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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/15/2024 9:53:38 AM

Clerk of the Superior Court
By M. Schwenke ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DISTRICT

VON BARON PARTLOW,
DONALD JOSEPH FALLON,
CARLOS ALBERTO BARRIOS,
SHANNON DEE O'HARA,
ALBERT SANCHEZ PARRA,
ANGELINA FRANCO PARRA,
JUSTIN IVAN RIVERA,
DANIEL JAMES RYAN,
JENNIFER LEE RYAN,

Plaintiffs,

v.

VEOLIA WATER WEST OPERATING
SERVICES, INC.;
VEOLIA WATER NORTH AMERICA-
WEST, LLC;
MARK WIPPLER, an individual,
and
DOES 1-200, inclusive,

Defendants.

Case No.: 24CU017279C

Unlimited Jurisdiction

COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs VON BARON PARTLOW, DONALD JOSEPH FALLON, CARLOS ALBERTO
2 BARRIOS, SHANNON DEE O'HARA, ALBERT SANCHEZ PARRA, ANGELINA FRANCO
3 PARRA, JUSTIN IVAN RIVERA, DANIEL JAMES RYAN, and JENNIFER LEE RYAN
4 ("Plaintiffs"), by and through their undersigned counsel, hereby file the following complaint
5 for damages and injuries ("Complaint") against all Defendants and DOES 1-200.

6 INTRODUCTION

7 1. This lawsuit is brought by residents and neighbors of the City of Imperial Beach
8 against the company and individuals tasked with preventing them from being exposed to raw
9 sewage and other contaminants. The human health, environmental justice, and ecological
10 disaster caused and contributed to by the defendants directly impacts public health, public
11 safety, and denies local community members the right to live and recreate in a safe and clean
12 environment. And so, they bring this lawsuit.

13 2. The defendants, through their intentional acts, negligence, recklessness, and
14 other misconduct have caused plaintiffs to suffer harm from contact with untreated sewage
15 and other contaminants because defendants have discharged and continue to discharge
16 pollutants such as fecal bacteria, contaminated sediment, heavy metals, and toxic chemicals,
17 some of which have been banned in the United States such as DDT, Benzidine, and
18 Polychlorinated Biphenyls ("PCBs"), into the Tijuana River and Estuary, and the Pacific Ocean
19 (collectively "Receiving Waters") in violation of the express terms and conditions of their
20 National Pollutant Discharge Elimination System ("NPDES") Permit and the Clean Water Act,
21 Title 33 U.S.C. Section 1342.

22 3. Defendants' NPDES Permit requires them to capture certain wastewater flows
23 from Mexico, divert the flows to the South Bay International Water Treatment Plant, and then
24 discharge up to 25 million gallons per day ("MGD") into the Pacific Ocean. But because of
25 decades of neglect, deferred maintenance, and other misconduct the defendants have violated
26 their NPDES Permit hundreds of times causing harm to the plaintiffs.

27 4. The problems caused by the defendants' actions and inactions are vast. For
28 instance, the California Coastal Commission reported on September 29, 2023, that over the

1 past five years, over 100 billion gallons of transboundary flows containing untreated sewage,
2 bacteria and viruses, heavy metals, pesticides, sediment, trash, and toxic chemicals, have
3 flowed from Mexico into Southern California via the Tijuana watershed. Much of that
4 untreated due to the defendants' actions, inactions, and their routine discharge of these same
5 pollutants into the Pacific Ocean via the Facility's South Bay Ocean Outfall ("SBOO"), and into
6 the Tijuana River and Estuary via leaks and spills from their canyon collectors and other
7 infrastructure, in violation of their NPDES Permit.

8 5. Defendants' failure to comply with their NPDES Permit and their negligence,
9 trespass, nuisance, and intentional acts have resulted in serious consequences to human
10 health and the environment. Among the consequences are exposure to dangerous and deadly
11 pathogens, raw sewage, hazardous toxins, and noxious odors throughout the City of Imperial
12 Beach, impacting plaintiffs' health and interfering with their use and enjoyment of their
13 property and their beaches and parks as well as serious gastrointestinal disease.



