

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

**Librada Gomez Mendoza, on behalf of
herself, and as parent and next of friend of
Ulysses Edgar Zarco Gomez, a minor**

Plaintiffs,

V.

**Corteva Inc.; Dow Chemical Company;
Stephen Investments, Inc., d.b.a Pilibos Bros;
Berberian Ranch; and E & J Gallo Winery,
d.b.a. Gallo Vineyard**

Defendants.

Case No. _____

Civil Complex Litigation

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Librada Gomez Mendoza (“Librada”) brings the instant civil action for herself and on behalf of her minor son, Ulysses Edgar Zarco Gomez (“Ulysses”), to recover damages and other cognizable relief arising out of the severe neurological injuries suffered by Ulysses, as a result of his *in utero*, infant, and ongoing exposure to the pesticide chlorpyrifos and its more toxic oxygen analog, chlorpyrifos oxon and the degradant 3,5,6-trichloro-2-pyridinol (“TCPy”).

Plaintiff Librada Gomez Mendoza further brings the instant civil action for herself and on behalf of her minor son, Ulysses Edgar Zarco Gomez, to recover damages and other cognizable relief arising out of the contamination of their residence of chlorpyrifos, chlorpyrifos oxon, 3,5,6-trichloro-2-pyridinol (“TCPy”).

PARTIES

1. Plaintiff Librada Gomez Mendoza (“Librada”) currently resides at 4949 East Balch Avenue, Fresno County, Fresno, California. Librada is Ulysses Edgar Zarco Gomez’ mother.

Librada brings this action as the parent and next friend of Ulysses Edgar Zarco Gomez (“Ulysses”), and also on his own behalf, to recover payments made for Ulysses’ care and for loss of parental consortium. Librada further brings this action on her own behalf to recover payments to abate the nuisance and trespass caused by the contamination of her current residence.

2. Defendant Corteva Inc. is a Delaware corporation with its principal place of business in Wilmington, Delaware. Corteva Inc. is the recently re-branded and spun-off successor-in-interest to Dow Agrosciences, LLC. During all relevant times, Dow (operating as Dow AgroSciences and then Corteva) was registered to do business in the State of California and was in fact doing business in the State of California, and more specifically in Fresno County, California. During all relevant times, Dow AgroSciences, operating in combination with its former parent company and Co-Defendant, Dow Chemical Company, was the primary registrant (and essentially the only) manufacturer and seller of chlorpyrifos and chlorpyrifos oxon in the United States. Dow marketed and sold chlorpyrifos and chlorpyrifos oxon for agricultural use under the trade name Lorsban.

3. Defendant Dow Chemical Company is a Delaware corporation with its principal place of business in Midland, Michigan. Dow Chemical has been through a recent string of mergers (e.g., with DuPont) and then spin-offs (e.g., from DuPont), the legal effect of which is that today’s Dow Chemical Company is the successor-in-interest to the Dow Chemical Company of the 2000s.

4. At all relevant times, basically for our purposes the 2000s, Defendant Dow Chemical Company was the parent company of Dow AgroSciences (n/k/a Defendant Corteva Inc.), and effectively controlled Dow AgroSciences. More importantly, while Dow AgroSciences was, during the 2000s, the legal registrant and seller of Lorsban and all other Dow-family chlorpyrifos

and chlorpyrifos oxon products in the United States, Dow Chemical was the actual manufacturer of chlorpyrifos and chlorpyrifos oxon. In other words, while Dow AgroSciences was headquartered in Indianapolis, Indiana, during the 2000s, the actual chlorpyrifos production facilities were located in Midland, Michigan, and operated, upon information and belief, by Dow Chemical Company and employees of Dow Chemical Company. In fact, these chlorpyrifos production facilities were, upon information and belief, inextricably integrated into Dow Chemical's Midland production facilities and the production of other chemicals sold for other purposes, at least some of which were marketed and sold directly by Dow Chemical, not Dow AgroSciences. Dow Chemical therefore had its own stake in the continued production and sale of chlorpyrifos and chlorpyrifos oxon, separate and apart from the contribution of its subsidiary, Dow AgroSciences, to parent Dow Chemical's bottom line. These entities—Corteva, Dow AgroSciences, the Dow Chemical of the 2000s and earlier and the Dow Chemical of today—are collectively referred to as "Dow" unless otherwise noted.

5. Upon information and belief, Defendant Steven Investments, Inc., d.b.a. Pilibros Bros. ("Pilibros") is a California company with its principal place of business in Fresno County, California. At all times relevant, Pilibros was registered to do business as a pesticide applicator in the State of California. According to records maintained by the California Department of Pesticide Regulation ("CPDR"), from 2009 to 2012, Pilibros applied 361 pounds of chlorpyrifos by ground application within a mile of two of Ulysses' early childhood homes and current home.

6. Upon information and belief, Defendant Berberian Ranch ("Berberian") is a California registered grower with the Agricultural Commissioner of Tulare County, and a California company with its principal place of business in Fresno, Fresno County, California. At all times relevant, Berberian was registered as a pesticide applicator in the State of California.

According to records maintained by the CPDR in 2010, Berberian applied 592 pounds of chlorpyrifos by ground application within 2 miles of one of Ulysses' early childhood homes and current home.

7. Upon information and belief, Defendant E & J Gallo Winery, d.b.a. Gallo Vineyard ("Gallo") is a California company with its principal place of business in Fresno County, California. At all times relevant, Gallo was registered to do business as a pesticide applicator in the State of California. According to records maintained by the California CDPR, between 2014 and 2018, Gallo applied 290 pounds of chlorpyrifos by ground application within two miles of Ulysses' early childhood homes and current home.

JURISDICTION

8. This court has jurisdiction over Defendants and the claims set forth below pursuant to Code of Civil Procedure §410.010 and the California Constitution, Article VI §10, because this case is a cause not given by statute to other trial courts. Further, jurisdiction and venue are proper in Fresno County, California, because Defendants Steven Investments, Inc., d.b.a. Pilibros Bros. and Berberian Ranch are located in Fresno County; Dow is an out of state corporation that does business in Fresno County; Plaintiffs currently reside in Kings County; E & J Gallo Winery, d.b.a. Gallo Vineyard is an in state corporation that does business in Fresno County; and Ulysses' exposures to chlorpyrifos, chlorpyrifos oxon, and TCPY described below occurred in Fresno County.

FACTUAL ALLEGATIONS

9. Ulysses was born on September 5, 2008.

10. At an early age, it was clear to Ulysses' doctors that Ulysses had developmental problems with deficits in attention, cognition, language skills, and social skills. Therefore, the

allegations in the instant Complaint focus on the time period from late 2007, when Ulysses was conceived through the first years of his life. However, Ulysses' exposure to, and harm from, chlorpyrifos, chlorpyrifos oxon, and TCPy has been ongoing and continuous throughout his life.

