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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 RACHEL HAVENS, an individual;  
15 STEVEN HAVENS, an individual;  
16 URSALA SANCHEZ, an individual; and  
BRIAN MCCRAY, an individual;

17 Plaintiffs,

18 v.

19 VEOLIA WATER WEST OPERATING  
20 SERVICES, INC.;  
21 VEOLIA WATER NORTH AMERICA-  
WEST, LLC;  
22 MARK WIPPLER, AN INDIVIDUAL; and  
23 DOES 1-200;

24 Defendants.

) CASE NO:

) **COMPLAINT FOR DAMAGES**

- ) **1. Negligence**  
) **2. Negligence Per Se**  
) **3. Public Nuisance**  
) **4. Private Nuisance**  
) **5. Trespass**  
) **6. Strict Liability for Ultrahazardous**  
) **Activities**

) **DEMAND FOR JURY TRIAL**

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1 The Plaintiffs, RACHEL HAVENS, STEVEN HAVENS, URSALA SANCHEZ, and BRIAN  
2 MCCRAY (“Plaintiffs”), by and through their undersigned counsel, bring this action against  
3 Defendants VEOLIA WATER WEST OPERATING, SERVICES, INC., VEOLIA WATER  
4 NORTH AMERICA-WEST, LLC, MARK WIPPLER, and DOES 1-200, inclusive, and each of  
5 them (“Defendants”). Plaintiffs’ allegations are based upon personal knowledge as to Plaintiffs’  
6 own experiences and on information and belief as to all matters, such that each allegation has  
7 evidentiary support or is likely to have evidentiary support upon further investigation and  
8 discovery.

9 **I. NATURE OF THE CASE**

10 Plaintiffs allege herein that they were and continue to be exposed to noxious fumes and odors  
11 in their homes and communities for an extended period of time as a direct and proximate result of  
12 Defendants’ negligent and reckless operation of the South Bay International Water Treatment  
13 Plant (“SBIWTP”), located in San Ysidro, California.

14 1. Defendants, through their intentional actions, negligence, recklessness, and other unlawful  
15 conduct, have caused Plaintiffs to suffer harm from exposure to untreated sewage and various  
16 contaminants, including Hydrogen Sulfide, DDT, Benzidine, and Polychlorinated Biphenyls (the  
17 “Contaminants”).

18 2. The Contaminants are highly toxic, malodorous environmental pollutants most commonly  
19 associated with sewage. Thousands of individuals living, working and recreating in Imperial Beach  
20 and the surrounding communities of Coronado, National City, Chula Vista and San Ysidro  
21 (collectively the “South Bay”) have experienced and complained of exposure to the Contaminants  
22 via noxious fumes, odors and unsafe water.

23 3. These Contaminants are known to cause headaches, nausea, respiratory issues,  
24 gastrointestinal upset, tremors, fatigue and other illnesses.

25 4. Plaintiffs bring this action to recover compensatory damages associated with their exposure  
26 to noxious fumes, odors and unsafe water flowing from the SBIWTP, for punitive damages, and  
27 for injunctive relief.

28 5. The harms experienced by Plaintiffs stem from the Defendants’ discharge — and continued

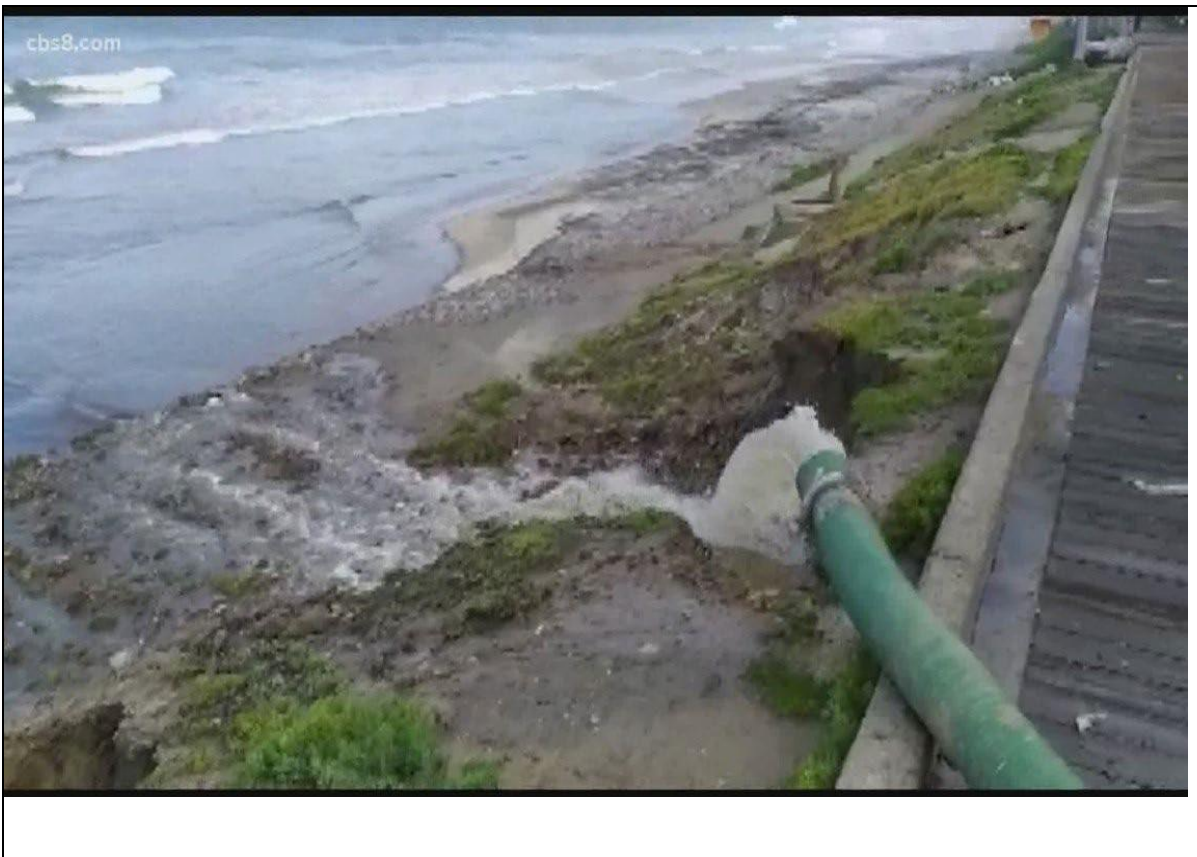
1 discharge — of harmful pollutants, including fecal bacteria, contaminated sediment, heavy metals,  
2 and toxic chemicals, such as DDT, Benzidine, and Polychlorinated Biphenyls (“PCBs”), some of  
3 which are banned in the United States. These pollutants have been released into the Tijuana River  
4 and Estuary, as well as the Pacific Ocean (the “Host Waters”). In doing so, Defendants have  
5 violated the express terms of their National Pollutant Discharge Elimination System (“NPDES”)  
6 Permit and the Clean Water Act, Title 33 U.S.C. Section 1342.