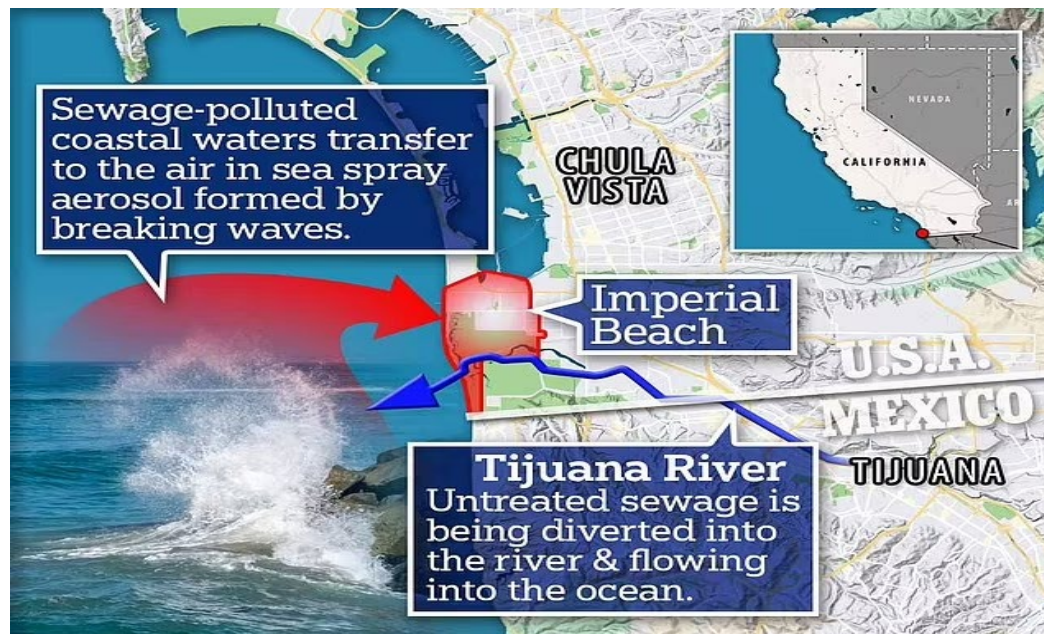
Photo taken from new report by CBS 8 News, Chris Gros

25 6. That sewage has also caused hundreds of days of closure at Imperial Beach,
26 Silver Strand State Beach, Border Field State Beach, and other areas of public recreation,
27 making some recreation and outdoor activities impossible due to defendants' actions and
28

inactions. Residents in the community have received “boil water” orders due to contaminated drinking water.

7. Wildlife in the area has also suffered: A recent report by San Diego State University’s School of Public Health has linked the death of Bottlenose dolphins that died from sepsis due to the ongoing discharge of sewage into the ocean at the City of Imperial Beach.

8. Recent studies have found that aerosolized sewage pollutants are often present in the air in Imperial Beach, San Ysidro and other South San Diego County border communities at levels that present a likely public health threat to people in those communities. And because of the aerosolized sewage pollutants caused by defendants’ actions and inactions, many people have suffered from gastrointestinal issues both from going into the water and from simply breathing the air.¹



Article by Stacy Liberatore for DailyMail.com

¹ <https://www.dailymail.co.uk/sciencetech/article-11840891/Sea-spray-tainted-raw-sewage-California-beach-study-reveals.html>

9. In other words, along with the deadly effects on wildlife, people living near or in the vicinity of the Tijuana River, Tijuana River Estuary and the Facility are also routinely exposed to aerosolized bacterial pathogens from raw sewage, even if they do not go in the water. Public beaches north of Imperial Beach to Coronado have also been closed intermittently for hundreds of days over the past decade, because of transboundary flows of raw sewage and untreated or poorly treated discharges from the Facility contaminating coastal waters. Discharges contaminated with pathogens, chemicals, sediment, and trash are also severely degrading the Tijuana River Estuary and offshore marine habitat. This harms local businesses and tourism and plaintiffs.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter because the amount in controversy exclusive of costs and interest exceeds \$35,000.

