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<p>LIONEL MEDINA, EKATERINA VOROBEVA, KARISTA VAETH and JENNIFER SCULLION, on behalf of Themselves and all others Similarly Situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>SIMSMETAL EAST LLC, SIMS MUNICIPAL RECYCLING NJ, LLC, SIMS GROUP USA HOLDINGS CORPORATION,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION, HUDSON COUNTY</p> <p>DOCKET NO.:</p> <p>CIVIL ACTION</p> <p><u>CLASS ACTION COMPLAINT AND JURY DEMAND</u></p>
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Plaintiffs, by their attorneys, Matsikoudis & Fanciullo, LLC and Law Offices of G. Martin Meyers, P.C., bring this Civil Action on their own behalf and on behalf of the Class they seek to represent, to obtain from the named Defendants (i) damages, both compensatory and punitive, (ii) injunctive relief, and (iii) attorneys’ fees and other costs of suit, and complain and allege, in this Class Action Complaint, as follows:

INTRODUCTION

1. Plaintiffs and the Class Members they represent are all residents of Port Liberté community, a multi-home Jersey City development that sits slightly more than 1,000 feet from Defendants’ recycling facility (the “Sims Facility,” as further defined infra).
2. The Sims Facility imposes a litany of ills on Plaintiffs, all of which will be detailed robustly herein, and include, but are not necessarily limited to, the following:

- a. Noise: The Sims Facility's regular operations generate excessively loud, constant noise – which *increases* during the Sims Facility's nighttime operations. Plaintiffs and the Class Members are constantly inundated by the overwhelming clamor of the Sims Facility's around-the-clock operations.
- b. Smells: The Sims Facility regularly – indeed, almost constantly – emits pungent, noxious odors, which not only violates mandates placed on Sims by the State of New Jersey, but also intrudes into the homes and lives of Plaintiffs and Class Members.
- c. Overnight Work, Noise and Lights: The Sims Facility 24/7 schedule operates in defiance of a local city ordinance,. During overnight hours the facility uses bright lights in order to work, which means Plaintiffs' homes are flooded with bright white light emanating from the Sims Facility, in addition to the unbearable noise of machinery, engines and the transfer and crushing of huge volumes of metal that continues throughout the night. The loud noises and bright lights mean Plaintiffs and Class Members routinely cannot sleep, and they certainly cannot “enjoy” their property.
- d. Dust/Particulate Matter: Particulate matter – from visible dust and soot, on the one hand, to microscopic particles, on the other – routinely blows off of and otherwise escapes from the Sims Facility. This escaped dust/particulate matter blows into the homes of Plaintiffs and the Class Members, as well as the surrounding environment, where it aggregates on ceilings, walls, furniture and floors. Worse still, Plaintiffs believe their health is threatened because, on information and belief, (i) this particulate matter contains toxic contaminants from Sims processing of metals, and

- (ii) it escapes in particles fine enough to be inhaled and directly assimilated into bodies and blood streams.
- e. Fires: Alarmingly, the Sims Facility recycles automobiles containing gasoline tanks and lithium-ion batteries, which frequently burst into flames, causing smoke and fire that can sometimes be seen for *miles*. The Sims Facility has had numerous large fires that have required massive responses from multiple jurisdictions to control. The smoke and dust emanating from these fires is likely toxic and the noxious odors therefrom often so nauseating that Plaintiffs and the Class Members are forced to shut their doors and windows. Smaller blazes routinely break out at the Sims Facility – and are left to smolder for *hours* before they are either extinguished or burn out on their own, during which time they presumably emit the same toxic smoke, dust and fumes.
- f. Explosions: Plaintiffs also have borne witness to multiple massive explosions at the Sims Facility, which have literally shaken the buildings wherein Plaintiffs’ homes sit, directly opposite the Sims Yard. Since May 2022, there have been at least five large explosions at the Sims Facility – and, beyond emitting thunderous booms that disrupt any peace Plaintiffs may have, each one has sent shockwaves that have shaken Plaintiffs’ buildings for several seconds, as if earthquakes had struck.
3. The aforesaid noise, noxious odors, blinding lights, dust and particulate matter, toxic smoke and explosive shockwaves all physically invade Plaintiffs’ properties – and otherwise substantially harm their quality of life and damage their health.
4. While Plaintiffs and the Class Members they represent have suffered, Sims has literally profited: Upon information and belief, the Sims Facility rakes in millions of dollars each

day – yet does nothing to abate the tremendous cost Plaintiffs must bear because of its operations.

5. This Civil Action is thus a classic study in irony: Behind the guise of an environmentally friendly recycling plant, Defendants are in fact bad actors, operating their facility in a way that is dramatically impacting the quality of life for the hundreds of citizens who reside nearby, diminishing their rights to the quiet, peaceful enjoyment of their properties and endangering their health.
6. Plaintiffs and all Class Members exclusively reside in Port Liberté residences that directly face the Sims Facility, and Plaintiffs and all Class Members are thus directly exposed to a myriad of harms that hail from the Sims Facility. Plaintiffs and the Class Members they represent have thus been, and continue to be, victimized by Sims and the Sims Facility, and they have suffered, and will continue to suffer, serious injury.
7. Given the aforesaid, and as Sims and the Sims Facility's ills are more robustly defined below, Plaintiffs bring this Civil Action to secure redress from Defendants for damages they and the Class Members have suffered as a consequence of Defendants' misconduct and failures, and demand appropriate monetary, equitable, injunctive and declaratory relief.

PARTIES

8. Plaintiff Lionel Medina is, and, at all times relevant, has been, a citizen of the City of Jersey City, County of Hudson and State of New Jersey, and, more specifically, has resided at 208 Shearwater Court West, Unit 47 Jersey City, NJ 07305.
9. Plaintiff Ekaterina Vorobeva is, and, at all times relevant, has been, a citizen of the City of Jersey City, County of Hudson and State of New Jersey, and, more specifically, has resided at 208-51 West Shearwater Court, Jersey City, NJ 07305.

10. Plaintiff Karista Vaeth is, and, at all times relevant, has been, a citizen of the City of Jersey City, County of Hudson and State of New Jersey, and, more specifically, has resided at 206-91 West Shearwater Court, Jersey City, NJ 07305.
11. Plaintiff Jennifer Scullion is, and, at all times relevant, has been, a citizen of the City of Jersey City, County of Hudson and State of New Jersey, and, more specifically, has resided at 207- 87 West Shearwater Ct., Jersey City, NJ 07305.
12. Defendant SimsMetal East LLC (“SimsMetal”) is a Delaware limited liability company with its primary place of business located at One Linden Avenue East, Jersey City, New Jersey. Upon information and belief, Sims Group USA Holdings Corporation (“SG”), as such entity is defined further below, is the sole and managing member of SimsMetal, and is a resident of or otherwise located in New Jersey.
13. Defendant Sims Municipal Recycling NJ, LLC (“SMR”) is a limited liability company organized and operating under the laws of the State of New Jersey, with its headquarters and primary place of business located at One Linden Avenue East, Jersey City, New Jersey. Upon information and belief, the members of SMR reside or are otherwise located in New Jersey.
14. Defendant Sims Group USA Holdings Corporation (“SG,” and, together with SimsMetal and SMR, “Sims” and the “Defendants,” and, each, a “Defendant”) is a Delaware corporation with its primary place of business located at One Linden Avenue East, Jersey City, New Jersey.
15. As it is instantly relevant, Defendants own and/or operate the Sims Metal “scrap yard,” located at One Linden Avenue East, Jersey City, New Jersey (the “Sims Facility”).

16. At all times mentioned herein, Defendants, and each of them, were authorized and empowered by each other to act, and did so act as agents of each other, and all of the claims herein alleged to have been done by any and/or all of them were thus done in the scope and capacity of such agency. Upon information and belief, each Defendant is and all Defendants are responsible in some manner for the events described herein and the damages Plaintiffs allege.

JURISDICTION AND VENUE

17. Jurisdiction is proper in this Court, and, furthermore, this Court is the proper venue for trial of this matter as: (i) Plaintiffs and all Class Members are domiciled in the State of New Jersey; (ii) Defendants are all New Jersey domiciliaries, and have done and continue to do business in the City of Jersey City, County of Hudson and State of New Jersey; (iii) the Sims Facility, the recycling plant at the heart of this matter, is located in the City of Jersey City, County of Hudson and State of New Jersey; (iv) all or substantially all of the acts and omissions giving rise to the claims in this Class Action occurred within New Jersey; and (v) all such claims sound exclusively in New Jersey law.

18. To this end, and more specifically with respect to jurisdiction:

- a. More than two-thirds of the members of the proposed class are citizens of New Jersey. Indeed, all are New Jersey residents.
- b. The primary Defendant is SimsMetal, which operates the Sims Facility, the site in question, on a daily basis, controlling the conditions and timing of the operation, and, therefore, is the primary Defendant whose conduct forms a significant basis for the claims asserted by the proposed class. SimsMetal is a citizen of New Jersey.

