

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

**JED AND ALISA BEHAR, individually and on
behalf of all others similarly situated,**

Plaintiffs,

v.

**NORTHROP GRUMMAN CORPORATION
AND NORTHROP GRUMMAN SYSTEMS
CORPORATION,**

Defendants.

Case No. 21-cv-03946-HDV-SK

CLASS ACTION

**[PROPOSED] FINAL PRETRIAL
CONFERENCE ORDER**

Judge: Hon. Hernán D. Vera

Trial Date: 3/24/26

Final Pretrial Conference: 3/5/2026

Following pre-trial proceedings, pursuant to Federal Rule of Civil Procedure 16 and Local Rule 16, IT IS ORDERED:

I. THE PARTIES AND PLEADINGS

a. Parties:

Plaintiffs' Position:

The parties in this action are the Plaintiff Class and the Class Representative Plaintiffs Jed Behar and Alisa Behar ("Behars" or "Plaintiffs") who bring this action on behalf of the whole Class, and Defendants Northrop Grumman Corporation, Northrop Grumman Systems Corporation ("Defendants" or "Northrop Grumman").¹ The Class Representative Plaintiffs, who bring claims on behalf of the whole Class, are Jed Behar and Alisa Behar. The Plaintiffs have been plaintiffs in this action since it was initially filed. As their claims have not been dismissed, they remain a party to this case and still assert their right to a jury trial. Northrop Grumman cannot bar Plaintiffs from trying their case.

On July 1, 2024, the Court granted Plaintiffs' motion for class certification, which established two classes: (1) a Mitigation Class, and (2) a Property Damage Class, each comprised of all persons who own a home above the bounds of the plume where TCE levels in the groundwater exceed 1.2 µg/L. (ECF No. 175 on July 1, 2024). After class notice was issued in April 2025, four of the 3,294 class members elected to opt out. Plaintiffs' Opposition to Defendants' Motion to Decertify the Class ("Opposition") at 1 [ECF No. 262]. Trial is set for March 24, 2026. (ECF No. 232). Plaintiffs Jed Behar and Alisa Behar are representatives for the Class.

Defendants' Position:

The Defendants in this case are (1) Northrop Grumman Corporation and (2) Northrop Grumman Systems Corporation, which is the successor-in-interest to Litton Industries, Inc. Northrop Grumman Systems Corporation is a wholly owned subsidiary of Northrop Grumman Corporation. Defendant Northrop Grumman Systems Corporation's subsidiary is Northrop Grumman Guidance and Electronics

¹ Plaintiffs' Motion to Amend Scheduling Order and for Leave to File a Third Amended Complaint (ECF No. 324), seeking to add Northrop Grumman Guidance and Electronics Company, Inc., as a defendant in all counts, is pending, with the Court setting submission on February 20, 2026.

1 Company, which is not a party to this litigation. Northrop Grumman Corporation is not a proper party to
2 this action. Northrop Grumman Corporation is a pure shareholder of Northrop Grumman Systems
3 Corporation and was never either an owner or operator of the 8020 Deering Avenue site (the “Site”), nor
4 did it succeed to the liabilities of any entity that was an owner or operator of the Site.

5 The named Plaintiffs in this case are Jed and Alisa Behar. The Court certified two classes: (1) a
6 Mitigation Class and (2) a Property Damage Class, each comprising “[a]ll persons who own a single
7 family or townhome within the [Class Area] at the time of Class Certification.” Dkt. 175 at 16. The
8 classes exclude individuals who “purchased a home with disclosure of contamination at their property
9 from the 8020 Deering Avenue Site.” *Id.* Plaintiffs have not provided information on how they intend to
10 identify individuals excluded from the classes or, alternatively, whether all current purported class
11 members meet the definition.

12 b. ***Pleadings:***

13 **Plaintiffs’ Position:**

14 Plaintiffs initiated this action on May 11, 2021. (ECF No. 1). The operative complaint is the Second
15 Amended Complaint (“SAC”). (ECF No. 73).²

16 The three remaining claims are: (1) negligence, (2) nuisance, and (3) trespass. The Court has
17 previously certified a class, with the Behars as named representatives, asserting claims for (1) negligence,
18 (2) nuisance, and (3) trespass on behalf of all Class Plaintiff homeowners.

19 Northrop Grumman filed its Answer to the SAC on August 16, 2022, denying these claims. (ECF
20 No. 75). At trial, Northrop Grumman also will pursue an affirmative defense based on the statute of
21 limitations and failure to mitigate damages.

22 **Defendants’ Position:**

23 Plaintiffs initiated this action on May 10, 2021. Dkt. 1. The operative complaint is the Second
24 Amended Complaint (“SAC”), Dkt. 91, as modified by (1) the parties’ stipulation striking Plaintiffs’
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27 ² Plaintiffs’ Motion to Amend Scheduling Order and for Leave to File a Third Amended Complaint (ECF
28 No. 324), seeking to add Northrop Grumman Guidance and Electronics Company, Inc., as a defendant in
all counts, is pending, with the Court setting submission on February 20, 2026.

1 allegations that “Plaintiffs and the Class Members currently suffer an increased risk of serious latent
2 disease, including a number of types of cancer that are associated with exposure to [TCE],” Dkt. 91 ¶ 71
3 (stricken by Dkt. 97 at 3), striking any allegations that “Plaintiffs and Class Members additionally suffer
4 fear of adverse health effects, including cancer and other latent, serious illness,” and striking Plaintiffs’
5 use of the phrase “fear of adverse health effects,” Dkt. 97 at 3; (2) Plaintiffs’ introduction of a “mitigation
6 class” and articulation of theory of harm in the motion for class certification and associated briefing, Dkts.
7 116, 136; and (3) all subsequent proceedings in this case. The three remaining claims are for negligence,
8 private permanent nuisance, and permanent trespass. Defendants filed an Answer to the SAC on April
9 19, 2023, denying these claims. Dkt. 92. At trial, Defendants will also pursue the affirmative defenses of
10 statute of limitations, failure to mitigate, and comparative fault.

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12 Defendants incorporate and do not waive the positions set forth in their motions to dismiss
13 (Dkt. 35, 45), motions to strike (Dkts. 36, 46), summary judgment motion (Dkt. 238), opposition to
14 Plaintiffs’ motion for class certification (Dkt. 132), motion for decertification (Dkt. 246), motion to clarify
15 (Dkt. 247), and motions to exclude Plaintiffs’ experts (Dkts. 133, 134, 143, 144, 145, 147, 240–245).
16 Defendants continue to maintain that no class can or should have been certified, that Jed and Alisa Behar
17 are improper class representatives and do not meet the requirements for inclusion in the class, that
18 summary judgment should have been granted to Defendants, and that Plaintiffs’ experts should be
19 excluded from trial. Defendants also do not waive their right to a single jury trial resolving liability,
20 damages and defenses, as set forth in the February 27, 2025 Joint Rule 26(f) Report, as well as Defendants’
21 supplement to the same. Dkts. 212, 268.

22 Defendants deny that Plaintiffs have suffered any cognizable injury and deny that Defendants are
23 liable for any damages claimed by Plaintiffs in this action. Defendants also dispute that Plaintiffs (1) are
24 entitled to “mitigation” damages for their permanent trespass and permanent private nuisance claims; (2)
25 may seek double recovery in the form of economic property damage and mitigation property damage for
26 the same alleged harm; (3) can pursue stigma damages, which are not available as a matter of law; (4) are
27 entitled to punitive damages; and (5) can recover any attorneys’ fees, costs, or pre- or post-judgment
28 interest.

1 **II. JURISDICTION**

2 It is stipulated that subject matter jurisdiction over this action exists under 28 U.S.C. § 1332, 1367 (Class
3 Action Fairness Act/Diversity of Citizenship and Supplemental Jurisdiction), and venue is proper in this
4 District and this Division pursuant to 28 U.S.C. § . § 1391(b)(2).

5 **Plaintiffs' Position:**

6 The amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,
7 and the action is between multiple members of the class who are residents and/or citizens of the State of
8 California on the one hand, and the Defendants who are citizens of the State of Delaware and the
9 Commonwealth of Virginia on the other hand. The number of members of all proposed plaintiff class in
10 the aggregate is more than one hundred (100). This Court has personal jurisdiction over Defendants
11 because Plaintiffs' claims arise out of Defendants' contacts, acts, and omissions within the State of
12 California such that the exercise of such jurisdiction is consistent with due process under the United States
13 Constitution.
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15 **Defendants' Position:**

16 Plaintiffs allege that subject matter jurisdiction exists over this action exists under 28 U.S.C. §§
17 1332, 1367 (Class Action Fairness Act/Diversity of Citizenship and Supplemental Jurisdiction), and venue
18 is proper in this District and this Division pursuant to 28 U.S.C. § 1391(b)(2). Defendants dispute that
19 class members have sustained any injury as a result of Defendants' conduct, and, therefore, class members
20 lack Article III standing. *See, e.g., TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) ("every class
21 member must have Article III standing in order to recover individual damages"); *Healy v. Milliman, Inc.*,
22 164 F.4th 701, 708 (9th Cir. 2026) ("named and unnamed class members alike had a burden to demonstrate
23 standing at trial").
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1 **III. TRIAL DURATION**

2 The Court set trial to commence on March 24, 2026, at 9:00 a.m., and to run until April 15, 2026,
3 for the liability and compensatory damages phase (Phase 1). For Phase 1, the Court has given each side
4 forty-two hours, inclusive of opening statements and closing arguments, to present its case. If the trial
5 proceeds to a punitive damages phase (Phase 2), the Court explained, there will be one additional day of
6 trial, during which each side will be allotted three hours.

7 **Plaintiffs' Position:**

8 Plaintiffs estimate that the trial will take no more than fifteen (15) full trial days. The liability and
9 economic compensatory damages phase ("Phase 1") will take approximately fourteen (14) days and
10 includes jury selection, openings, and closings. The Plaintiffs' portion of the punitive damages phase
11 ("Phase 2") will take approximately one (1) day. A "Phase 3" may be necessary relating to any post-trial
12 individual issues or costs and attorney's fees and is not included in our 15-day estimate. Plaintiffs believe
13 the length of Phase 3 would be dependent on how quickly Class Members respond to limited discovery
14 questions, as detailed in Plaintiffs' proposed trial plan.

15 **Defendants' Position:**

16 Defendants have also proposed a post-verdict process that—while not fully protecting their right
17 to a jury trial and without waiving their prior objections—would ensure that each claimant presents
18 admissible evidence on delayed discovery and class membership, and would preserve Defendants' ability
19 to obtain targeted documents, take limited testimony (including from sellers in the chain of title), and cross
20 examine class members, all managed efficiently by the Court or a magistrate judge. Dkt. 307 at 9–10; *see*
21 *United Air Lines, Inc. v. Wiener*, 286 F.2d 302, 306 (9th Cir. 1961) (holding that, "under the circumstances
22 presented by this appeal," liability and damages were "not so distinct and separable that a separate trial of
23 damages issues may be had without injustice"); *In re Vivendi Universal, S.A. Sec. Litig.*, 123 F. Supp. 3d
24 424, 426 (S.D.N.Y. 2015) (court permitted defendant to take individual discovery after adverse class
25 verdict); *O'Connor v. Boeing N. Am., Inc.*, 197 F.R.D. 404, 411, 415 (C.D. Cal. 2000) ("the limitations
26 defense would require individual trials for each of the class members."). The Court should require
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1 Plaintiffs to meet their evidentiary obligations and afford Defendants a meaningful, court-supervised
2 opportunity to test those claims before the Court awards any individualized damages.
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1 **IV. JURY TRIAL**

2 The trial is to be a jury trial. The parties' clean Joint Agreed Upon Proposed Jury Instructions have
3 been previously filed under separate cover as required by the Court's Civil Trial Order. The parties' clean
4 and redlined Disputed Jury Instructions have been previously filed under separate cover as required by the
5 Court's Civil Trial Order.

6 The parties' Competing Verdict Forms have been previously filed under separate cover as required
7 by the Court's Civil Trial Order.

8 For the convenience of the Court, the parties have attached as: **Exhibit 1** the parties clean Joint
9 Agreed Upon Proposed Jury Instructions, **Exhibit 2** the parties redlined Disputed Jury Instructions, and
10 **Exhibit 3** the parties Competing Verdict Forms.

11 **Plaintiffs' Position:** The parties were able to reach agreement on certain jury instructions and have filed
12 under separate cover a clean set of joint agreed upon proposed jury instructions. The parties were unable
13 to reach agreement on certain jury instructions, as well as the verdict form, and have filed under separate
14 cover a clean and redlined set of disputed jury instructions and a redlined competing verdict form,
15 reflecting those agreements and disagreements.
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18 **Defendants' Position:** Defendants maintain that all issues of liability, damages, and defenses as to named
19 Plaintiffs and each class member must be tried before a single jury.
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1 **V. ADMITTED FACTS**

2 The following facts are admitted and require no proof:

- 3 1. Northrop Grumman Corporation and Northrop Grumman Systems Corporation are both
4 incorporated in Delaware.
5 2. Northrop Grumman Systems Corporation is a wholly owned subsidiary of Northrop
6 Grumman Corporation.
7 3. Northrop Grumman Corporation's principal executive offices are located at 2980 Fairview
8 Park Drive, Falls Church, Virginia 22042.
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10 **VI. STIPULATED FACTS**

11 The following facts, though stipulated, shall be without prejudice to any evidentiary objection:

- 12 1. The Court has certified this matter to proceed as a class action.
13 2. 7031 Keokuk Ave, Winnetka, CA 91306 is located within the Class Area.
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VII. PARTIES' CLAIMS AND DEFENSES

Plaintiff's Claims:

a. Plaintiff plans to pursue the following claims against Defendant:

Claim 1: Negligence

Claim 2: Private Nuisance

Claim 3: Trespass

b. The elements required to establish Plaintiff's claims are:

Claim 1: Negligence: (1) Defendants owed Plaintiffs a legal duty to use due care; (2) Defendants breached that legal duty; and (3) Defendants breach was a proximate or legal cause of Plaintiffs' resulting injury. *See* Cal. Civ. Code § 1714(a) (establishing Defendants' duty of care in the management of the Site and the toxic chemicals used at the Site as well as remediating the plume in a negligent manner and failing to mitigate individual homes³); CACI Nos. 400 (Negligence—Essential Factual Elements), 401 (Negligence—Standard of Care), 430 (Causation: Substantial Factor); *Ladd v. County of San Mateo*, 12 Cal. 4th 913, 917 (1996); *Schaeffer v. Gregory Village Partners, L.P.*, 105 F.Supp.3d 951 (N.D. Cal. 2015) (citing *Coppola v. Smith*, 935 F.Supp.2d 993, 1015 (E.D. Cal. 2013); *Walnut Creek Manor, LLC v. Mayhew Ctr.*, No. C 07–5664 CW, 2010 WL 653561, at *1 (N.D. Cal. Feb. 22, 2010).

