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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

ALYSSA ISENSTEIN KRUEGER and
ROBERT KRUEGER, SCOTT MEEKER
and ERIN MEEKER, KELLY GOODWIN,
ELIZABETH MARRE and DARRYL
OBEIRNE, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

BULLSEYE GLASS CO., an Oregon
corporation,

Defendant.

CIVIL ACTION NO. _____

CLASS ACTION COMPLAINT
(Equitable Relief Only)

**CLAIM NOT SUBJECT TO MANDATORY
ARBITRATION**
ORS 21.135(2)(a)

INTRODUCTION

1.

Plaintiffs Alyssa Isenstein Krueger, Robert Krueger, Scott Meeker, Erin Meeker, Kelly Goodwin, Elizabeth Marre and Darryl OBeirne (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, allege the following against Bullseye Glass Co. (“Defendant” or “Bullseye”), based, where applicable, on personal knowledge, information, and belief, and the investigation and research of counsel. Pursuant to ORCP 32J, Plaintiffs presently seek equitable relief but have provided notice and demand to Defendant pursuant to ORCP 32H and intend to amend their complaint to seek damages after the expiration of the period set forth in that rule.

1 **NATURE OF THE ACTION**

2 2.

3 Southeast Portland is home to thousands of families, vibrant businesses, and thriving schools.
4 The people who live and work in this neighborhood represent a broad range of ethnic, socio-economic,
5 and age groups. Indeed, this diverse neighborhood is one of the most dynamic in the City, and has been
6 key to shaping Portland and its culture.

7 3.

8 Decades ago, citizens in Southeast Portland were instrumental in preventing the Mount Hood
9 Highway from being built through their neighborhood, an event often noted as being one of the most
10 important decisions in making Portland such a special place today. In fact, in 1974—near the time when
11 the community defeated the ill-conceived highway project—Defendant Bullseye Glass Co. opened its
12 Portland factory just half a mile from where the freeway would have been. Since that time, Bullseye has
13 been using the neighborhood’s air and backyards as a dumping ground for the arsenic, cadmium,
14 hexavalent chromium, and other toxins it sends up its smokestacks. Notwithstanding the fact that
15 Bullseye uses thousands of pounds each year of these toxic heavy metals in its glass furnaces, it has
16 decided not to install any pollution control technology to capture these pollutants; it freely sends waste
17 from its furnaces into the air of Southeast Portland. Once Bullseye emits this toxic pollution, children
18 inhale it, it lands on skin, in yards, and on playgrounds. It is taken up by the vegetables in backyard
19 gardens, and it comes into homes on the soles of people’s feet, on pets’ fur, and by other routes. Once
20 inside homes and bodies, these toxins create profound health risks for people, particularly children and
21 those with medical sensitivities.

22 4.

23 Over the past several decades, Bullseye has emitted sufficient amounts of toxic heavy metals to
24 make Southeast Portland a “hotspot” of these pollutants; the Oregon Department of Environmental
25 Quality (“DEQ”) measured arsenic in Southeast Portland at over 159 times state-established safety
26 levels, and cadmium at 49 times safety levels. Bullseye knew or should have known that it is and has
27 been emitting significant amounts of toxic materials. In fact, Bullseye privately lobbied the United
28 States Environmental Protection Agency to create an exemption in Clean Air Act regulations so that it

1 would not need to treat or filter the emissions from its smokestacks. As a result, Bullseye has
2 contaminated homes, businesses, and families.

3 5.

4 Plaintiffs bring this action pursuant to Oregon Rules of Civil Procedure (“ORCP”) 32,
5 individually and on behalf of those similarly situated, in order to protect themselves, their families, and
6 their community.

7 **JURISDICTION AND VENUE**

8 6.

9 All of the claims giving rise to this action accrued in Multnomah County, Oregon. Defendant
10 engages in regular, sustained business in Multnomah County and is a registered Oregon Corporation.
11 Further, Plaintiffs affected by Defendant’s conduct reside in Multnomah County. Defendant’s corporate
12 headquarters are also located in Multnomah County.

13 7.

14 The claims in this case are based solely on State law. Plaintiffs make no federal claims in this
15 case. All plaintiffs are Oregon citizens.

