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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

VALERIE AILEEN SILVA and )  
RICHARD SILVA, a married couple, )  
 )  
 ) Plaintiffs, )  
 )  
 ) v. )  
 )  
 ) BULLSEYE GLASS CO., an Oregon )  
 ) Corporation, )  
 )  
 ) Defendant. )  
 )

CAUSE No.:  
**COMPLAINT FOR DAMAGES**  
PERSONAL INJURY ACTION (28 U.S.C. §  
1332; 28 U.S.C. § 1391)  
**DEMAND FOR JURY TRIAL**

Plaintiffs allege:

**PARTIES, JURISDICTION, AND VENUE**

1.

Plaintiffs Valerie and Richard Silva, husband and wife, are residents of the state of Washington.

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1 2.

2 Defendant Bullseye Glass Co. is an Oregon corporation with its principal office located in  
3 Portland.

4 3.

5 There is complete diversity between the parties and jurisdiction is vested in this court  
6 pursuant to 28 U.S.C. § 1332. Each Plaintiff's damages exclusive of expenses and accruing  
7 interest exceed \$75,000. Venue is proper under 28 U.S.C. § 1391 as defendant resides in  
8 the District of Oregon and the incidents alleged herein took place in the District of Oregon.

9 **BACKGROUND FACTS**

10 4.

11 Plaintiff Valerie Silva, age 63, is employed by Fred Meyer at its Portland office facility  
12 located at 22nd and Powell streets. This office facility is located across the street from  
13 Bullseye's factory.

14 5.

15 Ms. Silva was diagnosed with stage IV (terminal) non-small cell lung cancer on  
16 September 28, 2014. The cancer is located in both lungs. The cancer was caused by airborne  
17 contamination. Ms. Silva never smoked cigarettes or used other tobacco products, nor did  
18 her husband.

19 6.

20 Since her diagnosis, Ms. Silva has received regular medical treatment for her cancer.  
21 Ms. Silva has suffered pain and suffering and loss of enjoyment of life as the result of her  
22 cancer, the cancer treatment, and the prospect of an early death. Her mother lived until she  
23 was 92 years old.

24 7.

25 Mr. and Mrs. Silva have a close and loving marriage. They are the parents of two  
26 daughters and have four grandchildren. Ms. Silva has been severely emotionally traumatized

1 by her cancer diagnosis. Her husband Richard has likewise been severely emotionally  
2 traumatized by his wife's cancer diagnosis and the devastating experience since her  
3 diagnosis, and suffers loss of consortium. They will continue to suffer emotional harm from  
4 this situation for the rest of their lives.

5 8.

6 On February 4, 2016, Ms. Silva received a notice at work that high levels of arsenic,  
7 cadmium and hexavalent chromium were obtained at a testing site located in the Fred  
8 Meyer parking lot. These contaminants had been emitted from the smokestacks at the  
9 Bullseye facility across the street.

10 9.

11 Arsenic, cadmium and hexavalent chromium are classified as class I human  
12 carcinogens by the US Department of Health and Human Services (DHHS) and the  
13 International Agency for Research on Cancer. The U.S. Environmental Protection Agency  
14 (EPA) and the State of Oregon Department of Environmental Quality (DEQ) have  
15 established standards for the allowed emissions of these contaminants. In particular, the  
16 EPA established National Emission Standards of Hazardous Air Pollutants (NESHAP) for  
17 Glass Manufacturing sources, 40 CFR Part 63, sub part SSSSSS.

18 10.

19 According to the protocols and standards set forth by the World Trade Center Claims  
20 Administrator (relying on scientific studies), airborne exposure for a period of as little as  
21 approximately four years to these contaminants causes lung and other solid cancers. Their  
22 toxicity and carcinogenicity have been well known in the United States for decades. In  
23 addition, these contaminants act as cancer tumor promoters for lung cancer cells. The  
24 suppliers of these contaminants provided Bullseye with Material Safety Data Sheets which  
25 state that these contaminants are human carcinogens and thus Bullseye was on notice that  
26 it was emitting carcinogens into the atmosphere.

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11.

Bullseye began operation as a stained glass factory at its present location in 1974. As part of the stained glass manufacturing process at its facility, large quantities of arsenic, cadmium and hexavalent chromium are used regularly. Bullseye has continuously emitted these contaminants into the air from this facility in southeast Portland for the past 40 years. In 2014, for example, Bullseye used 1,800 pounds of arsenic trioxide.

12.

Bullseye knew or should have known that it had been emitting significant and unsafe levels of these contaminants for decades. In fact, although it was aware of the dangers caused by these contaminants, Bullseye lobbied and obtained from the EPA an exemption from regulations for these contaminants so Bullseye would not have to treat or filter these contaminants prior to emission.

13.

On July 27, 2010 the EPA sent Bullseye a letter which notified Bullseye that its Portland facility was subject to 40 CFR Part 63 Subpart N, Manufacture of Glass in Periodic Furnaces, attached as Exhibit A hereto.

14.

Portland residents complained to environmental regulators about emissions from the Bullseye facility for decades. Nevertheless, Bullseye continued to emit these contaminants.

15.

DEQ detected toxic levels in Portland's air over the past decade. DEQ did not determine the source of the contamination until recently, as described below.

16.

Starting in 2012, the United States Forest Service began testing of moss in the Portland area. This testing revealed high levels of the above contaminants. Because moss

1 grows on trees and absorbs nutrients and toxins from the air and not from the soil, any  
2 contaminants detected in moss are derived solely from the air and rain.

3 17.

4 Research and testing by the Forest Service and DEQ established that the Bullseye  
5 facility is the source of this contamination of arsenic, chromium and cadmium. In October  
6 2015, DEQ tested the air in the vicinity of the Bullseye facility, and measured arsenic at 159  
7 times the state-established levels, and cadmium at 49 times the state-established levels. In  
8 February 2016, DEQ reported that unsafe levels of chromium had also been detected in the  
9 vicinity of the Bullseye facility. Attached hereto as Exhibits B and C are tables summarizing  
10 the exposure concentrations of these contaminants according to DEQ. DEQ has confirmed  
11 in public announcements that Bullseye is the source of the above carcinogenic chemicals  
12 into the air. Plaintiffs attach as Exhibit D, two maps developed by the Portland Oregonian  
13 from this governmental research which identify the scope and source of the contamination  
14 from the Bullseye facility.

15 18.

16 Plaintiffs never had knowledge or suspicion that toxic waste from the Bullseye facility  
17 had been contaminating the air adjacent to the Fred Meyer office facility until the February  
18 4, 2016 announcement at Fred Meyer. In fact, Ms. Silva went on daily walks for exercise on  
19 breaks and at lunch time in the area of the Bullseye facility.

20 19.

21 Ms. Silva's lung cancer was proximately and directly caused and its growth promoted  
22 by her exposures to the above contaminants from the Bullseye facility.

23 **FIRST CLAIM FOR RELIEF**

24 **(Strict Liability for Ultra-Hazardous Activity)**

25 20.

1 Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 19 of the  
2 Complaint as though fully set forth.

3 21.

4 Bullseye knew or should have known that the dispersal and discharge of the above  
5 contaminants into the air would create and has created actual harm to humans, including  
6 Ms. Silva.

7 22.

8 Bullseye knew or should have known that there existed, and still exists, to a scientific  
9 probability, the probability that harm to others would result from the discharge of these  
10 contaminants into the air.

11 23.

12 Bullseye's improper use and disposal of these contaminants was and is an ultra-  
13 hazardous activity.

14 24.

15 As a direct and proximate result of these negligent acts and omissions, Plaintiffs have  
16 suffered and will suffer non-economic damages of great physical, mental and nervous pain  
17 and suffering, including the cancer suffered by Ms. Silva in an amount which exceeds the  
18 jurisdictional minimum of this Court.

19 25.

20 As a direct and proximate result of these negligent acts and omissions, Plaintiffs have  
21 and will suffer economic damages in an amount in excess of the jurisdictional amount of  
22 this Court.

23 **SECOND CLAIM FOR RELIEF**

24 **(Negligence)**

25 26.

26

1 Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 19, 21  
2 and 22 of the Complaint as though fully set forth.

3 27.

4 Bullseye owed Ms. Silva a duty of care not to expose her to harm from the emissions  
5 from its facility.

6 28.

7 Bullseye was negligent in one or more of the following particulars:

- 8 i) Emitting cancer causing air pollutants into the air in a  
9 residential and commercial area within a large city in such a  
10 concentration as to be harmful to Plaintiff Valerie Silva's health;
- 11 ii) Allowing an unreasonably dangerous condition on its premises  
12 to escape and harm persons such as Plaintiff Valerie Silva;
- 13 iii) Hiding from Plaintiffs and the public the fact that it was  
14 poisoning Plaintiff Valerie Silva and others by emitting  
15 hazardous air pollutants to travel into Plaintiff Valerie Silva's  
16 environment;
- 17 iv) Failing to warn Plaintiff Valerie Silva that when Bullseye's  
18 emission of hazardous air pollutants came into contact with  
19 Plaintiff Valerie Silva, the pollutants were likely to cause  
20 Plaintiffs to suffer physical and emotional harm;
- 21 v) Failing to reduce or eliminate emitting the hazardous air  
22 pollutants identified in paragraphs 9 and 10 to levels deemed  
23 safe for humans;
- 24 vi) Exceeding emissions limits placed on it by state or federal  
25 agencies for the identified hazardous air pollutants; and  
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vii) Circumventing federal air pollutant standards in violation of 40 CFR 61.19; 40 CFR Part 63, subparts N and SSSSSS, although Bullseye knew or reasonably should have known that its actions would result in the emission of known human carcinogens at unsafe levels.

29.

As a direct and proximate result of this negligence, Plaintiffs have suffered and will suffer great physical, mental and nervous pain and suffering, including the cancer suffered by Ms. Silva.

30.

As a direct and proximate result of this negligence, Plaintiffs have and will suffer additional general and special damages in an amount to be proved at trial.

**THIRD CLAIM FOR RELIEF**

**(Negligence Per Se For Violation of ORS 468A.010 et seq.)**

31.

Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 19, 25 and 26 of the Complaint as though fully set forth.

32.

As actual operators and managers of facilities causing contamination at the Bullseye facility, Bullseye violated the provisions of ORS 468A.010 et seq., which provides that no person may discharge or emit a noxious contaminant into the air in any manner which will result in contamination, pollution or a nuisance. The statutes (or their predecessors) have been operative since before Bullseye opened its facility.

33.



1 Bullseye's violation of ORS 468A.010 et seq., and the regulations adopted by DEQ  
2 under its authority, proximately caused the Plaintiffs' harms.

3 34.

4 These air quality statutes and regulations were intended to prevent this type of injury  
5 to people, and Plaintiffs are members of the class of persons for whose protection these  
6 environmental protection statutes were adopted. Plaintiffs have suffered individual harm  
7 separate and apart from the public at large.

8 **FOURTH CLAIM FOR RELIEF**

9 **(Loss of Consortium)**

10 35.

11 Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 19, 25  
12 and 26 of the Complaint.

13 36.

14 At all material times herein Plaintiffs were married and continue to be married.

15 37.

16 As a result of the wrongful and negligent acts of Bullseye, the Plaintiffs were caused  
17 to suffer, and will continue to suffer in the future, loss of consortium, loss of society,  
18 affection, assistance, and conjugal fellowship, all to the detriment of their marital  
19 relationship.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Battery as to Plaintiff Valerie Silva Only)**

22 38.

23 Plaintiff, Valerie Silva, realleges and incorporates herein by reference paragraphs 1  
24 through 19, 24 and 28 of the Complaint.

25 39.

1 Bullseye caused non-consensual, harmful or offensive contact with Plaintiff Valerie  
2 Silva by virtue of its conduct as alleged above.

3 40.

4 Bullseye's actions directly or indirectly caused a non-consensual, harmful or offensive  
5 contact with Plaintiff Valerie Silva.

6 41.

7 Bullseye's conduct of knowingly emitting noxious contaminants in the location  
8 proximate to Plaintiff Valerie Silva's workplace and where Bullseye knew persons such as  
9 Plaintiff Valerie Silva would inhale or otherwise come into contact with said contaminants,  
10 was careless, willful, wanton and violated Plaintiff Valerie Silva's right to be free from  
11 Bullseye's misconduct, justifying an award of punitive damages.

12 42.

13 Plaintiffs reserve the right to add a request for punitive damages upon request to this  
14 Court after discovery is completed.

15 **DEMAND FOR JURY TRIAL**

16 43.

17 Plaintiffs demand a jury for trial of all of their claims.

18 **REQUEST FOR RELIEF**

19 Plaintiffs request the following relief:

- 20 1. For an award of actual and punitive damages on their claims.  
21 2. For prejudgment interest.  
22 3. For costs and attorneys' fees.  
23 4. For such other and further relief as the Court deems fair and equitable.  
24  
25  
26

1 *DATED* this 14th day of June, 2016.

2  
3 **THE SULLIVAN LAW FIRM**

4  
5 By:   
6 Kevin P. Sullivan, OSB #: 162383

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