

1 John V. Tamborelli (State Bar No. 134027)

2 **TAMBORELLI LAW GROUP**

3 A Professional Law Corporation  
21700 Oxnard Street, Suite 1590  
Woodland Hills, California 91367

4 Tel: (818) 710-3696

5 Fax: (818) 710-3695

6 Attorneys for Plaintiff,

7 Frank Bonvino

**FILED**  
Superior Court Of California  
County Of Los Angeles

APR 25 2014

Sherri R. Carter, Executive Officer/Clerk  
By: (Signature), Deputy  
Amber Hayes

8 SUPERIOR COURT OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

10  
11 FRANK BONVINO,

12 Plaintiff,

13 v.

14 LAS VIRGENES MUNICIPAL WATER  
DISTRICT, PACIFIC HYDROTECH,  
15 AECOM, and DOES 1 through 100,  
Inclusive,

16 Defendant(s).

Case No.: BC54<sup>3</sup>2637

[Complaint Filed April 24, 2014]

[Dept. 28]

[Assigned to Hon. Yvette Palazuelos for all  
purposes]

**EXHIBIT C TO COMPLAINT**

**BY FAX**

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20 1. *Ex Parte* Application for a Temporary Restraining Order and Order to Show  
21 Cause Re. Preliminary Injunction, both of which seek to restrain Defendant Las  
22 Virgenes Municipal Water District, Pacific Hydrotech, and AECOM, along with  
23 all those involved and DOES 1 through 100, inclusive from committing  
24 threatened conduct that will cause irreparable harm to Plaintiff Frank Bonvino.  
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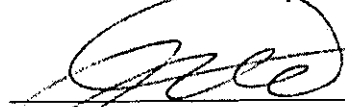
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A PROFESSIONAL LAW CORPORATION  
21700 OXNARD STREET, SUITE 1590  
WOODLAND HILLS, CALIFORNIA 91367

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DATED: April 25, 2014

Respectfully submitted,  
**Tamborelli Law Group**  
A Professional Law Corporation

By: 

JOHN V. TAMBORELLI  
Tamborelli Law Group  
Attorneys for Plaintiff Frank Bonvino

**TAMBORELLI LAW GROUP**  
A PROFESSIONAL LAW CORPORATION  
21700 OXNARD STREET, SUITE 1590  
WOODLAND HILLS, CALIFORNIA 91367

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21700 OXNARD STREET, SUITE 1590  
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21700 OXNARD STREET, SUITE 1590  
WOODLAND HILLS, CALIFORNIA 91367

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on Friday April 25, 2014, at 8:30 a.m., or as soon as  
3 the matter may be heard in appropriate Writs and Receivers Department of the above-  
4 titled court (Department \_\_\_ as determined by the Court at the time of the filing of this  
5 action), located at 111 North Hill Street, Los Angeles, California, 90012, Plaintiff Frank  
6 Bonvino (hereinafter, "Plaintiff") based in part on the Verified Complaint and on the  
7 Appendix of Declarations and Appendix of Authorities along with all supporting  
8 documents and exhibits filed herewith will seek the instant *Ex Parte* Application for a  
9 Temporary Restraining Order and Order to Show Cause Re. Preliminary Injunction, both  
10 of which seek to restrain Defendant Las Virgenes Municipal Water District (hereinafter,  
11 "Water District"), Pacific Hydrotech, and AECOM, along with all those involved,  
12 (hereinafter, "Tank Contractors") and DOES 1through100, inclusive (hereinafter,  
13 collectively "Defendants") from committing threatened conduct that will cause irreparable  
14 harm to Plaintiff, and which is imminent, as is more fully set forth below.

15  
16 **THE ORDER TO SHOW CAUSE**

17 The application for the Order to Show Cause Re. Preliminary Injunction is made  
18 on the grounds set forth in Code of Civil Procedure sections 526 (a) (1) through (a) (6)  
19 and 527. The preliminary injunction is required during the pendency of the litigation  
20 because:

- 21 1. Defendants failed to give proper notice required under CEQA Public Resource Code  
22 Sections 21080.3 and 21092 as well as CEQA Guidelines Sections 15072, 15072(f)  
23 and 15074, prior to Board approval of the Las Virgenes Municipal Water District  
24 Backbone Improvement Program ("Backbone Improvement Program") and as such  
25 Defendants' continuing effort to develop a five million gallon water storage tank  
26 ("Storage Tank") is unlawful. LVMWD's actions represent a colossal failure to comply  
27 with California's public notice, and public participation statutes, very possibly  
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intentionally. Specifically, Defendant Las Virgenes Municipal Water District's public notification ("Public Notice") was invalid and/or deficient in the following ways:

- a. Public Notice used a name that describes a site at a different location approximately 11+ miles from actual site;<sup>1</sup>
- b. Public Notice failed to provide an accurate description of the tank site by using the wrong name for the reservoir, one that contradicts the name used and cited by State of California safety agencies, without mention of neighborhood nor even city;<sup>2 3 4</sup>
- c. Public Notice was placed in The Daily News—a newspaper which does not meet the CEQA requirements for a "newspaper of general circulation;<sup>5"</sup>
  - i. Water District recognized this deficiency in 2011, and subsequently changed its normal practice to a different publication;<sup>6</sup>
- d. Public Notice provides a filing period which contradicts the filing period provided in Notice of Intent to Adopt a Mitigated Negative Declaration;<sup>7</sup>
- e. Defendant provided only 29 days for public comment, when they were required to provide 30 days;

<sup>1</sup> Declaration of Barry Steinhardt, Exhibit A.

<sup>2</sup> Public notice sole description for Storage Tank was "A five million gallon storage reservoir adjacent to Las Virgenes Reservoir." Separate from Storage Tank site, Water District also has a reservoir on Las Virgenes Road in Calabasas. Public notice makes no mention of which city the project is in. Declaration of Barry Steinhardt, Exhibit B

<sup>3</sup> State of California lists the reservoir's name as "Westlake Reservoir" owned by Las Virgenes Municipal Water District, Dam No. 1073-000, National ID No. CA00904, <http://www.water.ca.gov/damsafety/docs/Jurisdictional1.pdf>. Declaration of Barry Steinhardt, Exhibit C, page 6.

<sup>4</sup> Common public name for reservoir is "Westlake Reservoir". Declaration of Neil Ticktin, Paragraph 7.

<sup>5</sup> CA.Government Code section 6008(b) & (d). See Declaration of Neil Ticktin, Paragraph 25, Exhibit J, and Declaration of Barry Steinhardt, Paragraph 17

<sup>6</sup> Declaration of LVMWD Board Member, Barry Steinhardt, Paragraph 5.

<sup>7</sup> Public notice printed on August 26, 2009 in The Daily News defined public comment period as beginning August 31, 2009 and ending September 30, 2009. Actual public comment period began August 25, 2009 and ending September 23, 2009. Declaration of Barry Steinhardt, Exhibit A.



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- f. Evidence of the failure in Public Notice is that the Water District did not receive even a single comment from residents on this major project;<sup>8</sup> and
- g. Further evidence of failure in Public notice is that, one of the resident properties closest to the Project Site was purchased in 2011, but the transaction did not include disclosure of the site because the seller and selling broker did not know of it.<sup>9</sup>
2. Defendant misled the public, and violated public process, when it incorrectly stated in its Initial Study/Mitigated Negative Declaration ("MND") submitted for approval that it had in fact "...directly mailed [Notice of Intent to Adopt a Mitigated Negative Declaration] to owners contiguous to the project;"<sup>10</sup> This misrepresentation had the impact of both avoiding public vetting, reducing political opposition, and allowing the Board to approve the project by creating a false sense of public support due to no public comment otherwise.
3. Defendant failed to file the Notice of Determination in the required period of time under CEQA Guidelines Sections 15075(d);<sup>11</sup> <sup>12</sup>and
- a. As a result of an improperly filed Notice of Determination, "the statute of limitations is 180 days from the date the decision to carry out or approve the project is made".<sup>13</sup> The project's final approval was January 14, 2014;<sup>14</sup>

<sup>8</sup> Appendix E of the Final IS/MND which contains all comments submitted on the Draft IS/MND. Declaration of LVMWD Board Member, Barry Steinhardt, Paragraph 20.

<sup>9</sup> Declaration of Lisa C. Krijger, paragraphs 3-4.

<sup>10</sup> Section titled "Summary Of The Final Initial Study And Mitigated Negative Declaration LVMWD Backbone System Improvement Project", MND, Paragraph 2. Declaration of Neil Tickin, Paragraph 16, Exhibit A.

<sup>11</sup> CEQA Guidelines §15075(d): "The lead agency must file a Notice of Determination within 5 working days (15075(d)) after it approves a project. If a local agency is the lead agency, the notice must be filed with the county clerk of the county or counties in which the project will be located." See Appendix of Authorities, Exhibit 2.

