STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

SELAMANI NGARUKO
5805 North Lydell Avenue, #3–418
Whitefish Bay, WI 53217

–and–

CATHERINE VLAHOULIS
401 East Beaumont Avenue, #407
Whitefish Bay, WI 53217

On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

CYPRESS BAYSHORE RESIDENTIAL, LP
c/o CT Corporation System, *Its Registered Agent*
301 South Bedford Street, Suite 1
Madison, WI 53703

–and–

FICTITIOUS DEFENDANTS A–C
Addresses Unknown

Defendants.

Case No.: _____

Case Codes: 30301, 30405, 35002

SUMMONS

THE STATE OF WISCONSIN, to each person or entity named above as a Defendant:

You are hereby notified that the Plaintiffs in the above–captioned action has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action. Within ***45 days*** of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes.

Your answer must be sent or delivered to the Court and Plaintiffs' counsel, whose respective addresses are set forth below:

MILWAUKEE COUNTY CIRCUIT COURT
901 North 9th Street
Milwaukee, Wisconsin 53233

BARTON CERJAK S.C.
Michael J. Cerjak, Esq.
313 North Plankinton Avenue, Suite 207
Milwaukee, Wisconsin 53203

You may have an attorney help you or represent you. If you do not provide a proper answer within ***45 days***, the Court may grant a judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint.

A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 2nd day of August, 2023.

BARTON CERJAK S.C.

/s/ Electronically signed by Michael J. Cerjak
Michael J. Cerjak (SBN: 1056777)
Email: *mjc@bartoncerjak.com*
James B. Barton (SBN: 1068900)
Email: *jbb@bartoncerjak.com*
Joshua S. Greenberg (SBN: 1107959)
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Attorneys for Plaintiffs and the Putative Class

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COMPLAINT

NOW COME Plaintiffs Selamani Ngaruko and Catherine Vlahoulis, by their attorneys, Barton Cerjak S.C., on behalf of themselves and all others similarly situated, and for their Class Action Complaint against Defendants, Cypress Bayshore Residential, LP and Fictitious Defendants A–C (collectively, "Defendants"), allege and state as follows:

OVERVIEW

1. Through no fault of their own, more than thirty tenants in a new, luxury apartment complex located at Bayshore are living in an environmentally contaminated building laden with a known carcinogen called trichloroethylene.

2. These residents face this unfortunate plight because, as publicly available records make plain, the developers of the project elected to occupy the premises before conducting post–construction testing of a building that: (a) they knew was needed based on a pre–construction assessment performed by its environmental engineer; and (b) repeatedly recommended over the course of years by the Wisconsin Department of Natural Resources ("DNR").

3. Indeed, the site on which this new development sits was a former landfill, and since no later than August 2021—two years ago before construction even began—Defendants knew the soil on which their luxury apartment complex would be constructed had environmental concerns.

4. So, in the face of these known concerns, why wasn't post–construction testing performed before the developers began moving prospective tenants into the most at risk building of the complex? Alas, Defendants' engineer summed it up succinctly: any delay in achieving occupancy would have a "*major impact[ ]*" to the project's "*economics*." (*See infra*.)

5. As a result, Plaintiffs and the Class (defined *infra*) were unwittingly shepherded into the complex and thus, unwittingly exposed to excessive levels of TCE, all of which could have been avoided had Defendants not eschewed the DNR's stern advice to make sure the site was safe before moving in prospective tenants. Accordingly, this action seeks to hold Defendants accountable for the foreseeable consequences of their own malfeasance.

THE PARTIES

6. Plaintiff, Selamani Ngaruko, is an adult resident of the state of Wisconsin whose principal residence is located at 5805 North Lydell Avenue, #3–418, Whitefish Bay, WI 53217.

7. Plaintiff, Catherine Vlahoulis, is an adult resident of the state of Wisconsin whose principal residence is now located at 401 East Beaumont Avenue, #407, Whitefish Bay, WI 53217.

8. According to the Wisconsin Department of Financial Institution's records, Defendant, Cypress Bayshore Residential, LP ("Cypress Bayshore"), is a foreign limited partnership whose principal place of business is located at 8144 Walnut Hill Lane, Suite 1200, Dallas, TX 75231.

9. On information and belief, Fictitious Defendants A, B, & C are unknown parent, subsidiary, or affiliate entities and/or corporate predecessors of Cypress Bayshore that participated in the design, development, marketing, and leasing of the Lydell Apartments. Pursuant to Wis. Stat. § 807.12(2), the pleadings of this action will be amended once the true identities of these entities are revealed.

JURISDICTION AND VENUE

10. On information and belief, this Court has personal jurisdiction over Defendants pursuant to Wis. Stat. §§ 801.05(1)(d), (3), and (6) because, *inter alia*: (i) Defendants engage in substantial, non–isolated activities within this State; (ii) this action concerns local acts and omissions committed by Defendants that caused Plaintiffs and the Class to sustain injuries in this State; and (iii) the case involves rental property located within this State.

