IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION	MDL No. 2:18-mn-2873-RMG **This Document Relates to:** *City of Camden, et al. v. E.I. du Pont de Nemours & Company et al.*, Case No. 2:23-cv-03230-RMG

RESPONSE IN OPPOSITION TO CLASS COUNSEL'S MOTION FOR SANCTIONS AND OTHER RELIEF (DKT. 4691)

Below-signed counsel, Jeff Kray, and Marten Law LLP, respectfully submit this Response to Class Counsel's Motion for Sanctions and Other Relief (Dkt. 4691, "Motion for Sanctions"). Although below-signed counsel represents the Metropolitan Water District of Southern California ("Metropolitan"), Class Counsel's Motion for Sanctions seeks punishment for below-signed counsel as well as his law firm separate and apart from representation of that client. We therefore file this Response separately from Metropolitan's own response.

I. INTRODUCTION

Class action settlements have a clear process set out to protect absent class members from having their rights negotiated away by the limited set of parties allowed a seat at the settlement table. *See, e.g.*, *In re Jiffy LubeSec. Litig*., 927 F.2d 155, 158 (4th Cir. 1991) (emphasizing that courts have an affirmative duty to protect the interests of the "class members whose rights may not have been given adequate consideration during the settlement negotiations"). After private negotiations, the settlement is made public through the notice process. Fed. R. Civ. P. 23(e)(1). Potential class members may opt out or object. Fed. R. Civ. P. 23(c)(2)(B)(v), 23(e)(5). The Court

must hold a fairness hearing. Fed. R. Civ. P. 23(e)(2). The entire process is methodically designed to ensure that all potential class members have the right to provide input into the settlement process, voice opinions on the settlement contents, or opt out of the settlement class altogether. DuPont Fairness Hr'g Tr. at 91 ("Well, that's why we have opt outs. . . . And that's, I think, one of the really good aspects of this type of class is that it gives your clients the opportunity when it doesn't fit to opt out."). Through that process, settlement terms are clarified and may even change—all toward the goal of improving the final settlement.

This should have been the process with the settlement between water providers and E.I. DuPont de Nemours and Company, DuPont de Nemours Inc., the Chemours Company, the Chemours Company FC, LLC, and Corteva, Inc. ("DuPont Settlement"). Rather than allow the process to play out, however, at each step Class Counsel has used its leadership position to strongarm those who voice concerns about the settlement's terms. According to Class Counsel, those who objected have "burdened" the process. Dkt. 4691-1 at 20. Those who advised clients to opt out should "consult with [their] malpractice carrier." DuPont Fairness Hr'g Tr. at 72. Those who appeal are committing "abuse." Dkt. 4691-1 at 9. But there is a process for a reason, and that process has already led to improvements to the settlement. Now, discontented by the filing of a notice of appeal, Class Counsel lash out again with an unjustified Motion for Sanctions.

The Court should not allow Class Counsel to use sanctions threats to end-run the judicial process and discourage participation by public water systems ("PWSs") affected by settlements. Without presenting any evidence of bad faith or wrongdoing, Class Counsel speculatively impugn Mr. Kray's motives, going as far as to argue that neither he nor anyone in his firm should be permitted to practice law in this District. They find it unimaginable that counsel might participate in the judicial process because they have a good-faith view that the settlement can be improved

upon. Rather, Class Counsel go to great lengths to describe absent class members' unforgivable sin of attempting to meaningfully participate in the class action settlement process. The Motion for Sanctions is meritless and should be denied.

II. ARGUMENT

As a threshold matter, Class Counsel failed to meet and confer on their Motion—an independent ground on which to deny the motion. Moreover, as the basis for their attacks, Class Counsel describe nothing but ordinary participation by lawyers advocating for their clients in the class action settlement process. Their efforts to distort that participation—through innuendo, conjecture, spurious allegations, and conclusions unsupported by fact or law—fail to establish any misconduct. Class Counsel cannot, and have not, shown bad faith. Stripped down, the Motion is a grossly improper attempt to eliminate any serious involvement by class members in the carefully designed settlement process set out by the federal rules and overseen by the Court. The manner in which Class Counsel wield the authority the Court has entrusted to them is patently wrong, and their coercive tactics should not be permitted to proceed.

A. Class Counsel Failed to Confer on the Motion for Sanctions, So the Motion Should Be Denied.

As Class Counsel point out, Dkt. 4691-1 at 15–16, counsel must meet, confer, and attempt in good faith to resolve the concerns giving rise to a nondispositive motion before filing. Local Civ. Rule 7.02 (D.S.C.); *Quarterman v. Spirit Line Cruises, LLC*, No. 2:13-CV-3552-PMD, 2016 WL 374787, at *4 (D.S.C. Feb. 1, 2016) (quoting *Fort v. Leonard*, No. 7:05-cv-1028-HFF-WMC, 2006 WL 1487034, at *1 (D.S.C. May 26, 2006)). Class Counsel did not even attempt to meet and confer with Marten Law before filing their Motion for Sanctions. It should therefore be denied without consideration. *See* Dkt. 4691-1 at 16 n. 39 (citing *Kloppel v. Homedeliverylink, Inc*., No. 17-6296, 2022 WL 18491542, at *3 (W.D.N.Y. Nov. 29, 2022) (denying motion to intervene for

failure to comply with local rule)).

Class Counsel assert that they met the meet-and-confer requirement. Dkt. 4691-1 at 6–7 n.4. They represent that they "informed" Metropolitan's separate outside counsel Eric Fastiff of Lieff Cabraser Heimann & Bernstein, LLP, "of this sanctions motions [sic] on during [sic] the meet and confer" held on March 12 "and then again" on March 14. *Id.* Mr. Kray—a central subject of the Motion for Sanctions—was not a participant in those conferences, nor was he notified that they would occur or did occur. *See* Affidavit of Jeff Kray ¶¶ 9–10 ("Kray Aff.," filed concurrently). Further, the conferences cited by Class Counsel were not on the topic of a proposed sanctions motion. *Cf.* Local Civ. Rule 7.02 (D.S.C.) (requiring would-be movants to first "attempt in good faith to resolve the matter contained in the motion"). At no point did Class Counsel attempt to meet and confer with Mr. Kray or any member of Marten Law before Class Counsel moved for severe sanctions against them. *See* Kray Dec. ¶¶ 9-10. By definition this is a failure to "confer with opposing counsel," and the Motion should on that ground be denied. Local Civ. Rule 7.02 (D.S.C.) ("[A]ll motions shall contain an affirmation by the movant's counsel that prior to filing the motion he or she conferred or attempted to *confer with opposing counsel*[.]" (emphasis added)); *see also Geiger v. Z-Ultimate Self Def. Studios, LLC*, No. 14-CV-00240-REB-NYW, 2015 WL 3396154, at *3 (D. Colo. May 26, 2015) (emphasizing the importance of parties' "duty to meaningfully confer prior to the filing of any motion, but particularly a motion seeking sanctions").

Informing separate counsel of the vague intent to file a future motion on an undisclosed topic against another attorney is not a good-faith conferral. Class Counsel engaged in a game of telephone with other counsel to communicate its intentions. As a result, Mr. Kray first heard of this Motion through Class Counsel's filing. Kray Aff. ¶ 9. That is precisely the sort of surprise and waste of judicial resources that Local Rule 7.02 is intended to prevent. *See Quarterman*, 2016 WL

374787, at *4 ("Local Civil Rule 7.02 was adopted to remedy this type of situation by having the parties attempt to agree amongst themselves to an appropriate resolution.").

B. No Sanctions Are Warranted.

Mr. Kray and Marten Law have conducted themselves properly throughout this proceeding. Sanctions are unwarranted under either 28 U.S.C. § 1927 or the Court's inherent authority, and the Motion for Sanctions should be rejected as the empty intimidation tactic it is.

Federal law provides that "[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. Critically, "[b]ad faith on the part of the attorney is a precondition to imposing fees under § 1927." *E.E.O.C. v. Great Steaks, Inc.*, 667 F.3d 510, 522 (4th Cir. 2012); *Williams v. Giant Eagle Markets, Inc.*, 883 F.2d 1184, 1191 (3rd Cir. 1989) (courts should exercise authority under § 1927 "only in instances of a serious and studied disregard for the orderly process of justice" and after finding "willful bad faith on the part of the offending attorney"). Courts also have "inherent authority in appropriate cases to assess attorneys' fees and impose other sanctions against a litigant or a member of the bar who has 'acted in bad faith, vexatiously, wantonly, and for oppressive reasons.'" *Stradtman v. Republic Servs., Inc.*, 121 F. Supp. 3d 578, 581 (E.D. Va. 2015) (citations omitted). "Under both § 1927 and the court's inherent power, the burden of demonstrating an entitlement to attorneys' fees rests on the moving party." *Id*.

Class Counsel have not met their burden to show bad faith, any element of § 1927, or any element required for sanctions under the Court's inherent authority. Even entertaining their Motion

would give it more credence than it deserves and signal endorsement of Class Counsel's retributive tactics.

1. The Argument that the DuPont Settlement Threatens to Release Claims of PWSs that Opted Out is Not Frivolous.

Class Counsel liberally assert that various arguments Marten Law has made on behalf of their PWS clients over the course of this litigation are "frivolous." Dkt. 4691-1 at 6 n.1, 20, 22, 26. These specific allegations will be addressed below. The most recent issue precipitating Class Counsel's Motion is Metropolitan's decision to appeal the final approval order and judgment in this case.

Metropolitan's actions relate to a good-faith ongoing dispute over the permissible scope of the DuPont Settlement's release. Metropolitan has long been concerned that the Releasing Persons definition in the DuPont Settlement will negatively impact the legal rights of wholesale water providers like Metropolitan despite their opting out. Class Counsel calls this concern "speculative," Dkt. 4691-1 at 32, but the DuPont Settlement and Interrelated Guidance confirm Metropolitan's fear. *See* DuPont Agreement ¶ 2.45 (defining "Releasing Persons" to include "anyone in privity with or acting on behalf of" a class member); Dkt. 3858-1 at 5 ("In general, if a wholesaler opts out of the Settlement Class and its retail customer is a Settlement Class Member, the release would extend to the wholesaler as to the water it provided to the Settlement Class Member except to the extent the wholesaler shows it had the obligation for and bore unreimbursed PFAS-treatment costs for that water independent of the retail customer."). Metropolitan seeks to preserve its legal rights against DuPont, notwithstanding this cited language. Class Counsel have yet to make a single argument to counter that conclusion. Class Counsel refuse to acknowledge that their Interrelated Guidance does not prohibit the inadvertent release of rights between systems. Rather than grapple with the legal analysis necessary to adequately preserve the rights of complex

interrelated systems, Class Counsel have elected to impugn other lawyers' motives without cause and accuse them of seeking to undermine—rather than improve, as has always been their goal—a settlement of substantial national import.

Since its entry in this case, Metropolitan has been vocal about the settlement's impact on interactions between members of complex water systems. Metropolitan has utilized motions practice, Dkt. 3831, letters, Dkt. 3831-2, objections, Dkt. 3955 at 8–9, 12–17, proposed redlines, Ex. A, and negotiations, Kray Aff. ¶ 7, all to communicate significant concerns regarding those issues. Those concerns remain unresolved. As a result, Metropolitan opted out of the DuPont Settlement. Nonetheless, the potential that the DuPont Settlement will impact Metropolitan's right to make claims at a later date has forced Metropolitan to appeal. This is the only tool it has left to defend its rights.

Class Counsel has not even attempted to show how these arguments were made in bad faith, a prerequisite for sanctions under either § 1972 or the Court's inherent authority. On these separate and independent grounds, the Motion for Sanctions should be denied.

2. Filing Objections Is Not an Abuse of Process.

The opportunity to object to a class action settlement is constitutionally protected. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Objections are "an important component of providing legitimacy to the class action process." 4 Newberg and Rubenstein on Class Actions § 13:20 (6th ed.). When scrutinizing a settlement, "the representative plaintiffs (and their counsel) and the defendants (and their counsel) are all jointly urging the court to approve the proposed settlement, meaning the court is not presented with a familiar adversarial discussion of the pros and cons of the settlement." *Id.* It is the critical role of the objector to "fill that void directly by providing their independent views to the court." *Id.*

Despite the importance of objections, Class Counsel clearly would have preferred that no objections were filed here. Our obligations are to our clients, however, not to Class Counsel. Because our clients were considering participating in the settlement, and many ultimately *are* participating, it was incumbent on Marten Law to "act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." Model R. Pro. Conduct 1.3. Here, that duty involved filing objections to attempt to improve the settlements. And in fact, those efforts resulted in changes and intended clarifications to the settlement. *See, e.g.*, Dkt. 4064-1 (Guidance on Certain Release Issues).[1] Nor did the Court, in addressing the objections Marten Law filed on its clients' behalf, remark that any such objections were frivolous; rather, it considered the objections on their merits. *See* Dkt. 4471; DuPont Fairness Hr'g Tr. 113 ("I thought they had some legitimate concerns. . . . [T]here are several points that they're right.").

Class Counsel cite two specific objections that they argue constitute "frivolous arguments" somehow worthy of sanctions.[2] To begin, they claim Marten Law asserted that "a bellwether trial is mandatory before any settlement can be secured." Dkt. 4691-1 at 20. Marten Law did not assert such a *per se* rule. It argued that for this pathbreaking settlement, the lack of information on the

[1] The participation of Marten Law and Metropolitan in this litigation also led the settling parties to issue the Interrelated Guidance, Dkt. 3858-1, which set up an award allocation framework for interrelated PWSs that Class Counsel had not previously considered. The Court has lauded the feedback leading to this guidance and others as useful. 3M Fairness Hr'g Tr. 79–80 ("I think a lot of these comments you received have really helped with these interpretive guidances and they get a better agreement.").

[2] Class Counsel also complains without support that Marten Law "submitted false evidence through copying and pasting with respect to Objections." Dkt. 4691-1 at 26. They do not explain what alleged "false evidence" the firm introduced through objections. And they do not explain how similarities between our clients' objections somehow multiplied proceedings under § 1927—if anything, such similarities would—and did—facilitate a consolidated response. *See* Dkt. 4080-1 (Class Counsel's response to objections treating all objections filed on behalf of Marten Law clients as "Marten Law Objectors").

value of the claims being released from a bellwether result or some other means, compounded by "indications that the total settlement funds amount to a small fraction of expected nationwide PFAS remediation costs," raised "serious fairness and adequacy concerns." Dkt. 3961 at 26–27 (citing A.D. Lahav, *Bellwether Trials*, 76 GEO. WAS. L. REV. 576, 593–94 (2008); E.E. Fallon *et al., Bellwether Trials in Multidistrict Litigation*, 82 TUL. L. REV. 2323, 2342 (2008) (bellwether trials give parties an "understanding of the litigation that is exponentially more grounded in reality"); *In re Depuy Orthopaedics, Inc.*, 870 F.3d 345, 348–49 (5th Cir. 2017) ("Bellwether trials are meant to produce a sufficient number of representative verdicts and settlements to enable the parties and the court to determine the nature and strength of the claims, whether they can be fairly developed and litigated on a group basis, and what range of values the cases may have if resolution is attempted on a group basis.")). Beyond *ipse dixit*, Class Counsel do not say how this objection was somehow unreasonable, multiplied proceedings, or made in bad faith.

Similarly, the second argument Class Counsel allege as improper was that the "absence of objections does not suggest widespread approval of a settlement by class members." Dkt. 4691-1 at 20–21. Again, Class Counsel do not explain why this argument warrants sanctions. It is a well-documented feature of the class action settlement process that the settling parties "have an interest in curtailing objections generally" and as a result, they "will often propose to the court a more complex and onerous procedure for the filing of objections." 4 Newberg and Rubenstein on Class Actions § 13:30 (6th ed.). These barriers, along with general barriers to entry at the courthouse door—such as financial resources, notice, and time constraints—mean that objections and even opt-out counts are not always a reliable measure for support or lack thereof.

Class Counsel's "unsupported conjecture" regarding the supposed bad faith of Marten Law does not discharge their burden of proof. *Great Steaks*, 667 F.3d at 523. That the Court ultimately

overruled these objections does not render the objections or arguments deserving of sanctions. *See Royal Ins. V. Lynnhaven Marine Boatel, Inc.*, 216 F. Supp. 2d 562, 567 (E.D. Va. 2002) ("Although the Court declined to accept their proposed interpretation . . . it does not warrant the imposition of sanctions for what Plaintiffs perceived to be an arguable issue of law."). To hold otherwise would dismiss the crucial role of objections in the class action settlement process and likely violate due process.

3. Participation in the Fairness Hearing is a Critical Right for Those with Valid Objections.

The Federal Rules of Civil Procedure require that the Court hold a hearing before approving a proposed settlement. Fed. R. Civ. P. 23(e)(2). The fairness hearing provides yet another forum for considering objections. Although class members are not required to attend, this hearing provides an additional opportunity to have objections argued and tested beyond the papers. *See* 4 Newberg and Rubenstein on Class Actions § 13:30 (6th ed.). The ultimate purpose of the hearing is to aid the Court in scrutinizing the proposed settlement agreement to determine whether it is fair, reasonable, and adequate. *See Sharp Farms v. Speaks*, 917 F.3d 276, 293–94 (4th Cir. 2019) ("When the court reviews a proposed class-action settlement, it acts as a fiduciary for the class.").

Class Counsel argue that Metropolitan "withdrew" its Objections to "lie in wait for the Court to enter final approval and judgment." Dkt. 4691-1 at 28. They claim that Mr. Kray engaged in unprofessional conduct when he "advised the Court at the Fairness Hearing that his clients (including Met) supported the Settlement." *Id.* The record demonstrates that these are blatant misrepresentations. Two attorneys from Marten Law, Mr. Kray and Ms. Ferrell, participated in the DuPont Fairness Hearing held on December 14, 2023. Class Counsel appear to focus on the following exchange:

> **THE COURT:** And the question is, are you recommending I reject the settlement?
>
> **MR. KRAY:** We are not, Your Honor. We are recommending that there are a few things that should be addressed. And we'd encourage you to ask the settling parties to address those. And we're going to focus our conversation today on those particular elements.

DuPont Fairness Hr'g Tr. 89–90; Dkt. 4691-1 at 28 n.54 (citing same).

Immediately after this exchange, Mr. Kray stated, "And we speak today for four entities, those have filed objections to the DuPont settlement and have not opted out. And those four entities are the City of DuPont[,] Washington, the City of Tacoma[,] Washington, the City of Vancouver[,] Washington, and the North Texas [Municipal] Water District." DuPont Fairness Hr'g Tr. 90. Although several other Marten Law clients—including Metropolitan—had filed Objections to the DuPont Settlement, those clients opted out prior to the DuPont Fairness Hearing. *See* DuPont Agreement ¶ 9.7.3. Mr. Kray in no way represented that *Metropolitan* would not oppose the settlement in some fashion. At that stage, it was not even clear that Metropolitan's concerns with the Releasing Persons definition would remain unaddressed, let alone that Metropolitan might appeal on that ground. Class Counsel's reading of the record to the contrary is indefensible.

Grasping at straws, Class Counsel even point to Mr. Kray's statements from the *3M* fairness hearing. But at no time did Mr. Kray say anything at that hearing about what Metropolitan, which had opted out, intended or did not intend to do. He began, "We're here on behalf of two entities that filed objections to the 3M settlement as proposed. And they are the City of Dupont and the City of Vancouver, Washington. We also represent 15 other entities that filed objections to the agreement. But we do not rise to speak for them today because due to concerns about that settlement, those entities exercised their opt-out rights." 3M Fairness Hr'g Tr. 82. And he consistently only spoke on behalf of those two clients: "The Cities of Vancouver and Dupont have objected to aspects of the settlement agreement but have withdrawn their objections as to class

certification and do not oppose approval of this settlement." *Id.* at 84.

Metropolitan's decision to opt out was not some cloak-and-dagger maneuver. Opting out meant that Metropolitan was no longer entitled to submit objections. *See* DuPont Agreement ¶ 9.7.3. It also meant that Metropolitan *could not appear* at the Fairness Hearing because it did not have pending objections. *See* Dkt. 4239 (Court's order stating, "Any party which has opted out of the settlement is not a member of the settlement class and, consequently, is not authorized to speak at the Fairness Hearing set for December 14, 2023."). Metropolitan did not "s[i]t on its hands" as Class Counsel alleges. Dkt. 4691-1 at 28. Rather, it complied with the rules; Mr. Kray could not appear on Metropolitan's behalf at the hearing.

The DuPont Fairness Hearing accomplished its goal. The Court heard argument on the objections before it and recognized the good faith, fair points made. DuPont Fairness Hr'g Tr. 113. The Court went further and urged Class Counsel to confer with Marten Law to discuss the filed objections. *Id.* at 115–16 ("I would hope that y'all would listen further to these objectors and that DuPont would listen to them. And if you can clarify further that you do that, because I think everybody's acting in good faith. . . . I don't think we've got a bunch of people who are trying to throw a wrench into the settlement. . . . I think further discussions with these folks, I think, are worthwhile. And I think all of them have understandable anxiety."). Those directions did not go unheard. They led to substantive good-faith negotiations on potential amendments to the settlement. *See* Kray Aff. ¶¶ 6–7. Although the negotiations did not ultimately bear further fruit, *id.* ¶ 8, those discussions did help several Marten Law clients in their decisions to opt back into the DuPont Settlement. Class Counsel now seek to characterize the hearing and the negotiation process as some duplicitous maneuver. That clear mischaracterization of the record does not meet Class Counsel's burden to show bad faith in arguing for sanctions.

4. Mr. Kray Is Not "Orchestrating" Metropolitan's Actions.

Baselessly speculating about the attorney-client relationship between Metropolitan and Mr. Kray, Class Counsel weaves together a fantastical conspiracy theory that Metropolitan is a puppet of Mr. Kray, who Class Counsel depict as a mastermind "acting behind the scenes with respect to Met's recent actions." Dkt. 4691-1 at 22.

There is no conspiracy. The situation is simple. Metropolitan remains sincerely concerned with the scope of the settlement terms and the impact that it will have on Metropolitan and other wholesalers and their customers. While Marten Law continues to represent Metropolitan on PFAS-related issues, Metropolitan has retained separate counsel for the purpose of appealing this settlement. *See* Dkt. 4653. A client can obviously hire different lawyers for different purposes. *See* Model R. Pro. Conduct 1.2(a) ("a lawyer shall abide by a client's decisions concerning the objectives of representation").

Class Counsel barely bother to explain how the ordinary practice of hiring separate counsel for separate purposes is worthy of sanctions, *see* Dkt. 4691-1 at 14 n.31, or inquisition into confidential attorney-client communications, *see id.* at 22. Again, Mr. Kray made no misstatement at the DuPont Fairness Hearing (nor the 3M Fairness Hearing) when he said the clients on whose behalf he was appearing did not oppose the settlement but wanted to address specific concerns. Class Counsel incorrectly and offensively analogize Mr. Kray to Christopher Bandas—apparently, a "serial objector" who filed objections in MDLs across the country solely for the purpose of "extort[ing]" fees and allegedly operated through his colleagues. *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. CV157658MASLHG, 2020 WL 7585741, at *2–3 (D.N.J. Dec. 21, 2020). One can hardly imagine a worse analogy. Mr. Kray has never offered to withdraw objections in return for fees. Kray Aff. ¶ 12. And he is not orchestrating Metropolitan's decision-making.

"Unsupported conjecture" does not meet the burden of proof for sanctions. *Great Steaks*, 667 F.3d at 523. And Class Counsel's suggestion that the Court should allow them to examine protected attorney-client communications is puzzling and untoward. Unfortunately, this is not the first time that Class Counsel has inappropriately attempted to interfere with the normal course of the attorney-client relationship. *See* Dkt. 4379 (requesting court order requiring Marten Law clients City of DuPont and City of Vancouver to appear at 3M Fairness Hearing for Class Counsel to probe attorney-client relationships). The Court should not countenance this behavior any further.

5. The Cited Slide Is Accurate and Is No Basis for Sanctions.

Finally, Class Counsel point to a slide from an informational presentation Marten Law delivered to the Washington Association of Water and Sewer Districts on September 11, 2023, arguing that the slide is a "blatant distortion" of the settlement. Dkt. 4691-1 at 20. Perhaps Class Counsel take issue with its graphic design, but they never even attempt to identify what is inaccurate about the slide. It correctly represents that a participating PWS will receive money in an amount that cannot be reliably estimated, while giving up claims against DuPont, the claims of third-party Releasing Persons, the ability to fully recover from certain other defendants owing to the Claims-Over provision, and the possibility of recovering more from DuPont at trial. This is all objectively accurate. *See* Dkt. 3393-2 at 94 (award allocation formula contains unknown variable "sum of all adjusted base scores"); DuPont Agreement ¶¶ 12.1 (release), 2.45 (Releasing Persons definition), 12.7 (Claims-Over provision).

Class Counsel do not explain how an accurate slide amounts to "drumming up opposition to the settlement." Dkt. 4691-1 at 29. The slide looks nothing like the egregious misconduct

addressed in cases cited by Class Counsel as analogous.[3] Nor do Class Counsel explain how the slide, which occurred outside of litigation, "multiplie[d]" this litigation under 28 U.S.C. § 1927, or how this slide constitutes bad-faith conduct.

6. Class Counsel Cite Only Inapt Authority.

Underscoring this Motion's purpose as an intimidation tactic, Class Counsel do not even try to analogize the conduct of Mr. Kray, Marten Law, and Metropolitan to the sanctionable conduct in cases they cite. Even a cursory reading reveals these cases are entirely irrelevant. *See A1 Procurement, LLC v. Thermcor, Inc.*, No. 2:15-CV-15, 2015 WL 13733927, at *8–18 (E.D. Va. Nov. 18, 2015) (recommending revocation of *pro hac vice* admission where plaintiffs' attorney misrepresented address of office for service, misrepresented status as sole practitioner, and accepted representation of plaintiffs despite likelihood of being called as a witness), *report and recommendation not adopted as moot*, 2016 WL 184397 (E.D. Va. Jan. 15, 2016); *La Michoacana*

[3] *See Romano v. SLS Residential Inc.*, 253 F.R.D. 292, 295–300 (S.D.N.Y. 2008) (defendants falsely told putative class members their medical records would be made public unless they opted out); *Impervious Paint Indus., Inc. v. Ashland Oil*, 508 F. Supp. 720, 723–24 (W.D. Ky. 1981) (defendant contacted putative class members and provided legal advice on opting out); *Mueller v. Chesapeake Bay Seafood House Assocs., LLC*, No. CV ELH-17-1638, 2018 WL 1898557, at *8 (D. Md. Apr. 20, 2018) (defendant employer coerced employees and putative class members into signing arbitration agreements that likely misled employees into believing they could not participate in class action); *Marino v. CACafe, Inc.*, No. 16-cv-6291, 2017 WL 1540717, *2 (N.D. Cal. Apr. 28, 2017) (defendant emailed putative class members, offering $500 in return for release of claims against defendant without stating that class action lawsuit had been filed); *Stransky v. HealthONE of Denver, Inc.*, 929 F. Supp. 2d 1100, 1108–10 (D. Colo. 2013) (after filing of class action lawsuit against employer, employer held mandatory staff meetings that court found were "likely to confuse, if not coerce" prospective opt-in plaintiffs about lawsuit); *Belt v. Emcare, Inc.*, 299 F. Supp 2d 664, 669–70 (E.D. Tex. 2003) (ahead of court-approved notice, defendant employer unilaterally mailed own letter to absent class members and fundamentally misrepresented nature of suit, damages available, and effect of attorney fees on ultimate recoveries); *Guifu Li v. A Perfect Day Franchise, Inc.*, 270 F.R.D. 509, 518 (N.D. Cal. 2010) (defendant employer provided opt-out forms at one-on-one meetings where employees were told that if they participated in class action litigation, they would not receive any money, would be fired, and would be unable to find work elsewhere).

Nat., LLC v. Maestre, 611 F. Supp. 3d 87, 89 (W.D.N.C. 2020) (revoking *pro hac vice* admission where plaintiff's attorney threatened employee at a restaurant associated with defendant and falsely stated defendant had not responded to requests for admission); *Baily v. Bernzomatic*, No. 16-cv-7548, 2019 WL 410419, at *2 (N.D. Ill. Feb. 1, 2019) (revoking *pro hac vice* admission where attorney repeatedly lied about sanctions issued against him by other court, repeatedly falsely accused magistrate judge of conflict of interest, and misrepresented nature of state bar investigation); *Ryan v. Astra Tech, Inc.*, 772 F.3d 50, 62–63 (1st Cir. 2014) (affirming revocation of *pro hac vice* admission where attorney surreptitiously communicated with client at deposition using a notepad while a question was pending, destroyed evidence of the same, and misrepresented to the court what happened at ensuing status conference); *Robles v. In the Name of Human., We REFUSE to Accept a Fascist Am.*, No. 17-CV-04864-CW, 2018 WL 2329728, at *4–5 (N.D. Cal. May 23, 2018) (revoking *pro hac vice* admission where attorney had long history of discipline in multiple jurisdictions, failed to attached certificate of good standing in application, provided false information on prior discipline, and engaged in "pattern of flouting local and federal rules, making misrepresentations and omissions, and accusing judges of bias without adequate factual basis"), *aff'd sub nom. Robles v. City of Berkeley*, 820 F. App'x 529 (9th Cir. 2020); *Blauinsel Stiftung v. Sumitomo Corp.*, No. 99 CIV 1108 (BSJ), 2001 WL 1602118, at *7 (S.D.N.Y. Dec. 14, 2001) (sanctioning attorney for, *inter alia*, "(1) repeatedly misrepresenting to defense counsel the availability of [clients] for depositions; (2) failing to communicate with [clients] to schedule their depositions; and (3) waiting until defense counsel were en route to London before indicating that [clients] would not appear for their depositions"); *In re Hill*, 377 B.R. 8 (Bankr. D. Conn. Oct. 23, 2007) (sanctioning attorney who filed bankruptcy petition that concealed substantial material asset and submitted to court false and misleading information and testimony on the same). Nothing close

to any of the circumstances at issue in the cases Class Counsel cite as "support" exist here.

III. CONCLUSION

For the above reasons, below-signed counsel respectfully requests that the Court deny the Motion for Sanctions and Other Relief.[4]

Dated: March 20, 2024.

Respectfully submitted:

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[4] Marten Law will refrain for now from filing a counter-motion for sanctions. However, if the Court finds that Class Counsel's Motion for Sanctions is a frivolous and bad-faith intimidation tactic designed to discourage objection or participation by absent class members in future class action settlement proceedings, and that Class Counsel should be sanctioned *sua sponte* under the Court's inherent authority, *see Projects Mgmt. Co. v. Dyncorp Int'l LLC*, 734 F.3d 366, 375 (4th Cir. 2013), we are prepared to submit fee documentation for time spent responding to this Motion to facilitate the Court crafting an appropriate penalty.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed with this Court's CM/ECF system and was thus served electronically upon all registered counsel of record.

Dated: March 20, 2024.

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