Defendants' Position: Defendants assert that, in order for Plaintiffs to recover on their negligence claim, Plaintiffs must establish each element stated above as to Plaintiffs and each class member. Additionally, Plaintiffs must prove by a preponderance of the evidence that Defendants' negligence caused physical damage to Plaintiffs' and each class member's property. *S. Cal. Gas Leak Cases*, 7 Cal. 5th 391, 398 (2019).

³ Defendants object to Plaintiffs' characterization of Defendants' alleged duty of care. The cited provision states only that "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself." Cal. Civ. Code § 1714(a).

1 **Claim 2:** Private Nuisance: (1) Plaintiffs owned the property; (2) Defendants, by acting or failing to
2 act, created a condition or permitted a condition to exist that was harmful to health, or was indecent or
3 offensive to the senses, or was an obstruction to the free use of property so as to interfere with the
4 comfortable enjoyment of life or property; (3) Defendants' conduct in acting or failing to act was
5 intentional and unreasonable, or unintentional, but negligent and reckless; (4) the condition substantially
6 interfered with Plaintiffs' use or enjoyment of their land; (5) an ordinary person would reasonably be
7 annoyed or disturbed by Defendants' conduct; (6) Plaintiffs did not consent to Defendants' conduct; (7)
8 Plaintiffs were harmed; (8) the seriousness of the harm outweighs the public benefit of Defendants'
9 conduct; and (9) Defendants' conduct was a substantial factor in causing harm to Plaintiffs. CACI Nos.
10 2021 (Private Nuisance—Essential Factual Elements), 2022 (Private Nuisance— Balancing Test Factors);
11 *San Diego Gas & Elec. Co. v. Super. Ct.*, 13 Cal. 4th 893, 937–939 (1996).

12 **Defendants' Position:** Defendants assert that, in order for Plaintiffs to recover on their permanent
13 private nuisance claim, Plaintiffs must establish each element as to Plaintiffs and each class member.
14 Defendants dispute Plaintiffs' articulation of the second element; Plaintiffs are required to show that
15 Defendants created a condition that interfered with Plaintiffs' and class members' use and enjoyment of
16 their properties, meaning it is one that an ordinary person would reasonably find to be more than minor or
17 trivial. *San Diego Gas & Elec. Co. v. Superior Ct.*, 13 Cal. 4th at 937–39; *Lussier v. San Lorenzo Valley*
18 *Water Dist.*, 206 Cal. App. 3d 92, 101 (1988). Additionally, Plaintiffs must show that Plaintiffs and each
19 class member suffered actual physical harm. *San Diego Gas & Elec. Co.*, 13 Cal. 4th at 937–39.

20 **Claim 3:** Trespass: (1) Plaintiffs owned, occupied, or controlled the property; (2) Defendants
21 intentionally, recklessly, or negligently entered Plaintiffs' property or caused another person or thing to
22 do so; (3) Plaintiffs did not give permission for the entry or that Defendants exceeded Plaintiffs'
23 permission; (4) Plaintiffs were harmed; and (5) Defendants' entry was a substantial factor in causing
24 Plaintiffs' harm. *See* CACI Nos. 2000 (Trespass—Essential Factual Elements), 2004 (Trespass—
25 “Intentional Entry” Explained; *Newhall Land and Farming Co. v. Superior Ct.*, 19 Cal. App. 4th 334,
26 346–47 (1993) (trespass may be based on the presence of contaminants on property).
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1 **Defendants’ Position:** Defendants contend that, to recover on their permanent trespass claim,
2 Plaintiffs must establish each element stated above as to Plaintiffs and each class member. As to the first
3 element, under the facts of this case and pursuant to this Court’s orders, Plaintiffs must show that Plaintiffs
4 and each class member owned their properties. *See McBride v. Smith*, 18 Cal. App. 5th 1160, 1173
5 (2018) (“Trespass is an invasion of the plaintiff’s interest in the exclusive possession of land”).
6 Additionally, because this case involves a claim for trespass by an imperceptible substance, Plaintiffs must
7 prove that the imperceptible substance at issue caused a present and concrete harm to Plaintiffs’ and each
8 class member’s properties. Dkt. 296 at 15; *Palmisano v. Olin Corp.*, 2005 WL 6777560, at *12 (N.D.
9 Cal. June 24, 2005); *Wilson v. Interlake Steel Co.*, 32 Cal. 3d 229, 233 (1982).

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11 c. Key Evidence Plaintiff Relies on for Each Claim

12 On July 1, 2024, the Court certified a FRCP Rule 23(b)(3) mitigation and damages class consisting
13 of all persons who own a single family or townhome within the Class Area as of July 1, 2024 (“the Class”
14 or “Class Members”), excluding employees of Defendants Northrop Grumman Corporation and Northrop
15 Grumman Systems Corporation (“Defendants” or “Northrop Grumman”) and anyone who purchased a
16 home with disclosure of contamination at their property from the 8020 Deering Avenue Site. (ECF 175).

17 Plaintiffs will present common proof in support of their claims under California state law for (i)
18 negligence, (ii) trespass, and (iii) nuisance.

19 Plaintiffs will also present common proof to show that Plaintiffs and the class are entitled to toll
20 the applicable statute of limitations under the discovery rule.

21 **A. Liability**

22 Plaintiffs’ common evidence, supported by expert testimony, will show that the Behars, and all
23 Class Members, in the Class Area comprised of 3,294 homes (“Class Area”) suffered an injury based on
24 the presence of toxic chemicals on their property from 8020 Deering Avenue, including trichloroethylene
25 (“TCE”), perchloroethylene (“PCE”), and trichloroethane (“TCA”).

26 Plaintiffs will show that in 2001 Defendants acquired Litton Industries and Litton Systems, the
27 companies responsible for discharging volatile organic compounds (“VOCs”) into the groundwater at
28 8020 Deering in the late 1960s and early 1970s.

1 Based on these discharges, Plaintiffs will show that there is a roughly 2.4-mile Plume (“Plume”)
2 of toxic solvents that extends throughout the Class Area from 8020 Deering. Common evidence will
3 establish for all Class Members that toxic chemicals from this plume contaminate the groundwater, soil,
4 soil vapor, and the geology above the Plume, contaminating each-and-every property in the Class Area.
5 The Behars as well as other deposed Class Members (the Groses and Betty Frymire) will further testify as
6 to their lack of knowledge relating to the presence and cause of the toxic chemical contamination.

7 Plaintiffs’ expert hydrogeologist, Dr. W. Richard Laton, will testify about his mapping of the
8 geographic area above the Plume where TCE levels in the groundwater exceed 1.2 ug/L, the target
9 groundwater concentration sufficient to create vapor intrusion above California’s Environmental
10 Screening Level (“ESL”) of 0.48 ug/m³ for indoor air in homes above the plume. Dr. Laton will testify
11 that the target groundwater concentration is determined based on empirically derived attenuation factors
12 for risk-based screening of the vapor intrusion pathway from sub-slab and soil vapor to indoor air.
13 Additionally, common proof will establish that TCE and PCE are throughout the soil matrix, including
14 the groundwater and soil vapor. Plaintiffs will also introduce evidence proving that as ground water and
15 vapor travel through the geology, the soil becomes contaminated.
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17 Dr. Mark Kram, Plaintiffs’ vapor intrusion expert, will testify that the presence of TCE throughout
18 the Plume creates a preferential pathway for the TCE soil vapors to enter Plaintiffs’ homes. The VOCs
19 migrate from the soil, up through the foundation and/or crawlspace, and accumulate in indoor air resulting
20 in toxic exposures to residents. Dr. Kram will testify that the presence of TCE at levels exceeding the
21 screening limit, partnered with the contamination of the soil matrix, damages the properties and
22 necessitates mitigation.

