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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

COUNTY OF SAN MATEO, TOWN OF ATHERTON, CITY OF BRISBANE, TOWN OF COLMA, CITY OF EAST PALO ALTO, CITY OF FOSTER CITY, TOWN OF HILLSBOROUGH, CITY OF MENLO PARK, CITY OF MILLBRAE, CITY OF PACIFICA, TOWN OF PORTOLA VALLEY, CITY OF REDWOOD CITY, CITY OF SAN BRUNO, CITY OF SAN CARLOS, CITY OF SAN MATEO, and TOWN OF WOODSIDE, both individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs,

vs.

MONSANTO COMPANY, SOLUTIA, INC., PHARMACIA, LLC, and DOES 1-100,

Defendants.

Case No.: 22CIV1667

SECOND AMENDED COMPLAINT FOR:

1. REPRESENTATIVE PUBLIC NUISANCE ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA;
2. NON-REPRESENTATIVE PUBLIC NUISANCE;
3. PRIVATE NUISANCE; AND
4. TRESPASS.

JURY TRIAL DEMANDED

Judge: Hon. V. Raymond Swope

Department: Dept. 23

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I. INTRODUCTION

1. Plaintiffs are the People of the State of California (the "People"), the County of San Mateo (the "County"), and the following municipalities in the County's geographic boundaries: the Town of Atherton, the City of Brisbane, Town of Colma, the City of East Palo Alto, the City of Foster City, Town of Hillsborough, the City of Menlo Park, the City of Millbrae, the City of Pacifica, the Town of Portola Valley, the City of Redwood City, the City of San Bruno, the City of San Carlos, the City of San Mateo, and the Town of Woodside (collectively, the "Municipalities," and together with the People and the County, "Plaintiffs").

2. The County and the Municipalities represent the People under California Code of Civil Procedure section 731.

3. Plaintiffs sue Defendants Monsanto Company ("Current Monsanto"), Solutia, Inc. ("Solutia"), Pharmacia LLC ("Pharmacia"), and Does 1–100. Current Monsanto, Solutia, and Pharmacia (collectively, "Defendants") have succeeded to or have agreed to bear the liabilities of an earlier Monsanto entity that also was known as the Monsanto Company ("Original Monsanto," or "Monsanto").

4. This lawsuit arises out of the contamination of the County, the Municipalities, and the San Francisco Bay ("Bay") by polychlorinated biphenyls ("PCBs"), a group of human-made chemical pollutants. PCBs are ubiquitous contaminants that are detected in human, animal, and plant tissue around the world. PCBs are dangerous to human health, animal health, and the environment.

5. Monsanto made, promoted, marketed, distributed, and sold PCBs and products containing PCBs for a wide range of commercial, household, and industrial uses starting in the 1920s and ending in 1977 after Congress banned PCBs in the Toxic Substances Control Act of 1976.

a. During this period, Monsanto made about 1.4 billion pounds of PCBs.

b. Monsanto made about 99% of the PCBs ever used in the United States.

6. Monsanto promoted, marketed, distributed, and sold PCBs and/or products containing PCBs in and/or near the County and the Municipalities. Third parties also sold PCBs

and/or products containing PCBs in and/or near the County and the Municipalities. PCBs made by Monsanto have been disposed and/or released into the environment in and near the County and the Municipalities.

7. During the period it made, promoted, marketed, distributed, and sold PCBs, Monsanto knew that PCBs were dangerous to human health, animal health, and the environment. Monsanto knew that PCBs' physical attributes magnified those risks and meant they would persist for many decades after PCBs were disposed and/or released into the environment. Monsanto knew that PCBs were being disposed and/or released into the environment (including in and near the County, the Municipalities, and the Bay) in massive quantities. Monsanto knew its PCBs were creating a widespread environmental and public health problem that has injured, injures, and will continue to injure the Plaintiffs.

8. Monsanto disseminated disinformation about the dangers of PCBs. Monsanto's internal communications and public statements were severely inconsistent: even as Monsanto internally acknowledged the pervasive risks posed by its large-scale manufacture, distribution, and sale of PCBs, Monsanto minimized or denied those risks in its public statements. For example, Monsanto provided false and/or misleading information to federal, state, and local government authorities that were investigating PCB risks. Monsanto provided false and/or misleading information and improper instructions about PCBs, including disposal instructions, to its customers, distributors, and salespeople.

9. Monsanto's wrongful conduct was designed to maximize the company's profits at the expense of its customers, workers exposed to PCBs, and the public at large.

10. PCBs have contaminated the County's and the Municipalities' buildings, roadways, infrastructure, inland waters, soils, flora, and fauna.

11. PCBs also have contaminated the waters, tidal lands, submerged lands, flora, and fauna of the Bay. PCB contamination of the Bay includes areas within the County's geographic boundaries, and areas where the County and certain of the Municipalities hold tidelands or submerged lands.

12. The PCB contamination problems in the County (including the Municipalities) and

the Bay are interconnected. Perhaps most significantly, several municipal stormwater systems in the County—including those operated by the Municipalities—collect stormwater and dry-weather runoff. PCB-laden water and sediment are carried into and collected in the stormwater systems. Water and sediment containing PCBs are discharged from these stormwater systems into the Bay, exacerbating the Bay's PCB contamination. Stormwater and dry-weather runoff, as well as sediment, also are discharged from the County and the Municipalities into the Bay through pathways other than stormwater systems.

13. To prevent further PCB contamination of the Bay, discharges of PCBs into the Bay are limited by stringent regulations. To comply, the County and the Municipalities are required to drastically reduce the PCBs discharged from the County (including the Municipalities in it) to the Bay through stormwater and dry-weather runoff.

14. The County and the Municipalities have incurred and will incur substantial costs to comply with these regulations that reduce the harms of PCB contamination. The County and the Municipalities will continue incurring these costs for at least the next several decades.

15. Monsanto foresaw, or could have foreseen, that its PCBs and PCB-containing products would pollute the Bay Area including the County, and that PCB contamination would require governments to adopt regulations to curb PCB discharges into waterways like the Bay. Monsanto foresaw, or could have foreseen, that these regulatory requirements would be costly for local governments like Plaintiffs.

16. Defendants, not taxpayers, should bear these costs and Plaintiffs' other damages.

II. PARTIES

A. Plaintiffs

17. The County is a political subdivision of the State of California. It is located in the San Francisco Bay Area, immediately south of the City and County of San Francisco. The County seat is in Redwood City. The County's geographic boundaries include a large portion of the Bay.

18. Each of the Municipalities is a political subdivision of the State of California. Each of the Municipalities is an incorporated city or town within the County's geographic boundaries.

19. The People bring suit by and through the County and the Municipalities under

California Code of Civil Procedure section 731.

B. Defendants

20. Current Monsanto is a Delaware corporation with its principal place of business in Missouri. It is a wholly owned subsidiary of Bayer AG.

21. Solutia is a Delaware corporation with its principal place of business in Missouri. It is a wholly owned subsidiary of Eastman Chemical Company.

22. Pharmacia is a Delaware limited liability company with its principal place of business in New Jersey. It is a wholly owned subsidiary of Pfizer Inc.

23. Does 1–100 are currently unknown potential defendants that have succeeded to and/or have agreed to bear the liabilities of Original Monsanto that relate to PCBs, and/or are otherwise liable to the Plaintiffs for the claims and/or injuries alleged in this complaint. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained.

