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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.

STATE OF NEW JERSEY,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION; and THE
ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

v.

BEMAR ASSOCIATES, LLC; DIVYA
GROCERY INC. d/b/a LIVINGSTON
FOOD MART; SMINE LLC d/b/a
SMINE CLEANERS; JOHN
NAKASHIAN formerly d/b/a
TOWNE AND COUNTRY CLEANERS;
"XYZ CORPORATIONS" 1-10
(Names Fictitious); and "JOHN
AND/OR JANE DOES" 1-10 (Names
fictitious),

Defendants.

Civil Action

COMPLAINT

Plaintiffs, State of New Jersey, Department of Environmental
Protection ("Department"), and the Administrator of the New Jersey

Spill Compensation Fund ("Administrator") (collectively, "Plaintiffs"), by way of this complaint against Defendants Bemar Associates, LLC; Divya Grocery Inc., doing business as Livingston Food Mart; Smine LLC, doing business as Smine Cleaners; John Nakashian, an individual, formerly doing business as Towne and Country Cleaners; "XYZ Corporations" 1-10 (names fictitious); and "John and/or Jane Does" 1-10 (names fictitious) (collectively, "Defendants"), say as follows:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action against Defendants pursuant to the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24; the Brownfield and Contaminated Site Remediation Act ("the Brownfield Act"), N.J.S.A. 58:10B-1 to -20; the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29; and the common law.

2. This action arises because tetrachloroethylene ("PCE"), a solvent widely used in the dry cleaning industry, and other hazardous substances, were discharged on, and are emanating from, property presently or formerly owned by Defendant, Bemar Associates, LLC ("Bemar"), shown as Block 1706, Lots 2, 54 and 55, on the Tax Maps of the Township of Livingston, Essex County ("Property"). Exposure to PCE has been linked to kidney dysfunction, respiratory tract irritation, and cognitive and neurological effects.

3. The site of a former on-premises dry cleaning operation, the Property is situated in a residential area of Livingston Township, Essex County. The hazardous substances discharged on the Property have contaminated soils and ground water at levels exceeding the Department's promulgated soil and ground water remediation standards and vapor intrusion screening levels, and have migrated off the Property, contaminating a Township potable water supply well above maximum contaminant levels ("MCLs") for drinking water under the Safe Drinking Water Act.

4. Defendant Bemar failed to comply with a Spill Act Directive to conduct remediation in response to the hazardous substances. A publicly funded vapor intrusion investigation by the Department followed, which detected PCE vapors in sub-slab soil gas under the building and in the indoor air of a building on the Property and a nearby residence at levels constituting an immediate environmental concern, requiring the Department's installation and operation of a vapor mitigation system using public funds to protect human health. In addition, the Department, using public funds, conducted extensive soil excavation to remove sources of the hazardous substance discharges on the Property that Defendant Bemar failed to remediate.

5. Plaintiffs seek an order: (1) compelling Defendants to remediate the discharged hazardous substances; (2) declaring that Defendants' required remediation is subject to direct oversight of

the Department; (3) awarding Plaintiffs the unreimbursed costs they have incurred, and will incur, for remediation of the Property and all other areas to which PCE and other hazardous substances discharged at the Property have migrated (collectively, "Contaminated Property"); (4) awarding treble damages under the Spill Act for Defendant Bemar's failure to comply with an August 15, 2007 Spill Act Directive of the Department directing Bemar to remediate the Contaminated Property; and (5) ordering Defendants to pay civil penalties, Plaintiffs' investigative and litigation costs, and restitution.

THE PARTIES

6. Plaintiff Department is a principal department within the Executive Branch of the government of the State of New Jersey, with its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. The Department is vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-1 to -19.

7. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund") established in the Spill Act, with his offices at 401 East State Street, Trenton, Mercer County, New Jersey. The Administrator is authorized to approve and pay any cleanup and removal costs incurred by the Department, N.J.S.A. 58:10-23.11f.c and -23.11f.d,

and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

8. Defendant Bemar Associates, LLC ("Bemar"), is a New Jersey limited liability company with its main business address at 547 West Mt. Pleasant Avenue, Livingston, New Jersey. It owns and manages the Property.

9. Defendant Bemar's members are Beatrice Gesualdo (managing member), 547 West Mt. Pleasant Avenue, Livingston, New Jersey 07039, and Amalio Armenti, 174 Mountain Avenue, Warren, New Jersey 07059.

10. Defendant Divya Grocery Inc. ("Divya Grocery") is a corporation of the State of New Jersey, with a business address at 212 N. Livingston Avenue, Livingston NJ 07039. Under a lease agreement with Defendant Bemar, Divya Grocery owns and operates a local convenience store and/or a delicatessen on the Property, which on information and belief trades as Livingston Food Mart.

11. Divya Grocery's President is Shailesh Patel.

12. Defendant Smine LLC is a New Jersey limited liability company, with a business address at 214 N. Livingston Avenue, Livingston, NJ 07039. Under a lease agreement with Defendant Bemar, Smine LLC owns and operates a dry cleaning business on the Property, which on information and belief does business as "Smine Cleaners."

13. The managing member of Smine LLC ("Smine Cleaners") is Hye Jin Yoon, with a main business address at 214 North Livingston Avenue, Livingston NJ 07039.

14. On information and belief, Defendant John Nakashian, an individual, is a resident of the State of New Jersey, with a last known residential address of 225 Isabella Avenue, Irvington, New Jersey. On information and belief, John Nakashian, as a sole proprietorship, formerly owned and operated an on-premises dry cleaning and laundry business in the northern unit of the building on the Property doing business as "Towne and Country Cleaners."

15. "XYZ Corporations" 1-10, these names being fictitious, are corporate entities whose identities cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, insurers of, or are otherwise related to, or affiliated with, Defendant Bemar, and/or certain of which are dischargers or persons "in any way responsible" under the Spill Act for the hazardous substances discharged on the Property and emanating from the Property; and/or certain of which are otherwise dischargers or persons "in any way responsible" under the Spill Act for the hazardous substances discharged on the Property and emanating from the Property; and/or certain of which, as dischargers or persons "in any way responsible" under the Spill Act, are obligated under the Spill Act, the Brownfield Act, and SRRA to remediate said hazardous substances.

