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Courtroom Number: 2308
Location: District 1 Court
Cook County, IL

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12/1/2020 5:32 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2020CH07031

**IN CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

TANISHA RODRIGUEZ, on)	
behalf of herself and all other)	11319436
similarly situated,)	
A Proposed Class Action)	Case No. 2020CH07031
)	
Plaintiffs,)	Hon.
)	
v.)	Jury Demand
)	
MAT ASPHALT LLC.,)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

NOW COMES Plaintiffs, individually and on behalf of all others similarly situated, by and through her attorneys, The Law firms of MARSHALL P. WHALLEY & ASSOCIATES, P.C. and LIDDLE & DUBIN, P.C., (hereinafter “Plaintiffs”) and state in support of their Class Action Complaint against Defendant MAT ASPHALT, LLC, (hereinafter “Defendant”), as follows:

NATURE OF THE ACTION

1. This is a class action brought pursuant to 735 ILCS 5/2-801. This action is necessary to protect the property rights of Plaintiffs, and all others similarly situated, which have been unreasonably interfered with resulting from the physical invasion of Plaintiffs' property by noxious odors, thereby causing material injury to Plaintiffs' use and enjoyment of their property through public and private nuisance, negligence, gross negligence and trespass.

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2. Plaintiffs bring this action on behalf of themselves and all others who have similarly suffered from the invasion of noxious odors onto their property. The reason for not joining all potential class members as Plaintiffs is that, upon information and belief, there are thousands of potential plaintiffs, thereby making it impracticable to bring them before the Court.

3. Plaintiff brings this action individually and on behalf of all persons as the Court may determine to be appropriate for class certification, pursuant to Federal Rule of Civil Procedure

23. Plaintiff seeks to represent a Class of persons preliminarily defined as:

All owner/occupants and renters of residential property within a 1.0 mile radius of the MAT Asphalt Facility.

Excluded from this Class are Defendant and its affiliates, predecessors, successors, officers, directors, agents, servants, or employees, and the immediate family members of such persons. The proposed class boundary is subject to modification as discovery progresses. Plaintiff reserves the right to propose one or more sub-classes if discovery reveals that such subclasses are appropriate.

4. There are many persons who have been similarly affected and the question to be determined is one of common and general interest to many persons constituting the class to which Plaintiffs belong, and the group is so numerous as to make it impracticable to bring them all before the Court, for which reasons Plaintiffs initiate this litigation for all persons similarly situated pursuant to 735 ILCS 5/2-801.

5. The issues and questions of law and fact are common to the members of the Class and predominate over questions affecting individual members and the claims of Plaintiffs, and all others similarly named and those similarly situated, are typical of the claims of the Class. These issues and questions include, but are not limited to:

a. Whether Defendant's facility has been negligently constructed, maintained, or

operated;

- b. Whether the noxious odors that enter the residential area in which Plaintiffs reside originated at Defendant's facility;
- c. Whether Defendant knew or should have known that its operations would result in Plaintiffs' damages;
- d. Whether the presence of noxious odors on Plaintiffs' property constitutes an unreasonable interference for which the Defendant may be held liable;
- e. Whether Defendant knowingly allowed noxious odors to invade the Plaintiffs' property;
- f. Whether Defendant's conduct constituted a nuisance;
- g. Whether Defendant's conduct constituted a trespass; and
- h. Whether Defendant's conduct constituted negligence or gross negligence.

6. The maintenance of this litigation as a Class Action will be superior to other methods of adjudication in promoting the convenient administration of justice.

7. Plaintiffs, and all others similarly named and those similarly situated, and the law firms of Marshall P. Whalley & Associates, P.C. and Liddle, & Dubin, P.C., will fairly and adequately assert and protect the interests of the Class.

8. At all times relevant to this Complaint, the Defendant has been and is an Illinois corporation with its principal place of business located at 2055 Pershing Rd., Chicago, Cook County, IL 60609.

9. At all times relevant to this Complaint, Defendant has produced hot-mix asphalt at its facility. In its operations Defendant produces several hundred tons of asphalt per hour.

10. The Defendant's operation, maintenance, control, and use of its asphalt facility caused the Plaintiff Class Representatives and all others similarly situated similar property

damages by the invasion of noxious odors emitted by Defendant.

JURISDICTION AND VENUE

11. Jurisdiction and venue in Cook County are proper in this matter as all Plaintiffs named and unnamed are citizens and residents of Cook County, State of Illinois and Defendant is also a corporate resident of Cook County, State of Illinois. Damages in this case exceed the jurisdictional requirement.

