

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
TARA MACKEY, as parent and natural guardian of  
A.I. M., individually, and on behalf of all others  
similarly situated,

Plaintiffs,

- against -

NORTHPORT-EAST NORTHPORT UNION FREE  
SCHOOL DISTRICT

Defendant,  
-----X

To the above named Defendant:

You are hereby summoned to answer the Complaint in this action, and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance on the Plaintiffs' attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: Melville, New York  
September 3, 2020

**SUMMONS**

Index No. \_\_\_\_\_

Date purchased: \_\_\_\_\_

Plaintiff designates Suffolk  
County as the place of trial  
based on the location where  
events giving rise to the  
claims occurred:

11 Middleville Road  
Northport, NY 11768

Napoli Shkolnik, PLLC  
*Attorneys for Plaintiff and the Class*



\_\_\_\_\_  
Lilia Factor, Esq.  
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400 Broadhollow Road, Suite 305  
Melville, NY 11747

To:  
NORTHPORT-EAST NORTHPORT  
UNION FREE SCHOOL DISTRICT  
158 Laurel Avenue  
Northport, New York 11768

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

Index No.: \_\_\_\_\_

-----X

TARA MACKEY, as parent and natural guardian of  
A. I. M., individually and on behalf of all others  
similarly situated,

**VERIFIED COMPLAINT**

Plaintiffs,

- against -

NORTHPORT-EAST NORTHPORT UNION FREE  
SCHOOL DISTRICT

Defendant,

-----X

Plaintiffs, TARA MACKEY, as parent and natural guardian of A. I. M., individually and on behalf of all others similarly situated (the “Class”), by their attorneys, Napoli Shkolnik, PLLC, complaining of the Defendant, respectfully allege the following, upon information and belief:

**INTRODUCTION**

1. Northport Middle School is a public school for students from grades six (6) through eight (8) in the Northport-East Northport Union Free School District (“District” or “Defendant”), located at 11 Middleville Road, Town of Northport, County of Suffolk.

2. For many years, the school building and grounds (“NMS” or “School”) have been contaminated with toxic and/or hazardous substances, including, but not limited to, volatile and semi-volatile organic chemicals, heavy metals, mold and pesticides (“Contaminants”).

3. The District knew or should have known about the presence of the Contaminants through inspections and environmental testing conducted at the School at various times over the years of its operation.

4. Over the years, the District also received numerous complaints from teachers, staff and students regarding noxious odors, nausea, headaches, dizziness, asthma attacks, skin, eye and

respiratory irritation and other adverse health symptoms that they suffered while working at and/or attending the School.

5. However, at all relevant times, the District assured the community, including Plaintiff and the Class members, that there was no health risk to anyone at the School.

6. Plaintiff and the Class members are students who have attended the School and have been exposed to and injured by the Contaminants. Many developed cancer and other serious illnesses. Others had injuries that abated after they were no longer at the school. All continue to live with the fear of developing latent symptoms and related injuries later in life as a result of their toxic exposure at the School.

7. Plaintiff and the Class members have been damaged in an amount which exceeds the jurisdictional limitations of all the lower courts.

8. Plaintiff and the Class members seek damages for their personal injuries and the establishment of a medical monitoring program.

### **JURISDICTION**

9. This court has personal jurisdiction over the District, a municipal corporation duly organized and existing under, and by virtue of the State of New York laws, with a principal office located at 158 Laurel Avenue, Northport, New York 11768.

### **VENUE AND NOTICE**

10. Venue is proper in this Court pursuant to CPLR 503(a) and (c), because the events or omissions giving rise to the claims, injuries and damages alleged herein all occurred in the County of Suffolk, New York, and the Defendant is located therein.

11. Prior hereto, within the time prescribed by law, a sworn Notice of Claim stating, among other things, the time and place where the injuries and damages were sustained, together with Plaintiff's demands for adjustments thereof was duly served on the Defendant.

12. At least thirty (30) days has elapsed since the service of the Notice of Claim, without adjustment or payment by the Defendant.

