

1 Alexander M. Schack, Esq., Bar No. 99126
2 Natasha N. Serino, Esq., Bar No. 284711
3 Shannon F. Nocon, Esq., Bar No. 316523
4 SCHACK LAW GROUP
5 16870 West Bernardo Drive, Suite 400
6 San Diego, CA 92127
7 Tel: (858) 485-6535 Fax: (858) 485-0608
8 alexschack@schacklawgroup.com
9 natashaserino@schacklawgroup.com
10 shannonnocon@schacklawgroup.com

11 Attorneys for Plaintiffs

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
NORTH COUNTY BRANCH

DCVE CORP., a California Corporation; E & L POWAY SUSHI, INC., a California Corporation); ASHLI DEMNIANIUK, an individual; ERIC HUYNH, an individual; JAUN, INC., a California Corporation; ELROY PALOMERA d/b/a LARRY'S SANTORINI GREEK FOOD; JOSE LUIS GODINEZ, d/b/a LUPE'S CAFÉ; LINGHAM INVESTMENTS, INC., a California Corporation d/b/a ORIGINAL PANCAKE HOUSE; MI & MA, Inc., a California Corporation; OMAR HAKIMI, an individual; NYG PIZZA CO. INC.; THE OLDE CARRIAGE TAVERN, LLC, a California Limited Liability Corporation; PLAYERS BAR TOO, INC., a California Corporation; RENE'S BAR & GRILL, INC., a California Corporation; RIGOBERTO'S TACO SHOP, INC., a California Corporation; ST. KARAS, INC., a California Corporation; NARROWAY, INC., a California Corporation; PLACE SUBWAY PW, INC., a California Corporation; PLACE SUBWAY SS, INC., a California Corporation; PAUL A. HOANG, d/b/a WONG'S WOK CHINESE

Case No.: 37-2020-00042487-CU-PL-NC
Dept:
Judge Robert P Dahlquist
Action Filed:

COMPLAINT

1. Negligence
2. Strict Liability for Ultrahazardous Activity
3. Trespass
4. Public Nuisance
5. Private Nuisance
6. Failure to Perform Mandatory Duty – Violation of Govt. Code § 815.6
7. Inverse Condemnation
8. Strict Products Liability – Manufacturing Defect

DEMAND FOR JURY TRIAL

1 CUISINE; and WOOD VILLAGE
2 ENTERPRISE, a California Corporation,

3 Plaintiffs,

4 v.

5 CITY OF POWAY, a public entity, and
6 DOES 1-100, inclusive,

7 Defendants.

8
9 Plaintiffs DCVE CORP., a California Corporation; E & L POWAY SUSHI, INC., a
10 California Corporation; ASHLI DEMNANIUK, an individual; ERIC HUYNH, an individual;
11 JAUN, INC., a California Corporation; ELROY PALOMERA d/b/a LARRY'S SANTORINI
12 GREEK FOOD; JOSE LUIS GODINEZ, d/b/a LUPE'S CAFÉ; LINGHAM INVESTMENTS,
13 INC., a California Corporation d/b/a ORIGINAL PANCAKE HOUSE; MI & MA, Inc., a California
14 Corporation; OMAR HAKIMI, an individual; NYG PIZZA CO. INC.; THE OLDE CARRIAGE
15 TAVERN, LLC, a California Limited Liability Corporation; PLAYERS BAR TOO, INC., a
16 California Corporation; RENE'S BAR & GRILL, INC., a California Corporation; RIGOBERTO'S
17 TACO SHOP, INC., a California Corporation; ST. KARAS, INC., a California Corporation;
18 NARROWAY, INC., a California Corporation; PLACE SUBWAY PW, INC., a California
19 Corporation; PLACE SUBWAY SS, INC., a California Corporation; PAUL A. HOANG, d/b/a
20 WONG'S WOK CHINESE CUISINE; and WOOD VILLAGE ENTERPRISE, a California
21 Corporation, (hereinafter collectively referred to as "Plaintiffs"¹), by and through their undersigned
22 counsel, bring this action against Defendant City of Poway, and DOES 1 through 100, inclusive
23 (hereinafter collectively referred to as "the City" or "City of Poway" or "Defendants"). The exact
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28 ¹ With the exception of Plaintiff Ashli Demnianiuk, the above plaintiffs shall be collectively referred to as "Food Facility Plaintiffs." When including Plaintiff Ashli Demnianiuk, they shall be referred to collectively as "Plaintiffs."

1 names and capacities in which Plaintiffs are suing may be presently unknown and therefore
2 Plaintiffs bring this action in their capacities as individuals, trustees, executors, officers, guardians
3 ad litem, members, shareholders, heirs, survivors, and principals, as may be applicable.
4

5 **INTRODUCTION**

6 1. Plaintiffs bring this action against the City of Poway, a public entity, and DOES 1
7 through 100, in connection with their operation of a water treatment facility where they allowed a
8 dangerous condition to persist that ultimately resulted in the contamination of water and forced the
9 shutdown of all food facilities within the City.

10 2. At all times relevant hereto, the City has operated and continues to operate a
11 reservoir and water treatment facility located at or near 14467 Lake Poway Road, Poway, CA
12 92064, which includes but is not limited to Lake Poway and the Letser J. Berglund Water Treatment
13 Plant (hereinafter the “Facility”).

14 3. At all times relevant hereto, the Facility has been out of compliance with State
15 regulations and contained dangerous conditions that posed foreseeable risks of harm to Plaintiffs.
16 Among other things, the Facility’s reservoir overflow connections are directly connected to a sewer
17 and/or storm drain and the City’s Clearwell (which is supposed to contain uncontaminated drinking
18 water that is distributed to City of Poway customers) is connected to a storm drain containing
19 contaminated water and substances. Due to these conditions, and at all times relevant hereto, the
20 City of Poway was in violation of CCR Title 17, Section 7584, CHSC Section 116555(a)(2) and
21 CCR Title 22, Section 64585(a)(4).

