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Attorney for Plaintiffs
RANDALL FARRAR, Individually
and Trustee; SAN PASQUAL BAND
OF MISSION INDIANS

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

RANDALL FARRAR, INDIVIDUALLY
AND AS TRUSTEE OF THE
MINSUEND PROPERTY TRUST
(5-15-00) AND MOBILE HOME
PARK TRUST UDT (5-15-00); SAN
PASQUAL BAND OF MISSION
INDIANS,

Plaintiffs,

v.

FLUEGGE EGG FARM 3, INC.;
FLUEGGE EGG FARM 2, INC.;
AUGUST FLUEGGE JR.; AND DOES
ONE THROUGH TEN, INCLUSIVE,

Defendants.

Case No.: '20CV0741 DMS AHG

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF,
STATUTORY CIVIL
PENALTIES, AND MONEY
DAMAGES**

DEMAND FOR JURY TRIAL

I.**INTRODUCTION**

1. This lawsuit involves federal and state declaratory relief, injunctive, and money damages claims against defendants Fluegge Egg Farm 3, Inc., Fluegge Egg Farm 2, Inc., and August Fluegge, Jr. (collectively, and in the singular, hereafter “Fluegge”), arising from water pollution discharges from their egg farm located at 27023 N. Lake Wohlford Road, Valley Center, California, 92082 (the “Egg Farm”).

2. Plaintiffs are Randall Farrar, individually and as trustee of the Minsuend Property Trust UDT (5-15-00) and Minsuend Mobile Home Park Trust UDT (5-15-00) (collectively “Farrar”) as representative owners and managers of the real property and business located at 27024 N. Lake Wohlford Road, Valley Center, California, 92082 (“Farrar Property”), and the San Pasqual Band of Mission Indians (the “Tribe”), as interested party owners and managers of separate real property located at 27220 N. Lake Wohlford Road and 16120 Woods Valley Road in Valley Center, CA 92082, which are nearby and downstream and which are also adversely effected by Fluegge and the Egg Farm. Farrar and the Tribe are collectively referred to herein as “Plaintiffs.” Plaintiffs are collectively and similarly impacted and have been specifically damaged by the discharge, deposition, and flow of polluted wastewater from the Egg Farm onto Plaintiffs’ properties. Plaintiffs hereby make a demand for a jury trial.

3. Plaintiffs bring the federal claims of this action as private persons pursuant to the Clean Water Act’s citizen suit provision under 33 U.S.C. § 1365, allowing Farrar to enforce the Clean Water Act against Fluegge through this lawsuit. Plaintiffs seek declaratory and injunctive relief, and civil penalty monetary relief authorized by the Clean Water Act. In doing so, Plaintiffs seek to enjoin and punish Fluegge for continuing an unlawful discharge of polluted wastewater and runoff from the Egg Farm, as well as failure to adequately

1 prevent, monitor, and remediate discharges principally based on Clean Water Act
2 Sections 301 and 402, 33 U.S.C. §§ 1311, 1342.

3 4. Fluegge has failed, and continues to fail, to properly manage and
4 operate its Egg Farm facility with a Clean Water Act pollution discharge permit or
5 any waiver or exception therefor. Even if Fluegge had done so, the Egg Farm's
6 polluted wastewater and stormwater discharges directed into and through the
7 Plaintiffs' properties is actionable under state and common law negligence,
8 nuisance, and trespass claims for which money damages and an abatement
9 cleanup order is necessary and appropriate.

10 II.

11 JURISDICTION AND VENUE

12 5. This Court has federal subject matter jurisdiction over this action
13 pursuant to the Clean Water Act's citizen suit provision under 33 U.S.C. § 1365,
14 subd. (a) and federal question jurisdiction under 28 U.S.C. §§ 1331 and 1346.
15 This Court has supplemental jurisdiction over the herein-alleged state claims,
16 under pendent jurisdiction because those claims derive from a common nucleus of
17 operative facts that are to be tried in one judicial proceeding. (28 U.S.C. § 1367.)

18 6. Fluegge is subject to the jurisdiction of this Court because it is within
19 the local jurisdiction and venue of this Court, the Egg Farm facility qualifies as a
20 regulated concentrated animal feeding operation under e.g., 40 CFR § 122.23
21 from which point source discharges are controlled under to 33 U.S.C. § 1362,
22 subd. (14), and other pollution discharge controls under federal, state, and
23 common law.

24 7. Venue in this Court is proper pursuant to Clean Water Act section
25 505, subd. (c)(1), 33 U.S.C. § 1365, subd. (c)(1), because the events or omissions
26 giving rise to Plaintiffs' claims of violating the Clean Water Act by pollution and
27 wastewater discharges from Fluegge's facility occurred in San Diego County,
28 California, which falls within this judicial district of this U.S. Federal District

1 Court for the Southern District of California. (28 U.S.C. § 1391, subd. (e)(l).)

2 8. On December 20, 2019, Plaintiffs provided Fluegge and other
3 federal and state Clean Water Act implementing agencies, a statutory “Notice
4 Letter” setting forth the Clean Water Act violations alleged in this Complaint, and
5 Plaintiffs have otherwise complied with any and all procedural prerequisites
6 necessary for filing this Complaint. No enforcement action has been commenced
7 by any state or federal agency. None of the Clean Water Act violations set forth
8 in said Notice Letter have been procedurally or substantively corrected. A copy of
9 Plaintiffs’ notice letter is attached hereto as Exhibit 1 and is incorporated herein.

10 **III.**

11 **PARTIES**

12 9. Plaintiffs are Randall Farrar, individually and as trustee of the
13 Minsuend Property Trust UDT (5-15-00) and Minsuend Mobile Home Park Trust
14 UDT (5-15-00) (collectively “Farrar”) as representative owners and managers of
15 the real property and business located at 27024 N. Lake Wohlford Road, Valley
16 Center, California, 92082 (“Farrar Property”), and the San Pasqual Band of
17 Mission Indians (the “Tribe”), as interested party owners and managers of
18 separate real property located at 27220 N. Lake Wohlford Road and 16120 Woods
19 Valley Road in Valley Center, CA 92082, which are nearby and downstream and
20 which are also adversely effected by Fluegge and the Egg Farm. Farrar and the
21 Tribe are collectively referred to herein as “Plaintiffs.” Plaintiffs are impacted
22 and have been specifically damaged by the discharge and flow of polluted
23 wastewater from the Egg Farm onto Plaintiffs’ properties.

24 10. Defendants Fluegge Egg Farm 3, Inc., Fluegge Egg Farm 2, Inc., and
25 August Fluegge, Jr. (collectively “Fluegge”) are the owners, operators, and the
26 principal representatives and responsible parties under both the Clean Water Act
27 and state law claims for the water pollution and pollution discharges occurring
28 from their egg farm located at 27023 N. Lake Wohlford Road, Valley Center,

California, 92082 (the “Egg Farm”). Fluegge, and each of them, are experienced egg farmers who know of the herein alleged state and federal pollution control requirements, but has simply shunned and willfully ignored them for the Egg Farm at the peril and expense of the Plaintiffs and Plaintiffs’ properties, and the people and regulators of this nation, state, and region who strive to protect and achieve clean water.

IV.

CLEAN WATER ACT AND NPDES PERMIT REQUIREMENTS

11. Congress passed the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters[.]” 33 U.S.C. § 1251, subd. (a).

12. To protect the chemical, physical, and biological integrity of the nation’s surface waters, the Clean Water Act prohibits the discharge of pollutants from point sources to navigable waters of the United States except as authorized. (33 U.S.C. §§ 1251, subds. (a)(1) and (a)(3), 1311, subd. (a).) The National Pollutant Discharge Elimination System (“NPDES”) program was created in 1972 as a federal permit program designed to regulate the discharge of pollutants. 33 U.S.C. § 1342; 40 C.F.R. § 122 et seq.

13. Under the NPDES program, discharges of pollutants are prohibited unless discharged in compliance with an NPDES permit. Among other things, Section 301, 33 U.S.C. 26 § 1311, subd. (a), prohibits the discharge of pollutants from a point source to a water of the United States without a NPDES permit. Point source discharge from CAFOs is controlled pursuant to 33 U.S.C. § 1362, subd. (14).