13. On or about October 1, 2018, the Plaintiff duly submitted to a hearing pursuant to General Municipal Law 50(h), pursuant to the demand of Defendant District.

14. More than one year and 90 days has elapsed; however, Plaintiff's claims are tolled due to her status as a minor.

#### **FACTUAL ALLEGATIONS AS TO ALL COUNTS**

15. At the end of January 2020, the District ordered the School closed for the remainder of the school year after its environmental consultant, P.W. Grosser Consulting ("P.W. Grosser"), conducted testing that revealed elevated levels of mercury vapor in a cesspool at the premises and elevated levels of benzene in soil around two septic systems outside the NMS building. This was followed by additional testing and investigation.

16. In March 2020, the District made public a letter from the Suffolk County Department of Health Services that listed a total of eighteen (18) sanitary structures that, based on the testing results, had been impacted by contaminants, including mercury, silver, benzene, butanone, xylene, chlorobenzene, lead, arsenic cadmium, chromium, and semi-volatile organic compounds.

17. The District accompanied the above notice by its own letter assuring the community that "there is no reason to believe students or staff have been exposed to contaminants found in

the sanitary systems or leaching pools as there is no route of exposure.” The letter further promised that a comprehensive report of the consultant’s findings was forthcoming.

18. P.W. Grosser’s report was finally released to the community on or about June 15, 2020. It documents numerous reports and investigations of environmental hazards at the School over the years, including, but not limited to:

- a. 1970-1980’s (investigated in 1984, 2000-2002): Air, dust, and soil contamination with chlordane, a currently banned pesticide.
- b. 1990: Petroleum spill caused by overflow of underground storage tank.
- c. 2019: Petroleum bulk storage violations and past violations relating to failures to conduct regular inspections and maintain records relating to a 15,000 gallon fuel oil tank and provide cathodic protection and testing for two 4,000 gallon metal tank dispenser sumps.
- d. 2017: Chemical spill in the warehouse beneath the K-Wing classrooms.
- e. 2000- 2001: An acid neutralization pit and leaching pool in the former G-Wing (containing science classrooms) contaminated with mercury, lead and other heavy metals, with sewage gases entering the rooms through sinks and drains.
- f. 1997 (investigated in 2001): mold fungi in multiple areas of the building.
- g. 2000: clogged univents, mold and mildew odors, engine exhaust odors, stagnant air in auditorium, roof leaks.
- h. 2001, 2017, 2018: Complaints of vehicle exhaust odors in school building from vehicles idling in adjacent bus depot.
- i. 2017: Petroleum odors and detections of multiple petroleum-related compounds in the air in room K-74, located above the chemical storage warehouse.

- j. 2017: Detections of numerous volatile organic chemicals in the K-wing classrooms, hallway and the warehouse beneath the classrooms.
  - k. 2017: Detections of carbon monoxide in the kitchen (adjacent bus depot not tested).
  - l. “Numerous health and safety concern forms filled out by faculty and staff over the years”.
  - m. “An abundance of complaints (odor and health) relating to rooms in the G-, K-, and L-Wings.”
19. P.W. Grosser’s own investigation revealed:
- a. Elevated levels of arsenic in the soil at the track field.
  - b. Elevated levels of mercury and silver in the G-Wing leaching pool.
  - c. Elevated levels of mercury in the former leaching pool.
  - d. Elevated levels of mercury, silver and several volatile organic chemicals (“VOCs”), including benzene in the southern and eastern sanitary systems.
  - e. Elevated levels of 2-butanone in northern sanitary system primary leaching pool and M-Wing septic tanks.
  - f. Inhalation exposure pathways in rooms D-40, K-74, K-75 (improperly set sanitary vent near room D-40, multiple air admittance valves missing from the plumbing).
  - g. Three stormwater drywells with elevated levels of semi-volatile organic chemicals (“SVOCs”).
  - h. VOCs associated with petroleum detected in sub-slab vapor sampling.
  - i. Water intrusion in several areas.