22 4. The conditions at the Facility were inherently dangerous, created sanitary risks, and
23 pose a continuous threat to the public health. Despite knowledge of the dangerous conditions that
24 existed at the water Facility, Defendants failed to disclose this information to Plaintiffs, Poway
25 residents or business, or take any steps to correct the conditions. As a result, the foreseeable risks
26 created by the Facility, which were known to or created by Defendants, materialized in or before
27 November 2019, causing significant harm to Plaintiffs.
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1 alleged herein and that the harm suffered by Plaintiffs was proximately caused by them in addition
2 to Defendants.

3 10. Plaintiffs are informed and believe and thereon allege that, at all times mentioned,
4 each of the Defendants, including DOES 1 through 100, acted in concert with each and every other
5 Defendant, intended to and did participate in the events, acts, practices and courses of conduct
6 alleged herein, and was a proximate cause of damage and injury thereby to Plaintiffs as alleged
7 herein.

8 11. Plaintiffs are further informed and believe and thereon allege that, at all times herein
9 mentioned, each Defendant, including DOES 1 through 100, was the agent, representative, alter ego,
10 successor-in-interest, affiliate, principal, partner, joint venture, and/or employee of each of the other
11 defendants, and was acting within the course and scope of such agency or employment. As such,
12 each defendant was acting within the course and scope of its authority and with the express and/or
13 implied permission, knowledge, consent, and ratification of all other defendants when doing the acts
14 and omissions alleged herein.

15 **JURISDICTION AND VENUE**

16 12. This Court has jurisdiction over this action pursuant to California Constitution,
17 Article VI, §10.

18 13. Venue is proper in this Court pursuant to California Code of Civil Procedure section
19 395 because the acts and injuries that gave rise to this action occurred in San Diego County. Venue
20 is also proper in this Court pursuant to California Code of Civil Procedure section 394 because this
21 is the County in which the City of Poway is located.

22 **FACTUAL ALLEGATIONS**

23 **A. The City of Poway’s Water System and Its Violation of State Regulations**

24 14. The City operates a reservoir and water treatment facility located at or near 14467
25 Lake Poway Road, Poway, CA 92064, which includes but is not limited to Lake Poway and the
26 Lester J. Berglund Water Treatment Plant (collectively the “Facility”).

27 15. The City receives untreated surface water from the San Diego County Water
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1 Authority and Lake Poway. Before distribution to the public, the untreated surface water is
2 supposed to be treated at the Lester J. Berglund Water Treatment Plant (“LJBWTP”).

3 16. Once treated and safe for drinking, the treated water is stored in the T10 Clearwell
4 at the Facility. The T10 Clearwell (the “Clearwell”) is a 10-million-gallon reservoir tank, which
5 stores and supplies clean drinking water (treated water) to Poway’s businesses, residents, visitors
6 and those connected to the City’s distribution system, including Plaintiffs.

7 17. The City’s Clearwell at the Facility is partially buried and is divided into two
8 bays—a north bay and a south bay.

9 18. The south bay of the Clearwell contains, among other things, a 10-inch drain (the
10 “10-inch drain”) and an overflow box. When water in the Clearwell exceeds 16.5 feet, it flows
11 into the overflow box, which drains through a 30-inch overflow pipe (the “30-inch overflow
12 pipe”) and then flows into a 48-inch collector pipe (the “48-inch collector pipe”). The overflow
13 box is housed by a structure with flapper gates that allow water to flow into and through the 30-
14 inch overflow pipe.

15 19. Both the 10-inch drain and the 48-inch collector pipe are directly connected to a
16 storm drain collector pipe west of the Clearwell. Upstream of the connection to the 30-inch
17 overflow pipe, the 48-inch collector pipe is also directly connected to a series of storm drain
18 collection pipes that collect runoff from LJBWTP.

19 20. Due to the conditions described above, including but not limited to the
20 connections between the Clearwell and storm drain(s), the City of Poway and its Facility has
21 violated multiple California regulations.

22 21. The conditions at the Facility, including but not limited the connections related to
23 the Clearwell and storm drains alleged herein, are inherently dangerous conditions in violation of
24 State regulations, including but not limited to, California Health and Safety Code, section
25 116555(a)(2), California Code of Regulations, Title 22, section 64585(a)(4), California Code of
26 Regulations, Title 17, Section 7584 and/or California Water Code section 13350. Furthermore,
27 the connections between the Clearwell and the storm drain, as described herein, created a
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1 substantial risk of injury when the Facility was used with due care in the manner in which it was
2 reasonably foreseeable that it would be used. The risks of these dangerous conditions
3 materialized on or before November 29, 2019.

4 **B. Contamination of the Clearwell and the City’s Distribution of Contaminated Water**

5 22. On or before November 29, 2019, there was cross-contamination between the 30-
6 inch overflow pipe and the storm drain collection pipes that are directly connected to the 48-inch
7 collector pipe.

8 23. Stormwater and substances from the 48-inch collector pipe surcharged through the
9 30-inch overflow pipe and into the Clearwell. As a result, treated water in the Clearwell was
10 contaminated with storm drain water and substances (the “Water Contamination” or
11 “Contaminated Water”).

12 24. The City of Poway then distributed the Contaminated Water throughout the
13 distribution system to customers, including but not limited to on November 29, 2019.

14 **C. The City’s Knowledge That the Clearwell Had Been Compromised, Customer
15 Complaints, and the City’s Continued Failure to Warn**

16 25. Defendants knew the Clearwell was directly connected to the storm drain before
17 November 29, 2019. Defendants also knew that the 10-inch drain and the 48-inch collector pipe
18 were directly connected to a storm drain collector pipe before November 29, 2019. Defendants
19 further knew that the 48-inch collector pipe was connected to a series of storm drain collection
20 pipes before November 29, 2019.

21 26. On or before the morning of November 29, 2019, the City of Poway was notified
22 that brown or otherwise discolored water was coming from taps in the City of Poway and was
23 being delivered throughout its distribution system.

24 27. On November 29, 2019 and November 30, 2019, the City of Poway continued
25 distributing Contaminated Water through its distribution system to customers. The City of Poway
26 did this despite (1) knowledge of the dangerous condition of its Clearwell; (2) its belief, as of at
27 least November 29, 2019, that the Clearwell had been compromised; and (3) reason to believe
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1 the water was contaminated.

2 28. On or before November 30, 2019, the City of Poway knew or had reason to know
3 that substances from the storm drain had entered the Clearwell. Nevertheless, the City of Poway
4 continued distributing Contaminated Water through its distribution system to customers. During
5 this time, the City of Poway did not warn customers, businesses, residents, visitors or members
6 of the public in the City of Poway of the dangerous condition at its Facility.

7 29. It was not until the California State Water Resources Control Board ordered the
8 City of Poway to issue a boil water advisory (“Boil Water Advisory”) that the City notified any
9 customers. Even then, however, the City did not fully disclose the dangerous condition at its
10 Facility.

11 **D. The Boil Water Advisory and the Forced Closure of Food Facilities Due to the Water**
12 **Contamination**

13 30. Sometime on the evening of November 30, 2019, more than 24 hours after being
14 notified that its Clearwell had been compromised, the City of Poway finally issued a Boil Water
15 Advisory. The Boil Water Advisory instructed that all residents and recipients of City of Poway
16 water should boil the tap water before drinking it or using it for food preparation to avoid illness,
17 including but not limited to “stomach or intestinal illness.” The Boil Water Advisory further
18 admitted that it was believed that the potable drinking water distribution system had been
19 compromised. The Boil Water Advisory further stated, “[t]he affected area includes all within the
20 City of Poway boundaries.”

21 31. Notwithstanding the Boil Water Advisory, the City of Poway did not notify
22 customers that the Clearwell had been compromised or of the Water Contamination.

23 32. Due to the Water Contamination and dangerous conditions at the City of Poway’s
24 Water Facility, its water customers were unable to safely use or drink the water.

25 33. The unsafe condition of the City’s water, the dangerous conditions at the City’s
26 Facility, and the Water Contamination also forced the closure of all food facilities in the City of
27 Poway. On or about November 30, 2019, all food facilities within the City of Poway were
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1 ordered, via a food facility closure notification, to immediately stop all food preparation and
2 close their facilities due to the contamination of Poway's water.

3 34. The food facility closure notification ("Closure Notification") specifically stated:
4 "It is not safe to use the water for consumption, food preparation, or washing dishes."

5 35. The food facilities were required to remain closed until the boil water advisory
6 was lifted and they had completed the following steps, among other things: (1) The food facility
7 must have safe running hot and cold water; (2) Flush all water lines with clean water. This
8 includes sinks in the kitchen, restroom, waitress stations, and especially the produce misting
9 systems; (3) Inspect and purge all water lines connected to beverage machines and ice machines;
10 (4) Discard old ice and thoroughly clean ice machines; (5) Re-clean and sanitize all dishes or
11 other items that may have been in contact with water prior to the boil water order; (6) Discard
12 food potentially contaminated prior to the notice such as beverages, cut produce, or other food
13 items with water as an ingredient.

14 36. Due to the Water Contamination and dangerous conditions at the City's Water
15 Facility, the Boil Water Advisory remained in effect until on or about December 6, 2019.

16 37. Due to the costs and time associated with cleaning, food facilities, including
17 Plaintiffs, were not able to immediately reopen upon lifting of the Boil Water Advisory.

18 **E. Plaintiffs Suffered Damage Due to The Water Contamination**

19 38. As a direct, proximate and substantial cause of the City's conduct and the
20 dangerous conditions at the Facility, Food Facility Plaintiffs² suffered harm and sustained
21 damages including, but not limited to, property damage, loss of use, lost income, loss of
22 goodwill, and increased expenses, and clean-up costs.

23 39. In addition, the Water Contamination and dangerous conditions at the Facility
24 rendered Food Facility Plaintiffs' properties unsafe for use. As alleged herein, Food Facility
25 Plaintiffs were forced to shut down during the Boil Water Advisory, which lasted nearly a week.
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27 _____
28 ² "Food Facility Plaintiffs" include all Plaintiffs named in this Complaint except individual Plaintiff Ashli Demnianiuk.

1 40. Due to this closure, they have suffered tremendous business losses, lost earning
2 capacity, lost profits, and increased expenses. Defendants' conduct caused food facilities to lose
3 business during the holiday season, including holiday events and parties. This resulted in
4 substantial losses.

5 41. When Food Facility Plaintiffs were permitted to reopen, they faced additional
6 costs associated with reopening, including but not limited to replacing filters, cleaning systems,
7 flushing water lines, purging lines connected to beverage and ice dispensers, discarding ice,
8 rewashing dishes, sanitizing any items in contact with water, and discarding food. In addition to
9 food that Food Facility Plaintiffs were ordered to discard, they also lost inventory, produce, fresh
10 food and other property as a result of Defendants' conduct.

11 42. In sum, as a direct, legal, proximate and substantial result of Defendants' conduct,
12 Food Facility Plaintiffs have suffered damages and harm, including but not limited to the
13 following: (1) property damage; (2) loss of use, benefit, goodwill, diminution in value and/or
14 enjoyment of their property; (3) loss of income; (4) loss of earning capacity; (5) loss of profits;
15 (6) increased expenses; (7) expenses associated with reopening; (8) other consequential
16 economic losses; (9) damage to filtration systems; (10) damage to food, inventory, produce, and
17 other personal property; (11) mental pain and suffering including worry, emotional distress,
18 anguish, anxiety and nervousness; and/or (12) annoyance, discomfort and inconvenience.

19 43. As a direct, proximate and substantial cause of the City's conduct and the
20 dangerous conditions at the Facility, Plaintiff Ashli Demnianiuk suffered harm and sustained
21 damages including, but not limited to, physical injuries. As a further direct, legal, proximate and
22 substantial result of Defendants' conduct, Plaintiff Ashli Demnianiuk has suffered damages and
23 harm, including but not limited to the following: (1) physical injury; (2) medical expenses; (3)
24 loss of income; (4) loss of earning capacity; (5) emotional distress; (6) mental pain and suffering
25 including worry, anguish, anxiety and nervousness; and/or (7) annoyance, discomfort and
26 inconvenience, among other things.

27 **F. Plaintiffs Filed a Timely Government Claim**

1 44. Pursuant to the California Government Code § 810 et seq., Plaintiffs timely
2 notified the City of Poway of their claims against the City related to the allegations set forth
3 herein via an official claim form. Plaintiffs' claims were delivered to the City of Poway.