16 **THE PARTIES**

17 8.

18 Plaintiffs Alyssa Isenstein Krueger, Robert Krueger, Scott Meeker, Erin Meeker, Kelly
19 Goodwin, Elizabeth Marre and Darryl OBeirne are residents and citizens of Multnomah County,
20 Oregon.

21 9.

22 Defendant Bullseye Glass Co. is a domestic corporation doing business in roughly 29 states and
23 22 foreign countries and is organized under the laws of Oregon, with its principal place of business at
24 3722 SE 21st Avenue, Portland, Oregon 97202.

1 **FACTS**

2 **A. Southeast Portland’s Air**

3 10.

4 For at least the past decade, state agencies, including the Department of Environmental Quality
5 (“DEQ”), have known that Portland’s air contains high levels of a variety of toxic contaminants. For
6 example, DEQ has known that there are unexpectedly high levels arsenic and cadmium in the City’s air.
7 Despite knowing of concerning levels of air toxics, DEQ was apparently unable to locate the sources of
8 the contaminants.

9 11.

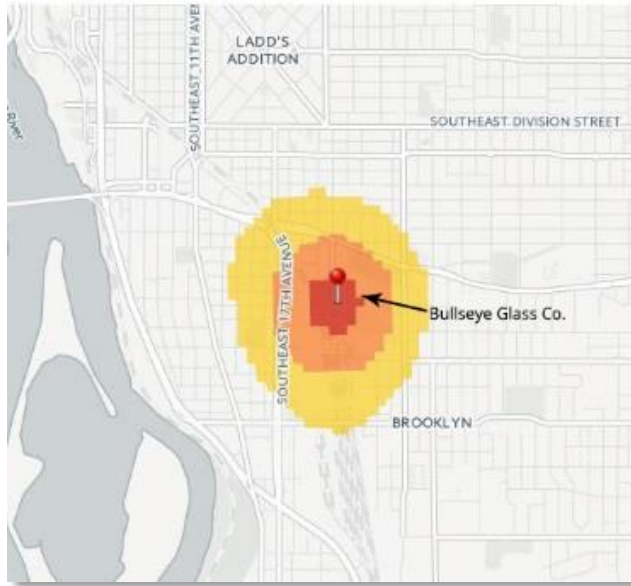
10 In 2012, researchers at the United States Forest Service began collecting moss from trees to track
11 air quality across the City. Because moss grows on trees, which are stationary, it absorbs and stores the
12 nutrients and toxins in the air and water in the tree’s immediate environment, which it then stores.
13 Because moss lacks roots, any contaminants found in moss are derived solely from the air or rain, rather
14 than from the soil.

15 12.

16 By the time the researchers had gathered the moss, analyzed its contents, and then mapped their
17 results, it became apparent that there was something terribly wrong taking place in Southeast Portland.
18 Those maps show dangerously high levels of cadmium and other heavy metals in the air, with a
19 proverbial “bullseye” at the center. That bullseye, in fact, centers on Defendant Bullseye’s glass
20 production facility in Southeast Portland.

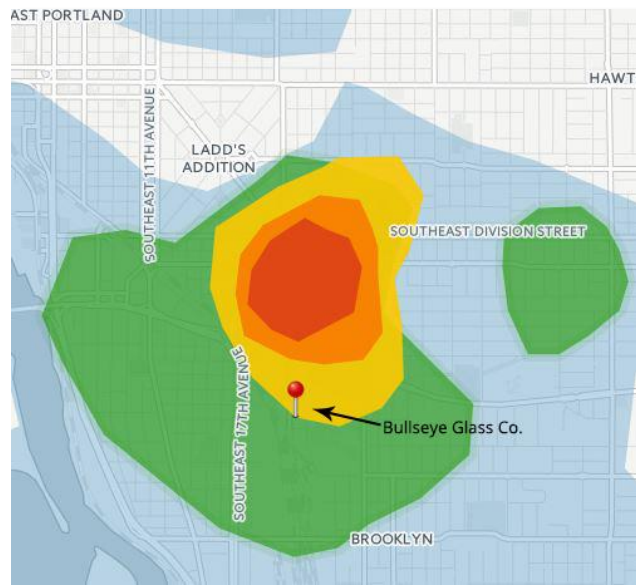
21 13.