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

PARTIES

A. Plaintiffs

12. Plaintiffs are all owners and/or residents of properties located in or near Imperial Beach, County of San Diego, State of California and all resided in or near Imperial Beach, California at all pertinent times.

13. The damages suffered by Plaintiffs include damage to real property, damage to personal property, physical harm and illness, discomfort, annoyance, inconvenience, mental anguish, loss of quiet enjoyment, loss of business income, and emotional distress.

B. Defendants

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

15. Defendant Veolia Water North America-West, LLC is a limited liability company incorporated in Delaware. It maintains its corporate headquarters in Boston, Massachusetts, and maintains offices in multiple locations, including San Diego, California. Plaintiffs refer to

1 the Veolia defendants collectively as “Veolia.”

2 16. Defendant Mark Wippler is an employee of Veolia who resides in San Diego,
3 California. At all times relevant to the facts and circumstances alleged in this pleading, Mr.
4 Wippler was Project Manager at Veolia North America. Plaintiffs are informed and believe that
5 all relevant times, as Project Manager Defendant Wippler oversaw the design and management
6 of the treatment of sewage at the Plant. Included in his duties, which he failed to perform, were
7 the following:

- 8 • Participate in the development of engineering design and delivery processes and
9 standards that would ensure the proper treatment and discharge of sewage and by
10 products of the treatment of sewage.
- 11 • Review designs by others to assure conformance with company and legal standards.
- 12 • Perform all job responsibilities and duties in compliance with all safety, health,
13 environmental, and security laws, rules, policies, programs and training and ensure
14 compliance with all applicable government regulations and procedures.
- 15 • Collaborate with others to accomplish design and construction oversight for assigned
16 facilities on new developments. Coordinates internal resources to ensure accurate and
17 timely plan reviews of assigned facilities for new developments.
- 18 • Managing the Plant, including ensuring that the Plant did not discharge such quantities
19 of air contaminants or other material that could cause injury, detriment, nuisance or
20 annoyance to any persons or to the public or which endanger the comfort, repose, health
21 or safety of such person or the public or which cause or have a natural tendency to cause
22 injury to business or property.

23 **FACTS**

24 17. For decades, the residents and neighbors of the City of Imperial Beach have
25 suffered injury from exposure to raw sewage. The United States Section, International
26 Boundary & Water Commission (IBWC), owns and operates the South Bay International
27 Water Treatment Plant (“SBIWTP”), designed for treating, among other things, raw sewage
28 flows from Mexico. The Plant is designed to treat sewage originating in Tijuana, Mexico and

1 discharge it to the Pacific Ocean through the South Bay Ocean Outfall, a four and one-half
2 mile long 11foot diameter pipe completed in January 1999. To manage the Plant, IBWC hired
3 Defendants.

4 18. The SBIWTP is located in San Diego County, California, about 2 miles west of
5 the San Ysidro Port of Entry.

6 19. The SBIWTP was designed to deal with the growing demand for the treatment of
7 wastewater resulting in the contamination of the Tijuana River Estuary in the United States as
8 well as the Pacific Ocean within the United States' territorial seas. That contamination has
9 been an ongoing concern since 1934 when the United States and Mexican governments
10 instructed the International Boundary Commission (IBC) to cooperate in the preparation of a
11 report on the Tijuana sewage problem. The SBIWTP is capable, when it is working, of
12 providing secondary treatment for 25 MGD average daily flows of sewage but has expansion
13 capability of up to 100 MGD. The plant treats sewage originating in Tijuana, Mexico and
14 discharges it to the Pacific Ocean through the South Bay Ocean Outfall, a four and one-half
15 mile long 11foot diameter pipe completed in January 1999.

16 20. The San Diego Regional Quality Control Water Board ("San Diego Water Board")
17 is the administrative agency that issued and enforces the NPDES Permit Order No. R9-2014-
18 0229, NPDES No. CA0108928, and Order No. R9-2021-0001, NPDES No. CA0108928, as
19 amended by Order No. R9-2023-0009, adopted Time Schedule Order No. R9-2023-0189
20 ("TSO") (collectively, "NPDES Permits"). The NPDES Permits required IBWC to comply with
21 the NPDES Permits' secondary effluent limitations by August 15, 2024, and set task deadlines
22 and corresponding interim goals to ameliorate the pollution arising from the South Bay Ocean
23 Outfall (SBOO). But Defendants have not complied, and the polluting conditions persist,
24 causing harm to plaintiffs.

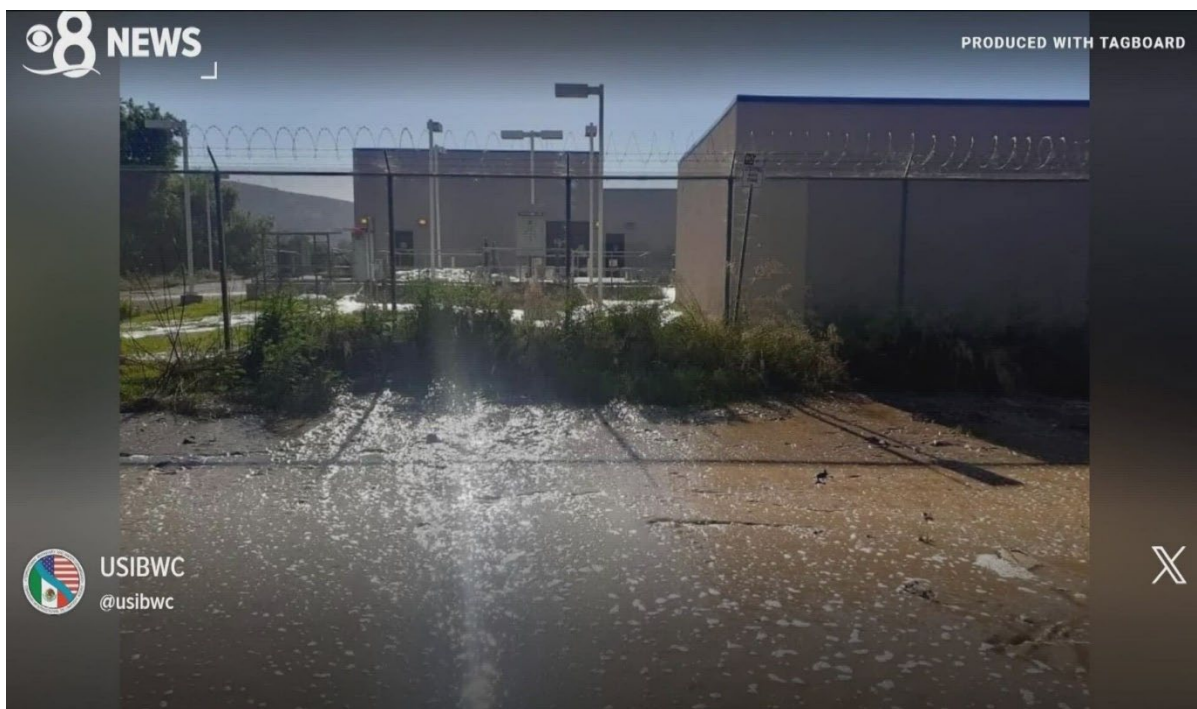
25 21. Pursuant to the Clean Water Act, the NPDES Permit Program was created to
26 control water pollution by regulating harmful pollutants from being discharged from a "point
27 source" (such as SBIWTP) into "waters of the United States" (such as the Tijuana River
28 Estuary and the Pacific Ocean) to protect human health and the environment. While this is a

1 federal program, the implementation and enforcement of this program has been delegated to
2 the State of California through its State Water Resources Control Board and the nine
3 subordinate Regional Water Quality Control Boards which includes the San Diego Water
4 Board.

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

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

13 24. The IWBC contracted with Veolia to operate, manage, and maintain the Plant.
14 Veolia is a large international consulting firm that manages public projects for governments
15 and private entities around the world.



27 *Photo from news report by CBS 8 News, Jasmine Ramirez, August 29, 2023*

1 25. Although it has received millions of dollars from the federal government to
2 operate, manage and maintain the SBIWTP, Veolia has, instead, caused, or contributed to, or
3 failed to ameliorate, a public health and environmental crisis that continues to harm residents
4 in Imperial Beach. Since 2018, the IWBC and Veolia have caused, or failed to prevent, over
5 500 illegal discharge incidents from SBIWTP, resulting in over a billion gallons of raw sewage
6 being dumped into the Tijuana River that flows into South San Diego.

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

12 27. Plaintiffs are informed and believe and based thereon allege that Veolia and
13 Wippler have failed, to such an enormous degree, to comply with its contract with the United
14 States (IBWC), by failing to adequately operate, manage, and maintain SBIWTP with due care
15 and diligence, in contravention of its contractual mandate, such that neither may rely on any
16 derivative governmental immunity herein.

17 28. The effects of the recent sewage spills are well known and well documented, and
18 while the Cities of Imperial Beach and Chula Vista, together with the San Diego Port
19 Commission have sued the IBWC and Veolia, detailing years of neglect, incompetent
20 management, and maintenance failures at SBIWTP, such cases have merely sought injunctive
21 relief and civil penalties. No relief has been directly sought to compensate the residents of
22 Imperial Beach who suffer daily from exposure to noxious odors, toxic chemicals, raw sewage,
23 hazardous waste, pollutants, and pathogens.

24 29. The ocean water regularly tests positive for Norovirus and has even been found
25 to have trace amounts of illegal drugs such as methamphetamine and cocaine from the
26 Tijuana River. There have been “boil water” orders due to contaminated drinking water. There
27 is an increase in the mosquito population causing fear of contracting diseases such as West
28 Nile Virus. According to a recent report, the entire fish population is now gone from the

1 estuary.

2 30. Plaintiffs are informed and believe and based thereon allege that the level of
3 toxic waste and pollution in the Tijuana River has increased tenfold over the last three years,
4 the consequences of which has been exacerbated dramatically by Defendants' mismanagement
5 of SBIWTP.

6 31. The State Water Board and the San Diego Water Board have issued hundreds of
7 violations to IWBC and Veolia. But Defendants continue to allow the toxicity and pollution in
8 the river and waters off the coast to increase and run unchecked and unremediated.

9 32. And as pleaded above, as recently as July 29, 2024, the San Diego Air Pollution
10 Control District issued a notice of violation to Veolia for causing a nuisance by discharging
11 302,000 gallons of untreated sewage to discharge into the Pacific Ocean at Imperial Beach.
12 Following that event, Veolia continued to fail to properly treat the wastewater, causing
13 additional raw sewage to be released, causing nuisance and other damage to the public,
14 including continued odor.

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 **Negligence**

18 **(Against All Defendants)**

19 33. All previous paragraphs are incorporated into this cause of action.

20 34. Defendants, and/or each of them, as owners, controllers, or operators of the
21 Plant and related infrastructure, were under a duty codified in Civil Code § 1714(a), which
22 states, in pertinent part:

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

26 35. Defendants each have special knowledge and expertise far beyond that of a
27 layperson with regard to the safe design, engineering, construction, use, operation, inspection,
28

1 repair, replacement, and maintenance of the Plant, related infrastructure, and wastewater
2 treatment.

3 36. At all times relevant herein, Defendants had a duty to properly design, engineer,
4 construct, operate, and maintain the Plant and related infrastructure to ensure wastewater
5 was properly treated and to not expose Plaintiffs to hazardous substances, sewage, pollution,
6 trash and other dangerous substances.

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

11 38. Defendants each breached these duties by, among other things:

- 12 a. Failing to design, construct, operate, manage, and maintain the Plant and
13 related infrastructure in a way that would prevent the discharge hazardous
14 waste, raw sewage, pollution, trash and other dangerous contaminants from
15 entering the air, soil, water, and Plaintiffs' properties;
- 16 b. Failing to prevent the discharge of trash, sewage, pollution, hazardous
17 chemicals, and other dangerous contaminants from being released or
18 discharged from the Plant and related infrastructure;
- 19 c. Failing to properly maintain the Plant and related infrastructure in a manner
20 that would prevent the discharge of trash, sewage, pollution, hazardous
21 chemicals, and other dangerous contaminants from being released or
22 discharged from its facilities;
- 23 d. Improperly and illegally discharging trash, sewage, pollution, hazardous
24 chemicals, and other dangerous contaminants from the Plant and related
25 infrastructure;
- 26 e. Failing to properly train and supervise employees and agents responsible for
27 operation, maintenance, and inspection of the Plant and related
28 infrastructure;

- f. Failing to implement and follow regulations and reasonably prudent practices to avoid the discharge of trash, sewage, pollution, hazardous chemicals, and other dangerous contaminants from SBIWTP and related infrastructure;
- g. Violating Health & Safety Code § 5411 by discharging waste in a manner that results in contamination, pollution, or a nuisance;
- h. Failing to operate and maintain its facilities and equipment in accordance with the requirements issued by the State Water Board; and/or
- i. Failing to comply with the San Diego Water Board requirements and NPDES Permits.

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

40. Defendants' failure to comply with applicable provisions of the Health and Safety Code, regulations, orders, and permits of the State Water Board and the San Diego Water Board as alleged here, is negligence per se because these statutes, orders, and rules seek to prevent the exact type of harm that Plaintiffs suffered because of Defendants' failure to comply with these statutes, orders, and rules. That is, Plaintiffs are within the class of individuals these statutes, orders, and rules were implemented to protect.

41. Also, contamination of the air, soil, and water caused by pollutants, sewage, and hazardous waste does not ordinarily occur in the absence of negligence. And here, the contamination was caused by an agency and instrumentality in the control of Defendants only. The contamination was not caused by any voluntary action by Plaintiffs. And thus, the Plaintiffs will be able to meet their burden of proof under the doctrine of *res ipsa loquitur*.

42. As a result of Defendants' negligence Plaintiffs were exposed to pollutants, sewage, and hazardous waste in the air they breath, the water they drink and use in their home, and the soil on their properties. Also, as a result of the contaminated water, air, and soil

1 Plaintiffs were and are exposed to dangerous and deadly pathogens, including E. coli, SARS-
2 CoV2, hepatitis A, human norovirus, and other viruses.

3 43. Plaintiffs cannot drink the water, shower, or bathe without being exposed to
4 pathogens, pollutants, sewage, and hazardous waste. Plaintiffs cannot open their windows or
5 breath the air outside without suffering exposure to pathogens, pollutants, sewage, hazardous
6 waste, and noxious odors. Plaintiffs have suffered and will continue to suffer injuries and
7 illness from their exposure to the contaminated water and air. Plaintiffs' properties have also
8 been damages from pollutants, sewage, hazardous waste, and noxious odors that have invaded
9 their properties.

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

16 **SECOND CAUSE OF ACTION**

17 **Public Nuisance**

18 **(Against All Defendants)**

19 45. All previous paragraphs are incorporated into this cause of action.

20 46. Plaintiffs are currently, and at all times relevant to this action were, the owners,
21 tenants, and/or lawful occupiers of real property located in Imperial Beach, the area of the
22 contamination.

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

27 48. These conditions interfered with Plaintiffs' physical health and quiet enjoyment
28 of their properties in a way unique to each of Plaintiff. Plaintiffs were and are continually

1 exposed to pollutants, sewage, and hazardous waste in the air they breathe, the water they
2 drink and use in their home, and the soil on their properties. Also, as a result of the
3 contaminated water, air, and soil Plaintiffs were and are exposed to dangerous and deadly
4 pathogens, including E. coli, SARS-CoV2, hepatitis A, human norovirus, and other viruses.

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

12 50. These conditions also affected many people at the same time.

13 51. At no time did Plaintiffs consent to Defendants' actions and inactions in creating
14 these conditions.

15 52. An ordinary person would be reasonably annoyed and disturbed by Defendants'
16 actions and inactions in creating these conditions.

17 53. Defendants' actions and inactions in creating these conditions were a substantial
18 factor in causing Plaintiffs to suffer damages. And each plaintiff's damages are different from
19 damages suffered by other plaintiffs. Those damages include, but are not limited to,
20 destruction of and damage to real property, destruction of and damage to structures,
21 destruction of and damage to personal property and cherished possessions, personal injuries,
22 discomfort, annoyance, inconvenience, mental anguish, loss of quiet enjoyment, and
23 emotional distress. Plaintiffs each seek damages to be determined, on an individual basis,
24 according to proof at trial.

25 54. The seriousness of the harm Defendants caused Plaintiffs outweighs any public
26 benefit that Defendants may provide.

27 55. Defendants, including one or more officers, directors, and/or managers, have
28 deliberately, and repeatedly, ignored their obligations to prevent pollution, raw sewage,

1 hazardous substances from contaminating the air, water, and soil in Imperial Beach.
2 Defendants, including one or more officers, directors, and/or managers, have deliberately, and
3 repeatedly, ignored complaints, orders issued by the San Diego Water Board, and even
4 violations received from the State Water Board related to the significant environmental
5 impacts and harm caused by its handling, storage, treatment, transport, and/or disposal of
6 hazardous and/or solid waste through its facilities.

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

14 **THIRD CAUSE OF ACTION**

15 **Private Nuisance**

16 **(Against all Defendants)**

17 57. All previous paragraphs are incorporated into this cause of action.

18 58. Defendants, and/or each of them, by their acts and/or omissions set forth above,
19 directly and legally caused an obstruction to the free use of Plaintiffs' property, an invasion of
20 the Plaintiffs' right to use their property, and/or a substantial and unreasonable interference
21 with the enjoyment of Plaintiffs' property, resulting in Plaintiffs suffering unreasonable harm
22 and substantial actual damages constituting a nuisance pursuant to California Civil Code
23 sections 3479 and 3481.

24 59. Plaintiffs were and are continually exposed to pollutants, sewage, and hazardous
25 waste in the air they breathe, the water they drink and use in their home, and the soil on their
26 properties. Plaintiffs cannot drink the water, shower, or bathe without being exposed to
27 pollutants, sewage, and hazardous waste. Also, as a result of the contaminated water, air, and
28

1 soil Plaintiffs were and are exposed to dangerous and deadly pathogens, including E. coli,
2 SARS-CoV2, hepatitis A, human norovirus, and other viruses.

3 60. Plaintiffs cannot open their windows or breath the air outside without suffering
4 exposure to pollutants, sewage, hazardous waste, and noxious odors. Plaintiffs have suffered
5 and will continue to suffer injuries and illness from their exposure to the contaminated water
6 and air. Plaintiffs' properties have also been damages from pollutants, sewage, hazardous
7 waste, and noxious odors that have invaded their properties.

8 61. As a direct and legal result of the wrongful acts and/or omissions of Defendants,
9 and/or each of them, Plaintiffs suffered, and continue to suffer, the injuries and/or damages
10 as set forth above.

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

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

26 / / /

27 / / /

28 / / /

1 **FOURTH CAUSE OF ACTION**

2 **Trespass**

3 **(Against All Defendants)**

4 64. All previous paragraphs are incorporated into this cause of action.

5 65. At all relevant times, Plaintiffs were the owners, tenants, and/or lawful occupiers
6 of real properties in the area of the contamination.

7 66. Defendants discharged raw sewage, pollution, and contaminated water into the
8 water in Imperial Beach from its facilities. The sewage, pollutants, and contaminated water
9 spread and entered Plaintiffs' properties through the sea spray aerosol and also entered
10 Plaintiff's plumbing and water in used at their properties, which caused damage to Plaintiffs'
11 properties.