PLAINTIFF PUTATIVE CLASS REPRESENTATIVES

12. At all times relevant hereto, Plaintiff, Tanisha Rodriguez, has resided at 3811 S. Honore, Chicago, Cook County, IL 60609.

13. All unnamed Plaintiff potential Class Members are residents or homeowners who live or own real estate nearby or adjacent to Defendant's Facility who have suffered similar damages to their property by the invasion of noxious odors from Defendant's facility.

GENERAL ALLEGATIONS

14. Defendant has, since July 20, 2018, produced hot-mix asphalt at its 8-acre facility located at 2500 W. Pershing Rd., Chicago, Illinois. In its operations Defendant produces several hundred tons of asphalt per hour. Through this process, Defendant unnecessarily emits noxious odors into the nearby residential community.

15. As part of its hot asphalt mix facility, Defendant operates a 400-ton asphalt drum mixer, three 35,000 gallon asphalt cement storage tanks, five 300-ton loadout silos, a crusher, multiple conveyors and screens, and bins for aggregate and reclaimed asphalt paving and shingles.

16. To produce its product, Defendant mixes limestone, recycled asphalt pavement and asphalt cement, a petroleum-based liquid. To mix these components, limestone and recycled

asphalt are transported to a rotating drum which heats up to 300 degrees at which time the asphalt cement is injected into the mix. After additional mixing, the asphalt is conveyed and stored in a 10-story tall storage silo. Trucks drive under the silo where the asphalt is loaded by force of gravity into the truck.

17. Due to Defendant's inadequate efforts to prevent its emissions from escaping into the adjacent residential neighborhood, Plaintiff's property has been and continues to be physically invaded by noxious odors.

18. The noxious odor emissions caused by Defendant's facility have been and continue to be dispersed across all public and private land in the class area.

19. Defendant, its predecessors and agents either constructed or directed the construction of the facility and exercised control and ownership over the facility.

20. Defendant's facility and its noxious odor emissions have been the subject of frequent complaints from residents in the nearby residential area.

21. Numerous households within the proposed Class Area have contacted Plaintiff's counsel documenting the noxious odors they attribute to the Defendant's facility.

22. Below is a small sampling of the factual allegations made by putative class members to Plaintiff's Counsel, demonstrating that the facility is the source and cause of the odor emissions, which have damaged their neighboring properties.

- a. Plaintiff Tanisha Rodriguez reported that "Starting in 2018 I have smelled toxic and noxious odors while inside my home (with closed windows)." "It affects my ability to sleep because the smell permeates my home in the early morning hours while windows are shut."
- b. Putative class member Jose Alcaraz reported that Defendants' facility "smells like rubber burning, plastic, very strong chemical smell like ammonia." And "I

cannot keep my windows open for a long period of time.”

- c. Putative class members John Croker and Cynthia Wisniewski described the odors from Defendants’ facility as “Sulphurous, burnt rubber, oil and/or kerosene odors.” “[I]f we open the windows the house smells for days.”
- d. Putative class member Alma Ortiz reported that Defendants’ facility “[s]mells like strong chemicals and trigger my allergies.” Ms. Ortiz said that “The odors from MAT Asphalt affect my ability to use my home because I can’t enjoy myself outside in the yard grilling or watching my grandkids much less take them to McKinley Park.”
- e. A complaint filed by the National Latino Education Institute stated “The fumes emitting from the asphalt plant have been extraordinarily strong today. It was difficult for me to walk from my car to inside our building without being physically affected by those fumes. I also learned later that my maintenance team had no choice, but to turn off the air conditioning system, because the fumes from the outside were so strong that they were affecting students and those inside the building.”