7 6. Defendants' NPDES Permit mandates the capture of certain wastewater flows from  
8 Mexico, directing those flows to the South Bay International Water Treatment Plant before  
9 discharging up to 25 million gallons per day (“MGD”) into the Pacific Ocean. However, due to  
10 decades of neglect, deferred maintenance, and other improper actions, the Defendants have  
11 repeatedly violated their NPDES Permit, resulting in hundreds of violations and causing significant  
12 harm to the Plaintiffs.

13 7. The consequences of the Defendants' actions and inactions are extensive and far-reaching.  
14 For example, the California Coastal Commission reported on September 29, 2023, that over the  
15 past five years, more than 100 billion gallons of transboundary flows—containing untreated  
16 sewage, bacteria, viruses, heavy metals, pesticides, sediment, trash, and toxic chemicals—have  
17 been discharged from Mexico into Southern California through the Tijuana watershed. Much of  
18 this contamination is directly attributable to the Defendants' failures, including their routine  
19 discharge of these same pollutants into the Pacific Ocean via the South Bay Ocean Outfall  
20 (“SBOO”) and into the Tijuana River and Estuary through leaks and spills from their canyon  
21 collectors and other infrastructure. These actions and omissions violate their NPDES Permit and  
22 have caused significant environmental harm.

23 8. Defendants’ failure to comply with their NPDES Permit and their negligence, trespass,  
24 nuisance, and intentional acts have resulted in serious consequences to human health and the  
25 environment. Among the consequences are exposure to dangerous and deadly pathogens, raw sewage,  
26 hazardous toxins, and noxious odors throughout the South Bay, impacting Plaintiffs’ health and  
27 interfering with their use and enjoyment of their property and their beaches and parks.

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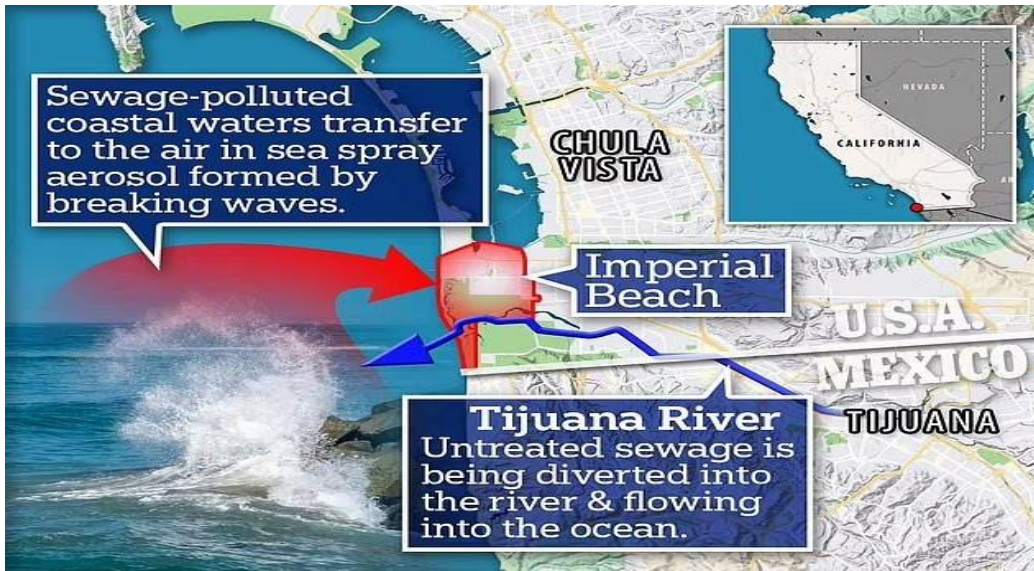


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16 9. The noxious fumes and odors from the discharge of the untreated sewage by Defendants have  
17 caused children attending neighboring schools within the South Bay Unified School District to remain  
18 inside, denying them the use of playgrounds and curtailing outside sports and activities such that they  
19 are unable to enjoy their adolescent years because exposure to the noxious odors and elevated levels  
20 of toxins increases their risk of illness.

21 10. The sewage has also caused hundreds of days of closure at Imperial Beach, Silver Strand State  
22 Beach, Border Field State Beach, and other areas of public recreations, making some recreational and  
23 outdoor activities impossible due to Defendants' actions and inactions. Residents in some South Bay  
24 communities have received "boil water" orders due to contaminated drinking water.

25 11. Recent studies have found that aerosolized sewage pollutants are often present in the air in the  
26 South Bay communities at levels that present a likely public health threat to people living, working and  
27 recreating in those communities.

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12. Public beaches in the affected South Bay communities have been closed intermittently for hundreds of days over the past decade, because of transboundary flows of raw sewage and untreated or poorly treated discharges from the SPIWTP contaminating coastal waters. Discharges contaminated with pathogens, chemicals, sediment, and trash are also severely degrading the Tijuana River Estuary and offshore marine habitat. This harms local businesses, tourism and has greatly affected the value and desirability of homes and properties located in the South Bay.

## II. JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter because the amount in controversy exclusive of costs and interest exceeds the court's jurisdictional minimum.

14. Venue is proper in this Court because all of the events giving rise to the claims alleged herein and Plaintiff's injuries occurred in San Diego County.

