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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12
13
14 JEDIDIAH AND ALISA BEHAR,
15 individually and on behalf of all others
16 similarly situated,

17 Plaintiffs,

18 v.

19 NORTHROP GRUMMAN
20 CORPORATION AND NORTHROP
21 GRUMMAN SYSTEMS
22 CORPORATION,

23 Defendants

Case No. 21-cv-03946-FMO-SK

CLASS ACTION

SECOND AMENDED

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 **PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT**
2 **AND JURY DEMAND**

3 Plaintiffs, by and through their undersigned attorneys, The Lanier Law
4 Firm, Environmental Energy & Natural Resources Advocates, PLLC, The Law
5 Office of Gideon Kracov, and Nidel & Nace, PLLC bring this civil action under
6 Fed. R. Civ. P. 23 on their own behalf and on behalf of the classes they represent
7 to obtain damages, both compensatory and punitive, injunctive relief, and costs of
8 suit from the Defendants. Plaintiffs complain and allege as follows:

9 **INTRODUCTION**

10 1. This is a civil action to redress circumstances created by Defendants
11 Northrop Grumman Corporation and Northrop Grumman Systems Corporation for
12 damages suffered by members of the putative classes defined below (the "Class
13 Members"). The Defendants' actions have resulted in the contamination of the
14 Class Members' properties and Class Members exposure to toxic chemicals due to
15 ongoing releases and leachate from Defendants' commercial manufacturing
16 facility. That facility is located at 8020 Deering Avenue, Canoga Park, California,
17 91304 (the "Site"). The Site has been owned and operated by the Defendants
18 since 1967¹. During its ownership and operation of the Site the Defendants: (1)
19 mishandled and released hazardous and toxic substances at the Site, (2) disposed
20 of hazardous wastes at the Site, and (3) mishandled the management and the
21 cleanup of the wastes and substances released from the Site. In combination, the
22 Contamination and its attendant risks have now migrated in, under, on, around and
23 through Plaintiffs' and Class Members' properties. The Site has experienced
24 continuing releases of toxic, hazardous, substances, and hazardous wastes for
25

26
27 ¹ The original owner/operator of the Site was Litton Industries, Inc. ("Litton").
28 Beginning in 2001 the Defendants, through a series of stock purchases, mergers,
and reorganizations, became owner of the operation and responsible for the
Contamination alleged herein.

1 decades. The fact of the contamination was known to the Defendants, and yet this
2 information has been withheld and concealed from Plaintiffs and the Class
3 Members.

4 2. Because of the Defendants' ownership and operations at the Site,
5 Plaintiffs and Class Members have been exposed to toxic and hazardous
6 substances and wastes from circuit board production, copper plating, silk
7 screening, photo printing and chemical stripping. These Site operations resulted in
8 Contaminants being released onto and into the soil, the ground water, and the air
9 at the Site. These releases have migrated to Plaintiffs' and Class Members'
10 properties. The Contaminants released at the Site were associated with the storage,
11 transfer and use of solvents, acids, and metals including, but not limited to:

12 Volatile organic compounds (VOCs) (including chlorinated
13 solvents): trichloroethylene (TCE), perchloroethylene (PCE), 1,1,1-
14 trichloroethane (1,1,1 TCA), cis-1,2-dichloroethene (c-1,1-DCE), 1,2-
15 dichloroethene (1,2, -DCE), vinyl chloride, chloroform methylene
16 chloride and 1,4 dioxane (herein referred to as "Contaminants", or
17 "Contamination".)

18 3. Despite their knowledge of: (a) the releasing, leaking and migrating
19 Contaminants at the Site; (b) the off-Site nuisance and trespass caused by the
20 Contaminants; (c) the fate and transport characteristics of the Contaminants; and
21 (d) the associated health risks with these toxic, hazardous, and carcinogenic
22 Contaminants, Defendants concealed the presence of these Contaminants and their
23 releasing, leaking and migrating from the Site. Defendants also concealed the fact
24 that the Contaminants were migrating onto, into, at and around the Plaintiffs' and
25 the Class Members' properties.

26 4. The presence of these toxic and hazardous Contaminants on, at, in,
27 and around Plaintiffs' and Class Members' properties presents a significant health
28 risk and harm to those living in, at, on, and around these contaminated properties

1 as well as a significant environmental liability and damage to those owning these
2 properties.

3 **PARTIES**

4 **Plaintiff(s)**

5 5. Plaintiffs are residents of the Canoga Park neighborhood in the Los
6 Angeles County, California, metropolitan area. Plaintiffs own and/or live in
7 property located within the Class Area. Plaintiffs are putative class representatives
8 for the Property Damage Class which is defined as those persons who own
9 residential property contaminated or otherwise affected by the Contaminate
10 chemicals released and discharged at the Defendants' Site.

11 6. As a result of Defendants' actions, specifically their inadequate
12 containment, handling, and remedial activities, the toxic and hazardous
13 Contaminants have entered Plaintiffs' and Class Members' properties and have
14 contaminated their property - their air, land, groundwater, dwelling place (homes)
15 and their surrounding environment - thereby causing Plaintiffs and the Property
16 Damage Class Members to suffer damage to property and personal finance, loss
17 of the use and enjoyment of property and destruction of their community.

