IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 17-022967-CA-01(11)

YVETTE STYLES, et al.,

Plaintiff(s),

vs.

CITY OF MIAMI, et al.,

Defendant(s).
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PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF LAW IN SUPPORT

Pursuant to Florida Rule 1.220, Plaintiffs, YVETTE STYLES, BEVERLY GIBSON, DAISY BAILEY-COPELAND, SANDRA ELAINE MARTIN, BENNIE COOPER-CHAPMAN, MELINDA MATHESON, on behalf of herself and her minor child, N.S., KENTRON POITIER, KAYVEON POITIER, THADDEUS SCOTT, and CAPUS DELONEY,[1] *individually and on behalf of all others similarly situated*, (collectively "Plaintiffs") respectfully move for certification of (1) a Medical Monitoring Class under Rules 1.220(a) and (b)(3); (2) a Medical Monitoring Class under Rules 1,220(a) and (b)(2); (3) a Property Testing subclass under Rules 1.220(a) and (b)(3); (4) a Property Testing subclass under Rules 1.220(a) and (b)(2); and (5) a Property Remedy subclass under Rules 1.220(a) and (b)(3). Plaintiffs also move for certification of the common issues of medical monitoring, liability, property characterization/testing and general causation for

[1] And the Estate of Willie Washington, pending the Court's ruling on the City of Miami's pending Motion to Dismiss for Mr. Washington's claim. ECF No. 607.

class treatment under Rule 1.220(d)(4)(A). In support of certification, Plaintiffs state the following:

INTRODUCTION

For more than four (4) decades the City of Miami operated a municipal trash incinerator known as "Old Smokey" in the heart of the historically Black West Grove community. For nearly fifty (50) years the City released toxic smoke and ash laced with dioxins, arsenic, and other hazardous substances, contaminating Plaintiffs' properties and bodies. The City further contaminated the community by using the toxic ash as fill throughout the community. For decades, the City failed to take any action to clean up this community-wide contamination. And, despite hiring Defendant SCS Engineers ("SCS") within the past fifteen (15) years in an attempt to address the issue, the City and SCS have still failed to find and remediate the hazardous contamination the City created.

This treatment of the community as a dumping ground is compounded by the Defendants' failure to warn about and failure to remediate the hazardous contamination created by the City, extending the community's exposure long after Old Smokey's closure. As a result, Plaintiffs bring claims for medical monitoring, negligent failure to warn, violation of Florida Statutes §§ 376.30–376.317, inverse condemnation, and professional negligence. *See* Plaintiffs' Second Amended Complaint ("SAC"), ECF No. 36.

The Court should certify the proposed Medical Monitoring Class, Property Classes, and Bodily Injury Issues Class under Rule 1.220 because Plaintiffs represent ascertainable groups of residents and property owners from a defined geographic area whose claims arise from the course of conduct relating to a single polluting incinerator—Old Smokey. These claims present a common nucleus of facts and issues, centered on whether Old Smokey's toxic ash and emissions created

contamination throughout the West Grove and Coral Gables, and whether Plaintiffs are entitled to medical monitoring, property damages, and other relief.

STATEMENT OF THE FACTS

I. Background: Defendants' Pollution, Failure to Remediate and Warn, and Current State of Contamination.

A. Old Smokey Plagued the West Grove for Decades.

Coconut Grove, Florida—one of the earliest settlements in what became Miami-Dade County—was founded in 1873 and incorporated in 1919.[2] Bahamian settlers formed the West Grove community, preserving and honoring their cultural heritage.[3] West Grove's marginalization was reinforced through Jim Crow segregation, redlining, and restrictive covenants that systematically excluded its residents from white areas.[4] Until the late 1950s, it was among the few areas where Black residents could live legally in the City of Miami.[5]

In 1925, when the City of Miami annexed Coconut Grove, the annexation accelerated racial and economic divisions which systematically marginalized the West Grove through underdevelopment, persistent neglect, and inadequate public resources.[6] Almost immediately, the City constructed a municipal trash incinerator in the heart of the West Grove. When the incinerator first opened, it incinerated 100 tons of waste per day, operating for twenty-four (24) hours per day

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[2] Grant Livingston, *The Annexation of the City of Coconut Grove*, 60 Tequesta 32, 35 (2000).

[3] *Id*. at 32–35.

[4] N. D. B. Connolly, *A World More Concrete: Real Estate and the Remaking of Jim Crow South Florida* 58, 152–53, 180–87 (Univ. of Chicago Press 2021); *see also* Anthony V. Alfieri, *Black, Poor, and Gone: Civil Rights Law's Inner-City Crisis*, 54 Harv. C.R.–C.L. L. Rev. 629, 643–47 (2019).

[5] *Id*. at 186.

[6] *Id*.; Alfieri, *supra* note 4.

and all seven (7) days of the week,[7] releasing smoke, ash, and toxic chemicals—including dioxins, arsenic, heavy metals, and polycyclic aromatic hydrocarbons—into the surrounding community. [8] (SAC at ¶¶ 33–35).The incinerator, operating almost nonstop, soon became known as "Old Smokey" because clouds of ash rained down on nearby homes and schools, sometimes sparking fires. (SAC at ¶ 35; *see also, generally,* Declarations of Plaintiffs, attached as **Composite Exhibit 2**).

The named Plaintiffs and class members lived, studied, and played within this affected area and endured significant health consequences. (*See* SAC at ¶¶ 8–18; *see also, generally,* Declarations of Plaintiffs, Composite Exhibit 2). Plaintiffs recall ash raining down like snow, coating their yards, windows, and clothes, and describe years of direct exposure through breathing contaminated air, touching polluted soil, and consuming homegrown fruits and vegetables. *Id*. Several of the named Plaintiffs and thousands of other students attended the G.W. Carver Schools immediately across the street from Old Smokey and endured smoke and odors in their classrooms, as well as smoke and ash on their outdoor playgrounds and athletic fields. *Id*.

B. Old Smokey's Closure and Defendants' Failure to Remediate.

In 1960, following a Facility rebuild, the Site incinerated 285 tons per day, operating sixteen (16) hours per day, and six (6) days a week,[9] emitting tons of toxic ash daily. Upon expanding the facility, fly ash began travelling beyond the West Grove and onto further

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[7] Miami Daily News 1925. Work Started on Incinerator. Miami Daily News. November 11, 1925. PDF Page 1, attached as **Exhibit 1**.

[8] Municipal trash incinerators are known sources of pollutants including heavy metals, dioxins, furans, PCBs, PAHs, among others, all of which pose risks to human health. *See* National Research Council (US) Committee on Health Effects of Waste Incineration. *3 Incineration Processes and Environmental Releases* (2000). https://www.ncbi.nlm.nih.gov/books/NBK233627/

[9] Greenleaf, *Detail Engineering and Economic Report - Solid Waste Collection and Disposal. Metropolitan Dade County, Florida*, 22 (May 1972), attached as **Exhibit 3**.

communities, including Coral Gables.[10] The City of Coral Gables filed a public nuisance action, which led to a court order closing Old Smokey in 1970.[11] When the smokestack was razed in 1974, no precautions were taken to prevent airborne contamination, and schoolchildren watched the demolition from across the street. (SAC at ¶ 39).

Post-demolition, the City failed to remediate or test its property prior to converting the building to a Fire Training Center on the contaminated site in 1979, once again disturbing, but not addressing toxic ash still in the soil. (SAC at ¶ 41.). In 1983, the City allowed the Barnyard Community Center to be built on the former incinerator property without testing or remediation, exposing children to toxic soils. (SAC at ¶ 45.). During this time, the City alone possessed the historical property records and institutional knowledge of Old Smokey's toxic pollution and contamination, yet it did not disclose the risks to the public and surrounding property owners. (SAC at ¶¶ 40–46.).

In 2011, an environmental assessment revealed arsenic, barium, and lead levels above cleanup standards at the Old Smokey site, [12] but the City did not disclose these findings to residents. The City hired Defendant Sterns, Conrad & Schmidt, Consulting Engineers, Inc. ("SCS") to perform site assessments, monitoring, and remediation, as well as to provide technical oversight and overall program management related to the Old Smokey Site, and thereafter a number of community parks. (SAC at ¶¶ 29, 59).

Subsequent testing in 2013 and 2014 confirmed widespread contamination both onsite and offsite. (SAC at ¶¶ 52-56, 14; *see also* Plaintiffs' Consolidated Motion for Sanction at 2-6, ECF

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[10] *City of Coral Gables v. City of Miami,* No. 67-7593 (11th Jud. Cir. October 23, 1969).

[11] *Id.*

[12] Cherokee Enterprises, Inc., *Phase I / Phase II Environmental Site Assessment* (March 2011) at 8-9, attached as **Exhibit 4**.

No. 495 (providing a detailed timeline of the sampling efforts done to date revealing widespread contamination in the community)). Yet the City – with consultation and advice from SCS – repeatedly delayed any corrective action. (SAC at ¶¶ 329-333, 61; ECF No. 495 at 2-6). In 2014, Miami-Dade County's Department of Environmental Resources Management (DERM) demanded additional testing, which revealed arsenic levels five (5) times above residential standards, lead levels four (4) times above those standards, and copper levels seven (7) times above the standards. (SAC at ¶ 56.) Despite these findings, residents were not informed and the contamination remained, further exposing Plaintiffs to hazardous toxins. And, despite dioxins being a well-known byproduct of waste incineration, the City and SCS conducted little to no dioxin sampling, especially at residential properties.

DERM repeatedly issued directives between 2016 and 2018 requiring corrective action, noting that soils in residential yards and neighborhood properties contained elevated levels of arsenic, lead, barium, and dioxins. (SAC at ¶¶ 61–69.)[13] Yet, the City and SCS failed to remediate private properties or adequately warn residents, leaving Plaintiffs and class members exposed to hazardous substances as defined under Florida Statutes and federal health assessment guidance. (SAC at ¶¶ 70–84, 209–16.)

C. Current Testing Reveals Deadly Levels of Dioxin and Arsenic.

During the pendency of this case, Plaintiffs' expert undertook significant soil sampling on various residential properties within a one-mile radius of the former incinerator site. The purpose of this sampling was to determine the extent of the contamination from the former Old Smokey incinerator that remained on residential properties in the community. This testing was necessary

[13] *See also* Letters from DERM to Property Owners, attached as **Composite Exhibit 5** (notifying the property owners of contamination detected on or adjacent to their property).

due to the Defendants' systematic failure to conduct sampling within the community that adequately characterized the residential contamination. *See e.g.,* July 18, 2024 Warning Letter from the Florida Department of Environmental Protection ("FDEP") at 1, attached as **Exhibit 6** (warning letter from FDEP to the City because "contamination has not been completely delineated and remediated" at the referenced site); December 18, 2017 Letter from DERM at 1, attached as **Exhibit 7** (same).

To obtain authority to take these soil samples, Plaintiffs' counsel sent mass-mailouts to current single-family residential property owners within a one-mile radius of the former incinerator site. *See* Declaration of Attorney Jason Clark, attached as **Exhibit 8**; *see also* August 8, 2025 Expert Rebuttal Report of Ryan Sullivan, MS, CEP, *Soil Sampling for Dioxins and Metals in the Town of Coral Gables, Florida – Rebuttal Report* ("Sullivan Rebuttal Report") at 8-10, attached as **Exhibit 9**. Responses granting authority to sample were random, based on which property owners responded, and Plaintiffs' counsel did not screen any properties prior to or after requesting authorization (other than to ensure it was a single-family residential property). *Id*. Plaintiffs' counsel compiled a list of all property owners who provided authorization and provided this list to Plaintiffs' soil sampling expert, Ryan Sullivan. *Id*.

Mr. Sullivan conducted three phases of soil sampling: in April 2023, September 2023, and June 2024. *Id*. Across the three sampling dates, thirty-six (36) different properties were tested for dioxins and heavy metals. *Id*.; *see also* November 27, 2024 Letter to Miami-Dade County Mayor Daniella Levine Cava, attached as **Exhibit 10** (notifying county mayor of contamination uncovered). Across the three (3) sampling phases, dioxins were detected at levels exceeding the Residential Soil Cleanup Target Levels (SCTL) of 7.0 ng-TEQ/kg in thirty-six (36) of the forty-six (46) total samples collected at these properties. *Id.* (citing FDEP 2025, *FDEP Soil Cleanup*

Target Levels, Soil Cleanup Target Levels for Rule 62-777, Florida Department of Environmental Protection). Of these samples, multiple exceeded 159 ng-TEQ/kg, over twenty-two (22) times the regulatory limit for residential properties. Similarly, thirty-eight (38) of the forty-six (46) total samples collected at these properties exceeded the residential SCTL for arsenic of 2.1 mg/kg. In sum, over 78% of the samples exceeded the residential SCTL for dioxin and over 82% exceeded the residential SCTL for arsenic, with multiple samples 2271% above the State of Florida's residential SCTL for dioxin.

