

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY
STATE OF GEORGIA

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CLARKE COUNTY, GEORGIA

DOCKET INITIALS

JEFFREY McELHENEY, as Parent and next)
friend of his minor son, JARRETT M.)
McELHENEY)

Plaintiff,)

v.)

BP PRODUCTS NORTH AMERICA INC.;)
CHEVRON U.S.A. INC.; GULF OIL)
CORPORATION; UNION OIL COMPANY)
OF CALIFORNIA; TRANSMONTAIGNE)
PRODUCT SERVICES, INC.;)
TRANSMONTAIGNE PRODUCT)
SERVICES INC. EAST; LOUIS DREYFUS)
HIGHBRIDGE ENERGY LLC;)
COLONIAL PIPELINE COMPANY; and)
PLANTATION PIPE LINE COMPANY.)

Defendants.)

Civil Action No.

SW11CV1692

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Jarrett M. McElheney, by and through his parent and next friend Jeffrey McElheney, seeks monetary damages and a jury trial against Defendants Gulf Oil Corporation; Union Oil of California; BP Products North America Inc.; TransMontaigne Product Services, Inc.; TransMontaigne Product Services Inc. East; Louis Dreyfus Highbridge Energy LLC; Colonial Pipeline; Chevron U.S.A. Inc.; and Plantation Pipe Line Company; respectfully showing the Court the following:

OVERVIEW

1. Jarrett M. McElheney ("Jarrett McElheney" or "Plaintiff") was conceived and raised in the Oakwood Mobile Home Park in Athens, Clarke County, Georgia ("Mobile Home Park"). Defendants operated multiple bulk petroleum facilities ("Facilities) and pipelines

adjacent to the Mobile Home Park. Defendants released and discharged toxic chemicals from their Facilities and pipelines, including the carcinogen benzene. Defendants' release and discharge of such toxic chemicals was in violation of Georgia common law, and Federal and Georgia environmental statutes and regulations. Defendants' illegal discharge and release of toxic chemicals contaminated the water, soil, and air in and surrounding the Mobile Home Park, and caused Jarrett McElheney to develop and suffer from cancer, specifically leukemia. Jarrett McElheney, through his parent and next friend Jeffrey McElheney, seeks compensatory and punitive damages to recover for personal injury and property damage under theories of negligence, negligence *per se*, trespass, battery, and private nuisance.

PARTIES, JURISDICTION AND VENUE

2. Jarrett McElheney is a resident of the State of Georgia currently living in Winterville, Georgia. He previously resided with his parents in Athens, Georgia, at the Mobile Home Park, adjacent to the Facilities owned and operated by Defendants.

3. Defendant BP Products North America Inc. ("BP"), d/b/a BP Oil and B.P. Exploration & Oil Co., is a Maryland Corporation with its principal place of business at 4101 Winfield Rd., Warrenville, IL 60555. At all relevant times, BP regularly transacted business in Georgia, committed tortious acts within Georgia, and owned property in Georgia. At all relevant times, BP was and continues to be authorized to do business in Georgia and may be served by delivering a copy of the Summons and Complaint to its registered agent, The Prentice-Hall Corp. System, at 40 Technology Pkwy. South, #300, Norcross, GA 30092. This Court has personal jurisdiction over BP pursuant to O.C.G.A § 9-10-91.

4. Defendant Chevron U.S.A., Inc. ("Chevron") is a Pennsylvania Corporation with its principal place of business at 6001 Bollinger Canyon Rd. V2322/A, San Ramon, CA 94583-

9128. At all relevant times, Chevron regularly transacted business in Georgia, committed tortious acts within Georgia, and owned property in Georgia. At all relevant times, Chevron was, and continues to be, authorized to do business in Georgia and may be served by delivering the Summons and Complaint to its registered agent, Corporation Service Company, at 40 Technology Parkway South, #300, Norcross, GA 30092. This Court has personal jurisdiction over Chevron pursuant to O.C.G.A § 9-10-91.