18 7. As a result of the actions of the Defendants, toxic and carcinogenic
19 Contaminants have entered onto Plaintiffs' and the Property Damage Class
20 Members' properties depriving Plaintiffs and the Property Damage Class
21 Members of their free use and enjoyment of their properties.

22 **Defendants**

23 8. Northrop Grumman Corporation is a foreign corporation
24 incorporated in the State of Delaware with principal executive offices located at
25 2980 Fairview Park Drive, Falls Church, Virginia 22042 ("NGC"). NGC is, *inter*
26 *alia*, an aerospace, technology and defense industry corporation. Northrop
27 Grumman Systems Corporation is a Delaware corporation which is a 100%
28 (wholly owned) subsidiary of Northrop Grumman Corporation. Plaintiffs and

1 Class Members rely upon the doctrines of actual and apparent agency and
2 *respondeat superior* as applicable based on the liability of corporations for their
3 management employees and agents' actions.

4 **JURISDICTION AND VENUE**

5 9. This Court has subject matter jurisdiction over this class action
6 pursuant to 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum or
7 value of \$5,000,000, exclusive of interest and costs, and the action is between
8 multiple members of the class who are residents and/or citizens of the State of
9 California on the one hand, and the Defendants who are citizens of the State of
10 Delaware and the Commonwealth of Virginia on the other hand. The number of
11 members of all proposed plaintiff class in the aggregate is more than one hundred
12 (100). The Court also has supplemental jurisdiction over the state law claims
13 pursuant to 28 U.S.C. § 1367.

14 10. This Court has personal jurisdiction over Defendants because
15 Plaintiffs' claims arise out of Defendants' contacts, acts, and omissions within the
16 State of California such that the exercise of such jurisdiction is consistent with due
17 process under the United States Constitution.

18 11. Venue is proper in this judicial district pursuant to 28 U.S.C. §
19 1391(b)(2) because (1) a substantial part of the events, acts, and omissions that
20 give rise to the claims at issue in this case occurred in this District, in Los Angeles
21 County, California, (2) Defendants conduct substantial business in this District,
22 and (3) Defendants have caused harm to Plaintiffs and Class Members in this
23 District.

24 **GENERAL FACTUAL ALLEGATIONS**

25 12. Plaintiffs and the Class Members have suffered damages as a result
26 of the presence of the Contaminants at their property and/or residence due to the
27 ongoing and continuing release, leaching, and migration of the Contamination
28 from the Site into, under, onto, at and around their properties and residences.

1 13. The Contaminants have been released and migrate (and continue to
2 be released and migrate) into, under, onto, at and around the Plaintiffs' and the
3 Class Members' properties and residences. Plaintiffs' and the Class Members'
4 properties and residences have been and continue to be contaminated with these
5 Contaminants - including toxic and carcinogenic chlorinated solvents, methylene
6 chloride and 1,4-dioxane.

7 14. The Site was in operation from roughly 1967 – 2002 as a circuit board
8 manufacturer. During this time period, the Contaminants were released and
9 disposed of at the Site in substantial quantities. Defendants' release and disposal
10 of Contaminants created an imminent and substantial threat to public health, to the
11 Plaintiffs' and the Class Members' health and wellbeing, and created dangerous
12 conditions at Plaintiffs' and Class Members properties and residences.

13 15. Defendants have known, or should have known, that the operations
14 at the Site were releasing, leaking, and disposing of these hazardous and
15 carcinogenic Contaminants into, under, at and onto properties and into the
16 groundwater and air in, at or near the Class Area as identified below.

17 16. Furthermore, Defendants did nothing to notify the general public in
18 the Class Area, including those living or purchasing homes in the Class Area, that
19 their properties and residences were contaminated or were threatened by
20 Contamination and that there was a serious risk of exposure to the Contaminants
21 through groundwater and indoor and outdoor vapors which created associated
22 health threats.

23 17. For over 50 years, while owning and/or operating the Site,
24 Defendants failed to properly control the Contamination, properly remediate the
25 Contamination, and appropriately notify the public about the presence, hazards
26 and threats of the Contamination.

27 18. Had Defendants properly remediated or contained the Contaminants,
28 Plaintiffs' and the Class Members' properties would not have been contaminated

1 and their health would not have been put at risk and continue to be threatened and
2 damaged.

3 19. Had Defendants notified the public, the Plaintiffs and the Class
4 Members would not have purchased property and/or resided at property within and
5 around the Class Area and would not have suffered damages as a result.

6 20. The contaminant trichloroethylene, or TCE, is a known human
7 carcinogen. TCE also degrades into other chlorinated solvents, many of which are
8 also known carcinogens (such as vinyl chloride).

9 21. In addition, upon information and belief, the Site is also leaching and
10 releasing methylene chloride and 1,4-dioxane. 1,4-dioxane was used as a
11 preservative for chlorinated solvents including TCE, TCA and PCE. 1,4-dioxane
12 is an anticipated human carcinogen and this Contaminant is more water soluble
13 than TCE. Therefore, 1,4-dioxane tends to migrate farther and faster than the
14 chlorinated solvents themselves.

15 22. Despite these facts, upon information and belief, Defendants have
16 never performed any testing for 1,4-dioxane in and around the Site or the
17 surrounding Class Area.

18 23. Contaminants leaching into and migrating with the groundwater
19 expose the Plaintiffs and the Class Members to dangerous carcinogens and VOC
20 Contaminants through the well-known, well-understood and generally accepted
21 process of “vapor intrusion” (“VI”).

22 24. VI occurs when chemical vapors from VOCs migrate from
23 contaminated soil and/or groundwater through the soil and through building
24 foundations and floors and into a building’s rooms. These chemical vapors degrade
25 indoor air to the point of posing significant risks to the human health of the
26 occupants.

27 25. Unknown to them, Plaintiffs and the Class Members have been, and
28 are being exposed to these dangerous, toxic and carcinogenic Contaminants while

1 at their homes - both indoors and outdoors.

2 26. As a result of this exposure and continuing threat of exposure,
3 Plaintiffs and Class Members require mitigation to eliminate the VI exposure and
4 to remove any ongoing threat of such exposure at their properties.

5 **Plaintiffs and Class Members Left Completely in the Dark**

6 27. No one, including the Defendants or the Defendants' employees and
7 agents, notified Plaintiffs or the Class Members of the source, risk to their health,
8 and actual presence of these Site Contaminants at, in, under, and around Plaintiffs'
9 and the Class Members' properties.

10 28. No one, including the Defendants, or their employees and agents,
11 notified Plaintiffs or the Class Members of the significantly elevated cancer risks
12 and risks of other diseases posed by the actual presence of Site Contaminants at,
13 in, under, and around their properties and residences.

14 29. Rather than provide such notice and information, for decades,
15 Defendants concealed from the public, the Plaintiffs, and the Class Members the
16 actual presence of Site Contaminants released, intruding into, threatening their
17 health and safety, and affecting their properties and residences located in the Class
18 Area; and the source of the Contaminants.

19 30. Plaintiffs and the Class Members reasonably believed that the
20 groundwater, surface water, air, and soil in their Canoga Park neighborhood did
21 not pose any greater health hazard than any other groundwater, air, soil, or natural
22 resources in a typical unpolluted residential community and were not informed
23 otherwise by Defendants.

24 31. Plaintiffs' and the Class Members' properties have each been exposed
25 to the Contamination due to Defendants' acts and omissions in owning, operating,
26 containing, and remediating the Site and the Contamination.

27 32. Plaintiffs and the Class Members seek redress and damages for
28 economic losses, such as loss of property value and interference with their use and

1 enjoyment of their property; the prompt identification, delineation, cleanup,
2 excavation, treatment, remediation and removal of Contaminants from their
3 properties; and punitive damages and other damages as the result of the
4 carelessness, recklessness, negligent, willful and wanton actions in violation of
5 law, and willful disregard of persons who foreseeably might be harmed by such
6 acts or omissions by the Defendants' senior management or ratification thereby.

7 33. Defendants, despite their knowledge of the serious health and
8 environmental effects associated with the Contaminants migrating throughout the
9 Class Area and the surrounding environment, failed to warn the public in general,
10 and the Plaintiffs and the Class Members in particular, of the dangers that the
11 historical use activities at the Site and the Contamination threat that the Site posed.

12 34. Despite their knowledge of the serious health and environmental
13 effects associated with Site Contamination, Defendants did not adequately design
14 the Site investigation and the Site Contaminant response and corrective action in
15 the Class Area. Nor did Defendants publicize the scope and extent of actual
16 Contamination, its associated risks, and its source. These actions and omissions
17 prevented Plaintiffs and Class Members from making appropriate responses and
18 enabled Defendants to avoid taking all appropriate and reasonable steps to address
19 and respond at these Class Area properties in a timely manner. As a result,
20 Plaintiffs and the Class Members suffered as a result of Defendants' gain resulting
21 in prolonged exposures and harm due to these dangerous chemical Contaminants.

22 **EQUITABLE TOLLING OF APPLICABLE STATUTE OF**
23 **LIMITATIONS**

24 35. Plaintiffs and the Class Members incorporate by reference all prior
25 paragraphs of this Complaint as if fully set forth herein.

26 36. The running of any statute of limitations has either not begun to run
27 or has been tolled by reason of Defendants' concealment, and the world-wide
28 outbreak of novel Covid-19 pandemic. Defendants, through their affirmative

1 misrepresentations and omissions, actively concealed from Plaintiffs and Class
2 Members the pollution present on, at and around their properties and Plaintiffs and
3 Class Members only recently became aware of such contamination on, at and
4 around their properties and residences.

5 37. As a result of Defendants' actions, Plaintiffs and the Class Members
6 could not reasonably know or have learned through reasonable diligence that
7 Plaintiffs' and the Class Members' properties were contaminated with
8 significantly elevated levels of Contaminants and that those risks were the direct
9 and proximate result of Defendants' acts and omissions.

