

**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY  
PENNSYLVANIA**

██████████, a minor, by and  
through his parent and natural guardian  
DONNA HOPE, individually and on  
behalf of all other similarly situated  
individuals,

Plaintiffs,

vs.

BUTLER AREA SCHOOL DISTRICT  
and GLENN TERWILLIGER,

Defendants.

CIVIL DIVISION

No.: 18-10759

FILED ON BEHALF OF:  
**Plaintiff**

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT, APPOINTMENT  
OF CLASS COUNSEL,  
CERTIFICATION OF THE  
SETTLEMENT CLASS,  
AND FOR APPROVAL OF THE  
FORM, MANNER AND  
ADMINISTRATION OF NOTICE**

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██████████, a minor, by and through  
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BUTLER AREA SCHOOL DISTRICT and  
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CERTIFICATION OF THE SETTLEMENT CLASS, AND FOR  
APPROVAL OF THE FORM, MANNER AND ADMINISTRATION OF NOTICE**

**I. INTRODUCTION**

The proposed class action Settlement Agreement (“SA”) readily satisfies each of the factors that a court must consider in making the preliminary approval determination.<sup>1</sup>

*First*, this Court must consider the value of the proposed settlement benefits balanced against the expected recovery at trial and after appeal to determine if the settlement fits within a “range of possible approval.” Here, the SA provides for payments to defined “Settlement Class Members” based upon damage amounts that such persons could likely receive were the action to proceed to a trial on the merits.

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<sup>1</sup> A copy of the Settlement Agreement is attached hereto As Exhibit 1. Attached as Exhibit “A” to the settlement agreement is a Proposed Final Judgment Approving Settlement Payment of Incentive Awards and Attorneys’ Fees and Order of Dismissal with Prejudice. Attached as Exhibit “B” to the settlement agreement is a Proposed Class Action Settlement and Hearing Claim Notice. Attached as Exhibit “C” to the settlement agreement is a Proposed Order of Preliminary Approval of Class Settlement and Providing for Notice and Hearing.

The SA defines “Settlement Class Members” as:

All persons, as reflected in Defendants’ records, who, between August 15, 2016 and January 20, 2017, 1. Were registered students of Summit Elementary School; 2. To whom, via their parents or natural guardians, Dr. Dale Lumley, on behalf of Butler Area School District, sent a letter dated January 20, 2017, warning of elevated copper and lead levels in the school’s drinking water; 3. Who were subsequently offered medical testing by the Butler Area School District; and 4. Who accepted the offer and obtained medical testing.

There are approximately 210 Settlement Class Members based upon Defendant Butler Area School District’s (“BASD”) records. The SA further recognizes that the Settlement Class Members shall be entitled to a lump sum payment of \$600.00

These settlement benefits will not be diminished by and are exclusive of the costs of class action notice, settlement administration and Plaintiffs’ Counsels’ attorneys’ fees and costs, all of which will be paid separately by Defendant in accordance with provisions in the SA. Thus, the costs of notice, administration and attorneys’ fees and reimbursement of advanced litigation costs are properly considered additional settlement benefits separate from the amounts described above.

*Second*, this Court must consider whether the negotiations occurred at arm's length. The record demonstrates that this settlement was ultimately the product of extensive arms length negotiation.

*Third*, this Court must determine whether sufficient discovery was undertaken. In the instant matter, an independent investigation into the circumstances described in the Class Action Complaint was undertaken by attorney Michael Witherel, Esquire. As part of this investigation, his investigation, the School Board provided Mr. Witherel unlimited access to all records maintained by the District, including records maintained on the computers of individual District employees as well as the District’s computer network and server. In addition, the Board

authorized Mr. Witherel to investigate any alleged inappropriate conduct discovered during his investigation into the Summit Elementary School water test results. Mr. Witherel also conducted numerous interviews of key witnesses in the instant matter. All of Mr. Witherel's findings and conclusions were provided to instant counsel in an Executive Summary Report. Thereafter, class counsel undertook additional written discovery throughout the instant litigation. Additionally, the Parties had the benefit of the prior proceedings in the case of *Haluska v. Forbes Regional* GD 05-9134, *Hoyman v. UPMC*, GD 12-016636, and *Alwine v. South Hills Endoscopy Center*, GD 12-017815, which provided a basis to approximate the individual damages of Settlement Class Members.

*Finally*, this Court must consider whether the proponents (i.e., Plaintiffs' Counsel) of the settlement are experienced in similar litigation. Here, the record fully establishes that Plaintiffs' Counsel have an extensive background in complex class action litigation.<sup>2</sup>

It is therefore respectfully requested that the Court grant preliminary approval.

## **II. STANDARDS FOR PRELIMINARY APPROVAL**

A trial court's approval of a class action settlement involves a two-step process. *Brophy v. Philadelphia Gas Works & Philadelphia Facilities Mgmt. Corp.*, 921 A.2d 80, 88 (Pa. Commw. Ct. 2007). Initially, the court must make a preliminary determination of the settlement's fairness. *Id.* Once this determination is made, then notice is directed to the class after which the court then must hold a hearing and then consider whether to grant final approval to the proposed

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<sup>2</sup> The class action background of Plaintiffs' Counsel is set forth in the Declaration Of Brendan Lupetin accompanying the Motion For Preliminary Approval.

settlement. *Id.* 4 H. Newberg & A. Conte, NEWBERG ON CLASS ACTIONS (4th ed. 2002) at § 11.25, p. 38. *See also* MANUAL FOR COMPLEX LITIGATION (FOURTH), § 21.632 (2004).

Neither the Pennsylvania Supreme Court nor the Pennsylvania Rules of Civil Procedure have definitively set forth the legal standard that applies to a court's "preliminary" determination that a proposed settlement is fair and reasonable. Pennsylvania Rule of Civil Procedure 1714(a) provides that "No class action shall be compromised, settled or discontinued without the approval of the court after hearing." Pa.R.C.P. No 1714. The Explanatory Comment to Rule 1714 states that the rule is intended to incorporate the provisions of Federal Rule 23(e). The Commonwealth Court in *Brophy v. Philadelphia Gas Works* did make reference to and apply the federal standard for preliminary approval in the course of determining that a trial court's preliminary approval order is not a final and appealable order. 921 A.2d at 88. Accordingly, it appears that courts in Pennsylvania should apply the federal legal standard applicable to the preliminary approval determination.

The federal legal standard for preliminary approval of a class settlement is two-fold. *First*, the Court must determine whether a settlement class may be conditionally certified for settlement purposes. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1977) (trial court may disregard management issues in certifying a settlement class, but the proposed class must still satisfy the other requirements of Rule 23). While a settlement class must satisfy each of the requirements of Rule 23(a) and 23(b)(3), "the fact of settlement is relevant to a determination of whether the proposed Class meets the requirement imposed by the Rule." *In re: Prudential Ins. Co. of America Sales Litigation*, 148 F.3d 283, 308-09 (3d Cir. 1998). In this context, some courts make only a preliminary determination that the proposed claims satisfy the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b). MANUAL FOR COMPLEX LITIGATION



(FOURTH) § 21.632. Accordingly, the first step in the preliminary approval analysis would be whether the proposed Settlement Class meets the legal requirements for determining class certification as set forth in Pa.R.Civ.P. 1702, 1708 and 1709.

*Second*, the Court must examine the proposed settlement to determine whether it appears fair and reasonable. MANUAL FOR COMPLEX LITIGATION (FOURTH), §21.632. Recently, Hon. Judge Brody explained this standard in *In re Nat'l Football League Players' Concussion Injury Litig.*, MDL 2323, 2014 WL 114351 (E.D. Pa. Jan. 14, 2014) as follows:

At the preliminary approval stage, the bar to meet the “fair, reasonable and adequate” standard is lowered, and the court is required to determine whether “the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.”

*See also Brophy*, 921 A.2d at 88.

To determine whether a settlement “falls within the range of possible approval,” a court must “consider plaintiffs' expected recovery balanced against the value of the settlement offer.” *Id.* As the Third Circuit explained, an initial presumption of fairness is established when the court finds that: (1) the parties' negotiations occurred at arms length; (2) there was sufficient discovery; and (3) the proponents of the settlement are experienced in similar litigations. *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768 (3d Cir.1995). This examination is generally “made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by parties.” *In re Nat'l Football League Players'*, 2014 WL 114351. *See also Bernhard v. TD Bank, N.A.*, CIV.08-4392RBK/AMD, 2009 WL 3233541 (D.N.J. Oct. 5, 2009) *citing In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y.1997); *Smith v. Professional Billing*, 2007 WL 4191749 (D. N.J. 2007) and NEWBERG ON CLASS ACTIONS, § 11.25.

The approval of a proposed settlement of a class action is a matter within the broad discretion of the trial court. Of course, settlements of class actions are favored in the law. *See In re General Motors Truck Litigation*, 55 F.3d at 784. The question of whether a proposed settlement is fair, reasonable and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "the terms of the compromise with the likely rewards of litigation." *In re Nat'l Football League*, at \*5; *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982); *Collier v. Montgomery County*, 192 F.R.D. 176, 184 (E.D. Pa. 2000) (citing factors established in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975)). Therefore, many courts recognize that the opinion of experienced counsel supporting the settlement is entitled to considerable weight.

In addition to being substantively reasonable in relation to the risks and likely rewards of litigation, the proposed settlement must be "the result of good faith, arms length negotiations." *Collier*, 192 F.R.D. at 184. In evaluating this requirement, courts proceed as follows:

If the proposed settlement appears to be the product of serious informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to Class Representatives or segments of the Class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

*Id.* A finding that these factors are present establishes an initial presumption of fairness. *Id.*; *see also General Motors*, 55 F.3d at 785-86. Here, the proposed settlement meets these standards.

### **III. THE PROPOSED SETTLEMENT SATISFIES THE STANDARDS FOR PRELIMINARY APPROVAL**

Plaintiffs set forth below an analysis of the class claims, merits and settlement proceedings and the substantive terms of the settlement. This analysis demonstrates that the class

claims satisfy certification requirements and that the proposed settlement meets the preliminary approval standard in providing for a fair and reasonable resolution.

**A. The Course Of Proceedings and Settlement Negotiations**

On February 7, 2017, Representative Plaintiff Jillian Tait<sup>3</sup> filed a three count Class Action Complaint in Federal Court for the Western District of Pennsylvania, alleging claims for Negligence, Medical Monitoring, and violations of the class members rights to bodily integrity guaranteed under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article I, § 1 of the Constitution of the Commonwealth of Pennsylvania, and under 42 U.S.C. §§ 1983 and 1988. An Amended Complaint was filed on December 10, 2018 with counts of negligence and vicarious liability. A Second Amended Complaint was filed on March 10, 2020 which included counts against all defendants for negligence and vicarious liability. On or about January 21, 2021, Plaintiffs moved to discontinue the action as to Defendants Mary Wolf and Dale R. Lumley, Ph.D. and amend the caption. This Order was granted.

The Parties thereafter engaged in mediation with Mediator David White who successfully assisted the Parties in reaching the proposed settlement in the gross amount of \$215,000, which includes and contemplates all Class Member Settlement payments, Administration Costs, and Attorney's Fees.

**B. The Material Provisions Of The Settlement Agreement**

**1. Payment Of \$600 To Each Eligible Settlement Class Member**

As stated above, the SA provides for an overall group of defined Settlement Class Members. SA 1.1.

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<sup>3</sup> Ms. Tait and her guardian were subsequently replaced as class representative by [REDACTED] and his mother.

The persons identified meeting the definition of a Class Member will automatically receive a \$600 settlement payment unless they opt out of the Class Action and instant settlement.

In order to provide these payments, the SA provides for the creation of a Settlement Fund. The initial amount of the Fund is based upon the amounts necessary to make these automatic payments to these class members. Accordingly, based upon the approximate number of persons the Parties agree are in the known Settlement Class Member group, the amount of the Fund, as initially deposited, would be ~\$126,000.