22 For example, this map, excerpted below and attached as Exhibit 1 to this complaint (and by
23 reference incorporated into this suit), prepared by *The Oregonian* and modified by Plaintiffs to indicate
24 Bullseye’s location, shows elevated levels of cadmium in moss circling Bullseye, with red indicating
25 above 30 nanograms per cubic meter of air, orange indicating .10 to 30 nanograms per cubic meter of
26 air, and yellow indicating 5 to 10 nanograms per cubic meter of air.



14.

This second map, excerpted below and attached as Exhibit 2 to this complaint (and by reference incorporated into this suit) and was also prepared by *The Oregonian* and likewise modified by Plaintiffs and shows elevated levels of arsenic in moss immediately adjacent to Bullseye, with red indicating .84 to .94 micrograms per kilogram, orange indicating .72 to .83 micrograms per kilogram, and yellow indicating .60 to .71 micrograms per kilogram.



1 15.

2 When presented with information about the Forest Service findings, DEQ deployed its air
3 monitors in Southeast Portland in the area near Bullseye. DEQ's monitors confirmed that Bullseye is, in
4 fact, a primary source of the unsafe levels of heavy metals in the neighborhood.

5 16.

6 Bullseye is an industrial facility in a residential and commercial area. In 2011, the DEQ noted in
7 Bullseye's proposed air quality permit that there were "no other industrial air sources with permits
8 within 1/2 mile of Bullseye Glass."

9 **B. Bullseye Glass Has Been Quietly Emitting Toxic Metals for Decades**

10 17.

11 Bullseye has at times claimed that it was surprised to learn that it had been polluting the
12 neighborhood. However, it should be no surprise to Bullseye that it is a primary source of cadmium,
13 arsenic, hexavalent chromium, and other toxics in Portland's air. Since 1974, Bullseye Glass has
14 manufactured glass at its Portland facility using a wide variety of chemicals to color or process the glass,
15 many of which are toxic, including arsenic, cadmium, and hexavalent chromium. Bullseye has grown
16 significantly in the intervening decades and has continued to use large amounts of cadmium and toxic
17 materials, including thousands of pounds of arsenic trioxide.

18 18.

19 In 2007, the U.S. EPA proposed new National Emissions Standards for Hazardous Air Pollutants
20 (called "NESHAPs") pursuant to the mandates of the Clean Air Act. EPA recognized that glass facilities
21 were often significant sources of arsenic, cadmium, chromium, lead, manganese, and nickel. Under the
22 new rules, EPA proposed to regulate the emissions of these hazardous air pollutants (known as "HAPs")
23 from a variety of sources, including glass manufacturers. The final rule EPA adopted required glass
24 manufacturers to "comply with a [particulate matter] emission limit of 0.1 gram per kilogram (g/kg) (0.2
25 pound per ton (lb/ton)) of glass produced or an equivalent metal HAP emission limit of 0.01 g/kg (0.02
26 lb/ton) of glass produced." The rule also requires factories to do performance testing to demonstrate
27 compliance with the rule, and perform routine monitoring of emissions from the facilities.

1 19.

2 While that rule goes a long way to protecting human health and the environment, it does not
3 apply to Bullseye, because Bullseye privately lobbied EPA to create an exemption for glass makers of
4 its size, in order to avoid complying with the proposed rule. EPA granted Bullseye's wish. The final rule
5 exempted facilities that do not operate continuous furnaces, regardless of the amounts of HAPs they use
6 in their production. Bullseye has continued to emit arsenic, cadmium, and other metals, from roughly
7 1974 until some point in February 2016.

8 20.

9 While Bullseye acted behind the scenes to avoid installing emissions controls, Plaintiffs and the
10 class did not know and could not reasonably have discovered the harm Bullseye had caused and
11 continues to cause them and their neighborhood until at least February 2016 when the moss studies
12 revealing the air pollution in the area were made public. State regulators claimed to have been caught off
13 guard by that information. If state regulators did not know of Plaintiffs' and class members' injuries or
14 their source, a reasonable person in Plaintiffs' and class members' position would not have learned or
15 known those facts.

