

FILED
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Clerk of the Napa Superior Court
By: Lori Walker, Deputy

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PAUL J. HEISELMANN, LESLIE VELASCO, JOHN WITT, MATT SMITH and KAMI
SMITH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA

SANDRA THOMPSON, JOHN W.
THOMPSON, PAUL J. HEISELMANN,
LESLIE VELASCO, JOHN WITT, MATT
SMITH, KAMI SMITH,

Plaintiffs,

v.

UPPER VALLEY DISPOSAL SERVICE,
UPPER VALLEY DISPOSAL AND
RECYCLING SERVICE, CLOVER FLAT
LANDFILL and DOES 1-100,

Defendants.

Case No. 21CV000681

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO STRIKE PORTIONS
OF DEFENDANTS' VERIFIED
AMENDED ANSWER TO VERIFIED
COMPLAINT
[CCP §§ 435(b)(1); 436]**

Date: July 20, 2021
Time: 8:30 a.m.
Dept: B

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on July 20, 2021 at 8:30 a.m., or as soon thereafter as the
matter may be heard, in Department B of the above-entitled court, Plaintiffs SANDRA

1 THOMPSON, JOHN W. THOMPSON, PAUL J. HEISELMANN, LESLIE VELASCO, JOHN
2 WITT, MATT SMITH and KAMI SMITH will and hereby does move to strike allegations and
3 portions of the Defendant's Verified Amended Answer to Plaintiff's Verified Complaint,
4 pursuant to Code of Civil Procedure Sections 435(b)(1) and 436 as more fully and specifically
5 set forth below.

6 This Motion will be based this Notice of Motion and Motion, the accompanying
7 Memorandum of Points and Authorities, Declaration of James P. Downs filed herewith, the files
8 and records of this action, and such other and further oral and documentary evidence as may be
9 introduced at the hearing on this matter.

11 SUMMARY

12 Counsel for Plaintiffs have over 60 years of cumulative litigation experience. Never in
13 their careers have counsel for Plaintiffs witnessed an answer to complaint that is so legally
14 defective, improperly misleading, professionally lacking or contrary to procedural conventions.
15 Indeed, Defendants' Amended Answer is illegal, as it violates the California Rules of Court,
16 Code of Civil Procedure Section 430.20 and case law. But this is not surprising, considering
17 Defendants' ongoing and continued violations of regulatory and legal frameworks.

19 MOTION TO STRIKE

- 21 1. Exhibits A through H Must Be Stricken from Defendants' Amended Answer;
- 22
- 23 2. Prayer 4: "That the Companies be awarded their reasonable attorney's fees"
24 must be Stricken from Defendants' Amended Answer. (page 24, lines 10 – 12);
25
- 26
- 27
- 28

