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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT, INC., a  
Washington Non-Profit Corporation,  
and CENTER FOR FOOD SAFETY,  
a Washington, D.C. Non-Profit  
Corporation,

Plaintiffs,

v.

GEORGE & MARGARET, LLC, a  
Washington Limited Liability  
Company, GEORGE DERUYTER &  
SON DAIRY, LLC, a Washington  
Limited Liability Company, and  
D&A DAIRY and D&A DAIRY  
LLC, a Washington Limited Liability  
Company,

Defendants.

NO. 2:13-CV-3017-TOR

ORDER ON CONSENT DECREE  
SANCTIONS

19 BEFORE THE COURT is the matter of sanctions in response to the Court's  
20 prior Order Finding Non-Compliance with Consent Decree. ECF No. 256. This

1 matter was heard with telephonic oral argument on July 14, 2020. Charles M.  
2 Tebbutt and Daniel C. Snyder appeared on behalf of Plaintiffs. Kent Krabill,  
3 Joshua D. Lang, and James S. Elliott appeared on behalf of Defendants. The Court  
4 has reviewed the record and files herein, and is fully informed. For the reasons  
5 discussed below, the Court finds Defendants' non-compliance with the Consent  
6 Decree warrants an order of sanctions.

### 7 **BACKGROUND**

8 This case arises out of the dairy operation practices of Defendants George &  
9 Margaret LLC, George DeRuyter & Son Dairy LLC, D&A Dairy, and D&A Dairy  
10 LLC (collectively, "the Dairies") and their impact on the environmental health of  
11 the surrounding community. Plaintiffs Community Association for Restoration of  
12 the Environment, Inc. ("CARE") and Center for Food Safety ("CFS") brought this  
13 suit under the citizen suit provision of the Solid Waste Disposal Act, also known as  
14 the Resource Conservation and Recovery Act ("RCRA"), alleging improper  
15 manure management practices constituting "open dumping" of solid waste. *See*  
16 *generally* ECF No. 80.

17 On May 19, 2015, the parties entered into a Consent Decree approved by the  
18 Court. ECF No. 169. On December 2, 2019, Plaintiffs filed a Motion for an Order  
19 to Show Cause, alleging Defendants repeatedly violated the Consent Decree over a  
20 more than four-year period. ECF No. 231. On January 15, 2020, the Court

1 granted Plaintiffs' Motion for Order to Show Cause and set a future hearing on the  
2 issue of non-compliance. ECF No. 252. On April 14, 2020, the Court entered an  
3 Order finding Defendants in non-compliance with the terms of the Consent Decree  
4 and requesting further briefing on the issue of appropriate sanctions and dates  
5 certain for full compliance. ECF No. 256.

## 6 DISCUSSION

### 7 A. Type of Sanctions

8 Having already determined that Defendants are not in compliance with the  
9 Consent Decree, the question presently before the Court is what type of sanction to  
10 impose for the non-compliance. "Courts have the ability to address the full range  
11 of litigation abuses through their inherent powers." *F.J. Hanshaw Ent., Inc. v.*  
12 *Emerald River Dev., Inc.*, 244 F.3d 1128, 1136 (9th Cir. 2001). "The finding of  
13 contempt and the imposition of monetary sanctions are independent inquiries."  
14 *Puget Soundkeeper All. v. Rainier Petroleum Corp.*, No. C14-0829JLR, 2017 WL  
15 6515970, at \*10 (W.D. Wash. Dec. 19, 2017). A court may impose sanctions that  
16 are either civil or criminal in nature. "To distinguish civil from criminal contempt,  
17 the focus of the inquiry is often 'not [upon] the fact of punishment, but rather its  
18 character and purpose.'" *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d  
19 770, 778 (9th Cir. 1983) (quoting *Shillitani v. United States*, 384 U.S. 364, 369  
20 (1966)).

1 “Civil contempt is characterized by the court’s desire to compel obedience to  
2 a court order ... or to compensate the contemnor’s adversary for the injuries which  
3 result from the noncompliance.” *Falstaff*, 702 F.2d at 778 (internal citations  
4 omitted). “A court’s power to impose coercive civil contempt depends upon the  
5 ability of the contemnor to comply with the court’s coercive order.” *Id.* “[I]n  
6 determining the amount and duration of a coercive fine, [the court] must ‘consider  
7 the character and magnitude of the harm threatened by continued contumacy, and  
8 the probable effectiveness of any suggested sanction in bringing about the result  
9 desired.’” *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 516 (9th Cir. 1992)  
10 (quoting *United States v. United Mine Workers of America*, 330 U.S. 258, 304  
11 (1947)). The contemnor’s ability to become compliant with the court’s order and  
12 therefore “purge” itself of conditional sanctions “is perhaps the most definitive  
13 characteristic of coercive civil contempt.” *Shell Offshore Inc. v. Greenpeace, Inc.*,  
14 815 F.3d 623, 629 (9th Cir. 2016). When a civil contempt sanction is  
15 compensatory, it is awardable to the prevailing party in the litigation and generally  
16 not to non-parties. *Ahearn ex rel. N.L.R.B. v. Int’l Longshore & Warehouse Union,*  
17 *Locals 21 & 4*, 721 F.3d 1122, 1131 (9th Cir. 2013). “Compensatory sanctions  
18 should be payable to the aggrieved party on evidence of the amount of losses.”  
19 *Puget Soundkeeper*, 2017 WL 6515970 at \*10 (citing *Gen. Signal Corp. v.*  
20 *Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986)).

1 In contrast, “[t]he primary purpose of criminal contempt is to punish past  
2 defiance of a court’s judicial authority, thereby vindicating the court.” *Falstaff*,  
3 702 F.2d at 778. “The principal beneficiaries of such an order are the courts and  
4 the public interest.” *Id.* “Criminal contempt is appropriate where the actor ‘defies  
5 the public authority and willfully refuses his obedience.’” *Whittaker Corp.*, 953  
6 F.2d at 517 (quoting *United Mine Workers*, 330 U.S. at 303). “[W]hen a court uses  
7 its inherent powers to impose sanctions that are criminal in nature, it must provide  
8 the same due process protections that would be available in a criminal contempt  
9 proceeding,” including the right to be advised of the charges, the right to a  
10 disinterested prosecutor, proof beyond a reasonable doubt, and the right to a jury  
11 trial if the fine or sentence imposed will be serious. *F.J. Hanshaw*, 244 F.3d at  
12 1138-39.

## 13 **B. Findings**

### 14 *1. Proposed Consent Decree Modifications*

15 In response to the Court’s Order Finding Non-Compliance, Plaintiffs have  
16 submitted proposed modifications to the Consent Decree terms as a proposed  
17 remedy for Defendants’ non-compliance. ECF No. 261-1. Although a consent  
18 decree is contractual in nature, it is also “a judicial decree that is subject to the  
19 rules generally applicable to other judgments and decrees.” *Rufo v. Inmates of*  
20 *Suffolk Cty. Jail*, 502 U.S. 367, 378 (1992). “[A] party may obtain relief from a

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