16 **C. Health Impacts of Bullseye's Emissions**

17 21.

18 The health impacts of prolonged exposure to the hazardous pollutants emitted from Bullseye are
19 potentially profound.

20 22.

21 Although Bullseye emits arsenic, cadmium, hexavalent chromium, and other toxic pollutants to
22 the air, inhalation is not the only route of exposure for people in Southeast Portland. Many of these
23 materials precipitate out of the air, landing on soil or grass in backyards, playgrounds, and gardens.
24 There, children playing may ingest the toxic materials directly and absorb them through their skin.
25 People and pets who come into contact with contaminated soil or dust can bring these hazardous
26 materials into their home on shoes and in clothing, hair, or fur. And, the metals contaminate crops,
27 particularly leafy greens grown in backyard gardens, including kale, lettuce, and broccoli, all of which
28 are favorites of the Portland gardener. As a result, in light of information about Bullseye's pollution, the

1 Oregon Health Authority has issued a warning against eating any fruits or vegetables grown within half
2 a mile of Bullseye.

3 23.

4 Because Bullseye's emissions not only contaminate the air, but the soil, grass, plants, and homes
5 throughout the community, people living in this neighborhood continue to be exposed to dangerous
6 levels of hazardous pollutants on a daily basis. Thus, even if Bullseye ceases its operations today, the
7 community would remain contaminated, causing harm of various types and posing a serious threat of
8 ongoing and likely mounting problems for the people who live and work there.

9 24.

10 Arsenic is a toxic material that presents a wide range of serious health effects. The United States
11 Department of Health and Human Services (DHHS), the International Agency for Research on Cancer,
12 and the U.S. EPA have all determined that inorganic arsenic is a human carcinogen, and that its
13 ingestion can increase the risk of cancer in the liver, bladder, and lungs. Ingestion of arsenic can also
14 cause irritation of the gut, and lead to decreased production of red and white blood cells, which may
15 cause fatigue, abnormal heart rhythm, blood-vessel damage resulting in bruising, and impaired nerve
16 function. Inhalation of arsenic, too, can cause a host of health problems, including lung irritation and
17 damage, as well as lung cancer. And, when arsenic comes in contact with skin it can produce circulatory
18 and peripheral nervous disorders.

19 25.

20 The effects of arsenic exposure are likely more pronounced in children. Children who are
21 exposed to inorganic arsenic have many of the same effects as adults, including irritation of the stomach
22 and intestines, blood vessel damage, skin changes, and reduced nerve function. Long-term exposure to
23 inorganic arsenic in children may result in lower IQ scores, and exposure to arsenic in early life
24 (including gestation and early childhood) may increase mortality in young adults.

25 26.

26 Inhaled or ingested inorganic arsenic can injure pregnant women or their unborn babies. Large
27 doses of inorganic arsenic that cause illness in pregnant female animals can also cause low birth weight,
28

1 fetal malformations, and even fetal death. Arsenic can cross the placenta and has been found in fetal
2 tissues. Arsenic is even traceable in human breast milk.

3 27.

4 Like arsenic, cadmium is a carcinogen that poses a host of health risks and impacts. Exposure to
5 high levels of air-borne cadmium can severely damage the lungs, causing short- and long-term impacts
6 on breathing and lung function. Eating food or drinking water with high levels of cadmium severely
7 irritates the stomach, leading to vomiting and diarrhea.

8 28.

9 Chronic exposure to cadmium also carries serious health risks. Long-term exposure to lower
10 levels of cadmium in air, food, or water leads to a buildup of cadmium in the kidneys. Not only can this
11 cause serious kidney disease, but it also leads to other risks throughout the body. Long-term effects of
12 even low-levels of exposure to cadmium include lung damage and fragile bones.

13 29.

14 Children are particularly susceptible to suffering serious health impacts from the exposure to
15 cadmium. Children absorb cadmium at higher rates than adults. Not only do children's bodies take up
16 cadmium at increased rates, but they are also more susceptible than adults to a loss of bone and
17 decreased bone strength from exposure to cadmium. Babies of animals exposed to high levels of
18 cadmium during gestation had changes in behavior and learning ability, and high enough exposures to
19 cadmium before birth can reduce body weight and affect the skeleton in developing young animals.

