

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION

<b>CONNECTICUT RIVER WATERSHED</b>	)	Civil Action No. 3-15-cv-30147-MGM
<b>COUNCIL, a non-profit organization</b>	)	
	)	
Plaintiff,	)	
	)	<del>PROPOSED</del> <b>CONSENT DECREE</b>
vs.	)	
	)	(Federal Water Pollution Control Act,
<b>CHANG &amp; SONS ENTERPRISE, INC., CHANG</b>	)	33 U.S.C. § 1251 et seq)
<b>FARMS, and SIDNEY CHANG,</b>	)	
	)	
Defendants.	)	
_____	)	

**CONSENT DECREE**

The following Consent Decree is entered into by and between Plaintiff Connecticut River Watershed Council and Defendants Chang & Sons Enterprises, Inc., Chang Farms, and Sidney Chang. The entities entering into this Consent Decree are each an individual "Settling Party" and collectively "Settling Parties."

**WHEREAS**, Plaintiff Connecticut River Watershed Council ("CRWC") is a 501(c)(3) non-profit, public interest organization founded in 1952 and based in Greenfield, MA;

**WHEREAS**, CRWC's mission is to protect the Connecticut River watershed from source to sea;

**WHEREAS**, Chang & Sons Enterprises, Inc., Chang Farms and Sidney Chang (collectively "Defendants") own and operate a Facility that engages in the agricultural

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production and distribution of bean sprouts from seed for the retail market, which is located at 301 River Road, Whately, MA 01093 ("the Facility");

**WHEREAS**, the Facility maintains a National Discharge Elimination System Permit No. MA00040207 ("NPDES permit"), jointly issued by the United States Environmental Protection Agency ("EPA") and the Massachusetts Department of Environmental Protection ("MassDEP"), allowing Defendants, under specific terms and conditions, to discharge pollutants into the Connecticut River;

**WHEREAS**, on June 3, 2015, CRWC served Defendants with a 60-day notice of intent to sue letter ("Notice Letter"), with copies to EPA, EPA Region I, and MassDEP, stating its intent to file suit for alleged violations of the Clean Water Act. The Notice Letter alleged violations of the Clean Water Act due to Defendants' discharges of pollutants into the Connecticut River in violation of their NPDES permit, as well as monitoring and reporting violations;

**WHEREAS**, on July 29, 2015 and August 7, 2015, the Defendants sent CRWC letters in response to the Notice Letter denying alleged violations of the Clean Water Act, and explaining that seeming violations were due to sampling methodology and reporting issues;

**WHEREAS**, on August 20, 2015, CRWC filed a complaint under section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), against Defendants in the United States District Court for the District of Massachusetts (Case No. 3-15-cv-30147-KAR), entitled *Connecticut River Watershed Council v. Chang & Sons Enterprises, Inc., et al.* ("Complaint");

**WHEREAS**, on November 18, 2015, the Defendants, through their consultants OHI Engineering, Inc. ("OHI"), submitted a request to the United States Environmental

Protection Agency ("EPA") that the limits in the NPDES Permit for the pH range and Nitrogen be modified due to Defendants' belief that such limits are incorrect;

**WHEREAS**, Defendants deny they have violated or are violating the Clean Water Act, and deny all allegations in the Complaint;

**WHEREAS**, the Settling Parties agree that it is in the Parties' mutual interests to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set forth in the Complaint without further proceedings;

**WHEREAS**, it is the express purpose of the Parties entering into this Consent Decree to protect and enhance the water quality of the Connecticut River, further the objectives set forth in the Clean Water Act and to resolve those issues alleged by CRWC in its Complaint;

**NOW, THEREFORE**, without the trial of any issue of fact or law, upon consent of the Settling Parties, and upon consideration of the mutual promises contained herein,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED BY THE COURT AS**

**FOLLOWS:**

1. The Court has jurisdiction over the subject matter of this action pursuant to Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);
2. Venue is appropriate in the District of Massachusetts (Western Division) pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facility where the alleged violations took place is located within this District;
3. The Complaint states a claim upon which relief may be granted against Defendants pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;
4. Plaintiffs have standing to bring this action;

5. Until this Consent Decree is terminated pursuant to paragraph 7, below, this Court shall retain jurisdiction over this matter for the purposes enabling the Settling Parties to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree and any future modifications agreed to in writing by the Settling Parties; and/or for granting any further relief as applicable law may require; and for as long as it is necessary for the Court to resolve any motion to enforce this Consent Decree.

**I. TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and the sufficiency of which is acknowledged by each Party, the Parties mutually agree, represent, and warrant as follows:

6. The term "Effective Date," as used in this Consent Decree, shall mean the date the Court enters the final Consent Decree;

7. This Consent Decree shall terminate fourteen (14) months from the Effective Date provided that Defendants have demonstrated compliance with the requirements of this Consent Decree and unless there is an ongoing, unresolved dispute regarding Defendants' compliance with the Consent Decree's provisions.

8. In full and complete satisfaction of the allegations in the Complaint and all other claims, known and unknown to CRWC as of the Effective Date of this settlement agreement, the Parties agree to the following:

a. Within 180 days of the final signatures of the Parties, Defendants shall complete work necessary to achieve compliance with numeric effluent limitations and

other conditions of its NPDES permit, including work to address sampling methodology and reporting issues in regard to the alleged pH, Biological Oxygen Demand ("BOD"), Total Suspended Solids ("TSS"), and Acute Toxicity violations. Within 7 days of completing such work, Defendants shall provide CRWC with a summary of the work completed. With respect to the Total Nitrogen loading effluent limit, if the first six months (March – August 2016) of monthly average sampling data shows that the Facility will be in violation of its Total Nitrogen loading limit after one year's worth of data is collected, Defendants must develop and provide to CRWC within 180 days of the Effective Date, a plan for bringing the Facility into compliance with the Total Nitrogen loading limit ("Total N plan") in its NPDES permit. Defendants must implement the Total N plan within 240 days of the Effective Date. Within 7 days of implementing the Total N plan, Defendants shall provide CRWC with written confirmation of such implementation. If the first six months (March – August 2016) of monthly average sampling data for Total nitrogen loading shows that the Facility may still achieve compliance with its monthly average limit after one year's worth of data is collected, then a Total N plan will only be required if, after a full year of sampling data is collected (March 2016 – February 2017), the data shows that the Facility has exceeded its monthly average Total nitrogen loading effluent limit for the year. In that circumstance, Defendants will have until April 15, 2017, to develop and implement the Total N plan. Within 7 days of implementing the Total N plan, Defendants shall provide CRWC with written confirmation of such implementation.

b. Within 30 days of the Effective Date, CRWC will transmit its comments to Defendants on Chang Farm's August 31, 2015 Wastewater Treatment Facility Best Management Practices and Quality Assurance Plan ("BMP Plan"). CRWC's comments will

be designed to ensure that Chang Farm's BMP Plan shall be a robust plan to reduce or prevent the discharge of pollutants to the Connecticut River, and shall include, at a minimum, all required elements specified in Defendants' 2014 NPDES Permit, Part I.A(17)(a)-(o). Defendants shall consider Plaintiff's and/or Plaintiff's expert's comments in good faith and incorporate them into the BMP Plan unless Defendants have a good faith reason not to, in which case the Parties agree to meet and confer as set forth below.

c. If Defendants agree to incorporate all of CRWC's comments into their BMP Plan, Defendants shall submit the updated BMP Plan to EPA and MassDEP in accordance with its NPDES permit within 60 days of receiving CRWC's comments.

d. If Defendants do not agree to incorporate all of CRWC's comments into their BMP Plan, Defendants shall notify CRWC within 30 days of receiving CRWC's comments, and the Parties agree to meet and confer within 10 days of Defendants' notification to discuss their differences. Should no resolution be forthcoming from this process, the matter will be subject to formal Dispute Resolution described in ¶¶ 19-20 below.

e. Environmental Project. Defendants shall make two payments of \$18,000 each (for a total of \$36,000) within 20 days of the Effective Date to the Pioneer Valley Planning Commission, to support a water quality monitoring program for the Connecticut River ("PVPC Program"), and to the Town of Sunderland Conservation Commission, to support a project to improve the Sunderland boat ramp that will reduce adverse effects to the River caused by the degrading boat ramp, while at the same time increasing river access ("Sunderland Boat Ramp Project"). The payments shall be mailed via certified mail or overnight delivery to the attention of Chris Curtis, Chief Planner,

Pioneer Valley Planning Commission, 60 Congress St., Springfield MA 01104-3419, and to the attention of Curt Griffin, Chair, Town of Sunderland Conservation Commission, 12 School Street, Sunderland, MA 01375, respectively. Defendants shall provide Plaintiff, via electronic mail, with proof of the payments at the time they are made.

f. Reimbursement of Plaintiff's Fees and Costs. Defendants shall partially reimburse Plaintiff for its investigation fees and costs, consultant fees and costs, reasonable attorneys' fees, and other costs incurred as a result of investigating and filing the lawsuit, and negotiating a resolution of this matter in an amount totaling \$39,000. All such payments shall be made within 20 days of the Effective Date and shall be made payable to Earthrise Law Center, addressed to Allison LaPlante, Earthrise Law Center at Lewis and Clark Law School, 10015 SW Terwilliger Blvd., Portland, Oregon 97219, and sent via certified mail or overnight delivery.

g. Compliance Monitoring. Defendants shall make a payment of \$3,000 to CRWC within 20 days of the Effective Date to defray the costs of CRWC monitoring Defendants' discharges for the three years after the Effective Date of this Consent Decree. This payment shall be made by check payable to "Connecticut River Watershed Council, Inc." and should be mailed to: Connecticut River Watershed Council, 15 Bank Row, Greenfield, MA 01301.

9. Waiver and Environmental Project Payments.

a. Plaintiff agrees to waive any Clean Water Act claims it may have involving the Facility's discharges that may have arisen prior to the Effective Date of the Consent Decree, as well as any Clean Water Act claims it may have involving the Facility's

wastewater discharges that may arise during the life of this Consent Decree except as set forth herein.

b. Defendants shall make a remediation payment in the amount of \$1,000 ("Environmental Project Payment") for each violation of any numeric effluent limitation related to BOD, TSS, pH, Nitrogen loading, and Acute Toxicity in the Facility's NPDES permit occurring during the life of this Consent Decree.

c. Notwithstanding § 9(b), Defendants will not be required to pay Environmental Project Payments for violations of the numeric effluent limitation for pH for a period of 90 days following the Effective Date of the Consent Decree. After the 90-day period expires, Defendants are required to pay Environmental Project Payments for any violations of the numeric effluent limitation for pH during the remaining life of the Consent Decree.

d. If, during the life of the Consent Decree, Defendants' NPDES permit is modified by EPA through a formal permit modification process so that the numeric limitations in the permit change, the new numeric limitations will be used to determine if violations have occurred and Environmental Project Payments apply.

e. Any Environmental Project Payments paid shall be used for the PVPC Program and shall be made to the attention of Chris Curtis, Chief Planner, Pioneer Valley Planning Commission, 60 Congress St., Springfield MA 01104-3419.

f. Defendants shall pay the Environmental Project Payments within 20 days of receiving the analysis of a wastewater sample that shows a violation of the Facility's NPDES permit numeric effluent limitations. In the case of the total Nitrogen loading parameter, any Environmental Project Payments incurred will be determined annually



based on the monthly averages as measured after data from March 2016 through February 2017 has been collected. Defendants shall provide CRWC, via electronic mail, with proof of each payment at the time it is made.

10. Interest Payments. In the event of late payment of any of the sums due under this Consent Decree, Defendants shall pay interest to CRWC, if the sum is owed pursuant to paragraphs 8(f) or 8(g), or to the Pioneer Valley Planning Commission and the Town of Sunderland, Conservation Commission, if the sum is owed pursuant to paragraphs 8(e) or 9, and interest shall accrue daily from the first day past the date the sum was due until the date Defendants tender payment. The interest rate, as specified in 28 U.S.C. 1961, shall apply. All such interest payments to CRWC shall be made payable to Earthrise Law Center, addressed to Allison LaPlante, Earthrise Law Center at Lewis and Clark Law School, 10015 SW Terwilliger Blvd., Portland, Oregon 97219, and sent via certified mail or overnight delivery.

11. Document Provision. During the life of this Consent Decree, Defendants shall copy CRWC via email on all documents and communications solely in relation to wastewater discharges at the Facility that are submitted to EPA and/or MassDEP. Such documents and communications shall be provided to CRWC concurrently as they are sent to the agencies. Any correspondence related to water quality received by Defendants during the life of the Consent Decree from EPA and/or MassDEP shall be provided to CRWC within 14 days of receipt by Defendants. Notwithstanding paragraph 26 below, Defendants are not required to copy or provide documentation referenced in this paragraph to CRWC's counsel (Earthrise Law Center).

**MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

12. In consideration of the above, upon the Effective Date of this Consent Decree, the Parties hereby fully release, except for claims for the Defendants' failure to comply with this Consent Decree and as expressly provided in ¶ 9, each other and their respective successors, assigns, officers, agents, employees, boards of directors, and all persons, firms and corporations having an interest in them, from any and all alleged Clean Water Act violations claimed in the Complaint, up to and including the Termination Date of this Consent Decree.

13. Nothing in this Consent Decree limits or otherwise affects the Plaintiff's right to address or take any position that it deems necessary or appropriate in any formal or informal proceeding before the EPA or MassDEP, or any other judicial or administrative body on any other matter relating to the Facility.