10 38. Defendants are estopped from relying on any statute of limitations
11 because of their concealment of the character, quality, scope, extent, and nature of
12 the Contamination at, in, under, and on properties forming the Class Area.
13 Defendants were aware of the non-public nature of the circumstances of the
14 Contamination. This non-public information (over which Defendants had and
15 continues to have control) was not provided to the residential homeowners and
16 purchasers, and persons living at properties within the class area, including the
17 Plaintiffs and the Class Members. On information and belief, to this day
18 Defendants have continued to fail to provide this information and facts to the
19 Plaintiffs and Class Members.

20 39. Plaintiffs and the Class Members had no knowledge that Defendants
21 were engaged in the wrongdoing alleged herein. The Contamination cannot be
22 seen either in the ground water beneath their property, or in the vapors from the
23 Contaminants entering their homes. Because of the concealment by Defendants,
24 and the failure to notify the Plaintiffs, the Class Members, and the public of the
25 Contamination and its attendant risks, neither the Plaintiffs nor the Class Members
26 have, nor could they have reasonably discovered, the Contamination at any time
27 prior to the commencement of this case.

28

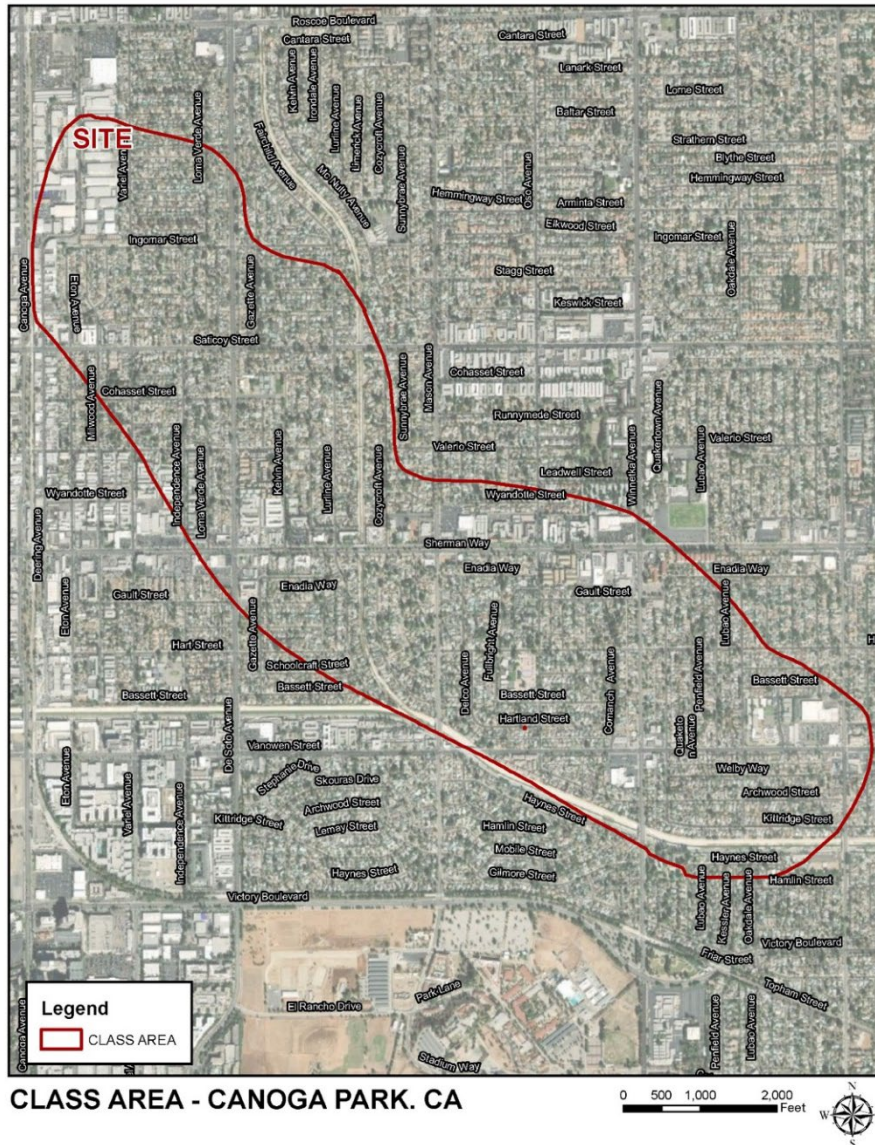
CLASS ALLEGATIONS

40. This class action is being filed by the Plaintiffs, pursuant to Federal Rule of Civil Procedure 23, on behalf of themselves and others similarly situated. These putative Class Members are similarly situated.

41. Plaintiffs seek to certify the following class, defined as:

Canoga Park Property Damage Class: Any and all persons that own any residential real property in or adjacent to the Canoga Park contaminated area (collectively, the “Class Area”) in Los Angeles, CA.

A map of the Canoga Park “Class Area” is shown in the figure below (outlined in red):



42. To the extent revealed by discovery and investigation, there may be additional appropriate classes and/or subclasses derived from the above class definition which are broader and/or narrower in scope.

43. Excluded from the classes are the Defendants, any entity that has a controlling interest in the Defendants, their legal representatives, officers, directors, assigns, successors, employees, agents and members of their immediate families; the governmental and judicial officers to whom this case is assigned, their staff, (and the members of their immediate families).