<sup>12</sup> See Declaration of Barry Steinhardt, Paragraph 21, Exhibit D shows the filed Notice of Determination

<sup>13</sup> CEQA Guidelines §15112. [http://ceres.ca.gov/planning/pub\\_notice/part3.html](http://ceres.ca.gov/planning/pub_notice/part3.html) . See Appendix of Authorities, Exhibit 4

1 4. Under CEQA Guidelines Sections 15162, and confirmed in writing by the Water  
2 District's own District Counsel<sup>15</sup>, a subsequent or supplemental Environmental Impact  
3 Report ("EIR") is required if there are substantial changes for the project, substantial  
4 changes occur in circumstances, or new information becomes available relevant to  
5 the EIR or MND for the project. The Defendants have incorrectly assessed the need  
6 for a subsequent or supplemental Environmental Impact Report for the following  
7 reasons:

8 a. New information since the MND approval including:

- 9 i. Announcement of California's Declaration of Drought, January 17<sup>th</sup>,  
10 2014;<sup>16</sup>  
11 ii. Locally, lack of rain at new extreme (driest year on record) on around  
12 January 2014;<sup>17</sup> and  
13 iii. New earthquake fault found in the same mountain range as project, and  
14 much closer than previously known active faults, March 17<sup>th</sup>, 2014<sup>18 19</sup>

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17 <sup>14</sup> See board meeting agenda (minutes not yet posted),  
<http://www.lvmwd.com/Home/ShowDocument?id=3804> . See Declaration of Neil Ticktin, Paragraph 17,  
Exhibit B, Page 3.

18 <sup>15</sup> June 6, 2012 "MND" letter from Wayne Lemieux of Lemieux & O'Neill, general counsel to LVMWD. See  
19 Declaration of Barry Steinhardt, Paragraph 22, Exhibit E, Page 3

20 <sup>16</sup> Governor Brown, <http://gov.ca.gov/news.php?id=18368> . See Appendix of Authorities, Exhibit 7

21 <sup>17</sup> "2013 is shaping up as the driest year since official record keeping started in 1877". Source:  
<http://articles.latimes.com/2013/dec/27/local/la-me-dry-la-20131228> . See Declaration of Neil Ticktin,  
Paragraph 18, Exhibit C, Page 1.

22 <sup>18</sup> "The temblor surprised seismologists because it was the strongest to hit directly under the Santa Monica  
23 Mountains in the 80 years 'since we started recording earthquakes in Southern California,' Caltech  
seismologist Egill Hauksson said. Until now, experts recorded only magnitude 1 to 3 quakes there."  
See [http://www.latimes.com/local/la-me-0318-earthquake-los-angeles-](http://www.latimes.com/local/la-me-0318-earthquake-los-angeles-20140318,0,300057.story#ixzz2zf1H0rEQ)  
24 [20140318,0,300057.story#ixzz2zf1H0rEQ](http://www.latimes.com/local/la-me-0318-earthquake-los-angeles-20140318,0,300057.story#ixzz2zf1H0rEQ) . See Declaration of Neil Ticktin, Paragraph 19, Exhibit D,  
Page 2.

25 <sup>19</sup> "Clearly, earthquakes happen in places you don't expect," said Thomas Heaton, director of Caltech's  
26 Earthquake Engineering Research Laboratory. "The bigger the earthquake, eventually, you really are  
surprised to find an earthquake on a fault you didn't know about." See [http://www.latimes.com/local/la-](http://www.latimes.com/local/la-me-0318-earthquake-los-angeles-20140318,0,300057.story#ixzz2zf1xxfpP)  
27 [me-0318-earthquake-los-angeles-20140318,0,300057.story#ixzz2zf1xxfpP](http://www.latimes.com/local/la-me-0318-earthquake-los-angeles-20140318,0,300057.story#ixzz2zf1xxfpP) See Declaration of Neil  
Ticktin, Paragraph 19, Exhibit D, Page 2.

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- b. Substantial changes in circumstances since the MND approval including:
  - i. Valley Fever testing is no longer valid due to Drought conditions which significantly increases risk of cocci exposure, March 10, 2014
- c. Substantial changes to the project since the MND approval including:
  - i. Project duration increased by more than 300% from 5 months, as stated in the MND when talking about environmental impact<sup>20</sup>, to an estimated 18 months; and
  - ii. Blasting period increased by 50% from four weeks to six weeks of daily blasting.

5. These changes have a significant impact requiring a supplemental EIR:

- a. MND does not address the risk of "Valley Fever", and it should have been addressed in a supplemental EIR. "Valley Fever is a serious disease. Symptoms and manifestations predominantly involve the respiratory system but can include painful lesions in the skull, spine or other bones; meningitis; painful, swollen joints; nodules, ulcers and skin lesions; as well as more serious issues such as strokes, or even death.",<sup>21</sup>
- b. "There is significant risk that multiple residents or workers will be exposed to cocci spores which could subsequently result in a localized cocci epidemic."<sup>22</sup> Defendants' Storage Tank project has caused dust to fly and expose residents living in the adjacent development to the risk of inhaling "Valley Fever" spores. Blasting and future stages will create an even greater exposure;
- c. Newly revealed information recently confirmed by the Water District, has shown that while the Water District did test for Valley Fever after the MND was

<sup>20</sup> MND, Page 29, Paragraph one, b-c) "Project construction is anticipated to occur for approximately five months." See Declaration of Neil Ticktin, Paragraph 20, Exhibit E.

<sup>21</sup> Declaration of Dr. Ajay Nirula, Paragraph 5.

<sup>22</sup> Declaration of Dr. Ajay Nirula, Paragraph 7.

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approved, their testing was inadequate. Because testing was performed during a wet period, and the area has now experienced years of drought, the tests are no longer adequate, as well as the samples taken while raining, as reported, may have been tainted. "We are in a situation now where longstanding drought conditions will impact germination of hyphae spores and increase their ability to be aerosolized. Any samples taken during a rainy period are only partially relevant to the current time period as the conditions then differ greatly from those in a multi-year drought: the conditions we are now in.",<sup>23</sup>

- d. LVMWD's safeguards of Valley Fever are wholly inadequate in the following ways:
  - i. LVMWD's solution of placing tarps on dirt fails to resolve the times when "as the tarps are lifted and dirt is shoveled crudely into trucks",<sup>24</sup>
  - ii. LVMWD fails to provide details of their ability as well as the feasibility of keeping the soil adequately watered during a drought;
  - iii. There is no monitoring of accuracy of LVMWD's testing<sup>25</sup>;
  - iv. LVMWD has not instituted recommendations by County of Los Angeles Department of Public Health to raise awareness, and educate the community on the disease, symptoms, and what to do if residents suspect infection.<sup>26</sup>
- e. There is no evacuation or emergency plan in the event of dam compromise or blasting accident.<sup>27</sup> The impacted Three Springs neighborhood of 481 homes

<sup>23</sup> Declaration of Dr. Ajay Nirula, Paragraph 13.

<sup>24</sup> Declaration of Dr. Ajay Nirula, Paragraph 14.

<sup>25</sup> Declaration of Dr. Ajay Nirula, Paragraph 15.

<sup>26</sup> See attached mail (LA County Health on Cocci Prevention.pdf) from Ramon Guevara, Epidemiologist, Emergency Preparedness and Response Program, County of Los Angeles Department of Public Health. See Declaration of Neil Tickin, Paragraph 21, Exhibit F.

<sup>27</sup> See need for plan statement in Declaration of LVMWD Board Member, Barry Steinhardt, Paragraph 19.

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has only one two-lane road of egress.

f. Association of Dam Safety Officials classifies this dam as "High Hazard" because of how close the dam is to people. A dam is considered "high hazard" when if it fails, it probably means loss of life (as is the case with this dam).<sup>28</sup> LVMWD's oversight—in not providing detailed emergency exit procedures—has huge ramifications especially because there is only one entrance and exit to the affected community and one disaster could result in irreparable human and real property losses;

g. MND identifies the closest active earthquake fault to the two dams of the Westlake Reservoir as the "Northridge Fault", and that "Neither tank site would be located within proximity to an active or potentially active fault, and therefore neither would be subject to significant ground shaking potential."<sup>29</sup> However, following the recent earthquake on March 17, 2014 at 6:22a.m. located in the same mountain range as the project, as quoted by Thomas Heaton, director at Caltech's Earthquake Engineering Research Laboratory that 'this earthquake was located in an area not previously known to have faults and subject to ground movement'. The recent earthquake has serious implications not previously identified prior to Board's approval of Backbone Improvement Project which includes repetitive blasting in close proximity to two dams holding back approximately 3 billion gallons of water in close proximity to thousands of residents;

6. Defendants have failed to comply with their own stipulated project safety guidelines in that Defendants have promised, yet failed to deliver on the following:

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<sup>28</sup> See Association of State Dam Safety Officials, Section 2, <http://damsafety.org/news/?p=c0fdade4-ab98-4679-be22-e3d7f14e124f> . See Declaration of Neil Ticktin, Paragraph 22, Exhibit G (section 2).  
<sup>29</sup> MND, Page 48,. See Declaration of Neil Ticktin, Paragraph 23, Exhibit H.

