

ALCO
HAZMAT LAW OFFICES OF HANS W. HERB

94 APR -8 PM 1:40

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

Arizona
California
Washington

(707) 576-0757
Telecopier:
(707) 575-0364

April 1, 1994

HANS W. HERB

All Parties on Attached List

Re: Your File Nos.: 01-01164 and 02-1937
Site: 16035 East 14th St., San Leandro, CA
Our Clients: Beatrice S. Gallegos and Gregory J. Garcia
Our File No.: 01-126-01
Solano County Superior Court Case No.: L002217

Ladies and Gentlemen:

I am pleased to report that we continue to be making progress in this matter. Despite threats of unwarranted intervention by the Alameda County District Attorney's office, we have been able to voluntarily restrain it without proceeding with our litigation. We consider this to be a very positive and important step.

In our view, attention is best focused now on how to cleanup the site, not how the lawyers can clean up. By directing our efforts away from the legal process and toward the cleanup, all of society is better off.

In light of the foregoing, our client has authorized us to dismiss, without prejudice, our lawsuit against the Alameda County District Attorney's office, the State and Regional Water Quality Control Boards, and Mr. Jensen personally. However, we would like to make one point abundantly clear. By making this accommodation, we are in no way relieving any of the defendants, or potential defendants, of any liability nor are we dropping any of our claims. We simply want to be true to our word and focus our efforts and energy on cleanup, not on lawyering.

However, if voluntary compliance is not maintained, or if circumstances change, we stand ready, willing and able to immediately refile our lawsuit. Should that become necessary, we will ask for significantly more relief including substantial damages, as well as court-ordered sanctions. We will also seek to recover our attorney's fees, costs and other expenses.

All Parties on Attached List
April 1, 1994
Page 2

The foregoing reminder is not meant to threaten or inflame matters. On the contrary, we want to keep things calm now that we have established a level of control. Further, we want to continue a mutually acceptable and amiable working relationship. Our goal is to protect the environment and to proceed with the cleanup. We anticipate that once funding becomes available from the State Underground Storage Tank Cleanup Fund, this entire problem will go away.

Should you have any questions, please feel free to contact me.

Very truly yours,
LAW OFFICES OF HANS W. HERB



Hans W. Herb

HWH/tcf

INTERESTED PARTY MAILING LIST

Mr. Edgar Howell
HEALTH CARE SERVICES AGENCY
OF ALAMEDA COUNTY
HAZARDOUS MATERIALS PROGRAM
80 Swan Way, RM 200
Oakland, CA 94621

Steven R. Richie
Lester Feldman
CALIFORNIA RWQCB
San Francisco Bay Region
2101 Webster St., Ste. 500
Oakland, CA 94612

William Attwater, Esq.
Mr. Theodore A. Cobb
STATE WATER RESOURCE
CONTROL BOARD
P.O. Box 100
Sacramento, CA 95812-0100

Gilbert A. Jensen, Esq.
District Attorney's Office
COUNTY OF ALAMEDA
1225 Fallon #100
Oakland, CA 94612

Name, Address and Telephone No. of Attorney(s)

Space Below for Use of Court Clerk Only

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404
(707) 576-0757

Attorney(s) for Plaintiffs

Superior COURT OF CALIFORNIA, COUNTY OF Solano
(SUPERIOR, MUNICIPAL, or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s):
Gregory J. Garcia, and Beatrice
S. Gallegos

Defendant(s):
Gilbert A. Jensen, et al.

(Abbreviated Title)

CASE NUMBER L002217

REQUEST FOR DISMISSAL

TYPE OF ACTION

- Personal Injury, Property Damage and Wrongful Death:
 - Motor Vehicle Other
- Domestic Relations Eminent Domain
- Other: (Specify) Injunction,
Declaratory Relief

TO THE CLERK: Please dismiss this action as follows: (Check applicable boxes.)

- 1. With prejudice Without prejudice
- 2. Entire action Complaint only Petition only Cross-complaint only
- Other: (Specify)*

Dated:

*If dismissal requested is of specified parties only, of specified causes of action only or of specified cross-complaints only, so state and identify the parties, causes of action or cross-complaints to be discussed.