16. "John and/or Jane Does" 1-10, these names being fictitious, are natural individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officers or officials of, or are otherwise related to, or affiliated with, Defendant Bemar, and/or one or more of the Defendant XYZ Corporations, and/or are dischargers or persons "in any way responsible" under the Spill Act for the hazardous substances discharged on the Property and emanating from the Property; and/or certain of which are otherwise dischargers and/or persons "in any way responsible" under the Spill for the hazardous substances discharged on the Property and emanating from the Property; and/or certain of which, as dischargers or "persons in any way responsible" under Spill Act, are obligated under the Spill Act, the Brownfield Act, and SRRA to remediate said hazardous substances.

THE PROPERTY AND PROPERTY OWNER

17. The Property that is the subject of this complaint consists of Block 1706, Lots 2, 55 and 54, on the Tax Maps of the Township of Livingston.

18. By deed dated March 23, 2004, Defendant Bemar acquired the Property from the Estate of Genevieve M. Greco. As of the date of this complaint, Bemar still owns Lots 2 and 55 of the Property, but has sold Lot 54 to another party.

19. Lot 55 of the Property fronts N. Livingston Avenue. On Lot 55 is a commercial building divided into two separate units, with one unit in the northern end of the building and the other in the southern end. Each unit has separate entrances and limited parking in front of the building.

20. On information and belief, Defendant Divya Grocery operates a local convenience store and/or a delicatessen in the southern unit of the commercial building on the Property pursuant to a lease agreement with Bemar.

21. On information and belief, Defendant Smine Cleaners operates a drop off/pickup dry cleaning business in the northern unit of the building on the Property pursuant to a lease agreement with Bemar. On information and belief, Smine Cleaners does not conduct onsite dry cleaning operations.

22. Lot 54 fronts N. Livingston Avenue and adjoins Lot 55 on the south. A single-family home is now located on Lot 55 with an address of 204 N. Livingston Avenue.

23. Lot 2 fronts E. McClellan Avenue, a street perpendicular to and intersecting with North Livingston Avenue, and partially adjoins Lot 55 on the rear. Lot 2 is an elongated, vacant, and partially paved parcel of land with additional space for parking.

24. As detailed herein, the Department has determined that PCE and other hazardous substances discharged on and emanating from the Property have contaminated the Property, the indoor air

of the commercial building on the Property and the residence of a nearby property, regional ground water, and a potable water supply well owned and operated by the Township of Livingston.

25. The Contaminated Property has been assigned Site Remediation and Waste Management Program Interest ("PI") #G000061248 by the Department.

THE PROPERTY AT 222 NORTH LIVINGSTON AVENUE

26. Adjoining Lot 55 of the Property on the north is property at 222 North Livingston Avenue, Livingston, New Jersey. This is a corner lot located at the intersection of North Livingston Avenue and E. McClellan Avenue, designated as Block 1706, Lot 1 on the Township of Livingston Tax Maps ("Exxon Mobil Property").

27. From the 1950s until February 9, 2011, Exxon Mobil Corporation or its corporate predecessors (collectively, "Exxon Mobil") owned Block 1706, Lot 1, on which a gasoline refueling station and motor vehicle repair garage operated until approximately 2008.

28. The Department has identified the Exxon Mobil Property as former Exxon Facility #32144 and assigned it Site Remediation and Waste Management Program PI #007479.

29. As detailed below, Exxon Mobil investigated the source of the PCE contamination in the ground water during ongoing remedial investigation activities at the Exxon Mobil Property. In

2007, it submitted a consultant's report to the Department concluding that the adjacent Property at 212-214 N. Livingston Avenue was a source of the PCE contamination and that the Exxon Mobil Property is not a contributing source of the PCE contamination.

GENERAL ALLEGATIONS

30. On information and belief, Salvatore S. and Genevieve M. Greco, husband and wife, acquired joint ownership of the Property through three separate transactions: a deed dated January 23, 1952, conveying Lot 55; a deed dated May 21, 1957 conveying Lot 54; and a deed dated December 1, 1956 conveying Lot 2.

31. From the 1950s to the early 1970s, Salvatore S. and Genevieve M. Greco operated a pharmacy in the building on the Property doing business as Towne Pharmacy or Greco's Pharmacy ("Greco's Pharmacy"). On information and belief, Greco's Pharmacy occupied the southern unit of the building.

32. On information and belief, from 1957 or 1958 to the early 1970s, Defendant John Nakashian operated an on-premises dry cleaning and laundering business in the northern unit of the building doing business as Towne and Country Cleaners. Towne and Country Cleaners ceased its dry cleaning and laundering operations in the building and vacated the premises on or before May 1974, when a new tenant occupied the northern unit of the building.

33. On information and belief, Defendant John Nakashian utilized PCE and other hazardous substances in dry cleaning operations conducted on the Property.

34. PCE is a "hazardous substance" as defined in N.J.S.A. 58:10-23.11b of the Spill Act.

35. On information and belief, during its dry cleaning and laundering operations on the Property, Defendant John Nakashian discharged PCE and other hazardous substances on the Property contaminating the soils and ground water, or was otherwise responsible for such unlawful discharges.

36. On December 17, 1973, Salvatore S. Greco died, and Genevieve M. Greco became the sole owner of the Property.

37. On November 17, 1988, Genevieve M. Greco died, and the Estate of Genevieve M. Greco became the owner of the Property.

38. On March 23, 2004, the Estate of Genevieve M. Greco conveyed the Property to Bemar.

39. In July 2004, Bemar conveyed Lot 54 of the Property to William Silverman, LLC.

40. Since the conveyance of Lot 54 to William Silverman, LLC, Lot 54's ownership has been transferred multiple times, and a residence has been constructed on the lot that is currently occupied.

41. On February 9, 2011, Om Divya Realty, LLC, a New Jersey limited liability company, acquired the Exxon Mobil Property at 222 N. Livingston Avenue from Exxon Mobil.

42. On information and belief, Om Divya Realty, LLC has re-developed the Exxon Mobil Property as a restaurant.

43. In November 1989, PCE was discovered in the Township of Livingston Water Department's potable water supply well no. 8 ("Well 8") at 19.95 parts per billion ("ppb"), exceeding New Jersey and Federal drinking water MCLs for PCE.

44. The Township of Livingston submitted Spill Fund Damage Claim (89-047) to the Department for the Township's costs of installing air strippers to treat the PCE contamination of Well 8 and Township potable water supply well nos. 3, 4, 5, and 9 contaminated with chlorinated volatile organic compounds ("VOCs").

45. The Spill Fund has paid the Township of Livingston \$2,221,660 for its costs of installing air strippers to treat the chlorinated VOC contamination of Wells 3, 4, 5, 8 and 9, including an estimated \$442,332 to install air strippers on Well 8 to treat its PCE contamination.

46. Quarterly sampling of Livingston Township's Well 8 in June 2007 detected PCE in excess of Safe Drinking Water Standards in both the influent (before treatment by the air strippers) and effluent samples. As a consequence, Well 8 was de-activated until

quarterly sampling of the effluent confirmed the PCE was again below Safe Drinking Water Standards.

47. Pursuant to the Spill Act, whenever any hazardous substance is discharged, the Department may, in its discretion, act to remove or arrange for the removal of such discharge, or direct the discharger, or person in any way responsible for the hazardous substance, to remove or arrange for the removal of such discharge. N.J.S.A. 58:10-23.11f.a

48. On August 15, 2007, the Department, pursuant to N.J.S.A. 58:10-23.11f.a, issued a Directive and Notice to Insurers ("Directive") to Defendant Bemar and to the Estate of Genevieve M. Greco directing them to conduct remediation of the Property.

49. In the Directive to Defendant Bemar and the Estate of Genevieve M. Greco, the Department:

a. Found that during a remedial investigation of the Exxon Mobil Property at 222 N. Livingston Avenue, Exxon Mobil had installed and sampled ground water monitoring wells on the Property, which disclosed the ground water was contaminated with PCE, and that based on the PCE levels detected in ground water and the proximity of nearby structures, a vapor intrusion investigation was required to evaluate the potential for vapor hazards in adjacent structures;

b. Determined that, pursuant to N.J.S.A. 58:10-23.11g.c, Defendant Bemar and the Estate of Genevieve M. Greco were responsible for the PCE, a hazardous substance under the Spill Act, discharged at the Property, and therefore strictly liable, jointly and severally, without regard to fault, for all costs of cleanup and removal of the PCE incurred by the Department;

c. Notified Defendant Bemar and the Estate of Genevieve M. Greco that the Department had determined it was necessary to conduct a Department-approved vapor intrusion investigation and remedial investigation of the Contaminated Property to determine the nature and the extent of the problem presented by the hazardous substance discharges, and to implement a remedial action to address the discharges;

d. Directed Defendant Bemar and the Estate of Genevieve M. Greco to submit to the Department a Vapor Intrusion Work Plan to investigate the potential for vapor intrusion in potentially affected residences, and, as necessary, to submit an interim Remedial Action Work Plan to address the vapor issues; and

e. Directed Defendant Bemar and the Estate of Genevieve M. Greco to submit a Preliminary Assessment and a Site Investigation for the Property in accordance with applicable Department regulations.

50. In the Directive, the Department notified Defendant Bemar and the Estate of Genevieve M. Greco that if they failed to conduct the remediation required by the Directive:

a. The Department would, in its discretion, conduct the remediation using public funds;

b. The failure of Defendant Bemar and the Estate of Genevieve M. Greco to comply with the Directive would increase their liability to the Department to an amount equal to three times the Department's costs for the cleanup and removal of the discharges, and might cause Spill Act liens to be placed upon the Property pursuant to N.J.S.A. 58:10-23.11f for the Department's cleanup and removal costs; and

c. The Department might issue further orders pursuant to N.J.S.A. 58:10-23.11u, violations of which could result in the assessment of civil penalties.

51. Neither Defendant Bemar nor the Estate of Genevieve Greco complied with the requirements of the Department's Directive.

52. On August 15, 2007, the Department also issued a Directive to Exxon Mobil in response to sampling of ground water during Exxon Mobil's ongoing remedial investigation at the Exxon Mobil Property, which detected various contaminants, including PCE.

53. In the Directive to Exxon Mobil, the Department:

a. Determined that Exxon Mobil was responsible for discharges of hazardous substances at the Exxon Mobil Property, and strictly liable, jointly and severally, without regard to fault, for all costs of cleanup and removal of hazardous substances incurred by the Department pursuant to N.J.S.A. 58:10-23.11g.c;

b. Found that Exxon Mobil must conduct a Department-approved remedial investigation of the contaminated Exxon Mobil Property to fully determine the nature and extent of the problem presented by the discharges;

c. Directed Exxon Mobil, pursuant to N.J.S.A. 58:10-23.11f, to submit to the Department a vapor intrusion work plan to investigate the potential for vapor intrusion in potentially affected residences and, as needed, to address the vapor issues; and

d. Directed Exxon Mobil to submit a Preliminary Assessment and a Site Investigation for the Exxon Mobil Property in accordance with applicable Department regulations.

54. In response to the Department's Directive and as part of ongoing remedial investigation of its property, Exxon Mobil submitted a vapor intrusion plan to the Department, participated

with the Department in a town meeting, and conducted the Preliminary Assessment/Site Investigation.

55. In addition, Exxon Mobil conducted an unknown source investigation to determine potential sources of the PCE contamination that was the focus of the Directive.

56. Exxon Mobil negotiated access to the adjacent Property. Its ensuing investigation included the advancement of 56 soil borings, collection of 113 soil samples, installation of four soil gas points, implementation of a near-surface soil gas survey through 108 temporary points, installation of a groundwater monitoring well, and the use of ground penetrating radar.

57. Among other results, laboratory analysis of Exxon Mobil's soil samples on the Property forwarded to the Department revealed PCE contamination in the soils above applicable Department remediation standards, including one sample with an elevated concentration of 39,500 mg/kg of PCE directly behind the back door of the building on the Property formerly occupied by Town and Country Cleaners.

58. The results of Exxon Mobil's soil gas monitoring on the Property revealed a maximum PCE concentration of 5,410 ppb, correlating to the highly PCE contaminated soil found behind the building.

59. In an October 17, 2007 letter to the Department entitled "Supplemental Response to August 15, 2007 NJDEP Directive and

Notice to Insurers, Exxon Facility #32144," Exxon Mobil summarized the findings of its investigation and attached a report entitled "Chlorinated Solvent Source Investigation Summary" dated October 16, 2007 prepared by its consultant, Kleinfelder East, Inc.

60. In its letter, Exxon Mobil stated that its technical investigations and the attached report demonstrated that the adjacent Property was the source of the PCE contamination described in the Directive.

61. Exxon Mobil asked that it be relieved of any further obligations under the Department's Directive to investigate the PCE contamination or complete a vapor intrusion investigation.

62. Between 2007 and 2008, the Department conducted a publicly funded vapor intrusion investigation, including sub-slab soil gas sampling and indoor air sampling of the building on the Property and residences on other potentially impacted properties.

63. The Department determined that PCE and other volatile organic vapors had entered the building on Lot 55 and a residence on 24 E. McClellan Avenue at levels threatening public health and requiring remedial action.

64. "Engineering controls" are defined by the Brownfield Act and by SRRA as "any mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. Engineering controls may include, without limitation, caps, covers, dikes,

trenches, leachate collection systems, signs, fences and physical access controls." N.J.S.A. 58:10B-1; N.J.S.A. 58:10C-2.

65. Based on the results of the vapor intrusion investigation, the Department determined that an engineering control was required to prevent PCE vapors from entering occupied structures at levels endangering human health.

66. Using public funds, the Department designed and installed an engineering control consisting of a soil vapor extraction and sub-slab depressurization system ("vapor mitigation system") servicing the building on the Property and a residence at 24 E. McClellan Avenue.

67. The Department's publicly funded vapor mitigation system creates a negative pressure in the sub-slab environment preventing PCE and other volatile organic chemical vapors from entering the occupied structures. It first began operation in February 2009, and subsequent adjustments and upgrades of the system were made by the Department over time based on continued indoor air sampling and monitoring.

68. On October 29 and 30, 2008, the Department conducted "hot spot" removals of PCE-contaminated soil on the Property identified during Exxon Mobil's investigation for off-site disposal, including approximately 50 tons of heavily PCE-contaminated soil from an area near the back door of the building

unit once occupied by Towne and Country Cleaners and presently occupied by Smine Cleaners.

69. In an April 2011 Unknown Source Investigation Summary, the Department determined that the Property was a source of the PCE contamination of Livingston Township Well 8 based on its review and evaluation of available scientific data and environmental reports. The Department's Summary reviewed the results of Exxon Mobil's remedial investigation, Chlorinated Solvent Source Investigation Summary, and receptor evaluation; sampling data obtained during the Department's publicly-funded vapor intrusion investigation and installation of the vapor mitigation system; sampling data obtained during its removal of PCE-contaminated soils on the Property; and other pertinent information.

70. In June 2012, the Department's publicly funded vapor mitigation system was fully operational and the Department assumed its ongoing operation and maintenance at continuing public expense.

71. In an August 17, 2012 letter, the Department forwarded to Defendant Bemar a Site Investigation Report prepared by the Department. The Site Investigation Report found that:

a. PCE and other hazardous substances had been discharged on the Property contaminating soils above the Department's soil remediation standards:

b. The soil contamination had migrated to the ground water, and the discharges were responsible for PCE ground water contamination above Department Groundwater Quality Standards found in Exxon Mobil monitoring wells; and

c. The Property was the source of the PCE contamination found in Township of Livingston Well 8 in 1989.

72. To this day, the Department continues to operate, maintain, and monitor the vapor mitigation system to protect public health and safety, including the health and safety of Bemar's tenants, Defendants Smine Cleaners and Divya Grocery, occupying the building on the Property.

73. Because Defendant Bemar failed to comply with the Department's Directive to conduct the required remediation, Bemar is liable to the Department in an amount equal to three times the costs incurred by the Department to conduct said remediation of the Property. N.J.S.A. 58:10-23.11f.a.(1).

74. In a November 14, 2012 letter, the Department notified Bemar that:

a. As of July 26, 2012, the Department had incurred \$1,287,182.77 of cleanup costs to respond to discharges of hazardous substances at the Property, not including its costs to treat contaminated Well 8, and was seeking reimbursement for those costs from Bemar;

b. Bemar would remain liable for all additional cleanup costs the Department incurred as a result of the hazardous substance discharges, and for restoring or replacing any natural resource damaged or destroyed as a result of the discharges;

c. The Department was filing first priority and non-priority Spill Act liens against the Property for the Department's cleanup costs to date;

d. If Bemar did not pay the Department's cleanup costs, it might file a civil action against Bemar to recover treble damages and statutory penalties; and

e. Bemar remained obligated under N.J.S.A. 58:10B-1.3 to complete any outstanding remediation at the Property.

75. On November 15, 2012, the Administrator of the Spill Fund, pursuant to N.J.S.A. 58:10-23.11f.f, filed a first priority lien against the Property, and a non-priority lien against the revenues and all real and personal property of Bemar, for the State's unreimbursed costs of \$1,287,182.7 for the remediation of the Contaminated Property. The liens have been docketed by the Clerk on the Superior Court on its civil docket or civil judgment and order docket as DJ-257894-12 and DJ-257898-12, respectively.

76. On August 16, 2019, the Administrator of the Spill Fund filed an amended first priority lien against the Property, and an amended non-priority lien against Bemar's revenues and all of its

real and personal property, in the amount of \$1,693,494.23, for the State's unreimbursed cleanup costs as of March 27, 2019.

77. The Department's publicly-funded remediation of the Contaminated Property is ongoing. The Department will continue to incur cleanup and removal costs in the future to remediate PCE and other hazardous substances discharged on the Property and emanating from the Property.

COUNT I

The Spill Act

(Defendants Bemar, Nakashian, XYZ Corporations and John and/or Jane Does)

78. Plaintiffs repeat the allegations of paragraphs 1 through 77 of the Complaint as though fully set forth herein.

79. The above-referenced discharges of PCE and other hazardous substances on the Property and emanating from the Property were and are prohibited by, and in violation of, the Spill Act. N.J.S.A. 58:10-23.11.c.

80. Defendants Bemar, John Nakashian, XYZ Corporations 1-10 (names fictitious), and John and/or Jane Does 1-10 (names fictitious) are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

81. The costs that Plaintiffs have incurred, and will incur, to remediate the hazardous substances discharged on the Property

and emanating from the Property are "cleanup and removal costs" as defined by N.J.S.A. 58:10-23.11b.

82. The strict liability provision of the Spill Act, N.J.S.A. 58:10-23.11g.c.(1), provides in pertinent part:

[A]ny person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c. 141 (C:58:10-23.11f).

83. Defendants Bemar and John Nakashian are dischargers or persons in any way responsible for the PCE and other hazardous substances discharged on the Property and emanating from the Property within the meaning of N.J.S.A. 58:10-23.11g.c.(1). As such, Bemar and John Nakashian are strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department and the Spill Fund to remediate the Contaminated Property.

84. Furthermore, N.J.S.A. 58:10-23.11g.c.(3) of the Spill Act provides, in part:

In addition to the persons liable pursuant to this subsection, any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a

hazardous substance had been discharged at the real property, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred.