23. Similarly, hundreds of complaints have been filed with the Illinois Environmental Protection Agency (IEPA). Some examples of these complaints include the following:

- a. In a complaint to the IEPA dated December 17, 2019, one resident stated it “Stinks like asphalt on my property” adding “come home at 12:15 pm and it smells strongly of asphalt on my property. Smell was noticeable immediately upon walking outside.”
- b. In a complaint to the IEPA dated December 14, 2019, one resident stated “I was sleeping at 3 am on December 14, 2019 and I woke up to the smell of asphalt. I got up and went outside and the smell become stronger. This odor literally woke me up from sleeping! I got in my car and drove past the plant where all the lights were on and there were large amounts of dust.”
- c. In a complaint to the IEPA dated December 13, 2019, one resident stated “The smell is overwhelming pretty much every morning including most weekends. It’s still the worst early mornings which is the only time I can walk my dog at the park and leave for work. I used to be able to smell the beauty of the park across the street. Now I only smell diesel and asphalt. The smell is strong enough I can smell it inside my enclosed porch in both front and back.
- d. In a complaint to the IEPA dated December 13, 2019, one resident stated “Strong asphalt clouds over McKinley Park. Thick smoke and smell on December 13, 2019 at 8:30 a.m. December 12, 2019 at 10:00 to 11:00 a.m. Then

left do to bad air.”

24. As a result of Defendant’s emission of noxious odors, there have been several neighborhood protests, significant media attention and a neighborhood group, Neighbors for Environmental Justice, has been formed to contest Defendant’s emissions.

25. During an inspection of October 28, 2019, the United States Environmental Protection Agency smelled offsite “asphalt like odors.” During this same inspection a baghouse temperature alarm occurred due to excessive temperatures.

26. A properly designed, operated, maintained, and managed facility of the sort Defendant operates will collect, capture and destroy odorous compounds in order to prevent noxious emissions into the surrounding community.

27. Defendant is required to control its noxious odor emissions by, among other things, operating and maintaining the facility in a manner that adequately captures, controls, and mitigates odor emissions so as to prevent them from escaping into the ambient air surrounding the facility and implementing other reasonably available odor mitigation, elimination, and control systems at the facility.

28. Defendant failed to install and maintain adequate technology to properly control its emissions of noxious odors, including but not limited to the following:

- a. The improper operation of its baghouse, including operating the baghouse at excessive temperatures;
- b. Improper storage of asphalt and its ingredients in improper containers, including the overnight storage of asphalt;
- c. Improper transportation of asphalt and its ingredients in open containers;
- d. Improper loading of asphalt from Defendant’s storage silos into the trucks used to take delivery of the asphalt.

29. Defendant's facility has emitted, and continues to emit, noxious odors that are detectable outside the bounds of its property.

30. The facility has emitted noxious odors that have caused negative impacts to its neighbors throughout the Class Area.

31. The noxious odors emitted from the facility are offensive, would be offensive to a reasonable person of ordinary health and sensibilities, and have caused property damage.

32. The invasion of Plaintiff's property and that of the Class by noxious odor emissions has reduced the value of that property and has interfered with the use and enjoyment of that property, resulting in damages.

33. The Class Area is home to a wide range of commercial and recreational activities, including but not limited to manufacturing, construction, retail trade, ministry, education, dining, and lodging.

34. Plaintiffs and the Class are a limited subset of individuals in Cook County, and the Class Area, that includes only owner/occupants and renters of residential property who live within the Class Area and fit within the Class Definition.

35. Members of the public, including but not limited to businesses, employees, commuters, tourists, visitors, minors, customers, clients, and students, have experienced and been harmed by the noxious odors emitted from the facility into public spaces; however, unlike Plaintiff and the Class, members of the public who are outside of the Class area have not suffered damages of the same kind, in the form of diminished property values and/or loss of use and enjoyment of their private property.

36. Defendant intentionally, recklessly, willfully, wantonly, maliciously, grossly

and/or negligently failed to properly maintain, operate, and/or construct the facility, and caused the invasion of Plaintiff's property by noxious odors on intermittent and reoccurring dates too numerous to individually recount.

37. Defendant is vicariously liable for all damages suffered by Plaintiff caused by Defendant's employees, representatives and agents, who, during the course and scope of their employment created, allowed or failed to correct the problem(s) which caused noxious odors to physically invade Plaintiff's and the Class' properties.

CAUSE OF ACTION I

PRIVATE NUISANCE

38. Plaintiff reallege and incorporate by reference herein paragraphs 1 through 37.

39. Defendant owed and continues to owe a duty to Plaintiff and the Class, who are neighboring private property holders, to prevent and abate the interference with, and the invasion of, their private property interests.

40. The noxious odors, pollutants, or air contaminants which entered Plaintiff's property originated from the facility constructed, designed, maintained, and/or operated by Defendant.

