

**IN THE UNITED STATE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

**FANNIE AND ALBERT TARTT,**  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

**BIO-LAB, INC., KIK  
INTERNATIONAL LLC, and  
KIK CUSTOM PRODUCTS INC.,**

Defendants.

**CASE NO. 1:24-cv-04407-SEG**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**FIRST AMENDED CLASS ACTION COMPLAINT**

Plaintiffs Fannie and Albert Tartt (“Named Plaintiffs” or “Plaintiffs”), individually and on behalf of all others similarly situated (the “Class,” as more fully defined below), by their undersigned counsel, brings this class action lawsuit against Defendants Bio-Lab, Inc. (“Bio-Lab”), KIK International LLC (“KIK International”), and KIK Custom Products Inc. (“KIK Custom Products”) (KIK International and KIK Custom Products are collectively referred to as “KIK”) (Bio-Lab and KIK are collectively referred to as “Defendants”) for real property-related damages sustained as the result of a September 29, 2024, fire and toxic chemical plume, which occurred at Defendants’ Conyers, Georgia, chemical plant and caused widespread “evacuat[i]ons as toxic smoke billow[ed] from [a] chemical-fueled

inferno.”<sup>1</sup> As a result of the preventable fire and toxic chemical plume, Plaintiffs and the other Class members have suffered a variety of real property-related damages including loss of use and enjoyment, potential remediation and clean-up costs, lost profits, and diminution of property value.

Defendants’ negligence, recklessness, and failure to prevent the fire and toxic chemical plume caused and continues to cause harm to Plaintiffs and the other Class members. Plaintiffs make the following allegations upon personal knowledge as to Defendants’ acts and/or omissions, upon information and belief, and upon Plaintiffs’ attorneys’ investigation as to all other matters:

## **I. GENERAL ALLEGATIONS**

### **A. Parties**

1. Plaintiff Fannie Tartt has been a resident of Rockdale County, Georgia since approximately August 2007, and a citizen of the state of Georgia since approximately 1996.

2. Plaintiff Albert Tartt has been a resident of Rockdale County, Georgia since approximately August 2007, and a citizen of Georgia since approximately 1996.

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<sup>1</sup> Andrea Margolis, *BioLab plant fire: Georgia residents evacuate as toxic smoke billows from chemical-fueled inferno*, FOX NEWS (Sep. 20, 2024, 5:18AM), <https://www.foxnews.com/us/biolab-plant-fire-georgia-residents-evacuate-toxic-smoke-billows-chemical-fueled-inferno>.

3. On September 29, 2024, Plaintiffs resided at 1849 Kings Row, Conyers, GA, 30012, approximately 1.3 miles from the Conyers, Georgia chemical plant, located at 1700 Covington Hwy, Conyers, GA 30012 (“Conyers Plant”).

4. Defendant Bio-Lab is engaged in the business of manufacturing and/or supplying swimming pool and spa water care chemicals under product names that include BioGuard, SpaGuard, Natural Chemistry, SeaKlear, AquaPill, Coral Seas, ProGuard, and Pro Series. At all relevant times, Bio-Lab owned and operated the Conyers Plant.

5. On September 30, 2024, after 5:00 pm local time, Plaintiffs filed the initial Complaint in this above-styled matter naming Bio-Lab, Inc. and KIK Consumer Products Inc. as defendants.

6. On October 17, 2024, Defendants filed with this Court Defendants KIK Consumer Products Inc. and Bio-Lab, Inc.’s Certificate of Interested Persons and Corporate Disclosure Statement (“Corporate Disclosure”). Doc. 44.

7. According to Defendants’ Corporate Disclosure, Bio-Lab is a Delaware corporation with its principal place of business in the State of Georgia.

8. Bio-Lab is licensed to do business in the State of Georgia and conducts business in several counties in the State of Georgia, including in Gwinnett and Rockdale Counties. Bio-Lab is a wholly owned subsidiary of KIK International LLC, a Delaware limited liability company.

9. Bio-Lab may be served through its registered agent for service of process, CT Corporation System, 289 S. Culver St., Lawrenceville, Georgia 30046.

10. According to Defendants' Corporate Disclosure, KIK Custom Products is a Delaware corporation with its principal place of business in Ontario, Canada. KIK Custom Products uses the registered trade name KIK Consumer Products Inc. KIK Custom Products is duly authorized to conduct business in the State of Georgia.

11. According to Defendants KIK International LLC and Bio-Lab, Inc.'s Certificate of Interested Persons and Corporate Disclosure Statement filed in *Forte, et al. v. KIK International LLC et al.*, Case No. 1:24-cv-04453-SEG [Doc. 21], KIK International is a Delaware limited liability company whose sole member is KIK U.S. Holdings LLC, a Delaware limited liability company. KIK U.S. Holdings LLC's sole member is KIK Custom Products. The principal place of business for KIK International is Ontario, Canada.

12. KIK is one of North America's largest independent manufacturers of consumer products. KIK acquired Bio-Lab in order to expand its pool and spa treatment business.

13. KIK, at all relevant times, owned and operated the Conyers Plant.

14. Upon information and belief, Bio-Lab has consistently held itself out as conducting business affairs as a conduit for KIK in connection with the ownership and operation of their chemical enterprise, including promoting itself as "the

swimming pool and spa water care division of KIK Consumer Products, based in Lawrenceville, Georgia.”<sup>2</sup>

15. Additionally, Bio-Lab and KIK constituted a joint venture in connection with the Conyers Plant in as much as they agreed to undertake ownership and operation of the Conyers Plant jointly for the purpose of sharing associated profits and losses, and each contributed their respective skills, property, or resources in exercising control or a right of control over the Conyers Plant.

**B. Jurisdiction and Venue**

16. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2).

- a. The amount in controversy in this class action exceeds \$5,000,000, exclusive of interest and costs.
- b. There are more than one hundred Class members.
- c. Plaintiffs and many members of the putative Class are citizens of states that are different from the states of which at least one Defendant is a citizen.
- d. One Defendant is also a citizen of a foreign state.

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<sup>2</sup> Bio-Lab, Inc., *Who We Are*, <https://www.biolabinc.com/> (last visited Oct. 31, 2024).

17. No exception to CAFA jurisdiction under 28 U.S.C. § 1332(d)(4) exists in this case.

18. On September 30, 2024, at 1:26 p.m., several plaintiffs, individually and on behalf of all others similarly situated, filed a class action complaint against Bio-Lab Inc. in the State Court of Gwinnett County. *Lynch, et al. v. Bio-Lab, Inc., et al.*, Case No. 24-C-09082-S5 (“*Lynch*”).

19. The complaint in *Lynch* was filed before Plaintiffs filed the initial Class Action Complaint in this matter. The complaint in *Lynch* asserts the same or similar claims on behalf of the same or other persons as the Complaint in this matter.

20. Further, at least one Defendant is a “primary defendant” who is not a citizen of Georgia for diversity jurisdiction purposes under CAFA, as KIK is a Delaware corporation with its principal place of business in Ontario, Canada.

21. This Court has jurisdiction over Defendants because they each operate their chemical enterprise in this District. Through their regular business operations in this District, Defendants intentionally and regularly availed themselves of the markets and jurisdiction in this District, conferring this Court with personal jurisdiction over each Defendant.

22. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this District,

Defendants' operations in this District caused harm to Plaintiffs and Class members in this District, and Defendants are subject to personal jurisdiction in this District.

### **C. Background Facts**

23. In 1973, Bio-Lab built the Conyers Plant and has maintained a presence in Rockdale County ever since.<sup>3</sup> At all relevant times, Defendants owned and operated the Conyers Plant.

24. Bio-Lab markets itself as “an industry leader in the development and marketing of innovative products that provide clear water for pools and spas and for keeping homes fresh and clean.”<sup>4</sup>

25. “Among other operations, the [Conyers Plant] received, blended, and packaged [trichloroisocyanuric acid (“TCCA”)] material into finished consumer products.”<sup>5</sup>

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<sup>3</sup> *Biolab Announces New Distribution Center in Conyers Georgia Under Construction by ARCO Design/Build*, PR NEWSWIRE (July 26, 2019), <https://www.prnewswire.com/news-releases/Bio-Lab-announces-new-distribution-center-in-conyers-georgia-under-construction-by-arco-designbuild-300891722.html>.

<sup>4</sup> *BioLab, Inc.*, POOL SUPPLY WAREHOUSE, <https://www.thepoolsupplywarehouse.com/collections/Bio-Lab-inc?srltid=AfmBOoq9nf-WP5fAL-mdKtjxxn0AMWVtMxRW52di0yu0qDac3FIKPNh9> (last visited Sept. 30, 2024).

<sup>5</sup> U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD, *Trichloroisocyanuric Acid Reaction, Decomposition, and Toxic Gas Release at Bio-Lab, Inc.* (1<sup>st</sup> ed. 2023), [https://www.csb.gov/assets/1/6/Bio-Lab\\_investigation\\_report\\_2023-4-24.pdf](https://www.csb.gov/assets/1/6/Bio-Lab_investigation_report_2023-4-24.pdf).

26. There is a history of fires and toxic chemical releases at the Conyers Plant.

27. In 2004, the warehouse of the Conyers Plant caught fire, injuring 28 people.<sup>6</sup> The fire produced a toxic chlorine plume that affected residents within 50 miles of the Conyers Plant, and authorities closed Interstate 20. Residents within a 1.5-mile radius of the facility were evacuated. The fire was caused by an explosion at the Conyers Plant fueled by 250,000 pounds of dry chlorine pellets. The explosion and fire resulted in a \$7 million settlement paid to those impacted by the fire.

28. In 2016, a fire ignited in a storage shed at the Conyers Plant.<sup>7</sup> The fire was only noticed and reported because a nearby resident smelled smoke and chemicals and called the authorities. The fire was fueled by reactions from chlorine pellets contained in the storage shed. Residents within a 1-mile radius of the facility were evacuated.