85. Defendant Bemar acquired the Property after September 14, 1993, and Bemar knew or should have known that hazardous substances had been discharged on the Property prior to its acquisition of the Property. Therefore, Bemar is strictly liable, jointly and severally, without regard to fault under N.J.S.A. 58:10-23.11g.c.(3) for all cleanup and removal costs incurred by the Department and the Spill Fund to remediate the PCE and other hazardous substances discharged on the Property and emanating from the Property.

86. Defendants XYZ Corporations 1-10 are dischargers or persons in any way responsible for the PCE and other hazardous substances discharged on the Property and emanating from the Property within the meaning of N.J.S.A. 58:10-23.11g.c.(1). As such, they are strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department and the Spill Fund to remediate the PCE and other hazardous substances discharged on the Property and emanating from the Property.

87. Defendants John and/or Jane Does 1-10 are dischargers or persons in any way responsible for the PCE and other hazardous substances discharged on the Property and emanating from the

Property within the meaning of N.J.S.A. 58:10-23.11g.c.(1). As such, they are strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department and the Spill Fund to remediate the PCE and other hazardous substances discharged on the Property and emanating from the Property.

88. Under N.J.S.A. 58:10-23.11u of the Spill Act, the Department may bring a civil action in the Superior Court against any person who has violated the Spill Act, or any rule, regulation, plan, information request, access request, order, or directive promulgated or issued pursuant thereto:

a. For injunctive relief, N.J.S.A. 58:10-23.11u.b.(1);

b. For the costs of any investigation, cleanup or removal, and for the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2);

c. For any other related costs incurred by the Department under the Spill Act, including an award pursuant to N.J.S.A. 58:10-23.11f.a.(1) of three times the Department's costs of cleanup and removal for the failure of a discharger or person in any way responsible for a hazardous substance to comply with a directive issued by the Department, N.J.S.A. 58:10-23.11u.b.(5); and

d. For the court's assessment of civil penalties for violations of the Spill Act, N.J.S.A. 58:10-23.11u.d.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor:

a. Declaring and adjudging Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs, and related costs, that the State has incurred, is incurring, and may in the future incur, to remediate the hazardous substances discharged on the Property and emanating from the Property;

b. Ordering that Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 reimburse Plaintiffs for all unreimbursed investigation, cleanup and removal costs, and related costs, the State has incurred to remediate hazardous substances discharged on the Property and emanating from the Property;

c. Finding Defendant Bemar liable for three times the amount of cleanup and removal costs incurred by Plaintiffs to remediate the Contaminated Property, as a result of Bemar's failure to comply with the Department's August 15, 2007 Spill Act Directive;

d. Ordering Defendant Bemar to comply with the requirement in the Department's Directive that Bemar conduct a preliminary assessment and a site investigation;

e. Assessing civil penalties against Defendant Bemar for violating the Department's August 15, 2007 Spill Act Directive;

f. Finding Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10, liable for Plaintiffs' costs of preparing and successfully litigating this action, together with interest, to the full extent allowed by law;

g. Granting Plaintiffs such other relief as this Court deems just, equitable and appropriate; and

h. Reserving the State of New Jersey's right to bring a claim in the future for natural resource damages arising out of the discharges of pollutants on the Property.

COUNT II

The Brownfield Act and SRRA

(Defendants Bemar, Nakashian, XYZ Corporations and John and/or Jane Does)

89. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1 through 88 of the Complaint as though fully set forth herein.

90. Effective January 6, 1998, the New Jersey Legislature enacted the Brownfield Act, N.J.S.A. 58:10B-1 to -20.

91. As amended by SRRRA (P.L. 2009, c. 60, §30, effective May 7, 2009), the Brownfield Act provides in part that a discharger of a hazardous substance or a person in any way responsible for a hazardous substance under N.J.S.A. 58:10-23.11g of the Spill Act has an affirmative obligation to remediate discharges of hazardous substances:

[T]he discharger of a hazardous substance or a person in any way responsible for a hazardous substance pursuant to the provisions of subsection c. of section 8 of P.L.1976, c. 141 [the Spill Act] (C.58:10-23.11g) . . . shall remediate the discharge of a hazardous substance.

[N.J.S.A. 58:10B-1.3.a.]

92. Defendants are "persons" as defined in the Brownfield Act. N.J.S.A. 58:10B-1.

93. As set forth in Count I of the Complaint, Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 are persons liable under the Spill Act.

94. As persons liable under the Spill Act, Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10, pursuant to N.J.S.A. 58:10B-1.3.a of the Brownfield Act, have affirmative obligations, jointly and severally, to remediate the PCE and other hazardous substances discharged on the Property and emanating from the Property.

95. In violation of N.J.S.A. 58:10B-1.3.a, Defendants Bemar, John Nakashian, XYZ Corporations 1-10 and John and Jane Does 1-10

have not complied with their obligations under N.J.S.A. 58:10B-1.3.a to remediate the Contaminated Property.

96. In addition, the Brownfield Act provides, in pertinent part:

No later than three years after the date of enactment of P.L. 2009, c. 60 [SRRA] (C:58:10C-1 et seq.), a person responsible for conducting the remediation, no matter when the remediation is initiated, shall comply with the provisions of [N.J.S.A. 58:10B-1.3.b].

[N.J.S.A. 58:10B-1.3.c.(3) (emphasis added).]

97. As defined in N.J.S.A. 58:10B-1, a "person responsible for conducting the remediation" includes, inter alia, "any other person who discharges a hazardous substance or is in any way responsible for a hazardous substance pursuant to section 9 of P.L.1976, c. 14 (C.58:10-23.11g), that was discharged at a contaminated site." In other words, "a person responsible for conducting the remediation" includes any person liable under the Spill Act.

98. As persons liable under the Spill Act, Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 are persons responsible for conducting the remediation of the Property.

99. As persons responsible for conducting the remediation, Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 were required to comply with the remediation

requirements enumerated in N.J.S.A. 58:10B-1.3.b on or before May 7, 2012. N.J.S.A. 58:10B-1.3.c.(3).

100. In violation of N.J.S.A. 58:10B-1.3.c.(3), Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 did not comply with N.J.S.A. 58:10B-1.3.b.(1), (2), (3) and (5); they did not retain a licensed site remediation professional ("LSRP"), notify the Department of the LSRP's retention, remediate the contamination without the prior approval of the Department, and pay all applicable fees, on or before May 7, 2012.