41. The odors, pollutants, and/or air contaminants invading Plaintiff's property are indecent and/or offensive to the senses, and obstruct the free use of their property so as to substantially and unreasonably interfere with the comfortable enjoyment of life and/or property, including in but not limited to the following ways:

a. Causing Plaintiff and the Class to remain inside their homes and forego use of their yards, porches, and other outdoor spaces and refrain from outdoor activities;

b. Causing Plaintiff and the Class to keep doors and windows closed when weather conditions otherwise would not require them to do so;

c. Depriving Plaintiff and the Class of the full value of their homes and properties;

d. Causing Plaintiff and the Class embarrassment, inconvenience, and reluctance to engage in outdoor activities and invite guests to their homes.

42. The odors, pollutants, and air contaminants produced by Defendant's facility constitute a substantial and unreasonable invasion of Plaintiffs' interests in the use and enjoyment of their property.

43. Defendant's invasion of Plaintiffs' property by noxious odors was intentional and/or negligent.

44. As stated above, hundreds of putative class members have filed complaints regarding the offensive odors emitted by Defendant.

45. Defendant is aware of the odors, pollutants, and air contaminants that emanate from its facility and has knowledge of the significant impacts the odors have on residents' lives, yet has failed to abate or correct the conditions causing the nuisance odors.

46. Plaintiff and the Class have suffered physical damage to property as a result of Defendant's nuisance odor emissions, including interference with use and enjoyment of property, deprivation of full value of property, diminution of property value, and embarrassment, annoyance, and inconvenience as alleged herein.

47. Whatever social utility provided by the Facility is clearly outweighed by the harm suffered by Plaintiff and the putative class, who have on unusually frequent occasions been

deprived of the full use and enjoyment of their properties and have been forced to endure substantial loss in the use and value of their properties.

CAUSE OF ACTION II

PUBLIC NUISANCE

48. Plaintiff reallege and incorporate by reference herein paragraphs 1 through 47.

49. Plaintiff and the Class utilized their property as a residence and reside within the Class Area.

50. The noxious odors which entered Plaintiff's property originated from Defendant's Facility.

51. Defendant's operation and/or maintenance of its facility is the proximate cause of the noxious odors that enter Plaintiffs' property.

52. The unreasonable odors caused by Defendant's facility have been and continue to be dispersed across public and private land throughout the Class Area.

53. By failing to reasonably design, operate, repair, and maintain its Facility, Defendant has caused an invasion of Plaintiff's property by noxious odors on unusually frequent occasions that are too numerous to individually list herein.

54. The noxious fumes and odors invading Plaintiff's property are indecent and offensive to Plaintiff and the Class, and indecent and offensive to individuals with ordinary sensibilities and obstruct the free use of Plaintiff's property so as to substantially and unreasonably interfere with the comfortable enjoyment of life and property.

55. A reasonable person would find Defendant's emission of noxious odors to be offensive and a nuisance.

56. Defendant knew that it was emitting noxious odors onto neighboring properties, yet it failed to take reasonably adequate steps to abate the nuisance.

57. Defendant owed and continues to owe a duty to Plaintiff and the Class to prevent and abate the interference with, and the invasion of, their private interests.

58. Defendant owed and continues to owe a duty to the public to prevent and abate the interference with, and the invasion of, the free use and enjoyment of public air and spaces by emitting noxious pollutants into the ambient air.

59. Defendant, by failing to reasonably repair, operate, and/or maintain its facility so as to abate nuisances such as malodorous emissions, has acted, and continues to act, intentionally, negligently, and with conscious disregard to public health, safety, peace, comfort, and convenience.

60. As a foreseeable, direct and proximate result of the foregoing conduct of Defendant, Plaintiff and the Class suffered damages to their property as alleged herein.

61. By causing noxious odors that physically invaded Plaintiff's property, Defendant created a nuisance which substantially and unreasonably impaired Plaintiff and the Class' use and enjoyment of their property on unusually frequent occasions too numerous to mention individually.

62. Such substantial and unreasonable interference includes, but is not limited to:

- a. loss of use and ability to enjoy the outside areas of Plaintiff's property or to open windows due to the presence of noxious odors;
- b. decrease in the value of Plaintiff and the Class' properties and depriving them of the full value of their properties; and
- c. annoyance, inconvenience, and discomfort, including but not limited to, inability to open windows when odors are present, inability to use outdoor spaces, and the inability to invite guests to Plaintiff's residence due to the embarrassment and annoyance of the noxious odors invade Plaintiff's property.

63. Apart from the private property damage incurred by Plaintiff and the Class, Defendant's emissions have substantially interfered with rights common to the general public, including the right to breathe uncontaminated and/or unpolluted air.

