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_____	:	SUPERIOR COURT OF NEW
NEW JERSEY DEPARTMENT OF	:	JERSEY LAW DIVISION -
ENVIRONMENTAL PROTECTION;	:	BERGEN COUNTY
and SHAWN LATOURETTE,	:	DOCKET NO.
COMMISSIONER OF NEW JERSEY	:	
DEPARTMENT OF ENVIRONMENTAL	:	<u>Civil Action</u>
PROTECTION; and THE	:	
ADMINISTRATOR OF THE NEW	:	
JERSEY SPILL COMPENSATION	:	
FUND,	:	
	:	COMPLAINT
Plaintiffs,	:	
	:	
v.	:	
	:	
ELMWOOD CLEANERS, INC.; THE	:	
ESTATE OF VINCENT BATTISTA;	:	
SALVATRICE BATTISTA;	:	
JOSEPH PUCCIO and MARIA	:	
PUCCIO; ELMWOOD PARK	:	
CLEANERS, INC.; HANS FAMILY	:	
CLEANERS CORP.; JUGOSLAV	:	
GEROSKI and MALGORZATA	:	
GEROSKI; KAZIMIERZ LEJA; IAN	:	
ENTERPRISES, LLC; "XYZ	:	
CORPORATIONS" 1-10; and "JOHN	:	
AND/OR JANE DOES" 1-10,	:	
	:	
Defendants.	:	
_____	:	

Plaintiffs the New Jersey Department of Environmental Protection ("Department"), Shawn LaTourette, Commissioner of the Department ("Commissioner"), and the Administrator of the Spill Compensation Fund ("Administrator") (collectively, "Plaintiffs"), by and through their attorney, bring this complaint against the above-named defendants, Elmwood Cleaners, Inc., the Estate of Vincent Battista, Salvatrice Battista, Joseph Puccio and Maria Puccio, Elmwood Park Cleaners, Inc., Hans Family Cleaners Corp., Jugoslav Geroski and Malgorzata Geroski, Kazimierz Leja, and Ian Enterprises, LLC (collectively, "Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action brought to remedy Defendants' noncompliance with environmental laws and regulations, which continue to expose the Elmwood Park community to pollution and other environmental and public health hazards.

2. Defendants are the current and former owners and operators of 46 Grove Street, Elmwood Park, Bergen County, New Jersey 07407, also known as Block 717, Lot 3 on the Elmwood Park Borough tax map (the "Property"). The Property is located in a predominantly residential neighborhood. For years, successive dry-cleaners operating at the Property stored and used tetrachloroethylene ("PCE"), a hazardous

substance pursuant to the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11b.

3. PCE is a hazardous substance used in dry-cleaning operations. Exposure to PCE can harm the nervous system and negatively impact visual memory, color vision, and the ability to process information. Inhalation of PCE can cause headaches, vision problems, and problems with muscle coordination. Studies have also found PCE exposure has been associated with several types of cancer including bladder cancer, non-Hodgkin lymphoma, and multiple myeloma. The United States Environmental Protection Agency ("EPA") has classified PCE as likely to be carcinogenic to humans.

4. Environmental testing conducted at the Property in December 2018 revealed concentrations of PCE that exceeded applicable standards for gas vapors in the soil below the building ("sub-slab soil gas"), indoor air, soil, and ground water. Further testing by the Department in September 2021 confirmed that concentrations of PCE in groundwater at the Property remained above those standards.

5. The Department issued a Directive and Notice to Insurers on October 28, 2021, directing Defendants Elmwood Cleaners, Inc., Joseph Puccio, Maria Puccio, Salvatrice Battista, the Estate of Vincent Battista, Hans Family Cleaners Corps., Jugoslav Geroski, Malgorzata Geroski,

Kazimierz Leja, and Ian Enterprises LLC (collectively, "Directive Defendants") to clean up and remove the hazardous substances discharged at the Property and all other areas to which any hazardous substances discharged at the Property have migrated (collectively, "Contaminated Site"). To date, the Directive Defendants have refused to comply with the Directive.

