

1 **BLUMENTHAL & MARKHAM**
A Partnership of Professional
2 Law Corporations
Norman B. Blumenthal (State Bar #068687)
3 David Markham (State Bar #071814)
Kyle R. Nordrehaug (State Bar #205975)
4 2255 Calle Clara
La Jolla, California 92037
5 (858)551-1223

6 Attorneys for Plaintiffs

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10

11 SHIRLEY MACY, an individual; PAUL
12 COSHOW, an individual; ROBIN WINTON,
an individual; SABRINA GESE, an
13 individual; OWEN MORRISON, an
individual; DOTTIE GLEN, an individual;
14 JOY ALSOBROOK, an individual; AL
MCGOWEN, an individual; JIM
15 PETERSEN, an individual, ROES 1 through
1,000, Inclusive, on behalf of themselves, on
16 behalf of the general public, and on behalf of
all persons similarly situated,

17 Plaintiffs,

18 v.

19 CITY OF ESCONDIDO; STATE OF
20 CALIFORNIA, and DOES 1 through 100,
Inclusive,

21 Defendant.
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CASE NO. **GIN 015280**

CLASS ACTION

THIRD AMENDED COMPLAINT FOR (1)
DECLARATORY RELIEF AGAINST CITY
OF ESCONDIDO, (2) DECLARATORY
RELIEF AGAINST STATE OF
CALIFORNIA, AND (3) INJUNCTIVE
RELIEF

*[Filed in accordance with Order of the Court
dated September 6, 2002]*

Judge: Hon. Dana M. Sabraw
Dept.: 24

1 Plaintiffs alleges on information and belief, except for those allegations which pertain to the
2 named Plaintiffs or to its attorneys (which are alleged on personal knowledge) as follows:
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4 **I. INTRODUCTION**

5 1. This suit in equity is brought to challenge the constitutionality of using contaminated,
6 industrial grade Hydrofluorosilicic acid to fluoridate the public water supply of the City of Escondido
7 under the due process clause of the Fourteenth Amendment to the United States Constitution, and the
8 Ninth Amendment as incorporated into the Fourteenth Amendment, and also Article I, Section 7(a) of
9 the California Constitution, insofar as these provisions safeguard the fundamental right of the Plaintiffs
10 and other class members to preserve their health from such government-imposed practices as may
11 prejudice or annoy it. The facts and evidence in this case will establish that, in light of current medical
12 and scientific knowledge, artificial fluoridation of the public water supply of the municipality using
13 contaminated, industrial grade hydrofluorosilicic acid will be harmful to the health of the residents of the
14 City of Escondido, including the Plaintiffs. The facts and evidence in this case will further establish that
15 there has been a change in the underlying medical and scientific understanding of fluoridation, which
16 now reveals that the **plan of fluoridation to be implemented by the City does not prevent tooth**
17 **decay**, and therefore will not serve any legitimate government purpose.

18 2. It can now be shown with competent and peer reviewed medical and scientific evidence
19 that artificial fluoridation of public water does **not** reduce tooth decay and that oral ingestion of fluoride
20 compounds has **no** effect on the incidence of dental caries. Further, it can now be proved with
21 reasonable certainty, beyond speculation and guess, and by preponderance of the evidence, including the
22 testimony of experts learned in the field, that artificial fluoridation of public water supplies using
23 contaminated, industrial grade Hydrofluorosilicic acid causes or contributes to the cause of cancer,
24 genetic damage, intolerant reactions, chronic toxicity, dental fluorosis, bone pathology and neurological
25 injury in humans, and that artificial fluoridation of public water supplies aggravates malnutrition, iodine
26 deficiencies, and other existing illnesses. Much of this medical and scientific evidence regarding the
27 efficacy and safety of fluoridation is very recent, having been published subsequent to the enactment of
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1 the state fluoridation legislation.
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3 **II. PARTIES**

4 3. Plaintiff SHIRLEY MACY, is an individual residing at 1035 Morning View Drive,
5 Escondido, California. SHIRLEY MACY is in recovery from cancer, and has a compromised immune
6 system, and as a result, she should not be exposed to fluoride. SHIRLEY MACY is a taxpayer and a
7 resident of Escondido, California, who brings this claim as a citizen suit against the Defendants.
8 SHIRLEY MACY receives her drinking water from the Escondido water district. The mass fluoridation
9 of Escondido's drinking water will result in a reasonable certainty of harm to SHIRLEY MACY. In
10 addition, to limit her intake of fluoridated water and preserve her health, MACY will be required to
11 expend thousands of dollars to install special water purification systems, in advance of the
12 implementation of fluoridation, in order to remove the artificial fluoridation added to the water.

13 4. Plaintiff PAUL COSHOW is an individual residing at 332 Highland Place, Escondido,
14 California. PAUL COSHOW is in recovery from skeletal injuries, and has compromised bone integrity.
15 PAUL COSHOW is a taxpayer and a resident of Escondido, California, who brings this claim as a
16 citizen suit against the Defendants. PAUL COSHOW receives his drinking water from the Escondido
17 water district. The mass fluoridation of Escondido's drinking water will result in a reasonable certainty
18 of harm to PAUL COSHOW. In fact, COSHOW must avoid exposure to fluoride because such
19 exposure will cause further bone pathologies and further delay COSHOW's recovery. In addition, to
20 limit his intake of fluoridated water and preserve his health, COSHOW will be required to expend
21 thousands of dollars to install special water purification systems, in advance of the implementation of
22 fluoridation, in order to remove the artificial fluoridation added to the water.

23 5. Plaintiff ROBIN WINTON, is an individual residing at 1943 Vermont Place, Escondido,
24 California. ROBIN WINTON is a mother with children ages 6, 9, 11, and 18. ROBIN WINTON and
25 her children receive their drinking water from the Escondido water district. ROBIN WINTON is a
26 taxpayer and a resident of Escondido, California, who brings this claim as a citizen suit against the
27 Defendants. The mass fluoridation of Escondido's drinking water will result in a reasonable certainty of
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1 harm to ROBIN WINTON and her family. WINTON and her family have been told by their dentist,
2 Merritt Barber, DDS. to avoid the ingestion of fluoride due to dental concerns, however, the CITY's plan
3 does not permit a resident to obtain drinking water without fluoridation. Thus, to limit her intake of
4 fluoridated water and preserve her families' health, WINTON will be required to expend thousands of
5 dollars to install special water purification systems, in advance of the implementation of fluoridation, in
6 order to remove the artificial fluoridation added to the water.

7 6. Plaintiff SABRINA GESE, is an individual residing at 736 E. Third Avenue, Escondido,
8 California. SABRINA GESE is a mother with children ages 1.5, 3, and 10. SABRINA GESE and her
9 children receive their drinking water from the Escondido water district. SABRINA GESE is a taxpayer
10 and a resident of Escondido, California, who brings this claim as a citizen suit against the Defendants.
11 The mass fluoridation of Escondido's drinking water will result in a reasonable certainty of harm to
12 SABRINA GESE and her family. SABRINA GESE and her family have been told by their dentist,
13 Grant Layton, DDS. to avoid the ingestion of fluoride due to dental concerns and because the
14 concentration of fluoride planned by the CITY will exceed medically accepted recommendations for her
15 youngest daughter, however, the CITY's plan does not permit a resident to obtain drinking water without
16 fluoridation. Thus, to limit her intake of fluoridated water and preserve her families' health, GESE will
17 be required to expend thousands of dollars to install special water purification systems, in advance of the
18 implementation of fluoridation, in order to remove the artificial fluoridation added to the water.

19 7. Plaintiff OWEN MORRISON is an individual residing at 3225 Mary Lane, Escondido,
20 California. OWEN MORRISON is concerned about the constitutional propriety of forced medication
21 without representation. OWEN MORRISON receives his drinking water from the Escondido water
22 district, but does not reside within the city limits of Escondido, and he therefore has no legislative
23 remedy to object to fluoridation of his water. OWEN MORRISON also fears the adverse effects of
24 fluoridation upon his property. OWEN MORRISON is a taxpayer and a resident of the Escondido
25 Water District, who brings this claim as a citizen suit against the Defendants. The mass fluoridation of
26 Escondido's drinking water will result in a reasonable certainty of harm to OWEN MORRISON and his
27 property. In addition, to limit his intake of fluoridated water and preserve his health, MORRISON will
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1 be required to expend thousands of dollars to install special water purification systems, in advance of the
2 implementation of fluoridation, in order to remove the artificial fluoridation added to the water.