5. Defendant Gulf Oil Corporation (“Gulf Oil”) is a Pennsylvania corporation with its principal place of business at 6001 Bollinger Canyon Rd. V2322/A, San Ramon, CA 94583-9128. At all relevant times, Gulf Oil regularly transacted business in Georgia, committed tortious acts within Georgia, and owned property in Georgia. At all relevant times, Gulf Oil was, and continues to be, authorized to do business in Georgia and may be served by delivering the Summons and Complaint to its registered agent, Corporation Service Co., at 40 Technology Pkw. S. #300, Norcross, GA 30092. This Court has personal jurisdiction over Gulf Oil pursuant to O.C.G.A § 9-10-91.

6. Defendant Union Oil Company of California (“UNOCAL”) is a California Corporation with its principal place of business at 6001 Bollinger Canyon Rd. V2322/A, San Ramon, CA 94583-9128. At all relevant times, UNOCAL regularly transacted business in Georgia, committed tortious acts within Georgia, and owned property in Georgia. At all relevant times, UNOCAL was, and continues to be, authorized to do business in Georgia and may be served by delivering the Summons and Complaint to its registered agent, Corporation Service Company, at 40 Technology Pkwy. South, #300, Norcross, GA 30092. This Court has personal jurisdiction over UNOCAL pursuant to O.C.G.A § 9-10-91.

7. Defendant TransMontaigne Product Services, Inc., (“TransMontaigne”) is a Delaware corporation with its principal place of business at 1670 Broadway, Ste 3100, Denver, Colorado 80202. At all relevant times, TransMontaigne regularly transacted business in Georgia, committed tortious acts within Georgia, and owned property in Georgia. At all relevant times, TransMontaigne was, and continues to be, authorized to do business in Georgia and may be served by delivering the Summons and Complaint to its registered agent, CT Corporation System/Shakinah Edwards, at 1201 Peachtree St., Atlanta, Georgia 30361. This Court has personal jurisdiction over TransMontaigne pursuant to O.C.G.A § 9-10-91.

8. Defendant TransMontaigne Product Services Inc. East (“TransMontaigne East”) was a Delaware corporation with its principal place of business at 200 Mansell Court East, Suite 600, Roswell, GA 30076. At all relevant times TransMontaigne East regularly transacted business in Georgia, committed tortious acts within Georgia, and owned property in Georgia. At all relevant times TransMontaigne East was authorized to do business in Georgia. TransMontaigne East may be served by delivering a copy of the Summons and Complaint to its registered agent, The Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, DE, 19801. This Court has personal jurisdiction over TransMontaigne East pursuant to O.C.G.A. § 9-10-91.

9. Defendant Colonial Pipeline Company (“Colonial”) is a Delaware corporation with its principal place of business at 1185 Sanctuary Parkway, Suite 100, Alpharetta, Georgia 30004-4765. At all relevant times, Colonial regularly transacted business in Georgia, committed tortious acts within Georgia, and owned property in Georgia. At all relevant times, Colonial was, and continues to be authorized to do business in Georgia, and may be served by delivering the Summons and Complaint to its registered agent, Corporation Service Company, at 40

Technology Pkwy South, #300, Norcross, GA 30092. This Court has personal jurisdiction over Colonial pursuant to O.C.G.A § 9-10-91.

10. Defendant Plantation Pipe Line Company (“Plantation”) is a Delaware corporation with its principal place of business at 500 Dallas Street Ste. 1000, Houston, Texas 77002. At all relevant times, Plantation regularly transacted business in Georgia, committed tortious acts within Georgia, and owned property in Georgia. At all relevant times, Plantation was and continues to be authorized to do business in Georgia and may be served by delivering the Summons and Complaint to its registered agent, CT Corporation System, at 1201 Peachtree St., N.E., Atlanta, GA 30361. This Court has personal jurisdiction over Colonial pursuant to O.C.G.A § 9-10-91.

11. Defendant Louis Dreyfus Highbridge Energy LLC is a Delaware Corporation with its principal place of business at 20 Westport Rd., P.O. Box 0843, Wilton, Connecticut 06897-0843. At all relevant times, Louis Dreyfus Highbridge Energy LLC, or its predecessor(s), the Louis Dreyfus Corporation and/or Louis Dreyfus ES Holdings LLC, (collectively referred to as “LDC”) regularly transacted business in Georgia, committed tortious acts within Georgia and owned property in Georgia. At all relevant times, LDC was, and continues to be, authorized to do business in Georgia and may be served by delivering the Summons and Complaint to its registered agent, Corporation Service Company, at 40 Technology Pkwy South, #300, Norcross, GA 30092. This Court has personal jurisdiction over LDC pursuant to O.C.G.A § 9-10-91.

