

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

COMMISSIONERS OF PUBLIC WORKS OF )	Civil Action No. 2:24-cv-02935-RMG
THE CITY OF CHARLESTON (d.b.a. )	
Charleston Water System), Individually and on )	<u>CLASS ACTION</u>
Behalf of All Others Similarly Situated, )	
Plaintiff, )	JOINT DECLARATION OF VINCENT M.
vs. )	SERRA AND F. PAUL CALAMITA IN
DUDE PRODUCTS INC., )	SUPPORT OF PLAINTIFF’S MOTION FOR
Defendant. )	FINAL APPROVAL OF CLASS ACTION
_____ )	SETTLEMENT AND AN AWARD OF
)	ATTORNEYS’ FEES AND EXPENSES
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)	

Vincent M. Serra declares as follows:

1. I, Vincent M. Serra, am an attorney duly licensed to practice in the States of New York and California, and in the District of Columbia, a partner of the law firm Robbins Geller Rudman & Dowd LLP (“Robbins Geller” or “Class Counsel”), and am admitted *pro hac vice* to this Court. I represent plaintiff, the Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) (“Plaintiff” or “CWS”), in this action (the “Litigation”).<sup>1</sup> I have been actively involved in the prosecution and resolution of the Litigation, am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my involvement in this Litigation and supervision of, or communications with, other lawyers and staff assigned to this Litigation.

F. Paul Calamita declares as follows:

2. I, F. Paul Calamita, am an attorney duly licensed to practice in the States of South Carolina, Virginia, Maryland, North Carolina, West Virginia, and Missouri, the chairman of the law firm AquaLaw PLC (“AquaLaw” or “Class Counsel”), and I represent Plaintiff in this Litigation. I have been actively involved in the prosecution and resolution of the Litigation, am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my involvement in this Litigation and supervision of, or communications with, other lawyers and staff assigned to this Litigation.

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

Exhibit A Confirmation of Email Notice

Exhibit B Excerpt of the WE&T August 2024 Issue with Summary Notice

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<sup>1</sup> All capitalized terms that are not otherwise defined herein have the same meanings ascribed to them in the Stipulation of Settlement entered into between Plaintiff and Dude Products Inc. dated May 10, 2024 (the “Settlement Agreement” or “Settlement”).

Vincent M. Serra and F. Paul Calamita, declare as follows:

4. We respectfully submit this Declaration in support of: (1) Plaintiff's Motion for Final Approval of Class Action Settlement; and (2) Class Counsel's Application for an Award of Attorneys' Fees and Expenses. This Declaration demonstrates why the proposed Settlement is fair, reasonable, adequate, in the best interests of the Settlement Class (defined below), and warrants final approval by the Court. This Declaration also supports the basis for Class Counsel's request for an award of attorneys' fees of \$272,006.75 and expenses of \$2,993.25.

## **I. THE NATURE AND PROCEDURAL HISTORY OF THE LITIGATION**

### **A. Summary of Plaintiff's Allegations**

5. This is a putative class action brought against defendant Dude Products Inc. ("Defendant" or "Dude Products") alleging Defendant's deceptive, improper, or unlawful conduct in the design, marketing, manufacturing, distribution, and/or sale of flushable wipes caused recurring property damage.

6. The action asserts causes of action against Defendant – a significant retailer in the flushable wipes market – for nuisance, trespass, defective design, failure to warn, and negligence on behalf of a proposed settlement class ("Settlement Class") consisting of all entities that own and/or operate sewage or wastewater conveyance and treatment systems, including municipalities, authorities and wastewater districts (sewage treatment plant, or "STP Operators") in the United States whose systems were in operation between May 9, 2021 and May 31, 2024 (the "Settlement Class Period"), the date of entry of the Preliminary Approval Order (defined below).

7. As described in the Class Action Complaint (the “Complaint”), Plaintiff alleges that Defendant’s flushable wipes (the “Products”)<sup>2</sup> are unsuitable for flushing, making them improperly labeled as “flushable” or “safe for sewer and septic systems.” ¶¶20-26.<sup>3</sup> Plaintiff alleges the Products do not disperse in a sufficiently short amount of time to avoid clogging or other operational problems, as indicated by independent testing and numerous instances of clogs and backups in wastewater systems nationwide, and thus cause ongoing damage to STP Operators’ sewer treatment facilities. ¶¶25-46. The Complaint describes undisputed “flushability” testing of Defendant’s flushable wipes that highlights the lack of empirical support for Defendant’s “flushable” claims (¶¶25-26), and details wastewater utilities’ negative experiences with flushable wipes which similarly did not disperse in sewer systems, including their costly efforts to address and remediate damage caused in part by Defendant’s products. ¶¶38-46.