Notably, Mr. Sullivan's sampling included one property previously sampled by Defendant SCS as part of SCS's "Regional Soil Assessment." *See* October 3, 2013 SCS Regional Soil Assessment, attached as **Exhibit 11** at 13. As background, DERM directed the City to conduct a regional assessment by taking a minimum of thirty (30) random samples within a one-mile radius of the Old Smokey site. *See* July 8, 2013 Letter from DERM, attached as **Exhibit 12**. The City retained SCS for this project. SCS proposed fifteen (15) residential properties, and ultimately only took samples at just four (4) of those residential properties – well short of DERM's original directive.[14] Compounding this issue, all four (4) residential properties were nearly one (1) mile away from the former site. Notwithstanding, Mr. Sullivan took four (4) different samples at this previously sampled property, and all four (4) samples (including a composite sample) exceeded the SCTL for dioxins and three (3) of the four (4) exceeded the SCTL for arsenic. Yet, somehow, when SCS conducted its soil sampling on the property during its regional assessment, SCS found no dioxin or arsenic exceeding any SCTL.[15]

[14] Exhibit 12 at 18.

[15] Exhibit 12 at 18.

Had Defendant SCS, acting at the City's direction, conducted a thorough regional site assessment in 2013—instead of collecting only four residential dioxin samples all located at nearly one (1) mile from Old Smokey—dioxin contamination at Class properties could have been identified and addressed more than a decade ago. *See e.g.* March 31, 2025 Expert Report of Dr. Paul Rosenfeld, Ph.D., *Expert Report on Emissions of Dioxins and Arsenic from the Former Coconut Grove Incinerator in Coconut Grove, Florida*, ("Rosenfeld Report") fig. ES-4, at 11 and tbl. ES-1, at 12, attached as **Exhibit 13** (demonstrating the large number of Mr. Sullivan's sampling locations shown in yellow compared to the small number of SCS sampling locations shown in orange). The same result could have been achieved had SCS, again at the City's direction, complied with DERM's original 2013 directive to take a minimum of thirty (30) random samples or DERM's (and FDEP's) continuous directives to evaluate fully the depth and extent of vertical and horizontal contamination from the former Old Smokey incinerator.

II. Dioxins and Arsenic are Known Toxins to Humans, Causing Many Cancers and other Serious Diseases.

The toxicology and epidemiology of dioxins and arsenic are among the most extensively studied in environmental health, and the risks these hazardous substances pose to humans are broadly accepted. As explained by Dr. Pamela Mahoney, exposure to chlorinated dibenzo-p-dioxins/furans ("dioxins/CDFs") and arsenic causes increased risks of multiple cancers (including bladder, lung, kidney, prostate, breast, liver/bile duct, myeloma, myeloid leukemia, non-Hodgkin's lymphoma, and skin) and many other serious diseases, including diabetes, cardiovascular disease, respiratory disease including asthma, reproductive and developmental toxicity, and neurotoxicity. *See* March 29, 2025 Expert Report of Pamela J. Mahoney, Ph.D., *Literature Review of the*

Epidemiologic Evidence: Health Effects of Arsenic, Dioxins and Furans ("Mahoney Report) at 1, 31, attached as **Exhibit 14**.[16]

The health effects of exposure to dioxins and arsenic are universally recognized within the scientific and regulatory communities. The International Agency for Research on Cancer has classified inorganic arsenic and 2,3,7,8-tetrachlorodibenzo-p-dioxin ("TCDD")—the most toxic dioxin congener—as Group 1 carcinogens, carcinogenic to humans. 100C Int'l Agency for Research on Cancer*, Arsenic, Metals, Fibres, and Dusts: A Review of Human Carcinogens,* 85 (2012); 69 Int'l Agency for Research on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Polychlorinated Dibenzo-para-dioxins and Polychlorinated Dibenzofurans,* 343 (1997). The United States Environmental Protection Agency ("EPA") has classified arsenic as a "Group A—Human Carcinogen" since 1988. EPA, *Integrated Risk Information System Toxicological Review of Inorganic Arsenic*, 2 (2025). The National Toxicology Program ("NTP") likewise lists both arsenic and TCDD as "known human carcinogens." National Toxicology Program, *Report on Carcinogens: 2,3,7,8-Tetrachlorodibenzo-p-dioxin* at 1 (15th ed. 2021).

A. Dioxins are Deadly Toxins.

Dioxins are persistent, fat-soluble compounds that accumulate in human tissue and interfere with gene expression, induce oxidative stress and inflammation, and disrupt endocrine and developmental pathways—mechanistic hallmarks that support carcinogenicity and multi-system toxicity. *See* March 31, 2025 Expert Report of Jill E. Ryer-Powder, Ph.D., MNSP, DABT, *Expert Report on Toxicity of Arsenic and Dioxins Former Coconut Grove Incinerator* ("Ryer-

[16] Defendants did not produce an epidemiologist expert in this case. Therefore Dr. Mahoney's opinions and the literature that she relied upon are unchallenged.

Powder Report") at 16, attached as **Exhibit 15**. The adverse-outcome pathway for dioxins is well-known, linking exposure and altered gene transcription to downstream diseases including cancers and negative effects on the thyroid, hepatic, cardiovascular, reproductive, and developmental systems. Exhibit 15 at 16-17.

The epidemiological evidence on dioxin carcinogenicity is equally strong. For example, a meta-analysis of seventeen (17) cohort studies indicated a statistically significant association with prostate cancer. Mahoney Report, Exhibit 14 at 22–23. Similarly, a systematic review indicated a significant positive association between dioxin exposure and breast cancer. *Id*. at 23. Moreover, studies of workers exposed to dioxins have shown consistent excesses of soft tissue sarcoma, non-Hodgkin's lymphoma, multiple myeloma, and myeloid leukemia. *Id*. at 16.

The EPA, WHO and ATSDR acknowledge associations between dioxin exposure and endocrine, reproductive, and developmental effects. Exhibit 14 at 26. For example, higher dioxin levels are associated with reduced fecundability and increased infertility risk in both the exposed mothers and their daughters who were exposed in utero. *Id*. at 26–27.

Studies on dioxins have also shown associations between exposure and cardiovascular disease, diabetes, and respiratory effects. *Id.* at 27–31. For example, the 2024 Toxicologic Profile found a number of studies with associations between CDD exposure and an increased risk of diabetes. Further, a systematic review of 35 studies suggests that early-life exposure to dioxin and/or PCBs adversely influences respiratory system development. *Id*. at 26.

B. Arsenic is a Deadly Toxin.

Arsenic affects virtually all cellular processes and organ systems. Human and experimental evidence shows associations with cancers (lung, bladder, skin, with supportive evidence for kidney, liver, and prostate) and with cardiovascular disease, diabetes, respiratory disease,

neurotoxicity, and adverse reproductive/developmental outcomes. Ryer-Powder Report, Exhibit 15 at 18–19.[17]

The causal association between arsenic and cancer is supported by decades of epidemiologic research across multiple continents. Studies in Chile, for example, have demonstrated extraordinary excesses in bladder and lung cancer mortality attributable to arsenic-contaminated drinking water. Mahoney Report, Exhibit 14 at 9. Similar findings are reported for arsenic exposure and lung cancer, with meta-analyses confirming elevated lung cancer risks even at relatively low exposures. *Id*. at 10–12. Epidemiology also supports associations between arsenic and kidney and prostate cancers, with studies showing odds ratios as high as 11 for renal, pelvis, and ureter cancers in high-exposure groups. *Id*. at 11–12. Similarly, other studies report increased prostate cancer incidence even at relatively low mean arsenic levels. *Id*. at 12–13.

Like dioxins, arsenic exposure is linked to cardiovascular disease (including ischemic heart disease and atherosclerosis), type 2 diabetes, developmental effects and respiratory conditions such as asthma. *Id*. at 14–18. These findings are consistent with conclusions of ATSDR and WHO, with both authorities warning that arsenic exposure, even at relatively low levels, increases risks of cancer, cardiovascular disease, diabetes, and adverse developmental outcomes. *Id*.at 14–18. Further, arsenic exposure during early life has been linked to impaired lung function and increased susceptibility to respiratory infections, indicating that childhood exposure may have long-term consequences on respiratory health. *Id*. at 18.

III. The Delineation of the Zone of Contamination and of the Exposure Threshold for Medical Monitoring.

[17] The Defendants' experts do not directly address or attempt to refute Dr. Powder's opinions or the literature that she relied upon.

A. Dr. Rosenfeld Conservatively Delineated the Zone of Contamination Based on The Many Soil Samples Containing Dioxin and Arsenic and Confirmed That Delineation Through Air Modeling.

Plaintiffs' expert – Dr. Paul Rosenfeld – has a Ph.D. in soil chemistry and over 25 years of experience in conducting environmental investigations and risk assessments for evaluating impacts to human health and property. Rosenfeld Report, Exhibit 13 at 108. Dr. Rosenfeld defined the proposed class boundary here ("Zone of Contamination") using the same methodologies he employed in *Hinton v. City of Fort Lauderdale*, No. 07035826 2018 WL 9539414 (Fla. 17th Cir. Ct. June 4, 2018). [18] *Id*. at 7. However, here, Dr. Rosenfeld has also conducted a "fingerprint" analysis that demonstrated that the primary dioxin congeners found in the soil samples throughout the Zone of Contamination is consistent with the dominant congeners in fly ash from municipal solid waste incinerators. *Id*. at 18-19, 104.

Providing a brief summary of Dr. Rosenfeld's methodology (which has already been approved in numerous courts in the state and across the country), Dr. Rosenfeld plotted all soil samples collected with a one-mile radius of the former incinerator site. *Id*. at 10. He then excluded all soil samples taken at parks and schools (i.e., non-residential properties) as well as samples taken post-remediation because "the Proposed Class Boundary was designed to assess dioxin and arsenic contamination specifically in residential properties" and soil samples at non-residential locations are not representative of such exposure. *Id*. To determine the class area, Dr. Rosenfeld further

[18] *Hinton v. City of Fort Lauderdale*, No. 07035826 (Fla.17th Cir. Ct.) and *Adderley v. City of Fort Lauderdale*, No. 11008499 (Fla.17th Cir. Ct.) involved a strikingly similar set of facts: a municipal incinerator places in a segregated portion of Fort Lauderdale, which released harmful contaminants into the community for years. Soil contamination persisted, and plaintiffs filed suit seeking medical monitoring, bodily injury, and property damages. In this litigation, the court denied the City of Fort Lauderdale's attempt to excluded Dr. Rosenfeld's testimony. Ultimately, the plaintiffs reached a class-wide settlement for medical monitoring, bodily injury (including wrongful death) and property damage.

filtered these residential samples to include only those that exceeded Florida's Soil Cleanup Target Level for dioxin and arsenic. To determine the class boundary, Dr. Rosenfeld connected the furthest remaining contaminated sample. *Id*. at 58. This was process was done both for dioxins and for arsenic, and Dr. Rosenfeld created two proposed boundaries: one based on dioxin results (Figure ES-8), and one based on arsenic results (Figure ES-9). *Id*. at 14-15. While the arsenic boundary was larger, the final Zone of Contamination represents the overlap of these two boundaries (i.e., the Zone of Contamination includes both elevated arsenic and dioxin). Figure ES-4 at 11; *see also* (illustrating Zone of Contamination).

To confirm the Zone of Contamination (which is based solely on the soil sampling data collected in the Zone), Dr. Rosenfeld employed AERMOD – the EPA's preferred air modeling software – to "demonstrate the pathway for arsenic and dioxin contamination to travel from the Old Smokey stack onto the larger surrounding community." *Id*. at 11, 104. Not only does the air dispersion modeling suggest that the soil sampling data is accurate, but the air dispersion modeling also "suggest[s] a larger alternative class boundary may be warranted." *Id*. at 11, 104*, see also* Figure ES-6. Thereby indicating the proposed Zone of Contamination is a conservatively determined boundary. And, while conservative, there are over 2,200 residential properties with the proposed Zone of Contamination; 71% of which Dr. Rosenfeld has determined are likely contaminated at levels that will require remediation under Florida's Residential Cleanup Standard for dioxin. *Id*. at 16, 105; *see also* Table ES-2.

