

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

NAOMI LUGO AND FRED  
CARRASQUILLO, SR.,

Plaintiffs,

vs.

ST. CROIX ALUMINA, LLC; GLENCORE  
INTERNATIONAL AG; ALCOA, INC.;  
GLENCORE, LTD. f/k/a CLARENDON,  
LTD.; and CENTURY ALUMINUM  
COMPANY,

Defendants.

MASTER CASE NO.  
SX-15-CV-000620

Case No: SX-15-CV-000622

**GLENCORE LTD.'S ANSWER TO PLAINTIFFS' VERIFIED COMPLAINT**

COMES NOW defendant Glencore Ltd. (“Glencore”), by and through undersigned counsel, and file this Answer to the Verified Complaint (“Complaint”) of plaintiffs Naomi Lugo and Fred Carrasquillo, Sr. (collectively, “Plaintiffs”), as follows:

**ANSWER**

1. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

2. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

3. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

4. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

5. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

6. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

7. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

8. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

9. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

10. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

11. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

12. On information and belief, Glencore admits the allegations contained in this Paragraph of the Complaint.

13. On information and belief, Glencore admits the allegations contained in this Paragraph of the Complaint, except that, on information and belief, Glencore understands that Alcoa has changed its name to Arconic Inc.

14. Glencore denies the allegations contained in this Paragraph of the Complaint.

15. Glencore admits that Glencore International AG is a Swiss corporation engaged in commodity trading with headquarters in Baar, Switzerland and denies the remaining allegations in the first sentence of this Paragraph of the Complaint. Glencore is without knowledge or information to admit or deny the allegations in the second sentence of this Paragraph of the Complaint.

16. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

17. Glencore admits 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; on information and belief, Glencore alleges that refinery operations ceased in approximately 2001. Glencore also admits that the facility refined a red ore called bauxite into alumina, and that a by-product of the refining process is bauxite residue, sometimes referred to as “red mud.” Glencore denies the remaining allegations of this Paragraph of the Complaint.

18. Glencore admits that it is a Swiss company, that VIALCO acquired the alumina refinery on St. Croix in 1989, that VIALCO is not a party to this lawsuit, and that, at one time (ending more than twenty years ago, *i.e.*, in 1995), Glencore was a thrice-removed parent company of VIALCO. Glencore denies the remaining allegations in this Paragraph of the Complaint.

19. Glencore admits the allegations in this Paragraph of the Complaint.

20. Glencore denies the allegations in this Paragraph of the Complaint as stated.

21. Glencore denies the allegations in this Paragraph of the Complaint as stated.

22. Glencore admits that in 1995, VIALCO's stock was acquired by Century Chartering Company or by Ravenswood Aluminum Company, and admits that Century Aluminum Company was a subsidiary of Glencore International AG until April 1996. Glencore denies the remaining allegations in this Paragraph of the Complaint.

23. This Paragraph of the Complaint is Plaintiffs' truncated interpretation of a lengthy legal document, the Acquisition Agreement between SCA and VIALCO, and to the extent this Paragraph attempts to re-write or mischaracterize the Acquisition Agreement, Glencore denies these allegations in order to allow the Acquisition Agreement to speak for itself.

24. This Paragraph of the Complaint is Plaintiffs' truncated interpretation of a lengthy legal document, the Acquisition Agreement between SCA and VIALCO, and to the extent this Paragraph attempts to re-write or mischaracterize the Acquisition Agreement, Glencore denies these allegations in order to allow the Acquisition Agreement to speak for itself.

25. To the extent the allegations in the first sentence of this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations; to the extent they pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of the first sentence of this Paragraph of the Complaint. The second sentence of this Paragraph merely sets forth a definition to which no response is required.

26. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

27. To the extent this Paragraph of the Complaint is Plaintiffs' truncated interpretation of a lengthy legal document, the Acquisition Agreement between SCA and VIALCO, and/or attachments thereto, and to the extent this Paragraph attempts to re-write or mischaracterize such documents, Glencore denies these allegations in order to allow the Acquisition Agreement and attachments thereto to speak for themselves. Glencore further denies the allegations of this Paragraph of the Complaint as stated.

28. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

29. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

30. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

31. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

32. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

### **FACTUAL BACKGROUND**

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

33. Glencore admits the first two sentences of this Paragraph of the Complaint.

Glencore lacks knowledge or information as to what document is referenced in the third sentence of this Paragraph of the Complaint sufficient to form a belief about the truth of the allegations contained therein. To the extent this sentence references Glencore's (Clarendon's) MSDS for bauxite, Glencore denies this allegation.

34. Answering the first sentence of this Paragraph of the Complaint, Glencore admits that a byproduct of the alumina refining process used at the St. Croix refinery during the time VIALCO operated it was a red substance called bauxite residue, and denies the remaining allegations therein. Answering the second and third sentences of this Paragraph of the Complaint, Glencore lacks knowledge or information as to what document is referenced therein sufficient to form a belief about the truth of the allegations contained therein. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of the last sentence of this Paragraph of the Complaint.

35. Glencore denies the allegations of this Paragraph of the Complaint as stated.

36. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations; to the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

37. Glencore admits that, at some points in time, bauxite at the refinery was stored in a steel A-frame structure with thick plastic sheeting, called the bauxite storage shed. Glencore admits that in 1995, Hurricane Marilyn hit St. Croix and damaged the roof of the

bauxite storage shed. Glencore is without knowledge or information sufficient to form a belief about the truth of the remaining allegations of this Paragraph of the Complaint.

38. Glencore denies the allegations of this Paragraph of the Complaint as stated.

39. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

40. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

41. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations; to the extent they pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

42. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

43. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations; to the extent they pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

44. On information and belief, Glencore denies this Paragraph of the Complaint as stated.

45. Glencore denies this Paragraph of the Complaint as stated.

46. On information and belief, Glencore denies the allegations in this Paragraph

of the Complaint.

47. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations; to the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations, except that Glencore denies, on information and belief, that there were emissions beyond the boundaries of the refinery during the time period at issue in the allegations of this Paragraph of the Complaint.

48. Glencore denies the allegations in this Paragraph of the Complaint as stated.

49. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

**B. Hurricane Georges**

50. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

51. Glencore admits the allegations in this Paragraph of the Complaint.

52. To the extent the allegations in this paragraph concern Glencore, whose former thrice-removed subsidiary, VIALCO, sold the refinery in 1995, three years before Hurricane Georges, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or



information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint, except Glencore admits that SCA refinery workers reported seeing bauxite blowing out of holes in the storage shed during Hurricane Georges.

53. Glencore denies the allegations in this Paragraph of the Complaint as stated.

54. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint concerning Plaintiffs' alleged cleaning. Glencore denies the remaining allegations of this Paragraph of the Complaint as stated.

55. Glencore denies the allegations contained in this Paragraph of the Complaint as stated.

56. Glencore denies the allegations contained in this Paragraph of the Complaint as stated.

57. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

58. Glencore denies the allegations contained in this Paragraph of the Complaint as stated.

59. Glencore denies the allegations contained in this Paragraph of the Complaint as stated.

60. Glencore denies the allegations contained in this Paragraph of the Complaint as stated.

61. Glencore is without knowledge or information sufficient to form a belief

about the truth of the allegations of this Paragraph of the Complaint.

62. Glencore denies the allegations contained in this Paragraph of the Complaint as stated.

63. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

64. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

65. Glencore denies the allegations contained in this Paragraph of the Complaint.

66. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint. To the extent the phrase “this time of cleanup” refers to a cleanup of “Defendants’ industrial waste” as stated in the previous Paragraph, Glencore denies the allegations as stated.

