

or \$400 per household), to be offset by amounts previously received through the Remediation Program. (*Id.*) The total Settlement Fund—which will be used to pay for all class members’ valid and timely claims for evacuation expenses, as well as awards to Class Representatives and costs of claims administration—is \$1,050,000. (*Id.* at 5.)

However, Plaintiffs’ Motion glosses over—and largely omits—that Plaintiffs and their counsel were entirely *unsuccessful* in obtaining much of the relief sought. (*See, e.g., id.* at 4.¹) Plaintiffs’ Complaint sought not only payment of evacuation expenses, but also injunctive relief barring or restricting Defendants’ use of hydrogen fluoride at the Husky Superior Refinery, as well as punitive damages. (Second Am. Compl., ECF No. 93 (Nov. 26, 2019) at 28.) This Court held at summary judgment that Plaintiffs were not entitled to the requested injunctive relief. As the Court explained, the “plaintiffs have not produced enough evidence for a reasonable factfinder to conclude that defendants’ continued use of [hydrogen fluoride] presents more than a speculative threat of injury,” and it accordingly concluded that Plaintiffs lacked standing to obtain injunctive relief connected to Defendants’ use of hydrogen fluoride. (*See Op. & Order*, ECF No. 232 at 14 (Feb. 19, 2021).) In light of its ruling as to Plaintiffs’ lack of standing, the Court also denied Plaintiffs’ motion to certify a Rule 23(b)(2) class for the purpose of obtaining declaratory and injunctive relief as to Defendants’ use of hydrogen fluoride. (*Id.* at 14–15.)

Plaintiffs’ Motion also fails to acknowledge that Plaintiffs were unsuccessful in obtaining relief of any kind from originally named defendant Husky Energy Inc. (“HEI”). Indeed, Plaintiffs misleadingly write that “Class Representatives (1) defeated Defendants’ three early motions to

¹ Although Plaintiffs acknowledge that Defendants moved for summary judgment as to Plaintiffs’ claim for injunctive relief and opposed certification of an injunctive relief class (Mem. of Law in Supp. of Pls.’ Mot., ECF No. 256 at 4), they fail to acknowledge that Defendants were successful in those efforts—and that Plaintiffs and their counsel were unsuccessful in their efforts to obtain injunctive relief.

dismiss or limit the case, including ... a motion to dismiss Defendant Husky Energy Inc.” (Mem. of Law in Supp. of Pls.’ Mot., ECF No. 256 at 4.) Although the Court *initially* denied Defendants’ motion to dismiss HEI (Op. & Order, ECF No. 78 (Sept. 30, 2019)), the Court subsequently granted Defendants’ motion for reconsideration of that order: The Court concluded that the order “reflected a ‘manifest error of law’ as it failed to consider the evidence submitted by both parties regarding HEI’s personal jurisdiction,” and the Court accordingly vacated it. (Order, ECF No. 89 (Oct. 25, 2019).) Plaintiffs thereafter stipulated to dismissal of HEI. (*See* Stipulation, ECF No. 91 (Nov. 15, 2019); Order Dismissing HEI, ECF No. 92 (Nov. 19, 2019).)

Finally, Defendants respectfully disagree with Plaintiffs’ characterization that they “took meaningful discovery despite Defendants’ strenuous objections to discovery.” (Mem. of Law in Supp. of Pls.’ Mot., ECF No. 256 at 15; *see also id.* at 4 & n.3.) In fact, discovery disputes in this matter were very limited. From the outset of the case, Defendants produced extensive discovery without any Court order. (*See* Decl. of Lucas T. Rael, ECF No. 69 (Aug. 2, 2019).) While Defendants’ motions to dismiss were pending, Defendants sought a temporary stay of discovery until such time as the motions were resolved (ECF No. 67 (Aug. 1, 2019)), which this Court denied (Order, ECF No. 74 (Aug. 13, 2019)).² Discovery thereafter proceeded for more than a year, up to and through summary judgment, without the need for this Court’s intervention. After Defendants’ motion for partial summary judgment and Plaintiffs’ motion for class certification had been filed and briefed, Plaintiffs moved to compel production of 33 documents that had been withheld as privileged. (ECF No. 205 (Oct. 22, 2020).) This Court denied the motion as “academic.” (Order, ECF No. 251 (Sept. 21, 2021).)

² The Court subsequently stayed discovery as to then-defendant HEI until Defendants’ motion to dismiss HEI was resolved. (Order, ECF No. 77 (Sept. 5, 2019).)

* * * * *

Given the Court's prior substantive rulings in favor of Defendants—which significantly narrowed the scope of relief Plaintiffs could pursue—the proposed settlement resolving Plaintiffs' remaining claims is entirely fair, reasonable, and adequate. Plaintiffs' Motion for final approval of the settlement should be granted.

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Respectfully submitted,

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