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<sup>6</sup> Jonathan Raymond, *BioLab in Conyers had similar chemical fire, smoke plume situation in 2004 | Here's what happened*, 11 ALIVE (Sep 29, 2024), <https://www.11alive.com/article/news/local/Bio-Lab-chemical-fire-conyers-georgia-2004-similar-incident/85-d71cc6d6-78cf-4283-9510-03c93b2ee71c>.

<sup>7</sup> Adrienne Haney, *Chemical fire breaks out Conyers warehouse*, 11 ALIVE (June 4, 2016, 10:29 AM), <https://www.11alive.com/article/news/local/conyers/chemical-fire-breaks-out-conyers-warehouse/85-231326577>.

29. In 2020, a water line leaked in the Conyers Plant, flooding part of the facility and reacting with the TCCA used in the facility.<sup>8</sup> The reaction produced dangerous fumes and a plume of hazardous chemicals. Following the incident, chlorine levels in the air at nearby business property measured 12 times the permissible exposure limit set by the federal government. Nearby businesses were evacuated, and the highway was closed. The leak and resulting fumes cost an estimated \$1,007,000 in property damage. Nine firefighters were hospitalized as a result of their response to the fumes.

30. Defendants also have a history of state and federal violations for their conduct at the Conyers Plant.

31. According to EPA records, the Conyers Plant has been inspected for Clean Air Act compliance three times in the past five years. These three inspections resulted in two informal enforcement actions and one formal enforcement action, with Bio-Lab paying a fine of \$1,000 for its violations.<sup>9</sup>

32. The Conyers Plant was also inspected in 2023 for compliance with the Clean Water Act (“CWA”). The inspection detected significant noncompliance, and

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<sup>8</sup> U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD, *Trichloroisocyanuric Acid Reaction, Decomposition, and Toxic Gas Release at Bio-Lab, Inc.* (1<sup>st</sup> ed. 2023), [https://www.csb.gov/assets/1/6/Bio-Lab\\_investigation\\_report\\_2023-4-24.pdf](https://www.csb.gov/assets/1/6/Bio-Lab_investigation_report_2023-4-24.pdf).

<sup>9</sup> *Detailed Facility Report: Bio-Lab, Inc.*, U.S. EPA, <https://echo.epa.gov/detailed-facility-report?fid=110007087213> (last visited Oct. 30, 2024).

Bio-Lab received an informal enforcement action. The Conyers Plant has spent eight of the last twelve quarters in CWA noncompliance, and five of the last twelve quarters with a significant violation of the CWA.<sup>10</sup>

33. The Conyers Plant was inspected in January 2024 for compliance with the Resource Conservation and Recovery Act (“RCRA”). Bio-Lab received two informal enforcement actions and spent two quarters in noncompliance with RCRA.<sup>11</sup>

34. “In February of [2024], BioLab received a notice of violation from Georgia environmental regulators after inspectors uncovered several [RCRA] violations during an inspection the month prior. . . . During the January inspection, the report said regulators found multiple improperly sealed and unlabeled hazardous waste containers on site. Used oil tanks and buckets were left uncovered, and inspectors noted that the company had not been performing its required weekly self-inspections. ‘Multiple areas in the facility . . . showed a neglect of facility maintenance to the point of creating potential safety hazards. It is advised that the facility take some action to address this issue,’ inspectors wrote.”<sup>12</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Charles P. Pierce, *A Cloud of Noxious Chemicals and Lawsuits Is Descending Outside Atlanta*, ESQUIRE (Oct. 15, 2024, 8:29 AM), <https://www.esquire.com/news-politics/politics/a62600626/biolab-fire-chemicals-leak-georgia/>

35. Bio-Lab shipped over 323,000 pounds of hazardous waste to and from the Conyers Plant during the first three quarters of 2024.<sup>13</sup> This number was consistent with numbers from previous years. Bio-Lab knew the amount of dangerous and toxic chemicals at the Conyers Plant and failed to take adequate precautions to ensure these chemicals were handled safely and to prevent dangerous chemical reactions, as evidenced by the prior violations detailed above.

36. Bio-Lab was also cited by the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") in 2013 for "one repeat and six serious safety violations following a March inspection" at the Conyers Plant.<sup>14</sup> The repeat violation involved "exposing workers to chlorine above the ceiling limit," which Bio-Lab had previously been cited for in 2009.<sup>15</sup>

37. Bio-Lab has reportedly been cited for "dozens of OSHA violations" over the past 30 years.<sup>16</sup>

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<sup>13</sup> *Detailed Facility Report: Bio-Lab, Inc.*, U.S. EPA, <https://echo.epa.gov/detailed-facility-report?fid=110007087213> (last visited Oct. 30, 2024).

<sup>14</sup> *OSHA News Release – Atlanta Region*, OSHA (Aug. 22, 2013), <https://www.osha.gov/news/newsreleases/region4/08222013>

<sup>15</sup> *Id.*

<sup>16</sup> Pamela Kirkland, *Conyers residents demand accountability after latest BioLab fire leaves lingering concerns*, GPB NEWS (Oct. 28, 2024, 3:46 PM), <https://www.gpb.org/news/2024/10/28/conyers-residents-demand-accountability-after-latest-biolab-fire-leaves-lingering>

38. Chemtura, the former parent company of Bio-Lab, settled with the EPA and the Department of Justice in 2010 for a total of \$26 million, and \$785,000 of that amount was payment for penalties incurred by the Conyers Plant.<sup>17</sup>

39. The repeated incidents at the Conyers Plant highlight ongoing environmental, health, and safety concerns and the need for improved environmental, health, and safety measures to protect their workers and the surrounding community.

40. Defendants' long history of violations and noncompliance at the Conyers Plant exemplifies the recklessness with which Defendants have acted and continue to act.

41. Rockdale County, Georgia has approximately 93,000 residents. The city of Conyers, Georgia has approximately 17,000 residents.

42. Numerous residential, commercial, and public properties are located in close proximity to the Conyers Plant. These properties include:

- a. Homes, schools, commercial buildings and stores, churches, and athletic fields;
- b. Shoal Creek Elementary School, located 1.6 miles from the Conyers Plant;
- c. Conyers Middle School, located 2.2 miles from the Conyers Plant;

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<sup>17</sup> *Id.*

- d. Rockdale County High School, located 1.9 miles from the Conyers Plant;
- e. CJ Hicks Elementary School, located 2.1 miles from the Conyers Plant;
- f. Georgia College of Construction, located 1.6 miles from the Conyers Plant;
- g. Rockdale County 911 Emergency Center, located 1.3 miles from the Conyers Plant;
- h. Conyers Rockdale Library System, located 1.6 miles from the Conyers Plant;
- i. Sweet Psalms Florist, located 1.1 miles from the Conyers Plant;
- j. Conyers First Methodist Church, located 1.4 miles from the Conyers Plant;
- k. Victorious Life Church, located 1.8 miles from the Conyers Plant;
- l. Antioch East AME Church, Inc., located 1.8 miles from the Conyers Plant;
- m. Kingdom Hall of Jehovah's Witnesses, located 1.7 miles from the Conyers Plant;
- n. Rockdale County Parks & Rec, located 1.8 miles from the Conyers Plant;
- o. AMMY Nursery, located 2.3 miles from the Conyers Plant;
- p. Conyers Apostolic Church, located 1.8 miles from the Conyers Plant;
- q. Way of the Cross Baptist Church, located 2.1 miles from the Conyers Plant; and

r. Silverback Xtreme Fitness, located 2.9 miles from the Conyers Plant.

43. According to the 2021 American Community Survey, 1,719 people live within one mile of the Conyers Plant. This population consists of 23% seniors (over 65) and 22% minors (under 18). More than 34,000 people live within a three-mile radius of the Conyers Plant, with 25% of that population consisting of minors.<sup>18</sup>

44. Upon information and belief, Defendants stored chlorine and other chemicals at the Conyers Plant.

45. Inspections by the Rockdale County Fire Rescue in 2022 revealed at least 69 chemicals stored at the Conyers Plant, 48 of which posed health hazards. Several of these chemicals were also known to be explosive or combustible.

46. At all relevant times, the risk of a chemical fire and the release of a toxic chemical plume was reasonably foreseeable to Defendants.

47. At all relevant times, it was reasonably foreseeable to Defendants that the risk of a chemical fire and the release of a toxic chemical plume could impact nearby properties and present a hazard to the residents located near the Conyers Plant.

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<sup>18</sup> *Detailed Facility Report: Bio-Lab, Inc.*, U.S. EPA, <https://echo.epa.gov/detailed-facility-report?fid=110007087213> (last visited Oct. 30, 2024).

48. The reality of prior fires at the Conyers Plant was a fact known to the Defendants.

**D. The Fire and the Ensuing Toxic Plume**

49. On September 29, 2024, a fire ignited at the Conyers Plant, resulting in a chemical reaction that caused an enormous toxic chemical plume—the plume was so large that it could be “seen for miles.”<sup>19</sup> The plume was visible from at least 30 miles away.<sup>20</sup>

50. Figures 1, 2, 3, and 4, below, depict the chemical plume.



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<sup>19</sup> Cindy Von Quednow & Lauren Mascarenhas, *Thousands told to stay home a day after chemical plant fire sent a plume containing chlorine high into the air*, CNN (Sept. 30, 2024, 12:58 PM), <https://www.cnn.com/2024/09/29/us/rockdale-county-Bio-Lab-fire-georgia/index.html>.

<sup>20</sup> David Aaro & Rosana Hughes, *Chemical Fire at Conyers, GA, Plant Forces Evacuations, Closures*, FIREHOUSE (Sept. 29, 2024), <https://www.firehouse.com/operations-training/video/55143420/evacuations-ordered-after-chemical-plant-fire-in-conyers-ga>.

