

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

Helen Shirley, et al.,

Plaintiffs,

v.

Limetree Bay Ventures, LLC, et al.,

Defendants.

CIVIL NO. SX-21-CV-00411

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**DEFENDANTS' RESPONSE IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

COME NOW Defendants Limetree Bay Ventures, LLC, Limetree Bay Terminals, LLC and Limetree Bay Refining, LLC, (collectively, "Limetree"), by and through undersigned counsel appearing specially and subject to all jurisdictional challenges, and hereby respond to Plaintiffs' Motion for a Temporary Restraining Order to Enjoin the Limetree Defendants from Making Additional Offers to Settle with Putative Class Members ("TRO Motion"). As grounds therefore, Limetree states:

**INTRODUCTION**

At the outset, Limetree adamantly denies that it is engaging in any improper conduct. Indeed, Plaintiffs, by their own admission, are only speculating in this regard, acknowledging that "[p]erhaps Limetree's actions are above board." TRO Motion at p. 5.

Limetree's actions have been legal and above board. On or about May 12, 2021, an incident occurred at the Limetree facility in St. Croix, USVI which caused very small amounts of oil to disperse in certain areas downwind of Limetree. Declaration of Jeffrey Charles ("Charles Decl.") at ¶3, attached hereto as Exhibit A. Before any class action lawsuit was filed, Limetree began an open and transparent effort to: communicate with the community about the incident that

had occurred, work in cooperation with all government agencies, assess and remediate any damage and amicably resolve claims. *Id.*, at ¶4. This effort involved the mobilization of many employees, contractors and others. *Id.*, at ¶5. And, Plaintiffs implicitly admit that Limetree's efforts to resolve claims is perfectly legal. TRO Motion at p. 4 ("Plaintiffs' do not seek to stop Limetree from making settlement offers altogether or for forever...").

A temporary restraining order ("TRO") is, by its very nature, the result of a proceeding without due process. Accordingly, the Court can enter a TRO

...only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

V.I. R. Civ. P. 65(b)(1) (emphasis added).

Here, Plaintiffs' application fails on its face under subsection (A) because it cites to no supporting affidavit and there is no verified complaint. Moreover, there is nothing in the record that clearly shows immediate and irreparable harm. Plaintiffs argue that the irreparable harm is the erosion of trust in the class counsel. TRO Motion at p. 4. The only sworn facts before the Court are the Declarations of Nelson Rojas and Michael Bicetti filed in support of Plaintiffs' Motion for Protective Order under Rule 23. However, neither individual has indicated that Limetree's communications caused them to lose trust in class counsel. In fact, to the very contrary both declarants are obviously speaking to, working with and have trust in the putative class counsel. Finally, there is no valid reason indicated as to why Limetree should be denied its due process. In point of fact, undersigned counsel reached out on behalf of Limetree yesterday morning, *before*

the TRO Motion was filed and offered to meet and confer on the Plaintiff's Motion for Protective Order which involves the same issues. The meet and confer conference is scheduled for this Friday at 3:30 pm.

### **ARGUMENT**

**The facts of record do not evidence immediate and irreparable harm; the parties are scheduled to meet and confer tomorrow at 3:30 p.m. to try and resolve any communication issues; and Rule 23 is the proper procedural avenue by which to resolve the issues and afford due process.**

The issues raised in the instant TRO Motion are identical to the issues raised in Plaintiffs' pending Motion for Protective Order ("Rule 23 Motion"). After Limetree was served with the Rule 23 Motion and retained undersigned counsel, Limetree reached out to Plaintiffs' counsel and sought to meet and confer with respect to issues raised in the Rule 23 Motion. This was done yesterday morning, June 9, 2021, **before** Limetree knew about the TRO Motion or Plaintiffs' intent to file a TRO Motion. Limetree offered to meet and confer on Friday, June 9, 2021, in order to allow counsel time to review the law cited by Plaintiffs and confer with Limetree in preparation for discussing an amicable resolution of the issues and a path forward. At that time, and for the first time, Plaintiffs counsel advised that it was considering a TRO application. Later that day, a meet and confer was scheduled for this Friday at 3:30 p.m., yet Plaintiffs' counsel still filed the TRO Motion. The TRO Motion is inappropriate and not supported by facts or law.

The purported irreparable harm at stake is the "intangible" erosion of trust in class counsel through the allegedly "misleading settlement offers". TRO Motion at p. 4. It is not surprising that Plaintiffs initially filed a Rule 23 Motion to address this issue. Rule 23 is the

proper avenue to resolve the communication issues because these issues do not involve immediate and irreparable harm.

By Plaintiffs' own admission, settling a claim and signing a Release is not irreparable harm. As Plaintiffs acknowledge, the Release "can always be voided." *Id.* In other words, there is a cure. And, while courts have protected putative class members from communications that might erode their trust in class counsel, Limetree's communications are not of the same ilk as the communications courts have found erode trust in class counsel. *See, e.g., Erhardt v. Prudential Group, Inc.*, 629 F.2d 843 (2<sup>nd</sup> Cir. 1980) (defendant sent letters commenting on the litigation to class members, warning them of the costs of suit and urging them not to participate); *Haffer v. Temple Univ.*, 115 F.R.D. 506 (E.D. Pa. 1987) (representatives of defendant university made false and misleading statements to members of plaintiff class, inaccurately describing it and indicating that only one attorney was representing it, and engaged in written and oral communications intended to discourage them from meeting with class counsel); *Tedesco v. Mishkin*, 629 F. Supp. 1474 (S.D.N.Y. 1986) (defendant sent unauthorized, false, misleading and inherently coercive letter, written by defendant but signed by class member sympathetic to defendant, to class plaintiffs, attacking class counsel and discouraging participation in class action); *Impervious Paint Indus., Inc. v. Ashland Oil*, 508 F. Supp. 720 (W.D. Ky.) (defendant communicated with class members, advising that evidentiary proof of claim would be required for recovery and that class members might be subjected to discovery and other legal procedures, which communications appeared to have resulted in a large number of opt-outs among contacted class members), appeal dismissed, 659 F.2d 1081 (6th Cir. 1981).

Here, there is no evidence that Limetree has tried to coerce any person to opt out of a class. There is no evidence that Limetree has inaccurately described the lawsuit, or even

mentioned it. Limetree has not. Charles Decl. at ¶9. Indeed, Limetree's communications began before the lawsuits were filed. Charles Decl. at ¶4-7. There is no evidence that Limetree has discouraged people from meeting with an attorney, much less class counsel. There is no evidence that Limetree has attacked class counsel or discouraged their participation in the class.

The only sworn evidence offered by Plaintiffs are the Declarations of Nelson Rojas and Michael Bicetti. Neither individual has presented any facts akin to the type of conduct courts have found erode trust in class counsel. At best, the Declarations relate to the enforcement of the settlement agreement. However, as Plaintiffs admit, to the extent there is any harm caused by entering into a settlement agreement, it is a curable harm. In this regard, it is noteworthy that neither declarant entered into a settlement. Rather, both declarants not only refused to sign the release or accept any money, but they are both clearly speaking to class counsel.

In sum, there is no evidence before this Court, much less any evidence in the form of "an affidavit or a verified complaint" as required by Rule 65, that shows a single communication by Limetree that attacks the class action suit, attacks any putative class counsel or otherwise erodes the trust in class counsel. V.I. R. Civ. P. 65(b)(1)(A).

### **CONCLUSION**

Plaintiffs acknowledge that a TRO is designed to maintain the status quo. Limetree's communications, remediation efforts and settlement discussions began well before any class action lawsuits were filed. Plaintiffs are not seeking to maintain the status quo, but to stop the status quo and to do so without allowing Limetree its right to due process. Moreover, the status quo that Plaintiff seeks to stop involves Limetree's right to communicate with people and offer and enter settlement agreements, a right Plaintiffs acknowledge Limetree can exercise.

Further, Plaintiffs offer no evidence, much less sworn testimony, that Limetree has made any communications which could erode trust in the class counsel. And, Plaintiffs acknowledge that if any settlement agreements were proven to be improper, they can be voided. Thus, there is no evidence of an "immediate and irreparable" harm.

The proper procedure for rectifying the issues Plaintiffs raise is through Rule 23. Standing Order #4 requires the parties to meet and confer before filing a Rule 23 motion. The parties are meeting and conferring tomorrow at 3:30 p.m. In the event, the parties cannot reach an agreement, the parties should be given opportunity to brief the issues which remain unresolved. At a minimum, Limetree must be given opportunity to file a Response and gather its evidentiary support.

WHEREFORE, Limetree respectfully requests that the TRO Motion be denied and that the parties be ordered to report on Friday June 11, 2021 as to the outcome of the meet and confer and, further, if any issue is left unresolved that the parties should be ordered to agree on a briefing schedule to submit to the Court.

Respectfully submitted,

**Beckstedt & Kuczynski LLP**  
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DATED: June 10, 2021

By:           /s/ Carl A. Beckstedt III            
Carl A. Beckstedt III, Esq.  
Virgin Islands Bar No. 684

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 10, 2021, I served the foregoing document to the following parties/attorneys via the method so stated:

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Maureen Shaw, Legal Assistant  
on behalf of Robert J. Kuczynski, Esq.

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**DECLARATION OF JEFFREY CHARLES**

I, **Jeffrey Charles**, pursuant to 28 U.S.C. § 1746 and V.I.R.Civ.P. 84, being over the age of eighteen and competent to testify about the matters contained herein, hereby declare under penalty of perjury, and state as follows upon my personal knowledge, that the following is true and correct:

1. I am employed by Limetree Bay Terminals, LLC (“Limetree”) in the capacity of Vice President, Terminals.
2. I also serve as Limetree’s Incident Commander.
3. On or about May 12, 2021, an incident occurred at the Limetree facility in St. Croix, USVI which caused very small amounts of oil to disperse in certain areas downwind of Limetree.
4. Immediately thereafter, Limetree took steps to (a) communicate with the community about the incident that had occurred, (b) work in cooperation with all government agencies, (c) assess and remediate any damage, and (d) amicably resolve claims.
5. This effort involved the mobilization of many employees, contractors and others.
6. On May 13, 2021, Limetree engaged Sedgwick Claims Management Services, Inc. (“Sedgwick”), a nationally-renown company with expertise in assessing property damage, to assist Limetree with (1) determining the extent of the damages sustained by affected residents, and (2) with administering settlements.
7. By May 14, 2021, Sedgwick employees were on the ground assisting Limetree with its

**EXHIBIT**

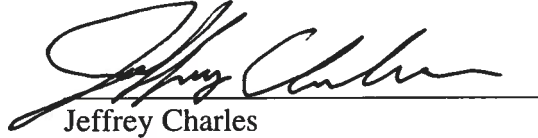
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response to the incident.

8. As of today's date, Limetree has washed over 700 cars, arranged for thousands of roofs, cisterns, exterior walls, and other structures to be washed, and has delivered over 16,000 cases of water to affected residents.
9. Limetree and its agents have not made any statements to residents regarding this action or regarding Plaintiffs' counsel.
10. On May 26, 2021, Limetree was served with the above captioned lawsuit.

Dated: June 10, 2021.

  
Jeffrey Charles