44. This Court may maintain these claims as a Class Action pursuant to Fed. R. Civ. P. 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4).

Numerosity

45. Fed. R. Civ. P. 23(a)(1): The members of each class are so numerous that joinder of all members is impractical. There are over 3800 residential use properties in the Class Area. The number of persons that own the 3800 plus properties located within the Class Area is estimated to exceed 5000 persons. The number of Class Members is such that it exceeds the number that reasonably allows for joinder of all Class Members and, therefore, the number of members of the Property Class satisfies Fed. R. Civ. P. 23 (a)(1).

Commonality

46. Fed. R. Civ. P. 23(a)(2): There are common questions of law and fact that affect the rights of every member of each respective class, and the types of relief sought are common to every member of each respective class. The same conduct by Defendants has injured or will injure all Class Members.

47. A class action is superior to other available methods of litigation for the fair and efficient adjudication of this controversy, in satisfaction of Fed. R. Civ. P. 23(a)(2). The same conduct by Defendants has injured each respective Class Member. Common questions of law and/or fact that are common to the respective Classes include, but are not limited to:

- a. Whether Defendants, through their acts or omissions at the Site, proximately caused Contaminants to be released and migrate into, at, on, or around the Class Area;
- b. Whether Defendants failed to exercise reasonable care in their handling, storing, transporting, using, releasing, discharging, emitting, disposing and/or failed to reasonably investigate, and remediate the Contaminants;

- c. Whether Defendants violated applicable standards concerning handling, storing, transporting, use, release, discharge, emission, disposal and/or failure to investigate and remediate the Contaminants;
- d. Whether Defendants' acts of releasing, discharging, spilling, emitting, allowing migrating or depositing Contaminants onto Plaintiffs' properties, and/or their failure to remove or remediate such contamination from Plaintiffs' properties, constitutes a private nuisance;
- e. Whether Defendants' releasing, discharging, emitting or depositing Site Contaminants onto Plaintiffs' properties, and/or their failure to remove such contamination, constitutes a trespass;
- f. Whether Defendants proximately caused Site Contaminants to be released into the environment, and Plaintiffs' and Class Members' properties and persons have been exposed to such Contaminants;
- g. Whether, as a result of the exposure or proximity to Site Contaminants, Plaintiffs' properties and the properties of the members of the Class have suffered a loss in value;
- h. Whether, as a result of the exposure or proximity to Site Contaminants, Plaintiffs' properties and the properties of the members of the Class have suffered a loss in their use and enjoyment of their property;
- i. Whether Defendants' actions created a public nuisance;
- j. Whether the Contamination created by Defendants in the Class Area is reasonably abatable;
- k. Whether the nature of the Defendants' actions and the

1 resulting Contamination constitutes continuing
2 negligence; and

- 3 1. Whether the failure to warn Plaintiffs and the Class
4 Members constitutes willful deceit and reckless
5 endangerment by the Defendants.

6 48. These questions of law and/or fact are common to the Class and
7 predominate over any questions affecting only individual Class Members.

8 **Typicality**

9 49. Fed. R. Civ. P. 23 (a)(3): The claims of Plaintiffs are typical of the
10 claims of the Class Members as required by Rule 23(a)(3), in that all claims are
11 based upon the same factual and legal theories. It is the same conduct of the
12 Defendants that injured each Class Member. The principal issue in this case
13 involves Defendants' conduct in the wrongful handling, storing, transporting,
14 using, releasing, discharging, emitting, and disposing of the Site Contaminants,
15 and Defendants' failing to quickly warn of and remediate the Site Contaminants.
16 Their operations at 8020 Deering Avenue have impacted all members of the Class.

17 **Adequacy**

18 50. Fed. R. Civ. P. 23(a)(4): Plaintiffs will fairly and adequately represent
19 and protect the interests of the Class, as required by Rule 23(a)(4). Plaintiffs have
20 retained counsel with substantial experience in the prosecution of class actions and
21 environmental litigation. Plaintiffs and their counsel are committed to the vigorous
22 prosecution of this action on behalf of the Class Members and have the financial
23 resources to do so. Neither Plaintiffs nor counsel has any interest adverse to those
24 of the Class Members.

25 51. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)
26 because the prosecution of separate actions by individual Class Members would
27 create a risk of inconsistent and/or varying adjudications that would establish
28 incompatible standards of conduct for Defendants. Adjudications respecting

1 individual Class Members would, as a practical matter, be dispositive of the
2 interests of the other Class Members or would risk substantially impairing or
3 impeding their ability to prosecute their interests.

4 52. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
5 because Defendants have acted or refused to act on grounds generally applicable
6 to all Class Members, thereby making relief in the form of an injunction - requiring
7 Defendants to remediate the nuisance, to conduct a prompt and thorough
8 investigation, and to engage in identification, excavation, containment,
9 remediation and removal of all Site Contaminants from the properties of Plaintiffs
10 and the Members of the Class - reasonably appropriate.

11 53. Plaintiffs and Class Members have suffered, and will continue to
12 suffer, harm and damages as a result of Defendants' unlawful and wrongful
13 conduct.