**a. Costs of notice**

The Parties have consulted with Analytics Consulting, LLC, a class action settlement administrator regarding the administration of this settlement and cost thereof. Analytics Consulting has provided the Parties a Summary Estimate totally \$8,323.00. The Parties have agreed that the Plaintiff shall pay the amount of Notice and Administration Expenses without objection from the agreed upon Settlement sum. The cost of notice and settlement administration are properly considered part of the value of a settlement. *See, e.g., Staton v. Boeing*, 327 F.3d 928, 975 (9th Cir. 2003).

**b. Attorneys' Fees And Costs**

Defendants have agreed to pay Plaintiffs' Counsel their reasonable attorneys' fees, costs and expenses subject to court approval from the gross settlement of \$215,000 in the amount of *no more than* \$71,666.67, which represents a 33.3% share of the gross settlement. SA Section 5(b)<sup>4</sup>. This payment, will not reduce or affect the monetary claim of each class member.

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<sup>4</sup> In the event there are more than 210 class members, counsel will reduce the attorneys' fee to guarantee each class member receives \$600.00.

**c. Class Notice**

The Notice to be sent to each individual Class member, a true and correct copy of which is attached to the Settlement Agreement as Exhibit B is sufficient to inform Class members regarding: (a) the formation of the Class; (b) the Class definition; (c) the terms of the proposed settlement; (d) the proposed request for an award of attorneys' fees and expenses to counsel; (e) the proposed individual service awards to the Representative Plaintiffs; (f) Class members' right to opt out of the Class and thereby not participate in the proposed settlement; (g) Class members' right to object to the proposed settlement; (h) the time and date of the Final Approval Hearing; and, (i) Class members' right to appear at the Final Approval Hearing in favor of or in opposition to the proposed settlement. The Notice is clear in content and provides Class members with sufficient information to make an intelligent decision as to whether to remain in the Class, opt out of the Class, or object to any aspect of the proposed settlement.

**d. Class Representative Service Awards**

The Class Representatives, [REDACTED] (a minor) and Donna Hope (individually and as the parent and natural guardian of [REDACTED]) shall be entitled to an incentive award of \$1,500 respectively, as the Class Representatives, to compensate them appropriately for efforts in prosecuting this case including retaining counsel, assisting in discovery, and keeping abreast of the litigation. The awards are subject to court approval. Defendants agree that the named Plaintiffs are entitled to the incentive awards pursuant to § 5(d) of the Settlement Agreement.

**e. Defendant's Denial of Liability; Certification for Settlement**

The Defendants have asserted and continue to assert many defenses in this Litigation and have expressly denied and continue to deny any fault, wrongdoing or liability whatsoever arising out of the conduct alleged in the Litigation. Defendants Butler Area School District and Mr.

Glenn Terwilliger expressly deny any fault, wrongdoing, or liability whatsoever, as well as the validity of each of the claims and prayers for relief asserted in the Litigation. Further, the Defendants stipulate that a Settlement Class should be certified for settlement purposes only. Other than for purposes of the settlement, the Defendants deny that a litigation class could be properly certified.

#### **IV. The Proposed Settlement Satisfies the Requirements For Class Certification**

##### **1. The General Legal Standards for Determining Class Certification**

The legal requirements for determining class certification are set forth in Pa.R.Civ.P. 1702, 1708 and 1709. Rule 1702 sets forth the five prerequisites that must be established.<sup>5</sup> One of these prerequisites mandates that a class action provide for a “fair and efficient method of adjudication of the controversy. Pa.Civ.P.1702(5). Rule 1708 defines the criteria for determining this particular requirement. Another of the Rule 1702 prerequisites mandates that the representatives will fairly and adequately assert and protect the interests of the class. Pa.R.Civ.P. 1702(4). Rule 1709 defines the criteria for determining this requirement. Pa.R.Civ.P. 1709.

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<sup>5</sup> Rule 1702 provides that:

One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (4) the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709;
- (5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

Therefore, the determination of class certification requires application of Pa.R.Civ.P. 1702, 1708 and 1709. *See also, Samuel-Bassett v. Kia Motors Am., Inc.*, 613 Pa. 371, 396, 34 A.3d 1, 15 (2011).

**2. The Requirements of Pa.R.Civ.P. 1702 Are Fully Satisfied**

**a. Numerosity Is Satisfied Because Joinder Is Impracticable**

The numerosity inquiry is two-fold. *First*, a proposed class must be sufficiently large such that joinder of all class members would be impracticable. *Second*, the class must be objectively defined so that members of the class are “identifiable”. The proposed class defined above consisting of approximately 210 persons is sufficiently large to justify class treatment and the members of the class are readily identifiable from the Defendants’ records.

A class is sufficiently numerous when “the number of potential individual plaintiffs would pose a grave imposition on the resources of the court and an unnecessary drain on the energies and resources of the litigants should plaintiffs sue individually.” *Temple University v. Pa. Dept. of Public Welfare*, 30 Pa.Cmwlth. 595, 374 A.2d 991, 996 (1977) (123 members sufficient); *ABC Sewer Cleaning Co. v. Bell of Pa.*, 293 Pa.Super. 219, 438 A.2d 616 (1981) (250 members sufficient); *Ablin, Inc. v. Bell Tel. Co. of Pa.*, 291 Pa.Super. 40, 435 A.2d 208 (1981) (204 plaintiffs sufficiently numerous). A class proponent need not plead or prove the actual number of class members, so long as the class can be defined with some precision and sufficient indicia is provided that more members exist than it would be practicable to join.” *Janicik*, 305 Pa.Super. at 132, 451 A.2d at 456.

To be identifiable, the class definition must be clear enough for the court to reasonably ascertain who the potential class members are. When a class is narrowly and precisely drawn and there are still so many potential class members that joinder is impracticable or impossible, the class is sufficiently delineated to meet the numerosity requirement. *Weismer v. Beech-Nut*

*Nutrition Corp.*, 419 Pa.Super. 403, 615 A.2d 428 (1992).

The defined class of 210 persons is precisely and objectively defined. Indeed, all class members have already been identified. Joinder of this many persons would be impracticable. Numerosity is satisfied.

**b. Commonality Is Satisfied**

Common questions exist within the meaning of Pa. R. Civ. P. 1702(2) “if the class members' legal grievances arise out of the ‘same practice or course of conduct on the part of the class opponent.’” ’ *Janicik, supra*. 305 Pa.Super. at 133, 451 A.2d at 457. Thus, it is necessary to establish that “the facts surrounding each plaintiff's claim must be substantially the same so that proof as to one claimant would be proof as to all.” *Allegheny County Housing Authority v. Berry*, 338 Pa.Super. at 341, 487 A.2d at 997.

In certifying a class of persons who underwent blood testing for HIV and HCV in *Haluska v. Forbes*, the Court of Common Pleas of Allegheny County recognized:

Each of the 235 patients has the same claim. Because of its negligence, the hospital could not guarantee that the patient will not experience future medical problems as a result of the procedure. Consequently, it is necessary the patient to undergo testing recommended by the hospital and possibly to refrain from certain activities until the results of a first and repeat test are known.

This case is similar to a hospital's failure to conduct blood tests before transferring the blood to patients over a one-week period. The hospital cannot vouch for the quality of the blood. Consequently, in each case the patient sustains the same injury from the same negligent act (the failure to test the blood) namely harm and inconvenience caused by steps that the patient must take as a result of the possibility that the blood may cause illness.

*See Haluska v. Forbes*, Memorandum and Order of Court granting class certification dated July 8, 2009.



Here likewise, the Representative and Class Plaintiffs have been subject to the identical negligent conduct. Their injuries are easily traceable to this alleged negligence. In light of *Haluska*, commonality is satisfied.

**c. Typicality Is Satisfied**

“The typicality requirement[’s] ... purpose is to determine whether the class representative’s overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that [its] pursuit of [its] own interests will advance those of the proposed class members.” *Janicik*, 305 Pa.Super. at 134, 451 A.2d at 458. Typicality exists if the class representative’s claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class. *Samuel-Bassett*, 613 Pa. at 421-22, 34 A.3d at 30-31. The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented. *Id.* But, typicality does not require that the claims of the representative and the class be identical, and the requirement “may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.” *Id.*

The named Plaintiffs’ claims are clearly “typical”. Here, the Representative Plaintiff and Class Members were subject to the same negligent acts, received the same notice thereof, and suffered the same injury. Typicality is satisfied.

**d. Adequate Representation Is Provided**

Rule 1702(4) requires that “. . . the representative parties will fairly and adequately assert and protect the interest of the class under the criteria set forth in Rule 1709.” Rule 1709 sets forth the following three factors for determining the adequacy of representation:

- (1) whether the attorney for the representative parties will adequately represent the interests of the class,

- (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and
- (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R. Civ. P. 1709.

This Court has presumed that counsel will adequately protect the interests of the class in the absence of evidence to the contrary. *Dunn v. Allegheny County Property Assessment*, 794 A.2d 416, 425 (Pa.Cmwlth 2002). Plaintiff has retained competent class counsel who are experienced in class action litigation. Class counsel has successfully represented classes in Pennsylvania and elsewhere. See Declaration of Brendan B. Lupetin which is to be filed separately.

Courts have also generally presumed that there is no conflict of interest on the part of the representative plaintiff unless the contrary is established. *See Dunn*, 794 A.2d at 425-426.

Finally, class counsel has undertaken to represent the class and advance all costs of the class contingent upon the outcome of the litigation. Thus, Plaintiffs' Counsel has undertaken adequate steps to provide for the financing of this litigation and to assure that the interests of the class will not be harmed. *Lash v. Equibank*, 143 P.L.J. 60, 64 (1994).

**e. A Class Action Would Provide A Fair And Efficient Method Of Adjudication**

Rule 1708(a) sets forth the applicable factors to be considered in determining whether a class action provides a fair and efficient method of litigation.<sup>6</sup> Application of these factors demonstrates that a class action is the only feasible method of adjudication.

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<sup>6</sup> Rule 1708 of the Pennsylvania Rules of Civil Procedure requires:

In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth [below]

*First*, as demonstrated above, common questions of law or fact predominate because virtually all of elements of Plaintiffs' negligence claim are subject to common proof. *Second*, the size of the class is relatively small and, therefore, any potential management problems will not be insurmountable. *Third*, the employment of class procedure here will obviate duplicative proceedings and prevent inconsistent results. *Fourth*, there are no other class cases pending against the Defendants with respect to this incident. This paucity of cases suggests that individual litigation may not be feasible because of the small amount of available damages.

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a) Where monetary recovery alone is sought, the court shall consider

(1) whether common questions of law or fact predominate over any question affecting only individual members;

(2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;

(3) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;

(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;

(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

Where, as here, the claimed injuries of an isolated group of individuals are traceable to a common negligent act, the asserted claims are appropriate for class action treatment. The decision in *Haluska v. Forbes*, GD 05-9134 is on point in describing the reasons this action satisfies the fair and efficient requirements:

. . . the individual claims of each plaintiff involve small recoveries that are not likely to be litigated because of the expense involved in retaining separate counsel and pay court costs. The case law cited by plaintiffs recognizes that a purpose of a class action is to aggregate relatively small potential recoveries into a case worth an attorney's labor.

*Fifth*, this particular forum is appropriate because the Defendants are located here and many, if not most, of the class members are located here. *Sixth*, given the nature of the damages suffered by the members of the class which are in the nature of inconvenience and discomfort, the amount of available damages appear to be relatively small. When compared to the complexities of the issues presented, these available damages further indicate the propriety of a class action. *Seventh*, the amount of Plaintiffs' damages, however, is not *de minimus*. But for a class action it is likely that other members could not pursue their right to recovery these damages.

## V. THE SETTLEMENT IS APPROPRIATE FOR PRELIMINARY APPROVAL

As can be gleaned from the history of this litigation set forth above and the terms of the proposed settlement, the preliminary approval factors have been met.<sup>7</sup>

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<sup>7</sup> Some courts use the so-called *Girsh* factors as a basis for determining preliminary approval. *Collier v. Montgomery County*, 192 F.R.D. 176, 184 (E.D. Pa. 2000) In *Girsch v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975) the following factors were identified to be used to determine whether a class settlement is fair, adequate and reasonable: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.

