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NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

E-filing
Case No. C03-05224

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

C03 05224

15 SCOTT SMITH and JUDITH WRIGHT
16 PERKINS,

Case No. 103 CV 817303

RMW

17 Plaintiffs,

PVT
DEFENDANTS' OLIN CORPORATION'S
AND STANDARD FUSEE CORPORATION'S
NOTICE OF REMOVAL

vs.

20 OLIN CORPORATION, STANDARD FUSEE
21 CORPORATION, ORION SAFETY
22 PRODUCTS, SANTA CLARA VALLEY
WATER DISTRICT, et al.,

JURY TRIAL DEMANDED

23 Defendants.

25 THIS CASE RELATES TO:

26 C 03-01644 RMW
27 C 03-01645 RMW
28 C 03-01646 RMW
C 03-01647 RMW
C 03-01649 RMW
C 03-01650 RMW
C 03-01651 RMW

1 C 03-01652 RMW
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20 C 03-01671 RMW
21 C 03-01672 RMW
22 C 03-01673 RMW
23 C 03-01674 RMW
24 C 03-01675 RMW
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C 03-03209 RMW
C 03-03210 RMW
C 03-03211 RMW

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19 TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION:
21

22 Pursuant to 28 U.S.C. § 1441, *et seq.*, Defendants **Olin** Corporation ("Olin") and
23 Standard Fusee Corporation, **d/b/a** Orion Safety Products ("Standard Fusee") (sometimes
24 collectively referred to as the "Removing Defendants") respectfully state:

25 BACKGROUND

26 1. This case is one among 34 newly-filed Complaints and Amended Complaints
27 removed to the United States District Court for the Northern District of **California**, San Jose
28

1 Division by Olin and Standard Fusee.¹ This case and its 33 newly-filed counterparts add to a
2 series of lawsuits (now numbering approximately 109 cases) asserting both class and individual
3 claims filed by the law firm of Alexander, Hawes & Audet. Each of the previous 109 lawsuits
4 was filed by the Alexander Plaintiffs in the Superior Court of California, County of Santa Clara
5 and removed to this Court by the Removing Defendants.

7 2. Plaintiffs in each of those 109 previously filed and removed cases joined two
8 individual defendants, Anne Lee and **Yoshio Suekawa**. Removing Defendants asserted that these
9 individual defendants, Lee and Suekawa, were fraudulently joined for the purpose of defeating
10 Removing Defendants' right to a federal forum. This Court agreed and, on July 17, 2003, issued
11 an Order in three related cases, Daniels. No. C-03-01211; Hughes. No. C-03-01290 and Luian.
12 No. C-03-01289, denying Plaintiffs' Motion to Remand, and holding that the complaints failed to
13 state a cause of action against Lee or Suekawa. On approximately September 24, 2003, the Court
14 issued an Order, pursuant to a Stipulation signed by all parties, dismissing without prejudice Lee
15 and Suekawa from all related Alexander cases.

18 3. After Removing Defendants removed the first few related cases, the Alexander
19 Plaintiffs in these previously filed 109 cases also either added or sought leave to add as a party
20 defendant the Santa Clara Valley Water District ("SCVWD"). In its Order of July 17, 2003,
21 relating to Daniels, **Hughes**, and Luian. *supra*, this Court also found the proposed joinder of
22 SCVWD to have been "motivated primarily by an intent to defeat federal jurisdiction" and, in
23 any event, that the plaintiffs' claims against the SCVWD were only "**tangentially related**" to the
24 plaintiffs' claims against the Removing Defendants:

27 1 Plaintiffs' Complaint refers to Standard Fusee Corporation and Orion Safety **Products** as two separate
28 entities, however, Orion Safety Products is instead a fictitious name under which Standard Fusee
Corporation conducts business. Hereinafter, this defendant will be referred to as "Standard Fusee".

1 Essentially, plaintiffs' proposed cause of action against the Water District and its
2 claims against **Olin** and Standard have only one thing in common: the fact that
3 they both relate to the alleged potassium **perchlorate** contamination in Morgan
4 Hill. Yet despite this one similarity, the claims against the Water District are not
5 inherently connected with plaintiffs' claims against the present defendants. The
6 claims against Olin and Standard focus on those defendants' alleged wrongdoing
7 in creating and hiding the contamination, while the claims against the Water
8 District involve that party's alleged failure to detect and remedy such
9 contamination. In this sense, the claims are only **tangentially** related. The
10 absence of the **SCVWD** will not prevent the just adjudication of plaintiffs' claims
11 against Olin and Standard for the alleged wrongdoing - the true heart of this
12 lawsuit.

13 Id., at §C(2), p. 17.

14 4. On September 24, 2003, the Removing Defendants filed in related case **Albert Aguilar**, Case No. C 03-01644 RMW, Defendants' Motion to Sever and Remand the Claims
15 against the SCVWD in accordance with the Court's Order of July 17, 2003 in Daniels. Lujan,
16 and Hughes. On approximately October 8, 2003, this Court issued an Order, pursuant to a
17 Stipulation signed by all parties, providing that the Court's ruling on Defendants' Motion to
18 Sever and Remand the Claims against the SCVWD filed in Aguilar. *supra*, would be binding in
19 all other then pending Alexander cases in which the SCVWD had been joined as a defendant
20 prior to removal. Plaintiffs subsequently affirmatively indicated that they do not oppose
21 Defendants' Motion to Sever and Remand Claims against the SCVWD. *See* Plaintiffs'
22 "Statement of Non Opposition, Pursuant to Local Rule 7-3(b), to Defendants' Motion to Sever
23 and Remand Claims against the Santa Clara Valley Water District" filed on November 7, 2003
24 and Correspondence of R. Creech, dated November 3, 2003. On November 7, 2003, this Court
25 issued its tentative ruling granting Defendants' Motion to Sever and Remand the Claims against
26 the SCVWD.

27 5. Surprisingly, notwithstanding this Court's July 17, 2003 Order declining to allow
28 the post-removal joinder of the SCVWD and the Alexander Plaintiffs' non-opposition to the

1 Removing Defendants' Motion to Sever and Remand in all previously pending related cases,
2 Plaintiffs in this case and the remaining 33 newly-served actions have continued to file cases in
3 state court asserting nearly identical claims against the SCVWD. Here, as in the 109 preceding
4 similar lawsuits, the SCVWD has been fraudulently **misoined**. Accordingly, the claims against it
5 should be severed and remanded and its citizenship disregarded for the purpose of assessing
6 whether diversity jurisdiction exists.

8 **ALLEGATIONS IN THIS LAWSUIT**

9 6. On approximately October 22, 2003, just days before filing their "Statement of
10 Non-Opposition" to the Removing Defendants' Motion to Sever the SCVWD in Aguilar, the law
11 firm of Alexander, Hawes & Audet filed on behalf of Plaintiffs Scott Smith and Judith Wright
12 Perkins ("Plaintiffs"), this action ("the Lawsuit"), styled Scott Smith and Judith Wright Perkins
13 v. **Olin Corporation, et al.** Case No. 103CV817303, in the Superior Court of California, Santa
14 Clara County. As with numerous other related previous individual complaints filed by the law
15 firm of Alexander, Hawes & Audet and removed to this Court, the Lawsuit purports to join the
16 SCVWD as a Defendant.

19 7. The Lawsuit alleges that the Plaintiffs "have lived, are living **and/or** own real
20 **property**" in the vicinity of a former flare manufacturing facility located in Morgan Hill,
21 California. (Complaint; ¶¶ 1, 20). Plaintiffs allege that the Removing Defendants owned **and/or**
22 operated the facility for the purpose of manufacturing safety flares from 1955 to approximately
23 1996 (Complaint, ¶¶ 6, 7). Plaintiffs further allege that as a result of the manufacturing
24 processes employed at the facility, the facility discharged potassium perchlorate which has
25 contaminated or threatens to contaminate the **groundwater** "in and around the [facility] and
26 surrounding communities." (Complaint, ¶ 1).

1 8. The Lawsuit purports to assert various tort claims against the Removing
2 Defendants. (Complaint, passim).²

3 9. Plaintiffs claim that they "have a substantial financial investment in [their] home"
4 and that the alleged contamination has resulted in the loss of "all ability to sell, market or
5 finance" their home. (Complaint, ¶¶ 2, 3). Elsewhere, Plaintiffs allege that they have "lost the
6 value of Plaintiffs' home." (Complaint, ¶¶ 4, 39). Additionally, Plaintiffs request, *inter alia*,
7 that "Defendants be ordered to remediate the **groundwater** contamination." (Complaint, ¶ 73).

8 10. Plaintiffs also seek to recover for their "severe and extreme emotional distress,"
9 "pain, discomfort, anxiety, fear, [and] worries" allegedly resulting from Plaintiffs' alleged
10 potassium **perchlorate** exposures **and** diminution in property values. (Complaint, ¶¶ 61,62).
11 Plaintiffs also allege that they are entitled to punitive damages (Complaint, "Sixth Cause of
12 Action").

13 **THIS REMOVAL IS TIMELY & REMOVING DEFENDANTS HAVE COMPLIED**
14 **WITH THE PROCEDURAL REQUIREMENTS OF 28 U.S.C. § 1446(a)**

15 11. Attached hereto as Exhibit A in compliance with 28 U.S.C. § 1446 (a) and
16 incorporated herein by this reference is a copy of all process, pleadings, and orders served upon
17 defendants to date **in** this action.

18 12. On October 24, 2003, Randall C. Creech, attorney for Olin, received on Olin's
19 behalf a copy of the summons and the Complaint (see Exhibit A-1, attached). Service on
20 Standard Fusee (see Exhibit A-2 attached) was also made the same day. The service date on
21 fraudulently joined defendants should be disregarded for purposes of determining the timeliness
22

23 27 Plaintiffs' six legal theories against the Removing Defendants are: "Negligence" (First Cause of
24 Action); "**Nuisance**" (Second Cause of Action); "Intentional Infliction of Emotional Distress" (Third
25 Cause of Action); "**Trespass**" (Fourth Cause of Action); "Equitable (**Injunctive and/or** Declaratory) Relief
26 and Damages" (Fifth Cause of Action); and "Punitive Damages" (Sixth Cause of Action).

of removal petitions. *See, e.g.*, authorities cited in ¶31 below. Despite diligent efforts, Removing Defendants have been unable to determine the precise date of service of the Complaint on the Santa Clara Valley Water District ("SCVWD"), however, on information and belief, the service on the SCVWD was effected not earlier than October 22, 2003.

13. This Notice of Removal is timely under 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days after the receipt by the first served Defendants through service, of a copy of the pleading setting forth the claims for relief upon which the Lawsuit is based. See Murphy Bros. v. Michael Pipe Stringing, Inc.. 526 U.S. 344 (1999) (the thirty day removal period does not begin to run until a defendant is formally served with the complaint).

**THIS COURT HAS ORIGINAL JURISDICTION OF THIS ACTION
UNDER 28 U.S.C. § 1332(a) (DIVERSITY OF CITIZENSHIP)**

14. This action is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a), and the Lawsuit is removable under 28 U.S.C. § 1441(a), because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and, excluding parties fraudulently joined, there is complete diversity of citizenship among the parties.