B. Drs. Rosenfeld and Spaeth Determined a Conservative Exposure Threshold for the Medical Monitoring Class Based on the Increased Risk of Getting Cancer From Old Smokey's Toxic Dioxin and Arsenic.

Kenneth Spaeth, M.D., M.P.H. is board certified in Occupational and Environmental Medicine, with significant experience and expertise in managing and evaluating medical

monitoring programs for people exposed to toxic substances. March 31, 2025 Expert Report of Kenneth Spaeth, MD, MPH, MOEH, *Medical Monitoring Program, Old Smokey Class Action* ("Spaeth Report") at 3-6, attached as **Exhibit 16**. Relying on Dr. Rosenfeld's exposure estimates in the Zone of Contamination, Dr. Spaeth developed "appropriate and reasonable clinical parameters as a part of a medical monitoring program to assess cancers that can result from exposure to the contaminants released by 'Old Smokey' into the Coconut Grove neighborhood and surrounding community." The medical monitoring program ("MMP") will assess for nine (9) different cancers "recognized by preeminent public health agencies and the body of epidemiological literature as being more likely as a result of exposure to dioxins and/or arsenic." *Id*. at 32. These cancers are: (1) breast cancer; (2) soft tissue sarcoma; (3) multiple myeloma/ plasmacytoma; (4) non-Hodgkin's lymphoma; (5) myeloid leukemia; (6) bladder cancer; (7) kidney cancer; (8) prostate cancer; and (9) lung cancer. *Id.* at 33.

As explained by Dr. Spaeth, "[t]hose claimants who experienced exposure to dioxins and arsenic from Old Smokey for a duration, frequency and intensity determined to have markedly elevated their risk of developing a related cancer should be included in the MMP." *Id*. at 44. To define this elevated "risk of developing a related cancer," Dr. Spaeth, referencing the EPA and ATSDR standard of elevated exposure-related cancer risk of one (1) additional cancer per million people exposed, has set the exposure threshold for the medical monitoring class as sufficient exposure to generate an additional excess lifetime cancer risk of 2 additional cancers per million people exposed. Spaeth Report, Exhibit 16 at 30.[19] As Dr. Spaeth explained, this threshold is conservative, allowing room for uncertainty in risk models. *Id*.

[19] Defendants did not produce a medical doctor expert in this case. Therefore Dr. Spaeth's opinions, including his proposed medical monitoring program, are unchallenged.

Following well-accepted EPA Risk Assessment Guidance,[20] Dr. Rosenfeld calculated a total cancer risk (i.e., including background concentrations) and an incremental cancer risk (i.e., with background concentrations removed) for each Plaintiff. *See* Rosenfeld Report, Exhibit 13 at 21-23; 95-99. The only variables in conducting Dr. Rosenfeld's risk assessment are the length of the individual's exposure (i.e., days/years spent living in the Zone of Contamination) and whether the individual was a child or adult at the time of exposure.[21] *Id*. at 95-99. All other inputs (e.g., inhalation rates, cancer slope factors, chemical concentration in the soil, among other) are standard under the EPA's Risk Assessment Guidance and calculated uniformly across the class. *Id.* at 95-97. Applying this to Plaintiffs, Dr. Rosenfeld has demonstrated in Tables ES-3, ES-4, and ES-5, that the total risk for all Plaintiffs exceeds two (2) in a million. *Id*. at 21-23; 95-99. Further, as noted by Dr. Spaeth, a high percentage of the Plaintiffs have increased cancer risks far above the two (2) threshold, with many well above ten (10) times or more. Spaeth Report, Exhibit 16 at 30.

Similarly, Dr. Powder has conducted her own screening human health risk assessment using the maximum concentrations of arsenic and dioxin detected in the proposed class boundary and has found that cancer risk within the class can be as high as 2.8E-04 (280 in 1 million). *See* Ryer-Powder Report, Exhibit 15 at 8. This far "exceeds the acceptable cancer risk threshold for residential exposure of 1E-06 (1 in 1 million)," making it "reasonable to assume that there is the potential for adverse health effects from exposure to dioxin and arsenic within the Proposed Class Boundary." *Id*.

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[20] USEPA 1989. Risk Assessment: Guidance for Superfund Volume 1 Human Health Evaluation Manual (Part A). United States Environmental Protection Agency. December 1989. Exhibit 6-14. (PDF Page 149).

[21] If an individual is exposed as a child and as an adult, these exposures are additive and a single total cancer risk is calculated, as was done with multiple Plaintiffs.

IV. The Need for Medical Monitoring and Proposed Old Smokey Medical Monitoring Program.

In Dr. Spaeth's expert evaluation, medical monitoring of health harms from Old Smokey is justified and appropriate because the governing criteria for establishing medical monitoring programs (MMPs) are satisfied. Spaeth Report, Exhibit 16 at 29.

Experts and public health agencies, including ATSDR, agree that MMPs are warranted when there has been significant exposure to hazardous substances with documented pathways, when serious health consequences may occur, when early detection provides substantial benefit, and when diseases may have delayed onset. Each of these factors is met here.

The community was exposed to dioxins and arsenic emitted from Old Smokey; exposures that Drs. Mahoney and Ryer-Powder confirm present serious risks of several cancers. Mahoney Report, Exhibit 14 at 31; Ryer-Powder Report, Exhibit 15 at 2. Cancer which will have improved outcomes with earlier detection. And, which, while not impossible, would not likely manifest before 10 years after the individual's first exposure. Spaeth Report, Exhibit 16 at 24 ("As per NIOSH, most solid tumors have a minimum latency period of four years though more commonly said to be 10 years . . .").

The proposed MMP is modest, cost-effective, and built on established medical standards, relying on questionnaires, physical examinations, laboratory testing, and, where appropriate, cancer-specific screening such as mammography or prostate-specific antigen testing. Unlike routine wellness exams, the Old Smokey MMP would focus specifically on cancers linked to Old Smokey exposures and be overseen by clinicians with expertise in environmental toxicology. It would also include mechanisms for referral, follow-up evaluation, and oversight by a qualified committee of experts and community members to ensure quality and acceptability. Spaeth Report, Exhibit 16 at 41-44.

V. The Proposed Class Representatives

The Class Representatives lived within the Zone of Contamination and were exposed to Old Smokey's toxic contamination which persist in the soil to date. Their common experiences illustrate the pervasive impact of Old Smokey's pollution on daily life in the Zone of Contamination and the common harms they have suffered from Old Smokey even decades after it was closed. The Plaintiffs' stories illustrate that Old Smokey's emissions were not occasional or isolated, but a daily and inescapable threat to life in the Zone of Contamination – a threat that has never been remediated and persists today – impacting all individuals who currently reside there or have resided there in the past.

Daisy Bailey-Copeland, who lived just blocks from the incinerator, recalled smoke and ash seeping through her windows and coating her as she walked or socialized outside. Rosenfeld Report, Exhibit 13 at 34 (citing Plaintiff's Amended Answers to City's First Interrogatories). Beverly Gibson likewise described constant exposure to visible plumes, odors, and ashfall infiltrating her home. *Id*. at 34-35. Sandra Martin, who grew up nearby, recounted soot and fumes that defined her childhood environment. Sandra Martin Declaration, Composite Exhibit 2A at 5-13. Thaddeus Scott noted that heavy emissions regularly covered his property and household surfaces. Thaddeus Scott Declaration, Composite Exhibit 2B at 14-24. Yvette Styles experienced ash deposition and persistent odors that lingered even after the facility's closure. Rosenfeld Report, Exhibit 13 at 39 (citing Plaintiff's Amended Answers to City's First Interrogatories). Bennie Cooper-Chapman remembered a neighborhood blanketed with particulates and smoke, while Capus Deloney testified to the constant intrusion of ash and smoke into both his home and outdoor spaces. Bennie Cooper-Chapman Declaration, Composite Exhibit 2C at 25-31; Capus Deloney Declaration, Exhibit 2D at 32-36.

The harm did not stop when the incinerator shut down. Melinda Matheson and her children, N.S., and Kayveon and Kentron Poitier, who all resided in the Zone of Contamination over 30 years after Old Smokey was shut down, recount living, working, or attending school in the Zone of Contamination, playing in contaminated parks, and eating fruit grown in the contaminated soil. *See generally,* Melinda Matheson Declaration; Composite Exhibit 2E at 37-40; Kentron Poitier Declaration, Exhibit 2F at 42-46; Kayveon Poitier Declaration, Exhibit 2G at 47-51; Declaration of Melinda Matheson, on behalf of N.S., Exhibit 2H at 52-55 (redacted for N.S.'s personal identifying information). While residing in the Zone of Contamination, they have been diagnosed with various conditions, including asthma and developmental disabilities, demonstrating that this contamination and its impacts span multiple generations. *See generally, id*.

Other individuals who still own or reside at properties in the Zone of Contamination, such as Mr. Deloney, Ms. Martin, Ms. Bailey-Copeland, among others, continue to come in frequent contact with contaminated soil, perpetuating their exposure. *See generally,* Exhibit 3A, 3B, and 3D; Exhibit 13 at 34. Whether it be gardening, mowing their lawn, or other general daily-life activities, they suffer continuous exposure to contaminants still persistent throughout the soil.

The plaintiffs' testimony reveals a shared and pervasive pattern of toxic exposure (and resultant harm) experienced by residents of the Zone of Contamination over multiple generations, all stemming from the same source: the City of Miami's Old Smokey incinerator and its deposition of ash laden with toxic substances, which has poisoned the community for decades, with no end in sight. *See generally*, Composite Exhibit 3; Rosenfeld Report, Exhibit 13 at 32-41.

VI. The Proposed Classes

The Plaintiffs seek class certification on behalf of prospective Plaintiffs who fall into one or more of the following classes or subclasses:

A. **Medical Monitoring Class:** All persons whose exposure to additional dioxin and arsenic above background levels due to contamination from Old Smokey has resulted in an incremental cancer risk of greater than two (2) in a million, as determined by the common risk calculation methodology set forth in pp. 95-99 of Dr. Rosenfeld's report. The medical monitoring class asserts claims against the City of Miami.

B. **Property Classes:** All persons who currently own one or more residential Subject Properties[22] located within the Zone of Contamination: [23]

    a. **Property Characterization/Testing Injunctive Subclass:** whose property requires soil characterization and/or soil testing;[24] and

    b. **Property Remedy Subclass:** whose use and enjoyment and property values are and have been damaged due to the historical and continued presence (or occupancy) of contaminants on the Subject Properties until they are properly remediated.[25]

Plaintiffs Capus Deloney and Sandra Martin are representatives for the Property Characterization/Testing Injunctive Subclass and Property Remedy Class.[26] The Property Characterization/Testing Injunctive Subclass asserts claims against the City of Miami and SCS. The Property Remedy Subclass asserts claims against the City of Miami.

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[22] The Class Subject Properties, as defined by Plaintiffs' expert Dr. Bell included 2,220 residential homes within the Class Area. Among others, the Class Subject Properties exclude commercial properties as well as multi-story apartments and condominiums. *See* March 31, 2025 Expert Report of Dr. Randall Bell, PhD, MAI, *Class Certification Expert Report,* ("Bell Report") at 17, attached as **Exhibit 17**.

[23] Defendants did not produce a property expert in this case. Therefore Dr. Bell's opinions, including his methods for conducting mass appraisal for the Subject Properties, are unchallenged.

[24] This subclass addresses Dr. Bell's definition of "Cost Effects." Examples of cost effects are property assessment, cleanup costs, and monitoring. Bell Report, Exhibit 17 at 13.

[25] This subclass addresses Dr. Bell's definition of "Use Effects" and "Risk Effects". "Use Effects" measure damages due to the historical and continued presence (or occupancy) of contaminants on the subject properties until they are cleaned up; and "Risk Effects" measure the forward-thinking perception that a potential buyer would have when determining what price one would pay for a property knowing that it has, had, or is in an area impacted by the presence of contaminants. *Id.*

[26] Should the Court grant Plaintiffs' Motion to Extend Time to Substitute [ECF No. 620] and permit substitution of the Estate of Willie Washington, then Plaintiff Darlene Hallman, as Personal Representative of the Estate of Willie Washington, will be a class representative of the Property Classes. Ms. Hallman, as Personal Representative of the Estate of Willie Washington, would *not* be a representative of the bodily injury or medical monitoring class.