### **A. The Value Of Any Expected Recovery Balanced Against The Proposed Settlement**

The proposed settlement would provide Settlement Class Members a payment for their damages in an amount that a jury might reasonably award. Here, a reasonable jury could readily determine that a payment of \$600 is an appropriate award for Settlement Class Members for a blood test. In *Haluska*, this Court awarded \$1500 to one of the class members after trial on the damages issue in a case where the class member had obtained two blood tests over a six-month period to ensure that HIV had not been contracted. And this sum was obtained via jury verdict rather than settlement and was thus subject to reduction to account for attorneys' fees and costs. In light of this award, it is reasonable to infer that \$600 for a single needle stick could be a likely result after a trial on damages in this case where most class members received a single blood test.

Accordingly, most, if not all Settlement Class Members would recover a monetary payment that is in line with what they could recover at trial. That they can achieve this recovery without the costs and risk of continued litigation clearly establishes the fairness and adequacy of the settlement as a preliminary matter. When the additional benefits of the settlement, which are separate and exclusive of these payments, such as costs of notice, settlement administration and attorneys' fees and costs are further considered, the proposed settlement obviously meets the preliminary approval standard.

### **B. Arms Length Settlement Negotiations**

This action has been vigorously litigated by the parties sufficient to assess the strengths of their respective claims and defenses. The Parties have engaged in lengthy, serious negotiations as detailed above and by court record. These negotiations have taken the course of

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well over a year.

### **C. Sufficiency Of Discovery**

The Parties had a clear view of the potential damages that could be recovered at trial given the course of trial and appellate proceedings in the *Haluska v. Forbes* class action. No amount of additional discovery could have altered the damages available to Settlement Class Members. The Parties knew of the risks of obtaining class certification also in light of the *Haluska* proceedings. This factor clearly supports preliminary approval.

### **D. The Proponents Of The Settlement Are Experienced**

Finally, counsel is highly experienced in class action litigation, such as the Action before the Court, and endorses the settlement as fair and adequate under the circumstances. Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate. *See, e.g., In re MicroStrategy Inc. Sec. Litig.*, 148 F. Supp.2d 654, 665 (E.D. Va. 2001); *Stewart v. Rubin*, 948 F. Supp. 1077, 1087 (D.D.C. 1996); *Rolland v. Cellucci*, 191 F.R.D. 3, 6 (D.Mass 2000).

### **E. Public Policy Considerations Support Preliminary Approval**

The resolution will save significant judicial resources by resolving this matter without with the time and expense of a trial that involves court personnel, jurors, the parties, witnesses and their attorneys. Also, the expense and uncertainty of an appeal is also avoided by this result.

## **IV. CONCLUSION**

Accordingly, the Plaintiffs, with Defendants' consent, move the Court for an Order Preliminarily approving the Settlement, Appointing Brendan Lupetin, Esquire and the law firm

of Lupetin & Unatin, LLC as Class Counsel, and approving the Form, Manner and Administration of Notice and Scheduling a Hearing related thereto.

Respectfully submitted,

By: \_\_\_\_\_



Brendan B. Lupetin, Esq.  
Pa. I.D. No. 201164  
Lupetin & Unatin, LLC  
The Gulf Tower  
707 Grant Street, Suite 3200  
Pittsburgh, PA 15219

# Exhibit 1



## SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of this 31<sup>st</sup> day of May 2022, by and between Defendants Butler Area School District and Mr. Glenn Terwilliger, on the one hand, and named Plaintiff, [REDACTED], a minor, and each member of the proposed class set forth in Plaintiffs' Complaint and Amended Complaint in the matter captioned [REDACTED], a minor, by and through his parent and natural guardian, Donna Hope et al v. Butler Area School District et al, Civ. No. 18-10759, (C.C.P. Butler County), on the other hand, subject to and conditioned on preliminary and final approval by the Court of Common Pleas of Butler County, Pennsylvania.

### **RECITALS:**

The Definitions appearing in Section 2 and other terms defined in this Settlement Agreement are incorporated by reference in these Recitals.

A. Butler Area School District, hereinafter referred to as ("BASD") is a public school district, incorporated, authorized and existing by virtue of the laws of the Commonwealth of Pennsylvania with its proper place of business located at 110 Campus Lane, Butler, PA, Butler County, PA 16001.

B. Mr. Glenn Terwilliger hereinafter referred to as ("Terwilliger") is an adult individual and citizen of the Commonwealth of Pennsylvania and was the former Maintenance Director of the BASD.

C. BASD and Terwilliger are collectively referred to as "Defendants".

D. The Class Members are defined in the Amended Complaint as all persons, as reflected in Defendants' records, who, between August 15, 2016 and January 20, 2017, 1. Were registered students of Summit Elementary School; 2. To whom, via their parents or natural guardians, Dr. Dale Lumley, on behalf of Butler Area School District, sent a letter dated January 20, 2017, warning of elevated copper and lead levels in the school's drinking water; 3. Who were subsequently offered medical testing by the Butler Area School District; and 4. Who accepted the offer and obtained medical testing.

E. Each of the Class Members is a minor individual; however, for purposes of representation in capacity only, the Class Members also include the parents or legal guardians of the minor Class Members.

F. The adult Class Members, individually, representing the minor Class Members do not seek and are not asserting any claims for injuries related to the subject matter of the putative Class Action and will not be compensated, other than for the Representative Adult on behalf of the named representative Class Members.

G. [REDACTED], a minor and Donna Hope, his parent and legal guardian are the representative Class Members.

H. The Complaint alleges that the minor Class Members have suffered damages as a result of a “fingerstick” using a lancet to draw a drop or two of capillary blood from the individual Class Members to test for the presence of soluble metals including copper and lead which had been leached into the potable water of the Summit Elementary School operated by the BASD from August 15, 2016 to January 20, 2017.

I. A “fingerstick” procedure using a lancet is a minimally invasive procedure.

J. Each of the Class Members received medical testing in the form of a fingerstick blood test and no Class Member has received a test result indicating a blood soluble metal level in excess of the background standard nor has any Class Member been injured in any manner as a result of ingesting the potable water from the Summit Elementary School, other than any temporary injury resulting from a “fingerstick”.

K. The “fingerstick” tests were offered to all Class Members by BASD as voluntary tests. The BASD paid for any person(s) who volunteered to have a “fingerstick” test and blood analysis. Upon information and belief, no Class Member incurred any “out of pocket” expenses related to the alleged ingestion of potable water at the Summit Elementary School.

L. Defendants vigorously deny all allegations made against them in the Litigation. Defendants enter into this Settlement Agreement without in any way admitting or acknowledging any fault or liability, and solely for the purpose of avoiding the burdens and expense of further

litigation of contested claims. Defendants do not admit or concede any deficiencies, faults, errors, omissions, noncompliance or wrongdoing of any nature whatsoever in connection with the administration, ownership or operation of the Summit Elementary School. Defendants further deny that the potable water at the Summit Elementary School affected or impacted Plaintiffs or the Class Members in any way.

M. Class Counsel are familiar with the claims being settled and the defenses that Defendants have asserted. Class Counsel have conducted a thorough investigation relating to the claims and underlying events and transactions alleged in the Amended Complaint.

N. Class Counsel believe that the Litigation has substantial merit. However, Class Counsel recognize and acknowledge that the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and appeals may be a costly undertaking. Class Counsel also have taken into account the uncertain outcome of the planned class certification motion and the risk of further litigation, especially in a complex suit such as this action, as well as the difficulties and delays inherent in such litigation. Class Counsel have also taken into account, among other things, the strengths and uncertainties of the claims asserted in the Litigation and the substantial benefits to be conferred on the Class by the settlement set forth in this Settlement Agreement. Class Counsel, therefore, have determined that this Settlement Agreement is in the best interests of the Class.

O. Counsel for the Parties have engaged in extended arm's-length negotiations and third party neutral non-binding mediation concerning the settlement of Plaintiffs' claims against Defendants.

P. This Settlement Agreement and related documents are not and shall not be construed as an admission or a concession by the Plaintiffs with regard to the merits of their claims whatsoever.

Q. This Settlement Agreement and related documents are not and shall not be construed as an admission or a concession by Defendants with regard to the merits of its defenses or the merits of Plaintiffs' claims.

R. Defendants have agreed to settle the Litigation as part of a complete settlement and a release of all claims arising out of the allegations in the present case that have been asserted by or on behalf of the Plaintiffs. It is the intention of the Parties that this proposed settlement completely resolves all claims of Plaintiffs and the Class Members that were alleged in the Litigation or could have been alleged concerning the ingestion of or exposure to the drinking water or other water at the Summit Elementary School or the resulting “fingerstick” tests except as expressly reserved herein.

**NOW THEREFORE**, intending to be legally bound hereby, and in consideration of the promises, mutual covenants and conditions contained herein, **IT IS STIPULATED, CONSENTED TO AND AGREED** as follows, by and among the Parties, through the undersigned attorneys on behalf of their respective clients and the Class, for purposes of the settlement only and subject to the approval of the Court pursuant to Pennsylvania Rule of Civil Procedure 1714:

1. **Settlement:** The Litigation and all claims alleged or which could have been alleged by Plaintiffs and Class Members shall be finally and fully settled, compromised and discontinued on the merits, with prejudice and without costs, and all released claims (as set forth herein) against any of the Defendants shall be fully, finally and forever released, subject to the approval of the Court, in the manner and upon the terms and conditions stated in this Settlement Agreement.

2. **Definitions:** As used herein, the following terms shall have the meanings stated in this paragraph:

a. “Administration of Settlement” means receiving, assisting, and maintaining claims and proofs of claims, calculating and verifying claims, and overseeing the distribution of the Settlement Fund.

b. The “Complaint” shall mean the Complaint and subsequent Amended Complaint in Civil Action.

c. The “Class” is defined in Paragraph “D” of this Agreement.

- d. “Class Counsel” shall mean Brendan Lupetin and Lupetin & Unatin, LLC
- e. “Class Members” are comprised of those individuals who meet the definition set forth in Paragraph “D” of this Agreement.
- f. The "Class Period" shall mean the period of time between August 15, 2016 and January 20, 2017.
- g. The “Court” shall mean the Court of Common Pleas of Butler County, Pennsylvania.
- h. “Effective Date” means the date on which this settlement becomes binding as to all Parties, which shall be the date on which the Final Judgment and Order approving the settlement becomes Final.
- i. The “Facility” shall mean the Summit Elementary School located at 351 Brinker Road, Butler, PA 16002, County of Butler, Commonwealth of Pennsylvania, including all related and supporting facilities, structures, activities, operations, and construction thereon.
- j. “Final” means the later of the following dates: (i) the date of expiration of the time for filing or noticing of any appeal from the Final Judgment and Order, that is, thirty days after the entry of the Final Judgment and Order computed in accord with Pennsylvania Rule of Civil Procedure 106 and Pennsylvania Rule of Appellate Procedure 903; or (2) the date of final affirmance of any appeal, the date of expiration of the time for filing petitions for allowance of appeal and, if appeal is granted, the date of final affirmance following review pursuant to that grant; or (3) the final dismissal of any appeal or proceeding on appeal.
- k. The “Final Judgment and Order” means an order and judgment of the Court substantially in the form attached as Exhibit A, concerning among other things the certification of the Class, the notice program to the Class, the approval of the settlement, and the terms and process for the submission of proofs of claim and the disbursement of the Settlement Fund.

l. The "Litigation" shall mean the civil action presently captioned [REDACTED], a minor, by and through his parent and natural guardian Donna Hope et al v. Butler Area School District et al, Case No. 18-10759 in the Court of Common Pleas of Butler County.

m. The "Named Class Representatives" shall mean and include the named Plaintiffs in this Litigation, [REDACTED], a minor and his parent and natural guardian, Donna Hope.

n. The "Notice" shall mean the Notice of Pendency of Class Action, Conditional Class Determination, and Proposed Settlement of Class Action and Settlement Hearing, the form and content of which shall be in the form attached hereto at Exhibit B. Such Notice shall be provided by Class Counsel via first class mail to all addresses, reasonably ascertainable, of Class Members.

o. "Order on Notice/Preliminary Approvals" means an order of the Court, substantially in the form attached as Exhibit C.

p. The "Parties" shall mean all Plaintiffs and the Butler Area School District and its employees, consultants, lawyers, insurers including but not limited to Liberty Mutual Insurance Company, Butler Area School District School Directors, Board Members, solicitors, consultant and Mr. Glenn Terwilliger, his lawyers and his insurer.

q. "Plaintiffs" shall mean and include each and all Class Members and Named Class Representatives.

r. The "Preliminary Approval Date" shall mean the date upon which the Court enters the Order on Notice/Preliminary Approvals.

s. The "Settlement Agreement" means this Settlement Agreement made and entered by the Parties in the Litigation and all exhibits attached to it.

t. The "Settlement Fund" means that payment made by Defendants to Class Counsel in accord with Section 5 of this Settlement Agreement plus any interest that accrues thereon following such payment.

u. The “Settlement Hearing” or “Settlement Fairness Hearing” means a hearing scheduled pursuant to Pennsylvania Rule of Civil Procedure 1714 to determine, among other things, whether the settlement of the Litigation is fair, reasonable and adequate, and to consider Class Counsel’s application for an award of attorneys’ fees and reimbursement of expenses for prosecuting the Litigation.

v. The “Total Settlement Value” means the settlement package described herein, which consists of an aggregate payment of Two Hundred Fifteen Thousand (\$215,000) with an individual class member maximum payment of no more than \$600 exclusive of attorney’s fees and costs.

w. “BASD” shall mean Butler Area School District as named in the Complaint and Amended Complaint.

x. The “Releasees” shall mean and include Mr. Glenn Terwilliger, BASD and any of BASD’s former, present and future, School Directors, Board members, employees, officers, shareholders, members, partners, accountants, agents, attorneys, insurers, representatives, and each of their present, former and future Board members employees, representatives, predecessors, successors, partners, principals, and officers, and all attorneys and all persons, including but not limited to the Releasees insurers and their appointed agents and attorneys acting by, through, under or in concert with them or any of them.