12. Venue is proper in this Court pursuant to O.C.G.A. §§ 9-10-93 and 14-2-510 because:

- (a) Defendants were all involved in the same transactions and occurrences that gave rise to Plaintiff’s claims; and

- (b) a substantial amount of the business giving rise to Plaintiff's claims was conducted in Athens-Clarke County; Defendants' tortious acts and omissions, and resulting injuries, occurred in Athens-Clarke County; and Defendants owned property in Athens-Clarke County.

FACTUAL BACKGROUND

The McElheney Family

13. Jeffrey and Felicia McElheney (collectively, the "McElheney's") moved into the Oakwood Mobile Home Park ("Mobile Home Park"), in Athens, GA, in or around May 1992.

14. As residents of the Mobile Home Park, the McElheney's breathed the air surrounding the Mobile Home Park, came into frequent and regular contact with the soil of the Mobile Home Park, and used the well located in the Mobile Home Park for the full spectrum of residential purposes, including drinking, bathing, and cleaning.

15. On or around January 26, 1994, the McElheney's conceived a son, Jarrett McElheney, while living in the Mobile Home Park.

16. Jarrett McElheney was born on October 25, 1994 and was raised by his parents in the Mobile Home Park until at least December 1998.

17. As a resident of the Mobile Home Park, Jarrett McElheney breathed the air surrounding the Mobile Home Park, came into frequent and regular contact with the soil of the Mobile Home Park, and used the well located in the Mobile Home Park for the full spectrum of residential purposes, including drinking, bathing, and cleaning.

18. Jarrett McElheney was diagnosed with leukemia on or around December 29, 1998.

Petroleum Facilities and Pipelines

19. Multiple bulk petroleum facilities (“Facilities”) and pipelines are located in Athens, GA, adjacent to the Mobile Home Park. Two of the Facilities are located southeast of the Mobile Home Park and one Facility is located northeast of the Mobile Home Park.

20. The Facilities are serviced by at least two pipeline systems. Colonial’s pipeline services the Colonial Facility to the northeast of the Mobile Home Park, and Plantation’s pipeline services one or more Facilities to the southeast.

The Southeast Terminal Facility

21. The Southeast Terminal Facility (“SET facility”) is located at 3450 Old Jefferson Road (Highway 129) in Athens, Clarke County, Georgia. The SET facility property is about eighteen (18) acres in size.

22. The SET facility’s land is bounded on the north by undeveloped land, on the southeast by a Chevron U.S.A. bulk storage facility, on the south by Old Jefferson Road, and on the west by Colonial’s underground lines and Camak Drive.

23. The Mobile Home Park is located about 600 feet northwest of the SET facility.

24. The Athens Grain Elevator site is located about 250 feet from the southwestern corner of the SET facility.

25. The SET facility has historically been a bulk storage terminal for petroleum products. The SET facility receives and stores gasoline, diesel, fuel, and kerosene from pipelines operated by Plantation.

26. The SET facility is equipped with multiple structures for the purpose of receiving and storing such petroleum products, including: (a) 12 above-ground storage tanks that have contained gasoline products, diesel, and fuel oil; (b) two truck-loading racks in the south-central

portion of the property; (c) an oil-water separator in the central portion of the property; and (d) office and warehouse buildings in the southeastern and southwestern portions of the property.

27. The gasoline, diesel, fuel, and kerosene are stored at the SET facility in above-ground storage tanks and distributed by tanker trucks.

Ownership of the SET Facility

28. Several companies have owned and/or operated the SET facility, including Defendants Gulf Oil, UNOCAL, BP, LDC, TransMontaigne, and TransMontaigne East (collectively, "SET facility Defendants").

29. The SET facility was co-owned by Gulf Oil and UNOCAL from its construction in 1943 through 1985.

30. On or around February 1, 1985, BP took over ownership from Gulf Oil and as a result, BP shared ownership with UNOCAL.

31. In or around July 1992, LDC purchased the UNOCAL portion of the SET facility from UNOCAL.

32. In a March 1999 EPA Notification of Hazardous Waste Activity form, TransMontaigne East was identified as a legal owner of the SET facility.