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- a. Defendants obtained approval by stating that it would mitigate issues regarding 'Geology, Soils and Seismicity,' by consulting the California Division of Safety of Dams';
  - b. Defendants approved its own project by misrepresentation via omission of Westlake Village noise and other relevant ordinances in the MND.<sup>30</sup> Defendant has already violated local noise ordinances in the project.<sup>31</sup> Defendant has already violated construction ordinances with construction traffic as early as 6:30am instead of the 8:15am or later promised.<sup>32</sup>
7. Pecuniary compensation will not afford adequate relief;
8. It would be extremely difficult to ascertain the amount of compensation which would, if even possible at all, provide adequate relief; and
9. The requested restraint is necessary to prevent a multitude of judicial proceedings and to avoid a multitude of suits against Defendants initiated by residents of the 481 homes in the Three Springs community, an estimated 1500 residents in 481 homes, seventy of which have signed declarations in support of Plaintiff's TRO and Preliminary Injunction.
10. It is worthy of note that there was, and is, no urgency to expedite the Water Tank's approval process. Even today, the need for building the tank remains completely discretionary and has been justified primarily for efficiencies by LVMWD. The record of Board support for a tank has been thin. In fact, only 3 of the 5 Board members saw enough benefit to vote in favor of this project. The only active engineer on the Board (Declarant Director Polan) voted against the need for a tank for any purpose. Furthermore, per Board Member Steinhardt's declaration, the Water District's General

<sup>30</sup> MND, Page 71, last paragraph. See Declaration of Neil Ticktin, Paragraph 24, Exhibit I.

<sup>31</sup> Declaration of Frank Bonvino, Paragraph 10.

<sup>32</sup> Declaration of Frank Bonvino, Paragraph 10 a.

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Manager made it clear that LVMWD can put off building the tank for years, and only wanted to do so now to take advantage of current construction costs. Additionally, the Court should be aware that the existing construction contract language allows the Board to postpone, or halt, construction at any time.

11. Moreover, the testing blasting stage of the Backbone Improvement Project began Monday, April 21, 2014, despite repeated requests for administrative relief to prevent this action based on the above facts. Such requests however have been ignored.

**THE RESTRAINING LANGUAGE SOUGHT IN THE OSC**

Plaintiff seeks this preliminary injunction to suspend LVMWD's approval of tank construction and all development and construction operations authorized while a complete and proper EIR process is completed, or mediated negotiations regarding steps necessary with Plaintiff and group representatives of all parties impacted, including a selection of residents, City of Westlake Village, Los Angeles County Health Department, geotech engineers and emergency response representatives—this injunction shall be in effect during the pendency of the instant litigation and shall enjoin, all Defendants, and each of them, their agents, servants, and employees, and all persons acting under, or in concert with, or for them:

- a. From starting or initiating and/or continuing any constructing, building, or blasting related to and/or associated with the project known as Las Virgenes Municipal Water District Backbone Improvement Program specifically related to the construction of a 5 million gallon water storage tank near the reservoir known as Westlake Reservoir (aka Las Virgenes Reservoir or Three Springs Reservoir);
- b. The preliminary injunction also seeks an order requiring, during the pendency of the instant litigation, all Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, or in concert with, or

**TAMBORELLI LAW GROUP**  
A PROFESSIONAL LAW CORPORATION  
21700 OXNARD STREET, SUITE 1590  
WOODLAND HILLS, CALIFORNIA 91367

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- for them;
- c. To post a copy of the Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction, and/or permit Plaintiffs to immediately do so, at all locations, including without limitation, on the entrance point of the Three Springs Community of Westlake Village, in and outside of the project location(s), and to mail notice to all residents who are contiguous and/or adjacent to the Las Virgenes Municipal Water District Backbone Improvement Program site—specifically the area affected by tank project; and
  - d. To identify with yellow caution tape visible to contractors, subcontractors, agents, and all on-lookers that construction blasting as well as any other activities above-mentioned is to cease immediately and without delay.

**SUPPORT FOR THE REQUESTED RELIEF**

The instant *Ex Parte* application for a Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction is based on the following: the Verified Complaint; on the Declarations of Frank Bonvino, Leonard E. Polan, Barry Steinhardt, Neil Ticktin, and multiple Westlake neighborhood residents, and John Tamborelli, Esq., and exhibits thereto; on the proposed Order to Show Cause; on the Memorandum of Points and Authorities filed concurrently herewith; and on any other points, authorities and/or evidence that may be presented before and / or at the hearing hereof.

DATED: April 23, 2014

Respectfully submitted,  
**Tamborelli Law Group**  
**A Professional Law Corporation**

By:   
\_\_\_\_\_  
JOHN V. TAMBORELLI  
Tamborelli Law Group  
Attorneys for Plaintiff Frank Bonvino



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**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

Balancing a community's need for natural resources against their absolute requirement for health and safety has never been easy. Communities have been confronted by this dilemma time and again throughout history. Modernly, the utilitarian prospective of doing the most good with the least amount of harm has been the rule of thumb. Since the inception of the Las Virgenes Municipal Water District Backbone Improvement Program ("Backbone Improvement Program"), identified and unidentified health and safety concerns have surfaced which have already caused and/or threaten to cause substantial harm to residents of Westlake Village as well as their real property.

Residents of Westlake Village and other affected communities which are contiguous to the property site are being forced to accept the Las Virgenes Municipal Water District Project. This four-stage project, which includes the development and installation of a massive five million gallon water storage tank, forces those affected by its implementation to place the project's proposed goals above their absolute health and safety needs. Make no mistake, Westlake Village residents' dilemma is further and substantially heightened by the fact that the Las Virgenes Municipal Water District (hereinafter, "Defendant") has effectively *locked* the Westlake Village residents and other affected communities out of the decision making process altogether.

Westlake Village residents were not properly noticed of the existence, proper location and magnitude of the Las Virgenes Municipal Water District Backbone Improvement Program—a project which likely includes without limitation:

- Installation of two 30-inch pipelines across the 'dam' upstream face which if they fail could compromise the dam holding back 3 billion gallons of water.
- Five-million gallon storage tank; and
- Modifications to the Westlake Filtration Plant and pump station-adjacent to the Westlake Reservoir.

California Environmental Quality Act ("CEQA") makes environmental protection a mandatory part of every California state and local agency's decision making process. CEQA was enacted with the idea of preventing or at minimum reducing precisely this

1 type of scenario, health and safety dangers, by enforcing a series of environmental  
2 safeguards and detailed potential harm assessments and notice requirements. Instead  
3 of engaging in an open and thorough environmental review as required by CEQA, the  
4 Las Virgenes Municipal Water District ("LVMWD") unlawfully participated in the following:

- 5 1. Misled the public when seeking Board approval by declaring that it notified  
6 contiguous community residents by mailing notice to public;<sup>33</sup>
- 7 2. Newspaper selected for notice was not a "newspaper of general circulation";<sup>34</sup>
- 8 3. Newspaper ad failed to provide adequate notice of project location;<sup>35</sup>
- 9 4. Failed to amend Mitigated Negative Determination to include
- 10 5. "Valley Fever" health risks;<sup>36</sup>
- 11 6. New earthquake faults at project location;<sup>37</sup>
- 12 7. Failed to draft in the first instance and later supplement Environmental Impact  
13 Report<sup>38</sup> ("EIR") or draft a new EIR; and
- 14 8. Failed to adhere to safety measures articulated in Mitigated Negative  
15 Declaration<sup>39</sup>.

16 Las Virgenes Municipal Water District selected a newspaper for public notification that it  
17 knew or should have known was not adequate to provide Westlake Village residents with  
18 sufficient notice and further distorted the notice process by obtaining approval for its  
19 project by misleading the public and Las Virgenes Municipal Water District elected board  
20 members to believe that it went 'above and beyond' the call of duty by noticing the public

21 <sup>33</sup> See Las Virgenes Water District's Mitigated Negative Declaration, summary, pg. 1, 2<sup>nd</sup> paragraph. See  
22 Declarataion of Neil Ticktin, Paragraph 16, Exhibit A.

23 <sup>34</sup> California Government Code section 6008(b) & (d). See Declaration of Neil Ticktin, Paragraph 25,  
24 Exhibit J, and Declaration of Barry Steinhardt, Paragraph 17.

25 <sup>35</sup> CEQA guidelines §15087, also outlined in UC CEQA Handbook, Appendix H. See Appendix of  
26 Authorities, Exhibit 3

27 <sup>36</sup> Declaration of Dr. Ajay Nirula, Paragraphs 19-20.

28 <sup>37</sup> See Declaration of Neil Ticktin, Paragraph 19, Exhibit D.

<sup>38</sup> Pursuant to CEQA Guidelines §15063(b)(2). See Appendix of Authorities, Exhibit 1

<sup>39</sup> See MND, Appendix F, pgs. 1-11. See Declaration of Frank Bonvino, Paragraph 16, Exhibit A.