23 Dr. Jill E. Ryer-Powder, a toxicologist, will testify that TCE and PCE are carcinogenic, establish
24 the health risks and reasonableness of avoiding exposure. She may also offer testimony as to how a
25 complete pathway for TCE vapors to travel from the groundwater Plume into the homes above the Plume
26 results in toxic exposure to residents. Plaintiffs will also introduce liability related evidence and expert
27 testimony regarding the TCE Plume and the site’s history through Dr. Hugh Gorman, an industrial
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1 historian, Dr. Matthew Tonkin, a hydrogeologist and groundwater modeler, and Dr. Kevin J. Boyle, a real
2 estate economist.

3 Accordingly, the common evidence and expert testimony will show that contamination constitutes
4 a physical injury to each-and-every class member property on the Plume. The evidence will show how the
5 toxic nature of this contamination, and its presence above screening limits, causes each class property
6 owner to incur the costs connected to mitigating and repairing the resulting damage. Plaintiffs' common
7 evidence, supported by expert testimony, will show how Northrop Grumman's contamination constitutes
8 a substantial interference with Plaintiffs' use and enjoyment of their property.

9 The applicable statute of limitations for all Class Members' claims is three (3) years. Cal. C.C.P.
10 § 338. While a claim generally accrues "and the statute of limitations 'begins to run upon the occurrence
11 of the last event essential to the cause of action,'" the "discovery rule 'postpones commencement of the
12 limitation period until the plaintiff discovers or should have discovered the facts essential to his cause of
13 action.'" *Shamsian v. Atlantic Richfield Co.*, 107 Cal.App.4th 967, 979–80 (Cal. App. 2 Dist. 2003)
14 (internal citation omitted). Plaintiffs will show that the common evidence, notice letters and other
15 notification distributed to Class Members, fail to provide notice of the presence of contamination at homes
16 throughout the Class Area or of the party(ies) responsible for the contamination, and the discovery rule
17 applies class wide.

18 In addition to Plaintiffs' expert testimony, Plaintiffs will present their case-in-chief *via* testimony
19 from the Class Representatives and deposed Class Members, current and former Northrop Grumman fact
20 and corporate representative witnesses, current and former Northrop Grumman consultants. and relevant
21 third parties, such as, Akzyakatl Mexikatzin, a Project Manager from the Los Angeles Regional Water
22 Quality Control Board with primary oversight over this Plume.

23 In sum, the jury trial will focus on questions of fact common to all of Plaintiffs' claims, including
24 whether:

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26 1. Defendants' acts or omissions at the Site proximately caused TCE and PCE to be
27 released and migrate into, at, on, or around the Class Area;
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2. Defendants failed to exercise reasonable care in their storing, use, disposal, containment, investigation, and remediation of TCE and PCE;
3. Defendants' TCE released from the Site migrated throughout the entire Class Area;
4. Properties within the Class Area are contaminated with TCE and PCE;
5. TCE contamination at or above 1.2 µg/L in the groundwater has caused injury to the Class Area properties in the form of diminished property values and the need for mitigation against contaminated soil vapor; and,
6. Plaintiffs timely filed their complaint within the applicable statute of limitations under the discovery rule and/or fraudulent concealment.

B. Damages

Plaintiffs will seek economic compensatory damages associated with Defendants' contamination based on the expert testimony and the evidence presented during the liability phase. Additionally, Plaintiffs will ask the jury to render a verdict for punitive damages. Immediately following the liability and damages phases of trial, Plaintiffs will seek a judgment from the Court that includes costs and fees of suit, attorney's fees under CCP §1021.5, prejudgment and post-judgment interest. Plaintiffs believe that trying both the liability phase and punitive damages phase immediately back-to-back, using the same jury, is the most efficient and fair way to try this case.

Plaintiffs' economic damages are for (i) property value diminution and (ii) mitigation costs. Dr. Boyle, a real estate economist, will testify at trial that being over the Plume and within proximity to 8020 Deering damages Plaintiffs' homes and provides a class-wide method to calculate damage. Dr. Boyle calculated the diminution in value for each class home and will establish property damages for all Class Members at trial. He will do so in three basic steps. First, Dr. Boyle will explain how he calculated the unimpaired value of class homes by using actual transaction prices and updating them to current home value using the Federal Reserve Economic Data Index. Dr. Boyle's damage model determines the damage to each property using individual values. Dr. Boyle also controls for differences in lot size, living area and age by using the most recent sale prices of properties and adjusting them with the Federal Index.

1 Second, Dr. Boyle will testify how he used past studies and a meta-equation to derive current
2 property damage for being on the Northrop Grumman Plume.

3 Third, Dr. Boyle will testify as to the average value diminution in the Class Area depending on
4 distance from 8020 Deering and apply those percentages to each unimpaired home value. Dr. Boyle's total
5 damages number for property value diminution for all class properties will be approximately
6 \$236,000,000. Plaintiffs will present Dr. Boyle's class damage calculations through a spreadsheet exhibit
7 and a corresponding FRE 1006 summary exhibit to aid the jury.

8 For property damages, the verdict sheet will ask the jury to provide a lump sum. If the jury awards a lower
9 lump sum than what Dr. Boyle's calculations provide for each home, following the trial either the class
10 administrator or special master can perform a basic calculation to apportion the property damages for each
11 home based on the damage model which apportions the diminution by distance.

12 Mitigation damages will be established by testimony from Dr. Kram. Mitigation costs for the sum
13 total of class homes are approximately \$277,800,000. Mitigation damages are calculated for each home
14 to remove toxic vapors before they enter a home's living area. The verdict sheet will ask the jury to provide
15 a lump sum for mitigation damages.
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17 **Defendant's Affirmative Defenses:**

18 a. Defendant plans to pursue the following affirmative defenses:

19 **Defense 1:** Statute of Limitations

20 **Defense 2:** Failure to Mitigate

21 **Defense 3:** Comparative Fault

22 Defendants reserve their rights with regard to the equitable defenses of laches, unclean hands, and
23 estoppel, as well as the purely legal defenses (e.g., those addressing punitive damages and class
24 certification).

25 b. The elements required to establish Defendant's affirmative defenses are:

26 **Defense 1:** Statute of Limitations: Plaintiffs' lawsuit was not filed within the three-year statute of
27 limitations because their claimed harm occurred before May 10, 2018. But Plaintiffs' lawsuit was still
28 filed on time if Plaintiffs prove that, before that date, Plaintiffs and each class member did not discover,

1 and did not know of facts that would have caused a reasonable person to suspect, that they had suffered
2 harm in connection with TCE in the groundwater that was caused by someone's wrongful conduct. *Jolly*
3 *v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1109–10 (1988); CACI Nos. 454, 455; *O'Connor v. Boeing N. Am.*,
4 *Inc.*, 311 F.3d 1139, 1150–58 (9th Cir. 2002).