67. Glencore denies the allegations contained in this Paragraph of the Complaint as stated.

**C. After Hurricane Georges**

68. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations; to the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

69. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations; to the extent the allegations in this Paragraph

pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

70. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

71. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations; to the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

72. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

73. To the extent this Paragraph of the Complaint sets forth a conclusion of law, no answer is required. To the extent the allegations in this Paragraph of the Complaint require an answer, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

74. Upon information and belief, Glencore understands that operations at the refinery ceased in approximately 2001. Glencore denies the remaining allegations in this Paragraph of the Complaint.

75. Glencore denies the allegations in this Paragraph of the Complaint as stated.

76. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

77. Glencore is without knowledge or information sufficient to form a belief

about the truth of the allegations of this Paragraph of the Complaint.

78. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

79. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

80. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

81. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint about others' knowledge; Glencore otherwise denies the allegations of this Paragraph of the Complaint.

82. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint about the Alcoa Defendants' disclosures; Glencore otherwise denies the allegations of this Paragraph of the Complaint.

83. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

84. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

85. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint about SCRG's knowledge; Glencore otherwise denies the allegations of this Paragraph of the Complaint.

86. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

87. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

88. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint about others' knowledge; Glencore otherwise denies the allegations of this Paragraph of the Complaint.

89. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint about the Alcoa Defendants' disclosures; Glencore otherwise denies the allegations of this Paragraph of the Complaint.

90. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

91. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

92. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint about SCRG's knowledge; Glencore otherwise denies the allegations of this Paragraph of the Complaint.

93. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

94. To the extent the allegations in this Paragraph of the Complaint pertain to

Glencore, Glencore denies the allegations; to the extent they pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

95. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

96. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

97. Glencore denies the allegations contained in this Paragraph of the Complaint.

98. Glencore denies the allegations contained in this Paragraph of the Complaint.

#### **D. Related Litigation**

99. Answering this Paragraph, Glencore admits that in 1999, named plaintiffs purporting to represent residents of and employees working in 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 against three defendants in this case: St. Croix Alumina, LLC; Alcoa Inc.; and Glencore Ltd. 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. Glencore denies the remaining allegations in this Paragraph.

100. Answering this Paragraph Glencore admits 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 clean up of all pollutants and removal of the piles of 'Red Dust,' coal dust, and particulates." Glencore denies any injunctive or other relief against Glencore could be based on those claims, and denies the remaining allegations in this Paragraph.

101. Glencore admits that that in August 2000, the *Henry* court certified a class as set forth in this Paragraph of the Complaint, which class the court subsequently decertified. Glencore denies any liability for those claims.

102. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

103. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

104. On information and belief, Glencore acknowledges that SCRG filed a suit against Alcoa in or around 2004, and to the extent this Paragraph attempts to re-write or mischaracterize the pleadings in that action, Glencore denies these allegations in order to allow the pleadings to speak for themselves.

105. Glencore admits the allegations of this Paragraph of the Complaint, but denies liability for such claim.

106. Glencore admits the first three sentences of this Paragraph of the Complaint. Glencore denies the last sentence of this Paragraph of the Complaint.

**COUNT 1: Abnormally Dangerous Condition**

107. Glencore incorporates its answers to the allegations of each of the previous Paragraphs of the Complaint as if set forth herein verbatim.

108. This Paragraph of the Complaint sets forth a conclusion of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, and to the extent they pertain to Glencore, Glencore denies the allegations; to the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

109. Glencore admits the St. Croix Alumina refinery is located proximate to the head of the Kraus Lagoon Channel at Port Alucroix, which ultimately connects to the Caribbean Sea. Glencore is without knowledge or information sufficient to form a belief about the truth of the remaining allegations of this Paragraph of the Complaint.

110. Glencore admits that there are residential communities located to the north of the former subject alumina refinery site, and otherwise denies the allegations of this Paragraph of the Complaint.