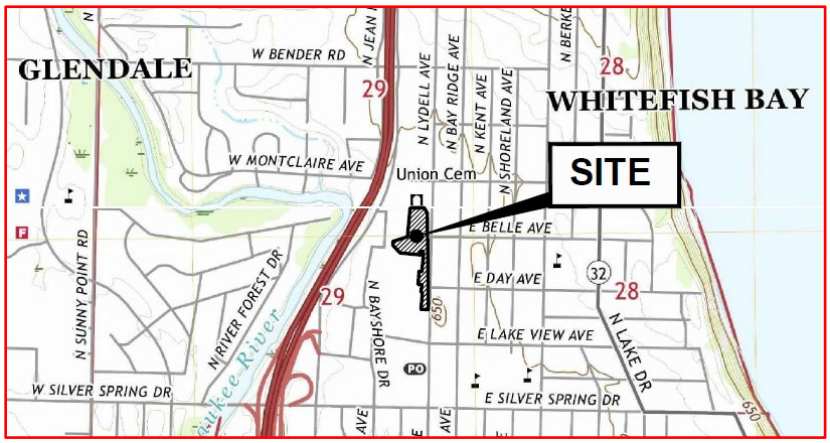
11. Jurisdiction is proper in this Court alone because: (i) the amount in controversy relative to the Class claims does not exceed $5 million in the aggregate; and (ii) the amount in controversy relative to each individual claim does not exceed $75,000.

12. Venue is proper in Milwaukee County pursuant to Wis. Stat. §§ 801.50(2)(a), (b) & (c) because it is the county where Plaintiffs' and the Class's claims arose, the real property which is the subject of the claims is situated, and Defendants conduct substantial business in this county through their redevelopment and marketing of this real property.

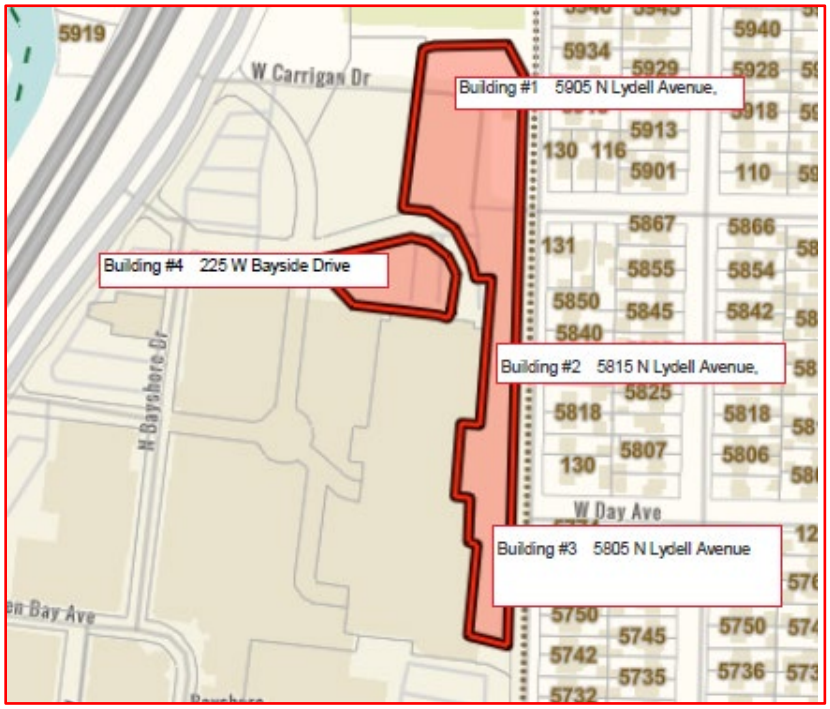
FACTUAL ALLEGATIONS COMMON TO ALL CLASS MEMBERS

The Lydell – Background

13. The Lydell is a new luxury apartment community in Glendale's Bayshore, a mixed-use complex including retail shops, restaurants, offices, and residential units. The site of the community rests between Lydell Avenue and Bayshore Drive, as depicted below:



