



IN THE CIRCUIT COURT FOR ST. CLAIR COUNTY, ALABAMA

**CANDICE JACKSON and
EMMANUEL GOMES, individually and
on behalf of a class of similarly situated
persons,**

Plaintiffs,

v.

**ENVIRONMENTAL LANDFILL, INC.;;
CAROL RUSSEL AS TRUSTEE OF
THE SCOTT RUSSELL
MANAGEMENT TRUST;
CHARLIE RICH; and AMY RICH,**

Defendants.

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Case No. _____

Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiffs Candice Jackson and Emmanuel Gomes brings this Class Action Complaint on behalf of themselves and on behalf of a class of other people similarly situated. Plaintiff and Members of the proposed Class sue Defendants Environmental Landfill, Inc., Carol Russel as Trustee of the Scott Russell Management Trust, Charlie Rich, and Amy Rich, and allege as follows:

PARTIES

1. Plaintiff Candice Jackson is an adult citizen and resident of St. Clair County, Alabama, who owns and resides at the property located at 1427 Annie Lee Road, Trussville, Alabama.
2. Plaintiff Emanuel Gomes is an adult citizen and resident of Jefferson County, Alabama, who owns and resides at the property located at 23 Waterford Place, Trussville, Alabama.
3. Defendant Environmental Landfill, Inc. (“ELI”) is an Alabama corporation

headquartered at and with its principal place of business in Saint Clair County, Alabama at 1317 Annie Lee Road, Trussville, Alabama 35173. Defendant ELI may be served through its registered agent, Nicole Russell at 1317 Annie Lee Road, Trussville, Alabama 35173.

4. Defendant Carol Russell as Trustee of the Scott Russell Management Trust (“SRMT”) is, upon information and belief, the trustee of a trust organized under the laws of the State of Alabama. Upon information and belief, and assets of the trust as well as its beneficiaries are in the State of Alabama. SRMT may be served via its trustee, Carol Russell, at 235 Asaro Place, Springville, Alabama 35146.

5. Defendant Charlie Rich is an adult citizen and resident of St. Clair County, Alabama. Upon information and belief, Defendant C. Rich resides at and may be served at 4001 Meadows Circle, Moody, Alabama 35004.

6. Defendant Amy Rich is an adult citizen and resident of St. Clair County, Alabama. Upon information and belief, Defendant A. Rich resides at and may be served at 4001 Meadows Circle, Moody, Alabama 35004.

JURISDICTION & VENUE

7. The Court has jurisdiction over this action. Plaintiffs and Members of the Proposed Class are residents of the State of Alabama. Defendant ELI is an Alabama corporation with its principal place of business in Alabama. Defendants Charlie Rich and Amy Rich are residents of Alabama.

8. Venue in this case is proper because the acts and omissions complained of herein primarily occurred in St. Clair County, Alabama and are related to Defendants’ ownership and operation of an unauthorized dump on property located in St. Clair County, Alabama.

FACTUAL ALLEGATIONS

9. Defendant SRMT is the owner of approximately 16.5 acres of land off Annie Lee Road in St. Clair County, Alabama. This property is split between three parcels, bearing the parcel numbers of 25-05-22-001-013.002, 25-05-22-0-001-013.000, and 25-08-27-0-001-003.000. Combined, these three parcels and 16.5 acres constitute the 1317 Property.

10. For years SRMT has allowed ELI to operate an illegal dump on the 1317 Property.

11. Upon information and belief, the use of the 1317 Property preceded the formation of ELI, and began under the direction of the prior owner of the property, Scott Russell.

12. On January 9, 2013, ADEM received an anonymous complaint that an unauthorized dump was being operated at the 1317 Property.

13. In response, ADEM conducted a site inspection on February 26, 2013, and found only that “multiple piles of tree cuttings and vegetative debris” were stored on the property and noted that no action was going to be taken.

14. However, several months later, on November 21, 2013, ADEM re-inspected the site, and noted that it contained construction/demolition waste as well as scrap tires / scrap tire materials “dumped and partially covered on the rear of the property.” The ADEM inspector further noted that this illegal dump “may have been hidden from view during [the] prior inspection” and that “[t]he site appears to be a potential fire hazard due to the presence of a smoldering area not far from regulated waste.”