- c. The principal injuries resulting from the alleged conduct of each Defendant were incurred in New Jersey.
- d. On information and believe, during the three-year period preceding the filing of this class action, no other class action has been filed asserting the same or similar factual allegations against any of the Defendants on behalf of the same or other persons.
- e. Therefore, this court is the proper forum for the adjudication of this matter.

GENERAL ALLEGATIONS

19. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were set forth more fully herein.

Defendants' Operations and Processes

20. Sitting on 83 acres of prime real estate along the New York Bay, a stone's throw from Plaintiffs' Port Liberté homes, and replete with "splendid views" of the Statue of Liberty and Lower Manhattan, the Sims Facility has been described as the "crown jewel" of the "Sims global empire."¹

21. In Sims' own words, its "scrap metal yard" in Jersey City (i.e., the Facility):

"...purchases and processes ferrous & non-ferrous scrap metal and electronics. [Sims] specialize[s] in bus, railcars and aluminum trailer recycling. Apart from industrial, obsolete & demo scrap and trucking & roll-off container services, [Sims] also offer[s] demolition & dismantling services. The yard's processing capabilities include wet car processing, mobile baling, car crushing, shearing, shredding, tin compacting and torch cutting services. The yard is equipped with a shredder, baler, shears, torch cutters and mobile car crushers. Complementary services offered by our scrap yard include stevedoring, barge loading, container loading, overseas container loading, rail car loading, bulk/container ship loading, truck loading and vessel loading."

22. A good deal of the scrap the Sims Facility recycles comes from other Sims yards around the country and world.²

¹ https://www.nj.com/jjournal-news/2013/05/jersey_city_metal_recycler_gob.html

² https://www.nj.com/jjournal-news/2013/05/jersey_city_metal_recycler_gob.html

23. However, the Sims Facility has an enormous appetite for scrap – one that cannot nearly be sated by discards from other Sims yards. Thus, the Sims Facility also actively advertises locally, regionally and nationally – from everyone to huge companies and haulers to individual citizens looking to get rid of junk – seeking more scrap to process. An ad taken directly from the Sims Facility’s website exclaims:³

Sell your scrap metal to us! We accept all types of ferrous and non-ferrous metals (copper, steel, iron, aluminum, brass, lead, zinc, nickel and more). Convenient location and hours of operation.

- General Metal Scrap – Obsolete production equipment, metal office equipment, construction scrap or other metal items.
- Plumbing and Electrical Scrap – Tradesmen can sell job-site scrap metal to us.
- Roll-off Containers – Service available for metal scrap pickup.
- Scrap Collectors – Metal collectors depend on quick and friendly service at our yards.
- Scrap Dealers– Leverage our bulk processing and logistics capabilities and get more money for your scrap.
- Commercial Junk Vehicles – We pay for processed end of life vehicles from repair centers, insurance companies, towing services, car parts stores, body shops and vehicle rental centers.
- Appliances and White Goods – Bulk purchase of obsolete appliances. Freon must be removed from refrigerated appliances before we can accept.

24. The list of scrap and junk the Sims Facility accepts is lengthy. Per the Sims Facility’s website, the Sims Facility takes in all kinds of metals (e.g., without limitation, aluminum, bronze, nickel, palladium, etc.), cars and car engines, marine engines, heavy machinery and even trains. Upon information and belief, the Sims Facility also accepts more dangerous disused products, like highly flammable/explosive lithium-ion batteries.⁴

³ <https://www.simsmm.com/locations/jersey-city-new-jersey/>

⁴ <https://www.simsmm.com/sell-to-us/materials-we-accept/>

25. When Sims receives scrap metal, it separates and stores it in a nearly 22,000 square-foot building, although not even this building can contain the amount of scrap metal the Sims Facility takes in: An apparently Sims-authorized video tour of the Sims Facility clearly depicts large piles of solid material, including, upon information and belief, soil spilling out of the building's open garage doors. The same tour video also shows a variety of large piles of what appears to be unprocessed scrap metal sitting outdoors with little containment.⁵
26. In any event, whether it receives scrap from other Sims yards or from people who pull up to the Sims Facility's front gate, the Sims Facility transforms the scrap it takes in into raw materials for the global commodities market.⁶
27. Among the Sims Facility's prized possessions and most notable tools is the so-called "Mega-Shredder," a "9,000 horsepower machine that can turn a car into fist size pieces in just ten seconds."⁷ The "Mega-Shredder" can "consume about 4,000 tons of assorted scrap a day."
28. The "Mega-Shredder" is central to one of the Sims Facility's core business lines: automobile recycling. Metal handlers take cars "from a mountain of graying scrap," then place them "on a conveyor belt," where they "inch[] forward with the rest of the gnarled metal [from the scrap pile] until, several stories up, [they] slid[e] down into the Mega-Shredder's gully. Here, out of sight, an array of 1,100-pound hammers, turned by a 100-ton rotor, greet[] [the automobiles]" and "[t]en violent seconds later, little more than fist-

⁵ <https://www.youtube.com/watch?v=bOudJSWmtbA>

⁶ https://www.nj.com/jjournal-news/2013/05/jersey_city_metal_recycler_gob.html

⁷ https://www.nj.com/jjournal-news/2013/05/jersey_city_metal_recycler_gob.html

sized bits remained.” The Sims Facility destroys and/or recycles “hundreds of vehicles each day” this way.

29. Beyond the “Mega-Shredder,” the Sims Facility also boasts a fleet “material handlers, front-end loaders, and mammoth-sized dump trucks,” and “a guillotine shredder that sheers metal into long strips ... a baler that makes tidy cubes out of mounds of tin cans ... [a]nd there is also the downstream processor, a massive mill that extracts more metal from materials such as insulated copper wiring.”⁸

30. Sims puts the Sims Facility’s various monstrous implements to good – and profitable - use: At the core of the Sims Facility’s work is recycling – for instance, “out of the 4,000 tons of scrap the Mega-Shredder consumes each day emerges some 2,800 to 3,000 tons of steel, aluminum, copper, brass and a mishmash [Sims calls] zorba ...” As a Sims representative told a local newspaper: “It comes in as scrap, and it leaves as a commodity.” Most of the recycled metals/products Sims extracts head overseas: Sims loads its “commodities” onto “deep-water vessels” that dock in the harbor adjacent to the Sims Facility – and Plaintiffs’ homes. It is then taken to various countries around the world – namely, Turkey and South Korea – where buyers pay approximately \$400 a ton.

31. The Sims Facility’s business is booming, generating Billions of dollars in annual revenue, and the Sims Facility was (and, upon information and belief, remains) the most productive and profitable Sims facility in the world.⁹ Indeed, the “math” says the “Mega Shredder” *alone* produces more than \$1.1 Million for the Sims Facility *each day*.

⁸ https://www.nj.com/jjournal-news/2013/05/jersey_city_metal_recycler_gob.html

⁹ https://www.nj.com/jjournal-news/2013/05/jersey_city_metal_recycler_gob.html

Defendants' Intrusion on and Damage to Plaintiffs' Lives

32. Plaintiffs and the Class Members have borne the steep cost of the Sims Facility's enormous profitability.
33. In sum, but without limitation: the Sims Facility constantly produces exceedingly loud noise and continually emits noxious odors (which Plaintiffs routinely hear and smell); so as to continue work during overnight hours, the Sims Facility turns on blindingly bright lights (which light pours into Plaintiffs' homes, and, in tandem with the loud noises and noxious odors frequently emanating from the facility, interferes with Plaintiffs' sleep); it routinely discharges and/or allows to be discharged literally tons of fine particulate matter and dust (which upon information and belief, may contain a mixture of toxic contaminants, and routinely blows toward and into Plaintiffs' homes); and perhaps worst of all, it has a troubling and lengthy history of massive fires and explosions (which send smoke and shockwaves into Plaintiffs' homes).
34. As a consequence of the foregoing, and as more robustly denoted below, Plaintiffs, Class Members and other Jersey City residents have regularly complained about the Sims Facility to prosecutors, police and even the public at large.
35. For instance, between 2021 and 2023, Jersey City police visited the Sims Facility dozens of times on various complaints – including on more than a dozen occasions to respond specifically to either fires or noise issues.
36. Similarly, complaints from Class Members triggered City of Jersey City code compliance officers to visit the Sims Facility for at least one “educational visit” regarding Defendants’ violation of the City’s noise ordinance. Upon information and belief, at and after this visit,

Jersey City officials threatened Defendants with legal action if they did not comply with City noise limits.

37. Likewise, in May 2021, Jersey City residents initiated a petition seeking to shut down the Sims Facility – or, at least, to force Sims to clean up its act at the Sims Facility (the “Petition”). In its preamble, the Petition, entitled “SIMS Metal is Creating an Environmental and Fire Hazard in Jersey City,” summarized the problems Sims and the Sims Facility have created:

“SIMS Metal is a recycling center in Jersey City across from Port Liberte residential and in the densely populated Greenville area of Jersey City.

Over the years, as SIMS crushes old cars and other junk there have been repeated blasts and fires. These blasts literally shake the foundation of the surrounding buildings and infrastructure. The fires have started getting worse and besides the environmental damage they are just waiting to spread to the surrounding residential communities. We don’t even know the long term health impact of this to humans, flora and fauna.

