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NEW YORK LAWYERS FOR THE PUBLIC
INTEREST



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Anthony Tristani
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

_____	X	
	:	
CLEANUP NORTH BROOKLYN by JENNIFER	:	
CHANTRTANAPICHATE; OSIRIS ARIAS; MAGDA	:	Index No.
ESCOBAR-BELTRAN; ZALMEN LABIN; SANDERS	:	
MENDEZ; JOSE MANUEL RODRIGUEZ; TEGHVIR	:	
SETHI; MERCEDES TAPIA; BIENVENIDO	:	
TORRES; and BENJAMIN WEINSTEIN,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
BROOKLYN TRANSFER LLC; GPB WASTE NY	:	
LLC; GPB CAPITAL HOLDINGS, LLC; NINO	:	
TRISTANI; and ANTHONY TRISTANI,	:	
	:	
Defendants.	:	
	:	
_____	X	

COMPLAINT

Plaintiffs Jennifer Chantrtanapichate, on behalf of Cleanup North Brooklyn (“Cleanup North Brooklyn”) and Osiris Arias, Magda Escobar-Beltran, Zalmen Labin, Sanders Mendez, Jose Manuel Rodriguez, Teghvir Sethi, Mercedes Tapia, Bienvenido Torres, and Benjamin Weinstein (collectively, the “Individual Plaintiffs”), for their Complaint against Defendants, hereby allege and state as follows:

NATURE OF THE PROCEEDING

1. Plaintiffs Cleanup North Brooklyn, a grassroots community group located in East Williamsburg/Bushwick, and Individual Plaintiffs, who are its members, bring this action to enjoin Defendants’ operation of a trash facility in a manner that creates a public and private nuisance and a nuisance per se, and violates numerous city and state laws and regulations.

2. For years, Defendants have operated—and continue to operate—their solid waste transfer station located at 105-115 Thames Street, in Brooklyn (the “Trash Facility” or “Facility”), without regard for laws and regulations or the well-being of the community. More than one hundred trucks come to the Trash Facility each day. They dump mountains of garbage onto the Facility’s floor, where large machines process and compact it, then load it onto trucks headed to landfills.

3. Defendants’ operation of the Facility constitutes a private and public nuisance and a nuisance per se in that it: releases noxious odors that permeate the surrounding neighborhood; causes excessive and disruptive noise, especially in the middle of the night; allows chemicals and liquid seeping from rotting garbage to flow out onto sidewalks and streets; and has led to the proliferation of vermin—mainly rats—that swarm the neighborhood day and night.

4. Defendants have also failed to control the truck traffic that enters and exits the Trash Facility, in violation of city and state regulations, thus compounding the noxious odors, excessive noise pollution, liquid chemicals and waste, and vermin that plague the neighborhood, and creating additional health and safety hazards. As a result of Defendants’ failure to control the heavy flow of garbage trucks, these trucks idle for excessive periods of time outside the Facility, releasing dangerous particulate matter into the air. Defendants have also failed to monitor these garbage trucks as they enter and exit the Facility, making multi-point turns on narrow residential streets, driving onto sidewalks, and terrorizing pedestrians.

5. Defendants’ operation of the Trash Facility has significantly disrupted Plaintiffs’ daily lives. Each weekday morning, when Plaintiff and Cleanup North Brooklyn member Mercedes Tapia walks her young daughters to school, she fears for their lives due to the many trucks crowding the streets, driving above the speed limit, blowing through stop signs and

crosswalks, and driving onto the sidewalks. Plaintiff and Cleanup North Brooklyn member Sanders Mendez is forced to take a circuitous route when walking his children to school in order to avoid the early morning truck traffic, the strong chemical deodorizer the Facility sprays out onto the sidewalk, and the stench of rotting garbage. Another Plaintiff and Cleanup North Brooklyn member, Jose Manuel Rodriguez, often loses his appetite and is unable to enjoy a meal in his own apartment due to the rotten garbage odors emanating from the doors of the Trash Facility, which Defendants have regularly left—and continue to leave—open.

6. Plaintiffs and Cleanup North Brooklyn members Osiris Arias and Magda Escobar-Beltran are unable to enjoy time in their own backyards due to the stench and the proliferation of rats drawn to the area by the garbage that Defendants fail to contain within the Trash Facility. The smell of garbage keeps neighbors from spending time conversing on their stoops. Plaintiff and Cleanup North Brooklyn member Zalmen Labin has lost clients of his yoga business, located across the street from the station, who complained about the odors and noise. The high levels of diesel emissions from idling trucks queuing to enter the Facility exacerbate asthma, which plagues many children in the community, including Ms. Tapia's daughter and Mr. Arias's son.

7. At night, when the Trash Facility is most active, the combination of excessive noise and odors interferes with the community members' sleep. Plaintiff and Cleanup North Brooklyn member Benjamin Weinstein—whose windows face the Trash Facility—is woken an average of six times per night by the sounds of loud machinery used to move and process the garbage. Mr. Mendez is awoken as well by the many trucks idling on the street right outside his bedroom window running their engines, honking their horns, reversing loudly and unloading garbage throughout the night.

8. Brooklyn Community District One, which includes parts of East Williamsburg and Bushwick, is home to a disproportionate number of New York City's waste facilities. This small area, where a large number of residents are low-income and people of color, many of them Spanish-speaking, handles 47 percent of all of New York City's garbage—equivalent to 470 full dump trucks traveling into this area each day. North Brooklyn is one of New York City's most environmentally over-burdened neighborhoods, known as “environmental justice communities,”¹ and the Trash Facility is one of the facilities that causes area residents to endure disproportionate harm. Community members founded Plaintiff Cleanup North Brooklyn to address this harm in their neighborhood.

9. Plaintiffs have spent years voicing their grievances to Defendants, as well as to city council members and city agencies charged with oversight of the Facility. Cleanup North Brooklyn members have filed numerous 311 complaints, including complaints about idling trucks and open Facility doors, both violations of state and city laws and regulations. They have also communicated their concerns to the Trash Facility's owners and operators directly. Cleanup North Brooklyn organized several public forums that hundreds of neighborhood residents attended to voice their concerns about the Trash Facility's impact on the community. The community's efforts to combat Defendants' harmful acts have been documented by national and international news outlets, including the New York Times and Univision.

10. In May 2016, Cleanup North Brooklyn set up video cameras to record Defendants' activity at the Trash Facility over the course of six days. The video footage from just six days showed over 1,200 instances of Defendants' misconduct, including many violations

¹ Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. “Environmental justice communities” are low income communities and communities of color that bear disproportionate environmental burdens.

of permits issued to Defendants, as well as city and state regulations. Defendants continue to operate the Trash Facility without regard to regulations designed to ensure safety and public health and to protect the surrounding community.

