

ENDORSED  
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ALAMEDA COUNTY

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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

9  
10 RICHARD E. DODGE and JEANNE M. )  
DODGE, )  
11 Plaintiffs, )

NO. 7.005703-2  
COMPLAINT FOR DAMAGES

12 vs. )

13 JOHN WARMERDAM, LAURA )  
14 WARMERDAM, BURT SERNE, )  
CORNELIUS VAN WYK, ELIZABETH )  
15 VAN WYK, DUTCH PRIDE DAIRY, a )  
California corporation, DUTCH )  
16 PRIDE DAIRY, a limited )  
partnership, AQUA TERRA )  
17 TECHNOLOGIES, NEWMAN REALTY, )  
FLETCHER, EGAN & PARADISO, )  
18 PARADISO CONSTRUCTION COMPANY, )  
DOES 1 THROUGH 85, inclusive, )

19 Defendants. )  
20 )

21 Plaintiffs allege as follows:

22 GENERAL ALLEGATIONS

23 1. Plaintiffs are now and have been since March, 1978, the  
24 record owners of certain real property located at 7400 Amador  
25 Valley Boulevard in the City of Dublin, County of Alameda, State of  
26 California (hereinafter referred to as the "Property").

27 2. Defendant NEWMAN REALTORS were the representatives and  
28

1 agents of the seller defendants hereinafter described in connection  
2 with the sale of the real property to plaintiffs in March, 1978.  
3 A copy of the Sales Agreement is attached hereto and identified as  
4 **Exhibit A.**

5 3. Defendants, JOHN WARMERDAM, LAURA WARMERDAM, BURT SERNE,  
6 CORNELIUS VAN WYK, ELIZABETH VAN WYK, DUTCH PRIDE DAIRY, a  
7 California corporation, DUTCH PRIDE DAIRY, a limited partnership,  
8 and DOES 1 - 30, were at all times relevant prior to the March,  
9 1978, sale, the owners, operators and/or partners in ownership of  
10 the real property. Said defendants are hereinafter referred to as  
11 the "Seller Defendants".

12 4. Defendants, JOHN WARMERDAM, LAURA WARMERDAM, BURT SERNE,  
13 CORNELIUS VAN WYK, ELIZABETH VAN WYK, DUTCH PRIDE DAIRY, a  
14 California corporation, DUTCH PRIDE DAIRY, a limited partnership,  
15 and DOES 31 - 60, were at all times relevant, lessees and operators  
16 of a business or businesses located at 7400 Amador Valley  
17 Boulevard, Dublin, Alameda County, California. Said defendants  
18 are hereinafter referred to as "Lessee Defendants".

19 5. Defendants FLETCHER, EGAN & PARADISO, PARADISO CONSTRUC-  
20 TION COMPANY and DOES 61 - 75 were the contractors and installers  
21 or the underground storage tanks described herein.

22 6. Defendants AQUA TERRA TECHNOLOGIES and DOES 76 - 85 were  
23 consulting engineers retained by plaintiffs to engineer and obtain  
24 a clearance of the real property in question from the County of  
25 Alameda, the Regional Water Quality Control Board, the Regional  
26 Fire District and all other interested governmental agencies.

27 7. On or about the times referred to on the attached lease  
28 exhibits, the owner and operator defendants leased the real

1 property and all improvements thereon from plaintiffs as more fully  
2 described in the lease attached hereto as **Exhibit B**.

3 8. Plaintiffs are informed and believe that each of the  
4 seller and lessee defendants at all relevant times had custody and  
5 control of the two underground storage tanks located on the  
6 property which were used as underground storage tanks for the  
7 storage and sale of gasoline.

8 9. In 1990, plaintiffs were required by various governmental  
9 agencies to remove two underground storage tanks on their property.

10 10. In March of 1990, plaintiffs were required by various  
11 governmental agencies to test and monitor the soil and underground  
12 water surrounding said tanks as a result of potential contamination  
13 which had been discovered at the time the tanks were removed in  
14 January, 1990. Plaintiffs have closed and removed the tanks and  
15 are testing and monitoring the real property in conformance with  
16 governmental requirements.

17 11. As a result of the closure and removal of said tanks and  
18 the testing and monitoring of the soil and groundwater, plaintiffs  
19 became aware that the soil and groundwater at or about the location  
20 of the tank may be contaminated by certain substances, including  
21 without limitation, petroleum products, which the government has  
22 determined are hazardous to and threaten the quality of the  
23 environment, including soil and groundwater (hereinafter referred  
24 to as "Hazardous Substances").

25 12. As a result of the existence of said Hazardous Substan-  
26 ces, Plaintiffs have been required by the government to remove  
27 portions of the soil and clean up other portions of the property.  
28 Plaintiffs have also been required to monitor and remediate damage

1 to the groundwater under the property.

2 13. Plaintiffs have suffered economic losses, including  
3 without limitation, costs incurred in removal of the tanks,  
4 testing, analyzing and monitoring the soil and groundwater and in  
5 cleaning up the soil and groundwater to remove and/or reduce the  
6 currently-known contamination. Said contamination has also  
7 adversely affected the monetary value and marketability of the Real  
8 Property in an exact amount currently unknown to Plaintiffs.

9 14. Plaintiffs are unable to determine the extent to which  
10 contamination from Hazardous Substances will continue to be  
11 discovered in the soil and/or groundwater at the Property causing  
12 Plaintiffs to incur future costs in testing, analysis and cleanup  
13 or the degree to which said contamination will prevent or adversely  
14 affect the future use or market value of the Real Property despite  
15 Plaintiffs' best efforts to clean up the Property.

16 15. Plaintiffs have incurred damages in addition to the  
17 aforesaid resulting from Defendants' conduct which include, among  
18 other things, damage to the Property, loss of use and income, loss  
19 of business opportunities, investigative costs, professional fees  
20 and further damage, the exact amount of which is unknown but which  
21 exceeds the sum of \$50,000.

22 16. Beginning in March of 1990, and continuing thereafter,  
23 defendant AQUA TERRA TECHNOLOGIES, for a valuable consideration,  
24 agreed to prepare and direct a plan of soil and groundwater  
25 decontamination. Plaintiffs relied on the representations of  
26 defendant AQUA TERRA TECHNOLOGIES, to their detriment. Defendant  
27 AQUA TERRA TECHNOLOGIES, failed to provide for an overall decon-  
28 tamination plan and failed to obtain clearance by various govern-

1 mental agencies after the initial cleanup work which was completed.  
2 As a result of the negligence and failures of defendant AQUA TERRA  
3 TECHNOLOGIES, plaintiffs have been required to retain the services  
4 of new decontamination specialists and incur additional expenses  
5 and costs pursuant to order of various governmental agencies.

6 17. Prior to Plaintiffs' purchase of the real property,  
7 Plaintiffs are informed and believe and thereon allege that the  
8 underground storage tanks were designed, manufactured, produced,  
9 installed and sold by Defendants FLETCHER, EGAN & PARADISO,  
10 PARADISO CONSTRUCTION COMPANY and DOES 61 - 75.

11 FIRST CAUSE OF ACTION  
12 (Breach of Lease-Waste)  
13 [Against All Lessee Defendants]

14 18. Plaintiffs reallege and incorporate herein by this  
15 reference each and every allegation contained in Paragraphs 1  
16 through 17 as though fully set forth herein.

17 19. Plaintiffs have duly performed all the terms and  
18 conditions of the written Lease to be performed by Plaintiffs.

19 20. Said Lease specifically required Lessees to maintain  
20 said premises and appurtenances, and every part thereof, in good  
21 and sanitary order, condition and repair.

22 21. Plaintiffs are informed and believe that during the term  
23 of Defendants' tenancies, Defendants committed waste by, among  
24 other things, using the underground tank in a manner that released,  
25 or caused to be released, suddenly and accidentally or otherwise,  
26 Hazardous Substances into the soil and/or groundwater of the  
27 Property.

28 22. As a direct and proximate result of Defendants' breaches  
as aforesaid, Plaintiffs have been damaged as set forth above in an

1 amount in excess of \$50,000, the exact amount of which is presently  
2 unknown.

3 23. By the terms of the Lease, Plaintiffs are entitled to  
4 recover reasonable attorneys' fees and costs of suit incurred in  
5 prosecuting this action. By reason of Defendants' breaches,  
6 Plaintiffs have been compelled to incur attorneys' fees and will  
7 continue to incur costs and fees in connection with this action.

8 SECOND CAUSE OF ACTION  
9 (Waste - Treble Damage)  
[Against All Lessee Defendants]

10 24. Plaintiffs reallege and incorporate herein by reference  
11 each and every allegation contained in Paragraphs 1 through 23, as  
12 though fully set forth herein.

13 25. The wrongful conduct of Lessee Defendants as hereinabove  
14 set forth was done knowingly and intentionally and with the  
15 knowledge that the continued use of said underground storage tanks  
16 was causing further contamination to soil and groundwater.  
17 Defendants willfully and maliciously engaged in such conduct with  
18 the knowledge that it would result in substantial injury to the  
19 Property and Plaintiffs' interests therein. Plaintiffs therefore  
20 seek from Defendants treble the amount of damages they have  
21 incurred pursuant to **California Code of Civil Procedure** Section  
22 732.

23 THIRD CAUSE OF ACTION  
24 (Breach of Lease - Failure to Maintain in Good Condition)  
[Against all Lessee Defendants]

25 26. Plaintiffs reallege and incorporate herein by reference  
26 each and every allegation contained in Paragraphs 1 through 25, as  
27 though fully set forth herein.

28 27. The Lease attached to this complaint as Exhibit B

1 obligates the Lessee Defendants to maintain and repair the subject  
2 Property and to keep it in good and sanitary order and repair.

3 28. The Lessee Defendants failed to maintain, repair and  
4 keep the Property in good condition and repair and failed to  
5 surrender possession of the Property at the expiration of the lease  
6 term in as good a condition as it was when received, reasonable  
7 wear and tear excepted.

8 29. As a direct and proximate result of Defendants' breaches  
9 as aforesaid, Plaintiffs have been damaged as set forth above in an  
10 amount in excess of \$50,000, the exact amount of which is unknown  
11 at the present time.

12 FOURTH CAUSE OF ACTION  
13 (Negligence)  
[Against all Defendants]

14 30. Plaintiffs reallege and incorporate herein by reference  
15 each and every allegation contained in Paragraph 1 through 29,  
16 inclusive, as though fully set forth herein.

17 31. Plaintiffs allege that Defendants, and each of them,  
18 have at all times relevant negligently designed, installed,  
19 engineered, used, loaded, transported, formulated, modified,  
20 applied, stored, disposed, discarded, and handled Hazardous  
21 Substances including without limitation petroleum products, in the  
22 course of business in such manner as to allow said substances to  
23 suddenly, accidentally and negligently be released or escape into  
24 the soil and groundwater at the Property and to cause property  
25 damage.

26 32. Plaintiffs allege that the negligent conduct of Defen-  
27 dants, and each of them, as set forth in this complaint, have  
28 proximately caused Plaintiffs to suffer harm and damages and has

1 proximately caused chemical and toxic substance contamination of  
2 Plaintiffs' Property and environment as set forth above. Plain-  
3 tiffs further allege that Defendants, and each of their acts of  
4 negligence and carelessness, as aforesaid, have and will cause  
5 Plaintiffs to incur damages a set forth above.

6 33. Plaintiffs allege that Defendants knew or should have  
7 known that the Hazardous Substances were and are dangerous and  
8 harmful to the environment; that Defendants, and each of them, knew  
9 or should have known the probable and proximate consequences of  
10 their conduct, and that Defendants negligently and/or willfully  
11 failed to reduce or eliminate the probability that these harms  
12 would occur.

13 34. As a direct and proximate result of Defendants' acts,  
14 Plaintiffs have been damaged as set forth above in an amount in  
15 excess of \$50,000, the exact amount of which is unknown at the  
16 present time.

17 FIFTH CAUSE OF ACTION  
18 (Equitable Indemnity)  
[Against All Defendants]

19 35. Plaintiffs reallege and incorporate herein by reference  
20 each and every allegation contained in Paragraphs 1 through 34,  
21 inclusive, as though fully set forth herein.

22 36. Should Plaintiffs be held liable to any person or  
23 governmental entity for damages, property damage, fines, or cleanup  
24 expenses arising from this contamination, Plaintiffs' liability  
25 will be predicated in whole or in part upon the negligence and  
26 carelessness of Defendants, and each of them, as alleged above.  
27 Plaintiffs should therefore be held harmless and indemnified by  
28 Defendants for the costs of the analysis, cleanup and monitoring of



1 the Property. Plaintiffs seek indemnification in whole or in part  
2 based generally upon the principles of equitable and partial  
3 indemnity as well as contribution pursuant to principles of  
4 comparative negligence, comparative fault and apportionment of  
5 liability and damages and upon the provisions of Section 1431.1, et  
6 seq., of the **Civil Code**, otherwise entitled The Fair Responsibility  
7 Act of 1986. Plaintiffs also base their rights to indemnification  
8 upon the **California Water Code** Section 13300 et seq. and **Health &**  
9 **Safety Code** Section 25363.

10 SIXTH CAUSE OF ACTION  
11 (Breach of Lease - Liability Insurance)  
12 [Against all Lessee Defendants]

13 37. Plaintiffs reallege and incorporate herein by reference  
14 each and every allegation contained in Paragraphs 1 through 36,  
15 inclusive, as though fully set forth herein.

16 38. Defendants, and each of them, agreed to take out and  
17 keep in force during the terms of the Lease public liability  
18 insurance insuring the contingent liability of Plaintiffs for and  
19 against damage, including personal injury and property damage.