C. **Bodily Injury Issues Class:** All individuals who have been diagnosed with a medical condition related to dioxin and/or arsenic exposure due to living in the Zone of Contamination. All named Plaintiffs are representatives for this class. This class asserts claims against the City of Miami.

   Plaintiffs seek certification of the Bodily Injury Issues Class only on the issues of liability and general causation that apply equally to the Medical Monitoring Class (i.e., that their toxic exposures generally can cause the medical injuries outlined by the Plaintiffs' experts, which, at this time, is uncontested). Plaintiffs do not seek certification of specific causation because that issue is too individualized for class determination.

The class representatives of each class have proven each element required for class certification under Florida Rule of Civil Procedure 1.220. In addition, hundreds of class members have provided statutory notice of their claims to the City pursuant to section 768.28(6), Florida Statutes. Such notice was given on behalf of the listed individuals as well as on behalf of the class. *See e.g.,* February 14, 2025 Letter to Mayor Francis Suarez, attached as **Exhibit 18** (example of one of many notice letters sent to the City providing notice for "this putative class action" of claims for the enclosed named individuals, "as well as other residents of the West Coconut Grove neighborhood, their families, guests, and neighbors").

All such individuals are available to be added as class representatives, should the Court find it necessary, including those individuals Plaintiffs previously sought leave to add. *See* Plaintiffs' Motion for Leave to File Third Amended Complaint, ECF No. 240.

VII. The Proposed Class Counsel.

The proposed class counsel, consisting of Louise R. Caro of Caro Law P.A., C. David Durkee and Jason Clark of The Downs Law Group, and Douglas Ruley of the University of Miami School of Law Environmental Justice Clinic, are highly experienced and well-qualified to represent the classes in this matter, bringing extensive experience in complex litigation, including mass torts, class actions, environmental toxic torts, and personal injury cases. Their qualifications

are further set forth in their Declarations submitted to the Court. *See* Attorney Declarations Demonstrating Qualifications for Class Counsel, attached as Composite **Exhibit 19**.

ARGUMENT

I. SUMMARY OF THE ARGUMENT

This case arises from the City of Miami's common course of conduct in operating the Old Smokey incinerator for over four (4) decades in the heart of the West Grove, followed by more decades of the City's failure to remediate the hazards from toxic dioxin and arsenic throughout the community, without any warning of the potential harm. These actions caused hazardous dioxins and arsenic to be release into the soils at residential homes, schools, and parks, creating community-wide contamination that persists today. Certification is proper here because the elements of Defendants' liability turn on common proof— Defendants' class-wide acts and omissions, a single originating source, fly ash deposition over a scientifically defined area, soil samples demonstrating unacceptable levels dioxin and arsenic, among others—so determining those issues will resolve central liability questions for all class members at once.

The Court should certify the Medical Monitoring, Property Classes, and Bodily Injury Issues Class because each class and subclass satisfies the requirements of Rule 1.220. The proposed classes are readily ascertainable groups of residents and property owners[27] whose claims all arise from the same nucleus of facts: the City's uniform operation and mismanagement of Old Smokey and its contamination, SCS's and the City's ongoing failure to conduct adequate soil sampling to delineate the horizontal (i.e., distance from the site) and vertical (i.e., surface level and

[27] These classes can be readily ascertained by Census data, property records, and county records (e.g., school records, tax records, among others).

underground) extent of the contamination, and their resulting ongoing failure to conduct adequate remediation.

Each proposed class demonstrates numerosity, commonality, typicality, and adequacy. In addition, each proposed class meets Rule 1.220(b)(3) because common issues related to proving liability predominate and a class representation is superior for the fair and efficient adjudication of this controversy. Further, the Medical Monitoring Class and Property subclasses meet Rule 1.220(b)(2) because the Defendants have acted on grounds generally applicable to all members of the class and final injunctive relief concerning the class is appropriate. Last, the Court should certify the common general causation issues of liability for class treatment pursuant to Rule 1.220(d)(4)(A).

The expert testimony of Drs. Mahoney, Powder, Rosenfeld, and Spaeth establishes toxic health effects of dioxin and arsenic and the need to establish a medical monitoring program for the Medical Monitoring Class because all seven elements for medical monitoring established by *Petito v. AH Robins Company, Inc.,* 750 So. 2d 103, 106 (Fla. 3d DCA 1999) are met through common proof.

Similarly, the sampling record and Dr. Rosenfeld's analysis establish—by common proof—that Old Smokey's emissions created a plume covering roughly 2,220 properties. Properties within this Zone have been impacted and face a material risk of exceeding Florida's residential soil cleanup levels, such that they properly belong in the class even though not every parcel has yet been individually sampled. All the evidence submitted by the Plaintiffs establishes common questions of liability, exposure and contamination through a common course of conduct, that these common questions predominate, and that a class action is superior to thousands of individual suits.

II. STANDARD OF REVIEW

Class action certification requires that the trial court conduct a rigorous analysis to determine that the elements of Florida Rule of Civil Procedure 1.220 have been met. *Olen Properties Corp. v. Moss*, 891 So. 2d 515, 519 (Fla. 4th DCA 2008) (*citing Baptist Hosp. of Miami, Inc. v. Demario,* 661 So. 2d 319, 321 (Fla. 3d DCA 1995)). The Plaintiffs carry the burden of proving the elements for class certification under Rule 1.220. *Sosa v. Safeway Premium Finance Co.*, 73 So. 3d 91, 106 (Fla. 2011). The requirements under Rule 1.220(a) for class action certification are that: (1) the members of the class are so numerous that a separate joinder of each member is impracticable; (2) the claim of the representative party raises questions of law or fact common to questions of law or fact raised by the claim of each member of the class; (3) the claim of the representative party is typical of the claim of each member of the class; and (4) the representative party can fairly and adequately represent the interests of each member of the class. *See* Fla. R. Civ. P. 1.220(a); *Ortiz,* 909 So.2d at 481. In addition to satisfying Rule 1.220(a), the plaintiffs must also satisfy one of the subdivisions of Rule 1.220(b). *Wyeth, Inc. v. Gottlieb*, 930 So. 2d 635, 639 (Fla. 3d DCA 2006).

Accordingly, the question this Court must decide, then, is whether all the requisites of Rule 1.220(a) (numerosity, commonality, etc.) are satisfied here, and whether the circumstances of Rule 1.220(b)(2), 1.220(b)(3), and 1.220(d)(4)(A) are present. The Court should focus on these elements and not the merits of the case, though the Court may consider evidence on the merits of the case in making its determination. *Sosa* at 106. The Court should resolve any doubts in favor of class certification. *Id*. at 105.

III. THE PLAINTIFFS HAVE STANDING.

The Plaintiffs have standing because they have alleged actual or legal injury; therefore, a case or controversy exists between them and the defendants. *Sosa*, 73 So. 2d at 116-17. Each of the class representatives was exposed to Old Smokey's toxic contamination and each is a member of the Medical Monitoring Class. Further, all allege one or more medical diagnoses generally associated with such exposure, thereby representing the Bodily Injury Issues Class. Likewise, class representatives of the Property Classes currently own property in the Zone of Contamination, making them members of the Property Characterization/Testing Injunctive Subclass and the Property Remedy Subclass. All class representatives have alleged actual injuries sufficient to demonstrate standing.

IV. THE PROPOSED MEDICAL MONITORING CLASS SHOULD BE CERTIFIED BECAUSE IT MEETS THE REQUIREMENTS OF RULE 1.220(a), AND 1.220(b) AND ARISES FROM A COMMON NUCLEUS OF OPERATIVE FACT AND COMMON ISSUES PREDOMINATE.

A. The Medical Monitoring Class Is So Numerous That Joinder is Impracticable.

Numerosity requires that the proposed class be "so numerous that joinder of all members is impracticable." Rule 1.220(a). *Miami Auto Retail, Inc. v. Baldwin*, 97 So.3d 846, 852 (Fla. 3d DCA 2012). "No specific number and no specific count are needed" to meet this test. *Sosa*, 73 So. 2d at 114. While class size is a factor in the test for impracticability of joinder, numbers alone are but one consideration. In making the determination of impracticability, courts have been guided by the following principles: when the class size is large, numbers alone will be sufficient to meet the numerosity requirement, proof of the identity of each class member is not required, and a court may rely on reasonable estimates of the class size. *Olen Props. Corp.* at 519.

Here, there can be little serious debate that joinder is impracticable. In the putative Medical Monitoring Class, empirical soil sampling data (and air dispersion modeling) confirms that many

thousands of residents who reside (or resided) throughout the Zone of Contamination have elevated cancer risks because they have been exposed to Old Smokey's dioxins and arsenic through incidental soil ingestion,[28] far exceeding the Eleventh Circuit's rule of thumb that generally less than twenty-one is inadequate, more than forty adequate." *See County of Monroe v. Priceline.com, Inc.,* 265 F.R.D. 659, 667 (S.D. Fla. 2010) (citing Newberg & Conte, Newberg on Class Actions, § 3.5 at 247 (4th ed.2002) ("[A]s few as 40 class members should raise a presumption that joinder is impracticable and the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone"); *see also Estate of Bobinger v. Deltona Corp.*, 563 So. 2d 739, 743 (Fla. 2d DCA 1990) ("classes as small as 25 have fulfilled the numerosity requirement"). Moreover, Plaintiffs' counsel has over 800 retained clients, each of whom has served the City with a statutory notice of their claim (as well as the class's claims) for medical monitoring pursuant to Fla. Stat. § 768.28(6)(a)(2). *See* Exhibit 18. In this case, as in *Sosa*, the Medical Monitoring Class "assuredly satisfies the numerosity requirement." *Id.*; *see also The Pinnacle Condominium Association, Inc. v. Haney,* 262 So. 3d 260 (Fla. 3d DCA 2019) (projected class size of 230 met numerosity requirement).

B. There Are Questions of Law or Fact Common to the Medical Monitoring Class.

The threshold of commonality is not high. *Broin v. Philip Morris Companies, Inc*., 641 So. 2d 888, 890 (Fla. 3rd DCA 1994). Plaintiff merely must establish a common claim arising from the same course of conduct and based on the same legal theory. *Id*.

A claim for medical monitoring requires a showing that the plaintiff has been exposed to (1) greater than normal background levels, (2) of a proven hazardous substance, (3) proximately caused by the defendant's tortious conduct, and that, as a result, (4) the plaintiff has a significantly

[28] *See* Exhibit 13, Section 10. Community Exposure Assessment, at 97-104.

increased risk of contracting a serious disease, (5) a monitoring procedure exists that makes the early detection of the disease possible; (6) the prescribed monitoring regime is different from that normally recommended in the absence of the exposure; and (7) the prescribed monitoring regime is reasonably necessary according to contemporary scientific principles. *Petito*, 750 So.2d at 106. Each of these *Petito* elements presents common issues of fact or law and are subject to common proof. Common questions applicable here include:

(1) Did the City's course of conduct, meaning its negligent acts and omissions as set out in the SAC, ¶ 310 (a-i) cause harmful contaminants, including arsenic and dioxin, to enter and remain in the Zone of Contamination;

(2) Are dioxin and arsenic proven hazardous substances;

(3) Was the class exposed to greater than background levels of arsenic and dioxin;

(4) Is the City liable under an accepted legal theory such as establishing a claim for medical monitoring under *Petito*, as well as negligent failure to warn;

(5) Does the class have an increased risks of injury or disease caused by the exposure to dioxin and arsenic in the Zone of Contamination; and

(6) Does the proposed monitoring program make the early detection of the disease possible; is it different from that normally recommended in the absence of the exposure; and is it reasonably necessary according to contemporary scientific principles.

The City's liability for the relief of medical monitoring presents common questions of law arising from the its common course of conduct as further described throughout this brief. Dr. Rosenfeld provides common proof that the dioxin and arsenic laden fly ash originated from the

Old Smokey incinerator and was deposited in the Zone of Contamination.[29] Also by common proof, Dr. Rosenfeld demonstrates that individuals in the Zone of Contamination were exposed to levels of dioxin and arsenic exceeding both background levels, and Florida's residential SCTL. Rosenfeld Report, Exhibit 13 at 15 ("The statistical analysis of the soil sampling at the 41 locations were compared to various cleanup standards and background concentrations."). Based on the empirical soil sampling data, Dr. Rosenfeld employed EPA-mandated statistical methods to create an estimated average concentration for the Zone of Contamination. *See* August 1, 2025 Expert Rebuttal Report of Dr. Paul Rosenfeld, *Rebuttal Report in Response to Criticisms by Defendant's Experts* ("Rosenfeld Rebuttal Report") at 7, attached as **Exhibit 20** ("My use of the 95 percent UCL is mandated in RAGS[30] because it is not possible to know the true mean concentration of arsenic and dioxin in the class area, and it provides a statistically robust, conservative concentration basis for identifying areas requiring further characterization or remediation.")