Figure 1



Figure 2



Figure 3



Figure 4

51. The fire ignited on the roof of the Conyers Plant at approximately 5 a.m. The fire then triggered a sprinkler head at the facility,<sup>21</sup> which sprayed water onto water-reactive chemicals contained in the fire and at the facility. This reaction sent “a colossal wall of smoke into the sky” which contained toxic chemicals,<sup>22</sup> depicted above.

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<sup>21</sup> Hank Sanders & Remy Tumin, *Plume From Chemical Plant Fire Reaches Atlanta*, N.Y. TIMES (Sept. 30, 2024, 2:18 PM),

<https://www.nytimes.com/2024/09/29/us/chemical-bio-lab-fire-georgia.html>.

<sup>22</sup> Rosana Hughes, *Conyers BioLab plant fire; What to know*, THE ATLANTA JOURNAL-CONSTITUTION (Oct. 4, 2024),

<https://www.ajc.com/news/crime/conyers-chemical-plant-fire-what-to-know/ZECJVWIRDNCR5P2DZJFSAXUQ2A/>.

52. The fire was initially contained but reignited around 12 p.m., sending a large plume of black smoke into the air. The fire was not contained again until approximately 4 p.m. After the fire was contained, smoldering and off-gassing continued to produce a toxic chemical plume.<sup>23</sup>

53. The fire caused a “complete collapse” of the Conyers Plant building, as the roof caved in and multiple walls fell as a result of the fire.<sup>24</sup>

54. As the toxic chemical plume expanded across the sky above Rockdale County and into other counties, one resident described the scene as “apocalyptic.”<sup>25</sup>

55. Chemistry professor Dr. Joseph Sadighee explained to the public in an interview that the safety data sheet for TCCA instructs companies to “never allow a small amount of water to go into a large amount of [TCCA] material.”<sup>26</sup> Dr. Sadighee also explained that, “when you have something that can't contact water, if a fire were

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<sup>23</sup> Associated Press, *Chemical smoke spewing from a Georgia factory is projected to spread toward Atlanta as winds shift*, GPB NEWS (Oct. 2, 2024, 5:01 PM), <https://www.gpb.org/news/2024/10/02/chemical-smoke-spewing-georgia-factory-projected-spread-toward-atlanta-winds-shift>.

<sup>24</sup> Cindy Von Quednow & Lauren Mascarenhas, *Thousands told to stay home a day after chemical plant fire sent a plume containing chlorine high into the air*, CNN (Sept. 30, 2024, 12:58 PM), <https://www.cnn.com/2024/09/29/us/rockdale-county-Bio-Lab-fire-georgia/index.html>.

<sup>25</sup> Sydney Sims, *I've Lived Through Three BioLab Fires in 20 Years. I Fear the Impact.*, CAPITAL B ATLANTA ( Oct. 2, 2024), <https://atlanta.capitalbnews.org/biolab-fire-black-residents-conyers-georgia/>.

<sup>26</sup> Melissa Nord, *Breaking down what chemicals are in the air over Conyers BioLab plant*, 11 ALIVE (Oct. 1, 2024, 9:44 PM), <https://www.11alive.com/article/news/local/conyers/explaining-what-exactly-is-in-air-over-conyers-biolab-plant/85-541f7251-4365-48f3-aec7-4c5d0b9acdc3>.

to happen, it's important to design your lab so that it won't contact water."<sup>27</sup> Bio-Lab did not design the Conyers Plant in such a manner.

56. Defendants did not have an adequate fire protection system in order to quickly and effectively extinguish fires at their facility while also avoiding causing dangerous chemical reactions with water-reactive chemicals.

57. Defendants' failure to possess and utilize an effective fire protection system exacerbated the harm caused by the fire at the Conyers Plant and delayed emergency response to the fire.

58. At approximately 1:10 p.m., authorities in Rockdale County, Georgia issued an Evacuation Alert directing residents living between Sigman Road and Interstate 20 near the Conyers Plant to evacuate immediately and residents north of Sigman Road to shelter in place with the windows closed and announcing that Interstate 20 would be closing ("Evacuation Alert").

59. The Evacuation Alert displaced more than 17,000 residents.

60. At the same time, Rockdale County authorities announced the closing of Interstate 20 in both directions between Salem Rd and Turner Hill, an eight-mile stretch of the highway, causing significant traffic disruptions. All southbound traffic on Hi-Roc Road between Irwin Bridge and Highway 138 was shut down, and all

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<sup>27</sup> *Id.*

traffic from Highway 138 to Interstate 20 from Turner Hill Road to Salem Road was shut down.

61. Interstate 20 remained closed until the morning of September 30, 2024, causing additional traffic disruptions. Other roads, including Old Covington Highway, Kysor Crossing, Dogwood Drive, and Veterans Drive, remained closed through at least October 1, 2024.<sup>28</sup>

62. Evacuated residents were unable to return to their homes to obtain personal items and necessities, including medication, technology, and communication devices to inform loved ones of their wellbeing.

63. At approximately 7:45 p.m. on September 29, 2024, Rockdale County, Georgia authorities issued a shelter-in-place order for all residents of Rockdale County (“Shelter-in-Place Order”) between 7:45 p.m. and midnight.<sup>29</sup> More than 90,000 residents were affected and could not leave their homes.

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<sup>28</sup> Makayla Richards, 11Alive Staff, *Rockdale County recommends nightly shelter-in-place for residents | Live updates, Tuesday, Oct. 1*, 11 ALIVE ( Oct. 1, 2024, 11:54 PM), <https://www.11alive.com/article/news/local/conyers/biolab-chemical-plume-conyers-rockdale-county-updates-tuesday-oct-1/85-e90ee497-a0d4-4a01-922b-7fd3cd740315>.

<sup>29</sup> *Updates on Bio Fire (9/29/24- 9/30/2024)*, ROCKDALE COUNTY (Sept. 30, 2024, 2:14 PM), <https://www.rockdalecountyga.gov/updates-on-bio-fire-9-29-24/>.

64. Those sheltering in place were asked by County officials “to turn the air conditioning off and keep windows and doors shut.”<sup>30</sup>

65. The Shelter-in-Place order was extended on September 30, 2024.<sup>31</sup>

66. All businesses in Rockdale County were asked to close operations while the Shelter-in-Place Order was in effect. The Shelter-in-Place Order affected approximately 2,200 businesses.<sup>32</sup>

67. On September 30, 2024, at approximately 2:20 p.m., the Georgia Emergency Management and Homeland Security Agency (“GEMA/HS”) issued a public safety alert to all residents within 50 miles of the Conyers Plant.<sup>33</sup>

68. On October 1, 2024, Rockdale County advised residents to continue to shelter in place, especially given that the “plume has consistently shifted throughout the night.”<sup>34</sup> That day, the Rockdale Emergency Management Agency and Rockdale County again extended the Shelter-in-Place Order, directing residents to remain

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<sup>30</sup> *Rockdale County Remains Closed with Shelter in Place Continuing*, ROCKDALE COUNTY (Sept. 30, 2024), <https://www.rockdalecountyga.gov/rockdale-county-remains-closed-with-shelter-in-place-continuing/>.

<sup>31</sup> *Id.*

<sup>32</sup> *Rockdale County, Georgia*, UNITED STATES CENSUS BUREAU [https://data.census.gov/profile/Rockdale\\_County\\_Georgia?g=050XX00US13247](https://data.census.gov/profile/Rockdale_County_Georgia?g=050XX00US13247) (last accessed Oct. 28, 2024).

<sup>33</sup> Rosana Hughes, *Conyers BioLab plant fire: What to know*, THE ATLANTA JOURNAL-CONSTITUTION (Oct. 4, 2024), <https://www.ajc.com/news/crime/conyers-chemical-plant-fire-what-to-know/ZECJWIRDNCR5P2DZJFSAXUQ2A/> ; <https://x.com/AFCEMA/status/1840819308697387256>.

<sup>34</sup> Updates on Bio Fire (9/29/24- 10/9/2024), ROCKDALE COUNTY (Oct. 9, 2024), <https://www.rockdalecountyga.gov/updates-on-bio-fire-9-29-24/>.

indoors from 7 p.m. until 7 a.m. every day through October 4, 2024.<sup>35</sup> All businesses in Rockdale County were advised to remain closed.

69. Piedmont Rockdale Hospital evacuated patients and announced that the hospital was on diversion, delaying care for those in need of emergency medical treatment.<sup>36</sup>

70. Rockdale County Schools were closed for fall break during the week following the fire at the Conyers Plant, but the schools also did not hold in-person classes the following week. Rockdale County Schools held classes virtually for 14 days from October 7 until October 21, 2024, while they “continuously monitored the environmental impact of the BioLab incident and cleanup efforts.”<sup>37</sup> More than 15,000 students were affected by the cancellation of in-person classes.<sup>38</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> Jonathan Raymond, *Conyers chemical plume after BioLab fire updates | Gwinnett says nothing hazardous detected, Atlanta mayor says smell is dissipating*, 11 ALIVE (Sept. 30, 2024, 1:30 PM), <https://www.11alive.com/article/news/local/conyers-chemical-plume-Bio-Lab-fire-latest-updates-monday-september-30/85-2a4ac3d6-4263-4b25-aec8-5d0865c7c960>.

<sup>37</sup> Rockdale County Public Schools, *UPDATE October 17, 2024: RCPS schools will return to in-person learning and school buildings reopen starting Monday, October 21, 2024.* (Oct. 17, 2024), [https://www.rockdaleschools.org/about/news\\_and\\_announcements/news/independent\\_learning\\_virtual\\_october\\_2024](https://www.rockdaleschools.org/about/news_and_announcements/news/independent_learning_virtual_october_2024).

<sup>38</sup> Holly Yan, *‘We want them gone’: Georgia county plans to sue BioLab after its chemical plant fire upended life for thousands of residents*, CNN (Oct. 22, 2024, 8:18 PM), <https://www.cnn.com/2024/10/22/us/biolab-fire-lawsuit-rockdale-county/index.html>

71. Newton County Schools closed on September 30 and October 1, 2024, due to the fire and toxic chemical plume from the Conyers Plant.<sup>39</sup> Schools opened for in-person classes with a delayed start time on October 2.<sup>40</sup> Newton County also canceled a Newton County Board of Commissioners meeting scheduled for October 1.