14. Neither the Consent Decree nor any payment pursuant to the Consent Decree shall constitute or be construed as a finding, adjudication, or acknowledgement of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. Defendants maintain and reserve all defenses they may have to any alleged violations that may be raised in the future.

#### **ENTRY OF THE CONSENT DECREE**

15. Within three days of the final signatures of the Parties, Plaintiff shall lodge the executed Consent Decree with the Court and submit it to the U.S. Department of Justice and U.S. EPA for review consistent with 40 C.F.R. § 135.5. The federal government review period expires 45 days after receipt by both agencies, as evidenced by written acknowledgement of receipt by the agencies or the certified return receipts, copies of which shall be provided to Defendants. In the event that the federal government objects to

entry of this Consent Decree, the Parties shall meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies.

16. Within five days of receiving notice from the federal government of its intent not to object or intervene or when the 45-day review period expires, whichever occurs first, the Settling Parties shall submit a joint motion to the Court seeking entry of the Consent Decree.

### **DISPUTE RESOLUTION**

17. This Court shall retain jurisdiction over this matter for the purposes of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, including, but not limited to, interpretation of, compliance with, and modification of Consent Decree terms. The Court shall have the power to enforce this Consent Decree with all available legal and equitable remedies, including contempt.

18. Meet and Confer. A party to this Consent Decree shall invoke the dispute resolution procedures of this Section by notifying all other Parties in writing of the matter(s) in dispute and of the party's proposal to resolve the dispute under this Section. The Parties shall then meet and confer in an attempt to resolve the dispute no later than 10 days from the date of the notice. The Parties have 10 days from the date on which they meet and confer to resolve the dispute.

19. If the Parties cannot resolve a dispute by the end of the meet and confer period, the party initiating the dispute resolution provision may invoke formal dispute resolution by filing a motion before this Court. The Parties shall jointly apply to the Court for an expedited hearing schedule on the motion.

20. Litigation costs and fees incurred due to motions practice before this Court to enforce the Consent Decree or address an alleged breach of this Consent Decree, may be awarded at the Court's discretion to any of the Settling Parties in accordance with the standard established by the Clean Water Act, 33 U.S.C. § 1365, and case law interpreting that standard.

21. Force Majeure. Defendants shall notify Plaintiff pursuant to the terms of this paragraph, when timely implementation of the requirements set forth in this Consent Decree becomes impossible, despite the timely good-faith efforts of Defendants, due to circumstances beyond the reasonable control of Defendants or their agents, and which could not have been reasonably foreseen and prevented by the exercise of due diligence by Defendants. In no circumstances shall a claim of inability to pay be considered Force Majeure.

a. If Defendants claims impossibility, they shall notify CRWC in writing within 21 days of the date that Defendants first knew of the event or circumstance that caused or would cause a violation of this Consent Decree. The notice shall describe the reason for the nonperformance and specifically refer to this Section. It shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by Defendants to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. Defendants shall adopt all reasonable measures to avoid and minimize such delays.

b. The Parties shall meet and confer in good-faith concerning the non-performance and, where the Parties concur that performance was or is impossible, despite

the timely good faith efforts of Defendants, due to circumstances beyond the control of Defendants that could not have been reasonably foreseen and prevented by the exercise of due diligence by Defendants, the Parties will establish new deadlines consistent with the intent of this Consent Decree.

c. If CRWC disagrees with Defendants' notice, or in the event that the Parties cannot timely agree on the terms of new performance deadlines or requirements, either party shall have the right to invoke the Dispute Resolution Procedure pursuant to paragraphs 17-20 above. In such proceeding, Defendants shall bear the burden of proving that any delay in performance of any requirement of this Consent Decree was caused or will be caused by force majeure and the extent of any delay attributable to such circumstances.

#### **MISCELLANEOUS PROVISIONS**

22. Construction. The language in all parts of this Consent Decree shall be construed according to its plain and ordinary meaning, except as to those terms defined in the Facility's NPDES permit, the Clean Water Act, or specifically herein.

