

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MIDLAND

MATTHEW S. SMITH, MICHAEL MERCER,
CHARLES COLLEY CASSANDRA COLLEY
and SANFORD HARDWARE 1, LLC, a
Michigan Limited Liability Company,
individually and on behalf of those similarly
situated,

Plaintiffs,

v.

BOYCE HYDRO POWER LLC, BOYCE
HYDRO LLC, BOYCE MICHIGAN LLC, LEE
W. MUELLER, MICHELE G. MUELLER,
MICHAEL D'AVENAS, STEPHEN B.
HULTBERG, WILLIAM D. BOYCE TRUST
2350 U/A/D 10/1908, WILLIAM D. BOYCE
TRUST 3649 U/A/D 06/1929, WILLIAM D.
BOYCE TRUST 3650 U/A/D 06/1929, BOYCE
TRUST HYDRO PROPERTY 2350 LLC,
BOYCE TRUST HYDRO PROPERTY 3649
LLC, and BOYCE TRUST HYDRO PROPERTY
3650 LLC,

Defendants.

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Case No.: 20-7052-NZ C

Hon.: Carras

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

FILED

TIME _____

JUN 04 2020

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COUNTY CLERK
MIDLAND, MICHIGAN

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A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in the United States District Court for the Eastern District of Michigan, the Michigan Court of Claims, Saginaw County Circuit Court, and this Court. In this Court it was given case number 20-7040-ND-B and was assigned to Judge Michael Beale. The action remains pending.

/s/ E. Powell Miller
E. Powell Miller

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Matthew S. Smith, Michael Mercer, Charles Colley, Cassandra Colley and Sanford Hardware 1, LLC (collectively “Plaintiffs”) on behalf of themselves and all others similarly situated, by and through their undersigned counsel, bring this action against Defendants Boyce Hydro Power LLC, Boyce Hydro LLC, Boyce Michigan LLC, Lee W. Mueller, Michele G. Mueller, Michael D’Avenas, Stephen B. Hultberg, William D. Boyce Trust 2350 u/a/d 10/1908, William D. Boyce Trust 3; 649 u/a/d 06/1929, William D. Boyce Trust 3650 u/a/d 06/1929, Boyce Trust Hydro Property 2350 LLC, Boyce Trust Hydro Property 3649 LLC, Boyce Trust Hydro Property 3650 LLC (collectively “Defendants”). Plaintiffs allegations herein are based upon personal knowledge as to their own acts, upon investigation of their counsel, and upon information and belief as to all other matters.

INTRODUCTION

On May 19, 2020, due to flooding on Michigan's Tittabawassee River, the Edenville Dam collapsed and breached, causing the nearby Sanford Dam to overflow and forcing the evacuation and displacement of 10,000 residents in Gladwin and Midland counties. Far from being an unforeseeable “act of God,” the breach of the Edenville and Sanford Dams was the unfortunate, predictable result of years of negligence, mismanagement, and a callous disregard for human safety. Defendants—a consortium of companies, trust entities, and individuals jointly responsible

for the ownership, operation, and control of the Edenville and Sanford Dams—have, for over a decade, and after repeated warnings from various regulatory agencies, knowingly failed to implement necessary measures that would have prevented the May 19 catastrophe from occurring, or, at the very least, would have significantly reduced the devastation that ensued. Indeed, Defendants' apathy was so egregious that the Federal Energy Regulatory Commission ("FERC") revoked Defendants' license to produce hydroelectric power at the Edenville Dam as a last-ditch attempt to hold Defendants accountable. However, Defendants failed to heed any of the warnings they received and failed to implement -or even attempt to implement- *any* measures to safeguard the structural integrity of the Edenville and Sanford Dams. Consequently, the well-founded fear that the Edenville and Sanford Dams would not withstand a flooding event was ultimately realized. As described herein, Plaintiffs sustained significant damage to their real and personal property as a result of Defendants' misconduct, and, accordingly, bring this action against Defendants, individually and on behalf of similarly situated Class Members, for equitable and injunctive relief, to recover compensatory and punitive damages, and for any other remedies or relief permitted by law.

PARTIES

Plaintiff Matthew S. Smith

1. Plaintiff Matthew S. Smith ("Plaintiff Smith" or "Mr. Smith") is a resident of Sanford, Michigan in Midland County.
2. Plaintiff Smith owns his residence, which backs up to Sanford Lake. As a result of the floods, his home and personal possessions, including but not limited to two boats, have been severely damaged and/or outright destroyed.

3. Due to the damage to his home, property and personal possessions as a result of the catastrophic flood and dam failure, and the last-minute order to evacuate, Plaintiff Smith's entire lower level of his home has been destroyed.

Plaintiff Michael Mercer

4. Plaintiff Michael Mercer ("Plaintiff Mercer" or "Mr. Mercer") is a resident of Sanford, Michigan in Midland County and owns his residence, which is located a block downstream from the Sanford Dam.

5. Plaintiff Mercer resided in his home with his fiancé. As a result of the catastrophic dam failures and floods, his home and personal possessions—including multiple snowmobiles and four-wheelers, a shed, tools, flooring, walls and the exterior deck have been severely damaged and/or outright destroyed.

6. Due to the damage to his home, property and personal possessions and the last-minute order to evacuate, Plaintiff Mercer is unable to reside in his residence.

Plaintiffs Charles and Cassandra Colley

7. Plaintiffs Charles and Cassandra Colley ("Plaintiffs Colley" or "Colley Family") are residents of Sanford, Michigan in Midland County. The Colley family lived approximately 1,600 feet from the Sanford Dam.

8. The Colley family rents their home, and resided in the property with their two minor daughters aged 8 and 13. As a result of the catastrophic dam failures and floods, their home and personal possessions—including two 2019 four-wheelers, a 2019 tractor, and a 2014 Jeep Cherokee—have been severely damaged and/or outright destroyed.

9. Due to the damage to their home and personal possessions and the last-minute order to evacuate, the Colley family is now homeless.

Plaintiff Sanford Hardware 1, LLC

10. Plaintiff Sanford Hardware 1, LLC (“Sanford Hardware”) is a domestic limited liability company with its registered address at 2351 N. 8 Mile, Sanford, MI 48657. Sanford Hardware’s principal place of business is at 346 Saginaw Rd., Sanford, MI 48657, approximately 1 mile from Sanford Dam, Sanford Lake, and the Tittabawassee River.

11. As a result of the catastrophic flooding and Dam failure, Plaintiff Sanford Hardware incurred substantial damage to its real and business property and sustained interruption to its business, loss of profits and other such damages as shall be determined.

Defendants

12. Defendant Boyce Hydro Power LLC, f/k/a Synex Michigan, LLC (“Boyce Hydro Power” individually and collectively, one of several “LLC Defendants”), is a Michigan Limited Liability Company with its registered office located in the city of Midland, County of Midland, State of Michigan. Upon information and belief, Defendant Boyce Hydro Power is wholly owned and operated by the Trust Defendants and/or Trustee Defendants. At all relevant times, Defendant Boyce Hydro Power has been in a joint venture with the Trust Defendants, Trustee Defendants, Individual Defendants and other LLC Defendants to own, maintain, and operate the Edenville and Sanford hydroelectric Dams. Defendant Boyce Hydro Power was licensed by the Federal Energy Regulatory Commission (“FERC”) to harness the Sanford and Edenville Dams’ hydroelectric output until September 10, 2018, when its license was revoked for repeated failures to correct safety and structural defects of the Edenville Dam. Defendant Boyce Hydro Power conducts business in Midland and Gladwin Counties in Michigan.

13. Defendant Boyce Hydro LLC (“Boyce Hydro” individually and collectively, one of several “LLC Defendants”), is a Michigan Limited Liability Company with its registered office

located in the city of Midland, County of Midland, State of Michigan. Upon information and belief, Defendant Boyce Hydro is wholly owned and operated by the Trust Defendants and/or Trustee Defendants. At all relevant times, Defendant Boyce Hydro has been in a joint venture with the Trust Defendants, Trustee Defendants, Individual Defendants and other LLC Defendants to own, maintain, and operate the Edenville and Sanford Dams and conducts business in Midland and Gladwin Counties in Michigan.

14. Defendant Boyce Michigan LLC, f/k/a Boyce Solar Power, LLC (“Boyce Solar” individually and collectively, one of several “LLC Defendants”), is a Michigan Limited Liability Company with its registered office located in the city of Midland, County of Midland, State of Michigan. Upon information and belief, Defendant Boyce Solar is wholly owned and operated by the Trust Defendants and/or Trustee Defendants. At all relevant times, Defendant Boyce Solar has been in a joint venture with the Trust Defendants, Trustee Defendants, Individual Defendants and other LLC Defendants to own, maintain, and operate the Edenville and Sanford Dams and conducts business in Midland and Gladwin Counties in Michigan.

15. Defendant Lee W. Mueller (“Mueller”) (individually and collectively, one of several “Individual Defendants”) is a citizen of Nevada. Defendant Mueller is sued personally as co-trustee and beneficiary of the Trust Defendants, and personally as member and co-manager of the LLC Defendants. At all relevant times, Defendant Mueller has been engaged in a joint venture with the other Trust Defendants, Trustee Defendants, Individual Defendants, and the LLC Defendants to own, maintain, and operate the Edenville and Sanford Dams and conducts business in Midland and Gladwin Counties in Michigan.

16. Defendant Michele G. Mueller (“M. Mueller”) (individually and collectively, one of several “Individual Defendants”), upon information and belief, is a citizen of Nevada.

Defendant M. Mueller is sued personally as a member of Edenville Hydro Property LLC; as a member of Boyce Michigan LLC; as a member of Boyce Hydro LCC and as a Member of Boyce Hydro Power LLC. At all relevant times, Defendant M. Mueller has been engaged in a joint venture with other Trust Defendants, Trustee Defendants, Individual Defendants, and the LLC Defendants to own, maintain, and operate the Edenville and Sanford Dams and conducts business in Midland and Gladwin Counties in Michigan.

