

FILED

May 20, 2021

SX-2021-CV-00413

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

FRANCIS E. CHARLES and)	
THERESA J. CHARLES,)	Civil No. SX-21-CV-
)	COMPLEX LITIGATION
Plaintiffs,)	
v.)	CLASS ACTION
)	
LIMETREE BAY REFINING,LLC,)	
LIMETREE BAY TERMINALS, LLC,)	
LIMETREE BAY VENTURES, LLC)	
ARCLIGHT CAPITAL PARTNERS, LLC,)	
FREEPOINT COMMODITIES, LLC and)	JURY TRIAL DEMANDED
EIG GLOBAL ENERGY PARTNERS, LLC)	
)	
Defendants.)	
_____)	

CLASS ACTION COMPLAINT

Plaintiffs Francis E. Charles and Theresa J. Charles, by their attorneys, make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge.

SUMMARY OF THE CASE

1. Defendants LIMETREE BAY REFINING, LLC, LIMETREE BAY TERMINALS, LLC, LIMETREE BAY VENTURES, LLC, ARCLIGHT CAPITAL PARTNERS, LLC, FREEPOINT COMMODITIES, LLC, and EIG GLOBAL ENERGY PARTNERS, LLC (collectively “Limetree”) have resumed operations on St. Croix of a large oil refinery and terminal storage facility, which has long been the site of massive environmental pollution by its operators. Limetree purchased the site from the former operators, HOVENSA, LCC (“HOVENSA”), who rather than comply with a 2011 Consent Decree with the Environmental Protection Agency (EPA),

filed for bankruptcy in 2015. On the heels of an island still recovering from Hurricanes Irma and Maria and during the COVID-19 pandemic, Limetree started up the refinery, with knowledge that it had not met the requirements of the HOVENSA consent decree, resurrecting the decades-long problem of emissions, including noxious sulfur dioxide (SO₂), hydrogen sulfide (H₂S), and dozens of Volatile Organic Compounds (VOCs) (hereafter collectively “Pollutants”), from the site’s operations into the surrounding communities.

2. While emissions from the refinery and the terminal storage facility are ongoing, the refinery start-up has been punctuated by at least four environmental incidents that poured emissions (and in some cases oil droplets) onto its neighbors. Limetree’s operations have limited residents’ ability to use their homes, have polluted the cisterns of many area homes preventing residents from using their water, have caused residents to experience a host of nuisance-level discomforts (*e.g.*, odor, burning eyes, nose and throat, headaches, nausea, worry), and have otherwise impeded the residents’ use and enjoyment of their homes. Limetree’s reckless and irresponsible start-up and the accompanying resident uproar caught the attention of the EPA, which cited Limetree for failing to restart sulfur dioxide air monitoring that previously had been done by HOVENSA. After a serious flaring incident on May 12, 2021, the EPA issued an emergency shut down order to Limetree on May 14, 2021 for a 60-day period.

3. Plaintiffs are area residents and bring this class action for damages under Virgin Islands common law nuisance, trespass, and negligence.

4. Plaintiffs seek lost-use-and-enjoyment damages to vindicate private property rights, *not* enforcement of environmental statutes, regulations, regulatory permits, or claims for personal injury; they seek monetary damages, *no* injunctive relief. Lawsuits for Virgin Islands common law nuisance, trespass, and negligence -- like that here -- are distinct from, and not

preempted by, federal law. *See Alleyne v. Diageo USVI, Inc.*, 63 V.I. 384, 396-98 (Super. Ct. 2015) (holding that state common law claims are not preempted by the Clean Air Act).

5. Plaintiffs allege that defendants have been negligent, and have created a nuisance and trespassed on residents' properties, by failing to exercise reasonable care in starting up and operating the refinery and terminal storage facility without the pollution controls needed to avoid class-area harm. The prolonged personal disturbances experienced throughout the class area (offensive odors, breathing problems, burning eyes, nose and throat, headaches, nausea, worry), the nuisance to residents' property use, including oil showers and inability to use cisterns, and the four alarming incidents that have led to the EPA's temporary shutdown of the refinery, were all foreseeable. Defendants, with knowledge of the problems that precipitated the 2011 HOVENSA-EPA Consent Decree, knew or should have known they would occur.

6. Defendants' conduct has been reckless. Compensatory and punitive damages to the Class are warranted to redress the harms defendants are causing and to deter like conduct in future.

PARTIES

7. Plaintiffs seek to represent all individuals who have resided in the neighborhoods north, northwest, west, and southwest of the Limetree complex on or after January 1, 2020.

8. Plaintiff Francis E. Charles has resided in Strawberry Hill, St. Croix, northwest of Limetree since 1976.

9. Plaintiff Theresa J. Charles has resided in Strawberry Hill, St. Croix, northwest of Limetree since 1976.

10. Defendant Limetree Bay Refining, LLC ("LBR"), the refinery side of Limetree's business, is registered to do business in the Virgin Islands and is headquartered in Christiansted,

Virgin Islands. LBR has owned and/or operated Limetree’s integrated petroleum refinery since 2016.

11. Defendant Limetree Bay Terminals, LLC, (“LBT”) the products storage and terminal facility side of Limetree’s business, is registered to do business in the Virgin Islands and is headquartered in Christiansted, Virgin Islands. LBT has owned and/or operated Limetree’s marine loading terminal comprised of tank farms storing refinery and other products since 2016.

12. Defendant Limetree Bay Ventures, LLC, a Delaware corporation headquartered in Boston, Massachusetts, is the parent of LBT and LBR, and owns and/or operates the 1,500-acre energy complex with the refinery and storage businesses (hereafter “the complex”).

13. Defendant Arclight Capital Partners, LLC is a Delaware corporation headquartered in Boston, Massachusetts. It has owned and/or operated the complex since 2016.

14. Defendant Freepoint Commodities LLC is a Delaware corporation headquartered in Stamford, Connecticut. It has owned and/or operated the complex since 2016.

15. Defendant EIG Global Energy Partners, LLC is a Delaware corporation headquartered in Washington, D.C. It has owned and/or operated the complex since at least 2021.

JURISDICTION AND VENUE

16. This Court has subject-matter jurisdiction over plaintiffs’ negligence, nuisance, and trespass claims pursuant to 4 V.I.C. §76 (granting this Court original jurisdiction in “all civil actions regardless of the amount in controversy”). This Court has personal jurisdiction under 5 V.I.C. §4903(a)(1) and (a)(3) because the claims arise from the defendants’ transaction of business in St. Croix and their causing of tortious injury by acts and omissions in St. Croix. Venue is proper under 4 V.I.C. §78(a), as the cause of action arose in this division.

17. Because this complaint pleads a “putative class action,” it must be transferred to the Complex Litigation Division pursuant to Virgin Islands Rule of Civil Procedure 23(d)(3).

FACTUAL ALLEGATIONS

Limetree Knew About the Unfulfilled Obligations of the 2011 Consent Decree When It Purchased the Idling Hovensa Facility

18. The Limetree complex (originally built in 1965) is located along the south central shore of St. Croix and is comprised of two businesses – the refinery and the terminal for storage of crude oil and petroleum products.

19. Immediately prior to Limetree’s purchase of the complex, it was owned and operated by HOVENSA. The EPA sued HOVENSA in 2011 for violations of the Clean Air Act relating to its refinery operation and entered into a Consent Decree (along with the Virgin Islands) to resolve those claims in exchange for HOVENSA’s commitment to take various steps to reduce emissions from the refinery.

20. Under the Consent Decree (entered by the federal district court on June 7, 2011), HOVENSA was required to, *inter alia*:

- (a) reduce or control emissions of nitrogen oxide, sulfur dioxide, particulate matter, and carbon monoxide from various parts of the refinery by installing pollution control equipment;
- (b) comply with fuel gas combustion requirements for certain equipment;
- (c) implement preventive maintenance and operation plans, among other measures;
- (d) comply with regulatory requirements for acid gas and hydrocarbon flaring and implement a program to investigate and correct its causes; and
- (e) implement stricter leak detection and repair requirements and replace valves leaking above a specified level.

21. About six months after entry of the Consent Decree, HOVENSA announced that it would idle its refinery operations and it failed to perform most of the injunctive relief required by the Consent Decree.

22. The terminal operations were not covered by the 2011 Consent Decree and continued to operate (largely uncontrolled) until HOVENSA decided to idle those operations in 2015 and thereafter filed for bankruptcy.

23. Limetree purchased the refinery and terminal assets in early 2016 with full knowledge of the problematic emissions from the refinery and that its purchase was contingent upon abiding the terms of the Consent Decree.

Limetree Did Not Properly Restart the Refinery

24. In late 2018, Limetree announced a financing deal to restart operations at the refinery (the terminal storage facility had already been operating). Limetree performed work at the facility throughout 2019 and restarted operations at the refinery in 2020, with a peak processing capacity of 200,000 thousand barrels of petroleum feedstock per day. www.limetreebayenergy.com/about-us.

25. Petroleum refineries like Limetree separate crude oil into petroleum products through a series of steps that involve both chemical separation and physical separation. The primary end product is transportation fuels, such as gasoline, jet fuel, and marine diesel fuel.

26. The separation process involves heating the crude oil to its boiling point. It is a noxious process that involves high levels of heat and combustion.

27. Some petroleum products produced at Limetree are further processed to remove sulfur, which generates pollutants including hydrogen sulfide (H₂S), sulfur dioxide (SO₂), nitrous

oxides (NO_x), carbon monoxide (“CO”), volatile organic compounds (“VOC”), and particulate matter (“PM”).

28. Limetree’s Flare #8, which has been a primary source of noxious emissions since start-up, is used to combust excess gas, including H₂S. Flare #8’s system collects gases from multiple areas throughout the refinery. Flaring emits pollutants.

29. Limetree has also restarted operations at the terminal, which boasts of 167+ storage tanks serving the refinery and third-party customers and is a constant source of fugitive vapor emissions of pollutants.

**Limetree’s Start-Up Rained Noxious Emissions and Oil Droplets
on Neighboring Communities, Leading to Its Eventual Temporary
Shutdown by the EPA On May 14, 2021.**

30. The risk of noxious emissions from their operations was well known to Defendants.

31. To monitor SO₂ emissions, the prior operator HOVENSA was required to operate five SO₂ monitors near the perimeter of the complex.

32. Limetree knew of the SO₂ air monitoring requirements yet refused to install working air monitors as part of its start-up activities, leading the EPA to issue a Notice of Violation to Limetree on April 30, 2021.

33. While emissions from the refinery and terminal storage facility are a steady occurrence, the refinery start-up has been punctuated by four separate incidents that have underscored the problem of Limetree’s emissions,

34. On February 4, 2021, an oily mist including liquid droplets of oil was emitted from Flare #8. The mist rained oil droplets on the vehicles and homes of nearby neighborhoods, and Limetree directed residents to disconnect their cisterns from roof spouts leaving them without a water source.

35. On several days in late April 2021, Limetree exceeded by orders of magnitude its allowed concentration of hydrogen sulfide (162 ppm) at the flare header for Flare #8. Between April 19 and April 23, readings at Flare #8 measured hydrogen sulfide concentrations as high as 31,546.5 ppm, 39,475.7 ppm, 2,272.4 ppm, 4,046.5 ppm, and peaked at 91,649.0 ppm on April 23.

36. Limetree continued to operate while it took days to locate the sources of the excess hydrogen sulfide, ultimately finding two different malfunctioning pressure safety valves among other issues. Limetree finally shut down some components of its operation temporarily on April 23. Nevertheless, Limetree again exceeded its allowable hydrogen sulfide concentration for eight hours on April 25.

37. While a properly operating flare receiving an appropriate flow of sulfurous gases would convert hydrogen sulfide to sulfur dioxide, Limetree's failure to monitor at its perimeter means that it cannot establish definitively how much sulfur dioxide or other pollutants were actually emitted. Regardless, the EPA has stated that its modeling of this late April incident establishes that emissions of both hydrogen sulfide and sulfur dioxide exceeded the Acute Exposure Guideline Level-1 limits, and an EPA contractor determined that individuals in the community were exposed to dangerous levels of sulfur dioxide.

38. As a result of the odor created by pollutants emitted, the Virgin Islands Department of Education closed three schools on April 23, reporting students and staff with nausea. A St. Croix community coronavirus vaccination center also shut down that day, and Department of Planning and Natural Resources (DPNR) advised that people with respiratory conditions should stay indoors or relocate to other areas of the island, *i.e.*, not use their homes at all. The Virgin Islands Department of Health issued a press release advising residents to speak with their healthcare providers if they experienced headaches, nausea, or symptoms of a respiratory nature.

39. Yet, again, on May 5, 6, and 7, 2021, community members were barraged by sulfurous, gassy, rotten odors from the facility, strong enough to cause physical symptoms and significant discomfort. In a May 5 Facebook statement, Limetree denied that there were any issues at the facility. But that same evening it again measured high hydrogen sulfide levels at the problematic Flare #8 flare header, which it acknowledged to the community on May 6. And it measured another hydrogen sulfide exceedance at Flare #8 on May 7.

40. The odor again forced the Department of Education to order another round of school closures from May 6-May 7. The Virgin Islands Bureau of Motor Vehicles also closed early on May 6 and remained closed on May 7, citing the negative effects the strong odor was having on its employees. Again, the Department of Health urged residents with respiratory issues to stay inside or relocate.

41. On May 12, 2021, yet another incident occurred at Flare #8. A large, black plume of emissions extended across the sky, and liquid drops of heavy oil rained on the surrounding neighborhoods. Limetree had yet again exceeded the hydrogen sulfide emissions at the flare header, causing over 500 pounds of sulfur dioxide, and likely other pollutants, to be emitted within 24 hours. Residents of the surrounding communities found oil on their roofs, vehicles, vegetable gardens, fruit trees, landscaping, and roads, and Limetree told residents of some areas not to consume water from their cisterns. Limetree temporarily halted some production at the refinery but continued other operations.

42. On May 12, 2021, the EPA's air monitors arrived on St. Croix and the EPA announced at a town hall meeting on May 13, 2021 that it was working to install the air monitors, which should have been installed years before by Limetree.

43. The EPA issued an emergency order to shut down Limetree's refinery operations on May 14, 2021 for a 60-day period. Limetree has indicated publicly that it will restart refinery operations after the 60-day period has passed.

Limetree's Emissions Harmed the Class.

44. Sulfur dioxide is a colorless gas with a pungent chemical smell. When it combines with moisture, including the moisture on the surface of the eyes, throats, and airways, it becomes a severe irritant.

45. Hydrogen sulfide is a colorless gas that produces a strong odor of rotten eggs. It, too, causes irritation to the eyes, nose and throat and difficulty breathing. At high enough concentrations, hydrogen sulfide can cause death. The irritant effects of both gases are well established by the Agency for Toxic Substances and Disease Registry ("ATSDR").

46. The noxious odors caused by SO₂ and H₂S can also provoke nausea, dizziness and headaches.

47. Volatile Organic Compounds ("VOCs") are compounds with high vapor pressure and low water solubility that are emitted as gases from certain manufacture and refining activities. Many of the VOCs emitted by Limetree's operations are irritants.

48. Residents have described the odor emanating from Limetree as "gassy," "burnt eggs," and "rotten."

49. The EPA established a telephone hotline on May 8, 2021 to receive complaints from residents, which led to 300-plus resident calls in less than a week reporting odors and physical symptoms.

50. Limetree's emissions have also contaminated the cisterns of neighboring residents, upon which they are dependent for household water use. Class members have been unable to use their cistern water to drink, wash, or water their gardens.

51. The vast majority of homes in the affected areas do not have air conditioning. Residents use windows to ventilate their homes and cannot escape the stench emanating from Limetree.

52. Plaintiff Francis Charles felt these effects beginning abruptly with the restart of refinery operations in 2020. He has smelled rotten eggs or the odor of eggs burning and experienced watery eyes, difficulty breathing, and significant fatigue and lethargy.

53. Plaintiff Theresa Charles also felt these effects beginning abruptly with the restart of refinery operations in 2020. She has also smelled rotten eggs or the odor of eggs burning and experienced watery eyes, difficulty breathing, and significant fatigue and lethargy.

54. Since the restart of refinery operations Plaintiffs Francis and Theresa Charles have frequently had to shut the windows and doors of their shared home, effectively locking themselves indoors for significant periods of time. The roof of their home has been dirty with black substances.

55. The water in the Plaintiffs' cistern has been affected with a strange taste.

56. The Plaintiffs have experienced the effects described in paragraphs 52-55 on a frequent basis, and sometimes daily, since the refinery resumed operations.

57. Residents throughout the class area have reported the same effects -- odor, burning eyes, nose and throat, headaches, nausea, difficulty breathing, and worry -- on social media and to the press.

CLASS ACTION ALLEGATIONS

58. Class definition. Plaintiffs file this class action pursuant to V.I. R. Civ. P. 23 on behalf of a class of persons who have resided in the neighborhoods north, northwest, west, and southwest of the Limetree complex on or after January 1, 2020 (hereafter, the “Class”).

59. Numerosity (V.I. R. Civ. P. 23(a)(1)). The Class, as defined in paragraph 58 above, is so numerous that joinder of all class members is impracticable. The exact number of class members is unknown, but it is believed to be in the thousands.

60. Commonality (V.I. R. Civ. P. 23(a)(2)). There are numerous questions of law and fact common to the Class. Plaintiffs’ claims on behalf of the Class arise from a single course of conduct by defendants, presenting questions of law and fact common to the class, including (1) whether the noxious emissions from the complex are preventable; (2) whether the harms caused by the noxious emissions are preventable; (3) whether defendants’ conduct is intentional; (4) whether the resulting harms to property rights suffered by plaintiffs and class area residents was foreseeable; (6) whether said harms are significant; (7) whether said harms are greater than the residents should be required to bear without compensation; (8) whether defendant’s conduct warrants punitive damages.

61. Typicality (V.I. R. Civ. P. 23(a)(3)). Plaintiffs’ claims are typical of the claims plaintiffs assert on behalf of the Class because plaintiffs and members of the Class have sustained similar types of damages, and their claims arise from the same course of conduct and the same legal theories, as set forth in this Class Action Complaint.

62. Adequacy of Representation (V.I. R. Civ. P. 23(a)(4)). Plaintiffs will fairly and adequately assert and protect the Class members’ interests. No conflicts exist in the maintenance of this class action; plaintiffs’ interests are coincident with the interests of the Class.

63. Plaintiffs are determined to discharge their fiduciary duties to the Class members faithfully; they understand that they cannot settle this class action without prior Court approval; and they have retained experienced class action counsel, well-experienced in environmental class action litigation and with adequate financial resources to assure that the interests of the class will be served. Class counsel are handling this matter on a contingent-fee basis, to be compensated for their services only as awarded by this Court.

64. Risk of Inconsistent Adjudications (V.I. R. Civ. P. 23(b)(1)). The prosecution of separate actions by Class members would create a risk of adjudications that could, as a practical matter, impair or impede the ability of Class members to protect their interests.

65. Fair and Efficient Method of Adjudication Claims and Defenses (V.I. R. Civ. P. 23(b)(3)). This class action will provide a fair and efficient method for adjudication of the Class members' claims and defendant's defenses.

- (a) The common questions of law and fact outlined above, and others, predominate over any question(s) affecting individual Class members only. The evidence necessary to prove defendant's course of conduct will be the same for every Class member.
- (b) Neither the size of the class nor any unusual legal or factual issues present management problems not normally and routinely handled in the management of class actions.
- (c) To plaintiffs' knowledge, no other action is pending asserting claims arising out of Limetree's restart of the refinery and tank farm operations and the resulting emissions.
- (d) This forum is appropriate for litigation of this class action because plaintiffs and all Class members are located here and defendants conduct business here. In view of the complexities of the technical issues and expenses of litigation, the separate claims of individual class members for lost use and enjoyment of their properties are insufficient in amount to support separate actions. This class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation effectively makes it virtually impossible for individual Class members to seek redress for the wrongs complained of herein.

COUNT I
NEGLIGENCE

66. Plaintiffs repeat and reallege the allegations set forth above.

67. Defendant had a duty to area residents to exercise ordinary care to prevent foreseeable interference -- here, by the release of offensive odors and noxious emissions -- with the residents' use and enjoyment of their properties.

68. Defendant breached said duty to exercise ordinary care by one or more of the following acts, omissions, or failures:

- (a) failing to reduce and control sulfur dioxide and other emissions from the refinery;
- (b) failing to reduce sulfur dioxide emissions by burning lower sulfur fuel oil;
- (c) failing to implement a program to investigate the causes of flaring incidents and take action to prevent it;
- (d) failing to create a preventive maintenance and operation plan for the sulfur recovery plant;
- (e) failing to replace leaking valves;
- (f) failing to monitor sulfur dioxide emissions by operating fence-line monitoring stations previously operated by HOVENSA;
- (g) failing to develop and/or maintain adequate policies and procedures as necessary to prevent the plaintiffs' injuries;
- (h) failing to sufficiently reduce emissions of pollutants at the refinery and terminal storage facility upon restarting; and/or
- (i) otherwise failing to develop, design, construct, inspect, maintain, operate, control and/or engineer its refinery and terminal storage facility to prevent flares and uncontrolled releases of hydrogen sulfide, sulfur dioxide, VOCs, and other pollutants.

69. As a foreseeable, direct, and proximate result of one or more of defendant's failures to exercise ordinary care, plaintiffs' and Class members' properties have been invaded since the Limetree Bay refinery and terminal storage facility resumed operations.

70. Defendants' failures, acts or omissions were the legal and factual cause of the damages that plaintiffs and Class members have suffered.

71. Defendants' conduct was grossly negligent and/or reckless. Defendants allowed conditions to exist that caused noxious odors and other harmful emissions to physically invade plaintiffs' and Class members' properties, and thus demonstrated a substantial lack of concern for whether injury resulted to plaintiffs' or Class members' properties.

WHEREFORE, defendants are liable in negligence to compensate plaintiffs and residents throughout the class area for the lost use and enjoyment of their properties caused by defendants' failures of duty, and for punitive damages.

COUNT II
PRIVATE NUISANCE (UNINTENTIONAL)

72. Plaintiffs repeat and reallege the allegations set forth above.

73. For the reasons described above in paragraphs 66-71, defendants' conduct was negligent, reckless, or abnormally dangerous.

74. As a result of defendants' conduct, as described above, defendants' emissions interfered with plaintiffs' and class members' private rights to use and enjoy their homes.

75. The interference caused significant harm to plaintiffs' and class members' properties by creating conditions at said properties any reasonable person would find offensive, seriously annoying, or intolerable.

WHEREFORE, defendants are liable in unintentional private nuisance for damages to compensate plaintiffs and residents throughout the class area for the lost use and enjoyment of their properties caused by defendants' failures of duty, and for punitive damages.

COUNT III
PRIVATE NUISANCE (INTENTIONAL)

76. Plaintiffs repeat and reallege the allegations set forth above.

77. Defendants' decision to operate their plant without controls and to continue operating their plant despite their inability to control emissions created nuisance-level conditions at plaintiffs' properties and properties throughout the class area, unreasonably interfering with plaintiffs' and class members' rights and privileges to use and enjoy their properties.

78. Defendants' conduct was the legal cause of the resulting harms.

79. The interference with the residents' property rights was substantial.

80. The interference was intentional, as the harms to the class area residents was substantially certain to result from defendants' decisions to operate the refinery and tank farms without controls and to continue operating the refinery and tank farms despite its inability to control emissions.

81. The interference was unreasonable. The harms were serious, the financial burden of compensating plaintiffs and others will not make continuation of defendants' operation infeasible, and hence the harm resulting from the interference is greater than the residents should be required to bear without compensation.

WHEREFORE, defendants are liable in intentional private nuisance for damages to compensate plaintiffs and residents throughout the class area for the lost use and enjoyment of their properties caused by defendants' intentional conduct, and for punitive damages.

COUNT IV
NEGLIGENT TRESPASS

82. Plaintiffs repeat and reallege the allegations set forth above.

83. For the reasons described above in paragraphs 66-71, defendants' conduct was negligent, reckless, or abnormally dangerous.

84. Defendants' negligent, reckless, or abnormally dangerous operation of their refinery and terminal caused the uncontrolled emission of oil and noxious gases, which entered plaintiffs' properties, including their water cisterns, as well as properties and cisterns throughout the class area. Plaintiffs did not consent to the entry of such oil and other substances onto their properties.

85. The entry of oil and noxious gases has caused significant harm to the homes, land, and water of the plaintiffs and other class members.

WHEREFORE, defendants are liable in negligent trespass for damages to compensate plaintiffs and residents throughout the class area for the entry of oil and other substances onto their properties, and for punitive damages.

COUNT V
INTENTIONAL TRESPASS

86. Plaintiffs repeat and reallege the allegations set forth above.

87. Defendants' operation of their refinery and tank farm caused the uncontrolled emission of oil and noxious gases, which entered plaintiffs' properties, including their water cisterns, as well as properties and cisterns throughout the class area. Plaintiffs did not consent to the entry of such oil and other substances onto their properties.

88. The entry was intentional, as the defendants knew that it was substantially certain to result from their decisions to operate the refinery and terminal without controls and to continue operating the refinery and terminal despite their inability to control emissions.

89. Defendants are aware that they caused the emission and entry of oil and other substances but have failed to remove it.

WHEREFORE, defendants are liable in intentional trespass for damages to compensate plaintiffs and residents throughout the class area for the entry of oil and other substances onto their properties, and for punitive damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and the class, pray for relief as follows:

- A. certification pursuant to Virgin Islands Rule of Civil Procedure 23 of a Class of all persons residing in the neighborhoods north, northwest, west, and southwest of the Limetree complex on or after January 1, 2020.
- B. judgment in damages against defendants to compensate plaintiffs and the class members for the loss of use and enjoyment;
- C. judgment for punitive damages against defendants.
- D. prejudgment and post judgment interest as provided by law; and
- E. all further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and the class, demand a trial by jury.

Respectfully submitted,

LAW OFFICES OF JOHN K. DEMA, PC.
Attorneys for Plaintiffs

Dated: May 20, 2021

/s/John K. Dema
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