IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PENNSYLVANIA

LINDA HERNANDEZ, on behalf of herself and all other similarly situated individuals,

Plaintiff,

v.

UNITED STATES STEEL CORPORATION, a Delaware corporation,

Defendant.

CIVIL DIVISION

G.D. NO.: _____

CLASS ACTION COMPLAINT

FILED ON BEHALF OF:
PLAINTIFF LINDA HERNANDEZ

COUNSEL OF RECORD FOR THIS PARTY:

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JURY TRIAL DEMANDED

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NOTICE TO DEFEND AGAINST CLAIMS

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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CLASS ACTION COMPLAINT

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Plaintiff, Linda Hernandez, by her attorneys, make the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge.

SUMMARY OF THE CASE

1. On December 24, 2018, a catastrophic fire erupted at Defendant's Clairton Plant, destroying a building as big as a football field and knocking out the "desulfurization" system Defendant used to remove sulfurous byproducts from the gases emitted to air. For more than three months, Defendant operated its plant without that system, and in so doing, released *unprecedented* quantities of noxious sulfur dioxide and hydrogen sulfide directly into the Mon Valley air,[1] triggering repeated high health alerts from the Allegheny County Health Department, causing widespread nuisance-level discomforts (offensive odor, burning eyes, nose and throat,

[1] Allegheny County has a long history of regulatory enforcement litigation over emissions from the Clairton Plant; and the County is in "non-attainment status" with respect to sulfur dioxide emissions for which Defendant is the major source. The emission levels that caused the nuisance conditions claimed of here, following the fire, are *unprecedented*.

difficulty breathing, sleep loss, headaches, anxiety), and generally impeding area residents' use and enjoyment of their homes.

2. Plaintiff Linda Hernandez—one such area resident—brings this class action for damages under Pennsylvania common law nuisance and negligence.

3. Plaintiff seeks lost-use-and-enjoyment damages to vindicate private property rights, *not* enforcement of environmental statutes, regulations, or regulatory permits; she seeks monetary damages, *not* injunctive relief. Lawsuits for Pennsylvania common law negligence and nuisance—like that here—are distinct from, and not preempted by, federal law. *See Bell v. Cheswick Generating Station*, 734 F.3d 188 (3d Cir. 2013).

4. Plaintiff alleges that Defendant was negligent, and created a nuisance, by failing to exercise the reasonable care that would have prevented the fire, then operating the fire-damaged Plant without the pollution controls needed to avoid class-area harm. The prolonged discomforts experienced throughout the class area (offensive odors, breathing problems, burning eyes, nose and throat, disrupted sleep, anxiety), and the repeated public warnings that alarmed class-area residents and caused them to shutter inside their homes, were all foreseeable. Defendant knew or should have known they would occur.

5. Defendant's conduct was reckless. Compensatory and punitive damages are warranted to redress the harms Defendant caused and deter like conduct in future.

PARTIES

6. Plaintiff Linda Hernandez has resided since August 1998 in East Pittsburgh, Pennsylvania, one of the 22 communities affected by the fire. She seeks to represent all individuals who resided in Braddock, Clairton, Dravosburg, Duquesne, East McKeesport, East Pittsburgh, Elizabeth Borough, Elizabeth Township, Forward, Glassport, Jefferson Hills, Liberty,

Lincoln, McKeesport, North Braddock, North Versailles, Pleasant Hills, Port Vue, Versailles, Wall, West Elizabeth, and West Mifflin.

7. Defendant is a Delaware Corporation headquartered in Pittsburgh, Pennsylvania. Since 1918, it has operated an integrated steelmaking operation comprised of four Pittsburgh-area facilities known as the Mon Valley Works, including the Clairton, Edgar Thomson, and Irvin Plants in Allegheny County, Pennsylvania.

JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction over Plaintiff's negligence and nuisance claims pursuant 42 Pa, C.S. 931(a) and personal jurisdiction under 42 Pa. C.S. § 530. Venue is proper under Pa. R. Civ. P. § 2179 and 42 Pa C. S. § 931(c). Defendant carries on a continuous and systematic part of its general business in this County. The Plaintiff and class members are all located in Allegheny County. The cause of action arose in Allegheny County. And the amount in controversy, exclusive of interest and costs, exceeds the County's $35,000 ceiling for compulsory arbitration. Allegheny Count Local Rule 1301.