3 8. Plaintiff DOTTIE GLEN is an individual residing at 1202 Borden Rd., Escondido,
4 California. DOTTIE GLEN is a type 2 diabetic, and is therefore entitled to the full protection of the
5 Americans with Disabilities Act. DOTTIE GLEN has two children at home in Escondido. DOTTIE
6 GLEN receives her drinking water from the Escondido water district. DOTTIE GLEN is a taxpayer and
7 a resident of Escondido, California, who brings this claim as a citizen suit against the Defendants. The
8 mass fluoridation of Escondido's drinking water will result in a reasonable certainty of harm to DOTTIE
9 GLEN and her family. Because GLEN is a diabetic, the National Institute Diabetes and Digestive
10 Kidney Diseases has recommended that she not consume excessive amounts of fluoride, however, the
11 CITY's plan does not permit GLEN to reduce the level of fluoride in her drinking water to comply with
12 these medical recommendations. In addition, to limit her intake of fluoridated water and preserve her
13 families' health, GLEN will be required to expend thousands of dollars to install special water
14 purification systems, in advance of the implementation of fluoridation, in order to remove the artificial
15 fluoridation added to the water.

16 9. Plaintiff JOY ALSOBROOK is an individual residing at 1150 Conway Drive, Escondido,
17 California. JOY ALSOBROOK is on physician prescribed medication for hypothyroidism. As a result,
18 she should not be exposed to fluoride. JOY ALSOBROOK receives her drinking water from the
19 Escondido water district. JOY ALSOBROOK is a taxpayer and a resident of Escondido, California,
20 who brings this claim as a citizen suit against the Defendants. The mass fluoridation of Escondido's
21 drinking water will result in a reasonable certainty of harm to JOY ALSOBROOK. In addition, to limit
22 her intake of fluoridated water and preserve his health, ALSOBROOK will be required to expend
23 thousands of dollars to install special water purification systems, in advance of the implementation of
24 fluoridation, in order to remove the artificial fluoridation added to the water.

25 10. Plaintiff AL MCGOWEN is an individual residing at 1548 Katella Way, Escondido,
26 California, and also works in Escondido. AL MCGOWEN has a daughter who is allergic to fluoride.
27 AL MCGOWEN and his family receive their drinking water from the Escondido water district. AL
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1 McGOWEN is a taxpayer and a resident of Escondido, California, who brings this claim as a citizen suit
2 against the Defendants. The mass fluoridation of Escondido’s drinking water will result in a reasonable
3 certainty of harm to AL McGOWEN and his family. In particular, McGOWEN’s daughter has been
4 diagnosed as allergic to fluoride, and has been instructed not to ingest fluoridated water. Thus, to limit
5 his families intake of fluoridated water, McGOWEN will be required to expend thousands of dollars to
6 install special water purification systems, in advance of the implementation of fluoridation, in order to
7 remove the artificial fluoridation added to the water.

8 11. Plaintiff JIM PETERSEN is an individual who works in Escondido, California. JIM
9 PETERSEN will be subjected to fluoridated water while he is working, as his business receives its
10 drinking water from the Escondido water district. JIM PETERSEN is a taxpayer and a resident of
11 Escondido, California, who brings this claim as a citizen suit against the Defendants. The mass
12 fluoridation of Escondido’s drinking water will result in a reasonable certainty of harm to JIM
13 PETERSEN. In addition, to limit his intake of fluoridated water, PETERSEN will be required to expend
14 thousands of dollars to install special water purification systems, in advance of the implementation of
15 fluoridation, in order to remove the artificial fluoridation added to the water.

16 12. The true names and capacities of the Plaintiffs suing herein as ROES 1-1,000, inclusive,
17 are presently unknown to Plaintiff who therefore sue the Defendant by such fictitious names. The names
18 of the ROE Plaintiffs are exclusively within the possession of the Defendant. Plaintiff will seek to
19 amend this complaint and include these ROE Plaintiffs’ true names and capacities if and when they are
20 ascertained. These fictitiously-named Plaintiffs are entitled to join in this action since they each have an
21 interest in the subject matter of this lawsuit and/or have been harmed or will be harmed by the conduct
22 complained of herein.

23 13. The Defendant, the CITY OF ESCONDIDO (“CITY”), is a municipal corporation. The
24 CITY has elected to to fluoridate Escondido’s water supply using the harmful substance hydrofluosilicic
25 acid, in an industrial-grade contaminated format and at excessive and harmful levels. It is alleged that
26 the CITY’s decisions in implementing this plan of fluoridation is unconstitutional and in violation of the
27 Plaintiffs’ fundamental rights. The Defendant, STATE OF CALIFORNIA (“STATE”), is a government
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1 entity which enacted legislation requiring the CITY to initiate a plan of fluoridation, and the CITY has
2 claimed that it is being forced to fluoridate the drinking water by the STATE legislation. The STATE's
3 legislation permits the use of contaminated, industrial grade Hydrofluorosilicic acid, and therefore, as
4 applied in this case, the STATE is acting in contravention of the constitutional limitation on the
5 STATE's police powers, in violation of the fundamental rights of the Plaintiffs. The true names and
6 capacities of the Defendants sued herein as DOES 1 through 100, inclusive, are presently unknown to
7 Plaintiff, who therefore names such Defendants by fictitious names. The names of the DOE Defendants
8 are exclusively within the possession of the Defendant. Plaintiff will seek to amend this complaint and
9 include these DOE Defendants' true names and capacities if and when they are ascertained. These
10 fictitiously named Defendants are in some way responsible for the acts and conduct alleged herein, and
11 are therefore appropriately named as Defendants to this action.

12 13 **III. FACTUAL ALLEGATIONS**

14 14. Plaintiffs challenge the CITY's decision and plan to inject contaminated hydrofluosilicic
15 acid into the public drinking water on the grounds that the action is *ultra vires* and unconstitutional
16 under United States Constitution, Amendment IX and XIV, and California Constitution, Art. I, Section
17 7(a). Plaintiffs also challenge the decision by the STATE to force the CITY to fluoridate its drinking
18 water and permitting the use of contaminated, industrial grade Hydrofluorosilicic acid under the STATE
19 legislation. The CITY's plan of fluoridation will result in permanent scarring and damage to the teeth of
20 Escondido residents, and other consumers of public drinking water supplied by the CITY, as illustrated
21 in the pictures attached hereto as Exhibit #1. The increased incidence of permanent dental scarring
22 caused by fluoridation with contaminated, industrial grade Hydrofluorosilicic acid is a generally
23 accepted scientific fact. See Burt et al., Exhibit #4; Riorden et al., Exhibit #5; Warren et al., Exhibit #6.
24 Further, while children are being permanently scarred, the CITY's plan of fluoridation serves no dental
25 health purpose, because recent scientific evidence has proven that the oral ingestion of fluoride
26 compounds has **no** significant effect on the incidence of tooth decay. See Featherstone, Exhibit #7. In
27 addition, scientific evidence will also show that the CITY's plan of fluoridation with contaminated,
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1 industrial grade Hydrofluorosilicic acid will cause or contribute to the cause of cancer, genetic damage,
2 skeletal fluorosis, toxic poisoning, dental fluorosis, birth defects, chemical deficiencies, osteosarcomas,
3 electrochemical dysfunctions, skeletal fracturing, liver dysfunction, kidney dysfunction, gastrointestinal
4 dysfunction, goiter, and renal deficiencies. Finally, fluoridation with contaminated, industrial grade
5 Hydrofluorosilicic acid will result in over exposure, negative synergistic effects with other chemicals,
6 and the aggravation of existing illnesses and disabilities (i.e. diabetes, vitamin or mineral deficiencies,
7 AIDS, and thyroid disorders). Given the substantial and certain harm which results from the CITY's
8 plan to fluoridate with contaminated, industrial grade Hydrofluorosilicic acid, the STATE's and the
9 CITY's actions cannot be constitutionally sustained under either the United States Constitution or the
10 California Constitution.

11 15. Fluorine or the free-fluoride negative anion does not exist separately in nature and must
12 be added to the water supply in conjunction with some other element (i.e. hydrofluosilicic acid,
13 silicofluoride, and sodium fluoride). The various fluorine-bearing compounds differ in their relative
14 toxicity and their bioavailability. The City has selected the most toxic and contaminated form of
15 fluoride, industrial-grade hydrofluosilicic acid created as a byproduct to fertilizer production. The
16 industrial grade hydrofluosilicic acid that the CITY has selected to use in its fluoridation plan, is a
17 byproduct of fertilizer production, which contains lead, arsenic, and other harmful heavy metals.
18 Industrial grade hydrofluosilicic acid, selected by the CITY, has never been approved by the Food and
19 Drug Administration (FDA) as safe and effective or approved for the purpose of reducing tooth decay.
20 Contaminated, industrial grade Hydrofluorosilicic acid is a hazardous waste which cannot be placed into
21 the drinking water under Penal Code §374.8.

22 16. On or about June 6, 2001, the CITY Council directed staff to obtain funds and to begin
23 implementation of water fluoridation. A true and correct copy of this action by the CITY Council is
24 attached hereto as Exhibit #2. At this hearing, a second motion to prohibit the use of hydrofluosilicic
25 acid in the fluoridation plan was rejected by a vote of 3 to 2. No further action by the council is required
26 before the fluoridation plan utilizing contaminated Hydrofluorosilicic acid is implemented. The CITY
27 has executed the contracts necessary to implement the fluoridation using contaminated
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1 Hydrofluorosilicic acid. The equipment selected by the CITY is used solely for fluoridation using
2 hydrofluosilicic acid. This is consistent with the CITY's representation on or about July 25, 2001, at
3 which time the CITY admitted that it had selected industrial-grade hydrofluosilicic acid as the substance
4 to be injected into the drinking water.¹ The CITY's independent decision to use contaminated
5 Hydrofluorosilicic acid is arbitrary and unreasonable, because this substance is untested and substantially
6 more harmful than other types of fluoride additives such as calcium fluoride and sodium fluoride. In
7 addition, the substance selected by the CITY, hydrofluosilicic acid, contains harmful impurities such as
8 lead, arsenic and heavy metals, which will contaminate the drinking water. The unnecessary insertion of
9 these impurities could be avoided by selecting a different type of fluoride. As a result, the CITY's
10 selection of hydrofluosilicic acid poses an unnecessary risk of harm to the Plaintiffs, their families, and
11 the other residents of Escondido. Such an act of police power is an arbitrary and unreasonable
12 infringement of the Plaintiffs fundamental rights, which is prohibited by the 14th Amendment, and
13 should be enjoined by this Court.

14 17. The CITY's decision to inject hydrofluosilicic acid at a level of 6.8mg/L, is also arbitrary
15 and unreasonable, because indisputable science will establish that the level selected by the CITY will
16 over-expose the Plaintiffs and all other consumers.² The level selected by the CITY substantially
17 exceeds the levels established by American Dental Association, American Academy of Pediatrics,
18 American Academy of Pediatric Dentistry, and the Canadian Dental Association recommendations for
19 controlled dose fluoride. This decision is arbitrary and unreasonable because it will subject the Plaintiffs
20 and their families to increased harm and unnecessary over-exposure under the state law. The CITY is
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22 ¹ James Hogland, an employee of the CITY, admitted in response to questions from Council Member
23 Marie Waldron, that the CITY would be using hydrofluosilicic acid as the fluoride product. Mr.
24 Hogland also recently distributed the signed agreements and completed implementation plans and
schedules to members of the CITY Council.

25 ² The CITY intends to deliver 1mg/L of fluoride, however, due to the large amount of waste in the
26 industrial grade hydrofluosilicic acid, a concentration equal to 6.8mg/L of hydrofluosilicic acid must be
27 injected simply to achieve fluoride concentrations of 1mg/L. The remaining 5.8mg/L represents
28 contaminants which are being unnecessarily added to the drinking water to the detriment of the
Plaintiffs.

1 statutorily authorized under state law to vary the level of fluoridation to accommodate the fluoride
2 exposure from all sources. Indisputable science will establish that fluoride exposure from all sources
3 requires a reduction in the level of planned fluoridation. The CITY commissioned a report by Senes Oak
4 Ridge, Inc. to provide an independent analysis of the study reported to the California State Legislature
5 and the City as proof that there is a deficiency in fluoride exposure that is causing increased incidence in
6 tooth decay compared to communities that have fluoride added to their drinking water. A true and
7 correct copy of the Senes Oak Ridge Report is attached hereto as Exhibit #3. The independent review
8 concluded that the California Oral Health Needs Report 1993-4 as reported by Pollick **does not support**
9 **the conclusion that increased fluoridation is warranted.** (Page 1). First, the Senes Review noted that
10 the California study was not scientifically valid, in that the sample of children was not representative and
11 that the study was not performed blindly. (Page 6). Further, the Senes Review noted that there is
12 significant uncertainty in the study because of the failure to account for actual fluoride intake from all
13 sources. Finally, the Senes Review admits that the data as reported in the California study “do not show
14 any increased advantage of fluoridated urban regions over rural or nonfluoridated urban regions. (Page
15 10). Thus, even the CITY’s own report did not support the CITY’s arbitrary and unreasonable decision
16 to fluoridate at 1mg per day. The CITY failed to consider the undeniable exposure from all sources and
17 its own report, and independently decided to fluoridate at an unnecessarily high level. The unnecessary
18 insertion of high levels fluoride could be avoided by the CITY selecting a lower level of fluoridation,
19 consistent with the state laws. As a result, the CITY’s selection of this artificially and scientifically
20 unsupported level of fluoridation poses an unnecessary risk of harm to the Plaintiffs, their families, and
21 the other residents of Escondido. Such an act of police power is an arbitrary and unreasonable
22 infringement of the Plaintiffs fundamental rights, which is prohibited by the 14th Amendment, and
23 should be enjoined by this Court.

24 18. Recently, there have been numerous events that have occurred during the year 2000 that
25 have dramatically changed the landscape of understanding on this issue: a Congressional investigation
26 by the House Committee on Science; a Congressional subcommittee hearing on Arsenic, Radon, and
27 Fluoride in the U.S. Senate; and a cover story in the leading dental journal that clarifies that ingested
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1 fluoride provides **no** significant reduction in the incidence of tooth decay. In light of these events, many
2 cities, like Modesto, Santa Cruz and San Diego are not going forward with fluoridation.

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4 **19. Harm Which Will Result From The Injection of Hydrofluosilicic Acid Into Escondido's**

5 **Drinking Water:** The harm resulting to humans from the ingestion of hydrofluosilicic acid is well
6 documented. The Plaintiffs and their families will be unnecessarily and unreasonably be exposed to
7 harm from hydrofluosilicic acid in the drinking water, which is an infringement of their fundamental
8 rights. Because of the CITY's decision to use hydrofluosilicic acid, the Plaintiffs' children will suffer
9 from dental mottling or fluorosis (permanent scarring of the teeth). Studies have shown that the use
10 hydrofluosilicic acid will result in a greater incidence of harm, which can be avoided by the use of other
11 forms of fluoride.

12 20. In addition, the Plaintiffs will be subjected to an unreasonable and increased risk of harm
13 from the use of hydrofluosilicic acid by the CITY, because hydrofluosilicic acid contains harmful
14 impurities like arsenic, and lead. Further, studies have linked hydrofluosilicic acid to harmful ailments,
15 like cancer, genetic damage, skeletal fluorosis, toxic poisoning, dental fluorosis, birth defects, chemical
16 deficiencies, osteosarcomas, electrochemical dysfunctions, skeletal fracturing, liver dysfunction, kidney
17 dysfunction, gastrointestinal dysfunction, goiter, and renal deficiencies. The science in this case will
18 show that the CITY's decision to use hydrofluosilicic acid, at the levels selected by the CITY, after
19 constant exposure, will cause or contribute to the cause of these ailments in the Plaintiffs, their families,
20 and other class members.