111. Glencore denies as stated the allegations in this Paragraph of the Complaint to the extent they pertain to Glencore. To the extent the allegations in this Paragraph of the Complaint pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

112. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information



sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

113. To the extent the allegations in the first sentence of this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in the first sentence of this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations. Glencore denies the allegations in the second and third sentences of this Paragraph of the Complaint.

114. Glencore denies the allegations in this Paragraph of the Complaint.

**COUNT II: Public Nuisance**

115. Glencore incorporates its answers to the allegations of each of the previous Paragraphs of the Complaint as if set forth herein verbatim.

116. This Paragraph of the Complaint sets forth a conclusion of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, and to the extent they pertain to Glencore, Glencore denies the allegations; to the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

117. Glencore denies the allegations in this Paragraph of the Complaint.

118. This Paragraph of the Complaint sets forth a conclusion of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the

Complaint require an answer, and to the extent they pertain to Glencore, Glencore denies the allegations; to the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

119. This Paragraph of the Complaint sets forth a conclusion of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

**COUNT III: Private Nuisance/Trespass**

120. Glencore incorporates its answers to the allegations of each of the previous Paragraphs of the Complaint as if set forth herein verbatim.

121. This Paragraph of the Complaint sets forth a conclusion of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, and to the extent they pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

122. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

123. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

124. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

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

125. Glencore incorporates its answers to the allegations of each of the previous Paragraphs of the Complaint as if set forth herein verbatim.

126. This Count is not stated against Glencore and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, and to the extent they pertain to Glencore, Glencore denies the allegations; to the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

127. This Count is not stated against Glencore and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

128. This Count is not stated against Glencore and therefore no answer is required.

However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore admits, on information and belief, that SCA voluntarily undertook efforts to clean up certain neighborhoods following Hurricane Georges. Glencore is without knowledge or information sufficient to form a belief about the truth of the remaining allegations of this Paragraph of the Complaint.

129. This Count is not stated against Glencore and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

130. This Count is not stated against Glencore and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

131. This Count is not stated against Glencore and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

132. This Count is not stated against Glencore and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

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

133. Glencore incorporates its answers to the allegations of each of the previous Paragraphs of the Complaint as if set forth herein verbatim.

134. This Paragraph of the Complaint sets forth a conclusion of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, and to the extent they pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

135. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

136. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

137. Glencore admits that it has known for a period of time that St. Croix is located in an area that may experience hurricanes, and that some residents relied upon cisterns as a source of drinking water while other residents were connected to the municipal water supply. Glencore denies the remaining allegations of this Paragraph to the extent they

pertain to Glencore's knowledge. Glencore is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in this Paragraph of the Complaint to the extent they refer to the knowledge of other parties.

138. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the knowledge of a party other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

139. This allegation is vague in that it refers to alleged actions taken by "Defendants" on the former refinery property, "despite [the purported] knowledge" of one defendant "since at least 2006," which is long after Glencore's thrice-removed former subsidiary owned or operated the refinery. Glencore therefore denies the allegations in this Paragraph of the Complaint. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

140. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

141. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information

sufficient to form a belief about the truth of the allegations in this Paragraph of the Complaint.

142. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations in this Paragraph of the Complaint.

143. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations in this Paragraph of the Complaint. Glencore denies that any Plaintiff suffered from severe emotional distress.

144. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations in this Paragraph of the Complaint. Glencore denies that any Plaintiff suffered from severe emotional distress.

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

145. Glencore incorporates its answers to the allegations of each of the previous Paragraphs of the Complaint as if set forth herein verbatim.

146. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, and to the extent they pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations in this Paragraph of the Complaint. Glencore denies that any Plaintiff suffered a severe emotional injury.

147. Glencore denies the allegations in this Paragraph of the Complaint

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

148. Glencore incorporates its answers to the allegations of each of the previous Paragraphs of the Complaint as if set forth herein verbatim.

149. This Paragraph of the Complaint sets forth a conclusion of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, and to the extent they pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations,.