**3. Submission of Settlement to the Court:**

a. As soon as practicable following the execution of this Settlement Agreement, Plaintiffs shall move the Court for entry of the Order on Notice/Preliminary Approvals, substantially in the form attached as Exhibit C.

b. If the Court preliminarily approves this settlement, Notice shall be given to the Class by Class Counsel in a form and manner substantially in conformance with the form attached as Exhibit B, and in accordance with the Notice specifications approved by the Court in its Order on Notice/Preliminary Approvals.

c. The Parties shall jointly request that the Court enter a Final Judgment and Order, substantially in the form attached as Exhibit A.

d. The Settlement Fairness Hearing shall be held to decide whether the settlement embodied in this Settlement Agreement shall be finally approved as fair, reasonable, and adequate and whether the terms and conditions shall be approved. The Parties shall jointly apply to the Court for approval of the settlement and shall each file such papers with the Court as their counsel or the Court determines to be necessary. At or before the Settlement Fairness Hearing, proof of mailing of the Notice shall be filed by Class Counsel.

e. Class Counsel may apply to the Court for an award of attorneys' fees and reimbursement of costs and expenses (including the fees and disbursements of Plaintiffs' consultants), consistent with Pennsylvania Rule of Civil Procedure 1717, in an amount not to exceed \$71,666.67 or 33.3% of the gross settlement amount. The Defendants agree to take no position concerning Class Counsel's application up to such amount, but may respond to inquiries from the Court. Any such award and reimbursement shall be paid exclusively from the Settlement Fund, and Class Counsel agrees to accept its fees from the deferred payments in order to allow for payment of Class Member claims from the initial payment.

f. In the event that the Order approving the fees, costs, and expense award to Class Counsel is reversed or modified on appeal and in the event the fees, costs, and expense award has been paid to any extent, then Class Counsel shall repay, within five (5) business days, the fees, costs, and expenses to Defendants with interest consistent with the reversal or modification. It is agreed that the procedure for and the allowance or disallowance by the Court of any applications for attorneys' fees, costs, expenses and interest, including the fees of consultants, from the Settlement Fund are beyond the scope of this Settlement Agreement, and any order or proceeding relating only thereto shall not operate to terminate, cancel, or affect the finality or effect of this Settlement Agreement.



g. All matters relating to the Administration of Settlement, including but not limited to payment to Class Counsel of their fees, costs and expenses, plus interest and disbursement to the Class of the Settlement Fund, shall proceed in accord with this Settlement Agreement, as approved by orders of the Court.

h. If the Court does not enter the judgments and orders provided for above, or if the Court enters such judgments and orders and appellate review of any of the judgments or orders is sought, and on such review, any such judgment or order is modified by an appellate court, then this Settlement Agreement shall be canceled and terminated, subject to the provisions of this Settlement Agreement, unless each Party within thirty (30) days of the date of the mailing of such ruling to the Parties, provides written notice to all other Parties of its intent to proceed with the settlement notwithstanding such modification. Notice of intent to proceed with the settlement may be provided on behalf of the Class by Class Counsel.

i. The obligations to proceed with the settlement are expressly conditioned on: (a) the Court's preliminary approval of this Settlement Agreement; (b) the Court's entry of the Final Judgment and Order overruling any objections; (c) the Final exhaustion of rights of appeal as to such Final Judgment and Order; and (d) fewer than ten (10) Class Members opting out of the settlement, unless Defendants elect to waive this condition. If any of these conditions fail, the Parties shall return to litigation as if no conditional settlement had ever existed.

j. If the settlement does not occur for any reason, this Settlement Agreement shall be of no force and effect and shall be void, and the Settlement Fund, including any accrued interest, shall be repaid to Defendants as provided by this Settlement Agreement.

k. Neither the Settlement nor this Settlement Agreement shall constitute or be an admission in any future proceedings between the settling parties to this Agreement, or between Defendants. In addition, neither this Settlement nor this Settlement Agreement be deemed evidence of any violation of any statute, regulation, order, permit,

approval, license, requirement or law, or an admission of any wrongdoing or liability by Defendants.

**4. Class Certification:**

a. Plaintiffs shall move the Court for an order certifying the Class pursuant to Chapter 1700 of the Pennsylvania Rules of Civil Procedure in conjunction with a request for the Court to approve this settlement.

b. Solely for the purposes of this settlement, Defendants consent to the Court's certification of the Class pursuant to Chapter 1700 of the Pennsylvania Rules of Civil Procedure.

c. Solely for the purposes of this settlement, Defendants consent to the Named Class Representatives and Class Counsel as proper and appropriate representatives of the Class.

d. Subject to Court approval under Rule 1714 of the Pennsylvania Rules of Civil Procedure, payment and other consideration paid or provided by Defendants in accordance with this Settlement Agreement shall constitute the full and final settlement of the Litigation, and upon the Effective Date, Defendants shall have no further liability or obligation to any member of the Class except as specifically set forth in this Settlement Agreement or in the Final Judgment and Order.

**5. Settlement Payment:**

a. Defendants, within forty-five ( 45 ) business days after the Effective Date, pay to Lupetin & Unatin, LLC, in trust, the sum of Two Hundred Fifteen Thousand Dollars (\$215,000) by a manner agreeable to the Parties. If Defendants fail to timely make the settlement payment, Defendants shall not be entitled to a release from Class Members and Class Counsel may bring an action in this Court against them for payment of those amounts.

b. Class Counsel shall place the aforesaid funds in escrow and seek reimbursement from the Settlement Fund of attorneys' fees and out-of-pocket costs

(including the fees and disbursements of Plaintiffs' experts and consultants) as approved by the Court. Such reimbursement shall not exceed \$71,666.67. Any such award and reimbursement shall be paid exclusively from the Settlement Fund, and Class Counsel agrees to accept its fees from the deferred payments in order to allow for payment of Class Member claims from the initial payment.

c. Subject to the Court's approval, a one-time lump sum payment of \$1,500 shall be paid from the Settlement Fund to Named Class Representative [REDACTED] [REDACTED] for his efforts on behalf of the class, in addition to his Class Member payment.

d. Subject to the Court's approval, a one-time lump sum payment of \$1,500 shall be paid from the Settlement Fund to Named Class Representative Donna Hope, individually and as the parent and natural guardian of [REDACTED] for her efforts on behalf of the class, in addition to her Class Member payment.

e. The remainder of the Settlement Fund shall be paid to qualifying Class Members in individual amounts not to exceed \$600 excluding attorney's fees and costs as may be approved by the court (for example, a proportionate amount of fees and costs will be deducted from each qualifying payments from the Settlement Fund) to each Class Member.

f. No payment from the Settlement Fund shall be made until the Effective Date. Class Counsel will distribute payments to the Class Members within 45 days of the Effective Date.

g. If the settlement as agreed in this Settlement Agreement is not approved by the Court, or if approval of the settlement is reversed on appeal, or if the settlement fails to become effective for any other reason, then the Settlement Fund, including all accrued interest or earnings, shall be returned within five (5) business days to Defendants' insurer, Liberty Mutual Insurance Company.

h. Class Counsel shall conduct all required and necessary work for Administration of Settlement and all costs and expenses for the Notice and the

Administration of Settlement shall be paid by Class Counsel. Defendants are not responsible or liable for costs and expenses relating to the Administration of Settlement. Plaintiffs and Class Counsel are released from any liability in connection with the Administration of Settlement, and the procedures therefor, except for any proven willful misconduct.

6. **Claims, Opt-Outs and Objections:** Class Members seeking to object to or opt out of this Settlement Agreement must notify Class Counsel and Counsel for the Defendants in the manner specified in the Class Notice. All opt-outs and objections must be in writing and postmarked no more than 30 days after the date that notice is mailed to the Class. Each Class Member shall receive a payment from the Settlement Fund of \$600 as the Court may approve.

7. **Release:** In consideration for Defendants' Settlement Payment set forth herein, Plaintiffs and all Class Members (both personally and on behalf of any person or entity who might claim through them or on their behalves), fully, finally and forever release all Defendants from any and all claims or causes of action alleged or asserted in the Litigation or which relate to the subject matter of the Complaint and Amended Complaint prior to the Final Approval Date, including any claims or causes of action that any Plaintiff or Class Member had, now has or may hereafter have related to any alleged injury, harm, known or unknown or which may occur in the future, real, perceived, assumed or presumed, physical, genetic, emotional, cognitive, injunctive relief, attorney fees, litigation expenses, court costs, or any other fees, costs, expenses or damages. This release includes all claims for personal injury now and in the future including, but not limited to claims for ingestion of water, toxins, metals, including but not limited to copper and lead, damages including but not limited to loss of comfort or convenience, loss of peace of mind, irritation, and annoyance. Anything in this Settlement Agreement to the contrary notwithstanding, the foregoing release specifically includes any and all claims for personal injuries or diagnosed medical harms, or medical monitoring or future claims arising out of, caused, contributed or alleged to be related in any way or manner to ingestion of or contact with the water at the Summit Elementary School. Such claims are released and are expressly released.

8. **Covenant Not To Sue:** Plaintiffs and all Class Members (both personally and on behalf of any person or entity who might claim through them or on their behalves) covenant and agree not to bring, commence, initiate or assert any lawsuit, action, filing, claim, cause of action, regulatory investigation or enforcement, administrative or regulatory proceeding, rulemaking, hearing, appeal, adjudication or other proceeding in any jurisdiction or forum against any Defendant for any matter released by this Settlement Agreement.

9. **Production of Class Member Data:** Class Counsel and Defendants hereby warrant and represent that: (a) they have produced to each other any and all datasheets, questionnaires or responses (in their entirety without redaction) received by them, their firms or their law offices from any potential Class Member relating to the subject matter of this Settlement Agreement; (b) they will promptly produce to each other any additional such datasheets, questionnaires or responses (in their entirety without redaction) which they may receive through the Effective Date; (c) they have produced in discovery to each other all evidence of which they are aware concerning any alleged impacts, injury or damage of any kind to the Class Members from the potable water system at the Summit Elementary School ; and (d) they have no knowledge of any planned or contemplated lawsuit, action or proceeding relating to the Facility based upon any matter not released under this Settlement Agreement.

