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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 BERNADETTE BLACKWOOD,
19 individually and as guardian ad litem for
20 E.B.; KAITELYNE BLACKWOOD;
21 CURTIS BLACKWOOD; CHRISTINA
22 DECKER, individually and as guardian
23 ad litem for N.S., J.S., and K.S.;
24 CARLOS SILVA; JAMES ERVIN;
25 KATHREN ERVIN; JAMES DENNIS
26 ERVIN; OFELIA ERVIN; DAVID
27 FRITZ; LISA FRITZ, individually and
28 as guardian ad litem for J.F.; VANESSA
ARAUJO; JOSE E. MAGAÑA;
BRADLEY MOROTAYA; ASHLEY
ROMERO; FELIX ROMERO; WANDA
ROMERO; JOHN MORRISON; LISA

Case No.: cv-14-C0395 JGB SPx

THIRD AMENDED COMPLAINT

- 1. **RCRA Imminent and Substantial Endangerment**
- 2. **Continuing Private Nuisance**
- 3. **Continuing Trespass – Vectors and Particulate**
- 4. **Continuing Trespass – Contaminants**

JURY TRIAL DEMANDED

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MORRISON; AMIR PANIAGUA;
CELIA PIÑA; EVA PIÑA; JOSE DE
JESUS PIÑA;SHELBY ANN
RATICAN, individually and as guardian
ad litem for M.R. and H.R; GARRY
SNELL; LISA SNELL; CHRISTOPHER
G. SPROWL, individually and as
guardian ad litem for A.S. and C.S.;
NICOLE SPROWL; FRED CHARLES
WHITTON; DALLAS WHITTON;
SUSAN GRAY, individually and as
guardian ad litem for A.K.; JOHN H.
GRAY; and SHAWNA GRAY;

Plaintiffs,

v.

MARY DE VRIES, individually and dba
N&M DAIRY (aka N&M DAIRY # 1
and N&M DAIRY # 2) and as trustee of
the NEIL AND MARY DE VRIES
FAMILY TRUST; NEIL DE VRIES,
individually and dba N&M DAIRY (aka
N&M DAIRY # 1 and N&M DAIRY #
2) and as trustee of the NEIL AND
MARY DE VRIES FAMILY TRUST;
JIM DE VRIES; RANDY DE VRIES;
and DOES 1 through 10 inclusive;

Defendants.

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COMPLAINT

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2 1. Plaintiffs Bernadette Blackwood, individually and as guardian ad
3 litem for E.B.; Kaitelyne Blackwood; Curtis Blackwood; Christina Decker,
4 individually and as guardian ad litem for N.S., J.S., and K.S.; Carlos Silva;
5 James Ervin; Kathren Ervin; James Dennis Ervin; Ofelia Ervin; David Fritz;
6 Lisa Fritz, individually and as guardian ad litem for J.F.; Vanessa Araujo;
7 José E. Magaña; Bradley Morotaya; Ashley Romero; Felix Romero; Wanda
8 Romero; John Morrison; Lisa Morrison; Amir Paniagua; Celia Piña; Eva
9 Piña; José de Jesus Piña; Shelby Ann Ratican, individually and as guardian ad
10 litem for M.R. and H.R.; Garry Snell; Lisa Snell; Christopher G. Sprowl,
11 individually and as guardian ad litem for A.S. and C.S.; Nicole Sprowl; Fred
12 Charles Whitton; Dallas Whitton; Susan Gray, individually and as guardian
13 ad litem for A.K.; John Gray; and Shawna Gray (hereinafter “Plaintiffs”), by
14 and through their attorneys Simmons Hanly Conroy LLC and Public Justice
15 PC, submit this Complaint against each of the defendants named herein.

16
17 **NATURE OF THE CASE**

18 2. This is a suit for declaratory and injunctive relief and
19 compensatory and punitive damages against defendants Mary De Vries,
20 individually and dba N&M Dairy (aka N&M Dairy # 1 and N&M Dairy # 2)
21 and as trustee of the Neil and Mary De Vries Family Trust; Neil De Vries,
22 individually and dba N&M Dairy (aka N&M Dairy # 1 and N&M Dairy # 2)
23 and as trustee of the Neil and Mary De Vries Family Trust; Jim De Vries; and
24 Randy De Vries (hereinafter “Defendants”), based on their illegal and
25 negligent manure handling and storage practices, practices that contaminated
26 Plaintiffs’ domestic water supplies and caused excessive odor and flies at
27 Plaintiffs’ properties.

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1 3. Plaintiffs Vanessa Araujo; David Fritz; Lisa Fritz, individually
2 and as guardian-ad-litem for J.F., José E. Magaña, Bradley Morotaya, Amir
3 Paniagua, Celia Piña, Eva Piña, José de Jesus Piña, Ashley Romero, Felix
4 Romero, and Wanda Romero (“RCRA Plaintiffs”) bring a citizen suit for
5 declaratory and injunctive relief against each of the above-named defendants
6 for the defendants’ violations of the Solid Waste Disposal Act, also known as
7 the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*
8 (“RCRA”).

9 4. As detailed below, RCRA Plaintiffs—who all live near and
10 downgradient from N&M Dairy—allege that N&M Dairy and its owners and
11 operators have violated and continue to violate Section 7002(a) of RCRA by
12 contributing to the past and present handling, storage, treatment,
13 transportation and/or disposal of solid and hazardous waste in such a manner
14 that may present an imminent and substantial endangerment to the health and
15 the environment by contaminating RCRA Plaintiffs’ water supplies.

16 5. Although Defendants ceased operations at the Dairy and
17 removed all cows in approximately July 2013, manure remains on the
18 property along with at least one operating lagoon and acres of contaminated
19 soil. Testing subsequent to the removal of the cows revealed that RCRA
20 Plaintiffs’ wells continue to be polluted at the same levels, and their domestic
21 water supply continues to be unusable for drinking or domestic supply
22 purposes.

23 6. RCRA Plaintiffs seek declaratory relief establishing that
24 Defendants violated RCRA; injunctive relief (i) directing N & M Dairies to
25 modify its handling, storage, treatment, transportation, and disposal of
26 hazardous waste such that these practices no longer present an imminent and
27 substantial endangerment to health and the environment, and (ii) obligating
28 Defendants to remediate the environmental contamination caused and/or

1 contributed to, including widespread soil and groundwater contamination.
2 RCRA Plaintiffs also request that the Court impose an award of reasonable
3 attorneys' fees and costs and expert witness fees and costs incurred in
4 bringing this action.

5 7. In addition, RCRA Plaintiffs, as well as Plaintiffs Bernadette
6 Blackwood, individually and as guardian ad litem for E.B.; Kaitelyne
7 Blackwood; Curtis Blackwood; Christina Decker, individually and as
8 guardian ad litem for N.S., J.S., and K.S.; Carlos Silva; James Ervin; Kathren
9 Ervin; James Dennis Ervin; Ofelia Ervin; John Morrison; Lisa Morrison;
10 Shelby Ann Ratican, individually and as guardian ad litem for M.R. and H.R.;
11 Garry Snell; Lisa Snell; Christopher G. Sprowl, individually and as guardian
12 ad litem for A.S. and C.S.; Nicole Sprowl; Fred Charles Whitton; Dallas
13 Whitton; Susan Gray, individually and as guardian ad litem for A.K.; John
14 Gray; and Shawna Gray, also bring this civil action seeking damages arising
15 out of Defendants' trespass, and creation of a nuisance. The state tort law
16 claims of these Plaintiffs arise out of California Civil Code §§ 3479 and 3294;
17 California Code of Civil Procedure §§ 526 and 731; California Health &
18 Safety Code § 5411; and California Water Code § 13050(m); and related
19 provisions of the common law.

20 8. Plaintiffs allege that Defendants have, are, and will continue to
21 create or contribute to abatable public and/or private nuisances and/or
22 trespasses by using unlawful and dangerous manure handling practices that
23 resulted in: contamination of RCRA Plaintiffs' water supplies; emission of
24 extremely offensive and excessive odors, dust, and particulate; toxic
25 emissions such as ammonia; and the invasion of Plaintiffs' homes and
26 properties by large numbers of flies.

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1 9. Although Defendants ceased operations at the Dairy and
2 removed all cows in approximately July 2013, the fly and odor problems
3 continue, in part because N&M Dairy is excavating its lagoons and drying the
4 manure sludge in the open. Plaintiffs seek compensatory and punitive
5 damages to redress these injuries.

6
7 **JURISDICTION**

8 10. This Court has subject-matter jurisdiction over this lawsuit
9 pursuant to Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

10 11. This Court also has federal question jurisdiction under 28 U.S.C.
11 § 1331 because this action arises under RCRA and, therefore, arises under
12 federal law.

13 12. This Court has supplemental jurisdiction over Plaintiffs' state-
14 law claims under 28 U.S.C. § 1367 because Plaintiffs' state-law claims are so
15 related to their federal claims that they constitute the same case or
16 controversy. Both the federal and state claims are based on the same nucleus
17 of operative facts: the manure handling practices of N&M Dairy and the
18 resulting harms to Plaintiffs.

19 13. On September 6, 2013, RCRA Plaintiffs gave notice of the
20 RCRA violations and their intent to file suit to the Defendants, the United
21 States Attorney General, the United States Environmental Protection Agency
22 ("EPA"), EPA Region 9, the California Governor, the California Attorney
23 General, the California Environmental Protection Agency, and the California
24 Department of Toxic Substances Control, and the California Department of
25 Resources Recycling and Recovery as required by Section 7002(a) of RCRA,
26 42 U.S.C. § 6972(a).

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1 14. More than ninety (90) days has passed since notice was served,
2 and violations complained of in the notice are continuing at this time, or
3 Defendants are reasonably likely to continue to remain in violation of RCRA.
4 The EPA has not prosecuted these violations. The Lahontan Regional Quality
5 Control Board brought and settled an enforcement action against Defendants,
6 Clean Up and Abatement Order (CAO) R6V-2013-0103 for N&M Dairy
7 (replacing prior CAOs R6V-2011-0055 and R6V-2011-0055A1), but that that
8 settlement does not provide for the remediation of the RCRA violations
9 identified in the notice nor does it compensate the Plaintiffs for their damages
10 and injuries as alleged herein. 42 U.S.C. §§9659(d)(2) & 11046(e).