CITIZENSHIP OF THE PLAINTIFFS

15. Plaintiffs Scott Smith and Judith Wright Perkins are domiciled in and are citizens of the State of California for the purposes of diversity jurisdiction, pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441. (Complaint, ¶5).

DIVERSE CITIZENSHIP OF DEFENDANTS OLIN AND STANDARD FUSEE

16. At the time this action was commenced, and at all times since, Defendant Olin
was and has been a corporation organized and existing under the laws of the State of Virginia,

1 " with its principal place of business in Connecticut. Therefore, for purposes of 28 U.S.C. § 1332
2 || and 28 U.S.C. § 1441, Olin is a citizen of the States of Virginia and Connecticut.

3 17. At the time this action was commenced and at all times since, Defendant Standard
4 Fusee Corporation, **d/b/a** Orion Safety Products, was and has been a corporation organized and
5 existing under the laws of the State of Delaware with its principal place of business in Maryland.
6
7 Therefore, for purposes of 28 U.S.C. § 1332 and 28 U.S.C. § 1441, Defendant Standard Fusee
8 Corporation, **d/b/a** Orion Safety Products, is a citizen of the States of Delaware and Maryland.

THE CITIZENSHIP OF "JOHN DOE" DEFENDANTS IS IGNORED FOR PURPOSES OF DETERMINING DIVERSITY JURISDICTION

12 18. Plaintiffs also have named in their Lawsuit "Does 1-50" as defendants.
13 (Complaint, ¶ 10). Plaintiffs' Lawsuit is entirely silent as to the identity of these "Doe"
14 defendants or ~~their~~ alleged relationship to Plaintiffs' claims in this Lawsuit. In the absence of
15 such allegations, these "Doe" defendants should be ignored in assessing whether a claim is
16 removable or whether their presence defeats diversity jurisdiction. 28 U.S.C. § 1441(a); McCabe
17 v. General Foods Corp., 811 F.2d 1336, 1339 (9th Cir. 1987).

**SCVWD HAS BEEN FRAUDULENTLY *MISJOINED*
AND PLAINTIFFS' CLAIMS AGAINST IT SHOULD BE
SEVERED AND DISMISSED OR SEVERED AND REMANDED**

22 19. Like parties **fraudulentlyjoined** to defeat diversity, the citizenship of parties that
23 have been ***misjoined*** for the same improper purpose also must be disregarded. “**Misjoinder** may
24 be just as fraudulent as the joinder of a resident defendant against whom a plaintiff has no
25 possibility of a cause of action.” Tapscott v. MS Dealer Service Corp.. 77 F.3d 1353, 1360 (11th
26 Cir. 1996) (fraudulently ***misjoined*** defendant severed after removal; motion to remand denied),
27 *abrogated on other grounds* (re aggregation of punitive damages to **meet jurisdictional amount**);

1 Pena v. **McArthur**, 889 F. Supp. 403 (E.D. Cal. 1994) (granting removing defendant's motion to
2 sever improperly joined resident defendant).

3 20. Here, **SCVWD** is not a properly joined party. Federal Rule of Civil Procedure 20
4 provides, in pertinent part: "All persons . . . may be joined in one action as defendants if there is
5 asserted against them jointly, severally, or in the alternative, any right to relief in respect of or
6 arising out of the same transaction, occurrence, or series of transactions or occurrences *and if*
7 any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20
8 (emphasis added). According to the plain language of Rule 20, the alleged existence of
9 "common questions of law or fact" alone is insufficient to satisfy joinder requirements; "there
10 must also exist some '**systematic pattern**' or logical relation between the **tortious** events." **Pena**,
11 889 F. Supp. at 405 (citation omitted). In **Pena**, the Court held that joinder was improper as
12 "[t]here were two distinct torts, committed by different defendants at different times, and . . .
13 resulted in the invasion of separate legal interests." Id. Further, the complaint contained no
14 allegations that the parties acted in concert or one defendant knew of the other defendant's
15 misconduct. Id. As such, joinder was improper. Id. See also, **Tele-Media Company of Western**
16 **Connecticut v. Antidormi**, 179 F.R.D. 75 (D. Conn. 1998) (holding that "[i]n the absence of any
17 claim that the defendants conspired³ or acted jointly, the same transaction requirement of Rule
18 20, even when read as broadly as possible, is plainly not satisfied"); **Movie Systems, Inc. v.**
19 **Abel**, 99 F.R.D. 129 (D. Minn. 1983) (holding that joint action is necessary to meet the
20 requirements under Rule 20 of the Federal Rules of Civil Procedure); **Gruening v. Sucic**, 89

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26 ³ In ¶ 11 of the Complaint, under a topic heading styled "THE PARTIES," Plaintiffs make a **conclusory**
27 allegation using the word "conspiracy." This allegation patently fails to state a claim for conspiracy, see
28 e.g., **Stanfield v. Starkey**, 220 Cal.App.3d 59, 75 (1990). Moreover, paragraph 11 is so vague that it also
fails to satisfy even Rule 8 notice pleading standards, much less the heightened particularity standards of
Rule 9(b) that typically apply to attempted "conspiracy" claims.

1 F.R.D. 573 (E.D. Pa. 1981) (holding that defendants were **misjoined**, in part because the alleged
2 misconduct of one defendant had no legal effect on the cause of action against the other
3 defendant).

4 21. As in the prior **Aguilar Complaint**,⁴ Plaintiffs here have purported to join the
5 Santa Clara Valley Water District ("SCVWD") alleging that SCVWD is "the primary water
6 resources agency for Santa Clara **County**" and is "the steward for its streams and **creeks**. . ."
7 (Complaint ¶ 30; Aguilar Complaint ¶ 32). Plaintiffs assert that the **SCVWD** has a duty "to
8 prevent pollution of these water sources and to provide clean, safe water" to its customers.
9 (Complaint ¶¶ 9, 30; Aguilar Complaint ¶¶ 9, 32). The instant Complaint alleges that the Water
10 District monitors water quality "at least on an annual basis through monitoring wells" throughout
11 its service area. (Complaint ¶ 30; Aguilar Complaint ¶ 32). According to the Complaint, such
12 monitoring permits the Water District to "discover adverse water quality trends before conditions
13 become severe and intractable." (Complaint, ¶ 33; Aguilar Complaint ¶ 35).

14 22. The instant Complaint, like Aguilar, also alleges that the Water District has
15 "ineffectively managed the **groundwater** basin" and its **groundwater** protection programs have
16 been "ineffective in protecting the groundwater basin from contamination." (Complaint ¶ 31;
17 Aguilar Complaint ¶ 33). The Complaint also claims that the Water District knew or should have
18 known of the presence of the **perchlorate** at the **Olin** site; that "**the** groundwater basin in the area
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25 24 As discussed above, on November 7, 2003, Plaintiffs filed a Non-Opposition Statement in relation to
26 Defendants' Motion to Sever and Remand Claims against the SCVWD in Aguilar and this Court issued a
27 tentative ruling granting the Motion. The allegations against the SCVWD in Aguilar are indistinguishable
28 from the allegations against it in Plaintiffs' proposed amended complaints in Daniels, Lilian and Hughes.
The Court declined to grant Plaintiffs' leave to file those proposed amendments in its Order of July 17,
2003.

1 was polluted"; and that the spread of pollutants in the area would cause personal injury and
2 property damage. (Complaint, ¶34; Aguilar Complaint ¶36).

3 23. Exhibit I to Plaintiffs' Motion to Remand in Daniels, Hughes and Lujan makes it
4 clear that this alleged negligence of the SCVWD could not have occurred until very recently.
5

6 The 1989 EPA site assessment of the Morgan Hill facility, reported in March 1990, found that:

- 7 • “[S]ampling was not necessary because of the low potential for release of
g contaminants to groundwater.”
9
10 • “There is no contamination in the nearby municipal well attributable to the site.”
11 • “Emergency removal does not appear to be **necessary**” because there “does not
12 appear to be an immediate threat of human or environmental contamination.”

13 Moreover, the instant Complaint has added a claim about **post-January** 2003 alleged
14 “**falsification**” of reports of levels of **perchlorate** in well water by the SCVWD. (Complaint ¶
15 104). In short, both the instant **Complaint** and the Aguilar Complaint charge **Olin** and **Standard**
16 **Fusee** with polluting Plaintiffs' groundwater through actions and omissions occurring between
17 1955 and 1996. They charge the Water District with failing to take appropriate actions to detect
18 and remediate the alleged pollution after it was detectable in the water, decades after the plant
19 commenced operations.

20 24. As a matter of law, this does not constitute a single transaction or series of
21 transactions as required for joinder under Rule 20. Instead, here, as in the Daniels, Hughes, Lujan
22 and Aguilar Complaints before it:

23 Essentially, plaintiffs' proposed cause of action against the Water District
24 and its claims against Olin and Standard have only one thing in common:
25 the fact that they both relate to the alleged potassium perchlorate
26 contamination in Morgan Hill. Yet despite this one similarity the claims
27
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1 against the Water District are not inherently connected with plaintiffs'
2 claims against the present defendants.⁵

3 July 17, 2003 Order at 17 in **Daniels, Hughes and Lujan, Denying Motion to Remand.** *See also*
4 U.S. v. Green. 33 F.Supp 2d 203 (W.D.N.Y. 1998) (the government's alleged negligence during
5 the cleanup was not the "same transaction or occurrence" as the original pollution.) The SCVWD
6 is fraudulently misjoined under prior orders of this Court and the other legal authorities cited
7 above, accordingly, its citizenship must be ignored for the purpose of assessing whether diversity
8 jurisdiction exists.

9
10 25. Moreover, when viewed in light of the circumstances surrounding the late
11 addition of SCVWD to this and numerous other related individual lawsuits removed both
12 previously and simultaneously herewith, Plaintiffs' joinder of SCVWD as a sham defendant
13 becomes more evident. *See* discussion above. Plaintiffs filing of this and related complaints
14 only after Defendants' removal of earlier-filed cases can be interpreted as nothing more than
15 "amendments . . . offered in bad faith in order to [attempt to] destroy removal jurisdiction."
16 McCabe. 811 F.2d at 1340 (rejecting attempted post-removal amended complaint); July 17, 2003
17 Order at 16, denying Motion to Remand in Daniels. Hughes and Lujan. ("[P]laintiffs' posture in
18 the procedural history of this case serves as a strong indicator that their present [attempt to add
19 SCVWD] is motivated primarily by an intent to defeat federal jurisdiction over this **action.**")
20
21

22 SCVWD SHOULD BE REALIGNED AS A PARTY PLAINTIFF

23 26. Even if, hypothetically, SCVWD's belated **misjoinder** did not violate Rule 20 and
24 even if Plaintiffs stated a claim against SCVWD, SCVWD should be aligned with the Plaintiffs,
25

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27 28 ⁵ Paragraph 89 of the instant Complaint complains of SCVWD's handling of nitrate issues in relation to a
study conducted between 1992 and 1996, while ¶ 94 complains of the SCVWD's handling of
IBM/Fairchild TCE issues. Clearly, these allegations against the SCVWD are not even "tangentially
related" to the claims against Olin and Standard Fusee.