15. In response to this site inspection, ADEM issued a “Notice of Violation” to Scott Russel (then the owner of the 1317 Property and a principal shareholder of ELI) and cited him specifically for violating ADEM Admin. Code 335-13-1-.13(1)(a), which states that “open or unauthorized dumps are prohibited.” ADEM further wrote that “[t]he disposal site does not meet

the minimum requirements for a landfill unit, has not obtained a landfill permit from the department, and therefore is an unauthorized dump.” ADEM specifically noted that the operation of unauthorized dumps constitutes a “nuisance” and must be stopped.

16. Russell’s sister, Defendant Amy Rich, responded to ADEM via e-mail on December 5, 2013, and provided ADEM with receipts showing that approximately 2.24 tons of material had been removed from the property. Mrs. Rich later told ADEM on December 26, 2013, that they had taken steps to prevent the dumping of unauthorized material in the future, including (1) the installation of security cameras and (2) the installation of a locked ticket box. So sure was Mrs. Rich that these steps would work that she informed ADEM “[w]e feel certain that we’ve taken care of all problems and do not foresee any in the future.”

17. In response to these communications from Mrs. Rich, ADEM responded it considered the “unauthorized solid waste dump” located on the 1317 Property to be closed. Unfortunately, the unauthorized solid waste dump would not remain closed for long.

18. Following the receipt of another complaint, ADEM conducted another inspection of the 1317 Property on September 8, 2014. During this inspection, the ADEM investigator noted “regulated” materials were illegally being dumped on the property, including “treated power pol[e]s, household trash, scrap tires, etc.”

19. For the next several years, Russell and ELI skated by under ADEM’s radar, until ADEM received another complaint that the Defendants were operating the 1317 Property as an illegal landfill, and ADEM conducted yet another site inspection. This site inspection, conducted on July 31, 2017, revealed that the Defendants had been illegally accepting regulated materials at the 1317 Property, including: construction/demolition waste, household wasted, appliances, scrap tires / scrap tire materials, electronics, scrap metal, and auto parts. The inspector further found

that petroleum had contaminated the soil. **Importantly, ADEM noted for the first time that the site represented a fire hazard, due to the “lack of availability of adequate water, location/composition of tire piles.”**

20. In response to this inspection, ADEM notified Defendants that they were, again, in violation of ADEM regulations for operating an “unauthorized dump,” and directed Defendants to close the site.

21. This time, Defendants removed **6.12 tons** of material from the Property and informed ADEM that they had “reminded all of our customers that under no circumstances are they [] allowed to bring in any type of unacceptable materials” and had posted signs identifying what was acceptable and what was not.

22. Unsurprisingly, these minimal efforts would also prove to be inadequate.

23. On March 13, 2018, following the receipt of another complaint concerning the property, ADEM conducted yet another inspection of the 1317 Property, and noticed that the waste on the Property impermissibly included regulated materials: construction / demolition waste, household waste, appliances, and scrap tires / scrap tire materials. The ADEM investigator also observed that Defendants had taken efforts to conceal their actions, stating: “[t]he operators of the site have attempted to hide waste previously dumped by placing tree cutting waste along the access road and on top of the dump areas.” **The ADEM investigator concluded his report by noting that the property still represented a fire hazard.**

24. A month later, on April 6, 2018, the ADEM inspector returned and noted that the 1317 Property still contained the regulated materials which were only “partially covered.” **Again, it was noted that the Property was a fire hazard.**

25. ADEM conducted another inspection of the 1317 Property on April 11, 2019,

nearly one year after the prior inspection. Yet again, impermissible waste was discovered on the site, including construction / demolition waste and abandoned vehicles.

26. ADEM's next inspection of the site occurred on December 2, 2020. Again, impermissible waste was discovered on site, including construction / demolition waste, household waste, appliances, and scrap tires / scrap tire materials. The ADEM inspector noted that the current operators of the Property were Defendants Charlie Rich and Amy Rich, who informed the inspector that the unauthorized dump site still presently exists on the 1317 Property, but "remains covered by tree cuttings and soil." **Again, ADEM noted that the Property represented a fire hazard.**

27. ADEM's final inspection occurred on August 10, 2022. During this inspection, the ADEM investigator spoke to Charlie Rich. While he did not observe any impermissible material located above ground, he was informed by Mr. Rich that impermissible material remains buried throughout the property but that it was his plan to work over the next 18 months to remove this material. **ADEM again noted that the Property was a fire hazard.**

28. On or around November 25, 2022, a fire on the 1317 Property began to blaze out of control. Fire fighters from the city of Moody Fire Department and the Alabama Forestry Division immediately came out to cut a fire break around the 1317 Property in an effort to contain the blaze.

