

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

IN RE: RED DUST CLAIMS	)	MASTER CASE NO.
	)	SX-15-CV-000620
NAOMI LUGO and FRED CARRASQUILLO,	)	
SR.,	)	CASE NO.: SX-15-CV-000622
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
ST. CROIX ALUMINA, LLC.;	)	
GLENCORE INTERNATIONAL AG;	)	
ALCOA INC.; GLENCORE, LTD	)	
f/k/a CLARENDON, LTD.; CENTURY	)	
ALUMINUM COMPANY, and ST. CROIX	)	
RENAISSANCE GROUP, LLLP	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS’ ANSWER TO PLAINTIFFS’ VERIFIED COMPLAINT**

COME NOW Defendants ST. CROIX ALUMINA, LLC (“SCA”) and ALCOA INC. n/k/a ARCONIC INC. (“Alcoa”) (collectively “Defendants”), by and through undersigned counsel, and file this Answer to Plaintiffs NAOMI LUGO and FRED CARRASQUILLO, SR. (“Plaintiffs”) Verified Complaint, as follows:

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Cause of Action)

Plaintiffs’ Complaint, and each cause of action alleged therein, fails to state a claim upon which relief may be granted against Defendants.

**SECOND AFFIRMATIVE DEFENSE**

(Statute of Limitations)

Plaintiffs’ Complaint, and each cause of action alleged therein, may be barred, in whole

or in part, by the applicable statutes of limitations.

**THIRD AFFIRMATIVE DEFENSE**

(Contributory Negligence)

Plaintiffs' Complaint, and each and every cause of action alleged therein, may be barred, in whole or in part, by the doctrine of contributory negligence set forth in V.I.C. § 1451, in that Plaintiffs' own, or others', negligent or intentional acts may have contributed to or caused any alleged damage about which Plaintiffs complain.

**FOURTH AFFIRMATIVE DEFENSE**

(Assumption of Risk)

Plaintiffs' Complaint, and each and every alleged cause of action therein, may be barred, in whole or in part, because Plaintiffs may have known, or should have known, of the hazards and conditions about which Plaintiffs complain, and appreciated the danger thereof. Plaintiffs may have voluntarily assumed the risk of their actions, and any recovery should be barred in accordance with the doctrines of express or implied assumption of the risk.

**FIFTH AFFIRMATIVE DEFENSE**

(Release)

Plaintiffs' Complaint, and each cause of action alleged therein, is barred to the extent that he or she was a party to or otherwise included in the Settlement Agreement and the Order for Final Class Certification, Approval of Settlement and Dismissal of Claims in Barnes et al. v. Virgin Islands Alumina Corporation et al., Civil Action File No. 112/1995, Territorial Court of the Virgin Islands, Division of St. Croix, the releases executed in connection with Henry v. St. Croix Alumina, LLC, CIVIL NO. 1999/0036, United States District Court for the District of the Virgin Islands, Division of St. Croix, and/or any other applicable release.

**SIXTH AFFIRMATIVE DEFENSE**

(Accord and Satisfaction)

Plaintiffs' Complaint and each cause of action alleged therein may be barred in whole or in part to the extent that they have been discharged by the doctrine of accord and satisfaction.

**SEVENTH AFFIRMATIVE DEFENSE**

(Independent, Intervening, or Superseding Causes)

Plaintiffs' claims may be barred, in whole or in part, because independent, intervening and superseding forces and/or actions of third parties or Plaintiffs may have proximately caused or contributed to their alleged losses or damages, if any, barring recovery from Defendants.

**EIGHTH AFFIRMATIVE DEFENSE**

(Apportionment of Fault)

The injuries allegedly sustained by Plaintiffs, in whole or in part, may have been the direct and proximate result of the acts, omissions, negligence or wrongdoing of other persons or entities such that those other persons or entities are principally, primarily or solely responsible for Plaintiffs' alleged injuries. Defendants' liability, if any, should therefore be apportioned, denied or reduced with the degree of fault attributable to said other persons or entities.

**NINTH AFFIRMATIVE DEFENSE**

(Act of God)

Plaintiffs' claims for injury and damage, if any, are barred in whole or in part because the alleged injury and damage, if any, was not the result of human intervention but was solely caused by an act of God, i.e., Hurricane Georges.