20 30.

21 The toxic emissions from Bullseye present a clear threat to the health of people living and
22 working in Southeast Portland. While some of the harms from this exposure are manifest today, others
23 may remain latent or undetected for years, leaving those exposed to Bullseye's waste to deal with health
24 impacts today and into the distant future.

1 **PLAINTIFFS' FACTS**

2 **A. Plaintiffs Alyssa Isenstein Krueger and Robert Krueger**

3 31.

4 Alyssa Isenstein Krueger and Robert Krueger moved to within roughly six-tenths of a mile of
5 Bullseye Glass in 2004, buying and restoring a bungalow on Tamarack Avenue in the southeastern
6 corner of Ladd's Addition. They did not know and could not have known at the time they bought their
7 home about the toxic emissions from Bullseye's nearby glass factory.

8 32.

9 Today they live in their home with their two sons, Kalman and Saul, ages six and three. Their
10 property includes fruit trees and shrubs, including five blueberry bushes, three apple trees, and golden
11 raspberries. In addition, they keep four chickens that forage in the family yard and lay eggs that feed
12 their family.

13 33.

14 Normally at this time of year, the Kruegers would be preparing to plant peas, leafy greens,
15 carrots, and beets in their garden. Because of the emissions from Bullseye, their garden is fallow, like
16 the gardens of so many of their neighbors. The family is holding off on planting their early spring crops,
17 and if their soil requires remediation then they will not be able to plant their crops later in the season,
18 including their traditional tomatoes, eggplant, pumpkins, green beans, and basil. The Kruegers worry
19 about the effects on their family from eating the produce and eggs produced on their land for years, and
20 they do not know if they will ever be able to raise chickens or grow produce there again without a costly
21 remediation of the soil.

22 **B. Plaintiffs Scott and Erin Meeker**

23 34.

24 Erin and Scott Meeker live within a half mile of Bullseye Glass, and their two-year-old daughter
25 attends a daycare center across the street from the Bullseye factory.

26 35.

27 Erin, an administrative coordinator at OHSU, and Scott, a carpenter at a Gresham fencing and
28 decking company, have lived in their current home since 2006. They bought it from a family member in

1 2010. They did not know when they bought their home, and could not have known based on reasonably
2 available public information, that it was in the shadow of a major polluter.

3 36.

4 Now they are concerned that the soil their daughter plays in, and in which they grow sugar snap
5 peas, lettuce, and other produce, is tainted by toxic metals. Normally they would be planting strawberry
6 plants right now, but they are not because health officials have told residents in their neighborhood to
7 not eat food from their own gardens.

8 37.

9 Beyond the couple's concerns about the effects on their family from eating the produce that they
10 have grown on their land for years, they are concerned that the value of their home will be decreased
11 when they want to sell it, and that they will need to pay for costly health and soil testing. Erin and Scott
12 are also deeply concerned about their daughter's daily exposure to the air toxins while attending and
13 playing outside at her daycare.

14 **C. Plaintiff Kelly Goodwin**

15 38.

16 Kelly Goodwin, an information technology consultant, has lived near Bullseye for eight years.
17 Between 2008 and 2012 she lived near the intersection of SE Woodward Street and SE 27th Avenue,
18 and then in 2012 she bought a home less than a quarter mile from Bullseye.

19 39.

20 In the front yard of that home at this time of year, she would normally start planting tomatoes,
21 zucchinis, and other produce. Soon, the perennial strawberries in her garden will start coming up. But
22 because of Bullseye, she cannot safely plant in her garden or eat what it grows.

23 40.

24 Kelly would had never bought her home had she known that Bullseye was emitting dangerous
25 levels of metals into the air in her neighborhood, and yet she did not know, and could not have known
26 based on reasonably available public information, that it was doing so. She is concerned that the
27 revelations about Bullseye have caused or will cause the value of her home to decline, and that her
28 family has and will be forced to pay for expensive health and soil testing.

