

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

KENDRA MABRY, individually and as mother and next friend of **K.W., M.C. 1, M.C. 2, J.W. 1, and J.W. 2**, who are minors,
ANGELA ESPINOZA, individually and as mother and next friend of **A. E., R. E., N. C., A. C., and K. C.**, who are minors, and
ROBERTO CABELLO, JR., on behalf of themselves and all other similarly-situated persons, known and unknown,

Plaintiffs,

v.

CITY OF EAST CHICAGO,
ANTHONY COPELAND, individually and in his capacity as mayor of the City of East Chicago,
BP PRODUCTS NORTH AMERICA, INC.,
E I DUPONT de NEMOURS AND COMPANY,
ATLANTIC RICHFIELD COMPANY,
EAST CHICAGO HOUSING AUTHORITY, and
TIA CAULEY, individually and in her capacity as the director of the East Chicago Public Housing Authority,

Defendants.

Civil Action

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF

By their attorneys of record, the plaintiffs, **KENDRA MABRY** individually, and as mother and next friend of **K.W., M.C. 1, M.C. 2, J.W. 1, and J.W. 2**, who are minors, **ANGELA ESPINOZA**, individually, and as mother and next friend of **A. E., R. E., N. C., A. C., and K. C.**, who are minors, and **ROBERTO CABELLO, JR.**, on behalf of themselves and all other similarly-situated persons, known and unknown, (collectively the “Tenants”), complain of the defendants, **CITY OF EAST CHICAGO** (the “City”), **ANTHONY COPELAND** (“Copeland”) individually and in his capacity as mayor of the City of East Chicago, **BP PRODUCTS NORTH AMERICA INC** (“BP”), **E I DUPONT de NEMOURS AND**

COMPANY (“DuPont”), **ATLANTIC RICHFIELD COMPANY** (“ARCO”), **EAST CHICAGO HOUSING AUTHORITY** (“ECHA”), and **TIA CAULEY** (“Cauley”), individually and in her capacity as director of the East Chicago Public Housing Authority. Based upon personal knowledge, the plaintiffs allege as follows:

INTRODUCTION

1. For over 30 years, the City and ECHA maintained affordable housing for the Tenants including families with children, people with disabilities, and others on land that the City and ECHA knew or reasonably should have known was contaminated with lead, arsenic and/or other toxic substances. Much of the affordable housing that the City and ECHA maintained on contaminated land was and is located in a development commonly known as the West Calumet Housing Complex (the “Complex”). Tenants living at the Complex in the summer of 2016 were suddenly told that they must leave, and are now forced to move on an expedited schedule, allowing as little as 30 days to find new housing. The loss of the affordable housing means, for many, a transition from an affordable housing complex to using vouchers that allow rental in privately-owned homes. The latter homes are more difficult to find and voucher holders are subject to discrimination. Discrimination against voucher holders is not illegal in Indiana.

2. The Tenants, including minor children who regularly played in contaminated dirt, have been exposed to lead, arsenic and potentially other toxic substances. Adults and children have experienced elevated lead levels and, upon information and belief, have experienced elevated levels of arsenic and other toxic substances. The defendants are aware of the dangers of lead. The City’s FY 2014 – 2018 Five Year Consolidated Plan and FY 2014 Action Plan (Action Plan) includes, on Page 40, the following table acknowledging the prevalence of lead-based threats in East Chicago:

Risk of Lead-Based Paint Hazard

Risk of Lead-Based Paint Hazard	Owner-Occupied		Renter-Occupied	
	Number	%	Number	%
Total Number of Units Built Before 1980	4,165	94%	4,655	88%
Housing Units build before 1980 with children present	235	5%	1,570	30%

Table 32 – Risk of Lead-Based Paint

Data Source: 2006-2010 ACS (Total Units) 2006-2010 CHAS (Units with Children present)

Despite clearly knowing that lead contamination poses a hazard, the City, Copeland, ECHA, and Cauley (collectively, the “Governmental Defendants”) allowed and directed the Tenants to reside in the Complex on land they knew, or should have known, was contaminated with lead; and they failed to take any steps to inform the Tenants of the lead risk, conduct tests at ECHA properties, or otherwise protect the Tenants.