11. Ulysses has subsequently been diagnosed with attention deficit disorder hyperactivity disorder ("ADHD"), oppositional defiant disorder ("ODD"), Specific Learning Disability, and anxiety. He has ongoing difficulties with verbal and nonverbal communication, compulsive behaviors, and attending to his own needs and activities of daily living. It is unlikely that Ulysses will ever be able to be gainfully employed or able to live independently, and he is reasonably certain to need some assistance and care for the rest of his natural life.

12. Ulysses' injuries were proximately caused by his *in utero* exposure to chlorpyrifos and chlorpyrifos oxon beginning in late 2007, when his mother, Librada, became pregnant with him, and his subsequent exposure to chlorpyrifos, chlorpyrifos oxon, and TCPy as an infant.

13. These chlorpyrifos, chlorpyrifos oxon, TCPy exposures came from multiple sources and routes: Ulysses' mother's work as a packing house worker during her pregnancy; his consumption as an infant of chlorpyrifos oxon-laden tap water drawn from the California Aqueduct; secondary transfer from his uncle's work as an agricultural field worker pruning and picking grapes and peaches; Ulysses' mother during her pregnancy and his first year of life; and, on occasion, to Ulysses as an infant; and, at all times, from chlorpyrifos overspray and spray drift, much of which first converted to chlorpyrifos oxon, that entered the structures where Ulysses' mother worked and lived during her pregnancy and where Ulysses lived as an infant. These exposures continue to this day despite the reduction in use of chlorpyrifos as evidenced from the 2019 testing of Ulysses' home showing measureable quantities of chlorpyrifos and

chlorpyrifos oxon. These exposures are described in more detail in the “Exposures” subsection, below.

History of Chlorpyrifos

14. On April 5, 1966, the Dow Chemical Company—the predecessor in interest and former parent of Dow AgroSciences LLC and therefore the predecessor in interest of Corteva—was awarded United States Patent Number 3,244,586 which provided patent protection for various formulations of o-pyridyl phosphates and phosphorothioate-based pesticides. One of the patented phosphorothioate formulations (*O,O – diethyl O – 3,5,6 – pyridyl phosphorothioate*) became known as the pesticide “chlorpyrifos.” One of the patented phosphate pesticide formulations (*diethyl 3,5,6-trichloro-2-pyridyl phosphate*) is the oxygen analog of Chlorpyrifos and is known as “chlorpyrifos oxon.”

15. Chlorpyrifos is approved and registered by the United States Environmental Protection Agency (EPA) for use as a pesticide in a variety of agricultural applications, and was approved for a variety of residential applications until 2000. Chlorpyrifos is identified as the active ingredient on the labels of numerous commercial, brand name, pesticide formulations hereinafter complained of and identified with particularity.

16. Chlorpyrifos oxon is a much more acutely potent and deadly neurotoxin, belonging to the same family of organophosphate-based pesticides as the chemical warfare agent, Sarin. In the mid 1930s, a German chemist, Gerhard Schrader, developed Sarin as a pesticide to combat insects adversely impacting German agriculture. Because of its extraordinary human neurotoxicity, Sarin was never implemented as an agricultural pesticide in Germany. Like Sarin, chlorpyrifos oxon is an extremely potent human neurotoxin.

17. Even though chlorpyrifos oxon (hereinafter “oxon”) was included as a pesticide in the chlorpyrifos patent, it has never been registered or presented for registration with and to the EPA as a pesticide due to its extreme neurotoxicity. Chlorpyrifos, although registered as a pesticide, has little or no insecticidal action prior to being converted to the oxon. When chlorpyrifos is mixed with water (almost always chlorinated treated water or water recycled from agricultural fields that is contaminated with brominated pesticides) and applied to the fields and orchards, it begins to convert to the unregistered, but Dow-patented pesticide, chlorpyrifos oxon.

18. Dow claims that the effectiveness of chlorpyrifos as an insecticide depends on the target insect’s biologic ability to convert chlorpyrifos, once ingested, to the oxon. What Dow does not disclose is: chlorpyrifos is unstable in the environment—particularly in the presence of chlorine or bromine, which catalyze the conversion—and that it quickly begins to convert to oxon when mixed with water according to label directions, nor does Dow disclose that it will also convert in sunlight during and after application, which Dow knew or should have known as far back as the late 1960s or early 1970s. Unlike chlorpyrifos, the oxon is relatively stable in the environment, especially once it gets indoors, so that its toxic effects persist for months. The practical effect of this reality is that an application of chlorpyrifos to the fields and orchards of California’s Central Valley is an application of the unregistered neurotoxin, chlorpyrifos oxon.

19. Chlorpyrifos and chlorpyrifos oxon further degrades to TCPy as a result of sunlight exposure, oxidizing pollutants, and halogens in the environment. Like chlorpyrifos oxon, TCPy is much more stable in the environment than the registered pesticide chlorpyrifos. Dow has consistently presented that TCPy is a compound created on in the body of a person exposed to chlorpyrifos as a result of the body’s metabolic processes, and that TCPy is non-toxic because it does not act as a neurotoxin. However, in the early 2000’s, it was established that TCPy, as well

as its parent compounds chlorpyrifos and chlorpyrifos oxon, are true endocrine disruptors. Again, the practical effect of this reality is that an application of chlorpyrifos to the fields and orchards of California's Central Valley is an application of unregistered endocrine disruptors, TCPy and chlorpyrifos oxon.

20. At all relevant times, and as more particularly stated hereinafter, Dow had actual notice and knowledge of the propensity of its product, chlorpyrifos, to convert to its oxygen analog, oxon, in the agricultural environment. At no time did Dow provide any label warning regarding the dangers of oxon and/or TCPy contamination related to the application of chlorpyrifos.

Revelations in the 1990s and Early 2000s

21. In 1995, roughly thirteen years before Ulysses' birth, the United States Environmental Protection Agency ("EPA") fined Dow for failing to report what are known in the industry as "adverse incidents"—incidents where Dow received notice that a person claims or is believed to have been poisoned by chlorpyrifos. Many of the incidents that Dow failed to report involved children who had been poisoned.

22. Despite Dow's efforts to conceal the harmful effects of chlorpyrifos, chlorpyrifos oxon, and TCPy from consumers, parents, agricultural communities, and the public, by September 2008, regulators and other researchers doing their own investigations into the hazards of chlorpyrifos had started to uncover some of the truths that Dow sought to conceal.

23. Eight years before Ulysses' conception, on June 8, 2000, the EPA conducted a thorough review of data submitted by Dow and determined that chlorpyrifos is toxic to the developing nervous system and brain of mammals and children and that, therefore, an additional safety factor was required for uses that might expose children to chlorpyrifos. This EPA finding

led to chlorpyrifos being withdrawn from the residential pesticide market, where it had been marketed as “Dursban.”