150. Glencore denies the allegations in this Paragraph of the Complaint.

151. Glencore denies the allegations in this Paragraph of the Complaint.

152. Glencore denies the allegations in this Paragraph of the Complaint.

153. Glencore denies the allegations in this Paragraph of the Complaint.



154. Glencore denies the allegations in this Paragraph of the Complaint.

155. Glencore admits, on information and belief, that SCA owned and operated the alumina refinery for a period of time before and after Hurricane Georges. Glencore is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

156. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

157. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

158. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

159. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

160. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

161. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the

parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

162. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

163. On information and belief, Glencore admits the allegations in this Paragraph of the Complaint.

164. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

165. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

166. Inasmuch as the allegations of this Paragraph of the Complaint pertain to the parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

167. To the extent the allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of such allegations.

168. This Paragraph of the Complaint sets forth conclusions of law, and therefore

no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

169. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

170. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

171. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

172. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

173. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

174. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

175. Glencore denies the allegations in the first sentence of this Paragraph of the

Complaint. This remainder of this Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

176. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

177. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

178. Glencore denies as stated the allegations contained in this Paragraph of the Complaint.

179. Glencore admits, on information and belief, that refinery personnel used respirators and/or safety equipment in high-dust areas (which does not include Plaintiffs' neighborhoods). Glencore is without knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in this Paragraph of the Complaint.

180. Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

181. On information and belief, Glencore denies as stated the allegations in this Paragraph of the Complaint.

182. Glencore admits that, at some times, bauxite was stored in an A-frame building with heavy plastic curtains on it; Glencore denies that no steps were taken to prevent bauxite or bauxite residue from escaping during a hurricane. On information and

belief, Glencore denies as stated the remaining allegations in this Paragraph of the Complaint. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations in this Paragraph of the Complaint.

183. Glencore admits that refinery employees testified or otherwise allegedly reported bauxite leaving the storage shed during Hurricane Georges through a hole blown in the roof. To the extent the remaining allegations in this Paragraph of the Complaint pertain to Glencore, Glencore denies the allegations as stated. To the extent the allegations in this Paragraph pertain to parties other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations in this Paragraph of the Complaint.

184. Inasmuch as the allegations of this Paragraph of the Complaint appear to pertain to a party other than Glencore (although “the Refinery” is not a party to this action and is vague as stated), Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

185. Inasmuch as the allegations of this Paragraph of the Complaint pertain to a party other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

186. Inasmuch as the allegations of this Paragraph of the Complaint pertain to a party other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

187. Inasmuch as the allegations of this Paragraph of the Complaint pertain to a party other than Glencore, Glencore is without knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph of the Complaint.

188. This Paragraph of the Complaint sets forth conclusions of law, and therefore no answer is required. However, to the extent the allegations in this Paragraph of the Complaint require an answer, Glencore denies the allegations.

#### **PRAYER FOR RELIEF**

189. Glencore denies that Plaintiffs are entitled to any of the relief requested.

#### **DEFENSES AND AFFIRMATIVE DEFENSES**

190. Without suggesting or conceding that it has the burden of proof on any such defenses, Glencore alleges the following defenses and/or affirmative defenses to the Complaint.

#### **FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Cause of Action)

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

#### **SECOND AFFIRMATIVE DEFENSE**

(Statute of Limitations)

The 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)

The Complaint, and each 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 contributed to or caused any alleged damage about which Plaintiffs complain.

### **FOURTH AFFIRMATIVE DEFENSE**

(Assumption of Risk)

The Complaint, and each cause of action alleged therein, may be barred, in whole or in part, because Plaintiffs knew, 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**

(Independent, Intervening, or Superseding Causes)

The Complaint, and each cause of action alleged therein, 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 Glencore.

**SIXTH 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. Glencore's liability, if any, should therefore be apportioned, denied, or reduced with the degree of fault attributable to said other persons or entities.

**SEVENTH AFFIRMATIVE DEFENSE**

(Act of God)

The Complaint, and each cause of action for injury and damage alleged therein, is 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.