29. A day later, while the fire fighters were still working to contain the fire, Defendant Charles Rich approached the fire fighters and asked if ELI would be able to intake additional loads of waste the following Monday.

30. Nearly a month later, the fire on the 1317 Property still continues, with no end in sight. Smoke and ash from the fire have carried from the 1317 Property and affected the property

of members of the proposed class, including named Plaintiffs.

31. The fire frequently smells of chemicals due to the regulated materials which Defendants allowed to be illegally dumped onto the 1317 Property over the past decade or so.

32. On December 8, 2022, an air quality monitor was installed in the area around the 1317 Property. Since the air quality monitor was installed, it has frequently measured in the unhealthy to hazardous ranges due to the smoke and ash emanating from the 1317 Property.

33. Upon information and belief, all Defendants have benefited financially from operating the 1317 Property as an illegal and unauthorized dump.

FACTUAL ALLEGATIONS SPECIFIC TO PLAINTIFF CANDICE JACKSON

34. Plaintiff Jackson resides at 1427 Annie Lee Road, Trussville, Alabama, on the property she owns which adjoins the 1317 Property.

35. Plaintiff Jackson and her family can no longer enjoy being outside on her property in any capacity because of the ever-present nature of Defendants' contamination.

36. Plaintiff Jackson has also had her real property contaminated with the soot and ash from Defendants' illegal and unauthorized dump deposited on her property.

37. Because of the black smoke and white smoke that continues to be emitted from the fire, Plaintiff Jackson and her family have suffered physical injury, including soreness in their throats, their eyes are burning, and they are having shortness of breath.

38. Plaintiff Jackson has suffered mental anguish as she worries about the health of her family and the damage to her home.

39. Plaintiff Jackson has purchased air purifiers to help improve the air quality in her home. Plaintiff Jackson has also purchased additional cleaning supplies to combat the intrusion of Defendants' contamination into her home, and has also begun to wash her family's clothes daily

to try to eliminate the smoke odor. However, until the smoke stops, she cannot even begin to take any remedial measures which need to be done to clean and repair damage to her home, her cars, her clothes, and other property.

FACTUAL ALLEGATIONS SPECIFIC TO PLAINTIFF EMMANUEL GOMES

40. Plaintiff Gomes resides at 23 Waterford Place, Trussville, Alabama. Plaintiff Gomes owns this property.

41. Plaintiff Gomes and his family can no longer enjoy being outside on his property in any capacity because of the ever-present nature of Defendants' contamination.

42. Plaintiff Gomes' two children suffer from diagnosed asthmatic issues, and they have suffered from severe asthma symptoms since the fire began. Plaintiff Gomes has suffered mental anguish as he worries about the health of his family and the damage to his home.

43. Plaintiff Gomes has also purchased additional cleaning supplies to combat the intrusion of Defendants' contamination into his home, and has also begun to wash his family's clothes daily to try to eliminate the smoke odor. However, until the smoke stops, he cannot even begin to take any remedial measures which need to be done to clean and repair damage to his home, his cars, his clothes, and other property.

CLASS ALLEGATIONS

44. This action on behalf of Plaintiff and all others similarly situated has been brought and may be properly maintained pursuant to the provisions of Rule 23 of the Alabama Rules of Civil Procedure.

45. Plaintiff and Members of the proposed Class are residents of Alabama who have all been similarly harmed by Defendants' misconduct.

46. The Class proposed by Plaintiff and her counsel is defined as follows:

All owners and/or occupants of real property located within 5 miles of the illegal and unauthorized dump located on the 1317 Property.

Property Owner Subclass

All owners of real property located within 5 miles of the illegal and unauthorized dump located on the 1317 Property.

47. Excluded from this Class are:
- a. Defendants and any entities in which any of the Defendants have a controlling interest;
 - b. Any of the legal representatives, heirs, successors, or assigns of Defendants;
 - c. The Judge to whom this case is assigned, and any Member of the Judge's immediate family and any other judicial officer assigned to this case;
 - d. All persons or entities that properly execute and timely file a request for exclusion from the class; and
 - e. Any attorneys representing the Plaintiff or Members of the proposed Class.

48. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

49. Plaintiff's proposed class satisfies the requirements of Ala. R. Civ. P. 23(a), as follows.

50. Numerosity: The members of the class are sufficiently numerous that individual joinder of all members would be impracticable, within the meaning of Rule 23(a)(1). Upon information and belief, Plaintiff estimates that there are at least hundreds of class members in the class. Putative Class Members are readily identifiable through property records and other public records, and may be given any required notices by regular mail, supplemented, if necessary and

required by the Court, by published notice.

51. Common Questions of Law and Fact: There are questions of law and fact common to the class as required by Rule 23(a)(2), which questions predominate over questions affecting only individual class members. The common questions of law and fact include, but are not limited to:

- a. Whether Defendants had a duty not to operate an unauthorized dump on the 1317 Property;
- b. Whether Defendants' violation of ADEM regulations constituted a breach of Defendants' duty owed to Plaintiff and Members of the proposed Class;
- c. Whether Defendants' operation of an unauthorized dump was done wantonly, intentionally, willfully, and/or recklessly;
- d. Whether Defendants' operation of an unauthorized dump and discharge of smoke, ash, and soot onto the properties of Plaintiff and Members of the proposed Class constituted a trespass;
- e. Whether Defendants' operation of an unauthorized dump constituted a nuisance; and
- f. Whether the touch or contact between the smoke, soot, and ash discharged from the 1317 Property constituted a battery.

52. These questions of law and fact common to the Members of the Class predominate over any questions affecting only individual Members, and thus a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

53. Typicality: Plaintiffs' claims are typical of those of Members of the Class, and their claims encompass those of the other Class Members they seek to represent, as required by Rule

23(a)(3). Their claims are typical because the facts and circumstances giving rise to liability are the same, the claims are based on the same legal theories, and the damages suffered by Plaintiffs are the same kinds of damages suffered by Members of the Class.

54. Adequacy of Representation: Representative Plaintiffs will fairly and adequately represent and protect the interests of the Class based upon the following facts and circumstances: their interests do not conflict; their interest are co-extensive with common rights of recovery based on the same essential facts and legal theories; they are members of the same communities; they are similarly damaged and are seeking the same remedies; and they intend to prosecute this action vigorously. Plaintiffs have further obtained counsel competent and experienced in complex class action and toxic tort litigation.

55. The prosecution of separate actions by individual Members of the Class would create a risk of (a) inconsistent or varying adjudications with respect to individual Members of the Class which could establish incompatible standards of conduct for the Defendants and/or (b) adjudications with respect to individual Members of the Class which would as a practical matter be dispositive of the Members not parties to the adjudications or substantially impair or impeded their ability to protect their interests.

56. The Defendants have acted on grounds generally applicable to all Members of the proposed Class, making final declaratory and injunctive relief concerning the Class as a whole appropriate, within the meaning of Rule 23(b)(2).

57. Common questions of fact and law among the Representative Plaintiffs and Members of the Class predominate over questions affecting only individual Class Members, within the meaning of Rule 23(b)(3). Some of the common issues are set forth in Paragraph 38 above.

58. Additionally, Class action treatment is a superior method to other available methods

for the fair and efficient adjudication of the controversy. Certification under Rule 23(b)(3) would be proper in that, among other things, there is no interest by Members of the Class in individually controlling the prosecution of separate actions; the expense of prosecuting individual claims for the matters for which Class certification is sought would be prohibitive in light of the typical claimant's injuries; neither the Plaintiff nor Members of the proposed Class have filed or are parties to any litigation in which the legal and factual issues raised herein are to be adjudicated; and it is desirable to concentrate the litigation of claims in a single proceeding so as to avoid unnecessary and expensive duplication of actions and to provide for judicial economy. Whatever difficulties may exist in the management of a Class action will be greatly outweighed by its benefits.

59. Class action treatment is preferable to other available methods in providing a fair and efficient method for the adjudication of the controversy described herein, which has affected a large number of persons. The Class action provides an effective method whereby the enforcement of the rights of the Plaintiff and Class Members without unnecessary expense or duplication.

COUNT I – NEGLIGENCE
(All Class Members)

60. Defendants ELI, Charles Rich, and Amy Rich owe a duty to Plaintiffs and Members of the Proposed Class to exercise due and reasonable care in the operation of its business. More specifically, Defendant ELI owes a duty to exercise due and reasonable care by adhering to—at a minimum—the applicable ADEM regulations governing which products it may accept on the 1317 Property.