### A. Plaintiffs

15. Plaintiffs are individuals who, at all times relevant to this action, resided at, worked at, rented, and/or owned property in the area impacted by the formation and release of the hazardous chemicals and noxious fumes into the Host Waters from the SPIWTP. Plaintiffs have all suffered damages, losses, and harm as a result of exposure to the noxious gases, odors and contaminated water including but not limited to, physical injury, discomfort, annoyance, inconvenience, illness, fear of physical injury and illness, increased risk of future injury and illness, including the need

1 for medical monitoring, emotional distress, harm to real and personal property, loss of quiet  
2 enjoyment, loss of business outcome, medical expenses, and other economic damages.

3 **B. Defendants**

4 16. Defendant Veolia Water West Operating Services, Inc. is a corporation headquartered in  
5 Aubervilliers, France and doing business in this judicial district.

6 17. Defendant Veolia Water North America-West, LLC is a limited liability company  
7 incorporated in Delaware. It maintains its corporate headquarters in Boston, Massachusetts, and  
8 maintains offices in multiple locations, including San Diego, California. Plaintiffs refer to the  
9 Veolia Defendants collectively as “Veolia.”

10 18. Defendant Mark Wippler is an employee of Veolia who resides in San Diego, California.  
11 At all times relevant to the facts and circumstances alleged in this pleading, Mr. Wippler was  
12 Project Manager at Veolia North America. Plaintiffs are informed and believe that all relevant  
13 times, as Project Manager Defendant Wippler oversaw the design and management of the  
14 treatment of sewage at the SPIWTP. Included in his duties, which he failed to perform, were the  
15 following:

- 16 • Participate in the development of engineering design and delivery processes and  
17 standards that would ensure the proper treatment and discharge of sewage and by  
18 products of the treatment of sewage.
- 19
- 20 • Review designs by others to assure conformance with company and legal  
21 standards.
- 22
- 23 • Perform all job responsibilities and duties in compliance with all safety, health,  
24 environmental, and security laws, rules, policies, programs and training and  
25 ensure compliance with all applicable government regulations and procedures.
- 26
- 27 • Collaborate with others to accomplish design and construction oversight for  
28 assigned 16 facilities on new developments. Coordinates internal resources to

1 ensure accurate and timely plan reviews of assigned facilities for new  
2 developments.

- 3  
4 • Managing the Plant, including ensuring that the Plant did not discharge such  
5 quantities of air contaminants or other material that could cause injury, detriment,  
6 nuisance or annoyance to any persons or to the public or which endanger the  
7 comfort, repose, health or safety of such person or the public or which cause or  
8 have a natural tendency to cause injury to business or property.

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10 19. The true names and/or capacities, whether individual, corporate, associate or otherwise of  
11 Defendants DOES 1 through 200, inclusive, and each of them, are unknown to Plaintiffs, who  
12 therefore sue said Defendants by such fictitious names.

13 20. Plaintiffs are informed and believe, and thereupon allege, that each of the Defendants  
14 fictitiously named herein as a DOE is legally responsible, negligently, or in some other actionable  
15 manner, for the events and happenings hereinafter referred to, and proximately caused the injuries  
16 of Plaintiffs as hereinafter alleged. Plaintiffs will amend this Complaint to assert the true names  
17 and/or capacities of such fictitiously named Defendants when the same have been ascertained.

18 21. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned  
19 herein, Defendants, including DOES 1 through 200, inclusive, and each of them, were the agents,  
20 servants, employees and/or joint ventures of the co-Defendants, and were, as such, acting within  
21 the course, scope and authority of said agency, employment and/or venture.

### 22 **III. ADDITIONAL FACTUAL BASIS FOR CLAIMS ASSERTED**

23 22. For decades, South Bay residents have suffered injury from exposure to raw sewage. The  
24 United States Section, International Boundary & Water Commission (IBWC), owns and operates  
25 SBIWTP, intended and designed for treating, among other things, raw sewage flows from Mexico.  
26 It was completed in January 1999 and IBWC hired Defendants to manage the SBIWTP.

27 23. The SBIWTP was designed to deal with the growing demand for the treatment of  
28 wastewater resulting in the contamination of the Tijuana River Estuary in the United States as well

1 as the Pacific Ocean within the United States' territorial seas. That contamination has been an  
2 ongoing concern since 1934 when the United States and Mexican governments instructed the  
3 International Boundary Commission (IBC) to cooperate in the preparation of a report on the  
4 Tijuana sewage problem. The SBIWTP is capable, when it is working, of providing secondary  
5 treatment for 25 MGD average daily flows of sewage but has expansion capability of up to 100  
6 MGD. The plant treats sewage originating in Tijuana, Mexico and discharges it to the Pacific  
7 Ocean through the South Bay Ocean Outfall, a four and one-half mile long 11foot diameter pipe  
8 completed in January 1999.

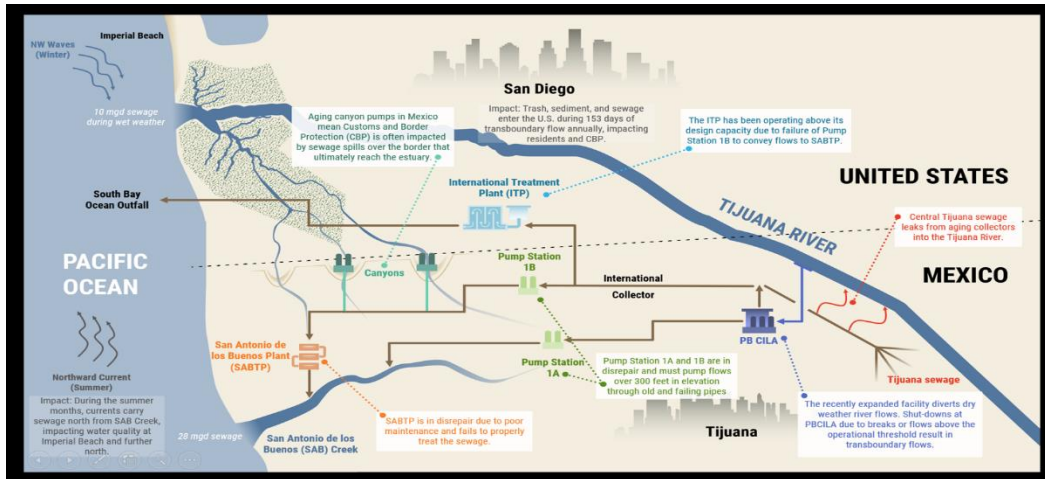
9 24. The San Diego Regional Quality Control Water Board ("San Diego Water Board") is the  
10 administrative agency that issued and enforces the NPDES Permit Order No. R9-2014-0229,  
11 NPDES No. CA0108928, and Order No. R9-2021-0001, NPDES No. CA0108928, as amended by  
12 Order No. R9-2023-0009, adopted Time Schedule Order No. R9-2023-0189 ("TSO")  
13 (collectively, "NPDES Permits"). The NPDES Permits required IBWC to comply with the NPDES  
14 Permits' secondary effluent limitations by August 15, 2024, and set task deadline and  
15 corresponding interim goals to ameliorate the pollution arising from the South Bay Ocean Outfall  
16 (SBOO). But Defendants have not complied, and the polluting conditions persist, causing harm to  
17 Plaintiffs.

