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Transaction ID 66299271
Case No. S18C-06-009 CAK

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GARY and ANNA-MARIE CUPPELS, individually and on behalf of all others similarly situated, Plaintiffs,	)	
v.	)	C.A. No.: S18C-06-009 CAK
MOUNTAIRE CORPORATION, an Arkansas corporation, MOUNTAIRE FARMS, INC., a Delaware corporation, and MOUNTAIRE FARMS OF DELAWARE, INC., a Delaware corporation. Defendants.	)	TRIAL BY JURY OF 12 DEMANDED

NOTICE OF HEARING

PLEASE TAKE NOTICE that the attached Motion In Support of Class Counsel's Application For Attorneys' Fees and Reimbursement of Expenses will be presented on April 12, 2021 at 9:30 a.m.

BAIRD MANDALAS BROCKSTEDT, LLC

/s/ Stephen A. Spence
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Attorney for Gary and Anna-Marie Cuppels and those similarly situated

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GARY and ANNA-MARIE CUPPELS, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. MOUNTAIRE CORPORATION, an Arkansas corporation, MOUNTAIRE FARMS, INC., a Delaware corporation, and MOUNTAIRE FARMS OF DELAWARE, INC., a Delaware corporation. Defendants.	C.A. No.: S18C-06-009 CAK TRIAL BY JURY OF 12 DEMANDED

MOTION IN SUPPORT OF CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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Date: February 1, 2021

This class action arose out of alleged environmental pollution in the Millsboro area. Plaintiffs asserted negligence against Mountaire which included claims of property damage, personal injury, nuisance, and trespass.

Class counsel achieved a proposed settlement with Mountiare which represents the best possible outcome for the parties given the complexity of this case and the circumstances involved. The proposed settlement is $65,000,000.

The prosecution of this case was a tremendous effort by a team of eleven attorneys, multiple paralegals, and numerous other support staff, in addition to expert and attorney consultants. As explained in more detail below, the claims brought were innovative and complex, with every issue fiercely contested. Class counsel respectfully request an attorney fee of 25%, *i.e.*, $16,250,000, and, pursuant to an agreement with Mountaire, request the reimbursement of a portion of expenses limited to $2,500,000. In support of this request, class counsel stats as follows:

I. Introduction and Statement of Relevant Facts

This litigation arose from allegations that the defendants Mountaire Corporation, Mountaire Farms of Delaware, Inc., and Mountaire Farms, Inc. (collectively, "Mountaire") caused groundwater contamination and air pollution that impacted the health and property of residents in the Millsboro area.

The settlement negotiated by class counsel is in the amount of $65,000,000. *See* Settlement Agreement, Exhibit 1. Class counsel respectfully request that the

Court award an attorney fee in an aggregate amount equal to 25% of the amount of the settlement: $16,250,000. The parties discussed the costs incurred by class counsel and have agreed that class counsel's request for reimbursement of expenses be limited to $2,500,000. *See* Itemization of Costs, Exhibit 2.[1]

The requested attorney fee and expense reimbursement is reasonable and warranted in view of class counsel's effort and the nature of the litigation, and is supported by the applicable standards and factors set forth by Delaware law—particularly in view of the significant result achieved by class counsel.

II. Background

A. Relevant Factual Background

On June 13, 2018, Plaintiffs Gary and Anna-Marie Cuppels, in their individual capacity and on behalf of similarly situated individuals (collectively, "Plaintiffs"), filed suit against Mountaire related to the operation of a chicken processing facility in Millsboro, Delaware. (D.I. 3). Plaintiffs later filed two amended complaints, with the operative complaint filed on June 29, 2020 (D.I. 423).

Plaintiffs alleged that Mountaire disposed of contaminated wastewater and liquefied sludge on lands near Plaintiffs' residences. Plaintiffs alleged that this

[1] Class counsel has spent well over $2,500,000 in expenses and costs for the successful prosecution of the claims for class members. But class counsel agreed with Mountaire to cap their reimbursement request to obtain additional settlement funds for disbursement to class members.

wastewater and sludge have seeped into the groundwater throughout the area, causing nitrates and other contaminants to enter Plaintiffs' drinking water wells and potentially cause health effects and property diminution.

Plaintiffs also alleged that Mountaire's wastewater treatment plant and their spray irrigation and sludge disposal operations emit air pollutants. This includes malodorous hydrogen sulfide and ammonia that reach Plaintiffs' residences at levels causing Plaintiffs to suffer health effects and to endure nuisance conditions preventing and devaluing the use of their properties.

B. The Litigation and Discovery

This matter has been extensively litigated. Over the course of the past thirty-six months,[2] class counsel tirelessly and relentlessly investigated and pursued this action, expending substantial time and effort. This endeavor achieved extraordinary results, including Mountaire's agreement to the settlement terms and jointly seeking preliminary certification of a class for settlement purposes.

The pursuit of this case on behalf of the class was a vast endeavor, only possible through the persistent and steadfast work of a large legal team dedicating substantial time, resources, and effort to ultimately achieve this settlement. The Court has been keenly aware of the difficulty class counsel faced, and the legal

[2] While the Complaint was filed on June 13, 2018, the work of class counsel began six months earlier in December 2017.

hurdles imposed by Mountaire's zealous persistence of a comprehensive legal defense. The Court, on occasion, has referred to portions of this litigation as a "battle,"[3] an apt and accurate description.

Class counsel's efforts began with an extensive pre-suit investigation. Class counsel spent six months gathering information, litigating FOIA requests, and reviewing documents and evidence to understand the situation and develop their legal theories. To this end, class counsel engaged the services of an initial fifteen experts in the fields of hydrogeology, engineering, air exposure, air emission modeling techniques, and wastewater engineering. Class counsel also gathered and collected hundreds of well water samples and visited the homes of dozens of individuals who were impacted by Mountaire's conduct. And class counsel also engaged with Millsboro area residents in multiple town hall meetings to explain the class litigation and issues involved, inform the community of the environmental issues, and learn more about the effect of Mountaire's activities on the community.

After this extensive investigation, class counsel drafted and filed a complaint pleading a detailed factual history and many causes of action, some seeking to expand existing Delaware law. In a unique approach showing the seriousness of their endeavor, class counsel attached to the complaint opinions from fifteen experts.

[3] "The battle over jurisdiction has lasted almost two years, and of course, significantly delayed the case." June 29, 2020 Order Granting Plaintiffs' Motion for Sanctions, pg. 2.

Mountaire responded with motions to dismiss that led to two rounds of briefing, with the pleadings stage stretching on for nearly 18 months.

Behind the scenes, class counsel devoted much of their professional lives to prosecuting this case. Class counsel engaged in at least bi-weekly strategy and litigation conferences, which lasted several hours to full days in order to strategize, analyze legal theories, and steer the litigation towards a positive result. This involved thorough research into all the legal and factual issues that arose during an evolving case. And, because the case involved many complicated technical, scientific, and medical issues, class counsel remained constantly engaged with twenty-six experts in hydrogeology, engineering, air exposure, air emission modeling techniques, and wastewater engineering, as well as medical doctors for an evaluation of the damages suffered by class members.

The evidence gathering and discovery process required a herculean effort. To develop a comprehensive factual record covering two decades. Class counsel and their team worked with their clients and community members to:

- Collect detailed medical histories and medical records;
- Collect water sample data from over two hundred wells;
- Conduct over eight hundred seventy-five interviews;
- Obtain two hundred forty-two medical questionnaires; and
- Obtain three hundred twenty-eight property damage questionnaires;

And, as the Court knows well, discovery here was extensive, including:

- Over 30 depositions, including experts, plaintiffs (for class discovery), Mountaire employees, Rule 30(b)(6) witnesses, and class representatives.
- Several rounds of extensive jurisdictional, class, and merits written discovery;
- Reviewed hundreds of thousands of documents,
- Site inspections at Mountaire facilities and class members' residences.

This case involved motions practice at every stage and on every issue. The parties engaged in two rounds of briefing on Mountaire's Rule 12 motions on personal jurisdiction, negligence pre se, and class allegations. Later there was motion practice on the dispositive issues of subject matter jurisdiction and class certification. Along the way, the parties filed motions with the Special Discovery Master and exceptions with the Court on countless discovery issues. Plaintiffs also successfully resisted the certification of interlocutory appeals to the Delaware Supreme Court. In total, the case involved at least forty-one contested motions, some of which involved multiple responses, replies, full briefing, and oral argument.[4]

In the midst of this hard-fought litigation, class counsel negotiated a successful $65,000,000 settlement. This resolution was partly the product of substantial alternative dispute resolution efforts, including a lengthy mediation

[4] *See* Exhibit 4 for a list of class counsel's motions and briefing submissions.

session with mediators David White and Eric Green in 2019, that was followed by several meet and confer sessions with Mountaire in 2020. After reaching a settlement in principle on key terms, the parties engaged in an intensive process over several months to agree to and document the many specifics of the settlement. This effort led to the detailed settlement memorialized in the Settlement Agreement attached as Exhibit 1.

C. Expenses

Class counsel seeks recovery of $2,500,000 in expenses incurred in connection with the litigation of this matter. These expenses include costs for expert witnesses, certain consulting experts, the Special Discovery Master, mediators, electronic discovery processing and hosting, filing fees, court reporting services, and other case related expenses. Where applicable, invoices of expert witnesses who assisted in the parallel federal court proceeding have been reduced by the amount attributable solely to the federal court litigation.

While class counsel incurred substantially greater than $2,500,000.00 in costs in connection with this matter, class counsel limits their request that amount in accordance with the parties' Settlement Agreement. Omitted from this request for reimbursement, for example, is in excess of $1,100,000 in costs incurred by class counsel for their environmental legal consultants, who were compensated on an hourly basis for participating in biweekly meetings through the duration of this case,

coordinating with experts, reviewing motions and memoranda, and assisting in document review.

A summary of the costs for which class counsel seeks reimbursement is provided in Exhibit 2.

***

In conclusion, class counsel strongly believe this settlement, their request for attorneys' fees, and their request for the reimbursement of expenses are fair, reasonable, adequate, and appropriate under applicable Delaware law. These opinions reflect their knowledge and their expertise in class action litigation and mass tort litigation. Furthermore, these opinions follow extensive investigation, analysis, and prosecution of the legal and factual underpinnings of this litigation, and reflect the substantial risks of recovering less compensation in the future, or none at all, in the event of an unfavorable outcome during the motions, trial, or appellate phases of this litigation.

III. Legal Analysis

It is well-settled in Delaware that an attorney who prosecutes a lawsuit that results in the creation of a fund or benefit may be awarded fees. The common fund doctrine permits a successful plaintiff's attorney to request an award of attorneys' fees from the settlement fund. *Crowhorn v. Nationwide Mut. Ins. Co.*, 836 A.2d 558, 561, 564 (Del. Super. 2003). "The Supreme Court has stated, 'Class action suits

which result in the recovery of money exemplify the class creation of a common fund." *Id*. at 564 (citing *Goodrich v. E.F. Hutton Group, Inc.*, 681 A.2d 1039, 1044 (Del. 1996)). "In the class action context, the cost of litigation, including counsel fees, are paid out of the common fund, in this case, the settlement fund." *Jane Doe 30's Mother v. Bradley*, 64 A.2d 379, 402 (Del. Super. 2012).

Class counsel seeks an award using the percentage approach plus expenses, which is the method Delaware courts apply for an award of attorneys' fees. *See Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1259 (Del. 2012) (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142 (Del. 1980)). Accordingly, the Declaration of Professor Charles Silver on the Reasonableness of Class Counsel's Request for Attorney's Fee ("Decl."), attached as Exhibit 3, is submitted in support of this application. Professor Silver has made the study of attorneys' fees the main focus of his academic career and has been published in over two dozen articles on empirical studies of fee awards in the class action context. *Id*. Professor Silver's declaration provides a detailed legal and empirical analysis on the reasonableness of the 25% fee sought by class counsel through an analysis of that percentage in the context of fee awards for other class actions of this magnitude. *Id.*

Delaware courts generally follow a multiple factor approach to determine attorneys' fee awards in class actions, in order for a Court to reach "an equitable award of attorneys' fees." *Crowhorn*, 836 A.2d at 565 (citing *Sugarland*, 420 A.2d

142). "In Delaware, the courts are not bound by a particular methodology in determining appropriate counsel fees under the common fund doctrine." *Jane Doe 30's Mother*, 64 A.2d at 401.

Delaware law requires the reviewed of a fee application based on five factors often called the "Sugarland" factors.

1. The benefits achieved;
2. The time and effort of counsel;
3. The relative complexities of the litigation;
4. Any contingency factor; and
5. The standing and ability of counsel involved.

Applied to this case, the Court should conclude that class counsel's attorneys' fee request is appropriate, well-reasoned, and results in an equitable award.

1. Benefit Achieved

The benefit achieved is the "most important of the Sugarland factors." *Theriault*, 51 A.3d at 1255. The measure of the benefit achieved includes both considerations of ultimate recovery and the value added by class counsel. *Sugarland*, 420 A.2d at 151. If the benefit achieved is quantifiable, then it is typical for Delaware courts to apply a "percentage-of-the-benefit approach" to reach an equitable fee award. *Jane Doe 30's Mother*, 64 A.3d at 401.

Applied here, the creation of a fund in the amount of $65,000,000 through the efforts of class counsel is a very substantial benefit achieved. *First*, class counsel has successfully created a substantial fund to compensate class members injured and

impacted by Mountaire. This fund will provide class members with compensation for personal injuries, diminution of their property value, medical bills, future medical care, and water filtration systems or alternative water supply. *Second*, this settlement eliminates the risk and uncertainty of trial, avoids the possibility of post-trial appeals, and foregoes the possibility that, without class certification, thousands of burdensome trials would be necessary. *Third*, settlement removes any doubt that Mountaire will continue its business operations in Delaware in the event of a large verdict. $55,000,000 has already been set aside to compensate the class and another $10,000,000 will be paid by December 31, 2021. This settlement ensures that the victims will be property and adequately compensated without the fear of Mountaire's bankruptcy or insolvency. Furthermore, settlement of this matter benefits Millsboro, Sussex County, and the state of Delaware by allowing Mountaire to continue its business and employ more than 8,000 workers. In sum, the settlement achieved is remarkable and of great benefit to the Millsboro residents who need and deserve to be compensated.

2. The Time and Effort of Counsel

The legal team involved eleven lawyers, multiple paralegals, and several other support staff from two law firms. Before filing the original complaint, counsel spent six months investigating the case and had retained 15 experts in various fields to assess the nature and extent of the environmental harm. For the last three years,

members of the law firms have devoted a substantial part of their professional lives to this litigation.[5]

The prosecution of this case required extensive factual investigation including client interviews with nearly 900 class members, procurement of nearly 250 extensive medical questionnaires, more than 300 property damage questionnaires, and more than 200 well tests.

Class counsel communicated daily by email and telephone, held at least bi-weekly teleconferences or in person meetings to work through a web of obstacles to achieve the settlement. Communication with the class was also critical and counsel conducted several town hall meetings and sent update letters every 60-90 days.

At the core of this litigation are more than 3 million pages of documents related to Mountaire's practices over the last two decades. To obtain the information necessary to understand the environmental harm caused by Mountaire, class counsel had to litigate against the Mountaire, DNREC, and the EPA. Notably, Mountaire objected to every single discovery request propounded by Plaintiffs, requiring extensive motion practice before a Special Discovery Master and the Court.

It was also necessary to inspect Mountaire facility, including the wastewater treatment plant and spray and sludge fields. Along with in-person, on-site

[5] "I start by saying from everything I've seen, all counsel and plaintiff's counsel have worked hard on this case and deserve to be substantially compensated." January 6, 2020 Teleconference with the Court and the parties, pg. 26:1-4.

inspections that included counsel and their experts, Plaintiffs used drone pilots to obtain footage various times of the year.

The parties also engaged in extensive deposition discovery over several months that included fact witnesses, 30(b)(6) designees, and class members. Litigating this matter at the height of a global pandemic also complicated nearly every aspect of the case from March 2020 on.

Simultaneously, while pursing discovery and depositions, class counsel was also engaged in substantial briefing on substantive case issues, including defending against multiple dispositive motions which required extensive briefing on jurisdiction, standing, and class certification issues. Thousands of pages of motions and briefing were submitted, and class counsel spent thousands of hours preparing for argument or strategizing responses to these legal challenges.

Throughout this process, class counsel engaged in protracted alternative dispute resolution. This included production of a 45-minute video, expert reports prepared specifically for mediation, attending a two-week mediation in 2019 followed by extensive meet and confers in 2020. These sessions included presentations from the parties and Plaintiffs' experts.

The settlement achieved resulted from a comprehensive and dedicated 36-month march in which every document was reviewed, every issue was litigated, and no stone was left unturned.

3. The Relative Complexity of the Litigation[6]

As noted by this Court, the legal issues involved here were complicated and vigorously contested.[7] The legal issues included fact-intensive jurisdictional rulings and principles of class action law that require analyzing legal decisions and precedent from Delaware courts and many other courts from around the country. The nature of the litigation required the appointment of a Special Discovery Master to decide dozens of discovery disputes, some of which issues of first impression.

The legal team also retained preeminent legal specialists in insurance coverage, electronic discovery, and class action practice, who assisted on the complex legal issues presented in this case.

On top of complex legal issues, the case centered on sophisticated environmental issues, which required the involvement of 26 experts and two consultants. Class counsel spent thousands of hours consulting with experts, reviewing expert reports, and refining the detailed scientific, environmental, and engineering opinions. This required consultations and study in hydrogeology,

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[6] "One of the secondary Sugarland factors is the complexity of the litigation. All else equal, litigation that is challenging and complex supports a higher fee award." *In re Activision Blizzard, Inc. S'holder Litig*., 124 A.3d 1025, 1072 (Del. Ch. 2015).

[7] "The complexity of the case and the press of other business strains my ability to follow my personal preference." October 8, 2020 Order of the Court Denying Defendants' Motion to Strike, pg. 3; "The case before me is a serious, high stakes litigation." Junes 29, 2020 Order of the Court Granting Plaintiffs' Motion for Sanctions, pg. 1.

engineering, air exposure, air emission modeling techniques, wastewater engineering, as well as medical doctors for an evaluation of class members' damages.

4. Contingent Representation[8]

Class counsel took on this matter on a contingent fee basis. At the time of the initial engagement, no one knew:

1. The nature and extent of the harm;
2. The number of people who had suffered property damage or personal injuries;
3. The availability of potential insurance coverage;
4. Whether the defendants were solvent and whether liability could be established as each defendant;
5. Whether there would be enough asset to adequately compensate the class if a Delaware court could not exercise personal jurisdiction over Mountaire Corporation;

Class counsel's pursuit of this case as a contingent fee matter involved taking great risk. At the time of the initial engagement, class counsel had no idea whether they would ever be able to recover any money in this case. The case was fraught with issues and uncertainty, with Mountaire intent on hard-nosed litigation. The risk of no recovery was genuine, right up until the moment the case was settled. Despite these uncertainties, class counsel accepted this matter and invested thousands of

[8] Another secondary Sugarland factor is the degree of contingency risk that counsel undertook. Some contingency risk is a prerequisite for a risk-based award. *In re Activision*, 124 A.3d at 1073.

hours of attorney time and incur expenses far greater than the $2,500,000 sought in reimbursement of costs.

Mountaire also challenged class certification on multiple fronts. Had certification been denied, class counsel would have been left with the extraordinary task of litigating hundreds of individual lawsuits against Mountaire, each of which would involve significant litigation costs, substantially reducing the feasibility of pursing these matters. Such an outcome would have put the millions of dollars invested by class counsel at risk.

As the case progressed, class counsel took on the cost and significant risk of completing the litigation at a time when no settlement offer had been made and the entire case was subject to defenses and dispositive motions that could have led to a complete defense victory. With this came the risk of losing years of time dedicated specifically to this litigation, and millions of dollars in costs which were required to fully pursue the investigation and prosecution of Plaintiffs' claims.

The fee sought by class counsel here is in line with fees awarded in other relevant Delaware class actions. *See Crowhorn*, 836 A.2d at 565 (awarding a $1,650,000 (33%) fee from a $5,000,000 settlement fund); *Jane Doe 30's Mother*, 64 A.2d at 401, 404 (awarding a $27,708,750 (22.5%) fee in a case that settled in the early stages of litigation.); *Sugarland*, 420 A.2d at 142 (affirming a $1,213,609 (20%) fee award). "A study of recent Delaware fee awards finds that the average

amount of fees awarded when derivative and class actions settle for both monetary and therapeutic consideration is approximately 23% of the monetary benefit conferred; the median is 25%." *Theriault*, 51 A.3d at 1260 (citing Richard A. Rosen, David C. McBride & Danielle Gibbs, *Settlement Agreements in Commercial Disputes: Negotiating, Drafting and Enforcement*,§ 27.10, at 27–100 (2010)).

Relatedly, class counsel has executed retainer agreements with about 900 area residents that include a 35% attorney fee provided the matter resolved without trial, and without appeal.[9] Despite the agreement of many retained clients for a higher portion of the settlement, class counsel is only seeking 25% of the settlement as compensation for their substantial efforts.

Finally, the Notice was approved and sent to class members. Class counsel's intent to apply for attorneys' fees of up to 25% and up to $2,500,000 in expenses was disclosed in the Notice. To date, no objections have been received.

5. The Standing and Ability of Counsel

It is respectfully suggested that this Court is familiar with all of class counsel through their efforts here and in prior cases, and otherwise is aware of the attributes of counsel and their time admitted to the bar. Lead counsel in this case were Philip C. Federico and Chase T. Brockstedt. This Court is familiar with their experience and work product. Additionally, Brent Ceryes and Stephen A. Spence were deeply

[9] The fee would increase to 40% if the case went to trial.

involved through the litigation. These lawyers were supported by a team of associates, paralegals, assistants, and consultants with experience litigating complex and difficult cases. The results in this case illustrate the standing and ability of counsel and thus speak for themselves.

IV. Conclusion

WHEREFORE, for all the reasons stated above, class counsel Baird Mandalas Brockstedt, LLC and Schochor, Federico & Staton, P.A., respectfully request that this Court: (1) approve their fee application and award attorneys' fees in the amount 25% of the settlement amount: $16,250,000; (2) approve payment to class counsel of the agreed on amount of $2,500,000 for reimbursement of expenses and; and (3) enter an Order to that effect.

BAIRD MANDALAS BROCKSTEDT, LLC

/s/ Chase T. Brockstedt
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Date: February 1, 2021

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GARY and ANNA-MARIE CUPPELS, Individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	C.A. No.: S18C-06-009 CAK
MOUNTAIRE CORPORATION, an Arkansas corporation, MOUNTAIRE FARMS INC., a Delaware corporation, MOUNTAIRE FARMS OF DELAWARE, INC., a Delaware Corporation,	)	
Defendants.	)	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release ("Agreement") is made and entered into by and between Gary and Anna-Marie Cuppels, Larry Miller, individually and as Personal Representative of the Estate of Barbara Miller, Michael and Anne Harding, and Ronald and Patricia Tolson (collectively, "Class Representatives"), as individuals (and, in the case of Larry Miller, also as Personal Representative of the Estate of Barbara Miller) and on behalf of all others similarly situated (collectively with the Class Representatives, "Plaintiffs"), and Defendants Mountaire Corporation ("MC"), Mountaire Farms Inc. ("MFI"), and Mountaire Farms of Delaware, Inc. ("MFODI") (collectively, "Defendants") (collectively

with Plaintiffs, the "Parties") and will be submitted to the Court for approval pursuant to Delaware Superior Court Rule of Civil Procedure 23(e).

RECITALS

WHEREAS, Plaintiffs filed a Class Action Complaint and two amended class action complaints in this matter captioned *Cuppels, et al. v. Mountaire Corporation, et al.*, C.A. No.: S18C-06-009 CAK (the "Action") alleging various claims against Defendants for personal injuries, property damages, remediation, and other damages and relief related to alleged environmental contamination at or emanating from MFODI's Millsboro, Delaware poultry processing facility, including its poultry processing plant, spray irrigation fields, land application fields, and related property on and nearby Route 24 east of Millsboro, Delaware (the "Facility");

WHEREAS, the presently operative claims are contained in the Second Amended Class Action Complaint, filed by Plaintiffs on June 29, 2020;

WHEREAS, Plaintiffs moved the Court to certify a class action comprised of two classes of Plaintiffs for purposes of this Action over the opposition of Defendants, a groundwater class and an air class;

WHEREAS, Plaintiffs' motion for class certification, and Defendants' opposition, are pending before the Court;

WHEREAS, the Parties have engaged in extensive motion practice and discovery in this Action;

WHEREAS, Defendants have denied all liability with respect to all claims in this Action, including the assertion that this Action should be certified as a class action;

WHEREAS, Plaintiffs and Defendants now seek to resolve the Plaintiffs' claims that are raised in or could have been raised in this Action as further provided herein, and they have agreed to the terms of this Agreement;

WHEREAS, the State of Delaware Department of Natural Resources and Environmental Control ("DNREC") filed a complaint against MFODI on June 4, 2018 in the U.S. District Court for the District of Delaware ("District Court") captioned *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, Case No. 18-00838-MN-JLH (D. Del.) (the "District Court Case") for alleged violations related to operations at the Facility and environmental contamination at or emanating from the Facility;

WHEREAS, Gary and Anna-Marie Cuppels, in their capacities as proposed intervenors ("Intervenors"), moved to intervene in the District Court Case on June 29, 2018, and were granted intervention by the District Court on March 25, 2019;

WHEREAS, DNREC and MFODI lodged a proposed consent decree with the District Court on December 16, 2019, and subsequently lodged the First

Amended Agreement and [Proposed] Consent Decree ("First Amended Consent Decree") on May 29, 2020, which Intervenors oppose;

WHEREAS, the Intervenors in the District Court case have also filed a motion for a preliminary injunction against MFODI, which is currently held in abeyance, and lodged a proposed complaint in intervention alleging various claims under federal law against MFODI;

WHEREAS, the Intervenors in the District Court Case have agreed to resolve their claims against MFODI in the District Court Case in a separate settlement in that case, including requirements for MFODI to conduct additional remedial measures beyond those required by the First Amended Consent Decree and a payment to Intervenors' counsel (the same as Plaintiffs' Counsel here) for their attorneys' fees, costs, and expenses in the District Court Case; and

WHEREAS, the Parties agree that this Agreement has been negotiated at arms' length and in good faith, and that settlement will avoid the expense, inconvenience, and uncertainty of continued litigation.

NOW, THEREFORE, IT IS AGREED by the undersigned on behalf of the Plaintiffs and Defendants, that the Action be settled and dismissed with prejudice in regards to all of Plaintiffs' claims and requests for relief as set forth herein, subject to Court approval under Delaware Superior Court Rule of Civil Procedure 23, on the following terms and conditions:

DEFINITIONS

1. The following definitions are applicable to this Agreement. Definitions contained elsewhere in this Agreement shall also be effective.

2. "Action" has the meaning set forth in the Recitals.

3. "Agreement" means this Class Action Settlement Agreement and Release and all exhibits hereto.

4. "Attorneys' Fees" mean all fees for services, exclusive of Costs and Expenses, that Plaintiffs' counsel claim or could claim they are entitled to in connection with their investigation into, development of, litigation of, and settlement of this Action. For purposes of this Agreement, Attorney's Fees shall not include any fees in connection with the District Court Case.

5. "Bar Date" means the deadline by which Class Members must register to participate in the claims process pursuant to this Agreement.

6. "Claims Adjudicator" means the third party or parties selected by the Plaintiffs and approved by the Court to adjudicate the claims made by the Participating Class Members.

7. "Claims Administrator" means the third party selected by the Plaintiffs, consented to by the Defendants, and approved by the Court to administer the QSF (as defined in Paragraph 37) and the claims process in accordance with this Agreement.

8. "Class Members" means those Persons who are part of the Settlement Class, and "Class Member" means any one such Person.

9. "Class Period" means May 1, 2000 to the date of the Court's Preliminary Approval.

10. "Class Representatives" mean Gary and Anna-Marie Cuppels (except to the extent they are acting in their capacity as Intervenors in the District Court Case), Larry Miller, individually and as Personal Representative of the Estate of Barbara Miller, Michael and Anne Harding, and Ronald and Patricia Tolson.

11. "Conciliatory Agreement" means the agreement by and between DNREC, MFI and MFODI dated December 13, 2019.

12. "Costs and Expenses" mean any and all costs and expenses (including but not limited to costs and expenses for filing fees, court reporters, expert witnesses, consultants, litigation support, environmental sampling and analysis, supplies, travel, salaries, overhead, and incidentals) incurred by Plaintiffs or Plaintiffs' counsel in connection with the investigation into, development of, litigation of, settlement of this Action, and implementation of this Agreement. Cost and Expenses shall not include any costs and expenses in connection with the District Court Case.

13. "Court" means the Superior Court of the State of Delaware.

14. "Date of Final Approval" means the later of the date of the Court's final approval of this Agreement, the date of the expiration of the time for filing appeals (if no appeals are filed), and, should any appeals be filed, the date on which any and all appeals have been resolved in favor of upholding the final approval of the Agreement, including the running of the time for reconsideration or further appeals of that favorable resolution.

15. "Day" means a calendar day unless expressly stated otherwise.

16. "Defendants" mean MC, MFI, and MFODI, and "Defendant" means any one of them.

17. "District Court" has the meaning set forth in the Recitals.

18. "District Court Case" has the meaning set forth in the Recitals.

19. "DNREC" means the Delaware Department of Natural Resources and Environmental Control.

20. "Effective Date" has the meaning provided in Paragraph 80.

21. "Facility" has the meaning set forth in the Recitals.

22. "Final Approval" means a Court order, written or verbal, granting final approval of this Agreement under Delaware Rule of Civil Procedure 23.

23. "Final Approval Hearing" means the hearing, also known as a fairness hearing, at which the Court will consider the Parties' motion for final approval of this Agreement and will hear any objections to this Agreement.

24. "First Amended Consent Decree" means the First Amended Agreement and [Proposed] Consent Decree lodged with the District Court in the District Court Case on May 29, 2020. The First Amended Consent Decree shall be construed to include any successor consent decree agreed to by all parties in the District Court Case should the District Court Judge not approve the First Amended Consent Decree.

25. "Intervenors" has the meaning set forth in the Recitals.

26. "MC" means Mountaire Corporation.