6. Directive Defendants' failure to remediate the Site in compliance with the Directive and applicable laws and regulations violates the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A. 58:10B-1 to -20, as amended by the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29, as well as the common law.

7. The community surrounding the Property has a significant minority population such that it is considered an "overburdened community" within the meaning of N.J.S.A. 13:1D-158.¹ Historically, across New Jersey, such communities

¹ "'Overburdened community' means any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency." N.J.S.A. 13:1D-158. The Contaminated Site is located within an area

have been disproportionately exposed to high-polluting facilities and the resultant threats of high levels of air, water, soil, and noise pollution, and accompanying increased negative public health impacts.

8. Residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes, and health without regard to race, language, or income. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R. 1241(b) (May 21, 2018); Environmental Justice Law, N.J.S.A. 13:1D-157 to -161.

9. The Department now seeks to compel Defendants to: (1) reimburse the Department for the public monies spent to address discharges stemming from former dry-cleaning operations at the Property; and (2) completely remediate the Contaminated Site to ensure the public and environment are protected from exposure to toxic dry-cleaning solvents that were detected in the indoor air, soil and groundwater on, and migrating from, the Contaminated Site.

THE PARTIES

10. The Department is a principal department within the Executive Branch of the State Government vested with the

of Elmwood Park, Bergen County, New Jersey that is listed as an overburdened community on the Department's website pursuant to N.J.S.A. 13:1D-159.

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 -9. The Spill Act, N.J.S.A. 58:10-23.11 to -24, empowers the Department to compel parties responsible for the discharge of hazardous substances to remediate the contamination, and recover costs incurred to remediate hazardous substances using public funds.

11. Commissioner Shawn LaTourette is the Commissioner of the Department. N.J.S.A. 58:10-23.11b. The Commissioner is vested by law with various powers and authority, including those conferred by the Department's enabling legislation, N.J.S.A. 13:1D-1 to -19.

12. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As the chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs the Department incurs, N.J.S.A. 58:10-23.11f.c. and 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.

13. The Department, the Commissioner, and the Administrator maintain their principal offices at 401 East State Street in Trenton, New Jersey.

14. Defendant Elmwood Cleaners, Inc., a/k/a Elmwood Cleaners & Tailoring ("Elmwood Cleaners & Tailoring") is a corporation organized under the laws of the State of New Jersey with a principal place of business at 46 Grove Street, Elmwood Park, NJ 07407. Elmwood Cleaners operated a dry-cleaning business at the Property from 1981 to March 18, 1997.

15. Defendant Elmwood Park Cleaners, Inc. ("Elmwood Park Cleaners") was a corporation organized under the laws of the State of New Jersey with a principal place of business at 46 Grove Street, Elmwood Park, NJ 07407. Elmwood Park Cleaners operated a dry-cleaning business at the Property from on or about March 18, 1997 to 2001.

16. Defendant Hans Family Cleaners Corp., t/a Hans Family Cleaners ("Hans Family Cleaners"), was a corporation organized under the laws of the State of New Jersey on October 21, 2001, with a principal place of business at 46 Grove Street, Elmwood Park, NJ 07407. Hans Family Cleaners operated a dry-cleaning business at the Property from 2001 to 2011.

17. Defendant Salvatrice Battista is a natural person whose last known address is 417 Flaker Drive, Wyckoff, NJ 07481.

18. Defendant the Estate of Vincent Battista is the Estate of Vincent Battista, who is deceased. Prior to his death, Vincent Battista was married to Salvatrice Battista

and, upon information and belief, also resided at 417 Flaker Drive, Wykoff. Defendants Salvatrice Battista and the Estate of Vincent Battista are collectively referred to as "the Battistas."

19. Vincent Battista was the President and only officer of Defendant Elmwood Cleaners & Tailoring and, along with Joseph Puccio, owned the company. The Battistas owned the Property as individuals, along with defendants Joseph and Maria Puccio from May 8, 1981, to April 16, 2001.

20. Defendants Joseph Puccio and Maria Puccio (the "Puccios") are natural persons whose last known address is 46 Hardwick Lane, Wayne, NJ 07470. Joseph Puccio owned Defendant Elmwood Cleaners & Tailoring with Vincent Battista. The Puccios owned the Property as individuals along with Defendants the Battistas from May 8, 1981, to April 16, 2001.

21. Defendants Jugoslav Geroski and Malgorzata Geroski (the "Geroskis") are natural persons whose last known address is 420 East 54th Street, Elmwood Park, NJ 07407. The Geroskis owned the Property with Defendant Kazimierz Leja from April 16, 2001, to January 31, 2020.

22. Defendant Kazimierz Leja is a natural person whose last known address is 151 Rutherford Boulevard, Clifton, NJ 07014. Leja owned the Property with Defendants the Geroskis from April 16, 2001, to January 31, 2020.

23. Defendant Ian Enterprises, LLC ("Ian Enterprises") is a New Jersey limited liability company formed in February 2020, with its main business address at 71 Pleasant Avenue, Upper Saddle River, NJ 07458. Ian Enterprises is the current owner of the Property and has owned it since January 31, 2020.

24. ABC Corporations 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, or are otherwise related to, Defendants and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Property.

25. John and/or Jane Does 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, Defendants and/or one or more of the ABC Corporation defendants, and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Property.

GENERAL ALLEGATIONS

26. The Property is approximately 0.17 acres in size and is comprised of a two-story building that contained a dry-

cleaning business in the basement and first floor and residential units on the second floor. The residential unit on the second floor was occupied until March 2022, when the municipality revoked the building's certificate of occupancy.

27. The Department has designated the Property and the Contaminated Site (the Property and all other areas to which any hazardous substance discharged on the Property has migrated) as Site Remediation Program Interest No. 831133.

28. Right to Know surveys² from 1997 to 2001 certified by Elmwood Park Cleaners show that PCE was used and stored on the Property during the course of its operations.

29. Hans Family Cleaners also certified on multiple Right to Know Surveys submitted from 2002 to 2008 that PCE was used and stored on the Property.

30. On or about December 11 and 12, 2018, EFI Global, Inc. ("EFI Global"), an environmental consulting group hired by a potential purchaser of the Property, collected sub-slab soil gas and indoor air samples from the first floor at the Property.

31. The sub-slab soil sampling results detected PCE at 1,200 micrograms per cubic meter ("ug/m³") from the Soil Gas

² Right to Know surveys report information about the use and presence of environmental hazardous substances as required by the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 to -31.

- North ("SG-N") sampling location, more than double the Department's Residential Soil Gas Screening Levels ("R-SGSL") of 540 ug/m³, and at 980,000 ug/m³ from the Soil Gas - South ("SG-S") sampling location; over 1,800 times higher than the Department's R-SGSL of 540 ug/m³; and over 400 times higher than the Nonresidential Soil Gas Screening Levels ("NR-SGSL") of 2,400 ug/m³.

32. The indoor air sampling results detected PCE in indoor air conditions at 670 ug/m³, over 60 times higher than the Department's Residential Indoor Air Remediation Standards ("R-IARS") of 11 ug/m³ and over 14 times higher than the Nonresidential Indoor Air Remediation Standards ("NR-IARS") of 47 ug/m³.

33. On or about December 18, 2018, EFI Global collected soil and groundwater samples at the Property.

34. Analytical results for the soil samples exhibited concentrations of PCE ranging from 0.012 milligram per kilogram ("mg/kg") to 1.77 mg/kg - roughly 1.4 times to more than 200 times higher than the Department's Migration to Ground Water Soil Remedial Standard ("SRS-MGW") of 0.0086 mg/kg.

35. Analytical results for the ground water sample exhibited a concentration of PCE of 9,640 micrograms per liter

("ug/L"), well over 9,000 times higher than the Department's Groundwater Remediation Standard of 1.0 ug/L.

36. On or about January 10, 2019, Defendant Jugoslav Geroski contacted the Department and reported that PCE contamination was encountered in indoor sampling being conducted at the Property. The Department assigned case number 19-01-10-1011-01. At the time, the second-floor apartment was occupied by residential tenants.

37. On or about September 23, 2019, a Licensed Site Remediation Professional ("LSRP") retained by the Geroskis - Kevin Donlon from Applied Service Corp. - also notified the Department of the same contamination. The Department assigned case number 19-09-23-1701-50.

38. On or about December 9 and 10, 2020, in response to the reports of contamination, the Department collected sub-slab soil gas and indoor air samples in two neighboring residential buildings located at 45 Grove Street and 41 Summit Avenue, and sub-slab soil gas samples at one building located at 49 Grove Street, all of which were within 100 feet of the Property. No PCE was detected.

39. There are several neighboring and nearby properties within 100 feet of the Property at which samples have not yet been taken.

40. On or about September 20 and 21, 2021, the Department collected indoor air samples in one of the two occupied apartments located on the second floor of the Property.

41. Analytical results for the indoor air samples exhibited concentrations of PCE at a concentration of 76 ug/m³, almost seven times higher than the Department's R-IARS of 11 ug/m³ and just over 1.6 times higher than the NR-IARS of 47 ug/m³.

42. Short-term exposure to high levels of PCE can cause central nervous system effects such as headaches, dizziness, sleepiness, lack of coordination, or effects on vision, hearing, and balance.

43. Long-term exposure to PCE can affect the central nervous system, kidney, liver, immune system, male reproductive system, or a developing fetus.

44. Because of the findings of EFI Global and the Department, the Department issued the Directive to Elmwood Cleaners & Tailoring, the Battistas, the Puccios, Hans Family Cleaners, the Geroskis, Leja, and Ian Enterprises ("Directive Defendants") on or about October 28, 2021.

45. The Directive required the Directive Defendants to clean up and remove the hazardous substances discharged at the Property; pay all applicable fees and Department oversight costs that have accrued; provide access to the

Property; provide all applicable documents concerning remediation to the Department; obtain all necessary permits; and provide the Department with copies of all insurance policies for the Property.

46. To date, other than providing access to the Property, Directive Defendants have failed to comply with the Directive.

47. Defendants have not funded or agreed to fund or perform any future remedial activities.

48. Ian Enterprises continues to own the Property.

49. On information and belief, the Property's residences are currently vacant. The Borough of Elmwood Park has placed an unsafe structure notice on the front door of the building located upon the Property declaring it unsafe for human occupancy.

50. Defendants have failed to pay annual remediation fees to the New Jersey Site Remediation & Waste Management Program.

51. As of July 18, 2022, Plaintiffs have incurred \$55,551.91 in costs.

52. Plaintiffs have used and will continue to use public funds to remediate the contamination at the Contaminated Site.

53. Defendants have failed to complete the remediation of the Contaminated Site, causing the Plaintiffs to expend public funds.

COUNT I

**Violation of the Spill Act and
the Brownfield Act (as Amended by SRRRA)**

54. Plaintiffs repeat and incorporate each of the foregoing paragraphs as though fully set forth herein.

55. Except as otherwise provided in the Spill Act, N.J.S.A. 58:10-23.11g12, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1).

56. Plaintiffs have incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Property.

57. Plaintiff Administrator has approved appropriations for the Contaminated Site.

58. The costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

59. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

60. The Battistas, as the owners of the Property at the time hazardous substances were discharged there, are dischargers of hazardous substances and/or persons in any way responsible for the discharges of hazardous substances at the Property and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

61. The Puccios, as the owners of the Property at the times hazardous substances were discharged there, are dischargers of hazardous substances and/or persons in any way responsible for the discharges of hazardous substances at the Property and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

62. The Geroskis, as the owners of the Property at the times hazardous substances were discharged there, are dischargers of hazardous substances and/or persons in any way responsible for the discharges of hazardous substances at the

Property and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

63. Leja, as the owner of the Property at the times hazardous substances were discharged there, is a discharger of hazardous substances and/or a person in any way responsible for the discharges of hazardous substances at the Property and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

64. Elmwood Cleaners & Tailoring, as the operator of a dry-cleaning operation at the Property at the time hazardous substances were discharged there, is a discharger and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

65. Elmwood Park Cleaners, as the operator of a dry-cleaning operation at the Property at the time hazardous

substances were discharged there, is a discharger and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

