

1 Robert J. Nelson (State Bar No. 132797)
Michael W. Sobol (State Bar No. 194857)
2 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
Embarcadero Center West
3 275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
4 Telephone: (415) 956-1000
Facsimile: (415) 956-1008

5 Phillip A. Jaret (State Bar No. 092212)
6 Robert S. Jaret (State Bar No. 124876)
JARET & JARET
7 900 Fifth Avenue, Suite 201
8 San Rafael, California 94901
Telephone: (415) 455-1010

9 Attorneys for Plaintiffs and Class

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION
14

15 FOOTHILL/DE ANZA COMMUNITY
16 COLLEGE DISTRICT, a public entity, on
behalf of itself and all others similarly
17 situated,

18 Plaintiff,

19 v.

20 NORTHWEST PIPE COMPANY, an
Oregon corporation; SOUTHWESTERN
21 PIPE, INC., a Texas corporation; P&H
TUBE CORPORATION, a Texas
22 Corporation; and SPAX
INCORPORATED, a Delaware
23 corporation,

24 Defendants.
25
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Case No. C-00-20749-JF

CLASS ACTION

**NOTICE OF ENTRY OF: (1) ORDER
GRANTING FINAL APPROVAL TO
CLASS ACTION SETTLEMENT AND
JUDGMENT AND FINAL ORDER AND
DECREE THEREON; AND (2) ORDER
AWARDING FEES AND COSTS**

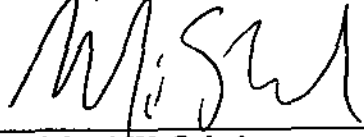
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PLEASE TAKE NOTICE that, on June 7, 2004, the Honorable Judge Jeremy Fogel entered (1) Order Granting Final Approval to Class Action Settlement and Judgment and Final Order and Decree Thereon; and (2) Order Awarding Fees and Costs, attached hereto as Exhibits A and B, respectively.

Dated: June 7, 2004

Respectfully submitted,

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP

By: 
Michael W. Sobol

Robert J. Nelson
Michael W. Sobol
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Phillip A. Jaret, Esq.
Robert S. Jaret, Esq.
JARET & JARET
900 Fifth Avenue, Suite 201
San Rafael, CA 94901
Telephone: (415) 455-1010

Attorneys for Plaintiff and Class

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FILED
JUN - 7 2004

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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MAY 28 2004

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IC

FOOTHILL/DE ANZA COMMUNITY
COLLEGE DISTRICT, a public entity, on
behalf of itself and all others similarly
situated,

Plaintiffs,

v.

NORTHWEST PIPE COMPANY, an Oregon
corporation; SOUTHWESTERN PIPE, INC.,
a Texas corporation; P&H TUBE
CORPORATION, a Texas corporation; and
SPAX INCORPORATED, a Delaware
corporation,

Defendants.

Civil Action No. CV-00-20749-JF/EAI

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL TO CLASS ACTION
SETTLEMENT AND JUDGMENT AND
FINAL ORDER AND DECREE
THEREON**

On February 23, 2004, this Court granted preliminary approval to the proposed
class action Settlement between the parties.¹

¹ Order Preliminarily Approving Class Action Settlement; Provisionally Certifying Nationwide
Settlement Class; and Approving Class Notice Program and Forms of Notice at ¶ 1 ("Preliminary
Approval Order").

1 The Court also provisionally certified a nationwide Settlement Class, approved a
2 Notice Program and Forms of Notice, and set a final fairness hearing to take place on June 7,
3 2004. The Settlement Class is defined as:

4 All persons who own or owned residential or commercial buildings
5 in the United States in which Poz-Lok and/or Poz-Lok pipe fittings
are installed, and all of their subrogees, assignees, and successors.

6 Preliminary Approval Order at ¶ 2.

7 On June 7, 2004, the Court held a duly-noticed final fairness hearing to consider
8 whether to grant final approval to the Settlement. The Court heard argument from the parties and
9 any others who elected to appear to voice their support for, or objection to, the Settlement.

