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7 **Attorneys for Plaintiff**

8 *The People of the State of California ex rel.*
9 *Placer County Air Pollution Control District*
10 *Feather River Air Quality Management District and*
11 **[Exempt from fees pursuant to Government Code Section 6103]**

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF PLACER

14 **PEOPLE OF THE STATE OF**
15 **CALIFORNIA *ex rel.* PLACER**
16 **COUNTY AIR POLLUTION**
17 **CONTROL DISTRICT and FEATHER**
18 **RIVER AIR QUALITY**
19 **MANAGEMENT DISTRICT,**

20 Plaintiff,

21 vs.

22 **JAMES DAY, individually; BARBARA**
23 **DAY, individually; MID VALLEY**
24 **CONSULTING & GENERAL**
25 **ENGINEERING, a California**
26 **corporation; and DOES 1-10, inclusive,**

27 Defendants.

No. _____

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
OTHER EQUITABLE RELIEF**

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PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA *ex rel.* PLACER
COUNTY AIR POLLUTION CONTROL DISTRICT and FEATHER RIVER AIR QUALITY
MANAGEMENT DISTRICT, based on information and belief, allege as follows:

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PLAINTIFF

1. Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA *ex rel.* PLACER COUNTY AIR POLLUTION CONTROL DISTRICT and FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT (People *ex rel.* PCAPCD & FRAQMD), brings its actions by and through the Placer County Air Pollution Control District (PCAPCD), whose jurisdiction includes the entirety of Placer County, and Feather River Air Quality Management District (FRAQMD), whose jurisdiction includes the entirety of Yuba and Sutter counties.

2. The People *ex rel.* PCAPCD & FRAQMD, acting in the public interest to protect the general public and environment against violation of California’s air pollution control laws and against unlawful and unfair competitive business advantages gained from illegal actions, omissions and practices, bring this action in the name of the People *ex rel.* PCAPCD & FRAQMD. By this action, the People *ex rel.* PCAPCD & FRAQMD seek to enjoin Defendants from engaging in unlawful acts, omissions and practices alleged herein, and seek civil penalties to be imposed for each of the Defendants’ violations.

3. The actions of the Defendants, as hereinafter set forth, constitute violations of the laws, regulations, rules, orders and public policies of the State of California and/or the Air Resources Board and/or Placer County Air Pollution Control District and the Feather River Air Quality Management District.

4. The People *ex rel.* PCAPCD & FRAQMD bring this action in a Superior Court for an injunction against any person who engages, had engaged, or proposes to engage in illegal conduct and for civil penalties for each violation on a per day basis, pursuant to Health & Safety Code §§ 41513 and 42402 *et seq.*

5. The People *ex rel.* PCAPCD & FRAQMD brings this action without prejudice to any other action or claims which it may have based on separate, independent, or unrelated violations of the California Health & Safety Code by the Defendants and/or on facts which are not alleged in this Complaint.

DEFENDANTS

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2 6. Defendant JAMES DAY is a resident of Yuba County. On information and belief,
3 JAMES DAY is or was an owner, the President/Chief Executive Officer, and a Director at MID
4 VALLEY CONSULTING & GENERAL ENGINEERING until its purchase by Nucleus Pump
5 Services on or about July 31, 2018. Pursuant to the Purchase/Sale Agreement, JAMES DAY has
6 worked in conjunction with and/or for Nucleus Pump Services since that date and will continue to
7 do so until approximately July 31, 2019.

8 7. Defendant BARBARA DAY is a resident of Plumas County. On information and
9 belief, BARBARA DAY is or was an owner, the Chief Financial Officer, the Secretary, and a
10 Director at MID VALLEY CONSULTING & GENERAL ENGINEERING until its purchase by
11 Nucleus Pump Services on or about July 31, 2018.

12 8. Defendant MID VALLEY CONSULTING & GENERAL ENGINEERING is a
13 California corporation, located at 1097 Bronco Dr., Plumas Lake, CA 95961, was and/or is a
14 petroleum station servicing company,

15 9. Defendants are now, and were at all times relevant herein, personally, individually,
16 and/or collectively responsible for the illegal conduct alleged herein, including, but not limited to,
17 false statements made, false documents submitted with the intent to deceive, the failure to
18 properly maintain, repair, service, and monitor equipment, failure to maintain adequate records,
19 failure to maintain proper certifications, and the improper clearing of In-Station Diagnostics
20 (“ISD”) alarms, all of which caused the release of emissions in excess of those permitted or
21 allowed by applicable permits, rules, regulations, or statutes.

22 10. Any act of Defendants, alleged herein to have constituted a violation of California
23 law was carried out personally by Defendants, or at their direction, or with its knowledge,
24 supervision, ratification or acquiescence. Any failure to act or omission alleged herein, to have
25 constituted a violation of California law, resulted from Defendants’ failure to act, or failure to
26 direct or authorize others to act. Defendants failed to exercise reasonable individual and/or
27 business judgments, and/or failed to inquire and/or perform due diligence regarding individual
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1 and/or business activities, including, but not limited to, the failure to properly maintain, service,
2 and monitor equipment, failure to maintain adequate records, failure to maintain proper
3 certifications, and the improper clearing of ISD alarms, which caused the release of emissions in
4 excess of those permitted or allowed by applicable permits, rules, regulations, or statutes.

5 11. Defendants each individually, or with their knowledge, supervision, ratification or
6 acquiescence, either individually and/or in its business representative capacity(ies), are or were, at
7 all times relevant to the claims in this Complaint and continuing through the present, legally
8 responsible for compliance with the California Health & Safety Code and regulations
9 promulgated thereunder, as well as the PCAPCD & FRAQMD rules and those governing toxic
10 air-contaminant emission sources within jurisdictional limits.

11 12. Whenever an allegation regarding any act of the Defendant(s) is made herein, such
12 allegation shall be deemed to mean the Defendant(s), or its/his/her agent(s) or employee(s) of
13 Defendant(s), did or so authorized such acts while actively engaged in the affairs of the
14 Defendant's personal and/or business operations and while acting within the course and scope of
15 their employment or while conducting business or personal affairs for a commercial purpose.

16 13. In this Complaint, when reference is made to any act of a Defendant, such
17 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
18 representatives of Defendant(s) did or authorized such acts, or negligently failed and omitted to
19 act or adequately and properly supervise, control or direct its employees and agents while
20 engaged in the management, direction, operation or control of the affairs of the land or property,
21 or business organization. Whenever in this complaint reference is made to any act of any
22 Defendant, such allegation shall be deemed to mean the act of each Defendant acting
23 individually, jointly and severally as defined by Civil Code Section 1430 *et seq.*

24 14. The People do not know the true names, capacities and liabilities of Defendants
25 DOES Nos. 1-10, inclusive, and therefore sues them under fictitious names. The People will
26 amend this Complaint to allege the true name and capacities of the DOE Defendants upon being
27 ascertained. Each of these Defendants was in some way legally responsible for the acts, omissions
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1 and/or violations alleged herein.

2 **VENUE AND JURISDICTION**

3 15. Venue is proper in Placer County, pursuant to California Code of Civil Procedure
4 § 393, and California Health & Safety Code § 42402 et seq., in that emissions violations, permit
5 violations, and violations involving physical equipment and/or record keeping violations alleged
6 in the Complaint occurred in the County of Placer within the jurisdiction of the PCAPCD. This
7 Court has jurisdiction pursuant to Article 6, Section 10 of the California Constitution.

8 **DEFINITIONS**

9 16. **In-Station Diagnostics.** In-Station Diagnostics (“ISD”) systems is equipment that
10 provides continuous real-time monitoring of critical emission-related vapor recovery system
11 parameters and components, and alerts the station operator when a failure mode is detected so
12 that corrective action is taken. At issue in this matter are ISD systems made by Incon (owned by
13 Franklin Fueling Systems) and Veeder-Root. A warning alarm means that critical vapor recovery
14 parameters have been exceeded (for example, the ability of the nozzle to collect the proper
15 amount of vapor, the development of leaks within the containment system, or the excess pressure
16 in the headspace of the underground storage tanks) or the vapor processor has malfunctioned. The
17 purpose of the warning alarm is to provide the gasoline dispensing facility owner/operator time to
18 contact a service provider and request troubleshooting and repair. If warning alarms are ignored
19 and/or the problem persists, a failure alarm is activated. Activation of the failure alarm results in
20 the termination of gasoline dispensing at either specific dispensers or at the entire facility,
21 depending upon which parameter resulted in the failure.

22 **STATUTORY AND REGULATORY FRAMEWORK**

23 **Provisions Applicable to PCAPCD & FRAQMD**

24 17. In 1975, the Legislature enacted California’s Clean Air Act and related pollution
25 control laws. The California Legislature has declared, “the people of the State of California have
26 a primary interest in the quality of the physical environment in which they live” and that this
27 interest “shall be safeguarded by an intensive, coordinated state, regional, and local effort to
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1 protect and enhance the ambient air quality of the state.” (Health & Safety. Code §§ 39000 and
2 39001.) “Since air pollution knows no political boundaries, the Legislature declares that a
3 regional approach to the problem should be encouraged whenever possible and, to this end, the
4 state is divided into air basins.” (Health & Safety. Code § 39001.) “Local and regional authorities
5 have the primary responsibility for control of air pollution from all sources other than vehicular
6 sources.” (Health & Safety. Code §§ 39002 and 40000.)

7 18. Pursuant to Health & Safety Code § 42303.5, “no person shall knowingly make
8 any false statement in any application for a permit, or in any information, analyses, plans, or
9 specifications submitted in conjunction with the application or at the request of the air pollution
10 control officer.”

11 19. Pursuant to Health & Safety Code § 42402.4, any “person who knowingly and
12 with intent to deceive, falsifies any document required to be kept pursuant to any provision of this
13 part, or any rule, regulation, permit, or order of the state board or of a district, including a district
14 hearing board, is liable for a civil penalty of not more than thirty-five thousand dollars
15 (\$35,000).”

16 20. Pursuant to Health & Safety Code § 39013, “[a]ir contaminant’ or ‘air pollution’
17 means any discharge, release, or other propagation into the atmosphere and includes, but is not
18 limited to, smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate
19 matter, acids, or any combination thereof.” (See PCAPCD Rule 102, Section 204 and FRAQMD
20 Rule 1.1 B.4.)

21 21. Pursuant to Health & Safety Code § 39665(a), “[t]oxic air contaminant” means an
22 air pollutant which may cause or contribute to an increase in mortality or in serious illness, or
23 which may pose a present or potential hazard to human health.”

24 22. The California Air Resources Board is charged with protecting air quality in
25 California. To this end, it issues Executive Orders, such as VR-202-X and VR-204-W, which
26 detail the vapor recovery equipment required to ensure the otherwise toxic vapors regulated by
27 ARB’s Airborne Toxic Control Measures regarding benzene are effectively controlled. Orders are
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1 individually enforceable pursuant to such provisions as Health & Safety Code §§ 42402(a),
2 42402(b)(1), 42402.1(a), 42402.2(a), and 42402.3(a), which establish liability for emissions
3 violations of any “order ... of the state board.”

4 23. California’s local air pollution control districts can pass their own more specific
5 rules that incorporate the Executive Orders. Local air districts also issue permits to facility
6 owner/operators, such as an Authority to Construct or a Permit to Operate. These permits contain
7 detailed conditions, including requiring adherence to orders of the state board, recordkeeping
8 requirements, and procedures to follow for ISD alarms.

9 24. Pursuant to Health & Safety Code § 41954(f), “No person shall offer for sale, sell,
10 or install any new or rebuilt gasoline vapor control system, or any component of the system,
11 unless the system or component has been certified by the state board and is clearly identified by a
12 permanent identification of the certified manufacturer or rebuilder.”

13 25. Pursuant to Health & Safety Code § 41960.2(a), “All installed systems for the
14 control of gasoline vapors resulting from motor vehicle fueling operations shall be maintained in
15 good working order in accordance with the manufacturer’s specifications of the system certified
16 pursuant to Section 41954.”

17 26. Pursuant to Health & Safety Code § 41960.2(b),

18 Whenever a gasoline vapor recovery control system is repaired or rebuilt by someone
19 other than the original manufacturer or its authorized representative, the person shall
20 permanently affix a plate to the vapor recovery control system that identifies the repairer
21 or rebuilder and specifies that only certified equipment was used. In addition, a rebuilder
22 of a vapor control system shall remove any identification of the original manufacturer if
23 the removal does not affect the continued safety or performance of the vapor control
24 system.

25 27. Pursuant to California Code of Regulations Title 23 § 2611, “‘Designated
26 underground storage tank operator’ or ‘designated UST operator’ means one or more individuals
27 designated by the owner or operator to have responsibility for training facility employees and
28 conducting visual inspections at an underground storage tank facility.”

29 28. Pursuant to California Code of Regulations Title 23, § 2715(e), any individuals
30 installing underground storage tank system components must be certified by the manufacturer of

1 the components and have a current underground storage tank system installer certificate from the
2 International Code Council (“ICC”), or work under the direct and person supervision of someone
3 present at the work site who is certified. The UST system includes both containment of liquid
4 petroleum and hydrocarbons (e.g. gas) and its associated toxic vapors.

5 29. Pursuant to California Code of Regulations Title 23 § 2611, ““Service technician’
6 means any individual who installs or tests monitoring equipment, or provides maintenance,
7 service, system programming or diagnostics, calibration, or trouble-shooting for underground
8 storage tank system components.”

9 30. Pursuant to California Code of Regulations Title 23 § 2611 a UST service
10 technician must possess or be employed by a person who has the required licenses, and be trained
11 and certified by the manufacturer of the equipment, and must possess or work under the direct
12 and personal supervision of an individual physically present at the work site who possesses a
13 current certificate from the ICC.

14 31. ISD technicians and UST installer/technicians have crossover in the certifications
15 required by manufacturers. For example, Veeder Root requires that for clearing of ISD/PMC
16 alarms, personnel must have an ATG Technician Certification, which pertains to USTs, and a VR
17 Vapor Products Certification. (See VR-202-X, Table 2 at 25.)

18 32. California Air Resources Board Executive Order VR-202-X requires that for Phase
19 II Enhanced Vapor Recovery (“EVR”) System Including In-Station Diagnostics Systems that
20 utilize a vacuum pump to draw vapors back to the underground storage tank (“UST”), referred to
21 as an “assist” system because it assists in the return of vapors to the UST system,

22
23 Installation, maintenance, and repair of system components, including removal and
24 installation of such components in the course of any required tests, shall be performed by
25 technicians certified by the appropriate manufacturer unless otherwise specified in the
[ARB Approved Installation, Operation and Maintenance (IOM) Manual]. Additional
certifications may be required in accordance with local district requirements.

26 (VR-202-X, at 1.)

27 33. Similarly, VR-204-W requires that for Phase II EVR System Including In-Station
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1 Diagnostics Systems that use displacement to return vapors to the UST, referred to as a “balance”
2 system,

3 All components must be installed, maintained, and operated in accordance with the
4 specifications in the ARB [Air Resources Board] Approved Installation, Operation and
5 Maintenance Manual (IOM). Installation, maintenance and repair of system components,
6 including removal and installation of such components in the course of any required tests,
7 shall be performed by technicians certified by the appropriate manufacturer unless
8 otherwise specified in the IOM. Additional certifications may be required in accordance
9 with local district requirements.

10 (VR-204-W at 1.)

11 34. INCON ISD contractors must successfully complete the applicable
12 Franklin Fueling Systems (owner of INCON) training program before they can install, startup,
13 and service INCON Console equipment. (VR-202-X at 40 and VR-204-W at 19.) Franklin
14 Fueling Systems contractors must have up-to-date Level 1 & 2 certifications to install and startup
15 the TS Console. (*Id.*) Franklin Fueling Systems contractors must have up-to-date Level 5
16 certification to install, startup and service the Vapor Recovery Monitoring (“VRM”) system. (*Id.*)

17 35. Veeder-Root contractors must comply with a range of different certifications as
18 detailed in a table at VR-202-X at 25 and VR-204-W at 16. For example, clearing Veeder-Root
19 ISD/ Pressure Management Control (“PMC”) alarms requires both an automatic tank gauge
20 (“ATG”) Technician Certification (which pertains to USTs) and a VR Vapor Products
21 Certification. (VR-202-X Table 2 at 25 and VR-204-W at 16.)

22 36. California Air Resources Board Executive Order VR-202-X, applicable to assist
23 ISD systems by both INCON and Veeder Root, further requires that:

24 Each GDF [Gasoline Dispensing Facility] operator/owner shall keep records of
25 maintenance performed at the facility. Such records shall be maintained on site or in
26 accordance with district requirements or policies. The records shall include the
27 maintenance or test date, repair date to correct test failure, maintenance or test performed,
28 affiliation, telephone number, name and Certified Technician Identification Number of
individual conducting maintenance or test. Additional information may be required in
accordance with local district requirements.

Each GDF operator/owner shall keep records of all alarms detected by the ISD system.
Alarm History records shall be maintained on site or in accordance with district
requirements or policies. The records shall include the alarm date, the nature of the alarm,
type of test and test date to verify the validity of ISD alarm, maintenance or repair date to

1 correct the cause of the alarm, maintenance or repair performed to correct the cause of the
2 alarm, affiliation, telephone number, name and Certified Technician Identification
3 Number of individual conducting maintenance or test. Additional information may be
4 required in accordance with local district requirements.

5 (VR-202-X at 7.)

6 37. Similarly, California Air Resources Board Executive Orders VR-204-W,
7 applicable to balance ISD systems by both INCON and Veeder Root, further requires that

8 Each GDF operator owner shall keep records of alarms and maintenance performed at the
9 facility. Such records shall be maintained on site in accordance with district requirements
10 or policies. The records shall include alarm date and time, nature of the alarm,
11 troubleshooting, maintenance or repair performed to validate and/or correct alarms,
12 component, or system failures, date when maintenance or repair was conducted, name and
13 Certified Technician Identification Number of individual conducting maintenance or test,
14 affiliation, and telephone number. Additional information may be required in accordance
15 with local district requirements.

16 (VR-204-W at 9.)

17 38. In order to complete ISD Vapor Flow Meter Operability & Site Shutdown, an
18 annual test required under Executive Order VR-204-W, an ISD interface port must be present as a
19 separate dedicated port. (VR-204-W, Exhibit 17.)

20 39. California Air Resources Board Executive Order VR-202-X superseded earlier
21 versions that applied to events detailed herein. VR-202-X was issued February 15, 2019,
22 superseding VR-202-W issued on August 30, 2018, which in turn superseded VR-202-U issued
23 on August 31, 2016, which in turn superseded VR-202-T issued on June 10, 2016, which in turn
24 superseded VR-202-S issued on August 26, 2015.

25 40. Similarly, California Air Resources Board Executive Order VR-204-W superseded
26 earlier versions that applied to events detailed herein. VR-204-W was issued March 28, 2018,
27 superseding VR-204-V issued on July 3, 2017, which in turn superseded VR-204-U issued on
28 March 30, 2017, which in turn superseded VR-204-T issued on September 23, 2016, which in
turn superseded VR-204-S issued on March 28, 2016.

Provisions Applicable to Placer County Air Pollution Control District

41. The Placer County Air Pollution Control District (“PCAPCD”) is the local

1 regional agency responsible for the enforcement of the State laws and regulations and District
2 rules for Placer County, in which Defendants committed violations. (See Health & Safety Code §
3 41200 and PCAPCD Rule 101.)

4 42. Pursuant to the Federal Clean Air Act and California Health & Safety Code
5 Section 40702, PCAPCD has adopted rules and regulations to do such acts as necessary, imposed
6 upon or proper to execute the powers and duties granted thereto. Such acts include the adoption of
7 rules, regulations (see PCAPCD Rule Book at www.placerair.org/rules), and executive orders.

8 43. PCAPCD Rule 214 – Transfer of Gasoline into Fuel Tanks – provides at Section
9 301 – Gasoline Transfer that:

10
11 A person shall not transfer or permit the transfer of gasoline from a stationary storage
12 container subject to the provisions of RULE 213, GASOLINE TRANSFER INTO
13 STATIONARY STORAGE CONTAINERS into any motor vehicle fuel tank of greater
14 than 5 gallons capacity unless such transfer is made through a fill nozzle which directs the
15 gasoline vapors displaced by the transfer through the fill nozzle to a system that is CARB
16 certified and will prevent at least 95 percent by weight of such gasoline vapors from
17 entering the atmosphere. PCAPCD Rule 214 Section 301.1 The vapor recovery system is
18 operating in accordance with the applicable CARB Executive Orders, the manufacturer's
19 specifications, and is maintained to be leak free, vapor tight, and in good working order;
20 and PCAPCD Rule 214 Section 301.2. The equipment is operated and maintained without
21 any major defects.

22 44. PCAPCD Rule 303 – Prohibition of Sale – provides that

23
24 A person shall not supply, offer for sale, sell, install or allow the installation of any new or
25 rebuilt vapor recovery system or any of its components, unless the system and component
26 are CARB certified. Each vapor recovery system and its components shall be clearly and
27 permanently marked with the qualified manufacturer's name and model number as
28 certified by CARB. In addition, any qualified manufacturer who rebuilds a component
shall also clearly and permanently mark the corresponding information on the component.

45. PCAPCD Rule 214 – Transfer of Gasoline into Fuel Tanks – provides at Section
304 – Maintenance and Repair that: “No person shall operate any CARB certified vapor recovery
system or any portion thereof, or CARB certified vapor recovery equipment that has a major
defect.”

46. PCAPCD Rule 214 Section 304.1.1 states: “Upon the identification of any major

1 defect, the owner or operator shall tag "Out-of-Order" all dispensing equipment for which vapor
2 recovery has been impaired.”

3 47. PCAPCD Rule 407 – Circumvention – provides: “A person shall not build, erect,
4 install or use any article, machine, equipment or other contrivance, the use of which, without
5 resulting in an actual reduction in the total release of air contaminants to the atmosphere,
6 superficially reduces or conceals an emission which would otherwise constitute a violation of
7 Division 26 of the Health and Safety Code of the State of California or of these Rules and
8 Regulations.”

9 48. Per Executive Orders VR-202-X and VR-204-W, records must be kept on site and
10 be provided on request, which is outlined in any permits issued by PCAPCD.

11 **Provisions Applicable to Feather River Air Quality Management District**

12 49. The Feather River Air Quality Management District (“FRAQMD”) is the local
13 regional agency responsible for the enforcement of the State laws and regulations and District
14 rules for Yuba and Sutter counties, in which Defendants committed violations. (See Health &
15 Safety Code § 41200 and FRAQMD Rule 1.)

16 50. Pursuant to the Federal Clean Air Act and California Health & Safety Code
17 Section 40702, FRAQMD has adopted rules and regulations to do such acts as necessary,
18 imposed upon or proper to execute the powers and duties granted thereto. Such acts include the
19 adoption of rules, regulations (see FRAQMD Rules, available at
20 <https://www.arb.ca.gov/drdb/fr/cur.htm>), and executive orders.

21 51. FRAQMD Rule 3.8 E.1. requires that a person who performs maintenance
22 inspections, repairs, or testing at any gasoline dispensing facility shall provide to the
23 owner/operator all applicable records at the end of each day when the service is provided,
24 including records of all defective components identified or repaired during maintenance
25 inspections, repair logs, and records of tests, as specified.

26 52. Per Executive Order VR-204-W, records must be kept on site and
27 be provided on request, which is outlined in any permits issued by FRAQMD.

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1 **A. Allegations Within PCAPCD's Jurisdiction**

2 **Hira's Beacon**

3 57. Between 2017 and 2018, Defendants performed work on ISD systems and
4 provided test results for work performed at Hira's Beacon, 510 Washington Blvd., Roseville, CA
5 95678 ("Hira's Beacon") to PCAPCD, wherein he provided a certification number for Veeder
6 Root products when that certification had expired.

7 58. JAMES DAY's Veeder Root Vapor Products certification expired on January 10,
8 2017.

9 59. On May 5, 2017 JAMES DAY signed a work order for clearing ISD alarms,
10 when he was uncertified to perform that task, in violation of Health & Safety Code § 42402.4.

11 60. In 2017 and 2018, Defendants improperly cleared ISD alarms at Hira's Beacon.
12 This constituted an attempt to circumvent PCAPCD rules and applicable laws and regulations.

13 61. On June 6, 2017 JAMES DAY signed a work order for clearing ISD alarms,
14 when he was uncertified to perform that task, in violation of Health & Safety Code § 42402.4.

15 62. The May 5, 2017 and June 6, 2017 work orders were submitted by Hira's Beacon
16 owner to PCAPCD to attempt to demonstrate compliance with the requirement to have ISD
17 alarms addressed by a certified technician.

18 63. On or about June 26, 2017, Defendants conducted annual vapor recovery testing
19 without required certifications, in violation of Executive Order VR-202-X.

20 64. Initial and subsequent corrected test results provided to the District for the
21 original testing were not accurate for the Volume/Liquid ("V/L") test. If calculated properly as
22 specified by the test procedure, the meter readings reported would have resulted in failing V/L
23 test results. This indicates that the V/L testing was either not conducted, not properly conducted
24 for all grades at all fueling points, and/or data was falsified.

25 65. On July 7, 2017, BARBARA DAY provided test results to PCAPCD with an
26 invalid certification number(s), thereby establishing that Defendants knowingly made a false
27 statement and knowingly and intentionally submitted a false document to PCAPCD with the
28

1 intent to deceive.

2 66. On September 7, 2017, BARBARA DAY provided test results to PCAPCD with
3 an invalid certification number(s), thereby establishing that Defendants knowingly made a false
4 statement and knowingly and intentionally submitted a false document to PCAPCD with the
5 intent to deceive.

6 67. On or about June 26, 2017, Defendants conducted a retest of the annual vapor

7 68. recovery testing without required certifications, in violation of Executive Orders

8 VR-202-X On April 12, 2018, Defendants again provided test results to PCAPCD

9 with an

10 invalid certification number(s), thereby establishing that Defendants knowingly made a false
11 statement and knowingly and intentionally submitted a false document to PCAPCD with the
12 intent to deceive.

13 69. On April 25, 2018 Notice of Violation (“NOV”) No. 5117 was issued to JAMES
14 DAY for work performed by MIDVALLEY CONSULTING & GENERAL ENGINEERING
15 pursuant to Health & Safety Code § 42303.5 for having submitted false certifications to the
16 District regarding work performed at Hira’s Beacon. JAMES DAY cleared ISD alarms when he
17 did not have the certifications to clear alarms, or conduct troubleshooting or address ISD alarms
18 and thus excess emissions were caused and persisted because proper troubleshooting and repair
19 work was not completed.

20 70. On May 4, 2018, PCAPCD issued NOV No. 5121 to Hira’s Beacon for having a
21 non-certified contractor perform service work and annual vapor recover testing and for not
22 submitting vapor recovery tests results to the PCAPCD.

23 71. On June 27, 2018, District staff found that at least eighteen ISD alarms were
24 improperly cleared without documented troubleshooting and repair work by a certified technician,
25 in 2017 and 2018. The owner of Hira’s Beacon told PCAPCD staff that JAMES DAY had cleared
26 the ISD alarms and/or instructed the owner to clear the alarms, as indicated in numerous work
27 orders.

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1 72. On May 4, 2018, Hira's Beacon was further issued NOV No. 5226 for, among
2 other violations, having ISD alarms improperly cleared without required troubleshooting and
3 repairs, incomplete ISD logs, and non-certified technicians responding to ISD alarms.

4 73. Subsequent evaluation and troubleshooting by other contractors found that the
5 ISD alarms were due to a malfunctioning Clean Air Separator and underground vapor piping that
6 had a large hole that looked like an auger had drilled through it.

7 74. On September 10, 2018, NOV No. 5117 was sent to JAMES DAY and included a
8 proposed settlement with a deadline to respond by October 12, 2018. No response was received.

9 75. On October 22, 2018, another notice regarding NOV No. 5117 was sent to
10 JAMES DAY, extending the settlement deadline to November 9, 2018.

11 76. On October 29, 2018 JAMES DAY spoke with District staff regarding NOV No.
12 5117 but failed to resolve the violations. JAMES DAY made false statements to PCAPCD that all
13 troubleshooting and repair work was conducted by certified technicians, when neither JAMES
14 DAY nor MID VALLEY CONSULTING & GENERAL ENGINEERING employee Brian Roth
15 were certified.

16 77. On October 30, 2018, JAMES DAY emailed PCAPCD with
17 an invalid Veeder Root certification number for MID VALLEY CONSULTING & GENERAL
18 ENGINEERING employee Brian Roth, thereby making false statements to PCAPCD.

19 78. On January 17, 2019, the District offered to settle NOV No. 5117 for a reduced
20 penalty, with a deadline of February 15, 2019.

21 79. No response from JAMES DAY was received regarding NOV No. 5117 and this
22 violation remains subject to enforcement.

23 80. JAMES DAY made false statements to PCAPCD between 2017 and 2018 that he
24 was a Healy Certified Technician when he and/or his staff were not certified to perform work on
25 Healy systems.

26 81. On June 5, 2019, NOV No. 5373 was issued to JAMES DAY for violations that
27 included improper clearing of ISD alarms without documented troubleshooting and repair work
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1 by a certified technician, for informing the station owner that he could clear ISD alarms, for
2 annual performance testing by an uncertified technician and inaccurate and/or falsified data.

3 82. From approximately May 2017 to June 2018, Plaintiff alleges that Defendants
4 failed to maintain all installed systems for the control of gasoline vapors resulting from motor
5 vehicle fueling operations in good working order in accordance with the manufacturer's
6 specifications of the system certified.

7 **Riverside Rd. Arco**

8 83. Defendants performed work at Arco AM/PM Riverside, 998 Riverside Road,
9 Roseville, CA 95678 ("Riverside Rd. Arco").

10 84. On May 9, 2017, PCAPCD issued NOV No. 5056 to the station owner of
11 Riverside Rd. Arco for improperly re-enabling dispensing after failure alarms disabled dispensing
12 between April 17, 2016 and October 30, 2016. Directions for re-enabling fuel dispensing after a
13 failure alarm were found written on the side of the ISD alarm by PCAPCD inspector on April 20,
14 2017 in violation of Executive Order VR-202-X's requirement that only certified technicians re-
15 enable fuel dispensing when a failure alarm occurs after the appropriate troubleshooting and
16 repair work is complete. The owner of Riverside Rd. Arco informed PCAPCD inspector that
17 JAMES DAY had told the owner to clear the ISD alarms. After the ISD alarm disabled
18 dispensing, dispensing was improperly re-enabled at least 16 times. These actions constituted an
19 attempt to circumvent PCAPCD rules and applicable laws and regulations.

20 85. On February 13, 2018, an employee ("Individual One") of MID VALLEY
21 CONSULTING & GENERAL ENGINEERING conducted testing at the site and found multiple
22 failures for dispenser tightness. Individual One did not conduct any V/L testing at that time due to
23 the failures Individual One found.

24 86. On May 7, 2018, Defendants knowingly submitted false test results that contained
25 data intended to deceive.

26 87. On June 5, 2018, Defendants sent an email to PCAPCD stating that they had
27 submitted test results on May 7, 2018 and were providing another copy of the test results. This
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1 email contained false statements and further established the results were knowingly submitted
2 with the intent to deceive PCAPCD.

3 88. On February 20, 2019, a PCAPCD inspector and Individual
4 One found during a test that Riverside Rd. Arco's air quality records binder contained results
5 from tests purportedly performed by Individual One from the February 13, 2018 test and a re-test
6 on April 19, 2018. Although Individual One did not conduct V/L testing on February 13, 2018,
7 the records showed V/L data. The first and second pages of the V/L test results purportedly from
8 February 13, 2018 were identical numbers, with exception of the fueling points listed. These
9 statements constituted an attempt to circumvent PCAPCD rules and applicable laws and
10 regulations.

11 89. On February 20, 2019, District staff found that the ISD console was not
12 communicating properly with the dispensers and was not measuring V/L data. However, passing
13 test results were submitted to PCAPCD for the previous year. PCAPCD was informed by
14 Individual One who had performed the testing that the testing had failed the dispenser tightness
15 test due to leaks on multiple dispensers and that ISD operability and V/L testing had not (and
16 would not have) been conducted during the test on February 13, 2018. Testing that day found
17 again multiple gross leaks on dispenser 3/4 that would have been detected if the ISD system was
18 properly operating, yet the ISD system had no record of dispenser specific alarms for the last two
19 years. These constituted attempts to circumvent PCAPCD rules and applicable laws and
20 regulations. Defendants submitted false statements regarding passing 2018 operability testing.

21 90. On February 20, 2019, Individual One admitted to PCAPCD inspector that
22 around
23 February 2018, when Individual One was an employee of MID VALLEY CONSULTING &
24 GENERAL ENGINEERING, Individual One began noticing that when Individual One noted test
25 failures at Gasoline Dispensing Facilities, passing paperwork was being submitted to regulatory
26 agencies for testing at multiple sites. According to Individual One, when Individual One would
27 note failed testing at a site, Individual One was not sent out by Defendants to retest after repair
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1 work and that only a couple of the test report pages required Individual One's signature.
2 Individual One admitted to PCAPCD inspector that Individual One was concerned by these
3 actions by Defendants and began to keep a notebook of test results obtained in the field.

4 91. On April 11, 2019 NOV No. 5364 was issued to MID VALLEY CONSULTING
5 & GENERAL ENGINEERING pursuant to Health & Safety Code § 42303.5 for having
6 submitted false test reports for annual vapor recovery testing conducted at Riverside Rd. Arco.

7 92. On June 4, 2019, NOV No. 5373 was issued to JAMES DAY for violations that
8 included improper clearing of ISD alarms without appropriate documented troubleshooting and
9 repair work by a certified technician, for informing the station owner that the owner could clear
10 ISD alarms, for submitting passing test results to PCACPD when not test had taken place, and for
11 numerous problems with the ISD system.

12 93. From approximately April 2016 to February 2019, Plaintiff alleges that
13 Defendants failed to maintain all installed systems for the control of gasoline vapors resulting
14 from motor vehicle fueling operations in good working order in accordance with the
15 manufacturer's specifications of the system certified.

16 **Rowdy Randy's**

17 94. On October 11, 2017, PCACPD issued NOV No. 4736 to Rowdy Randy's, 650
18 High Street, Auburn, California, 95603 ("Rowdy Randy's") for, among other violations, at least
19 ten (10) ISD alarms in August-September 2017 that were cleared without troubleshooting and
20 repair. Defendants performed work at Rowdy Randy's. No documentation was present that a
21 certified contractor addressed the ISD alarms or performed repairs. ISD alarms were not
22 documented in the alarm log. The station owner informed PCAPCD that JAMES DAY cleared
23 the ISD alarms and/or instructed the owner to clear the alarms. An employee of Defendants stated
24 that no ISD interface port was present, which is a violation of Executive Order VR-204-W's
25 requirement that all ISD consoled have a vacant RS-232 port. PCAPCD alleges that Defendants
26 falsified results in 2011, 2013, and 2016 at this facility, because the test could not have been
27 performed as specified in the Executive Order without a vacant RS-232 port. These actions
28

1 constituted an attempt to circumvent PCAPCD rules and applicable laws and regulations.

2 95. On June 4, 2019, NOV No. 5373 was issued to JAMES DAY for violations that
3 included improper clearing of ISD alarms without appropriate documented troubleshooting and
4 repair work by a certified technician, for informing the station owner that the owner could clear
5 ISD alarms, and for failing to have a vacant ISD interface port.

6 96. From at least August 2017 to September 2017 and likely in 2011, 2013,
7 and 2016, Plaintiff alleges that Defendants failed to maintain all installed systems for the control
8 of gasoline vapors resulting from motor vehicle fueling operations in good working order in
9 accordance with the manufacturer's specifications of the system certified.

10 **Auburn Arco**

11 97. On June 29, 2018, PCAPCD issued NOV No. 5162 for multiple improper
12 clearings of ISD alarms and failing to have documentation that a certified contractor addressed
13 the alarms and performed repairs. Between June 2017 and May 2018, alarms on the ISD at
14 Auburn Arco were cleared at least seventeen (17) times, either by the Defendants or at their
15 direction. The owner of Auburn Arco stated and documented that JAMES DAY informed the
16 owner he could clear the ISD alarms. These actions constituted an attempt to circumvent
17 PCAPCD rules and applicable laws and regulations.

18 98. Subsequent evaluation and troubleshooting by other contractors found the alarms
19 were due to leaks from the vapor piping in the top of one of the dispensers that was loosely
20 connected.

21 99. On June 4, 2019, NOV No. 5373 was issued to JAMES DAY for violations that
22 included improper clearing of ISD alarms without appropriate documented troubleshooting and
23 repair work by a certified technician and for informing the station owner that the owner could
24 clear ISD alarms.

25 100. From approximately June 2017 to June 2018, Plaintiff alleges that Defendants
26 failed to maintain all installed systems for the control of gasoline vapors resulting from motor
27 vehicle fueling operations in good working order in accordance with the manufacturer's
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1 specifications of the system certified.

2 **Washington Minimart**

3 101. On March 1, 2017, PCAPCD issued NOV No. 4248 to Washington Minimart,
4 999 Washington Blvd., Roseville, California 95678 (“Washington Minimart”) for, among other
5 violations, improper clearing of ISD alarms between April 6, 2016 and October 26, 2016 and
6 failure to provide documentation that a certified contractor addressed the alarms and performed
7 repairs. Defendants performed work on Washington Minimart. Washington Minimart staff
8 admitted to PCAPCD that Defendants informed Washington Minimart employee(s) it/they could
9 clear warning and failure alarms, despite the requirement that alarms may only be cleared by a
10 certified technician. These actions constituted an attempt to circumvent PCAPCD rules and
11 applicable laws and regulations.

12 102. ISD alarms at Washington Minimart was improperly cleared at least 104
13 times from 2016 to 2017. These actions and others alleged herein regarding Washington
14 Minimart constituted an attempt to circumvent PCAPCD rules and applicable laws and
15 regulations.

16 103. Subsequent evaluation and troubleshooting by other contractors found that the
17 alarms were due to multiple component leaks including a vapor splitter O-ring and a P/V valve.

18 104. On June 4, 2019, NOV No. 5373 was issued to JAMES DAY for violations that
19 included improper clearing of ISD alarms without appropriate documented troubleshooting and
20 repair work by a certified technician and for informing the station owner that the owner could
21 clear ISD alarms.

22 105. Defendants have performed work in a non-compliant manner that is harmful to
23 the region’s air quality and specifically air within PCAPCD’s jurisdictional limits, and provides
24 Defendants and their clients with an economic advantage over competitors.

25 106. Defendants’ failure to properly maintain, service, and monitor equipment, as well
26 as their improper clearing of ISD alarms, failure to maintain adequate records, and failure to
27 maintain proper certifications are the causes of emissions in excess of those permitted or allowed
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1 by applicable permits, rules, regulations, or statutes.

2 107. Upon information and belief, the violative conduct is continuing with PCAPCD's
3 jurisdiction.

4 108. From approximately April 2016 to October 2017, Plaintiff alleges that
5 Defendants failed to maintain all installed systems for the control of gasoline vapors resulting
6 from motor vehicle fueling operations in good working order in accordance with the
7 manufacturer's specifications of the system certified.

8 **B. Allegations Within FRAQMD's Jurisdiction**

9 **5th Street Gas Station, Marysville, CA**

10 109. From approximately late 2015 or early 2016 until present, Defendants performed
11 work at 5th Street Gas Station, 929 5th Street, Marysville, CA 95901 ("5th Street Gas").

12 110. From at least November 11, 2016 through January 4, 2018, data from 5th Street
13 Gas showed a significant number of ISD warning alarms were triggered, failures and shutdowns
14 occurred, and ISD manual restarts and alarm clearings occurred. During this period the ISD
15 system at 5th Street Gas never worked properly.

16 111. JAMES DAY and/or technicians/contractors/employees for MID VALLEY
17 CONSULTING & GENERAL ENGINEERING lacked proper certifications by Veeder Root to
18 install ISD equipment for at least some of the time period he performed work at 5th Street Gas.

19 112. Technicians employed by Defendants lacked proper certification to perform work
20 so performed for at least some of the time period they performed work at 5th Street Gas.

21 113. On March 28, 2016, JAMES DAY made false statements regarding the nature of
22 technical problems with the ISD system to Judy Harlow of FRAQMD. JAMES DAY stated that
23 the ISD system had not "mapped" properly due to latest gasoline price flux. JAMES DAY stated
24 that low fuel costs created greater supply demand, which was followed by a price increase,
25 thereby causing radical V/L readings. JAMES DAY stated that when gas prices level out the ISD
26 system will have better V/L results and the "mapping" should be consistent. These statements
27 constituted an attempt to circumvent FRAQMD rules and applicable laws and regulations.

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1 114. On November 3, 2017, JAMES DAY made false statements regarding the nature
2 of technical problems with the ISD system, namely that the ISD system was passing daily, that he
3 had been bringing daily readings into the FRAQMD office, and on the nature of the technical
4 problems with the ISD system, to Leslie Morgan of FRAQMD. These statements constituted an
5 attempt to circumvent FRAQMD rules and applicable laws and regulations.

6 115. On November 6, 2017, JAMES DAY made false statements to FRAQMD
7 regarding the nature of technical problems with the ISD system. These statements constituted an
8 attempt to circumvent FRAQMD rules and applicable laws and regulations.

9 116. On information and belief, on November 14, 2017, JAMES DAY made false
10 statements to Leslie Morgan of FRAQMD regarding an alleged conversation he had with the
11 technical support of the manufacturer of the ISD system, Veeder Root. JAMES DAY made false
12 statements that he had spoken with a Jim/James and Cliff at Veeder Root and the advice they
13 allegedly gave him regarding “mapping” of the ISD system. Leslie Morgan of FRAQMD
14 contacted Veeder Root and learned that there was no one by the name of “Cliff” in the technical
15 support team at Veeder Root, and that JAMES DAY had not spoken to the team member named
16 Jim. These statements by JAMES DAY constituted an attempt to circumvent FRAQMD rules and
17 applicable laws and regulations.

18 117. JAMES DAY made other false statements to FRAQMD and falsified documents
19 with the intent to deceive and circumvent FRAQMD rules and applicable laws and regulations.

20 118. In or about January 2016 Defendants incorrectly installed a Wayne EDEM board,
21 a component of a gasoline vapor control system, that was not certified by the state board for
22 operation with the ISD and UST systems installed.

23 119. Between November 2016 and January 2018, the ISD at 5th Street Gas was cleared
24 approximately 50 times by Defendants. These actions constituted an attempt to circumvent
25 FRAQMD rules and applicable laws and regulations.

26 120. On June 7, 2019, JAMES DAY and BARBARA DAY were issued NOV No. KS-
27 19-08-Y for violations of Health and Safety Code sections 42303.5, 41960.2(a), and FRAQMD
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1 Rule 3.8.E.1, for failure to install a certified system, submitting false statements, and failure to
2 provide records between about 2016 and 2018.

3 121. Defendants have performed work in a non-compliant manner that is harmful to
4 the region's air quality and specifically air within FRAQMD's jurisdictional limits, and provides
5 Defendants and their clients with an economic advantage over competitors.

6 122. Defendants' failure to properly maintain, service, and monitor equipment, as well
7 as their improper clearing of ISD alarms, failure to maintain adequate records, and failure to
8 maintain proper certifications are the causes of emissions in excess of those permitted or allowed
9 by applicable permits, rules, regulations, or statutes.

10 123. From approximately December 2015 to February 2019, Plaintiff alleges that
11 Defendants failed to maintain all installed systems for the control of gasoline vapors resulting
12 from motor vehicle fueling operations in good working order in accordance with the
13 manufacturer's specifications of the system certified.

14 124. Upon information and belief, the violative conduct is continuing within
15 FRAQMD's jurisdictional limits.

16 **C. Allegations Within Yolo-Solano Air Pollution Control District's Jurisdiction**

17 **P & D Properties**

18 125. Defendants performed work on the P & D Properties, 847 Harbor Boulevard,
19 West Sacramento, California, which was issued NOV No. 1768 on June 27, 2017 for, among
20 other violations, improper clearing of ISD alarms between June 16, 2017 and June 27, 2017.
21 Defendants were fired by the owner/operator.

22 **Alamo 76**

23 126. Defendants performed work on Alamo 76, 970 Alamo Drive, Vacaville,
24 California ("Alamo 76"), which was issued NOV No. 1980 on information and belief in 2017, for
25 failure to complete a source test within twelve months of the previously successful reverification
26 test.

27 127. On August 29, 2017, September 19, 2017, September 28, 2017 and November 1,
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1 2017, a YSAQMD inspector visited the facility to witness the required testing, and it appeared
2 that the testing passed. However, on December 1, 2017 YSQAMD received results from the
3 testing that indicated that not all the required testing passed or was properly conducted.

4 **Chevron Winter**

5 128. Defendants performed work on Chevron Winter, 999 East Grant Avenue,
6 Winters, California (“Chevron Winter”), which was issued NOV No. 1721 on April 11, 2016 for
7 having modified the existing gasoline dispensing and vapor recovery equipment, converting an
8 existing gasoline tank to storage diesel fuel and altering two dispensers, without first obtaining an
9 Authority to Construct permit. According to the owner/operator, MIDVALLEY CONSULTING
10 & GENERAL ENGINEERING was supposed to have secured the required permitting.

11 **IJK Oil**

12 129. Defendants performed work on IJK Oil, Inc., 970 Merchant Street, Vacaville,
13 California 95688 (“IJK Oil”), which was issued NOV No. 1940 on September 11, 2017, for
14 altering permitted facility components without first obtaining an Authority to Construct permit.
15 Since this was at least the third instance of this happening, YSAQMD issued NOV No. 1941
16 (below) to MIDVALLEY CONSULTING & GENERAL ENGINEERING.

17 **Mid Valley Consulting (IJK Oil)**

18 130. On September 11, 2017, Defendants MIDVALLEY CONSULTING &
19 GENERAL ENGINEERING and JAMES DAY were issued NOV No. 1941 for having modified
20 the equipment at IJK Oil without having obtained the Authority to Construct permit. The
21 YSAQMD had to make three attempts to secure a settlement with MIDVALLEY CONSULTING
22 & GENERAL ENGINEERING because no response was received by YSAQMD. MIDVALLEY
23 CONSULTING & GENERAL ENGINEERING eventually settled with the YSAQMD.

24 **Sahota**

25 131. Defendant MIDVALLEY CONSULTING & GENERAL ENGINEERING
26 performed work on Sahota Enterprises, Inc. dba Romey’s Gas, 3 Main Street, Woodland,
27 California 95695 (“Sahota”), which was issued NOV No. 1681 on February 10, 2016 for having
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1 modified the existing gasoline dispensing equipment from an Assist Vapor Recovery system to a
2 Balance Vapor Recovery system without first obtaining an Authority to Construct permit.

3 **D. Allegations of Violations Across Multiple Air Districts**

4 132. Defendants knowingly represented with the intent to deceive to PCAPCD and
5 FRAQMD staff in written documents and/or made false statements via written and/or oral
6 communications that Defendants and/or their employees were certified to perform work on ISD
7 equipment when in fact they lacked required certifications, and that such work was performed in
8 accordance with applicable permits, rules, regulations, or statutes.

9 133. On information and belief, Defendants performed work at some or all of the
10 locations cited herein as a “designated underground storage tank operator” or “designated UST
11 operator” as defined by California Code of Regulations Title 23 § 2611.

12 134. Defendant’s lacked required certifications to perform work as an
13 underground storage tank installers or service technicians, which led to excess emissions of air
14 contaminants to be emitted into the ambient air regulated under PCAPCD’s and FRAQMD’s
15 regulatory, inspection and enforcement authorities.

16 135. At all times relevant herein, Defendants, separately and each of them, resided in
17 and/or conducted business in the State of California. California law uniformly requires all persons
18 and corporations to comply with all relevant environmental regulations, and satisfy applicable
19 environmental standards. Defendants’ community members and competitors included any costs
20 associated with this required compliance in their competing prices for the same or similar
21 products or services, thereby placing Defendants, and each of them, at a competitive advantage
22 over competing persons and companies that followed, abided, or complied with applicable rules,
23 orders, regulations, and laws at issue herein.

24 136. Defendants, separately and each of them, engaged in conduct or failed to act
25 thereby causing unpermitted emissions or excess emissions of air contaminants to be emitted into
26 the ambient air regulated under PCAPCD’s and FRAQMD’s regulatory, inspection and
27 enforcement authorities. Defendants, separately and each of them, violated air pollution control
28

1 laws related to the emissions of toxic air contaminants. Defendants, separately and each of them,
2 acted or failed to act in ways that complied with the applicable air pollution control laws,
3 regulations, orders, and rules.

4 137. On information and belief, Defendants, separately and each of them circumvented
5 emissions rules and regulations at every location identified herein and others by having built,
6 erected, installed, or used machines and/or equipment that superficially reduced or concealed an
7 emission which would otherwise constitute a violation of Division 26 of the Health and Safety
8 Code of the State of California or of other Rules and Regulations, the use of which did not result
9 in an actual reduction in the total release of air contaminants to the atmosphere,

10 138. Defendants' improper clearing of ISD alarms at gasoline transfer and dispensing
11 facilities, failure to keep repair logs and records, operation without certifications, installation of
12 uncertified component(s) of a gasoline vapor control system, failure to keep systems for the
13 control of gasoline vapors maintained in good working order and in accordance with all
14 requirements, operation of CARB certified vapor recovery equipment that has a major defect and
15 failing to tag all impaired equipment as "Out-of-Order," failing to affix a plate to vapor recovery
16 control system identifying repairer or rebuilder and/or failing to remove identification of original
17 manufacturer, and use of machines or equipment in a manner that conceals an emission of air
18 contamination in violation of the Health and Safety code and District rules and regulations,
19 knowing false statements, and knowing falsification of documents with intent to deceive, caused
20 the release of unpermitted emissions and/or caused emissions in excess of those permitted by
21 relevant permits.

22 139. On or about July 31, 2018, Defendant MID VALLEY CONSULTING &
23 GENERAL ENGINEERING was purchased by Nucleus Pump Services.

24 140. Upon information and belief, the People *ex rel* PCAPCD and FRAQMD allege
25 that defendants are responsible for corporate violations heretofore unknown, about which the
26 People intend to conduct discovery.

1
2 **E. Defendant JAMES DAY's Role in MID VALLEY CONSULTING & GENERAL**
3 **ENGINEERING's Non-Compliance as Owner, CEO, and Director.**

4 141. At all times relevant herein, Defendant JAMES DAY has been an owner, Chief
5 Executive Officer, and a director for MID VALLEY CONSULTING & GENERAL
6 ENGINEERING.

7 142. As an owner, the CEO, and a director of MID VALLEY CONSULTING &
8 GENERAL ENGINEERING, JAMES DAY had a duty to ensure MID VALLEY CONSULTING
9 & GENERAL ENGINEERING's compliance with all relevant environmental regulations, and to
10 satisfy applicable environmental standards. For all relevant periods, Defendant JAMES DAY, in
11 part, directed and controlled the day-to-day operations of MID VALLEY CONSULTING &
12 GENERAL ENGINEERING.

13 143. Defendant JAMES DAY had - by reason of Defendant's position, authority and
14 responsibility within MID VALLEY CONSULTING & GENERAL ENGINEERING - the
15 responsibility and authority either to prevent in the first instance, or promptly to correct, the
16 violations alleged in this Complaint.

17 144. But Defendant JAMES DAY failed to do so, and through Defendant's actions and
18 inactions, facilitated the occurrence of the violations alleged in this Complaint.

19 145. As owner, the CEO, and a director of MID VALLEY CONSULTING &
20 GENERAL ENGINEERING, JAMES DAY caused or contributed to each of the acts and
21 omissions alleged below in violation of the laws, regulations, rules, orders and public policies of
22 the State of California, the Air Resources Board, PCAPCD, and/or FRAQMD:

- 23 a. Knowingly false statements in applications for a permit, or in any information,
24 analyses, plans, or specifications submitted in conjunction with the application
25 or at the request of the air pollution control officer, in violation of California
26 Health and Safety Code Section 42303.5;
- 27 b. Knowingly and with intent to deceive, falsified documents required to be kept
28

1 pursuant to any provision of California Health and Safety Code Division 26,
2 Part 4, or any rule, regulation, permit, or order of the state board or of a
3 district, including a district hearing board;

- 4 c. Improper clearing of ISD alarms at gasoline transfer and dispensing facilities,
5 failing to keep repair logs and records, operating without certifications,
6 installing uncertified component(s) of a gasoline vapor control system, failing
7 to keep systems for the control of gasoline vapors maintained in good working
8 order and in accordance with all requirements, operating CARB certified vapor
9 recovery equipment that has a major defect and failing to tag all impaired
10 equipment as “Out-of-Order”, failing to affix a plate to vapor recovery control
11 system identifying repairer or rebuilder and/or failing to remove identification
12 of original manufacturer, and using a machine or equipment in a manner that
13 conceals an emission of air contamination in violation of the Health and Safety
14 code and District rules and regulations, without reducing air contamination.

15
16 **F. Defendant BARBARA DAY’s Role in MID VALLEY CONSULTING & GENERAL**
17 **ENGINEERING’s Non-Compliance as Owner, Chief Financial Officer, Secretary,**
18 **and a Director.**

19 146. At all times relevant herein, Defendant BARBARA DAY has been an owner,
20 Chief Financial Officer (CFO), Secretary, and a director for MID VALLEY CONSULTING &
21 GENERAL ENGINEERING.

22 147. As an owner, the CFO, Secretary, and a director of MID VALLEY
23 CONSULTING & GENERAL ENGINEERING, JAMES DAY had a duty to ensure MID
24 VALLEY CONSULTING & GENERAL ENGINEERING’s compliance with all relevant
25 environmental regulations, and to satisfy applicable environmental standards. For all relevant
26 periods, Defendant BARBARA DAY, in part, directed and controlled the day-to-day operations
27 of MID VALLEY CONSULTING & GENERAL ENGINEERING.

28 148. Defendant BARBARA DAY had - by reason of Defendant’s position, authority

1 and responsibility within MID VALLEY CONSULTING & GENERAL ENGINEERING - the
2 responsibility and authority either to prevent in the first instance, or promptly to correct, the
3 violations alleged in this Complaint.

4 149. But Defendant BARBARA DAY failed to do so, and through Defendant's actions
5 and inactions, facilitated the occurrence of the violations alleged in this Complaint.

6 150. As an owner, the CFO, the Secretary, and a director of MID VALLEY
7 CONSULTING & GENERAL ENGINEERING, BARBARA DAY caused or contributed to each
8 of the acts and omissions alleged below in violation of the laws, regulations, rules, orders and
9 public policies of the State of California, the Air Resources Board, PCAPCD, and/or FRAQMD:

- 10 d. Knowingly false statements in applications for a permit, or in any information,
11 analyses, plans, or specifications submitted in conjunction with the application
12 or at the request of the air pollution control officer, in violation of California
13 Health and Safety Code Section 42303.5;
- 14 e. Knowingly and with intent to deceive, falsified documents required to be kept
15 pursuant to any provision of California Health and Safety Code Division 26,
16 Part 4, or any rule, regulation, permit, or order of the state board or of a
17 district, including a district hearing board;
- 18 f. Improper clearing of ISD alarms at gasoline transfer and dispensing facilities,
19 failing to keep repair logs and records, operating without certifications,
20 installing uncertified component(s) of a gasoline vapor control system, failing
21 to keep systems for the control of gasoline vapors maintained in good working
22 order and in accordance with all requirements, operating CARB certified vapor
23 recovery equipment that has a major defect and failing to tag all impaired
24 equipment as "Out-of-Order", failing to affix a plate to vapor recovery control
25 system identifying repairer or rebuilder and/or failing to remove identification
26 of original manufacturer, and using a machine or equipment in a manner that
27 conceals an emission of air contamination in violation of the Health and Safety
28

1 code and District rules and regulations, without reducing air contamination.

2
3 **FIRST CAUSE OF ACTION**

4 Knowing and Intentional Falsification of Documents

5 HEALTH & SAFETY CODE SECTION § 42402.4

6 (Defendants **JAMES DAY; BARBARA DAY; MID VALLEY CONSULTING & GENERAL**
7 **ENGINEERING; and DOES 1-10, inclusive.)**

8 151. The People *ex rel.* PCAPCD and FRAQMD restate and incorporate all previous
9 paragraphs as though fully set forth herein.

10 152. Within the last 3 years from the filing of this complaint, including in addition any
11 applicable tolling per doctrines or agreements and continuing to the present, Defendants,
12 separately and each of them, have knowingly and with intent to deceive, falsified document(s)
13 required to be kept pursuant to any provision of California Health and Safety Code Division 26,
14 Part 4, or any rule, regulation, permit, or order of the state board or of a district, including a
15 district hearing board.

16 153. These falsified documents include, but are not limited, the falsified documents
17 also include, but are not limited to, the falsified test results from Riverside Arco and Rowdy
18 Randy's.

19 154. The unlawful conduct, acts, and/or omissions of Defendants demonstrate the
20 necessity and legal basis for the imposition, pursuant to Health & Safety Code § 42402.4, of a
21 civil penalty of up to \$35,000.

22 **SECOND CAUSE OF ACTION**

23 Willful and Intentional Emissions of Air Contaminants

24 HEALTH & SAFETY CODE SECTION 42402.3 (a)

25 (Defendants **JAMES DAY; BARBARA DAY; MID VALLEY CONSULTING & GENERAL**
26 **ENGINEERING; and DOES 1-10, inclusive.)**

27 155. The People *ex rel.* PCAPCD and FRAQMD restate and incorporate all previous
28 paragraphs as though fully set forth herein.

156. Within the last 3 years from the filing of this complaint, including in addition any
applicable tolling per doctrines or agreements and continuing to the present, Defendants,
separately and each of them, have engaged in acts and omissions in violation of Health &

1 Safety Code §§ 41954(f), 41960.2(a)-(b), California Code of Regulations Title 23 §§ 2715(e) and
2 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W and/or earlier iterations
3 of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec. 303, PCAPCD
4 Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13, by willfully and
5 intentionally emitting air contaminants by improperly clearing ISD alarms at gasoline transfer and
6 dispensing facilities, failing to keep repair logs and records, operating without certifications,
7 installing uncertified component(s) of a gasoline vapor control system, failing to keep systems for
8 the control of gasoline vapors maintained in good working order and in accordance with all
9 requirements, operating CARB certified vapor recovery equipment that has a major defect and
10 failing to tag all impaired equipment as “Out-of-Order”, failing to affix a plate to vapor recovery
11 control system identifying repairer or rebuilder and/or failing to remove identification of original
12 manufacturer, using a machine or equipment in a manner that conceals an emission of air
13 contamination in violation of the Health and Safety code and District rules and regulations,
14 without reducing air contamination, and by knowingly making false statements in applications for
15 a permit, or in any information, analyses, plans, or specifications submitted in conjunction with
16 the application or at the request of an air pollution control officer.

17 157. Upon information and belief, since at least 2016, and on multiple days
18 thereafter, and continuing through the present, Defendants, separately and each of them, have
19 engaged in acts and omissions in violation of Health & Safety Code §§ 41954(f), 41960.2(a)-(b),
20 California Code of Regulations Title 23 §§ 2715(e) and 2611, Air Resources Board Executive
21 Orders VR-202-X and VR-204-W and/or earlier iterations of these Orders, as well as PCAPCD
22 Rule 214 Sec. 301, PCAPCD Rule 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule
23 407, and FRAQMD Rules 3.8.E.1 and 3.13, by willfully and intentionally emitting air
24 contaminants by improperly clearing ISD alarms at gasoline transfer and dispensing facilities,
25 failing to keep repair logs and records, operating without certifications, installing uncertified
26 component(s) of a gasoline vapor control system, failing to keep systems for the control of
27 gasoline vapors maintained in good working order and in accordance with all requirements,
28

1 operating CARB certified vapor recovery equipment that has a major defect and failing to tag all
2 impaired equipment as “Out-of-Order,” failing to affix a plate to vapor recovery control system
3 identifying repairer or rebuilder and/or failing to remove identification of original manufacturer,
4 using a machine or equipment in a manner that conceals an emission of air contamination in
5 violation of the Health and Safety code and District rules and regulations, without reducing air
6 contamination, and by knowingly making false statements in applications for a permit, or in any
7 information, analyses, plans, or specifications submitted in conjunction with the application or at
8 the request of an air pollution control officer.

9 158. The unlawful conduct, acts, and/or omissions of Defendants in violation Health &
10 Safety Code § 42402.3, violation of Health & Safety Code §§ 41954(f), 41960.2(a)-(b),
11 California Code of Regulations Title 23 §§ 2715(e) and 2611, Air Resources Board Executive
12 Orders VR-202-X and VR-204-W and/or earlier iterations of these Orders, as well as PCAPCD
13 Rule 214 Sec. 301, PCAPCD Rule 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule
14 407, and FRAQMD Rules 3.8.E.1 and 3.13, as alleged herein, demonstrate the necessity and legal
15 basis for the imposition, pursuant to Health & Safety Code §§ 42402.3, subdivision (a), and
16 42403 of a civil penalty of up to \$75,000.00 for each willful and intentional non-compliant act,
17 omission or conduct, on a per violation per day basis.

18
19 **THIRD CAUSE OF ACTION**

20 Knowing Emissions of Air Contaminants
21 HEALTH & SAFETY CODE SECTION 42402.2 (a)
(Defendants **JAMES DAY; BARBARA DAY; MID VALLEY CONSULTING & GENERAL
ENGINEERING;** and **DOES 1-10**, inclusive.)

22
23 159. The People *ex rel.* PCAPCD and FRAQMD restate and incorporate all previous
24 paragraphs as though fully set forth herein.

25 160. Within the last 3 years from the filing of this complaint, including in addition any
26 applicable tolling per doctrines or agreements and continuing to the present, Defendants,
27 separately and each of them, have engaged in acts and omissions in violation of Health & Safety
28

1 Code §§ 41954(f), 41960.2(a)-(b), California Code of Regulations Title 23 §§ 2715(e) and 2611,
2 Air Resources Board Executive Orders VR-202-X and VR-204-W and/or earlier iterations of
3 these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec. 303, PCAPCD
4 Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13, by willfully and
5 intentionally emitting air contaminants by improperly clearing ISD alarms at gasoline transfer and
6 dispensing facilities, failing to keep repair logs and records, operating without certifications,
7 installing uncertified component(s) of a gasoline vapor control system, failing to keep systems for
8 the control of gasoline vapors maintained in good working order and in accordance with all
9 requirements, operating CARB certified vapor recovery equipment that has a major defect and
10 failing to tag all impaired equipment as “Out-of-Order,” failing to affix a plate to vapor recovery
11 control system identifying repairer or rebuilder and/or failing to remove identification of original
12 manufacturer, using a machine or equipment in a manner that conceals an emission of air
13 contamination in violation of the Health and Safety code and District rules and regulations,
14 without reducing air contamination, and by knowingly making false statements in applications for
15 a permit, or in any information, analyses, plans, or specifications submitted in conjunction with
16 the application or at the request of an air pollution control officer.

17 161. Upon information and belief, from at least April 2016, and on multiple days
18 thereafter, Defendants, separately and each of them, have engaged in acts and omissions in
19 violation of Health & Safety Code §§ 41954(f), 41960.2(a)-(b), California Code of Regulations
20 Title 23 §§ 2715(e) and 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W
21 and/or earlier iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule
22 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and
23 3.13, by willfully and intentionally emitting air contaminants by improperly clearing ISD alarms
24 at gasoline transfer and dispensing facilities, failing to keep repair logs and records, operating
25 without certifications, installing uncertified component(s) of a gasoline vapor control system,
26 failing to keep systems for the control of gasoline vapors maintained in good working order and
27 in accordance with all requirements, operating CARB certified vapor recovery equipment that has
28

1 a major defect and failing to tag all impaired equipment as “Out-of-Order,” failing to affix a plate
2 to vapor recovery control system identifying repairer or rebuilder and/or failing to remove
3 identification of original manufacturer, using a machine or equipment in a manner that conceals
4 an emission of air contamination in violation of the Health and Safety code and District rules and
5 regulations, without reducing air contamination, and by knowingly making false statements in
6 applications for a permit, or in any information, analyses, plans, or specifications submitted in
7 conjunction with the application or at the request of an air pollution control officer.

8 162. The unlawful conduct, acts, and/or omissions of Defendants in violation of
9 Health & Safety Code §§ 41954(f), 41960.2(a)-(b), California Code of Regulations Title 23 §§
10 2715(e) and 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W and/or
11 earlier iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec.
12 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13, as
13 alleged herein, demonstrate the necessity and legal basis for the imposition, pursuant to Health &
14 Safety Code §§ 42402.2, subdivision (a), and 42403, of a civil penalty of up to \$40,000 for each
15 non-compliant act, omission or conduct, after Defendants knew of the emission and failed to take
16 corrective action, on a per violation per day basis.

17 **FOURTH CAUSE OF ACTION**

18 Negligent Emissions of Air Contaminants
19 HEALTH & SAFETY CODE SECTION 42402.1 (a)
20 (Defendants **JAMES DAY; BARBARA DAY; MID VALLEY CONSULTING & GENERAL**
21 **ENGINEERING;** and **DOES 1-10**, inclusive.)

22 163. The People *ex rel.* PCAPCD and FRAQMD restate and incorporate all previous
23 paragraphs as though fully set forth herein.

24 164. Within the last 3 years from the filing of this complaint, including in addition any
25 applicable tolling per doctrines or agreements and continuing to the present, Defendants,
26 separately and each of them, have engaged in acts and omissions in violation of Health & Safety
27 Code §§ 41954(f), 41960.2(a)-(b), California Code of Regulations Title 23 §§ 2715(e) and 2611,
28 Air Resources Board Executive Orders VR-202-X and VR-204-W and/or earlier iterations of
these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec. 303, PCAPCD

1 Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13, by negligently
2 emitting air contaminants by improperly clearing ISD alarms at gasoline transfer and dispensing
3 facilities, failing to keep repair logs and records, operating without certifications, installing
4 uncertified component(s) of a gasoline vapor control system, failing to keep systems for the
5 control of gasoline vapors maintained in good working order and in accordance with all
6 requirements, operating CARB certified vapor recovery equipment that has a major defect and
7 failing to tag all impaired equipment as “Out-of-Order,” failing to affix a plate to vapor recovery
8 control system identifying repairer or rebuilder and/or failing to remove identification of original
9 manufacturer, using a machine or equipment in a manner that conceals an emission of air
10 contamination in violation of the Health and Safety code and District rules and regulations,
11 without reducing air contamination, and by knowingly and negligently making false statements in
12 applications for a permit, or in any information, analyses, plans, or specifications submitted in
13 conjunction with the application or at the request of an air pollution control officer.

14 165. Upon information and belief, from at least April 2016, and on multiple days
15 thereafter, Defendants, separately and each of them, have engaged in acts and omissions in
16 violation of Health & Safety Code §§ 41954(f), 41960.2(a)-(b), California Code of Regulations
17 Title 23 §§ 2715(e) and 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W
18 and/or earlier iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule
19 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and
20 3.13, by negligently emitting air contaminants by improperly clearing ISD alarms at gasoline
21 transfer and dispensing facilities, failing to keep repair logs and records, operating without
22 certifications, installing uncertified component(s) of a gasoline vapor control system, failing to
23 keep systems for the control of gasoline vapors maintained in good working order and in
24 accordance with all requirements, operating CARB certified vapor recovery equipment that has a
25 major defect and failing to tag all impaired equipment as “Out-of-Order,” failing to affix a plate
26 to vapor recovery control system identifying repairer or rebuilder and/or failing to remove
27 identification of original manufacturer, using a machine or equipment in a manner that conceals
28

1 an emission of air contamination in violation of the Health and Safety code and District rules and
2 regulations, without reducing air contamination, and by knowingly and negligently making false
3 statements in applications for a permit, or in any information, analyses, plans, or specifications
4 submitted in conjunction with the application or at the request of an air pollution control officer.

5 166. The unlawful conduct, acts, and/or omissions of Defendants in violation of
6 Health & Safety Code §§ 41954(f), 41960.2(a)-(b), California Code of Regulations Title 23 §§
7 2715(e) and 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W and/or
8 earlier iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec.
9 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13, as
10 alleged herein, demonstrate the necessity and legal basis for the imposition, pursuant to Health &
11 Safety Code §§ 42402.1 subdivision (a), and 42403, of a civil penalty of up to \$25,000 for each
12 negligent non-compliant act, omission or conduct, on a per violation per day basis.

13
14
15 **FIFTH CAUSE OF ACTION**

16 Strict Liability Violations of State Laws and Regulations and District Rules
17 HEALTH & SAFETY CODE section 42402 (b)(1)
18 (Defendants **JAMES DAY; BARBARA DAY; MID VALLEY CONSULTING & GENERAL**
19 **ENGINEERING; and DOES 1-10, inclusive.**)

20 167. The People *ex rel.* PCAPCD and FRAQMD restate and incorporate all previous
21 paragraphs as though fully set forth herein.

22 168. Within the last 3 years from the filing of this complaint, including in addition any
23 applicable tolling per doctrines or agreements and continuing to the present, Defendants,
24 separately and each of them, have engaged in acts and omissions in violation of Health & Safety
25 Code §§ 41954(f), 41960.2(a)-(b), 42303.5, California Code of Regulations Title 23 §§ 2715(e)
26 and 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W and/or earlier
27 iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec. 303,
28 PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13, by
improperly clearing ISD alarms at gasoline transfer and dispensing facilities, failing to keep

1 repair logs and records, operating without certifications, installing uncertified component(s) of a
2 gasoline vapor control system, failing to keep systems for the control of gasoline vapors
3 maintained in good working order and in accordance with all requirements, operating CARB
4 certified vapor recovery equipment that has a major defect and failing to tag all impaired
5 equipment as “Out-of-Order,” failing to affix a plate to vapor recovery control system identifying
6 repairer or rebuilder and/or failing to remove identification of original manufacturer, using a
7 machine or equipment in a manner that conceals an emission of air contamination in violation of
8 the Health and Safety code and District rules and regulations, without reducing air contamination,
9 and by knowingly making false statements in applications for a permit, or in any information,
10 analyses, plans, or specifications submitted in conjunction with the application or at the request of
11 an air pollution control officer, and such assertions include but are not limited to those times
12 when Defendants were required to have certifications for certain work on ISD systems when in
13 fact they were uncertified, as well as making false statements to Districts’ staff regarding
14 applications for a permit or information sought in conjunction with the applications for a permit
15 and information sought at the request of the air pollution control officer.

16 169. Upon information and belief, since at least April 2016, and on multiple days
17 thereafter, Defendants, separately and each of them, have engaged in acts and omissions in
18 violation of Health & Safety Code §§ 41954(f), 41960.2(a)-(b), 42303.5, California Code of
19 Regulations Title 23 §§ 2715(e) and 2611, Air Resources Board Executive Orders VR-202-X and
20 VR-204-W and/or earlier iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301,
21 PCAPCD Rule 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD
22 Rules 3.8.E.1 and 3.13, by improperly clearing ISD alarms at gasoline transfer and dispensing
23 facilities, failing to keep repair logs and records, operating without certifications, installing
24 uncertified component(s) of a gasoline vapor control system, failing to keep systems for the
25 control of gasoline vapors maintained in good working order and in accordance with all
26 requirements, operating CARB certified vapor recovery equipment that has a major defect and
27 failing to tag all impaired equipment as “Out-of-Order,” failing to affix a plate to vapor recovery
28

1 control system identifying repairer or rebuilder and/or failing to remove identification of original
2 manufacturer, using a machine or equipment in a manner that conceals an emission of air
3 contamination in violation of the Health and Safety code and District rules and regulations,
4 without reducing air contamination, and by knowingly making false statements in applications for
5 a permit, or in any information, analyses, plans, or specifications submitted in conjunction with
6 the application or at the request of an air pollution control officer.

7 170. The unlawful conduct, acts, and/or omissions of Defendants in violation Health &
8 Safety Code §§ 41954(f), 41960.2(a)-(b), 42303.5, California Code of Regulations Title 23 §§
9 2715(e) and 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W and/or
10 earlier iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec.
11 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13, as
12 alleged herein, demonstrate the necessity and legal basis for the imposition, pursuant to Health &
13 Safety Code §§ 42402.3, subdivision (a), and 42402.2(a) of a strict liability civil penalty up to
14 \$10,000 for each non-compliant act, omission or conduct, on a per violation per day basis.

15
16 **SIXTH CAUSE OF ACTION**

17 Strict Liability Violations of State Laws and Regulations and District Rules
18 HEALTH & SAFETY CODE SECTION 42402 (a)
(Defendants **JAMES DAY; BARBARA DAY; MID VALLEY CONSULTING & GENERAL**
19 **ENGINEERING;** and **DOES 1-10**, inclusive.)

20 171. The People *ex rel.* PCAPCD and FRAQMD restate and incorporate all previous
21 paragraphs as though fully set forth herein.

22 172. Within the last 3 years from the filing of this complaint, including in addition any
23 applicable tolling per doctrines or agreements and continuing to the present, Defendants,
24 separately and each of them, have engaged in acts and omissions in violation of Health & Safety
25 Code §§ 41954(f), 41960.2(a)-(b), 42303.5, California Code of Regulations Title 23 §§ 2715(e)
26 and 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W and/or earlier
27 iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec. 303,
28 PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13, by

1 improperly clearing ISD alarms at gasoline transfer and dispensing facilities, failing to keep
2 repair logs and records, operating without certifications, installing uncertified component(s) of a
3 gasoline vapor control system, failing to keep systems for the control of gasoline vapors
4 maintained in good working order and in accordance with all requirements, operating CARB
5 certified vapor recovery equipment that has a major defect and failing to tag all impaired
6 equipment as “Out-of-Order,” failing to affix a plate to vapor recovery control system identifying
7 repairer or rebuilder and/or failing to remove identification of original manufacturer, using a
8 machine or equipment in a manner that conceals an emission of air contamination in violation of
9 the Health and Safety code and District rules and regulations, without reducing air contamination,
10 and by knowingly making false statements in applications for a permit, or in any information,
11 analyses, plans, or specifications submitted in conjunction with the application or at the request of
12 an air pollution control officer, and such assertions include but are not limited to those times
13 when Defendants were required to have certifications for certain work on ISD systems when in
14 fact they were uncertified, as well as making false statements to Districts’ staff regarding
15 applications for a permit or information sought in conjunction with the applications for a permit
16 and information sought at the request of the air pollution control officer.

17 173. Upon information and belief, from at least April 2016, and on multiple days
18 thereafter, Defendants, separately and each of them, have engaged in acts and omissions in
19 violation of Health & Safety Code §§ 41954(f), 41960.2(a)-(b), 42303.5, California Code of
20 Regulations Title 23 §§ 2715(e) and 2611, Air Resources Board Executive Orders VR-202-X and
21 VR-204-W and/or earlier iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301,
22 PCAPCD Rule 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD
23 Rules 3.8.E.1 and 3.13, by improperly clearing ISD alarms at gasoline transfer and dispensing
24 facilities, failing to keep repair logs and records, operating without certifications, installing
25 uncertified component(s) of a gasoline vapor control system, failing to keep systems for the
26 control of gasoline vapors maintained in good working order and in accordance with all
27 requirements, operating CARB certified vapor recovery equipment that has a major defect and
28

1 failing to tag all impaired equipment as “Out-of-Order,” failing to affix a plate to vapor recovery
2 control system identifying repairer or rebuilder and/or failing to remove identification of original
3 manufacturer, using a machine or equipment in a manner that conceals an emission of air
4 contamination in violation of the Health and Safety code and District rules and regulations,
5 without reducing air contamination, and by knowingly making false statements in applications for
6 a permit, or in any information, analyses, plans, or specifications submitted in conjunction with
7 the application or at the request of an air pollution control officer.

8 174. The unlawful conduct, acts, and/or omissions of Defendants in violation of
9 Health & Safety Code §§ 41954(f), 41960.2(a)-(b), 42303.5, California Code of Regulations Title
10 23 §§ 2715(e) and 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W
11 and/or earlier iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule
12 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and
13 3.13, as alleged herein, demonstrate the necessity and legal basis for the imposition, pursuant to
14 Health & Safety Code §§ 42402, subdivision (a), and 42403, of a strict liability civil penalty up to
15 \$5,000.00, for each non-compliant act, omission or conduct, on a per violation per day basis.

16
17 **INJUNCTION TO PROTECT AIR RESOURCES**
18 **HEALTH & SAFETY CODE SECTION 41513**

19 (Defendants **JAMES DAY; BARBARA DAY; MID VALLEY CONSULTING & GENERAL**
20 **ENGINEERING;** and **DOES 1-10**, inclusive.)

21 175. The People *ex rel.* PCAPCD and FRAQMD restate and incorporate all previous
22 paragraphs as though fully set forth herein.

23 176. California Health & Safety Code Section 41513 provides: “Any violation of any
24 provision of this part, or of any order, rule, or regulation of the state board or of any district, may
25 be enjoined in a civil action brought in the name of the people of the State of California, except
26 that plaintiff shall not be required to allege facts necessary to show, or tending to show, lack of
27 adequate remedy at law or to show, or tending to show, irreparable damage or loss.”

1 177. Defendants, through the actions, omissions, negligence, knowing conduct after
2 notice and reasonable opportunities to cure and intentional or negligent conduct alleged in this
3 complaint, have impaired California air quality and environmental resources by improperly
4 clearing ISD alarms at gasoline transfer and dispensing facilities, failing to keep repair logs and
5 records, operating without certifications, installing uncertified component(s) of a gasoline vapor
6 control system, failing to keep systems for the control of gasoline vapors maintained in good
7 working order and in accordance with all requirements, operating CARB certified vapor recovery
8 equipment that has a major defect and failing to tag all impaired equipment as “Out-of-Order,”
9 failing to affix a plate to vapor recovery control system identifying repairer or rebuilder and/or
10 failing to remove identification of original manufacturer, and using a machine or equipment in a
11 manner that conceals an emission of air contamination in violation of the Health and Safety code
12 and District rules and regulations, without reducing air contamination - all of which Defendants
13 are legally responsible for.

14 178. In order to protect California’s air resources, the People *ex rel.* PCAPCD and
15 FRAQMD are entitled to an order requiring Defendants, separately and each of them, to
16 undertake any steps necessary to prevent further harm to air quality and environmental resources,
17 including an order that Defendants, and each of them, cease and desist from improperly clearing
18 ISD alarms at gasoline transfer and dispensing facilities, failing to keep repair logs and records,
19 operating without certifications, installing uncertified component(s) of a gasoline vapor control
20 system, failing to keep systems for the control of gasoline vapors maintained in good working
21 order and in accordance with all requirements, operating CARB certified vapor recovery
22 equipment that has a major defect and failing to tag all impaired equipment as “Out-of-Order,”
23 failing to affix a plate to vapor recovery control system identifying repairer or rebuilder and/or
24 failing to remove identification of original manufacturer, using a machine or equipment in a
25 manner that conceals an emission of air contamination in violation of the Health and Safety code
26 and District rules and regulations, knowingly making false statements, falsifying documents
27 knowingly and with intent to deceive, and to further comply with all laws, rules and regulations.
28

1 **PRAYER**

2 **WHEREFORE, THE PEOPLE OF THE STATE OF CALIFORNIA *ex rel.* PLACER**
3 **COUNTY AIR POLLUTION MANAGEMENT DISTRICT AND FEATHER RIVER AIR**
4 **QUALITY MANAGEMENT DISTRICT PRAY FOR THE FOLLOWING RELIEF:**

- 5 1. A preliminary and permanent injunction, pursuant to Health and Safety Code Section
6 41513, against Defendants, separately and each of them, requiring each Defendant to
7 comply with the specific requirements of Health & Safety Code §§ 41954(f), 41960.2(a)-
8 (b), 42303.5 and 42402 through 42402.4, California Code of Regulations Title 23 §§
9 2715(e) and 2611, Air Resources Board Executive Orders VR-202-X and VR-204-W
10 and/or earlier iterations of these Orders, as well as PCAPCD Rule 214 Sec. 301, PCAPCD
11 Rule 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD
12 Rules 3.8.E.1 and 3.13, inclusive, according to proof and as alleged in the Complaint.
- 13 2. Penalties, according to proof, against each Defendant pursuant to Health & Safety Code
14 Sections 42402.4 for each false document submitted knowingly and with the intent to
15 deceive, when such document was required to be kept pursuant to any provision of any
16 rule, regulation, permit, order of the state board or district.
- 17 3. Penalties, according to proof, against each Defendant pursuant to Health & Safety Code
18 Sections 42402.3, subdivisions (a) and (d), and 42403 for each willful and intentional
19 emission of an air contaminant in violation of Health & Safety Code, Division 26, Part 4,
20 section 39000 et seq. (non-vehicular air pollution), orders of the state board or district, or
21 applicable rules, regulations, or permits, as set forth in this complaint.
- 22 4. Civil Penalties, according to proof, against each Defendant pursuant to Health & Safety
23 Code Sections 42402.2, subdivisions (a) and (c), and 42403 for each knowing emission of
24 an air contaminant, after knowledge of such emission and failure to take corrective action,
25 in violation of Health & Safety Code, Division 26, Part 4, section 39000 et seq. (non-
26 vehicular air pollution), order of the state board or district, or applicable rules, regulations,
27 or permits, as set forth in this complaint.
- 28

- 1 5. Civil Penalties, according to proof, against each Defendant pursuant to Health & Safety
2 Code Sections 42402.1, subdivisions (a) and (c), and 42403 for each negligent emission of
3 an air contaminant in violation of Health & Safety Code, Division 26, Part 4, section
4 39000 et seq. (non-vehicular air pollution), order of the state board or district, or
5 applicable rules, regulations, or permits, as set forth in this complaint.
- 6 6. Civil Penalties, according to proof, against each Defendant pursuant to Health & Safety
7 Code Sections 42402, subdivisions (b)(1) and (d), and 42403 for each violation of Health
8 & Safety Code, Division 26, Part 4, section 39000 et seq. (non-vehicular air pollution),
9 order of the state board or district, or applicable rules, regulations, or permits, as set forth
10 in this complaint.
- 11 7. Civil Penalties, according to proof, against each Defendant pursuant to Health & Safety
12 Code Sections 42402, subdivisions (a) and (d), and 42403 for each violation of Health &
13 Safety Code, Division 26, Part 4, section 39000 et seq. (non-vehicular air pollution),
14 orders of the state board or district, or applicable, orders, rules, regulations, or permits, as
15 set forth in this complaint.
- 16 8. Grant the People *ex rel.* PCAPCD & FRAQMD its costs of inspection, investigation,
17 enforcement, prosecution and suit herein as set forth in this complaint.
- 18 9. Grant such other and further relief as the Court deems just and fair.

19
20 Dated: July 23, 2019

Respectfully Requested,
Aqua Terra Aeris (ATA) Law Group

21
22 
23 By: _____
24 Matthew C. Maclear
25 Attorney for Plaintiff
26 ***The People of the State of California ex rel. Placer***
27 ***County Air Pollution Control District and Feather***
28 ***River Air Quality Management District***