20 39. Plaintiffs are informed and believe that Defendants  
21 breached said portion of the Lease by failing to obtain public  
22 liability insurance running in favor of plaintiffs.

23 SEVENTH CAUSE OF ACTION  
24 (Breach of Lease - Failure to Comply with Terms)  
25 [Against All Lessee Defendants]

26 40. Plaintiffs reallege and incorporate herein by reference  
27 each and every allegation contained in Paragraphs 1 through 39,  
28 inclusive, as though fully set forth herein.

41. Said Lease specifically prohibited Defendants, and each  
of them, from assigning or in any other way subletting the subject

1 Property without the written consent of Plaintiffs. Plaintiffs are  
2 informed and believe that Defendants, and each of them, breached  
3 the Lease in this regard and leased or otherwise transferred the  
4 beneficial use of the subject Property to other Defendants  
5 resulting in the damages heretofore and hereinafter described.

6 EIGHTH CAUSE OF ACTION  
7 (Declaratory Relief)  
8 [Against All Defendants]

9 42. Plaintiffs reallege and incorporate herein by reference  
10 each and every allegation contained in Paragraphs 1 through 41,  
11 inclusive, as though fully set forth herein.

12 43. As a result of the aforesaid circumstances, an actual  
13 controversy has arisen between Plaintiffs and Defendants in that  
14 Plaintiffs claim that they are entitled to a statutory and  
15 contractual right of indemnification as well as an equitable right  
16 of indemnification either in whole or in part from Defendants for  
17 any and all costs incurred as alleged in this complaint filed by  
18 Plaintiffs and any other Cross-Complaints filed in this action,  
19 including indemnification for attorneys' fees, court costs and  
20 costs of suit. Defendants allege they are not liable for the  
21 costs, expenses and obligations to remove the pollution and  
22 contamination.

23 44. Unless all obligations, rights and duties arising out of  
24 the action from the respective parties herein are determined in  
25 this proceeding and a declaration relative thereto is issued by  
26 this Court, Plaintiffs will be subjected to an unreasonable  
27 economic burden and will sustain irreparable injury.

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NINTH CAUSE OF ACTION

(Breach of Contract - Failure to Comply With Laws)  
[Against All Lessee Defendants, Aqua Terra and Does 76-85]

45. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in Paragraphs 1 through 44, inclusive, as though fully set forth herein.

46. During the Defendants' tenancy at the Property and at exact times unknown to Plaintiffs, Defendants breached their implied covenants of good faith and fair dealing with Plaintiffs by failing to comply with the Laws of the City of Dublin, County of Alameda, State of California, and other governmental agencies by, among other things, failing and refusing to timely obtain the appropriate permits from the City of Dubin for the underground storage tank, by failing to properly test and monitor the underground storage tank pursuant to the ordinances and laws of the City of Dublin, County of Alameda and the State of California, by failing and refusing to clean up the Property, by failing to cooperate fully with Plaintiffs in Plaintiffs' efforts to comply with the requirements and recommendations of governmental agencies regulating, or otherwise involved in, the protection of the environment, and by failing and refusing to indemnify and hold Plaintiffs harmless from Defendants' failure to abide by such laws a required by their Lease and/or the contrat entered into by the parties.

47. As a direct and proximate result of Defendants' breaches as aforesaid, Plaintiffs have been damaged a set forth above in an amount in excess of \$50,000, the exact amount of which is unknown at the present time.

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1                                   TENTH CAUSE OF ACTION

2       (Violation of Law - Interference with Plaintiffs' Ability to  
3       Obtain Relief from the State Water Resources Control Board)  
4       [Against Seller and Lessee Defendants]

5           48. Plaintiffs reallege and incorporate herein by reference  
6       each and every allegation contained in paragraphs 12 through 47,  
7       inclusive, as though fully set forth herein.

8           49. In order to obtain reimbursement in whole or in part for  
9       the damages herein alleged, Plaintiffs have applied to the  
10       Underground Storage Tank Cleanup Fund administered by the State  
11       Water Resources Control Board. Plaintiffs' application for  
12       reimbursement has been denied because of the failure of Defendants,  
13       and each of them, to obtain a permit for operation of the under-  
14       ground storage tanks.

15                                   ELEVENTH CAUSE OF ACTION

16       (Stricter Liability in Tort: Ultra-Hazardous Activity)  
17       [Against All Lessee Defendants]

18           50. Plaintiffs reallege and incorporate herein by reference  
19       each and every allegation contained in Paragraphs 1 thorough 49,  
20       inclusive, as though fully set forth herein.

21           51. Plaintiffs allege that Defendants are strictly liable  
22       for their conduct in using, storing and/or disposing of hazardous  
23       Substances as alleged in this Complaint, as such actions constitute  
24       ultrahazardous activity.

25           52. Plaintiffs allege that they have been damaged as alleged  
26       above, as a result of Defendants' course of conduct by engaging in  
27       the aforesaid ultrahazardous activity.

28           53. Regardless of any degree of care which Defendants may  
     allege, Defendants should be held liable for the damage which  
     Plaintiffs have sustained by virtue of Defendants engaging in the

1 aforesaid ultrahazardous activity as set forth above.

2 TWELFTH CAUSE OF ACTION  
3 (Fraud)

4 [Against All Lessee and Seller Defendants and Newman Realtors]

5 54. Plaintiffs reallege and incorporate herein by reference  
6 each and every allegation contained in Paragraphs 1 through 53,  
7 inclusive, as though fully set forth herein.

8 55. Plaintiffs are informed and believe and thereon allege  
9 that Defendants, and each of them, including Defendant Sellers and  
10 NEWMAN REALTORS, were aware that the underground storage tanks at  
11 the time of the sales transaction heretofore alleged were con-  
12 tinuously discharging gasoline and other contaminants into the soil  
13 and groundwater surrounding said tanks.

14 56. Plaintiffs are informed and believe and thereon allege  
15 that Defendants knew or should have known of the existence of the  
16 ongoing contamination at the time of the sales transaction.

17 57. Defendants did not disclose the existence of the  
18 contamination at the time of the sales transaction.

19 58. At the time of the transaction, Plaintiffs were not  
20 aware of the existence of the contamination as heretofore alleged  
21 and had no reason to know of said contamination.

22 59. The agreed upon purchase price for the Property was the  
23 fair market value of the property free of underground con-  
24 tamination. Had Plaintiffs been informed of the presence of  
25 underground contamination, they would not have purchased the  
26 property.

27 60. Defendants breached the land purchase agreement by  
28 delivering the Property with underground contamination that made  
the Property unsuitable for Plaintiffs' development.

1           61. The cost of remediating the underground contamination is  
2 high enough to make the Plaintiffs' development of the property for  
3 commercial purposes uneconomical. The presence of the contamina-  
4 tion has made the Property unmarketable.

5                           THIRTEENTH CAUSE OF ACTION

6                           (Fraud - Intentional Misrepresentation)

7                           [Against All Lessee and Seller Defendants and Newman Realtors]

8           62. Plaintiffs reallege and incorporate herein by reference  
9 each and every allegation contained in Paragraphs 1 through 61,  
10 inclusive, as though fully set forth herein.

