

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT is made and entered into this _____ day of May 2015, by the Parties, who are the plaintiffs and representatives of a putative class in that civil action styled Crystal Good et al., v. American Water Works, Inc., et al., Civil Action No. 2:14-01374, U.S. District Court, Southern District of West Virginia (consolidated with Civil Action Nos. 2:14-11011; 2:14-13164 and 2:14-13454) hereinafter referred to collectively as the “Action” and the “Plaintiffs” and Gary Southern, a defendant in the Action;

WHEREAS, Plaintiffs filed a complaint on January 14, 2014, a Consolidated Class Action Complaint on June 20, 2014 and a First Amended Class Action Complaint, on December 9, 2014, in which Plaintiffs seek to recover, *inter alia*, compensatory and punitive damages, equitable relief, injunctive relief and medical monitoring, for themselves and on behalf of a putative class of others similarly situated, for physical personal injury tort claims, non-physical tort claims, property damage claims, economic losses, other injuries and alleged causes of action as pled therein, allegedly resulting from the release of the chemical product Crude MCHM into the Elk River at Charleston, West Virginia on January 9, 2014; and as more fully set forth in the Complaint, Consolidated Class Action Complaint and First Amended Class Action Complaints (collectively “the Class Action Complaints”);

WHEREAS, Plaintiffs seek to represent a class or classes of individuals and businesses comprised of all persons and businesses supplied with, using or exposed to water contaminated with Crude MCHM, provided by the West Virginia-American Water Company, in nine West Virginia counties, and as more fully set forth in the Class Action Complaints;

WHEREAS, Plaintiffs allege defendants, including Southern, violated statutes and regulations of the United States and State of West Virginia, that defendants were negligent, and violated other common law and legal duties owed to plaintiffs, as more fully set forth in the Class Action Complaints;

WHEREAS, Gary Southern denies all liability and wrongdoing alleged by Plaintiffs in their Class Action Complaints;

WHEREAS, Plaintiffs also have filed claims for damages allegedly caused and/or contributed to by Freedom Industries, Inc. in its bankruptcy case presently pending in the United States Bankruptcy Court for the Southern District of West Virginia, styled In Re Freedom Industries, Inc., Case No. 14-20017;

WHEREAS, the Parties have engaged in negotiations and now have agreed to a settlement of all the Plaintiffs' and class claims against Southern;

WHEREAS, after analyzing the facts and law applicable to the claims herein, and taking into account the burdens, risks, uncertainties, and expense of litigation, as well as the fair, cost-effective, and assured method of resolving the claims of the Class under this Settlement Agreement, the undersigned Class Counsel and Plaintiff Class Representatives have concluded that this Settlement Agreement is fair, reasonable, adequate and in the best interests of the class;

WHEREAS, Southern has similarly concluded that this Settlement Agreement is desirable in order to reduce the risk, expense and time of litigation, and to resolve finally and completely Plaintiffs' claims against him;

WHEREAS, the Parties understand that Class Members shall have the option to exclude themselves ("Opt Out") from the class under Rule 23(d) and 23(c)(2)(B)(v) of the Federal Rules of Civil Procedure;

NOW, THEREFORE, the Parties have agreed to settle all claims in this matter on

the terms and conditions set forth below, subject to the Court's approval that this Settlement Agreement is a fair, reasonable and adequate settlement under Federal Rule of Civil Procedure 23(e).

1. PAYMENT TO PLAINTIFFS. Southern will pay the sum of \$350,000.00

(Three Hundred and Fifty Thousand Dollars) into the Court's Registry. The payment will be tendered by Southern within 10 days after the Court enters an Order preliminarily approving this Settlement Agreement.

2. RELEASE OF CLAIMS. In consideration of the payment of \$350,000.00 by Southern into the Court's Registry, the Plaintiffs, acting on behalf of a settlement class to be certified by the Court, on their own behalf, and the class members' heirs, beneficiaries, executors, employees, agents, partners, members, and shareholders, parent, subsidiary and affiliated companies, and successors and assigns, do hereby fully and finally release, acquit and forever discharge Southern and his heirs, beneficiaries, executors, agents, employees, representatives and assigns, of and from all the claims and causes of action alleged in the Class Action Complaints, and all other claims, liabilities, obligations, causes of action, damages, costs, attorney fees and expenses, arising from or related to the matters described in the Class Action Complaints, including claims for compensatory, exemplary or punitive damages and medical monitoring, in law or equity, whether known or presently unknown, vested or contingent, suspected or unsuspected, foreseeable or unforeseeable, asserted or unasserted, which Plaintiffs may now have or which may arise hereafter, relating to and arising from those matters and events described and alleged in the Complaints; including, but not limited to, negligence, gross negligence, public nuisance, private nuisance, trespass, violations of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Resource

Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the W.Va. Air Pollution Control Act, W.Va. Code §§ 22-5-1 et seq., the W.Va. Water Pollution Control Act, W.Va. Code §§ 22-11-1 et seq., the W.Va. Groundwater Protection Act, W.Va. Code §§ 22-12-1 et seq., the W.Va. Hazardous Waste Management Act, W.Va. Code §§ 22-18-1 et seq., and the regulations promulgated pursuant to the foregoing statutes, and claims based on theories of strict liability, ultrahazardous activities, or other causes of action.

3. DISMISSAL. The Plaintiffs and Class Counsel will request the United States District Court to dismiss Southern from all the Complaints, including the Consolidated Class Action Complaint and any Amended Consolidated Class Action Complaints, with prejudice.

4. APPROVAL OF COURT. This Settlement Agreement shall not be effective unless and until it is approved by the United States District Court and the Court enters a written order (the "Approval Order") approving the same. The Parties agree that, in order to obtain Court approval, the Plaintiffs and Class Counsel shall file an appropriate motion pursuant to Rule 23(e), Federal Rules of Civil Procedure, requesting the Court to (1) require Plaintiffs to direct notice in a reasonable manner to all class members who would be bound by the proposed Settlement Agreement; (2) certify a settlement class; (3) conduct a hearing and find that the proposed settlement and Settlement Agreement are fair, reasonable

and adequate; and, (4) provide an opportunity to class members to opt-out and to object to this proposed settlement and Settlement Agreement. The Approval Order must include authorization to Plaintiffs to release all claims against Southern and to dismiss the Class Action Complaints against Southern, with prejudice.

Notwithstanding the foregoing, Southern understands and agrees that the entry of a final approval order may be delayed pending a finding that notice should issue, but that his obligation to pay the settlement funds into the registry of the Court is triggered by entry of an order preliminarily approving the settlement. In the event no final approval order will be entered, the funds may be released to him by Court order.

5. SOUTHERN WARRANTIES_Southern hereby represents and warrants as follows:

a. Subject to the entry of the Approval Order, he has the requisite power and authority to enter into this Settlement Agreement and to perform the obligations imposed on him by this Settlement Agreement; and

b. This Settlement Agreement has been thoroughly negotiated and analyzed by counsel for Southern and has been executed by him and delivered in good faith, pursuant to arm's length negotiations, and for good and valuable consideration.

6. PLAINTIFF'S REPRESENTATIONS AND WARRANTIES. The Class Representatives and Named Plaintiffs respectively represent and warrant as follows:

a. Subject to entry of the final Approval Order, each of the Class Representatives and Named Plaintiffs has the requisite power and authority to enter into this Settlement Agreement and to perform the obligations imposed on

them by this Settlement Agreement.

b. To the extent that counsel to any of the Class Representatives or Named Plaintiffs executes this Settlement Agreement on behalf of any Class Representative and/or Named Plaintiff, those Plaintiffs have expressly authorized their undersigned counsel to execute this Settlement Agreement on their respective behalf.

c. This Settlement Agreement has been thoroughly negotiated and analyzed by counsel to each Class Representative and each Named Plaintiff and has been executed and delivered in good faith, pursuant to arm's length negotiations, and for good and valuable consideration.

7. NO ADMISSION OF LIABILITY. The Parties agree that neither this Agreement nor the payment of consideration pursuant to this Agreement may be deemed or construed, at any time or for any purpose, as an admission of liability or wrongful or unlawful conduct of any kind by Southern, and may not be admitted into evidence against Southern in any suit, action, or proceeding of any kind, except in a proceeding for breach of this Agreement or to enforce this Agreement.

8. INTERPRETATION. This Agreement has been negotiated and reviewed by the Parties and their attorneys, and shall not be construed for or against any Party.

9. MODIFICATION OF AGREEMENT. This Agreement may not be modified amended, revoked or changed, except in writing executed by all Parties.

10. CHOICE OF GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the state of West Virginia, regardless of any choice of law rules as to any state law issue.

11. SEVERABILITY. If any provision of this Settlement Agreement is held to be

illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, and the remaining provisions thereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance here from.

12. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement between Plaintiffs and Southern.

13. SURVIVAL. The representations and warranties in this Settlement Agreement shall survive the execution of this Settlement Agreement and all transactions between the Parties that this Settlement Agreement contemplates.

14. COSTS AND ATTORNEYS' FEES. The Parties will be responsible for his or their own fees and costs incurred in connection with this litigation, including attorney fees and expenses related to the negotiation and execution of this Settlement Agreement and any documents attendant thereto, including but not limited to the motion to approve this Settlement Agreement.

15. COUNTERPARTS AND COPIES. A Party may sign and return a signature page to this Settlement Agreement via facsimile or email. This Settlement Agreement may be executed in counterparts and shall be binding once each Party has signed the Settlement Agreement. All counterparts of this Settlement Agreement containing any Party's signature shall be effective as if it were a single, signed original document.

16. EFFECTIVE DATE. This Settlement Agreement is effective when (i) executed by all Parties or their authorized representatives, including Class Counsel, and (ii) when the Court enters a written order approving this settlement and Settlement Agreement.

IN WITNESS AND AGREEMENT HEREOF, Plaintiffs, by their authorized representatives, individual attorneys, and Gary Southern set their hands and seals:

Dated this _____ day of _____, 2015.

Gary Southern



Kevin W. Thompson, as Interim Class Counsel for the following Good Plaintiffs: Crystal Good; M.T.S.; N.T.K.; A.M.S., Melissa Johnson, Aladdin Restaurant, Inc.; Georgia Hamra; Mary Lacy, Joan Green, Jamila Aisha Oliver, Wendy Renee Ruiz; Kimblerly Ogier; Roy J. McNeal; Maddie Fields; R.G. Gunnoe Farms LLC; and Dunbar Plaza, Inc.