18 25. Pursuant to the Clean Water Act, the NPDES Permit Program was created to control water  
19 pollution by regulating harmful pollutants from being discharged from a "point source" (such as  
20 SBIWTP) into "waters of the United States" (such as the Tijuana River Estuary and the Pacific  
21 Ocean) to protect human health and the environment. While this is a federal program, the  
22 implementation and enforcement of the program has been delegated to the State of California  
23 through its State Water Resources Control Board and the nine subordinate Regional Water Quality  
24 Control Boards which includes the San Diego Water Board.

25 26. The discharge of effluent from the SBIWTP to the Pacific Ocean through the SBOO is a  
26 significant and ongoing source of pollution affecting Imperial Beach, often requiring beach  
27 closures and adverse effects to wildlife and human health and noxious and harmful odors  
28 throughout the area.

1 27. The IWBC is a federal agency responsible for operating the SBIWTP in South San Diego.  
2 The purpose of SBIWTP is to collect large amounts of trash and sediment coming into the estuary  
3 from the Tijuana River, treat the sewage, and pump the treated water out into the Pacific Ocean.

4 28. The IWBC contracted with Veolia to operate, manage, and maintain the SBIWTP. Veolia  
5 is a large international consulting firm that manages public projects for governments and private  
6 entities around the world.



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16 29. Although it has received millions of dollars from the federal government to operate,  
17 manage and maintain the SBIWTP, Veolia has, instead, caused, or contributed to, or failed to  
18 ameliorate, a public health and environmental crisis that continues to harm South Bay residents.  
19 Since 2018, the IWBC and Veolia have caused, or failed to prevent, over 500 illegal discharge  
20 incidents from SBIWTP, resulting in over a billion gallons of raw sewage being dumped into the  
21 Tijuana River that flows into South San Diego.

22 30. For instance, on or about July 29, 2024, the San Diego County Air Pollution Control  
23 District (“SDCAPCD”) issued a notice to the IBWC about over 150 complaints about an odor over  
24 a three-day period. The SDCAPCD investigation found that the Hollister Wastewater Pump  
25 Station, operated by Defendants, was improperly maintained and caused the odors.

26 31. Plaintiffs are informed and believe and based thereon allege that Veolia and Wippler have  
27 failed, to such an enormous degree, to comply with its contract with the United States (IBWC), by  
28 failing to adequately operate, manage, and maintain SBIWTP with due care and diligence, in

1 contravention of its contractual mandate, such that neither may rely on any derivative  
2 governmental immunity herein.

3 32. The effects of the recent sewage spills are well known and well documented, and while the  
4 Cities of Imperial Beach and Chula Vista, together with the San Diego Port Commission have sued  
5 the IBWC and Veolia, detailing years of neglect, incompetent management, and maintenance  
6 failures at SBIWTP, such cases have merely sought injunctive relief and civil penalties. No relief  
7 has been directly sought to compensate South Bay residents who suffer daily from exposure to the  
8 Contaminants, noxious odors, toxic chemicals, raw sewage, hazardous waste, pollutants, and  
9 pathogens.

10 33. The ocean water regularly tests positive for Norovirus and has even been found to have  
11 trace amounts of illegal drugs such as methamphetamine and cocaine from the Tijuana River.  
12 There have been “boil water” orders due to contaminated drinking water. There is an increase in  
13 the mosquito population causing fear of contracting diseases such as West Nile Virus. According  
14 to a recent report, the entire fish population is now gone from the estuary. Plaintiffs are informed  
15 and believe and based thereon allege that the level of toxic waste and pollution in the Tijuana River  
16 has increased tenfold over the last three years, the consequences of which has been exacerbated  
17 dramatically by Defendants’ mismanagement of SBIWTP.

18 34. The State Water Board and the San Diego Water Board have issued hundreds of violations  
19 to IWBC and Veolia for their ongoing failures. Despite these sanctions, the Defendants continue  
20 to allow the toxicity and pollution in the river and coastal waters to worsen, unchecked and  
21 unremedied. As detailed above, on July 29, 2024, the San Diego Air Pollution Control District  
22 issued a notice of violation to Veolia for discharging 302,000 gallons of untreated sewage into the  
23 Pacific Ocean at Imperial Beach, creating a public nuisance. Following this incident, Veolia failed  
24 to adequately treat the wastewater, leading to the continued release of raw sewage, exacerbating  
25 the nuisance, and causing further environmental damage, including persistent odors affecting the  
26 public, and in particular South Bay residents. The State Water Board and the San Diego Water  
27 Board have issued hundreds of violations to IWBC and Veolia. But Defendants continue to allow  
28 the toxicity and pollution in the river and waters off the coast to increase and run unchecked and

1 unmediated.

2 **A. Plaintiffs' Injuries**

3 35. Plaintiffs are individuals and families who live, work, and/or own property and homes in  
4 the South Bay and given their proximity to the SBIWTP and the discharge of the raw sewage, were  
5 sickened and injured as a result of the noxious fumes, odors and the contaminated water.

6 36. Due to the high levels of the Contaminants and other toxic pollutants and their prolonged  
7 exposure, Plaintiffs claim damages for physical injury (for which many have sought medical  
8 treatment), fear of future physical injury, increased risk of future injury, including the need for  
9 medical monitoring, emotional distress, harm to real and personal property, medical expenses and  
10 other economic damages.

11 37. Plaintiffs' injuries include but are not limited to, headaches, lightheadedness, dizzy spells,  
12 asthma, nausea, breathing conditions, stinging eyes, fatigue, gastrointestinal upset, tremors and  
13 other related symptoms, as well as other harms not yet known. Plaintiffs are informed and believe,  
14 and thereon allege, that some or all of the health effects may result in chronic and/or ongoing  
15 injuries.

16 **B. Medical Monitoring Damages**

17 38. Defendants have exposed Plaintiffs to excessive levels of Contaminants proven toxic and  
18 hazardous to human health.

19 39. The exposure to these dangerous substances and conditions has placed Plaintiffs in an  
20 increased risk of contracting latent illnesses and disease, including but not limited to respiratory,  
21 cardiovascular, neurological and mental health issues which therefore requires medical monitoring  
22 paid for by Defendants.

23 40. Monitoring and testing procedures for illnesses associated with exposure to the  
24 Contaminants make early detection and treatment of such diseases and health conditions possible  
25 and confer a substantial benefit on recipients.

26 41. For these reasons, Plaintiffs request and are entitled to compensatory damages for medical  
27 monitoring.

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1 **IV. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Negligence**

4 **(Against All Defendants)**

5 42. All previous paragraphs are incorporated into this cause of action.

6 43. Defendants, and/or each of them, as owners, controllers, or operators of the SBIWTP and  
7 related infrastructure, were under a duty codified in Civil Code §1714(a), which states, in pertinent  
8 part:

9 Everyone is responsible, not only for the result of his or her willful acts, but also for an  
10 injury occasioned to another by his or her want of ordinary care or skill in  
11 the management of his or her property or person, except so far as the latter has,  
12 willfully or by want of ordinary care, brought the injury upon himself or herself.

13 44. Defendants each have special knowledge and expertise far beyond that of a layperson with  
14 regard to the safe design, engineering, construction, use, operation, inspection, repair, replacement,  
15 and maintenance of the SBIWTP, related infrastructure, and wastewater treatment.

16 45. At all times relevant herein, Defendants had a duty to properly design, engineer, construct,  
17 operate, and maintain the SBIWTP and related infrastructure to ensure wastewater was properly  
18 treated and to not expose Plaintiffs to hazardous substances, sewage, pollution, trash and other  
19 dangerous substances.

20 46. Defendants owed a duty to Plaintiffs to ensure the handling, storing, treating, management  
21 of hazardous waste, raw sewage, pollution, trash and other dangerous substances did not  
22 contaminate of the air, soil, and water causing injuries to Plaintiffs' health and property.

23 47. Defendants each breached these duties by, among other things:

24 a. Failing to design, construct, operate, manage, and maintain the Plant and related  
25 infrastructure in a way that would prevent the discharge hazardous waste, raw sewage,  
26 pollution, trash and other dangerous contaminants from entering the air, soil, water, and  
27 Plaintiffs' properties;

28 b. Failing to prevent the discharge of trash, sewage, pollution, hazardous chemicals, and  
other dangerous contaminants from being released or discharged from the Plant and

1 related infrastructure;

2  
3 c. Failing to properly maintain the Plant and related infrastructure in a manner that would  
4 prevent the discharge of trash, sewage, pollution, hazardous chemicals, and other  
5 dangerous contaminants from being released or discharged from its facilities;

6  
7 d. Improperly and illegally discharging trash, sewage, pollution, hazardous chemicals,  
8 and other dangerous contaminants from the Plant and related infrastructure;

9  
10 e. Failing to properly train and supervise employees and agents responsible for  
11 operation, maintenance, and inspection of the Plant and related infrastructure;

12  
13 f. Failing to implement and follow regulations and reasonably prudent practices to  
14 avoid the discharge of trash, sewage, pollution, hazardous chemicals, and other  
15 dangerous contaminants from SBIWTP and related infrastructure;

16  
17 g. Failing to operate and maintain its facilities and equipment in accordance  
18 with the requirements issued by the State Water Board; and/or

19  
20 h. Failing to comply with the San Diego Water Board requirements and NPDES  
21 Permits.

22  
23 48. Defendants' breaches resulted in illegally discharging hazardous waste, raw sewage,  
24 pollution, trash, and other dangerous contaminants into the South Bay that has entered the air, soil,  
25 water, and Plaintiffs' properties. This has caused a public health and environmental crisis that has  
26 harmed and continues to harm Plaintiffs' health and properties.

27 49. Also, contamination of the air, soil, and water caused by pollutants, sewage, and hazardous  
28 waste does not ordinarily occur in the absence of negligence. And here, the contamination was

1 caused by an agency and instrumentality in the control of Defendants only. The contamination was  
2 not caused by any voluntary action by Plaintiffs. And thus, the Plaintiffs will be able to meet their  
3 burden of proof under the doctrine of *res ipsa loquitor*.

4 50. As a result of Defendants' negligence Plaintiffs were exposed to pollutants, sewage, and  
5 hazardous waste in the air they breathe, the water they drink and use in their home, and the soil on  
6 their properties. Also, as a result of the contaminated water, air, and soil Plaintiffs were and are  
7 exposed to dangerous and deadly pathogens, including E.coli, SARS-CoV2, hepatitis A, human  
8 norovirus, and other viruses.

9 51. Plaintiffs cannot drink the water, shower, or bathe without being exposed to pathogens,  
10 pollutants, sewage, and hazardous waste. Plaintiffs cannot open their windows or breath the air  
11 outside without suffering exposure to pathogens, pollutants, sewage, hazardous waste, and noxious  
12 odors. Plaintiffs have suffered and will continue to suffer injuries and illness from their exposure  
13 to the contaminated water and air. Plaintiffs' properties have also been damages from pollutants,  
14 sewage, hazardous waste, and noxious odors that have invaded their properties.

15 52. Defendants' negligence was a substantial factor in causing Plaintiffs to suffer damages  
16 including, but not limited to, damage to real property, damage to personal property, physical harm  
17 and illness, discomfort, annoyance, inconvenience, mental anguish, loss of quiet enjoyment, loss  
18 of business income, and emotional distress. Plaintiffs each seek damages to be determined, on an  
19 individual basis, according to proof at trial.

20 **SECOND CAUSE OF ACTION**

21 **Negligence Per Se**  
22 **(Against All Defendants)**

23 53. All previous paragraphs are incorporated into this cause of action as though fully set forth  
24 herein.