11           63. Defendants omitted, concealed and suppressed the fact  
12 that the underground storage tanks had caused contamination of the  
13 groundwater and soil beneath the Property.

14           64. Defendants knew or should have known that the soil and  
15 water contamination would have been material to Plaintiffs'  
16 decision to purchase the Property.

17           65. Defendants made the misrepresentations and omitted or  
18 concealed the facts alleged above with the intent to defraud  
19 Plaintiffs and to induce Plaintiffs to purchase the Property.  
20 Defendants made the representations without any reasonable grounds  
21 for believing them to be true and Plaintiffs detrimentally relied  
22 on such misrepresentations.

23           66. At the time Plaintiffs purchased the Property, they did  
24 not know the true facts and had no reason to suspect the presence  
25 of underground contamination and had no duty to inspect the  
26 subsurface conditions of the Property.

27           67. Plaintiffs would not have purchased the Property had  
28 they known the true facts alleged above.

          68. As a proximate result of Defendants' fraudulent

1 omissions and representations, Plaintiffs have been damaged in an  
2 amount heretofore and hereinafter alleged.

3 69. The aforementioned conduct of Defendants was an inten-  
4 tional misrepresentation, deceit or concealment of a material fact  
5 known to Defendants with the intention on the part of Defendants to  
6 defraud Plaintiffs and was despicable conduct justifying an award  
7 of exemplary damages pursuant to **Code of Civil Procedure** Section  
8 3294.

9 FOURTEENTH CAUSE OF ACTION  
10 (Trespass)  
11 [Against All Defendants]

12 70. Plaintiffs reallege and incorporate herein by reference  
13 each and every allegation contained in Paragraphs 1 through 69,  
14 inclusive, as though fully set forth herein.

15 71. Plaintiffs allege that Defendants' conduct, including  
16 without limitation, misuse of the underground storage tanks on the  
17 Property and disposal of Hazardous Substances on or about the soil  
18 and groundwater as hereinabove alleged, constitutes wrongful acts  
19 of continuing trespass on the Property.

20 72. Plaintiffs allege that they have been damaged to a  
21 degree unknown, as alleged above, as a result of Defendants'  
22 wrongful trespass on the Property.

23 73. The acts of the Defendants, and each of them, as alleged  
24 above, were willful, wanton, oppressive and in conscious disregard  
25 for Plaintiffs' rights and the safety of others and justify an  
26 award of exemplary and/or punitive damages according to proof and  
27 attorneys' fees pursuant to **Code of Civil Procedure** Section 1021.9.

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1 FIFTEENTH CAUSE OF ACTION  
2 (Negligence Per Se)  
3 [Against All Defendants]

4 74. Plaintiffs reallege and incorporate herein by reference  
5 each and every allegation contained in Paragraphs 1 through 73,  
6 inclusive, as though fully set forth herein.

7 75. Plaintiffs allege that Defendants' failure to comply  
8 with the applicable ordinances and laws of the City of Dublin,  
9 County of Alameda, the State of California and the United States  
10 government, are a breach of Defendants' duties to Plaintiffs, and  
11 constitutes negligence per se. Plaintiffs are in the class of  
12 those intended to be protected by said statutes.

13 76. Plaintiffs have been damaged as hereinabove alleged, as  
14 a result of Defendants' violations of said ordinances and statutes.

15 SIXTEENTH CAUSE OF ACTION  
16 (Nuisance)  
17 [Against All Defendants]

18 77. Plaintiffs reallege and incorporate herein by reference  
19 each and every allegation contained in Paragraphs 1 through 76,  
20 inclusive, as though fully set forth herein.

21 78. Plaintiffs allege that Defendants and their conduct as  
22 alleged above, and the resulting contamination of the Property  
23 substantially interfered with and continues to interfere with  
24 Plaintiffs' use, enjoyment and right of private occupancy of the  
25 Property in that the Hazardous Substances have contaminated, and  
26 continue to contaminate, the soil, subsurface soil layers and  
27 groundwater situated at, under or on the Property. Plaintiffs  
28 accordingly have not been able to freely use and enjoy the Property  
because Defendants' conduct has created a private nuisance.

79. Plaintiffs allege that Defendants' conduct, as above



1 stated, affected and continues to affect the community-at-large in  
2 that Defendants, and each of them, have created a present danger to  
3 the public in the form of Hazardous Substance contamination to the  
4 environment. Plaintiffs have been particularly affected by this  
5 nuisance created by Defendants because of the specific injury to  
6 their property and therefore, have standing to bring an action  
7 against Defendants for public nuisance.

8 80. Plaintiffs have been damaged by the private and public  
9 nuisance created by Defendants as alleged above.

10 SEVENTEENTH CAUSE OF ACTION  
11 (Statutory Contribution)  
12 [Against All Defendants]

13 81. Plaintiffs reallege and incorporate herein by reference  
14 each and every allegation contained in paragraphs 1 through 80,  
15 inclusive, as though fully set forth herein.

16 82. Plaintiffs have been required to take removal and/or  
17 remedial action to respond to the existence of the Hazardous  
18 Substances at the Property and have incurred substantial expen-  
19 ditures in their efforts to take such removal and/or remedial  
20 action.

21 83. Such expenditures amounted to a sum in excess of  
22 \$50,000. Plaintiffs continue to incur expenditures in connection  
23 with such removal or remedial action.

24 84. Plaintiffs have incurred removal and/or remedial costs  
25 in accordance with the **California Health and Safety Code**, the  
26 **California Water Code**, the **Federal CERCLA/RCRA** acts and other  
27 applicable laws. No portion of said costs are attributable to  
28 Plaintiffs' actions. Plaintiffs are informed and believe that said  
costs and expenditures are attributable to Defendants, and each of

1 their actions as aforesaid. As a result, Defendants, and each of  
2 them, have become and are now liable to Plaintiffs for the removal  
3 and/or remedial costs incurred by Plaintiffs.

4 EIGHTEENTH CAUSE OF ACTION  
(Negligent Misrepresentation)

5 [Against All Lessee, Seller Defendants and Newman Realtors]

6 85. Plaintiffs incorporate by reference the allegations of  
7 Paragraphs 1 through 84 as though fully set forth herein.

8 86. On or about the times mentioned above, Defendants, and  
9 each of them, fraudulently and falsely represented to Plaintiffs  
10 that either, A) there were not underground storage tanks on the  
11 property; or, B) that any tanks were secure and safe, were not  
12 leaking, and were not contaminating the soil and groundwater under  
13 the property. The representations made by the Defendants, and each  
14 of them were in fact false. The true facts, on information and  
15 belief, were that each of the subject tanks was, and has been  
16 leaking, leaching, discharging, releasing, or otherwise expelling  
17 chemicals into the soil and groundwater, suddenly and accidentally or  
18 otherwise.

