EXHIBIT D

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

BEECHER COTTON, PAMELA COLON, SIRDINA ISAAC-JOSEPH, ESTHER CLIFFORD, SYLVIA BROWNE, ALVINA JEAN-MARIE ILARRAZA, individually and on behalf of all others similarly situated, Plaintiffs, v. LIMETREE BAY VENTURES, LLC, LIMETREE BAY REFINING, LLC, LIMETREE BAY TERMINALS, LLC, ARCLIGHT CAPITAL PARTNERS, LLC, FREEPOINT COMMODITIES, LLC, EIG GLOBAL ENERGY PARTNERS, LLC, BP PRODUCTS NORTH AMERICA, INC. and JOHN DOES 1-10., Defendants.	CIVIL NO. SX-2021-CV-00414 **COMPLEX LITIGATION** JURY TRIAL DEMANDED

PLAINITFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY MANDATORY INJUNCTION, AND TO LIMIT COMMUNICATIONS WITH CLASS MEMBERS, VOID RELEASES SIGNED BY CLASS MEMBERS PERMANENT MANDATORY INJUNCTION

Plaintiffs Beecher Cotton, Pamela Colon, Sirdina Isaac-Joseph, Esther Clifford, Sylvia Browne, and Alvina Jean-Marie Ilarraza (collectively, "Plaintiffs) individually and on behalf of all others similarly situated, for their emergency motion against Defendants Limetree Bay Ventures, LLC, Limetree Bay Refining, LLC, Limetree Bay Terminals, LLC, Arclight Capital Partners, LLC, Freepoint Commodities, LLC, EIG Global Energy Partners, LLC, BP Products North America, Inc., and John Does 1-10 (collectively, "Defendants) state as follows:

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I. Introduction

Through their reckless operation of Limetree Bay Refinery, Defendants have wreaked havoc on St. Croix, subjecting the people that live and work on the island to at least four catastrophic Contamination Incidents1 in the first three months after the refinery was reopened in February 2021. These repeated incidents, in which Refinery Contaminants literally rained down on the surrounding communities, caused significant damage and injury and jeopardized the health, safety and well-being of Plaintiffs and members of the proposed classes ("Class Members").2

Yet in the wake of these events, instead of seeking to make amends with the people they've harmed, Defendants have sought to protect their interests and minimize their legal exposure. They have done this by directly contacting Class Members and attempting to induce them to sign a release of claims that would pay only a few thousands of dollars in exchange for waiving all legal rights to hold Defendants liable for bodily harm or property damage relating to the Contamination Incidents. (*See E*xhibit. 1 as an example release) Defendants began this process immediately following the first Contamination Incident that occurred upon the refinery's reopening (the February 4 Incident) and have continued this process unabated to the present, and despite the fact that numerous class actions concerning the Contamination Incidents have been filed and for which Defendants have received notice. Despite this, Defendants have persisted in their wrongful campaign of contacting Class Members and attempting to have them sign the release without adequately informing them of their

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1 Unless otherwise noted, capitalized terms have the meaning ascribed to them in Plaintiffs' Class Action Complaint (the "Complaint") filed in the above-captioned matter on May 20, 2021. Moreover, references to "¶__" refer to the paragraphs in the Complaint.

legal rights, including with respect to the pendency of the present litigation and related class actions that have been filed concerning the Contamination Incidents. In addition, Defendants have taken the position that they are under no legal duty to clean up the oil that has inundated Plaintiffs' homes and gotten into their cisterns, and contaminated their water and damaged their vegetation and also harmed their vehicles.

Defendants' actions are improper, and the present Motion has been brought to remedy this conduct and to ensure fairness in the litigation process and a just outcome for Plaintiffs and Class Members, and insure clean up of the Plaintiffs' property. Accordingly, pursuant to VI CIV. PRO RULE 23(d) and 65, Plaintiffs request that the Court enter an Order providing for immediate relief, including (i) prohibiting Defendants and their agents from communicating the materially misleading release or otherwise engaging in communications with Class Members concerning this litigation or the subject thereof; (ii) precluding Defendants from using or enforcing any improperly obtained releases they have received to date; (iii) requiring Defendants to provide Plaintiffs' counsel with a list containing the names and addresses of every Class Member who received a release, has signed a release and/or has been contacted regarding the Contamination Incidents and/or this litigation or any related litigation; (iv) directing that a Court-approved corrective notice be issued to all Class Members who have received a release from Defendants to date; and (v) issuing an order reguiring the Defendants to properly clean up the oil spill, to include, but not be limited to cleaning Plaintiffs'

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2 "Class Members" refers to members of Plaintiffs' proposed classes, as defined in the Complaint. *See* ¶ 141.

homes, cisterns, vehicles and grounds promptely, and (VI) requiring Defendants to pay Plaintiffs' attorneys' fees and costs in bringing this motion.

For the reasons set forth herein, the Motion should be granted.

II. Relevant Factual and Procedural History

a. Defendants' Reckless Restart of the Limetree Bay Refinery Results in Significant Damage and Injury to Class Members

On February 1, 2021, Defendants restarted the long-shuttered Limetree Bay Refinery, a 55-year old oil refinery with a dark history of environmental abuse and badly in need of physical and operational upgrades.3 Nonetheless, the Defendants hastily forged ahead with the refinery's restart, setting an ambitious goal of having the facility process over 200,000 barrels of crude oil and other feedstocks per day.4

The problems with the refinery's restart were immediate and severe and had catastrophic consequences for Class Members property, safety and well-being. Just three days after reopening, the Limetree Bay Refinery suffered a flaring incident that resulted in oil and other contaminants raining down on Class Members' homes, cars and vegetation.5 One account of the February 4 Incident described it as having "spewed a plume of steam and fuel residue into the air, covering more than 130 homes with specks of oil and contaminating the drinking water of more than 60 residents."6

3 ¶¶ 28, 42.
4 ¶ 43.
5 ¶44.
6 ¶45.

Another initial estimate indicated that the event resulted in the likely contamination of at least 193 residences, 148 roofs, 245 cars and at least 70 cisterns.7

Despite having the refinery's permit revoked by the EPA in the wake of the February 4 Incident, as well as being subject to other significant regulatory scrutiny, Defendants continued to operate the Limetree Bay Refinery to disastrous results.8 On April 23, 2021 another flaring incident resulted in the release of large amounts of sulfuric gases into the air, exposing thousands of Class Members to harmful and potentially deadly contaminants and forcing businesses, schools and even Covid-19 vaccination centers to close.9 Although it apologized for the April 23 Incident and acknowledged the impact of the incident on the public, Defendants recklessly continued to operate the refinery.10

On May 5, 2021, another incident at the Limetree Bay Refinery resulted in a "gaseous leak" that resulted in at least 200 residents complaining about odors and suffering serious health effects, including nausea, vomiting, stomach aches, itching, irritated eyes and rash.11 At least nine residents visited local emergency rooms as a result of the May 5 Incident, while other victims sought treatment from private health care providers.12

Finally, on May 12, 2021, the Limetree Bay Refinery "spewed oil and sulfur dioxide into the air" in an episode the EPA called "a serious incident that led to the exceedance of the emission limit

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7 ¶47.
8 ¶¶51-56.
9 ¶¶57-59.
10 ¶¶57, 60.
11 ¶63
12 ¶64.

for sulfur dioxide, a toxic gas."13 The incident resulted in oil droplets being released onto nearby residential communities.

The impact of the Contamination Incidents on Class Members has been wide-ranging and severe. In the days that followed the incidents, Plaintiffs discovered that their cars, homes, and other property (including their soil and cisterns) were covered in oil and other contaminants.14 Moreover, Plaintiffs also suffered severe and immediate adverse health reactions to the incidents, including becoming bedridden, suffering from swelling, stabbing pain and irritation of the eyes, nausea and upset stomach, fatigue, uncontrollable coughing, shortness of breath, and headaches.15 Plaintiffs also endured lack of sleep, stress and emotional distress as a result of their experience and their fear concerning the long-term health impacts of the Contamination Incidents.16

b. Defendants Attempt to Minimize Their Legal Exposure By Foisting the Release on Class Members in the Wake of the Contamination Incidents

Despite the extensive and well-documented damage and suffering in the community wrought by their reckless operation of the Limetree Bay Refinery, Defendants eschewed making any genuine effort to meaningfully address the consequences of their actions and instead sought to protect their bottom-line. In the days following the February 4 Incident, Defendants and their OVER 100 representatives ventured into the neighborhoods surrounding the Limetree Bay Refinery and attempted to wrongfully induce Class Members, including Plaintiff Cotton, to sign a release of

13 ¶¶68-69.
14 *See* ¶¶89-140.
15 *Id*.
16 *Id*.

claims that would pay only $2,000 in exchange for waiving all legal rights to hold Defendants liable for bodily harm or property damage relating to the incident.17