11

VENUE

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13 15. Venue is proper in this Court under RCRA 42 U.S.C. § 6972(a)
14 and under California law because the alleged violations of the federal statutes
15 and state law occurred and continue to occur in the Central District of
16 California.

17

PARTIES

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19 16. Plaintiffs all live near the N&M Dairy site.

20 17. Plaintiffs whose residential property is downgradient from the
21 N&M Dairy site cannot use or drink the well water—the only domestic water
22 supply on their properties—because it has been contaminated by N&M
23 Dairy’s manure handling, storage, and disposal practices.

24 18. All Plaintiffs suffer from extremely high numbers of flies on
25 their properties and in their homes. They have experienced, and continue to
26 experience, flies on their walls, flies landing on their bodies, and flies buzzing
27 around doorways and windows. Plaintiffs cannot open their garage or house

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1 doors without flies invading their garages and homes, and they cannot open
2 their car doors without numerous flies immediately invading their cars.

3 19. Plaintiff Bernadette Blackwood resides in Helendale, California,
4 with her husband, Plaintiff Curtis Blackwood; their daughter, Kaitelyne
5 Blackwood; and their minor son, Plaintiff E.B. Their residence is located
6 approximately 0.5 miles from N&M Dairy. Curtis Blackwood has owned the
7 property since approximately 1999, and he has resided there continuously
8 with Bernadette and Kaitelyne Blackwood since then and with E.B. since he
9 was born in 2002.

10 20. Plaintiff Christina Decker resides in Helendale, California, with
11 Plaintiff Carlos Silva and their three minor children, Plaintiffs N.S., J.S., and
12 K.S. Their residence is located approximately 0.3 miles from the N&M Dairy
13 fence line. Carlos Silva and Christina Decker have owned the property since
14 approximately August 2009, and they have resided there continuously since
15 that time with their three minor children.

16 21. Plaintiffs James and Kathren Ervin, husband and wife, reside in
17 Barstow, California, with their adult son, Plaintiff James Dennis Ervin, and
18 James Ervin's mother, Plaintiff Ofelia Ervin. Their residence is located
19 approximately 0.3 miles from the N&M Dairy fence line. Various members of
20 the Ervin family have owned the property and resided there for generations.

21 22. Plaintiff Lisa Fritz resides in Helendale, California, with her
22 husband, Plaintiff David Fritz, and their minor daughter, Plaintiff J.F. Lisa
23 Fritz is the adult daughter of Plaintiffs Wanda Romero and Felix Romero,
24 who reside in a different home on the same property in Helendale, California,
25 with their adult children, Plaintiff Ashley Romero, and Plaintiff José
26 Magaña, as well as adult friends, Plaintiffs Vanessa Araujo and Bradley
27 Morotaya. Wanda and Felix Romero have owned the property and have
28 resided there continuously since 1993. Ashley Romero, José Magaña, and

1 Lisa Fritz have also resided on the property since 1993, while David Fritz has
2 resided there since approximately 2006, and Vanessa Araujo and Bradley
3 Morotaya have resided there since approximately 2010. The Fritzes live in
4 one home on the property, and the Romeros and their friends live in a second
5 home on the property. The well for these residences is located approximately
6 250 feet downgradient from the N&M Dairy fence line. The residential
7 property is located 1/8 mile downgradient from the dairy facilities. Well water
8 is the only source of water for these residences. The well water is unfit for
9 domestic use because it is sourced from aquifers contaminated by N&M
10 Dairy's manure handling, storage, and disposal practices, with nitrates above
11 the federal and California State set MCLs.

12 23. Plaintiffs John and Lisa Morrison, husband and wife, reside in
13 Helendale, California. Their residence is located approximately 0.2 miles
14 from the N&M Dairy fence line. The Morrisons have owned the property
15 since 1998 and they have resided there continuously since then.

16 24. Plaintiff Eva Piña resides in Barstow, California, with her
17 parents, Plaintiffs Celia Piña and José de Jesus Piña, and her fiancé, Plaintiff
18 Amir Paniagua. Celia and José de Jesus Piña have owned the property and
19 have resided there continuously since 1987. Eva Piña has resided there
20 continuously since 1987, while Amir Paniagua has resided there since 2007.
21 Their residence and its well are located approximately one mile downgradient
22 from N&M Dairy. Well water is the only source of water at the residence.
23 Their well is unfit for domestic use because it is sourced from aquifers
24 contaminated by N&M Dairy's manure handling, storage, and disposal
25 practices, with nitrates above the federal and California State set MCLs.

26 25. Plaintiffs Garry Snell and Lisa Snell, husband and wife, reside in
27 Helendale, California, with their adult daughter, Plaintiff Shelby Ratican, and
28 her two minor children, Plaintiffs M.R. and H.R. Garry and Lisa Snell have

1 owned the property and resided there continuously since 2001. The Snells’
2 residence is located approximately 0.5 miles from the N&M Dairy fence line.

3 26. Plaintiff Christopher G. Sprowl resides in Helendale, California,
4 with his wife, Plaintiff Nicole Sprowl, and their two minor children, Plaintiffs
5 A.S and C.S. Mr. Sprowl’s residence is located approximately 0.3 miles from
6 the N&M Dairy fence line. Mr. and Mrs. Sprowl have resided there
7 continuously with their two minor children since September 2012.

8 27. Plaintiff Fred Charles “Chuck” Whitton resides in Helendale,
9 California, with his adult son, Plaintiff Dallas Whitton. Chuck Whitton
10 bought the property in approximately 1963 and has owned it continuously
11 since then. In approximately 2006, the Whittons had a house built on the
12 property, and Dallas Whitton moved in and has resided there since that time.
13 Chuck Whitton has resided there since 2008. The Whittons’ residence is
14 located approximately 0.7 miles from N&M dairy.

15 28. Plaintiffs Susan Gray and John Gray, husband and wife, reside
16 in Barstow, California, with their adult daughter, Plaintiff Shawna Gray, and
17 Mr. Gray’s minor granddaughter, Plaintiff A.K. Susan and John Gray have
18 owned the property and resided there continuously since 1987. Shawna Gray
19 has resided there since 1995, and A.K. has resided there since approximately
20 2006. The Grays’ residence is located approximately one mile from the N&M
21 Dairy fence line.

22 29. Plaintiffs are “persons” within the meaning of RCRA 42 U.S.C.
23 § 6972(a).

24 30. Defendants Neil De Vries, individually and as trustee of the Neil
25 and Mary De Vries Family Trust, and Mary De Vries, individually and as
26 trustee of the Neil and Mary De Vries Family Trust, own, have operated, and
27 do business as N&M Dairy aka N&M Dairy # 1 and/or N&M Dairy # 2,
28 collectively an approximate 904-acre dairy at or near 36001 Lords Road and

1 18200 Lords Road, Helendale, California, in San Bernardino County. The site
2 includes San Bernardino County Assessor’s parcel numbers 466-041-01, 466-
3 041-17, 466-041-20, 466-041-21, 466-041-22, 466-041-23, 466-091-15, 466-
4 091-17, 466-091-26, 466-101-07, 466-101-06, 466-111-02. The dairy is
5 permitted under California Regional Water Board WDID No. 6B368010004.

6 31. Defendants Jim De Vries and Randy De Vries have operated and
7 continue to do business as N&M Dairy aka N&M Dairy # 1 and/or N&M
8 Dairy # 2.

9 32. The true names and capacities, whether individual, corporate,
10 associate, or otherwise, of Defendants DOES 1 through 10, inclusive, are
11 unknown to Plaintiffs at this time, and Plaintiffs therefore sue said Defendants
12 by such fictitious names. When the true names and capacities of said
13 Defendants have been ascertained, Plaintiff will seek leave of the court to
14 amend this complaint accordingly. Plaintiffs are informed and believe and
15 thereon allege that: (a) each defendant designated herein as a DOE is
16 responsible, negligently and/or because of engaging in statutorily prohibited
17 conduct and/or by creating a continuing nuisance and/or in some other
18 actionable manner, for the events and happenings hereinafter referred to, and
19 has caused injuries and damages proximately thereby to one or more of the
20 Plaintiffs, as hereinafter alleged; and (b) each defendant designated herein as
21 a DOE is either a resident of California or does business in California of such
22 nature and/or quantity as to render said defendant subject to the jurisdiction of
23 the State of California in this civil action.

24 33. Defendants are “persons” within the meaning of RCRA 42
25 U.S.C. § 6972(a)(1).

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1 **STATUTORY AND REGULATORY FRAMEWORK**

2 **A. RCRA**

3 34. The purpose of RCRA is “to promote the protection of health
4 and environment,” and it seeks to accomplish that goal by “prohibiting future
5 open dumping on the land and requiring the conversion of existing open
6 dumps to facilities which do not pose a danger to the environment or to
7 health.” 42 U.S.C. § 6902(a).

8 35. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B),
9 provides that citizens may commence a citizen suit against “any person,” as
10 defined in Section 1004(15) of RCRA, 42 U.S.C. § 6972(a)(1), “including
11 any past or present generator, past or present transporter, or past or present
12 owner or operator of a treatment, storage, or disposal facility who has
13 contributed or who is contributing to the past or present handling, storage,
14 treatment, transportation, or disposal of any solid or hazardous waste which
15 may present an imminent and substantial endangerment to health or the
16 environment.”

17 36. Section 1002(b) of RCRA states that “disposal of solid waste . . .
18 in or on the land without careful planning and management can present a
19 danger to human health and the environment.” 42 U.S.C. § 6901(b).

20 37. Under section 1004(3) of RCRA, “[t]he term ‘disposal’ means
21 the discharge, deposit, injection, dumping, spilling, leaking, or placing of any
22 solid waste . . . into or on any land or water such that such solid waste or
23 hazardous waste or any constituent thereof may enter the environment or be
24 emitted into the air or discharged into any waters, including ground-waters.”
25 42 U.S.C. § 6903(3).

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1 38. RCRA defines “solid waste” as “any garbage, refuse, sludge
2 from a waste treatment plant . . . and other discarded material, including solid,
3 liquid, semisolid, or contained gaseous material resulting from . . .
4 *agricultural operations.*” 42 U.S.C. § 6903(27) (emphasis added).

5 39. EPA criteria for solid waste disposal practices prohibit the
6 contamination of any underground drinking water source beyond the solid
7 waste boundary of a disposal site. 40 C.F.R. § 257.3-4(a).

