class members objected to the settlement,” and 500  
10 class members opted out); *Van Lith v. iHeartMedia + Ent., Inc.*, No. 1:16-CV-00066-SKO, 2017  
11 WL 4340337, at \*14 (E.D. Cal. Sept. 29, 2017) (“Indeed, ‘[i]t is established that the absence of a  
12 large number of objections to a proposed class action settlement raises a strong presumption that  
13 the terms of a proposed class action settlement are favorable to the class members.’” (quoting  
14 *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004))); *Cruz*  
15 *v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at \*5 (N.D. Cal. Dec. 19, 2014)  
16 (“A court may appropriately infer that a class action settlement is fair, adequate, and reasonable  
17 when few class members object to it.” (citing *Churchill Vill.*, 361 F.3d at 577)).

18 The Court finds that the notice provided to the Settlement Class pursuant to the Settlement  
19 Agreement (ECF No. 599-2) and the Preliminary Approval Order fully complied with Due  
20 Process and Rule 23, and was reasonably calculated under the circumstances to apprise the  
21 Settlement Class of the pendency of the Action, their right to object to or to exclude themselves  
22 from the Settlement Agreement, and their right to appear at the Final Approval Hearing. The  
23 notice program included (i) direct notice via regular mail for Class Members; (ii) published notice  
24 in two publications widely read by school district leaders, *Education Week* and *School*  
25 *Administrator*; (iii) an informative letter to the top education official in each state (other than  
26 Indiana); (iv) a toll-free hotline; (v) a dedicated mailing address and contact information for  
27 Interim Settlement Class Counsel; and (vi) a Settlement Website.

28

1 Pursuant to Federal Rule of Civil Procedure 23, the Court fully and finally approves the  
2 Settlement Agreement in all respects (including, without limitation: the amount of the Settlement;  
3 the creation and use of the Public School District Opioid-Recovery Trust, and the appointment of  
4 Dr. Andrés Alonso as the Special Trustee, as the mechanism for distributing settlement money to  
5 Class Members who apply for funding and are selected by the Special Trustee; the scope of the  
6 releases; and the dismissal with prejudice of the claims asserted against Defendants in the  
7 Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the  
8 Class. The Court further finds that the Settlement is the result of arm's-length negotiations  
9 between experienced and informed counsel representing the parties' interests. Accordingly, the  
10 Settlement Agreement and the Settlement embodied therein are hereby finally approved in all  
11 respects. The Parties are directed to perform its terms.

12 The terms of the Settlement Agreement and of this Order and Judgment shall be forever  
13 binding on Defendants, Plaintiffs, and all other Class Members (except any Class Member who  
14 timely and validly requests exclusion from the Class), as well as their respective successors and  
15 assigns.

16 The releases set forth in section III of the Settlement Agreement, together with the  
17 definitions contained in section I relating thereto, are expressly incorporated herein in all respects.  
18 The releases are effective as of the Effective Date. Accordingly, this Court orders that:

19 (a) Without further action by anyone, upon the Effective Date of the  
20 settlement, Plaintiffs and each of the other Class Members (except any Class Member who timely  
21 and validly requests exclusion from the Class),, on behalf of themselves, and each of their  
22 respective executors, administrators, predecessors, successors, assigns, parents, subsidiaries,  
23 affiliates, officers, directors, agents, fiduciaries, beneficiaries or legal representatives, in their  
24 capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall  
25 have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived,  
26 and discharged each and every Released Claim (including Unknown Claims) against any of the  
27 Released Persons, and shall forever be barred and enjoined from commencing, instituting,  
28



1 prosecuting, or continuing to prosecute any or all of the Released Claims against any of the  
2 Released Persons.