11. While Defendants could take reasonable steps to operate the Trash Facility in compliance with applicable laws and regulations and in a manner that is less harmful to the community, they have refused to do so. At a meeting with Cleanup North Brooklyn in February 2017, Defendants agreed to make certain simple—but impactful—improvements in operations to reduce the odors, noise, idling, liquid waste, and dangerous truck activity. These included such measures as: using motion sensors to ensure Facility doors remain shut unless a truck needs to enter; and monitoring trucks entering and exiting the Facility to ensure, among other things, that they maneuver safely and turn off their engines when they queue in front of the Facility. Unfortunately, Defendants failed to follow through on even these reasonable and easily achievable actions.

12. Defendants' continued failure to abate the noise, pollution, odors, vermin, and other nuisances caused by their operation of the Facility—despite their knowledge of these conditions from Plaintiffs' repeated complaints—have left Plaintiffs with no choice but to bring this action to gain legal relief from the nuisance conditions they have endured for so long.

13. Plaintiffs respectfully request the following relief: (i) a declaratory judgment that Defendants' current operations constitute a public and private nuisance and nuisance per se; (ii) an injunction ordering Defendants who are the current Facility owners, and all other entities acting on concert with them, to abate the nuisance caused by their operation of the Trash Facility; (iii) an injunction prohibiting the current Facility owners, and all other entities acting on concert with them, from operating the Trash Facility in a manner that causes or contributes to a

public or private nuisance; (iv) an injunction ordering the current Facility owners, and all other entities acting on concert with them, to comply with all applicable laws, regulations, and permit conditions; (v) compensatory damages; and (vi) any and all other relief that the Court deems just and proper.

JURISDICTION AND VENUE

14. This action is brought pursuant to the Court's equitable power to enjoin Defendants from maintaining a public and private nuisance. The Court has jurisdiction under New York Civil Practice Law and Rules ("CPLR") § 301.

15. Plaintiffs designate Kings County as the place of trial. Venue is proper in Kings County pursuant to CPLR § 503 and § 507.

PARTIES

16. Plaintiff Cleanup North Brooklyn is an unincorporated grassroots community organization founded in 2015. It has approximately 55-75 active members who include residents, parents, manufacturing workers, business owners, artists, and young people in the neighborhood surrounding the Trash Facility. Its mission is to restore the health of the neighborhood as a safe place to walk, breathe, and live and to achieve waste equity in North Brooklyn. Cleanup North Brooklyn utilizes community organizing, outreach, and education to achieve its goals. The majority of Cleanup North Brooklyn's members live or work within three to four blocks of the Trash Facility.

17. Jennifer Chantrtanapichate is Cleanup North Brooklyn's co-president and represents the community organization in that capacity.

18. The Individual Plaintiffs all live or work within one block of the Trash Facility and are all members of Cleanup North Brooklyn.

19. Plaintiff Osiris Arias, age 42, lives at 125 Thames Street, Apt. 1R, in an apartment rented by his mother. He has lived in the building for 21 years and lives with his wife, mother, and three children—ages nine, fourteen, and fifteen.

20. Plaintiff Magda Escobar-Beltran, age 41, lives at 81 Grattan Street with her three daughters and her husband. She has lived there and has served as the building's manager since 2005.

21. Plaintiff Zalmen Labin is the owner of Loom Yoga, located at 1087 Flushing Avenue, Shops # 115-118, in a space he rents. The studio entrance is on Thames Street directly across the street from the Trash Facility. He has been running his business there since 2010.

22. Plaintiff Sanders Mendez, age 46, rents an apartment at 42 Porter Avenue and is also the caretaker for Iglesia Betania Christian Church, located at the same address. He has resided in his current apartment with his four children and his wife and has served as a caretaker for the church property since 2013.

23. Plaintiff Jose Manuel Rodriguez, age 44, has rented Apt. 4L at 120 Grattan Street for about three years and has lived in the neighborhood for twenty years.

24. Plaintiff Teghvir Sethi, age 26, has rented Apt. 201 at 120 Thames Street for about three years.

25. Plaintiff Mercedes Tapia has rented Apt. 3R at 125 Thames Street for 18 years. She lives with her husband, brother, and three children—ages three, ten, and twenty.

26. Plaintiff Bienvenido Torres, age 74, rents Apt. 1B at 131 Thames Street and has lived in the neighborhood for 55 years.

27. Plaintiff Benjamin Weinstein, age 46, has rented Apt. 302 at 120 Thames Street for five years.

28. Upon information and belief, Defendant Brooklyn Transfer LLC (“Brooklyn Transfer”) is a waste management services company headquartered in Brooklyn, New York. From about November 2010 to January 2017, Brooklyn Transfer owned and operated the Trash Facility, officially named Citygreen Organics, located at 105-115 Thames Street, Brooklyn, New York 11237.

29. Upon information and belief, Defendant Nino Tristani is the co-owner of Brooklyn Transfer and was and continues to be involved in the day-to-day operations of the Trash Facility as its manager.

30. Upon information and belief, Defendant Anthony Tristani is the co-owner of Brooklyn Transfer.

31. Upon information and belief, Defendant GPB Waste NY LLC (“GPB Waste”) is a limited liability company located and incorporated in New York. GPB Waste acquired the Trash Facility from Brooklyn Transfer in about January 2017 and is its current owner and operator.

32. Upon information and belief, Defendant GPB Capital Holdings, LLC (“GPB Capital” and together with GPB Waste, “the GPB Defendants”) is a global asset management firm specializing in private equity and is headquartered in New York. Upon information and belief, GPB Capital invests in businesses with a focus on waste management, technology, communications, energy, manufacturing, retail, life sciences, and real estate. GPB Capital owns and operates the Trash Facility through its investment in GPB Waste, one of its portfolio companies.

FACTUAL ALLEGATIONS

Plaintiffs’ Neighborhood

33. The Trash Facility occupies about one-third of a city block in an active neighborhood where long-term residential buildings coexist with light industrial and commercial

uses. As shown on the map at Figure 1, there are several apartment buildings on the same block as the Trash Facility, and others directly across the street and on adjacent corners. Several apartment buildings on Grattan Street share a backyard with the Trash Facility. Individual Plaintiffs all reside or own businesses in the immediate block around the Trash Facility as indicated on Figure 1.

Figure 1: Trash Facility and Neighborhood



Imagery ©2017 Google, Map data ©2017 Google United States 50 ft

(Red boxes indicate the Trash Facility's doors.)

	Address	Resident/Business
A	120 Thames Street	Jennifer Chanttranapichate Teghvir Sethi Benjamin Weinstein
B	125 Thames Street	Osiris Arias Mercedes Tapia
C	131 Thames Street	Bienvenido (Benny) Torres
D	81 Grattan Street	Magda Escobar-Beltran
E	120 Grattan Street	Jose Manuel Rodriguez
F	1087 Flushing Avenue (entrance on Thames Street)	Zalmen Labin Loom Yoga
G	42 Porter Avenue	Sanders Mendez Igelsia Betania Christian Church

34. Neighborhood residents attend school and church in the immediate area, and there are numerous playgrounds and parks nearby. Iglesia Betania is a church located around the corner from the Trash Facility at 42 Porter Avenue, and United Revival Mennonite Church is just two blocks away at 169 Knickerbocker Avenue. These churches hold services, meetings and community activities throughout the week. Children attend schools within five blocks of the Facility: elementary school P.S. 145 Andrew Jackson; P.S. 123; and Williamsburg Charter High School. The parks in the area include Maria Hernandez Park on Knickerbocker Avenue, which has a playground and basketball courts; Gilbert Ramirez Park, on White Street between McKibbin and Seigel Streets; Green Central Knoll, at 55-65 Evergreen Avenue, which has a baseball field; and Garden Playground, at 40 Beaver Street.

35. Numerous small businesses are situated on the same block as or directly facing the Trash Facility, including Loom Yoga, owned by Plaintiff Zalmen Labin; Andy's Deli; Frame Art; Kave Espresso Bar; Brooklyn Yarn Café; and Bushwick Food Co-op.

36. The population residing in the immediate vicinity of the Trash Facility is largely comprised of low-income Spanish-speaking people of color. According to the United States Census Bureau's 2010-2015 American Community Survey, Census Block 453, which covers the immediate blocks around the Facility, is 53 percent people of color, with 43 percent of total individuals and 60.9 percent of children in this community district living below the poverty line.

37. The Trash Facility is sited in an M1-1 district, which is intended for light manufacturing and related uses that are capable of complying with the high-performance standards required by the Zoning Resolution of the City of New York. M1-1 districts are frequently buffers between districts consisting of residential buildings and districts containing

heavier industrial uses. The Trash Facility is located two blocks, or approximately 0.2 miles, from an R-6 residential zone.

38. Since 2004, New York City has not allowed new waste transfer stations to be located in M-1 districts in areas like North Brooklyn where there are high concentrations of waste facilities, due to the negative impact these facilities have on the surrounding community. 16 R.C.N.Y. § 4-32(b)(5). Because the Trash Facility was already operating at the current location in 2004, it was “grandfathered in” and allowed to remain. Today, no new waste transfer station would be permitted to operate in this area.

The Trash Facility’s Ownership And Operations

39. The Trash Facility first commenced operating as a waste transfer facility in its current location on Thames Street and Porter Avenue in 1991.

40. Defendant Brooklyn Transfer obtained a permit from the New York State Department of Environmental Conservation (the “DEC”) to operate the Trash Facility (the “DEC Permit”) in November 2010, and continued to own and operate the Facility until about January 2017.

41. On January 11, 2017, the DEC Permit was transferred from Brooklyn Transfer to its current owner, Defendant GPB Waste, a portfolio company of Defendant GPB Capital.

42. Defendants Nino Tristani and his brother Anthony Tristani (the “Tristanis”) own Brooklyn Transfer. In addition, the Tristanis own or have owned other New York City waste industry businesses,² including Five-Star Carting Corporation (“Five-Star”), a waste collection

² On information and belief, the Tristanis also own the following waste-related companies, in addition to a number of real estate holding and property management companies: Rapid Processing, LLC; Workforce Cleaning Services, LLC; Brooklyn C&D, LLC; and NY/NJ Recycling LLC.

company that currently services the Trash Facility. Defendant GPB Capital recently acquired the majority stake in Five-Star.³

43. Defendants also control the majority of the commercial waste collection trucks that utilize the Trash Facility. According to data submitted by commercial haulers to the New York City Business Integrity Commission, 90 percent of the commercial waste processed by the Trash Facility in 2015 came from customers of Five-Star. As such, the vast majority of trucks that utilize the Trash Facility throughout the night and early morning belong to the Defendants' related company.

44. Defendants have operated and continue to operate the Trash Facility under two permits. The DEC Permit (referenced, *supra*, ¶¶ 40 & 41) allows Defendants to process up to 560 tons—or approximately 64,400 standard garbage bags—per day of putrescible municipal solid waste.⁴ Defendants also have a permit from the New York City Department of Sanitation (“DSNY”), which authorizes Defendants to operate the Trash Facility Monday through Saturday, 24 hours a day. The Trash Facility commences operations for the week late Sunday night/early Monday morning.

45. The Trash Facility acts as a way station for garbage after it has been collected and before it is trucked out to landfills outside New York City. The Facility consists of an enclosed 37,500 square foot building. Trucks enter and exit through large steel roll-up doors. One door is located on Porter Avenue, leading to the weighing station, and two more doors for unloading and loading garbage are located on Thames Street.⁵

³ GPB Capital also recently acquired stakes in two other commercial waste hauling companies: Joe Morea & Sons Private Sanitation, Inc. (whose trucks dispose waste at the Trash Facility) and Staten Island Carting, Inc.

⁴ Putrescible solid waste is discarded material that contains organic matter, which releases a malodorous stench as it rots.

⁵ A third door on Thames Street appears to remain unused.

46. Trucks enter and exit the Facility day and night, with the highest number arriving between 1:00 a.m. and 7:00 a.m. According to the Trash Facility's 2015-2016 Engineering Report (the "Engineering Report"), which details the Facility's operations for its DEC Permit application, on peak days, up to 113 trucks arrive at the Facility—with as many as thirteen arriving within one hour. In 2016, trucks brought an average of 511 tons of putrescible solid waste into and out of the Trash Facility each day.

47. Trucks arriving at the Facility must first back into the Porter Avenue entrance to be weighed. They often queue down Grattan Street, even though they are not permitted to do so, presumably because only one truck can go into the weigh station at a time. Then they exit from the same Porter Avenue door and turn right onto Thames Street, which is a narrow one-way street. Trucks must back into the Thames Street entrance to dump the trash they are carrying. The trucks—some as large as 70 feet long—must conduct a difficult multi-point turn to reverse into the Facility. Because of the Facility's design, the large long-haul trucks must drive onto the sidewalk, completely obstructing it for passersby, during this maneuver. The trucks regularly do this without the assistance of Defendants' employees.

48. Once a collection truck has entered the Facility, it spends five to ten minutes tipping the garbage from the truck's rear compartment onto the floor, where mountains of trash collect. Workers operate large, noisy payloaders, backhoes and other heavy machinery and construction vehicles to move and compress the huge piles of waste. When a long-haul truck arrives, it backs into the second Thames Street door, where a payloaders carries the compressed waste to be loaded onto it and taken to a landfill.

Defendants' Operation Of The Trash Facility Has Harmed—And Continues To Harm—Members Of Cleanup North Brooklyn And Constitutes A Nuisance

49. Defendants' operation of the Trash Facility has impeded and continues to impede neighborhood residents from using and enjoying the public streets, sidewalks, courtyards, and other common spaces in the neighborhood due to the odors, noise, truck traffic, leachate, chemical spray, proliferation of rats, and diesel emissions. This has caused a loss of community in the neighborhood and has inhibited people's daily lives.

50. The nuisance conditions caused by Defendants differ in degree and kind from the normal inconveniences, litter, and street noise associated with New York City life. Neighborhood residents suffer from the pervasive stench, the poor air quality, the vermin, and the relentless noise—even in the privacy of their homes. After enduring these conditions for years, residents in the neighborhood were fed up, and in 2015, with the leadership of Ms. Chantrtanapichate, they came together to form Cleanup North Brooklyn to collectively work to ameliorate the problem.

