UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON (d.b.a. Charleston Water System), Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. DUDE PRODUCTS INC., Defendant.	Civil Action No. 2:24-cv-02935-RMG CLASS ACTION PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Representative Plaintiff, the Commissioners of Public Works of the City of Charleston (d.b.a. "Charleston Water System") ("Plaintiff"), respectfully files this motion for an Order granting preliminary approval of the class action settlement with Defendant Dude Products Inc. ("Defendant" or "Dude Products") that resolves all of Plaintiff's Released Claims against Dude Products during the Settlement Class Period.[1] For the reasons set forth in the accompanying Memorandum, Plaintiff respectfully moves the Court for an Order:

1. Granting preliminary approval of the Settlement;

2. Certifying a Rule 23(b)(2) class for settlement purposes;

3. Appointing Plaintiff as Class Representative;

4. Appointing Robbins Geller Rudman & Dowd LLP and AquaLaw PLC as Class Counsel;

5. Approving the Settling Parties' proposed form and method of providing notice of the pendency of the Settlement to the Settlement Class under Rule 23(e)(2); and

6. Scheduling a Settlement hearing for final approval of (a) the Settlement set forth in the Stipulation of Settlement, and (b) Class Counsel's application for an award of attorneys' fees and expenses incurred in representing the Settlement Class.

In support of this Motion, Plaintiff incorporates by reference its Memorandum in Support and the Stipulation of Settlement and supporting Exhibits, which are filed simultaneously herewith.

DATED: May 10, 2024

AQUALAW PLC
F. PAUL CALAMITA (ID #12740)

/s/ F. Paul Calamita
F. PAUL CALAMITA

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[1] Capitalized terms not defined herein are defined in the Stipulation of Settlement, dated May 10, 2024.

6 South Fifth Street
Richmond, VA 23219
Telephone: 804/716-9021
804/716-9022 (fax)
paul@aqualaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
VINCENT M. SERRA
FRANCIS P. KARAM
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com
vserra@rgrdlaw.com
fkaram@rgrdlaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 10, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

/s/ F. Paul Calamita

AQUALAW PLC
F. PAUL CALAMITA (ID #12740)
6 South Fifth Street
Richmond, VA 23219
Telephone: 804/716-9021
804/716-9022 (fax)
paul@aqualaw.com

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COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON (d.b.a. Charleston Water System), Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. DUDE PRODUCTS, INC., Defendants.	Civil Action No. 2:24-cv-02935-RMG PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Representative plaintiff, the Commissioners of Public Works of the City of Charleston (d.b.a. "Charleston Water System") ("Plaintiff"), submits this memorandum of law in support of its motion for preliminary approval of the proposed Settlement with Dude Products Inc. ("Defendant" or "Dude Products") (collectively with Plaintiff, the "Parties").[1] The terms of the Settlement are set forth in the Settlement Agreement between the Parties submitted herewith.

I. INTRODUCTION

The Settlement provides critical injunctive relief to municipal wastewater systems throughout the country, including a commitment by Defendant to meet a national municipal wastewater industry flushability standard for its flushable wipes and labeling improvements for non-flushable wipes – to resolve all of Plaintiff's Released Claims against Defendant during the Settlement Class Period. The Settlement is the result of arm's–length negotiations between Class Counsel and Defense Counsel that followed months of negotiations, years of related litigation against other flushable wipes manufacturers and retailers, and five analogous settlements approved by this Court. Plaintiff and Class Counsel believe that the Settlement – which largely parallels the recent settlements with Costco Wholesale Corporation, CVS Health Corporation, Kimberly-Clark Corporation, The Procter & Gamble Company, Target Corporation, Walgreen Co., and Walmart, Inc. – presents an excellent result for the Settlement Class in the face of substantial uncertainty, and will provide wastewater treatment facilities nationwide with significant additional relief from wipes-related clogs and blockages given Defendant's increasingly large share of the flushable wipes market.

[1] Capitalized terms not defined herein are defined in the Stipulation of Settlement entered into between Plaintiff and Dude Products, dated May 10, 2024 ("Settlement Agreement"). Citations and internal quotations are omitted and emphasis is added throughout unless otherwise noted. A proposed order granting the relief requested herein (the "Notice Order") is attached to the Settlement Agreement, filed herewith, as Exhibit D.

In determining whether preliminary approval is warranted, the issue before the Court is whether the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure ("Rule") 23(e)(2) and certify the Settlement Class for purposes of settlement and entering a judgment. Fed. R. Civ. P. 23(e)(1). The Settlement satisfies each of the elements of Rule 23(e)(2) as well as the factors set forth in *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991) for settlement purposes and certification of the Settlement Class is appropriate under Rule 23. Accordingly, notice of the Settlement should be given to Settlement Class Members, and a hearing scheduled to consider final settlement approval.

Because the Settlement meets the foregoing criteria and is well within the range of what might be approved as fair, reasonable, and adequate, Plaintiff asks this Court to enter an Order: (1) granting preliminary approval of the Settlement; (2) certifying a Rule 23(b)(2) class for settlement purposes; (3) appointing Plaintiff as Class representative; (4) appointing Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and AquaLaw PLC ("AquaLaw") as Class Counsel; (5) approving the Parties' proposed form and method of giving notice of pendency and of the Settlement to the Settlement Class under Rule 23(e)(1); and (6) scheduling a settlement hearing for final approval of the Settlement and Class Counsel's application for an award of attorneys' fees and expenses incurred in representing the Settlement Class.

II. BACKGROUND OF THE LITIGATION

A. Summary of Plaintiff's Claims and Settlement Negotiations

Plaintiff alleges that Defendant's deceptive, improper, or unlawful conduct in the design, marketing, manufacturing, distribution, and/or sale of flushable wipes caused recurring property damage, thus constituting nuisance, trespass, defective design, failure to warn and negligence. ¶¶60-102.[2] Plaintiff further alleges Defendant's branded flushable wipes (including the

[2] The use of "Complaint" refers to Plaintiff's Class Action Complaint, filed herewith. Citations to "¶__" refer to the Complaint. The use of "flushable wipes" refers to moist wipe products

"Product")[3] are unsuitable for flushing, making them improperly labeled as "flushable" or "safe for sewer and septic systems." ¶¶20-26. Plaintiff alleged that Defendant's flushable wipes did not disperse in a sufficiently short amount of time (if at all) to avoid clogging or other operational problems, as indicated by independent testing, and thus cause ongoing damage to sewer treatment facilities and Sewage Treatment Plant ("STP") Operators. ¶¶25-37. Plaintiff based its allegations on a thorough factual analysis, based in part on its own experience with multiple clogs containing flushable wipes and tests conducted regarding the inability of Defendant's flushable wipes to perform as advertised, shedding light on the likelihood of additional future clogs containing flushable wipes.

The Complaint follows years of intense litigation in *Commissioners of Public Works of the City of Charleston v. Costco Wholesale Corp., et al.*, No. 2:21-cv-00042-RMG (D.S.C.) (the "*Charleston* Action"), in which Plaintiff and Class Counsel secured significant relief for classes of STP Operators nationwide through five court-approved settlements with seven defendants – Costco, CVS, Kimberly-Clark, P&G, Target, Walgreens, and Walmart – all of whom are major players in the flushable wipes industry. Given the substantial benefits and success of those settlements, Class Counsel initiated an investigation into Defendant's flushability claims in November 2023. Plaintiff retained Barry Orr, the Sewer Compliance Officer and Sewer Outreach and Control Inspector for the City of London, Ontario and the Canadian Water and Wastewater Association representative on IWSFG, to perform flushability testing on Defendant's Flushable Wipes products. ¶25. According to Mr. Orr's testing, conducted in December 2023, Defendant's

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marketed and labeled as safe to flush, safe for plumbing, safe for sewer and/or septic systems, and/or biodegradable. ¶1.

[3] The Product is defined by the Parties as "moist wipes products labeled as flushable under the name 'DUDE Wipes' or other flushable wipes sold in the United States by Defendant under its brand." Settlement Agreement ¶1.18.

flushable wipes failed the IWSFG's Public Available Specification ("PAS") 3 Slosh Box Disintegration Test ("IWSFG 2020: PAS 3"),[4] which evaluates the wipes' likelihood of causing harm to wastewater conveyance systems or treatment plants. ¶26. The flushable Dude Wipes product scored only 20.13% dispersibility, significantly lower than the 80% dispersibility necessary to be considered "flushable" under the IWSFG standard. *Id*.

Class Counsel recognized the strength of Plaintiff's claims and, before filing suit, presented Plaintiff's testing results to Defense Counsel in December 2023 and inquired as to whether Defendant would be interested in discussing a potential pre-filing resolution of Plaintiff's claims, which led to several telephone conversations between Class Counsel and Defense Counsel. Over the course of the next several months, Class Counsel and Defense Counsel negotiated the terms of the Settlement. Class Counsel provided Defendant a copy of their 102-paragraph, 31-page draft complaint, along with a draft stipulation, in February 2024. The Parties ultimately agreed to all material terms of the agreement, other than attorneys' fees, in March 2024. The Parties reached agreement on attorneys' fees in April 2024.

Through the Settlement Agreement, Plaintiff ensured Defendant would commit to meeting certain flushability standards (including IWSFG 2020: PAS 3), submit to periodic independent

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[4] The Slosh Box Disintegration Test is a testing metric widely used in the flushable wipes industry, including by certain Defendants' own trade association – "INDA," the Association of the Nonwoven Fabrics Industry – to determine flushability. The IWSFG 2020: PAS 3 test contains a testing methodology and acceptance criteria far more stringent than INDA's own Slosh Box Disintegration Test contained in the Guidelines for Assessing the Flushability of Disposable Nonwoven Products (GD4) given, *inter alia*, the IWSFG's significantly shorter test duration, lower RPMs (causing less disturbance to the wipes during the test period) and higher percentage "pass through" threshold. *Cf. Publicly Available Specification (PAS) 3:2020 Disintegration Test Methods – Slosh Box*, INTERNATIONAL WATER SERVICES FLUSHABILITY GROUP (Dec. 2020), https://www.iwsfg.org/wp-content/uploads/2021/06/IWSFG-PAS-3-Slosh-Box-Test-2.pdf at 13 *with Guidelines for Assessing the Flushability of Disposable Nonwoven Products*, INDA & EDANA (May 2018), https://www.edana.org/docs/default-source/product-stewardship/1-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-products-ed-4-ex-cop.pdf?sfvrsn=a23eca32_2.

testing, and implement modifications to the packaging of non-flushable wipes. Settlement Agreement ¶2.1. The Settlement Agreement replicates in all material terms the court-approved settlements in the *Charleston* Action.

B. Terms of the Settlement

The Settlement provides meaningful injunctive relief in response to Plaintiff's claims. *First*, Defendant has agreed to ensure that the Product meets the IWSFG 2020: PAS 3 flushabilty specifications, including an average pass-through percentage of at least 80% after 30 minutes of testing within 18 months following. Settlement Agreement ¶2.1(a).

Second, Defendant has agreed to certain testing implementation and monitoring, including two years of confirmatory testing to verify that the Products continue to meet the IWSFG 2020: PAS 3 specifications, either by: (1) hosting periodic independent testing of the Products; or (2) submitting the Products to a mutually acceptable lab for independent testing. Settlement Agreements ¶2.1(b).

Third, Defendant has agreed to labeling changes for non-flushable products, including meeting the "Do Not Flush" labeling standards set forth in Chapter 590 of Assembly Bill No. 818 of California State, which took effect on July 1, 2022 ("AB818"), Section 3 of House Bill 2565 of Washington State, which took effect on March 26, 2020 ("HB2565"), and Section 1 of House Bill 2344 of Oregon State, which took effect on September 25, 2021 ("HB2344"), ***nationwide*** to the extent such products are "Covered Products" as defined in AB818, HB2565, and HB2344. Settlement Agreement ¶2.1(c)(iii). Defendant also agreed that it would ***exceed*** these requisite standards insofar as they will include "Do Not Flush" symbols or warnings on, not only the principal display panel, but also at least two additional panels of packaging for "non-flushable" wipes products, except for packages that only have two panels. *Id*. This provides critical additional notice to consumers nationwide that these baby wipes are not flushable.

The substantive terms of the Settlement are materially similar to the Kimberly-Clark settlement, which the Court approved on January 24, 2022 and served as a benchmark for much of the Parties' negotiations in reaching similar Settlements with Costco, CVS, P&G, Target, Walgreens, Walmart in the *Charleston* Action. For example, Dude Products and defendants in the *Charleston* Action all agreed to meet the IWSFG 2020: PAS 3 flushabilty specifications and ensure that their respective flushable wipes products meet all other IWSFG 2020 flushability specifications. And Defendant agreed to two years of confirmatory testing to verify that its flushable wipes products continue to meet the IWSFG 2020 PAS 3 specifications, just as defendants in the *Charleston* Action agreed. Likewise, Dude Products and the *Charleston* Action defendants have all agreed to include "Do Not Flush" warnings or labels on two additional panels (separate and apart from their obligation to provide such warnings or labels on the principle display panels) for certain non-flushable wipes, and to either comply on a nationwide basis with the standards of the most stringent state laws governing the labeling of non-flushable wipes existing at the time of the settlements or commit to implement consistent labeling (in compliance with those laws) nationwide.

III. PRELIMINARY SETTLEMENT APPROVAL

A. The Law Favors Class Action Settlements

In determining whether to approve the Settlement, the Court should be guided by the principle that "[t]here is a strong judicial policy in favor of settlements, particularly in the class action context." *Reed v. Big Water Resort, LLC*, 2016 WL 7438449, at *5 (D.S.C. May 26, 2016); *see also Covarrubias v. Captain Charlie's Seafood, Inc*., 2011 WL 2690531, at *2 (E.D.N.C. July 6, 2011) ("There is a strong judicial policy in favor of settlement, in order to conserve scarce resources that would otherwise be devoted to protracted litigation."); *Crandell v. U.S.*, 703 F.2d 74, 75 (4th Cir. 1983) ("Public policy, of course, favors private settlement of disputes."). Indeed, "[t]he voluntary resolution of litigation through settlement is strongly favored by the courts and is

'particularly appropriate' in class actions." *In re LandAmerica 1031 Exch. Servs., Inc. Internal Revenue Service §1031 Tax Deferred Exch. Litig.*, 2012 WL 13124593, at *4 (D.S.C. July 12, 2012) (quoting *S.C. Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990)). Settlements of the complex disputes often involved in class actions minimize litigation expenses of both parties and reduce the strain such litigation imposes upon scarce judicial resources. *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977).

As set forth below, Plaintiff and Class Counsel respectfully submit that the proposed Settlement merits preliminary approval and warrants notice apprising Settlement Class Members of the Settlement and the scheduling of a final Fairness Hearing.

B. The Relevant Factors for Preliminary Approval

Rule 23(e) requires judicial approval for a settlement of claims brought as a class action. Fed. R. Civ. P. 23(e) ("The claims . . . of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court's approval."). The approval process typically takes place in two stages. In the first stage, a court provides preliminary approval of the settlement, pending a final settlement hearing, certifies the class for settlement purposes and authorizes notice of the settlement to be given to the class. *See Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994).

Pursuant to Rule 23(e)(1), the issue at preliminary approval is whether the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). Rule 23(e)(2) provides:

> (2) ***Approval of the Proposal***. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
>
> > (A) the class representatives and class counsel have adequately represented the class;
> >
> > (B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

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

Overlapping with Rule 23(e)(2)(B) (arm's-length negotiation) and Rule 23(e)(2)(C)(i) (adequacy of the settlement based on the costs, risks, and delay of trial and appeal) is the two-level analysis in the Fourth Circuit which includes "consideration of the fairness of settlement negotiations and the adequacy of the consideration to the class." *Gaston v. LexisNexis Risk Sols. Inc.*, 2021 WL 244807, at *5 (W.D.N.C. Jan. 25, 2021) (quoting *Jiffy Lube*, 927 F.2d at 158-59). "However, at the preliminary approval stage, the Court need only find that the settlement is within 'the range of possible approval.'" *Id.* As discussed below, the proposed Settlement satisfies each of the factors identified under Rule 23(e)(2), as well as the Fourth Circuit's "fairness" and "adequacy" analysis, and the standard for certification of a class for settlement purposes is met, such that Notice of the proposed Settlement should be sent to the Settlement Class in advance of a final Fairness Hearing.

C. The Proposed Settlement Meets Each of the Rule 23(e)(2) Factors

1. The Settlement Was Negotiated at Arm's Length

The Rule 23(e)(2)(B) factor and the first hurdle under the Fourth Circuit's analysis is a procedural one – "whether the settlement was reached through good-faith bargaining at arm's length." *In re NeuStar, Inc. Sec. Litig.*, 2015 WL 5674798, at *10 (E.D. Va. Sept. 23, 2015); *see*

Rule 23(e)(2)(B) ("the proposal was negotiated at arm's length"). In making this determination, courts in this Circuit look at four factors: "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of [] class action litigation." *Reed*, 2016 WL 7438449, at *6 (quoting *Jiffy Lube*, 927 F.2d at 158-59). "Where a settlement is the result of genuine arm's-length negotiations, there is a presumption that it is fair." *Gaston*, 2021 WL 244807, at *6; *see also Reed*, 2016 WL 7438449, at *6 (there is a presumption of fairness when settlement "is achieved through arms-length negotiations").[5] Here, there is no question the Settlement was the result of arm's-length negotiations with no hint of collusion.

As discussed herein, the Parties engaged in vigorous negotiations over the course of several months – which followed earlier litigation and settlements between Plaintiff and seven other flushable wipes manufacturers and/or retailers in the *Charleston Action* surrounding the same issues. While the Action has not proceeded to discovery, the Parties engaged in numerous discussions concerning the merits of Plaintiff's claims, and exchanged testing data (that would have likely been provided in connection with future discovery) that informed the negotiations. The review of this information, combined with the pre-suit investigation and negotiations with Defendant, following years of litigation and mediator-assisted negotiations in the analogous *Charleston* Action, gave Plaintiff a meaningful understanding of the merits of its factual allegations, and the strengths and weaknesses of its legal claims. The negotiations were adversarial throughout, and the Parties drew on their extensive knowledge of the merits of their respective arguments.

[5] Plaintiff recognizes that at least two Circuits have recognized this presumption no longer applies. *See, e.g.*, *Moses v. New York Times Co.*, 79 F.4th 235, 243 (2d Cir. 2023). In any event, as explained herein, the absence of the presumption does not undermine the fact that the Settlement satisfies the Rule 23(e)(2) factors and is otherwise fair and adequate.

Notably, the knowledge of Class Counsel through their involvement in related flushable wipes litigation and work with consultants who have long studied flushable wipes and non-flushable wipes, gave Plaintiff a meaningful understanding of the merits of its factual allegations, and the strengths and weaknesses of its legal claims. The fact that the Settlement was negotiated at arm's length strongly supports preliminary approval. As discussed further below, Robbins Geller has an extensive record of success in complex cases and similar class actions, and their experience is discussed at length in the Robbins Geller firm resume, which can be found at www.rgrdlaw.com. Likewise, AquaLaw is a specialty law firm with one of the broadest municipal water practices of any U.S. law firm, representing utilities, water districts and related industry associations nationwide.[6] Class Counsel believe that their reputation and experience gave them a strong position in engaging in settlement negotiations with Defendant.

2. The Settlement Is Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal

The Rule 23(e)(2)(C)(i) factor (adequacy of relief, taking into account the "costs, risks, and delay of trial and appeal") and the second hurdle under the Fourth Circuit's analysis is the substantive adequacy of the Settlement. This factor is also readily satisfied. Here, the Court considers the following:

> (1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.

Case v. French Quarter III LLC, 2015 WL 12851717, at *7 (D.S.C. July 27, 2015) (quoting *Jiffy Lube*, 927 F.2d at 158-59). These factors weigh heavily in favor of finding the proposed Settlement adequate.

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[6] More information about AquaLaw can be found at www.aqualaw.com.

In assessing the proposed Settlement, the Court should balance the benefits afforded to the Settlement Class – including the immediacy and certainty of obtaining injunctive relief – against the significant costs, risks, and delay of proceeding with the Action. For example, class actions alleging nuisance and trespass can present numerous hurdles to proving liability that can be difficult for plaintiffs to meet in the class action context. *See, e.g.*, *Rowe v. E.I. Dupont De Nemours & Co.*, 262 F.R.D. 451, 457 (D.N.J. 2009) (finding that claims for injunctive relief based on nuisance, trespass, and gross negligence did not meet the requirements for class certification under Rule 23(b)(2)).

Furthermore, if litigation were to proceed, hurdles to proving liability or even proceeding to trial would remain. For instance, Plaintiff would ultimately need to rely extensively on several expert witnesses to prevail at class certification and ultimately prove its claims. Each expert's testimony would be critical to demonstrating the Defendant's liability, and the conclusions of each expert would be hotly contested. If, for some reason, the Court determined that even one of Plaintiff's experts should be excluded from testifying at trial, Plaintiff's case would become more difficult to prove. *See Comcast Corp. v. Behrend*, 569 U.S. 27 (2013). Even if successful, this process presents considerable expenses. *See Clark v. Duke Univ.*, 2019 WL 2588029, at *6 (M.D.N.C. June 24, 2019) ("The parties would almost certainly incur substantial additional litigation expense if [the litigation] proceeds through summary judgment briefing to trial[.]").

While Plaintiff believes its claims are strong, it cannot ignore the risks of protracted litigation. There is a fair probability that the Court may accept one or more of Defendant's arguments – many of which likely have already been highlighted by defendants in the *Charleston* Action – at any point, including at class certification, summary judgment and trial stages. Even if Plaintiff prevails, there is no guarantee that it would be provided the relief afforded by the Settlement, particularly the enhanced labeling changes to the non-flushable products. *See Sims v.*

BB&T Corp., 2019 WL 1995314, at *5 (M.D.N.C. May 6, 2019) ("the settlement includes . . . terms beneficial to the class that might not be included in any recovery at trial"). Thus, without the Settlement, there is a very real risk that the Settlement Class will receive lesser relief or nothing at all (*e.g.*, Defendant could choose to forgo further flushability performance improvements in order to retain other of the Product's characteristics, such as strength, in their current form). The benefits presented by the Settlement, particularly when viewed in the context of the risks, costs, delay and uncertainties of further proceedings, weigh heavily in favor of preliminary approval.

The remaining factor – the degree of opposition to the Settlement – will be addressed at the final approval stage, after the Settlement Class Members have been given notice of the proposed Settlement and an opportunity to comment. To date, Plaintiff is unaware of any potential objections to the Settlement by any Settlement Class Member.

3. The Remaining Rule 23(e)(2) Factors Are Also Met

a. Plaintiff and Class Counsel Have Adequately Represented the Settlement Class

Plaintiff and its counsel have adequately represented the Settlement Class as required by Rule 23(e)(2)(A) by diligently investigating and prosecuting this Action on their behalf. Among other things, Plaintiff and Class Counsel investigated and assessed the relevant factual events, including developments in the flushable wipes industry, instances of harm to STP Operators attributable to flushable wipes, the testing of Defendant's flushable wipes, and flushability standards; drafted a detailed complaint; participated in settlement negotiations with Defendant; and, in connection with the *Charleston* Action, researched the legal issues underlying Plaintiff's claims, withstood motions to dismiss, exchanged discovery, served document requests and negotiated a protocol governing the preservation of physical evidence – work that would prove highly useful in the prosecution of Plaintiff's claims against Dude Products. These efforts ultimately resulted in Defendant's agreement to substantial injunctive relief similar to the relief

provided by the Court-approved settlements in the *Charleston* Action, including a commitment for Defendant's Product to comply with the wastewater industry's preferred flushability standard, submission to confirmatory performance testing of the Product, and labeling improvements.

b. The Proposed Method of Distributing Relief to the Settlement Class Is Effective

As the Settlement does not provide for monetary relief, no method of distribution is necessary here. Relatedly, as demonstrated below in §IV, the method of the proposed notice (Rule 23(e)(2)(C)(ii)) is effective. The notice plan includes notice by First-Class direct mail and publication in a leading industry magazine, in accordance with the Court's preferences in connection with the *Charleston* Action, and direct email notice to major wastewater industry groups and numerous state wastewater associations. Settlement Agreement ¶¶7.2, 7.4. In addition, the notice plan includes issuing a press release containing the Summary Notice and the creation of a settlement-specific website where key documents will be posted, including the Settlement Agreements, Notice, and Notice Order. *Id*. ¶¶7.3-7.4.

c. Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses the terms of any proposed award of attorneys' fees. As stated in the Notice and agreement, Class Counsel intend to apply to the Court for awards of attorneys' fees and expenses (including the court costs) not to exceed $275,000. Settlement Agreement ¶6.1. If approved by the Court, Defendant will pay Class Counsel up to $275,000 in attorneys' fees and expenses, as the Fee and Expense Award. *Id*. These provisions do not impact the Settlement Class Members' relief.

d. The Settling Parties Have No Other Agreements

Rule 23(e)(2)(C)(iv) requires the disclosure of any other agreements. The Parties have not entered into any other agreements here.

e. Settlement Class Members Are Treated Equitably

The final factor under Rule 23(e)(2) is whether Settlement Class Members are treated equitably. Fed. R. Civ. P. 23(e)(2)(D). As discussed above, the nature of the Settlement's terms (providing for injunctive relief) ensure that the Settlement equitably applies to all Settlement Class Members.

* * *

Thus, each factor identified under Rule 23(e)(2) and *Jiffy Lube* is satisfied. For all of the foregoing reasons, the Court should find that the Settlement is fair, adequate and reasonable, and in Settlement Class Members' best interests.

IV. PROPOSED PLAN OF NOTICE TO THE SETTLEMENT CLASS

Rule 23(c)(2)(A) states, "[f]or any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class." Fed. R. Civ. P. 23(c)(2)(A). When a class is certified under Rule 23(b)(2), the court may "direct appropriate notice to the class," but need not follow the strict requirements of class notice for classes certified under Rule 23(b)(3). Fed. R. Civ. P. 23(c)(2)(A); *see also Thorn v. Jefferson-Pilot Life Ins. Co*., 445 F.3d 311, 330 n.25 (4th Cir. 2006) ("Unlike Rule 23(b)(3), Rule 23(b)(2) neither requires that absent class members be given notice of class certification nor allows class members the opportunity to opt-out of the class action.").

When a class claim is settled, notice must be provided in a "reasonable manner to all class members who would be bound by the [proposed settlement]." Fed. R. Civ. P. 23(e)(1)(B). "While the rule does not spell out the required contents of the settlement notice, it must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *Beaulieu v. EQ Indus. Servs., Inc*., 2009 WL 2208131, at *28 (E.D.N.C. July 22, 2009) (quoting *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 122 (8th Cir. 1975)). Likewise, the due process clause also requires that in a class action, notice of the settlement and an opportunity to be heard must be given to absent class members. *Cf.*

Mashburn v. Nat'l Healthcare, Inc., 684 F. Supp. 660, 667 (M.D. Ala. 1988) ("This Court is of the opinion that the notice given to members of the plaintiff class by publication and by mail, as aforesaid, complied with all requirements of due process, all requirements of Rule 23 of the Federal Rules of Civil Procedure, and constituted the best notice practicable under the circumstances.").

Here, the Settlement provides for three forms of notice, which will include a description of the material terms of the Settlement, Class Counsel's Fee and Expense Application, the date of the Final Approval Hearing and the date by which any objection by Settlement Class Members to any aspect of the Settlement and/or the Fee and Expense Application must be received. Settlement Agreement ¶7.1. First, the Notice (attached to the Settlement Agreement as Exhibit B) will be provided by email to numerous state wastewater associations and major industry groups. *Id.* ¶7.2. Second, a case-specific website will be established dedicated to the Settlement, which will contain the Notice, the Settlement Agreement and other relevant documents and information. *Id.* ¶7.3. Third, a Summary Notice (attached to the Settlement Agreement as Exhibit C) will be published through a press release issued by the Parties and in an industry publication such as the Water Environment Federation's magazine *Water Environment & Technology*, and mailed directly to identifiable publicly owned STP Operators in the United States via First-Class mail, as Plaintiff and defendants did in connection with the *Charleston* Action. *Id.* ¶7.4. The contents and method of the Notice therefore satisfy all applicable requirements.

Accordingly, in granting preliminary settlement approval, the Court should also approve the Parties' proposed form and method of giving notice to the Settlement Class.

V. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

Under the terms of the Settlement Agreement, the Parties have agreed, for the purposes of the Settlement only, to the certification of the Settlement Class. The Settlement Class is defined

as: "All STP Operators in the United States whose systems were in operation May 9, 2021 and the date of preliminary approval." Settlement Agreement ¶1.22.[7]

The Fourth Circuit encourages federal courts to "give Rule 23 a liberal rather than a restrictive construction, adopting a standard of flexibility in application which will in the particular case best serve the ends of justice for the affected parties and . . . promote judicial efficiency." *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 424 (4th Cir. 2003). In order to obtain class certification, a plaintiff must establish the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation and demonstrate that the action may be maintained under one of the three subsections of Rule 23(b). *See Calderon v. GEICO Gen. Ins. Co.*, 279 F.R.D. 337, 345 (D. Md. 2012). Here, the Parties assert for settlement purposes only that the requirements of Rule 23(a) and (b)(2) have been satisfied.

A. The Proposed Settlement Class Satisfies Rule 23(a)

The proposed Settlement Class here satisfies the requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation.

1. Numerosity

Rule 23(a)(1) permits class treatment where "the class is so numerous that joinder of all members is impracticable[.]" *See Owens v. Metro. Life Ins. Co*., 323 F.R.D. 411, 415 (N.D. Ga. 2017). "No consistent standard has been developed for establishing numerosity in class actions." *Ballard v. Blue Shield of S.W. Va., Inc.*, 543 F.2d 1075, 1080 (4th Cir. 1976) (citing 7 C. Wright & A. Miller, *Federal Practice & Procedures* §1762 (1972)); *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) (no specific size is necessary).

[7] STP Operators refers to "entities that own and/or operate sewage or wastewater conveyance and treatment systems, including municipalities, authorities and wastewater districts." Settlement Agreement at 1.

The number of STP Operators in the United States is estimated to be over 17,000 based on the Environmental Protection Agency's records. *See Charleston* Action, ECF No. 123-1 at 2. Thus, numerosity is easily satisfied here. *See Williams v. Henderson*, 129 F. App'x 806, 811 (4th Cir. 2005) (indicating that a class with over 30 members justifies a class).

2. Commonality

To meet the commonality requirement, there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This does not require that all, or even most issues be common, but only that common issues exist. "The commonality element is generally satisfied when a plaintiff alleges that '[d]efendants have engaged in a standardized course of conduct that affects all class members.'" *In re Checking Acct. Overdraft Litig.*, 275 F.R.D. 666, 673 (S.D. Fla. 2011).

The proposed Settlement Class also easily satisfies Rule 23(a)(2). Common questions include, but are not limited to:

a) whether Defendant mislabels its flushable wipes so as to have consumers believe that their flushable wipes will not cause harm to sewer systems in their area;

b) whether Defendant's business practices violate South Carolina law;

c) whether Defendant knew or should have known that the labeling on its flushable wipes was false, misleading or deceptive when issued;

d) whether Defendant's flushable wipes cause adverse effects on STP Operators' systems;

e) whether Defendant sells, distributes, manufactures or markets flushable wipes in South Carolina and nationwide that are in fact flushable;

f) whether Defendant's flushable wipes are safe for sewer systems; and

g) whether Plaintiff and Class members are entitled to injunctive relief.

Similar actions centering on the labeling of flushable wipes have been found to present common questions of law and fact in the litigation and settlement contexts. *See Kurtz v. Kimberly-Clark Corp.*, 414 F. Supp. 3d 317, 321 (E.D.N.Y. 2019) (finding consumer allegations that Flushable Wipes do not perform as advertised to present common issues of fact and law);

Charleston Action, ECF No. 225 at 3-5 (certifying class of STP Operators in the settlement context).

3. Typicality

Rule 23(a)(3)'s typicality requirement asks whether "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). To be typical, the class representative's claims "cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466-67 (4th Cir. 2006).

Here, Plaintiff's and other Settlement Class Members' claims arise out of the same course of conduct by Defendant and are based on identical legal theories. As discussed above, Plaintiff alleges that Defendant's flushable wipes did not conform to the representations on their packaging, which caused excessive and recurring harm to Settlement Class Members' facilities. These claims are identical to the legal claims belonging to all Settlement Class Members and would present proof of Defendant's liability on the basis of common facts supporting the appropriateness of injunctive relief. *See Berry v. Schulman*, 807 F.3d 600, 608-09 (4th Cir. 2015) ("[B]ecause of the group nature of the harm alleged and the broad character of the relief sought, the (b)(2) class is, by its very nature, assumed to be a homogenous and cohesive group with few conflicting interests among its members.").

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To meet this requirement, the named class representatives must show that "they will fairly and adequately protect the interests of every putative claimant by showing that they have no interests that are antagonistic to other class members and that they are competent to undertake the case." *Reed*, 2016 WL 7438449, at *4. "The Court should also consider the adequacy of representation by Class Counsel." *Id*. For the

first requirement (adequacy of class representatives), Fourth Circuit courts have required that plaintiffs merely show that "Named Plaintiffs' interests are directly aligned with the interests of absent class members." *Id*. For the second requirement (adequacy of class counsel), courts in the Fourth Circuit generally presume adequacy is met "in the absence of specific proof to the contrary." *Id*.; *see also Case*, 2015 WL 12851717, at *5 (quoting same).

Plaintiff easily satisfies both prongs of the adequacy requirement. The interests of Plaintiff and absent Settlement Class Members align because they each have been harmed by, and/or are at risk of being harmed by, the same course of conduct, and each Settlement Class Member will benefit from the terms of the Settlement. Plaintiff has demonstrated its adequacy and dedication through its active involvement in the investigation and settlement, and its own attempts to remedy the Complaint's allegations, including publicly discussing flushable wipes-related problems at issue in related litigation and attempting to educate the public on related flushability issues (and commitment to further do so through the Settlement).[8] Plaintiff, which has incurred expenses and anticipates incurring additional expenses due to flushable wipes in its capacity as a wastewater utility system, has no interests that are antagonistic to the interests of any of the Settlement Class Members.

Plaintiff also meets the second prong of the adequacy requirement. To date, Class Counsel has invested significant attorney and staff time to this matter. Robbins Geller is a preeminent nationwide plaintiffs' firm specializing in complex class action litigation, and currently serves as lead counsel in other flushable wipes-related litigation. *See* www.rgrdlaw.com. Robbins Geller

[8] *See, e.g.*, *What Not to Flush*, CHARLESTON WATER SYSTEM, http://charlestonwater.com/361/What-Not-to-Flush (last visited May 3, 2024); Andrew Brown, *Charleston Water System sues manufacturers, retailers over 'flushable' toilet wipes*, THE POST AND COURIER (Jan. 8, 2021), https://www.postandcourier.com/business/charleston-water-system-sues-manufacturers-retailers-over-flushable-toilet-wipes/article_99b29254-51c5-11eb-b7fa-eb9a98184e11.html; Settlement Agreements ¶2.1(b)(ii).

has served as lead or co-lead counsel in hundreds of class actions in almost every state in the country, and has achieved considerable success, including attaining one of the five largest recoveries in the Fourth Circuit at the time in *Nieman v. Duke Energy Corp., et al*., No. 3:12-cv-00456 (W.D.N.C.). *See* https://www.rgrdlaw.com/cases-nieman-v-duke-energy-corp.html. Likewise, AquaLaw is a preeminent firm with a wide-ranging municipal water practice, serving public utilities and other entities nationwide and litigating a wide range of disputes in State and federal courts involving water and infrastructure. *See* www.aqualaw.com. The Court previously found Robbins Geller and AquaLaw adequate in appointing members of these firms as class counsel in connection with the settlements in the *Charleston* Action. *Charleston* Action, ECF Nos. 133 at 7 and 225 at 6.

Accordingly, both Rule 23(a)(4) and Rule 23(g) are satisfied. Plaintiff should be designated as Class Representative of the Settlement Class, and Robbins Geller and AquaLaw should be designated as Class Counsel.

B. The Settlement Class Satisfies Rule 23(b)(2)

Rule 23(b)(2) permits certification where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Class actions alleging claims for nuisance, trespass, and/or negligence are commonly certified under Rule 23(b)(2). *See, e.g.*, *Olden v. LaFarge Corp.*, 203 F.R.D. 254, 271 (E.D. Mich. 2001), *aff'd*, 383 F.3d 495 (6th Cir. 2004) (certifying class alleging claims for nuisance and negligence under Rule 23(b)(2)). Here, Plaintiff has similarly requested injunctive relief (from harm caused by the continued design, marketing, manufacturing, distribution and/or sale of flushable wipes), and alleges that Defendant has "refused to act" by failing to adopt and implement appropriate product improvements and labeling changes. *See id*. at 270.

Additionally, "Rule 23(b)(2) classes are 'mandatory,' in that 'opt-out rights' for class members are deemed unnecessary and are not provided under the Rule." *Schulman*, 807 F.3d at 609 (citing *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2558 (2011)). Indeed, all Settlement Class Members will benefit equally from the injunctive relief presented by the Settlement. While Settlement Class Members thus cannot opt out of the Settlement, they may object to the Settlement or express any concerns they may have before final Court approval.

Therefore, Plaintiff respectfully submits that there is good reason and just cause to certify the Settlement Class, for settlement purposes, under Rule 23(b)(2).

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks that the Court grant preliminary approval of the proposed Settlement and enter the proposed Order Granting Motion for Preliminary Approval of Class Action Settlement, submitted as Exhibit D to the Settlement Agreement.

DATED: May 10, 2024

Respectfully submitted,

AQUALAW PLC
F. PAUL CALAMITA (ID #12740)

F. PAUL CALAMITA

6 South Fifth Street
Richmond, VA 23219
Telephone: 804/716-9021
804/716-9022 (fax)
paul@aqualaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
VINCENT M. SERRA
FRANCIS P. KARAM
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com
vserra@rgrdlaw.com
fkaram@rgrdlaw.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON (d.b.a. Charleston Water System), Individually and on Behalf of All Others Similarly Situated,	)	Action No. 2:24-cv-02935-RMG
Plaintiff,	)	CLASS ACTION
vs.	)	STIPULATION OF SETTLEMENT
DUDE PRODUCTS INC.	)	
Defendant.	)	

Representative Plaintiff Commissioners of Public Works of the City of Charleston ("Plaintiff"), on behalf of itself and all Settlement Class Members (defined below), and Defendant Dude Products Inc. ("Defendant" or "Dude Products") (collectively, the "Settling Parties") hereby enter into this Stipulation of Settlement ("Stipulation"), subject to approval of the Court.

WHEREAS, Defendant sells personal wipes labelled as being "flushable" in the United States under the brand name "DUDE Wipes" and has done so in the past.

WHEREAS, on May 9, 2024, Plaintiff filed this Action, alleging common law causes of action for nuisance, trespass, strict products liability—defective design, strict products liability—failure to warn, and negligence against Defendant, in connection with the manufacturing, design, marketing and/or sale of flushable wipes, which lawsuit is currently pending as *Commissioners of Public Works of the City of Charleston (D.B.A. Charleston Water System) v. Dude Products, Inc.*, Civil Action No. No. 2:21-cv-42-RMG (D.S.C.). In the Action, Plaintiff seeks injunctive relief and class certification pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), on behalf of itself, as well as a nationwide class and a South Carolina class of entities that own and/or operate sewage or wastewater conveyance and treatment systems, including municipalities, authorities and wastewater districts ("STP Operators").

WHEREAS, Plaintiff alleges that the flushability-related claims made on the labeling and packaging of the wipe products sold by Defendant are false, deceptive, or misleading.

WHEREAS, Defendant denies that this case is suitable for class treatment other than in the context of a settlement, and denies and continues to deny any wrongdoing or legal liability for any alleged wrongdoing; does not admit or concede any actual or potential fault, wrongdoing, or legal liability in connection with any facts or claims that have been or could have been alleged by

Plaintiff; and contends that neither Plaintiff nor any of the proposed Settlement Class Members have been injured or are entitled to any relief.

WHEREAS, to avoid the costs, disruption, and distraction of further litigation, and without admitting the validity of any allegations made by Plaintiff, or any liability with respect thereto, Defendant has concluded that it is desirable to settle the claims against it, which will be dismissed on the terms reflected in this Stipulation.

WHEREAS, Plaintiff believes the claims against Defendant alleged in the Action have merit, but, based on Plaintiff's independent testing of Defendant's flushable wipe product, the knowledge of Plaintiff's counsel through this and other litigation regarding flushable wipes, and Plaintiff's counsel's work with consultants who have long studied flushable wipes and non-flushable wipes, Plaintiff and Plaintiff's counsel remain of the view that a settlement of the claims against Defendant in the Action on the terms reflected in this Stipulation is fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Class.

WHEREAS, the agreement reflected in this Stipulation is substantively identical to recent settlements with other flushable wipes manufacturers and retailers in *Commissioners of Public Works of the City of Charleston (D.B.A. Charleston Water System) v. Costco Wholesale Corporation, et al.*, No. 2:21-cv-42-RMG (D.S.C.) that were reached after protracted, arm's-length negotiations over several years;

WHEREAS, the Settling Parties recognize the tremendous time and expense that would be incurred by further litigation in this matter and the uncertainties inherent in any such litigation, and that their interests would be best served by a settlement of the litigation;

WHEREAS, until the class settlement is final (*i.e.*, approved by the district court and no longer subject to judicial review), this Stipulation and its entire contents are governed by Rule 408

of the Federal Rules of Evidence and the parallel provisions of the Evidence Codes of each of the 50 states and the District of Columbia. Until that time, nothing in this Stipulation is binding on any Settling Party or the Settlement Class Members, whether by way of agreement, estoppel, or reliance, except as necessary to seek approval of such binding and final class settlement. The Settling Parties further agree that neither the existence of this Stipulation nor its recitals may be cited or relied upon by any tribunal, except as concerns the approval of and compliance with this Stipulation.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, it is hereby STIPULATED AND AGREED, by and among the Settling Parties to this Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Fed. R. Civ. P. 23 and satisfaction of all the terms and conditions set forth herein, that the released claims shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms.

I. DEFINITIONS

1.1 "Action" means *Commissioners of Public Works of the City of Charleston v. Dude Products Inc.,* Case No. 2:24-cv-02935-RMG, pending in the United States District Court for the District of South Carolina, Charleston Division.

1.2 "Class Counsel" means the law firms of Robbins Geller Rudman & Dowd LLP and AquaLaw PLC, subject to approval by the Court.

1.3 "Complaint" means the Class Action Complaint filed against Defendant in this Action.

1.4 "Court" means the United States District Court for the District of South Carolina, Charleston Division.

1.5 "Defendant" means Dude Products, Inc.

1.6 "Defendant's Released Claims" means any and all claims Defendant may have against Plaintiff, each and all of the Settlement Class Members, and/or Class Counsel, including those for damages or injunctive relief arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action, including, but not limited to, Unknown Claims.

1.7 "Defense Counsel" means the law firm of Barnes & Thornburg.

1.8 "Effective Date" means the later of: (a) the expiration of the time to appeal the final judgment and order with no appeal having been filed; (b) if any such appeal is filed, the termination of such appeal on terms that affirm the final judgment and order or dismiss the appeal with no material modification of the final judgment and order; or (c) the expiration of the time to obtain any further appellate review of the final judgment and order. A modification or reversal on appeal of the amount of the attorneys' fees and expenses awarded by the Court to counsel for Plaintiff and the Settlement Class or the amount of any class representative service award shall not prevent the settlement agreement from becoming final and effective if all other aspects of the final judgment and order have been affirmed.

1.9 "Fee and Expense Application" means Class Counsel's application to the Court for an award of Class Counsel's attorneys' fees and expenses in connection with the settlement of the claims against Defendant in this Action, as well as any interest thereon.

1.10 "Fee and Expense Award" means an order by the Court granting Class Counsel's Fee and Expense Application in whole or in part.

1.11 "Final Approval Hearing" means the hearing at or after which the Court will consider whether or not to issue a Final Judgment.

1.12 "Final Judgment" means the order issued by the Court finally approving the Stipulation in all material respects as fair, reasonable, and adequate under Rule 23(e)(2), and the judgment entered pursuant to that order after the Final Approval Hearing, a form of which is attached hereto as Exhibit A.

1.13 "Formula" means base formula and substrate combination.

1.14 "Notice" means the notice of Settlement pursuant to Federal Rule of Civil Procedure 23(e)(1) to be disseminated as set forth in §7 below, the form of which is attached hereto as Exhibit B. The Settling Parties understand that "[u]nlike Rule 23(b)(3), Rule 23(b)(2) neither requires that absent class members be given notice of class certification nor allows class members the opportunity to opt-out of the class action." *Thorn v. Jefferson-Pilot Life Ins.*, 445 F.3d 311, 330 & n.25 (4th Cir. 2006).

1.15 "Plaintiff" means Commissioners of Public Works of the City of Charleston.

1.16 "Plaintiff's Released Claims" means any and all claims of Plaintiff and the Settlement Class Members for injunctive relief that arise from or relate to the claims and allegations in the Complaint, including Unknown Claims, and the acts, facts, omissions, or circumstances that were or could have been alleged by Plaintiff in the Action, including but not limited to all claims for injunctive relief related to any wipe products (flushable and non-flushable) currently or formerly manufactured, marketed, or sold by Defendant or any of its affiliates or licensees. For the avoidance of doubt, "Plaintiff's Released Claims" do not include claims for damages or other monetary relief, including, but not limited to, claims for monetary relief under the law of nuisance.

1.17 "Preliminary Approval Order" means a Court order, providing for, among other things, preliminary approval of the Settlement.

1.18 "Product" means moist wipes products labeled as flushable under the name "DUDE Wipes" or other flushable wipes sold in the United States by Defendant under its brand.

1.19 "Released Parties" means the parties receiving a release, including Plaintiff, Class Counsel, Defendant, and their present, former, and future, direct and indirect, parents, subsidiaries, affiliates, assigns, divisions, predecessors, and successors, and all of their respective officers, agents, administrators, and employees, Defendant's Counsel, and all Settlement Class Members.

1.20 "Releasing Parties" means the parties granting a release, including Plaintiff, all Settlement Class Members, and Defendant.

1.21 "Settlement" means the settlement of this Action as between Plaintiff and Defendant as set forth in this Stipulation.

1.22 "Settlement Class" means "All STP Operators in the United States (including its states, districts, or territories) whose systems were in operation between May 9, 2021 and the date of preliminary approval."

1.23 "Settlement Class Member" means a person or entity that falls within the definition of the Settlement Class.

1.24 "Settlement Class Period" means the period between May 9, 2021 and the date of preliminary approval.

1.25 "Settling Parties" means Plaintiff, Defendant, and all Settlement Class Members.

1.26 "Unknown Claims" means Plaintiff's Released Claims and all of Defendant's Released Claims that any of the Settling Parties or Settlement Class Members do not know or suspect to exist in his, her, or its favor at the time of the release, which if known by him, her, or it, might have affected his, her, or its decision not to object to this Settlement or release of the Released Parties, Plaintiff, Class Counsel, or Settlement Class Members. With respect to any and

all Plaintiff's Released Claims and Defendant's Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Settling Parties shall, to the fullest extent permitted by law, fully, finally, and forever expressly waive and relinquish with respect to such claims, any and all provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all similar provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY**.

1.27 The plural of any term defined herein includes the singular, and vice versa.

II. SETTLEMENT TERMS

1. Rule 23(b)(2) Class Certification

1.1 The Settling Parties consent to certification of the Settlement Class for the claims raised against Defendant in this Action pursuant to Fed. R. Civ. P. 23(b)(2), for purposes of settlement only.

1.2 Defendant does not agree to certification of the Settlement Class for any purpose other than to effectuate this Stipulation. In the event that this Stipulation is terminated pursuant to its terms or is not approved in all material respects by the Court, or such approval is reversed, vacated, or modified in any material respect by this or any other court, the certification of the Settlement Class shall be deemed vacated, the Action shall proceed as if the Settlement Class had never been certified, and no reference to the Settlement Class, this Stipulation, or any documents,

communications, or negotiations related in any way thereto shall be made for any purpose in this Action or any other action or proceeding.

2. Consideration to the Settlement Class: Injunctive Relief, and Associated Commitments by Defendant

2.1 In consideration for the Releases (Paragraphs 3.1 and 4.1 below), Defendant has agreed to be bound by the following permanent injunction in the Court's Final Judgment approving the Settlement of the claims made by Plaintiff and the putative Classes against Defendant in the Action:

a. Product and Testing Criteria

(i) Defendant commits to meeting the current International Water Services Flushability Group ("IWSFG") Publicly Available Specification ("PAS") 3 (Disintegration Test) (hereinafter referred to as "IWSFG 2020: PAS 3") flushability specifications for the Product manufactured on or after 18 months of the date of the Settlement Agreement ("Compliance Date"), whereby the average percentage of the total initial dry mass of the sample (as described in IWSFG 2020: PAS 3) passing through a 25 mm sieve for the five test pieces drawn from each of the four (or, at Defendant's election, more) packages of the Product (as further detailed below) after 30 minutes of testing shall be equal to or greater than 80% (at the temperature (20 degrees Celsius +/-2 degrees), volume (4 liters) and RPM (18) specified in IWSFG 2020: PAS 3). If Defendant is able to attain IWSFG compliance prior to 18 months of the date of the Settlement Agreement, it can provide written notice to Plaintiff, which will initiate the two-year performance monitoring verification period set forth in Paragraph 2.1(b)(ii).

(ii) Defendant commits that it will not sell flushable wipes containing plastics, as defined in Section 5.3.5 of IWSFG 2020: PAS 2, in the United States.

(iii) Once the Product meets the IWSFG 2020: PAS 3 specification and all other IWSFG 2020 specifications, Defendant may represent that Product is IWSFG 2020 compliant for a period of at least five years, subject to the on-going testing requirements set forth herein, irrespective of whether IWSFG adopts heightened testing specifications.

(iv) In the event that exigent circumstances (such as supply chain disruptions) render the Compliance Date unworkable, Defendant commits to promptly notify Plaintiff within 14 days of becoming aware that compliance may be delayed, and keep Plaintiff apprised of the expected date upon which compliant Products with be manufactured. Likewise, Plaintiff agrees that if such exigent circumstances make future compliance with IWSFG 2020: PAS 3 temporarily unworkable, no breach of this Stipulation or violation of the resulting Final Judgment will have been deemed to occur should Defendant cure the compliance defect expeditiously.

(v) For the avoidance of any doubt, Defendant will not recall the Product and is permitted to sell through any product manufactured prior to the Compliance Date.

b. Testing Implementation/Monitoring

(i) If Plaintiff elects, Defendant and/or other flushable wipes manufacturers that supply flushable wipes to Defendant, as applicable, will meet with Plaintiff (virtually if requested by Defendant) after the final Stipulation of Settlement is signed to discuss the Product's performance and Defendant's plan to achieve the performance criteria for wipes manufactured on or after 18 months of the date of the Settlement Agreement.

(ii) Defendant and/or other flushable wipes manufacturers that supply flushable wipes to Defendant, as applicable, at their election, will submit to and either (1) host periodic independent testing of the Product, including funding of Reasonable Costs for a Plaintiff-selected representative to participate in the same, or (2) submit the Product at their cost to a

mutually acceptable lab for independent testing (Parties agree in advance that the Integrated Paper Services ("IPS") lab and SGS are acceptable independent labs), beginning on the Compliance date in accordance with agreed-to IWSFG 2020: PAS 3 testing protocols. The PAS 3 testing will be conducted approximately every four months for a period of 24 months with five test pieces drawn from each of at least four (or more at Defendant's election) packages of each formula of the Product manufactured on or after the Compliance Date (or such earlier manufacture date that Defendant indicates to Plaintiff that the Product is IWSFG 2020: PAS 3 compliant) to be selected by Plaintiff. Plaintiff will provide Defendant with the lot number for the test pieces to confirm the manufacturer, formula, and the manufacturing date. The monitoring period will end after 24 months of successful Product performance.

(iii) If any performance verification tests find that the Product is not compliant with IWSFG 2020: PAS 3, Defendant has the right to object to the results of that testing and submit its own results or data. If the results or data submitted with Defendant's objection finds that the Product is compliant with IWSFG 2020: PAS 3 and the Parties cannot resolve inconsistent results, Defendant shall submit the Product to IPS for independent testing, in accordance with IWSFG 2020: PAS 3 testing protocols, within 60 days of receiving the conflicting results. If the Product is thereafter found non-compliant, Defendant shall have 120 days to regain compliance in its wipes manufacturing operations.

(iv) Reasonable Costs, as noted in Paragraph 2.1(b)(ii), consist of reimbursement of Plaintiff's selected representative for up to 12 hours of testing per testing cycle (*i.e.*, three times per year) at a flat rate of $2,800 dollars per testing cycle for Plaintiff's selected representative.

c. Label Changes

(i) Defendant will add or cause to be added certain labeling changes, as described below, for its non-flushable wipes products nationwide by the Compliance Date.

(ii) Defendant will add or cause to be added prominent language or illustration on their DUDE brand non-flushable wipes products identifying the non-flushable wipes products as "non-flushable" or instructing users not to flush the non-flushable wipes products (*e.g.*, "Do Not Flush"), consistent with the provisions in Paragraph 2.1(c)(iii).

(iii) Defendant will ensure that its DUDE brand non-flushable wipes products labeling will meet the current "do not flush" labeling standards set forth in Chapter 590 of Assembly Bill No. 818 of California State, which took effect on July 1, 2022 ("AB818"), Section 3 of House Bill 2565 of Washington State, which took effect on March 26, 2020 ("HB2565"), and Section 1 of House Bill 2344 of Oregon State, which took effect on September 25, 2021 ("HB2344"), to the extent such products are "Covered Products" as defined in AB818, HB2565, and HB2344. Defendant agrees to exceed the standards herein insofar as it will include "do not flush" symbols or warnings (or cause such warnings to be included), or disposal instructions, on not only the principal display panel, but also at least two additional panels of packaging for non-flushable wipes products, except for packages that only have two panels.

(iv) Upon request, Defendant will provide one representative labeling for each of their DUDE brand non-flushable wipes products to Plaintiff to confirm that it complies with the required labeling changes.

(v) For the avoidance of any doubt, Defendant will not recall the Product and is permitted to sell through any product manufactured prior to the Compliance Date.

d. Acknowledgement and Endorsement

(i) After Defendant implements the injunctive relief described herein, the Product shall be deemed "flushable," biodegradable, safe for sewer systems, and capable of breaking down after flushing, as advertised, subject to compliance with the testing provisions in Paragraphs 2.1(a)(ii) above.

(ii) After Defendant implements the injunctive relief described herein, Plaintiff will take the following steps to endorse the Product: (1) provide its endorsement of compliance with IWSFG 2020 as representative of the Settlement Class; (2) solicit commitment of U.S. municipal wastewater treatment industry (including members of IWSFG, such as NACWA) to provide acknowledgment that the Product is, in fact, flushable, biodegradable, safe for sewer systems, and capable of breaking down after flushing, as advertised; and (3) provide a sample press release for Defendant's review acknowledging the Product's performance and compliance with IWSFG 2020.

3. Release by Plaintiff and the Settlement Class

3.1 Upon the Effective Date, Plaintiff and each Settlement Class Member release and discharge Defendant, their present, former, and future, direct and indirect, parents, subsidiaries, affiliates, assigns, divisions, predecessors, licensees, insurers, and successors, and all of their respective officers, agents, administrators, and employees, and Defendant's Counsel, of and from all Plaintiff's Released Claims, including Unknown Claims, provided, however, that Plaintiff's Released Claims shall not include any claims to enforce the terms of this Stipulation.

4. Releases by Defendant

4.1 Defendant and any other suppliers for Defendant will release and discharge Plaintiff, the Injunctive Relief Settlement Class members, and counsel for Plaintiff and the Settlement Class from all claims arising from or relating to the institution, prosecution, or

settlement of this Action; any defenses or compulsory counterclaims Defendant or any other supplier for Defendant may have in the Action; and the Settlement Class's settlement of their claims. The released claims will not include any claims to enforce the terms of the settlement agreement.

5. No Admission of Liability

5.1 Defendant denies any liability in this Action, and it denies the appropriateness of certification of a litigation class in the Action or any other case except in the context of settlement. This Stipulation reflects, among other things, the compromise and settlement of disputed claims among the Parties.

5.2 This Stipulation, the fact of settlement, the releases contained herein, any actions taken to carry out the settlement agreement, and any related documents or proceedings are not intended to be (nor may they be deemed or construed to be) an admission or concession of liability or the validity of any claim, defense, allegation, point of fact, or point of law.

5.3 This Stipulation, the fact of settlement, the releases contained herein, any actions taken to carry out the settlement agreement, and any related documents or proceedings shall not be used as an admission of any fault or offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Parties in any proceeding.

6. Payment of Attorneys' Fees and Expenses.

6.1 Class Counsel will apply to the Court for separate awards of attorneys' fees and expenses (including the court costs), not to exceed $275,000. If approved by the Court, Defendant shall pay Class Counsel up to $275,000 in attorneys' fees and expenses, inclusive, as the Fee and Expense Award.

6.2 Defendant shall pay the Fee and Expense Award to Class Counsel within 21 days of entry of the order awarding such fees and expenses.

7. Notice to the Settlement Class Pursuant to Rule 23(e)(1)

7.1 The Notice is designed to provide the Settlement Class with information regarding the proposed Settlement and their rights thereunder, including a description of the material terms of the Settlement; Class Counsel's Fee and Expense Application; the date of the Final Approval Hearing; and the date by which any objection by Settlement Class Members to any aspect of the Settlement and/or the Fee and Expense Award must be received.

7.2 The Notice, as approved by the Court, will be provided by email to, for example, the following entities:

Water Environment Federation. https://www.wef.org/

National Association of Clean Water Agencies. https://www.nacwa.org/

National Rural Water Association. http://www.nrwa.org/

National Association of Counties. https://www.naco.org/

National League of Cities. www.nlc.org

American Public Works Association. www.awwa.org

US Water Alliance. http://uswateralliance.org/about/our-members

State POTW wastewater associations. The Notice will be provided to State POTW wastewater associations, including:

South Carolina Water Quality Association. http://www.scwqa.org/

California Association of Sanitation Authorities. https://casaweb.org/

Illinois Association of Wastewater Agencies. www.ilwastewater.org

Maine Wastewater Control Association. www.mwwca.org

Maryland Association of Municipal Wastewater Agencies. http://www.mamwa.org/

Association of **Missouri** Cleanwater Agencies. http://www.amoca.info/

New England Water Works Association – www.newwa.org

North Carolina Water Quality Association. http://ncwqa.com/

New Jersey Association of Environmental Authorities.
https://www.aeanj.org/

Oregon Association of Water Utilities. https://oawu.net/

Association of **Ohio** Metropolitan Wastewater Agencies.
https://www.aomwa.org/

Pennsylvania Municipal Authorities Association.
https://www.municipalauthorities.org/

Texas Association of Clean Water Agencies. https://www.tacwa.org/

Virginia Association of Municipal Wastewater Agencies.
http://www.vamwa.org/

West Virginia Municipal Water Quality Association. http://wvmwqa.org/

Wisconsin wastewater operator's association – www.wwoa.org

7.3 The Settling Parties shall also establish a website dedicated to the Settlement, which shall include a copy of the Notice and other Settlement-related documents and which shall list all Settlement-related dates and deadlines.

7.4 The Summary Notice in the form attached hereto as Exhibit C, shall be published through a press release issued by the Settling Parties and in an industry publication such as the Water Environment Federation's magazine *Water Environment & Technology*, and mailed directly to identifiable publicly owned sewage treatment plant operators in the United States via Firs-Class mail, as provided in the Notice Order.

7.5 Defendant agrees to bear the costs associated with providing publication and postcard notice. Plaintiff agrees to bear the costs, if any, associated with providing email notice to the class members and hosting the settlement administration website.

7.6 Within ten (10) business days of the filing of Plaintiff's motion for preliminary approval of the Settlement, Defendant, at its expense, will direct notice of the proposed Settlement

to the federal and state officials required to be notified by the Class Action Fairness Act of 2005, 28 U.S.C. §1715.

8. Order Preliminarily Approving the Settlement; Final Fairness Hearing

8.1 As soon as reasonably practicable after execution of this Stipulation, Class Counsel will move the Court for an order preliminarily approving the Settlement, *see* Exhibit D, and for a stay of all proceedings in the Action as to Defendant until the Court renders a final decision on approval of the Settlement. At the same time, voluntary notice will be provided as detailed *supra*, §II.7.

8.2 The Settling Parties will ask the Court to schedule a Fairness Hearing to determine whether the Settlement should receive Final Approval, with that hearing to occur no earlier than 100 calendar days after the Court enters an order preliminarily approving the Settlement. By no later than the dates ordered by the Court, Class Counsel will move the Court for appropriate orders approving and effectuating the Settlement, including orders:

(a) certifying the Settlement Class for settlement purposes pursuant to Fed. R. Civ. P. 23(b)(2) and fully and finally approving the Settlement contemplated by this Stipulation and its terms as being fair, reasonable, and adequate within the meaning of Rule 23 and directing its consummation pursuant to its terms and conditions;

(b) directing that the Action, to the extent that it is brought against Defendant, be dismissed with prejudice;

(c) discharging and releasing the Released Persons from Plaintiff's Released Claims;

(d) permanently barring and enjoining the institution and prosecution, by Plaintiff and Settlement Class Members, of any other action against the Released Persons, in any court, asserting any Plaintiff's Released Claims;

(e) discharging and releasing Plaintiff, Class Counsel, and the Settlement Class from Defendant's Released Claims;

(f) reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the consummation and enforcement of this Stipulation;

(g) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing entry of a Final Judgment as to Defendant in the Action;

(h) granting the Fee and Expense Application; and

(i) containing such other and further provisions consistent with the terms of this Stipulation to which the Settling Parties expressly consent in writing.

9. Miscellaneous Provisions

9.1 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Action. The Settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Final Judgment will contain a finding that, during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum regarding the Action, including that the Action was brought or defended in bad faith or without a reasonable basis.

9.2 If, for any reason, the Settlement is not approved by the Court, is terminated, overturned, or materially modified on appeal or as a result of further proceedings on remand, or otherwise does not become effective, unless the Settling Parties shall agree otherwise, the Settling

Parties shall revert to their litigation positions immediately prior to the execution of this Stipulation, without waiver of any rights, claims, or defenses; nothing in this Stipulation, or the motion for preliminary approval of the Settlement shall be cited by the Settling Parties or relied on by the Court for any purpose other than in connection with disputes concerning the Settlement.

9.3 The Settling Parties acknowledge and agree that this Stipulation memorializes the entire agreement among the Settling Parties, that they have not executed this Stipulation in reliance on any promise, representation, inducement, covenant, or warranty except as expressly set forth herein, and that this Stipulation supersedes all other prior statements or agreements, whether oral or written, to the extent any provision hereof is inconsistent with any such prior oral or written statements or agreements.

9.4 This Stipulation may not be amended except by a writing executed by all Settling Parties hereto or their respective successors-in-interest.

9.5 The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation and over any disputes arising under this Stipulation, and all Settling Parties hereby submit to the jurisdiction of the Court for such purposes.

9.6 Each Settling Party represents and warrants to all other Settling Parties that such Settling Party: (a) was represented by attorneys of the Settling Party's choosing in connection with the execution of this Stipulation; (b) has read and understood all aspects of this Stipulation and all of its effects; and (c) has executed this Stipulation as a voluntary act of the Settling Party's own free will and without any threat, force, fraud, duress, or coercion of any kind.

9.7 If any provision of this Stipulation is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Stipulation will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the

Settling Parties shall attempt to renegotiate the Stipulation or, if that proves unavailing, either Settling Party can terminate the Stipulation without prejudice to any Settling Party. For purposes of this Paragraph, the Releases laid out in Paragraphs 3.1 and 4.1 are considered material to this Stipulation.

9.8 This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiff and Class Counsel shall be binding upon all Settlement Class Members.

9.9 This Settlement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to South Carolina's principles governing choice of law. The Settling Parties agree that any dispute arising out of or relating in any way to the Settlement shall not be litigated or otherwise pursued in any forum or venue other than the Court, and the Settling Parties expressly waive any right to demand a jury trial as to any such dispute.

9.10 The provisions contained in this Stipulation shall not be deemed a presumption, concession, or admission by Defendant of any fault, liability, or wrongdoing as to any facts or claims that have been or might be alleged or asserted in the Action, or any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, for any purpose other than as provided expressly herein.

9.11 This Stipulation will be construed as if the Settling Parties jointly prepared it, and any uncertainty or ambiguity will not be interpreted against any one Settling Party because of the manner in which this Stipulation was drafted or prepared.

9.12 The headings used in this Stipulation are for convenience only and will not be used to construe its provisions.

9.13 The Settlement may be executed in any number of counterparts and by each of the different Settling Parties on several counterparts, each of which when so executed and delivered will be an original. The executed signature page(s) from each counterpart may be joined together and attached and will constitute one and the same instrument.

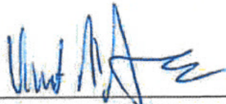
9.14 This Stipulation of Settlement is confidential until publicly filed with the Court. The Parties must use all reasonable efforts to ensure that information relating to the settlement of the Action is not disclosed, except as provided below. Before the Effective Date, the Parties shall not publish or release any statement or information to the media or the public relating to the Parties settlement discussions. After the Effective Date, any information published or released relating to the settlement must be truthful and adhere strictly to information that appears as part of the public record related to the approval of the settlement agreement. If any media outlet contacts any of the Parties or counsel for the Parties seeking information or a statement regarding the settlement or the Action, any information provided must be truthful and consistent with the public record and terms of the settlement. Any discussions, negotiations, documents, statements, or actions relating to the settlement of the Action are prohibited from disclosure in any other case, unless that information appears as part of the public record.

9.15 All claims that were asserted in the Action will be dismissed with prejudice in the Court's order and judgment of final approval. If for any reason the Effective Date does not occur, all claims and defenses will revert to their status before preliminary settlement approval.

IN WITNESS WHEREOF, the Settling Parties have executed this Stipulation effective as of the date set forth below.

DATED: May 10, 2024

F. Paul Calamita (ID #12740) AQUALAW PLC
6 South Fifth Street
Richmond, VA 23219
Tel: 804.716.9021
Fax: 804.716.9022
Email: paul@aqualaw.com



Vincent M. Serra
Samuel H. Rudman
Francis P. Karam

ROBBINS GELLER RUDMAN & DOWD LLP
58 South Service Road, Suite 200
Melville, NY 11747
Tel: 631.367.7100
Fax: 631.367.1173
Email: vserra@rgrdlaw.com
srudman@rgrdlaw.com
fkaram@rgrdlaw.com

Counsel for Plaintiff and the Proposed Settlement Class

DATED: May 10, 2024

BARNES & THORNBURG LLP
By: Paul Olszowka
Christine E. Skoczylas
paul.olszowka@btlaw.com
christine.skoczylas@btlaw.com
One North Wacker Drive Suite 4400
Chicago, IL 60606
Tel. (313) 357-1313

Counsel for Defendant Dude Products, Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON (d.b.a. Charleston Water System), Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. DUDE PRODUCTS, INC., Defendant.	Civil Action No. 2:24-cv-02935-RMG CLASS ACTION **[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL OF DUDE PRODUCTS, INC. WITH PREJUDICE**

This matter is before the Court pursuant to the order granting the motion for preliminary approval of the Class Action Settlement with DUDE Products, Inc. ("Defendant") ("Notice Order") dated May ___, 2024, on the applications of the Plaintiff, the Settlement Class and Defendant (together "the Parties") for final approval of the Settlement set forth in the Stipulation dated May 10, 2024 ("Stipulation"). Due and adequate notice having been given to the Settlement Class as required in the Notice Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

2. This Court has jurisdiction over the subject matter of the Action and over all the Parties to the Settlement, including all members of the Settlement Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby affirms its determination in the Notice Order and finally certifies for purposes of settlement only the Settlement Class defined as:

(a) "All entities that own[ed] and/or operate[d] sewage or wastewater conveyance and treatment systems, including municipalities, authorities and wastewater districts in the United States between May 9, 2021 and _______, 2024 [**the date of preliminary approval**]."

(b) Excluded from the Settlement Classes are counsel of record (and their respective law firms) for any of the Parties, employees of Defendant, and any judge presiding over this action and their staff, and all members of their immediate families.

4. Pursuant to Fed. R. Civ. P. 23(e), the Court finds that the Stipulation and Settlement are fair, reasonable, and adequate as to each of the Settling Parties, and that the Stipulation and Settlement are hereby finally approved in all respects, and the Settling Parties are hereby directed to perform their terms.

5. Accordingly, the Court authorizes and directs implementation of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. The Court hereby dismisses the Action and all Plaintiff's Released Claims with prejudice, without costs as to any of the Released Parties or Released Persons, except as and to the extent provided in the Stipulation and herein.

6. Upon the Effective Date hereof, and as provided in the Stipulation, Plaintiff and each of the Settlement Class Members shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Defendant and its present, former, and future, direct and indirect, parents, subsidiaries, affiliates, assigns, divisions, predecessors, licensees, insurers, and successors, and all of its respective officers, agents, administrators, and employees, and Defense Counsel of and from all Plaintiff's Released Claims (including, but not limited to, Unknown Claims (as defined in the Stipulation)).

7. Upon the Effective Date hereof, and as provided in the Stipulation, Defendant DUDE Products, Inc. and its subsidiaries, affiliates, and all of its respective officers and employees, shall be deemed to have, and by operation of this Final Judgment, shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff, each and all of the Settlement Class Members, and Class Counsel from all Defendant's Released Claims (including, but not limited to, Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution or settlement of the Action.

8. The Notice given to the Settlement Class in accordance with the Notice Order was appropriate under the circumstances of these proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23(e) and due process.

9. Any order entered regarding any attorneys' fee and expense application shall in no way disturb or affect this Final Judgment and shall be considered separate from this Final Judgment.

10. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) are or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of any Released Party; or (b) are or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Any Released Party may file any of the Stipulation and/or this Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. Without affecting the finality of this Final Judgment in any way, this Court hereby retains continuing exclusive jurisdiction over: (a) implementation of the Settlement; (b) hearing and determining applications for attorneys' fees and expenses in the Action; and (c) all Settling Parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

12. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Fed. R. Civ. P. 11.

13. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, then this Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

14. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

15. The Court directs immediate entry of this Final Judgment by the Clerk of the Court.

IT IS SO ORDERED.

DATED: ____________________

____
THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE

EXHIBIT B

Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. DUDE Products, Inc.
Case No. 2:24-cv-02935-RMG

United States District Court for the District of South Carolina, Charleston Division

IF YOU ARE A SEWAGE TREATMENT SYSTEM OPERATOR IN THE UNITED STATES WHOSE SYSTEM WAS IN OPERATION BETWEEN MAY 9, 2021 AND _______, 2024 [THE DATE OF PRELIMINARY APPROVAL], A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

A federal court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

- A proposed settlement ("Settlement") has been reached in the above class action against DUDE Products, Inc. ("Defendant"). The action challenges the manufacturing, design, marketing and/or sale of Defendant's flushable wipes.[1] Defendant denies the allegations about its flushable wipes and there has been no finding of liability against DUDE Wipes, Inc. Defendant has agreed to the Settlement to avoid the uncertainties and expenses associated with continuing the case.

- You are a Settlement Class Member if you own[ed] and/or operate[d] sewage or wastewater conveyance and treatment systems.

- If you are a Settlement Class Member, your legal rights are affected whether you act or don't act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
Do Nothing	If you do nothing, then you will automatically receive benefits under the Settlement in the form of Defendant's business modifications that are further described in this Notice.
Object	Write to the Court about why you do not like something about the Settlement or Class Counsel's requested attorneys' fees and expenses such that it is received **no later than [Objection deadline].**

[1] The terms of the Settlement is in the Stipulation of Settlement, dated May 10, 2024 (the "Stipulation"), which can be viewed at www.charlestonwipessettlement.com. All capitalized terms not defined in this Notice have the same meanings as in the Stipulation.

Attend a hearing on [Final Approval Hearing Date]	Ask to speak in Court about your opinion of the Settlement and/or the requests for attorneys' fees and expenses. Requests to speak must be received by the Court and counsel for the Parties **no later than ___________, 2024.**

- **There is no need to submit a claim form**. The Settlement provides benefits in the form of business practice modifications that are further detailed on pages _ - _ of this Notice. If you do nothing, then you will automatically receive the benefits of the Settlement.
- These rights and options – **and the Court-ordered deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this litigation still has to decide whether to approve the Settlement with DUDE Products, Inc.

BASIC INFORMATION

1. Why should I read this Notice?

The Court authorized this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your rights and options, before the Court decides whether to approve the Settlement.

If you operate a sewage or wastewater conveyance and treatment plant, such as a municipality, authority or wastewater district in the United States whose system was in operation between May 9, 2021 and __________, 2024 [date of preliminary approval], you are part of the Settlement Class.

This Notice explains the lawsuit, the Settlement with Defendant, and your rights.

The Honorable Judge Richard M. Gergel of the United States District Court for the District of South Carolina is overseeing this class action. The lawsuit is known as *Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. DUDE Products, Inc.*, Case No. 2:24-cv-02935-RMG.

2. What is this lawsuit about?

This lawsuit challenges the manufacturing, design, marketing and/or sale of flushable wipes by Defendant DUDE Products, Inc.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representatives" (in this case, Commissioners of Public Works of the City of Charleston) sue on behalf of other people who have similar claims. The people together are a "Settlement Class" or "Settlement Class Members." The people who sue – and all the Settlement Class Members like them – are called the "Plaintiffs." The company or companies the Plaintiffs sue (in this case, DUDE Products, Inc.) is or are called the "Defendant" or "Defendants." If the court certifies (or approves) the Settlement Class, then one court can resolve the issues for everyone in the Settlement Class.

4. Why is there a Settlement?

The Court has not decided whether Plaintiff City of Charleston or Defendant DUDE Products, Inc. should win this case. Instead, the respective parties agreed to settle. That way the respective parties avoid the cost and risks of trial, and DUDE Products, Inc. will agree to make changes to their policies and practices to benefit Settlement Class Members now rather than years from now, if at all.

More information about the Settlement and the lawsuit is available in the "Court Documents" section of the Settlement Website: www.charlestonwipessettlement.com.

WHO IS IN THE SETTLEMENT CLASS?

You need to decide whether you are affected by this lawsuit.

5. Am I part of the Settlement Class?

If you own[ed] or operate[d] a sewage or wastewater conveyance and treatment system, such as a municipality, authority or wastewater district in the United States whose system was in operation between May 9, 2021 and ________, 2024 [Preliminary Approval Date], you are part of the Settlement Class.

THE SETTLEMENT'S BENEFITS

6. What are the benefits of the Settlement with Defendant?

Defendant has agreed to implement certain modifications to its business practices with respect to the flushable wipes Products, including DUDE Wipes flushable wipes.

a. Product and Testing Criteria

(i) Defendant commits to meeting the current International Water Services Flushability Group ("IWSFG") Publicly Available Specification ("PAS") 3 (Disintegration Test) (hereinafter referred to as "IWSFG 2020: PAS 3") flushability specifications for the Product manufactured on or after 18 months of the date of the Settlement Agreement ("Compliance Date"), whereby the average percentage of the total initial dry mass of the sample (as described in IWSFG 2020: PAS 3) passing through a 25 mm sieve for the five test pieces drawn from each of the four (or, at Defendant's election, more) packages of the Product (as further detailed below) after 30 minutes of testing shall be equal to or greater than 80% (at the temperature (20 degrees Celsius +/-2 degrees), volume (4 liters) and RPM (18) specified in IWSFG 2020: PAS 3). If Defendant is able to attain IWSFG compliance prior to 18 months of the date of the Settlement Agreement, it can provide written notice to Plaintiff, which will initiate the two-year performance monitoring verification period set forth in Paragraph 2.1(b)(ii).

(ii) Defendant commits that it will not sell flushable wipes containing plastics, as defined in Section 5.3.5 of IWSFG 2020: PAS 2, in the United States.

(iii) Once the Product meets the IWSFG 2020: PAS 3 specification and all other IWSFG 2020 specifications, Defendant may represent that Product is IWSFG 2020 compliant for a period of at least five years, subject to the on-going testing requirements set forth herein, irrespective of whether IWSFG adopts heightened testing specifications.

(iv) In the event that exigent circumstances (such as supply chain disruptions) render the Compliance Date unworkable, Defendant commits to promptly notify Plaintiff within 14 days of becoming aware that compliance may be delayed, and keep Plaintiff apprised of the expected date upon which compliant Products with be manufactured. Likewise, Plaintiff agrees that if such exigent circumstances make future compliance with IWSFG 2020: PAS 3 temporarily unworkable, no breach of this Stipulation or violation of the resulting Final Judgment will have been deemed to occur should Defendant cure the compliance defect expeditiously.

(v) For the avoidance of any doubt, Defendant will not recall the Product and is permitted to sell through any product manufactured prior to the Compliance Date.

b. Testing Implementation/Monitoring

(i) If Plaintiff elects, Defendant and/or other flushable wipes manufacturers that supply flushable wipes to Defendant, as applicable, will meet with Plaintiff (virtually if requested by Defendant) after the final Stipulation of Settlement is signed to discuss the Product's performance and Defendant's plan to achieve the performance criteria for wipes manufactured on or after 18 months of the date of the Settlement Agreement.

(ii) Defendant and/or other flushable wipes manufacturers that supply flushable wipes to Defendant, as applicable, at their election, will submit to and either (1) host periodic independent testing of the Product, including funding of Reasonable Costs for a Plaintiff-selected representative to participate in the same, or (2) submit the Product at their cost to a mutually acceptable lab for independent testing (Parties agree in advance that the Integrated Paper Services ("IPS") lab and SGS are acceptable independent labs), beginning on the Compliance date in accordance with agreed-to IWSFG 2020: PAS 3 testing protocols. The PAS 3 testing will be conducted approximately every four months for a period of 24 months with five test pieces drawn from each of at least four (or more at Defendant's election) packages of each formula of the Product manufactured on or after the Compliance Date (or such earlier manufacture date that Defendant indicates to Plaintiff that the Product is IWSFG 2020: PAS 3 compliant) to be selected by Plaintiff. Plaintiff will provide Defendant with the lot number for the test pieces to confirm the manufacturer, formula, and the manufacturing date. The monitoring period will end after 24 months of successful Product performance.

(iii) If any performance verification tests find that the Product is not compliant with IWSFG 2020: PAS 3, Defendant has the right to object to the results of that testing and submit its own results or data. If the results or data submitted with Defendant's objection finds that the Product is compliant with IWSFG 2020: PAS 3 and the Parties cannot resolve inconsistent results, Defendant shall submit the Product to IPS for independent testing, in accordance with IWSFG 2020: PAS 3 testing protocols, within 60 days of receiving the conflicting results. If the Product is thereafter found non-compliant, Defendant shall have 120 days to regain compliance in its wipes manufacturing operations.

(iv) Reasonable Costs, as noted in Paragraph 2.1(b)(ii), consist of reimbursement of Plaintiff's selected representative for up to 12 hours of testing per testing cycle

(*i.e.*, three times per year) at a flat rate of $2,800 dollars per testing cycle for Plaintiff's selected representative.

c. Label Changes

(i) Defendant will add or cause to be added certain labeling changes, as described below, for its non-flushable wipes products nationwide by the Compliance Date.

(ii) Defendant will add or cause to be added prominent language or illustration on their DUDE brand non-flushable wipes products identifying the non-flushable wipes products as "non-flushable" or instructing users not to flush the non-flushable wipes products (*e.g.*, "Do Not Flush"), consistent with the provisions in Paragraph 2.1(c)(iii).

(iii) Defendant will ensure that its DUDE brand non-flushable wipes products labeling will meet the current "do not flush" labeling standards set forth in Chapter 590 of Assembly Bill No. 818 of California State, which took effect on July 1, 2022 ("AB818"), Section 3 of House Bill 2565 of Washington State, which took effect on March 26, 2020 ("HB2565"), and Section 1 of House Bill 2344 of Oregon State, which took effect on September 25, 2021 ("HB2344"), to the extent such products are "Covered Products" as defined in AB818, HB2565, and HB2344. Defendant agrees to exceed the standards herein insofar as it will include "do not flush" symbols or warnings (or cause such warnings to be included), or disposal instructions, on not only the principal display panel, but also at least two additional panels of packaging for non-flushable wipes products, except for packages that only have two panels.

(iv) Upon request, Defendant will provide one representative labeling for each of their DUDE brand non-flushable wipes products to Plaintiff to confirm that it complies with the required labeling changes.

(v) For the avoidance of any doubt, Defendant will not recall the Product and is permitted to sell through any product manufactured prior to the Compliance Date.

d. Acknowledgement and Endorsement

(i) After Defendant implements the injunctive relief described herein, the Product shall be deemed "flushable," biodegradable, safe for sewer systems, and capable of breaking down after flushing, as advertised, subject to compliance with the testing provisions in Paragraphs 2.1(a)(ii) above.

(ii) After Defendant implements the injunctive relief described herein, Plaintiff will take the following steps to endorse the Product: (1) provide its endorsement of compliance with IWSFG 2020 as representative of the Settlement Class; (2) solicit commitment of U.S. municipal wastewater treatment industry (including members of IWSFG, such as NACWA) to provide acknowledgment that the Product is, in fact, flushable, biodegradable, safe for sewer systems, and capable of breaking down after flushing, as advertised; and (3) provide a sample press release for Defendant's review acknowledging the Product's performance and compliance with IWSFG 2020.

7. What am I giving up by not objecting to the Settlement Class?

As a Settlement Class Member, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or the Released Parties or Released Persons about the Plaintiff's Released Claims (as defined below) in this case. It also means that all of the Court's orders will apply to you and legally bind you. If the Settlement is approved, you will give up all claims (as defined below), including "Unknown Claims" (as defined below), against the "Released Parties" (as defined below):

- "Plaintiff's Released Claims" means any and all claims of Plaintiff and the Settlement Class Members for injunctive relief that arise from or relate to the claims and allegations in the Complaint, including Unknown Claims, and the acts, facts, omissions, or circumstances that were or could have been alleged by Plaintiff in the Action, including but not limited to all claims for injunctive relief related to any wipe products (flushable and non-flushable) currently or formerly manufactured, marketed, or sold by Defendant or any of its affiliates or licensees. For the avoidance of doubt, "Plaintiff's Released Claims" do not include claims for damages or other monetary relief, including, but not limited to, claims for monetary relief under the law of nuisance.

- "Released Parties" means the parties receiving a release, including Plaintiff, Class Counsel, Defendant, and their present, former, and future, direct and indirect, parents, subsidiaries, affiliates, assigns, divisions, predecessors, licensees, insurers, and successors, and all of their respective officers, agents, administrators, and employees, Defense Counsel, and all Settlement Class Members.

- "Unknown Claims" means Plaintiff's Released Claims that arise from or relate to the Action and all of Defendant's Released Claims that any of the Settling Parties or Settlement Class Members do not know or suspect to exist in his, her, or its favor at the time of the release, which if known by him, her, or it, might have affected his, her, or its decision not to object to this Settlement or release of the Released Parties, Plaintiff, Class Counsel, or Settlement Class Members. With respect to any and all of Plaintiff's Released Claims and Defendant's Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Settling Parties shall, to the fullest extent permitted by law, fully, finally, and forever expressly waive and relinquish with respect to such claims, any and all provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all similar provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

  A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE

AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

YOUR RIGHTS AND OPTIONS

8. How do I object to the Settlement or to the request for attorneys' fees and expenses?

You can object to the Settlement and/or Class Counsel's request for attorneys' fees and expenses.

You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, no benefits in the form of modifications of Defendant's business practices will be made, and the litigation will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections must contain the following:

- the name and case number of this lawsuit (*Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. DUDE Products, Inc.*, Case No. 2:24-cv-02935-RMG);

- your full name, mailing address, email address, and telephone number;

- an explanation of why you believe you are a Settlement Class Member, including documents sufficient to establish the basis for your standing as a Settlement Class Member;

- all reasons for your objection or comment, including all citations to legal authority and evidence supporting the objection;

- whether you intend to personally appear and/or testify at the Final Approval Hearing (either personally or through counsel), and what witnesses you will ask to speak;

- the name and contact information of any and all attorneys representing, advising, and/or assisting you, including any counsel who may be entitled to compensation for any reason related to your objection or comment, who must enter an appearance with the Court in accordance with the Local Rules;

- the name and case number of all class action settlements to which you or your counsel have objected; and

- your handwritten or electronically imaged signature (an attorney's signature or typed signature is not sufficient).

To be considered by the Court, your objection must be received by the Court either by mailing it to the Class Action Clerk, United States District Court for the District of South Carolina, Charleston Division, J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401, or by filing it in person at any location of the United States District Court for the District of South Carolina.

To be considered, your objection must be received on or before the [objection deadline].

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

The Court decided that the law firms of Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and AquaLaw PLC are qualified to represent you and all Settlement Class Members. These firms are called "Class Counsel" and are experienced in handling similar class action cases. More information about Robbins Geller and AquaLaw are available at www.rgrdlaw.com and www.aqualaw.com, respectively.

Class Counsel believe, after investigating this case and litigating similar cases for several years, that the Stipulation is fair, reasonable, and in the best interests of the Settlement Class. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

10. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But if you want your own lawyer, you will have to pay for that lawyer. For example, you can ask him or her to appear in court for you if you want someone other than Class Counsel to speak for you.

11. How will the lawyers be paid?

Class Counsel's attorneys' fees and expenses will be paid in an amount to be determined and awarded by the Court. Defendant has also agreed to pay reasonable attorneys' fees and expenses.

Class Counsel will ask the Court to approve attorneys' fees and expenses from Defendant of no more than $275,000.

The final amount of attorneys' fees and expenses will be determined by the Court.

Class Counsel's application for an award of attorneys' fees and expenses will be made available on the "Court Documents" page of the Settlement Website at www.charlestonwipessettlement.com on the date it is filed or as quickly thereafter as possible.

THE COURT'S FINAL APPROVAL HEARING

12. When and where will the Court decide whether to approve the Settlement with Defendant?

The Court is scheduled to hold the Final Approval Hearing on ________, 2024 at ________ in Courtroom __ of the United States District Court for the District of South Carolina, Charleston Division, J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401. The hearing may be rescheduled to a different date, time, or location without another notice to Settlement Class Members. Especially given the national health emergency, the date, time, or location of the hearing may be subject to change, as will the manner in which Settlement Class Members might appear at the hearing. Please review the Settlement Website for any updated information regarding the hearing.

At the Final Approval Hearing, the Court will consider whether the Settlement with Defendant is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who appear at the hearing and who have provided notice of their intent to appear at the hearing. The Court may also consider Class Counsel's application for attorneys' fees and expenses.

13. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you submit a written objection, you do not have to come to the Court to talk about it. As long as you submit your written objection on time, and follow the requirements above, the Court will consider it. You may also pay your own attorney to attend, but it is not required.

14. May I speak at the Final Approval Hearing?

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. At the hearing, the Court, in its discretion, will hear any objections and arguments concerning the fairness of the Settlement and/or Class Counsel's request for attorneys' fees and expenses.

To do so, you must include in your objection or comment a statement saying that it is your Notice of Intent to Appear in *Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. DUDE Products, Inc.*, Case No. 2:24-cv-02935-RMG (D.S.C.). It must include your name, address, email, telephone number, and signature as well as the name and address of your lawyer, if one is appearing for you. Your submission and Notice of Intent to Appear must be filed with the Court and be received **no later than [objection deadline].**

GETTING MORE INFORMATION

15. How do I get more information?

This Notice summarizes the proposed Settlement. For precise terms and conditions of the Settlement, please see the Stipulation available at www.charlestonwipessettlement.com, by contacting Class Counsel at (804) 938-4211, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.scd.uscourts.gov/cgibin/login.pl, or by visiting the office of the Clerk of Court for the United States District Court for the District of South Carolina, Charleston Division, J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401, between 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

PLEASE DO NOT TELEPHONE OR WRITE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THE SETTLEMENT.

All questions regarding the Class Settlement should be directed to Class Counsel.

DATED: ___________, 2024

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

____

THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE

EXHIBIT C

Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. DUDE Products, Inc.
Case No. 2:24-cv-02935-RMG

United States District Court for the District of South Carolina, Charleston Division

IF YOU ARE A SEWAGE TREATMENT SYSTEM OPERATOR IN THE UNITED STATES WHOSE SYSTEM WAS IN OPERATION BETWEEN MAY 9, 2021 AND ___________, 2024 [THE DATE OF PRELIMINARY APPROVAL], A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

A federal court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

- A proposed settlement ("Settlement") has been reached in the above class action with Defendant DUDE Products, Inc. ("Defendant"). The action challenges the manufacturing, design, marketing and/or sale of Defendant's flushable wipes.[1] Defendant denies the allegations about its flushable wipes and there has been no finding of liability against DUDE Products, Inc.. Defendant has agreed to the Settlement to avoid the uncertainties and expenses associated with continuing the case.

WHO IS IN THE SETTLEMENT CLASS?

If you own[ed] or operate[d] a sewage or wastewater conveyance and treatment plant, such as a municipality, authority or wastewater district in the United States whose system was in operation between May 9, 2021 and ________, 2024 [Preliminary Approval Date], you are part of the Settlement Class.

The Court-certified Settlement Class is defined as "All STP (Sewage Treatment Plant) Operators in the United States whose systems were in operation between May 9, 2021 and the date of preliminary approval."

WHAT DOES THE SETTLEMENT PROVIDE?

Defendant has agreed to implement certain modifications to its business practices and the Settling Parties have made certain representations and commitments with respect to the flushable wipes Products, including DUDE Wipes flushable wipes. The details of these business practice modifications are set forth in the Notice which is located at www.charlestonwipessettlement.com.

YOUR RIGHTS AND OPTIONS

[1] The terms of the Settlement is in the Stipulation of Settlement, dated May 10, 2024 (the "Stipulation"), which can be viewed at www.charlestonwipessettlement.com. All capitalized terms not defined in this Notice have the same meanings as in the Stipulation.

Do Nothing

By doing nothing, you will receive the benefits of the Settlement with Defendant in the form of business practice modifications described in the Notice. You will automatically receive the benefits of this Settlement.

Object to the Settlement or the request for attorneys' fees and expenses.

You can object to the Settlement and/or Class Counsel's request for attorneys' fees and expenses of up to $275,000. Objections must be received no later than _____, 2024, by the Court, either by mailing it to the Class Action Clerk, United States District Court for the District of South Carolina, Charleston Division, J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401, or by filing it in person at any location of the United States District Court for the District of South Carolina.

Should I Hire an Attorney?

You do not need to hire your own attorney because Class Counsel is working on your behalf. If you retain your own attorney, you will need to pay for that attorney.

Final Approval Hearing

The Court will hold the Final Approval Hearing on ________, 2024, at _______ at the United States District Court for the District of South Carolina, Charleston Division, J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401. You can go to this hearing, but you do not have to. The Court will hear any objections, determine if the Settlement with Defendant is fair, and consider Class Counsel's request for an award of attorneys' fees and expenses. Class Counsel's request for fees and expenses will be posted on the Settlement Website after it is filed.

HOW DO I GET MORE INFORMATION?

This Notice is only a summary. For more information, including the Stipulation and other legal documents, visit www.charlestonwipessettlement.com.

PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION OR ADVICE.

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON (d.b.a. Charleston Water System), Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. DUDE PRODUCTS, INC., Defendant.	Civil Action No. 2:24-cv-02935-RMG CLASS ACTION **[PROPOSED] ORDER AND OPINION**

Before the Court is Plaintiff's motion for preliminary approval of class action settlement. (Dkt. No. ____). For the reasons set forth below, the Court grants Plaintiff's motion.

I. Background

In this putative class action, Plaintiff, on behalf of itself and all others similarly situated, alleges that Defendant DUDE Products, Inc. designs, markets, manufactures, distributes, and/or sells wipes labeled as "flushable" which are not actually flushable. These wipes allegedly damage sewer systems across the country. Plaintiff brings these claims for nuisance, trespass, strict products liability, failure to warn, and negligence. Plaintiff's Complaint seeks prospective injunctive relief and reasonable attorney's fees and costs for Class Counsel.

Plaintiff moved for preliminary approval of a settlement reached between itself and DUDE Products, Inc. (Dkt. No. ___). Attached to the motion was a full copy of the Parties' Stipulation of Settlement. (Dkt. No. ___). Defendant DUDE Products, Inc. did not oppose Plaintiff's motion.

II. Standard

Class certification and preliminary approval of a class settlement are governed by Rule 23 of the Federal Rules of Civil Procedure. Courts have recognized that "a potential settlement is a relevant consideration when considering class certification." *Temp. Servs., Inc. v. Am. Int'l Grp., Inc.*, No. 3:08-cv-00271-JFA, 2012 WL 13008138, at *1 (D.S.C. July 31, 2012). "If not a ground for certification *per se*, certainly settlement should be a factor, and an important factor, to be considered when determining certification." *In re A.H. Robins Co.*, 880 F.2d 709, 740 (4th Cir. 1989) *abrogated on other grounds by Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 619 (1997) (affirming that "[s]ettlement is relevant to a class certification"). However, certification of a class for the purposes of settlement must still satisfy the pertinent requirements under Rule 23. *Id.* Accordingly, the Court will first consider whether provisional class certification is appropriate under Rule 23 because it is a prerequisite to preliminary approval of a class action settlement.

To certify a class, Plaintiff must demonstrate that the proposed class certification satisfies the prerequisites set forth within both Rule 23(a) and Rule 23(b). Rule 23(a) empowers the Court to certify a class action when (1) the class is so numerous that joinder of all members is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims or defenses of the representative parties are typical of the claims and defenses of the class as a whole ("typicality"); and (4) the representative parties will fairly and adequately protect the interests of the class ("adequacy of representation"). Fed. R. Civ. P. 23(a). In addition, Rule 23(b) requires that questions of law or fact common to members of the class predominate over those affecting individual members of the class and a class action is a superior means of resolving the controversy. Fed. R. Civ. P. 23(b).

Plaintiff bears the burden of showing by a preponderance of the evidence that class certification is appropriate under Rule 23. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–351

(2011). Class Certification is a two-step process. First, a plaintiff must establish that each of the four requirements of Rule 23(a) is met: numerosity, commonality, typicality, and adequacy of representation. *Id.* at 349. Second, she must establish that at least one of the bases for certification under Rule 23(b) is met. Where, as here, a plaintiff seeks to certify a class under Rule 23(b)(2), it must show that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

III. Discussion

A. Conditional Certification of Settlement Class

Plaintiff moves this Court to certify a settlement class pursuant to Fed. R. Civ. P. 23(b)(2). The "Settlement Class" is composed of "All STP Operators in the United States whose systems were in operation between May 9, 2021 and the date of preliminary approval." (Dkt. No. ____). An "STP Operator" is an entity that "owns and/or operates a sewage or wastewater conveyance and treatment systems, including municipalities, authorities, and wastewater districts." (Dkt. No. ___).

As mentioned above, the Court must determine whether the proposed settlement class satisfies the requirements for class certification under Federal Rule of Civil Procedure 23. The requirements that must be met under Rule 23(a) are (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. In addition, the Plaintiff must satisfy one of the subsections of Rule 23(b) for each of their proposed classes.

The Court holds that the Settlement Class satisfies the numerosity requirement of Rule 23(a)(1). The Parties have indicated the number of STP Operators in the United States likely exceeds 17,000. (Dkt. No. ______). Numerosity is easily satisfied. *See Williams v. Henderson*,

129 Fed. App'x 806, 811 (4th Cir. 2005) (indicating that a class with over 30 members justifies a class).

The Court further finds that the commonality requirement of Rule 23(a)(2) is met. The commonality requirement – at least as it relates to a settlement class – is "not usually a contentious one: the requirement is generally satisfied by the existence of a single issue of law or fact that is common across all class members and thus is easily met in most cases." 1 Newberg on Class Actions § 3:18 (5th ed.); *see also Tatum v. R.J. Reynolds Tobacco Co.*, 254 F.R.D. 59, 64 (M.D.N.C. 2008) (noting that "[t]he commonality requirement is relatively easy to satisfy") (quoting *Buchanan v. Consol. Stores Corp.*, 217 F.R.D. 178 187 (D. Md. 2003)). The Parties have enumerated various common questions which show the requirement is met, (Dkt. No. ____), such as whether "Defendant mislabeled its Flushable Wipes so as to have consumers believe that its Flushable Wipes will not cause harm to sewer systems in their area" and "whether Defendant's Flushable Wipes are safe for sewer systems."

The typicality requirement of Rule 23(a)(3) is also met. Typicality requires the class representatives' claims to be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality is also satisfied if the plaintiff's claim is not "so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim. That is not to say that typicality requires that the plaintiff's claim and the claims of class members be perfectly identical or perfectly aligned." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466-67 (4th Cir. 2006). Here, there is a sufficient link between Plaintiff's claims and those of absent class members. Like absent class members, Plaintiff is a STP Operator which has allegedly suffered damages caused by flushable wipes. *See* (Dkt. No. ____) (describing similar alleged harms suffered by STP Operators outside of South Carolina). In sum, Plaintiff and the Settlement

Class Members' claims arise out of the same alleged course of conduct by Defendants and are based on identical legal theories. Accordingly, the typicality requirement is met. *Deiter*, 436 F,3d at 466 ("The essence of the typicality requirement is captured by the notion that 'as goes the claim of the named plaintiff, so goes the claims of the class.'").

The Court further finds that Plaintiff and its counsel are adequate representatives of the Settlement Class. In reaching this determination, the Court has considered whether the proposed class representative will fairly and adequately protect the interests of the class. *Knight v. Lavine*, No. 1:12-CV-611, 2013 WL 427880 at *3, 2013 U.S. Dist. LEXIS 14855 (E.D. Va. Feb. 4, 2013).

First, the Court finds that the Plaintiff has no interests that are antagonistic to the interests of the Settlement Class and is unaware of any actual or apparent conflicts of interest between it and the Settlement Class.

Second, the Court finds proposed Class Counsel to be competent to undertake this litigation. Class Counsel have extensive experience in class actions, including with litigating claims like those here. Class Counsel have also demonstrated robust prosecution of analogous class claims in *Commissioners of Public Works of the City of Charleston v. Costco Wholesale Corp., et al.*, No. 2:21-cv-00042-RMG (D.S.C.) (the "*Charleston* Action"). Accordingly, the Court is satisfied Plaintiff and Class Counsel – Robbins Geller Rudman & Downd LLP and AquaLaw PLC – are adequate representatives of the conditional Settlement Class under Rule 23(a)(4).

In addition to the requirements of Rule 23(a), a proposed class action must satisfy one of the sections of Rule 23(b). *See EQT Prod. Co. v. Adair*, 764 F.3d 347, 357 (4th Cir. 2014). With respect to Rule 23(b)(2), parties seeking class certification must show that the defendants have "acted or refused to act on grounds generally appliable to the class, thereby making appropriate final injunctive relief … with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2).

The Court finds that as to the Settlement Class, Defendant has acted on grounds generally appliable to the class as a whole. Here, the Settlement Agreement treats all Settlement Class Members alike in granting them the benefits of the relief Defendant would provide. As discussed above, Defendant would, *inter alia*, agree to alter certain products and provide for new labeling on others. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 131 S. Ct. 2541, 2557, 180 L.Ed.3d 374 (2011) ("The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.") (citation omitted). The Proposed Settlement thus satisfies the elements of Rule 23(b)(2).

In sum, for the sole purpose of determining: (i) whether this Court should finally approve the Proposed Settlement as fair, reasonable, and adequate; and (ii) whether the Court should dismiss this litigation as against Defendants as detailed in the Settlement Agreement, the Court hereby certifies a conditional settlement class as follows:

1. Settlement Class: All STP Operators in the United States whose systems were in operation between May 9, 2021 and the date of preliminary approval.

2. Excluded from the Settlement Class are counsel of record (and their respective law firms) for any of the Parties, employees of Defendant, and any judge presiding over this action and their staff, and all members of their immediate families.

If the proposed Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any other reason, the Settlement Class shall be decertified; the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any party and shall not be deemed or

construed to be an admission or confession by any party of any fact, matter, or proposition of law; all parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court; and the Parties shall be permitted to pursue their respective appeals to the United States Court of Appeals for the Fourth Circuit.

B. Appointment of Class Counsel and Class Representative

Having certified the settlement class under Rule 23(b)(2), the Court is now required to appoint Class Counsel under Rule 23(g). Fed. R. Civ. P. 23(g)(1)(A). Having considered the work Plaintiff's counsel have done in identifying and investigating potential claims in this action, counsel's experience in handling complex litigation, counsel's knowledge of the applicable law, and the resources counsel will commit to representing the class, the following law practices are designated Class Counsel under Rule 23(g)(1):

1. Robbins Geller Rudman & Dowd LLP; and
2. AquaLaw PLC

Plaintiff is appointed Class Representative.

C. Preliminary Approval of the Proposed Settlement

At the preliminary approval stage, the Court must decide as to the fairness, reasonableness, and adequacy of the settlement terms. Fed. R. Civ. P. 23(e)(2); *see also* Manual for Complex Litigation (Fourth) ("MCL"), § 21.632 (4th ed. 2004). The Fourth Circuit has bifurcated this analysis into consideration of the fairness of settlement negotiations and the adequacy of the consideration to the class. *In re Jiffy Lube Secs. Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991). However, at the preliminary approval stage, the Court need only find that the settlement is within "the range of possible approval." *Scott v. Family Dollar Stores, Inc.*, No. 3:08-cv-00540-MOC-DSC, 2018 WL 1321048, at *3, 2018 U.S. Dist. LEXIS 41908 (W.D.N.C. Mar. 14, 2018); *Horton*

v. Merrill Lynch, Pierce, Fenner & Smith, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (citing *In re Mid-Atlantic Toyota Antitrust Litigation*, 564 F. Supp. 1379, 1384 (D. Md. 1983)).

The Fourth Circuit has set forth the factors to be used in analyzing a class settlement for fairness: (1) the posture of the case at the time the proposed settlement was reached, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the settlement negotiations, and (4) counsel's experience in the type of case at issue. *Jiffy Lube*, 927 F.2d at 158-59.

The Court finds that the settlement reached in this case was the result of a fair process. Although negotiated during the preliminary stages of the litigation, as outlined in Plaintiff's motion, the proposed settlement was the result of an investigation and communications between the Parties over the course of several months. (Dkt. No. __ at __) Significantly, Plaintiff states that it and its counsel drew on their extensive knowledge of the merits of the Parties' likely respective positions and Plaintiff and counsel's involvement in several flushable wipes-related actions, including in the intensely-litigated *Charleston* Action. (*id.* at __) The negotiations here were a natural extension of five successful settlements in the *Charleston* Action, and the settlement here, in turn, parallels the terms of those settlements and furthers the goal of the Parties to ensure Defendants' wipes are truly flushable and consistent with international flushability guidelines supported by the wastewater industry. (*id.* at __)

Therefore, while the Proposed Settlement was negotiated before discovery was complete, the Court finds that the Parties' experience litigating similar issues and Class Counsel's experience negotiating previous flushable wipes settlements indicate this settlement was negotiated at arms' length. *See In re Lupron Marketing and Sales Practices Litigation*, 228 F.R.D. 75, 94 (D. Mass. 2005) ("The storm warnings indicative of collusion are a 'lack of significant discovery and [an

extremely expedited settlement of questionable value accompanied by an enormous legal fee.'") (quoting *In re General Motors Corp. Pick-up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 801, 31 Fed. R. Serv. 3d 845 (3d Cir. 1995)).

The Settlement Agreement provides for injunctive relief requiring Defendant to (1) meet certain flushability standards, (2) submit to periodic independent testing, and (3) implement modifications to the packaging of non-flushable wipes. (Dkt. No. ___). Additionally, Plaintiff states, and the Court finds, that the substantive terms of the Settlement Agreement are materially similar to the already approved settlements in recent class action settlements between Plaintiff and other flushable wipes manufacturers, retailers, and distributors, including Kimberly-Clark Corporation, Costco Wholesale Corporation, CVS Health Corporation, The Procter & Gamble Company, Target Corporation, Walgreen Co., and Wal-Mart, Inc. *See generally Charleston* Action.

The Court finds that the Settlement Agreement is within the range of possible approval. *See Toyota Antitrust Litigation*, 564 F. Supp. at 1384. In an analysis of the adequacy of a proposed settlement, the relevant factors to be considered may include: (1) the relative strength of the case on the merits, (2) any difficulties of proof or strong defenses the plaintiff and class would likely encounter if the case were to go to trial, (3) the expected duration and expense of additional litigation, (4) the solvency of the defendants and the probability of recovery on a litigated judgment, (5) the degree of opposition to the proposed settlement, (6) the posture of the case at the time settlement was proposed, (7) the extent of discovery that had been conducted, (8) the circumstances surrounding the negotiations, and (9) the experience of counsel in the substantive area and class action litigation. *See Jiffy Lube*, 927 F.2d at 159; *West v. Cont'l Auto., Inc.*, No. 3:16-cv-00502, 2018 WL 1146642 at *4, 2018 U.S. Dist. LEXIS 26404 (W.D.N.C. Feb. 5, 2018).

Plaintiff argues that continued litigation against Defendant poses substantial risks that make any recovery uncertain and that the immediacy and certainty of obtaining injunctive relief weigh in favor of finding the Proposed Settlement as adequate. Further, the Court observes that the injunctive relief provided against Defendant in the Settlement Agreement mirrors significant portions of the relief which Plaintiff affirmatively seeks in its Complaint. In sum, the likelihood of substantial future costs weighed against the uncertainty of future litigation favors approving the proposed settlement. *See Sims v. BB&T Corp.*, No. 1:15-CV-732, 2019 WL 1995314, at *4-5 (M.D.N.C. May 6, 2019).

D. Notice of the Proposed Settlement Class

Notice to class members upon settlement of class claims should be conducted in a "reasonable manner." *See* Fed. R. Civ. P. 23(e)(1)(B); *see also* Wright and Miller's Federal Practice and Procedure, Civil § 1786 ("The first specific question to be dealt with in determining the quality of the notice typically is whether individual notice must be given. In actions under Rules 23(b)(1) and 23(b)(2), the court is only directed to give 'appropriate notice to the class,' leaving the type of notice discretionary."); 2 McLaughlin on Class Actions § 6.17 (17th ed.) (noting "courts have consistently held that first-class mail address to class members' last known address and publication of a summary notice in appropriate press medium are sufficient to satisfy the notice requirements of … 23(e) for advising class members of a proposed settlement").

As outlined in the Settlement Agreement (*See* Dkt. No. ____) and in Plaintiff's motion (Dkt. No. ____), "Notice" consists of the following: (1) First-Class direct mailed notice to the publicly owned sewage treatment plant operators located in the United States, (Dkt. No. ___); (2) Publication of a Summary Notice, Ex. C, (*id.* at ____), of one-half page in size once in both the print and online editions of the Water Environment Federation's magazine *Water Environment &*

Technology, (*id.*); (3) Transmittal by email of the Notice of Settlement, Ex. B, (*id.* at ___), to roughly 23 national and local water organizations (*id.* at ___); (4) a Settlement website (*id.* at ___); (5) Publication of a Summary Notice via press release issued by the Parties (*id.* at ___); and (6) notice of the Proposed Settlement to federal and state officials as required by the Class Action Fairness Act of 2005 (*id.* at ___).

Based on the nature of the proposed injunctive relief, the Court finds the Notice plan as described in filings with the Court (Dkt. No. ___), is reasonable and adequate.

IV. Conclusion

For the reasons stated above, the Court **GRANTS** Plaintiff's motion for preliminary settlement approval (Dkt. No. ___). Within seven (7) days of the entry of this Order, the Parties shall file a Proposed Timeline for Proposed Settlement for the Court's consideration.

DATED: ____________________

____
THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE