From:	Nick Coulson
To:	AG-PFASProposal
Cc:	Steven Liddle
Subject:	Response to PFAS Tort Litigation RFP
Date:	Wednesday, June 5, 2019 8:26:51 AM
Attachments:	DAG Proposal w Attachments.pdf

Dear Ms. Synk, DAG, and DAG staff,

I am pleased to transmit to you the attached Proposal to Provide Legal Services in response to DAG's PFAS tort litigation Request for Proposals. The proposal and all attachments are contained in a single attached file which is within the size restrictions outlined in the RFP. I would greatly appreciate it if you could confirm receipt of the file.

Please feel free to contact me with any questions or requests for further information.

Regards,

Nicholas A. Coulson
LIDDLE & DUBIN P.C.
975 E. Jefferson Ave.
Detroit, MI 48207
313.392.0015 office
248.978.5538 mobile/direct
313.392.0025 fax

LIDDLE & DUBIN, PC

Proposal to Provide Legal Services to the State of Michigan

PFAS Manufacturer Tort Litigation

June 5, 2019

Submitted to:

AAG Polly Synk
Department of the Attorney General
Attorney General Dana Nessel
PFASProposal@michigan.gov

Submitted by:

Liddle & Dubin, P.C.
975 E. Jefferson Avenue
Detroit, MI 48207

Contact:

Nicholas Coulson
975 E. Jefferson Avenue
Detroit, MI 48207
NCoulson@LDClassaction.com
(248) 978-5538 (Direct)
(313) 392-0025 (Fax)

Firm Overview and Approach to Requested Legal Services

Liddle & Dubin P.C. ("Liddle & Dubin" or "LD") is pleased to submit this proposal to provide legal services to the State of Michigan Department of Attorney General. Liddle & Dubin is a Michigan law firm with more than 20 years of experience in environmental tort litigation. No other firm (perhaps not even all other firms combined) has litigated more environmental tort claims under Michigan law. The firm's lawyers overwhelmingly focus their practices on environmental contamination claims and have successfully litigated such claims in jurisdictions around the country. Liddle & Dubin has obtained hundreds of millions of dollars in monetary and non-monetary relief for its clients in environmental litigation, and its efforts have resulted in improvement measures to remediate various environmental concerns.

LD is ideally situated to assist the DAG in this matter because:
- We have litigated countless environmental tort claims under Michigan law over more than 20 years.
- We have broad and specific experience with the scientific and technical issues that will drive this litigation
- We are currently litigating tort claims against manufacturers of PFAS and PFAS-containing products under Michigan tort law on behalf of the residents of Parchment, Michigan. We participated in the Judicial Panel on Multidistrict Litigation hearing on PFAS contamination and closely follow the developments in PFAS cases nationwide.

As the DAG is certainly aware, Michigan is home to the most publicly identified PFAS-contaminated sites in the nation. Given the ubiquity of PFAS contamination sites within Michigan, it would be difficult to understate the significance of the litigation this proposal addresses. But the stakes are raised even further in consideration of the fact that in Michigan, unlike certain other states, "the Attorney General has the authority to bring suit on behalf of political subdivisions where there is an issue of state interest." *In re Certified Question from the United States Dist. Court for the E. Dist. of Mich. v. Philip Morris*, 465 Mich. 537, 547, 638 N.W.2d 409, 415 (2002). This broadens the recoverable damages to include those borne by cities, counties, and townships in addition to those directly incurred by the State.

When Michigan sued the tobacco manufacturers in 1996, the legal landscape was quite different. The Attorney General's lawsuit included claims for violations of the Michigan Consumer Protection Act ("MCPA"); the Michigan Antitrust Reform Act; restitution based on unjust enrichment; indemnity; and breach of duty voluntarily undertaken. In the instant case, many of these claims would not likely be viable due to differing facts and/or changes in the law. For example, the MCPA is functionally dead letter law by virtue of a series of judicial decisions that incorporated nearly every business activity into the act's safe-harbor for regulated businesses.[1]

As is evident from the actions filed by the states of Minnesota, New York, New Jersey, and Vermont, it is the traditional common-law tort causes of action which provide states with the strongest claims against the manufacturers of PFAS.[2] No law firm is more experienced with the intricacies of Michigan environmental tort claims than Liddle & Dubin. LD is particularly well situated to assist the state with its claims against 3M, DuPont, Chemours, and others because of its long history of litigating environmental tort claims in Michigan and across the country, as well as its active involvement at the forefront of private PFAS litigation.

The State's strongest claims are those for nuisance and negligence (the latter as modified by the law of products liability). Michigan's products liability statutes, a product of the 1996 tort reform legislation, provide significant but passable obstacles for negligence claim(s). Of importance are the requirement to establish an "alternative design" and the "sophisticated user doctrine." In bringing this litigation, it will be especially important for the selected counsel to be familiar with the relevant statutes of limitations and their interplay with CERCLA's federally required commencement date.

LD's attorneys have an average of more than 18 years of experience litigating environmental tort claims in Michigan and have devoted their careers to prosecuting environmental torts. They have extensive experience with the legal and technical issues that will be likely to drive the state's forthcoming action(s) to successful resolution. LD attorneys have

---

[1] See, e.g., Victor and Lyngklip, *The Michigan Consumer Protection Act is Virtually Dead,* Michigan Bar Journal, August, 2012.
https://www.michbar.org/file/journal/pdf/pdf4article2070.pdf

[2] Minnesota brought statutory claims under the Minnesota Environmental Response and Liability Act, Minnesota Water Pollution Control Act, as well as four tort claims. Minnesota's claims arose from 3M's own manufacturing activities within Minnesota, an important difference from actions brought by other states.

worked extensively with expert witnesses in the fields of pollutant fate and transport modeling, hydrogeological modeling, civil and environmental engineering, toxicology, real estate valuation, and more. They have litigated all manner of legal issues that are likely to bear on this litigation, including relevant statutes of limitation, federal preemption, applicable duties, and standing. LD employs three paralegals, a full-time environmental investigator, and several additional legal assistants and support staff.

LD partner Steven Liddle is a recipient of Michigan Lawyers Weekly's "Lawyers of the Year" award for his representation of thousands of homeowners impacted by environmental contamination. He was named to Crain's Detroit Business 2003 "40 Under 40". In the Fox Creek litigation, he resolved a 60-year-old ongoing environmental problem for residents of the lower east side of Detroit. For decades, sewage had been discharged into a canal system that bordered their homes. Mr. Liddle resolved the case for $3.8 million in damages and the installation of a new $25 million sewage system to eliminate future discharges. Since that time, Mr. Liddle has successfully represented hundreds of thousands of individuals in environmental claims against corporate and municipal entities, recovering hundreds of millions of dollars. This includes his current efforts against 3M and Georgia-Pacific stemming from the PFAS contamination of Parchment, Michigan's municipal drinking water. He has also served as an adjunct professor at Michigan State University Detroit College of Law, where he taught complex litigation.

LD partner David Dubin has spent over two decades litigating environmental contamination cases, predominantly in Michigan but also across the country. He has successfully litigated cases involving contamination from sewage systems, landfills, steel plants, rendering facilities, oil refineries, cement manufacturers, food processing plants and paper mills. He has extensive experience working with expert witnesses in the fields of civil and environmental engineering, hydrogeological modeling, and the modeling of fate and transport of pollutants. Mr. Dubin is particularly experienced with managing complex, multi-defendant litigation, including class actions and mass torts. He has been at the center of two of the largest multi-defendant complex litigations ever seen in Michigan courts. His efforts have resulted in many millions of dollars recovered and sweeping facility improvements at locations across Michigan and the country.

LD attorney Nicholas Coulson has been appointed as class counsel in more than a dozen environmental class action lawsuits involving contamination from landfills, waste incinerators,

chemical plants, railroad tie manufacturers, and sewage systems. In these cases he has recovered many millions of dollars and obtained emissions-reducing improvements. He has extensive experience working with and deposing expert witnesses in such fields of study as: fate and transport of pollutants, civil and environmental engineering, toxicology, complex real estate appraisal, survey methodology, and sensory perception. He has deep knowledge of the interplay between state common law claims and federal statutory schemes, having authored the firm's brief in *Bell v. Cheswick Generating Station*, 734 F.3d 188, 190 (3d Cir. 2013). In that case the Court of Appeals for the Third Circuit ruled that the federal Clean Air Act does not preempt source-state common law tort claims regarding airborne emissions. The decision was instrumental in establishing a nationwide consensus which has been protective of the property rights of countless people. Mr. Coulson is actively involved in the firm's efforts against 3M and Georgia-Pacific arising from the Parchment Water Crisis. He currently serves as class counsel for one of the nation's largest certified classes in a pending $32.5 million nationwide class action settlement against Uber Technologies.

LD attorney Laura Sheets has successfully litigated environmental tort cases in Michigan and elsewhere since 2001. Her efforts have resulted in many millions of dollars in monetary recoveries and improvements to the quality of life in dozens of neighborhoods. She served as interim co-lead and class counsel in *Holder, et al v. Enbridge Energy L.P., et al*, Case No. 1:10-cv-752 (W.D. Mich. 2010), the class action litigation that arose from the 2010 Kalamazoo River oil spill. She has successfully resolved dozens of cases against a variety of industrial polluters in numerous jurisdictions, both in state and federal courts. In 2013, Attorney at Law magazine profiled her efforts on behalf of homeowners in environmental cases. She presently represents residents impacted by environmental contamination in seven states.

Information Responsive to RFP by Section

1.1 Identify the bidder's contact person for the RFP process. Include name, title, address, email, and phone number.

Nicholas Coulson
Attorney, Liddle & Dubin P.C
975 E. Jefferson Avenue
Detroit, MI 48207

NCoulson@LDClassaction.com
(313) 392-0015
(313) 392-0025 (Fax)

1.2 Identify the person authorized to sign a contract resulting from this RFP. Include name, title, address, email, and phone number.

Liddle & Dubin, P.C.
Steven D. Liddle
Managing Partner
975 E. Jefferson Avenue
Detroit, MI 48207
SLiddle@LDClassAction.com
(313) 392-0015

1.3 Identify the company's legal business name, address, phone number, and website.

Liddle & Dubin, P.C.
975 E. Jefferson Avenue
Detroit, Michigan 48207
(313) 392-0015
www.LDClassAction.com

2.2 Identify the State your business is organized in.

Liddle & Dubin is organized in Michigan.

2.3 Identify the location (city and state) that would have primary responsibility for this work if awarded a contract.

Detroit, Michigan

2.4 Identify the practice group area, if applicable, proposed to handle the work.

Not applicable. All of the firm's attorneys will be made available according to the needs of the DAG. In addition to the four listed attorneys, the firm is currently interviewing to replace two recently departed attorneys.

2.5 Explain any partnerships and strategic relationships you have that would bring significant value to the State.

Liddle & Dubin has working relationships with counsel in leadership in the *In re: AFFF Litigation MDL*. Co-ordination with state litigation is an important function of MDL leadership. An effective working relationship would allow the State to benefit from

developments in the federal litigation, which should create efficiencies and shorten the time required to litigate the State's case.

2.6 If you intend to use subcontractors to perform the work, disclose: (1) the subcontractor's legal business name, website, address, phone number, and primary contact person; (2) a description of subcontractor's organization; (3) a complete description of the services or products it will provide; (4) information concerning subcontractor's ability to provide the services; (5) whether the bidder has a previous working experience with the subcontractor, and if yes, provide details of that previous relationship.

Liddle & Dubin *does not* intend to use any subcontractors to perform any of the legal work anticipated in this proposal. Consistent with the SAAG contract, the firm intends to retain expert consultants and witnesses at the appropriate time and as approved by the Department of Attorney General. We have worked with numerous potential candidate experts in various fields.

2.7 Identify the name and title of the individuals you propose as key personnel. Attach resumes or CVs for each person.

Steven D. Liddle (CV-**Attachment 1**)
David R. Dubin (CV-**Attachment 2**)
Laura L. Sheets (CV-**Attachment 3**)
Nicholas A. Coulson (CV-**Attachment 4**)

3.1 Describe at least 3 relevant experiences supporting your ability to successfully perform the work set forth in the SOW. Include a description of services provided and results obtained. Include contact information for the clients you represented.

Reference 1: In ***Etheridge, et al v. City of Grosse Pointe Park, et al*** (Wayne County Case No. 95-527115 NZ) ("the Fox Creek Litigation"), LD obtained class certification over the defendant's objection for a class of residents impacted by sewage dumping into a Fox Creek. LD represented the plaintiffs and the certified class at all stages of the litigation, and ultimately obtained $3.8 million in damages and the installation of a new $25 million sewage system to eliminate future discharges. The improvement measures in this case ended a dumping practice that had been ongoing for approximately 60 years. The most active plaintiff in the case was Cindy Wile, whose last known address was 428 S. William, Marine City, MI 48039.

Reference 2: In ***Beck v. Stony Hollow Landfill*, Case No. 3:16-cv-455 (S.D. Ohio)**, LD represented a class of homeowners and renters residing near a landfill with poorly controlled emissions of landfill gas. LD represented the plaintiffs from the inception of the case and defeated two dispositive motions before obtaining a settlement of $1.875 million in monetary relief and $1.45 million in improvement measures to minimize the impact of airborne emissions from the landfill. This case is notable given the fact that few other law firms have been successful in forcing class-wide settlements with significant emissions relief in similar cases. The lead plaintiff in the case was Carly Beck of Moraine Ohio, who can be reached at (937) 432-5955.

Reference 3: Sewage Invasion Litigation. In *In Re: Lessard,* Case No. 00-74306 (E.D. Mich), we extensively litigated the issue of governmental immunity for sewage invasions, including a certified question to the Michigan Supreme Court. While we prevailed on behalf of our thousands of clients under a traditional trespass/nuisance theory, the court utilized prospective application to limit the holding in future cases, depriving future victims of redress. Rather than accept this outcome, we led a grassroots campaign that led to the enactment of Public Act 222 of 2001 (MCL 691.1416 *et seq*.). The act created one of the few exceptions to governmental immunity, allowing a homeowner to seek damages arising from a sewage backup. The enactment of this law has enabled thousands of Michigan homeowners to receive reimbursement for property loss occasioned by a sewage backup and has incentivized numerous municipalities to upgrade their sewer infrastructure to prevent future events. Given the passage of time, the firm no longer has contact information for the lead plaintiffs in the case.

3.2 Provide publicly available motions, briefs, and other documents relevant to your experience in providing the legal services sought under this RFP.

Attachment 5 is a brief that LD filed in *Michaely, et al v. Browning-Ferris Industries of California, Inc.* Case No. BC 497125 (Superior Court of the State of California, County of Los Angeles- Central Division). We believe that this brief helped cement the likelihood that the Plaintiffs would obtain class certification, and helped lead to a settlement that obtained $3.5 million in cash and $6 million worth of emissions-reducing improvements for a class of approximately 1100 neighbors of a landfill with poorly-controlled emissions.

Attachment 6 is the Amended Complaint LD recently filed in *Dykehouse et al v. The 3M Company et al,* Case No. 1:18-cv-01225 (W.D. Mich). The complaint sets out our theory of the case in a PFAS contamination lawsuit brought under Michigan tort law.

Attachment 7 is the Court's Opinion and Order in *Batties v. Waste Mgmt. of Pa., Inc.*, No. 14-7013, 2016 U.S. Dist. LEXIS 186335, at *48 (E.D. Pa. May 11, 2016). There, while observing that "prosecuting an environmental class action is a complex undertaking, involving specialized, often-technical evidence, and novel legal issues[,]" the court noted that "Class Counsel [LD] skillfully and vigorously investigated and prosecuted the Class's claims… Absent the skill and efficiency of Class Counsel, it is also unlikely that individual Class Members could have obtained any recovery on their nuisance claims." *Id.* In Batties, LD resolved the class's claims for $1,400,000 in cash and $600,000 worth of facility improvements.

4 Conflict of Interest

4.1 Provide detailed information regarding any prior, current, or anticipated future relationship with any manufacturer of PFAS or PFAS containing products that could give rise to potential actual or apparent conflict of interest. Disclose such information for both the bidder and any proposed subcontractors.

Liddle & Dubin is prosecuting tort claims against 3M arising from the water contamination crisis in Parchment, Michigan. It does not, nor has it ever, represented any manufacturer of PFAS or PFAS containing products. It is not involved in any litigation against such an entity which would be in any way adverse to the interests of the State.

4.2 Disclose any actual, apparent, or potential conflict of interest between the bidder and the State of Michigan.

Liddle & Dubin previously represented a plaintiff in putative class action litigation arising from the Flint Water Crisis. The defendants in that litigation included the State of Michigan, former Governor Snyder, the Department of Health and Human Services, the Department of Environmental Quality, and a number of state officials and/or employees. That case has been dismissed. Liddle & Dubin has referred several clients to attorney Corey

Stern at Levy Konigsberg who are pursuing claims related to exposure to lead from the Flint Water Crisis. Liddle & Dubin has no active role of any kind in that litigation.

Liddle & Dubin presently represents putative class plaintiffs in litigation against 3M and Georgia-Pacific arising from the contamination of Parchment, Michigan's municipal water supply. Georgia-Pacific has identified MDEQ/EGLE as one of many potentially responsible third parties. Liddle & Dubin and the Plaintiffs in that case have not named and do not intend to name any State entity as a Defendant in that case, given both the facts of the case and the controlling issue of governmental immunity.

4.3 With respect to any information provided in response to the questions above, provide an explanation of why an actual, apparent, or potential conflict of interest would not arise, or the measures that would be taken to avoid such a conflict.

Representation of the State of Michigan in the investigation and litigation of claims against PFAS manufacturers will not create any conflict of interest. Such representation will not be directly adverse to any client of the firm. See Mich. Rules Prof. Conduct 1.7(a). The firm's representation of the State will not be materially limited by its responsibilities to any client, third person, or by its own interests. See *Id.* 1.7(b). Further, the arrangement anticipated by this proposal is not "the same or a substantially related matter" to the Flint Water Crisis litigation. See *Id.* 1.9.

Proposed Contract and Fee Agreement

5 SAAG Contract

5.1 We affirm agreement with the terms of the SAAG Contract, Attachment A to the RFP.

6 Fee Agreement

6.1 Attachment 8 is a proposed Fee Agreement which: (1) aligns with the SAAG Contract and (2) clearly sets forth how LD proposes to address payment in the event of recovery.

Conclusion

Liddle & Dubin is a Michigan law firm equipped with the legal and technical expertise which will best serve the State in litigation against manufacturers of PFAS and PFAS-containing products. The firm's experience with complex scientific issues related to migration and exposure,

its unparalleled experience in Michigan environmental tort law, and its role in PFAS litigation all combine to provide the State an unequaled value in this undertaking. We look forward to assisting the DAG in gathering further information to support its decision. We would welcome DAG staff for a visit to our Detroit office in the historic Parker House located at 975 E. Jefferson Avenue.

Attachment 1- Steven Liddle CV

LIDDLE & DUBIN, PC

Steven D. Liddle

Steven D. Liddle is a recipient of Michigan Lawyers Weekly's "Lawyers of the Year" award for his representation of thousands of homeowners impacted by environmental contamination. He was named to Crain's Detroit Business 2003 "40 Under 40". In the Fox Creek litigation, he resolved a 60-year-old ongoing environmental problem for residents of the lower east side of Detroit. For decades, sewage had been discharged into a canal system that bordered their homes. Mr. Liddle resolved the case for $3.8 million in damages and the installation of a new $25 million sewage system to eliminate future discharges. Since that time, Mr. Liddle has successfully represented hundreds of thousands of individuals in environmental claims against corporate and municipal entities, recovering many millions of dollars. This includes his current efforts against 3M and Georgia-Pacific stemming from the PFAS contamination of Parchment, Michigan's municipal drinking water. He has also served as an adjunct professor at Michigan State University Detroit College of Law, where he taught complex litigation.

Representative cases: *Etheridge, et al v. City of Grosse Pointe Park, et al* (Wayne County Case No. 95-527115 NZ) ("the Fox Creek Litigation") - Obtained class certification over the defendant's objection for a class of residents impacted by sewage dumping into a Fox Creek. Represented the plaintiffs and the certified class at all stages of the litigation, and ultimately obtained $3.8 million in damages and the installation of a new $25 million sewage system to eliminate future discharges. The improvement measures in this case ended a dumping practice that had been ongoing for approximately 60 years.

Michaely, et al v. Browning-Ferris Industries of California, Inc. Case No. BC 497125 (Superior Court of the State of California, County of Los Angeles- Central Division) - We believe that this brief helped cement the likelihood that the Plaintiffs would obtain class certification, and helped lead to a settlement that obtained $3.5 million in cash and $6 million worth of emissions-reducing improvements for a class of approximately 1100 neighbors of a landfill with poorly-controlled emissions.

Sewage Invasion Litigation- *In Re: Lessard,* Case No. 00-74306 (E.D. Mich)- Extensively litigated the issue of governmental immunity for

sewage invasions, including a certified question to the Michigan Supreme Court. While we prevailed on behalf of our thousands of clients under a traditional trespass/nuisance theory, the supreme court utilized prospective application to limit the holding in future cases, depriving future victims of redress. Rather than accept this outcome, we led a grassroots campaign that led to the enactment of Public Act 222 of 2001 (MCL 691.1416 *et seq*.). The act created one of the few exceptions to governmental immunity, allowing a homeowner to seek damages arising from a sewage backup. The enactment of this law has enabled thousands of Michigan homeowners to receive reimbursement for property loss occasioned by a sewage backup and has incentivized numerous municipalities to upgrade their sewer infrastructure to prevent future events.

Bar Admissions: Michigan (P45110)
E.D. Mich.
W.D. Mich.
W.D. NY
E.D. Wisc.
U.S. Court of Appeals- Sixth Circuit
Supreme Court of the United States

Education: University of Detroit Mercy Law School (JD, 1991)
Michigan State University (B.A., Marketing, 1987)

Attachment 2- David Dubin CV

LIDDLE & DUBIN, PC

David R. Dubin

David Dubin has spent over two decades litigating environmental contamination cases, predominantly in Michigan but also across the country. He has successfully litigated cases involving contamination from sewage systems, landfills, steel plants, rendering facilities, oil refineries, cement manufacturers, food processing plants and paper mills. He has extensive experience working with expert witnesses in the fields of civil and environmental engineering, hydrogeological modeling, and the modeling of fate and transport of pollutants. Mr. Dubin is particularly experienced with managing complex, multi-defendant litigation, including class actions and mass torts. He has been at the center of two of the largest multi-defendant complex litigations ever seen in Michigan courts. His efforts have resulted in many millions of dollars recovered and sweeping facility improvements at locations across Michigan and the country.

Representative cases: *Cash v. Rockford* (County of Winnebago Circuit Court- Illinois Case No. 07-CH-1069)- Obtained $2,500,000 settlement for victims of sewage contamination caused by municipal negligence.

Ng. et al v. International Disposal Corp.(Superior Ct. CA- Santa Clara County Case No. 112CV228591) – Obtained settlement of $1,200,000 and sweeping physical improvements to waste recovery facility including landfill, recyclery, and compost plant.

Sinclair, et al v. City of Grosse Pointe Farms (Wayne County Case No. 11-011115-NZ) - Obtained complete victory, including reversal of dismissal of many claims, at Michigan Court of Appeals resulting in $4,000,000 settlement on behalf of GPF residents whose homes had been invaded with sewage.

Bar Admissions:
Michigan (P52521)
E.D. Mich.
W.D. Mich.
U.S. Court of Appeals- Fifth Circuit
U.S. Court of Appeals- Sixth Circuit
Supreme Court of the United States

Education:
Michigan State University – Detroit College of Law (JD, 1997)
Eastern Michigan University (B.A., Political Science/Soviet Studies, 1994)

Attachment 3- Laura Sheets CV

LIDDLE & DUBIN, PC

Laura L. Sheets

Laura L. Sheets has successfully litigated environmental tort cases in Michigan and elsewhere since 2001. Her efforts have resulted in many millions of dollars in monetary recoveries and improvements to the quality of life in dozens of neighborhoods. She served as interim co-lead and class counsel in *Holder, et al v. Enbridge Energy L.P., et al*, Case No. 1:10-cv-752 (W.D. Mich. 2010), the class action litigation that arose from the 2010 Kalamazoo River oil spill. She has successfully resolved dozens of cases against a variety of industrial polluters in numerous jurisdictions, both in state and federal courts. In 2013, Attorney at Law magazine profiled her efforts on behalf of homeowners in environmental cases. She presently represents residents impacted by environmental contamination in seven states.

Bar Admissions: Michigan (P63270)
E.D. Mich.
W.D. Mich.

Education: Wayne State University Law School (JD, 2001)
Wayne State University (B.A., Journalism, 2008) (*Magna Cum Laude*)

Attachment 4- Nicholas Coulson CV

LIDDLE & DUBIN, PC

Nicholas A. Coulson

Nicholas A. Coulson has been appointed as class counsel in more than a dozen environmental class action lawsuits involving contamination from landfills, waste incinerators, chemical plants, railroad tie manufacturers, and sewage systems. In these cases he has recovered many millions of dollars and obtained emissions-reducing improvements. He has extensive experience working with and deposing expert witnesses in such fields of study as: fate and transport of pollutants, civil and environmental engineering, toxicology, complex real estate appraisal, survey methodology, and sensory perception. He has deep knowledge of the interplay between state common law claims and federal statutory schemes, having authored the firm's brief in *Bell v. Cheswick Generating Station*, 734 F.3d 188, 190 (3d Cir. 2013). In that case the Court of Appeals for the Third Circuit ruled that the federal Clean Air Act does not preempt source-state common law tort claims regarding airborne emissions. The decision was instrumental in establishing a nationwide consensus which has been protective of the property rights of countless people. Mr. Coulson is actively involved in the firm's efforts against 3M and Georgia-Pacific arising from the Parchment Water Crisis. He currently serves as class counsel for one of the nation's largest certified classes in a pending $32.5 million nationwide class action settlement against Uber Technologies.

Representative Cases: *Beck v. Stony Hollow Landfill*, Case No. 3:16-cv-455 (S.D. Ohio), LD represented a class of homeowners and renters residing near a landfill with poorly controlled emissions of landfill gas. LD represented the plaintiffs from the inception of the case and defeated two dispositive motions before obtaining a settlement of $1.875 million in monetary relief and $1.45 million in improvement measures to minimize the impact of airborne emissions from the landfill.

Batties v. Waste Mgmt. of Pa., Inc., No. 14-7013, 2016 U.S. Dist. LEXIS 186335, at *48 (E.D. Pa. May 11, 2016). Recovered a total of $2,000,000 in cash and improvement measures to landfill. Court observed that "Class Counsel skillfully and vigorously investigated and prosecuted the Class's claims… Absent the skill and efficiency of Class Counsel, it is also unlikely

that individual Class Members could have obtained any recovery on their nuisance claims." *Id.*

McKnight v. Uber (Case No. 3:14-cv-05615-JST) (ND. Cal.)- Class counsel in pending $32,500,000 class action settlement of claims regarding Uber's "Safe Rides Fee," safety measures, and background check process for potential drivers.

Bar Admissions: Michigan (P78001)
E.D. Mich.
W.D. Mich.
W.D. NY
E.D. Wisc.
U.S. Court of Appeals- Third Circuit
U.S. Court of Appeals- Fifth Circuit

Education: University of Minnesota Law School (JD, 2013)
Oakland University (B.A., Political Science, 2008)

Attachment 5 - *Michaely* Brief

Mike Arias, Esq, (CSB #115385)
Arnold C. Wang, Esq. (CSB #204431)
ARIAS SANGUINETTI STAHLE & TORRIJOS LLP
6701 Center Drive West, Suite 1400
Los Angeles, CA 90045
Telephone: (310) 844-9696
Facsimile: (310) 670-1231

Steven D. Liddle, Esq. (*Pro Hac Vice*)
David R. Dubin, Esq. (*Pro Hac Vice*)
Nicholas A. Coulson, Esq. (*Pro Hac Vice*)
LIDDLE & DUBIN, P.C.
975 E. Jefferson Avenue
Detroit, Michigan 48207
Telephone: (313) 392-0015
Facsimile: (313) 392-0025

Attorneys for Plaintiffs and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

UNLIMITED JURISDICTION

YESHAYAHU MICHAELY, DEAN MICHAELS, ANDREA PROVENZALE, STEPHEN BECK, MICHAEL HEMMING and ANI GEVSHENIAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC., and DOES 1-100,

Defendant.

CASE NO. BC 497125
Honorable Kenneth R. Freeman

PLAINTIFFS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

Date Action Filed: December 11, 2012
Trial Date: None Set

I. INTRODUCTION

To hear Defendant tell it, hundreds of members of the putative class, the SCAQMD, Plaintiffs, their counsel, and their experts have joined together to falsely accuse Defendant of creating a nuisance. Faced with a mountain of evidence and lacking a leg to stand on, Defendant seeks to convince the Court that it is merely the victim of an elaborate, Grisham-esque conspiracy. Defendant offers some reason that each of the many pieces of evidence against it should be ignored. Many of Defendant's assertions regarding Plaintiffs' claims and supporting evidence are stretches, but taken together they become laughable. It is incredible that in the face of so much evidence, Defendant has the gall to represent to this Court that these claims are merely the fabrications of its selfishly motivated neighbors. But had there actually been some nefarious plan to concoct this lawsuit, Plaintiffs could have hoped for no better coconspirator than this Defendant.

Defendant is right about one thing; this case does follow a familiar pattern. First, a landfill operated by Republic Services or one of its subsidiaries spends years refusing to be a good neighbor, emitting foul odors across hundreds of homes. Where regulatory action fails to provide an adequate remedy to the problem, a class action lawsuit is filed. Then the same law firm comes in to defend the landfill, bringing along a small army of hired expert guns to protest every conceivable aspect of class litigation. Defendant swears up and down that the claims against it cannot possibly be litigated on a class-wide basis, and that individual litigation would be superior. But what Defendant fails to mention is the final step of the pattern, where it seeks to resolve the case through a class-wide settlement.[1] This

[1] Defendant and/or its parent and sister companies have agreed to settle both the *Ng v. International Disposal Corp.* and *McCarty v. Southeast Oklahoma Landfill* cases as class actions. (See Declaration of Nicholas A. Coulson in Support of (1) Plaintiffs' Reply in Support of Class Certification; (2) Plaintiffs' Response to Defendant's Evidentiary Objections to and Motion to Strike the Declaration of David A. Weeks; (3) Plaintiffs' Response to Defendant's Evidentiary Objections to and Motion to Strike the Declaration of Henry S. Cole; and (4) Plaintiffs' Response to Defendant's Evidentiary Objections to and Motion to Strike the Declaration of Nicholas A. Coulson ("Coulson Reply Decl.") ¶ 4 Ex. A; ¶5 Ex. B.)

is because Defendant knows that the denial of class certification would turn this case into a wasteful, nearly unmanageable mess, and class resolution is far superior.

This case will almost certainly resolve as a class action. This is illustrated by the fact that Defendant[2] entered into class settlements in the two cases it asserts follow the same conspiratorial pattern at issue here. What Plaintiffs are asking this Court to do is much more fair and honest than Defendant's approach. Defendant hopes to use the costs and obstacles of *individual* litigation to leverage a more favorable settlement with the *entire class*. The Court should not indulge its efforts. If a case is going to be resolved on behalf of the class, fairness and due process dictate that it is best litigated, at all times, on behalf of the class. Class members' claims should not be weakened by the threat of individual hurdles that Defendant well knows it will never seek to deploy. The evidence that this case is predominated by a common problem with common questions and common answers is overwhelming. The Court should not entertain Defendant's invitation to look the other way, allowing the costs of individual litigation to be used as a weapon against claims that even Defendant knows will be resolved class-wide.

II. ARGUMENT

A. Defendant's Attempt to Portray a Conspiracy Theory is Rooted in Desperation, Not Reality.

In order for Defendant's conspiracy theory to hold water, the Court would need to agree that the Plaintiffs and hundreds of their neighbors were lying about their experiences, and then aided by a rogue SCAQMD agent with an inexplicable desire to create a mountain of additional work for himself. Then, that the SCAQMD itself found those fraudulent findings so compelling that it devoted substantial resources to remedying a problem that did not exist. Further, that Defendant's own consultants conducted odor studies that had no real world application despite showing the odor pathways from the landfill directly into the Plaintiffs' neighborhoods. Finally, that the Plaintiffs hired unscrupulous experts to concoct

[2](and/or Defendant's parent and sister companies)

even more false evidence in support of this imaginary odor problem that only hundreds of area residents had complained about.

Defendant faults the more active community leaders for banding together in a Google Group, coordinating their calls to make sure that their concerns were not ignored by the SCAQMD. (Defendant's Opposition to Plaintiffs' Motion for Class Certification ("Def. Opp.") 5:13-25.) And Defendant points to the fact that over 70 percent of the recorded complaints (over a limited period of time) came from this group, ignoring the fact that even 30 percent of the complaints is substantially more than almost any other facility receives. (*Id.*) Defendant claims that other class members were induced to complain via social media, but provides absolutely no support for this assertion. (Def. Opp. 6:20-21.) And despite having the communications of the Google Group, Defendant is unable to assert that any person was ever encouraged to complain to the SCAQMD in the absence of odor.

Defendant attacks the work of the SCAQMD's inspector, Mr. Israel, simply because it must. (See Def. Opp. 16:12-18:4.) Absent some reason to disregard his entire body of work, the sheer volume of verified offsite odor emissions are of devastating consequence for Defendant. But there exists no reason to disregard Mr. Israel's observations. Defendant claims that Mr. Israel acted "contrary to agency protocol" by "not account[ing] for either odor intensity or duration" in confirming a complaint. (Def. Opp 16:16-18.) In support of this assertion, Defendant cites to an SCAQMD document that sets a numerical scale for describing the intensity of odors, and uses the term nuisance as a descriptor for some of the numerical values. But the district has another document that establishes the policies and procedures for issuing a nuisance violation. (See Coulson Reply Decl. ¶6 Ex. C, ("SCAQMD Policies and Procedures").) Those policies and procedures are the ones that actually govern an inspector's investigations, and they make absolutely no mention of the standard Defendant attempts to convict Mr. Israel of violation. (*See Id.*) They also instruct inspectors to direct complainants to request that other neighbors file complaints when they experience the odor, something Defendant chastises both Mr. Israel and the Google Group for doing. (*Id.* at 4.0(c).)

Defendant attempts to distance itself from the results of its own odor studies, but the import of those studies is clear. (See Def. Opp. 25:11-21.) Defendant has long known precisely how the odors it emits are transported into the Plaintiffs' neighborhoods, and those channels corroborate Plaintiffs' observations and modeling. The Environ report clearly shows two main impacted areas, the North and South proposed class areas. Defendant's assertion that this model was merely "conceptual" does not make the model any less relevant at this stage of the case. Defendant seeks to disclaim the report entirely because it used tracers instead of measured odor emissions, but this is a distinction without a difference when it comes to the path of transport.

Defendant cites to David Stewart's survey as evidence that there is no real odor problem, since "only 3.5% of respondents" "within a three-mile radius" of SCL reported problems with landfill odors. (Def. Opp. 6:9-12.) As an initial matter, Stewart's survey indicated that "about two-thirds" of residents within one mile of the landfill, a group that more closely aligns with the proposed class, reported experiencing the odor problem. (Coulson Decl. ¶7 Ex. D Deposition of David Stewart ("Stewart Dep.") 51:6-9.) But even more importantly, Stewart's methodology was obviously and egregiously flawed.

The survey vastly over-represented people over the age of 66, who, according to Defendant's other expert John Kind, generally have impaired senses of smell. (See *Id.* 81:15-82:7.) This phenomenon plays out in the survey results. In the entire three mile area, an odor nuisance was reported by 23% of people between the ages 18 and 34, 11% of people between 35 and 49, 14% of people between 50 and 65, and only 4% of those 66 or older. (*Id.* 96:4-19.) But people 66 or older made up almost 46% of Stewart's survey respondents, despite accounting for only 16.5% of adults in the class area.[3] (*Id.* 100:25-101:2.) Stewart admitted he had conducted no research into the age demographics of the

[3] 75% of the population in the 3 mile radius was over 18. The total percentage of those aged 66 or older was 12.4%, so those persons make up approximately 16.5% of the adult population. Stewart initially took issue with the demographics presented to him because they included children, but ultimately agreed that the numbers could be adjusted to consider only adults. (Stewart Dep. 91:9-93:2.)

population. (*Id.* 93:24-94:1.) He had no defense for this obvious error, which was caused by only including people in the survey who had listed landlines and were willing to take a survey in the middle of the day. (See *Id.*. 37:2-5.) Indeed, the only thing that can be taken away from Stewart's survey is that despite the obvious bias towards people with lesser senses of smell, roughly two thirds of the people living near the landfill reported having experienced its odors. This evidence will be useful to Plaintiffs in establishing the nuisance using the appropriate objective standard.

Defendant also accuses Plaintiffs of nefariously "gerrymander[ing]" the class area because it differs from the larger class area proposed in the complaint. (Def. Opp. 6:16-19.) It is strange that Defendant faults Plaintiffs for tailoring the class area to the evidence. With the benefit of class discovery, Plaintiffs modified the class definition to be reflective of the area that is most strongly impacted by Defendant's odors, a step that is both logical and proper. This geographically defined class area will allow for the presentation of common evidence, including sworn statements of putative class members, Plaintiffs' air dispersion modeling, governmental records and Defendant's own documents.

Perhaps Defendant's conspiracy theory strategy is actually quite brilliant. In comparison to the assertion that the odor problem is made up, Defendant's claim that the relevant proof is too individualized to certify the class almost seems reasonable. But just beyond the surface, it is clear that both are attempts at obscuring an obvious truth. When the proper legal standard is considered, and the relevant evidence applied, it is clear that this obvious problem has an obvious solution in the form of class litigation.

B. Defendant Has Tacitly Admitted That Class resolution is Not Only Superior, But Inevitable.

As Defendant is aware, *Waldron et al. v. Republic Services of Michigan I, LLC* Mich. Cir. Ct. Dec 18, 2008) No. 06-615173-NZ involved nuisance odors emitted into residential areas from a Republic Services landfill. It was certified over the defendant's objections and later settled as a class action. (See Coulson Reply Decl. ¶8, Ex. E.) In *Ng*, the court denied certification without prejudice and expressly left open the possibility of

certifying the class if it were provided further information regarding air dispersion modeling. But when several hundred additional residents immediately expressed interest to Plaintiffs' counsel in joining the case, Defendant was forced to recognize that the only feasible way to move forward was through class litigation. Defendant therefore agreed to settle the case as a class action.[4] (Coulson Reply Decl ¶4 Ex. A.) And in *McCarty*, recognizing the likelihood that a class would be certified, Defendant's parent and sister company agreed to settle the case on a class-wide basis before the court ruled on the plaintiffs' motion for class certification. (See Coulson Reply Decl. ¶ 5 Ex. B.)

C. Defendant Misconstrues the Purpose of Plaintiffs' Evidence

Defendant attempts to attack Plaintiffs' evidence by creating a series of strawmen. For example, where Plaintiffs offer the findings of fact in the Orders of Abatement as evidence of commonality and predominance, Defendant attacks them as insufficient to "establish class boundaries." (Def. Opp 18:18-19.) And Defendant claims that the Notices of Violation "do not indicate how large a geographic area was affected," ignoring the fact that particular odor episodes need not cover the entire class area in order for the nuisance as a whole to cover the area. (See Def. Opp. 15:11-12.) However, Defendant is simply wrong when it claims that the NOVs do not support the conclusion that there has been a widespread odor problem. *(Id.* 12-13.) The spread of locations where the SCAQMD confirmed odors that led to the NOVS were documented absolutely supports that conclusion. (See Declaration of Nicholas A. Coulson in Support of Plaintiffs' Motion for Class Certification ¶31 Ex. W.)

D. Defendant Advances a Series of Faulty Arguments in an Effort to Elevate Individual Issues over the Common Issues that Predominate the Case. Each of Defendant's "Individual Issues" is Irrelevant, Unimportant, or Imaginary.

[4] A similar result occurred in *Baynai*, which involved a different defendant. when hundreds of class members were joined to the action shortly after the denial of class certification, and an endless stream of others continued to seek to bring their own claims. The case was certified as a class action for purposes of settlement. (Coulson Reply Decl. ¶9 Ex. F.)

1. Because Defendant is Wrong about both AERMOD and Nuisance Law, Plaintiffs Are Well Positioned to Establish Injury and Causation through Common Proof.

a. Defendant's Position Regarding AERMOD is Untenable.

Defendant attacks the testimony of Plaintiffs' air dispersion modeler because it knows that the availability of dispersion modeling clearly elevates common issues above individual ones. Defendant attacks on two fronts; 1) that Mr. Weeks performed his modeling incorrectly and 2) that AERMOD is inappropriate for Plaintiffs' purposes in any event.[5] But Defendant's attacks are based on half-truths and faulty science. They are also contradicted by the overwhelming weight of the evidence. As is explained in Plaintiffs' opposition to Defendant's evidentiary objections to Mr. Weeks' testimony, Defendant's attempt to re-run Weeks' model with self-serving, flawed data misunderstands its very purpose.[6] An identical effort was rejected by the court in *Ng*. ("The court is not inclined to credit defense counsel's re-running of the AERMOD modeling (with a different odor flux emission rate) as a final adjudication on the merits at this time." (Bruen Decl. ¶ 37 Ex. EE, 18 Fn 66.)

Defendant cites the court's opinion in *Ng* in support of its claims that AERMOD is unreliable for Plaintiffs' purposes. But Defendant blatantly omits an important portion of the relevant passage regarding AERMOD, where the court noted that "[t]his method of proving (or disproving) liability could potentially provide a substantial benefit to the Court and the parties when compared to multiple individual nuisance suits arising out of the same circumstances." (Bruen Decl. ¶37, Ex. EE, 18.) The court simply had remaining questions

[5] Defendant also claims, without support that Plaintiffs have indicated that Mr. Weeks' testimony needs to be "fix[ed]." (Def. Opp. 24:13-15.) Defendant cites generally to page 10 of Plaintiffs' brief, where the Court will find no such statement.

[6] The map of doctored impacts Defendant includes in its opposition should be disregarded for two independent reasons. First, as the *Ng* court noted, whether or not a given degree of impact is actually shown for any particular area is irrelevant at this stage as it is a merits issue. Second, as explained in Plaintiffs' opposition to Defendant's evidentiary objections, Defendant's re-modeling assumes a different nuisance standard (which is a question of fact) and Defendant's own ridiculous emissions data.

about whether AERMOD "can be used to provide different results for different homes or clusters of homes" (it can), or has "the precision to factor in" variables such as "proximity, location, terrain, and any other relevant environmental or topographical factors" (it does). (*Id.*)

As Mr. Weeks explains in his report, his modeling was executed with receptors spaced on a 100 meter by 100 meter grid. (Declaration of David A. Weeks in Support of Plaintiffs' Motion for Class Certification, ¶5, Ex.1, 12.) In other words, the model already takes into account areas small enough to satisfy the *Ng* court's concerns. And the variables the court discussed are all inherently accounted for in AERMOD. Indeed, that is the very purpose of the model. As shown in Mr. Weeks' report, AERMOD runs account for meteorology, geography, and terrain. (*Id.* 10-12.)

b. Defendant Misstates the Standard for Nuisance in Order to Elevate Individual Issues.