27. "MFI" means Mountaire Farms Inc.

28. "MFODI" means Mountaire Farms of Delaware, Inc.

29. "Notice of Objection" means a Class Member's valid and timely written objection to this Agreement.

30. "Notice" means the Notice to be provided to all Class Members as described in Paragraph 55 and attached hereto as **Exhibit B**.

31. "Participating Class Members" means Class Representatives and all Class Members who do not submit a timely and valid Request for Exclusion on or prior to the Response Deadline.

32. "Parties" means Plaintiffs and Defendants, and a "Party" means any Plaintiff or Defendant.

33. "Person" means any individual or legal entity.

34. "Plaintiffs" means the Class Representatives as individuals (and, in the case of Larry Miller, also as Personal Representative of the Estate of Barbara Miller) and all others similarly situated as alleged in the Second Amended Complaint and shall be construed to include the Settlement Class.

35. "Plaintiffs' counsel" means Baird Mandalas Brockstedt, LLC and Schochor, Federico and Staton, P.A.

36. "Preliminary Approval" means a Court order, written or verbal, granting preliminary approval of this Agreement pursuant to a Motion for Preliminary Approval.

37. "Qualified Settlement Fund" or "QSF" means a fund established for the benefit of the Settlement Class as described in Paragraphs 48-50.

38. "Released Claims" means all allegations and claims of any kind, known or unknown, whether pursuant to federal, state, or local statutory law, common law, regulations, or other law that Plaintiffs made or could have made against any Releasee that arose, directly or indirectly, from or relate to (a) the matters alleged or that could have been alleged in the Action; (b) matters alleged or that could have been alleged in the District Court Case; (c) matters alleged or that could have been alleged in connection with any challenge to the Conciliatory Agreement; (d) matters alleged or that could have been alleged in *Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of*

Delaware, Inc., C.A. No. S18M-06-002-RFS (Del. Sup. Ct.); (f) Attorneys' Fees and Costs and Expenses; and (g) any other matters related to operation of, permitting of, or any alleged emissions, spills, and deposits of waste of any kind from or at the Facility or environmental contamination of any kind (including but not limited to wastewater, sludge and/or other biosolids, groundwater, surface water, and air emissions or odors) at or released from the Facility.

39. "Releasees" means Defendants, their successors, assigns, parent, subsidiaries, and affiliates, as well as each of their respective employees, representatives, officers, directors, shareholders, owners, agents, and attorneys, and "Releasee" means any one of the above.

40. "Request for Exclusion" means a timely and valid letter submitted by a Class Member indicating a request to be excluded (i.e., to opt-out) from the Agreement.

41. "Response Deadline" means the deadline by which Class Members must postmark or otherwise submit Requests for Exclusion or Notices of Objection.

42. "Settlement Amount" means the total amount of $65.0 million dollars, inclusive of all Attorneys' Fees, Costs and Expenses, pre- and post-judgment interest, and any other expenses incurred, or to be incurred, by Plaintiffs, Plaintiffs'

counsel, the QSF, the Claims Administrator, and Claims Adjudicator, and claims of any other kind related to the Action.

43. "Settlement Class" shall have the meaning set forth in Paragraph 44.

SETTLEMENT CLASS

44. Definition of the Settlement Class. The Parties shall propose the following Settlement Class: "All Persons who, on or after May 1, 2000, owned, leased, resided on, or were employed on a full-time basis at: (a) property located in whole or part within the Groundwater Area, which is geographically bounded by the solid blue line on **Exhibit A**, and not the Air Area, which is bounded by the dashed red line on **Exhibit A**; (b) property located in whole or part within the Air Area, but not the Groundwater Area; and (c) property located in whole or part within both the Groundwater Area and the Air Area."

45. Exclusions from the Settlement Class. The following are excluded from the Settlement Class: (1) Defendants; (2) any entity in which Defendants have a controlling interest; (3) any Person with an ownership interest in Defendants; (4) any current or former officer or director of Defendants; (5) any current or former employee of any Defendant for any potential exposure during their employment by such Defendant; (6) Persons who have entered into separate settlement agreements with any Defendant related to claims similar to those claims

made in the Action; and (7) the legal representatives, successors, or assigns of Defendants.

46. Effect of Agreement to Settlement Class Certification. The Parties agree that certification of the Settlement Class is for settlement purposes only. Should the Court fail to grant Preliminary Approval or Final Approval of the Settlement Class, or, should any Preliminary Approval or Final Approval be reversed on appeal, the Parties' agreement herein to class certification shall immediately be revoked without any further action needed. The Parties agree that their stipulation and agreement to class certification for purposes of this Agreement shall not be admissible in, or considered in connection with, the issue of whether a class should be certified in a contested or other non-settlement context in this Action, in the District Court Case, or in any other matter filed or to be filed. Plaintiffs furthermore expressly waive the right to argue that Defendants have waived, forfeited, or are otherwise estopped or precluded from opposing class certification based on any statements made in connection with this Agreement.

PRELIMINARY APPROVAL

47. Motion for Preliminary Approval. No later than 7 days after the Effective Date of this Agreement, Plaintiffs shall file with the Court a Joint Motion for Preliminary Approval which shall seek entry of an order that would, for settlement purposes only: (a) preliminarily certify the Settlement Class under

Delaware Superior Court Rule of Civil Procedure 23, (b) preliminarily approve this Agreement as fair, reasonable, and adequate, (c) approve the Notice, as described in Paragraph 55 and attached hereto as **Exhibit B**, and (d) seek other relief as agreed by the Parties. Defendants shall join the Motion for Preliminary Approval for settlement purposes only but, in doing so Defendants do not make any admission of fact, law, or liability.

QUALIFIED SETTLEMENT FUND

48. Establishment and Funding of QSF. The Parties shall establish a Qualified Settlement Fund ("QSF") consistent with the Internal Revenue Code and applicable regulations at a bank determined by the Claims Administrator. Defendants shall fund the QSF in two installments: Defendants shall pay $55.0 million into an escrow account ("Escrow Account") pursuant to the escrow agreement ("Escrow Agreement," as defined further below) by December 31, 2020 to be paid to the QSF as provided herein, and Defendants shall pay the remaining $10.0 million to the QSF by December 31, 2021 (collectively, the "Settlement Amount"). (In the event that, by the time the second installment is due to be paid, the first installment has not yet been released from the Escrow Account pursuant to the terms of Paragraph 49 and pursuant to the Escrow Agreement, the second installment shall also be paid to the escrow account.) The Parties agree that Defendants shall have no obligation to make any other payments of any kind to

any Party or any Person other than payment of the Settlement Amount pursuant to this Agreement.

49. Terms of the Escrow Agreement. The terms of the Escrow Agreement shall provide that the Escrow Account shall be released to the QSF within 3 business days after the later of (a) the Date of Final Approval of the Agreement and (b) the date the District Court approves and enters the First Amended Consent Decree. (Until such time, the Escrow Account may be used to pay the costs and expense of the Claim Administrator, the Claim Adjudicator, and the financial institution at which the funds are held on deposit). The Escrow Agreement shall provide that all Escrow Account shall revert to Defendants in the event that (i) the Court does not approve this Agreement or (ii) the District Court does not approve the First Amended Consent Decree. The Escrow Account shall be established pursuant to an Escrow Agreement in substantially the form provided in **Exhibit C**.

50. Approval of the QSF. The Parties agree to seek Court approval for use of a QSF by separate motion. The Parties shall work in good faith to seek and obtain Court approval for the QSF. Should the Court not approve the QSF, the Parties shall confer in good faith in an effort to address the Court's concerns and to promptly seek approval for an amended QSF. No funds may be released to the Claims Administrator for the purpose of making payments to Plaintiffs or

Plaintiffs' Counsel prior to the Court's approval of the QSF and as otherwise provided in the Escrow Agreement.

51. Settlement Amount Not Considered Punitive Damages. The Parties agree that no amount of the Settlement Amount shall be considered punitive damages.

52. Claims Administrator. The Parties agree that the QSF shall be administered by the Claims Administrator selected by Plaintiffs, agreed to by Defendants, and approved by the Court.

ATTORNEYS' FEES AND COSTS AND EXPENSES

53. Attorneys' Fees and Costs and Expenses. The Parties agree that Plaintiffs' Counsel may seek Court approval for: (a) the payment of Attorneys' Fees in an amount of up to 25% of the Settlement Amount; and (b) Costs and Expenses not to exceed $2.5 million. The Parties agree that the requested Attorneys' Fees and Costs and Expenses shall not include the payment of fees for, or the reimbursement of costs and expenses incurred in, the District Court Case. The Parties agree that Attorneys' Fees and Costs and Expenses approved by the Court shall be paid solely from the QSF. Defendants shall not oppose Plaintiffs' Counsel's application for Attorneys' Fees and Costs and Expenses to the extent they are within the limitations in this Paragraph. Should Plaintiffs' Counsel be awarded more than 25% of the Settlement Amount in Attorneys' Fees and/or Costs

and Expenses of more than $2.5 million, Plaintiffs' Counsel shall refund the amount over 25% of the Settlement Amount in Attorneys' Fees and/or over $2.5 million in Costs and Expenses, awarded and received as applicable, to the QSF for the benefit of the Settlement Class. The Claims Administrator or Defendants may enforce this provision and shall be held harmless by Plaintiffs' Counsel from any costs or fees in doing so.

54. Timing. Defendants agree that Plaintiffs' Counsel may seek their Attorneys' Fees and Costs and Expenses from the first installment of $55.0 million, subject to approval of their application for Attorneys' Fees and Costs and Expenses by the Superior Court; provided that no such Attorneys' Fees and Costs and Expenses shall be paid until the QSF has both been approved by the Court and funds are permitted to be released from the QSF pursuant to Paragraph 49 and pursuant to the Escrow Agreement.

CLASS NOTICE AND DEADLINES

55. Notice to Class Members. As soon as practicable after Preliminary Approval, the Claims Administrator will provide Notice, as described in Paragraph 56, in accordance with the Notice Plan attached hereto as **Exhibit D**.

56. Contents of Notice. All known Class Members shall be mailed a Notice in substantially the form provided in **Exhibit B**, subject to Court approval. Such Notice includes, among other information: (a) information regarding the

nature of the Action; (b) a summary of the Agreement's principal terms; (c) the Settlement Class definition; (d) a general description of the claims adjudication and allocation process; (e) the dates that constitute the Class Period; (f) instructions on how to submit Requests for Exclusion or Notices of Objection; (g) the Response Deadline by which the Class Member must postmark or submit electronically Requests for Exclusion or Notices of Objections; (h) the claims to be released, (i) the date of the Final Approval Hearing; and (j) a description of the District Court Case, including that the settlement therein includes attorneys' fees, costs, and expenses in that case.

57. Request for Exclusion. Any Class Member wishing to opt out from the Agreement, other than Class Representatives, must sign and postmark or submit electronically a written Request for Exclusion to the Claims Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the Claims Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. In the case of Requests for Exclusion that are submitted electronically, the electronic time stamp (i.e., date and time received) on the electronic mail, as received by the Claims Administrator, shall be the exclusive means to determine whether a Request for Exclusion has been timely submitted. A Request for Exclusion whose timeliness cannot be ascertained shall be considered untimely. Class Members

who fail to submit a timely Request for Exclusion shall be considered Participating Class Members and shall be deemed to have waived all rights to opt out of the Agreement and shall be foreclosed from pursuing separate claims against the Defendants in this Action or any other proceeding. The Class Representatives agree that they shall not make a Request for Exclusion.

58. Time and Method of Filing Notice of Objection. To object to the Agreement, a Class Member must postmark a Notice of Objection to the following three addresses on or before the Response Deadline:

CLERK OF THE COURT	**PLAINTIFFS' COUNSEL**	**DEFENDANTS' COUNSEL**
Superior Court, Sussex County RE: Mountaire Class Action Sussex County Courthouse 1 The Circle, Suite 2 Georgetown, DE 19947	Chase Brockstedt, Esq. Re: Mountaire Class Action Baird Mandalas Brockstedt, LLC 1413 Savannah Rd, Suite 1 Lewes, DE 19958	Michael W. Teichman, Esq. Re: Mountaire Class Action Parkowski, Guerke & Swayze, P.A. 1105 N. Market Street, 19th Fl Wilmington, DE 19801

The Notice of Objection must be signed by the Class Member and state the reasons for the objection. In the case of Notices of Objection that are mailed to the Claims Administrator, the postmark date shall be the exclusive means to determine whether a Notice of Objection has been timely submitted. A Notice of Objection whose timeliness cannot be ascertained shall be considered untimely. Class Members who fail to submit a timely Notice of Objection in the manner specified above shall be deemed to have waived all objections to the Agreement and will be

foreclosed from making any objections, whether by appeal or otherwise, to the Agreement. Class Members who timely submit Notices of Objection shall have a right to appear at the Final Approval Hearing in the manner prescribed by the Court in order to have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Agreement or appeal from the Final Approval of the Agreement.

59. Notice of Objection. Any objection to the Agreement, including any of its terms or provisions, by a purported Class Member must set forth the following: (a) the Objector's full name, (b) the Objector's mailing address and place of residence, if different, (c) proof that the Objector is a Class Member (which may be satisfied by the Objector's address being within the Groundwater Area, the Air Area, or both), (d) the grounds for the objections and any documents supporting those objections, (e) whether the Objector is represented by separate legal counsel, and (f) whether the Objector or his/her counsel intends to appear before the Court at the Final Approval Hearing in the manner prescribed by the Court.

60. Reports Regarding Requests for Exclusion. The Claims Administrator shall provide the Parties' counsel with a weekly report regarding the number of Class Members who have submitted valid Requests for Exclusion. The Claims

Administrator shall provide the Parties' counsel a final report within 7 days after the Response Deadline.

61. Bar Date for Registration. The Notice shall provide a Bar Date by which Class Members who wish to participate in the claims process must register; provided that some of the Settlement Amount shall be segregated for Class Members who, in the sole discretion of the Claims Adjudicator, are determined to have good cause for late registration.

62. Defendants' Right to Renegotiate or Withdraw. (a) If the Claims Administrator reports that more than 5% of all Class Members or more than 5% of solely Class Members for the Groundwater Area filed timely Requests for Exclusion, at Defendants' sole election the Parties shall meet and confer in good faith to discuss whether changes could be made to the Agreement to reduce the number of opt-outs, to enter into an amended Agreement including any agreed changes, and to seek Court approval of such amended Agreement in a superseding Motion for Preliminary Approval. If the Parties are unable to reach agreement among themselves, they shall seek the assistance of a mediator or the Court. If the Parties are still not able to reach agreement, at Defendants' sole election the Parties shall jointly move to withdraw the Agreement. (b) If the Claims Administrator reports that more than 10% of all Class Members or more than 10% of solely Class Members for the Groundwater Area filed timely Requests for Exclusion, at

Defendants' sole election the Parties shall jointly move to withdraw the Agreement. The Parties agree to seek a date for the Final Approval Hearing at least 21 days after the deadline for Requests for Exclusion so that they have time to meet the requirements of this Paragraph. They also agree to work in good faith to seek additional time from the Court to meet the requirements of this Paragraph.

CLAIMS PROCESS

63. Individual Settlement Payment Adjudications. The Parties agree that the payments to qualifying Participating Class Members shall be determined by the Claims Adjudicator. The claims process shall include consideration of all of the Participating Class Members' claims for damages, including but not limited to personal injuries for air and/or groundwater exposure, property damages, , nuisance, negligence, gross negligence, recklessness, negligence per se, trespass, unjust enrichment, medical monitoring, wrongful death, and survival. For the Participating Class Members in the Groundwater Area, the claims process shall consider past and future out-of-pocket expenses for water testing and alternative water supplies or treatment systems.

64. Claims Administration and Adjudication Costs. All administrative costs for the administration and allocation of the QSF, including but not limited to the cost of the QSF, the Claims Administrator, the Claims Adjudicator, and any court-approved administrators, trustees, allocators, or other personnel and the costs

of providing notices to, and other communications with, the Settlement Class as described below, shall be paid from the QSF. Plaintiffs will not seek any further fees, costs, or other expenses from Defendants, and Defendants shall have no responsibility or liability for the administration or costs of the QSF or to provide any further funding to the QSF.

65. Any and All Other Costs. The Parties agree that each Party will bear any other fees, costs, or other expenses associated with this Action and the execution of this Agreement that they have incurred or may incur.

66. Agreement Binds All Participating Class Members. Any Class Member who does not affirmatively opt out of the Settlement Class by submitting a timely and valid Request for Exclusion pursuant to Paragraph 57 shall be bound by all of the terms of this Agreement, including those pertaining to the Released Claims, as well as any judgment that may be entered by the Court if it grants Final Approval.

67. Medicare Addendum and Liens. Any Participating Class Member who is a Medicare recipient or who is Medicare eligible and who receives compensation for personal injury damages pursuant to the claims process pursuant to this Agreement shall be required to execute a Medicare Addendum in substantially the form set forth in **Exhibit E**. Such Participating Class Member shall be responsible for any liens or reimbursement rights by any hospital,

ambulance service, or other medical provider, Medicare, Medicaid, insurance company, or attorney enforceable against the proceeds of this settlement or against the Releasees, their insurers or the persons, firms, or corporations making the payment herein. If such a lien or reimbursement right is asserted against the proceeds herein or against Releasees, their insurers, or any person, firm, or corporation making payment herein, then, in consideration of the damages payment made such Participating Class Member covenants: (i) to obtain such asserted lien or reimbursement right; (ii) to pay and satisfy, including on a compromise basis, such asserted lien or reimbursement right; and (iii) to obtain a written release of Releasee, their insurers, and the persons, firms or corporations making the damages payment herein or, alternatively, agree to indemnify and hold harmless said parties from any costs, expenses, attorney's fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of such lien or reimbursement right by any entity having such lien or reimbursement right. **Any Participating Class Member who receives compensation for personal injury damages pursuant to the claims process pursuant to this Agreement but does not execute the Medicare Addendum in substantially the form set forth in Exhibit E, represents that such Participating Class Member is not a Medicare recipient and/or is not Medicare eligible.**

68. Alternative Approach. As an alternative to Paragraph 67 and the Medicare Addendum, the Parties may agree upon an alternative approach, such as the use of a lien resolution administrator that is responsible for (a) identifying all potential Medicare liens for each Participating Class Member, (b) causing lienholders to be reimbursed for any injury-related medical expenses paid in connection with the events underlying the Released Claims; and (c) ensuring that all liens are fully and finally released before settlement funds are disbursed to Participating Class Members. If the Parties have so agreed prior to the conclusion of the claims process pursuant to the Plan of Allocation, the alternative shall be used in lieu of Paragraph 67 and the Medicare Addendum.

69. Cooperation Regarding Liens. Each Participating Class Member agrees to cooperate fully in identifying liens applicable to that Participating Class Member, or resolving any claims for reimbursement associated with lien applicable to the Participating Class Member. In connection with this obligation, each Participating Class Member agrees to execute any supplemental documents or correspondence, provide any additional information, and to take all additional actions that may be necessary or appropriate to identify or resolve a lien.

70. No Set Aside Required. The parties recognize that Medicare is a secondary payor and do not intend to shift to Medicare the burden of paying for the past and/or future medical care allegedly caused by the actions of Defendants.

This Agreement is based upon a good faith resolution of a disputed claim. The Parties made every reasonable effort to adequately protect Medicare's interest and incorporate such into the settlement terms and to comply with both federal and state law. The future medical needs of the Participating Class Members and their Medicare status shall be considered by the Claims Adjudicator. Based upon these considerations, the Parties have concluded that no set aside or similar arrangement should be established.

71. Administration of Taxes. The Claims Administrator shall be responsible for issuing to Plaintiffs, Participating Class Members, and Plaintiffs' Counsel IRS Forms 1099-MISC or any other tax forms as may be required by law for all amounts paid pursuant to this Agreement.

72. Tax Liability. Defendants make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on any statement, representation, or calculation by Defendants or by the Claims Administrator in this regard.

73. Unredeemed Individual Settlement Payment Checks. Individual Settlement Payment checks returned as undeliverable or remaining unredeemed for more than 180 days after issuance shall be allocated to Participating Class Members at the discretion of the Claims Adjudicator.

FINAL APPROVAL

74. Final Approval Hearing and Final Approval. The Notice shall provide the date for the Final Approval Hearing. Plaintiffs' Counsel shall be responsible for drafting all documents and making all arrangements required by the Court that are necessary to obtain Final Approval, subject to an opportunity for Defendants to review and revise such documents, to the extent such documents are to be filed jointly or by consent. Plaintiffs' Counsel shall also be responsible for drafting the Attorneys' Fees and Costs and Expenses application to be heard by the Court.

75. Continued Jurisdiction. Upon Final Approval, the Court shall retain continuing jurisdiction solely for purposes of addressing (a) the interpretation and enforcement of the terms of the Agreement, (b) administrative matters, and (c) such other matters as may be appropriate under Court rules or as set forth in this Agreement. Provided, however, that there shall be no right to review of decisions of the Claims Adjudicator by this Court.

76. Certificate of Completion. Upon completion of the administration of the QSF, the Claims Administrator shall provide a written declaration under oath to certify such completion to the Court and to counsel for all Parties.

RELEASE AND OTHER OBLIGATIONS

77. Release. In consideration of and in exchange for the terms and conditions of this Agreement, and upon the release of the escrow funds as provided

in Paragraph 49 and pursuant to the escrow agreement, the Participating Class Members fully and forever release the Releasees from the Released Claims. With respect to the Released Claims, the Participating Class Members expressly waive all rights they may have with respect to the subject matter of the Released Claims.

78. Additional Covenants. (a) In the event that the District Court has not yet entered the First Amended Consent Decree, Participating Class Members (other than Intervenors who are bound by a separate agreement), shall not oppose entry of the First Amended Consent Decree in the District Court Case; (b) Participating Class Members shall not oppose any existing permitting or other proceeding related to implementation of and consistent with the terms of the First Amended Consent Decree; (c) Participating Class Members shall not raise any other claims against any Releasee to the same extent that DNREC would be barred from raising such claims against MFODI pursuant to Article XIII of the First Amended Consent Decree; (d) Participating Class Member (other than Intervenors who are bound by a separate agreement) shall not challenge the Conciliatory Agreement with DNREC; and (e) Participating Class Members shall withdraw any other pending challenges or objections in any other proceeding that are related to this matter or the First Amended Consent Decree. MFODI agrees to comply with the substance of the First Amended Consent Decree and the Conciliatory Agreement and to cooperate with DNREC in the satisfaction of its obligations under the same.

Participating Class Members reserve their rights to seek to enforce the First Amended Consent Decree in the event of a substantial and material breach of Defendant's obligations thereunder. Class Representatives further agree that, prior to Final Approval, they will not take any actions against any Releasee that would be inconsistent with these Additional Covenants.

TERMINATION

79. Termination of Agreement. In the event that (a) the Court does not order Final Approval of the Agreement (b) Final Approval is not upheld on appeal, if any appeals are filed, (c) Defendants seek to terminate the Agreement pursuant to Paragraph 62, or (d) the Agreement does not become final for any other reason, then this Agreement will be null and void. Any order or judgment entered by the Court in furtherance of this Agreement will likewise be treated as void from the beginning.

GENERAL TERMS AND CONDITIONS

80. Effective Date. This Agreement shall become effective once agreed to and executed by all Parties. The effective date of this Agreement shall be the date of the last signature below; provided, however, that the Agreement remains subject to the Preliminary Approval and Final Approval of the Court and the terms and conditions herein.

81. Bound by Agreement. The Parties agree that they intend this Agreement to be fully enforceable and binding on all Parties and that the Agreement shall be admissible and subject to disclosure in any proceeding to enforce its terms.

82. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.

83. Acknowledgement that Agreement is Fair and Reasonable. The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of the Agreement.

84. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Agreement only, except that (a) Plaintiffs or Plaintiffs' counsel may appeal any reduction to the Attorneys' Fees and Costs and Expenses below the amount they request from the Court but within the amount permitted by Paragraph 53, (b) any Party may appeal any Court order that materially alters the Agreement's terms, and (c) any Party may appeal any

decision not to approve the Agreement, in whole or part, or any other decision that is materially adverse to the Agreement and the Parties.

85. Cooperation. The Parties and their counsel shall cooperate with each other and use their best efforts to achieve the implementation of the Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek assistance of the Court to resolve such disagreement.

86. Public Statements Concerning the Agreement. Upon relief from the Court, the Parties intend to make a joint public statement concerning the Agreement.

87. No Effect on First Amended Consent Decree. Nothing in this Agreement shall, in any way, alter or effect MFODI's obligations under the First Amended Consent Decree.

88. Modification. No provision of this Agreement may be modified except by a subsequent writing signed by all of the Parties.

89. Entire Agreement. Except for the settlement in the District Court Case between Intervenors and MFODI, this Agreement contains the entire agreement between the Parties on this subject matter. Nothing in this Agreement shall be construed to alter, supersede, amend, or terminate any provision of any

other agreement, including but not limited to the settlement in the District Court Case.

90. Construction. Each of the Parties represents that it has been represented by counsel of its choice in the negotiation and drafting of this Agreement. Accordingly, this Agreement shall not be strictly construed against any Party on the ground that the rules for the construction of contracts requires resolution of any ambiguity against the party drafting the document. Each of the Parties further represents that its counsel has completely explained to it the terms of this Agreement, and that it fully understands and voluntarily accepts those terms.

91. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

92. Assignment. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged. This Agreement is not assignable.

93. No Admission. Neither this Agreement nor any of its provisions shall operate or be construed as an indication, inference, presumption, admission, or as evidence relative to any fact, issue of law, issue of liability, or any other matter on

the part of any of the Parties. Neither this Agreement nor any action taken pursuant to this Agreement shall be filed or offered or received in evidence in any action or proceeding except, and only to the extent necessary to enforce its terms.

94. Costs of Agreement. The Parties shall bear their own costs, expenses, attorneys' and paralegals' fees, consultants' fees, and other fees incurred in connection with the negotiation of, preparation of, execution of, and compliance with this Agreement.

95. Circumvention. The Parties shall not circumvent their obligations pursuant to this Agreement by seeking to have any third party take any action that the Parties themselves are prohibited from taking.

96. Persons Not Party to this Agreement. The Parties reserve all rights against persons and entities not Parties to this Agreement, and this Agreement shall not be deemed to create any rights whatsoever as a third-party beneficiary or otherwise in any person or entity that is not a Party other than Releasees.

97. Governing Law, Venue, and Jurisdiction. This Agreement shall be construed and interpreted in accordance with the laws of the Delaware without reference to its conflicts of law principles. The Parties agree that personal jurisdiction over them shall be proper and the exclusive venues for any action arising out of or related to this Agreement shall be in the Court.

98. Authority. The undersigned representatives of each of the Parties certifies that they are authorized to enter into this Agreement and to bind such Party to all of its terms and conditions.

99. Counterparts. This Agreement may be executed in any number of counterparts (whether by email, PDF, or original), each of which will be deemed to be an original and all of which together will constitute the same instrument.