10 Having read, reviewed and considered the papers filed with this Court, the oral
11 arguments of counsel, and presentations by any Settlement Class members who appeared at the
12 hearing, and based on its familiarity with the history of these proceedings, this Court finds and
13 concludes as follows:

14 **I. THE CLASS NOTICE COMPLIED WITH THIS COURT'S ORDER, WAS THE**
15 **BEST PRACTICABLE NOTICE, AND COMPORTED WITH DUE PROCESS.**

16 The Court finds that the settling parties undertook a thorough and extensive notice
17 campaign designed by Kinsella/Novak Communications, Ltd., a nationally-recognized expert in
18 this specialized field. The Court finds and concludes that the Notice Program as designed and
19 implemented provided the best practicable notice to the members of the Class, and satisfied the
20 requirements of due process. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811-12 (1985);
21 Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 174-75 (1974); Mullane v. Central Hanover Bank &
22 Trust Co., 339 U.S. 306, 314 (1950).

23 **II. CLASS CERTIFICATION OF A NATIONWIDE SETTLEMENT CLASS IS**
24 **APPROPRIATE.**

25 On February 23, 2004, this Court provisionally certified a nationwide Settlement
26 Class, finding that all of the relevant criteria were satisfied. The propriety of class certification
27 has not been questioned. This Court finds that class certification for settlement purposes is
28 appropriate here.

1 Plaintiffs satisfy all of the applicable criteria for class certification under Federal
2 Rule of Civil Procedure 23(b)(3) and the United States Supreme Court's decision in Amchem
3 Products, Inc. v. Windsor 521 U.S. 591 (1997), in the context of settlement.² The numerosity
4 requirement is met because the proposed Settlement Class comprises hundreds of owners of
5 buildings throughout the United States in which the allegedly defective pipe was installed, and it
6 is wholly impracticable, if not impossible, to join individual members of a class of this size and
7 geographic dispersion. Fed. R. Civ. P. 23(a)(1); Consolidated Rail Corp. v. Town of Hyde Park,
8 47 F.3d 473, 483 (2d Cir. 1995) (numerosity presumed if the class consists of more than 40
9 members).

10 The commonality requirement is also met: in the absence of class certification and
11 settlement, each individual Class member would be forced to litigate a long list of core common
12 issues of law and fact, all relating to the allegedly defective nature of Poz-Lok, and the
13 Defendants' alleged common course of conduct in relation to the members of the Settlement
14 Class. Fed. R. Civ. P. 23(a)(2); Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).
15 Because the named Plaintiff's and Class Members' claims allegedly all arise from the same
16 alleged events and course of conduct, and are based on the same asserted legal theory, the
17 typicality requirement is satisfied. Fed. R. Civ. P. 23(a)(3); In re United Energy Corp. Solar
18 Power Modules Tax Shelter Investors Sec. Litig., 122 F.R.D. 251, 256 (C.D. Cal. 1988).

19 The adequacy of representation requirement is met here because the named
20 Plaintiff has the same interests as all members of the Settlement Class, and is represented by
21 experienced and competent counsel. Fed. R. Civ. P. 23(a)(4); In re United Energy Corp. Solar
22 Power Modules, supra, 122 F.R.D. at 257.

23 The Court further finds that common questions predominate over individual issues
24 in this action. Fed. R. Civ. P. 23(b)(3); Hanlon, supra, 150 F.3d at 1022. At the heart of this case
25 are two fundamental issues common to all members of the class: whether, as Plaintiffs allege,
26

27 ² The Court's nationwide class-related findings herein are made specifically in the context of the
28 Agreement and in light of the Defendants' agreement to nationwide class certification for
settlement purposes only, as Amchem allows.

1 Poz-Lok is a uniformly defective product and whether, as Plaintiffs allege, Defendants
2 perpetrated a common fraud by concealing the alleged defect.

3 The Court finds that class treatment is superior to other means of resolving the
4 instant dispute, because employing the class device here will not only achieve economies of scale
5 for Class members, but will also conserve the resources of the judicial system and preserve public
6 confidence in the integrity of the system by avoiding the waste and delay of repetitive
7 proceedings, and prevent the inconsistent adjudications of similar issues and claims. Id.³

8 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE.**

9 The Ninth Circuit has stated that “there is an overriding public interest in settling
10 and quieting litigation,” and this is “particularly true in class action suits.” Van Bronkhorst v.
11 Safeco Corp., 529 F.2d 943, 950 (9th Cir. 1976). In deciding whether to approve a proposed
12 Settlement under Fed. R. Civ. P. 23(e), the court must find that the proposed settlement is “fair,
13 adequate and reasonable.” Officers for Justice v. Civil Service Commission, 688 F.2d 615, 625
14 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983); Marshall v. Holiday Magic, Inc., 550 F.2d
15 1173, 1178 (9th Cir. 1977).