17. Defendant Michael d'Avenas ("d'Avenas") (individually and collectively, one of several "Individual Defendants") is a citizen of California. Defendant d'Avenas is sued personally as a co-trustee and contingent beneficiary of the Trust Defendants, and personally as member and co-manager of the LLC Defendants. At all relevant times, Defendant d'Avenas has been engaged in a joint venture with the other Trust Defendants, Trustee Defendants, Individual Defendants, and the LLC Defendants to own, maintain, and operate the Edenville and Sanford Dams (collectively the "Dams") and conducts business in Midland and Gladwin Counties in Michigan.

18. Defendant Stephen B. Hultberg ("Hultberg") (individually and collectively, one of several "Individual Defendants") is, upon information and belief a citizen of Michigan. Defendant Hultberg is sued personally as a co-trustee and beneficiary of the Trust Defendants, and personally as member and co-manager of the LLC Defendants who own, maintain, and operate the Edenville and Sanford Dams and conduct business in Midland and Gladwin Counties. At all relevant times, Defendant has been engaged in a joint venture with the other Trust Defendants, Trustee Defendants, Individual Defendants, and the LLC Defendants to own, maintain, and operate the Edenville and Sanford Dams (collectively the "Dams") and conducts business in Midland and Gladwin Counties in Michigan. Together, Defendants Mueller, d'Avenas and Hultberg (collectively, the "Trustee Defendants") have authority to bind, manage, dispose of assets, and/or

make decisions on behalf of the Trust Defendants. The Trustee Defendants do business in Midland and Gladwin Counties in Michigan.

19. Defendant William D. Boyce Trust 2350 u/a/d 10/1908 (“Boyce Trust 2350” individually and collectively, one of several “Trust Defendants”) is a citizen of, without limitation, the States of Nevada and California. Upon information and belief, Defendant is a member owner of each of the LLC Defendants, in conjunction with the Trust Defendants and/or Trustee Defendants. At all relevant times, Defendant has been engaged in a joint venture with the other Trust Defendants, Trustee Defendants, Individual Defendants, and the LLC Defendants to own, maintain, and operate the Edenville and Sanford hydroelectric Dams. Defendant Boyce Trust 2350 conducts business in Midland and Gladwin Counties in Michigan.

20. Defendant William D. Boyce Trust 3649 u/a/d 06/1929 (“Boyce Trust 3649” individually and collectively, one of several “Trust Defendants”) is a citizen of, without limitation, the States of Nevada and California. Upon information and belief, Defendant is a member owner of each of the LLC Defendants, in conjunction with the Trust Defendants and/or Trustee Defendants. At all relevant times, Defendant has been engaged in a joint venture with the other Trust Defendants, Trustee Defendants, Individual Defendants, and the LLC Defendants to own, maintain, and operate the Edenville and Sanford hydroelectric Dams. Defendant Boyce Trust 3649 conducts business in Midland and Gladwin Counties in Michigan.

21. Defendant William D. Boyce Trust 3650 u/a/d 06/1929 (“Boyce Trust 3650” individually and collectively, one of several “Trust Defendants”) is a citizen of, without limitation, the States of Nevada and California. Upon information and belief, Defendant is a member owner of each of the LLC Defendants, in conjunction with other Trust Defendants and/or Trustee Defendants. At all relevant times, Defendant has been engaged in a joint venture with the other

Trust Defendants, Trustee Defendants, Individual Defendants, and the LLC Defendants to own, maintain, and operate the Edenville and Sanford hydroelectric Dams. Defendant Boyce Trust 3650 conducts business in Midland and Gladwin Counties in Michigan.

22. Defendant Boyce Trust Hydro Property 2350 LLC, a/k/a Edenville Hydro Property, LLC (“Boyce Trust Hydro 2350” individually and collectively, one of the several “LLC Defendants”) is a Michigan Limited Liability Company with its registered office located in the City of Midland, County of Midland, State of Michigan. Upon information and belief, Defendant is wholly owned and operated by the Trust Defendants and/or Trustee Defendants. At all relevant times, Defendant has been in a joint venture with the Trust Defendants, Trustee Defendants, Individual Defendants, and other LLC Defendants to own, maintain, and operate the Edenville and Sanford Dams and conducts business in Midland and Gladwin Counties in Michigan.

23. Defendant Boyce Trust Hydro Property 3649 LLC, a/k/a Smallwood Hydro Property, LLC (“Boyce Trust Hydro 3649” individual and collectively, one of several “LLC Defendants”), is a Michigan Limited Liability Company with its registered office located in the City of Midland, County of Midland, State of Michigan. Upon information and belief, Defendant is wholly owned and operated by the Trust Defendants and/or Trustee Defendants. At all relevant times, Defendant has been in a joint venture with the Trust Defendants, Trustee Defendants, Individual Defendants, and other LLC Defendants to own, maintain, and operate the Edenville and Sanford Dams and conducts business in Midland and Gladwin Counties in Michigan.

24. Defendant Boyce Trust Hydro Property 3650 LLC, a/k/a Secord Hydro Property LLC (“Boyce Trust Hydro 3650” individually and collectively, one of several “LLC Defendants”), is a Michigan Limited Liability Company with its registered office located in the City of Midland, County of Midland, State of Michigan. Upon information and belief, Defendant is wholly owned

and operated by the Trust Defendants and/or Trustee Defendants. At all relevant times, Defendant has been in a joint venture with the Trust Defendants, Individual Defendants, Trustee Defendants, and other LLC Defendants to own, maintain, and operate the Edenville and Sanford Dams and conducts business in Midland and Gladwin Counties in Michigan.

25. Upon information and belief, the LLC Defendants served as mere instrumentalities of the Trust Defendants and/or Trustee Defendants, as evidenced by (1) undercapitalization of the LLC Defendants; (2) a parent-subsiary relationship between and among the LLC Defendants, Trust Defendants, and Trustee Defendants; (3) Defendants' failure to maintain separate books and records; (4) the intermingling of corporate and individual finances between and among the LLC Defendants, Trust Defendants, and Trustee Defendants; (5) the use of the LLC Defendants to support illegality; and/or (6) Defendants' failure to honor corporate formalities.

JURISDICTION AND VENUE

26. This Court has jurisdiction over Defendants pursuant to MCL 600.705, MCL 600.711, and MCL 600.715.

27. This Court has subject matter jurisdiction over this lawsuit pursuant to MCL 600.605 because the amount in controversy, exclusive of interest, costs, and attorney's fees, exceeds \$25,000.

28. Venue is proper in this Midland County Circuit Court pursuant to MCL 600.1621(a) because at least three defendants have a registered office in the City of Midland, County of Midland, State of Michigan and conducts business in the County of Midland.

GENERAL ALLEGATIONS

A. Defendants' Ownership of the Dams.

22. The Edenville Dam (“Dam” or “Edenville Dam”) was built in 1924 with the purpose of providing hydroelectric power and is located on the border of Midland and Gladwin Counties in Michigan.¹

23. The Edenville Dam “consists of earthen embankments . . . totaling about 6,600 feet in length and having a maximum height of 54.5 feet. The Dam spans both the Tittabawassee and Tobacco Rivers creating a 2,600-acre reservoir known as Wixom Lake with a gross storage capacity of about 40,000 acre-feet and a 49-mile-long shoreline at full pool.”²

24. Three other dams were also built in 1924 “for the purpose of waterpower development and to generate electricity”; Sanford Dam, which is downstream from the Edenville Dam; and Smallwood and Secord Dams, which are upstream from the Edenville Dam.

25. The Sanford Dam (“Sanford Dam”), which stands three stories tall, is on the Tittabawassee River near the town of Sanford, Michigan and about 34 miles upstream of the City of Midland.

26. The Secord Dam (“Secord Dam”) is on the Tittabawassee River in Gladwin County, Michigan and is approximately 8.5 miles northeast of the City of Gladwin. The Secord Dam is approximately 42 miles upstream from the City of Midland, Michigan. The failures of Edenville Dam and Sanford Dam caused damage to Secord Dam and resulted in the flooding of Secord Lake and the surrounding areas.

27. The Smallwood Dam (“Smallwood Dam”) is on the Tittabawassee River in Gladwin County and is approximately 8 miles southeast of the City of Gladwin. The Smallwood Dam is approximately 34 miles upstream of the City of Midland, Michigan. The failures of

¹ <https://gladwincounty-mi.gov/Dam-information/>

² 162 FERC ¶ 61,116, 2018 WL 2221301, Fed. Energy Reg. Comm'n Rep. P 61116 (February 15, 2018).

Edenville Dam and Sanford Dam caused damage to Smallwood Dam and resulted in the flooding of Smallwood Lake and the surrounding areas.

28. The construction of these four dams modified the Tittabawassee River and created Sanford, Wixom, Smallwood and Secord Lakes, creating a continuous chain of lakes 35 miles in length.

29. Edenville Dam was formerly licensed to operate as a hydroelectric dam generating electricity, and was, until recently, subject to regulation by the Federal Energy Regulatory Commission (“FERC”).³ The Edenville Dam, and its former related production of hydroelectricity, are referred to as the “Edenville Project.”

30. The Edenville Project “was originally licensed to Wolverine Power Corporation on October 16, 1998. The license was transferred from Wolverine Power Corporation to Synex Michigan, LLC on June 23, 2004. Subsequent to Defendants’ purchase, Synex Michigan, LLC changed its name to Boyce Hydro Power, LLC (licensee) and filed a statement with the Commission on July 12, 2007 to this effect.”⁴

31. Even though the Edenville Dam is no longer licensed to produce electricity, it is critically important to maintain the water levels of Wixom Lake and the water levels of the river and all bodies of water downstream from the Dam.

³ <https://www.ferc.gov/legal/staff-reports/2017/hydropower-primer.pdf> (“The FPA, codified in 16 U.S.C. §§ 791 to 823d, was enacted in 1935 and grants the Commission jurisdiction over nonfederal hydropower projects throughout the United States, as well as the power to regulate the transmission and wholesale sale of electricity in interstate commerce.”).

https://www.michigan.gov/dnr/0,4570,7-350-79136_79236_80249-80301--,00.html

<https://sanfordlakeassociation.org/sanford-Dam>

⁴ 159 FERC ¶ 62,292, 2017 WL 3283765, Fed. Energy Reg. Comm'n Rep. P 62292 (June 15, 2017).