In the process of investigating the Contamination Incidents that are the subject of the Complaint, counsel for Plaintiffs came into possession of the purported release that Defendants gave to area residents relating to the February 4 Incident. The release contains the following language:

> **RELEASE OF ALL CLAIMS**
>
> KNOWN ALL MEN BY THESE PRESENT, THAT _____ for the sole consideration of Two-Thousand Dollar ($2,000.00); have released and discharged Limetree Bay Refining, LLC., its members, managers, officers, directors, employees, agents, parents, owners, and affiliates; from all claims, demands, damages, and actions, caused by Limetree Bay Refining, LLC., on account of all Property Damage and or Bodily Injury resulting, or to result from an incident which occurred on or about the 4th Day of February, 2021 on St. Croix, USVI.
>
> The undersigned further declares and represents that no promise inducement or agreement not herein expressed has been made to the undersigned; and that this Release contains the entire agreement between the parties hereto, and that terms of this Release are contractual and not a mere recital.
> I signed the foregoing Release and Settlement Agreement and fully agree and accept to the terms and provisions stated therein.
> I declare, certify, and state under penalty of perjury under the laws of the United States of America and the U.S. Virgin Islands that the foregoing is true and correct pursuant to 28 U.S.C. Sec. 1746(2} and V.I.R.Civ.P.84 (2018), which both authorize the making of these statements without the signature of a notary.
> The release also includes blank spaces for the date of execution, signature and address of the

released class member as well as blank spaces for a witness's signature, printed name and address.

Upon information, Defendants have distributed the same or a substantially similar release to Class Members beginning just after the February 4 Incident and continuing to the present in an effort to limit their liability with respect to the Contamination Incidents. This effort has continued despite

17 ¶49.

the filing of several putative class actions relating to the Contamination Incidents, including Plaintiffs' action.

Specifically, on May 19, 2021, the first class action lawsuit against certain of the Defendants was filed. Since that time, several other class actions have been filed against Defendants, including Plaintiffs' Complaint on May 20, 2021. These class actions have generally been filed on behalf of classes like those defined as follows in the Complaint: "all persons or entities who have suffered injuries and/or damages because of the Contamination Incidents at the Limetree Bay Refinery" as well as "a separate medical monitoring class on behalf of all persons who were exposed to the contaminants at issue"." ¶ 141.

Yet despite having clear notice of these pending class actions and the scope of the proposed classes, Defendants have continued to seek a release from class members without providing material information to class members concerning their rights and, in particular, the existence of the pending class actions that have been filed on their behalf. Indeed, since Plaintiffs filed their Complaint, dozens of putative class members have contacted counsel for Plaintiffs and informed them that Defendants have approached them about entering into a release with respect to the Contamination Incidents. None have been advised by Defendants of the pendency of these class actions.

c. Defendants have taken the position that they are under no legal duty to clean up the results of the Oil Spills.

Despite the operation of a clear private and public nuisance the Defendants have taken the position that they have no legal duty to clean up the trespass of oil on Plaintiffs' property. They have

represented that any cleanup of the oil they have spewed on the Plaintiffs' property is gratuitous, and not a legal duty such that they require releases, or they intend to leave the oil on the properties.

III. Argument

a. This Court is authorized to enter an Order limiting Defendants' communications with Class Members

Pursuant to Virgin Islands Rule of Civil Procedure 23, in conducting a class action, this Court is empowered with broad authority to issue orders that "determine the course of proceedings" and "impose conditions on the representative parties or on intervenors." VI CIV. PRO RULE 23(d); *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981) (analyzing Fed R. Civ. Pro 23 and finding that courts "have both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties.").18

This authority extends to communications between parties and putative class members. *In re Allergan BIOCELL Textured Breast Implant Products Liability Litig*., Civ. No. 19-MD-2921BRMJAD, 2020 WL 3977674, at *4 (D.N.J., July 14, 2020). Further, the court's duty to supervise communications with potential class members exists even before a class is certified. *Slamon v. Carrizo (Marcellus) LLC*, No. 16-cv-2187, 2018 WL 3615989, at *3 (M.D.Pa., July 27, 2018)(internal quotations and citations omitted); *In re Oil Spill by the Oil Rig "Deepwater Horizon"*