8 40. An “underground drinking water source” includes (1) an aquifer
9 supplying drinking water for human consumption or (2) any aquifer in which
10 the groundwater contains less than 10,000 milligrams per liter of total
11 dissolved solids (“TDS”). 40 C.F.R. § 257.3-4(c)(4).

12 41. To “contaminate” an underground drinking water source means
13 to cause the groundwater concentration of a listed substance to exceed its
14 corresponding maximum contaminant level specified in Appendix I to 40
15 C.F.R. Part 257, or cause an increase in the concentration of that substance
16 where the existing concentration already exceeds the maximum contaminant
17 level in Appendix I.

18
19 **B. NUISANCE**

20 42. The California Civil Code defines a nuisance as anything that is
21 injurious to health, or is indecent or offensive to the senses, or an obstruction
22 to the free use of property, so as to interfere with the comfortable enjoyment
23 of life or property. Cal. Civ. Code § 3479.

24 43. The California Water Code defines a nuisance as a condition that
25 (1) is injurious to health, or is indecent or offensive to the senses, or an
26 obstruction to the free use of property, so as to interfere with the comfortable
27 enjoyment of life or property; (2) affects at the same time an entire
28 community or neighborhood, or any considerable number of persons,

1 although the extent of the annoyance or damage inflicted upon individuals
2 may be unequal; and (3) occurs during, or as a result of, the treatment or
3 disposal of wastes. Cal. Water Code § 13050(m).

4 44. The California Health & Safety Code provides that no person
5 “shall discharge sewage or other waste, or the effluent of treated sewage or
6 other waste, in any manner which will result in contamination, pollution or a
7 nuisance.”

8 45. The California Civil Code exempts agricultural operations only if
9 they meet all seven strict criteria: (1) an agricultural activity; (2) conducted or
10 maintained for commercial purposes; (3) in a manner consistent with proper
11 and accepted customs and standards; (4) as established and followed by
12 similar agricultural operations in the same locality; (5) the claim of nuisance
13 arises due to any changed condition in or about the locality; (6) after the
14 activity has been in operation for more than three years; and (7) the activity
15 was not a nuisance at the time it began. Cal. Civ. Code, § 3482.5.

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17 **C. TRESPASS**

18 46. California law allows any person who owned, leased, or
19 occupied the property trespassed upon to sue for trespass if they were harmed
20 by that trespass and so long as that harm was a substantial factor in causing
21 the person’s harm.

22 47. California law prohibits a person from intentionally or
23 recklessly or negligently entering another person’s property or causing
24 another thing to enter the plaintiff’s property without consent or given
25 permission for the entry. In the context of this tort, the unlawful entry occurs
26 where the defendant directly enters the subject property or where the
27 defendant’s conduct is substantially certain to cause something to go onto
28 that property, such as contamination, debris, or flies.

1 48. Under California law, contamination of the groundwater in an
2 aquifer under a plaintiff’s property can constitute a trespass, as can the
3 deposit of particulate matter, dust or debris, as well as the entry onto a
4 plaintiff’s property of unwanted pests such as rodents or flies.
5

6 **FACTS**

7 **A. N&M DAIRY**

8 49. Upon information and belief, N&M Dairy is, and all times herein
9 relevant was, a for-profit, unincorporated business owned by Neil De Vries,
10 individually and/or as trustee of the Neil and Mary de Vries Family Trust, and
11 Mary De Vries, individually and/or as trustee of the Neil and Mary de Vries
12 Family Trust; and operated by Neil De Vries, Mary De Vries, Jim De Vries,
13 and Randy De Vries. Neil De Vries, Mary De Vries, Jim De Vries, and Randy
14 De Vries, share, and at all times herein relevant shared, ownership and/or
15 control of N&M Dairy, N&M Dairy’s herd management activities, and the
16 manure and other waste management practices of N&M Dairy.

17 50. Upon information and belief, N&M Dairy has been in operation
18 for more than two decades. From at least April 7, 1992, to very recently,
19 N&M Dairy operated on approximately 904 acres in Helendale, California,
20 along the Mojave River.

21 51. N&M Dairy consists of two adjacent dairy facilities, N&M Dairy
22 #1 (the eastern portion of the facility, at 36001 Lords Road) and N&M Dairy
23 #2 De Vries Brothers Dairies (the western portion of the facility, at 18200
24 Lords Road). Upon information and belief, the number of cows confined on
25 the premises increased in number over the years, and Plaintiffs are informed
26 and believe that until approximately July 2013, the two dairies combined
27 confined between 2,800 and 4,500 cows and heifers on the property.

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1 52. The N&M Dairy utilized a scraped drylot system. Manure is
2 stored in dry stacks, and wash water flushes the milking facilities into storage
3 ponds, or lagoons.

4 53. N&M Dairy was a large dairy Concentrated Animal Feeding
5 Operation (“CAFO”) under federal law. 40 C.F.R. § 122.23(b)(4)(i).

6 54. According to N&M Dairy’s Nutrient Management Plan, N&M
7 Dairy #1 managed 1,700 milk cows plus support stock and had two adjacent
8 untilled fields, numerous sites for dry stacked manure, and approximately
9 three unlined lagoons for storing 76,967 gallons of wash water daily. All
10 fields at Dairy #1 have highly permeable soil.

11 55. According to N&M Dairy’s Nutrient Management Plan, N&M
12 Dairy #2 managed 1,100 milk cows plus support stock and had two adjacent
13 fields, numerous sites for dry stacked manure, and approximately three
14 unlined lagoons for storing 26,505 gallons of wash water daily.

15 56. In addition to the three fields at Dairy #1 and Dairy #2, N&M
16 Dairy includes three fields immediately west of the Mojave River. The
17 cropland consists of 300 acres of pivot irrigated land. Fields 1 and 2 are
18 adjacent to Dairy #1, Fields 3 and 4 are adjacent to Dairy #2, and Fields 5
19 through 8 are immediately west of the Mojave River.

20 57. N&M Dairy and the waste disposal areas are located in the
21 Middle Mojave River Valley groundwater basin in the Mojave River
22 Hydrological Unit, the same groundwater basin from which Plaintiffs’
23 residential wells draw.

24 58. N&M Dairy is located upgradient from Plaintiffs’ properties by
25 1/8 to 1/2 miles.

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1 59. N&M Dairy is located on soil that is primarily comprised of
2 cobblestones, sand, and gravel, with base soils of Victorville Sandy Loam or
3 Villa Loamy Sand to a depth of at least 140 feet. These soils have high
4 permeability and are considered by the State of California to be at a high risk
5 of nitrate leakage.

6 60. The water table at N&M Dairy ranges from 9 feet to 44 feet
7 below ground surface. The groundwater is downgradient to the east on
8 average, in a direction parallel to and toward the Mojave River, but reverses
9 when the River is flowing. Plaintiffs' homes and wells are located east of
10 N&M Dairy, which is considered downgradient from N&M Dairy. The
11 principal sources of natural recharge to the groundwater basin are the Mojave
12 River, and to a lesser extent, streams and washes. The Mojave River
13 recharges the aquifer system, as does surface water when sufficient surface
14 water is present. However, significant recharge occurs only during episodic
15 stormflows, usually in the winter. During the rest of the year, most of the river
16 is usually dry. The floodplain aquifer near Helendale is recharged primarily
17 by the infiltration of winter stormflows from the Mojave River. Because of
18 the limited availability of surface water, water supply in the area is derived
19 entirely from groundwater. There are no agricultural properties or waste
20 treatment facilities located between N&M Dairy and Plaintiffs' downgradient
21 wells or the downgradient wells tested by the California State Water Board.

22
23 **B. Manure Handling, Storage, and Disposal Practices**

24 61. Like all large dairy CAFOs, when it was in operation, N&M
25 Dairy generated significant quantities of solid and liquid manure wastes.

26 62. Upon information and belief, over the past two decades, N&M
27 Dairy continuously increased the size of its operations without adequately or
28 appropriately addressing the increased waste. Over the past two decades, the

1 conditions on the dairy have continued to worsen each time the herd size or
2 other operations increased, creating more flies, dust and particulates,
3 groundwater contamination, and odors so that Plaintiffs could no longer use
4 or enjoy their property.

5 63. N&M Dairy stores or has stored close to 100,000 tons of manure
6 onsite and the combined lagoons have collected over 30 million gallons of
7 waste wash water annually. Around 40,000 tons of manure have been moved
8 off site, and the rest has been disposed of on the property. The adjacent N&M
9 Dairy were on scraped drylot systems. Manure was or is stored in dry stacks,
10 and wash water flushed the milking facilities into five lagoons.

11 64. The Lahontan Regional Water Quality Control Board (the
12 “Board”) estimates that each cow produces approximately 19 pounds of
13 manure per day. Thus, for example, in 2010, N&M Dairy confined
14 approximately 4,500 cows and heifers producing approximately 15,600 tons
15 of manure per year.

16 65. The Board’s allowed agronomics application rate—that is, how
17 much manure can be effectively utilized by cropland—is 3.6 tons of manure
18 per acre per year. The N&M Dairy property includes 400 acres of cropland,
19 which means that 1,440 tons of manure can be agronomically applied to its
20 cropland each year.

21 66. Because of the agronomic application limits, the Dairy’s Waste
22 Discharge Requirements issued in 2001 state that manure in excess of 3,100
23 dry tons per year must be removed from the dairy site. The Dairy did not
24 comply with this order.

25 67. Indeed, the Board’s 2010 Clean Up and Abatement Order
26 concluded that the amount of manure generated annually by N&M Dairy “is
27 significantly more than what the Discharger can agronomically apply to crop
28

1 land at The Dairy and the Discharger is storing excess manure at the Dairy
2 site.” Clean Up and Abatement Order No. R6V-2010-0029.

3 68. The Dairy applied and continue to apply liquid and solid manure
4 wastes to its cropland in excess of the agronomic rates. Applying manure in
5 amounts greater than that which the current crop can effectively utilize causes
6 nitrates to leach through soil and into groundwater. Once these nitrates enter
7 the local water table, they migrate away from N&M Dairy and into the wells
8 of nearby residents.

9 69. The over-application manure has resulted in and will continue to
10 result in the ponding of manure when irrigation or precipitation occurs. That
11 ponding creates a direct pathway for manure and manure constituents to
12 runoff into surface water and discharge into groundwater.

13 70. Based on its inspection of the site, the Board has found numerous
14 violations regarding the over-application of manure above agronomic rates at
15 N&M Dairy. Some of those violations include:

- 16 a. July 1, 2009-December 31, 2009: Water Board official
17 noted that N&M Dairy has been over-applying manure
18 based on its self-monitoring report.
- 19 b. February 2, 2010: Inspection report found over-application
20 of manure on the east side of the Dairy’s fields.
- 21 c. July 2, 2010: Clean Up and Abatement Order No. R6V-
22 2010-0029 found that N&M Dairy was applying manure
23 above agronomic rates.
- 24 d. July 28, 2010: Enforcement action taken against N&M
25 Dairy for over-application of manure on cropland.
- 26 e. May 22, 2012: Board inspectors witnessed and
27 photographed manure spread on bare land with no crops or
28 vegetation.

1 71. In addition, N&M Dairy's storage of solid and/or liquid manure
2 in unlined earthen lagoons and on or in other permeable surfaces has caused
3 and is continuing to cause the discharge of untreated manure directly into
4 groundwater. Plaintiffs are informed and believe that seepage from the
5 Dairy's manure waste storage areas has been ongoing since the date these
6 storage areas were brought into operation.

7 72. N&M Dairy's manure storage lagoons are all 10 feet deep, which
8 is at the same depth as the shallowest groundwater aquifer onsite (9 to 44 feet
9 deep).

10 73. N&M Dairy's storage lagoons are unlined, over permeable soils,
11 and insufficient to contain and store the amount of liquid manure and wash
12 water generated by the Dairy.

13 74. According to National Resource Conservation Service
14 ("NRCS")'s most recent standards from October 2009, manure lagoons
15 should not be constructed above an aquifer that serves as a domestic water
16 supply. If no reasonable alternative exists, however, NRCS recommends that
17 manure lagoons be built with either (1) a clay liner with a permeability less
18 than 1×10^{-6} centimeters per second; (2) a flexible membrane liner over a clay
19 liner; (3) a geosynthetic clay liner; or (4) a concrete liner designed in
20 accordance with slab on grade criteria for fabricated structures requiring
21 water tightness.

22 75. Upon information and belief, N&M Dairy's lagoons do not meet
23 NRCS standards. The lagoons are constructed above an aquifer that serves as
24 a domestic water supply. The storage lagoons are unlined and on permeable
25 soils. The storage lagoons are 10 feet deep, which is at the same depth as the
26 shallowest groundwater aquifer onsite (9 to 44 feet deep).

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1 76. At Dairy #1, the three lagoons have a storage capacity of
2 1,202,904 cubic feet and store over 8.5 million gallons of liquid manure.
3 However, they would require 3,149,645 cubic feet of capacity to properly
4 contain the liquid manure generated by the Dairy.

5 77. At Dairy #2, the three lagoons have a combined storage capacity
6 of 968,346 cubic feet and stores almost 7 million gallons of liquid manure.

7 78. Upon information and belief, N&M Dairy's storage lagoons are
8 insufficient to contain and store the amount of liquid manure and wash water
9 generated by the facilities. In 2011, Board inspectors observed that "[t]he
10 dairy does not have adequate storage for generated wash water, and some of
11 the ponds are discharging into the adjacent area, which is very permeable,
12 thus creating nuisance conditions and a potential for groundwater
13 degradation." July 7, 2011 inspection report.

14 79. In 2010, the Board found that "[w]ash water generated from the
15 dairy milking barns contains high concentrations of nitrate and total dissolved
16 solids and is discharged into unlined ponds located at the N&M Dairy. Soil
17 below these ponds is very porous; and therefore, water in these ponds
18 percolates directly into to groundwater. . . Discharges from ponded wash
19 water and excess manure have affected and threaten to further affect
20 groundwater beneath and downgradient of the site." Clean Up and Abatement
21 Order No. R6V-2010-0029. In addition, N&M Dairy's storage and/or
22 composting of solid manure on permeable surfaces cause runoff and leachate
23 from the solid manure to enter groundwater, contributing to the contamination
24 of the local water supply. The Board found in 2010 that "manure piles on the
25 property contain high concentrations of nitrate... and excess manure ha[s]
26 affected and threaten to further affect groundwater beneath and downgradient
27 of the site." Clean Up and Abatement Order No. R6V-2010-0029.

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1 80. The excess manure stored at the Dairy ignited and caused a fire in
2 September 2013. Previous and subsequent fires have occurred at N&M Dairy
3 as well, emitting smoke and particulate into the neighboring community.

4 81. Based on its inspection of the site, the Board has found numerous
5 violations regarding the storage of liquid and solid manure in or on permeable
6 surfaces at N&M Dairy. Some of those violations include:

- 7 a. March 26, 2009: Inspection finding manure piles “all over
8 the site” and uncovered dead animals.
- 9 b. June 23, 2009: Inspection noting piles of manure dumped
10 openly on the property and dead calves left for so long that
11 they were decomposing to bones.
- 12 c. July 1, 2009: Inspection noting manure piles “all over the
13 site” along with uncovered dead animals.
- 14 d. January 7, 2010: Inspection photographing temporary
15 unlined ponds on the property, full of liquid manure, and
16 noting a lack of drain system, indicating that the waste was
17 percolating into the groundwater.
- 18 e. February 2, 2010: Inspection finding waste water
19 discharging into adjacent property. Pools on both east and
20 west sides were full, and excess flow from the ponds was
21 pooling and percolating into the ground. Inspection noted
22 that the ponds have no engineering standards.
- 23 f. July 2, 2010: Clean Up and Abatement Order No. R6V-
24 2010-0029 found that dairy site contained pooling waste
25 water on the property and manure piles with no measure to
26 stop the manure from draining into the ground.

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- 1 g. July 28, 2010: Inspection noting a new pond constructed
2 with no lining on the west side and on the southeast side
3 on the site, and that one of the ponds was overfilled.
- 4 h. July 7, 2011: Inspection report finding ponds overflowing
5 into permeable soil.
- 6 i. July 7, 2011: Inspection finding that Dairies failed to
7 comply with order to line ponds and that ponds remain
8 unlined.
- 9 j. August 3, 2012: Inspection finding that ponds were too
10 full and an excess flow of waste water was percolating
11 into the ground. Inspection noted that no Nutrient
12 Management Plan had been implemented nor any data
13 submitted.
- 14 k. February 19, 2013: Inspection finding new rows of manure
15 piles on Dairy #2 with no Best Management Practice
16 measures. Dairy #1 found similar manure piles and
17 excessive manure.

18 82. Further, upon information and belief, though it is no longer
19 operating as a dairy, N&M dairy is currently excavating its lagoons and
20 leaving the manure sludge out to dry on the ground.

21 83. Even after the cattle were removed, because the manure remains
22 on the property, and because the soil remains saturated with nutrients and
23 other pollutants, the seepage of manure waste from the lagoons, fields, stalls,
24 and the practice of windrowing and/or storage and/or composting piles of
25 manure has contributed and continues to contribute to the excessive
26 contamination of the groundwater, which is posing, or may pose, an imminent
27 and substantial endangerment to health and/or the environment.

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1 **C. Groundwater Contamination**

2 84. N&M Dairy’s manure handling, storage, and/or disposal and
3 possible other practices are responsible for groundwater contamination at
4 levels beyond the Maximum Contaminant Level (“MCL”) for nitrates.

5 85. MCLs are health-based standards set by the EPA. An MCL is the
6 level above which the contaminant is known to have an adverse effect on
7 human health. The National Primary Drinking Water Regulations,
8 promulgated under the Safe Drinking Water Act, prohibit contamination
9 levels in drinking water that exceed MCLs. *See* 42 U.S.C. § 300f *et seq.*

10 86. The MCL for nitrates is 10 milligrams per liter (10 mg/l).

11 87. Ingestion of nitrates above 10 mg/l is known to cause
12 methemoglobinemia, a blood disorder in which an abnormal amount of
13 methemoglobin—a form of hemoglobin—is produced. Hemoglobin is the
14 molecule in red blood cells that distributes oxygen to the body.

15 Methemoglobin cannot release oxygen, and in persons with
16 methemoglobinemia, the hemoglobin is unable to release oxygen effectively
17 to body tissues.

18 88. Methemoglobinemia is also known as “blue baby syndrome” in
19 infants. Infants who ingest nitrates above the MCL may quickly become
20 seriously ill and, if left untreated, may die.

21 89. High nitrate levels may also affect pregnant women and adults
22 with hereditary cytochrome b5 reductase deficiency. In addition, nitrate and
23 nitrite ingestion by humans has been linked to goitrogenic (anti-thyroid)
24 actions in the thyroid gland, fatigue and reduced cognitive functioning due to
25 chronic hypoxia, and maternal reproductive complications, including
26 spontaneous miscarriage.

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1 90. Ingestion of nitrates in excess of the MCL is also suspected of
2 causing various forms of cancer in the general exposed population and
3 compromises the health of immune-compromised individuals and the elderly.

4 91. Board Investigative Order No. R6V-2010-0044 found that
5 groundwater data collected by Water Board staff during January 2010 and
6 February 2010 “indicate shallow domestic water supply wells downgradient
7 of N&M Dairy contain nitrate...in concentrations that exceed the drinking
8 water standards” and that “[n]itrates exceeding MCLs “have been found in
9 groundwater from residential wells in the downgradient direction
10 approximately 0.75 miles east of the N&M Dairy. Such degradation makes
11 the groundwater unsuitable for domestic and other uses and constitutes a
12 pollution.”

13 92. Board Abatement Order Nos. R6V-2011-0055 and R6V-2011-
14 0055-A1, entitled “Requiring N&M Dairy to Clean Up and Abate the Effects
15 of Discharging Nitrate and TDS Contaminants to Groundwaters of the
16 Mojave River Hydrologic Unit” states that a June 4, 2011 report showed
17 nitrates in groundwater downgradient of the dairy and that “the results
18 presented in the Report indicate that the nitrate plume originating at the dairy
19 has migrated downgradient affecting individual supply wells in the adjacent
20 neighborhood. The sampling results confirmed nitrate and TDS in the
21 groundwater downgradient and cross-gradient are exceeding the MCL and
22 S[econdary] M[aximum] C[ontaminant] L[evel] respectively.”