25 54. California Health and Safety Code section 5411 provides: "No person shall discharge  
26 sewage or other waste, or the effluent of treated sewage or other waste, in any manner which will  
27 result in contamination, pollution or a nuisance."

28 55. In doing the acts that are alleged herein, Defendants, and each of them, discharged waste,  
effluent, and/or sewage in a manner that has resulted in contamination, pollution, and a nuisance,

1 and have thereby violated Healthy and Safety Code section 5411 pursuant to its express terms.

2 56. Health and Safety Code section 5411 was enacted by the California legislature and is a  
3 statute applicable to all persons and entities subject to the jurisdiction of California courts.

4 57. As a result of Defendants' violation of Health and Safety Code section 5411, Plaintiffs,  
5 and each of them, have suffered injuries to their person and property, and Defendants' violation of  
6 the statute has proximately caused Plaintiffs' harm for which the present action is brought.

7 58. Health and Safety Code section 5411 was designed, enacted, and adopted to prevent the  
8 kind of injuries suffered by Plaintiffs as it sought to deter persons and entities, including  
9 Defendants, from discharging sewage, waste, and/or effluent in a manner that would result in  
10 injuries of the sort that Plaintiffs have suffered and continue to suffer as the result of Defendants'  
11 acts and omissions that constitute a direct violation of the statute.

12 59. Plaintiffs were of the class of persons for whose protection the statute was adopted because  
13 Plaintiffs are persons who have been exposed to, and continue to be exposed to, the substantial  
14 health and safety risks associated with the sewage, waste, and/or effluent that Defendants have  
15 discharged in conscious disregard for Plaintiffs' rights and safety. The legislature sought to protect  
16 persons like Plaintiffs from these health and safety risks and injuries associated therewith by  
17 adopting the statute as a means through which the legislature could deter against the sort of conduct  
18 in which Defendants have engaged and in which Defendants continue to engage.

19 60. Defendants, and each of them, have therefore breached the duty Defendants owed to  
20 Plaintiffs and in so doing have breached the relevant standard of care set forth under Health and  
21 Safety Code section 5411. Defendants' failure to comply with applicable provisions of the Health  
22 and Safety Code, regulations, orders, and permits of the State Water Board and the San Diego  
23 Water Board as alleged herein, is negligence per se because these statutes, orders, and rules seek  
24 to prevent the exact type of harm that Plaintiffs suffered because of Defendants' failure to comply  
25 with these statutes, orders, and rules. That is, Plaintiffs are within the class of individuals these  
26 statutes, orders, and rules were implemented to protect

27 61. In doing the above-mentioned acts in violation of Health and Safety Code section 5411,  
28 Defendants' conduct was a substantial factor in bringing about the injuries and damages to

1 Plaintiffs. Defendants were accordingly negligent per se and are liable to Plaintiffs as a result of  
2 Defendants' statutory violations.

3 62. As a direct, proximate and legal cause of the negligence and carelessness of Defendants,  
4 Plaintiffs sustained severe and serious injuries to their person and property.

5 63. Defendants' negligence, including negligence per se, was a substantial factor in causing  
6 Plaintiffs to suffer damages including, but not limited to, damage to real property, damage to  
7 personal property, physical harm and illness, discomfort, annoyance, inconvenience, mental  
8 anguish, loss of quiet enjoyment, loss of business income, and emotional distress. Plaintiffs, and  
9 each of them, seek damages to be determined, on an individual basis, according to proof at trial.

10 64. Defendants' negligent, reckless, and/or illegal actions and inactions in discharging waste  
11 in a manner that resulted in contamination, pollution, and a nuisance was a substantial factor in  
12 causing Plaintiffs to suffer damages including, but not limited to, damage to real property, damage  
13 to structures, damage to personal property and cherished possessions, physical injuries and illness,  
14 discomfort, annoyance, inconvenience, mental anguish, loss of quiet enjoyment, loss of business  
15 profits, and emotional distress. Plaintiffs each seek damages to be determined, on an individual  
16 basis, according to proof at trial.

17 65. Defendants, including one or more officers, directors, and/or managers, have deliberately,  
18 and repeatedly, ignored their obligations to prevent pollution, raw sewage, hazardous substances  
19 from contaminating the air, water, and soil in Imperial Beach. Defendants, including one or more  
20 officers, directors, and/or managers, have deliberately, and repeatedly, ignored complaints and  
21 even orders issued by the San Diego Water Board related to the significant environmental impacts  
22 and harm caused by its handling, storage, treatment, transport, and/or disposal of hazardous and/or  
23 solid waste through its facilities. Defendants, including one or more officers, directors, and/or  
24 managers, know that allowing contaminated water to spread into the air, soil, water, and enter  
25 Plaintiffs' properties would cause a significant risk of injury and illness. Defendants acted  
26 recklessly and with conscious disregard to human life and safety, and this recklessness and  
27 conscious disregard was a substantial factor in bringing about Plaintiffs' harm. This is despicable  
28 and oppressive conduct. Plaintiffs thus seek punitive damages in an amount sufficient to push

1 Defendants' long history of deliberate disregard for Plaintiffs' safety.

2 **THIRD CAUSE OF ACTION**

3 **Public Nuisance**  
4 **(Against All Defendants)**

5 66. All previous paragraphs are incorporated into this cause of action.

6 67. Plaintiffs are currently, and at all times relevant to this action were, the owners, tenants,  
7 and/or lawful occupiers of real property located in Imperial Beach, the area of the contamination  
8 that is the subject of this action.

9 68. Defendants' actions and inactions created a condition and/or permitted a condition to exist  
10 that undermined health, was offensive to the senses, obstructed the free use of property, and  
11 interfered with the comfortable enjoyment of life and property, unlawfully obstructed the free  
12 passage or use, in the typical manner, of public streets and highways.

13 69. These conditions interfered with Plaintiff's physical health and quiet enjoyment of their  
14 properties in a way unique to each Plaintiff. Plaintiffs were and are continually exposed to  
15 pollutants, sewage, and hazardous waste in the air they breathe, the water they drink and use in  
16 their home, and the soil on their properties. Also, as a result of the contaminated water, air, and  
17 soil Plaintiffs were and are exposed to dangerous and deadly pathogens, including E. coli, SARS-  
18 CoV2, hepatitis A, human norovirus, and other viruses.

19 70. Plaintiffs cannot drink the water, shower, or bathe without being exposed to pathogens,  
20 pollutants, sewage, and hazardous waste. Plaintiffs cannot open their windows or breath the air  
21 outside without suffering exposure to pollutants, sewage, hazardous waste, and noxious odors.  
22 Plaintiffs have suffered and will continue to suffer injuries and illness from their exposure to the  
23 contaminated water and air. Plaintiffs' properties have also been damages from pollutants, sewage,  
24 hazardous waste, and noxious odors that have invaded their properties.

25 71. These conditions also affected many people at the same time.

26 72. At no time did Plaintiff consent to Defendants' actions and inaction in creating these  
27 conditions.

28 73. Any ordinary person would be reasonably annoyed and disturbed by Defendants' actions  
and omissions in creating these conditions.

1 74. Defendants' actions and inactions in creating these conditions were a substantial factor in  
2 causing Plaintiffs to suffer damages. And each plaintiff's damages are different from damages  
3 suffered by other plaintiffs. Those damages include, but are not limited to, destruction of and  
4 damage to real property, destruction of and damage to structures, destruction of and damage to  
5 personal property and cherished possessions, personal injuries, discomfort, annoyance,  
6 inconvenience, mental anguish, loss of quiet enjoyment, and emotional distress. Plaintiffs each  
7 seek damages to be determined, on an individual basis, according to proof at trial.

8 75. The seriousness of the harm Defendants caused Plaintiffs outweighs any public benefit that  
9 Defendants may provide.

10 76. Defendants, including one or more officers, directors, and/or managers, have deliberately,  
11 and repeatedly, ignored their obligations to prevent pollution, raw sewage, hazardous substances  
12 from contaminating the air, water, and soil in Imperial Beach. Defendants, including one or more  
13 officers, directors, and/or managers, have deliberately, and repeatedly, ignored complaints, orders  
14 issued by the San Diego Water Board, and even violations received from the State Water Board  
15 related to the significant environmental impacts and harm caused by its handling, storage,  
16 treatment, transport, and/or disposal of hazardous and/or solid waste through its facilities.

17 77. Defendants, including one or more officers, directors, and/or managers, know  
18 that allowing contaminated water to spread into the air, soil, water, and enter Plaintiffs' properties  
19 would cause a significant risk of injury and illness. Defendants acted recklessly and with conscious  
20 disregard to human life and safety, and this recklessness and conscious disregard was a substantial  
21 factor in bringing about Plaintiffs' harm. This is despicable and oppressive conduct. Plaintiffs thus  
22 seek punitive damages in an amount sufficient to punish Defendants' long history of deliberate  
23 disregard for Plaintiffs' safety.

24 **FOURTH CAUSE OF ACTION**

25 **Private Nuisance**  
26 **(Against All Defendants)**

27 78. All previous paragraphs and incorporated into this cause of action.

28 79. Defendants, and/or each of them, by their acts and/or omissions set forth above, directly

1 and legally caused an obstruction to the free use of Plaintiffs' property, an invasion of the  
2 Plaintiffs' right to use their property, and/or a substantial and unreasonable interference with the  
3 enjoyment of Plaintiffs' property, resulting in Plaintiffs suffering unreasonable harm and  
4 substantial actual damages constituting a nuisance pursuant to California Civil Code sections 3479  
5 and 3481.

6 80. Plaintiffs were and are continually exposed to pollutants, sewage, and hazardous waste in  
7 the air they breathe, the water they drink and use in their home, and the soil on their properties.  
8 Plaintiffs cannot drink the water, shower, or bathe without being exposed to pollutants, sewage,  
9 and hazardous waste. Also, as a result of the contaminated water, air, and soil Plaintiffs were and  
10 are exposed to dangerous and deadly pathogens, including E. coli, SARS-CoV2, hepatitis-A,  
11 human norovirus, and other viruses.

12 81. Plaintiffs cannot open their windows or breath the air outside without suffering exposure  
13 to pollutants, sewage, hazardous waste, and noxious odors. Plaintiffs have suffered and will  
14 continue to suffer injuries and illness from their exposure to the contaminated water and air.  
15 Plaintiffs' properties have also been damaged from pollutants, sewage, hazardous waste, and  
16 noxious odors that have invaded their properties.

17 82. As a direct and legal result of the wrongful acts and/or omissions of Defendants, and/or  
18 each of them, Plaintiffs suffered, and continue to suffer the injuries and/or damages as set forth  
19 above.

20 83. Defendants, including one or more officers, directors, and/or managers fictitiously named  
21 herein as DOES 1-200, have deliberately, and repeatedly, ignored their obligations to prevent  
22 pollution, raw sewage, hazardous substances from contaminating the air, water, and soil in  
23 Imperial Beach. Defendants, including one or more officers, directors, and/or managers, have  
24 deliberately, and repeatedly, ignored complaints, orders issued by the San Diego Water Board, and  
25 even violations received from the State Water Board related to the significant environmental  
26 impacts and harm caused by its handling, storage, treatment, transport, and/or disposal of  
27 hazardous and/or solid waste through its facilities.

28 84. Defendants, including one or more officers, directors, and/or managers fictitiously named

1 herein as DOES 1-200, know that allowing contaminated water to spread into the air, soil, water,  
2 and enter Plaintiffs' properties would cause a significant risk of injury and illness. Defendants  
3 acted recklessly and with conscious disregard to human life and safety, and this recklessness and  
4 conscious disregard was a substantial factor in bringing about Plaintiffs' harm. This is despicable  
5 and oppressive conduct. Plaintiffs thus seek punitive damages in an amount sufficient to punish  
6 and deter Defendants' long history of deliberate disregard for Plaintiffs' safety.

7 **FIFTH CAUSE OF ACTION**

8 **Trespass**

9 **(Against All Defendants)**

10 85. All previous paragraphs are incorporated into this cause of action.

11 86. At all relevant times, Plaintiff were the owners, tenants, and/or lawful occupiers of real  
12 properties in the area of the contamination.

13 87. Defendants discharged raw sewage, pollution, and contaminated water into the water in  
14 Imperial Beach from its facilities. The sewage, pollutants, and contaminated water spread and  
15 entered Plaintiffs' properties through the sea spray aerosol and also entered Plaintiff's plumbing  
16 and water in used at their properties, which caused damage to Plaintiffs' properties.