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18 Cases analyzing Federal Rule of Civil Procedure 23 are instructive to the Court's analysis of VI Civ. Pro Rule 23 here. *See Castillo v. St. Croix Basic Services, Inc.*, 2020 WL 1164685, at *12 (V.I.Super., 2020)("[N]ow that the Virgin islands Supreme Court has promulgated a rule that allows class actions, and borrowed the Virgin Islands rule from the federal rule, federal case interpreting the federal rule is persuasive."); *see also* VI Civ. Pro Rule 23 advisory committee on rules comment ("Rule 23 follows - in all its detail - the modern approach to class actions followed in almost every American jurisdiction, including the federal courts.").

in the Gulf of Mexico, on April 20, 2010, MDL No. 2179, 2011 WL 323866, at *6 (E.D.La., Feb. 2, 2011) ("Even prior to certification of a class, this Court has both the inherent authority and the responsibility under Rule 23 to supervise or control certain communications with potential class members, especially those who are unrepresented by their own counsel.").

In its supervisory capacity "a court may limit communications between counsel and putative class members to protect the class from misleading information, including communications that omit critical information, that threaten the choice of remedies available to class members, or that otherwise abuse the rights of the members of the class. *Gortat v. Capala Bros., Inc.*, No. 07-CV-3629ILGSMG, 2009 WL 3347091, at *11 (E.D.N.Y., Oct. 16, 2009)(internal quotations omitted). Such communications "pose a serious threat to the fairness of the litigation process, the adequacy of representation and the administration of justice generally." *In re School Asbestos Litig*., 842 F.2d 671, 680 (3d Cir. 1988) (*citing Gulf Oil*, 452 U.S. at 101 n. 12). Communications deemed sufficient to warrant a court's entry of a protective order include, "communications that coerce prospective class members into excluding themselves from the litigation; communications that contain false, misleading or confusing statements; and communications that undermine cooperation with or confidence in class counsel." *Cox Nuclear v. Gold Cup Coffee Servs.*, 214 F.R.D. 696, 698 (S.D. Ala. 2003).19

19 *Jubinville v. Hill's Pet Nutrition, Inc.*, C.A. No. 19-74WES, 2019 WL 1584679, at *7 (D.R.I., April 12, 2019)(citing examples when a court may "step in and exercise its Fed. R. Civ. P. 23(d) authority when communications have been found to be violative of the principles of Rule 23, …[including] communications that misrepresent the status or effect of the pending action, communications that coerce prospective class members into excluding themselves from the litigation, and communications that undermine cooperation with or confidence in class counsel.")

The prevailing standard to be applied by a court in fashioning an order limiting communications between parties and potential class members, articulated in *Gulf Oil*, is that any such order "should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties." *Gulf Oil*, 452 U.S.at 101. Further, "such a weighing—identifying the potential abuses being addressed—should result in a carefully drawn order that limits speech as little as possible, consistent with the rights of the parties under the circumstances." *Id.* at 102. However, an order under *Gulf Oil*, "does not require a finding of actual misconduct – rather, the key is whether there is potential interference with the rights of the parties in a class action." *Jubinville*, 2019 WL 1584679, at *7; *Slamon v. Carrizo (Marcellus) LLC, 2018 WL 3615989, at *3 (M.D.Pa., 2018)(*"Rule 23(d) does not require a finding of *actual* harm; it authorizes the imposition of a restricting order to guard against the *likelihood* of serious abuses.")(internal quotations omitted).

Based on Defendants' continuing practice of issuing releases to Class Members that omit material information concerning Class Members' rights, including the pendency of this class action, an Order from this Court limiting such communications is well-justified.

b. Defendants have sought releases from Class Members without adequately disclosing Class Members' rights, including the pendency of class actions concerning the Contamination Incidents

Defendants are offering Class Members a relatively small amount of money ($2,000.00) to compensate them for the significant injury, damages, and long-term health effects suffered as a

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(internal citations and quotations omitted).

result of the Contamination Incidents. In exchange, Class Members are to waive all legal rights to hold Defendants liable for bodily harm or property damage relating to the Contamination Incidents. Of course, based on the content of the release, in making their decision as to whether to sign the release, Class Members are left unaware of the existence of the present litigation and related class actions concerning the Contamination Incidents, the claims of plaintiffs in these actions, the right to consult an attorney, and that by signing the release they will be releasing their right to seek recovery from Defendants through these matters. To this end, the release jeopardizes the proper functioning of the litigation by "'omit[ting] critical information,' 'that threaten the choice of remedies available to class members.'" *Gortat*, 2009 WL 3347091, at *11 (quoting *In re Currency Conversion Fee Antitrust Litig.*, 361 F. Supp. 2d 237, 252-53 (S.D.N.Y. 2005); *Allergan*, 2020 WL 3977674, at *8: (given that the "releases require patients to give up any potential recovery in this case, even if those patients have no idea that this case exists, or that it may ultimately provide them with a better result …[the] release impermissibly threatens to influence putative class members' choice of remedies.").20