4 45. The City of Poway has rejected each of the Plaintiffs' claims. Plaintiffs have
5 timely brought this action within the deadlines set by California Government Code § 945.6.

6 **FIRST CAUSE OF ACTION**
7 **Negligence**
8 **(On Behalf of all Plaintiffs Against All Defendants)**

9 46. Plaintiffs reallege and incorporate by reference all the allegations set forth in this
10 Complaint as though fully set forth herein.

11 47. Defendants were the owners, operators, managers, and/or proprietors of the
12 Facility, which is the property of Defendants.

13 48. Having undertaken the planning, construction, operation, design, maintenance,
14 and/or oversight of the Facility as alleged herein, Defendants had a duty to use due care in the
15 same.

16 49. As the owners, operators, managers, and/or proprietors of the Facility, Defendants
17 owed a duty, including to Plaintiffs, to use reasonable care to keep the premises in a reasonably
18 safe condition. This included, among other things, a duty to protect against reasonably
19 foreseeable risks of injury that might result from dangerous conditions at said Facility (i.e. on
20 Defendants' property). As the operators of the Facility, Defendants further had a duty: (1) to
21 take reasonable and ordinary care to minimize the risk of contamination of the Clearwell; (2) to
22 use reasonable care to prevent dangerous conditions that would contaminate the Clearwell; (3)
23 not to create dangerous conditions that would contaminate the Clearwell; and (4) a duty to
24 prevent backflow, among other things.

25 50. Defendants owed the duties alleged herein to Plaintiffs, who purchased and/or
26 consumed water treated and/or stored at the Facility.

27 51. Defendants so negligently and carelessly owned, operated, managed, controlled,
28 supervised, and/or maintained the Facility so as to expose Plaintiffs to an unreasonable risk of

1 injury, thereby breaching the duties owed to Plaintiffs.

2 52. Defendants breached their duty by, among other things: (1) allowing, creating,
3 permitting and/or maintaining a dangerous condition at the Facility; (2) operating the Facility
4 with the Clearwell directly connected to a storm drain(s); (3) failing to protect the Facility and
5 water treatment system at the Facility from backflow contamination; (4) creating a contamination
6 hazard; and (5) allowing the entry of untreated storm drain water and substances into the
7 Clearwell. At all times relevant herein, Defendants planned, constructed, operated, designed,
8 altered, maintained and/or the Facility in a dangerous condition.

9 53. In particular, Defendants negligently, carelessly, recklessly and without due
10 regard to the safety of Plaintiffs, created, permitted, continued, and/or maintained an
11 unreasonably dangerous and unsafe condition at the Facility. As alleged herein, the Facility was
12 in a dangerous condition in that, among other things, both the 10-inch drain and the 48-inch
13 collector pipe at the Clearwell were directly connected to a storm drain collector pipe west of the
14 Clearwell and the 48-inch collector pipe is also directly connected to a series of storm drain
15 collection pipes that collect runoff from LJBWTP. These conditions were dangerous in that they
16 created a foreseeable risk of contamination of the Clearwell and, thus, contamination of the
17 drinking water.

18 54. The risk of contamination of the Clearwell and the compromising of the water
19 distribution system was reasonably foreseeable, if not expected, by a reasonable and prudent
20 person and were reasonably foreseeable and to be expected by Defendants. As further alleged
21 herein, the dangerous condition created a reasonably foreseeable risk of the kind of injury which
22 occurred.

23 55. Defendants had actual or constructive notice of the dangerous conditions at the
24 Facility. As operators of the Facility, Defendants knew or should have known that the Clearwell
25 was directly connected to the storm drain, as alleged herein, and they failed to take corrective
26 action(s). Defendants also knew or should have known that the Facility was subject to backflow
27 contamination.

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1 56. As a result of the dangerous conditions at the Facility, and as further alleged
2 herein, the Clearwell became compromised, resulting in the Water Contamination and Boil
3 Water Advisory, thereby causing damage to Plaintiffs.

4 57. Defendants' failure to comply with their duties of care and their allowing a
5 dangerous condition to persist at the Facility proximately caused damage to Plaintiffs. The
6 negligence of Defendants' was a substantial factor causing the damages suffered by Plaintiffs.

7 58. Defendants placed the property in a dangerous condition and had other means
8 available to take alternative action that would not have created the dangerous conditions. In
9 addition, Defendants had sufficient time prior to the injuries alleged herein to take measures to
10 protect against the dangerous condition and/or correct the dangerous condition. Defendants,
11 however, did not take any measures to protect against the dangerous condition at the Facility or
12 correct the dangerous conditions. Alternatively, a negligent or wrongful act or omission of an
13 employee of the City of Poway, within the scope of his or her employment, created the
14 dangerous condition.

15 59. Due to the Defendants' conduct, the Facility was in a dangerous condition at the
16 time of the injuries alleged herein.

17 60. As a direct, proximate, and substantial result of Defendants' negligence, Food
18 Facility Plaintiffs suffered damages and injuries including, but not limited to, property damage,
19 destruction of and/or damage to real and personal property, loss of income, restoration costs,
20 loss of earning capacity, loss of goodwill, loss of use, benefit, goodwill and diminution in value
21 and/or enjoyment of such property, loss of profits, increased expenses, economic damages,
22 mental pain and suffering, worry, emotional distress, anguish, anxiety, nervousness and costs
23 associated with clean-up and reopening, among other things. As alleged herein, Food Facility
24 Plaintiffs lost the use and enjoyment of their property and incurred expenses as a consequence of
25 that loss and the Water Contamination.

26 61. As a direct, legal, proximate and substantial result of Defendants' negligence,
27 Plaintiff Ashli Demnianiuk suffered damages and injuries, including but not limited to the
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1 following: (1) physical injury; (2) medical expenses; (3) loss of income; (4) loss of earning
2 capacity; (5) emotional distress; (6) mental pain and suffering including worry, anguish, anxiety
3 and nervousness; and/or (7) annoyance, discomfort and inconvenience, among other things.

4 62. As further alleged herein, Plaintiffs have therefore suffered damages in an amount
5 to be proven at trial, but believed to be above this Court's jurisdictional minimum.

6 63. The injuries sustained by Plaintiffs were proximately caused by the dangerous
7 condition alleged herein.

8 **A. Negligence Per Se: Defendants' Violations of State Regulations**

9 64. Through the acts, omissions, and conduct alleged herein, Defendants have
10 violated multiple California laws, statutes, ordinances, safety regulations and/or enactments,
11 including but not limited to: (1) California Health and Safety Code, section 116555(a)(2); (2)
12 California Code of Regulations, Title 22, section 64585(a)(4); (3) California Code of
13 Regulations, Title 17, Section 7584; and (4) California Water Code section 13350.

14 65. California Code of Regulations, Title 22, section 64585(a)(4) requires that each
15 distribution reservoir "not be designed, constructed, or used for any activity that creates a
16 contamination hazard." As alleged herein, the direct connections between the Clearwell and
17 storm drain(s) created a contamination hazard.

18 66. California Code of Regulations, Title 17, section 7584 provides that a "water
19 supplier shall protect the public water supply from contamination by implementation of a cross-
20 connection control program." This section further requires that the water suppliers implement a
21 control program to prevent backflow that includes the following elements (1) the adoption of
22 operating rules or ordinances to implement the cross-connection program; (2) the conducting of
23 surveys to identify water user premises where cross-connections are likely to occur; (3) the
24 provisions of backflow protection by the water user at the user's connection or within the user's
25 premises or both; (4) the provision of at least one person trained in cross-connection control to
26 carry out the cross-connection program; (5) the establishment of a procedure or system for
27 testing backflow preventers, and (6) the maintenance of records of locations tests, and repairs of
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1 backflow preventers.

2 67. California Health and Safety Code, section 116555(a)(2) provides that, among
3 other things, owners of a public water system must ensure that the system “Will not be subject to
4 backflow under normal operating conditions.” As alleged herein, the Facility was subject to
5 backflow under normal operating conditions.

6 68. California Water Code section 13350(b) provides that “A person who, without
7 regard to intent or negligence, causes or permits a hazardous substance to be discharged in or on
8 any of the waters of the State, except in accordance with waste discharge requirements or other
9 provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or
10 (e).”³

11 69. Defendants’ violations of California laws, regulations and statutes, as alleged
12 herein, were a substantial factor in bringing about the harm suffered by Plaintiffs.

13 70. The harm and/or injury that resulted from Defendants’ conduct was the nature of
14 which the laws, statutes, or regulations (including but not limited to (1) California Health and
15 Safety Code, section 116555(a)(2); (2) California Code of Regulations, Title 22, section
16 64585(a)(4); (3) California Code of Regulations, Title 17, Section 7584; and (4) California Water
17 Code section 13350) were designed to prevent.

18 71. Plaintiffs, who suffered injury as a result of Defendants’ conduct, were of the
19 class of persons for whose protection the above laws and regulations were adopted.

20 **SECOND CAUSE OF ACTION**
21 **Strict Liability for Ultrahazardous Activity**
22 **(On Behalf of All Plaintiffs Against All Defendants)**

23 72. Plaintiffs reallege and incorporate by reference all the allegations set forth in this
24 Complaint as though fully set forth herein.

25 73. Defendants were engaged in an ultrahazardous activity. Among other things,

26 ³ Subsection (d) provides “The court may impose civil liability either on a daily basis or on a per gallon basis, but not
27 both. Subsection (e) provides “The state board or a regional board may impose civil liability administratively pursuant
28 to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not
both.” (Cal. Water Code § 13350.)

1 Defendants were engaged in the handling, storing, treatment and containment of storm drain
2 substances, untreated water and other substances containing unsafe materials and/or waterborne
3 illnesses. Defendants were also engaged in the treatment of water and the provision of treated
4 drinking water.

5 74. Defendants' elected to keep a dangerous condition at their Facility such that their
6 treated water in the Clearwell was directly connected to storm drains. Defendants' operation of
7 the Facility with the Clearwell, containing treated drinking water, directly connected to certain
8 storm drain pipes was an ultrahazardous activity in that it created health risks, was unsanitary,
9 created the potential to spread waterborne illnesses, compromise the City's distribution system,
10 had a potential to cause property damage and was unsafe.

11 75. As a direct, proximate, and substantial result of Defendants' ultrahazardous
12 activity, Food Facility Plaintiffs suffered damages and injuries including, but not limited to,
13 property damage, destruction of and/or damage to real and personal property, loss of income,
14 restoration costs, loss of earning capacity, loss of goodwill, loss of use, benefit, goodwill and
15 diminution in value and/or enjoyment of such property, loss of profits, increased expenses,
16 economic damages, mental pain and suffering, worry, emotional distress, anguish, anxiety,
17 nervousness and costs associated with clean-up and reopening, among other things.

18 76. As a direct, legal, proximate and substantial result of Defendants' ultrahazardous
19 activity, Plaintiff Ashli Demnianiuk suffered damages and injuries, including but not limited to
20 the following: (1) physical injury; (2) medical expenses; (3) loss of income; (4) loss of earning
21 capacity; (5) emotional distress; (6) mental pain and suffering including worry, anguish, anxiety
22 and nervousness; and/or (7) annoyance, discomfort and inconvenience, among other things.

23 77. As further alleged herein, Plaintiffs have therefore suffered damages in an amount
24 to be proven at trial, but believed to be above this Court's jurisdictional minimum.

25 78. The harm suffered by Plaintiffs was the kind of harm that would be anticipated as
26 a result of the risk created by Defendants' conduct and its operation of the Facility in a dangerous
27 condition.

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1 79. Defendants' ultrahazardous activities were a substantial factor in causing the harm
2 to Plaintiffs.

3 **THIRD CAUSE OF ACTION**

4 **Trespass**

4 **(On Behalf of All Food Facility Plaintiffs Against All Defendants)**

5 80. Plaintiffs hereby reallege and incorporate by reference all the allegations set forth
6 in this Complaint as though fully set forth herein.

7 81. At all times relevant herein, Food Facility Plaintiffs were the owners, tenants,
8 and/or lawful occupiers of property damaged by the Water Contamination and Boil Water
9 Advisory.

10 82. Defendants negligently and/or intentionally allowed the Clearwell to become
11 contaminated with storm drain water. Defendants then distributed this Contaminated Water to
12 properties occupied by residents and businesses in the City of Poway, including Food Facility
13 Plaintiffs, and by so doing, entered their property. This was a substantial factor that resulted in
14 Food Facility Plaintiffs' harm.

15 83. Food Facility Plaintiffs did not grant permission for Defendants to cause the
16 Contaminated Water to enter their property, the Boil Water Advisory or for Defendants to enter
17 their property in the manner it did; and/or Defendants exceeded any permission.

18 84. Defendants' entry onto Food Facility Plaintiffs' properties was unauthorized and
19 tangible, and interfered with Plaintiffs' exclusive possessory rights.

20 85. As a direct, proximate and substantial cause of the trespass, Food Facility
21 Plaintiffs have suffered and will continue to suffer damages, including but not limited to property
22 damage, discomfort, annoyance and inconvenience in an amount to be proven at trial.

23 86. Defendants' conduct was a substantial fact in causing Food Facility Plaintiffs'
24 harm.

25 **FOURTH CAUSE OF ACTION**

26 **Public Nuisance**

26 **(On Behalf of All Food Facility Plaintiffs Against All Defendants)**

1 87. Plaintiffs reallege and incorporate by reference all the allegations set forth in this
2 Complaint as though fully set forth herein.

3 88. Defendants' actions, conduct, omissions, negligence, trespass and failure to act
4 resulted in the Water Contamination, dangerous conditions at the Facility, the Boil Water
5 Advisory alleged herein, a health hazard and sanitation issue, and a foreseeable obstruction to the
6 free use of Food Facility Plaintiffs' properties. In addition, Defendants' actions, conduct,
7 omissions, negligence, trespass and failure to act also invaded their right to use the property of
8 Food Facility Plaintiffs and interfered with their enjoyment of said property, causing them
9 unreasonable harm and substantial actual damages constituting a nuisance.

10 89. Defendants' conduct created a condition and/or permitted a condition to exist,
11 including but not limited to the direct connection of the Clearwell and certain storm drain pipes
12 at the Facility, that was harmful to health and was dangerous in that it was unsanitary and created
13 a risk of illness.

14 90. Defendants' conduct, as alleged herein, resulted in the forced closures of food
15 facilities in the City of Poway. As a result, Defendants' conduct obstructed the free use of
16 property and interfered with the comfortable enjoyment of life or property by Food Facility
17 Plaintiffs.

18 91. Food Facility Plaintiffs did not consent to Defendants' conduct, as alleged herein.

19 92. Defendants' conduct, the Water Contamination and the dangerous conditions at
20 the Facility, which resulted in the Boil Water Advisory, affected a substantial number of people
21 in the City of Poway at the same time.

22 93. An ordinary person would be reasonably annoyed or distributed by Defendants'
23 conduct, the Water Contamination and the dangerous condition, as well as the Boil Water
24 Advisory that resulted therefrom.

25 94. The serious nature of the harm, including but not limited to the health risks,
26 sanitation issues, Boil Water Advisory, and forced closure of food facilities, outweighs the social
27 utility of Defendants' conduct.

1 95. Food Facility Plaintiffs suffered harm that was different from the type of harm
2 suffered by the general public. Among other things, Food Facility Plaintiffs were forced to close
3 their food facilities as a result of Defendants' conduct and the resulting Water Contamination and
4 Boil Water Advisory.

5 96. Defendants' conduct, as alleged herein, was a substantial fact in causing the harm
6 to Food Facility Plaintiffs.

7 **FIFTH CAUSE OF ACTION**
8 **Private Nuisance**
9 **(On Behalf of All Food Facility Plaintiffs)**

10 97. Plaintiffs reallege and incorporate by reference all the allegations set forth in this
11 Complaint as though fully set forth herein.

12 98. Food Facility Plaintiffs owned, leased, controlled, occupied or otherwise
13 rightfully possessed property in the City of Poway at which they operated food facilities.

14 99. Defendants' actions, conduct, omissions, negligence, trespass and failure to act
15 resulted in the Water Contamination, the dangerous conditions at the Facility, the Boil Water
16 Advisory alleged herein, a health hazard and sanitation issue, and a foreseeable obstruction to the
17 free use of Food Facility Plaintiffs' properties. In addition, Defendants' actions, conduct,
18 omissions, negligence, trespass and failure to act also obstructed the free use of the property of
19 Food Facility Plaintiffs and interfered with their comfortable enjoyment of said property, causing
20 them unreasonable harm and substantial actual damages constituting a nuisance.

21 100. Defendants' conduct created a condition and/or permitted a condition to exist,
22 including but not limited to the direct connection of the Clearwell and certain storm drain pipes
23 at the Facility, that was harmful to health and was dangerous in that it was unsanitary and created
24 a risk of illness.

25 101. Defendants' conduct, as alleged herein, resulted in the forced closures of food
26 facilities in the City of Poway, including by Food Facility Plaintiffs. As a result, Defendants'
27 conduct substantially interfered with Food Facility Plaintiffs' use and enjoyment of their
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1 property.

2 102. Food Facility Plaintiffs did not consent to Defendants' conduct, as alleged herein.

3 103. An ordinary person would be reasonably annoyed or distributed by Defendants'
4 conduct, the Water Contamination and the dangerous condition, as well as the Boil Water
5 Advisory that resulted therefrom.

6 104. As further alleged herein, Food Facility Plaintiffs were harmed by Defendants'
7 conduct. Among other things, Food Facility Plaintiffs suffered loss of use and damage to their
8 property. Defendants' conduct, as alleged herein, was a substantial factor in causing the harm to
9 Plaintiffs.

10 105. The serious nature of the harm, including but not limited to the health risks,
11 sanitation issues, Boil Water Advisory, and forced closure of food facilities, outweighs the public
12 benefit of Defendants' conduct.

