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2014 APR -3 PM 2:31
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

FILED

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

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

Case No.: cv-14-C0395 JGB SPx

FIRST 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

1 ROMERO; FELIX ROMERO; LUIS
2 ROMERO; WANDA ROMERO; JOHN
3 MORRISON; LISA MORRISON;
4 AMIR PANIAGUA; CELIA PIÑA;
5 EVA PIÑA; JOSE DE JESUS
6 PIÑA;SHELBY ANN RATICAN,
7 individually and as guardian ad litem for
8 M.R. and H.R; GARRY SNELL; LISA
9 SNELL; CHRISTOPHER G. SPROWL,
10 individually and as guardian ad litem for
11 A.S. and C.S.; NICOLE SPROWL;
12 FRED CHARLES WHITTON;
13 DALLAS WHITTON; SUSAN GRAY,
14 individually and as guardian ad litem for
15 A.K.; JOHN H. GRAY; and SHAWNA
16 GRAY;

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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;
JAMES DE VRIES; RANDY DE
VRIES; and DOES 1 through 10
inclusive;

Defendants.

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1 **COMPLAINT**

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

16 **NATURE OF THE CASE**

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

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

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

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

18 4. RCRA Plaintiffs seek declaratory relief establishing that Defendants violated
19 RCRA; injunctive relief (i) directing N & M Dairies to modify its handling, storage,
20 treatment, transportation, and disposal of hazardous waste such that these practices no
21 longer present an imminent and substantial endangerment to health and the environment,
22 and (ii) obligating Defendants to remediate the environmental contamination caused
23 and/or contributed to, including widespread soil and groundwater contamination. RCRA
24 Plaintiffs also request that the Court impose an award of reasonable attorneys’ fees and
25 costs and expert witness fees and costs incurred in bringing this action.
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1 5. In addition, RCRA Plaintiffs, as well as Plaintiffs Bernadette Blackwood,
2 individually and as guardian ad litem for K.B. and E.B.; Curtis Blackwood; Christina
3 Decker, individually and as guardian ad litem for N.S., J.S., and K.S.; Carlos Silva;
4 James Ervin; Kathren Ervin; James Dennis Ervin; Ofelia Ervin; John Morrison; Lisa
5 Morrison; Shelby Ann Ratican, individually and as guardian ad litem for M.R. and H.R.;
6 Garry Snell; Lisa Snell; Christopher G. Sprowl, individually and as guardian ad litem for
7 A.S. and C.S.; Nicole Sprowl; Fred Charles Whitton; Dallas Whitton; Susan Gray,
8 individually and as guardian ad litem for A.K.; John Gray; and Shawna Gray, also bring
9 this civil action seeking damages arising out of Defendants' trespass, and creation of a
10 nuisance. The state tort law claims of these Plaintiffs arise out of California Civil Code
11 §§ 3479 and 3294; California Code of Civil Procedure §§ 526 and 731; California Health
12 & Safety Code § 5411; and California Water Code § 13050(m); and related provisions of
13 the common law.

14
15 6. Plaintiffs allege that Defendants have, are, and will continue to create or
16 contribute to abatable public and/or private nuisances and/or trespasses by using unlawful
17 and dangerous manure handling practices that resulted in: contamination of RCRA
18 Plaintiffs' water supplies; emission of extremely offensive and excessive odors, dust, and
19 particulate; toxic emissions such as ammonia; and the invasion of Plaintiffs' homes and
20 properties by large numbers of flies.

21 7. Although Defendants ceased operations at the Dairy and removed all cows
22 in approximately July 2013, the fly and odor problems continue, in part because N&M
23 Dairy is excavating its lagoons and drying the manure sludge in the open. Plaintiffs seek
24 compensatory and punitive damages to redress these injuries.

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1 **JURISDICTION**

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

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

6 10. This Court has supplemental jurisdiction over Plaintiffs’ state-law claims
7 under 28 U.S.C. § 1367 because Plaintiffs’ state-law claims are so related to their federal
8 claims that they constitute the same case or controversy. Both the federal and state claims
9 are based on the same nucleus of operative facts: the manure handling practices of N&M
10 Dairy and the resulting harms to Plaintiffs.

11 11. On September 6, 2013, RCRA Plaintiffs gave notice of the RCRA violations
12 and their intent to file suit to the Defendants, the United States Attorney General, the
13 United States Environmental Protection Agency (“EPA”), EPA Region 9, the California
14 Governor, the California Attorney General, the California Environmental Protection
15 Agency, and the California Department of Toxic Substances Control, and the California
16 Department of Resources Recycling and Recovery as required by Section 7002(a) of
17 RCRA, 42 U.S.C. § 6972(a).

18 12. More than ninety (90) days has passed since notice was served, and
19 violations complained of in the notice are continuing at this time, or Defendants are
20 reasonably likely to continue to remain in violation of RCRA. The EPA has not
21 prosecuted these violations. The Lahontan Regional Quality Control Board brought and
22 settled an enforcement action against Defendants, Clean Up and Abatement Order (CAO)
23 R6V-2013-0103 for N&M Dairy (replacing prior CAOs R6V-2011-0055 and R6V-2011-
24 0055A1), but that that settlement does not provide for the remediation of the RCRA
25 violations identified in the notice nor does it compensate the Plaintiffs for their damages
26 and injuries as alleged herein. 42 U.S.C. §§9659(d)(2) & 11046(e).
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1 **VENUE**

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

5
6 **PARTIES**

7 14. Plaintiffs all live near the N&M Dairy site.

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

12 16. All Plaintiffs suffer from extremely high numbers of flies on their properties
13 and in their homes. They have experienced, and continue to experience, flies on their
14 walls, flies landing on their bodies, and flies buzzing around doorways and windows.
15 Plaintiffs cannot open their garage or house doors without flies invading their garages
16 and homes, and they cannot open their car doors without numerous flies immediately
17 invading their cars.

18 17. Plaintiff Bernadette Blackwood resides in Helendale, California, with her
19 husband, Plaintiff Curtis Blackwood, and their minor children, Plaintiffs K.B., 17 years
20 old, and E.B., 12 years old. Their residence is located approximately 0.5 miles from
21 N&M Dairy. Bernadette and Curtis Blackwood have owned the property since
22 approximately 1999, and they have resided there continuously with K.B. since then, and
23 with E.B. since he was born in 2002.