3 (b) Without further action by anyone, upon the Effective Date of the  
4 settlement, each of the Released Persons shall be deemed to have, and by operation of this  
5 Judgment shall have, fully, finally and forever released, relinquished, and discharged Plaintiffs,  
6 Class Members (except any Class Member who timely and validly requests exclusion from the  
7 Class), and Lead Counsel from all claims and causes of action of every nature and description  
8 (including Unknown Claims) arising out of, relating to, or in connection with, the institution,  
9 prosecution, assertion, settlement, or resolution of the Litigation, except claims to enforce the  
10 Settlement and the terms of the Settlement Agreement and claims or defenses arising from claims  
11 by any Class Member concerning a deficiency in the administration of the Settlement.

12 Notwithstanding the paragraph above, nothing in this Judgment shall bar any action by  
13 any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this  
14 Judgment.

15 **II. THE REQUESTED ATTORNEYS' FEES, REIMBURSEMENT OF COSTS,**  
16 **AND AWARD OF INCENTIVE AWARDS**

17 Class Counsel request an award of \$2.3 million in attorneys' fees and costs of \$176,002  
18 for work undertaken in prosecuting the claims resolved by the Settlement as well as incentive  
19 awards of \$10,000 for each of the 14 class representative school districts. These amounts are to be  
20 paid from the Settlement Fund before transfer of the remainder to the Special Public School  
21 District Opioid-Recovery Trust.

22 Federal Rule of Civil Procedures 23(h) provides that, "[i]n a certified class action, the  
23 court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by  
24 the parties' agreement." Fed. R. Civ. P. 23(h). "Attorneys' fees provisions included in proposed  
25 class action settlement agreements are, like every other aspect of such agreements, subject to the  
26 determination whether the settlement is fundamentally fair, adequate and reasonable." *Staton v.*  
27 *Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003) (internal quotation marks and citation omitted).  
28 Thus, "courts have an independent obligation to ensure that the award, like the settlement itself, is

1 reasonable, even if the parties have already agreed to an amount.” *In re Bluetooth Headset Prods.*  
2 *Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

3           When, as here, a settlement establishes a calculable monetary benefit for a class, a court  
4 has discretion to award attorneys’ fees based on a percentage of the monetary benefit obtained or  
5 by using the lodestar method. *See In re Volkswagen*, 2017 WL 1047834, at \*1 (N.D. Cal. Mar. 17,  
6 2017); *see also Staton*, 327 F.3d at 967. The \$23 million available to the class is non-  
7 reversionary, eliminating any incentive to discourage Class Members’ participation in the  
8 Settlement and ensuring that the full value is put towards the interests of the Class in this  
9 litigation. Class Counsel’s requested fee represents 10% of the total settlement value. This is well  
10 below the Ninth Circuit’s “‘benchmark’ fee award” of 25% and is also consistent with the  
11 national MDL 2804 settlements. *In re Google LLC St. View Elec. Commc’ns Litig.*, 611 F. Supp.  
12 3d 872, 887 (N.D. Cal. 2020), *aff’d sub nom.*, *In re Google Inc. St. View Elec. Commc’ns Litig.*,  
13 21 F.4th 1102 (9th Cir. 2021); *see also In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid*  
14 *Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017 WL 6040065, at \*2 (N.D. Cal. Dec. 6, 2017),  
15 *aff’d*, 768 F. App’x 651 (9th Cir. 2019) (noting that, “in most common fund cases, the “[fee]  
16 award exceeds the [25%] benchmark,” and “[f]ar lesser results (with 20% recovery of damages or  
17 less) have justified upward departures from the 25% benchmark” (citations omitted)).

18           A lodestar cross-check also confirms the reasonableness of the award sought. Both the  
19 hours worked and the rates billed are customary and reasonable. The total lodestar yields a  
20 multiplier of 2.73 for work done through October 2023. This multiplier is within the range of  
21 reason and supported by the facts of this case. In addition, class counsel in this case were the first  
22 group in the country to identify the claims that schools have against opioid industry defendants  
23 and to recognize, marshal, and develop evidence to prove the causal connection between neonatal  
24 opioid exposure and neonatally exposed children’s disproportionate likelihood of requiring  
25 special education services, which roughly double the cost of their education. These were issues  
26 and evidence apparently overlooked by the AGs and also by school districts themselves. Without  
27 their pioneering work, these claims would very likely still be unrecognized or latent.

