

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JUAN DUARTE and BETSY DUARTE, on
behalf of Themselves and all others Similarly
Situated,

Plaintiffs,

v.

UNITED STATES METALS REFINING
COMPANY; FREEPORT MINERALS
CORPORATION, FREEPORT McMORAN,
INC. and AMAX REALTY DEVELOPMENT,
INC.,

Defendants.

Civil Action No.: 2:17-cv-01624 (ES)(SCM)

FIFTH AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiffs, by their attorneys, German Rubenstein LLP, The Lanier Law Firm, Vlasac & Shmaruk LLC and Nidel & Nace PLLC, bring this Civil Action on their own behalf and on behalf of the Class they seek to represent, to obtain damages, both compensatory and punitive, injunctive relief, and costs of suit from the named Defendants, and complain and allege, in this Class Action Complaint, as follows:

I. INTRODUCTION

1. This is a Civil Action to secure redress from the Defendants for damages suffered by Plaintiffs as a result of the Defendants' respective wrongful emission, release, discharge, handling, storage, transportation, processing, disposal and/or failure to remediate toxic and hazardous waste, which was generated as a by-product of their respective smelting, processing, refining, casting, production and recovery operations in Carteret, New Jersey, and/or their failure

to test, identify, disclose, remove and/or properly remediate contamination and toxic substances related to such operations from Plaintiffs' properties, as described herein.

2. Plaintiffs and their properties have been exposed to toxic and hazardous substances released as a result of Defendants' conduct, as detailed below, associated with their respective operations of a smelter located on Middlesex Avenue in the Borough of Carteret, Middlesex County, New Jersey (the "Smelter") and/or the deficient testing and remediation of Smelter Contaminants, as described below.

3. Defendants, respectively, processed, created, refined, generated, emitted, released, discharged, handled, stored, transported, disposed and failed to properly test for, disclose the presence of, and/or remediate large quantities of toxic and hazardous materials including arsenic, benzene, cadmium, chromium, copper, dioxins, furans, iron, lead, nickel, selenium, tellurium, tin, zinc and other toxic metals, volatile organic compounds ("VOCs") and materials (collectively, "Smelter Contaminants").

4. These toxic and hazardous materials scattered through the atmosphere so that Plaintiffs, Class Members, and their properties in Carteret were, and continue to be, exposed to toxic and hazardous materials from the Smelter.

5. Beginning in approximately the 2016-17 timeframe Defendants notified Plaintiffs and residents living in the proposed Class Area, for the first time, that soil at residential properties surrounding the Smelter may contain lead, arsenic and/or copper associated with Smelter operations at concentrations above safe levels, requiring excavation and removal. Prior to this time, Plaintiffs were unaware, and had no basis to be aware, of the existence of lead,

arsenic and copper or any other Smelter Contaminants and for the need for this contamination to be excavated and removed from their properties.

6. The Smelter Contaminants have been and continue to be a source of hazardous substance exposures on and within Plaintiffs' properties and persons in Carteret.

7. Wind, erosion, fugitive emissions and other airborne and human releases of the Smelter Contaminants have caused these toxic and hazardous substances to spread within Carteret. The toxic and hazardous substances were, and continue to be, transported by wind, atmospheric deposition, and other natural and human processes onto and into Plaintiffs' homes, properties, and persons.

8. Large amounts of Smelter Contaminants remain today in Carteret and the full nature and extent of the contamination has not been adequately delineated by the Defendants.

9. The presence of Smelter Contaminants presently impacts Plaintiffs, causes a diminution in their property values, is a blight on Plaintiffs' community, causes annoyance and inconvenience and deprives Plaintiffs of their free use and enjoyment of their property, including, but not limited to, the inability to fully use, enjoy and recreate on their outdoor spaces, freely perform certain work and repairs on their property; and requires that their property be dug up, excavated (while being contained) and otherwise disrupted, causing unreasonable and significant inconvenience and disturbance. Plaintiffs additionally suffer fear of adverse health effects, including cancer and other serious illness, including childhood mental, physical, developmental, and cognitive harms and other serious health issues, as a result of the presence of Smelter Contaminants on their properties.

10. Despite their knowledge of the dangers associated with their past and ongoing conduct, all Defendants failed to properly determine the true nature and extent of the Smelter Contaminants within the community or to provide Plaintiffs with proper notice or warning of the true nature and extent of these toxic substances.

11. All Defendants failed to disclose the full extent of their historic operations in Carteret and did not fully delineate the extent of the contamination in the Class Area.

12. Because all Defendants concealed the dangers associated with and attendant to, their conduct, Plaintiffs did not know, nor could they have known, of the presence, nature, and extent of Smelter Contaminants.

13. Defendants' concealment of these dangers and resulting contamination of the community continues to this day.

14. All Defendants have actively engaged in a campaign of concealment and misinformation concerning the nature and extent of the hazard posed by these contaminants and have failed to timely warn the Carteret community concerning same, such that reasonable members of the Community would be unaware of the presence, nature and extent of Smelter Contaminants.

II. PARTIES

Plaintiffs

15. Plaintiffs Juan Duarte and Betsy Duarte are residents of Carteret, New Jersey. Plaintiffs Juan Duarte and Betsy Duarte own the residential property located at 3-A Salem Avenue, Carteret, New Jersey. As a result of the actions of the Defendants, toxic and hazardous substances have entered onto their property, have contaminated their property, air, land, dwelling

and surrounding environment, thereby causing Plaintiffs Juan Duarte and Betsy Duarte to suffer damage to their property and personal finance, loss of the use and enjoyment of their residence, unreasonable and substantial annoyance and inconvenience, including, but not limited to, the inability to fully use, enjoy and recreate on their outdoor spaces; freely perform certain work and repairs on their property; and requiring their property to be dug up, excavated and otherwise disrupted causing inconvenience and disruption. Plaintiffs additionally suffer fear of adverse health effects, including cancer and other serious illness affecting themselves and their infant child, N.D.

16. More than two-thirds of the members of the proposed Class are citizens of the State of New Jersey.

17. No other class action asserting the same or similar factual allegations against any of the defendants has been filed within three years prior to the present action.

Defendants

United States Metals Refining Company (“USMR”) is Directly Liable to Plaintiffs for Its Release of Smelter Contaminants onto Plaintiffs’ Properties Across the Class Area

18. Defendant United States Metals refining Company (“USMR”) is directly liable to Plaintiffs for its release, including the airborne release, of Smelter Contaminants onto Plaintiffs’ properties across the Class Area during its years of operations.

19. USMR is a Delaware corporation with its principal place of business located in New Jersey.

20. USMR owns or formerly owned certain property located at, or around, 300-400 Middlesex Avenue in the Borough of Carteret, Middlesex County, New Jersey, (the “Site”) on

which USMR operated an industrial plant engaged in, *inter alia*, primary and secondary copper smelting and metals refining from the early 1900s to approximately 1991 (the "Smelter" or the "USMR Smelter").

21. During its operations USMR created, generated, emitted, discharged, handled, disposed, stored, stockpiled, transported, and/or released Smelter Contaminants into the Class Area, including via stack, fugitive, and other emissions and releases. As a result of these releases, Smelter Contaminants entered onto Plaintiffs' and the Class Members' properties.

22. USMR processed various metal components to recover copper and precious metals, including telephone and electronic scrap, automotive parts, electric motors, and radiators.

23. USMR failed to use proper emission controls during its operations, resulting in the Smelter spewing for the enormous amounts of contaminating materials that landed across Carteret, including the Class Area.

24. By Defendants' own estimates, a minimum of 59,347 tons of lead were emitted from the Smelter to the atmosphere, and there were continuing state and county notices of violation of air quality standards.

25. Through its wrongful acts and omissions, including the airborne emission, release, and discharge of Smelter Contaminants, USMR caused Smelter Contaminants to enter onto Plaintiffs' and the Class Members' properties, has contaminated their property, air, land, dwelling and surrounding environment, and thereby caused Plaintiffs and the Class Members to suffer damage to their property and personal finance, loss of the use and enjoyment of their property and destruction of their community.

26. As a result of USMR's acts and omissions, Smelter Contaminants have unreasonably interfered with Plaintiffs' and the Class Members' exclusive use and enjoyment of their property and remain on their properties causing them significant harm to this day.