- j. Detectable concentrations of carbon monoxide (“CO”) in the H-Wing, while buses were exiting in the morning.
  - k. Detectable counts of total fungi counts and aspergillus/penicillium in M-87, a former classroom, and the K-Wing warehouse.
  - l. Musty odors and decaying organic material within roof drains.
20. At all relevant times, the District has continued to insist that there has been and is no risk of exposure or health risk from the Contaminants.
21. Until this school year, the District denied parents’ requests to allow their children to transfer to the other middle school in the District, dismissing their legitimate concerns as unfounded.
22. At all relevant times, members of the School Board and the District have severely criticized parents who raised concerns over environmental hazards at the school and asked for investigations, creating an atmosphere of hostility and intimidation.
23. Following publication of the P.W. Grosser report, the District removed the fuel storage tanks from the bus depot and announced, in a July 2020 “Update to the Community”, that the bus depot was relocated off-site.
24. However, as of the date of orientation for the new school year (2020-2021) at the end of August, the buses remained in the lot right next to the school building.
25. On information and belief, many hazardous conditions remain on the premises, continuing to endanger the health and safety of the students who are currently attending and will attend the School.



### THE CONTAMINANTS

26. **Chlordane** is an extremely hazardous substance (pursuant to 42 U.S.C. 11002) and has been classified as a Group B2, probable human carcinogen. It was used as a pesticide in the United States from 1948 until it was banned in 1988. Chlordane exposure is a risk factor for type-2 diabetes, prostate cancer, testicular cancer and breast cancer.

27. **Lead** affects almost every organ and system in the human body; it can damage organs, cause permanent developmental disabilities, seizures, coma, and even death. Lead exposure has its strongest effect on children and child brain development. Children exposed to even low levels of lead often develop difficulties learning, and if the exposure does not stop, the damage will continue and is permanent. The Centers for Disease Control (“CDC”) has determined that there is no safe blood lead level in children.

28. **Mercury** is a neurotoxin. It is ranked third by the US Government Agency for Toxic Substances and Disease Registry (“TSDR”) as the most toxic element or substances on the planet after arsenic and lead. Exposure to mercury can cause brain, kidney, and lung damage and may seriously harm a developing fetus. Exposure to even low levels of airborne mercury for prolonged periods of time can cause irritability, sleep disturbances, excessive shyness, tremors, coordination problems, changes in vision or hearing, and memory problems. Mercury vapor can become lipid soluble once oxidized and bioaccumulate in the renal cortex, liver, and especially, the brain. It is estimated that the half-life of mercury in the brain can be as long as 20 years.

29. **Petroleum products**, including hexane, benzene, toluene, xylenes, naphthalene, and fluorine, may cause damage to the lungs, central nervous system, liver, and kidneys. Some petroleum compounds have also been shown to affect reproduction and the developing fetus in animals.

30. **Benzene** is a petroleum product and a known human carcinogen that adversely affects the hematological, immune and nervous systems. Breathing benzene can cause drowsiness, dizziness, and unconsciousness; long-term exposure harms the bone marrow and can cause anemia and leukemia.

31. **Mold** produces allergens and irritants that have a potential to cause health problems. Inhaling or touching mold or mold spores may cause allergic reactions, asthma attacks, irritation in the eyes, skin, nose, throat and lungs of both mold-allergic and non-allergic people. People with asthma or who are allergic to mold may have severe reactions. Immune-compromised people and people with chronic lung disease may get infections in their lungs from mold.

32. **Carbon monoxide** is found in fumes produced by burning fuel. Following inhalation of contaminated air, carbon monoxide rapidly enters all parts of the body including the blood, brain, heart and muscles. Carbon monoxide poisoning is one of the leading causes of death due to poisoning in the United States. Effects of severe poisoning may be life-threatening and include cardiac arrhythmias, myocardial ischemia, cardiac arrest, hypotension, respiratory arrests, noncardiogenic pulmonary edema, seizures, and coma.