24. At the same time the EPA was reviewing chlorpyrifos for withdrawal from the residential use market in 2000, concerns about minuscule quantities of chlorpyrifos remaining as residues on foods commonly consumed by children nationwide—even *after* washing and processing by packing-house workers like Ulysses’ mom and other workers in California’s Central Valley—led Dow to stop marketing Lorsban for applications involving tomatoes and apples, crops thought to be associated with consumption by children in the United States.

25. In March 2021, the Endocrine Society (“The Society”) submitted comments on the EPA’s proposed interim registration review decision for chlorpyrifos. The Society referred to “ample evidence that chlorpyrifos has extensive effects on neurobiological and endocrine systems” arguing that chlorpyrifos tolerances do not comply with “a reasonable certainty of no harm.” Four epidemiological studies, referenced by The Society, indicate that exposure to chlorpyrifos increases the risk for breast cancers. Additionally, consistent with the testosterone reducing effects cited by The Society, three epidemiological studies have found reduction in human sperm quality associated with chlorpyrifos and its degradants. Most of the epidemiological evidence for these endocrine disrupting effects by the scientific community has been since the early 2000s. On information and belief, these effects were well known by Dow for many years before they were forced to remove chlorpyrifos products from the residential use market and well into the subsequent years while the agricultural use of chlorpyrifos flourished.

26. Incredibly, however, despite Dow’s knowledge that fetuses, infants, and young children were at heightened risk of developmental and neurological injuries, Dow continued to market and sell Lorsban for all other crops—even though comparatively much larger exposures

necessarily result to the children of agricultural workers and children living in agricultural communities like the cities in California's Central Valley. Chlorpyrifos, chlorpyrifos oxon, and TCPy continue to be sold and sprayed liberally on all other crops almost 20 years later—especially on orchards and other crops growing on trees and bushes, like citrus fruits, stone fruits and grapes. The calculus used by Dow's toxicologists, risk assessors, market analysts, and executives to justify this distinction between tomatoes and apples versus all other crops remains obscure. Interestingly, apples are one of the only crops for which total production in the State of Michigan, where Dow's ultimate decision-makers lived and worked at the time, rivals or exceeds production in the State of California.

27. Lorsban continued to be marketed and sold for extensive use in California's Central Valley during Ulysses' gestation and infancy. In fact, the amount of chlorpyrifos, chlorpyrifos oxon, and TCPy applied per acre to citrus fruits in California's Central Valley dramatically increased in the early 2000s apparently in response to emerging or alleged insect resistance. Dow continued to sell Lorsban for use in California's Central Valley until February 2020, and growers could continue to apply it to their fields until the end of the same year, roughly 20 years after Dow's executives and managers plainly knew that chlorpyrifos, chlorpyrifos oxon, and TCPy were too dangerous to risk their own children's exposure to minuscule, trace quantities of chlorpyrifos in apple sauce, ketchup, and pasta sauce.

28. Two years after the EPA determined that the developing brains and nervous systems of children were especially vulnerable to chlorpyrifos, researchers working with another important United States agency—the United States Department of Agriculture—published their discovery that water containing chlorine (which is typically added to tap water for disinfecting

and sometimes oxidizing purposes) causes chlorpyrifos to transform to chlorpyrifos oxon.¹ The publication of these findings, which were or ought to have been known to Dow beforehand, was well before Ulysses' conception in late 2007.

29. These same researchers noted in their July 2002 publication that chlorpyrifos oxon is approximately 1,000 times more toxic than chlorpyrifos itself, and that their findings therefore raised important concerns about the safety of chlorpyrifos products. Despite this publication, which obviously should have raised alarm bells in Dow's product stewardship and toxicology departments—assuming, that is, the doubtful proposition that Dow was not already aware of the propensity of chlorpyrifos to transform to chlorpyrifos oxon in mixtures containing chlorinated water and elsewhere—Dow did not sound any alarms, at least not publicly. Chlorpyrifos continued to be marketed—without any additional warnings—for agricultural use in California's Central Valley, and to fields that abut the California Aqueduct, from which communities there draw their drinking water.

Ulysses' Exposures to Lorsban During Gestation and Infancy

30. In and around late 2008, during her pregnancy, Ulysses' mother, Librada worked for several months in a packing house in Dinuba, washing and packing peaches and plums, crops known to have high levels of chlorpyrifos residue in this time frame, with CDPR records showing more than 18,000 pounds applied to those crops that year. Given the prevailing practice of washing the produce in highly chlorinated water, the washing of this produce by packing house workers such as Librada converted large portions of the chlorpyrifos residues on the

¹ Wu, J. and Laird, D., "Abiotic transformation of chlorpyrifos to chlorpyrifos oxon in chlorinated water," *Environmental Toxicology and Chemistry*, vol. 22(2): 261–62 (2002).

produce to chlorpyrifos oxon, the analyte that is 1,000 times more toxic than chlorpyrifos itself, and TCPy, the analyte that causes endocrine disruption.

31. It has been known and knowable from animal studies for many years prior to Ulysses' gestational exposure in 2008 that chlorpyrifos, chlorpyrifos oxon, and TCPy enter the blood stream and cross through the umbilical cord blood to the fetuses of mammals, which, depending on the dose and other factors, causes developmental toxicity.

32. Extensive testing of cord blood samples by researchers in New York City and elsewhere in the 2000s subsequently confirmed that when pregnant women are exposed to chlorpyrifos through skin contact, the breathing of volatilized and aerosolized chlorpyrifos, and ingestion of dust particles, that chlorpyrifos enters the pregnant mother's blood stream and is passed through cord blood to the developing baby. The same scientists confirmed—in published, peer-reviewed studies from the 2000s—that residential exposures in New York City housing from indoor crack-and-crevice applications of chlorpyrifos result in cord blood levels that cause permanent neurological damage to the developing human fetus, resulting in a significantly and dramatically increased chance of developmental delays and permanent deficits in learning, memory, and cognition to the exposed children.

33. Unlike the participants in the New York City housing studies from the 2000s, Ulysses' mother's cord blood was not tested for chlorpyrifos levels at his birth, so a precise, quantitative comparison cannot be made between Ulysses' fetal exposure and those in the New York City studies. However, drawing on other literature from agricultural workers and by using scientific techniques for estimating and comparing exposures under different scenarios, it is clear that the expected exposure of Ulysses to chlorpyrifos, chlorpyrifos oxon, and TCPy resulting from his mother's employment and handling of contaminated produce in the packing house

during her pregnancy equaled or exceeded the high end exposures of New York City residents. Yet this single exposure scenario was far from Ulysses' only gestational and infant exposure to chlorpyrifos, chlorpyrifos oxon, and TCPy.