C. Defendants' Liability for Original Monsanto's Acts and Omissions

24. All three Defendants have succeeded to, and/or have agreed to bear, the liabilities of Original Monsanto that relate to PCBs.

25. Beginning in 1997, Original Monsanto underwent a series of several transactions. The effect of these transactions was to spin off Original Monsanto into three entities: Current Monsanto, which took on Original Monsanto's agricultural business; Solutia, which took on the chemical business, and Pharmacia, which took on the pharmaceutical business.

26. Current Monsanto, Solutia, and Pharmacia have entered into various agreements regarding indemnification and the sharing and apportionment of liabilities. These agreements include ones entered when Solutia underwent a Chapter 11 bankruptcy reorganization between 2003 and 2008.

III. JURISDICTION

27. The Superior Court of California for San Mateo County is a court of general jurisdiction and therefore has subject-matter jurisdiction over this action.

28. This court has personal jurisdiction over Defendants because each Defendant maintains substantial contacts with California, and also because they have succeeded to, or have

agreed to bear, the liabilities of Original Monsanto, which maintained substantial contacts with California including the wrongful conduct that gave rise to Plaintiffs' claims.

IV. FACTUAL BACKGROUND

A. Chemical Properties of PCBs

29. PCBs are a group of chlorinated hydrocarbons: organic compounds that consist of carbon, hydrogen, and chlorine atoms. Generally, PCBs are categorized based on the number of chlorine atoms in their chemical structure (i.e., their degree of "chlorination"). PCBs range from a thin liquid to a waxy consistency. There are no known natural sources of PCBs.

30. Although different PCBs exhibit somewhat different physical properties, all PCBs have common properties that make them especially problematic pollutants:

a. PCBs are lipophilic (i.e., tend to be soluble in oils, fats, or lipids).

b. PCBs are highly stable, durable, and resistant to thermal and chemical degradation.

c. Most organisms cannot easily metabolize PCBs.

31. Although all PCBs are resistant to degradation, more heavily chlorinated PCBs tend to be more durable (and therefore more persistent in the environment) than more lightly chlorinated ones. Once PCBs enter living tissue, more heavily chlorinated PCBs tend to have longer half-lives than less heavily chlorinated PCBs.

B. Release and Transport of PCBs

32. PCBs have been released into the environment in many ways. For example:

a. Because Monsanto produced and sold PCBs in massive quantities without adequate warnings and instructions about how they should be properly disposed, PCBs and PCB-containing products were routinely dumped or disposed in landfills, which are not suitable means of disposal. Monsanto knew that PCBs and PCB-containing products were routinely dumped or disposed in landfills, and Monsanto at times advised its customers to dump PCBs or dispose them in landfills. Monsanto did so despite knowing that these were not suitable means of disposal.

b. PCBs entered the environment from accidental spills and leaks of the chemicals, and from accidental spills and leaks of products containing the chemicals. These spills and leaks were exacerbated by Monsanto's failure to provide adequate warnings and instructions. For example, liquid PCBs were frequently used as dielectric (i.e., non-conductive) oil inside electrical transformers. Although electrical transformers were supposed to remain sealed, transformers leaked, PCBs would be spilled from transformers during maintenance, and PCBs also were released when transformers were improperly disposed. Monsanto knew that because of its inadequate warnings and instructions about spills and leaks, and because of its marketing and promotion of PCBs for unsuitable applications where they would inevitably be spilled or leaked, PCBs and products containing the chemicals were being spilled and leaked into the environment in large quantities.

c. Because PCBs are semi-volatile, they routinely vaporized into the air. For example, PCB-containing building materials can vaporize, expose occupants to PCBs through inhalation, and escape buildings. Monsanto knew that because of its marketing, promotion, and sale of PCBs for unsuitable applications where the chemicals could readily volatilize, PCBs were being released into the environment through volatilization.

d. PCBs also entered the environment because of deliberate application of PCBs. For example, Monsanto at times encouraged customers to use PCBs as organic solvents or extenders for pesticides that were sprayed onto crops.

33. PCBs continue to be released into the environment today. Among other sources, PCBs are released from contaminated sites, improperly disposed PCB-laden waste, PCB-containing products that are still in service, landfills, and soils and sediment that contain PCBs.

34. Once released into the environment, PCBs cycle in the environment between air, water, and soil.

35. These principles hold true for areas within the County and the Municipalities. PCBs

were released into the environment within and near the County and the Municipalities from a wide range of sources. These sources include, but are not limited to, building and construction materials like caulk, roadway paint, dielectric fluid in electrical transformers, and fluorescent light ballasts. Once released, PCBs have cycled and transported within and between land, air, and water in and near the County and the Municipalities.

C. Risks to the Environment

36. PCBs create numerous environmental risks.

37. For example, PCBs can enter aquatic fauna such as zooplankton and bottom-grazing fish when they eat materials containing PCBs. These fauna readily absorb PCBs but do not easily metabolize them. In part because PCBs are lipophilic, they tend to "bioaccumulate," or build up, in living tissue.

38. PCBs, like many other persistent pollutants, are known to "biomagnify" at higher levels of the food chain. Over its lifespan, a predator organism like a bird or carnivorous fish will eat numerous smaller organisms containing PCBs, and the PCBs will build up in that predator organism's tissue.

39. PCBs have been shown to be toxic, cause cancer, and cause numerous other health harms in many non-human living organisms.

40. Some scientific studies—including studies of Bay ecosystems—have found that PCBs are especially harmful to birds that eat fish and/or other aquatic organisms contaminated with PCBs. In such birds, PCBs can cause infertility, developmental problems, eggshell thinning, and other harms.

41. PCB exposure has been linked to myriad adverse effects in various other non-human animals.

D. Risks to Human Health

42. Humans can be exposed to PCBs through ingestion, inhalation, and dermal contact.

43. Today, the most common way people are exposed to PCBs is through ingestion of contaminated fish or shellfish.

44. The principles of bioaccumulation and biomagnification apply to humans. Once

PCBs enter the human body, they tend to build up in skin, fatty tissue, and the liver.

45. PCB contamination is one of the main reasons why federal, state, and local governments often advise Americans to avoid eating large quantities of certain types of fish, and fish and/or shellfish from certain PCB-impacted waters.

46. PCBs are acutely toxic.

47. Chronic exposure to PCBs is known or suspected to cause a range of cancers including non-Hodgkin's lymphoma, breast cancer, liver cancer, gallbladder cancer, gastrointestinal cancers, pancreatic cancer, and skin cancer.

48. Chronic exposure to PCBs is known or suspected to cause numerous non-cancer health effects including cardiovascular, dermal, endocrine, gastrointestinal, hepatic (liver), immune, neonatal, neurological, ocular, and reproductive harm.

E. Monsanto's PCB Manufacturing and Sales – In General

49. The Swann Chemical Company ("Swann") started manufacturing PCBs in 1929. Monsanto purchased Swann in or around 1935.

50. Monsanto's manufacturing of PCBs peaked in 1970, and the company continued manufacturing PCBs until 1977.

51. Monsanto made about 1.4 billion pounds of PCBs.

52. Monsanto made about 99% of the PCBs ever used in the United States.

53. Most of Monsanto's PCB sales were under the trade name "Aroclor." Monsanto also sold PCBs—both alone and mixed with other chemicals—under other trade names like Pydraul, a line of hydraulic fluids.

