

further suffered emotional distress related to the contamination. Plaintiff and Class Members have suffered compensatory damages and are entitled to punitive damages due to Defendants' willful, wanton, and/or reckless conduct in creating a scenario where diesel fuel was permitted to spill onto Plaintiff's and Class.

63. Moreover, the actions of Defendants have caused an unreasonable interference with the health, wealth, welfare, and use of the private property for which Defendants are subject to injunctive relief fully remediating the damage and prohibiting the continuance of the damaging effects of the hazardous materials without full remediation.

#### **COUNT IV**

##### **PRIVATE NUISANCE (On Behalf of Plaintiff and the Class)**

64. Plaintiff hereby incorporates each and every allegation in the foregoing paragraphs as if fully rewritten herein.

65. Defendants have caused a nuisance and environmental contamination by negligently handling and allowing the diesel fuel and toxic compounds within the fuel to enter the air, soil, sediments, biota, surface water, and potentially groundwater located on Plaintiff's and Class Members respective properties rendering these properties unfit for their uses.

66. This type of contamination and harm to Plaintiff and Class Members' properties was or should have been reasonably foreseeable to Defendants.

67. Plaintiff and the Class Members are entitled to full use of their respective properties, and they have been deprived of the use and enjoyment of their respective properties.

68. Defendants intentional, negligent, and unreasonable acts and omissions caused the release of the hazardous materials that invaded the Adams Property and Class Member's properties and further caused the properties to remain contaminated.

69. Plaintiff and each of the Class Members had a legal right or interest as an owner and/or resident of the property that was invaded and contaminated.

70. Defendants' nuisance is ongoing, and as long as the nuisance continues, Plaintiff and Class Members' damages will continue.

71. As a direct and proximate result of the contamination, Plaintiff and Class Members have suffered damages, including but not limited to, past and continued loss of use and enjoyment of their properties, as well as temporary and potentially permanent property damage, resulting in restoration costs, loss of time, and loss of value of the property. Plaintiff and Class Members further suffered annoyance, discomfort, and inconvenience related to the contamination. Plaintiff and Class Members have suffered compensatory damages and are entitled to punitive damages due to Defendants' willful, wanton, and/or reckless conduct in creating a scenario where diesel fuel was permitted to spill onto Plaintiff's and Class Members' properties.

72. Moreover, the actions of Defendants have caused an unreasonable interference with the health, wealth, welfare, and use of the private property and constitute a nuisance for which Defendants are subject to injunctive relief prohibiting the creation and continuance of the nuisance, and Plaintiff and Class Members are entitled to all direct, consequential, compensatory and/or punitive damages as described herein.

#### COUNT V

**ABSOLUTE NUISANCE  
(STRICT LIABILITY)  
(On Behalf of Plaintiff and the Class)**

73. Plaintiff hereby incorporates each and every allegation in the foregoing paragraphs as if fully rewritten herein.

74. By their acts and omissions, Defendants have violated applicable statutory and regulatory standards, including *inter alia*, to comply with all Ohio Revised Code and Administrative Code requirements addressing the safe handling of fuel during the operations including but not limited to the following: Ohio's Water Pollution Act, Ohio Rev. Code § 6111 et seq., Ohio's Public Nuisance Statute, Ohio Rev. Code § 3767 et seq. and Ohio's Air Nuisance Rule, Ohio Admin. Code § 3745-15-07.

75. Defendants' nuisance is ongoing, and as long as the nuisance continues, Plaintiff's and Class Members' damages will continue.

76. As a direct and proximate result of the contamination, Plaintiff and Class Members have suffered damages, including but not limited to, past and continued loss of use and enjoyment of their properties, as well as temporary and potentially permanent property damage, resulting in restoration costs, loss of time, and loss of value of the property. Plaintiff and Class Members further suffered annoyance, discomfort, and inconvenience related to the contamination. Plaintiff and Class Members have suffered compensatory damages and are entitled to punitive damages due to Defendants' willful, wanton, and/or reckless conduct in creating a scenario where diesel fuel was permitted to spill onto Plaintiff's and Class Members' properties.

77. Moreover, the actions of Defendants have caused an unreasonable interference with the health, wealth, welfare, and use of the private property and constitute a nuisance for which Defendants are subject to injunctive relief prohibiting the creation and continuance of the nuisance, and Plaintiff and Class Members are entitled to all direct and consequential damages as described herein.