32. Downstream from the Edenville Dam is the Sanford Dam, located in Midland County, which is also owned and operated by Defendants.

33. Sanford Lake is a man-made reservoir, which was formed by the damming of the Tittabawassee River with the creation of the Sanford Dam. The main body of the lake stretches for about 6 miles.⁵

34. Defendants obtained the Sanford Dam and its related FERC license, which is still valid, at the same time as the Edenville Dam in approximately March 2006.⁶

B. Federal Regulations and Safety Standards.

35. The FERC has clear standards and rules to ensure that hydroelectric dams are safe and do not pose a threat to the public.⁷ As summarized in a recent FERC Order related to the Edenville Dam:

The Commission's Dam Safety Guidelines require that, if the failure of project works would present a threat to human life or would cause significant property damage, the project works must be designed to either withstand overtopping or the loading condition that would occur during a flood up to the probable maximum flood, or to the point where a failure would no longer constitute a hazard to downstream life and/or property. In the alternative, the capacity of the spillway must be adequate to prevent the reservoir from rising to an elevation that would endanger the safety of the project works. Given that failure of the Edenville Dam could pose a significant risk to the Village of Sanford, Northwood University, the City of Midland, and other downstream areas, the dam must meet this design standard.⁸

⁵ <https://sanfordlakeassociation.org/the-lake>

⁶ See *Lee W. Mueller, et. al. v. R.L. Milsner, Inc., et. al.*, Case No. 07-3012-CZ, Gladwin County Circuit Court (Feb. 23, 2007)

⁷ <https://www.ferc.gov/industries/hydropower/safety/guidelines/eng-guide/chap2.pdf>

⁸ 162 FERC ¶ 61,007, 2018 WL 2221191, Fed. Energy Reg. Comm'n Rep. P 61007 (January 5, 2018).

36. The FERC's safety rules also come from its oft-cited Engineering Guidelines for the Evaluation of Hydropower Projects.⁹

37. Chapter two of FERC's Engineering Guidelines required Defendants to ensure that the Edenville Dam was capable of handling 100% of the probable maximum flood ("PMF").¹⁰

38. The PMF is defined as: "The flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin under study."¹¹

39. The FERC used this peak 100% standard for the Edenville Dam because the FERC necessarily, and rightfully, determined that a "failure of the project works would present a threat to human life or would cause significant property damage."¹²

40. Defendants had a duty to ensure the FERC's safety standards and requirements were met, and that duty was heightened by the fact that they knew a failure could threaten human life and/or cause significant property damage.

41. In addition, Defendants' License at Article 4 gave the FERC broad authority to issue both general and specific rules and regulations, "from time to time," related to the Edenville Project so as to ensure there was no risk to "the protection of life, health, or property."¹³

42. Since Defendants obtained the Edenville Dam's license, the FERC spent the next 15 years issuing notices, orders, opinions, and warnings to the Defendants about the unsafe Edenville Dam.

⁹ Each individual chapter is available online, at the link below: <https://www.ferc.gov/industries/hydropower/safety/guidelines/eng-guide.asp>.

¹⁰ <https://www.ferc.gov/industries/hydropower/safety/guidelines/eng-guide/chap2.pdf> (at 2-3).

¹¹ *Id.*

¹² See 159 FERC ¶ 62,292, 2017 WL 3283765, Fed. Energy Reg. Comm'n Rep. P 62292 (June 15, 2017).

¹³ *Id.* at (A)(1)(5).

43. These all constituted legal duties in which, as discussed below, Defendants failed to fulfill.

44. The Edenville Dam has consistently failed to meet these very important rules guidelines, and that did not change when Defendants acquired the Edenville Dam and took over the license in approximately March 2006. In fact, matters have gotten worse since Defendants took over.

45. FERC “[s]taff informed Boyce that its primary concern was the licensee’s longstanding failure to address the project’s inadequate spillway capacity, and required Boyce to construct two auxiliary spillways as risk reduction measures, and to file a plan and schedule for additional modification needed to safely pass the project’s full probable maximum flood. The order noted Boyce’s extensive violations and warned that the failure to comply with the order could result in an order to cease generation and subject the licensee to enforcement and civil penalties.”¹⁴

C. Defendants’ Repeated Failure to Comply with FERC Orders and Regulations.

46. Defendants have an extensive track record of breaking the rules, flouting state and federal regulations, and putting profits before safety when it comes to the Edenville Dam and downstream matters.

47. A FERC Compliance Order aptly summarized Defendants incorrigible behavior:

Thirteen years after acquiring the license for the project, the licensee has still not increased spillway capacity leaving the project in danger of a PMF event. *The licensee has shown a pattern of delay and indifference to the potential consequences of this situation. A situation that must be remedied in order to protect life, limb, and property.*¹⁵ (Emphasis added)

¹⁴ 162 FERC ¶ 61,007, 2018 WL 2221191, Fed. Energy Reg. Comm’n Rep. P 61007 (January 5, 2018).

¹⁵ 159 FERC ¶ 62,292, 2017 WL 3283765, Fed. Energy Reg. Comm’n Rep. P 62292 (June 15, 2017).

48. For years, the FERC advised Defendants that the Edenville Dam did not meet adequate design standards and could only drain about half¹⁶ of the expected “probable maximum flood” — the amount of water expected in the most severe storm that is reasonably possible in the region.¹⁷

49. This was a critical safety issue, and the FERC consistently implored Defendants, since acquiring the Edenville dam’s license, to increase the spillway capacity.

50. Instead, Defendants failed to increase the spillway capacity or make other required repairs. The FERC was faced with delay tactics, non-compliance, false promises, complaints, and any other illegitimate reason in Defendants’ arsenal of excuses.

51. Eventually, federal regulators ordered Defendants to build two spillways to accommodate potential flooding, and Defendants agreed.¹⁸ However, Defendants failed to do so.¹⁹

52. Despite multiple extensions and continued leniency by the FERC, Defendants undertook no efforts to remedy the safety concerns outlined by the FERC, blatantly disregarding the severe repercussions that would ensue from potential flooding.²⁰

D. The June 15, 2018 Compliance Order and Defendants’ Failure to Comply.

53. More than a decade of non-compliance came to a peak on June 15, 2017, when the FERC issued a 50-plus page Compliance Order to Defendants describing, in extensive detail,

¹⁶ “The Edenville Dam's spillway capacity was only about 50 percent of the probable maximum flood, the commission said.” <https://www.nytimes.com/aponline/2020/05/20/us/ap-us-midwest-flooding-failing-dam.html>

¹⁷ “[T]he project spillways are not adequate to pass the probable maximum flood, thereby creating a grave danger to the public.” 162 FERC ¶ 61,007, 2018 WL 2221191, Fed. Energy Reg. Comm’n Rep. P 61007 (January 5, 2018).

¹⁸ 159 FERC ¶ 62,292, 2017 WL 3283765, Fed. Energy Reg. Comm’n Rep. P 62292 (June 15, 2017).

¹⁹ *Id.*

²⁰ *Id.*

Defendants' failure to comply with the FERC's orders and directives, their failure to acknowledge the grave public safety concern, and their decade-long string of excuses.

54. Although the FERC's concerns were many, the key concern was public safety. The Compliance Order provides, in part:

the Commission's primary concern is the licensee's longstanding failure to address the project's inadequate spillway capacity. The Edenville dam has a high hazard potential rating, which means a failure of the project's works would create a threat to human life and/or would cause significant property damage. The project's spillway deficiencies must be remedied. *Id.*

55. The FERC was "appall[ed]" by the Defendants' behavior and utter disregard of public safety:

The licensee has shown a persistent pattern of requesting additional time; missing deadlines; providing deficient designs, plans, and specifications; and has not shown due diligence obtaining a permit from the Michigan DEQ. Commission staff has worked with the licensee for 13 years in an attempt to get plans developed and implemented to meet the spillway capacity requirements. The Regional Engineer and staff have been very flexible, granting the licensee multiple extensions of time, allowing the licensee to switch its overall plans, and ultimately allowing the licensee to address the spillway capacity deficiencies in stages — starting with two auxiliary spillways. *Despite this, the licensee is making no progress in advancing construction of even the initial risk reduction measure and its disregard for the severity of this situation is appalling.*²¹

56. The FERC's Compliance Order outlines Defendants' carelessness, recklessness, and refusal to follow the rules.

57. The Compliance Order enumerated the opportunities Defendants had been given to remedy their wrongs, but Defendants never followed through and permitted the Dam's condition to remain unsafe and continue to pose a risk to public health and safety.²²

²¹ *Id.* at ¶ 27 (emphasis added)

²² *See generally, id.*

58. The Compliance Order made clear that Defendants had to make changes and had to increase the Dam's spillway capacity.

59. The Compliance Order required Defendants to provide specific plans, specifications, reports, and other information to come into compliance with the FERC's regulations and the terms of its license.²³

60. But Defendants' failure to come into compliance remained. Aside from some *de minimis* compliance with the Compliance Order, Defendants snubbed their nose at the most important issue raised in the Order – safety.²⁴

61. Defendants utterly failed to comply with the two safety-related directives in the Compliance Letter and, as a result, on November 20, 2017, FERC's staff issued an order requiring Defendants to cease generating energy at the Edenville Project and referred the matter to the Office of Enforcement for further action.²⁵

62. The FERC “determined that the violations required prompt action and that the licensee's persistent pattern of noncompliance provided strong evidence that it would not make serious efforts to come into compliance absent an order disrupting its operation.”²⁶

²³ *Id.*

²⁴ 162 FERC ¶ 61,116, 2018 WL 2221301, Fed. Energy Reg. Comm'n Rep. P 61116 (February 15, 2018).

²⁵ 161 FERC ¶ 62,119, 2017 WL 7797220, Fed. Energy Reg. Comm'n Rep. P 62119 (November 20, 2017).

²⁶ 162 FERC ¶ 61,116, 2018 WL 2221301, Fed. Energy Reg. Comm'n Rep. P 61116 (February 15, 2018).