PARTIES, JURISDICTION AND VENUE

3. The City is an Indiana municipal corporation located in Lake County, Indiana.
4. The City employed Anthony Copeland, who is currently the mayor of East Chicago.
5. ECHA maintained, and maintains, the housing in which the Tenants lived.
6. ECHA employed Cauley, who is currently its director.
7. BP has its headquarters in London, England, but regularly transacts business in Lake County, Indiana. BP is the successor in interest to ARCO.
8. DuPont has its headquarters in Wilmington, Delaware, but regularly transacts business in Lake County, Indiana.
9. ARCO has its headquarters in LaPalma, California, but regularly transacts business in Lake County, Indiana. ARCO is now part of BP.
10. At relevant times, the defendants perpetrated the conduct described below individually and/or by and through their respective agents, over whom the defendants exerted operational control concerning the facts at issue.

11. All of the relevant acts and/or omissions set forth in this complaint took place in Lake County, Indiana.

12. The Tenants all lived in Lake County, Indiana, and specifically in the City of East Chicago, when the relevant acts and/or omissions set forth in this complaint took place.

a. Tenants Angelina Espinoza, Roberto Cabello, Jr., A. E., R. E., N. C., A. C., and K. C. lived in the Complex for at least seven years. They are Hispanic. A. E., R. E., N. C., A. C., and K. C. are minor children.

b. Tenants Kendra Mabry, K. W., M. C. 1, M. C. 2, J. W. 1, and J. W. 2 lived in the Complex for at least three years. Their race is African-American.

K. W., M. C., J. W., M. C., M. C. 2, and J. W. 2 are minor children.

13. The Complex is located in the City of East Chicago, Lake County, Indiana.

14. This is an action for violation of a federal statute, the Fair Housing Act, 42 U.S.C. §3601 *et seq.* This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question).

15. Venue is proper in the Northern District of Indiana pursuant to 28 U.S.C. §1391 because Defendants are subject to personal jurisdiction in this district.

CLASS ALLEGATIONS

16. The plaintiffs bring this action as an opt-out class action under Federal Rule of Civil Procedure (“FRCP”) 23(b)(2) and 23(b)(3) on behalf of themselves and a putative class of similarly situated individuals.

The plaintiffs maintain that, pursuant to FRCP 23, the class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class; the claims

or defenses of the representative parties are typical of the claims or defenses of the class; and the representative parties will fairly and adequately protect the interests of the class

17. This action is necessary to protect the civil rights of the plaintiffs and all others similarly situated who have been injured by the pertinent discriminatory acts or practices committed by the defendants and their agents, representatives, and servants of any type.

18. The reason for not joining all potential class members as plaintiffs is that, on information and belief, there are thousands of potential plaintiffs, making it impractical to bring them before the Court. All plaintiffs are members of a protected class, namely race, national origin, or familial status. There are many persons who are similarly situated that have been affected and the question to be determined is one of common and general interest to many persons constituting the class to which the plaintiffs belong and the group is so numerous as to make it impracticable to bring them all before the Court, for which reason the plaintiffs initiate this litigation for all persons similarly situated pursuant to FRCP 23.

19. Issues and questions of law and fact common to the members of the class predominate over questions affecting individual members and the claims of the plaintiffs are typical of the claims of the putative class.

20. The maintenance of this litigation as a class action will be superior to other methods of adjudication in promoting the convenient administration of justice.

21. The plaintiffs will fairly and adequately assert and protect the interests of the class.

SUBSTANTIVE ALLEGATIONS

22. The City lists the demographics of its population at 42.9 percent African-American and 50 percent Hispanic and says that African-American and Hispanic people

experience greater affordable housing need in East Chicago. Action Plan, P. 29. The Tenants who live, and lived, in the Complex are overwhelmingly African-American and Hispanic.

23. The Complex has 346 units according to ECHA's 2015 ECHA Plan and 5-Year Plan Update, page 4. Page 19 of the same document details a plan to demolish all of these affordable housing units, Tenant's homes, in 2016:

Development name: West Calumet

Development project number: 29-2 (AMP 3) Family

Activity type: Disposition/Demolition

Application status: Planned Application

Date application planned for submission: TBD

Number of units affected: 346

Coverage of action: Partial or Total Development (TBD)

Timeline for development activity: Projected start date of activity 1/01/16; Projected end of activity 12/31/16

24. The City, Copeland, ECHA, and Cauley planned to eliminate this affordable, majority minority (African-American and Hispanic) neighborhood during 2016, regardless of whether lead was abruptly "discovered."

25. In 2014, DuPont and ARCO entered into an agreement with the Environmental Protection Agency and Indiana Department of Environmental Management for a \$26-million clean-up of lead and arsenic contaminants in East Chicago. No notice was provided to Tenants or the public regarding the agreement or the underlying circumstances which detrimentally impacted the property, health, and lives of the Tenants.

26. The combined actions of the Defendants in this matter have harmed the Tenants by exposing them, on an on-going basis, to extremely high levels of lead, arsenic, and other contaminants.

27. Copeland's wrongful acts were a manifestation of the City's policies and are fairly those of the City because of his position as mayor.

28. The City's policies and customs, including the plan to demolish the Complex, supported the deliberate concealment and aggravation of conditions affecting the Tenants, and these policies and customs were the force behind the conduct of Copeland, ECHA, and Cauley that caused harm to the Tenants.

29. Lead is a cumulative toxin that affects many body systems and is particularly harmful to young children. Even relatively low levels of exposure can cause serious, irreversible neurological damage.

30. Arsenic is highly toxic and is a carcinogen.

31. The defendants failed to protect the Tenants, concealed the fact that lead and arsenic were present at the Complex, and planned to destroy the Complex at an economically-convenient time with disregard for the rights of the Tenants.

32. The defendants' wrongful acts constituted intentional discrimination against people based on membership in a protected class: race, national origin, and/or familial status.

33. In June or July 2016, Copeland and the City abruptly notified the Tenants of what they called the "discovery" of lead and told the Tenants that they would have to move.

Exhibit A, Correspondence.

34. The tenants have been stymied in their efforts to understand the relocation process, and Copeland, the City, ECHA, and Cauley have utterly failed to communicate clearly about the need to relocate and options available to the Tenants.

35. Options made available to the Tenants appear to revolve around vouchers. Many private landlords refuse to accept vouchers, acting out of animus based on class. This discrimination is not illegal in Indiana, Lake County, or East Chicago—leaving Tenants with no "Housing Choice," even if their vouchers bear that name.

36. Throughout their tenancy, the Tenants have been subjected to degrading and humiliating treatment by the City, Copeland, ECHA, and Cauley. This includes, but is not limited to:

- a. Excessive police patrols;
- b. Having various entrances closed, limiting ingress and egress to and from the Complex to one gate; and
- c. Upon information and belief, closure of all gates, allowing no free and unimpeded ingress and egress during “riots” by African-Americans in other parts of the United States.

I. CAUSE OF ACTION: Violation of the Fair Housing Act by Defendants City of East Chicago, Mayor Anthony Copeland, East Chicago Public Housing Authority, and ECHA Director Tia Cauley (Governmental Defendants)

37. The plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint as if fully pleaded herein.

38. The Governmental Defendants’ conduct in planning to demolish the Complex, and taking steps to empty it, has made and will make housing unavailable because of national origin, race, or color and also constitutes discrimination in terms, conditions, or privileges of sale or rental of dwellings or in the provision of services because of national origin, race, or color in violation of Section 804(a) and Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(a) and 42 U.S.C. § 3604(b).

39. The Governmental Defendants’ adoption and implementation of the Annual Plan has made and will make housing unavailable because of national origin, race, or color in violation of Section 804(a) of the Fair Housing Act, 42 U.S.C. § 3604(a).

40. The Governmental Defendants' concealment of health risks, and failure to mitigate risks, at the Complex has discriminated in the terms and conditions of housing in violation of 42 U.S.C. § 3604(a) and 42 U.S.C. § 3604(b).

41. The Governmental Defendants' unfair policing strategy and failure to provide free ingress and egress at the Complex has discriminated in the terms and conditions of housing in violation of 42 U.S.C. § 3604(a) and 42 U.S.C. § 3604(b).