**TENTH AFFIRMATIVE DEFENSE**

(Failure to Mitigate Damages)

Plaintiffs may have failed to exercise reasonable efforts to minimize or avoid any damages which are alleged to have been caused by Defendants. By reason thereof, plaintiffs may be barred, in whole or in part, from recovering damages from Defendants and Defendants' liability to Plaintiffs, if any, should be apportioned, denied or reduced accordingly.

**ELEVENTH AFFIRMATIVE DEFENSE**

(Laches, Estoppel, Res Judicata and/or Unclean Hands)

Plaintiffs' claims may be barred, in whole or in part, by the doctrines of laches, estoppel, res judicata and/or unclean hands.

**TWELFTH AFFIRMATIVE DEFENSE**

(Consent/Waiver)

Plaintiffs' claims are barred, in whole or in part, by the doctrine of consent/waiver.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(No Causation)

To the extent that Plaintiffs suffered injury, ascertainable loss, or damage, which Defendants deny, such injury, ascertainable loss, or damage was not proximately caused by any conduct or inaction of Defendants, or was not foreseeable, or both.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Alleged Injury or Damage Caused by Others)

To the extent that Plaintiffs suffered injury or damage, which Defendants deny, such injury or damage was caused by the actions or conduct of others, not of Defendants.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(No Injury or Damage)

On information and belief, Defendants deny that Plaintiffs have suffered any injury or damage whatsoever, and further deny that Defendants are liable to any such persons for any injury or damage claimed or for any injury or damage whatsoever.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(CERCLA Preemption)

The complaint is barred in whole or in part because some or all the releases, costs sought to be recovered and other actions for which relief is sought in the Complaint, if they occurred, are preempted by the adoption of CERCLA or other federal statutes, and, therefore, are barred.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(No Extreme or Severe Emotional Distress)

On information and belief, Defendants deny that Plaintiffs have suffered extreme or severe emotional distress.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(No Extreme or Outrageous Conduct)

To the extent that Plaintiffs suffered injury or damage, which Defendants deny, such injury or damage was not caused by any extreme or outrageous conduct or actions by Defendants.

**NINETEENTH AFFIRMATIVE DEFENSE**

(No Intent or Knowledge)

To the extent that Plaintiffs suffered injury or damage, which Defendants deny, such injury or damage was not caused by any intentional or knowing conduct or actions by

Defendants.

**TWENTIETH AFFIRMATIVE DEFENSE**

(Lack of Standing—No Injury in Fact or Loss of Money or Property)

Plaintiffs may lack standing to assert the claims in the Complaint because they may not have sustained any injury in fact, loss of money, or property or other economic harm as the result of any action or omission of Defendants.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(Coming to the Nuisance)

Plaintiffs' claims may be barred, in whole or in part, by the doctrine of "coming to the nuisance" insofar as Plaintiffs may have moved to the area knowing that the alleged nuisance existed and/or was already occurring. *Alleyne v. Diageo USVI, Inc.*, 63 V.I. 384, 387 (Super. Ct. 2015).

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(No entitlement to Punitive Damages)

Plaintiffs are precluded from recovering punitive damages, either in whole or in part, from Defendants under the applicable provisions of law, including the United States Constitution.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

(Punitive Damages Unconstitutional)

Plaintiffs' claims for punitive damages are barred, in whole or in part, because a punitive damage award would violate the United States Constitution.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

(Unjust Enrichment to Plaintiffs)

Plaintiffs' claims are barred, in whole or part, because granting Plaintiffs the relief they seek would constitute unjust enrichment in that the granting of such relief would unjustly enrich Plaintiffs and unjustly impose loss upon Defendants.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

(Safe Harbor)

The Complaint, and each claim therein, is barred to the extent that it seeks to impose liability based on conduct by Defendants that at all times was in compliance with relevant laws and guidance from applicable regulations.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

(Reasonable Conduct)

Plaintiffs' claims are barred in whole or in part because Defendants have, during the relevant period of time, acted reasonably and without fault.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

(Reservation of Right to Assert Additional Defenses)

Defendants reserve the right to assert additional affirmative defenses as discovery and investigation proceeds in this action.

**ANSWER**

1.