19 87. When the Defendants, and each of them, made these  
20 representations they knew or should have known them to be false,  
21 and the representations were made by the Defendants with the intent  
22 to induce Plaintiffs to act in a manner herein alleged.

23 88. Plaintiffs, at the time these representations were made  
24 by the Defendants, were ignorant of the falsity of Defendants'  
25 representations and believed them to be true. In reliance on these  
26 representations, Plaintiffs were induced to and did purchase the  
27 said property, lease the said property and allow the property to  
28 remain unsecured, thereby potentially spreading the toxic

1 chemicals. Had Plaintiffs known the actual facts, they would not  
2 have taken such actions. Plaintiffs' reliance on Defendants'  
3 representations were justified because Plaintiffs had a contractual  
4 relationship with the Defendants. As a result of the contractual  
5 relationship, the Defendants, and each of them, had an obligation  
6 to deal honestly and fairly with the Plaintiffs and to keep them  
7 informed and advised of the true facts.

8 89. The proximate result of Defendants' negligent mis-  
9 representation and the facts herein alleged, is that Plaintiffs  
10 have been induced to expend enormous sums of money, and time to  
11 cleanup, remediate, and otherwise neutralize toxic chemicals and  
12 hazardous waste emanating from the subject property.

13 90. The aforementioned conduct of the Defendants was a  
14 negligent misrepresentation, deceit, or concealment of a material  
15 fact known to the Defendants with the intention on the part of the  
16 Defendants of thereby depriving the Plaintiffs of property and  
17 legal rights and otherwise causing injury, and was despicable  
18 conduct that subjected and continues to subject the Plaintiffs to  
19 hardship and economic loss as described heretofore.

20 NINETEENTH CAUSE OF ACTION  
21 (Breach of Contract)  
22 [Against Seller Defendants]

23 91. Plaintiffs incorporate by reference the allegations in  
24 Paragraphs 1 through 90, inclusive, as though fully set forth  
25 below.

26 92. Under the property purchase agreement, the Seller  
27 Defendants were obligated to deliver the property to the Plaintiffs  
28 free from contamination, and to have the property subject to no  
liabilities.

1           93. The agreed upon purchase price for the property was the  
2 fair market value of the property free of the underground storage  
3 tanks' contamination.

4           94. The Seller Defendants breached the purchase agreement by  
5 delivering the property with underground storage tanks and  
6 contamination that made the property unsuitable for its intended  
7 purpose.

8           95. The cost of remediating the underground storage tanks  
9 and related contamination is high enough to make Plaintiffs'  
10 operation of this property non-economical. The presence of the  
11 contamination has made the property unmarketable. For these  
12 reasons, Defendants' breach has caused a failure of consideration.

13           96. Plaintiffs have performed all of their obligations under  
14 the purchase agreement or is excused from such obligations.

15           97. Seller Defendants' breach has damaged Plaintiffs in an  
16 amount not yet determined but in excess of this Court's jurisdic-  
17 tion in an amount equal to at least the cost of removing the  
18 underground storage tank and investigating or remediating and  
19 monitoring the contamination, the loss of profits for the use of  
20 the property, the loss of market value of the property and the loss  
21 or delay of the rental value of the property.

22                           TWENTIETH CAUSE OF ACTION  
23                           (Unfair Business Practices)  
24                           [Against All Defendants]

25           98. Plaintiffs reallege and incorporate herein by reference  
26 each and every allegation contained in Paragraphs 1 through 97,  
27 inclusive, and as though fully set forth herein.

28           99. The actions done by the defendants in this case violate,  
among other laws, sections of the California Business and Profes-

1 sions Code, including Sections 17000, et seq., 17082, 17500, 17503,  
2 and constitute unfair competition and other business offenses.

3 100. As a result of this conduct, Plaintiffs have been  
4 damaged in an amount currently unknown but within the jurisdic-  
5 tional limits of this Court.

6 101. In addition, pursuant to **California Business and**  
7 **Professions Code**, Plaintiffs are entitled to treble damages and  
8 attorneys' fees.

9 TWENTY FIRST CAUSE OF ACTION  
10 (Professional Negligence)  
[Against Aqua Terra & Does 76-85]

11 102. Plaintiffs incorporate by reference the allegations in  
12 Paragraphs 1 through 100, inclusive, as though fully set forth  
13 below.

14 103. At all times herein mentioned, Plaintiffs' relied on  
15 Defendant AQUA TERRA TECHNOLOGIES to do all things necessary to  
16 insure that the Property was decontaminated and that the relevant  
17 governmental agencies would sign off the Property leaving Plain-  
18 tiffs with no further liabilities referable to contamination  
19 cleanup. Defendants, including AQUA TERRA TECHNOLOGIES, negli-  
20 gently failed to perform the acts for which they had been engaged  
21 and further negligently performed the cleanup of the subject  
22 property so that Plaintiffs have been required to continue to  
23 expend sums in an amount presently unknown to satisfy government  
24 requirements concerning the Property decontamination.

25 TWENTY-SECOND CAUSE OF ACTION  
26 (Fraud and Intentional Misrepresentation)  
[Against Aqua Terra and Does 76-85]

27 104. Plaintiffs incorporate by reference the allegations in  
28 Paragraphs 1 through 103, inclusive, as though fully set forth

1 below.

2 105. At all times herein mentioned, Defendants AQUA TERRA  
3 TECHNOLOGIES, and DOES 76-85, purposefully omitted, concealed and  
4 suppressed the fact that they had failed to decontaminate the  
5 hazardous waste located at or about the Property as they had  
6 represented to Plaintiffs. Defendants also purposefully mis-  
7 represented to Plaintiffs that the relevant governmental agencies  
8 would sign off the property, leaving Plaintiffs with no further  
9 liabilities referable to contamination cleanup. Defendants made  
10 these representations without any reasonable grounds for believing  
11 them to be true and Plaintiffs' detrimentally relied upon such  
12 misrepresentations.

13 106. Defendants made the above misrepresentations and/or  
14 omitted or concealed the facts alleged above with the intent to  
15 defraud Plaintiffs and to induce Plaintiffs to pay them valuable  
16 consideration.

17 107. At the time Plaintiffs agreed to retain AQUA TERRA  
18 TECHNOLOGIES and DOES 76 - 85 for the purpose of decontaminating  
19 the Property, Plaintiffs did not know the true facts and had no  
20 reason to suspect that Defendants would fail to properly decon-  
21 taminate the Property or that the relevant governmental agencies  
22 would fail to sign off the Property. Plaintiffs had no reason to  
23 suspect the continuing presence of underground contamination and  
24 had no duty to inspect the subsurface conditions of the Property.

25 108. As a proximate result of Defendants' fraudulent  
26 omissions and misrepresentations, Plaintiffs have been damaged in  
27 an amount heretofore and hereinafter alleged.

28 109. The aforementioned conduct of Defendants was an

1 intentional misrepresentation, fraud, deceit or concealment of a  
2 material fact known to Defendants with the intention on the part of  
3 Defendants to defraud Plaintiffs and was despicable conduct  
4 justifying award of exemplary damages pursuant to **Code of Civil**  
5 **Procedure** Section 3294.