10. **Opt-Outs:** This Settlement Agreement is expressly contingent upon no more than 10 Class Members opting out of the settlement and/or seeking to be excluded pursuant to Rule 1711(a) of the Pennsylvania Rules of Civil Procedure. Defendants, at their sole discretion, shall further have the right to withdraw from the Settlement Agreement should any of the 10 Class Members pose an unacceptable risk to future litigation in their sole opinion. Should more than 10 Class Members in total file requests to be excluded from the Class pursuant to Rule 1711(a) of the Pennsylvania Rules of Civil Procedure, Defendants may withdraw from this Settlement Agreement and have no further obligations under this Settlement Agreement whatsoever. In the event that the Defendants withdraw from this Settlement Agreement as provided in this paragraph, the Parties shall return to litigation as though no Settlement

Agreement ever existed.

**11. Residual Funds - Unused Balance of Settlement Fund**

Pursuant to Pennsylvania Rule of Civil Procedure 1716(b) 50% of any unused monies in the Settlement Fund after 180 days shall be transferred to the Pennsylvania Interest on Lawyers Trust Account Board. The remaining 50% of any Residual Funds are to be transferred to a Fund to be established by the Court and administered by a person(s) for the benefit of the students and users of the Summit Elementary School to be determined at the sole discretion of the Butler Area School District.

**12. Remedies Upon Breach:** In the event of any material breach of this Settlement Agreement by any Plaintiff or Class Member, Defendants shall be entitled to fully recover all sums paid to such Plaintiff or Class Member pursuant to this Settlement Agreement. The Parties expressly agree that any material breach of the Release or Covenant Not to Sue provisions of this Settlement Agreement by any Plaintiff or Class Member will result in immediate and irreparable harm to Defendants, entitling them to specific performance and other injunctive relief.

**13. Miscellaneous Provisions:**

a. All exhibits attached to the Settlement Agreement are completely incorporated as though fully set forth herein.

b. The Recitals set forth in this Settlement Agreement are incorporated into and shall constitute a part of this Settlement Agreement Waiver by any Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

c. This Settlement Agreement constitutes the entire complete and final agreement among the Parties and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No representations, warranties or inducements other than those set forth herein have been made to any Party concerning this Settlement Agreement. If finally approved by the Court, this Settlement Agreement supersedes any prior agreement or understanding among the Parties. No

representations, warranties, inducements, promises, or agreements oral or otherwise not embodied or incorporated in this Settlement Agreement have been made concerning or in connection with this Settlement Agreement, or the attached exhibits. Any and all prior discussions, negotiations, agreements, commitments and understandings relating to this Settlement Agreement are superseded hereby and merged into this Settlement Agreement.

d. The terms or provisions of this Settlement Agreement may not be changed, waived, modified, or varied in any manner whatsoever unless in writing duly signed on behalf of all Parties; any such modification shall be with the consent of the Court without further notice to the Class unless the Court requires such additional notice.

e. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of its provisions, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement by such other Party.

f. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one in the same document, provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves original signed counterparts. This Settlement Agreement is hereby authorized to be executed by electronic signatures which shall be valid and binding as original signatures and may be relied upon by the parties.

g. This Settlement Agreement must be approved of by the Butler Area School District Board of School Directors in the normal course of business in a public meeting thereof.

h. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties once it is approved by the Court and all other conditions have been met.

i. Notices of breach or termination required by this Settlement Agreement shall be submitted by overnight delivery to each Party signing this Settlement Agreement, as follows: (i) to Defendants c/o John C. McMeekin II, Esq. of Rawle & Henderson, 1339 Chestnut St, 16<sup>th</sup> Floor, Philadelphia, PA 19107; and (ii) Jon Hogue, Esq. of Murray, Hogue & Lannis, 3400 Gulf Tower, 707 Grant Street, Pittsburgh, PA, 15219; and (iii) to Brendan Lupetin, Esq., Lupetin & Unatin, LLC Gulf Tower 707 Grant Street, Pittsburgh, PA 15219

j. All terms of this Settlement Agreement shall be governed by and interpreted in accord with the Pennsylvania Rules of Civil Procedure and the laws of the Commonwealth of Pennsylvania.

k. This Settlement Agreement shall be enforced solely in this Court. Defendants and Plaintiffs waive any objection which each such Party may now have or hereafter have to the venue of any such suit, action, or proceeding to enforce this Settlement Agreement, irrevocably consent to the jurisdiction of this Court in any such suit, action, or proceeding, and agree to accept and acknowledge service of any and all process which may be duly served in any such suit, action, or proceeding.

l. Without affecting the finality of the Final Judgment and Order to be entered upon this Settlement, the Court shall retain such continuing jurisdiction as is necessary and appropriate to enforce the settlement, and to administer the performance of the settlement in accord with its terms, including allowing or disallowing applications for attorneys' fees and other payments, determining and supervising distribution procedures related to the Settlement Fund, identifying Class Members and their respective interests, if any, in the Settlement Fund, sending notices to Class Members, reviewing disputes regarding claims submitted, and distributing the Settlement Fund.



m. Because of the arm's-length negotiations described above, all Parties hereto have contributed substantially and materially to the preparation of this Settlement Agreement.

n. Each of the counsel signing this Settlement Agreement represents that he has authority from his client or clients to execute this Settlement Agreement on its behalf or their behalves.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals as of the day and year first written above.

\_\_\_\_\_  
[REDACTED], a minor through his parent  
and natural guardian Donna Hope

\_\_\_\_\_  
Donna Hope, individually

\_\_\_\_\_  
Brendan Lupetin, Esq.  
Lupetin & Unatin, LLC  
Counsel for Plaintiffs

\_\_\_\_\_  
\_\_\_\_\_, Esq.  
Counsel for Plaintiffs

\_\_\_\_\_  
Butler Area School District,  
Defendant  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
John C. McMeekin II, Esq.  
Rawle & Henderson LLP  
Counsel for Butler Area School District

\_\_\_\_\_  
Mr. Glenn Terwilliger,  
Defendant  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Thomas W. King III, Esq.  
Dillon McCandless King Coulter & Graham, LLP  
Counsel for Butler Area School District

\_\_\_\_\_  
Mr. Jon Hogue, Esq.  
Counsel for Defendant  
Murray, Hogue & Lannis  
Glenn Terwilliger

# Exhibit A

**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY  
PENNSYLVANIA**

██████████, a minor, by and through  
his parent and natural guardian DONNA  
HOPE, individually and on behalf of all  
other similarly situated individuals,

Plaintiffs,

vs.

BUTLER AREA SCHOOL DISTRICT and  
GLENN TERWILLIGER,

Defendants.

CIVIL DIVISION

No. 18-10759

**(PROPOSED) FINAL JUDGMENT APPROVING SETTLEMENT, PAYMENT OF  
INCENTIVE AWARDS AND ATTORNEYS' FEES AND ORDER OF DISMISSAL  
WITH PREJUDICE**

This matter having come before the Court on the Motion of the Parties for Final Approval of settlement, in accordance with a Settlement Agreement (“SA”), by and between BUTLER AREA SCHOOL DISTRICT and GLENN TERWILLIGER, (“Defendants”) on the one hand, and ██████████, a minor, by and through his parent and natural guardian DONNA HOPE, individually and on behalf of all other similarly situated individuals, on behalf of themselves and the members of the proposed class (collectively “Class Members” or “Class Plaintiffs”) in the above-styled action (the “Action”), on the other.

WHEREAS, a Fairness Hearing having been held before the Court on \_\_\_\_\_, 2023, pursuant to this Court’s Order Preliminarily Approving Settlement and Directing Notice to Class (the “Order”);

Notice having been given to Class Members pursuant to Order of Court, the respective parties having appeared by their attorneys of record;

The Court having heard and considered the positions advanced in support of the proposed

settlement of this Action, the attorneys for the parties having been heard, an opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Order and Notice. The Court having determined that this Action satisfies the requirements of Pa.R.Civ.P. 1702, 1708 and 1709 in an Order dated \_\_\_\_\_, 2023 with respect to a class of persons defined as:

All minor individuals, as reflected in the Defendants' records, who, between August 15, 2016 and January 20, 2017: 1. Were registered students of Summit Elementary School; 2. To whom (via their parents or natural guardians) Dr. Dale Lumley, on behalf of the Butler Area School District, sent a letter dated January 20, 2017, warning of elevated copper and lead levels in the school's drinking water; 3. Who were subsequently offered medical testing by the Butler Area School District; and 4. Who accepted the offer and obtained medical testing in the form of a finger stick blood test(s).

("Class Members")

Notice to the Class Members having been adequate and sufficient and in compliance with all the requirements of due process;

The Court having determined that it has jurisdiction over the subject matter of the Action and over all parties to the action, including Class Members; and

No objections having been filed by Class Members.

After reviewing the Settlement Agreement, considering the record, pleadings and other documents filed in support of the request for final approval of the Settlement, and the presentations of counsel, the Court finds as follows:

1. The question presented on a motion for final approval of a proposed class action settlement is whether the proposed settlement is fair, reasonable and adequate within Pa.R.Civ.P. 1714 in light of the following factors:
  - a. the risks of establishing liability and damages;

- b. the range of reasonableness of the settlement in light of the best possible recovery;
- c. the range of reasonableness of the settlement in light of all the attendant risks of litigation;
- d. the complexity, expense and likely duration of the litigation;
- e. the state of the proceedings and the amount of discovery completed;
- f. the recommendations of competent counsel, and;
- g. the reaction of the class to the settlement.

*Dauphin Deposit Bank and Trust Co. v. Hess*, 556 Pa. 190, 727 A.2d 1076, 1079 (1999)

**A. The Risks of Establishing Liability**

- 1.
2. This factor surveys the possible risks of litigation in order to balance the likelihood of success and potential damages against benefit of settlement.
3. The Class Plaintiffs face risks that their claims might be dismissed in total. The Class Plaintiffs face a risk that they may not sufficiently establish that Defendants' conduct was not negligent and, therefore, may not recover actual damages. The Class Plaintiffs also face risk that the court would not grant certification of the class.
4. These considerations weigh in favor of settlement.

**B. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery**

5. An assessment of the reasonableness of a proposed settlement seeking monetary relief requires analysis of the present value of the damages a plaintiff would likely recover if successful, appropriately discounted for the risk of not prevailing.

6. The best possible recovery that plaintiffs might achieve would be to recover an amount for individual harm and inconvenience damages and then an additional amount representing punitive damages. The Court allowed a claim for damages for negligence. The settlement therefore provides relief well within the range of relief that could be obtained at trial.
7. In light of the questions of law and fact present in this litigation as discussed above, the value of the proposed settlement outweighs the mere possibility of future relief. The expense of a trial on the negligence claim and mini-trials on individual class member damages would be substantial. The continued litigation of this matter would require a large expenditure of the court's and the parties' resources.
8. Moreover, in light of the highly contested nature of liability, it is likely that any judgment entered would be the subject of post-trial motions and appeals, further prolonging the litigation and reducing the value of any recovery. Thus, a settlement is advantageous to all concerned. An appeal of a damage award could seriously and adversely affect the scope of an ultimate recovery, if not the total recovery itself.
9. While Class Plaintiffs may be confident of their ability to prevail at trial, no adjudication has been made as to the validity of their claim. The Court also recognizes Defendant has continued to deny all liability and allegations of wrongdoing and that some or all of Class Plaintiffs' claims could have been dismissed in connection with dispositive motions which would surely be filed, if the settlement were not approved.
10. The proposed settlement represents a substantial benefit for the Class Plaintiffs. The settlement provides each class member with a right to recover \$500 to \$750 in

damages depending upon the number of blood tests received.

**C. The Range Of Reasonableness Of The Settlement In Light Of All The Attendant Risks of Litigation**

11. The third *Dauphin* factor is intended to compare the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing with the amount of the proposed settlement.
12. Here, the Plaintiffs faced potential risk that class certification would be denied, that a jury would find that defendant did not act negligently or that a jury would not award any damages. Despite these risks, the settlement confers a recovery based upon an assumption that these risks would be overcome.
13. This factor supports approval of the settlement.