Dr. Rosenfeld used this calculated average concentration within the Zone of Contamination to "calculate cancer risks for both individuals and the broader community." "These individual cancer risks accounted for individual considerations, including duration of exposure (i.e., amount of time living within the proposed class boundary)" and, as Dr. Rosenfeld explains, "[t]his same method can easily be applied to any future class member." Rosenfeld Rebuttal Report at 5, Exhibit 20. The increased risks of cancer caused by the toxic exposure are common to all class members

[29] *See also* Rosenfeld Report, p. 67-68 references to DERM letters in which DERM attributes contamination found in soil to Old Smokey, Exhibit 13.

[30] RAGS is the 1989 USEPA **R**isk **A**ssessment **G**uidance for **S**uperfund, Volume I Human Health Evaluation Manual (Part A).

and Plaintiffs,[31] and the calculated cancer risk for each individual Plaintiff demonstrates that all have sufficient exposure to develop a risk of exposure-related cancer "well-above" the EPA's and ATSDR's acceptable risk benchmark of 1 in one million. Spaeth Report, Exhibit 16 at 30.

Likewise, the proposed Old Smokey medical monitoring program is common to all Medical Monitoring Class members, is tied to those cancers associated with the exposures class members experience here, and is consistent with the established criteria for medical monitoring programs. *See generally, Id.* "The proposed MMP, in its very nature and design, increases the likelihood for earlier identification of exposure-related cancers which, in turn, increases the potential for reducing morbidity and mortality." July 31, 2025 Expert Rebuttal Report of Dr. Kenneth Spaeth, *Response to report of defense expert Glenn Millner, PhD* ("Spaeth Rebuttal Report") at 4, attached as **Exhibit 21**.

C. The Claims of the Representative Parties Are Typical.

The class representatives' claims are typical for the Medical Monitoring Class because they possess the same legal interest and have suffered the same injury as the class members (i.e., exposure to dioxins and arsenic above background levels while residing in the Zone of Contamination which has led to a significantly increased risk of developing cancer). *Sosa*, 73 So. 3d at 114; *Miami-Dade Expressway v. Tropical*, 230 So. 2d 751,757 (Fla 3rd DCA 2018). As set forth in previous sections, the Medical Monitoring Class representatives and other class members have all been affected by the same events, actions, and omissions of the City. These representatives all live or have lived in the Zone of Contamination, and all meet or exceed the risk level determined by Dr. Spaeth for inclusion in the Medical Monitoring Class. The same methodology applied by

[31] *See* Rosenfeld Rebuttal Report, Table 3 at 20, Exhibit 20 (demonstrating that even using the most conservative methods as suggested by Defendants' expert Dr. Glenn Millner, cancer risks for all Plaintiffs still exceed the medical monitoring inclusion threshold).

Dr. Rosenfeld to calculate the Plaintiffs' risk levels can be applied to any future class member. Rosenfeld Rebuttal Report at 5, Exhibit 20. The class representatives' claims (i.e., monitoring for various cancers generally associated to exposure to dioxins and arsenic at levels seen here) are typical of the Medical Monitoring Class and will fairly and adequately represent the interests of this class.

D. The Representative Parties Will Fairly and Adequately Protect the Interests of the Medical Monitoring Class.

The Medical Monitoring Class meets the adequacy prong because class counsel has the qualifications, experience, and ability to conduct the litigation, and because the class representatives' interests are consistent with the interests of the class members. *Sosa*, 73 So.3d at 115; *Broin*, 641 So.2d at 892. Louise Caro served as lead counsel in the similar cases of *Adderley, et al. v. City of Fort Lauderdale,* Case No. 11008499, and *Hinton v. City of Fort Lauderdale*, Case No. 0730358, in addition to her extensive experience in other contamination class actions. *See* Attorney Declarations, Composite Exhibit 19. Attorneys Durkee and Clark from the Downs Law Group and Attorney Ruley from the University of Miami School of Law Environmental Justice Clinic also have extensive experience in complex litigation, including mass torts, class actions, environmental toxic torts, and personal injury cases. *See id*.

Moreover, the class representatives will fairly and adequately protect the interests of the classes. Each of these representatives has been active in the litigation since 2017 and are members of the Medical Monitoring Class. *See Terry L. Braun, P.A. v. Campbell*, 827 So. 2d 261, 268 (Fla. 5th DCA 2002) (explaining how a class representative must be part of the class and possess the same interest and suffer the same injury as class members). Notably, since 2017, no conflicts have been raised by any of the more than 800 claimants identified to date, reflecting that each class representative's interests parallel the interests of the other class members. The class representatives

have suffered the same or similar injury and seek the same relief as all class members of the Medical Monitoring Class. *See Disc. Sleep of Ocala, LLC v. City of Ocala*, 245 So. 3d 842, 853 (Fla. 5th DCA 2018) ("additional proof that the named plaintiffs adequately represent the class exists when the same relief is sought for plaintiffs and all class members").

E. Common Questions of Fact and Law Predominate for the Medical Monitoring Class.

Common questions of fact predominate when the defendant acts toward the class members in a similar or common way. *Sosa,* 73 So. 3d at 111. Predominance is established if plaintiffs demonstrate a reasonable methodology for proof of class-wide impact. *Id*; *Celebrity Cruises, Inc. v. Rankin*, 173 So. 3d 359, 362 (Fla. 3d DCA 2015). The predominance test focuses on proof of liability: if "common issues of fact and law impact more substantially the efforts of class members *to prove liability* than the individual issues that may arise, then the class claims predominate." *Sosa, 73 So. 3d*. at 112 (emphasis added). Accordingly, predominance exists when proving a class representative's case necessarily proves the cases of other class members. *Id*.

The medical monitoring claim and the Medical Monitoring Class meet these tests for predominance because the City acted in the same way toward every class member. The City's common course of conduct in its negligent operation of Old Smokey, negligent or nonexistent remediation of the toxic contamination from the incinerator, and negligent failure to warn, and its negligent and inadequate testing and remediation, were the same for every class representative and every member of the proposed Medical Monitoring class. Therefore, the proof of the City's liability is common to all class members and common questions regarding liability predominate.

Moreover, each of the seven elements of the medical monitoring claim presents common questions subject to common proof, as summarized below:

(1) Exposure to above background levels – The levels of exposure to dioxin and arsenic in the class exceed background levels and are common to all members of the exposure class (Rosenfeld Report, Exhibit 13) through common routs of exposure (August 1, 2025 Expert Rebuttal Report of Dr. Jill-Ryer Powder, *Expert Rebuttal Report* (Ryer-Powder Rebuttal Report) at 6-7, attached as **Exhibit 22** (providing a "conceptual site model" showing common various potential class-wide routes of exposure);

(2) To a known hazardous substance – Old Smokey released arsenic and dioxins in the Zone of Contamination, exposing all members of the Medical Monitoring Class (Rosenfeld Report, Exhibit 13) to chemicals well-associated with increase the risk of developing numerous types of cancer (Ryer-Powder Report, Exhibit 15; Mahoney Report, Exhibit 14);

(3) Caused by the defendants' negligence or other tortious conduct – The City's tortious conduct (e.g., spreading of contaminants throughout the Zone of Contamination and subsequent failure to adequately delineate the harm and remediate, thereby exposing class members for decades to date) is common to all members of the Medical Monitoring Class and does not vary among the class members (Rosenfeld Report, Exhibit 13);

(4) Proximate result of exposure is increased risk of a serious latent disease – The class members' increased risk of developing any of the associated serious cancers are the proximate result of exposure to dioxin and arsenic are common (Rosenfeld Report, Exhibit 13; Spaeth Report, Exhibit 16);

(5) Medical monitoring procedures exist for early detection – There is a uniform monitoring program common to the class that has procedures that will results in early detection of diseases associated with the exposures to arsenic and dioxins (Spaeth Report, Exhibit 16);

(6) The prescribed monitoring is different from regular medical monitoring for non-exposed people – The monitoring program provides for monitoring different from what the common class members would be able to otherwise generally obtain (Spaeth Report, Exhibit 16);

(7) Prescribed monitoring regime is reasonably necessary according to contemporary scientific principles – Contemporary scientific principles suggest that the exposures suffered by the class members increase risk of disease to a sufficient level to warrant medical monitoring of the class (Spaeth Report, Exhibit 16; Rosenfeld Rebuttal Report, Exhibit 20 ("EPA's Federal Register clarifies that Congress deemed any source category yielding a 'lifetime cancer risk greater than 1 in a million' as requiring continued regulation under CAA Section 112, 'conclud[ing] that risk above that level represents a hazard to public health.'" (citing USEPA 2012. Federal Register,

> Vol. 77. No. 32. United States Environmental Protection Agency. February 16, 2012. Page 9311 (PDF Page 9))).

In sum, all seven *Petito* elements have been established through the City's common course of conduct and through the common evidence submitted by Plaintiffs' experts. Importantly, no individual considerations predominate over the class claims. As Dr. Spaeth succinctly explains:

> Conducting a risk assessment can indeed include an assessment of the exposure and health parameters specific to that individual. However, it is universally understood that the particulars related to an individual within an exposed community represents clinical risk assessment for individual (i.e., specific) causation determination**. For community risk assessment and MMP consideration, such individual factors, by standard methodology, are irrelevant when characterizing the nature and extent of contamination in the community and the resultant risks.** The degree of risk, in this way, is based strictly and specifically on the nature and extent of the community exposed.

Spaeth Rebuttal Report at 6-7, Exhibit 21 (emphasis added); *Id*. at 7 ("Standard methodology as articulated in risk assessment guidance from EPA or ATSDR indicates no need for the kinds of granular details specific to each member of a contaminated community.")

The predominance of common issues in claims for medical monitoring arising from toxic exposures has led to the certification of medical monitoring classes in many similar cases. *E.g., Burdick v. Tongoa, Inc.*, 179 A.D. 3d 153, 159 (N.Y. App. 2019) (common issues predominated in medical monitoring claim); *Donovan v. Philip Morris USA, Inc*., 268 F.R.D. 1, 28-29 (D. Mass. 2010) ("Because all seven elements of the medical monitoring cause of action may be proven on a class-wide basis … all of these issues are common among class members."); *Meyer v. Fluor Corp*., 220 S.W. 3d 712, 719 (Mo. 2007) ("It is the common fact of exposure to a set of toxins from a single source that the common and overriding issue in Plaintiff's case."); *Elsea v. U.S. Engineering Co*., 463 S.W. 3d 409, 422 (Mo. App. W.D. 2015((same); *Perrine v. E.I. Du Pont De Nemours & Co*., 694 S.E. 2d 815, 859-60 (W. Va. 2010); *Foust v. SEPTA*, 756 A. 2d 112 (Pa. Cmwlth. 2000); *O'Connor v. Boeing North American, Inc.*184 F.R.D.331 (C.D. Cal. 1998); *Cook*

v. Rockwell International Corp., 151 F.R.D. 378 (D. Col 1993); *Ysalva v. Hughes Aircraft Co*., 845 F. Supp. 705, 713 (D. Ariz. 1993).

The same ruling should apply to the proposed medical monitoring claim in this case, and the Court should find that common issues predominate for the Medical Monitoring Class.

F. A Class Action Is Superior for the Medical Monitoring Class.

The Medical Monitoring Class satisfies Rule 1.220(b)(3)'s superiority requirement because a class action is the most manageable and efficient way to resolve the claims of each class member. *Sosa*, 73 So. 2d at 116. The medical monitoring claims are not so large as to justify and make practical each person file a separate action, and the difficulty and expense of marshalling expert testimony would overwhelm individual plaintiffs, so a class action is the most economically feasible remedy. Equally important, in light of the large number of class members who base their claims on the City's common course of conduct, a class action is the most manageable, just, and efficient use of judicial resources in resolving these claims. *Id*.

G. The Court Should Certify the Medical Monitoring Class for the Injunctive Relief of Medical Monitoring Under Rule 1.220(b)(2).