Odors

51. Defendants' failure to operate the Trash Facility properly has caused members of Cleanup North Brooklyn to suffer excessive and extreme odors that pervade the community.

52. Despite the fact that the Trash Facility is equipped with exhaust fans with filters and odor-counteracting chemicals, garbage odors still persist. Defendants regularly leave the Trash Facility doors open, even when there are no trucks entering or exiting, causing the stench from the rotting garbage heaped inside the Facility to pervade outdoor spaces, residences, and businesses blocks away.

53. The odor has contributed to the loss of community in the area, as people spend less time together outdoors. Because of the unbearable odors, children are unwilling to play

outside on the sidewalk or streets. People are deterred from using the open courtyard in the shopping center across the street from the Trash Facility when the odors are bad, and frequent the businesses there less often than they would otherwise.

Chemical Spray

54. In an (unsuccessful) attempt to mask some of the overwhelming scent of garbage, Defendants mounted nozzles on drums at the building entrances, which spray odor-counteracting chemicals into the air. The nozzles are located at the edge of the entrance doors and point out towards the street, spewing strong-smelling chemicals out of the Facility, offending and irritating pedestrians on the public sidewalk.

Excessive Noise

55. Defendants' operation of the Trash Facility generates excessive noise that can be heard throughout the neighborhood. This prevents residents from sleeping, from spending time outdoors on their stoops, sidewalks, streets, and parks, and from opening their windows. The noise is at its worst during the overnight hours, mainly due to the fact that commercial waste is typically collected and dumped at night.

56. This excessive noise has been caused by: the unloading and dumping of trash onto the concrete floor—often causing part of the dump truck to collide with the Facility floor or wall; the exhaust fans; the heavy machinery and construction vehicles used to move the waste inside the Facility; and the odor control system. Defendants' routine failure to close the doors when trucks are not entering or exiting greatly exacerbates the noise.

57. Defendants' failure to control truck traffic has compounded the excessive noise, which is generated by the many trucks rumbling up and down the narrow residential streets,

idling outside the Facility and on streets they do not belong, beeping as they reverse, and honking their horns.

Dangerous Truck Traffic

58. Defendants' failure to control truck traffic into the Trash Facility, as they are required to do, has caused dangerous conditions in the streets surrounding the Facility.

59. The trucks that come to the Trash Facility conduct dangerous maneuvers and drive onto public sidewalks to enter and exit the Facility, frequently reversing without the aid of attendants and doing so more quickly than is safe. It often takes more than five minutes for a truck to be able to enter the Trash Facility, especially if there is no assistance from a Facility employee. This often causes traffic jams early in the morning when residents are trying to get to work and parents are trying to take children to school. This is also hazardous because it poses a public safety threat should an emergency or rescue vehicle need to get through.

60. In addition, many people who have parked their cars in the vicinity of the Trash Facility have reported damage to their cars.

Particulate Matter

61. Defendants' failure to control truck traffic has also caused Cleanup North Brooklyn members to suffer the effects of breathing excessive fine particulate matter and other pollutants. The idling trucks emit fine particulate matter, nitrogen oxides, hydrocarbons, carbon monoxide, and sulfur dioxide—hazardous air pollutants known or suspected to cause cancer or other serious health effects, as well as greenhouse gases, into the air.

62. These emissions negatively affect the air quality of the neighborhood and put residents at risk for premature mortality, aggravated heart and lung disease, aggravated asthma, and increased respiratory symptoms.

Leachate

63. Defendants have also failed to control the liquid oozing from rotting waste, known as leachate, produced by the waste processed at the Facility.

64. The leachate flows out of the Trash Facility's Thames Street entrance and from idling and parked trucks waiting to use the Facility. Workers often hose the leachate away from the Facility onto the sidewalk and street and into public sewers on the street. The leachate then sits in giant pools on the sidewalks, in curbs, and on the street making this area even more foul-smelling.

Vermin and Litter

65. Finally, Defendants' operation of the Trash Facility has caused vermin and garbage to invade the neighborhood, harming the community.

66. The Trash Facility attracts swarms of rats in the neighborhood. Many community members are afraid to walk on the streets and other nearby public spaces, such as the courtyard located in the Loom shopping complex, any time after dusk for fear of encountering the sizeable rat population.

67. Trash blows off trucks and out from the Facility onto the sidewalks and streets, making the entire vicinity of the Trash Facility feel like a dump, creating unsanitary conditions that many in this community try to avoid, and attracting vermin. Community members have to pick up, clean, and hose the streets on their own to keep these spaces clear and walkable.

Defendants' Operation Of The Trash Facility Has Harmed—And Continues To Harm—Individual Plaintiffs And Constitutes A Nuisance

68. Defendants' failure to operate the Trash Facility properly has substantially interfered with Plaintiffs' use and enjoyment of their private property and ability to run their businesses. Defendants' operations have also caused special damage to the Individual Plaintiffs.

Plaintiff Osiris Arias

69. Osiris Arias, who has resided half a block from the Trash Facility at 125 Thames Street for 21 years, cannot use his backyard, particularly in the summer when the odors are at their worst and when he would most like to enjoy that outdoor space to have family gatherings.

70. Trucks headed to the Trash Facility queue right outside his first floor apartment. The noise of trucks idling and driving by often wakes him up at 3:00 or 4:00 a.m.

71. Mr. Arias's son suffers from asthma—with which he was diagnosed only after spending a summer playing outside exposed to the odors and diesel emissions. The particulate matter from idling trucks right outside his apartment exacerbates his condition. Mr. Arias has had to take his son to the emergency room multiple times due to asthma attacks. Because of this, the odors and truck emissions have injured him in a manner distinct from the general public.

72. Rats congregate near the trash at Mr. Arias's apartment building. Mr. Arias has also found rat droppings in the passenger seats and by the engine of his car after leaving it parked near the Trash Facility. He has had to spend money on rat poison out of fear that the rats will damage the car, or even potentially cause an accident or fire (to say nothing of the smell and disease in rat feces).

73. Mr. Arias's wife's car was hit by a truck coming from or going to the Trash Facility when it was parked on Thames Street between Porter and Knickerbocker Avenues. He had to pay \$1,500 in repairs. During the past month, Mr. Arias's car was sideswiped and damaged while parked on the corner near the Facility.

Plaintiff Magda Escobar-Beltran

74. Magda Escobar-Beltran has lived in a first floor apartment at 81 Grattan Street since 2005 with her husband and three daughters and is the managing agent for the building.

Defendants' operation of the Trash Facility has substantially interfered with her use and enjoyment of her home and her ability to manage the property. Ms. Escobar-Beltran experiences a harm that is different than that of the general public because, among other things, the Trash Facility requires her to use more resources in carrying out her job responsibilities.