61. Similarly, Defendant SRMT owes a duty to Plaintiff and Members of the Proposed Class to exercise due and reasonable care in this use of its property. More specifically, Defendant SRMT owes a duty to exercise due and reasonable care by adhering to—at a minimum—the

applicable ADEM regulations governing the dumping of material on its property.

62. Defendants also owe a duty to Plaintiffs and Members of the Proposed Class not to leave the 1317 Property an unchecked fire hazard.

63. Defendants breached their duties owed to Plaintiffs and members of the Proposed Class by operating an unauthorized and illegal dump on the 1317 Property, by illegally accepting regulated materials, and by failing to take actions to eliminate the fire hazard the property presented despite multiple warnings by ADEM.

64. As a direct, proximate and foreseeable result of Defendants' conduct, practices, actions, and inactions, Plaintiffs and Members of the proposed Class who are owners of property have been caused to suffer, and will continue to suffer: (a) damage to their interests in real property; (b) damage to their personal property; (c) out-of-pocket expenditures related to remediating and mitigating the Defendants' contamination; (d) annoyance, inconvenience, and interference and loss of use and enjoyment of their property; and (e) continuing trespass.

65. As a direct, proximate and foreseeable result of Defendants' conduct, practices, actions, and inactions, Plaintiffs and Members of the proposed Class who are occupants of property have been caused to suffer, and will continue to suffer: (a) damage to their personal property; (b) the battery caused by their exposure to the smoke, soot, ash and toxic fumes from Defendants' illegal and unauthorized dump; and (c) out-of-pocket expenditures related to remediating and mitigating the Defendants' contamination.

66. Therefore, Plaintiffs and Members of the proposed Class claim money damages in an amount that will fairly and reasonably compensate them for the harm caused by the Defendants.

COUNT II – WANTONNESS
(All Class Members)

67. Defendants ELI, Charles Rich, and Amy Rich owe a duty to Plaintiffs and Members of the Proposed Class to exercise due and reasonable care in the operation of its business. More specifically, Defendant ELI owes a duty to exercise due and reasonable care by adhering to—at a minimum—the applicable ADEM regulations governing which products it may accept on the 1317 Property.

68. Similarly, Defendant SRMT owes a duty to Plaintiff and Members of the Proposed Class to exercise due and reasonable care in this use of its property. More specifically, Defendant SRMT owes a duty to exercise due and reasonable care by adhering to—at a minimum—the applicable ADEM regulations governing the dumping of material on its property.

69. Defendants also owe a duty to Plaintiffs and Members of the Proposed Class not to leave the 1317 Property an unchecked fire hazard.

70. Defendants breached their duties owed to Plaintiffs and Members of the Proposed Class by operating an unauthorized and illegal dump on the 1317 Property, by illegally accepting regulated materials, and by failing to take actions to eliminate the fire hazard the property presented despite multiple warnings by ADEM.

71. Having previously been cited by ADEM for similar misconduct—including repeated warnings that the property constituted a fire hazard—Defendants' breach of their duties owed to Plaintiff and Members of the proposed Class was intentional, willful, and/or reckless.

72. As a direct, proximate and foreseeable result of Defendants' conduct, practices, actions, and inactions, Plaintiffs and Members of the proposed Class who are owners of property have been caused to suffer, and will continue to suffer: (a) damage to their interests in real property; (b) damage to their personal property; (c) out-of-pocket expenditures related to remediating and

mitigating the Defendants' contamination; (d) annoyance, inconvenience, and interference and loss of use and enjoyment of their property; and (c) continuing trespass.

73. As a direct, proximate and foreseeable result of Defendants' conduct, practices, actions, and inactions, Plaintiffs and Members of the proposed Class who are occupants of property have been caused to suffer, and will continue to suffer: (a) damage to their personal property; (b) the battery caused by their exposure to the smoke, soot, ash and toxic fumes from Defendants' illegal and unauthorized dump; and (c) out-of-pocket expenditures related to remediating and mitigating the Defendants' contamination.

74. Therefore, Plaintiffs and Members of the proposed Class claim money damages in an amount that will fairly and reasonably compensate them for the harm caused by the Defendants.

