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10  
11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 JCM FARMING, INC., a California  
14 corporation,

15 Plaintiff,

16 v.

17 ANDREW WHEELER, Administrator,  
18 United States Environmental  
19 Protection Agency; and UNITED  
20 STATES ENVIRONMENTAL  
21 PROTECTION AGENCY,

22 Defendants.

Case No.: '20CV1119 BEN AGS

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

23 **INTRODUCTION**

24 1. The most important function of any society is protecting the lives, health,  
25 and safety of its members. To achieve these objectives, rules are put into place to regulate  
26 when and how dangerous substances and objects are used. These days, guns, weapons,  
27 and their associated laws are perhaps the most obvious example. Less obvious, but more  
28 important are laws related to highly toxic chemicals. Thus, while the laws affecting  
firearms in this State are considered by some to be restrictive, the laws pertaining to the  
purchase, storage, dispersion and clean-up of certain classes of chemicals are more

1 expansive, restrictive, and transparent – highlighting the fact that certain classes of  
2 chemicals can be much more dangerous than firearms. Because of this, both Federal and  
3 State laws have been enacted to regulate how and when dangerous chemicals may be  
4 used around the public.

5         2. The primary federal statute dealing with the regulation of toxic chemicals  
6 in an agricultural setting is the Federal Insecticide, Fungicide and Rodenticide Act  
7 (“FIFRA”). Regulations pursuant to FIFRA and accompanying Worker Protection  
8 Standards (“WPS”) require the posting of prominent signs notifying the public, workers  
9 and neighbors when harmful pesticides have been applied to agricultural fields. FIFRA  
10 requirements are incredibly stringent and transparent due to the extreme harm that can  
11 be caused by the regulated chemicals, some of which are in the same class as, and directly  
12 descended from, chemicals used in World War I which were later banned by the Geneva  
13 Convention. Currently, pesticide poisonings are a major concern throughout the world,  
14 and greatest in developing countries because of the impracticality of much personal  
15 protective equipment in humid tropical areas, because farmers are often illiterate,  
16 because the pesticide label is often not available in the local language, and because of  
17 employer disregard for worker health and safety. The World Health Organization  
18 estimates that there are up to 5 million acute unintentional pesticide-related illnesses  
19 and injuries per year.<sup>1</sup> The United Nations estimates that globally 200,000 people die  
20 each year as a result of chronic exposure to agricultural chemicals.<sup>2</sup> In this country,  
21 FIFRA and accompanying state regulations protect us from these very illness and deaths  
22 – **when they are followed.**

23         3. In California, regulations relating to the licensing, purchase, transport,  
24 storage and use of FIFRA restricted chemicals are far more restrictive than those for the  
25 purchase, sale, transportation and use of guns – as they should be, since chemicals are

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26 <sup>1</sup> Levine RS, Doull J. Global estimates of acute pesticide morbidity and mortality. *Rev*  
27 *Environ Contam Toxicol.* 1992;129:29-50. doi:10.1007/978-1-4684-7106-9\_3

28 <sup>2</sup> U.N. Human Rights Council, Feb. 27-Mar. 24, 2017, Report of the Special Rapporteur  
on the right to food, U.N. Doc. A/HRC/34/48 (Jan. 24, 2017).

1 not only deadly, but silent as well. In spite of this, in the Coachella Valley, FIFRA  
2 chemical requirements are ignored. In the Coachella Valley, this failure to warn is  
3 subjecting the public, tourists and workers to contact with highly toxic and dangerous  
4 chemicals. Children and adults alike routinely now come into contact with some of the  
5 deadliest chemicals manufactured.

6 4. Plaintiff JCM Farming, Inc. has, through an investigative study, assembled  
7 a voluminous stock of proprietary photographic, videographic, and documentary proof of  
8 the lack of chemical warning signage, and of the public's exposure to regulated and  
9 dangerous chemicals.