**EIGHTH 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 Glencore. By reason thereof, Plaintiffs may be barred, in whole or in part, from recovering damages from Glencore and Glencore's liability to Plaintiffs, if any, should be apportioned, denied, or reduced accordingly.



**NINTH AFFIRMATIVE DEFENSE**

(Laches, Estoppel, and/or Unclean Hands)

The Complaint, and each cause of action alleged therein, may be barred, in whole or in part, by the doctrines of laches, estoppel, and/or unclean hands.

**TENTH AFFIRMATIVE DEFENSE**

(Consent/Waiver)

The Complaint, and each cause of action alleged therein, may be barred, in whole or in part, by the doctrine of consent/waiver.

**ELEVENTH AFFIRMATIVE DEFENSE**

(No Causation)

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

**TWELFTH AFFIRMATIVE DEFENSE**

(Alleged Injury or Damage Caused by Others)

To the extent that Plaintiffs experienced injury or damage, which Glencore denies, such injury or damage was caused by the actions or conduct of others, not of Glencore.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(No Injury or Damage)

On information and belief, Glencore denies that Plaintiffs have experienced any injury or damage whatsoever, and further denies that Glencore is liable to any such persons for any injury or damage claimed or for any injury or damage whatsoever.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Reasonable Conduct)

The Complaint, and each cause of action alleged therein, is barred in whole or in part because Glencore has, during the relevant period of time, acted reasonably and without fault.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(No Extreme or Severe Emotional Distress)

On information and belief, Glencore denies that Plaintiffs have experienced extreme or severe emotional distress.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(No Extreme or Outrageous Conduct)

To the extent that Plaintiffs sustained injury or damage, which Glencore denies, such injury or damage was not caused by any extreme or outrageous conduct or actions by Glencore.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(No Intent or Knowledge)

To the extent that Plaintiffs experienced injury or damage, which Glencore denies, such injury or damage was not caused by any intentional or knowing conduct or actions by Glencore.

**EIGHTEENTH 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 not sustained any injury in fact, loss of money, or property or other economic harm as the result of any action or omission of Glencore.

**NINETEENTH AFFIRMATIVE DEFENSE**

(Coming to the Nuisance)

The Complaint, and each cause of action alleged therein, 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).

**TWENTIETH AFFIRMATIVE DEFENSE**

(No entitlement to Punitive Damages)

Plaintiffs are precluded from recovering punitive damages, either in whole or in part, from Glencore under the applicable provisions of law, including the United States Constitution and the Revised Organic Act of 1954, .

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(Punitive Damages Unconstitutional)

The claims for punitive damages are barred, in whole or in part, because a punitive damage award would violate the United States Constitution and, *inter alia*, the Revised Organic Act of 1954 and the Constitutions of Switzerland, Connecticut, and New York.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(Unjust Enrichment to Plaintiffs)

The Complaint, and each cause of action alleged therein, may be 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 Glencore.

**TWENTY-THIRD 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 Glencore that at all times was in compliance with relevant laws and guidance from applicable regulations.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

(Release)

The Complaint, and each cause of action alleged therein, is barred in whole or in part to the extent Plaintiffs were 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 No. 112/1995, Territorial Court of the Virgin Islands, Division of St. Croix and/or any other applicable release.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

(Accord and Satisfaction)

The Complaint, and each cause of action alleged therein, may be barred in whole or in part to the extent that it has been discharged by the doctrine of accord and satisfaction.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

(Reservation of Right to Assert Additional Defenses)

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

WHEREFORE, Glencore prays for judgment as follows:

1. That Plaintiffs take nothing by the Complaint;
2. That Plaintiffs receive no injunctive or other relief by the Complaint;
3. That Glencore be awarded its costs of suit; and
4. For such further relief as this Court may deem just and proper.

Respectfully submitted this 2nd day of January 2018.

By: \_\_\_\_\_



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