6 TWENTY-THIRD CAUSE OF ACTION  
7 (Negligent and Strict Product Liability)  
8 [Against Defendants Fletcher, Egan & Paradiso and Does 61-75]

9 110. Plaintiffs incorporate by reference the allegations in  
10 Paragraphs 1 through 109, inclusive, as though fully set forth  
11 below.

12 111. Plaintiffs are informed and believe and thereon allege  
13 that said underground storage tanks were defectively and negli-  
14 gently designed, modified, manufactured, sold and warranted so as  
15 to fail shortly after installation.

16 112. As a result of the failure of said tanks, the soil and  
17 groundwater contamination as herein alleged occurred causing damage  
18 to plaintiff in excess of \$50,000.

19 WHEREFORE, Plaintiffs pray to judgment against all defen-  
20 dants, as follows:

21 A. For general damages in an amount in excess of \$50,000,  
22 and as according to proof, representing the economic losses  
23 incurred by Plaintiffs alleged herein, including costs of removal  
24 of the tanks, cleanup of oil and groundwater and testing and  
25 monitoring of soil and groundwater, diminished market value, loss  
26 of income and/or business opportunities, property damage and loss  
27 of use of the Property and investigative, administrative and  
28 professional costs incurred;

B. For special damages according to proof;

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C. For treble damages according to proof pursuant to all applicable statutes and laws;

D. For punitive and exemplary damages where applicable in an amount commensurate with the acts complained of and the financial condition of Defendants, and each of them;

E. For a judicial declaration that Defendants are liable to Plaintiffs for all past, present and future costs incurred by Plaintiffs in connection with cleanup of the Hazardous Substance at the subject property;

F. For attorneys' fees and costs of suit incurred herein; and

G. For such other and further relief as this Court deems proper.

DATED: December 29, 1992

McNAMARA, HOUSTON, DODGE, McCLURE & NEY

*Denise Billups-Stone*

By \_\_\_\_\_  
Denise Billups-Stone  
Attorneys for Plaintiffs DODGE



Received from RICHARD E. & JEANNE M. DODGE, California March 24, 1978

for the purchase of one thousand of 100/100 (100,000.00) Dollars evidenced by general escrow

located in Dublin County of Alameda, State of California

and described as follows All of that real property known as 7400 Amador Valley Blvd., Dublin, Calif. and being Assessor's Parcel #941-201-1-4 and being a one story Dutch Pride Dairy Stop.

The total purchase price is ONE HUNDRED THOUSAND DOLLARS (\$ 100,000.00 ) Dollars

The purchase price is to be paid to Seller and a deed delivered in behalf of Buyer on or before 3/28/78, 1978 on the following terms and conditions

a. **TOTAL PURCHASE PRICE TO BE ALL CASH INCLUDING DEPOSIT** \$100,000.00 plus closing costs. THE CLOSING DATE

RICHARD E. & JEANNE DODGE and Dutch Pride Dairy, a Limited Partnership, will execute a 9 year lease at \$1,000.00 per month with two 5 year options. Option lease price to be negotiated when options are due. Lease will contain a clause to have lessee pay all taxes on equipment and Lessor to pay taxes on Real Estate and improvements. Lease to be approved in escrow.

This is contingent on option between Dutch Pride Dairy, a Limited Partnership, and Cornelius and Elizabeth Van Wyk being exercised prior to 4/1/78.

b. **FIXTURES.** The purchase price covers all existing fixtures including, but not limited to, wall-to-wall floor covering, drapes, window coverings and screens, curtain and drapery rods, awnings, trees, shrubs and equipment

c. **TITLE.** Title to said property is to be free of all liens and encumbrances except as mentioned herein, evidenced by a policy of title insurance to be paid for by Buyers. Title is subject to taxes, easements and restrictions of record. Buyer to obtain a preliminary title report issued by Safeco title company. Escrow company shall be Newman Escrow

Seller shall pay any expense in connection with the removal of title defects. If Seller fails to deliver title as herein provided or if the improvements on said property should be materially damaged or destroyed prior to the close of escrow, then, at Buyer's option, the deposit shall be returned to him and this contract shall terminate.

d. **PRORATIONS.** Taxes, premiums on insurance acceptable to Buyer, rents, interest and other charges against said property shall be prorated as of the date of recordation of deed. Any assessments for improvements in construction, recently completed or a lien at close of escrow shall be paid for by SELLER. Security and cleaning deposits, advance rentals, or consideration involving future lease credits shall be credited to Buyer. Buyer and Seller to pay their respective closing costs

e. **WARRANTY.** Seller warrants that grounds and improvements will be maintained, that roof is water-tight and that all appliances and heating, plumbing, sewer, and electrical systems shall be in working order at close of escrow. Seller agrees to permit inspection thereof prior to close of escrow and to pay for any necessary repairs

f. **OCCUPANCY.** Occupancy of said property is to be delivered to Buyer. see lease above

g. **REPRESENTATIONS.** Buyer acknowledges that no representations, guarantees, promises or warranties of any kind or nature have been made by Seller or Seller's agents which are not specified herein, and that all facts or statements upon which Buyer relies in executing this agreement are contained herein.

h. **TIME.** Time is of the essence of this agreement which is binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

i. **SUPPLEMENTS.** The supplements checked Yes below are incorporated as part of this agreement.

- |                          |                                     |                          |                                     |                          |
|--------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| YES                      | NO                                  | YES                      | NO                                  | YES                      |
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j. **DEFAULT.** If Buyer defaults in his performance of the terms and conditions of this agreement, the deposit paid by Buyer shall be retained in trust until the damages suffered by Seller as a result thereof have been ascertained, and upon the determination, said deposit may be applied toward payment of such damages. If any party to this agreement or the Broker(s) named herein shall hereafter institute any action in a court of competent jurisdiction against any other party to this agreement, the prevailing party in said action shall be entitled to a reasonable attorney's fee, in addition to any other judgment of the court. The Broker's commission provided below shall be paid by Seller, provided, however, that if said purchase and sale is not completed because of Buyer's failure to perform his obligations herein, Buyer agrees to pay said commission directly to Broker(s) and Broker(s) shall have the right to institute legal action against Buyer directly for said commission.

k. The undersigned Buyer offers and agrees to buy the above described property on the terms and conditions described herein and acknowledges receipt of a copy hereof.

l. The undersigned Seller accepts the foregoing offer and agrees to sell the property described above on the terms and conditions set forth herein, and agrees to pay below named Broker(s) a commission of Ten percent of the sales price due upon execution of this agreement by Seller

m. The undersigned Seller acknowledges receipt of a copy hereof and authorizes Broker(s) to deliver a duly signed copy to Buyer

n. This offer shall be deemed revoked unless accepted in writing on or before Presentation

EXHIBIT A

be approved in escrow.

This is contingent on option between Dutch Pride Dairy, a Limited Partnership, and Cornelius and Elizabeth Van Wyk being exercised prior to 4/1/78.

- b. **FIXTURES.** The purchase price covers all existing fixtures including, but not limited to, wall-to-wall floor covering, drapes, window coverings and screens, curtain and drapery rods, awnings, trees, shrubs and equipment
- c. **TITLE.** Title to said property is to be free of all liens and encumbrances except as mentioned herein, evidenced by a policy of title insurance to be paid for by Buyers. Title is subject to taxes, easements and restrictions of record. Buyer to obtain a preliminary title report issued by Safeco title company. Escrow company shall be Newman Escrow. Seller shall pay any expense in connection with the removal of title defects. If Seller fails to deliver title as herein provided or if the improvements on said property should be materially damaged or destroyed prior to the close of escrow, then, at Buyer's option, the deposit shall be returned to him and this contract shall terminate.
- d. **PRORATIONS.** Taxes, premiums on insurance acceptable to Buyer, rents, interest and other charges against said property shall be prorated as of the date of recordation of deed. Any assessments for improvements in construction, recently completed or a lien at close of escrow shall be paid for by SELLER. Security and cleaning deposits, advance rentals, or consideration involving future lease credits shall be credited to Buyer. Buyer and Seller to pay their respective closing costs
- e. **WARRANTY.** Seller warrants that grounds and improvements will be maintained, that roof is water-tight, and that all appliances and heating, plumbing, sewer, and electrical systems shall be in working order at close of escrow. Seller agrees to permit inspection thereof prior to close of escrow and to pay for any necessary repairs
- f. **OCCUPANCY.** Occupancy of said property is to be delivered to Buyer see lease above
- g. **REPRESENTATIONS.** Buyer acknowledges that no representations, guarantees, promises or warranties of any kind or nature have been made by Seller or Seller's agents which are not specified herein, and that all facts or statements upon which Buyer relies in executing this agreement are contained herein.
- h. **TIME.** Time is of the essence of this agreement which is binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.
- i. **SUPPLEMENTS.** The supplements checked Yes below are incorporated as part of this agreement.

YES	NO		YES	NO		YES	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Structural Pest Control Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Occupancy Agreement	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Special Studies Zone Disclosure	<input type="checkbox"/>	<input checked="" type="checkbox"/>	VA Amendment	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Flood Insurance Disclosure	<input type="checkbox"/>	<input checked="" type="checkbox"/>	FHA Amendment	<input type="checkbox"/>	

- j. **DEFAULT.** If Buyer defaults in his performance of the terms and conditions of this agreement, the deposit paid by Buyer shall be retained in trust until the damages suffered by Seller as a result thereof have been ascertained, and upon the determination, said deposit may be applied toward payment of such damages. If any party to this agreement or the Broker(s) named herein shall hereafter institute any action in a court of competent jurisdiction against any other party to this agreement, the prevailing party in said action shall be entitled to a reasonable attorney's fee, in addition to any other judgment of the court. The Broker's commission provided below shall be paid by Seller, provided, however, that if said purchase and sale is not completed because of Buyer's failure to perform his obligations herein, Buyer agrees to pay said commission directly to Broker(s) and Broker(s) shall have the right to institute legal action against Buyer directly for said commission
- k. The undersigned Buyer offers and agrees to buy the above described property on the terms and conditions described herein and acknowledges receipt of a copy hereof.
- l. The undersigned Seller accepts the foregoing offer and agrees to sell the property described above on the terms and conditions set forth herein, and agrees to pay below named Broker(s) a commission of Ten percent of the sales price due upon execution of this agreement by Seller.
- m. The undersigned Seller acknowledges receipt of a copy hereof and authorizes Broker(s) to deliver a duly signed copy to Buyer.
- n. This offer shall be deemed revoked unless accepted in writing on or see Presentation

A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE CONSULT YOUR ATTORNEY. If you desire inspection of the physical condition of the property, consult a qualified expert in the appropriate field.

X Richard E. Dodge 3/24/78  
 BUYER DATE

X Jeanne M. Dodge 3/24/78  
 BUYER DATE

Newman Realtors  
 BROKER BY Henry Smith

565 Ygnacio Valley Rd. 933-8400  
 ADDRESS PHONE

c/o Newman Realtors  
BUYER'S ADDRESS PHONE

COMMISSION DIVISION To Newman Realtors

X  
SELLER DATE

Same as above  
BUYER BY

X [Signature] MARCH 25  
 SELLER DATE

Newman Realtors

L E A S E

THIS LEASE executed in duplicate at Antioch, California, on this   /   day of April, 1978, between Lessors, Richard and Jeanne Dodge, 1120 Walker Ave. Walnut Creek, California, and Lessee, John Warmerdam 3810 Delta Fair Blvd., Antioch, California.

IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. DESCRIPTION OF PREMISES: The Lessor hereby leases to Lessee and Lessee hires from Lessor on the terms and conditions hereinafter set forth all of those certain premises with appurtenances as situated in Antioch, California and upon which the business known as "Dutch Pride Drive-In Dairy" is now located and commonly known as 7400 Amador Valley Blvd., Dublin, California.

2. TERMS AND EXTENSION OF LEASE: The term of the within lease shall commence on April 1, 1978 and end March 31, 1987. The Lessee has the option to renew the lease for an additional 2 - 5 year term at the end of this lease. Rent to be negotiated between Lessor and Lessee.

3. RENT: Lessee agrees to pay to Lessor, \$ 1,000 per month without deduction or offset, at such place as may be designated by Lessor. Payable monthly in advance on the first day of each month, commencing April 1, 1978.

4. USE: The premises are leased to Lessee for the purpose of the sale of dairy products and for the sale of similar and related items.

5. ALTERATIONS: Lessee shall not make or suffer to be made any alterations of said premises or any part thereof without the written consent of Lessor first hand and obtained and any additions to, or alterations of, the said premises, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to Lessor. Lessee shall keep the leased premises free from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

6. TAXES. Lessor shall pay all real property taxes and any general or special assessment that may be assessed against leased premises during the term or any extension thereof.

Lessee shall be liable for all taxes levied against personal property and trade fixtures or improvements placed by Lessee in or upon leased premises.

7. TAXES AS ADDITIONAL RENTAL: Lessee shall in addition to all other sums agreed to be paid by him under this lease, pay unto Lessor, upon his demand, the increased property taxes assessed against the leased premises based on the 1977 property tax bill.

8. UTILITIES: Lessee shall pay for all water, gas, heat, light, power, telephone service, and all other service applied to the leased premises.

9. REMOVAL OF TRADE FIXTURES: Provided that Lessee is in full and complete performance of the provisions of this Lease, Lessee may remove all unattached movable furniture, trade fixtures and store equipment installed on the leased premises by Lessee and the same shall be removed by Lessee at the expiration or termination of this Lease or any renewal thereof, provided that the same may be removed without damage to the building. If damage is caused by such removal Lessee agrees to repair such damage at his own costs forthwith.

10. REPAIRS: Lessee shall at his sole costs, keep and maintain said premises and appurtenances, and every part thereof, (excepting exterior walls and roofs which Lessor agrees to repair including, windows and skylights) in good and sanitary order, condition and repair.

11. LIABILITY INSURANCE: Lessee agrees to take out and keep in force during the life hereof, at Lessee's expense, public liability insurance to protect against any liability to the public, incident to the use of or resulting from any accident occurring in or about said premises, the liability under such insurance to be not less than \$ 100,000 for any one person injured or \$300,000 for any one accident or \$20,000 for property damage. These policies shall insure the contingent liability of Lessor and Lessee agrees to furnish to Lessor a certificate of said insurance.

12. ATTORNEY'S FEES: If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party, costs of suit and reasonable attorney's fees which shall be fixed by the court.

13. HOLDING OVER: Any holding over after March 31, 1987, the expiration of said term with the consent of Lessor, shall be construed to be a tenancy from month to month at a rental of \$1000 a month and shall otherwise be on the terms and conditions herein specified so far as applicable.

14. ASSIGNMENT OR SUBLETTING: Lessee shall not assign this Lease, or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person to occupy or use the said premises or any portion thereof without the written consent of Lessor first had and obtained, and a consent to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of Lessor, terminate this Lease. This Lease shall not, nor shall any interest therein be assignable, as to the interest of Lessee by operation of law without the written consent of Lessor.

15. BINDING ON SUCCESSORS: The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns, of all the parties hereon, and all of the parties hereto shall be jointly and severly liably hereunder.

16. TIME: Time is of the essence of this Lease.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease on April 1<sup>st</sup> 1978.

\_\_\_\_\_  
JEANNE DODGE "LESSOR"

\_\_\_\_\_  
RICHARD DODGE "LESSOR"

*John Warmerdam*  
\_\_\_\_\_  
JOHN WARMERDAM "LESSEE"

1 DOUGLAS C. MCCLURE  
State Bar No. 45556  
2 DENISE BILLUPS-SLONE  
State Bar No. 151606  
3 McNAMARA, HOUSTON, DODGE, McCLURE & NEY  
1211 Newell Avenue, Second Floor  
4 Post Office Box 5288  
Walnut Creek, California 94596  
5 Telephone: (510) 939-5330  
Facsimile: (510) 939-0203  
6

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 30 1992

RONALD G. OVERHOLT, Exec. Off./Clerk  
Kathy McKern

7 Attorneys for Plaintiffs  
RICHARD E. DODGE and JEANNE M.  
DODGE

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA  
9

10 RICHARD E. DODGE and JEANNE M. )  
DODGE, )

NO. V. 005703-3

11 Plaintiffs, )

DECLARATION OF COUNSEL  
CERTIFYING VENUE  
(LOCAL RULE 3.4[2])

12 vs. )

13 JOHN WARMERDAM, LAURA )  
14 WARMERDAM, BURT SERNE, )  
CORNELIUS VAN WYK, ELIZABETH )  
15 VAN WYK, DUTCH PRIDE DAIRY, a )  
California corporation, DUTCH )  
16 PRIDE DAIRY, a limited )  
partnership, AQUA TERRA )  
17 TECHNOLOGIES, NEWMAN REALTY, )  
FLETCHER, EGAN & PARADISO, )  
18 PARADISO CONSTRUCTION COMPANY, )  
DOES 1 THROUGH 85, inclusive, )

19 Defendants. )  
20

21  
22 DENISE BILLUPS-SLONE declares:

23 1. I am an attorney duly licensed to practice before all of  
24 the Courts of the State of California and am associated with the  
25 law firm of McNAMARA, HOUSTON, DODGE, McCLURE & NEY, Attorneys of  
26 Record for Plaintiffs.

27 2. The following causes of action, filed by Plaintiffs,  
28 against the above-entitled defendants, arose within the geo-

1 graphical limits of the Eastern Division of the Alameda County  
2 Superior Court:

- 3 a. Breach of Lease - Waste;
- 4 b. Waste - Treble Damages;
- 5 c. Breach of Lease - Failure to Maintain in Good  
6 Condition;
- 7 d. Negligence;
- 8 e. Equitable Indemnity;
- 9 f. Breach of Lease - Liability Insurance;
- 10 g. Breach of Lease - Failure to Comply with Terms;
- 11 h. Declaratory relief;
- 12 i. Breach of Contract - Failure to Comply with Laws;
- 13 j. Violation of Law - Interference with Plaintiffs'  
14 Ability to Obtain Relief from the State Water Resources Board;
- 15 k. Strict Liability in Tort: Ultra-Hazardous Activity;
- 16 l. Fraud;
- 17 m. Fraud - Intentional Misrepresentation;
- 18 n. Trespass;
- 19 o. Negligence Per Se;
- 20 p. Nuisance;
- 21 q. Statutory Contribution;
- 22 r. Negligent Misrepresentation;
- 23 s. Breach of Contract;
- 24 t. Unfair Business Practices;
- 25 u. Professional Negligence;
- 26 v. Fraud and Intentional Misrepresentation;
- 27 w. Negligent and Strict Product Liability.

28 3. The Complaint filed on behalf of Plaintiffs involves the



1 sale, purchase and maintenance of real property located at 7400  
2 Amador Valley Boulevard, in the City of Dublin, County of Alameda,  
3 State of California. I am informed and believe that the Eastern  
4 Division of the Alameda County Superior Court serves the Livermore-  
5 Pleasanton-Dublin Judicial District.

6 I declare under penalty of perjury that the foregoing is true  
7 and correct. Executed this 30th day of December, 1992, at Walnut  
8 Creek, California.

*Denise Billups-Slone*

---

Denise Billups-Slone

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**SUPERIOR COURT  
STATE OF CALIFORNIA  
COUNTY OF ALAMEDA**

**RONALD G. OVERHOLT**  
EXECUTIVE OFFICER  
JURY COMMISSIONER AND  
CLERK OF THE SUPERIOR COURT  
1225 Fallon Street  
Oakland, CA 94612

EXECUTIVE OFFICE, ROOM 209  
Phone: (510) 272-6040

CLERK OF THE COURT, ROOM 105  
Phone: (510) 272-6755

**NOTICE OF CASE RULES**

Special rules have been adopted by the Alameda County Superior Court to implement the Trial Court Delay Reduction Act of 1986 (Government Code Section 68600) which may apply to this case. These rules have been published as Chapter Four: ADMINISTRATION OF CIVIL LITIGATION of the Alameda County Superior Court Local Court Rules and will be strictly enforced by the Court. All counsel will be expected to be familiar with them.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE OF CASE RULES WITH THE COMPLAINT (AND CROSS-COMPLAINT).

The Alameda County Superior Court Local Rules are published by the San Francisco Banner/Daily Journal, the San Francisco Recorder and West Publishing Company.

202-21  
(Revised 3/01/90)