21 21. In addition, the Plaintiffs will be subjected to an unreasonable and increased risk of harm
22 from the use of hydrofluosilicic acid by the CITY, because the Plaintiffs are susceptible to harm from
23 fluoride under the 1993 Toxicological Profile promulgated by the U.S. Department of Health & Human
24 Services (Exhibit #8 hereto). Because fluoride is excreted through the kidney, people with renal
25 insufficiency would have impaired renal clearance. Poor nutrition increases the incidence and severity of
26 dental fluorosis and skeletal fluorosis. Because of the role of calcium in bone formation, calcium
27 deficiency would be expected to increase susceptibility to effects of fluoride. Fluoride inhibits glycolysis
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1 by inhibiting enolase. It also inhibits energy metabolism through the tricarboxylic acid cycle by blocking
2 the entry of pyruvate and fatty acids and by inhibiting succinic dehydrogenase. In addition, people who
3 drink abnormally large quantities of water, must also drink non-fluoridated water to avoid over-
4 exposure.

5 22. **Total Exposure:** By considering total exposure under the Safe Drinking Water Act, it
6 becomes clear that in this case, fluoridation of Escondido's water supply is not reasonably related to the
7 CITY's stated intent to reduce tooth decay by providing a total from all sources of 1 mg of fluoride per
8 day to a child, and that the levels selected by the CITY are unreasonably excessive. Scientific evidence
9 and studies show that there is no deficiency in fluoride exposure and that the original water fluoridation
10 goal of delivering 1 mg of fluoride to a child per day is already achieved and surpassed in non
11 fluoridated communities when considering exposure from all sources. The 1991 Review of Fluoride
12 Benefits and Risks by the U.S. Public Health Service, Dept of Health and Human Services estimates
13 daily intake of children in a non fluoridated city is 0.95 to 2.3. mg/day; in a fluoridated city, 0.90 to 3.6
14 mg/day. Estimated daily intake of adults in a non fluoridated city is 0.88 to 2.2 mg/day and in a
15 fluoridated city 1.58 to 6.6 mg/day. Scientific evidence establishes that food and juice already contains
16 substantial amounts of fluoride, and this total exposure was never considered by the CITY when it set
17 the concentration levels. As a result, the CITY's decision will result in the over-exposure of the
18 Plaintiffs' and their families to fluoride.

19 23. The CITY's plan of fluoridation is not reasonably related to the prevention of tooth decay
20 because the oral ingestion of hydrofluosilicic acid has **no effect on the incidence of dental cavities**.
21 Citing more than 20 years of peer-reviewed published studies that show that any effect of fluoride on
22 tooth decay is post-eruptive, meaning only after the tooth is formed and as a result of fluoride being
23 applied directly to the surface of the tooth rather than ingested, the July 2000, cover story of the Journal
24 of the American Dental Association reminded every dentist in America, "Importantly, this means that
25 fluoride incorporated during tooth mineral development at normal levels of 20 to 100 ppm (even in areas
26 that have fluoridated drinking water or with the use of fluoride supplements) does not measurably alter
27 the acid solubility of the mineral [enamel]," concludes author John Featherstone, M.Sc., Ph.D., Professor
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1 and Chair, Department of Preventive and Restorative Dental Sciences and Department of Dental Public
2 Health and Hygiene, University of California, San Francisco, "Even when the outer enamel has higher
3 fluoride levels, such as 1000 ppm, it does not measurably withstand acid-induced dissolution any better
4 than enamel with lower levels of fluoride." (Exhibit #7, at 890). To date, there has been no scientifically
5 accepted rebuttal of the conclusions published by Featherstone in the Journal of the ADA.

6 24. **No Legitimate Purpose to Fluoridation Using Contaminated Hydrofluorosilicic**

7 **Acid:** In a presentation to the National Institute of Health and the Center for Disease Control in 1999, as
8 well as publications in other peer-reviewed scientific journals (Exhibit #9), Featherstone reports that the
9 culmination of scientific evidence shows that, "The level of fluoride incorporated into dental mineral by
10 systemic ingestion is insufficient to play a significant role in caries prevention." Featherstone concludes,
11 "Again, as described above, the concentration of fluoride in dental enamel and dentin as provided by
12 fluoridation of drinking water or by natural levels at about 1ppm is insufficient to provide protection
13 against caries... The role of systemically incorporated fluoride is of very limited value." (Exhibit #9, at
14 37).

15 25. In the CDC's Morbidity and Mortality Weekly Report of October 22, 1999, the CDC
16 incorporates Featherstone's description of the physiological mechanism by which fluoride acts topically,
17 rather than systemically, and concludes, "Laboratory and epidemiological research suggests that fluoride
18 prevents dental caries predominately after eruption of the tooth into the mouth, and its actions primarily
19 are topical for both adults and children." (Exhibit #10, p 937). More recently, in the CDC's Morbidity
20 and Mortality Weekly Report (MMWR) *Recommendations and Reports* dated August 17, 2001, the
21 CDC once again clarifies that **ingestion** of fluoride provides no significant reduction in the incidence of
22 tooth decay: The Report establishes, "The prevalence of dental caries in a population is **not** inversely
23 related to the concentration of fluoride in enamel, and a higher concentration of enamel fluoride is **not**
24 necessarily more efficacious in preventing dental caries." MMWR August 17, 2001 / 50(RR14), at 4.
25 (Emphasis added). (Exhibit #10). In fact, the guidelines set forth in the CDC report establish that
26 children receiving their water from the CITY will be over-exposed under the CITY's current plan.
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1 MMWR August 17, 2001 / 50(RR14), at 8.³

2 26. The CITY's plan of fluoridation using contaminated Hydrofluorosilicic acid is not
3 reasonably related to the prevention of tooth decay because the most recent epidemiological studies
4 (studies of man) show that there is no correlation between water fluoridation with contaminated
5 Hydrofluorosilicic acid and reduction in tooth decay. In the 1998 review of the fifty year experience of
6 the two original New York cities chosen for comparison in tooth decay rates (Newburgh, NY was
7 fluoridated while Kingston, N.Y. remains non fluoridated to this day), Kumar J.V. et al. report, "Among
8 7-14 year old lifelong residents of fluoridated Newburgh, New York, mean number of decayed, missing
9 and filled permanent teeth exceeded that of non fluoridated Kingston, New York." (Exhibit #11).

10 27. This recent medical and scientific understanding establishes that the decision by the CITY
11 to utilize contaminated hydrofluosilicic acid, at the selected concentrations, is not reasonably related to
12 the prevention of dental cavities. This change in scientific and medical evidence about the efficacy and
13 safety of fluoridation with contaminated Hydrofluorosilicic acid establishes that, in light of the current
14 state of knowledge, the fluoridation of Escondido's drinking water with contaminated Hydrofluorosilicic
15 acid is not reasonably related to the promotion of public health.

16 28. **Dental Fluorosis:** Scientific evidence proves that the addition of contaminated
17 Hydrofluorosilicic acid to drinking water is proven to cause permanent damage to the teeth of an ever-
18 increasing number of children which only a dentist can repair at great expense. (*See Exhibit #1* for
19 illustrations of the harm). This harm will be suffered by the Plaintiffs' children, and all other similarly
20 situated class members **There is no scientific dispute that contaminated Hydrofluorosilicic acid**
21 **exposures cause dental fluorosis.** The condition can not be effected by topical application of fluoride to
22 the tooth. Prior to water fluoridation using contaminated Hydrofluorosilicic acid the number of
23 individuals estimated to display the visible signs of dental fluorosis was less than 1% of the nation. In
24

25
26 ³ Importantly, it must be noted that the CDC report failed to address the following issues with respect
27 to drinking water fluoridation: (1) the CDC didn't assess the risk of fluoridation, (2) the CDC never
28 distinguished between fluoride products, including toxicity, contaminants and bioavailability, and (3) the
CDC never identified a permissible range of total fluoride exposure.

1 their 1997 report on the data collected by the National Institute of Dental Research during a 1986-87
2 survey of U.S. schoolchildren, Heller, K E et al. showed children age 7 to 17 with a single continuous
3 residence (n=15,532) in 84 U.S. cities were examined for dental fluorosis. Of those children **residing in**
4 **fluoridated** communities, 29.9% were found to have dental fluorosis of at least two teeth and an
5 additional 36.5% were found to have dental fluorosis of at least one tooth, **for a total of 66.4%**. (Exhibit
6 #12). According to the report, the incidence of serious fluorosis (two teeth or more) in fluoridated
7 communities was **more than double** that of non-fluoridated communities.