5 Because Plaintiffs have invoked the delayed discovery rule, Plaintiffs—not Defendants—bear the
6 burden of proving they did not discover their claims before the limitations date. A plaintiff asserting
7 delayed discovery must prove “(1) the time and manner of discovery and (2) the inability to have made
8 earlier discovery despite reasonable diligence.” *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 808
9 (2005). Courts have uniformly recognized that this burden lies with plaintiffs alone. *See, e.g., Yamauchi*
10 *v. Cotterman*, 84 F. Supp. 3d 993, 1011 (N.D. Cal. 2015) (“A plaintiff relying on the discovery rule to
11 show delayed accrual of a cause of action bears the burden of pleading and proving belated discovery.”);
12 *California Sansome Co. v. U.S. Gypsum*, 55 F.3d 1402, 1406 (9th Cir. 1995) (“the burden is on [the
13 plaintiff] to plead and prove the facts necessary to toll the limitations period once it is established that it
14 would have otherwise commenced”); *E-Fab, Inc. v. Accts., Inc. Servs.*, 153 Cal. App. 4th 1308, 1319
15 (2007) (“The burden is on the plaintiff to show diligence.”).

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17 ***Plaintiffs’ Position:*** Defendants must prove when Plaintiffs’ claims first accrued and that Plaintiffs’
18 claims were not filed within the three-year statute of limitation. “When a nuisance is permanent, ...
19 plaintiffs must bring suit for permanent nuisance within three years of obtaining notice of the
20 contamination of their property.” *McCoy v. Gustafson*, 180 Cal.App.4th 56, 84 (2006) (citing *Mangini v.*
21 *Aerojet-General Corp.*, 12 Cal.4th 1087, 1096 (Cal. 1996)). Such facts must be established before any
22 question about tolling under the discovery rule becomes necessary or relevant.

23 **Defense 2:** Failure to Mitigate: Plaintiffs and class members may not recover damages for harm to
24 their properties that Plaintiffs and class members could have avoided with reasonable efforts or
25 expenditures. *Shaffer v. Debbas*, 17 Cal. App. 4th 33, 41 (1993); CACI No. 358.

26 ***Plaintiffs’ Position:*** Defendants have never proffered any evidence of negligence on the part of
27 Plaintiffs and have not cited any cases supporting their entitlement to that affirmative defense. Such a
28 defense is not possible in this case. Plaintiffs’ damages occurred at the same time as the legal wrong. There

1 was no period in which Plaintiffs could have averted to prevent or reduce any of their damages. *Pool v.*
2 *City of Oakland*, 42Cal.3d 1051, 1066 (1986) (“The rule of [mitigation of damages] comes into play after
3 a legal wrong has occurred, butwhile some damages may still be averted”). Defendants have noted
4 that the Behars have not spent any money to install a mitigation system in their home. But, consistent with
5 *Pool*, the affirmative defense of mitigation does not require a plaintiff to pay out-of-pocket to cover
6 damages they are seeking to recover from a defendant while a defendant drags out the lawsuit. *Valle de*
7 *Oro Bank v. Gamboa*, 26 Cal. App. 4th 1686, 1691 (1994) (“The duty to mitigate damages does not require
8 an injured party to do what is unreasonable or impracticable.”).

9 **Defense 3:** Comparative Fault: Plaintiffs and class members may not recover damages for harm to
10 their properties that Plaintiffs and class members caused by their own negligence. To succeed on this
11 defense, Defendants must prove that (1) Plaintiffs or class members were negligent and (2) Plaintiffs’ or
12 class members’ negligence was a substantial factor in causing their harm. *Bradfield v. Trans World*
13 *Airlines, Inc.*, 88 Cal. App. 3d 681, 686 (1979); CACI No. 405. Defendants also claim that the negligence
14 of nonparties Materials & Process Research Associates, Inc., Black Copy Company, Inc., and Graphic
15 Technologies Corporation contributed to Plaintiffs’ and the class members’ harm. To succeed on this
16 claim, Defendants must prove both of the following: (1) that Materials & Process Research Associates,
17 Inc., Black Copy Company, Inc., and/or Graphic Technologies Corporation were negligent; and (2) that
18 the negligence of Materials & Process Research Associates, Inc., Black Copy Company, Inc., and/or
19 Graphic Technologies Corporation was a substantial factor in causing Plaintiffs’ and the class members’
20 harm. See CACI 406; *Stewart v. UnionCarbide Corp.*, 190 Cal.App.4th 23, 33 (2010).

21 **Plaintiffs’ Position:** Defendants have never proffered any evidence of negligence on the part of
22 Plaintiffs and have not cited any cases supporting their entitlement to that affirmative defense. Plaintiffs
23 were not and could not have been negligent. “Contributory negligence is negligence of the plaintiff before
24 any damage, or any invasion of his rights, has occurred” *Pool v. City of Oakland*, 42 Cal.3d 1051, 1066
25 (1986) (quoting Prosser & Keeton, Torts 5th ed. (1984), § 37 at p. 458). Defendants have no evidence or
26 expert to support any claim that Plaintiffs failed to take any reasonable action that could have prevented
27 or lessened the impact of Defendants’ contamination. Plaintiffs filed this lawsuit to seek a remedy
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1 immediately after learning about their injury. As a result, given the unknown nature of the injury and the
2 resulting harm, it would be impossible for Plaintiffs to have been negligent and contributed to their own
3 harm and Defendants lack any evidence or expert support for this defense.

4 In terms of trespass, it is “well-settled that contributory negligence is not a defense to trespass
5 and—in general—to any intentional tort.” *Gandy v. Asplundh Tree Expert Co.*, 2005 WL 2680067, at *2
6 (Cal. Ct. App. Oct. 20, 2005), *as modified* (Nov. 16, 2005).

7 Moreover, Plaintiffs solely seek recovery of economic damages, and neither apportionment of
8 responsibility nor Cal. Civ. Code § 1431.2 apply to economic damages. Cal. Civ. Code § 1431.2(a) (“the
9 liability for each defendant for *non-economic damages* shall be several only and not joint”) (emphasis
10 added); *id.* at (b)(1) (“For purposes of this section, the term ‘economic damages’ means objectively
11 verifiable monetary losses including medical expenses, loss of earning, burial costs, loss of use of
12 property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of
13 employment and loss of business or employment opportunities.”). This instruction has no legal or factual
14 basis for its inclusion. *Stewart v. Union Carbide Corp.*, 190 Cal.App.4th 23, 33 (Cal. App. 2d Dist. 2010)
15 (defendant has burden to establish concurrent or alternate causes).

16 c. In brief, the key evidence Defendant relies on for each affirmative defense is:

17 **Defense 1:** Statute of Limitations: Plaintiffs admit that their claimed harm occurred decades ago, but
18 purport to rely on the delayed-discovery rule to survive the statute of limitations. Dkt. 91 ¶¶ 1, 36.
19 Because Plaintiffs invoke delayed discovery, Plaintiffs must prove for each class member “(1) the time
20 and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence.”
21 *Fox*, 35 Cal. 4th at 808; *see also Yumul*, 733 F. Supp. 2d at 1141 (“[T]his rule applies even where plaintiff
22 is prosecuting a class action.”); *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 320–24 (4th Cir.
23 2006). Plaintiffs have not identified any plan to produce any such admissible evidence on behalf of each
24 member of the class.

25 **Defense 2:** Failure to Mitigate: Defendants will present evidence that Plaintiffs did not test for vapor
26 intrusion or install vapor-intrusion-mitigation systems.
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1 **Defense 3:** Comparative Fault: Defendants will present evidence that Plaintiffs did not test for vapor
2 intrusion or do anything else to limit their claimed harm from vapor intrusion. Defendants will present
3 evidence at trial that three former operators at the 8020 Deering Ave Site—Materials & Process Research
4 Associates, Inc., Black Copy Company Inc., and Graphic Technologies Corporation—operated at the site
5 after Litton Systems, Inc., likely used TCE, and could have been the source, or a source of the
6 contamination.