Plaintiffs seek a permanent injunction that establishes a Court-supervised medical monitoring program funded by the City pursuant to *Petito v. A.H. Robins,* 750 So.2d 103 (Fla. 3d DCA 1999). As explained in *Petito*, "it [is] entirely proper for a court of equity to create and supervise a fund for the purpose of monitoring the condition of plaintiffs when it has been shown that such monitoring is reasonably necessary." 750 So.2d at 105. Further, under Rule 1.220(b)(2), an injunctive class is proper where "the party opposing the class has acted or refused to act on grounds generally applicable to all the members of the class." This requires a determination of whether the defendants have acted in a consistent or common manner towards members of the class. *Freedom Life Ins. Co. v. Wallant*, 891 So.2d 1109, 1112 (Fla. 4th DCA 2004).

The Medical Monitoring Class easily meets these tests for certification of an injunctive relief class. As argued in Section IV.B. and IV.E., the testimony of Plaintiffs and Plaintiffs' experts satisfy all seven of the *Petito* elements and medical monitoring is warranted. Further, this testimony demonstrates that medical monitoring should be available to the entire class, due to the City's common course of conduct in blanketing residential properties throughout the surrounding community with contaminants, including dioxin and arsenic, and allowing that contamination to remain in the soils of residential properties for decades so as to prolong the class members' exposures.

There can be no doubt that the City's actions impacted the entire Class. Countless examples over the past decades demonstrate how the City has "acted or refused to act on grounds generally applicable to all the members of the class." These include, but are not limited to: (1) the City's uniform operation of Old Smokey; (2) the City's subsequent failure to properly remediate the Old Smokey site after closing operations in 1970 as well as after razing the stack in 1974; (3) the City's failure to properly remediate the site prior to construction of the Fire Training Center in 1979; (4) the City's failure to properly remediate the same after testing conducted at the site in 2011 revealed high levels of contamination from the Old Smokey incinerator; (5) the City's failure to delineate the vertical and horizontal extent of the contamination into the surrounding neighborhood and private properties from the Old Smokey Site after the testing in 2011 at the Fire Training Facility; (6) the City's ongoing failure once again to delineate contamination in the surrounding neighborhood after testing in 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2023, and 2024 all found contamination from the incinerator in the neighborhood. [32] (SAC at ¶ 310, 58.; Sullivan

[32] The City has also failed to remediate contamination at specific properties since directed by DERM beginning in 2014.

Rebuttal Report at 8, Exhibit 9); and (7) the City's failure to warn residents of the contamination detected or the potential harms from exposure to these contaminants. These actions and inactions created prolonged community-wide exposure to greater than background levels of dioxin and arsenic, and the relief sought—implementation of a court-supervised medical monitoring program—applies equally to all class members exposed within the Zone of Contamination.

This case is similar to the many prior cases in which courts have certified injunctive relief classes for medical monitoring programs based on comparable expert evidence. *Sullivan v. Saint-Gobain Performance Plastics Corp*., 2019 WL 8272995, at *13 -15 (D. Vt. 2019); *Donovan v. Philip Morris USA, Inc*., 2012 WL 957633, 28-29 (D. Mass. 2010); *Arch v. Am. Tobacco Co., Inc*., 175 F.R.D. 469 (E.D. PA 1997); *Gibbs v. E.I DuPont de Nemours & Co*., 876 F. Supp. 475 (W.D.N.Y. 1995); *Ysalva*, 845 F. Supp. 705. Accordingly, Plaintiffs have met the tests for certifying the Medical Monitoring Class under Rule 1.220(b)(2) and the Court should certify Plaintiffs' Medical Monitoring Class.

V. THE PROPOSED PROPERTY SUBCLASSES SHOULD BE CERTIFIED BECAUSE THESE CLAIMS MEET THE REQUIREMENTS OF RULE 1.220(a), AND 1.220(b) AND ARISE FROM A COMMON NUCLEUS OF OPERATIVE FACT AND COMMON ISSUES PREDOMINATE.

A. The Property Subclasses Are So Numerous That Joinder is Impracticable.

Both Property Classes satisfy the numerosity requirement under Rule 1.220(a), which requires that the proposed class be "so numerous that joinder of all members is impracticable." Rule 1.220(a). *Miami Auto Retail, Inc*, 97 So.3d at 852.

The Property Characterization/Testing subclass includes 2,220 single-family residential properties within the Zone of Contamination. Bell Report at 10, Exhibit 17. In light of the significant number of soil samples exceeding the Florida Residential SCTL for dioxins and arsenic within the Zone, coupled with the City's failure to characterize the contamination within this Zone,

it is necessary that thousands of properties within the Zone undergo soil characterization/testing to adequately delineate the horizontal and vertical extent of the contamination. Rosenfeld Report at 105, Exhibit 13 ("These incremental lifetime cancer risks still exceed the EPA's target risk range of 1 in a million, warranting further attention, investigation and remediation."); Rosenfeld Rebuttal Report at 69-70, Exhibit 20 ("By implementing these well-established regulatory tools, I ensure that screening levels serve their intended purpose, which is to flag areas for further analysis or remediation based on scientifically defensible thresholds."). Therefore, the Property Characterization/Testing Subclass surely satisfies the numerosity requirement.

The Property Remedy Subclass similarly satisfies the numerosity requirement. Based on the soil sampling data collected to date, it is expected that "between approximately 488 and 1,576 properties could require remediation, depending on the cleanup level used." Rosenfeld Report at 69-70, Exhibit 13. Therefore, even under the strictest of regulatory standards, over hundreds of owners' use and enjoyment of their home has been damages (and property values have diminished) due to the historical and continued presence (or occupancy) of contaminants on their property. Assuredly, where hundreds of property owners will assert common claims, joinder is impractical.

B. There Are Common Questions of Law or Fact to the Property Classes, as Well as to Each Subclass.

The elements of the Plaintiffs' claims for both Property Subclasses are well-established under Florida law. First, Section 376.313(3) creates a statutory strict liability cause of action allowing private parties to recover damages for pollution of their properties without proof of causation. *Aramark Uniform & Career Apparel, Inc. v. Easton*, 894 So. 2d 20, 22 (Fla. 2004). Further, Section 376.305(1) requires that the polluter "immediately undertake to contain, remove, and abate the discharge to the satisfaction of the department." Second, when a government entity creates a known dangerous condition that is not obvious to those who might be harmed, it has an

operational-level duty to warn or protect the public. *City of St. Petersburg v. Collom*, 419 So. 2d 1082, 1086 (Fla. 1982). Third, government action that substantially interferes with property owners' use and enjoyment of their property or diminishes property value constitutes an inverse condemnation requiring compensation, and the property owner does "not have to show that all beneficial use or all value was destroyed". *City of Ft. Lauderdale v. Hinton*, 276 So. 3d 319, 327 (Fla. 4th DCA 2019); *see also Palermo v. Brevard County* 2021 WL 3015259, *3 (M.D. Fla. May 24, 2021 (*citing Hinton*). Defendants also have a common law duty to exercise reasonable care as to foreseeable risks—here, duties to not release toxic pollutants and to remediate hazardous contamination. *McCain v. Florida Power Corp.*, 593 So.2d 500, 500–02 (Fla. 1992). When the negligent party is a professional, such as SCS, the law imposes a duty to perform services in accordance with the standard of care used by similar professionals in the community under similar circumstances. *Moransais v. Heathman*, 744 So. 2d 973, 975–76 (Fla. 1999).

Commonality is satisfied for the Property subclasses when "the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class," Fla. R. Civ. P. 1.220(a)(2), and the threshold is "not high." *Sosa,* 73 So. 3d at 107. "The primary concern in the consideration of commonality is whether the representative's claim arises from the same practice or course of conduct that gave rise to the remaining claims and whether the claims are based on the same legal theory." *Id.*

The claims of property owners for both Property Subclasses here arise from the same course of conduct—the City's decades-long operation of Old Smokey, which generated and dispersed toxic ash throughout the Zone of Contamination, and the City's subsequent failure to adequately address contaminated soils. The resulting contamination of residential properties raises questions of fact and law common to all members of the Property Classes.

These common questions include:

(1) Did the City's operation of the incinerator release harmful contaminants, including dioxin and arsenic, onto residential properties in the Zone of Contamination;

(2) Are contaminants still present on properties in the Zone of Contamination at levels exceeding Florida's residential SCTL for those contaminants;

(3) Is the City liable under an accepted legal theory such as negligent failure to warn, strict liability, and inverse condemnation;

(4) Was the City's course of conduct common to the property owners within the class;

Each of these questions present common issues that can be answered with common proof. Analytical sampling results, deposition modeling, and fingerprint analyses of the soil sampling by Dr. Rosenfeld show dioxin contamination throughout the Zone consistent with pollution from Old Smokey. Rosenfeld Report at 106-107, Exhibit 13. Dr. Rosenfeld's findings establish a shared factual basis: residential properties within the Zone of Contamination are contaminated with hazardous substances originating from the same source—Old Smokey. All property claims arise from the same contamination source. Further, all property claims arise from the ongoing contamination of these properties, which is a direct result of the City's repeated failures across decades to characterize/test these properties and conduct adequate remediation to remove the contaminants. These facts alone satisfy the commonality requirement under Rule 1.220(a)(2) for the Property Classes. That being said, additional common questions of law and fact are raised by each individual property subclass.

Starting with the Soil Characterization/Remediation Subclass, additional common questions of law and fact raised are:

(1) Does the soil data collected to date suggest additional soil characterization and soil testing is need in the Zone of Contamination;

(2) Has the City (and SCS) adequately characterized the soil in the Zone of Contamination;

(3) Is SCS liable under an accepted legal theory, such as professional negligence;

(4) Did SCS's failure to uncover contaminants during its regional assessment cause contaminants to remain on properties in the Zone for additional time;

As set forth in detail in Sections III.A. and III.B. of this brief, testimony from Dr. Rosenfeld establishes the need for additional soil characterization/testing due to the large number of properties expected to exceed regulatory clean up levels. *See generally*, Rosenfeld Report, Exhibit 13. This in large part due to the inadequate testing done to date by SCS. According to SCS itself, the goal of the 2013 Regional Assessment was "to assess potential impacts to soil (within a one-mile radius of the former incinerator site) resulting from atmospheric deposition during historic operation of the incinerator." Regional Assessment at 1, Exhibit 11. There:

> SCS had a duty to the City to conduct their regional assessment according to reasonable and customary standards of practice for environmental professionals to confirm or refute the occurrence of soil impacts and potential threats to human health in the Subject Area. If SCS was deficient in their duty, this may have caused residential properties within the Subject Area ("The Class") to remain contaminated with, and residents exposed to, toxins from Old Smokey, including arsenic and dioxins.

March 31, 2025 Expert Report of Timothy Mayotte, PhD, PE, *Preliminary Report* ("Mayotte SCS Report") at 1, attached as **Exhibit 23**.[33] SCS's failure to satisfy its own listed goal outlined in its regional assessment, thereby causing properties to remain contaminated throughout the zone, presents a common question of fact and law requiring common proof.

[33] Neither Defendant has proffered any expert testimony rebutting Dr. Mayotte's testimony.

Turning to the Property Remedy Subclass, additional common questions of law and fact raised are:

(1) Do the levels of contamination on and around a property in the Zone constitute a compensable partial taking due to loss of use and enjoyment;

(2) Do the levels of contamination on and around a property in the Zone diminish the value of the property;

(3) Do the presence of contaminants on and around the property create a negative stigma attached to the properties, diminishing their property values.

(4) Does a mass appraisal method exist to determine common damages values for the class.

The City's liability presents common questions of law arising from the City's common course of conduct. Dr. Rosenfeld provides common proof that the soils throughout the Zone of Contamination exceed both background levels, and Florida's residential SCTL. Rosenfeld Report, Exhibit 13 at 15. Relying on Dr. Rosenfeld's proposed Zone of Contamination, Dr. Bell "quantif[ies] damages to the proposed class of residential properties in the areas of Miami and Coral Gables, Florida ("the Class") impacted by the presence of toxic ash, including arsenic and/or dioxins." Bell Report at 6, Exhibit 17.

More specifically, Dr. Bell demonstrates that all affected properties suffered "cost," "use," and/or "risk" effects due to the presence of contamination on the property or throughout the neighboring community. [34] The first value for damages ("cost effects") represents the actual costs the property owner will incur remediating and cleaning up the property.[35] *Id*. at 13. The second

[34] *See generally*, Bell Report, Exhibit 17.