E. The Edenville Project's License Was Revoked by the FERC.

63. Defendants' refusal to follow the rules resulted in the FERC issuing a proposal on February 15, 2018, to revoke Defendants' license which permitted them to generate hydroelectricity at the Edenville Dam.²⁷

64. One of the biggest reasons in the proposal for revocation was Defendants' failure to increase the spillway capacity and their continued disregard of public safety, including their failure to create an adequate public safety plan:

Last, we note that Boyce Hydro's noncompliance was not limited to its inability to address issues related to the project's spillway capacity and recreation facilities. As detailed above, the licensee also directly violated numerous license requirements. Standard Article 4 of the license requires Boyce Hydro to file a Public Safety Plan; however, despite being aware of this requirement for over four years, Boyce Hydro still has not filed an adequate plan.²⁸

65. Defendants continued to ignore the dire warnings, the signs, and the directives outlined in the proposed order and instead continued to put greed over safety, arguing to the FERC that revoking its license and stopping energy production would cut its revenue in half, "starving [Defendants] of the very funds [they] need[] to maintain, let alone increase, the spillway capacity."²⁹

66. Defendants' efforts to gather sympathy from the FERC are belied by their past behavior, as Defendants never made any efforts past to fix the problems: "in response to a

²⁷ *Id.*

²⁸ 164 FERC ¶ 61,178, 2018 WL 6326709, Fed. Energy Reg. Comm'n Rep. P 61178 (September 10, 2018) (emphasis added)

²⁹ October 5, 2019 Request for Rehearing

<https://sanfordlakeassociation.org/wp-content/uploads/2018/10/Boyce.Rehearing.Motion.10.05.2018.pdf>

Commission information request, [Defendants] admit[ted] that [they] had not asked any financial institution for a loan or any other funding.”³⁰

67. Roughly six months later, on September 10, 2018, Defendants’ license as to the Edenville Dam was formally revoked by the FERC.³¹

68. “Boyce Hydro's license includes terms and conditions concerning dam safety, property rights, water quality, public recreation and safety, and other areas of public concern,” the order revoking the license stated. “Boyce Hydro has a long history of non-compliance with those terms and conditions and with related provisions in the (Federal Power Act) and Commission regulations and orders.”³²

69. The Revocation Order highlighted Defendants’ callous disregard for human safety:

In sum, Boyce Hydro has, for more than a decade, knowingly and willfully refused to comply with major aspects of its license and the Commission's regulatory regime, *with the result that public safety has been put at risk and the public has been denied the benefits, particularly project recreation, to which it is entitled.* The record demonstrates that there is no reason to believe that Boyce Hydro will come into compliance; *rather, the licensee has displayed a history of obfuscation and outright disregard of its obligations.* We do not often revoke a license, but the licensee has left us with no other way to vindicate the public interest here.³³

70. For more than a decade, the FERC warned Defendants of its “long history of non-compliance” through its orders, notice, opinion, and letters.

71. Defendants knew that the Edenville Dam did not comply with the applicable safety regulations and that it was clearly susceptible, or certain, to suffer a catastrophic failure.

³⁰ 164 FERC ¶ 61,178, 2018 WL 6326709, Fed. Energy Reg. Comm'n Rep. P 61178 (September 10, 2018).

³¹ *Id.*

³² 162 FERC ¶ 61,116, 2018 WL 2221301, Fed. Energy Reg. Comm'n Rep. P 61116 (February 15, 2018).

³³ 164 FERC ¶ 61,178, 2018 WL 6326709, Fed. Energy Reg. Comm'n Rep. P 61178 (September 10, 2018).

72. The FERC took the most drastic non-monetary action it could; it took away Defendants' ability to profit off electricity produced by the Edenville Dam.³⁴

F. The Switch to State Regulation, EGLE, and the State Rules.

73. After revoking Defendants' license, the FERC transferred complete oversight of the Edenville Dam to the State of Michigan.³⁵

74. Even though FERC revoked Defendants' federal license, Defendants were obligated to maintain the Edenville Dam according to Michigan regulations designed to protect human safety.³⁶

75. The Revocation Order stated: "Following revocation of the license, the Commission's jurisdiction will end, and authority over the site will pass to Michigan DEQ for dam safety regulatory purposes."³⁷

76. Specifically, the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") took oversight of the Edenville Dam.³⁸ See MCL 324.31506.

77. The EGLE has its own Dam Safety Program and enforcement mechanisms.³⁹

78. And, like the FERC, a Michigan statute provides guidelines for minimum spillway capacities. See MCL 324.31516.

³⁴ 16 U.S.C. § 823b; *see also* 164 FERC ¶ 61,178, 2018 WL 6326709, Fed. Energy Reg. Comm'n Rep. P 61178 (September 10, 2018).

³⁵ *See* 164 FERC ¶ 61,178, 2018 WL 6326709, Fed. Energy Reg. Comm'n Rep. P 61178 (September 10, 2018). The FERC did not "transfer" regulatory authority per se, but since the Defendants no longer had a license there was no reason, under their regulations, to continue to regulate. The FERC noted that the State of Michigan is fully capable of protecting public safety and already regulated Dams generally and for safety.

³⁶ *See* Mich. Comp. Laws § 324.31516(d)

³⁷ 164 FERC ¶ 61,178, 2018 WL 6326709, Fed. Energy Reg. Comm'n Rep. P 61178 (September 10, 2018).

³⁸ <https://www.michigan.gov/egle/0,9429,7-135-3313-529696--,00.html>

³⁹ https://www.michigan.gov/egle/0,9429,7-135-3313_3684_3723-9515--,00.html

79. Because the Edenville Dam is categorized as a “high hazard potential dam,”⁴⁰ Michigan law requires that the spillway capacity “shall be capable of passing the half probable maximum flood.” MCL 324.31516(1)(d).

80. “‘Half probable maximum flood’ means the largest flood that may reasonably occur over a watershed, and is derived from the combination of hydrologic runoff parameters and the half probable maximum storm.” MCL 324.215(7).

81. The Michigan statute provides for the submission of inspection reports and it arms EGLE with enforcement authority to order repairs to dams, and issue other compliance orders. Failure to abide by these orders can result in civil litigation and penalties. MCL 324.31518(7); MCL 324.31524 and 31525.

82. The Michigan statute further authorizes EGLE to promulgate rules related to Dam safety in the state. MCL 324.31528; See Michigan Administrative Code Rules 281.1301 to 1313.

G. The Four Lakes Task Force and Defendants’ Fight with Michigan.

83. After the State of Michigan and EGLE took over regulation of the Edenville Dam, a task force comprised of local Home Owners’ Associations, the Four Lakes Task Force (“FLTF”) was formed to purchase and take over Defendants’ Edenville, Sanford, Smallwood, and Second Dam operations by January 2022.⁴¹

84. Around the end of December of 2019 and early January 2020, upon information and belief, the FLTF signed a purchase agreement with Defendants to acquire the Edenville,

⁴⁰ See FLTF April 2019 Lake Level Study Report by Spicer Group; [http://www.four-lakes-taskforce-](http://www.four-lakes-taskforce-mi.com/uploads/1/2/3/1/123199575/four_lake_level_study_final_full_report_20190426.pdf/)

[mi.com/uploads/1/2/3/1/123199575/four_lake_level_study_final_full_report_20190426.pdf/](http://www.four-lakes-taskforce-mi.com/about.html)
⁴¹ <http://www.four-lakes-taskforce-mi.com/about.html>;
<https://chemicalcitypaper.com/2020/01/02/four-lakes-task-force-signs-purchase-agreement-for-wixom-and-sanford-lakes/>

Sanford, Secord, and Smallwood Dams, but the titles for the Dams have not yet been transferred and that is not expected to occur until 2022.⁴²

85. During this transition phase, Defendants remain legally accountable for the Dams.⁴³

86. Upon purchase in 2022, an entity known as the Four Lakes Operation (“FLO”) would have gained ownership of the FERC licenses for the Sanford, Smallwood, and Secord Dams, which expire in 2028.⁴⁴

87. Despite new regulators from the State of Michigan and EGLE, and the planned sale of the Dams, Defendants have continually failed to remedy the known safety issues.

88. Around October 2018, and again around November 2019, Defendants lowered the water level without permission from EGLE.⁴⁵ This lowering is known as a “drawdown.”

89. As part of their operation of the Edenville Dam, Defendants raised and lowered the level of Wixom Lake, often by as much as eight feet.⁴⁶

90. Dam safety engineer Luke Trumble noted on January 31, 2020 that the Edenville Dam did not even meet the half as stringent (50% as opposed to 100%) spillway capacity requirement imposed by the State of Michigan, compared to the one imposed by the FERC.⁴⁷

⁴² See FLTF PowerPoint Re Purchase Agreement; <http://www.four-lakes-taskforce-mi.com/frequently-asked-questions.html>

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ https://www.michigan.gov/documents/egle/egle-BoyceHydroDamChronology_691440_7.pdf

⁴⁶ See *Attorney General of Michigan et al v. Lee Mueller et al*, Case No.: 20-255, 30th Circuit Court, filed April 30, 2020, ¶¶ 31-39).

⁴⁷ <https://www.detroitnews.com/story/news/local/michigan/2020/05/22/state-found-edenville-dam-failed-safety-standards-four-months-before-flood/5241158002/> (citing internal emails obtained by the Detroit news)

91. Trumble then told the Spicer Group, the FLTF's chief engineering consultants, to advise the FLTF and Defendants of the deficiency.⁴⁸

92. In December of 2019, Defendants opened the Edenville Dam's gates and lowered the level of Wixom Lake and, this time, did so in a rapid and unsafe fashion.⁴⁹

93. These December 2019 drawdowns were not authorized by either EGLE or the DNR, and Defendants' application to do so was explicitly denied.⁵⁰

94. As a result of this rapid drawdown, the State advised Defendants of this violation.⁵¹

95. Defendants refused to correct this violation and instead continued to perform the denied and explicitly prohibited drawdown.⁵²

96. Defendants sought to lower the lake level during the winter months because they did not want to spend the money on the necessary repairs to the Edenville Dam, or the equipment, safety measures, and staff used by other hydroelectric dams in Michigan — such as heated power-washers, bubblers, on-call workers — to fight ice buildup.⁵³

97. As a result of these drawdowns, the State of Michigan, the DNR and EGLE sued Defendants on April 30, 2020.⁵⁴

98. Defendant Mueller applied for a permit to raise the Edenville lake level in the Spring of 2020, fully aware of the unsafe condition of the Edenville Dam.⁵⁵

⁴⁸<https://www.detroitnews.com/story/news/local/michigan/2020/05/22/state-found-edenville-dam-failed-safety-standards-four-months-before-flood/5241158002/>

⁴⁹ See *Attorney General of Michigan et al v. Lee Mueller et al*, Case No.: 20-255, 30th Circuit Court, filed April 30, 2020 at ¶ 34.