33. As of 2003, the SET facility was jointly owned by TransMontaigne and BP Amoco (also known as BP Oil) and was operated by BP.

The Harmful Chemicals Produced and Dispersed by the SET Facility

34. Throughout its existence, the SET facility generated multiple forms of waste, including gasoline and diesel tank bottom sludge containing benzene, lead, and other hazardous chemicals.

35. Before the Resource Conservation and Recovery Act (RCRA) was enacted in 1980, the SET facility disposed of toxic leaded-tank bottom sludge on site, in diked areas surrounding the above-ground storage tanks.

36. The RCRA gave authority to the EPA to control hazardous waste, including the generation, transportation, storage, treatment, and disposal of hazardous waste. One provision of the RCRA requires an RCRA Part A Permit Application, which asks for information about hazardous waste treatment, storage, or disposal facilities (TSDFs) that the EPA uses to identify regulated waste TSDFs and their activities, to track and plan certain activities, and to aid in inspection and enforcement mechanisms. The EPA also uses this information to ensure that hazardous wastes are managed properly, the TSDFs operate as required, the statutory provisions are upheld, and regulations are followed by facility owners and operators.

37. On or around November 13, 1980, Gulf Oil filed a RCRA Part A Permit Application for the leaded-tank bottoms generated on site and use of the oil-water separator.

38. On or around April 13, 1981, the RCRA Part A Permit Application was withdrawn.

39. At least from November 1993 to June 1994, and from September 1994 to March 1995, the oil-water separator at the SET facility was used to process the discharge from several water sources on the SET facility's property including: (i) contact water from the truck-loading-rack drains; (ii) storm water; and (iii) tank bottom water from the on-site above-ground storage tanks. This discharge was saturated with multiple toxic chemicals, including benzene. During these times, the SET facility was operating the oil-water separator without filing or gaining the approval required from an RCRA Part A Permit Application.

40. In processing the discharge from these multiple water sources, the oil-water separator produced significant waste. This waste was drained through subsurface piping and discharged to an on-site ditch.

41. The on-site ditch eventually directed the discharge of the oil-water separator waste off site, along the western border of the SET facility and toward the Mobile Home Park.

42. The EPA has identified contaminants of concern (“COCs”) as contaminants that could pose a significant threat to public health if accidentally or intentionally introduced to drinking water and the surrounding environment.

43. The waste from the SET facility is associated with several hazardous COCs, of which many are carcinogenic, including: benzene, toluene, ethylbenzene, MTBE, 1,2 dibromoethane, 1,2 dichloroethane, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, and lead.

44. The SET facility’s oil-water separator discharge point (also known as the “outfall”), and the area almost 300 feet downgradient of this outfall, are two locations that have been identified as sources of at least some of the above COCs.

45. In addition to the COCs associated with the waste discharged from the oil-water separators, there was an underground pipe leak at the SET facility, during which BP released an unknown quantity of diesel fuel throughout the SET facility. This line rupture has been identified as another source of at least some of the above COCs at the facility.

46. There were numerous leaks and releases at the SET facility, including the following:

- (a) A diesel fuel leak was discovered on May 8, 1991.

- (b) On March 24, 1997 a release was discovered on the mid-grade product line near the additive tank compound.
- (c) On January 14, 1998 a release was discovered on the high sulfur line near the meter stack area.
- (d) On April 22, 1998 the PVC pipe in the receiving manifold area came unglued.

47. Contaminated surface water at the SET facility was also identified as a source of at least some of the above COCs.

48. There were also significant quantities of non-aqueous phase liquid (“NAPL”) found in the groundwater around the SET facility. NAPLs are liquids that do not dissolve readily with water. These NAPLs provided an ongoing source of toxic organic chemical contamination, including carcinogenic benzene, to the groundwater and surrounding environment in and around the Mobile Home Park.

49. The environment and communities surrounding the SET facility are exposed to COCs through several sources, including: (i) surficial soils, (ii) subsurface soils, (iii) the dissolved-phase contaminant plume, (iv) the NAPL contaminant plume, (v) storm water runoff, and (vi) sediments.

