



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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

**NOTICE OF JOINT MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AGREEMENT AND OTHER RELIEF**

**PLEASE TAKE NOTICE** that the attached Joint Motion for Final Approval of Class Action Settlement Agreement and Other Relief will be presented at the Fairness Hearing on April 12, 2021 at 9:30 a.m.

**BAIRD MANDALAS BROCKSTEDT, LLC**

*/s/ Chase T. Brockstedt* \_\_\_\_\_

Chase T. Brockstedt, Esq. (DE #3815)

Stephen A. Spence, Esq. (DE #5392)

1413 Savannah Road, Suite 1

Lewes, Delaware 19958

(302) 645-2262

Attorneys for Gary and Anna-Marie Cuppels and those similarly situated

Date: March 22, 2021



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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

**JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT AGREEMENT AND OTHER RELIEF**

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

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

F. Michael Parkowski, Esquire (#0007)  
Michael W. Teichman, Esquire (#3323)  
Elio Battista, Jr., Esquire (#3814)  
PARKOWSKI, GUERKE & SWAYZE, P.A.  
1105 N. Market Street, 19th Floor  
Wilmington, DE 19801  
(302) 654-3300

John C. Phillips, Jr., Esquire (#110)  
Lisa C. McLaughlin (#3113)  
PHILLIPS, McLAUGHLIN & HALL, P.A.  
1200 North Broom Street Wilmington, DE  
19806  
(302) 655-4200

OF COUNSEL:  
Timothy K. Webster, Esquire (*pro hac vice*)  
SIDLEY AUSTIN LLP  
1501 K Street, N.W. Washington, D.C. 20005  
(202) 736-8000

## I. INTRODUCTION AND SUMMARY

The parties respectfully request the Court enter an order granting final approval of the proposed Class Action Settlement Agreement and Release (the “Settlement Agreement”) between Plaintiffs and Defendants Mountaire Corporation, Mountaire Farms of Delaware, Inc., and Mountaire Farms, Inc. filed with the Court on December 23, 2020 (D.I. 605, Ex. A), to resolve claims related to alleged groundwater contamination and air pollution within the Millsboro, Delaware community. In general, the Settlement Agreement requires Defendants to pay \$65 million to resolve Class Members’ claims as well as for attorneys’ fees, costs, and expenses (the “Settlement Amount”).<sup>1</sup> And the Settlement Agreement provides a Claims Adjudicator-directed process by which eligible Class Members may recover damages related to their individual claims for alleged groundwater contamination and air pollution, as applicable.

The \$65 million Settlement Amount will adequately compensate all Class Members. Plaintiffs and Class Counsel submit that this Settlement Agreement is not only fair, reasonable, and adequate, but an outstanding result for the Class Members. The Settlement Agreement achieves this litigation’s goals of accountability and provides fair compensation to residents of Millsboro through an efficient claims

---

<sup>1</sup> Where not defined herein, capitalized terms have the meaning provided in the Settlement Agreement.

process that will include consideration of all relevant, compensable damages under Delaware law.

The parties respectfully request that the Court certify the Settlement Class for settlement purposes only and approve the proposed Settlement Agreement.<sup>2</sup>

## **II. PROCEDURAL HISTORY**

On June 13, 2018, Plaintiffs Gary and Anna-Marie Cuppels, in their individual capacity and on behalf of similarly-situated individuals (“Plaintiffs”), filed a Complaint against Defendants Mountaire Corp., Mountaire Farms Inc., and Mountaire Farms of Delaware, Inc. (collectively, “Defendants”) related to the operation of a chicken processing facility in Sussex County (the “Facility”). Plaintiffs filed an Amended Complaint on October 12, 2018 and a Second Amended Complaint on June 26, 2020, adding additional proposed class representatives and claims.

Plaintiffs allege that Defendants disposed of contaminated wastewater and liquefied sludge on lands near Plaintiffs’ residences. Plaintiffs allege that this wastewater and sludge have seeped into the groundwater throughout the area, causing nitrates and other contaminants to enter Plaintiffs’ drinking water wells, resulting in health effects and property diminution for a class of individuals living,

---

<sup>2</sup> As set forth in the Settlement Agreement, by entering into the Settlement Agreement and joining this motion, Defendants do not admit any factual allegations against them, any legal issues, or any liability.

working, leasing, or owning property and/or businesses in the area identified as the “Groundwater Area” set forth on Exhibit A.

Plaintiffs further allege that Defendants’ wastewater treatment plant and their spray irrigation and sludge operations emit air pollutants, including malodorous hydrogen sulfide that reach Plaintiffs’ residences at levels causing a class of individuals living, working, leasing, or owning property and/or businesses in the area identified as the “Air Area” set forth on Exhibit A to suffer health effects and to endure nuisance conditions preventing and devaluing the use of their properties.

Defendants deny Plaintiffs’ allegations. Specifically, Defendants assert that they are not the cause of nitrate contamination in residential supply wells and that they did not emit and are not emitting air pollutants in the nature and quantity alleged by Plaintiffs. Defendants further assert, among other defenses, that Plaintiffs cannot establish that Defendants’ actions are the proximate cause of Plaintiffs’ injuries. Defendants have chosen to settle the case in order to achieve final resolution of this matter and avoid the uncertainty associated with litigation.

After the filing of the Complaint, the parties litigated numerous dispositive motions and engaged in preliminary discovery on issues of class certification and jurisdiction. In August 2019, the Court granted the parties’ request to stay the case while they pursued mediation. The parties engaged the services of two well-respected mediators: David White, an attorney and mediator with extensive

experience litigating and mediating cases, and Eric Green, a mediator with extensive experience mediating class actions of national prominence, including environmental matters. The parties mediated over four days in Wilmington, Delaware. This mediation included presentations from both parties and their experts. The mediation, however, was not successful at that time.

Following the parties' initially unsuccessful attempt at mediation, this Court authorized discovery on the merits of the case, and the parties resumed briefing on class certification and certain dispositive motions. The parties and the Special Discovery Master implemented an electronic discovery protocol, and over the following months, hundreds of thousands of pages of documents were produced and reviewed by the parties. Discovery also involved multiple site inspections both at the Facility as well as the residences of class members, the scope and procedures of which were litigated before the Special Discovery Master. The parties also engaged in over 20 discovery depositions, including the depositions of corporate designees, class representatives, unnamed class members, an expert witness, and Defendants' current and former employees (and many more depositions remain pending). The parties litigated numerous discovery disputes through the Court appointed Special Discovery Master and before this Court.

The parties continued to discuss settlement in 2020, as an extension of the mediation that began in 2019. Ultimately, in late 2020, the parties reached agreement and entered into the proposed Settlement Agreement.

On December 23, 2020, the parties jointly filed a Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Other Relief (the “Preliminary Approval Motion”) (D.I. 605). In addition to seeking preliminary approval of the Settlement Agreement, the Preliminary Approval Motion requested that the Court (1) preliminarily certify the settlement class; (2) appoint class representatives; (3) appoint Plaintiffs’ counsel as Class Counsel; (4) designate RG/2 as Claims Administrator; (5) approve and order the implementation of a proposed Notice Plan; (6) establish a procedure for objections to the Settlement Agreement; (7) establish a procedure for opt-outs from the Settlement Agreement; (8) set a bar date for the submission of claims; and (9) schedule a briefing schedule and date for a fairness hearing to consider final approval of Settlement Agreement.

On January 11, 2021, the Court granted the Preliminary Approval Motion (D.I. 610).

Following preliminary approval, Class Counsel directed class notice through RG/2 Claims Group pursuant to the Court-approved notice plan. The notice campaign was robust. RG/2 Claims mailed the Notice to 6,720 Class Members identified via property records. Declaration of Melissa Baldwin, attached as Exhibit

B. Further, the Class Counsel engaged in a publication notice campaign, which included advertisements in multiple newspapers, as well as a press release that generated news coverage in multiple media outlets. Class Members were also provided with a toll-free number and an informative website to obtain case related documents and further information regarding the proposed Settlement ([www.mountairesettlement.com](http://www.mountairesettlement.com)). Both the direct and publication notices provided the Settlement Class Members with information on how they could review a copy of the Settlement Agreement, the deadline by which they were required to file any objections to the Settlement Agreement, their right to exclude themselves from any settlement and the deadline for doing so, the potential preclusive effect of the Settlement Agreement, instructions on how to register for participation in the Settlement Agreement, and a bar date for the submission of claims.

Class Member response has been overwhelmingly positive. Since the initiation of notice, over 3,000 Class Members have registered claims. By contrast, only two Class Members are objecting to the Settlement Agreement, representing one household.<sup>3</sup>

---

<sup>3</sup> An additional four letters styled as “objections” were received from individuals who are not Class Members. As further described in Argument V.C.4.ii, these individuals do not have standing to raise objections. See *Marie Raymond Revocable Trust v. MAT Five LLC*, 980 A.2d 388, 406 (Del. Ch. 2008).

The parties now seek final approval of the Settlement Agreement and other related relief necessary to implement the terms of this settlement.

### **III. THE SETTLEMENT**

#### **A. Terms of Settlement Agreement**

The proposed Settlement Agreement requires Defendants to pay \$65 million cash in full satisfaction of Plaintiffs' claims, including all legal fees, costs, and expenses (including costs and expenses of administering the settlement fund described below). The payment is required to be made in two installments: one payment of \$55 Million by December 31, 2020 and a second payment of \$10 Million by December 31, 2022. Defendants have already made the first payment, which is held by an independent escrow agent pursuant to the Settlement Agreement.

Contemporaneously with the filing of this Motion, Plaintiffs will move for the establishment of a Qualified Settlement Fund (the "QSF") to receive the settlement proceeds (the "QSF Motion"). The QSF will be funded with those proceeds currently held in escrow pending approval of the proposed Settlement Agreement and the entry of the First Amended Consent Decree in the Federal Case (*see infra* III.D.) as well as the second payment due at the end of this year, as described above. Following this Court's approval of the QSF Motion, the QSF will be allocated and amounts will be distributed to Class Members in accordance with the Allocation Plan described briefly below and further detailed in Exhibit C. Legal fees, costs,

expenses, and any liens will likewise be subject to the approval of this Court prior to payment from the QSF.

**B. Settlement Class Definition**

Plaintiffs' proposed class definition is as follows:

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

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

The Groundwater Area has been defined as the area overlying the groundwater contamination plumes alleged to have been caused in whole or in part by Defendants. The Groundwater Area was developed by Plaintiffs' expert witness, Dr. Harvey Cohen, a hydrogeologist with more than 20 years of contaminant fate

and transport experience. Dr. Cohen reviewed dozens of reports and models related to the groundwater near the Defendants' facilities and plotted nitrate and water levels in hundreds of monitoring and residential wells upgradient and downgradient of Defendants' spray irrigation and sludge fields. Based on hundreds of hours of analysis and groundwater "particle tracking" by Dr. Cohen and his colleagues at S.S. Papadopoulos & Associates, Dr. Cohen would testify that this area has been or soon will be impacted by Defendants. Dr. Cohen's report describing the methodology utilized to reach these conclusions is included as Exhibit D.

As to the Air Area, Plaintiffs allege Defendants' conduct caused multiple exceedances of the Delaware Air Quality Standard for hydrogen sulfide and exceedances of the health standard established by the Agency for Toxic Substances and Disease Registry ("ASTDR") for ammonia and other air pollutants that, in the aggregate, are believed to be sufficient to potentially affect human health or cause property damage. The Air Area of potential hydrogen sulfide air exposure has been modeled by John Purdum, an expert in Environmental Protection Agency ("EPA") air modeling techniques, based on EPA modeling protocols and emissions. Mr. Purdum's report describing the methodology utilized to reach these conclusions is included as Exhibit E. Glen Adams's report describing how Mr. Purdum's calculations were used to generate the class map is attached Exhibit F.

As set forth in the accompanying declaration of Plaintiffs' expert in medical toxicology, William Meggs, M.D., attached as Exhibit G, the Air Area encompasses the area over which Class Members could have been exposed to hydrogen sulfide emissions from Defendants' operations sufficient to cause health effects, to a reasonable degree of medical probability. Those outside this area would not, to a reasonable degree of medical probability, have been exposed to sufficient levels of pollutants from Defendants' operations to permit Dr. Meggs to conclude that those individuals suffered health effects as a result of Defendants' operations. *Id.* Additionally, as described the declaration of Plaintiffs' expert in property diminution, Ken Acks, attached as Exhibit H, the Air Area also encompasses all properties that could, to a reasonable degree of probability, have experienced a diminution of property value as a result of Defendants' emissions.<sup>4</sup>

### **C. Allocation of Settlement Proceeds**

Plaintiffs have proposed that a Claims Adjudicator be retained for the allocation of the proceeds of the Settlement Agreement. Specifically, Plaintiffs have

---

<sup>4</sup> Defendants retained qualified experts who were prepared to refute the opinions of Plaintiffs' experts. However, due to the filing of the proposed Settlement Agreement, Defendants did not serve their experts' report. Thus, Defendants reserve, among other reservations, the right to raise *Daubert* challenges to all of Plaintiffs' expert witnesses in the event the Court does not grant final approval of the Settlement Agreement, if approval of the Settlement Agreement were reversed on appeal, or if the Settlement Agreement is terminated for any other reason. Defendants have agreed to the Settlement Class for settlement purposes only.

proposed, and Defendants have consented to, the Hon. Irma Raker (Ret.) serving as Claims Adjudicator.

Plaintiffs respectfully request that the Court appoint Judge Raker as Claims Adjudicator. Judge Raker has extensive class action allocation experience, having recently led the distribution of settlement proceeds from a \$190 million settlement to approximately 9,000 claimants in *Jane Doe No. 1, et al. v. Johns Hopkins Hospital, et al.*, No. 24-C-13- 001041 (Md. Cir. Ct. 2014). Judge Raker has also served as an Associate Judge of the District Court of Maryland, Montgomery County from 1980 to 1982, Associate Judge of the Circuit Court for Montgomery County Maryland from 1982 to 1992, and on the Maryland Court of Appeals from 1994 until her retirement in 2008.

The Claims Adjudicator will evaluate each claim and categorize each claimant to determine fair, reasonable, and equitable compensation based upon the established categories of damages and the Allocation Plan, attached as Exhibit C. In doing so, the Claims Adjudicator will utilize the injury categories and additional factors noted in the Allocation Plan. Following notification to each claimant of their allocation, a period will be provided during which each claimant may appeal to the Claims Adjudicator before the allocation becomes final. An estimate of Judge Raker's fees in connection with this service is provided as Exhibit I.

Plaintiffs further request the continued appointment of RG/2 as Claims Administrator. RG/2 will assist Judge Raker in the administration of the settlement program, including issuing necessary mailings, data entry, developing and maintaining access to databases, managing documents provided in support of claims, and providing other services necessary to implement the settlement program. An estimate of RG/2 fees in connection with this service is provided within Exhibit B.

**D. The Federal Case**

There is a pending matter in the United States District Court for the District of Delaware that relates to the proposed Settlement Agreement: *Delaware Department of Natural Resources and Environmental Control v. Mountaire Farms of Delaware, Inc.* 1:18-cv-00838 MN-JLH (the “Federal Case”). As this Court is aware, the Cuppels, individually, and Plaintiffs’ Counsel have been engaged in litigation as intervenors before the U.S. District Court for the District of Delaware in the Federal Case. The Federal Case involves claims raised by DNREC against Mountaire Farms of Delaware, Inc. (“MFODI”) under federal law related to alleged violations and contamination at the Facility. The claims at issue in the Federal Case are premised on some of the same operative factual allegations as the claims in this matter. In the Federal Case, DNREC and MFODI entered into a proposed consent decree, and then a First Amended Agreement and [Proposed] Consent Decree (“First Amended Consent Decree”) that requires MFODI to (a) make certain Facility

improvements to prevent future groundwater contamination; and (b) engage in certain efforts to remove existing nitrate contamination from the groundwater, among other terms and conditions. The Cuppels, as intervenors in the Federal Case, raised objections to the Consent Decree as originally proposed as well as the First Amended Consent Decree. The Cuppels also moved for a preliminary injunction in the Federal Case, seeking a suspension or curtailment of MFODI operations.

Contemporaneously with the settlement of this class action case, the Cuppels intervenors and MFODI have entered into a separate confidential settlement agreement in the Federal Case to resolve the intervenors' claims in that case, including its motion for preliminary injunction and its opposition to the First Amended Consent Decree. Pursuant to that agreement, intervenors anticipate that they will withdraw their objections and ask the Federal Court to enter the First Amended Consent Decree, and that MFODI will be required to engage in certain additional activities to prevent future harm to the groundwater and provide residents an avenue to report and receive follow-up on air pollution complaints. The Parties estimate that the aggregate value of MFODI's commitments, including under the First Amended Consent Decree, is expected to be approximately \$120 million for incurred and contracted costs, exclusive of long-term operation and maintenance and contingencies that the intervening Cuppels value at an additional \$20 million. These remedies are not included as part of the Settlement Agreement in this matter, and

Intervenors' Counsel (Class Counsel here) will not be requesting a legal fee, costs, and expenses for the Federal Case in connection with this resolution of this matter, as the legal fees, costs, and expenses related to the Federal Case have been separately negotiated.

Payment of the Settlement Amount in this case is contingent on entry of the First Amended Consent Decree (or any successor thereof) in the Federal Case, which is anticipated to occur shortly following final approval of this Settlement Agreement, if approved, if not sooner. Defendants shall not be entitled to a return of any portion of the Settlement Amount if both the proposed Settlement Agreement is finally approved and the First Amended Consent Decree is approved and entered in the Federal Case. However, if the Court does not enter final approval of the Settlement Agreement, if the Court's final approval of the Settlement Agreement is overturned on appeal, or if the First Amended Consent Decree is not entered in the Federal Case, the Settlement Amount shall be returned to Defendants, together with any interest or other gains that have accrued on each of their respective contributions, less permissible notice and administrative expenses incurred subsequent to preliminary approval of the proposed Settlement Agreement.

#### **IV. THE NOTICE PLAN**

Delaware Superior Court Rule 23(c)(2) requires that when a class is certified under Rule 23(b)(3), as here, the "Court shall direct to the members of the class the

best notice practicable under the circumstances,” describing the right of exclusion from the class; the potential preclusive effect of the settlement, and the right to enter an appearance through counsel. In the case of settlement, Delaware Superior Court Rule 23(e) further requires that “notice by mail, publication or otherwise of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs of any class action settlement.”

The Court approved Plaintiffs’ proposed Notice Plan, finding it was consistent with Rule 23(c)(2), represented the best practicable notice under the circumstances, and was reasonably calculated to apprise Class Members of the facts of this litigation and their rights with respect to the Settlement Agreement (D.I. 610).

Class Counsel complied with this Court’s Order by directly mailing notice of the proposed Settlement to over 6,720 current and former residents within the Class Area. Declaration of Melissa Baldwin, attached as Exhibit B. Similarly, Class Counsel provided publication Notice through newsprint advertisements and an internet site in a manner consistent with the Notice Plan. *Id.* Having provided Notice to the Class Members in the manner directed by the Court, Plaintiffs have satisfied Rules 23(c)(2) and 23(e). The Court should find that Class Counsel provided sufficient notice of the Settlement Agreement to Class Members.

## **V. ARGUMENT**

### **A. The Court Should Certify the Settlement Class**

Certification of a class action requires a two-step analysis. *Crowhorn v. Nationwide Mut. Ins. Co.*, 836 A.2d 558, 561-562 (Del. Super. Ct. 2003). The first step requires that the action satisfy all four prerequisites mandated by Rule 23(a). *Id.* The prerequisites are: (1) numerosity; (2) commonality; (3) typicality, and (4) adequacy of representation. *Id.* If all of the prerequisites of subsection (a) are satisfied, then the Court moves to the second step, which is to determine if the requirements of Rule 23(b) are satisfied. *Id.*

In this Court's Order Granting the Preliminary Approval Motion, the Court preliminarily found that the Settlement Class satisfied the four requirements of Rule 23(a). The Court further found that for settlement purposes, the questions of law or fact common to the Settlement Class predominated over individual questions, and that a class action is superior to other available methods for the fair and efficient adjudication of this controversy, satisfying the requirements of Rule 23(b)(3). No party or opponent to the Settlement Agreement has alleged that the requirements of Rule 23 have not been met. Thus, Plaintiffs request that this Court conclude that the

requirements of Rule 23 continue to be met and will certify the Settlement Class. *Id.* at 562.<sup>5</sup>

Plaintiffs briefly address these elements below.

### **1. Numerosity**

A class must be “so numerous that joinder of all members is impracticable” in order to meet the numerosity requirement. Super. Ct. Civ. R. 23(a). “Although there is no numerical cutoff under the numerosity requirement, numbers in the proposed class in excess of forty, and particularly in excess of one hundred, have sustained the numerosity requirement.” *Smith v. Hercules, Inc.*, 2003 WL 1580603, at \*4 (Del. Super. Jan. 31, 2003). Here, the potential members of the Groundwater and Air Areas are in excess of the following figures: Groundwater Area only-1,568; Air Area only-4,615, and both areas-1,116. Joinder of over 7,000 plaintiffs would be impracticable. The numerosity requirement is therefore met.

### **2. Commonality**

The second requirement, commonality, will be met “where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated.” *Leon N. Weiner*

---

<sup>5</sup> Defendants reserve, among other reservations, all objections and arguments raised in their Answering Brief and Sur-Reply to Plaintiffs’ Motion for Class Certification (D.I. 487, 567). Defendants consent to the proposed Settlement Class for settlement purposes only. *See also* Settlement Agreement ¶ 46.

*& Assoc., Inc. v. Krapf*, 584 A.2d 1220, 1224 (Del.1991). Commonality is satisfied where common questions are capable of generating common answers apt to drive the resolution of the litigation. *Wal-Mart Stores Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Thus, if the Class Representatives share at least one question of law or fact with the grievances of the prospective class this requirement will be met. *Smith*, 2003 WL 1580603, at \*4.

There are common questions of law and fact in this action which can be certified and resolved on behalf of the Class such as alleged nitrate contamination and air pollution and proximate causation of the alleged injuries. In particular, Plaintiffs assert that Defendants' alleged conduct presents numerous common questions which could be resolved on a class-wide basis.

### **3. Typicality**

The "typicality" requirement is satisfied if the representative's interests are consistent with those of the class members. *Krapf*, 584 A.2d at 1225-26. Typicality will be found despite factual differences if a representative's claim "arises from the same event or course of conduct that gives rise to the claims ... of other class members and is based on the same legal theory." *Leon*, 584 A.2d at 1226 (quoting *Zeffiro v. First Pa. Banking & Trust Co.*, 96 F.R.D. 567, 569 (E.D.Pa.1983)). The claims of the Class Representatives are typical of the claims of the Class, as each Class Representative lives within both the Groundwater Area and the Air Area and

claim personal injury and property damage associated with alleged groundwater contamination and air pollution.

#### **4. Adequacy of Representation**

The fourth prerequisite determines whether the class representative is competent to represent the entire class. *Smith*, 2003 WL 1580603, at \*8. This requirement is comprised of two elements: “(a) that the interests of the representative party must coincide with those of the class; and, (b) that the representative party and his attorney can be expected to prosecute the action vigorously.” *Id.*

In determining whether the interests of a representative coincide with those of the class, the court looks to see if any conflict exists between named parties and the class they seek to represent. *Id.* at \*9. “[O]nly a conflict that goes to the very subject matter of the litigation will defeat a party’s claim of representative status.” *Id.* The Class Representatives have no conflicts with other Class Members. As set forth above, their interests are typical and coincide with the interests of the class.

Additionally, the Class Representatives and Class Counsel have vigorously prosecuted this litigation. Plaintiffs have complied with their discovery obligations, which have included extensive written discovery and deposition testimony. Class Counsel are experienced in class actions and other complex litigation, and have been diligently investigating and litigating this case for nearly three years. Class Counsel has adequately represented the interests of the Class.