10 5. In 2007, Plaintiff JCM Farming, Inc. was subjected to repeated low and  
11 dangerous hot air balloon overflights at its ranch property at the eastern end of the  
12 Coachella Valley (the "Ranch"), near what is now the site for one of the largest live music  
13 festivals in the world. The property is located on Avenue 54 in Thermal, California, and  
14 is situated in the approximate center of the agricultural area where the bulk of the  
15 chemicals are used in the Coachella Valley.

16 6. The balloonists regularly hover and fly just above ground level over  
17 agricultural fields in the agricultural areas surrounding the ranch property, creating a  
18 hot convective effect that sucks up cold chemical molecules from the chemically treated  
19 fields and "filters" them through the balloon gondola which is occupied by the balloon  
20 pilot and passengers, which regularly includes children.

21 7. JCM Farming did what should be expected, and for two years it directly  
22 requested the balloon companies not overfly the property below Federal Aviation  
23 Administration ("FAA") minimum altitudes, and requested that local and federal  
24 authorities enforce statutes that prohibited these flights. After two years of inaction by  
25 the balloonists and authorities, JCM Farming sued to stop the dangerously low flights  
26 over its property.

27 8. The public, media, and governmental responses were substantial and  
28 severe. Ranch postings (signs) were shot out and at least one bullet was discharged into

1 the ranch and public death and other threats against JCM Farming and its ownership  
2 were publicly posted on-line. The local newspaper, *The Desert Sun*, vilified JCM Farming  
3 and repeatedly published that the company might be a nefarious operation. Most  
4 surprising though, was County of Riverside leadership which launched an all-out  
5 offensive in support of ballooning and against JCM Farming.

6 9. In order to respond to claims that it was being hyperbolic or incorrect  
7 regarding the ballooning activities, JCM Farming began meticulously documenting  
8 balloon flights in the Coachella Valley. The flight documentation tracked three main  
9 phases of these flights.

10 10. The first was the **Start** phase and the factors documented were: date, time,  
11 location (GPS coordinates), weather/topography, the balloon company/owner, crew make-  
12 up, vehicles used, any Transportation Charter permits, passengers, children present,  
13 seniors, expecting women, “no trespass” posted properties, gates locked and secured,  
14 fenced property, and pilot/crew behavior. The second phase was **Flight** and tracked:  
15 flight track (GPS coordinates), altitude, contour flying, agricultural fields along the path,  
16 powerlines, traffic interference, livestock and horses, homes, touch and go landing/take-  
17 offs, interference by chase crews, near railroad landing and/or touch and go’s, law  
18 enforcement involvement, and witness involvement. The average tracks for these flights  
19 traversed ten (10) chemically treated agricultural grids, and the vast majority flew low  
20 enough to “vacuum” dangerous chemicals from the cold ground up and around the  
21 passengers and crew. The final phase was **Landing** and the factors documented were:  
22 location (GPS coordinates), posted signage of pesticide or other work being performed, the  
23 chemical grid, farmers/laborers in the area, witnesses to the landing, time of landing,  
24 pilot/chase crew/passenger behaviors on landing, damage to landing areas, passenger  
25 injuries, law enforcement and/or fire department called to location, and time of  
26 landing/total flight time.

27 11. JCM Farming retained a highly qualified group of individuals and  
28 companies to document the items detailed above. The principal investigators and