24 18. Plaintiff Christina Decker resides in Helendale, California, with her
25 husband, Plaintiff Carlos Silva, and their children, Plaintiffs N.S., 10 years old, J.S., 8
26 years old, and K.S., 5 years old. Their residence is located approximately 0.3 miles from
27
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1 the N&M Dairy fence line. Carlos Silva and Christina Decker have owned the property
2 since approximately August 2009, and they have resided their continuously since that
3 time with their three minor children.

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

9 20. Plaintiff Lisa Fritz resides in Helendale, California, with her husband,
10 Plaintiff David Fritz, and their daughter, Plaintiff J.F., who is approximately 1.5 years
11 old. Lisa Fritz is the adult daughter of Plaintiffs Wanda Romero and Felix Romero, who
12 reside in a different home on the same property in Helendale, California, with their adult
13 children, Plaintiff Ashley Romero, Plaintiff Luis Romero, and Plaintiff José Magaña, as
14 well as adult friends, Plaintiffs Vanessa Araujo and Bradley Morotaya. Wanda and Felix
15 Romero have owned the property and have resided there continuously since 1993. Ashley
16 Romero, José Magaña, and Lisa Fritz have also resided on the property since 1993, while
17 David Fritz has resided there since approximately 2006, and Vanessa Araujo and Bradley
18 Morotaya have resided there since approximately 2010. Luis Romero resided on the
19 property from 1993 until mid-2011 and then again from February 2013 through the
20 present. The Fritzes live in one home on the property, and the Romeros and their friends
21 live in a second home on the property. The well for these residences is located
22 approximately 250 feet downgradient from the N&M Dairy fence line. The residential
23 property is located 1/8 mile downgradient from the dairy facilities. Well water is the only
24 source of water for these residences. The well water is unfit for domestic use because it is
25 sourced from aquifers contaminated by N&M Dairy's manure handling, storage, and
26 disposal practices, with nitrates above the federal and California State set MCLs.
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1 21. Plaintiffs John and Lisa Morrison, husband and wife, reside in Helendale,
2 California. Their residence is located approximately 0.2 miles from the N&M Dairy fence
3 line. The Morrisons have owned the property since 1998 and they have resided there
4 continuously since then.

5 22. Plaintiff Eva Piña resides in Barstow, California, with her parents, Plaintiffs
6 Celia Piña and José de Jesus Piña, and her fiancé, Plaintiff Amir Paniagua. Celia and José
7 de Jesus Piña have owned the property and have resided there continuously since 1987.
8 Eva Piña has resided there continuously since 1987, while Amir Paniagua has resided
9 there since 2007. Their residence and its well are located approximately one mile
10 downgradient from N&M Dairy. Well water is the only source of water at the residence.
11 Their well is unfit for domestic use because it is sourced from aquifers contaminated by
12 N&M Dairy's manure handling, storage, and disposal practices, with nitrates above the
13 federal and California State set MCLs.
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15 23. Plaintiffs Garry Snell and Lisa Snell, husband and wife, reside in Helendale,
16 California, with their adult daughter, Plaintiff Shelby Ratican, and her two minor
17 children, Plaintiffs M.R., 8 years old, and H.R., 5 years old. Garry and Lisa Snell have
18 owned the property and resided there continuously since 2001. The Snells' residence is
19 located approximately 0.5 miles from the N&M Dairy fence line.

20 24. Plaintiff Christopher G. Sprowl resides in Helendale, California, with his
21 wife, Plaintiff Nicole Sprowl, and their two children, Plaintiffs A.S., 8 years old, and
22 C.S., 6 years old. Mr. Sprowl's residence is located approximately 0.3 miles from the
23 N&M Dairy fence line. Mr. and Mrs. Sprowl have owned this property and resided there
24 continuously with their two minor children since September 2012.

25 25. Plaintiff Fred Charles "Chuck" Whitton resides in Helendale, California,
26 with his adult son, Plaintiff Dallas Whitton. Chuck Whitton bought the property in
27 approximately 1963 and has owned it continuously since then. In approximately 2006,
28

1 the Whittons had a house built on the property, and Dallas Whitton moved in and has
2 resided there since that time. Chuck Whitton has resided there since 2008. The Whittons'
3 residence is located approximately 0.7 miles from N&M dairy.

4 26. Plaintiffs Susan Gray and John Gray, husband and wife, reside in Barstow,
5 California, with their adult daughter, Plaintiff Shawna Gray, and Mr. Gray's
6 granddaughter, Plaintiff A.K., 9 years old. Susan and John Gray have owned the property
7 and resided there continuously since 1987. Shawna Gray has resided there since 1995,
8 and A.K. has resided there since approximately 2006. The Grays' residence is located
9 approximately one mile from the N&M Dairy fence line.

10 27. Plaintiffs are "persons" within the meaning of RCRA 42 U.S.C. § 6972(a).

11 28. Defendants Neil De Vries, individually and as trustee of the Neil and Mary
12 De Vries Family Trust, and Mary De Vries, individually and as trustee of the Neil and
13 Mary De Vries Family Trust, own, have operated, and do business as N&M Dairy aka
14 N&M Dairy # 1 and/or N&M Dairy # 2, collectively an approximate 904-acre dairy at or
15 near 36001 Lords Road and 18200 Lords Road, Helendale, California, in San Bernardino
16 County. The site includes San Bernardino County Assessor's parcel numbers 466-041-01,
17 466-041-17, 466-041-20, 466-041-21, 466-041-22, 466-041-23, 466-091-15, 466-091-17,
18 466-091-26, 466-101-07, 466-101-06, 466-111-02. The dairy is permitted under
19 California Regional Water Board WDID No. 6B368010004.

20 29. Defendants James De Vries and Randy De Vries have operated and continue
21 to do business as N&M Dairy aka N&M Dairy # 1 and/or N&M Dairy # 2.