For these reasons, pursuant to this Motion for Final Approval, Plaintiffs ask that this Court re-confirm appointment of the Class Representatives and Class Counsel as set forth in the January 11, 2021, Order Granting Preliminary Approval of Settlement.

### **5. Ascertainability**

A plaintiff seeking certification under Rule 23 should show by a preponderance of the evidence that the class is ascertainable. *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 354 (3d Cir. 2013). This means proving (1) the class is “defined with reference to objective criteria;” and (2) there is “a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.” *Id.* at 355. Plaintiffs need only show that “class members *can* be identified.” *McRobie v. Credit Prot. Ass’n*, 2019 WL 1469097, at \*6 (E.D. Pa. Apr. 3, 2019).

In environmental cases, courts have certified classes defined according to geographic areas impacted by contamination. *E.g. Bentley v. Honeywell*, 223 F.R.D. 471, 477 (S.D. Oh. 2004) (class defined as “persons who own or reside in residential property in the area overlying the commingled groundwater plume”); *Stoll v. Kraft Foods Global, Inc.*, 2010 WL 3613828 (S.D. Ind.) (class boundaries depicted on a map); *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58 (S.D. Ohio 1991) (court certified class defined as properties within a six mile radius).

Here, the two Areas used for Plaintiffs' class definition are appropriate because they include within their respective boundaries the persons and properties allegedly impacted by Defendants' alleged contamination and pollution, as supported by Plaintiffs' expert witnesses. *See also* Ex. D, Expert Report of Harvey Cohen, Ph.D; Ex. E, Expert Report of John Purdum; Ex. F, Expert Report of Glen Adams; Ex. G, Expert Report of William Meggs, M.D.; Ex. H, Expert Report of Ken Acks.

**B. Class Certification is appropriate under Rule 23(b)(3)**

Plaintiffs have pled that class certification is appropriate here under Superior Court Rule 23(b)(3).<sup>6</sup> Class treatment under Rule 23(b)(3) is appropriate where “the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” The two requirements, “predominance” and “superiority,” ensure that the class will be certified when it would “achieve economies of time, effort, and expense, and promote ... uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.” *Amchem*

---

<sup>6</sup> As noted, Defendants support a settlement class but reserve all arguments and positions as to class certification in the event the Court does not grant final approval of the Settlement Agreement or if the Settlement Agreement were reversed on appeal. *See also* Settlement Agreement ¶ 46.

*Products, Inc. v. Windsor*, 521 U.S. 591, 615 (1997). Plaintiffs briefly address these elements below.

**1. Common issues predominate over individualized issues.**

The predominance requirement is met if “resolution of some of the legal or factual questions that qualify each class member’s case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.” *Moore v. PaineWebber, Inc.*, 306 F.3d 1247, 1252 (2d Cir. 2002) (citations omitted). Here, there are many common issues of fact and law shared among all Plaintiffs. These factual issues include, but are not limited to, determinations of each Defendant’s liability under each cause of action alleged by Plaintiffs, and their compliance with regulations and permits over time. Moreover, most individualized questions (such as causation, duration and intensity of exposure, and injury/damage) will be deferred to the Claims Adjudicator, and therefore the legal and factual issues involved for approval of the Settlement Agreement are predominately common issues.

**2. Superiority**

Under Rule 23, Plaintiffs must also show that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. A class action is superior where “class-wide litigation of common issues will reduce litigation costs and promote greater [judicial] efficiency.” *Valentino v. Carter–*

*Wallace*, 97 F.3d 1227, 1234 (9th Cir. 1996). “Relitigation or repetitive discovery of the same core issues would be grossly inefficient and wasteful of the resources of the parties and the courts.” *Cook v. Rockwell Intern. Corp.*, 151 F.R.D. 378, 389 (D. Colo. 1993). Additionally, concerns about the manageability of a litigation class are not implicated by the proposed settlement class. Here, a class action settlement is plainly a superior means to resolve this matter as opposed to individualized litigation of individual issues.

**C. The Settlement is Fair, Reasonable, and Adequate, and Should Be Finally Approved.**

Pursuant to Superior Court Rule 23, the Court engages in a two-step process when determining whether to approve a class action settlement. *Doe v. Bradley*, 64 A.3d 379, 394 (Del. Super. 2012) (citing *Crowhorn*, 836 A.2d at 562. First, the Court conducts a preliminary review of the proposed settlement to determine if there are patent grounds to question the fairness of the settlement. *Id.* If not, the Court will preliminarily approve the settlement and schedule a so-called “fairness hearing” at which the Court will receive evidence in support of or opposition to the settlement in order to determine whether the settlement is fair, reasonable, and adequate. *Id.* This first step is complete. The Court found in its January 11, 2021 Order Granting Preliminary Approval of Class Settlement Agreement and Other Relief that the settlement resulted from extensive arm’s length negotiations through mediation and

direct discussion, and in authorizing class notice, that the Court would likely be able to approve the Settlement under Rule 23 (D.I. 610).

Second, to make the “fairness” determination, the Court should consider several factors, including, *inter alia*:

- (1) the advantages of the proposed settlement versus the probable outcome of a trial on the merits;
- (2) the probable duration and cost (both financial and emotional) of a trial;
- (3) the extent of participation in the settlement negotiations by class representatives and by a judge or special master;
- (4) the number and force of the objections by class members;
- (5) the effect of the settlement on other pending (or future) actions;
- (6) the fairness and reasonableness of the claims administration process for individual claims;
- (7) the apparent intrinsic fairness of the settlement terms; and
- (8) the extent to which only the class representatives are to receive monetary relief.

*See Id.* (citing *Crowhorn*, 836 A.2d at 563). There is a presumption in favor of the settlement when there has been arms-length bargaining among the parties after adequate development of the factual record and legal theories. *Id.*

Class Counsel respectfully submits that approval of the Settlement Agreement is clearly in the best interests of the Class Members under all the conditions and circumstances of the case and is therefore fair, reasonable, and adequate.

Accordingly, the parties respectfully request that the proposed Settlement Agreement be approved.

**1. The Settlement Agreement is far more advantageous to Class Members than a trial on the merits.**

The amount to be paid by Defendants is reasonable under all the circumstances. These circumstances involve: (1) the prospect of continuing discovery and litigation on issues including certification, jurisdiction, and liability; (2) litigation that would be extraordinarily expensive and continue for many years; (3) the likelihood and uncertainty of appeals of legal and other issues by Defendants, against whom claims of negligence and others have been asserted; (4) the unpredictability of success on any of the issues that would be litigated, including questions of whether Defendants are responsible for the groundwater and air pollution Plaintiffs claim to have affected the putative class; (5) the delays that would necessarily be encountered throughout many years of litigation versus the benefit of compensation to Class Members at this time; (6) the additional expense that would be incurred in the litigation process; and (7) the absence of insurance coverage available for recovery. As reflected in the Settlement Agreement, Defendants maintain all objections to Plaintiffs' motion for class certification, the jurisdiction of this Court to preside over Plaintiffs' complaint and over Defendants, and Plaintiffs' entitlement to relief on any of their causes of action. The risk that Defendants will prevail on any of these arguments—and the cost of litigating these issues, including

any appeals—favors approving the Settlement Agreement. *See, e.g., Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at \*15 (D.N.J. Aug. 26, 2011) (the “risk of decertification ... weighs in favor of settlement”). Here, the proposed Settlement Agreement presents a significantly superior means by which to resolve the class claims.

**2. The probable duration and cost (both financial and emotional) of a trial weighs heavily in favor of the proposed Settlement.**

This resolution was achieved after several years of investigation and litigation. Despite this work, multiple years of additional litigation would likely await the parties in the absence of a negotiated resolution, and the Court has not yet made final rulings on any claims or defenses. The parties would have to proceed with time consuming and expensive expert preparation and testimony, as well as continued document production and other discovery, not to mention extensive pre-trial motions and proceedings. Interlocutory appeals as to rulings on dispositive motions and class certification would likely be considered (and one had already been initiated at the time of settlement). Even if certified, an initial trial of this matter would be highly complex and monopolize this Court’s resources. Further, it would be followed by potentially hundreds of individual trials on damages. This Settlement Agreement allows the parties, and the Class Members in particular, to avoid lengthy and costly litigation in favor of a fair and final resolution now.

**3. Class Representatives and neutrals were involved in bringing the parties to this Settlement.**

The Class Representatives have been active in this litigation, having responded to many written discovery requests, provided deposition testimony, and participated in inspections of their homes and properties. The Class Representatives have been informed of and support the terms of the Settlement Agreement. *See* D.I. 605, Preliminary Approval Motion, Exhibit I, Class Representatives' Declarations.

Additionally, the parties were aided in reaching resolution of this matter by the assistance of mediators, including the Special Discovery Master. David White, and Eric Green. While the parties were able to finalize settlement negotiations without further assistance from the mediators, Mr. White and Mr. Green initiated settlement mediation and assisted the parties in understanding the strengths and weaknesses of their respective claims. The parties consider the proposed Settlement Agreement to be an extension of the mediation process. Mr. Green has since reviewed the terms of the final Settlement Agreement and submits an affidavit in support of this Settlement Agreement attached hereto as Exhibit J.

**4. The small number of objections, and large number of participating residents, reflects strong support of the Settlement from the members of the Class.**

There are in excess of 7,000 potential Class Members. To date, RG/2 has received over 3,000 registrations from individuals who wish to participate in the Settlement. In contrast, there are only two outstanding objections from potential

Class Members, on behalf of one household. There is a presumption in favor of the settlement when, among other criteria, “only a few members of the class object and their relative interest is small.” *Crowhorn*, 836 A.2d at 563 (citing *Wellman v. Dickinson*, 497 F. Supp. 824, 830 (S.D.N.Y. 1980)). This presumption applies here.

**i. The Court should overrule the Objectors’ objections.**

The two Class Members whose objections remain pending, Messrs. Bell and Burdick, live in a home within the Groundwater Area but outside the east boundary of the Air Area (the “Objectors”).<sup>7</sup> Their home is over 2 miles away from Defendants’ Facility which is the alleged source of air contamination. Attached as Exhibit J is a map showing the location of the Objectors’ home in relation to the Air Area and Defendants’ Facility.

The Objectors’ objection is focused on criticizing the exclusion of their home from the Air Area. They imply that certain areas were intentionally included or excluded from the Air Area for improper reasons and argue the determination of the Air Area was not scientifically sound. To the contrary, the contours of the Air Area were determined exclusively by Plaintiffs’ experts in this case who utilized EPA air dispersion modeling techniques and industry-standard GIS mapping techniques. *See*

---

<sup>7</sup> The objections of Messrs. Bell and Burdick appear to contain no proof of membership in the class, as required under the Court’s Order (D.I. 610, ¶20). Instead, Messrs. Bell and Burdick provide only a representation that they reside at an address within the class definition. As such, their objections were not properly filed and are deficient in their failure to comply with the terms of the Court’s Order.

Ex. E, Expert Report of John Purdum; Ex. F, Expert Report of Glen Adams. Specifically, those experts developed the Air Area by utilizing Mountaire emission data reported under the EPA Toxics Release Inventory, and concurrent one-hour meteorological data. *Id.* This information was inputted into the EPA AERMOD air dispersion model which Plaintiffs contend was done in accordance with procedures prescribed by the EPA. *Id.* The AERMOD model assesses air dispersion based on meteorological data, sources of pollution, and terrain.<sup>8</sup> The undulating shape of the Air Area is based on variable weather patterns and variable emissions data over the relevant time period, drawn using GIS mapping tools, not by any direction of Class Counsel.

Moreover, the Air Area reflects the area within which Class Members would have a potentially compensable claim for damages. While the Objectors describe smelling unpleasant odors which they attribute to Defendants, they are located a substantial distance away from Defendants' facility. The Air Area was drawn to reflect the potential for multiple exposures of hydrogen sulfide at concentration levels that, in the aggregate, can potentially affect human health or cause property damage to a reasonable degree of probability and not to account for every potential molecule of a pollutant. Ex. G, Expert Report of William Meggs, M.D.; Ex. H,

---

<sup>8</sup> EPA, Air Quality Dispersion Modeling - Preferred and Recommended Models Webpage. Available at: <https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models>

Expert Report of Ken Acks. The Objectors' exclusion from the Air Area results from Plaintiffs' experts' conclusion that they cannot establish a compensable claim for damages, in view of other contributing causes of odor, and air modeling which does not support frequent exposure to odors from Defendants' Facility at levels sufficient to cause damages.

The Objectors' objection addresses only a small component of the Court's broader consideration of whether to approve the Settlement Agreement as fair, reasonable, and adequate. The Objectors take issue with the Settlement Class as it relates to the Air Area, arguing they should be included within that area.<sup>9</sup> The Court should find their contention unpersuasive and not a reason to deny the Settlement, for three reasons. First, courts commonly approve class definitions in environmental cases that utilize scientific methods to depict the areas that constitute the class. *See Bentley*, 223 F.R.D. at 477 (S.D. Oh. 2004) (class defined as "persons who own or reside in residential property in the area overlying the commingled groundwater plume"); *Stoll*, 2010 WL 3613828 (S.D. Ind.) (class boundaries depicted on a map); *Boggs*, 141 F.R.D. 58 (S.D. Ohio 1991) (court certified class defined as properties within a six-mile radius). Defining classes using these methods necessarily involves

---

<sup>9</sup> Objectors also assert that the class map legend uses an incorrect scale. Class counsel has confirmed with their experts that the scale of the class map is accurate and requires no correction.

line-drawing and the resulting challenges of inclusion and exclusion based on scientific modeling, which is a reliable methodology.

Second, the Court's order preliminarily certifying the Settlement Class included findings that the Settlement Class was appropriate because it creates an ascertainable class defined using objective criteria that establishes a membership within definite boundaries (D.I. 610, ¶4). Nothing the Objectors have raised is sufficient to undermine that finding. This is especially so given the further details Plaintiffs have provided with this motion explaining how their experts used scientific methods based on objective data to define the Air Area. The Court should reconfirm its finding that the Class Area meets the requirements of Rule 23 and is part of a settlement that is fair, reasonable, and adequate.

Third, the Air Area exceeds the area that may result from a contested case, as Defendants would argue in litigation that the Air Area should be less inclusive, rather than more inclusive, than is proposed here. Thus, the Air Area could not be expected to grow, and indeed could contract, were the Settlement Agreement to be disapproved.

Finally, it is relevant to note that the Objectors had the right to exclude themselves from this settlement and pursue their own litigation, but they elected not to do so, preferring to participate in this settlement and lodge an objection.

The Court should overrule the Objectors' objections and approve the Settlement Agreement.

**ii. The Court should not consider objections from commenters who are not potential Class Members because they have no standing to object to the Settlement Agreement.**

Four other individuals submitted comments to the Court styled as objections. Those are: Mr. Reed, Mr. Caserta, Ms. Legg, and Ms. Simon (the "Commentors"). All the Commentors live outside of both the Groundwater Area and the Air Area, as shown on Exhibit K.<sup>10</sup> Therefore, the Commentors are not eligible to be Class Members, nor may they participate in the Settlement Agreement.

The Commentors do not have standing to object to the Settlement Agreement because they are not eligible to be Class Members. This is so under Delaware law. *Marie Raymond Revocable Trust v. MAT Five LLC*, 980 A.2d 388, 406 (Del. Ch. 2008) ("Both Stone and Goodwill were excluded from the class, did not choose to opt into the class, and will not have their rights effected by the settlement. Thus, they do not have standing to object."); *Bradley*, 64 A.3d at 394 (describing factors

---

<sup>10</sup> As shown on Exhibit L, the only source of nitrates allegedly related to Defendants nearby the residences of Mr. Reed and Ms. Simon is a field upon which Defendants applied sludge. Defendants discontinued the use of this field approximately 15 years ago, in 2006. Additionally, Plaintiffs' experts modeled the groundwater flow for the entire Groundwater Area and determined that the groundwater flow moves away from Mr. Reed and Ms. Simon's respective properties, as depicted on Exhibit L. For these reasons, the residences of Mr. Reed and Ms. Simon would not have been within the area Plaintiffs alleged was impacted by Defendants' conduct.

including “the number and force of the objections *by class members*”) (emphasis added); DEL. SUPER. CT. CIV. R. 23(e) (directing notice of a settlement to “all members of the class”). Federal courts also conclude that “nonclass members have no standing to object to a proposed settlement.” NEWBERG ON CLASS ACTIONS § 13:22 (5th ed.) (collecting authority). The reasoning is that “a settlement has no impact on them: as nonparties, they cannot be bound to the outcome of the litigation, and their interests generally are not affected by a class settlement.” *Id.*<sup>11</sup> That reasoning applies here because Commentors are not bound by the Settlement Agreement, and they may pursue any timely claims they may have against Defendants, subject to any and all defenses Defendants may have.

Even if the Court were to consider the Commentors’ objections, provisionally or otherwise, the Court should overrule them. The Commentors criticize the creation of, and their exclusion from, the Air Area and Groundwater Area.<sup>12</sup> As explained above (*supra* III.B & V.C.4.i), those areas were determined by well-qualified experts

---

<sup>11</sup> In federal case law not applicable here, the general rule that nonmembers have no standing is subject to a “plain legal prejudice” exception when the settlement will cause actual injury to nonclass members by depriving the non-settling party of a substantive right. NEWBERG ON CLASS ACTIONS § 13:24 (5th ed.). Even were that exception at issue, it would not apply here because there is no such deprivation of a substantive right.

<sup>12</sup> Commentors raise other arguments that are irrelevant to the Court’s consideration of the fairness of the Settlement Agreement. Commentors also include allegations on professional responsibility matters that are before the Office of Disciplinary Counsel; thus, this Court should not consider or comment on those matters.

using methodologies accepted in their respective fields, while also taking into consideration Plaintiffs' burden to prove causation. And those areas are the product of arm's length negotiations with Defendants, who were prepared to advocate for less-inclusive areas in litigation, with a compromise reached by the parties based on Plaintiffs' (not Defendants') experts' approach as reflected in the Settlement Agreement.

**5. The Settlement Agreement will have no known effect on other pending (or future) actions.**

As of the date of this motion, there is only one other pending matter relating to the same or similar underlying claims (except for the Federal Case, which is as discussed *supra* III.D. and not repeated here): *Albright v. Mountaire Farms of Delaware, Inc. et al.*, Case No. S18C-08-033 RFS (Del. Super. Ct.). In that case, the plaintiffs, John Albright, Dina Morrison, and Jay Albright, Jr. ("Albright plaintiffs") were initially represented by the firm of Jacobs & Crumplar, P.A. which withdrew as counsel of record on November 1, 2019. The Albright plaintiffs have proceeded *pro se* ever since. After a stay in the *Albright* case was lifted, Defendants moved to dismiss the complaint. The Albright plaintiffs failed to timely respond to Defendants' motion to dismiss, and, on October 8, 2020, the Court advised the Albright plaintiffs that their failure to respond to that motion could result in a dismissal of the case. Shortly after the Court's October 8, 2020 letter, the parties reached a confidential agreement. Defendants provided the Albright plaintiffs with

settlement agreements and releases on November 4, 2020, but the Albright plaintiffs have not yet returned them fully-executed. On November 12, 2020, the Court issued an order indicating that it would dismiss the case with prejudice if the parties fail to file a stipulation of dismissal by January 11, 2021. On February 23, 2021, the Court entered an order dismissing the case. It is unlikely that the Settlement Agreement will have any impact on this matter.

**6. The Allocation Plan is fair, reasonable, and equitable.**

Class Counsel represent that the Allocation Plan represents a fair process for allocation of the proceeds of this Settlement Agreement. It provides consideration to the compensable elements of each Class Member's claims in a fair and efficient manner. Additionally, the Allocation Plan includes a variety of protections for Class Members, including: a right to reconsideration of the determination of the Claims Adjudicator if a claimant is unsatisfied with their allocation amount; a late filing fund for those who, as a result of extraordinary circumstances, are unable to timely register; and a latent injury trust fund to provide compensation for potential future claims. Consequently, Plaintiffs request that this Court approve the Allocation Plan as fair, reasonable, and equitable.

**7. The terms of the Settlement Agreement are intrinsically fair.**

Class Counsel respectfully represent that this settlement is an outstanding result for the Class Members. It will resolve complex and challenging

environmental contamination claims by providing substantial and equitable monetary benefits to the Class, in exchange for releases narrowly tailored to Defendants' historic activities.

**8. All registered Class Members will receive substantial monetary relief under this Settlement Agreement.**

Monetary relief in this case is to be shared by all Class Members who timely registered pursuant to the Notice Plan in an equitable fashion, and no funds placed in the QSF will revert to Defendants.<sup>13</sup> As set forth below, Plaintiffs request an aggregate enhancement award to be awarded to the Class Representatives totaling \$150,000.00 to be allocated amongst the seven individual Class Representatives.

**VI. RELATED RELIEF**

In connection with, and/or to implement the terms of the Settlement Agreement, Plaintiffs request the following additional relief.

**A. Enhancement Awards**

Plaintiffs request an aggregate enhancement award to be awarded to the Class Representatives totaling \$150,000.00 to be allocated amongst the seven individual Class Representatives. This amount represents just 0.2% of the total settlement proceeds. Plaintiffs propose that these funds be allocated by the Claims Adjudicator, in proportion to the Class Representatives' efforts in prosecuting this claim. Those efforts include providing critical background information, supplying supporting

---

<sup>13</sup> Pending entry of the First Amended Consent Decree in the Federal Case.

documents, giving deposition testimony, and participating extensively in the entire process of this litigation including approval of the Settlement Agreement itself. The Cuppels have been directly involved from the start of the case, with the other representatives becoming more involved recently. The payment to Class Representatives is commensurate with their efforts and participation through this lawsuit.

**B. Lifting the Gag Order**

On or about October 30, 2018, at the request of Plaintiffs, the Court imposed a gag order on the parties, restricting the ability of attorneys, experts, consultants, and witnesses for both parties, Plaintiffs, Defendants' officers, and any persons or entities acting on behalf of Defendants in a public relations capacity from publicly commenting on this case, except in accordance with Delaware's Professional Conduct Rule 3.6. The gag order was issued due to considerations of material prejudice to the parties' rights to a fair trial. Should this Settlement Agreement be approved, the concerns which brought about the gag order cease to exist. Therefore, Plaintiffs respectfully request that this Court lift the gag order imposed in this case, effective immediately for any statement about final approval agreed to by all parties and fully upon the earlier of the expiration of the time for appeals, if no appeals are taken, or the resolution of any appeals.

WHEREFORE, the parties respectfully request that the Court grant the parties' Joint Motion for Final Approval of Settlement and enter the attached Proposed Order which includes the following relief:

- A. Certify the Settlement Class;
- B. Approve the Settlement Agreement and Allocation Plan;
- C. Appoint Plaintiffs' Counsel as Class Counsel, and Gary Cuppels, Anna Marie Cuppels, Michael Harding, Anne Harding, Larry Miller, Ronald Tolson, and Patricia Tolson as Class Representatives;
- D. Designate RG/2 Claims Administration LLC as Claims Administrator;
- E. Designate Hon. Irma Raker (Ret.) as Claims Adjudicator;
- F. Grant enhancement awards of \$150,000 to be apportioned between the seven individual Class Representatives by the Claims Adjudicator;
- G. Lift the Gag Order as provided herein.

Attorneys for Gary and Anna-Marie Cuppels and those similarly situated:

BAIRD MANDALAS BROCKSTEDT, LLC

/s/Chase T. Brockstedt, Esquire  
Chase T. Brockstedt, Esq. (DE #3815)  
Stephen A. Spence, Esq. (DE #5392)  
1413 Savannah Road, Suite 1  
Lewes, Delaware 19958  
(302) 645-2262

Philip C. Federico, Esq.  
Brent Ceryes, Esq.  
SCHOCHOR, FEDERICO AND STATON, P.A.  
1211 St. Paul Street  
Baltimore, Maryland 21202  
(410) 234-1000  
*Admitted Pro Hac Vice*

Attorneys for Defendants Mountaire Corporation, Mountaire Farms Inc., and  
Mountaire Farms of Delaware, Inc.:

PARKOWSKI, GUERKE & SWAYZE, P.A.