50. There is one groundwater aquifer beneath the SET facility, which is unconfined and vulnerable to contamination from infiltration of contaminants from the surface. This aquifer has been extensively contaminated from the Defendants’ activities at the facility, including, but not limited to, leaks, discharges, water cuts, and toxic sludge disposal.

51. In addition to soil and groundwater contamination, the above-ground storage tanks at the SET facility are vented to the environment and release toxic volatile organic compounds (“VOCs”), including, but not limited to, benzene.

52. The EPA has defined VOCs as gases emitted from solids or liquids, including a variety of chemicals which may have short- and long-term adverse health effects.

53. While operating the SET facility, the owners and/or operators negligently, recklessly, and intentionally released hazardous chemicals, including benzene, into the environment by way of soil, water, and air contamination.

Other Facilities

54. The Colonial Pipeline facility is to the northeast of the Mobile Home Park. It is comprised of seven above-ground storage tanks that contain gasoline and other fuels.

55. The above-ground storage tanks at the Colonial Pipeline facility release toxic VOCs into the environment including, but not limited to, benzene.

56. While operating the facility, Colonial Pipeline owners and/or operators negligently, recklessly, and intentionally released hazardous chemicals, including benzene, into the environment by way of soil, water, and air contamination.

57. The former Chevron facility is located to the east of the SET facility. It is comprised of at least 12 above-ground storage tanks used to store fuels which contain toxic COCs and emit toxic VOCs into the environment, including benzene.

58. While operating the facility, Chevron owners and/or operators negligently, recklessly, and intentionally released hazardous chemicals, including benzene, into the environment by way of soil, water, and air contamination.

Injurious Effects of Facilities' Activities on Jarrett McElheney

59. Several studies were done investigating the environmental impacts of the activities at the SET facility and the surrounding facilities, including the 1992 Draft Phase I Site Inspection for Southeast Terminal ("Site Inspection").

60. The Site Inspection broadly assessed the impacts of past activities on contaminant levels at and around the facility, including sources of contamination and the related risk to the surrounding population.

61. The Site Inspection includes materials identifying the Mobile Home Park and noting the existence of the private drinking well in the Mobile Home Park.

62. In as early as 1994, Defendant Chevron identified the private well in OMHP while performing a well survey of the area.

63. By way of the Site Inspection and simple well surveying, Defendants knew, or certainly should have known, about the mobile home community living in close proximity to their activities. However, the investigations that Defendants performed never analyzed nor acknowledged the potential for human health harm.

64. At least by way of the Site Inspection, Defendants knew, or certainly should have known, about the private drinking water well that supplied water to the Mobile Home Park. However, the residents of the Mobile Home Park were never informed about the history of toxic contamination migrating from the facilities to the environment in and surrounding the Mobile Home Park.

65. The chemicals that Defendants negligently released onto and into the ground, including benzene, migrated into the aquifer that supplied water to the Mobile Home Park's well and contaminated the water used by residents of the Mobile Home Park, including Jarrett McElheney and his parents, Felicia and Jeffrey.

66. The chemicals that Defendants negligently released into the air, including benzene, migrated to the air surrounding the Mobile Home Park and contaminated the air

breathed by residents of the Mobile Home Park, including Jarrett McElheney and his parents, Felicia and Jeffrey.

67. The chemicals that Defendants negligently released onto and into the ground and water sources, including benzene, migrated into the aquifer at the Mobile Home Park and contaminated the soil in the Mobile Home Park that the residents, including Jarrett McElheney and his parents, Felicia and Jeffrey, came into contact with.

68. Prior to Jarrett McElheney's birth, Felicia and Jeffrey breathed the air surrounding the Mobile Home Park, consumed the well water, used the well water for bathing and cleaning, and came into contact with the soil at the Mobile Home Park.

69. Prior to his diagnosis of leukemia, Jarrett McElheney breathed the air surrounding the Mobile Home Park, consumed the well water, used the well water for bathing and cleaning, and came into contact with the soil at the Mobile Home Park.

70. Prior to his diagnosis, Jarrett McElheney was exposed to Defendants' toxic chemicals, including benzene, in the womb (as a result of his parents' exposures), after birth, as an early infant, and growing up as a young child in the Mobile Home Park through the air, water, and soil.

71. As a result of the exposures caused by Defendants' willful, reckless, and negligent release of toxic chemicals into the environment, Jarrett McElheney contracted cancer, specifically leukemia, and suffered other injuries.