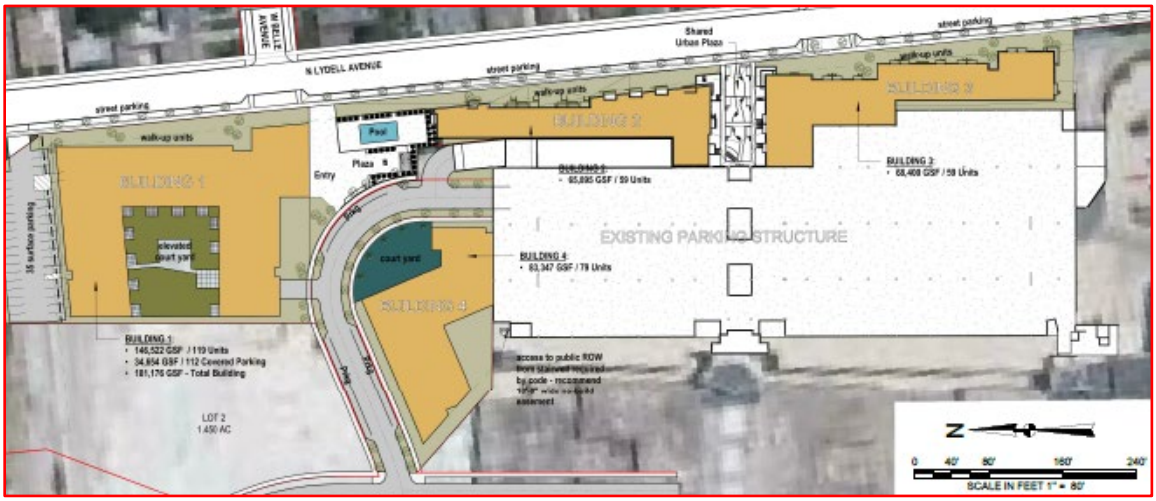
14. The Lydell is a collection of four buildings—referred to as Building 1, Building 2, Building 3, and Building 4—which are depicted in the site map below:



The Lydell: Defendants Were Aware Of Trichloroethylene On The Site Of Building 3 Prior To Beginning Construction

15. Construction of the Lydell was slated to begin in late 2021, where the site was being developed on an area that was historically used as a landfill.

16. Given the historic presence of landfilled materials at the site, it was apparent that there could be variability with respect to the presence of volatile organic compounds at the site's different buildings.



17. As such, before construction began, Defendants—through their environmental engineer, GeoEnvironmental ("GZA")—performed an assessment on the soil and groundwater at various site locations to assess potential environmental issues. GZA's pre-construction assessment identified the presence of volatile organic compounds concentrated in the area where Building 3 was slated to be constructed; specifically the results revealed elevated levels of trichloroethylene ("TCE"). *See* NR 724 Remedial Action Design Report Bayshore Town Center, which is accessible via the link below:

- https://apps.dnr.wi.gov/botw/DownloadBlobFile.do?docSeqNo=261173&docName=20210813_43_Vapor_Screening_Assessment.pdf&docDsn=592293 (see Figure 6 on page 25 of 69).

18. GZA prepared a report that disclosed the presence of these compounds to and for an entity that, on information and belief, is affiliated with Defendants. *See id.* (page 1 of 69).

19. GZA's findings regarding the elevated levels of TCE at Building 3's contemplated location was also reported to the State of Wisconsin Department of Natural Resources ("DNR") in GZA's August 13, 2021 correspondence. Specifically, the correspondence provided a summary that demonstrated the specific concentration of TCE in soil and groundwater relative to Building 3:

Building 1
GZ-3 4.5-6' Naph *1,420J* ug/kg Soil to GW
GB-2 Benz 2.8 ug/l PAL

Building 2
GB-207 TCE 1.4 ug/l PAL
GB-209 TCE 1.6 ug/l PAL

Building 3
GB-205 TCE 2 ug/l PAL
GB-204 25' from VC 1.5 ug/l ES
GB203 40' from TCE 3.7 ug/l PAL
GB-202 TCE .52 ug/l PAL
GB-201 40' from TCE 5.2 ug/l ES
GB-200 25' from TCE 0.82ug/l PAL
GB-10 TCE 2.6 ug/l PAL
GZ-MW-14 TCE 0.88 ug/l PAL
GZ-14 2-3.5' cis-DCE *200* ug/kg Soil to GW
GZ-14 2-3.5' TCE *340* ug/kg Soil to GW
GZ-15
GZ-G-3 >5% LEL CH4
GP-204 >5% LEL CH4

See August 13, 2021 E-mail from John Osborne of GZA to David Hanson of DNR, which is accessible pursuant to the link below:

- *https://apps.dnr.wi.gov/botw/DownloadBlobFile.do?docSeqNo=261173&docName=20210813_43_Vapor_Screening_Assessment.pdf&docDsn=592293*.

20. By 2021, then, based on GZA's pre-construction environmental assessment, it was known that Building 3 presented a higher risk for TCE exposure than other areas of the Lydell development.

The Science: TCE Is A Known Carcinogen

21. According to the *15th Report on Carcinogens* (the "*Report*"), a publication released in December 2021 by the U.S. Department of Health and Human Services ("DHHS"), TCE "is *known to be a human carcinogen* based on sufficient evidence of carcinogenicity from studies in humans." *See Report* at 1 (emphasis in original), a true and correct copy of which is set forth in the hyperlink below:

- *https://ntp.niehs.nih.gov/sites/default/files/ntp/roc/content/profiles/trichloroethylene.pdf*)

22. As the *Report* explained, "[s]tarting in the early 1900s, [TCE] was primarily used as a degreaser, to remove grease, wax, or dirt form metal parts before painting, plating, or other processes[,]" but its usage in this capacity declined in the 1970s. (*See id.* at 3 (Use).)