1 **3. Introduction to Answer must be Stricken from Defendants' Amended Answer**

2 **(page 1, line 8 through page 6, line 7):**

3 I. "INTRODUCTION"

4 The instant lawsuit is frivolous and filed for improper purposes, as set forth in more detail below.

5 Most of Plaintiffs' allegations are simple false:

- 6
- 7 • Plaintiffs falsely allege that the Companies polluted the Napa River. This allegation was
8 previously included in an article written by Bay City News and picked up by Patch on
9 May 14, 2021. On May 17, 2021, following confirmation from Supervisor Diane Dillon's
10 office, the publication issued a correction stating that the article "mischaracterized the
11 extent of creek contamination from the Clover Flat Landfill in 2019. There is no evidence
12 the contamination ever reached the Napa River."
 - 13 • Plaintiffs also falsely allege that the Companies operate outside of the hours of their use
14 permit. To the contrary, and as their records will prove, the Companies strictly adhere to
15 the hours of operation, and all other requirements, set forth in their use permits. For
16 example, contrary to Plaintiffs' allegations, UVR only processes glass from 10:00 a.m. to
17 3:00 p.m. Similarly, the Companies do not process any landfill waste, recycling or
18 organic waste from outside the service area dictated by their use permit. CFL does accept
19 fire debris from adjacent counties to assist with the responsible removal of fire debris
20 given the extensive wildfires in Napa and Sonoma counties over the past 3-4 years.
21 However, the Napa County Local Enforcement Agency ("LEA") and Regional Water
22 Quality Control Board ("RWQCB") approve any acceptance by CFL of fire debris.
23 • As for safety, Plaintiffs' allegations are again demonstrably false. First, the Companies
24 do not accept landfill waste at the Whitehall Lane facility as Plaintiffs allege. All storage
25 do not accept landfill waste at the Whitehall Lane facility as Plaintiffs allege. All storage
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1 and processing of landfill waste takes place at CFL, which is zoned for such operations.
2 Accordingly, there have been no leachate issues at Whitehall Lane. Plaintiffs' allegations
3 regarding fire are also false. There has been one "hot spot" at Whitehall Lane on or
4 around December 20, 2020, but it was immediately addressed by on-site staff and caused
5 no damages. There have been no fires at CFL since September of 2018 -- i.e., in almost
6 three years -- and none of the fires before September of 2018 caused any damage to the
7 surrounding properties. Moreover, in 2019, a new fire suppression system was installed at
8 CFL pursuant to plans approved by the Napa County Fire Marshall. The sporadic minor
9 fires experienced by the Companies are within the "norm" in the industry. See, e.g.,
10 [https:// www. Waste360.com/waste/4th-annual-reported-waste-recycling-facility-fires-](https://www.Waste360.com/waste/4th-annual-reported-waste-recycling-facility-fires-uscanada-released)
11 [uscanada-released](https://www.Waste360.com/waste/4th-annual-reported-waste-recycling-facility-fires-uscanada-released) (last visited on June 10, 2021).
12

13
14 Plaintiffs' other false allegations are addressed in response to their number allegations below.

15 In addition to false allegations, Plaintiffs' Complaint is based on inaccurate descriptions
16 of isolated past issues, none of which continue today, and all which have been remedied to the
17 satisfaction of the applicable regulatory authorities or are currently being addressed under their
18 supervision. These regulatory authorities include the RWQCB, the California Department of Fish
19 and Wildlife, and Napa County acting as the LEA to ensure compliance with state standards set
20 by CalRecycle.
21

22 As referenced above, the Companies' activities are also carried out pursuant to, and in
23 compliance with, up-to-date, valid use permits, which dictate their service area, hours of
24 operation and the type and amount of materials the facility can process. Notably, Plaintiffs
25 participated in the public administrative hearings that led to the Companies' most recently-
26 approved use permit. After a thorough public review process, that permit was issued over
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1 Plaintiffs' objections. Plaintiffs chose not to appeal the decision to the Board of Supervisors
2 despite having the right to do so. As a result, Plaintiffs failed to exhaust their administrative
3 remedies and lack standing to bring their claims. Plaintiffs also never previously complained
4 directly to the Companies. Moreover, even though the allegations in the Complaint all took place
5 years ago, Plaintiffs took no action until now, and they do not explain their failure to do so in the
6 Complaint.
7

8 In addition to complying with state and local regulations, the Companies carefully
9 monitor all of their activities internally. They follow industry best practices with respect to
10 safety, fire prevention, leachate prevention, and managing odor and noise issues. For example,
11 the Companies were the first in the State of California to move from the "windrow" technique
12 for composting to the "Covered Aerated Static Pile" or "CASP" technique, which is now the
13 industry standard in California.
14