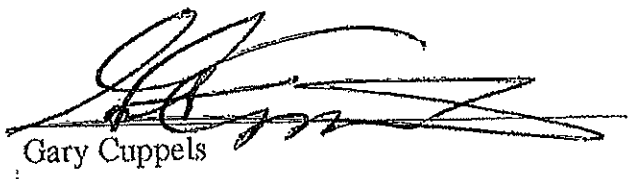
In witness thereof, the Class Representatives on behalf of Plaintiffs and Defendants have executed this Agreement on the date following each signature below.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

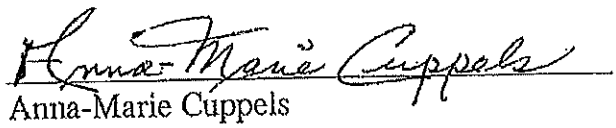
CLASS SETTLEMENT AGREEMENT AND RELEASE IN *CUPPELS, ET AL. V. MOUNTAIRE CORP., ET AL.*

AGREED TO FOR PLAINTIFFS:

12/22/20
Date


Gary Cuppels

12/22/20
Date


Anna-Marie Cuppels

CLASS SETTLEMENT AGREEMENT AND RELEASE IN *CUPPELS, ET AL. V. MOUNTAIRE CORP., ET AL.*

AGREED TO FOR PLAINTIFFS:

12/22/2020
Date

Ronald Tolson
Ronald Tolson

12/22/2020
Date

Patricia Tolson
Patricia Tolson

AGREED TO FOR PLAINTIFFS:

12-22-20
Date

Larry Miller
Larry Miller

12-22-20
Date

Larry Miller
Larry Miller, as Personal Representative for
The Estate of Barbara Miller

CLASS SETTLEMENT AGREEMENT AND RELEASE IN *CUPPELS, ET AL. V. MOUNTAIRE CORP., ET AL.*

AGREED TO FOR PLAINTIFFS:

12-23-2020
Date

Michael Harding

12-23-2020
Date

Anne Harding

Counsel for Plaintiffs:

12-23-20

Date

Philip C. Federico

12-23-20

Date

Chase T. Brockstedt

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE IN *CUPPELS, ET AL. V. MOUNTAIRE CORP., ET AL.*

AGREED TO FOR MOUNTAIRE CORPORATION:

12-23-20
Date

Name: Craig S. Lair
Title: CFO

AGREED TO FOR MOUNTAIRE FARMS INC.:

12-23-20
Date

Name: Kevin Gowland
Title: CEO

AGREED TO FOR MOUNTAIRE FARMS OF DELAWARE, INC.:

12-23-20
Date

Name: Kevin Gowland
Title: CEO

Counsel for Defendants:

Date — Michael W. Teichman

Date — Lisa C. McLaughlin

Date — Timothy K. Webster

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE IN *CUPPELS, ET AL. V. MOUNTAIRE CORP., ET AL.*

AGREED TO FOR MOUNTAIRE CORPORATION:

_____ _____

Date Name:
Title:

AGREED TO FOR MOUNTAIRE FARMS INC.:

_____ _____

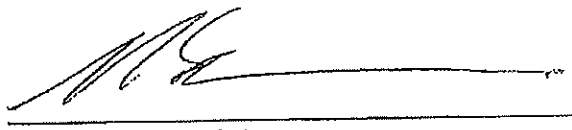
Date Name:
Title:

AGREED TO FOR MOUNTAIRE FARMS OF DELAWARE, INC.:

_____ _____

Date Name:
Title:

Counsel for Defendants:

12/23/2020 

Date Michael W. Teichman

_____ _____

Date Lisa C. McLaughlin

_____ _____

Date Timothy K. Webster

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE IN *CUPPELS, ET AL. V. MOUNTAIRE CORP., ET AL.*

AGREED TO FOR MOUNTAIRE CORPORATION:

_____ _____

Date Name:
Title:

AGREED TO FOR MOUNTAIRE FARMS INC.:

_____ _____

Date Name:
Title:

AGREED TO FOR MOUNTAIRE FARMS OF DELAWARE, INC.:

_____ _____

Date Name:
Title:

Counsel for Defendants:

_____ _____

Date Michael W. Teichman

12/23/2020 _____

Date Lisa C. McLaughlin

_____ _____

Date Timothy K. Webster

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE IN *CUPPELS, ET AL. V. MOUNTAIRE CORP., ET AL.*

AGREED TO FOR MOUNTAIRE CORPORATION:

Date

Name:
Title:

AGREED TO FOR MOUNTAIRE FARMS INC.:

Date

Name:
Title:

AGREED TO FOR MOUNTAIRE FARMS OF DELAWARE, INC.:

Date

Name:
Title:

Counsel for Defendants:

Date

Michael W. Teichman

Date

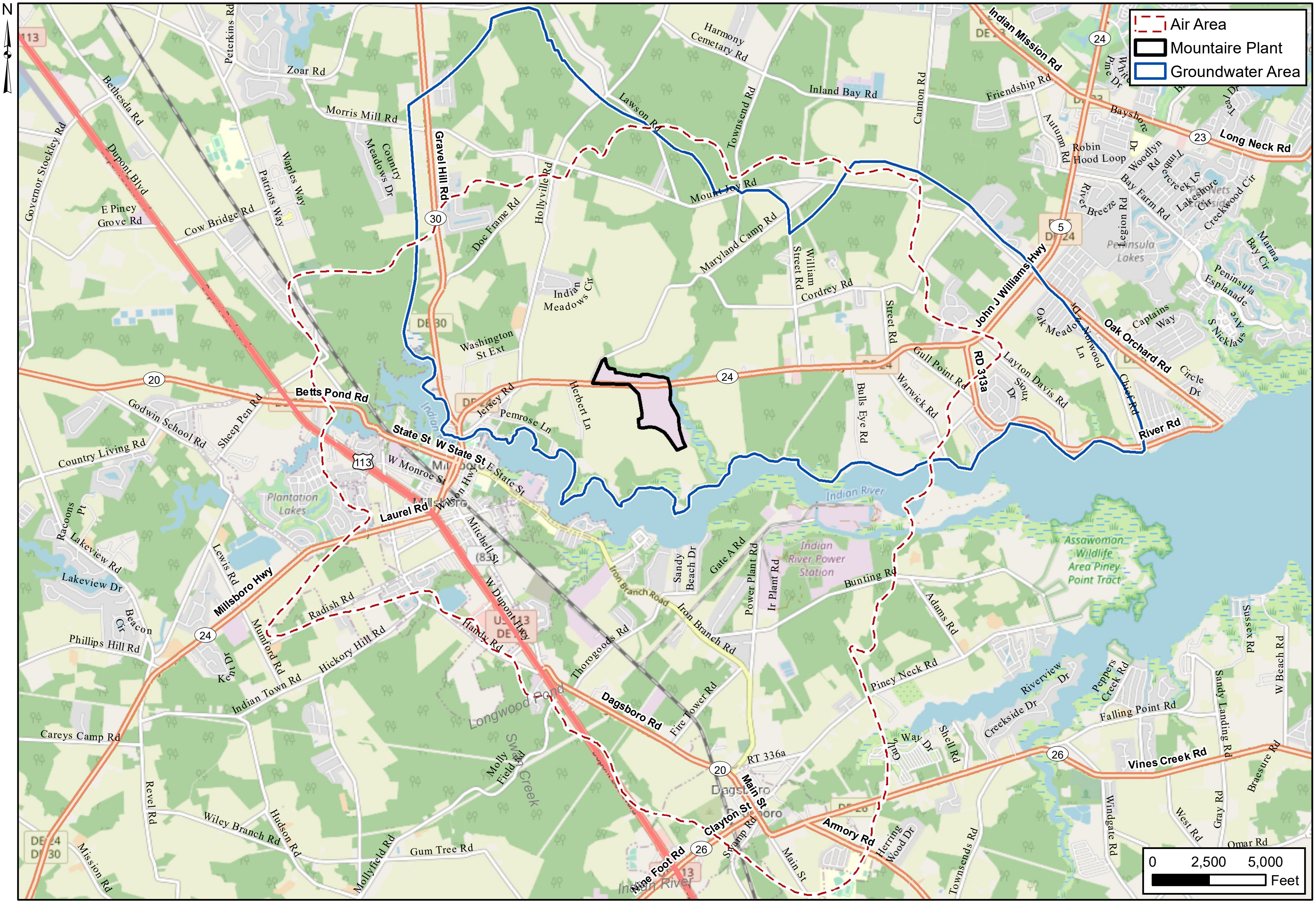
Lisa C. McLaughlin

12/23/2020
Date

Timothy K. Webster

Exhibit A

Settlement Class Map



N
Air Area
Mountaire Plant
Groundwater Area
0 2,500 5,000
Feet

Exhibit B

Form of Notice

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GARY and ANNA-MARIE CUPPELS, individually and on behalf of all others similarly situated, Plaintiffs,	)	
v.	)	C.A. No.: S18C-06-009 CAK
MOUNTAIRE CORPORATION, and Arkansas corporation, MOUNTAIRE FARMS, INC., a Delaware corporation, and MOUNTAIRE FARMS OF DELAWARE, INC., a Delaware corporation. Defendants.	)	

NOTICE OF PROPOSED SETTLEMENT

A state court directed this notice. This is not a solicitation from a lawyer. You are not being sued. However, your legal rights are affected by the information contained in this Notice.

SUMMARY

- This Notice concerns your potential entitlement to recover compensation for alleged groundwater and air contamination from the Millsboro, Delaware poultry processing facility owned by Mountaire Farms of Delaware, Inc. Read this Notice carefully as it concerns your legal rights and contains deadlines for participation.
- A $65,000,000.00 proposed settlement ("Class Action Settlement") has been reached that offers payments to the "Mountaire Settlement Class" consisting of: all Persons who, on or after May 1, 2000, owned, leased, resided on, or were employed on a full-time basis at: (a) property located in whole or part within the Groundwater Area, which is geographically bounded by the solid blue line on **Exhibit A**, and not the Air Area, which is bounded by the dashed red line on **Exhibit A**; (b) property located in whole or part within the Air Area, but not the Groundwater Area; and (c) property located in whole or part within both the Groundwater Area and the Air Area.
- Excluded from the definition of the class are: (1) Defendants; (2) any entity in which Defendants have a controlling interest; (3) any Person with an ownership interest in Defendants; (4) any current or former officer or director of Defendants; (5) any current or former employee of any Defendant for any potential exposure during their employment by such Defendant; (6) Persons who have entered into separate settlement agreements with any Defendant related to claims similar to those claims made in the Action; and (7) the legal representatives, successors, or assigns of Defendants.
- The total recovery for each Settlement Class Member will depend on how many of those Class Members submit a valid and timely claim, as well as the severity of each Class Member's injuries

and damages. Each Settlement Class Member who files a valid and timely claim shall be considered to receive a portion of the $65,000,000.00 after a Court-approved deduction of attorneys' fees and expenses, notice costs, fees and administration costs, and, if applicable, payment of any liens, including any Medicare/Medicaid liens.

- Plaintiffs alleged that Defendants disposed of contaminated wastewater and liquefied sludge on lands near Plaintiffs' residences and properties. Plaintiffs alleged that this wastewater and sludge have seeped into the groundwater throughout the area, causing nitrates and other contaminants to enter Plaintiffs' drinking water wells, resulting in health effects and reduced property values. Plaintiffs further alleged that Defendants' wastewater treatment plant and their spray irrigation and sludge disposal operations emit air pollutants, including malodorous hydrogen sulfide and ammonia that reach Plaintiffs' residences and properties at levels causing Plaintiffs to suffer health effects and to endure nuisance conditions preventing and devaluing the use of their properties. Defendants deny Plaintiffs' allegations but have chosen to settle the case in order to achieve a final resolution of this matter and resolve the uncertainty associated with litigation.
- In addition to this Class Action Settlement, in another case in Federal Court, *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, C.A. No. 18-838 (MN), Mountaire has agreed to engage in certain additional activities to prevent future harm to the groundwater, reduce air emissions and provide residents an avenue to report and receive follow-up on air pollution complaints in the form of a First Amended Consent Decree before the Federal Court for approval. The Parties estimate that the aggregate value of these separate commitments is expected to be approximately $120 million for incurred and contracted costs, exclusive of long-term operation and maintenance and contingencies. Further information about the Federal Case, including resolution of claims by Intervenors in that case, is set forth below.
- The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and after any appeals are finally resolved, payments will be made to those who have filed a valid claim and suffered compensable injuries and damages.

Your legal rights are affected whether you act or don't act.
Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
REGISTER PROPERLY	You must register to be considered for payment from this Class Action Settlement. You may do so by either (1) visiting the Mountaire Settlement website at _[to be inserted]_____, and completing the Registration Form online at that site, or (2) mailing the completed Registration Form attached to this Notice as Exhibit B to the following address: Cuppels v. Mountaire Class Action Settlement Administrator RG/2 Claims Administration LLC PO Box 59479 Philadelphia, PA 19102-9479 Phone: (866) 742-4955 Web: www.rg2claims.com

	Email: info@rg2claims.com **You must complete the Registration Form and submit it by mail postmarked on or before by** __[to be inserted]_____ **, 2021 or online through the Mountaire Settlement website on or before** ___[to be inserted]_____**, 2021,** in order to be considered for payment through the Class Action Settlement. Those who fail to register by this date by mail or through the Mountaire Settlement website will **NOT** be eligible for compensation.
OPT OUT	You can exclude yourself from this settlement if you do not want to participate in this Class Action Settlement. If you own/owned, reside/resided, or are/were employed at property in the Settlement Class Area and you wish to opt out of the Settlement Class, you must send a written request to opt out, postmarked on or before __[to be inserted]_____- to the following address: Cuppels v. Mountaire Class Action Settlement Administrator RG/2 Claims Administration LLC PO Box 59479 Philadelphia, PA 19102-9479 Phone: (866) 742-4955 Web: www.rg2claims.com Email: info@rg2claims.com A Request for Exclusion ("Opt Out") Form is attached hereto as Exhibit C
OBJECT	If you wish to participate in the Class Action Settlement, but wish to object in whole or part to the proposed Settlement, you must do so on or before ___[to be inserted]_____**, 2021.** Whether or not you object to the Settlement, you must register if you wish to be considered for compensation from this Settlement should the Settlement be approved. You cannot both request to be excluded and object.
GO TO A HEARING	The Court will hold a hearing on the fairness of the proposed settlement on ___[to be inserted]_____, **2021,** either (a) the Sussex County Superior Courthouse, 1 The Circle, Georgetown, DE 19947 or (b) virtually, due to the ongoing threat to public health posed by COVID-19. At this hearing, you can ask to speak in Court about the fairness of the proposed Class Action Settlement if you have filed a timely objection to the proposed Settlement. **You may be represented by an attorney if you choose to attend this hearing; however, you do not need to come to the hearing or speak to be considered for possible compensation. You only need to properly register to be considered for compensation.**
DO NOTHING	You do not need to take any action if you do not wish to be excluded from the Settlement Class. However, if you take no action you will receive no benefits from the Class Action Settlement. You will also give up any rights you have to sue Mountaire Farms of Delaware, Inc.; Mountaire Farms Inc.; and

	Mountaire Corporation for injuries or damages related to groundwater contamination or air pollution (*See* question 7).

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

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why is there a notice?

A Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit known as *Cuppels v. Mountaire*, C.A. No.: S18C-06-009 CAK (the "Lawsuit"), and about all of your options before the Court decides whether to approve the Settlement. This notice explains the Lawsuit, the Settlement, and your legal rights.

Judge Craig Karsnitz of the Delaware Superior Court, in and for Sussex County, is overseeing this case. The people who sued are called the "Plaintiffs." Mountaire Farms of Delaware, Inc; Mountiare Farms, Inc.; and Mountaire Corporation are the "Defendants."

2. What is this litigation about?

Plaintiffs alleged that Defendants disposed of contaminated wastewater and liquefied sludge on lands near Plaintiffs' residences and properties. Plaintiffs alleged that this wastewater and sludge have seeped into the groundwater throughout the area, causing nitrates and other contaminants to enter Plaintiffs' drinking water wells, resulting in health effects and reduced property values. Plaintiffs further alleged that Defendants' wastewater treatment plant and their spray irrigation and sludge disposal operations emit air pollutants, including malodorous hydrogen sulfide and ammonia that reach Plaintiffs' residences and properties at levels causing Plaintiffs to suffer health effects and to endure nuisance conditions preventing and devaluing the use of their properties. Defendants have denied these allegations but have chosen to settle the case in order to to achieve a final resolution of this matter and resolve the uncertainty associated with litigation.

3. Why is this a class action?

In a class action, one or more people called "Class Representatives" sue on behalf of themselves and other people with similar claims. Together, all the people with similar claims are members of a "Settlement Class." Plaintiffs have pursued this matter as a class action in an effort to efficiently resolve this litigation with respect to all who may be affected by Mountaire's alleged groundwater contamination and air pollution.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or the Defendants. Instead, both sides have agreed to a proposed Settlement. By agreeing to the proposed Settlement, the parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Members who have timely registered will be considered for compensation. The Class Representatives and Class Counsel believe the proposed Settlement is best for everyone who is affected. Although Defendants have agreed to this Settlement, they do not admit any factual allegations against them, any legal issues, or any liability.

WHO IS PART OF THE SETTLEMENT

5. Who is affected by the Settlement?

The Parties seek final approval of a Settlement Class that includes All Persons who, on or after May 1, 2000, owned, leased, resided on, or were employed on a full-time basis at: (a) property located in whole or part within the Groundwater Area, which is geographically bounded by the solid blue line on **Exhibit A**, and not the Air Area, which is bounded by the dashed red line on **Exhibit A**; (b) property located in whole or part within the Air Area, but not the Groundwater Area; and (c) property located in whole or part within both the Groundwater Area and the Air Area.

Excluded from the definition of the class are (1) Defendants; (2) any entity in which Defendants have a controlling interest; (3) any Person with an ownership interest in Defendants; (4) any current or former officer or director of Defendants; (5) any current or former employee of any Defendant for any potential exposure during their employment by such Defendant; (6) Persons who have entered into separate settlement agreements with any Defendant related to claims similar to those claims made in the Action; and (7) the legal representatives, successors, or assigns of Defendants.

To participate in this settlement, and potentially qualify for compensation, you must register properly.

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are in the Settlement Class, or if you have any other questions about the proposed Settlement, visit the Mountaire Settlement website at www._ _[to be inserted]_____.com. [Defendants reserve the right to review and approve the webstite] You also may contact Class Counsel. (*See* question 17 for contact information). Please do not call or write the Delaware Superior Court.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

The Defendants have agreed to pay $65,000,000.00 (the "Class Action Settlement Amount") to resolve the Settlement Class Members' claims. In exchange for this payment, Settlement Class Members who do not request to be fully excluded will fully release any known or unknown claims, which were alleged or could have been alleged in the Lawsuit. Specifically, Settlement Class Members will not be permitted to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants for all allegations and claims of any kind, known or unknown, whether pursuant to federal, state, or local statutory law, common law, regulations, or other law that Plaintiffs made or could have made against any Defendant that arose, directly or indirectly, from or relate to (a) the matters alleged or that could have been alleged in the Lawsuit; (b) matters alleged or that could have been alleged in *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, C.A. No. 18-838 (MN); (c) matters

alleged or that could have been alleged in connection with any challenge to the December 13, 2019 Conciliatory Agreement between the Delaware Department of Natural Resources and Environmental Control, Mountaire Farms of Delaware, Inc. and Mountaire Farms Inc.; (d) matters alleged or that could have been alleged in *Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, C.A. No. S18M-06-002-RFS (Del. Sup. Ct.); (f) attorneys' fees, costs, and expenses; and (g) any other matters related to operation of, permitting of, or any alleged emissions from or at the Facility or environmental contamination of any kind (including but not limited to wastewater, sludge and/or other biosolids, groundwater, surfacewater, and air emissions or odors) at or released from the Facility.

The amount of Settlement funds paid out to each individual will depend on the number of valid and timely claims made by Settlement Class Members (*See* question 8 below), and the severity of injuries and damages suffered by each Class Member.

The Class Action Settlement Amount will be used to pay eligible Claimants as approved by the Court; the fund will also be used to pay attorneys' fees, enhancement awards to the Class Representatives, costs, and expenses approved by the Court. The Class Action Settlement Amount reflects the total amount that Defendants will pay in this matter, not including the amount paid in connection with another case in Federal Court, *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, C.A. No. 18-838 (MN), the resolution of which requires Mountaire to comply with the First Amended Consent Decree, and requires MFODI to engage in certain additional activities to prevent future harm to the groundwater and provide residents an avenue to report and receive follow-up on air pollution complaints. The Parties estimate that the aggregate value of these separate commitments is expected to be approximately $120 million for incurred and contracted costs, exclusive of long-term operation and maintenance and contingencies.

A portion of the Settlement funds may be set aside for eligible claimants who fail to timely register due to exigent circumstances and for latent injuries. The claims adjudicator will have the discretion to consider such claims, with any award subject to Court approval.

8. How much compensation will I receive?

Each Settlement Class Member who files a valid and timely claim as described herein shall be considered for possible compensation by an impartial third party adjudicator who will consider the facts of your claim. Your allocation will be paid from the Settlement Fund after a Court approves the allocation and deduction of attorneys' fees, any enhancement awards to Class Representatives, notice and administration costs, and related fees and expenses and/or payment of any liens.

9. How do I register?

You must registrer to participate in this settlement on or before _____, **2021**. You may do so by visiting www.____[to be inserted]_____.com, and completing the Registration Form online

at that site, or mailing the completed Registration Form attached to this Notice as Exhibit B to the following address:

Cuppels v. Mountaire Class Action Settlement Administrator
RG/2 Claims Administration LLC
PO Box 59479
Philadelphia, PA 19102-9479
Phone: (866) 742-4955
Web: www.rg2claims.com
Email: info@rg2claims.com

You must complete the Registration Form and submit it by mail postmarked on or before _[to be inserted]_____**, 2021 or online through the Mountaire Settelment website by** ___[to be inserted]_____**, 2021** in order to be considered for payment through the Class Action Settlement. Those who fail to register by mail or through the Mountaire Settlement website will **NOT** be eligible for compensation.

After you register, it is important to notify RG/2 Claims Group by phone or email of any change in your address or phone number.

After you have registered, and if this settlement is approved by the Court, you may be required to submit additional information and documentation to support your claim. You will be contacted to provide this information at a later date. You should also check the website at www.___[to be inserted]_____.com for any updates.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in the case?

The Court has appointed a number of lawyers as "Class Counsel" to represent all members of the Settlement Class. They include:

Philip C. Federico
Brent P. Ceryes
Schochor, Federico and Staton, P.A.,

Chase T. Brockstedt
Stephen A. Spence
Baird Mandalas Brockstedt, LLC

The court-approved fees for these lawyers will be paid out of the Class Action Settlement (*see* question 11). You may hire another attorney at your own expense to object to the Settlement or for any other purpose related to this notice. You do not need to have an attorney to participate in this Settlement. You only need to properly register once to be eligible for possible compensation.

11. How will the lawyers be paid?

Class Counsel intend to request a legal fee of up to 25 percent of the Class Action Settlement Amount, plus reimbursement of reasonable, actual out-of-pocket expenses incurred in prosecuting the Class Action, which are not to exceed $2,500,000.00. The fees and expenses must be approved by the Court and will be paid out of the Class Action Settlement Amount that Defendants will pay under the Settlement Agreement. The Court will decide the amount of fees and costs to be paid. This does not include legal fees and reimbursement of expenses that Class Counsel will receive in connection with a separate settlement agreement for another lawsuit in Federal Court, *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, C.A. No. 18-838 (MN).

OPT-OUT OF THE SETTLEMENT

12. How can I exclude myself from the settlement?

If you owned, leased, resided on, or were employed on a full-time basis at, property in the Settlement Class Area, the geographic parameters of which are shown on the map attached as Exhibit A, on or after May 1, 2000, you may choose to opt-out and be excluded from the Settlement Class. If you opt out of the Settlement Class, you will not be eligible to participate in the distribution of the settlement proceeds. If you do not opt out of the Settlement Class, you will not be able to commence any other litigation, arbitration, or other proceeding against the Defendants in any other forum concerning the subject matter of this case and you will be bound by the terms of the Settlement Agreement. If you own property or reside in the Settlement Class Area and you wish to opt out of the Settlement Class, you must send a written request to opt out, postmarked on or before ___[to be inserted]____, **2021**- to the following address:

Cuppels v. Mountaire Class Action Settlement Administrator
RG/2 Claims Administration LLC
PO Box 59479
Philadelphia, PA 19102-9479
Phone: (866) 742-4955
Web: www.rg2claims.com
Email: info@rg2claims.com

A Request for Exclusion ("Opt Out") Form is attached hereto as Exhibit C

OBJECTING TO THE SETTLEMENT

13. How do I object to the Settlement?

If you wish to participate in this settlement, but wish to object to any part of the proposed Settlement, or the Settlement as a whole, you must submit a letter or other written document that includes the following:

1) Your full name, address and telephone number. If you have or if you hire your own attorney, your attorney's full name, address and telephone number;

2) A written statement of all grounds for your objection accompanied by any legal support for the objection (if any);

3) A statement of whether you intend to appear at the Final Fairness (Approval) Hearing;

4) Proof of membership in the Class; and

5) Your signature or that of your attorney (if you have one or if you hire one).

You must mail your objection to each of the following three (3) addresses, **and** your objection must be postmarked no later than ____[to be inserted]_____, **2021**:

CLERK OF THE COURT	PLAINTIFFS' COUNSEL	DEFENDANTS' COUNSEL
Superior Court, Sussex County RE: Mountaire Class Action Sussex County Courthouse 1 The Circle, Suite 2 Georgetown, DE 19947	Chase Brockstedt, Esq. Re: Mountaire Class Action Baird, Mandalas, Brockstedt, LLC 1413 Savannah Rd, Suite 1 Lewes, DE 19958	Michael W. Teichman, Esq. Re: Mountaire Class Action Parkowski, Guerke & Swayze, P.A. 1105 N. Market Street, 19th Fl Wilmington, DE 19801

If you are a member of the Settlement Class, and do not wish to participate in this settlement, you can exclude yourself from this settlement, as set forth above.

THE FINAL FAIRNESS (APPROVAL) HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement and any requests for attorneys' fees and expenses ("Final Fairness Hearing").

14. When and where will the Court decide whether to approve the proposed Settlement?

The Court has scheduled a Final Fairness Hearing on _[to be inserted]____, ___ at __[to be inserted]____, __ pm, at the Sussex County Superior Courthouse, 1 The Circle, Georgetown, DE 19947. However, in light of the continuing threat COVID-19 poses to public health, the hearing may be held virtually. Please check the Mountaire Settlement website at www.____[to be inserted]_____.com for updates regarding the location of the hearing. The hearing may be moved to a different date or time without additional notice. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys' fees, costs and expenses, and for any Enhancement Awards to the Class Representatives. If there are objections, the Court will also consider them at that time. At or after the hearing, the Court will decide whether to approve the Settlement, fees and expenses, and any Enchancement Awards.

15. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper addresses, and it complies with the other requirements set forth above, the Court will consider it.

YOU DON'T NEED TO COME TO THE HEARING OR SPEAK TO BE CONSIDERED FOR POSSIBLE COMPENSATION AS A CLASS MEMBER. YOU ONLY NEED TO PROPERLY REGISTER ONCE TO BE CONSIDERED FOR COMPENSATION AS A CLASS MEMBER.

16. May I speak at the hearing?

If you have timely and properly objected, you may ask the Court for permission to speak at the Final Fairness Hearing. To do so, your filed objection must include a statement of whether you intend to appear at the Final Fairness Hearing.

HOWEVER, YOU DON'T NEED TO COME TO THE HEARING OR SPEAK TO BE CONSIDERED FOR POSSIBLE COMPENSATION AS A CLASS MEMBER. YOU ONLY NEED TO PROPERLY REGISTER ONCE TO BE CONSIDERED FOR COMPENSATION AS A CLASS MEMBER.

IF YOU DO NOT REGISTER

17. What happens if I do not register?

If you **do not** register on or before ___[to be inserted]_____, and this proposed Settlement is approved by the Court, you will be bound by the Judgmententered by the Court, and by the terms and obligations of the Settlement Agreement, and you may not receive any benefits whatsoever from the Settlement. This also means that you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit or proceeding against any of the Mountaire entities described in Section 7 of this notice.

As referenced above, if this proposed Settlement is approved, you may be required to submit additional information and documentation to support your claim. You will be contacted to provide this information at a later date. **It is important that you keep your registration information current, by reporting any changes in your address or telephone number to the RG/2 Claims Group at the contact information listed on page **.** Failure to provide that information may also prevent you from being considered for compensation from this Settlement.

GETTING MORE INFORMATION

18. How do I get more information?

This Notice summarizes the proposed Settlement, and is also available at the website www.___ [to be inserted]_____.com. If you are a member of the Settlement Class and have any questions about the terms of the Settlement Agreement or would like to review the Settlement Agreement or any other documents related to this notice, you may

1. Write or call the Class Action Administrator:

Cuppels v. Mountaire Class Action Settlement Administrator
RG/2 Claims Administration LLC
PO Box 59479
Philadelphia, PA 19102-9479
Phone: (866) 742-4955
Web: www.rg2claims.com
Email: info@rg2claims.com

2. Contact Class Counsel through the Class Action website at www.___ [to be inserted]_____.com.
3. Write or call Class Counsel:

Chase Brockstedt, Esq.
Re: Mountaire Class Action
Baird, Mandalas, Brockstedt, LLC
1413 Savannah Rd, Suite 1
Lewes, DE 19958
(302) 645-2262

4. Request copies in person at the Clerk's Office at the Sussex County Superior Court:

Sussex County Courthouse
1 The Circle, Suite 2
Georgetown, DE 19947

Do not call the Sussex County Superior Court or Mountaire or Mountaire's Counsel.

Exhibit A

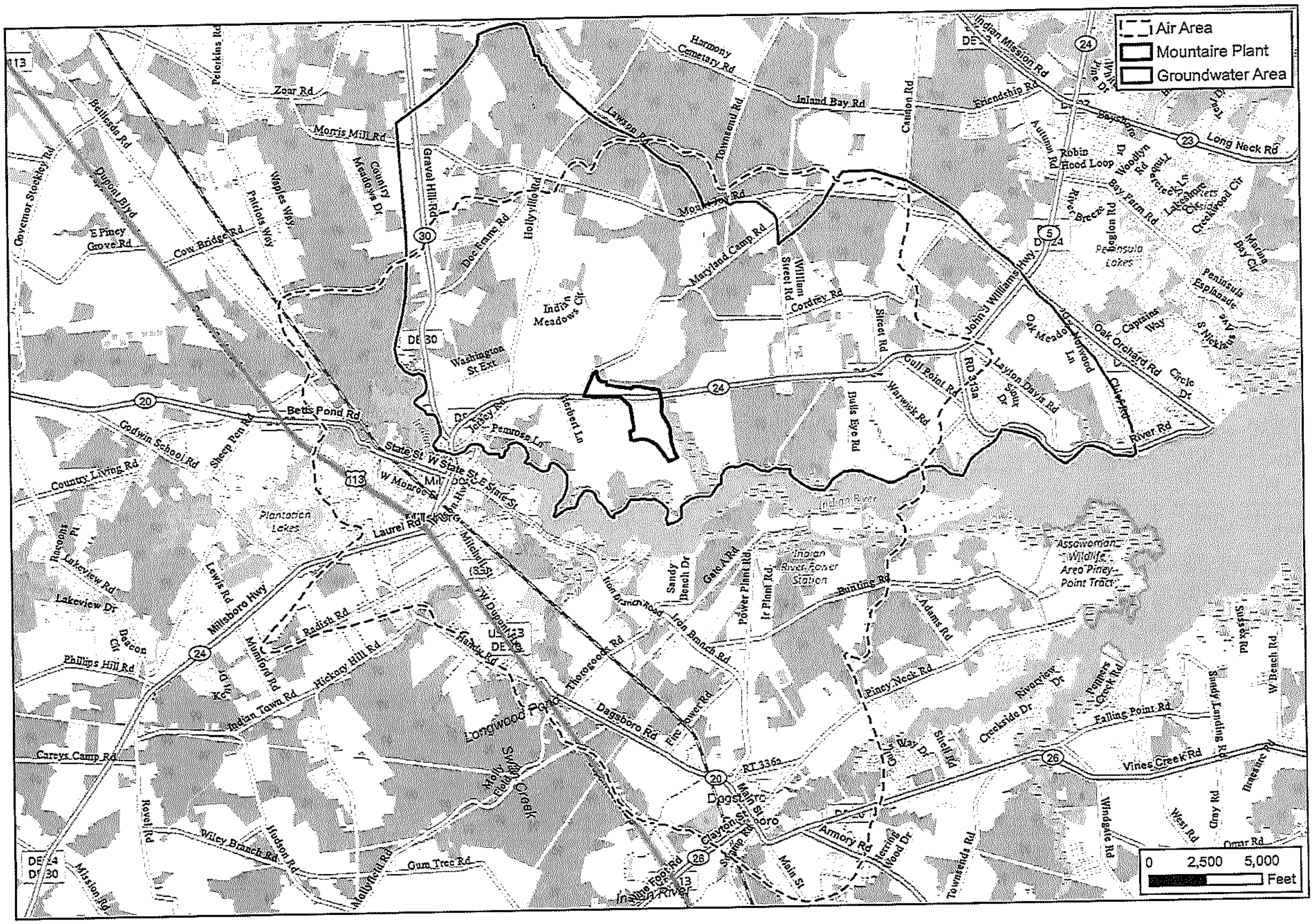

Air Area
Mountaire Plant
Groundwater Area
0 2,500 5,000 Feet
N
Millsboro
Dagsboro
Indian River
Indian River Power Station
Plantation Lakes
Peninsula Lakes
Assawoman Wildlife Area Piney Point Tract
Swan Creek
Gravel Hill Rd
Hollyville Rd
Washington St Ext
Indian Meadows Cir
Maryland Camp Rd
John J Williams Hwy
Betts Pond Rd
Laurel Rd
Millsboro Hwy
Dagsboro Rd
Iron Branch Rd
Power Plant Rd
Bunting Rd
Piney Neck Rd
Vines Creek Rd
Long Neck Rd
Oak Orchard Rd
River Rd

Exhibit B

Class Action Registration Form

To participate in the $65 million settlement described in the Notice of Proposed Settlement, Class Members must submit this Registration Form to the Claims Administrator.