33. **Volatile organic compounds (VOCs)** are emitted gases from certain solids and liquids, such as paints varnishes, wax, pesticides, products for cleaning, disinfecting, cosmetic, degreasing, and other products. Health effects of exposure to VOCs include eye, nose and throat irritation headaches, loss of coordination and nausea, damage to liver, kidney and central nervous system. Some VOCs are known to be carcinogenic. Among the immediate symptoms that some people have experienced soon after exposure to some VOCs are eye and respiratory tract irritation, headaches, dizziness, visual disorders and memory impairment.

34. **Semi-volatile organic compounds (SVOCs)** are a subgroup of VOCs. They are highly toxic and difficult to decompose. Most can cause cancer, reproductive disorders, nervous system damage, and immune system disruption. Many polycyclic aromatic hydrocarbons (PAHs), a major group of SVOCs, cause cancer, endocrine disruption and affect the immune system.

35. On information and belief, additional toxic substances not specifically named herein, have been detected at the School. The above list is by no means closed and is only meant to highlight some of the known Contaminants.

36. Upon information and belief, each of the Contaminants is individually toxic and hazardous to human health and the combined effects of exposure to multiple Contaminants cause additional, synergistic adverse impacts.

37. With respect to all of the Contaminants, as well as any new hazardous substances that may be identified on the School premises, Plaintiff and the Class members reserve their right to allege additional locations, exposure pathways, contaminant levels, injuries and damages, as further information is obtained through discovery, disclosure of public records, environmental investigation, and medical follow-up, as well as any future updates of public health standards and guidelines.

### **THE PARTIES**

#### **Infant Plaintiff, A. I. M.**

38. At the time of exposure and resulting injuries complained of herein, A. I. M. was a student lawfully attending middle school at NMS.

39. A.I.M. attended sixth, seventh and eighth grade at the School, from 2015 through 2018.

40. During this period, her migraines became much more frequent.

41. At the beginning of seventh grade, A.I.M. began experiencing symptoms of intense coughing and feeling tired. Her symptoms worsened during eighth grade.

42. A.I.M. was tested and diagnosed with asthma, high levels of carbon monoxide in the blood, and low count platelets. She was prescribed an inhaler.

43. A.I.M.'s parents and doctors petitioned the District to allow her to attend a different middle school in the District, but all of these requests were denied.

44. A.I.M.'s symptoms and injuries were caused by her exposure to Contaminants at the School.

45. A.I.M.'s exposure to the Contaminants put her at a significant risk of future latent injury, diseases and cancers.

### **The Class**

46. The proposed Class is composed of past and present students of the District who attended the School and were exposed to the Contaminants at the School premises, causing past and present injury, and a significantly increased risk of latent injury, diseases and cancers.

47. Proposed Class members were unlawfully exposed to the Contaminants via ingestion, inhalation, and or/dermal contact, while attending the School for classes and school-related sports and activities.

48. Plaintiff and the Class members are an 'exposed population' as defined in Section 6.8.1 of the ATSDR Public Health Assessment Guidance Manual as follows:

49. A population is considered exposed if a completed exposure pathway, which links a contaminant with a receptor population, exists in the past, present, or future. An exposed population includes persons who ingest, inhale, or contact site contaminants or are exposed to radiation in the past, present, or future. Examples of exposed persons include those who:

- *have ingested, are ingesting, or will ingest the contaminant from one or more environmental media;*
- *have inhaled, are inhaling, or will inhale the contaminant from one or more environmental media;*

- *have contacted, are contacting, or will contact the contaminant in one or more environmental media; and*
- *were exposed, are exposed, or will be exposed to gamma radiation from one or more environmental media.*

*If an environmental medium (soil) contains a contaminant of concern at a point of exposure (a residential yard), and evidence already exists that a route of exposure (ingestion) has occurred, is occurring, or will occur, the health assessor should assume that persons living at that residence are exposed or will be exposed. If the residential yard contains a vacant house, the health assessor should assume that future residents will be exposed. Persons should also be considered exposed if exposure has been verified by human biologic measurements or medical examination. For health assessments, human biologic measurements or medical examination are not necessary for the assignment of an exposure category to a population.*

50. Plaintiff and the Class members bring this action and seek to certify a class action pursuant to Article 9 of the New York Civil Practice Law and Rules, Section 901, on behalf of themselves and those similarly situated individuals as members of the proposed Class, subject to amendment and additional discovery as follows:

All past and present students of the District who attended the School and were exposed to the Contaminants, causing personal injury and a significantly increased risk of injury, diseases and cancers. (the “Class”).

51. Excluded from the Class are:
- a. Defendant, including any entity or division in which Defendant has a controlling interest, along with Defendant’s legal representative, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates;
  - b. the Judge to whom this case is assigned, the Judge’s staff, and the Judge’s immediate family; and
  - c. all governmental entities.

52. The Class and this action satisfy the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements. Plaintiffs reserve the right to amend the

Class definitions if discovery and further investigation reveal that the Class or any Subclass should be expanded, divided into additional subclasses, or modified in any other way.

#### NUMEROSITY AND ASCERTAINABILITY

53. The Class is so numerous that joinder of all members is impracticable, given that the number of affected past and present students of NMS, upon information and belief, is more than ten thousand individuals. While the exact number of Class members is not yet known, a precise number can be ascertained from the number of students enrolled in the School during the years of its operation. Finally, Class members can be notified of the pendency of this action by Court-approved notice methods.

#### PREDOMINANCE OF COMMON ISSUES

54. There are numerous questions of law and fact common to Plaintiff and Class members that predominate over any question affecting only individual Class members, the answers to which will advance resolution of the litigation as to all Class members. These common legal and factual issues include the following:

- a. whether Defendant engaged in the conduct alleged herein;
- b. whether Defendant's failures to properly operate and maintain the School premises proximately caused the release of Contaminants at the School;
- c. whether Defendant knew or should have known of the presence of Contaminants at the School;
- d. whether Defendant knew or should have known that exposure to the Contaminants at the School could increase health risks to students;
- e. whether Defendant failed to warn students and their parents about the above health risks;

- f. whether Defendant failed to timely, properly and fully remediate Contaminants when they were identified as being present at the School premises;
- g. whether Defendant failed to take timely and appropriate measures to reduce and eliminate exposure of students to the Contaminants;
- h. whether Defendant failed to timely and appropriately address complaints regarding environmental hazards at the School and to investigate related health complaints from students and staff;
- i. whether Defendant made unlawful and misleading representations or material omissions with respect to the presence and/or health impacts of the Contaminants at the School;
- j. whether the Contaminants proximately caused the injuries described herein;
- k. whether their exposure to the Contaminants at the School presents a risk of latent injury to Plaintiff and the Class members.
- l. Whether Plaintiff and the Class members are entitled to damages and other monetary relief, medical monitoring, and if so, in what amount.

#### TYPICALITY

55. Plaintiff's claims are typical of the claims of the Class members and arise from the same course of conduct by Defendant. Plaintiff's person, like that of all Class members, has been damaged by Defendant' misconduct in that Plaintiff has incurred damages and losses related to the contamination at the School premises, causing personal injury.

56. Furthermore, the factual bases of Defendant's actions and misconduct are common to all Class members and represent a common thread of misconduct resulting in common injury to all Class members.

57. The relief Plaintiff seeks is typical of the relief sought for absent Class members.

ADEQUACY OF REPRESENTATION

58. Plaintiff will serve as a fair and adequate Class representative as Plaintiff's interests, as well as the interests of Plaintiff's counsel, do not conflict with the interests of other members of the Class which Plaintiff seeks to represent.

59. Further, Plaintiff has retained counsel competent and experienced in class action litigation.

60. Plaintiff and Plaintiff's counsel are committed to vigorously prosecuting this action on behalf of the Class.

SUPERIORITY

61. The class action mechanism is superior to any other available means for the fair and efficient adjudication of this case. Further, no unusual difficulties are likely to be encountered in the management of this class action.

62. Given the great number students of NMS impacted by Defendant' conduct, it is impracticable for Plaintiff and the Class members to individually litigate their respective claims. To do so would risk inconsistent or contradictory judgments and increase delays and expense to both the parties and the court system.

63. Therefore, the class action mechanism presents considerably less management challenges and provides the efficiency of a single adjudication and comprehensive oversight by a single court.

**Defendant:**

64. Defendant, District, is a municipal corporation existing as a political subdivision of the State of New York by virtue of the statutes of the State of New York.



65. At all relevant times, the District was the owner of the premises known as the Northport Middle School, located at 11 Middleville Road, Northport, Town of Huntington, County of Suffolk, State of New York.

66. At all relevant times, the District administered and operated the subject School, including the School building, grounds, adjacent bus depot, appurtenant buildings, and all sanitary structures on the School premises.

67. All references to the District, includes its agents, servants, licensees, contractors, subcontractors, employees and other affiliates, agencies and departments, and/or those acting under their direction, behest, permission and control in the ownership, operation, management, maintenance, and/or supervision of the School premises.

68. At all relevant times, the District managed, maintained, supervised and controlled the School premises.

69. At all relevant times, the District was responsible for repairs and maintenance at the School premises.

70. At all relevant times, the District was responsible for ensuring that the School premises would be free of Contaminants that would cause injury, toxic exposure and/or increased health risks to the students attending the School.

**AS AND FOR A FIRST CAUSE OF ACTION: NEGLIGENCE**

71. Plaintiff and the Class members re-allege and reaffirm each and every allegation set forth in all preceding paragraphs as if fully restated herein.

72. Defendant owed Plaintiff and the Class members a cognizable duty to exercise reasonable care in maintaining and supervising the School premises to maintain them in a safe condition and free from Contaminants.

73. Defendant further had a cognizable duty to adequately protect and safeguard all students at the School, including Plaintiff and the Class members, using the same degree of care, caution and prudence that a parent would use in similar circumstances.

74. Defendant breached its duty of reasonable care by negligently storing, spilling, discharging or otherwise causing and/or permitting the release of Contaminants into the air, water and soil at the School premises.

75. Defendant breached its duty of reasonable care by failing to take precautions, conduct proper maintenance and repairs, and otherwise by allowing the School premises to become and remain unsafe, dangerous, toxic and hazardous to the health of the students, including Plaintiff and the Class members.

76. Defendant negligently caused Plaintiff and the Class members to be exposed to and come into contact with harmful Contaminants and other toxic substances/chemicals while these students were lawfully on the School premises.

77. Defendant had actual and/or constructive notice of the dangerous and toxic conditions existing at the School due to the presence of the Contaminants.

78. Despite having such notice, Defendant failed to take timely and adequate measures to remediate the above conditions and mitigate the toxic exposure of Plaintiff and the Class members.

79. Defendant knew, or should have known that the Contaminants detected at the School premises are inherently dangerous and hazardous to the health and well-being of those exposed to, or coming in contact with said Contaminants and constitute a health hazard for students, including Plaintiff and the Class Members.

80. Defendant knew or should have known that repeated and/or prolonged exposure to the Contaminants exacerbates these health hazards and put Plaintiff and the Class members at risk of contracting the diseases associated with the exposure.

81. Defendant breached its duty by failing to warn Plaintiff and the Class members about the hazardous nature of the Contaminants and the consequent risks to their health from toxic exposure caused while attending the School.

82. Defendant breached its duty by failing to provide the means to protect all students, including Plaintiff and the Class members, from said conditions.

83. Defendant breached its duty by failing to properly investigate health-related complaints of students and staff at the School.

84. Defendant breached its duty by failing, for years, to conduct a comprehensive investigation and remediation of the environmental conditions at the School.

