BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water and wastewater rates in Orange County by Pluris Wedgefield, LLC.	DOCKET NO. 20230083-WS FILED: January 8, 2024

CITIZENS' MOTION FOR RECONSIDERATION

The Citizens of Florida, through the Office of Public Counsel ("Citizens" or "OPC"), pursuant to Rule 25-22.0376, Florida Administrative Code, request the Florida Public Service Commission ("FPSC" or "Commission") to reconsider its decision in Order No. PSC-2023-0387-PCO-WS, issued on December 27, 2023 ("Order"). In support, Citizens provide the following arguments.

The standard of review on a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. *See e.g.*, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Order No. PSC-06-0949-FOF-EI (Issued Nov. 13, 2006). OPC is only requesting reconsideration of the aspects of this order that satisfy this reconsideration standard. To the extent that OPC may pursue further review of the issues in this motion or any other issues in the Order, OPC's maintains and does not waive any appellate rights despite not addressing such other issues here. OPC reasserts its arguments from its letters dated November 30, 2023, and December 5, 2023 and presented at the Agenda Conference on December 5, 2023.

I. Background

Pluris Wedgefield, LLC. ("Pluris" or "Utility") is a Class A utility providing water and wastewater service to customers in Orange County. Rates were last established for Pluris in a

2017 limited proceeding.[1] Pluris' last comprehensive base rate proceeding was in 2012 and was resolved as reflected in Order No. PSC-2013-0187-PAA-WS, issued May 2, 2013 ("2013 Order").[2] On September 22, 2023, Pluris filed its application for approval of interim and final water and wastewater rate increases.[3] The original 60-day statutory deadline for the Commission to suspend Pluris' requested final rates and address its interim rate request was November 21, 2023. However, by letter dated September 26, 2023, the Utility agreed to extend the statutory time frame by which the Commission was required to address the suspension of Pluris' final rates and its interim rate request to December 5, 2023.[4]

The procedures governing interim rates for water and wastewater utilities are established in section 367.082, Florida Statutes. The analogous "File and Suspend Law" for natural gas and electric utilities was designed "to provide accelerated [rate] relief without sacrificing the protections inherent in the overall regulatory scheme."[5] Interim rates, which are one aspect of this scheme, were designed "to make a utility whole during the pendency of the proceeding without the interjection of any opinion testimony."[6] Thus, the provision of interim rates is a way to reduce regulatory lag and afford utilities a way to obtain immediate financial relief.[7]

[1] Order No. PSC-2018-0311-PAA-WS, issued June 13, 2018, in Docket No. 20170166-WS, *In re: Application for limited proceeding rate increase in Orange County by Pluris Wedgefield, Inc.*
[2] Order No. PSC-2013-0187-PAA-WS, issued May 2, 2013, in Docket No. 20120152-WS, *In re: Application for increase in water and wastewater rates in Orange County by Pluris Wedgefield, Inc.* ("2013 Order")
[3] Document No. 03990-2023.
[4] Document No. 05373-2023.
[5] Fla. Power Corp. v. Hawkins, 367 So. 2d 1011, 1013 (Fla. 1979).
[6] Citizens of Fla. v. Pub. Serv. Com, 435 So. 2d 784, 786 (Fla. 1983).
[7] Citizens of Fla. v. Mayo, 333 So. 2d 1, 4-5 (Fla. 1976).

II. <u>The Commission Should Reconsider its Decision to Approve Pluris' Request for an Interim Rate Increase for Water and Wastewater Rates.</u>

a. The Commission failed to make, or refrained from making, adjustments consistent with Pluris' most recent individual rate proceeding and the Commission's own promulgated Rules and procedures.

OPC respectfully requests that the Commission reconsider its order approving interim rate increases for Pluris because the Commission made adjustments inconsistent with Pluris' most recent individual rate proceeding and the Commission's own promulgated Rules and procedures and failed to make certain adjustments that actually were appropriately consistent with the interim statute. OPC's pre-Agenda Conference letter cited to section 367.082, Florida Statutes, with certain portions in underline as follows:[8]

> 367.082 Interim rates; procedure.—
>
> (5)(a) In setting interim rates or setting revenues subject to refund, the commission shall determine the revenue deficiency or excess by calculating the difference between the achieved rate of return of a utility or regulated company and its required rate of return applied to an average investment rate base or an end-of-period investment rate base.
>
> (b) For purposes of this subsection:
>
> 1. "Achieved rate of return" means the rate of return earned by the company for the most recent 12-month period. The achieved rate of return <u>shall be calculated by applying appropriate adjustments consistent with those which were used in the most recent individual rate proceeding of the utility or regulated company and annualizing any rate changes occurring during such period.</u>
>
> 2. "Required rate of return" shall be calculated as the weighted average cost of capital for the most recent 12-month period, using the last authorized rate of return on equity of the utility or regulated company, the current embedded cost of fixed-rate capital, the actual

[8] Document No. 06410-2023, pp. 10-11.

> cost of short-term debt, the actual cost of variable-cost debt, and the actual cost of other sources of capital which were used in the last individual rate proceeding of the utility or regulated company.
>
> 3. In a proceeding for an interim increase, the term "last authorized rate of return on equity" used in subparagraph 2. means the minimum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the utility or regulated company. In a proceeding for an interim decrease, the term "last authorized rate of return on equity" used in subparagraph 2. means the maximum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the utility or regulated company. The last authorized return on equity for purposes of this subsection shall be established only: in the most recent rate case of the utility; in a limited scope proceeding for the individual utility; by voluntary stipulation of the utility approved by the commission; or pursuant to s. 367.081(4)(f).

The statute explicitly states that the Commission must calculate the achieved rate of return by applying appropriate adjustments consistent with those which were used in the most recent individual rate proceeding of the utility.

In order to aid the Commission staff in its duties, the Commission also approves internal administrative procedures and general information applicable to every Commission division in a promulgated Administrative Procedures Manual ("APM").[9] The APM contains a section on interpreting and applying, in relevant part, the water and wastewater interim statute.[10] When a specific adjustment was made in the last rate proceeding and the adjustment was based on Commission practice instead of an adopted Rule, the APM provides that an adjustment consistent

[9] Admin. Proc. Manual, Preface-i, (ED 10/18/12). Attached in relevant part as Exhibit A.
[10] *Id*. at 13.12.

with the practice applied in the last rate proceeding be made using interim test year amounts.[11] Similarly, when no specific adjustment was made in the last rate proceeding and no rule was in place during the last or instant rate proceeding, then no adjustment should be made to the interim test year amounts.[12] This is the case even if there is a current practice of making such adjustments if the current practice is not codified in a rule.[13] If the amount is nevertheless both material and sufficiently important, an expedited hearing is available to the utility or staff so the Commissioners can vote on the adjustment.[14]

1. Equity Adjustment.

The Commission's total specific equity adjustment of $5,894,387 to reclassify $3,848,517 recorded in Accounts Payable – Associated Companies and $3,049,849 that were recorded by the company in Miscellaneous Current and Accrued Liabilities does not comply with the interim statute requirements or the APM guidance on interpretation of it. This adjustment converts the actual 13-month average equity balance as reflected on MFR Schedule A-19 from a negative balance of $1,003,979 to a constructed positive balance of $5,894,387.[15] In the Utility's last rate case, for the account "Accounts Payable – Assoc. Cos.," Pluris reflected a year-end balance of $341,627 in 2011 and $258,951 in 2010 on the Docket No. 20120152-WS MFR Schedule A-19, which results in a simple average balance of $300,289. Further, the MFR Schedule A-19 did not reflect 2010 and 2011 balances for Miscellaneous Current and Accrued Liabilities. For both interim and final purposes in the Utility's last rate case, the Commission did not reclassify the

[11] *Id.* at 13.12-6.
[12] *Id*. at 13.12-7.
[13] *Id.*
[14] *Id*.
[15] This amount is $62,320 greater than the $5,832,067 year-end equity balance as reflected on MFR Schedule A-19.

$300,289 average balance recorded in Accounts Payable – Associated Companies to equity. The Commission did reclassify to Equity the long-term debt balance of $250,000 of "Advances from Associated Companies."[16] The same balance of $250,000 shown on the current A-19 schedule was not reclassified to Equity – which is inconsistent with the previous rate case order. These facts demonstrate that the Commission's interim revenue requirement adjustment in the current case is impermissible and in direct violation of section 367.082(5)(b)1, Florida Statutes.

In addition to the above facial statutory violation, this adjustment violates the Commission's own policies or practices as memorialized in its APM. There was no rule in place that would dictate that current and accrued liabilities should be reclassified to equity during the last rate proceeding or in the instant one. Therefore, pursuant to section 13.12-7 of the APM, no adjustment to boost Equity should be made if the practice is not codified in a rule. If the staff or company nevertheless believed that the amounts at stake were both material and sufficiently important, then either of them could have asked the Commission to hold an expedited hearing so the Commissioners could vote on the adjustment. This did not happen.

The Utility stated during the Agenda Conference that the amounts recorded in Accounts Payable – Associated Companies and Miscellaneous Current and Accrued Liabilities carry no interest and there is no intent to repay nor ability to repay them.[17] These statements are not captured within the four corners of the Utility's petition.[18] In the test year approval letter dated

[16] 2013 Order at 11.
[17] Fla. Public Service Comm'n, 12/5/23 Commission conference, Item 7 transcript, Docket No. 20230083-WS, pp. 20-21, https://www.floridapsc.com/pscfiles/library/filings/2023/06663-2023/06663-2023.pdf.
[18] On page 232 of the PDF file containing the Commission's Water & Wastewater Reference Manual for Utility Companies published June 2015, it states that "[p]rima facie entitlement is when a utility makes a showing of interim increase within the four corners of its filing." (Underlined Emphasis Added.)