34. However, this isn't the only exposure scenario Ulysses and his mother, while she was pregnant, experienced. Ulysses' mother, while pregnant, and during Ulysses' early years, lived in an area of Fresno that is primarily metropolitan in comparison to most towns of the agricultural areas of the Central Valley. However, chlorpyrifos, in the amount of 346 pounds, was applied by aerial and ground applications between 2007 and 2011 within a two mile radius of this home. The application resulted in volatilization and migration of the pesticide, it infiltrated the family home of Ulysses. Some of this chlorpyrifos was converted to the oxon in the atmosphere due to the presence of sunlight, hydroxyl radicals, ozone, and fog. The result was a house environment with concentrations of chlorpyrifos, chlorpyrifos oxon, and TCPy such that Ulysses and his mother were exposed to significant concentrations of chlorpyrifos, chlorpyrifos oxon, and TCPy in their living space during her pregnancy and Ulysses' infancy.

35. One last significant source of chlorpyrifos, chlorpyrifos oxon, and TCPy exposure came from secondary contact with Ulysses' uncles who worked as agricultural field workers during Ulysses' mother's pregnancy and the first year of his life, working in fields sprayed with chemicals as is common practice in the Central Valley agricultural community. Among other chemicals, the uncles' work exposed them to residues of Lorsban mixed with chlorinated or brominated water, a combination guaranteed to produce a mixture of chlorpyrifos and chlorpyrifos oxon in water, although the label did not mention the chlorpyrifos oxon. The uncles would ordinarily try to take off their chemical-laden clothes when they returned from work, but sometimes the long day and the desire to part of Ulysses' life overtook their good intentions and

they would participate with the family before changing and showering the chemicals from their bodies. This resulted in another significant exposure to chlorpyrifos, chlorpyrifos oxon, and TCPy for Ulysses during his gestation and infancy.

36. As a direct and proximate consequence of the above exposures to chlorpyrifos, chlorpyrifos oxon, and TCPy during gestation and infancy, Ulysses suffered from the severe neurotoxic and endocrine toxic effects of chlorpyrifos and its oxon analyte, and their degradant TCPy. The neurotoxic and endocrine toxic effects of these exposures caused attention deficit disorder hyperactivity disorder (“ADHD”), oppositional defiant disorder (“ODD”), Specific Learning Disability, and anxiety. Each of the above exposures independently contributed to Ulysses’ neurological and endocrine system injuries, and the cumulative effect of all of them combined was devastating to him and his family.

Ongoing and Current Exposure to Lorsban

37. Similar to the house Ulysses’ lived in as an infant, his current home is at 4949 East Balch in Fresno is located in a more metropolitan area of the Central Valley. However, an analogous exposure scenario affects this house as well. This current and ongoing exposure represents a present and continuing risk to Ulysses and his family. From 2008 to 2018 multiple applicators applied 1,479 pounds of chlorpyrifos within a two mile radius of the family home.

38. The overuse and over application of chlorpyrifos in the vicinity of Ulysses’ home resulted in volatilization and migration of the pesticide, which infiltrated the home where Ulysses presently lives.

39. In 2019, the California Department of Pesticide Regulation (“CDPR”) banned the use of chlorpyrifos effectively by canceling the ability of Dow to register chlorpyrifos products

in the State for use. This led to a reported 99% reduction of use² of Lorsban and related products that same year in California.

40. Sampling conducted of Ulysses' residence in September of 2019 revealed the presence of chlorpyrifos oxon in the home establishing contamination long after the reduction of use in the Central Valley.

41. The foreseeable fate and transport of chlorpyrifos, chlorpyrifos oxon, and TCPy, once released into the agricultural community such as Ulysses' and his family's, are such that hundreds, if not thousands, of families in the general area where Ulysses presently lives who reside in homes that are similarly contaminated.

42. Without remediation of the toxic dust and residues that continue to contaminate Ulysses' home there will be a continued, chronic dosing of Ulysses, his siblings and mother, increasing the risk of the serious and life-shortening diseases that are a consequence of their everyday exposure to chlorpyrifos, chlorpyrifos oxon, and TCPy. Ulysses, in particular, will continue to bear the burden of an increased risk of the exacerbation of the conditions that already plague him due to his life-long exposure to chlorpyrifos, chlorpyrifos oxon, and TCPy: attention deficit disorder hyperactivity disorder ("ADHD"), oppositional defiant disorder ("ODD"), Specific Learning Disability, and anxiety.

COUNT I – NEGLIGENCE AS TO THE DOW DEFENDANTS

43. Plaintiffs re-allege and incorporate each paragraph above as if separately set forth herein.

44. Beginning in the 1980s and continuing into the 1990s and 2000s, Dow engaged in a pattern of conduct designed to hide the dangers of chlorpyrifos from its customers and the general public. At best, this conduct could be characterized as the negligent failure to test for

certain specific harms or to appreciate and take appropriate measures to protect from those harms associated with chlorpyrifos. At worst, it amounted to selfish, greedy, malicious, and willful manipulation of the scientific data and the public's perception of the harms of Lorsban—that is, chlorpyrifos and chlorpyrifos oxon.

45. All of these actions and omissions—whether willful, reckless, or merely negligent—were in the service of the false (and certainly untested) safety narrative that Dow promoted for years, which is that the toxicity of chlorpyrifos is mediated solely by cholinesterase inhibition, the first and main toxic effect, and therefore any dose that does not result in acute cholinergic signs and symptoms (such as salivation, lacrimation, sweating, rapid heart rate, etc.) has no adverse impact.

46. Dow used this untested safety narrative for years as an internal excuse to conceal numerous reports of chlorpyrifos poisoning and adverse effects following applications, on the grounds that it simply could not be verified as a chlorpyrifos-related adverse event if the person allegedly poisoned did not show signs and symptoms of a cholinergic reaction. Notice the perfectly circular and subversive nature of this logic: If a manufacturer does not report incidents involving suspected poisoning in the absence of acute cholinergic signs on the grounds that there were no acute cholinergic signs, no evidence can come to light that poisoning does, in fact, occur in the absence of acute cholinergic signs.

47. However, Dow's willful concealment of these reports was discovered in the early 1990s, and Dow was fined for it by the EPA in 1995.

48. In response, Dow doubled down on its safety narrative, paying a panel of “independent” researchers to review spoon-fed studies and literature at its behest, and conclude, in 1997: “The available scientific evidence provides no basis for concern that [chlorpyrifos]

causes human adverse health effects other than its known cholinergic effects associated with acute poisoning.” Statements like this succinctly captured Dow’s central chlorpyrifos narrative. It was at best untested and supported only by the circular reasoning embodied in Dow’s willful concealment of adverse incident reports that challenged the cholinergic poisoning narrative even in 1997.

49. In fact, Dow’s safety narrative had already been contradicted by 1997 by recent publications that focused on low-dose, non-cholinergic harm in mammalian development, but it would have fallen apart completely in the years between 1997 and Ulysses birth in 2009 but for Dow’s negligent, reckless, and willful manipulation of data and public opinion.