64. Plaintiff suffered and continues to suffer special harm to private property interests, including interference with the use and enjoyment of private land and private property, deprivation of full value of private property, and decreased property values. These damages are of a different kind and are additional to damages suffered by the public at-large exercising the same common right to breathe uncontaminated and unpolluted air.

65. Plaintiff did not consent to noxious odors entering upon her property.

66. Whatever social utility provided by the Facility is clearly outweighed by the harm suffered by Plaintiff and the putative class, who have on unusually frequent occasions been deprived of the full use and enjoyment of their properties and have been forced to endure substantial loss in the value of their properties.

67. Defendant's substantial and unreasonable interferences with Plaintiff's property rights constitutes a nuisance for which Defendant is liable to Plaintiff for all damages arising from such nuisance, including compensatory, injunctive, exemplary, and/or punitive relief.

COUNT III

NEGLIGENCE AND/OR GROSS NEGLIGENCE

68. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 67.

69. In constructing, maintaining, operating, controlling, engineering and/or designing the facility, Defendant has a duty to exercise ordinary care and diligence so noxious odors do not invade Plaintiffs' property.

70. Defendant knowingly breached its duty to exercise ordinary care and diligence when it improperly constructed, maintained, operated, engineered and/or designed the facility and knew, or should have known, that such actions would cause Plaintiffs' property to be invaded by noxious odors.

71. As a direct and proximate result of the failure of Defendant to exercise ordinary care, Plaintiffs' property has been and continues to be physically invaded by noxious odors.

72. As a direct and proximate result of Defendant's negligence in operating and/or constructing and/or engineering and/or maintaining its facility, Plaintiffs' property is exposed to and invaded by noxious odors.

73. As a direct and proximate result of the invasion of Plaintiffs' property by noxious odors, Plaintiffs have suffered damages.

74. The conduct of Defendant in knowingly allowing conditions to exist, which caused noxious odors to physically invade Plaintiffs' property constitutes gross negligence as Defendant's conduct demonstrates a substantial lack of concern for whether an injury resulted to Plaintiffs.

75. Defendant is vicariously liable for the negligence and/or gross negligence of its employees, representatives, and agents, who, during the course and scope of their employment, allowed or failed to correct the problem which caused noxious odors to physically invade Plaintiffs' property.

76. Defendant's gross negligence entitles Plaintiffs to an award of punitive damages.

COUNT IV

TRESPASS

77. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 76.

78. Defendant intentionally, recklessly, willfully, wantonly, maliciously and negligently failed to construct, maintain and/or operate its facility, which caused the invasion and damage of Plaintiffs' property by noxious odors on dates too numerous to mention by air emissions during Defendant's industrial operations.

79. As a direct and proximate result of the foregoing conduct of Defendant, noxious odors physically invaded, and damaged Plaintiffs' property.

80. It was reasonably foreseeable that Defendant's failure to properly construct, maintain and/or operate the facility could result in an invasion of Plaintiffs' possessory interests by noxious odors.

81. As a further direct and proximate result of the foregoing conduct of Defendant, Plaintiffs suffered substantial damages to their property as alleged herein.

82. The noxious odors which physically invaded, and damaged Plaintiffs' land and property interfered with and damaged Plaintiffs' interests in the exclusive possession of plaintiffs' land and property and constituted a trespass upon Plaintiffs' property.

83. Plaintiffs did not consent for noxious odors to physically invade their land and property.

84. The Defendant's actions, which resulted in the trespass upon Plaintiffs' land and property were, and continue to be, intentional, willful, and malicious and made with a conscious disregard for the rights and safety of Plaintiffs, entitling Plaintiffs to compensatory and punitive relief

WHEREFORE, the named Plaintiff, on behalf of herself and putative class members, respectfully demand:

1. A determination that this action is a proper class action maintainable pursuant to 735 ILCS 5/2/-801, and that the named Plaintiff is the appropriate class representative; and

2. Judgment against the Defendant and in favor of the named Plaintiff and putative class members for:

- (a) Compensatory damages subject to proof;
- (b) Interest until the date of judgment;
- (c) Post-judgment interest until paid;
- (d) The "costs" and disbursements incurred by the plaintiffs in connection with action, including reasonable attorney's fees; and
- (e) Any and all further relief to which named Plaintiffs and putative class members may be entitled.

Respectfully Submitted,

/s/Marshall P. Whalley _____
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