We understand that the work SIMS is doing helps with recycling and is necessary. However, we believe that a densely populated residential area is not fit for this type of dangerous work.¹⁰

38. Various signatories of Petition explained why they signed. Unedited excerpts of these explanations, with identities of the signatories redacted, are as follows:¹¹

Signatory #1:

“While SIMS has tried at times to be a good neighbor, their inability to keep their workplace free of fire, and their policy of working 24/7, has created an untenable situation for those who live in the area. The amount of pollution being put into the air (and probably the water) from the fires alone is horrifying. something must be done.

Signatory #2:

I live in Port Liberte and this is a major health hazard and a violation of ability to live in peace.

¹⁰ <https://www.change.org/p/mayor-of-jersey-city-sims-metal-is-creating-an-environmental-and-fire-hazard-in-jersey-city>

¹¹ <https://www.change.org/p/mayor-of-jersey-city-sims-metal-is-creating-an-environmental-and-fire-hazard-in-jersey-city/c>

Signatory #3:

This is a hazard for the community and environment surrounding SIMS. The smoke from last night (25 May) fire penetrated our houses and building hallways with a toxic smell through the night. This [is the] 3rd big fire in a year.

Signatory #4:

SIMS should be moved or shut down. They have ongoing explosions and fires that pollute the surrounding neighborhoods.

39. However, none of it has stopped Sims or the Sims Facility. Defendants continue to wrongfully own, operate and maintain the Sims Facility, and invade and do substantial harm to the lives of Plaintiffs and Class Members.

Defendants' Noise

40. Defendants processes and the instruments it uses to break down, separate and/or recycle scrap metal (e.g., the “Mega-Shredder”) continuously generate and emit excessive noise, which invades Plaintiffs’ properties and intrudes on and significantly diminishes the quality of their lives.

41. Upon information and belief, the noise Defendants generate and emit at the Sims Facility exceeds New Jersey and Jersey City limits of 65 decibels – approximately as loud as a “normal conversation” or a “business office”¹² – between 7:00 a.m. and 10:00 p.m.¹³

42. Worse still, upon information and belief, as Sims’ operations continue unabated throughout the night, the noise Defendants generate and emit at the Sims Facility exceeds State and City limits of 50 decibels between the hours of 10:00 p.m. and 7:00 a.m.¹⁴

¹² <https://ehs.yale.edu/sites/default/files/files/decibel-level-chart.pdf>

¹³ N.J.A.C. 7:29-1.2, JERSEY CITY ORDINANCES § 222-5.2

¹⁴ N.J.A.C. 7:29-1.2, JERSEY CITY ORDINANCES § 222-5.2

43. The excessive noise created by the Sims Facility’s nighttime operations reaches public and private lands in the area neighboring the Facility – and, more specifically, Plaintiffs’ homes.
44. Not surprisingly, the excessive noise Defendants transmit into Plaintiffs’ properties has utterly disrupted Plaintiffs’ lives: For instance, Plaintiffs, their families and their guests cannot sleep as a consequence of Sims being so loud – hardly a surprise, in that the National Institutes of Health has determined that, for proper “restorative sleep” to occur, the “mean sound level prevailing in bedrooms should not exceed 30 [decibels].”¹⁵
45. A properly owned, operated and maintained recycling facility and/or metal scrapyards should not emit, transmit or otherwise disperse excessive noise into the ambient air and toward, onto and into neighboring lands, including, but not limited to, Plaintiffs’ properties. At a minimum, a properly owned, operated and maintained by a responsible recycling facility and/or metal scrapyards would abate any noises generated from its operations.
46. As Plaintiffs’ properties are under constant assault from the excessive noise Sims and the Sims Facility generate, this noise adversely impacts Plaintiffs’ health, and, at a minimum, it unquestionably destroys Plaintiffs’ enjoyment of their lives, their homes and the Port Liberté property generally.
47. Accordingly, Port Liberté residents – who are Class Members – have formally complained to the City of Jersey City, Mayor, City Council and municipal prosecutor about Defendants and the noise at the Sims Facility. Likewise, Jersey City Police Department (JCPD) records indicate that JCPD officers have responded to the Sims Facility on multiple occasions for “Noise Complaint(s).”

¹⁵ Ingo Feitze, M.D., Ph.D., et al., The Effect of Room Acoustics on the Sleep Quality of Healthy Sleepers, Noise Health, September-October 2016, located at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5187651/>

Defendants' Noxious Odors

48. Noxious, highly odoriferous and offensive odors from the Sims Facility regularly escape the site's boundaries and waft into Plaintiffs' homes and properties.
49. Upon information and belief, these odors are the result of the various processes Defendants employ at the Sims Facility and/or the consequent waste products the Sims Facility produces.
50. On occasions too numerous to list herein, Sims has emitted unreasonably noxious odors into the ambient air above and outside the Sims Facility. Sims and the Sims Facility's noxious odors and emissions thereafter disperse across all public and private land in the area – and routinely invade Plaintiffs' properties, which, as noted above, sit roughly only slightly more than 1,000 feet away and are frequently downwind from the Sims Facility.
51. Upon information and belief, such noxious odors are not just offensive to Plaintiffs' olfactory senses; they are potentially hazardous to their health. Separation and/or purification of metals for later sale generally involves heating and/or chemically treating processed scrap. These processes often emit metal fumes, organic vapors and acid gases, and release other hazardous chemical gases.¹⁶ Upon information and belief, Sims uses these chemicals and/or techniques at the Sims Facility, and, therefore may emit dangerous chemical fumes. Frequently, toxic chemical fumes emit “innately repulsive and nauseating” odors that may also cause harm.¹⁷
52. In any event, a properly owned, operated and maintained recycling facility and/or metal scrapyards would not emit noxious odors into the ambient air like the Sims Facility does.

¹⁶ <https://www.osha.gov/sites/default/files/publications/OSHA3348-metal-scrap-recycling.pdf>

¹⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3136963/>

53. Indeed, per its permit(s) with the NJDEP, Sims is prohibited from “causing” any “air contaminant,” including “any air contaminant detectable by the sense of smell” from being “present in the outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property” anywhere outside the Sims Facility.
54. Sims is thus required, *inter alia*, to maintain and implement adequate odor mitigation and emission control processes and technologies to prevent noxious odors from invading the ambient air *anywhere* outside the Sims Facility.
55. Despite this clear mandate, and other common law prohibitions, the Sims Facility regularly emits hideous noxious odors and fumes, which routinely drift or otherwise disperse into the Port Liberté community generally, and the homes of Plaintiffs and the Class Members, more specifically.
56. Put differently, Plaintiffs’ properties are routinely, and continue to be, invaded by noxious odors and emissions from the Sims Facility.
57. Accordingly, Class Members have complained to Jersey City officials regarding the Sims Facility’s noxious odors. For example, in February 2022, a Port Liberté resident complained to Jersey City’s Department of Health and Human Services about adverse “Health Conditions” caused by Defendants at the Sims Facility. Via Jersey City’s See-Click-Fix website, the resident reported:
- “...a foul odor in the air stemming from [the Sims Facility] ... [and that] there has been a change in air quality in Port Liberté due to the ongoing construction that is taking place on the property of [Defendants].”

58. While such odors and fumes likely adversely impact Plaintiffs' health, they at a minimum unquestionably destroy Plaintiffs' enjoyment of their lives, their homes and the Port Liberté property generally.

Defendants' Overnight Bright Lights

59. The Defendants operate the Sims Facility 24/7, and, during their overnight operational hours, employ intensely bright white lights to illuminate the Sims Facility's grounds – and such excessive light instantaneously and continuously crosses the short span between the Sims Facility and Port Liberté, invades Plaintiffs and Class Members' properties, and significantly diminishes their quality of life and their enjoyment of their homes¹⁸.

60. It is patently illegal for Sims to operate overnight – or, for that matter, any time between dusk and dawn. Jersey City's "Peace and Good Order" ordinance specifically states:

"... industrial use businesses that are located within fifteen hundred (1,500) feet of a residential zone, measured from the edges of the respective lots, shall not conduct business between the hours of 7:00 p.m. and 6:00 a.m of the next day."¹⁹

As set forth supra, the Sims Facility sits slightly more than 1,000 feet from the *buildings* wherein Plaintiffs and the Class Members live; Port Liberté's lot line is closer still. Thus, every night Sims *operates* – regardless of whether it makes intolerable noise or shines bright white lights – it is breaking Jersey City law.

61. Even were it legal for Sims to operate the Sims Facility overnight, Jersey City's "Lighting" ordinance requires, *inter alia*, that light emitted by Defendants shall: (i) not be "overly bright," (ii) "be shielded to confine the illumination spread [to] within the site boundaries,

¹⁸ <https://www.youtube.com/shorts/NWynbdwZGak>

¹⁹ JERSEY CITY ORDINANCES § 242-12

and (iii) “be so arranged that the direct source of light is not visible from any adjacent residential area.”²⁰

62. Defendants comply with *none* of the aforesaid mandates.

63. Put differently, far from confining the “illumination” to the Sims Facility and “arranging” the Sims Facility’s lights so they are not visible in “residential areas,” on a nightly basis, Defendants shine overly bright lights *directly at and into* the properties of Plaintiffs and Class Members.