FACTUAL ALLEGATIONS

The Clairton Plant and the December 2018 Fire

9. Defendant's Clairton Plant, located roughly 10 miles southeast of Pittsburgh in Clairton, is the largest coke manufacturing facility in the United States. It produces approximately 4.3 million tons of coke annually for the production of steel. The coke is used in the manufacture of steel slabs at Defendant's Edgar Thomson Plant in Braddock. The steel slabs produced at Edgar Thompson are rolled and treated at Defendant's nearby Irvin Plant, in West Mifflin, to meet customer specifications.

10. Each day, the Clairton Plant operates ten coke oven batteries to produce roughly 10,000 tons of coke from the destructive distillation (carbonization) of more than 16,000 tons of coal. The coke ovens use a high-temperature process—combustion in the absence of oxygen at 1,800 degrees Fahrenheit—to remove sulfur and other impurities from the coal. The process generates hundreds of cubic feet of hazardous, volatile "coke oven" gases (sulfur dioxide, a criteria air pollutant regulated by the Clean Air Act, and other noxious pollutants, including hydrogen sulfide). The coke gas is "desulfurized" at the Plant's processing center before emission to air.

11. The coke oven gas is volatile, and extremely flammable. The Plant's high-temperature, high-pressure industrial process operations are subject to unstable conditions, allowing pressure surges that can cause catastrophic events such as fires and explosions. Properly designed and maintained pressure let-down safety systems and programs ensuring mechanical integrity are essential for preventing such catastrophic events.

12. The risk of coke gas explosions and fires is well known to Defendant. At the Clairton Plant alone, one explosion injured two workers in 2009; and another blew out concrete-block walls at the plant, bent heavy steel beams, and injured 20 workers in 2010.

13. On December 24, 2018, a massive fire erupted at the Clairton Plant. Defendant has disclosed that the fire originated from "a mechanical failure in the C-521 vacuum machine area" of the Plant's gas processing center. A compressor pipe ruptured, shearing the bolts that held the gas piping together. The separated piping became the fuel source for the fire, which tore through the gas processing center, and caused extensive damage to a building the size of a football field. The Plant's desulfurization process was disabled and it took Defendant more the three months to restore it to operation.

Continued Operation with Emissions Uncontrolled

14. After the fire, Defendant chose to continue production without an operable desulfurization process to remove the sulfurous gases from any waste gases emitted to air. Defendant could not reduce the uncleaned coke oven gases, and instead *spread* the pollution over a wider geographic area by piping these gases to the Irvin and Edgar Thomson Plants and releasing them into the ambient air via flaring stacks at those locations. As a result, the ACHD later learned, the volume of sulfur dioxide and hydrogen sulfide released into the Mon Valley Air had skyrocketed.

15. Defendant knew or should have known this would occur.

16. Within a week after the fire, Defendant reported "elevated hydrogen sulfide" to the ACHD and acknowledged "potential increases" of sulfur dioxide and other pollutants from the Irvin and Edgar Thomson Plants (where the gases were piped and flared) as well as Clairton. As the ACHD later learned, Defendant's hydrogen sulfide emissions had increased *26-fold* above levels measured from the plant before the fire, and its sulfur dioxide emissions had increased *36-fold* above levels measured from the plant before the fire. Indeed, the flaring of diverted coke oven gases was pushing *20 additional tons* of sulfur dioxide into the ambient air in a single day—a fact which gravely concerned ACHD.

17. These emissions have caused repeated exceedances of the EPA National Ambient Air Quality standards (NAAQs)—standards set to protect the public against life-threatening health risks. *Far lower measures are sufficient to create the nuisance-level harms claimed here*.

The Post-Fire Emission's Effects on the Class

19. Sulfur dioxide has a pungent chemical smell. When it combines with moisture, including the moisture on the surface of eyes, throats, and airways, it becomes sulfuric acid—a

severe irritant. Hydrogen sulfide produces a strong odor of rotten eggs. It, too, causes irritation to the eyes, nose and throat and difficulty breathing.

20. These irritant effects are well established. They were noted by Defendant in its report to the ACHD immediately after the fire. And they have been long recognized, including by Pennsylvania courts. As one such court observed 60 years ago:

> [S]ulphur dioxide is a very poisonous gas … it has a choking effect and produces coughing …
>
> [H]ydrogen sulphide is a very odoriferous gas with the characteristic odor of rotten eggs … and continuous exposure to very low concentrations causes malaise, nausea, headaches and, in some cases, shortness of breath;… and irritation of the nasal passages and … interferes with the[ir] sleep … and very materially diminishes the usefulness of their homes as places in which to live … and … entertain …"

Evans v. Moffat, 160 A.2d 465 (Pa. Super. 1960).