Further, the release is not *neutral*, but instead protects Defendants' interests and causes Class Members to release claims otherwise covered by the pending class cases. Defendants are prohibited from engaging in unilateral, misleading contact with putative class members regarding the issues of the litigation. *See, e.g., In re School Asbestos Litig.*, 842 F.2d at 682-83 ("Such communications are

20 *See also, Zamboni v. Pepe West 48th Street LLC*, No. 12-cv-3157AJNJCF, 2013 WL 978935, at *3 (S.D.N.Y. 2013)("a communication may be coercive where the defendant interferes with participation by potential class members in the lawsuit or misleads them by failing to reveal how some proposed transaction might affect their rights in the litigation").

not, in fact, litigation-neutral; as the district court concluded, they seek to protect defendants' pecuniary interests by influencing decisions that will determine defendants' ultimate potential liability in the litigation"); *Kleiner v. First Nat'l Bank of Atlanta*, 751 F.2d 1193, 1203 (11th Cir. 1985) ("Unsupervised, unilateral communications with the plaintiff class sabotage the goal of informed consent by urging exclusion on the basis of a one-sided presentation of the facts, without opportunity for rebuttal. The damage from misstatements could well be irreparable").

Moreover, the pertinent consideration is not whether the release would be enforceable under principles of contract law but, rather, the Court's focus must be on "the communication as a whole, including the circumstances of its conveyance, to properly evaluate its potential to mislead or coerce, as well as its potential impact on this litigation." *Allergan*, 2020 WL 3977674, at *7. Here the proposed classes mainly consist of individuals who are unfamiliar with the judicial system and their rights in a class action lawsuit. In addition, these individuals are acting under great duress as they are faced with the need to promptly repair and remediate damage to their properties, treat their injuries, and otherwise ensure their well-being in the wake of numerous environmental disasters brought about by Defendants' recklessness. They are likely under intense stress. In this context, Defendants' actions in presenting a take-it-or-leave-it release are clearly aimed at limiting the rights of Class Members at a vulnerable moment before this litigation is adjudicated on the merits, misleading those who are most in need of the Court's protections. *Id*. ("The Court finds that the context, timing, and method of conveying the release all contribute to a serious risk of coercion and abuse.").

Accordingly, this Court's intervention is necessary given the material omissions of Defendants' release, which makes the communication deceptive and seeks to limit the rights of Class Members without full disclosure of the pending class litigation and their rights in relation to those matters. *Slamon,* 2018 WL 3615989, at *3-4 (judicial intervention warranted where failure to mention existence of class action in release a material omission and "patently misleading" in that "it may induce putative class members into releasing claims without knowledge of the possibility of recovery through the current litigation; it also does not afford putative class members a meaningful chance to evaluate the claims and their likelihood of success with counsel.") To hold otherwise would "provide an incentive for defendants in this case, and in other cases, to engage in improper and potentially coercive communications with members of [the] putative class." *Gortat*, 2009 WL 3347091, at *5.

c. The Court should enter an Order to remedy the unjust consequences of Defendants' improper communications with Class Members and to limit Defendants' prospective communications with Class Members

In light of Defendants' repeated and ongoing misleading communications with Class Members, the Court should order appropriate measures to remedy Defendants' abuses, including prohibiting further communications, issuing corrective notices, and awarding attorney's fees and costs. *See, e.g., Belt v. Emcare Inc.*, 299 F. Supp. 2d 664, 669-70 (E.D. Tex. 2003); *Stransky v. Healthone of Denver*, 929 F. Supp. 2d 1100, 1114 (D. Colo. 2013) (ordering dissemination of corrective notice, prohibiting further communications regarding litigation apart from dissemination of corrective notice and awarding attorney's fees and costs).