Plaintiffs
Attorney(s) for

Hans W. Herb
(Type or print attorney(s) name(s))

TO THE CLERK: Consent to the above dismissal is hereby given. **

Dated:

**When a cross-complaint (or Response (Marriage) seeking affirmative relief) is on file, the attorney(s) for the cross-complainant (respondent) must sign this consent when required by CCP 581(1), (2) or (5).

Attorney(s) for

(Type or print attorney(s) name(s))

(To be completed by clerk)

- Dismissal entered as requested on
- Dismissal entered on as to only.....
- Dismissal not entered as requested for the following reason(s), and attorney(s) notified on

_____, Clerk

Dated By _____, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO
600 UNION AVENUE, FAIRFIELD, CA 94533

PLAINTIFF:

Gregory J. Garcia, et al.

DEFENDANT:

Silbert A. Jensen, et al.

CASE NO. LC02217

NOTICE OF STATUS CONFERENCE

ONE TWO _____

Pursuant to local rules and by order of this court, this matter has been calendared for Status Conference:

DATE: 4/25/94

TIME: 9:00 A.M. DEPT: 3

THE OBLIGATIONS OF COUNSEL, OR ANY PARTY NOT REPRESENTED AT STATUS CONFERENCE ONE AND STATUS CONFERENCE TWO ARE AS FOLLOWS:

- 1) Plaintiff shall serve a copy of Notice of Status Conference One with the complaint.
- 2) Any party serving a cross-complaint shall serve a copy of Notice of Status Conference One on each cross-defendant with the cross-complaint.
- 3) Any cross-complaint served after Status Conference One shall be accompanied by a copy of Notice of Status Conference Two served with it.
- 4) A Status Conference One Report shall be filed by each party by each counsel by the 7th calendar day before the Status Conference One.
- 5) At Status Conference One the court shall inform the parties of the place for Status Conference Two and shall make it expected that counsel will accomplish in regard to the case before the filing of the Status Conference Two Report for Status Conference Two.
- 6) Each counsel shall complete, file and serve on all parties a completed Status Conference Two Report by the 7th calendar day before the date set for Status Conference Two.
- 7) At any Status Conference, counsel shall be completely aware of all procedural, factual, and legal aspects of the case, and have full authority to discuss and resolve any issues that arise at the conference, including settlement of the case.
- 8) The court may impose sanctions in the event that a Status Conference Report is not timely filed and/or served, or is not fully completed, or; the requirements of #7, above, are not met.

1/26
LTR

COUNSEL ARE OBLIGATED TO REVIEW AND COMPLY WITH LOCAL RULES REGARDING CIVIL LITIGATION.

* * * * *

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (Aviso a Acusado)

GILBERT A. JENSEN; COUNTY OF ALAMEDA DISTRICT ATTORNEY'S OFFICE; SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD; DOES 1 through 100, inclusive.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le est., demandando)

GREGORY J. GARCIA, and BEATRICE S. GALLEGOS

You have 30 CALENDAR DAYS after this Summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book.)

Despues de que la entreguen esta citacion judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una repuesta escrita a maquina en esta corte.

Una carta o una llamada telefonica no le ofrecera proteccion su repuesta escrita a maquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su repuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefonico).

CASE NUMBER. (Numero del Caso)

LC02217

The name and address of the court is: (El nombre y direccion de la corte es)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

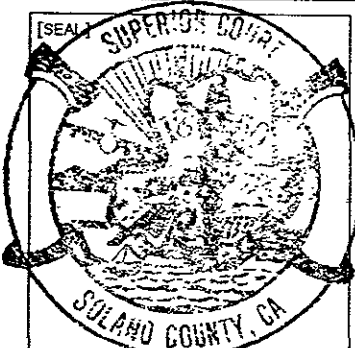
(707) 576-0757

DATE: **DEC 28 1993**
(Fecha)