50. There are a fair number of subparts to Dow’s false chlorpyrifos safety narrative. One is Dow’s denial of any special risk of toxicity to children or developing brains that might happen through any mechanism other than cholinesterase inhibition or in the absence of acute cholinergic signs and symptoms. Another is Dow’s denial of any neurotoxic effects from chronic, low-dose poisoning below the threshold for clinical signs and symptoms of cholinergic poisoning. Yet another critical component of this narrative is Dow’s insistence that chlorpyrifos is only converted to chlorpyrifos oxon inside the host organism, such as the target pest or non-target human bystander, and that this need for biological conversion adds a layer of protection because detoxification of chlorpyrifos oxon occurs at the same sites (e.g., the liver) as the conversion. All of these were fundamentally untested and ultimately false propositions. Dow knew or should have known that all of these propositions needed to be tested well before Ulysses’ conception in 2008. Instead, Dow delayed testing these claims until forced to do so by regulatory requirement or regulatory agency pressure, and then concealed and misrepresented findings that were unfavorable to its narrative.

51. Another reason Dow promoted its favored narrative was to deny any reason or responsibility for conducting careful exposure studies of children or others in various exposure scenarios, whether agricultural or residential, behind the false claim that cholinesterase monitoring and vigilance for signs of cholinergic poisoning were sufficient to determine whether any humans were getting a potentially harmful dose. “Biological monitoring”—the process of testing urine or blood for the presence of a toxicant or a unique metabolite of a toxicant—was available for chlorpyrifos by the late 1980s. The need to carefully assess the exposures and potential exposures of children to chlorpyrifos was known within the risk assessment community in the 1980s and actually flagged by researchers with the California Department of Food and Agriculture’s Worker Health and Safety Branch in the 1980s and stated in a 1990 publication of that agency. Yet Dow conducted no biological monitoring of any sort to quantify the exposures of children from various use patterns and exposure scenarios, such as the exposures identified above that resulted in Ulysses’ poisoning.

52. Dow also failed to consider or test the possibility that chlorpyrifos was a developmental neurotoxicant—that is, toxic to the nervous systems of fetuses and infants—for years. The EPA first issued a standardized protocol for developmental neurotoxicity testing in 1991, but Dow did not design or begin such a test until an independent researcher first published a study in 1995 suggesting that chlorpyrifos was, indeed, a developmental neurotoxicant and that the mechanism was something other than cholinesterase inhibition. So, in response, Dow undertook its own developmental neurotoxicity study specifically to refute those findings. When Dow finally disclosed the findings of that study in 1998, Dow misleadingly and falsely dismissed a critical and clearly significant adverse effect on a specific part of the brain of the developing rat

pups in its own chlorpyrifos study group, and assured the public and regulators that the study provided no evidence of developmental neurotoxicity.

53. That 1995 study by independent researchers was also important because it involved chronic low dose exposures to rat pups, rather than a single acute and symptomatic poisoning. In response to this threat to Dow's chlorpyrifos safety narrative, Dow designed and commissioned an expensive study by researchers at the University of Michigan of its own adult worker populations in its chlorpyrifos manufacturing plant in Midland, Michigan. The thought was that workers at Dow's chlorpyrifos plant represented a population of persons exposed to repeated or chronic low level doses of chlorpyrifos. These researchers began their research in the late 1990s and finalized their report for EPA submission in 2002, before Ulysses' birth, and subsequently published several journal articles from the study.

54. The researchers at the University of Michigan were nominally independent, but, upon information and belief, they were intimately aware of who was funding the research and regularly communicated with their contacts at Dow. Upon information and belief, these researchers found adverse neurological effects during the course of analyzing the data from the study, but did not report or disclose those adverse findings in the final report that Dow submitted to the EPA in 2002. The adverse neurological findings from the study only emerged in the public literature in 2007, in a published journal article from the study, when, many years after the study was completed and a report omitting this analysis and finding was delivered to the EPA, the University of Michigan team published an article attempting to explain the adverse findings away on the basis of a convoluted and twisted post hoc analysis of the data.

55. In 2002, researchers working with the United States Department of Agriculture ("USDA") published findings that challenged another foundational element of Dow's

chlorpyrifos safety narrative when they reported that chlorinated water catalyzes the transformation of chlorpyrifos to chlorpyrifos oxon, which is 1,000 times as toxic to mammals as chlorpyrifos itself. Dow's safety narrative depends heavily on the notion that mammals, including humans, are protected from chlorpyrifos toxicity by the need for it to be converted to chlorpyrifos oxon in the body, at sites where that oxon can be rapidly detoxified. Moreover, all or almost all of the laboratory science supporting the registrations of chlorpyrifos and various Lorsban products were conducted using analytical grade chlorpyrifos or formulations of chlorpyrifos that would not be influenced by this chlorine conversion, and therefore were rendered largely irrelevant by the discovery. In other words, as of July 2002, at the latest, Dow knew or should have known that Dow's toxicity testing conducted on pure chlorpyrifos and pure chlorpyrifos formulations did not meaningfully say anything about the safety of its Lorsban products given that—after diluting with chlorinated (or brominated) water per the instructions on the label—they began converting to a compound that is 1,000 times as toxic.

56. In fact, Dow—as the manufacturer, seller, and registrant of chlorpyrifos and many Lorsban products that it instructed users to dilute with water before use—should have investigated and discovered this abiotic conversion in the presence of chlorinated water, which describes almost all tap water, and brominated water, given the similarity between bromine and the ubiquitous nature of brominated pesticides in agricultural settings. In fairness, given what we know about Dow's sophisticated culture, Dow probably did know about the abiotic conversion of chlorpyrifos to chlorpyrifos oxon well before USDA discovered it for itself.

57. Dow's response to the publication of the USDA research was, first, to ignore it, and then to set about challenging the claim that chlorpyrifos oxon was, in fact, 1,000 times as toxic, a proposition that Dow had never invested much in challenging before.

58. In 2009, Plaintiffs' counsel commissioned an independent expert review of chlorpyrifos studies published by Dow scientists in refereed journals. The experts identified nine "core" experimental studies published by Dow researchers of the effects of chlorpyrifos on mammalian toxicology ranging from 1980 to 2000, with four of the nine published in 2000, a period of intense regulatory scrutiny. The experts also identified approximately ten relevant "secondary" studies by Dow researchers.

59. That independent expert review concluded that the Dow publications were littered with numerous errors and problems, such as: the use of atypical and inappropriately small sample sizes; analyzing only a subset of the data in a way that increases the likelihood of a false negative finding; inappropriately crude measurement techniques; the use of inappropriate and subjective qualitative measures; a failure to further investigate findings of near-statistical significance; discounting valid findings; and making unsupported claims. All of the problems and errors in Dow's published studies identified by the expert review were biased in the direction of making it less likely that a study would find an adverse effect associated with chlorpyrifos.