101. As provided in N.J.S.A. 58:10B-1.3.b.(4), a person responsible for conducting the remediation must establish a remediation funding source if a remediation funding source is required by N.J.S.A. 58:10B-3.

102. Under N.J.S.A. 58:10B-3, a person liable under the Spill Act who has been issued a directive by the Department shall establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation.

103. As a person liable under the Spill Act who was issued a Directive by the Department in 2007, Defendant Bemar is in violation of N.J.S.A. 58:10B-1.3.c(3) and N.J.S.A. 58:10B-1.3.b.(4); it did not establish a remediation funding source to pay the estimated cost of the required remediation on or before

May 7, 2012, and to this day, Bemar still has not established a remediation funding source..

104. As provided in N.J.S.A. 58:10B-1.3. b.(8), a person responsible for conducting the remediation must meet the mandatory remediation timeframes and expedited site-specific timeframes established by the Department pursuant to N.J.S.A. 58:10C-28.

105. Pursuant to N.J.S.A. 58:10C-28, the Department promulgated Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS") regulations, N.J.A.C. 7:26C. The ARRCS regulations established: (a) the mandatory remediation time frame for submitting an initial receptor evaluation at N.J.A.C. 7:26C-3.3(b)2; and (b) the mandatory remediation time frame for completing a remedial investigation of the Contaminated Property and submitting a remedial investigation report at N.J.A.C. 7:26C-3.3(b)5.

106. As persons responsible for conducting the remediation, Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 are in violation of N.J.S.A. 58:10B-1.3.c.(3) and N.J.S.A. 58:10B-1.3.b.(8); they have not conducted remediation of the Contaminated Property in accordance with the mandatory remediation time frames established in N.J.A.C. 7:26C-3.3(b)2 and -3.3(b)5 of the ARRCS regulations.

107. Pursuant to N.J.S.A. 58:10B-13.a, when an engineering or institutional control is used in lieu of remediating a site to

meet an established remediation standard for soil, groundwater, or surface water, the person responsible for conducting the remediation shall, as a condition of the use of the control measure, implement any engineering or institutional control the Department requires to prevent exposure to the contaminants, provide any necessary maintenance of those controls, and provide for the restriction of the use of the property by the owner in a manner that prevents exposure.

108. In violation of N.J.S.A. 58:10B-13.a, Defendant Bemar, a person responsible for conducting the remediation of the Contaminated Property, has not implemented and provided the necessary maintenance of the vapor mitigation system required by the Department to prevent exposure to the contaminants in this case.

109. In addition, N.J.S.A. 58:10B-13.d provides in pertinent part:

The owner or lessee of any real property, or any person operating a business on real property, which has been remediated to a nonresidential use soil remediation standard or on which a remedial action that includes engineering or institutional controls for soil, groundwater, or surface water has been implemented to protect the public health, safety, or the environment, as applicable, shall maintain the engineering or institutional controls as required by the department.

110. Defendant Bemar, the owner of the Property on which an engineering control, the vapor mitigation system, has been installed to protect the public health, safety, and the environment, is in violation of N.J.S.A. 58:10B-13.d; it has not maintained the vapor mitigation system as required by the Department.

111. As provided in N.J.S.A. 58:10B-1.3.b.(9), a person responsible for conducting the remediation must obtain all necessary permits.

112. Pursuant to N.J.S.A. 58:10C-19.a of SRRA, the Department has established a permit program to regulate the operation, maintenance, and inspection of engineering and institutional controls: N.J.A.C. 7:26C-7.1 through 7.13 of the Department's ARRCs.

113. N.J.A.C. 7:26C-7.4(a)1 of the ARRCs regulations provides that a person subject to N.J.A.C. 7:26C-2.2 must comply with the remedial action permit requirements for engineering and institutional controls established in N.J.A.C. 7:26C-7.5 through 7.13.

114. Defendant Bemar, a person liable under the Spill Act, is a person subject to N.J.A.C. 7:26C-2.2. N.J.A.C. 7:26C-2.2(a)1. As such, Bemar is obligated by N.J.A.C. 7:26C-7.4(a)1 to comply with the remedial action permit requirements of N.J.A.C. 7:26C-7.5 through 7.13.

115. In violation of N.J.S.A. 58:10B-1.3.c.(3), N.J.S.A. 58:10B-1.3.b.(9) and N.J.A.C. 7:26C-7.4(a)1, Defendant Bemar has not obtained a remedial action permit for maintaining, operating and monitoring the effectiveness of the vapor mitigation system on its Property as required by N.J.A.C. 7:26C-7.5, nor has Bemar complied with other applicable remedial action permit requirements of N.J.A.C. 7:26C-7.6 through 7.13.

116. N.J.S.A. 58:10C-27 of SRRA provides that the Department shall undertake direct oversight of the remediation of a contaminated site where the person responsible for conducting the remediation of the contaminated site has failed to meet a mandatory remediation time frame established by the Department pursuant to N.J.S.A. 58:10C-28.

117. Because Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 have not complied with the above-cited mandatory remediation timeframes for the receptor evaluation and the remedial investigation established by the Department, the remediation of the Property is subject by operation of law to the direct oversight of the Department pursuant to N.J.S.A. 58:10C-27.

118. Defendants Bemar, John Nakashian, XYZ Corporations 1-10 and John and Jane Does 1-10 have not complied with the direct oversight remediation requirements enumerated in N.J.S.A. 58:10C-27.c and the ARRCs regulations at N.J.A.C. 7:26C-14.2, and are in

violation of N.J.S.A. 58:10B-1.3, N.J.S.A. 58:10C-27.c, and N.J.A.C. 7:26C-14.2.

119. Any person who fails to comply with the provisions of N.J.S.A. 58:10B-1.3 of the Brownfield Act shall be liable and subject to the enforcement provisions established in N.J.S.A. 58:10-23.11.u of the Spill Act. N.J.S.A. 58:10B-1.3.e.