⁵⁰ *Id.* at ¶ 36.

⁵¹ *Id.* at ¶ 37.

⁵² *Id.* at ¶ 37.

⁵³ *Id.* at ¶ 37.

⁵⁴ See Michigan AG lawsuit.

⁵⁵ <https://www.detroitnews.com/story/news/local/michigan/2020/05/21/state-says-didnt-pressure-boyce-hydro-raise-water-levels-before-dam-failure/5236290002/>

99. By May 3, 2020, Defendants, fully aware of the unsafe condition of Edenville Dam, had completed raising the level of Wixom Lake.⁵⁶

H. The Inevitable Occurred – the Edenville Dam Collapsed.

100. Unfortunately, the FERC’s decade-long-warning to Defendants that their Dam “would create a threat to human life and/or would cause significant property damage” if not fixed proved true on May 19, 2020.

101. On May 19, 2020, due to flooding on the Tittabawassee River, the eastern side of the Edenville Dam collapsed and breached, triggering immediate evacuations in the town of Edenville, Sanford, and the city of Midland and forced the evacuation and displacement of over 10,000 residents.

102. The devastation caused by the Edenville Dam’s breach was catastrophic:



⁵⁶<https://www.freep.com/story/news/local/michigan/2020/05/22/edenville-dam-owner-boyce-hydro-egle-midland-flooding-blame/5239914002/>

Aerial photo of flooding in downtown Midland, Mich., Wednesday, May 20, 2020.⁵⁷



Aerial photo of breaching Sanford Dam, Sanford, MI, Wednesday, May 20, 2020.⁵⁸

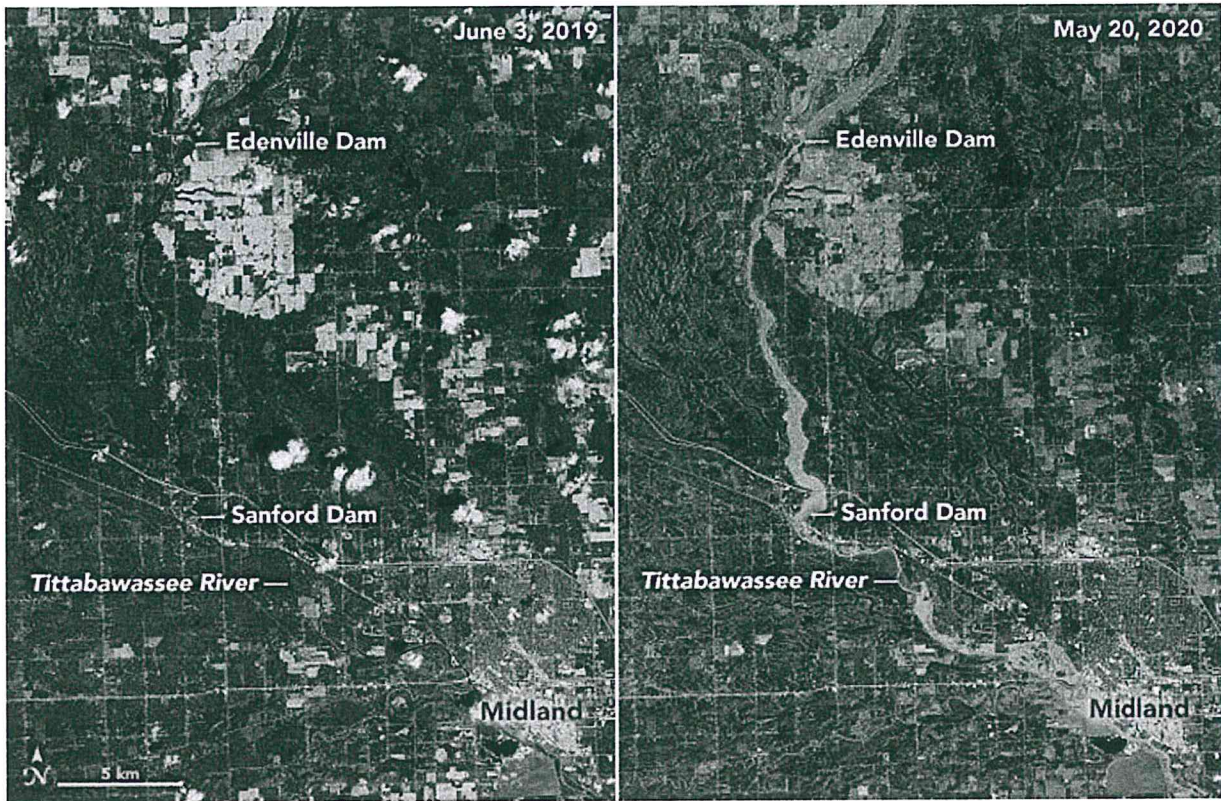
⁵⁷<https://www.freep.com/story/news/local/michigan/2020/05/24/Dam-safety-unit-2-staff-supervisor-1000-Dams/5247566002/>

⁵⁸ *Id.*



An aerial image taken by a drone shows the Edenville Dam breach on Wednesday, May 20, 2020.⁵⁹

⁵⁹<https://www.cnn.com/2020/05/20/us/michigan-Dam-failure-before-after-photos-trnd/index.html>



NASA imagery shows waterways before and after the Edenville Dam collapse, and the Sanford Dam was overtopped Tuesday, May 19, 2020.⁶⁰

103. Immediately prior to the collapse of the Edenville Dam, Wixom Lake flooded, causing property damage to residents on Wixom Lake.⁶¹ The eventual collapse of the Edenville Dam released the 21.5 million gallons of water comprising Wixom Lake, virtually emptying Wixom Lake in an hour.⁶² As a result, Wixom Lake transformed into a sand pit filled with dead

⁶⁰ <https://www.washingtonpost.com/weather/2020/05/22/michigan-Dams-failure-before-after>

⁶¹ https://www.clickondetroit.com/news/local/2020/05/20/looked-like-niagra-falls-dam-that-created-wixom-lake-gives-way-flooding-mid-michigan-communities/?fbclid=IwAR2NCombOKn_9DVgRTf3GKilnpa7wclf541GuxPfwgT6fnu8opn7eOz20sQ

⁶² <https://www.fox2detroit.com/news/at-21-5-billion-gallons-wixom-lake-is-twice-as-big-as-oakland-countys-largest-lake-it-emptied-in-one-hour>

fish and boats sitting on hoists with no water beneath them, greatly diminishing property values of former lakefront property.



*Washed out boating docks on Wixom Lake due to the failure of the Edenville Dam on Wednesday, May 20, 2020.*⁶³

⁶³ <https://www.mlive.com/public-interest/2020/05/residents-on-michigans-vanished-wixom-lake-prep-for-first-holiday-without-it.html> (image 32/57); (image 46/57).



Two boats sit atop what remains of the Edenville Dam, washed up after severe flooding on Wednesday, May 20, 2020.⁶⁴

104. The collapse of the Edenville Dam emptied Wixom Lake, sending the devastating force of floodwaters into Sanford Lake—the reservoir created by the Sanford Dam—which also nearly emptied into the surrounding communities.⁶⁵ The roaring water forced out of Wixom Lake as a result of the Edenville Dam collapse caused devastating and catastrophic damage to real and personal property located downstream of Wixom Lake.

105. The result was catastrophic demolition and/or damage to thousands of residences and personal property and the utter and complete devastation of the town of Sanford.

⁶⁴ Courtesy of Mlive: <https://www.mlive.com/public-interest/2020/05/residents-on-michigans-vanished-wixom-lake-prep-for-first-holiday-without-it.html>

⁶⁵ <https://www.mlive.com/weather/2020/05/sanford-lake-now-a-puddle-after-dam-breach-from-flooding.html>

106. As a result of the torrential floodwaters rushing downstream from Wixom Lake, the Sanford Dam, roughly ten miles downstream of the Edenville Dam and six miles upstream of City of Midland, breached and overflowed, causing severe and extensive flooding into the downstream communities and eventually into the City of Midland.⁶⁶



The flooding in Midland came after the failure of two dams in the area, completely covering certain roads and vegetation.⁶⁷

⁶⁶<https://www.mlive.com/news/saginaw-bay-city/2020/05/troubled-dam-breaks-sends-floodwaters-hurting-toward-midland.html>

⁶⁷ <https://www.nytimes.com/2020/05/20/us/michigan-dams.html>

107. The Tittabawassee River, which the Edenville and Sanford Dams help maintain, crested at 35 feet in Midland, Michigan, its highest level on record.⁶⁸

108. As a result of the catastrophic damage, the Governor of Michigan issued a State of Emergency and more than 10,000 people were evacuated from the region⁶⁹ with just minutes to spare.

109. Many of the evacuees had nowhere to go but shelters, a disastrous place to be housed during the COVID-19 pandemic, creating an increased risk of grave physical harm and/or mental anguish. Some evacuees, seeking to avoid exposure to COVID-19, have been sleeping in their cars.⁷⁰

110. Thousands of homes and business were completely destroyed, personal property and valuables were lost, sewage systems overflowed, water supplies and residential wells were rendered undrinkable and the regions surrounding the Edenville and Sanford dams were left in utter disrepair.

111. Had Defendants complied with the State and federal regulations, as they had been ordered to do so for more than 15 years, this disaster would not have happened, or the destruction would have been significantly lessened.