1 **D. Plaintiffs Elizabeth Marre and Darryl OBeirne**

2 41.

3 Elizabeth Marre and Darryl OBeirne live within a mile of Bullseye Glass with their three small
4 children. The couple has lived in the area since 2002, buying their current home on SE 29th Avenue in
5 2003. They also own a rental property in the area.

6 42.

7 Elizabeth and Darryl did not and could not reasonably have known about the unchecked
8 emissions from the nearby Bullseye Glass facility. Had they known about the emissions from Bullseye
9 Glass, they would not have bought a home in their neighborhood.

10 43.

11 Elizabeth, a mortgage broker, recently had herself tested for cadmium and was told that she has
12 elevated levels of that metal, which Bullseye used or uses in its glass manufacturing process. She and
13 Darryl, a general contractor, are justifiably concerned about how the exposure to that and other metals is
14 affecting their children, ages 5 years, 7 years, and 5 months. Their 5-month old's urine test also recently
15 came back with high enough levels of inorganic arsenic that her doctor suggested further testing.

16 44.

17 The family relies on vegetables from their garden, and normally this time of year they would be
18 planting tomatoes, kale, beans, and carrots. Because of Bullseye, they are not doing that now.

19 45.

20 Beyond the health impact of her family, the couple is concerned that the value of their homes
21 will decline due to the Bullseye's ongoing operations, that they could have difficulty finding renters, and
22 that they will need to pay for expensive soil remediation on top of the medical expenses they have
23 already incurred.

24 **CLASS ACTION ALLEGATIONS**

25 46.

26 Plaintiffs bring claims pursuant to Oregon Rule of Civil Procedure 32 on behalf of the Class of
27 similarly situated persons. Plaintiffs propose to represent the following Class:
28

1 All persons who have lived or worked near Bullseye Glass Co.,
2 during any period in which Bullseye Glass Co. has used arsenic,
3 cadmium, chromium, or other toxic constituents in its glass
4 manufacturing (the "Toxins"), and in areas where test results show
5 elevated levels of the Toxins.

6 47.

7 The Class members are ascertainable and have a well-defined community of interest of their
8 members.

9 48.

10 **Numerosity.** The members of the Class are so numerous that joinder of all members would be
11 impracticable. There are approximately 6,000 individuals who live in areas near Bullseye Glass Co. that
12 have shown elevated levels of toxic emissions. In addition, hundreds or perhaps thousands more work in
13 those areas and have been daily exposed to Bullseye's emissions.

14 49.

15 **Commonality.** There are common questions of law and fact that predominate over any questions
16 affecting only individual members of the Class. Those common factual and legal questions of law
17 include but are not limited to: whether Defendant was negligent in its construction, maintenance, or
18 operation of Bullseye's facility, whether Bullseye's facility has created a nuisance, whether Defendant
19 has trespassed on Class members' property and land enjoyed by Class members, whether Defendant
20 owed any duties to Class members, whether and how Class members have been harmed by Defendant's
21 conduct, and whether Class members' personal or real property has been damaged and if so how the
22 values of that property have been affected by the release of gases and toxic chemicals into the
23 atmosphere at the Facility near where Class members live.

24 50.

25 **Typicality.** The representative Plaintiffs' claims are typical of the claims of the members of the
26 Class. Plaintiffs and all the members of the Class have been injured by the same wrongful acts and
27 omissions of Defendants. Plaintiffs' claims arise from the same practices and course of conduct that give
28 rise to the claims of the members of the Class and are based on the same legal theories.

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51.

Adequacy. Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Class, and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiffs nor their attorneys have any interests contrary to or in conflict with the Class.

52.

Superiority. A class action is superior to other available methods for the fair and efficient adjudication of this case. The amount of equitable relief (and at some point in the future, damages) available to individual plaintiffs are insufficient to make litigation addressing Defendants’ conduct economically feasible in the absence of the class action procedure. Individualized litigation also presents a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, a class action approach presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court. And, this forum is desirable as Defendant does business here and class members reside here. Finally, no other similar litigation has been commenced, but if commenced, it can be coordinated under ORCP 32 K

FIRST CLAIM FOR RELIEF

(Nuisance)

53.