23. TCE is classified as a hazardous substance by multiple federal regulations, including the Clean Air Act, the Clean Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), to name a few. (*See id.* at 5–6 (Regulations).)

24. In fact, the Environmental Protection Agency's ("EPA") National Air Toxics Program designated TCE as one of thirty–three hazardous air pollutants that present the greatest threat to public health in urban areas. (*See id.*)

25. Indeed, excessive exposure to TCE has been causally connected to developing numerous types of cancer, including kidney cancer, Non–Hodgkin Lymphoma, and liver cancer. (*See id.* at 1–2 (Carcinogenicity).) According to the Centers for Disease Control and Prevention, for women who are or may become pregnant, TCE exposure could lead to development problems for their babies, including heart defects.

The DNR Advises Defendants That A Vapor Investigation Is Required And That Testing Should Be Performed Before Occupancy

26. On August 20, 2021, the DNR indicated to GZA that a vapor investigation at the site would be required as a result of the previously done assessment.

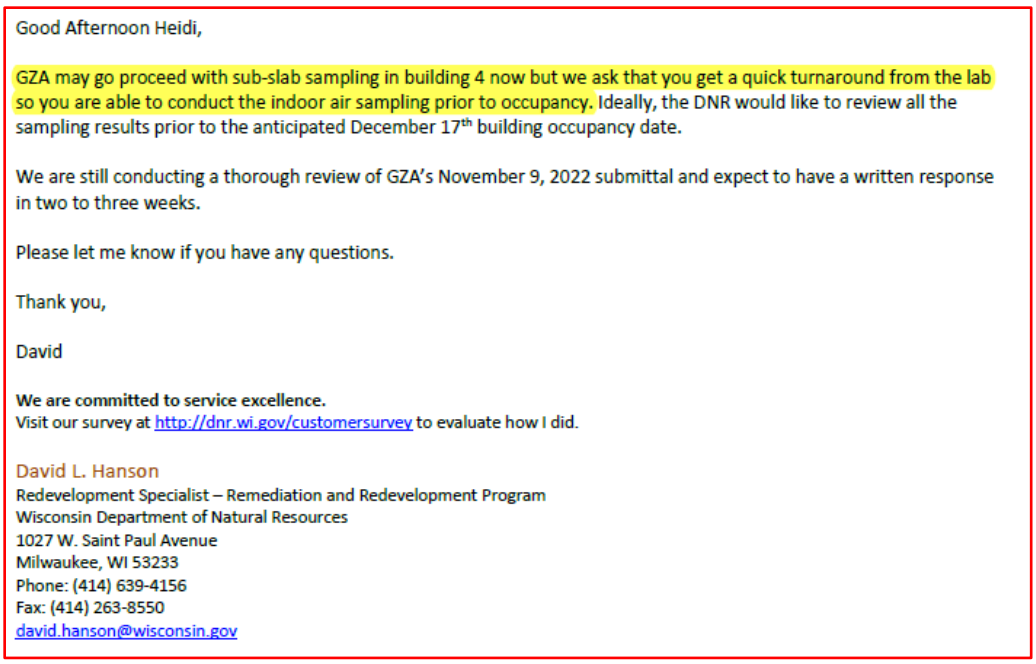
27. In November 2022, GZA submitted a schedule for vapor and indoor air sampling of the residential buildings at the Lydell to DNR.

28. In connection with submitting this schedule, however, GZA—on behalf of Defendants—informed DNR that occupancy of certain buildings at the site would occur *before* testing results were available due to financial concerns:

> Hi Dave,
> On behalf of Cypress Equities (RP for Bayshore Town Center) and Bayshore Shopping Center Property Owner, LLC (Owner and operator of the Residential Buildings 1-4 on Lots 3 and 4), GZA wanted to provide you with a schedule for the vapor and indoor air sampling of the residential buildings. Construction is progressing and Building 4 will be the first building to be occupied; the anticipated opening date for the building is December 17th. All of the buildings have been constructed with sub-slab piping connected to a riser as a passive vapor mitigation system. In accordance with our vapor assessment work plan already submitted to you, GZA is working to get the sub-slab and indoor air samples collected at Building 4 following the start up of the HVAC system to allow collection of samples that are representative of occupied conditions. We have been made aware that there will be a brief period between HVAC start up and occupancy. GZA is working to coordinate the sample collection before occupancy, which is likely the week following Thanksgiving. However, we understand occupancy will begin to occur prior to the laboratory results being available for Building 4. One of the primary purposes of the vapor sampling is to confirm the passive sub-slab system is adequate or would require blower installation to increase depressurization beneath the building, should concentrations happen to exceed the applicable VSRLs. Given the general lack of VOC detection in the area of these Building 4, we feel confident that an active system is unlikely to be necessary as we have discussed previously. Therefore, we are proposing to collect the air and vapor samples following at least 24 hours of HVAC system operation. Vapor samples will be tested under TO-15 (sub slab) and TO-17 (passive air samples for 7 days) targeted for CVOC analytes.
>
> We are requesting confirmation from the Department before proceeding with this approach. If we were to wait at least 30 days following construction of the building to receive the vapor sampling results, the economics for the Building will be majorly impacted. We appreciate your consideration of this approach and ask you to contact me with any questions.
>
> Thank you,
> Heidi