Defendants admit that this Court has subject matter jurisdiction.

2.

Defendants are without sufficient knowledge or information to admit or deny the

allegations in this Paragraph of the Complaint, and therefore deny the same.

3.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

4.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

5.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

6.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

7.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

8.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

9.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.



10.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

11.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

12.

Defendants admit the allegations in this Paragraph of the Complaint.

13.

Alcoa Inc. changed its name to Arconic Inc. on November 1, 2016. With this correction made, Defendants admit the allegation in this Paragraph of the Complaint.

14.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

15.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

16.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

17.

Defendants admit that an alumina refinery on the south shore of the island of St. Croix was owned and/or operated at different times by different entities over several years and further that refinery operations ceased in approximately 2001. Defendants also admit that the facility refined an ore known as bauxite into alumina and that the by-product of the refining process is bauxite residue, which was stored at the facility. Defendants deny the remaining allegations in this Paragraph of the Complaint.

18.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

19.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

20.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

21.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

22.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

23.

Defendants admit only that, in 1995, Alcoa Inc. was an indirect parent of a partially owned subsidiary, SCA. The remaining allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in this Paragraph of the Complaint, and therefore deny the same.

24.

Defendants deny the allegations in this Paragraph of the Complaint as stated and refer Plaintiffs to the four corners of the contract between SCA and VIALCO.

25.

Defendants deny the first sentence of this Paragraph. The remaining allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in this Paragraph of the Complaint, and therefore deny the same.

26.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

27.

Defendants deny the allegations of this Paragraph of the Complaint.

28.

Defendants deny the allegations in this Paragraph of the Complaint.

29.

Defendants admit that SCA is a Delaware Limited Liability Company, and admit that SCA operated the alumina refinery between 1998 and 2001. Defendants deny that Alcoa wholly owned SCA, deny that Alcoa made any environmental decisions concerning the subject alumina refinery, and deny any remaining allegations in this Paragraph of the Complaint.

30.

Defendants deny that Alcoa Inc. was ever named or known as Alumina Company of America. Defendants also deny that Alcoa wholly owned SCA and deny that Alcoa directed environmental decisions concerning the alumina refinery. Additionally, Defendants state that Alcoa Inc. changed its name to Arconic Inc. on November 1, 2016. Defendants deny the remaining allegations in this Paragraph of the Complaint.

31.

Defendants admit that, in 2002, SCA entered into a Purchase and Sale Agreement with Brownfield Recovery Corp. and Energy Answers Corporation of Puerto Rico, and that Agreement speaks for itself. Defendants state that Alcoa was not a party to the Purchase and Sale Agreement. The remaining allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in this Paragraph of the Complaint, and therefore deny the same.

32.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

**FACTUAL BACKGROUND**

**A. The St. Croix Alumina Refinery**

33.

Answering for Defendants SCA and Alcoa, Defendants admit that alumina is extracted from a naturally-occurring ore called bauxite and that bauxite can be red in color. Defendants also admit that bauxite in high enough concentrations and under particular conditions can cause mild irritation of the eyes, skin, and upper respiratory tract.

34.

Defendants admit that the by-product of the alumina refining process used at the St. Croix refinery is a red substance called bauxite residue. Defendants deny that bauxite residue is called or otherwise referred to “red dust”. Defendants also deny that bauxite residue is indistinguishable in color and texture from bauxite. Defendants admit that dust from bauxite residue generated by processing and/or under other particular conditions can, under certain conditions, cause irritation of the eyes, skin, and upper respiratory tract, and that contact with skin and eyes should be avoided. Defendants deny the remaining allegations in this Paragraph of the Complaint.

35.

Defendants admit that the bauxite residue SCA stored when it operated the alumina refinery between 1998 and 2001 contained coal ash to lower the acidity of the bauxite residue and was stored outdoors in berms. Defendants deny the second sentence of this Paragraph to the

extent it pertains to SCA and Alcoa. The remaining allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in this Paragraph of the Complaint, and therefore deny the same.

36.

Defendants admit that there was asbestos within the equipment in the manufacturing facility of the on the refinery. Defendants deny the remaining allegations in this Paragraph of the Complaint.

37.