CHARLES D. RAMEY

Clerk, by 
(Actuano)

, Deputy
(Delegado)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (individual)
- other:

- 4. by personal delivery on (date):

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(CITACION JUDICIAL)**

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NOTICE TO DEFENDANT: (Aviso a Acusado)

GILBERT A. JENSEN; COUNTY OF ALAMEDA DISTRICT ATTORNEY'S OFFICE; SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD; DOES 1 through 100, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le est., demandando)

GREGORY J. GARCIA, and BEATRICE S. GALLEGOS

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The name and address of the court is: (El nombre y direccion de la corte es)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

CASE NUMBER: (Numero del Caso)

LC02217

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE:

DEC 28 1993

(Fecha)

CHARLES D. RAMEY

Clerk, by

M. JACKSON

Deputy

(Actuario)

(Delegado)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

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- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (individual)
- other:

- 4. by personal delivery on (date):

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(CITACION JUDICIAL)**

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YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le est., demandando)

GREGORY J. GARCIA, and BEATRICE S. GALLEGOS

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COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

CASE NUMBER. *(Numero del Caso)*
LC02217

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)
Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: DEC 28 1993
(Fecha)

CHARLES D. RAMEY Clerk, by M. JACKSON, Deputy
(Actuario) (Delegado)

[SEAL]

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- as the person sued under the fictitious name of *(specify)*:
- on behalf of *(specify)*:

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (individual)
	<input type="checkbox"/> other:	
- by personal delivery on (date):

SUMMONS (CITACION JUDICIAL)

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YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le est., demandando)

GREGORY J. GARCIA, and BEATRICE S. GALLEGOS

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

CASE NUMBER (Numero del Caso)

1002217

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)
Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: DEC 28 1993
(Fecha)

CHARLES D. RAMEY Clerk, by M. JACKSON, Deputy
(Actuario) (Delegado)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

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- as the person sued under the fictitious name of (specify):
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under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (individual)
 other:

- by personal delivery on (date):

1 Hans W. Herb, Esq., SBN 136018
2 LAW OFFICES OF HANS W. HERB
3 50 Santa Rosa Avenue, Fifth Floor
4 Santa Rosa, California 95404
5 (707) 576-0757

ENDORSED FILED
Clerk of the Superior Court

DEC 23 1993

4 Attorneys for Plaintiffs
5 GREGORY J. GARCIA and
6 BEATRICE S. GALLEGOS

By CHARLES D. RAMEY
M. JACKSON
DEPUTY CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SOLANO

10
11

12 GREGORY J. GARCIA, and)
13 BEATRICE S. GALLEGOS,)
14 Plaintiffs,)
15 vs.)
16 GILBERT A. JENSEN; COUNTY OF)
17 ALAMEDA DISTRICT ATTORNEY'S)
18 OFFICE; SAN FRANCISCO BAY)
19 REGIONAL WATER QUALITY CONTROL)
20 BOARD; STATE WATER RESOURCES)
21 CONTROL BOARD; DOES 1 through)
22 100, inclusive,)
23 Defendants.)

CASE NO. 1002217
COMPLAINT FOR INJUNCTION;
DECLARATORY RELIEF AND DAMAGES

23 Plaintiffs allege as follows:

24 THE PARTIES

25 1. Plaintiff, Gregory J. Garcia ("GARCIA"), is and was
26 at all times relevant to this matter a resident of Solano
27 County, California.

COPY

1 2. Plaintiff, Beatrice S. Gallegos ("GALLEGOS"), is,
2 and was at all times relevant to this matter, a resident of
3 Fresno County, California.

4 3. The acts alleged herein occurred, in part, in Solano
5 County, California.

6 4. Defendant Gilbert A. Jensen (hereinafter "JENSEN")
7 is, on information and belief, an attorney duly licensed to
8 practice law in the State of California. Although JENSEN has
9 purported to represent the State Water Resources Control Board
10 and Regional Water Quality Control Board as well as other
11 regulatory agencies, on information and belief, JENSEN is an
12 assistant attorney at the County of Alameda District Attorney's
13 office. Because it is unclear what capacity, if any, JENSEN is
14 involved in the matters alleged herein, he is named as an
15 individual defendant as well as an agent of any organization who
16 ultimately takes responsibility for his conduct.