**D. The complexity, expense and likely duration of the litigation**

14. Absent the settlement, future proceedings would take a long time and would be costly. Future proceedings would include class certification proceedings, a trial on the merits of the negligence claim, mini-trials on damages, possibly additional objections to class certification and, given the novel legal issues presented, an appeal. Both parties would be required to extensively brief and argue the issues. Whether or not the case proceeded on a class basis, discovery would have to be pursued, dispositive motions filed and it is highly likely that trial preparation on both sides would be necessary. Given Defendant's vigorous advocacy of the contention that it did not violate the law, it would be unrealistic not to expect appeals from any result reached on the question of liability or of damages.

15. Avoidance of this unnecessary expenditure of time and resources clearly benefits all

parties.

**E. The Stage of the Proceedings And The Amount of Discovery Completed**

16. A settlement should not be approved if the parties do not have an adequate appreciation of the merits of the case.

17. The proposed settlement was reached at a point in the litigation where the Parties have a clear understanding of the factual basis for the claims and defenses. The Parties had a clear understanding of the class certification issues and the amount of available damages by reason of the class proceedings in the similar case of *Haluska v. Forbes*.

**F. The Recommendations of Competent Counsel**

18. Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate.

19. Here, Plaintiffs' Counsel is experienced in class action and personal injury litigation.

20. This factor further supports approval of the settlement.

**G. The Reaction Of The Class To The Settlement**

21. On \_\_\_\_\_ notices were individually mailed to Class Members advising them of the terms of the settlement and their right to exclude themselves from the Class. The deadline for Class members to exclude themselves or to object was \_\_\_\_\_, 2023.

22. Fewer than ten (10) Class Members have exercised the right to opt out and no objections have been filed to date. This is convincing evidence of the proposed settlement's fairness and adequacy.



23. In conclusion, most if not all of the factors discussed above weigh in favor of the settlement of this class action.

**H. The Representative Plaintiffs Are Entitled To An Incentive Payment For Participation In This Action**

24. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. The payment of \$1,500 provided to [REDACTED] and Donna Hope, respectively, is within the range of incentive awards authorized in consumer class actions.

**I. Class Counsel Is Entitled To The Requested Attorneys' Fees And Costs As Provided In The Settlement Agreement**

25. Upon consideration of the of Plaintiffs' Motion for Award and Approval of Attorneys and the supporting materials submitted in support of thi motion, the Court finds that the \$71,666.67 in fees and costs, as negotiated by the parties, is reasonable and appropriate. In so holding, the Court has considered and reviewed the Plaintiffs' Counsel's Motion, Brief and Declarations in support of the request for approval of attorneys' fees and costs in this matter and finds that Plaintiffs' Counsel requests reasonable under the factors set forth in Pa.R.Civ. P. 1717.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

1. The Court has jurisdiction over the subject matter of the Action, the Class Members, and Defendant.
2. The Settlement Class has been preliminarily certified under Rules Pa.R.Civ.P. 1702, 1708 and 1709 of the Rules of Civil Procedure, with the named plaintiffs in the Action serving as the representatives of the Class. For the reasons stated in the Order of Preliminary Approval, the Court finds that the Settlement

Class shall be certified for final settlement purposes.

3. The Settlement Agreement was reached after arm's-length negotiations between the Parties. The Settlement Agreement and the proposed Settlement are fair, reasonable and adequate, consistent and in compliance with all applicable requirements of the United States Constitution (including the Due Process Clause), the Pennsylvania Rules of Civil Procedure, the Rules of Court and any other applicable law, and in the best interests of each of the Parties and the Class Members. The terms of the Agreement and this Final Judgment are binding on Plaintiffs and all other Class Members, except those who timely and properly filed a request for exclusion and whose names are listed in Exhibit A hereto, as well as their heirs, executors and administrators, successors and assigns, and those terms shall have res judicata, collateral estoppel and all other preclusive effect in all pending and future claims, lawsuits or other proceedings, including all forms of alternative dispute resolution, maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this Action or are otherwise encompassed by the release set forth in the Settlement Agreement.

4. The Notice and the notice methodology, implemented pursuant to the Settlement Agreement: (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object to or exclude themselves from the proposed Settlement and their right to appear at the Fairness Hearing; (iii) were reasonable and constituted due, adequate and sufficient notice to

all persons entitled to receive notice; and (iv) met all applicable requirements of the Pennsylvania Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of Court and any other applicable law.

5. Except as to any individual who has validly and timely requested exclusion from the Settlement Class, this Court hereby dismisses with prejudice and without costs (except as otherwise provided in the Settlement Agreement) the litigation against Defendant. Plaintiffs and all Class Members and any person or entity acting on their behalf, are permanently barred and enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action; and (ii) organizing such nonexcluded Class Members into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action.

6. The Lawsuit is hereby dismissed with prejudice.

7. The releases set forth in the Settlement Agreement are hereby approved.

8. Except for the obligations expressly provided for in the Agreement, Class Members fully and finally release the Defendants from the claims in this

action as defined in the Settlement Agreement.

9. The Parties are authorized, without further approval from the Court, to agree to and to adopt such amendments, modifications and expansions of the Agreement and all exhibits attached hereto as: (i) are consistent with the Final Judgment; and (ii) which do not limit the rights of Class Members under the Agreement.

10. Analytics Consulting, LLC, is designated as the Settlement Administrator with the authority to accept and disburse funds, as directed by the court order and settlement agreement.

11. The Court hereby grants the request for Class Representative Awards of \$1,500 each to [REDACTED] and Donna Hope. The Class Representative payment will be paid separately in accordance with the terms of the Settlement Agreement.

12. Plaintiffs' Counsel is hereby award \$71,666.67 in attorneys' fees to be paid in accordance with the terms of the Settlement Agreement.

13. Without affecting the finality of the Final Judgment, the Court shall retain jurisdiction over the Action and the Parties and Class Members, and the administration and enforcement of the Settlement, for a period of three (3) years following entry of this Order.

It is So Ordered.

BY THE COURT:

\_\_\_\_\_ J.

# Exhibit B

*Stark et al. v. Butler Area School District et al., No. 18-10759*  
*Court of Common Pleas of Butler County*

**YOU MAY BE ENTITLED TO A PAYMENT  
OF \$600 FROM A CLASS ACTION  
SETTLEMENT.**

**YOU HAVE BEEN IDENTIFIED AS THE PARENT OR GUARDIAN OF A MINOR who 1) Was a registered student of Summit Elementary School; 2) Received a letter from Dr. Dale Lumley, on behalf of the Butler Area School District (“BASD”), dated January 20, 2017, warning of elevated copper and lead levels in the school’s drinking water; 3) Who was later offered medical testing by the Butler Area School District; and 4) Who accepted the offer and obtained medical testing in the form of a finger stick blood test.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- **Your legal rights are affected whether you act or don’t act. Read this notice carefully.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>DO NOTHING</b>	Your child will receive an automatic payment of \$600.00 if the Court approves the settlement. Payments will be made if the Court approves the settlement after appeals are resolved.
<b>EXCLUDE YOURSELF</b>	Receive no settlement payment. This is the only option that allows you to ever be part of any other lawsuit against BASD about the claims in this case.
<b>OBJECT</b>	Write to the Court if you disapprove of the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice

**WHAT THIS NOTICE CONTAINS**

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2. What is this lawsuit about?	
3. Why is this a class action?	
4. Why is there a settlement?	
<b>WHO IS A CLASS MEMBER? .....</b>	<b>PAGE 5</b>
5. How do I know if I am a part of the settlement?	
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<b>THE SETTLEMENT BENEFITS – WHAT YOU COULD RECEIVE .....</b>	<b>PAGE 5, 6</b>
7. What can I receive from the settlement?	
<b>HOW YOU RECEIVE A PAYMENT – SUBMITTING A CLAIM FORM .....</b>	<b>PAGE 6</b>
8. How can I receive a payment?	
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<b>THE COURT'S FAIRNESS HEARING .....</b>	<b>PAGE 10</b>
18. When and where will the Court decide whether to approve the settlement?	
19. Do I have to come to the hearing?	
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<b>GETTING MORE INFORMATION.....</b>	<b>PAGE 11</b>
22. Are there more details about the settlement?	

## BASIC INFORMATION

### 1. Why is this Notice being provided?

This Notice is being provided to you because the records of Butler Area School District ("BASD") indicate that you are the parent or guardian of a minor who 1) Was a registered student of Summit Elementary school between August 15, 2016 and January 20, 2017; 2) Received a letter from Dr. Dale Lumley, on behalf of the BASD, dated January 20, 2017, warning of elevated copper and lead levels in the school's drinking water; 3) Who was later offered medical testing by the Butler Area School District; and 4) Who accepted the offer and obtained medical testing in the form of a finger stick blood test.

The Court directed that you be sent this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a neutral administrator (referred to in this Notice as the "Settlement Administrator") approved by the Court will make the payments that the settlement allows.

The Court in charge of the case is the Court of Common Pleas of Butler County, Pennsylvania, (referred to in this notice as the "Court"). The case is known as [REDACTED], a minor, by and through his parent and natural guardian DONNA HOPE, individually and on behalf of all other similarly situated individuals, Plaintiffs, vs. BUTLER AREA SCHOOL DISTRICT and GLENN TERWILLIGER, Defendants, No. 18-10759 (Court of Common Pleas of Butler County, Pennsylvania) (referred to in this notice as the "Lawsuit"). The people who sued are called Plaintiffs, and the entities who have been sued, BASD and Glenn Terwilliger, are called the Defendants.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

### 2. What is this lawsuit about?

The lawsuit alleges sometime before the 2016/2017 school year, the Summit Elementary water system contained excessive concentrations of chlorine, which accelerated the corrosion of the water system and which resulted in a slow and continuous movement of dangerous levels of lead and copper into the Summit Elementary water system. The lawsuit claims that the Defendants knew or should have known of the dangerous levels of lead and copper in the school's water system and fixed the problem and/or warned the students. The lawsuit claims that because the Defendants failed to fix the problem or warn about it, they were negligent, and caused the students to drink contaminated water, which placed them at risk of copper and/or lead poisoning. The lawsuit claims that while there is no evidence the students were harmed by



exposure to copper or lead, they suffered injury due to the fingerstick many of them received when undergoing related blood testing. Plaintiffs further claim that they are entitled to recover money damages related to pain, suffering, and inconvenience caused by the fingerstick.

The Defendants deny the Plaintiffs' claims and deny any wrongdoing. The Defendants deny the students suffered any injury. The entire history of the case can be found via a review of the docket at No. 18-10759 in the Court of Common Pleas of Butler County.

If you believe your minor child meets the criteria described in Section #1 of this Notice and suffered harm therefrom in the form of demonstrable copper or lead poisoning, you will be giving up any such claims if you do not exclude yourself from this class action settlement. If you want to pursue such claims on an individual basis you should consider retaining an attorney of your own choice and excluding yourself from this class action using the exclusion procedure explained below in the Answer to Question NO. 11. The Class Counsel listed below in the Answer to No. 14 cannot represent you to file such individual claims either in this action or a separate lawsuit.

The Court has preliminarily approved this Lawsuit to proceed as a class action for settlement purposes only. If the settlement is not approved, the Court will have to decide whether this Lawsuit should be treated as a class action for the purpose of addressing the merits and trying the Lawsuit.

### 3. Why is this a class action?

In a class action, one or more people called class representatives sue on behalf of people who they believe have similar claims. All of these people are a class or class members. One court resolves the issues for all class members, except for those who exclude themselves from the class. In the Lawsuit, the "Class Representative" is the named Plaintiffs, [REDACTED], a minor and his mother and natural guardian, Donna Hope. This Lawsuit is being presided over by Judge S. Michael Yeager, of the Court of Common Pleas of Butler County, Pennsylvania.

### 4. Why is there a settlement?

Both sides believe their claims or defenses would have won in this Lawsuit. However, the Court has not decided in favor of Plaintiffs or Defendants. Instead, both sides have agreed to a settlement. That way, they and the Settlement Class Members avoid the risk, delay, and expense of continuing the Lawsuit, and the Settlement Class Members will be eligible to receive compensation. The Class Representative and the attorneys think the settlement is best for all Settlement Class Members.

## WHO IS A CLASS MEMBER?

To see if your child will be affected by this class action, you first have to determine if they are a Class Member.