14. The United States Environmental Protection Agency (“EPA”) is charged with the responsibility of administering the NPDES permit program unless EPA approves a state water quality control program to implement the NPDES requirements. (33 U.S.C. §§ 1251, subd. (d), 1342, subd. (b).) Pursuant

1 to federal regulations, NPDES permits issued by states with approved programs
2 must contain certain terms and conditions to safeguard water quality (33 U.S.C.
3 §§ 1311, 1342, subds. (a) and (b)) and those states may impose stricter, but not
4 less than, the federal standards.

5 15. California is a participant in the NPDES permit scheme pursuant to
6 the Porter-Cologne Water Quality Control Act (“Porter-Cologne Act”).
7 (California Water Code, §§ 13260-13276, 13370-13390.) The EPA has approved
8 the entire regulatory scheme set forth in the Porter-Cologne Act, which establishes
9 a comprehensive statewide program for water quality administered through the
10 State Water Resources Control Board (“the State Water Board”) and its nine
11 regional boards, within a framework of statewide coordination and policy.
12 (California Water Code §§ 174, 13001.)

13 16. The Porter-Cologne Act is intended to protect, restore, and prevent
14 degradation of the quality and beneficial uses of the waters of the state and waters
15 of the United States. (California Water Code §§ 13000, 13050, subd. (f), 13241,
16 and 13263.) As authorized under the Clean Water Act, the Porter-Cologne Act
17 has adopted more stringent controls on discharges into the waters of the state and
18 United States than are required under the Clean Water Act. (40 C.F.R. §§ 131.2,
19 130.3; California Water Code § 13377 et seq.)

20 17. As directed by the Clean Water Act, California adopted water quality
21 standards for each region of California, as set forth in regional water quality
22 control plans (“basin plans”). As relevant to this matter, water quality standards for
23 the San Diego region, are set forth in the San Diego Basin Plan adopted by the San
24 Diego Water Board and approved by the State Water Board. The San Diego Basin
25 Plan, and other relevant plans, policies, and regulations, are designed to protect
26 beneficial uses, which include recreation, the preservation and enhancement of
27 fish, wildlife and other aquatic resources, and the domestic or municipal water
28 supply. (California Water Code, §§ 130500, 13170, 13240, and 13241.)

1 water runoff into a “point source” cement culvert (as is defined under the Clean
2 Water Act section 33 U.S.C. § 1362, subd. (14), and as is more broadly defined
3 under the PCA) directed under N. Lake Wohlford Road onto and through the
4 Farrar Property, properties of San Pasqual Band of Mission Indians, and then
5 connecting through the expanded Moosa Canyon Creek floodway back into the
6 more delineated channel of said Creek. The Egg Farm is located within the
7 floodway and branch of the Moosa Canyon Creek waterway with said waterway
8 being located within, adjacent, and downstream of the Egg Farm where the
9 principal and aforementioned Egg Farm discharge is occurring.

10 24. In addition to its legal qualifications under the PCA, Moosa Canyon
11 Creek is a recognized Waters of the United States under the Clean Water Act, as
12 defined by Clean Water Act section 502, subd. (7), 33 U.S.C. §1362, subd. (7) and
13 40 C.F.R. §122.2, and has been designated for state and locally adopted recreation
14 and environmental beneficial uses. Moosa Canyon Creek flows from floodway
15 receiving waters of the Egg Farm westerly through the community of Valley
16 Center and other listed and protected water bodies.

17 25. Fluegge’s ownership and operation of the Egg Ranch has also
18 caused, and continues to cause, the flow and deposition of pollutants and
19 contaminates into and through Plaintiffs’ properties, and further downgrade
20 properties, including lower Moosa Canyon Creek.

21 26. One or more water quality tests from the Egg Farm’s point source
22 cement culvert and discharge point indicate E. Coli and Total Coliforms levels
23 between 400,000 and 1.7 million MPN/100 ml., and E. Coli, Enterococcus, Fecal
24 Coliforms and Total Coliforms between 300,000 and 1.9 million MPN/100 ml.
25 These bacterial, growth-inducers, and turbid pollutants have and continue to
26 pollute the Farrar Property, the properties of San Pasqual Band of Mission
27 Indians, Moosa Canyon Creek, and the groundwaters of the lower San Luis Rey
28 basin at and below grade from the Egg Farm.