7 Defendants also incorporate by reference the evidence referenced in Defendants’ Trial Plan and
8 Memorandum of Contentions of Fact and Law. Dkts. 307, 321.
9

VIII. REMAINING TRIABLE ISSUES

In view of the admitted facts and the elements required to establish the claims and affirmative defenses, the following issues remain to be tried:

Plaintiffs' Position:

- a. Whether Defendants' acts or omissions at or around 8020 Deering proximately caused TCE and PCE to be released and migrate into, at, on, or around the Class Area.
- b. Whether Defendants failed to exercise reasonable care in their storing, use, disposal, containment, investigation, and remediation of TCE and/or PCE.
- c. Whether Defendants' TCE released from the Site migrated throughout the entire Class Area.
- d. Whether Plaintiffs and the class member properties are contaminated with TCE and/or PCE.
- e. Whether TCE contamination at or above 1.2 µg/L in the groundwater has caused injury to Plaintiffs and the class member properties in the form of the need for mitigation against contaminated soil vapor.
- f. The amount of alleged damages that Plaintiffs and the class members are owed for mitigation damages.
- g. Whether TCE contamination at or above 1.2 µg/L in the groundwater has caused injury to Plaintiffs and the class member properties in the form of diminished property values.
- h. The amount of alleged damages that Plaintiffs and the class members are owed for property value diminution.
- i. When Plaintiffs' and the class members' negligence claims accrued.
- j. When Plaintiffs' and the class members' trespass claims accrued.
- k. When Plaintiffs' and the class members' nuisance claims accrued.
- l. Whether Defendants can prove that Plaintiffs and the class members did not timely file their complaint within the applicable statute of limitations.
- m. Whether, assuming Defendants prove their statute of limitation defense, Plaintiffs and the class members are entitled to tolling under the discovery rule or fraudulent concealment and estoppel.

- 1 n. Whether Plaintiffs and the class members are entitled to punitive damages and, if so, the amount
2 owed.

3 **Defendants' Position:**

- 4 a. Whether Litton Systems was negligent in its operations at the Site;
5 b. Whether Litton Systems' operations at the Site caused a release of TCE;
6 c. Whether Litton Systems' operations at the Site released TCE at levels proven by Plaintiffs to
7 constitute harm to Plaintiffs and each class member;
8 d. The level, if any, of TCE from Litton Systems' operations at the Site present in the groundwater,
9 soil, soil vapor and/or indoor air at every home in the Class Area (including the Behars' home);
10 e. Whether other localized sources of TCE contributed to the groundwater contamination in any part
11 of the Class Area;
12 f. Whether TCE released by Litton Systems' operations at the Site has entered property owned by
13 Plaintiffs and each class member;
14 g. Whether other localized sources of TCE caused or contributed to any exceedances of screening
15 levels at every home in the Class Area (including the Behars' home);
16 h. Whether indoor sources of TCE, unrelated to groundwater or Litton Systems' operations at the
17 Site, caused or contributed to any exceedances of screening levels at every home in the Class Area
18 (including the Behars' home);
19 i. Whether each Defendant was negligent in its investigation and remediation of TCE released from
20 the Site;
21 j. Whether each Defendants' alleged negligence was a substantial factor in causing harm to Plaintiffs
22 and each class member;
23 k. Whether the presence of TCE at background levels or at levels below the residential screening
24 level in indoor air or soil vapor constitutes a substantial interference with Plaintiffs' and class
25 members' use and enjoyment of their homes;
26 l. Whether the entry of TCE released by Litton Systems' operations at the Site onto property owned
27 by Plaintiffs and each class member, if any, has (1) caused a deposit of particulate matter upon
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- 1 Plaintiffs' and each class member's property or (2) caused actual physical damage to Plaintiffs'
2 and each class member's property;
- 3 m. Whether each class-area home sits on top of groundwater with TCE at concentrations at or above
4 1.2 µg/L;
- 5 n. Whether a clean-water lens exists in any given part of the Class Area;
- 6 o. Whether the presence of TCE in groundwater at concentrations of 1.2 µg/L caused each class-area
7 home to diminish in property value;
- 8 p. What amount of money damages, if any, each class member is entitled to recover;
- 9 q. Whether mitigation in all class-area homes is necessary to eliminate a substantial interference with
10 Plaintiffs' and class members' use and enjoyment of their homes;
- 11 r. Whether Plaintiffs and class members could have avoided harms to their properties with reasonable
12 efforts or expenditures;
- 13 s. Whether Plaintiffs and each class member were negligent;
- 14 t. Whether Plaintiffs' and each class member's negligence was a substantial factor in causing their
15 alleged harms;
- 16 u. Whether each potential member of the class purchased his or her home with disclosure of
17 contamination at their property from the 8020 Deering Avenue Site;
- 18 v. Whether each class member knew, or should have known, when he or she purchased his or her
19 home, that there was TCE in the groundwater beneath the home that originated at the Site;
- 20 w. Whether each class member knew, or should have known, before May 10, 2018, that there was
21 TCE in the groundwater beneath his or her home that originated at the Site;
- 22 x. When and how each class member discovered his or her claims, as required to claim reliance on
23 the discovery rule exception to the statute of limitations, *O'Connor v. Boeing N. Am., Inc.*, 311
24 F.3d 1139, 1150, 1157 (9th Cir. 2002);
- 25 y. Whether any award of punitive damages would be supported by the facts and consistent with the
26 requirements of due process;
- 27 z. Whether Plaintiffs and each class member own properties in the Class Area; and
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1 aa. Whether each class member has standing to pursue a claim.
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1 **IX. DISCOVERY**

2 All discovery is complete.

3 **Plaintiffs' Position:** Plaintiffs intend to serve supplemental expert reports prior to the deadline set by
4 Federal Rule of Civil Procedure 26(a)(3) and consistent with the Court's instructions at the February 11,
5 2026 status hearing. *See* Dkt. 328 ("The Court allows the parties to file supplemental expert reports"). In
6 the event that from now until the time of trial, Defendants produce any new materials and/or supplement
7 their experts with new substantive data or opinions, Plaintiffs reserve all rights to motion for a limited
8 reopening of discovery to (1) respond with expert opinions addressing the new data or opinions and (2)
9 take a limited deposition regarding the new opinions prior to trial. In the alternative, Plaintiffs reserve the
10 right to move to strike any new discovery or opinions as untimely.

11
12 Plaintiffs agree that discovery is complete, however, Plaintiffs reserve the right to seek net worth
13 discovery if Defendants do not stipulate to net worth or agree to provide a corporate representative witness
14 on the topic of Defendants' net worth at trial.

15 **Defendants' Position:** Defendants reserve all rights in the event that Plaintiffs or their experts produce
16 any new materials, data or opinions prior to trial. Defendants intend to serve supplemental expert reports
17 prior to the deadline set by Federal Rule of Civil Procedure 26(a)(3). *See* Dkt. 328 ("The Court allows
18 the parties to file supplemental expert reports"). Defendants also reserve all rights in the event that the
19 Court grants Plaintiffs' pending Motion to Amend Scheduling Order and for Leave to File Third Amended
20 Complaint. Dkt. 324.