1 producers of the photographs and evidence in this matter were a group of five retired and  
2 former law enforcement officers, supervisors and executives, and security and personal  
3 protection business owners and attorneys. The team has more than 245 years of  
4 specialized enforcement, intelligence gathering and assessment and legal investigative  
5 experience, which includes federal, state, military, and local enforcement experience.  
6 Three team members are sworn Board members of a branch of the USDOJ-sponsored  
7 Operation Cooperation. Three team members are certified firearms and executive  
8 protection instructors, and one is a concealed carry firearms permit qualifications officer  
9 for the County of Riverside Sheriff's Department. Three of the members are college level  
10 state licensed law enforcement adjunct professors, and one of these professors developed  
11 and taught a specialized college level course in the investigation of major criminal fraud  
12 and embezzlements including indictment and trial preparation procedures. This member  
13 of the team also organized and commanded the first major fraud investigative bureau for  
14 the county prosecuting attorney before being appointed a municipal police chief. Three  
15 members have been qualified in state courts as expert witnesses in several areas  
16 including forensics, security and fraudulent operations. Several of the members were  
17 assigned to federal, state, and county task forces during their careers which included  
18 federal drug task forces, attorney general task force on consumer fraud, and Federal  
19 Trade Commission Task Force on Consumer Fraud. One of the members is also a  
20 published professional photographer with hundreds of publications to his credit. Four  
21 members of the team have been court qualified to testify regarding their photographic  
22 work. Finally, the investigators in this case, prepared their work product, and collected  
23 or developed evidence following accepted legal procedures and in accordance with  
24 established state and federal codes on the rules of evidence.

25 12. Initially, the investigation quickly confirmed and documented that  
26 balloonists routinely trespassed on both take-off and landing. However, after repeated  
27 observation of flight characteristics and patterns, the investigation unexpectedly found  
28 that the absolute most dangerous aspect of the ballooning activity was that it regularly

1 and repeatedly exposed passengers and balloon pilots to some of the most toxic and highly  
2 regulated chemicals used in agriculture. This exposure occurred typically during flight,  
3 when the balloonists regularly flew low to the ground through toxic “buffer zones” and  
4 when the balloons hovered over or landed in “hot” agricultural fields. The photographs  
5 and videos which confirm the facts and circumstances of the claims herein exceed 27,000  
6 in number, all of which are proprietary, copyrighted, and available to the Court subject  
7 to an appropriate protective order.

8 13. The required FIFRA signage, which could have served as notice/warning to  
9 balloon passengers (and others), and which would have given the observers the option of  
10 modifying their behavior, was and is non-existent in the Coachella Valley. JCM Farming  
11 estimates that many thousands of individuals have unknowingly been exposed to highly  
12 toxic chemicals.

13 14. JCM Farming has also been directly impacted by governmental failures to  
14 enforce chemical use policies. Specifically, on January 9, 2018, in violation of a prior  
15 verbal agreement with JCM Farming personnel, Riverside County personnel directly  
16 sprayed restricted use chemicals at the Ranch’s perimeter near which employees were  
17 present and congregated, which spraying subjected the employees to direct and  
18 unanticipated contact with a plume of toxic chemicals. No advance notice of County  
19 application of chemicals at this location was given, either directly in consultation or  
20 through postings. Further, the chemical which County applicators used on this date was  
21 not the one County personnel had promised which was less dangerous chemical and has  
22 a four-hour Restricted Entry Interval (“**REI**”), but a much more toxic chemical with a 24  
23 hour REI. This rendered a large portion of the Ranch off-limits for more than a full day.  
24 JCM Farming personnel were direct witnesses to, and documented, this entire incident,  
25 including the fact that County personnel were applying restricted use chemicals and not  
26 wearing any personal protective equipment as required per Worker Protection Standards  
27 laws.



1 protect human health and the environment.”<sup>3</sup> Since its formation in 1970, EPA’s primary  
2 responsibility has been to protect the public by ensuring compliance with federal statutes,  
3 including the Clean Air Act of 1963 (and its subsequent amendments), the National  
4 Environmental Policy Act of 1969, the Federal Water Pollution Control Act of 1972 (better  
5 known as the Clean Water Act) and, as particularly relevant here, FIFRA.

6 22. As a federal agency with resource limitations, EPA delegates some  
7 enforcement authority to the States but maintains responsibility and authority to confirm  
8 or disapprove “local” actions when they conflict with federal mandates.

9 **FACTS**

10 23. Plaintiff has deep roots and operates several businesses in the Coachella  
11 Valley. These businesses include the Ranch, residential rental units, and commercial  
12 buildings that house medical facilities serving thousands of Coachella Valley residents  
13 and guests.