112. The floodwaters also reached containment ponds at Dow Chemical. Plaintiffs and Class Members are subject to the substantial risk of imminent harm from the continuing increased

⁶⁸<https://www.detroitnews.com/story/news/local/michigan/2020/05/20/tittabawassee-river-midland-flooding/5226734002/>

⁶⁹ https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-529649--,00.html

⁷⁰ <https://www.freep.com/story/news/local/michigan/2020/05/22/michigan-flooding-shelters/5242629002/>

risk of exposure to chemicals and/contamination from the containment ponds. To date, environmental testing has not occurred.⁷¹

113. On May 20, 2020, the FERC, who continues to license the Sanford, Smallwood and Secord dams ordered Defendants to conduct an inspection of these dams within three days after the water recedes.⁷²

114. The full extent of damage to the Sanford Dam, which was breached by floodwaters, cannot be ascertained and repaired until the floodwaters recede, subjecting Plaintiffs and Class Members to the substantial risk of imminent harm from the continuing risk of complete failure of the Sanford dam.

115. FERC further ordered Defendants to safely draw down waters at Defendants' Smallwood and Secord locations to inspect the dams for safety issues.⁷³ Until the full extent of any damage to the Smallwood and Secord Dams is ascertained and repaired, Plaintiffs and Class Members are subject to the substantial risk of imminent harm from the continuing risk of failure of the Smallwood and Secord dams.

116. On May 26, 2020, as result of the catastrophic Dam failure and flooding, FLTF halted the planned purchase of the four dams from Defendants.⁷⁴

⁷¹<https://www.detroitnews.com/story/news/local/michigan/2020/05/21/mid-michigan-floodwater-contamination-not-tested-yet/5239070002/>

⁷² <https://www.detroitnews.com/story/news/local/michigan/2020/05/28/feds-boyce-hydro-wrong-smallwood-dam-damaged-midland-edenville/5268745002/?fbclid=IwAR23I8jLB7Khs4bMaCpK92rhxBv7CcxCLON5KJ5S4btsBnYrPh4mAf3qw-Y>

⁷³ <https://www.detroitnews.com/story/news/local/michigan/2020/05/28/feds-boyce-hydro-wrong-smallwood-dam-damaged-midland-edenville/5268745002/?fbclid=IwAR23I8jLB7Khs4bMaCpK92rhxBv7CcxCLON5KJ5S4btsBnYrPh4mAf3qw-Y>

⁷⁴<https://www.detroitnews.com/story/news/local/michigan/2020/05/26/task-forces-acquisition-mid-michigan-dams-halted-after-flood/5259651002/>

117. Defendants had a duty to operate the Dams in a safe manner to prevent the foreseeable risk of dam failure and the resulting flooding of thousands of homes, businesses, real and personal property, and emptying of lakes, causing enormous harm to Plaintiffs and Class Members.

118. Time and time again, Defendants were given the opportunity to remedy the safety concerns; but, each time, they repeatedly failed to do so, causing catastrophic damage to the people and property located in the Sanford and Midland region.

CLASS ALLEGATIONS

119. Plaintiffs incorporate the preceding paragraphs by reference as if fully set forth at length herein.

120. Plaintiffs bring this action individually and as a class action pursuant to MCR 3.501 on behalf of themselves and the following proposed class (“Class” or “Class Members”) of similarly situated persons for both legal and equitable remedies:

All persons and entities that owned or leased residential or commercial property or a business which suffered economic losses, including property damage, due to the failure or imminent threat of failure of the Edenville and Sanford Dams in May 2020.

121. Plaintiffs reserve the right to modify or amend the definition of the proposed Class.

122. Excluded from the Class are: (a) Defendants and any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (b) the Judge to whom this case is assigned and the Judge’s staff; (c) the attorneys representing any parties to this Class Action; (d) any State of Michigan or any of its agencies; and (e) the cities, towns, counties, townships, municipalities, and government entities of Gladwin, Midland or Saginaw Counties.

A. Numerosity

123. Pursuant to MCR 3.501(A)(1)(a), the Class is so numerous that joinder is impracticable. Defendants' actions and/or omissions resulted in the displacement of over 10,000 residents and damage to the real and personal property of tens of thousands of residents within Gladwin, Midland and/or Saginaw Counties.

B. Typicality

124. Pursuant to MCR 3.501(A)(1)(c), Plaintiffs' claims are typical of the claims of the members of the Class, Plaintiffs and all Class Members have been adversely affected by Defendants' unlawful conduct.

C. Adequacy

125. Pursuant to MCR 3.501(A)(1)(d), Plaintiffs will fairly and adequately represent the Class.

126. Plaintiffs' interests are coincident with and not antagonistic to those of the other members of the Class.

127. Plaintiffs have retained counsel with substantial experience litigating class action lawsuits such as this one.

128. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the resources with which to do so.

D. Commonality and Predominance

129. Pursuant to MCR 3.501(A)(1)(b), common questions of law and fact exist as to all members of the Class which will drive the resolution of the claims raised. This is particularly true given the nature of the claims, which focuses on the conduct of Defendants, not of any particular

Class Member, and which was generally applicable to all the members of the Class, thereby making appropriate relief with respect to the Class as a whole.

130. Plaintiffs' claims and the claims of all Class Members are based on the same legal and remedial theories arising from the wrongful conduct, acts and omissions of Defendants in the ownership, maintenance and operations of the Dams and the resulting flood waters.

131. All members of the Class have been similarly affected by Defendants' conduct, which conduct has injured Class Members by causing damage to Plaintiffs' and Class Members' real and personal property; diminished value to Plaintiffs' and Class Members' real property; loss of income from Plaintiffs' and Class Members' real property; lost wages; loss of use and enjoyment of Plaintiffs' and Class Members' real and personal property; additional expenses related to annoyance and inconvenience; and, in light of the Plaintiffs and Class Members necessary displacement during the COVID-19 pandemic, an increased risk of grave physical harm and/or mental anguish damage.

132. Common legal and factual questions include, but are not limited to:

- a. Whether Defendants owed a duty to Plaintiffs and the other members of the Class to safely own, operate and maintain the Edenville and Sanford Dams;
- b. Whether Defendants breached that duty;
- c. Whether Defendants knew or should have known that it was unreasonably dangerous to operate the Dams without adequate spillways, creating a high degree of risk attendant with controlling water in such a fashion;
- d. Whether Defendants knew or should have known that the operation of the Dams in the manner alleged herein was reasonably likely to cause the Edenville Dam to collapse and the flooding waters to breach the Sanford Dam;

- e. Whether Defendants breached a legal duty to Plaintiffs and the other Class Members by failing to maintain and operate the Edenville and Sanford Dams and associated waterways in a manner which would not unreasonably endanger Plaintiffs and Class Members and/or cause Plaintiffs and Class Members injury;
- f. Whether Defendants' breach of a legal duty caused Plaintiffs and the other Class Members to incur real and personal property damage, diminution of value of property, forced evacuation, loss of the use and enjoyment of property and common areas within the community and other injury and damage;
- g. Whether Defendants' failure to maintain and operate the Edenville and Sanford Dams and associated waterways in a manner which would not unreasonably endanger Plaintiffs and Class Members and/or cause Plaintiffs and Class Members injury created the substantial risk of imminent harm from the continuing increased risk of such harm;
- h. Whether Defendants negligently, recklessly, or intentionally owned, operated and/or maintained the Dams; and
- i. Whether Plaintiffs and the other Class Members have suffered damages as a result of Defendants' actions.

133. These common questions of law and fact predominate over any question affecting only individual Class Members. Defendants have acted on grounds generally applicable to the entire Class, and the answers to these common questions will advance resolution of the litigation as to all Class Members.

E. Superiority

134. Pursuant to MCR 3.501(A)(1)(e), this class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender.

- a. Absent a class action, Class Members would likely find the cost of litigating to be prohibitively high and, therefore, would have no effective remedy at law, and the expense and burden of individual litigation would render it impossible for members of the Class to individually redress the wrongs to them.
- b. Individualized litigation would create the risk of inconsistent or varying adjudications arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single Michigan court.
- c. Plaintiffs know of no difficulty to be encountered in the management of this action as a class action and many examples of similar cases certified as class actions are readily available.
- d. If required, Plaintiffs will propose one or more subclass(es), as the record becomes more developed.

- e. The class action is superior as final equitable or declaratory relief may be appropriate with respect to the Class.

COUNT I – NEGLIGENCE

135. Plaintiffs repeat and incorporate the above allegations as if fully set forth herein.

136. Defendants owed Plaintiffs and Class Members a duty to maintain and operate the Edenville and Sanford Dams and associated waterways in a manner which would not unreasonably endanger Plaintiffs and Class Members and/or cause Plaintiffs and Class Members injury.

137. In particular, Defendants owed Plaintiffs and Class Members a duty to:

- a. Operate, manage, maintain, and/or control the Edenville and Sanford Dams and associated waterways in a reasonably safe condition and in proportion to the commensurate danger to the public welfare;
- b. Prevent the unreasonable interference and use with Plaintiffs and Class Members' rightful use of the Edenville and Sanford Dams' associated waterways;
- c. Operate, manage, maintain, and/or control the Edenville and Sanford Dams in an adequate state of repair and operation, as required by the exercise of reasonable prudence, accepted engineering standards, and/or applicable local, State, and Federal laws, regulations and guidelines; and
- d. Operate, manage, maintain, and/or control the Edenville and Sanford Dams and associated waterways in a manner that would not cause unnecessary and excessive flooding.

138. Defendants were negligent in operating, managing, maintaining, and controlling the Edenville and Sanford Dams and associated waterways, so as to cause an unusual and excessive

increase of water levels which resulted in the overflow of flood waters and ensuing injury and harm to Plaintiffs and Class Members.

139. Defendants breached their duty of care to Plaintiffs and Class Members by, among other acts and omissions, failing to:

- a. Operate, manage, maintain, and/or control the Edenville and Sanford Dams and associated waterways in a reasonably safe condition and in proportion to the commensurate danger to the public welfare, including by refusing to implement adequate overflow control and spillways to the Edenville and Sanford Dams; and
- b. Prevent the unreasonable interference and use with Plaintiffs and Class Members' rightful use of the Edenville and Sanford Dams' associated waterways;
- c. Operate, manage, maintain, and/or control the Edenville and Sanford Dams in an adequate state of repair and operation, as required by the exercise of reasonable prudence, accepted engineering standards, and/or applicable local, State, and Federal laws, regulations and guidelines including, but not limited to, Defendants failure to implement—or even take seriously—the FERC and EGLE orders and guidelines; and
- d. Operate, manage, maintain, and/or control the Edenville and Sanford Dams and associated waterways in a manner that would not cause unnecessary and excessive flooding.