Plaintiffs incorporate every prior allegation into this claim.

54.

The emissions from Bullseye Glass are a nuisance. For at least the last 6 years metals such as arsenic and cadmium have poured uncontrolled from the stacks of Bullseye’s furnaces.

55.

Those emissions have substantially and unreasonably interfered with the use and enjoyment of Plaintiffs’ and class members’ property.

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56.

The interference is substantial because, as described already, Plaintiffs and class members cannot now safely use portions of their land to grow fruits and vegetables to feed themselves and their families, and they cannot safely allow their children or pets to play in their yards without concern that they are putting their health (and that of their children and pets) at risk.

57.

Plaintiffs and class members' reactions to this nuisance are ordinary and reasonable reactions to the recent revelation that they live within a previously unknown toxic hotspot.

58.

Defendant's interference with Plaintiffs' and class members' use and enjoyment of their land is also unreasonable. Knowingly spewing toxic contaminants into a residential area is not a reasonable thing for anyone to do. Also, Bullseye knows or should know that similar facilities in other states and abroad commonly comply with more strict emissions control limitations imposed by those states and jurisdictions, in order to prevent this very type of problem from occurring.

59.

Nothing but cost and will prevents Defendant from controlling and containing its emissions. The harm that Plaintiffs and class members' have been forced to bear as a result of Defendant's decision to try to externalize rather than bear those costs is far greater than Plaintiffs and class members' should be forced to bear in their predominantly residential neighborhood.

60.

Defendant's conduct in creating the nuisance was and/or is negligent, reckless, intentional, and/or abnormally dangerous. As described in this complaint, Defendant's conduct directly caused the nuisance.

61.

Any compliance by Defendant with applicable laws or permit conditions does not excuse Defendants' nuisance or any other tort.

1 62.

2 Plaintiffs seek an injunction ordering Bullseye to only resume the use of arsenic, cadmium, and
3 chromium if it has first installed adequate emissions controls equipment.

4 63.

5 Any hardship allegedly caused to the Defendant by such an injunction is greatly outweighed by
6 the benefits resulting to Plaintiffs and the class members: the ability to live secure in the knowledge that
7 the air they breathe, and the land that they live on and enjoy and rely on for food, are safe.

8 64.

9 Plaintiffs give notice that they intend to amend this claim after the expiration of the notice period
10 to add a claim for damages.

11 **SECOND CLAIM FOR RELIEF**

12 (Common Law Trespass)

13 65.

14 Plaintiffs re-allege paragraphs 1-52 and further allege that by emitting particulate emissions onto
15 the land possessed by Plaintiffs and the class, Defendant disturbed Plaintiffs' and class members' rights
16 to exclusive possession of that land.

17 66.

18 Bullseye directly or indirectly allows particles from its furnaces to enter on to and remain on
19 Plaintiffs' and class members' land.

20 67.

21 Defendant's conduct that allowed and/or created a trespass was and is negligent, reckless,
22 intentional, and/or abnormally dangerous.

23 68.

24 Defendant had no license or other authorization to enter on to or to leave contaminants on land
25 possessed by Plaintiffs and the class members. Any compliance by Defendant with applicable laws or
26 permit conditions does not excuse Defendants' trespass.

1 69.

2 Plaintiffs seek an injunction ordering Bullseye to only resume the use of arsenic, cadmium, and
3 chromium if it has first installed adequate emissions controls equipment, and directing Defendant to
4 remove the particles it has caused to be deposited on land that they possess.

5 70.

6 Any hardship allegedly caused to the Defendant by such an injunction is greatly outweighed by
7 the benefits resulting to Plaintiffs and the class members: the ability to live secure in the knowledge that
8 the air they breathe, and the land that they live on and enjoy and rely on for food, are safe.

9 71.

10 Plaintiffs give notice that they intend to amend this claim after the expiration of the notice period
11 to add a claim for damages.

12 **ADDITIONAL CLAIMS**

13 72.

14 Plaintiffs intend to amend this complaint to add additional causes of action that include claims
15 for damages, and additional relief at the conclusion of the 30-day period required under ORCP 32H

16 **REQUEST FOR RELIEF**

17 Plaintiffs request judgment and seek the following equitable relief:

18 A. An order certifying this matter as a class action pursuant to ORCP 32;

19 B. An order directing Defendant to preserve documents and other information related to
20 Plaintiffs' current claims and any future damages claims;

21 C. An order directing Defendant to permanently cease the use of arsenic, cadmium, and
22 chromium in its glass production processes unless and until it installs adequate emissions control
23 systems and has removed the offending materials from the air and soils in the neighborhood;

24 D. An order requiring Bullseye to provide residents living within 1.5 miles of Bullseye urine
25 and blood testing for arsenic, cadmium, and chromium;

26 E. An order requiring Bullseye to remove all particulate matter Bullseye has deposited or
27 allowed to be deposited on the property of Plaintiffs and Class members;

28 F. An order directing Bullseye to pay attorneys' fees and costs; and

1 G. Such other relief that the Court may deem just.

2 DATED this 3rd day of March, 2016.

3 KELLER ROHRBACK L.L.P.

4 By 

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Attorneys for Plaintiffs and the Proposed Class

Exhibit 1

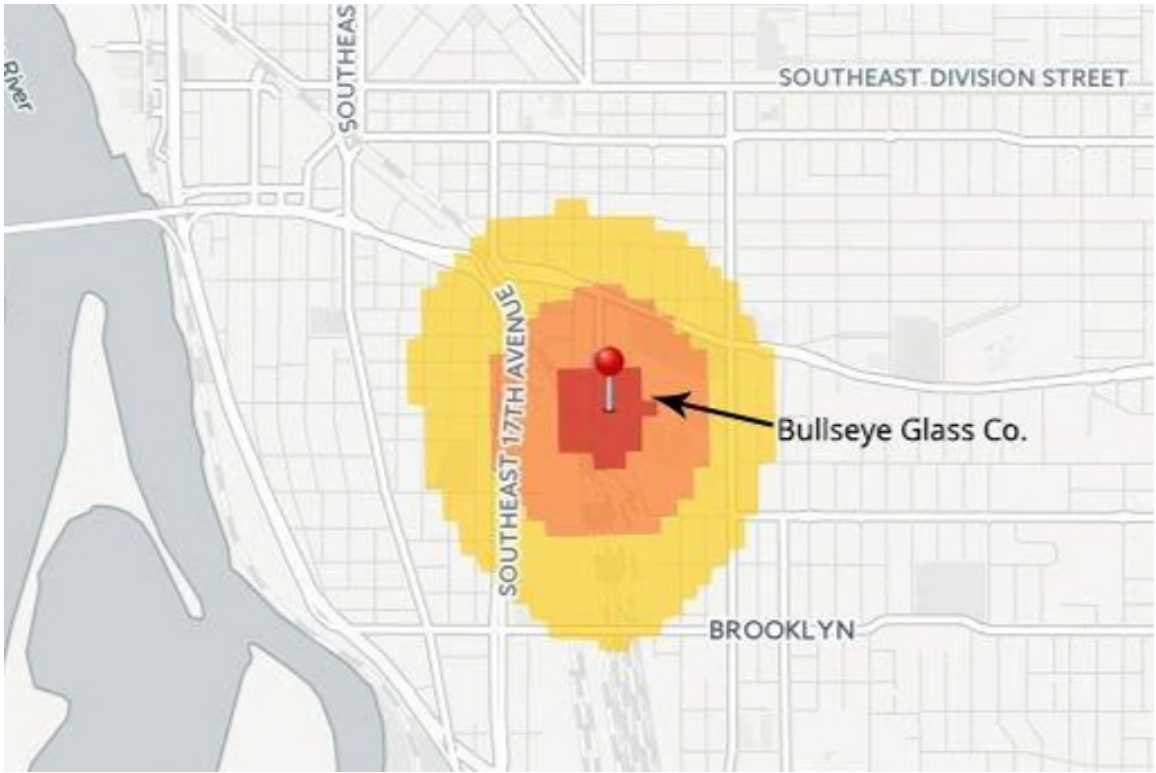


Exhibit 2