July 21, 2023, the Utility was instructed to file all information it wishes the Commission to consider when arriving at a decision on its rate case application with its original filing.[19] Additionally, even if true, this retroactive reclassification completely glosses over the substance of the amounts recorded: legal costs related to litigation that the Commission has yet to determine should be passed on to customers by increasing common equity by $6,898,366 from negative $1,003,979 to $5,894,387.

On one hand, Commission staff stated that the interim nature of this action meant that corrections and mistakes didn't matter at this phase of the rate case process as they can always be remedied in the future; however, staff also stated that their opinion on these reclassifications **would not change** for Proposed Agency Action ("PAA") final rate purposes.[20] Staff's unwillingness to conform their recommendation to the current facts and law, combined with a stated refusal to review these matters as the record develops throughout the PAA process, leaves customers without a meaningful remedy. The approval of Issue 1 in Commission staff's recommendation to suspend the Utility's final requested rates is an administrative act that anticipates the further elaboration and explanation regarding the initial rate case filing and the subsequent development of the record through staff inquiry and discovery. For several reasons, it is disconcerting to the OPC that the Commission staff's opinion on this matter appears to have been pre-determined without further evaluating whether the Utility's specific set of facts and circumstances would warrant a different treatment after additional and/or corroborative data is received from the Utility.

Commission staff also seemed to imply that these adjustments were appropriate because the way the Utility booked these expenses constituted errors that the Commission would be

[19] *See* Document No. 04222-2023.
[20] Transcript p. 30.

fixing.[21] However, there is nothing within the four corners of the Utility's submissions that would indicate the Utility meant to book these expenses in any other manner. Even assuming *arguendo* that the Utility did make errors in its application materials, nothing in section 367.082, Florida Statutes, authorizes the Commission to unilaterally "correct" the Utility's submissions.

That Commission staff (and now the Commission) has apparently pre-decided this issue is especially troubling in light of the detrimental impact of these adjustments to equity on the customers of Pluris. OPC calculates that these adjustments together unlawfully increase interim revenue requirements by over $245,000.[22] By driving up the interim revenue requirement, these adjustments increase Pluris' interim rate requirement which the Commission, apparently, intends to permanently enshrine once Pluris' final rate application is considered. This means that Pluris customers will effectively be paying back what they won from Pluris in a settlement. Pluris may even be able to extract from customers more than it paid out in such a situation, as rates are only changed either upon request or on the Commission's own discretionary motion pursuant to section 367.081(2)(a)1., Florida Statutes.[23]

The settlement (attached as exhibit B)[24] that is the source of these adjustments may itself bar the Commission's actions. Pursuant to section 5.5. of the parties' Proposed Agreement of Compromise and Settlement ("Agreement"), "[Pluris Wedgefield, LLC, Pluris Holdings, LLC, and Pluris Wedgefield, Inc.] agree that neither the Settlement Fund, the expenses incurred by Defendants in providing the Prospective Relief, nor Defendants' litigation costs associated with the Action shall be used for the purpose of seeking to charge higher rates for the potable water

[21] *Id.* at 27
[22] Document no. 06410-2023, p. 2.
[23] For example, Pluris' last full rate case was brought in over ten years ago in 2013.
[24] Available online at http://wedgefieldwatersettlement.com/case-documents.aspx.

distributed by Defendants in the Wedgefield Community."[25] This Agreement was adopted by a Final Order Approving Settlement and Judgment of Dismissal With Prejudice ("Final Order") in the Circuit Court for the Ninth Judicial Circuit in and For Orange County, Florida, civil case no. 2020-CA-004390-O. This Final Order ordered, in relevant part, that all Settlement Class Members are bound by the Final Order and by the Agreement and Settlement embodied therein. Ironically, by making these adjustments in an apparent attempt to aid Pluris' equity situation, the Commission may be opening Pluris to more litigation costs that would then require further cash infusions to cover. Furthermore, given that the parent of Pluris was also a named defendant, it is premature to decide in the context of interim rates whether legal or settlement costs attributable to the parent are properly recovered from customers of either the water or wastewater system.

Section 367.082(1), Florida Statutes, does provide that interim rates are subject to refund. Commission staff appears to rely on this provision in the event that it is determined that Pluris was not entitled to this increase in rates.[26] However, per section 367.082(4), Florida Statutes, the refund is only calculated to reduce the rate of return of the utility or regulated company during the pendency of the proceeding to the same level within the range of the newly authorized rate of return which is found fair and reasonable on a prospective basis. This means, should the Commission approve rates that are the same or higher than the interim rates (as Commission staff appears set to recommend), then Pluris customers who should not have been required to pay back

[25] It is also likely that the Commission's unfortunate and unauthorized *post hoc* inclusion of the settlement and legal costs violates Commission policy and practice of not charging wastewater customers for costs associated with the water system (or vice versa). This treatment prejudges the ultimate resolution of this issue in establishing permanent rates and likely precludes customer recoupment of improper collection of costs in any possible interim true-up (further discussed *infra*).

[26] Transcript at 3.

to the utility what they won in the court proceeding will be permanently harmed by never being able to recover these amount from improperly-imposed rates.[27]

OPC respectfully submits that the Commission should take caution in allowing the reclassification of the two recorded current and accrued liabilities as equity for interim purposes because the Commission previously has disallowed legal expenses associated with a lawsuit, as well as a retroactive ratemaking concern of increasing equity by previously expensed legal costs.[28] The Commission has disallowed the capitalization of items previously expensed by utilities, as it was found to violate the prohibition of retroactive ratemaking.[29] In its Order, the Commission stated that an investment of approximately $7.9 million was made to recapitalize the Utility.[30] OPC notes that **nearly $3 million as reflected on MFR Schedule D-2(a) of the $7.9 million recapitalization amount are for legal costs that the Utility previously expensed from 2020 to 2022**. Further, the Commission's practice is to disallow fines paid as they should be borne by the shareholders of the utility.[31] Due to time constraints, the Commission failed to adequately explore and consider these critical facts at the time. Instead of focusing on the errors that substantially increased the amounts awarded to the utility as interim rates, the Commission should have paid more attention to fact that the Utility's failed to request this treatment on their own behalf.

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[27] Counsel for OPC was prepared to make this point in remarks before the Commission but was not allowed to and thus the Commission did not consider it in its decision. Transcript at 17.
[28] *See* Order No. PSC-98-1583-FOF-WS.
[29] *See* Order No. PSC-01-0326-FOF-SU. This Commission has consistently recognized that ratemaking is prospective and that retroactive ratemaking is prohibited. *See* Gulf Power Co. v. Cresse, 410 So. 2d 492 (Fla. 1982); Meadowbrook Utility Systems, Inc. v. Florida Public Service Commission, 518 So. 2d, 326 (Fla. 1987); Citizens of the State of Florida v. Florida Public Service Commission, 448 So. 2d 1024 (Fla. 1982); and GTE Florida Inc. v. Clark, 668 So. 2d 971 (Fla. 1996).
[30] Order at 4.
[31] *See* Order Nos. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU; and PSC-97-0618-FOF-WS, issued May 30, 1997, in Docket No. 960451-WS.

Without evidence of an adjustment consistent with the last rate case, OPC respectfully submits that the reliance on the *prima facie* information contained in the Utility's MFRs to make a dispositive, constructed adjustment to equity for interim purposes is misplaced and inappropriate. The capital structure regulatory treatment of the equity infusion predominantly relating to the significant legal expenses and settlement paid for a water lawsuit from 2020 to 2022 requires further examination through additional and/or corroborative data from the Utility in order to ensure that the nature of these expenses do not represent non-utility investment. Rule 25-30.436(5)(f), F.A.C, requires the provisions of Rule 25-30.433, F.A.C., must be followed in preparing the utility's application. Rule 25-30.433(13), F.A.C., states that "[n]onutility investment should be removed directly from equity when reconciling the capital structure to rate base unless the utility can show, through competent evidence, that to do otherwise would result in a more equitable determination of the cost of capital for regulatory purposes." The mandate of this rule to exclude non-utility investment stands in sharp contrast to the absence of any rule requiring the reclassification. Finally, even if the Commission finds these adjustments to be appropriate, as a matter of policy the Commission should not make them because they place the onus of obtaining a settlement back on the very customers the settlement was meant to benefit.

2. Omitted and Inconsistent Adjustments.

In the Utility's last rate case, the Commission made adjustments related to Contractual Services – Management Fees. Prior to the Commission staff's recommendation filed on November 21, 2023, the Commission was notified by the OPC in writing on November 13 and 15, 2023, that such adjustments for Contractual Services – Management Fees consistent with the Utility's last rate case were statutorily required pursuant to Section 367.082(5)(b)1, Florida Statutes. Prior to the December 5, 2023, Agenda Conference, the Commission was notified by the OPC in writing on November 30, 2023, that the Utility's 2013 and 2015 Price Index Applications approved by the

Commission included adjustments for Contractual Services – Management Fees consistent with the Utility's last rate case. [32] In this letter, the OPC stated that, at minimum, these same adjustments in the approved 2013 and 2015 price indices should be removed also in accordance with the interim statute;[33] however, for some reason, the Commission staff still did not address the omission of this statutory required adjustment in its December 4, 2023 Oral Modification.

Also in the Utility's last rate case, the Commission did reclassify the amount recorded in Advances from Associated Companies from long-term debt to equity. On November 30, 2023, the OPC verbally notified Commission staff regarding its omission of this adjustment in its interim recommendation, as well as other presentation errors on Schedule No. 2; however, for some reason, the Commission staff still did not address the omission of this statutory required adjustment nor the presentation errors on Schedule No. 2 in its December 4, 2023 Oral Modification to its recommendation. This omission was again pointed out to the Commission at the December 5, 2023, Agenda Conference.[34]

Finally, in the Utility's last rate case, the Commission found that the Utility's water distribution and wastewater collection systems shall be considered 85.l% ((1,594+33)/1,911) used and useful ("U&U"). The 5-year growth allowance of 33 equivalent residential connections (ERCs) was calculated on MFR Schedule F-9 from the Utility's last rate case. According to the Commission staff's engineering workpapers, the U&U is 92.2% ((1,699+63)/1,911) for the Utility's water distribution and wastewater collection systems. The 5-year growth allowance of 63 ERCs was calculated on the Utility's initial MFR Schedule F-8. Due to a correction of an MFR deficiency, the Utility revised its MFR Schedules F-7, F-8, and F-9 which reflected a 5-year growth

[32] Document 06410-2023 at 3-5.
[33] *Id*.
[34] Transcript at 16.

allowance of 85 ERCs; however, the Utility failed to correct its MFR Schedule F-5 which still reflected 63 ERCs, instead of 85 ERCs. Therefore, consistent with the last rate case, the correct U&U is 93.4% ((1,699+85)/1,911) for the Utility's water distribution and wastewater collection systems.

Section 367.082(5)(b)1, Florida Statutes, requires interim rates to be calculated by the strict statutory formula of applying appropriate adjustments consistent with those in its last rate case. The Commission has either failed entirely to incorporate the above adjustments from the Utility's last rate case into its consideration of interim rates or incorporated them incorrectly. Further, the Commission's adjustments in the last rate proceedings were based on practice instead of Rule. When a specific adjustment was made in the last rate proceeding and the adjustment was based on Commission practice instead of an adopted Rule, the APM advises that an adjustment consistent with the practice applied in the last rate proceeding be made using interim test year amounts. Therefore, the Commission is also ignoring its own APM in omitting or failing to correctly make the above adjustments.

III. Conclusion

The Commission should reconsider Order No. PSC-2023-0387-PCO-WS by taking another look at the adjustments it has made, or failed to make, consistent with Pluris' prior rate case and the interim statute. The Commission's adjustments to equity in particular are troubling in light of their practical effect being punishing Pluris' customers for managing to get a settlement out of Pluris. Notwithstanding this issue, the Commission should also ensure that adjustments follow the requirements of section 367.082, Florida Statutes.

OPC has consulted with counsel for the Utility on this motion. The Utility objects to this motion.

WHEREFORE, the Citizens hereby request the Commission grant this Motion for Reconsideration of Order No. PSC-2023-0387-PCO-WS.

Respectfully submitted,

/s/ Walt Trierweiler
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CERTIFICATE OF SERVICE
DOCKET NO. 20230083-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 8th day of January 2024, to the following:

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13.12-6

CHART 1
ADJUSTMENTS TO BE MADE CONSISTENT WITH THE LAST CASE

Was a specific adjustment made in the last rate proceeding?	Was the adjustment based on either practice or a rule?	Should an adjustment be made to the interim test year amounts when determining the interim increase or decrease?
Yes	No rule was in place during the prior rate proceeding and no rule has been adopted since. (Adjustment was based on practice.)	Yes, make the adjustment consistent with the practice applied in the last rate proceeding using interim test year amounts.
Yes	No rule was in place during the prior rate proceeding, but a rule has been adopted that is consistent with the practice supporting the adjustment made in the last rate proceeding.	Yes, make the adjustment consistent with the practice applied in the last rate proceeding using interim test year amounts. Note: Interim statute and rule are consistent.
Yes	No rule was in place during the prior rate proceeding, but a rule has been adopted that is <u>not</u> consistent with the adjustment made in the last rate proceeding.	Yes, make the adjustment consistent with the practice applied in the last rate proceeding using interim test year amounts. Note: Interim statute prevails over rule.
Yes	A rule was in place during the prior rate proceeding and is still in effect.	Yes, make the adjustment consistent with the rule applied in the last rate proceeding using interim test year amounts. Note: Interim statute and rule are consistent.
Yes	A rule was in place during the prior rate proceeding, but that rule has been substantially revised.	Yes, make the adjustment consistent with the rule applied in the last rate proceeding, but using interim test year amounts. Note: Interim statute prevails over rule.

CHART 2
ADJUSTMENTS WERE NOT MADE IN THE LAST RATE PROCEEDING
(ADJUSTMENTS NOT INCONSISTENT WITH THOSE MADE IN THE LAST RATE PROCEEDING)

Was a specific adjustment made in the last rate proceeding?	Was a rule or current practice in effect?	Should an adjustment be made to the interim test year amounts when determining any interim increase or decrease?
No	No rule was in place during the last rate proceeding and none is in place now. Adjustments of this type have been made based on current practice. The adjustment did not pertain to the company's operations in the last rate proceeding.	No adjustment should be made if the practice is not codified in a rule. If the amount is both material and sufficiently important, an expedited hearing may be held so the Commissioners can vote on the adjustment.
No	No rule was in place during the prior rate proceeding, but a rule has been adopted since then.	Yes, make the adjustment consistent with the new rule, using interim test year amounts. Note: Rule not inconsistent with interim statute.
No	Although a rule was in place during the prior rate proceeding, it did not pertain to the company's operations, so no adjustment was necessary. The rule does apply in this rate proceeding.	Yes, make the adjustment consistent with the rule, using interim test year amounts. Note: Interim statute and rule are consistent.
No	Although a rule was in place during the prior rate proceeding, it did not pertain to the company's operations, so no adjustment was necessary. Since then the rule has been substantially revised.	Yes, make the adjustment consistent with the revised rule, using interim test year amounts.
No	This type of adjustment has never been an issue in any rate proceeding.	No, do not make the adjustment. If the amount is both material and sufficiently important, an expedited hearing may be held so the Commissioners can vote on

EXHIBIT B

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIVIL ACTION

EXHIBIT A

JESSICA KOHL and MATTHEW KOHL, individually, and on behalf of a class of persons similarly situated,

Plaintiffs,

Case No. 2020-CA-004390-O

v.

PLURIS WEDGEFIELD, LLC, PLURIS HOLDINGS, LLC, and PLURIS WEDGEFIELD, INC.

Defendants.

PROPOSED AGREEMENT OF COMPROMISE AND SETTLEMENT

AGREEMENT OF COMPROMISE AND SETTLEMENT

Subject to the approval of the Court pursuant to Fla. R. Civ. P. 1220(e), this Agreement of Compromise and Settlement is made between the Plaintiffs Jessica Kohl and Matthew Kohl, on behalf of the Settlement Class, and Defendants Pluris Wedgefield, LLC, Pluris Holdings, LLC, and Pluris Wedgefield, Inc. Subject to Court approval and as provided herein, the Parties stipulate and agree that, in consideration of the promises set forth in this Agreement and other good and valuable consideration, that upon entry of the Final Approval Order and the occurrence of the Effective Date, this Action shall be settled, compromised, and dismissed upon the terms and conditions set forth below.

This Agreement is intended by the Parties to fully and finally compromise, resolve, discharge, release, and settle the Released Claims, and to result in the dismissal of the Action with prejudice, subject to the terms and conditions set forth below and without any admission or concession as to the merits of any claim or defense by any of the Parties.

1. DEFINITIONS

1.1. As used in this Agreement, the following terms shall have the following meanings:

a. "Action" means *Kohl v. Pluris Wedgefield LLC, et al.*, No. 2020-CA-004390-O (Circuit Court for the Ninth Judicial Circuit, in and for Orange County, Florida).

b. "Agreement" means this Agreement of Compromise and Settlement and any Exhibits attached to it.

c. "Class Counsel" means the Maher Law Firm, P.A., Heninger Garrison Davis, LLC, and Normand PLLC.

d. "Class Member" or "Settlement Class Member" means a member of the Settlement Class. This Agreement may use the words "he," "she," "him," "her," or "it" to refer to a Class Member or Settlement Class Member without excluding any gender, person, or entity.

e. "Class Notice" means the notice(s) of the proposed class action settlement described in this Agreement that the Settlement Administrator will disseminate to the Class, pursuant to the Preliminary Approval Order, the Notice Plan, and this Agreement.

f. "Class Period" means the period beginning on April 12, 2016 and ending on the date on which the Preliminary Approval Order is entered.

g. "Court" means the Circuit Court for the Ninth Judicial Circuit, in and for Orange County, Florida.

h. "Customer List" refers to the reasonably accessible list of residential customers from the Wedgefield Community who paid for potable water distributed by Pluris Wedgefield LLC during the Class Period that will be provided by Defendants. This list shall include, where available, the name, physical address, e-mail address, and billing amounts, for all customers during the Class Period. Defendants agree to provide Class Counsel with the Customer List within fifteen (15) days following the execution of this Agreement. To the extent reasonably possible, the Customer List shall be produced in a Microsoft Excel compatible format.

i. "Defendants" means Defendants Pluris Wedgefield, LLC, Pluris Holdings, LLC, and Pluris Wedgefield, Inc.

j. "Defense Counsel" means Alston & Bird LLP and Greenberg Traurig, PA.

k. "Effective Date" means either: (i) the date on which the Final Approval Order is entered, if no objections are timely filed; (ii) the last date on which a timely notice of appeal from the Final Approval Order could be filed, if objections are filed but no appeal is filed; (iii) the last date on which a timely petition for writ of certiorari could be filed, if an appeal is filed, the court of appeals confirms the Final Approval Order through a dismissal or affirmance, and no certiorari petition is filed; (iv) the date on which the Florida Supreme Court denies or dismisses a writ of certiorari or affirms the Final Approval Order, if an appeal is filed, the court of appeals confirms the Final Approval Order through a dismissal or affirmance, and a certiorari petition is filed; or (v) a date to which Defense Counsel and Class Counsel agree in writing.

l. "Final Approval Hearing" means the hearing required by Fla. R. Civ. P. 1220(e), following issuance of Class Notice, that provides an opportunity for Class Members to make an Opt-Out Request, and an opportunity for Settlement Class Members to object to all or part of this Agreement, at which time the Parties will request the Court to approve this Agreement and enter a Final Approval Order.

m. "Final Approval Order" means an order entered by the Court following the Final Approval Hearing that provides that the terms of this Agreement are

fair, reasonable, and adequate and otherwise comply with all legal requirements for approval of a class action settlement.

n. "Long-Form Notice" means the Class Notice substantially in the form attached as **Exhibit 1** that the Settlement Administrator will distribute to Class Members in accordance with due process and Fla. R. Civ. P. 1220(e) as set forth herein. The Settlement Administrator shall prepare the Long-Form Notice in English and in Spanish.

o. "Net Settlement Fund" means the Settlement Fund less Court approved counsel fees, costs and expenses, tax related payments, and the Claims Program Administration Expenses plus any interest accrued in the Settlement fund account.

p. "Notice Plan" means the plan for dissemination of Class Notice to Class Members as set forth herein.

q. "Objection Deadline" means the date thirty (30) days before the Final Approval Hearing, by which objections to this Agreement must be submitted in accordance with this Agreement and the Class Notice.

r. "Opt-Out Deadline" means the date thirty (30) days before the Final Approval Hearing, by which requests for exclusion from the settlement Class must be sent.

s. "Opt-Out Request" means a Class Member request to be excluded from the Settlement Class.

t. "Parties" means the Plaintiffs on behalf of the Settlement Class and Defendants.

u. "Plaintiffs" means Jessica Kohl and Matthew Kohl.

v. "Plan of Allocation" means the proposed plan for allocating the Settlement Fund for payments to Class Members and other payments as set forth herein.

w. "Preliminary Approval Order" means the order that the Plaintiffs will seek from the Court which would: (i) conditionally certify the Settlement Class for settlement purposes only; (ii) preliminarily appoint the Plaintiffs as class representatives for settlement purposes only; (iii) preliminarily appoint Class Counsel as counsel for the Settlement Class for settlement purposes only; (iv) preliminarily approve this Agreement as fair, adequate, and reasonable, and within the reasonable range of a possible final settlement; (v) approve the forms of Class Notice and provide that the Notice Plan constitutes the best notice practicable under the circumstances and satisfies due process requirements and Fla. R. Civ. P. 1220(e); (vi) set the date and time for the Final Approval Hearing; (vii) order that Class Notice be disseminated; (viii) set the Claims Deadline, the Objection Deadline, and

the Opt-Out Deadline; (ix) provide that Class Members who do not submit a timely and valid Opt-Out Request will be bound by the Final Approval Order and the judgment dismissing the Action with prejudice and by the Release; and (x) otherwise comply with Fla. R. Civ. P. 1220(e).

x. "Release" means the Releasing Parties release, waiver, compromise, settlement, and discharge of the Released Claims and covenant not to sue, as set forth herein.

y. "Released Claims" means any and all claims, causes of action, rights, promises, obligations, allegations, demands, injuries, remedies, facts, or other theories of law or equity that have been or could have been asserted by the Settlement Class and any other Settlement Class claims arising from this litigation, which would make any Released Person liable for or subject to relief of any kind or damages of any type—including compensatory, consequential, incidental, punitive, exemplary, statutory, or special damages, or damages based upon a multiplier of compensatory damages—penalties, court costs, attorneys' fees or expenses, other monetary relief, injunctions, other equitable relief, or declaratory relief, whether alleged or unalleged, known or unknown, suspected or unsuspected, matured or not yet matured, contingent or non-contingent, patent or latent, manifested or unmanifested, past, present, or future, open or concealed, which existed in the past, exist now, or could exist in the future, without regard to the subsequent existence or discovery of different or additional claims, causes of action, rights, promises, obligations, allegations, demands, injuries, remedies, facts, or other theories of law or equity, against Defendants related to the water received in the Wedgefield Community from April 12, 2016 through the date on which the Final Settlement Approval Order is entered. Specifically excluded from this definition of Released Claims are claims for personal injury or wrongful death, regardless of what legal or equitable theories of liability they are asserted under.

z. "Released Persons" means Pluris Wedgefield, LLC, Pluris Holdings, LLC, and Pluris Wedgefield, Inc. and any person or entity that provided water to the Wedgefield community from April 12, 2016 through the date on which the Final Settlement Approval Order is entered, as well as the past, present, and future controlling persons, directors, officers, employees, agents, servants, independent contractors, joint venturers, representatives, advisors, consultants, attorneys, insurers, subrogees, shareholders, partners, members, subsidiaries, divisions, parents, affiliates, predecessors, heirs, executors, administrators, successors, and assigns of any Released Person.

aa. "Releasing Parties" means all Settlement Class Members as well as the past, present, and future controlling persons, directors, officers, employees, agents (including homeowners' and condominium associations), servants, independent contractors, joint venturers, representatives, advisors, consultants, attorneys, insurers, subrogees, shareholders, partners,

members, subsidiaries, divisions, parents, affiliates, predecessors, heirs, executors, administrators, successors, and assigns of any of the Releasing Parties, and any other person or entity claiming through or on behalf of any of the Releasing Parties.

bb. "Settlement Administrator" means [KCC, LLC], which shall agree to provide Class Notice, administer the Settlement Program, and perform the other obligations of a Settlement Administrator under this Agreement, as set forth herein.

cc. "Settlement Class Member" means a member of the Settlement Class. This Agreement may use the words "he," "she," "him," "her," or "it" to refer to a Settlement Class Member without excluding any gender, person, or entity.

dd. "Settlement Class" means all Class Members excluding those persons and entities that make a timely and otherwise valid Opt-Out Request as set forth herein.

ee. "Settlement Class" means all residential customers who paid for potable water distributed by Pluris Wedgefield, LLC and Pluris Wedgefield, Inc. from April 12, 2016 through the date on which the Preliminary Settlement Approval Order is entered. Excluded from the Class are Defendants, any Released Persons, Class Counsel, and any judge, clerk, deputy, and/or employee of the Court in which this case is pending.

ff. "Settlement Fund" means the money deposited by Defendants into an account established by Class Counsel to fund payments required by this Agreement, or such account itself, as set forth herein.

gg. "Settlement Program Administration Expenses" means expenses paid out of the Settlement Fund for the Settlement Administrator, Claims Program, and Class Notice.

hh. "Settlement Program" means the program and procedures set forth herein for providing Class Notice as well as processing and paying Class Members their monetary relief as set forth in this Agreement.

ii. "Summary Notice" means the Class Notice substantially in the form of attached **Exhibit 2** that the Settlement Administrator will publish and disseminate via email as set forth herein. The Settlement Administrator shall prepare the Summary Notice in English and in Spanish.

jj. "Wedgefield Community" refers to the geographic area in which Settlement Class Members reside where they received water provided by Pluris Wedgefield, LLC and Pluris Wedgefield, Inc.

2. RECITALS

2.1. The original Complaint in this Action was filed on April 25, 2020, in the Circuit Court for the Ninth Judicial Circuit, in and for Orange County, Florida.

2.2. On September 14, 2020, Defendants removed the Action to the United States District Court, Middle District of Florida, Orlando Division (Case No. 6:20-CV-01683).

2.3. Plaintiffs filed a First Amended Complaint on October 19, 2020.

2.4. Defendants moved to dismiss the First Amended Complaint on November 6, and Plaintiffs opposed this motion on December 3, 2020.

2.5. After conducting extensive fact and expert discovery, Plaintiffs moved to certify the Action as a class action on October 29, 2021. Defendants responded in opposition to this motion on December 13, and Plaintiffs replied in support of their motion on January 20, 2022.

2.6. On March 1, 2022, the Parties participated in mediation with Rodney Max of Upchurch, Watson, White & Max serving as the independent, non-party mediator. The Parties continued settlement negotiations after the mediation, reached an agreement in principle on March 16, and signed a term sheet on March 23, 2022, to resolve the Action and its putative class claims. At the time of the settlement, the Court had not ruled on Defendants' motion to dismiss or Plaintiffs' motion for class certification.

2.7. Defendants deny all of Plaintiffs' allegations of fault, wrongdoing, or liability and do not admit or concede that any of the allegations made by any of the Plaintiffs in the Action are true. Neither this Agreement, its Exhibits, nor any other document or item arising out of or related to the Settlement described in this Agreement shall be offered or accepted into evidence in any other case or proceeding for any purpose whatsoever, including as evidence of any admission by Defendants. Any representation, assertion, declaration, statement, or stipulation by Defendants or Plaintiffs in connection with the Settlement is made for settlement purposes only. In the event this

Settlement is not finally approved, nothing in this Agreement shall be construed as a waiver by Defendants of their contention that class certification is not appropriate or is contrary to law in this Action or in any other case or proceeding.

2.8. Since 2020, Class Counsel have conducted an extensive investigation of the facts and circumstances related to the allegations made in the Action, including consulting experts, serving written discovery, reviewing written and document discovery received from Defendants, answering written discovery and serving documents on behalf of the Plaintiffs, interviewing potential witnesses, conducting inspections at the property of Jessica Kohl and Matthew Kohl, reviewing the information and evidence that they have obtained, and researching and studying the legal principles applicable to the issues of liability, damages, jurisdiction, and procedure.

2.9. The Parties have engaged in extensive, arm's length negotiations regarding the settlement of claims involving the Wedgefield Community, including multiple in-person and telephonic conferences. The Plaintiffs, through Class Counsel, have evaluated the time and expense that will be necessary to prosecute these cases to final judgment, the delays that are likely before any judgment may be entered, and the uncertainty inherent in predicting the outcome of any complex litigation such as this and, based upon such evaluation, have concluded that further proceedings in this Action are likely to be protracted, complex, and expensive, and that the outcome is unpredictable.

2.10. Without conceding any of their claims lack merit, the Plaintiffs and Class Counsel have concluded that it is in the best interests of the Settlement Class Members to settle the Action on the terms and conditions set forth herein, and that the settlement with Defendants embodied in this Agreement is fair, reasonable, and adequate to the Plaintiffs and the Settlement Class Members.

2.11. While denying any fault, wrongdoing, or liability—and without conceding any

infirmity in its defenses, that any of Plaintiffs' allegations in the Action are true, or that Plaintiffs' claims qualify for class certification for trial—Defendants consider it desirable to enter into this Agreement to avoid further expense, to dispose of burdensome and protracted litigation, and to avoid the uncertain outcome of proceeding with the Action.

2.12. Defendants have agreed to enter into the settlement contemplated by this Agreement and to deposit funds into the Settlement Fund, according to the terms and conditions set forth in this Agreement, to resolve or satisfy one or more claims arising from acts allegedly performed in the ordinary course of its business. Therefore, that deposit is being paid by Defendants as an "ordinary and necessary expense" paid or incurred in carrying on its trade or business within the meaning of section 162 of the Internal Revenue Code of 1986, as amended.

2.13. For the above reasons, Defendants and the Plaintiffs, acting for the Settlement Class, agree that, except as explicitly and specifically stated to the contrary in this Agreement, the Released Claims shall be settled and compromised, and the Action shall be dismissed with prejudice, according to the terms and conditions set forth in this Agreement.

3. CLASS CERTIFICATION

3.1. For purposes of settlement of the Action only, and without any admission or concession that class certification would be appropriate in the Action or any other case, Defendants agree that it will not object to certification of the Settlement Class pursuant to Fla. R. Civ. P. 1220(b)(3) and 1220(e).

3.2. If the Effective Date does not occur because a Final Approval Order is not entered: (a) the Action shall revert to its current status as an uncertified putative class action; (b) Defendants shall retain all of the rights to oppose class certification that it had prior to execution of this Agreement; and (c) nothing in this Agreement or in orders, filings, proceedings, or negotiations

related to this Agreement may be used as evidence or argument in this Action or any other case or proceeding.

4. THE SETTLEMENT FUND

4.1. In consideration for this Agreement, and in satisfaction and settlement of the Released Claims, Defendants shall pay a total of three million three hundred thousand U.S. dollars ($3,300,000) (the "Settlement Fund"). Defendants shall within fourteen (14) days after the Effective Date, wire transfer the Settlement Fund into an account established by Class Counsel for the Settlement Fund at a mutually acceptable federally insured banking institution chartered under the National Bank Act, provided that Defendants have timely received a properly completed and executed IRS Form W-9 from Class Counsel or the Settlement Administrator on behalf of the Settlement Fund (and any other tax forms reasonably requested by Defendants).

4.2. The Settlement Administrator, acting pursuant to this Agreement and any instructions from the Court, shall control the Settlement Fund and shall have the exclusive right to authorize payments, withdrawals, and transfers.

4.3. Once the Settlement Fund is established, the Parties shall not bear any risk regarding responsibility for, or liability in connection with the Settlement Fund, including the investment, administration, maintenance, or distribution of the Settlement Fund or any gains or losses experienced by the Settlement Fund.

4.4. The Settlement Fund is intended to be a "qualified settlement fund" within the meaning of United States Treasury Regulation § 1.468B-1. Neither the Parties nor the Settlement Administrator shall take a position in any filing or before any tax authority that is inconsistent with such treatment. Defendants shall be the "transferor" within the meaning of United States Treasury Regulation § 1.468B-1(d)(1) to the Settlement Fund with respect to the amounts transferred. The

Settlement Administrator shall be the "administrator" of the Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-2(k)(3) and, as such, the Settlement Administrator shall: (a) timely make or join in any and all filings or elections necessary to make the Settlement Fund a qualified settlement fund at the earliest possible date (including, if requested by Defendants, a relation-back election within the meaning of United States Treasury Regulation § 1.468B-1(j)); (b) timely file all necessary or advisable tax returns, reports, or other documentation required to be filed by or with respect to the Settlement Fund; (c) timely pay any taxes (including any estimated taxes, any interest or penalties, or any taxes or tax detriments that may be imposed on Defendants) required to be paid by or with respect to the Settlement Fund; and (d) comply with any applicable information reporting or tax withholding requirements imposed by applicable law, in accordance with United States Treasury Regulation § 1.468B-2(l). Any such taxes, as well as all other costs incurred by the Settlement Administrator in performing the obligations created by this Section, shall be paid out of the Settlement Fund. Defendants shall have no responsibility or liability for paying such taxes and no responsibility to file tax returns with respect to the Settlement Fund or to comply with information reporting or tax withholding requirements with respect thereto. The Settlement Fund shall be used to indemnify and hold Defendants harmless for any such taxes (including any taxes payable by reason of any such indemnification) that Defendants pay or are required to pay. Defendants shall provide the Settlement Administrator with the required statement under United States Treasury Regulation § 1.468B-3(e).

4.5. Any interest accrued in the Settlement Fund shall inure to the benefit of Settlement Class Members.

4.6. In accordance with the terms and conditions of this Agreement, the Settlement Fund shall be used to pay monetary relief to the Class Members pursuant to Plan of Allocation set forth

herein, the award of fees, expenses, and costs to Class Counsel, expenses and costs to administer the settlement, and certain other fees, costs, expenses, taxes, reimbursements, and credits, as set forth herein.

4.7. The Settlement Fund shall be the sole and exclusive source for satisfying all costs, including but not limited to the costs of Class Notice, the Claims Program Administration Expenses, and any claims for payment by any of the Plaintiffs, Settlement Class Members, or Class Counsel that relate to the Action or the settlement reflected in this Agreement. Defendants are under no obligation to pay any amount except as specified in Section 4.1 and Section 5. The Settlement Administrator shall submit all invoices to Class Counsel related to the costs of the Class Notice and any Claims Program Administration Expenses. The Settlement Administrator shall be paid out of the Settlement Fund upon Class Counsel's approval of the invoices. Nothing in this Section 4.7 is intended to or shall result in Defendants paying more than $3,300,000.00 in connection with this Agreement.

5. PROSPECTIVE RELIEF

5.1. In further consideration for this Agreement, and in satisfaction and settlement of the Released Claims, the Parties agree to the prospective relief memorialized in **Exhibit 3** to this Agreement. Accordingly, **Exhibit 3** is explicitly incorporated herein.

5.2. All expenses incurred by Defendants in providing the prospective relief memorialized in **Exhibit 3** to this Agreement are separate and apart from the Defendants' obligation to pay the Settlement Fund and shall by borne exclusively by Defendants.

5.3. The Parties further agree that the only valid sampling is at FDEP-approved testing locations in accordance with methods and standards established and approved by FDEP. Similarly, the only valid testing is at a laboratory certified by FDEP as currently accredited under NELAP for

methods approved by EPA or FDEP for each relevant analysis (chlorite, TTHM, HAA5). Should Plaintiffs wish to conduct additional sampling and testing in addition to the testing scheduled in **Exhibit 3** ("Additional Sampling"), Defendants will provide Plaintiffs access to FDEP-approved testing locations provided that (1) Plaintiffs provide three business days (i.e., a minimum of 72-hours) advance written notice regarding the (a) date and time of the requested Additional Sampling, (b) the location or locations of the requested Additional Sampling, and (c) the test or tests that Plaintiffs will instruct the laboratory to conduct for each analyte; (2) Plaintiffs conduct the Additional Sampling solely at their expense using properly qualified and insured consultants and laboratories; (3) Defendants have the opportunity to observe the Additional Sampling and take contemporaneous split samples solely at their own expense; (4) Plaintiffs conduct no more than four Additional Sampling events per calendar year; and (5) each Party provides the other Party a copy of their test results within three business days of receipt. Any rights to access under this Agreement will terminate immediately following (a) a sale of the Wedgefield facility to Orange County or to another independent third-party or (b) the expiration of the testing period covered in **Exhibit 3**, whichever is sooner.

5.4. The Parties further agree to meet and confer to develop the timetable and actions necessary for implementing the prospective relief memorialized in **Exhibit 3** to this Agreement. In the event that the Parties are not able to reach an agreement on such a timetable and or such actions, the Parties agree to refer the matter to Rodney A. Max at Upchurch, Watson, White & Max for alternative dispute resolution. If Mr. Max is unavailable or unable to serve as a neutral, the Parties will appoint a mutually agreeable neutral to assist them in the resolution of any issues in dispute.

5.5. Defendants agree that neither the Settlement Fund, the expenses incurred by Defendants in providing the Prospective Relief, nor Defendants' litigation costs associated with the

Action shall be used for the purpose of seeking to charge higher rates for the potable water distributed by Defendants in the Wedgefield Community.

6. THE PRELIMINARY APPROVAL ORDER

6.1. Not later than twenty-one (21) days after execution of this Agreement, Plaintiffs shall submit this Agreement to the Court and request that it enter a Preliminary Approval Order on an expedited basis.

7. NOTICE OF PROPOSED SETTLEMENT

7.1. No later than thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall commence Class Notice to the Class pursuant to the Preliminary Approval Order and the Notice Plan.

7.2. KCC, LLC shall serve as the Settlement Administrator.

7.3. The Settlement Administrator shall distribute and publish the Class Notice in accordance with the terms of this Section and the Notice Plan. The Notice Plan shall be presented to the Court prior to entry of the Preliminary Approval Order.

7.4. Consistent with Fla. R. Civ. P. 1220 and due process, the Notice Plan shall include the following methods of distributing notice: (a) mailing and emailing of the Summary Notice to the physical and email address of each Settlement Class Member where such information is available in the Customer List; (b) establishing a toll-free IVR telephone number; and (c) establishing a website run by the Settlement Administrator ("Settlement Website").

7.5. Before distribution of either the Summary Notice or the Long-Form Notice, the Settlement Administrator shall establish a toll-free telephone facility. The toll-free telephone number of that facility shall be included in the Summary Notice, the Long-Form Notice, and the Settlement Website established under this Agreement. The telephone facility shall be capable of: (a) receiving requests for the Long-Form Notice; (b) providing general information concerning

deadlines for Opt-Out Requests and objections to this Agreement, and the dates of relevant Court proceedings, including the Final Approval Hearing; and (c) mailing materials to Class Members as provided in this Section. The toll-free number shall be maintained until ninety (90) days after entry of the Final Approval Order. This may be accomplished through the use of an IVR system, to the extent practicable.

7.6. Before distribution of either the Summary Notice or the Long-Form Notice, the Settlement Administrator shall cause an internet website concerning the settlement reflected in this Agreement to be established, referred to previously as the Settlement Website. The internet address of the Settlement Website shall be included in the Summary Notice and the Long-Form Notice. The Long-Form Notice shall be posted in English and Spanish on the website. The Settlement Website shall provide: (a) general information concerning deadlines for Opt-Out Requests and objections to this Agreement, and the dates of relevant Court proceedings, including the Final Approval Hearing; (b) the toll-free phone number to be established under this Agreement; and (c) electronic copies of this Agreement and the Long-Form Notice that Settlement Class Members can download and print when available. The Settlement Website shall be maintained until thirty (30) days after the end of the final distribution and final Settlement Administrator report is provided to the Parties.

7.7. The Summary Notice shall be in the form of **Exhibit 2** and shall comply with Fla. R. Civ. P. 1220 and due process requirements. The Summary Notice shall be sent by email to each Class Member identified in the Customer List by the Settlement Administrator.

7.8. The Summary Notice also shall be mailed first class to each Class Member identified in the Customer List. The Settlement Administrator will promptly log each Summary Notice that is returned as undeliverable and shall provide copies of the log to Class Counsel and Defense Counsel.

The Settlement Administrator shall take reasonable steps to re-mail all undeliverable Summary Notices to updated addresses by reasonable means. If any Summary Notice mailed to a Class Member is returned as undeliverable a second time, then no further mailing shall be required.

7.9. The Long-Form Notice shall be in the form of **Exhibit 1** and shall comply with Fla. R. Civ. P. 1220 and due process requirements. The Long-Form Notice shall: (a) describe the Action and this Agreement in a concise and neutral way; (b) inform Class Members about their right to make an Opt-Out Request; (c) inform Settlement Class Members about their right to object to this Agreement; (d) inform Settlement Class Members about their right to compensation under this Agreement; (e) describe the Settlement Fund; (f) state the date of the Final Approval Hearing; and (g) provide any other information required to satisfy Florida's notice requirements for a class action settlement.

7.10. Any personal information regarding Class Members that Defendants provide to the Settlement Administrator or Class Counsel pursuant to this Agreement will be provided solely for the purpose of allowing Class Members to recover under this Agreement, will be kept in strict confidence, will not be disclosed to any third party, and will not be used for any other purpose.

7.11. After entry of the Preliminary Approval Order, Class Members may identify themselves to the Settlement Administrator as for purposes of receiving additional information regarding the Claims Program.

7.12. At least ten (10) days before the date of the Final Approval Hearing, the Settlement Administrator shall file proof of the Class Notice.

7.13. The Settlement Administrator may make appropriate modifications to the Notice Plan and Class Notice described in this Section and the Exhibits to this Agreement that have been approved by Defense Counsel, Class Counsel, and the Court and are consistent with due process

and the terms of this Section.

8. COMPENSATION FOR SETTLEMENT CLASS MEMBERS

8.1. The provisions of this Section describing the relief available to Settlement Class Members shall serve as guidelines for the Settlement Administrator in connection with Class Counsels' proposed Plan of Allocation.

8.2. Any individual identified on the Customer List is presumed to be a Settlement Class Member and entitled to the monetary relief set forth in this Agreement, unless information is provided to the Settlement Administrator that is subsequently verified by it indicating otherwise.

8.3. Individuals who are not identified on the Customer List but nevertheless inform the Settlement Administrator that they believe they meet the definition of a Class Member shall have the burden of providing the Settlement Administrator with documentation demonstrating that they were the named customer on a residential account with Defendants for a property located in the Wedgefield Community during the Class Period. No later than fifteen (15) days after entry of the Final Approval Order, the Settlement Administrator shall provide Defendants with a list of all such individuals whom it has determined, after a diligent inquiry into the documentation and other facts, may be a Class Member, and request that Defendants search its records for any accounts pertaining to those individuals. This request shall be made one-time by the Settlement Administrator. Upon receiving the request, Defendants shall conduct a search of its records for any accounts pertaining to those individuals and shall provide the Settlement Administrator with any additional records or information it may have within fifteen (15) days of receiving the request. If Defendants have no records for any such individual, then that individual bears the burden of further demonstrating payments made directly to Defendants during the Class Period.

8.4. Class Counsels' Proposed Plan of Allocation is attached as **Exhibit 4** to this

Settlement Agreement and is fully incorporated herein.

8.5. Under no circumstances shall any portion of the Settlement Fund revert back to Defendants.

8.6. No later than twenty-one (21) days after the Effective Date, the Settlement Administrator shall issue payments and any other relief to Class Members to which they are entitled consistent with this Settlement Agreement, pursuant to the Plan of Allocation.

8.7. In no event shall the Parties or their counsel have any liability for the acts or omissions of the Settlement Administrator, or their agents, employees, or contractors.

8.8. All information submitted or created in connection with administering this Settlement is confidential. Such information may be disclosed only to Defendants, Defense Counsel, Class Counsel, the Settlement Administrator, and the Court. Such information may be used only for purposes of performing the obligations and exercising the rights created by this Agreement.

9. ATTORNEYS' FEES

9.1. No later than fifteen (15) days prior to the Objection Deadline, Class Counsel will timely petition the Court for attorneys' fees and for reimbursement of costs and expenses incurred in connection with the Action and the settlement reflected in this Agreement. The Petition shall also be filed on the settlement website. A failure to grant some or all requested attorneys' fees, costs, and expenses shall not be grounds for modification or termination of this Agreement.

9.2. The Settlement Administrator shall within fifteen (15) days of the Effective Date pay or cause to be paid to Class Counsel the attorneys' fees, costs, and expenses awarded.

9.3. No Releasing Parties nor any of his, her or its predecessors, successors, parents, subsidiaries, partners, principals, affiliates (as defined in 17 C.F.R. Part 210.1-02. b), heirs,

administrators, executors, attorneys, successors in interest or assigns shall be liable or obligated to pay any fees, expenses, costs or disbursements to, or incur any expense on behalf of, any person or entity (including, without limitation, Plaintiffs or Class Counsel), directly or indirectly, in connection with the Action or this Settlement Agreement, except as expressly provided for in this Settlement Agreement.

9.4. Class Counsel shall have the sole authority to allocate any Court-awarded attorneys' fees, costs, and litigation expenses amongst Class Counsel and additional Plaintiffs' counsel in a manner consistent with the agreements between any and all such counsel.

10. PLAN OF ALLOCATION AND ADMINISTRATION OF SETTLEMENT FUND

10.1. The Settlement Administrator shall administer the Settlement Fund subject to the jurisdiction of the Court. The Settlement Administrator shall not disburse the Settlement Fund except (i) as provided in this Agreement, (ii) as provided in the Plan of Allocation ordered by the Court, (iii) by any other order of the Court, or (iv) by written agreement of the Parties.

10.2. To the extent any dates in Class Counsels' Proposed Plan of Allocation conflicts with any dates specified within this Settlement Agreement, the dates set forth within the Settlement Agreement control.

10.3. The Settlement Administrator shall post an estimate of the final administration fees on the settlement website no later than fifteen (15) days prior to the Objection deadline. If some costs are contingent, then the Settlement Administrator shall post a range of the estimated costs and the Settlement Administrator shall be bound to charge no more than the highest of the estimate range.

10.4. Defendants shall have no obligations or responsibility relating to the issuance or distribution of the checks.

10.5. Any check distributed in accordance with this Agreement for payments out of the Settlement Fund shall not contain any reference to Defendants or any of its affiliates, other than as necessary to identify the checks as settlement of the underlying lawsuit.

10.6. Checks shall remain negotiable for 180 days from the date of mailing. Checks not cashed during this time will be cancelled. The Parties agree the unclaimed funds resulting from all settlement checks which remain unclaimed or un-cashed as described above or in Class Counsels' Plan of Allocation shall be distributed by the Settlement Administrator as a Cy Pres Award as set forth in more detail in Class Counsels' Plan of Allocation.

11. SETTLEMENT CLASS MEMBERS' RIGHT OF EXCLUSION

11.1. Class Counsel agree that representations, encouragements, solicitations, or other assistance to anyone seeking exclusion from the Settlement Class or any other person wishing to litigate with Released Persons over any of the Released Claims in this matter could place Class Counsel in a conflict of interest with the Settlement Class. Accordingly, Class Counsel and their respective firms agree not to represent, encourage, solicit, or otherwise assist anyone in requesting exclusion from the Settlement Class, except that Class Counsel can answer questions from Settlement Class Members concerning whether they have a right to opt-out.

11.2. A Settlement Class Member may choose to be excluded from the Settlement Class by sending to the Settlement Administrator (via U.S. Mail) a written Opt-Out Request that is timely and valid. Any Settlement Class Member who does not submit a timely and valid Opt-Out Request shall be a Settlement Class Member for all purposes under this Agreement, submits to the jurisdiction of the Court, and shall be bound by the terms of this Agreement (including all releases) and by all orders and judgments in the Action. Any Settlement Class Member who does submit a timely and valid Opt-Out Request shall not (a) be bound by any orders or judgments entered in the

Action; (b) be entitled to any of the relief or other benefits provided under this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of this Agreement.

11.3. To be timely and valid, an Opt-Out Request must be signed by the Settlement Class Member or counsel representing the Settlement Class Member, must be post-marked on or before the Opt-Out Deadline, and must include (a) the full name, current address, and telephone number of the Class Member; and (b) a statement substantially to the effect of: "I/We hereby request that I/we be excluded from the proposed Settlement Class in *Kohl v. Pluris*." No "mass" or "class" Opt-Out Requests shall be valid. The Settlement Administrator shall also verify whether the Class Member is on the Customer List.

11.4. Any Settlement Class Member who submits an Opt-Out Request may revoke his or her Opt-Out Request by sending to the Settlement Administrator (via U.S. Mail, email, or online) a written statement of revocation that is post-marked no later than ten (10) days before the date of the Final Approval Hearing.

11.5. Plaintiffs shall not elect or seek to opt out or exclude themselves from the Settlement Class, and any such attempt will be deemed a breach of this Agreement and sufficient to permit Defendants to terminate the Agreement.

11.6. If Class Counsel, Defendants, or Defense Counsel receive Opt-Out Requests or revocations of such requests, then within three (3) days they shall promptly provide copies to each other and the Settlement Administrator.

11.7. The Settlement Administrator shall provide the Parties with copies of all Opt-Out Requests within five (5) days after the Opt-Out Deadline and copies of all revocations of such requests no later than three (3) business days before the Final Approval Hearing.

11.8. Class Counsel shall have the right to contact prospective class members to explain

the litigation and the settlement and may contact persons who submit Opt-Out Requests, or who file an objection.

11.9. In the event 50 or more of the Settlement Class Members submit valid Opt-Out Requests, Defendants may, in their sole discretion, withdraw from and not be bound by the terms or conditions of this Agreement.

12. SETTLEMENT CLASS MEMBERS' RIGHT TO OBJECT

12.1. A Settlement Class Member may object to this Agreement and any of its terms by sending to the Court, Class Counsel, and Defense Counsel written notice of the objection that is timely and valid.

12.2. To be timely and valid, an objection (a) must be sent to the Court, Class Counsel, and Defense Counsel (via U.S. Mail); (b) must be post-marked on or before the Objection Deadline; and (c) must include (i) the full name and current address and telephone number of the Settlement Class Member; (ii) if not their current address, their prior address in the Wedgefield Community; (iii) all of the Settlement Class Member's objections, the reasons therefore, and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; (iv) a statement of whether the Settlement Class Member intends to appear at the Final Approval Hearing; and (v) the Settlement Class Member's signature and the signature of any attorney representing the Settlement Class Member. Neither an objection signed by counsel alone nor any "mass" or "class" objections shall be valid.

12.3. Only Settlement Class Members who state in their objections that they intend to appear at the Final Approval Hearing will have the right to present their objections orally at the Final Approval Hearing.

12.4. In sending any objections to the Court, Class Counsel, and Defense Counsel, Settlement Class Members must use the following addresses:

The Court:
Clerk of Court, Case No. 2020-CA-004390-O
Circuit Court for the Ninth Judicial Circuit,
In and for Orange County, Florida,
425 N. Orange Avenue, Courtroom [ ]
Orlando, Florida 32801

Class Counsel:
THE MAHER LAW FIRM, P.A.
398 W. Morse Blvd., Suite 200
Winter Park, FL 32789
Attn: Matthew S. Mokwa

Defense Counsel:
Greenberg Traurig P.A.
101 East Kennedy Boulevard
Suite 1900
Tampa, FL 33602
Attn: David B. Weinstein and
Christopher White

Alston & Bird LLP
One Atlantic Center
1201 W. Peachtree Street NE
#4900
Atlanta, GA 30309
Attn: Cari K. Dawson and
Jenny A. Hergenrother

12.5. The Parties shall have the same right to seek discovery from any objecting Settlement Class Member as they would if the objector was a named party in the Action.

12.6. A Settlement Class Member who does not submit a timely and valid objection, does not respond to discovery, or does not make himself or herself available for deposition shall be deemed to have waived, and shall be forever foreclosed from making, any objection to this Agreement and the settlement reflected in this Agreement (whether by appeal or otherwise) and shall not be permitted to present objections or otherwise be heard at the Final Approval Hearing.

13. DENIAL OF LIABILITY

13.1. Defendants maintain that they were and have remained in regulatory compliance

and acted in accordance with all applicable statutes, rules, and regulations governing its business, including those of the State of Florida, the Florida Department of Environmental Protection, and the Florida Public Services Commission. Defendants nonetheless have concluded that it is in its best interests that the Action be settled on the terms and conditions set forth in this Agreement. Defendants reached this conclusion after considering issues in the Action, the benefits of a final resolution of the Action, and the time and expense that would be necessary to defend the Action through judgment, appeal, and any subsequent proceedings that may occur.

13.2. Defendants maintain that their defenses on class certification and on the merits and are meritorious. Thus, Defendants believe that they have a reasonable chance of success relative to defeating class certification and prevailing on the merits of this Action. Because of the costs, resources, and time that would be incurred, Defendants would not have settled this Action except on the terms set forth in the Agreement.

13.3. As a result of the foregoing, Defendants enter into this Agreement without admitting, conceding, or acknowledging any fault, liability, or wrongdoing of any kind. On the contrary, Defendants deny all fault, liability, or wrongdoing. Accordingly, neither this Agreement nor any other action by Defendants in connection with the settlement shall be construed as an admission or concession of the truth or merit of any of the allegations in the Action, any legal or factual arguments advanced by the Plaintiffs, or of any liability, fault, or wrongdoing of any kind. The terms of this Agreement, including the nature of the Agreement, are material to Defendants' decision to settle this Action notwithstanding its belief that its defenses are meritorious. Moreover, Defendants deny any fault, wrongdoing or liability to Plaintiffs or the Settlement Class Members for damages or other relief but believe that the proposed settlement contemplated by this Agreement is desirable in order to avoid the further significant burden, expense, risk, and

inconvenience of protracted litigation, and the distraction and diversion of its personnel and resources.

14. FINAL JUDGMENT OF DISMISSAL

14.1. At least twenty-one (21) days before the Final Approval Hearing, Class Counsel shall file a motion on Plaintiffs' behalf requesting that the Court (a) grant final approval of the settlement reflected in this Agreement and (b) enter a Final Approval Order and a final judgment dismissing the Action with prejudice. Class Counsel shall provide Defense Counsel with drafts of their papers in support of final approval at least five (5) business days in advance of filing. Any Settlement Class Member's opposition to Plaintiffs' motion shall be filed fourteen (14) days before the Final Approval Hearing, and Class Counsel shall file any response seven (7) days before the Final Approval Hearing.

14.2. The Final Approval Order requested by Plaintiffs shall:

a. Approve such award of attorneys' fees, costs and expenses for Class Counsel as the Court deems appropriate;

b. Provide that the Agreement is fair, reasonable, and adequate for Settlement Class Members;

c. Direct that the Agreement be implemented in accordance with its terms;

d. Dismiss the Action with prejudice;

e. Adjudge that each of the Releasing Parties has expressly, intentionally, fully, finally, and forever released, waived, compromised, settled, and discharged all Released Claims;

f. Permanently bar and enjoin each of the Releasing Parties from asserting any Released Claim directly or indirectly against any Released Person;

g. Provide that the form and manner of notice given to the Settlement Class Members fairly and adequately informed them of all material elements of the Action, and this Agreement constituted sufficient notice to the Settlement Class Members in accordance with Fla. R. Civ. P. 1220 and due process requirements;

h. Reserve exclusive and continuing jurisdiction over the interpretation, performance, enforcement, and administration of this Agreement and the Court's orders in the Action; and

i. Retain the authority to permanently bar and enjoin any actions in contravention of this Agreement or the Final Approval Order and to otherwise enforce this Agreement and the Final Approval Order through the exercise of equitable powers (including specific performance, contempt, and injunctive relief), irrespective of the availability or adequacy of any remedy at law.

14.3. Upon entry of the Final Approval Order, this Action shall be dismissed with prejudice.

15. EXCLUSIVE REMEDY AND RELEASE OF CLAIMS

15.1. The relief provided for in this Agreement shall be the sole and exclusive remedy for the Released Claims against the Released Persons.

15.2. Upon entry of the Final Approval Order, the Releasing Parties (for all purposes and in all capacities) shall be conclusively deemed to have expressly, intentionally, voluntarily, fully, finally, irrevocably, and forever released, waived, compromised, settled, and discharged (as by an instrument under seal without further act by any person, and upon good and sufficient consideration) any and all Released Claims against each and every Released Person. The Releasing Parties also shall be conclusively deemed to have acknowledged that the Release was separately bargained for and is a key element of the settlement reflected in this Agreement.

15.3. Each of the Releasing Parties shall forever refrain from instituting, maintaining, prosecuting, or continuing any suit, action, or proceeding against any of the Released Parties in connection with any of the Released Claims. If any of the Releasing Parties institute, maintain, prosecute, or continue any such suit, action, or proceeding, Plaintiffs and Class Counsel shall cooperate with the efforts of any of the Released Persons to obtain dismissal by assisting any such Released Persons in communicating with the Releasing Parties, providing the Releasing Parties

with a copy of this Settlement Agreement, and informing the Releasing Parties of the Released Claims.

15.4. The Releasing Parties shall be conclusively deemed to have acknowledged that certain legal authorities provide that "a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which is known by him or her must have materially affected his or her settlement with the debtor." The Releasing Parties shall be conclusively deemed to have expressly, intentionally, voluntarily, fully, finally, and forever waived and relinquished application of all such legal authorities and any similar federal, state, or other laws, rights, rules, principles, or authorities and by accepting payment from the Settlement Fund is estopped from asserting any Released Claim against all Released Parties.

15.5. Notwithstanding the foregoing provisions of this Section, the Release excludes and will not release any obligations to Releasing Parties that Defendants have explicitly and expressly assumed under this Agreement.

15.6. The Release shall be a complete defense to and will preclude any Released Claim in any suit, action, or proceeding.

16. OTHER TERMS AND CONDITIONS

16.1. Defendants shall have the right to terminate this Agreement if: (a) the Court refuses to approve any part of this Agreement; (b) the Court materially changes the terms of the requested Preliminary Approval Order or the requested Final Approval Order; (c) an appellate court reverses or vacates the Final Approval Order; (d) the Effective Date does not occur; or (e) any other ground for termination provided for in this Agreement arises.

16.2. If this Agreement is terminated, the Agreement (except for Sections 3.2, 16.3, 16.9, 16.19, 16.20, 16.21) shall become null and void and of no further force and effect. In that event,

this Agreement, any negotiations, statements, communications, or proceedings relating thereto, and the fact that the Parties agreed to the Agreement shall be without prejudice to the rights of the Parties, shall not be construed as an admission or concession by any of the Parties, and shall not be used or subject to discovery for any purpose whatsoever in any subsequent proceedings in the Action.

16.3. This Agreement, any negotiations, statements, communications, or proceedings relating thereto, and the fact that the Parties agreed to the Agreement shall not be construed as an admission or concession by any of the Parties or Settlement Class Members or be used or subject to discovery for any purpose whatsoever in any other suit, action, or proceeding, other than to enforce the terms of this Agreement (including the Release).

16.4. The Parties and their counsel agree to undertake their best efforts to perform the terms of this Agreement and to obtain and defend the Final Approval Order. Plaintiffs and their counsel further agree to recommend approval of this Agreement by the Court and Class Members without qualification or condition not set forth in this Agreement.

16.5. If the Court refuses to approve any part of this Agreement, the Court materially changes the terms of the requested Preliminary Approval Order or the requested Final Approval Order, or if an appellate court reverses or vacates the Final Approval Order, then (before any termination of this Agreement under Section 16.1 or otherwise) the Parties shall attempt to amend this Agreement consistent with the applicable order and proceed with a settlement based on an amended version of this Agreement. If the Parties are not able to reach an agreement regarding an amended version of this Agreement, the Parties agree to refer the matter to Rodney A. Max at Upchurch, Watson, White & Max for alternative dispute resolution. If Mr. Max is unavailable or unable to serve as a neutral, the Parties will appoint a mutually agreeable neutral to assist them in the

resolution of any issues in dispute.

16.6. Defendants represent and warrant that: (a) they have all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby; (b) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Defendants; (c) Defense Counsel has full authority to sign on behalf of and to bind Defendants to the Agreement's terms; and (d) this Agreement has been duly and validly executed and delivered by Defendants and constitutes its legal, valid, and binding obligation.

16.7. Class Counsel represent and warrant that they have full authority to conduct settlement negotiations with Defendants and Defense Counsel and to enter into this Agreement on behalf of Plaintiffs.

16.8. While nothing in this Agreement is intended to operate as a restriction on the right of Class Counsel to practice law within the meaning of the relevant state equivalents to Rule 5.6(b) of the ABA Model Rules of Professional Conduct, Class Counsel represents that, to the fullest extent permitted by the applicable rules of professional responsibility and excepting the instant litigation, Class Counsel neither has any current clients nor any present intent to seek any clients for the purpose of bringing claims against Defendants with respect to the water supplied to the Wedgefield community (the "subject matter"). Class Counsel represents that they currently have no solicitations or advertisements for claimants in relation to claims related to the subject matter against Defendants in any medium, including but not limited to billboards, websites, television, and newspapers.

16.9. Plaintiffs and Class Counsel shall keep strictly confidential and not disclose to any third party any non-public information regarding the negotiation of the settlement reflected in this

Agreement.

16.10. The Parties and their counsel shall refrain from knowingly making false or untruthful statements related to the Action.

16.11. If any Party breaches his, her, or its obligations under Paragraph 16.9 of this Agreement, then, in addition to any other remedies the non-breaching Party may have, the breaching Party shall be obligated, jointly and severally, to pay the non-breaching Party, within 30 business days after its demand, $10,000 as liquidated damages, plus all reasonable attorneys' fees and costs incurred by the non-breaching Party in enforcing this Agreement, all without the non-breaching party being required to establish any actual damage or harm. The Parties all acknowledge and agree that calculating the actual damages for a breach of the referenced paragraph would be extremely difficult if not impossible and, therefore, the $10,000 payment is both fair and reasonable under the circumstances as liquidated damages.

16.12. If any Party breaches his, her, or its obligations under Paragraph 16.10 of this Agreement, then the non-breaching Party may seek liquidated damages in the amount of $1,500 from the breaching Party through the filing of an action in the County Civil Court for Orange County, Florida. Prior to the filing of any such action, however, the non-breaching Party shall notify the breaching Party of the alleged breach through the manner specified in this Agreement, and shall provide the non-breaching with thirty (30) days from the date of notice to withdraw or repudiate the alleged breach in the same manner or forum in which the allegedly breaching statement was made. If the non-breaching Party withdraws or repudiates the alleged breach, then the non-breaching Party shall have no right to bring an action seeking liquidated damages pursuant to this Paragraph.

16.12. This Agreement shall be binding upon and inure to the benefit of the Parties, the

Settlement Class Members, and their respective agents, heirs, executors, administrators, successors, and assigns.

16.13. This Agreement and any Exhibits attached to it shall constitute the entire agreement of the Parties with respect to the subject matter thereof. The settlement reflected in this Agreement is not subject to any condition not expressly provided for herein, and there exists no collateral or oral agreements among any of the Parties relating to the subject matter of the Agreement that supersede or supplement the Agreement. In entering this Agreement, no party is relying on any promise, inducement, or representation other than those expressly set forth herein and in any Exhibits hereto. Any agreement purporting to change or modify the terms of this Agreement or any of its Exhibits must be in writing, signed by Class Counsel and Defense Counsel, and approved by the Court.

16.14. All Exhibits to this Agreement are incorporated by this reference.

16.15. The waiver by any of the Parties to this Agreement of any breach of its terms must be in writing and shall not be deemed or construed to be a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous. If one of the Parties considers another of the Parties to be in breach of this Agreement, the Party claiming a breach must provide the Party claimed to be in breach with written notice describing the alleged breach with reasonable specificity and a reasonable opportunity to cure the breach before taking any action to enforce the Agreement. In the event that the Parties are not able to resolve the breach, the Parties agree to refer the matter to Rodney A. Max at Upchurch, Watson, White & Max for alternative dispute resolution. If Mr. Max is unavailable or unable to serve as a neutral, the Parties will appoint a mutually agreeable neutral to assist them in the resolution of any issues in dispute.

16.16. Within sixty (60) days after the Effective Date, Plaintiffs and Class Counsel shall, upon written request, return or destroy (and certify in writing that they have destroyed) all

documents produced by Defendants in connection with the Action and/or the negotiation or performance of this Agreement, with the exception of any documents required by the Settlement Administrator to perform its duties as set forth herein, in Class Counsels' Plan of Allocation, or as ordered by a court.

16.17. This Agreement may be executed in any number of counterparts, including by facsimile or electronic mail, each of which shall be deemed to be an original. All counterparts shall constitute one Agreement, binding on the Parties, regardless of whether the Parties are signatories to the same counterpart. However, the Agreement will be without effect until and unless Class Counsel and Defense Counsel have executed a counterpart.

16.18. Whenever this Agreement requires or permits notice to the Settlement Administrator, Plaintiffs, Class Counsel, Defendants, or Defense Counsel, the notice shall be provided by e-mail (provided a copy is also sent by First Class Mail) or next-business-day express delivery service, as follows:

Settlement Administrator:
[KCC, LLC]

Plaintiffs or Class Counsel:
Matthew S. Mokwa
THE MAHER LAW FIRM, P.A.
398 W. Morse Blvd., Suite 200
Winter Park, FL 32789
mmokwa@maherlawfirm.com

Defendants or Defense Counsel: David B. Weinstein
Christopher White
GREENBERG TRAURIG
101 East Kennedy Blvd
Suite 1900
Tampa, FL 33602
weinsteind@gtlaw.com
whitech@gtlaw.com

Alston & Bird LLP
Cari K. Dawson and Jenny A. Hergenrother
One Atlantic Center
1201 W. Peachtree Street NE
#4900
Atlanta, GA 30309
cari.dawson@alston.com
jenny.hergenrother@alston.com

16.19. Any headings, subheadings, or titles herein are used for purposes of convenience only and have no other legal force, meaning, or effect.

16.20. This Agreement will be governed by the laws of the State of Florida, without regard for conflicts of law principles.

16.21. Any suit, action, or proceeding to enforce this Agreement shall be commenced and maintained only in the Court.

16.22. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement will be construed or interpreted against any of the Parties based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by one of the Parties.

16.23. In the event of conflict between this Agreement and any other document prepared pursuant to the Agreement, the terms of this Agreement supersede and control.

16.24. The Parties, subject to Court approval, reserve the right to agree to any reasonable extensions of time that might be necessary to perform any of the obligations or exercise any of the rights created by this Agreement.

16.25. The words "include," "includes," and "including" are deemed to be followed by the phrase "without limitation."

16.26. If the last date for the performance of any action required or permitted by this Agreement falls on a Saturday, Sunday, or Court holiday, that action may be performed on the next business day as if it had been performed within the time period provided for performance of the action.

IN WITNESS WHEREOF, each of the undersigned, being duly authorized, has caused this Agreement to be executed on the dates shown below and agrees that it shall take effect on the first date that it has been executed by all of the undersigned. **By signing below, each of the undersigned also acknowledges that he or she has read the Agreement, understands its binding nature, has had the opportunity to consult with co-counsel, and enters into the Agreement voluntarily.**

APPROVED AND AGREED TO BY CLASS COUNSEL:

Date: 12/19/2022

Matthew S. Mokwa
The Maher Law Firm

APPROVED AND AGREED TO BY DEFENSE COUNSEL

Date: 12/19/22

David B. Weinstein
Greenberg Traurig, P.A.