75. In addition to compensatory damages, Defendants should also be held liable for punitive damage as a result of Defendants' wantonness in an amount determined by the character and degree of Defendants' wrongful conduct, and the necessity to prevent the same or similar wrongful conduct by the Defendants and others in the future.

**COUNT III – TRESPASS
(Property Owner Subclass)**

76. Defendants' operation of an unauthorized dump and failure to remediate the known fire hazard has caused smoke, soot, and ash to be discharged into the air and onto the properties of Plaintiffs and the Members of the proposed Class. Defendants' operation of an unauthorized dump was intentional, and the Defendants knew or should have known that this would produce the trespass, *i.e.*, the invasion by foreign substance.

77. Defendants' operation of an unauthorized dump and failure to remediate the known fire hazard has resulted in physical intrusions onto the property of Plaintiffs and Class Members, and physically altered the physical aspects of Plaintiffs and Class Members' properties. This

physical alteration is substantial damage.

78. As a direct, proximate and foreseeable result of Defendants' conduct, practices, actions, and inactions causing a trespass, Plaintiffs and Class Members who are owners of real property have been caused to suffer, and will continue to suffer, damage to their interests in real property, including: (a) losses related to the purchase of additional air filters to replace those damaged by the soot, ash, and smoke discharged onto their real property by Defendants; (b) damage to their interests in real property, including diminution in value and/or loss of rental value; (c) the need for mitigation and remediation of Defendants' intrusive contamination; and (d) annoyance, inconvenience and interference and loss of use and enjoyment of their property. In addition, Plaintiffs and Class Members claim damages for mental anguish in an amount to be determined by a jury that are fair and reasonable in consideration of the nature, severity, and length of time of the trespass caused by the Defendants.

**COUNT IV – PUBLIC NUISANCE
(All Class Members)**

79. Plaintiffs and Members of the Proposed Class are owners of real property in an area surrounding the 1317 Property.

80. Under Alabama Law, a nuisance "is anything that works hurt, inconvenience, or damage to another." Ala. Code § 6-5-120 (1975). "A public nuisance is one which damages all persons who come within the sphere of its operation, though it may vary in its effects on individuals." Ala. Code § 6-5-121 (1975). "If a public nuisance causes a special damage to an individual in which the public does not participate, such special damage gives a right of action." Ala. Code § 6-5-123 (1975).

81. Defendants have created a nuisance by their operation of an unauthorized dump and their failure to remediate known fire hazards located on the same, which has contaminated and

harmed the property of Plaintiffs and Members of the Proposed Class. The soot, ash, and smoke billowing from the fire on Defendants' illegal and unauthorized dump have caused concern, inconvenience, and hurt to Plaintiffs and Members of the Proposed Class, as it would to any reasonable person. It was reasonably foreseeable, and in fact, known to the Defendants, that their actions would cause interference with the property rights of Plaintiffs and Members of the proposed Class would place, and have placed, Plaintiffs and Members of the proposed Class at increased risk of physical harm. The nuisance has caused, and will continue to cause, mental anguish to Plaintiffs and Members of the proposed Class until it is satisfactorily abated.

82. The Plaintiffs and Members of the proposed Class have suffered special damages from the fire on Defendants' illegal and unauthorized dump because they have inhaled and continue to inhale the contaminated air, and the contaminated air containing ash, soot, and smoke has invaded their properties and continues to invade them, altering and damaging their property. These damages are different in kind and degree from the damages suffered by the public in general.

83. Defendants' nuisance is continuing because Defendants' operation of the illegal and unauthorized dump is continuing as is the fire.

84. Therefore, the Plaintiffs and Members of the proposed Class claim money damages in an amount that will fairly and reasonably compensate them for the harm caused by the Defendants, including for: a) losses related to the purchase of additional air filters to replace those damaged by the soot, ash, and smoke discharged onto their real property by Defendants; (b) damage to their interests in real property, including diminution in value and/or loss of rental value; (c) the need for mitigation and remediation of Defendants' intrusive contamination; (d) annoyance, inconvenience and interference and loss of use and enjoyment of their property, and (e) battery and continuing trespass. In addition, the Plaintiffs and Members of the proposed Class claim

damages for mental anguish in an amount to be determined by a jury that are fair and reasonable in consideration of the nature, severity, and length of time of the nuisance caused by the Defendants.