54. Monsanto categorized many of its Aroclor products (in plural form, "Aroclors") according to their degree of chlorination. For example, Aroclor 1248 was approximately 48% chlorine by mass, while Aroclor 1254 was approximately 54% chlorine.

55. Monsanto aggressively and successfully promoted and marketed Aroclors and other PCBs and PCB-containing products. Monsanto successfully recommended to its customers that PCBs be incorporated into a breathtakingly wide range of commercial, household, and industrial products.

F. Monsanto's Knowledge of PCB Risks and Actions to Downplay Them

56. The allegations in this section are illustrative and represent only a small portion of Monsanto's long history of misconduct that undergirds the Plaintiffs' claims.

57. Monsanto learned about PCB risks early. Swann observed during the early 1930s that workers at its PCB manufacturing facility often developed dermatitis (skin irritation). Swann nevertheless marketed PCBs for a wide array of commercial, household, and industrial uses.

58. In 1936, the Halowax Corporation reported severe chloracne (an acne-like skin irritation that can be caused by exposure to PCBs) among many of its workers using chlorinated biphenyls. Also, three of Halowax's workers died with symptoms of jaundice. Autopsies showed that two of the three decedents had severe liver damage. Halowax subsequently commissioned a study. Its author warned that PCBs could cause "systemic" toxic effects. Monsanto closely followed the Halowax workers' deaths and the study.

59. By 1944, Monsanto had started to advise its salespeople that PCBs were toxic and could cause liver damage.

60. In the mid-1950s, Monsanto commissioned a study by researchers at the University of Cincinnati College of Medicine that exposed animals to Aroclor vapors for extended periods of time. This study raised concerns about PCBs' carcinogenicity.

61. Monsanto nevertheless continued to sell PCBs and PCB-containing products without adequate warnings, and continued to recommend their use in a wide range of commercial, household, and industrial applications. Even worse, in and/or around the 1950s, Monsanto promoted using Aroclors as a solvent or extender for powdered DDT (dichloro-diphenyl-trichloroethane, the organochloride Rachel Carson wrote about in *Silent Spring*) and other pesticides to be applied to crops.

62. In September 1955, Monsanto's medical director, Dr. Emmet Kelly, authored an internal memorandum "summariz[ing]" "[Monsanto's] position" about Aroclors.[1] Kelly wrote, "We know Aroclors are toxic but the actual limit has not been precisely defined. It does not make

[1] Ex. 1 at 1.

too much difference, it seems to me, because our main worry is what will happen if an individual develops any type of liver disease and gives a history of Aroclor exposure. I am sure the juries would not pay a great deal of attention to [maximum allowable concentrations]."[2]

63. Between 1956 and 1957, Monsanto tried to sell Pydraul 150, a hydraulic fluid containing PCBs, to the U.S. Navy for use in submarines. The Navy resisted because it disfavored using toxic compounds like PCBs in confined environments.[3] The Navy conducted an animal experiment with Pydraul 150; all the rabbits the Navy exposed to the fluid's vapors died.[4]

64. Monsanto nevertheless concealed the risks of Pydraul:

a. When Monsanto learned that the Navy planned to publish the results of its Pydraul 150 experiment, the company encouraged the Navy to avoid referring to Monsanto trade names.

b. In an April 1957 letter to the Standard Oil Company summarizing toxicity data for four Pydraul products, Monsanto wrote that "the toxicity report on Pydraul 150 indicates that it is practically innocuous when fed orally to rats . . . . In rabbit skin and eye irritation studies, Pydraul 150 was no more irritating than a 10% soap solution tested similarly."[5] Monsanto's letter did not mention the Navy's dead rabbits. Monsanto's letter also did not mention the numerous other studies demonstrating PCB risks that the company had conducted, commissioned, or known about.

65. Monsanto's practice of downplaying and concealing PCB risks was not limited to the Pydraul product line. In a May 1957 technical bulletin about Aroclors, Monsanto included only a short section on toxicity. Monsanto claimed, "Animal toxicity studies and 20 years of manufacturing and use experience indicate that Aroclor compounds are not serious industrial health hazards."[6]

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[2] *Id.* at 2.
[3] Ex. 2.
[4] Ex. 3.
[5] Ex. 4 at 1.
[6] Ex. 5 at 12.

66. However, some Monsanto employees tried to pressure the company to attend to PCB risks. For example, one Monsanto scientist warned in a 1957 internal memorandum about the company's practice of promoting PCBs for use as an organic solvent or extender for DDT and other pesticides that were sprayed on crops. The scientist noted that PCBs were toxic and suggested that their application to crops could pose legal risks.[7]

67. In a 1960 brochure, Monsanto touted Aroclors as "among the most unique, most versatile chemically-made materials in the industry."[8] Monsanto marketed Aroclors as suitable for a wide range of commercial, household, and industrial applications.[9]

68. Meanwhile, Monsanto failed to adopt safeguards, provide instructions, and issue warnings relating to PCBs and PCB-containing products. In many instances, Monsanto took affirmative action to downplay and/or conceal the mounting evidence about PCB dangers. For example:

a. Monsanto advised customers that PCBs and PCB-containing products should be dumped or disposed in landfills (and was aware its customers followed that advice), even though Monsanto's own research had already demonstrated that this was not an appropriate means of disposal.

b. In 1962, Monsanto represented to the U.S. Public Health Service that "[the company's] experience and the experience of our customers over a period of nearly 25 years, has been singularly free of difficulties."[10]

69. In 1963, Monsanto received additional empirical evidence that PCBs were—as expected from its inertness and resistance to degradation—highly persistent in the environment. In 1939, Aroclors had been applied to test plots at the University of Florida, Gainesboro to determine whether the compounds could be used for termite-proofing. Monsanto documents from 1963 indicate that a researcher revisiting those sites observed "visual evidence of the presence of

[7] Ex. 6.
[8] Ex. 7 at 3.
[9] *See generally id.*
[10] Ex. 8 at 1.

Aroclor."[11]

70. In 1966, Søren Jensen and Gunnar Widmark of the University of Stockholm published a landmark study about PCBs. Jensen and Widmark had set out to identify the prevalence of DDT and other pesticides in the environment. However, Jensen and Widmark identified unexpected compounds that they eventually determined to be PCBs. Jensen and Widmark located PCBs in fish, sea birds, conifer needles, and human fat tissue. In their study, Jensen and Widmark expressed concern that PCBs were spreading widely throughout the environment due to high production volumes, their durability, and their tendency to bioaccumulate and biomagnify. The Jensen and Widmark study prompted substantial internal conversations and correspondence in Monsanto.

71. Despite these red flags, Monsanto's board approved in November 1967 the appropriation of $2.9 million (about $23 million in 2022 dollars) to expand production at two PCB manufacturing facilities.[12]

72. In early 1968, PCBs caused a mass poisoning in Japan. PCBs leaked from a heat exchanger used in the processing of rice bran oil, contaminating that oil with PCBs. This oil was both consumed directly and fed to poultry. Hundreds of thousands of birds and at least 500 people died.