72. The Newton County Emergency Management Agency advised Newton County residents to “stay indoors.”<sup>41</sup> Newton County residents experienced strong odors and symptoms such as burning eyes. One resident stated that “when I walk outside it smells like I’m standing next to a freshly chlorinated indoor pool.”<sup>42</sup>

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<sup>39</sup> Newton County Schools, *Schools Closed Monday, September 30* (Sept. 29, 2024), [https://www.newtoncountyschools.org/departments/public\\_relations/news/schools\\_closed\\_monday\\_september\\_30?fbclid=IwY2xjawFm09ZleHRuA2FlbQIxMAABHQ-KlsTtwU5LXzxpISGupG0F0A2fijFc32ZrSQSNx2GxNdluQSyYwVLQug\\_aem\\_7E6-2smPIyp0ljqw\\_kYpxg](https://www.newtoncountyschools.org/departments/public_relations/news/schools_closed_monday_september_30?fbclid=IwY2xjawFm09ZleHRuA2FlbQIxMAABHQ-KlsTtwU5LXzxpISGupG0F0A2fijFc32ZrSQSNx2GxNdluQSyYwVLQug_aem_7E6-2smPIyp0ljqw_kYpxg).

<sup>40</sup> Evan Newton, *County leaders hold meeting to discuss impact from BioLab fire*, THE COVINGTON NEWS (Oct. 1, 2024, 6:58 PM), <https://www.covnews.com/news/county/county-leaders-hold-meeting-discuss-impact-biolab-fire/>

<sup>41</sup> Evan Newton, *FEMA says Newton County has not experienced ‘significant impacts’ from BioLab fire, despite citizen concerns*, THE COVINGTON NEWS (Sept. 30, 2024, 2:34 PM), <https://www.covnews.com/news/county/fema-says-newton-county-has-not-experienced-significant-impacts-from-biolab-fire-despite-citizen-concerns/>

<sup>42</sup> *Id.*

73. Fayette County Public Schools canceled all outdoor activities following the fire at the Conyers Plant.<sup>43</sup>

74. Georgia Piedmont Technical College closed both their Newton and Rockdale campuses until further notice because of the fire and toxic chemical plume.

75. Government buildings, including the Rockdale County Courthouse, Administration Building, Water Resources, Elections Office, Animal Services, Tax Commissioner, and Board of Commissioner's Office were all closed on September 30, 2024, due to the fire and toxic chemical plume.<sup>44</sup>

76. The City of Conyers closed City Hall, municipal court, and Conyers University through October 2, 2024, and cancelled a Conyers Downtown Development Authority meeting scheduled for October 1, 2024.<sup>45</sup>

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<sup>43</sup> Fox 5 Atlanta Digital Team, *BioLab fire: School and government office closures over air quality concerns*, FOX5 ATLANTA (Sept. 30, 2024, 10:52 AM), <https://www.fox5atlanta.com/news/biolab-fire-school-government-closures-air-quality-chlorine>.

<sup>44</sup> Scott Flynn, *Rockdale County chemical fire: County and School closings for Monday*, WSB-TV ATLANTA (Sept. 29, 2024, 10:32 PM), <https://www.wsbtv.com/news/local/rockdale-county/rockdale-county-chemical-fire-county-school-closings-monday/CP52YJPW7FAGTNPVK6MF5P53VM/>.

<sup>45</sup> Jonathan Raymond, *Conyers chemical plume after BioLab fire updates | Gwinnett says nothing hazardous detected, Atlanta mayor says smell is dissipating*, 11 ALIVE (Sept. 30, 2024, 1:30 PM), <https://www.11alive.com/article/news/local/conyers-chemical-plume-Bio-Lab-fire-latest-updates-monday-september-30/85-2a4ac3d6-4263-4b25-aec8-5d0865c7c960>.

77. Government offices in nearby Newton County closed on September 30, 2024, due to health concerns.

78. Churches in Rockdale County, and from Rockbridge to Northside County, were all asked to cancel or immediately end services on Sunday, September 29, 2024.<sup>46</sup>

79. The Rockdale County Fire Rescue, the local fire department, was dispatched to respond to the fire at the Conyers Plant.

80. The Rockdale County Emergency Management Agency mobilized in response to the fire. The state also sent officials from the Georgia Environmental Protection Division (“EPD”) to respond and assess the air quality after the fire, and the Georgia Department of Public Health (“DPH”) was engaged in monitoring the public health impacts of the fire and the resulting toxic chemical plume.<sup>47</sup>

81. The Georgia Department of Transportation managed road closures and accompanying transportation delays in response to the fire.

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<sup>46</sup> David Aaro & Rosana Hughes, *Conyers chemical plant fire: Air quality monitored across metro Atlanta*, THE ATLANTA JOURNAL-CONSTITUTION (Sept. 30, 2024, 1:19 PM), <https://www.ajc.com/news/atlanta-news/metro-atlanta-chemical-plant-fire-leads-to-evacuation-of-17000/NLTZ6RLMIZCERF76B7FHUQFRYE/>.

<sup>47</sup> *State and Federal Agencies Continue Monitoring Rockdale County Biolab Fire Incident*, GEORGIA EMERGENCY MANAGEMENT AND HOMELAND SECURITY AGENCY (Oct. 2, 2024), <https://gema.georgia.gov/press-releases/2024-10-02/state-and-federal-agencies-continue-monitoring-rockdale-county-biolab>.

82. The U.S. Environmental Protection Agency (“EPA”) also responded, assisting in air quality monitoring and assessment,<sup>48</sup> and the Federal Emergency Management Agency (“FEMA”) was called to respond and assist in emergency management.<sup>49</sup>

83. The U.S. Chemical Safety and Hazard Investigation Board (“CSB”) announced it was investigating “the major chemical fire that occurred on September 29 at the Bio-Lab facility in Conyers, GA.”<sup>50</sup> This investigation is ongoing.

84. Shelter locations and evacuation sites were established for affected residents, including sites in Lithonia, Covington, and Stockbridge, with assistance from the American Red Cross and DeKalb County Emergency Management.

85. On October 2, 2024, GEMA/HS announced it was monitoring the toxic chemical plume affecting residents from the fire at the Conyers Plant, informing residents about potential health impacts and recommending nearby residents stay

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<sup>48</sup> The Associated Press, *Residents in Conyers, Ga., told to shelter in place following chemical plant fire*, ABC NEWS CHANNEL 6 WJBF.COM (Sept. 29, 2024, 2:11 PM), <https://www.wjbf.com/news/georgia-news/residents-in-conyers-ga-told-to-shelter-in-place-following-chemical-plant-fire/>.

<sup>49</sup> Cindy Von Quednow & Lauren Mascarenhas, *Thousands told to stay home a day after chemical plant fire sent a plume containing chlorine high into the air*, CNN (Sept. 30, 2024, 12:58 PM), <https://www.cnn.com/2024/09/29/us/rockdale-county-Bio-Lab-fire-georgia/index.html>.

<sup>50</sup> US Chemical Safety and Hazard Investigation Board, *U.S. Chemical Safety Board Sends Team to Bio-Lab* (Sept. 30, 2024), <https://www.csb.gov/us-chemical-safety-board-sends-team-to-bio-lab/>.

indoors and turn off HVAC machines.<sup>51</sup> Levels of chlorine detected in the air were more than double the action levels set by the EPA for the chemical.<sup>52</sup>

86. The Georgia DPH issued a warning across the state given that the toxic chemical plume had traveled to “areas beyond the immediate area of the fire.”<sup>53</sup> The Georgia DPH told residents to “[l]imit your activities outdoors and stay inside and away from the smoke” and to “[k]eep windows and doors closed.”<sup>54</sup>

87. As winds shifted, the toxic chemical plume traveled between multiple cities and counties, reaching the metropolitan Atlanta area and DeKalb County by

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<sup>51</sup> Georgia Emergency Management and Homeland Security Agency, *Rockdale County Biolab Fire* (Oct. 2, 2024), <https://gema.georgia.gov/rockdale-county-biolab-fire-1>.

<sup>52</sup> 11 Alive Staff, *Shelter-in-place order extended through weekend, Rockdale County officials say | Conyers chemical plume Friday latest updates*, 11 ALIVE (Oct. 4, 2024, 5:19 PM), <https://www.11alive.com/article/news/local/conyers/chemical-plume-updates-friday-oct-4-biolab/85-89bc98d1-7731-4876-9db5-e1a813afe3fd>; Action levels are set by the EPA “based on the most protective AEGLs (Acute Exposure Guideline Levels) which are used by emergency responders when dealing with chemical spills or other exposures and describe the human health effects from once-in-a-lifetime, or rare, exposure to airborne chemicals.” *Air Monitoring Summary Table October 3, 2024 (5 a.m. to 5 p.m.)*, U.S. EPA [https://www.epa.gov/system/files/documents/2024-10/biolabchlorine\\_datasummaryreport\\_20241003\\_5pm.pdf](https://www.epa.gov/system/files/documents/2024-10/biolabchlorine_datasummaryreport_20241003_5pm.pdf) (Last visited Oct. 31, 2024).

<sup>53</sup> Georgia Department of Public Health, *Smoke From BioLab Chemical Fire Health Precautions* (Oct. 2, 2024) <https://dph.georgia.gov/smoke-biolab-chemical-fire-health-precautions>

<sup>54</sup> *Id.*

October 3, 2024.<sup>55</sup> “Reports of haze and a strong chlorine smell extended to Atlanta's densely populated eastern suburbs in DeKalb and Gwinnett counties.”<sup>56</sup> “For days, shifting winds swept the chemical haze back and forth in multiple cities, including parts of Atlanta.”<sup>57</sup>

88. On October 2, 2024, the City of Atlanta announced that a haze would appear in the City and residents would smell chlorine. The City altered operational plans by delaying work start times in the City. The toxic chemical plume reached Atlanta on October 3, 2024.