16 In this regard, the Ninth Circuit has held and observed:

17 Although Rule 23 is silent respecting the standard by which a
18 proposed settlement is to be evaluated, the universally applied
19 standard is whether the settlement is fundamentally fair, adequate
20 and reasonable. The district court’s ultimate determination will
21 necessarily involve a balancing of several factors which may
22 include, among others, some or all of the following: the strength of
23 plaintiffs’ case; the risk, expense, complexity, and likely duration of
24 further litigation; the risk of maintaining class action status
25 throughout the trial; the amount offered in settlement; the extent of
26 discovery completed, and the stage of the proceedings; the
27 experience and views of counsel; the presence of a governmental
28 participant; and the reaction of the class members to the proposed
settlement.

25 ³ On June 24, 2002, this Court certified a six-state class, finding that such a class, as opposed to
26 the initially-sought nationwide class, would be manageable for litigation purposes. Now, because
27 certification of a nationwide class is for settlement purposes only, and not for trial, the Court need
28 not be concerned with manageability. Amchem, 521 U.S. at 620 (“[c]onfronted with a request for
settlement-only class certification, a [trial] court need not inquire whether the case, if tried,
would present intractable management problems, for the proposal is that there be no trial.”).

1 Officers for Justice, 688 F.2d at 625 (citations omitted). Accord Class Plaintiffs v. City of
2 Seattle, 955 F.2d 1268 (9th Cir. 1992), cert. denied, 506 U.S. 953 (1992).

3 According to the Ninth Circuit, the inquiry to be made by the district court is
4 limited:

5 Therefore, the settlement or fairness hearing is not to be turned into
6 a trial or rehearsal for trial on the merits. Neither the trial court nor
7 this court is to reach any ultimate conclusions on the contested
8 issues of fact and law which underlie the merits of the dispute, for it
9 is the very uncertainty of outcome in litigation and avoidance of
wasteful and expensive litigation that induce consensual
settlements. The proposed settlement is not to be judged against a
hypothetical or speculative measure of what might have been
achieved by the negotiators.

10 Id. (citations omitted, emphasis in original).

11 Whenever a court approves a proposed class action settlement, the court implicitly
12 is determining "that the settlement was the product of good faith negotiations conducted at arm's
13 length by both sides." Ellis v. Naval Air Rework Facility, 87 F.R.D. 15, 18 (N.D. Cal. 1980); see
14 also In re Orthopedic Bone Screw Products Liability Litig., 176 F.R.D. 158, 184 (E.D. Pa. 1997)
15 ("the Court must conclude that the settlement was the product of 'good faith, arms length
16 negotiations before granting its approval"); In re Montgomery County Real Estate Antitrust
17 Litig., 83 F.R.D. 305, 315 (D. Md. 1979) (same). Moreover, a finding that a settlement is the
18 product of arm's length negotiations conducted by capable, experienced counsel lends to it a
19 presumption that the proposed settlement is fair and reasonable. See M. Berenson Co. v. Faneuil
20 Hall Marketplace, Inc., 671 F. Supp. 819, 822 (D. Mass. 1987) ("Where, as here, a proposed class
21 settlement has been reached after meaningful discovery, after arm's length negotiation, conducted
22 by capable counsel, it is presumptively fair.") (footnote omitted); Ellis, 87 F.R.D. at 18.

23 Here, the factors identified by the Ninth Circuit support approval of the
24 Settlement.

25 A. **This Settlement Is The Product Of An Adversarial, Arms'-Length**
26 **Negotiation.**

27 The Settlement is the result of arm's-length, serious, informed and non-collusive
28 negotiations between experienced, knowledgeable counsel who have actively contested this

1 litigation. Both Class Counsel and counsel for Defendants have substantial experience litigating
2 defective products cases. The litigation was hard fought, as were the settlement negotiations.

3 Settlement discussions extended over nearly two years. The parties employed two
4 experienced mediators during this period, and also utilized an arbitrator to make non-binding
5 judgments on certain insurance-related issues. The Settlement does not possess any obvious
6 deficiencies or indicia of fraud or collusion, such as unduly preferential treatment of the named
7 Plaintiff and Class Representative Foothill/De Anza Community College District⁴ or other
8 members of the Settlement Class, or excessive attorneys' fees.⁵ The Court therefore finds that the
9 Settlement is the product of an adversarial, arms'-length negotiation.