120. In addition, an owner, lessee, or operator who fails to maintain an engineering or institutional control as required by N.J.S.A. 58:10B-13.d shall be subject to the penalties and actions authorized in N.J.S.A. 58:10-23.11u, and, where applicable, shall be liable for any additional remediation and damages pursuant to N.J.S.A. 10-23.11g. N.J.S.A. 58:10B-13.d.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor:

a. Finding Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10, liable and obligated to remediate the Contaminated Property pursuant to N.J.S.A. 58:10B-1.3.a, and in violation of N.J.S.A. 58:10B-1.3.a for their failure to do so;

b. Finding Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 liable and obligated pursuant to N.J.S.A. 58:10B-1.3.c.(3) to comply with each of the above-cited remediation requirements of N.J.S.A. 58:10B-1.3.b, and in violation of N.J.S.A. 58:10B-

1.3.c.(3) and N.J.S.A. 58:10B-1.3.b for their failure to do so;

c. Ordering Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 to remediate the Contaminated Property as required by law;

d. Finding Defendant Bemar liable and obligated to retain an LSRP and, pursuant to N.J.S.A. 58:10B-13.a and -13.d, to maintain and operate the engineering control, the vapor mitigation system installed by the Department, and in violation of N.J.S.A. 58:10B-13.a and -13.d for its failure to do so;

e. Finding Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 liable and obligated to retain an LSRP and, pursuant to N.J.S.A. 58:10B-1.3.c.(3), N.J.S.A. 58:1B-1.3.b.(9) and N.J.A.C. 7:26C-7.4(a)1, to obtain a remedial action permit for maintaining, operating, and monitoring the vapor mitigation system as required by N.J.A.C. 7:26C-5, to comply with other applicable remedial action permit requirements in N.J.A.C. 7:26C-7.6 through 7.13, and in violation of N.J.S.A. 58:10B-1.3.c.(3), N.J.S.A. 58:1B-1.3.b.(9) and N.J.A.C. 7:26C-7.4(a)1 for their failure to do so;

f. Ordering Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 to assume

responsibility, jointly and severally, for maintaining and operating the vapor mitigation system on the Property presently operated and maintained by the Department at public expense, obtaining a remedial action permit from the Department, and complying with the remedial action permit requirements in N.J.A.C. 7:26C-7.6 through 7.13, as required by law;

g. Finding that, pursuant to N.J.S.A. 58:10C-27, remediation of the Contaminated Property is under direct oversight of the Department; that Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 are liable and obligated to comply with the direct oversight remediation requirements of N.J.S.A. 58:10C-27.c and N.J.A.C. 7:26C-14.2;

h. Ordering Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 to conduct remediation of the Contaminated Property under direct oversight of the Department as required by law;

i. Assessing civil penalties against Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10, pursuant to N.J.S.A. 58:10B-1.3.e, 58:10B-13.d and N.J.S.A. 58:10-23.11u.d, for their violations of the above-cited remediation requirements of N.J.S.A. 58:10B-1.3,

N.J.S.A. 58:10B-13, N.J.S.A. 58:10C-27, and applicable Department regulations;

j. Awarding Plaintiffs their costs of investigating the discharge of hazardous substances on the Property and emanating from the Property, and their costs of preparing and litigating this action, together with interest, to the full extent allowed by law;

k. Granting Plaintiffs such other relief as this Court deems just, equitable and appropriate; and

l. Reserving the State of New Jersey's right to bring a claim in the future for natural resource damages arising out of the discharges of hazardous substances on the Property.

COUNT III

The Brownfield Act

(Defendants Smine Cleaners and Divya Grocery)

121. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1 through 120 of the Complaint as though fully set forth herein.

122. Defendants Smine Cleaners and Divya Grocery, lessees operating businesses on the Property on which an engineering control, the vapor mitigation system, has been implemented, are liable and obligated under N.J.S.A. 58:10B-13.d to maintain and operate the vapor mitigation system on the Property as required by the Department.

123. In violation of N.J.S.A. 58:10B-13.d, Defendants Smine Cleaners and Divya Grocery have not maintained and operated the vapor mitigation system as required by the Department.

124. In addition, N.J.A.C. 7:26C-7.4(a)2 of the ARRCs regulations provides that a statutory permittee must comply with the remedial action permit requirements for engineering and institutional controls established by the Department in N.J.A.C. 7:26C-7.5 through 7.13.

125. As defined in N.J.A.C. 7:26C-1.3, a "statutory permittee" is:

a person who becomes, subsequent to the placement of an institutional control or an engineering control on a property, the owner, operator, or tenant of that property, who, therefore, is required to comply with the procedures in N.J.A.C. 7:26C-7.

126. On information and belief, Defendant Smine Cleaners became a tenant on the Property after placement of the engineering control, the vapor mitigation system, on the Property, and therefore Smine Cleaners is a statutory permittee.

127. As a statutory permittee, Smine Cleaners is obligated by N.J.A.C. 7:26C-7.4(a)2 to comply with the remedial action permit requirements of N.J.A.C. 7:26C-7.5 through 7.13.

128. In violation of N.J.S.A. 58:10B-1.3.b.(9) and N.J.A.C. 7:26C-7.4(a)2, Defendant Smine Cleaners has not complied with the

remediation permit requirements of N.J.A.C. 7:26C-7.5 through 7.13.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor:

a. Finding Defendants Smine Cleaners and Divya Grocery liable and obligated to retain an LSRP and, pursuant to N.J.S.A. 58:10B-13.d, to maintain and operate the vapor mitigation system presently operated and maintained by the Department at mounting public expense, and in violation of N.J.S.A. 58:10B-13.d for their failure to do so;

b. Finding Defendant Smine Cleaners, as a statutory permittee, liable and obligated to retain an LSRP and, pursuant to N.J.S.A. 58:1B-1.3.b.(9) and N.J.A.C. 7:26C-7.4(a)2, to obtain a remedial action permit for maintaining, operating, and monitoring the vapor mitigation system as required by N.J.A.C. 7:26C-5, to comply with other applicable remedial action permit requirements in N.J.A.C. 7:26C-7.6 through 7.13, and in violation of N.J.S.A. 58:1B-1.3.b.(9) and N.J.A.C. 7:26C-7.4(a)2 for its failure to do so;

c. Ordering Defendants Smine Cleaners and Divya Grocery to assume responsibility, jointly and severally, for operating and maintaining the vapor mitigation system presently operated and maintained by the Department at mounting public expense, as required by law;

d. Assessing civil penalties against Defendants Smine Cleaners and Divya Grocery pursuant to N.J.S.A. 58:10B-13.d for their violations of the above-cited remediation requirements of N.J.S.A. 58:10B-13 and applicable Department regulations;

e. Awarding Plaintiffs their costs of investigating the discharge of hazardous substances on the Property and emanating from the Property, and their costs of preparing and litigating this action, together with interest, to the full extent allowed by law;

f. Granting Plaintiffs such other relief as this Court deems just, equitable and appropriate; and

g. Reserving the State of New Jersey's right to bring a claim in the future for natural resource damages arising out of the discharges of hazardous substances on the Property.