i. Any signed releases obtained by Defendants to date should be invalidated

Defendants' release fails to inform Class Members that a class action lawsuit has been commenced on their behalf, the remedies that may be available to them in the class action, their right to counsel, and the scope of the rights they will be relinquishing if they sign the release. As a result, Class Members are uninformed about their potential claims and chance for greater recovery in the lawsuit. Under these circumstances, any Class Member who has signed a release to date should not be bound by its terms and any such executed release should be deemed invalid and not enforceable. To hold otherwise would be unconscionable. *In re Currency Conversion*, 361 F. Supp. 2d at 252 ("In the absence of candid disclosure, it would be unconscionable to allow [defendants] to nullify [class members'] rights."). In *Currency*, the court denied the defendants' request that any class members who voluntarily signed binding arbitration agreements be precluded from participating in the litigation, and held that agreements signed after the commencement of litigation were unenforceable. *Id.* at 254. So too here, given that Defendants have omitted key information in their communications with Class Members concerning the pendency of the class litigation and their attendant rights, any such releases that have been executed by Class Members should be deemed invalid and should not be enforced. 21

21 *See also Slamon*, 2018 WL 3615989, at *4 (plaintiff request to render releases and other documents executed in response to misleading communication void and legally unenforceable rendered moot by fact defendant agreed to rescind all agreements executed by putative class members thus far, and to grant each such individual the opportunity to make a new election to accept the settlement offer).

ii. Defendants should be prohibited from seeking additional releases from Class Members

Defendants "are prohibited from sending misleading (either by way of affirmative misrepresentation or by material omission), coercive, or otherwise confusing communications" to putative class members. *Slamon v. Carrizo (Marcellus) LLC,* 2018 WL 3615989, at *5 (M.D.Pa., 2018); *In re Currency*, 361 F. Supp. 2d at 253 ("[W]hen a defendant contacts putative class members for the purpose of altering the status of a pending litigation, such communication is improper without judicial authorization). Accordingly, Defendants should be prohibited from further communicating the materially misleading release to Class Members. The release utterly fails to inform class members of the most basic fact that several class action lawsuits have been commenced on their behalf concerning the Contamination Incidents. Given such a material omission, Class Members may be unknowingly relinquishing valuable rights when they execute the release. Defendants' conduct in seeking a release in this manner is plainly improper and should be prohibited forthwith.

Plaintiffs' requested restriction is narrowly tailored to specifically address Defendants' ongoing issuance of the materially misleading release for the duration of the class litigation concerning the Contamination Incidents. *Belt v. Emcare, Inc.,* 299 F.Supp.2d 664, 669 (E.D.Tex.,2003)(enjoining all defendants from making any ex-parte communications with absent class members regarding the action until the end of trial). Such a limited restriction appropriately balances the Defendants' First Amendment rights with the severity of the potential harm to be visited upon Class Members as a result of Defendants' ongoing conduct.

iii. A corrective notice should be issued at Defendants' expense

In order to remedy Defendants' misleading communication, a Court-approved corrective notice should be issued. This Court is authorized to take such action to cure the misleading release and to prevent similar problems in the future "where potential class members have received inaccurate, confusing or misleading communications." *Slamon*, 2018 WL 3615989, at *3 (M.D.Pa., 2018) (internal quotations and citation omitted). This includes where a party "misleads class members by omitting critical information from its communications." *In re Currency*, 361 F. Supp. 2d at 252.

A corrective notice is warranted here given Defendants' improper notice, which contains numerous material omissions, not least of which is the pendency of the present litigation. Moreover, a corrective notice is particularly important where, as here, Class Members mainly consist of unsophisticated individuals who are unfamiliar with the judicial system. These individuals are operating under severe distress given that the Contamination Incidents have upended their lives, damaged and/or destroyed their property, and jeopardized their health and well-being. Many of these Class Members are unable to afford the costs necessary to repair and remediate their property and/or pay for the care necessary to treat their injuries. It is likely that, given their circumstances, many Class Members will accept or rely upon financial help from Defendants when offered, without understanding that doing so will require a complete waiver of their legal rights.

At a minimum, a corrective notice in this instance should include information concerning the existence of the litigation relating to the Contamination Incidents, potential remedies available to Class Members in the litigation, the misleading nature of the release, and contact information for

Plaintiffs' counsel. Distribution of such a corrective notice would negate any confusion caused by Defendants' material omissions and give Class Members a better understanding of their rights moving forward. Corrective notices of this kind have been regularly ordered where justified by similarly misleading communications to potential Plaintiffs and class members. *See e.g. Goody v. Jefferson County,* No. CV–09–437, 2010 WL 3834025, at *3 (D. Idaho Sept. 23, 2010) (finding that corrective notice is necessary to ensure that all putative plaintiffs know about their right to join the collective action); *Zamboni*, 2013 WL 978935, at *4 (requiring corrective notice "alerting employees that they have not waived any FLSA rights" and extending "the period within which, armed with that knowledge, employees may opt in to this lawsuit."); *Ladegaard v. Hard Rock Concrete Cutters, Inc.,* No. 00C5755, 2001 WL 1403007, at *7-8 (N.D.Ill., Nov. 9, 2001) (ordering notice to each person who received a release stating that the release is void in its entirety, that signing it does not prohibit participation in the litigation and that defendants cannot retaliate against anyone for participating in the lawsuit.)22

Finally, Plaintiffs' counsel has no knowledge of the number and identity of all Class Members that have a received a release to date. From the information counsel currently has regarding these improper releases, it is possible these releases have been distributed to thousands of Class Members. As such, Plaintiffs further request that the Court direct Defendants to produce a list

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22 *See also, Slamon,* 2018 WL 3615989, at *2 (Noting with approval curative notice that "includes three pages of text, including a description of the pending class action, contact information for Plaintiff's counsel, and an assurance that those who have already executed the Materials may have an opportunity to 'reconsider' their decision, and that they would not be 'bound by that prior decision of the signed Materials unless and until [they] re-sign and return the Materials again after [their] receipt of this letter.'").

of every Class Member who received a release, so that counsel can thoroughly evaluate the extent of these misleading communications.

IV. The Plaintiffs are entitled to a Mandatory Injunction ordering the Defendants to promptly and properly clean up the spill

Preliminary injunctions are "generally granted under the theory that there is an urgent need for speedy action to protect the plaintiffs' rights." Samuel v. V.I. Joint Bd. of Elections, No. 2012-0094, 2013 U.S. Dist. LEXIS 3689, at *29 (D.V.I. Jan. 6, 2013). This urgent need can exist when property rights are infringed by outside environmental causes, and Plaintiff may seek an injunction when it suffers the greater irreparable harm. *See* SBRMCOA, LLC v. Beachside Assocs., LLC, No. ST-13-CV-570, 2015 V.I. LEXIS 107, at *19-21 (Super. Ct. Sep. 1, 2015) ("The interference with real property rights is an appropriate basis for injunctive relief."). Where status quo is the condition not of rest, but of action, and the condition of rest will cause irreparable harm, mandatory injunction is proper. Ferry-Morse Seed Co. v. Food Corn, Inc., 729 F.2d 589, 593 (8th Cir. 1984); *see also* ("…purpose of injunction pendente lite is…to prevent threatened wrong or any further perpetration of injury… and thus to protect property or rights from further complication or injury…").

Pursuant to Superior Court Rule 7, the Federal Rule of Civil Procedure 65 governs the Court's consideration of temporary restraining orders ("TRO"), preliminary injunctions and mandatory injunctions. Pate v. Gov't of the V.I., No. ST-14-CV-479, 2014 V.I. LEXIS 112, at *4 (Super. Ct. Dec. 11, 2014); *see also* International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n, 389 U.S. 64, 75 (1967) (mandatory injunction is within Rule 65). The factors to be considered when evaluating a temporary restraining order are the same factors the Courts consider

when evaluating whether to issue a preliminary injunction. Appleyard v. Juan F. Luis Hosp. & Med. Ctr., No. SX-14-CV-282, 2014 V.I. LEXIS 56, at *4 (Super. Ct. July 28, 2014); *see also* Bieros v. Nicola, 857 F. Supp. 445, 445 (E.D. Pa. 1994). Pursuant to, Pate, 2014 V.I. LEXIS 112, at *7), the Court considers the following, referred to as the *Petrus Factors*:

1) *"whether the movant has shown a reasonable probability of success on the merits;*
2) *whether the movant will be irreparably injured by denial of the relief;*
3) *whether granting preliminary relief will result in even greater harm to the nonmoving party; and*
4) *whether granting the preliminary relief will be in the public interest.*" Petrus v. Queen Charlotte Hotel Corp., 56 V.I. 548, 554 (2012).

The Superior Court of the Virgin Islands applies a hybrid sliding-scale test when weighing the *Petrus factors*, if the movant has shown a reasonable probability of success on the merits, the remaining three (3) factors are considered and balanced against each other, and the Court recognizes that there may be situations where the balance of the equities favors injunctive relief even where one of the three (3) factors have not been met. *E.g.*, Id at *7-8; *see also* Yusuf v. Hamed, 59 V.I. 841, 847 n.3 (2013) ("Although the elements considered by the Court when reviewing a request for a temporary injunction are clear, the weight given to these factors is not. If the court determines that the moving party's likelihood of irreparable harm is great and the nonmoving party's likelihood of irreparable harm is very low, a 'sliding-scale test', [is acceptable and allows] the moving party to obtain an injunction even where the probability of success on the merits is low.").