10 **B. The Litigation Is Complex And Would Otherwise Take Years, And**
11 **Significant Resources, To Litigate.**

12 This case is procedurally and substantively complex. The class certification issue
13 alone has consumed a significant amount of time and effort on the part of the parties and the
14 Court. In addition to the complicated questions surrounding class certification, liability in this
15 case is not a simple inquiry.⁶ Appellate issues could delay recovery for years. The Court finds
16 that the litigation is complex and would otherwise take years and significant resources to resolve
17 through further litigation, with no guarantee of success for either party.

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21 ⁴ The Class Representative shall receive an award of \$10,000 to compensate the Class
22 Representative for its time, effort and inconvenience in representing the interests of absent class
23 members. The Plaintiff has been actively involved in this litigation. It has met with Class
24 Counsel, provided documents, and responded to discovery, as required. Throughout the
litigation, the Plaintiff has demonstrated its understanding of its duty to consider the interests of
the absent Class members, and has acted accordingly. A Class Representative award in the
amount of \$10,000 is appropriate. See In re Lease Oil Antitrust Litig., 186 F.R.D. 403, 449 (S.D.
Tex. 1999); Smith v. Tower Loan of Miss., Inc., 216 F.R.D. 338, 367-68 (S.D. Miss. 2003).

25 ⁵ The Settlement provides for attorneys' fees of \$2 million, plus costs. The Court has addressed
26 Class Counsel's request for an award of attorneys' fees and reimbursement of costs by separate
Order.

27 ⁶ Although liability in this lawsuit is hotly contested, whether the Plaintiff would ultimately have
28 prevailed is not the question before the Court. Parker v. Anderson, 667 F.2d 1204, 1209 (5th Cir.
1992). Moreover, the fact that outcome of the lawsuit is uncertain makes settlement all the more
appropriate.

1 **C. The Litigation Is Advanced And The Discovery Completed To Date Is**
2 **Extensive, Giving Plaintiff Ample Knowledge To Bargain For A Fair,**
3 **Adequate And Reasonable Settlement.**

4 During four years of litigation, the parties took numerous depositions, propounded
5 and responded to multiple rounds of discovery, conducted extensive document review and
6 consulted with various experts allowing the parties ample information from which to decide
7 whether to settle the case, and on what terms. Class Counsel support the Settlement as a fair,
8 adequate and reasonable means of ending the litigation. Defendants' support of the Settlement is
9 based on an equally comprehensive understanding of the case due to the litigation's advanced
10 stage.

11 **D. Neither Side Can Be Guaranteed Success On The Merits.**

12 The likelihood of Plaintiffs' success on the merits if the case were to proceed to
13 trial is a key consideration in assessing the fairness, adequacy, and reasonableness of a settlement.
14 Although each side could be expected to champion the merits of its case if this matter were to
15 proceed to trial, both must also recognize the inherent uncertainty of litigation. Class Counsel
16 possess ample knowledge – gained through experience – of the factual and legal strengths and
17 weaknesses of their case. At the same time, Defendants have been able to evaluate the strengths
18 and weaknesses of their defenses. This Settlement is the product of uncertainty and careful risk/
19 benefit analyses on both sides of the aisle.

20 The proposed Settlement offers certainty and closure to all parties. It also avoids
21 the substantial risks and delays that would be present if this hard-fought litigation continued at the
22 trial level and through potentially lengthy appeals. The significant legal and factual hurdles that
23 Plaintiff faced had the potential to prevent *any* recovery from Defendants. Defendants have
24 foregone an array of legal and fact-based defenses in acquiescing to the Settlement.

25 While Class Counsel believe the Settlement Class' claims are meritorious, they are
26 also experienced and realistic, and understand that the duration and outcome of this litigation, and
27 of any appeals that would inevitably follow a successful trial, are inherently uncertain. These
28 risks must be considered in assessing the fairness of the Settlement, which guarantees against a
29 result that would leave the Settlement Class without any recovery from Defendants, or with less

1 than the Settlement offers.

2 This Court therefore finds that neither side can be guaranteed success on the merits
3 of their claims or defenses.

4 **E. The Proposed Settlement Offers Significant Relief Relative To The Range Of**
5 **Possible Recovery.**

6 The Settlement makes available up to \$14.5 million for the repair and replacement
7 of leaking Poz-Lok fire sprinkler pipe. A comprehensive set of Protocols will govern the
8 administration of the Settlement. The Protocols are premised upon the notion that Class members
9 will receive 100 percent of the cost of repair and replacement of the leaking Poz-Lok pipe, plus
10 100 percent of the consequential damages resulting from the Poz-Lok pipe, if the pipe leaks or
11 leaked in the first six years after installation. The recovery goes down incrementally after that, to
12 acknowledge that class members will have received longer use of the Poz-Lok pipe prior to the
13 leak. The Court finds that this approach is appropriate under the facts and circumstances of this
14 case.

15 **F. Class Counsel And Settlement Class Members Overwhelmingly Support The**
16 **Settlement.**

17 **1. Class Counsel View The Settlement As Fair, Adequate And**
18 **Reasonable.**

19 Class Counsel support the proposed Settlement as fair, adequate and reasonable.
20 In negotiating the Settlement, Class Counsel had the collective benefit of years of experience with
21 the facts and law of this case, including consultation with experts, volumes of documents and the
22 testimony of key officers and employees of Defendants. Class Counsel have extensive
23 experience in the litigation, certification, trial, settlement, and claims processing of product-
24 related cases.

25 **2. Class Members' Reactions Favor Final Approval.**

26 Since the Court granted preliminary approval, published Notice has been
27 extensive, advising Class members of their rights to comment on or opt out of the Settlement. In
28 response, only one Settlement Class member objected to the Settlement and subsequently

1 withdrew the objection, and no one opted out. The lone objector withdrew its objections once
2 counsel for the objector had an opportunity to discuss the Settlement with Class Counsel.

3 Here, the Court finds that the overwhelming non-opposition to the Settlement
4 indicates that the vast majority of Settlement Class members support the Settlement as fair,
5 adequate and reasonable.

6 * * *

7 Accordingly, the entire matter of the proposed Settlement having been duly
8 noticed, and having been fully considered by the Court,

9 **IT IS HEREBY ADJUDGED, ORDERED AND DECREED that:**

10 1. This Court has jurisdiction over the claims of the Class members asserted
11 in this proceeding, personal jurisdiction over the settling parties (including the Class members),
12 and subject matter jurisdiction to approve the Settlement Agreement.

13 2. This Court confirms that the applicable requirements of Federal Rule of
14 Procedure 23 have been satisfied with respect to the Settlement Class. Accordingly, the Court
15 makes final its February 23, 2004 Preliminary Approval Order with respect to the Class' claims
16 against Defendants, for purposes of effectuating the Settlement.

17 3. Notice given to the members of the Settlement Class constituted the best
18 notice practicable to apprise the Settlement Class members of the pendency of this action, all
19 material elements of the Settlement, and their opportunity to exclude themselves from, to object
20 to, or to comment on the Settlement and to appear at the final fairness hearing, was due, adequate,
21 and sufficient notice to all Settlement Class members, and complied fully with the Federal Rules
22 of Civil Procedure, due process, and any other applicable rules of the Court. A full opportunity
23 has been afforded to the Settlement Class members to participate in the final fairness hearing, and
24 all Settlement Class members and other persons wishing to be heard have been heard.
25 Accordingly, the Court determines that all members of the certified Settlement Class, except to
26 the extent such Settlement Class members have timely excluded themselves from the Class, are
27 bound by this Judgment, Final Order and Decree.

28 4. The Court hereby grants final approval to the Settlement and finds that it is

1 fair, reasonable and adequate, and in the best interests of the Settlement Class as a whole.

2 5. The objections which have been filed were considered by the Court and are
3 overruled.

4 6. In addition to any recovery it may receive under the Settlement Agreement,
5 and in recognition of its efforts on behalf of the Settlement Class, the Court approves an award of
6 \$10,000 to Class Representative Foothill/De Anza Community College District.

7 7. Without affecting the finality of this Judgment, Final Order and Decree, the
8 Court reserves continuing and exclusive jurisdiction over the parties to the Settlement Agreement,
9 including Defendants and Settlement Class members, to administer, supervise, construe and
10 enforce the Settlement Agreement in accordance with its terms for the mutual benefit of the
11 parties.

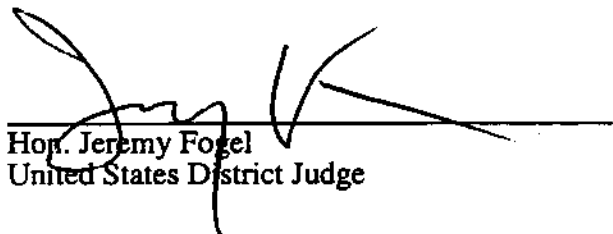
12 8. The Settlement Agreement is expressly incorporated herein by this
13 reference, and has the full force and effect of an order of this Court. The parties shall
14 consummate the Settlement Agreement according to its terms.

15 9. As to Defendants, and except as to Settlement Class members who have
16 timely requested exclusion from the Class, the operative Complaint in this action is dismissed
17 with prejudice and without costs, and Defendants and their Insurance Companies are released
18 from any and all claims regarding Poz-Lok Components.

19 10. In the interests of justice, there being no just reason for delay, the Court
20 expressly directs the Clerk of the Court to enter this Judgment, Final Order and Decree, and
21 hereby decrees, that upon entry, it be deemed as a final judgment and appealable in accordance
22 with the terms of the Settlement.

23 **IT IS SO ORDERED.**

24
25 On this 7th day of June, 2004

26 
27 Hon. Jeremy Fogel
28 United States District Judge

ORIGINAL

FILED
JUN - 7 2004
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RECEIVED
MAY 28 2004

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

FOOTANZA COMMUNITY
COLLEGE DISTRICT, a public entity,
on behalf of itself and all others similarly
situated,

Civil Action No. CV-00-20749-JF/EAI

**[PROPOSED] ORDER AWARDING FEES
AND COSTS**

v.

NORTHWEST PIPE COMPANY, an
Oregon corporation; SOUTHWESTERN
PIPE, INC., a Texas corporation; P&H
TUBE CORPORATION, a Texas
corporation; and SPAX
INCORPORATED, a Delaware
corporation

The Court, having considered the application of Class Counsel for an award of attorneys' fees and the reimbursement of costs and expenses, having reviewed the briefs and declarations filed in connection with that application, being familiar with the case, makes the following findings of fact and conclusions of law:

1. Class Counsel's request for an award of attorneys' fees in the amount of \$2 million is reasonable and appropriate.
2. The requested fee award is reasonable under under both the percentage of common fund and the lodestar-multiplier methods for calculating attorneys' fees. Specifically, the Court has looked at a number of factors in determining the reasonableness of the fee, including (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the requisite legal skill necessary; (4) the customary fee; (5) whether the fee is fixed or contingent; (6) the amount in controversy and the results obtained; and (7) awards in similar cases. See Van Vranken v. Atlantic Richfield Co., 901 F. Supp. 294, 298 (N.D. Cal. 1995) (citing

1 Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), cert. denied, 425 U.S. 951
2 (1976)).

3 3. The requested fee award will result in a multiplier on Class Counsel's
4 lodestar of approximately 1.056, which is at the very low end of the range of multipliers that trial
5 courts have determined to be reasonable in class action cases.

6 4. Not a single Class member has objected to the requested fee award, the
7 amount of which was set forth in the Summary Notice that was mailed to known Class members,
8 and was also published in newspapers, magazines, and professional journals nationwide.

9 5. Class Counsel's request for reimbursement of costs and expenses in the
10 amount of \$ 330,422.99 is also reasonable and appropriate.

11 6. The Court finds that the costs for which Class Counsel seek reimbursement
12 were incidental and necessary to the representation of the Class and were therefore reasonably
13 incurred.

14 GOOD CAUSE APPEARING THEREFOR,

15 IT IS HEREBY ORDERED as follows:

16 1. Class Counsel shall be awarded attorneys' fees in the amount of \$2 million,
17 which fee shall be paid from the Poz-Lok Settlement Fund.

18 2. Class Counsel shall be reimbursed their costs and expenses in the amount
19 of \$ 330,422.99, which amount shall also be paid from the Poz-Lok Settlement Fund.

20 SO ORDERED.

21
22 On this 7th day of June, 2004

23 
24 Hon. Jeremy Fogel
25 United States District Judge
26
27
28