1 via a newspaper in general circulation and by mailing notices to the affected  
2 community<sup>40</sup>.

3 Also, instead of engaging in the open and thorough environmental review required  
4 by CEQA to determine if an EIR was required, the Las Virgenes Municipal Water District  
5 chose to skate its responsibilities by not only failing to draft an EIR but failing to  
6 sufficiently amend the MND and re-notice the statutorily required agencies as well as the  
7 public of their right to comment on any amended MND<sup>41</sup>. Not even the City of Westlake  
8 Village had enough time to comment during the public comment period.<sup>42</sup> These are quite  
9 certainly the type of discretionary actions to which CEQA applies and safeguards against.

10 It is clear that not only was LVMWD's notice to the public improper and insufficient,  
11 but their project carries substantial and adverse environmental impacts. Dr. Ajay Nirula,  
12 a medical doctor, board certified in Internal Medicine, Rheumatology with a Ph.D. in  
13 Molecular Immunology, declaration describes that the LVMWD's expert, Dr. Hector's  
14 review is insufficient and fails to address the recent drought conditions which appear to  
15 have increased the overall risk [for "Valley Fever"]. Dr. Nirula goes on to state that while  
16 "the analysis by [Dr. Hector] has confirmed the risk, ... "diagnostic testing for cocci near  
17 the reservoir is no longer valid, incomplete and potentially flawed."<sup>43</sup>

18 According to Dr. Nirula, "there is a significant risk that multiple residents or workers  
19 will be exposed to cocci spores which could subsequently result in a localized cocci  
20 epidemic."<sup>44</sup> "Valley Fever (cocci) impacts include health risks involving the  
21 "...respiratory system, but can include painful lesions in the skull, spine or other bones,  
22 meningitis, painful swollen joints, nodules, ulcers and skull lesions, as well as more  
23 serious issues such as strokes, or even death"<sup>45</sup>.

24 <sup>40</sup> See Section titled "Summary Of The Final Initial Study And Mitigated Negative Declaration LVMWD  
25 Backbone System Improvement Project", MND, Paragraph 2. See Declaration of Neil Ticktin,  
26 Paragraph 16, Exhibit A.

27 <sup>41</sup> CEQA Guidelines sections 15075, 15162, and 15164. See Appendix of Authorities, Exhibits 2, 5, and 6,  
28 respectively.

<sup>42</sup> Declaration of LVMWD Board Member, Barry Steinhardt, Paragraph 15c

<sup>43</sup> Declaration of Dr. Ajay Nirula, Paragraph 19.

<sup>44</sup> Declaration of Dr. Ajay Nirula, Paragraph 7.

<sup>45</sup> Declaration of Dr. Ajay Nirula, Paragraph 5.

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The Three Springs community of Westlake Village is home to 481 homes, a public park with play equipment, open area and basketball courts, and daily lives of approximately 1500 people. Allowing blasting for a six-week period, exposure to risk without notice to the public and sufficient environmental review violates CEQA outright. Because Plaintiff is likely to prevail on the merits, and because the continued construction of tank and the blasting will cause or is causing irreparable harm to Three Springs residents' health and places them at risk of becoming infected with the Valley Fever/cocci disease, Plaintiff ask the Court to enjoin LVMWD's approval to construct the tank and to blast as well as the operations authorized by that approval until LVMWD, its affiliates, its contractors, and subcontractors complies with the mandates of CEQA, including a complete and thorough environmental review that is subject to public's informed scrutiny.

**BACKGROUND**

The "Las Virgenes Reservoir" as it is identified in LVMWD's notice as published in The Daily News on Wednesday, August 26, 2009 does not in fact exist as identified. Instead, the Reservoir/ dam which LVMWD refers to as the location of tank's construction and blasting are identified by the State of California as "Westlake Reservoir"<sup>46 47</sup>. Westlake Reservoir has existed since 1972 and has provided water storage for LVMWD customers in several cities for that time. LVMWD's Mitigated Negative Declaration, dated October 2009, proposed to alter the [Westlake] Reservoir site to introduce a 5 million gallon storage reservoir ("tank"), upgrades to the Westlake Filtration Plant and pump station, and 16 inch pipeline that starts in the City of Westlake Village, at least some of LVMWD's operations require six weeks of blasting and soil upheaval.

On or about 2007, the LVMWD conducted an initial evaluation of the Backbone Improvement Program identified in LVMWD's 2007 Master Plan. In 2009, an alternative study was completed outlining various alignments and options for the improvements, see

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<sup>46</sup> State of California lists the reservoir's name as "Westlake Reservoir" owned by Las Virgenes Municipal Water District, Dam No. 1073-000, National ID No. CA00904, <http://www.water.ca.gov/damsafety/docs/Jurisdictional1.pdf>. Declarataion of Barry Steinhardt, Exhibit C, page 6.

<sup>47</sup> Common public name for reservoir is "Westlake Reservoir". Declaration of Neil Ticktin, Paragraph 7.

1 LVMWD's Regular Board Meeting Minutes of June 26, 2012, (attached as Ex. F to  
2 Declaration of Barry Steinhardt.) Notice of Intent ("NOI") to Adopt a Mitigated Negative  
3 Declaration ("MND") was posted in/on August 25, 2009 thru September 23, 2009. MND,  
4 summary, pg. 1, (Declaration of Neil Ticktin, Paragraph 16, Exhibit A; Decl. of Steinhardt  
5 at 6, parg 14(a)). However, on August 26, 2009, LVMWD's Daily News ad labeled  
6 "Public Notice For Draft Initial Mitigated Negative Declaration," stated that public's  
7 comment period expired on September 30, 2009. LVMWD's Published Notice in Daily  
8 News, Public Notice section, D4, attached as Ex.A of Declaration of Barry Steinhardt. In  
9 October 2009, the Board approved the Alternative Study and certified the MND for the  
10 program. On or about November 4, 2009, Notice of Determination ("NOD") was filed with  
11 the Registrar Records Office/County Clerk, NOD, Ex. D. On or about December 5,  
12 2011, Dr. Richard F. Hector provided comments and recommendations regarding  
13 environmental concerns identified, yet his comments fail to adequately addressed points  
14 raised. Thus, the MND was not updated accordingly. See Dr. Hector's Letter to David  
15 Lippman, dated Dec, 5, 2011, attached as Ex. G in Declaration of Barry Steinhardt; (See  
16 also, Dr. Ajay Nirula's Declaration.) In the about six weeks leading up to the January 14,  
17 2014 approval, and in the approximately two months that followed, significant changes to  
18 plan outlined in MND were as follows: blasting period expanded from four (4) to six (6)  
19 weeks. Currently, the tank construction is projected to last now for eighteen (18) months,  
20 contrary to the originally defined project duration of 5 months, attached as MND, Page  
21 29, Paragraph 1, b-c, ("Project construction is anticipated to occur for approximately five  
22 months.")

23 In or around 2011, the Board acknowledged that The Daily News was a  
24 newspaper based outside the Water District service area and that it was not generally  
25 read by the people living in the District, therefore the Board switched all public notice  
26 articles to "The Acorn" newspaper. (See Declaration of Barry Steinhardt, paragraph 5.)

27 Leading up to and prior to the Board's vote on January 14, 2014, to approve  
28 commencement of the tank construction and blasting aspect of the project, Board  
member Barry Steinhardt repeatedly attempted to include items to the agenda for public  
discussion regarding Environmental Impact, concerns about blasting, dam safety, animal  
safety, traffic safety, noise and air pollution, dust, and exposure to "Valley Fever" spores,  
(See Declaration of Barry Steinhardt, paragraph 6.)

1 More recently, on March 17, 2014, at 6:22 a.m., a 4.4 magnitude earthquake  
2 occurred in the Santa Monica Mountains, near the location of the proposed tank site.  
3 (Declaration of Frank A. Bonvino, paragraph 8.) The Los Angeles Times reported that Mr.  
4 Thomas Heaton, director of Caltech earthquake engineering division was quoted stating  
5 'this earthquake was located in an area not previously known to have faults and subject  
6 to ground movement.' (Declaration of Frank A. Bonvino, paragraph 8.) Tank  
7 construction commenced on March 3, 2014. (Declaration of Frank A. Bonvino, paragraph  
8 14.) In sum, despite numerous concerns communicated by Three Springs residents,  
9 members of the Westlake Village City Council and even members of the LVMWD Board,  
10 the LVMWD has refused to amend the MND so that it incorporates a more thorough and  
11 reliable study into risk of "Valley Fever" and its proposed mitigation measures to prevent  
12 such an outbreak, as well as a re-examination of the effects and/or dangers of faults or  
13 earthquakes in the location of the tank's construction, in addition to a specialized  
14 emergency and evacuation plan needs development and dissemination to residents and  
15 first responders.

## LEGAL STANDARDS

### I. The California Environmental Quality Act:

17 The California Legislature enacted CEQA to "protect, rehabilitate and enhance the  
18 environmental quality of the state." Pub. Res. Code §21001(a). CEQA must be  
19 interpreted "to afford the fullest possible protection to the environment within the  
20 reasonable scope of the statutory language." (*C.B.E. v. California Resource Agency*, 103  
21 Cal. App. 4<sup>th</sup> 98, 109 (2002) ("CBE v. CRA"). CEQA has substantive, procedural, and  
22 informational mandates. CEQA's substantive mandates include a prohibition on  
23 approving projects with significant adverse environmental impacts when feasible  
24 mitigation measures can reduce, eliminate, or lessen such impacts. Pub. Res. Code §  
25 21002; Pub. Res. Code §21081(a); 14 Cal. Code Regs ("CEQA Guidelines") §15730.  
26 Review of disputed statutory exemption is governed by Pub. Res. Code §21168.5, which  
27 provides for review of whether there was a "prejudicial abuse of discretion" because the  
28 agency has not proceeded in a manner required by law or [because] the determination or  
decision is not supported by substantial evidence". Pub. Res. Code §21168.5.

1                   **A. CEQA's ENVIRONMENTAL IMPACT REPORT ("EIR") REQUIREMENT**

2                   Once it is determined that CEQA applies to a particular project, a lead agency  
3 must next determine whether the project is eligible for a negative declaration or a full EIR.  
4 To be clear, a negative declaration is appropriate only when the lead agency claims no  
5 significant impacts (Pub. Res. Code §21064) and is subject to public notice, comment,  
6 and vote by the lead agency's highest elected decision making body. (Id. at §§ 21092;  
7 21151(c); Guidelines §15073). An EIR is required, however, whenever a public agency  
8 proposes to approve a project that may have significant effect on the environment.  
9 (Laurel Heights Impr. Ass'n v. Regents of Univ. of Cal., (1988) 47 Cal.3d 376, 390;  
10 Guidelines §§15070; 15370.) An EIR complies with CEQA by requiring agencies "to  
11 identify the significant effects on the environment of a project, to identify alternatives to  
12 project, and to indicate the manner in which those significant effects can be mitigated or  
13 avoided," Pub. Res. Code §21002.1(a); see also Pub. Res. Code §21002.1(b). The EIR  
14 is "the heart of CEQA," and an "environmental 'alarm bell' whose purpose is to alert the  
15 public and its responsible officials to environmental changes before they have reached  
16 the ecological points of no return." (Laurel Heights, 47 Cal.3d at 392.) The EIR also  
17 functions as a "document of accountability, "intended to" demonstrate to an apprehensive  
18 citizenry that the agency has, in fact, analyzed and considered the ecological implications  
19 of its action." (Id.) The EIR process is calculated to protect the environment as well as  
20 informed self-government. (CBE v. CRA, 103 Cal.App.4<sup>th</sup> at 107.)

18                   **II. Standard for a Preliminary Injunction:**

19                   In deciding whether to issue a temporary injunction, Courts evaluate  
20 two interrelated questions: (1) will the plaintiffs suffer greater injury from denial of the  
21 injunction than defendants will from granting it; and (2) is there a reasonable probability  
22 that plaintiffs will prevail on the merits. (Robbins v. Superior Court (1985) 38 Cal.3d 199,  
23 206 (citations omitted)). In striking this balance, the court should consider the  
24 advancement of the public interest. (County of Inyo v. City of Los Angeles (1976) 61  
25 Cal.3d 91, 100; Cosney v. California (1970) 10Cal.App.3d 921, 924.) "We believe no one  
26 would contend that the law has lesser concern for the overall public welfare than for the  
27 individual private rights." (Bayside Timber Co. v. Board of Supervisors (1971) 20  
28 Cal.App.3d 1, 14.)

1 Moreover, a court's decision to issue a preliminary injunction "must be guided by a  
2 mix of potential merit and interim-harm factors; the greater the plaintiff's showing on one,  
3 the less must be shown on the other to support the injunction." Butt v. State of California  
4 v. Board of Supervisors (1989) 49 Cal.3d 432, 447; Pleasant Hill Bayshore Disposal v.  
5 Chip-It Recycling (2001) 91 Cal.App.4<sup>th</sup> 678, 696 (where plaintiff demonstrated a high  
6 likelihood of success on the merits, the court had discretion to issue an injunction even if  
7 the balance of harm did not necessarily tip in its favor); It Corp v. County of Imperial  
8 (1983) 35 Cal.3d 63, 69-70; Whyte v. Schlage Lock Co. (2002) 101 Cal.App.4th 1443,  
9 1449.

## 10 ARGUMENT

### 11 I. Plaintiff is Likely to Succeed on the Merits.

#### 12 A. Water District Failed to Notice the Public as Required by CEQA.

13 CEQA Guidelines section 15072, provides in pertinent part:

14 "The lead agency shall mail a notice of intent to adopt a negative declaration or  
15 mitigated negative declaration to the last known name and address of all  
16 organizations and individuals who have previously requested such notice...and  
17 shall give notice...by at least one of the following procedures to allow the public  
18 the review period provided under Section 15105:

- 19 (1) Publication at least one time by the lead agency in a newspaper of  
20 general circulation in the area affected by the proposed project. If more  
21 than one area is affected, the notice shall be published in the newspaper  
22 of the largest circulation from among the newspaper of largest  
23 circulation in those areas.
- 24 (2) Posting of notice by the lead agency on and off site in the area where  
25 the project is to be located.
- 26 (3) Direct mailing to the owners and occupants of contiguous property  
27 shown on the latest equalized assessment roll."

28 Here, the Water District's Mitigated Negative Declaration ("MND") incorrectly  
states that "A Notice of Intent to Adopt a Mitigated Negative Declaration was filed with the  
State Clearinghouse along with the required number of copies of the document for  
circulation to various state agencies, published in a newspaper of general circulation in



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1 the area affected by the project, and directly mailed to owners of property contiguous to  
2 the project". (See MND, Summary, pg. 1, paragraph 2; Declaration of Neil Ticktin, Exhibit  
3 A.) The public notice portion of this statement is simply untrue. More than seventy (70)  
4 Westlake Village residents, who live contiguous to the tank project site, never received  
5 any such notice by mail. Declarations attached as Appendix of Declarations Note:  
6 Resident declarations refer to the reservoir as "Las Virgenes Reservoir" as that is the  
7 name LVMWD uses, despite it being the wrong name. Furthermore, LVMWD is unable to  
8 produce proof of mailing of Notice of Intent to any owners of property contiguous to the  
9 project, Declaration of Steinhardt at 6, parg. 13(a)-(b). Thus, LVMWD's statement that it  
10 mailed notice is more than misleading, it is untrue.

11 While the LVMWD did publish an ad in the Daily News purportedly providing notice  
12 to the public, this also fails to meet CEQA requirements.

13 California Government Code sections 6008, 6008(b), 6008(d), provides in pertinent part:

14 "Notwithstanding any provision of the law to the contrary, a newspaper is a  
15 'newspaper of general circulation' if it meets the following criteria":

16 6008(b):  
17 "It has a substantial distribution to paid subscribers in the city, district, or judicial  
18 district in which it is seeking adjudication"

19 6008(d):  
20 "It has only one principal office of publication and that office is in the city, district,  
21 or judicial district for which it is seeking adjudication"

22 Here, the Daily News fails to meet the general circulation criteria listed above.  
23 First, the Daily News did not have a substantial distribution to paid subscribers in the area  
24 affected by the tank construction and blasting project. (See attached Appendix of  
25 Declarations; see also, Declaration of Barry Steinhardt at Paragraph 5; Declaration of  
26 Neil Ticktin at paragraph 5; Declaration of Leonard E. Polan at paragraph 9.)

27 In or around 2011, and after publishing notice of the tank project in the Daily  
28 News, LVMWD recognized that the Daily News was not a local paper with widespread  
distribution across the LVMWD's region. (Steinhardt declaration at Paragraph 5.) To  
increase the likelihood of getting notice to the residents, LVMWD switched to "The Acorn"  
newspaper, a local paper with widespread distribution across the LVMWD's region. (id.).  
Thus, more than seventy (70) residents of the affected community did not subscribe to or

1 regularly see the Daily News sold in their community; the Board decided to change from  
2 the Daily News to The Acorn because they recognized—albeit late—that Daily News did  
3 not constitute a 'newspaper of general circulation'. CEQA § 15072(b)(1); Cal. Gov Code  
4 § 6008(b). Moreover, Plaintiff did not actually learn of the Mitigated Negative Declaration  
5 until February 2014. Declaration of Frank Bonvino at paragraph 5.

6 Second, the Daily News' principal office of publication is outside the area of  
7 residents affected by the tank project. In fact, the Daily News' principal office of  
8 publication is located at 21860 Burbank Blvd., Suite 200, Woodland Hills, CA 91367.<sup>48</sup>

9 Third, CEQA Guidelines section 15072(g), provides in pertinent part: "A notice of  
10 intent to adopt a negative declaration or mitigated negative declaration shall specify the  
11 following:

- 12 (1) A brief description of the proposed project and its location.
- 13 (2) ....
- 14 (3) The date, time, and place of any scheduled public meetings or hearings to be  
15 held by the lead agency on the proposed project...
- 16 (4) The address or addresses where copies of the proposed...mitigated negative  
17 declaration including revisions developed under 15070(b) and all documents  
18 referenced in the proposed...mitigated negative declaration are available for  
19 review. This location or locations shall be readily accessible to the public  
20 during the lead agency's normal working hours.
- 21 (5) ...
- 22 (6) Other information specifically required by statute or regulation for a particular  
23 project or type of project."

24 Again, LVMWD failed to comply with CEQA's because it incorrectly identifies  
25 the tank site's location. LVMWD's ad in the Daily News states "A five million gallon  
26 storage reservoir adjacent to Las Virgenes Reservoir." (Daily News, paragraph 3,  
27 attached to Declaration of Barry Steinhardt, Exhibit A.) First, according to state of  
28 California, identifies the reservoir referred to in LVMWD's ad as the Westlake Reservoir,

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<sup>48</sup> <http://www.dailynews.com/contact-us> . See Declaration of Neil Tickin, Paragraph 26

1 and as such, Defendant's ad fails to notify the public of the location of the project site.  
2 Decl. of Steinhardt at 4-5, par. 12(a)-(b)(4). Second, "storage reservoir" is ambiguous  
3 and does not provide proper notice to the public that a 5 million gallon tank will be  
4 constructed. The probable confusion caused by LVMWD's ad using the word "reservoir",  
5 instead of "tank" becomes more evident when one considers the fact that residents in the  
6 area would have known that a "reservoir" holding 3 billion gallons of water already existed  
7 in the location of the project site; therefore, many residents likely would assume that the  
8 ad did not apply to the location of the Westlake Reservoir. (see Declaration of Barry  
9 Steinhardt paragraph. 12(a)-(b)(4).)

9 CEQA Guidelines section 15072(g)(2), provides in pertinent part:

10 (2) The starting and ending dates for the review period which the lead agency  
11 will receive comments on the proposed...mitigated negative declaration. This  
12 shall include the start and end dates for the review period. If the review period has  
13 been shortened pursuant to 15105, the notice shall include a statement to that  
14 effect.

14 CEQA Guidelines section 15105(b), provides in pertinent part:

15 "...When a proposed...mitigated declaration is submitted to the State  
16 Clearinghouse for review by state agencies, the public review period shall not be less  
17 than 30 days, unless a shorter period, not less than 20 days, is approved by the State  
18 Clearinghouse."

19 Because LVMWD submitted a MND to the State Clearinghouse and failed to  
20 obtain approval for a shorter public review period, the review period should have been no  
21 less than 30 days. (See MND summary, pg.1, paragraph 2; Declaration of Neil Ticktin,  
22 Exhibit A thereto.)

23 Yet again, the public notice period was insufficient and failed to comply with  
24 CEQA's requirements in that a MND was posted on August 25, 2009 and it was removed  
25 on September 23, 2009. (Declaration of Barry Steinhardt paragraph 14(a)-(c), Ex G  
26 thereto.)

27 Not only did the Notice of Intent to Adopt MND fail to effectuate public notice, but  
28 the Notice of Determination also failed to meet CEQA notice requirements. Pursuant to  
CEQA Guidelines section 15075, LVMWD was required to file NOD within five calendar  
days of project approval. CEQA Guidelines §15075. Here, the LVMWD did not file their

1 NOD for at least six days after receiving approval. Decl. of Steinhardt at 6-7 pargs.  
2 15(a)-(d).

3 The California Court of Appeals, in Latinos Unidos De Napa v. City of Napa, 196  
4 Cal.App.4th 1154 (2011), held that the “30-day” period—as outlined in CEQA—excludes  
5 the first day of posting and includes the last day. The Court also held that the NOD notice  
6 must be posted “...for the entire last (30<sup>th</sup> day) to satisfy the 30-day posting requirement.”  
7 196 Cal.App.4th 1154, at 1157-1158; see also, Cal. Civ. Proc. Code § 12.

8 The language in CEQA definitively states that the **review period shall not be less**  
9 **than 30 days**. CEQA Guidelines section 15105(b), *emphasis added*. Since public notice  
10 of proposed MND was posted for no more than twenty-nine (29) days, not the thirty (30)  
11 days required under CEQA, notice was improper.

12 For the foregoing reasons, notice of the proposed MND was defective and  
13 improper and as such the statute of limitations did not accrue. Furthermore, the time  
14 period for the public to comment only begins after notice as required by CEQA is  
15 accomplished, hence the public review period, period to comment, and period to attend  
16 hearings has not expired. Moreover, Plaintiff was prejudiced by LVMWD’s failure to  
17 notice the public because he was unable to have any of his comments /  
18 recommendations published, his objections to the tank project were not taken seriously  
19 and the project has resulted in constant dust (possibly cocci) settling on his and inside his  
20 home, and noise above the City’s limits going unchecked and without regard to his health  
21 and safety. (Declaration of Frank Bonvino, paragraph 6.)

22 In or around January 2014, LVMWD’s Board approved the commencement of the  
23 tank project, yet LVMWD failed to provide proper notice and they failed to file Notice of  
24 Determination as required under CEQA Guidelines section 15075. (Declaration of Barry  
25 Steinhardt, paragraphs 7-11.) Thus, the statute of limitations has not yet run.

26 Therefore, Plaintiff requests that this Court grant his request for TRO and  
27 Preliminary Injunction suspending LVMWD’s approval of tank construction and all  
28 development and construction operations authorized unless and until LVMWD fully  
complies with CEQA’s notice requirements, completes a proper EIR process, or mediated  
negotiations regarding steps necessary with Plaintiff and group representative of all the  
parties impacted, including a selection of residents, City of Westlake Village, LA County  
Health Department, geotech engineers and emergency response representatives.

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**B. Water District Violated CEQA By Failing to Thoroughly Study and Mitigate the Project's Significant Impacts in an Environmental Impact Report.**

Plaintiff contends that not only did the LVMWD fail to meet CEQA's notice requirements, but also LVMWD misclassified its tank project as meeting the standards to draft a Mitigated Negative Declaration, and thereby avoided drafting an Environmental Impact Report.

**i. Expert opinion supports a "fair argument" that the Project has significant environmental impacts.**

An EIR is required, whenever substantial evidence in the record supports a "fair argument" that a project "may have any significant environmental impact." Pub. Res. Code § 21080(c); Citizens Action v. Thornley, (1990) 222 Cal. App.3d 748, 754.) The fair argument standard creates a "low threshold" favoring preparation of an EIR. Id. If substantial evidence supports a fair argument that a project may have a significant environmental effect, the lead agency must prepare an EIR even if it is also presented with other substantial evidence indicating that the project will have no significant effect. (Stanislaus Audubon v. Stanislaus, (1995), 33 Cal.App.4th 144, 150-151.)

The "fair argument" standard is virtually the opposite of the typical deferential standard afforded to agencies. Whereas agency decisions are generally upheld if any substantial evidence supports its decision, once the "fair argument" standard is applied, an agency's decision to avoid preparation of an EIR must be reversed if any evidence contradicts the agency's decision. (Quail Botanical Gardens v. City of Encinitas, (1994), 29 Cal.App.4th 1597, 1602) (EIR required for 40-home residential development).

As a matter of law, "expert opinion" constitutes "substantial evidence" within the meaning of CEQA. (Pub. Res. Code § 21080(e)(1); Guidelines § 15064(f)(5)). Expert testimony is sufficient to create a fair argument, even if other evidence contradicts the expert's conclusions. (Guidelines § 15064(g); Brentwood ass'n v. City of Los Angeles, (1982) 134 Cal.App.3d 491, 504-05; Sierra Club v. Sonoma, (1992) 6 Cal.App.4th, 1307, 1317).

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**ii. Expert opinion demonstrates the Project's significant impacts.**

In addition to Dr. Ajay Nirula's many credentials, he has worked on studies which are germane to the current issue of the case.<sup>49</sup> As a trained Molecular Biologist, Dr. Nirula completed extensive early work PCR (assay used by consultant to detect cocci) soon after its discovery). While working at the National Institute of Health, Dr. Nirula went on to develop a new version of PCR which in 1990 was published in a scientific journal called "Gene". Dr. Nirula's declaration indicates that the LVMWD tank project has a number of significant environmental impacts that must be disclosed, studied, and mitigated.<sup>50</sup> To be clear, LVMWD's expert Dr. Richard Hector's recognizes that there is a localized risk of valley fever (cocci) epidemic relating to the to the constructing of the water tank. Additionally, the documents relied on by Dr. Hector confirm that cocci infection is a serious concern as it relates to the tank's construction due to the geographic location, and historical precedents of analogous situations. (See Declaration of Dr. Nirula paragraph 6.) As explained in Dr. Nirula's declaration, the testing to identify risks of Valley Fever is cursory at best and misleading at worst due to the following: first, the samples that Dr. Hector relied on were extracted from the proposed tank construction location in 2011 and during a rainy season. (Declaration of Dr. Nirula paragraph 12.) Dr. Hector comments on numerous studies including a study done by a Dr. Smith and relied on by Dr. Hector which demonstrated that during seasons of sufficiently heavy rains reported of coccidioidal disease are decreased in the area endemic for Coccidioides. (Declaration of Dr. Nirula paragraph 13.) Following this line of reasoning, if a locality endemic for Coccidioides experienced a drought, incidents of cocci disease would increase.<sup>51</sup> As Dr. Nirula points out, the area of the proposed tank construction as well as

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<sup>49</sup> Dr. Nirula has background in immunology, molecular biology, internal medicine, and direct experience with the clinical manifestations of "Valley Fever." He has an MD, is Board Certified in Internal Medicine(2000-2010), Rheumatology, is very familiar with clinical course of cocci, having treated several patients with the disease, Ph.D. in Molecular Immunology; Former Faculty member at UCSF, Department of Medicine; Worked in Biotechnology for many years, and very familiar with technical aspects of diagnostic testing; Trained Molecular Biologist. Did extensive early work with PCR (assay used by consultant to detect cocci) soon after its discovery. Developed new version of PCR while working at National Institute of Health, which was published in journal Gene in 1990. See Declaration of Dr. Ajay Nirula, Paragraph 21, Exhibit A, (reference 4 in attached CV).

<sup>51</sup> In addition to expert declaration, this is well documented. For example, "a drier climate with occasional

1 other regions in California are currently experiencing drought conditions. (Declaration of  
2 Dr. Nirula paragraph 13.) As such, Dr. Hector's conclusions cannot be relied upon  
3 because they do not encompass the current weather conditions that Dr. Hector admits  
4 influence the outcome of his analysis regarding the risk of Valley Fever infection at the  
5 site of the proposed tank. (Declaration of Dr. Nirula paragraphs 13-14.) Second, the  
6 mitigation measures for dust control, mainly covering soil with tarps during blasting, lack  
7 effective deterrence because it fails to take into account the time periods when the tarps  
8 are lifted and "dirt is shovelled crudely into trucks." (Declaration of Dr. Nirula paragraph  
9 12.) It is at this time and others that the dust can travel and carry airborne cocci particles  
10 straight to multiple residents in affected areas as well as workers—thereby exposing  
11 others to a localized cocci epidemic. (Declaration of Dr. Nirula paragraph 7.) LVMWD's  
12 watering the soil proposal lacks detailed planned measures to address this current  
13 season of drought that we face and there have been reports of inadequate watering.  
14 Decl. of Dr. Nirula at 5, parg. 14(a). In fact, Mr. Bonvino states in his declaration that dust  
15 from the construction site flies directly over to his property. (Declaration of Frank Bonvino  
16 paragraph 6.) Third, the sensitivity and accuracy of the PCR assay used by LVMWD's  
17 experts are questionable. As Dr. Nirula's declaration states "LVMWD's review claims that  
18 polymerase chain reaction (PCR) testing has not detected cocci in the soil by the  
19 reservoir. The claim lacks some important details and appears to be supported by  
20 assumptions that raise further questions. Specifically:

21 i. According to LVMWD, soil was sampled at depths of 4-10 inches. This may  
22 not truly rule out cocci at the varying depths where blasting will occur, estimated by  
23 LVMWD at a depth of 10-24 feet.

24 ii. LVMWD's expert claims the depth is representative without referencing  
25 supportive data. LVMWD's expert accurately notes that 'soil studies can prove the  
26 presence of the fungus but negative studies cannot prove the absence.' The PCR assay  
27 is highly sensitive and is an appropriate tool. As someone that worked on the

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28 bouts of worsening storm patterns could spur more valley fever cases, turning a regional epidemic into  
a national one," said NASA senior scientific advisor Thomas Mace.  
<http://www.bakersfieldcalifornian.com/health/x246651198/JUST-ONE-BREATH-Changing-climate-may-expand-valley-fevers-impact> See Declaration of Neil Tickin, Paragraph 27, Exhibit K.

1 development of PCR, it is somewhat puzzling he was unable to detect any cocci DNA  
2 with soil samples from an endemic area. The sensitivity of the assay is theoretically at  
3 the level of a single copy of a gene. A more reassuring result would have been detection  
4 of cocci DNA at low amounts relative to multiple positive control soil samples, PCR  
5 primer pairs, and indication of sensitivity.

6 i. LVMWD's expert did not demonstrate that there were appropriate internal  
7 positive controls used for the reservoir soil sample.

8 ii. LVMWD's expert did not demonstrate that the samples and testing were  
9 taken with the appropriate rigor.

10 iii. It is not clear if positive controls with soil from cocci-endemic regions were  
11 used. Use of purified cocci DNA would not be an adequate positive control."

12 Based on the foregoing, LVMWD's expert's testing and expert's comments fail to  
13 provide a reliable analysis of the risks of Valley Fever and the likelihood of exposure if the  
14 proposed tank construction is allowed to proceed because of the following: Dr. Hector's  
15 assessments relies on the tests conducted during a raining season and we are currently  
16 experiencing a drought; the diagnostic testing for cocci near the reservoir is no longer  
17 valid, and is incomplete, or potentially flawed; testing spores used and data retrieved are  
18 out-of-date, and major change in environment. As such, to threaten the safety of the  
19 neighboring residents under these circumstances is unconscionable.

20 **C. New Information and Substantial Change in Circumstances Requires**  
21 **That LVMWD Draft a Supplemental Environmental Impact Report.**

22 Pursuant to Pub. Res. Code §21166, a supplemental environmental impact report  
23 is required if:

24 "21166(a) Substantial changes are proposed in the project which will require major  
25 revisions of the environmental impact report. (b) Substantial changes occur with  
26 respect to the circumstances under which the project is being undertaken which  
27 will require major revisions in the environmental impact report. (c) New  
28 information, which was not known and could not have been known at the time of  
the environmental impact report was certified as complete, becomes available."

Here, new information previously unknown to both Plaintiff and Defendant is now  
available. Since LVMWD's MND and NOD fails to address these current health and  
safety issues, LVMWD's tank project should not be allowed to proceed any further until



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1 any and all health and safety issues raised by new information is fully researched,  
2 analyzed, and mitigated.

3 **i. March 17, 2014 Earthquake Near The Location of Proposed Five-**  
4 **Million Gallon Tank Site.**

5 As Plaintiff declares in his declaration, on or about March 17, 2014, at  
6 approximately 6:22a.m., a 4.4 magnitude earthquake erupted in the Santa Monica  
7 Mountains, near the location of the proposed tank site. Decl. of Bonvino at 3, para. 8. In  
8 his comments, the LVMWD's expert, Dr. Richard F. Hector points out that "Even though  
9 the spores of the Coccidioides fungus have the ability to travel great distances, as the  
10 cases resulting from the Northridge Earthquake demonstrated, [he does not believe that  
11 the same health risks are present in the project site because he] is unaware of reports  
12 that the movement of comparatively small amounts of soil results in infection in persons  
13 some distance from the site of disruption, suggesting that the risk of infection in residents  
14 near the Las Virgenes Reservoir is low..." Dr. Hector's Letter, dated Dec. 5, 2011, at 4,  
15 para. 2. Dr. Hector's comments clearly point out that earthquakes in the tank site can  
16 cause dust and even cocci to travel great distances and result in cases of human valley  
17 fever infection. Furthermore, Dr. Hector comments refer to an earthquake that occurred  
18 in 1994, approximately fifteen (15) years prior to the LVMWD's research, and Dr. Hector's  
19 comments. Moreover, as Plaintiff declares, a director at Cal Tech was quoted saying that  
20 "this earthquake was located in an area not previously known to have faults and subject  
21 to ground movement." (Declaration of Frank Bonvino, paragraph 8.) This new event is  
22 both relevant and substantial and must be thoroughly reviewed for any environmental  
23 and health and safety effects that it may have on the residents of Three Springs.  
24 Subsequent to LVMWD's research and Dr. Hector's comments, however, the same  
25 general geographic area sustained a 4.4 magnitude earthquake. Declaration of Frank  
26 Bonvino, paragraph 8.)

27 **ii. Recent California State Recognition That We Are Experiencing**  
28 **A Drought.**

Our State is currently experiencing a drought<sup>52</sup>, yet the soil studies

<sup>52</sup> Governor Brown, <http://gov.ca.gov/news.php?id=18368> . See Appendix of Authorities, Exhibit 7

1 conducted by and relied upon by LVMWD were completed in 2011 “after the area  
2 experienced heavy rainfall totaling over .0.8”...” (See Dr. Hector’s Letter at page 2,  
3 paragraph 1, attached as Ex. G to the Declaration of Barry Steinhardt.) As Dr. Nirula  
4 explains in his attached declaration, any samples taken during a rainy period are only  
5 partially relevant and do not reflect the soil present during the current drought conditions.  
6 (Declaration of Dr. Nirula, paragraph 13.) Furthermore, the LVMWD’s plan to water the  
7 soil does not detail the plans for watering during drought conditions. (Declaration of Dr.  
8 Nirula, paragraph 14.) Moreover, Plaintiff has already experienced dust possibly carrying  
9 the cocci / Valley Fever flying directly unto his property. (Declaration of Frank Bonvino at  
10 Paragraph 6.)

11 Since the 2011 soil samples were taken, more than two years have elapsed, a 4.4  
12 magnitude earthquake sent a stiff jolt to the area near the proposed tank site, and alas  
13 we are experiencing drought conditions. It is indisputable that these new events have  
14 occurred and it is clear from Dr. Hector’s comments that these events, and the increased  
15 risks associated with them, were not analyzed in his comments. Moreover, Dr. Hector’s  
16 analysis makes it clear that earthquakes and drought conditions are most certainly  
17 substantial factors in contributing to the spread of the cocci and possibly Valley Fever  
18 infection.

19 **II. Plaintiffs will be Irreparably Harmed Without an Injunction:**

20 **A. The Risk of Valley Fever is a Real and is likely to Harm People and the  
21 Environment.**

22 Plaintiff, the environment, and human health are at risk of suffering irreparable  
23 harm should LVMWD’s tank construction be allowed to continue without adequate  
24 environmental analysis and without feasible mitigation measures to protect the  
25 environment and public health. “It is undisputed that ‘environmental injury, by its nature,  
26 can seldom be remedied by money damages and is often permanent or at least of long  
27 duration, i.e., irreparable.’” (CBE v. Cenco, 179 F. Supp.2d 1128, 1148 (C.D.Cal. 2001),  
28 quoting Amoco Prod. Co v. Village of Gambell, 480 U.S. 531, 545 (1987); Save the Yaak  
Comm. V. Block, 840 F.2d 714, 722 (9thCir. 1988) (“when the environmental injury is  
sufficiently likely, the valance of harms will usually favor the issuance of an injunction to  
protect the environment”)). CEQA, like its federal counterpart the National Environmental  
Policy Act (“NEPA”), has procedural requirements in place to provide the opportunity for

1 public involvement and to facilitate sound environmental decision. Failure to comply with  
2 CEQA's requirements caused harm itself, specifically the risk that "real environmental  
3 harm will occur through inadequate foresight and deliberation." (Sierra Club v. Marsh,  
4 872 F.2d 497, 504 (1<sup>st</sup> Cir.1989)); see also, Sierra Club v. U.S. Army Corps of Eng'rs,  
5 446 F.3d 808, 816 (8<sup>th</sup> Cir. 2006) (injury under NEPA includes "failing to issue a required  
6 impact statement"))).

7 The Water District's failure to provide adequate testing and mitigation measures and  
8 their failure to notice the public as required by CEQA inflicts substantial and irreparable  
9 informational harm upon Plaintiff and the general public. CEQA confers a right of an  
10 informed decision making process and an opportunity for meaningful public participation  
11 prior to project construction. See e.g. Pub. Res. Code §21092; Save Our Ecosystems v.  
12 Clark, 747 F.2d 1240, 1250 (9<sup>th</sup>Cir. 1984) (strong presumption of irreparable harm when  
13 "agency fails to evaluate **thoroughly** the environmental impact of a proposed action").  
14 (*emphasis added.*)

15 "Valley Fever is a serious disease. Symptoms and manifestations predominantly involve  
16 the respiratory system but can include painful lesions in the skull, spine or other bones;  
17 meningitis; painful, swollen joints; nodules, ulcers and skin lesions; as well as more  
18 serious issues such as strokes, or even death." (Declaration of Dr. Ajay Nirula at  
19 paragraph 5.) Generally, largely unpopulated rural communities have reported cases of  
20 Valley Fever; however, the tank construction site is "reportedly in close proximity to  
21 residents who are pregnant, suffer from asthma, have respiratory issues, and are  
22 recovering from illness. All of these residents are at increased risk of the cocci infection,  
23 and some are within very close proximity to the project." Declaration of Dr. Ajay Nirula at  
24 paragraph 16.)

#### 25 **Recent Cases.**

26 "Independent from Dr. Hector's review, it is worth noting that numerous recent  
27 examples of cocci outbreaks related to construction of similar scope can be provided.  
28 Examples include:

- 29 i. In May 2013, 28 workers were sickened by cocci infection related to construction at  
30 Topaz Solar Farm and California Valley Solar Ranch.
- 31 ii. In August 2013, the California Department of Public health reported that ten  
32 members of a 12-person construction crew excavating a trench developed Valley Fever.

1 iii. In September 2013, U.S. Centers for Disease Control Director Dr. Thomas Frieden  
2 called Valley Fever "a big and growing problem" that presents "substantial" economic and  
3 health costs for Californians." Declaration of Dr. Ajay Nirula at paragraph 8. )

4 **A BOND IS NOT REQUIRED FOR A TEMPORARY RESTRAINING ORDER:**

5 Unlike a preliminary injunctions, which require the undertaking of a bond under  
6 Civil Procedure Code §529 once granted, there is no code requirement that the court  
7 order an undertaking upon granting a temporary restraining order. However, any bond  
8 required here should be de minimis. (Mangini v. J.G. Durland Int'l, (1994) 31 Cal. App.4<sup>th</sup>  
9 214, 217 (court has discretion to require a nominal bond if larger bond would "deny  
10 access to judicial review"). South Pasadena v. Slater, 56 F. Supp. 2d 1106, 1148 (C.D.  
11 Cal. 1999) ("courts routinely impose either no bond or a minimal bond in public  
12 environmental cases"))).

12 **III. CONCLUSION:**

13 For the reasons stated above, Plaintiff respectfully ask the Court to issue a  
14 Temporary Restraining Order and Order to Show Cause Re. Preliminary Injunction  
15 suspending LVMWD's approval of tank construction and all development and  
16 construction operations authorized to prevent further irreparable harm while the Court  
17 considers the LVMWD's violation of CEQA.

18 DATED: April 24, 2014

Respectfully Submitted,

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22 John V. Tamborelli, Esq.  
23 Tamborelli Law Group  
24 Attorney for Plaintiff Frank Bonvino  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES  
BONVINO V. LAS VIRGENES MUNICIPAL WATER DISTRICT, ET AL.**

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21700 Oxnard Street, Suite 1590, Woodland Hills, California.

On April 24, 2014, I served the foregoing document described as:

**PLAINTIFF FRANK BONVINO'S NOTICE OF AND EX PARTE APPLICATION AND MOTION FOR TRO ALTERNATIVELY A REQUEST TO SHORTEN TIME AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION AGAINST LAS VIRGENES MUNICIPAL WATER DISTRICT; [PROPOSED] ORDER RE: TRO AND PRELIMINARY INJUNCTION**

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:


Attorney General Kamala Harris  
Office of The Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

(BY EXPRESS MAIL, CCP 1013(c,d) I caused such envelope with postage thereon fully prepaid to be placed in the box regularly maintained by the express service carrier, Federal Express, at 21700 Oxnard Street, Suite 1590, Woodland Hills, California, copies of the routing slips attached hereto.

Executed on the April 24, 2014 at Woodland Hills, California.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
\_\_\_\_\_  
Mary J. Henrie

**TAMBORELLI LAW GROUP**  
A PROFESSIONAL LAW CORPORATION  
21700 OXNARD STREET, SUITE 1590  
WOODLAND HILLS, CALIFORNIA 91367

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on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

- (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
- (BY EXPRESS MAIL, CCP 1013(c,d) I caused such envelope with postage thereon fully prepaid to be placed in the box regularly maintained by the express service carrier, Federal Express, at 21700 Oxnard Street, Suite 1590, Woodland Hills, California, copies of the routing slips attached hereto.
- Executed on the April 24, 2014 at Woodland Hills, California.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

\_\_\_\_\_  
Messenger

**TAMBORELLI LAW GROUP**  
A PROFESSIONAL LAW CORPORATION  
21700 OXNARD STREET, SUITE 1590  
WOODLAND HILLS, CALIFORNIA 91367

04/25/2014

1 PERSONAL SERVICE LIST  
2 David Lippman  
3 Director, Facilities & Operations  
4 Las Virgenes Municipal Water District  
5 4232 Las Virgenes Road  
6 Calabasas, CA 91302

7 Pacific Hydrotech  
8 314 E 3rd Street  
9 Perris, CA 92570  
10 (951) 943-8803

11 AECOM  
12 1220 Avenida Acaso  
13 Camarillo, CA 93012  
14 805-388-3775  
15 Attn: John Coffman  
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**TAMBORELLI LAW GROUP**  
A PROFESSIONAL LAW CORPORATION  
21700 OXNARD STREET, SUITE 1590  
WOODLAND HILLS, CALIFORNIA 91367

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