14 24. In 2006-2007, Plaintiff was engaged in the construction of buildings at the  
15 Ranch. It was then that balloons began overflights of the Ranch below 500’ above ground  
16 level. Per federal flight regulations, no aircraft (including balloons) may fly less than 500’  
17 above any structure. These low balloon overflights were frequent and caused work  
18 stoppages due to worker safety concerns for construction personnel on scaffolding. Flights  
19 went as low as 25 feet above roof tops. And, at least one balloon operator stated under  
20 oath it was his [incorrect] belief balloons could legally operate as low as 1 inch over the  
21 property. Around this time a ballooning accident at Vista Santa Rosa, a property adjacent  
22 to the Ranch, resulted in the death of passenger, further concerning Plaintiff with regard  
23 to balloon safety.

24 25. For two years JCM Farming engaged the balloonists, local authorities, and  
25 federal authorities in efforts to end the low overflights. Federal authorities advised they  
26 considered it a local issue. The Riverside County Sheriff’s Department advised that while

27 \_\_\_\_\_  
28 <sup>3</sup> <https://www.epa.gov/aboutepa/our-mission-and-what-we-do> (last visited Mar. 24,  
2020).

1 it was sympathetic to JCM Farming's position, it was prohibited from expending  
2 resources on balloonists as the District Attorney's office would not prosecute take-off/  
3 landing trespass actions. Finally, after two years of inaction by authorities or voluntary  
4 compliance by the balloonists, JCM Farming brought suit to stop the dangerously low  
5 flights over its property.

6 26. The litigation brought by JCM Farming resulted in a dangerous backlash,  
7 due in large part to negative and misleading coverage by the local newspaper *The Desert*  
8 *Sun*. This backlash included the newspaper's readers' threats of violence and death  
9 against the company and its personnel, which forced the company to engage outside  
10 security personnel for protection. These threats were posted on *The Desert Sun's* website  
11 in response to articles written by its staff. The most dangerous threats were reported to  
12 the FBI, the Riverside County Sheriff's Department and the San Diego Sheriff's  
13 Department and are on file with each agency.

14 27. In hopes of diminishing the constant threats against it, vilification by the  
15 press, and anonymous on-line attacks questioning its motives and assertions about  
16 balloon activities, JCM Farming dismissed its Complaint without prejudice in 2011 –  
17 even though it had already defeated several motions for summary judgment.  
18 Unfortunately, the vilification continued.

19 28. As a result, beginning in 2011, with the assistance of outside security  
20 professionals Plaintiff began a detailed and thorough investigation into ballooning  
21 activities and related illegal actions in the Coachella Valley. The investigative efforts  
22 were designed to show definitively the exact nature of ballooning activities in the  
23 Coachella Valley, including take-off, flight paths, altitudes, and landing locations. At  
24 first, Plaintiff's initial claims were confirmed and the balloonists were documented as  
25 clearly trespassing on private property during take-off and landing, and flying below FAA  
26 required minimum altitudes. Affected landowners confronted balloon crews that landed  
27 on their private property only to be routinely intimidated by the balloon operators who  
28 intentionally and inappropriately invoked the authority of the Federal government when

1 the operators threatened to report the owners for “interfering with a Federal landing”.  
2 Relevant authorities were sent information about the balloonists and their actions via  
3 certified mailings.