**COUNT V – ABATEMENT OF NUISANCE
(All Class Members)**

85. Plaintiffs reallege all prior paragraphs contained within Count IV – Private Nuisance.

86. Plaintiffs and Members of the proposed Class have the right to bring an action to abate the nuisance caused by the unabated fire burning on Defendants’ illegal and unauthorized dump, which has caused and continues to cause contamination of the air and properties of Plaintiffs and Members of the Proposed Class because their injury is different in kind and degree from the injury suffered by the public at large.

87. In addition to their claims for damages, Plaintiffs and Members of the Proposed Class are entitled to an injunction to abate the nuisance created and maintained by Defendants. The Court should issue an injunction requiring Defendants to take all steps necessary to extinguish the fire on the 1317 Property and to prevent the continued release of contaminants into the air, based on the continuing irreparable injury to Plaintiff and Members of the Proposed Class posed by the continuing nuisance and damage to their property interests, for which there is no adequate remedy at law.

**COUNT VI – BATTERY
(All Class Members)**

88. Defendants touched or contacted Plaintiffs and Members of the proposed Class through their operation of an illegal and unauthorized dump, their failure to remediate a known fire hazard, the resulting fire now burning on the illegal and unauthorized dump, and their

discharge of smoke, soot, and ash therefrom.

89. Defendants intended to touch or contact Plaintiffs and Members of the proposed Class through their discharge of smoke, soot, and ash, knew that their intentional actions complained of herein would be substantially certain to result in such contact, or were recklessly indifferent to whether such contact would occur.

90. The touching or contact of the Plaintiffs and Members of the proposed Class by Defendants' smoke, soot, and ash was and is harmful and offensive.

91. Defendants' battery is continuing because their operation of the illegal unauthorized dump site, the unabated fire, and the discharge of smoke, soot, and ash from the same is ongoing.

92. As a result of Defendants' battery, Plaintiffs and Members of the proposed Class have been and continue to be damaged.

93. Therefore, Plaintiffs and Members of the proposed Class claim money damages in an amount that will fairly and reasonably compensate them for the harm caused by Defendants. In addition, they claim damages for mental anguish in an amount to be determined by the jury that are fair and reasonable in consideration of the nature, severity, and length of time of the battery caused by Defendants.

94. In addition to compensatory damages, Defendants should also be held liable for punitive damage as a result of Defendants' battery in an amount determined by the character and degree of Defendants' wrongful conduct, and the necessity to prevent the same or similar wrongful conduct by the Defendants and others in the future.

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs and Members of the Proposed Class respectfully request this

Court to grant the following relief:

- a. Award Plaintiffs and Members of the proposed Class compensatory damage to the utmost extent allowed by law sufficient to compensate them for damage from negligence, wantonness, trespass, nuisance, and battery, with such damage including, but not being limited to, diminution in value of real property and/or loss of rental value, the cost of mitigation or remediation of Defendants' contamination, annoyance and interference, loss of use and enjoyment of real property, aggravation and inconvenience, and mental anguish;
- b. Award Plaintiffs and Members of the proposed Class punitive damages to the utmost extent allowed by law;
- c. Issue an injunction requiring Defendants to cease operating an unauthorized dump site, based on the continuing irreparable injury to Plaintiffs and Members of the proposed Class posed by the continuing nuisance and damage to their property interests, for which there is no adequate remedy at law;
- d. Award attorney fees and costs and expenses incurred in connection with the litigation of this matter;
- e. That this case be certified as a Class action pursuant to Rule 23 of the Alabama Rules of Civil Procedure; and
- f. Award such other and further relief as this Court may deem just, proper, and equitable.

Respectfully submitted: December 21, 2022;

/s/Mark R. Ekonen
Mark Ekonen (EKO001)
Attorney for Plaintiff

Of Counsel:

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JURY DEMAND

Plaintiff demands trial by struck jury on all issues raised herein.

PLEASE SERVE DEFENDANTS VIA CERTIFIED MAIL:

Environmental Landfill, Inc.
Attn: Nicole Russell
1317 Annie Lee Road
Trussville, AL 35173

Carol Russell as Trustee of the Scott Russell Management Trust
235 Asaro Place
Springville, AL 35146

Charlie Rich
4001 Meadows Circle
Moody, AL 35004

Amy Rich
4001 Meadows Circle
Moody, AL 35004