89. The Atlanta-Fulton County Emergency Management Agency (“EMA”) issued regular public updates from September 30, 2024, through October 13, 2024, on the toxic chemical plume created by the fire at the Conyers Plant. These updates noted that “off-gassing” and “smoldering” continued to occur at the Conyers Plant

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<sup>55</sup> David Aaro, Alexis Stevens, and Helena Oliviero, *Conyers chemical plant fire: Winds to shift toward Atlanta through Sunday*, THE ATLANTA JOURNAL CONSTITUTION (Oct. 4, 2024), <https://www.ajc.com/news/crime/conyers-plant-fire-atlanta-mayor-advises-staying-indoors-if-haze-reaches-city/CMXIGCNJXNEJBOK2YPRXOYCF6I/>.

<sup>56</sup> Shamim Chowdhury, *Chemical Cloud Near Atlanta Causes New Shelter-in-Place Warning*, NEWSWEEK (Oct. 2, 2024, 5:19 AM), <https://www.newsweek.com/chemical-cloud-near-atlanta-causes-new-shelter-place-warning-1962101>.

<sup>57</sup> Holly Yan, *‘We want them gone’: Georgia county plans to sue BioLab after its chemical plant fire upended life for thousands of residents*, CNN (Oct. 22, 2024, 8:18 PM), <https://www.cnn.com/2024/10/22/us/biolab-fire-lawsuit-rockdale-county/index.html>.

through October 6, 2024, adding toxic chemicals to the air.<sup>58</sup> Off-gassing reportedly continued into October 7, 2024.<sup>59</sup> The Atlanta-Fulton County EMA advised residents to stay inside and informed residents of the myriad negative health impacts the toxic chemicals emitted from the Conyers Plant can have.<sup>60</sup>

90. The Fulton County Board of Health also advised residents to stay inside and to close windows and doors,<sup>61</sup> and they expanded the hours during which County clinics were open in response to the fire and toxic chemical plume.<sup>62</sup>

91. DeKalb County also warned residents about high chlorine levels in the air and a likelihood of “seeing haze and smelling chlorine” in DeKalb County on October 2, 2024. DeKalb County advised residents to stay inside.<sup>63</sup>

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<sup>58</sup> Atlanta-Fulton County EMA (@AFCEMA), X, <https://x.com/AFCEMA> (last visited Oct. 31, 2024).

<sup>59</sup> Akilah Winters, *Conyers chemical plume | Shelter-in-place lifted for most of county except for those within 2-mile radius of facility*, 11 ALIVE (Oct. 7, 2024, 11:27 PM), <https://www.11alive.com/article/news/local/conyers/conyers-chemical-plume-biolab-fire-officials-update/85-e1b1b8cc-7f27-45b5-adb3-8d57eb7f7e1b>.

<sup>60</sup> *Id.*

<sup>61</sup> Fulton County Board of Health, *Smoke From BioLab Chemical Fire* <https://fultoncountyboh.com/smoke-from-biolab-chemical-fire/> (Last visited Oct. 31, 2024).

<sup>62</sup> Fulton County Board of Health (@FultonHealth), X, <https://x.com/fultonhealth?prefetchTimestamp=1729861589581> (last visited Oct. 31, 2024).

<sup>63</sup> DeKalb County Georgia, *State and Federal Agencies Continue Monitoring Rockdale County Biolab Fire Incident (Oct. 2)* (Oct. 2, 2024, 5:54 PM), <https://www.dekalbcountyga.gov/news/state-and-federal-agencies-continue-monitoring-rockdale-county-biolab-fire-incident-oct-2>.

92. Walton County dispatched the Walton County Emergency Management Agency and the Walton County Fire Rescue to aide in the response to the fire and toxic chemical plume. Walton County also advised residents to “turn off your air conditioners, turn on your ceiling fans, and if possible bring your outside animals indoors.”<sup>64</sup>

93. The EPA and the Georgia EPD conducted air quality surveys on September 29 and 30, 2024, and the results indicated “the harmful irritant chlorine” emitting from the Conyers Plant.<sup>65</sup> The chlorine was present in the plume of smoke coming from the facility, and wind patterns made the toxic chlorine pollution follow an “unpredictable path.”

94. On October 3, 2024, Rockdale County announced that the EPA had detected and was monitoring chlorine and chlorine compounds, chloramine, carbon monoxide, hydrogen chloride, and phosgene in the air.<sup>66</sup> Rockdale County also explained why the Shelter-in-Place Order affected evening hours: “In the evening atmospheric inversion is occurring trapping air and pollution, and the harmful

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<sup>64</sup> Sharon Swanepoel, *Update Sept. 30 from Walton County EMA: Air is safe to breath, but recommends to stay indoors*, MONROE LOCAL (Sept. 30, 2024), <https://news.monroelocal.org/update-walton-ema-director-chlorine-smell-in-air-is-sufficiently-dissipated-but-stay-indoors/>.

<sup>65</sup> Rockdale County, Georgia, *Rockdale County Remains Closed with Shelter in Place Continuing* (Sept. 30, 2024), <https://www.rockdalecountyga.gov/rockdale-county-remains-closed-with-shelter-in-place-continuing/>.

<sup>66</sup> Rockdale County, Georgia, *FAQ Biolab* <https://www.rockdalecountyga.gov/faq-biolab/> (last visited Oct. 31, 2024).

chemicals closer to the ground. This causes unhealthy spikes in air quality for people not sheltering in place in the evening.”<sup>67</sup>

95. One expert estimated that 12 to 20 million pounds of chlorine burned in the fire at the Conyers Plant.<sup>68</sup>

96. In addition to chlorine and other chemicals mentioned, air monitoring revealed the presence of bromine. “Georgia Tech professor Sally Ng said a system known as the Atmospheric Science and Chemistry Measurement Network detected a 1,400-times increase in the amount of chlorine-containing particles in the air, and a 170-times increase in the amount of bromine-containing particles in the air over Decatur on Monday morning [September 30, 2024]. Typically, there is little of either element in the air, Ng said.”<sup>69</sup>

97. By October 3, 2024, hundreds of residents near the Conyers Plant had visited “emergency rooms and clinics complaining of symptoms associated with an

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<sup>67</sup> *Id.*

<sup>68</sup> Joi Dukes, *EPA whistleblower on BioLab debris testing: 'You can't find what you don't look for'*, FOX 5 ATLANTA (Oct. 7, 2024, 11:16 PM), <https://www.fox5atlanta.com/news/rockdale-county-biolab-fire-debris-testing>.

<sup>69</sup> Charles P. Pierce, *A Cloud of Noxious Chemicals and Lawsuits Is Descending Outside Atlanta*, ESQUIRE (Oct. 15, 2024, 8:29 AM), <https://www.esquire.com/news-politics/politics/a62600626/biolab-fire-chemicals-leak-georgia/>.

exposure to the BioLab smoke,” and more than 700 residents made poison control calls to the Georgia Poison Center.<sup>70</sup>

98. Residents expressed fear about the toxic chemical plume. One resident said, “[i]t is anxiety provoking to see a big black cloud coming at your house.” Another asked, “[w]e were told that the chemicals aren’t hazardous, and yet my phone was buzzing all, every day, ‘shelter in place.’ Why am I sheltering in place if the chemicals aren’t happening?”<sup>71</sup>

99. On October 3, 2024, state lawmakers in Georgia called for “the immediate and permanent closure of the Bio-Lab facility in Rockdale County” and asked the Governor to declare a state of emergency.<sup>72</sup>

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<sup>70</sup> David Aaro, Alexis Stevens & Helena Oliviero, *Conyers Chemical Plant Fire: Winds to Shift Toward Atlanta Through Sunday*, THE ATLANTA JOURNAL-CONSTITUTION (Oct. 4, 2024), <https://www.ajc.com/news/crime/conyers-plant-fire-atlanta-mayor-advises-staying-indoors-if-haze-reaches-city/CMXIGCNJXNEJBOK2YPRXOYCF6I/>; Candace McCowan, *BIOLAB FIRE: Georgia Poison Center Has Taken Nearly 700 Calls About Exposure to Chlorine Symptoms*, WSBTV.COM NEWS (Oct. 3, 2024), <https://www.wsbtv.com/news/local/atlanta/biolab-fire-haze-chemical-fire-set-move-into-metro-atlanta-thursday/Y3JQB2QUVFAHRPFW6VEFQR7DLY/>.

<sup>71</sup> Rebecca Grapevine & Healthbeat Atlanta, *Biolab Fire: Patchwork Response Exposes Shortfalls in Emergency Planning, Environmental Safety*, ROUGH DRAFT ATLANTA (Oct. 24, 2024), <https://roughdraftatlanta.com/2024/10/24/chemical-plant-fire-conyers-bio-lab/>.

<sup>72</sup> Brianna Leonard, *State Lawmakers Call for Permanent Closure of Conyers Biolab After Chemical Fire*, ATLANTA NEWS FIRST (Oct. 3, 2024), <https://www.atlantaneWSfirst.com/2024/10/03/state-representatives-call-permanent-closure-conyers-biolab-after-chemical-fire/>.