17 5. Alameda County is a duly authorized and existing
18 public corporation organized under California law. The District
19 Attorney's Office is a subdivision of Alameda County.

20 6. The Regional Water Quality Control Board for the San
21 Francisco Bay Region (hereinafter "RWQCB") is a duly organized
22 political subdivision of the State of California. The RWQCB is
23 a subordinate agency of the State Water Resources Control Board.

24 7. The State Water Resources Control Board (hereinafter
25 "SWRCB") is a duly authorized and existing governmental entity
26 of the State of California. It is a part of the California
27 Environmental Protection Agency.

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1 GENERAL ALLEGATIONS

2 8. In 1961, Joseph R. Garcia died in Alameda County,
3 California. In December of 1962, his estate was distributed.
4 Among the items in his estate was the piece of property located
5 at 16035 E. 14th Street in San Leandro, California (the
6 "property"). At that time, the property was improved by a
7 service station operated by the Seaside Oil Company of Santa
8 Barbara, California.

9 9. In accordance with Joe Garcia's wishes, his son,
10 plaintiff herein, Gregory J. GARCIA, received a 50% interest in
11 the property to be held in trust until he reached the age of
12 majority. The remaining 50% was deeded by the court to Joe
13 Garcia's widow and plaintiff herein, Beatrice S. GALLEGOS.

14 10. At no time did either of the plaintiffs have any
15 operational control over the service station or the equipment on
16 the property. Instead, the plaintiffs simply acted as passive
17 landlords for the piece of property they inherited.

18 11. In 1974, after Gregory J. GARCIA returned from
19 military service in Vietnam, the trust administered for him by
20 his mother deeded him the property. It was later disposed of by
21 sale.

22 12. In 1979, Jerry Petsas and Mary Petsas (hereinafter
23 referred to as "Petsases"), purchased the property and all the
24 service station equipment from the plaintiffs. The Petsases
25 purchased the property "as-is" and without any right of recourse
26 against the plaintiffs.

27

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1 13. At the time the property was sold to the Petsases,
2 the underground storage tanks, pumps and all service station
3 equipment at the San Leandro property were in good working
4 condition. The property was leased and the improvements were
5 being used by the tenants who were operating an automobile
6 repair business on the property.

7 14. At no time were there ever any improper or illegal
8 spills, leaks, discharges, or releases of petroleum products
9 known to plaintiffs. In fact, the equipment was sold as-is at
10 the demand of the purchasers, not the sellers. The property was
11 discounted substantially by the sellers to satisfy the as-is
12 clause.

13 15. In 1983, the State of California first enacted
14 requirements for the permitting of underground storage tanks.
15 In accordance with the requirements of the State permitting
16 statutes, the Petsases apparently notified the appropriate
17 permitting agency of the presence of the underground storage
18 tanks on their property. After receiving several extensions of
19 time within which to comply with the permit requirements or
20 remove the tanks, the Petsases were ordered by Alameda County to
21 have the tanks removed. According the public records, this took
22 place beginning in 1985. The Petsases took no action to remove
23 the tanks for several more years.

24 16. In 1991, the Petsases finally removed the
25 underground storage tanks from their property pursuant to Orders
26 issued by various regulatory and permitting agencies. When the
27
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1 tanks were removed, trace amounts of contamination were
2 apparently detected in the soil and groundwater at the site.

3 17. From information gathered from public records,
4 plaintiffs are informed and believe that in 1991, the Petsases
5 became subject to local agency oversight by the Alameda County
6 Healthcare Services Agency (hereinafter referred to as "ACHSA").
7 The ACHSA operates as a "deputy" water board pursuant to a
8 contract with the SWRCB.