8. Notably, Plaintiff’s experience with flushable wipes includes, for example, a massive 12-foot-long clog removed from its system in October 2018 (causing over \$140,000 in damage) and another major clog in June 2019 (causing approximately \$60,000 in damage). ¶¶31-34. To address the ongoing problems associated with Defendant’s Flushable Wipes, Plaintiff invested more than \$2 million to install a Supervisory Control and Data Acquisition (“SCADA”) system at each of its 213 pump stations, to allow for continuous remote monitoring of each pump station to provide early notification of potential wipe-related clogs. ¶36. Plaintiff has also installed screens and/or bar screen overlays within approach channels at vortexes to capture and remove wipes, which cost \$120,000 in the five years preceding the filing of the Complaint. *Id.*

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<sup>2</sup> The Products are defined in the Settlement Agreement to mean “moist wipes products labeled as flushable under the name “DUDE Wipes” or other flushable wipes sold in the United States by Defendant under its brand. Settlement Agreement ¶1.18.

<sup>3</sup> References to “¶\_\_” and “¶¶\_\_” refer to the Complaint, filed on May 9, 2024 . ECF No. 1.

9. The Complaint seeks injunctive relief only – in the form of (1) accurate and truthful labeling to remedy costly and ongoing damage to Plaintiff’s wastewater facilities due in significant part to the inability of Defendant’s current, purportedly “flushable” wipes to break down and disperse sufficiently to pass through Plaintiff and Class members’ wastewater systems and (2) a commitment that products which the Defendant labels as being “flushable” in the future will properly disperse in public sewer systems. ¶1; *Id.* at Prayer for Relief, C-G.

## **B. Procedural History**

### **1. The Litigation**

10. Class Counsel’s efforts in connection with the Litigation and on behalf of Plaintiff began years before the filing of the Complaint. Indeed, Class Counsel began its factual investigation in November 2018, shortly after it was first reported that flushable wipes contributed to major clogging of CWS’s sewer system and facilities. Even before then, Robbins Geller was litigating an analogous case on behalf of a different STP Operator against Defendants in the Eastern District of New York – *The Preserve at Connetquot Homeowners Association, Inc. v. Costco Wholesale Corporation, et al.*, No. 2:17-cv-07050-JFB-AYS. Plaintiff’s expert consultant in *Preserve* – Robert Villée, the former Executive Director of the Plainfield Area Regional Sewerage Authority and former chair of WEF – among others, advised Plaintiff in connection with Plaintiff’s initial investigation into industry practices that lead to settlements in related litigation (discussed below) preceding this action.

11. Class Counsel’s investigation of the Litigation followed a thorough investigation and litigation in *Commissioners of Public Works of the City of Charleston v. Costco Wholesale Corporation et al.*, 2:21-cv-00042-RMG (ECF No. 1) (the “Related Action”), which included a review of publicly available information, including, *inter alia*, countless media reports, flushability testing results, an FTC investigation, and pending litigation against numerous wipes manufacturers

and retailers. The investigation also included extensive communications with CWS and other wastewater systems nationwide about their experiences dealing with flushable wipes at their facilities, and coordination with industry experts and consultants – including Mr. Villée and Barry Orr, a prominent wastewater industry specialist and representative of the Canadian Water and Wastewater Association on the International Water Services Flushability Group (“IWSFG”), a group of water associations, utilities, and professionals focused on flushability – who advised Class Counsel on the factual bases of Plaintiff’s claims. Class Counsel also consulted with numerous state and national associations of sewer system operators about their wipes-related challenges and potential solutions.

12. Plaintiff filed its initial complaint in the Related Action on January 6, 2021 and ultimately reached settlements with each of the seven defendants that resulted in industry-wide improvements to defendants’ flushable wipes and labeling of their non-flushable wipes products. The Dude Products Settlement Agreement was made possible in large part due to the substantial litigation (and successful settlements) with the prior settling defendants, including briefing five motions to dismiss Plaintiff’s initial and amended complaints, with Plaintiff ultimately overcoming defendants’ motions.

13. There was also considerable discovery with the prior settling defendants, including the development of a Stipulated Protective Order, a Joint Protective Order under Fed. R. Evid. 502(d) in connection with the production of privileged discovery materials, and an ESI protocol.

14. Plaintiff and the prior settling defendants spent months working out a protocol for the preservation of physical evidence. Class Counsel’s preservation proposals were made in consultation with CWS and Plaintiff’s expert consultants and were developed to balance the need for the preservation of physical clog and debris material with the difficulties, practicalities, and

logistical complications associated with handling and storing such material, including health and safety considerations and the diversion of significant monetary and human resources of Plaintiff.

15. The investigation and litigation of the Related Action informed Plaintiff's thorough investigation here, which including the review of publicly available information, including, *inter alia*, countless media reports, market analyses, and flushability testing results. Plaintiff also retained Mr. Orr to conduct IWFSG testing of Defendant's flushable wipes. Armed with the results of these tests, which confirmed that Defendant's flushable wipes did not in fact meet the requisite IWFSG dispersibility threshold, Plaintiff prepared and filed its complaint on May 9, 2024 (setting forth claims for nuisance, trespass, defective design, failure to warn, and negligence on behalf of STP Operators in South Carolina and throughout the country).