1 VI.

2 **FIRST CLAIM FOR RELIEF - VIOLATION OF THE**
 3 **FEDERAL CLEAN WATER ACT AND PORTER-COLOGNE**
 4 **WATER QUALITY CONTROL ACT**

5 (Violation of 33 U.S.C. § 1311 and 1342; California Water Code § 13000 et seq.)

6 27. Plaintiffs reallege and incorporate by reference Paragraphs 1-26 as if
 7 fully set forth herein.

8 **A. Liability Under the Clean Water Act and Porter-Cologne Act**

9 28. Fluegge has designed, or accepted the facility design, and operates
 10 the Egg Farm to allow the collection of waste from the substantial facility acreage
 11 and substantial number of egg-laying hens, to be transported and strewn about the
 12 Egg Farm before ultimately putting all the contaminated and polluted chicken
 13 excrement waste deposits in an open field north of the primary Egg Farm.
 14 Operation of the Egg Farm does not fully capture waste during the transfer
 15 process from the hen facility to the open field, causing waste to accumulate in
 16 other areas of the Egg Farm property.

17 29. Between September 2018 and continuing through the date of this
 18 *Complaint*, Fluegge's acts and omissions, relating to its operation and
 19 maintenance of the Egg Farm, have resulted in a significant quantity and source of
 20 discharges of regulated pollution as defined under the Clean Water Act (33 U.S.C.
 21 § 1362, subd. (6)), to pass into, through, and be deposited in and on the Farrar
 22 Property, the properties of San Pasqual Band of Mission Indians and other private
 23 parties, and into Moosa Canyon Creek. These pollutants include, but are not
 24 limited to, fecal coliform, total coliform, E.coli, enterococcus, Nitrogen, and
 25 Phosphorous.

26 30. The discharges and stormwater events constitute discharges of
 27 pollutants from a point source to both Waters of the State and Waters of the
 28 United States.

1
2 31. Upon information and belief, similar levels of pollutants have been,
3 and continue to be, discharged from the Egg Farm into the subject drain and
4 cement culvert, onto the Farrar Property, properties of San Pasqual Band of
5 Mission Indians (and others), and into Moosa Canyon Creek and its floodway
6 drainage channel.

7 32. Each day that Fluegge has and continues to fail to possess or obtain
8 permits for the unpermitted discharge of waste and polluted waters from the Egg
9 Farm and into Waters of the United States and Waters of the State constitute a
10 separate violation of Clean Water Act Section 301, 33 U.S.C. § 1311, and PCA,
11 and are subject to substantial civil penalties, injunctive relief, and other statutory
12 remedies.

13 B. Statutory Discharge Requirements

14 33. Fluegge did not and does not possess an NPDES or State Waste
15 Discharge Requirement (WDR) permit that allows for the discharge of pollutants
16 from the Egg Farm to the land, waters and waterway areas described and alleged
17 above, and does not possess any other qualifying permit or waiver in violation of
18 Clean Water Act, 33 U.S.C. § 1311(a), Water Code § 13376, Water Quality
19 Control Plan for the San Diego Basin (“Basin Plan”), or any other local or state
20 order regarding the same.

21 34. Fluegge’s past, current, and continuing operations do not qualify for
22 an NPDES permit, or any state or federal permit or discharge waiver because the
23 Egg Farm was (and is) not designed or constructed to retain all facility wastewater
24 and precipitation through manure areas in accordance with the requirements of
25 Title 27 of the California Code of Regulations, Section 22562, subdivisions (a)
26 and (b).

27 35. Fluegge’s operation of the Egg Farm further violates the following
28 applicable discharge prohibitions in the Basin Plan: (1) discharging waste to

1 waters of the state in a manner causing, or threatening to cause, a condition of
 2 pollution, contamination or nuisance; (2) discharging waste to land, except as
 3 authorized by a WDR; (3) discharging pollutants or dredged or fill material to
 4 waters of the United States except as authorized by an NPDES permit; (4)
 5 discharging of wastes to inland surface waters, except in cases where the quality
 6 of the discharge complies with applicable receiving water quality objectives; (5)
 7 discharging waste in a manner causing flow, ponding, or surfacing on lands not
 8 owned or under the control of the discharger; (6) dumping, deposition, or
 9 discharge of waste directly into waters of the state, or adjacent to such waters in
 10 any manner which may permit its being transported into the waters; (7)
 11 discharging a storm water conveyance system that is not composed entirely of
 12 “storm water”; (8) discharging sand, silt, clay, or other earthen materials from any
 13 activity in quantities which cause deleterious bottom deposits, turbidity or
 14 discoloration in waters of the state or which unreasonably affect, or threaten to
 15 affect, beneficial uses of such waters; and (9) discharging nitrogen compounds
 16 and other pollutants that percolate to ground water and affect interconnected
 17 surface waters.