Your Registration Form must be postmarked on or before _[**to be inserted**]_ for it to be valid. Alternatively, you may register your claim online at _[to be inserted]___. Your online claim must be submitted on or before _[**to be inserted**]__for it to be valid.

A separate registration form must be completed for each Claimant. Claims on behalf of minors should be submitted on the minor's behalf by a parent or guardian (separately from any claims made by the parent or guardian for themselves).

Your Registration Form must be submitted to:

Mountaire Class Action Settlement Administrator
RG/2 Claims Administration LLC
PO Box 59479
Philadelphia, PA 19102-9479
Phone: (866) 742-4955
Web: www.rg2claims.com
Email: info@rg2claims.com

You may contact the Class Administrator toll-free at 1-866-742-4955 to determine whether you are eligible and to receive assistance with completing the this Registration Form.

You must also sign this form on the signature line at the bottom of the last page to be eligible to participate in the settlement fund.

I. Claimant Information:

_____ _____ _____
Claimant First Name Claimant Middle Name Claimant Last Name

If you are completing this Registration Form on behalf of someone else (e.g., a deceased person, an incapacitated person, a minor, or a legal entity), please complete the following, and complete the contact information in Section III below on your own behalf.

_____ _____ _____
Your First Name Your Middle Name Your Last Name

What is your relationship to the Person upon whose behalf you have completed this Fact Sheet? (e.g., parent, guardian, Estate Administrator)

_____

II. Qualifying Street Address:

Identify property address wholly or partly within the class area which you owned, leased, resided on, or were employed full-time at any time between May 1, 2000 to the present. If you have owned, leased, resided, or were employed full-time at multiple property addresses within the class area, identify the most recent address, and indicate below.

_____
Address

_____ _____ _____
City State Zip

I ☐ owned ☐ leased ☐ resided at ☐ was employed full-time at the property at the above address.

Approximate duration of ownership, lease, residency, or full-time employment at this address:

_____ to _____

I ☐ have ☐ have not owned, leased, resided at, or was employed full-time at multiple properties within the class area from May 1, 2000 to present.

III. Contact and Identifying Information:

☐ My contact information is the same as the Qualifying Street Address listed above.

_____
Address

_____ _____ _____
City State Zip

Telephone: _____ _____ _____
Home Cell Work

Email: _____

Date of Birth: _____ _____ _____
MM DD YY

_____ _____
Date: Signature:

Exhibit C

Request for Exclusion

I wish to be excluded from the Class in Cuppels v. Mountaire Corp. et. al., C.A. No.: S18C-06-009 CAK, and I understand that by excluding myself, I will not be able to get any money or benefit from the settlement.

_____
Signature

_____
Printed Name

_____

_____

_____
Current Address

_____
Current Telephone Number

Please send this Request for Exclusion by First Class U.S. Mail to:

Mountaire Class Action Exclusions
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479

It must be postmarked no later than _____.

Exhibit C

Escrow Agreement

EXECUTION VERSION

CONFIDENTIAL

ESCROW AGREEMENT

This Escrow Agreement dated December 23, 2020 is made by and among Mountaire Farms of Delaware, Inc. ("MFODI"), on behalf of itself, Mountaire Corporation, and Mountaire Farms Inc. (collectively, together with MFODI, "Defendants"), Gary and Anna-Marie Cuppels, Larry Miller, individually and as Personal Representative of the Estate of Barbara Miller, Michael and Anne Harding, and Ronald and Patricia Tolson ("Class Representatives") on behalf of themselves and other similarly situated (collectively, together with Class Representatives, "Plaintiffs"), through their counsel of record, Schochor, Federico and Staton, P.A., and Baird Mandalas Brockstedt LLC ("Class Counsel"), The Huntington National Bank, as escrow agent ("Escrow Agent"), and upon deposit into the QSF (as hereinafter defined) RG/2 Claims Administration LLC ("Claims Administrator").

RECITALS

A. This Escrow Agreement governs the deposit, investment and disbursement of the settlement funds that, pursuant to the Class Action Settlement Agreement and Release (the "Settlement Agreement") dated December 23, 2020 attached hereto as **Exhibit A**, entered into by and among Plaintiffs and Defendants in the class action captioned *Cuppels, et al. v. Mountaire Corp., et al.*, No. S18C-06-009 (Sup. Ct.) (the "Superior Court Case") pending in the Superior Court of Delaware (the "Court").

B. Pursuant to the terms of the Settlement Agreement, Defendants shall pay or cause to be paid in cash the total amount of Sixty Five Million Dollars and no/100 ($65,000,000.00), payable in two (2) separate installments in accordance with the terms of the Settlement Agreement and this Escrow Agreement, for all claims for damages and all other relief sought by Plaintiffs in the Second Amended Complaint and that could have been sought or awarded, including attorneys' fees, costs, and other expenses (construed broadly to include, but not be limited to, attorneys' fees, litigation expenses, pre- and/or post-judgment interest, and court costs) in the Superior Court Case and all other matters as described in the Settlement Agreement (the "Settlement Amount").

C. Also pursuant to the terms of the Settlement Agreement, Plaintiffs and Defendants agree to establish a Qualified Settlement Fund ("QSF") to hold the Settlement Amount. The QSF is subject to Court approval. Defendants are required to establish and fund an escrow account to receive the first installment of Fifty Five Million Dollars and no/100 ($55,000,000.00) by December 31, 2020, in advance of the Court's consideration of the Settlement Agreement and the request to establish a QSF.

D. The disbursements contemplated by this Escrow Agreement are subject to the Superior Court Date of Final Approval of both the Settlement Agreement and a settlement class pursuant thereto under Del. Supr. Ct. R. 23(b) (the "Court Order") and the date the District Court approves and enters the First Amended Consent Decree in *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, Case No. 18-00838-MN-JLH (D. Del.) (the "District Court Case") (which for purposes hereof is construed to

include any successor consent decree agreed by all parties in the District Court matter should the District Court disapprove the First Amended Consent Decree).

E. Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Settlement Agreement. For reference throughout this Escrow Agreement, "Date of Final Approval" is defined in the Settlement Agreement and herein to mean the later of the date of the Court's final approval of the Settlement Agreement, the date of the expiration of the time for filing appeals (if no appeals are filed), and, should any appeals be filed, the date on which any and all appeals have been resolved in favor of upholding the final approval of the Settlement Agreement, including the running of the time for reconsideration or further appeals of that favorable resolution.

AGREEMENT

1. Appointment of Escrow Agent. The Escrow Agent is hereby appointed to receive, deposit and disburse the Settlement Amount upon the terms and conditions provided in this Escrow Agreement, the Court Order, the Settlement Agreement and any other exhibits or schedules later annexed hereto and made a part hereof.

2. The Escrow Account. The Escrow Agent shall establish and maintain an escrow account titled as *Cuppels, et al. v. Mountaire Corp., et al.* Class Settlement Fund, No. S18C-06-009 (Del. Sup. Ct.) (the "Escrow Account"). In accordance with the Settlement Agreement, MFODI, on behalf of Defendants, shall cause the Settlement Amount to be deposited into the Escrow Account in up to two installments with the first installment deposited by December 31, 2020 in the amount of Fifty-Five Million Dollars and no/100 ($55,000,000.00). The second installment of Ten Million Dollars and no/100 ($10,000,000.00) will be deposited into the Escrow Account by December 31, 2021; provided, however, that if disbursement has been effected pursuant to Section 7 below prior to the due date for the second installment, the second installment shall be paid directly to the QSF Account as provided below rather than into the Escrow Account. Escrow Agent shall receive the installment payment(s) into the Escrow Account; the installment payment(s) and all interest accrued thereon and other gains, minus allowable expenses as provided herein, shall be referred to herein as the "Escrow Fund." The Escrow Fund shall be held and invested on the terms and subject to the limitations set forth herein, and shall be released by Escrow Agent only in accordance with the terms and conditions hereinafter set forth, consistent with the Settlement Agreement.

3. Investment of Escrow Fund. At the written direction of Class Counsel, Escrow Agent shall invest the Escrow Fund exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC") or (b) secured by instruments backed by the full faith and credit of the United States Government. Defendants shall not bear any responsibility for or liability related to the investment of the Escrow Fund by the Escrow Agent.

4. Escrow Fund Subject to Jurisdiction of the Court. Subject at all times to any event causing reversion under Section 7(b) or termination under Section 8, the Escrow Fund shall

become subject to the jurisdiction of the Court after the entry of the Court Order and the passage of the Date of Final Approval until such time as the Escrow Fund shall be distributed, pursuant to the Settlement Agreement and on further order(s) of the Court.

5. Tax Payments of Escrow Fund. All taxes with respect to the Escrow Fund shall be treated as and considered to be a cost of administration of the Escrow Fund and the Escrow Agent shall timely pay such taxes out of the Escrow Fund without prior order of the Court. Any tax withholdings shall be effected from the Escrow Fund as needed before the QSF is established or before reversion. The Claims Administrator shall be responsible for the timely and proper preparation and delivery of any necessary documentation for signature by all necessary parties, and the timely filing of all tax returns and other tax reports required by law. The Claims Administrator may engage an accounting firm or tax preparer to assist in the preparation of any tax reports or the calculation of any tax payments due as set forth in Sections 5 and 6 and the expense of such assistance shall be paid from the Escrow Fund by the Escrow Agent at the Claims Administrator's direction. The Escrow Fund shall be used to indemnify and hold MFODI harmless for any taxes that may be deemed to be payable by MFODI by reason of the income earned on the Escrow Fund, and Escrow Agent as directed by the Claims Administrator, shall establish such reserves as are necessary to cover the tax liabilities of the Escrow Fund and the indemnification obligations imposed by this paragraph. This indemnity shall survive termination of this Escrow Agreement. If the Escrow Fund is returned to MFODI pursuant to the terms of the Settlement Agreement or Court Order, MFODI shall provide Escrow Agent with a properly completed Form W-9.

6. Tax Treatment & Report. By the later of (i) Date of Final Approval of the Settlement Agreement by the Court and (ii) the date the District Court approves and enters the First Amended Consent Decree, a QSF Account shall be established and treated at all times as a "Qualified Settlement Fund" within the meaning of Treasury Regulation §1.468B-1 (the "QSF Account"). The Claims Administrator and MFODI shall timely make such elections as necessary or advisable to fulfill the requirements of such Treasury Regulation, including the "relation-back election" under Treas. Reg. § 1.468B-1(j)(2) if necessary to the earliest permitted date. For purposes of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" of the Qualified Settlement Fund shall be the Claims Administrator. The Claims Administrator shall timely and properly prepare and deliver to all necessary parties for signature, and file all necessary documentation for any elections required under Treas. Reg. §1.468B-1. The Claims Administrator shall timely and properly prepare and file any informational and other tax returns necessary or advisable with respect to the Qualified Settlement Fund and the distributions and payments therefrom including without limitation the returns described in Treas. Reg. §1.468B-2(k), and to the extent applicable Treas. Reg. §1.468B-2(l).

7. Disbursement Instructions

(a) The Escrow Fund less withheld taxes and Escrow Agent fees shall be paid to the QSF Account upon the later of the Court Order establishing the Date of Final Approval of both the Settlement Agreement and a settlement class and the date the District Court approves and enters the First Amended Consent Decree.

(b) All of the Escrow Fund will revert to MFODI on the earlier of the date (i) the Superior Court disapproves the Superior Court Settlement Agreement, (ii) the District Court disapproves the First Amended Consent Decree, or (iii) in conformance with termination provisions of Settlement Agreement Section 78, upon notice solely from MFODI or its counsel.

(c) After the Date of Final Approval and after the District Court approves and enters the First Amended Consent Decree, and establishment of the QSF, the Claims Administrator may release funds from the QSF Account only in accordance with the Settlement Agreement and the Court Order.

(d) Class Counsel may, without further order of the Court or authorization by MFODI, instruct Escrow Agent to disburse the funds necessary to pay reasonable class notice and administration expenses upon application by the Claims Administrator with notice to all Parties and ten (10) days to object.

(e) Disbursements other than those described in this Section 7, the Court Order and the Settlement Agreement must be authorized by an order of the Court.

(f) In the event funds transfer instructions are given (other than in writing at the time of execution of this Agreement), whether in writing, by facsimile, e-mail, telecopier or otherwise, Escrow Agent will seek confirmation of such instructions by telephone call back when new wire instructions are established, to the person or persons designated in subparagraphs (a) and (b) above, and Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. It will not be reasonably necessary to seek confirmation if Escrow Agent receives written letters authorizing a disbursement from each of the law firms required in subparagraphs (a) and (b), as applicable, on their letterhead and signed by one of the persons designated in subparagraphs (a) and (b). To assure accuracy of the instructions it receives, Escrow Agent may record such call backs. If Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it shall not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be validly changed only in a writing that (i) is signed by the party changing its notice designations, and (ii) is received and acknowledged by Escrow Agent. MFODI and Class Counsel agree to notify Escrow Agent of any errors, delays or other problems within thirty (30) days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of Escrow Agent's error, Escrow Agent's sole obligation is to pay or refund the amount of such error and any amounts as may be required by applicable law. Any claim for interest payable will be at the then-published rate for United States Treasury Bills having a maturity of ninety-one (91) days.

(g) The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with

such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including, without limitation, the risk of the Escrow Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Escrow Agent and that there may be more secure methods of transmitting instructions than the method(s) selected by the Escrow Agent; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

8. Termination of Settlement. If the Settlement Agreement terminates in accordance with its terms, Class Counsel and MFODI shall notify the Escrow Agent. Upon such notification, the balance of the Escrow Fund, together with any interest earned thereon, less any administrative expenses paid or actually incurred in accordance with the terms of the Settlement Agreement but not yet paid, and any unpaid taxes due, as determined by the Claims Administrator, shall be returned to MFODI.

9. Fees. Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached as **Exhibit B**. All fees and expenses of Escrow Agent shall be paid solely from the Escrow Fund or the Qualified Settlement Fund, as applicable. The Escrow Agent may pay itself such fees from the Escrow Fund or the Qualified Settlement Fund, as applicable only after such fees have been approved for payment by the Escrow Agent and in accordance with the terms of the Settlement Agreement. If Escrow Agent is asked to provide additional services, a separate agreement and fee schedule will be entered into.

10. Duties, Liabilities and Rights of Escrow Agent. This Escrow Agreement sets forth all of the obligations of Escrow Agent, and no additional obligations shall be implied from any other agreement, instrument or document unless referenced herein.

(a) Escrow Agent may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by the Parties or the Claims Administrator, as provided herein, without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. Escrow Agent may act in reliance upon any signature which is reasonably believed by it to be genuine, and may assume that such person has been properly authorized to do so.

(b) Escrow Agent may consult with independent legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected to the extent Escrow Agent acts in accordance with the reasonable opinion and instructions of counsel. Escrow Agent shall have the right to reimburse

itself for reasonable legal fees and reasonable and necessary disbursements and expenses actually incurred from the Escrow Account only (i) upon approval by the Claims Administrator or (ii) pursuant to an order of the Court.

(c) Escrow Agent, or any of its affiliates, is authorized to manage, advise, or service any money market mutual funds in which any portion of the Escrow Fund or the Qualified Settlement Fund, as applicable may be invested.

(d) Escrow Agent is authorized to hold any treasuries held hereunder in its federal reserve account.

(e) Escrow Agent shall not bear any risks related to the investment of the Escrow Fund in accordance with the provisions of paragraph 3 of this Escrow Agreement. The Escrow Agent will be indemnified by the Escrow Fund or the Qualified Settlement Fund, as applicable, and held harmless against, any and all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses of attorneys chosen by the Escrow Agent) as and when incurred, arising out of or based upon any act, omission, alleged act or alleged omission by the Escrow Agent or any other cause, in any case in connection with the acceptance of, or performance or non-performance by the Escrow Agent of, any of the Escrow Agent's duties under this Agreement, except as a result of the Escrow Agent's bad faith, willful misconduct or gross negligence.

(f) Upon distribution of all of the funds in the Escrow Account pursuant to the terms of this Escrow Agreement and any orders of the Court, Escrow Agent shall be relieved of any and all further obligations and released from any and all liability under this Escrow Agreement, except as otherwise specifically set forth herein.

(g) In the event any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder, the Escrow Agent shall be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction located within the State of Delaware, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The parties further agree to pursue any redress or recourse in connection with such a dispute, without making the Escrow Agent a party to same.

11. Non-Assignability by Escrow Agent. Prior to creation and approval of the Qualified Settlement Fund, Escrow Agent's rights, duties and obligations hereunder may not be assigned or assumed without the written consent of MFODI and Class Counsel, and after the creation and approval of the Qualified Settlement Fund, written consent of the Claims Administrator.

12. Resignation of Escrow Agent. Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following one hundred and twenty (120) days prior written notice to the parties to this Escrow Agreement. On the effective date of such resignation, Escrow Agent shall deliver this Escrow Agreement together with any and all related instruments

or documents and all funds in the Escrow Account to the successor Escrow Agent, subject to this Escrow Agreement. If a successor Escrow Agent has not been appointed prior to the expiration of one hundred and twenty (120) days following the date of the notice of such resignation, then Escrow Agent may petition the Court for the appointment of a successor Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Escrow Agreement.

13. Notices. Notice to the parties hereto shall be in writing and delivered by hand-delivery, facsimile, electronic mail or overnight courier service, addressed as follows:

If to MFODI:

Craig S. Lair
1901 Napa Valley Dr.
Little Rock, AR 72212
501-399-8876
clair@mountaire.com

Michael W. Teichman
Parkowski, Guerke & Swayze
1105 N. Market Street, 19th Floor
Wilmington, DE 19801
302-594-3331
mteichman@pgslegal.com

Timothy K. Webster
Sidley Austin LLP
1501 K Street NW
Washington, DC 20005
Telephone: 202-736-8136
E-mail: twebster@sidley.com

If to the Class Counsel:

Philip C. Federico
Schochor, Federico and Staton, P.A.
1211 St. Paul Street
Baltimore, MD 21202
Telephone: 410-234-1000
E-mail: pfederico@sfspa.com

Chase T. Brockstedt
Baird Mandalas Brockstedt LLC
1413 Savannah Rd., Suite 1
Lewes, DE 19958
Telephone: 302-645-2262
E-mail: chase@bmbde.com

If to the Claims Administrator:

Cuppels, et al. v. Mountaire Corp, et al.
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479
Telephone: 1-866-RG2-4955
Telephone: 1-215-979-5551
E-mail: info@rg2claims.com

If to Escrow Agent:

THE HUNTINGTON NATIONAL BANK
Rose Kohles, Vice President
1150 First Avenue, Suite 501
King of Prussia, PA 19406
Telephone: (215) 430-5289
E-mail: rose.kohles@huntington.com

Susan Brizendine, Trust Officer
Huntington National Bank
7 Easton Oval – EA5W63
Columbus, Ohio 43219
Telephone: (614) 331-9804
E-mail: susan.brizendine@huntington.com

14. Patriot Act Warranties. Section 326 of the USA Patriot Act (Title III of Pub. L. 107-56), as amended, modified or supplemented from time to time (the "Patriot Act"), requires financial institutions to obtain, verify and record information that identifies each person or legal entity that opens an account (the "Identification Information"). The parties to this Escrow Agreement agree that they will provide the Escrow Agent with such Identification Information as the Escrow Agent may request in order for the Escrow Agent to satisfy the requirements of the Patriot Act.

15. Entire Agreement. This Escrow Agreement, including all Schedules and Exhibits hereto, constitutes the entire agreement and understanding of the parties hereto. Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. To the extent this Escrow Agreement conflicts in any way with the Settlement Agreement, the provisions of the Settlement Agreement shall govern.

16. Governing Law. This Escrow Agreement shall be governed by the law of the State of Delaware in all respects. The parties hereto submit to the jurisdiction of the Court, in connection with any proceedings commenced regarding this Escrow Agreement, including, but not limited to, any interpleader proceeding or proceeding Escrow Agent may commence pursuant to this Escrow Agreement for the appointment of a successor Escrow Agent, and all parties hereto submit to the jurisdiction of such Court for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue or inconvenient forum.

17. Termination of Escrow Account. The Escrow Account will terminate after all funds deposited in it, together with all interest earned thereon and other gains, less permissible expenses, are disbursed, and all obligations of Escrow Agent have been complied with in accordance with the provisions of the Settlement Agreement and this Escrow Agreement.

18. Attorney-in-fact. The Class Counsel is hereby appointed as the exclusive agent, proxy and attorney-in-fact for the Settlement Class. The Class Counsel shall have the exclusive authority to act for and on behalf of the Settlement Class, including (a) to consummate transactions contemplated herein, including executing and delivery any necessary documents (with such modifications or changes therein as to which the Class Counsel, in their sole discretion, shall have consented), (b) to communicate to, and receive all communications and notices from, MFODI and/or the Escrow Agent , and (c) to do each and every act, implement any decision and exercise any and all rights which the Settlement Class are permitted to do or exercise under this Escrow Agreement.

19. Miscellaneous Provisions.

(a) Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Escrow Agreement.

(b) Further Cooperation. The parties hereto agree to perform such further acts and things and to execute and deliver such other documents as Escrow Agent may request from time to time in connection with the administration, maintenance, enforcement or adjudication of this Escrow Agreement in order (a) to give Escrow Agent confirmation and assurance of Escrow Agent's rights, powers, privileges, remedies and interests under this Escrow Agreement and applicable law, (b) to better enable Escrow Agent to exercise any such right, power, privilege or remedy, or (c) to otherwise effectuate the purpose and the terms and provisions of this Escrow Agreement, each in such form and substance as may be acceptable to Escrow Agent.

(c) Non-Waiver. The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date first above written.

RG/2 CLAIMS ADMINISTRATION LLC, as Claims Administrator

By: _____
Michael Gillen, President

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date first above written.

THE HUNTINGTON NATIONAL BANK, as Escrow Agent

By: _____
Rose Kohles, Vice President

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date first above written.

MOUNTAIRE FARMS OF DELAWARE, INC.

By: _____
Craig S. Lair, Chief Financial Officer

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date first above written.

CLASS COUNSEL

BAIRD MANDALAS BROCKSTEDT, LLC

By: _____
Chase T. Brockstedt, Esq., Partner

SCHOCHOR FEDERICO & STATON, P.A.

By: _____
Philip C. Federico, Esq., Partner

Exhibit A

Settlement Agreement
(to be attached)

Exhibit B

Fees of Escrow Agent

Acceptance Fee: **Waived**

The Acceptance Fee includes the review of the Escrow Agreement, acceptance of the role as Escrow Agent, establishment of Escrow Account(s), and receipt of funds.

Annual Administration Fee: **Waived**

The Annual Administration Fee includes the performance of administrative duties associated with the Escrow Account including daily account management, generation of account statements to appropriate parties, and disbursement of funds in accordance with the Escrow Agreement. Administration Fees are payable annually in advance without proration for partial years.

Out of Pocket Expenses: **Waived**

Out of pocket expenses include postage, courier, overnight mail, wire transfer, and travel fees.

Exhibit D

Notice Plan

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

GARY and ANNA-MARIE CUPPELS et al., individually and on behalf of others similarly situated,	:	
Plaintiffs,	:	
v.	:	C.A. NO.: S18C-06-009 CAK
MOUNTAIRE CORPORATION, MOUNTAIRE FARMS INC., and MOUNTAIRE FARMS OF DELAWARE, INC.,	:	
Defendants.	:	

DECLARATION OF MICHAEL J. LEE REGARDING NOTICE PLAN

I, MICHAEL J. LEE, declare as follows:

1. I am over 21 years of age and am not a party to this action. This declaration is based on my personal knowledge, information provided by the staff of RG/2 Claims Administration, LLC ("RG/2"), and information provided by Mitchell + Resnikoff ("M+R"). If called as a witness, I could and would testify competently to the facts stated herein.

2. I am the Chief Operating Officer at RG/2, which has been retained as the Claims Administrator responsible for administering the Notice Plan ("Notice Plan") and the claims administration processes for the above-captioned action. RG/2 is a leader in class action settlement administration that provides settlement administration services and notice plans for class actions involving consumer rights, securities, product liability, environmental, employment, and discrimination. I have experience in all areas of class action settlement administration including notification planning including direct notice by mail and email, print publication

notice, and digital publication notice methodologies. Since 2000, RG/2 Claims has administered in excess of $1.8 billion in class action settlement proceeds.

3. A copy of RG/2's firm background and capabilities is attached hereto as Exhibit 1. I, and in consultation with counsel in the present litigation and M+R designed the Notice Plan for the settlement in the above- captioned action ("Settlement"). The Declaration of Ron Resnikoff of Mitchell + Resnikoff is attached hereto as Exhibit 2.

4. This Declaration describes and, together with the exhibits, constitutes the proposed Notice Plan for the Settlement. The Notice Plan was developed by RG/2 and M+R to reach the Class consistent with other effective court-approved notice programs, and the Federal Judicial Center's (FJC) Judges' Class Action Notice and Claims Process Checklist and Plain Language guide.

PROPOSED NOTICE PLAN

5. The objective of the proposed Notice Plan is to provide notice of the proposed Settlement to members of the Proposed Class ("Class Members" or "Class") that satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

6. I have been provided the proposed Class Definition set forth within the Joint Motion for Preliminary Certification of Class Action Settlement Agreement and other Relief.

7. In consideration of the proposed Class Definition, we have designed the Notice Plan that includes the following elements:

(a) Direct Mailed Notice, also referred to herein as the Long Form Notice (the proposed Notice is separately attached to the Settlement);

(b) Publication Notice;

(c) A dedicated settlement website through which Class Members can obtain detailed information about the Settlement and access the Long Form Notice and case documents and file a registration form (also referred to herein as the Claim Form);

(d) A toll-free telephone number that Class Members can obtain additional information about the Settlement and request a copy of the Long Form Notice and Claim Form; and

(e) A press release in a form acceptable to the parties.

8. At the conclusion of the notice campaign, RG/2 will provide a final declaration verifying implementation of the Notice Plan.

DIRECT MAILED NOTICE

9. Direct mailed Notice (i.e., the Long Form Notice) will be provided by First-Class mail to all Class Members whose addresses are identified as residing within the Groundwater Area, the Air Area, or both.

10. Based upon information provided by counsel, the parties have a shape file which can be utilized to identify mailing addresses for potential Class Members. Utilizing the US Postal Services National Change of Address and record locator services, RG/2 expects to be able to find complete information for class members that will allow for the delivery of a notice packet by First-Class Mail to identified class members. For all notices returned as undeliverable, RG/2 will: (1) skip-trace addresses and mail Notice to the most recent available addresses identified, and (2) mail a second Notice to the Current Resident at the property located within the class area.

PUBLICATION NOTICE

11. The Class definition also includes former owners and residents of the properties in the Groundwater Area and/or Air Area as well as those employed full-time in those areas (other than excluded members). In order to reach these class members, RG/2 will publish a Publication Notice in a form acceptable to the parties in 6 Delaware Newspapers with a combined circulation of 76,375 and *USAToday*. Collectively, the print publications will reach over 680,000.

12. The Publication Notice will inform potential class members of the existence of the Settlement and instructions on how to find the settlement website and participate in the settlement administration.

13. The Notice Plan calls for the Publication Notice to be placed four times for publication in the following newspapers over a period of 60 days:

- *Cape Gazette*
- *Coastal Point*
- *Laurel Star*
- *Seaford Star*
- *Delaware Wave*
- *Delaware Coastal Press*

14. The Notice Plan calls for the Publication Notice to be placed one time for publication in the following newspaper:

- *USAToday*

SETTLEMENT WEBSITE

15. Prior to the launch of the Notice Plan, RG/2 will establish a settlement website for the purposes of disseminating the Notice and related content.

16. RG/2 will work with the counsel to update the case website to finalize the content to for the website and the claims portal. The website will provide Class Members with general information about the Settlement consistent with the Long Form Notice, including answers to

frequently asked questions, important dates and deadline information, a summary of Settlement benefits, the ability to download a registration form, a collection of downloadable Court documents related to the litigation and the settlement (including the Long Form and Publication Notices, online Claim Form, Settlement Agreement, and Preliminary Approval Orders), and the contact information for the Claims Administrator.

TOLL-FREE HELPLINE

17. Prior to the launch of the notice campaign, RG/2 will make available a toll-free number to assist potential Class Members and any other persons seeking information about the Settlement. The helpline will be staffed by live operators during normal business hours and will be fully automated and will operate 9:00 AM to 5:00 PM, 5 days a week. Callers will have the option to leave a message in order to speak with the Claims Administrator who will return their call within 24 hours.

18. The toll-free helpline will include a voice response system that allows callers to listen to general information about the Settlement, listen to responses to frequently asked questions ("FAQs"), or request a paper version of the Long Form Notice and Claim Form.

19. RG/2 will work with Counsel to finalize responses to the FAQs that will incorporate the information contained in the Court-approved Class Notice that will provide accurate answers to anticipated questions about the Settlement.

PRESS RELEASE

20. M+R will issue a press release in a form acceptable to the parties consisting of the Notice to be distributed via *PRNewswire*.