100. On October 4, 2024, Rockdale County extended the Shelter-in-Place Order until 7 a.m. on October 7, 2024.<sup>73</sup>

101. On October 7, 2024, eight days after the fire started, the Rockdale County Emergency Management Agency extended the Shelter-in-Place Order for residents within two miles of the Conyers Plant while lifting the Order for other residents in the County farther from the Conyers Plant.<sup>74</sup>

102. On October 8, 2024, the Rockdale County Board of Commissioners held a public meeting at which residents voiced concerns about the fire and the Conyers Plant, including reports of debris and property damage caused by the toxic chemical plume.<sup>75</sup> The same day, state legislators held a public forum during which residents voiced similar concerns. Multiple residents spoke about damage caused to their property and an inability to access or operate their business as a result of the

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<sup>73</sup> *BIOLAB FIRE: Rockdale County Extends Nightly Shelter-In-Place Order Through the Weekend*, WSBTV NEWS (Oct. 4, 2024), <https://www.wsbtv.com/news/local/rockdale-county/biolab-fire-rockdale-county-extends-nightly-shelter-in-place-order-through-weekend/IJTQ3CK3OJHXLDMHVQWZZGT54/>.

<sup>74</sup> Rockdale County, Georgia, *Rockdale County Lifts Shelter in Place Except for the 2-Mile Radius Around Biolab* (Oct. 7, 2024), [https://www.rockdalecountyga.gov/rockdale-county-lifts-shelter-in-place-except-for-the-2-mile-radius-around-biolab/?fbclid=IwZXh0bgNhZW0CMATAAR2p5-0qo4es0I3F4VJpAs4Z0pnnt5rPIOFpdOFgyh9bKlOoasc4YnqBDT8\\_aem\\_IP5arsVonmC0GoC3\\_xgIQ](https://www.rockdalecountyga.gov/rockdale-county-lifts-shelter-in-place-except-for-the-2-mile-radius-around-biolab/?fbclid=IwZXh0bgNhZW0CMATAAR2p5-0qo4es0I3F4VJpAs4Z0pnnt5rPIOFpdOFgyh9bKlOoasc4YnqBDT8_aem_IP5arsVonmC0GoC3_xgIQ).

<sup>75</sup> Don Shipman, *Rockdale Residents Impacted by Toxic Plume Voice Frustrations to County Leaders*, ATLANTA NEWS FIRST (Oct. 8, 2024), <https://www.atlantaneWSfirst.com/2024/10/08/rockdale-residents-impacted-by-toxic-plume-voice-frustrations-county-leaders/>.

fire and the toxic chemical plume from the Conyers Plant.<sup>76</sup> Residents also expressed frustration about Bio-Lab's repeated wrongdoing, citing the prior fires and smoke plumes for which Defendants were responsible in 2004, 2016, and 2020.

103. Kenny Johnson, the Rockdale County Soil and Water Conservation District Supervisor, also spoke to the legislators and told them that "BioLab treats their own water, and they have chemicals on that property that can kill you."<sup>77</sup> Mr. Johnson publicly called for a federal criminal investigation into Bio-Lab and KIK.

104. Multiple business owners shared stories of how the fire and toxic chemical plume negatively impacted their business. These stories included the following:

- a. Melvin Little, who owns an auto repair and paint shop near the Conyers Plant, said that the chains he had added to car tires in his shop looked like they had aged 30-40 years in several days due to the toxic chemical plume over his shop. He told state legislators that he likely lost at least \$80,000 in business due to the toxic chemical plume from the Conyers Plant.
- b. Larry Cox, who owns a business near the Conyers Plant, said that several business owners in his area could not access their business facilities because the locks on their doors or entrances had corroded due to the toxic chemical plume. He also told state legislators that, after he entered his business in the days after the

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<sup>76</sup> *WATCH LIVE: Georgia Lawmakers Holding Biolab Chemical Fire Hearing as Chemical Plume Lingers*, ATLANTA NEWS FIRST (Oct. 8, 2024), <https://www.youtube.com/watch?v=TVcjSC0njvs&t=382s>.

<sup>77</sup> Christine Fonville, *Dekalb Sheriff Speaks at Hearing on Biolab Chemical Fire*, THE CHAMPION (Oct. 10, 2024), <https://thechampionnewspaper.com/dekalb-sheriff-speaks-at-hearing-on-biolab-chemical-fire/>.

fire at the Conyers Plant started, representatives from Bio-Lab entered his business and instructed him to leave.

- c. Torrie Crawford, who owns a transportation company located near the Conyers Plant, could not access his warehouse for days due to the fire and toxic chemical plume at the Conyers Plant.

105. The EPA continued to detect chlorine gas in the air near the Conyers Plant at levels above the action level for chlorine through October 11, 2024, twelve days after the fire at the Conyers Plant started.<sup>78</sup> Chlorine gas remained in the air above or near EPA action levels through at least October 17, 2024, when the EPA stopped releasing its air monitoring data.<sup>79</sup>

106. On October 17, 2024, Rockdale County Schools explained to residents that “[o]fficials have reported no visible plumes and no significant spikes in the readings for the past 72 hours.”<sup>80</sup> This announcement means that there had been visible plumes and/or significant spikes in the readings for chemicals in the air for eighteen days after the fire at the Conyers Plant started.

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<sup>78</sup> *Air Monitoring Summary Table October 11, 2024 (5 a.m. to 5 p.m.)*, U.S. EPA (Oct. 11, 2024), [https://www.epa.gov/system/files/documents/2024-10/biolabchlorine\\_datasummaryreport\\_20241011\\_5pm.pdf](https://www.epa.gov/system/files/documents/2024-10/biolabchlorine_datasummaryreport_20241011_5pm.pdf).

<sup>79</sup> *Air Monitoring Summary Table October 17, 2024 (5 a.m. to 5 p.m.)*, U.S. EPA (Oct. 17, 2024), [https://www.epa.gov/system/files/documents/2024-10/biolabchlorine\\_datasummaryreport\\_20241017\\_5pm.pdf](https://www.epa.gov/system/files/documents/2024-10/biolabchlorine_datasummaryreport_20241017_5pm.pdf).

<sup>80</sup> Rockdale County Public Schools, *Return In Person Oct 21 after IDL October 2024* (Oct. 17, 2024), [https://www.rockdaleschools.org/about/news\\_and\\_announcements/news/independent\\_learning\\_virtual\\_october\\_2024](https://www.rockdaleschools.org/about/news_and_announcements/news/independent_learning_virtual_october_2024).

107. Rockdale County announced on October 17, 2024, that “all of the chemical responsible for igniting a fire at the Conyers BioLab plant has been removed and the shelter-in-place has been lifted for the entire county.”<sup>81</sup>

108. On October 23, 2024, Senator Raphael Warnock and Representative Hank Johnson wrote an oversight letter to Bio-Lab and KIK expressing “grave concern” about the Conyers Plant fire and the resulting toxic chemical plume.<sup>82</sup> The elected officials stressed the costs to the community from the fire and toxic chemical plume: “[T]his is the third incident that Rockdale County has had to front the costs for cleaning up, and the third time that first responders have put their lives at risk. Working families may have also had to front out-of-pocket costs on childcare from closed schools, medical bills for chemical plume exposure, property damage, temporary housing, and lost wages from closed job sites.”<sup>83</sup> The elected officials then posed detailed questions to Defendants about the fire, the history of safety failures and workplace violations at the Conyers Plant, and Defendants’ planned response efforts.

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<sup>81</sup> Blake DeVine, *Chemical That Sparked Biolab Plant Fire Removed, Shelter-In-Place Lifted for All of Rockdale County*, ATLANTA NEWS FIRST (Oct. 17, 2024), <https://www.atlantanewsfirst.com/2024/10/17/rockdale-county-officials-give-update-biolab-incident/>

<sup>82</sup> Letter to KIK Consumer Products from Sen. Raphael Warnock & Rep. Henry C. “Hank” Johnson, Jr. (Oct. 23, 2024), *accessible at* <https://www.warnock.senate.gov/wp-content/uploads/2024/10/10.23.2024-Warnock-Oversight-Letter-to-BioLab-Regarding-September-2024-Fire.pdf>.

<sup>83</sup> *Id.*

109. Residents living near the Conyers Plant have observed smoke and ash debris on their property and around their homes.<sup>84</sup>

110. Throughout the first week after the fire began and the toxic chemical plume was created, numerous residents reported “black and burned debris falling all over [their] property.”<sup>85</sup>

111. One resident had debris from the toxic chemical plume spread across her property, including her yard. This debris damaged her property and threatened the lives of her horses, which she had to evacuate.<sup>86</sup>

112. A Conyers resident felt that the damage to her property was so severe and that living near the Conyers Plant was so intolerable that her property was “worthless.”<sup>87</sup> “They can have the house. They can have the land, because it’s no good.”<sup>88</sup>

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<sup>84</sup> Sharon Swanepoel, *Update Sept. 30 from Walton County EMA: Air is safe to breath, but recommends to stay indoors*, MONROE LOCAL (Sept. 30, 2024), <https://news.monroelocal.org/update-walton-ema-director-chlorine-smell-in-air-is-sufficiently-dissipated-but-stay-indoors/>.

<sup>85</sup> Asia Wilson & Blake DeVine, *One Week Since Fire Broke out at Rockdale County Chemical Plant, Changing Thousands of Lives*, ATLANTA NEWS FIRST (Oct. 6, 2024), <https://www.atlantanewsfirst.com/2024/10/06/1-week-since-fire-broke-out-rockdale-county-chemical-plant-changing-thousands-lives/>.

<sup>86</sup> *Id.*

<sup>87</sup> Pamela Kirkland, *Conyers Residents Demand Accountability After Latest Biolab Fire Leaves Lingering Concerns*, GPB NEWS (Oct. 28, 2024), <https://www.gpb.org/news/2024/10/28/conyers-residents-demand-accountability-after-latest-biolab-fire-leaves-lingering>.

<sup>88</sup> *Id.*

113. Residents started a group on Facebook to share information about the fire and toxic chemical plume. In this group, dozens of residents shared about property damage caused by the toxic chemical plume created from the Conyers Plant. A sampling of these reports is listed below:

- a. “I stopped taking pics after taking 21 pics, ashes had to be cleaned off my car and truck at car wash, they would not blow off, in fact. . . . I’m 12 miles away!”
- b. “I’m 19 miles away and have a collection of debris. We've had headaches since the fire and my daughter has missed a week of school.”
- c. “I have 6 horses on my property (one is 31 years old) and have wondered about the debris we’ve found.”