Upon information and belief, Defendants admit the allegations in the first sentence of this Paragraph of the Complaint. Defendants also admit that St. Croix was struck by Hurricane Marilyn in 1995 and that the hurricane damaged the roof of the bauxite storage shed. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in this Paragraph of the Complaint, and therefore deny the same.

38.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

39.

Defendants deny the allegations in this Paragraph of the Complaint.

40.

Defendants deny as stated the allegations in this Paragraph of the Complaint. Defendants admit that SCA possessed a range of estimates relating to asbestos removal, most of which dealt

with removal following a permanent closure of the facility, and relating to various environmental issues but deny the remaining allegations in this Paragraph of the Complaint. Alcoa denies that it was involved in this process.

41.

Defendants admit that the bauxite residue produced when SCA operated the facility between 1998 and 2001 contained coal ash to lower the acidity of the bauxite residue, and was stored in bauxite residue areas at the property. Defendants deny that they added red dust, coal dust and other particulates to the property. Defendants deny the remaining allegations in this Paragraph of the Complaint.

42.

Defendants deny the first and second sentences of this Paragraph of the Complaint. Defendants also deny that “red dust” disposal areas existed at the refinery. Defendants admit that SCA possessed a range of estimates relating to Residue Area Closure and relating to various environmental issues on the property, but deny the remaining allegations in this Paragraph of the Complaint. Alcoa denies the allegations in this Paragraph of the Complaint.

43.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same. Further, to the extent the allegations in this Paragraph include SCA and Alcoa, Defendants deny the allegations in this Paragraph of the Complaint.

44.

To the extent that Plaintiffs assert that an Alcoa research scientist was writing about the

St. Croix refinery or refineries that used a similar process for storing bauxite residue, Defendants deny this Paragraph of the Complaint.

45.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

46.

Defendants deny the allegations in this Paragraph of the Complaint.

47.

Defendants deny that there were emissions of dust beyond the boundaries of the refinery from the time SCA took ownership of the refinery. Defendants deny the remaining allegations in this Paragraph of the Complaint.

48.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

49.

Defendants admit that in or about 2000, SCA employees acknowledged that there were statements of concern in the community pertaining to fugitive emissions from bauxite residue, but deny that such statements of concern are evidence that emissions occurred.

**B. Hurricane Georges**

50.

Defendants deny the allegations in this Paragraph of the Complaint.



51.

Defendants admit the allegations in this Paragraph of the Complaint.

52.

Defendants admit that refinery workers reported seeing bauxite blowing out of holes in the storage shed towards nearby neighborhoods during Hurricane Georges. Defendants deny the remaining allegations in this Paragraph of the Complaint.

53.

Defendants deny the allegations in this Paragraph of the Complaint.

54.

Defendants are without sufficient knowledge or information regarding Plaintiffs alleged cleaning and cleaning costs to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same. Defendants deny the remaining allegations in this Paragraph of the Complaint.

55.

Defendants deny the allegations in this Paragraph of the Complaint.

56.

Defendants deny the allegations in this Paragraph of the Complaint.

57.

Defendants deny the allegations in this Paragraph of the Complaint.

58.

Defendants deny the allegations in this Paragraph of the Complaint.

59.

Defendants deny the allegations in this Paragraph of the Complaint.

60.

Defendants deny the allegations in this Paragraph of the Complaint.

61.

Defendants deny the allegations in this Paragraph of the Complaint.

62.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

63.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

64.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

65.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

66.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

67.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

**C. After Hurricane Georges**

68.

Defendants deny the allegations in this Paragraph of the Complaint.

69.

Defendants deny the allegations in this Paragraph of the Complaint.

70.

Defendants deny the allegations in this Paragraph of the Complaint.

71.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this paragraph of the Complaint, and therefore deny the same.

72.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

73.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent the allegations in this Paragraph require an answer, Defendants state that following the Hurricane, SCA conducted immediate and timely cleaning of houses, cisterns, and personal property in certain neighborhoods. Defendants also state that thereafter and including following sale of the refinery, SCA engaged in remediation of portions of the refinery property and that such remediation included a closure of the area of bauxite residue storage known as Area A which was completed in 2016 in accordance with requirements of the Consent Decree with the DPNR.

74.

Defendants admit that the refinery ceased operations in 2001. Except as admitted, Defendants deny this Paragraph of the Complaint.