COUNT IV

Unjust Enrichment and Restitution

(All Defendants)

129. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1 through 128 of the Complaint as though fully set forth herein.

130. As a result of Defendant Bemar's failure to comply with the Department's Spill Act Directive, and the failure of Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane

Does 1-10 to comply with their remediation obligations under N.J.S.A. 58:10B-1.3, N.J.S.A. 58:10B-13, N.J.S.A. 58:10C-27, and the Department's applicable regulations, Plaintiffs have conducted remediation of the Contaminated Property using public funds and at great public expense, and continue to conduct said remediation, to protect public health, safety and the environment.

131. Plaintiffs' publicly funded remediation of the Contaminated Property, including the Department's installation, maintenance, and operation of the vapor mitigation system servicing the Property, has inured to the financial benefit of Defendant Bemar, enabling it to obtain a certificate of occupancy from Livingston Township, continue leasing the Property to commercial tenants, and reap a continuing stream of revenues, income, and profits that Bemar would not otherwise enjoy.

132. Plaintiffs' publicly funded remediation of the Contaminated Property has restored the Property and enhanced its economic value.

133. The restoration and enhanced value of Bemar's Property as a result of Plaintiffs' publicly funded remediation would result in a windfall to Bemar if Bemar were to sell the Property to a third party without having reimbursed the State for its remediation costs.

134. Defendant Bemar has been unjustly enriched by virtue of Plaintiffs' publicly funded remediation of the Contaminated Property.

135. Because Defendant Bemar has been unjustly enriched by Plaintiffs' publicly funded remediation of the Property, Bemar is required by law and in equity to make restitution to Plaintiffs for all costs incurred by the State to remediate the Contaminated Property.

136. Defendants Smine Cleaners and Divya Grocery, lessees occupying the Property, were required by law to operate and maintain the vapor mitigation system servicing the Property, to obtain a remedial action permit for its operation, maintenance, and monitoring, and to comply with applicable remedial action permit regulations, and they have failed to do so.

137. The Department's continued operation and maintenance of the vapor mitigation system, the obligation of Defendants Smine Cleaners and Divya Grocery by law, has inured to the financial benefit of Smine Cleaners and Divya Grocery, enabling them to continue leasing and operating their commercial businesses on the Property, and to reap a continuing stream of revenues, income and profits, which they would not otherwise enjoy.

138. Defendants Smine Cleaners and Divya Grocery have been unjustly enriched by virtue of the Department's installation,

maintenance, and operation of the vapor mitigation system at public expense.

139. Because Defendants Smine Cleaners and Divya Grocery have been unjustly enriched, they are required by law and in equity to make restitution to Plaintiffs for all costs incurred by the State to install, maintain, and operate the vapor mitigation system on the Property.

140. Plaintiffs' expenditure of public funds for the remediation of the Contaminated Property has also unjustly enriched Defendants John Nakashian, XYZ Corporations 1-10 and John and Jane Does 1-1, who were legally obligated to fund or perform the remediation. Because they have been unjustly enriched, they are required by law and in equity to make restitution to Plaintiffs for all costs incurred by the State to remediate the Contaminated Property.

WHEREFORE, Plaintiffs pray that this Court enter judgment in favor of Plaintiffs:

a. Finding that Defendants Bemar, John Nakashian, Smine Cleaners, Divya Grocery, XYZ Corporations 1-10 and John and Jane Does 1-10 have been unjustly enriched by virtue of Plaintiffs' publicly-funded remediation of the Contaminated Property;

b. Ordering Defendants Bemar, John Nakashian, XYZ Corporations 1-10, and John and Jane Does 1-10 to make

restitution to Plaintiffs for all costs incurred by the State, and to be incurred by the State, for remediating the Contaminated Property, including but not limited to the Department's vapor intrusion investigation; its installation, maintenance, and operation of the vapor mitigation system servicing the Property at continuing public expense; its unknown source investigation; its site investigation; its soil removal actions; and Plaintiffs' costs of treating the Township of Livingston's PCE-contaminated Well 8;

c. Ordering Defendants Smine Cleaners and Divya Grocery to make restitution to Plaintiffs for all costs incurred by the State, and to be incurred by the State, for the installation, maintenance, and operation of the vapor mitigation system servicing the Property;

d. Ordering Defendants Bemar, Smine Cleaners, and Divya Grocery to assume responsibility, jointly and severally, for maintaining, operating, and monitoring the publicly funded vapor mitigation system servicing the Property, to apply for and obtain a remedial action permit from the Department for that purpose, and to comply with all applicable Department regulations and requirements;

e. Ordering Defendants Bemar, John Nakashian, Smine Cleaners, Divya Grocery, XYZ Corporations 1-10, and John and Jane Does 1-10 to make restitution for Plaintiffs' costs for

inspections and investigations leading to establishment of Defendants' violations of their remediation obligations under law;

f. Awarding Plaintiffs' costs of preparing and prosecuting this civil action, including reasonable attorneys' and consultants' fees, together with interest, to the full extent allowed by law;

g. Awarding Plaintiffs such other relief as this Court deems equitable, just and appropriate; and

h. Reserving the State of New Jersey's right to bring a claim in the future for natural resource damages arising out of the discharges of hazardous substances on the Property.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

DATED: 12/18/2020

By: /s/ Nielsen V. Lewis
Nielsen V. Lewis
Deputy Attorney General

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Nielsen V. Lewis, Deputy Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.

CERTIFICATION REGARDING OTHER ACTIONS AND NON-PARTIES

Pursuant to R. 4:5-1(b) (2), I certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration action, and that no other action or arbitration proceeding regarding the matter in controversy is contemplated. I further certify that I know of no non-parties who should be joined to this litigation pursuant to R. 4:28 or who are subject to joinder pursuant to R. 4:29-1(b) at this time. Plaintiffs acknowledge their continuing obligation under R. 4:5-1(b) (2) to file and serve on all other parties and with the Court an amended certification if a change in the facts stated in this certification becomes known to Plaintiffs in the course of this litigation.

CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)

Pursuant to R. 4:5-1(3), I certify that confidential personal identifiers have been redacted from the within Complaint and other documents now submitted to the Court, and will be redacted from all subsequent documents submitted to the Court in accordance with R. 1:38-7(b).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

DATED: 12/18/2020

By: /s/ Nielsen V. Lewis
Nielsen V. Lewis
Deputy Attorney General