60. In other words, Dow contaminated the published information and literature available on chlorpyrifos with bad science, through its negligent, reckless, and willful underreporting and concealment of adverse incidents and its overproduction of studies finding no adverse effects by heavily biased design. This was all done to promote Dow's favored safety narrative on chlorpyrifos and conceal the dangers of chlorpyrifos from the public, so Dow could continue to sell it and sell it without the kind of warnings that would be required to prevent catastrophic injuries like those suffered by Ulysses and his family.

61. Dow's negligence, recklessness, and willfulness worked to a disastrous effect on at least two levels. First, Dow itself failed to take appropriate measures in light of what it knew or

should have known were the risks and harms of chlorpyrifos, especially to infants and children, from doses below the level of cholinergic signs and symptoms. Second, by concealing critical information from the public and contaminating the public discussion and literature with false assertions and biased studies, Dow prevented others—such as homeowners, parents, employers, and regulators—from taking steps necessary to protect themselves and their children, employees, employees’ children, and citizens from these harms.

62. Had Dow taken the steps that a reasonably careful manufacturer would have taken, and conducted additional tests, reported the results, and adopted protective measures in response, then a reasonable manufacturer in possession of that knowledge would have removed Lorsban from the market entirely before 2009.

63. At the very least, a reasonable manufacturer would have issued stricter directions for use and warnings in at least the following ways: It would have recommended that applicators mix chlorpyrifos only with purified or distilled water, not with chlorinated tap water or water from agricultural runoff where brominated pesticides are applied; it would have warned specifically of the likelihood that applicators and bystanders would encounter chlorpyrifos oxon directly, a much more toxic substance than the chlorpyrifos listed as an active ingredient on the label; it would have warned of the special risks to children and the risks from chronic low-dose exposures even in the absence of cholinergic signs and symptoms; it would have increased the required distance or “setback” from occupied structures, both residential and business structures (including packing houses), to prevent the occurrence of overspray and spray drift entering occupied buildings where pregnant women or children are likely to be present; and it would have warned against the use near “aqueducts” and “canals” or any body of water from which potable water is drawn specifically in its label. Instead, Dow’s Lorsban labels warned only of use

“adjacent to permanent bodies of water such as rivers, natural ponds, lakes, streams, reservoirs, marshes, estuaries, and commercial fish ponds.” By excluding “canals” and “aqueducts” from the list, Dow created the impression that the only harm at issue was a harm to aquatic life, not to residents of Central Valley towns that consume drinking water sourced from the California Aqueduct.

64. As a result of Dow’s negligence, recklessness, and willfulness, as described in the preceding paragraph, Lorsban was misbranded under federal law and EPA regulations, including 7 U.S.C § 136j(a)(1) and 40 C.F.R. §§ 156.10(i)(2)(vi) and 156.10(i)(2)(x), due to its failure to include the necessary instructions for dilution and limitations and restrictions on use noted in the preceding paragraph, which were required to prevent unreasonable adverse effects. Therefore, this right of action is not preempted by federal law. Plaintiffs are not making a claim under federal law but note it only for purposes of avoiding unnecessary arguments and motion practice relating to federal preemption.

65. Dow’s negligence, recklessness, and willfulness were the proximate cause of Ulysses’ developmental and neurological injuries including: attention deficit disorder hyperactivity disorder (“ADHD”), oppositional defiant disorder (“ODD”), Specific Learning Disability, and anxiety.

**COUNT II – STRICT PRODUCTS LIABILITY – FAILURE TO WARN
AS TO THE DOW DEFENDANTS**

66. Plaintiffs re-allege and incorporate each paragraph above as if separately set forth herein.

67. Dow, as the manufacturer and seller of Lorsban products in the United States, had a duty under California law to know the expected uses and ensure that its Lorsban products, as manufactured, designed, and labeled, were safe for those reasonably expected uses.

68. The reasonably expected uses of Lorsban products in the early and mid-2000s included all of the uses described in preceding sections of this Complaint that resulted in Ulysses' exposure to chlorpyrifos and chlorpyrifos oxon during gestation and infancy and as a toddler. It was reasonably foreseeable and expected that pregnant women and infants such as Ulysses would be exposed to Lorsban in these ways.

69. Dow had comparable, if not identical, duties under federal law that prohibits that misbranding of pesticides. *See* 7 U.S.C § 136j(a)(1) and 40 C.F.R. §§ 156.10(i)(2)(vi) and 156.10(i)(2)(x). Plaintiffs are not suing under those federal laws or duties, but note them only for purposes of avoiding unnecessary arguments and motion practice related to federal preemption.

70. By the time Ulysses was conceived in 2008, Dow knew or should have known that Lorsban, as labeled and sold, was not safe for its reasonably expected uses in California's Central Valley because it lacked warnings and instructions necessary to render it reasonably safe for its reasonably expected uses. Warnings and instructions that were required to make Lorsban safe but were omitted relate to, at least, the following hazards and necessary remedial measures, all of which were known when Ulysses was conceived:

- (i) Chlorpyrifos transforms to chlorpyrifos oxon in the presence of chlorinated or brominated water. Chlorpyrifos oxon is 1,000 times more toxic to mammals than chlorpyrifos. Therefore, Dow should have recommended, at minimum, that applicators mix chlorpyrifos only with purified or distilled water, not with chlorinated tap water or water from agricultural runoff where brominated pesticides are applied. Dow should have recommended against the use of Lorsban products adjacent to or near "canals" and "aqueducts"—such as the

California Aqueduct, from which small towns in California draw tap water—in addition to other specifically identified bodies of water on the label. Dow also should have warned specifically of the likelihood that applicators and bystanders would encounter chlorpyrifos oxon directly, a much more toxic substance than the chlorpyrifos listed as an active ingredient on the label.

- (ii) Chlorpyrifos and chlorpyrifos oxon were already known to be particularly hazardous to the developing nervous systems of mammals. Therefore, Dow should have warned of the special risks to children and the extra care required around structures where children or pregnant women might be present. For example, Dow should have increased the required distance or “setback” from occupied structures, both residential and business structures (including packing houses), to prevent the occurrence of overspray and spray drift entering occupied buildings where pregnant women or children are likely to be present.
- (iii) Chlorpyrifos and chlorpyrifos oxon were already known to cause neurotoxic effects in the absence of acute cholinergic signs and symptoms, such as from chronic low-dose exposures to children and adults. Therefore, Dow should have warned of the special risks to children and the extra care required around structures where children or pregnant women might be present. For example, Dow should have increased the required distance or “setback” from occupied structures, both residential and business structures (including packing houses), to prevent the occurrence of overspray and spray drift entering occupied buildings where pregnant women or children are likely to be present. In order to prevent chronic, low dose exposure from drinking, cooking with, and bathing in Lorsban-

contaminated tap water, Dow should have recommended against the use of Lorsban products adjacent to or near “canals” and “aqueducts”—such as the California Aqueduct, from which small towns in California draw tap water—in addition to other specifically identified bodies of water on the label.