75.

Defendants admit that SCA requested indemnification from VIALCO in 2001, pursuant to the terms of a 1995 Acquisition Agreement, for certain Pre-Closing Environment Condition. Defendants deny as stated the remaining allegations in this Paragraph of the Complaint.

76.

Defendants admit that SCA entered into a consent decree and the terms of the consent decree speak for themselves. Defendants deny as stated the remaining allegations in this Paragraph of the Complaint.

77.

Defendants admit that SCRG granted SCA access to the refinery. Defendants deny as stated the remaining allegations in this Paragraph of the Complaint.

78.

Defendants deny the allegation in this Paragraph of the Complaint.

79.

Defendants deny the allegation in this Paragraph of the Complaint.

80.

Defendants deny the allegation in this Paragraph of the Complaint.

81.

Defendants deny the allegation in this Paragraph of the Complaint.

82.

Defendants deny the allegation in this Paragraph of the Complaint.

83.

Defendants deny the allegation in this Paragraph of the Complaint.

84.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

85.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

86.

Defendants deny the allegation in this Paragraph of the Complaint.

87.

Defendants deny the allegation in this Paragraph of the Complaint.

88.

Defendants deny the allegation in this Paragraph of the Complaint.

89.

Defendants deny the allegation in this Paragraph of the Complaint.

90.

Defendants deny the allegation in this Paragraph of the Complaint.

91.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

92.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

93.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

94.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same. Further, to the extent the allegations in this Paragraph include SCA and Alcoa, Defendants deny the allegations in this Paragraph of the Complaint.

95.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

96.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

97.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same. Further, to the extent the allegations in this Paragraph refer to SCA and Alcoa, Defendants deny the allegations in this Paragraph of the Complaint.

98.

Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same. Further, to the extent the allegations in this Paragraph include SCA and Alcoa, Defendants deny the allegations in this Paragraph of the Complaint.

**D. Related Litigation**

99.

Defendants admit that in 1999 plaintiffs who alleged that they were residents of six specific neighborhoods filed a putative class action, eventually captioned Josephat Henry, et al. v. St. Croix Alumina, LLC, et al., Civ. No. 1999-0036, in the U.S. District Court of the Virgin Islands. The Henry plaintiffs sought compensatory and punitive damages for alleged personal injuries and property damage sustained from exposure to materials purportedly blown from the refinery by Hurricane Georges. Defendants deny the remaining allegations in this Paragraph of

the Complaint.

100.

Defendants admit that, in addition to damages, the Henry plaintiffs also sought, in the Third Amended Complaint, an injunction “requiring that defendants cease and desist all activities that result in pollutants being discharged, and further requiring a cleanup of all pollutants and removal of the piles of ‘Red Dust,’ coal dust, and particulates.” Defendants deny any liability for those claims and deny the remaining allegations in this Paragraph of the Complaint.

101.

Defendants admit that in August 2000, the Henry court certified a class as set forth in this Paragraph, which class the court subsequently decertified. Defendants deny any liability for those claims.

102.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

103.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

104.

Defendants admit that SCRG filed a separate suit against Alcoa for such claims, however, Defendants deny liability for such claims.

105.

Defendants admit allegations in this Paragraph of the Complaint, but deny liability for such claim.



106.

Defendants admit the first three sentences in this Paragraph of the Complaint. Defendants deny the remaining allegations in this Paragraph of the Complaint.

**COUNT I: Abnormally Dangerous Condition**

107.

Defendants reassert and incorporate by reference their answers to Paragraphs 1 through 106 of their Answer as if set forth herein.

108.

This paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. Additionally, to the extent the allegations in this Paragraph of the Complaint pertain to parties other than Defendants, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same. Further, to the extent the allegations in this Paragraph include SCA and Alcoa, Defendants deny the allegations in this Paragraph of the Complaint.

109.

Defendants admit the allegations in this Paragraph of the Complaint.

110.

Defendants admit that there are residential communities located north of the subject alumina refinery.

111.

Defendants deny as stated the allegation in this Paragraph of the Complaint.

112.

Defendants deny as stated the allegation in this Paragraph of the Complaint.

113.

Defendants deny as stated the allegation in this Paragraph of the Complaint.

114.