14 54. A class action is superior to other available methods for the fair and
15 efficient adjudication of the controversy under Fed. R. Civ. P. 23 (b)(3).
16 Maintenance of this action as a class action is a fair and efficient method for
17 adjudication of this controversy. Absent a class action, most Class Members likely
18 would find the cost of litigating their claims prohibitive and would have no
19 effective remedy at law. The class treatment of common questions of law and fact
20 is also superior to multiple individual actions or piecemeal litigation in that it
21 conserves the resources of the courts and the litigants and promotes consistency
22 and efficiency of adjudication. Thus, it would be impracticable and undesirable for
23 each member of each putative class who has suffered harm to bring a separate
24 action. In addition, the maintenance of separate actions would place a substantial
25 and unnecessary burden on the Court and could result in inconsistent
26 adjudications, while a single class action can determine, with judicial economy,
27 the rights of all Class Members.

1 55. Class certification is also appropriate because this Court can
2 designate particular claims or issues for class-wide treatment and may designate
3 one or more subclasses pursuant to Fed. R. Civ. P. 23(c)(4).

4 56. No unusual difficulties are likely to be encountered in the
5 management of this action as a class action.

6 57. Plaintiffs and the Class Members were not in any way responsible for
7 the Site Contaminants in the Class Area.

8 **CAUSES OF ACTION**

9 **FIRST CLAIM – NEGLIGENCE - CONTINUING NEGLIGENCE**

10 58. Plaintiffs repeat and re-allege each and every allegation contained in
11 the preceding paragraphs of this complaint as if set forth in full herein.

12 59. At all relevant times hereto Defendants owed to Plaintiffs and Class
13 Members, who foreseeably could be injured by its negligence, a duty to exercise
14 reasonable care in using, handling, storing, disposing, releasing, and discharging
15 Site Contaminants, Defendants knew, or should have known, that their actions
16 could result in damage and injury to Plaintiffs, Class Members, their property, and
17 their residences.

18 60. Defendants also owed a duty of care to Plaintiffs and Class Members
19 to exercise reasonable care in the disposal, storage, and remediation of Site
20 Contaminants particularly due to the proximity of their actions in relation to
21 Plaintiffs' and Class Members' residential property.

22 61. Defendants further owed a duty to exercise reasonable care to
23 disclose the presence of these Contaminants, including carcinogenic materials, the
24 risks that they posed, and what Defendants knew about the presence and risks of
25 these Site Contaminants.

26 62. Defendants further owed a duty to exercise reasonable care to
27 remediate and manage the Site Contaminants to avoid further injury to Plaintiffs
28 and Class Members.

1 63. These duties to exercise reasonable care arose out of the common law
2 as well as relevant Federal and California environmental statutes and regulations.

3 64. Defendants breached their duty, over a period of years, in at least the
4 following respects:

- 5 a. Failing, and continuing to fail, to prevent groundwater
6 contamination and its migration off of the Site of the
7 Contamination.
- 8 b. Despite knowledge of the widespread presence of Site
9 Contamination, and along with the knowledge of the health and
10 environmental risks that these materials posed for those living
11 in the Class Area, failing, and continuing to fail, to take
12 appropriate actions in, on, at and around the Site (including acts
13 into, onto, and under the land that forms the Class Area) and
14 into private homes within the Class Area.
- 15 c. Failing, and continuing to fail, to safely, properly and timely
16 remove, remediate and dispose of the hazardous and toxic
17 Contamination, including carcinogenic materials.
- 18 d. Failing, and continuing to fail, to warn and disclose to Plaintiffs
19 and Class Members of the Contamination on, in, and around
20 their properties, and the risks that this Contamination posed to
21 them and to their families, and the likelihood that they were
22 being exposed to carcinogenic chemicals.
- 23 e. Defendants have failed, and continue to fail, to adequately and
24 with due care identify the extent of Contamination from the
25 Site, promptly notify property owners of impacts and health
26 threats posed by those chemicals, and remediate these
27 chemicals so as to reduce or remove the threat to Plaintiffs' and
28 Class Members' properties.

1 65. As a result of Defendants' acts and omissions, as further detailed
2 above, extensive Contamination has existed, exists and will continue to exist
3 without affirmative remediation actions in and around the Class Area.

4 66. As a result of Defendants' misconduct and continued malfeasance as
5 set forth herein, Plaintiffs and Class Members have suffered and continue to suffer
6 harm and damages, including, but not limited to, the loss of value to their property
7 and the loss of the use and enjoyment of their property and an increased risk of
8 serious injury/illness.

9 67. At all relevant times, Defendants caused and continue to cause actual
10 injury and actual damages to Plaintiffs and the Class Members and/or their
11 property through acts and omissions actuated by actual malice and/or accompanied
12 by a reckless, wanton and willful disregard of persons who foreseeably might be
13 harmed by such acts or omissions.

14 68. Defendants, despite knowledge of the serious health and
15 environmental effects associated with exposure to such Contaminants, including
16 carcinogenic materials, allowed for the development of Contaminated lands for
17 development and sale for residential use despite being unfit for residential
18 purposes due to the presence of the Contamination in, on, at and around the land
19 comprising the Class Area and subsequently failed to warn Plaintiffs, the Class
20 Members, and the public of the dangers such activities posed.

21 69. Defendants, despite knowledge of the serious health and
22 environmental effects associated with exposure to Site Contaminants, masked and
23 continue to mask the true extent of contamination, thereby enabling themselves to
24 avoid taking all appropriate steps to properly remediate the hazardous substances
25 and levels of contamination in, on, at and around the Class Area or to remediate
26 and mitigate dangers.

27 70. As a direct and proximate result of the Defendants' continuing
28 wrongful acts and omissions, Plaintiffs and Class Members properties have been

1 and will continue to be contaminated (without abatement), and the property value
2 diminished and these properties are unfit for unfettered residential use.

3 71. As a direct and proximate result of the Defendants' continuing
4 wrongful acts and omissions, Plaintiffs and the Class Members currently suffer an
5 increased risk of serious latent disease, including a number of types of cancer that
6 are associated with exposure to Site Contaminants.

7 72. As a direct and proximate result of the Defendants' continuing
8 wrongful acts and omissions, Plaintiffs and the Class Members currently suffer
9 actual property damage, diminution in the value of their property, stigma, need for
10 mitigation and remediation, cleanup costs, loss of use and enjoyment of their
11 property and destruction of their community. Plaintiffs and the Class Members
12 seek to recover against the Defendants for such damages. Further, Plaintiffs and
13 the Class Members seek restitution from the Defendants for the amount
14 Defendants saved by not safely and properly disposing their waste by disposing of
15 their waste on Plaintiffs and the Class Members property.

16 **SECOND CLAIM – PRIVATE NUISANCE**

17 73. Plaintiffs repeat and re-allege each and every allegation contained in
18 the preceding paragraphs of this complaint as if set forth in full herein.

19 74. Defendants' past, present and/or continuing acts and/or omissions
20 constitute a nuisance in that Defendants have used the Site in a manner that has
21 resulted in an unreasonable burden and interference on the Plaintiffs and the Class
22 Members in the form of personal harm, inconvenience, annoyance and discomfort
23 incidental to the contamination of their properties by Site Contaminants that
24 leaked, leached, or discharged from the Site.

25 75. Defendants' past, present and/or continuing activities, acts and/or
26 omissions at the Site and in the property surrounding the Site including, but not
27 limited to, the Class Area, constitute a private continuing nuisance resulting in
28 unreasonable interference with Plaintiffs' and the Class Members' right to the

1 exclusive use and enjoyment of their properties due to the presence of
2 contamination in the form of hazardous and toxic substances contaminating their
3 properties and the surrounding environment, thereby exposing Plaintiffs and the
4 Class Members to hazardous and toxic substances and substantially interfering
5 with Plaintiffs' and the Class Members' free use and enjoyment of their properties.

6 76. Defendants' past, present and/or continuing acts and/or omissions,
7 resulting in high levels of hazardous Contamination in and on the properties
8 surrounding the Site and/or Defendants' failure to contain, remove, or properly
9 investigate and remediate this hazardous Contamination, and allowing such
10 Contamination to remain on Plaintiffs' and the Class Members' properties, the
11 surrounding properties, and the surrounding environment, constitutes a nuisance
12 in that Defendants have managed the Site and the remediation of Site
13 Contaminants in a manner that has unreasonably interfered with Plaintiffs' and the
14 Class Members' property interests, use and enjoyment, and health and safety.

15 77. Defendants' past, present and/or continuing acts and/or omissions,
16 resulting in high levels of Site Contamination at and on the properties surrounding
17 the Site and/or Defendants' failure to remove or properly investigate and remediate
18 this hazardous Contamination, and allowing such contamination to remain on the
19 private properties surrounding Plaintiffs' properties constitutes a nuisance in that
20 Defendants will now have to engage in extensive and disruptive remediation and
21 removal of these contaminants that will result in unreasonable interference with
22 Plaintiffs' and Class Members' use and enjoyment of their property. Further,
23 Plaintiffs and the Class Members seek restitution from the Defendants for the
24 amount Defendants saved by not safely and properly disposing their waste by
25 disposing of their waste on Plaintiffs and the Class Members property.

26 78. Defendants' Contamination presently impacts Plaintiffs' and the Class
27 Members' property, causes a diminution in their property values, is a blight on
28 Plaintiffs' community, causes annoyance, interference and inconvenience and

1 deprives Plaintiffs of the free use and enjoyment of property, including, but not
2 limited to, the inability to fully use, enjoy and recreate on their indoor and outdoor
3 spaces, freely perform certain work and repairs on their property; and requiring
4 the property to be dug up, excavated, handled with extreme caution and otherwise
5 disrupted causing inconvenience and disruption. Plaintiffs and Class Members
6 additionally suffer fear of adverse health effects, including cancer and other latent,
7 serious illness.

8 79. In the alternative, Defendants' disposal of and/or failure to control
9 and/or remediate Site Contaminants from residential areas violates applicable
10 standards and/or regulations, which constitutes a nuisance *per se*.

11 80. Defendants' knew or should have known that the invasion of Site
12 Contaminants onto Plaintiffs' and the Class Members' properties and residences
13 was substantially certain to result.

14 81. This interference with Plaintiffs' and the Class Members' use and
15 enjoyment of their property is and will continue to be substantial, unreasonable,
16 unwarranted and unlawful until removed.

17 82. As a result of Defendants' wrongful acts and omissions, Plaintiffs and
18 the Class Members have suffered and will suffer exposure to hazardous
19 substances, annoyance, inconvenience, discomfort, displacement, fear of adverse
20 health effects and economic loss for which damages are justified.

21 83. As a direct and proximate result of Defendants' misconduct, Plaintiffs
22 and the Class Members have suffered and will continue to suffer economic losses
23 and the loss of value to their property and other damages.

24 84. The nuisance that Defendants created, and continue to create, is a
25 continuing nuisance in that it has continued and has not been abated. In the
26 alternative, the nuisance that Defendants created and continue to create is a
27 permanent nuisance and cannot be abated.

28 85. Separate and apart from acting negligently, at all relevant times

1 Defendants caused injury and damages to the Plaintiffs, the Class Members and/or
2 their property through acts and omissions actuated by actual malice and/or
3 accompanied by a reckless, wanton and willful disregard of persons who
4 foreseeably might be harmed by such acts or omissions.

5 86. Defendants, despite knowledge of the serious health and
6 environmental effects associated with exposure to the Site Contaminants failed to
7 properly investigate and remediate said Contaminants from the surrounding
8 environment and had knowledge (or should have known) that the land,
9 groundwater and indoor air had been, is, or would be developed for residential use;
10 at the same time as failing to warn purchasers and existing residents of the dangers
11 of such Contaminants.

12 87. Defendants, despite knowledge of the serious health and
13 environmental effects associated with exposure to the Site Contaminants, did not
14 disclose the true extent of Contamination, thereby enabling the Defendants to
15 avoid taking all appropriate steps to properly remediate Site Contaminants and to
16 mitigate their dangers in the Class Area.

17 88. Defendants, despite knowledge of the serious health and
18 environmental effects associated with exposure to the Site Contaminants, failed to
19 properly warn of and remediate such Contamination in the Class Area.

20 **THIRD CLAIM – TRESPASS/ CONTINUING TRESPASS**

21 89. Plaintiffs repeat and re-allege each and every allegation contained in
22 the preceding paragraphs of this complaint as if set forth in full herein.

23 90. Defendants intentionally used, disposed of and stored chemicals that
24 directly caused, and continue to cause, the migration of Site Contamination at,
25 under, onto, and into Plaintiffs' and Class Members' properties and homes.

26 91. These chemicals on their land constitute uninvited, unwanted and
27 unlawful invasion of Plaintiffs' and Class Members' properties and homes.

28

1 92. Defendants' trespass has proximately caused, and continues to cause,
2 Plaintiffs and the Class Members to suffer economic and non-economic damages
3 including remediation costs, loss of use and enjoyment, stigma, and loss of
4 property value. Plaintiffs and Class Members sue to recover these damages.
5 Further, Plaintiffs and the Class Members seek restitution from the Defendants for
6 the amount Defendants saved by not safely and properly disposing their waste by
7 disposing of their waste on Plaintiffs and the Class Members property.

8 93. Plaintiffs' and the Class Members' right to be free of trespass has been
9 and continues to be denied by Defendants.

10 **JURY TRIAL DEMAND AND PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiffs request that the Court enter an order or
12 judgment against Defendants as follows:

- 13 A. Enter an Order pursuant to Federal Rule of Civil Procedure 23
14 permitting this action to be maintained as a class action, appointing
15 Plaintiffs as the representatives of the Class and Plaintiffs' counsel as
16 counsel for the Class;
- 17 B. Enter an Order requiring injunctive relief – that the Defendants bear
18 the costs of a property inspection and remediation program,
19 including, but not limited to, testing, examination, mitigation and
20 remediation of the Site Contaminants at each Class Area Property;
- 21 C. Enter an Order requiring the Defendants to bear the cost of
22 publication to Plaintiffs and Class Members of any notice required by
23 Fed. R. Civ. P. 23 or by the Court;
- 24 D. Enter judgment in favor of Plaintiffs and Class Members against
25 Defendants for loss of property value, stigma, loss of use and
26 enjoyment, cost of appropriate mitigation and remediation measures,
27 unjust enrichment and for all other relief, in an amount to be proven
28 at trial, as to which they may be entitled, including attorney's fees,

1 interest, fees and costs of this suit;

2 E. Award prejudgment and post-judgment interest as provided by law;

3 F. Award punitive damages; and

4 G. Award such other relief as this Court deems necessary, just and
5 proper.

6 Dated: August 3rd, 2022

7 /s/ Michael Akselrud

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*Attorneys for the Plaintiffs and the
Putative Class Members*

CERTIFICATE OF SERVICE

I, Michael Akselrud, an attorney, hereby certify that the **SECOND AMENDED CLASS ACTION COMPLAINT** was served to counsel for the Defendants through the Court's ECF/CM system on August 3rd, 2022.

By: /s/ Michael Akselrud
Michael Akselrud

*Attorneys for the Plaintiffs and the
Putative Class Members*