4 29. On January 8, 2014, FAA Administrator Michael Huerta was advised in  
5 detail with regard to the balloonists’ activities, with copies to others including top ranking  
6 officials at Department of Homeland Security, the Federal Bureau of Investigation, the  
7 United States Department of Transportation, the National Transportation Safety Board,  
8 the California Department of Forestry and Fire Protection, United States senators and  
9 congressperson, a State senator and assemblymen, the United States and California  
10 Attorneys General, the Johns Hopkins Bloomberg School of Health, the California Office  
11 of Environmental Health Hazard Assessment, the California Farm Bureau Federation,  
12 the California Women for Agriculture, the Riverside County Sheriff, the Riverside County  
13 District Attorney, the Riverside County Board of Supervisors, the Riverside County  
14 Airport Land Use Commission, the Riverside County Office of Economic Development,  
15 the Jacqueline Cochran Regional Airport, Chiefs of Police for Indio, Palm Springs,  
16 Cathedral City, Desert Hot Springs, the American Society for the Prevention of Cruelty  
17 to Animals, the Agua Caliente Band of Cahuilla Indians, the Cabazon Band of Mission  
18 Indians, the Augustine Band of Cahuilla Indians, the Torres Martinez Desert Cahuilla  
19 Indians, and the San Diego County Sheriff.

20 30. Plaintiff’s investigation continued because the agencies and individuals  
21 referenced above failed to act. The continuing observations of flight activities began to  
22 show a disturbing pattern. With more observation, it became apparent that balloon  
23 operators were doing more than simply trespassing on take-off and landing or flying  
24 below statutory minimum flight altitudes. Plaintiff observed and documented, perhaps  
25 before anyone else, that the balloon operators were also exposing their passengers (adults  
26 and children alike) to toxic chemicals by continuously contour flying just above ground  
27 level and by landing in hot fields where chemicals had recently been applied.  
28

1           31. Plaintiff’s multi-generational farming background provided a framework for  
2 understanding how, when, and which chemicals (pesticides, herbicides, etc.) were used in  
3 agriculture. As such, Plaintiff began questioning why FIFRA mandated pesticide  
4 warning signs were **nowhere to be seen** in the Coachella Valley. As Plaintiff has chosen  
5 not to use FIFRA regulated chemicals on its property it had previously determined it did  
6 not have to post chemical warning signage.

7           32. However, a simple perusal of the California Department of Pesticide  
8 Regulation website confirmed that tons and tons of FIFRA regulated chemicals were  
9 being used throughout the Coachella Valley. Plaintiff’s investigators confirmed the  
10 volume of chemical usage, then sought to document how many chemical use warning  
11 signs were posted throughout the Valley. They found exactly **zero**. Upon further  
12 investigation, Plaintiff was stunned to find that chemical usage **warning signs were**  
13 **not even available for purchase** locally.

14           33. On December 4, 2017, one of Plaintiff’s outside security consultants with a  
15 deep law enforcement background in the Coachella Valley (including as Indio Chief of  
16 Police<sup>4</sup>) met with County of Riverside Supervisor Manuel Perez and his Deputy Chief of  
17 Staff Patricia Cooper and advised them informally of the “hot fields” risks as respects  
18 balloons and toxic chemicals. There was a complete lack of concern or action by  
19 Supervisor Perez or the Board, and it appeared that the County was turning a blind eye  
20 to the lack of warning signage and to the chemical exposure by members of the public.  
21 This initially made no sense to Plaintiff, until a possible reason became clear.

22           34. Hot air ballooning is a highly publicized tourist attraction and activity in the  
23 Coachella Valley. The County of Riverside and local municipalities have effectively  
24 provided both cover for, and promotion of, the balloonists and their actions by routinely  
25 including images of hot air balloons in their on-line and print marketing materials. The  
26 County of Riverside and local municipalities engage in further promotion when they

27 \_\_\_\_\_  
28 <sup>4</sup> Indio is roughly the geographic center of the Coachella Valley and the epicenter of all  
ballooning activity in the Valley.

1 sponsor balloon festivals, hang banners and signs promoting ballooning, and make  
2 balloons part of the official crests and logos.

3 35. The Coachella Valley is known world-wide as a tourist destination. In 2017  
4 alone, the Coachella Valley's tourism industry attracted roughly 13.6 million visitors  
5 spending more than \$5.5 billion, contributing to the tourism industry's \$7 billion  
6 economic impact.<sup>5</sup> Tourism directly and indirectly impacts over 50,000 jobs, and  
7 generated nearly \$600 million in state and local taxes in 2017.<sup>6</sup> