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11 **Attorneys for Plaintiff/Petitioner County of Santa Cruz**

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SANTA CRUZ

14 COUNTY OF SANTA CRUZ 15 16 Plaintiff/Petitioner, 17 v. 18 CALIFORNIA DEPARTMENT OF FOOD 19 AND AGRICULTURE; A.G. KAWAMURA, in 20 his official capacity as Secretary of the 21 California Department of Food and Agriculture; 22 and DOES 1 through 100, inclusive, 23 24 Defendants/Respondents.	25 Case No. 26 27 <b>PETITION FOR WRIT OF MANDATE 28 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</b>
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29 Plaintiff and Petitioner County of Santa Cruz (“the County”) alleges as follows:

30 1. This case concerns the announced intention of Defendant and Respondent  
31 California Department of Food and Agriculture (“CDFA”) to aerial spray large portions of Santa  
32 Cruz County with a pesticide designed to address the Light Brown Apple Moth (“LBAM”). The  
33 pesticide CDFAs intends to spray – Checkmate LBAM-F (“Checkmate”) – is a blend of LBAM  
34 pheromones and chemicals designed to deliver the pheromones to the atmosphere. This pesticide  
35 is allegedly designed to confuse male moths, prevent them from finding female moths, and thus  
36 interrupt the LBAM’s breeding cycle. Under order of the Governor’s Office, CDFAs has disclosed

1 the chemical ingredients that compose Checkmate; however CDFA has refused to disclose the  
2 concentration of the chemicals such that the Santa Cruz County community can intelligently  
3 evaluate the risks of aerial spraying of Checkmate on health, safety and the environment.

4 2. There have been no scientific studies to determine whether aerial spraying of  
5 Checkmate is safe for humans or animals and there is no emergency requiring that this pesticide be  
6 aerially sprayed before further testing and research is done to assess its safety. Recently, CDFA  
7 began aerially spraying Checkmate OLR-F and LBAM-F in Monterey County. Numerous citizens  
8 have complained of adverse health effects that they trace directly to the spraying. With this  
9 lawsuit, the County seeks a court order requiring CDFA to refrain from aerial spraying Checkmate  
10 in Santa Cruz County.

11 **ALLEGATIONS CONCERNING THE PARTIES**

12 3. Plaintiff and Petitioner County of Santa Cruz is a political subdivision of the State  
13 of California.

14 4. Defendant and Respondent CDFA is an agency of the State of California responsible  
15 for, among other things, regulating the destruction of insects that are harmful to California's  
16 economy.

17 5. Defendant and Respondent A.G. Kawamura is the Secretary of CDFA and is  
18 generally responsible for administering CDFA in accordance with State and Federal laws. Secretary  
19 Kawamura is being sued in his official capacity only. All references in this complaint to CDFA  
20 include Secretary Kawamura.

21 6. The true names and capacities of the defendants and respondents named herein as  
22 Does 1 through 100, inclusive, are unknown to the County, who therefore sues said defendants and  
23 respondents by such fictitious names. The County will amend this Complaint/Petition to show  
24 their true names and capacities when ascertained.

25 **JURISDICTION AND VENUE**

26 7. This Court has jurisdiction over this action pursuant to Sections 187, 526, 1085, and  
27 1094.5 of the California Code of Civil Procedure. The relief requested is authorized under Civil  
28

1 Code section 3420, *et seq.* (preventative relief) and Code of Civil Procedure section 525, *et seq.*  
2 (injunctive relief).

3 8. Venue for this action properly lies in this Court pursuant to California Code of Civil  
4 Procedure section 393 and Government Code section 955.3.

5 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 9. On or about September 21, 2007 CDFA disclosed that it intends to aerial spray  
7 Checkmate on a large area in the County starting November 4, 2007. The approval of the spraying  
8 was accompanied by a finding by CDFA that this project was exempt from the California  
9 Environmental Quality Act (“CEQA”), Public Resources Code section 21000, *et seq.*, because the  
10 project was in response to an emergency pursuant to Public Resources Code section 21080(b) and  
11 was exempt under a “categorical exemption” for actions taken to help the environment.

12 10. CDFA’s use of emergency and categorical exemptions to evade the requirements of  
13 CEQA is arbitrary, capricious, and contrary to law. There is no emergency, and the County is  
14 informed and believes that CDFA’s mass aerial spraying of this pesticide will not help the  
15 environment. Given the season, the current quarantine, and the fact that few agricultural products  
16 are transported from this County after November 1, the County is informed and believes that  
17 LBAMs will neither breed nor be transported out of the County in sufficient numbers to justify the  
18 spraying in November. The use of this product is experimental and is not expected to eradicate the  
19 LBAM in this County. Moreover, no quantifiable damage to crops in this County has been  
20 attributed to the LBAM. Reasonable alternatives to the contemplated spraying have been identified  
21 but are being ignored or dismissed by CDFA.

22 11. The County is informed and believes that Checkmate may be harmful to humans  
23 when applied aurally, and contend that at the very least it is an open question at this point as this  
24 type of spraying has never been done in an urban setting before last month in Monterey County and  
25 insufficient testing has been completed to determine whether the chemicals in Checkmate, either  
26 individually or in conjunction with one another, cause injury to humans or the environment. Many  
27 people in Monterey County have reported suffering adverse health effects after the recent spraying  
28 there, such as respiratory illness, congestion, eye, ear, nose and throat irritation, headaches, muscle

1 fatigue, dizziness, itching skin, rashes, and nausea. Moreover, the County is informed and believes  
2 that the spraying may have a significant adverse effect on the environment, because these chemicals  
3 have known side effects and are being delivered aerially in a manner that has been untested in this  
4 environment.

5 **FIRST CAUSE OF ACTION**

6 **[Trespass]**

7 12. The previous paragraphs of this Complaint are incorporated herein by reference.

8 13. The County owns and controls substantial properties where it employs a sizeable  
9 work force, confines jail detainees entrusted to its care, treats patients, and provides services for its  
10 citizenry. CDFA intends to aerially spray the County's property with Checkmate. CDFA does not  
11 have the consent of the County to apply this pesticide on its property. Moreover, the County  
12 employs persons in a public safety capacity (peace officers, firefighters, public works employees)  
13 that will be required to be patrolling and working throughout the County when this spraying occurs.  
14 In addition, the County is inhabited by homeless persons who sleep in County parks and on public  
15 property and will be unable to avoid being sprayed on by escaping indoors. Plaintiff is informed and  
16 believes that its employees and citizens will be negatively impacted and may be physically or  
17 psychologically harmed if they come into contact with the Checkmate pesticide and that the  
18 pesticide will be a substantial factor in causing that harm.

19 WHEREFORE, the County prays for judgment as set forth below.

20 **SECOND CAUSE OF ACTION**

21 **[Nuisance]**

22 14. The previous paragraphs of this Complaint are incorporated herein by reference.

23 15. By aerially spraying the Checkmate pesticide over property owned and controlled by  
24 the County, the County is informed and believes that CDFA will create a condition that is harmful to  
25 the health of the County's employees and citizens and will create a condition that is indecent and  
26 offensive to the senses of those individuals. CDFA's conduct will act as an interference with the  
27 County's comfortable use of its property and that of its citizenry and the County does not consent to  
28 CDFA's conduct in aerially spraying the pesticide over these properties. Ordinary persons would be

1 reasonably annoyed or disturbed by CDFA’s conduct and the County is informed and believes that  
2 its employees and citizens will be harmed both physically and psychologically by CDFA’s spraying  
3 regimen. The County asserts that the seriousness of the harm caused to these individuals outweighs  
4 the public benefit of CDFA’s aerial spraying, and that the spraying of this pesticide is a substantial  
5 and unreasonable interference with the County’s employees and citizenry’s use and enjoyment of the  
6 County’s, and their own, property.

7 WHEREFORE, the County prays for judgment as set forth below.

8 **THIRD CAUSE OF ACTION**

9 **[Writ of Mandate -- Violation of CEQA – Code Civ. Proc., §1085]**

10 16. The previous paragraphs of this Complaint are incorporated herein by reference.

11 17. The California Environmental Quality Act (“CEQA”), Public Resources Code section  
12 21000, *et seq.*, requires that all projects that may have an effect on the environment be rigorously  
13 analyzed to ensure that feasible alternatives and feasible mitigation measures have been adequately  
14 considered and utilized to the extent possible to lessen the project’s impact on the environment.  
15 Projects carried out by public agencies are subject to the same level of review and consideration as  
16 private projects. (Pub. Resources Code, § 21001.1.) CEQA requires that if there is substantial  
17 evidence that a project may have a significant impact on the environment, unless an applicable  
18 exemption applies, the lead agency in charge of approving a project must prepare an Environmental  
19 Impact Report (“EIR”) to analyze the environmental issues and provide a basis for public discussion  
20 and information concerning the environmental consequences of a relevant project. (Pub. Resources  
21 Code, §§ 21061; 21080(d).)

22 18. On October 3, 2007, without any publicly noticed hearings, CDFA filed a Notice of  
23 Exemption notifying the State Office of Planning and Research that it intended to embark on a  
24 project of aerial pesticide spraying in Santa Cruz County to eradicate the LBAM. The Notice of  
25 Exemption alleged that the project was exempt from the requirements of CEQA as an “Emergency  
26 Project” under Public Resources Code section 21080(b)(4) and CEQA Guideline Article 18, section  
27 15269(a). The Notice of Exemption also alleged that the project was exempt from the requirements  
28 of CEQA under a “Categorical Exemption” per CEQA Guideline Article 19, section 15308 (class 8).



1           24.     A judicial declaration is necessary and appropriate at this time under the  
2 circumstances in order that the County may ascertain its rights with regard to the intended aerial  
3 spraying.

4           WHEREFORE, plaintiff and petitioner County of Santa Cruz prays for a judgment against  
5 defendants and respondents CDFA and A.G. Kawamura, and each of them, as follows:

6           1.       For Alternative and Peremptory Writs of Mandate to compel CDFA and A.G.  
7 Kawamura to withdraw the Notice of Exemption and set aside their approval of the aerial spraying  
8 of Santa Cruz County unless and until they have certified an EIR in compliance with CEQA and  
9 further testing is conducted to ensure that this pesticide is safe for humans and the environment;

10          2.       For temporary, preliminary and permanent injunctive relief to prohibit CDFA and  
11 A.G. Kawamura from aerial spraying the pesticide Checkmate in Santa Cruz County unless and  
12 until they have certified an EIR in compliance with CEQA and further testing is conducted to  
13 ensure that this pesticide is safe for humans and the environment;

14          3.       For costs of suit, including reasonable attorneys fees incurred in this action under  
15 Code of Civil Procedure section 1021.5; and

16          4.       For such other and further relief as the court deems proper.

17  
18 Dated: October \_\_, 2007

DANA McRAE, COUNTY COUNSEL

19  
20 By \_\_\_\_\_

21           JASON M. HEATH  
22           Assistant County Counsel  
23           **Attorneys for Plaintiff and Petitioner**  
24           **COUNTY OF SANTA CRUZ**