### 5. How do I know if my child is a part of the settlement?

Judge Yeager decided that everyone who fits the following description is a Class Member: 1) A registered student of Summit Elementary school during the time period of August 15, 2016 through January 20, 2017; 2) Who received a letter from Dr. Dale Lumley, on behalf of the Butler Area School District ("BASD"), dated January 20, 2017, warning of elevated copper and lead levels in the school's drinking water; 3) Who was later offered medical testing by the Butler Area School District; and 4) Who accepted the offer and obtained medical testing in the form of a finger stick blood test.

A search of BASD's records identified your child as a potential member of the Settlement Class. If your child is a member of the Settlement Class, unless you exclude them from the Settlement Class, you will be deemed to be a "Settlement Class Member" and subject to the settlement.

### 6. What if I am not sure whether my child is included?

If you are not sure whether you are included in the Class, or you have questions about the case, you may call or email Class Counsel:

Brendan B. Lupetin, Esq.  
LUPETIN & UNATIN  
The Gulf Tower, Suite 3200  
707 Grant Street  
Pittsburgh, PA 15219  
E: [blupetin@pamedmal.com](mailto:blupetin@pamedmal.com)  
P: (412) 281-4100

## THE SETTLEMENT BENEFITS – WHAT YOU COULD RECEIVE

### 7. What can my child receive from the settlement?

Settlement Class Members as to whom BASD has a record that they received blood testing are eligible to receive a one-time lump sum payment of \$600 if Judge Yeager approves the settlement as fair, reasonable, and adequate.

## HOW YOUR CHILD RECEIVES A PAYMENT – SUBMITTING A CLAIM FORM

### 8. How can my child receive a payment?

You do not have to do anything in order for your child to receive the payment of \$600.00. Your child has been identified as a person as to whom BASD has a record of having went and obtained a blood test after receiving a notice letter and offer of medical treatment from BASD. Since BASD has a record of your child's medical test your child is eligible to receive this payment under the settlement.

### 9. When would my child receive payment?

The Court will hold a hearing on \_\_\_\_\_, 2023, to decide whether to approve the settlement. If Judge Yeager approves the settlement, there may be appeals after that. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

### 10. What is my child giving up to receive a payment or stay in the class?

Unless you exclude your child, they are staying in the Class, and that means that they can't sue, continue to sue, or be part of any other lawsuit against the Defendants about the issues that were or could have been raised in *this* case. It also means that all of the Court's orders will apply to you child and legally bind you and them, including the Release of Claims described in detail in the Settlement Agreement. This Release of Claims provision describes exactly the legal claims that your child is giving up if this settlement is approved and you do not exclude them.

## EXCLUDING YOUR CHILD FROM THE SETTLEMENT

If you want to keep your child's right to sue or continue to sue the Defendants on your own about the legal issues that were or could have been raised in this case, then you must take steps to get out. This is called excluding yourself/them from – or is sometimes referred to as opting out of – the Settlement Class.

If you believe that your child suffered an injury greater that what is claimed in this case (pain and suffering from a needle stick), you should consider excluding your child from this class action using the exclusion procedure explained below in the Answer to Question NO. 11.

### 11. How does my child get out of the settlement?

To exclude your child from the Settlement Class, you must make your request in writing. A request for exclusion must contain the following: (1) a prominent identifying reference to the case as follows "*Stark et al. v. Butler Area School District et al., No. 18-10759, Court of Common Pleas of Butler County*;" (2) your name and your child's name; (3) your address; (4) an expression of your desire to opt out or be excluded from the Settlement Class; and (6) your signature. A separate request for exclusion must be submitted for each Settlement Class Member who wants to be excluded from the settlement i.e. if you have more than one child who meets the class description you would need to make a separate request for each.

**Your written request for exclusion must be sent by First Class Mail, postage prepaid, and postmarked no later than \_\_\_\_\_, 2023, and must be addressed to the Court-appointed Settlement Administrator at: [\_\_\_\_\_].**

You cannot exclude your child on the phone or by e-mail. If you ask to file the proper exclusion document, you will not receive any settlement payment from this lawsuit, and you cannot object to the settlement. Neither you nor your child will be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the Defendants with regard to the issues raised in this case in the future.

### 12. If I don't exclude my child can I sue the Defendants for the same thing later?

No. Unless you exclude your child now, you give up the right to sue the Defendants for the claims this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is \_\_\_\_\_, 2023.

### 13. If I exclude my child, can I receive money from this settlement?

No. If you exclude your child, they will not receive any money from this settlement. But, they may sue separately, continue to sue, or be part of a different lawsuit against the Defendants.

## THE LAWYERS REPRESENTING YOU

### 14. Do I/Does my child have a lawyer in the case?

The Court appointed this lawyer and law firm to represent you and other Class Members. This lawyer is called Class Counsel or Lead Counsel. You will not be charged for these lawyers.

Brendan B. Lupetin, Esq.  
LUPETIN & UNATIN  
The Gulf Tower, Suite 3200  
707 Grant Street  
Pittsburgh, PA 15219  
E: [blupetin@pamedmal.com](mailto:blupetin@pamedmal.com)  
P: (412) 281-4100

If you want your child to be represented by their own lawyer in this case, you may hire one at your own expense. The Class Counsel listed above cannot represent you or your child to file any individual claims in a separate lawsuit.

#### 15. How will the lawyers be paid?

Neither you nor your child will be charged for the services of Class Counsel. As part of the consideration provided to you and the other Settlement Class Members, the Defendants will pay Class Counsel's fees, costs and expenses separate and apart from the Settlement Relief being made available to Settlement Class Members.

Class Counsel will ask the Court to approve payment in the amount of no more than \$71,666.67 to them for attorneys' fees, costs and expenses. Class Counsel will also ask the Court to approve payments of \$1,500 each to [REDACTED] and Dona Hope for their service as Class Representatives. The fees and payments would pay Class Counsel and the Class Representatives for investigating the facts and litigating the Lawsuit, as well as negotiating the settlement and monitoring your child's rights during approval and administration of the settlement. These amounts will not come out of the funds for payments to Settlement Class Members. The Court may award less than the amount requested.

### OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

#### 16. How do I tell the Court that I don't like the settlement?

You may remain a member of the Settlement Class and object to the settlement. If you do not exclude your child from the Settlement Class, you may object to any aspect of the proposed settlement, including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed settlement, the adequacy of the representation by the Class Representatives or by Class Counsel, or the request of Class Counsel for fees, costs and expenses and awards to the Class Representatives. Each objection must be in writing and include: (1) a prominent identifying reference to the case as follows "*Stark et al. v. Butler Area School District et al., No. 18-10759, Court of Common Pleas of Butler County*" (2) your name and your child's name; (3) your address; (4) a statement of each objection being made and basis therefore; (5) a statement indicating whether you intend to appear at the Fairness Hearing; and (6) a list of

witnesses whom you may call by live testimony and copies of any documents or papers that you plan to submit in support of your objection(s)..

**You must file your objection(s) with the Court, and send copies by First Class Mail, postage prepaid, to Class Counsel and counsel for the Defendants postmarked no later than \_\_\_\_\_, 2023 as follows:**

CLASS COUNSEL	COUNSEL SHEC
<p>Brendan B. Lupetin            Pa. I.D. No. 201164            LUPETIN &amp; UNATIN            The Gulf Tower, Suite 3200            707 Grant Street            Pittsburgh, PA 15219</p>	<p>Thomas W. King, III, Esquire            Dillon McCandless King Coulte &amp; Graham, L.L.P.            128 West Cunningham Street            Butler, PA 16001  <a href="mailto:tking@dmkcg.com">tking@dmkcg.com</a>            (Counsel for Defendant Butler Area School District)</p> <p>John C. McMeekin, II, Esquire            Rawle &amp; Henderson LLP            The Widener Building            1339 Chestnut Street, 16<sup>th</sup> Floor            Philadelphia, PA 19107  <a href="mailto:jmcmeekin@rawle.com">jmcmeekin@rawle.com</a>            (Counsel for Defendant Butler Area School District)</p> <p>Jon Hogue, Esquire            Murray Hogue &amp; Lannis            707 Grant Street, Suite 3400            Pittsburgh, PA 15219  <a href="mailto:jhogue@mhandl.com">jhogue@mhandl.com</a>            (Counsel for Defendant Glenn Terwilliger)</p>

If you do not comply with these procedures, including the deadline for submitting written objections, you will lose any opportunity to have your objection considered by the Court at the Fairness Hearing or to otherwise contest the approval of the proposed settlement or to appeal from any orders or judgments entered by the Court in connection with the proposed settlement.

**17. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class, and you will be bound as a Settlement Class Member if the Court approves the settlement despite any objections. Excluding yourself is telling the Court that you don't want your child to be part of the Class. If you exclude your child, you have no basis to object because the case no longer affects you.

## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to.

### 18. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at \_\_\_:\_\_\_ a.m./p.m. on \_\_\_\_\_, 2023, in Room \_\_\_\_\_ at the Butler County Courthouse., 124 W Diamond Street, Butler, PA 16001. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Persons who have followed the procedures described below may appear to be heard by the Court. The Court may also decide whether to approve Class Counsel's fees, costs and expenses and awards to the Class Representatives as negotiated in the settlement. After the hearing, the Court will decide whether to approve the settlement. It is not known how long these decisions will take.

### 19. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send a timely and proper objection, the Court will consider it whether or not you attend the hearing. You may also pay your own lawyer to attend, but it is not necessary.

### 20. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must notify the Court and parties in writing. The writing must contain: (1) a prominent identifying reference to the case as follows: "*Stark et al. v. Butler Area School District et al., No. 18-10759, Court of Common Pleas of Butler County*;" (2) your full name, address, telephone number, and signature; and (3) if counsel will appear on your behalf, the counsel's full name, address, telephone number, and bar identification number.

**You must file your Notice of Intent to Appear with the Court, and send copies by First Class Mail, postage prepaid, to Class Counsel and counsel for the Defendants, at the addresses provided for submitting objections set forth in Section 18 of this Notice, no later than \_\_\_\_\_, 2023. You cannot speak at the hearing if you exclude yourself from the Settlement Class.**

## IF YOU DO NOTHING

### 21. What happens if I do nothing?

If you do nothing, your child will receive a lump sum payment of \$600 from this settlement. But, unless you exclude your child, you won't be able to start a lawsuit or continue with a lawsuit against the Defendants about the legal issues that were or could have been raised in this case, ever again.

## GETTING MORE INFORMATION

### 22. Are there more details about the settlement?

This notice summarizes the lawsuit. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by writing to Class Counsel at the addresses listed in Section 14 of this Notice.

Date: May 10, 2023.

**DO NOT CALL THE COURT. DO NOT CALL OR SEND CORRESPONDENCE TO  
JUDGE YEAGER OR HIS STAFF.**



# Exhibit C

**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY  
PENNSYLVANIA**

██████████, a minor, by and through  
his parent and natural guardian DONNA  
HOPE, individually and on behalf of all  
other similarly situated individuals,

Plaintiffs,

vs.

BUTLER AREA SCHOOL DISTRICT and  
GLENN TERWILLIGER,

Defendants.

CIVIL DIVISION

No. 18-10759

**ORDER OF PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND  
PROVIDING FOR NOTICE AND HEARING**

This matter is before the Court on the Plaintiffs' Consent Motion for Preliminary Approval of Settlement, Appointment of Class Counsel, Certification of the Settlement Class, and for Approval of the Form, Manner and, Administration of Notice and a hearing related thereto.

WHEREAS, the Plaintiff has submitted a consent Motion pursuant to Pa.R.Civ.P. 1714 for an order preliminarily approving the settlement to this action in accordance with the terms of the class action Settlement Agreement.

The Court, having reviewed the Settlement Agreement entered into by the parties, hereby Orders that:

1. The Court hereby conditionally certifies a settlement class, pursuant to Pa.R.Civ.P. 1702, 1708 and 1709 as follows:

All minor individuals, as reflected in the Defendants' records, who, between August 15, 2016 and January 20, 2017: 1. Were registered students of Summit Elementary School; 2. To whom (via their parents or natural guardians) Dr. Dale Lumley, on behalf of the Butler Area School District, sent a letter dated January 20, 2017, warning of elevated copper and lead levels in the school's

drinking water; 3. Who were subsequently offered medical testing by the Butler Area School District; and 4. Who accepted the offer and obtained medical testing in the form of a finger stick blood test(s).