EXHIBITS

21. Attached hereto are true and correct copies of the following exhibits:

(a) Exhibit 1: Background information on RG/2 Claims Administration LLC

(b) Exhibit 2: The Declaration of Ron Resnikoff of Mitchell + Resnikoff

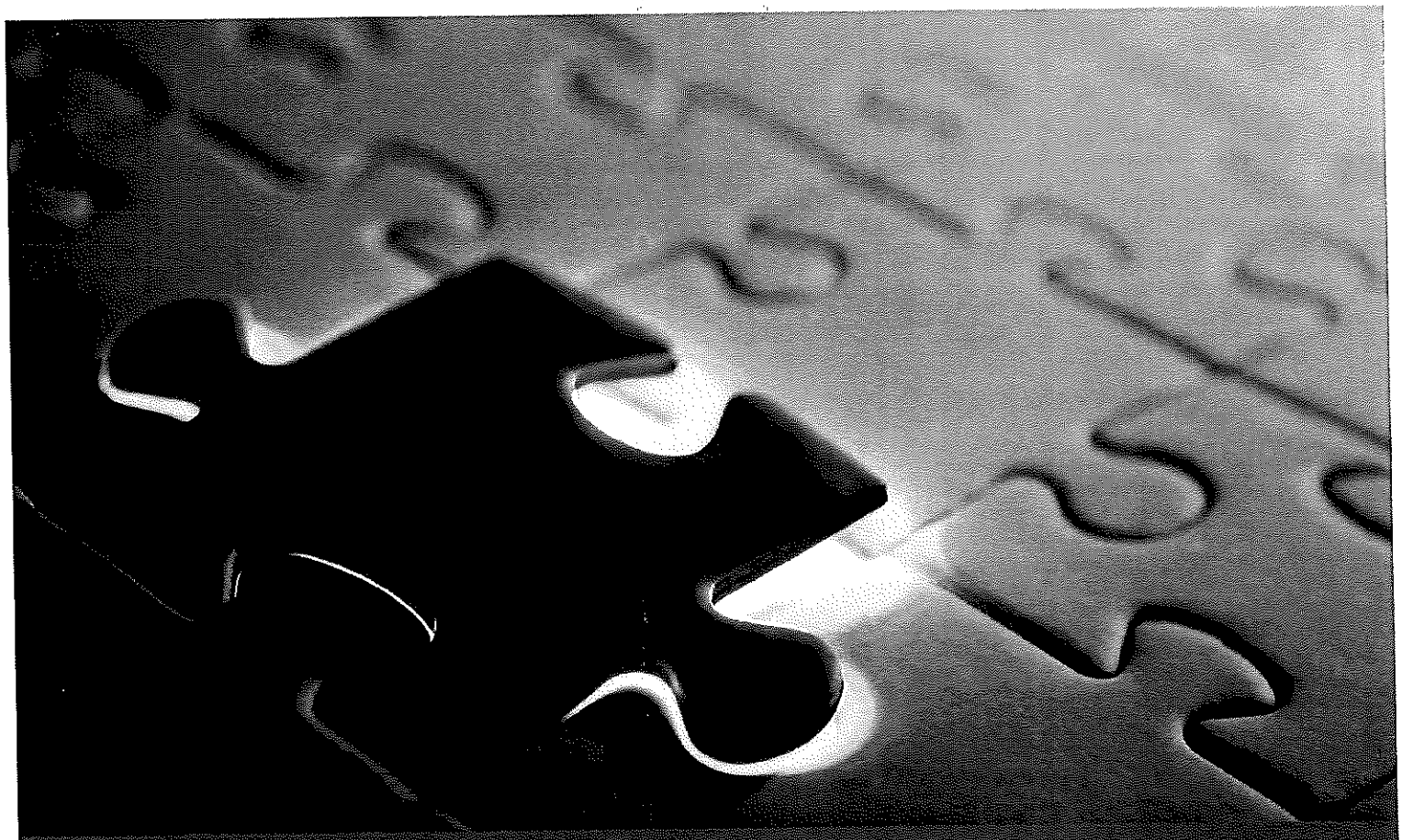
(c) Exhibit 3: Notice Plan Cost Estimate

Pursuant to 10 *Del. C.* §3927, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and was executed in Hamilton, NJ on December 23, 2020.

Michael J. Lee

EXHIBIT 1

RG2 Claims Administration LLC



SETTING A NEW STANDARD IN CLASS ACTION CLAIMS ADMINISTRATION

PHILADELPHIA • NEW YORK • ATLANTA • SAN DIEGO • SAN FRANCISCO

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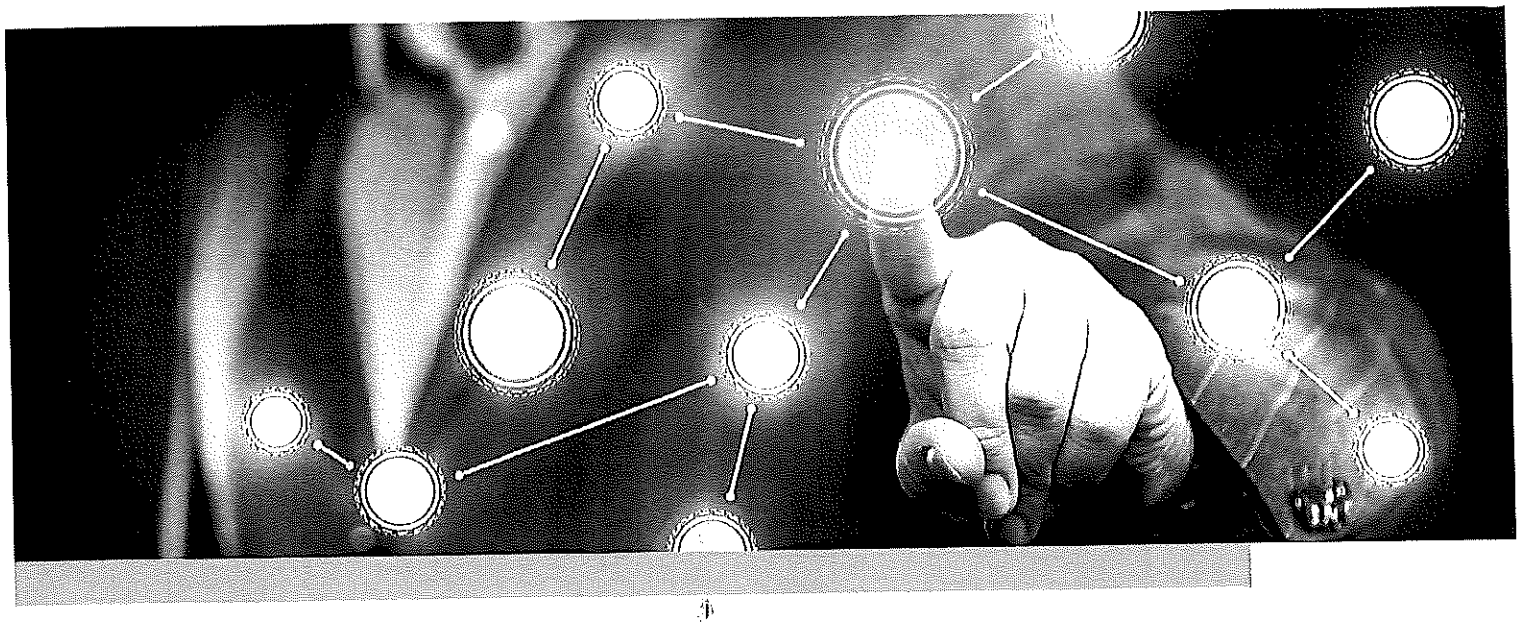
Class Action Experience
High-Quality Service at Competitive Rates

RG/2 Claims seasoned professionals utilize their vast class action experience, tax and financial management resources to deliver high-quality service at competitive rates.

RG/2 Claims is a boutique class action claims administration firm with a nationwide presence founded by seasoned class action practitioners and highly credentialed tax professionals. Our leadership team has a collective 100 years' experience working in the field of class action litigation and settlement administration to leverage for the benefit of counsel. Our team of driven class action attorneys, *highly credentialed CPAs and forensic accountants* approach each matter with a personal goal to shepherd the settlement through the process from settlement negotiations through final approval. Our personal attention and care ensures that the administration is handled in a seamless matter that allows counsel to proceed with the knowledge and confidence that their settlement will receive the attention and care that they demand. In addition, our operations and IT personnel bring individualized innovations to each engagement, driving the notice and settlement administration to conclusion. We have the experience to handle large settlements with the personal attention and care expected from a boutique firm.

RG/2 Claims recognizes that cutting-edge technology is the key to efficient and reliable claim processing. Our IT Group, including an experienced web design team, enables RG/2 Claims to employ technologies used to enhance accuracy, efficiency and interaction of all participants in the claims process. Our approach focuses on analysis of case needs, development of solutions to maximize resources and reduce costs through accurate and efficient data collection and entry, and ongoing maintenance and support. Throughout the entire claims process, our goal is to (1) optimize completeness, accuracy and efficiency of the data management system, including online integration; (2) validate critical fields and data; and (3) track opt-outs and claimant responses. RG/2 Claims' proprietary database application provides a *single source for managing the entire claims administration process and expediting decision making and resource management.* From the initial mailing through distribution of settlement funds and reconciliation of distributed payments, RG/2 Claims' **CLEVerPay®** system centralizes data, facilitating information sharing and efficient communication.



Cutting-Edge Technology and Skilled Resources

The CLEVerPay® System: A proprietary and revolutionary application developed exclusively by RG/2 Claims.

At RG/2 Claims, we developed a proprietary and customizable database with the goal of providing single-source management throughout the claims administration process, expediting decision making and resource management.

From the initial mailing through distribution of settlement funds and reconciliation of payments, RG/2 Claims' CLEVerPay® system centralizes the entire process while providing information sharing and communications solutions.

Our CLEVerPay® system is a robust and user-friendly resource that can be easily customized to meet your administration and distribution needs. We recognize how essential it is for data to be clean, centralized and readily accessible. RG/2 Claims' CLEVerPay® system has the capacity to assimilate and analyze large amounts of raw data from multiple inputs, to convert that raw data into useful information and to distribute the useful information in a variety of formats.

The integration of these elements results in timely and accurate distribution of secure payments generated from RG/2 Claims' single-source CLEVerPay® system.

For more information, please visit our website to download our CLEVerPay® System Datasheet at: http://www.rg2claims.com/pdf/cleverPayDatasheet.pdf.

Experienced Professionals
Always There When You Need Us

RG/2 Claims principals have hands-on experience in both class action practice and settlement administration. Our combined access to resources and institutions allows us to deliver superior value-added service in all aspects of settlement administration.

GRANT RAWDIN, Esq., CFP®, CEO and co-founder, is an attorney, an accountant and a Certified Financial Planner™ practitioner. *Worth* magazine named him one of the "Best Financial Advisors in America." Mr. Rawdin's professional background includes more than 25 years of legal and accounting experience focused in tax, business, investment analysis, legal claims and class action settlement administration. Mr. Rawdin has a Juris doctor degree from Temple University Beasley School of Law and a B.A. in English from Temple University, and he is admitted to practice law in Pennsylvania and New Jersey.

rawdin@rg2claims.com

MICHAEL A. GILLEN, CPA, CFE, CFF, President and co-founder, has more than 25 years of experience in many facets of litigation consulting services, with particular emphasis on criminal and civil controversies, damage measurement, fraud and embezzlement detection, forensic and investigative accounting, legal claims and class action settlement administration and taxation. He assists numerous attorneys and law firms in a variety of litigation matters. Mr. Gillen graduated from La Salle University with a B.S. in Accounting.

mikegillen@rg2claims.com

MICHAEL J. LEE, CFA, COO, the chief architect of our proprietary CLEVerPay® system is a Chartered Financial Analyst with extensive experience in litigation consulting services, including damage assessment, measurement, evaluation, legal claims and class action settlement administration. Additionally, Mr. Lee has about a decade of experience in the financial services industry, with particular emphasis on securities valuation, securities research and analysis, investment management policies and procedures, compliance investigations and portfolio management in global equity markets. Mr. Lee has a B.S. in Business Administration with a dual major in Finance and Management from La Salle University and an M.B.A. in Finance from the NYU Stern School of Business.

mlee@rg2claims.com

MELISSA BALDWIN, Director of Claims Administration—Employment and Consumer, has over 18 years of experience in the administration of class action matters, with focuses on project management, client communication, notice coordination, claims processing and auditing, and distribution in the class action practice areas of antitrust, consumer and labor and employment. As Notice and Correspondence Coordinator, Ms. Baldwin assisted in the administration of an antitrust matter involving nine defendant banks, which included over 47 million class members and the subsequent distribution of the $330 million Settlement Fund to the valid class members. Ms. Baldwin has a B.S. in Business Administration from Drexel University.

mbaldwin@rg2claims.com

TINA M. CHIANGO, Director of Claims Administration—Securities and Antitrust, has over 20 years of experience in the administration of class action matters. Ms. Chiango focuses on project management; this includes establishing procedures and case workflow, client communications, notice coordination, overseeing the processing and auditing of claims, distribution to the class and preparing reports and filings for the court. Over the last 20 years, Ms. Chiango has worked on a broad spectrum of class action settlements including securities, antitrust, consumer and mass tort, among others. Ms. Chiango has a B.S. in Business Administration with a major in Accounting from Drexel University.

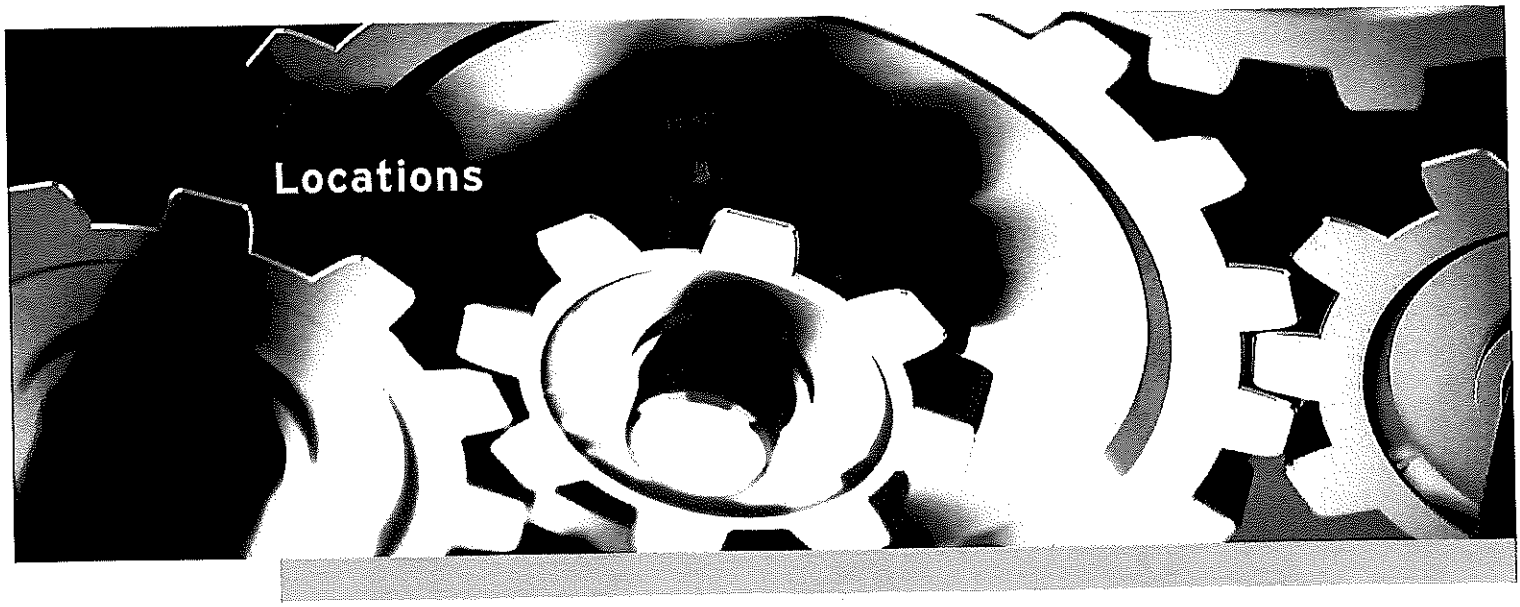
tchiango@rg2claims.com

WILLIAM W. WICKERSHAM, Esq., Senior Vice President, Business Development and Client Relations, focuses his practice on assisting clients in navigation of the claims administration process from pre-settlement consultation through disbursement in all class action practice areas, including, but not limited to, antitrust, consumer, labor and employment, and securities. As a seasoned director of client relations, he advises counsel on settlement administration plans and manages many large and complex class action settlements. Mr. Wickersham has also appeared in federal court on several occasions to successfully support counsel in the settlement approval process including complex securities, environmental and wage and hour matters. As a former securities class action attorney, he brings over a decade's worth of experience in the class action bar as a litigator and as a claims administrator. As a litigator, Mr. Wickersham was involved in several high profile litigations which resulted in recoveries for investors totaling over $2.5 billion. Mr. Wickersham has a juris doctor degree from Fordham University School of Law, a B.A. from Skidmore College and is admitted to practice law in New York.

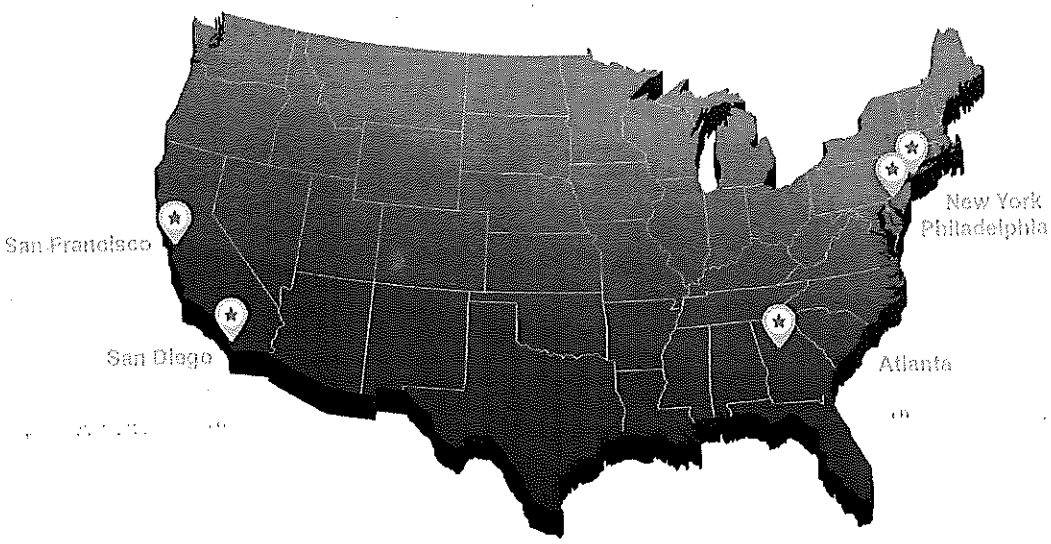
wwwickersham@rg2claims.com

CHRISTOPHER J. TUCCI, Esq., Vice President, Business Development and Client Relations, focuses on guiding clients through the class action claims administration process from pre-settlement consultation to innovative notice campaigns, to quality and cost-effective administration, to the ultimate distribution of funds. He advises clients on the administrative solutions for consumer, employment, securities, and antitrust class action. Mr. Tucci is recognized as an expert in the financial services legal community and is a sought after national speaker on litigation management, financial services laws, data security breaches, corporate investigations, and in-house counsel best practices. As a former senior in-house litigator for nearly two decades, he has extensive experience managing litigation for global financial services corporations, including dozens of securities, wage & hour, and consumer class actions matters. Mr. Tucci brings a unique perspective to class action matters with his deep practical experience in the management of litigation including selecting and managing outside counsel, handling internal investigations, communicating with state and federal regulators, and managing litigation from inception through settlement or dismissal. Mr. Tucci has a juris doctor degree from Widener University School of Law, a B.A. from the University of Delaware, and is admitted to practice in Pennsylvania and New Jersey.

ctucci@rg2claims.com



Locations



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NEW YORK
1540 Broadway • New York, NY 10036-4086
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ATLANTA
1075 Peachtree Street NE, Suite 2000 • Atlanta, GA 30309-3929
P 404.253.6904 • F 404.253.6905

SAN DIEGO
750 B Street, Suite 2900 • San Diego, CA 92101-4681

SAN FRANCISCO
Spear Tower • One Market Plaza, Suite 2200 • San Francisco, CA 94105-1127
P 415.957.3011 • F 415.957.3090





Full Life-Cycle Support for Your Class Action With You Every Step of the Way

Whether engaged as a court-appointed settlement administrator, claims agent or disbursing agent, RG/2 Claims offers a complete range of claims, settlement administration and investment management services, including but not limited to:

PROFESSIONAL CASE MANAGEMENT CONSULTING

RG/2 Claims provides custom pre-settlement consultation and highly personalized attention throughout the life cycle of settlement administration. Each retention begins with an in-depth consultation concerning the specific needs of the case. Our professionals routinely and proactively identify administrative concerns and identify and propose solutions that avoid delay and remove unpredictability from the equation. We work through a coordinated approach involving a core of specialists that are intimately familiar with the case entrusted to our care. Our retentions result in effective and efficient solutions and greater peace of mind for busy lawyers.

NOTIFICATION PLANNING AND CAMPAIGNS

Whether routine or innovative, RG/2 Claims designs cost-effective and thorough notification plans that will suit your budget whether the settlement is national in scope or highly localized. RG/2 Claims guides you through the array of notice publication options at your disposal in a variety of media formats.

WEBSITE DESIGN

RG/2 Claims can assist in the design and hosting of a website specific to the client's needs to allow for document posting, as well as pertinent information and deadlines about the case. RG/2 Claims can also provide various options for claims filing, which includes an online portal that allows claimants to submit their claims and supporting documentation through the website.

CLAIMS PROCESSING

RG/2 Claims utilizes a proprietary and customizable database that provides a single-source management tool throughout the claims administration process, expediting decision making and resource management. RG/2 Claims' proprietary and sophisticated CLEVerPay® system centralizes the entire process while providing information sharing and communications solutions, from the initial mailing through distribution of settlement funds and reconciliation of payments.

DISTRIBUTION AND TAX SERVICES

RG/2 Claims' in-house tax, accounting and financial services professionals provide disbursement services, including management of checking, sweep, escrow and related cash accounts, as well as non-cash assets, such as credits, gift cards, warrants and stock certificates. RG/2 Claims' in-house CPAs provide a broad array of accounting services, including securing private letter rulings from the IRS regarding the tax reporting consequences of settlement payments, the preparation of settlement fund tax returns and the preparation and issuance of IRS Forms 1099 and W-2.

Range of Services

Offering Unparalleled Value

RG/2 offers a range of quality value-added services for your class action administration.

SECURITIES

RG/2 Claims' highly experienced team uses its various resources to locate beneficial holders of securities, including working with the Depository Trust Company and a proprietary list of nominee firms to identify and mail notices to the class. With RG/2 Claims' CLEVerPay system, claims are processed efficiently and accurately using our proprietary damage grid that calculates class member damages in accordance with a broad array of complex plans of allocation. Claims are automatically flagged through a validation process so RG/2 Claims can communicate with class members concerning their claims and can assist them in filing claims that are complete and properly documented. Once ready for distribution, RG/2 Claims conducts an audit of the claims to insure against calculation errors and possible fraudulent claims. Once the audit is completed, RG/2 Claims calculates distribution amounts for eligible class members in accordance with the plan of allocation and issues checks and any applicable tax documents. RG/2 Claims is also often called upon to act as the Escrow Agent for the Settlement Fund, investing the funds and filing all required tax returns.

ANTITRUST

Because of the high-dollar settlements involved in most antitrust cases and potential large recoveries on behalf of class members, RG/2 Claims understands the importance of accuracy and attention to detail for these cases. RG/2 Claims works with counsel to arrive at the best possible plan to provide notice to the class. With RG/2 Claims' CLEVerPay system, claims filed with a large volume of data, which is common in an antitrust case, can be quickly and easily uploaded into our database for proper auditing. Our highly-trained staff consults with counsel to apply an audit plan to process claims in an efficient manner while ensuring that all claims meet class guidelines. Once ready for distribution, RG/2 Claims calculates check amounts for eligible class members in accordance with the plan of allocation and will issue checks (including wire transfers for large distributions) as well as any necessary tax documents. RG/2 Claims is also available to act as the Escrow Agent for the Settlement Fund, investing the funds and filing all required tax returns.

EMPLOYMENT

With an experienced team of attorneys, CPAs, damage experts and settlement administrators, RG/2 Claims handles all aspects of complex employment settlements, including collective actions, FLSA, gender discrimination, wage-and-hour and, in particular, California state court class and PAGA settlements. RG/2 Claims utilizes technological solutions to securely receive and store class data, parse data for applicable employment information, personalize consents forms or claim forms, collect consents or claims electronically, calculate settlement amounts and make payments through our proprietary CLEVerPay system. Our proprietary database also allows for up-to-the-minute statistical reporting for returned mail, consents or claims received and exclusions submitted. Our CPAs concentrate on withholding and payroll issues and IRC section 468(B) compliance and reporting. Customizable case-specific websites allow for online notification and claims filing capabilities. With Spanish/English bilingual call center representatives on-staff, class members are provided immediate attention to their needs.

CONSUMER

RG/2 Claims handles a wide range of complex consumer matters with notice dissemination to millions of class members and with settlements involving cash, coupons, credits and gift cards. Our experienced claims administrators are available to provide guidance on media, notice and distribution plans that are compliant with the Class Action Fairness Act and the state federal rules governing notice, and that are most beneficial to the class. Our proprietary CLEVerPay system provides a secure and efficient way to track class member data, claims and payments. Integrated with our database, we can provide a user-friendly claims filing portal that will allow class members to complete a static claim form or log-in using user-specific credentials to view and submit a claim personalized just for that user. A similar online portal can be provided as a highly cost-effective method for distribution where the class member can log in to obtain coupons, vouchers or credits as their settlement award.

Effective administration requires proactive planning and precise execution. Before we undertake any matter, we work with you to develop a specific plan for the administration of your case. The service plan is comprehensive, complete and tailored to your specific needs.

RG/2 CLAIMS PROVIDES THE SERVICES SUMMARIZED BELOW:

- Technical consultation during formulation of settlement agreement, including data collection criteria and tax consequences
- Design and development of notice and administration plan, including claim form design and layout
- Claim form and notice printing and mailing services
- Dedicated claimant email address with monitoring and reply service
- Calculation and allocation of class member payments
- Claim form follow-up, including issuing notices to deficient and rejected claims
- Mail forwarding
- Claimant locator services
- Live phone support for claimant inquiries and requests
- Claim form processing
- Claim form review and audit
- Check printing and issuance
- Design and hosting of website access portals
- Online claim receipt confirmation portal
- Ongoing technical consultation throughout the life cycle of the case
- Check and claim form replacement upon request

WE ALSO PROVIDE THE FOLLOWING OPTIONAL SERVICES:

- Periodic status reporting
- Customized rapid reporting on demand
- Issue reminder postcards
- Consultation on damage analyses, calculation and valuation
- Interpretation of raw data to conform to plan of allocation
- Issue claim receipt notification postcards
- Online portal to provide claims forms, status and contact information
- Dedicated toll-free claimant assistance line
- Evaluation and determination of claimant disputes
- Opt-out/Objection processing
- Notice translation
- Integrated notice campaigns, including broadcast, print and e-campaigns
- Pre-paid claim return mail envelope service
- Web-based claim filing
- 24/7 call center support
- Damage measurement and development of an equitable plan of allocation

WE ALSO PROVIDE CALCULATION AND WITHHOLDING OF ALL REQUIRED FEDERAL AND STATE TAX PAYMENTS, INCLUDING:

- Individual class member payments
- Qualified Settlement Fund (QSF) tax filings
- Employment tax filings and remittance
- Generation and issuance of W-2s and 1099s
- Integrated reporting and remittance services, as well as client-friendly data reports for self-filing

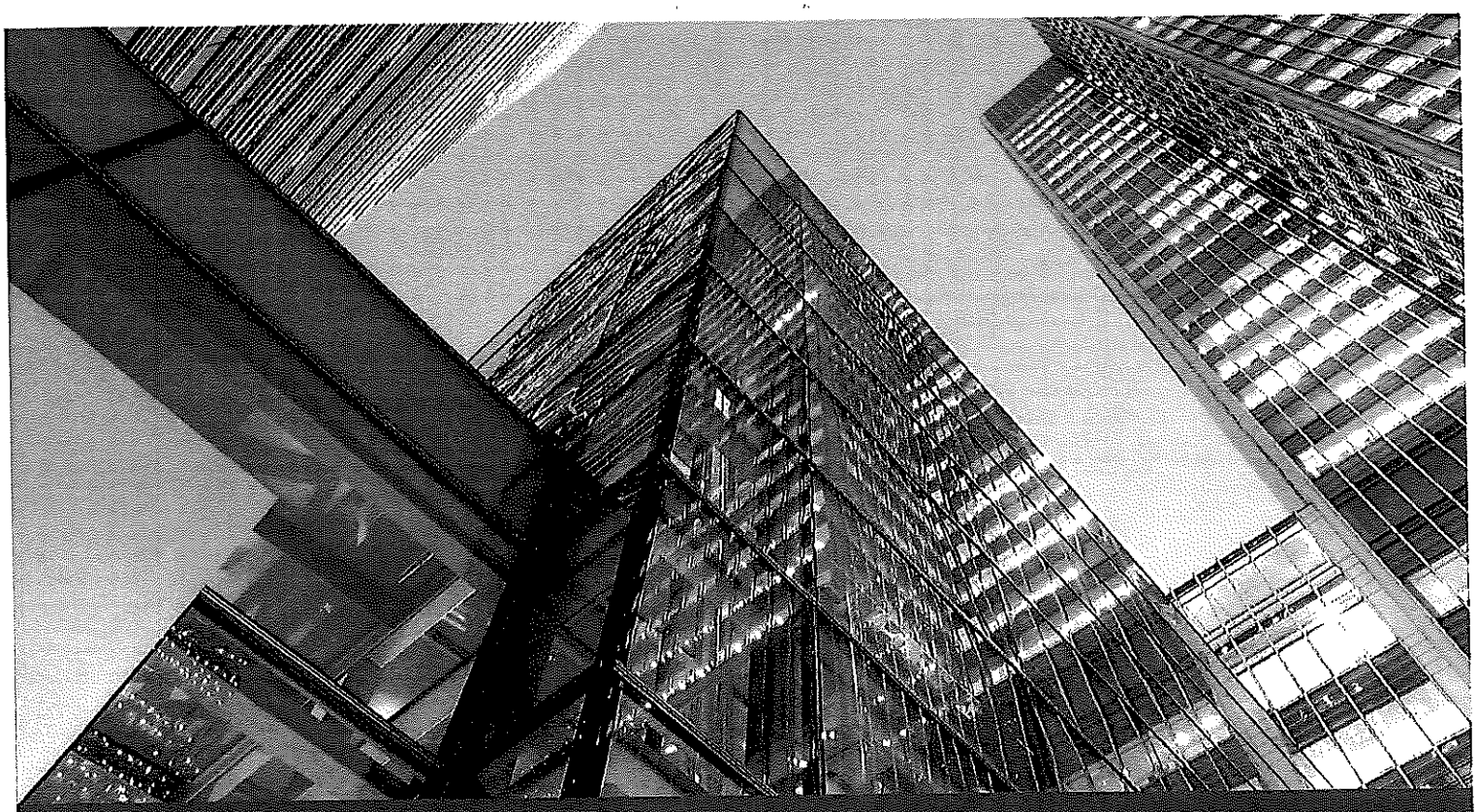
Don't see the service you are looking for?
Ask us. We will make it happen.