8 29. In The Effects of a Break in Water Fluoridation on the Development of Dental Caries and
9 Fluorosis, published by Burt B A et al. in year 2000, it was concluded that while the 11 month break in
10 fluoridation of Durham, North Carolina had little effect on caries, dental fluorosis is sensitive to even
11 small changes in fluoride exposure from drinking water, and this sensitivity is greater at 1 to 3 years of
12 age than at 4 or 5 years. In this study, the overall prevalence of fluorosis was 44%. (Exhibit #4).

13 30. This certain increase of dental fluorosis in the Escondido's children, including the
14 children of the Plaintiffs, which will result from the CITY's conduct is the physical manifestation of
15 toxic poisoning caused by the injection of contaminated Hydrofluorosilicic acid. The CITY's plan of
16 fluoridation utilizing contaminated Hydrofluorosilicic acid will predictably cause more dental and
17 physiological harm, than artificial fluoridation could possibly hope to prevent.

18 31. **Hydrofluosilicic Acid Has Never Been Approved by The FDA:** The CITY's plan of
19 fluoridation is not reasonably related to the prevention of tooth decay because health claims are made by
20 the CITY for the substance hydrofluorosilicic acid which have never been approved by the Food and
21 Drug Administration. Hydrofluorosilicic acid has never been evaluated and approved by the Food and
22 Drug Administration for safety and effectiveness for the purpose of reducing tooth decay through such
23 ingestion. Hydrofluosilicic acid is otherwise identified as a Class I hazardous waste that can not be
24 dumped in the ocean or a stream or lake or buried in the ground, nor can it be given away because of its
25 toxicity rating. It is neither pharmaceutical grade, nor food grade, nor natural to any environment. It is
26 separated from phosphate ore by exposure to a sulfuric acid wash, and captured in scrubber systems by
27 spraying water on the resulting gas to prevent airborne emissions. It is approximately 23% in
28

1 concentration with the remaining 77% consisting of **industrial wastewater with contaminants such as**
2 **lead, arsenic, cadmium, mercury, etc...**, depending on the composition of the phosphate ore being
3 mined at the time. Thus, The CITY Council has unilaterally decided to inject a non-approved drug into
4 the faucets of every resident of Escondido.

5 32. Under the CITY's proposed plan of injecting artificial fluoride compounds into
6 Escondido's drinking water, untested and unnecessarily toxic forms of fluorine will be used, containing
7 contaminants not present in the reagent or pharmaceutical grade fluoride used in testing, and not
8 presenting the proportional content of calcium found in "naturally" fluoridated water sources. Further,
9 as noted herein, fluoride ingestion negatively affects calcium deficiencies, thus the absence of calcium in
10 artificial fluoridating agents that do not replicate the proportional calcium found in source water
11 increases the harmful and deleterious effects of dental fluorosis and fluoride poisoning. Instead, the
12 CITY chose to use industrial grade hydrofluorosilicic acid, which is contaminated with heavy metals,
13 like lead, in violation of California law and which have never been tested for safety or efficacy.⁴

14 _____
15 ⁴ The Maximum Contaminant Levels (MCL) of such heavy metal in drinking water are established by
16 California and U.S EPA considering science and practical processes and costs. Public Health Goals for
17 acutely toxic contaminants are established by Office of Environmental Health Hazards Assessment.
California Health and Safety Code Section 116365 provides in pertinent part:

18 116365. (a) The department shall adopt primary drinking water standards for contaminants in drinking
19 water that are based upon the criteria set forth in subdivision (b) and shall not be less stringent than the
20 national primary drinking water standards adopted by the United States Environmental Protection
21 Agency. Each primary drinking water standard adopted by the department shall be set at a level that is as
22 close as feasible to the corresponding public health goal placing primary emphasis on the protection of
23 public health, and that, to the extent technologically and economically feasible meets all of the
24 following:

- 25 (1) With respect to acutely toxic substances, avoids any known or anticipated adverse effects on public
26 health with an adequate margin of safety, and
27 (2) With respect to carcinogens, or any substances that may cause chronic disease, avoids any significant
28 risk to public health.
(1) Each public health goal shall be set for acutely toxic substances, at a level at which no known or
anticipated adverse effects on health will occur, with an adequate margin of safety.
(2) Each public health goal shall be set for a carcinogen or other substance that may cause chronic
disease at a level that, based upon currently available data, does not pose any significant risk to health.
(3) To the extent the information is available, the office shall consider possible synergistic effects
resulting from exposure to, or interaction with, two or more contaminants.

1 33. The CITY’s decision to use industrial grade hydrofluosilicic acid exposes the public to
2 unnecessary heath risks without regard to the comparative toxicity and bioavailability of other fluoride
3 compounds. Calcium fluoride is a natural partnering of the two elements and, other than in conditions of
4 soil erosion or disruption that presents the separate elements in “naturally” fluoridated water, is
5 relatively insoluble and non-bioavailable. Hydrofluorosilicic acid is classified as “extremely toxic,” as
6 compared to sodium fluoride. As a result, the CITY has arbitrarily chosen to use methods of
7 fluoridation which present an unnecessary toxic risk. Accepted scientific studies show that the type of
8 fluoridation chosen by the CITY (industrial grade hydrofluorosilicic acid) is 20 times more toxic than
9 fluoride found naturally in water as a result of disruption in calcium fluoride in the soil, and contains
10 contaminants which are not present in other forms of available fluoride.

11 34. The unnecessary toxicity present in the CITY’s decision to use industrial grade
12 Hydrofluorosilicic acid is further exacerbated by yet another disturbing fact. **There have been no**

13 _____
14 (4) The office shall consider the effect of the contaminants upon subgroups that comprise a meaningful
15 portion of the general population, including, but not limited to, infants, children, pregnant women, the
16 elderly, individuals with a history of serious illness, or other subpopulations, that are identifiable as
17 being at greater risk of adverse health effects due to exposure to contaminants in drinking water than the
18 general population.

19 (5) The office shall consider the contaminant exposure and bodyburden levels that alter physiological
20 function or structure in a manner that may significantly increase the risk of illness.

21 (6) If the office finds that the currently available scientific data is insufficient to determine the amount of
22 a contaminant that creates no significant risk to public health, the public health goal shall be set at a level
23 that is protective of public health with an adequate margin of safety, based exclusively on health
24 considerations and factoring in the considerations set forth in paragraphs (1) to(5), inclusive, and
25 paragraph (7), and using the most current principles, practices, and methods used by public health
26 professionals who are experienced practitioners in the fields of epidemiology, risk assessment, and
27 toxicology. However, if adequate scientific evidence demonstrates that a safe dose response threshold
28 for a contaminant exists, then the public health goal should be set at that threshold. The department may
set the public health goal at zero if necessary to satisfy the requirements of this paragraph.

(7) The office shall consider exposure to contaminants in media other than drinking water, including, but
not limited to, exposures in food, in the ambient and indoor air, and the resulting bodyburden.

(d) Notwithstanding any other provision of this section, any maximum contaminant level in effect on
August 22, 1995, may be amended by the department to make the level more stringent pursuant to this
section. However, the department may only amend a maximum contaminant level to make it less
stringent if the department shows clear and convincing evidence that the maximum contaminant level
should be made less stringent and the amendment is made consistent with this section.

1 **scientific studies analyzing the toxicity of industrial grade Hydrofluorosilicic acid injected into the**
2 **water supply.** All scientific studies on the adverse effects of water fluoridation in humans have used
3 reagent or pharmaceutical grade sodium fluoride. Thus, the CITY has chosen to fluoridate with
4 chemicals for which there are no chronic studies.

5 35. The EPA has conceded that the form of fluoride chosen by the CITY is untested. In a
6 letter by Fox J C, Asst. Admin., U.S. EPA. to Ken Calvert, Chairman, Subcommittee on Energy and
7 The Environment, Committee on Science. U.S. House of Representatives, Washington, DC. June 23,
8 1999, the EPA wrote "In collecting data for a fact sheet, EPA was **not** able to identify chronic studies for
9 these [fluoridation] chemicals." (Exhibit #13).

10 36. Arsenic is the most common contaminant found in hydrofluosilicic acid. Arsenic levels
11 vary considerably in the acid, with after-dilution levels reaching as high as 1.66 parts per billion in the
12 water. (Exhibit #14). According to data from the National Academy of Sciences, drinking water
13 containing 0.5 parts per billion arsenic presents a 1 in 10,000 risk of developing cancer. A study from
14 Finland (Kurtio, et al, 1999) found that people drinking water with 0.1 to 0.5 parts per billion arsenic
15 had a 50% greater risk of developing bladder cancer than people drinking water with less than 0.1 ppb.
16 The National Resources Defense Council is currently pushing for the EPA to set a new Maximum
17 Contaminant Level for arsenic of 3 ppb. but according to NRDC, "even a relatively strict arsenic
18 standard of 3 ppb could pose a fatal cancer risk several times higher than EPA has traditionally accepted
19 in drinking water."

20 37. In more than 400,000 samples of children's blood taken by the states of Massachusetts
21 and New York, Masters & Coplan found evidence showing **increased levels of lead found in**
22 **children's blood when the untested hazardous wastes from the phosphate fertilizer industry**
23 **(Hydrofluosilicic acid), which is to be used in the CITY's fluoridation plan, are present in public**
24 **water systems.** As a result, the Plaintiffs and their children will suffer from increased rates of lead in
25 their blood based upon the CITY's decision to use **industrial grade Hydrofluosilicic acid.**

26 38. Apparently, in deciding that fluoridation of Escondido's water would present no harm to
27 the residents of Escondido, the CITY has chosen to rely on studies with reagent or laboratory grade
28

1 fluoride, but then implemented the CITY's plan of fluoridation using untested and unequivocally more
2 toxic fluoride compounds. The reason is simple, the untested and toxic fluoride compounds are by-
3 products of the fertilizer industry, supplied at low cost because the industry would otherwise have to pay
4 approximately \$1.40 per gallon for neutralizing the toxic waste at the *highest* rated waste facility. Such
5 waste cannot be deposited into the drinking water supply under Penal Code §374.8

6 39. The fluoridation of the CITY's water with contaminated Hydrofluorosilicic acid
7 permitted under the STATE legislation is neither reasonably related to governmental interests nor
8 narrowly tailored to limit incursion into the fundamental rights of the Plaintiffs and the citizens of
9 Escondido. Fluoride or other methods of reducing tooth decay could be delivered by less intrusive and
10 dangerous methods, which would not pose a reasonable certainty of harm. It can be proved through
11 scientific and medical evidence that the fluoridation required by the STATE, as applied in this case with
12 the use of contaminated Hydrofluorosilicic acid, will cause or contribute to the cause of cancer, impaired
13 electrochemical functions, bone pathology, aggravated illnesses, harm to susceptible individuals, and a
14 negative synergistic effect with other chemicals.

15 40. There is an abundance of scientific and medical evidence establishing the **mutagenic and**
16 **carcinogenic effects of artificial fluoridation** of public water supplies using contaminated
17 Hydrofluorosilicic acid. Dean Burk et al., Lord Jauncey and Justice Flaherty: Opposing views of the
18 Flouridation-Cancer Link, 17 Fluoride 63 (1984); Statement of Dean Burk, National Cancer Institute,
19 before the U.S. Environmental Protection Agency Hearing on EPA's Proposed Rulemaking on Fluoride
20 National Primary Drinking Water Regulations. June 17-18, 1985, as published in National Fluoridation
21 News B Fall 1985; and A Current Restatement and Continuing Reappraisal Concerning Demographic
22 Variables in American Time-Trend Studies on Water Fluoridation and Human Cancer, 61 Proceedings
23 Pa. Acad. Sci. 138 (1988) (Exhibits 15, 16, and 17): These papers recapitulate massive epidemiological
24 data among 20 large American central cities from 1940 to 1968, involving over 18 million people
25 according to the 1960 census, including a long base line to control for known and unknown variables,
26 and setting forth detailed adjustments by conventional methods for age. Race and sex, and also for
27 changes in population size. The use of observed cancer death rates show and association on the order of
28

1 300 excess cancers deaths per million persons exposed within 15-20 years after initiation of artificial
2 fluoridation of public water supplies. Extrapolated to the United States, this association works out to as
3 many as 40,000 excess cancer deaths per year attributable to artificial fluoridation of public water
4 supplies (more than 5,000 in California). These papers also show that the National Cancer Institute of
5 the United States attempted to conceal the danger by running an adjustment of the observed cancer death
6 rates which omitted all available and pertinent data as derived by accepted procedures in epidemiology,
7 and that, when such data was included and the same adjustment was recalculated, an association was
8 revealed on the order of 200 excess cancer deaths per million persons exposed within 15-20 years after
9 initiation of artificial fluoridation of public water supplies. Extrapolated to the United States, this
10 association works out to over 20,000 excess cancer deaths per year attributable to artificial fluoridation.
11 Burk et al. also shows that the observed cancer death rates are probability closer to reality and
12 demonstrate that the adjusted cancer death rates significantly understate the size of the casualty
13 associated with fluoridation. (Exhibits 15, 16, and 17). There is an abundance of scientific and medical
14 evidence establishing that the use of contaminated Hydrofluorosilicic acid in the drinking water causes
15 or contributes to the cause of cancer:

- 16 A. **Exhibit 18**, Alfred Taylor and Nell Taylor, Effect of Sodium Fluoride on Tumor Growth,
17 119 Proceedings Soc. Exptl. Biol. & Med. 252 (1965): As against control mice drinking
18 distilled water, an average increase of 15% in growth in implanted tumors was observed
19 for mice drinking water containing water containing fluoride at 1 ppm introduced as NaF,
20 and an average increase of 27% for mice drinking water containing fluoride at 2 ppm
21 introduced as NaF.
- 22 B. **Exhibit 19**, Jones et al., in “Sodium Fluoride Promotes Morphological Transformation of
23 Syrian Hamster Embryo Cells,” *Carcinogenesis*, (1988) vol.9, no.12, pp.2279-2284,
24 found that the low-level long term characteristics of human exposure to fluoride are
25 consistent with the conditions for promotion of tumor development in mouse skin by
26 some classes of chemicals and that sodium fluoride like other tumor promoters can
27 interfere with biochemical processes and control of cellular growth and function. After
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1 confirming by blind study that the finding that sodium fluoride induces morphological
2 transformation in animal embryo cells, Jones investigated other mechanisms by which
3 fluoride could influence the process of cancer development, e.g., as a carcinogen or tumor
4 promoter, finding that sodium fluoride can promote/enhance the frequency of
5 morphologically transformed cell clones previously initiated with either procarcinogens
6 or direct- acting agents even when sodium fluoride treatment was delayed for days after
7 carcinogen treatment.

- 8 C. **Exhibit 20**, Aly Mohamed and Mary Chandler, Cytological Effects of Sodium Fluoride
9 on Mice, 15 Fluoride 110 (1982): As against controls drinking distilled water, male mice
10 drinking water containing fluoride from 1 to 200 ppm introduced as NaF
11 suffered extensive breaking of chromosomes and other chromosomal abnormalities in
12 bone marrow and testes.
- 13 D. **Exhibit 21**, Takeki Tsutsui et al., Cytotoxicity, Crhromosome aberrations, and
14 Unsheduled DNA Synthesis in Cultured Human Diploit Frbroblasts Induced by Sodcium
15 Fluoride, 139 Mutation Res. 193 (1984): The results observed suggest that sodium
16 fluoride causes DNA damage in human diploid fibroblasts in culture.
- 17 E. **Exhibit 22**, Takeki Tsutsui et al., Sodium Fluoride Induced Morphological and
18 Neoplastic Transformation, Chromosome Aberrations, Sister Chromatid Exchanges, and
19 Unsheduled DNA Synthesis in Cultured Syrian Hamster Embryo Cells, 44 Cancer Res.
20 938 (1984): The results observed indicate that sodium fluoride is genotoxic and capable
21 of inducing neoplastic transformation of Syrian hamster embryo cells in culture.
- 22 F. **Exhibits 23 and 24**, Perry Cohn, A Brief Report on the Association of Drinking Water
23 and the Indicidence of Osteosarcoma Among White Males, New Jersey Department of
24 Health, 1992, and John Yiamouyiannis, Fluoridation and Cancer: the Biology and
25 Epidemiology of Bone and Oral Cancer Related to Fluoridation, 26 Fluoride 83 (1993):
26 these epidemiological studies show a positive relationship between water fluoridation and
27 osteosarcomas of the bone in men, thus confirming the results observed by John Bucher
28

1 et al.

2
3 41. There is an abundance of scientific and medical evidence establishing the **negative effect**
4 **of fluoridation with contaminated Hydrofluorosilicic acid on electrochemical and brain function.**

5 In 1994 Spittle B. provided a *Psychopharmacology* review of fluoride. Possible mechanisms whereby
6 fluoride could affect brain function include influencing calcium currents, altering enzyme configuration
7 by forming strong hydrogen bonds with amide groups, inhibiting cortical adenylyl cyclase activity and
8 increasing phosphoinositide hydrolysis. (Exhibit #25). Other recent studies have shown that this
9 electrochemical effect of fluoride can reduce IQ, cause behavioral deficits, aluminofluoride complexes,
10 decreased brain protein, neural injury, and other brain disfunctions.

11 42. There is an abundance of scientific and medical evidence establishing the **negative effect**
12 **of artificial fluoridation** of public water supplies using contaminated Hydrofluorosilicic acid on the
13 skeleton and bones. The same level of fluoride in drinking water that causes dental fluorosis also causes
14 bone pathology. Ingested fluoride from all sources accumulates selectively in bone and approximately
15 50% of each daily dose will remain in the skeleton for a life time. People with nutritional deficiencies
16 and/or impaired kidney function will accumulate fluoride more rapidly than normal healthy individuals
17 under the age of 50. Crippling skeletal fluorosis occurs in people who have ingested 10 to 20 mg of
18 fluoride per day for 10 to 20 year. (See Exhibit #26, *Health Effects of Ingested Fluoride*. National
19 Research Council, p 59 (1993)). When bone levels of fluoride reach 4,000 to 7,000 ppm the stage two
20 skeletal fluorosis is reached. Preclinical and stage one skeletal fluorosis is characterized by joint and
21 lower back pain and increasing radiographic density. (See Exhibit #27, *Review of Fluoride Benefits and*
22 *Risks*. Dept. of Health and Human Services. Table 23: Osteosclerotic Phase and Human Skeletal
23 Fluorosis, 45 (1991)).

24 43. In 1994, Sogaard C H et al. reported that after 5 years of sodium fluoride therapy, a
25 significant reduction of 45% was found in trabecular bone strength and an even more pronounced
26 reduction of 58% was found in trabecular bone quality, as assessed by biomechanical testing of iliac
27 crest bone biopsies in osteoporotic patients. (See Exhibit #28, *Bone*: Vol 15 No 4; 393-399, 1994). All
28

1 studies of fracture rates relative to long term contaminated fluoride exposure indicate a **significant**
2 **increase in fracture risk**. The increased fracture risk due to fluoridation appears to range from 40-
3 100%, depending on the age of the subjects studied and duration of exposure. For women in their
4 seventh decade who have been exposed to life-long fluoridation, the risk of hip fracture is approximately
5 doubled. 170. Among women aged 50 B 64 years, exposure to natural fluoride at 2.4 mg/L during at
6 least a 13 year period between 1967 to 1980 was associated with increased incidence of hip fracture.
7 (Exhibit #29, Kurttio P et al. Exposure to Natural Fluoride in Well Water and Hip Fracture: A Cohort
8 Analysis in Finland. *American Journal of Epidemiology*: Vol 150 No 8; 817, 1999).

9 44. There is an abundance of scientific and medical evidence establishing that certain
10 susceptible and ill people, like the Plaintiffs, will be additionally harmed by the artificial fluoridation of
11 public water supplies using contaminated Hydrofluorosilicic acid. Those residents who must avoid
12 ingestion of fluoride, lead, arsenic or other compounds include the elderly, diabetics, persons with
13 kidney dysfunctions, persons with thyroid dysfunctions, hypothyroidism, persons with AIDS or cancer,
14 persons with cardiovascular disorders, persons with vitamin or mineral deficiencies, and persons who
15 have previously suffered from fluoride poisoning or fluorosis. As alleged hereinabove, the Plaintiffs and
16 many other are under **express** instructions from their medical providers to avoid ingestion of these
17 harmful compounds.

18 45. There is an abundance of scientific and medical evidence establishing that contaminated
19 Hydrofluorosilicic acid has a negative synergistic effect with other elements found in food and water
20 sources. Fluoride evidences negative synergistic effects with arsenic and lead, both of which are
21 contaminants in the hydrofluorosilicic acid selected by the CITY. In addition fluoride evidences
22 negative synergistic effects with caffeine, aluminum, pregnancy, renal deficiencies, enzymes, and
23 calcium. The synergistic effects of fluoride with enzymes, in particular, negatively impacts insulin,
24 thyroxin, seratonin, melatonin, and white blood cell migration in humans. Further, those persons who
25 are lactose intolerant, deficient in calcium, magnesium or vitamin C will be adversely impacted by
26 fluoride's synergistic effect.

1 48. The class action claims in this case are asserted by the Plaintiffs on behalf of all persons
2 in California who receive their drinking water from the City of Escondido's water supply. The Plaintiffs
3 each receive their drinking water from the City of Escondido, and reside in the Escondido Water District.

4 49. The members of the class are so numerous that separate joinder of each member is
5 impractical.

6 50. The claims of the representative Plaintiffs raise questions of law and fact that are
7 common to questions of law and fact raised by the claims of each member of the class.

8 51. The claims of the representative Plaintiffs are typical of the claims of each member of the
9 class.

10 52. The representative Plaintiffs will fairly and adequately protect and represent the interests
11 of each member of the class.

12 53. The prosecution of separate claims by each individual member of the class would create a
13 risk of inconsistent or varying adjudications.

14 54. The questions of law or fact common to the claims or of the representative Plaintiffs and
15 the claims of each member of the class predominate over any questions of law or fact affecting
16 individual members of the class. Should the court determine that the claims in this case cannot proceed
17 as "private attorney general" claims on behalf of the general public, class representation is superior to
18 other available methods for the fair and efficient adjudication of this controversy.

19 55. Questions of law and/or fact that are common to the claims include, among others:

20 (a) Whether the CITY's plan of fluoridation implementation utilizing the injection
21 of hydrofluorosilicic acid at excessive levels into the drinking water supply
22 violates the Plaintiffs' fundamental rights under the California and Federal
23 Constitution.

24 (b) Whether the STATE's fluoridation legislation, as applied to the City of
25 Escondido, violates the Plaintiffs' fundamental rights under the California and
26 Federal Constitution.

- (c) Whether the CITY's selection of hydrofluorosilicic acid for use in its fluoridation plan is reasonably related to a legitimate governmental interest;
- (d) Whether the STATE's fluoridation legislation, as applied to the City of Escondido, is reasonably related to a legitimate governmental interest; and/or,
- (e) Whether the CITY's selection of contaminated Hydrofluorosilicic acid in its plan of implementation was arbitrary;

56. The named class representatives will fairly and adequately protect and represent the interests of each member of the class.

57. Plaintiffs' claims are typical of the claims of the class in that the claims of all members of the class result from CITY's plan of fluoridation using contaminated Hydrofluorosilicic acid. Plaintiffs' claims are typical of the claims of the class in that the claims of all members of the class result from STATE's fluoridation legislation as applied to the City of Escondido. There is no conflict as between the representative Plaintiffs and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

58. The named Plaintiffs are the representative parties for the class and is able to and will fairly and adequately protect the interests of the class. The attorneys for Plaintiffs are experienced and capable in litigation in the field of consumer class actions and have successfully represented thousands of consumers nationwide in other consumer class actions.

59. This action is properly maintained as a class action inasmuch as the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

V. FIRST CAUSE OF ACTION
(Declaratory Relief)
(Against Defendant CITY)

1 60. Plaintiff hereby incorporates by reference, paragraphs 1 through 59 of the Complaint as
2 though set forth fully herein.

