

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

JEROME JOHNSON, DUANE JOHNSON
and GEORGE GLOVER, SR., on behalf of
themselves and others similarly situated,

Plaintiffs,

vs.

CITY OF DENMARK, SOUTH
CAROLINA; DEPARTMENT OF HEALTH
& ENVIRONMENTAL CONTROL and
BERRY SYSTEMS, INC.

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
C/A NO.: 2018-CP-05-00242

**MEMORANDUM OF
UNDERSTANDING AND SETTLEMENT**

Plaintiffs Duane Johnson and George Glover, Sr.¹, by and through their undersigned attorneys, and Defendant Berry Systems, Inc., (“Berry Systems” or “Defendant Berry Systems”), Defendant City of Denmark (“City” or “Defendant City”), and Defendant Department of Health & Environmental Control (“DHEC” or Defendant DHEC)² by and through their undersigned attorneys, hereby agree upon and execute this Memorandum of Understanding and Settlement. The Parties wish to enter into this memorandum in order to set forth the general terms of their agreed upon settlement in the above-captioned matter. The Parties, therefore, agree that such terms to the settlement are as follows:

1. A final order certifying the class shall be entered by the Court.
2. Defendant Berry Systems agrees to pay the Plaintiffs one million dollars (\$1,000,000.00) to settle all of the Plaintiffs’ property damage claims against this

¹ Plaintiff Jerome Johnson was dismissed from this action by Order entered Jan. 25, 2024, and therefore Plaintiffs Duane Johnson and George Glover are the only remaining Plaintiffs in this action.

² Pursuant to South Carolina Act No. 60 of 2023 and South Carolina Code §1-30-140, as of July 1, 2024, all functions, powers, duties, and obligations of the environmental divisions, offices, and programs of the South Carolina Department of Health and Environmental Control were transferred to, incorporated in, and shall be administered as part of the Department of Environmental Services.

Defendant, both individually and on behalf of the Plaintiff Class. The settlement funds are to be paid to the Plaintiffs by Defendant's insurer, Auto-Owners Insurance following final approval and as directed by the Order on final approval.

3. In exchange for the above-referenced payment, the Plaintiffs agree to release the Defendant Berry Systems and its insurer, Auto-Owners Insurance, of and from all claims that Plaintiffs have, or could have, asserted against Defendant Berry Systems in the above-captioned lawsuit, both in their individual capacity and on behalf of the Plaintiff class. The parties shall prepare and execute a mutually satisfactory settlement and release agreement.
4. Defendant City of Denmark agrees to facilitate and administer notice of the settlement by (a) providing to class counsel a list of all class members and all current and/or last known contact information that it possesses, that class being comprised of customers of Defendant City's water system for the time July 24, 2015 to July 24, 2018; and(b) by including a copy of the Court approved notice of the settlement in its regular billing to all current customers who are class members with confirmation to Class Counsel of such administration.
5. In exchange for the above-referenced cooperation and assistance, and upon final Court approval, the Plaintiffs agree to release the Defendant City of Denmark from all property damage claims including all claims for the refund or recoupment of monthly water bill payments that Plaintiffs have, or could have, asserted against the Defendant City in the above-captioned lawsuit, both in their individual capacity and on behalf of the Plaintiffs' class. The parties shall prepare and execute a mutually satisfactory settlement and release agreement.
6. Defendant DHEC agrees to provide technical assistance to the City of Denmark with an application for grant funds allocated either from the State Revolving Fund or Rural Infrastructure Administration related to upfitting, modification, and/or infrastructure needs for its water system as identified by the City of Denmark Water System. Further, Defendant DHEC agrees to assist with notice of the settlement of the above-captioned matter by displaying this notice on its webpage, said webpage information to be included in the bill insert notice issued by Defendant City.
7. In exchange for the consideration set forth in paragraph 6, the Plaintiffs agree to release the Defendant DHEC³ from all claims, demands, damages, actions, causes of action, and suits of relating, in any way to property damage, that Plaintiffs have, or could have, asserted against the Defendant DHEC in the above-captioned lawsuit, both in their individual capacity and on behalf of the Plaintiffs' class. The parties shall prepare and execute a mutually satisfactory settlement and release agreement.

³ Pursuant to South Carolina Act No. 60 of 2023, as of July 1, 2024, DHEC was abolished and two separate agencies created, the South Carolina Department of Environmental Services and the South Carolina Department of Public Health. Plaintiffs expressly agree and acknowledge that the release being provided to Defendant DHEC herein shall also be a release of the two new separate agencies, South Carolina Department of Environmental Services and South Carolina Department of Public Health.

8. The Parties agree that nothing herein shall be construed as an admission of fault or liability on behalf of Defendant Berry Systems, Defendant City of Denmark or Defendant DHEC. It is expressly understood that DHEC has denied the allegations and denied having any liability whatsoever to Plaintiffs. The Parties further agree that no future settlement agreements, settlement approval petitions, or public statements shall contain or be premised upon an admission of fault or liability on behalf of any of the Defendants.
9. The Plaintiffs shall protect and satisfy any and all valid liens which may exist and impact this settlement. The Plaintiffs shall hold Defendants harmless against such liens.
10. PRELIMINARY APPROVAL: Counsel for the Plaintiffs shall prepare an initial petition for preliminary approval and request for notice for a class that comprises the following:

All citizens of South Carolina and businesses incorporated or organized under the laws of South Carolina, or with a principal place of business in South Carolina, who paid water bills to the City of Denmark within three years of July 24, 2018, which represents the date of the Cease Use Order issued by the Department of Pesticide Regulation at Clemson University to the City of Denmark.
11. NOTICE: The participating parties shall thereafter create a notice plan. Defendants City of Denmark and South Carolina Department of Health & Environmental Control have agreed to and will assist with notice as outlined in this agreement in exchange for a dismissal as to these parties, and provided that the remaining terms and conditions enunciated herein and incorporated into a final master settlement agreement (MSA) are met. This notice shall include initial inserts into customer bills for those members of the class, as well as notice to be circulated in an agreed upon local publication and Defendant South Carolina Department of Health & Environmental Control shall include this notice on its webpage. The parties hereto agree that notice shall occur over a set period of time that shall not cause undue delay or other burden(s) on members of the class.
12. FINAL APPROVAL: Following the notice period, class counsel shall prepare a petition for settlement approval and class notice of the settlement, both of which must be approved by the Court of Common Pleas for Bamberg County. Counsel for Defendants City of Denmark and South Carolina Department of Health & Environmental Control shall be able to review and approve the documents before they are submitted to the Court. Counsel for the participating Defendants shall take no position on class counsel's request for fees.
13. The Plaintiffs represent that their Counsel will work with Counsel for the City of Denmark and the South Carolina Department of Health & Environmental Control to

facilitate providing notice to the class through the U.S. Mail and potentially additional means of providing notice to class members.

The Parties agree that the settlement contemplated by this Memorandum shall only be effective and binding if at least 85% percent of the Plaintiffs' Class are bound by it. Therefore, if more than 14% of the class members of the Plaintiffs' Class object to, or opt-out of, the Plaintiffs' Class and proposed Class Settlement, Defendants City of Denmark and South Carolina Department of Health & Environmental Control may opt to cancel and nullify this Memorandum. Notwithstanding, and once all opt-outs are taken into account, the participating Defendants may nevertheless agree to move forward with the settlement provided that no change in monetary or other essential terms shall occur unilaterally.

14. Upon approval by the court, satisfactory notice to the class members, and the complete execution of the final settlement documents, Auto-Owners Insurance shall deliver the settlement funds within ten (10) business days to Plaintiffs' counsel or as directed by Plaintiffs' counsel.
15. Upon approval by the court, satisfactory notice to the class members, complete execution of the final settlement documents, and receipt of the settlement funds, Counsel for the Plaintiffs shall cause this action to be dismissed *with prejudice within ten (10) business days*.

WE SO AGREE!



Counsel for Plaintiff Duane Johnson

Dated: 9/3/24



Counsel for Plaintiff George Glover, Sr.

Dated: 9/3/24

Counsel for Defendant Berry Systems, Inc.

Dated: _____

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WE SO AGREE!

Counsel for Plaintiff Duane Johnson

Dated: _____

Counsel for Plaintiff George Glover, Sr.

Dated: _____



Counsel for Defendant Berry Systems, Inc.

Dated: 9/3/24

s/Andrew F. Lindemann
Counsel for City of Denmark

Dated: 9/3/24

s/Barbara J. Wagner
Counsel for Department of Health & Environmental Control

Dated: 9/3/24