23 93. Every groundwater monitoring ever taken by N&M Dairy has
24 indicated that the level of nitrates in the groundwater exceeded the MCL for
25 nitrates and other pollutants in at least one of its monitoring wells.

26 94. Groundwater samples taken by the Board beginning in February
27 2004 also found nitrate levels that exceeded the MCL by up to seven or more
28 times the MCL.

1 95. The Board's sampling also found levels of barium, chromium,
2 copper, and mercury that exceed the MCLs for those chemicals. The MCL for
3 barium is 2mg/l; chromium's MCL is 0.1mg/l; copper's MCL is 1.3mg/l; and
4 mercury's MCL is 0.002mg/l.

5 96. In addition, the Board's testing at N&M Dairy revealed
6 excessive levels of secondary MCLs, such as total dissolved solids ("TDS"),
7 calcium, chloride, manganese, sulfate, specific conductance, and turbidity.
8 The recommended SMCL for TDS is 500 mg/l and the upper limit is 1000
9 mg/l.

10 97. Samples taken by the Board and Plaintiffs at residential wells
11 downgradient from N&M Dairy indicated levels of nitrates, chromium, and
12 arsenic that exceeded the MCLs for those chemicals.

13 98. Test results from samples taken at upgradient wells, meanwhile,
14 indicate nitrate levels well below the MCL for nitrate.

15 99. Based on these lab reports and the hydrology of the area, the
16 Board concluded that N&M Dairy is responsible for the contamination of the
17 groundwater downgradient (east) from its site and is responsible for
18 Plaintiffs' contaminated residential wells. The contamination is directly
19 attributable to N&M Dairy's improper handling, storage, and disposition of
20 solid and liquid manure.

21 100. A sampling of testing results follows:

- 22 a. February 4, 2004, at N&M Dairy (the Dairy's monitoring
23 wells MW1 and MW2 are located near Dairy #2, on the
24 west side of the property, and MW3 and MW4 are located
25 near Dairy #1, on the east side):
- 26 i. MW1: 18.1 mg/l nitrates
 - 27 ii. MW2: 21.4 mg/l nitrates
 - 28 iii. MW3: 22.2 mg/l nitrates

- 1 iv. MW4: 42.8 mg/l nitrates
- 2 b. May 12, 2004, at N&M Dairy:
- 3 i. MW1: 13.8 mg/l nitrates
- 4 ii. MW2: 37.7 mg/l nitrates
- 5 iii. MW3: 23.3 mg/l nitrates
- 6 iv. MW4: 39.0 mg/l nitrates
- 7 c. December 10, 2004, at N&M Dairy:
- 8 i. MW2: 52.8 mg/l nitrates
- 9 ii. MW3: 15.8 mg/l nitrates
- 10 iii. MW4: 26.2 mg/l nitrates
- 11 d. May 4, 2005, at N&M Dairy:
- 12 i. MW1: 14.4 mg/l nitrates
- 13 ii. MW2: 10.0 mg/l nitrates
- 14 iii. MW3: 20.6 mg/l nitrates
- 15 iv. MW4: 17.3 mg/l nitrates
- 16 e. May 27, 2005, at N&M Dairy: Onsite average ranged from
- 17 10 mg/l to 16 mg/l nitrates.
- 18 f. December 15, 2005, at N&M Dairy:
- 19 i. MW3: 16.9 mg/l nitrates
- 20 ii. MW4: 20.2 mg/l nitrates
- 21 g. December 27, 2007, at N&M Dairy:
- 22 i. MW1: 12.3 mg/l nitrates
- 23 ii. MW3: 26.2 mg/l nitrates
- 24 h. December 22, 2008, at N&M Dairy:
- 25 i. MW1: 15.0 mg/l nitrates
- 26 ii. MW4: 31.9 mg/l nitrates
- 27 i. December 9, 2009, at N&M Dairy:
- 28 i. MW1: 16.4 mg/l nitrates

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- ii. MW2: 15.1 mg/l nitrates
- j. January 7, 2010, at downgradient residential well at 19456 National Trail Highway:
 - i. 18 mg/l nitrates
 - ii. 780 mg/l TDS
- k. January 18, 2010, at N&M Dairy: Well near corrals at Dairy #1 had 88 mg/l nitrates.
- l. February 26, 2010, at upgradient residential wells:
 - i. 17950 Lords Road: 1.6 mg/l nitrates
 - ii. 17950 Lords Road: 310 mg/l TDS
 - iii. 29442 Bullion Road: 0.23 mg/l nitrates
 - iv. 29442 Bullion Road: 420 mg/l TDS
- m. March 9, 2010, at downgradient residential well at 19741 National Trail Highway:
 - i. 18 mg/l nitrates
 - ii. 810 mg/l TDS
- n. May 16, 2012, at N&M Dairy:
 - i. MW3: 20.3 mg/l nitrates
 - ii. MW4: 32.0 mg/l nitrates
- o. May 30, 2012, at two downgradient residential wells at 19456 National Trails Road: 14.8 mg/l and 66.0 mg/l nitrates.
- p. September 28, 2012:
 - i. Sample 1: 186 mg/l nitrates
 - ii. Sample 2: 21.6 mg/l nitrates
 - iii. Sample 3: 119 mg/l nitrates
 - iv. Sample 4: 163 mg/l nitrates
 - v. Sample 5: 332 mg/l nitrates

- 1 q. December 4, 2012, at N&M Dairy:
 - 2 i. MW1: 14.2 mg/l nitrates
 - 3 ii. MW4: 28.4 mg/l nitrates
- 4 r. May 15, 2013, at Plaintiffs' properties: Sample 1 at 30
- 5 mg/l nitrates
- 6 s. July 16, 2013, at Plaintiffs' properties:
 - 7 i. Sample 1: 71 mg/l nitrates
 - 8 ii. Sample 4: 32 mg/l nitrates

9 101. RCRA Plaintiffs live downgradient from N&M Dairy and their
10 only source of residential water is well water that has been contaminated by
11 N&M Dairy.

12 102. Under order of the Board, N&M Dairy delivers bottled water to
13 RCRA Plaintiffs, but they sometimes do not receive enough drinking water
14 for their families, they do not receive enough water for domestic uses other
15 than drinking, and there have been lapses in the delivery of bottled water.
16 Given this history, RCRA Plaintiffs are concerned that delivery of bottled
17 water will not be reliable going forward.

18 103. Further, the bottled water is, at most, only enough for drinking
19 and cooking. RCRA Plaintiffs continue to use contaminated well water for
20 some food preparation, washing dishes, bathing (including children), cleaning
21 their homes, doing laundry, and watering food crops. These Plaintiffs often
22 must ration water during hot weather.

23 104. Eating food prepared with nitrate-contaminated water and
24 irrigated with nitrate-contaminated water can lead to chronic nitrate poisoning
25 because the dietary intake of nitrates is much larger than from drinking
26 nitrate-contaminated water alone.

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D. Soil Contamination that Leads to Continuing Water Contamination

105. N&M Dairy's improper manure handling, storage, and disposal practices have contaminated the soil beneath its property.

106. Because nitrates and other contaminants have been leaching into the soil from N&M Dairy's over-application of manure, storage of manure on permeable ground, and unlined manure lagoons, the subsoil is saturated with nitrates and other contaminants.

107. In studies, soil plumes contaminated by nitrates have been found beneath manure lagoons deeper than 5 feet that had been used for less than 11 years, a depth and timeframe similar to the N&M Dairy lagoons here.

108. Further, the storage of manure on permeable soil, as N&M Dairy has done, results in plumes of ammonium-contaminated soil. A study of manure lagoons on soil that is likely less permeable than the soil at N&M Dairy found that, over the course of 25 years of operation, the soil beneath a facility would accumulate a concentration of 81,200 pounds of ammonium per acre of soil.

109. The long-term leaching of contaminants into the soil—as has happened here—results in the bioaccumulation of those contaminants. Those contaminants are not only in the contaminants soil, but also leach into the groundwater.

110. Upon information and believe, without soil remediation, the contaminated soil plumes at N&M Dairy continue and will continue to leach nitrates, phosphates, heavy metals, and other contaminants into RCRA Plaintiffs' groundwater for more than five decades after N&M Dairy removes all manure.

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E. Excessive Ammonia Emissions, Odors, and Flies

111. The overapplication and storage of excessive manure at N&M Dairy has also resulted in excessive ammonia emissions, odors, and pests plaguing the Plaintiffs on the Plaintiffs’ properties.

112. These nuisances have continued despite the discontinuation of active use of the Dairy.

113. In part, the nuisances have continued because of the remaining manure on the dairy site.

114. In part, the nuisances have continued because N&M Dairy is currently excavating its lagoons and is drying the manure sludge on the ground. The open drying of manure sludge attracts flies and emits ammonia and other noxious odors.

115. Ammonia is a toxic gas with a pungent odor that is commonly released during the decomposition of manure. Ammonia inhalation can cause irritation, bloody noses, lung damage, and death in humans and causes chronic stress to farm animals.

116. In its September 2012 inspection, the Board observed excessive numbers of flies throughout N&M Dairy and noted that the Board had received numerous complaints from area residents about the abundance of flies. The Inspectors informed Defendants that the fly traps were not installed and maintained correctly, and Jim De Vries “admitted that the fly baits/traps could be used more effectively.” Abatement Order No. R6V-2010-0029, entitled “Requiring N&M Dairy to Clean Up and Abate the Nuisance Conditions Caused by Excessive Manure and Standing Manure Mixed with Water from Dairy Operations at N&M Dairy,” states that “Staff observed thousands of flies and noted odors throughout inspection of the dairy. The conditions observed by Water Board staff confirmed the validity of the

1 residents' complaints. The odors and flies from the improperly stored and
2 disposed manure by N&M Dairy are indecent or offensive to the senses of the
3 residents in close proximity to N&M Dairy, and prevent the residents from
4 the free use of their properties. Thus, a condition of nuisance has been
5 created by the treatment and/or disposal of waste (manure) at the N&M
6 Dairy."

7 117. Board Abatement Order Nos. R6V-2011-0055 and R6V-2011-
8 0055-A1 stated that N&M Dairy had caused conditions which created an odor
9 problem and fly problem and thereby created a condition of nuisance.