72. As a result of the exposure caused by Defendants' willful, reckless, and negligent release of toxic chemicals, Jarrett McElheney has suffered, and will continue to suffer from the long-term effects of having leukemia and being treated for leukemia. These effects include, but

are not limited to, the risk of relapse of leukemia, as well as the increased risk of diseases later in life, including cancer.

COUNT I: NEGLIGENCE

73. Plaintiff incorporates each and every preceding paragraph, as if set forth fully herein.

74. Jarrett McElheney and his parents were residents of the Mobile Home Park that was adjacent to and/or nearby Defendants' Facilities and/or pipelines. As such, Jarrett McElheney and his parents could foreseeably be injured by Defendants' willful, reckless, and negligent release of harmful chemicals into the environment.

75. The Defendants owed a duty to Jarrett McElheney and his parents to exercise reasonable care in not releasing and discharging toxic contaminants from their Facilities and/or pipelines that they knew, or should have known, could result in personal injury to Jarrett McElheney, Felicia and Jeffrey, and others.

76. The Defendants owed a duty to Jarrett McElheney and his parents to exercise reasonable care to discover any such releases and discharges of toxic contaminants from their Facilities and/or pipelines.

77. The Defendants owed a duty to Jarrett McElheney and his parents to warn them and/or others in the community that Defendants' Facilities and/or pipelines contaminated the surrounding environment.

78. The Defendants owed a duty to Jarrett McElheney and his parents to warn them and/or others in the community of the risks associated with exposure to the contaminants released from Defendants' Facilities and/or pipelines.

79. Defendants' duties to exercise reasonable care arose out of the common law of Georgia, as well as relevant Federal and state environmental regulations.

80. Defendants breached their duties to exercise reasonable care and were negligent in the following respects:

- (a) In releasing and discharging toxic contaminants from the Facilities and/or pipelines into the groundwater, soil, and air in and surrounding the Mobile Home Park because Defendants knew or should have known that hazardous toxic contaminants were being produced, released, and discharged from their activities, specifically from the (i) operation of the oil-water separator; (ii) spills, leaks and discharges of toxic contaminants; and (iii) venting of toxic contaminants into the air and local environment. Defendants nevertheless failed to use appropriate care, available technology, and procedures to prevent and control such releases and discharges;
- (b) In failing to discover the contamination of the air, water, and soil in and surrounding the Facilities, pipelines, and/or Mobile Home Park sooner;
- (c) In failing to discover that the groundwater contamination had migrated onto adjacent property and into private wells that were used for drinking water;
- (d) In failing to contain the toxic contaminants, and instead allowing them to migrate into the surrounding environment, including the environment and land in and surrounding the Mobile Home Park;
- (e) In failing to discover that airborne contamination had migrated into the Mobile Home Park and into the air that residents in the Mobile Home Park breathed;

- (f) In failing to warn Jarrett McElheney, Felicia and Jeffrey, and others of the contamination in the Mobile Home Park well, in the air surrounding the Mobile Home Park, and in the soil in and surrounding the Mobile Home Park;
- (g) In failing to identify the private well at the OMHP to its consultants and to State and Federal Agencies;
- (h) In failing to warn Jarrett McElheney, Felicia and Jeffrey, and others of the likelihood of exposure to toxic chemicals released and discharged by Defendants;
- (i) In failing to warn Jarrett McElheney, Felicia and Jeffrey, and others of the risks associated with exposure to the toxic chemicals released and discharged by Defendants;
- (j) In failing to engage in remedial or other actions to remove or control the contamination of toxic chemicals; and
- (k) In failing to prevent Jarrett McElheney, Felicia and Jeffrey, and others from being exposed to the contamination of toxic chemicals.

81. As a direct and proximate result of the Defendants' wrongful acts and omissions, Jarrett McElheney was exposed to toxic contaminants flowing from Defendants' Facilities and/or pipelines in his contact with the water, soil, and air in and surrounding the Mobile Home Park.

82. As a direct and proximate result of his contact with Defendants' toxic contaminants, Jarrett McElheney has suffered from cancer, specifically leukemia, and other personal injuries.