California's law of nuisance consists of two primary requirements; that the invasion be 1) substantial and 2) unreasonable. (*San Diego Gas & Electric Co. v. Superior Court*, (1996) 13 Cal. 4th 893.) Both of these requirements are judged *objectively*, without regard to the particular circumstances of an individual Plaintiff. (*Id.*) With regard to the "substantial" interference requirement, "the degree of harm is to be judged by an objective standard, i.e., what effect would the invasion have on persons of normal health and sensibilities living in the same community? … 'If normal persons in that locality would not be substantially annoyed or disturbed by the situation, then the invasion is not a significant one, even though the idiosyncrasies of the particular plaintiff may make it unendurable to him.' [citation]." (*Monks v. City of Rancho Palos Verdes*, (2008) 167 Cal. App. 4th 263, 303 [internal citation omitted.].) With regard to the unreasonableness inquiry, the primary test is "whether the gravity of the harm outweighs the social utility of the defendant's conduct … . Again the standard is objective: the question is not whether the particular plaintiff found the invasion unreasonable, but 'whether reasonable persons generally, looking at the whole situation impartially and objectively, would consider it

unreasonable.' [citation.]." (*Id.* [citation omitted.].)

Objective determinations are especially well suited for class treatment. (See *Massachusetts Mutual Life Ins. Co. v. Superior Court*, (2002) 97 Cal. App. 4th 1282.) Whatever idiosyncrasies may exist amongst putative class members' senses of smell are irrelevant. The jury will be able to apply uniform standards to a single set of common evidence to determine whether the odor impacts experienced across the class area constitute substantial and unreasonable interferences. Therefore, "[t]he theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." (*Sav-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal. 4th 319, 327.)

Defendant should know this. In *Ng*, the court summarily rejected the argument that idiosyncrasies in odor exposure and perception are relevant in a nuisance class action.

> The Court is not persuaded by [Defendants' expert's] testimony or Defendants' arguments regarding the subjectivity of odor perception. As discussed above, the degree of harm to be judged in a nuisance action is based on an objective standard. Thus, Plaintiffs' proposed model poses the question of whether a certain measurable odor impact would cause a normal, reasonable person living near the [landfill] to be substantially annoyed or disturbed. The subjective ideosyncracies of particular class members - whether it is a unique sensitivity or tolerance to the measurable odor impact - would be irrelevant to the liability question of whether the [landfill] odor emissions, as traced and measured through AERMOD, impacted class members.

(Bruen Decl. ¶37, Ex. EE, 18.)

2. Defendant's Assertion that Odor/Nuisance Class Actions "Cannot Be Certified" is Unsupported and Wrong.

Defendant claims that "Case Law from California and Elsewhere Confirms That Odor Class Actions Like This Cannot Be Certified." (Def. Opp. 31:10-11.) In support of this contention, Defendant cites inapposite California cases that did not involve odor or common proof, and an out of state case that involved noise, soil, and groundwater contamination. But not only can cases like this be certified, they often are, as evidenced by cases involving this very Defendant and/or its parent company. And where class

certification is denied in these cases, the resulting mess can typically only be cleaned up by a class resolution.

The only California cases Defendant cites, other than *Ng,* are not odor cases and did not involve common proof. The three cases from the Western District of Kentucky in the years 2007 and 2008, like Defendants' other authority, did not involve common evidence of the Defendants' emissions such as the air modeling offered in the instant case. (See *Brockman v. Barton Brands, LTD.* (W.D. Ky., 2007) 2007 WL 4162920; *Burkhead v. Louisville Gas & Electric Co.* (W.D. Ky. 2008) 250 F.R.D. 287*; Cochran v. Oxy Vinyls,* (W.D. Ky., 2008) *LP* 2008 WL 4146383.) Each of those cases, which were decided by the same judge, hinged on the lack of evidence of a method of common proof. See, e.g. (*Cochran, Supra,* 2008 U.S. Dist. LEXIS 67389, at p 40 ("Plaintiffs have failed to provide evidence that 'the defendant's liability can be determined on a class-wide basis.' ").)

Where common evidence is offered to prove the claims of the class, similar cases are routinely granted certification. This is because "[t]he issues of liability and causation, however, require almost identical evidence of the pollution emanating from the landfill and its causal connection, if any, to the plaintiffs' alleged damages. This class action, considering those issues, would 'avoid duplication of judicial effort and prevent separate actions from reaching inconsistent results with similar, if not identical, facts,' despite the fact that individual hearings as to damages might be required [citation.] (*Marr v. WMX Techs.*, (Conn. 1998) 244 Conn. 676, 683 [citation omitted.].)

Similar cases in which certification has been granted and/or upheld include *Warner v. Waste Mgmt*., (Ohio 1988) 36 Ohio St. 3d 91, 94 (affirming in relevant part certification of class pursuing negligence and nuisance claims against operators of a dump); *Mejdreck v. Lockformer Co*., (N.D. Ill. Aug. 9, 2002) 2002 U.S. Dist. LEXIS 14785, 1, 2002 WL 1838141 (environmental claims including nuisance and negligence certified); *Stoll v. Kraft Foods Global, Inc.*, (S.D. Ind. Sept. 6, 2010) 2010 U.S. Dist. LEXIS 92930, 1 (class of residents certified to pursue environmental claims); *Collins v. Olin Corp*., (D. Conn. 2008); 248 F.R.D. 95, 105 ; *Turner v. Murphy Oil USA*, Inc., (E.D. La. 2006) 234 F.R.D. 597, 601

(nuisance and negligence claims certified in oil spill); *Jones v. Capitol Enters*., (La.App. 4 Cir. 2012) 89 So. 3d 474, 477 (nuisance claim for effects of water tower sandblasting project certified); *Hill v. City of Warren,* (Mich. Ct. App. 2007) 276 Mich. App. 299 (class certification of nuisance and negligence claims upheld).

D. Defendant Distorts the Standard for Typicality

'Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought. The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.' " (*Seastrom v. Neways, Inc*. (2007) 149 Cal. App. 4th 1496, 1502 (internal quotations omitted).) There is no question that Plaintiffs allege the same or similar injury as the class, that the action is based on conduct which is not unique to the named Plaintiffs, and that other class members have been injured by the same course of conduct.

Defendant asserts that Plaintiffs do not satisfy the typicality requirement because *no* plaintiff could be typical. This is based on the assertion that "[a]ny proof offered by the named Plaintiffs in support of their individual claims will necessarily relate *only* to their respective properties and not to other putative class members." (Def. Br. at 34:17-18.) Defendant's claim here relies on its faulty assertions that 1) Plaintiffs must prove individual exposure to odors under the nuisance law standard; 2) that AERMOD cannot be used to show the spread of odor through the class area ; and 3) that documented odors throughout the class area cannot be used as proof of a common odor problem. Here, Defendant is really advancing a commonality argument, but regardless of its classification it is meritless. Proof of physical exposure is irrelevant and unnecessary, and common evidence will allow for a determination that establishes precisely which properties have been affected.

Defendant's argument as to the typicality of damages is nonsensical. It is based on a hypothetical scenario whereby Plaintiffs amend their complaint to allege personal injury claims. (See Def. Opp. 35:25-27.) There is no evidence of any personal injuries caused by

the landfill, Defendant's curious attempts to conjure it notwithstanding. Plaintiffs have suffered inconvenience, annoyance, and discomfort, but nothing rising to the level of an actionable personal injury or illness.

No Plaintiff is subject to unique Defenses. Defendant points to various other sources of odor that alleges the Plaintifs may be smelling. But Plaintiffs do not assert that they will prove the claims of the class just by testifying about what they have smelled at their homes. The actual evidence of the spread of the odor will include objective odor modeling, corroborated by official observations of odor throughout the class area. None of this is implicated by the made up, speculative sources of potential odor that Defendant points to as "unique defenses." It cannot be seriously argued that such "defenses" will take up a substantial amount of resources in litigating Plaintiffs' claims.

E. Plaintiffs Will Continue to Adequately Represent Their Neighbors.

Defendant argues that Plaintiffs are inadequate representatives of the class because they do not assert claims for personal injury. While Defendant cites to various deposition transcripts to suggest that Plaintiffs or class members believe they have such claims, none of the referenced testimony actually supports such a conclusion. Plaintiffs are aware of no evidence that the odors complained of are even capable of causing injury or serious illness. But even if some class-member, somewhere, believed that they had a claim for injury or illness, Plaintiffs would still be adequate representatives of the class.

"The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit." (*Capitol People First v. State Dept. of Developmental Services*, (2007) 155 Cal. App. 4th 676, 696-697 (citations and internal quotations omitted).) "While it is true that the putative representative cannot adequately protect the class if his or her interests are antagonistic to or in conflict with the objectives of those he or she seeks to represent, a party's claim of representative status will only be defeated by a conflict that goes to the very subject matter of the litigation.... antagonism per se by members of a class will not automatically preclude

certification, given the state's policy of encouraging the use of the class action device. (*Id.* at 317 (citation and internal quotations omitted).)

Where absent class members may have claims in addition to those asserted in the litigation, and where remaining in the litigation would split those causes of action and bar litigation of the further claims, "[a]n order for notice... can be so drawn as to warn those members of the class defined in the complaint of the risk they run by remaining as participants; if they knowingly assume that risk, no one else can complain. (*Anthony v. General Motors Corp.*, 33 Cal. App. 3d 699, 704 (Cal. App. 2d Dist. 1973).)

F. Defendant Misstates the Ascertainability Requirement.

Defendant attacks ascertainability as though Plaintiffs seek to define their class based on the merits of the action. This is not the case. The class is defined exclusively by reference to objective criteria, allowing for a determination of who is and who is not a class member that is distinct from the merits evidence.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata. [citation.]" (*Lee v. Dynamex, Inc.*, (2008) 166 Cal. App. 4th 1325, 1334 [citation omitted.].) "Ascertainability turns on (1) the class definition; (2) the size of the class; and (3) the means of identifying the class members. [citation]." (*Cohen v. DIRECTV, Inc.*, (2009) 178 Cal. App. 4th 966, 971 [citation omitted].) "Rather than focusing the ascertainability question on the ultimate fact class members would have to prove to establish liability, this element is 'better achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary.' [citation]" (*Lee*, *supra*, 166 Cal. App. 4th at p. 1334.) In *Lee*, the Court of Appeals held that "[i]n short, the trial court's analysis unnecessarily confused issues of ascertainability with the merits of the underlying claims." (*Id.*) So long as the proposed class definition is sufficient to identify those persons who fall within it, "[a]t this stage of the proceeding, nothing more is required; and appropriate exclusions can be implemented at a later stage." (See *Bell v. Farmers Ins. Exchange, supra,* 115 Cal.App.4th at p. 744

[fact that class may ultimately turn out to be overinclusive not determinative; most class actions contemplate eventual individual proof of damages, including possibility some class members will have none]." (*Lee, supra,* 166 Cal. App. 4th at p.1336.)

G. Defendant's Attack on Numerosity is Evidence of its Desperation and Lack of Credibility.

The determination of numerosity is limited to limited to "how many individuals [fall] within the class definition and whether their joinder [is] impracticable." (*Hendershot v. Ready to Roll Transportation, Inc.*, (2014) 228 Cal. App. 4th 1213, 1221.) The numerosity of the class *as defined* is not in dispute. Defendant cannot defeat numerosity by asserting that based on its own distortion of Plaintiffs' modeling, the number of persons in a redefined class is not sufficiently numerous. (See, e.g., *Anderson v. Merit Energy Co.*, (D. Colo. June 19, 2008) (2008 U.S. Dist. LEXIS 47743 at 9 (rejecting defendant's challenge to numerosity, because it was "based on the faulty premise that Plaintiffs are relying on [merits considerations] to establish members of the proposed class)). Membership, and therefore the number of people, in the class is defined by reference to objective geographic criteria and without an evaluation of the merits of the case. (*See Linder v. Thrifty Oil Co.*, (2000) 23 Cal. 4th 429, 440-441.)

VI. CONCLUSION

For all of the foregoing reasons, Plaintiffs hereby request this lawsuit be maintained as a class action, and that Plaintiffs' Counsel be appointed as Class Counsel.

Dated: September 17, 2015

LIDDLE & DUBIN, P.C.

s/ Nicholas A. Coulson

Steven D. Liddle, Esq.(*Pro Hac Vice*)
David R. Dubin, Esq. (*Pro Hac Vice*)
Nicholas A. Coulson, Esq. (*Pro Hac Vice*)
LIDDLE & DUBIN, P.C.
975 E. Jefferson Avenue
Detroit, Michigan 48207

Telephone: (313) 392-0015
Facsimile: (313) 392-0025

Mike Arias, Esq, (CSB #115385)
Arnold C. Wang, Esq. (CSB #204431)
ARIAS SANGUINETTI STAHLE & TORRIJOS LLP
6701 Center Drive West, Suite 1400
Los Angeles, CA 90045
Telephone: (310) 844-9696
Facsimile: (310) 670-1231

Attorneys for Plaintiffs and the Putative Class

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of Michigan, County of Wayne. I am over the age of eighteen and am not a party to the within action; my business address is 875 E. Jefferson Avenue, Detroit MI 48207.

On September 17, 2015, I served the foregoing document described as:

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

On the interested parties in this action by transmission [ ] the original [X] a true comp thereof as follows:

[X] BY EMAIL TO CASEHOMEPAGEL I hereby certify that this document was uploaded to the *Michaely, et al. v. Browning-Ferris Industries of California, Inc., et al.* website and will be posted on the website by the close of the next business day and the webmaster will give e-mail notification to all parties.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed on September 17, 2015 at Detroit, Michigan.

s/ Nicholas A. Coulson
Nicholas A. Coulson

Attachment 6- *Dykehouse* Amended Complaint

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

DAVID DYKEHOUSE, KRISTINA BOSKOVICH, and ELIZABETH HAMBLIN, on behalf of themselves and all others similarly situated, Plaintiff, vs. THE 3M COMPANY, a Delaware Corporation, GEORGIA-PACIFIC LLC, a Delaware Corporation, and GEORGIA-PACIFIC CONSUMER PRODUCTS LP, a Delaware Limited Partnership Defendants.	Case No. 1:18-cv-01225-JTN-ESC Hon. Janet T. Neff FIRST AMENDED CLASS ACTION COMPLAINT DEMAND FOR JURY TRIAL

Plaintiffs David Dykehouse, Kristina Boskovich, and Elizabeth Hamblin, (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, file this First Amended Class Action Complaint and Jury Demand against Defendants The 3M Company ("3M"), Georgia-Pacific LLC ("Georgia-Pacific"), and Georgia-Pacific Consumer Products LP (collectively, "Defendants"), and state as follows:

I. INTRODUCTION

1. This action is a response to the tragic, avoidable poisoning of an entire municipal water system that services more than 3,000 people.

2. The City of Parchment's water system, which also services portions of Cooper Township, was contaminated with dangerously high levels of harmful chemicals known as PFAS due to the Defendants' acts and failures to act. As a result, thousands of people have been placed

at risk for developing serious and fatal diseases and a quiet Michigan town was thrust into the national news as the embodiment of fears shared by many Americans.

3. Defendants Georgia-Pacific and Georgia-Pacific Consumer Products LP (including through entities merged into it) (the "Georgia-Pacific Defendants") were responsible at various times for constructing, operating, maintaining, utilizing, and closing the Crown Vantage Landfill ("Landfill"), from which these dangerous chemicals were allowed to leach into the water system. They also dumped large quantities of waste into the landfill that contained the same chemicals. Despite full knowledge that the landfill contained substances that are harmful to human health, and that the landfill was situated extremely close to the wells from which Parchment's drinking water was drawn, the Georgia-Pacific Defendants failed to construct, operate, maintain, use, and close the landfill in a safe and responsible manner.

4. Defendant 3M manufactured these dangerous chemicals and has known about their dangers for decades. Internal studies from the late 1950s or early 1960s showed that PFAS accumulate in the human body and have toxic effects. Further research showed particular harmful effects, and yet more research was actively suppressed by 3M in order to hide the dangers of its products. 3M engaged in a campaign of disinformation and deceit in furtherance of its efforts to sell profitable products that it knew would cause widespread harm.

II. PARTIES

5. Plaintiff David Dykehouse is an individual and Michigan citizen who at all times relevant hereto has resided at 302 Parchmount Avenue, Parchment, Michigan and intended to remain in Michigan.

6. Plaintiff Kristina Boskovich is an individual and Michigan citizen who at all times relevant hereto resided at 1361 Remus St., Kalamazoo, Michigan and subseqently 31244 30th St., Paw Paw, Michigan, and intended to remain in Michigan.

7. Plaintiff Elizabeth Hamblin is an individual and Michigan citizen who at all times relevant hereto has resided at 1085 East G Avenue, Parchment, Michigan and intended to remain in Michigan.

8. Defendant The 3M Company is a Delaware Corporation with its principal place of business located in St. Paul, Minnesota.

9. Defendant Georgia-Pacific LLC is a limited liability company organized in Delaware with its principal place of business located in Atlanta, Georgia.

10. Defendant Georgia-Pacific Consumer Products LP is a limited partnership organized in Delaware with its principal place of business located in Atlanta, Georgia.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. §1332(a) and/or §1332(d). Jurisdiction is proper because the amount in controversy exceeds $5,000,000, exclusive of interest and costs, this is an action between citizens of different states whereby there is complete diversity of parties, and Plaintiffs and the members of the class are citizens of a different state than Defendants.

12. Venue is proper in this Court under 28 U.S.C. 1391(b)(2), because a substantial portion of the events or omissions giving rise to Plaintiffs' claims took place in this District, and because the property that is the subject of this action is situated in this District.

IV. GENERAL AND FACTUAL ALLEGATIONS

The City of Parchment

13. The City of Parchment, located in Kalamazoo County, Michigan, sits on the Kalamazoo River and has its roots as a factory town that took shape around a paper mill built in 1909.

14. Unfortunately, aspects of the very mill that drove Parchment's development would also leave a toxic legacy for future generations.

15. The mill's operations have included a landfilling operation (the "Landfill") for disposing of paper-making waste. The Landfill served as a disposal location for waste generated by the mill and at least one other nearby papermaking facility.

16. Most of Parchment's residents are served by Parchment's municipal water system, while a smaller number receive their water from private wells.

17. Upon information and belief, Parchment's waster system services over 3100 users.

18. Many residents of neighboring Cooper Township are also served by Parchment's municipal water system.

19. Parchment's water system draws from three groundwater wells.

3M and PFAS

20. PFAS is a family of chemicals known as per- and polyfluoroalkyl substances which includes Perfluorooctanesulfonic acid ("PFOS") and perfluorooctanoic acid ("PFOA"), among other lesser-known substances.

21. PFAS chemicals are sometimes also referred to as PFCs.

22. 3M began to research and develop PFAS in the late 1940s, and began commercial production in the early 1950s.

23. PFOA is a derivative of a man-made chemical called Ammonium perfluoroctoanoate (APFO). APFO is not found in nature.

24. 3M was the original manufacturer of PFOA. It began producing PFOA by a process known as electrochemical fluorination in 1947.

25. 3M synthesized PFOA by electrochemical fluorination in Minnesota from 1947 to 2002, and during that time it was the world's largest producer.

26. 3M used PFOA to manufacture various products for applications including carpeting, upholstery, apparel, floor wax, textiles, sealants, and cookware.

27. Importantly, PFOA was used in products applied to paper, such as waxed and food contact paper.

28. PFOA (like PFOS) was considered desirable due to having the property of exceptional stability, which is precisely what causes it to be persistent in nature and cause environmental and health problems.

29. 3M began producing PFOS-based compounds by electrochemical fluorination in 1949, and announced the phaseout of PFOS and PFOS-related products in 2000.

30. 3M produced all or substantially all of the PFOS in the United States.

31. 3M produced a variety of widely-used products with PFOS, including the well-known Scotchgard and also Scotchban, which was used in the production of certain types of paper.

32. 3M's PFAS products were used at the Parchment Paper Mill and disposed of at the Crown Vantage Landfill.

33. For decades, 3M took active steps to prevent the public from becoming aware of the dangers associated with PFAS.

34. As it turns out, these dangers include that PFAS persist in the environment on a scale that can be measured in many human lifetimes and that they accumulate in the human body where they can cause horrific illnesses.

35. 3M created and manufactured these substances and has known about their dangers for decades.

36. 3M studies from the late 1950s or early 1960s showed that PFAS accumulate in the human body and are toxic.

37. 3M studies from the 1970s concluded that the chemicals were "even more toxic" than previously believed.

38. In the 1970s, 3M became aware that these chemicals were widely present in the blood of the general U.S. Population.

39. For decades, 3M failed to report legally-required information about the adverse health effects of PFAS to the EPA. As a result, it was eventually required to pay a $1.5 million dollar fine.

40. 3M began to test its workers' blood for organic fluorines at least as early as 1976, and at least as early as 1979 it identified PFAS in the blood of its employees at a plant in Alabama.

41. In 1978, 3M conducted tests that confirmed that PFAS had been found in its workers' blood.

42. In 1980, a 3M study confirmed that PFOS, also known as C8, is toxic to rats and monkeys.

43. In about 1983, 3M determined that organic fluorine levels in its workers' blood were increasing sharply. 3M's medical services team transmitted an internal document which noted that "[t]he test results that were reviewed at our meeting seem to substantiate a trend that has been developing over the past 12-18 months - a tendency for these levels in a number of people to no longer show the previous pattern of decline, in fact, a fair number are now demonstrating an increase in blood fluorine levels." The physician added that, unless the trends change, "we must view this present trend with serious concern. It is certainly possible that . . . exposure opportunities are providing a potential uptake of fluorochemicals that exceeds excretion capabilities of the body."

44. A 1992 internal 3M study concluded that ten years of employment in PFOA production was associated with a three-fold increase in mortality from prostate cancer in men.

45. 3M has continued to make false and/or misleading statements regarding the safety of its products. For example, as late as May of 2000 it continued to publically insist that its PFAS products were safe.

46. 3M did not share the information it had discovered about the dangers and persistence of PFAS with authorities or the public until decades after it learned about them.

47. 3M concealed these and other key facts from government regulators and the scientific community, creating an internal team to "command the science" and erect "defensive barriers to litigation." It funded friendly research with numerous strings attached, and paid to suppress less favorable research, similar to the approach taken by the tobacco industry.

48. 3M also actively sought ways to make sure that whatever "science" was published regarding PFAS was favorable to its interests.

49. One professor, John Giesy, racked up a substantial net worth, at least in part by covertly suppressing independent scientific research on PFAS.

50. Professor Giesy received numerous grants from 3M for the selective funding of "outside research" that would assist the company in commanding the science and erecting defensive barriers to litigation.

51. Professor Giesy's work was clearly not all above board and had a substantial impact on the publically-available information regarding PFAS. In an e-mail to a 3M lab manager, he indicated that "[s]ince we had been set up as academic experts, about half of the papers published in the area in any given year came to me (continue to come to me) for review. In time sheets, I always listed these reviews as literature searches so that there was no paper trail to 3M."

52. Giesy bragged about rejecting at least one article that included negative information on the harmful effects of PFAS and related chemicals on human health.

53. In another e-mail to a 3M employee, Mr. Giesy advised that "you want to keep 'bad' papers out of the literature, otherwise in litigation situations they can be a large obstacle to refute… I assume that you are keeping track of the literature in case we need it in the future."

54. 3M behaved as an entity that knew exactly how harmful its actions were. Beyond its efforts to stymie potential knowledge of the dangers of PFAS in the academic sphere, 3M destroyed documents, told staff to stamp all documents relating to PFAS as attorney-client privileged, and to throw away pencil notes from meetings and not jot down thoughts because of how they could be viewed during legal discovery. One employee made a note to "clean out computer of all electronic data" on the chemicals.

55. In about 1999, a 3M scientist resigned in protest, copying the EPA on a resignation letter which noted that he could "no longer participate" in a 3M process that put "markets, legal defensibility and image over environmental safety" while calling PFAS one of the most insidious chemicals in existence.

56. During the time that it manufactured and sold PFAS chemicals, 3M had extensive knowledge of the impact they had on the environment and human health.

57. 3M knew or should have known that PFAS, to the extent that they could ever be safely handled, must be handled in a way that safeguards against their migration into the environment.

58. 3M knew or should have known that it was likely that PFAS would be released from the sites where they were utilized and/or disposed of, and would reach groundwater, surface water, and soil, resulting in widespread contamination and significant injuries.

59. 3M knew or should have known that PFAS would pose dangers to humans in proximity to any area in which they were used and/or disposed.

60. To the extent that 3M can assert any lack of knowledge regarding any particular danger of PFAS, that lack of knowledge can be directly attributed to 3M's significant efforts to suppress any scientific endeavor that might result in useful information about the harms of PFAS.

61. 3M posits its early 2000's exit from the manufacturing of PFAS as a magnanimous action that was taken voluntarily. In reality, it did so only under threat of long overdue action by the EPA once more information about the dangers of PFAS finally came to light.

62. EPA and other regulatory bodies could have taken action sooner had Defendant not hidden, suppressed, and otherwise buried important information about the impacts of PFAS.

The True Dangers of PFAS

63. While the evidence that PFAS are harmful to human health dates back several decades, their dangers have become more widely known in recent years as 3M has lost some of its capacity to "command the science" around them.

64. The chemical properties of PFAS make them resistant to any breakdown or degradation in the environment, because they are thermally, chemically, and biologically stable. They are resistant to biodegradation, atmospheric oxidation by light, direct photolysis, and hydrolysis. They are therefore incredibly persistent when released into the environment.

65. PFAS chemicals do not break down for hundreds, or potentially thousands of years.

66. PFAS are known to bioaccumulate, or become physically concentrated, in humans and animals. A 2005 U.S. Department of Health and Human Services report confirmed that "human exposure to PFOS and PFOA lead to the buildup of these chemicals in the body."

67. PFAS are particularly persistent in water and soil, and due to their water-solubility, they migrate readily from soil to groundwater.

68. PFAS can travel through soil and other environmental media, which poses a significant risk of spreading pollution.

69. The environmental persistence of PFAS makes it essential that locations known to be contaminated with PFAS be especially well controlled, to prevent long-term pollution of the natural environment and resources.

70. PFOS was added to Annex B of the Stockholm Convention on Persistent Organic Pollutants in May of 2009.

71. Exposure to PFAS chemicals is associated with a number of serious health risks.

72. PFAS exposure is associated with an increased risk of chronic kidney disease, thyroid disease, high cholesterol, elevated liver enzymes, ulcerative colitis, pregnancy-induced hypertension, various auto-immune disorders, and numerous cancers including testicular, kidney, prostate, pancreatic, ovarian, and non-Hodgkin's lymphoma.

73. Animal studies reveal the likelihood that PFAS have the ability to cause other cancers that have not yet expressly been associated with exposure in humans.

74. The EPA has advised that PFAS exposure may result in developmental effects to fetuses or infants during breastfeeding.

75. In 2005, an Environmental Working Group analysis of PFOA, conducted in accordance with the EPA's guidelines for assessing the cancer-causing potential of a chemical, found PFOA to be a likely carcinogen to humans. While this categorization requires only one of five EPA cancer criteria to be met, the analysis concluded that the chemical satisfied three of those criteria.

76. In May of 2006, the EPA Science Advisory Board stated that PFAS cancer data are consistent with guidelines suggesting that the chemical is "likely to be carcinogenic to humans."

77. An extensive study of the impacts of PFOA contamination, which included blood sampling from nearly 70,000 people in an impacted area, concluded that there was a "probable link" between PFOA exposure and testicular cancer, kidney cancer, thyroid disease, ulcerative colitis, high cholesterol, and pregnancy-induced hypertension.

78. The health conditions associated with PFAS can arise months or years after exposure.

79. In 2014, the EPA noted that "PFOA and PFOS are extremely persistent in the environment and resistant to typical environmental degradation processes. [They] are widely distributed across the higher trophic levels and are found in soil, air and groundwater at sites across the United States. The toxicity, mobility and bioaccumulation potential of PFOS and PFOA pose potential adverse effects for the environment and human health."

80. In June of 2016, a peer-reviewed panel of scientists concurred with the U.S. Department of Health and Human Services National Toxicology Program's finding that PFOS and PFOA can harm the human immune system.

81. In 2009, the EPA established provisional health advisories of PFOA at 0.4 ppb and PFOS at 0.2 ppb.

82. In 2012, the EPA included PFOS and PFOA in its Third Unregulated Contaminant Monitoring Rule, requiring certain drinking water providers nationwide to test their water for these substances and report the results.

83. In May of 2016, the EPA established Lifetime Health Advisories for both PFOS and PFOA at a combined concentration of .07 ppb (70 ppt).

84. The sufficiency of the EPA's advisory is hotly disputed, with many experts of the opinion that they are too permissive.

85. New Jersey set a maximum contaminant level of 14 ppt for PFOA in drinking water, and Vermot has set a level of 20 ppt for PFOA and PFOS in drinking water.

86. Dr. Philippe Grandjean, Professor of Environmental Health at Harvard University's T.H. Chan School of Public Health, has conducted extensive research on PFAS chemicals and human health, and recommends a maximum concentration level of 1 ppt.

87. In June of 2018, the U.S. Agency for Toxic Substances and Disease registry released a comprehensive 982 page Toxicological Profile for Perfluoroalkyls report, which shows that the safety thresholds should be 7 ppt for PFOS and 11 ppt for PFOA.

88. The ATSDR report also suggests links between perfluoroalkyl exposure and health outcomes including hepatic effects, cardiovascular effects, endocrine effects, immune effects, reproductive effects, and developmental effects. It further examines the mechanisms for exposure-caused cancer.

89. With each passing year, the more PFAS are studied the more bad news is uncovered. It is clear that 3M's efforts to actively conceal information about its products prevented the public from learning what it needed to know to avoid catastrophic results.

The Paper Mill and Landfill

90. Parchment's paper mill has changed ownership a number of times over its many decades of operations through a series of acquisitions. It was owned variously by the Kalamazoo Vegetable Parchment Co., Brown Co., James River Corp., Fort James Corp., and Crown Vantage Paper Co.

91. The mill and its associated properties, including the Landfill, were owned by Fort James Corp. from approximately 1980 until 1995.

92. The mill's operations have included the manufacture and subsequent disposal of products made with PFAS.

93. 3M-made PFAS were used at the mill and PFAS waste was buried at the mill's Landfill.

94. For example, a perfluoroalykl polymer was a primary ingredient in an oil and grease repellant known as "Scotchban FX-845" which was produced by 3M and was used in laminated products produced at the plant.

95. Scotchban was used in various consumer products that resist grease, water, and oil, including microwave popcorn packages.

96. Crown Vantage Inc. (parent company) and Crown Paper Co. (subsidiary) (collectively, "Crown") were created from the James River Corporation as a spin-off in 1995 in an effort to reduce James River's debt. The spin-off included 11 of James River's mills, and the CEO of the new company had been an Executive Vice President for James River Corp.

97. Part of the business that was spun-off into Crown was the specialty packaging and converting papers unit in Michigan, which included the Parchment plant and its Landfill.

98. The Landfill actually consists of two separately permitted landfill units, referred to as the Type II Landfill and the Type III Landfill.

99. A 1985 letter from James River Corporation to the Michigan Department of Natural Resources notes, regarding the Type II Landfill, that the "landfill is the exclusive property of James River and has therefore only received waste from the two James River Corp. facilities located in this area."

100. The Type II landfill was closed and stopped accepting new waste by 1989.

101. James River Corporation was issued Construction Permit #0202 on April 20, 1987 for a 32.8 acre solid waste disposal area at the Crown Vantage Landfill (the Type III Landfill),

but the design was ultimately modified to a 21.2 acre disposal area. The landfill plans did not include any liner or leachate collection system.

102. The Type III Landfill was established to provide disposal capacity for the James River Corporation Parchment Mill and the James River Corporation Kalamazoo Mill, located across the Kalamazoo River.

103. Crown Paper Company operated the Type III Landfill from August 1995 through October of 2000 for the disposal of residual waste from papermaking operations.

104. James River Paper was the prior owner and operator of the Type III Landfill and continued to dispose of solid waste in the landfill during the period of Crown Paper Company's ownership under the terms of a "Landfill Agreement" between Crown Paper Company, on the one hand, and James River Paper Company, Inc. and James River Corporation of Virginia (collectively, the "James River Entities"), on the other hand.

105. Under the Landfill Agreement, Crown Paper Company allowed the James River Entities to continue to dispose of residual waste in the Type III Landfill in exchange for the payment of tipping fees and contribution to the costs associated with closure of the Type II and Type III Landfills.

106. The James River Entities were required to pay tipping fees of two to four dollars per cubic yard, to start.

107. During the timeframe of the agreement, the James River Entities disposed of papermill sludge at the Landfill. This includes waste from the James River Corporation Kalamazoo Mill, until November of 1997.

108. A perfluoroalkyl polymer was a main ingredient in oil and grease-repellents used in laminated paper products produced by Fort James Corp in the 1990s. The repellant was patented by 3M and discontinued when 3M began phasing out products based on PFOS in 2000.

109. Enormous volumes of waste containing high concentrations of PFAS were disposed of at the Type III Landfill by James River Corporation and/or James River Paper Company, Inc.

110. The Landfill Agreement called for the closure costs of the Type III landfill to be borne 60% by the James River Entities and 40% by Crown Paper Company, for the first 50% of closure costs. Thereafter, the costs were to be divided according to the percentage of waste volume disposed by each party after the date of the agreement.

111. The agreement called for closure costs for the Type II Landfill to be borne equally between the James River Entities and Crown Paper Company.

112. The Landfill Agreement defined "Closure Costs" as "any requirements of the Michigan Department of Natural Resources to close the Landfill including but not limited to cap placement, vegetation, post-closure maintenance, post-closure monitoring, and any require remedial actions or, in the case of the Type II Landfill, improvements to the existing cap, post-closure maintenance, post-closure monitoring, and any required remedial actions."

113. Under the Landfill Agreement, the James River Entities were granted access to the Landfill and its files and records to "evaluate the Landfill's compliance with its permit and the requirements of the Michigan Department of Natural Resources."

114. A 1997 lease agreement between Fort James Operating Company and Crown Paper Co. requires Fort James to retain liability for any remediation required due to its activities at the Parchment Mill's Premises.

115. In 2000, only fifteen years into their existence, Crown Vantage, Inc. and Crown Paper Co. filed for bankruptcy and began liquidating their assets.

116. The bankruptcy estates sought to abandon all rights, title, and interest in all of the real property associated with the Parchment Mill.

117. Ultimately, Crown's' rights and interests under the Landfill Agreement with James River entities were assigned to MDEQ.

118. In 1997, James River Corporation merged with Fort Howard Corporation and changed its name to Fort James Corporation.

119. Also in 1997, James River Paper Company, Inc., which was a wholly-owned subsidiary of James River Corporation, changed its name to Fort James Operating Company.

120. In 2000, Defendant Georgia-Pacific Consumer Products LP acquired the Fort James Corporation (formerly James River Corporation of Virginia), and the latter was merged into the former after Securities and Exchange Commission required divestitures were made.

121. In April of 2002, Georgia-Pacific entered a Consent Order with the Michigan Department of Environmental Quality ("MDEQ"), setting forth Georgia-Pacific's responsibilities in closing the mill's landfill.

122. The Consent Order notes that under the Bankruptcy Court Order and the Landfill Agreement, Georgia-Pacific had certain obligations with respect to the two landfill units.

123. Under the Consent Order, Georgia-Pacific and MDEQ agreed "to set out their respective rights and obligations" with respect to the landfill units.

124. The Consent Order required Georgia-Pacific to, among other things: (1) contribute to the cost of closure, maintenance, and long-term monitoring at the Landfills; and (2) generate and implement a plan for closing the Landfills (the "Closure Plan").

125. The Consent Order expressly notes that it "in no way affects [Georgia-Pacific's] responsibility to comply with any other applicable state, federal, or local laws or regulations in the performance of its obligations" under the order.

126. The order further notes that "the issues [sic] of resource damage has not been completely addressed by the execution of this Consent Order. It is agreed that the state of Michigan does not waive the right to bring an appropriate action to recover resources damages that are not remediated by the Closure Plan."

127. In 2002, MDEQ found that Parchment's wellfield was "highly susceptible to potential contaminants."

128. In February of 2003, the Consent Order was amended for purposes of extending the deadline for completion of the final certification information.

129. MDEQ's April 15, 2002 contract with Georgia-Pacific to close the landfill notes that "[n]ot closing the landfill could result in contamination continuing to emanate into the Kalamazoo River."

130. The contract further notes that "Georgia Pacific has developed the engineering plans and estimates for the costs of closures based on the ability to complete some of the work itself and to obtain sub contractors as needed."

131. Prior to its closing, the Landfill had a history of regulatory and/or permit violations which were due, at least in part, to Georgia-Pacific Consumer Products LP's predecessors' negligent and/or faulty construction, operation, maintenance, and/or use of the landfill.

132. For example, an August 3, 2001 MDEQ waste management division evaluation report noted that MDEQ "staff observed that the landfill had reached capacity and that excess fill above the limits established in the [construction permit] had been placed at the facility."

133. MDEQ identified the level of fill as a permit and regulatory violation. At closure, the landfill was overfilled by approximately 60,000 cubic yards, or approximately 1.75 feet of uniform overfill over the entire 21.2 acre site.

134. MDEQ also noted in the evaluation report that "stained soils were evident in many areas where stormwater that has come into contact with waste materials have flowed off the site."

135. The evaluation report notes the permit obligation that "the facility shall not discharge pollutants into waters of the United States in violation of Part 31 or NPDES permit."

136. Georgia-Pacific, directly and/or through the use of subcontractors, performed the work to close the Landfill.

137. The Landfill was closed in a way that did not protect the groundwater from contamination by PFAS or other harmful substances in the Landfill.

138. Prior to Georgia-Pacific's work in closing the Landfill, it was known that landfilling activities at the Type III Landfill were impacting the groundwater.

Discovery of PFAS in Plaintiffs' Water Supply

139. In recognition of the dangers and widespread impacts of PFAS, in 2017 Governor Snyder created the Michigan PFAS Action Response Team (MPART) as an interagency organization to "investigate sources and locations of PFAS contamination in the state, to take action to protect people's drinking water, and to keep the public informed as we learn more about this emerging contaminant."

140. MPART has worked to identify areas where PFAS may be present as a contaminant. Without this effort, Parchment's residents would likely still be drinking PFAS contaminated water.

141. On July 26, 2018, the Michigan Department of Environmental Quality ("MDEQ") discovered that Parchment's municipal water system and the wells from which it draws were contaminated with PFAS.

142. Test results showed PFOS concentrations in Parchment's drinking water of 740 parts per trillion ("ppt") and PFOA concentrations of 670 ppt and a total PFAS concentration of 1587 ppt.

143. Prior to the date of this discovery, neither Plaintiffs nor the class knew or should have known that their drinking water had been contaminated with PFAS.

144. The State of Michigan has also adopted 70 ppt as the acceptable drinking water criterion for PFAS.

145. This means that the concentration of PFAS detected in Parchment's municipal water well was more than 22 times the limits adopted by both the state and federal governments, which themselves are as much as 70 times the limits recommended by experts.

146. On July 29, Lieutenant Governor Brian Calley declared a state of emergency in Kalamazoo County regarding the contamination of Parchment's water supply.

147. Impacted residents were forced to drink bottled water until at least late August, 2018, after Parchment's system was connected to Kalamazoo's water service and the system was flushed. Many residents understandably still do not trust the water.

148. On August 13, 2018, MDEQ received results for PFAS tests it conducted on 102 private wells in Parchment and Cooper Township. Results for those wells ranged as high as 340 ppt.

149. MDEQ has reported that the highest PFAS levels were generally found closer to the Landfill.

150. Indeed, MDEQ identified the Landfill as a "likely source" of the contamination.

151. On July 31, 2018, MDEQ began to take samples from 14 groundwater monitoring wells at the Landfill.

152. Samples collected from the landfill revealed one location contained 11,500 parts per trillion of or PFOA and PFOS.

153. Part 201 of the Natural Resources and Environmental Protection Act governs the state's responses to contamination and provides for private parties to conduct certain response activities.

154. Georgia-Pacific announced on October 1, 2018 that it would "voluntarily" aid efforts to identify the source of PFAS that contaminated the city's water.

155. Georgia-Pacific has voluntarily agreed to do the following, at its own expense, under the MDEQ's supervision:

a. Develop a work plan, with the MDEQ's assistance, that identifies monitoring well locations and depths, sampling procedures and analytical methodology;

b. Install monitoring wells in accordance with the work plan;

c. Measure water levels in the monitoring wells;

d. Collect and analyze groundwater samples in accordance with the work plan;

e. Provide all data to the MDEQ along with tables and figures to summarize results;

f. Install additional monitoring wells and collect additional groundwater samples as needed to understand and define the extent of contamination as well as the sources of PFAS impacting private and public water supplies;

g. Provide the MDEQ with a report on the information obtained through the work plan.

156. While it likely lowers costs incurred by MDEQ, leaving Georgia-Pacific in charge of studying the cause of Parchment's water contamination raises obvious questions about bias in the results.

157. On April 22, 2019, MDEQ was reorganized and became the Michigan Department of Environment, Great Lakes, and Energy, or EGLE.

Necessity of Medical Monitoring

158. The hazardous substances to which Plaintiffs and the Class have been exposed are known to cause serious illness, as described herein and including without limitation various forms of cancer.

159. Two of the Plaintiffs' blood have been tested for PFOA and PFOS, with a third test forthcoming. The test results show elevated concentrations of PFOA and PFOS, including values that would constitute many multiples of the 95th percentile established in a prior study of populations exposed to contaminated drinking water.

160. Persons such as Plaintiffs and the Class who have been significantly exposed to the hazardous substances caused by Defendant's tortuous conduct have or will have a significantly increased risk of contracting one or more diseases as described herein, including but not limited to cancer.

161. The exposure to which Plaintiffs and the Class have been subjected make it reasonably necessary for them to undergo periodic diagnostic medical examinations different from what would be prescribed in the absence of their exposure.

162. Monitoring procedures exist that make the early detection of the diseases and/or illnesses for which Plaintiffs and the Class are at an increased risk.

163. Early diagnosis and treatment for the cancers, diseases, and disorders caused by PFAS exposure is essential to detect and mitigate long-term health consequences in Plaintiffs and the Class.

164. Simple procedures including, but not limited to, blood tests, skin evaluations, scans, urine tests, and physical examinations are well-established and readily available.

165. These measures are essential to preventing and/or mitigating long-term health consequences that will be borne by Plaintiffs and the Class Members through no fault of their own due to Defendants' actions in exposing Plaintiffs and the Class Members to dangerous chemicals and, in some cases, these measures are likely to prove life-saving.

166. The requested tests, procedures, scans, and examinations are different from the normal recommended medical care, and will be specifically tailored to assess and monitor conditions that pertain to PFAS exposure, and they would not be necessary in the absence of a known exposure to these chemicals.

167. Further, these tests, examinations, and procedures would occur more frequently than the normal recommended schedule of examinations for a population that had not been exposed to these levels of PFAS chemicals.

168. The required testing is reasonably necessary and in accord with current medical and scientific procedures.

169. Plaintiffs and the Class have no other adequate remedy at law, and medical monitoring through the establishment of a medical monitoring fund is reasonably necessary.

V. CLASS ALLEGATIONS

170. Plaintiffs bring this action on behalf of themselves and on behalf of all others similarly situated pursuant to Fed. R. Civ. P. 23.

171. Plaintiffs seek to represent a class preliminarily defined as "all persons who resided in homes serviced by Parchment, Michigan's municipal water system as of July 26, 2018 and have not brought individual actions for personal injury or illness and do not opt out of the Class." Plaintiffs reserve the right to amend this class definition and/or add subclasses and/or issue classes (pursuant to Fed. R. Civ. P. 23(c)(4)-(5)) as discovery progresses and the appropriateness of any such classes is determined.

172. Upon information and belief, there are approximately 3100 users of Parchment's water system.

173. While the precise number of Class Members is not presently known, the Class is clearly so numerous that joinder of all members would be impracticable.

174. This case entails numerous questions of law and fact that are common to Plaintiffs and all members of the putative class. Such questions include, by way of illustration only and without limitation:

a. The extent to which Parchment's water supply was contaminated with PFAS;

b. The acts of the Defendants that caused Plaintiffs and the putative class to be exposed to PFAS contaminated drinking water;

c. How PFAS contamination migrated from the Landfill into the wellfields from which Parchment's water was drawn;

d. The harms and impacts imposed upon Plaintiffs and the class by their exposure to PFAS;

e. The acts of Defendant 3M in manufacturing and selling widely distributed, dangerous products about which it suppressed information and failed to warn;

f. The duty owed to the putative class by the each of the Defendants;

g. Whether each of the Defendants breached any duties owed to the putative class;

h. Whether the Defendants acted with a deliberate indifference to a known or obvious danger;

i. Whether the actions of the Defendants constituted gross negligence, because they were so reckless as to demonstrate a substantial lack of concern for whether an injury would result;

175. The claims of the named Plaintiffs are typical of the claims of the absent Class Members. The harms suffered by the named Plaintiffs are the same as those of the Class and they are pursued under the same legal theories as are applicable to the Class.

176. Plaintiffs will fairly and adequately protect the interests of the absent Class Members and have no conflicts with the Class with respect to the allegations in this complaint.

177. Plaintiffs have retained counsel with substantial experience related to the claims in this lawsuit. Plaintiffs' Counsel has represented certified classes in numerous cases involving environmental contamination (including from landfills), complex hydrological issues, and problems with municipal infrastructure.

178. Plaintiffs' Counsel has investigated the allegations in this complaint, and has committed the appropriate resources to represent the Class.

179. This case is appropriate for certification under Rule 23(b)(3). Common issues of fact and law predominate over questions affecting only individual Class Members and a class action is the superior means for litigating this case.

Count I– PUBLIC NUISANCE

All Plaintiffs and the Putative Class Against 3M

180. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

181. Defendant's actions in causing PFAS contaminated water to be delivered to the homes of Plaintiffs resulted in the presence of contaminants in Plaintiffs' properties and/or persons.

182. Defendant's actions substantially and unreasonably interfered with Plaintiffs' comfortable living and ability to use and enjoy their homes, constituting a nuisance.

183. Plaintiffs did not consent for PFAS contaminated water to physically invade their persons or property.

184. Plaintiffs suffered injuries and damage to their persons and/or properties as a direct and proximate result of Defendant's actions in causing PFAS contaminated water to be delivered to their homes.

185. The injuries to Plaintiffs and the Class are especially injurious to themselves as compared with the general public, which has encountered the contaminated water or been inconvenienced by the lack of public water and therefore incurred injuries less substantial than those suffered by persons whose homes were serviced by the contaminated water system.

186. Defendant's actions in causing a substantial and unreasonable interference with Plaintiffs' ability to use and enjoy their properties constitutes a nuisance and Defendant is liable for all damages arising from such nuisance, including compensatory and exemplary relief.

187. Defendant's actions and/or omissions were the proximate cause of the Plaintiffs' injuries.

188. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages, exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

Count II– PUBLIC NUISANCE

All Plaintiffs and the Putative Class Against Georgia-Pacific LLC

189. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

190. Defendant's actions in causing PFAS contaminated water to be delivered to the homes of Plaintiffs resulted in the presence of contaminants in Plaintiffs' properties and/or persons.

191. Defendant's actions substantially and unreasonably interfered with Plaintiffs' comfortable living and ability to use and enjoy their homes, constituting a nuisance.

192. Plaintiffs did not consent for PFAS contaminated water to physically invade their persons or property.

193. Plaintiffs suffered injuries and damage to their persons and/or properties as a direct and proximate result of Defendant's actions in causing PFAS contaminated water to be delivered to their homes.

194. The injuries to Plaintiffs and the Class are especially injurious to themselves as compared with the general public, which has encountered the contaminated water or been inconvenienced by the lack of public water and therefore incurred injuries less substantial than those suffered by persons whose homes were serviced by the contaminated water system.

195. Defendant's actions in causing a substantial and unreasonable interference with Plaintiffs' ability to use and enjoy their properties constitutes a nuisance and Defendant is liable for all damages arising from such nuisance, including compensatory and exemplary relief.

196. Defendant's actions and/or omissions were the proximate cause of the Plaintiffs' injuries.

197. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages, exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

Count III– PUBLIC NUISANCE

All Plaintiffs and the Putative Class Against Georgia-Pacific Consumer Products LP

198. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

199. Defendant's actions in causing PFAS contaminated water to be delivered to the homes of Plaintiffs resulted in the presence of contaminants in Plaintiffs' properties and/or persons.

200. Defendant's actions substantially and unreasonably interfered with Plaintiffs' comfortable living and ability to use and enjoy their homes, constituting a nuisance.

201. Plaintiffs did not consent for PFAS contaminated water to physically invade their persons or property.

202. Plaintiffs suffered injuries and damage to their persons and/or properties as a direct and proximate result of Defendant's actions in causing PFAS contaminated water to be delivered to their homes.

203. The injuries to Plaintiffs and the Class are especially injurious to themselves as compared with the general public, which has encountered the contaminated water or been inconvenienced by the lack of public water and therefore incurred injuries less substantial than those suffered by persons whose homes were serviced by the contaminated water system.

204. Defendant's actions in causing a substantial and unreasonable interference with Plaintiffs' ability to use and enjoy their properties constitutes a nuisance and Defendant is liable for all damages arising from such nuisance, including compensatory and exemplary relief.

205. Defendant's actions and/or omissions were the proximate cause of the Plaintiffs' injuries.

206. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages, exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

Count IV– PRIVATE NUISANCE

All Plaintiffs and the Putative Class Against 3M

207. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

208. Defendant's actions in causing PFAS contaminated water to be delivered to the homes of Plaintiffs resulted in the presence of contaminants in Plaintiffs' properties and/or persons.

209. Defendant's actions substantially and unreasonably interfered with Plaintiffs' comfortable living and ability to use and enjoy their homes, constituting a nuisance.

210. Plaintiffs did not consent for PFAS contaminated water to physically invade their persons or property.

211. Plaintiffs suffered injuries and damage as a direct and proximate result of Defendant's actions in causing PFAS contaminated water to be delivered to their homes.

212. Defendant's actions in causing a substantial and unreasonable interference with Plaintiffs' ability to use and enjoy their properties constitutes a nuisance and Defendant is liable for all damages arising from such nuisance, including compensatory and exemplary relief.

213. Defendant's actions and/or omissions were the proximate cause of the Plaintiffs' injuries.

214. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages, exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

Count V– PRIVATE NUISANCE

All Plaintiffs and the Putative Class Against Georgia-Pacific LLC

215. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

216. Defendant's actions in causing PFAS contaminated water to be delivered to the homes of Plaintiffs resulted in the presence of contaminants in Plaintiffs' properties and/or persons.

217. Defendant's actions substantially and unreasonably interfered with Plaintiffs' comfortable living and ability to use and enjoy their homes, constituting a nuisance.

218. Plaintiffs did not consent for PFAS contaminated water to physically invade their persons or property.

219. Plaintiffs suffered injuries and damage as a direct and proximate result of Defendant's actions in causing PFAS contaminated water to be delivered to their homes.

220. Defendant's actions in causing a substantial and unreasonable interference with Plaintiffs' ability to use and enjoy their properties constitutes a nuisance and Defendant is liable for all damages arising from such nuisance, including compensatory and exemplary relief.

221. Defendant's actions and/or omissions were the proximate cause of the Plaintiffs' injuries.

222. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages, exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

Count VI– PRIVATE NUISANCE

All Plaintiffs and the Putative Class Against Georgia-Pacific Consumer Products LP

223. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

224. Defendant's actions in causing PFAS contaminated water to be delivered to the homes of Plaintiffs resulted in the presence of contaminants in Plaintiffs' properties and/or persons.

225. Defendant's actions substantially and unreasonably interfered with Plaintiffs' comfortable living and ability to use and enjoy their homes, constituting a nuisance.

226. Plaintiffs did not consent for PFAS contaminated water to physically invade their persons or property.

227. Plaintiffs suffered injuries and damage as a direct and proximate result of Defendant's actions in causing PFAS contaminated water to be delivered to their homes.

228. Defendant's actions in causing a substantial and unreasonable interference with Plaintiffs' ability to use and enjoy their properties constitutes a nuisance and Defendant is liable for all damages arising from such nuisance, including compensatory and exemplary relief.

229. Defendant's actions and/or omissions were the proximate cause of the Plaintiffs' injuries.

230. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages, exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

Count VII –NEGLIGENCE

All Plaintiffs and the Putative Class Against Georgia-Pacific LLC

231. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

232. Defendant owed Plaintiffs and the putative class a duty to exercise reasonable care in creating, selling, applying, and disposing of PFAS substances, including but in no way limited to the operation of the Landfill.

233. Section 324.20101a of the Natural Resources and Environmental Protection Act imposes duties on Defendant, including the duties to "exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety" and to "[t]ake reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions."

234. Plaintiffs and the putative class relied on the Defendant to perform its duties.

235. Defendant failed to exercise reasonable or due care.

236. Defendant breached their duties to Plaintiffs in ways including but not limited to the following:

a. Failing to exercise ordinary care in the manufacture of PFAS-containing products;

b. Failure to warn of known harms of PFAS;

c. Failure to exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances;

d. Failure to exercise due care in the disposal of PFAS, including the construction, operation, maintenance, use, and closure of the Landfill;

e. Failure to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions; and

f. Failure to warn Plaintiffs and the Class about the likelihood that their water supply was or would become contaminated.

237. Plaintiffs and the putative class suffered harm resulting from Defendant's failures to exercise reasonable care.

238. Defendant is liable to Plaintiffs and the putative class for all harms resulting to themselves and their property from Defendant's failures to exercise reasonable care.

239. Defendant's liability includes without limitation increased risk of disease, disorder, and illness, and property damage suffered by Plaintiffs and the putative class as a result of Defendant's failures to exercise reasonable care.

240. Defendant's actions and/or omissions were the proximate cause of the Plaintiffs' injuries.

241. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages, exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

Count VIII –NEGLIGENCE

All Plaintiffs and the Putative Class Against Georgia-Pacific Consumer Products LP

242. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

243. Defendant owed Plaintiffs and the putative class a duty to exercise reasonable care in creating, selling, applying, and disposing of PFAS substances, including but in no way limited to the operation of the Landfill.

244. Section 324.20101a of the Natural Resources and Environmental Protection Act imposes duties on Defendant, including the duties to "exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety" and to "[t]ake reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions."

245. Plaintiffs and the putative class relied on the Defendant to perform its duties.

246. Defendant failed to exercise reasonable or due care.

247. Defendant breached their duties to Plaintiffs in ways including but not limited to the following:

a. Failing to exercise ordinary care in the manufacture of PFAS-containing products;

b. Failure to warn of known harms of PFAS;

c. Failure to exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances;

d. Failure to exercise due care in the disposal of PFAS, including the construction, operation, maintenance, use, and closure of the Landfill;

e. Failure to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions; and

f. Failure to warn Plaintiffs and the Class about the likelihood that their water supply was or would become contaminated.

248. Plaintiffs and the putative class suffered harm resulting from Defendant's failures to exercise reasonable care.

249. Defendant is liable to Plaintiffs and the putative class for all harms resulting to themselves and their property from Defendant's failures to exercise reasonable care.

250. Defendant's liability includes without limitation increased risk of disease, disorder, and illness, and property damage suffered by Plaintiffs and the putative class as a result of Defendant's failures to exercise reasonable care.

251. Defendant's actions and/or omissions were the proximate cause of the Plaintiffs' injuries.

252. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages,

exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

COUNT IX- PRODUCT LIABILITY- DEFECTIVE DESIGN

All Plaintiffs and the Putative Class Against 3M

253. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

254. At all times relevant hereto, Defendant was in the business of designing, developing, engineering, manufacturing, researching, testing, providing, and/or distributing products containing PFAS.

255. Defendant had a duty to design its products in a way that would prevent human exposure to toxic chemicals and the contamination of the natural environment.

256. Defendant breached its duty by, among other acts, negligently and wrongly designing, developing, engineering, manufacturing, researching, testing, providing, and/or distributing PFAS products and therefore failing to exercise reasonable care to prevent these products from posing an unreasonable risk of harm to human health and the environment.

257. It was reasonably foreseeable that the PFAS chemicals made, sold, and/or utilized by Defendant would contaminate the environment, including water supplies.

258. It was reasonably foreseeable that the PFAS chemicals made, sold, and/or utilized by Defendant would enter the bodies of Plaintiffs and the Class Members by environmental contamination, including of their drinking water.

259. Alternative designs of Defendant's products were and are available, reasonable, technologically feasible and practical, which would have significantly reduced or prevented the harms suffered by Plaintiffs and the Class

260. Defendant's products were defective at the time of manufacture as well as at the time that they left the Defendant's control.

261. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages, exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

COUNT X- PRODUCT LIABILITY- FAILURE TO WARN

All Plaintiffs and the Putative Class Against 3M

262. Plaintiffs incorporate every allegation in this complaint as if fully restated herein.

263. At all times relevant hereto, Defendant was in the business of designing, developing, engineering, manufacturing, researching, testing, providing, and/or distributing products containing PFAS.

264. Defendant had a duty to provide reasonable instructions and adequate warnings about the risk of injury and hazardous nature of the products, as well as their harmful effects to human health and the environment.

265. Defendant knew or should have known that the distribution, storage, and use of these products would likely contaminate the environment and enter the water supply, harming human health, property, and the environment.

266. These risks were not obvious to end users.

267. Defendant breached its duties by failing to provide warnings, or at least adequate warnings, that use of the products could result in PFAS chemicals entering the human body and posing a substantial risk to human health.

268. Defendant breached its duties by failing to provide warnings, or at least adequate warnings, that use of the products could result in contamination of the environment and drinking water.

269. Sufficient and adequate instructions or warnings would have greatly reduced or avoided the harms suffered by Plaintiffs and the Class Members as set forth in this Complaint.

270. As a direct and proximate result of the Defendant's conduct and/or failures to act, Plaintiffs and the putative class have suffered property damages, consequential damages, exemplary damages, and have been placed at a substantially increased risk for developing numerous diseases, disorders, and illnesses, as described herein.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that the Court grant them:

a. An order certifying one or more classes pursuant to Fed. R. Civ. P. 23;

b. An order declaring the Defendants liable for each Cause of Action as stated above;

c. Compensatory damages, including for injuries to property as outlined herein;

d. Injunctive relief;

e. Medical monitoring;

f. Consequential damages;

g. Punitive damages as appropriate;

h. Any and all other damages as outlined above;

i. Reasonable attorneys' fees and litigation expenses for any common fund or common benefit obtained for the benefit of a class; and

j. Such other relief as this Court may deem fair and equitable.

VII. JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Respectfully submitted,

Dated: June 5, 2019

LIDDLE & DUBIN, P.C.
by: /s/ Nicholas A. Coulson
Steven D. Liddle (P45110)
Nicholas A. Coulson (P78001)
975 E. Jefferson Avenue
Detroit, Michigan 48207
(313) 392-0025
sliddle@ldclassaction.com
ncoulson@ldclassaction.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of June, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel registered with CM/ECF.

s/ Nicholas A. Coulson
Nicholas A. Coulson

Attachment 7- *Batties Opinion*

User Name: ZR5RZFV
Date and Time: Wednesday, June 5, 2019 8:07:00 AM EDT
Job Number: 90245181

Document (1)

1. *Batties v. Waste Mgmt. of Pa., Inc., 2016 U.S. Dist. LEXIS 186335*
   Client/Matter: DAG
   Search Terms: Batties v. Waste Mgmt. of Pa., Inc., 2016 U.S. Dist. LEXIS 186335
   Search Type: Natural Language

Batties v. Waste Mgmt. of Pa., Inc.

United States District Court for the Eastern District of Pennsylvania

May 11, 2016, Decided; May 11, 2016, Filed

Civ. No. 14-7013

Reporter
2016 U.S. Dist. LEXIS 186335 *

JOHN BATTIES, CAROLINE SMITH, SHARON MACK, and SHIRL LYNN BIRELY on behalf of themselves and all others similarly situated, Plaintiffs, v. WASTE MANAGEMENT OF PENNSYLVANIA, INC., Defendant.

Core Terms

Settlement, Landfill, class member, class action, Notice, households, awards, requirements, Parties, odors, factors, issues, Plaintiffs', Prudential, class certification, attorney's fees, emissions, risks, costs, proposed settlement, proposed class, discovery, certification, measures, opt-outs, approve, damages, cases, class-action, objectors

Counsel: **[*1]** For Caroline Smith, Sharon Mack, Plaintiffs: KEVIN S. RIECHELSON, LEAD ATTORNEY, KAMENSKY, COHEN & RIECHELSON, Trenton, NJ USA; NICHOLAS A. COULSON, LEAD ATTORNEY, LIDDLE & DUBIN, P.C., Detroit, MI USA; STEVEN D. LIDDLE, LEAD ATTORNEY, LIDDLE & DUBIN PC, Detroit, MI USA.

For John Batties, Shirl Lynn Birely, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, Plaintiffs: NICHOLAS A. COULSON, LEAD ATTORNEY, LIDDLE & DUBIN, P.C., Detroit, MI USA; STEVEN D. LIDDLE, LIDDLE & DUBIN PC, Detroit, MI USA.

For Waste Management of Pennsylvania, Inc., A PENNSYLVANIA CORPORATION, Defendant: JOHN F. STOVIAK, LEAD ATTORNEY, SAUL EWING LLP, Philadelphia, PA USA; CATHLEEN M. DEVLIN, SAUL EWING LLP, Phila, PA USA.

For New Jersey Department of Environmental Protection, Respondent: LISA MARIE ALMEIDA, LEAD ATTORNEY, NJ ATTORNEY GENERAL'S OFFICE, Trenton, NJ USA.

Judges: Paul S. Diamond, J.

Opinion by: Paul S. Diamond

Opinion

ORDER

In this putative class action, Plaintiffs bring negligence and nuisance claims against Defendant Waste Management of Pennsylvania, Inc., on behalf of themselves and all others similarly situated. On December 15, 2015, I conditionally certified a *Rule 23(b)(3)* settlement class and preliminarily approved the Parties' **[*2]** Proposed Settlement. (Doc. No. 28.) Plaintiffs now ask me to certify finally a *Rule 23(b)(3)* settlement class, grant final approval of the Settlement, and approve an award of attorneys' fees and incentive awards. (Doc. Nos. 30, 31.) Because I conclude that: (1) the proposed settlement class meets the requirements of *Rule 23(a)* and *23(b)(3)*; (2) the Notice was sufficient; (3) the terms of the Settlement are fair, reasonable, and adequate; and (4) the requested costs, fees, and awards are reasonable, I will grant Plaintiffs' unopposed Motions.

BACKGROUND

Plaintiffs are residents living near Defendant's landfill—Tullytown Resource Recovery Facility—which is located near the Pennsylvania-New Jersey border in Tullytown, Pennsylvania. Plaintiffs have brought class-action negligence and nuisance claims against Defendant, alleging that odorous emissions that emanate from the Landfill have interfered with the use and enjoyment of their properties.

Plaintiffs filed their Complaint on December 10, 2014, and an Amended Complaint on May 14, 2015. (Doc. Nos. 1, 16.) Defendant answered on June 5, 2015. (Doc. No. 17.) During discovery, the Pennsylvania Department of Environmental Protection renewed the Landfill's operating permit **[*3]** but required the Landfill to close by May 22, 2017, citing odor complaints from local residents. (Operating Permit, Doc. No. 41, Ex. 1.) On August 14, 2015, Plaintiffs moved for class

certification, which Defendant opposed. (Doc. Nos. 19, 20.) On September 1, 2015, I stayed this matter pending the Parties' private mediation, which resulted in the Proposed Settlement. (Doc. No. 22; Settlement Agreement, Doc. No. 25, Ex. 1.)

The Proposed Settlement requires Defendant to provide monetary and nonmonetary relief to the Class. Defendant will pay $1.4 million into a common fund, which (after deducting fees, costs, and incentive awards) will be divided equally among all Class Members who submitted timely claims. (Settlement Agreement at ¶ 5.) Class Counsel submitted a supplemental declaration that they have received 1105 "timely, proper, and adequately supported" claims, and 84 unsupported claims for which Class Counsel have requested supplemental documentation. (Doc. No. 43 at ¶¶ 7-11.) Accordingly, each qualified household will receive somewhere between $651.81 and $701.36, depending on how many of the 84 remaining claimants have supported claims. (Id. at ¶ 11.) Additionally, Defendant agrees **[*4]** to: (1) install and operate two "turbine misting systems" to reduce odorous emissions; (2) apply odor control suppressants to the Landfill "during non-operating daylight hours on Saturdays and Sundays"; (3) "commit to no less than bi-monthly power washing of the docks and walkways at the Florence Township marina"; and (4) not seek a permit amendment from the PADEP "to allow for the renewed disposal of wastewater treatment sludges or biosolids within the Landfill." (Settlement Agreement at ¶ 7; Doc. No. 30 at 4.) Defendant estimates the value of these nonmonetary benefits at $600,000, and has submitted an expert declaration from Bard Horton, a landfill engineer, who avers that the estimated values are "reasonable." (Bard Horton Decl., Doc. No. 31, Ex. 1.) The Settlement Agreement also includes a release of certain future claims concerning the Landfill; significantly, however, the "release shall not bar claims for medical harms or personal injuries." (Settlement Agreement at ¶ 8.)

On December 8, 2015, Plaintiffs filed an unopposed Motion, asking me to: (1) certify conditionally the Proposed Class for settlement purposes only; (2) approve preliminarily the Proposed Settlement; (3) appoint **[*5]** preliminary Plaintiffs as Class Representatives and their attorneys as Class Counsel; (4) approve Plaintiffs' proposed Notice to the Class; and (5) schedule a final approval hearing. (Doc. No. 25.) On December 17, 2015, as required by the Class Action Fairness Action, Defendant mailed notice of the Proposed Settlement to the New Jersey and Pennsylvania Departments of Environmental Protection. See *28 U.S.C. § 1715(b)*.

I held a preliminary settlement approval hearing on December 18, 2015. (Doc. No. 27.) On December 21, 2015, I, *inter alia*, preliminarily certified the Proposed Class for settlement purposes, approved the Proposed Settlement, found that the Proposed Notice was the best notice practicable under the circumstances, and appointed Named Plaintiffs as Class Representatives and their attorneys as Class Counsel. (Doc. No. 28.) After Class Counsel disseminated Notice, fourteen households opted-out of the Class, and seven households objected to the Settlement. (Objections, Doc. No. 30, Ex. 2-8; Opt-Outs, Doc. No. 32 at ¶ 7.)

On February 17, 2016, Plaintiffs filed two unopposed Motions: (1) a "Motion for Final Approval of Class Settlement, Certification of Settlement Class, and Appointment of Class Representatives **[*6]** and Class Counsel"; and (2) a "Motion for Award of Attorney Fees, Reimbursement of Litigation Costs, and Service Awards for the Class Representatives." (Doc. Nos. 30, 31).

On March 2, 2016, I held a final settlement fairness hearing, which was attended only by counsel—i.e., no objectors, opt-outs, or other interested third-parties attended—who addressed on the record, *inter alia*, the fairness of the Settlement; the safety of the odor-reducing measures Defendant must implement pursuant to paragraph seven of the Settlement Agreement; and the reasonableness of the requested costs, fees, and awards. (Doc. Nos. 35, 36); see *Gates v. Rohm and Haas Co., 248 F.R.D. 434 (E.D. Pa. 2008)* ("Judicial review of a proposed class settlement generally requires two hearings: one preliminary approval hearing and one final 'fairness' hearing.").

On March 16, 2016, the New Jersey Department of Environmental Protection filed an objection to the Settlement, challenging the adequacy of the injunctive relief provided. (Doc. No. 37.) I thus ordered the Parties to respond to the NJDEP's objection. (Doc. No. 38, 39, 41.)

DISCUSSION

Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." *Fed. R. Civ. P. 23(e)*. "While the law generally **[*7]** favors settlement in complex or class action cases for its conservation of judicial resources, the court has an obligation to ensure that any settlement reached protects the interests of the class members." *In re Aetna Inc. Sec. Litig., 2001 U.S. Dist. LEXIS 68, 2001 WL 20928, at *4 (E.D. Pa. Jan 4, 2001)* (citing *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig., 55 F.3d 768, 784 (3d Cir. 1995)*).

I. Settlement Class Certification: *Rule 23* Analysis

"[T]he party proposing class-action certification bears the burden of affirmatively demonstrating by a preponderance of the evidence her compliance with the requirements of *Rule 23*." *Neale v. Volvo Cars of N. Am., LLC, 794 F.3d 353, 370 (3d Cir. 2015)* (internal quotations omitted). On December 21, 2015, after a hearing, I preliminarily certified a *Rule 23(b)(3)* Settlement Class. (Doc. No. 28.) For the reasons that follow, I now conclude find that Plaintiffs have satisfied their burden respecting settlement class certification.

a. The *Rule 23(a)* Requirements

The Parties now ask me to certify the following *Rule 23(e)* Settlement Class:

> All owner/occupants and renters of residential property at any time between December 10, 2012 and present within the following geographic area ("the Class Area"):
>
> **On the New Jersey Side of the Delaware River, the area bounded by a perimeter with the following characteristics:**
>
> Originating at the intersection of I-276 and the New Jersey bank of the Delaware River, proceeding along I-276 to I-295; Proceeding along I-295 **[*8]** to Columbus Hedding Road; Following Columbus Heading Road (becomes Kinkora Road) to US-130 and proceeding in a geographically straight line to latitude 40.121168, longitude - .74.754159; Following the Delaware River bank back to the point of origin at I-276.
>
> **On the Pennsylvania Side of the Delaware River, the area bounded by a perimeter with the following characteristics:**
>
> Originating at the intersection of I-276 and the Pennsylvania bank of the Delaware River, proceeding along I-276 to US-13. Following US-13 to Edgely Road; Proceeding on Edgely Road to the Delaware Canal Towpath. Following the Delaware Canal Towpath to latitude 40.128126, longitude - 74.837998; Proceeding in a geographically straight line to latitude 40.135730, longitude - 74.843255, at Edgely Access Road Proceeding along Edgely Access Road to Edgely Road; Following Edgely Road to Mill Creek Parkway; Proceeding along Mill Creek Parkway (becomes Mill Creek Road) to Old Bristol Pike; Following Old Bristol Pike to latitude 40.149049, longitude-74.809785; Proceeding in a geographically straight line to latitude 40.140318, longitude - 74.807172; Proceeding in a geographically straight line to latitude 40.138034, longitude **[*9]** - 74.809272; Following the Delaware River bank back to the point of origin at I-276.

(Doc. No. 16 at 4-5; Doc. No. 25-1 at 1-2.) "Defendant and its affiliates, predecessors, successors, officers, directors, agents, servants, or employees, and the immediate family members of such persons" are excluded from the Class. (Id.)

I find that the Proposed Class meets all of the requirements of *Rule 23(a)*.

First, Plaintiffs have shown "that there is a reliable and administratively feasible method for ascertaining the class" because the Proposed Class is well defined with reference to clear, objective criteria within a small geographic area, allowing for a simple determination as to whether property falls within the Class Area's boundaries. *Hayes v. Wal-Mart Stores, Inc., 725 F.3d 349, 356 (3d Cir. 2013)* ("[A]scertainability entails two important elements. First, the class must be defined with reference to objective criteria. Second, there must be a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition."); see *Byrd v. Aaron's Inc., 784 F.3d 154, 169 (3d Cir. 2015)* ("The 'household members' of owners or lessees are ascertainable."). Accordingly, I find that the Proposed Class is ascertainable.

Second, here, where there are approximately 8,275 residential parcels and **[*10]** 9,664 residential addresses (to which Notice has been sent) in the Class Area, the Proposed Class is so numerous that the joinder of all its Members is plainly impractical. (Roddewig Report, Doc. No. 20, Ex. 3 at 11; List of Class Area Addresses, Doc. No. 25, Ex. 3; Doc. No. 25-1 at 15); *Fed. R. Civ. P. 23(a)(1)*; see *Weiss v. York Hosp., 745 F.2d 786, 808 n.35 (3d Cir. 1984)* ("[N]umbers in excess of forty, particularly those exceeding one hundred or one thousand have sustained the [numerosity] requirement."); *King Drug Co. of Florence v. Cephalon, Inc., 309 F.R.D. 195, 203 (E.D. Pa. 2015)* (same).

Third, the claims of the Proposed Class "depend upon a common contention of such a nature that it is capable of classwide resolution." *Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 131 S. Ct. 2541, 2550-51, 180 L. Ed. 2d 374 (2011)*; *In re Cmty. Bank of N. Virginia Mortgage Lending Practices Litig., 795 F.3d 380, 399 (3d Cir. 2015)* (commonality requirement satisfied where the plaintiffs "alleged that the class was subjected to the same kind of illegal conduct by the same entities, and that class members were harmed in the same way, albeit to potentially different extents"), cert. denied sub nom., *PNC Bank v. Brian W., 136 S. Ct. 1167, 194 L. Ed. 2d 241 (2016)*; *Fed. R. Civ. P. 23(a)(2)*. As I explained in my preliminary certification Order, the instant case presents at least the following classwide questions of law or fact:

> (1) Whether Defendant failed to employ adequately

various available odor-mitigating techniques?;
(2) Whether Defendant owed a duty to its neighbors in the Class Area?;

(3) Assuming the existence of a duty, did Defendant **[*11]** breach that duty respecting Plaintiffs and the Proposed Class Members?;
(4) What constitutes a substantial and unreasonable interference with the use and enjoyment of property for a reasonable person within the Class Area?;
(5) To where and in what concentrations have the Landfill's emissions been dispersed?;
(6) What are the sources of the odorous emissions from the Landfill?; and
(7) Are there sources of odorous emissions in the Class Area other than those emanating from the Landfill?

Fourth, the Named Plaintiffs' claims are typical of those of the Class, and their interests align with those of absent Class Members. *Fed. R. Civ. P. 23(a)(3)*; *Baby Neal for & by Kanter v. Casey, 43 F.3d 48, 57 (3d Cir. 1994)*. ("The typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented."); see also *In re Nat'l Football League Players Concussion Injury Litig., 821 F.3d 410, 2016 WL 1552205, at *8 (3d Cir. 2016)* ("We also have set a 'low threshold' for typicality."). Named Plaintiffs have satisfied the typicality requirement by alleging on behalf of themselves and the Class the same manner of injury (i.e., interference with the reasonable use and enjoyment of their properties) from the same course **[*12]** of conduct (i.e., the spread of odorous emissions from Defendant's Landfill), and by basing their own and the Class's claims on the same legal theories (i.e., negligence and nuisance). *Marcus v. BMW of N. Am., LLC, 687 F.3d 583, 598 (3d Cir. 2012)* ("If a plaintiff's claim arises from the same event, practice or course of conduct that gives rises to the claims of the class members, factual differences will not render that claim atypical if it is based on the same legal theory as the claims of the class."); *In re Processed Egg Prods. Antitrust Litig., 284 F.R.D. 249, 260 (E.D. Pa. 2012)*. Because I find that Named Plaintiffs' claims are typical of those of the Class, I finally appoint John Batties, Caroline Smith, Sharon Mack, and Shirl Lynn Birely as Class Representatives.

Fifth, the Class Representatives and Class Counsel have fairly and adequately protected the Class's interests. *Fed. R. Civ. P. 23(a)(4)*; *Gates, 248 F.R.D. at 441* (inquiring into "whether the representative's interests conflict with those of the class and whether the class attorney is capable of representing the class") (citations and quotations omitted). As I have discussed, the Class Representative's interests do not conflict with the interests of the other Class Members. Moreover, given the vigor with which Class Counsel have pursued this lawsuit, as well as their familiarity with this litigation and **[*13]** experience successfully litigating environmental class-action lawsuits, I find that they are able to represent (and have represented) the Class adequately. *Fed. R. Civ. P. 23(g)*; *In re Nat'l Football League, 821 F.3d 410, 2016 WL 1552205, at *11* ("'[A] minimal degree of knowledge' about the litigation is adequate." (quoting *New Directions Treatment Servs. v. City of Reading, 490 F.3d 293, 313 (3d Cir. 2007)*)).

In sum, I conclude that the Proposed Class satisfies *Rule 23(a)*'s requirements.

b. The *Rule 23(b)* Requirements

The Proposed Class must also satisfy at least one of the three subsections of *Rule 23(b)*. Plaintiffs seek to certify an opt-out class for settlement purposes under *Rule 23(b)(3)*. See *Comcast Corp. v. Behrend, 569 U.S. 27, 133 S. Ct. 1426, 1432, 185 L. Ed. 2d 515 (2013)* ("*Rule 23(b)(3)*, as an 'adventuresome innovation,' is designed for situations 'in which class-action treatment is not as clearly called for.'" (quoting *Wal-Mart Stores, 131 S. Ct. at 2558*)). "In order to certify an opt-out class under *Rule 23(b)(3)*, *[I]* must make two additional findings: predominance and superiority." *Id. at 442*; see *In re Prudential Ins. Co. Am. Sales Practice Litig., 148 F.3d 283, 313-14 (3d Cir. 1998)* ("Issues common to the class must predominate over individual issues, and the class action device must be superior to other means of handling the litigation.").

The Third Circuit "consider[s] the *Rule 23(a)* commonality requirement to be incorporated into the more stringent *Rule 23(b)(3)* predominance requirement." *Sullivan v. DB Investments, Inc., 667 F.3d 273, 297 (3d Cir. 2011)* (en banc); see *In re Nat'l Football League, 821 F.3d 410, 2016 WL 1552205, at *14* ("We are . . . more inclined to find the predominance test met in the settlement context.") (internal quotation marks omitted). "Common issues predominate **[*14]** in air pollution cases when the paramount issue concerns whether a plant's emissions . . . substantially interfer[e] with the local residents' use and enjoyment of their real and personal property." *Stanley v. U.S. Steel Co., No. 04-74654, 2006 U.S. Dist. LEXIS 16582, 2006 WL 724569, at *7 (E.D. Mich. Mar. 17, 2006)*. Moreover, given evidence that residents within the Class Area were similarly injured—although the degrees of impact may vary—the common issues I have discussed respecting Defendant's conduct and odorous emissions are subject to generalized proof. See *Neale, 794 F.3d at 371* ("If issues common to the class overwhelm

individual issues, predominance should be satisfied.").

Moreover, factual differences regarding the character of the affected properties or the degree to which Class Members were disturbed by the Landfill's odors likely relate to damages, not liability. *Gates, 248 F.R.D. at 441*; see *Roach v. T.L. Cannon Corp., 778 F.3d 401, 402 (2d Cir. 2015)* ("Comcast does not mandate that certification pursuant to *Rule 23(b)(3)* requires a finding that damages are capable of measurement on a classwide basis." (citing *Comcast Corp., 569 U.S. 27, 133 S. Ct. 1426, 185 L. Ed. 2d 515*)); *In re Nexium Antitrust Litig., 777 F.3d 9, 23 (1st Cir. 2015)* ("Comcast did not require that plaintiffs show that all members of the putative class had suffered injury at the class certification stage—simply that at class certification, the damages calculation must reflect the liability theory."). As the Third Circuit recently observed, "'that individual damages **[*15]** calculations do not preclude class certification under *Rule 23(b)(3)* is well nigh universal." *Neale, 794 F.3d at 374-75* (quoting *Comcast Corp, 133 S. Ct. at 1437* (Ginsburg, J., dissenting)); William B. Rubenstein, Newberg on Class Actions § 4:54 (5th ed.) ("[C]ourts in every circuit have uniformly held that the 23(b)(3) predominance requirement is satisfied despite the need to make individualized damage determinations . . . .'").

Accordingly, common issues regarding Defendant's liability predominate over issues regarding the damages suffered by each prospective Class Member, thus rendering the Proposed Class eligible for certification under *Rule 23(b)(3)*.

I also find that litigating this matter as a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." *Fed. R. Civ. P. 23(b)(3)*; *In re Prudential Ins., 148 F.3d at 316* (requiring courts to "balance, in terms of fairness and efficiency, the merits of a class action against alternative methods of adjudication") (quotations and citations omitted). It is desirable, both for purposes of efficiency and fairness, to resolve the Class's claims in a single action. The alternative is the litigation of hundreds (or thousands) of individual claims, unfortunately excluding the claims of certain Class Area residents for whom individual litigation is **[*16]** not feasible. *Sullivan, 667 F.3d at 312* (explaining a purpose of *Rule 23(b)(3)* "'is to vindicate the claims of consumers and other groups of people whose individual claims would be too small to warrant litigation'" (quoting *Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 617, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997)*).

In sum, the Proposed Class meets all *Rule 23*'s requirements. Accordingly, pursuant to *Rule 23(a)* and *(b)(3)*, and solely for the purpose of settlement in accordance with the Settlement Agreement, I finally certify the following Settlement Class: All owner/occupants and renters of residential property located within the Class Area from December 10, 2012 through the Effective Date.

II. Notice Implementation

On December 21, 2015, I ruled that the proposed Notice of Pendency of Class Action Settlement to Class Members (attached as Exhibit 2 to Plaintiffs' Motion for Preliminary Approval) and the proposed method of notice satisfy the requirements of *Rule 23(e)*, the requirements of due process, and are otherwise fair and reasonable. (Doc. No. 28 at 9-10; see Proposed Notice, Doc. No. 25, Ex. 2) As I explained, "[b]ecause Plaintiffs plan to mail notice of the Settlement directly to all the listed addresses in the Class Area . . . , the form, content, and procedures of the proposed Class Notice constitutes 'the best notice practicable under the circumstances.'" **[*17]** Doc. No. 28 at 9-10 (quoting *Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 173, 94 S. Ct. 2140, 40 L. Ed. 2d 732 (1974)*); *Fed. R. Civ. P. 23(c)(2)(B)* (notice requirement for *Rule 23(b)(3)* class). I ordered Class Counsel to provide notice to the entire Class by first-class mail no later than fourteen days from December 21, 2015. (Doc. No. 28 at 10.) On January 4, 2016, in accordance with my Order, Class Counsel mailed Notice to some 9,600 households in the Class Area. (Doc. No. 25, Ex. 3 (List of Class Addresses); Doc. No. 32 at ¶ 6 (Coulson Decl.).) In response to the Notice, Class Counsel received opt-outs from fourteen households and objections from seven households, thus indicating that Class Members did in fact receive adequate Notice informing them of their rights under the Settlement. (Objections, Doc. No. 30, Exs. 2-8; Opt-Outs, Doc. No. 32 at ¶ 7.) Accordingly, I find that the approved Notice Plan has been effectively implemented by Class Counsel.

III. Fairness, Adequacy, and Reasonableness of Proposed Settlement

Before approving the Settlement, I must "scrutinize the terms of the settlement to ensure that it is 'fair, adequate and reasonable.'" *In re Gen. Motors, 55 F.3d at 784* ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."); **[*18]** *Fed. R. Civ. P. 23(e)(2)*. The proponents of the Settlement bear the burden of proving that it should be approved. See *In re Gen. Motors, 55 F.3d at 785*.

a. Presumption of Fairness

A proposed class-action settlement should be afforded a presumption of fairness if: (1) settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected. *In re Cendant Corp. Litig., 264 F.3d 201, 232 n.18 (3d. Cir. 2001)*; *In re CertainTeed Fiber Cement Siding Litig., 303 F.R.D. 199, 216 (E.D. Pa. 2014)* ("The presumption of fairness may attach even where a class is certified for settlement purposes only . . . ."). Here, as I have explained in my previous Order and throughout this Order, the Settlement is entitled to a presumption of fairness because: (1) it is the result of bona fide, good-faith, arm's-length negotiations between adversarial Parties and their counsel; (2) the Parties engaged in significant discovery respecting class certification—which largely overlaps with the discovery that would be conducted during the merits stage of this litigation—before they agreed to mediation and settlement; (3) the attorneys are experienced class-action litigators who have a comprehensive understanding of the issues in this case, and Class Counsel specialize in class-based, **[*19]** odor-nuisance litigation; and (4) only a minimal number of Class Members have objected to the Proposed Settlement (which I discuss in more detail below). *In re Processed Egg Prods., 284 F.R.D. at 267*; see *In re Nat'l Football League, 821 F.3d 410, 2016 WL 1552205, at *17* (declining to require formal discovery before presuming that a settlement is fair).

b. The *Girsh* and *Prudential* Factors

In determining whether the Settlement is fair, adequate, and reasonable, I must consider the Girsh factors:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation.

In re Cendant Corp., 264 F.3d at 231 (citing *Girsh v. Jepson, 521 F.2d 153 (3d Cir. 1975)*). Additionally, "[i]n more recent decisions, the Third Circuit has suggested an expansion of the nine-prong test when appropriate to include what are now referred to as the Prudential considerations." *In re Flonase Antitrust Litig., 951 F. Supp. 2d 739, 742 (E.D. Pa. 2013)*; see **[*20]** *In re Baby Prods. Antitrust Litig., 708 F.3d 163, 174 (3d Cir. 2013)* ("Unlike the Girsh factors, each of which the district court must consider . . . , the Prudential considerations are just that, prudential."). Moreover, where "settlement negotiations precede class certification, and approval for settlement and certification are sought simultaneously," I must "apply an even more rigorous, 'heightened standard'" that ensures Class Counsel have "demonstrated sustained advocacy throughout the course of the proceedings and ha[ve] protected the interests of all class members." *In re Pet Food Prods. Liab. Litig., 629 F.3d 333, 350 (3d Cir. 2010)* (quoting *In re Prudential, 148 F.3d at 317*).

The Girsh and Prudential factors underscore that the Settlement is fair, reasonable, and adequate. See *Fed. R. Civ. P 23(e)(2)* ("If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.").

Factor One: Complexity, Expense, and Likely Duration of Litigation

This is a complex environmental case that, in the absence of settlement, would likely involve expensive and time-consuming pretrial discovery and motions practice (in addition to the extensive discovery and briefing respecting class certification). *In re Certainteed, 303 F.R.D. at 216* ("That a settlement would eliminate delay and expenses and provide immediate benefit to the class militates in favor **[*21]** of approval."). The time and resources saved by the avoiding the costs that would certainly be incurred benefits both Parties. *Fleisher v. Fiber Composites, LLC, No. CIV.A. 12-1326, 2006 U.S. Dist. LEXIS 16582, 2014 WL 866441, at *11 (E.D. Pa. Mar. 5, 2014)*. By contrast, the Settlement provides the Class with prompt compensation for Defendant's alleged interference with their property rights, and nonmonetary relief aimed at reducing the Landfill's odors. See *Good v. Nationwide Credit, Inc., 314 F.R.D. 141, 2016 WL 929368, at *8 (E.D. Pa. 2016)* ("The proposed settlement will offer prompt relief to the class, whereas individual litigation may be much more time consuming."). Such prompt resolution of the Class's claims against Defendant is especially important in light of the Landfill's May 2017 closing date—after which the Class's ability to obtain meaningful, injunctive relief becomes far more limited. Accordingly, I find that the first factor favors the Settlement.

Factor Two: The Reaction of the Class to the Settlement

There have been very few opt-outs from or objections to the Settlement. *In re Prudential, 148 F.3d at 318* ("This factor

attempts to gauge whether members of the class support the settlement."); see *Chakejian v. Equifax Info. Servs., LLC, 275 F.R.D. 201, 212 (E.D. Pa. 2011)* ("Courts have generally assumed that 'silence constitutes tacit consent to the agreement.'" (quoting *In re Gen. Motors, 55 F.3d at 812*)). Of the **[*22]** 9,644 households in the Class Area, only seven households objected and fourteen households opted-out—i.e., fewer than one percent of all affected households. (Objections, Doc. No. 30, Exs. 2-8; Opt-Outs, Doc. No. 32 at ¶ 7.) The dearth of objections or opt-outs suggests that the Class is generally satisfied with the Settlement. See, e.g., *Olden v. Gardner, 294 F. App'x 210, 217 (6th Cir. 2008)* ("Out of nearly 11,000 absent class members, only 79 objected to the settlement . . . . Although this is not clear evidence of class-wide approval of the settlement, it does permit the inference that most of the class members had no qualms with it. This tends to support a finding that the settlement is fair."); *Stoetzner v. U.S. Steel Corp., 897 F.2d 115, 118 (3d Cir. 1990)* (settlement "strongly favor[ed]" where, "out of 281 class members, only twenty-nine, filed objections to the proposed settlement"). *Stoner v. CBA Info. Servs., 352 F. Supp. 2d 549, 552 (E.D. Pa. 2005)* ("Over 16% of 11,980 class members notified have submitted claim forms seeking to participate in the settlement. Only 18 members have chosen to opt out and only five have filed what could be considered objections . . . . This relatively high response rate indicates a more than favorable class reaction."). This is confirmed by Class Counsel's representations at the hearing that a majority of the feedback received about **[*23]** the Settlement was overwhelmingly positive, and Class Counsel's declaration that over 1,100 Class Members have submitted timely, documented claims. (Doc. No. 43.)

Although no one objected to the fairness of the Settlement at the March 2, 2016 final fairness hearing, or asked me to reschedule or continue the hearing, as I noted on the record, I would have permitted any objector in attendance to present evidence or otherwise voice concerns about the Settlement. Because there have been few opt-outs or objections, the second Girsh factor counsels in favor of approving the Settlement. *In re Cendant Corp., 264 F.3d at 235* ("The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement.").

Factor Three: The Stage of the Proceedings and the Amount of Completed Discovery

I must next consider "the degree of case development that class counsel have accomplished prior to settlement," and whether Class Counsel appreciated the merits of Plaintiffs' case before settlement negotiations. *In re Gen. Motors, 55 F.3d at 813*. At the time the Parties agreed to private mediation, they had completed class discovery and briefed certification—an **[*24]** issue that overlaps considerably with the case's merits. (Doc. Nos. 19, 20, 21); see *In re Hydrogen Peroxide Antitrust Litig., 552 F.3d 305, 317-18 (3d Cir. 2008)*. Class Counsel had *inter alia*: requested and reviewed public administrative agency documents related to the Landfill, hundreds of "Resident Data Sheets," as well as Defendant's internal documents relating to its administrative compliance and odor-control efforts; deposed three of Defendant's experts and its corporate designee; defended various depositions; and obtained reports from two experts. (Coulson Decl., Doc. No. 30, Ex. 1.) Enough discovery has thus been conducted to give both sides an accurate view of the risks of continued litigation. *In re Cendant Corp., 264 F.3d at 236* ("Settlement favored 'although this litigation was settled at an early stage, because of the nature of the case Lead Plaintiff had an excellent idea of the merits of its case against [the defendant] insofar as liability was concerned at the time of the Settlement."); *In re CertainTeed, 303 F.R.D. at 217*. Accordingly, this factor weighs in favors of the Settlement.

Factors Four, Five, and Six: The Risks of Establishing Liability, Proving Damages, and Maintaining the Class Action Through Trial

I must next "survey the potential risks and rewards of proceeding to litigation in order to weigh the likelihood **[*25]** of success against the benefits of an immediate settlement.'" *In re CertainTeed, 303 F.R.D. at 217* (addressing factors four through six together) (quoting *In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 537 (3d Cir. 2004)*). In the absence of settlement, Defendant would oppose class certification, deny liability, contest causation, and litigate innumerable issues related to damages. To establish liability, Plaintiffs must establish—most likely by way of expert testimony—that the emissions from the Landfill spread to the subject properties and were present with such regularity and concentration to constitute a nuisance. See generally *Restatement (Second) of Torts § 821A*-F (1979) (defining public and private nuisance); *Cox v. City of Dallas, Tex., 256 F.3d 281, 291 (5th Cir. 2001)* ("The theory of nuisance lends itself naturally to combating the harms created by environmental problems."). Defendant would likely respond with its own expert opinions as to other potential sources of odors or industrial emissions in the Class Area—as Defendant did in its opposition to Plaintiffs' initial Class Certification Motion. (Doc. No. 20 at 11-12.) Defendant would also contest Plaintiffs' evidence respecting damages to property values in the Class Area, by challenging (through experts) the degree to which any decline in value was caused by the Landfill as

opposed to numerous other causes of fluctuating **[*26]** property values. See *Esslinger v. HSBC Bank Nevada, N.A., No. CIV.A. 10-3213, 2012 U.S. Dist. LEXIS 165773, 2012 WL 5866074, at *10 (E.D. Pa. Nov. 20, 2012)* (class settlement favored where "the size of the Class and the differing circumstances of each Class member would make damages estimation, and recovery, even more difficult").

These risks respecting liability and damages are outweighed by the immediate benefits of settlement, thus rendering the Settlement the most desirable course of action for the entire Class. The Settlement provides each household with monetary relief—between $651.80 and $701.36— and requires Defendant to enact odor-reducing measures that will benefit the entire Class during the twelve months remaining on the Landfill's operating permit. This immediate injunctive relief likely could not be obtained in the absence of settlement; and it is possible, given the above-mentioned risks of continued litigation, that the Class would not receive meaningful monetary relief absent settlement either.

Finally, there are risks attendant to obtaining class certification and maintaining certification through trial. *In re Gen. Motors, 55 F.3d at 817* ("[T]the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the action."); see *In re Warfarin, 391 F.3d at 537* ("A district **[*27]** court retains the authority to decertify or modify a class at any time during the litigation if it proves to be unmanageable."); cf. *In re Nat'l Football League, 821 F.3d 410, 2016 WL 1552205, at *20* (describing the sixth Girsh factor as "toothless" in the settlement-class context). The Settlement was reached after briefing was completed on the class certification issue, but before Plaintiff's Motion for Class Certification was decided. The Parties decision to settle thus avoids risks attendant to class certification (and, if granted, the potential for a subsequent decertification).

In sum, the risk attendant to establishing classwide liability and damages, and obtaining and maintaining class certification, weigh in favor of the Settlement.

Factor Seven: Ability of Defendant to Withstand a Greater Judgment

The Parties concede that Defendant has the ability to withstand a judgment larger than that provided in the Settlement, a factor that weighs marginally against the Settlement. (Doc. No. 30-1 at 16.) Indeed, many courts consider this factor to be neutral. See, e.g., *In re Flonase, 951 F. Supp. 2d at 744-45* ("I follow my district court colleagues within the Third Circuit who 'regularly find a settlement to be fair even though the defendant has the practical ability to pay greater amounts.'" **[*28]** (quoting, *inter alia*, *Bredbener v. Liberty Travel, Inc., 2011 U.S. Dist. LEXIS 38663, 2011 WL 134745, at *15 (D.N.J. Apr. 8, 2011))*); *Reibstein v. Rite Aid Corp., 761 F. Supp. 2d 241, 254 (E.D. Pa. 2011)* ("[T]his factor is most clearly relevant where a settlement in a given case is less than would ordinarily be awarded but the defendant's financial circumstances do not permit a greater settlement.").

Factors Eight and Nine: Range of Reasonableness of Settlement Fund in Light of Best Possible Recovery and Attendant Risks of Litigation

These final Girsh factors are intended to "'evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case.'" *In re CertainTeed, 303 F.R.D. at 218* (quoting *In re Warfarin, 391 F.3d at 537*). The Settlement provides meaningful monetary and nonmonetary relief to the Class—i.e., cash payments of $650 to $700 to each household, and Defendant's implementation of odor-reducing measures. (Doc. No. 19, Ex. 11; Doc. No. 19-1 at 4; Doc. No. 43 at ¶ 11.) As explained, absent settlement, the Class almost certainly could not secure injunctive relief of any kind before the Landfill's scheduled closing. See *Cox, 256 F.3d at 291* ("Two basic remedies are available in nuisance actions—damages and injunctions."). Class Counsel—seasoned class-action and odor-nuisance litigators—assert that such cases "generally do not resolve in the eight figure range" and that they "are aware of no class action involving **[*29]** nuisance odors alone that has." (Doc. No. 30-1 at 17.) The Settlement thus falls well within the range of reasonableness when considering the risks of continued litigation, the unavailability of injunctive relief, and the best possible recovery for the Class. See *In re Prudential, 148 F.3d at 322* (upholding district court's finding that "calculating the best possible recovery for the class in the aggregate would be 'exceedingly speculative,' and in this instance such a calculation was unnecessary because the reasonableness of the settlement could be fairly judged").

The Prudential Considerations

Of these six additional factors, only three apply here: (1) "whether class or subclass members are accorded the right to opt out of the settlement"; (2) "whether any provisions for attorneys' fees are reasonable"; and (3) "whether the procedure for processing individual claims under the settlement is fair and reasonable." *In re Prudential, 148 F.3d at 323*. All three factors confirm the Settlement's fairness: it allows for Class Members to opt-out, and individuals from

fourteen households did in fact do so; Class Counsel's requested attorneys' fees are reasonable (as I discuss at length below); and the claims-processing procedure is fair and reasonable, with **[*30]** Class Counsel having sent each household in the Class Area a clear, concise, and nonburdensome claims form. (Claims Form, Doc. No. 25, Ex. 4; Proposed Notice with Instructions, Doc. No. 25, Ex. 2; Coulson Decl., Doc. No 32.)

Objections to the Settlement

I have received *pro se* objections to the Settlement from seven households in the Class Area, and a counseled objection from the New Jersey Department of Environmental Protection. Because many of the objections are unsubstantiated or based on a misunderstanding of the actual terms (or purposes) of the Settlement, and none of the objections casts doubt on the reasonableness of the Settlement, I will overrule each objection. See *In re CertainTeed, 303 F.R.D. at 216* ("[O]bjectors bear the burden of proving any assertions they raise challenging the reasonableness of [the] class action settlement." (quoting *In re Netflix Privacy Litig., 11-CV-00379 EJD, 2013 U.S. Dist. LEXIS 37286, 2013 WL 1120801, at *11 (N.D.Cal. Mar. 18, 2013))*; *United States v. Oregon, 913 F.2d 576, 581 (9th Cir. 1990)* (same); *Noll v. eBay, Inc., 309 F.R.D. 593, 602 (N.D. Cal. 2015)* (same); *Fussell v. Wilkinson, No. 03-CV-704, 2005 U.S. Dist. LEXIS 30984, 2005 WL 3132321, at *3 (S.D. Ohio Nov. 22, 2005)* (same).

For instance, Debra and Ernest Long object because they allege, *inter alia*, that the Landfill's odors have given Ms. Long and their daughter migraines and other medical issues; Vicki McDaid likewise objects to "any settlement that would release the defendant of future litigations regarding health issues." (Doc. **[*31]** No. 30, Ex. 2 (Long Objection); Ex. 7 (McDaid Objection).) The Settlement Agreement does not release these types of personal injury claims, however, and they are largely outside the scope of this litigation. Settlement Agreement at ¶ 8 ("[T]his release shall not bar claims for medical harms or personal injuries."); see *Olden, 294 F. App'x at 219-20* ("Like any other settlement, this one requires the plaintiffs to release their claims against the defendant. . . . Specifically, the release covers claims based on 'alleged airborne pollution, emissions, releases, spills and discharges, exposure to hazardous substances, air contaminants, toxic pollutants, particulate, or odors [emanating from the Alpena plant].' Because such claims have an identical factual predicate as the claims pled in the complaint, no problem is posed by their release.").

Similarly, Jeffrey Tuccillo, Samantha and Stephen Coin, the Longs, Paige Stranko, Joshua Naprawa, and Ms. McDaid object based on their (largely unsubstantiated, but well-intentioned) safety-related concerns regarding the nonmonetary relief provided in paragraph seven of the Settlement Agreement—especially the potential that the "misting turbines" might disperse hazardous chemicals throughout **[*32]** the community. (Doc. No. 30, Ex. 2, 4-8.) Yet, Defendant has submitted extensive evidence underscoring that any odor-reducing product it uses or will use on the Landfill does not pose any danger to public health or safety. (Barry Sutch Decl., Doc. No. 34; Public Health Study, Doc. No 33 (analyzing, *inter alia*, odor-control products used at the Landfill from June 2015 through September 2015).) Defendant submitted a public health study—*Tullytown Resource Recovery Facility Landfill: Investigation of Public Health and Odor Issues in the Florence-Roebling Area*—which explains that the turbines use substances similar to those already applied to the Landfill, each composed of natural-based and commercially available products that are commonly used on landfills throughout the country. (Doc. No. 33 at 30-33 & tbl. 13.) These products contain components that are common in everyday, household goods, none of which appears on the regulatory lists of hazardous chemicals. (Id.; Doc. No. 34 at ¶¶ 14-27.) Moreover, the manufacturers of such products must submit Safety Data Sheets to the Occupational Health and Safety Administration pursuant to OHSA's Hazard Communication Standard. (Doc. No. 34; Doc. **[*33]** No 41 at 5.) The study thus concludes that "adverse public health effects . . . would not be expected to occur as a result of the odor control product air emissions at" the Landfill. (Doc. No. 33 at 33.) This evidence was corroborated with a declaration from Barry Sutch—an expert with over a decade of professional experience in landfill operations management—that he is "not aware of any public health concerns associated with odor-control systems, processes, and products that have been used at the Tullytown Landfill." (Doc. No. 34 at ¶ 27.) In light of these submissions, the complete absence of contrary evidence, and the Parties' on-the-record reassurances regarding the safety of the misting turbines, I will overrule these objections.

Although the Longs, Alan Harris, and Lori and Kevin Potpinka also object to the inadequacy of each household's monetary recovery, they mistakenly believe that each household will receive only $83 to $90. (Doc. No. 30, Exs. 2, 3, 5.) As Class Counsel explained at the hearing, however, these estimates were based on an inaccurate local newspaper report. In fact, each household that submits a qualifying claim will receive between $650 and $700, some eight times **[*34]** the amount assumed by the objectors. (Doc. No. 43 at ¶ 11); see *Moulton v. U.S. Steel Corp., 581 F.3d 344, 351-52 (6th Cir. 2009)* ("The objectors first argue that class-member awards of $300 are unconscionably low. But that objection is based on the misconception [about] the agreement . . . .").

Ms. Stranko, Mr. Naprawa, the Coins, and the Potpinkas raise the same objections regarding future monitoring of the Landfill's odors, Florence Township's air and water quality, and potential "TCE contamination" in the Delaware River. (Doc. No. 30, Ex. 4-6.) The objectors appear to suggest that they will only accept a settlement that includes "[c]onstant and long term monitoring of air and water quality . . . as well as a warning system." (Id.) These objectors have not, however, submitted any evidence suggesting the Landfill's odors have affected their water supply, or evidence contradicting Defendant's strong showing that such air-quality monitoring is unnecessary. Moreover, the objectors are in fact seeking regulatory relief through the Settlement, and in the process conflate the regulatory role of the PADEP with this Court's limited role in reviewing the fairness of an agreement between private parties to this litigation. See *Ehrheart v. Verizon Wireless, 609 F.3d 590, 593 (3d Cir. 2010)* ("A district court is not a party to **[*35]** the settlement, nor may it modify the terms of a voluntary settlement agreement between parties."). In sum, although the objectors' concerns about the quality of the air and water are well-intentioned, it is not unreasonable for the Class to settle this litigation on terms that do not compel Defendant to conduct continuous, long-term air and water monitoring. To the extent it appears that Defendant is not complying with the provisions of the Settlement Agreement, however, I will retain jurisdiction to compel compliance.

Finally, the Longs object to Defendant's denial of liability, arguing that it should instead "be made to stand trial." (Doc. No. 30, Ex. 2.) Yet, the Longs appear to misunderstand that this Settlement, like all settlements, "is a compromise," and their insistence that Defendant "stand trial" strongly suggests that they are unwilling to accept any settlement (or at least any settlement that does not require an admission of liability). *In re Gen. Motors, 55 F.3d at 806* ("[S]ettlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution."); see *In re Nat'l Football League, 821 F.3d 410, 2016 WL 1552205, at *29* ("It is the nature of a settlement that some will be dissatisfied with the ultimate result.").

I will thus overrule each *pro se* objection, **[*36]** the vast majority of the which, although made in good faith, do not impugn the reasonableness of the Settlement and are unsubstantiated or based on misconceptions regarding the Settlement's scope, the nature of the Class's claims, the safety of the odor-reducing measures, and this Court's role in reviewing the Settlement's fairness.

Next, I turn to the New Jersey Department of Environment Protection's objection. (Doc. No. 37.) On December 17, 2015, as required by the Class Action Fairness Act, Defendant mailed notice of the proposed settlement to the New Jersey and Pennsylvania Departments of Environmental Protection. See *28 U.S.C. § 1715(b)* (requiring a defendant that enters into a class-action settlement to serve appropriate state officials with notice "[n]ot later than 10 days after a proposed settlement of a class action is filed in court"); id. *§ 1715(d)* (prohibiting courts from issuing final settlement approval order earlier than ninety days after the service of notice under *§ 1715(b)*). PADEP—which has regulatory authority over the Landfill—has filed no objections to the Settlement. NJDEP—which has no authority over the Landfill—did not send a representative to the March 2 final fairness hearing to express its concerns **[*37]** about the Settlement. Rather, on March 16, 2016—ninety days after it received notice—it submitted a written objection. See *In re Ins. Brokerage Antitrust Litig., 579 F.3d 241, 261 (3d Cir. 2009)* ("[A]bsence from the hearing did not cause it to forfeit the objections it had timely submitted to the District Court in written form.").

Before addressing the merits of NJDEP's objection, I must resolve whether the Department, as a non-class member, has standing to object to the Settlement. *Anthony v. Council, 316 F.3d 412, 416 (3d Cir. 2003)* (courts "are under an 'independent obligation' to examine standing . . . 'even if the parties fail to raise the issue'" (quoting *FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 230-31, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990)))*. "The objector, as a party seeking to generate a court ruling, has the burden of demonstrating her standing." Newberg on Class Actions § 13:22 (5th ed.).

NJDEP purports to object under *section 3 of CAFA* (*28 U.S.C. 1715*), to "protect the interests of all class members, especially those that reside in the State of New Jersey." (Doc. No. 37 at 1-2.) These conclusory assertions are insufficient to establish non-class member standing to object to a proposed class-action settlement. See, e.g., Newberg on Class Actions § 13:26 (5th ed.) ("[N]onclass members (including opt-outs), nonsettling defendants, and others not subject to a class action settlement generally do not have standing to object to the settlement's approval."). **[*38]**

First, NJDEP, which objects only to protect the interests of New Jersey residents (as opposed to its own interests), has not even conclusorily alleged that it has "suffered an injury in fact," nor could it, given that NJDEP does not exercise regulatory authority over the Landfill (as I discuss below). *Anthony, 316 F.3d at 416* (tripartite test for standing); Newberg on Class Actions § 13:26 (5th ed.) ("A government entity may seek to appear and object on behalf of class members who are its citizens, perhaps framing its appearance in terms of *parens patriae*. *Courts have rejected standing on this basis*.") (emphasis added); id. (where government entity objects because "its interests are at stake and may be impaired

by the settlement . . . . the harm to the government entity must be specific and not generalized"). Second, "most courts have concluded that government officials notified of class action settlements under CAFA have neither standing to object to the settlement nor the right to intervene in the settlement under *Rule 24(a)*." Newberg on Class Actions § 13:26 (5th ed.) (discussing the standing of government entities to object); see, e.g., *In re Budeprion XL Mktg. & Sales Litig., No. 09-MD-2107, 2012 U.S. Dist. LEXIS 135313, 2012 WL 4322012, at *4 (E.D. Pa. Sept. 21, 2012)* ("CAFA affords states a right to be notified **[*39]** of class action settlements. The statute says nothing, however, of granting states a right to be heard on, or formally appeal, every class action settlement simply because residents of that state are class members."); *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010, 910 F. Supp. 2d 891, 943 (E.D. La. 2012)* ("The Gulf States do not acquire standing under CAFA's notification provision, *28 U.S.C. § 1715*. This statute simply requires notification; it does not create standing that a state official otherwise lacks."), aff'd sub nom., *In re Deepwater Horizon*, *739 F.3d 790 (5th Cir. 2014)*; *In re Am. Int'l Grp., Inc. Sec. Litig., 916 F. Supp. 2d 454, 462 (S.D.N.Y. 2013)* ("That CAFA does not affect standing is clear from the plain text, which states that '[n]othing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials.'" (quoting *28 U.S.C. § 1715(f)*))). Accordingly, NJDEP has not established that it has standing to object to the Settlement.

Even assuming, *arguendo*, that NJDEP has standing to object, I will overrule its objection. NJDEP objects to the adequacy of the nonmonetary, odor-reducing measures that Defendant must implement pursuant to paragraph seven of the Settlement Agreement. (Doc. No. 37 at 2.) Yet, the Department actually asks me to use this settlement as a vehicle **[*40]** to impose New Jersey's regulatory requirements on a landfill that falls within the exclusive regulatory authority of PADEP: "NJDEP believes that the Settlement Agreement should require the owner and operator of the Tullytown Landfill to comply with conditions established in the New Jersey regulations." (Doc. No. 37 at 2; see PADEP-Issued Operating Permit, Doc. No 41, Ex. 1; Doc. No 20-19; Doc. No 33 at 31.) I decline this remarkable invitation.

According to NJDEP, Defendant does not currently employ "minimum controls that are necessary to prevent or minimize odors," nor does the Settlement require such controls. (Id.) The Department thus urges that any settlement that does not require specific "modifications to landfill operations" is *per se* in adequate. (Id. at 3.) Citing various New Jersey regulations governing landfill operators, NJDEP demands that the Settlement require Defendant to comply with those regulations by: (1) minimizing the working face of the Landfill; (2) covering "all exposed surfaces of solid waste at the close of each operating day with a daily cover consisting of six inches of compacted clean soil or alternative cover material"; (3) applying "at least 12 inches of intermediate **[*41]** cover material" to the surface if any waste is exposed for a period exceeding twenty-four hours; and (4) installing "a sanitary landfill gas collection and venting system designed to contain malodorous gaseous emissions on sight." (Id. 2-4.) I agree with Plaintiffs that these demands confirm that "NJDEP would only be satisfied by the perfect settlement that obtains all conceivable injunctive relief"—i.e., relief that would inherently "usurp the regulatory role" of PADEP. (Doc. No. 39 at 2.)

It appears that NJDEP did not review the Landfill's operating permit before lodging its objection. Had it done so, it would have learned that PADEP already imposes numerous regulatory requirements, many of which overlap with NJDEP's demands. For instance, PADEP had already ordered the Landfill to eliminate biosolid intake by February 2015 and to cease its operations by May 2017. Indeed, PADEP requires Defendant to employ many of the measures NJDEP now urges: i.e., working face procedures and daily cover requirements, implementation and operation of landfill gas collection systems, and other nuisance-minimization and odor-control measures. (Operating Permit, Doc. No. 41, Ex. 1 at ¶¶ 37, 38, 48.) NJDEP utterly **[*42]** fails to acknowledge, as Defendant observes, the odor-control measures required by paragraph seven of the Settlement Agreement "are far from the only odor-control procedures being implemented . . . , but instead are additional commitments by [Defendant] over and above" PADEP's regulatory requirements. (Doc. No. 41 at 2; see also id. Exs. 2, 3.) It is thus telling that NJDEP's objection, despite citing New Jersey regulations at length, omits any mention of the regulatory requirements its Pennsylvania counterpart imposes on the Landfill; it is similarly revealing that PADEP, which is vastly more familiar with the Landfill's operating permit and regulatory obligations, has not raised any concerns about the adequacy of the Settlement.

NJDEP also notes that "[t]he only acceptable aerosolized misting systems use water vapor mist," and argues that because the Settlement does not "specify what vapor mist compound will be introduced into the turbine misting system" it is inadequate. (Doc. No. 37 at 2-3.) Yet Defendant's public health study provides that the "[p]roducts used in misting lines are water-based" and would not cause "adverse public health effects in Florence-Roebling." (Doc. No. 33 at 31-33.) The **[*43]** Parties also provided additional reassurances respecting the safety of the odor-reducing products at the final fairness hearing. (Doc. Nos. 33, 34; Doc. No. 39 at 2-3.)

Finally, NJDEP raises concerns that the odor-reducing products used on the Landfill will only suppress malodorous emissions rather than reducing them. (Doc. No. 37 at 3.) Even if correct, this is hardly a reason to reject the Settlement. Suppression of malodorous emissions (combined with other regulatory requirements imposed on the Landfill) still provides meaningful relief to the Class.

In sum, upon review of the record and settlement documents, and after considering all timely objections, conducting two hearings, and applying the Girsh and Prudential factors, I find that the Settlement is fair, reasonable, and adequate. *Fed. R. Civ. P. 23(e)(2)*; see *In re Nat'l Football League, 821 F.3d 410, 2016 WL 1552205, at *25* ("In the end, this settlement was the bargain struck by the parties, negotiating amid the fog of litigation. If we were drawing up a settlement ourselves, we may want different terms or more compensation . . . . But our role as judges is to review the settlement reached by the parties for its fairness, adequacy, and reasonableness."). Accordingly, I will grant final approval the Settlement pursuant **[*44]** to *Rule 23(e)*.

IV. Fairness and Reasonableness of the Requested Attorneys' Fees, Costs, and Service Awards for Class Representatives

a. Attorneys' Fees

Having previously appointed Class Counsel in my December 21, 2015 Order, I must now must conduct a "thorough judicial review" of their fee application. (Doc. No. 28 at 8); *Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 192 (3d Cir. 2000)* (quoting *In re Prudential, 148 F.3d at 333*).

"There are two basic methods for calculating attorneys' fees—the percentage-of-recovery method and the lodestar method." *In re Prudential, 148 F.3d at 333*. The percentage-of-recovery method "is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *Sullivan, 667 F. 3d at 330* (quoting *In re Rite Aid Sec. Litig., 396 F.3d 294, 300 (3d Cir. 2005))*. The lodestar method "is then used 'to cross-check the reasonableness of a percentage-of-recovery fee award.'" Id. (quoting *In re AT&T Corp., 455 F.3d 160, 164 (3d Cir. 2006)*; *In re Rite Aid, 396 F.3d at 307* ("[T]he lodestar cross-check does not trump the primary reliance on the percentage of common fund method.").

Plaintiffs have asked me to approve attorneys' fees of $545,197.53, costs of $59,802.47, and service awards of $5,000 to each Class Representative. (Doc. No. 31); *Fed. R. Civ. P. 23(h)*; see *In re CertainTeed, 303 F.R.D. at 220* ("Class counsel in a class action who recovers a common fund for the benefit of persons other than himself or **[*45]** a client is entitled to a fair and reasonable award of attorneys' fees from the fund as a whole.").

In determining whether these amounts are reasonable, I must consider:

> (1) the size of the fund created and the number of beneficiaries; (2) the presence or absence of substantial objections by class members to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time plaintiffs' counsel devoted to the case; (7) the awards in similar cases; (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement; and (10) any innovative terms of settlement.

In re Diet Drugs, 582 F.3d 524, 541 (3d Cir. 2009) (citing *Gunter, 223 F.3d at 195 n.1* & *In re Prudential, 148 F.3d at 336-40*); *Gunter, 223 F.3d at 195 n.1* ("The factors . . . need not be applied in a formulaic way. Each case is different, and in certain cases, one factor may outweigh the rest."). An application of these factors leads me to conclude that the requested fees and awards are reasonable.

*Factor One: The Size of the Fund Created and the Number of Persons **[*46]** Benefited*

I must assess the benefits the Settlement confers on the entire Class. As I have discussed, the monetary relief is signficant: the Settlement Agreement, which covers more than nine thousand residential properties, requires the creation of a $1.4 million common fund, resulting in each qualifying household receiving between $650 and $700. (Doc. No. 43 at ¶ 11.) The Settlement also requires Defendant to undertake odor-improvement measures, which the Parties value (without objection) at $600,000. (Bard Horton Decl., Doc. No. 31, Ex. 2.) Moreover, I am satisfied that the Class will tangibly and quickly benefit from these odor-reducing measures, which would not have been obtained in the absence of the Settlement.

Factor Two: The Presence or Absence of Substantial Objections by Class Members

I have already discussed at length (and rejected) the Class Members' objections to the Settlement. I note, however, that there is only one objection to counsel fees, and that objection was based on the mistaken premise that each household will receive only $83. (Doc. No. 30, Ex. 3 (Harris Objection).) The near-absence of objections to the requested fees, costs, and awards weighs in favor of granting **[*47]** the request. *In re Rite Aid, 396 F.3d at 305* ("The District Court did not abuse its discretion in finding the absence of substantial objections by class members to the fee requests weighed in favor of approving the fee request.").

Factors Three, Four, and Six: Skill and Efficiency of the Attorneys, Complexity and Duration of the Litigation, and Amount of Time Class Counsel Devoted to the Case

Class Counsel—from the Detroit-based firm Liddle & Dubin, P.C.—are among the few attorneys that specialize in class-action odor-nuisance litigation. Class Counsel skillfully and vigorously investigated and prosecuted the Class's claims. Moreover, Counsel obtained a material recovery for the Class quickly: approximately a year passed from the filing of the Complaint to the Motion for Settlement. Absent the skill and efficiency of Class Counsel, it is also unlikely that individual Class Members could have obtained any recovery on their nuisance claims. *In re Linerboard Antitrust Litig., No. CIV.A. 98-5055, 2004 U.S. Dist. LEXIS 10532, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004)* ("The result achieved is the clearest reflection of petitioners' skill and expertise.").

Similarly, prosecuting an environmental class action is a complex undertaking, involving specialized, often-technical evidence, and novel legal issues. Class Counsel spent a combined 1,106 hours **[*48]** working on this matter. (Coulson Decl., Doc. No. 30, Ex. 1); *In re Cendant Corp. PRIDES, 243 F.3d at 741* (considering complexity or novelty of the legal issues, extensive discovery, and the number of hours spent on the case). Class Counsel, *inter alia*, investigated Plaintiffs' claims, drafted the original Complaint and Amended Complaint, exchanged and reviewed voluminous documentary evidence, conducted and defended expert depositions, briefed class certification, prepared for and engaged in a full-day mediation with Defendant, sought approval of the Settlement, and attended two hearings related to the Settlement's fairness. In these circumstances, the third, fourth, and sixth Gunter factors weigh in favor of Class Counsel's fee award.

Factor Five: The Risk of Nonpayment

Class Counsel have litigated this matter on an entirely contingent basis. (Doc. No. 31 at 8.) There was thus a possibility that Counsel would have received no compensation and no reimbursement of the $60,000 in costs it expended. *In re CertainTeed, 303 F.R.D. at 223* ("Any contingency fee arrangement includes a risk of no payment."). These risks weigh in favor of the reasonableness of the requested award. *Id.*

*Factors Eight and Ten: The Value of Benefits Attributable to Class Counsel and Innovative **[*49]** Settlement Terms*

Class Counsel's experience in odor-nuisance litigation allowed them to litigate this case effectively and efficiently, and to negotiate a beneficial Settlement. Although PADEP ordered the Landfill to close in May 2017, that regulatory relief is independent and distinct from the monetary and nonmonetary benefits Class Counsel independently obtained for the Class. *In re CertainTeed, 303 F.R.D. at 223-24* ("There is no contention, by objectors or otherwise, that the settlement could be attributed to work done by other groups, such as government agencies." (quoting *Esslinger, 2012 U.S. Dist. LEXIS 165773, 2012 WL 5866074, at *14)*. This weighs in favor of Counsel's fee award.

Class Counsel concedes, however, that there are no particularly innovative settlement terms, and that the injunctive relief required by the Settlement is typical of the nonmonetary relief generally sought in nuisance cases.

Factors Seven and Nine: Awards in Similar Cases, Percentage Fee that Would Have Been Negotiated Pursuant to a Private Contingent Fee Arrangement, and Lodestar Cross-Check

As I have discussed, the monetary portion of the Settlement is $1.4 million, and the value of the nonmonetary relief is estimated to be $600,000. Here, Class Counsel seek fees of $545,197.53—approximately 27% of the total **[*50]** estimated settlement value, and 39% of the common fund (i.e., excluding the value of the nonmonetary improvement measures). Regardless of the value attributed to the nonmonetary relief, however, the requested fee award falls well within the range of reasonableness. See, e.g., *Leap v. Yoshida, No. CIV.A. 14-3650, 2015 U.S. Dist. LEXIS 17146, 2015 WL 619908, at *4 (E.D. Pa. Feb. 12, 2015)* ("Fee awards in common fund cases generally range from 19% to 45% of the fund."); *In re Schering-Plough Corp. Enhance ERISA Litig., No. CIV.A. 08-1432 DMC, 2012 U.S. Dist. LEXIS 75213, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012)* (same); *In re Ikon Office Sols., Inc., Sec. Litig., 194 F.R.D. 166, 194 (E.D. Pa. 2000)* (same); see also *In re*

*Datatec Sys., Inc. Sec. Litig., No. 04-CV-525 (GEB), 2007 U.S. Dist. LEXIS 87428, 2007 WL 4225828, at *2 (D.N.J. Nov. 28, 2007)* (approving $45,000 in costs and a fee equal to 30% of $750,000 settlement fund). The Third Circuit has also explained that fee assessment "involve[s] a sliding scale dependent upon the ultimate recovery, the expectation being that, absent unusual circumstances, the percentage will decrease as the size of the fund increases." *In re Cendant Corp. PRIDES, 243 F.3d at 738*. Courts have approved percentages similar to those sought here in class actions involving vastly bigger common funds. See, e.g., *id. at 737 n.22* (providing a chart of mega-fund settlements where approved fees ranged from 2.8% to 36%, five of which involved fees exceeding 25% of the total fund); *In re Ikon, 194 F.R.D. 166* (approving fee equal to 30% of $111 million common fund). **[*51]** The sliding scale approach to assessing class-action attorneys' fees thus suggests that the instant fee request is reasonable.

Additionally, the requested fee accords with the amount Counsel would have received had this case been subject to a private contingent fee arrangement. *In re CertainTeed, 303 F.R.D. at 224* ("In private contingency fee cases, lawyers routinely negotiate agreements for between 30% and 40% of the recovery."); *Esslinger, 2012 U.S. Dist. LEXIS 165773, 2012 WL 5866074, at *14* (same); *In re Ikon, 194 F.R.D. at 194* (same). Because the reasonableness of attorneys' fees are determined by the marketplace, and the requested fee is in line with market rates, the private market confirms the reasonableness of the requested award. Cf. *Missouri v. Jenkins by Agyei, 491 U.S. 274, 285, 109 S. Ct. 2463, 105 L. Ed. 2d 229 (1989)* ("In determining how other elements of the attorney's fee are to be calculated, we have consistently looked to the marketplace as our guide to what is 'reasonable.'").

Finally, I must use the lodestar method "'to cross-check the reasonableness of a percentage-of-recovery fee award.'" *Sullivan, 667 F.3d at 330* (quoting *In re AT&T, 455 F.3d at 164*). The lodestar calculation in this case is $416,000—based on 218 hours at $600 per hour for Steven Liddle, 696 hours at $300 per hour for Nicholas Coulson, and 192 hours at $400 per hour for Kevin Riechelson. (Coulson Decl., Doc. No. 30, Ex. 1 at 3); *In re Rite Aid, 396 F.3d at 306-07* ("The lodestar cross-check calculation **[*52]** need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records."). When Class Counsel's requested fee ($545,197.53) is divided by the lodestar figure, the total lodestar multiplier is 1.3, well within the range of reasonableness. *In re Prudential, 148 F.3d at 341* ("[M]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied." (quoting Herbert Newberg & Albert Conte, Newberg on Class Actions, § 14:03 (3d ed. 1992))); *In re Remeron, 2005 U.S. Dist. LEXIS 27013, 2005 WL 3008808, at *47-48* (multiplier of 1.8 is on the "low end of the spectrum").

In sum, the Gunter factors and the lodestar cross-check satisfy me that Class Counsel's requested fee award of $545,197.53 is reasonable.

b. Litigation Expenses

Class Counsel has requested reimbursement of $59,802.47 in costs and expenses. *Fed. R. Civ. P. 23(h)*; e.g., *In re Ikon, 194 F.R.D. at 192* ("There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of . . . reasonable litigation expenses from that fund."). Class Counsel have documented these expenses, which were incurred performing necessary tasks on behalf of the Class, including: legal research; court filings and travel; postage, **[*53]** copies, and scanning related to Class Member correspondence and notice; court reporting; and mediation. (Coulson Decl., Doc. No. 30, Ex. 1 at 4.) I will approve Class Counsel's request for reimbursement of these expenses because I am satisfied that they were reasonably and appropriately incurred during Class Counsel's prosecution of this action.

c. Service Awards for Class Representatives

I have appointed Named Plaintiffs—John Batties, Caroline Smith, Sharon Mack, and Shirl Lynn Birely—as Class Representatives. Each Class Representative now seeks a $5,000 service award. "The approval of contribution or incentive awards is common, especially when the settlement establishes a common fund." *In re CertainTeed, 303 F.R.D. at 225* ("'The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation, and to reward the public service of contributing to the enforcement of mandatory laws.'" (quoting *Sullivan, 667 F.3d at 333 n.65*)). Such awards are warranted in light of the role that the Class Representatives played in this litigation: they assisted Class Counsel's investigation of their underlying claims, complied with discovery requests, and were deposed. Their **[*54]** efforts made this Settlement possible, and they are thus entitled to the modest service awards sought.

In sum, I will approve as reasonable the requests for attorneys' fees, reimbursement of litigation expenses, and service awards.

CONCLUSION

For the foregoing reasons, I will grant Plaintiffs' Motion for final approval of the Settlement, final certification of the *Rule 23(b)(3)* settlement class, and appointment of Class Representatives and Class Counsel, as well as Plaintiffs' Motion for attorneys' fees, reimbursement of expenses, and service awards.

* * *

AND NOW, this 11th day of May, 2016, after holding two fairness hearings, and upon consideration of Plaintiffs' Motion for Final Approval of Class Action Settlement (Doc. No. 30), Plaintiffs' Motion for Award of Attorney Fees, Reimbursement of Litigation Costs, and Service Awards for Class Representatives (Doc. No. 31), the Settlement Agreement (Doc. No. 25, Ex. 10), all objections raised (Doc. No. 30, Ex. 2-8; Doc. No. 37), and the Parties' evidentiary submissions, it is hereby **ORDERED** as follows:

1. Plaintiffs' Motion for Final Approval of Class Action Settlement, Certification of Settlement Class, and Appointment of Class Representatives and Class **[*55]** Counsel is **GRANTED**. (Doc. No. 30.) Based on the foregoing, I conclude that the Settlement, which is entitled to a presumption of reasonableness, is fair, reasonable, and adequate. *Fed. R. Civ. P. 23(e)(2)*. Accordingly, the Settlement Agreement (including the Release in ¶ 8), is finally approved and shall be consummated in accordance with its terms. Furthermore, the Class is finally certified for settlement purposes only in accordance with *Rule 23*'s requirements; Named Plaintiffs (John Batties, Caroline Smith, Sharon Mack, and Shirl Lynn Birely) are finally appointed Class Representatives, and Plaintiffs' Counsel (Nicholas A. Coulson, Steven D. Lddle, and Kevin S. Riechelson) are finally appointed as Class Counsel.

2. Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Litigation Costs, and Service Awards for the Class Representatives is **GRANTED**. (Doc. No. 31.) As explained in this Order, the requested fees, costs, and service award are fair and reasonable: Class Counsel's work on this case warrants the requested $545,197.53 fee award and $59,908.47 reimbursement for litigation costs, and Class Representatives' assistance in this litigation warrants the requested $5,000 service awards.

3. All claims asserted **[*56]** by Plaintiffs and the Class against Defendant are **DISMISSED with prejudice** in accordance with the terms of the Settlement Agreement. The rights of the following individuals who timely opted-out of the Settlement shall not be affected by the Settlement or by this Order: Wesley and Stacey Fine; Gregorio, Theresa, Lorraine, Gregorio Jr., Nicole Perrio, and Lorraine M. Wolf; Kathryn Przytula; Francis J. Carroll; Reade and Karen Edwardson; Michael Sawka; Brian Embley; Barbara Gregory; Mary J. Reed; Michael and Alyson Perino; Donna Cornelison; Patricia Bradeis; and Mitchel and Kathryn Pykosz. (Doc. No. 32 at ¶ 7.)

4. Seeing no reason to delay entry of judgment, the Clerk of Court shall enter final judgment and mark this case as closed. *Fed. R. Civ. P. 54(b)*. The entry of final judgment is appropriate because this Order fully and finally adjudicates the Class's claims against Defendant, allows for immediate execution of the Settlement, and will expedite the distribution of the Settlement proceeds to Class Members.

5. Without affecting the finality of this judgment, I will retain exclusive jurisdiction over the Settlement Agreement to oversee its administration, distribution to the Class, and issues relating to **[*57]** attorneys' fees.

AND IT IS SO ORDERED

/s/ Paul S. Diamond

Paul S. Diamond, J.

May 11, 2016

Attachment 8-
Proposed Fee Agreement

Fee Agreement- PFAS Litigation SAAG

This Fee Agreement between Liddle & Dubin, P.C. (SAAG) and the Michigan Department of Attorney General ("DAG") sets forth the provisions for payment under the "SAAG Contract" entered between the parties contemporaneously hereto. As consideration for legal services rendered and to be rendered by SAAG in carrying out the purpose of the SAAG Contract, DAG agrees to pay SAAG 15% (fifteen percent) of all net amounts recovered as a result of litigation undertaken under the SAAG Contract. This percentage applies whether recovery is made through settlement, verdict, or any form of judgment and is irrespective of whether any appeals are taken.

DAG assigns, and SAAG accepts and acquires as its fee, a proportionate interest in the subject matter of any claim, action, or suit instituted or asserted under the SAAG Contract. All expenses and costs will be deducted prior to the contingent fee calculation to the extent there is a recovery on the claim in question. DAG is only obligated to repay costs and expenses to the extent there is a recovery on the claim in question. Any liens and subrogation are to be deducted after the contingent fee is calculated

SAAG shall be reimbursed all reasonable expenses associated with the legal services being rendered including, but not limited to, legal research, long distance telephone calls, fax, postage, copying, travel, litigation, and expert expenses. DAG grants a special privilege to SAAG for their professional fees, expenses, costs, interest, and loans, on all monies and properties recovered or obtained. DAG's repayment of costs and expenses is contingent on the outcome from any funds received on the claim in question. DAG is only obligated to repay costs and expenses to the extent there is a recovery on the claim in question and the amount of costs and expenses recovered may not exceed the recovery. If SAAG borrows money from any lending institution to finance any portion of the cost of the DAG's case, the amounts advanced by SAAG to pay the cost of prosecuting or defending a claim or action or otherwise protecting or promoting DAG's interest will bear interest at the highest lawful rate allowed by applicable law. However, in no event will the recoverable interest be greater than the amount paid by the firm to the lending institution.

If SAAG terminates the SAAG Contract pursuant to section 9.1 of the SAAG Contract, or if DAG terminates the SAAG Contract pursuant to Section 9.2 of the SAAG Contract, SAAG shall be entitled to a proportional share of the attorneys' fees of any recovery ultimately obtained in any action brought pursuant to the SAAG Contract. Such share shall be calculated by determining the amount that SAAG would have been entitled to had it completed all SAAG litigation in which it was involved, and reducing that amount by the percentage of total hours expended on the matter by other SAAG attorneys. For example, if SAAG expends 750 hours litigating an action, and the SAAG Contract was terminated before different counsel expended 250 more hours on the action, SAAG would be entitled to 75% of the fee it would have earned had it expended all 1000 hours on the case.

Dated: _____

_____
Steven D. Liddle for SAAG

Dated:_____

_____
Dana Nessel, Attorney General or her Designee
Michigan Department of Attorney General