**COUNT VI**

**TRESPASS**

**(On Behalf of Plaintiff and the Class)**

78. Plaintiff hereby incorporates each and every allegation in the foregoing paragraphs as if fully rewritten herein.

79. Defendant intentionally, negligently and recklessly allowed the release of hazardous materials that contaminated the Adams Property and Class Members properties.

80. By the foregoing conduct, Defendants caused the fuel and its inherent hazardous organic compounds to escape, invade, and contaminate air, likely groundwater, surface water, soils, sediments, biota, bushes and trees on Plaintiff's and Class Member's Properties.

81. This type of contamination and harm to Plaintiff and Class Members' properties was or should have been reasonably foreseeable to Defendants.

82. Plaintiff and Class Members never authorized Defendant to invade and contaminate their properties and natural resources.

83. The continued presence of the hazardous material on the Adams Property and Class Members' properties and natural resources constitutes a continuing trespass.

84. As a direct and proximate result of the contamination, Plaintiff and Class Members have suffered damages, including but not limited to, past and continued loss of use and enjoyment of their properties, as well as temporary and potentially permanent property damage, resulting in restoration costs, loss of time, and loss of value of the property. Plaintiff and Class Members further suffered annoyance, discomfort, and inconvenience related to the contamination. Plaintiff and Class Members have suffered compensatory damages and are entitled to punitive damages due to Defendants' willful, wanton, and/or reckless conduct in creating a scenario where diesel fuel was permitted to spill onto Plaintiff's and Class Members' properties.

85. Moreover, the actions of Defendants have caused an unreasonable interference with the health, wealth, welfare, and use of the private property and constitute a trespass for which Defendants are subject to injunctive relief prohibiting the creation and continuance of the trespass, and Plaintiff and Class Members are entitled to all direct and consequential damages as described herein.

### COUNT VII

#### **INJURY TO TREES & BUSHES ON LAND OF ANOTHER (Ohio R.C. 901.51) (On Behalf of Plaintiff and the Class)**

86. Plaintiff hereby incorporates each and every allegation in the foregoing paragraphs as if fully rewritten herein.

87. As a direct and proximate result of Defendants' reckless actions as described above, Plaintiff and Class Members suffered damages to the shrubs vines, and trees on the Adams Property and Class Members' properties. Defendants are liable for treble damages.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff Zackory Adams, individually and on behalf of all others similarly situated, prays for judgment as follows:

- a) For an Order certifying this action as a Class Action and appointing Plaintiff as Class Representative and his counsel as Class Counsel;
- b) For equitable relief compelling Defendant to utilize appropriate methods with respect to additional air and soil testing, restoration and abatement actions;
- c) For an award of actual damages, compensatory damages, statutory damages, and statutory penalties, in an amount to be determined, as allowable by law;
- d) For an award of punitive damages, as allowable by law;

- e) For an award of attorneys' fees and costs, and any other expenses, including expert witness fees;
- f) Pre- and post-judgment interest on any amounts awarded; and,
- g) Such other and further relief as this court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff Zackory Adams, individually and on behalf of all others similarly situated, hereby demands a trial by jury of any and all issues in this action so triable as of right.

Respectfully submitted,

  
/s/ Joseph M. Lyon  
Joseph M. Lyon #0076050  
Clint Watson #00078378  
THE LYON FIRM, LLC  
2754 Erie Ave.  
Cincinnati, OH 45208  
Phone: (513) 381-2333  
[jlyon@thelyonfirm.com](mailto:jlyon@thelyonfirm.com)  
[cwatson@thelyonfirm.com](mailto:cwatson@thelyonfirm.com)

Respectfully Submitted,

**RITTGERS & RITTGERS**

  
Charles M. Rittgers (0086567)  
12 East Warren Street  
Lebanon, Ohio 45036  
Telephone: 513-932-2115  
Fax: 513-934-2201  
E-Mail: [charlie@rittgers.com](mailto:charlie@rittgers.com)

*Attorneys for Plaintiff*

**INSTRUCTIONS TO CLERK:**

Please serve the Defendants via Certified Mail at the addresses above.



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Charles M. Rittgers (0086567)