114. Other Facebook posts confirmed the same thing, as residents reported debris on their property and accompanying discoloration and contamination of their property by the chemicals in the debris. Below is a sampling of these reports:

- a. “Bio lab on fire very close to my house debris is flying all in my yard lungs are on fire eyes burning and can't stop coughing and I'm in my house now.”
- b. “Conyers GA Bio lab fire debris in my front yard.”
- c. “We got the tests back of the debris all over the property, and it has tested positive for hydrogen cyanide. Conducted by Dekalb Co. Fire Hazmat team. We’ve been told don’t touch it. Keep all animals away from it. It needs to be remediated.”
- d. “What about my truck that has black debris on it that has went through my paint on my vehicle?”

- e. “[M]y car is a very rare pink and I now have black spots over the top. Wasn’t there before this. My car also smells like I’m storing chemicals.”
- f. “My mother’s house has ash, cars covered in this mess, house covered [in] it also.”
- g. “A friend had some of the debris that came into her yard tested. It was some kind of chemical black ash stuff with arsenic and other things in it. She was advised to get her horses and everything out of the field as it was highly poisonous.”

115. Beginning on September 29, 2024, and continuing through the date of this Complaint, residents in Rockdale County and surrounding communities have been unable to use and enjoy their indoor and outdoor property as a result of the debris and poor air quality caused by the fire and resulting toxic chemical plume.

116. At the time of the fire, Plaintiffs were in their residence at 1849 Kings Row, Conyers, GA 30012, which is approximately 1.3 miles from the Conyers Plant.

117. As a result of the fire and resulting toxic chemical plume, Plaintiffs had concerns about their health and well-being and the health and well-being of their family because their residence is in the area directly impacted by the plume.

118. Plaintiffs were not able to evacuate. They closed their home, turned off the heating, ventilation, and air conditioning system, and sheltered in place. They were not able to leave their home for any reason, including to attend a scheduled physical therapy session.

119. As a result of the fire and resulting toxic chemical plume, toxic and harmful substances, smoke, debris, particulate matter, other dust, and other pollutants have been deposited in, on, and around Plaintiffs' property. As a result, Plaintiffs have not been able to use and enjoy their home.

120. At all relevant times, Defendants failed to act with reasonable care, acted with utter indifference, recklessly, and with willful and wanton misconduct.

121. Defendants failed to prevent the chemical fire and the resulting toxic chemical plume and otherwise acted with utter indifference, recklessly, and with willful and wanton misconduct.

122. Defendants, alternatively, failed to discover the hazards that resulted in the chemical fire and resulting toxic chemical plume, where such hazards could have been discovered by the exercise of ordinary care and otherwise acted with utter indifference, recklessly, and with willful and wanton misconduct.

123. Defendants failed to act with reasonable care to take sufficient precautions which would have prevented or mitigated the chemical fire and toxic chemical plume and otherwise acted with utter indifference, recklessly, and with willful and wanton misconduct.

124. Defendants failed to act with reasonable or ordinary care to prevent toxic chemicals, dust, and hazardous by-products from being released into the environment and onto the properties of Plaintiffs and the other Class members and

otherwise acted with utter indifference, recklessly, and with willful and wanton misconduct.

125. Defendants failed to act with reasonable or ordinary care to contain the discharge of toxic smoke, dust, and hazardous by-products after the fire occurred and otherwise acted with utter indifference, recklessly, and with willful and wanton misconduct.

126. At all relevant times, it was foreseeable to Defendants that their failures would seriously injure Plaintiffs and the other Class members.

## **II. CLASS ACTION ALLEGATIONS**

127. Pursuant to Rule 23(c) of the Federal Rules of Civil Procedure, Plaintiffs seek to certify and represent a class defined as:

All owners and lessees of real property in Rockdale County and surrounding communities who were subject to the evacuation and shelter-in-place orders and advisories issued as a result of the plume of toxic smoke, debris, and particulate matter that emanated from the Conyers Plant because of the fire and chemical reaction.

128. Specifically excluded from the Class are Defendants, including any parent, subsidiary, affiliate, or controlled person of Defendants; Defendants' officers, directors, agents, or employees, the judicial officers assigned to this litigation and any members of their staffs and immediate families, and any juror assigned to this action.

129. Plaintiffs reserve the right to amend or modify the Class definition with greater specificity or division after having had an opportunity to conduct discovery.

130. **Numerosity.** Upon information and belief, there are thousands of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of members of the Class is currently unknown to Plaintiffs, tens of thousands of people live in Rockdale County alone, thousands of properties were subject to the Evacuation Alert, and thousands of pieces of real and personal property were affected. Class members may be identified through objective means, including objective data available to the Parties regarding the persons and property present in the affected areas following the fire. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, social media and/or published notice. Thus, pursuant to Rule 23(a)(1) of the Federal Rules of Civil Procedure, the large size of the Class renders the Class so numerous that joinder of all individual members is impracticable.

131. **Predominance of Common Questions of Law or Fact.** Common questions of law and fact predominate in this matter because Defendants' conduct towards Plaintiffs and the other Class members is uniform. These common questions

of law or fact predominate over any questions affecting only individual Class members. Common questions include, but are not limited to the following:

- a. Whether Defendants engaged in the wrongful conduct alleged herein;
- b. Whether Defendants caused the fire at the Conyers Plant in violation of rules, regulations, and customs;
- c. Whether Defendants caused the release of toxic chemicals and particulate matter into the Rockdale community and surrounding communities;
- d. Whether Defendants failed to exercise reasonable care in allowing the fire at the Conyers Plant to occur;
- e. Whether Defendants failed to exercise reasonable care in causing the chemical reaction that caused the release of toxic chemicals and particulate matter into the Rockdale community and surrounding communities;
- f. Whether Defendants omitted required, reasonable, or minimal safety measures resulting in the fire at the Conyers Plant;
- g. Whether Defendants failed to follow required, reasonable, or minimal safety measures that would have mitigated the fire at the Conyers Plant;
- h. Whether Defendants engaged in ultrahazardous activities;
- i. Whether Defendants were negligent;
- j. Whether Defendants created a nuisance;
- k. Whether Defendants engaged in trespass to the properties of the Class members;

- l. Whether Plaintiffs and the other Class members suffered injury and damages as a result of Defendants' conduct;
- m. Whether Plaintiffs and the other Class members are entitled to damages, equitable relief, and other relief.

132. Plaintiffs share a common interest with the other Class members in the objectives of the action and the relief sought.

133. Plaintiffs satisfy the commonality requirement of Rule 23(a)(2) of the Federal Rules of Civil Procedure because their claims arise from Defendants' course of conduct which led to the single incident affecting all of the Class members and are based on the same legal theories as all other Class members' claims.

134. **Typicality.** Pursuant to Rule 23 (a)(3) of the Federal Rules of Civil Procedure, Plaintiffs' claims are typical of the claims of all other Class members because all such claims arise from Defendants' conduct as alleged herein.

135. Plaintiffs and the other Class members' legal claims arise from the same single event, namely, the Conyers Plant catching fire, followed by the creation of a large plume of toxic chemicals that emitted from the facility and spread throughout the Rockdale County area and beyond. The material facts underlying each Class member's claim are the same material facts as those supporting Plaintiffs' claims alleged herein and require proof of the same material facts.

136. Plaintiffs and the other Class members sustained damages as a direct and proximate result of the same wrongful acts or omissions in which Defendants engaged.

137. Plaintiffs' damages and injuries are akin to those of Class members, and Plaintiffs seek relief consistent with the relief of Class members.

138. **Adequacy.** Pursuant to Rule 23 (a)(4) of the Federal Rules of Civil Procedure, Plaintiffs can and will adequately represent the other Class members and their interests are common to and coincident with them. By proving their individual claims, Plaintiffs will necessarily prove the other Class members' claims and prove Defendants' class wide liability. Plaintiffs have no known conflicts of interest with any of the other Class members, their interests and claims are not antagonistic to those of any other Class member, nor are their claims subject to any unique defenses.

139. Plaintiffs, therefore, can and will fairly and adequately protect and represent the other Class members' interests.

140. Plaintiffs' counsel—Barnes Law Group, LLC, DiCello Levitt LLP, Stewart Miller Simmons Trial Attorneys, Miner, Barnhill & Galland, P.C., and The Collins Law Firm, P.C.—have extensive experience in environmental and toxic tort litigation and class actions and have adequate financial resources to ensure that the interests of the Class will be adequately represented.

141. If appointed Class representative, Plaintiffs are aware of, and are committed to, faithfully upholding their fiduciary duties to absent Class members.

142. Plaintiffs and their counsel are committed to the vigorous prosecution of this action and will allocate the appropriate time and resources to ensure that the Class is fairly represented.

143. Plaintiffs and their counsel will, therefore, fairly and adequately assert and protect the interests of the Class.

144. **Appropriateness.** Class treatment provides an appropriate method for adjudication of this controversy insofar as the class action can best secure the economics of time, effort, and expense and promote uniformity of decision. Indeed, the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for the party opposing the Class. As a result, separate actions brought by individual Class members would possibly lead to a situation where identical language is interpreted differently.

145. Resolution of the common issues of fact and law affecting Plaintiffs' and the other Class members' claims, including, but not limited to the common issues discussed above, in a single action will eliminate the chance of inconsistent and/or varying adjudications. Such resolution will further allow Class members to present their claims efficiently; share the costs of litigation, experts, and discovery;

and preserve judicial time and resources. A class action is thus superior to other available means for the fair and efficient adjudication of Plaintiffs' and the other Class members' claims.

