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San Francisco County Superior Court [Exempt from Filing and Motion Fees – Govt.]

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BOWMAN LIU

Todd E. Robins (SBN 191853)
Jed J. Borghei (SBN 257049)
Taeva C. Shefler (SBN 291637)
ROBINS BORGHEI LLP
369 Pine Street, Suite 400
San Francisco, CA 94104
Telephone: (415) 848-8850
Facsimile: (415) 276-5875

Attorneys for Plaintiffs, COUNTY OF MADERA, MADERA COUNTY MAINTENANCE DISTRICT 28 (RIPPERDAN) and MADERA COUNTY MAINTENANCE DISTRICT 36 (EASTIN ARCOLA)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

COUNTY OF MADERA, MADERA COUNTY MAINTENANCE DISTRICT 28 (RIPPERDAN) and MADERA COUNTY MAINTENANCE DISTRICT 36 (EASTIN ARCOLA)

Plaintiffs,

vs.

THE DOW CHEMICAL COMPANY; SHELL OIL COMPANY, individually and doing business as SHELL CHEMICAL COMPANY; OCCIDENTAL CHEMICAL CORPORATION; J.R. SIMPLOT COMPANY; PUREGRO COMPANY; NUTRIEN AG SOLUTIONS, INC.; WILBUR-ELLIS COMPANY LLC ; and DOES 1 through 300, INCLUSIVE,

Defendants.

CASE NO.

Date Filed:

COMPLAINT FOR DAMAGES AND OTHER RELIEF:
(1) STRICT PROD. LIABILITY (DESIGN DEFECT);
(2) STRICT PROD. LIABILITY (FAILURE TO WARN)
(3) NUISANCE;
(4) TRESPASS; and
(5) NEGLIGENCE.

JURY TRIAL DEMANDED

CGC -20-587618

Plaintiffs COUNTY OF MADERA, MADERA COUNTY MAINTENANCE DISTRICT 28 (RIPPERDAN) and MADERA COUNTY MAINTENANCE DISTRICT 36 (EASTIN ARCOLA) hereby allege as follows, based on information and belief and investigation of counsel:

I. SUMMARY OF THE CASE

1. Plaintiff COUNTY OF MADERA ("Plaintiff"), by and through its duly formed MAINTENANCE DISTRICT 28 (RIPPERDAN) (hereafter, "MD28-Ripperdan") and

1 MAINTENANCE DISTRICT 36 (EASTIN ARCOLA) (hereafter, "MD36-Eastin Arcola") and co-
2 plaintiffs herein, owns and operates public water systems that provide drinking water to residents
3 and businesses in the unincorporated places in the County of Madera known as Ripperdan,
4 California, and Eastin Arcola, California, respectively. Plaintiffs seek to recover by this action
5 the substantial costs necessary to protect the public and restore certain of their drinking water
6 supply wells, which are contaminated by the toxic chemical, 1,2,3-trichloropropane ("TCP").

7 2. TCP is a highly toxic substance that is an ingredient, component, constituent,
8 contaminant and/or impurity in certain commercial products. In years past, TCP and/or products
9 containing TCP (collectively referred to hereinafter as "TCP Products"), were applied, released,
10 discharged and/or disposed of by others in the vicinity of drinking water supply wells owned and
11 operated by Plaintiffs. TCP has migrated through the subsurface and into the groundwater, and
12 now contaminates the water pumped from certain of Plaintiffs' wells.

13 3. The defendants in this action are the manufacturers, distributors and releasors of
14 the TCP Products that caused the contamination of Plaintiffs' water supply. Among other things,
15 the manufacturer defendants knowingly and willfully manufactured, promoted and sold TCP
16 Products when they knew or reasonably should have known that TCP would reach groundwater,
17 pollute drinking water supplies, render drinking water unusable and unsafe, and threaten public
18 health and welfare, as it has done with respect to Plaintiffs' water supply.

19 4. Plaintiffs file this lawsuit to recover compensatory and all other damages,
20 including all necessary funds to compensate Plaintiffs for the costs of designing, constructing,
21 installing, operating and maintaining the treatment facilities and equipment required to comply
22 with state and federal safe drinking water laws and to remove TCP from their water supply, and
23 to ensure that the responsible parties bear such expense, rather than Plaintiffs and their
24 ratepayers.

25 II. THE PARTIES

26 5. Plaintiff COUNTY OF MADERA is a California general law county that, by and
27 through Plaintiff MADERA COUNTY MAINTENANCE DISTRICT 28 (RIPPERDAN) and
28 MADERA COUNTY MAINTENANCE DISTRICT 36 (EASTIN ARCOLA), which are

1 maintenance districts duly formed pursuant to the Government Code, owns and operates public
2 water systems that provide drinking water to residents and businesses in the unincorporated
3 places in the County of Madera known as Ripperdan, California, and Eastin Arcola, California,
4 respectively. Plaintiffs' public water systems include, among other elements, drinking water
5 production wells that draw from one or more groundwater aquifers, well sites, associated
6 pumping, hydro-pneumatic tanks, and distribution systems and equipment, all of which will be
7 referred to collectively in this Complaint as Plaintiffs' "Water Systems." Plaintiffs' Water
8 Systems include the right of Plaintiffs to extract and use groundwater from their wells to supply
9 drinking water to residents and business within each such System's service area. Plaintiffs have
10 a significant property interest in the waters they extract and use from the Water Systems' wells.
11 The past, present and continuing contamination of such waters by TCP constitutes physical
12 injury to such waters for which Plaintiffs are entitled to, and Plaintiffs hereby do, seek damages
13 and other appropriate relief.