18 36. In addition to the stricter state PCA standards, discharge prohibitions
 19 in federal Clean Water Act regulations for Fluegge and the Egg Farm production
 20 facility (as defined by 40 C.F.R. § 412.2, subd. (h)), include, but are not limited to,
 21 the control of all manure, litter, and other wastes (including from egg washing and
 22 mortalities) at its production facility to a standard where it is designed,
 23 constructed, operated and maintained to contain all manure, litter, and process
 24 wastewater, including the runoff and the direct precipitation from a 25-year, 24-
 25 hour rainfall event. (40 C.F.R. §§ 412.43, subd. (a)(1); 412.44, subd. (a); and
 26 412.45, subd. (a) [applying the standards set forth in 40 C.F.R. § 412.31, subd.
 27 (a)(1) for BPT, BCT, and BAT standards].)

28 37. Each day that Fluegge has and continues to fail to comply with

1 effluent or discharge limitations arising from its Egg Farm point source and
2 stormwater discharges is a separate and distinct violation of the Clean Water Act
3 and PCA subject to the substantial civil penalties, injunctive relief, and other
4 statutory remedies.

5 C. Violation of Reporting Requirements

6 38. Fluegge has not taken legally required actions to measure, authorize,
7 or report its *discharges of pollutants* as required under the Clean Water Act and
8 PCA. This self-regulating aspect of the Clean Water Act and PCA is critical for
9 implementation and compliance.

10 39. According to the Clean Water Act, any person who discharges or
11 proposes to discharge wastes into waters in the region's designated and useable
12 waters (other than into a community sanitary sewage system) must describe the
13 quantity and nature of the proposed discharge in a report of waste discharge or an
14 NPDES permit application. The reporting must contain information required by
15 the federal and/or state implementing agency – in this case being the San Diego
16 Regional Water Board ("Regional Board"). The filing of the report with the
17 Regional Board is mandatory unless waived by the Board on the grounds that the
18 waiver is not against the public interest. (Clean Water Act §§ 1311, 1342; Water
19 Code § 13776; Basin Plan, p. 4-3; 40 Code Fed. Reg. §§ 122.41, 122.48; 40
20 C.F.R. § 412.37, subds. (a), (b); tit. 20, Cal.Code.Reg. § 22560 (b).)

21 40. Each day that Fluegge and the Egg Farm failed to report the
22 discharges of pollutants is a separate and distinct violation of the Clean Water Act
23 and PCA, and is subject to the substantial civil penalties, injunctive relief, and
24 other statutory remedies.

25 D. Recording and Monitoring Requirements

26 41. Fluegge and the Egg Farm have not recorded and monitored the
27 minimal threshold information about their operations and procedures as required
28 under the Clean Water Act to measure, contain, eliminate, and control discharges

1 of pollution affecting, or potentially affecting, the subject waters of the United
2 States and State of California.

3 42. According to the Clean Water Act and PCA, Fluegge and the Egg
4 Farm must comply with visual inspection, depth marker, corrective actions, and
5 mortality handling pursuant to 40 C.F.R. § 412.37, subds. (a)(1) - (a)(4) and
6 maintain records of the same pursuant to 40 C.F.R. § 412.37, subds. (b)(1)-(b)(4).
7 The Egg Farm must additionally keep records related to production area of
8 manure, litter storage, and overflow. (40 C.F.R. § 412.37, subds. (b)(5) - (b)(6).)

9 43. Additionally, pursuant to Cal. Code Regs., tit. 27 § 22560, subd. (b),
10 all dischargers of waste must record waste discharges that include average facility
11 wastewater and volume or weight of manure, total animal population and type,
12 location and use of disposal fields and retention ponds, and animal capacity of the
13 facility.