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

9 31. Defendants are “persons” within the meaning of RCRA 42 U.S.C.
10 § 6972(a)(1).
11

12 **STATUTORY AND REGULATORY FRAMEWORK**

13 **A. RCRA**

14 32. The purpose of RCRA is “to promote the protection of health and
15 environment,” and it seeks to accomplish that goal by “prohibiting future open dumping
16 on the land and requiring the conversion of existing open dumps to facilities which do not
17 pose a danger to the environment or to health.” 42 U.S.C. § 6902(a).
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19 33. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), provides that
20 citizens may commence a citizen suit against “any person,” as defined in Section
21 1004(15) of RCRA, 42 U.S.C. § 6972(a)(1), “including any past or present generator,
22 past or present transporter, or past or present owner or operator of a treatment, storage, or
23 disposal facility who has contributed or who is contributing to the past or present
24 handling, storage, treatment, transportation, or disposal of any solid or hazardous waste
25 which may present an imminent and substantial endangerment to health or the
26 environment.”
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1 34. Section 1002(b) of RCRA states that “disposal of solid waste . . . in or on the
2 land without careful planning and management can present a danger to human health and
3 the environment.” 42 U.S.C. § 6901(b).

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

9 36. RCRA defines “solid waste” as “any garbage, refuse, sludge from a waste
10 treatment plant . . . and other discarded material, including solid, liquid, semisolid, or
11 contained gaseous material resulting from . . . *agricultural operations*.” 42 U.S.C.
12 § 6903(27) (emphasis added).

13 37. EPA criteria for solid waste disposal practices prohibit the contamination of
14 any underground drinking water source beyond the solid waste boundary of a disposal
15 site. 40 C.F.R. § 257.3-4(a).

16 38. An “underground drinking water source” includes (1) an aquifer supplying
17 drinking water for human consumption or (2) any aquifer in which the groundwater
18 contains less than 10,000 milligrams per liter of total dissolved solids (“TDS”). 40 C.F.R.
19 § 257.3-4(c)(4).

20 39. To “contaminate” an underground drinking water source means to cause the
21 groundwater concentration of a listed substance to exceed its corresponding maximum
22 contaminant level specified in Appendix I to 40 C.F.R. Part 257, or cause an increase in
23 the concentration of that substance where the existing concentration already exceeds the
24 maximum contaminant level in Appendix I.
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1 **B. NUISANCE**

2 40. The California Civil Code defines a nuisance as anything that is injurious to
3 health, or is indecent or offensive to the senses, or an obstruction to the free use of
4 property, so as to interfere with the comfortable enjoyment of life or property. Cal. Civ.
5 Code § 3479.

6 41. The California Water Code defines a nuisance as a condition that (1) is
7 injurious to health, or is indecent or offensive to the senses, or an obstruction to the free
8 use of property, so as to interfere with the comfortable enjoyment of life or property; (2)
9 affects at the same time an entire community or neighborhood, or any considerable
10 number of persons, although the extent of the annoyance or damage inflicted upon
11 individuals may be unequal; and (3) occurs during, or as a result of, the treatment or
12 disposal of wastes. Cal. Water Code § 13050(m).

13 42. The California Health & Safety Code provides that no person “shall
14 discharge sewage or other waste, or the effluent of treated sewage or other waste, in any
15 manner which will result in contamination, pollution or a nuisance.”
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17 43. The California Civil Code exempts agricultural operations only if they meet
18 all seven strict criteria: (1) an agricultural activity; (2) conducted or maintained for
19 commercial purposes; (3) in a manner consistent with proper and accepted customs and
20 standards; (4) as established and followed by similar agricultural operations in the same
21 locality; (5) the claim of nuisance arises due to any changed condition in or about the
22 locality; (6) after the activity has been in operation for more than three years; and (7) the
23 activity was not a nuisance at the time it began. Cal. Civ. Code, § 3482.5.

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1 **C. TRESPASS**

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

5 45. California law prohibits a person from intentionally or recklessly or
6 negligently entering another person’s property or causing another thing to enter the
7 plaintiff’s property without consent or given permission for the entry. In the context of
8 this tort, the unlawful entry occurs where the defendant directly enters the subject
9 property or where the defendant’s conduct is substantially certain to cause something to
10 go onto that property, such as contamination, debris, or flies.

11 46. Under California law, contamination of the groundwater in an aquifer under
12 a plaintiff’s property can constitute a trespass, as can the deposit of particulate matter,
13 dust or debris, as well as the entry onto a plaintiff’s property of unwanted pests such as
14 rodents or flies.

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17 **FACTS**

18 **A. N&M DAIRY**

19 47. Upon information and belief, N&M Dairy is, and all times herein relevant
20 was, a for-profit, unincorporated business owned by Neil De Vries, individually and/or as
21 trustee of the Neil and Mary de Vries Family Trust, and Mary De Vries, individually
22 and/or as trustee of the Neil and Mary de Vries Family Trust; and operated by Neil De
23 Vries, Mary De Vries, James De Vries, and Randy De Vries. Neil De Vries, Mary De
24 Vries, James De Vries, and Randy De Vries, share, and at all times herein relevant
25 shared, ownership and/or control of N&M Dairy, N&M Dairy’s herd management
26 activities, and the manure and other waste management practices of N&M Dairy.

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

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

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

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

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

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

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

3 55. N&M Dairy and the waste disposal areas are located in the Middle Mojave
4 River Valley groundwater basin in the Mojave River Hydrological Unit, the same
5 groundwater basin from which Plaintiffs' residential wells draw.

6 56. N&M Dairy is located upgradient from Plaintiffs' properties by 1/8 to 1/2
7 miles.

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

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

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

4 60. Upon information and belief, over the past two decades, N&M Dairy
5 continuously increased the size of its operations without adequately or appropriately
6 addressing the increased waste. Over the past two decades, the conditions on the dairy
7 have continued to worsen each time the herd size or other operations increased, creating
8 more flies, dust and particulates, groundwater contamination, and odors so that Plaintiffs
9 could no longer use or enjoy their property.

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

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

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

24 64. Because of the agronomic application limits, the Dairy’s Waste Discharge
25 Requirements issued in 2001 state that manure in excess of 3,100 dry tons per year must
26 be removed from the dairy site. The Dairy did not comply with this order.
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1 65. Indeed, the Board’s 2010 Clean Up and Abatement Order concluded that the
2 amount of manure generated annually by N&M Dairy “is significantly more than what
3 the Discharger can agronomically apply to crop land at The Dairy and the Discharger is
4 storing excess manure at the Dairy site.” Clean Up and Abatement Order No. R6V-2010-
5 0029.

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

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

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

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

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

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

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

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

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

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

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

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

24 78. The excess manure stored at the Dairy ignited and caused a fire in September
25 2013. Previous fires have occurred at N&M Dairy as well, emitting smoke and particulate
26 into the neighboring community.
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1 79. Based on its inspection of the site, the Board has found numerous violations
2 regarding the storage of liquid and solid manure in or on permeable surfaces at N&M
3 Dairy. Some of those violations include:

- 4 a. March 26, 2009: Inspection finding manure piles “all over the site” and
5 uncovered dead animals.
- 6 b. June 23, 2009: Inspection noting piles of manure dumped openly on the
7 property and dead calves left for so long that they were decomposing to
8 bones.
- 9 c. July 1, 2009: Inspection noting manure piles “all over the site” along with
10 uncovered dead animals.
- 11 d. January 7, 2010: Inspection photographing temporary unlined ponds on the
12 property, full of liquid manure, and noting a lack of drain system, indicating
13 that the waste was percolating into the groundwater.
- 14 e. February 2, 2010: Inspection finding waste water discharging into adjacent
15 property. Pools on both east and west sides were full, and excess flow from
16 the ponds was pooling and percolating into the ground. Inspection noted that
17 the ponds have no engineering standards.
- 18 f. July 2, 2010: Clean Up and Abatement Order No. R6V-2010-0029 found
19 that dairy site contained pooling waste water on the property and manure
20 piles with no measure to stop the manure from draining into the ground.
- 21 g. July 28, 2010: Inspection noting a new pond constructed with no lining on
22 the west side and on the southeast side on the site, and that one of the ponds
23 was overfilled.
- 24 h. July 7, 2011: Inspection report finding ponds overflowing into permeable
25 soil.
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- 1 i. July 7, 2011: Inspection finding that Dairies failed to comply with order to
2 line ponds and that ponds remain unlined.
- 3 j. August 3, 2012: Inspection finding that ponds were too full and an excess
4 flow of waste water was percolating into the ground. Inspection noted that
5 no Nutrient Management Plan had been implemented nor any data
6 submitted.
- 7 k. February 19, 2013: Inspection finding new rows of manure piles on Dairy #2
8 with no Best Management Practice measures. Dairy #1 found similar
9 manure piles and excessive manure.

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

13 81. Even after the cattle were removed, because the manure remains on the
14 property, and because the soil remains saturated with nutrients and other pollutants, the
15 seepage of manure waste from the lagoons, fields, stalls, and the practice of windrowing
16 and/or storage and/or composting piles of manure has contributed and continues to
17 contribute to the excessive contamination of the groundwater, which is posing, or may
18 pose, an imminent and substantial endangerment to health and/or the environment.

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21 **C. Groundwater Contamination**

22 82. N&M Dairy's manure handling, storage, and/or disposal and possible other
23 practices are responsible for groundwater contamination at levels beyond the Maximum
24 Contaminant Level ("MCL") for nitrates.

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

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

4 85. Ingestion of nitrates above 10 mg/l is known to cause methemoglobinemia, a
5 blood disorder in which an abnormal amount of methemoglobin—a form of
6 hemoglobin—is produced. Hemoglobin is the molecule in red blood cells that distributes
7 oxygen to the body. Methemoglobin cannot release oxygen, and in persons with
8 methemoglobinemia, the hemoglobin is unable to release oxygen effectively to body
9 tissues.

10 86. Methemoglobinemia is also known as “blue baby syndrome” in infants.
11 Infants who ingest nitrates above the MCL may quickly become seriously ill and, if left
12 untreated, may die.

13 87. High nitrate levels may also affect pregnant women and adults with
14 hereditary cytochrome b5 reductase deficiency. In addition, nitrate and nitrite ingestion
15 by humans has been linked to goitrogenic (anti-thyroid) actions in the thyroid gland,
16 fatigue and reduced cognitive functioning due to chronic hypoxia, and maternal
17 reproductive complications, including spontaneous miscarriage.

18 88. Ingestion of nitrates in excess of the MCL is also suspected of causing
19 various forms of cancer in the general exposed population and compromises the health of
20 immune-compromised individuals and the elderly.

21 89. Board Investigative Order No. R6V-2010-0044 found that groundwater data
22 collected by Water Board staff during January 2010 and February 2010 “indicate shallow
23 domestic water supply wells downgradient of N&M Dairy contain nitrate...in
24 concentrations that exceed the drinking water standards” and that “[n]itrates exceeding
25 MCLs “have been found in groundwater from residential wells in the downgradient
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1 direction approximately 0.75 miles east of the N&M Dairy. Such degradation makes the
2 groundwater unsuitable for domestic and other uses and constitutes a pollution.”

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

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13 91. Every groundwater monitoring ever taken by N&M Dairy has indicated that
14 the level of nitrates in the groundwater exceeded the MCL for nitrates and other
15 pollutants in at least one of its monitoring wells.

16 92. Groundwater samples taken by the Board beginning in February 2004 also
17 found nitrate levels that exceeded the MCL by up to seven or more times the MCL.

18 93. The Board’s sampling also found levels of barium, chromium, copper, and
19 mercury that exceed the MCLs for those chemicals. The MCL for barium is 2mg/l;
20 chromium’s MCL is 0.1mg/l; copper’s MCL is 1.3mg/l; and mercury’s MCL is
21 0.002mg/l.

22 94. In addition, the Board’s testing at N&M Dairy revealed excessive levels of
23 secondary MCLs, such as total dissolved solids (“TDS”), calcium, chloride, manganese,
24 sulfate, specific conductance, and turbidity. The recommended SMCL for TDS is 500
25 mg/l and the upper limit is 1000 mg/l.
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1 95. Samples taken by the Board and Plaintiffs at residential wells downgradient
2 from N&M Dairy indicated levels of nitrates, chromium, and arsenic that exceeded the
3 MCLs for those chemicals.

4 96. Test results from samples taken at upgradient wells, meanwhile, indicate
5 nitrate levels well below the MCL for nitrate.

6 97. Based on these lab reports and the hydrology of the area, the Board
7 concluded that N&M Dairy is responsible for the contamination of the groundwater
8 downgradient (east) from its site and is responsible for Plaintiffs' contaminated
9 residential wells. The contamination is directly attributable to N&M Dairy's improper
10 handling, storage, and disposition of solid and liquid manure.

11 98. A sampling of testing results follows:

12 a. February 4, 2004, at N&M Dairy (the Dairy's monitoring wells MW1 and
13 MW2 are located near Dairy #2, on the west side of the property, and MW3
14 and MW4 are located near Dairy #1, on the east side):

15 i. MW1: 18.1 mg/l nitrates

16 ii. MW2: 21.4 mg/l nitrates

17 iii. MW3: 22.2 mg/l nitrates

18 iv. MW4: 42.8 mg/l nitrates

19 b. May 12, 2004, at N&M Dairy:

20 i. MW1: 13.8 mg/l nitrates

21 ii. MW2: 37.7 mg/l nitrates

22 iii. MW3: 23.3 mg/l nitrates

23 iv. MW4: 39.0 mg/l nitrates

24 c. December 10, 2004, at N&M Dairy:

25 i. MW2: 52.8 mg/l nitrates

26 ii. MW3: 15.8 mg/l nitrates

- 1 iii. MW4: 26.2 mg/l nitrates
- 2 d. May 4, 2005, at N&M Dairy:
- 3 i. MW1: 14.4 mg/l nitrates
- 4 ii. MW2: 10.0 mg/l nitrates
- 5 iii. MW3: 20.6 mg/l nitrates
- 6 iv. MW4: 17.3 mg/l nitrates
- 7 e. May 27, 2005, at N&M Dairy: Onsite average ranged from 10 mg/l to 16
- 8 mg/l nitrates.
- 9 f. December 15, 2005, at N&M Dairy:
- 10 i. MW3: 16.9 mg/l nitrates
- 11 ii. MW4: 20.2 mg/l nitrates
- 12 g. December 27, 2007, at N&M Dairy:
- 13 i. MW1: 12.3 mg/l nitrates
- 14 ii. MW3: 26.2 mg/l nitrates
- 15 h. December 22, 2008, at N&M Dairy:
- 16 i. MW1: 15.0 mg/l nitrates
- 17 ii. MW4: 31.9 mg/l nitrates
- 18 i. December 9, 2009, at N&M Dairy:
- 19 i. MW1: 16.4 mg/l nitrates
- 20 ii. MW2: 15.1 mg/l nitrates
- 21 j. January 7, 2010, at downgradient residential well at 19456 National Trail
- 22 Highway:
- 23 i. 18 mg/l nitrates
- 24 ii. 780 mg/l TDS
- 25 k. January 18, 2010, at N&M Dairy: Well near corrals at Dairy #1 had 88 mg/l
- 26 nitrates.
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- 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
- q. December 4, 2012, at N&M Dairy:
 - i. MW1: 14.2 mg/l nitrates
 - ii. MW4: 28.4 mg/l nitrates
- r. May 15, 2013, at Plaintiffs' properties: Sample 1 at 30 mg/l nitrates
- s. July 16, 2013, at Plaintiffs' properties:
 - i. Sample 1: 71 mg/l nitrates

1 ii. Sample 4: 32 mg/l nitrates

2 99. RCRA Plaintiffs live downgradient from N&M Dairy and their only source
3 of residential water is well water that has been contaminated by N&M Dairy.

4 100. Under order of the Board, N&M Dairy delivers bottled water to RCRA
5 Plaintiffs, but they sometimes do not receive enough drinking water for their families,
6 they do not receive enough water for domestic uses other than drinking, and there have
7 been lapses in the delivery of bottled water. Given this history, RCRA Plaintiffs are
8 concerned that delivery of bottled water will not be reliable going forward.

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

13 102. Eating food prepared with nitrate-contaminated water and irrigated with
14 nitrate-contaminated water can lead to chronic nitrate poisoning because the dietary
15 intake of nitrates is much larger than from drinking nitrate-contaminated water alone.
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18 **D. Soil Contamination that Leads to Continuing Water Contamination**

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

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

24 105. In studies, soil plumes contaminated by nitrates have been found beneath
25 manure lagoons deeper than 5 feet that had been used for less than 11 years, a depth and
26 timeframe similar to the N&M Dairy lagoons here.
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1 106. Further, the storage of manure on permeable soil, as N&M Dairy has done,
2 results in plumes of ammonium-contaminated soil. A study of manure lagoons on soil
3 that is likely less permeable than the soil at N&M Dairy found that, over the course of 25
4 years of operation, the soil beneath a facility would accumulate a concentration of 81,200
5 pounds of ammonium per acre of soil.

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

9 108. Upon information and believe, without soil remediation, the contaminated
10 soil plumes at N&M Dairy continue and will continue to leach nitrates, phosphates,
11 heavy metals, and other contaminants into RCRA Plaintiffs' groundwater for more than
12 five decades after N&M Dairy removes all manure.
13

14
15 **E. Excessive Ammonia Emissions, Odors, and Flies**

16 109. The overapplication and storage of excessive manure at N&M Dairy has also
17 resulted in excessive ammonia emissions, odors, and pests plaguing the Plaintiffs on the
18 Plaintiffs' properties.

19 110. These nuisances have continued despite the discontinuation of active use of
20 the Dairy..

21 111. In part, the nuisances have continued because of the remaining manure on
22 the dairy site.

23 112. In part, the nuisances have continued because N&M Dairy is currently
24 excavating its lagoons and is drying the manure sludge on the ground. The open drying of
25 manure sludge attracts flies and emits ammonia and other noxious odors.
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1 113. Ammonia is a toxic gas with a pungent odor that is commonly released
2 during the decomposition of manure. Ammonia inhalation can cause irritation, bloody
3 noses, lung damage, and death in humans and causes chronic stress to farm animals.

4 114. In its September 2012 inspection, the Board observed excessive numbers of
5 flies throughout N&M Dairy and noted that the Board had received numerous complaints
6 from area residents about the abundance of flies. The Inspectors informed Defendants
7 that the fly traps were not installed and maintained correctly, and Jim De Vries “admitted
8 that the fly baits/traps could be used more effectively.” Abatement Order No. R6V-2010-
9 0029, entitled “Requiring N&M Dairy to Clean Up and Abate the Nuisance Conditions
10 Caused by Excessive Manure and Standing Manure Mixed with Water from Dairy
11 Operations at N&M Dairy,” states that “Staff observed thousands of flies and noted odors
12 throughout inspection of the dairy. The conditions observed by Water Board staff
13 confirmed the validity of the residents’ complaints. The odors and flies from the
14 improperly stored and disposed manure by N&M Dairy are indecent or offensive to the
15 senses of the residents in close proximity to N&M Dairy, and prevent the residents from
16 the free use of their properties. Thus, a condition of nuisance has been created by the
17 treatment and/or disposal of waste (manure) at the N&M Dairy.”

18 115. Board Abatement Order Nos. R6V-2011-0055 and R6V-2011-0055-A1
19 stated that N&M Dairy had caused conditions which created an odor problem and fly
20 problem and thereby created a condition of nuisance.

21 116. Abatement Order No. R6V-2011-0056, entitled “Requiring N&M Dairy to
22 Clean Up and Abate the Groundwater Pollution and Nuisance Conditions Caused by
23 Inadequate Manure and Wash Water Management From Dairy Operations at N&M
24 Dairy,” noted a July 7, 2011, Inspection determining that “[t]he dairy does not have
25 adequate storage for generated wash water, and some of the ponds are discharging into
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1 the adjacent area, which is very permeable, thus creating nuisance conditions and a
2 potential for groundwater degradation.”

3 117. Despite the above Abatement Orders, the nuisances have not ceased. N&M
4 Dairy has routinely violated Abatement Orders.

5 118. The Board stated that its “authority to control odor and vector issues rising
6 to the level of a nuisance, as defined in section 13050 of the Water Code, is limited by its
7 authority to control the discharge causing the nuisance condition. The Water Board does
8 not have general authority to abate nuisance or assure the protection of public health.”
9 Therefore, it cannot provide the Plaintiffs with the relief they seek.

10 119. With regard to flies, the excessive numbers of flies have made it impossible
11 for Plaintiffs to live normally. Flies are ubiquitous on Plaintiffs’ property, both indoors
12 and outdoors, and all surfaces, including food and drink, are covered in fly residue and
13 bacteria. Every time an exterior door is opened, flies fly into Plaintiffs’ homes no matter
14 how quickly the door is closed again. At one Plaintiff’s home, the front door has not been
15 opened in years because of the risk of letting more flies in.

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

21 121. Plaintiffs live with flyswatters on every table and, during the summer
22 months when the flies are at their worst, cannot sit in their homes without flyswatters in
23 their hands. Mr. and Mrs. Snell have taken turns eating, so that one can swat away flies
24 while the other eats. The flies have entered the Plaintiffs’ refrigerators, dishwashers, and
25 showers, and landed on their food, drinks, and toothbrushes.
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1 122. Plaintiffs have been forced to spend an excessive amount of time and money
2 attempting to clean fly residue off their walls and windows, blinds, light fixtures, even
3 smoke detectors. Spending three to five hours to clean a single room is not uncommon.
4 The fly residue is sticky and requires hard scrubbing to remove. Several of the Plaintiffs
5 have had to repaint their interior walls and windowsills more than once in the past
6 decade. The Blackwoods and the Morrisons painted their interior in brownish colors in an
7 attempt to disguise the fly residue.

8 123. Many of the Plaintiffs have suffered interrupted sleep because of the
9 constant buzzing of flies and having flies land on them—particularly the young children,
10 who attempt to nap during the day, and Mr. Snell, who works at night and must sleep
11 during the day, when the flies are worse.

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

21 125. At times, depending on the direction and intensity of the wind, pungent
22 odors and ammonia permeate Plaintiffs' properties, causing their throats and eyes to burn.
23 Plaintiffs are sometimes woken up by a terrible stench.

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

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

10 128. In these and other ways, the excessive ammonia emissions, odors, and pests
11 are offensive to the senses, obstruct the Plaintiffs' free use of their properties, and
12 interfere with Plaintiffs' comfortable enjoyment of their lives and property.
13

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15 **F. Defendants' Willful and Malicious Disregard for Plaintiffs**

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

- 21 a. Despite at least five orders to come into compliance, issued between October
22 11, 2010, and August 3, 2012, the Dairy refused to submit or even begin to
23 implement the required Nutrient Management Plans or submit any of the
24 data required by California Nutrient Management Plans.
- 25 b. Despite four Clean up and Abatement Orders and Investigation Orders
26 finding that the Dairy contained excess manure that was causing a nuisance
27 and groundwater contamination to the community aquifer, Defendants did
28

1 not bring their facility into compliance. For example, a 2010 Order R6V-
2 2010-0029-A1 required a Manure Removal Plan to bring the facility into
3 compliance. On July 7, 2011, an inspection still revealed overfilled lagoons
4 seeping into drainage ditches and about the property, ponding in the corrals,
5 and overfull storm retention basins.

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

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

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

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

25
26 130. Defendants have routinely and consistently refused to operate N&M Dairy
27 within proper and accepted customs and standards for a California dairy facility, or with
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1 ordinary care, despite being informed that their unlawful practices were causing a
2 continuing nuisance, rendering Plaintiffs' water unfit to drink and causing excessive
3 numbers of flies to diminish the quality of Plaintiffs' lives and the value of their
4 properties.

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

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

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

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21 **G. The Board's Enforcement Actions**

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

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

3 136. Sometime in 2013, N&M Dairy discontinued dairy operations and removed
4 most or all of the dairy cows from the site.

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

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

14 139. The 2013 Order does not require N&M Dairy to take measures to remediate
15 the soil or reduce the population of vectors in addition to other manure control measures.
16 The 2013 Order also does not require N&M Dairy to explore digging deeper wells for
17 Plaintiffs in order to provide them with an independent safe water source.