28

1 In sum, both the percentage of the fund and the lodestar multiplier are reasonable in light  
2 of the substantial benefits obtained for the Class, the risks and complexities of this litigation, and  
3 the quality of counsel's work. Moreover, as noted above, no Class Member has objected to the  
4 requested fees and costs. Class Counsel's request for \$2.3 million in attorneys' fees plus  
5 reimbursement of \$176,002 in expenses is hereby **GRANTED**.

6 The Court has discretion to award reasonable incentive awards for Settlement Class  
7 Representatives. The request of \$10,000 per Settlement Class Representative for a total of  
8 \$140,000 amounts to six tenths of one percent of the total settlement fund. The 14 Settlement  
9 Class Representatives undertook a novel and pioneering case under difficult circumstances, and  
10 their awards are justified.

11 **III. CONCLUSION**

12 Accordingly, the Court hereby orders, adjudges, finds, and decrees as follows:

13 1. The Court certifies a Settlement Class of all elementary, middle, and secondary  
14 public school districts in the United States, except those in Indiana, American Samoa, the  
15 Commonwealth of Guam, the Commonwealth of the Northern Mariana Islands, and the U.S.  
16 Virgin Islands.

17 2. The Court **DISMISSES** the Action and all claims contained therein, as well as all  
18 of the Released Claims, with prejudice as to the Parties, including the Class. The Parties are to  
19 bear their own costs, except as otherwise provided in the Settlement Agreement

20 3. Only those persons who timely submit valid requests to opt out of the Settlement  
21 Class are not bound by this Order and are not entitled to any recovery from the Settlement.

22 4. The Court **CONFIRMS** the use of the Public School Districts' Opioid Recovery  
23 Trust administered by Trustees Dr. Andrés Alonso and Truist Bank.

24 5. The Court **CONFIRMS** the appointment of Interim Settlement Class Counsel as  
25 Settlement Class Counsel.

26 6. The Court **CONFIRMS** the appointment of Settlement Class Representatives  
27 listed as Lead Plaintiffs in the Amended Master Complaint (School Districts).

28 7. The Court **CONFIRMS** the appointment of Epiq as Notice Administrator.

1           8.       The Court **GRANTS** Class Counsel’s request for attorneys’ fees and costs, and  
2 **AWARDS** Class Counsel \$2.3 million in attorneys’ fees and costs of \$176,002 to be allocated by  
3 Settlement Class Counsel to school district counsel involved in this matter. Further, the Court  
4 **GRANTS** Class Counsel’s request to award service awards of \$10,000 for each of the 14  
5 Settlement Class Representatives.

6           9.       The Court hereby discharges and releases the Released Claims as to the Released  
7 Parties, as those terms are used and defined in the Settlement Agreement.

8           10.      The Court hereby discharges and releases the Released Claims as to the Released  
9 Parties, as those terms are used and defined in the Settlement Agreement.

10          11.      The Court hereby permanently bars and enjoins the institution and prosecution by  
11 Class Plaintiffs and any Class Member of any other action against the Released Parties in any  
12 court or other forum asserting any of the Released Claims, as those terms are used and defined in  
13 the Settlement Agreement.

14          12.      The Court further reserves and retains exclusive and continuing jurisdiction over  
15 the Settlement concerning the administration and enforcement of the Settlement Agreement and  
16 to effectuate its terms.

17  
18                   **IT IS SO ORDERED.**

19  
20 DATED: \_\_\_\_\_

\_\_\_\_\_  
21 THE HONORABLE CHARLES R. BREYER  
22 UNITED STATES DISTRICT JUDGE  
23  
24  
25  
26  
27  
28