71. Had Dow included warnings and instructions such as the ones identified in the preceding paragraph, Ulysses would have been exposed to significantly less, if any, chlorpyrifos and chlorpyrifos oxon, and would not have suffered his severe neurological injuries. Dow’s inadequate warnings and instructions for use were therefore the proximate cause of Ulysses’ developmental and neurological injuries, including attention deficit disorder hyperactivity disorder (“ADHD”), oppositional defiant disorder (“ODD”), Specific Learning Disability, and anxiety.

**COUNT III – STRICT PRODUCTS LIABILITY – DESIGN DEFECT
AS TO THE DOW DEFENDANTS**

72. Plaintiffs re-allege and incorporate each paragraph above as if separately set forth herein.

73. Dow, as the manufacturer and seller of Lorsban products in the United States, had a duty under California law to know the expected uses and ensure that its Lorsban products, as manufactured, designed, and labeled, were safe for those reasonably expected uses.

74. The reasonably expected uses of Lorsban products in the early 2000s included all of the uses described in preceding sections of this Complaint that resulted in Ulysses’ exposure to chlorpyrifos, chlorpyrifos oxon, and TCPy during gestation, infancy, and as a toddler and small child. It was reasonably foreseeable and expected that pregnant women and infants such as Ulysses would be exposed to Lorsban in these ways.

75. Federal law permits states to prohibit the sale of any pesticide that is unreasonably dangerous as designed. Therefore, claims for design defect are not preempted by federal law.

76. Dow's Lorsban products were defectively designed for two reasons: First, they were more dangerous than the ordinary consumer or end user would reasonably expect. Second, Dow's Lorsban products contained active insecticidal ingredients, chlorpyrifos and chlorpyrifos oxon, that rendered the products unreasonably dangerous, and there were safer, alternative insecticidal ingredients available.

77. Dow's Lorsban products were more dangerous than any reasonable consumer or end user would expect for the following reasons: (1) the active ingredients—chlorpyrifos and chlorpyrifos oxon—were highly toxic to the nervous systems of fetuses and infants; (2) chlorpyrifos, chlorpyrifos oxon and TCPy caused developmental and chronic neurological deficits from repeated low-dose exposures even in the absence of acute poisoning events; and (3) the active ingredient that Dow disclosed to the public, chlorpyrifos, transformed into its much more toxic metabolite when mixed with chlorinated or brominated water, which the ordinary consumer or end user had no way of knowing. All of these hazards were known or knowable to Dow by 2002, but not known to ordinary consumers and end users.

78. In fact, Dow actively and maliciously took steps to conceal these hazards from the public, in all of the ways described in Count I, above. Throughout the 1990s and the 2000s, Dow worked hard to convince the public and ordinary consumers of its favored safety narrative, as summarized by a panel of "independent" researchers paid by Dow in 1997: "The available scientific evidence provides no basis for concern that [chlorpyrifos] causes human adverse health effects other than its known cholinergic effects associated with acute poisoning."

79. These design defects were the proximate cause of Ulysses' developmental and neurological injuries, including attention deficit disorder hyperactivity disorder ("ADHD"), oppositional defiant disorder ("ODD"), Specific Learning Disability, and anxiety.

COUNT IV – NEGLIGENCE AS TO THE APPLICATOR DEFENDANTS

80. Plaintiffs re-allege and incorporate each paragraph above as if separately set forth herein.

81. Defendants Pilibros, Berberian, and Gallo are collectively referred to herein as the "Applicator Defendants."

82. Upon information and belief, each of the Applicator Defendants negligently applied chlorpyrifos by aerial application in one or more of the following ways:

- (1) By flying at too high of a height (greater than 10 feet) above the target plants, thus resulting in more significant spray drift and overspray;
- (2) By using a combination of nozzles, pressure, airspeed, and nozzle angle that resulted in fine droplets, thus resulting in more significant spray drift and overspray;
- (3) By applying with the aircraft traveling downwind and in conditions with excessive windspeeds, and failing to adjust properly for the wind and windspeeds;
- (4) By failing to control droplet size and spraying smaller droplets, thus resulting in more significant spray drift and overspray; and
- (5) By failing to observe proper setbacks for bodies of water or sensitive sites.

83. The negligent acts of Defendant Applicators in, among other things referred to above, failing to control droplet size, observe proper spray heights and setbacks for bodies of

water, and adjust properly for windspeeds, resulted in excessive spray drift in and around the California Aqueduct source water for the Central Valley water systems. Chlorpyrifos entered this source water, was transformed to chlorpyrifos oxon and TCPy, and was thereby consumed by Ulysses and/or his mother.

84. The negligence of each of the Applicator Defendants was therefore a proximate cause of Ulysses exposure to chlorpyrifos, chlorpyrifos oxon, and TCPy; and therefore his serious neurological injuries.

COUNT V – TRESPASS
AS TO ALL TRESPASSER DEFENDANTS AND DOW

85. Plaintiffs re-allege and incorporate each paragraph above as if separately and set forth herein.

86. Since 2018, Plaintiffs have leased and occupied the residence at 4949 Balch Avenue, Number 102, Fresno, Fresno County, California.

87. Defendants Pilibros, Berberian, and Gallo, are collectively referred to herein as the “Trespasser Defendants.”

88. At all times relevant, upon belief and information, Trespasser Defendants recklessly and negligently applied chlorpyrifos by aerial and ground applications in excess through over application and over spray and such conduct caused chlorpyrifos and chlorpyrifos oxon to enter the land in possession of Ulysses’ family and thereby caused and continues to cause harm to the land and to its possessors or third persons in whose security the possessor has a legally protected interest.

89. Dow, and its successors in business, recklessly and negligently marketed and sold its Lorsban products on a large scale and such conduct caused their products to enter land in the

possession of Ulysses' family and would thereby cause harm to the land and to its possessor or to third persons in whose security the possessor has a legally protected interest.

90. At all times relevant, Dow has caused and allowed chlorpyrifos and chlorpyrifos oxon of the poisonous pesticide product to be marketed and sold under the brand name Lorsban, to enter into Ulysses' residence in a manner constituting an invasion of the interest in the exclusive possession of the property where Ulysses' family reside in such a manner as to constitute a trespass upon property as described with particularity within the general allegations of the complaint.

91. The Trespasser Defendants' and Dow's conduct cause chlorpyrifos and chlorpyrifos oxon to enter the Plaintiffs' property constitutes a trespass in that it represents a substantial interference with the family's possession of the property where they reside.

92. As a proximate result of the trespass by Trespasser Defendants and Dow, the property has been and continues to be damaged in an amount according to proof which sum shall be reasonably necessary to restore the property to the condition it was prior to the entry of the chlorpyrifos and chlorpyrifos oxon dust and contaminated water that Trespasser Defendants and Dow caused to enter the property.