Defendants deny as stated the allegation in this Paragraph of the Complaint.

**COUNT II: Public Nuisance**

115.

Defendants reassert and incorporate by reference their answers to Paragraphs 1 through 114 of their Answer as if set forth herein.

116.

Defendants deny the allegations in this Paragraph of the Complaint.

117.

Defendants deny the allegations in this Paragraph of the Complaint.

118.

Defendants deny the allegations in this Paragraph of the Complaint.

119.

Defendants deny the allegations in this Paragraph of the Complaint.

**COUNT III: Private Nuisance/Trespass**

120.

Defendants reassert and incorporate by reference their answers to Paragraphs 1 through 119 of their Answer as if set forth herein.

121.

Defendants deny the allegations in this Paragraph of the Complaint.

122.

Defendants deny the allegations in this Paragraph of the Complaint.

123.

Defendants deny the allegations in this Paragraph of the Complaint.

124.

Defendants deny the allegations in this Paragraph of the Complaint.

**COUNT IV: Negligence as to Defendants Alcoa, SCA and SCRG only**

125.

Defendants reassert and incorporate by reference their answers to Paragraphs 1 through 124 of their Answer as if set forth herein.

126.

Defendants deny the allegation in this Paragraph of the Complaint.

127.

Defendants deny the allegation in this Paragraph of the Complaint.

128.

Defendants admit that SCA voluntarily undertook efforts to clean-up bauxite that Hurricane Georges may have blown into certain neighborhoods. Defendants deny that any bauxite residue was blown into any neighborhoods and deny the remaining allegations in this Paragraph of the Complaint.

129.

Defendants deny the allegation in this Paragraph of the Complaint.

130.

Defendants deny the allegation in this Paragraph of the Complaint.

131.

Defendants deny the allegation in this Paragraph of the Complaint.

132.

Defendants deny the allegation in this Paragraph of the Complaint.

**COUNT V: Intentional Infliction of Emotional Distress**

133.

Defendants reassert and incorporate by reference their answers to Paragraphs 1 through 132 of their Answer as if set forth herein.

134.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent the allegations in this Paragraph require a response, Defendants deny the allegations in this Paragraph of the Complaint.

135.

Defendants deny the allegations in this Paragraph of the Complaint.

136.

Defendants deny the allegations in this Paragraph of the Complaint.

137.

Defendants admit that SCA knew that St. Croix is located in an area that may experience hurricanes. Defendants also admit that SCA knew that some residents relied upon cisterns as a source of drinking water and that other residents were connected to the municipal water supply.

138.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the

allegations in this Paragraph of the Complaint, and therefore deny the same.

139.

The allegations in this Paragraph of the Complaint are vague in that they attempt to equate alleged knowledge in 2006 by SCRG with actions taken by SCA during its period of ownership, which ended before SCRG allegedly acquired the knowledge in 2006. Defendants therefore deny the allegation in this Paragraph of the Complaint.

140.

Defendants deny the allegation in this Paragraph of the Complaint.

141.

Defendants deny the allegation in this Paragraph of the Complaint.

142.

Defendants are without sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same. Additionally, to the extent the allegations in this Paragraph of the Complaint pertain to parties other than Defendants, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same. Further, to the extent the allegations in this Paragraph include SCA and Alcoa, Defendants deny the allegations in this Paragraph of the Complaint.

143.

Defendants deny the allegations in this Paragraph of the Complaint.

144.

Defendants deny the allegations in this Paragraph of the Complaint.

**COUNT VI: Negligent Infliction of Emotional Distress**

145.

Defendants reassert and incorporate by reference their answers to Paragraphs 1 through 144 of their Answer as if set forth herein.

146.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent an answer is required, Defendants deny the allegations in this Paragraph of the Complaint.

147.

Defendants deny the allegations in this Paragraph of the Complaint.

**COUNT VII: Negligence as to All Defendants**

148.

Defendants reassert and incorporate by reference their answers to Paragraphs 1 through 147 of their Answer as if set forth herein.

149.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent an answer is required, Defendants deny the allegations in this Paragraph of the Complaint.

150.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

151.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

152.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

153.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

154.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

155.