15 With respect to composting organic materials, the Companies have been implementing a
16 closed-loop, environmentally-friendly and sustainable process for decades. Among other things,
17 the Companies collect and process grape pomace from local wineries and vineyards, then process
18 that material into certified organic compost, which the Companies then sell back to local
19 vineyards and farming operations or donate to schools and community groups. Under this model,
20 by-products of the wine industry – as well as emissions gasoline consumption and other
21 environmental impacts arising from transportation – are minimized. Transporting organic
22 material, or any waste, out of the county would cause an enormous negative environmental
23 impact, including huge gas use and carbon emissions. The Companies' composting process, by
24 contrast, minimizes the environmental impact. As for odor, the Companies' composting process
25 creates minimal, and certainly reasonable, odor given that they service an agricultural
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1 community. The odor is similar in nature and intensity -- a slight vinegar smell -- to the smell
2 throughout Napa County each year during harvest season. (That smell does not deter tourism,
3 which is at its peak during harvest season.) Whitehall Lane does not store or process landfill
4 waste and thus does not emit a 'garbage' odor.

5 The rest of the allegations in the Complaint relate to the Companies' ordinary, lawful
6 business, which was in operation long before Plaintiffs purchased their neighboring properties.
7 The services the Companies perform for the Upper Valley community are not only legal and
8 authorized, but are also essential to the continued health, cleanliness and safety of the
9 community. Plaintiffs knew UVDS and UVR operated their composting, recycling and collection
10 businesses when they purchased their properties, and the proximity to the Whitehall Lane facility
11 was, by virtue of how the real estate market works, incorporated into the purchase prices they
12 paid.
13
14

15 As evidenced by Plaintiffs' allegations and conduct, this lawsuit is frivolous and was filed for
16 improper purposes:

- 17 • The allegations in the Complaint are largely false and misleading.
- 18 • Plaintiffs conspicuously do not allege any specific damages they have sustained, instead
19 citing vaguely to "concern" over fires and other issues. If Plaintiffs had suffered any real
20 harm, they would have alleged it in their very detailed, verified 22-page Complaint.
- 21 • Plaintiffs' conduct shows that the instant case is meritless. They had the opportunity to
22 object to the current use permit and appeal to the Board of Supervisors, but chose not to
23 do so. If Plaintiffs were truly motivated by the issues in the Complaint, they would have
24 objected and appealed. Similarly, the Companies' complaint records establish that none
25 objected and appealed. Similarly, the Companies' complaint records establish that none
26 objected and appealed. Similarly, the Companies' complaint records establish that none
27 objected and appealed. Similarly, the Companies' complaint records establish that none
28 objected and appealed. Similarly, the Companies' complaint records establish that none

1 of the Plaintiffs ever complained directly to the Companies. Most of the alleged events in
2 the Complaint took place years ago, but Plaintiffs took no action during that time.

- 3 • Plaintiffs include several random, completely irrelevant allegations in their Complaint
4 that the Companies did not engage in a competitive bidding process, and that the
5 Companies do not compete with each other. (The Companies obtained their contracts
6 lawfully through the applicable process, and they do not compete with each other,
7 because they serve different functions, i.e., UVDS collects waste, UVR handles recycling
8 and compost, and CFL handles the disposal and processing of recyclable material.)

9 These issues have nothing to do with Plaintiffs' causes of action for nuisance and
10 trespassing or the relief they seek. As set forth below, these irrelevant allegations show
11 that Plaintiffs filed this lawsuit to obtain the Companies' confidential information to
12 provide to St. Helena Mayor Geoff Ellsworth to assist him in his personal vendetta
13 against the Companies.
14

- 15 • Plaintiffs have recently served voluminous discovery relating to these issues, which have
16 no relevance to the instant lawsuit, seeking the Companies' pricing information, profit
17 margin, contracts with local hotels and restaurants, financial structure, billing, and other
18 confidential financial information. See, e.g., Exhibit A hereto.
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21 Based on these facts, the Companies believe that this meritless lawsuit is part of a
22 coordinated effort by Plaintiffs, Ellsworth and others to interfere with the Companies contracts
23 and lawful operations. Ellsworth has publicly stated that he, acting as an individual and not on
24 behalf of the city of St. Helena, is coordinating and leading efforts to end the Upper Valley's
25 contracts with the Companies and contract with a different waste management company to move
26 all waste operations and landfills to Nevada. Ellsworth recently published a misleading and
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1 unsupported Op-Ed article in the Napa Register in which he confirmed his goal of replacing the
2 Companies.

3 [https://napavalleyregister.com/community/star/opinion/clover-flat-landfill-climate-
6 concerns/article_67e2152b-5104-56a7-91fl-
7 411309438dd5.html?utm_medium=social&utm_source=email&utm_campaign=user-share](https://napavalleyregister.com/community/star/opinion/clover-flat-landfill-climate-
4 concerns/article_67e2152b-5104-56a7-91fl-
5 411309438dd5.html?utm_medium=social&utm_source=email&utm_campaign=user-share)

8 (last visited on June 10, 2021). Ellsworth also conspicuously referenced the “lack of competitive
9 bidding” in the Companies’ contract process in his article, mirroring the out-of-place language in
10 Plaintiffs’ Complaint. See id.

11 The Companies are informed and believe that Ellsworth is actively communicating with
12 other waste management companies regarding replacing the Companies. The Companies are
13 informed and believe that Plaintiffs are collaborating with and assisting Ellsworth’s efforts, and
14 that they have filed this lawsuit to put financial pressure on the Companies, create bad press for
15 the Companies and to attempt to obtain the Companies’ confidential information, including
16 pricing information to provide to Ellsworth. In a letter circulated to various community members
17 on January 20, 2021 by Plaintiff Matt Smith, Plaintiff admitted that Plaintiffs have “learned”
18 information “through Mayor Ellsworth,” including the false allegation that the Companies
19 polluted the Napa River.
20

21 Once the Companies prevail in this frivolous lawsuit, they will pursue claims for
22 malicious prosecution and abuse of process against Plaintiffs, their counsel and anyone else
23 whom discovery reveals to have participated in the filing and prosecution of this case.”
24

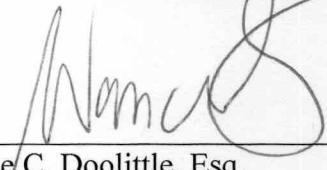
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1 Dated: June 21, 2021

LAW OFFICES OF WALLACE C. DOOLITTLE

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4 Wallace C. Doolittle, Esq.
5 Attorneys for Plaintiffs SANDRA THOMPSON,
6 JOHN W. THOMPSON, PAUL J. HEISELMANN,
7 LESLIE VELASCO, JOHN WITT, MATT SMITH
8 and KAMI SMITH
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1 I am employed in Alameda County, California, and am over the age of eighteen years and not a
2 party to the within entitled action. My business address is 1260 B Street, Suite 220, Hayward,
3 California 94541.

4 On June 22, 2021 I served the following in regard to case number 21CV000681
5 For the Superior Court of California
6 County of Napa

7 **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS OF**
8 **DEFENDANTS' VERIFIED AMENDED ANSWER TO VERIFIED COMPLAINT [CCP**
9 **§§ 435(b)(1); 436]**

10 on the interested party(ies) in this action by emailing true copies thereof to the addresses as
11 follows and by placing true copies thereof enclosed in sealed envelopes and/or packages
12 addressed as follows:

13 SHARTSIS FRIESE LLP
14 RICHARD F. MUNZINGER
15 SUZANNE S. ORZA
16 One Maritime Plaza, Eighteenth Floor
17 San Francisco, CA 94111

18 Email: rmunzinger@sflaw.com
19 Email: sorza@sflaw.com

20 **BY EMAIL: (email addresses listed above)**

21 **BY U.S. MAIL:** I placed the envelope for collection and processing for mailing following this
22 business's ordinary business practice with which I am readily familiar. On the same day
23 correspondence is placed for collection and mailing, it is deposited in the ordinary course of
24 business with the United States Postal Service.

25 I declare under penalty of perjury under the laws of the State of California that the
26 forgoing is a true and correct statement and that this Proof of Service was executed
27 on June 22, 2021.

28 By: 
Daniel Etler