12 67. Plaintiffs did not grant permission for any pollution, sewage, and contaminated
13 water to enter or to come into contact with their properties.

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

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

27 70. Defendants, including one or more officers, directors, and/or managers, know
28 that allowing contaminated water to spread into the air, soil, water, and enter Plaintiffs'

properties would cause a significant risk of injury and illness. Defendants acted recklessly and with conscious disregard to human life and safety, and this recklessness and conscious disregard was a substantial factor in bringing about Plaintiffs' harm. This is despicable and oppressive conduct. Plaintiffs thus seek punitive damages in an amount sufficient to punish Defendants' long history of deliberate disregard for Plaintiffs' safety.

FIFTH CAUSE OF ACTION

Battery

(Against all Defendants)

71. All previous paragraphs are incorporated into this cause of action.

72. Defendants, including one or more officers, directors, and/or managers, knew that their conduct and affirmative acts in discharging pollutants, raw sewage, and toxic materials into South San Diego waters and the air would cause Plaintiffs to contact, ingest, breathe, or drink that polluted air and water.

73. Defendants, including one or more officers, directors, and/or managers, were aware that their conduct and affirmative acts in in discharging pollutants, raw sewage, and toxic materials into South San Diego waters and the air would contact Plaintiffs in an offensive or harmful way when Plaintiffs contacted, ingested, or drank that water. Defendants affirmative conduct caused Plaintiffs to come into contact with and be exposed to harmful and deadly pathogens, including E. coli, SARS-CoV2, hepatitis A, human norovirus, and other viruses.

74. Despite this, Defendants discharged pollutants, including raw sewage and toxic materials, into South San Diego waters and the air. Defendants continued this harmful and offensive conduct even after receiving hundreds of violations from State Water Board and the San Diego Water Board.

75. Plaintiffs never consented to contacting, breathing, ingesting, or drinking polluted air and water, raw sewage, or dangerous pathogens.

76. Defendants' conduct was reckless, wanton, malicious, and in bad faith. In addition to compensatory or nominal damages, Defendants should also be liable for punitive

1 damages as a result of Defendants' recklessness, wantonness, maliciousness, and bad faith in
2 an amount determined by the character and degree of Defendants' wrongful conduct, and the
3 necessity to prevent the same or similar wrongful conduct by the Defendants and others in the
4 future.

5 **SIXTH CAUSE OF ACTION**

6 **Health & Safety Code § 5411**

7 **(Against all Defendants)**

8 77. All previous paragraphs are incorporated into this cause of action.

9 78. Defendants negligently, wilfully, recklessly, and/or in violation of law,
10 discharged waste in a manner that resulted in contamination, pollution, and a nuisance.

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

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

factor in bringing about Plaintiffs' harm. This is despicable and oppressive conduct. Plaintiffs thus seek punitive damages in an amount sufficient to punish Defendants' long history of deliberate disregard for Plaintiffs' safety.

VII. PRAYER FOR RELIEF

Plaintiffs seek the following damages in an amount according to proof at the time of trial:

- i. General and/or special damages determined on an individual basis according to proof;
- ii. Loss of the use, benefit, goodwill, and enjoyment of Plaintiffs' real and/or personal property;
- iii. Loss of wages, earning capacity, goodwill, and/or business profits or proceeds and/or any related displacement expenses;
- iv. Out of pocket costs;
- v. Damage to real and personal property;
- vi. Past and future medical expenses and incidental expenses;
- vii. General damages for personal injury, emotional distress, fear, annoyance, disturbance, inconvenience, mental anguish, and loss of quiet enjoyment of property;
- viii. Prejudgment interest;
- ix. For punitive and exemplary damages in an amount sufficient to punish Defendants' conduct and deter similar conduct, as allowed under all applicable law; and
- x. Any and all other and further such relief as the Court shall deem proper, all according to proof.

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