Defendants admit that SCA owned the alumina refinery from July 1995 to 2002 and operated the refinery from 1998 to 2001. SCA denies the remaining allegations in this Paragraph of the Complaint. Alcoa denies that it ever owned or operated the refinery and, therefore, denies the allegations in this Paragraph of the Complaint.

156.

Defendants deny the allegations in this Paragraph of the Complaint.

157.

Defendants deny the allegations in this Paragraph of the Complaint.

158.

Defendants deny the allegations in this Paragraph of the Complaint.

159.

Defendants deny the allegations in this Paragraph of the Complaint.

160.

Defendants deny the allegations in this Paragraph of the Complaint.

161.

Defendants deny the allegations in this Paragraph of the Complaint.

162.

Defendants deny the allegations in this Paragraph of the Complaint. Additionally, Defendants deny that Alcoa had any obligations relating to any bauxite, red mud, or other alleged particulates because it never owned nor operated the refinery.

163.

Upon information and belief, Defendants admit the allegations in this Paragraph of the Complaint.

164.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

165.

The allegations in this Paragraph of the Complaint pertain to parties other than



Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

166.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

167.

Defendants deny the allegations in this Paragraph of the Complaint.

168.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent that an answer is required, Defendants deny the allegations in this Paragraph of the Complaint.

169.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent that an answer is required, Defendants deny the allegations in this Paragraph of the Complaint.

170.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent that an answer is required, Defendants deny the allegations in this Paragraph of the Complaint.

171.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent that an answer is required, Defendants deny the allegations

in this Paragraph of the Complaint.

172.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent that an answer is required, Defendants deny the allegations in this Paragraph of the Complaint.

173.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent that an answer is required, Defendants deny the allegations in this Paragraph of the Complaint.

174.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent that an answer is required, Defendants deny the allegations in this Paragraph of the Complaint.

175.

Defendants deny the allegations in this Paragraph of the Complaint.

176.

This Paragraph of the Complaint sets forth Plaintiffs' conclusions of law, and therefore no answer is required. To the extent the allegations in this Paragraph require an answer, Defendants deny the allegations in this Paragraph of the Complaint.

177.

Defendants admit the allegations in the first sentence of this Paragraph of the Complaint. Defendants deny that the Management Standards and Guidelines Plaintiffs refer to pertain to subject alumina refinery or refineries that used a similar process for storing bauxite residue.

Defendants deny the remaining allegations in this Paragraph of the Complaint.

178.

Defendants admit that VICZM conducted an inspection of the refinery in 1994 and found branches of vegetation were stained red. Defendants deny as stated the quoted language provided in the first sentence of this Paragraph of the Complaint. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in this Paragraph of the Complaint, and therefore deny the same.

179.

Defendants deny as stated the allegations in this Paragraph of the Complaint. The fact that plant personnel used respirators in high-dust areas is not relevant to this case because the neighborhoods were not in high-dust areas.

180.

Defendants admit that Alcoa and SCA filed a “Statement of Undisputed Facts.” However, Defendants deny that any of the facts Plaintiffs state in this Paragraph of the Complaint caused Plaintiffs’ alleged damages or existed at the time that SCA owned the refinery.

181.

Defendants deny as stated the allegations in this Paragraph of the Complaint.

182.

Defendants admit that bauxite was stored in an A-frame building with heavy plastic curtains on it. Defendants deny that the refinery took no steps to prevent bauxite or bauxite residue from escaping during a hurricane. Defendants deny as stated the allegations in this Paragraph of the Complaint.

183.

Defendants admit that refinery employees witnessed bauxite leaving the storage shed during Hurricane Georges through a hole blown in the roof. Defendants deny as stated the remaining allegations in this Paragraph of the Complaint.

184.

Defendants deny as stated the allegations in this Paragraph of the Complaint.

185.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

186.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

187.

The allegations in this Paragraph of the Complaint pertain to parties other than Defendants. Thus, Defendants lack sufficient knowledge or information to admit or deny the allegations in this Paragraph of the Complaint, and therefore deny the same.

188.


Defendants deny the allegations in this Paragraph.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by their Complaint;
2. That Defendants be awarded its costs of suit; and
3. For such further relief as this Court may deem just and proper.

Respectfully submitted this 8<sup>th</sup> day of December, 2017.

By:



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