3 61. Plaintiffs bring this action for declaratory relief pursuant to California Code of Civil
4 Procedure §1060. CCP §1060 expressly authorizes “Any person... who desires a declaration of his or
5 her rights with respect to another... may... bring an original action or cross-complaint in the superior
6 court.” The Section 1060 further provides that “the declaration [from the Court] may be had even before
7 there has been any breach of the obligation with respect to which said declaration is sought.”

8 62. Pursuant to CCP §1060, Plaintiffs seek a declaration of their rights with respect to the
9 conduct of the CITY. Plaintiffs seek a declaration that the exercise of the police power by the CITY in
10 the implementation of a fluoridation plan utilizing contaminated Hydrofluorosilicic acid violates the
11 Plaintiffs’ fundamental rights secured by the United States and California Constitutions. Plaintiffs
12 further seek a declaration that the fluoride implementation contracts, utilizing contaminated
13 Hydrofluorosilicic acid, as executed by the CITY are illegal and void, as violative of the United States
14 and California Constitutions.

15 63. The CITY’s action implementing the fluoridation plan utilizing hydrofluorosilicic acid
16 and excessive concentrations violates the fundamental rights of the Plaintiffs and other similarly situated
17 residents of Escondido to preserve their health from such government-imposed practices as may
18 prejudice or annoy it. The injection of industrial grade Hydrofluorosilicic acid into the drinking water of
19 Escondido at excessive concentrations is reasonably certain to result in the serious impairment of the
20 health with respect to residents in the City of Escondido and captive consumers of the CITY’s public
21 water supply, while serving no legitimate government purpose. In the Florida State Journal of Land Use
22 & Environmental Law, John Remington Graham and Dr. Pierre Morin conclude that the current
23 scientific and medical evidence on fluoridation establishes with a reasonable certainty that fluoride is
24 dangerous to public health by causing cancer and other ailments. (A true and correct copy of this journal
25 publication is attached hereto as Exhibit #30 and is incorporated herein by this reference). (See Exhibit
26 #30, pp.217-228).

1 64. The implementation of water fluoridation by the CITY using contaminated, industrial
2 grade hydrofluorosilicic acid will cause irreparable harm to the personal and property rights of the
3 residents of Escondido, the Plaintiffs, and all others receiving their water supply from the CITY’s
4 municipal water utility, as detailed above.

5 65. The injection of industrial grade Hydrofluorosilicic acid into the drinking water of
6 Escondido at excessive concentrations is reasonably certain to result in the serious impairment of the
7 health with respect to residents in the City of Escondido and captive consumers of the CITY’s public
8 water supply, while serving no legitimate government purpose. Further, safer and non-contaminated
9 varieties of fluoride bearing solutions are readily available. The CITY’s plan to inject contaminated,
10 industrial grade Hydrofluorosilicic acid into the drinking water violates the fundamental rights of the
11 Plaintiffs, and other similarly situated persons, because drinking water fluoridation using contaminated
12 Hydrofluorosilicic acid causes serious harm, and the medicinal use of this fluoride compound is intended
13 **not** to stave the spread of a communicable disease or to save lives, as is the case with the small pox
14 vaccination, but rather serves a purely cosmetic and dental purpose. Further, recent medical and
15 scientific evidence establishes that the oral ingestion of fluoridated water does not promote dental health,
16 and as a result, serves no legitimate governmental purpose. The CITY’s decision to use contaminated,
17 industrial grade hydrofluorosilicic acid in its fluoridation plan is arbitrary, capricious and unreasonable.
18 The CITY’s use of contaminated hydrofluorosilicic acid, with its concomitant injury to the health and
19 personal freedom on Escondido’s residents, without their informed consent, cannot therefore be
20 constitutionally sustained under either the United States or California Constitution. The CITY’s plan to
21 fluoridate using contaminated, industrial grade hydrofluorosilicic acid will cause irreparable harm to the
22 personal and property rights of the residents of Escondido, the Plaintiffs, and all others receiving their
23 water supply from the CITY’s municipal water utility, as detailed above.

24 67. Plaintiff is therefore entitled to the relief requested in the Prayer to this Complaint.
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VI. SECOND CAUSE OF ACTION

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(Declaratory Relief)

(Against Defendant STATE)

68. Plaintiff hereby incorporates by reference, paragraphs 1 through 59 of the Complaint as though set forth fully herein.

69. Plaintiffs bring this action for declaratory relief pursuant to California Code of Civil Procedure §1060. CCP §1060 expressly authorizes “Any person... who desires a declaration of his or her rights with respect to another... may... bring an original action or cross-complaint in the superior court.” The Section 1060 further provides that “the declaration [from the Court] may be had even before there has been any breach of the obligation with respect to which said declaration is sought.”

70. Pursuant to CCP §1060, Plaintiffs seek a declaration of their rights with respect to the conduct and the STATE in this case. Plaintiffs seek a declaration the exercise of the police power by the STATE in enacting legislation requiring the fluoridation of Escondido’s drinking water supply and permitting the use of contaminated Hydrofluorosilicic acid violates the Plaintiffs’ fundamental rights secured by the United States and California Constitutions.

71. The STATE’s action enacting legislation which permits the use of contaminated Hydrofluorosilicic acid is unconstitutional as applied in this case and violates the fundamental rights of the Plaintiffs and other similarly situated residents of Escondido to preserve their health from such government-imposed practices as may prejudice or annoy it. The injection of industrial grade Hydrofluorosilicic acid into the drinking water of Escondido at excessive concentrations is reasonably certain to result in the serious impairment of the health with respect to residents in the City of Escondido and captive consumers of the CITY’s public water supply, while serving no legitimate government purpose. In the Florida State Journal of Land Use & Environmental Law, John Remington Graham and Dr. Pierre Morin conclude that the current scientific and medical evidence on fluoridation establishes with a reasonable certainty that fluoride is dangerous to public health by causing cancer and other ailments. (A true and correct copy of this journal publication is attached hereto as Exhibit #30 and is incorporated herein by this reference). (See Exhibit #30, pp.217-228).

1 76. Beginning on or about June 6, 2001, and continuing to the present time, the CITY
2 wrongfully and unlawfully exercised its police power in implementing the plan of fluoridation, utilizing
3 Hydrofluorosilicic acid at excessive levels, as more particularly alleged hereinabove.

4 77. Defendants' wrongful conduct and the threat of harm, unless and until enjoined and
5 restrained by order of this Court, will cause great and irreparable injury to the Plaintiffs, their families
6 and other members of the class, as alleged hereinabove.

7 78. Plaintiffs have no adequate remedy at law for the injuries currently being suffered and for
8 the injuries that are threatened by the CITY's plan of fluoridation, in that the injury to the fundamental
9 rights of the Plaintiffs cannot be remedied by damages and that the quantification of such damages will
10 be impossible to determine. Further, unless enjoined, the Plaintiffs will be forced to institute a
11 multiplicity of suits, because the wrongful conduct by the CITY is of a repeating and continuing nature.
12 Injunctive and declaratory relief is expressly authorized by California Code of Civil Procedure §526a.

13
14 **VII. PRAYER**

15 **WHEREFORE,** Plaintiff prays:

16 1. That the CITY's fluoridation plan utilizing contaminated Hydrofluorosilicic acid at excessive
17 concentrations be declared a violation of the Plaintiffs' and Escondido residents' fundamental rights
18 under the United States and California Constitutions;

19 2. That the STATE's legislation requiring the fluoridation of Escondido's drinking water supply
20 and permitting the use of contaminated Hydrofluorosilicic acid in this case be declared a violation of the
21 Plaintiffs' and Escondido residents' fundamental rights under the United States and California
22 Constitutions;

23 2. For a temporary and permanent injunction that enjoins the Defendant CITY and/or its agents
24 and employees from injecting hydrofluorosilicic acid into the Escondido drinking water supply at
25 excessive levels;

26 3. For reasonable attorneys' fees for enforcing this important public right in accordance with
27 CCP §1021.5; and,

1 4. For costs of this proceeding and for such other and further relief as the court deems just and
2 proper.

3
4 Dated: September __, 2002

BLUMENTHAL & MARKHAM

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 Kyle R. Nordrehaug
Attorney for Plaintiffs

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