66. Hans Family Cleaners, as the operator of a dry-cleaning operation at the Property at the time hazardous substances were discharged there, is a discharger and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

67. Ian Enterprises, as the current owner of the Property who knew or should have known that the Property was contaminated when it was purchased and/or person in any way responsible for the discharges of hazardous substances at the Property, and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

68. By failing to comply with the Department's Directive, Directive Defendants are strictly liable, jointly and severally, without regard to fault, in an amount up to three times the cleanup and removal costs that Plaintiffs have incurred, and will incur in the future, to remediate the hazardous substances discharged at the Property. N.J.S.A. 58:10-23.11f.a.(1).

69. Pursuant to N.J.S.A. 58:10-23.11u.d, Defendants also are subject, upon order of the court, to a civil penalty of up to \$50,000 per day for their failure to remediate the Contaminated Site. Each day the violation continues is a separate and distinct violation.

70. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., the Department may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup, and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); and for any other unreimbursed costs the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

71. Pursuant to N.J.S.A. 58:10-23.11q., the Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs paid from the Spill Fund.

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

73. As amended by SRRA, the Brownfield Act provides in part that a discharger for 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.]

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

75. As persons liable under the Spill Act, Defendants, pursuant to N.J.S.A. 58:10B-1.3.a of the Brownfield Act, have affirmative obligations, jointly and severally, to remediate the hazardous substances discharged at the Property.

76. 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.

WHEREFORE, Plaintiffs request judgment in their favor:

a. Ordering Defendants to reimburse Plaintiffs, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred as a result of the discharge of hazardous substances at the Property, with applicable interest;

b. Ordering Defendants to reimburse the Department and the Administrator, without regard to fault, in an amount equal to three times all cleanup and removal costs the Department and the Administrator have incurred as a result of the discharge of hazardous substances at the Property, with applicable interest;

c. Finding Defendants liable, without regard to fault, for all cleanup and removal costs Plaintiffs will incur as a result of the discharge of hazardous substances at the Property;

d. Finding Directive Defendants liable, without regard to fault, in an amount equal to three times all cleanup and removal costs Plaintiffs will incur as a result of the discharge of hazardous substances at or to the Property;

e. Ordering Defendants to perform any further cleanup of hazardous substances discharged at the Property in conformance with SRRA, the Brownfield Act, and all other applicable laws and regulations;

- f. Assessing civil penalties as provided by N.J.S.A. 58:10- 23.11u against each Defendant for their failure to remediate the Contaminated Site;
- g. Awarding Plaintiffs their costs and fees in this action;
- h. Awarding Plaintiffs overdue annual remediation fees;
- i. Ordering Defendants to establish and maintain a remediation funding source in the form of a line of credit, surety bond, insurance policy, letter of credit, or remediation trust fund pursuant to N.J.A.C. 7:26C-5 in the amount determined by a cost review pursuant to N.J.A.C. 7:26C-5.10 for the full cost of remediation of the Contaminated Site;
- j. Ordering Directive Defendants to install a sub-slab depressurization system at the Property;
- k. Awarding Plaintiffs any other relief this Court deems appropriate; and
- l. Reserving Plaintiffs' right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

COUNT II

Unjust Enrichment

77. Plaintiffs repeat and incorporate each of the foregoing Paragraphs as though fully set forth herein.

78. Defendants have failed to fully perform or fully fund the remediation required to address the contamination at the Contaminated Site.

79. Plaintiffs have used and will continue to use public funds to remediate the contamination at the Contaminated Site.

80. Plaintiffs' use of public funds for the investigation and remediation of the Contaminated Site, which otherwise would be Defendants' obligation to fully fund or perform, has unjustly enriched Defendants.

81. Defendants have failed to complete the remediation of the Contaminated Site, causing the Plaintiffs to expend public funds. Therefore, Defendants are required by law and by equity to reimburse Plaintiffs accordingly.

WHEREFORE, Plaintiffs request judgment in their favor:

- a. Finding that the Defendants have been unjustly enriched by the Plaintiffs' expenditure of public funds to remediate the Contaminated Site;
- b. Ordering Defendants to reimburse Plaintiffs for costs Plaintiffs have incurred, and will incur, to remediate the Contaminated Site, with applicable interest;

c. Finding Defendants liable for all other compensatory and consequential damages;

d. Awarding the Plaintiffs such other relief as this Court deems appropriate; and

e. Reserving Plaintiffs' right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

COUNT III

Negligence

82. Plaintiffs repeat each allegation of the foregoing Paragraphs as though fully set forth herein.

83. Defendants owed a duty to all persons foreseeably injured by their conduct, including the Plaintiffs and the public at large, to refrain from discharging hazardous substances and pollutants at the Property, or otherwise creating an unreasonable risk of harm to foreseeable persons that might be injured or otherwise adversely affected by the discharge of hazardous substances and pollutants at the Property.

84. Defendants owed a further duty to all persons foreseeably injured by their conduct, including the Plaintiffs and the public at large, to remediate any discharge of hazardous substances and pollutants at the Property and otherwise take appropriate actions to protect foreseeably

injured persons from being adversely affected by the discharge of hazardous substances and pollutants at the Property.

85. Defendants and/or their predecessors, by illegally and/or improperly discharging hazardous substances and pollutants at the Property and/or failing to take due care to prevent harm to foreseeably injured persons as a result of the illegal and/or improperly discharged hazardous substances and pollutants at the Property, breached their duty to the Plaintiffs and the public at large.

86. Defendants and/or their predecessors, by failing to remediate the discharge of hazardous substances and pollutants at the Property, and otherwise failing to take due care to prevent harm to persons foreseeably injured as a result of the discharge of hazardous substances and pollutants at the Property, breached their duty to the Plaintiffs and the public.

87. Defendants and/or their predecessors' breach of their duty to refrain from discharging hazardous substances and pollutants at the Property and/or otherwise their failure to exercise due care to prevent harm to foreseeably injured persons at the Contaminated Site, created an unreasonable risk of contaminating the groundwater underneath, and in the vicinity of, the Contaminated Site, created a public health

risk for nearby communities who utilize the groundwater as a drinking water source, and otherwise permitted an undue risk of harm to Plaintiffs and the public at large, resulting in injury to the Plaintiffs.

88. As a result of Defendants' negligence, and/or the negligence of the Defendants' predecessors at the Property, the Plaintiffs have incurred costs, and may continue to incur costs, at the Contaminated Site, all of which were proximately caused by the Defendants and/or the Defendants' predecessors at the Property.

WHEREFORE, Plaintiffs demand judgment in their favor:

- a. Ordering Defendants to reimburse the Plaintiffs, without regard to fault, jointly and severally, for all cleanup and removal costs the Department and the Administrator have incurred for the remediation of the Contaminated Site, with applicable interest;
- b. Finding Defendants liable for any cleanup and removal costs and damages the Plaintiffs will incur for the remediation of the Contaminated Site;
- c. Ordering Defendants to complete the remediation in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 to -31, and all other applicable laws and regulations;

- d. Awarding the Plaintiffs their costs and fees in this action;
- e. Awarding the Plaintiffs any other relief this court deems appropriate; and
- f. Reserving the right to bring a claim in the future for natural resource damages arising out of the hazardous substances existing at the Contaminated Site.

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW
JERSEY

By: /s/Zachary Lawrence
Zachary Lawrence
Deputy Attorney General

Dated: August 24, 2022

DESIGNATION OF TRIAL COUNSEL

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

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

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW
JERSEY

By: /s/Zachary Lawrence
Zachary Lawrence
Deputy Attorney General

Dated: August 24, 2022

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel certifies that the matters in controversy in this action are currently not the subject of any other pending action in any court or arbitration proceeding known to Plaintiffs at this time, nor is any non-party known to Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such matter or non-party later becomes known to Plaintiffs, an amended certification will be filed and served upon all other parties and filed with this Court in accordance with R. 4:5- 1(b) (2).

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW
JERSEY

By: /s/Zachary Lawrence
Zachary Lawrence
Deputy Attorney General

Dated: August 24, 2022