29. On information and belief, Defendants directed and/or pressured its agent GZA to request that occupancy be permitted prior to the completion of testing due to financial concerns.

30. Not surprisingly, the DNR cautioned Defendants otherwise and advised Defendants (through GZA) that indoor air sampling needed to be performed *prior to occupancy*:



Good Afternoon Heidi,

GZA may go proceed with sub-slab sampling in building 4 now but we ask that you get a quick turnaround from the lab so you are able to conduct the indoor air sampling prior to occupancy. Ideally, the DNR would like to review all the sampling results prior to the anticipated December 17th building occupancy date.

We are still conducting a thorough review of GZA's November 9, 2022 submittal and expect to have a written response in two to three weeks.

Please let me know if you have any questions.

Thank you,

David

We are committed to service excellence.
Visit our survey at http://dnr.wi.gov/customersurvey to evaluate how I did.

David L. Hanson
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Wisconsin Department of Natural Resources
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Milwaukee, WI 53233
Phone: (414) 639-4156
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david.hanson@wisconsin.gov

31. Thus, by December 2022, Defendants knew that—based on its pre-construction assessment performed a year prior—a competent and robust vapor investigation at the site, supported by post-construction air samples, was needed before obtaining occupancy and shepherding unwitting tenants into the site's various buildings.

Defendants Flout The DNR's Advice, Start Moving Tenants In Before Testing Is Completed, And Try To Conceal Results

32. On information and belief, however, Defendants disregarded the DNR's recommendations and began moving tenants into the Lydell before completing necessary testing. Indeed, on information and belief, residents in some cases were moved in before construction was even completed.

33. And with respect to Building 3—the site location that Defendants knew had the highest concentration of TCE based on its pre-construction assessment—Defendants failed to timely advise the DNR as to its occupancy schedule.

34. Indeed, DNR was not even aware that—when Defendants ultimately furnished post–construction tests results in June 2023 that were supposed to be completed before occupancy even occurred—Lydell tenants had already been living in Building 3 since the end of March/beginning of April 2023.

35. In fact, the DNR even followed up with Defendants/GZA in March 2023 to request an update on their post–construction test results, but never received any response or information concerning Building 3's testing and/or its occupancy.

36. On information and belief, Defendants actively misled the DNR and elected to move prospective tenants into Building 3 without completing the requisite testing that the DNR recommended given Defendants' self–professed concern about the "major impact[ ]" this would have on the development's "economics."

37. The resulting consequences of Defendants' corporate decision making were all too predictable: when Defendants finally reported Building 3's test results to the DNR in June 2023, they revealed an elevated presence of TCE in some areas of the building at more than 100 times acceptable levels. The results in some individual units were measured at more than 30 times acceptable levels.

38. After the DNR and the local public health department became aware that tenants were living in Building 3, the agencies required Defendants to immediately notify these Lydell residents given these health concerns.

39. Rather than heed the advice from these agencies and inform Lydell residents in a straightforward manner, Defendants attempted to mislead their tenants.

40. For example, government officials provided Defendants with a letter to use for notifying their tenants of the elevated TCE levels in Building 3, which Defendants' site lead, John Ausburn ("Ausburn"), swiftly rejected; Ausburn then asked GZA to rewrite the proposed letter and downplay the severity of exposing Lydell tenants to TCE, so it did not "*make it sound like the [tenants] have had a month–long exposure to the plague*[:]"

From: John Ausburn <John.Ausburn@cypressequities.com>
Sent: Wednesday, June 14, 2023 3:00 PM
To: John Osborne <John.Osborne@gza.com>; Heidi Woelfel <Heidi.Woelfel@gza.com>
Subject: [EXTERNAL] FW: Bayshore Check-in

John,
You are doing a letter also, right? I don't think we will be willing to agree with the attached one. It is far too overreactive and one-sided. Send me your version, one that doesn't make it sound like the tenant's have had a month-long exposure to the plague.
Thanks,
John

41. On information and belief, a letter that Defendants drafted and disseminated ultimately included two inaccuracies, which required government officials to send their own letter less than a week later to correct these misstatements.

42. On information and belief, at Defendants' direction, tenants were told that the TCE levels were "*not a big deal*" and that government officials were "*blowing the situation out of proportion*." In other words, at Defendants' direction, exposing Lydell residents to a known carcinogen was minimized and concealed.