It is clear that Plaintiffs have a likelihood of success on the merits of this matter. Clearly the spewing of oil onto persons property, chattels, and into Plaintiffs' cisterns is both a trespass and a private and public nuisance.

Plaintiffs will be irreparably harmed by denial of the relief. Since Defendants will not clean up the petrochemicals in Plaintiffs" cisterns and on their houses without Plaintiffs signing a release, plaintiffs would be forced to continue to drink and bath in contaminated water and to not be able to correct the damage to their soil and plants or their vehicles as a result of being unable to pay for the clean up, thus causing additional harm and loss of health.

Granting the Temporary Restraining Order and Mandatory Preliminary Injunction will not harm the Defendants as they are already willing to do this work, but want to obtain onerous releases under duress to do so. It is in the public interest for the Defendants to clean up the mess their oil has made to persons property.

V. Conclusion

WHEREFORE, Plaintiffs respectfully request that this Court (i) grant their motion; (ii) prohibit Defendants from engaging in misleading communications with putative class members concerning this lawsuit or the subject thereof; (iii) prohibit Defendants from soliciting or securing any more releases of class members' claims; (iv) deem any releases procured from Class Members regarding the subject matter of this lawsuit void; (v) order Defendants to furnish Plaintiffs' counsel with a list containing the names and addresses of every putative class member who received a release, and/or has been contacted concerning this action or the subject matter of this action; (vi) order the issuance of a corrective notice; (vii) issue a Temporary Restraining Order and Mandatory Preliminary Injunction requiring the Defendants to promptly and properly clean up the oil spilled on Plaintiffs' property, vehicles, plants, soil, cisterns and provide ample drinking water to the Plaintiffs

and (viii) award Plaintiffs' counsel their attorneys' fees and costs in bringing this motion, and (IX) grant such other and further relief as this Court deems appropriate.

RESPECTFULLY SUBMITTED
LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Plaintiffs

DATED: June 10, 2021

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CERTIFICATE OF WORD/PAGE COUNT

This document complies with the page or word limitation set forth in Rule 6-1 (e).

BY: /s/ Lee J. Rohn
Lee J. Rohn, Esq.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on June 10, 2021, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send a notification of such filing to the following:

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BY: /s/ Lee J. Rohn (kj)

ARLES
E COURT

RELEASE OF ALL CLAIMS

KNOWN ALL MEN BY THESE PRESENT, THAT Islam Qattoum and ashley Mcglahy, of 186 Enfield green [ADDRESS] (the "premises"), for the sole consideration of Nine thousand three hundred ninety five Dollars ($ 9,395.83); has released and discharged Limetree Bay Refining, LLC, Limetree Bay Terminals, LLC, and Limetree Bay Ventures, LLC, and each of their respective members, managers, officers, directors, employees, agents, parents, owners, subsidiaries, affiliates, and insurers; from any and all claims, demands, damages, and actions, on account of all Bodily Injury and or Property Damage arising out of or in any way connected to the incident which occurred on or about the 12th Day of May, 2021 on St. Croix, USVI at 1 Estate Hope, Christiansted, Virgin Islands 00820.

The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned; that this Release contains the entire agreement between the parties hereto, and that terms of this Release are contractual and not a mere recital. The parties also understand and agree that the acceptance of the above stated consideration from one party to the other is in full accord and satisfaction of, and in compromise of a doubtful and disputed claim, and that the payment thereof is not an admission of liability, but made for the purpose of terminating any and all disputes and litigation between the parties with respect to the incident. The undersigned declares and represents that the undersigned is either the owner of the premises or authorized agent of the owner of the premises.

I sign the foregoing Release and Settlement Agreement and fully agree and accept to the terms and provisions stated therein. I declare, certify, and state under penalty of perjury under the laws of the United States of America and the U.S. Virgin Islands that the foregoing is true and correct pursuant to 28 U.S.C. Sec. 1746(2) and V.I. R. Civ. P. 84, which both authorize the making of these statements without the signature of a notary.

Executed on (Date): 5/21/2021

Sign: (X) _____ Print Name: Islam Qattoum

Witness (XX) _____ (XX) MARIA AUSTRIE
Signature Print Name

Witness Address: (XX) 498 Barren Spot, Christiansted VI 00820

EXHIBIT 1