

STATE OF SOUTH DAKOTA
COUNTY OF MEADE

IN THE CIRCUIT COURT, 4TH JUDICIAL DISTRICT

Andrew Morse and John and Emily Clarke,)
For themselves and on behalf of all)
Similarly situated individuals,)

Plaintiffs,)

v.)

Cause No. 20-295

State of South Dakota, and/or)
The South Dakota Commission of)
School and Public Lands, as successors)
of the South Dakota Cement Plant)
Commission, and the South Dakota)
Cement Plant Trust,)

Defendants.)

PETITION FOR CLASS ACTION

Plaintiffs, representatives Andrew Morse, and John and Emily Clarke (husband and wife),
on behalf of themselves and all similarly situated individuals, allege the following facts and claims:

INTRODUCTION

1. This action is brought in conformity with South Dakota Codified Laws ("SDCL"), Section 15-6-23, to redress damages and injuries suffered by the owners of homes located on real property in the Hideaway Hills¹ subdivision, Blackhawk, South Dakota ("Hideaway Hills"). Hideaway Hills is located on land that was mined for gypsum, both above and below the surface, in connection with the ownership and operation of the South Dakota

¹ "Hideaway Hills" is more particularly described in paragraph 37 of this Petition, *supra*.

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4TH CIRCUIT CLERK OF COURT

By _____

Cement Plant (the "Gypsum Mine"). The homes at Hideaway Hills are built upon land that is unstable, both due to deteriorating voids under the surface of the land, and strip and pit mining that took place over the underground mine. Hideaway Hills is essentially sitting upon "Swiss cheese" as a result of the mining activities of the State of South Dakota.

2. Plaintiffs' homes are uninhabitable as a result of the deformation of soil and collapsing of the Gypsum Mine underneath them. The area of gypsum mining, the mine voids and deformation of the surface, span the entirety of Hideaway Hills. There is no parcel of land in the subdivision that is unaffected. There is no parcel of land or home that is safe for habitation.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this class action lawsuit pursuant to S.D. Const. art. 3, § 27 and Art. 5, § 5.
4. The State and its entities may be sued with regard to the claims stated herein. This Court has subject matter jurisdiction over Plaintiffs' claims. S.D. Const. art. 3, § 27; SDCL §§ 21-32-8, 21-32-16.
5. This Court has personal jurisdiction over the State and its entities. SDCL §§ 15-7-1, 2.
6. Defendants have no sovereign immunity. S.D. Const. art. 13, § 10; *See Maher v. City of Box Elder*, 925 N.W. 2d (S. D. 2019); *Long v. State*, 904 N.W.2d 502 (S.D. 2017); *Arcon Const. Co., Inc. v. SD Cement Plant*, 349 N.W. 2d 407 (S.D. 1984), *L/R/ Foy Cons. Co. v. SD State Cement Plant Comm'n.*, 399 N.W. 2d 340 (S.D. 1987).
7. Venue is properly fixed in this Court pursuant to SDCL §§ 15-5-1 and 15-5-8.

THE NAMED PARTIES

8. Plaintiff, Andrew Morse (“Andrew”) was a resident of Hideaway Hills, living at 7053 East Daisy Drive, Blackhawk, South Dakota, until the collapse of the mine on East Daisy Drive on April 27, 2020, which forced his evacuation. Andrew’s residence is owned by the Janet A. Anderson Irrevocable Trust. The Irrevocable Trust acquired the home on 7053 East Daisy Drive in 2013, and Morse is currently the beneficiary of the Trust. Morse is authorized by the Irrevocable Trust Trustee to prosecute this action on behalf of the Trust.

The property description of Morse’ residence is:

Lot 24 in Block 2 Hideaway Hills Subdivision, Meade County, South Dakota, as shown on the Plat File in Book 21 on Page 217 in the Office of the Register of Deeds, Meade County, South Dakota.

9. Plaintiffs, John and Emily Clarke, husband and wife, are residents of Hideaway Hills, living at 7020 Daisy Drive, Blackhawk, South Dakota. John and Emily Clarke own their home, but the home is unsafe and, due to the collapsing Gypsum Mine, worthless. The property description of the Clarke residence is:

Lot 3 in Block 2 of Hideaway Hills Subdivision, Meade County, South Dakota, as shown on the plat filed in Plat Book 21, Page 28.