75. The rat problem is so severe that she has had to take extreme measures to combat it. She has invested significant resources to patch the basement with metal and concrete to attempt to keep the rats out, but they still manage to get into the building. Ms. Escobar-Beltran has had to call an exterminator for the rats as recently as last year and uses poisons year-round. She, her daughters, and other residents of the building cannot use their small backyard after 6:00 p.m. for fear of rats attracted by the leachate and garbage from the Trash Facility. She has been unable to host evening barbecues and gatherings.

76. One evening, Ms. Escobar-Beltran left the door leading out back open for a fresh breeze, and a rat scurried into her apartment. She and her husband did not sleep that night; they spent the entire night chasing the rat.

77. The excessive noise from the Trash Facility also harms Ms. Escobar-Beltran and her family. She leaves the air conditioner on in her daughters' bedroom even on cool nights to create a white noise in the hopes that it masks the loud noises from the Trash Facility through the night. During the winter, she uses a humidifier for the same purpose.

78. Ms. Escobar-Beltran, who is a medical professional, worries every day about the extent of harm the diesel fumes may cause her young girls and their still-developing lungs, since her children have lived around the corner from the Facility their entire lives.

79. Ms. Escobar-Beltran's car was sideswiped and damaged by a truck that was leaving or heading towards the Facility. Since then, she has never parked on the corner closest to her home.

Plaintiff Zalmen Labin

80. Zalmen Labin is the owner of Loom Yoga, located directly across the street from the Trash Facility. In 2010, he signed a ten-year lease for this space and opened his business. At the time he signed the lease, the Trash Facility was temporarily closed and the neighborhood seemed quiet and free of odors and traffic. Since the Facility reopened, it has substantially interfered with the use and enjoyment of this property and his ability to run his business.

81. Defendants' failures in operating the Trash Facility have led Mr. Labin to lose customers and have otherwise harmed his business. Because of the smells and the noise from the Facility, Mr. Labin has been unable to open the windows in the studio rooms. Clients have complained about the resulting lack of ventilation and fresh air. He had to purchase a noise machine to cover the noises coming from the Trash Facility. These measures, however, have not adequately addressed the problem and have detracted from his customers' experience, causing him to lose business. He has received numerous complaints from clients at the studio about the smell and the noise from the Trash Facility. At least two clients have posted negative reviews on Yelp based on the garbage odor and the noise from the constant rumbling of trucks going in and out of the Facility.

82. When she first moved to the area, Cleanup North Brooklyn member Patricia Lopez was eager to take classes at Loom Yoga, especially outdoor classes. As soon as she smelled how strong the odor was at the studio, she changed her mind.

83. Mr. Labin has tried to rent out his studio space to someone who was going to use it to hold a weekly yoga class. Once the prospective teacher experienced the noise, smells, and lack of ventilation from not being able to open the windows, however, she changed her mind and the deal fell through. Mr. Labin has lost potential income from being unable to rent this space.

84. Defendants' operation of the Trash Facility has forced Mr. Labin to change his business plans. Mr. Labin had planned to use the storefront on Thames Street, which faces the Trash Facility doors, to attract clients with benches outside for people to sit and flyers about the studio's services. Because people avoid that street due to the Trash Facility, however, there is little foot traffic and reduced visibility for his business, and Mr. Labin has had to spend more money on marketing to attract new clients. He no longer uses the storefront entrance and instead has redirected customers to the main entrance to the shopping complex on Flushing Avenue, which is not as clearly marked with his business name.

85. Mr. Labin had also planned to use the mall's courtyard to hold outdoor community yoga sessions. However, because of the odors and noise he can only schedule them on Sundays, when the Facility does not operate. Even then, people are hesitant to participate because of rats seen in the courtyard.

86. Mr. Labin lost an employee who was forced to quit because she was experiencing asthma attacks, which she attributed to the odors and diesel truck emissions from the waste facility. Mr. Labin has purchased an air filter to preserve his own respiratory health and that of his customers and employees.

87. A truck hit Mr. Labin's car while it was parked in a public parking spot on Thames Street in front of the Facility. A Facility employee had previously warned Mr. Labin about parking there, and after Mr. Labin returned to his car to see the damage, the Facility

employee and a truck driver in front of the Facility warned Mr. Labin again that he should no longer park in that location.

Plaintiff Sanders Mendez

88. Sanders Mendez was born in the neighborhood and has lived there all his life. Since 1983, Mr. Mendez has been a member of the Iglesia Betania Christian Church at 42 Porter Avenue, around the corner from the Trash Facility. Since 2013, he has lived in an apartment above the church with his wife and four children, ages five, eight, nine, and seventeen, and acts as a caretaker for the church. Defendants' operation of the Trash Facility has substantially interfered with Mr. Mendez's use and enjoyment of his home and has negatively affected his family.

89. The bedrooms in Mr. Mendez's second floor apartment face Grattan Street, where trucks queue to enter the Facility to be weighed. The trucks' exhaust pipes release their fumes almost directly level with the bedroom windows. Mr. Mendez must tape all the bedroom windows shut to keep out the odors, severe truck fumes, and black dust. Even with the tape, the odors permeate his home, and he finds thick black dust on his windowsills and countertops. He is frightened to think of what happens as he and his children inhale that black dust.

90. Mr. Mendez purchased an air conditioner just last year to cool and circulate the air inside, and to help his children sleep through the night by masking some of the loud noises from the Trash Facility and trucks. Mr. Mendez now struggles to pay the high utility bills resulting from having to run the air conditioner all the time.

91. Every night of the week except Saturday, noise from the Trash Facility or trucks wakes Mr. Mendez, and sometimes wakes his children. He hears large trucks rumbling down the street, brakes squealing, reverse alerts beeping, and loud booms from inside the Trash Facility.

When a large heavy truck speeds by—which happens almost nightly—he feels the building shake. If the noise wakes his children, he or his wife also wake up to tend to them.

92. The constant sleep deprivation due to the noise causes him to have frequent headaches. Mr. Mendez also suffers from anxiety, which is exacerbated by lack of sleep. These are injuries specific to him and different from the experience of the general public.

93. Mr. Mendez is responsible for keeping the sidewalks around the church clean, and takes pride in maintaining a clean exterior. He is often forced to clean up the litter, broken glass, metal, and rocks that garbage trucks leave behind on the public sidewalks, as well as waste that escapes from the Trash Facility. He also often sees leachate and litter leaking from trucks parked or idling on Porter Street and Grattan Avenue. The leachate pools near the trucks and smells awful; Mr. Mendez fears getting splashed with it when the trucks speed through the puddles.

94. Mr. Mendez does not allow his kids to walk near the Trash Facility because of the dangerous truck traffic and the chemical spray the Facility projects directly onto the sidewalk. He also does not allow them to ride their bicycles on the street; they can only ride in the small lot behind the church, or he will walk with them to Maria Hernandez Park.

95. A couple of years ago, Mr. Mendez believes a truck coming to or from the Trash Facility hit his car while it was parked near his apartment on the corner across from the Trash Facility. He no longer parks his car there.