18 140. The 2013 Order also raises the TDS trigger level for bottled water from
19 500mg/L to 815 mg/L. This increase reduces Plaintiffs’ water quality from a “good”
20 palatability level to a “fair” palatability level as defined by the World Health
21 Organization. The average TDS for groundwater in the Middle Mojave River Valley
22 Basin is about 500/mg, and the EPA lists the Secondary Maximum Contaminant Level
23 for TDS at 500 mg/L. California lists the same limit, 500 mg/L, as its “Recommended
24 Range.” Cal. Code Regs. Tit. 22, § 64449.
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1 141. The 2013 Order contains no provisions to provide Plaintiffs with a remedy if
2 and when Defendants violate the provisions of the 2013 Order, and they have violated
3 prior Orders.
4

5 **CLAIMS FOR RELIEF**

6 **COUNT 1**

7 **RCRA Imminent and Substantial Endangerment**

8 **RCRA Plaintiffs against Mary De Vries, individually and dba N&M Dairy (aka**
9 **N&M Dairy # 1 and N&M Dairy # 2); Neil De Vries, individually and dba N&M**
10 **Dairy (aka N&M Dairy # 1 and N&M Dairy # 2); James De Vries; Randy De Vries;**
11 **and Doe Defendants 1 through 5**
12

13
14 142. RCRA Plaintiffs incorporate by reference the allegations of the preceding
15 paragraphs of this Complaint.

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

20 144. Defendants are the past and present owners or operators of a storage or
21 disposal facility under RCRA, 42 U.S.C. § 6972(a)(1)(B), because N&M Dairy stores
22 and disposes of manure and waste washwater in massive unlined earthen lagoons and in
23 piles on the ground onsite and applies manure onto fields above agronomic rates. As a
24 result, Defendants contribute to the past or present handling, storage, and disposal of
25 solid waste.
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1 145. N&M Dairy is a past and present generator of manure and other by-product
2 wastes. Manure is “handled” and “transported” by the Dairy as well as disposed of on the
3 Dairy’s land.

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

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

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

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

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

3 151. Plaintiffs are harmed and will continue to be harmed by this imminent and
4 substantial endangerment unless the Court grants the relief sought herein.

5 152. Under RCRA, 42 U.S.C. § 6972(a), RCRA Plaintiffs seek an assessment of
6 past, present, and future response, remediation, removal and/or clean-up costs against
7 N&M Dairy, particularly the remediation of the groundwater and soil, and temporary
8 and/or permanent injunctive relief, as well as attorneys and expert witness fees and costs.
9 WHEREFORE, RCRA Plaintiffs, and each of them, pray for relief as set forth below.
10

11 **COUNT 2**

12 **Continuing Private Nuisance under California Law**

13 **All Plaintiffs against All Defendants**

14 153. Plaintiffs incorporate by reference the allegations of the preceding
15 paragraphs of this Complaint.
16

17 154. Plaintiffs own and/or occupy property adjacent to or otherwise near N&M
18 Dairy. Plaintiffs have the right to own, enjoy, and use the property without interference
19 by N&M Dairy.

20 155. Plaintiffs, and each of them, have an inalienable right to own, enjoy, and use
21 their property without interference by Defendants.

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

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

10 158. None of the Plaintiffs consented to Defendants' improper management of
11 their facilities and cows, nor to their improper waste management practices; nor did
12 Plaintiffs consent to receive the noxious odors and emissions, dust and particulate, flies,
13 or other conditions that have created a nuisance on their properties.

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

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

3 161. The conditions described herein constitute a “nuisance” pursuant to
4 California Health & Safety Code § 5411 and California Water Code § 13050(m).

5 162. The contaminated and unsafe domestic water supplies create hassle and
6 expense for Plaintiffs and, to the extent they must continue to use the water for household
7 tasks, are dangerous to their health. The toxic emissions are dangerous to Plaintiffs’
8 health and cause annoyance, discomfort, irritation, and inconvenience. The contamination
9 of the water supply, the toxic emissions, and the excessive odors and pests are offensive
10 to Plaintiffs’ senses, obstruct their ability to use their properties, and interfere with their
11 enjoyment and free use of their properties.

12 163. At all times that Defendants discharged these offensive odors, hazardous
13 substances, and flies, Defendants knew or should have known that noxious and toxic
14 emissions with a pungent odor, including ammonia, are commonly released during the
15 decomposition of uric acid in cow manure. Defendants knew or should have known that
16 decomposition can occur in both wet and dry conditions, which means that ammonia and
17 other noxious emissions are released immediately after excretion and continues to form
18 as waste breaks down. Defendants knew or should have known that ammonia inhalation
19 can cause irritation, bloody noses, lung damage, and even death to humans, and that it
20 causes chronic stress to farm animals. Defendants knew or should have known that dead
21 and decomposing animals cause offensive odors and other hazardous chemical
22 compounds; are a common cause of localized odors from animal production facilities;
23 and attract and serve as a breeding ground for flies.

24 164. The seriousness of Plaintiffs’ injuries outweighs the social utility of N&M
25 Dairy’s conduct, as N&M Dairy could have taken measures to prevent the harm while
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1 still operating the dairy. N&M Dairy could have prevented these injuries by following the
2 legal standards for manure storage and disposal.

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

7 166. Since at least 2004, N&M Dairy has negligently failed to abate the continued
8 nuisance and has negligently permitted the nuisance to continue.

9 167. N&M Dairy's conduct constitutes a continuing nuisance under § 3479 of the
10 California Civil Code and a per se nuisance under California Health & Safety Code §
11 5411 and California Water Code § 13050(m).

12 168. In addition to creating the above-described nuisance that has harmed the
13 Plaintiffs as alleged herein, Defendants have failed to adequately abate the continuing
14 nuisance and have allowed the nuisance to continue. Despite removal of the cows, odor
15 from manure and waste and vectors continue, and the soil is still saturated with nitrates
16 and other pollutants, resulting in continued degradation of the groundwater on which the
17 RCRA Plaintiffs rely.

18 169. Plaintiffs seek compensatory damages, including pre-judgment interest, for
19 their injuries. However, because Plaintiffs cannot be adequately compensated with money
20 damages, Plaintiffs also seek injunctive relief, particularly relief requiring N&M Dairy to
21 remediate the contaminated soil and groundwater, dig deeper wells for the RCRA
22 Plaintiffs if such action will provide RCRA Plaintiffs with water safe for domestic and
23 agricultural use, and increase their vector controls to prevent flies from entering
24 Plaintiffs' properties.

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

9
10 171. N&M Dairy's actions were taken maliciously and in conscious disregard of
11 the rights of Plaintiffs. As such, Plaintiffs are entitled to punitive and exemplary
12 damages, as set forth in greater detail above.