10 118. Abatement Order No. R6V-2011-0056, entitled "Requiring
11 N&M Dairy to Clean Up and Abate the Groundwater Pollution and Nuisance
12 Conditions Caused by Inadequate Manure and Wash Water Management
13 From Dairy Operations at N&M Dairy," noted a July 7, 2011, Inspection
14 determining that "[t]he dairy does not have adequate storage for generated
15 wash water, and some of the ponds are discharging into the adjacent area,
16 which is very permeable, thus creating nuisance conditions and a potential for
17 groundwater degradation."

18 119. Despite the above Abatement Orders, the nuisances have not
19 ceased. N&M Dairy has routinely violated Abatement Orders.

20 120. The Board stated that its "authority to control odor and vector
21 issues rising to the level of a nuisance, as defined in section 13050 of the
22 Water Code, is limited by its authority to control the discharge causing the
23 nuisance condition. The Water Board does not have general authority to abate
24 nuisance or assure the protection of public health." Therefore, it cannot
25 provide the Plaintiffs with the relief they seek.

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1 121. With regard to flies, the excessive numbers of flies have made it
2 impossible for Plaintiffs to live normally. Flies are ubiquitous on Plaintiffs'
3 property, both indoors and outdoors, and all surfaces, including food and
4 drink, are covered in fly residue and bacteria. Every time an exterior door is
5 opened, flies fly into Plaintiffs' homes no matter how quickly the door is
6 closed again. At one Plaintiff's home, the front door has not been opened in
7 years because of the risk of letting more flies in.

8 122. Because opening garage doors lets in vast numbers of flies, one
9 household avoids parking its vehicles in the garage altogether. Mr. Sprowl
10 and Mr. Morrison have been unable to perform vehicle maintenance and
11 repair as frequently as they would like to because the prevalence of flies
12 makes it too difficult; and similarly, Dallas Whitton has been unable to work
13 outdoors using torches and welders because of the flies.

14 123. Plaintiffs live with flyswatters on every table and, during the
15 summer months when the flies are at their worst, cannot sit in their homes
16 without flyswatters in their hands. Mr. and Mrs. Snell have taken turns eating,
17 so that one can swat away flies while the other eats. The flies have entered the
18 Plaintiffs' refrigerators, dishwashers, and showers, and landed on their food,
19 drinks, and toothbrushes.

20 124. Plaintiffs have been forced to spend an excessive amount of time
21 and money attempting to clean fly residue off their walls and windows,
22 blinds, light fixtures, even smoke detectors. Spending three to five hours to
23 clean a single room is not uncommon. The fly residue is sticky and requires
24 hard scrubbing to remove. Several of the Plaintiffs have had to repaint their
25 interior walls and windowsills more than once in the past decade. The
26 Blackwoods and the Morrisons painted their interior in brownish colors in an
27 attempt to disguise the fly residue.

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1 125. Many of the Plaintiffs have suffered interrupted sleep because of
2 the constant buzzing of flies and having flies land on them—particularly the
3 young children, who attempt to nap during the day, and Mr. Snell, who works
4 at night and must sleep during the day, when the flies are worse.

5 126. Plaintiffs are unable to spend any time out of doors on their
6 property because of the prevalence of flies—they are prisoners in their own
7 homes. Outdoor activities such as motorcycle riding, barbecuing, and
8 shooting have been impossible to enjoy. The children who would otherwise
9 play outside for hours come in after only 10 or 15 minutes because they
10 cannot tolerate the flies, and they have been unable to enjoy playing in
11 temporary above-ground swimming pools because the water attracts flies.
12 Nearly all of the Plaintiffs have stopped or significantly decreased the amount
13 of hosting that they do of guests at their homes. They refrain from inviting
14 friends and family members or have their invitations declined.

15 127. At times, depending on the direction and intensity of the wind,
16 pungent odors and ammonia permeate Plaintiffs' properties, causing their
17 throats and eyes to burn. Plaintiffs are sometimes woken up by a terrible
18 stench.

19 128. Plaintiffs have suffered skin conditions, ear infections,
20 headaches, stomach aches and digestive problems, bloody noses, hair loss,
21 and tooth loss. Mrs. Blackwood has developed a chemical sensitivity that she
22 attributes to the ammonia and/or the insecticides that they have used to
23 combat the fly invasions. Ms. Araujo had an ear infection that her doctor told
24 her was the type of infection people get from swimming in polluted water, but
25 Ms. Araujo does not swim and had not been in any water other than
26 showering at the Romero home.

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1 129. Many of the Plaintiffs have animals at their properties that are
2 also bothered by the flies and the ammonia. The Silvas, the Romeros, and the
3 Whittons have dogs who have been bitten so much on their ears, noses, and
4 faces by the flies that they bleed. The flies and ammonia also interfere with
5 the chickens cultivated on the Romero and Whitton properties.

6 130. In these and other ways, the excessive ammonia emissions,
7 odors, and pests are offensive to the senses, obstruct the Plaintiffs' free use of
8 their properties, and interfere with Plaintiffs' comfortable enjoyment of their
9 lives and property.

10
11 **F. Defendants' Willful and Malicious Disregard for Plaintiffs**

12 131. Defendants have continuously violated provisions of the
13 California Health & Safety Code, the California Water Code, and Regional
14 Water Quality Control Board Orders. Defendants have repeatedly refused to
15 correct violations noted by the Board. Defendants have failed and refused to
16 manage N&M Dairy's waste to avoid causing injury to the Plaintiffs, even
17 after being made aware of violations.

18 a. Despite at least five orders to come into compliance, issued
19 between October 11, 2010, and August 3, 2012, the Dairy
20 refused to submit or even begin to implement the required
21 Nutrient Management Plans or submit any of the data required
22 by California Nutrient Management Plans.

23 b. Despite four Clean up and Abatement Orders and Investigation
24 Orders finding that the Dairy contained excess manure that was
25 causing a nuisance and groundwater contamination to the
26 community aquifer, Defendants did not bring their facility into
27 compliance. For example, a 2010 Order R6V-2010-0029-A1
28 required a Manure Removal Plan to bring the facility into

1 compliance. On July 7, 2011, an inspection still revealed
2 overfilled lagoons seeping into drainage ditches and about the
3 property, ponding in the corrals, and overfull storm retention
4 basins.

5 c. A September 6, 2012, email from the Board stated that despite a
6 Notice of Violation being sent on August 7, 2012, with a
7 response required by August 21, 2012, Defendants failed to
8 provide any response to the Notice.

9 d. Defendants left cows to die and rot on the facility without
10 bothering to remove them despite numerous notices to do so. A
11 March 26, 2009, Inspection revealed numerous uncovered dead
12 cows and calves thrown into a dug out hole as well as a
13 completely rotted calf half buried in manure in the corrals. This
14 same inspection revealed a dead cow with a dead calf still
15 protruding from the mother lying in the road near the east end of
16 the property. Despite the resulting June 1, 2009, Notice of
17 Violation, an inspection performed barely a month later on June
18 23, 2009, again found violations and included a photo of a dead
19 calf that had been there long enough to have exposed bones. A
20 September 12, 2012, inspection revealed a cow that had been left
21 rotting in a corral with other cows for more than 48 hours when
22 the Board Inspectors discovered it.

23 e. Defendants refused to line the lagoons despite demands in 2010
24 and 2011 that they do so and the knowledge that the lagoons
25 were leaking.

26 f. Defendants routinely placed illegal piles of manure on the
27 property despite numerous notices that the practice was unsound
28 and unlawful.

1 132. Defendants have routinely and consistently refused to operate
2 N&M Dairy within proper and accepted customs and standards for a
3 California dairy facility, or with ordinary care, despite being informed that
4 their unlawful practices were causing a continuing nuisance, rendering
5 Plaintiffs' water unfit to drink and causing excessive numbers of flies to
6 diminish the quality of Plaintiffs' lives and the value of their properties.

7 133. During a December 21, 2011, meeting with the Board, the
8 Defendants were told that they must provide water to any resident that had
9 water above the MCL for nitrates within 48 hours. Defendants stated simply
10 that their bottled water provider only comes once every two weeks and is not
11 willing to make an extra trip for one or two residents. Defendants then
12 requested that the Board extend the 48 hour time requirement to a two week
13 time requirement so as to not incur additional expense with the bottled water
14 provider.

15 134. In September 2012, during an inspection at N&M Dairy Neil De
16 Vries told Board inspectors that, with regard to managing his wastewater
17 properly, "Even if I had the money I wouldn't do it anyway."

18 135. In September 2012, during an inspection at N&M Dairy, Neil De
19 Vries stated in response to inspectors informing him that N&M Dairy was
20 responsible for groundwater contamination in the community that "people
21 down the road who don't have anything to do are told to complain" by the
22 Board.

23
24 **G. The Board's Enforcement Actions**

25 136. Based on the history of observed violations at N&M Dairy, the
26 Board ordered N&M Dairy to remove excessive manure stored at the site in
27 2010. Clean Up and Abatement Order No. R6V-2010-0029.

28 ///

1 137. The order addressed only the removal of excessive manure from
2 the site and did not address any other aspects of the environmental damage.
3 *Id.* N&M Dairy failed to comply with the corresponding manure removal
4 reporting requirements. After several extensions, 89 percent of the excess
5 manure was removed from the site by late 2013.

6 138. Sometime in 2013, N&M Dairy discontinued dairy operations
7 and removed most or all of the dairy cows from the site.

8 139. In December 2013, the Board issued another Clean Up and
9 Abatement Order. No. R6V-2013-0103 (“2013 Order”). The Board found that
10 N&M Dairy had violated state law by discharging waste into the groundwater
11 beneath and downgradient of the dairy and that the “affected groundwater is
12 no longer useable for drinking or domestic supply purposes.”

13 140. The 2013 Order requires N&M Dairy to sample residential wells
14 within a certain area downgradient of the dairy, provide sampling reports to
15 the Board, and provide replacement bottled water to affected residents. The
16 2013 Order also requires N&M Dairy to remove any remaining waste
17 manure.

18 141. The 2013 Order does not require N&M Dairy to take measures to
19 remediate the soil or reduce the population of vectors in addition to other
20 manure control measures. The 2013 Order also does not require N&M Dairy
21 to explore digging deeper wells for Plaintiffs in order to provide them with an
22 independent safe water source.

23 142. The 2013 Order also raises the TDS trigger level for bottled
24 water from 500mg/L to 815 mg/L. This increase reduces Plaintiffs’ water
25 quality from a “good” palatability level to a “fair” palatability level as defined
26 by the World Health Organization. The average TDS for groundwater in the
27 Middle Mojave River Valley Basin is about 500/mg, and the EPA lists the
28 Secondary Maximum Contaminant Level for TDS at 500 mg/L. California

1 lists the same limit, 500 mg/L, as its “Recommended Range.” Cal. Code
2 Regs. Tit. 22, § 64449.

3 143. The 2013 Order contains no provisions to provide Plaintiffs with
4 a remedy if and when Defendants violate the provisions of the 2013 Order,
5 and they have violated prior Orders.

6
7 **CLAIMS FOR RELIEF**

8 **COUNT 1**

9 **RCRA Imminent and Substantial Endangerment**

10 **RCRA Plaintiffs against Mary De Vries, individually and dba N&M**
11 **Dairy (aka N&M Dairy # 1 and N&M Dairy # 2) and as trustee of the**
12 **Neil and Mary De Vries Family Trust; Neil De Vries, individually and**
13 **dba N&M Dairy (aka N&M Dairy # 1 and N&M Dairy # 2) and as**
14 **trustee of the Neil and Mary De Vries Family Trust; Jim De Vries;**
15 **Randy De Vries; and Doe Defendants 1 through 3**

16 144. RCRA Plaintiffs incorporate by reference the allegations of the
17 preceding paragraphs of this Complaint.

18 145. Since at least 1992, N&M Dairy has been disposing “solid
19 waste” under RCRA, 42 U.S.C. § 6903(27), because the liquid and solid
20 manure and waste wash water are, either when overapplied or dumped into
21 storage lagoons or on the ground, “discarded material[s] . . . resulting from . .
22 . agricultural operations.”

23 146. Defendants are the past and present owners or operators of a
24 storage or disposal facility under RCRA, 42 U.S.C. § 6972(a)(1)(B), because
25 N&M Dairy stores and disposes of manure and waste washwater in massive
26 unlined earthen lagoons and in piles on the ground onsite and applies manure
27 onto fields above agronomic rates. As a result, Defendants contribute to the
28 past or present handling, storage, and disposal of solid waste.

1 147. N&M Dairy is a past and present generator of manure and other
2 by-product wastes. Manure is “handled” and “transported” by the Dairy as
3 well as disposed of on the Dairy’s land.

4 148. N&M Dairy’s handling, transportation, storage, and disposal of
5 manure and waste washwater presents an imminent and substantial
6 endangerment to public health and the environment.

7 149. Specifically, RCRA regulations prohibit a facility or practice
8 from contaminating an underground drinking water source. 40 C.F.R.
9 § 257.3-4(a). “Contamination” occurs when a toxic substance is introduced
10 that causes the concentration of that substance to exceed its MCL. *See* 40
11 C.F.R. § 257.3-4(a), App. I.

12 150. N&M Dairy’s manure handling, storage, and disposal practices
13 have contaminated the groundwater under the Dairies as well as the
14 groundwater downgradient from the dairy, including the well water that
15 RCRA Plaintiffs rely on for their drinking and other domestic needs, because
16 the contaminant levels in the groundwater exceed the MCLs for several
17 contaminants, most notably nitrates and arsenic, making the water unsafe for
18 drinking and domestic use.

19 151. N&M Dairy’s handling, transportation, storage, and disposal of
20 manure and waste washwater presents an imminent and substantial
21 endangerment to public health and the environment because those practices
22 have contaminated the downgradient groundwater to the extent that it is not
23 safe for drinking or for domestic use. RCRA Plaintiffs’ and other
24 downgradient residents’ only source of domestic water is well water that is
25 now unsafe because of N&M Dairy’s contamination.

26 ///

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1 152. N&M Dairy's handling, transportation, storage, and disposal of
2 manure and waste washwater presents an imminent and substantial
3 endangerment to public health and the environment because those practices
4 have contaminated the soil beneath the dairies. Unless it is remedied, the
5 contaminants in the soil will continue to leach into the groundwater for
6 decades to come, continuing to contaminate RCRA Plaintiffs' well water and
7 making it unsafe to drink or use.

8 153. Plaintiffs are harmed and will continue to be harmed by this
9 imminent and substantial endangerment unless the Court grants the relief
10 sought herein.

11 154. Under RCRA, 42 U.S.C. § 6972(a), RCRA Plaintiffs seek an
12 assessment of past, present, and future response, remediation, removal and/or
13 clean-up costs against N&M Dairy, particularly the remediation of the
14 groundwater and soil, and temporary and/or permanent injunctive relief, as
15 well as attorneys and expert witness fees and costs.

16 WHEREFORE, RCRA Plaintiffs, and each of them, pray for relief as
17 set forth below.

18
19 **COUNT 2**

20 **Continuing Private Nuisance under California Law**

21 **All Plaintiffs against All Defendants**

22 155. Plaintiffs incorporate by reference the allegations of the
23 preceding paragraphs of this Complaint.

24 156. Plaintiffs own and/or occupy property adjacent to or otherwise
25 near N&M Dairy. Plaintiffs have the right to own, enjoy, and use the property
26 without interference by N&M Dairy.

27 157. Plaintiffs, and each of them, have an inalienable right to own,
28 enjoy, and use their property without interference by Defendants.

1 158. Plaintiffs are informed and believe and thereon allege that
2 Defendants, and each of them, own, lease, rent, market, operate, manage,
3 maintain, occupy, loan, borrow, bail, and/or control N&M Dairy, including
4 but not limited to the land and its appurtenances, as well as the dairy farm
5 facilities and equipment thereon, and have so owned, leased, rented,
6 marketed, operated, managed, maintained, occupied, loaned, borrowed,
7 bailed, and/or controlled N&M Dairy continuously since at least the late
8 1980s.

9 159. Plaintiffs are informed and believe and thereon allege that
10 Defendants, and each of them, are and at all relevant times were responsible
11 for the business operations of N&M Dairy and for the management of the
12 property, and have been involved in the hiring, retention, supervision,
13 management, training, operations, maintenance, and control of Dairy
14 employees, contractors, subcontractors, and other workers at the Dairy, as
15 well as other agents retained by Defendants to assist them in their business
16 enterprise, continuously since at least the late 1980s.

17 160. None of the Plaintiffs consented to Defendants' improper
18 management of their facilities and cows, nor to their improper waste
19 management practices; nor did Plaintiffs consent to receive the noxious odors
20 and emissions, dust and particulate, flies, or other conditions that have created
21 a nuisance on their properties.

22 161. At all times herein relevant, N&M Dairy failed to exercise care
23 in handling, storage, and disposing of manure, causing the contamination of
24 RCRA Plaintiffs' domestic drinking water and t causing the entry of noxious
25 emissions, excessive odors, particulate, and excessive pests (flies) onto
26 Plaintiffs' properties. In addition, creatures such as lizards and birds that eat
27 flies have entered Plaintiffs' properties and in some instances damaged the
28 eaves, walls, and exterior of some of the Plaintiffs' homes.

1 162. Since at least 2004, N&M Dairy has failed to follow acceptable
2 standards and customs for the handling, storage, and disposal of manure by
3 overapplication of manure on cropland, overfilling unlined manure lagoons,
4 and piling manure directly on permeable soil. N&M Dairy’s operations
5 constituted a continuing and abatable nuisance at the time they began and
6 constitute a continuing and abatable nuisance that is still occurring to this day.
7 The excess manure still stored at the Dairy has emitted and continues to emit
8 toxins and excessive odors, and served and continues to serve as breeding
9 grounds for flies

10 163. The conditions described herein constitute a “nuisance” pursuant
11 to California Health & Safety Code § 5411 and California Water Code §
12 13050(m).

13 164. The contaminated and unsafe domestic water supplies create
14 hassle and expense for Plaintiffs and, to the extent they must continue to use
15 the water for household tasks, are dangerous to their health. The toxic
16 emissions are dangerous to Plaintiffs’ health and cause annoyance,
17 discomfort, irritation, and inconvenience. The contamination of the water
18 supply, the toxic emissions, and the excessive odors and pests are offensive to
19 Plaintiffs’ senses, obstruct their ability to use their properties, and interfere
20 with their enjoyment and free use of their properties.

21 165. At all times that Defendants discharged these offensive odors,
22 hazardous substances, and flies, Defendants knew or should have known that
23 noxious and toxic emissions with a pungent odor, including ammonia, are
24 commonly released during the decomposition of uric acid in cow manure.
25 Defendants knew or should have known that decomposition can occur in both
26 wet and dry conditions, which means that ammonia and other noxious
27 emissions are released immediately after excretion and continues to form as
28 waste breaks down. Defendants knew or should have known that ammonia

1 inhalation can cause irritation, bloody noses, lung damage, and even death to
2 humans, and that it causes chronic stress to farm animals. Defendants knew or
3 should have known that dead and decomposing animals cause offensive odors
4 and other hazardous chemical compounds; are a common cause of localized
5 odors from animal production facilities; and attract and serve as a breeding
6 ground for flies.

7 166. The seriousness of Plaintiffs' injuries outweighs the social utility
8 of N&M Dairy's conduct, as N&M Dairy could have taken measures to
9 prevent the harm while still operating the dairy. N&M Dairy could have
10 prevented these injuries by following the legal standards for manure storage
11 and disposal.

12 167. Any person would be reasonably annoyed or disturbed by the
13 contamination of domestic water supplies, exposure to noxious emissions,
14 and/or extent to which the Plaintiffs' properties, homes, and lives have been
15 compromised by excessive pests as a result of Defendants' bad practices.

16 168. Since at least 2004, N&M Dairy has negligently failed to abate
17 the continued nuisance and has negligently permitted the nuisance to
18 continue.

19 169. N&M Dairy's conduct constitutes a continuing nuisance under §
20 3479 of the California Civil Code and a per se nuisance under California
21 Health & Safety Code § 5411 and California Water Code § 13050(m).

22 170. In addition to creating the above-described nuisance that has
23 harmed the Plaintiffs as alleged herein, Defendants have failed to adequately
24 abate the continuing nuisance and have allowed the nuisance to continue.
25 Despite removal of the cows, odor from manure and waste and vectors
26 continue, and the soil is still saturated with nitrates and other pollutants,
27 resulting in continued degradation of the groundwater on which the RCRA
28 Plaintiffs rely.