/s/ Michael W. Teichman (3323)  
F. Michael Parkowski, Esq. (#0007)  
Michael W. Teichman, Esq. (#3323)  
Elio Battista, Jr., Esq. (#3814)  
1105 North Market Street, 19th Fl. Wilmington, DE 19801  
(302) 654-3300

PHILLIPS, MCLAUGHLIN &  
HALL, P.A.  
John C. Phillips, Jr., Esq. (#110)  
Lisa C. McLaughlin, Esq. (#3113)  
1200 North Broom Street  
Wilmington, DE 19806  
(302) 655-4200

SIDLEY AUSTIN LLP  
Timothy K. Webster  
1501 K Street N.W.  
Washington D.C. 20005  
(202) 736-8000  
*Admitted Pro Hac Vice*

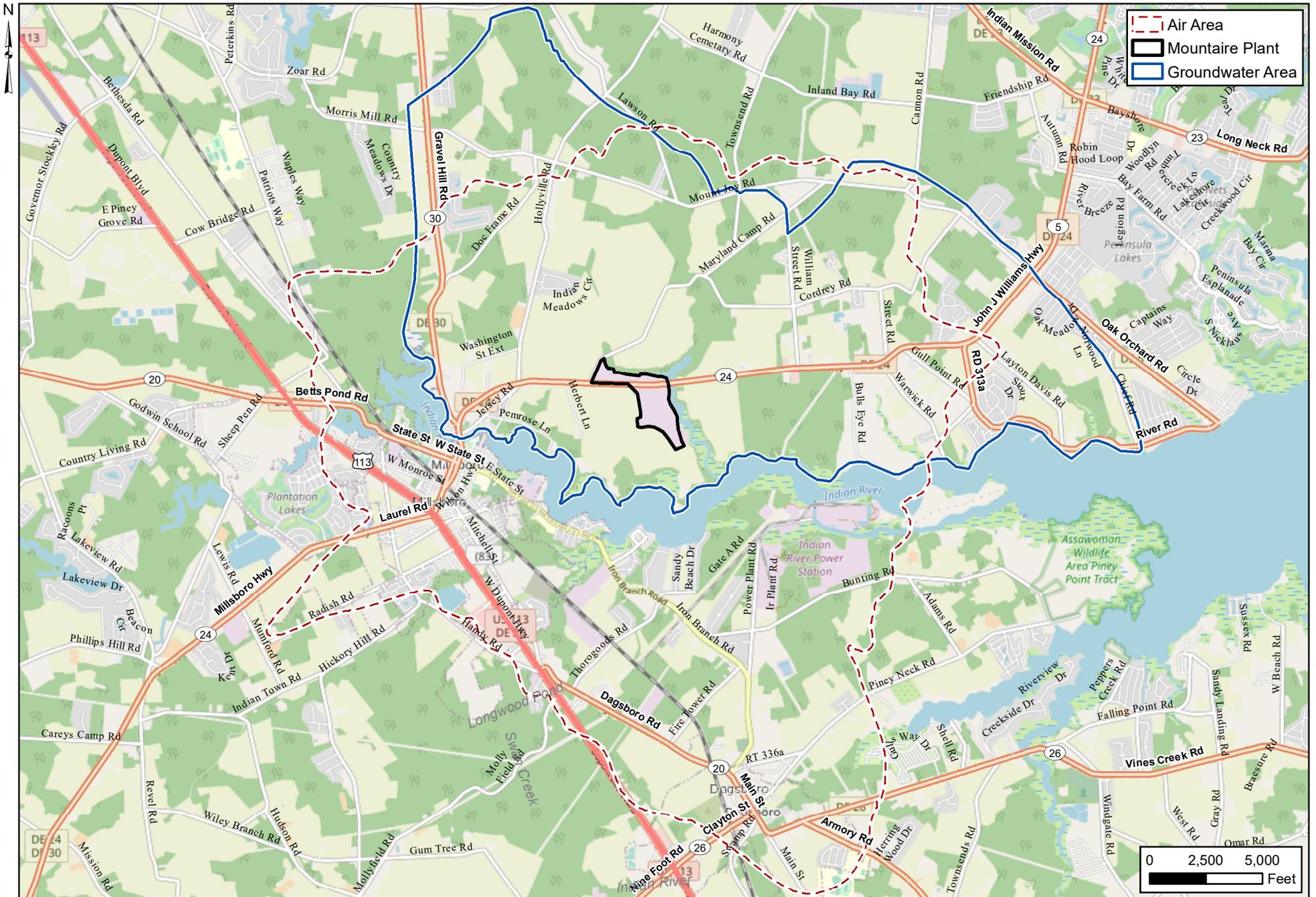
Date: March 22, 2021

**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



**EXHIBIT A**

# EXHIBIT A



**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



**EXHIBIT B**

**IN SUPERIOR COURT OF THE STATE OF DELAWARE**

GARY and ANNA-MARIE CUPPELS,  
Individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

MOUNTAIRE CORPORATION, an Arkansas  
Corporation, MOUNTAIRE FARMS INC., a  
Delaware Corporation, MOUNTAIRE FARMS  
OF DELAWARE, INC., a Delaware  
Corporation,

Defendants.

C.A. No.: S18C-06-009 CAK

**DECLARATION OF MELISSA  
BALDWIN REGARDING NOTICE  
TO THE CLASS AND PROPOSED  
PLAN FOR ADMINISTRATION OF  
NEXT PHASE**

I, Melissa Baldwin, hereby declare and state as follows:

1. I am the Director of Claims Administration for RG/2 Claims Administration LLC (“RG/2 Claims”), whose address is 30 South 17<sup>th</sup> Street, Philadelphia, PA 19103. I am over the age of 18, have personal knowledge of the matters set forth herein, and if called upon to do so, could testify competently to them.

2. RG/2 Claims is a full-service class action settlement administrator offering notice, claims processing, allocation, distribution, tax reporting, and class action settlement consulting services. RG/2 Claims’ experience includes the provision of notice and administration services for settlements arising from antitrust, consumer fraud, civil rights, employment, negligent disclosure, and securities fraud allegations. Since 2000, RG/2 Claims has administered and distributed in excess of \$1.8 billion in class action settlement proceeds.

3. As approved in the Court’s Preliminary Approval Order dated January 11, 2021, the Parties agreed to have RG/2 Claims be responsible for: creating a website with an online claims portal; publication of Notice; processing Claims, Opt Out letters and objections;

corresponding with Claimants; making all payments to Claimants from the settlement; all required tax reporting and withholding; and communicating the information regarding status of claims and payment to the Parties' counsel. Subsequent to this Order, RG/2 Claims has performed the services detailed below.

4. RG/2 Claims caused to obtain the mailing addresses of residents and absentee owners of the properties, including homes, apartments and businesses, within the defined Air and Groundwater Areas using the shape files provided to us by Plaintiffs' Counsel. When there were absentee owners, the Notice was mailed to both the mailing address of the property owner, as well as to the "Current Resident" of the property address. Through these efforts, RG/2 Claims mailed the Notice of Proposed Settlement, Area Map, Class Action Registration Form and Request for Exclusion Form (collectively, the "Notice package") to 6,720 potential Class Members on January 20, 2021. A true and correct copy of the Notice package is attached hereto as **Exhibit A**.

5. The website, [www.mountairesettlement.com](http://www.mountairesettlement.com), went live on January 22, 2021. The website includes the following:

- a. The "Homepage" contains a brief summary of the Settlement and advises potential Class Members of their rights under the Settlement. A copy of the Homepage is attached hereto as **Exhibit B**;
- b. The "Notice, Registration Form and Exclusion Form" page contains pdf copies of the Notice of Proposed Settlement, the Class Action Registration Form and the Request for Exclusion Form;
- c. The "Class Area Map" page includes a color and enlargeable version of the Air and Groundwater Areas.
- d. The "File a Claim" page contains a link to the Class Action Registration Form online filing portal;

- e. The “Court Documents” page contains: the Class Action Settlement Agreement and Release; Order Granting Preliminary Approval of Class Action Settlement Agreement and Other Relief; the Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Release (with Exhibits); and the Motion in Support of Class Counsel’s Application for Attorney’s Fees and Reimbursement of Expenses (with Exhibits). Additional documents will be added as requested.
- f. The “Contact” page contains the contact information of the Claims Administrator and Class Counsel. RG/2 Claims received 242 emails to the [info@rg2claims.com](mailto:info@rg2claims.com) email address related to this matter.

6. RG/2 Claims also arranged for a toll-free phone number at (844) 951-2344 to be available for Class Members to review frequently asked questions about the Settlement, request a Registration Form be mailed to them, speak to a live operator or leave a voicemail message requesting a returned call. We have received 138 phone calls through the toll-free phone number.

7. On January 26, 2021, RG/2 Claims arranged for the release of the Short Form Notice on PR Newswire.

8. RG/2 Claims arranged for the Short Form Notice to be published in the national publication of USA Today on January 29, 2021.

9. RG/2 Claims also arranged for the Short Form Notice to be published in local daily and weekly publications in Delaware on four occasions during the Registration Form filing period. These publications and the dates the Short Form Notice appeared in them are listed below:

<b>Publication</b>	<b>First Insertion</b>	<b>Second Insertion</b>	<b>Third Insertion</b>	<b>Fourth Insertion</b>
<i>Cape Gazette</i>	Jan 29, 2021	Feb 2, 2021	Feb 5, 2021	Feb 9, 2021
<i>Coastal Point</i>	Jan 29, 2021	Feb 5, 2021	Feb 12, 2021	Feb 19, 2021
<i>Laurel Star</i>	Jan 28, 2021	Feb 4, 2021	Feb 11, 2021	Feb 18, 2021
<i>Seaford Star</i>	Jan 28, 2021	Feb 4, 2021	Feb 11, 2021	Feb 18, 2021
<i>Delaware Wave</i>	Feb 2, 2021	Feb 9, 2021	Feb 16, 2021	Feb 23, 2021
<i>Delaware Coastal Press</i>	Feb 3, 2021	Feb 10, 2021	Feb 17, 2021	Feb 24, 2021
<i>Wilmington News Journal</i>	Jan 31, 2021	Feb 7, 2021	Feb 14, 2021	Feb 21, 2021
<i>Delaware State News</i>	Jan 31, 2021	Feb 7, 2021	Feb 14, 2021	Feb 21, 2021

A true and copy of the Short Form Notice is attached hereto as **Exhibit C**.

10. Subsequent to mailing the Notice package to potential Class Members, 660 Notice packages have been returned by the U.S. Post Office as undeliverable. RG/2 Claims has performed standing skip-tracing to locate new addresses for 172 Class Members and Notice packages were promptly remailed to those Class Members. Further, RG/2 Claims mailed 165 Notice packages to the “Current Resident” at the addresses associated with the previously mentioned returned Notice packages.

11. The Notice advised Class Members of their right to exclude themselves from the Settlement, provided that their request be postmarked by February 22, 2021. To date, RG/2 Claims has received twenty-seven (27) timely-filed and two (2) late-filed Requests for Exclusion from the Settlement. Copies of these Requests for Exclusion are attached hereto as **Exhibit D**.

12. The Notice also advised Class Members of their right to object to the Settlement, provided that their objection be filed with the Court by February 22, 2021. To date, RG/2 Claims has not received any objections timely filed with the Court.

13. Class Members have until March 22, 2021 to either submit a Registration Form through the online portal or have their mailed Registration Form postmarked. Through March 19, 2021, RG/2 Claims has received 2,263 Registration Forms filed online and 1,415 Registration Forms filed by mail. RG/2 Claims will evaluate the claims filed and report to the Court the number of eligible Class Members after the filing deadline when a thorough deduping of the file can occur.

14. To date, RG/2 Claims has incurred fees and expenses of \$92,670 associated with the Settlement Administration thus far, and received payment in the amount of \$56,085. Additional fees and expenses will be incurred as this administration progresses and will be billed accordingly.

15. As of March 18, 2021, RG/2 Claims has collected 3,678 Registration Forms from potential Class Members. For the next phase of the administration, RG/2 Claims will work with Judge Raker (the Claims Adjudicator) to administer surveys, collect responses, and correspond with claimants in order to collect the data required so that the allocation team can implement the Plan of Allocation and place claimants in categories based on the severity of their claims. The plan as proposed requires that RG/2 Claims:

- Issue paper surveys by mail that offers claimants the opportunity to complete either a short-form or long-form survey;
- Compile responses in a proprietary database so that the allocation team can analyze responses to implement the Plan of Allocation;
- Communicate with claimants regarding incomplete forms, missing documentation, and disqualified submissions;
- Issue Notices of Payment informing claimants of their estimated payment amounts; and
- Distribute Settlement Payments to claimants.

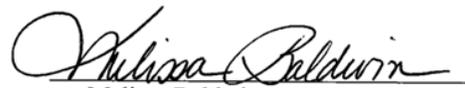
16. Following is an estimate of the cost of the project based upon an assumption that 3,300 surveys are distributed and 990 claimants elect to complete the long form survey. To the extent that the parties determine lien searches are required prior to distribution, RG/2 Claims will work with a lien administrator prior to issuing settlement payments.

<u>Task</u>	<u>Amount</u>
Case Intake Including Coordination, Data Management, Translation	\$14,500
Supplemental Payment Survey Set up including database and Interface	\$14,875
Website Development and Data Hosting (15 months)	\$16,400
Survey Mailing and Follow Up	\$8,200
Survey Processing	\$26,500
Survey Follow-Up	\$5,400
Evaluating and Reporting	\$12,000
Mailing of Notice of Payments	\$2,000
Telephone and Email Support	\$5,000
Appeals Management	\$6,000
Distribution	\$8,000
Tax Reporting	\$3,000
Project Management	\$41,000
<b>Estimated Administration Costs and Expenses*</b>	<b>\$162,875</b>

\*Excludes the costs associated with federal and state Medicare lien searches, estimated at \$125 per claimant for 1,411 claimants \$176,375

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on March 22, 2021 at Philadelphia, Pennsylvania.

  
 Melissa Baldwin

# **EXHIBIT A**

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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

**NOTICE OF PROPOSED SETTLEMENT**

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

**SUMMARY**

- This Notice concerns your potential entitlement to recover compensation for alleged groundwater and air contamination from the Millsboro, Delaware poultry processing facility owned by Mountaire Farms of Delaware, Inc. Read this Notice carefully as it concerns your legal rights and contains deadlines for participation.
- A \$65,000,000.00 proposed settlement (“Class Action Settlement”) has been reached that offers payments to the “Mountaire Settlement Class” consisting of: all Persons who, on or after May 1, 2000, owned, leased, resided on, or were employed on a full-time basis at: (a) property located in whole or part within the Groundwater Area, which is geographically bounded by the solid blue line on **Exhibit A**, and not the Air Area, which is bounded by the dashed red line on **Exhibit A**; (b) property located in whole or part within the Air Area, but not the Groundwater Area; and (c) property located in whole or part within both the Groundwater Area and the Air Area.
- Excluded from the definition of the class are: (1) Defendants; (2) any entity in which Defendants have a controlling interest; (3) any Person with an ownership interest in Defendants; (4) any current or former officer or director of Defendants; (5) any current or former employee of any Defendant for any potential exposure during their employment by such Defendant; (6) Persons who have entered into separate settlement agreements with any Defendant related to claims similar to those claims made in the Action; and (7) the legal representatives, successors, or assigns of Defendants.
- The total recovery for each Settlement Class Member will depend on how many of those Class Members submit a valid and timely claim, as well as the severity of each Class Member’s injuries and damages. Each Settlement Class Member who files a valid and timely claim shall be considered to receive a portion of the \$65,000,000.00 after a Court-approved deduction of attorneys’ fees and expenses, notice costs, fees and administration costs, and, if applicable, payment of any liens, including any Medicare/Medicaid liens.
- Plaintiffs alleged that Defendants disposed of contaminated wastewater and liquefied sludge on lands near Plaintiffs’ residences and properties. Plaintiffs alleged that this wastewater and sludge have seeped

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

- In addition to this Class Action Settlement, in another case in Federal Court, *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc., C.A. No. 18-838 (MN)*, Mountaire has agreed to engage in certain additional activities to prevent future harm to the groundwater, reduce air emissions and provide residents an avenue to report and receive follow-up on air pollution complaints in the form of a First Amended Consent Decree before the Federal Court for approval. These additional activities include: refraining from land application of sludges and biosolids pending certain wastewater treatment upgrades; continuing to provide bottled water to certain residents; installing at least 60 acres of phytoremediation; and establishing a process to respond to odor complaints. The Parties estimate that the aggregate value of these separate commitments is expected to be approximately \$120 million for incurred and contracted costs, exclusive of long-term operation and maintenance and contingencies. Further information about the Federal Case, including resolution of claims by Intervenors in that case, is set forth below.
- The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and after any appeals are finally resolved, payments will be made to those who have filed a valid claim and suffered compensable injuries and damages.

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

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

<b>REGISTER PROPERLY</b>	<p>You must register to be considered for payment from this Class Action Settlement. You may do so by either (1) visiting the Mountaire Settlement website at <a href="http://www.MountaireSettlement.com">www.MountaireSettlement.com</a>, and completing the Registration Form online at that site, or (2) mailing the completed Registration Form attached to this Notice as Exhibit B to the following address:</p> <p style="text-align: center;">Cuppels v. Mountaire Class Action Settlement Administrator          RG/2 Claims Administration LLC          P.O. Box 59479          Philadelphia, PA 19102-9479          Phone: (844) 951-2344          Web: <a href="http://www.MountaireSettlement.com">www.MountaireSettlement.com</a>          Email: <a href="mailto:info@rg2claims.com">info@rg2claims.com</a></p> <p><b>You must complete the Registration Form and submit it by mail postmarked on or before by March 22, 2021 or online through the Mountaire Settlement website on or before March 22, 2021</b>, in order to be considered for payment through the Class Action Settlement. Those who fail to register by this date by mail or through the Mountaire Settlement website will <b>NOT</b> be eligible for compensation.</p>
--------------------------	--

OPT OUT	<p>You can exclude yourself from this settlement if you do not want to participate in this Class Action Settlement. If you own/owned, reside/resided, or are/were employed at property in the Settlement Class Area and you wish to opt out of the Settlement Class, you must send a written request to opt out, postmarked on or before <b>February 22, 2021</b> to the following address:</p> <p style="text-align: center;">Cuppels v. Mountaire Class Action Settlement Administrator  RG/2 Claims Administration LLC  P.O. Box 59479  Philadelphia, PA 19102-9479  Phone: (844) 951-2344  Web: <a href="http://www.MountaireSettlement.com">www.MountaireSettlement.com</a>  Email: <a href="mailto:info@rg2claims.com">info@rg2claims.com</a></p> <p>A Request for Exclusion (“Opt Out”) Form is attached hereto as Exhibit C</p>
OBJECT	<p>If you wish to participate in the Class Action Settlement, but wish to object in whole or part to the proposed Settlement, you must do so on or before <b>February 22, 2021</b>. Whether or not you object to the Settlement, you must register if you wish to be considered for compensation from this Settlement should the Settlement be approved. You cannot both request to be excluded and object.</p>
GO TO A HEARING	<p>The Court will hold a hearing on the fairness of the proposed settlement on <b>April 12, 2021</b>, at 9:30 a.m., either (a) the Sussex County Superior Court Courthouse, located at 1 The Circle, Georgetown, DE 19947 or (b) virtually (such as on-line through the internet), due to the ongoing threat to public health posed by COVID-19. At this hearing, you can ask to speak in Court about the fairness of the proposed Class Action Settlement if you have filed a timely objection to the proposed Settlement. <b>You may be represented by an attorney if you choose to attend this hearing; however, you do not need to come to the hearing or speak to be considered for possible compensation. You only need to properly register to be considered for compensation.</b></p>
DO NOTHING	<p>You do not need to take any action if you do not wish to be excluded from the Settlement Class. However, if you take no action you will receive no benefits from the Class Action Settlement. You will also give up any rights you have to sue Mountaire Farms of Delaware, Inc.; Mountaire Farms Inc.; and Mountaire Corporation for injuries or damages related to groundwater contamination or air pollution (<i>See</i> question 7).</p>

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

## WHAT THIS NOTICE CONTAINS

<b>BASIC INFORMATION</b> .....	<b>PAGE 4</b>
1. Why is there a notice?	
2. What is this litigation about?	
3. Why is this a class action?	
4. Why is there a Settlement?	
<b>WHO IS PART OF THE SETTLEMENT</b> .....	<b>PAGE 5</b>
5. Who is included in the Settlement?	
6. What if I am not sure whether I am included in the Settlement?	
<b>THE SETTLEMENT BENEFITS</b> .....	<b>PAGE 5</b>
7. What does the Settlement provide?	
8. How much compensation will I receive?	
9. How do I register?	
<b>THE LAWYERS REPRESENTING YOU</b> .....	<b>PAGE 6</b>
10. Do I have a lawyer in the case?	
11. How will the lawyers be paid?	
<b>OPT-OUT OF THE SETTLEMENT</b> .....	<b>PAGE 7</b>
12. How can I exclude myself from the settlement?	
<b>OBJECTING TO THE SETTLEMENT</b> .....	<b>PAGE 7</b>
13. How do I object to the settlement?	
<b>THE FINAL FAIRNESS (APPROVAL) HEARING</b> .....	<b>PAGE 8</b>
14. When and where will the Court decide whether to approve the proposed Settlement?	
15. Do I have to attend the hearing?	
16. May I speak at the hearing?	
<b>IF YOU DO NOT REGISTER</b> .....	<b>PAGE 9</b>
17. What happens if I do not register?	
<b>GETTING MORE INFORMATION</b> .....	<b>PAGE 10</b>
18. How do I get more information?	

## BASIC INFORMATION

### 1. Why is there a notice?

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

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

### 2. What is this litigation about?

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

### 3. Why is this a class action?

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

### 4. Why is there a Settlement?

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

## WHO IS PART OF THE SETTLEMENT

### 5. Who is affected by the Settlement?

The Parties seek final approval of a Settlement Class that includes All Persons who, on or after May 1, 2000, owned, leased, resided on, or were employed on a full-time basis at: (a) property located in whole or part within the Groundwater Area, which is geographically bounded by the solid blue line on **Exhibit A**, and not the Air Area, which is bounded by the dashed red line on **Exhibit A**; (b) property located in whole or part within the Air Area, but not the Groundwater Area; and (c) property located in whole or part within both the Groundwater Area and the Air Area. The final determination of the Groundwater Area and Air Area was based on a detailed analyses by Plaintiffs' technical experts, including but not limited to, the review of documents, the evaluation of data recovered from area monitoring wells and well tests, modeling of the flow of groundwater and air, and an assessment of those neighboring areas where Plaintiffs' claim harmful groundwater and air contamination from the Millsboro facility were allegedly transported in potentially sufficient quantities to cause personal injuries to individuals with substantial exposures to those contaminants (such as residents and full-time employees in those areas) or property damage. These efforts resulted in Plaintiffs' expert opinions concerning the final determination of the Groundwater Area and Air Area in the fall of 2020.

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

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

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

If you are not sure whether you are in the Settlement Class, or if you have any other questions about the proposed Settlement, visit the Mountaire Settlement website at [www.MountaireSettlement.com](http://www.MountaireSettlement.com). You also may contact Class Counsel. (See question 18 for contact information). Please do not call or write the Delaware Superior Court.