## **2. Settlement Negotiations**

16. The Settlement provides critical injunctive relief to municipal wastewater systems throughout the country, including a commitment by Defendant to meet a national municipal wastewater industry flushability standard for its flushable wipes and labeling improvements for non-flushable wipes – to resolve all of Plaintiff's Released Claims against Defendant during the Settlement Class Period. The Settlement is the result of arm's-length negotiations between Class Counsel and Defense Counsel that followed months of negotiations, years of related litigation against other flushable wipes manufacturers and retailers, and five analogous settlements approved by this Court. Dude Wipes' counsel is highly experienced in these matters, having settled a related (damages) class action case involving Defendant's products just last fall. *See Darnall et al. v. Dude Products Inc.*, Case No. 2023LA000761 (Ill. Cir. Ct. 2023) ("*Darnall*" or the "*Darnall Action*"), which was approved by the Court on November 16, 2023.

17. Plaintiff and Class Counsel believe that the Settlement – which largely parallels the recent settlements with Costco Wholesale Corporation, CVS Health Corporation, The Procter &

Gamble Company, Target Corporation, Walgreen Co., and Walmart, Inc., and the earlier settlement with Kimberly-Clark Corporation, in the Related Action – presents an excellent result for the Settlement Class in the face of substantial uncertainty, and will provide wastewater treatment facilities nationwide with significant additional relief from wipes-related clogs and blockages given Defendant’s increasingly large share of the flushable wipes market and the key fact that Defendant’s products are extra-large in size (a key aspect of its advertising of same).

18. Class Counsel researched and monitored Defendant’s market share and products during the pendency of the prior litigation noted above. Class Counsel carefully reviewed the class action damages settlement in the *Darnall* Action involving Defendant, which was approved by the Court on November 16, 2023.

19. Plaintiff was both disappointed and concerned that the *Darnall* settlement provided only compensation to consumers for prior damages caused by Defendant’s products not dispersing upon being flushed and did not require that Defendant’s future products actually disperse when flushed or, failing that, that they be fairly labelled to warn consumers they should not flush Defendant’s products. These concerns were especially significant given the extra-large size of Defendant’s products and its significant increase in national market share over the past five or more years.

20. Thereafter, Class Counsel, through its expert, performed testing of Defendant’s Products and found that they only dispersed approximately 20 percent in the IWSFG Publicly Available Specification (PAS) 3: 2020 “Slosh Box” disintegration test<sup>4</sup> (“IWSFG 2020: PAS 3”),

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<sup>4</sup> The Slosh Box Disintegration Test is a testing metric widely used in the flushable wipes industry, including by certain Defendant’s own trade association – “INDA,” the Association of the Nonwoven Fabrics Industry – to determine flushability. The IWSFG 2020: PAS 3 Slosh Box Disintegration Test contains a testing methodology and acceptance criteria far more stringent than INDA’s own Slosh Box Disintegration Test contained in the Guidelines for Assessing the Flushability of Disposable Nonwoven Products (GD4) given, *inter alia*, the IWSFG’s significantly shorter test duration, lower RPMs

a standard adopted by this court of a minimum of 80 percent in the prior settlements with defendants Costco Wholesale Corporation, CVS Health Corporation, Kimberly-Clark Corporation, The Procter & Gamble Company, Target Corporation, Walgreen Co., and Walmart, Inc.

21. Class Counsel then initiated and engaged in discussions with Defendant's counsel in late 2023. Throughout the subsequent settlement negotiations, Plaintiff sought to replicate the core elements of the successful settlements with defendants in the Related Action, with the goal of providing added relief to STP Operators nationwide through commitments by the Defendant to achieve compliance with the wastewater industry's preferred flushability standards for their flushable wipes products, and, to submit to confirmatory testing for two years and improve the labeling of their non-flushable wipes products. The cumulative effect of the Settlement is designed to provide much-needed additional relief to STP Operators, including the reduction of flushable and non-flushable wipes accumulating in Class Members' wastewater systems, and the corresponding reduction of wipes-related clogs and the financial burdens associated with addressing such clogs. Such burdens also include the costs associated with wipes-related clogs which result in sewer overflows to public and private property in the areas served by Class Members.

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(causing less disturbance to the wipes during the test period) and higher percentage "pass through" threshold. Cf. *Publicly Available Specification (PAS) 3:2020 Disintegration Test Methods – Slosh Box*, INTERNATIONAL WATER SERVICES FLUSHABILITY GROUP (Dec. 2020), <https://www.iwsfg.org/wp-content/uploads/2021/06/IWSFG-PAS-3-Slosh-Box-Test-2.pdf> at 13 with *Guidelines for Assessing the Flushability of Disposable Nonwoven Products*, INDA & EDANA (May 2018), [https://www.edana.org/docs/default-source/product-stewardship/guidelines-for-assessing-the-flushability-of-disposable-nonwoven-products-ed-4-finalb76f3ccdd5286df88968ff0000bfc5c0.pdf?sfvrsn=34b4409b\\_2](https://www.edana.org/docs/default-source/product-stewardship/guidelines-for-assessing-the-flushability-of-disposable-nonwoven-products-ed-4-finalb76f3ccdd5286df88968ff0000bfc5c0.pdf?sfvrsn=34b4409b_2) at 9. Coupled with the Defendant's commitments that their flushable wipes do not contain plastics (Settlement Agreement ¶2.1(a)(ii)), compliance with the IWSFG 2020: PAS 3 specification will effectively bring the Defendant's flushable wipes into full compliance with the IWSFG flushability specifications. See IWSFG Flushability Specifications, <https://www.iwsfg.org/iwsfg-flushability-specification/>.

22. As noted, counsel for Plaintiff and Defendant began discussing Plaintiff's concerns about the labeling and flushability of Defendant's products in late 2023 and early 2024. Following receipt of the testing results indicating that Defendant's wipes failed the IWSFG 2020: PAS 3 test, the Settling Parties began discussing the contours of a possible settlement. In early January 2024, Defense Counsel indicated that Defendant was willing to consider entering into a settlement agreement similar to the structural guidepost of the prior settlements which this Court had already approved. During this time, Class Counsel had been investigating, drafting, and finalizing its complaint against Defendant, as discussed above, to file either on its own, absent settlement, or in connection with a settlement agreement.

23. Class Counsel promptly drafted a stipulation of settlement, and in late February 2024, sent the agreement to Defense Counsel for Defendant's review. The Settling Parties exchanged several drafts of the stipulation over the following weeks and were able to reach agreement as to the central elements of settlement – including a commitment that Defendant's flushable wipes will comply with the IWSFG 2020: PAS 3 flushability specification, a two-year confirmatory testing requirement, and labeling enhancements for any non-flushable wipes – in mid-March, 2024.

24. Following agreement on the central tenets of the substantive injunctive settlement relief, the Settling Parties then turned to attorneys' fee negotiations. Those negotiations were aided by the extensive negotiations with the defendants in the Related Action – which came after extensive assistance from a mediator who was experienced assisting with flushable products cases and associated fee/expense provisions. During this time, Defense Counsel shared the results of Defendant's own testing of its flushable wipes indicating progress toward compliance with the substantive settlement terms. The attorneys' fee and settlement negotiations were also informed

by the Court's imposition of an impending trial date in the Related Action, in the absence of settlement, that the parties viewed as compressed given the need to finish discovery and address class certification. Class Counsel and Defendant reached agreement on attorneys' fees and expenses in mid-April, 2024. Over the course of the following weeks, Plaintiff and Defendant continued to document the specific terms of the Stipulation of Settlement. On May 9, 2024, Plaintiff filed its Complaint against Defendant. ECF No. 1. On May 10, the Settling Parties formally executed the Stipulation of Settlement. ECF No. 2.

### **3. Preliminary Approval and Notice**

25. Plaintiff filed a motion for preliminary approval of the Settlement with accompanying memoranda of law and exhibits, on May 10, 2024. ECF No. 5. The Court granted Plaintiff's Preliminary Approval Motion on May 31, 2024 (the "Preliminary Approval Order") (ECF No. 14), and following the submission of a proposed schedule governing the remaining settlement-related proceedings, issued a Specialized Scheduling Order for Settlement on June 12, 2024, establishing various deadlines regarding the Settlement. ECF No. 16.

26. Pursuant to these Orders, by June 28, 2024, Class Counsel provided email Notice to the State publicly owned treatment works wastewater associations and other entities identified in ¶7.2 of the Settlement Agreement (*see* Ex. A attached hereto), and developed and activated a website dedicated to the Settlement with pertinent information for Settlement Class Members, including the Notice and other case and settlement-related documents, the deadlines associated with the Settlement, answers to FAQs, and Class Counsel's contact information (address, phone and email) should Settlement Class Members have additional questions about the Settlement. Settlement Agreement ¶7.3; [www.charlestonwipessettlement.com](http://www.charlestonwipessettlement.com).

27. The Notice apprises Settlement Class Members of their right to, and the deadline by which they must, object to the Settlement and/or Class Counsel's application for the requested

attorneys' fees and expenses. The Notice also states that Settlement Class Members can request to speak about their opinion of the Settlement and/or the requests for attorneys' fees and expenses at the Final Approval Hearing, gives information about the Settlement and its benefits, and provides further explanation about the various ways to receive additional information about the Settlement. Additionally, Class Counsel and Defense Counsel coordinated and caused the Summary Notice to be published in the August 2024 print and online editions of WEF's *Water Environment & Technology* magazine. See Ex. B attached hereto.

28. Class Counsel also supervised the efforts of Gilardi & Co. LLC ("Gilardi") to disseminate the First-Class mail notice to Settlement Class Members and to oversee and effectuate publication of notice via press release. Submitted herewith is the Declaration of Ross D. Murray Regarding Notice Dissemination and Publication, which attests to the services that Gilardi has performed, including that these notices having been mailed to over 15,000 Settlement Class Members – generated from a list obtained from the U.S. Environmental Protection Agency's online portal on November 1, 2023 – and transmitted over *Business Wire*. To date, there have been no formal objections from any Settlement Class Member.

## **II. THE SETTLEMENT**

### **A. The Settlement Was Fairly, Honestly, and Aggressively Negotiated by Counsel Who Endorse the Settlement**

29. The terms of the Settlement were negotiated by the Settling Parties at arm's length through adversarial, good faith negotiations. The Settlement was reached only after intense settlement negotiations in the Related Action and after months of negotiations amongst Class Counsel and Defense Counsel – both of whom had experience in settling wipes-related class action lawsuits. Class Counsel were ultimately able to ensure the Defendant would commit to meeting key product flushability standards (including the IWSFG 2020: PAS 3 specification), submit to

two years of periodic independent confirmatory testing, and commit to improvements to the labeling of certain non-flushable wipe-related products. Settlement Agreement ¶2.1.

30. Class Counsel have extensive experience representing public utilities and other governmental entities in complex and other litigation in federal and state courts nationwide. Robbins Geller has considerable expertise in flushable wipes-related litigation having litigated flushable wipes class actions, including the analogous *Preserve* matter and *Kurtz v. Costco Wholesale Corp.* consumer matter in the Eastern District of New York, No. 14-cv-1142, for nearly a decade, and has achieved favorable results in a variety of important and unprecedented complex class actions. *See, e.g.*, <https://www.rgrdlaw.com/services-litigation-consumer-fraud-privacy-litigation.html>. Likewise, AquaLaw is a preeminent firm with a wide-ranging municipal water practice, serving public utilities and other entities nationwide and litigating a wide range of disputes in courts involving water and infrastructure. *See, e.g.*, [www.aqualaw.com/our-focus/](http://www.aqualaw.com/our-focus/). Notably, Robbins Geller and AquaLaw served as co-class counsel in the analogous Related Action previously pending before this Court, which, as discussed above, resulted in five settlements with seven leading manufacturers and/or retailers of flushable wipes, representing a significant share of the market.

31. Defense Counsel are experienced lawyers from Barnes & Thornburg, LLP, one of the 100 largest firms in the United States with a reputation for vigorous advocacy in the defense of complex class action litigation. Defense Counsel continue to deny any wrongdoing or legal liability for any wrongdoing on behalf of Defendant and would vigorously press their client's defenses if the matter were taken to litigation.

32. The volume and substance of Class Counsel's knowledge of the merits and potential weaknesses of Plaintiff's claims are adequate to support the Settlement. It took hard and

diligent work by skilled counsel to develop the facts and theories which persuaded the Defendant, representing a meaningful share of the flushable wipes market, to enter into serious settlement negotiations requiring changes to its' business practices, product improvements, and labeling enhancements for any non-flushable wipes. As discussed above, Class Counsel conducted an extensive factual investigation of the Related Action beginning over five years before the filing of the Complaint, including coordination with industry experts and consultants and the review of extensive media reports, testing analyses, and pending litigation against other wipes manufacturers and retailers. Class Counsel also thoroughly researched the law applicable to the claims of the Settlement Class and applicable defenses thereto, including analyzing the strengths and weaknesses of numerous other unsuccessful class actions on behalf of STP Operators against flushable wipes manufacturers regarding alleged misrepresentations in connection with the sale of flushable wipes, and developed a robust Complaint. Class Counsel gained even greater knowledge of the merits of Plaintiff's claims as a result of the discovery process and settlement negotiations with prior settling defendants in the Related Action, and based on Robbins Geller's history of litigating flushable wipes-related damages claims against Costco, Kimberly-Clark and other manufacturer/retailers. The accumulation of these efforts permitted Plaintiff and Class Counsel to be well-informed of the strengths and weaknesses of their case and to engage in effective settlement discussions.

33. In deciding to enter into the Settlement, Plaintiff and Class Counsel considered, among other things, the substantial immediate benefit to Settlement Class Members under the terms of the Settlement Agreement, and the risks of continued litigation, including the legal hurdles and risks involved in opposing a motion for class certification and/or summary judgment, as well

as the further risk, delay, and expense in ultimately proving liability and damages, particularly in a case such as this where causation issues are highly contested.

**B. The Terms of the Settlement**

34. The Settlement provides meaningful injunctive relief in response to Plaintiff's claims. *First*, the Defendant commits that the Products it manufactures will meet the IWSFG 2020; PAS 3 flushability specifications by November 10, 2025. Settlement Agreement ¶2.1(a).

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

36. *Third*, the Defendant has agreed to labeling changes for non-flushable products by agreeing to meet the "Do Not Flush" labeling standards set forth in, *inter alia*, Chapter 590 of Assembly Bill No. 818 ("AB818") of California State – considered the most stringent labeling law in the United States – nationwide to the extent its products are "Covered Products" as defined in AB818. Settlement Agreement ¶2.1(c). The non-flushable labeling provisions are designed to provide supplemental relief by further minimizing the impact of any non-flushable wipe products on Settlement Class Members' wastewater systems.

**C. The Settlement Eliminates the Risks and Any Potential Delay of Injunctive Relief for Plaintiff and the Settlement Class**

37. During the Litigation, throughout the settlement discussions, and in other previous flushable wipes litigation (including in the Related Action), the Defendant (and its counterparts in the similar litigation) previewed many of the arguments that it would undoubtedly set forth, including at the summary judgment and class certification stages, in the absence of settlement.

The Defendant would attempt to refute Plaintiff's allegations concerning and/or supporting standing, causation, the viability of a nationwide class, and Plaintiff's request for a permanent injunction. While Plaintiff has defeated motions to dismiss asserting such arguments in the Related Action, it cannot be certain that the Court will continue to reject those arguments in the future – particularly at the summary judgment stage – and as a result Plaintiff faces the risk of failing to obtain meaningful injunctive relief for the Settlement Class. Moreover, causation and the viability of a nationwide class, at a minimum, would be costly and hotly contested issues if the Litigation continued. The Settlement, therefore, eliminates this risk and provides substantial, immediate benefits to the Settlement Class.

38. The process of ultimately proving liability and entitlement to injunctive relief requires further expert work in examining the performance of Defendant's flushable wipes (which would likely require the negotiation and adoption of a preservation protocol along the lines of which the parties negotiated in the Related Action), exchanging expert reports and rebuttal reports, taking expert depositions, briefing *Daubert* motions and/or holding *Daubert* hearings, briefing summary judgment, and prevailing at trial. This is a costly and time-consuming process that is not guaranteed to enhance the injunctive relief the Settlement Class is currently expected to receive under the terms of the Settlement described above, and would require significant and costly preservation efforts on the part of Plaintiff, along with expert analysis of physical clog material by Plaintiff's and the Defendant's experts.

39. Based on their extensive experience in the Related Action, other flushable wipes-related litigation, water and wastewater-related issues, class action litigation, and in this case, and after weighing the substantial benefits of the Settlement against the numerous obstacles to recovery

after continued litigation, Class Counsel maintains that the Settlement is fair, reasonable, and in the best interest of the Settlement Class.

### **III. CLASS COUNSEL'S REQUESTED AWARD OF ATTORNEYS' FEES AND EXPENSES IS REASONABLE**

40. Class Counsel has substantial experience representing public utilities and other entities in complex cases, including in this District and in district courts throughout the Fourth Circuit. As described above, Class Counsel brought their substantial experience to bear, working efficiently and diligently to obtain an excellent result for the Settlement Class on a wholly contingent basis. The lodestar multiplier for the requested fee is 1.5, and the total requested fee and expense award of \$275,000 is no larger than the amount described in the Notice. The requested fee is the smallest of any of the related settlements which have already been approved by this Court, despite Defendant being the last among those entities to settle and to have their products meet the IWSFG dispersibility standard and appropriate product labeling specified in the Settlement. Class Counsel's experience and advocacy were required in presenting the strengths of the case, from the initiation of their investigation to the Settlement and thereafter, in an effort to achieve the best possible result and convince the Defendant and Defense Counsel of the risks their client faces from litigating Plaintiff's claims. The Settlement represents a substantial recovery for the Settlement Class, attributable to the diligence, determination, hard work, and reputation of Class Counsel. In light of Class Counsel's significant efforts in the face of numerous risks, we respectfully submit that the fee request is reasonable and warrants approval.

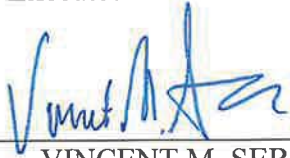
### **IV. CONCLUSION**

41. Given that the Settlement will result in critical injunctive relief in ensuring, *inter alia*, that Dude Products Inc.'s extra-large flushable wipes meet the national municipal wastewater standard for flushability, and that the Defendant commits to confirmatory flushability testing and

enhancements to the labeling of any non-flushable wipes that it may sell, and given the uncertainty surrounding whether Plaintiff would have ultimately prevailed, Class Counsel respectfully submits that the Settlement is fair, reasonable, and adequate, and warrants final approval. Class Counsel also submits that its request for an award of attorneys' fees of \$272,006.75 and expenses of \$2,993.25 is reasonable and warrants this Court's approval.

We declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of August, 2024.



VINCENT M. SERRA



F. PAUL CALAMITA

## EXHIBIT A

**From:** [Clay Kulesza](#)  
**To:** [Paul Calamita](#)  
**Cc:** [Ellen Egen](#)  
**Subject:** FW: Special Notice of Dude Products Flushable Wipes Settlement to Select POTW Associations  
**Date:** Wednesday, June 26, 2024 11:20:34 AM  
**Attachments:** [Long Form Class Notice of DUDE Products Settlement.pdf](#)

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Paul, just confirming for you that the attached Notice was sent out via BCC to the following emails:

[pnichols@wef.org](mailto:pnichols@wef.org);  
[AAspatore@nacwa.org](mailto:AAspatore@nacwa.org);  
[jjohnson@beckleysanitaryboard.org](mailto:jjohnson@beckleysanitaryboard.org);  
[customercare@wwoa.org](mailto:customercare@wwoa.org);  
[Bill.Gase@ArlingtonTx.Gov](mailto:Bill.Gase@ArlingtonTx.Gov);  
[info@municipalauthorities.org](mailto:info@municipalauthorities.org);  
[rees.alexander@squirepb.com](mailto:rees.alexander@squirepb.com);  
[office@oawu.net](mailto:office@oawu.net);  
[pgallos@aeanj.org](mailto:pgallos@aeanj.org);  
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[burkeiii.kevin@comcast.net](mailto:burkeiii.kevin@comcast.net);  
[jvoskuhl@casaweb.org](mailto:jvoskuhl@casaweb.org);  
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[jbebermeyer@apwa.net](mailto:jbebermeyer@apwa.net);  
[info@nlc.org](mailto:info@nlc.org)  
[sgimont@naco.org](mailto:sgimont@naco.org);  
[matt@nrwa.org](mailto:matt@nrwa.org);  
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Clay

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**From:** Clay Kulesza  
**Sent:** Wednesday, June 26, 2024 11:19 AM  
**To:** Clay Kulesza <cfkulesz@gmail.com>  
**Cc:** Paul Calamita <paul@aqualaw.com>; Vince Serra <vserra@rgrdlaw.com>  
**Subject:** Special Notice of Dude Products Flushable Wipes Settlement to Select POTW Associations

**Notice Of Charleston Water System Flushable Wipes Settlement With DUDE Products Inc.**

We hope everyone is doing well.

We are writing to a group of wastewater/governmental state and national associations identified to receive special notice in a recent class action flushable wipes litigation settlement between the Charleston Water System and DUDE Products Inc.. This settlement is nearly identical to prior settlements you received notice of between Charleston Water System and (1) Kimberly-Clarke and (2) Walmart, Costco, Target, CVS, Walgreens, and Proctor & Gamble.

We want to alert you (and through you, your members) that Federal District Court Judge Richard Gergel has given preliminary approval to a wipes-related [Class Action Settlement](#) between the Charleston Water System and the Defendant. A final fairness hearing will be held on September 27, 2024 at 10 a.m. in Judge Gergel's courtroom in Charleston, SC. Your members may submit objections to the settlements by September 6, 2024.

The settlements only address **injunctive relief** and do not affect any of your members' potential individual claims against DUDE Products for damages or other monetary relief due to wipes-related blockages.

The settlements generally require the Defendant to (1) ensure its flushable wipes meet the national municipal flushable wipes dispersibility test (IWSFG) and (2) improve its labeling of non-flushable products. The settlement is nearly identical to Charleston Water System's 2021 settlement with Kimberly-Clark Corporation and 2023 settlements with Walmart, Costco, Target, Walgreens, CVS, and Procter & Gamble. The IWSFG test was developed by key municipal wastewater stakeholders including the National Association of Clean Water Agencies. The settlement is also consistent with the WIPPES Act that is moving through Congress.

We urge you to forward or otherwise share this email with your members. They can visit [www.Charlestonwipesettlement.com](http://www.Charlestonwipesettlement.com) to review the settlement documents and other important information. All POTWs in the country will also receive direct notice of these settlements by US mail. There will also be a notice in the August WE&T Magazine.

We will greatly appreciate your confirming for us that you have or will forward this notice to your members.

We believe the settlement is extremely favorable for POTWs nationwide by ensuring that the Defendant's Flushable Wipes will meet the national municipal flushability standard for flushable wipes (IWSFG 2020) and that Defendant will provide much improved warnings on the packaging of any non-flushable wipe products that it makes or sells. In combination with the previous Kimberly-Clark, Walmart, Costco, Target, Walgreens, CVS, and Procter & Gamble flushable wipes settlements, we believe this settlement will significantly reduce the impacts POTWs are seeing from both flushable and non-flushable wipes-related maintenance, equipment damage, and sewer blockages attributable to wipes.

If you or any of your members have any questions, please contact Class Counsel Paul Calamita (AquaLaw) via email at [paul@aqualaw.com](mailto:paul@aqualaw.com). Thank you.

Sincerely,

Clay Kulesza

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

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

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

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

National League of Cities. [www.nlc.org](http://www.nlc.org)

American Public Works Association. [www.awwa.org](http://www.awwa.org)

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

State POTW wastewater associations. The Notice will be provided to State POTW

wastewater associations, including:

South Carolina Water Quality Association. <http://www.scwqa.org/>  
California Association of Sanitation Authorities. <https://casaweb.org/>  
Illinois Association of Wastewater Agencies. [www.ilwastewater.org](http://www.ilwastewater.org)  
Maine Wastewater Control Association. [www.mwwca.org](http://www.mwwca.org)  
Maryland Association of Municipal Wastewater Agencies. <http://www.mamwa.org/>  
Association of Missouri Cleanwater Agencies. <http://www.amoca.info/>  
New England Water Works Association – [www.newwa.org](http://www.newwa.org)  
North Carolina Water Quality Association. <http://ncwqa.com/>  
New Jersey Association of Environmental Authorities. <https://www.aeanj.org/>  
Oregon Association of Water Utilities. <https://oawu.net/>  
Association of Ohio Metropolitan Wastewater Agencies. <https://www.aomwa.org/>  
Pennsylvania Municipal Authorities Association.  
<https://www.municipalauthorities.org/>  
Texas Association of Clean Water Agencies. <https://www.tacwa.org/>  
Virginia Association of Municipal Wastewater Agencies. <http://www.vamwa.org/>  
West Virginia Municipal Water Quality Association. <http://wvmwqa.org/>  
Wisconsin wastewater operator's association – [www.wwoa.org](http://www.wwoa.org)

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Attorney

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## EXHIBIT B



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Operations Challenge

Collection System Event's new procedures. Which strategy will prove superior, however, remains an unanswered question heading into WEFTEC 2024.

Biggest Competition Yet

At press time, Operations Challenge officials expected as many as 60 teams to compete at WEFTEC 2024, which

would make this year's event the largest in Operations Challenge history. In line with recent WEFTEC competitions, the roster is expected to include teams from around the world. Teams anticipated to appear include representatives from Argentina, Canada, Colombia, Finland, Germany, the United Kingdom, and — for the first time — Brazil.



At the Water Environment Association of Utah Annual Conference in April, first-place finishers Wasted Gas representing Central Valley Water Reclamation Facility (South Salt Lake) complete the Laboratory Event. Austin Petersen

Each Operations Challenge team competing at WEFTEC must represent a WEF MA or comparable regional professional organization abroad. These MAs each may sponsor a pre-allotted number of teams each year, typically decided via regional qualifier competitions, to appear at WEFTEC. Registration for teams that secure MA sponsorship — whether by placing highly in a regional competition or by making separate arrangements with their MA where appropriate — is open through September 6. Operations Challenge takes place at WEFTEC from 9:30 a.m. to 5 p.m. on Monday, October 7, and continues on Tuesday, October 8, from 8:30 a.m. to 4 p.m. Get more details about Operations Challenge, including information on registration procedures as a competitor or volunteer, at [bit.ly/WET-OpsChallenge](https://bit.ly/WET-OpsChallenge).

Justin Jacques is Managing Editor of WE&T. He can be reached at [jjacques@wef.org](mailto:jjacques@wef.org).

SPONSORED CONTENT

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

IF YOU ARE A SEWAGE TREATMENT SYSTEM OPERATOR IN THE UNITED STATES WHOSE SYSTEM WAS IN OPERATION BETWEEN MAY 9, 2021 AND MAY 31, 2024, A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

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

A proposed settlement ("Settlement") has been reached in the above class action with Defendant DUDE Products Inc. ("Defendant"). The action challenges the manufacturing, design, marketing and/or sale of Defendant's flushable wipes.<sup>1</sup> Defendant denies the allegations about its flushable wipes and maintains that its products perform as advertised. There has been no finding of liability against DUDE Products Inc. Defendant has agreed to the Settlement to avoid the uncertainties and expenses associated with continuing the case.

WHO IS IN THE SETTLEMENT CLASS?

If you own[ed] or operate[d] a sewage or wastewater conveyance and treatment plant, such as a municipality, authority or wastewater district in the United States whose system was in operation between May 9, 2021 and May 31, 2024, you are part of the Settlement Class. The Court-certified Settlement Class is defined as "All STP (Sewage Treatment Plant) Operators in the United States whose systems were in operation between May 9, 2021 and the date of preliminary approval."

WHAT DOES THE SETTLEMENT PROVIDE?

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

YOUR RIGHTS AND OPTIONS

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

**Object to the Settlement or the Request for Attorneys' Fees and Expenses.** You can object to the Settlement and/or Class Counsel's request for attorneys' fees and expenses of up to \$275,000.

**Should I Hire an Attorney?** You do not need to hire your own attorney because Class Counsel is working on your behalf. If you retain your own attorney, you will need to pay for that attorney.

**Final Approval Hearing.** The Court will hold the Final Approval Hearing on September 27, 2024, at the J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401. You can go to this hearing, but you do not have to. The Court will hear any objections, determine if the Settlement with Defendant is fair, and consider Class Counsel's request for an award of attorneys' fees and expenses. Class Counsel's request for fees and expenses will be posted on the Settlement Website after it is filed.

HOW DO I GET MORE INFORMATION?

**This Notice is only a summary.** For more information, including the Stipulation and other legal documents, visit [www.charlestonwipessettlement.com](http://www.charlestonwipessettlement.com).

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

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