64. Plaintiffs and Class Members predictably suffer as a result. Among other things, the excessively bright, constantly-burning lights make it difficult for Plaintiffs and Class Members to sleep.

65. A properly owned, operated and maintained recycling facility and/or metal scrapyards would not produce or emit, transmit or otherwise disperse excessive light into the ambient air and toward, onto and into neighboring lands, including, but not limited to, Plaintiffs’ properties. At a minimum, a properly owned, operated and maintained recycling facility and/or metal scrapyards would abate any such light before same left its property.

66. As Plaintiffs’ properties are constantly flooded by the excessive light Sims and the Sims Facility generate, this light adversely impacts Plaintiffs’ health, and, at a minimum, it unquestionably destroys Plaintiffs’ enjoyment of their lives, their homes and the Port Liberté property generally.

67. Accordingly, Port Liberté residents have formally complained to the City of Jersey City about the excessive light Defendants and the Sims Facility generates and transmits into their properties, noting that it is “disruptive to a peaceful residential environment.”

²⁰ JERSEY CITY ORDINANCES § 345-69

Defendants' Dust/Particulate Matter

68. Defendants discharge or otherwise allow to escape from the Sims Facility literally tons of dust and particulate matter each year into the environment, area and properties surrounding the Sims Facility – dust and particles that invade Plaintiffs and Class Members' properties and thereby negatively impact their quality of life and their health.

69. In a permit application filed with the DEP, Sims indicated that:

“Emissions generated from material operations at the [Facility] include fugitive particulate emissions related to the on-site movement and handling of various materials, including ferrous and non-ferrous metals.”

70. In the same permit application, it was determined that the Sims Facility potentially emitted and would generate the following “fugitive emissions”:

- a. 8.14 tons per year of Particulate Matter (PM-10);
- b. 8.14 tons per year of Fine Particulate Matter (PM-2.5)
- c. 8.14 tons per year of Total Suspended Particulates (TSP)

71. According to the EPA, Particulate Matter of less than 10 micrometers in diameter (i.e. PM-10) “can get deep into your lungs and ... into your bloodstream.”²¹

72. Likewise, Fine Particulate Matter – particles less than 2.5 micrometers in diameter (i.e., PM-2.5) pose the greatest risk to health.

73. Though Suspended Particulates are larger particles, they are still dangerous: Inhalation of these particles can lead to “mortality, morbidity and deficits in pulmonary function.”²²

²¹ EPA Website, “What Are the Harmful Effects of PM”, *available at* <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics#effects>.

²² See <https://www.eea.europa.eu/publications/2-9167-057-X/page021.html>

74. This varied particulate matter routinely and visibly flies off and leaves the Facility in veritable dust storms, and thereafter regularly – if not constantly - invades the properties of Plaintiffs and Class Members.
75. Dangerously, concentrations of particulate matter in the air of Class Members’ homes regularly reaches the “Very Unhealthy Standard” of the EPA’s “Air Quality Index” and averages “unhealthy.”
76. The particulate matter invades Plaintiffs’ homes and substantially diminishes the quality of life of Plaintiffs and all Class Members. Without even accounting for the fact that it is undoubtedly in the air they breathe, Sims Facility dust routinely aggregates on Plaintiffs’ walls, floors, furniture and cars.
77. Worse still, as intimated above, Sims Facility particulate matter almost certainly represents a health threat to Plaintiff.
78. Even setting aside Defendants’ operations at the Sims Facility, Sims has acknowledged that certain “Contaminants of Concern” (“COCs”) are, and, at all times relevant, have been, present in Sims Facility soils in excess of New Jersey regulatory maximums. These COCs include, but are not necessarily limited to: (i) PAHs, such as Benzo(a)anthracene, Benzo(a)pyrene, Benzo(b)fluoranthene, Dibenzo (a,h) anthracene) and Indeno (1,2,3-cd) pyrene; (ii) Metals, such as Arsenic, Cadmium, Copper, Lead, Nickel and Zinc; and “Other” problematic compounds, such as Bis (2-ethylhexyl)phthalate and PCBs.
79. For example, and without limitation, at certain locations where Sims has sampled soils at the Sims Facility that are closest to the Port Liberté community (and, by extension, Plaintiffs’ homes), Lead levels consistently registered higher – and, at least one sampling point, more than 25 times higher – than state soil limits; Zinc levels were roughly five times

greater than regulatory limits; and PCB levels were as much as 10,000 times higher than such maximums.²³

80. Upon information and belief, these contaminants are all present in the particulate matter that routinely blows from the Sims Facility into the Port Liberté community and the Plaintiffs' homes.

81. That some of these contaminated particles may be "historic fill" is of no moment: Sims is obligated to keep particulate matter from escaping the Sims Facility.

82. Moreover, even if *some* of the contaminated particles leaving the Sims Facility and invading Plaintiffs' properties are the residue of "historic fill," not *all* of them are: As noted above, Sims' various processes shred and otherwise break down metal at the Sims Facility; upon information and belief, these processes create particulate matter, which is laced with various chemicals and other contaminants, and which escapes the Sims Facility and invades Plaintiffs' properties.

83. Indeed, on windy days, Plaintiffs can see particulate matter blowing from massive piles, which are the products of Sims' various processes to shred and otherwise break down metal at the Sims Facility. These metal shavings and particulates are released into the ambient air at and around the Sims facility, and occasionally blow toward Plaintiffs' properties, at times in such an intense fashion that they resemble a sandstorm - except that the material blowing in the wind is not merely harmless sand, but toxic metals.²⁴

84. A properly owned, operated and maintained recycling facility and/or metal scrapyards would not emit, transmit or otherwise disperse dust and/or particulate matter of any kind into the ambient air and toward, onto and into neighboring lands, including, but not limited

²³ Sims Docs 144, 150

²⁴ <https://www.youtube.com/watch?v=RZoFh-pmYn4>

to, Plaintiffs' properties. At a minimum, a properly owned, operated and maintained recycling facility and/or metal scrapyards would abate the spread of any dust and particulate matter before same left its property.

85. At the very least, Sims has failed to install sufficient measures to ensure this (contaminated) particulate matter stays on-site at the Sims Facility and does not invade Plaintiffs' homes and otherwise destroy their reasonable enjoyment of their properties.

86. Worse still, upon information and belief, Sims' operations at the Sims Facility affirmatively agitate this particulate matter, *causing* it to escape the Sims Facility and invade Plaintiffs' homes – where it causes significant damage.

Defendants Myriad Fires

87. Defendants regularly either cause or wrongfully allow to start and burn a variety of fires at the Sims Facility – from multi-alarm infernos to smoldering combustion that ostensibly never ends.

88. Whether large or small, these blazes – and the copious smoke and soot they produce – dramatically, adversely and unreasonably impact Plaintiffs, Class Members, their lives and their enjoyment of their properties²⁵.

89. Inside only the past five years, the major fires at the Sims Facility include, but are not necessarily limited to, the following:

- a. On or about April 25, 2019, a “raging” fire at the Sims Facility “sent flames and dark smoke billowing into the air in Jersey City,” which required the assistance of FDNY to extinguish.²⁶

²⁵ <https://www.youtube.com/watch?v=hL41TxkkHEE>

²⁶ <https://www.nbcnewyork.com/news/local/scrap-metal-fire-sends-dark-smoke-billowing-in-jersey-city/1554499/>

- b. On or about May 24 and 25, 2021, a fire at the Sims Facility sent “thick black smoke into the air.” The fire broke out on May 24 and “continued to burn through the night,” before it was finally controlled. Smoke from the Sims Facility was so widespread, it could be seen for “miles” and residents in Upper Manhattan and the Bronx smelled it – as did Plaintiffs and the Class Members.²⁷ After this fire, Port Liberté residents reported that “smoke from ... the fire penetrated our houses and building hallways with a toxic smell through the night,” and the Sims Facility represented a “major health hazard and a violation of ability to live in peace.”²⁸
- c. At or about 4:30 A.M. on November 5, 2021, JCFD firefighters responded to the Sims Facility to battle a “working fire within a scrap metal pile.” Sims employees needed to help JCFD by “pull[ing] the pile apart while firefighters extinguished the fire.”²⁹
- d. On or about December 7, 2021, JCFD firefighters made the “well-worn trek” to the Sims Facility to put out a “blaze” that had “started in a scrap metal pile.”³⁰
- e. On or about July 24, 2022, multiple firefighters responded to a “massive 3-alarm scrapyards fire” in Jersey City, smoke from which could be seen “miles away.”³¹
- f. On or about September 29, 2023, the Jersey City Fire Department (“JCFD”) responded to an “Outside Rubbish, Trash or Waste Fire” at the Sims Facility. The fire was “located ... in a large outside pile of scrap metal in the area of [the Sims Facility’s] Building I.” Though Sims employees worked to put out the fire prior

²⁷ <https://abc7ny.com/jersey-city-fire-scrap-yard-metal-sims-management/10691317/>

²⁸ <https://www.change.org/p/mayor-of-jersey-city-sims-metal-is-creating-an-environmental-and-fire-hazard-in-jersey-city/c>

²⁹ <https://www.nj.com/hudson/2021/11/another-fire-reported-at-sims-metal-recycling-plant-in-jersey-city.html>

³⁰ https://www.nj.com/hudson/2021/12/another-fire-breaks-out-at-jersey-city-recycling-plant.html?fbclid=IwAR3XJhJrPL9DfEYhkVxSkDqddU90XYco3P6Y8sou78X_c0mgV_QVJ3mgO60

³¹ https://twitter.com/rawsalerts/status/1551281430361247745?s=20&t=RUGPiJtVlaBDiwhCM5J_kA

to JCFD’s arrival, it took 35 JCFD firefighters and a dozen JCFD fire trucks and other vehicles to extinguish the blaze.