42. The Governmental Defendants' conduct, through their officials, described above, constitutes a violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*

43. There are persons who have been injured by the Governmental Defendants' discriminatory actions as described above and are aggrieved persons as defined in 42 U.S.C. § 3602(i). These persons have suffered, or may have suffered, damages as a result of the defendant's discriminatory conduct.

44. The Governmental Defendants' conduct has been intentional, willful, and taken in disregard of the Tenants' rights, including African-American and Hispanic residents of the Complex and those with children.

II. CAUSE OF ACTION: Violation of the Fair Housing Act by Defendants ARCO, Du Pont, and BP (Corporate Defendants)

45. The plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint as if fully pleaded herein.

46. As set forth above, the defendants ARCO, DuPont, and BP (collectively, the "Corporate Defendants") caused harmful conditions to exist at the Complex, entered into an agreement to mitigate it, took steps that increased the danger, and failed to notify the Tenants.

47. As a result of the Corporate Defendants' actions, the Tenants must leave their homes.

48. As a result of the Corporate Defendants' actions and omission, the Tenants have experienced adverse conditions, different from those experienced by people in predominantly White neighborhoods, in their homes—namely, exposure to lead, arsenic, and other toxins.

49. The Corporate Defendants' conduct, through their agents and in concert with other defendants, described above, constitutes a violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*

50. There are persons who have been injured by the Corporate Defendants' discriminatory actions as described above and are aggrieved persons as defined in 42 U.S.C. § 3602(i). These persons have suffered, or may have suffered, damages as a result of the Corporate Defendants' discriminatory conduct.

51. The Corporate Defendants' conduct has been intentional, willful, and taken in disregard of the rights of Hispanic and African-American residents of East Chicago and families with children, particularly the Tenants in the Complex.

III. CAUSE OF ACTION: Violation of the Fair Housing Act by All Defendants Based on Disparate Impact

52. The plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint as if fully pleaded herein.

53. The defendants' actions, practices and policies, as described above, have had and continue to have a substantial adverse, disparate impact on Hispanic and African-American households, and households with children, in violation of the Fair Housing Act, 42 U.S.C. § 3604 (a) and (b). Further, the defendants' actions violate HUD's prohibition, effective March 18, 2013, on disparate impact, 24 CFR § 100.70(d)(5), on: enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make

unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

IV. CAUSE OF ACTION: Violation of the Right to Due Process of Law as Guaranteed by the Fourteenth Amendment to the United States Constitution Actionable Pursuant to 42 U.S.C. § 1983 Against the Governmental Defendants

54. The plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint as if fully pleaded herein.

55. As set forth above, the City, Copeland, ECHA, and Cauley (Governmental Defendants) have ordered the Tenants to leave their homes and planned to demolish them in 2016 without affording any due process whatsoever.

56. As set forth above, the Governmental Defendants have taken actions that infringe upon and deprive the Tenants of their property rights without meaningful and adequate notice and opportunity to be heard.

57. The Governmental Defendants, acting under color of state law and local ordinance, have deprived the Tenants of their rights secured by the due process clause of the Fourteenth Amendment, actionable under 42 U.S.C. § 1983.

V. CAUSE OF ACTION: Violation of the Civil Rights Act of 1866, 42 U.S.C. §1982 Against the Governmental Defendants

58. The plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint as if fully pleaded herein.

59. The Civil Rights Act of 1866, as amended, 42 U.S.C. § 1982, guarantees that “. . . [a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property”

60. By seeking to declare uninhabitable or demolish all the homes within the Complex and maintaining and implementing an Action Plan that contemplates destruction of the Complex, the Governmental Defendants are intentionally seeking to deprive the Tenants and other African-American and Hispanic residents of their right to inherit, purchase, lease, sell, hold, and convey real and personal property as is enjoyed by white citizens, in violation of 42 U.S.C. § 1982.

61. The Governmental Defendants have otherwise intentionally discriminated against the Tenants and other African-American and Hispanic residents of West Calumet as described above.

62. The Governmental Defendants have thus violated the plaintiffs' rights guaranteed under 42 U.S.C. § 1982.

VI. CAUSE OF ACTION: Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution Actionable Pursuant to 42 U.S.C. § 1983 Against the Governmental Defendants

63. The plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint as if fully pleaded herein.

64. The City, Copeland, ECHA, and Cauley (Governmental Defendants) have intentionally discriminated against the Tenants and other African-American and Hispanic residents of the Complex as set forth more fully above.

65. The Governmental Defendants have, under color of federal and state law and local ordinance, intentionally deprived the Tenants of their rights to equal protection under the law as guaranteed to them by the Fourteenth Amendment of the United States Constitution because of their race, ethnicity and/or national origin, actionable pursuant to 42 U.S.C. § 1983.

REQUEST FOR DECLARATORY RELIEF

66. The Tenants, on the one hand, and the defendants, on the other hand, have adverse legal interests, and there is a substantial controversy between the parties that the Court can resolve by declaring the parties' respective rights.

67. The Tenants have an interest in and a right to remain in their homes, including the right to be free of unnecessary health risks and to notice of any health risks. They also have the right to limited English proficiency services.

68. The Tenants are entitled to a declaration, *inter alia*, that the defendants cannot deprive them of their homes; that the defendants cannot implement the Annual Plan designed to deprive them of their homes; that the defendant must provide documents in Spanish and provide Spanish-language interpreters where needed.

69. The Tenants seek corresponding injunctive relief, including a Court order that the defendants are restrained from bringing any action to dispossess them of their homes.

JURY DEMAND

The plaintiffs hereby demand a trial by jury on all claims and issues that are capable of being tried by a jury.

WHEREFORE, on behalf of themselves and all other similarly situated persons, the plaintiffs pray that this Court will enter an ORDER that:

A. Declares that the actions of the defendants described herein constitute violations of the Fair Housing Act;

B. Enjoins the defendants, their officials, agents, and employees, and all other persons in active concert or participation with them, from continuing to discriminate on the basis of national origin, race, color, or familial status in violation of 42 U.S.C. §§ 3601 *et seq.*;

C. Requires such actions by the defendants as may be necessary to restore all persons aggrieved by the defendants' discriminatory housing practices to the position they would have occupied but for the defendants' discriminatory conduct;

D. Requires provision of Spanish-language documents and translators in all Community Development, City, and ECHA activities;

E. Awards monetary damages to each person aggrieved by the defendants' discriminatory housing practices including actual damages, compensatory damages, and compensation for pain and suffering and emotional distress;

F. Awards punitive damages where allowed;

G. Awards attorney's fees and costs of bringing this action; and

H. Grants such other relief as justice may require.

Respectfully submitted,

/s/Roberto Alejandro Mendoza

Roberto Alejandro Mendoza 30766-49

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(219) 200-2000

CERTIFICATE OF SERVICE

The undersigned attorney certifies that he served the attached pleading and civil cover sheet on all parties of record via the Court's CM/ECF system and filed summonses accordingly.

/s/Roberto Alejandro Mendoza

Roberto Alejandro Mendoza 30766-49

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EXHIBIT

A

Anthony Copeland
MAYOR



City of East Chicago
4527 INDIANAPOLIS BLVD.
EAST CHICAGO, INDIANA 46312
219-391-8200 • 219-391-8397 FAX

Mayor to Residents of West Calumet Housing Complex

Dear Resident:

Your health and safety are always my first priority.

When the City and the East Chicago Housing Authority (ECHA) recently were informed by the EPA that the ground within the West Calumet Housing Complex was highly contaminated with lead and arsenic, we moved immediately to protect your safety, health, and welfare.

The identification of lead and arsenic poses potential dangers, and that is why I ordered the East Chicago Health Department to offer lead testing to you and your children. Now that we know the levels of lead in the ground in West Calumet Housing Complex, we feel it is in your best interest to temporarily relocate your household to safer conditions. ECHA is asking HUD to provide vouchers for safe, sanitary housing as soon as possible. Even though this may be a great inconvenience to you, it's necessary to protect you and your children from possible harm.

The staff of ECHA, including the Section 8 staff will be assisting you in the coming days, and we will continue to provide you with information as soon as it becomes available.

We ask for your patience and cooperation in this process.

Sincerely,

Anthony Copeland
Mayor