USMR is Directly Liable to Plaintiffs for Deficiencies in Its Testing and Remediation of Smelter Contaminants Across the Class Area

27. Defendant USMR is directly liable to Plaintiffs for its failure to properly identify, report, and remediate Smelter Contaminants in Carteret, including within the Class Area.

28. USMR was, and remains, under a duty to fully determine the full nature and extent of Smelter Contaminants emanating from the Smelter.

29. On numerous occasions NJDEP ordered USMR to fully determine the horizontal and vertical extent of pollution at and/or emanating from the site and to remediate the Smelter Contaminants. USMR has failed to do so to this day.

30. USMR has failed to identify and remove Smelter Contaminants from properties across the Class Area.

31. As a result of USMR's failure to identify and remove the Contaminants, the presence of contamination is ongoing and continuing across the Class Area.

32. Defendant USMR contracts with and directs environmental consultants, including ARCADIS, to implement a soil testing and remediation program to ostensibly identify the presence of Smelter Contaminants at properties within the Class Area, inform the owners of such properties the results of their testing, and remediate those Contaminants.

33. Defendant USMR manages and directs the environmental remediation program in Carteret, including across the Class Area.

34. Defendant USMR has failed to disclose the presence, nature, and extent of Smelter Contaminants on properties across the Class Area.

35. Defendant USMR, through its officers, directors, employees, and personnel, including Joseph A. Brunner, decided to leave Smelter Contaminants on properties across the Class Area, instead of properly remediating them, where the presence of such Contaminants is ongoing and continuing.

36. USMR's Director of Discontinued Operations, Joseph Brunner, engaged in a public outreach and mail campaign in which he reports inaccurate test results to proposed Class Members concerning the nature, extent, and severity of Smelter Contaminants on their properties.

37. USMR's Manager of External Communications, James Telle, engaged in a public outreach and mail campaign in which he reports inaccurate test results to proposed Class Members concerning the nature, extent, and severity of Smelter Contaminants on their properties, as well as the lack of necessity to remediate their properties despite the presence of Smelter Contaminants.

38. Defendant USMR has affirmatively misrepresented the true nature and extent of Smelter Contaminants by engaging in a public relations and mail campaign that misstates, misrepresents, and otherwise fails to disclose the concentrations, levels, measurements, detections, presence, nature and extent of Smelter Contaminants on Plaintiffs' and Class Area properties, instead relying on misleading averages and statistical manipulations of the testing data.

39. Based on misleading averages and statistical manipulations of testing data, including the deletion of high value detections, Defendant USMR chose to allow Smelter Contaminants to remain on properties across the Class Area, instead of removing such Contaminants which persist at harmful levels.

40. Through its wrongful acts and omissions, including its failure to properly investigate, control, curb, contain, properly identify, disclose, report, and/or properly remediate Smelter Contaminants, Defendant USMR has caused, and continues to cause, Smelter Contaminants to remain on Plaintiffs' and the Class Members' properties, have contaminated their property, air, land, dwelling and surrounding environment, and thereby caused Plaintiffs and the Class Members to suffer damage to their property and personal finance, loss of the use and enjoyment of their property and destruction of their community.

41. As a result of USMR's acts and omissions, Smelter Contaminants have unreasonably interfered and continue to unreasonably interfere with Plaintiffs' and the Class Members' exclusive use and enjoyment of their properties and remain on their properties causing them significant harm to this day.

42. Defendant USMR has failed, and/or continues to fail, to prevent the Smelter Contaminants from causing harm, or threatened harm, to the health, safety, and welfare of Plaintiffs and the Class members, as well as their use and enjoyment of their properties.

Amax Realty Development, Inc. ("Amax") is Directly Liable to Plaintiffs for Its Release of Smelter Contaminants onto Plaintiffs' Properties Across the Class Area

43. Defendant Amax Realty Development, Inc. ("Amax") is a Delaware Corporation, with its principal place of business at 300 Middlesex Avenue, Carteret, New Jersey.

44. Defendant Amax owned or operated a portion of the Site during which time Smelter Contaminants were created, generated, disposed, emitted, discharged, handled, stored, stockpiled, and/or transported, and thereby released into the Class Area.

45. Defendant Amax is directly liable to Plaintiffs for its release, including the airborne release, of Smelter Contaminants onto Plaintiffs' properties across the Class Area during its years of operations.

46. During its operations, Amax created, generated, emitted, discharged, handled, disposed, stored, stockpiled, transported, and/or released Smelter Contaminants into the Class Area, including via stack, fugitive, and other emissions and releases.

47. Amax processed various metal components to recover copper and precious metals, including telephone and electronic scrap, automotive parts, electric motors, and radiators.

48. Amax failed to use proper emission controls during its operations, resulting in the Smelter spewing for the enormous amounts of contaminating materials that landed across Carteret, including the Class Area.

49. By Defendants' own estimates, a minimum of 59,347 tons of lead were emitted from the Smelter to the atmosphere, and there were continuing state and county notices of violation of air quality standards.

50. Through its wrongful acts and omissions, including the airborne emission, release, and discharge of Smelter Contaminants, Amax caused Smelter Contaminants to enter onto Plaintiffs' and the Class Members' properties, has contaminated their property, air, land, dwelling and surrounding environment, and thereby caused Plaintiffs and the Class Members to suffer damage to their property and personal finance, loss of the use and enjoyment of their

property and destruction of their community. As a result of Amax's acts and omissions, Smelter Contaminants have unreasonably interfered with Plaintiffs' and the Class Members' exclusive use and enjoyment of their property and remain on their properties causing them significant harm to this day.

Amax is Directly Liable to Plaintiffs for Deficiencies in Its Testing and Remediation of Smelter Contaminants Across the Class Area

51. Defendant Amax is directly liable to Plaintiffs for its failure to properly identify and remediate Smelter-related Contaminants in Carteret, including within the Class Area.

52. Amax was, and remains, under a duty to fully determine the full nature and extent of Smelter Contaminants emanating from the Smelter.

53. On numerous occasions NJDEP ordered Amax to fully determine the horizontal and vertical extent of pollution at and/or emanating from the site and to remediate the Smelter Contaminants. Amax has failed to do so to this day.

54. Amax has failed to identify and remove Smelter Contaminants from properties across the Class Area.

55. As a result of Amax's failure to identify and remove the Contaminants, the presence of contamination is ongoing and continuing across the Class Area.

56. Defendant Amax has failed to disclose the presence, nature, and extent of Smelter Contaminants on properties across the Class Area.

57. Defendant Amax, through its officers, directors, employees, and personnel, including Joseph A. Brunner, decided to leave Smelter Contaminants on properties across the Class Area, instead of properly remediating them, where the presence of such Contaminants is ongoing and continuing.

58. Amax's Director of Discontinued Operations, Joseph Brunner, engaged in a public outreach and mail campaign in which he reports inaccurate test results to proposed Class Members concerning the nature, extent, and severity of Smelter Contaminants on their properties.

59. Amax's Manager of External Communications, James Telle, engaged in a public outreach and mail campaign in which he reports inaccurate test results to proposed Class Members concerning the nature, extent, and severity of Smelter Contaminants on their properties, as well as the lack of necessity to remediate their properties despite the presence of Smelter Contaminants.

60. Defendant Amax has affirmatively misrepresented the true nature and extent of Smelter Contaminants by engaging in a public relations and mail campaign that misstates, misrepresents, and otherwise fails to disclose the concentrations, levels, measurements, detections, presence, nature and extent of Smelter Contaminants on Plaintiffs' and Class Area properties, instead relying on misleading averages and statistical manipulations of the testing data.

61. Based on misleading averages and statistical manipulations of testing data, including the deletion of high value detections, Defendant Amax chose to allow Smelter Contaminants to remain on properties across the Class Area, instead of removing such Contaminants which persist at harmful levels.

62. Through its wrongful acts and omissions, including its failure to properly investigate, control, curb, contain, properly identify, disclose, report, and/or properly remediate Smelter Contaminants, Defendant Amax has caused, and continues to cause, Smelter

Contaminants to remain on Plaintiffs' and the Class Members' properties, have contaminated their property, air, land, dwelling and surrounding environment, and thereby caused Plaintiffs and the Class Members to suffer damage to their property and personal finance, loss of the use and enjoyment of their property and destruction of their community.

63. As a result of Amax's acts and omissions, Smelter Contaminants have unreasonably interfered and continue to unreasonably interfere with Plaintiffs' and the Class Members' exclusive use and enjoyment of their properties and remain on their properties causing them significant harm to this day.

64. Defendant Amax has failed, and/or continues to fail, to prevent the Smelter Contaminants from causing harm, or threatened harm, to the health, safety, and welfare of Plaintiffs and the Class members, as well as their use and enjoyment of their properties.

Freeport Minerals Corporation ("Minerals") is Directly Liable to Plaintiffs for Deficiencies in Its Testing and Remediation of Smelter Contaminants Across the Class Area

65. Defendant Freeport Minerals Corporation ("Minerals") is a Delaware corporation with its principal place of business located at 333 N. Central Ave., Phoenix, Arizona 85004.

66. Defendant Minerals is directly liable to Plaintiffs for its failure to properly identify and remediate Smelter Contaminants in Carteret, including within the Class Area.

67. Minerals was, and remains, under a duty to fully determine the full nature and extent of Smelter Contaminants emanating from the Smelter.

68. On numerous occasions NJDEP ordered Minerals to fully determine the horizontal and vertical extent of pollution at and/or emanating from the site and to remediate the Smelter Contaminants. Minerals has failed to do so to this day.

69. Minerals has failed to identify and remove Smelter Contaminants from properties across the Class Area.

70. As a result of Minerals' failure to identify and remove the Contaminants, the presence of contamination is ongoing and continuing across the Class Area.

71. Defendant Minerals contracts with and directs environmental consultants, including ARCADIS, to implement a soil testing and remediation program to ostensibly identify the presence of Smelter Contaminants at properties within the Class Area, inform the owners of such properties the results of their testing, and remediate those contaminants.

72. Defendant Minerals provides technical services to USMR, including environmental remediation services, in connection with Smelter Contaminants on properties across the Class Area.

73. Defendant Minerals provides staff and personnel to USMR, including environmental remediation staff and personnel, in connection with Smelter Contaminants on properties across the Class Area.

74. Upon information and belief Joseph A. Brunner is an employee of Defendant Minerals.

75. Joseph A. Brunner is the project manager for the environmental remediation of Smelter contaminants in Carteret, including within the Class Area.

76. Joseph A. Brunner is involved in the decision-making process concerning environmental remediation of Smelter Contaminants in Carteret, including within the Class Area.

77. Joseph A. Brunner directs the work of environmental consultants in connection with the environmental remediation of Smelter Contaminants in Carteret, including within the Class Area.

78. Defendant Minerals manages and directs the environmental remediation program in Carteret, including across the Class Area.

79. Defendant Minerals has entered into and signed, contracts in connection with the environmental testing, investigation, and remediation of Smelter Contaminants in Carteret, including within the Class Area.

80. Defendant Minerals has paid expenses in connection with the environmental testing, investigation, and remediation of Smelter Contaminants in Carteret, including within the Class Area.

81. Defendant Minerals individually, and together with USMR and Amax, has failed to disclose the presence, nature, and extent of Smelter Contaminants on properties across the Class Area.

82. Defendant Minerals, through its officers, directors, employees, and personnel, including Joseph A. Brunner, decided to leave Smelter Contaminants on properties across the Class Area, instead of properly remediating them, where the presence of such Contaminants is ongoing and continuing.

83. Minerals' Director of Discontinued Operations, Joseph Brunner, engaged in a public outreach and mail campaign in which he reports inaccurate test results to proposed Class Members concerning the nature, extent, and severity of Smelter Contaminants on their properties.

84. Minerals' Manager of External Communications, James Telle, engaged in a public outreach and mail campaign in which he reports inaccurate test results to proposed Class Members concerning the nature, extent, and severity of Smelter Contaminants on their properties, as well as the lack of necessity to remediate their properties despite the presence of Smelter Contaminants.

85. Minerals' Vice President and Chief Sustainability Officer, William Cobb, has responsibility for environmental compliance, discontinued operations management, and remediation of historic environmental liabilities, including Smelter-related cleanup. Mr. Brunner reports to Mr. Cobb, who has decision-making authority in connection with the remediation of Smelter Contaminants in Carteret, and across the Class Area.

86. Defendant Minerals, individually, and together with USMR and Amax, has affirmatively misrepresented the true nature and extent of Smelter Contaminants by engaging in a public relations and mail campaign that misstates, misrepresents, and otherwise fails to disclose the concentrations, levels, measurements, detections, nature and extent of Smelter Contaminants on Plaintiffs' and Class Area properties, instead relying on misleading averages and statistical manipulations of the testing data.

87. Based on misleading averages and statistical manipulations of testing data, including the deletion of high value detections, Defendant Minerals chose to allow Smelter Contaminants to remain on properties across the Class Area, instead of removing such Contaminants, which persist at harmful levels.

88. Through its wrongful acts and omissions, including its failure to properly control, curb, contain, properly identify, disclose, report, and/or properly remediate Smelter

Contaminants, Defendant Minerals has caused, and continues to cause, Smelter Contaminants to remain on Plaintiffs' and the Class Members' properties, has contaminated their property, air, land, dwelling and surrounding environment, and thereby caused Plaintiffs and the Class Members to suffer damage to their property and personal finance, loss of the use and enjoyment of their property and destruction of their community.

89. As a result of Minerals' acts and omissions, Smelter Contaminants have unreasonably interfered and continue to unreasonably interfere with Plaintiffs' and the Class Members' exclusive use and enjoyment of their properties and remain on their properties causing them significant harm to this day.

90. Defendant Minerals has failed, and/or continues to fail, to prevent the Smelter Contaminants from causing harm, or threatened harm, to the health, safety, and welfare of Plaintiffs and the Class members, as well as their use and enjoyment of their properties.

91. Through its wrongful acts and omissions, including its failure to properly control, curb, contain, properly identify, disclose, report, and/or properly remediate Smelter Contaminants, Defendant Minerals has caused, and continues to cause, Smelter Contaminants to remain on Plaintiffs' and the Class Members' properties, have contaminated their property, air, land, dwelling and surrounding environment, and thereby caused Plaintiffs and the Class Members to suffer damage to their property and personal finance, loss of the use and enjoyment of their property and destruction of their community.

92. Defendant USMR is a wholly owned subsidiary of Defendant Minerals.

93. Defendant Minerals actively performs, directs, or causes to be performed, individually and through its corporate personnel, affiliates and subsidiaries, all cleanup and

remediation obligations of Defendants USMR and Amax related to the Smelter and, through its actions, as described above, accepts responsibility for all cleanup and remediation associated with the historic operation of the Smelter and its contamination in Carteret and across the Class Area.

Freeport McMoRan, Inc. (“McMoRan”) is Directly Liable to Plaintiffs for Deficiencies in Its Testing and Remediation of Smelter-Related Contaminants Across the Class Area

94. Defendant Freeport McMoRan, Inc. (“McMoRan”) is a Delaware corporation with its principal place of business located at 333 N. Central Ave., Phoenix, Arizona 85004.

95. Defendant McMoRan is directly liable to Plaintiffs for its failure to properly identify and remediate Smelter-related Contaminants in Carteret, including within the Class Area.

96. McMoRan was, and remains, under a duty to fully determine the full nature and extent of Smelter Contaminants emanating from the Smelter.

97. On numerous occasions NJDEP ordered McMoRan to fully determine the horizontal and vertical extent of pollution at and/or emanating from the site and to remediate the Smelter Contaminants. McMoRan has failed to do so to this day.

98. McMoRan has failed to identify and remove Smelter Contaminants from properties across the Class Area.

99. As a result of McMoRan’s failure to remove the Contaminants, the presence of contamination is ongoing and continuing across the Class Area.

100. Upon information and belief Joseph A. Brunner is an employee of Defendant McMoRan and, specifically, the Director of Discontinued Operations at Freeport McMoRan, Inc.

101. Joseph A. Brunner is the project manager for the environmental remediation of Smelter Contaminants in Carteret, including within the Class Area.

102. Joseph A. Brunner is involved in the decision-making process concerning environmental remediation of Smelter Contaminants in Carteret, including within the Class Area.

103. Joseph A. Brunner directs the work of environmental consultants in connection with the environmental remediation of Smelter Contaminants in Carteret, including within the Class Area.