73. Monsanto's internal memoranda discussed the mass poisoning and the risks associated with Monsanto's PCB-containing products, which also were used inside heat exchangers in food processing plants. Although Monsanto knew it was "a matter of time until the regulatory agencies will be looking down [its] throats," Monsanto did not withdraw its PCB-containing products from this use. Instead, Monsanto planned to put customers' "mind[s] at ease . . . by playing down the medical reports."[13]

74. In December 1968, University of California, Berkeley researcher R.W. Risebrough

[11] Ex. 9.
[12] Ex. 10.
[13] Ex. 11 at 1.

and others published a landmark study about PCBs in *Nature*. Risebrough and his co-authors found that PCBs were toxic, spread easily and widely once released into the environment, and posed a significant threat to humanity. Risebrough's study, which partly focused on Bay ecosystems, reported high concentrations of PCBs in peregrine falcons and dozens of other local bird species. The article linked this contamination to eggshell thinning in peregrine falcons and consequent population declines.

75. Monsanto decided to respond combatively to the Risebrough article. As W.R. Richard, the manager of Research and Development of Monsanto's Organics Division, wrote in an internal memorandum, "Either [Risebrough's] position is attacked and discounted or we will eventually have to withdraw product from end uses which have exposure problems."[14]

76. For example, Monsanto issued a press release about the Risebrough article that cast doubt on whether the chemicals Risebrough identified were PCBs, even though the company's internal memoranda acknowledged they were. Monsanto also claimed it was surprised that PCBs were being widely released and dispersed into the environment. Monsanto made similar representations to the U.S. government, feigning surprise at the widespread release and dispersal of PCBs.

77. Around the same time, Monsanto retained University of Illinois researcher Robert Metcalf to assess the PCB problem. Metcalf warned that PCBs were being released to the environment in massive quantities, that these PCBs were circulating and transporting in the environment, and "there is an important environmental quality problem involved in wastes of PCB."[15] Metcalf advised that "the evidence regarding PCB effects on environmental quality is sufficiently substantial, widespread, and alarming to require immediate corrective action on the part of Monsanto. The defensive measures presently underway will do little if anything to refute the evidence already presented."[16]

78. Monsanto nevertheless continued to pursue greater PCB sales. For example, in

[14] Ex. 12 at 2.
[15] Ex. 13 at 1–2 (underlining in original).
[16] *Id.* at 2–3.

April 1969, Monsanto's president requested its board of directors to approve $1.1 million in appropriations to expand the production of solid Aroclors at its Anniston, Alabama facility. These solid Aroclors were more heavily chlorinated PCBs that Monsanto knew to be more problematic pollutants.

79. In August 1969, Monsanto held a meeting of its "PCB Committee." Handwritten notes from the meeting read, "Subject is snowballing." The handwritten notes identified three "Alternatives": (1) "go out of business"; (2) "sell the hell out of them as long as we can and do nothing else"; and (3) "try to stay in business in controlled applications – control contamination levels." [17]

80. In or around September 1969, Monsanto formed an Aroclor Ad Hoc Committee. At its first meeting, the Ad Hoc Committee "[a]greed to" three "[o]bjectives": (1) "[p]ermit continued sales and profits of Aroclors and Terphenyls" (another type of organic compound); (2) "[p]ermit continued development of uses and sales"; and (3) "[p]rotect image of Organic Division and of the Corporation."[18] None of Monsanto's three "objectives" involved protecting the public or the environment from the dangers of PCBs.

81. Monsanto's Aroclor Ad Hoc Committee produced voluminous reports and correspondence. These reports and correspondence showed the Committee knew PCBs were being released to the environment in massive volumes, and they had become a truly global contaminant. The Committee knew PCBs had been tied especially closely to aquatic organisms and birds that consumed aquatic organisms. The Committee knew PCBs were toxic to humans and animals, PCBs could be harmful even at low concentrations, and PCBs were contaminating human food. The Committee knew the company's products would be scrutinized by regulators and the public. But the Committee pushed Monsanto to prolong PCB sales for as long as possible because they were profitable.

82. In or around 1970, Monsanto achieved record production and sales of PCBs.

83. As part of its strategy to prolong PCB sales at the public's expense, Monsanto

[17] Ex. 14 at 5.
[18] Ex. 15 at 1.

misled the public by representing that PCBs were not being released into the environment at high rates, that PCBs were not being used in household products, and that PCBs were not very toxic. For example, in April 1970, Monsanto released a press release "repl[ying] to [a] charge that PCB threatens the environment" by U.S. Representative William F. Ryan.[19] Monsanto insisted that "PCB is not a household product," despite the company's knowledge that Aroclors were used in carbonless copy paper and numerous other household products.[20] Monsanto also suggested that PCBs were mostly used in "closed systems" (i.e., systems from which PCBs could not escape) despite its knowledge that PCBs were used in open systems, and its knowledge that PCBs were routinely released even from so-called "closed systems."[21]

84. In 1970, Monsanto decided to discontinue Aroclors 1254 and 1260, which were the most heavily chlorinated Aroclors that were widely distributed. By this point, Monsanto had known for many years that more chlorinated PCBs were especially problematic pollutants. A February 1970 interoffice memorandum provided talking points for company representatives' conversations with consumers of these Aroclors. Monsanto stressed to its representatives that the company had decided not to recall these heavier Aroclors: "We want to avoid any situation where a customer wants to return fluid. . . . We would prefer that the customer use up his current inventory and purchase [new products] when available. He will then top off with the new fluid and eventually all Aroclor 1254 and Aroclor 1260 will be out of his system. We don't want to take fluid back."[22] Monsanto suggested that customers should be grateful: "We certainly have no reason to be defensive or apologetic about making this change. . . . [O]ur customers should commend us . . . ."[23]

85. Despite Monsanto's best efforts, a scandal occurred in 1971. Large volumes of poultry feed marketed in the southeastern United States were found contaminated with PCBs. In turn, this feed had contaminated numerous chickens and chicken eggs. Also in the early 1970s:

a. Monsanto's customers started to express more and more concerns about

[19] Ex. 16 at 1.
[20] *See id.* at 2.
[21] *See id.* at 2.
[22] Ex. 17 at 1.
[23] *Id.*

PCBs.

b. Monsanto learned about long-term animal studies of chronic PCB exposure that further demonstrated that the chemicals were toxic.

c. Monsanto learned about detections of PCBs in cow milk traced to Aroclor-containing paint in feed silos.

d. Further research by Monsanto identified PCBs in a wide range of samples including in human tissue.

86. In September 1971, the United States formed an interagency task force to review existing data about PCBs and coordinate further government investigations. The *New York Times* published an article about the task force's formation. The newspaper reported, "The Monsanto Company of St. Louis, which is the only American manufacturer of PCB, has been conducting a two-year study of the effects of the chemical on rats and dogs. A company spokesman said that no ill effects had yet been detected."[24] However, Monsanto's contemporaneous internal memoranda suggested that Monsanto's experiments on rats, dogs, and chickens had demonstrated adverse effects, especially reproductive harm in rats and chickens.[25]

87. In May 1972, the federal task force concluded that "PCB's [sic] were highly persistent, could bioaccumulate to relatively high levels in fish and could have serious adverse effects on human health."[26] The task force recommended discontinuing "all PCB uses except in closed electrical systems."[27]

88. Over the next few years, the U.S. government continued to sample soils, waters, birds, and fish across the United States. PCBs were found to be ubiquitous throughout the United States including in the Bay. Federal and other researchers also developed even more evidence in animal experiments that PCBs were toxic and carcinogenic.

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[24] Richard L. Lyons, *Panel Organized to Study DDT-Like Compound for Environmental Hazards*, N.Y. Times (Sept. 23, 1971), *available at* https://www.nytimes.com/1971/09/23/archives/panel-organized-to-study-ddtlike-compound-for-environmental-hazards.html.