RG2 Claims Administration LLC

FOR MORE INFORMATION, PLEASE CONTACT:

WILLIAM W. WICKERSHAM, Esq.
Senior Vice President
Business Development and Client Relations
Phone: 917.531.8241
Email: wwwickersham@rg2claims.com

WWW.RG2CLAIMS.COM



BOUTIQUE ADMINISTRATOR WITH WORLD-CLASS CAPABILITIES

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EXHIBIT 2

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

GARY and ANNA-MARIE CUPPELS et al., individually and on behalf of others similarly situated,	:	
Plaintiffs,	:	
v.	:	C.A. NO.: S18C-06-009 CAK
MOUNTAIRE CORPORATION, MOUNTAIRE FARMS INC., and MOUNTAIRE FARMS OF DELAWARE, INC.,	:	
Defendants.	:	

DECLARATION OF RON RESNIKOFF

I, RONALD B. RESNIKOFF, declare as follows:

1. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts stated herein and, if called as a witness, could and would testify competently thereto.

2. I am the Founder and CEO of Mitchell + Resnikoff ("M+R"), an advertising and marketing firm based in Jenkintown, PA. My firm has been asked by RG/2 Claims Administration LLC ("RG/2") to partner in the design and execution of the proposed Notice Plan for the settlement in the above-captioned action (the "Settlement").

3. I have more than 49 years of experience in marketing communications, direct marketing and advertising. In the past 49 years, I have focused on direct marketing and targeting using online (once it came into vogue) and offline channels in addition to founding M+R in 1988, a successor company to Mitchell & Company that started in 1970.

4. Our work at M+R has evolved since its inception to include designing, executing, and analyzing digital, direct marketing/mail and offline (print) advertising and communications campaigns. The technologies and tools described herein are well-accepted, leading practices in

the digital advertising world and are transferable and applicable to the execution of an effective class action notice plan.

5. This Declaration describes advertising industry trends and practices as well as the media approach and methodology for the Notice Plan for the Settlement.

6. M+R and RG/2 constructed the Notice Plan to be consistent with, and to take advantage of, how individuals consume media and locate information today. Specifically, in addition to providing print publication notice, when appropriate we leverage digital components including mobile and desktop web banners,-paid search and social media. Leveraging the ways in which today's consumer accesses media enables us to construct a robust, action-oriented notification plan. In addition, as we constructed the Notice Plan, we considered the available coverage information about the Defendant's class. This information enables us to better target our Notice Plan and reach potential Settlement Class Members. Specifically, the Notice efforts will target likely residents of properties that were affected by the environmental exposure.

7. The Claims Administrator shall be responsible for executing a direct mail campaign which will include mailing the Notice of Proposed Settlement and related content via USPS First-Class Mail to the owners of all current properties located within the Class Area as identified through the use of a shape file that defines the boundaries of the Class Area. To the extent that properties are identified which include non-resident owners, the Notice of Proposed Settlement and related content will be mailed to the owner as well as to "Current Resident" at the property address. The Claims Administrator will log all returned mail and skip-trace addresses and remail Notice to any current mailing addresses identified. Additionally, the Claims Administrator will issue a second notice to "Current Resident" at the property address.

8. The Claims Administrator will also maintain a case website where Class Members will be able to access current information regarding the case status, review Court documents, and file their Registration Forms via an electronic claim portal.

9. The print media campaign, consists of six local newspapers covering Sussex county, DE. The total one-time circulation is 76,375. Each ad will run four times during the

campaign for a total circulation of 305,500. The newspaper campaign is intended to be supportive of the targeted direct mail campaign. In addition, the notice will be published one time in the national edition of USAToday with a daily circulation of 609,826 for a Friday edition.

10. A press release consisting of the Notice will be distributed to media.

M+R BACKGROUND

11. Over the past 49 years, my company and our media partners and team of digital experts, has planned, managed, executed, and reported on-hundreds of individual digital media and traditional media (TV, Print, Radio, Out-of-Home (OOH)) executions for some of the country's major consumer brand advertisers and business-to-business organizations. M+R clients have included AmeriGas, SEI Investments, AAA MidAtlantic, Aramark, American Education Services/PHEAA, EP Henry, McGraw Hill/FW Dodge, Fulton Bank, JP Morgan Chase, Visa International, WL Gore, Marlin Leasing, National Gaucher Foundation, and MBNA, Tarkett, Zurich Payroll.

12. In my past 30 years as CEO of M+R, I have overseen all aspects of digital and traditional media executions, ranging from strategy development, direct marketing targeting and creative design, to planning, to identification of media partners, to integration of technology, to media buying, to optimizations of media executions and analysis. M+R, its media partners and team of digital experts have-managed more than $15 million in digital and traditional media and direct marketing executions. I have hired and trained more than 50 employees over the years and integrated third-party, industry-leading technologies and providers such as Google and Epsilon.

CONNECTION TO THE NOTICE WEBSITE

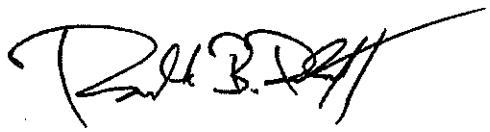
13. All communications in the form of newspaper ads, PR release and direct mail will drive readers to the Settlement website by including the URL.

CONCLUSION

14. Based on my experience in designing and executing offline marketing plans, as well as industry best practices, it is my opinion that the direct mail notice, associated skip tracing, local newspaper publication notice, national newspaper notice in *USAToday* and press

release components of the Notice Plan represent the best notice practicable under the circumstances to reach in excess of an estimated 70% of likely Settlement Class Members.

Pursuant to 10 *Del.. C.* §3927, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and was executed in Jenkintown, PA on December 23, 2020.



Ronald B. Resnikoff

EXHIBIT 3

RG2 Claims Administration LLC

Estimate of Fees and Costs for Notice Services related to:
Gary and Anna Marie Cuppels et al. v. Mountaire Corporation

					Amount
Design & Development					
Start Up - Development of Case-Specific Notice Plan					$ 2,300
Case Intake					
Compile Address Data for Current and Former Residents					$ 1,500
Review Notice, Design and Typeset Notice					$ 525
Web Design Static Website with Court Documents					$ 1,200
Develop Claim Portal for Collecting Registration Forms					$ 3,500
Monthly maintenance (months)					$ 900
Subtotal: Setup Cost					**$ 9,925**
Publication Notice					$ 18,697
4x Placement of Summary Notice in the Following Publications:	**Circulation 1x**	**Circulation 4x**			
Cape Gazette	21,000	84,000		$	573
Coastal Point	18,000	72,000		$	460
Laurel Star	1,625	6,500		$	435
Seaford Star	2,750	11,000			NA
Delaware Wave	17,000	68,000		$	250
Delaware Coastal Press	16,000	64,000		$	250
	76,375	305,500			
1x Placement of Summary Notice in the Following Publication:	**Circulation 1x**				
USAToday	609,826			$	12,880
Issue Press Release				$	850
Project Management/Creative				$	3,000
Class Member Identification & Notification				$	5,260
Print 16-page Notice Mailer	3,000	$	1.25	$	3,750
NCOA and Mail				$	250
Postage	3,000	$	0.42	$	1,260
Notice Follow Up				$	1,564
Process Returned Notices	300	$	0.75	$	225
Skip Trace	300	$	1.25	$	375
Remail Notice to Former Resident	225	$	1.75	$	150
Issue new notice to "Current Resident" at returned address	300	$	1.75	$	525
Postage	525	$	0.55	$	289
Subtotal: Notification Cost					**$ 25,521**

RG2 Claims Administration LLC

Estimate of Fees and Costs for Notice Services related to:
Gary and Anna Marie Cuppels et al. v. Mountaire Corporation

	Quantity (hours/pieces)		Rate		Amount
Claimant Communications					
Set up Toll-Free Customer Service Line				$	750
Monthly Maintenance	12	$	150.00	$	1,800
Estimated Call Volume	300				
Total Minutes	1,200	$	0.15	$	180
Live Operator*					
Total Minutes	400	$	1.10	$	440
Email Responses	100	$	4.50	$	450
Subtotal: Claimant Communications				**$**	**3,620**
Opt-Out Processing					
Open Mail,Log In	15	$	0.75	$	11
Process Op-out requests and report	15	$	4.50	$	68
Import Portal Claims	585	$	1.25	$	731
Review of Claims Providing Proof	135	$	3.75	$	506
Process Paper Claim Submissions	315	$	4.50	$	1,418
Issue deficiency/Denial letters/emails	50	$	1.25	$	63
Process responses to deficiency letters	25	$	3.00	$	75
Postage	50	$	0.55	$	28
Subtotal: Processing				**$**	**2,899**
Tax Reporting					
Set up Qualified Settlement Fund in accordance with 468B				$	250
QSF Tax preparation incluuding quarterly estimated tax payments and annual tax filings (per year)	2	$	1,250	$	2,500
Subtotal: Tax Reporting				**$**	**2,750**
Case Management, Data Analysis, Data Warehousing, Technical Support and Reporting to Counsel and the Court.				$	11,370
Subtotal: Project Management				**$**	**11,370**
Total Estimated Cost for Implementing Notice Plan				**$**	**56,085**

Exhibit E

Medicare Addendum Form

CLASS ACTION SETTLEMENT AND RELEASE EXHIBIT __: MEDICARE ADDENDUM

In further consideration for the Class Action Settlement Agreement and Release (hereinafter "Agreement") to which this Medicare Addendum is attached and incorporated therein, Mountaire Corporation, Mountaire Farms Inc., and Mountaire Farms of Delaware, Inc. and their successors, assigns, parent, subsidiaries, and affiliates, as well as each of their respective employees, representatives, officers, directors, shareholders, owners, agents, and attorneys, the Claims Administrator, the Claims Adjudicator(s), and Plaintiffs' counsel (all collectively referred to as "Releasees") rely on the following representations and warranties made by _____ ("Releasor").

I. Representations and Warranties

Releasor and Releasee agree that all representations and warranties made herein shall survive settlement.

A. Medicare Secondary Payer.

Releasor acknowledges and agrees that the parties hereto have taken reasonable steps to comply with the requirements of 42 U.S.C. § 1395y(b) and the related rules and regulations (hereinafter collectively "MSP"), and that they will continue to do so.

B. MSP applicability.

1. Releasor represents and warrants that Releasor is or was Medicare eligible;

2. Releasor is aware of Medicare's potential interest in this settlement to the extent Medicare has made any conditional payments for medical services or items received by Releasor pursuant to MSP, and related to the injury, or illness giving rise to this settlement, and arising from or related to the matters forming the basis of the claims against Releasee by Releasor;

3. Releasor represents and warrants that they have provided the information to Releasee necessary to comply with any applicable reporting obligations under MSP.

C. Releasor's responsibility for reimbursement of Medicare claims.

1. Releasor represents and warrants that they or their agent have notified Medicare and/or its contractor related to MSP (hereinafter inclusively "Medicare") of the claim(s) giving rise to this settlement.

2. Releasor represents and warrants that in exchange for payment of Releasor's claims from the Settlement Amount paid by Releasees, they shall reimburse Medicare for any conditional payments made by Medicare that

are subject to repayment from the proceeds of this settlement and/or arising from or related to the matters forming the basis of the claims asserted by Releasor. Releasor represents and warrants that it is their responsibility, and not Releasees' responsibility (or any other person or entity), to reimburse Medicare from the proceeds of the settlement less Procurement Costs as defined by 42 C.F.R. § 411.37.

II. Indemnification

In addition to and without limiting any other language in the Agreement, Releasor agrees to indemnify and hold harmless Releasees from and against any and all claims, demands, actions, causes of action, liabilities, debts, liens, obligations, damages, expenses, subrogated interests, and losses of every kind or character that have been or may in the future be asserted against the Releasees by Medicare, the Centers for Medicare and Medicaid Services (including any successor agencies) ("CMS"), any persons or entities acting on behalf of Medicare or CMS, or any other person or entity, including but not limited to the Releasor, that are related to, arise out of, or are in connection with MSP and are related to this Agreement.

This indemnification obligation includes all damages and costs incurred by Releasee, including but not limited to attorney's fees incurred by or on behalf of Releasees, fines and penalties, multipliers, costs, interest, expenses and judgments.

Notwithstanding any other provision of the Agreement to the contrary, Releasor shall not be obligated to defend or indemnify Releasee in relation to any fines or penalties which are through no fault of Releasor, and which resulted solely from the fault of Releasee or its counsel and insurers with regard to reporting obligations under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act or any successor act.

III. Reliance on Representations and Warranties

In agreeing to the Agreement and funding the settlement, Releasees are relying on the representations and warranties of Releasor regarding Releasor's Medicare status and the actions Releasor has represented they have taken and/or will take to satisfy any and all Medicare claims pertaining to the matters forming the basis of Releasor's claims.

If the above representations are not correct and/or the above actions are not performed, it is acknowledged and agreed that Releasor is in material breach of this Medicare Addendum and the Agreement. In addition, nothing contained in this Medicare Addendum shall be construed to limit the rights of Releasees to pursue all available remedies at law or in equity for breach of this Medicare Addendum or the Agreement, including but not limited to any damages, legal fees and costs or expenses for Releasor's failure to adhere to the representations and warranties contained herein.

IV. Release

By executing this Medicare Addendum, and in addition to the release set forth in the Agreement, Releasor hereby releases and forever discharges Releasee of and from any and all claims or potential claims that Releasor has or might have in the future arising out of or relating in any way, directly or indirectly, to any action or conduct of commission or omission by or on behalf of Releasees with respect to (a) reporting of this settlement to Medicare, CMS or to any persons or entities acting on behalf of Medicare or CMS, or (b) any claim, inquiry, investigation, or other action by or on behalf of Medicare, CMS or any persons or entities acting on behalf of Medicare or CMS relating to conditional payments by Medicare or future rights to such conditional payments or Medicare benefits. Releasor specifically agrees and recognizes that the claims and potential claims released in this paragraph include, but are not limited to, any claims or potential claims to a private cause of action under 42 U.S.C. § 1395y(b)(3), and any claims based on any loss or potential loss of Medicare benefits or future entitlement to Medicare benefits, based on or relating to anything that any of the Releasees may do or fails to do with respect to reporting of this settlement or with respect to reimbursement of conditional payments made by Medicare.

Executed in _____County, _____ this _____ day of _____, 2021.

_____
RELEASOR

STATE OF _____, COUNTY OF _____, to wit:
On the ____ day of _____, 2021, before me personally appeared Releasor, to me known to be the person named in the foregoing Release, and who executed the foregoing Release and acknowledged to me that he/she has read the Release and understands the contents thereof and that he/she voluntarily executed the same.

_____
WITNESS

EXHIBIT 2

Mountaire Expenses		
	Expense	**Totals**
1078	Notice Processing	2,641.95
1080	Audio/Visual (e.g., mediation video, drones, video deposition, etc.)	56,151.56
1081	Investigation	28,373.45
1082	Court Reporting	32,059.02
1083	Expert Forensic Fees	2,077,232.78
1084	Medical Records	3,022.41
1086	Photocopying	27,352.14
1087	Postage	8,610.90
1089	Travel (e.g., airfare/hotel for experts)	66,737.16
1090	Other Costs (Microsoft, Adobe, Clio, etc.)	11,517.58
1091	Telephone	496.00
1094	Filing Fees	16,871.41
1097	Research (Westlaw, etc.)	20,190.76
1098	Mediation Costs	36,868.09
2000	Discovery Master	204,988.59
2/1/2021		**$ 2,593,113.80**

*Total does not include:

1. Non Reimbursable items (i.e. Marketing, payroll, and expenses before filing date: travel etc.).
2. Bills from Roger Truitt (Truitt Environmental Solutions, LLC) and Deborah Jennings.
3. Items used solely in Federal Court Litigation.

EXHIBIT 3

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GARY and ANNA-MARIE CUPPELS, et al., individually and on behalf of all others similarly situated, Plaintiffs,	)	
v.	)	C.A. No.: S18C-06-009 CAK
MOUNTAIRE CORPORATION, an Arkansas corporation, MOUNTAIRE FARMS, INC., a Delaware corporation, and MOUNTAIRE FARMS OF DELAWARE, INC., a Delaware corporation. Defendants.	)	TRIAL BY JURY OF 12 DEMANDED

DECLARATION OF PROFESSOR CHARLES SILVER ON THE REASONABLENESS OF CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES

Chase T. Brockstedt (#3815)
Stephen A. Spence (#5392)
BAIRD MANDALAS BROCKSTEDT, LLC
1413 Savannah Road, Suite 1
Lewes, DE 19958
(302) 645-2262

OF COUNSEL:
Philip Federico, Esq. (*pro hac vice*)
Brent Ceryes, Esq. *(pro hac vice*)
SCHOCHOR, FEDERICO AND STATON, P.A.
1211 St. Paul Street
Baltimore, Maryland 21202
(410) 234-1000

I, Charles Silver, state as follows:

I. SUMMARY OF OPINIONS

1. Class Counsel's request for a fee award equal to 25 percent of the recovery is reasonable because it is in line with the market rate, is comparable to awards in similar cases in in Delaware and elsewhere, and is justified by the risks incurred, the services delivered, and the result achieved.

2. Support for Class Counsel's request is also provided by the practices of sophisticated clients, who routinely pay more than 25 percent of their recoveries when hiring lawyers to handle commercial lawsuits on contingency.

3. Finally, Class Counsel request to base the fee award on a percentage of the recovery is reasonable because this is the conventional and market-preferred means of compensating lawyers who work on contingency. Sophisticated clients ***never*** base fees on hourly rates in matters like this one. The market's unambiguous message is that the percentage approach creates better incentives.

II. CREDENTIALS

A. Professional Credentials

4. I hold the Roy W. and Eugenia C. McDonald Endowed Chair in Civil Procedure at the University of Texas School of Law. I joined the Texas faculty in 1987, after receiving an M.A. in political science at the University of Chicago and a J.D. at the Yale Law School. I received tenure in 1991. Since then, I have been a Visiting Professor at University of Michigan School of Law (twice), the Vanderbilt University Law School, and the Harvard Law School.

5. The study of attorneys' fees has been a principal focus of my academic career. I published my first article on the subject shortly after I joined the law faculty at the University of

Texas at Austin. Charles Silver, *A Restitutionary Theory of Attorneys' Fees in Class Actions*, 76 CORNELL L. REV. 656 (1991). Since then, I have published about a dozen more articles, two of which are empirical studies of fee awards in class actions. Lynn A. Baker, Michael A. Perino, and Charles Silver, *Setting Attorneys' Fees In Securities Class Actions: An Empirical Assessment*, 66 Vanderbilt L. Rev. 1677 (2013); and Lynn A. Baker, Michael A. Perino, and Charles Silver, *Is the Price Right? An Empirical Study of Fee-Setting in Securities Class Actions*, 115 COLUM. L. REV. 1371 (2015) ("*Is the Price Right?*"). The CORPORATE PRACTICE COMMENTATOR chose *Is the Price Right?* as one of the ten best articles published in the field of corporate and securities law in 2016.

6. I am one of the ten most-cited members of the Texas Law faculty. References to my and discussions of my works on attorneys' fees appear in leading treatises and other authorities, including the MANUAL FOR COMPLEX LITIGATION, THIRD (1996), the MANUAL FOR COMPLEX LITIGATION, FOURTH (2004), the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS, and the RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT. From 2003 through 2010, I served as an Associate Reporter on the American Law Institute's PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION (2010). Many courts have cited the PRINCIPLES with approval, including the U.S. Supreme Court.

7. I also served as the Invited Academic Member of the Task Force on the Contingent Fee created by the Tort Trial and Insurance Practice Section of the American Bar Association. In 2009, the Tort Trial and Insurance Practice Section honored me with the Robert B. McKay Award in recognition of my scholarship in the areas of tort and insurance law.

8. Finally, because awards of attorneys' fees often raise issues relating to the professional responsibilities of attorneys, I note that I have an extensive teaching background and publication record in this field as well.

9. I have attached a copy of my resume as Appendix 1 to this Declaration.

B. Delaware Citations

10. The Delaware Court of Chancery has cited my work on multiple occasions. Vice Chancellor Laster cited two of my early articles on fee awards in *In re Appraisal of Dell Inc*., 2016 WL 6069017, at *14 (Del. Ch. Oct. 17, 2016) (citing Charles Silver, *Unloading the Lodestar: Toward a New Fee Award Procedure*, 70 TEXAS L. REV. 865 (1992) and Charles Silver, *A Restitutionary Theory of Attorneys' Fees in Class Actions*, 76 CORNELL L. REV. 656 (1991)).[1] And in *Chen v. Howard-Anderson*, 2017 WL 2842185 (Del.Ch. June 30, 2017), Vice Chancellor Laster cited a third article I coauthored on incentive awards for lead plaintiffs. See *Id*. *3 (citing Charles Silver & Sam Dinkin, *Incentivizing Institutional Investors to Serve as Lead Plaintiffs in Securities Fraud Class Actions*, 57 DEPAUL L. REV. 471, 481 (2008).

11. Articles published in the Delaware Journal of Corporate Law have also cited my writings. See Philip M. Nichols, *Symmetry and Consistency and the Plaintiff's Risk: Partial Settlement and the Right of Contribution in Federal Securities Actions*, 19 DEL. J. CORP. L. 1, 63 (1994) (citing Jules Coleman & Charles Silver, *Justice in Settlements*, 4 SOCIAL PHILOSOPHY AND POLICY 102 (1986)); and David H. Webber, *Private Policing of Mergers and Acquisitions: An Empirical Assessment of Institutional Lead Plaintiffs in Transactional Class and Derivative Actions*, 38 DEL. J. CORP. L. 907, 982 (2014) (citing Silver & Dinkin, *supra*, 57 DEPAUL L. REV. 471).

[1] The decision in *Appraisal of Dell* was reversed on appeal on grounds having to do with the allocation of litigation expenses among shareholders. See *Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd*, 177 A.3d 1 (Del. 2017).

C. Prior Expert Witness Engagements

12. I have testified as an expert on and submitted reports relating to attorneys' fees and lawyers' ethical responsibilities many times. Courts have cited or relied upon my opinions when awarding fees in many class actions, including *In re Enron Corp. Securities, Derivative & "ERISA" Litig*., 586 F. Supp. 2d 732 (S.D. Tex. 2008), *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 2019 WL 6888488 (E.D.N.Y. 2019); *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006), and *In re NASDAQ Mkt.-Makers Antitrust Litig*., 187 F.R.D. 465, 488 (S.D.N.Y. 1998), all of which settled for amounts exceeding $1 billion.

13. Other noteworthy cases in which I submitted reports include *In re: Urethane Antitrust Litigation*, 2016 WL 4060156 (D. Kan. July 29, 2016) ($974 million recovery); *In re UnitedHealth Grp. Inc. PSLRA Litig*., 643 F. Supp. 2d 1094 (D. Minn. 2009) ($925.5 million settlement); *In re Waste Mgmt., Inc. Sec. Litig*., 2002 WL 35644013 (S.D. Tex. May 10, 2002) ($457 million settlement); *San Allen, Inc. v. Buehrer, Administrator, Ohio Bureau of Workers' Compensation*, (Ohio Common Pleas—Cuyahoga County, 2014) (recovery of $420 million); *In re Checking Account Overdraft Litig*., 830 F. Supp. 2d 1330 (S.D. Fla. 2011) ($410 million settlement) *Silverman v. Motorola Sols., Inc*., 739 F.3d 956, 957 (7th Cir. 2013) ($200 million settlement); *Schwartz v. TXU Corp*., 2005 WL 3148350, at *8 (N.D. Tex. Nov. 8, 2005) ($149.75 million settlement); and *In re Loestrin 24 Fe Antitrust Litig*., 2020 WL 4038942 (D.R.I. July 17, 2020) ($62.5 million settlement). I could add many others to this list.

14. I also had the privilege of submitting an expert report on fees in one of the largest, longest lived, and most important environmental pollution cases in U.S. history, *Cook v. Rockwell Int'l Corp.*, 2017 WL 5076498 (D. Colo. Apr. 28, 2017). The class members were property owners who alleged that plutonium emissions from the Rocky Flats weapons production facility

diminished the value of their lands. The litigation settled for $375 million after 27 years of litigation and generated a $150 million fee award. I mention *Cook* to show that I am familiar with the risks and costs that environmental pollution class actions entail and to establish that judges award sizeable fee percentages—there, 40 percent—in such lawsuits when the circumstances warrant.

III. DOCUMENTS REVIEWED

15. In preparing this report, I received the items listed below which, unless noted otherwise, were generated in connection with this case.

- Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Other Relief
- Transcript of Proceedings in *Cuppels v. Mountaire Corporation, et al.*, before the Honorable Craig A. Karsnitz in the Superior Court of the State of Delaware in and for Sussex County (January 6, 2021).
- Plaintiffs' Opening Brief in Support of Their Motion for Class Certification
- Defendants' Answering Brief in Opposition to Plaintiffs' Motion for Class Certification
- Plaintiffs' Reply in Support of Plaintiffs' Motion for Class Certification
- Defendants' Sur-Reply in Opposition to Plaintiffs' Motion for Class Certification
- Plaintiffs' Sur-Sur-Reply in Support of Plaintiffs' Motion for Class Certification

IV. FACTS

16. The litigation-related facts upon which my conclusions rest are set out in detail in the aforementioned documents which I reviewed. I recite some of the central facts below.

17. Before the Court is a proposed settlement of a class action brought on behalf of claimants who own or lease property, reside, or were employed full-time in areas where, they allege, the Defendants unlawfully polluted the air, the water, or both. As pollution cases tend to be, this litigation is complex. To prove their claims, the class members would have to amass considerable historical evidence regarding the Defendants' waste disposal practices; engage experts with considerable advanced training and prior experience to perform sophisticated analyses of groundwater plumes and air flow patterns; and provide evidence of a variety of harms, such as personal injury and economic loss.

18. About two and a half years have elapsed since the original complaint was filed and, as both sides report, the complexity of this lawsuit is already clear.

> This matter has been extensively litigated. As the Court stated in its November 16, 2020 Memorandum Opinion, "Cuppels' and other Plaintiffs' claims against the Mountaire defendants are likely the most intensely litigated in the Superior Court in and for Sussex County." (D.I. 599 at 1). Plaintiffs' June 2018 Complaint included reports from fifteen experts.

Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Other Relief, p. 3. Matters already decided include the Defendants' motions to dismiss for lack of personal jurisdiction and subject matter jurisdiction (denied twice). Defendants' have also amassed an army of experts of their own.

19. Litigation of this case on a class-wide basis will require common evidence, that is, evidence tending to show that all class members are entitled to recover. Although there are certainly prominent common factual and legal issues, there are also variations due to differences in air currents and underground water flows, in the nature or severity of class members' injuries

and economic losses, and in Mountaire's waste disposal practices. The combination of common issues and individual variations gives both side considerable ammunition with which to fight over class certification. In fact, extensive discovery relating to class certification has been taken and the motion to certify has been fully briefed.

20. The parties have also taken extensive discovery of the merits. Documents produced number in the hundreds of thousands. Multiple inspections of Defendants' facility and of class members' homes have been conducted, and more than 20 witnesses have been deposed. Plaintiffs also obtained materials from the Delaware Department of Natural Resources and Environmental Control.

21. The proposed Settlement Agreement requires Defendants to pay $65 million to resolve the class members' claims. Attorneys' fees, litigation expenses, and costs associated with administering the settlement are to come out of this sum. The settlement class is defined geographically on the basis of expert studies of the areas said to be affected by Defendants' waste disposal practices.

22. Class Counsel has applied to the Court for a fee award not to exceed 25 percent of the settlement fund ($16.25 million) plus up to $2.5 million in reimbursement of costs.

V. BACKGROUND ANALYSIS: SETTING COMMON FUND FEES ACCORDING TO MARKET RATES MAXIMIZES CLASS MEMBERS' EXPECTED RECOVERIES

23. When presiding over class actions, judges act as fiduciaries for absent claimants. In keeping with this responsibility, other academics and I believe that they should use their discretion to regulate fees in the manner that will make class members best off. See, e.g., Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 FORD. L. REV. (forthcoming 2021); and Charles Silver, *Due Process and the Lodestar Method: You Can't Get There from Here*, 74 TUL. L. REV. 1809 (1999-2000).

24. This is why, throughout my academic career, I have urged judges to base fee awards from common funds on rates prevailing in the private market for legal services. Because the market for legal services is competitive, lawyers competing for business have incentives to offer fee terms that serve clients best.

25. Today, judges routinely want to know what market rates are and give them weight when deciding how much to award lawyers whose efforts create common funds. In this report, I will show that Class Counsel's request for a fee equal to 25 percent of the recovery falls below the low end of the range of percentages that prevails in the private market, which typically runs from 30 percent to 40 percent even in cases with the potential to generate enormous recoveries.

A. Fee-Setting Is A Positive-Sum Interaction

26. Many people think that fee-setting is a zero-sum game in which more for a lawyer means less for a client. Because the object of class litigation is to help the victims, they infer that lower fees are always better than higher ones.

27. This belief is mistaken. Fee-setting is a positive-sum interaction in which higher fees can help claimants. To see this, imagine how class members would fare if courts set common fund fee awards at 0 percent. When the fee is zero, the expected recovery is zero too because lawyers will not agree to represent class members (or signed clients) on these terms. From class members' perspective, a fee percentage greater than zero is better than zero because a positive recovery is better than no recovery.