85. Defendant breached its duty by refusing to permit Plaintiff to attend a different school within the District, even when such a transfer was specifically requested by Plaintiff's parents and her physicians.

86. Defendant breached its duty by continuing to operate the bus depot, K-wing classrooms above a chemical storage warehouse, and other areas of the School despite being on notice of noxious odors, toxic substances and numerous health complaints associated with those locations.

87. Defendant has and continues to actively deny that the Contaminants detected at the School premises caused harmful toxic exposure and injuries to Plaintiff and the Class members.

88. Defendant's failures to warn and consistent and continuing denial of health risks prevented and/or delayed Plaintiff and the Class members from realizing that their health conditions were caused or contributed to by the Contaminants found at the School.

89. Defendant's failures to warn and consistent and continuing denial of health risks prevented and/or delayed Plaintiff and the Class members from avoiding prolonged toxic exposure at the School.

90. At the time Defendant breached its duties to Plaintiff and the Class members, Defendant's acts and/or failures to act posed recognizable and foreseeable possibilities of danger to Plaintiff and the Class members so apparent as to entitle them to be protected against such actions or inactions.

91. As a direct and proximate result of Defendant's failures and omissions, Plaintiff and the Class members suffered permanent, severe, foreseeable injuries, incurred medical expenses, and were otherwise damaged.

92. Defendant should be required to compensate Plaintiff and the Class Members for all past, present and future medical expenses associated with their injuries, as well as compensation for their pain and suffering and other damages.

93. As part of their medical care, Plaintiff and the Class members may need to undergo toxicological examinations and diagnoses, and any other medical monitoring necessary in order to ascertain the nature and extent of the injuries suffered due to their toxic exposure. Many of these costs are not be covered by health care insurers, and if covered, may unfairly result in increased premiums.

94. In addition, due to their toxic exposure at the School, Plaintiff and the Class Members are at a significantly increased risk of contracting serious latent diseases, including, but

not limited to cancer, brain, kidney and lung damage, immune system and central nervous system disorders, endocrine disruption and other serious health conditions.

95. As cancer risk from multiple agents is additive, the cumulative cancer risk posed by multiple contaminants is consequently greater than the risk posed by any single contaminant.

96. Plaintiff's and the Class members' increased susceptibility to certain injuries and the irreparable threat to their future health and well-being resulting from their exposure to the Contaminants at the School can only be mitigated and/or addressed by the creation of a program (the "Northport Medical Program") that includes, but is not limited to the following services:

- a. Funding medical surveillance for all past, current and future students who were or may be exposed to the Contaminants at the School.
- b. Gathering and forwarding to Plaintiff's and the Class members' treating physicians information related to the diagnosis and treatment of injuries which may result from their exposure to the Contaminants at the School;
- c. Aiding in the early diagnosis and treatment of resulting injuries through ongoing testing and monitoring of each and every student who has attended the School.
- d. Education and outreach on the existence and availability of the above services, including but not limited to the establishment of a public website with information about the Northport Medical Program, meetings with potentially eligible populations, development and dissemination of outreach materials informing former and current Northport/East Northport residents about the program, and the establishment of phone information services;
- e. Funding further studies of the long-term effects of toxic exposure to Contaminants found at the School; and

f. Funding research into possible cures for the illnesses associated with the above toxic exposure.

97. Prescribed monitoring procedures exist that make the early detection of illnesses caused by toxic exposure possible.

98. The monitoring procedures or regimes are different from normally recommended procedures that would be used in the absence of the exposure.

99. The prescribed medical surveillance is reasonably necessary, according to contemporary scientific principles, for persons such as Plaintiff and the Class members, who have been exposed to excessive levels of Contaminants.

100. Plaintiff and the Class members will suffer irreparable harm if the requested medical monitoring program is not implemented, because they are in danger of suffering catastrophic latent diseases as a result of their prolonged exposure to toxic and hazardous substances caused by Defendant's negligence.

101. Detection of exposure-related conditions and early treatment is medically reasonable and necessary to prevent their progression and further injuries.

102. It is also medically reasonable and necessary to collect data and coordinate study efforts for persons exposed to such substances in order to effectively treat Plaintiff and the Class members.

103. Establishment of a medical monitoring program for the Plaintiff and the Class members is essential, as a consequential damage from their exposure to the Contaminants, because without the requested medical monitoring programs, they will be subjected to further injuries and delayed treatment.

104. Plaintiff and the Class members request that the Court appoint a plan administrator, require Defendant to fund the medical monitoring plan, and reserve jurisdiction to enforce the terms and conditions of the plan.

105. Accordingly, Plaintiff and the Class members seek general damages from Defendant, in an amount to be determined at trial, directly resulting from their injuries in a sufficient amount to compensate them for the injuries and losses, including medical monitoring, and direct, consequential, and nominal damages flowing from Defendant's conduct.

**AS AND FOR A SECOND CAUSE OF ACTION: NEGLIGENCE PER SE**

106. Plaintiff and the Class members reallege and reaffirm each and every allegation set forth in all preceding paragraphs as if fully restated herein.

107. As part of its ownership and operation of the School premises, Defendant had a duty to comply with applicable environmental laws, regulations and guidelines.

108. Such laws, regulations and guidelines include but are not limited to: 6 NYCRR §§ 211.1, Parts 370-372, 375-376, 613 (and former 612 and 614), and Articles 7, 12, 18 of the Suffolk County Sanitary Code.

109. These laws and regulations were intended for the protection of the environment and public health.

110. Plaintiff and the Class members are members of the group(s) whose protection was intended by the drafters of such laws and regulations.

111. On information and belief, Defendant has, at various times, violated one or more of the above laws and regulations in its operations of the School premises.

112. These violations were a direct and proximate cause of the injuries suffered by Plaintiff and the Class members.

113. Violation of these laws and regulations thereby constitutes *per se* negligence.

114. The amount of damages for the injuries will be established at the time of trial and said amount exceeds the jurisdictional limits of all of the lower courts.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff and the Class members, on behalf of themselves and all others similarly situated, request the Court to enter judgment against Defendant:

- A. Awarding general damages directly resulting from Plaintiff's and each Class member's personal injuries in a sufficient amount to compensate them for their past, present, and future personal injuries and losses, and direct, consequential, and nominal damages flowing from Defendant's conduct, in amounts to be proved at trial;
- B. Payment for the establishment of a medical monitoring program and fund, as described above, for Plaintiff and the Class members;
- C. Awarding Plaintiff and the Class members the costs of this lawsuit, including attorneys' fees and expert costs;
- D. Awarding Plaintiff and the Class members pre-judgment and post-judgment interest, as provided by law, and
- E. Awarding Plaintiff and the Class members such other, further and different relief as the Court may deem appropriate and just.

**JURY TRIAL DEMANDED**

Plaintiff and the Class members demand a trial by jury of all claims asserted in this

Verified Complaint.

Dated: Melville, New York  
September 3, 2020



Respectfully submitted,

Napoli Shkolnik PLLC  
*Attorneys for Plaintiff and the Class*



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**VERIFICATION**

I, Lilia Factor, am an attorney duly admitted to practice law in the Courts of this State, and I affirm the following under penalties of perjury:

I am the attorney at Napoli Shkolnik, PLLC, attorneys for the Plaintiffs in the above entitled action. I have read the foregoing SUMMONS & VERIFIED COMPLAINT and know the contents thereof, and upon information and belief, affirmant believes after an inquiry reasonable under the circumstances, the matters alleged herein to be true, and that the contentions herein are not frivolous, as that term is defined in 22 NYCRR § 130-1.1(c).

The reason this verification is made by affirmant and not by Plaintiff is that the named Plaintiff herein resides in a County other than the County in which this firm maintain its offices.

The source of affirmant's information and the grounds of his/her belief are communications, papers, reports and investigations contained in the file maintained by this office.

Dated: Melville, New York  
September 3, 2020



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Lilia Factor