93. As a further proximate result of the trespass created by Trespasser Defendants and Dow, Ulysses' family has been forced to continue to pay upon property which they are unable to use and enjoy in a manner in which they had prior as a foreseeable result of having been exposed to the excessive amounts of chlorpyrifos and chlorpyrifos oxon that have been deposited in their home by means and mechanisms set forth in this complaint.

94. As a further direct and proximate result of the trespass created by Trespasser Defendants and Dow, Ulysses and his family – and indeed thousands of Central Valley families

living in the agricultural basket of the United States where excessive amounts of chlorpyrifos, and subsequently chlorpyrifos oxon and TCPy, have been applied – have been harmed and injured in their person and property and have been condemned by the Trespasser Defendants’ and Dow’s conduct to live in homes contaminated by chlorpyrifos, chlorpyrifos oxon and TCPy, which presently places them at a substantially increased risk over that of the general population for the development of the serious adverse health conditions set forth herein. This contamination will continue to pose a significant risk to their health and their lives for so long as chlorpyrifos and chlorpyrifos oxon are present in their residence.

COUNT VI- NUISANCE
AS TO TRESPASSER DEFENDANTS AND DOW

95. Plaintiffs re-allege and incorporate each paragraph above as if separately set forth herein.

96. Since 2018, Plaintiffs have leased and possessed the residence at 4949 Balch Avenue, Number 102 Fresno, Fresno County, California.

97. At all times relevant, upon belief and information, Trespasser Defendants recklessly and negligently applied chlorpyrifos, chlorpyrifos oxon, and TCPy via application of pesticides containing chlorpyrifos by aerial and ground applications in excess through over application and over spray and such conduct permitted chlorpyrifos, chlorpyrifos oxon, and TCPy to enter Plaintiffs’ residence and it is currently there in the form of contaminated dust, surface residues, and it is present in the drinking water.

98. At all times relevant, Dow has recklessly and negligently allowed chlorpyrifos and chlorpyrifos oxon via the pesticide product to be marketed and sold under the brand name Lorsban, to enter in the Plaintiffs’ residence and it is currently present there in the form of contaminated dust, surface residues, and it is present in the drinking water.

99. Trespasser Defendants and Dow, by acting and failing to act, created a condition or permitted a condition to exist that is harmful to health and indecent and offensive to the senses, so as to interfere with Ulysses' family's comfortable enjoyment of life and property.

100. As a further proximate result of the nuisance created by the Trespasser Defendants and Dow, Plaintiffs have been hurt and injured in their health as a foreseeable result of having been exposed to the excessive amounts of chlorpyrifos, chlorpyrifos oxon, and TCPy that have been deposited in their home by the means and mechanisms set forth in this complaint.

101. Trespasser Defendants' and Dow's conduct in acting and in failing to act was negligent and reckless and has caused a condition of substantial interference with the rights and the safety of Ulysses and his family.

102. Any ordinary person would be reasonably disturbed by Trespasser Defendants' and Dow's conduct in causing toxic and dangerous chemicals to enter their home in a manner that is injurious to the health and well-being of Ulysses and his family.

103. This intrusion of Dow's product into the property where Plaintiffs reside constitutes a nuisance in that it is injurious to Plaintiffs' physical health and their comfortable enjoyment of the property.

104. As a proximate result of the nuisance caused by Trespasser Defendants and Dow, Plaintiffs' residence has been and continues to be damaged in an amount according to proof which sum shall be reasonably necessary to restore the property to the condition it was in prior to the entry of chlorpyrifos and chlorpyrifos oxon laden dust, residues, and contaminated water into their property.

105. As a further proximate result of the nuisance created by Trespasser Defendants and Dow, Plaintiffs have been hurt and injured in their health as a foreseeable result of having been

exposed to the excessive amounts of chlorpyrifos and chlorpyrifos oxon that have been deposited within their homes by means and mechanisms set forth in this Complaint.

106. As a further result of the nuisance created by Trespasser Defendants and Dow, Plaintiffs have suffered injury to their bodies and person, to include annoyance and distress, including mental anguish, to such an extent as to support an award for the exemplary damages beyond the costs of abating the nuisance constituted by the entry of chlorpyrifos and chlorpyrifos oxon –dangerous and toxic substances – that presently contaminate the home where the Plaintiffs reside.

PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL

107. Wherefore, Plaintiffs respectfully pray for the following:

- (1) General compensatory damages for the pain and suffering of Ulysses Edgar Zarco Gomez resulting from his injuries due to chlorpyrifos, chlorpyrifos oxon, and TCPy exposure;
- (2) Special compensatory damages for the loss in earning capacity suffered by Ulysses Edgar Zarco Gomez resulting from his injuries due to chlorpyrifos, chlorpyrifos oxon and TCPy exposure;
- (3) Special compensatory damages for de-contamination of the residence of Ulysses Edgar Zarco Gomez;
- (4) Special compensatory damages for the past and future medical expenses and special needs and care for Ulysses Edgar Zarco Gomez resulting from his injuries due to chlorpyrifos and chlorpyrifos oxon exposure;
- (5) Compensatory damages for loss of consortium, mental anguish, and sorrow suffered by Ulysses Edgar Zarco Gomez's family;

(6) Punitive damages for the willful, reckless, and recklessly indifferent conduct of the Defendants, in an amount sufficient to deter such future conduct;

(7) Pre-judgment and post-judgment interest; and

(8) Such other relief as this Court may deem appropriate.

108. Plaintiffs demand a jury trial as to all issues.

DATED this ____ day of July 2021.

BONNET FAIRBOURN FRIEDMAN
& BALINT P.C.

By: _____
PATRICIA N. SYVERSON (203111)
600 West Broadway, Ste. 900
San Diego, CA 92101
Telephone: (619) 798-4593
psyverson@bffb.com

BONNET FAIRBOURN FRIEDMAN
& BALINT P.C.
Van Bunch (To be admitted Pro Hac Vice)
2325 E. Camelback Road, Suite 300
Phoenix, AZ 85016
Telephone: (602) 274-1100
vbunch@bffb.com

As local counsel on behalf of:

CALWELL LUCE diTRAPANO PLLC
W. Stuart Calwell (To be admitted Pro Hac Vice)
L. Danté diTrapano (To be admitted Pro Hac Vice)
Alexander D. McLaughlin (To be admitted Pro Hac Vice)
D. Christopher Hedges (To be admitted Pro Hac Vice)
Law and Arts Center West
500 Randolph Street
Charleston, WV 25302
Telephone: (304) 343-4323
scalwell@cldlaw.com

dditrapano@cldlaw.com
amclaughlin@cldlaw.com
chedges@cldlaw.com

Counsel for Plaintiffs