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

14
15 **COUNT 3**

16 **Continuing Trespass under California Law**

17 **All Plaintiffs against All Defendants**

18 172. Plaintiffs incorporate by reference the allegations of the preceding
19 paragraphs of this Complaint.

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

25 174. Defendants intentionally, recklessly, or negligently mismanaged their
26 facilities, operations, animals, and animal waste at N&M Dairy so as to cause swarms of
27 flies to enter Plaintiffs' property.

1 175. In addition, depending on the direction and intensity of the wind, on many
2 occasions during the past several years, and earlier, dust and particulate—including, upon
3 information and belief, bits of manure—have entered Plaintiffs’ property from N&M
4 Dairy.

5 176. None of the Plaintiffs gave any of the Defendants permission for, nor has
6 any of the Plaintiffs consented to, the entry of flies and particulates onto their property
7 and into their homes, garages, and vehicles.

8 177. The flies and particulates that Defendants’ misconduct caused to enter onto
9 Plaintiffs’ properties, without the permission or consent of Plaintiffs, constitute repeated
10 invasions of Plaintiffs’ property interests, including their right to exclusive possession of
11 the land that they owned, leased, occupied, and/or resided on, and thus constitute a
12 temporary, abatable, and continuing trespass that has directly and proximately caused
13 substantial injuries and damages to Plaintiffs, and each of them.

14 178. Defendants’ mismanagement of their facilities, operations, animals, and
15 animal waste at N&M Dairy was a substantial factor in causing the unauthorized and
16 offensive entry of the flies and particulate onto the properties of Plaintiffs. Moreover, the
17 unconsented-to entry of excessive numbers of flies, as well as the unconsented-to entry of
18 manure particulate, onto the properties of Plaintiffs, was and is a substantial factor
19 contributing to the harms and damages that Plaintiffs have suffered and continue to suffer
20 as alleged herein.

21 179. The wrongful acts of Defendants, and each of them, as alleged herein, were
22 done maliciously, oppressively, fraudulently, and in conscious disregard of the rights,
23 health, and safety of Plaintiffs; and Plaintiffs are entitled to punitive damages to punish
24 Defendants and deter such conduct by Defendants and others in the future, in an amount
25 to be ascertained according to proof at the time of trial.

26 WHEREFORE, Plaintiffs, and each of them, pray for relief as set forth below.
27
28

1
2 **COUNT 4**

3 **Continuing Trespass under California Law**

4 **RCRA Plaintiffs against All Defendants**

5 180. Plaintiffs incorporate by reference the allegations of the preceding
6 paragraphs of this Complaint.

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

11 182. Defendants intentionally, recklessly, or negligently mismanaged their
12 facilities, operations, animals, and animal waste at N&M Dairy so as to cause the
13 resulting contaminants to enter RCRA Plaintiffs' groundwater.
14

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

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

23 185. Defendants' mismanagement of their facilities, operations, animals, and
24 animal waste at N&M Dairy was a substantial factor causing the unauthorized entry of
25 contaminants into RCRA Plaintiffs' properties, and this offensive and unauthorized entry
26 was a substantial factor in causing the harms and damages that RCRA Plaintiffs have
27 suffered and continue to suffer as alleged herein.
28

1 186. The wrongful acts of Defendants were done maliciously, oppressively,
2 fraudulently, and in conscious disregard of the rights, health, and safety of RCRA
3 Plaintiffs; and they are entitled to punitive damages to punish Defendants and deter such
4 conduct by Defendants and others in the future, in an amount to be ascertained according
5 to proof at the time of trial.

6 WHEREFORE, RCRA Plaintiffs, and each of them, pray for relief as set forth
7 below.
8

9 **RELIEF REQUESTED**

10 Plaintiffs respectfully request that the Court enter a judgment:

11 A. Declaring that Defendants' past and/or present generation, handling, storage,
12 treatment, transportation and/or disposal of solid waste presents, or may present, an
13 imminent and substantial endangerment to public health and the environment.
14

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

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

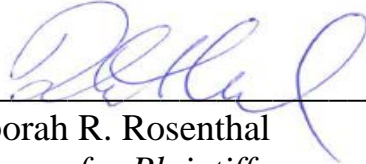
23 D. Ordering Defendants to take all actions as may be necessary to eliminate any
24 present or future endangerment and nuisances, including, but not limited to:

- 25 a) funding, developing and implementing an appropriate and effective
26 remediation plan to ensure that the groundwater is no longer contaminated
27 and is safe to drink; and
28

- 1 b) funding, developing and implementing an appropriate and effective
2 remediation plan to ensure that the soil is no longer contaminated and will
3 not leach into the groundwater.
- 4 c) funding, developing and implementing an appropriate and effective plan to
5 provide RCRA Plaintiffs with a permanent independent source of safe
6 drinking water that is not reliant on Defendants' bottled water delivery.
- 7 d) Implementing heightened vector control on N&M Dairy property to prevent
8 the spread of flies and providing Plaintiffs with vector control and sanitation
9 services to prevent the impact of the flies on their properties.
- 10 E. Awarding Plaintiffs compensatory, punitive, and exemplary damages.
- 11 F. Awarding Plaintiffs reasonable attorneys' and expert witness fees and other
12 costs, pursuant to 42 U.S.C. § 6972(e); California Code of Civil Procedure §§ 1021.5,
13 1021.9, and 1032; and other statutes as may be applicable; and
- 14 G. Ordering such other relief as the Court may deem just and proper.
- 15
16
17

18 Dated: April 2, 2014

**SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC**

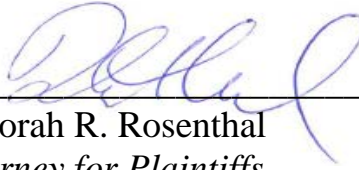
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21 By: 
22 Deborah R. Rosenthal
23 *Attorney for Plaintiffs*
24
25
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3 **DEMAND FOR JURY TRIAL**
4

5 Plaintiffs hereby demand a trial by jury of all issues herein so triable.
6

7 Dated: April 2, 2014

**SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC**

9
10 By: 
11 Deborah R. Rosenthal
12 *Attorney for Plaintiffs*

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