83. As a direct and proximate result of the Defendants' wrongful acts and omissions, Jarrett McElheney contracted leukemia and has suffered other injuries.

84. As a direct and proximate result of the Defendants' wrongful acts and omissions, Jarrett McElheney has suffered, and will continue to suffer from the long-term effects of having leukemia and being treated for leukemia. These effects include, but are not limited to, the risk of relapse of leukemia, as well as the increased risk of diseases later in life, including cancer.

85. Jarrett McElheney is entitled to recover damages for such personal injuries, emotional distress, fear and anxiety and for the economic losses, including medical expenses, past and future, lost income and other losses resulting from Defendants' negligence.

COUNT II: NEGLIGENCE PER SE

86. Plaintiff incorporates each and every preceding paragraph, as if set forth fully herein.

87. The SET facility Defendants disposed of pollutants and/or hazardous substances, containing toxic VOCs, including benzene, into the environment in Georgia.

88. The SET facility Defendants were required to comply with the Resource Conservation and Recovery Act ("RCRA"), 40 C.F.R. § 262.11, and Section 391-3-11.08 of the Georgia Hazardous Waste Management Rules.

89. The SET facility Defendants failed to make a hazardous waste determination as required by § 3002(a) of the Resource Conservation and Recovery Act ("RCRA"), 40 C.F.R. § 262.11, and Section 391-3-11.08 of the Georgia Hazardous Waste Management Rules.

90. The SET facility Defendants violated Section 3005(a) of RCRA, 40 C.F.R. § 270.10, and Section 391-3-11.11 of the Georgia Hazardous Waste Management Rules by operating a hazardous waste disposal facility without a permit.

91. Upon information and belief, Plaintiff further alleges that the discharges were in violation of other Federal and Georgia statutory provisions and regulations but cannot specify the

statutory or regulatory provisions, or the detailed facts relating to the violations, without conducting further discovery of information that is in the exclusive control of the defendants. If and when Plaintiffs have discovered the necessary information they will seek leave of the Court to amend further this Complaint to allege the additional violations.

92. Plaintiff Jarrett McElheney was within the class of persons that the above statutes and rules were designed to protect and he has suffered the kind of harm the statutes were designed to prevent.

93. Jarrett McElheney has suffered personal injuries, including but not limited to leukemia, from the unpermitted disposal of hazardous substances at the SET facility that contaminated the air, water, and soil in and surrounding the Mobile Home Park that Jarrett McElheney used and came in contact with.

94. The SET facility Defendants' violations of the above laws and regulations constitute negligence *per se*, for which they are strictly liable to Plaintiff.

95. As a direct and proximate result of the SET facility Defendants' negligence *per se*, Jarrett McElheney was injured by contracting leukemia and suffering other injuries.

96. As a direct and proximate result of the Defendants' negligence *per se*, Jarrett McElheney has suffered, and will continue to suffer from the long-term effects of having leukemia and being treated for leukemia. These effects include but are not limited to, the risk of relapse of leukemia, as well as the increased risk of diseases later in life, including but not limited to, cancer.

97. Jarrett McElheney is entitled to recover damages for such personal injuries, emotional distress, fear and anxiety and for the economic losses, including medical expenses, past and future, lost income and other losses resulting from Defendants' negligence *per se*.

COUNT III: TRESPASS

98. Plaintiff incorporates each and every preceding paragraph, as if set forth fully herein.

99. Plaintiff Jarrett McElheney also asserts a claim for damages as a result of trespass to his family's property.

100. The McElheney's Mobile Home and surrounding land in the Mobile Home Park were the personal property of the McElheney's.

101. The Defendants' willful, reckless, and negligent conduct resulted in the release and discharge of hazardous and toxic contaminants into the water, soil, and air that migrated onto and into Plaintiff's property and the surrounding environment without Plaintiff's authorization.

102. The physical invasion of Plaintiff's property by such hazardous and toxic contaminants constitutes a trespass to the property for which Plaintiff is entitled to recover damages under Georgia common law.

103. As a direct and proximate result of the Defendants' trespass, Jarrett McElheney was injured by way of contracting leukemia and suffering other injuries.

104. As a direct and proximate result of the Defendants' trespass, Jarrett McElheney has suffered, and will continue to suffer from the long-term effects of having leukemia and being treated for leukemia. These effects include, but are not limited to, the risk of relapse of leukemia, as well as the increased risk of diseases later in life, including but not limited to, cancer.