104. Defendant McMoRan, through its officers, directors, employees, and personnel, including Joseph A. Brunner, decided to leave Smelter Contaminants on properties across the Class Area, instead of properly remediating them, where the presence of such Contaminants is ongoing and continuing.

105. Defendant McMoRan manages and directs the environmental remediation program in Carteret, including across the Class Area.

106. Defendant McMoRan has entered into and signed, contracts in connection with the environmental testing, investigation, and remediation of Smelter Contaminants in Carteret, including within the Class Area.

107. Defendant McMoRan has paid expenses in connection with the environmental testing, investigation, and remediation of Smelter Contaminants in Carteret, including within the Class Area.

108. Defendant McMoRan has entered insurance contracts and purchased insurance in connection with the environmental testing, investigation, and remediation of Smelter Contaminants in Carteret, including within the Class Area.

109. Defendant McMoRan has been named as an additional insured on insurance contracts in connection with the environmental testing, investigation, and remediation of Smelter Contaminants in Carteret, including within the Class Area.

110. Defendant McMoRan has failed to identify and remove Smelter Contaminants from properties across the Class Area, where the presence of such Contaminants is ongoing and continuing.

111. Defendant McMoRan contracts with and directs environmental consultants, including ARCADIS, to implement a soil testing and remediation program to ostensibly identify the presence of Smelter Contaminants at properties within the Class Area, inform the owners of such properties the results of their testing, and remediate those contaminants.

112. Defendant McMoRan has failed to disclose the presence of Smelter Contaminants from properties across the Class Area.

113. Defendant McMoRan has affirmatively misrepresented the true nature and extent of Smelter Contaminants by engaging in a public relations and mail campaign that misstates, misrepresents, and otherwise fails to disclose the concentrations, levels, measurements, detections, presence, nature and extent of Smelter Contaminants on Plaintiffs' and Class Area properties, instead relying on misleading averages and statistical manipulations of the testing data.

114. Based on misleading averages and statistical manipulations of testing data, including the deletion of high value detections, Defendant McMoRan chose to allow Smelter Contaminants to remain on properties across the Class Area, instead of removing such Contaminants which persist at harmful levels.

115. Defendant McMoRan has failed to disclose the accurate and true nature and extent of the presence of Smelter Contaminants on properties across the Class Area.

116. Defendant McMoRan provides technical services to USMR and Minerals, including environmental remediation services, in connection with Smelter Contaminants on properties across the Class Area.

117. Defendant McMoRan provides staff and personnel to USMR and Minerals, including environmental remediation staff and personnel, in connection with Smelter Contaminants on properties across the Class Area.

118. Defendant McMoRan has accepted responsibility for the pollution in Carteret, including a \$59 million charge for off-site impacts of its Smelter Contaminants. That pollution is causing injury to the Plaintiffs, the proposed Class Members, and their properties.

119. Defendant McMoRan has paid the costs relating to continued cleanup liabilities in Carteret.

120. Defendant McMoRan individually, and together with USMR, Amax, and Minerals, has failed to disclose the presence, nature, and extent of Smelter Contaminants on properties across the Class Area.

121. Defendant McMoRan, individually, and together with USMR, Amax, and Minerals, has affirmatively misrepresented the true nature and extent of Smelter Contaminants by engaging in a public relations and mail campaign that misstates, misrepresents, and otherwise fails to disclose the concentrations, levels, measurements, detections, presence, nature and extent of Smelter Contaminants on Plaintiffs' and Class Area properties, instead relying on misleading averages and statistical manipulations of the testing data.

122. Through its wrongful acts and omissions, including its failure to properly control, curb, contain, properly identify, disclose, report, and/or properly remediate Smelter Contaminants, Defendant McMoRan has caused, and continues to cause, Smelter Contaminants to remain on Plaintiffs' and the Class Members' properties, has contaminated their property, air, land, dwelling and surrounding environment, and thereby caused Plaintiffs and the Class Members to suffer damage to their property and personal finance, loss of the use and enjoyment of their property and destruction of their community.

123. As a result of McMorRan's acts and omissions, Smelter Contaminants have unreasonably interfered with Plaintiffs' and the Class Members' exclusive use and enjoyment of their properties and remain on their properties causing them significant harm to this day.

124. Defendant McMoRan has failed, and/or continues to fail, to prevent the Smelter Contaminants from causing harm, or threatened harm, to the health, safety, and welfare of Plaintiffs and the Class members, as well as their use and enjoyment of their properties.

125. Defendant McMoRan actively performs, directs, or causes to be performed, individually and through its corporate personnel, affiliates and subsidiaries, all cleanup and remediation obligations of Defendants USMR, Amax, and Minerals related to the Smelter and, through its actions, as described herein accepts responsibility for all cleanup and remediation associated with the Smelter.

126. Defendant McMoRan actively makes misleading public statements through its corporate personnel and affiliates to the Plaintiffs and the proposed Class Members concerning the nature and extent of contamination within the proposed Class Area. Specifically, its Director of Discontinued Operations, Joseph Brunner, engaged in a public outreach and mail campaign in

which he reports inaccurate test results to proposed Class Members concerning the nature, extent, and severity of Smelter Contaminants on their properties.

127. Defendant McMoRan actively makes misleading public statements through its corporate personnel and affiliates to the Plaintiffs and the proposed Class Members concerning the nature and extent of contamination within the proposed Class Area.

128. McMoRan's Director of Discontinued Operations, Joseph Brunner, engaged in a public outreach and mail campaign in which he reports inaccurate test results to proposed Class Members concerning the nature, extent, and severity of Smelter Contaminants on their properties.

129. McMoRan's Manager of External Communications, James Telle, engaged in a public outreach and mail campaign in which he reports inaccurate test results to proposed Class Members concerning the nature, extent, and severity of Smelter Contaminants on their properties, as well as the lack of necessity to remediate their properties despite the presence of Smelter Contaminants.

130. McMoRan's Vice President and Chief Sustainability Officer, William Cobb, has responsibility for environmental compliance, discontinued operations management, and remediation of historic environmental liabilities, including Smelter-related cleanup. Mr. Brunner reports to Mr. Cobb, who has decision-making authority in connection with the remediation of Smelter Contaminants in Carteret, and across the Class Area.

131. Upon information and belief, Defendant Amax is the successor to USMR.

132. Upon information and belief, Defendant Amax acquired USMR and all of its Smelter-related liabilities.

133. Upon information and belief, Defendant McMoRan acquired Minerals.
134. Upon information and belief, Defendant McMoRan acquired USMR.
135. Upon information and belief, Defendant McMoRan acquired Amax.
136. Upon information and belief Defendant USMR is a subsidiary of Minerals.

III. FACTUAL ALLEGATIONS

137. Plaintiffs and their properties have been exposed to hazardous substances released as a result of Defendants' USMR and Amax' operation of the Smelter, and as a result of all Defendants failure to properly identify, disclose, and remediate Smelter Contaminants, as described above

138. As detailed above, Defendants, respectively, created, generated, emitted, released, discharged, handled, stored, transported, disposed and/or failed to fully identify, test for, disclose or properly remediate Smelter Contaminants in Carteret, New Jersey, including across the Class Area.

139. These toxic and hazardous Smelter Contaminants scattered so that properties and persons in Carteret were, and continue to be, exposed to hazardous materials. Plaintiffs have been exposed to toxic and hazardous substances contained within dust, dirt, and/or other releases caused by USMR and Amax's operation of the Smelter, and as a result of all Defendants failure to properly identify, disclose, and remediate Smelter Contaminants, as described above.

140. In the 2016-17 timeframe, Defendants USMR, Amax, Minerals, and McMoRan notified Plaintiffs, for the first time, that soil at their residential properties surrounding the Smelter contain hazardous and toxic substances associated with Smelter operations in Carteret. The concentrations exist above safe levels, requiring excavation and removal. Prior to this time,

Plaintiffs were unaware, and had no basis to be aware, of the presence of these contaminants on their properties.

141. The Smelter Contaminants have been, and continue to be, a source of hazardous substance exposures on and within Plaintiffs' properties and persons.

142. Wind, erosion, fugitive emissions, atmospheric deposition and other airborne and human releases of the Smelter Contaminants have caused these toxic and hazardous substances to spread within Carteret. The toxic and hazardous substances were, and are, transported by wind and other natural and human processes onto and into Plaintiffs' homes, properties, and persons.