28. When regulating fees, then, the object should ***not*** be to set them as close to zero as possible. ***It should be to maximize class members' net expected recoveries***—the amounts they expect to take home after paying their attorneys. Because a claimant who nets $1 million after paying a 40 percent fee is better off than one who nets $500,000 after paying a 20 percent fee, it

is rational for clients to offer higher percentages when doing so is expected to leave them with more money after fees are paid.

29. Judges have known this for years. In 2002, a task force on fees commissioned by the Third Circuit stated: "The goal of appointment [of class counsel] should be to maximize the net recovery to the class and to provide fair compensation to the lawyer, not to obtain the lowest attorney fee. The lawyer who charges a higher fee may earn a proportionately higher recovery for the class than the lawyer who charges a lesser fee." *Third Circuit Task Force Report*, 208 F.R.D. 340, 373 (January 15, 2002) (emphasis added). The Seventh Circuit made a similar point in *In re Synthroid Marketing Litig.*, 264 F.3d 712 (7th Cir. 2001). It rejected the so-called "mega-fund rule," according to which fees must be capped at low percentages when recoveries are very large, noting that "[p]rivate parties would never contract for such an arrangement" because it would encourage cheap settlements. *Id*. at 718. When fees are capped at low levels, lawyers' incentives are weakened and they may lose any financial interest in holding out for higher dollars, which are harder to recover and require lawyers to bear greater risks. Clients want lawyers to maximize the value of their claims, not to settle cheaply.

B. The Case For Mimicking The Market

30. In the market for legal services, claimants negotiate fees when litigation starts, not when it ends. Upfront, they see the risks that lie ahead and appreciate the virtue of rewarding contingent fee lawyers for bearing them. As the Seventh Circuit observed,

> The best time to determine [a contingent fee lawyer's] rate is the beginning of the case, not the end (when hindsight alters the perception of the suit's riskiness, and sunk costs make it impossible for the lawyers to walk away if the fee is too low). This is what happens in actual markets. Individual clients and their lawyers never

> wait until after recovery is secured to contract for fees. They strike their bargains before work begins.

In re Synthroid Marketing Litigation, 264 F.3d at 724.

31. Unfortunately, judges typically set fee terms when class actions settle, not when they begin. Consequently, the hindsight bias may cause them to set fees too low. This can only harm class members in the long-run by weakening lawyers' incentives.

32. To guard against this, I believe that judge should attempt to replicate the fee terms to which class members would have agreed had they bargained directly with class counsel at the start of litigation. A general insight from the economics of contracts is that rational parties agree on terms that maximize the amount of wealth available for them to share. *See* Alan Schwartz and Robert E. Scott, *Contract Theory and the Limits of Contract Law*, 113 YALE L. J. 541 (2003) ("[P]arties at the negotiation stage prefer to write contracts that maximize total benefits."). When markets are competitive, as the market for legal services plainly is, clients and lawyers should settle on the lowest percentages that maximize their joint expected return. This is the percentage that maximizes clients' net expected recoveries.

33. The market rate also provides a natural cross check on the reasonableness of a fee request. When a request falls within the range that sophisticated clients normally pay when hiring lawyers on contingency to handle large cases, there is reason to believe that class members would have agreed to pay it had they been able to bargain with class counsel directly. The best evidence of the terms of hypothetical bargains are the terms that real clients and lawyers agree to in similar circumstances. As the Second Circuit observed, "market rates, where available, are the ideal proxy for [class action lawyers'] compensation." *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000).

34. As discussed in more detail below, the information I have gathered over years of study shows that claimants typically agree to pay contingent fees in the range extending from 30 percent to 40 percent, even when sophisticated clients hire lawyers to handle complex commercial lawsuits with the potential to generate enormous recoveries. Fees paid by sophisticated clients are valuable points of reference, especially in a case like this one, where claimants who suffered personal injuries and property damage possess varying levels of sophistication. Sophisticated and experienced business clients can choose good lawyers and bargain down their fees to efficient levels. Consequently, by mimicking their practices, courts can regulate awards from common funds in ways that are likely to encourage lawyers to maximize class members' net recoveries.

VI. FEES PREVAILING IN THE PRIVATE MARKET FOR LEGAL SERVICES

A. Market Rates Increasingly Dominate The Fee-Setting Process

35. Although only the Seventh Circuit mandates the use of market rates, federal judges across the country recognize the superiority of this approach and use it often. Examples include *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-CV-07192-CM, 2019 WL 6889901, at *21 (S.D.N.Y. Dec. 18, 2019); *In re TRS Recovery Servs., Inc. & Telecheck Servs., Inc., Fair Debt Collection Practices Act (FDCPA) Litig.*, No. 2:13-MD-2426-DBH, 2016 WL 543137, at *9 (D. Me. Feb. 10, 2016); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 788 (N.D. Ill. 2015); *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, No. 3:10-CV-30163-MAP, 2014 WL 6968424, at *6 (D. Mass. Dec. 9, 2014); *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 842 F. Supp. 2d 346 (D. Me. 2012); *In re Trans Union Corp. Privacy Litig.*, No. 00 C 4729, 2009 WL 4799954, at *9 (N.D. Ill. Dec. 9, 2009), *order modified and remanded*, 629 F.3d 741 (7th Cir. 2011); *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 40 (D.N.H. 2006).

36. State court judges often take guidance from market rates too. In *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 376 P.3d 672 (2016), the Supreme Court of California cited the

desirability of approximating the market rate as a reason for permitting judges to grant percentage-based fee awards from common funds.

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, ***a better approximation of market conditions in a contingency case***, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation … convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte, 1 Cal. 5th at 503, 376 P.3d at 686, (emphasis added) (citations omitted).

37. Judges prefer the market-based approach for several reasons. They appreciate the importance of incentivizing lawyers properly. They want an objective basis for deciding how much lawyers are paid. And they desire a means of sizing fees that is easy to employ. The market-based percentage approach addresses all three concerns, as Judge D. Brock Hornby cogently explained in *Nilsen v. York Cty*., 400 F. Supp. 2d 266 (D. Me. 2005). He began by criticizing the multi-factor approach, which he described as being "not a rule of law or even a principle" because "it would support equally a fee award of 16%, 20%, 25%, 30%, or 33-1/3%." *Id*. at 277. He then observed that "some of the factors" commonly applied clash with the contingent percentage approach, "which is designed to create incentives for the lawyer to get the most recovery for the class by the most efficient manner (and [to] penalize the lawyer who fails to do so)." *Id*. And he finally added that the factor-based and lodestar-based methods are

"'burdensome to administer'" and "consume significant lawyer and judicial resources." *Id*. at 278 (quoting *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir.1995)).

38. Judge Hornby then wrote,

> There is good reason for using a market-oriented approach. If a consumer wanted to determine a reasonable plumber's, mechanic's or dentist's fee, the consumer would have to look to the market. Why should lawyers be different? Perhaps more important, the market is the implicit if not explicit standard when a jury awards damages that include reasonable medical expenses in a personal injury case. We do not use a multifactor approach then. We even look at the market to a degree in lodestar cases, because we purport there to look at market rates for what a lawyer can charge as an hourly rate.
>
> I therefore adopt the methodology of the Seventh Circuit as most reflective of what a judge does instinctively in setting a fee as well as most amenable to predictability and an objective external constraint on a judge's otherwise uncabined power: "courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." The market-mimicking approach has its own shortcomings but it is better than the fuzzier alternatives.

400 F. Supp. 2d., at 278-279 (quoting *In re Synthroid Mktg. Litig.*, 264 F.3d at 718). See also *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig*., 56 F.3d 295, 307 (1st Cir.1995) (observing that the percentage-of-fund method eliminates any incentive to be inefficient, as inefficiency just reduces the lawyer's own recovery); and *Wal–Mart Stores, Inc. v.*

Visa U.S.A. Inc., 396 F.3d 96, 121 (2d Cir. 2005) (the percentage method "directly aligns the interests of the class and its counsel" and provides a powerful incentive for efficiency and early resolution).

39. In sum, by taking guidance from the market, judges constrain their discretion, conserve resources, and motivate lawyers to represent class members zealously and efficiently.

B. In Contingent Fee Litigation, Percentage-Based Compensation Predominates

40. Having established that market rates are "ideal" proxies, it remains to consider how the market compensates plaintiffs' attorneys. In this section and the next, I explain what I know about this issue.

41. I start by noting that when clients hire lawyers to handle lawsuits on contingency, the market sets lawyers' compensation as percentages of claimants' recoveries. Even sophisticated business clients with complex, high-dollar legal matters use the percentage approach. I have studied lawyers' fees for years, and I have never seen a contingent fee contract that based a lawyers' compensation on an hourly rate approach, such as the lodestar method.

42. For example, when two co-authors and I studied hundreds of settled securities fraud class actions specifically looking for terms included in fee agreements between lawyers and investors seeking to serve as lead plaintiffs, all the agreements we found provided for contingent percentage fees. *Is the Price Right*, *supra*. No lead plaintiff agreed to pay its lawyers by the hour; nor did any retain counsel on a lodestar-multiplier basis.

43. The finding that sophisticated businesses use contingent fee arrangements when hiring lawyers to handle securities class actions was expected. Over the course of my academic career, I have studied or participated in hundreds of class actions, many of which were led by sophisticated business clients. To the best of my recollection, I have encountered only one in

which a lead plaintiff paid class counsel out of pocket; that case is more than 100 years old and was decided before the common fund doctrine was well established. Even wealthy named plaintiffs like prescription drug wholesalers and public pension funds that, in theory, could pay lawyers by the hour have used contingent, percentage-based compensation arrangements instead. Because percentage-based compensation arrangements dominate the market, courts should also use them when awarding fees from common funds.

44. The market also favors fee percentages that are flat or that rise as recoveries increase. Scales with percentages that decline at the margin are rarely employed. Professor John C. Coffee, Jr., the country's leading authority on class actions, made this point in a report filed in the antitrust litigation relating to high fructose corn syrup.

> I am aware that "declining" percentage of the recovery fee formulas are used by some public pension funds, serving as lead plaintiffs in the securities class action context. However, I have never seen such a fee contract used in the antitrust context; nor, in any context, have I seen a large corporation negotiate such a contract (they have instead typically used straight percentage of the recovery formulas).

Declaration of John C. Coffee, Jr., submitted in *In re High Fructose Corn Syrup Antitrust Litigation*, M.D.L. 1087 (C.D. Ill. Oct. 7, 2004), ECF No. 1421, ¶ 22. My experience is similar to Professor Coffee's. I know of few instances in which large corporations used scales with declining percentages when hiring attorneys.

45. In view of the rarity with which declining scales are used, the "mimic the market" approach suggests that flat percentages and scales with percentages that rise at the margin create better incentives. There is a sound economic rationale for this. Flat percentages and rising scales reward plaintiffs' attorneys for recovering higher dollars that are harder to obtain because they demand a willingness on the part of counsel to proceed ever closer to trial, thereby increasing their costs and exposing them to greater risk of loss. Flat percentages and percentages that increase

with the recovery encourage plaintiffs' attorneys to shoulder the costs and risks that must be borne when lawyers encourage clients to turn down inadequate settlements.

C. Sophisticated Clients Normally Pay Fees Of 30 Percent To 40 Percent When Hiring Lawyers To Handle Commercial Lawsuits On Straight Contingency

46. Countless plaintiffs have hired lawyers on contingency to handle cases of diverse types. Consequently, the market for legal services is a rich source of information about lawyers' fees. For example, in this case, the Named Plaintiffs who contracted directly with the lawyers for the class agreed to pay 35 percent of their recoveries as fees if the case resolves without an appeal, prior to a pretrial conference. By combining their retainer agreements with those used by other plaintiffs in other cases, one can compile a portrait of the market.

47. Although the Named Plaintiffs' agreements do not bind the Court, it is apt to observe that the fee they selected—35 percent—falls within normal range, which extends from 30 percent to 40 percent of the recovery. *See, e.g.*, *George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) ("Plaintiffs request for approval of Class Counsel's 33% fee falls within the range of the private marketplace, where contingency-fee arrangements are often between 30 and 40 percent of any recovery"); and *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201 (N.D. Ill. 2018) ("a typical contingency agreement in this circuit might range from 33% to 40% of recovery"). The same range is known to prevail in high-dollar, non-class, commercial cases. *See, e.g.*, *Kapolka v. Anchor Drilling Fluids USA, LLC*, 2019 WL 5394751, at *10 (W.D. Pa. Oct. 22, 2019); and *Cook v. Rockwell Int'l Corp.*, *supra*, 2017 WL 5076498, at *2. If the desirability of adhering to the Named Plaintiffs' contracts depends on the reasonableness of their terms, the argument in their favor is conclusive.

48. The point of surveying the evidence, then, is not to establish something new. It is to show that what everyone already knows is correct. The market rate for contingent fee lawyers

generally ranges from 30 to 40 percent of clients' recoveries, with 33 percent being especially common.

49. We do not know as much about fees paid in large commercial lawsuits as we might.[2] No publicly available database collects information about this sector of the market, and businesses that sue as plaintiffs rarely reveal their fee agreements. Consequently, most of what is known is drawn from anecdotal reports.[3] That said, the evidence available on the use of contingent fees by sophisticated clients shows that marginal percentages tend to be high.

1. Sophisticated Named Plaintiffs In Class Actions

50. Sophisticated business clients commonly agree to pay fees of 33 percent or greater when serving as lead plaintiffs in class actions. Here are a few examples.

- In *San Allen, Inc. v. Buehrer*, Case No. CV-07-644950 (Ohio – Court of Common Pleas), which settled for $420 million, seven businesses serving as named plaintiffs signed retainer contracts in which they agreed to pay 33.3 percent of the gross

[2]I have studied the costs insurance companies incur when *defending* liability suits. *See* Bernard Black, David A. Hyman, Charles Silver and William M. Sage, *Defense Costs and Insurer Reserves in Medical Malpractice and Other Personal Injury Cases: Evidence from Texas, 1988-2004*, 10 AM. L, & ECON, REV. 185 (2008). Unfortunately, this information sheds no light on the amounts that businesses pay when acting as plaintiffs.

[3] Businesses sometimes use hybrid arrangements that combine guaranteed payments with contingent bonuses. For example, when representing Caldera International, Inc. in a dispute with IBM, Boies, Schiller & Flexner LLP billed two-thirds of its lawyers' standard hourly rates and stood to receive a contingent fee equal to 20 percent of the recovery. Letter from David Boies and Stephen N. Zack to Darl McBride dated Feb. 26, 2003, available at https://www.sec.gov/Archives/edgar/data/1102542/000110465903028046/a03-6084_1ex99d1.htm (visited Aug. 23, 2020). According to Wikipedia, the damages sought in the lawsuit initially totaled $1 billion, but were later increased to $3 billion, and then to $5 billion. Wikipedia, *SCO Group, Inc. v. International Business Machines Corp.*, https://en.wikipedia.org/wiki/SCO_Group,_Inc._v._International_Business_Machines_Corp. (visited Aug. 23 , 2020).

recovery obtained by settlement as fees, with a bump to 35 percent in the event of an appeal. Expenses were to be reimbursed separately.

- In *In re U.S. Foodservice, Inc. Pricing Litigation*, Case No. 3:07-md-1894 (AWT) (D. Ct.), a RICO class action that produced a $297 million settlement, both of the businesses that served as named plaintiffs were represented by counsel in their fee negotiations and both agreed that the fee award might be as high as 40 percent.
- In *In re International Textile Group Merger Litigation*, C.A. No. 2009-CP-23-3346 (Court of Common Pleas, Greenville County, South Carolina), which settled in 2013 for relief valued at about $81 million, five sophisticated investors serving as named plaintiffs agreed to pay 35 percent of the gross class-wide recovery as fees, with expenses to be separately reimbursed. (The fee was initially set at over 40 percent but was later bargained down to 35 percent.)

51. Similar rates prevail in antitrust class actions in which businesses participate as plaintiffs. For example, I studied and prepared expert reports in a series of pharmaceutical cases bought against manufacturers that engaged in pay-for-delay settlements to patent challenges. The named plaintiffs in these cases were drug wholesalers. All were large companies, and several were enormous—of Fortune 500 size or larger. All also had in-house or outside counsel monitoring the litigations. The potential damages were enormous. In one case, *King Drug Company of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-cv-1797-MSG (E.D. Pa. Oct. 8, 2015), the plaintiffs recovered over $500 million. In the series as a whole, they won more than $2 billion. In most of the cases, these sophisticated businesses supported fees equal to one-third of the recovery. In one case, they endorsed a fee of 30 percent and in another of 27.5 percent.

52. The cases I studied were not exceptional. Professor Brian Fitzpatrick gathered information on an even larger number of pharmaceutical antitrust cases—33 in all—that were resolved between 2003 and 2020. According to his forthcoming article, "the fee requests ranged from a fixed percentage of 27.5% to a fixed percentage of one-third"; "one-third *heavily* dominated the sample"; and "the average was 32.85%." Finally, "in the vast majority of cases, one or more of these corporate class members—often the biggest class members—came forward to voice affirmative support for the fee request, and not a single one of these corporate class members objected to the fee request in any of the 33 cases." Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, *supra*. Professor Fitzpatrick's table of cases appears in Appendix 2.

53. In sum, when sophisticated business clients serve as named plaintiffs in high-stakes class actions, they typically pay contingent fees ranging from 30 percent to 40 percent of the recovery, with fees of 33 percent or more being promised in most cases. As well, there is little variation in fee percentages across cases of different sizes.

2. Patent Cases

54. Now consider patent infringement cases, another context in which sophisticated business clients often hire law firms on contingency. There are many anecdotal reports of high percentages in this area. The most famous one relates to the dispute between NTP Inc. and Research In Motion Ltd., the company that manufactures the Blackberry. NTP, the plaintiff, promised its law firm, Wiley Rein & Fielding ("WRF"), a 33⅓ percent contingent fee. When the case settled for $612.5 million, WRF received more than $200 million in fees. Yuki Noguchi, D.C. *Law Firm's Big BlackBerry Payday: Case Fees of More Than $200 Million Are Said to Exceed Its 2004 Revenue*, WASHINGTON POST, March 18, 2006, D03.

55. The fee percentage that WRF received is typical, as Professor David L. Schwartz found when he interviewed 44 experienced patent lawyers and reviewed 42 contingent fee agreements.

> There are two main ways of setting the fees for the contingent fee lawyer [in patent cases]: a graduated rate and a flat rate. Of the agreements using a flat fee reviewed for this Article, the mean rate was 38.6% of the recovery. The graduated rates typically set milestones such as "through close of fact discovery," "through trial," and "through appeal," and tied rates to recovery dates. As the case continued, the lawyer's percentage increased. Of the agreements reviewed for this Article that used graduated rates, the average percentage upon filing was 28% and the average through appeal was 40.2%.

David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 ALA. L. REV. 335, 360 (2012).[4]

56. Clearly, in the segment of the market where sophisticated business clients hire lawyers to litigate patent cases on contingency, successful lawyers earn sizeable premiums over their normal hourly rates. The reason is obvious. When waging patent cases on contingency, lawyers must incur large risks and high costs, so clients must promise them hefty returns. Patent plaintiffs have the option of paying lawyers to represent them on an hourly basis, but still prefer a contingency arrangement, even at 30-40 percent, to bearing the risks and costs of litigation themselves.

[4] Professor Schwartz's findings are consistent with reports found in patent blogs, one of which stated as follows.

> *Contingent Fee Arrangements*: In a contingent fee arrangement, the client does not pay any legal fees for the representation. Instead, the law firm only gets paid from damages obtained in a verdict or settlement. Typically, the law firm will receive between 33-50% of the recovered damages, depending on several factors. This is strictly a results-based system.

Matthew L. Cutler, *Contingent Fee and Other Alternative Fee Arrangements for Patent Litigation*, HARNESS DICKEY, (JUNE 8, 2020), https://www.hdp.com/blog/2020/06/08/contingent-fee-and-other-alternative-fee-arrangements-for-patent-litigation/.

3. Other Large Commercial Cases

57. Turning from patent lawsuits to business representations more generally, many examples show that compensation tends to be a significant percentage of the recovery. A famous case from the 1980's involved the Texas law firm of Vinson & Elkins ("V&E"). ETSI Pipeline Project ("EPP") hired V&E to sue Burlington Northern Railroad and other defendants, alleging a conspiracy on their part to prevent EPP from constructing a $3 billion coal slurry pipeline. V&E took the case on contingency, "meaning that if it won, it would receive one-third of the settlement and, if it lost, it would get nothing." David Maraniss, Texas Law firm Passes Out $100 Million in Bonuses, Washington Post, Aug. 22, 1990, https://www.washingtonpost.com/archive/politics/1990/08/22/texas-law-firm-passes-out-100-million-in-bonuses/8714563b-10b8-4f85-b74a-1e918d030144/. After many years of litigation, a series of settlements and a $1 billion judgment against a remaining defendant yielded a gross recovery of $635 million, of which the firm received around $212 million in fees. Patricia M. Hynes, *Plaintiffs' Class Action Attorneys Earn What They Get*, 2 JOURNAL OF THE INSTITUTE FOR THE STUDY OF LEGAL ETHICS, 243, 245 (1991). It bears emphasizing that the clients who made up the plaintiffs' consortium, Panhandle Eastern Corp., the Bechtel Group, Enron Corp. and K N Energy Inc., were sophisticated businesses with access to the best lawyers in the country. No claim of undue influence by V&E can possibly be made.

58. The National Credit Union Administration's ("NCUA") experience in litigation against securities underwriters provides a more recent example of contingent-fee terms that were used successfully in large, related litigations. After placing 5 corporate credit unions into liquidation in 2010, NCUA filed 26 complaints in federal courts in New York, Kansas, and California against 32 Wall Street securities firms and banks. To prosecute the complaints, which centered on sales of investments in faulty residential mortgage-backed securities, NCUA retained

two outside law firms, Korein Tillery LLP and Kellogg, Hansen, Todd, Figel, & Frederick PLLC, on a straight contingency basis. The original contract entitled the firms to 25 percent of the recovery, net of expenses. As of June 30, 2017, the lawsuits had generated more than $5.1 billion in recoveries on which NCUA had paid $1,214,634,208 in fees.[5]

59. When it retained outside counsel on contingency, NCUA knew that billions of dollars were at stake. The failed corporate credit unions had sustained $16 billion in losses, and NCUA's objective was to recover as much of that amount as possible. It also knew that dozens of defendants would be sued and that multiple settlements were possible. Even so, NCUA agreed to pay a straight contingent percentage fee in the standard market range on all the recoveries. It neither reduced the fees that were payable in later settlements in light of fees earned in earlier ones, nor bargained for a percentage that declined as additional dollars flowed in, nor tied the lawyers' compensation to the number of hours they expended.

60. In *In re Merry-Go-Round Enterprises, Inc*., 244 B.R. 327 (D. Md. 2000), the bankruptcy trustee wanted to assert claims against Ernst & Young. He looked for counsel willing to accept a declining scale of fee percentages, found no takers, and ultimately agreed to pay a law firm a straight 40 percent of the recovery. Ernst & Young subsequently settled for $185 million, at which point the law firm applied for $71.2 million in fees, 21 times its lodestar. The bankruptcy judge granted the request, writing: "[v]iewed at the outset of this representation, with special

[5]The following documents provide information about NCUA's fee arrangement and the recoveries obtained in the litigations: Legal Services Agreement dated Sept. 1, 2009, https://www.ncua.gov/services/Pages/freedom-of-information-act/legal-services-agreement.pdf; National Credit Union Administration, Legal Recoveries from the Corporate Crisis, https://www.ncua.gov/regulation-supervision/Pages/corporate-system-resolution/legal-recoveries.aspx; Letter from the Office of the Inspector General, National Credit Union Administration to the Hon. Darrell E. Issa, Feb. 6, 2013, https://www.ncua.gov/About/leadership/CO/OIG/Documents/OIG20130206IssaResponse.pdf.

counsel advancing expenses on a contingency basis and facing the uncertainties and risks posed by this representation, the 40% contingent fee was reasonable, necessary, and within a market range." *Id.* at 335.

61. Based on what lawyers who write about fee arrangements in business cases have said, contingent fees of 33⅓ percent or more remain common. In 2011, The Advocate, a journal produced by the Litigation Section of the State Bar of Texas, published a symposium entitled "Commercial Law Developments and Doctrine." It included an article on alternative fee arrangements, which reported typical contingent fee rates of 33 percent to 40 percent.

> A pure contingency fee arrangement is the most traditional alternative fee arrangement. In this scenario, a firm receives a fixed or scaled percentage of any recoveries in a lawsuit brought on behalf of the client as a plaintiff. Typically, the contingency is approximately 33%, with the client covering litigation expenses; however, firms can also share part or all of the expense risk with clients. Pure contingency fees, which are usually negotiated at approximately 40%, can be useful structures in cases where the plaintiff is seeking monetary or monetizable damages. They are also often appropriate when the client is an individual, start up, or corporation with limited resources to finance its litigation. Even large clients, however, appreciate the budget certainty and risk-sharing inherent in a contingent fee arrangement.

Trey Cox, *Alternative Fee Arrangements: Partnering with Clients through Legal Risk Sharing*, 66 THE ADVOCATE (TEXAS) 20 (2011).

62. In sum, when seeking to recover money in class actions involving large stakes and in commercial lawsuits, sophisticated business clients typically pay contingent fees ranging from 30 percent to 40 percent, with fees of 33 percent or more being promised in most cases.

VII. THE COURT HAS DISCRETION TO EMPLOY THE PERCENTAGE APPROACH

63. To this point, I have set out the reasons for concluding that the percentage approach is superior to the lodestar method and have also shown that the market rate for the services of lawyers retained on contingency is 30 percent to 40 percent of the recovery. It remains to establish

that the Court has discretion to apply the percentage approach. This is, of course, a question of Delaware law that the Court can answer without my help, but it is clear that such discretion exists. The following passage, which appears in the Delaware Supreme Court's opinion in *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1254 (Del. 2012), summarizes the law of the State.

> In *Sugarland Industries, Inc. v. Thomas,* [420 A.2d 142, 149-50 (Del. 1980),] this Court rejected any mechanical approach to determining common fund fee awards. In particular, we explicitly disapproved the Third Circuit's "lodestar method." Therefore, Delaware courts are not required to award fees based on hourly rates that may not be commensurate with the value of the common fund created by the attorneys' efforts. Similarly, in *Sugarland,* we did not adopt an inflexible percentage of the fund approach.
>
> Instead, we held that the Court of Chancery should consider and weigh the following factors in making an equitable award of attorney fees: 1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities of the litigation; 4) any contingency factor; and 5) the standing and ability of counsel involved. Delaware courts have assigned the greatest weight to the benefit achieved in litigation.

Theriault, 51 A.3d at 1254. "[T]he general principle [to be derived] from *Sugarland* [is] that the hours that counsel worked [are] of secondary importance to the benefit achieved. *Id.* at 1258. Thus, "[w]hen the benefit is quantifiable . . . by the creation of a common fund, *Sugarland* calls for an award of attorneys' fees based upon a percentage of the benefit. . . . [A] "common fund is itself the measure of success . . . [and] represents the benchmark from which a reasonable fee will be awarded." *Id*. at 1259.

64. The Supreme Court also described local fee practices, as follows.

> Delaware case law supports a wide range of reasonable percentages for attorneys' fees, but 33% is "the very top of the range of percentages." The Court of Chancery has a history of awarding lower percentages of the benefit where cases have settled before trial. When a case settles early, the Court of Chancery tends to award 10–15% of the monetary benefit conferred. When a case settles after the plaintiffs have engaged in meaningful litigation efforts, **typically including multiple depositions and some level of motion practice**, fee awards in the Court of Chancery range from 15–25% of the monetary benefits conferred. "A study of recent Delaware fee awards finds that the average amount of fees awarded when derivative and class actions settle for both monetary and therapeutic consideration is approximately 23% of the monetary benefit conferred; the median is 25%."

Id. at 1259–60 (citations omitted). By the assessment of this Court in its November 16, 2020 Opinion, the litigation effort in this matter far exceeded that which is typical in this jurisdiction, warranting a fee at the high end of the prevailing ranges. The 25 percent award requested here falls within the prevailing range. As shown below, the practices described in *Theriault* are similar to those that prevail in other jurisdictions.

VIII. WHEN LITIGATION BEGAN, THE RISK OF LOSING WAS PALPABLE

65. The proposed settlement will make $65 million available to the class, before deductions for fees, expenses, and incentive awards. Because the outcome of litigation is now known, the hindsight bias—a well-known flaw in human reasoning—is likely to lead observers, including the Court, to underestimate the risks that Class Counsel faced when the lawsuit began. Unless corrected, the bias will drive fee awards downward, until they are too low to incentivize lawyers to bear the risks that class actions actually entail. When considering the reasonableness

of Class Counsel's fee request, it is imperative to remember that **when litigation commenced, no one knew whether the class members would prevail or lose outright**.

66. It is also important to understand that all class actions are high-risk propositions for plaintiffs law firms because they require attorneys to concentrate resources instead of spreading them out. Plaintiffs' firms tend to be small. Both Baird Mandalas Brockstedt, LLC and Schochor, Federico and Staton, P.A. have fewer than two dozen lawyers on staff. (By way of comparison, Sidley Austin LLP, which represents the Defendants, is the 11th largest law firm in the United States, with almost 2,000 attorneys and over $2 billion in annual revenue.) Because small firms cannot easily weather financial shocks, they tend to guard against large losses by diversifying their risks. Instead of concentrating resources in a few large matters each of which may take years to resolve, they handle a large number of smaller ones that are likely to settle quickly. This strategy makes a firm's revenue stream more predictable and reduces the likelihood that a loss in any single case will entail substantial hardship. Because class actions are large, undiversified risks, small firms can sensibly handle them only if success generates exceptional fees.

67. In effect, plaintiffs' attorneys who work at small law firms operate like investors who, instead of putting all their eggs in one basket, maintain diversified portfolios of stock. Diversification generates predictable returns and eliminates the risk that the failure of a single company will wipe out the investor. Deciding to concentrate a substantial portion of one's assets in a single class action or a single security is much riskier and makes sense only if the expected payoff is far higher.