105. As a direct and proximate result of the Defendants' trespass, Plaintiff's property was injured in other ways.

106. Jarrett McElheney is entitled to recover damages for such property damage, personal injuries, emotional distress, fear and anxiety and for the economic losses, including medical expenses, past and future, lost income and other losses resulting from such trespass on his and his family's property.

COUNT IV: BATTERY

107. Plaintiff incorporates each and every preceding paragraph, as if set forth fully herein.

108. Defendants intentionally caused Jarrett McElheney and other residents of the Mobile Home Park to come into contact with hazardous, toxic, and carcinogenic chemicals, including benzene.

109. Defendants knowingly and intentionally caused hazardous, toxic, and carcinogenic chemicals to be released into the soil, air, and groundwater, knowing with substantial certainty that such chemicals would come into contact with nearby residents.

110. Defendants knowingly and intentionally caused hazardous, toxic, and carcinogenic chemicals to be released into the soil, air, and groundwater, knowing with substantial certainty that such chemicals would cause harm to nearby residents.

111. Jarrett McElheney did not consent to contact with the harmful chemicals that Defendants caused him to come into contact with. Rather, he and his parents were unaware of their exposure to the harmful chemicals and would not have consented to contact with such chemicals.

112. The contact that Defendants caused was harmful to Jarrett McElheney, causing him to develop serious health problems, including leukemia, and other injuries.

113. Jarrett McElheney is entitled to recover damages for such personal injuries, emotional distress, fear and anxiety and for the economic losses, including medical expenses, past and future, lost income and other losses resulting from such battery.

COUNT V: PRIVATE NUISANCE

114. Plaintiff incorporates each and every preceding paragraph, as if set forth fully herein.

115. Defendants owned and controlled their Facilities and/or pipelines at all relevant times.

116. Defendants caused hazardous and toxic chemicals, including benzene, to continuously be released from their Facilities and/or pipelines into the surrounding soil, air, and groundwater.

117. Defendants had full knowledge and notice of the continuous releases, but allowed them to persist. Defendants are therefore responsible for the creation, continuance, and maintenance of such releases.

118. The leaks and air releases from the Defendants' Facilities and/or pipelines constituted a nuisance because they interfered with the McElheney family's safe enjoyment of their private property. This interference included causing Jarrett McElheney to develop serious health problems, including leukemia, from the ordinary use his property. The nuisance also caused the McElheney's undue stress, unhappiness, and disrupted peace of mind.

119. Jarrett McElheney is entitled to recover damages for such personal injuries, emotional distress, fear and anxiety and for the economic losses, including medical expenses, past and future, lost income and other losses resulting from such private nuisance.

COUNT VI: PUNITIVE DAMAGES

120. Plaintiff incorporates each and every preceding paragraph, as if set forth fully herein.

121. The conduct of Defendants showed willful misconduct, malice, wantonness, oppression, or that entire want of care so as to raise a presumption of a conscious indifference to the consequences of their actions.

122. Defendants acted with the specific intent to cause harm to Jarrett McElheney.

123. Jarrett McElheney is accordingly entitled to recover punitive damages, without limitation or cap, from each of the Defendants, in accordance with the enlightened conscience of an impartial jury.

PRAAYER FOR RELIEF

Plaintiff demands a TRIAL BY JURY and prays for the following relief:

(a) all compensatory damages available to Plaintiff, including (but not limited to) his personal injuries, economic losses, medical expenses, both past and future, property damages, emotional distress, inconvenience, pain and suffering, and other indignities, to be determined by a jury;

(b) punitive damages to be determined by a jury;

(c) pre-judgment and post-judgment interest;

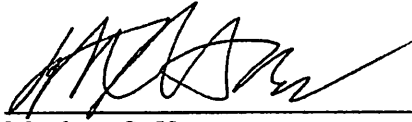
(d) all costs of litigation, including without limitation, attorneys' fees and costs; and

(e) all other available relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to O.C.G.A. § 15-12-122, Plaintiff requests that this action be tried by a jury of twelve jurors. Plaintiff demands a trial by jury as to all issues.

Respectfully submitted this 15th day of November, 2011.



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