[25] Ex. 18 at 2–3.

[26] *Review of PCB Levels in the Environment*, U.S. Envtl. Protection Agency, at 1 (January 1976), *available at* https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=2000I3HT.TXT (describing the task force's May 1972 findings).

[27] *Id.*

89. Even as Monsanto came under a regulatory microscope, the company did not relent in its efforts to mislead the public. For example, Monsanto in 1975 manipulated a study it had commissioned by Industrial Biotest Laboratories ("IBL"). IBL had written a report about a two-year Aroclor feeding study involving rats. IBL had concluded that Aroclors were "slightly tumorigenic." Monsanto asked IBL to change this language to "does not appear to be carcinogenic." IBL complied.[28]

90. Ultimately, Monsanto knew the time window for selling PCBs was ending.

91. In December 1975, Monsanto's PCB Study Group addressed in a memorandum the question, "Is the adverse impact now, or in the future, likely to be greater than the benefits derived from staying in the business?"[29] Focusing solely on its own interests and disregarding the adverse effects of its products on public welfare, the PCB Study Group concluded, "in answer to the question at hand, *the negative impact on Monsanto's image* will, indeed, exceed the benefits derived from staying in the business."[30]

92. Knowing that a PCB ban was imminent, the PCB Study Group recommended that Monsanto should phase out PCBs before it was forced to do so.[31] "Principally, Monsanto must, not be viewed as being forced into a decision to withdraw from PCB manufacture by either government action or public pressure. Rather, key audiences must perceive Monsanto as having initiated responsible action . . . ."[32]

93. In early 1976, Monsanto, consistent with this recommendation, announced the company planned to phase out its production of PCBs.

94. Several weeks later, in March 1976, the Toxic Substances Control Act passed the Senate. The Act was signed into law in October 1976.

95. Monsanto nevertheless continued to sell PCBs until approximately October 31, 1977.

[28] *See* Ex. 19; Ex. 20.
[29] Ex. 21 at 2.
[30] *Id.* at 3 (emphasis added).
[31] *Id.* at 3.
[32] *Id.* at 3.

96. The Toxic Substances Control Act's PCB manufacturing ban became effective on January 1, 1979.

G. PCB Contamination in San Mateo County and the Bay

97. The Bay is a shallow estuary where the Pacific Ocean's saline waters mix with freshwater. It covers approximately 1,600 square miles and is the largest estuary on the United States' West Coast. A large portion of the Bay lies within the County's geographic boundaries.

98. The Bay supports a diverse ecosystem. Year-round, the Bay supports aquatic and wetland plants, crabs, clams, fish, birds, other aquatic life, and marine and terrestrial mammals. During certain seasons, the Bay provides critical habitat for migratory birds and anadromous fish, some of which spawn in the Bay. The Bay also is important for human and economic activity including recreational fishing, commercial fishing, shipping, watersports, swimming, and boating.

99. The Bay receives substantial inflow from tributaries in, and runoff from, the County: the eastern part of the County borders and drains into the Bay.

100. Because buildings, roadways, infrastructure, inland waters, flora, and fauna in the County (including the Municipalities) are contaminated with PCBs, inflows of water and sediment from the County to the Bay often contain PCBs. This includes inflows originating from landlocked Municipalities that are not directly adjacent to the Bay. These PCBs contribute to the Bay's already-severe PCB contamination problem. Every segment of the Bay is considered impaired by PCB contamination under Section 303(d) of the Clean Water Act.

101. The San Francisco Bay Regional Water Quality Control Board ("Regional Board") has identified certain parts of the Bay as "hot spots" where PCB concentrations in sediment are multiple orders of magnitude higher than elsewhere in the Bay. Some of these hot spots, like Redwood City Harbor, are located in the County.

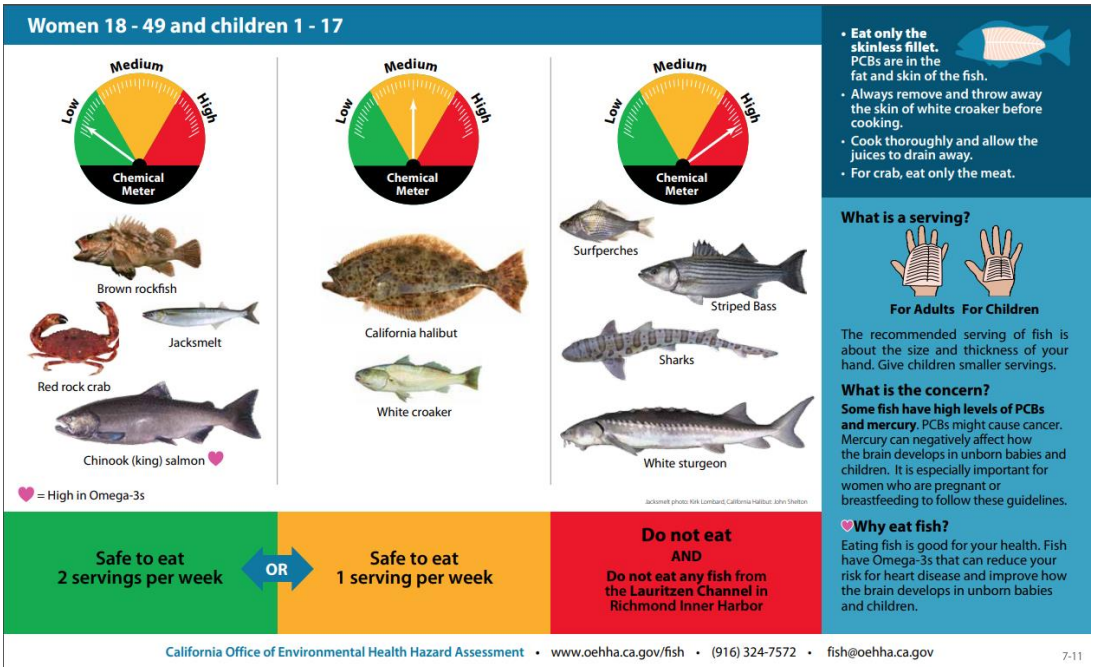
102. PCB contamination in the Bay has been so severe that the California Office of Environmental Health Hazard Assessment ("OEHHA") has advised some people not to eat certain types of fish caught in the Bay.

a. For example, children and women aged 18 to 49 are advised against eating striped bass, sharks, and white sturgeon caught in the Bay *at all*. These persons

also are advised to limit their consumption of California halibut and white croaker caught in the Bay to a single serving a week.

b. All persons are advised against eating the skin and fatty tissue of fish caught in the Bay.

103. The following image depicts a poster distributed by the OEHHA.



104. Over the decades, numerous studies have found that PCBs are adversely affecting Bay birds. Studies of herons, terns (including the endangered California least tern), and other birds in the Bay have identified high PCB concentrations in eggs and linked this contamination to reduced embryo weight and increased embryo mortality.

H. The County and Municipalities' Need to Limit PCB Discharges into the Bay

105. The Regional Board regulates water quality in the Bay.

106. Under the National Pollution Discharge Elimination System ("NPDES") authorized by the Clean Water Act, the Regional Board has issued a Municipal Regional Stormwater Permit ("MRP Permit") that regulates PCB discharges in stormwater and dry-weather runoff from the County and all the municipalities in it, including the Municipalities that are Plaintiffs in this action.

107. The current version of the MRP Permit requires the County and Municipalities to sharply limit PCB discharges in stormwater and dry weather runoff to the Bay.

108. To comply with the MRP Permit, Plaintiffs have taken a wide range of actions, and will have to take a wide range of actions, to limit PCB-laden stormwater and dry-weather runoff from flowing into the Bay. These actions include, and/or may in the future include—among other things:

a. Testing and monitoring;

b. The installation of "green infrastructure" to capture PCBs in runoff;

c. Measures to control PCB discharges when structures with PCBs are demolished;

d. Identification of PCB-contaminated sites and abatement of contamination at those sites;

e. More frequent street sweeping;

f. Trash capture devices that capture particles and sediment carried in runoff;

g. Costs associated with coordinating MRP compliance among jurisdictions in the County, including Plaintiffs;

h. Costs associated with coordinating with the California State Water Resources Control Board and Regional Board; and

i. Ongoing operating and maintenance for green infrastructure, capture devices, and/or other abatement devices/infrastructure/mechanisms.

109. Monsanto foresaw, or could have foreseen, that PCB contamination would require government bodies like the Regional Board to adopt regulations to curb PCB discharges through stormwater and dry-weather runoff into waterways like the Bay. Monsanto foresaw, or could have foreseen, that regulations curbing such discharges would require local governments like the County and the Municipalities to take a wide range of actions and bear associated costs.

110. Plaintiffs already have incurred substantial costs to limit PCB discharges into the Bay through stormwater and dry weather runoff. Plaintiffs will continue incurring such costs for decades into the future.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Continuing Public Nuisance on Behalf of the People of the State of California)

(Against All Defendants)

111. The People, by and through the County and Municipalities, incorporate by reference each allegation contained above.

112. Buildings, roadways, infrastructure, inland waters, flora, and fauna in the County including the Municipalities are contaminated with PCBs.

113. The Bay's sediments, waters, flora, and fauna also are contaminated with PCBs. This contamination includes sediments, waters, flora, and fauna within the County's geographic boundaries.

114. PCB contamination of the County, the Municipalities, and the Bay is a public nuisance that substantially and unreasonably interferes with rights common to the public, including a substantial number of the County and Municipalities' residents:

a. This PCB contamination threatens the health of people who eat fish and shellfish harvested from the Bay.

b. This PCB contamination interferes with the public's right to use waterways for a range of beneficial uses including, but not limited to, recreational and commercial fishing.

c. Monsanto has unlawfully obstructed people from using the Bay, a navigable waterway, in the customary matter by limiting their ability to extract and consume fish and shellfish from the Bay.

d. This PCB contamination has harmed a range of living organisms.

115. PCB contamination of the County, the Municipalities, and the Bay has simultaneously affected many thousands of persons.

116. PCB contamination of the County, the Municipalities, and the Bay is severe, pervasive, and costly. Especially because the County, the Municipalities, and the Bay have

immense cultural, economic, environmental, and social value, any ordinary person would be reasonably annoyed and disturbed by this contamination.

117. Monsanto, by acting or failing to act, created this public nuisance or permitted it to exist. Monsanto's conduct amounted to affirmative, knowing action to create the nuisance:

a. Monsanto made about 99% of the PCBs ever used in the United States.

b. Monsanto made virtually all the PCBs that contaminate the County, the Municipalities, and the Bay today.

c. Despite knowing about their dangers, Monsanto wrongfully promoted and marketed PCBs and PCB-containing products for an extremely wide range of commercial, household, and industrial uses and applications. This promotion and marketing caused PCBs to be used or misused in a wide range of unsuitable commercial, household, and industrial uses and applications, from which PCBs would inevitably be discharged into the environment in large quantities.

d. Monsanto made false or misleading statements about the dangers of PCBs and PCB-containing products, the prevalence of PCBs in products, the likelihood of PCB releases, and the prevalence of PCBs in the environment. Monsanto also concealed the dangers of PCBs and PCB-containing products, the likelihood of PCB releases, and the prevalence of PCBs in the environment. Monsanto's concealment and false or misleading statements increased PCB sales, generating profits for the company at the expense of creating this nuisance.

e. Monsanto manufactured, promoted, marketed, distributed, and sold PCBs and PCB-containing products without providing adequate warnings and instructions about how they should be properly used, handled, and disposed. Monsanto also directed PCB customers and users to use, handle, and dispose PCBs in improper ways that caused PCBs to be released into the environment.

f. Despite knowing that more heavily chlorinated PCBs were more problematic pollutants, Monsanto nevertheless promoted, marketed, distributed, and sold

them aggressively. To facilitate this conduct, Monsanto continued to invest heavily in expanding its manufacturing capacity for heavily chlorinated PCBs, long after the company learned about heavily chlorinated PCBs' particular risks.

g. Even after learning about PCB risks, Monsanto chose not to thoroughly investigate them.

h. Monsanto consciously decided not to recall or take back PCBs and PCB-containing products.

i. Monsanto's actions and failures to act caused PCBs to contaminate the County, the Municipalities, and the Bay at levels that pose unacceptable risks to human health and the environment.

118. The seriousness of the harm caused by Monsanto outweighs the social utility of Monsanto's conduct.

119. The County, the Municipalities, and the People did not consent to Monsanto's creation of this public nuisance.

120. The harms associated with this public nuisance are reasonably abatable.

121. Monsanto and the Defendants have failed to abate the public nuisance of PCB contamination of the County, the Municipalities, and the Bay.

122. Each of the Defendants has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

123. For these reasons, the People pray for relief as set forth below.

SECOND CAUSE OF ACTION

(Continuing Public Nuisance, By the County and the Municipalities)

(Against All Defendants)

124. The County and the Municipalities incorporate by reference each allegation contained above.

125. Buildings, roadways, infrastructure, inland waters, flora, and fauna in the County including the Municipalities are contaminated with PCBs.

126. The Bay's sediments, waters, flora, and fauna also are contaminated with PCBs. This contamination includes sediments, waters, flora, and fauna within the County's geographic boundaries.

127. PCB contamination of the County, the Municipalities, and the Bay is a public nuisance that substantially and unreasonably interferes with rights common to the public, including a substantial number of the County and Municipalities' residents:

a. This PCB contamination threatens the health of people who eat fish and shellfish harvested from the Bay.

b. This PCB contamination interferes with the public's right to use waterways for a range of beneficial uses including, but not limited to, recreational and commercial fishing.

c. Monsanto has unlawfully obstructed people from using the Bay, a navigable waterway, in the customary matter by limiting their ability to extract and consume fish and shellfish from the Bay.

d. This PCB contamination has harmed a range of living organisms.

128. PCB contamination of the County, the Municipalities, and the Bay has simultaneously affected many thousands of persons.

129. PCB contamination of the County, the Municipalities, and the Bay is severe, pervasive, and costly. Especially because the County, the Municipalities, and the Bay have immense cultural, economic, environmental, and social value, any ordinary person would be reasonably annoyed and disturbed by such contamination.

130. Monsanto, by acting or failing to act, created this public nuisance or permitted it to exist. Monsanto's conduct amounted to affirmative, knowing action to create the nuisance:

a. Monsanto made about 99% of the PCBs ever used in the United States.

b. Monsanto made virtually all the PCBs that contaminate the County, the Municipalities, and the Bay today.

c. Despite knowing about their dangers, Monsanto wrongfully promoted and marketed PCBs and PCB-containing products for an extremely wide range of

commercial, household, and industrial uses and applications. This promotion and marketing caused PCBs to be used or misused in a wide range of unsuitable commercial, household, and industrial uses and applications, from which PCBs would inevitably be discharged into the environment in large quantities.

d. Monsanto made false or misleading statements about the dangers of PCBs and PCB-containing products, the prevalence of PCBs in products, the likelihood of PCB releases, and the prevalence of PCBs in the environment. Monsanto also concealed the dangers of PCBs and PCB-containing products, the likelihood of PCB releases, and the prevalence of PCBs in the environment. Monsanto's concealment and false or misleading statements increased PCB sales, generating profits for the company at the expense of creating this nuisance.

e. Monsanto manufactured, promoted, marketed, distributed, and sold PCBs and PCB-containing products without providing adequate warnings and instructions about how they should be properly used, handled, and disposed. Monsanto also directed PCB customers and users to use, handle, and dispose PCBs in improper ways that caused PCBs to be released into the environment.

f. Despite knowing that more heavily chlorinated PCBs were more problematic pollutants, Monsanto nevertheless promoted, marketed, distributed, and sold them aggressively. To facilitate this conduct, Monsanto continued to invest heavily in expanding its manufacturing capacity for heavily chlorinated PCBs, long after the company learned about heavily chlorinated PCBs' particular risks.

g. Even after learning about PCB risks, Monsanto chose not to thoroughly investigate them.

h. Monsanto consciously decided not to recall or take back PCBs and PCB-containing products.

i. Monsanto's actions and failures to act caused PCBs to contaminate the County, the Municipalities, and the Bay at levels that pose unacceptable risks to human health and the environment.

131. The seriousness of the harm caused by Monsanto outweighs the social utility of Monsanto's conduct.

132. The County and the Municipalities did not consent to Monsanto's creation of this public nuisance.

133. The harms associated with this public nuisance are reasonably abatable.

134. Monsanto and the Defendants have failed to abate the public nuisance of PCB contamination of the County, the Municipalities, and the Bay.

135. The County and the Municipalities have suffered harm different from the type of harm suffered by the general public:

a. The County and the Municipalities have particular duties to safeguard the health of its residents and visitors.

b. The County and the Municipalities have particular duties to comply with PCB discharge limitations into the Bay.

c. The County and the Municipalities have suffered damages because of the public nuisance. The County and the Municipalities already have borne monitoring, investigation, planning, compliance, and/or other costs and losses.

d. The County and the Municipalities will suffer damages because of the public nuisance. The County and the Municipalities will continue to bear substantial monitoring, investigation, planning, compliance, and/or other costs and losses because of PCB pollution in the County and the Bay.

e. The County and the Municipalities own, control, or otherwise are responsible for large swaths of property affected by PCB contamination.

f. Large portions of the Bay, which is contaminated with PCBs, lie within County boundaries.

g. Certain of the Plaintiffs own tidally affected parcels of land contaminated with PCBs.

h. The state of California has conveyed submerged land to the County, the City of Brisbane, the City of Redwood City, and the City of San Mateo. Under state law, the County is obliged to serve as a steward and trustee of those public trust resources. Those resources have been contaminated with PCBs.

136. The Plaintiffs have suffered damages because Monsanto created this public nuisance.

a. The public nuisance has caused the County and the Municipalities to incur damages in the form of monitoring, investigation, planning, compliance, and/or other costs and losses.

b. The public nuisance has damaged the County's and the Municipalities' natural resources.

137. Monsanto's wrongful conduct was a substantial factor in causing harm to the Plaintiffs.

138. Monsanto acted with malice, oppression, or fraud as required for an award of punitive damages. As alleged elsewhere, Monsanto deliberately misled buyers of PCBs and PCB-containing products, users of PCBs and PCB-containing products, governments, and the public. Monsanto also concealed the dangers of PCBs. Monsanto knowingly caused injury to the public welfare to safeguard its own profits.

139. Each of the Defendants has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

140. For these reasons, the County and the Municipalities pray for relief as set forth below.

THIRD CAUSE OF ACTION

(Continuing Private Nuisance, By the County and the Municipalities)

(Against All Defendants)

141. The County and the Municipalities incorporate by reference each allegation contained above.

142. PCB contamination caused by Monsanto has obstructed the County and the Municipalities from owning and freely using their property, so as to interfere with their comfortable enjoyment of life or property:

a. The County, the City of Brisbane, the City of Redwood City, and the City of San Mateo own, lease, occupy, or control submerged land in the Bay that is contaminated with PCBs. This submerged land continues to become contaminated because of PCB-laden discharges into the Bay.

b. Certain of the Plaintiffs own tidally affected parcels of land contaminated with PCBs.

c. The County and the Municipalities own, lease, occupy, or control buildings, roadways, infrastructure, inland waters, and land that are contaminated with PCBs. PCB contamination has required the County and the Municipalities to respond with measures to curtail PCB discharges from this property.

d. The Municipalities own, lease, occupy, or control municipal stormwater systems that receive PCB-laden water and solid materials (such as sediments).

e. PCB-laden sediment and other solid materials deposit and/or accumulate in the Municipalities' stormwater systems.

f. PCB contamination of municipal stormwater systems has prevented the Municipalities from freely using these municipal stormwater systems as designed without taking expensive remedial measures such as upgrades, retrofits, and upstream source controls.

g. The County and the Municipalities own, lease, occupy, or control land that they have had to, or will have to, use to construct remedial infrastructure to comply with regulatory requirements pertaining to PCB contamination.

143. This PCB contamination that interferes with the County's and the Municipalities' property interests constitutes a nuisance:

a. PCB contamination of property owned, leased, occupied, or controlled by the County and the Municipalities causes PCBs to be discharged into the Bay, threatening the health of people who eat fish and shellfish captured in the Bay.

b. PCB contamination of property owned, leased, occupied, or controlled by the County and the Municipalities interferes with the public's right to use waterways for a range of beneficial uses including, but not limited to, recreational and commercial fishing.

c. Through PCB contamination of property owned, leased, occupied, or controlled by the County and the Municipalities, Monsanto has unlawfully obstructed people from using the Bay, a navigable waterway, in the customary matter by limiting their ability to extract and consume fish and shellfish from the Bay.

d. PCB contamination of property owned, leased, occupied, or controlled by the County and the Municipalities causes contamination of the Bay that has harmed a range of living organisms.

144. Each of these interferences is substantial and unreasonable, so as to be annoying, disturbing, offensive, or inconvenient to the ordinary person.

145. Monsanto, by acting or failing to act, created this private nuisance or permitted it to exist. Monsanto's conduct was intentional and unreasonable, or – at minimum – unintentional but negligent or reckless:

a. Monsanto made about 99% of the PCBs ever used in the United States.

b. Monsanto made virtually all the PCBs that contaminate the County, the Municipalities, and the Bay today.

c. Despite knowing about their dangers, Monsanto wrongfully promoted and marketed PCBs and PCB-containing products for an extremely wide range of commercial, household, and industrial uses and applications. This promotion and marketing caused PCBs to be used or misused in a wide range of unsuitable commercial, household, and industrial uses and applications, from which PCBs would inevitably be discharged into the environment in large quantities.

d. Monsanto made false or misleading statements about the dangers of PCBs and PCB-containing products, the prevalence of PCBs in products, the likelihood of PCB releases, and the prevalence of PCBs in the environment. Monsanto also concealed the dangers of PCBs and PCB-containing products, the likelihood of PCB releases, and the prevalence of PCBs in the environment. Monsanto's concealment and false or misleading statements increased PCB sales, generating profits for the company at the expense of creating this nuisance.

e. Monsanto manufactured, promoted, marketed, distributed, and sold PCBs and PCB-containing products without providing adequate warnings and instructions about how they should be properly used, handled, and disposed. Monsanto also directed PCB customers and users to use, handle, and dispose PCBs in improper ways that caused PCBs to be released into the environment.

f. Despite knowing that more heavily chlorinated PCBs were more problematic pollutants, Monsanto nevertheless promoted, marketed, distributed, and sold them aggressively. To facilitate this conduct, Monsanto continued to invest heavily in expanding its manufacturing capacity for heavily chlorinated PCBs, long after the company learned about heavily chlorinated PCBs' particular risks.

g. Even after learning about PCB risks, Monsanto chose not to, or otherwise failed to, thoroughly investigate them.

h. Monsanto consciously decided not to, or recklessly or negligently failed to, recall or take back PCBs and PCB-containing products.

i. Monsanto's actions and failures to act caused PCBs to contaminate the County, the Municipalities, and the Bay at levels that pose unacceptable risks to human health and the environment.

146. The seriousness of the harm caused by Monsanto outweighs the social utility of Monsanto's conduct.

147. The County and the Municipalities did not consent to Monsanto's creating this private nuisance.

148. The harms associated with this private nuisance are reasonably abatable.

149. Monsanto and the Defendants have has failed to abate this private nuisance.

150. The Plaintiffs have suffered damages because Monsanto created this private nuisance.

a. The private nuisance has caused the County and the Municipalities to incur damages in the form of monitoring, investigation, planning, compliance, and/or other costs and losses.

b. The private nuisance has damaged Plaintiffs' natural resources.

151. Monsanto's wrongful conduct was a substantial factor in causing harm to the Plaintiffs.

152. Monsanto acted with malice, oppression, or fraud as required for an award of punitive damages. As alleged elsewhere, Monsanto deliberately misled buyers of PCBs and PCB-containing products, users of PCBs and PCB-containing products, governments, and the public. Monsanto also concealed the dangers of PCBs. Monsanto knowingly caused injury to the public welfare to safeguard its own profits.

153. Each of the Defendants has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

154. For these reasons, the County and the Municipalities pray for relief as set forth below.

FOURTH CAUSE OF ACTION

(Continuing Trespass, By the County and the Municipalities)

(Against All Defendants)

155. The County and the Municipalities incorporate by reference each allegation contained above.

156. The County and the Municipalities own, lease, occupy, and/or control buildings, roadways, infrastructure, inland waters, and land contaminated with PCBs. As previously alleged, the County, the City of Brisbane, the City of Redwood City, and the City of San Mateo own, lease, occupy, and/or control submerged bottomlands in the Bay. As previously alleged, certain of the Plaintiffs own tidally affected parcels of land contaminated with PCBs.

157. The County and the Municipalities have a right to exclusively possess certain buildings, roadways, infrastructure, inland waters, and land contaminated with PCBs. The County, the City of Brisbane, the City of Redwood City, and the City of San Mateo have a right to exclusively possess their submerged bottomlands in the Bay.

158. Monsanto caused PCBs to enter and contaminate the County's and the Municipalities' property. Monsanto's conduct that caused this entry was intentional and unreasonable, or unintentional but negligent or reckless:

a. Monsanto made about 99% of the PCBs ever used in the United States.

b. Monsanto made virtually all the PCBs that contaminate the County, the Municipalities, and the Bay today.

c. Despite knowing about their dangers, Monsanto wrongfully promoted and marketed PCBs and PCB-containing products for an extremely wide range of commercial, household, and industrial uses and applications. This promotion and marketing caused PCBs to be used or misused in a wide range of unsuitable commercial, household, and industrial uses and applications, from which PCBs would inevitably be discharged into the environment in large quantities.

d. Monsanto made false or misleading statements about the dangers of PCBs and PCB-containing products, the prevalence of PCBs in products, the likelihood

of PCB releases, and the prevalence of PCBs in the environment. Monsanto also concealed the dangers of PCBs and PCB-containing products, the likelihood of PCB releases, and the prevalence of PCBs in the environment. Monsanto's concealment and false or misleading statements increased PCB sales, generating profits for the company at the expense of creating this nuisance.

e. Monsanto manufactured, promoted, marketed, distributed, and sold PCBs and PCB-containing products without providing adequate warnings and instructions about how they should be properly used, handled, and disposed. Monsanto also directed PCB customers and users to use, handle, and dispose PCBs in improper ways that caused PCBs to be released into the environment.

f. Despite knowing that more heavily chlorinated PCBs were more problematic pollutants, Monsanto nevertheless promoted, marketed, distributed, and sold them aggressively. To facilitate this conduct, Monsanto continued to invest heavily in expanding its manufacturing capacity for heavily chlorinated PCBs, long after the company learned about heavily chlorinated PCBs' particular risks.

g. Even after learning about PCB risks, Monsanto chose not to, or otherwise failed to, thoroughly investigate them.

h. Monsanto consciously decided not to, or recklessly or negligently failed to, recall or take back PCBs and PCB-containing products.

i. Monsanto's actions and failures to act caused PCBs to contaminate the County, the Municipalities, and the Bay at levels that pose unacceptable risks to human health and the environment.

159. The County and the Municipalities did not authorize the entry of PCBs onto their property.

160. The entry of PCBs onto the County's and the Municipalities' property, which Monsanto caused, was a substantial factor in causing actual harm to the Plaintiffs.

a. The entry has caused the County and the Municipalities to incur damages in the form of monitoring, investigation, planning, compliance, and/or other costs and losses.

b. The entry of PCBs onto the County's and the Municipalities' property has damaged their natural resources.

161. The harms associated with this trespass are reasonably abatable.

162. Monsanto acted with malice, oppression, or fraud as required for an award of punitive damages. As alleged elsewhere, Monsanto deliberately misled buyers of PCBs and PCB-containing products, users of PCBs and PCB-containing products, governments, and the public. Monsanto also concealed the dangers of PCBs. Monsanto knowingly caused injury to the public welfare to safeguard its own profits.

163. Each of the Defendants has succeeded to, and/or has agreed to bear, the liabilities of Original Monsanto relating to PCBs.

164. For these reasons, the County and the Municipalities pray for relief as set forth below.

VI. PRAYER FOR RELIEF

For these reasons, the Plaintiffs seek the following relief against the Defendants:

1. Compensatory damages, in an amount to be proved at trial;
2. Natural resource damages;
3. Punitive damages;
4. A court order requiring Defendants to establish and deposit monies in an abatement fund to cover all future costs reasonably necessary for the County and the Municipalities to prevent PCBs from being discharged into the Bay, and to comply with municipal stormwater permits issued to the County and the Municipalities;
5. A court order restraining Defendants from their ongoing trespass on County and Municipalities' property;
6. Attorney's fees and expenses;
7. Costs of suit; and

8. Any other and further relief that the Court deems just, proper, and appropriate.

VII. JURY DEMAND

The Plaintiffs demand a jury trial on all causes of action for which a jury is available under the law.

Dated: July 13, 2023

Respectfully submitted,

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