68. In this case, the risk of losing must have been obvious to both law firms when litigation commenced. Because it would have made substantially less sense financially to litigate this case on behalf of their signed clients alone, the possibility of earning a fee large enough to

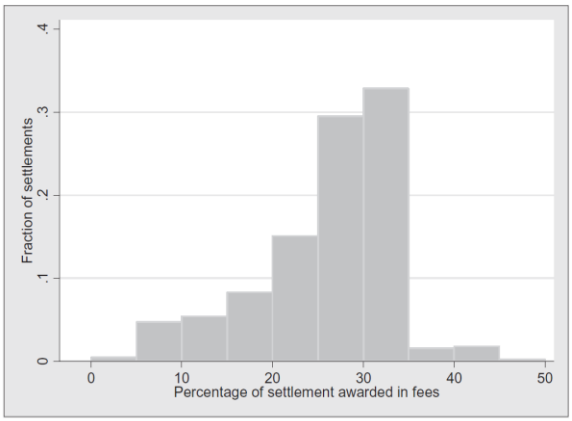
justify the risk of losing hinged considerably on the Court's decision on the motion for class certification.

69. When litigation started, then, the likelihood of failing to persuade the Court to certify a class was by itself sufficiently great to make this case a high-risk proposition. It follows that, with success having been achieved, the fee award should be large. Otherwise, many law firms will be discouraged from handling similar cases in the future, and citizens of Delaware will be denied the protection that civil lawsuits provide.

IX. FEE AWARDS IN CASES WITH COMPARABLE MONETARY RECOVERIES

70. Many law professors have studied fee award practices empirically, and all have found that fees in the range of 25 percent of the recovery are common. For example, in an article that has been cited by courts repeatedly, Professor Brian Fitzpatrick studied all federal class actions that settled in 2006 or 2007. Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and their Fee Awards*, 7 JOURNAL OF EMPIRICAL LEGAL STUDIES 811 (2010). He found that the vast majority of fee awards (exclusive of costs) ran from 25 percent of the recovery to 40 percent, and that more awards fell into the 30-35 percent range than any other. The figure below displays his findings visually.

Figure 4: The distribution of 2006–2007 federal class action fee awards using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

Id, Figure 4, p. 834.

71. In a study published in 2017, Professor Theodore Eisenberg and colleagues assembled a dataset of 450 class actions that settled more recently. Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N. Y.U. L. REV. 937, 948 (2017). They reported mean and median fee awards of 27 percent and 29 percent, respectively. *Id*., p. 951, Table 3.

72. A recent study of securities class actions conducted by NERA, formerly known as National Economics Research Associates, found that from 2010 to 2019, the median fee award in cases with recoveries between $25 million and $100 million was 27 percent. Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review*, Fig. 17 (NERA, 2020).

73. A report covering antitrust class actions that settled from 2009 to 2019 found that, in cases with recoveries between $50 million and $99 million, the median fee award equaled 30 percent of the recovery. Joshua David and Rose Hohles, *2019 Antitrust Annual Report: Class Action Filings in Federal Court*, Fig. 14 (2020).

74. Here, Class Counsel have applied for fees equal to 25 percent of the recovery. In cases with settlements of this size, there are hundreds or even thousands of class actions with similar awards. By comparison to comparable cases, the requested fee is plainly reasonable.

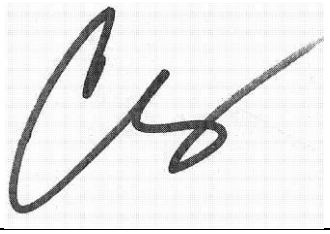
X. COMPENSATION

75. I am being compensated by Class Counsel for my time in connection with this matter, including this affidavit.

XI. CONCLUSION

76. For the reasons set out above, I believe that Class Counsel's request for a fee award equal to 25 percent of the gross recovery is reasonable.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 29th day of January, 2021, at Empire, Michigan.



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- Assistant Professor

University of Michigan Law School, Fall 2018
- Visiting Professor

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Vanderbilt University Law School, Fall 2003
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Yale Law School, JD (1987)
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PUBLICATIONS

Special Projects

Books

PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION (with Samuel Issacharoff, Reporter, and Robert Klonoff and Richard Nagareda, Associate Reporters) (American Law Institute 2010).

Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, "Report on Contingent Fees In Class Action Litigation," 25 Rev. Litig. 459 (2006).

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PRACTICAL GUIDE FOR INSURANCE DEFENSE LAWYERS (2002) (with Ellen S. Pryor and Kent D. Syverud, Co-Reporters); published on the IADC website (2003); revised and distributed to all IADC members as a supplement to the Defense Counsel J. (2004).

BOOKS

MEDICAL MALPRACTICE LITIGATION: HOW IT WORKS, WHAT IT DOES, AND WHY TORT REFORM HASN'T HELPED (with Bernard S. Black, David A. Hyman, Myungho Paik, and William M. Sage) (Cato Institute, forthcoming 2019).

OVERCHARGED: WHY AMERICANS PAY TOO MUCH FOR HEALTH CARE (with David A. Hyman) (Cato Institute, 2018).

HEALTH LAW AND ECONOMICS, Vols. I and II (coedited with Ronen Avraham and David A. Hyman) (Edward Elgar 2016).

LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION, (coedited with Richard Nagareda, Robert Bone, Elizabeth Burch and Patrick Woolley) (Foundation Press, 2nd Ed. 2012) (updated annually through 2018).

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Articles and Book Chapters by Subject Area (* indicates Peer Reviewed)

Health Care Law & Policy

1. "There is a Better Way: Give Medicaid Beneficiaries the Money," (with David A. Hyman) (under submission).

2. "Regulating Pharmaceutical Companies' Financial Largesse," 7:25 Israeli J. Health Policy Res. (2018), https://doi.org/10.1186/s13584-018-0220-5 (with Ronen Avraham).*

3. "Medical Malpractice Litigation," (with David A. Hyman) OXFORD RESEARCH ENCYCLOPEDIA OF ECONOMICS AND FINANCE (2019), DOI: 10.1093/acrefore/9780190625979.013.365.*

4. "It Was on Fire When I Lay Down on It: Defensive Medicine, Tort Reform, and Healthcare Spending," (with David A. Hyman) OXFORD HANDBOOK OF AMERICAN HEALTH LAW, I. Glenn Cohen, Allison Hoffman, and William M. Sage, eds. (2017).*

5. "Compensating Persons Injured by Medical Malpractice and Other Tortious Behavior for Future Medical Expenses Under the Affordable Care Act," (with Maxwell J. Mehlman, Jay Angoff, Patrick A. Malone, and Peter H. Weinberger)25 Annals of Health Law 35 (2016).

6. **"**Double, Double, Toil and Trouble: Justice-Talk and the Future of Medical Malpractice Litigation," (with David A. Hyman) 63 DePaul L. Rev. 574 (2014) (invited symposium).

7. "Five Myths of Medical Malpractice," (with David A. Hyman) 143:1 Chest 222-227 (2013).*****

8. "Health Care Quality, Patient Safety and the Culture of Medicine: 'Denial Ain't Just A River in Egypt,'" (with David A. Hyman), 46 New England L. Rev. 101 (2012) (invited symposium).

9. "Medical Malpractice and Compensation in Global Perspective: How Does the U.S. Do It?" (coauthored with David A. Hyman) MEDICAL MALPRACTICE AND COMPENSATION IN GLOBAL PERSPECTIVE (Ken Oliphant & Richard W. Wright, eds. 2013)*; originally published in 87 Chicago-Kent L. Rev. 163 (2012).

10. "Justice Has (Almost) Nothing to Do With It: Medical Malpractice and Tort Reform," in Rosamond Rhodes, Margaret P. Battin, and Anita Silvers, eds., MEDICINE AND SOCIAL JUSTICE, Oxford University Press 531-542 (2012) (with David A. Hyman).*****

11. "Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid," 59 Vanderbilt L. Rev. 1085 (2006) (with David A. Hyman) (invited symposium).

12. "Medical Malpractice Reform Redux: Déjà Vu All Over Again?" XII Widener L. J. 121 (2005) (with David A. Hyman) (invited symposium).

13. "Speak Not of Error, Regulation (Spring 2005) (with David A. Hyman).

14. "The Poor State of Health Care Quality in the U.S.: Is Malpractice Liability Part of the Problem or Part of the Solution?" 90 Cornell L. Rev. 893 (2005) (with David A. Hyman).

15. "Believing Six Improbable Things: Medical Malpractice and 'Legal Fear,'" 28 Harv. J. L. and Pub. Pol. 107 (2004) (with David A. Hyman) (invited symposium).

16. "You Get What You Pay For: Result-Based Compensation for Health Care," 58 Wash. & Lee L. Rev. 1427 (2001) (with David A. Hyman).

17. "The Case for Result-Based Compensation in Health Care," 29 J. L. Med. & Ethics 170 (2001) (with David A. Hyman).*****

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18. "Fictions and Facts: Medical Malpractice Litigation, Physician Supply, and Health Care Spending in Texas Before and After HB 4," 51 Tex. Tech L. Rev. 627 (2019). (with David A. Hyman and Bernard Black) (invited symposium on the 15th anniversary of the enactment of HB4).

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20. "Policy Limits, Payouts, and Blood Money: Medical Malpractice Settlements in the Shadow of Insurance," 5 U.C. Irvine L. Rev. 559 (2015) (with Bernard S. Black, David A. Hyman, and Myungho Paik) (invited symposium).

21. "Does Tort Reform Affect Physician Supply? Evidence from Texas," Int'l Rev. of L. & Econ. (2015) (with Bernard S. Black, David A. Hyman, and Myungho Paik), available at http://dx.doi.org/10.1016/j.irle.2015.02.002.*****

22. "How do the Elderly Fare in Medical Malpractice Litigation, Before and After Tort Reform? Evidence From Texas" (with Bernard S. Black, David A. Hyman, Myungho Paik, and William M. Sage), Amer. L. & Econ. Rev. (2012), doi: 10.1093/aler/ahs017.*****

23. "Will Tort Reform Bend the Cost Curve? Evidence from Texas" (with Bernard S. Black, David A. Hyman, Myungho Paik), 9 J. Empirical Legal Stud. 173-216 (2012).*****

24. "O'Connell Early Settlement Offers: Toward Realistic Numbers and Two-Sided Offers," 7 J. Empirical Legal Stud. 379 (2010) (with Bernard S. Black and David A. Hyman).*****

25. "The Effects of 'Early Offers' on Settlement: Evidence From Texas Medical Malpractice Cases, 6 J. Empirical Legal Stud. 723 (2009) (with David A. Hyman and Bernard S. Black).*****

26. **"**Estimating the Effect of Damage Caps in Medical Malpractice Cases: Evidence from Texas," 1 J. Legal Analysis 355 (2009) (with David A. Hyman, Bernard S. Black, and William M. Sage) (inaugural issue).*****

27. "The Impact of the 2003 Texas Medical Malpractice Damages Cap on Physician Supply and Insurer Payouts: Separating Facts from Rhetoric," 44 The Advocate (Texas) 25 (2008) (with Bernard S. Black and David A. Hyman) (invited symposium).

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31. "Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988-2002," 2 J. Empirical Legal Stud. 207–259 (July 2005) (with Bernard S. Black, David A. Hyman, and William S. Sage).*****

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32. "Screening Plaintiffs and Selecting Defendants in Medical Malpractice Litigation: Evidence from Illinois and Indiana," 15 J. Empirical Legal Stud. 41-79 (2018) (with Mohammad Rahmati, David A. Hyman, Bernard S. Black, and Jing Liu)*

33. "Medical Malpractice Litigation and the Market for Plaintiff-Side Representation: Evidence from Illinois," 13 J. Empirical Legal Stud. 603-636 (2016) (with David A. Hyman, Mohammad Rahmati, Bernard S. Black).*

34. "The Economics of Plaintiff-Side Personal Injury Practice," U. Ill. L. Rev. 1563 (2015) (with Bernard S. Black and David A. Hyman).

35. "Access to Justice in a World without Lawyers: Evidence from Texas Bodily Injury Claims," 37 Fordham Urb. L. J. 357 (2010) (with David A. Hyman) (invited symposium).

36. "Defense Costs and Insurer Reserves in Medical Malpractice and Other Personal Injury Cases: Evidence from Texas, 1988-2004," 10 Amer. Law & Econ. Rev. 185 (2008) (with Bernard S. Black, David A. Hyman, and William M. Sage).*****

Attorneys' Fees – Empirical Studies and Policy Analyses

37. "The Mimic-the-Market Method of Regulating Common Fund Fee Awards: A Status Report on Securities Fraud Class Actions," RESEARCH HANDBOOK ON REPRESENTATIVE SHAREHOLDER LITIGATION, Sean Griffith, Jessica Erickson, David H. Webber, and Verity Winship, Eds. (forthcoming 2018).

38. "Is the Price Right? An Empirical Study of Fee-Setting in Securities Class Actions," 115 Columbia L. Rev. 1371 (2015) (with Lynn A. Baker and Michael A. Perino).

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40. "Setting Attorneys' Fees In Securities Class Actions: An Empirical Assessment," 66 Vanderbilt L. Rev. 1677 (2013) (with Lynn A. Baker and Michael A. Perino).

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56. "When Should Government Regulate Lawyer-Client Relationships? The Campaign to Prevent Insurers from Managing Defense Costs," 44 Ariz. L. Rev. 787 (2002) (invited symposium).

57. "Defense Lawyers' Professional Responsibilities: Part II – Contested Coverage Cases," 15 G'town J. Legal Ethics 29 (2001) (with Ellen S. Pryor).

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Class Actions, Mass Actions, and Multi-District Litigations

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71. "The Allocation Problem in Multiple-Claimant Representations," 14 S. Ct. Econ. Rev. 95 (2006) (with Paul Edelman and Richard Nagareda).*****

72. "A Rejoinder to *Lester Brickman, On the Theory Class's Theories of Asbestos Litigation,"* 32 Pepperdine L. Rev. 765 (2005).

73. "Merging Roles: Mass Tort Lawyers as Agents and Trustees," 31 Pepp. L. Rev. 301 (2004) (invited symposium).

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78. "Mass Lawsuits and the Aggregate Settlement Rule," 32 Wake Forest L. Rev. 733 (1997) (with Lynn A. Baker) (invited symposium).

79. "Comparing Class Actions and Consolidations," 10 Tex. Rev. of Litig. 496 (1991).

80. "Justice in Settlements," 4 Soc. Phil. & Pol. 102 (1986) (with Jules L. Coleman).*****

General Legal Ethics and Civil Litigation

81. "A Private Law Defense of Zealous Representation" (in progress), available at http://ssrn.com/abstract=2728326.

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83. "Fiduciaries and Fees," 79 Fordham L. Rev. 1833 (2011) (with Lynn A. Baker) (invited symposium).

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90. "Preliminary Thoughts on the Economics of Witness Preparation," 30 Tex. Tech L. Rev. 1383 (1999) (invited symposium).

91. "And Such Small Portions: Limited Performance Agreements and the Cost-Quality/Access Trade-Off," 11 G'town J. Legal Ethics 959 (1998) (with David A. Hyman) (invited symposium).

92. "Bargaining Impediments and Settlement Behavior," in D.A. Anderson, ed., DISPUTE RESOLUTION: BRIDGING THE SETTLEMENT GAP (1996) (with Samuel Issacharoff and Kent D. Syverud).

93. "The Legal Establishment Meets the Republican Revolution," 37 S. Tex. L. Rev. 1247 (1996) (invited symposium).

94. "Do We Know Enough about Legal Norms?" in D. Braybrooke, ed., SOCIAL RULES: ORIGIN; CHARACTER; LOGIC: CHANGE (1996) (invited contribution).

95. "Integrating Theory and Practice into the Professional Responsibility Curriculum at the University of Texas," 58 Law and Contemporary Problems 213 (1995) (with Amon Burton, John S. Dzienkowski, and Sanford Levinson,).

96. "Thoughts on Procedural Issues in Insurance Litigation," VII INS. L. ANTHOL. (1994).

Legal and Moral Philosophy

97. "Elmer's Case: A Legal Positivist Replies to Dworkin," 6 L. & Phil. 381 (1987).*****

98. "Negative Positivism and the Hard Facts of Life," 68 The Monist 347 (1985).*****

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Practice-Oriented Publications

100. "Your Role in a Law Firm: Responsibilities of Senior, Junior, and Supervisory Attorneys," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (3D) (Texas Center for Legal Ethics and Professionalism 1996).

101. "Getting and Keeping Clients," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (3D) (Texas Center for Legal Ethics and Professionalism 1996) (with James M. McCormack and Mitchel L. Winick).

102. "Advertising and Marketing Legal Services," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (Texas Center for Legal Ethics and Professionalism 1994).

103. "Responsibilities of Senior and Junior Attorneys," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (Texas Center for Legal Ethics and Professionalism 1994).

104. "A Model Retainer Agreement for Legal Services Programs: Mandatory Attorney's Fees Provisions," 28 Clearinghouse Rev. 114 (June 1994) (with Stephen Yelenosky).

Miscellaneous

105. "Public Opinion and the Federal Judiciary: Crime, Punishment, and Demographic Constraints," 3 Pop. Res. & Pol. Rev. 255 (1984) (with Robert Y. Shapiro).*****

PERSONAL

Married to Cynthia Eppolito, PA; Daughter, Katherine; Step-son, Mabon.

Consults with attorneys and serves as an expert witness on subjects in his areas of expertise.

First generation of family to attend college.

APPENDIX 2: TABLE OF FEE AWARDS GRANTED IN ANTITRUST CASES WITH SOPHISTICATED BUSINESSES SERVING AS LEAD PLAINTIFFS COMPILED BY PROFESSOR BRIAN T. FITZPATRICK TO BE PUBLISHED IN A FORTHCOMING ARTICLE IN THE FORDHAM LAW REVIEW

TABLE OF FEE AWARDS IN DIRECT PURCHASER PHARMACEUTICAL ANTITRUST CLASS ACTIONS

Direct-Purchaser Pharmaceutical Antitrust Settlements, April 2003-April 2020

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
11/09/18	*Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd. et al*, No. 14-00719 (D. Del.)	$9,000,000	33.33%	N/A	None	No
10/24/18	*In Re: Blood Reagents Antitrust Litigation*, No. 09-md-02081 (E.D. Pa.)	$41,500,000	33.33%	N/A	None	No
09/20/18	*In re Lidoderm Antitrust Litigation*, No. 14-md-02521 (N.D. Cal.)	$166,000,000	27.11%	33.33%	None	Yes
07/18/18	*In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, No. 14-md-02503 (D. Mass.)	$72,500,000	31.45%	N/A	None	No

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
04/18/18	*American Sales Company, LLC v. Pfizer, Inc.*, No. 4-cv-00361 (E.D. Va.)	$94,000,000	32.69%	33.33%	None	Yes
12/19/17	*In re Aggrenox Antitrust Litigation*, No. 14-md-02516 (D. Conn.)	$146,000,000	33.33%	33.33%	None	Yes
12/07/17	*In re Asacol Antitrust Litigation*, No. 15-cv-12730 (D. Mass.)	$15,000,000	33.33%	N/A	None	Yes
10/23/17	*Castro v. Sanofi Pasteur, Inc.*, No. 11-cv-7178 (D.N.J.)	$61,500,000	33.33%	N/A	None	Yes
10/05/17	*In re K-Dur Antitrust Litigation*, No. 01-cv-01652 (D.N.J.)	$60,200,000	33.33%	N/A	None	Yes
10/15/15	*King Drug Company of Florence, Inc. v. Cephalon, Inc., et al*, No. 06-cv-01797 (E.D. Pa.)	$512,000,000	27.50%	N/A	None	Yes

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
05/20/15	*In re Prograf Antitrust Litig.*, No. 11-md-2242 (D. Mass.)	$98,000,000	33.33%	N/A	None	Yes
01/20/15	*In re Prandin Direct Purchaser Antitrust Litig.*, No. 10-cv-12141 (E.D. Mich.)	$19,000,000	33.33%	N/A	None	Yes
09/16/14	*Mylan Pharmaceuticals, Inc. v. Warner Chilcott PLC*, No. 12-cv-3824 (E.D. Pa.)	$15,000,000	33.33%	N/A	None	No
08/06/14	*Louisiana Wholesale v. Pfizer, Inc., et al*, No. 02-cv-01830 (D.N.J.)	$190,416,438	33.33%	N/A	None	Yes
06/30/14	*In re Skelaxin (Metaxalone) Antitrust Litigation*, No. 12-md-2343 (E.D. Tenn.)	$73,000,000	33.33%	N/A	None	Yes
4/16/14	*In Re: Plasma-Derivative Protein Therapies Antitrust Litigation*, No. 09-07666 (N.D. Ill.)	$64,000,000	33.33%	N/A	None	No

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
06/14/13	*American Sales Company, Inc. v. Smithkline Beecham Corporation*, No. 08-cv-03149 (E.D. Pa.)	$150,000,000	33.33%	N/A	None	Yes
04/10/13	*Louisiana Wholesale Drug Company, Inc. v. Becton Dickinson & Company, Inc.*, No. 05-cv-01602 (D.N.J.)	$45,000,000	33.33%	N/A	None.	Yes
11/07/12	*In re Wellbutrin XL Antitrust Litigation*, No. 08-cv-2431 (E.D. Pa.)	$37,500,000	33.33%	N/A	None	Yes
05/31/12	*Rochester Drug Co-Operative, Inc., v. Braintree Laboratories, Inc.*, No. 07-cv-142 (D. Del.)	$17,250,000	33.33%	N/A	None	Yes
01/12/12	*In re Metoprolol Succinate Antitrust Litigation*, No. 06-cv-52 (D. Del.)	$20,000,000	33.33%	N/A	None	Yes

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
11/28/11	*In re DDAVP Direct Purchaser Antitrust Litigation*, No. 05-cv-2237 (S.D.N.Y.)	$20,250,000	33.33%	N/A	None	Yes
11/21/11	*In re Wellbutrin SR Antitrust Litigation*, No. 04-cv-5525 (E.D. Pa.)	$49,000,000	33.33%	N/A	None	Yes
08/11/11	*Meijer, Inc. v. Abbott Laboratories*, No. 07-cv-05985 (N.D. Cal.)	$52,000,000	33.33%	N/A	None	Yes
01/31/11	*In re Nifedipine Antitrust Litigation*, No. 03-mc-223 (D.D.C.)	$35,000,000	33.33%	N/A	None	Yes
01/25/11	*In re Oxycontin Antitrust Litigation*, No. 04-md-1603 (S.D.N.Y.)	$16,000,000	33.33%	N/A	None	Yes
04/23/09	*In re Tricor Direct Purchaser Litigation*, No. 05-340 (D. Del.)	$250,000,000	33.33%	N/A	None	Yes

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
04/20/09	*Meijer, Inc. v. Barr Pharmaceuticals, Inc.*, No. 05-cv-2195 (D.D.C.)	$22,000,000	33.33%	N/A	None	Yes
11/09/05	*In re Remeron Direct Purchaser Antitrust Litigation*, No. 03-cv-00085 (D.N.J.)	$75,000,000	33.33%	N/A	None	Yes
04/19/05	*In re Terazosin Hydrochloride Antitrust Litigation*, No. 99-md-1317 (S.D. Fla.)	$74,572,327	32.41%	N/A	None	Yes
11/30/04	*North Shore Hematology-Oncology Associates, P.C. v. Bristol-Myers Squibb Co.*, No. 04-cv-248 (D.D.C.)	$50,000,000	33.33%	N/A	None	No
04/09/04	*In re Relafen Antitrust Litigation*, No. 01-cv-12239 (D. Mass.)	$175,000,000	33.33%	N/A	None	No

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
04/11/03	*Louisiana Wholesale Drug Co. v. Bristol-Myers Squibb Co.*, No. 01-cv-7951 (S.D.N.Y.)	$220,000,000	32.96%	N/A	None	Yes
			N = 33 **Median = 33.33%** **Mean = 32.85%**	**3/33**	**0/33**	**26/33**

Source: Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 FORD. L. REV. (forthcoming 2021);

EXHIBIT 4

Class Counsel's Contested Motions and Briefing on Behalf of Plaintiffs

	Motion Title	Date
1	Plaintiffs' Opposition to DNREC's Motion to Quash Subpoenas to DNREC	July 13, 2018
2	Plaintiffs' Response to Defendant's Motion to Quash Subpoenas	September 20, 2018
3	Plaintiffs' Motion for Gag Order	September 22, 2018
4	Plaintiffs' Response in Opposition to Defendant's Motion for a Continuance of Hearing on Gag Order	October 2, 2018
5	Plaintiffs' Response in Opposition to Defendant's Motion for Enlargement of Page limit	October 9, 2018
6	Plaintiffs' Answering Brief Opposing Defendants' Motion to Dismiss Under Rule 12(b)(6) for Failure to Meet the Requirements of Rule 23(b)	October 11, 2018
7	Plaintiffs' Answering Brief in Response to Defendant Mountaire's First Motion to Dismiss Under Rule 12(b)	October 11, 2018
8	Plaintiffs' Response to DNREC's Renewed Motion to Quash Subpoenas to DNREC	October 16, 2018
9	Plaintiffs' Response in Opposition to Defendant Mountaire's Motion to Stay Discovery	October 22, 2018
10	Plaintiffs' Opposition to Defendant's Motion for Reconsideration of Commissioner's Order on Plaintiffs' Motion for Gag Order	November 27, 2018
11	Plaintiffs' Answering Brief Opposing Defendants' Motion to Dismiss Under Rule 12(b)(6) for Failure to Meet the Requirements of Rule 23(b)	December 7, 2018
12	Plaintiffs' Answering Brief in Response to Defendant Mountaire's First Motion to Dismiss Under Rule 12(b)	December 7, 2018

13	Plaintiffs' Motion to Compel to Defendant's Responses to Requests for Admissions with Certification	April 8, 2019
14	Motion for Relief Under Rule 60 for Clarification of Scope of Jurisdiction discovery	May 1, 2019
15	Plaintiffs' Response regarding Jurisdictional Discovery	May 7, 2019
16	Plaintiffs' Opposition to Defendant's Motion to Extend Deadlines	June 7, 2019
17	Plaintiffs' Response to Defendant's Exceptions to the Special Master's June 19, 2019 Decision	July 4, 2019
18	Plaintiffs' Response to Defendant's Exception to the Special Masters August 6, 2019 Decision re: Motion to Compel Discovery	December 3, 2019
19	Motion for Class Certification and Opening Brief In Support of Class Certification	January 10, 2020
20	Plaintiffs' Response to DNREC's Motion to Quash Subpoenas and for a Protective order	March 26, 2020
21	Plaintiffs' Motion for a Protective Order re: Defendant's communications with Class Members	March 30, 2020
22	Response to DNREC's Motion for a Stay of Litigation	April 3, 2020
23	Plaintiffs' Motion for Rule to Show Cause and Discovery Sanctions	April 14, 2020
24	Response and Objection to Defendant's Counsel's Request to Postpone the April 24, 2020 Hearing	April 16, 2020
25	Plaintiffs' Motion to Compel reproduction of unredacted logged documents	May 1, 2020
26	Plaintiffs' Motion to Compel production of unredacted Mountaire meeting minutes	May 1, 2020
27	Plaintiffs' Response in Opposition to Defendant's Exceptions to Special Mater's April 15, 2029 Ruling	May 6, 2020

28	Plaintiffs' Memorandum of Law in Support of Plaintiff's First Supplemental Submission in response to Defendant's Motion to Dismiss for lack of Personal Jurisdiction	May 18, 2020
29	Plaintiffs' Second Supplemental Submission in response to Defendant's Motion to Dismiss for lack of Personal Jurisdiction	May 27, 2020
30	Plaintiffs' Second Motion for Discovery Sanctions	May 27, 2020
31	Plaintiffs' Motion to Compel Discovery from DNREC	July 7, 2020
32	Plaintiffs' Opposition to DNREC's Application for Certification of Interlocutory Appeal	July 7, 2020
33	Plaintiffs' Motion to Strike Defendant's Response in Support of the Third-Party DNREC's Application for Certification of Interlocutory Appeal	July 10, 2020
34	Plaintiffs' Motion for Cross-Designation	July 17, 2020
35	Plaintiffs' Opening Brief in Support of Plaintiffs' Motion for Cross-Designation	August 6, 2020
36	Plaintiffs' Answering Brief in Opposition to Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction	August 14, 2020
37	Plaintiffs' Reply in Support of Motion for Cross-Designation	September 9, 2020
38	Plaintiffs' Reply Brief in Support of Plaintiffs' Motion for Class Certification	September 15, 2020
39	Plaintiffs' Motion for Rule to Show Cause and Discovery Sanctions against DNREC for failure to produce documents	October 2, 2020
40	Response in Opposition to Defendant's Renewed Motion to Dismiss for Lack of Subject Matter Jurisdiction	October 9, 2020

41	Plaintiffs' Reply in Support of Plaintiff's Motion for Class Certification	October 15, 2020
42	Plaintiffs' Sur-Sur Reply in Support of Plaintiff's Motion for Class Certification	October 28, 2020
43	Plaintiffs' Opposition to Mountaire's Application for Certification of Interlocutory Appeal	November 5, 2020
44	Joint Motion for Preliminary Approval of Class Action Settlement and Agreement	December 23, 2020

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Transaction ID 66300204
Case No. S18C-06-009 CAK

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GARY and ANNA-MARIE CUPPELS, et al., individually and on behalf of all others similarly situated, Plaintiffs, v.	)	
	)	C.A. No.: S18C-06-009 CAK
MOUNTAIRE CORPORATION, an Arkansas corporation, MOUNTAIRE FARMS, INC., a Delaware corporation, and MOUNTAIRE FARMS OF DELAWARE, INC., a Delaware corporation. Defendants.	)	

[PROPOSED] ORDER GRANTING MOTION IN SUPPORT OF CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

Upon review of the Motion in Support of Class Counsel's Application for Attorneys' Fees and Reimbursement of Expenses file in the above-referenced caption, and any responses thereto, it is so ordered that:

Class counsel Baird Mandalas Brockstedt, LLC and Schochor, Federico & Staton, P.A., are granted:

(1) approval of their fee application and an award of attorneys' fees in the amount 25% of the settlement amount: $16,250,000; and

(2) approval of payment from the settlement amount to class counsel of $2,500,000 for reimbursement of expenses.

SO ORDERED, this _____ day of _____, 2021

_____

THE HONORABLE CRAIG A. KARSNITZ