13 **SIXTH CAUSE OF ACTION**
14 **Failure to Perform Mandatory Duty – Violation of Govt. Code § 815.6**
15 **(On Behalf of All Plaintiffs Against All Defendants)**

16 106. Plaintiffs reallege and incorporate by reference all the allegations set forth in this
17 Complaint as though fully set forth herein.

18 107. Defendant City of Poway is a public entity organized and existing under the laws
19 of the State of California.

20 108. At all times relevant to this action, the employees of the City of Poway were
21 acting within the scope of their employment by the City of Poway.

22 109. Pursuant to California Government Code section 815.6, Defendants, and each of
23 them, including DOES 1 through 100, are liable for injury proximately caused by their failure to
24 discharge a mandatory duty.

25 110. Defendants, and each of them, including DOES 1 through 100, have a mandatory
26 duty to ensure that the City's water system is not subject to backflow under normal operating
27 conditions.

28 111. This mandatory duty is imposed by enactments, as defined in California

1 Government Code section 810.6, promulgated to lawmaking authority delegated by the
2 Legislature to, among others, the State Water Resources Control Board, and the State
3 Department of Public Health.

4 112. The enactments promulgated by the legislature, the State Water Resources
5 Control Board and the State Department of Public Health (among others), and as stated herein,
6 specifically, explicitly and affirmatively require that Defendants implement a control program to
7 prevent backflow, establish procedure for testing backflow, conduct surveys regarding cross-
8 connections and ensure that the Facility would not be subject to backflow, among other things.

9 113. California Health and Safety Code, section 116555(a)(2) provides that, among
10 other things, owners of a public water system must ensure that the system “Will not be subject to
11 backflow under normal operating conditions.”

12 114. California Code of Regulations, Title 17, section 7584 provides that a “water
13 supplier shall protect the public water supply from contamination by implementation of a cross-
14 connection control program.” This section further requires that the water suppliers implement a
15 control program to prevent backflow that includes the following elements (1) the adoption of
16 operating rules or ordinances to implement the cross-connection program; (2) the conducting of
17 surveys to identify water user premises where cross-connections are likely to occur; (3) the
18 provisions of backflow protection by the water user at the user’s connection or within the user’s
19 premises or both; (4) the provision of at least one person trained in cross-connection control to
20 carry out the cross-connection program; (5) the establishment of a procedure or system for
21 testing backflow preventers, and (6) the maintenance of records of locations tests, and repairs of
22 backflow preventers.

23 115. California Code of Regulations, Title 22 section 64585(a)(4) provides that no
24 distribution reservoir shall be “designed, constructed or used for any activity that creates a
25 contamination hazard.”

26 116. Defendants violated CCR Title 17, Section 7584, CHSC Section 116555(a)(2) and
27 CCR Title 22, Section 64585(a)(4). Defendants failed to discharge the mandatory duties
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1 identified herein by among other things failing to protect the water system from backflow
2 contamination and allowing for the Water Contamination of the Clearwell, as alleged herein.
3 Further, Defendants failed to make reasonable efforts to perform their duties.

4 117. As a direct and proximate result of Defendants' acts and omissions, as alleged
5 herein, Plaintiffs were harmed and have suffered foreseeable injuries and damages of the
6 particular kind sought to be prevented by the enactments discussed, and in an amount to be
7 proven at trial, but believed to be above this Court's jurisdictional minimum. Defendants' failure
8 to perform its duties was a substantial factor in causing the harm to Plaintiffs.

9 118. As a direct, proximate, and substantial result of Defendants' breaches of their
10 duties, Food Facility Plaintiffs suffered injuries including, but not limited to, property damage,
11 destruction of and/or damage to real and personal property, loss of income, restoration costs,
12 loss of earning capacity, loss of goodwill, loss of use, loss of enjoyment of their property,
13 benefit, goodwill and diminution in value and/or enjoyment of such property, loss of profits,
14 increased expenses, economic damages, mental pain and suffering, worry, emotional distress,
15 anguish, anxiety, nervousness and costs associated with clean-up and reopening, among other
16 things.

17 119. As a direct, legal, proximate and substantial result of Defendants' breaches of
18 their duties, Plaintiff Ashli Demnianiuk suffered damages and injuries, including but not limited
19 to the following: (1) physical injury; (2) medical expenses; (3) loss of income; (4) loss of earning
20 capacity; (5) emotional distress; (6) mental pain and suffering including worry, anguish, anxiety
21 and nervousness; and/or (7) annoyance, discomfort and inconvenience, among other things.

22 **SEVENTH CAUSE OF ACTION**

23 **Inverse Condemnation**

24 **(On Behalf of All Food Facility Plaintiffs Against Defendant City of Poway and DOES 1
through 50)**

25 120. Plaintiffs hereby reallege and incorporate the allegations set forth in this Complaint
26 as if fully set forth herein.

27 121. Article I, Section 19 of the California Constitution states in relevant part, "private
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1 property may be taken or damaged for public use only when just compensation, ascertained by a
2 jury unless waived, has first been paid to, or into court for, the owner.”

3 122. California Government Code § 905.1 provides that no claim is required to be filed to
4 maintain an action against a public entity for taking of, or damage to, private property, pursuant to
5 Section 19, Article I of the California Constitution.

6 123. At all times relevant hereto, Defendant City of Poway and DOES 1 through 50,
7 inclusive, was a public entity that owned, controlled, maintained, operated, inspected, funded,
8 planned, mapped, surveyed, engineered, constructed, designed, improved, monitored, permitted,
9 and/or operated the Facility.

10 124. At all times relevant hereto, Defendant City of Poway and DOES 1 through 50
11 operated a reservoir and water treatment facility at or near 14467 Lake Poway Road, Poway, CA
12 92064, which includes but is not limited to Lake Poway and the Lester J. Berglund Water Treatment
13 Plant (the “Facility”). The Facility was and is a public improvement deliberately owned, controlled,
14 maintained, operated, funded, planned, designed, altered, and implemented by Defendant City of
15 Poway and DOES 1 through 50, inclusive, for the purposes of providing clean water for public use
16 in the City of Poway.