Plaintiff Jose Manuel Rodriguez

96. Jose Manuel Rodriguez has lived within a block of the Trash Facility at 120 Grattan Street for about twenty years. Defendants' operation of the Trash Facility has substantially interfered with the use and enjoyment of his rental property. When he catches a whiff of the garbage odors from the Facility inside his apartment, he immediately loses his appetite, even if he was about

to prepare his dinner. To actually enjoy his meals, he must leave his home and travel far from the Trash Facility.

97. Mr. Rodriguez does not have an air conditioning unit and in the summer is forced to choose between suffering the unbearable heat and stuffiness or the terrible smell coming in through open windows.

98. Mr. Rodriguez avoids walking down Thames Street because of the odors from the Trash Facility and leachate that often pools on the street. Because he lives just half a block from the station, this often causes him to walk a longer, less direct path to and from his apartment.

Plaintiff Teghvir Sethi

99. Defendants' operation of the Trash Facility substantially interferes with Teghvir Sethi's ability to use and enjoy his home. The loud noises coming through the Facility's open doors regularly keep him up all night. Mr. Sethi has had to purchase two white noise machines, an industrial fan, an air purifier, an air conditioning unit as well as sound-absorbing curtains, to block the noise that comes from the Trash Facility across the street all hours of the night—all to no avail. The noise prevents him from falling asleep and wakes him up multiple times a night on those occasions he is able to fall asleep. Mr. Sethi's sleep quality has diminished significantly since he moved to 120 Thames Street.

100. Mr. Sethi cannot open his windows to ventilate his apartment because of the odors from the garbage and chemical spray. Black dust generated by the Trash Facility and trucks still accumulates on his windowsills.

101. Mr. Sethi has asthma. Inhaling the chemical spray from the Facility has triggered his asthma on two occasions, and he had to use his inhaler. After those two occasions, he now avoids walking past the Trash Facility and must frequently take longer routes and detours.

Plaintiff Mercedes Tapia

102. Mercedes Tapia has lived half a block from the Trash Facility at 125 Thames Street for eighteen years. Defendants' operation of the Trash Facility has substantially interfered with the use and enjoyment of her home. Odors from the Facility adversely affect her and her family, particularly in the morning after the doors have been left open for most of the night. She and her children regularly feel nauseous in the mornings and lose their appetites for breakfast.

103. Ms. Tapia never opens her windows due to the smell, leaving her home uncomfortably stuffy and poorly ventilated. She must constantly run her air conditioner, even on cooler nights, so her family can sleep comfortably. This has caused Ms. Tapia to incur high utility bills.

104. The smell of fuel from idling trucks also permeates Ms. Tapia's home, and she is unable to remove it by frequent thorough cleaning.

105. The noises from the Trash Facility and the trucks keep Ms. Tapia and her children from sleeping at night and regularly wake them up around 4:00 or 5:00 a.m.

106. On three separate occasions, Ms. Tapia has almost been hit by a truck while walking her children to school. Ms. Tapia recently had to yank her three-year-old daughter back from the curb before a truck almost sideswiped her. Instead of letting her girls play near home, Ms. Tapia takes them on the train or bus to Cooper Park at the other end of the neighborhood.

107. Ms. Tapia's daughter has asthma, which flares up in the summers when it is hot and the odors from the Trash Facility are at their worst. Her daughter's asthma has been exacerbated by the emissions from the diesel trucks idling outside the Trash Facility. She had to send her daughter to treatment for her condition.

Plaintiff Bienvenido Torres

108. Bienvenido (“Benny”) Torres has lived in the neighborhood for 55 years. He has lived in his current apartment at 131 Thames Street—where he also serves as the building’s maintenance man—for the past three years. The Trash Facility has substantially interfered with the use and enjoyment of his home.

109. Mr. Torres remembers the days before the Trash Facility, when a bakery operated on the site and he would wake up to the smell of fresh bread and cake. On the Fourth of July, he and his neighbors would stay outside all day and celebrate, but that no longer happens as people spend less time outdoors.

110. Mr. Torres never opens the windows in his home or spends much time outside on his stoop because the odors are too bad.

111. Mr. Torres works very hard to keep his apartment and the building’s basement and backyard, spotless and clear of the odors and dust from the Trash Facility. Neighbors credit Mr. Torres for keeping the entire block clean as well. He is constantly picking up litter and hosing down the streets and sidewalks to clean up the garbage from the trucks and the Trash Facility. He is known as the “Mayor of Thames Street” for the pride he takes in attempting to maintain some level of cleanliness on the block.

Plaintiff Benjamin Weinstein

112. Benjamin Weinstein has lived in his apartment at 120 Thames Street for five years. Defendants’ operation of the Trash Facility has interfered with his ability to enjoy and use his home for the entire time he has lived in his apartment.

113. Excessive noise from the Trash Facility’s open doors awaken Mr. Weinstein an average of six times each night, six nights a week. As the trucks tip their beds they make a loud

banging noise that wakes him immediately, and he is kept awake by other sounds such as the loud noise of the backhoe as it scoops and dumps trash into eighteen-wheeler trucks.

114. The chemical spray the Facility uses to mask the odor irritates Mr. Weinstein's eyes and causes him to feel congested after walking on the sidewalk outside the Trash Facility when the doors are open and the nozzles pointed outwards.

115. Mr. Weinstein likes to exercise outside, but cannot enjoy being outside in his own neighborhood. He must walk five or six blocks away to do any exercise outdoors.

Economic Harm

116. The Individual Plaintiffs have suffered economic harm in a number of ways as result of Defendants' failure to operate the Transfer Facility properly, including but not limited to: (i) increased utility bills from having to purchase and run air conditioning units while windows are closed; (ii) diminution of business values; (iii) interference with use of their rental property; (iv) purchase of noise mitigating equipment, such as white noise machines, humidifiers, and noise absorbent curtains; (v) investment in exterminator services, rat poison, traps, and reinforcing walls by installation of metal and concrete to keep vermin out; and (vi) costs of repair and remediation to parked cars and other property damaged by incoming and outgoing trucks to and from the Trash Facility.

Defendants' Violations Of State And City Laws, Regulations, And Permits

New York State Department of Environmental Conservation Regulations

117. Waste transfer stations are regulated by the DEC, which has authority under Article 27 of the Environmental Conservation Law and has promulgated regulations at Title 6 Part 360 of the Official Compilation of Codes, Rules & Regulations of the State of New York. Pursuant to this authority, the DEC issued Defendants the DEC Permit, under which they operate

the Trash Facility. Defendants, however, have been operating the Trash Facility in violation of the DEC regulations and permit conditions.

118. Defendants have routinely routed trucks entering the Trash Facility to improperly queue on Grattan Street while they await the weigh station, instead of at the approved parking locations on Porter Avenue and Thames Street, in violation of the DEC Permit.

119. Defendants have allowed trucks outside and inside the Facility to idle for more than five minutes in violation of the DEC Permit. DEC Permit at 3.

120. Defendants have allowed tractor trailers that queue on the street outside the Facility, waiting to be loaded, to emit noxious odors and to leave solid or liquid waste on the public street. Defendants have done nothing to discourage this behavior, and have refused to clean the waste left behind by the trucks. This is all in violation of the DEC Permit. DEC Permit at 3.

121. Defendants have regularly kept the Facility's large doors open for hours at a time, even when no vehicle or personnel is entering or exiting the building, in clear violation of the DEC Permit, which permits doors to be open only to allow trucks to enter or exit. DEC Permit at 3.

122. Defendants' employees have hosed garbage and liquid waste onto the tipping floor and out onto the sidewalks and streets. The leachate often pools by the curbs on Thames Street, sometimes accumulating so much that it oozes across the street and around the corner. This is in clear violation of the DEC Permit. DEC Permit at 4.

123. Defendants have failed to control traffic flow into the Trash Facility safely or efficiently, in violation of 6 N.Y.C.R.R. § 360-11.3(b)(1).

124. Defendants have failed to maintain the Trash Facility's operations in a way that prevents vermin, in violation of 6 N.Y.C.R.R. § 360-1.14(l).

125. Defendants have failed to maintain the Facility's operations in a way that effectively controls odors and prevents them from becoming nuisances and hazards to health, safety, and property, in violation of 6 N.Y.C.R.R. § 360-1.14(m).

126. Defendants have failed to control noise levels from the equipment and operations at the Facility to prevent transmission beyond the property line at locations authorized for residential purposes of levels above 67 decibels (A) from 7:00 a.m.-10:00 p.m., and 57 decibels (A) from 10:00 p.m.-7:00 a.m. in violation of 6 N.Y.C.R.R. § 360-1.14(p).

New York City Department of Sanitation Rules

127. The DSNY also regulates and issues permits to waste transfer stations under regulations at Chapter 4 of Title 16 of the Rules of the City of New York. Defendants operate the Trash Facility under a permit issued by DSNY that must be renewed each year.

128. Defendants have failed to operate and maintain the Trash Facility in a safe and sanitary manner so as to avoid any nuisance or condition hazardous to public health or safety, in violation of 16 RCNY § 4-17(a)(2).

129. Defendants have allowed trucks to enter and exit the Facility without an attendant on duty, in violation of 16 RCNY § 4-17(b).⁶

⁶ 16 RCNY §4-17(b)(emphasis added) states: "The Permittee shall prohibit any transport vehicle required to be licensed or permitted pursuant to Title twenty of the Administrative Code from depositing solid waste at or removing solid waste from the putrescible solid waste transfer station, unless such transport vehicle is appropriately licensed or permitted. Entrance into or exit from a putrescible solid waste transfer station by a transport vehicle shall be permitted **only when an attendant is on duty**. The loading or unloading of any transport vehicle shall be **continuously supervised by an attendant** to avoid unauthorized deposit or removal of solid waste and injury to persons in such station."

130. Defendants' operations have also been in violation of DSNY regulations that impose noise level limits on waste transfer stations' operations. 16 RCNY § 4-17(n). Sound levels for all internal combustion-powered equipment must not exceed 80 decibels (A) at a distance of 50 feet from the operating equipment. 16 RCNY § 4-17(n)(4).⁷

131. By causing the proliferation of rats that run rampant in the adjacent streets, which have become a serious problem for many community members in their homes and places of business, Defendants' operation of the Trash Facility has been in violation of the DSNY regulations requiring that the Facility "be kept free of vectors, including, but not limited to, rodents, insects and other pests and of any condition conducive to vectors." 16 RCNY § 4-17(e)-(f).⁸

132. Defendants have failed to control the Facility's odors so that they do not create a public nuisance in violation of 16 RCNY § 4-17(j).

133. Defendants have not utilized odor control equipment that effectively neutralizes odors. Furthermore, Defendants have attempted to mask these odors by installing nozzles to spray odor-counteracting chemicals, which are pointed toward the street and sidewalks instead of aimed towards the Facility's fans and exhaust vents. These acts are in violation of 16 RCNY § 4-16(b)(3).

134. Finally, Defendants have failed to ensure that the Facility's doors remain closed except for when vehicles are entering or leaving, in violation of 16 RCNY § 4-17(p).

⁷ If existing ambient sound levels exceed these limits, the waste transfer station may not increase the levels. 16 RCNY § 4-17(n)(1).

⁸ 16 RCNY § 4-16(f) states: "Pest control measures shall be specified and shall be adopted in the design of a putrescible solid waste transfer station pursuant to § 151 of the New York City Health Code."

Prohibition on Air Pollution

135. By causing the Facility to emit “air contaminants [including odors, mists, and fumes] to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property,” Defendants have violated 6 N.Y.C.R.R. § 211.1.

136. By causing the Facility to emit “odorous air contaminant. . . [that] causes or may cause detriment to the health, safety, welfare or comfort of any person, or injury to plant and animal life, or causes or may cause damage to property or business,” Defendants have violated N.Y.C. Admin. Code § 24-141.

Prohibition on Idling

137. Section 217-3.2 of Title 6 of the NYCRR prohibits heavy-duty vehicles from idling for more than five consecutive minutes. Defendants have violated this regulation.

138. Defendants have regularly allowed trucks to idle outside the Facility for longer than three minutes, in violation of N.Y.C. Admin. Code § 24-163(a).

Regulations on Truck Traffic

139. Defendants have turned a blind eye to the trucks with whom they do business—including the trucks they own via their company Five-Star—that regularly drive and reverse in a dangerous manner in violation of N.Y. Veh. & Traf. Law, tit. 7, art. 33, § 1211(a).

140. Defendants have not controlled the trucks that load and unload waste at the Facility, which have regularly failed to yield to pedestrians on sidewalks, in violation of N.Y. Veh. & Traf. Law, tit. 7, art. 27, § 1151-a.

Performance Standards of the Zoning Resolution of the City of New York

141. The Trash Facility is categorized as Use Group 18 in the Zoning Resolution of the City of New York and, as such, Defendants must comply with certain performance standards. By

causing the Facility to emit odors that can be detected at lot lines and are producing a public nuisance and hazard beyond the lot lines, Defendants are in violation of the Zoning Resolution, art. 4, ch. 2, § 42-241.

142. By causing the Facility to emit toxic and noxious matter beyond the lot line that is detrimental to and endangers the public health, safety, comfort of residents in the area and damages their property, Defendants are in violation of Zoning Resolution, art. 4, ch. 2, § 42-252. Additionally, Defendants are in violation of limits on sound pressure level in an M1 district in violation of Zoning Resolution, art. 4, ch. 2, § 42-213.

Plaintiffs' Outreach And Advocacy Efforts To Improve Trash Facility Operations

143. Plaintiffs have attempted to remedy the above noted conditions by making 311 calls and reaching out directly to Defendants. When these efforts failed, the Plaintiffs began further advocacy.

144. In November 2015 and December 2016, Cleanup North Brooklyn held annual community forums about Defendants' operation of the Trash Facility, which hundreds of community members attended.

145. In 2015, Cleanup North Brooklyn also released a short film about the Trash Facility's impact on the community. In 2016, they documented over 1,200 instances of Defendants' misconduct over the course of six days in a report entitled Profits Before Safety.

146. Profits Before Safety came out of a community effort to observe and memorialize the Facility's operations through video recordings. Over the period of just six days in May of 2016, the community collected hours of evidence showing, among other things: trucks idling on the street; Defendants unnecessarily leaving the Trash Facility's doors wide open; Defendants failing to wash the Facility's floor thoroughly every day as required by its permits; employees

hosing leachate from the Facility out into the street and public sewers; giant tractor trailer trucks conducting dangerous maneuvers and blocking significant portions of the street and parking spaces; trucks running stop signs; and the Trash Facility accepting waste it is not permitted to accept. Cleanup North Brooklyn members also obtained noise level readings in the area and found them to exceed allowable limits.

147. Plaintiffs have also attempted to gain relief by reaching out to relevant officials. The community members have discussed their concerns with their City Council Member Antonio Reynoso, who has supported their advocacy, as well as with DSNY, which permits and oversees the Trash Facility.

148. In December 2016, largely in response to the Profits Before Safety report, DSNY invited Cleanup North Brooklyn representatives to a meeting with senior staffers of DSNY and Council Member Reynoso's staff. At the December meeting, Cleanup North Brooklyn voiced the community's long-standing frustrations with Defendants' operation of the Trash Facility. DSNY offered to facilitate a meeting between Defendants and Cleanup North Brooklyn. In February 2017, DSNY facilitated that meeting, at which Cleanup North Brooklyn directly addressed the Defendants, communicated their greatest concerns, and discussed reasonable measures Defendants could take to alleviate their adverse impact on the community. During the meeting, Defendants committed to take steps to mitigate some of the offensive impacts the Trash Facility was having on the community.

149. Following the meeting, on March 13, 2017, Cleanup North Brooklyn sent Defendants a letter memorializing those commitments they had made during the meeting to improve their operations and mitigate the impact on the surrounding community. The commitments Defendants promised to undertake included, but are not limited to: keeping

Facility doors closed except while in use; ceasing the spraying of leachate into the street; assigning a station attendant to assist in queuing of waste trucks to minimize idling; relocating the spray nozzles to prevent chemicals from spraying onto the sidewalks; and taking several additional measures to reduce noise, odor, dangerous truck traffic, and other nuisance conditions.

150. Defendants have not honored most of those commitments.⁹

FIRST CAUSE OF ACTION

Private Nuisance

151. Plaintiffs repeat and reallege the allegations contained above as if set forth fully herein.

152. Defendants' operation of the Trash Facility has caused the emission of offensive and noxious odors, excessive noise, irritating chemical sprays, and leachate, has attracted vermin, and has created dangerous truck emissions and truck traffic.

153. The offensive and noxious odors, noise, emissions, leachate, chemical sprays, vermin and truck traffic substantially interfere with Plaintiffs' use and enjoyment of property that they own or lease.

154. Such interference is a result of Defendants' actions operating the Trash Facility.

155. Defendants' actions in causing such interference are intentional, negligent and/or reckless.

156. Defendants know or are substantially certain that their actions cause odors, emissions, noise, vermin, leachate, chemical sprays, and truck traffic that are offensive and noxious to plaintiffs and the community.

⁹ The only commitment Defendants made at the meeting for which they followed through was to post signs on the exterior of the Trash Facility warning pedestrians of an active driveway and instructing trucks not to honk.

157. Defendants' actions are unreasonable in nature because reasonable steps can be taken to reduce the severity of these impacts on the community.

158. Defendants' actions constitute a private nuisance.

159. Defendants have actual notice of the nuisance and have had a reasonable opportunity to abate the nuisance.

160. Defendants' conduct constitutes a private nuisance and has proximately caused—and will continue to cause—damages to Plaintiffs. Plaintiffs are entitled to injunctive relief requiring, *inter alia*, Defendants to abate the nuisance. Plaintiffs are also entitled to compensatory damages for the direct financial harm, in an amount to be determined at trial.

SECOND CAUSE OF ACTION **Public Nuisance**

161. Plaintiffs repeat and reallege the allegations contained above as if set forth fully herein.

162. Defendants' conduct or omissions have caused the Trash Facility to emit significant offensive and noxious odors, excessive noise, litter, leachate, and irritating chemical sprays, have attracted vermin, and have created dangerous truck emissions and truck traffic that impact Plaintiffs' residences, businesses, and public spaces.

163. The offensive and noxious odors, noise, emissions, truck traffic, litter, vermin, leachate and chemical sprays offend, interfere with, and cause damage to the public in their exercise of rights common to all, such as traveling through the area, using public streets and sidewalks and areas such as places of employment and businesses, residing in their dwellings, attending neighborhood schools, and breathing the air.

164. These impacts injure and endanger the property, health, safety, and comfort of a considerable number of persons.

165. Plaintiffs and members of Cleanup North Brooklyn have experienced special harm from Defendants' conduct or omissions that are different in kind from those experienced by the public at large.

166. Defendants' actions constitute a public nuisance.

167. Defendants have actual notice of the public nuisance and have had a reasonable opportunity to abate the nuisance. Defendants' conduct constitutes a public nuisance that has proximately caused—and will continue to cause—damages to Plaintiffs. Plaintiffs are entitled to injunctive relief requiring, *inter alia*, Defendants to abate the nuisance. Plaintiffs are also entitled to compensatory damages for the direct financial harm, in an amount to be determined at trial.

THIRD CAUSE OF ACTION **Nuisance Per Se**

168. Plaintiffs repeat and reallege the allegations contained above as if set forth fully herein.

169. The Defendants' actions are in violation of city and state laws, regulations, and permit conditions.

170. Such illegality makes the nuisance a nuisance per se.

171. Defendants' conduct constitutes nuisance per se and has proximately caused—and will continue to cause—damage to Plaintiffs. Plaintiffs are entitled to injunctive relief requiring, *inter alia*, Defendants to abate the nuisance. Plaintiffs are also entitled to compensatory damages for the direct financial harm, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court award the following relief:

- i. A declaratory judgment that Defendants' actions stated herein have constituted and continue to constitute a private nuisance;

- ii. A declaratory judgment that Defendants' actions stated herein have constituted and continue to constitute a public nuisance;
- iii. A declaratory judgment that Defendants' actions stated herein have constituted and continue to constitute nuisance per se;
- iv. An injunction ordering Defendants GPB Waste NY LLC and GPB Capital Holdings, LLC, and any and all other entities acting in concert with them, to abate the nuisance caused by Defendants' actions stated herein;
- v. An injunction prohibiting Defendants GPB Waste NY LLC and GPB Capital Holdings, LLC, and any and all other entities acting in concert with them, from operating the Trash Facility in a manner that causes or contributes to a public or private nuisance;
- vi. An injunction ordering Defendants GPB Waste NY LLC and GPB Capital Holdings, LLC, and any and all other entities acting in concert with them, to comply with all applicable laws, regulations, and conditions imposed in their various permits;
- vii. An award of money damages; and
- viii. Any and all other relief that the Court deems just and proper.

Dated: August 30, 2017
New York, New York

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