143. Large amounts of Smelter Contaminants remain today in Carteret and the full nature and extent of the contamination has not been delineated by the Defendants.

144. The Smelter Contaminants have impacted Plaintiffs' properties, caused a diminution in their property values, are a blight on Plaintiffs' community and deprives Plaintiffs of their free use and enjoyment of their property.

145. Smelter Contaminants contain, amongst other elements, arsenic, copper and lead, which have been detected on Plaintiffs' and the Class Members' residential properties.

146. The United States Environmental Protection Agency ("EPA") classifies arsenic as a known human carcinogen causing lung, liver, kidney, bladder and skin cancer.

147. The EPA classifies lead as a probable human carcinogen. In addition, children are particularly susceptible to the toxic effects of lead. Exposure may cause anemia, kidney damage, muscle weakness, brain damage and death. Lead exposure can severely affect a child's mental and physical development and growth.

148. Defendants' records demonstrate that they knew of the dangers associated with Smelter Contaminants and its impact on Plaintiffs and the Members of the proposed Class.

149. Despite this knowledge, Defendants USMR, Amax, Minerals, and McMoRan engaged in a campaign to mislead environmental and health regulators and the public of the health risks associated with Smelter Contaminants, then and through the present.

150. As described above, Defendants USMR, Amax, Minerals, and McMoRan intentionally and/or negligently concealed and failed to disclose, and continue to conceal and fail to disclose, to Plaintiffs, Class Members and/or public agencies, material facts concerning the nature, extent, magnitude, and effects of the exposure of Plaintiffs, Class Members and/or their property, to these toxic and hazardous substances.

151. Defendants USMR, Amax, Minerals, and McMoRan knew and/or reasonably should have known that Plaintiffs, Class Members and/or their properties, would be exposed to hazardous materials and contaminants. Defendants knew and understood, and/or reasonably should have known and understood, that their concealment of such information would subject and continue to subject Plaintiffs, Class Members and/or their property in Carteret, to continued exposure to hazardous materials and contaminants.

152. Plaintiffs and the Class Members reasonably believed that the air, land, and soil in the Class Area did not pose any potential health hazard.

153. Plaintiffs and the Class Members have each been exposed to lead, arsenic and other Smelter Contaminants due to Defendants USMR, Amax, Minerals, and McMoRan's negligence in handling, storing, use, disposal and/or failure to properly identify, disclose and/or remediate said hazardous substances.

154. Plaintiffs and the Class Members seek redress and damages for economic losses, such loss of property value, punitive damages and other damages as the result of the carelessness, recklessness, negligence and willful and wanton violation of law by Defendants USMR, Amax, Minerals, and McMoRan.

IV. CLASS ALLEGATIONS

155. This Class Action is being filed by the Plaintiffs, pursuant to Fed. R. Civ. P. 23, on behalf of themselves and others similarly situated.

156. Plaintiffs seek to certify the following class defined as:

157. **Property Damages Class:**

All persons who own or owned any Residential Property (as that term is defined by N.J. Admin. Code § 18:12-2.2(b) and includes ‘dwelling house[s] and the lot or parcel of land on which the dwelling house is situated [where the] dwelling is functionally designed for use and enjoyment by not more than four families and includes residential condominiums’) and (ii) vacant lots zoned for residential use in each case located within the geographical boundary defined by the map below (the “Class Area”) at any time during the Class Period, but excluding (i) properties owned by the Defendants or employees of Defendants, and (ii) properties owned by any federal, state, or local government or any subdivision of such government entities. The Class Area is generally bounded by Peter J. Sica Industrial Highway to the East, Romanowski Street to the North-East Cypress Street to the North, Arthur and East Grant Streets to the West, and Middlesex Ave. to the South. The Class includes Residential Properties located on both sides of the boundary streets. The Class Period is from January 30, 2017, to March 27, 2023.

158. To the extent revealed by discovery and investigation, there may be additional appropriate classes and/or subclasses from the above class definition which is broader and/or narrower in time or scope.

159. Excluded from the class are Defendants' officers, directors, agents, employees, and members of their immediate families; and the judicial officers to whom this case is assigned, their staff, and the members of their immediate families.

160. Plaintiffs, members of the Class and/or their property have been exposed to and continue to be exposed to toxic and hazardous substances at, around, and emanating from the Smelter.

161. This Court may maintain these claims as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4).

162. The members within each Class are so numerous that joinder of all members is impractical.

163. The number of properties located in the Property Damage Class Area exceeds 100 and, therefore, the number of Class members likely also exceeds 100 people, in satisfaction of Fed. R. Civ. P. 23(a)(1).

164. There are common questions of law and fact that affect the rights of every member of the Class, and the types of relief sought are common to every member of the Class. The same conduct by the respective Defendants has injured each Class Member. Common questions of law and/or fact common to the Class include, but are not limited to:

- a. Whether USMR and Amax through their acts or omissions, proximately caused Smelter Contaminants to be released into the Class Area.
- b. Whether USMR and Amax were negligent in their handling, storing, transporting, use, release, discharge, emission, disposal and/or failure to properly investigate, remediate and abate lead, arsenic and other Smelter Contaminants.
- c. Whether USMR, Amax, Minerals, and McMoRan were negligent in their handling, storing, transporting, use, disposal and/or failure to properly

investigate, identify, remediate and abate lead, arsenic and other Smelter Contaminants.

- d. Whether USMR, Amax, Minerals, and McMoRan were negligent in their handling, storing, transporting, use, disposal and/or failure to properly disclose the presence of lead, arsenic and other Smelter Contaminants to Plaintiffs and the Class Members.
- e. Whether Defendants, respectively, violated applicable standards concerning handling, storing, transporting, use, release, discharge, emission, disposal and/or failure to investigate and remediate lead, arsenic, and other Smelter Contaminants.
- f. Whether Defendants' respective releasing, discharging, emitting or depositing lead, arsenic and other Smelter Contaminants onto Plaintiffs' properties, or their failure to remove or abate such Contaminants from Plaintiffs' properties, constitutes a private nuisance.
- g. Whether Defendants' respective releasing, discharging, emitting or depositing lead, arsenic and other Smelter Contaminants onto Plaintiffs' properties, or their failure to remove such Contaminants, constitutes a trespass.
- h. Whether Defendants' respective releasing, discharging, emitting, or depositing lead, arsenic and other Smelter Contaminants onto Plaintiffs' properties, and/or their failure to remove such contamination, and/or concealing knowledge of same, constitutes an abnormally dangerous, ultrahazardous, and inherently or intrinsically dangerous activity.
- i. Whether, as a proximate result of the exposure to lead, arsenic and other Smelter Contaminants, Plaintiffs' and the Class Members' properties require remediation.
- j. Whether, as a proximate result of the presence of Smelter Contaminants, there has been a diminution in value of properties across the Class Area.

165. These questions of law and/or fact are common to the Class and predominate over any questions affecting only individual class members.

166. The claims of Plaintiffs Juan Duarte and Betsy Duarte are typical of the claims of the Class as required by Fed. R. Civ. P. 23(a)(3), in that all claims are based upon the same factual and legal theories. It is the same conduct by Defendants that has injured each member of

the Class. The principal issue in this matter involves Defendants' respective conduct in wrongfully handling, storing, transporting, using, releasing, discharging, emitting, disposing and/or failing to remediate their toxic and hazardous Smelter Contaminants related to their operations in Carteret which impacts all members of the Class.

167. Plaintiffs will fairly and adequately represent and protect the interests of the Class, as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs have retained counsel with substantial experience in the prosecution of class actions and environmental litigation in New Jersey. Plaintiffs and their counsel are committed to the vigorous prosecution of this action on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor counsel has any interest adverse to those of the Class.

168. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants and/or because adjudications respecting individual members of the Class would, as a practical matter, be dispositive of the interests of the other members or would risk substantially impairing or impeding their ability to prosecute their interests.

169. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants USMR, Amax, Minerals, and McMoRan have acted or refused to act on grounds generally applicable to all Members of the Class in failing to properly identify, disclose, and remediate Smelter Contaminants, thereby making relief in the form of an injunction requiring Defendants to abate the nuisance and for the prompt and thorough investigation, identification,

excavation and removal of all Smelter Contaminants, from the properties of plaintiffs and the Members of the Class appropriate.

170. Plaintiffs and members of the Class have suffered, and will continue to suffer, harm and damages as a result of Defendants' USMR, Amax, Minerals, and McMoRan's unlawful and wrongful conduct in failing to properly identify, disclose, and remediate Smelter Contaminants.

171. A class action is superior to other available methods for the fair and efficient adjudication of the controversy under Fed. R. Civ. P. 23(b)(3). Absent a class action, most members of the Class likely would find the cost of litigating their claims to be prohibitive and will have no effective remedy at law. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

172. Class certification is also appropriate because this Court can designate particular claims or issues for class-wide treatment and may designate one or more subclasses pursuant to Fed. R. Civ. P. 23(c)(4).

173. Maintenance of this action as a class action is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each member of each putative class who has suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all putative class members.

174. No unusual difficulties are likely to be encountered in the management of this action as a class action.

175. Plaintiffs and the members of the Class were not in any way responsible for the Smelter Contaminants discharged in Carteret, New Jersey.

V. COUNTS

COUNT I Private Nuisance

176. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs of this complaint as if set forth in full herein.

177. Defendants' respective past, present and/or continuing acts and/or omissions constitute a nuisance in that Defendants used, have used, and/or continue to use their property in a manner, or otherwise acted in a manner, that has resulted in an unreasonable burden and interference on the Plaintiffs and the Class Members in the form of personal harm, inconvenience, annoyance, and discomfort incidental to exposure to lead, arsenic and other Smelter Contaminants.

178. USMR's release, discharge, handling, storage, transportation, processing, disposal and failure to identify, disclose and remediate Smelter Contaminants constitutes a nuisance in that USMR has used and/or continues to use its property, or otherwise acted in a manner, that has resulted in an unreasonable burden and interference on the Plaintiffs and the Class Members in the form of personal harm, inconvenience, annoyance, and discomfort incidental to exposure to lead, arsenic and other Smelter Contaminants.

179. Amax's release, discharge, handling, storage, transportation, processing, disposal and failure to identify, disclose and remediate Smelter Contaminants constitutes a nuisance in

that USMR has used and/or continues to use its property, or otherwise acted in a manner, that has resulted in an unreasonable burden and interference on the Plaintiffs and the Class Members in the form of personal harm, inconvenience, annoyance, and discomfort incidental to exposure to lead, arsenic and other Smelter Contaminants.

180. Minerals' handling, storage, transportation, processing, disposal and failure to identify, disclose and remediate Smelter Contaminants constitutes a nuisance in that Minerals has used and/or continues to use its property, or otherwise acted in a manner, that has resulted in an unreasonable burden and interference on the Plaintiffs and the Class Members in the form of personal harm, inconvenience, annoyance, and discomfort incidental to exposure to lead, arsenic and other Smelter Contaminants.

181. McMoRan's handling, storage, transportation, processing, disposal and failure to identify, disclose and remediate Smelter Contaminants constitutes a nuisance in that McMoRan has used and/or continues to use its property, or otherwise acted in a manner, that has resulted in an unreasonable burden and interference on the Plaintiffs and the Class Members in the form of personal harm, inconvenience, annoyance, and discomfort incidental to exposure to lead, arsenic and other Smelter Contaminants.

182. Defendants' respective past, present and/or continuing activities, acts and/or omissions at and near the Smelter constitute a private nuisance resulting in unreasonable interference with Plaintiffs' and the Class Members' right to the exclusive use and enjoyment of their properties through the invasion of hazardous and toxic substances contaminating their properties and the surrounding environment, thereby exposing Plaintiffs and the Class Members

to hazardous and toxic substances and substantially interfering with Plaintiffs' and the Class Members' free use and enjoyment of their properties.

183. Defendants' respective past, present and/or continuing acts and/or omissions, resulting in the deposition of Smelter Contaminants onto and/or failure to remove or properly investigate and remediate lead, arsenic and other Smelter Contaminants, and allowing such contamination to remain on Plaintiffs' properties and surrounding environment, constitutes a nuisance in that Defendants have used their property, or otherwise acted in a manner, that has unreasonably interfered with Plaintiffs' and the Class Members' property interests, health and safety.

184. Defendants' contamination presently impacts Plaintiffs, causes a diminution in their property values, is a blight on Plaintiffs' community, causes annoyance, interference and inconvenience and deprives Plaintiffs of their free use and enjoyment of their property, including, but not limited to, the inability to fully use, enjoy and recreate on their outdoor spaces, freely perform certain work and repairs on their property; and requiring their property to be dug up, excavated, handled with extreme caution and otherwise disrupted causing inconvenience and disruption. Plaintiffs additionally suffer fear of adverse health effects, including cancer and other latent, serious illness, including childhood health issues, as described above.

185. In the alternative, USMR's release, discharge, disposal of and/or failure to remove lead, arsenic and other Smelter Contaminants from residential areas violates applicable standards and/or regulations, which constitutes a nuisance *per se*.

186. Amax's disposal of and/or failure to remove lead, arsenic and other Smelter Contaminants from residential areas violates applicable standards and/or regulations, which constitutes a nuisance *per se*.

187. Minerals' disposal of and/or failure to remove lead, arsenic and other Smelter Contaminants from residential areas violates applicable standards and/or regulations, which constitutes a nuisance *per se*.

188. McMoRan's disposal of and/or failure to remove lead, arsenic and other Smelter Contaminants from residential areas violates applicable standards and/or regulations, which constitutes a nuisance *per se*.

189. Defendants knew that the invasion of contaminants onto Plaintiffs' and the Class Members' properties was substantially certain to result from their respective actions and/or omissions, as aforesaid.

190. This interference with Plaintiffs' and the Class Members' use and enjoyment of their property is substantial, unreasonable, unwarranted, and unlawful.

191. As a result of Defendants' respective wrongful acts and omissions as described above, Plaintiffs and the Class Members have suffered exposure to hazardous substances, annoyance, inconvenience, discomfort, displacement, fear of adverse health effects and economic loss for which damages are justified.

192. As a direct and proximate result of Defendants' respective misconduct as described above, Plaintiffs and the members of the Class have suffered and continue to suffer economic losses and the loss of value to their property and other damages.

193. Defendants are jointly and severally liable to Plaintiffs and the members of the Class for their respective acts and/or omissions.

194. The nuisance that Defendants, respectively, created is a continuing nuisance in that it has continued and remains unabated.

195. Separate and apart from acting negligently, at all relevant times the Defendants, respectively, caused injury and damages to the Plaintiffs, the Class and/or their property through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

196. USMR, despite its knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, released, discharged, stored, handled, processed, disposed, emitted, and failed to properly investigate and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

197. Amax, despite its knowledge of the serious health and environmental effects associated with exposure to lead, arsenic and other Smelter Contaminants, released, discharged, stored, handled, processed, disposed, emitted and failed to properly investigate and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

198. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to such contaminants, and despite orders from health and environmental regulators, masked the true extent of contamination, thereby enabling them to avoid taking all appropriate steps to properly remediate

lead, arsenic and other Smelter Contaminants, or to mitigate dangers created by such Contaminants in the Class Area.

199. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, individually and together, stored, handled, processed, disposed, and failed to properly investigate, disclose and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

200. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, and despite orders and warnings from health and environmental regulators, failed to properly remediate such contamination in Carteret.

WHEREFORE, Plaintiffs demand judgment against Defendants individually, jointly, and severally, for compensatory damages, the implementation of a property inspection and remediation program, punitive damages, interest, costs of suit as provided for by law, and such other relief as the Court may deem just and proper.

COUNT II
Strict Liability

201. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs of this complaint as if set forth in full herein.

202. USMR, by generating, discharging, releasing, emitting, and dispersing Smelter Contaminants into the Class Area, and by failing to properly remediate and allowing those contaminants and pollutants to remain in the environment, and/or concealing knowledge of same, has engaged in abnormally dangerous, ultrahazardous, and inherently or intrinsically dangerous

activities for which it and its successors are strictly liable to the Plaintiffs and the Class Members.

203. Amax, by generating, discharging, releasing, emitting, and dispersing Smelter Contaminants into the Class Area, and by failing to properly remediate and allowing those contaminants and pollutants to remain in the environment, and/or concealing knowledge of same, has engaged in abnormally dangerous, ultrahazardous, and inherently or intrinsically dangerous activities for which it and its successors are strictly liable to the Plaintiffs and the Class Members.

204. Minerals, by failing to properly remediate and allowing Smelter Contaminants and pollutants to remain in the environment, and/or concealing knowledge of same, has engaged in abnormally dangerous, ultrahazardous, and inherently or intrinsically dangerous activities for which it and its successors are strictly liable to the Plaintiffs and the Class Members.

205. McMoRan, by failing to properly remediate and allowing Smelter Contaminants and pollutants to remain in the environment, and/or concealing knowledge of same, has engaged in abnormally dangerous, ultrahazardous, and inherently or intrinsically dangerous activities for which it and its successors are strictly liable to the Plaintiffs and the Class Members.

206. Defendants' respective activities pose a high degree of risk of harm to Plaintiffs. The likelihood that the harm that results from the Defendants' activities will be great is based on the fact that the contaminants released into, and remaining in, the Class Area from the Smelter contain highly toxic arsenic, lead, and other Smelter Contaminants; that these contaminants present serious health risks (including cancer and mental, physical, behavioral and

developmental delays); and that Defendants' respective acts and omissions continue to cause contamination in soil, dust and air at levels higher than acceptable limits.

207. The risks posed by Defendants' respective release, and failure to properly investigate, delineate, identify, disclose, and remediate Smelter Contaminants in a densely populated urban area could not be eliminated by the exercise of reasonable care and no safe way exists to dispose of toxic waste by simply releasing it onto land in such a densely populated urban area.

208. There is no safe way to dispose of, and allow to remain, Smelter Contaminants in the Class Area, which is in a densely populated urban area, given the capacity of arsenic, lead, and other Smelter Contaminants to cause cancer and other serious adverse health effects in humans. The serious health and environmental risks posed by the Smelter Contaminants that Defendants respectively released, disposed, and failed to properly remediate in such a densely populated urban area clearly could not have been eliminated by the exercise of reasonable care on the part of Defendants.

209. Defendants' respective release, and failure to properly investigate, delineate, remediate, and warn Plaintiffs and the Class Members about the Smelter Contaminants in the Class Area was neither a matter of common usage nor appropriate to the place where it was carried out.

210. The discharge of, and failure to properly remediate, dangerous toxic waste into the environment is a critical societal problem in New Jersey, and thus, the value of Defendants' respective activities, if any, is substantially outweighed by the serious health and environmental problems caused by them.

211. As a direct and proximate result of Defendants' respective misconduct as set forth herein, Plaintiffs and the members of the class have suffered and continue to suffer enhanced risk of future personal injury; economic losses, the loss of value to their property; and other damages as set forth herein.

212. Defendants are jointly and severally liable to Plaintiffs and the Class Members for their respective acts and/or omissions.

213. Separate and apart from acting negligently, at all relevant times the Defendants respectively caused injury and damages to the Plaintiffs and/or their property through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

214. USMR, despite its knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, released, discharged, stored, handled, processed, disposed, emitted, and failed to properly investigate identify, disclose, and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

215. Amax, despite its knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, released, discharged, stored, handled, processed, disposed, emitted, and failed to properly investigate. identify, disclose, and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

216. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to lead, arsenic and other

Smelter Contaminants, individually and together, stored, handled, processed, disposed, and failed to properly investigate, identify, disclose and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

217. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to such contaminants, and despite orders from health and environmental regulators, masked the true extent of contamination, thereby enabling them to avoid taking all appropriate steps to properly remediate lead, arsenic and other Smelter Contaminants, or to mitigate the dangers created by such Contaminants in the Class Area.

218. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, and despite orders and warnings from health and environmental regulators, failed to properly remediate such contamination in Carteret.

WHEREFORE, Plaintiffs demand judgment against Defendants individually, jointly, and severally, for compensatory damages, the implementation of a property inspection and remediation program, punitive damages, interest, costs of suit as provided for by law, and such other relief as the Court may deem just and proper.

COUNT III
Trespass

219. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs of this complaint as if set forth in full herein.

220. Defendants' respective wrongful conduct, as set forth above, resulted in the direct physical invasion of Plaintiffs' and the Class Members' properties by hazardous and toxic

substances contaminating their properties and the surrounding environment at concentrations above safe levels, requiring excavation and removal.

221. USMR, by generating, discharging, releasing, emitting and dispersing Smelter Contaminants into the Class Area, and by failing to properly remediate and allowing those contaminants and pollutants to remain in the environment, and/or concealing knowledge of same, caused the direct physical invasion of Plaintiffs' and the Class Members' properties by hazardous and toxic substances contaminating their properties and the surrounding environment at concentrations above safe levels, requiring excavation and removal.

222. Amax, by generating, discharging, releasing, emitting and dispersing Smelter Contaminants into the Class Area, and by failing to properly remediate and allowing those contaminants and pollutants to remain in the environment, and/or concealing knowledge of same, caused the direct physical invasion of Plaintiffs' and the Class Members' properties by hazardous and toxic substances contaminating their properties and the surrounding environment at concentrations above safe levels, requiring excavation and removal.

223. Minerals, by failing to properly remediate and allowing Smelter Contaminants and pollutants to remain in the environment, and/or concealing knowledge of same, caused the direct physical invasion of Plaintiffs' and the Class Members' properties by hazardous and toxic substances contaminating their properties and the surrounding environment at concentrations above safe levels, requiring excavation and removal.

224. McMoRan, by failing to properly remediate and allowing Smelter Contaminants and pollutants to remain in the environment, and/or concealing knowledge of same, caused the direct physical invasion of Plaintiffs' and the Class Members' properties by hazardous and toxic

substances contaminating their properties and the surrounding environment at concentrations above safe levels, requiring excavation and removal.

225. The hazardous and toxic substances continue to contaminate Plaintiffs' and the Class Members' properties, thereby exposing Plaintiffs and the Class Members to the hazardous and toxic substances.

226. The invasion and exposure is ongoing and continuous.

227. The presence of the hazardous and toxic constituents on Plaintiffs' and the Class Members' properties is unauthorized and unreasonable.

228. The Defendants have not sought nor obtained Plaintiffs' and the Class Members' consent to place or store their substances and wastes on Plaintiffs' and the Class Members' property.

229. As a direct and proximate result of Defendants' respective misconduct as set forth herein, Plaintiffs and the Class Members have suffered and continue to suffer economic losses, loss of use and enjoyment of their property; annoyance, discomfort, and inconvenience; the loss of value to their property and other damages.

230. Defendants are jointly and severally liable to Plaintiffs and the Class Members for their respective acts and/or omissions.

231. Separate and apart from acting negligently, at all relevant times the Defendants, respectively, caused injury and damages to the Plaintiffs and/or their property through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

232. USMR, despite its knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, released, discharged, stored, handled, processed, disposed, emitted, and failed to properly investigate and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

233. Amax, despite its knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, released, discharged, stored, handled, processed, disposed, emitted, and failed to properly investigate and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

234. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, individually and together, stored, handled, processed, disposed, and failed to properly investigate identify, disclose, and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

235. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to such contaminants, and despite orders from health and environmental regulators, masked the true extent of contamination, thereby enabling them to avoid taking all appropriate steps to properly remediate lead, arsenic and other Smelter Contaminants, or to mitigate the dangers created by such Contaminants in the Class Area.

236. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, and despite orders and warnings from health and environmental regulators, failed to properly remediate such contamination in Carteret.

WHEREFORE, Plaintiffs demand judgment against Defendants individually, jointly, and severally, for compensatory damages, the implementation of a property inspection and remediation program, punitive damages, interest, costs of suit as provided for by law, and such other relief as the Court may deem just and proper.

COUNT IV
Negligence

237. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs of this complaint as if set forth in full herein.

238. Defendants, at all times material hereto, acted through their officers, employees, and agents, who in turn acted in the scope of their authority and employment in furtherance of the business of Defendants.

239. As a direct and proximate result of Defendants' respective acts and omissions, as aforesaid, extensive contamination has been documented on Plaintiffs' property and in the Class Area.

240. At all relevant times, Defendant USMR knew, or should have known, that the hazardous and toxic substances released, emitted, and discharged from its Smelter were contaminating the surface and subsurface of the Class Area and would eventually enter Plaintiffs' and Class Members' persons, properties, air, and surrounding environment.

241. At all relevant times, Defendant Amax knew, or should have known, that the hazardous and toxic substances released, emitted, and discharged from its Smelter were contaminating the surface and subsurface of the Class Area and would eventually enter Plaintiffs' and Class Members' persons, properties, air, and surrounding environment.

242. At all relevant times, Defendants USMR, Amax, Minerals, and McMoRan knew, or should have known, that the hazardous and toxic substances discharged were contaminating the surface and subsurface of the Class Area and would eventually enter Plaintiffs' and Class Members' persons, properties, air, and surrounding environment.

243. At all relevant times, Defendants USMR, Amax, Minerals, and McMoRan failed to safely sample for, identify and properly remove and dispose the aforementioned Smelter Contaminants, and failed to advise or warn Plaintiffs and the Class Members of the dangers emanating from the presence of hazardous and toxic Smelter Contaminants in their surrounding environment.

244. Defendants, respectively, failed to use reasonable care to safeguard those residing in the Class Area from injury or property damage.

245. As a direct and proximate result of Defendants' respective misconduct as set forth herein, Plaintiff and the Class Members have suffered and continue to suffer economic losses, loss of use and enjoyment of their property; annoyance, discomfort, and inconvenience; the loss of value to their property and other damages.

246. Defendants are jointly and severally liable to Plaintiffs and the Class Members for their respective acts and/or omissions.

247. Separate and apart from acting negligently, at all relevant times the Defendants, respectively, caused injury and damages to the Plaintiffs and/or their property through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

248. USMR, despite its knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, released, discharged, stored, handled, processed, disposed, emitted, and failed to properly investigate and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

249. Amax, despite its knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, released, discharged, stored, handled, processed, disposed, emitted, and failed to properly investigate and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

250. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to lead, arsenic, and other Smelter Contaminants, individually and together, stored, handled, processed, disposed, and failed to properly investigate, identify, disclose, and remediate said contaminants from the surrounding environment, while failing to warn residents of the dangers of such contaminants.

251. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to such contaminants, and despite orders from health and environmental regulators, masked the true extent of

contamination, thereby enabling them to avoid taking all appropriate steps to properly remediate lead, arsenic and other Smelter Contaminants, or to mitigate the dangers created by such Contaminants in the Class Area.

252. Defendants USMR, Amax, Minerals, and McMoRan, despite their knowledge of the serious health and environmental effects associated with exposure to lead, arsenic and other Smelter Contaminants, and despite orders and warnings from health and environmental regulators, failed to properly remediate such contamination in Carteret.

WHEREFORE, Plaintiffs demand judgment against Defendants individually, jointly, and severally, for compensatory damages, the implementation of a property inspection and remediation program, punitive damages, interest, costs of suit as provided for by law, and such other relief as the Court may deem just and proper.

JURY TRIAL DEMAND AND PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the members of the Class request that the Court enter an order or judgment against Defendants as follows:

A. Enter an Order pursuant to Fed. R. Civ. P. 23 permitting this action to be maintained as a class action, appointing Plaintiffs as the representatives of the Class and Plaintiffs' counsel as counsel for the Class;

B. Enter an Order requiring the Defendants to bear the costs of a property inspection and remediation program, including, but not limited to, testing, examination, and remediation of lead, arsenic and other Smelter Contaminants;

C. Enter judgment in favor of Plaintiffs and Class Members against Defendants for loss of property value, loss of use and enjoyment of property, and for all other relief, in an

amount to be proven at trial, as to which they may be entitled, including interest, expert fees and costs of this suit;

- D. Award prejudgment and post-judgment interest as provided by law;
- E. Award punitive damages; and
- F. Such other relief as this Court deems necessary, just, and proper.

Plaintiffs demand a trial by jury as to all claims so triable in this action.

Dated: March 27, 2023

By: /s/ Steven J. German
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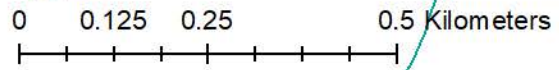
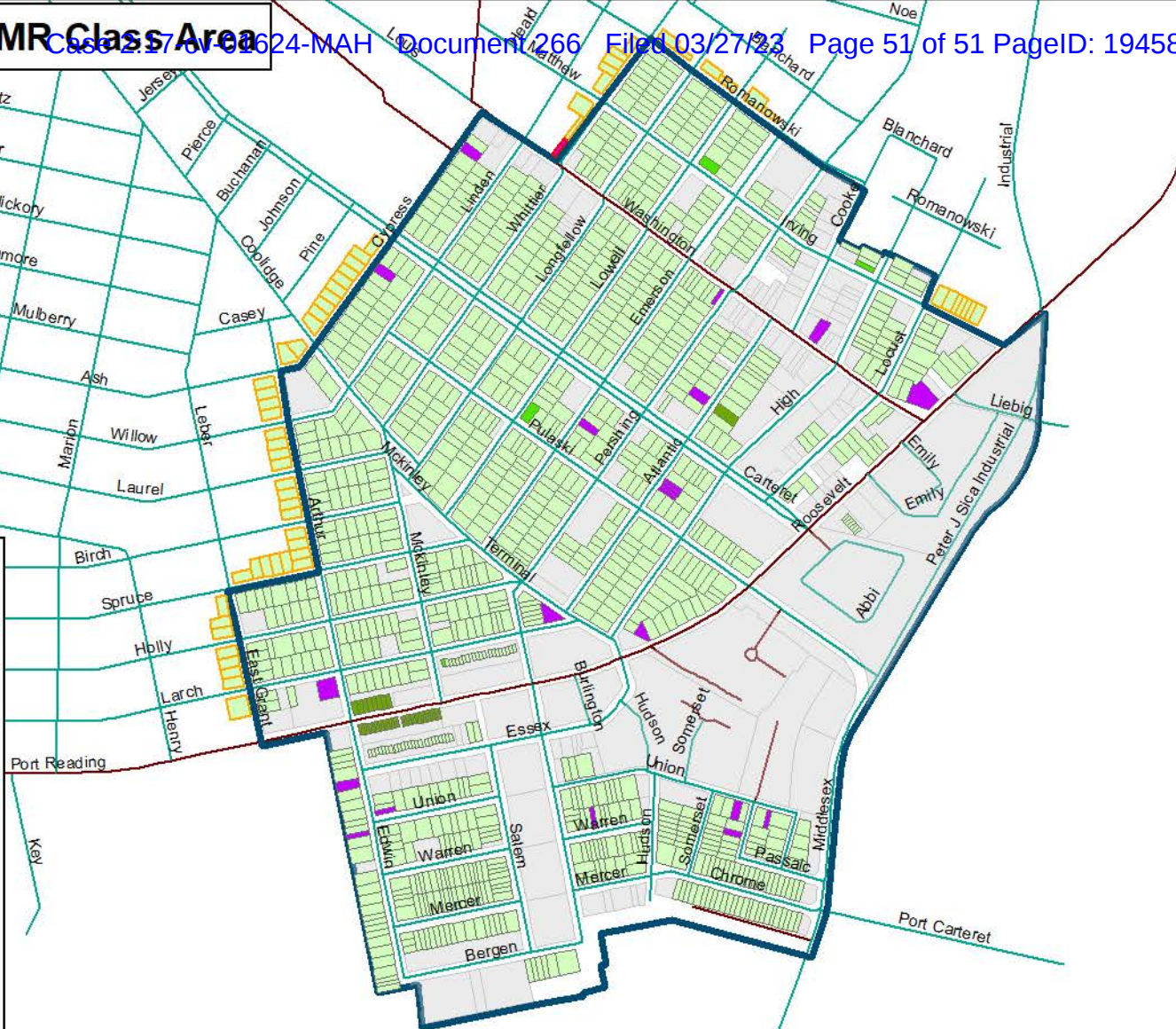
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Trial Counsel for Plaintiffs and the Class

Duarte v USMR Class Area



- Adjacent Eligible Parcels**
- Vacant Lot
 - Residential
- Eligible Property Parcels**
- Vacant Lot
 - Residential
 - Small Apartment
 - Residential Apartment
 - Condo/Townhouse
- Not Eligible Parcel**
- Non-Residential
 - Class Boundary



Service Layer Credits: Statewide Road Centerlines for New Jersey (Next Generation 9-1-1 Format); Parcels and MOD-IV of Middlesex County, New Jersey 20221216