[35] Cost effects (i.e., the estimated costs of soil sampling and/or soil remediation are to be calculated by Plaintiffs' expert Dr. Tim Mayotte. *See* March 31, 2025 Expert Report of Timothy Mayotte,

value ("use effect") represents the damage "due to the historical and continued presence (or occupancy) of contaminants on the subject properties until they are cleaned up." *Id*. This was calculated using a "land rental rate," which reflects the market value for the right to use a property (i.e., the value for the storage of the City's contaminants on a property). *Id*. at 48-49.[36] Finally, the third value ("risk effects") "measure the forward-thinking perception that a potential buyer would have when determining what price one would pay for a property knowing that it has, had, or is in an area impacted by the presence of contaminants." *Id*. Put simply: the stigma effect.

The evaluation of each of these three elements of real estate damages "can be conducted for each property in the proposed class and added together to arrive at a class-wide damage." *Id*. at 73.[37] And, the same methodology Dr. Bell utilizes here has been approved by numerous courts around the country. *See* July 24, 2025 Expert Rebuttal Report of Dr. Randall Bell, *Sworn Declaration of Randall Bell, PhD, MAI* ("Bell Rebuttal Report") at 5, attached as **Exhibit 25** (listing similar cases where court approved his appraisal methodologies). Dr. Bell's proposed damages formula is common to the entire class and the damages are tied to the damages each individual property suffers.

Based on the foregoing, commonality is met for the Property Characterization/Testing Class and the Property Remedy Class under Rule 1.220.

PhD, PE, *Preliminary Class Remediation Plan* (Mayotte Remediation Report), attached as **Exhibit 24**. At this time, neither Defendant has proffered expert testimony rebutting Dr. Mayotte's remediation plan.

[36] Using the land rental rate "is conservative because the proposed class properties are mostly improved, and improved properties typically have a higher market value than land." *Id.* at 14.

[37] Again, neither Defendant has produced any expert rebutting Dr. Bell's mass appraisal methodology.

C. The Claims of the Representative Parties Are Typical, Satisfying Fla. R. Civ. P. 1.220(a)(3)

Again, typicality ensures that the representatives, in advancing their own self-interest, will advance the interest of the class. *Sosa*, 73 So.3d at 114-15. As set forth in previous sections above, the representative parties have been affected by the same events, actions, and omissions that have affected the other class members. *Morgan v. Coats*, 33 So.3d 59, 64-65 (Fla. 2d DCA 2010). While the value of damages may differ among class members, the class representatives' claims arise out of the same facts, assert the same legal theories, and employ the same methods for determining damages that will be applied class-wide.

All class representatives of the Property Characterization/Testing Class own property in the Zone of Contamination and their claims are typical of every other class member: property owners within the Zone seek characterization of the soil on their property due to the City's and SCS's failure to adequately do so. Similarly, the representative of the Property Remedy Class asserts claims typical of the class. Representatives currently own property in the Zone of Contamination, and assert real property damage claims, as demonstrated for the class representatives in Dr. Bell's Report. Exhibit 17 at 73. Dr. Bell will apply the same methodology to determine all class members' damages.

D. The Representative Parties Will Fairly and Adequately Protect the Interests of the Class, Satisfying Fla. R. Civ. P. 1.220(a)(4)

As with the Medical Monitoring Class, the Property Subclasses satisfy the adequacy requirement because class counsel has the qualifications and experience necessary to vigorously prosecute this litigation, and because the class representatives' interests are aligned with those of all property owners in the Class Area. *Sosa*, 73 So.3d at 115. Counsel—including Louise Caro, who has served as lead in similar contamination class actions, along with attorneys from the Downs

Law Group and the University of Miami School of Law Environmental Justice Clinic—have extensive experience in mass tort, class action, and environmental contamination litigation. Attorney Declarations, Exhibit 16.

The class representatives themselves, owners of contaminated properties, share the same injuries and seek the same relief as other members of the Property Class: soil characterization/testing, and compensation for loss of use and diminished value. *See Terry L. Braun, P.A. v. Campbell*, 827 So.2d 261, 268 (Fla. 5th DCA 2002). As noted in the adequacy section prior, since this litigation began in 2017, no conflicts have arisen among the plaintiffs, underscoring that the named representatives' interests parallel those of the entire class. *Disc. Sleep of Ocala, LLC v. City of Ocala*, 245 So.3d 842, 853 (Fla. 5th DCA 2018).

E. Common Questions of Law or Fact Predominate in the Property Classes.

Predominance exists for the Property Classes because all the class members' claims arise from the City's common course of conduct spreading toxic ash throughout the community, thereby contaminating hundreds of properties with dioxin and arsenic. The City's and SCS's failure to adequately characterize the soil contamination, and resulting failure to remediate, has resulted in years of additional ongoing contamination at properties within the Zone of Contamination. Common questions predominate because the City and SCS acted (through their actions and omissions) toward the class members in a similar or common way, and all class members will prove their claims with the same factual and expert evidence. *Sosa*, 73 So.2d at 111-12.

Whether the City is strictly liable under Fla. Stat. § 376.313 for its toxic contamination of the properties in the Zone of Contamination is a common question with common proof. Moreover, an inverse condemnation can occur from the operation of a trash incinerator that contaminates private property with toxic materials so as to substantially interfere with the beneficial use of

enjoyment of the property or diminish property value. *City of Ft. Lauderdale v. Hinton,* 276 So.3d 319, 327 (Fla. 4th DCA 2019). Whether the City's operation of Old Smokey has substantially interfered with the use and enjoyment of the properties within the zone of contamination or diminished property values are common questions with common proof among all class members. *See Florida Dept. of Agriculture v. Lopez-Brignoni*, 114 So.3d 1138, 1140 (Fla. 3rd DCA 2012) (affirming class certification for inverse condemnation claims).

Individual considerations do not predominate over class considerations. This is especially true where Dr. Bell has explained that his court-approved "[m]ass appraisal methodologies inherently account for individual property characteristics. For example, multiple regression analysis utilizes independent variables such as sale date (time), lot size, and geographic location to produce individual values and rents for each property in a class." Bell Rebuttal Report at 3, Exhibit 25. The combination of use, cost, and risk effects allows him to "uniformly and consistently" calculate various damage categories on a class-wide bases. *Id*.

The common issues that will prove liability, supplemented by the common method for determining causation and damages, make this case similar to multiple cases of toxic contamination where common issues predominated and property classes were certified. *See, e.g.*, *Mejdrech v. Met-Coil Systems Corp*., 319 F.3d 910, 911 (7th Cir. 2003) (certifying the "core questions, i.e., whether and to what extent [the defendant] caused contamination of the area in question."); *Sterling v. Velsicol Chemical Corp*., 855 F.2d 1188, 1197 (6th Cir. 1988) (in mass torts, the factual and legal issues of a defendant's liability do not differ dramatically from one plaintiff to the next); *Collins v. Olin Corp*., 248 F.R.D. 95, 104, 106 (D. Conn. 2008) (finding predominance where the defendant's course of conduct, the extent of the area contaminated, the nature of the contaminants, and the general nature of the harms caused by the contaminants were common issues

determinable on a class-wide basis); *Cook v. Rockwell International Corp*., 151 F.R.D. 378, 388 (D. Colo. 1993) (listing common liability questions in case of radiation contamination); *Boggs v. Divested Atomic Corp*., 141 F.R.D. 58, 67 (S.D. Ohio 1991) (common questions concerning the history of operations at the plant, the nature, timing, extent, and cause of emissions, and the generalized impact of the plant's operations on real property values predominated); *Bell v. Westrock CP, LLC*, 2019 WL 1874694 (E.D. Va. 2019) (common questions of liability predominated).

Drs. Rosenfeld and Bell provide class-wide proof of soil contamination and property damages Plaintiffs have presented expert testimony, which is unchallenged, that establishes a common method for determining damages, even though common proof of damages is not required for class certification. *Sosa*, 73 So.2d at 107. The property claims in this case are a classic example of common issues of fact and law impacting more substantially the efforts of every class member to prove liability. *Sosa*, 73 So.2d at 112. Accordingly, these common issues predominate, and the Court should certify the property class under Rule 1.220(b)(3).

F. A Class Action Is Superior to Other Methods for Fairly and Adequately Adjudicating the Property Claims.

A class action is superior for adjudicating the claims of the Property Subclasses because it is the most efficient method for the Court and the plaintiffs. Rather than overwhelming the Court with over a thousand individual trials, the common issues proving liability can and should be determined in a single proceeding. Likewise, rather than overwhelming individual plaintiffs with the expense of proving their claims, liability can be determined for all class members at once. *Sosa*, 73 So.2d at 116.

G. The Court Should Certify the Injunctive Relief Class for Property Characterization.

Plaintiffs seek a permanent injunction to establish a property characterization/testing program that requires the City and SCS to fund a sampling program that provides for soil characterization/sampling for current property owners within the Zone of Contamination. A mandatory injunction compelling area-wide soil testing is warranted. After more than a decade of City resistance, testing confirming the existence and extent of contamination is the necessary predicate to any enforceable remediation order and to protecting public health

Injunctive relief is proper where that plaintiff shows "(1) irreparable harm, (2) a clear legal right; (3) an inadequate remedy at law; and (4) consideration of the public interest." *St. Lucie Cty. v. St. Lucie Vill.*, 603 So. 2d 1289, 1292 (Fla. 4th DCA 1992) (citing *Hiles v. Auto Bahn Federation Inc.,* 498 So. 2d 997 (Fla. 4th DCA 1986)).

The sampling subclass meets these elements. First, the City caused irreparable harm by polluting the Zone of Contamination with harmful levels of arsenic and dioxin on private properties. SCS caused irreparable harm by failing in its duty to perform services in accordance with the standard of care used by similar professionals in the community under similar circumstances.[38] Rosenfeld Report, Table ES-1 at 11-12, Exhibit 13. Such failure to perform its duty resulted in the failure to uncover elevated levels of dioxins and arsenic throughout the Zone of Contamination, causing over *a decade* of additional ongoing exposures. Second, Plaintiffs have a clear legal right to the safe use and enjoyment of their properties, free from unlawful contamination, embedded in residential soils. Third, no monetary remedy can substitute for

[38] For instance, despite DERM requesting that SCS take thirty (30) randomly selected samples at residential properties within one (1) mile of the former incinerator, SCS took samples at just four (4) properties. And, all four (4) properties were nearly one (1) mile away from the site.

removal of toxins embedded in residential soils[39], and class members will not be receiving monetary payments.[40] Finally, there is no possible public benefit to permitting the properties in the Zone of Contamination to remain contaminated.

The soil sampling conducted to date provides evidence that nearly 80% of the properties in the class area may require remediation when all residential properties within the Zone of Contamination have been adequately characterized/tested, which is far more than a "negligible proportion of the proposed class members properly seeking injunctive relief." Rosenfeld Report at 69, Exhibit 13; *In re Monumental Life Ins. Co.*, 365 F.3d 408, 415 (5th Cir. 2004) (citing *Bolin v. Sears Roebuck & Co.*, 231 F.3d 970 (5th Cir. 2000).

Prantil v. Arkema France S.A.., No. 4:17-CV-02960, 2022 U.S. Dist. LEXIS 89217, at *1 (S.D. Tex. May 18, 2022), provides an example where a court certified an injunctive class, ordering the defendants to characterize the class area.[41] While not litigated in Florida, "Florida's Class Action rule, Florida Rule of Civil Procedure 1.220, is based on Federal Rule of Civil Procedure 23, and [Florida Courts] may look to federal cases as persuasive authority in the interpretation of rule 1.220." *Concerned Class Members v. Sailfish Point*, 704 So.2d 200, 201 (Fla. 4th DCA 1998) (citing *Broin*, 641 So.2d at 889). In *Prantil*, "[t]he evidence in the record shows that the contamination in the class area is sufficiently persistent and harmful such that it poses a substantial

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[39] As *Prantil v. Arkema France S.A.* explained, "[c]ompensating individual property owners … would not remedy the class-wide harm. … Plaintiffs' requested relief cannot be replicated with a check." No. 4:17-CV-02960, 2022 U.S. Dist. LEXIS 89217, at *138 (S.D. Tex. May 18, 2022). Similarly, damages for diminished property values cannot restore baseline safety.

[40] This aligns with *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), because monetary relief is incidental, if not entirely absent. Any funds associated with soil sampling would not compensate Class members directly but instead would be directed to the environmental firm designated by the City or DERM to perform the testing.

[41] Notably, Defendants' expert Dr. Millner served as an expert in *Prantil* and advanced substantially the same or similar arguments.

and ongoing threat to human health. As a result, contaminants from the Arkema Incident pose a risk to all putative class members, not just those whose properties are presently contaminated." 2022 U.S. Dist. LEXIS 89217, at *138 (explaining how the alleged harm is not the immediate physical contamination of a select number of properties, but rather the exposure to contamination across the class area for all class members).

Prantil explained that a cleanup order is injunctive when "contamination presents an imminent and ongoing threat." 2022 U.S. Dist. LEXIS 89217, at *1. This is precisely the situation here. Hundreds of soil samples collected by multiple consultants document dioxin and arsenic concentrations that substantially exceed Florida's SCTLs. Those contaminants, released during the City's operation of the Old Smokey incinerator, remain within the delineated Zone of Contamination because the City and SCS failed to adequately characterize the horizontal and vertical extent of impacts across the Class Area.

Furthermore, SCS is a proper defendant for an injunctive class. Florida Rule of Civil Procedure 1.220(b)(2) authorizes certification where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." As the City's environmental consultant, SCS falls squarely within this standard. SCS was retained to assess and advise on contamination emanating from Old Smokey and the Fire Training Center. SCS Regional Assessment, Exhibit 11 at 1. It had a professional duty—grounded both in its contractual role and in the standard of care owed by engineers—to ensure that contamination was properly identified, tested, and remediated. [42] (SAC ¶ 322-341). Instead, as the record reflects, the consultant (i)

[42] *See* Mayotte SCS Report, Exhibit 23. Again, the Defendants did not produce an engineering expert in this case, therefore Dr. Mayotte's opinions are unchallenged.

collected only four residential samples in its 2013 regional assessment (despite DERM requesting 30), and the four samples taken were nearly a mile from the source,[43] (ii) failed to comply with regulatory directives from DERM to conduct a full vertical and horizontal delineation, and (iii) failed to recommend the comprehensive soil testing that regulators expressly called for.[44] As a result, dioxin contamination remained undetected at residential properties for more than a decade and remains unremediated on Class members' properties. This failure is not a discrete, historic event. It continues to injure Class members by leaving them uninformed as to whether their soils are contaminated and at what levels, thereby depriving them of the ability to protect their health, their children, and their property. The appropriate and necessary equitable remedy is precisely the characterization/testing that the consultant negligently failed to secure.

Courts have recognized that equitable relief such as testing, monitoring, and investigation is a paradigmatic form of class-wide injunctive relief because it cannot be apportioned to individual plaintiffs and is indivisible in nature. *See Engle v. Liggett Group, Inc.*, 945 So.2d 1246, 1268 (Fla. 2006) (endorsing certification of common issues where "liability determinations are common to all class members and subject to generalized proof"); *Petito v. A.H. Robins Co.*, 750 So.2d 103, 106 (Fla. 3d DCA 1999) (approving medical monitoring class where exposure to hazardous substance created common increased risk of disease).

SCS's liability is common to all Class members: it engaged in a single course of conduct that applied generally to the Class, and the injunctive relief sought—comprehensive soil characterization/testing—applies equally to every property within the Class area. That relief cannot be tailored to some but not others; the only practicable remedy is to require characterization/

[43] SCS Regional Assessment, Exhibit 11; July 8, 2012 Letter from DERM, Exhibit 12.

[44] *See* FDEP Warning Letter, Exhibit 6; *see* Enforcement Letter from DERM, Exhibit 7.

testing across the Class. This is precisely the type of "indivisible" equitable relief for which Rule 1.220(b)(2) exists.

Nor can SCS escape class-wide liability by pointing to the City. The City relied on the consultant's expertise to interpret and implement regulatory directives. By failing to fulfill its professional responsibilities, the consultant compounded the City's inaction and independently prolonged the risks to the Class. Both the City and its consultant are therefore proper defendants to injunctive relief, ensuring that the Court's order will be enforceable against the entity with the technical capacity and professional duty to effectuate it.

Accordingly, certification of the injunctive class against both the City and its consultant is warranted under Rule 1.220(b)(2).

H. The Testing Injunctive Relief Subclass Complements, But Is Distinct From, the Property Remedy Subclass.

The Property Remedy and the Characterization/Testing Injunctive Relief Classes address related but distinct harms. The Property Remedy Subclass seeks compensation for the City's wrongful appropriation of property owners' lands as a de facto waste site and, where possible, remediation of the properties themselves. *See Florida Dept. of Agriculture v. Lopez-Brignoni,* 114 So. 3d 1138, 1140 (Fla. 3rd DCA 2012) (affirming class certification for inverse condemnation claims). But monetary relief for past damages cannot substitute for the essential testing needed to identify toxins embedded in residential soils. Without comprehensive testing, contamination remains undetected and unremediated. Property damages alone cannot restore baseline safety; only injunctive relief requiring testing ensures that hazardous substances are fully identified and addressed to protect residents and their properties going forward.

Dr. Bell's report provides an objective, common approach consistent with this relief. Dr. Bell quantifies the total property damage through appraisal methodologies measuring "cost

effects," "use effects," and "risk effects." Bell Report, Exhibit 17. This sampling falls under the "cost effect", since that includes costs for property characterization and clean-up. *Id.* at 30. These costs are unique and distinct from the risk and use effects (which instead represent the value to the property owner for the loss of use and enjoyment of his or her property, and for the stigma in the community due to the current or past presence of contaminants). These use and risk effects will continue to accrue "*until [the properties] are cleaned up*." *Id*. at 13 (emphasis added).

Strict liability and inverse condemnation claims alone cannot redress the ongoing presence of arsenic and dioxins. Monetary compensation cannot identify which yards remain contaminated or remove the toxins embedded in the soil. Without injunctive relief requiring comprehensive testing, the horizontal and vertical extent of contamination will never be known, and residents will continue to live with unsafe soils. The injunctive relief subclass for testing is indispensable to complement the Property Remedy subclass. While damages provide compensation for the taking, the injunctive relief class ensures that the ongoing contamination is identified for remedial action and the properties restored to safe residential use.

VI. THE COURT ALSO SHOULD CERTIFY THE LIABILITY, MEDICAL MONITORING, AND GENERAL CAUSATION ISSUES FOR CLASS TREATMENT PURSUANT TO RULE 1.220(d)(4)(A).

Rule 1.220(d)(4)(A) provides that, when appropriate, "a claim or defense may be brought or maintained on behalf of a class concerning particular issues." The federal analog is Rule 23(c)(4)(A). In *Engle*, 945 So. 2d at 1268 (Fla. 2006), the Florida Supreme Court held that a series of decisions from multiple federal courts of appeal provided "persuasive authority" for certifying for class treatment "only limited liability issues" pursuant to Rule 1.220(d)(4)(A).

The Court should apply *Engle* to this case by certifying the many common liability issues set forth in Sections IV.B., IV.E., V.B., and V.E. for class treatment. These common issues include

the defendants' course of conduct in operating Old Smokey (in contaminating the plaintiffs' properties and bodies, and in failing to warn about or remediate its toxic contamination), all seven *Petito* elements of the medical monitoring claim, the liability elements of the claims for inverse condemnation and for strict liability, and the common need for property characterization/testing and remediation. Under Rule 1.220(d)(4)(A), the Court should isolate these common issues and proceed with class treatment of these particular issues. *Id*.; *citing Valentino v. Carter-Wallace, Inc*., 97 F. 3d 1227, 1234 (9th Cir. 1996).

Moreover, the Court should certify these common issues for class treatment even if it imports the predominance standard into the issues certification analysis. *See Engle*, 945 So. 2d at 1269, fn. 11 (noting the single federal court of appeal that has adopted this approach). Here, predominance exists because liability for "[a]irborne pollution is inherently general or class-wide." *Sullivan v. St.-Gobain Performance Plastics Corp.*, No. 5:16-cv-125, 219 WL 8272995, at *11 (D. Vt. Aug. 23, 2019). As in *Sullivan*, the Court should certify the common issues for class treatment under Rule 1.220(d)(4)(A) because the core question—whether the defendants caused the contamination—is common to all claims and "[t]his case is one in which generalized evidence will resolve the liability issues." *Id*. at *12.

Finally, the Court should certify the issue of general causation for the personal injury claims for class treatment. General causation determines whether the substance at issue can cause the diseases or other physical harms alleged by the plaintiffs, in contrast to specific causation, which determines whether each plaintiff's individualized injury was caused by that person's exposure. *E.I. Du Pont de Nemours & Co. v. Castillo*, 748 So. 2d 1108, 1116 (Fla. 3d DCA 2000). Courts often certify the issue of general causation for class treatment. *See Liggett Group v. Engle,* 853 So. 2d 434, 441 (Fla. 3rd DCA 2003) (common issues relating to the defendants' conduct and the

general health effects of smoking certified for class treatment); *Adkisson v. Jacobs Eng'g Grp., Inc.*, 342 F. Supp. 3d 791, 799 (E.D. Tenn. 2018) (holding that "general causation is suitable for class-wide adjudication" in toxic tort cases); *Simon v. Philip Morris*, 200 F.R.D. 21, 30 (E.D.N.Y. 2001). In *7-Eleven, Inc. v. Bowens*, 857 N.E.2d 382, 386-87 (Ind. Ct. App. 2006), the appellate court upheld the trial court's decision to certify general causation and general liability for class treatment to "reduce repetitious litigation and resolve the questions that can be applied to the class as whole." *Id.* at 389.

Here, a finding that the first four elements of medical monitoring identified in *Petito* are satisfied also establishes the essential elements of general causation for personal injury claims. Specifically, those elements are: (1) exposure to levels of a substance greater than normal background, (2) where the substance is a proven hazardous agent, (3) proximately caused by the defendant's tortious conduct, and (4) resulting in a significantly increased risk that the plaintiff will contract a serious disease. *Petito*, 750 So. 2d at 106. Because these determinations resolve questions common to all class members, they fall squarely within Rule 1.220(d)(4)(A) and *Engle*, which authorize certification of common issues for class treatment. Trying these common issues once, in a single proceeding, will promote efficiency and fairness by avoiding duplicative litigation and the risk of inconsistent verdicts, while conserving the Court's and the parties' resources.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court certify the proposed Medical Monitoring Class, Property Classes, and Bodily Injury Issues Class on general causation under Rule 1.220. The City's decades-long course of conduct, along with SCS's recent conduct, has resulted in community-wide contamination that presents common questions of law and fact appropriate for class treatment. Class certification is the only fair and efficient means to resolve

these claims, ensuring consistent relief for thousands of affected residents and property owners. Accordingly, the Court should grant Plaintiffs' Motion for Class Certification in its entirety.

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Respectfully submitted,

The Downs Law Group

By: */s/ Jason T. Clark*
Jason Clark, Esq.
Fla. Bar: 1031911
Email: jclark@downslawgroup.com
C. David Durkee, Esq.
Fla. Bar: 998435
Email: ddurkee@downslawgroup.com
3250 Mary Street, Suite 307
Miami, FL 33133
Tel.: (305) 444-8226
Fax: (305) 444-6773

Caro Law, P.A.

By: */s/ Louise R. Caro*
Louise R. Caro, Esq.
Fla. Bar: 633380
Email: lcaro@carolawpa.com
2665 South Bayshore Drive
Suite 220
Miami, Florida 33133
Tel.: (786) 471-0920
Fax: (786) 513-7634
By: */s/ Douglas A. Ruley*
Douglas A. Ruley
Fla. Bar: 1048894
Director, Environmental Justice Clinic
University of Miami School of Law
druley@law.miami.edu

Attorneys for Plaintiffs and the Putative Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served this 2nd day of September 2025, via the Florida Courts E-Filing Portal to all counsel of record on the attached service list.

By: */s/ Jason T. Clark*
Jason Clark, Esq.

GEORGE WYSONG, Esq.,
City Attorney
NICHOLAS BASCO, Esq.
Assistant City Attorney
ERIC J. EVES, Esq.
Assistant City Attorney
KEVIN R. JONES
Deputy City Attorney
Office of the City Attorney for the City of Miami
444 S.W. 2nd Avenue, Suite 945
Miami, FL 33130-1910
nbasco@miamigov.com
eeves@miamigov.com
krjones@miamigov.com

Counsel for Defendant, City of Miami

David M. Wells, Esq.
Jorge D. Guttman, Esq.
Frank Florio, Esq
Gunster
600 Brickell Avenue, Suite 3500
Miami, Florida 33131
dwells@gunster.com
jguttman@gunster.com
fflorio@gunster.com

Counsel for Defendant Stearns, Conrad & Schmidt Consulting Engineers, Inc. d/b/a SCS Engineers