17 88. Plaintiffs did not grant permission for any pollution, sewage, and contaminated water to  
18 enter or to come into contact with their properties.

19 89. This trespass was a substantial factor in causing Plaintiffs to suffer damages including, but  
20 not limited to, damage to real property, damage to structures, damage to personal property and  
21 cherished possessions, discomfort, annoyance, inconvenience, mental anguish, loss of quiet  
22 enjoyment, and emotional distress. Plaintiffs each seek damages to be determined, on an individual  
23 basis, according to proof at trial.

24 90. Defendants, including one or more officers, directors, and/or managers, have deliberately,  
25 and repeatedly, ignored their obligations to prevent pollution, raw sewage, hazardous substances  
26 from contaminating the air, water, and soil in the South Bay. Defendants, including one or more  
27 officers, directors, and/or managers, have deliberately, and repeatedly, ignored complaints, orders  
28 issued by the San Diego Water Board, and even violations received from the State Water Board  
related to the significant environmental impacts and harm caused by its handling, storage,

1 treatment, transport, and/or disposal of hazardous and/or solid waste through its facilities.

2 91. Defendants, including one or more officers, directors, and/or managers, know and at all  
3 relevant times knew, that allowing contaminated water to spread into the air, soil, water, and enter  
4 Plaintiffs' properties would cause a significant risk of injury and illness. Defendants acted  
5 recklessly and with conscious disregard to human life and safety, and this recklessness and  
6 conscious disregard was a substantial factor in bringing about Plaintiffs' harm. This is despicable  
7 and oppressive conduct. Plaintiffs thus seek punitive damages in an amount sufficient to punish  
8 Defendants' long history of deliberate disregard for Plaintiffs' safety.

9 **SIXTH CAUSE OF ACTION**  
10 **Strict Liability for Ultrahazardous Activities**  
11 **(Against All Defendants)**

12 92. All previous paragraphs are incorporated into this cause of action as though fully set forth  
13 herein.

14 93. Defendants, and each of them, are and at all relevant times were engaged in the treatment  
15 of sewage, waste, pollutants, and other materials which necessarily involves a risk of serious harm  
16 to persons, land, or chattels of others as the results of inherently ultrahazardous potential to cause  
17 injuries.

18 94. Defendants caused Plaintiffs' injuries as the direct and proximate result of Defendants'  
19 conduct while Defendants were engaging in the treatment of sewage, waste, and pollutants.

20 95. Defendants knowingly and voluntarily chose to engage in the aforementioned treatment  
21 and at all relevant times knew that the activity involved a serious risk of harm and injuries to  
22 persons in the position of Plaintiffs.

23 96. The ultrahazardous activities in which Defendants do and all relevant times did engage  
24 were such that was a substantial likelihood that harm resulting from these activities would be great,  
25 and in fact has been great with respect to all the damages and injuries suffered by Plaintiffs.

26 97. The treatment activities in which Defendants do and at all relevant times did engage that  
27 are the source of Plaintiffs' injuries are not a matter of common usage.

28 98. The treatment activities in which Defendants do and at all relevant times did partake are  
inappropriate in relation to where the activities are carried out because of the high likelihood and

1 foreseeable result that the toxins, viruses, pollutants, chemicals, and all Contaminants to which  
2 Plaintiffs have been and are exposed, as the result of living in a coastal and highly populated area,  
3 all of which made these activities pose a grave threat to the health and safety of Plaintiffs.

4 99. The community receives little or no value whatsoever from Defendants' activities but is  
5 subjected to the constant presence of Contaminants because of Defendants' activities that led to  
6 such Contaminants' exposure to persons who did not know, nor had reason to know, of  
7 Defendants' activities and the resulting harm that they would suffer harm from said activities.

8 100. Defendants' engagement in the ultrahazardous activities pertaining to the treatment of  
9 waste, sewage, and effluent was a substantial factor in causing Plaintiffs' harm.

10 101. Plaintiffs' harm, including all of the injuries and damages mentioned throughout this  
11 Complaint, is and at all relevant times was the kind of harm that Defendants would and did  
12 anticipate as the result of the risk Defendants created by virtue of engaging in the discharge of  
13 effluent from the SBIWTP to the Pacific Ocean, an ultrahazardous activity, for which Defendants  
14 are strictly liable to Plaintiffs' for all damages to person and property proximately resulting  
15 therefrom.

## 16 **VII. PRAYER FOR RELIEF**

17 Plaintiffs, for causes of action against Defendants, seek the following damages in an amount  
18 according to proof at the time of trial:

- 19 i. General and/or special damages determined on an individual basis according to proof;
- 20 ii. Loss of the use, benefit, goodwill, and enjoyment of Plaintiffs' real and/or personal  
21 property;
- 22 iii. Loss of wages, earning capacity, goodwill, and/or business profits or proceeds and/or any  
23 related displacement expenses;
- 24 iv. Out of pocket costs;
- 25 v. Damage to real and personal property;
- 26 vi. Past and future medical expenses and incidental expenses;
- 27 vii. General damages for personal injury, emotional distress, fear, annoyance, disturbance,  
28 inconvenience, mental anguish, and loss of quiet enjoyment of property;

- 1 viii. Prejudgment interest;  
2 ix. For punitive and exemplary damages in an amount sufficient to punish Defendants'  
3 conduct and deter similar conduct, as allowed under all applicable law, including California  
4 Civil Code section 3294(a)-(b); and  
5 x. Any and all other and further such relief as the Court shall deem proper, all according to  
6 proof.

7  
8 DATED: November 15, 2024

**FRANTZ LAW GROUP, APLC**

/s/ Kristin Westphal

James P. Frantz, Esq.  
M. Regina Bagdasarian, Esq.  
Kristin Westphal, Esq.  
Attorneys for Plaintiffs

1 **JURY DEMAND BY PLAINTIFFS**

2 Plaintiffs herein demand a trial by jury.

3  
4 DATED: November 15, 2024

**FRANTZ LAW GROUP, APLC**

5  
6 /s/ Kristin Westphal  
7 \_\_\_\_\_  
8 James P. Frantz, Esq.  
9 M. Regina Bagdasarian, Esq.  
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11 Attorneys for Plaintiffs  
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