9 18. Under the terms of the ACHSA's oversight contract,
10 the Petsases were to be provided with assistance and advice from
11 ACHSA in dealing with their contamination problem. In exchange
12 for paying the SWRCB a service charge of approximately \$125 per
13 hour, the Petsases were to be assisted by the ACHSA in cleanup
14 of the unauthorized releases at the site.

15 19. Unfortunately, the expert advice offered by the
16 ACHSA apparently turned out to be incorrect. As a result, on
17 information and belief, the Petsases were required to expend
18 tens of thousands of dollars frivolously while the toxic problem
19 at the site, to the extent it existed, was not being addressed.

20 20. On information and belief, after becoming
21 financially destitute due to the advice provided by the ACHSA,
22 the Petsases sought to bring in other potentially responsible
23 parties to assist them with the high cost of dealing with the
24 cleanup requirements.

25 21. On information and belief, in accordance with
26 instructions from the ACHSA, the Petsases requested that
27 plaintiffs be named as "responsible parties" for the cleanup of
28

1 the San Leandro site. This was based on the ACHSA's erroneous
2 belief that all operators and owners of an underground storage
3 tank are responsible for the cleanup of any contamination
4 discovered once the tank is removed.

5 22. As a result of the request by the Petsases, the
6 ACHSA, by letter dated March 2, 1993, informed plaintiffs that
7 the ACHSA had declared them to be responsible parties in
8 connection with the property.

9 23. In the time provided by statute, and in accordance
10 with California Health and Safety Code §25297.1(d)(3) and (h),
11 as well as Health and Safety Code §§25299.37(c) and (d),
12 plaintiffs filed a proper appeal to the SWRCB, objecting to the
13 requirement that they participate in the investigation and
14 cleanup at the San Leandro property.

15 24. While the petition was pending before the SWRCB,
16 defendant JENSEN appointed himself as a hearing officer and
17 conducted what he termed a "Pre-enforcement Review Panel."
18 Also present at the review panel were members of the ACHSA and a
19 staff employee of the RWQCB.

20 25. At the end of the "hearing", which plaintiffs were
21 not present at, JENSEN announced that plaintiffs were
22 responsible parties for the cleanup of this site.

23 26. Upon receiving information that JENSEN had
24 determined that plaintiffs were responsible parties at the site,
25 plaintiffs, through their attorneys, contacted the SWRCB to
26 inquire as to how to proceed in order to avoid inconsistent
27 adjudications. The SWRCB, via letters and verbal
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1 communications, indicated that the matter was still pending
2 before the SWRCB. Further, the SWRCB advised plaintiffs that
3 JENSEN was neither authorized to represent the SWRCB, nor did
4 the State approve of his conduct in holding illegal hearings in
5 which he appointed himself a hearing officer. In addition, the
6 State Board advised that the issue of plaintiff's liability for
7 the cleanup at the site would be presented to the State Board
8 for review and that any determination of JENSEN was null and
9 void.

10 27. Subsequently, plaintiffs received yet another
11 directive, this one from the executive officer of the Bay Area
12 RWQCB, again ordering the plaintiffs to participate in the
13 cleanup at the San Leandro property. Plaintiffs timely appealed
14 that decision to the SWRCB and, in accordance with local
15 practice, appealed to the executive officer of the RWQCB to have
16 a full hearing on the issue. The hope was to resolve the
17 conflict informally since three appeals were already pending.

18 28. On December 20, 1993, plaintiffs received a letter
19 from the Mr. JENSEN regarding his position on these various
20 cleanup orders and their appeals. In Mr. JENSEN's letter, Mr.
21 JENSEN implied that he was not bound by the decisions of either
22 the SWRCB or the RWQCB and that he was going to exercise his
23 independent judgment, outside of the legal and statutory
24 process, to determine how to proceed with various sanctions
25 against plaintiffs.

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1 29. According to defendant JENSEN, these sanctions
2 include fines of up to \$1000 per day for each day plaintiffs
3 failed to comply with defendant JENSEN's directives.

4 30. At this point, plaintiffs are left in a quandary.
5 They have purportedly been named as responsible parties by no
6 less than three agencies and/or organizations (the ACHSA, the
7 RWQCB and the Alameda County District Attorney's Office). At
8 the same time, appeals have been filed, as required by statute,
9 of the decision of these entities in naming petitioners as
10 responsible parties. Nevertheless, despite the fact that
11 appeals are pending, defendant JENSEN, of his own volition,
12 apparently contends that the appeals do not bind him and that he
13 alone can make an independent decision, outside of the statutory
14 process, to sanction the plaintiffs.

15 31. Plaintiffs have repeatedly attempted to establish
16 communications with the Alameda County District Attorney's
17 Office to resolve the issues in this matter. JENSEN has refused
18 to return any phone calls or to substantively answer any letters
19 concerning this matter.

20 32. Although the Alameda County Board of Supervisors,
21 the Bay Area RWQCB and the SWRCB have all attempted to work, in
22 good faith, to resolve this matter, the ultimate ability of
23 those agencies to affect a proper resolution depends on being
24 able to properly control and restrain defendant JENSEN. Under
25 such circumstances, any settlement with the legally authorized
26 agencies would be meaningless since, according to defendant
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1 JENSEN, he has the power to ultimately overrule any decision of
2 any of the agencies.

3 33. Under California Code of Civil Procedure §1021.5,
4 plaintiffs are entitled to recover attorneys' fees for acting in
5 the public interest. Plaintiffs base their claim to attorneys'
6 fees in this case on at least three separate and independent
7 grounds. First, the actions of JENSEN, as a representative of
8 the Alameda County District Attorney's Office, threatens to harm
9 the environment by diverting resources from the cleanup of
10 environmental contamination instead to finance litigation and
11 attorneys' fees to the detriment of the people of the State of
12 California. Second, despite acknowledging the fact that its
13 conduct is without legal authority, the Alameda County District
14 Attorney's Office has continued to proceed with its claims
15 against the plaintiffs. Third, plaintiffs are entitled, if they
16 so choose, to damages under U.S.C. 1983. Because plaintiffs
17 believe they will prove that this same improper conduct has
18 happened to others, they request reasonable attorneys' fees for
19 abating this illegal practice as a private attorney general.

20 FIRST CAUSE OF ACTION

21 (Declaratory Relief)

22 34. Plaintiffs refer to each and every paragraph set
23 forth in the preceding allegations and incorporate those
24 paragraphs as though set forth in full in this cause of action.

25 35. Plaintiffs allege that an actual and present
26 controversy now exists between plaintiffs and defendants in that
27 plaintiffs contend that they have a right to seek redress of the
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1 erroneous decisions of the ACHSA and the Bay Area RWQCB. The
2 defendants, dispute these contentions, and contend that
3 plaintiffs have no rights of appeal and that JENSEN, either
4 individually or as an agent of the District Attorney's Office,
5 is not bound by the statutory or decisional law of the State of
6 California.

7 36. As a result of the foregoing, plaintiffs request a
8 declaration of their rights pursuant to §1060 of the Code of
9 Civil Procedure and §11350(a) of the Government Code.

10 WHEREFORE, plaintiff prays for judgment as follows:

11 (a) For an injunction restraining defendant JENSEN from
12 illegally interfering with the exercise of due process rights by
13 the plaintiffs;

14 (b) For a declaratory judgment that plaintiffs are
15 entitled to due process under the local oversight program
16 contract;

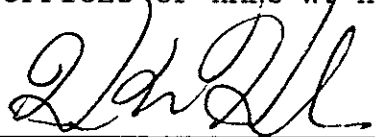
17 (c) For a declaratory judgment that plaintiffs are
18 entitled to due process under the Water Code;

19 (d) For attorneys' fees pursuant to C.C.P. §1021.5;

20 (e) For such other and further relief as the Court rules
21 is just and proper.

22 DATED: December 23, 1993

Respectfully submitted,
LAW OFFICES OF HANS W. HERB

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25 BY: 

HANS W. HERB
Attorney for Plaintiffs
GREGORY J. GARCIA and
BEATRICE S. GALLEGOS