- g. Less than a month later, on or about October 22, 2023, the United States Coast Guard reported that a “fire has broken out aboard a scrap barge” at the Sims Facility. A response from the Coast Guard, JCFD, FDNY and two New Jersey Regional Fireboat Task Force vessels was required to extinguish the blaze. News reports indicate more than 100 tons of material from the Sims Facility required “extinguishment,” and the “blaze burned for hours before being placed under control.”³² The Coast Guard continues to monitor the environmental impacts of this blaze.³³
90. The fires at the Sims Facility are so common and disconcerting, Plaintiffs, Class Members and other Jersey City residents have taken to various internet groups and sites to track them, complain about them, and share concerns and worries related to them. For instance, one subreddit is entitled, “In light of the recurring fires at Sims Metal facility in Jersey City, does anyone know if the place emits fumes on a constant basis?”³⁴
91. Moreover, on the day of the May 25, 2021 fire, Jersey City residents started the aforementioned Petition to shut down Sims.³⁵
92. Concerns of residents, Plaintiffs and Class Members hardly lack for foundation. During the above-detailed July 2022 fire, for example, Jersey City firefighters essentially went door-to-door to implore residents at Port Liberté – i.e., Plaintiffs and Class Members – to keep

³² <https://www.nj.com/hudson/2023/10/jcfd-multiple-agencies-team-up-to-extinguish-jersey-city-barge-blaze.html>

³³ <https://www.marinelink.com/news/fire-breaks-scrap-barge-new-jersey-508930>

³⁴ https://www.reddit.com/r/jerseycity/comments/nkon9s/in_light_of_the_recurring_fires_at_sims_metal/?rdt=46698

³⁵ <https://www.change.org/p/mayor-of-jersey-city-sims-metal-is-creating-an-environmental-and-fire-hazard-in-jersey-city>

their doors and windows shut, and expressly affirmed that the smoke billowing from the Sims Facility and toward and into Plaintiffs' homes was highly toxic.

93. Major fires are nothing new to the Sims Facility – or, consequently, Plaintiffs, Class Members and the Port Liberté community. Rather, they are a longstanding problem and disturbingly routine fact of life for Defendants and the Sims Facility. For instance, and without limitation:

- a. News reports indicate the Sims Facility had at least six major fires between 2010 and 2021.³⁶
- b. In 2013, a Sims Facility fire drew the ire of Jersey City officials, including Jersey City's Mayor, who expressly blamed Sims for allowing the blaze to “get out of control.”³⁷
- c. These fires frequently caused other environmental problems. For instance, in September 2011, a Sims Facility crane caught fire, which sent scads of diesel fuel into the ground below.³⁸

94. While the various infernos at the Sims Facility may grab headlines, smaller fires burn routinely at and across the Sims Facility. Though these smaller fires may not require JCFD responses, the smoke therefrom nonetheless frequently penetrates Plaintiffs' homes, and invades and unreasonably impacts their lives and their enjoyment of their properties.

95. Defendants' response to the myriad of fires at the Sims Facility has been shockingly callous. While Defendants have stated that they take Sims Facility fires “very seriously,”

³⁶ <https://abc7ny.com/jersey-city-fire-scrap-yard-metal-sims-management/10691317/>

³⁷ https://www.nj.com/hudson/2013/08/plant_involved_in_large_fire_tried_to_handle_fire_themselves_jersey_city_mayor_says.html

³⁸ https://www.nj.com/hudson/2013/08/plant_involved_in_large_fire_tried_to_handle_fire_themselves_jersey_city_mayor_says.html

they have also affirmatively thrown up their arms at the “serious” problem, stating that the Sims Facility “is one of the largest metal recycling facilities in the country, and any outdoor facility of this type may on occasion have fires. This facility is no exception.”

96. Regardless of Sims’ view that fires small and large are apparent inevitabilities at the Sims Facility, a properly owned, operated and maintained recycling facility and/or metal scrapyards would not cause or allow to happen *any* fires on its lands, and/or allow the smoke, fumes and other consequences of such fires to be emitted, transmitted or otherwise dispersed into the ambient air and toward, onto and into neighboring lands, including, but not limited to, Plaintiffs’ properties. At a minimum, a properly owned, operated and maintained recycling facility and/or metal scrapyards would abate the potential for and consequences of any fires it might generate and/or allow to start and burn.
97. However, upon information and belief, Sims does *none* of this, and Plaintiffs have suffered accordingly.
98. At the very least, Sims has failed to install sufficient measures to ensure fires do not start and burn at the Sims Facility, and, at a minimum, if fires do start, that the smoke and other consequences of such fires do not leave the Sims Facility and invade Plaintiffs and Class Members’ homes and otherwise destroy their reasonable enjoyment of their properties.
99. This said, as noted above, upon information and belief, Sims’ operations at the Sims Facility affirmatively *cause* these fires to start and the smoke and other results thereof to escape the Sims Facility and invade Plaintiffs and Class Members’ homes and lives – where it causes significant (and, at a minimum, unreasonable) damage.

Defendants' Alarming Explosions

100. Sometimes together with the aforementioned fires, and sometimes separate from them, regular explosions at the Sims Facility routinely rock Plaintiffs' Port Liberté homes.

101. Indeed, since May 2022, there have been at least five explosions at the Sims Facility, which have caused fires, sent smoke into Plaintiffs' homes, woken Plaintiffs up from what should have been restful sleep, and, perhaps most disturbingly of all, shaken Plaintiffs properties (and the buildings wherein those properties sit) for several seconds, as if they had been hit by earthquakes. Indeed, on information and belief, the aforementioned explosions represent a potential threat to the structural integrity of the midrise buildings in which the Plaintiffs reside.

102. Per Sims management, Sims is supposed to track the various explosions at the Sims Facility in a "log." However, despite the fact that explosions at the Sims Facility are a longstanding problem, this is not always done, if it is done at all: In 2009, after a Jersey City citizen complained to Sims about "non-stop explosions" at the Sims Facility the night before, which the resident related to "gas tanks and propane tanks" that Sims had failed to properly empty, Sims Regional Director stated:

"We have a log that is supposed to be completed when this sort of thing occurs. The log was blank, so I am not sure what happened. I need to talk to night management [at the Sims Facility]."

The Regional Director went on, however, to admit: "You are right, this is unacceptable and we will address it immediately." However, upon information and belief, Sims did not "address it," and certainly did nothing "immediately," hence the fact that there have been nearly a half-dozen explosions at the Sims Facility since 2022.

103. Frankly, Sims' false expressions of good corporate citizenship are nothing new. To allegedly attempt to track and fix the various problems at the Sims Facility, Sims set up a telephone "hotline" for neighboring residents – including, but not necessarily limited to, Plaintiffs and Class Members – to call and report problematic odors, noises, fires, explosions and the like at the Sims Facility. However, Plaintiffs and Class Members report that, when they have called the Sims "hotline" to complain, *nothing* was ever done to fix the problems they identified. Ultimately, and without any notice or warning, Sims quietly shut down the "hotline" and ended its charade of "caring" about citizen concerns.
104. Needless to say, a properly owned, operated and maintained recycling facility and/or metal scrapyards would not cause or allow to happen *any* explosions on its lands, and/or cause or allow those explosions and the consequences thereof (including, but not limited to, smoke, fumes, etc.) to be transmitted onto and into neighboring lands, including, but not limited to, Plaintiffs' properties. At a minimum, a properly owned, operated and maintained recycling facility and/or metal scrapyards would abate the potential for and consequences of any explosions it might generate and/or allow to occur.
105. However, upon information and belief, Sims does *none* of this, and Plaintiffs have suffered.
106. At the very least, Sims has failed to install sufficient measures to ensure explosions do not happen at the Sims Facility, and, at a minimum, if explosions do occur, that the various consequences thereof do not leave the Sims Facility and invade Plaintiffs and Class Members' homes and otherwise destroy their reasonable enjoyment of their properties.
107. This said, as noted above, upon information and belief, Sims' operations and wrongful conduct at the Sims Facility affirmatively *cause* these explosions to happen and

the results thereof to escape the Sims Facility and invade Plaintiffs and Class Members' homes and lives.

Impacts of Defendants' Acts and Omissions on Plaintiffs and the Class Members

108. As intimated herein, the various problems at the Sims Facility have been the subject of frequent complaints from nearby residents – including residents at Port Liberté, where all Plaintiffs and Class Members reside.

109. Indeed, dozens of Port Liberté residents have contacted Plaintiffs' counsel complaining of and documenting the various problems at the Sims Facility, giving first-hand accounts of how the Sims Facility's noise, odors, bright lights, fugitive dust and particulate matter, fires and explosions have adversely impacted their lives, significantly damaged their enjoyment of their various properties, and otherwise harmed them.

110. As noted above, many Class Members have also complained to Jersey City government officials and to Sims about the disaster that is the Sims Facility – but, Sims has failed to respond to such complaints, and even shut down the “hotline” designed to aggregate them, causing Plaintiffs and Class Members further frustration and upset.

111. Plaintiffs and Class Members have all suffered physical discomfort because of all of the aforesaid problems at the Sims Facility – and Defendants' causation of and failure to abate same.

112. Moreover, the Sims Facility has damaged Plaintiffs and Class Members' properties. At the very least, Defendants, via their misconduct alleged herein, have reduced the value of such properties, significantly interfered with the use and enjoyment of same, and put Plaintiff's health in jeopardy resulting in significant damages to them and the Class Members.

113. As explained herein, Defendants have long known that their ownership, operation and maintenance of the Sims Facility has been causing unreasonable off-site impacts on residential neighbors. However, Defendants knowingly – and, upon information and belief, *intentionally* – failed to take any, let alone reasonable, steps to abate such harm to the Sims Facility’s neighbors and their properties.

114. Put simply and broadly, Defendants have negligently, unreasonably, knowingly, intentionally, recklessly, willfully and grossly failed to properly construct, operate, repair and/or maintain the Sims Facility, thereby causing, *inter alia*, significant intrusion upon the property and lives of Plaintiffs and the Class Members, by, among other things, excessive noise, excessive light, noxious and obnoxious odors, dust and particulate matter, smoke and other residue of fires both large and small, and explosions.

CLASS ACTION ALLEGATIONS

115. Pursuant to Rule 4:32, Plaintiffs bring this Class Action on behalf of themselves and all other persons similarly situated (the “Class”).

116. The Class is defined as:

All possessors of real property whose property is located within the Port Liberté community, with windows, doors, balconies and/or other open-air access facing the Sims Facility (such location, the “Class Area”).

117. Excluded from the Class are: (i) Defendants and their directors, officers and employees; (ii) any justice, judge or magistrate judge assigned to this action and/or who presides over any proceeding concerning this action, and any such justice, judge or magistrate judge’s spouse, or a person within the third degree of relationship to any of them, or the spouse of such a person; (iii) any and all federal, state, or local governments, including, but not limited to, any departments, agencies, divisions, bureaus, boards,

sections, groups, counsel and/or subdivisions of same; (iv) all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; and (v) those persons who have suffered personal injuries as a result of the facts alleged herein.

118. Plaintiff reserves the right to modify or amend the foregoing Class definitions before the Court determines whether certification is appropriate.

119. This action has been brought and may be properly maintained as a class action under Rule 4:32, because, as further articulated below, there exists a well-defined community of interest in the litigation and membership in the proposed Class is readily ascertainable.

120. **Numerosity**: There exist at least ninety-five (95) Port Liberté residential units in the Class, wherein at least one person resides, and frequently, several persons reside. Ergo, the Class will be composed of at least sixty-six, or, far more likely, more than one-hundred (100) members. The members of the Class are thus so numerous that joinder is impracticable.

121. **Commonality**: Numerous common questions of law and fact exist between the Class Members, and, as will be established infra, predominate over any individual questions affecting Class Members. These common questions include, but are not necessarily limited to, the following:

- a. Whether and how Defendants negligently, knowingly, intentionally, recklessly, grossly, and otherwise unreasonably, failed to construct, operate and maintain the Sims Facility and its operations;
- b. Whether Defendants owed any duties to Plaintiffs;

- c. Which duties Defendants owed to Plaintiffs;
- d. Whether Defendants breached any duties owed to Plaintiffs;
- e. Which steps and/or means, if any, Defendants have or have not taken in order to control or abate the emissions of noxious odors through the construction, operation and maintenance of the Sims Facility and its operations;
- f. Which steps and/or means, if any, Defendants have or have not taken in order to control or abate the emission and/or transmission of excessive noise through the construction, operation and maintenance of the Sims Facility and its operations;
- g. Which steps and/or means, if any, Defendants have or have not taken in order to control the emission and transmission of excessive light through the construction, operation and maintenance of the Sims Facility and its operations;
- h. Which steps and/or means, if any, Defendants have or have not taken in order to control the emission, discharge and/or dispersion of dust and/or particulate matter and/or fine particulate matter through the construction, operation and maintenance of the Sims Facility and its operations;
- i. Which steps and/or means, if any, Defendants have or have not taken in order to abate the occurrence of fires, and abate and control the emission and discharge of the results of such fires (e.g., smoke, fumes, etc.) through the construction, operation and maintenance of the Sims Facility and its operations;
- j. Which steps and/or means, if any, Defendants have or have not taken in order to control and abate the occurrence of explosions, including, but not limited to, the control and abatement of the results of such explosions (e.g., fires, shockwaves,

etc.) through the construction, operation and maintenance of the Sims Facility and its operations;

- k. Whether Defendants have met their standard of care with respect to their construction, operation and maintenance of the Sims Facility and its operations;
- l. Whether and to what extent the Sims Facility's noxious odors were and are dispersed over and across neighboring properties, including Class Members' properties;
- m. Whether and to what extent the Sims Facility's excessive noise was and is dispersed over and across neighboring properties, including Class Members' properties;
- n. Whether and to what extent the Sims Facility's excessive light was and is dispersed over and across neighboring properties, including Class Members' properties;
- o. Whether and to what extent the Sims Facility's dust and/or particulate matter and/or fine particulate matter was and is dispersed over and across neighboring properties, including Class Members' properties;
- p. Whether and to what extent the tangible byproducts/results (e.g., smoke, fumes, etc.) of the Sims Facility's Fires were and are dispersed over and across neighboring properties, including Class Members' properties;
- q. Whether and to what extent the Sims Facility's explosions and their tangible results (e.g., fires, shockwaves, etc.) were and are dispersed over and across neighboring properties, including Class Members' properties.
- r. Whether it was reasonably foreseeable that Defendants' failure to properly construct, operate and maintain the Sims Facility and its operations would result in an invasion of Plaintiffs' property interests;

- s. Whether Defendants have, at any time relevant, violated any New Jersey statutes and/or regulations related to noise;
- t. Whether Defendants have, at any time relevant, violated New Jersey statutes and/or regulations related to light;
- u. Whether Defendants have, at any time relevant, violated any City of Jersey City ordinances related to noise;
- v. Whether Defendants have, at any time relevant, violated any City of Jersey City ordinances related to light;
- w. Whether any of Defendants' conduct at the Sims Facility, including, but not limited to, such acts and/or failures to act that precipitate, *inter alia*, the Sims Facility's myriad of fires and explosions, constitutes Defendants' engagement in any abnormally dangerous activity;
- x. Whether any of Defendants' conduct at the Sims Facility, including, but not limited to, such acts and/or failures to act that precipitate, *inter alia*, the Sims Facility's causation, allowance and/or emission of excessive noise, noxious odors, excessive light, dust and particulate matter, fires and any consequences thereto (e.g., without limitation, smoke and fumes), and explosions and any consequences thereto (e.g., fires, smoke, shockwaves, etc.), constitute and/or result in an unreasonable interference with a right common to the general public;
- y. Whether any of Defendants' conduct at the Sims Facility, including, but not limited to, such acts and/or failures to act that precipitate, *inter alia*, the Sims Facility's causation, allowance and/or emission of excessive noise, noxious odors, excessive light, dust and particulate matter, fires and any consequences thereto (e.g., without

limitation, smoke and fumes), and explosions and any consequences thereto (e.g., fires, smoke, shockwaves, etc.), (i) involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, (ii) is proscribed by a statute, ordinance or administrative regulation, or (iii) is of a continuing nature or has produced a permanent or long-lasting effect, and, if the Defendants know or have a reason to know, has a significant effect upon the public right.

- z. Whether Defendants violated any of their own policies and procedures with respect to the construction, operation and maintenance of the Sims Facility during any time relevant;
 - aa. Whether Defendants' conduct, including their actions and alleged failures to act, resulted in or was the proximate cause of any harm suffered by Plaintiffs and the Class Members;
 - bb. Whether the degree of harm suffered by Plaintiffs and the Class Members constitutes a substantial annoyance or interference; and
 - cc. The proper measure of damages incurred by the Plaintiffs and the Class.
122. **Typicality:** Plaintiffs' claims are typical of the claims of the Class. If brought and prosecuted individually, the claims of each Class Member would require proof of many of the same material and substantive facts, utilize the same complex evidence, including, but not limited to, expert testimony, rely upon the same legal theories and seek the same type of relief. As the result of Defendants' common course of conduct in violation of laws and standards, as alleged herein, Plaintiffs sustained damages akin to damages sustained by all Class Members. As such, the claims of the Plaintiffs and the other Class Members have a

common cause and their damages are of the same type. In short, and as stated herein, the claims of Plaintiffs and the Class Members originate from the same failure of the Defendants to properly construct, operate and maintain the Sims Facility and its operations. All Class Members have suffered injury in fact as a result of Defendants' breaches of duty and the invasion of the Class Members' property by Defendants' production of and/or failure to curb the production and occurrence and/or transmission of Sims Facility's excessive noise, noxious odors, excessively bright lights, dust and particulate matter, fires and the consequences resulting therefrom, and explosions and the consequences resulting therefrom.

123. **Adequacy:** Plaintiffs are adequate representatives of the Class because Plaintiffs are members of the Class, and are committed to pursuing this matter against Defendants to obtain relief for the Class. Plaintiffs are not subject to any individual defense unique from those conceivably applicable to other Class Members or the Class in its entirety. Plaintiffs anticipate no management difficulties in this litigation. Plaintiffs have no conflicts of interest with the Class. Plaintiffs' counsel is competent and experienced in litigating complex matters and class actions, and has extensive experience in litigation involving environmental matters and nuisances. Plaintiffs intend to vigorously prosecute this case and will fairly and adequately protect the interests of the Class.

124. **Predominance:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. Common issues in this litigation predominate over individual issues. The issues discussed above in regard to commonality are more important to the resolution of this litigation than any individual issues. The

purpose of the class-action mechanism is to permit litigation against wrongdoers even when damages to individual plaintiffs may not be sufficient to justify individual litigation. Here, the damages suffered by Plaintiffs and the other Class Members are relatively small compared to the burden and expense required to individually litigate their respective claims against Defendants, and thus, individual litigation to redress Defendants' wrongful conduct would be impracticable. Individual litigation by each Class Member would also burden and unreasonably strain the court system, and would result in undue delay. Individual litigation creates the potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class-action device presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

125. **Ascertainability**: The Class are defined by reference to objective criteria, and there is an administratively feasible mechanism to determine who fits within the Class.

126. **Injunctive and Declaratory Relief**: This class action is also appropriate for certification because Defendants have acted and/or refused to act on grounds generally applicable to Class Members, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the Class Members, and making final injunctive relief appropriate concerning the Class in its entirety. Defendants' policies and practices challenged herein apply to and affect the Class Members uniformly. Plaintiffs' challenge of these policies, practices and procedures hinges on Defendants' conduct concerning the Class in its entirety, not on facts or law applicable only to Plaintiffs. Unless a Class-wide injunction is issued, Defendants may continue failing to construct, operate and maintain the Sims Facility and its operations, so as to prevent, *inter alia*, the various

problems defined herein, and Defendants may continue to act unlawfully as otherwise set forth in this Complaint. Further, Defendants have acted or refused to act on grounds generally applicable to the Class, and, accordingly, final injunctive or corresponding declaratory relief with regard to the Class Members as a whole is appropriate.

CAUSES OF ACTION

COUNT ONE

Public Nuisance

127. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were set forth more fully herein.
128. As they have all been described herein, the noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions that emanate from the Sims Facility represent unreasonable interferences, and each such category of emanation represents an unreasonable interference, with a right and/or rights common to the general public.
129. To this end, and as has been set forth supra, the Sims Facility's noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves, and the conduct of Defendants, including Defendants acts and omissions, that gives rise to such problems, clearly involve significant interferences with the public health, the public safety, the public peace, the public comfort and/or the public convenience that Plaintiffs and the Class members have the right to enjoy.

130. Similarly, with respect to various of the interferences the Sims Facility imposes on the public, Plaintiffs and the Class, including, but not limited to, the Sims Facility's creation and emanation of excessive noise and light, Defendants' conduct is proscribed by statutes, ordinances and/or administrative regulations.

131. Finally, as the Sims Facility has a long history of causing such interferences, and as Defendants' conduct is ongoing, Defendants know and/or have reason to know their conduct and the Sims Facility's myriad of problems have had and have a significant effect on the public's rights. Indeed, Defendants are plainly aware of the significant problems they have created – but simply do not care: As described above, Defendants operated various “hotlines” where upset residents could complain; however, upon information and belief, Defendants never acted on any such complaints, then discretely shut down those “hotlines,” with hopes no one would notice.

132. Plaintiffs have the right to recover damages in this matter, as they have suffered harms in a kind different from those suffered by other members of the public in exercising the rights common to the general public with which Defendants have interfered. While Defendants' conduct, acts and omissions have both interfered with and generally endangered the public at large, Plaintiffs are particularly and especially vulnerable: They live approximately 1,000 feet away from the Sims Facility, which subjects them to not only constant annoyance and a diminished quality of life, but places them in a zone of extreme danger vis-à-vis the Sims Facility's routine toxic emissions, fires and explosions.

133. Plaintiffs also have suffered and continue to suffer special harm relating to the use of their land and property, and diminished property values – damages of a different kind than those suffered by the public at large.

134. Additionally, Plaintiffs have standing to sue as representative members of a class in a class action.

135. In sum, based on Defendants' various acts and omissions described herein, the Sims Facility both constitutes a public nuisance and also creates a series of public nuisances. Worse still, Defendants creation of this and these public nuisances, and their acts and omissions as set forth above, were willful and wanton, and, upon information and belief, were effected so that Defendants could maximize profits.

COUNT TWO
Private Nuisance

136. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were set forth more fully herein.

137. At all times relevant, Plaintiffs used their real properties as residences, and, at all times relevant have resided and reside, within the Class Area.

138. Defendants, and each Defendant's respective, past, present and/or continuing acts and/or omissions have constituted and constitute a nuisance, in that Defendants used, have used and/or continue to use the Sims Facility and their property in a manner, or have otherwise acted in a manner, that has resulted in an unreasonable burden and interference on the Plaintiffs and the Class Members in the form of personal harm, inconvenience, annoyance and discomfort incidental to exposure to noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves.

139. For instance, and without limitation, by failing to reasonably construct, operate and/or maintain the Sims Facility and its operations, defendants have caused an invasion

of Plaintiffs and Class Members' property by noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves. While examples of these invasions are set forth herein, the invasion of Plaintiffs' property by any or all of these problems caused and/or emanated by the Sims Facility occurs with such frequency that such invasions are too numerous to individually detail and list herein.

140. The noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves, that invade the properties of Plaintiffs and Class Members are indecent, offensive and dangerous to Plaintiffs and the Class Members, and are and would be indecent, offensive and dangerous to individuals with ordinary sensibilities, and obstruct the free use of the properties of Plaintiffs and the Class, so as to substantially and unreasonably interfere Plaintiffs and the Class Members' with the comfortable enjoyment of life and property.

141. Indeed, Defendants' various invasions, and/or each such invasion, of the properties of Plaintiffs and Class members, has impacted and presently impacts Plaintiffs and the Class Members, causes a diminution in their property values, is a blight on the community of Plaintiffs and the Class Members, causes annoyance, interference and inconvenience, and deprives Plaintiffs and the Class Members of their free use and enjoyment of their property, including, but not limited to, the inability to fully use, enjoy and recreate on and in their outdoor spaces, freely perform certain work and repairs on their property, and freely

open doors, windows and otherwise be exposed to outside air on and in their properties. Additionally, Plaintiffs and the Class Members suffer fear of adverse health effects, as described above.

142. Additionally, Sims' creation, release, emanation, and/or discharge of and/or failure to abate and/or eliminate the Sims Facility's noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves violates applicable standards, statutes, regulations and/or ordinances, and therefore constitutes nuisance *per se*.

143. Indeed, Sims' operation of the Sims Facility between the hours of 7:00 p.m. and 6:00 a.m. violates Jersey City Ordinance §242-12, a law specifically designed and enacted to preserve and protect Plaintiffs and Class Members' enjoyment of their homes, and the peace and quiet of their residential community, and thereby constitutes nuisance *per se*.

144. Moreover, Defendants' creation, release, emanation and/or discharge of and/or failure to abate and/or eliminate the Sims Facility's noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves breached a duty it owed to Plaintiffs, Class Members and other neighboring residents to reasonably and safely construct, operate and maintain the Sims Facility.

145. Defendants knew well that the Sims Facility's noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the

consequences thereof, such as, without limitation, fires and shockwaves were invading and continue to invade the Plaintiffs and Class Members' properties and that such invasions were substantially certain to result from their respective actions and/or omissions, as aforesaid.

146. Defendants also knew well that the Sims Facility's noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves were dramatically interfering with and unreasonably diminishing, and continue to dramatically interfere with and substantially diminish Plaintiffs' and the Class Members' quality of life and enjoyment of their properties, and that such interference and diminishment was substantially certain to result from Defendants' respective actions and/or omissions, as aforesaid.

147. This interference with the Plaintiffs and the Class Members' use and enjoyment of their properties is substantial, unreasonable, unwarranted and unlawful.

148. As a direct and proximate result of Defendants' respective wrongful acts and omissions as described herein, Plaintiffs and the Class Members have suffered exposure to hazardous substances, annoyance, inconvenience, discomfort, displacement, fear of adverse health effects and economic loss for which compensatory damages are justified and, frankly, required.

149. As a direct and proximate result of Defendants' misconduct, and each Defendant's misconduct, as all of same has been described above, Plaintiffs and the Class Members continue to suffer economic losses, the loss of value to their property, and other damages.

150. Defendants are jointly and severally liable to Plaintiffs and the Class Members for their respective acts and/or omissions.

151. The nuisance and nuisances Defendants have respectively created is and are continuing, in that it and they have continued and remain unabated.

152. There was and thus remains a great probability that substantial harm would result from Defendants' various acts and omissions in constructing, operating and maintaining the Sims Facility.

153. Defendants engaged in their aforesaid acts and/or omissions negligently and/or grossly negligently and caused injury and damages to Plaintiffs and the Class Members, and such negligence and/or gross negligence was willful, actuated by actual malice, and/or made with a wanton, willful and/or conscious disregard for the rights and safety of Plaintiffs and the Class Members and other persons who might foreseeably be harmed by such acts or omissions, which entitles Plaintiffs and the Class to an award of compensatory, exemplary and punitive relief. To wit, at certain times relevant, and as detailed above, Defendants operated telephone "hotlines" whereby citizens like Plaintiffs and Class Members could report to Defendants problems with and at the Sims Facility; however, despite a number of calls to these "hotlines," Defendants did nothing to remediate any problems citizens reported, and, in fact, discretely disconnected and eliminated the "hotlines," and hoped no one would notice.

COUNT THREE
Trespass

154. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were set forth more fully herein.

155. Defendants' wrongful conduct, as set forth herein, resulted in the direct physical invasion of Plaintiffs and Class Members' properties by, *inter alia*, hazardous substances, noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves.

156. Defendants intentionally, negligently, recklessly, and/or via an abnormally dangerous activity or abnormally dangerous activities caused and/or allowed such invasion(s) of Plaintiffs and Class Members' properties to occur.

157. Such invasions, and the exposure of Plaintiffs and Class Members to such invasions and the hazards appurtenant thereto, are ongoing and continuous.

158. As a direct and proximate result of Defendants misconduct, as set forth herein, Plaintiffs and the Class Members have suffered, continue to suffer and will continue to suffer damages.

159. Moreover, at all times relevant, Defendants have caused harm and damages to Plaintiffs and the Class Members and/or their respective properties, through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

COUNT FOUR
Negligence

160. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were set forth more fully herein.

161. Defendants, at all times relevant, acted themselves or through their officers, employees and agents, who, in turn, acted in the scope of their authority and employment and in furtherance of the business of Defendants.

162. Defendants owed various duties of care to Plaintiffs and the Class Members, including a duty to exercise ordinary care, and the duties to reasonably and safely construct, operate and maintain the Sims Facility.

163. On a myriad of occasions, Defendants breached this duty, by their creation, release, emanation and/or discharge of and/or failure to abate and/or eliminate the Sims Facility's noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves.

164. As a direct and proximate result of Defendants breach(es), Plaintiffs and the Class Members have suffered, continue to suffer and will continue to suffer damages.

165. Moreover, at all times relevant, Defendants have caused harm and damages to Plaintiffs and the Class Members and/or their respective properties, through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

COUNT FIVE
Strict Liability

166. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if same were set forth more fully herein.

167. As set forth herein, Defendants have engaged in abnormally dangerous activities of metal recycling, and the creation, release, emanation and/or discharge of and/or failure to

abate and/or eliminate the Sims Facility's noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves. Accordingly, Defendants are strictly liable to the Plaintiffs and the Class Members.

168. Defendants various aforesaid "activities" pose a high degree of risk of harm to Plaintiffs and the Class Members: Plaintiffs and Class Members live roughly only 1,000 feet from the Sims Facility, and are essentially in the direct line of fire and/or blast zone for the various hazards the Sims Facility creates and/or emanates.

169. Likewise, there exists a strong likelihood that the harm to Plaintiffs and the Class Members that results from the Defendants' activities will be great – again, proximity alone dictates that Plaintiffs and the Class Members have been and will continue to be profoundly impacted by Defendants' misconduct and the various ills the Sims Facility imposes. Additionally, the health hazards created by various emanations of the Sims Facility are incredibly significant – e.g., without limitation, the toxic contaminants the Sims Facility releases, its regular multi-alarm fires that burn "out of control" and release toxic fumes and smoke, and its routine explosions all pose a substantial health risk to Plaintiffs and the Class Members.

170. The risks posed by Defendants' misconduct, and their ongoing creation, release, emanation and/or discharge of and/or failure to abate and/or eliminate the Sims Facility's noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and

shockwaves, cannot and could not be eliminated by the exercise of reasonable care. To some degree, proof of this concept may be derived from the fact that the Sims Facility has a nearly two-decade history of causing the *same* problems – yet cannot solve them.

171. Defendants’ metal recycling, and their creation, release, emanation and/or discharge of and/or failure to abate and/or eliminate the Sims Facility’s noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves, was and is neither a matter of common usage nor appropriate to the place where it was, has been and continues to be carried out.

172. While metal recycling is a noble goal, the misconduct with which Defendants engage in such ends dramatically outweighs any value the Sims Facility might have. Simply, there is no excuse for Defendants’ creation, release, emanation and/or discharge of and/or failure to abate and/or eliminate the Sims Facility’s noxious odors, excessive noise, excessively bright overnight lights, dust and particulate matter, fires and the consequences thereof, such as, without limitation, smoke and fumes, and explosions and the consequences thereof, such as, without limitation, fires and shockwaves – and no amount of recycled material (especially in that Sims’ goal with such material is not a healthier planet, but a healthier bank account) is worth the dangers and damage the Sims Facility creates.

173. As a direct and proximate result of Defendants’ misconduct, as same has been set forth herein, Plaintiffs and the Class Members have suffered, continue to suffer and will

continue to suffer damages, including, but not limited to, the enhanced risk of future personal injury, economic losses, the loss of value to their property and other damages.

174. Moreover, at all times relevant, Defendants have caused harm and damages to Plaintiffs and the Class Members and/or their respective properties, through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other members of the proposed Class, respectfully request that the Court enter judgment in Plaintiffs' favor and against Defendants as follows:

- A. Declaring, adjudging and decreeing that this action is a proper class action, and certifying the proposed Class pursuant to Rule 4:32, including designating Plaintiffs as Class representatives and appointing Plaintiffs' counsel as Class Counsel;
- B. Awarding Plaintiffs and the Class appropriate monetary relief, including actual damages, statutory damages, consequential damages, punitive damages, exemplary damages, nominal damages, restitution, and disgorgement of all earnings, interest, profits, compensation, and benefits received as a result of Defendants' unlawful acts, omissions and practices;
- C. Awarding Plaintiffs and the Class equitable, injunctive and declaratory relief as may be appropriate to protect the interest of Plaintiffs and the Class Members, including, but not limited to, an Order enjoining Defendants from engaging in the wrongful and/or unlawful conduct complained of herein;

- D. Compelling Defendants to pay the costs associated with notification of Class Members about the judgment and administration of claims;
- E. Awarding the Plaintiffs and the Class pre-judgment and post-judgment interest to the maximum extent allowable;
- F. Awarding Plaintiffs and the class reasonable attorneys' fees, costs and expenses; and
- G. Awarding Plaintiffs and the Class such other favorable relief as allowable under law.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury on all issues in the above-entitled Complaint and cause of action.

DESIGNATION OF TRIAL COUNSEL

Please take notice that pursuant to Rule 4:25-4, William C. Matsikoudis, Derek S. Fanciullo, Esq., Aspen-Jade C. Tucker, Esq., of the law firm of Matsikoudis & Fanciullo, LLC, and Justin A. Meyers, Esq. of the Law Offices of G. Martin Meyers, P.C., are hereby designated as trial counsel for Plaintiff for the within matter.

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned, Derek S. Fanciullo, Esq., certifies on behalf of the Plaintiff as follows:

1. I am an attorney admitted to practice law in the State of New Jersey, counsel for the above-named Plaintiff in the subject action.
2. The matter in controversy in this case is not, to my knowledge, the subject of any other action pending in any court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.
3. There are no other parties who should be joined in this action that we are aware of at the present time.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: Jersey City, NJ
April 25, 2024

MATSIKLOUDIS & FANCIULLO, LLC

/s/William C. Matsikoudis, Esq.
WILLIAM C. MATSIKLOUDIS, ESQ.

/s/ Derek S. Fanciullo, Esq.
DEREK S. FANCIULLO, ESQ.

LAW OFFICES OF G. MARTIN MEYERS, P.C.

/s/Justin A. Meyers, Esq.

Attorneys for Plaintiffs and the Proposed Class