43. On information and belief, Defendants also worked to limit access to media to keep information about TCE issues at the Lydell out of the public sphere and press. For example, Defendants also requested that their notices to the residents be marked "*personal and confidential*" to

"*give the tenants some pause before posting it on the internet*," and security officers were hired to prevent journalists from accessing tenants.

44. On information and belief, Defendants further attempted to keep government officials from speaking to tenants.

45. Moreover, although Defendants were advised in mid–June 2023 not to accept any new tenants in Building 3 due to the ongoing, elevated TCE levels reflected in Defendants' post–construction air samples, Defendants continued to place new tenants into Building 3 as late as July 3, 2023, or later.

46. Based on the course of conduct, Defendants sought to actively mislead and conceal the condition of the premises to prospective and current tenants of Building 3.

Some Residents Evacuated, While Others Are Offered Next To Nothing For A Confidential And General Release

47. By July 17, 2023, TCE remediation efforts failed, and ongoing levels detected at Building 3 resulted in the need to evacuate six units.

48. Remaining tenants have been offered $500 in exchange for terminating their lease agreements, but with a catch: any tenant must fully release any and all claims against Defendants and related entities as well as keep the terms of the agreement confidential.

49. In other words, Defendants seek to bar future injury claims that some tenants may develop as a result potential chronic exposure to a known carcinogen as well as claims for the economic injury and inconvenience associated with displacement.

FACTUAL ALLEGATIONS SPECIFIC TO THE NAMED PLAINTIFFS

Plaintiffs Sign Leases And Move In, But Are Not Told Of The Risks Or Issues

50. Relocating to Wisconsin for work, Selamani Ngaruko toured the Lydell in March 2023. He was assured that the building was ready for occupancy, and on March 24, 2023, executed a lease agreement for Unit 418 in Building 3 to begin on April 1, 2023.

51. Catherine Vlahoulis toured the facility in April 2023 and entered into a lease agreement for Unit 404 in Building 3 to begin on May 18, 2023. She too was advised that the building was ready for occupancy.

52. The leases for both Mr. Ngaruko and Ms. Vlahoulis were standard form agreements, and completed electronically. Other than limited portions specific to unit and tenancy, they could not be changed and contained the same terms.

53. The form rental agreements are governed by and subject to Wisconsin law and require Defendants to keep the premises safe, sanitary, and habitable consistent with prevailing law.

54. At no point before signing their respective leases, however, were either Mr. Ngaruko or Ms. Vlahoulis informed that: (a) Defendants' pre–construction environmental assessment revealed elevated levels of TCE; (b) given the health hazards associated with the exposure to TCE, the DNR expressly recommended that Defendants conduct post–construction air sampling to ensure that this hazardous condition was sufficiently remediated; and (c) Defendants flouted the DNR's advice, failed to conduct this testing, and moved Mr. Ngaruko, Ms. Vlahoulis, and other fellow residents into Building 3 anyway.

55. Had either Mr. Ngaruko or Ms. Vlahoulis known about the risks of the serious health and safety threat that existed in Building 3—facts plainly material to any prospective tenant—neither would have ever entered into an agreement to rent an apartment at the Lydell.

56. Kept oblivious of these material facts that Defendants concealed and misrepresented, Mr. Ngaruko, Ms. Vlahoulis, executed their respective leases and moved into the Lydell.

57. At this time, Ms. Vlahoulis has moved her family out of the Lydell and sought medical evaluation, while Mr. Ngaruko is in the process of doing the same.

CLASS ACTION ALLEGATIONS

58. Plaintiffs bring this action pursuant to Section 803.08(2)(a), (2)(b), and (2)(c) of the Wisconsin Statutes on behalf of themselves and the members of the following proposed class:

The Class: All lessees of Building 3 at the Lydell.

59. Subject to additional information that will be obtained through further investigation and discovery, the foregoing class and any potential subclasses (collectively, the "Class" unless otherwise noted) may be expanded or narrowed by an amendment to the pleadings. The following parties, however, are specifically excluded from the Class: Defendants; any of Defendants' parent companies, subsidiaries, affiliates, dealers, successors, assigns, officers, directors, legal representatives, employees, agents, family members, and/or co–conspirators; all governmental entities, and any judge, justice, or judicial officer presiding over this matter.

60. **Numerosity**: Members of the Class are so numerous that joinder of all members is impracticable pursuant to Wis. Stat. § 803.08(1)(a). The Class is composed of more than thirty tenants who signed leases for Building 3 at the Lydell. Although the exact number of Class members is not yet known, the Class is readily identifiable from information and records in Defendants' possession, custody, and control and can be ascertained through appropriate discovery.

61. **Commonality**: There are questions of law or fact common to the Class pursuant to Wis. Stat. § 803.08(1)(b). Such legal or factual questions include but are not limited to:

i. Whether each tenant signed a form lease agreement subject to Wisconsin law.

ii. Whether the lease agreements are enforceable under Wisconsin law.

iii. When and to what extent Defendants decided to occupy the Lydell notwithstanding environmental contamination concerns.

iv. Whether Plaintiffs and the Class have experienced out–of–pocket and/or pecuniary losses as a result of Defendants' conduct.

v. Whether Plaintiffs and the Class are entitled to damages and/or other monetary relief and, if so, in what amount or form should it take.

62. **Typicality**: Plaintiffs' claims are typical of the claims of the Class pursuant to Wis. Stat. § 803.08(1)(c) because all Class members are similarly affected by Defendants' conduct: indeed, Plaintiffs and the Class: (i) leased apartments at the Lydell developed and marketed by Defendants; (ii) have, are, or will suffer the same or similar monetary harm caused by renting apartments at the Lydell, being exposed to potential carcinogens, and being displaced as a result of the presence of TCE; and (iii) are all residents of the state of Wisconsin where the events described herein occurred. Accordingly, Plaintiffs and the Class's claims are subject to Wisconsin law and all Class members may enforce their rights against Defendants pursuant to the claims identified below.

63. **Adequacy**: Plaintiffs will fairly and adequately protect the interests of the Class pursuant to Wis. Stat. § 803.08(1)(d) because: (i) neither Plaintiff nor counsel has interests that conflict with the interest of the Class they represent, as all want to hold Defendants accountable for the harm; (ii) Plaintiffs are willing and able to vigorously litigate this action on behalf of the Class; and (iii) proposed class counsel has the qualifications, experience, capabilities, and sufficient resources to handle the case as a class action.

64. Pursuant to Wis. Stat. § 803.08(2)(a), litigating this matter as a class action, as opposed to separate actions brought by individual Class members, alleviates the risk of: (i) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants; and/or (ii) adjudications of individual Class members' actions that may, as a practical matter, be dispositive of the interests of other Class members not parties to the individual adjudications, or substantially impair or impede their ability to protect their interests.

65. Pursuant to Wis. Stat. § 803.08(2)(b), Defendants have acted or refused to act on grounds that apply to the Class, thus rendering final injunctive relief, equitable relief, and/or a corresponding declaratory judgment with respect to the Class as a whole appropriate.

66. Pursuant to Wis. Stat. § 803.08(2)(c), the questions of law or fact common to the Class predominate over any questions affecting only individual Class members, thus a class action is superior to other available methods of fairly and efficiently adjudicating this controversy.

67. Treatment of this controversy as a class action is therefore a superior means of effectuating its fair and efficient adjudication. Such treatment will permit a large number of similarly situated Class members to litigate their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense. The benefits of the Class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

68. Additionally, the amount of monetary damages at issue for each claim is such that the expenses of litigating each Class member's claims individually would be cost prohibitive, so much so that proceeding individually would deny Plaintiffs and the Class members a viable remedy.

Proceeding by way of class action is therefore the only fair, efficient, economical, and sensible way to vindicate the injuries that Plaintiffs and the Class members have sustained.

69. Plaintiffs know of no difficulty, nor can Plaintiffs foresee any difficulty, that they may have in maintaining this class action that would preclude its maintenance as such.

70. The undersigned counsel for Plaintiffs and the Class request that this Court appoint them to serve as Class counsel, first on an interim basis and then on a permanent basis, pursuant to Wis. Stat. § 803.08(12), as the undersigned counsel has: (i) done substantial work in identifying and investigating the claims brought in this action; (ii) experience handling complex litigation and the types of claims asserted in this action; (iii) knowledge of the applicable law; and (iv) sufficient resources to commit to the representation of the Class. Moreover, the undersigned counsel will fairly and adequately represent the interests of the Class. *See* Wis. Stat. §§ 803.08(12)(b)(1) & (2)(a).

COUNT I: STATUTORY VIOLATION OF WIS. STAT. § 100.20 & WIS. ADMIN. CODE ATCP § 134.04 (Against All Defendants)

71. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

72. Plaintiffs bring this claim on behalf of the Class identified above.

73. Section 100.20 of the Wisconsin Statutes ("Section 100.20") prohibits individuals and entities from engaging in unfair trade practices. Wis. Stat. § 100.20(1).

74. To that end, Section 100.20 authorizes Wisconsin's Department of Agriculture, Trade and Consumer Protection ("DATCP") to "issue general orders forbidding methods of competition in business or trade practices in business which are determined by the [DATCP] to be unfair." *Id.* § 100.20(2)(a).

75. The statute vests any person who suffers pecuniary loss stemming from a violation of "any order issued under [Section 100.20]" with a cause of action to sue for damages in a court of competent jurisdiction. *Id.* § 100.20(5).

76. Relevant here, Chapter ATCP 134 of Wisconsin's Administrative Code ("ATCP 134") specifies certain residential rental practices to which a "landlord" must adhere in leasing residential units to Wisconsin consumers. *See* Wis. Admin. Code ATCP §§ 134.01 *et seq*.

77. ATCP 134 was adopted under the authority of Section 100.20(2) and is enforceable through a private right of action pursuant to Section 100.20(5). Thus, Plaintiffs may enforce the mandates of ATCP 134 by way of a Section 100.20(5) claim on behalf of themselves and members of the Class.

78. Applied here, ATCP § 134.04(4) specifies certain disclosure requirements that a "landlord" must make before leasing a residential space, including disclosures of conditions related to habitability:

> CODE VIOLATIONS AND CONDITIONS AFFECTING HABITABILITY. Before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant, the landlord shall disclose to the prospective tenant:
>
> …
>
> (b) The following conditions affecting habitability, the existence of which the landlord knows or could know on basis of reasonable inspection, whether or not notice has been received from code enforcement authorities:
>
> …
>
> 4. Any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises other than negligent use or abuse of the premises by the tenant.

Wis. Admin. Code ATCP § 134.04(2).

79. In this case, Defendants, the landlord, failed to disclose to Plaintiffs, the tenants, conditions that could have been known to landlord that represented a substantial hazard and unreasonable risk of injury to Plaintiffs, *i.e.*, environmental contamination, and all other tenants of Building 3.

80. Neither Plaintiffs, nor any member of the Class—nor any reasonable, prospective tenant, for that matter—would have executed the lease agreement with Defendants had Defendants been honest brokers and explained the truth; namely, that they ignored the DNR's recommendations to perform testing prior to occupancy.

81. As a result of Defendants' violations of ATCP 134, Plaintiffs and the Class have suffered pecuniary loss, including but not limited to moving expenses, rent payments, and the loss of use of their premises and property, medical monitoring expenses and costs, as well as displacement.

82. Accordingly, Plaintiffs and the Class bring this claim for Defendants' violations of ATCP 134 through the Class's authority under Wis. Stat. § 100.20 and seek recovery for the losses suffered—in addition to the other remedies set forth under this statute, including exemplary damages and attorneys' fees—in an amount to be determined at trial.

COUNT II: STATUTORY VIOLATION OF WIS. STAT. § 100.20 & WIS. ADMIN. CODE ATCP § 134.09 (Against All Defendants)

83. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

84. Plaintiffs bring this claim on behalf of the Class identified above.

85. Apart from a landlord's disclosure obligations pursuant to ATCP § 134.04, the Code also proscribes certain conduct designed to induce prospective tenants into a rental agreement:

> MISREPRESENTATIONS. (a) No landlord may do any of the following for the purpose of inducing any person to enter into a rental agreement:
>
> > 1. Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.

Wis. Admin. Code ATCP § 134.09(9)(a)(1).

86. As alleged above, Defendants offered the Lydell as new units safe and ready for occupancy.

87. As the foregoing makes clear, however, these representations were false; Defendants represented the Lydell to Plaintiffs and the Class as safe and ready for occupancy when, in fact, the necessary and recommended testing had not yet even been performed.

88. In other words, neither characteristics of the Lydell nor its equivalency to other, comparable developments were accurate.

89. Nonetheless, Defendants made these false advertisements to induce Plaintiffs and the Class to enter their respective leases at the Lydell and thus unwittingly expose themselves to a serious environmental hazard.

90. Neither Plaintiffs, nor any member of the Class—nor any reasonable, prospective tenant—would have executed their respective lease agreements had Defendants not made these false representations.

91. Accordingly, Plaintiffs and the Class bring this claim for Defendants' violations of ATCP 134 through the Class's authority under Wis. Stat. § 100.20 and seek recovery for the losses suffered—in addition to the other remedies set forth under this statute, including exemplary damages and attorneys' fees—in an amount to be determined at trial.

WHEREFORE, Plaintiffs respectfully request the following relief, as allowed pursuant to the above–referenced facts, the applicable caselaw, and the governing statutes:

(A) Certification of the Class under Section 803.08(3) of the Wisconsin Statutes;

(B) Appointment of Plaintiffs as class representatives and the undersigned counsel as class counsel, including as pre–certification interim counsel;

(C) An order that Defendants disgorge all rents, monies, revenues, tax credits, and/or profits they wrongfully obtained as a result of their acts and practices alleged in this Complaint;

(D) That the Court award Plaintiffs and the Class compensatory and/or restitutionary damages;

(E) That the Court award Plaintiffs and the Class punitive and/or exemplary damages in accordance with applicable law;

(F) That the Court award Plaintiffs and the Class costs and attorneys' fees incurred in connection with prosecuting this action; and

(G) That the Court award any other relief it deems just and equitable under the circumstances.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE

Dated this 2nd day of August, 2023.

BARTON CERJAK S.C.

/s/ Electronically signed by Michael J. Cerjak
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