140. Defendants knew or reasonably should have known that their measures to operate, manage, maintain, and/or control the Edenville and Sanford Dams were inadequate, such that Plaintiffs and Class Members were foreseeable and probable victims of Defendants' negligent, reckless, and/or wrongful conduct.

141. Indeed, Defendants were warned by FERC numerous times as to the various safety failures of the Dams, as well as by the state of Michigan.

142. Instead of making improvements to the Edenville Dams that could have increased safety and prevented the catastrophic failure of the Dams, Defendants recklessly ignored the safety of the public and declined to make necessary repairs and improvements to the Dams.

143. If Defendants had conducted their operations in an ordinarily prudent and safe manner, in the usual course of events, the damage to Plaintiffs' and Class Members' real and personal property would not have occurred or would have been significantly lessened. Accordingly, Defendants' negligent, recklessness, and/or other wrongful conduct was a proximate cause of Plaintiffs' and Class Members' injury and damages.

144. As a direct and proximate result of the foregoing, Plaintiffs and Class Members have been displaced, suffered, and will continue to suffer injury and harm including, but not necessarily limited to, damage to Plaintiffs' and Class Members' real and personal property; diminished value to Plaintiffs' and Class Members' real property; loss of income from Plaintiffs' and Class Members' real property; lost wages; loss of use and enjoyment of Plaintiffs' and Class Members' real and personal property; additional expenses related to annoyance and inconvenience; and, in light of Plaintiffs and Class Members necessary displacement during the COVID-19 pandemic, an increased risk of grave physical harm and/or mental anguish

145. Accordingly, Plaintiffs and Class Members seek damages from Defendants, in an amount to be determined at trial, directly resulting from the injuries to their persons and properties, in a sufficient amount to compensate them for the injuries and losses sustained and to restore Plaintiffs and Class Members to their original position, including but not limited to the difference between the current value of their properties and such value if the harm had not been done, the

cost of repair or restoration, remediation and abatement, and actual, consequential, and nominal damages, flowing from the negligence which are the natural and proximate result of Defendants' conduct.

COUNT II – TRESPASS

146. Plaintiffs incorporate the preceding paragraphs by reference as if fully set forth at length herein.

147. Defendants' failure to properly operate, maintain and manage the Dams caused a release of flood waters on to Plaintiffs' and Class Members properties, which constituted an unauthorized direct or immediate intrusion of a physical, tangible object onto land over which Plaintiffs and the Class Members have a right of exclusive possession.

148. Plaintiffs and Class Members had a right of exclusive possession over their land.

149. Diverting water constitutes an intrusion onto land.

150. Defendants knew or reasonably should have known that its acts and/or omissions would result in the physical invasion of Plaintiffs' and Class Members' land by the flood waters.

151. Defendants exercised operation, ownership and control of the Dams near residential and commercial properties under dangerous conditions, including by operating without adequate spillways, such that Defendants could have prevented the injuries suffered by Plaintiffs and Class Members.

152. As a direct and proximate result of Defendants' acts and/or omissions as alleged herein, Plaintiffs and the Class Members have incurred, and will continue to incur, costs and expenses related to the investigation, treatment, remediation, repair and/or replacement of respective properties, as well as the damages set forth below, in an amount to be determined at trial.

153. Accordingly, Plaintiffs and Class Members seek damages from Defendants, in an amount to be determined at trial, directly resulting from the injuries to their persons and properties, in a sufficient amount to compensate them for the injuries and losses sustained and to restore Plaintiffs and Class Members to their original position, including but not limited to the difference between the current value of their properties and such value if the harm had not been done, the cost of repair or restoration, remediation and abatement, and actual, consequential, and nominal damages, flowing from Defendants' trespass.

COUNT III – STATUTORY TRESPASS

154. Plaintiffs incorporate the preceding paragraphs by reference as if fully set forth at length herein.

155. MCL 600.2919(1) provides that any person who:

- (a) cuts down or carries off any wood, underwood, trees, or timber or despoils or injures any trees on another's lands, or
- (b) digs up or carries away stone, ore, gravel, clay, sand, turf, or mould or any root, fruit, or plant from another's lands, or
- (c) cuts down or carries away any grass, hay, or any kind of grain from another's lands without the permission of the owner of the lands, or on the lands or commons of any city, township, village, or other public corporation without license to do so, is liable to the owner of the land or the public corporation for 3 times the amount of actual damages.

156. Defendants trespassed on Plaintiffs and Class Members property by causing water to enter the land in the possession of Plaintiffs and Class members.

157. As a direct and proximate cause of Defendants' trespass, Plaintiffs' and Class Members' properties have suffered injury and/or damage, as contemplated by MCL 600.2919(1):

- a. Plaintiffs and Class Members have had their trees and timber injured, removed, and carried away from their property;

- b. Plaintiffs and Class Members have had their stone, ore, gravel, clay, sand, turf, mould, roots, fruits, and plants removed and carried away;
- c. Plaintiffs and Class Members have had their grass, hay, and grains removed and carried away.

158. As a direct and proximate cause of Defendants' trespass, Plaintiffs and Class Members have suffered damages to their properties and are entitled to treble damages pursuant to the statute.

COUNT IV – PRIVATE NUISANCE

159. Plaintiffs incorporate the preceding paragraphs by reference as if fully set forth at length herein.

160. Plaintiffs and the Class Members, as described herein, are owners or occupiers of certain real property and/or waters with the right of possession and use.

161. Plaintiffs and the Class Members have a right to the use and enjoyment of their properties, including, but not limited to, their land, structures, and personal objects on their properties.

162. Defendants had a duty to prevent waters from breaching the Dams and destroying and/or damaging Plaintiffs' and Class Members' property interests and to prevent the substantial risk of imminent harm from the continuing increased risk of such damage.

163. Defendants exercised sufficient operation, ownership, and control of the Dams and associated waterways near residential and commercial properties under dangerous and/or hazardous conditions, including by operating the Edenville and Sanford Dams without adequate spillways, such that Defendants could have prevented the injuries suffered by Plaintiffs and Class Members.

164. Plaintiffs and the Class Members did not consent for flood waters to physically invade their personal and real property or to create a substantial risk of imminent harm from the continuing increased risk of such damage.

165. The invasion of Plaintiffs' and the Class Members' real and personal property; impairment of their real and personal property interests by the flood waters; and/or the substantial risk of imminent harm from the continuing increased risk of such damage has significantly and unreasonably interfered with their right to use and enjoy their properties.

166. Indeed, this offensive and substantial interference has caused Plaintiffs and Class Members significant devastation, loss, damage, inconvenience, annoyance and harm, and has, and continues to cause significant inconvenience and expense. Defendants' interference with the physical condition of Plaintiffs' and the Class Members' real and personal properties has created a disturbance in the comfort and/or conveniences of the properties' occupants, including their peace of mind and threat of future injury that is a present menace and interference with enjoyment.

167. Defendants' conduct has also substantially interfered with Plaintiffs' and the Class Members' ability to avail themselves of their property's value as an asset and/or source of collateral for financing, and to use their property in the manner that each Plaintiff and Class Member decides.

168. Defendants' substantial and unreasonable interference with Plaintiffs' and the Class Members' use and enjoyment of their property constitutes a nuisance for which Defendants are liable to Plaintiff and Class Members for all damages arising therefrom.

169. As a direct and proximate result of Defendants' wrongful and intentional acts and omissions as alleged herein, Plaintiffs and the Class Members have incurred, and will

continue to incur, costs and expenses related to the investigation, treatment, remediation, repair and/or replacement of respective properties, as well as the damages set forth below, in an amount to be determined at trial.

170. Accordingly, Plaintiffs and Class Members seek damages from Defendants, in an amount to be determined at trial, directly resulting from the injuries to their persons and properties, in a sufficient amount to compensate them for the injuries and losses sustained and to restore Plaintiffs and Class Members to their original position, including but not limited to the difference between the current value of their properties and such value if the harm had not been done, the cost of repair or restoration, remediation and abatement, and actual, consequential, and nominal damages, flowing from the negligence which are the natural and proximate result of Defendants' conduct.

COUNT V – PUBLIC NUISANCE

171. Plaintiffs incorporate the preceding paragraphs by reference as if fully set forth at length herein.

172. Plaintiffs and the Class Members, as members of the general public, have a common right to safely live, work, and the use of an environment where flood waters do not threaten their health, safety or interfere with their right to use and enjoyment of public amenities, including lakes, rivers, ponds, creeks and their banks; beaches; and other land.

173. Defendants, through the negligent, reckless, and/or intentional acts and omissions alleged herein, have unreasonably interfered with the rights of Plaintiffs and Class Members by causing the environment and areas in which Plaintiffs and the Class Members live and own property to become flooded, destroyed, and/or damaged by flood waters.

174. Defendants' wrongful actions and inactions in causing the floodwaters have significantly interfered with the public's health, safety, peace, comfort, and convenience.

175. Defendants had a duty to prevent waters from breaching the Dams and flooding, destroying and/or Damaging public amenities, including lakes, rivers, ponds, creeks, and their banks; beaches; and other land.

176. Defendants operated, owned, and/or maintained the Dams near residential and commercial properties under dangerous conditions, including by operating without adequate spillways, creating a high degree of risk attendant with controlling water in such a fashion.

177. Defendants knew, or should have known, that their wrongful conduct in repeatedly, continuously and systematically causing and contributing to the failure, breach and/or malfunction of the Dams in the communities in which Plaintiffs and the Class Members live and own property would, and has, produced a permanent and/or long-lasting infringement on public rights.

178. Plaintiffs' and the Class Members' damages as a result of Defendants' conduct are of a special character and distinct from those suffered by the general public because Plaintiffs and the Class Members have actually been exposed to the flood waters.

179. Plaintiffs and the Class Members did not consent for flooding and breaching waters to physically invade the aforementioned public amenities.

180. Defendants' substantial and unreasonable interference with Plaintiffs' and the Class Members' use and enjoyment of the public amenities described herein constitutes a nuisance for which Defendants are liable to Plaintiffs and Class Members.

181. As a direct and proximate result of Defendants' wrongful and intentional acts and omissions as alleged herein, Plaintiffs and the Class Members have incurred, and will

continue to incur, costs and expenses related to the investigation, treatment, remediation, repair and/or replacement of respective properties, as well as the damages set forth below, in an amount to be determined at trial.

182. Accordingly, Plaintiffs and Class Members seek damages from Defendants, in an amount to be determined at trial, directly resulting from the injuries to their persons and properties, in a sufficient amount to compensate them for the injuries and losses sustained and to restore Plaintiffs and Class Members to their original position, including but not limited to the difference between the current value of their properties and such value if the harm had not been done, the cost of repair or restoration, remediation and abatement, and actual, consequential, and nominal damages, flowing from the negligence which are the natural and proximate result of Defendants' conduct.

COUNT VI – STRICT LIABILITY/ABNORMALLY DANGEROUS ACTIVITY

183. Plaintiffs incorporate the preceding paragraphs by reference as if set forth at length herein.

184. At all relevant times, Defendants had supervision and control of the Edenville and Sanford Dams.

185. Defendants have engaged in an abnormally dangerous activity by owning and/or operating a Dam that collects large quantities of water in dangerous and/or hazardous conditions.

186. Defendants were under a continuing duty to protect Plaintiffs and Class Members from flooding and escape of the waters held by the Dams and their associated reservoirs.

187. Defendants operated, managed, maintained, and/or controlled the Dams near residential and commercial properties under dangerous conditions, including by operating without

adequate spillways, creating a high degree of risk attendant with controlling water in such a fashion.

188. The scale of the Edenville and Sanford Dams creates a likelihood of imminent and catastrophic harm stemming from any breach, malfunction, and/or failure of the respective Dams.

189. Storing water and operating Dams near residential and commercial properties significantly increases the risk of potential harm as a result of any breach, malfunction, and/or failure of the Dams.

190. As a direct and proximate result of Defendants' conduct in the abnormally dangerous activities alleged above, substantial damage has been incurred by Plaintiffs and Class Members, including destruction of real and personal property, damage to real and personal property, the inability to use said property, and a diminution in property values.

191. The harm sustained by Plaintiffs and Class Members is exactly the kind of harm posed by engaging in the abnormally dangerous activity alleged herein.

192. Defendants are strictly liable for all damages and injuries to Plaintiffs and all similarly situated individuals resulting from the abnormally dangerous activity alleged herein.

193. Plaintiffs respectfully request entry of a judgment against Defendants in whatever amount Plaintiffs and Class Members are entitled to, including for actual damages, diminution in property value, and all other relief this Court deems just and appropriate, including but not limited to, all costs and attorney's fees associated with bringing this action and interest from the date of filing this Complaint until the date of judgment at the statutory rate.

COUNT VII – GROSS NEGLIGENCE

194. Plaintiffs incorporate the preceding paragraphs by reference as if fully set forth at length herein.

195. Defendants owed Plaintiffs and Class Members a duty to maintain and operate the Edenville and Sanford Dams and associated waterways in a manner which would not unreasonably endanger Plaintiffs and Class Members and/or cause Plaintiffs and Class Members injury.

196. In particular, Defendants owed Plaintiffs and Class Members a duty to:

- a. Operate, manage, maintain, and/or control the Edenville and Sanford Dams and associated waterways in a reasonably safe condition and in proportion to the commensurate danger to the public welfare;
- b. Prevent the unreasonable interference and use with Plaintiffs and Class Members' rightful use of the Edenville and Sanford Dams' associated waterways;
- c. Operate, manage, maintain, and/or control the Edenville and Sanford Dams in an adequate state of repair and operation, as required by the exercise of reasonable prudence, accepted engineering standards, and/or applicable local, State, and Federal laws, regulations and guidelines; and
- d. Operate, manage, maintain, and/or control the Edenville and Sanford Dams and associated waterways in a manner that would not cause unnecessary and excessive flooding.

197. Defendants knew or reasonably should have known that their measures to operate, manage, maintain, and/or control the Edenville and Sanford Dams were inadequate, such that Plaintiffs and Class Members were foreseeable and probable victims of Defendants' negligent, reckless, and/or wrongful conduct.

198. Defendants knew or should have known that the Edenville and Sanford Dams were unsafe, poorly maintained, did not feature adequate spillways, and violated local, state, and/or federal safety standards.

199. Defendants knew or should have known that the Edenville and Sanford Dams could breach, malfunction, and/or failure in the event of high rainfall.

200. Defendants knew or should have known that if either the Edenville or Sanford Dams were breached, malfunctioned, and/or failed, the effects would be catastrophic to the surrounding area and would cause widespread floods and draining of natural bodies of water.

201. Defendants were grossly negligent in operating, managing, maintaining, and/or controlling the Edenville and Sanford Dams and associated waterways, so as to cause an unusual and excessive increase of water levels which resulted in the overflow of flood waters and ensuing injury and harm to Plaintiffs and Class Members.

202. Defendants breached their duty of care to Plaintiffs and Class Members by, among other acts and omissions, failing to:

- a. Operate, manage, maintain, and/or control the Edenville and Sanford Dams and associated waterways in a reasonably safe condition and in proportion to the commensurate danger to the public welfare, including by refusing to implement adequate overflow control and spillways to the Edenville and Sanford Dams; and
- b. Prevent the unreasonable interference and use with Plaintiffs and Class Members' rightful use of the Edenville and Sanford Dams' associated waterways;
- c. Operate, manage, maintain, and/or control the Edenville and Sanford Dams in an adequate state of repair and operation, as required by the exercise of reasonable prudence, accepted engineering standards, and/or applicable local, State, and

Federal laws, regulations and guidelines including, but not limited to, Defendants failure to implement—or even take seriously—the FERC and EGLE orders and guidelines; and

- d. Operate, manage, maintain, and/or control the Edenville and Sanford Dams and associated waterways in a manner that would not cause unnecessary and excessive flooding.

203. Defendants' failure to operate the Edenville and Sanford Dams in accordance with local, state, and/or federal regulations and statutes was a direct and proximate cause of Plaintiffs' and Class Members' injury, and indicative of a callous, willful, and conscious disregard for public welfare and safety.

204. Indeed, Defendants were warned by FERC numerous times as to the various safety failures of the Dams, as well as by the state of Michigan.

205. Instead of making improvements to the Sanford and Edenville Dams that could have increased safety and prevented the catastrophic failure of the Dams, Defendants recklessly ignored the safety of the public and declined to make necessary repairs and improvements to the Dams.

206. If Defendants had conducted their operations in an ordinarily prudent and safe manner, in the usual course of events, the damage to Plaintiffs' and Class Members' real and personal property would not have occurred or would have been significantly lessened. Accordingly, Defendants' negligent, recklessness, and/or other wrongful conduct was a proximate cause of Plaintiffs' and Class Members' injury and damages.

207. As a direct and proximate result of the foregoing, the Plaintiffs and Class Members have been displaced, suffered, and will continue to suffer injury and harm including, but not

necessarily limited to, damage to Plaintiffs' and Class Members' real and personal property; diminished value to Plaintiffs' and Class Members' real property; loss of income from Plaintiffs' and Class Members' real property; lost wages; loss of use and enjoyment of Plaintiffs' and Class Members' real and personal property; additional expenses related to annoyance and inconvenience; and, in light of the Plaintiffs and Class Members necessary displacement during the COVID-19 pandemic, an increased risk of grave physical harm and/or mental anguish.

208. Accordingly, Plaintiffs and Class Members seek damages from Defendants, in an amount to be determined at trial, directly resulting from the injuries to their persons and properties, in a sufficient amount to compensate them for the injuries and losses sustained and to restore Plaintiffs and Class Members to their original position, including but not limited to the difference between the current value of their properties and such value if the harm had not been done, the cost of repair or restoration, remediation and abatement, and actual, consequential, and nominal damages, flowing from the negligence which are the natural and proximate result of Defendants' conduct.

RELIEF REQUESTED

As a result of the aforementioned acts and omissions of Defendants, Plaintiffs seek relief on behalf of themselves and the Class, including, but not limited to:

- a. Monetary damages for each violation of Counts I through VII:
 - i. sufficient to remediate Plaintiffs' and Class Members' properties from the damage caused by Defendants' conduct;
 - ii. to compensate Plaintiffs and Class Members for the diminution in the value of their properties caused by Defendants' conduct;
 - iii. to compensate Plaintiffs and Class Members for the loss of use and enjoyment of their properties caused by Defendants' conduct;
 - iv. to compensate Plaintiffs and Class Members for the cost to obtain

housing and/or shelter, clothing, and other goods due to the damage and/or destruction of Plaintiffs' and Class Members' properties and possessions;

- v. to compensate for sustained business interruption, loss of profits and any other such damages as shall be determined; and
 - vi. for such other monetary damages that are required to fully compensate Plaintiffs and Class Members for the loss of value, use, and enjoyment of their properties and possessions caused by Defendants' conduct.
- b. Injunctive relief on behalf of themselves and the Class, including but not limited to, an order requiring Defendants to fully remediate Plaintiffs' and Class Members' properties so that Plaintiffs' and Class members' properties are free from the presence of flood waters and potentially harmful bacteria and chemicals, and to provide Plaintiffs and Class Members with alternative, comparable housing during the remediation period;
- c. Any and all equitable relief that the Court deems proper and just;
- d. An order certifying the proposed Class, designating Plaintiffs as the named representatives of the respective Class Members, and appointing Plaintiffs' counsel as Class Counsel;
- e. An award to Plaintiffs and Class members of compensatory, exemplary, and consequential damages, including interest in an amount to be proven at trial;
- f. An award of attorneys' fees and costs;
- g. An award of pre-judgment and post-judgment interest as provided by law; and
- h. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs and Class Members demand a trial on all issues so triable.

Dated: June 3, 2020

Respectfully submitted,

/s/ E. Powell Miller

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