10. Defendant, the State of South Dakota (the “State”) is a sovereign state of the United States of America, incorporated into the union of the United States on November 2, 1889. SDCL § 1-1-1. The State owns the subsurface of the land that is now Hideaway Hills due to the dissolution of the South Dakota Cement Plant Commission, effective June 30, 2011. The State owns the subsurface and mineral rights of the land of Hideaway Hills because the subsurface and mineral rights reverted to the State upon dissolution of the South Dakota Cement Plant Commission.

11. Defendant, the South Dakota Cement Plant Commission (“CP Commission”) was an agency or arm of the State which owned the South Dakota Cement Plant (the “Cement Plant”) and the State-owned lands and mineral interests held in connection with the operations of the South Dakota Cement Plant until the Commission was dissolved by statute in South Dakota Law 2010, Ch. 32, §9, 2011; *See* 2010 SB 166, 85th Legislative Assembly, enacted March 8, 2010. All lands and mineral interests were instructed, by statute to be transferred *by the CP Commission to the SP Commission* no later than June 30, 2011. However, no transfer of title to the land now known as Hideaway Hills ever occurred. The State therefore owns the subsurface and mineral rights of the land of Hideaway Hills.
12. Defendant, the South Dakota Commission of School and Public Lands (“SP Commission”) is an agency or arm of the State which holds title to other public lands owned by the State. The SP Commission currently owns all mineral rights, subsurface rights and the right to grant mining leases of such other lands, pursuant to SDCL § 5-1-8.
13. Alternatively, therefore, the SP Commission owns the subsurface and mineral rights of the land that is now Hideaway Hills as a matter of South Dakota Statute, even though the SP Commission is not the owner of record of any part of Hideaway Hills in any public filing.
14. The State, the SP Commission and the CP Commission are all the “State.”
15. Defendant South Dakota Cement Plant Trust (“Trust”) is a fund that is part of the general revenues of the State that was authorized to be set apart to hold the proceeds of the operation, sale, or liquidation of the Cement Plant. SD Const. Art. 13, § 20; South Dakota Laws, Ch. 55 (1993); SDCL § 5-17-42. The Trust was transferred from the CP Commission to the SP Commission on or around June 30, 2011. SDCL §§ 4-5-17, 4-5-47.

Currently, the Trust is managed by the South Dakota Investment Council ("Council"). The annual audit for the Council, dated October 2, 2020, states the Trust holds net assets in the amount of \$333,808,945 as of September 30, 2020.

16. The State has control of, and discretion to make, distributions from the Trust.

**FACTS GIVING RISE TO THE CLAIMS OF
PLAINTIFFS AND MEMBERS OF THE CLASS**

The Land and the Mine—Mining Operations and Land sales

17. Commencing in 1958, and continuing until 1993, the State, first as an entity and later through the CP Commission, began buying parcels of land that included the area known as Hideaway Hills.
18. At the time of the land acquisitions, the State was aware that gypsum had been mined underneath the land, first, by North Dakota Plaster (from January, 1917 to January 1929) and later by its parent company United States Gypsum (from November, 1930 to May, 1945).
19. From 1958 through 1985, the State and then the CP Commission purchased the land that is now Hideaway Hills to mine gypsum for use by the Cement Plant in the manufacturing of cement. Gypsum is used in cement manufacturing to help control the rate of hardening and/or curing.
20. The State, by and through the CP Commission, mined gypsum in the Gypsum Mine beneath Hideaway Hills, and on the surface of the land in what is now Hideaway Hills, during the period between 1958 and 1993.

Permitting Process for Expansion of Mining Operations

21. In 1985, the CP Commission and/or the Cement Plant applied to amend Permit 424 (the permit originally issued for mining in the Gypsum Mine) to expand the mining operation

to the surface of the land and to take action to prevent erosion. The application to amend projected that all mining operations would cease in 1993.

22. A later public notice concerning Permit 424, stated that after mining was concluded at the Gypsum Mine, reclamation of the land would be performed for the intended usage as "pasture land."

Sale of Land to Developers

23. However, the land that was the Gypsum Mine, and is now Hideaway Hills, was not used for pasture land as intended. On June 17, 1994, after all mining for gypsum had ceased, the State, by and through the CP Commission, sold the land that is now Hideaway Hills to land developer Raymond C. Fuss, and his wife, Carol M. Fuss, reserving the underlying mineral to the CP Commission.

24. The Warranty Deed of conveyance from the CP Commission to Raymond and Carol Fuss, recorded in Book 473, page 534 of the Meade County, South Dakota land records, contains the following covenant:

Grantor reserves unto itself all deposits of coal, ores, metals and other minerals, asphaltum, oil gas, geothermal resources, and other like substance in such land (except sand and gravel), together with the rights to prospect for, mine, and remove the same upon rendering compensation to the owner of lessee for all damages that may be caused by such prospecting or removal. [Emphasis added].