17 125. Defendant City of Poway and DOES 1 through 50, inclusive, deliberately controlled,
18 owned, maintained, operated, planned, altered, approved and/or supervised the Facility with actual
19 or constructive knowledge of the dangerous condition at the Facility, including but not limited to the
20 direct connection between the Clearwell and a storm drain, and the high risk of contamination of the
21 Clearwell, thereby causing the Water Contamination and Boil Water Advisory which directly,
22 proximately, and substantially caused damage to Plaintiffs’ possessory interests in their property
23 and/or directly and legally resulted in the taking of Plaintiffs’ properties.

24 126. At all times relevant herein, Food Facility Plaintiffs possessed, leased, owned, and/or
25 had an interest in certain property in the City of Poway connected to and relying on the City of
26 Poway’s water distribution system.

27 127. The foregoing occurrence directly and legally resulted in an unlawful “taking” and/or
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1 damage of property in accordance with Food Facility Plaintiffs’ damages as alleged herein. The
2 conduct of City of Poway and DOES 1 through 50, inclusive, as alleged herein, resulted in the
3 taking of and/or damage of the private property of Food Facility Plaintiffs’ members.

4 128. The “taking” and/or damage of property as alleged herein, was substantially caused
5 by Defendant City of Poway and DOES 1 through 50, inclusive, and deprived Plaintiffs’ members
6 of their use and enjoyment of their property, causing damage. As a direct result of the “taking”
7 and/or damage of Food Facility Plaintiffs’ properties, Defendant City of Poway and Does 1 through
8 50, inclusive, caused damage to Food Facility Plaintiffs’ properties for which they have not received
9 just compensation.

10 129. The conduct as described herein constitutes damage to a property interest protected
11 by Article I, § 19 of the California Constitution, which entitles Food Facility Plaintiffs to just
12 compensation according to proof as alleged herein for all damages incurred.

13 130. The acts and/or omissions of Defendants’ constitute a physical invasion of Food
14 Facility Plaintiffs’ real property for public use, placing a burden on each Food Facility Plaintiffs’
15 properties that is direct, substantial, and peculiar to the property itself.

16 131. Under and pursuant to California Code of Civil Procedure section 1036, Plaintiffs are
17 entitled to recover all litigation costs and expenses with regard to the compensation for damage of
18 properties, including but not limited to attorneys’ fees, expert fees, consulting fees, and litigation
19 costs.

20 **SEVENTH CAUSE OF ACTION**
21 **Strict Products Liability – Manufacturing Defect**
22 **(On Behalf of All Plaintiffs Against All Defendants)**

23 132. Plaintiffs hereby reallege and incorporate the allegations set forth in this Complaint
24 as if fully set forth herein.

25 133. At all times herein mentioned, Defendants distributed, manufactured, treated, and/or
26 sold water to customers in the City of Poway. At all times herein mentioned, Defendants’ further
27 distributed, manufactured, and/or sold the Contaminated Water alleged herein to customers,
28 individuals, residents and businesses in the City of Poway, including Plaintiffs.

1 134. Defendants manufactured, distributed and/or sold the Contaminated Water and water
2 to the public, knowing it would be purchased and used without testing and inspection for defects by
3 the general public, including Plaintiffs.

4 135. The Contaminated Water was not safe, as an ordinary consumer would have
5 expected it to be when used or misused in an intended and reasonably foreseeable way. The
6 Contaminated Water distributed by Defendants was used in a manner that was reasonably
7 foreseeable by Defendants. Intended and reasonably foreseeable use of water distributed by
8 Defendants, including the Contaminated Water, exposed users to dangerous risks of illness and
9 property damage, among other things.

10 136. The risks associated with the Contaminated Water outweigh significantly any
11 potential benefits.

12 137. When the Contaminated Water left the Facility and Defendants' control, it differed
13 from Defendants' intended result. Among other things, the Contaminated Water was unsafe when it
14 left the Facility and Defendants' control. As further alleged herein, the water treated and/or
15 distributed by Defendants' contained a defect. Furthermore, Defendants had control over the
16 manufacturing and distribution process.

17 138. Plaintiffs were harmed by the water and/or substances distributed, manufactured and
18 sold by Defendants.

19 139. The Contaminated Water's defects, including but not limited to its potential to cause
20 illness and property damage, was a substantial factor in causing Plaintiffs' harm.

21 140. As a direct and proximate result of the aforementioned defects of the water, Plaintiffs
22 sustained injuries and damages as set forth herein, in an amount to be proven at trial, and believed
23 to be in excess of this Court's jurisdictional minimum.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of them, as
26 follows:

- 27 1. That the Court enter judgment against Defendants for each of the causes of
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action alleged against them;

2. That the Court enter an order directing Defendants to comply with California law, including but not limited to CCR Title 17, Section 7584, CHSC Section 116555(a)(2) and CCR Title 22, Section 64585(a)(4);
3. For all compensatory, general and special damages according to proof;
4. Loss of the use, benefit, goodwill and enjoyment of the real and personal property of Plaintiffs;
5. Repair, depreciation, and/or replacement of damaged, destroyed, and/or lost personal and/or real property;
6. Loss of wages, earning capacity and/or profits or proceeds and/or any related expenses, including but not limited to expenses associated with reopening;
7. For all recoverable compensatory, consequential, and/or statutory damages in the maximum amount permitted by law or other equitable monetary relief, plus pre and post-judgment interest thereon;
8. For all medical expenses;
9. For other equitable relief;
10. For prejudgment interest as provided by law;
11. For costs of suit incurred herein;
12. For payment of reasonable attorneys' fees and costs as permitted by law, including but not limited to California Code of Civil Procedure section 1021.5, and other statutes as may be applicable;
13. Attorneys' fees, expert fees, consultant fees and litigation costs and expenses, as allowed under California Code of Civil Procedure § 1021.9;
14. General damages for fear, worry and anxiety;
15. For injury for mental and emotional stress according to proof;
16. For all such other and further relief as the Court deems just and proper.

JURY DEMAND

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Plaintiffs hereby demand trial by jury on each and every triable issue.

Date: November 18, 2020

Respectfully submitted,

Natasha N. Serino

Natasha N. Serino, Esq.
SCHACK LAW GROUP
16870 W. Bernardo Drive, #400
San Diego, CA 92128
(858) 485-6535 (858) 485-0608 fax
Natashaserino@schacklawgroup.com