2. Upon preliminary review, the Agreement of Settlement entered into between the parties appears to be fair, reasonable and adequate to the class. Accordingly, the proposed settlement is preliminarily approved, pending a final fairness hearing after notice to the class as provided herein.

3. The Court finds that the prerequisites to a class action under Pa.R.Civ.P. 1702, 1708 and 1709 have been satisfied for settlement purposes only in that:

- (a) there are approximately 210 class members;
- (b) the claims of the class representatives are typical of those of the other members of the class;
- (c) there are questions of fact and law that are common to all members of the class; and;
- (d) the class representatives will fairly and adequately protect the interests of the class and have retained counsel experienced in complex class action litigation who have and will adequately represent the class; and
- (e) the action is maintainable as a class action under Pa.R.Civ.P. 1708(a) for settlement purposes.

4. Pursuant to Pa.R.Civ.P. 1709, plaintiffs ██████████, a minor, by and through his parent and natural guardian DONNA HOPE, individually and on behalf of all other similarly situated individuals, are certified as class representatives. This Court certifies attorney Brendan Lupetin as counsel for the settlement class, and he shall serve as the attorney to whom any request for exclusions from the Settlement Class or objections to the settlement or the

request for attorneys' fees and costs shall be mailed by class members or opt-outs.

5. The Court will hold a fairness hearing pursuant to Pa.R.Civ.P.1714(a) on \_\_\_\_\_ in Courtroom \_\_\_\_\_ at \_\_\_ a.m./p.m. for the following purposes:

- a. To determine whether the defined class should be certified for settlement purposes pursuant to Pa.R.Civ.P. 1702, 1708 and 1709;
- b. To determine whether the proposed settlement is fair, reasonable and adequate and should be granted final approval by the Court;
- c. To determine whether a final judgment should be entered dismissing the claims of the Class Members with prejudice, as required by the Agreement;
- d. To consider the application of Plaintiffs' counsel for an award of attorneys' fees and expenses, and for service awards to the class representatives; and
- e. To rule upon other such matters as the Court may deem appropriate.

6. The Court hereby approves, as to form and content, the notices of settlement of class action and finds that the mailing and distribution of the notice meets the requirements of Pa.R.Civ.P. 1714 as well as all due process requirements, is the best notice practical under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

7. Analytics Consulting, LLC, 18675 Lake Drive E, Eden Prairie, MN 55347 is appointed as Settlement Administrator and is authorized and directed to mail the approved class notice and administer the notice procedure as more fully set forth below.

8. The costs of printing and mailing the Class Notice and otherwise administering the settlement shall be paid by Plaintiffs in accordance § 5(h) of the Settlement Agreement.

9. Within sixty (60) days of the date of this Order, the Settlement Administrator shall:

(A) have updated the Class List for the Settlement Classes using the best practices of updating class member addresses, including by use of the national change of address database;

(B) cause a copy of the proper class notice to be sent by first class mail to the individuals on each of the Class List for the Settlement Class as of the date of the filing of this Order;

(C) establish an Internet website containing information about the Settlement; and

(D) establish a Telephone Assistance program, all as provided in the Settlement Agreement.

10. The Defendants are authorized to provide the names and identifying information of Settlement Class Members, including Social Security Numbers for purposes of confirming and/or updating the Class List. In this connection, this Order is authorization to provide such information pursuant to the Health Insurance Portability and Accountability Act (HIPPA) pursuant to 45 C.F.R. Sec. 164.512(e)(1)(I-(ii) which authorizes the disclosure of HIPPA protected information pursuant to a court order.

11. At least twenty (20) days prior to the final fairness hearing, the Settlement Administrator shall serve on Plaintiffs' counsel proof, by affidavit of, that it has performed the functions described herein.

12. As provided in the Class Notice, each Class Member shall have the right to exclude himself or herself from the settlement class by mailing a request for exclusion to the Settlement Administrator and/or Counsel for the Class postmarked not later than thirty (30) days after mailing of the Class Notice. Requests for exclusion must set forth the Class Member's original signature, current postal address and telephone number, the last four digits of the Settlement Class Member's Social Security number, and a specific statement that the proposed Settlement Class Member wants to be excluded from the Settlement Class. At least seven (7)

days prior to the final approval hearing, Class Counsel shall file with the Court a list of all persons who have timely requested exclusion from the Settlement Class along with copies of the Requests for Exclusion.

13. As provided in the Class Notice, each Class Member who does not timely opt out of the class shall have the right to object to the settlement or to the request by Plaintiffs' counsel for an award of attorneys' fees and expenses by filing written objections with the Court postmarked not later than thirty (30) days after the date on which the Class Notices were mailed. Each Class Member that objects must file his or her objections with the Court under the caption of this case and must also serve his or her objections on Counsel as provided in the Notice. Any settlement class member who does not make his or her objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as incorporated in the Settlement Agreement, to the final judgment and order approving class settlement, unless otherwise ordered by Court. Any such objections shall be:

(A) Delivered by hand, sent by first class mail, overnight or other delivery service, written objections and copies of any papers and briefs within thirty days of the date on which the Class Notice was mailed to: Brendan B. Lupetin, Esquire, Lupetin & Unatin, LLC The Gulf Tower, 707 Grant Street, Suite 3200, Pittsburgh, PA 15219.

(B) Filed under the caption of this case as *Stark v. BASD*, No. 18-10759 with the Butler County Prothonotary (Civil), First Floor, Government Center 124 W. Diamond Street Butler, PA 16001 within thirty (30) days of the mailing of the Class Notice.

14. As provided in the Class Notice, each Class Member who does not timely opt out of the class shall have the right to be heard at the final fairness hearing upon written request to be

heard that must be filed with the Court under the caption of this case as *Stark v. BASD, No. 18-10759* with the Butler County Prothonotary (Civil), First Floor, Government Center 124 W. Diamond Street Butler, PA 16001 and postmarked not later than 21 days before the scheduled final settlement hearing. Each Class Member that wishes to appear at the final fairness hearing must file his or her written request with the Court and must also serve his or her request on Counsel for the Class as provided in the Notice. Any settlement class member who does not make his or her written request to be heard in the manner provided herein shall be deemed to have waived his or her right to speak at the final fairness hearing. To the extent an objection relates to Plaintiffs' Counsel's attorneys' fees and costs, any such objection may be made and/or supplemented up to seven (7) days after the filing of a motion for such fees and costs.

15. All briefs, memoranda, petitions and affidavits to be filed in support of final approval of the settlement and for an award of attorneys' fees and expenses by counsel for the class shall be filed not later than ten (10) days before the fairness hearing.

16. The Court reserves the right to adjourn the date of the final fairness hearing without further notice to the members in the settlement classes and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the settling parties, if appropriate, without further notice to the settlement class.

17. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlement Agreement.

It is So Ordered.

BY THE COURT:

\_\_\_\_\_ J.

**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY  
PENNSYLVANIA**

██████████, a minor, by and through  
his parent and natural guardian DONNA  
HOPE, individually and on behalf of all  
other similarly situated individuals,

Plaintiffs,

vs.

BUTLER AREA SCHOOL DISTRICT and  
GLENN TERWILLIGER,

Defendants.

CIVIL DIVISION

No. 18-10759

**DECLARATION OF BRENDAN B. LUPETIN IN SUPPORT OF THE MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR APPROVAL OF  
ATTORNEYS' FEES AND COSTS**

Pursuant to 28 U.S.C. § 1746, I, Brendan B. Lupetin, hereby declare as follows:

1. I am serving as one of the Plaintiffs' Counsel in this case. I give this declaration to describe the background and experience of Plaintiffs' Counsel and in support of the Motion To For Final Approval of Class Action Settlement and in support of the Motion For Approval Of Attorneys' Fees and Costs.
2. I have been a member in good standing of the bar of the Commonwealth of Pennsylvania since 2005. I am admitted to practice before the United States District Court for the Western and Middle Districts of Pennsylvania as well as The United States Court of Appeals for the Third Circuit.
3. I am a 2005 graduate of the University of Pittsburgh School of Law.
4. I have been named a Pennsylvania Super Lawyer every year since 2018. In 2022 and 2023 I was named a Top 50 Lawyer in Pittsburgh and Top 100 Lawyer in Pennsylvania.
5. I am a member of the Academy of Trial Lawyers of Allegheny County.



6. I am a member of the American Board of Trial Advocates (ABOTA).
7. I was recently nominated for admission into the American College of Trial Lawyers.

**I. Class Counsel's Judgment That The Settlement Satisfies The Standards Of Fairness, Reasonableness And Adequacy**

8. Based upon the combined background and experience in personal injury and class action litigation of Plaintiffs' Counsel (set forth below), it is their belief that the Settlement would satisfy the requirement that a class action settlement be fair, reasonable and adequate.
9. The proposed settlement was reached at a point in the litigation where the Parties have a clear understanding of the factual basis for the claims and defenses.
10. The Class Plaintiffs face risks that a the jury would find that Defendant did not act negligently or that class certification would be denied. The Class Plaintiffs face a risk that any verdict obtained at trial could be reversed on appeal.
11. The settlement, nonetheless, provides an assured return of an amount that a jury could reasonably award. The settlement therefore provides relief well within the range of relief that could be obtained at trial.
12. In Plaintiffs' Counsels' judgment, future proceedings would take a long time and would be costly. Future proceedings would include, a trial on the merits, possibly additional objections to class certification and, given the novel legal issues presented, an appeal.
13. Given the legal and factual difficulties going forward and the fact that the settlement provides much of the relief that could be obtained at trial it is the opinion of Class Counsel that the settlement is fair, reasonable and adequate.

**II. Background and Experience of Plaintiffs' Counsel Brendan Lupetin**

14. I am the co-owner of Lupetin & Unatin, LLC, a personal injury and medical malpractice law firm.
15. For my entire career I have focused by law practice on plaintiff personal injury and medical malpractice litigation.
16. Prior to the instant lawsuit, I have been appointed as class action counsel in two other class action lawsuits. Specifically, I was appointed class action counsel in *Hoyman v. UPMC* 12-16636 (Allegheny Cty. 2012) and *Alwine v. SHEC*, GD 12-018715 (Allegheny Cty. 2016).
17. In both *Hoyman* and *Alwine*, I, as class counsel, brought about amicable settlements that were approved in the Allegheny County Court of Common Pleas.

Respectfully submitted,

LUPETIN & UNATIN, LLC

By: \_\_\_\_\_

Brendan B. Lupetin, Esquire  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, APPOINTMENT OF CLASS COUNSEL, CERTIFICATION OF THE SETTLEMENT CLASS, AND FOR APPROVAL OF THE FORM, MANNER AND ADMINISTRATION OF NOTICE** has been served upon the following via Email, Hand Delivery, and/or U.S. First-Class Mail, postage pre-paid, this 10<sup>th</sup> day of **May, 2023** as follows:

**Thomas W. King, III, Esquire**  
**Dillon McCandless King Coulte & Graham, L.L.P.**  
**128 West Cunningham Street**  
**Butler, PA 16001**  
[tking@dmkcg.com](mailto:tking@dmkcg.com)  
*(Counsel for Defendant Butler Area School District)*

**John C. McMeekin, II, Esquire**  
**Rawle & Henderson LLP**  
**The Widener Building**  
**1339 Chestnut Street, 16<sup>th</sup> Floor**  
**Philadelphia, PA 19107**  
[jmcmeekin@rawle.com](mailto:jmcmeekin@rawle.com)  
*(Counsel for Defendant Butler Area School District)*

**Jon Hogue, Esquire**  
**Murray Hogue & Lannis**  
**707 Grant Street, Suite 3400**  
**Pittsburgh, PA 15219**  
[jhogue@mhandl.com](mailto:jhogue@mhandl.com)  
*(Counsel for Defendant Glenn Terwilliger)*



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Brendan B. Lupetin, Esq.  
Pa. I.D. No. 201164  
Lupetin & Unatin, LLC  
The Gulf Tower  
707 Grant Street, Suite 3200  
Pittsburgh, PA 15219