1 and not the Removing Defendants. "The courts, not the parties, are responsible for aligning the
2 parties according to their interests in the litigation." *Continental Airlines. Inc. v. Goodyear Tire*
3 & Rubber Co.

4 819 F.2d 1519, 1523 (9th Cir. 1987) (citation and quotation omitted). "If the
5 interests of a party named as a defendant coincide with those of the plaintiff in relation to the
6 purpose of the lawsuit, the named defendant must be realigned as a plaintiff for jurisdictional
7 purposes." *Id.* In evaluating a party's proper alignment in litigation, the court should "determine
8 the issue of antagonism on the face of the pleadings and by the nature of the controversy."
9

10 *Glenmede Trust Co. v. Dow Chemical Co.* 384 F. Supp. 423, 429 (E.D. Pa. 1974). Here,
11 clearly, if the SCVWD is antagonistic to any party in this case, it is not to the Plaintiffs, but to
12 the Removing Defendants. Plaintiffs' Complaint demonstrates that both Plaintiffs and the
13 SCVWD share the same interest in protecting the quality of the District's and Plaintiffs' drinking
14 water. Complaint, ¶¶ 31, 32; see also. The Santa Clara Valley Water District Act, West's
15 Annotated California Codes. Water District Appendix. Chapter 60. ("The Water District Act"),
16 § 5(5). Once properly aligned as a party plaintiff, the citizenship of SCVWD does not defeat
17 diversity. *Hedges v. Rudeloff.* 196 F. Supp. 475, 477 (S.D. Tex. 1961).

18

19 **THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000
20 EXCLUSIVE OF INTEREST AND COSTS**

21 27. Plaintiffs' Complaint, on its face, also demonstrates that Plaintiffs seek damages
22 exceeding \$75,000.00, thus meeting the jurisdictional minimum of 28 U.S.C. § 1332(a).
23 Plaintiffs' Complaint alleges that after having made substantial financial commitment to
24 purchase their property, the alleged contamination of Plaintiffs' drinking water has left Plaintiffs
25 without any "ability to sell, market or finance" their now allegedly valueless home. (Complaint
26 ¶¶ 2, 3, 4). In addition to alleging that they "lost the value of [their] home," see *id.* Plaintiffs
27

1 also seek remediation of their property, emotional distress damages and punitive damages.

2 (Complaint ¶¶ 62, 73, 75, 76).

3 28. Each separate category of damages sought against the removing defendants is
4 appropriately combined to meet the amount in controversy requirement. Hunter v. United Van
5 Lines. 746 F.2d 635, 650-51 (9th Cir. 1984) ("When plaintiff joins several claims against the
6 defendant, the general rule . . . is that the value of all the claims can be added together in
7 determining whether the requisite **jurisdictional** amount **exists.**"), quoting 14 C. Wright, A.
8 Miller & E. Cooper, FEDERAL PRACTICE & PROCEDURE § 3704, at 412-13 (1975). Here,
9 Plaintiffs' claim for property damages alleged, *standing alone*, meets the amount in controversy
10 requirement (*see* ¶ 30 below and Exhibit B establishing amount in controversy for Plaintiffs
11 based on assessed home value). The combination of all categories of damages alleged (loss of
12 home value + remediation of property + emotional distress damages + punitive damages) sought
13 by Plaintiffs certainly exceeds \$75,000 exclusive of interest and costs.

14 29. The damages Plaintiffs seek to recover for the alleged complete diminution in
15 value of their home itself exceeds \$75,000. Records maintained by the Santa Clara County Tax
16 Collector demonstrate that the home identified by the Plaintiffs in the Complaint has an assessed
17 value in excess of \$75,000. Plaintiffs have alleged ownership of property located at 13165
18 Monterey Road, San Martin, California (Complaint, ¶ 5). The Santa Clara County Tax Collector
19 has assessed the Full Cash Value of the land and improvements at this location to be \$1,353,500.
20 See Declaration of Randall C. Creech, attached hereto as Exhibit B. Based on the **assessed**
21 value, Plaintiffs' claim that they "lost the value of [their] homes" is sufficient alone to satisfy the
22 jurisdictional minimum.

30. Alleged loss of value of the Plaintiffs' home (see ¶30 above and Exhibit B), plus property remediation, plus alleged emotional distress damages plus punitive damages indisputably meets the \$75,000 amount in controversy requirement of 28 U.S.C. § 1332.

CONSENTS TO REMOVAL

31. Consent to removal by the fraudulently joined defendants is not required, see e.g., **Emrich v. Touche Ross & Co.**, 846 F.2d 1190, 1193, n.1 (9th Cir. 1988) (consent of "nominal, unknown or fraudulently joined" defendants not required). Removing Defendants have given written notice of the filing of this Notice of Removal to Counsel for Plaintiffs and have filed a copy of this Notice of Removal with the Circuit Court Clerk of the Superior Court for Santa Clara, County, California.

JURY TRIAL DEMANDED

32. Removing Defendants demand a trial by jury on all issues.

WHEREFORE, Removing Defendants **Olin** Corporation and Standard Fusee Corporation, **d/b/a** Orion Safety Products, give notice that the Lawsuit is removed from the Superior Court for Santa Clara County, California to the United States District Court for the Northern District of California, San Jose Division, for the exercise of jurisdiction over the Lawsuit as though the Lawsuit had originally been instituted in this Court.

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Respectfully submitted,

CREECH, LIEBOW & KRADS

By: 

Randall C. Creech, Cal. Bar # 65542
Attorneys for Defendant Olin Corporation

SEDGWICK, DETERT, MORAN
& ARNOLD LLP

By: _____

Keith M. Casto, Cal. Bar. No. 141279
Earl L. Hagström, Cal. Bar. No. 150958

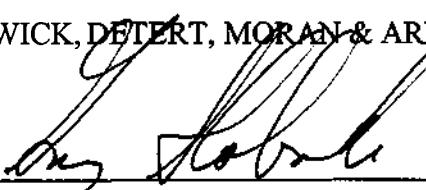
Attorneys for Defendants Standard Fusee
Corporation d/b/a Orion Safety Products

1 DATED: November 18, 2003

Respectfully submitted,

2 SEDGWICK, DETERT, MORAN & ARNOLD LLP

3
4 By:


5 GARY A. SLOBODA

6 Attorneys for Defendant

7 STANDARD FUSEE COMPANY

8 d/b/a ORION SAFETY PRODUCTS

1 EXHIBITS

2 Exhibit A: Copy of all process, pleadings, and orders

3 A-1: Olin

4 A-2: Standard Fusee

5 Exhibit B: Declaration re Amount in controversy for Plaintiff based on assessed home value.

EXHIBIT A

1 Richard Alexander, Esq. (48432)
Jeffrey W. **Rickard**, Esq. (125180)
2 Ryan M. Hagan, Esq. (200850)
3 **ALEXANDER, HAWES & AUDET, LLP**
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5
Attorneys for Plaintiffs

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SCOTT SMITH & JUDITH WRIGHT
PERKINS,

Plaintiffs.

vs.

OLIN CORPORATION, a corporation;
STANDARD FUSEE CORPORATION, a
corporation; ORION SAFETY
PRODUCTS, a corporation; SANTA
CLARA VALLEY WATER DISTRICT;
and DOES 1 through 50, inclusive.

Defendants.

CASE NO: 1-03-CV-817303

AMENDED COMPLAINT FOR:

- (1) Negligence**
 - (2) Nuisance**
 - (3) Intentional Infliction of Emotional Distress**
 - (4) Trespass**
 - (5) Equitable (Injunctive and/or Declaratory) Relief and Damages**
 - (6) Punitive Damages**
 - (7) Equitable (Injunctive and/or Declaratory) Relief**
 - (8) Failure to Discharge Mandatory Duty**

AND

DEMAND FOR JURY TRIAL

Plaintiffs, SCOTT SMITH & JUDITH WRIGHT PERKINS, (hereinafter “**Plaintiff**”) allege as follows:

NATURE OF THE CASE

1. This action is brought to remedy Defendants' unlawful conduct directed at Plaintiff. The Plaintiff, like numerous current and previous residents and property owners at the affected "Olin Site" (as hereinafter alleged), has lived, is living, **and/or** owns property situated on a highly toxic **groundwater** plume of potassium **perchlorate** that is a direct result of Defendants'

1 forty years of manufacturing highway flares containing potassium perchlorate, and dumping such
2 potassium perchlorate waste into the soil. Within a year of filing this complaint, Plaintiff
3 discovered that Plaintiff's only groundwater source is located within the plume area
4 contaminated with potassium perchlorate, which continues to migrate throughout the affected
5 area. Defendants are responsible for the presence of the contamination, for allowing the toxic
6 waste to remain in the community and fester, and for allowing potassium perchlorate to
7 contaminate the groundwater in and around the Olin Site area and surrounding communities.
8 Despite the fact that Defendants have known about the discharge of poisonous waste materials
9 into the soil for some time, Plaintiff was left to discover the presence of the contamination only
10 after the public was informed by the media in or around January 2003.

11 2. Plaintiff has a substantial financial investment in Plaintiff's home and real
12 property located within the affected Olin Site and surrounding communities. Plaintiff purchased,
13 built, or had Plaintiff's home built, to live peacefully and safely. Plaintiff had no knowledge that
14 there was potassium perchlorate in the groundwater supplying the community or that Defendants
15 had been dumping or discarding potassium perchlorate so it was allowed to migrate through the
16 soil and into the groundwater aquifer that the community depends upon for water. Plaintiff had
17 no knowledge that Plaintiff's home was built over a chemical dump.

18 3. Despite California's stringent environmental laws and standards, Defendants
19 created a toxic waste site, left their waste in the soils and allowed it to infiltrate the groundwater
20 system. Now, a toxic dump exists under the neighborhood homes, buildings, playgrounds, and
21 places of business located within the affected Olin Site and surrounding communities, and it is
22 uncertain as to the length of time which will be required for abatement of the contamination, if it
23 can be abated at all. The Plaintiff's inalienable right to quietly enjoy the safety and security in
24 owning property has been destroyed by Defendants' misconduct. Plaintiff is essentially a
25 prisoner of the Olin Site, having lost all ability to sell, market, or finance.

26 4. The experts are now investigating the extent and scope of the potassium
27 perchlorate contamination. The Defendants are involved in cleaning up the toxic waste for which
28 they are legally responsible. The EPA has not filed a formal action against any of Defendants.

1 Plaintiff fears for Plaintiff's own safety, and for the safety of Plaintiff's family. Neither the short
2 term nor the long term health effects of Plaintiff's exposure to potassium perchlorate through the
3 contaminated groundwater is known at this point. Plaintiff must live each and every day with
4 this knowledge that the sanctity of Plaintiff's community is continuously being invaded with a
5 poisonous substance that has rendered the groundwater unusable. Plaintiff has lost the value of
6 Plaintiff's home and real property, the safety of the environment, and now is confronted with the
7 stigma that necessarily attaches to property which is located on or near a toxic waste site.

THE PARTIES

9 5. Plaintiffs, SCOTT SMITH & JUDITH WRIGHT PERKINS, are individuals
10 residing in Morgan Hill, **California**. They own a home and real property which has been
11 damaged by the presence of potassium perchlorate in the groundwater system in their
12 community. Plaintiffs, SCOTT SMITH & JUDITH WRIGHT PERKINS, own the residence
13 located at 13165 Monterey Road, San Martin, California.