21 In the event of a class verdict, the Court should allow individualized, class-member discovery to
22 safeguard due process and allow testing of individual claims, including limitations and standing. *See, e.g.,*
23 *In re Vivendi Universal, S.A. Sec. Litig.*, 123 F. Supp. 3d 424, 426 (S.D.N.Y. 2015) (court permitted
24 defendant to take individual discovery after adverse class verdict). Defendants previously sought
25 individualized, class-member discovery on issues relating to the statute of limitations, delayed discovery,
26 and class membership, but their request was denied. *See* Dkt. 180, 202. Defendants reserve all rights on
27 that issue.
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1 **X. DISCLOSURES AND EXHIBIT LIST**

2 All disclosures under FED. R. CIV. P. 26(a)(3) have been made.

3 The parties' joint exhibit list has been previously filed under separate cover as required by L.R.
4 16-6.1 and the Court's Scheduling Order ("Joint Exhibit List"). In view of the volume of exhibits marked
5 by each party, the parties have incorporated in the previously filed "Joint Exhibit List" (ECF No. 315) all
6 agreements regarding admitted exhibits, and all objections, including the grounds therefor.

7 The parties reserve the right to amend, including adding or removing exhibits, up to and until the
8 Friday before trial which is the last day to add exhibits. The parties also reserve the right to use additional
9 documents as demonstratives and/or for impeachment as is consistent with the Court's trial procedures.
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XI. WITNESS LISTS

The parties' witness lists have been previously filed under separate cover as required by the Court's Scheduling Order. The following table incorporates those witnesses that the parties intend to call at trial:

Plaintiffs' Witness List:

Will Call / May Call	Witness's Name, Title, Affiliation (If Relevant)	Est. Direct Exam (Hours)
Will	Jed Behar, Class Representative	0.75 hours
Will	Alisa Behar, Class Representative	0.75 hours
Will	Dr. Kevin Boyle, Professor Emeritus, Virginia Tech	1.5 hours
Will	Corporate Representative(s) of Defendants for punitive damage phase from each corporate defendant	3.5 hours
May	Dr. Helen Dawson, Principal, Geosyntec Consultants	1.5 hours
May	Shantal DerBoghosian, Project Manager, Northrop Grumman Corporation	1.5 hours
May	Betty Frymire, Class Member	0.4 hours
Will	Dr. Hugh Gorman, Professor Emeritus, Michigan Tech	1.2 hours
May	Lisa Grose, Class Member	0.3 hours
May	Miles Grose, Class Member	0.4 hours
May	Jeff Gwinn, President, Orion Environmental	0.75 hours
May	Kassidy Jones, Project Manager, Northrop Grumman Corporation (individually and as 30(b)(6))	0.75 hours
May	Joseph Kwan, Former Director of Environmental Management, Northrop Grumman Corporation	1.0 hours
Will	Dr. Mark Kram, Founder and CTO, Groundswell Technologies, Inc.	3 hours

Will	Dr. W. Richard Laton, Professor, Cal State Fullerton; Founder, Earth Forensics, Inc.	1.5 hours
May	Abraham Mercado, Former Vice President, Consensus, Inc. (individually and as 30(b)(6))	0.75 hours
Will	Akzyakatl Mexikatzin, Project Manager, LARWQCB (Regional Waterboard)	1.5 hours
Will	Kevin Miskin, Principal Engineer, Stantec Consulting Corporation (individually and as 30(b)(6))	1.5 hours
May	Matthew Nelson, Former Staff Engineer, Orion Environmental	1.5 hours
Will	Dr. Jill Ryer-Powder, Founder, Environmental Health Decisions	0.75 hour
May	Dr. Matt Thomas, Senior Environmental Engineer, Geosyntec Consultants	0.75 hours
Will	Dr. Matthew Tonkin, President, S.S. Papadopoulos & Associates, Inc.	1.5 hours
May	Dr. Dominique Hanssens, Professor Emeritus, UCLA	1.25 hours

Defendants' Witness List:

Will Call / May Call	Witness's Name, Title, Affiliation (If Relevant)	Est. Direct Exam (Hours)
Will	Kevin Miskin, Principal Engineer, Stantec Consulting Services, Inc.	3 hours
Will	Abraham Mercado, Vice President, Consensus, Inc.	2 hours
Will	Kassidy Jones, Remediation Program Lead, Northrop Grumman Systems Corporation	1 hour

1	May	Michael Shannon, Senior Staff Principal of Corporate Environmental	1 hour
2		Remediation, Northrop Grumman Systems Corporation	
3	Will	Helen Dawson, Senior Principal, Geosyntec Consultants, Inc.	3 hours
4	May	Matthew Nelson, Former Senior Project Engineer, Orion	2 hours
5		Environmental, Inc.	
6	May	Joseph Kwan, Corporate Director of Environmental Remediation,	1 hour
7		Northrop Grumman Systems Corporation	
8	May	Shantal Der Boghosian, Program Manager, Northrop Grumman	1 hour
9		Systems Corporation	
10	May	Matthew Thomas, Project Engineer, Geosyntec Consultants, Inc.	1 hour
11	Will	Murray Einarson	3 hours
12	Will	Robert Ettinger	3 hours
13	Will	Jon Fryzek	2 hours
14	Will	Thomas McHugh	2 hours
15	Will	Robert Scofield	2 hours
16	Will	Jennifer Pitts	3 hours
17	Will	Andrea Eisfeldt	2 hours
18	Will	Jay Vandeven	2 hours
19	Will	Jedidiah Behar, Plaintiff	3 hours
20	Will	Alisa Behar, Plaintiff	2 hours
21	Will	Betty Frymire, Class member	1 hour
22	Will	Lisa Ford Grose, Class member	1 hour
23	Will	Miles Grose, Class member	1 hour
24	Will	Akzayakatl Mexikatzin, Employee, Los Angeles Regional Water	2 hours
25		Quality Control Board	

May	Class Members to be identified	30 min per witness
May	Defendants' and/or their consultants' business records' custodian	1 hour

Only the witnesses identified on the lists will be permitted to testify (other than solely for impeachment).

Plaintiffs' Position: These witnesses will not necessarily be called in this order. Time estimates are for direct examination during Plaintiffs' case-in-chief and are subject to change.

This list is provided as of February 17, 2026 for purposes of filing with the Court and is not intended as final witnesses list for trial nor is it a waiver of any rights. Plaintiffs reserve the right to call additional witnesses from their broader disclosures as necessary and do not waive the ability to spend more or less time on any listed witness depending on the evidence presented, the Court's rulings, or the needs of trial. For the purposes of this list, direct exam time estimates have been provided for witnesses that Plaintiffs currently anticipate calling live in their case-in-chief.

Plaintiffs reserve the right to not call certain witnesses identified herein depending on the testimony, rulings, and other facts developed during their case-in-chief or during Defendants' case-in-chief. Plaintiffs further reserve their right to amend their Witness List upon developments leading up to trial, including receipt of Defendants' Witness List, Exhibit List, Designation(s) of Deposition Testimony, or any pre-trial rulings received from the Court.

Defendants have not specified their corporate representative(s) for trial, to the extent those individuals are not on this list, Plaintiffs reserve the right to seek testimony from that representative. While Defendants have stated that they will not be bringing a corporate representative to trial in addition to previously designated Rule 30(b)(6) witnesses, Plaintiffs will still be seeking a corporate representative from each corporate defendant for the punitive damages phase to testify regarding net worth and other issues.

1 The parties have met and conferred multiple times during the last month about which witnesses
2 the Defendants represent they will bring to testify live at trial. Given those ongoing discussions, Plaintiffs
3 reiterate their reservation of all rights to exchange deposition designations for anyone Defendants
4 represent will be unavailable at the time of trial. This would include reading in any deposition testimony
5 or playing videotaped deposition testimony. Defendants have cited Rule 26(a)(3) that provides if
6 deposition designations are not provided for in the scheduling order, then Plaintiffs have 30 days prior to
7 trial to provide designations to Defendants.

8 Plaintiffs reserve the right to call and/or cross-examine any witness identified on Defendants'
9 witness list. Finally, Plaintiffs reserve the right to invoke, and hereby incorporate by reference, any and
10 all reservations set forth by Defendants in their witness list.

11 **Defendants' Position:**

12 These witnesses will not necessarily be called in this order. Time estimates are for direct
13 examination are subject to change.

14 This list is provided as of February 17, 2026, for purposes of filing with the Court and is not
15 intended as final witnesses list for trial nor is it a waiver of any rights. Defendants reserve the right to call
16 additional witnesses from their broader disclosures as necessary and do not waive the ability to spend
17 more or less time on any listed witness depending on the evidence presented, the Court's rulings, or the
18 needs of trial. Defendants reserve the right to not call certain witnesses identified herein depending on
19 the testimony, rulings, and other facts developed during trial. Defendants further reserve their right to
20 amend their Witness List upon developments leading up to trial. Defendants reserve the right to call
21 and/or cross-examine any witness identified on Plaintiffs' witness list.

22 Defendants object to Plaintiffs' eve-of-trial demand that Defendants produce corporate
23 representatives to testify regarding Defendants' financial condition for the punitive damages phase. It is
24 Plaintiffs' burden to introduce evidence of a defendant's financial condition at trial. *Adams v. Murakami*,
25 54 Cal.3d 105, 119 (1991) ("In light of our holding that evidence of a defendant's financial condition is
26 essential to support an award of punitive damages, Evidence Code section 500 mandates that the plaintiff
27 bear the burden of proof on the issue."). The Ninth Circuit has consistently applied this rule. *See Morgan*
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1 v. *Woessner*, 997 F.2d 1244, 1259 (9th Cir. 1993); *Kaffaga v. Estate of Steinbeck*, 938 F.3d 1006, 1018
2 (9th Cir. 2019). Plaintiffs had ample opportunity to obtain this evidence during discovery, including by
3 noticing a Rule 30(b)(6) deposition, yet they conducted no discovery whatsoever on Defendants’ financial
4 condition and identified no witnesses on this issue for trial. Defendants have no obligation to produce
5 undisclosed witnesses to assist Plaintiffs in proving Plaintiffs’ own case—doing so would be “inherently
6 prejudicial.” *Adams*, 54 Cal.3d at 120. Having slept on their rights throughout discovery, Plaintiffs cannot
7 now demand that Defendants cure Plaintiffs’ failures; the Court should deny this improper demand.

8 The parties are working on a stipulation regarding Plaintiffs’ intent to call Defendants’ fact
9 witnesses who provided deposition testimony as 30(b)(6) witnesses. Defendants reserve their right to
10 object to such testimony at trial. *See Plexxikon Inc. v. Novartis Pharms. Corp.*, 2021 WL 2255885, at *5
11 (N.D. Cal. June 3, 2021) (“[C]ourts have generally concluded that ‘a corporate representative may not
12 testify to matters outside his own personal knowledge to the extent that information [is] hearsay not falling
13 within one of the authorized exceptions.’”) (collecting cases); *Cusack v. BendPak, Inc.*, 2018 WL
14 4390715, at *2, fn. 2 (D. Idaho Sept. 13, 2018) (granting motion in limine limiting testimony by
15 Defendant’s 30(b)(6) witness to matters within his personal knowledge and noting “[t]he mere fact that
16 he was identified as a Rule 30(b)(6) deponent for purposes of discovery does not mean he can testify at
17 trial about matters within the ‘corporate’ knowledge but outside his personal knowledge.”); *De Jaray v.*
18 *Lattice Semiconductor Corp.*, 345 F.R.D. 353, 358 (D. Or. 2024) (denying Plaintiff’s motion to compel
19 Defendant’s 30(b)(6) witness to testify at trial).

21 Defendants note that Plaintiffs’ witness list contains cumulative witnesses. Defendants reserve
22 their right to object to cumulative testimony. *See* FRE 403 (“court may exclude relevant evidence if its
23 probative value is substantially outweighed by a danger of . . . needlessly presenting cumulative
24 evidence”).

25 Defendants also note that Plaintiffs intend to call Dr. Dominique Hanssens, who was Defendants’
26 expert for purposes of opposing class certification. Defendants reserve their right to object to
27 Dr. Hanssens’s testimony as irrelevant to any issues at trial. *See* FRE 403.
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XII. MOTIONS IN LIMINE

The parties' motions *in limine* have been previously filed under separate cover as required by the Court's Scheduling Order. The parties' responses to motions *in limine* are to be filed under separate cover on or before February 17, 2026, as required by the Court's Scheduling Order. The parties have met and conferred on these initial motions. The following motions *in limine*, and no others, are ***still pending and at issue***:

Docket Number	Motion in Limine
314	Plaintiffs' Motion in Limine to Preclude Any Evidence, Questions, Comments, and Reference Regarding or Video from the Social Media Account of "Dr Jedly"
316	Defendants' Motion in Limine to Exclude Use and References to the Draft Cleanup-and-Abatement Order.
317	Defendants' Motion in Limine to Exclude Argument or Evidence Related to Either Defendant's Financial Condition
318	Defendants' Motion in Limine to Exclude Evidence Related to Other Operations and Litigation
319	Defendants' Motion in Limine to Exclude Evidence Related to Non-Cancer Health Effects.
320	Defendants' Motion in Limine to Exclude Evidence, Testimony, and Argument That Plaintiffs May Recover Both Diminution in Value and Mitigation Damages

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1 **XIII. BIFURCATION**

2 Bifurcation of the following issues for trial is ordered.

3 **Plaintiffs' Position:** Phase 2, for punitive damages, should immediately follow the Phase 1 liability and
4 damages phase and be heard by the same seated jury. At this time, the majority of Plaintiffs' witnesses
5 will be called in Phase 1, including Dr. Boyle for property damages. Since Plaintiffs currently plan to call
6 all designated experts in their Phase 1 case in chief any additional bifurcation would decrease efficiency
7 and waste the Court's time and resources as the witnesses and evidence of liability and damages (both
8 mitigation and property value diminution) are inextricably interwoven.

9 **Defendants' Position:** The parties agree that issues of liability and compensatory damages should be tried
10 together and that punitive damages should be tried before the same jury but in a separate phase. Dkt. 307
11 at 5–7; Dkt. 308 at 8. As Defendants explained in their trial plan, that separate phase on punitive damages
12 would be necessary only if the jury finds in favor of Plaintiffs, with the additional requisite findings to
13 support a punitive-damages award. Dkt. 307 at 5–7.
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16 **XIV. ADMISSIONS**

17 The foregoing admissions having been made by the parties, and the parties having specified the
18 foregoing issues remaining to be litigated, this Final Pre-Trial Order shall supersede the pleadings, and
19 govern the course of the trial of this cause, unless modified to prevent manifest injustice.
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2 **IT IS SO ORDERED.**

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4 DATED:

5 _____
6 Hernán D. Vera
7 United States District Judge

8 Approved as to form and content:

9
10 Dated: February 17, 2026

Counsel for Plaintiffs

11
12 By: /s/ Ryan D. Ellis
13 Counsel for Plaintiffs

14 Dated: February 17, 2026

Counsel for Defendants

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16 By: /s/ Abbey Hudson
17 Counsel for Defendants
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