14 6. The following defendants designed, manufactured, formulated, marketed,
15 promoted, distributed, sold (directly or indirectly), applied, discharged, disposed of and/or
16 released the TCP Products that are sources of the TCP that contaminates Plaintiffs' wells and
17 water supply.

18 7. Defendant THE DOW CHEMICAL COMPANY ("Dow") is a Delaware
19 corporation with its principal place of business in Midland, Michigan, which at all times relevant
20 to this action was doing business in California.

21 8. Defendant SHELL OIL COMPANY, individually and doing business as SHELL
22 CHEMICAL COMPANY ("Shell") is a Delaware corporation with its principal place of business
23 in Houston, Texas, which at all times relevant to this action was doing business in California.

24 9. Defendant OCCIDENTAL CHEMICAL CORPORATION, individually and as
25 successor by merger to Occidental Chemical Agricultural Products, Inc. (formerly known as
26 Occidental Chemical Company, successor by merger to Associated Farm Supplies)
27 ("Occidental"), is a New York corporation with its principal place of business in Dallas, Texas,
28 which at all times relevant to this action was doing business in California.

1 10. Defendant NUTRIEN AG SOLUTIONS, INC. (formerly known as Crop
2 Production Services, Inc.), individually and as successor in interest to Western Farm Service,
3 Inc. (formerly known as Cascade Farm Services, Inc.) and as successor in interest to UAP
4 Distribution, Inc. (individually and doing business as United Agri Products West, UAP West,
5 and United Agri Products, and as successor in interest to United Agri Products Financial
6 Services, Inc.) (“Nutrien”), is a Delaware corporation with its principal place of business in
7 Loveland, Colorado, which at all times relevant to this action was doing business in California.

8 11. Defendant PUREGRO COMPANY (“PureGro”) is a California corporation with
9 its principal place of business in San Ramon, California, which at all times relevant to this action
10 was doing business in California.

11 12. Defendant J.R. SIMPLOT COMPANY (formerly known as Simplot Company),
12 individually and doing business as Simplot Grower Solutions and Simplot Soilbuilders, and as
13 successor by merger to Simcal Chemical Company (formerly known as Valley Nitrogen
14 Producers, Inc.) (“Simplot”), is a Nevada corporation with its principal place of business in
15 Boise, Idaho, which at all times relevant to this action was doing business in California.

16 13. Defendant WILBUR-ELLIS COMPANY LLC (“Wilbur-Ellis”) is a California
17 corporation with its principal place of business in San Francisco, California, which at all times
18 relevant to this action was doing business in California.

19 14. The names and capacities, whether individual, corporate or otherwise, of
20 defendants named herein as DOES 1 through 300, inclusive, are unknown at this time to Plaintiff
21 who therefore sues said defendants by such fictitious names. Plaintiff will amend the Complaint
22 to show the true names and capacities of said defendants when their identities and capacities
23 have been ascertained.

24 15. The defendants named in paragraphs 7-13 above and defendant DOES 1 through
25 300, inclusive, are referred to collectively herein as “Defendants.”

26 16. Defendants Dow and Shell and DOES 1 through 100, inclusive, are referred to
27 collectively herein as “Manufacturer Defendants.”
28

1 17. Defendants Occidental, Simplot, PureGro, Nutrien, Wilbur-Ellis and DOES 101
2 through 200, inclusive, are referred to collectively herein as "Distributor Defendants."

3 18. DOES 201 through 300, inclusive, are referred to collectively herein as
4 "Owner/Operator Defendants."

5 19. When reference is made in this Complaint to any act or omission of any of the
6 Defendants, it shall be deemed that the officers, directors, agents, employees or representatives
7 of the Defendants committed or authorized such act or omission, or failed to adequately
8 supervise or properly control or direct their employees while engaged in the management,
9 direction, operation or control of the affairs of Defendants, and did so while acting within the
10 scope of their duties, employment or agency.

11 III. JURISDICTION AND VENUE

12 20. The California Superior Court has jurisdiction over this action pursuant to
13 California Constitution Article VI, Section 10, which grants the Superior Court "original
14 jurisdiction in all cases except those given by statute to other trial courts." The statutes under
15 which this action is brought do not grant jurisdiction to any other trial court.

16 21. This Court has jurisdiction over Defendants because, based on information and
17 belief, each is a corporation or other business that has sufficient minimum contacts in California,
18 is a citizen of California, or otherwise intentionally availed itself of the California market either
19 through the distribution or sale of TCP Products in the State of California or by having a
20 manufacturing, distribution or other facility located in California so as to render the exercise of
21 jurisdiction over it by the California courts consistent with traditional notions of fair play and
22 substantial justice.

23 22. Venue is proper in San Francisco Superior Court because at least one Defendant's
24 principal place of business is located within the County of San Francisco.

25 IV. ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION

26 **A. The Contaminant: TCP.**

27 23. TCP does not occur naturally. Rather, TCP is and/or was produced as a
28 byproduct of certain chemical processes used to produce allyl chloride, epichlorohydrin and

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