14 6. Defendant **Olin** Corporation is a multi-national corporation with annual revenues
15 in excess of \$1 billion dollars, derived in part from the international sale of chemicals and
16 munitions, including Winchester ammunition through the Winchester Arms Company.

17 Defendant Olin Corporation is authorized to do business in the State of California and which, at
18 all times relevant hereto, owned and operated a manufacturing facility located in the City of
19 Morgan Hill, County of Santa Clara, State of California. That as part of the ongoing business of
20 Defendant Olin Corporation, Olin was engaged in the process of manufacturing highway safety
21 flares at said facility from **1955** to approximately 1996.

7. Defendant Standard Fusee Corporation was at all times relevant hereto, the lessee
of the subject Olin property from 1988 to 1996 and manufactured flares on the Olin property at
the Olin plant during that time period.

25 8. Defendant Orion Safety Products purchased the automotive and marine signal
26 divisions of Olin Corporation in 1988, and is the world's largest manufacturer of emergency
27 flares.

28 " 9. The Santa Clara Valley Water District (hereinafter "SCVWD") is the primary

1 water resources agency for Santa Clara County, **California**, is the steward for its streams and creeks,
2 underground aquifers and district-built reservoirs and has a duty to prevent pollution of these
3 water sources and to provide clean, safe water for homes and businesses.

4 10. DOES 1 to 50 are persons whose identities are unknown to Plaintiff at this time.
5 Defendants DOES 1 to 50 are business entities controlled by, **and/or** agents of **and/or** employees
6 of **and/or** affiliated with Defendants. Plaintiff is ignorant of the true names and capacities of the
7 Defendants sued herein under the fictitious names DOES 1 to 50. They are sued herein pursuant
8 to C.C.P. § 474. When Plaintiff becomes aware of the true names and capacities of the
9 Defendants sued as DOES 1 to 50, Plaintiff will amend this Complaint to state their true names
10 and capacities.

11 11. Each Defendant sued herein was the principal, agent, or employee of the other,
12 and was acting within the scope of such agency or employment. Each Defendant sued herein was
13 the co-conspirator of the other and was acting within the course and scope of a conspiracy
14 formed amongst each of them. Each Defendant sued herein aided and abetted the other with the
15 intent that each would be successful in their mutual endeavors. Each Defendant sued herein
16 received money or property as a result of the conduct described herein without consideration
17 therefore **and/or** with knowledge that the money or property was obtained as a result of the
18 wrongful conduct described herein. Each entity Defendant sued herein is a shell organization,
19 and is actually the alter ego of the other Defendants sued herein.

12. "OLIN," "Defendants," and/or "Defendant" as used in this Complaint refers to all
Defendants as well as DOES 1 to 50.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to California Code of Civil
Procedure section 410.10.

14. Venue is proper in this Court pursuant to Code of Civil Procedure sections 395
and 395.5 in that Defendants breached their duties and because liability arises in the County of
Santa Clara. Further the Defendants either maintain offices, transact business, have agents, are
found, or reside, in the County of Santa Clara. Plaintiff is informed and believes that the

1 unlawful misconduct took place in Santa Clara County at Olin Corporation's facility in Morgan
2 Hill in the State of California. Furthermore, many of the unlawful acts herein alleged were
3 committed or perpetrated within the County of Santa Clara.

4 15. No portion of this Complaint is brought pursuant to federal law.

5 **POTASSIUM PERCHLORATE OVERVIEW**

6 16. At all relevant times, potassium perchlorate has been known to be an herbicide
7 that is toxic to animals and people.

8 17. Potassium perchlorate's effect on thyroid function was discovered in 1952 and has
9 been confirmed repeatedly since then. (Stanbury and Wyngaarden 1952; Kessler and
10 Krunkemper 1966; Lampe, et al. 1967; Brown-Grant and Sherwood 1971; Gauss 1972; Mannisto
11 1979.)

12 18. Potassium perchlorate was first suspected as a carcinogen in 1966, when a long
13 term study on the effects of potassium perchlorate in drinking water was reported. After two
14 years of potassium perchlorate consumption, more than a third of potassium perchlorate-fed lab
15 animals developed benign thyroid tumors, compared with none of the control animals. (Kessler
16 and Krunkemper 1966.) Although potassium perchlorate does not directly cause cancer,
17 potassium perchlorate-induced tumors result from changes in the thyroid caused by hormone
18 interference. Similar effects are seen with other thyroid hormone disruptors. The severity of
19 these precursor lesions have a dose response relationship (the more that is consumed, the greater
20 the risk) and for that reason the EPA considers potassium perchlorate to be a probable
21 carcinogen.

22 19. Studies in the 1950s showed that potassium perchlorate could pass through the
23 placenta and it affected fetuses more seriously than adults. (Postel 1957; Brown-Grant and
24 Sherwood 1971.) This is significant. Potassium perchlorate's risks are greater to children
25 because of the relationship between maternal and fetal thyroid hormone levels and neurological
26 development. Since the 1970s the consequences of depressed thyroid hormone levels on
27 developing fetuses and infants have been known to be devastating and even temporary disruption
28 of thyroid hormones can lead to permanent defects in the developing organism. In 1969 it was

1 revealed that mild maternal **hypothyroidism** can cause reduced **IQ** in children. (Man and Jones
2 1969.) Thyroid hormones are crucial to proper development of many organ systems, including
3 the nervous and reproductive systems (**Porterfield 1994; Jannini 1995**) and toxins that disrupt
4 thyroid function can be expected to impact neurological developmental and increase the risk of
5 mental retardation, vision, speech and hearing impairment, delayed reflex development, and
6 impaired fine motor skills.

7 **FACTUAL ALLEGATIONS**

8 20. This action is brought to remedy Defendants' unlawful conduct directed at
9 Plaintiff. The Plaintiff, a property owner at the affected **Olin Site**, has lived, is living, **and/or**
10 owns real property situated above a highly toxic groundwater plume of potassium perchlorate,
11 that is a direct result of Defendants' forty years of manufacturing highway flares containing
12 potassium perchlorate, and dumping such potassium perchlorate waste into the soil.

13 21. Within a year of filing this complaint, Plaintiff discovered that Plaintiff's only
14 groundwater source is located in the plume area contaminated with potassium perchlorate, which
15 continues to migrate throughout the affected area. Defendants are responsible for the presence of
16 the contamination, for allowing the toxic waste to remain in the community and fester, and for
17 allowing potassium perchlorate to contaminate the groundwater in and around the Olin Site area
18 and surrounding communities. Despite the fact that Defendants have known about the discharge
19 of poisonous waste materials into the soil for some time, Plaintiff was left to discover the
20 presence of the contamination only after the public was informed by the media in or around
21 January 2003.

22 22. It is common knowledge, and was well known to each of the Defendants, that the
23 chemicals being dumped onto the soil and into the evaporation pond located on the Olin Site
24 were and are dangerous to the surrounding communities, and in fact, a massive explosion
25 occurred in the **1970's** as a result of the Defendants' waste dumping on the Olin Site, which
26 **blew-out** windows in numerous structures in the vicinity.

27 23. It is common knowledge, and was well known to each of the Defendants, that the
28 Olin Site is located above a groundwater aquifer that supplies the drinking water to the Olin Site

area and surrounding communities, nonetheless, the individual managers directed that the waste potassium perchlorate be dumped onto the soil and into the evaporation pond on the **Olin Site**.

24. The Olin Corporation operated the facility from the 1950s until about March 1988 when Standard Fusee **Corporation** leased **the** facility from Olin. Highway flares and railroad flares are the main product manufactured by both Olin Corporation and Standard Fusee at the Olin Site.

25. In 1986, soil samples were taken along the northeastern boundary of the Olin Site. Two soil borings down to 16 feet below ground surface and one down to 11 feet below ground surface were drilled along the Olin Site's northern property line. A composite soil sample was taken from each boring and analyzed for 15 compounds, including potassium perchlorate. The results indicated a concentration of potassium perchlorate **in** the soil of up to one (1) part per million or one hundred (100) parts per billion.

26. At all relevant times, it was public knowledge that waste potassium perchlorate was dumped into an **unlined** evaporation pond located on the Olin site, and that such **unlined** evaporation pond was used from about 1951 to 1987. The evaporation pond, about 15 feet by 15 feet in size, is known to have received wastes from the cleaning process of the ignition material mixing bowls which were cleaned on site. This process consisted of boiling a solution of water and soda ash in the mixing bowls and discharging the liquid and ignition material residues, including potassium perchlorate, into the unlined evaporation pond.

27. In 1987, Olin closed the evaporation pond and in late 1987 or early 1988 the evaporation pond was drained and the bottom layer of soil was removed and spread out onto the adjacent field, creating a perchlorate leach field.

28. The Olin Site is located within a portion of the Las Llagas sub-basin in the southern leg of the Santa Clara Valley. The **groundwater** below the site is located within one **unconfined** aquifer, and flows from the northwest to the southeast, and is not stratified. The aquitards that exist in the aquifer are not extensive and do not prohibit the flow of groundwater to the lower portions of the aquifer, which is not protected from surface contaminants.

29. There is a municipal well within 300 feet of the site that is one of 12 wells in a

1 blended water **supply** system for the City of Morgan Hill. The municipal water system supplies
2 water to thousands of people in the City of Morgan Hill area. This is separate and apart from
3 approximately 2000 wells south of Morgan Hill and north of Gilroy

4 30. The Santa Clara Valley Water District ("SCVWD") is the primary water resources
5 agency for Santa Clara County, California, is the steward for its streams and creeks, underground
6 aquifers and district-built reservoirs and has a duty to prevent pollution of these water sources
7 and to provide clean, safe water for homes and businesses. To accomplish this the SCVWD
8 monitors groundwater quality at least on an annual basis through monitoring wells throughout the
9 groundwater basin which are designed to monitor for common groundwater constituents and
10 unnatural constituents including, but not limited to, organic solvents, gasoline additives, nitrates
11 and chloride.

12 31. The SCVWD has a duty to ensure a safe and healthy supply of groundwater. The
13 SCVWD manages the groundwater basin to fulfill the objectives of the District Act and its
14 mission. The goal of these groundwater management efforts has been, and continues to be, to
15 ensure that groundwater resources are sustained and protected. As part of the District's Global
16 Governance Commitment adopted by the Board of Directors, the District will provide a healthy,
17 clean, reliable, and affordable water supply that meets or exceeds all applicable water quality
18 regulatory standards in a cost-effective manner. The District has ineffectively managed the
19 groundwater basin to fulfill the objectives of the District Act and its mission to sustain and
20 protect groundwater resources. Overall, the District's groundwater protection programs have
21 been ineffective in protecting the groundwater basin from contamination.

22 32. In addition, the SCVWD has a duty to maintain groundwater basins and is legally
23 authorized to collect revenues from well owners for the water they use. Such water usage is
24 monitored by a meter that the SCVWD requires to be installed. In addition, the SCVWD through
25 its Well Ordinance Program is responsible for issuing permits for wells and inspecting all well
26 construction activities in Santa Clara County to make sure that wells do not threaten groundwater
27 resources in the county.

28 33. By monitoring the quality of the groundwater **basin**, the District can discover

1 adverse water quality trends before conditions become severe and intractable, so that timely
2 remedial action to prevent or correct costly damage can be implemented. In general, the District
3 monitors **groundwater** quality to ensure that it meets water quality objectives for all designated
4 beneficial uses, including municipal and domestic, agricultural, industrial service, and industrial
5 process water supply uses.

6 34. At all relevant times, the **SCVWD** knew or should have known that potassium
7 perchlorate was present in several monitoring wells and soil samples on or near the **Olin Site**,
8 that the groundwater basin in the area was polluted, that the pollutants were spreading
9 underground into the San Martin drinking water and that people, and particularly children were at
10 risk for severe injuries caused by potassium perchlorate and that property damage was occurring
11 and would occur with regard to the owners of all private property in the area.

12 35. Plaintiff **has** a substantial financial investment **in the home and real property**
13 located within the **affected Olin Site** and surrounding **communities**. Plaintiff purchased, built, or
14 had **Plaintiff's** home built so Plaintiff could live peacefully and safely. Plaintiff had no idea that
15 there was potassium perchlorate in the groundwater supplying the community or that Defendants
16 had been dumping or discarding potassium perchlorate so it was allowed to migrate through the
17 soil and into the groundwater aquifer that the community depends upon for water. Plaintiff had
18 no idea that **Plaintiff's** home was built over a chemical dump.

19 36. Despite California's stringent environmental laws and standards, Defendants
20 created a toxic waste site, left **their** waste in the soils and allowed it to infiltrate the groundwater
21 system. Now, a toxic dump exists under the neighborhood homes, buildings, playgrounds, and
22 places of business located within the affected Olin Site and surrounding communities, and it is
23 uncertain as to the length of time which will be required for abatement of the contamination, if it
24 can be abated at all. Plaintiff is essentially a prisoner of the Olin Site, having lost all ability to
25 sell, market, or finance.

26 37. The experts **are** now investigating the extent and scope **of** the potassium
27 perchlorate contamination. The Defendants are involved in cleaning up the toxic waste for which
28 they are legally responsible. The EPA has not filed a formal action against any of Defendants.

1 Plaintiff now fears for Plaintiff's own safety, and for the safety of Plaintiff's family.

3 38. Neither the short term nor the long term health effects of Plaintiff's exposure to
4 potassium **perchlorate** through the contaminated **groundwater** is known at this point. Plaintiff
5 **must** live each and every day with this knowledge that the sanctity of Plaintiff's community is
6 continuously being invaded with a poisonous substance that has rendered the groundwater
7 unusable.

8 39. Plaintiff has lost the value of Plaintiffs home, the safety of the environment, and
9 now is **confronted**with the stigma that necessarily attaches to property which is located on or
10 near **a** toxic waste site.

FIRST CAUSE OF ACTION

Negligence Against All Defendants

13 40. Plaintiff hereby incorporates by reference paragraphs 1 through 39 above as
14 though fully set forth herein, and further alleges:

15 41. Plaintiff claims that Defendants were negligent.

16 42. At all times material herein, Defendants were under a duty to conduct its business
17 of manufacturing highway flares with due and reasonable care imposed by law. Defendants were
18 at all times relevant hereto under the strictest duty of care to conduct themselves in a non-
19 negligent reasonable manner according to the reasonable product person standard.

20 43. Defendants violated this duty of due and reasonable care and said violation was
21 despicable, wanton and reckless and calculated to cause grievous harm to the Plaintiff.

22 44. Plaintiff has in the past and will in the future sustain damages as a result of the
23 negligence of the Defendants in their failure to contain and properly dispose of waste and by-
24 products, including potassium perchlorate, from the manufacture of highway flares.

25 45. As a proximate result of the aforesaid carelessness and negligence of said
26 Defendants, the aforesaid conduct caused severe injury to Plaintiff and thereby proximately
27 caused Plaintiff to sustain damages and injuries as herein alleged.

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2 SECOND CAUSE OF ACTION

3 **Nuisance Against All Defendants**

4 46. Plaintiff hereby incorporates by reference paragraphs 1 through 39 above as
5 though fully set forth herein, and further alleges:

6 47. Plaintiff at all times herein mentioned has the inalienable right to own, enjoy, and
7 use Plaintiff's residence and property without interference by other property owners such as
8 Defendants who choose to undertake ultrahazardous activities on their land, and to not have that
9 right impaired by the introduction into the **groundwater** system of toxic substances by
10 Defendants.

11 48. Defendants, and each of them, have a public duty to conduct their business, and in
12 particular the mass storage and disposal of hazardous toxic substances, in a manner that does not
13 damage the public welfare and safety.

14 49. At all times mentioned herein the conduct of said Defendants caused hazardous
15 substances and toxins, including potassium **perchlorate** to be **discharged/disposed** of into the soil
16 and groundwater supply of the communities around the subject **Olin** Site. The substances
17 penetrated the soil and contaminated the groundwater and have been distributed throughout the
18 community as a result of being carried through the groundwater system.

19 50. The aforementioned discharges emanated from land upon which Defendants
20 carried on activities in conjunction with the operation of their businesses, at all times mentioned
21 herein, and for forty **years** prior thereto.

22 51. The **aforementioned** conduct of said Defendants constitutes a nuisance within the
23 meaning of §3479 of the Civil Code in that it is injurious **and/or** offensive to the senses of
24 Plaintiff, **and/or** interferes with Plaintiff's comfortable enjoyment of life, **and/or** of their property,
25 **and/or** unlawfully obstructs the free use, in the customary manner, of Plaintiff's property
26 including, but not limited to, **all** uses particular to residential living, recreation and work. The
27 contamination and its concomitant spoliation of the community groundwater supply is a
28 continuing **and/or** permanent nuisance which adversely impacts the use **and/or** value of Plaintiff's

property.

2 52. As a direct and proximate result of said wrongful conduct, Plaintiff has suffered
3 economic damages including, but not limited to, lost use of property, denial of useful and quiet
4 enjoyment of property, diminution in the fair market value of property, impairment of the
5 salability of property, and losses related to residual toxic contamination, which has caused said
6 property to be stigmatized. Plaintiff alleges that said damages are in excess of the minimum
7 jurisdictional amount of this Court to be set forth according to proof at trial.

8 53. As a further and direct proximate result of **Defendants'** wrongful conduct, the
9 Plaintiff has suffered, and will continue to suffer, pain, discomfort, anxiety, fear, worries, stress,
10 and mental and emotional distress, all to the **Plaintiff's** general damage in an amount to be set
11 forth according to proof.

12 54. Unless the nuisance is abated, Plaintiff's property and rights of enjoyment will be
13 progressively further diminished in value.

14 55. The nuisance is specially injurious to Plaintiff, in that Plaintiff is a property owner
15 who has substantial equity, or has committed substantial financial resources toward the purchase
16 **and/or** development of Plaintiff's respective property, without knowledge of the extent of
17 damage, economic and otherwise, which would result from a toxic site. Plaintiff will be
18 adversely affected by the nuisance unless **and/or** until it is abated.

19 56. The wrongful acts of Defendants were done maliciously, oppressively, and
20 fraudulently, and Plaintiff is entitled to punitive and exemplary damages in an amount to be
21 ascertained according to proof, which is appropriate to punish or set an example of Defendants.

THIRD CAUSE OF ACTION

Intentional Infliction of Emotional Distress Against All Defendants

24 57. Plaintiff hereby incorporates by reference paragraphs 1 through 39 above as
25 though fully set forth herein, and further alleges:

26 58. Defendants' conduct in connection with the disposal of potassium perchlorate was
27 done despite Defendants' knowledge that the potassium perchlorate was present and was known
28 to be and were specifically designated as hazardous to human health. Defendants chose to place

1 their interests in securing a profit from the manufacture of highway flares above the safety and
2 health of the affected community.

3 59. Defendants at all relevant times knew of the existence of Plaintiff and the affected
4 community, knew that Plaintiff would be exposed to potassium **perchlorate** as a result of
5 Defendants' **conduct**, and knew that the discovery of these facts by Plaintiff would necessarily
6 cause Plaintiff to suffer injury, including severe emotional distress. Nevertheless, Defendants
7 intentionally proceeded with their manufacture of highway flares and reckless disposal of waste
8 and by-products, including potassium perchlorate.

9 60. Defendants' conduct in connection with **the** disposal of potassium perchlorate was
10 undertaken with reckless disregard of the Plaintiff and the affected **community**.

11 61. As a direct and proximate result of Defendants' conduct alleged herein, Plaintiff
12 suffers severe and extreme emotional distress.

13 62. As a further and direct proximate result of said wrongful conduct, Plaintiff has
14 suffered, and will continue to suffer pain, discomfort, anxiety, fear, worries, stress, and mental
15 and emotional distress, all to the Plaintiffs general damage in an amount to be set forth
16 according to proof at **trial**.

17 63. The wrongful acts of Defendants were done maliciously, oppressively, and
18 fraudulently, and Plaintiff is entitled to punitive and exemplary damages in an amount to be
19 ascertained according to **proof**, which is appropriate to punish or set an example of Defendants.

20 FOURTH CAUSE OF ACTION

21 Trespass Against All Defendants

22 64. Plaintiff hereby incorporates by reference paragraphs 1 through 39 above as
23 though fully set forth herein, and further alleges:

24 65. Plaintiff at **ali** times herein mentioned, had interest and title in **Plaintiff's** property
25 and the right to quiet and useful enjoyment thereof, as well as **Plaintiff's** surrounding living
26 environment, including the **groundwater**.

27 66. As a direct and proximate result of the intentional, reckless, or negligent conduct
28 of Defendants, and each of them, as alleged herein, the presence of potassium perchlorate has

1 infiltrated the soil, which in turn contaminated the **groundwater** and has irreparably damaged
2 Plaintiff's interests in property and water.

3 67. As a direct and proximate result of said wrongful conduct, Plaintiff has suffered
4 economic damages including, but not limited to, lost use of property, denial of useful and quiet
5 enjoyment of property, diminution in the fair market value of property, impairment of the
6 **salability** of property, and losses related to residual toxic contamination, which has caused said
7 property to be stigmatized. Plaintiff alleges that said damages are in excess of the minimum
8 **jurisdictional** amount of this Court to be set forth according to proof at trial.

9 68. As a further and direct proximate result of said wrongful conduct, the Plaintiff has
10 suffered, and will continue to suffer, pain, discomfort, anxiety, fear, worries, stress, and mental
11 and emotional distress, all to the **Plaintiff's** general damage in an amount to be set forth
12 according to proof at trial.

13 69. As a direct and proximate result of Defendants' conduct alleged herein, Plaintiff
14 suffers severe and extreme emotional distress.

15 70. Defendants' acts and omissions which constitute trespass as described herein were
16 committed with malice, fraud and oppression thereby entitling Plaintiff to exemplary or punitive
17 damages.

FIFTH CAUSE OF ACTION

Equitable (Injunctive and/or Declaratory) Relief and Damages

Against All Defendants

21 71. Plaintiff hereby incorporates by reference paragraphs 1 through 39 above as
22 though fully set forth herein, and further alleges:

23 72. Plaintiff has no adequate remedy at law, rendering injunctive and other equitable
24 relief appropriate in that damages cannot adequately compensate Plaintiff for the injuries suffered
25 and threatened.

26 73. Accordingly, Plaintiff requests the following equitable relief:

27 a. That a judicial determination and declaration be made of the rights of
28 Plaintiff and the corresponding responsibilities of Defendants; and

b. That the Defendants be ordered to remediate the **groundwater** contamination as alleged herein.

3 74. Plaintiff is entitled to compensation for economic losses as provided under the
4 Laws of the State of California.

SIXTH CAUSE OF ACTION

Punitive Damages Against All Defendants

7 75. Plaintiffs hereby incorporates by reference paragraphs 1 through 39 above as
8 though fully set forth herein, and further allege:

9 76. Defendants' actions were oppressive, malicious, grossly negligent, wilful and
10 wanton and exhibit a callous disregard for Plaintiff's rights.

SEVENTH CAUSE OF ACTION

Equitable (Injunctive and/or Declaratory) Relief Against SCVWD

13 77. Plaintiffs hereby incorporate by reference paragraphs 1 through 39 above as
14 though fully set forth herein, and further allege:

15 78. The Plaintiffs have no adequate remedy at law, rendering injunctive and other
16 equitable relief appropriate in that damages cannot adequately compensate Plaintiffs for their
17 inability to use their contaminated groundwater for household, business **and/or** agricultural
18 purposes resulting from SCVWD's acts **and/or** omissions.

19 79. Accordingly, Plaintiffs request the following equitable relief:

20 a. That a judicial determination and declaration be made of the rights of the
21 **Plaintiffs** and the corresponding rights and responsibilities of the SCVWD.

b. A Court order prohibiting SCVWD from further collecting any groundwater usage charge **and/or** groundwater well monitoring charge from Plaintiffs.

24 c. A Court declaration that the SCVWD failed to fulfill its duties under the
25 District's Global Governance Commitment adopted by the Board of Directors, that the District
26 will provide a healthy, clean, reliable, and affordable water supply that meets or exceeds all
27 applicable water quality regulatory standards, according to proof.

EIGHTH CAUSE OF ACTION
Failure to Discharge Mandatory Duties
Against the SCVWD

80. Plaintiffs hereby incorporates by reference paragraphs 1 through 39 above as though fully set forth **herein**, and further allege:

81. Within six months of the date this claim was served, **claimant(s)** first learned of perchlorate pollution of the well water in their community and **affecting** their property.

At all relevant times the Santa Clara Valley Water District [SCVWD]:

9 82. Was, and is, a governmental entity created for the object and purpose of providing
10 "comprehensive water management for all beneficial uses," "to protect waters" and to "prevent
11 the waste . . . of the water supply in the district." Santa Clara Valley Water District Act
12 [hereinafter "SCVWDA"] Section 4.

13 83. Was empowered by law "to conserve . . . and manage water for the present and
14 future use within the **district** . . . for irrigation, **domestic**, . . . environmental, and all other
15 beneficial uses . . . to prevent contamination, pollution or otherwise rendering unfit for beneficial
16 use the surface and subsurface waters used or useful in the **district**, and to commence, maintain
17 and defend actions and proceedings to prevent any such interference with the described waters as
18 may endanger or damage the inhabitants, lands or use of water in . . .**the district**." SCVWDA
19 Section 5.

20 84. Levied **groundwater** charges on the use of well water "in furtherance of the district
21 **activities** in the protection and augmentation of the water supplies for users . . . which are
22 necessary for the public health, welfare and safety of the people of this State." SCWVDA
23 Section 26.3.

At all relevant times the Santa Clara Valley Water District [SCVWD], pursuant to its powers under the SCVWDA:

26 85. Has as its mission and goal to "manage the groundwater **basin** . . . to ensure that
27 groundwater **resources** are sustained and protected" and in furtherance of that goal and mission to
28 "identify and evaluate threats to groundwater quality and prevent or mitigate contamination

1 associated with those threats." Santa Clara Valley Water District Groundwater Management
2 Plan, July 2001 ["Plan"] p. 1;

3 86. Adopted a Global Governance Commitment providing that "the District will
4 provide a healthy, clean, reliable, and affordable water supply that meets or exceeds all
5 applicable water quality regulatory standards in a cost-effective manner." Plan, p. 4.

6 87. Managed, and manages, the groundwater of the Llagas Subbasin, one of three
7 principles groundwater basins in the county which extends from **Cochran** Road south to the
8 County's southern boundary. "The Llagas Subbasin is approximately 15 miles long, 3 miles
9 wide at its northern boundary" It is a "series of interbedded clay layers" which transmits water
10 "through the gravelly alluvial fans of streams in the deeper confined aquifer" and "filter water,
11 making it suitable for drinking." Plan p. 11.

12 88. Monitored, and monitors, the water quality of the ground basin water "to ensure
13 that it meets water quality objectives for all designated beneficial uses, including municipal and
14 domestic, agricultural, industrial service and industrial process water supply uses." "By
15 monitoring the quality of the groundwater basin, the District can discover adverse water quality
16 trends before conditions become severe and intractable, so that timely remedial action to prevent
17 or correct costly damage can be implemented." Plan p. 29.

18 89. Has monitored high levels of nitrate concentrations in groundwater samples in the
19 Llagas Subbasin, which "are a particular concern for infants." Plan p. 30. Between 1992 and
20 1996 it conducted "an extensive study" the results of which are grossly misrepresented and
21 understated by the **District's** conclusion that "nitrate concentrations in the Llagas Subbasin are
22 generally increasing over time and that elevated concentrations still exist throughout the
23 subbasin." Plan p. 40. The sources of nitrate loading in the Llagas Subbasin are fertilizer
24 applications, animal waste and leach fields for septic tank systems, and human waste generation.
25 Because of the slow movement of surface water to the water table, past practices "continue to
26 contribute to increasing nitrate concentrations in the groundwater for several years or decades to
27 come." Plan p. 40. Of the 4,000 wells in the southern portion of the District, 600 private wells
28 were tested and more than half exceeded the federal safe drinking water standard for nitrate [45

1 mg/liter] in the Llagas Subbasin Plan. p. 41. The District claims it has been conducting "a
2 comprehensive monitoring effort to track season, **areal**, and long-term trends in nitrate
3 concentrations." Plan p. 42

4 At all relevant times the SCVWD has known or otherwise admitted that:

5 90. Where there is industrial use of chemicals, there are accidental spills and
6 intentional dumping which pollute the air, soil, surface water and groundwater.

7 91. The District **does** not have to look far to find pollution of the aquifer because
8 Santa Clara County leads the nation in EPA **Superfund** cleanup sites as a result of industrial
9 chemicals being spilled or dumped.

10 92. All industries that produce chemical products, with very few exceptions, pollute
11 the air, soil, surface water and groundwater until they are caught, e.g. **Olin** manufacturing of
12 flares on **Tenant** Road.

13 93. Groundwater basins must be "aggressively protected from contamination and the
14 threat of contamination" and this longstanding implicit policy of the District and commitment to
15 the well users of Santa Clara County is now incorporated into the District's written statement of
16 policy. Plan p. 64.

17 94. In 1981, a major underground fiberglass tank storing TCE at the **IBM/Fairchild**
18 industrial manufacturing site on **Cottle** Road literally dissolved and gushed hundreds of gallons
19 of toxic solvent into the groundwater of the Great Oaks Water Company causing widespread
20 drinking water pollution. A subsequent study by the State of California showed that the rate of
21 miscarriages for women who had consumed this solvent polluted well water was three [3] times
22 the state average. As a result of that tragic event, "the District's attention focused on water
23 quality of the groundwater basin." Plan p. 8. As a consequence the District recognized that the
24 spilling and dumping of industrial chemicals and underground tank storage of pollutants "affect
25 groundwater quality and that effective protection of the County's groundwater basin demanded a
26 proactive approach" [Plan p. 55] and "the need for the District to be actively involved in ensuring
27 that appropriate investigation and cleanup of sites was undertaken in a timely manner." Plan p.
28 59. By 1987 the District knew that more than 1,000 fuel leaks had been reported and began a

1 program of investigation and cleanup of releases from underground storage tanks. Id. The
2 District provides "regulatory oversight on investigation and cleanup at UST sites where a release
3 has occurred." Plan p. 57. For example, "if there is evidence of a leak or if contamination is
4 detected . . . the District . .confirms the release, lists the site on **the** Leaking Underground
5 Storage Tank Oversight Program database, and notifies the responsible party and the State Water
6 Resources Control Board. The District then determines if the unauthorized release poses a threat
7 to human health and safety, the environment, or water resources and, if necessary, a caseworker
8 requests additional investigation and cleanup." Id. The District claims that it "has been at the
9 forefront of several initiatives for improving the effectiveness and efficiency of our regulatory
10 oversight efforts and the cost-effectiveness of corrective action while protecting human health,
11 safety, the environment and water resources." Plan p. 56.

12 95. Storm water runoff carries pollution into the drinking water aquifer. Dry wells in
13 particular "have been sites of illegal dumping of pollutants." In addition, all surface drainage,
14 not just shallow drainage well receiving storm water, constitute a threat to water quality. "One
15 dry well has a solvent plume more than 2,000 feet long and more than 200 feet deep in a recharge
16 area of South County where the only source of drinking water is **groundwater.**" Plan p. 50. The
17 same is true for ponds of industrial waste which percolate into the aquifer, and only since 1991
18 has the District had a storm water infiltration policy to prevent pollution of drinking water and
19 since 1993 property owners are prohibited from using dry wells which threaten groundwater
20 quality. Plan pp. 50-51.

21 96. Abandoned wells serve as conduits that transport contaminants into the **District's**
22 drinking water aquifers. Beginning "in the mid-1980s, the District . . . **actively** searched for and
23 destroyed known active wells and abandoned wells . . . **within** known contamination plumes."
24 Plan p. 52.

25 97. That specific "areas of the groundwater basin are particularly vulnerable to
26 contamination" namely hazardous material storage sites. Plan p. 53. Beginning in 1989 the
27 District collected data on hazardous material storage sites, wells and **hydrogeology** for the
28 purpose of groundwater protection and claims that it has developed a **countywide** information

1 system to identity and evaluate threats to **groundwater** quality from hazardous material storage
2 sites, underground storage tank sites and petroleum storage facilities. **Plan** p. 53. In order to
3 "ensure prompt and adequate cleanup" of pollution to safeguard drinking water, the District
4 claims it recognizes the necessity of "quickly locating contamination sources." **Plan** p. 54.

5 98. In 1990, a consultant hired by **Olin** to evaluate the closure of its chemical
6 operation contacted the **SCVWD** to learn and identify the flow of groundwater at the Olin
7 chemical operation on **Tenant** Road. The consultant was advised by the District that
8 groundwater flowed from the northwest to the southeast and that in addition the nature of the
9 soils in the basin readily allowed the passage of waters from the surface to the depths of the
10 aquifer.

11 99. The **SCVWD** has had, and has, the duty to provide safe and healthy groundwater,
12 to take affirmative action to provide clean, unpolluted well water, to aggressively investigate
13 potential sources of pollution by industrial plants and actual sources of pollution by industrial
14 operations in Santa Clara County, including locations known to Santa Clara County, the Santa
15 Clara County Fire District and other agencies of individuals, businesses and corporations that
16 have dumped chemicals that are toxic to people and animals on open ground, and to take all
17 actions to prevent the dumping of industrial wastes that threaten drinking water in Santa Clara
18 County.

19 100. As a result of the **SCVWD** having undertaken to perform actively all of the above
20 described duties and imposing a charge on all owners of private wells [known to the District to
21 be the sole source of water for human consumption in the Llagas Subbasin, including the
22 environs of San Martin] for the purpose of assuring safe, healthy and drinkable water and
23 protecting the public health, welfare and safety, has **a** special relationship with all private well
24 owners in Santa Clara County, and each of them including **claimant(s)** and has **non-delegable**
25 duties to assure the public health, welfare and safety with drinkable water **uncontaminated** by
26 potassium **perchlorate**, a known herbicide that is toxic to people and animals.

27 101. In all that it did, the **SCVWD** was negligent and careless in the performance of its
28 affirmative duties and in violation of its special relationship with the private well owners upon

1 whom it imposed well charges. The District was literally asleep in the performance of its
2 affirmative duties pursuant to its special relationship with private well owners and users and
3 turned its back on private well owners and users whom it had assumed the obligation to protect
4 by ignoring the obvious:

5 a. Olin Mathieson's plant used such dangerous and explosive chemicals in the
6 manufacturing of flares on Tennant Road, an area served exclusively by private and public wells
7 for drinking water, that on or about 1973 dangerous and toxic effluent that had been discharged
8 onto the ground into a waste pond exploded. The explosion was of such force that it blew out
9 windows approximately one-quarter of a mile away.

10 b. Olin's industrial manufacturing operation utilized massive amounts of toxic
11 chemicals, including many chemicals known to the State of California to cause cancer, and that
12 the manufacturing of flares was chemical intensive.

13 c. The Morgan Hill Fire Department and later the Central Fire District conducted
14 routine inspections of the Olin facility for the purpose of identifying all chemicals which would
15 present a risk to firefighters and that such inventories always showed large amounts of potassium
16 perchlorate, phosphorous, **styrene** and **methylene** chloride in use at the plant. At **all** relevant
17 times these records of inspections and inventories were available as public records to anyone
18 upon request.

19 d. The same fire records confirm widespread dumping of toxic chemicals into a
20 drainage pond which could only contaminate the soft clay aquifer and the Llagas Creek aquifer
21 **which** sits below the Olin flare manufacturing and dumping site. Under no circumstances would
22 years of dumped effluent from Olin's flare manufacturing operation evaporate or merely sit on
23 the surface in an **unlined** pond. The only way it could go was down into the aquifer.

24 e. In addition, the public record for permits for hauling hazardous substances
25 confirmed the chemicals in use at the Tennant Road site.

26 f. Despite public knowledge of the dumping of **toxic** industrial waste into a waste
27 pond in an area served exclusively by well water, the **SCVWD** allowed the dumping of toxic
28 chemicals hazardous close to human life by Olin to continue unimpeded for decades and which

1 has created one of the most massive plumes of polluted well water in the United States a mile
2 wide and six miles long, a pollution plume **ofundrinkable** water that is growing every day and
3 one that will take 30 to 50 years to cleanup.

4 102. To its shame all of the foregoing misconduct and damage occurred under the
5 "nose," oversight, and operational control of the SCVWD which has the responsibility for
6 making sure that a tragedy of this colossal proportion does not occur, especially after the District
7 suffered the embarrassment of the **IBM/Fairchild** TCE pollution of the Great Oaks Water
8 Company that impacted hundreds of well water families. No one ever imagined the SCVWD
9 would be so incompetent as to "top" that fiasco by allowing the pollution of hundreds, upon
10 hundreds of wells in San Martin by Olin's well known chemical operation.

11 103. Making the situation worse, despite the public records available in Santa Clara
12 County confirming that Olin dumped toxic chemicals into a **waste** pond, the SCVWD at no time
13 before January, 2003 ever tested as part of its regular monitoring program for the presence **of**
14 traces of any of the toxic chemicals used by Olin in its flare manufacturing business.

15 104. Since the public acknowledgment of dangerous levels of potassium **perchlorate** in
16 private wells south of the **Olin** plant and identification of a gigantic plume of pollution that is
17 more than six miles long, the SCVWD has compounded its negligence and carelessness and
18 further violated its affirmative duties to private well owners and its special relationship with
19 private well owners and users by:

20 a. Continuing to impose a well charge for polluted water that is not safe or healthy
21 fordrinking;

22 b. By falsifying its reports of perchlorate levels in well water by using an artificially
23 reporting cutoff of 4 ppb when at all times the SCVWD has had available to it the ability to test
24 water to .8 ppb and in fact has obtained reports of actual concentrations at significant levels in
25 excess of the EPA's recommended action level of 1 ppb but below 4 ppb, and has concealed the
26 true test results from private well owners. This falsification of test results has had the potential
27 for causing serious harm, when all the SCVWD had to do was to report the actual known and
28 reported test levels of perchlorate and to require that all well water be tested to .8 ppb. Instead

1 the SCVWD has advised well owners and users that wells with **reportable** levels of perchlorate
2 above 1 ppb, but below 4 ppb, are "non-detect." In fact the term "non-detect" does not mean that
3 a given well water sample does not contain perchlorate but only means that the SCVWD has
4 ordered tests which automatically report a perchlorate level of less than 4 ppb as "non-detect."
5 Lying to the public, after its dismal failure to properly test **groundwater**, to **pro-actively** inspect
6 and control industrial chemical manufacturing operations that dump effluent into open ponds
7 which have exploded and not monitoring water to assure it is healthy and safe to drink, is
8 unforgivable and shameful.

9 c. By not admitting and acknowledging that private well owners are entitled to know
10 the actual level of perchlorate in their drinking water and not be lied to by being told a well is
11 "non-detect" when it contains measurable amounts of potassium perchlorate at dangerous levels.

12 d. This misconduct is all the more reprehensible in that the District knows that
13 perchlorate interferes with the thyroid which controls growth, development and metabolism.
14 Small changes in maternal thyroid hormone levels during pregnancy have been associated with
15 reduced **IQs**. Fetuses, infants and children who experience greater changes in hormone levels
16 may suffer permanent retardation, loss of hearing and speech, or deficits in motor skills. EPA
17 1998; Brechner 2000. Women whose levels of a particular thyroid hormone measured in the
18 lowest 10 percent of the population during the first trimester of pregnancy were more than 2.5
19 times as likely to have a child with an **IQ** of less than 85 and five times as likely to have a child
20 with an IQ of less than 70. Haddow 1999. This was true whether or not these women were
21 **hypothyroid**. Many had thyroid hormones in the normal range. Pop et al. 1999. Mammalian
22 toxicity of perchlorate was **demonstrated** as early as 1897, at least in a variety of animals.
23 Further publications on its toxicity in animals occurred in 1936 and 1938. The potent effect of
24 perchlorate on thyroid function (inhibiting iodide uptake) was first demonstrated in animals and
25 humans in 1952. In the early 1960's, with widespread use of perchlorate, severe and fatal toxic
26 reactions (**agranulocytosis**, aplastic anaemia) began to be reported and led to the discontinuation
27 of perchlorate use. Perchlorate concentrations of 1 ppb [**0.01 micrograms** per kilogram] in
28 drinking water a day induces significant effects on the levels of thyroid hormones in the mother,

1 fetus and offspring of laboratory animals. **Crofton 2001.** Similar low dose studies have found "a
2 large number of significant effects" on brain and thyroid structure. Argus 2001; EPA 2002. The
3 Arizona Department of Health Services found a significant increase in abnormal levels of a
4 thyroid hormone in infants whose mothers drank perchlorate tainted water from the Colorado
5 River during pregnancy as compared to mothers who had not. **Brechner et al.** 2000. A study of
6 California **newborns** found that low levels of perchlorate affect infant thyroid hormone levels.
7 Looking at all infants born in California in 1996 and comparing the hormone levels of infants
8 whose mothers had drunk **perchlorate-contaminated** water to those whose mothers had not, the
9 study found a statistically significant effect on infant thyroid hormone levels at perchlorate
10 exposure of 1 to 2 ppb. The effects were more pronounced at higher dose levels. Schwartz 2001.

11 105. As a direct, proximate and legal cause of the negligence and carelessness of the
12 SCVWD, Plaintiffs have suffered the devaluation of their homes, commercial and agricultural
13 property and the loss of enjoyment of use of such properties, including restraints on, and the
14 inability to, refinance mortgages, all as a result of widespread pollution of drinking water with
15 potassium perchlorate leaching into the drinking water aquifer of the Llagas Subbasin from an
16 industrial chemical flare manufacturing operation conducted by **Olin Corporation** on **Tenant**
17 Road, Santa Clara County California.

18 WHEREFORE, Plaintiffs pray for relief as follows:

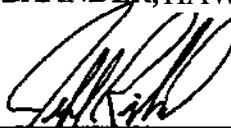
- 19 1. That judgment be entered in favor of the Plaintiffs;
- 20 2. Relief in the form of an order requiring Defendants to remediate the **groundwater**
21 contamination as alleged herein;
- 22 3. Relief in the form of a judicial determination and declaration of the rights of
23 Plaintiffs and the corresponding responsibilities of Defendants;
- 24 4. Attorney's fees, expenses and costs of this suit;
- 25 5. For damages, according to proof, including general damages, treble damages, and
26 exemplary and punitive damages;
- 27 6. For interest, including **pre-judgment** and post-judgement interest, as permitted by
28 law; and

1 7. Such additional relief as this Court deems necessary, just and proper.
2

3 Dated: 10/20/03

ALEXANDER, HAWES & AUDET, LLP

5 By:

6 
Richard Alexander
Jeff Rickard
Ryan M. Hagan
7 Attorneys for Plaintiffs

8
9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs, SCOTT SMITH & JUDITH WRIGHT PERKINS, hereby **demand(s)** a trial by
11 jury.

12 Dated: 10/20/03

ALEXANDER, HAWES & AUDET, LLP

15 By:

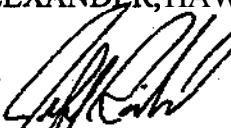
16 
Richard Alexander
Jeff Rickard
17 Ryan M. Hagan
Attorneys for Plaintiffs

EXHIBIT A-1

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (*Aviso a Acusado*)

OLIN CORPORATION, a corporation; STANDARD FUSEE CORPORATION, a corporation; ORION SAFETY PRODUCTS, a corporation; SANTA CLARA VALLEY WATER DISTRICT; and DOES 1 through 50, inclusive

FOR COURT USE ONLY

YOU ARE BEING SUED BY PLAINTIFF:

(*A Ud. le esta demandando*)

SCOTT SMITH & JUDITH WRIGHT PERKINS

You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal **requirements**. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le **entreguen** esta citation judicial **usted** tiene un **plazo** de 30 **DIAS** CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.

Una carta o una **llamada telefónica** no le **ofrecerá protección**; su respuesta escrita a máquina tiene que cumplir con las **formalidades legales apropiadas** si usted **quiere** que la corte escuche su caso.

Si usted no **presenta** su respuesta a **tiempo**, puede **perder** el caso, y le pueden **quitar** su salario, su dinero y **otras** cosas de su propiedad sin aviso **adicional por parte** de la corte.

Existen **otros** requisitos legales. Puede que usted **quiera llamar** a un abogado **inmediatamente**. Si no conoce a un abogado, puede llamar a un **servicio de referencia de abogados** o a una **oficina de ayuda legal** (vea el **directorio telefónico**).

The name and address of the court is: (*El nombre y dirección de la corte es*)

Santa Clara County Superior Court
191 North First Street, San Jose CA 95113

CASE NUMBER: (*Número del Caso*)

1-03-CV-817303

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(*El nombre, la dirección y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es*)

Richard Alexander, Esq. (48432)

ALEXANDER, HA WES & AUDET, LLP
152 North Third Street, Suite 600, San Jose, CA 95112

Telephone: 408.289.1776
Facsimile: 408.287.1776

Kirk Torre

Chief Executive Officer/Clerk

DATE:
(Fecha)

OCT 22 2003

Clerk by
(Actuario)

Sara Batres, Deputy
(Delegado)



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. I on behalf of (specify):

under: CCP 416.10 (corporation)
 CCP 416.20 (defunct corporation)
 CCP 416.40 (association or partnership)
 other

CCP 416.60 (minor)
 CCP 416.70 (conservatee)
 CCP 416.90 (individual)

4. I by personal delivery on (date):

EXHIBIT A-2

(ENDORSED)

(END
FILED

1 Richard Alexander, Esq. (48432)
2 Jeffrey W. **Rickard**, Esq. (125180)
3 Ryan M. Hagan, Esq. (200850)
4 **ALEXANDER, HAWES & AUDET, LLP**
5 152 North Third Street, Suite 600
6 San Jose, CA 95112
7 Telephone: 408.289.1776
8 Facsimile: 408.287.1776
9 Attorneys for Plaintiffs

OCT 29 10 50 AM '04

OCT 29 10
BY S. Marshall REPUTY

SUPERIOR COURT OF CALIFORNIA
CLERK'S OFFICE, SANTA CLARA

SUPERIOR COURT OF CALIFORNIA
CLERK'S OFFICE, SANTA CLARA

10
11 SCOTT SMITH & JUDITH WRIGHT } CASE NO: 1-03-CV-817303
12 PERKINS, }
13) PROOF OF SERVICE OF
14 vs.) SUMMONS; AMENDED COMPLAINT;
15) AND NOTICE OF RESCHEDULED CASE
16) MANAGEMENT CONFERENCE
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

PROOF OF SERVICE

I, the undersigned, declare as follows. I am now and at all times herein mentioned have been a citizen of the United States, over the age of eighteen years, and not a party to the within action or cause; I am employed in Santa Clara County, **California**, and my business address is 152 North Third Street, Suite 600, San Jose, Santa Clara County, California.

On October 24, 2003, I served a copy of the following:

SUMMONS; AMENDED COMPLAINT; AND NOTICE OF RESCHEDULED CASE MANAGEMENT CONFERENCE

_____(by mail) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing **mail**, addressed as set forth below. At Alexander, Hawes & Audet, LLP, mail placed in that designated area is given the correct amount of postage and is deposited that same day in the ordinary course of business in a United States mailbox in the City of San Jose, California.

X (by personal delivery) by causing said document to be personally delivered by courier to the person(s) at the address set forth below.

— (by Federal Express) by depositing a true copy thereof in a sealed packet for overnight delivery, with charges thereon fully **prepaid**, in a Federal Express collection box in San Jose, California.

— (by facsimile transmission) by transmitting said document(s) from our office facsimile machine **(408.287.1776)** to facsimile machine **number(s)** shown below. Following transmission, I received a "Transmission Report" from our facsimile machine indicating that the transmission had been transmitted without error.

Randall C. Creech
CREECH, LIEBOW & KRAUS
99 Almaden Boulevard, Eighth Floor
San Jose, CA 95113
Ph: 408.993.9911
Fx: 408.993.1335
Attns. for Defendant, *Olin Corporation*

Keith M. Casto
Earl L. Hagstrom
Sedgwick, Detert, Moran & Arnold
1 Embarcadero Center, 16th Floor
San Francisco, CA 95111-3628
Ph: 415.627.6951
Fx: 415.781.2635
Attns. for Defendants, Standard Fusee Corporation and Orion Safety Products

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Def. Santa Clara Valley Water District

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on 10/28/03, at San Jose, California.

Corene Abrego

1
PROOF OF SERVICE

2 I, the undersigned, declare as follows. I am now and at all times herein mentioned have been a citizen
3 of the United States, over the age of eighteen years, and not a party to the within action or cause; I am
4 employed in Santa Clara County, **California**, and my business address is 152 North Third Street, Suite 600,
5 San Jose, Santa Clara County, California.

6 On October **30, 2003**, I served a copy of the following:

7 **PROOF OF SERVICE RE: SUMMONS; AMENDED COMPLAINT; AND NOTICE OF**
8 **RESCHEDULED CASE MANAGEMENT CONFERENCE**

9 (by mail) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a
10 designated area for outgoing mail, addressed as set forth below. At Alexander, Hawes & Audet, LLP,
11 mail placed in that designated area is given the correct amount of postage and is deposited that same
12 day in the ordinary course of business in a United States mailbox in the City of San Jose, California.

13 _____ (by personal delivery) by causing said document to be personally delivered by courier to the
14 person(s) at the address set forth below.

15 _____ (by Federal Express) by depositing a true copy thereof in a sealed packet for overnight delivery, with
16 charges thereon fully prepaid, in a Federal Express collection box in San Jose, California.

17 _____ (by facsimile transmission) by transmitting said document(s) from our office facsimile machine
18 (**408.287.1776**) to facsimile machine number(s) shown below. Following transmission, I received a
19 "Transmission Report" from our facsimile machine indicating that the transmission had been
20 transmitted without error.

21 Randall C. Creech
22 CREECH, LIEBOW & **KRAUS**
23 99 Almaden Boulevard, Eighth Floor
24 San Jose, **CA 95113**
25 Ph: **408.993.9911**
Fx: 408.993.1335
Attys. for Defendant, Olin Corporation

26 Keith M. Casto
27 Earl L. Hagstrom
28 Sedgwick, **Detert**, Moran & Arnold
1 Embarcadero Center, **16th** Floor
San Francisco, **CA 95111-3628**
Ph: 415.627.6951
Fx: 415.781.2635
Attys. for Defendants, Standard Fusee Corporation and Orion Safety Products

29 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
30 and correct and that this Declaration was executed on **10/30/13** at San Jose, California.

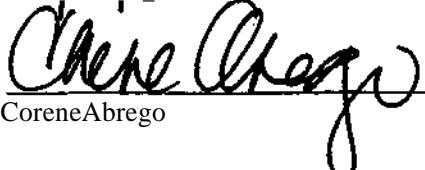
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EXHIBIT B

1 Randall C. Creech, Esq. (SBN 65542)

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7 Attorneys for Defendant Olin Corporation

8 Keith M. Casto, Esq. (SBN 141279)
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15 Attorneys for Defendants Standard Fusee Corporation
16 d/b/a Orion Safety Products

17 IN THE UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 SAN JOSE DIVISION

20 SCOTT SMITH & JUDITH WRIGHT)
21 PERKINS,) Civil Action No. _____
22 Plaintiffs,)
23 vs.)
24 OLIN CORPORATION, et al.,)
25 Defendants. _____)

26 I, Randall C. Creech, declare as follows:

27 1. I am a partner at the law firm of CREECH, LffiBOW & KRAUS in San Jose,
28 California. Olin Corporation has retained this firm for the defense of this action. I have
personal knowledge of the matters set forth herein and am competent to testify thereto.

2. On November 11, 2003, I obtained from the office of the Santa Clara County
Assessor a copy of the most recent tax assessment for the land and improvements for the

23 DECLARATION OF RANDALL C. CREECH
24 EXHIBIT B

1 property identified by Plaintiff(s) in the Complaint. The assessment was obtained from an
2 electronic database (Property Assessment Information System), available to the public on the
3 Internet. The document was obtained from an electronic database by selecting the property by
4 the street address which was identified by Plaintiff(s) in the Complaint. A true and correct copy
5 of the materials obtained from the Santa Clara County Assessor is attached hereto as Attachment
1.

7 3. Plaintiff(s) Smith and Perkins allege ownership of property located at 13165
8 Monterey Road, San Martin, California (Complaint, ¶ 5). As set forth in Attachment<1, the
9 Santa Clara County Assessor has assessed the Full Cash Value of the land and improvements at
10 this address to be \$1,353,500.

I declare under penalty of perjury, under the laws of the State of California, that the forgoing is true and correct, and if called upon to testify, I could and would competently do so.

Executed this 21st day of November, 2003, at San Jose, California.

William

RANDALL C. CREECH

DECLARATION OF RANDALL C. CREECH
EXHIBIT B

Data as of 11/09/200

Santa Clara County Assessor's Office
Assessment Roll Information Inquiry and Retrieval

Assessment Roll Information for Tax Year 2003 :

APN: 779-10-020**DISCLAIMER:**

This service has been provided to allow easy access and a visual display of County information. A reasonable effort has been made to ensure the accuracy of the data provided; nevertheless, some information may be out of date or may not be accurate. The County of Santa Clara assumes no responsibility arising from use of this information. ASSOCIATED DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Do not make any business decisions based on this data before validating the data. [Revenue and Taxation Code Section 408.3(c)]

Situs Address and Mailing Address Information

Number of Property Address(es): 3	Billing Address(es):
13165 Monterey Rd San Martin	13165 Monterey Rd San Martin Ca 95046
13175 Monterey Rd San Martin	13165 Monterey Rd San Martin Ca 95046
13170 Monterey Rd San Martin	13165 Monterey Rd San Martin Ca 95046

Property Information

Document No.	15978738	Transfer Date	11 / 27 / 2001
Document Type	Grant Deed	Tax Default Date	n/a

Tax Rate Area: 87-002

Morgan Hill [Unified School]	Gavilan Jt(35.43) f Comm. College]
Loma Prieta Soil [Resource Consrv.]	Gavilan [Water Consrv.]
Bay Area Jt(l,7,21,28,38,41,43,48,49,57) [Air Quality Mgmt.]	South Santa Clara [Fire Protection]
Area No. 01 (Library Services) [County Service]	Area No. 01, Library Benefit Assessment [County Service]
Santa Clara Valley [County Water 1	Santa Clara Valley-Zone S-1 [County Water 1
Santa Clara County Importation [Water-Misc.]	

Assessed Values On: 779-10-020 (Assessed Information as of 6/30/2003)

Real Property	Business	Exemptions	Net Assessed Value
Land	\$ 719,239	Fixtures \$0 Homeowner	\$0
Improvements	\$ 634,261	Structure \$0 Other	\$0
	Personal Prop.	\$0	