## THE SETTLEMENT BENEFITS

### 7. What does the Settlement provide?

The Defendants have agreed to pay \$65,000,000.00 (the "Class Action Settlement Amount") to resolve the Settlement Class Members' claims. In exchange for this payment, Settlement Class Members who do not request to be fully excluded will fully release any known or unknown claims, which were alleged or could have been alleged in the Lawsuit. Specifically, Settlement Class Members will not be permitted to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants for all allegations and claims of any kind, known or unknown, whether pursuant to federal, state, or local statutory law, common law, regulations, or other law that Plaintiffs made or could have made against any Defendant that arose, directly or indirectly, from or relate to (a) the matters alleged or that could have been alleged in the Lawsuit; (b) matters alleged or that could have been alleged in *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, C.A. No. 18-838 (MN); (c) matters alleged or that could have been alleged in connection with any challenge to the December 13, 2019 Conciliatory Agreement between the Delaware Department of Natural Resources and Environmental Control, Mountaire Farms of Delaware, Inc. and Mountaire Farms Inc.;

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

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

The Class Action Settlement Amount will be used to pay eligible Claimants as approved by the Court; the fund will also be used to pay attorneys' fees, enhancement awards to the Class Representatives, costs, and expenses approved by the Court. The Class Action Settlement Amount reflects the total amount that Defendants will pay in this matter, not including the amount paid in connection with another case in Federal Court, *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, C.A. No. 18-838 (MN), the resolution of which requires Mountaire to comply with the First Amended Consent Decree, and requires MFODI to engage in certain additional activities to prevent future harm to the groundwater and provide residents an avenue to report and receive follow-up on air pollution complaints. These additional activities include: refraining from land application of sludges and biosolids pending certain wastewater treatment upgrades; continuing to provide bottled water to certain residents; installing at least 60 acres of phytoremediation; and establishing a process to respond to odor complaints. The Parties estimate that the aggregate value of these separate commitments is expected to be approximately \$120 million for incurred and contracted costs, exclusive of long-term operation and maintenance and contingencies.

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

## 8. How much compensation will I receive?

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

## 9. How do I register?

You must register to participate in this settlement on or before **March 22, 2021**. You may do so by visiting [www.MountaireSettlement.com](http://www.MountaireSettlement.com), and completing the Registration Form online at that site, or mailing the completed Registration Form attached to this Notice as Exhibit B to the following address:

Cuppels v. Mountaire Class Action Settlement Administrator  
RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479  
Phone: (844) 951-2344  
Web: [www.MountaireSettlement.com](http://www.MountaireSettlement.com)  
Email: [info@rg2claims.com](mailto:info@rg2claims.com)

**You must complete the Registration Form and submit it by mail postmarked on or before March 22, 2021 or online through the Mountaire Settlement website by March 22, 2021** in order to be considered for payment through the Class Action Settlement. Those who fail to register by mail or through the Mountaire Settlement website will **NOT** be eligible for compensation.

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

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

## THE LAWYERS REPRESENTING YOU

### 10. Do I have a lawyer in the case?

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

**Philip C. Federico**

**Brent P. Ceryes**

Schochor, Federico and Staton, P.A.,

**Chase T. Brockstedt**

**Stephen A. Spence**

Baird Mandalas Brockstedt, LLC

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

### 11. How will the lawyers be paid?

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

Class Counsel will file with the Court a Motion for Attorneys’ Fees and Reimbursement of Expenses seeking approval of their request for a legal fee and for the reimbursement of expenses. That motion will be available for review on or before January 20, 2021 on the settlement information website at [www.MountaireSettlement.com](http://www.MountaireSettlement.com).

## OPT-OUT OF THE SETTLEMENT

### 12. How can I exclude myself from the settlement?

If you owned, leased, resided on, or were employed on a full-time basis at, property in the Settlement Class Area, the geographic parameters of which are shown on the map attached as Exhibit A, on or after May 1, 2000, you may choose to opt-out and be excluded from the Settlement Class. If you opt out of the Settlement Class, you will not be eligible to participate in the distribution of the settlement proceeds. If you do not opt out of the Settlement Class, you will not be able to commence any other litigation, arbitration, or other proceeding against the Defendants in any other forum concerning the subject matter of this case and you will be bound by the terms of the Settlement Agreement. If you own property or reside in the Settlement Class Area and you wish to opt out of the Settlement Class, you must send a written request to opt out, postmarked on or before **February 22, 2021** to the following address:

Cuppels v. Mountaire Class Action Settlement Administrator  
RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479  
Phone: (844) 951-2344  
Web: [www.MountaireSettlement.com](http://www.MountaireSettlement.com)  
Email: [info@rg2claims.com](mailto:info@rg2claims.com)

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

## OBJECTING TO THE SETTLEMENT

### 13. How do I object to the Settlement?

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

- 1) Your full name, address and telephone number. If you have or if you hire your own attorney, your attorney’s full name, address and telephone number;
- 2) A written statement of all grounds for your objection accompanied by any legal support for the objection (if any);
- 3) A statement of whether you intend to appear at the Final Fairness (Approval) Hearing;
- 4) Proof of membership in the Class; and
- 5) Your signature or that of your attorney (if you have one or if you hire one).

You must mail your objection to each of the following three (3) addresses, **and** your objection must be postmarked no later than **February 22, 2021**:

<b>PROTHONOTARY (Clerk of Court)</b>	<b>CLASS COUNSEL</b>	<b>DEFENDANTS’ COUNSEL</b>
Superior Court, Sussex County RE: Mountaire Class Action Sussex County Courthouse 1 The Circle, Suite 2 Georgetown, DE 19947	Chase Brockstedt, Esq. Re: Mountaire Class Action Baird, Mandalas, Brockstedt, LLC 1413 Savannah Rd, Suite 1 Lewes, DE 19958	Michael W. Teichman, Esq. Re: Mountaire Class Action Parkowski, Guerke & Swayze, P.A. 1105 N. Market Street, 19th Fl Wilmington, DE 19801

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

## THE FINAL FAIRNESS (APPROVAL) HEARING

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

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

The Court has scheduled a Final Fairness Hearing on April 12, 2021, at 9:30 a.m., at the Sussex County Superior Court Courthouse, located at 1 The Circle, Georgetown, DE 19947. However, in light of the continuing threat COVID-19 poses to public health, the hearing may be held virtually (such as on-line through the internet). The hearing may be moved to a different date, time or location. Please check the Mountaire Settlement website at [www.MountaireSettlement.com](http://www.MountaireSettlement.com) for updates regarding the date, time and location of the hearing. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys' fees, costs and expenses, and for any Enhancement Awards to the Class Representatives. If there are objections, the Court will also consider them at that time. At or after the hearing, the Court will decide whether to approve the Settlement, fees and expenses, and any Enhancement Awards.

### 15. Do I have to attend the hearing?

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

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

### 16. May I speak at the hearing?

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

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

## IF YOU DO NOT REGISTER

### 17. What happens if I do not register?

If you **do not** register on or before **March 22, 2021**, and this proposed Settlement is approved by the Court, you will be bound by the Judgment entered by the Court, and by the terms and obligations of the Settlement Agreement, and you may not receive any benefits whatsoever from the Settlement. This also means that you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit or proceeding against any of the Mountaire entities described in Section 7 of this notice.

As referenced above, if this proposed Settlement is approved, you may be required to submit additional information and documentation to support your claim. You will be contacted to provide this information at a later date. **It is important that you keep your registration information current, by reporting any changes in your address or telephone number to RG/2 Claims at the contact information listed on page 9.** Failure to provide that information may also prevent you from being considered for compensation from this Settlement.

## GETTING MORE INFORMATION

### 18. How do I get more information?

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

1. Write or call the Class Action Administrator:

Cuppels v. Mountaire Class Action Settlement Administrator  
RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479  
Phone: (844) 951-2344  
Web: [www.MountaireSettlement.com](http://www.MountaireSettlement.com)  
Email: [info@rg2claims.com](mailto:info@rg2claims.com)

2. Contact Class Counsel through the Class Action website at [www.MountaireSettlement.com](http://www.MountaireSettlement.com).

3. Write or call Class Counsel:

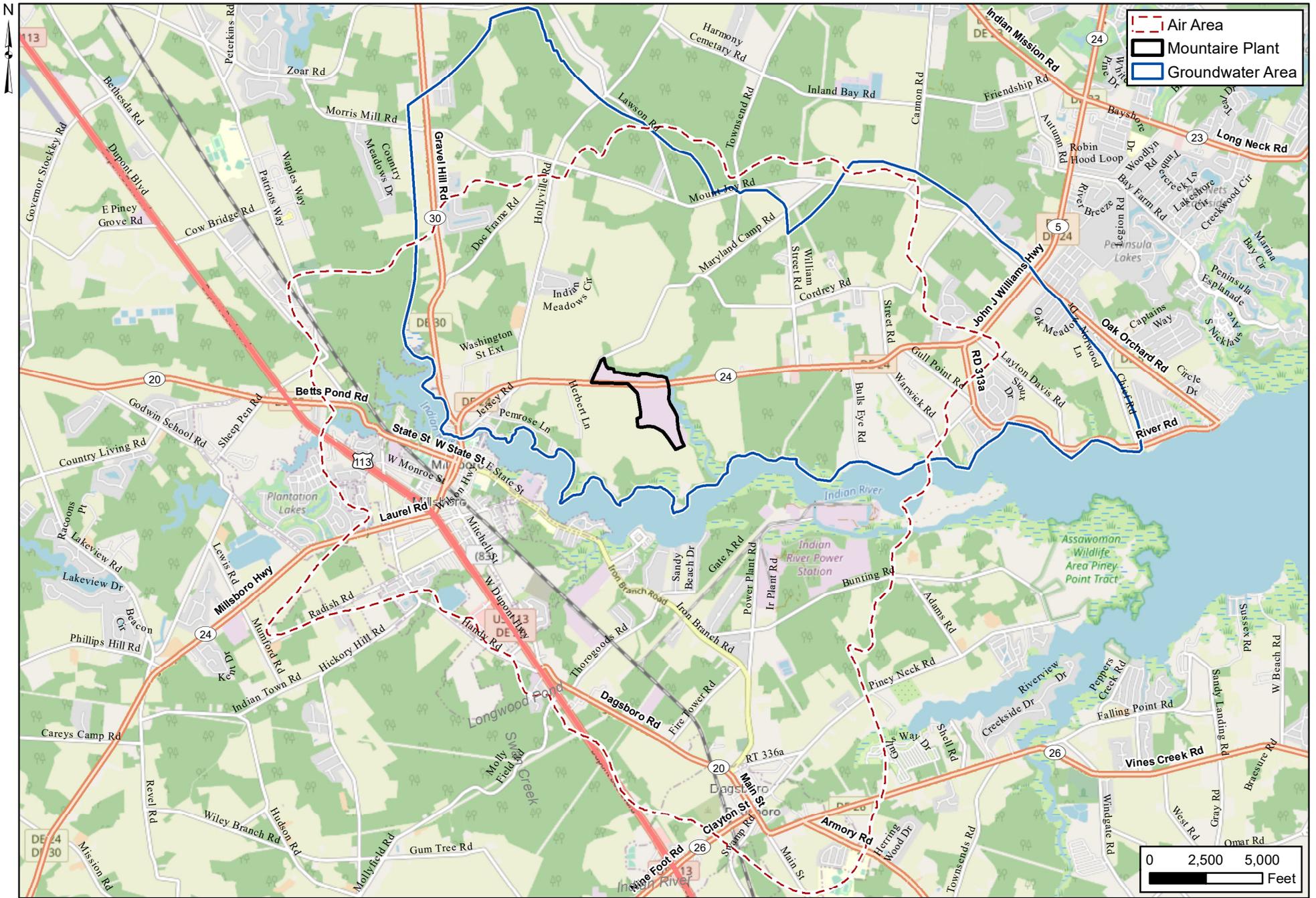
Chase Brockstedt, Esq.  
Re: Mountaire Class Action  
Baird, Mandalas, Brockstedt, LLC  
1413 Savannah Rd, Suite 1  
Lewes, DE 19958  
302-313-5288

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

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

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

# EXHIBIT A



# **EXHIBIT B**

## **Class Action Registration Form**

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

Your Registration Form must be postmarked on or before **March 22, 2021** for it to be valid. Alternatively, you may register your claim online at [www.MountaireSettlement.com](http://www.MountaireSettlement.com). Your online claim must be submitted on or before **March 22, 2021** for it to be valid.

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

Your Registration Form must be submitted to:

Mountaire Class Action Settlement Administrator  
RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479  
Phone: (844) 951-2344  
Web: [www.MountaireSettlement.com](http://www.MountaireSettlement.com)  
Email: [info@rg2claims.com](mailto:info@rg2claims.com)

You may contact the Class Administrator toll-free at 1-844-951-2344 to determine whether you are eligible and to receive assistance with completing this Registration Form.

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

### **I. Claimant Information:**

\_\_\_\_\_  
Claimant First Name

\_\_\_\_\_  
Claimant Middle Name

\_\_\_\_\_  
Claimant Last Name

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

\_\_\_\_\_  
Your First Name

\_\_\_\_\_  
Your Middle Name

\_\_\_\_\_  
Your Last Name

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

\_\_\_\_\_



## **EXHIBIT C**

### **Request for Exclusion**

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

---

Signature

---

Printed Name

---

---

Current Address

---

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**

# **EXHIBIT B**

# MOUNTAIRE SETTLEMENT

## Cuppels v Mountaire Corporation et al.

### Civil Action No. S18C-06-009 CAK Delaware Superior Court

You may have been mailed a **Notice** ([pdf/Mountaire-Long-Form-Notice.pdf](#)) or seen notice in a newspaper which concerns your potential entitlement to recover compensation for alleged groundwater and air contamination from the Millsboro, Delaware poultry processing facility owned by Mountaire Farms of Delaware, Inc. Read the Notice carefully as it concerns your legal rights and contains deadlines for participation.

A \$65,000,000.00 proposed settlement (“Class Action Settlement”) has been reached that offers payments to the “Mountaire Settlement Class” consisting of: all Persons who, on or after May 1, 2000, owned, leased, resided on, or were employed on a full-time basis at: (a) property located in whole or part within the Groundwater Area, which is geographically bounded by the solid blue line on **Exhibit A** ([pdf/Final-Map-StreetMapMinorRoadsLabeled\\_Dashed-\(00342480xB9753\).pdf](#)), and not the Air Area, which is bounded by the dashed red line on **Exhibit A** ([pdf/Final-Map-StreetMapMinorRoadsLabeled\\_Dashed-\(00342480xB9753\).pdf](#)); (b) property located in whole or part within the Air Area, but not the Groundwater Area; and (c) property located in whole or part within both the Groundwater Area and the Air Area.

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

In addition to this Class Action Settlement, in another case in Federal Court, *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.*, C.A. No. 18-838 (MN), Mountaire has agreed to engage in certain additional activities to prevent future harm to the groundwater, reduce air emissions and provide residents an avenue to report and receive follow-up on air pollution complaints in the form of a First Amended Consent Decree before the Federal Court for approval. These additional activities include: refraining from land application of sludges and biosolids pending certain wastewater treatment upgrades;

continuing to provide bottled water to certain residents; installing at least 60 acres of phytoremediation; and establishing a process to respond to odor complaints. The Parties estimate that the aggregate value of these separate commitments is expected to be approximately \$120 million for incurred and contracted costs, exclusive of long-term operation and maintenance and contingencies. Further information about the Federal Case, including resolution of claims by Intervenors in that case, is set forth below.

The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and after any appeals are finally resolved, payments will be made to those who have filed a valid claim and suffered compensable injuries and damages.

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

### YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

#### REGISTER PROPERLY

You must register to be considered for payment from this Class Action Settlement. You may do so by either (1) clicking [here](https://www.mountairesettlement.com/fileclaim.html) (<https://www.mountairesettlement.com/fileclaim.html>), and completing the Registration Form online, or (2) mailing the completed **Registration Form** ([pdf/Mountaire\\_ClaimForm.pdf](pdf/Mountaire_ClaimForm.pdf)) to the following address:

Cuppels v. Mountaire Class Action Settlement Administrator  
c/o RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479  
Phone: (844) 951-2344  
Web: [www.mountairesettlement.com](http://www.mountairesettlement.com)  
(<https://www.mountairesettlement.com>)  
Email: [info@rg2claims.com](mailto:info@rg2claims.com) (<mailto:info@rg2claims.com>)

**You must complete the Registration Form and submit it by mail postmarked on or before by March 22, 2021 or online through the Mountaire Settlement website on or before March 22, 2021**, in order to be considered for payment through the Class Action Settlement. Those who fail to register by this date by mail or through the Mountaire Settlement website will **NOT** be eligible for compensation.

<p style="text-align: center;"><b>OPT OUT</b></p>	<p>You can exclude yourself from this settlement if you do not want to participate in this Class Action Settlement. If you own/owned, reside/resided, or are/were employed at property in the Settlement Class Area and you wish to opt out of the Settlement Class, you must send a written request to opt out, postmarked on or before February 22, 2021 to the following address:</p> <p style="text-align: center;">Cuppels v. Mountaire Class Action Settlement Administrator c/o RG/2 Claims Administration LLC P.O. Box 59479 Philadelphia, PA 19102-9479 Phone: (844) 951-2344 Web: <a href="http://www.mountairesettlement.com">www.mountairesettlement.com</a> (<a href="https://www.mountairesettlement.com">https://www.mountairesettlement.com</a>) Email: <a href="mailto:info@rg2claims.com">info@rg2claims.com</a> (<a href="mailto:info@rg2claims.com">mailto:info@rg2claims.com</a>)</p> <p>A Request for Exclusion (“Opt Out”) Form can be found <a href="#">here</a> (pdf/Mountaire_ExclusionForm.pdf).</p>
<p style="text-align: center;"><b>OBJECT</b></p>	<p>If you wish to participate in the Class Action Settlement, but wish to object in whole or part to the proposed Settlement, you must do so on or before <b>February 22, 2021</b>. Instructions for submitting an objection are included in the <a href="#">Notice</a> (pdf/Mountaire-Long-Form-Notice.pdf). Whether or not you object to the Settlement, you must register if you wish to be considered for compensation from this Settlement should the Settlement be approved. You cannot both request to be excluded and object.</p>
<p style="text-align: center;"><b>GO TO A HEARING</b></p>	<p>The Court will hold a hearing on the fairness of the proposed settlement on <b>April 12, 2021</b>, at 9:30 a.m., either (a) the Sussex County Superior Court Courthouse, located at 1 The Circle, Georgetown, DE 19947 or (b) virtually (such as on-line through the internet), due to the ongoing threat to public health posed by COVID-19. At this hearing, you can ask to speak in Court about the fairness of the proposed Class Action Settlement if you have filed a timely objection to the proposed Settlement. <b>You may be represented by an attorney if you choose to attend this hearing; however, you do not need to come to the hearing or speak to be considered for possible compensation. You only need to properly register to be considered for compensation.</b></p>
<p style="text-align: center;"><b>DO NOTHING</b></p>	<p>You do not need to take any action if you do not wish to be excluded from the Settlement Class. However, if you take no action you will receive no benefits from the Class Action Settlement. You will also give up any rights you have to sue Mountaire Farms of Delaware, Inc.; Mountaire Farms Inc.; and Mountaire Corporation for injuries or damages related to groundwater contamination or air pollution.</p>

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

**Do not call the Sussex County Superior Court or Mountaire or Mountaire’s Counsel, as they cannot provide you with legal advice or any opinion regarding the Lawsuit or proposed Settlement.**



# **EXHIBIT C**

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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

**SUMMARY NOTICE OF PROPOSED SETTLEMENT**

*To:* All Persons who, on or after May 1, 2000, owned, leased, resided on, or were employed on a full-time basis at property located in whole or part within a defined geographic area near Millsboro, Delaware, as described more precisely in maps setting forth the Class Definition available at [www.MountaireSettlement.com](http://www.MountaireSettlement.com), or available from the Claims Administrator and/or Plaintiffs' Counsel, identified below, subject to certain exclusions.

YOU ARE HEREBY NOTIFIED, pursuant to Delaware Superior Court of Civil Procedure 23 and an Order of the Delaware Superior Court, that the Court-appointed Class Representatives, on behalf of themselves and all members of the Class, and Mountaire Farms of Delaware, Inc., Mountaire Farms Inc., and Mountaire Corporation ("Mountaire" or the "Defendants"), have reached a proposed settlement of the claims in the above-captioned class action (the "Action") in the amount of \$65,000,000 (the "Settlement"). This Settlement is intended to provide compensation for personal injury and property damage associated with alleged groundwater and air contamination from the Millsboro, Delaware poultry processing facility owned by Mountaire Farms of Delaware, Inc.

The Court has scheduled a Final Fairness Hearing on April 12, 2021, at 9:30 a.m., at the Sussex County Superior Court Courthouse, located at 1 The Circle, Georgetown, DE 19947. However, in light of the continuing threat COVID-19 poses to public health, the hearing may be held virtually (such as on-line through the internet). The hearing may be moved to a different date, time or location. Please check the Mountaire Settlement website at [www.MountaireSettlement.com](http://www.MountaireSettlement.com) for updates regarding the date, time, and location of the hearing. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys' fees, costs and expenses, and for any monetary awards to the Class Representatives for their service as such ("Enhancement Awards"). If there are objections, the Court will also consider them at that time. Following the hearing, the Court will decide whether to approve the Settlement, attorney fees and expenses, and any Enhancement Awards.

**IF YOU ARE A MEMBER OF THE CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO A MONETARY PAYMENT.** If you have not yet received a full Notice and Registration Form (together, the "Notice") explaining the details of the lawsuit and the proposed settlement, you may obtain copies of these documents by visiting the website of the Claims Administrator, [www.MountaireSettlement.com](http://www.MountaireSettlement.com), or by contacting the Claims Administrator at:

Cuppels v. Mountaire Class Action Claims Administrator  
RG/2 Claims Administration LLC

P.O. Box 59479  
Philadelphia, PA 19102-9479  
Phone: (844) 951-2344  
Web: [www.MountaireSettlement.com](http://www.MountaireSettlement.com)  
Email: [info@rg2claims.com](mailto:info@rg2claims.com)  
**Settlement Website:** [www.MountaireSettlement.com](http://www.MountaireSettlement.com)

Inquiries, other than requests for the Registration Form or for information about the status of a claim, may also be made to Class Counsel:

Chase Brockstedt, Esq.  
Re: Mountaire Class Action  
Baird, Mandalas, Brockstedt, LLC  
1413 Savannah Rd, Suite 1  
Lewes, DE 19958  
302-313-5288

If you are a Class Member, you must register to be considered for payment from this Class Action Settlement. You may do so by either (1) visiting the Mountaire Settlement website at [www.MountaireSettlement.com](http://www.MountaireSettlement.com), and completing the Registration Form online at that site, or (2) mailing the completed Registration Form to the Claims Administrator identified above. You must complete the Registration Form and submit it by mail postmarked on or before by **March 22, 2021** or online through the Mountaire Settlement website on or before **March 22, 2021**, in order to be considered for payment through the Class Action Settlement. Those who fail to register by this date by mail or through the Mountaire Settlement website will NOT be eligible for compensation.

If you are a Class Member and wish to exclude yourself from the Class, you must submit a request for exclusion in accordance with the instructions set forth in the Notice, and it must be postmarked no later than **February 22, 2021**. If you properly exclude yourself from the Class, you will not be bound by any judgments or orders entered by the Court relating to the Settlement, whether favorable or unfavorable, and you will not be eligible to share in the distribution of the Settlement Fund.

If you wish to participate in the Class Action Settlement, but wish to object in whole or part to the proposed Settlement, you must do so by first class mail in accordance with the instructions set forth in the Notice on or before **February 22, 2021**.

**PLEASE DO NOT CONTACT THE COURT, DEFENDANTS, OR  
DEFENDANTS' COUNSEL REGARDING THIS NOTICE.**

DATED: January 11, 2021

BY ORDER OF THE COURT  
DELAWARE SUPERIOR COURT

# **EXHIBIT D**

**EXHIBIT C**

**FEB 0 2 2021**

**Request for Exclusion**

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

*Shirley T. Shipe*  
\_\_\_\_\_  
Signature

*Shirley T. Shipe*  
\_\_\_\_\_  
Printed Name

*4 Little Owl Trail, MB, Del*  
\_\_\_\_\_  
Current Address

*302-945-7180*  
\_\_\_\_\_  
Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**

*Q*

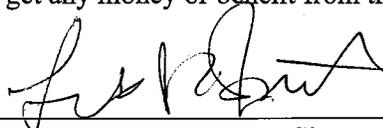


**EXHIBIT C**

FEB 02 2021

**Request for Exclusion**

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



Signature

LENOX J. K. SMITH

Printed Name


  
 CAMILLE G. SMITH

P.O. Box 1255

Millsboro, DE 19966

Current Address

302.934.9764

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C****FEB 0 2 2021****Request for Exclusion**

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



Signature

Lenox J. K. Smith

Printed Name


  
 CAMILLE G. SMITH

14 Hunters PT

Millsboro, DE 19966

Current Address

302 934 9764

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C**

**Request for Exclusion**

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

*Mildred A. Dohrn*

.Signature

MILDRED A. DOHRN

Printed Name

27625 THISTLE LANE

MILLS BORO, DE 19966

Current Address

302 945 5637

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C**

FEB 04 2021

**Request for Exclusion**

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

*Stanley A Hearn*  
Signature

*Stanley A Hearn*  
Printed Name

*1326 N. Fir*

*TACOMA, WA 98406*

Current Address

*253-752-5064*

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C**

**FEB 0 2 2021**

**Request for Exclusion**

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

Joyce E. Serman  
Signature

Joyce E. Serman  
Printed Name

90 Joyce E. Serman

9 Nash Circle

Millsboro, De. 19966  
Current Address

302-245-2281  
Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C**

**Request for Exclusion**

FEB 11 2021

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

Nancy L. Quillen  
Signature

NANCY L. QUILLEN  
Printed Name

306 BRANCHWAY  
MILLSBORO, DE 19966

Current Address  
1-302-934-6618  
Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C****Request for Exclusion**

FEB 17 2021

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

Grace A. Beveridge  
Signature

GRACE A. BEVERIDGE  
Printed Name

VACATION: 14 Nash Circle, Hut Courts W.

Millsboro, DE 19966

PRIMARY: 505 LONG RUN DRIVE,  
Current Address  
SCHUYLKILL HAVEN, PA 17972

570-739-4895

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**

*This is addressed to DAVID BEVERIDGE  
who is deceased since 2010.*



**EXHIBIT C**

FEB 11 2021

**Request for Exclusion**

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

Allison Bennett  
Signature

Allison Bennett  
Printed Name

29515 Vines Creek Rd.

Dagsboro, DE 19939

Current Address

302-236-9299  
Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C**

FEB 16 2021

**Request for Exclusion**

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

*[Handwritten Signature]*

Signature

Ana M Ruiz

Printed Name

20508 Ashedille Dr

Current Address

Millsboro, DE 19966

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C**

FEB 16 2021

**Request for Exclusion**

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

Gladys T Larsen  
Signature

Gladys T Larsen  
Printed Name

27778 Possum Point Road Millsboro, DE  
Current Address 19966

302 470 9083  
Current Telephone Number 2/09/21

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



# EXHIBIT C

FEB 20 2021

## Request for Exclusion

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

Penney M. Steen  
Signature

Penney M. Steen  
Printed Name

\_\_\_\_\_  
\_\_\_\_\_

29548 Penney Ln, Dagsboro, DE  
Current Address 19939

302-732-6584  
Current Telephone Number

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

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

The Request for Exclusion must be postmarked no later than February 22, 2021.



**EXHIBIT C**

FEB 23 2021

**Request for Exclusion**

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

*Louise D. Dorey*  
\_\_\_\_\_  
Signature

*Louise D. Dorey*  
\_\_\_\_\_  
Printed Name

*26604 Grand Hill Rd.*  
\_\_\_\_\_

*Millersville DE 19966*  
\_\_\_\_\_

\_\_\_\_\_  
Current Address

*302-934-7765*  
\_\_\_\_\_

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



# EXHIBIT C

## Request for Exclusion

FEB 23 2021

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

*Erica Kennedy*

Signature

*Erica Kennedy*

Printed Name

*23512 Tristan Lane, Millsboro DE*

Current Address

*19966*

*302-381-1662*

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C**

FEB 23 2021

**Request for Exclusion**

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

*Josephine P. Rogers*  
\_\_\_\_\_  
Signature

*Josephine P. Rogers*  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
\_\_\_\_\_

*124 Millers Run Millsboro, De*  
\_\_\_\_\_  
Current Address *19964*

*202-933-0471*  
\_\_\_\_\_  
Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



# EXHIBIT C

FEB 23 2021

## Request for Exclusion

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

Mary Lou Rollison  
Signature

Mary Lou Rollison  
Printed Name

317 Country Place

Millsboro, Delaware 19966

Current Address

302-934-8926  
Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C****Request for Exclusion**

FEB 25 2021

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

Wayne Hartig  
Signature

WAYNE HARTIG  
Printed Name

115 S. Symington Ave.  
Current Address

Catonsville, MD. 21228

443-636-5030  
Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C****Request for Exclusion**

FEB 20 2021

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

Bernice L. Murray  
Signature

Bernice L. Murray  
Printed Name

414 Delaware Ave.

Millsboro, DE 19966

Current Address

302 934-1019

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EXHIBIT C**

MAR 04 2021

**Request for Exclusion**

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

Printed Names of owners of  
27066 John J Williams Highway  
Millsboro, DE 19966

Albert Fiel  
Crystal Coursey  
Sharon Coursey  
Michael Coursey  
Sandra Coursey  
Rhonda Coursey-Pratt  
Daniel Coursey  
Aaron Coursey  
Trent Coursey

Rhonda V. Coursey-Pratt

Signature

*Rhonda Coursey-Pratt*

Printed Name

27066 John J Williams Highway  
Millsboro, DE 19966

Current Address

314-378-7340

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**

*Trent Coursey*

---

Trent Coursey  
27066 John J Williams Highway  
Millsboro, DE 19966  
Ph: 302-260-1475

*Aaron Coursey*

---

Aaron Coursey  
27066 John J Williams Highway  
Millsboro, DE 19966  
Ph: 215-900-0558

*Daniel Coursey*

---

Daniel R. Coursey  
27066 John J Williams Highway  
Millsboro, DE 19966  
Ph: 267-738-6226

*Alberta Feil*

---

Alberta M. Feil  
27066 John J Williams Highway  
Millsboro, DE 19966  
Ph: 937-430-4037

*Crystal Coursey*

---

Crystal M. Coursey  
27066 John J Williams Highway  
Millsboro, DE 19966  
Ph: 302-519-6716

*Sharon Coursey*

---

Sharon L. Coursey  
27066 John J Williams Highway  
Millsboro, DE 19966  
Ph: 302-480-3991

*Michael Coursey*

---

Michael S. Coursey  
27066 John J Williams Highway  
Millsboro, DE 19966  
Ph: 252-301-0335

*Sandra Miller*

---

Sandra L. Miller  
27066 John J Williams Highway  
Millsboro, DE 19966  
Ph: 314-954-0243

### EXHIBIT C

### Request for Exclusion

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

Donna Rogers / Phillip E. Rogers

Signature

Donna Rogers

Phillip E. Rogers

Printed Name

P.O. Box 962

Millsboro, DE 19966

Current Address

302-841-8060

Current Telephone Number

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

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

The Request for Exclusion must be postmarked no later than February 22, 2021.

This form was received  
after 2/22/21



11005290736

**EXHIBIT C**

FEB 19 2021

**Request for Exclusion**

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

*Linda L. Thomas*

Signature

*Linda L. Thomas*

Printed Name

*31658 Deer Haven Lane*

*Dagsboro, De. 19939*

Current Address

*302-732-9224*

Current Telephone Number

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

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

**The Request for Exclusion must be postmarked no later than February 22, 2021.**



**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



EXHIBIT C

## **PLAN OF ALLOCATION**

Should the Court grant final approval of the Settlement Agreement following the Fairness Hearing, this Plan of Allocation will govern the allocation of compensation to Participating Class Members in this Action (also referred to as Claimants herein). The total settlement proceeds to be allocated will be determined by deducting Court-approved legal fees, costs, and expenses (including the costs of administering the settlement) from the \$65 million Class Action Settlement Amount. The entirety of the net proceeds will be distributed to the eligible Participating Class Members who establish their damages pursuant to this plan. Unless specified herein, capitalized terms have the same meaning ascribed to them in the Settlement Agreement.

### **Initial Allocation**

The steps in the Initial Allocation process are as follows:

**Appointment of Claims Adjudicators:** Plaintiffs' Counsel will engage the services of the Honorable Irma Raker (Ret.), or another individual or entity approved by the Court, to serve as Claims Adjudicator. If approved, the Hon. Irma Raker (Retired) will serve as the Claims Adjudicator and will evaluate all participating class members for compensation. Judge Raker may also utilize David White as a consultant and/or assistant adjudicator.

The Honorable Irma Raker (Ret.) has extensive experience in class action allocation, having recently led the distribution of settlement proceeds from a \$190 million settlement to approximately 9,000 claimants in *Jane Doe No. 1, et al. v. Johns Hopkins Hospital, et al.*, No. 24-C-13-001041 (Md. Cir. Ct. 2014) (class action settlement of claims of surreptitious photographing and inappropriate touching brought by former patients against gynecologist Dr. Nikita Levy and Johns Hopkins University). Judge Raker has also served as an Associate Judge of the District Court of Maryland, Montgomery County from 1980 to 1982, Associate Judge of the Circuit Court for Montgomery County Maryland from 1982 to 1992, and on the Maryland Court of Appeals from 1994 until her retirement in 2008. The Honorable Irma Raker's CV is attached as Exhibit 1 to this Allocation Plan.

David White is a Delaware attorney with experience in alternative dispute resolution and toxic tort litigation. Mr. White also served as a Commissioner for the Delaware Superior Court from 2001 to 2008, where he presided over pretrial matters pertaining to the Court's mass tort litigation. Mr. White has also been actively involved in this litigation for several years as a mediator and Court Appointed Special Discovery Master. Mr. White brings subject matter expertise to the allocation team based on his long-term involvement and knowledge of this matter.

**Appointment of Claims Administrator:** Plaintiffs' Counsel propose to engage RG/2 Claims Administration LLC to serve as the Claims Administrator and

will furnish all Registrations to the Claims Adjudicators for their consideration. RG/2 is a boutique class action claims administration firm with a nationwide presence founded by seasoned class action practitioners and highly credentialed tax professionals. The Claims Administrator will collect and provide the Claims Adjudicators with any information (including medical records or other supporting information provided by the Claimant) that is necessary to evaluate the Claimant's claims.

**Evaluation of Claims:** The Claims Adjudicators will evaluate each individual claim. The Claims Adjudicators will review all applicable information and personally meet each class member, if necessary (via telephone, videoconference, or in person as appropriate). The Claims Adjudicators will consult subject matter experts including S.S. Papadopoulos (hydrogeology), John Purdum (air modeling), William Meggs, M.D. (toxicology); James Dahlgren, M.D. (toxicology); Catherine Zeman, Ph.D. (epidemiology); and Kenneth Acks (property diminution), as necessary, to provide expertise related to the exposure, health effects, or likely property diminution, as applicable, for each Participating Class Member. The CVs of these experts are available upon request.

The Claims Adjudicators will also evaluate eligibility to be a Participating Class Member, should there be any question as to eligibility. The Parties also

generally agree that any ambiguity with respect to eligibility should be resolved in favor of finding eligibility where feasible.

**Calculation of Damages:** The process for awarding damages is set forth in “Damages Criteria and Categories, Related Factors and Special Damages” below.

The Claims Adjudicators will consider each of the Damages Criteria for each Claimant. With respect to most of the identified Damages Criteria, the Claimant’s damages will be categorized as none, mild, moderate, or severe. The Claims Adjudicators will be responsible for assigning a fixed monetary damage amount to each Damage Severity Category within each of the applicable Damage Criteria. The Claims Adjudicators may also award Special Economic Damages, where appropriate, in consideration of costs for related medical bills, water treatment, water testing, and other related damages actually incurred. The amount allocated to each Claimant will be the sum of the monetary damage awards for each of the applicable Damages Criteria, and any Special Economic Damages. The Claims Adjudicators will not award damages for claims unrelated to the alleged contamination at issue in this Action.

**Notification of Award:** The Claims Adjudicators will notify each Claimant of the amount allocated, or of a decision on eligibility (if applicable), in an Initial Notification. The Initial Notification will include notice reminding each Claimant that they continue to be bound by the terms and conditions of the Settlement Agreement, including the release, and will also include the required Medicare

Addendum. Claimants may appeal the Initial Notice as provided below. If no timely appeal is made, and the Medicare Addendum has been returned (where applicable), the Claims Adjudicators will authorize a Final Notice and including payment of the claim. If a timely appeal is made, the Final Notice will not be issued until after the appeal process is concluded. At that time, and after the Medicare Addendum has been returned (where applicable), the Claims Adjudicators will authorize a Final Notice consistent with the appeal outcome and including payment of the claim. The Claims Adjudicator shall have the discretion to delay the issuance of Final Notices and payment of claims until after the Appeal process has been completed for all Claimants.

In the event that the Parties agree to an alternative approach to the Medicare Addendum before the Initial Notices are sent, such as a lien resolution administrator, as contemplated under the Settlement Agreement, Claimants shall not be required to submit a Medicare Addendum.

### **Appeal**

If any Claimant disagrees with their allocated Injury Category and Award, or any determination as to eligibility, they may appeal the Initial Notice. The appeal shall be made within 30 days after the mailing of Initial Notice to that person by providing to the Claims Adjudicators a written request to reconsider the allocation and/or eligibility determination and by including any new information that should

be considered by the Claims Adjudicators during such reconsideration. The Claims Adjudicators will notify such persons of a decision within 45 days after receiving such written request to reconsider. The decision on the Initial Notice or the appeal if made, shall then be final and not subject to further review.

Claimants shall be advised that an appeal of their Initial Notice may result in the Claims Adjudicator determining that their claim payment remain the same, be increased, or *be decreased*.

Claimant shall be barred from bringing any action against the Releasees (as defined in and to the extent set forth in the Settlement Agreement), Plaintiffs' Counsel, the Claims Adjudicators, or the Claims Administrators, concerning the allocation received.

### **Reserve Allocations**

**Late Filed Claims:** The Claims Adjudicators shall reserve two million dollars (\$2,000,000) of the total Class Action Settlement Amount the payment of claims submitted after the Bar Date. The Claims Adjudicators shall have the sole discretion to make any distribution from the reserve allocation, considering whether the Claimant is a minor or whether extraordinary circumstances otherwise prevented a Claimant from submitting a timely Registration. At the discretion of the Claims Adjudicators, some or all of this reserve allocation may be maintained for one year following the Court's approval of the Settlement Agreement, provided that none of

the reserve allocation is maintained after that date. At the discretion of the Claims Adjudicators, the remaining balance of the reserve allocation may be added to the Latent Injury Trust Fund described below.

**Latent Injury Claims:** To the extent that members of the Class who may show signs of harm that may only be manifested, and require treatment, at some later time following the conclusion and final approval of the initial allocation, a latent injury trust fund shall be set aside for the purpose of compensating Class members who develop substantiated latent injuries (the "Latent Injury Trust Fund"). The Latent Injury Trust Fund shall be made up of an initial cash amount of \$2,000,000.00. Should a member of the Settlement Class, over the course of the five (5) years following Final Approval of the proposed Settlement Agreement, develop documented, causally related medical symptoms requiring medical treatment unknown to the Class member as of the Bar Date, such Class member may apply to the Claims Administrator for funds from the Latent Injury Trust Fund, solely to pay for such treatment. Such funds as may remain in the Latent Injury Trust Fund as of five (5) years following the Court's approval of the Settlement Agreement.

**Distribution of Residual Funds:** At the discretion of the Claims Adjudicators, but no later than six months after the expiration of the five year period for submission of claims to the Latent Injury Trust Fund, any remaining funds from the reserve allocations for late filed claims and the Latent Injury Trust Fund shall be

distributed to the Participating Class Members on a pro rata basis consistent with the Final Notice made by the Claims Administrator, accounting for the resolution of any appeals made of any such Initial Allocation.

### **Damages Criteria and Categories, Related Factors, and Special Damages**

#### **Damages Criteria and Categories:**

The Claims Adjudicator will consider the following four criteria of damages and related criteria (collectively referred to herein as “damages”):

- (1) Type and severity of personal injuries, including wrongful death and survival claims, associated with exposure to alleged groundwater contamination and/or air pollution associated with the alleged contamination at issue in this Action in the Groundwater Area, the Air Area, or both, as applicable;
- (2) Risk of future personal injury and necessity for medical monitoring, based on exposure to groundwater contamination and/or air pollution associated with the alleged contamination at issue this Action, as applicable;
- (3) Degree of property diminution or loss of enjoyment of real property associated with alleged groundwater contamination and/or air pollution in the Groundwater Area, the Air Area, or both, as applicable associated with the alleged contamination at issue in this Action (this criteria is not applicable to individuals who are only Claimants because they were employed full-time in Groundwater Area, the Air Area, or both); and
- (4) The necessity for an alternative water supply or water treatment system (this criteria is only applicable to Claimants who currently own or reside in the Groundwater Area)

With respect to criteria 1, 2, and 3 above, damages will be categorized as:

**Category 1:** no identified damages

**Category 2:** mild/minor damages

**Category 3:** moderate damages

**Category 4: severe damages**

With respect to criteria 4 above, damages will be categorized as either (1) requiring alternative water or water treatment system (to the extent not already required to be provided through the First Amended Consent Decree) or (2) not requiring any alternative water or water treatment system. Damages, if any, will awarded in consideration of the estimated cost of the alternative water or water treatment system.

The Claims Adjudicators will be responsible for assigning monetary damages amounts for each category within each of the four damage criteria.

Only those Participating Class Members within the Air Area will be considered for damages related to alleged air pollution, and only those within the Groundwater Area will be considered for damages related to potential groundwater contamination. Claimants who have owned property, leased property, or resided in both areas may be considered for both types of damages. Claimants who did not own or lease property or reside in both areas and are only Claimants because they were employed full-time in the Groundwater Area, the Air Area, or both, may not be considered for damages related to criteria 3 or 4, which only apply to Claimants who owned property, leased property, or resided in the Settlement Class areas.

**Factors for Consideration:**

The Claims Adjudicator may consider the following non-exclusive list of factors in arriving at an allocation of the settlement proceeds which is fair and reasonable, and

considers the relative merit and compensable damages for each claim consistent with Delaware law.

**(1) Exposure to Alleged Groundwater Contamination in the Groundwater Area:**

- Current or former residence within Groundwater Area, and proximity of residence to spray irrigation and sludge fields utilized by Mountaire.
- Exposure to potentially contaminated well water, including:
  - use of well for drinking water;
  - rate of consumption of well water;
  - presence or absence of water treatment system effective at removing nitrates; and
  - well testing results.
- Duration and period of time over which class member resided within Groundwater Area.

**(2) Exposure to Alleged Air Pollution in the Air Pollution Area:**

- Current or former residence within Air Area, and distance of residence from sources of potential air pollution, including the Mountaire facility and storage lagoons.
- Actual exposure to potential air pollution, including observed historic odors.
- Duration and period of time over which class member were potentially exposed within the Air Area.

**(3) Personal Injury Category Damages:**

- Diagnosed and/or reported medical conditions associated with nitrates, for those Participating Class Members within the Groundwater Area.
- Diagnosed and/or reported medical conditions associated with hydrogen sulfide, for those Participating Class Members within the Air Area.

**(4) Property Diminution Damages:**

- Real property characteristics.
- Period and duration of property ownership.
- Claimant supplied appraisals, valuations, property sale history or related information.
- Location of the property relative to the Facility

### **Special Economic Damages:**

In addition to the above damage categorization, Claimants may be eligible for additional Special Damages, including but not limited to past medical and other unreimbursed expenses, which will consider the following:

- Claimant supplied medical bills resulting from medical conditions associated with nitrate, for those within Groundwater Area.
- Claimant supplied medical bills resulting from medical conditions associated with hydrogen sulfide exposure, for those within the Air Pollution Area.
- Claimant supplied costs and expenses for alternative water supply, water testing, and water filtration, for those within the Groundwater Area.

# **Exhibit 1**

**IRMA S. RAKER**  
**Bethesda, MD**  
**(301) 518-7030**

**JUDICIAL EXPERIENCE:**

Court of Appeals of Maryland, Judge, 1994-2008; Senior Judge, 2008-Present  
Circuit Court for Montgomery County, Associate Judge, 1982-1994  
District Court of Maryland, Associate Judge, 1980-1982

**LEGAL EXPERIENCE:**

Certified Mediator and Arbitrator, 2008-Present  
American Arbitration Association, Arbitrator and Mediator, 2015-Present  
Sachs, Greenebaum and Tayler, Partner, 1979-1980  
State's Attorney's Office for Montgomery County, Assistant State's Attorney, 1973-1979

**EDUCATION:**

**Certified Mediator:**

American Bar Association, 2007  
Appellate Mediation, Maryland Court of Special Appeals, December 2009-Present

**Law School:**

Washington College of Law of The American University, Juris Doctor, December 1972

**Post-Graduate Studies:**

The Hague Academy of International Law, The Hague, Holland, July 1959

**Undergraduate Studies:**

Syracuse University, Bachelor of Arts, June 1959

**BAR MEMBERSHIPS:**

Court of Appeals of Maryland, 1973  
Court of Appeals of the District of Columbia, 1974  
United States District Court for the District of Maryland, 1977  
United States Court of Appeals for the Fourth Circuit, 1977

**TEACHING ACTIVITIES:**

**National:**

Washington College of Law of The American University, Adjunct Professor, Trial  
Practice, 1980-Present  
Maryland Judicial Institute, faculty member, 1984-2008

**International:**

The Court of Bosnia and Herzegovina, Sarajevo, Lecturer, April 2005  
Taiwan High Court, Taiwan, Lecturer, May 2001  
Consultant at Conference for Newly Independent States, Leiden, The Netherlands,  
November 1995

**PROFESSIONAL ACTIVITIES:**

Senior Judges Committee, Maryland Judicial Conference, 2015-Present  
Maryland Access to Justice Commission, Chair, 2008-2014  
Maryland Judicial Conference, Judicial Compensation Committee, Chair, 1997-2008  
Attorney General's and Lt. Governor's Family Violence Council, 1995  
Maryland Special Committee to Revise Article 27, Crimes and Punishment, Annotated  
Code of Maryland  
Maryland Judicial Conference, Executive Committee, elected to represent Sixth Judicial  
Circuit, Legislative Committee, 1985-1989  
Commission to Study Bail Bond and Surety Industry in Maryland, appointed by Chief  
Judge Murphy to represent Maryland Judicial Conference, 1981  
District Court Committee on Criminal Law and Motor Vehicle Matters, Chairperson,  
appointed by Chief Judge Sweeney, 1981-1982  
Attorney Grievance Commission of Maryland, Inquiry Committee, 1978-1981

**Maryland State Bar Association:**

Maryland Bar Foundation, Fellow, 1989-Present  
Board of Governors, elected 1981, 1982, 1985, 1986, 1990  
Standing Committee to Draft Pattern Jury Instructions in Civil and Criminal Cases,  
Chair; Sub-Committee to Draft Pattern Instructions in Criminal Cases, Chair, 1980-  
2012; Member, 1980-Present  
Criminal Law and Practice Section Council, Chair, 1983-1984; Member, 1973-Present;  
Section Council Member, 2008, 2011-2013  
Montgomery-Prince George's Continuing Legal Education Institute, Inc., Board of  
Trustees, 1997  
Special Committee on Law Related Education, 1983-2012  
Judicial Administration Section Council, Member, 1994  
Special Committee on the Centennial of the Maryland State Bar Association, Member,  
1994  
Judicial Administration Section Council, 1994-1998  
Special Committee on Judicial Selection and Tenure, 1979  
Special Committee on Environmental Law, 1978-1979  
Special Committee on Trial by Jury, 1988-1993  
Special Committee on Law Practice Quality, 1989-1992

**American Bar Association:**

American Bar Association Fellow  
Criminal Justice Standards Committee Task Force on Diversion and Special Courts,  
Chair, 2006-2010  
Criminal Justice Standards Committee, Chair, 2002-2004, Chair, 1995-1996, Member,  
1994-1996

Criminal Justice Standards Pretrial Release and Speedy Trial Task Force, 1999-2001  
ABA Bar Foundation Fellow, 1994-Present  
Criminal Justice Section Council, elected 3-year term, 1997  
Criminal Justice Standards Committee Task Force on Trial by Jury and Discovery, 1991-1993  
Committee on Rights of Victims in the Criminal Justice System, 1992  
Ad Hoc Committee on the Indigent Defense Crisis, 1992-1993  
Judicial Division International Courts Committee, 2006

**Montgomery County Bar Association:**

Bar Leaders, Montgomery County Bar Foundation  
Executive Committee, elected 1979-1980  
Criminal Law Section, Chairperson, 1978-1979  
Ethics Committee, 1977-1978  
Nominating Committee, 1977-1978  
Circuit Court Committee  
Correctional Reform Committee  
Committee on Administration of Justice

**American Law Institute**, elected 1997, Member

**American Inns of Court:**

Fahy Inn, Executive Committee & Charter Member, 1983-1985  
J. Dudley Digges Inn, 1985-2000  
Alan J. Goldstein Inn, President, 1995-1996

**PUBLICATIONS:**

Article, *Fourth Amendment and Independent State Grounds*, 77 MISS. L.J. 401 (2007)  
Note, *The New "No-Knock" Provisions and its Effect on the Authority of the Police to Break and Enter*. 20 Am. U. L. Rev. 467 (1970-71)

**HONORS:**

Simon E. Sobeloff Law Society Sobeloff Award, 2016  
Public Justice Center - Access to Justice, 2014  
Maryland Bar Foundation, H. Vernon Eney Award, June 2009  
Maryland State's Attorney's Association Leadership Award, 2008  
American Bar Association, Margaret Brent Women Lawyers of Achievement Award, August, 2007  
Lady Justice Award, National Association of Women Judges, District 4, 2007  
*The Daily Record's* Leadership in Law Award, 2001  
National Association of Social Workers' Public Citizen of the Year Award, 2001  
Certificate of Appreciation presented by Montgomery County Bar Association for contribution to the Mentor-Mentee Program, 2000  
Outstanding Jurist Award presented by Montgomery County Bar Association, 2000  
Recognized by *The Daily Record* as one of "Maryland's Top 100 Women," 1998, 1999, 2001 and 2003  
*The Daily Record's* Circle of Excellence, 2001

Midwood High School Alumni Association, Lifetime Achievement Award, 1999  
Girl Scouts of Central Maryland, Distinguished Women Award, 1999  
Montgomery County Bar Association Century of Service Award, 1999  
The American University, Washington College of Law Distinguished Alumna Award, 1999  
Included in *Women of Achievement in Maryland History*, a historical reference book on extraordinary achievements of women in Maryland American Red Cross, Maryland Chapter, Elizabeth Dole Woman of Achievement Award, 1998  
*Who's Who in America, Who's Who in American Law, Who's Who of American Women, Who's Who in the East*  
Syracuse University Alumni Club of Greater Baltimore, Outstanding Alumnus, Spokesperson & Jurist, 1996  
Margaret Brent Trailblazers Award presented by The American Bar Association Commission on Women in the Profession and The Women's Bar Association of Maryland, 1995  
New York Bar Foundation, Award of Appreciation, 1995  
Outstanding Syracuse University Alumna Award in Commemoration of 125<sup>th</sup> Anniversary of the founding of Syracuse University, 1995  
Rita C. Davidson Award, Recipient of Annual Award, Women's Bar Association of Maryland, 1995  
Ninth Annual Dorothy Beatty Memorial Award for Significant Contribution to Women's Rights, Women's Law Center, 1994  
Robert C. Heeney Award, Recipient of Annual Award, Maryland State Bar Criminal Law Section, 1993  
Women Legislators of Maryland, The General Assembly, Citation, in recognition of outstanding contributions to the advancement and welfare of women in Maryland, 1989  
Congregant of Excellence, awarded by Adas Israel Men's Club, 1988  
"Celebration of Women" Award, Pioneer Women Na'amat Outstanding Service on Behalf of Victims of Family Violence, 1985  
Montgomery County Government Certificate of Appreciation and Recognition for contribution to a more responsive approach to the problems of domestic violence, 1983  
Montgomery County Government Award for Outstanding Contribution to the Task Force on Battered Spouses, 1982  
Montgomery County Government Certificate of Appreciation and recognition for two years of outstanding work to promote the safety and dignity of women as a member of the Montgomery County Sexual Offenses Committee, 1977  
Lawyer's Cooperative Publishing Company and Bancroft Whitney awards for highest grade in Torts, Criminal Procedure and Modern Land Transactions, 1971-1973  
American University Law Review, Associate Editor, 1972  
Lura E. Turley Prize, American University, 1972  
Merit Scholarship to Attend Hague Academy of International Law, 1959  
Pi Sigma Alpha, National Political Science Honorary, 1958  
Deans List, Syracuse University, 1957-1959

**PROFESSIONAL ASSOCIATIONS:**

American Bar Association, 1974-2013  
Maryland State Bar Association, 1973-Present  
Montgomery County Bar Association, 1973-Present  
Women's Bar Association of Maryland, 1974-Present  
Women's Bar Association of the District of Columbia, 1978-Present  
National Association of Women Judges, 1980-Present, Maryland Chapter, elected  
Treasurer, 1991; elected President, Maryland Chapter, 1994  
The International Academy of Trial Judges, 1989-Present  
National District Attorney's Association, 1973-1980  
Network 2000, 1996-2011  
The Women's Forum of Washington, DC, 2004-2012  
Cosmos Club, Member, 2008-Present

**CIVIC ACTIVITIES:**

Washington College of Law, Dean's Advisory Council, Member, 1998-2009  
Syracuse University's Maxwell School of Citizenship and Public Affairs Advisory Board,  
Member, 1996-2004  
Bethesda-Chevy Chase YMCA Committee of Management, 1995-2004  
Montgomery County Task Force on Battered Spouses, 1981  
Montgomery County Advisory Committee on Environmental Protection, 1980  
Montgomery County Crisis Center, Citizens Advisory Board, 1979, 1980  
Montgomery County Advisory Committee to County Executive on Child Abuse, 1976-  
1977; Battered Spouses, 1977-1978  
Montgomery County Sexual Offenses Committee, 1976, 1977  
West Bradley Citizens Association, Treasurer, Vice-President, 1964-1968

**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



EXHIBIT D

**IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE**

GARY and ANNA-MARIE )  
CUPPELS individually and on behalf )  
of all others similarly situated, )  
 )  
Plaintiffs, )

v. )

Case No.: CA S18C-06-009 CAK

MOUNTAIRE CORPORATION, an )  
Arkansas corporation, MOUNTAIRE )  
FARMS, INC., a Delaware )  
corporation, and MOUNTAIRE )  
FARMS OF )  
DELAWARE, INC., a Delaware )  
corporation. )  
 )  
Defendants. )

**AFFIDAVIT OF HARVEY A. COHEN, PhD, PG**

STATE OF  Maryland  )  
 ) ss.  
COUNTY OF  Montgomery  )

I, Harvey A. Cohen, a Principal Hydrogeologist with S.S. Papadopoulos & Associates, Inc, do hereby depose and say the following under oath:

1. I have more than 20 years of experience as a hydrogeologist evaluating the fate and transport of contaminants in groundwater. I Have a B.S. in Geology from Cornell University and a PhD in Geological Sciences from Princeton University. I am a registered geologist in Delaware and several other states.
2. Over the past two years, I have reviewed hundreds of relevant documents including but not limited to monitoring well and residential well data and reports published by Mountaire, the Delaware Geologic Survey, the Delaware Department of Natural

Resources and Environmental Control (DNREC) and the U.S. Environmental Protection Agency (EPA) related to the groundwater contamination by nitrates in the vicinity of Mountaire's wastewater spray irrigation and sludge disposal fields north and east of Millsboro, Delaware.

3. Since 2018, I have authored or co-authored several reports and related documents addressing the area of groundwater concern related to Mountaire's operations. These include:
  - a. Cohen, Harvey and Soderberg, Keir. 2018. Review and Assessment of Groundwater Conditions in the Vicinity of the Mountaire Farms Poultry Processing Plant, Millsboro, Delaware. June 11;
  - b. Cohen, Harvey, 2018. Letter to Chase Brockstedt re: Affidavit of Mark Eisner (Appendix B), C.A. No.: S 18C-06-009 RFS, Mountaire Poultry Processing Plant, Millsboro, DE. October 8; and
  - c. Cohen, Harvey and Soderberg, Keir. 2020. Supplemental Report Review and Assessment of Groundwater Conditions in the Vicinity of the Mountaire Farms Poultry Processing Plant, Millsboro, Delaware. January 15.
  - d. Cohen, Harvey and Soderberg, Keir. 2020. Supplemental Report Review and Assessment of Groundwater Conditions in the Vicinity of the Mountaire Farms Poultry Processing Plant, Millsboro, Delaware. April 28.
4. The first delineation, in the June 2018 report (Figure 2), was based primarily upon published information on area hydrogeology, geology, and topography, as well as information on the locations of Mountaire's spray irrigation fields and sludge application fields during the period after July 2000. The arrows in that figure show the generalized groundwater flow direction based on the following references and my own experience and technical judgement:
  - a. Ramsey, Kelvin W., and Jaime L. Tomlinson. 2014. Geologic Map of the Millsboro and Whaleysville Quadrangles, Delaware. Delaware Geological Survey Digital Product 06-01, Geologic Map Series No. 20.

- b. Delaware Geological Survey, Digital Water-Table Data for Sussex County, Delaware (Digital Data Product No. 05-01). 2005.
  - c. He, Changming, and A. Scott Andres. 2015. Simulation of Groundwater Flow and Contaminant Transport in Eastern Sussex County, Delaware with Emphasis on Impacts of Spray Irrigation of Treated Wastewater. Delaware Geological Survey. Report of Investigations No. 79.
5. The area of groundwater concern was updated in the October 2018 letter to Chase Brockstedt based upon additional information, including records that indicated Mountaire had disposed of sludge on the southern portion of the Hettie Lingo field, on the south edge of the Inland Bays water treatment facility.
- a. Based upon the sources cited above, as well as additional regional hydrogeology and modeling reports, the area of groundwater concern was extended eastward to address the potential pathways of contaminant migration from the former Hettie Lingo farm.
6. A revised delineation of the area of groundwater concern was presented in the reports of January 14, 2020 and April 28, 2020. The area of groundwater concern was refined, based upon mapping of groundwater data and particle tracking. The methods are outlined in Sections 2.2 and 2.3 of the January report. The area of groundwater concern defined by the envelope of particle tracks from Mountaire's wastewater and sludge disposal areas represents the likely area over which nitrate from Mountaire's operations has traveled or is likely to travel in the future (see Exhibit A attached).
- a. The primary source of information used for mapping water levels were monthly and quarterly groundwater elevation data from Mountaire spray field and sludge application field monitoring wells. Some quarterly data were also available from monitoring wells at the Inland Bays water treatment facility.
    - i. Data were grouped by sampling event (generally by month), and there were more than 60 events between February 2001 and June 2019 for which some data were available.

- ii. Universal kriging methods were then used to develop maps of groundwater elevations for each period for which data were available; the groundwater elevation data were supplemented with elevation control points along water bodies including the Indian River, Millsboro Pond, and Swan Creek. In addition, to better estimate the water table in areas with no monitoring wells (e.g. east of Swan Creek), several control points were also added, based upon the water level mapping completed by the Delaware Geological Survey (2005).
- iii. Following completion of the water table interpolation, particle tracking methods were implemented to simulate flow paths of particles originating near the boundaries of the spray irrigation and sludge application fields used by Mountaire;
- iv. In reviewing the particle tracks, events with fewer than 28 monitoring locations were excluded from the analysis, and data from east of Swan Creek were use separately to constrain flow path analyses east of Swan Creek; some sets of particle tracks indicating physically unlikely stagnation or convergence of particle tracks were also discarded as likely reflecting erroneous water level measurements;
- v. As indicated in the 2020 reports and their figures, the 31 remaining sets of flow paths were superimposed to illustrate an “envelope” of flow paths from the source areas – this methodology simulates seasonal and annual variations in groundwater flow paths that cannot be derived from the steady-state data sets or from parts of the area of concern with limited or no groundwater data.
- vi. As a result of this analysis, the revised area of groundwater concern was reduced in extent near the Udell, Thorogood, Rust and Hettie Lingo farms. While the calculated flow paths do extend westward to Cow Bridge Branch, the area of groundwater concern was not extended in that direction.

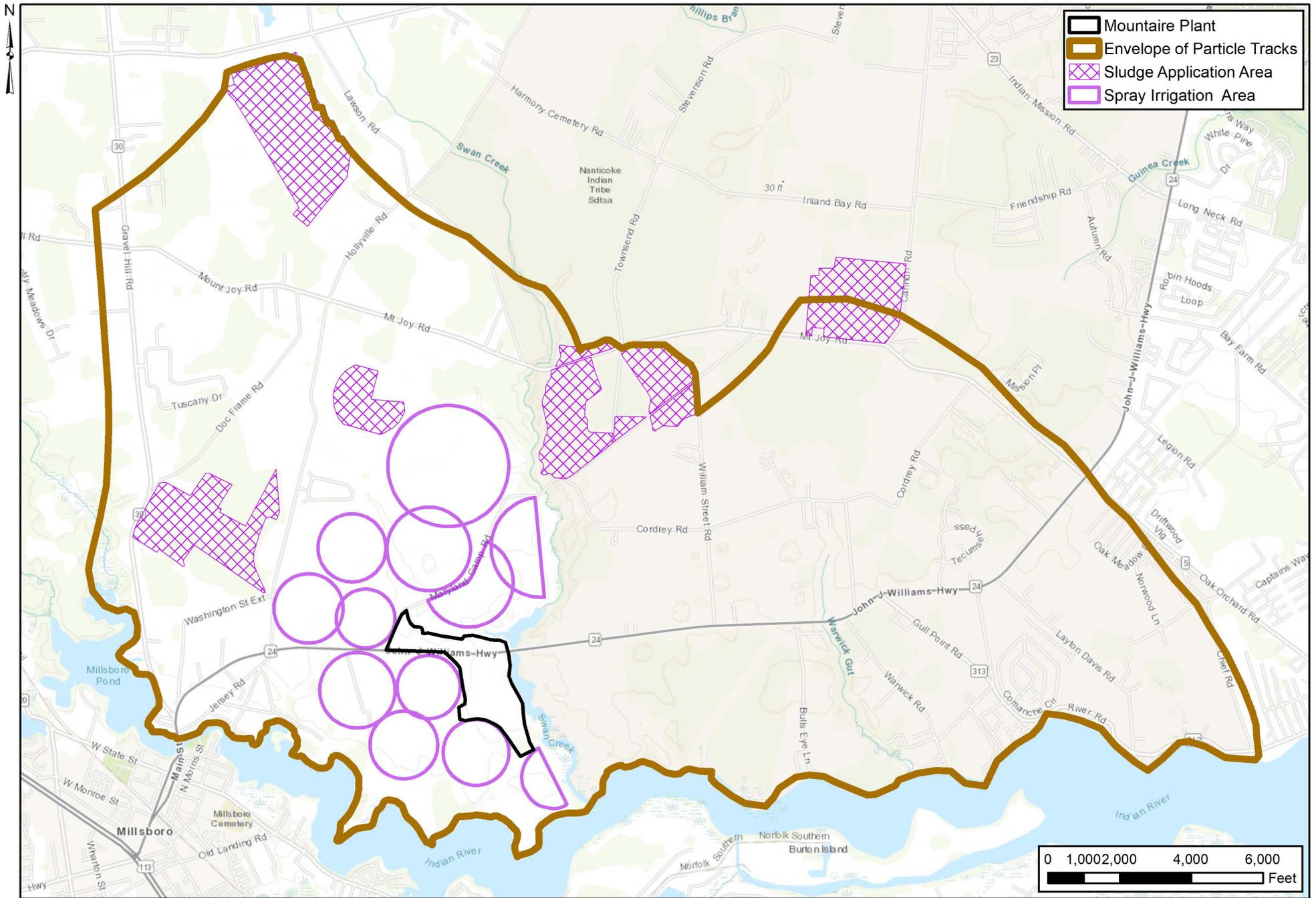
I affirm that the contents of this affidavit are true and correct to the best of knowledge, under penalty of perjury.

A handwritten signature in blue ink, appearing to read "Harvey Cohen", with a long horizontal flourish extending to the right.

---

HARVEY A. COHEN

September 15, 2020



**Exhibit A** Envelope of Particle Tracks (Cohen and Soderberg, 2020)

**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



**EXHIBIT E**



Mountaire reported emissions from its anaerobic lagoons for 2012 to 2018 yearly as:

- 10638 pounds in 2012,
- 2188 pounds in 2013,
- 8883 pounds in 2014,
- 7853 pounds in 2015,
- 11798 pounds in 2016,
- 12913 pounds in 2017, and
- 14921 pounds in 2018.

I used seven years of processed, hourly meteorological data with EPA-approved AERMINUTE (dated 15272) and AERMET (dated 19191). These are EPA meteorological preprocessors used to prepare meteorological information for the AERMOD model. AERMINUTE generates 1-hour wind speed and direction from 1-minute ASOS readings. These 1-hour values are used to supplement the hourly surface observations. I also used hourly surface observations from Sussex County Airport in Georgetown, Delaware and concurrent upper air observations from Wallops Island, Virginia for 2012-2018 were input to AERMET, all in accordance with EPA protocol.

### Conclusion

Delaware has established a regulatory, 1-hour hydrogen sulfide ambient air health standard of 0.03 parts per million (ppm). This means that concentrations of hydrogen sulfide in the community should never exceed that limit. For this analysis, the MAXIFILE option in AERMOD was used to create a file of modeled concentrations, and the corresponding receptor locations or areas that had ambient air concentrations violating the 1-hour Delaware hydrogen sulfide ambient air standard of 0.03 ppm.

The results of my analysis, based on EPA's AERMOD model and Mountaire's reported emissions, to a reasonable degree of scientific probability are that Mountaire caused hydrogen sulfide concentrations in the air surrounding the Mountaire plant to violate the Delaware 0.03 ppm 1-hour standard as far as 5.7 miles or more away from the plant.

### Figures

I have depicted the modeled concentrations on the attached figures. I provided the modeled concentrations, and threshold exceedances, with the corresponding UTM coordinates, to S. S. Papadopulos & Associates, Inc. (SSPA) to generate the figures that follow.

Year-specific 1-hour hydrogen sulfide exceedances for the 7-year meteorological modeling period are presented in Figure 1-7.

Figure 1 presents the area of modeled 1-hour hydrogen sulfide exceedances for 2012 TRI emissions and 2012 meteorology. H<sub>2</sub>S concentrations from the 2012 reported anaerobic lagoon emissions are at or above the 1-hour standard as far away as 6.2 miles from the modeling grid center.

Figure 2 presents the area of modeled 1-hour hydrogen sulfide exceedances for 2013 TRI emissions and 2013 meteorology. H<sub>2</sub>S concentrations from the 2013 reported anaerobic lagoon emissions are at or above the 1-hour standard as far away as 2.0 miles from the modeling grid center.

Figure 3 presents the area of modeled 1-hour hydrogen sulfide exceedances for 2014 TRI emissions and 2014 meteorology. H<sub>2</sub>S concentrations from the 2014 reported anaerobic lagoon emissions are at or above the 1-hour standard as far away as 4.4 miles from the modeling grid center.

Figure 4 presents the area of modeled 1-hour hydrogen sulfide exceedances for 2015 TRI emissions and 2015 meteorology. H<sub>2</sub>S concentrations from the 2015 reported anaerobic lagoon emissions are at or above the 1-hour standard as far away as 3.5 miles from the modeling grid center.

Figure 5 presents the area of modeled 1-hour hydrogen sulfide exceedances for 2016 TRI emissions and 2016 meteorology. H<sub>2</sub>S concentrations from the 2016 reported anaerobic lagoon emissions are at or above the 1-hour standard as far away as 5.3 miles from the modeling grid center.

Figure 6 presents the area of modeled 1-hour hydrogen sulfide exceedances for 2017 TRI emissions and 2017 meteorology. H<sub>2</sub>S concentrations from the 2017 reported anaerobic lagoon emissions are at or above the 1-hour standard as far away as 5.7 miles from the modeling grid center.

Figure 7 presents the area of modeled 1-hour hydrogen sulfide exceedances for 2018 TRI emissions and 2018 meteorology. H<sub>2</sub>S concentrations from the 2018 reported anaerobic lagoon emissions are at or above the 1-hour standard as far away as 5.2 miles from the modeling grid center.

Figure 8 presents the frequency of modeled exceedances over the 7-year 2012-2018 meteorological period.

All opinions expressed herein are based on the information and documents currently available with the right to supplement the opinions as more information is discovered or becomes available.

I swear or affirm, under penalty of perjury, that the above statements are true and correct.



---

John Purdum

.....



# Frequency of Mountaire Hydrogen Sulfide Ambient Standard Exceedances for 2012 Meteorology

Hydrogen Sulfide Anaerobic Lagoon Emissions Reported in 2012

Model Extent

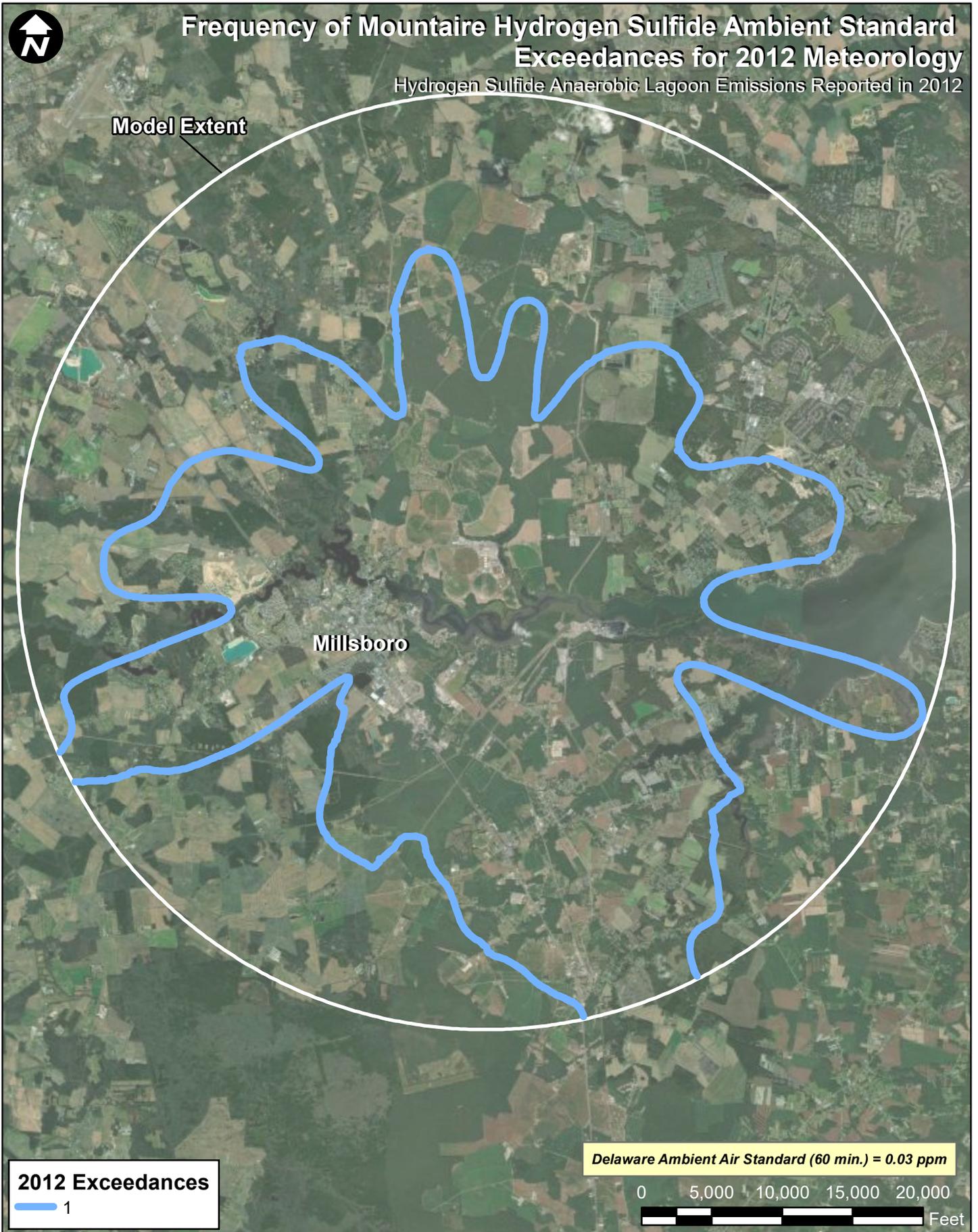
Millsboro

**2012 Exceedances**  
— 1

Delaware Ambient Air Standard (60 min.) = 0.03 ppm

0 5,000 10,000 15,000 20,000  
Feet

Figure 1





# Frequency of Mountaire Hydrogen Sulfide Ambient Standard Exceedances for 2013 Meteorology

Hydrogen Sulfide Anaerobic Lagoon Emissions Reported in 2013

Model Extent

Millsboro

Delaware Ambient Air Standard (60 min.) = 0.03 ppm

2013 Exceedances

1

0 5,000 10,000 15,000 20,000 Feet

Figure 2



# Frequency of Mountaire Hydrogen Sulfide Ambient Standard Exceedances for 2014 Meteorology

Hydrogen Sulfide Anaerobic Lagoon Emissions Reported in 2014

Model Extent

Millsboro

2014 Exceedances

1

Delaware Ambient Air Standard (60 min.) = 0.03 ppm

0 5,000 10,000 15,000 20,000 Feet

Figure 3



# Frequency of Mountaire Hydrogen Sulfide Ambient Standard Exceedances for 2015 Meteorology

Hydrogen Sulfide Anaerobic Lagoon Emissions Reported in 2015

Model Extent

Millsboro

2015 Exceedances

1

Delaware Ambient Air Standard (60 min.) = 0.03 ppm

0 5,000 10,000 15,000 20,000 Feet

Figure 4



# Frequency of Mountaire Hydrogen Sulfide Ambient Standard Exceedances for 2016 Meteorology

Hydrogen Sulfide Anaerobic Lagoon Emissions Reported in 2016

Model Extent

Millsboro

**2016 Exceedances**  
— 1

Delaware Ambient Air Standard (60 min.) = 0.03 ppm

0 5,000 10,000 15,000 20,000  
Feet

Figure 5



# Frequency of Mountaire Hydrogen Sulfide Ambient Standard Exceedances for 2017 Meteorology

Hydrogen Sulfide Anaerobic Lagoon Emissions Reported in 2017

Model Extent

Millsboro

**2017 Exceedances**  
— 1

Delaware Ambient Air Standard (60 min.) = 0.03 ppm

0 5,000 10,000 15,000 20,000  
Feet

Figure 6



# Frequency of Mountaire Hydrogen Sulfide Ambient Standard Exceedances for 2018 Meteorology

Hydrogen Sulfide Anaerobic Lagoon Emissions Reported in 2018

Model Extent

Millsboro

**2018 Exceedances**  
— 1

Delaware Ambient Air Standard (60 min.) = 0.03 ppm

0 5,000 10,000 15,000 20,000  
Feet

Figure 7



# Frequency of Mountaire Hydrogen Sulfide Ambient Standard Exceedances Over the 7-Year Modeling Period

Hydrogen Sulfide Anaerobic Lagoon Emissions Reported Over the 7-Year Modeling Period

Model Extent

Millsboro

## Total Exceedances

- 1
- 5
- 10
- 20
- 25

Delaware Ambient Air Standard (60 min.) = 0.03 ppm

0 5,000 10,000 15,000 20,000 Feet

Figure 8

**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



**EXHIBIT F**

**IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE**

GARY and ANNA-MARIE )  
CUPPELS individually and on behalf )  
of all others similarly situated, )  
 )  
Plaintiffs, )

v. )

Case No.: CA S18C-06-009 CAK

)  
MOUNTAIRE CORPORATION, an )  
Arkansas corporation, MOUNTAIRE )  
FARMS, INC., a Delaware )  
corporation, and MOUNTAIRE )  
FARMS OF )  
DELAWARE, INC., a Delaware )  
corporation. )  
 )  
Defendants. )

**AFFIDAVIT OF GLEN A. ADAMS**

STATE OF  Maryland  )  
 ) ss.  
COUNTY OF  Montgomery  )

I, Glen A. Adams, a GIS Staff Scientist with S.S. Papadopoulos & Associates, Inc, do hereby depose and say the following under oath:

1. I have over 3 years of experience as in Geospatial Information Sciences (GIS) and its application in the fate and transport of contaminants in groundwater. I have a B.S. in GIS from the University of Maryland, College Park, and am currently pursuing the Master of Science in Geospatial Information Sciences.
2. Since SSP&A was retained in 2018 by Schocher, Federico and Staton, P.A., I have collaborated with Harvey A. Cohen, PhD, PG and Keir Soderberg, PhD to provide GIS support, data processing, visualization and report figure production.

3. During this time, I worked on producing maps of modeled emission data provided by John Purdum. The data was provided in an Excel format, with coordinates in NAD 1983 UTM Zone 18N (m) projection. I converted the data to a shapefile format with ArcGIS 10.7. Each dataset was then interpolated using the Inverse Distance Weighted (IDW) algorithm in ArcGIS with a cell size of 80, power of 2, and search radius of 50 points, using the model extent as a barrier feature. The resulting surfaces were then contoured at the intervals shown in the final maps. Through this process I created a map showing the area in which there were at least seven exceedances of the Delaware Air Standard for hydrogen sulfide over the seven years of modeling results from John Purdum (attached as Exhibit A).
  
4. IDW was chosen as the method of interpolation because it is a very common form of interpolation that is simple and robust. IDW determines each cell value using a linearly weighted combination of a set of sample points. The sample points are weighted using a function of inverse distance.

I affirm that the contents of this affidavit are true and correct to the best of knowledge, under penalty of perjury.

A handwritten signature in blue ink, appearing to read "Glen Adams", is written above a horizontal line.

---

GLEN A. ADAMS

September 15, 2020



# Frequency of Mountaire Hydrogen Sulfide Ambient Standard Exceedances for 2012 - 2018 Modeling Period

Model Extent

Millsboro

Delaware Ambient Air Standard (60 min.) = 0.03 ppm

  $\geq 7$  Exceedances

0 5,000 10,000 15,000 20,000 Feet

Exhibit A

**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



EXHIBIT G

**IN SUPERIOR COURT OF THE STATE OF DELAWARE**

GARY and ANNA-MARIE CUPPELS,  
Individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

MOUNTAIRE CORPORATION, an Arkansas  
Corporation, MOUNTAIRE FARMS INC., a  
Delaware Corporation, MOUNTAIRE FARMS  
OF DELAWARE, INC., a Delaware  
Corporation,

Defendants.

C.A. No.: S18C-06-009 CAK

**DECLARATION OF WILLIAM  
MEGGS, M.D.**

I, William Meggs, M.D., hereby declare and state as follows:

1. I am a medical doctor, clinician and researcher specializing in the area of human medical toxicology. I hold an academic appointment as Professor in the Division of Toxicology at the Department of Emergency Medicine at East Carolina University School of Medicine in Greenville, North Carolina. My educational background includes a BS degree in physics from Clemson University, a PhD degree in physics from Syracuse University, and a MD degree in medicine from the University of Miami. I completed a residency in internal medicine at the University of Rochester, a fellowship in allergy and immunology at the National

Institutes of Health, and a fellowship in Medical Toxicology at New York University.

2. I am board certified in the specialties of medical toxicology, internal medicine, emergency medicine and allergy and clinical immunology. I have practiced medicine since 1980. My clinical practice concentrates primarily on the diagnosis and treatment of people who have been exposed to toxic substances and allergens. I have undertaken extensive research in the field of toxicology, including research concerning the effects of irritants on the human airway. I am the editor of *Toxicant Induction of Irritant Asthma, Rhinitis, and Related Conditions*, published by Springer Verlag in 2013.

3. I was the recipient of the American College of Medical Toxicology 2010 Award for outstanding contributions to toxicology research. In 2011, I received the East Carolina University Lifetime Achievement Award in Research and Creative Activities. I have contributed approximately one hundred articles and textbook chapters to the medical and scientific literature.

4. I was retained by the law firm Baird, Mandalas, Brockstedt, LLC, and the law firm of Schochor, Federico & Staton, P.A, to offer an opinion of causation concerning residents exposed to hydrogen sulfide gas and nitrates from the operations of the defendants.

5. Among other documents related to this case, I have reviewed the reports and affidavits of John Purdum and the report of Glen Adams, offered in support of Class Certification. I have also reviewed the map showing the boundaries of the Class Area.

6. Hydrogen sulfide is a potentially dangerous gas that is produced from decay of organic matter, including waste lagoons from slaughterhouses, poultry processing plants, and other industrial and agricultural sources.

7. Both acute and chronic exposures to hydrogen sulfide can be dangerous. The risk of adverse health outcomes increases with the level and duration of exposures. Those with the highest levels of exposure are most likely to have adverse health, as are those who have lived in the exposure areas for the longest periods of time. Those with the lowest levels of exposure are the least likely to have adverse health outcomes.

8. Based on the modeling conducted by John Purdum, individuals residing outside the Air Area designated on the Class Map would be subject to relatively low levels of hydrogen sulfide associated with Mountaire's operations, if any. Exposure to hydrogen sulfide gas would further be mitigated to the extent that the excess emissions occurred while residents were indoors.

9. The determination of whether hydrogen sulfide from Mountaire's operations caused health effects individuals is further complicated by the potential

exposure from hydrogen sulfide emissions from other agricultural and industrial sources.

10. Based on the information available to me, given the relatively low levels of exposure for individuals outside the Air Area, the potential that residents would have been indoors for some or all of these exposures, and the potential contribution of hydrogen sulfide from other sources, to a reasonable degree of medical certainty, I would not be able to opine that those located outside the Air Area suffered health effects related to hydrogen sulfide from the Mountaire facility.

11. I swear or affirm, under penalty of perjury, that the above statements are true and correct.

**SIGNATURE BLOCK ON NEXT PAGE**

*William J. Meggs, M.D.*

*March 18, 2021*

---

William Meggs, M.D.

---

Date

**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



**EXHIBIT H**

**IN SUPERIOR COURT OF THE STATE OF DELAWARE**

GARY and ANNA-MARIE CUPPELS,  
Individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

MOUNTAIRE CORPORATION, an  
Arkansas Corporation, MOUNTAIRE  
FARMS INC., a Delaware Corporation,  
MOUNTAIRE FARMS OF  
DELAWARE, INC., a Delaware  
Corporation,

Defendants.

C.A. No.: S18C-06-009 CAK

**DECLARATION OF KEN ACKS**

I, Ken Acks, M.B.A., hereby declare and state as follows:

1. I am the founder and chief executive of economic consulting and real estate analysis firm The Cost Benefit Group, which has produced studies of more than 900 projects worth over \$3.5 billion dollars in 140 counties and 28 states. Our firm focuses upon estimating the economic impacts of environmental hazards upon real estate, and has provided a wide range of other consulting services.

2. I received my bachelor's degree from the University of Chicago, and an M.B.A. in Finance from the New York University Graduate School of Business Administration.

3. I have previously worked with the U.S. Environmental Protection Agency and ERG Inc. to help create cost-benefit and valuation databases and analysis systems, and have analyzed the effects of nuclear power plants, gasoline storage tanks, asbestos, groundwater contamination, oil leaks, construction projects, and utility rates upon property values, employment, income, corporate balance sheets, real estate markets, and municipalities.

4. I was retained by the law firm Baird, Mandalas, Brockstedt, LLC, and the law firm of Schochor, Federico & Staton, P.A, to offer an opinion regarding the potential diminution of property associated with the exposure of residents exposed to hydrogen sulfide gas and nitrates from the operations of the defendants.

5. Among other documents related to this case, I have reviewed the report and affidavit of John Purdum and the report of Glen Adams, submitted in support of Class Certification. I have also reviewed the map showing the boundaries of the Class Area.

6. As part of this investigation The Cost-Benefit Group:

a. Reviewed documents describing the site and contamination, including reports from the U.S. EPA, the Delaware Department of Natural Resources

and Environmental Control, the Delaware Center for the Inland Bays, expert report newspaper articles, reports in other types of media, and other publications.

- b. Analyzed local economic, demographic and real estate market conditions and trends.
- c. Interviewed knowledgeable sources.
- d. Reviewed academic economic and appraisal literature pertaining to valuation of contamination.
- e. Examined sales and values of comparable properties near the source of contamination and in control areas.
- f. Estimated property value changes, including potential losses in rental value and stigma, based upon previous studies, comparable sales, our experience with similar situations, and the facts of this particular site.

7. Among other factors, our assessment of the degree of property diminution took into account the type/intensity and frequency of contamination, the geographic location of the property, the source of the contamination, and the stage of cleanup or remediation plan approval.

8. In particular, in the case of air pollution, the degree of property diminution decreases with less frequent and less severe pollution, greater distances from the source of contamination, and where there is a plan which will serve to

reduce or eliminate future dispersion of pollutants. Additionally, once air pollution has been abated, there is minimal future impact on property values.

9. Based on the modeling conducted by John Purdum, individuals residing outside the Air Area designated on the Class Map would be subject to relatively low levels of hydrogen sulfide associated with Mountaire's operations, if any. Further, while the distance to the plant is variable, based on the shape of the Air Area, all residences outside the Air Area are located significant distances from the source of contamination.

10. Additionally, it is my understanding that pursuant to a Consent Decree, Mountaire will be engaging in remedial efforts which will substantially reduce air pollution relative to historic levels. Further, last available reported emissions from the Mountaire plant are already substantially lower levels than in prior years, having been reduced from over 15,000 pounds in 2018, to 1,053 pounds in 2019.

11. Based on the information available to me, given the relatively infrequent exposure to air pollutants, the distance of these properties from the facility, and the remedial efforts that have already substantially reduced the degree of air pollution in connection with Mountaire's operations, I am unable to opine to a reasonable degree of probability that those properties located outside the Air

Area experienced a measurable reduction in property value associated with air pollution.

12. I swear or affirm, under penalty of perjury, that the above statements are true and correct.

**SIGNATURE BLOCK ON NEXT PAGE**

*Kenneth Acks*

---

Kenneth Acks

Dated: March 19, 2021

EFiled: Mar 22 2021 04:44PM EDT  
Transaction ID 66444355  
Case No. S18C-06-009 CAK



EXHIBIT I

## **Summary of Anticipated Expenses for Administration of Cuppels v. Mountaire Settlement Fund**

The following is a summary of anticipated costs based upon an estimated 3,300 claimants.

The Claims Adjudicator will perform necessary duties and all allocation tasks.

Costs associated with services as Special Master/Claims Adjudicator are anticipated to total approximately \$450,000, to be paid by the Qualified Settlement Fund Administrator as appropriate on a periodic basis as work is completed. Should the total costs exceed this estimate, the Claims Adjudicator will seek prior approval of the Court.

Anticipated Tasks for Claims Adjudicator include, but not limited, to the following:

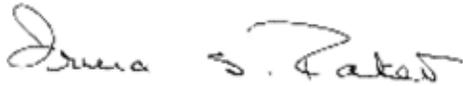
- Determine award for each claimant
- Determine awards for named plaintiffs
- Interact with Court on all necessary issues. Review all administrative expenses and communicate with Court and Trustee.
- Communicate as necessary with Class Counsel
- Work with and coordinate with RG/2, Mike Lee and Staff
- Review any sub-contractor contracts
- Address and determine eligibility of claimants
- Construct and review questionnaires
- Review medical records
- Review land records, addresses, property claims
- Review past and future out-of-pocket expenses for water testing and alternative water supplies or treatment systems.
- Meet with nurse consultants regarding potential personal injuries
- Consult with experts, including medical, property damage, and causation related experts.
- Read settlement expert reports
- Bi-monthly team meetings—in person or zoom
- Meet with claimants as necessary
- Develop allocation process.
- Address issues related to minor claimants and estates
- Address late filings, including in person hearings
- Utilize technical/computer support as necessary
- Consider, Formulate and Calculate recommended award
- Create appeal system
- Conduct Appeals. Develop and set up appeals process, develop records and base.

- Coordinate team efforts---telephone calls, website video, calls with Judge,
- Travel time
- Meet with media as necessary
- Monitor reserved funds and address allocations in reserved funds.

In addition to the claim adjudicator fee, the Claims Adjudicator anticipates the following additional costs:

- Engaging and meeting with consultants and experts to assist in the allocation process as necessary. The experts include those previously consulted by class counsel, as well other consultants with experience in fund allocation.
- Potential legal expenses if sub-contracts necessary, protective orders, business associate agreements, etc. These additional expenses are estimated to total approximately \$75,000 - \$100,000.

Submitted based on best information and belief by

A handwritten signature in cursive script, appearing to read "Irma S. Raker".

Judge Irma S. Raker

March 18, 2021

**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



EXHIBIT J

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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

**DECLARATION OF MEDIATOR ERIC D. GREEN IN RE MOTION FOR FINAL APPROVAL OF CLASS-ACTION SETTLEMENT**

1. I am a full-time mediator with Resolutions, LLC, an ADR firm located in Boston, Massachusetts. I retired as a Professor at the Boston University School of Law in 2007 after thirty years teaching negotiation, mediation, complex ADR processes, resolution of mass torts, constitutional law and evidence. I subsequently taught Evidence at Harvard Law School as a Lecturer in Law. I was a co-founder of JAMS/EnDispute, the largest private ADR provider in the United States, and I am a co-founder and principal of Resolutions, LLC.

2. I was a member of the Center for Public Resources International Institute of Dispute Resolution virtually since its inception, over 40 years ago, and have served on many of its panels and committees and spoken at numerous of its conferences and programs on mediation and ADR. I am now a member of its Board of Directors. I was a co-author with Professors Frank Sander and Stephen Goldberg of the first edition of *Dispute Resolution*, the first law school textbook on ADR,

and have written numerous books and articles on dispute resolution and evidence. I maintain an active ADR/mediation practice for complex, legally-intensive disputes.

3. I have successfully mediated many high stakes cases, including the *United States v. Microsoft* antitrust case, various Mastercard/Visa merchants' class action antitrust cases, portions of the Enron Securities class action cases, the LCD, CRT, LIB, vitamin, and polyurethane antitrust cases, the childhood and adult cancer cases in Toms River, New Jersey, numerous large construction cases, including most of the disputes arising out of the design and construction of major league baseball and football stadiums, environmental cases, insurance coverage, intellectual property, international disputes, ERISA cases, and consumer cases. I have mediated many complex, multi-party class action cases involving horizontal and vertical price-fixing antitrust claims, mergers and acquisitions, contract disputes, patent disputes, securities fraud, shareholder derivative claims, accounting problems, mass torts, employment, gas line explosion, contamination, and consumer claims. I have mediated dozens if not hundreds of antitrust class actions. In the past few years, I have also mediated many large cases arising out of the 2007-2008 financial crisis, including class actions involving all aspects of mortgage-based securities, CDO's, auction-rate securities, private equity, and various types of financial fraud. Many of the cases I have mediated have involved the federal government, state governments, or regulatory agencies.

4. I have also served as court-appointed Special Master, the Legal Representative for Future Claimants, Mediator and Guardian Ad Litem in class or mass claimant matters in the Northern District of Ohio, Southern District of New York, District of Massachusetts, Eastern District of Texas, and Eastern District of Michigan. Currently I am serving as the Special Master and Trustee for all Takata airbag personal injury and wrongful death claims.

5. I am a 1968 Honors graduate of Brown University and graduated in 1972 from Harvard Law School, magna cum laude, where I was Executive Editor of the Harvard Law Review. I am a member of the bars of the states of California (inactive) and Massachusetts, the United States District Courts for the Northern and Central Districts of California and the District of Massachusetts, several Courts of Appeals, and the Supreme Court of the United States. Prior to teaching at Boston University School of Law, I clerked for the Hon. Benjamin Kaplan, Supreme Court of Massachusetts and then was an associate and partner at Munger Tolles & Olson in Los Angeles.

6. I have delivered hundreds of lectures, panel discussions and training sessions on ADR and taught or supervised more than one thousand students in ADR while mediating more than one hundred cases a year for over 40 years. I continue to teach classes to judges and others about the innovative use of Special Masters, mediators and ADR in complex cases. I also continue to provide Continuing Legal Education Training in ADR, particularly the mediation of class actions. In 2001, I was awarded a Lifetime Achievement Award from the American College of Civil Trial Mediators. I was voted Boston's Lawyer of the Year for Alternative Dispute Resolution for 2011 based on my "particularly high level of peer recognition." In 2011, I received the James F. Henry Award for Outstanding Contributions to the field of ADR from The International Institute for Conflict Prevention & Resolution.

7. I, along with David White from the law firm of McCarter & English, LLP, were jointly retained by the parties in *Cuppels v. Mountaire, et al.*, C.A. No.: S18C-06-009 CAK (the "Superior Court Action") to conduct a private mediation in this case. After preliminary discussions with the parties' counsel, the parties and I agreed to a mediation schedule that included extensive pre-mediation briefing—both shared and confidential submissions—and an in-person mediation

beginning on November 7, 2019, and continuing for as many as five additional days thereafter, as necessary.

8. Following the submission of the parties' briefs and pre-mediation calls with the respective parties, Mr. White and I supervised day-long mediation sessions November 7, 2019, November 8, 2019, November 12, 2019, and November 13, 2019, at the offices of McCarter & English, LLP, in Wilmington, Delaware. Plaintiffs were represented by Schochor, Federico & Staton, P.A. and Baird Mandalas Brockstedt, LLC. Defendants Mountaire Corp., Mountaire Farms, Inc., and Mountaire Farms of Delaware, Inc. ("Defendants" or "Mountaire"), were represented by Sidley Austin LLP, Parkowski, Guerke & Swayze, P.A., and Phillips, McLaughlin & Hall, P.A. Executives from Mountaire, including two directors, also participated on behalf of Mountaire.

9. Although the details of the mediation session are confidential, it is my opinion that counsel for both sides skillfully and vigorously represented the interests of their clients. The level of advocacy for both parties was informed, engaged, ethical, and effective. The parties' positions on both liability and damages in the dispute were extensively briefed prior to the mediation sessions. Their positions on liability and damages, as well as the risks involved in continuing to litigate the cases, were probed and discussed at length during the mediation in both joint and separate sessions, including in presentations from Plaintiffs' experts, several of whom were present for the mediation. Throughout the process, the parties engaged in extensive adversarial negotiations over virtually every issue in the case. The negotiations were principled, exhaustive, informed, and sometimes difficult and contentious.

10. These mediation sessions in November of 2019 were not successful in bringing about a negotiated resolution at that time. The positions of the parties were too far apart to find

common ground. In the judgment of the mediators and the parties, further litigation and time was necessary in order for the parties to resume productive settlement discussions.

11. I was later informed that the parties met for continued settlement discussions in November of 2020, approximately one year after our initially unsuccessful mediation, and were successful in negotiating a settlement of the Superior Court action that provides for \$65 million in full satisfaction of Plaintiffs' claims in the Superior Court action, including all legal fees and related costs and expenses (the "Superior Court Settlement Agreement").

12. I have also been provided and reviewed a copy of the Superior Court Settlement Agreement, as well as the Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Other Relief, and their exhibits, as well as the transcript of the hearing regarding that motion, which provide further detail regarding this proposed settlement and the context within which it was reached.

13. In my opinion, based on my familiarity with the facts, the legal theories, and litigation risks acquired over the four-day mediation I supervised in November of 2019, and my review of the above referenced documents setting forth the terms of this settlement, the outcome of these negotiations is the result of a fair, thorough, and fully-informed arms-length process between highly capable, experienced, and informed counsel and their respective clients. The final settlement represents the parties' and counsels' best professional effort and judgment about a fair, reasonable, and adequate settlement after thoroughly investigating and litigating this case, taking into account the risks, strengths, and weaknesses of their respective positions on the substantive issues, the risks and costs of continued litigation, and the best interests of their clients. I have not been asked to review or provide an opinion on the Motion in Support of Class Counsel's Application for Attorneys' Fees and Reimbursement of Expenses; I understand that Professor

Charles Silver has provided an opinion in connection with that motion. Moreover, I am aware of litigation in the District Court of the District of Delaware that has also been settled. That matter was not a part of November 2019 mediation, and I express no opinion as to such settlement.

Pursuant to 10 *Del. C.* § 3927, I declare under penalty of perjury under the laws of Delaware that the foregoing is true and correct. Executed this 24 day of February, 2021, at Boston, Massachusetts.

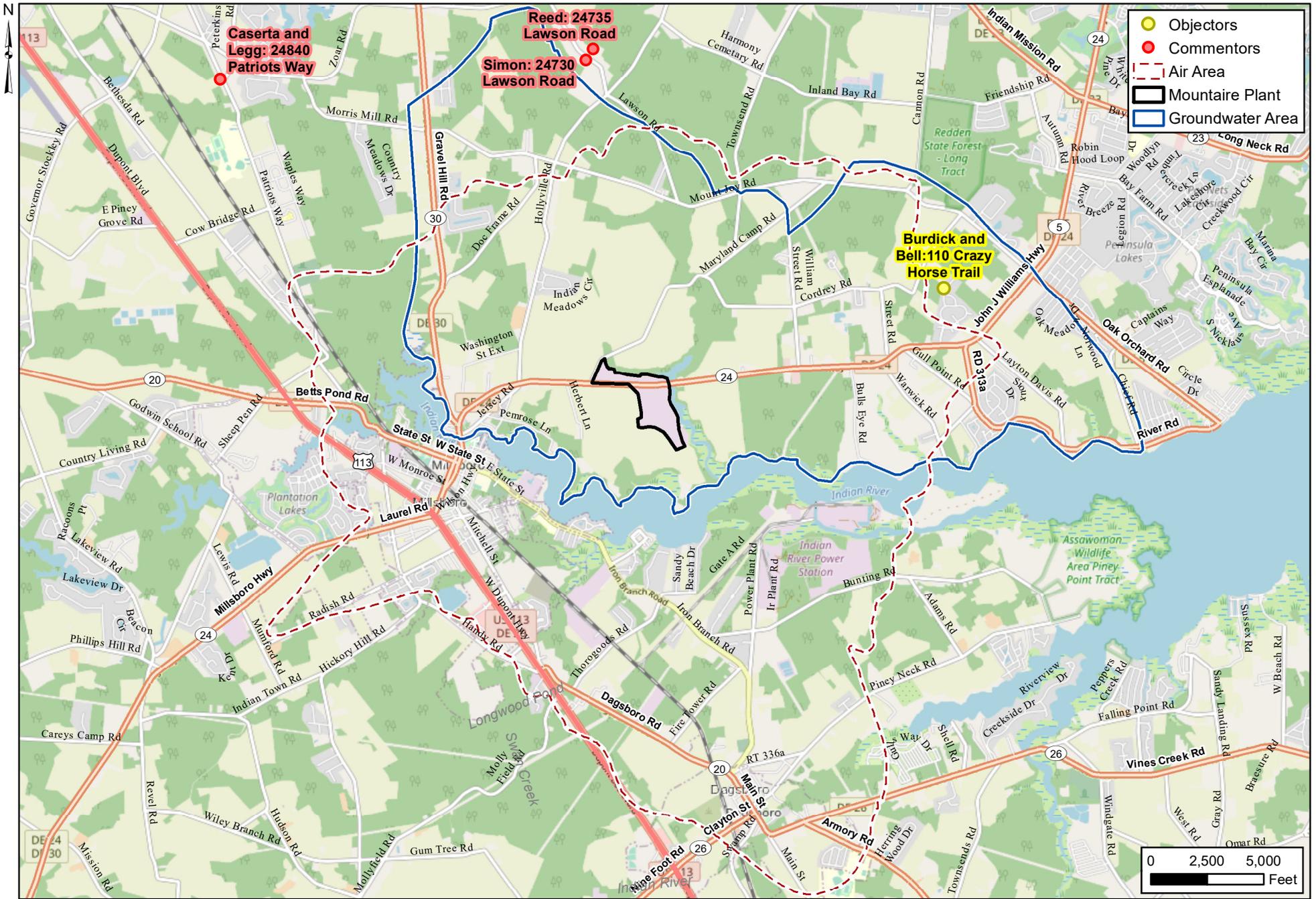
A handwritten signature in black ink, appearing to read 'E D Green', written over a horizontal line.

Eric D. Green

**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



**EXHIBIT K**



**EFiled: Mar 22 2021 04:44PM EDT**  
**Transaction ID 66444355**  
**Case No. S18C-06-009 CAK**



EXHIBIT L

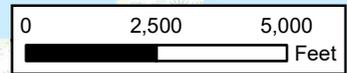
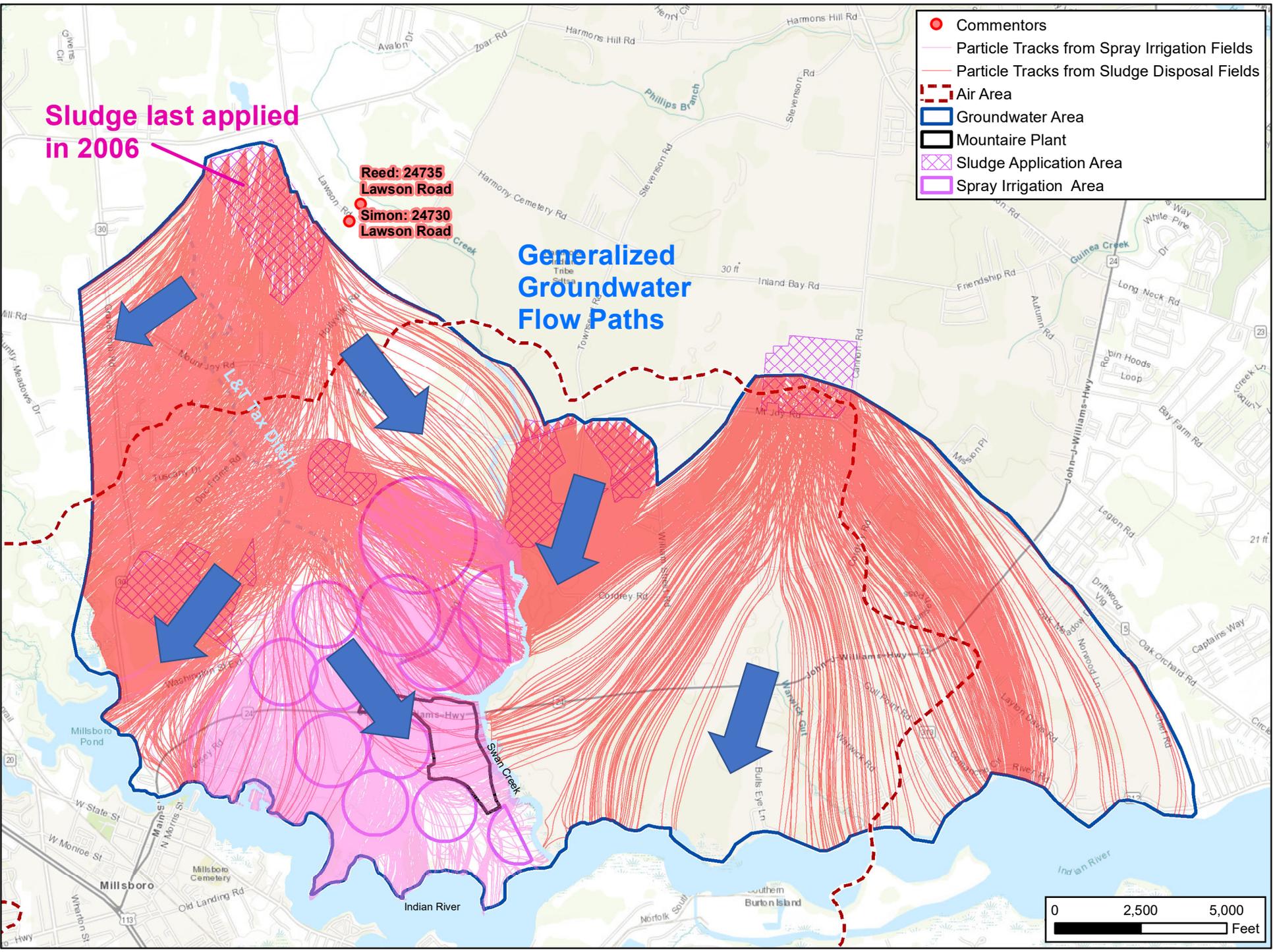


- Commentors
- Particle Tracks from Spray Irrigation Fields
- Particle Tracks from Sludge Disposal Fields
- Air Area
- Groundwater Area
- Mountaire Plant
- Sludge Application Area
- Spray Irrigation Area

**Sludge last applied in 2006**

**Reed: 24735  
Lawson Road**  
**Simon: 24730  
Lawson Road**

**Generalized  
Groundwater  
Flow Paths**





**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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

**ORDER GRANTING FINAL APPROVAL OF  
CLASS SETTLEMENT AGREEMENT AND OTHER RELIEF**

Gary Cuppels, Anna Marie Cuppels, Michael Harding, Anne Harding, Larry Miller, individually and on behalf of the Estate of Barbara Miller, Ronald Tolson, and Patricia Tolson, by and on behalf of others similarly situated (“Plaintiffs”), and Defendants Mountaire Corporation, Mountaire Farms of Delaware, Inc., and Mountaire Farms Inc. (collectively, “Defendants”), having entered into a proposed Class Action Settlement Agreement and Release (“Settlement Agreement”) in this Action, and the Court having previously granted the parties’ Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Other Relief (D.I. 605, 610), and the parties having filed a Joint Motion For Final Approval of Class Action Settlement Agreement and Other Relief (D.I. 622), and in consideration of

the arguments and documentation presented both in support and opposition thereof, including at the Fairness Hearing held April 12, 2021:

The Joint Motion for Final Approval of Settlement Agreement and Other Relief (the “Motion”) is GRANTED and it is further ORDERED as follows:

1. For purposes of this Order, the Court adopts the definitions set forth in the Settlement Agreement.

### **Certification of the Settlement Class**

2. The Court certifies the following Settlement Class for settlement purposes only:

“All Persons who, on or after May 1, 2000, owned, leased, resided on, or were employed on a full-time basis at: (a) property located in whole or part within the Groundwater Area, which is geographically bounded by the solid blue line on Exhibit A to the Motion, and not the Air Area, which is bounded by the dashed red line on Exhibit A to the Motion; (b) property located in whole or part within the Air Area, but not the Groundwater Area; and (c) property located in whole or part within both the Groundwater Area and the Air Area.”

A copy of Exhibit A is attached hereto for convenience. Excluded from the class definition are: (1) Defendants; (2) any entity in which Defendants have a controlling interest; (3) any person with an ownership interest in Defendants; (4) any current or former officer or director of Defendants; (5) any current or former employee of any Defendant for any potential exposure during their employment by such Defendant; (6) persons who have entered into separate settlement agreements

with any Defendant related to claims similar to those claims made in the Action; and (7) the legal representatives, successors, or assigns of Defendants.

3. The Court finds that the requirements of Delaware Superior Court Rule 23(a) and Rule 23(b)(3) are satisfied for the certification of the Settlement Class for settlement purposes only.

4. Rule 23(a)(1) is satisfied because the Class consists of thousands of Persons who live or work or lived or worked in and around the town of Millsboro, Delaware, and joinder of all members is impracticable.

5. Rule 23(a)(2) is satisfied because there are common issues of law and fact, including Defendants' alleged conduct and liability, at the core of all claims.

6. Rule 23(a)(3) is satisfied because the Class Representatives' claims are typical of those of other Class Members.

7. Rule 23(a)(4) is satisfied because the Class Representatives fairly and adequately protected the interests of the Settlement Class.

8. Rule 23(b)(3) is satisfied because the questions of law or fact common to the Settlement Class predominate over individual questions, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

9. The Court appoints as Class Representatives Gary Cuppels, Anna Marie Cuppels, Michael Harding, Anne Harding, Larry Miller, Ronald Tolson, and Patricia Tolson.

10. The Court appoints Chase Brockstedt Esq., Stephen A. Spence, Esq., and the law firm of Baird Mandalas Brockstedt, LLC; and Philip C. Federico, Esq., Brent P. Ceryes, Esq., and the law firm of Schochor, Federico & Staton, P.A. as Class Counsel.

### **Approval of the Settlement**

11. Pursuant to Delaware Superior Court Rule 23(e), the Court hereby finds the Settlement Agreement is fair, reasonable, and adequate. Specifically, this Court finds that:

- a. the Settlement Agreement is far more advantageous to the Class Members than a trial on the merits;
- b. the Court has not issued any final rulings on the merits of any of claims or defenses, and the probable duration and cost of continuing this litigation through discovery, pre-trial motions, trial, and any appeals weighs heavily in favor of the Settlement Agreement;
- c. the involvement of Class Representatives and neutrals weighs in favor of approving the Settlement Agreement;

- d. the small number of objections, and the large number of participating Class Members, reflects strong support of the settlement from Class Members and weighs in favor of approving the Settlement Agreement;
- e. the Settlement Agreement will not adversely affect any other pending actions;
- f. the Allocation Plan is fair, reasonable, and equitable;
- g. the Settlement Agreement's terms are intrinsically fair; and
- h. the monetary award to Class Members is substantial, and weighs in favor of settlement.

12. In making all the foregoing findings, the Court has exercised its discretion in certifying a Settlement Class and has considered the affidavits and declarations submitted in support of this settlement and finds them credible.

#### **Notice to Class Members**

13. The Court finds that due notice was given in accordance with the Order Granting Preliminary Approval of Class Action Settlement Agreement and Other Relief, and that the form and content of that Notice, and the procedures for dissemination thereof in the Notice Plan, satisfy the requirements of Delaware Superior Court Rule 23(c)(2) and Rule 23(e), and due process and constitute the best notice practicable under the circumstances.

14. In particular, the Court finds that the notice to the Class Members of the Settlement Agreement, as well as the manner in which it was provided to Class Members, fairly and adequately described the proposed Settlement Agreement; the manner in which Class Members could object to or opt-out of the settlement; and the potential binding effect of this settlement. The Court further finds that a full and fair opportunity was afforded to Class Members to object to or to comment on the Settlement Agreement and to participate in the hearing convened on April 12, 2021, to determine whether the Settlement Agreement should be given final approval.

#### **Objections to the Settlement**

15. The Court held a hearing to consider the fairness, reasonableness, and adequacy of the proposed Settlement Agreement on April 12, 2021. The Court and the parties addressed objections to the Settlement Agreement from two Class Members. Those objections failed to provide proof of residency as required under the Court's Order Granting Preliminary Approval of Class Settlement Agreement and Other Relief. Despite this, the Court fully considered these objections and finds them unpersuasive in light of the arguments and evidence introduced by the parties. The objections to the Settlement Agreement are hereby overruled. Furthermore, the Court finds that purported objectors who are not Class Members do not have standing to object to the Settlement Agreement. Nonetheless, the Court has

reviewed the comments of those who are not Class Members and finds them unpersuasive.

### **Implementation of the Settlement**

16. For the reasons stated above, the Court GRANTS final approval of the Settlement Agreement.

17. The parties are directed to implement the Settlement Agreement according to its terms and conditions.

18. Pursuant to the Settlement Agreement, funds shall be distributed to Class Members in accordance with the Allocation Plan.

19. The Court approves an enhancement award of \$150,000 to be apportioned between the seven individual Class Representatives by the Claims Adjudicator.

20. The Court appoints RG/2 as Claims Administrator.

21. The Court appoints the Hon. Irma Raker as Claims Adjudicator.

22. Consistent with the Allocation Plan, no person shall have any claim against the Releasees (as defined in and to the extent set forth the in the Settlement Agreement), Plaintiffs' Counsel, the Claims Adjudicator, or the Claims Administrator, arising from or relating to determinations or distributions made substantially in accordance with the Settlement Agreement and/or Orders of the Court.

23. This Final Approval Order shall have no force or effect on the persons that have validly excluded themselves from the Class. The final list of persons that have validly excluded themselves from the Settlement Agreement was lodged with the Court in advance of the Fairness Hearing.

24. The case is dismissed with prejudice, except as provided in Paragraph 26 of this Order, and the Released Claims are released as set forth in the Settlement Agreement.

25. The October 30, 2018 gag order previously imposed on the attorneys, experts, consultants, and witnesses for both parties, Plaintiffs, Defendants' officers, and any persons or entities acting on behalf of Defendants in public relations capacity from publicly commenting on this case is hereby lifted effective immediately for any statement about final approval agreed to by all parties and fully upon the earlier of the expiration of the period for filing an appeal, if none is filed, or upon resolution of the appeal if one is filed and this Order is upheld.

26. Without affecting the finality of the judgment, the Court reserves and continues jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement and over this Order.

27. Upon conclusion of the allocation process pursuant to the Allocation Plan, including distribution of the full Settlement Amount, the parties shall file a notice with the Court.

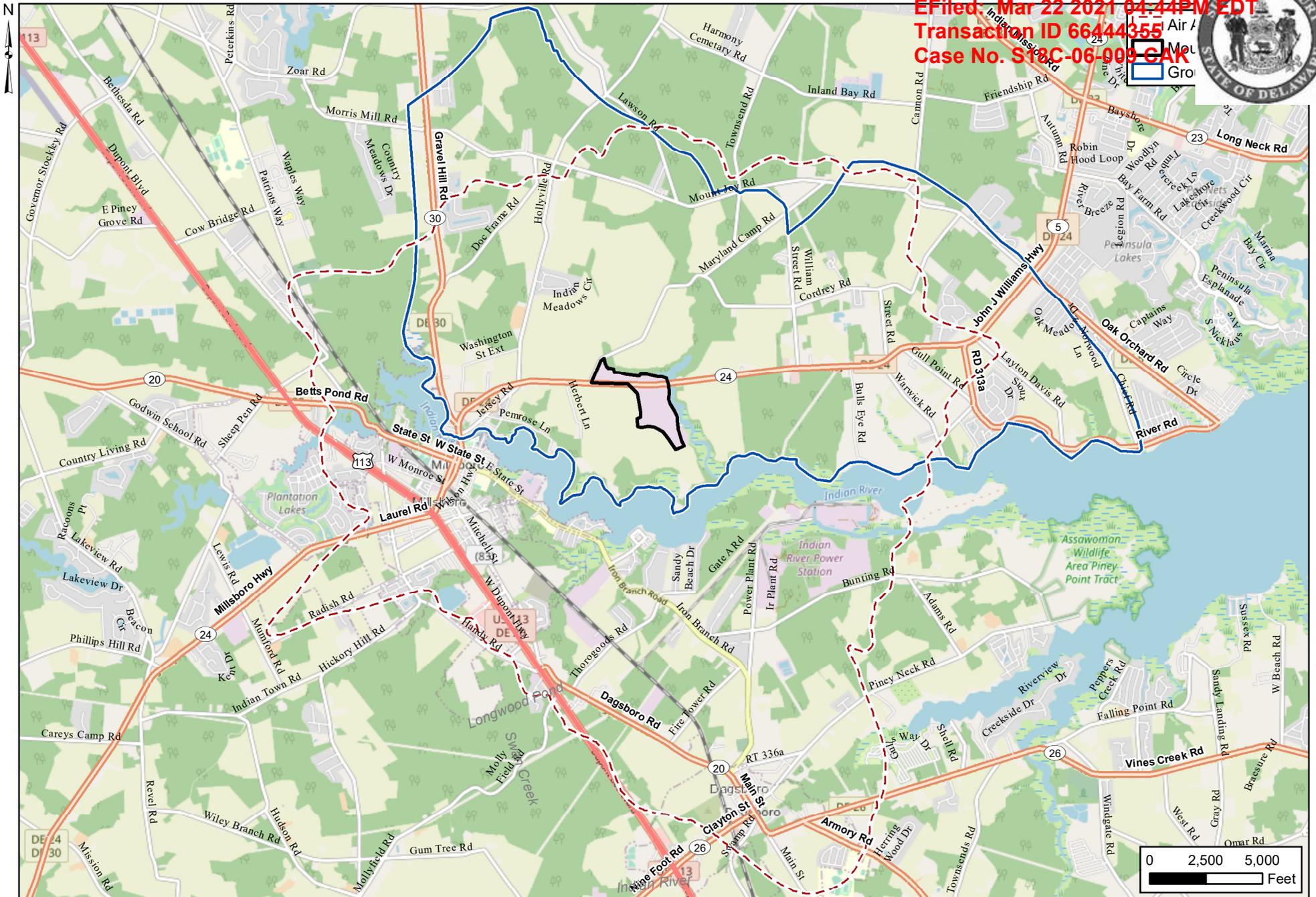
**IT IS SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2021

---

THE HONORABLE CRAIG A. KARSNITZ

# EXHIBIT A

Filed: Mar 22 2021 04:44PM EDT  
Transaction ID 66444355  
Case No. S18C-06-009 CAK





**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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

**CERTIFICATE OF SERVICE**

I, Chase T. Brockstedt, Esquire, hereby certify that on this 22nd day of March, 2021 a true and correct copy of the Joint Motion for Final Approval of Class Action Settlement Agreement and Other Relief was served upon all counsel of record via Electronic Filing:

PHILLIPS, McLAUGHLIN & HALL  
John C. Phillips, Jr., Esquire  
Lisa C. McLaughlin, Esquire  
1200 North Broom Street  
Wilmington, DE 19806

PARKOWSKI, GUERKE & SWAYZE, P.A.  
F. Michael Parkowski, Esquire  
Michael W. Teichman, Esquire  
Elio Battista, Jr., Esquire  
1105 North Market Street, 19th Floor  
Wilmington, DE 19801

This information will also be available on [Mountairesettlement.com](http://Mountairesettlement.com).

**BAIRD MANDALAS BROCKSTEDT, LLC**

/s/ Chase T. Brockstedt

Chase T. Brockstedt, Esq. (DE #3815)

Stephen A. Spence, Esq. (DE #5392)

1413 Savannah Road, Suite 1

Lewes, Delaware 19958

(302) 645-2262

Attorneys for Gary and Anna-Marie Cuppels and those  
similarly situated

[chase@bmbde.com](mailto:chase@bmbde.com)