14 44. Each day that Fluegge and the Egg Farm have failed, and continue to
15 fail, to monitor and record their activities to measure, contain, eliminate, and
16 control discharges of pollution affecting, or potentially affecting, the subject
17 waters of the United States and State of California, is a separate and distinct
18 violation of the Clean Water Act and PCA, and is subject to substantial statutory
19 civil penalties, injunctive relief, and other remedies.

20 E. Ongoing Violations; Need for Declaratory and Injunctive Relief; Civil
21 Penalties and Attorneys' Fees

22 45. Based on the above-alleged knowing acts, and continued permitting,
23 discharge, monitoring, and reporting violations, discharges and other CWA and
24 PCA will continue in violations of Sections 301 and 402 of the Clean Water Act,
25 33 U.S.C. § 1311 and 1342, and violation of the Porter-Cologne Water Quality
26 Control Act, as alleged herein.

27 46. A preliminary and permanent injunction, and declaratory relief, is
28 necessary in order to cease the above-alleged violations of Fluegge.

senses, and unlawfully obstruct the free use of property so as to interfere with the comfortable enjoyment of life and property by the public as a whole.

54. The ongoing discharge and nuisance by Fluegge affect all those members of the public who live in the surrounding community and work and recreate in said area, in a manner different and above-and-beyond the adverse effects of Plaintiffs and their properties.

55. Clean waterways and the prevention of waste discharge is a well-known topic of concern and consensus among the public and an ordinary person would be reasonably annoyed or disturbed by the conditions caused by Fluegge.

56. The necessity of protecting the health and safety of the public, aquatic wildlife, and native species outweighs any purported benefit of the Egg Farm's operations – especially where said operations are causing unpermitted and unlawful discharge.

57. Plaintiffs have disputed and do not consent to Fluegge's conduct.

VIII.

THIRD CLAIM FOR RELIEF – STATE STATUTE AND COMMON LAW

(Private Nuisance and Private Nuisance Per Se)

58. Plaintiffs reallege and incorporate by reference Paragraphs 1-57 as if fully set forth herein.

59. Fluegge's unpermitted discharges, in violation of the above state and federal statutes, including Section 301, 33 U.S.C. § 1311, constitute a private nuisance per se.

60. Fluegge's discharge of contamination obstructs the free use of Plaintiffs' properties, such that an ordinary person would be annoyed and disturbed by the obstruction of the free use of their properties.

61. Plaintiffs have disputed and do not consent to Fluegge's conduct.

62. Plaintiffs have suffered the loss of quiet use and enjoyment of Plaintiffs' properties because Fluegge's discharges enter onto the Plaintiffs'

properties and cause them to suffer harm that include: (1) malodorous fumes; (2) direct soil contamination; and (3) other loss of use and quiet enjoyment of the said Plaintiffs' properties.

63. Fluegge's conduct in discharging waste from the Egg Farm facility is a substantial factor in causing Plaintiffs' individual and collective harm and injury such that they request an award of money damages alleged and believed to be in excess of \$650,000 which will be more specifically proven at trial.

64. Fluegge's knowing acts and permitting the polluted discharges also support an award of exemplary and punitive damages based on malicious, oppressive, and despicable conduct, and in conscious disregard of the rights of Plaintiffs, that an ordinary and decent society does not tolerate.

IX.

FOURTH CLAIM FOR RELIEF – STATE STATUTE AND COMMON LAW

(Trespass)

65. Plaintiffs reallege and incorporate by reference Paragraphs 1-64 as if fully set forth herein.

66. Fluegge, through the operation of the Egg Farm and its facilities, causes pollutant discharges to invade onto the Farrar Property and properties of San Pasqual Band of Mission Indians and other downstream properties.

67. Fluegge's actions in the operation of the Egg Farm, including the storage and disposal of manure and the flow of water runoff through a cement culvert onto the Farrar Property and properties of San Pasqual Band of Mission Indians and other downstream properties, was knowing, intentional, wanton, and reckless.

68. Plaintiffs did not give permission to Fluegge to operate in a way to operate, collect, or otherwise discharge waste from the Egg Farm onto the Farrar Property and properties of San Pasqual Band of Mission Indians and other downstream properties.

69. Fluegge refuses to permanently cease any and all operations at the Egg Farm that cause waste discharges and pollutants to invade the Farrar Property and properties of San Pasqual Band of Mission Indians and other downstream properties, such that a permanent injunction is appropriate and necessary.

70. Plaintiffs have been, and continue to be, harmed by Fluegge's unlawful and unpermitted pollution entries and depositions into the Farrar Property, and properties of San Pasqual Band of Mission Indians and other downstream properties, has and continues to result in the diminution in value of said properties from the contamination of pollutants from Fluegge's discharges.

71. Fluegge's conduct in discharging waste from the Egg Farm facility is a substantial factor in causing injury to Plaintiffs' properties such that they request an award of money damages alleged and believed to be in excess of \$650,000 which will be more specifically proven at trial.

72. Fluegge's knowing acts and management of allowing the discharge of pollution also support an award of exemplary and punitive damages based on malicious, oppressive, and despicable conduct, and in conscious disregard of the rights of Plaintiffs, that an ordinary and decent society does not tolerate.

X.

FIFTH CLAIM FOR RELIEF – STATE STATUTE AND COMMON LAW

(Negligence and Negligence Per Se)

73. Plaintiffs reallege and incorporate by reference Paragraphs 1-72 as if fully set forth herein.

74. Under state statute and common law doctrine, Fluegge owes a duty to not dispose of pollution and contaminated waters through or deposited on Plaintiffs' properties. As alleged above, Fluegge breached that duty by doing so.

75. Fluegge's violation of the Clean Water Act Section 301, 33 U.S.C. § 1311, and the other allegations and state codes alleged above, impose fault and liability on Fluegge pursuant to the legal doctrine of negligence per se.

1 4. Ordering Fluegge to pay civil penalties Clean Water Act Section 309,
2 subd. (d), 33 U.S.C. § 1319, subd. (d) and the state's PCA same or more intensive
3 corollary;

4 5. Awarding Plaintiffs their costs of litigation, including reasonable
5 attorneys' fees, incurred in prosecuting this action, pursuant to the Clean Water
6 Act section 505, subd. (d), 33 U.S.C. § 1365, subd. (d), Porter-Cologne Water
7 Quality Control Act, and/or under California Code of Civil Procedure § 1021.5 or
8 any equivalent statute;

9 6. Finding that Fluegge has caused a public nuisance;

10 7. Finding that Fluegge has caused a private nuisance;

11 8. Enjoin Fluegge from continuing the public nuisance, private
12 nuisance, and trespasses and ordering the abatement and removal of pollution
13 from the Farrar Property and other Plaintiffs' properties;

14 9. An award of money damages to Plaintiffs for private nuisance, public
15 nuisance, trespass, and negligence;

16 10. An award of exemplary and punitive damages based on knowing,
17 wanton, reckless, malicious, oppressive, and despicable conduct, and in conscious
18 disregard of the rights of Plaintiffs and others.

19 11. Any and all other relief deemed appropriate by this Court.

20 Dated: April 17, 2020

21
22 **CRAIG A. SHERMAN, APC**

23 /s Craig A. Sherman .

24 Craig A. Sherman, Esq.

25 Attorney for Plaintiffs

26 RANDALL FARRAR and

27 SAN PASQUAL BAND OF MISSION INDIANS

28 craigshermanapc@gmail.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Randall Farrar, individually and as Trustee of the Minsuend Property Trust (5-15-00) and Mobile Home Park Trust UDT (5-15-00); San Pasqual Band of Mission Indians

(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

CRAIG A. SHERMAN, APC
1901 First Avenue, San Diego, CA 92101
619-702-7892

DEFENDANTS

FLUEGGE EGG FARM 3, INC.; FLUEGGE EGG FARM 2, INC.; AUGUST FLUEGGE JR.; and DOES ONE through TEN, inclusive

County of Residence of First Listed Defendant SAN DIEGO

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

33 U.S.C. § 1311 and 1342

Brief description of cause:

Defendants discharge polluted water onto Plaintiffs' property

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

650,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/17/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Craig A. Sherman, Esq. (craigshermanapc@gmail.com)

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE