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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, and ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, Plaintiffs, v. RCLC, INC., PROMETCOR, INC., F&M DEVELOPMENT GROUP, LLC, REI CORPORATION, and "JOHN DOES" 1 through 10 (Names Fictitious), Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY DOCKET NO. Civil Action COMPLAINT Jury Trial Demand

Plaintiffs the New Jersey Department of Environmental Protection ("DEP" or the "Department"), the Commissioner of the Department ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "Plaintiffs"), having their principal offices at 401 East State

Street in the City of Trenton, County of Mercer, State of New Jersey, by and through their attorneys, bring this Complaint against the above-named defendants saying:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action pursuant to the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to 23.24, the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -35, the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6, et seq., and the common law of unjust enrichment. Plaintiffs seek payment by defendants of civil penalties for their failure to remediate the contamination that is the subject of this Complaint and failure to comply with a known deed restriction that prohibits residential use of certain properties formerly owned or operated by defendants in the City of Newark, which failure has resulted in the construction of personal residences occupied by citizens of the State of New Jersey above ground water that is contaminated by, among other things, trichloroethylene ("TCE"). Plaintiffs further seek reimbursement of the cleanup and removal costs and damages Plaintiffs have incurred and will incur as a result of the discharges and/or unsatisfactory storage or containment of hazardous substances at real property located in the City of Newark, Essex County, New Jersey, and formally designated as and consisting of 20-68

Manufacturers Place, Block 2395.01, Lots 26.01-26.14; 45-65 Manufacturers Place, Block 2395, Lots 1.01-1.06; 39-43 Manufacturers Place, Block 2479, Lots 67 and 68; 56 Vincent Street, Block 2395, Lot 66; and 68-70 Vincent Street, Block 2395, Lot 59 (collectively, "Properties"), as well all other areas where any hazardous substances discharged at the Properties have come to be located ("Site").

2. From the 1950s to the 1990s, Ronson Metals Corporation ("Ronson Metals") manufactured cigarette lighters at a facility in the Ironbound District of Newark, New Jersey. That process resulted in the discharge of several hazardous substances into the soil and groundwater, including TCE. TCE can have lasting effects on the human central nervous system and respiratory tract and has been linked to other serious health conditions. After ceasing operations, the owner and operator ignored their statutory and regulatory obligations and never fully cleaned up the contaminated soil or groundwater. Instead, the owner sold the property to REI Corporation ("REI"), a property redeveloper, and in a subsequent transaction, REI conveyed a portion of the property to F&M Development Group ("F&M"). Both REI and F&M then developed the property into individual residences and several warehouses without ensuring the remediation was complete. REI and F&M then sold those residences to individuals without providing notice of the soil or

groundwater contamination, exposing the homeowners to harmful vapors. In response, the Department installed vapor intrusion mitigation technology to prevent the dangerous vapors from entering the homes.

THE PARTIES

3. The Department is a principal department within the Executive Branch of the New Jersey State government vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

4. The Commissioner is the Commissioner of the Department, N.J.S.A. 58:10-23.11b, and in that capacity she is vested by law with various powers and authority, including those conferred by the DEP's enabling legislation, N.J.S.A. 13:1D-1 through -19.

5. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Fund"), N.J.S.A. 58:10-23.11j, and as the chief executive officer of the Fund he is authorized to approve and pay any cleanup and removal costs DEP incurs, N.J.S.A. 58:10-23.11f(c) and (d), and to certify the amount of any claim to be paid from the Fund. N.J.S.A. 58:10-23.11j(d).

6. Defendant RCLC, Inc. ("RCLC") is a corporation organized under the laws of the State of New Jersey, with a principal place

of business at 1480 Route 9 North, Suite 301, Woodbridge, New Jersey 07095.

7. Defendant Prometcor, Inc. ("Prometcor") is a corporation organized under the laws of the State of New Jersey, with a principal place of business at 1480 Route 9 North, Suite 301, Woodbridge, New Jersey 07095.

8. Defendant REI is a corporation organized under the laws of the State of New Jersey, with a principal place of business at 54 South Terrace, Short Hills, New Jersey 07078.

9. Defendant F&M is a limited liability company organized under the laws of the State of New Jersey, with a principal place of business at 54 South Terrace, Short Hills, New Jersey 07078.

10. Defendant "John Does" 1 through 10 ("John Doe Corporate Officers"), these names being fictitious, are individuals who were corporate officers and agents of Defendants RCLC, Prometcor, REI and/or F&M (collectively "Defendants") and who were responsible for the conduct of Defendants that led to the discharges and violations alleged in this Complaint and/or exercised sufficient authority and control over Defendants to prevent or correct the occurrence of the discharges and violations, but failed to do so.

SITE OWNERSHIP AND OPERATION HISTORY

11. The Properties consist of several blocks and lots located within the Ironbound District of the City of Newark.

12. From approximately the late 1950s through the 1990s, the Properties were owned by RCLC, which at that time was known as Ronson Corporation.

13. The Properties were operated by RCLC's subsidiary, which is now known as Prometcor and was previously known as Ronson Metals.

14. In or around 2010, Ronson Corporation, formerly a worldwide manufacturer of lighters and lighter-related products, sold its intellectual property rights to Zippo Manufacturing Company.

15. As a result of the sale to Zippo Manufacturing Company, Ronson Corporation agreed to change its corporate name to RCLC, and Ronson Metals changed its corporate name to Prometcor.

16. In the late 1990s and early 2000s, RCLC sold the Properties to REI in three separate transactions.

17. In July 1999, RCLC sold Block 2479, Lots 67 and 68, to REI.

18. In July 2000, RCLC sold Block 2395, Lots 1.01-1.06, 66, and 59, to REI.

19. In May 2002, RCLC sold Block 2395.01, Lots 26.01-26.14, to REI.

20. In or around 2005, REI sold Block 2395.01, Lots 26.01-26.14, to F&M.

21. Prior to those sales, RCLC, Prometcor, and their corporate predecessors and subsidiaries had conducted, among other things, metal-plating, lamp manufacturing, and lighter manufacturing, at the Properties since at least the early 1900s.

22. RCLC's and Prometcor's lighter manufacturing operations involved the use of, among other things, TCE, which is a chlorinated solvent that, when existing in groundwater, can volatilize into the air.

23. RCLC's and Prometcor's lighter manufacturing operations continued at the Properties until 1989, when RCLC decided to close its manufacturing facility.

GENERAL ALLEGATIONS

24. RCLC's 1989 closure of its manufacturing facility triggered the investigation and remediation requirements of the Environmental Cleanup Responsibility Act ("ECRA"), now known as ISRA. N.J.S.A. 13:1K-6 to -18.

25. Although initially failing to conduct any remediation, RCLC eventually performed limited preliminary sampling at the Properties and signed a memorandum of agreement in 1993.

26. RCLC later performed an extensive investigation pursuant to the memorandum of agreement and uncovered 12 areas of soil contamination at the Properties, as well as groundwater contamination below the Properties.

27. The samples taken by RCLC revealed TCE contamination in the soil and ground water in excess of the Department's cleanup criteria.

28. RCLC completed the remediation of 12 areas of soil contamination at the Site and obtained no further action letters ("NFAs") for soil contamination only; RCLC did not obtain an NFA for soil contamination existing at Block 2395.01, which was not being remediated to below the Department's unrestricted use standards.

29. The NFAs pertaining to Block 2395 stipulated that the soil contamination was remediated to unrestricted use standards, as such that Block was suitable for unrestricted use.

30. The NFAs pertaining to Block 2479 stipulated that the soil contamination was remediated to unrestricted use standards but required a deed restriction for previously-existing contamination from a leaking underground storage tank; RCLC filed this deed restriction.

31. Although RCLC did not obtain an NFA for the soil contamination at Block 2395.01, it did perform remediation there by installing a clay and six-inch crushed-stone cap that was 25-30 feet wide and ran the entire length of the Block.

32. The Department also required a deed restriction at Block 2395.01 ("Block 2395.01 Deed Restriction") that limited the future use of that Block to parking and industrial uses only.

33. On or around January 30, 2002, RCLC filed the Block 2395.01 Deed Restriction with the Essex County Clerk, which required RCLC and Prometcor (as well as REI and F&M once they obtained ownership) to inspect, maintain, and evaluate the adequacy of the engineering controls installed at Block 2395.01 and report on same to the Department every five years.

34. The Block 2395.01 Deed Restriction was issued and filed pursuant to, among other authorities, the Spill Act.

35. During its limited remediation, RCLC sampled the groundwater monitoring wells that it installed at and near the Properties; those samples revealed TCE contamination in the ground water in excess of the Department's cleanup criteria.

36. The samples taken by RCLC from the monitoring wells located near Block 2395.01 revealed TCE contamination as high as 76,000 parts-per-billion ("ppb"); the Department's Ground Water Quality Standard for TCE is 1 ppb.

37. Samples taken from a groundwater monitoring well located downgradient from Block 2395.01 revealed TCE concentrations as high as 35,000 ppb.

38. In a Groundwater Investigation Report dated December 20, 1995, RCLC conceded that the TCE groundwater contamination was caused by the industrial operations conducted at the Properties by its subsidiary, Ronson Metals, now Prometcor.

39. RCLC requested that the Department change the classification for the groundwater at the Site from Class IIA to Class IIIA in order to avoid active groundwater remediation, and it simultaneously proposed an alternate cleanup level for TCE of 58,250 ppb.

40. The Department denied those requests and instead required RCLC and Prometcor to actively remediate the groundwater.

41. RCLC and Prometcor failed to remediate the groundwater or even complete a groundwater remedial investigation.

42. The Department had informed RCLC on three separate occasions that, pursuant to ISRA, the sale of the Properties to REI could not proceed without RCLC's execution of a remediation agreement requiring it to, among other things, establish a remediation funding source for the remainder of the remediation.

43. Nevertheless, RCLC failed to satisfy its obligation to complete the remediation, sign a remediation agreement, and establish a remediation funding source; instead, it began selling the Properties to REI in violation of, among other statutes and regulations, ISRA.

44. In or around the early 2000s, before purchasing the Properties, REI began planning to construct 19 homes and five commercial buildings there.

45. In 2000, REI applied to the Newark City Planning Board for construction plan and subdivision approval.

46. On January 10, 2000, the Newark City Planning Board held a hearing on the application.

47. At that hearing, REI's environmental engineer, who performed RCLC's and Prometcor's limited remediation and thus had knowledge of the contamination at the Site, discussed with the Planning Board a radioactive component of the soil contamination but failed to mention the TCE contamination or the elevated levels of metals contamination at the Site, including arsenic, lead, and nickel.

48. The Planning Board nevertheless asked REI whether the contamination at the Properties could meet residential standards, and REI's environmental engineer responded that the radioactive component would meet the Department's requirements, again failing to mention the TCE or metals contamination.

49. The Planning Board approved the subdivision application subject to approval by the Department and the United States Nuclear Regulatory Commission; specifically, it stated that REI was required to obtain NFAs from the Department before building the

residences because the construction would convert the use of the Properties from industrial to residential.

50. On May 25, 2000, the Department issued an additional NFA for the radioactive soil contamination only.

51. No NFA or response action outcome has ever been issued for the soil contamination at Block 2395.01 or the groundwater contamination at the Site.

52. Despite never receiving an NFA for Block 2395.01 or the groundwater contamination, and despite the Block 2395.01 Deed Restriction, REI and F&M constructed several single-family residences there in the mid-2000s.

53. REI and F&M sold those residences in violation of the Spill Act and ISRA to citizens of the State of New Jersey without citing, notifying, or otherwise addressing the Block 2395.01 Deed Restriction or the nature of the groundwater contamination at and below the Properties.

54. Individuals still occupy the residences to this day.

55. RCLC and Prometcor sold the Properties to REI in violation of ISRA, and REI and F&M constructed the residences in contradiction of the recorded deed notice, without any notice to the Department, and without obtaining a valid NFA for groundwater and providing it to the Planning Board.

56. In or around 2012, the Department uncovered REI's and F&M's construction at Block 2395.01 in violation of the Block 2395.01 Deed Restriction and identified it as a potential risk to human health.

57. The Department immediately began an extensive vapor intrusion investigation at and near the Properties with a specific focus on ensuring the indoor air quality at the residences.

58. The Department discovered that at least six of the residences built by REI and F&M were actively being impacted by TCE vapors exceeding the Department's residential indoor air screening levels.

59. The Department installed sub-slab depressurization systems at those residences and no less than 22 other buildings at the Properties.

60. On September 11, 2014, the Department issued a Directive and Notice to Insurers to REI and F&M requiring them to complete the remediation of the groundwater contamination located at and emanating from the Properties and to reimburse the Department for past and future cleanup and removal costs.

61. REI and F&M failed to comply with the Directive.

62. On February 29, 2016, the Department filed liens against REI, F&M, and RCLC, each in the amount of $1,482,371.62.

63. As dischargers of hazardous substances and/or persons in any way responsible for the hazardous substances discharged at the Properties under the Spill Act, Defendants are required to remediate the Site. N.J.S.A. 58:10B-1.3(a).

64. Defendants have failed to remediate the Site and have failed to meet remediation timeframes, including the mandatory remediation timeframes set forth in N.J.A.C. 7:26C-3.3, and specifically the statutory May 7, 2014 deadline set forth in N.J.S.A. 58:10C-27a(3) for completing a remedial investigation; as a result, Defendants are subject to direct oversight pursuant to N.J.A.C. 7:26C-3.3(c); N.J.A.C. 7:26C-14.2; and N.J.S.A. 58:10C-27.

65. Defendants' failure to perform the remediation and honor the requirements of the Block 2395.01 Deed Restriction has exposed citizens of the State of New Jersey to TCE vapors emanating from the groundwater contamination currently existing below the Properties.

66. The John Doe Corporate Officers, as officers of Defendants, were responsible for the conduct of the Defendants that directly led to the discharges of hazardous substances at the Property and violations of, among other statutes and regulations, the Spill Act and the WPCA, and they exercised sufficient authority over Defendants to prevent or correct the occurrence of the

discharges and violations, but failed to do so; as such, the John Doe Corporate Officers are responsible for the discharges and violations alleged in this Complaint.

67. The Department is continuing to incur cleanup and removal costs to address the impacts of the contamination.

Count One – Civil Penalties

68. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 67 above as though fully set forth herein.

69. Since at least the late 1990s/early 2000s, Defendants and the John Doe Corporate Officers have failed to satisfy their statutory and regulatory obligations to complete the remediation at the Site, including, but not limited to their obligation under the Block 2395.01 Deed Restriction to, among other things, inspect, maintain, and evaluate the adequacy of the engineering controls and report on same to the Department every five years.

70. Defendants' and the John Doe Corporate Officers' failure to satisfy those obligations has resulted in the exposure of numerous individuals to TCE vapors and compelled the Department to incur significant cleanup and removal costs.

71. Pursuant to N.J.S.A. 58:10-23.11u(d), Defendants and the John Doe Corporate Officers are subject, upon order of the court, to civil penalties of up to $50,000 per day for their failure to complete the remediation and their violations of the Spill Act,

the WPCA, SRRA, the Brownfield Act, ISRA, the Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS"), N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, in addition to the Block 2395.01 Deed Restriction, which was issued and filed pursuant to that same statutory and regulatory authority.

WHEREFORE, Plaintiffs demand judgment in their favor:

a) Finding Defendants in violation of their statutory and regulatory obligations to complete the remediation at the Site and to honor and comply with the Block 2395.01 Deed Restriction;

b) Imposing upon Defendants, pursuant to N.J.S.A. 58:10-23.11u.d., civil penalties commensurate with their repeated failure to satisfy their statutory and regulatory obligations and REI's and F&M's construction of homes on Block 2395.01 in violation of the Block 2395.01 Deed Restriction;

c) Awarding Plaintiffs their costs and fees in this action; and

d) Awarding Plaintiffs any other relief this court deems appropriate.

Count Two - Spill Act

72. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 71 above as though fully set forth herein.

73. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

74. The Department has incurred, and will continue to incur, cleanup and removal costs for the remediation at the Site.

75. The Administrator has approved, and may continue to approve, appropriations from the Fund for the hazardous substances existing at the Site.

76. The costs that the Department and the Administrator have incurred, and will incur, for the contamination at the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

77. Any person who discharges a hazardous substance, or is in any way responsible for any hazardous substances, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs the Department and the Administrator have incurred and will incur as a result of a hazardous substance discharge. N.J.S.A. 58:10-23.11g(c).

78. Defendant RCLC, as the owner of the Properties at the time hazardous substances were discharged there, is a person in any way responsible for any hazardous substance and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department and the Administrator pursuant to the Spill Act, N.J.S.A. 58:10-

23.11g(c)(1), and for the completion of the remediation pursuant to SRRA, and the Brownfield Act.

79. Defendant Prometcor, as an operator at the Properties at the time hazardous substances were discharged there, is a discharger and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department and the Administrator pursuant to the Spill Act, N.J.S.A. 58:10-23.11g(c)(1), and for the completion of the remediation of those discharges pursuant to SRRA and the Brownfield Act.

80. Defendant REI, as the knowing purchaser of the contaminated Properties, is a person in any way responsible for any hazardous substance and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department and the Administrator pursuant to the Spill Act, N.J.S.A. 58:10-23.11g(c)(1), and for the completion of the remediation of those discharges pursuant to SRRA and the Brownfield Act.

81. Defendant F&M, as the knowing purchaser of Block 2395.01, which was and is a known-contaminated property, is a person in any way responsible for any hazardous substances and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department and

the Administrator pursuant to the Spill Act, N.J.S.A. 58:10-23.11g(c)(1), and for the completion of the remediation of those discharges pursuant to SRRA and the Brownfield Act.

82. By failing to comply with the 2014 Directive issued pursuant to the Spill Act, REI and F&M are subject to liability, jointly and severally, without regard to fault, in an amount up to three times the cleanup and removal costs and damages that Plaintiffs have incurred, and will incur, to remediate the Site. N.J.S.A. 58:10-23.11f(a)1.

83. Pursuant to N.J.A.C. 7:26C-3.3 and N.J.A.C. 7:26C-14.2, Defendants are subject to direct oversight for their failure to remediate the contamination at the Site and to meet statutory and mandatory remediation timeframes, and they are required to hire a licensed site remediation professional, establish a remediation trust fund for the cost of the remediation, and obtain a response action outcome, among other things.

84. Pursuant to N.J.S.A. 58:10-23.11u(a)(1)(a) and N.J.S.A. 58:10-23.11u(b), the Department may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u(b)(1); for its unreimbursed cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u(b)(2); and for any other unreimbursed costs

or damages the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u(b)(5).

85. Pursuant to N.J.S.A. 58:10-23.11q, the Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Fund.

WHEREFORE, the Department and the Administrator demand judgment in their favor:

a) Ordering Defendants REI and F&M to reimburse the Department and the Administrator, without regard to fault, jointly and severally, in an amount equal to three times their cleanup and removal costs and damages that have been incurred for the remediation at the Site, with applicable interest;

b) Ordering Defendants to reimburse the Department and the Administrator, without regard to fault, jointly and severally, for all cleanup and removal costs the Department and the Administrator have incurred for the remediation at the Site, with applicable interest;

c) Entering declaratory judgment against Defendants REI and F&M, without regard to fault, jointly and severally, in an amount equal to three times the Department's and the Administrator's cleanup and removal costs and damages that will be incurred for the remediation at the Site;

d) Entering declaratory judgment against Defendants, without regard to fault, for any cleanup and removal costs and damages the Department and the Administrator will incur for the remediation at the Site;

e) Ordering Defendants to complete the remedial action in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3(a), SRRA, and all other applicable statutes and regulations including, but not limited to ARRCS and the Tech Regs;

f) Ordering Defendants to comply with direct oversight pursuant to N.J.A.C. 7:26C-14.2 as a result of their failure to meet statutory and mandatory remediation timeframes;

g) Awarding the Department and the Administrator their costs and fees in this action; and

h) Awarding the Department and the Administrator any other relief this court deems appropriate. The Department and the Administrator are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. The Department and the Administrator are specifically seeking to reserve the right to bring a claim in the future for natural resource damages arising out of the hazardous substances existing at the Site.

Count Three – Water Pollution Control Act

86. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 85 above as though fully set forth herein.

87. Defendants RCLC, Prometcor, and the John Doe Corporate Officers are "persons" within the meaning of the WPCA. N.J.S.A. 58:10A-3.

88. It is unlawful for any person to discharge any pollutant into the ground waters of the State, except to the extent the discharge conforms with a valid New Jersey pollutant discharge elimination system permit issued by the Commissioner pursuant to the WPCA, or pursuant to a valid national pollutant discharge elimination system permit issued pursuant to the federal WPCA, 33 U.S.C.A. 1251 to 1387. N.J.S.A. 58:10A-6(a).

89. The unauthorized discharge of pollutants into the ground waters of the State is a violation of the WPCA for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10A-6(a).

90. Defendants RCLC and Prometcor discharged pollutants at the Site, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6(a), nor exempt pursuant to N.J.S.A. 58:10A-6(d) or N.J.S.A. 58:10A-6(p), and they are liable, without regard to fault, for all costs and damages incurred by the Commissioner for

the discharges at the Properties of pollutants into the ground waters of the State. N.J.S.A. 58:10A-6.

91. The John Doe Corporate Officers were responsible for the conduct of defendants RCLC and Prometcor that directly led to the discharges to the ground waters of the State at the Site, and they exercised sufficient authority over defendants RCLC and Prometcor to prevent or correct the occurrence of those discharges and to correct RCLC's and Prometcor's subsequent failure to perform the remediation, but failed to do so.

92. The Commissioner has incurred, and will incur, costs and damages as a result of the discharges of pollutants into the ground waters of the State at the Site.

93. Under N.J.S.A. 58:10A-10c, the Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c(1); for the reasonable costs of any investigation, inspection, or monitoring survey which led to establishment of a violation of the WPCA, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10c(2); any reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10c(3); and the actual amount of any economic benefits accruing to the violator from any

violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the return earned or that may be earned on the amount of avoided costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation, N.J.S.A. 58:10A-10c(5).

WHEREFORE, the Commissioner requests judgment in her favor:

a) Permanently enjoining Defendants RCLC and Prometcor by requiring them to remove, correct, or terminate the adverse effects upon water quality resulting from the unauthorized discharges of pollutants into the ground waters of the State;

b) Entering an order assessing Defendants RCLC and Prometcor, without regard to fault, the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of their violation of the WPCA, including the costs of preparing and litigating this case;

c) Entering declaratory judgment against Defendants RCLC and Prometcor, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of their violation, including the costs of preparing and litigating this case;

d) Entering an order assessing Defendants RCLC and Prometcor, without regard to fault, all reasonable costs incurred for removing, correcting or terminating the adverse effects upon water quality resulting from their unauthorized discharge of pollutants into the ground waters of the State;

e) Entering declaratory judgment against Defendants RCLC and Prometcor, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants into the ground waters of the State;

f) Entering an order assessing Defendants RCLC and Prometcor, without regard to fault, for the actual amount of any economic benefits they have accrued, including any savings realized from avoided capital or noncapital costs, the return they have earned on the amount of avoided costs, any benefits they have enjoyed as a result of a competitive market advantage, or any other benefit they have received as a result of having violated the WPCA;

g) Entering declaratory judgment against Defendants RCLC and Prometcor, without regard to fault, assessing them for the actual amount of any economic benefits that will accrue to them, including any savings to be realized from avoided

capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage they have enjoyed, or any other benefit that will accrue as a result of having violated the WPCA;

h) Awarding the Commissioner her costs and fees in this action; and

i) Awarding the Commissioner such other relief as this court deems appropriate. The Commissioner is not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. The Commissioner reserves the right to bring a claim in the future for natural resource damages arising out of the hazardous substances existing at the Site.

Count Four – Unjust Enrichment

94. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 93 above as though fully set forth herein.

95. Defendants have failed to fully perform or fund the remediation at the Site.

96. Plaintiffs have used and will continue to use public funds to remediate the contamination existing at and emanating from the Properties.

97. Plaintiffs' expenditure of public funds at the Site, which would otherwise be Defendants' obligation to fully fund and/or perform, has unjustly enriched Defendants.

98. Defendants have not reimbursed Plaintiffs for the costs that Plaintiffs have incurred to conduct the remediation of the contamination existing at and emanating from the Properties.

WHEREFORE, Plaintiffs demand judgment in their favor:

a) Declaring that Defendants have been unjustly enriched by Plaintiffs' expenditure of public funds to perform the remediation of the contamination existing at and emanating from the Properties;

b) Ordering Defendants to reimburse Plaintiffs for the costs Plaintiffs have incurred, and will incur, to perform the remediation of the contamination existing at and emanating from the Properties, with applicable interest;

c) Entering judgment against Defendants for all other compensatory and consequential damages; and

d) Awarding the Plaintiffs such other relief as this court deems appropriate.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/: Mark S. Heinzelmann
Mark S. Heinzelmann
Deputy Attorney General

Dated: August 1, 2018

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues involved herein pursuant to R. 4:35-1.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the court is advised that Mark S. Heinzelmann, Deputy Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel certifies that the matters in controversy in this action are currently not the subject of any other pending action in any court or arbitration proceeding known to the State at this time, nor is any non-party known to the State at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such matter or non-party later becomes known to Plaintiffs, an amended certification shall be filed and served on all other parties and with this court in accordance with R. 4:5-1(b)(2).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: /s/: Mark S. Heinzelmann
Mark S. Heinzelmann
Deputy Attorney General

Dated: August 1, 2018