23. Mutual Drafting and Construction. It is hereby expressly understood and agreed that the Settling Parties jointly drafted this Consent Decree. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

24. Choice of Law. The laws of the United States shall govern this Consent Decree.

25. Severability. In the event that any provision, paragraph, section, or sentence of this Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

26. Correspondence. All notices required herein or any other correspondence pertaining to this Consent Decree shall be in writing via first class mail and electronic mail, as follows:

If to Plaintiff:

Kevin Cassidy  
Earthrise Law Center  
P.O. Box 445  
Norwell, MA 0201  
[cassidy@lclark.edu](mailto:cassidy@lclark.edu)

Andrea Donlon  
Connecticut River Watershed Council  
15 Bank Row  
Greenfield, MA 01301  
[adonlon@ctriver.org](mailto:adonlon@ctriver.org)

If to Defendants:

Glenn A. Wood  
Rubin and Rudman, LLP  
50 Rowes Wharf  
Boston, MA 02110  
[gwood@rubinrudman.com](mailto:gwood@rubinrudman.com)

27. Notifications of communications shall be deemed submitted three days after the date that they are postmarked and sent by first-class mail, or immediately after acknowledgement of receipt via email by the receiving party. Any change of address or addresses shall be communicated in the manner described above for giving notices.

28. Effect of Consent Decree. Plaintiff does not, by its agreement to this Consent Decree, warrant or aver in any manner that Defendants' compliance with this Consent

Decree will constitute or result in compliance with any federal or state law or regulation. Nothing in this Consent Decree shall be construed to affect or limit in any way the obligation of Defendants to comply with all federal, state, and local laws and regulations governing any activity referenced in this Consent Decree.

29. Counterparts. This Consent Decree may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy, electronic copies, PDF'd signatures sent via email, and/or facsimile copies of original signatures shall be deemed to be originally executed counterparts of this Consent Decree.

30. Modification of the Consent Decree. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. This Consent Decree, and any provisions herein, may not be changed, waived, or discharged, unless by a written instrument, signed by all Settling Parties. Approval by the Court of any changes is required only if a modification materially changes the terms of this Consent Decree or materially affects Defendants' ability to meet the requirements or objectives of this Consent Decree.

31. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

32. Integration Clause. This is an integrated Consent Decree. This Consent Decree, along with any attachments incorporated into the Consent Decree by reference, is intended to be a full and complete statement of the terms of the agreement between the Settling Parties and expressly supersedes any and all prior oral or written agreements, covenants, representations, and warranties (express or implied) concerning the subject matter of this Consent Decree.

33. Authority. The undersigned representatives for the Settling Parties each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Consent Decree.

34. The provisions of this Consent Decree apply to and bind the Settling Parties, including any successors or assigns. The obligations created in this Consent Decree are enforceable by this Court at the request of either Party. The Parties certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

35. The Parties shall be bound by this Consent Decree and will not contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, Defendants do not admit liability for any purpose as to any allegation or matter arising out of this Action.

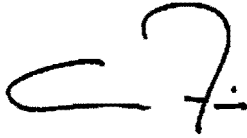
**IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the latest date of the signatures below.



**APPROVED AS TO CONTENT**

Dated: March 31, 2016

CONNECTICUT RIVER WATERSHED COUNCIL

A handwritten signature in black ink, appearing to be 'A. Fisk', written over a horizontal line.

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Andrew Fisk, Executive Director

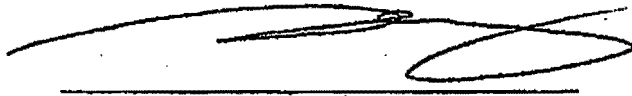
**APPROVED AS TO CONTENT**

Dated: April 10, 2016

**CHANG & SONS ENTERPRISES, INC.**

**CHANG FARMS**

**SIDNEY CHANG**

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

**Sidney Chang, Owner**

**APPROVED AS TO FORM**

Dated: March 31, 2016

EARTHRISE LAW CENTER

A handwritten signature in black ink, appearing to read 'K Cassidy', is written over a horizontal line.

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Kevin Cassidy, Senior Staff Attorney  
Attorney for Plaintiff

~~PROPOSED~~ ORDER

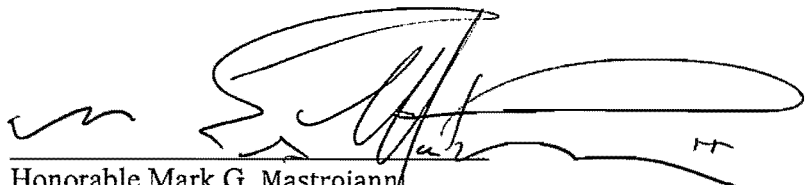
This Court having found that the foregoing Consent Decree was entered into in good faith and that the terms of the foregoing Consent Decree are fair, reasonable and just, the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED.**

This Court shall retain jurisdiction over this matter during the pendency of the term of this Consent Decree.

**IT IS SO ORDERED.**

Date:

5/5/16

  
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Honorable Mark G. Mastroianni  
UNITED STATES DISTRICT COURT JUDGE  
DISTRICT OF MASSACHUSETTS