25. By February, 1996, two years later, Raymond Fuss and his brother, Larry Dean Fuss, had conveyed the property now known as Hideaway Hills to each other, had divided the land into "Lots A and B," and were beginning the process of acquiring the approval of the Meade County Board of Commissioners for the "Fuss Subdivision," later to be known as "Hideaway Hills."

The Gypsum Mine Collapse

26. By 2006, 156 homes had been built over the Gypsum Mine, now known as Hideaway Hills. None of the persons who purchased homes at Hideaway Hills, including Plaintiffs Morse and the Clarkes, had any knowledge that their homes were built on land that was once the Gypsum Mine and were therefore all in danger of collapsing into the Gypsum Mine.
27. On April 27, 2020, a portion of the Gypsum Mine collapsed at the side of the road on East Daisy Drive at Hideaway Hills. A resident of the home near the collapse narrowly missed falling into the mine with his lawnmower while simply mowing his front yard. Meade County and the utility provider, Northdale Sanitary District, evacuated twelve homes in the area because it appeared that other areas of properties close by the collapse had also collapsed into a void, or were "sinking" into the mine.
28. Plaintiff, Morse's residence was one of the homes evacuated because it was too dangerous to live in. The residence, purchased in 2012 for \$120,753.40, and which substantially appreciated in subsequent years, is now worthless. Morse found himself homeless when the Gypsum Mine collapsed on April 27, 2020.

Investigation of the Gypsum Mine

29. Following the collapse of the Gypsum Mine on East Daisy Drive, geophysical testing revealed that the Gypsum Mine takes up an area encompassing the entire subdivision of Hideaway Hills and that it extends in some cases, beyond the subdivision (such as below the I-90 Interstate,)
30. The area of the Gypsum Mine that is visible to the naked eye by entering the mine through the sunken opening on East Daisy Drive constitutes less than 25% of the total area of the Gypsum Mine, both below and above the surface of the land.

The Gypsum Mine was Mined by Room and Pillar Mining.

31. The condition of the Gypsum Mine reflects mining activity in the style known as “room and pillar.” Rather than following a vein of minerals and mining in tunnels, “room and pillar” mining is accomplished by carving out large caverns or “rooms” to harvest minerals and leaving walls or pillars to support the ceilings of the “rooms.”

Extent of Current and Continuing Collapse

32. Fifty-six cavernous rooms or “voids” exist beneath Hideaway Hills and, because the State’s Gypsum Mining operation expanded from subsurface mining to both surface and subsurface mining by the Cement Plant (under the authority of the CP Commission), the current ceiling of certain voids are as little as 4-7 feet beneath the surface of the land that supports homes.
33. Sixteen voids in the Gypsum Mine which exist close to East Daisy Drive are actively collapsing. Other portions of the mine may be collapsing, and given the current deformation of the soil, likely are, but are not currently accessible for eye-witness viewing.
34. Plaintiffs, the Clarkes’ property is located in an area where there are active voids and the land is rapidly deforming. The Clarkes’ residence has begun to shift and the walls of their home are no longer vertical. The Clarkes’ property, purchased in 2016, for \$179,500.00, and which had appreciated over the years, is worthless. Further, the current state of the Clarkes’ residence presents a hazard to their family.
35. The Gypsum Mine extends under all of the land under Hideaway Hills. And the land over the Gypsum Mine is collapsing—some parts may collapse at any time, some parts may take 5 years or more. One thing is absolutely clear, however, eventually all of it is *going to collapse into the mine.*

36. The 156 homes in Hideaway Hills, the residences of more than 300 state citizens and Class Members are now worthless because the land upon which their homes rest is incapable of supporting the homes. Plaintiffs, and other Class Members, have lost the value of their homes, have been forced to expend money for geophysical and drilling tests to determine whether their homes are directly over voids or are in imminent danger of collapse, and have suffered other damages due to having to relocate, find shelter, continue to pay mortgages and property taxes on homes that have no value, and to store their personal property. Plaintiffs and Class Members have sustained both monetary and physical damages as a result of the on-going collapse of the Gypsum Mine.
37. The land in and around Hideaway Hills is dangerous. School buses and automobiles cannot safely traverse the roads in Hideaway Hills. Electrical and gas lines located in unstable areas and voids may break, threatening to cause a disastrous explosion or fires. Water and sewer lines may also break with the shifting and collapsing soil spreading toxins and disease.
38. Conditions at Hideaway Hills caused by the Gypsum Mine have rendered Hideaway Hills unsafe for living for Plaintiffs and other Class members.
39. The aggregate of damages suffered by Plaintiffs and the other Class members exceeds \$50 million.

CLASS ACTION ALLEGATIONS

40. In accordance with SDCL § 15-6-23, Plaintiffs, Morse and the Clarkes bring this action upon a "Class" of individuals defined as follows:

All natural persons who own, possess title to, or hold a beneficial interest in, homes located in the subdivision of Hideaway Hills, Black Hawk, South Dakota ("Hideaway Hills"), more particularly described in land records of Meade County, South Dakota as (i) Tract 1 of Lot 1 of the NW/4, less Lot AR and Lot H-1, and

Lot 3 of the NE/4, less Lot H-1; or (ii) Plat of Lots A and B of the Fuss Subdivision, formerly a portion of Tract 1 and 2 of the NW/4 of Section 8 and a portion of Lot 3 of the NE/4 of Section 8; or (iii) are situated on land east of Black Hawk, Meade County, South Dakota, described in applications for permits for the mining of gypsum by South Dakota Cement Plant Commission or South Dakota Cement Plant, including but not limited to Permit No. 424, for the site located at Tract 1, Lot 1 NW/4 less Lot AR and Lot H-1, and Lot 3 NE/4 less Lot H-1, Section 8: T2N-R7E, generally situated east of Black Hawk between Highway 79 and I-90.

A. Numerosity, SDCL § 15-6-23(a)(1)

41. The Class alleged by Plaintiffs can be identified by a count of the homes located on the parcels of land described above, which, as gleaned from aerial pictures, is at least 156. Persons who hold title or a beneficial interest in these 156 homes may be ascertained by Meade County property tax records, or by researching the names of residents living at the addresses of the homes. It may be estimated, assuming at least 2 residents per home, that the number of such natural persons exceeds 300. *See, Shangreaux v. Westby*, 281 N.W. 2d 590, 593 (S.D. 1979). The Class satisfies the requirement of numerosity because it will be impractical, if not impossible, to join all these persons in a single action. *See Duerre v. Hepler*, 892 N.W. 2d 209, 217 (S.D. 2017).

B. Common Questions of Law or Fact, SDCL § 15-6-23(a)(2)

42. The Class alleged by Plaintiffs satisfies the commonality element because, qualitatively, each of the persons in the Class possess common contentions of law and fact, that is, first, that they have been deprived of their use, enjoyment, and investment in their homes and, indeed, that they are placed in a hazardous position in their homes, as a result of the operations of the Gypsum Mine and, second, that the State is liable for their damages as described herein. *See, Duerre*, at 218.

C. Claims and Defenses of Representative Parties are Typical to Those of the Class, SDCL § 15-6-23 (a)(3)

43. Plaintiffs' claims are typical of the persons in the described Class. Morse was deprived of the use and enjoyment of his home, and the value of his beneficial interest in the home, by the hazards made apparent when a portion of the Gypsum Mine collapsed on East Daisy Drive near his residence, and another area of collapse developed in his back yard.
44. The land upon which the Clarkes' residence sits is deforming, the home structure is shifting, and geophysical testing indicates voids under the Clarkes' property and all along Daisy Street that are devolving.
45. Like all other residents of Hideaway Hills, Morse and the Clarkes have completely lost the value of their homes as a result of the mining operations at the Gypsum Mine. The fair market value and tax value of each class member's home can be easily calculated and is easily ascertainable. Like all other Class members, the Clarkes wonder if, or when, they will need to evacuate their home.
46. Plaintiffs are highly motivated to prosecute the claims stated in this Petition and to fairly and adequately protect the interest of the Class, as the Class Members are their neighbors and friends. These neighbors are suffering together the loss of the investment value in their homes and the fear and anxiety associated with the loss of safety and security of their properties and loved ones in Hideaway Hills. *See, Duerre*, 892 N.W. 2d at 218.
47. Plaintiffs' and the Class' claims may be resolved with one agreed-upon approach to the calculation of, and model of damages.

D. The Representative Parties will Fairly and Adequately Protect the Interests of the Class, SDCL § 15-6-23(a)(4)

48. Plaintiffs can fairly and adequately represent the interests of the Class. First, neither Morse nor the Clarkes have any interests which are antagonistic to the members of the Class, which are all their neighbors. Like the persons who comprise the Class, Plaintiffs seek to recover the value, use, and enjoyment of their homes.
49. The State possesses the monetary resources to remedy the hazardous conditions at Hideaway Hills arising from the Gypsum Mine, both generally and via the Cement Plant Trust. Plaintiffs are not in competition with the persons who comprise the Class for monetary resources to cover the damages suffered by all the residents of Hideaway Hills.
50. Counsel of record in this proceeding have both ample resources to prosecute this litigation, and the complex litigation and mass action experience to successfully prosecute the claims of Plaintiff and the Class. Fox Rothschild LLP (the "Firm"), is a 950 attorney firm with offices in 27 states located across the United States. The Firm attorneys representing Plaintiffs have a combined experience of over 100 years of complex litigation experience. Kathleen Barrow of the Firm has served as defendants' counsel in numerous class actions.
51. Anthony Vitullo, Fee, Smith, Sharp & Vitullo, LLP, is highly experienced on the plaintiffs' side in mass action and class action litigation. Anthony Vitullo has served as class counsel in multiple class actions.
52. Counsel of record in this proceeding have expended, to date, over \$180,000 in geophysical testing and drilling to determine the size and position of the Gypsum Mine and the nature and extent of surface soil instability as a result of the mining operations attendant to the Gypsum Mine. Investment in the investigation concerning the location and condition of the Gypsum Mine has allowed Plaintiffs' attorney team to be uniquely positioned to place

Plaintiffs and the Class members in the best position to prosecute their claims against the State.

E. Other Considerations, SDCL § 15-6-23(a)(5) and § 15-6-23(b)

53. No tax issues are raised in this litigation which would prevent the certification of the Class under SDCL § 15-6-23(a)(5).
54. The resolution of Plaintiffs' claims through a class action fulfills the requirements that *one* of the elements of Section 16-6-23(b) be satisfied. *See Trapp v. Madera Pacific, Inc.*, 390 N.W. 2d 558, 560-61 (S.D. 1986). The claims of the persons who live in Hideaway Hills are so common, and their interests so intertwined, that inconsistent or varying adjudications of facts or law, will establish differing and potentially incompatible standards of conduct for the State and the entities identified in this Petition. SDCL § 15-6-23(b)(1)(A). A determination by the Court that the State must condemn one home of a Hideaway Hills resident, but not another home three houses down, for example, would leave the State uncertain how to treat other homes in the subdivision. This is true, in part, because only a small portion of the Gypsum Mine under the surface is currently accessible. The majority of the Gypsum Mine may only be comprehended, visualized and understood through the geophysical tests and drilling conducted and being conducted by Plaintiffs' counsel.
55. Likewise, an adjudication in one resident's litigation regarding the loss of that resident's home in Hideaway Hills that is adverse to that resident may establish a precedent that hampers another resident's ability to prosecute a similar claim. The provisions of Section 15-6-23(b)(1)(B) are also satisfied in this case.

**COUNT ONE: TAKING OF PRIVATE PROPERTY WITHOUT JUST
COMPENSATION**

56. The actions of the State with respect to the Gypsum Mine at Hideaway Hills has deprived Plaintiffs and the Class of their safety and security in their homes, and the use and enjoyment of their property.
57. The actions of the State with respect to the Gypsum Mine at Hideaway Hills has deprived Plaintiffs and the Class of the monetary value of their land and homes.
58. The damages suffered by Plaintiffs and the Class by the actions of the State with respect to the Gypsum Mine is unique to Plaintiffs and the Class as to that experienced by any members of the general public.
59. The State has not paid Plaintiffs or the Class any compensation for their homes or land.
60. The State owes Plaintiffs and the Class just compensation for their homes and land. S.D. Const. art. VI, § 13; S.D. Const. art. XVII, § 18; *Rupert v. City of Rapid City*, 827 N.W.2d 60-61 (S.D. 2013).

**COUNT TWO: BREACH OF EXPRESS COVENANT
THAT RUNS WITH THE LAND**

61. The Warranty Deed that passed title from the State to Raymond and Carol Fuss for the land that is Hideaway Hills contains a covenant with regard to the State's mining activity at the Gypsum Mine. The covenant states that the State shall "[render] compensation to the owner of lessee for all damages that may be caused by such prospecting or removal" (the "Covenant"). Petition, *infra* at ¶ 21.
62. The Covenant was made for the direct benefit of the property of the land of Hideaway Hills.

63. The Covenant was made to insure the use, quiet enjoyment and safety of Raymond and Carol Fuss, *and all subsequent owners of the property at Hideaway Hills*, with respect to the State's mining activity at the Gypsum Mine.
64. The State owes Plaintiffs and the Class, all who are persons that presently own a portion of the estate of Hideaway Hills subject to the Covenant, and all received title to their properties through a direct, and unbroken chain of title conveyed from the state, through Raymond and Carol Fuss, damages for breach of the Covenant, in an amount sufficient to compensate them for the destruction of their land and homes and injuries sustained as a consequence of such breach. SDCL §§ 43-12-2, 43-12-3, 43-12-5.

**COUNT THREE: BREACH OF DUTY OF SURFACE,
OR SUBJACENT SUPPORT**

65. Under both statutory and common law, the State owes continuing legal duties to Plaintiffs and the Class to assure that its activities at the Gypsum Mine does not undermine or destroy the support of the land's surface and subjacent properties, so as to avoid sinking, collapsing and deformation of the land and, consequentially, render the owners of the surface or subjacent properties unable to use and enjoy the land. SDCL § 43-16-2; Restatement (Second) of Torts § 820; *See e.g., Hansen v. U.S.*, 65 Fed. Cl. 76,80 (2005); *Audo v. W. Coal & Mining Col.*, 162 P. 344, 346 (1917).
66. With respect to the Gypsum Mine, the State breached its duties to the Plaintiffs and the Class.
67. The State owes Plaintiffs and the Class damages for breach of its legal duties in an amount sufficient to compensate them for the destruction of their land and homes and injuries sustained as a consequence of breach of its duties to provide support of surface and subjacent properties under statutory and common law.

COUNT FOUR: UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

68. The State's mining activities with respect to the Gypsum Mine advanced the State's ability to earn profits from the South Dakota Cement Plant in amounts exceeding \$12 million, annually.
69. The State's mining activities with respect to the Gypsum Mine rendered the property of Hideaway Hills unsuitable for use as anything other than pasture land.
70. Nevertheless, the State sold and transferred the property of Hideaway Hills to Raymond and Carol Fuss without restriction as to the future use of the property, or notice of the potential hazards the property presented to the transferees or future owners.
71. The State sold the Cement Plant without assuring that real property used in connection with the Cement Plant's operation, including the property at Hideaway Hills, was adequately remediated and reclaimed and that any transfers of property to third parties included appropriate restrictions as to use and disclosures of present and potential hazards.
72. The State inequitably profited from the transfer of the property at Hideaway Hills.
73. The State's transfer of the Hideaway Hills property without restriction as to its future use or notice of hazardous condition allowed the State to profit from the property, adding to the profit the State received from the Gypsum Mine.
74. The State's transfer of the Hideaway Hills property without restriction or notice of hazardous condition ultimately resulted in Plaintiffs and the Class purchasing and living in homes that are both worthless and dangerous to their safety, security and life.
75. The State is unjustly enriched by its use of the Hideaway Hills property in connection with the Gypsum Mine and the transfer of the property without restriction as to future use and notice of hazardous condition. *Johnson v. Larson*, 779 N.W.2d 412, 416 (S.D. 2010).

76. It would be inequitable for the State to retain all profits relating to the Cement Plant and Gypsum Mine without addressing the damages caused to the Hideaway Hills property and its inhabitants, Plaintiffs and the Class. *Huston v. Martin*, 919 N.W.2d 356, 366 (S.D. 2018).

77. Profits from the State's mining activities and the transfer of the property at Hideaway Hills, profits from the State's unjust enrichment in the amount of \$333,823,934.00, are held in the Trust.

78. The Trust holds the State's profits arising from its unjust enrichment in constructive trust for the benefit of Plaintiffs and the Class, who have lost their land, their homes and have suffered other injuries in consequent of the State's unjust enrichment. SDCL § 55-1-11.

79. Plaintiffs and the Class are entitled to a distribution from the Trust to make them whole and restore the *status quo*.

WHEREAS, having pled the above stated facts and claims, Plaintiffs ask this Court to approve Plaintiffs as representatives, recognize and certify the Class, to award the legal and equitable relief and damages requested herein, and to make such further orders for relief for Plaintiffs and the Class as the Court determines is appropriate and just.

Respectfully submitted this 27th day of October, 2020.

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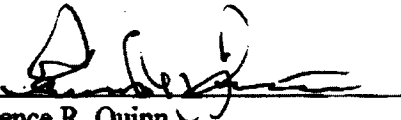


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