1 171. As a direct and proximate result of the acts and omissions of the
2 Defendants as herein alleged, Plaintiffs seek compensatory damages; punitive
3 damages; and pre-judgment interest, as set forth in Plaintiffs' prayer for
4 Relief below. However, because Plaintiffs cannot be adequately compensated
5 with money damages, Plaintiffs also seek injunctive relief, particularly relief
6 requiring N&M Dairy to remediate the contaminated soil and groundwater;
7 dig deeper wells for the Plaintiffs with contaminated water, if such action will
8 provide them with water safe for domestic and agricultural use; and increase
9 their vector controls to prevent flies from entering Plaintiffs' properties.

10 172. If the permanent injunction that Plaintiffs seek is not issued,
11 requiring Defendants to abate the nuisance, Plaintiffs will suffer great and
12 irreparable injury in that, among other things: (1) at least some of the adverse
13 consequences of Defendants' business activities and/or abandonment of the
14 property, facilities, and manure at N&M Dairy will continue, and (2) the loss
15 of and damage to Plaintiffs' use and enjoyment of their property will
16 continue, and (3) Plaintiffs' properties and their local community and the area
17 surrounding N&M Dairy will acquire a widening reputation as a community
18 that is polluted, degraded, noxious, and unpleasant, thereby destroying the
19 attractiveness of the locality as a place to visit, live, or recreate, and the
20 desirability of Plaintiffs' properties to themselves and to others.

21 173. N&M Dairy's actions were taken maliciously and in conscious
22 disregard of the rights of Plaintiffs. As such, Plaintiffs are entitled to punitive
23 and exemplary damages, as set forth in greater detail above.

24 WHEREFORE, Plaintiffs, and each of them, pray for relief as set forth
25 below.

26

27 ///

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COUNT 3

Continuing Trespass under California Law

All Plaintiffs against All Defendants

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4 174. Plaintiffs incorporate by reference the allegations of the
5 preceding paragraphs of this Complaint.

6 175. At all times herein relevant, the repeated and frequent emissions
7 from Defendants' facilities at N&M Dairy, of excessive numbers of flies,
8 dust, and particulate, have migrated off of Defendants' property and facilities
9 and dispersed through the surrounding environment, including entering the
10 real properties, houses, and garages that Plaintiffs, and each of them, own,
11 lease, and/or occupy and reside in.

12 176. Defendants intentionally, recklessly, or negligently mismanaged
13 their facilities, operations, animals, and animal waste at N&M Dairy so as to
14 cause swarms of flies to enter Plaintiffs' property.

15 177. In addition, depending on the direction and intensity of the wind,
16 on many occasions during the past several years, and earlier, dust and
17 particulate—including, upon information and belief, bits of manure—have
18 entered Plaintiffs' property from N&M Dairy.

19 178. None of the Plaintiffs gave any of the Defendants permission for,
20 nor has any of the Plaintiffs consented to, the entry of flies and particulates
21 onto their property and into their homes, garages, and vehicles.

22 179. The flies and particulates that Defendants' misconduct caused to
23 enter onto Plaintiffs' properties, without the permission or consent of
24 Plaintiffs, constitute repeated invasions of Plaintiffs' property interests,
25 including their right to exclusive possession of the land that they owned,
26 leased, occupied, and/or resided on, and thus constitute a temporary, abatable,
27 and continuing trespass that has directly and proximately caused substantial
28 injuries and damages to Plaintiffs, and each of them.

1 180. Defendants’ mismanagement of their facilities, operations,
2 animals, and animal waste at N&M Dairy was a substantial factor in causing
3 the unauthorized and offensive entry of the flies and particulate onto the
4 properties of Plaintiffs. Moreover, the unconsented-to entry of excessive
5 numbers of flies, as well as the unconsented-to entry of manure particulate,
6 onto the properties of Plaintiffs, was and is a substantial factor contributing to
7 the harms and damages that Plaintiffs have suffered and continue to suffer as
8 alleged herein.

9 181. As a direct and proximate result of the acts and omissions of the
10 Defendants as herein alleged, Plaintiffs seek compensatory damages; punitive
11 damages; and pre-judgment interest, as set forth in Plaintiffs’ prayer for
12 Relief below.

13 182. The wrongful acts of Defendants, and each of them, as alleged
14 herein, were done maliciously, oppressively, fraudulently, and in conscious
15 disregard of the rights, health, and safety of Plaintiffs; and Plaintiffs are
16 entitled to punitive damages to punish Defendants and deter such conduct by
17 Defendants and others in the future, in an amount to be ascertained according
18 to proof at the time of trial.

19 WHEREFORE, Plaintiffs, and each of them, pray for relief as set forth
20 below.

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COUNT 4

Continuing Trespass under California Law

**RCRA Plaintiffs; Susan Gray, individually and as guardian ad litem for
A.K.; John Gray; Shawna Gray; James Ervin; Kathren Ervin; Ofelia
Ervin; James Dennis Ervin; John Morrison; and Lisa Morrison against
All Defendants**

183. Plaintiffs incorporate by reference the allegations of the preceding paragraphs of this Complaint.

184. As discussed in detail in preceding paragraphs, Defendants' animal and manure handling, storage, and disposal practices have caused contaminants from the N&M Dairy site to enter the groundwater aquifers under the property owned by the RCRA Plaintiffs, which the RCRA Plaintiffs use as their only sources of domestic water.

185. Defendants intentionally, recklessly, or negligently mismanaged their facilities, operations, animals, and animal waste at N&M Dairy so as to cause the resulting contaminants to enter RCRA Plaintiffs' groundwater.

186. None of the RCRA Plaintiffs gave any of the Defendants permission for the entry of contaminants into their properties.

187. The contaminants that Defendants' misconduct caused to enter onto RCRA Plaintiffs' properties constitute repeated invasions of RCRA Plaintiffs' property interests, including their right to exclusive possession of the land that they owned, leased, occupied, and/or resided on, and thus constitute a temporary, abatable, and continuing trespass that has directly and proximately caused substantial injuries and damages to RCRA Plaintiffs.

188. Defendants' mismanagement of their facilities, operations, animals, and animal waste at N&M Dairy was a substantial factor causing the unauthorized entry of contaminants into RCRA Plaintiffs' properties, and this offensive and unauthorized entry was a substantial factor in causing the harms

1 and damages that RCRA Plaintiffs have suffered and continue to suffer as
2 alleged herein.

3 189. As a direct and proximate result of the acts and omissions of the
4 Defendants as herein alleged, Plaintiffs seek compensatory damages; punitive
5 damages; and pre-judgment interest, as set forth in Plaintiffs' prayer for
6 Relief below. Additionally, because Plaintiffs cannot be adequately
7 compensated with money damages, Plaintiffs also seek injunctive relief,
8 particularly relief requiring N&M Dairy to remediate the contaminated soil
9 and groundwater; dig deeper wells for the Plaintiffs with contaminated water,
10 if such action will provide them with water safe for domestic and agricultural
11 use; and increase their vector controls to prevent flies from entering Plaintiffs'
12 properties.

13 190. The wrongful acts of Defendants were done maliciously,
14 oppressively, fraudulently, and in conscious disregard of the rights, health,
15 and safety of RCRA Plaintiffs; and they are entitled to punitive damages to
16 punish Defendants and deter such conduct by Defendants and others in the
17 future, in an amount to be ascertained according to proof at the time of trial.

18 WHEREFORE, RCRA Plaintiffs, and each of them, pray for relief as
19 set forth below.

20

21

RELIEF REQUESTED

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23

Plaintiffs respectfully request that the Court enter a judgment against
Defendants, and each of them:

24

25

26

27

A. Declaring that Defendants' past and/or present generation,
handling, storage, treatment, transportation and/or disposal of solid waste
presents, or may present, an imminent and substantial endangerment to public
health and the environment.

28

///

1 B. Issuing a compliance order that requires Defendants to cease and
2 desist from storing manure on any portion of Defendants' land that
3 Defendants have not first lined adequately to prevent seepage of pollutants
4 into surface water or groundwater that may, whether by flow or diffusion,
5 transmit such pollutants outside Defendants' property boundaries.

6 C. Issuing temporary and/or injunctive relief against Defendants by
7 ordering Defendants to cease all activities constituting the imminent and
8 substantial endangerment to the public health and environment.

9 D. Ordering Defendants to take all actions as may be necessary to
10 eliminate any present or future endangerment and nuisances, including, but
11 not limited to:

- 12 1) funding, developing and implementing an appropriate and
13 effective remediation plan to ensure that the groundwater is
14 no longer contaminated and is safe to drink;
- 15 2) funding, developing and implementing an appropriate and
16 effective remediation plan to ensure that the soil is no longer
17 contaminated and will not leach into the groundwater;
- 18 3) funding, developing and implementing an appropriate and
19 effective plan to provide Plaintiffs with contaminated water
20 with a permanent independent source of safe drinking water
21 that is not reliant on Defendants' bottled water delivery; and
- 22 4) implementing heightened vector control on N&M Dairy
23 property to prevent the spread of flies and providing Plaintiffs
24 with vector control and sanitation services to prevent the
25 impact of the flies on their properties.

26 E. Awarding Plaintiffs compensatory damages consisting of general
27 damages for annoyance, discomfort, inconvenience, interference with the
28 Plaintiffs' possessory interest in their property, loss of use of property, and

1 loss of peaceful enjoyment of life and property;, related to the damage or
2 destruction caused by flies, fly feces and/or regurgitation, and/or other
3 noxious or hazardous conditions created by the presence of flies, odors, dust,
4 contaminants, and/or particulate; in an amount according to proof at the time
5 of trial.

6 F. Awarding Plaintiffs punitive and exemplary damages in an
7 amount according to proof at the time of trial.

8 G. Awarding Plaintiffs reasonable attorneys' and expert witness
9 fees and other costs of suit and prejudgment interest, pursuant to 42 U.S.C. §
10 6972(e); California Code of Civil Procedure §§ 998, 1021.5, 1021.9, and
11 1032; and other statutes and related provisions of law as may be applicable.

12 H. Ordering such other relief as the Court may deem just and
13 proper.

14
15 Dated: 6/15/15

SIMMONS HANLY CONROY LLC

16
17 By: 

18 Deborah R. Rosenthal
19 *Attorney for Plaintiffs*

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues herein so triable.

Dated: June 15, 2015

SIMMONS HANLY CONROY LLC

By: 
Deborah R. Rosenthal
Attorney for Plaintiffs

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