21. Plaintiff Hernandez felt these effects immediately following the fire. Having spent hours decorating the outside of her East Pittsburgh home on Christmas Eve, she experienced unprecedented levels of chemical and sulfurous odor and an onset of nuisance-level physical discomforts: burning throat, difficulty breathing, headache, persistent coughing, and general malaise. Visits to urgent care produced no explanation.

22. The fire was announced publically on January 9, 2019. On the same day, the ACHD issued the first in a series of unprecedented health alerts to the 22 Mon Valley communities. The first alert, titled "Mon-Valley Residents Urged to Limit Outdoor Activities Due to Air Quality Concerns" stated:

> High concentrations of sulfur dioxide can affect breathing and may aggravate existing respiratory and cardiovascular disease. Sensitive populations include those with asthma, individuals with bronchitis or emphysema, children, and the elderly…. *ACHD is recommending that Mon-Valley residents limit their outdoor activities* … while repairs are being made.

(Similar warnings were repeated over January, February, March, and early April.)

23. Alarmed by the health alerts and her experience over the two weeks before, Plaintiff Hernandez stopped taking her dogs for walks, kept her granddaughter inside, and otherwise limited her activities outdoors. But the headaches, coughing, throat irritation, and difficulty breathing continued throughout January, February, March, and through at least April 4, 2019, interrupted only by vacation excursions outside the Mon Valley-area, during which the symptoms abated.

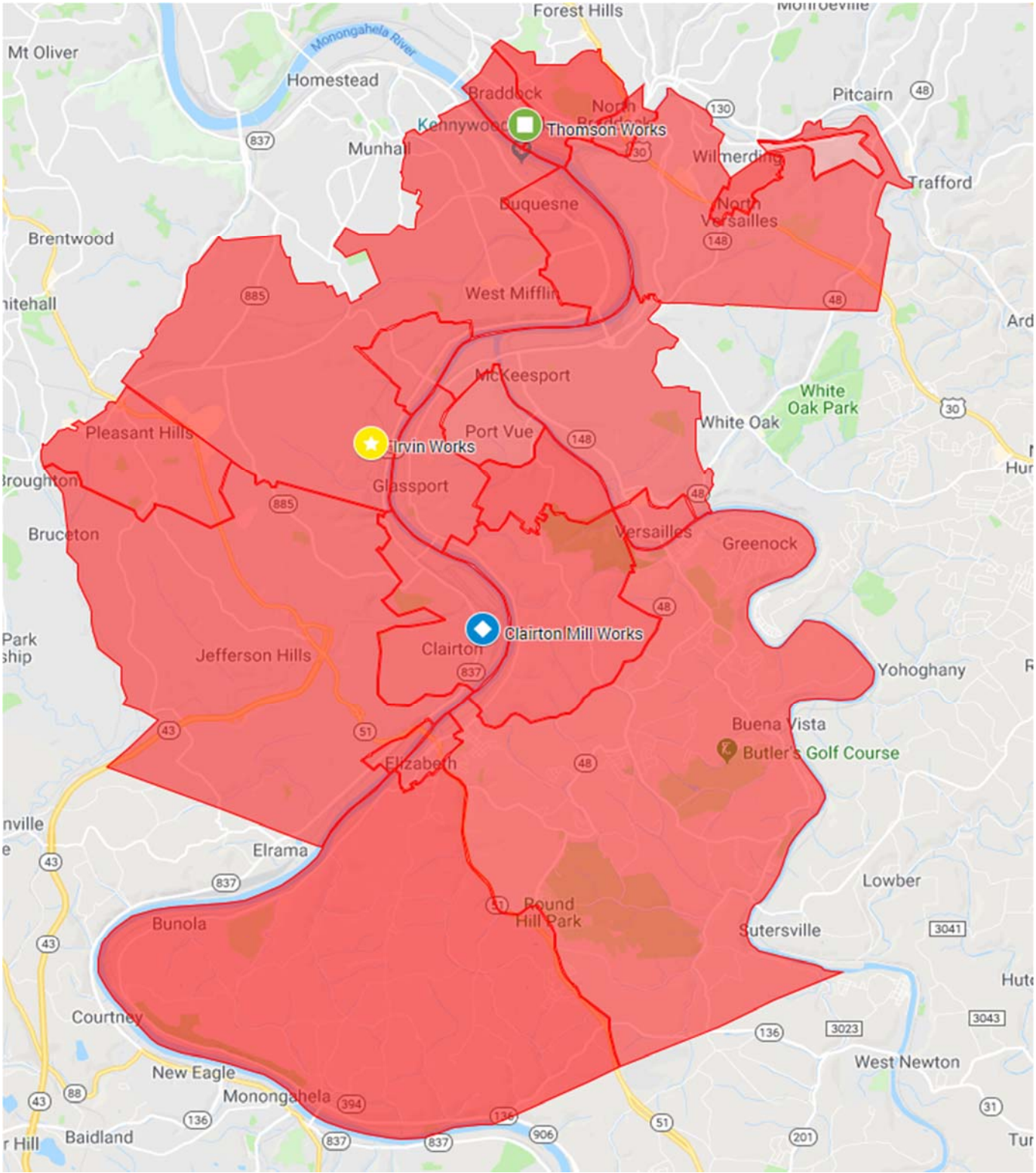
24. Residents throughout the class-area have reported the same effects: the same difficulty breathing, offensive odors (including in the home), burning throat and eyes, headaches, sleepless nights, anxiety over health risks. *See e.g.*, https://www.wesa.fm/post/three-months-after-fire-clairton-residents-say-coke-works-emissions-still-affect-quality-life.

25. On April 4, 2019, Defendant announced that its desulfurization equipment was repaired and operational.

CLASS ACTION ALLEGATIONS

26. Class definition. Plaintiff files this Class Action pursuant to Pa. R. Civ. P. 1701-17 on behalf of a class of persons who have resided on or after December 24, 2018 in Braddock, Clairton, Dravosburg, Duquesne, East McKeesport, East Pittsburgh, Elizabeth Borough, Elizabeth Township, Forward, Glassport, Jefferson Hills, Liberty, Lincoln, McKeesport, North Braddock, North Versailles, Pleasant Hills, Port Vue, Versailles, Wall, West Elizabeth, and West

Mifflin (hereafter, the "Class").



27. Numerosity (Pa. R. Civ. P. 1702(1)): The Class, as defined in paragraph 26 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 exceed tens of thousands.

28. Commonality (Pa. R. Civ. P. 1702(2)): There are numerous questions of law and fact common to the Class. Plaintiff's claims on behalf of the Class arise from a single course of conduct by Defendant, presenting questions of law and fact common to the class, including (1) whether the December 24, 2018 fire was preventable; (2) whether the harms the fire caused were preventable; (3) whether Defendant's conduct was intentional; (4) whether Defendant's conduct was otherwise actionable under the rules governing liability for negligent, reckless, or ultrahazardous conduct; (5) whether the resulting harms to property rights suffered by Plaintiffs and class area residents were foreseeable; (6) whether said harms were 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.

29. Typicality (Pa. R. Civ. P. 1702(3)): Plaintiff's claims are typical of the claims Plaintiff asserts on behalf of the Class because Plaintiff 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.

30. Adequacy of Representation (PA. R. Civ. P. 1702(4)): Plaintiff will fairly and adequately assert and protect the Class members' interests. No conflicts exist in the maintenance of this class action; Plaintiff's interests are coincident with the interests of the Class.

31. Plaintiff is determined to faithfully discharge her fiduciary duties to the Class members; she understands that she cannot settle this Class Action without prior Court approval; and she has 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.

32. Fair and Efficient Method of Adjudication Claims and Defenses (Pa. R. Civ. P. 1702(5)(a)): 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) 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.

(d) To Plaintiff's knowledge, no other action is pending asserting claims arising out of the December 24, 2018 fire at the Clairton Plant.[2]

(e) This forum is appropriate for litigation of this Class Action because Plaintiff and all Class members are located here and Defendant conducts business here.

[2] A nuisance, trespass and negligence class action arising out earlier conduct by Defendant, unrelated to the December 24, 2018 fire, is pending in this Court: *Ross v. USX Company*, Case No. GD-17-008663, Court of Common Pleas of Allegheny County.

(f) 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.

(g) 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 impossible for individual Class members to seek redress for the wrongs complained of herein.

COUNT I
NEGLIGENCE

33. Plaintiff repeats and re-alleges the allegations set forth above.

34. 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.

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

(a) Failing to develop and/or maintain adequate policies and procedures as necessary to prevent the December 24, 2018 Clairton Plant fire;

(b) Failing to develop and implement an adequate mechanical integrity program necessary to prevent any such fires;

(c) Failing to develop, design, construct, inspect, maintain, operate, control, and/or engineer proper gas processing center compressors, piping, and/or pressure let-down devices as necessary to counter the risk of explosion or fire in its gas processing area;

(d) Failing to develop and employ a backup release management plan to control the release of noxious gas and other harmful emissions in the event of a fire;

(e) Failing to notify Plaintiff and the Class of the December 24, 2018 Clairton Plant Fire and the hazardous emission levels until January 9, 2019;

(f) Failing to sufficiently reduce production and thereby emissions at the Clairton Plant following the December 24, 2018 fire and until the emission reduction system was repaired and functioning; and/or

(d) Otherwise failing to develop, design, construct, inspect, maintain, operate, control and/or engineer its Clairton Plant to prevent catastrophic fires and uncontrolled releases of noxious gas and other harmful emissions.

36. As a direct and proximate result of one or more of Defendant's failures to exercise ordinary care, Plaintiff's and Class Members' properties have been invaded, for more than three months, by offensive odors and noxious emissions during and following the December 24, 2018 fire.

37. As a direct, proximate, and foreseeable result of one or more of Defendant's failures, acts or omissions, Plaintiff and class members have suffered damages.

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

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

COUNT II
PRIVATE NUISANCE (UNINTENTIONAL)

39. Plaintiff repeats and re-alleges the allegations set forth above.

40. For the reasons described above in paragraphs 34 through 38, Defendant's conduct was negligent, reckless or abnormally dangerous.

41. As a result of Defendant's conduct, as described above, Defendant's emissions encroached Plaintiff's and Class members' private rights to use and enjoy their land.

42. The encroachment caused significant harm to Plaintiff's and Class members' properties by creating conditions at said properties any normal person would find definitely offensive, seriously annoying, or intolerable.

WHEREFORE, Defendant is liable in unintentional private nuisance for damages to compensate Plaintiff and residents throughout the Class area for the lost use and enjoyment of their properties caused by Defendant's failures of duty, and for punitive damages.

COUNT III
PRIVATE NUISANCE (INTENTIONAL)

43. Plaintiff repeats and re-alleges the allegations set forth above.

44. Defendant's decision to continue to operate its plant without desulfurization controls created nuisance-level conditions at Plaintiffs' property and properties throughout the Class area, unreasonably interfering with Plaintiff's and Class members' rights and privileges to use and enjoy their properties.

45. Defendant's conduct was the legal cause of the resulting harms.

46. The invasion of the residents' property was substantial.

47. The invasion was intentional, as the harms to the Class area residents was substantially certain to result from Defendant's decision to operate before desulfurization controls had been restored.

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

WHEREFORE, Defendant is liable in intentional private nuisance for damages to compensate Plaintiff and residents throughout the Class area for the lost use and enjoyment of their properties caused by Defendant's intentional conduct, and for punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for relief as follows:

A. Certification pursuant to Pa. Rule of Civil Procedure 1702 of a Class of all persons living, during the period since December 24, 2018, in the Braddock, Clairton, Dravosburg, Duquesne, East McKeesport, East Pittsburgh, Elizabeth Borough, Elizabeth Township, Forward, Glassport, Jefferson Hills, Liberty, Lincoln, McKeesport, North Braddock, North Versailles, Pleasant Hills, Port Vue, Versailles, Wall, West Elizabeth, and West Mifflin;

B. Judgment in damages against Defendant to compensate Plaintiff and the Class members for the loss of use and enjoyment;

C. Judgment for punitive damages against Defendant.

D. Prejudgment and post judgment interest as provided by law;

E. All further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the Class, demands a trial by jury.

DATED: April 9, 2019

FEINSTEIN DOYLE PAYNE & KRAVEC, LLC

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*Admission *pro hac vice* pending.

Counsel for Plaintiff and the Class

VERIFICATION

I, Linda Hernandez, VERIFY that I am the plaintiff in this action and that the statements made in the foregoing State Court Class Action Complaint as to me are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Dated: April 9, 2019

By: Linda Hernandez
Linda Hernandez
Plaintiff