146. In the alternative, the proposed classes may be certified because:

- a. The prosecution of separate actions by each individual Class member would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the Defendants;
- b. The prosecution of individual actions could result in adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of non-party Class members or substantially impair or impede their ability to protect their interests; and
- c. Defendants acted or refused to act on grounds generally applicable to the proposed classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

### **III. CLAIMS ALLEGED**

**COUNT I**  
**Negligence**  
**(Against All Defendants)**

147. Plaintiffs adopt and incorporate Paragraphs 1-146, as though fully set forth herein.

148. Defendants knew or should have known of the risk of fire, chemical reaction, and toxic plume at the Conyers Plant.

149. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic substances into the surrounding neighborhood.

150. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful smoke into the surrounding neighborhood.

151. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful debris into the surrounding neighborhood.

152. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful particulate matter into the surrounding neighborhood.

153. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful dust into the surrounding neighborhood.

154. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful pollutants into the surrounding neighborhood.

155. Defendants knew or should have known that the release of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other

pollutants would pose a risk of serious damage to, diminution in the value of, and loss of use and enjoyment of the affected property.

156. Defendants had a duty to Plaintiffs and the other Class members to exercise reasonable care to prevent the foreseeable interference with Class members' use and enjoyment of their properties that has resulted from the release of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants from the fire and toxic chemical plume.

157. Defendants had a duty to prevent the release of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants from the Conyers Plant.

158. Defendants breached the duties that they owe to Plaintiffs and each of the other Class members, to exercise reasonable care, which has interfered with Class members' property and caused property damage, lost profits, loss of use, and expected diminution of property value.

159. Specifically, Defendants breached that duty by:

- a. Choosing not to take sufficient precautions to prevent a fire;
- b. Choosing not to take sufficient precautions to prevent a chemical reaction with water-reactive chemicals;
- c. Choosing not to take sufficient precautions to extinguish a fire;
- d. Choosing not to take sufficient precautions to prevent and mitigate the emissions of toxic chemicals from the Conyers Plant;

- e. Allowing enormous amounts of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants to be deposited on Class members' properties; and/or
- f. Otherwise failing to take sufficient precautions to control the emissions of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants from Class members' property.

160. As a direct and proximate cause of one or more of the aforementioned negligent acts or omissions, Plaintiffs and the other Class members suffered property damage, lost profits, loss of use, and expected diminution of property value.

161. As a direct and proximate cause of one or more of the aforementioned negligent acts or omissions, Plaintiffs and the other Class members have incurred, and will continue to incur, monetary damages arising from the property damage, lost profits, loss of use and enjoyment, and diminution of property value.

**COUNT II**  
**Nuisance**  
**(Against All Defendants)**

162. Plaintiffs adopt and incorporate Paragraphs 1-146, as though fully set forth herein.

163. Defendants knew or should have known of the risk of fire at the Conyers Plant.

164. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic substances into the surrounding neighborhood.

165. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful smoke into the surrounding neighborhood.

166. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful debris into the surrounding neighborhood.

167. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful particulate matter into the surrounding neighborhood.

168. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful dust into the surrounding neighborhood.

169. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful pollutants into the surrounding neighborhood.

170. The fire at the Conyers Plant caused the uncontrolled discharge of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other

pollutants, which invaded the Plaintiffs' and the other Class members' properties, and Plaintiffs and the other Class members did not consent to the entry of such materials onto their properties.

171. Defendants knew or should have known that they caused the disposal and invasion of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants on the Plaintiffs' and the other Class members' properties but have failed to remove such material from the Plaintiffs' and the other Class members' properties.

172. Defendants' uncontrolled discharge of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants and the disposal and invasion thereof onto the Plaintiffs' and the other Class members' properties is unreasonable and unlawful.

173. The discharge, disposal, and invasion of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants onto Plaintiffs' and the other Class members' properties have substantially interfered with the lawful rights of Plaintiffs and the other Class members to use and enjoy their properties, which constitutes a private nuisance.

174. The nuisance described above continues to this day and has adversely impacted the life and health of Plaintiffs and the other Class members.

175. The nuisance described above has unreasonably, negligently, and recklessly interfered with the comfortable use and enjoyment of life and property, has caused expected diminutions in Plaintiffs' and the Class members' property values, and has thereby created a common law nuisance, for reasons of which Defendants are liable to the Plaintiffs and the other members of the Class Plaintiffs represent.

176. As a direct and proximate result of this nuisance, Plaintiffs and the other Class members suffered unacceptable and unreasonable interference with their rights to use and enjoy their properties, interference they should not be required to suffer without compensation.

177. As a direct and proximate cause of the nuisance, Plaintiffs and the other Class members have incurred, and will continue to incur, monetary damages arising from the lost use and enjoyment of their property caused by Defendants' conduct.

**COUNT III**  
**Trespass**  
**(Against All Defendants)**

178. Plaintiffs adopt and incorporate Paragraphs 1-146, as though fully set forth herein.

179. Defendants knew or should have known of the risk of fire at the Conyers Plant.

180. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic substances into the surrounding neighborhood.

181. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful smoke into the surrounding neighborhood.

182. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful debris into the surrounding neighborhood.

183. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful particulate matter into the surrounding neighborhood.

184. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful dust into the surrounding neighborhood.

185. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful pollutants into the surrounding neighborhood.

186. Defendants knew or should have known that the release of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other

pollutants into the surrounding neighborhood would pose a risk of serious damage to, diminution in the value of, and loss of use and enjoyment of the affected property.

187. The fire at the Conyers Plant caused the uncontrolled discharge of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants, which invaded the property in which Plaintiffs and the other Class members have an interest, and Plaintiffs and the other Class members did not consent to the entry of such materials onto these properties.

188. Defendants are aware that they caused the disposal and invasion of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants on the Plaintiffs' and the Class members' properties but have failed to remove the toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants from the properties.

189. Defendants' uncontrolled discharge of toxic and harmful substances, smoke, debris, particulate matter, other dust, and/or other pollutants and the disposal and invasion thereof onto the Plaintiffs' and the other Class members' properties is unreasonable and unlawful, and such discharge, disposal and invasion have substantially interfered with the lawful rights of Plaintiffs and the other Class members to use and enjoy their properties, constituting an unlawful trespass.

190. The trespass is continuing and ongoing.

191. Defendants' interference with Plaintiffs' and Class members' possessory rights was unreasonable and foreseeable.

192. As a direct and proximate result of the trespass, Plaintiffs and Class members sustained and will continue to sustain a loss of ability to use and enjoy their properties.

193. As a direct and proximate cause of the trespass, Plaintiffs have incurred, and will continue to incur, monetary damages arising from the lost use and enjoyment of their property caused by Defendants' conduct.

**COUNT IV**  
**Punitive Damages**  
**(Against All Defendants)**

194. Plaintiffs adopt and incorporate Paragraphs 1-193, as though fully set forth herein.

195. Defendants' repeated incidents involving similar fires, smoke plumes, chemical releases, and toxic chemical emissions from the Conyers Plant reflect bad faith, reckless, and willful and wanton conduct on the part of Defendants.

196. Defendants' failures to address the causes of previous incidents and allowing another chemical fire to occur without adequately updating fire protection systems and emergency procedures represent bad faith, reckless, and willful and wanton conduct on the part of Defendants.

197. Defendants' misconduct has been willful, malicious and in reckless and wanton disregard for the rights of Plaintiffs and of others. As such, Defendants should be required to pay punitive damages in an amount that will deter such misconduct in the future.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the other Class members, respectfully request that this Court:

- a) Issue an order certifying this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure in the manner described above;
- b) Appoint Plaintiffs as Class representatives and their undersigned counsel as Class counsel;
- c) Issue a class-wide judgment holding Defendants liable for the reasons described above for their unlawful conduct causing Plaintiffs and the other Class members to sustain damages resulting therefrom;
- d) Enter a judgment declaring that Defendants have committed the violations of law alleged herein;
- e) Award Plaintiffs and the other Class members compensatory damages in an amount that is fair, just, and reasonable, to be determined at trial;
- f) Award Plaintiffs and the other Class members punitive damages in an amount that is fair, just, and reasonable, to be determined at trial;
- g) Award pre-judgment and post-judgment interest to Plaintiffs and the other Class members as permitted by law;
- h) Award reasonable attorneys' fees and costs of suit; and

- i) Order equitable, injunctive, and declaratory relief requiring Defendants to:
  - i. Provide all Conyers residents with particulate masks;
  - ii. Provide all Conyers residents with high-efficiency particulate air filters for their homes;
  - iii. Conduct immediate testing and sampling of the air and groundwater to detect the presence of toxins and other chemicals potentially hazardous to human health;
  - iv. Immediately and publicly disclose all information regarding the toxins and other compounds that comprised the plume;
  - v. Institute perimeter particulate matter monitoring at the fence line of the Conyers Plant;
  - vi. Install additional air quality monitors in all affected areas;
  - vii. Provide a full cleanup of all affected residences, businesses, and common areas;
  - viii. Wash the exterior of buildings in all affected areas;
  - ix. Wash the streets and sidewalks in all affected areas;
  - x. Provide alternative housing for residents in Conyers, Georgia and affected surrounding communities for the duration of the cleanup process;
  - xi. Provide funds for an independent third-party assessor to evaluate and provide estimates to real property owners in Conyers, Georgia and affected surrounding communities regarding property damage and diminution in property value; and
  - xii. Any and all additional relief that the Court deems just and proper.

**JURY DEMAND**

Plaintiffs, individually and on behalf of the other proposed Class members, demand a trial by jury on all issues herein so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: November 1, 2024.

Respectfully submitted,

/s/ Roy E. Barnes

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**CERTIFICATE OF SERVICE AND TYPE SIZE COMPLIANCE**

Pursuant to Local Rule 5.1C, ND Ga. I hereby certify that on this date I electronically filed the foregoing **FIRST AMENDED CLASS ACTION COMPLAINT** with the Clerk of Court using the CM/ECF system which will automatically send email notification to all counsel of record.

This 1st day of November, 2024.

Respectfully submitted,

/s/ Roy E. Barnes

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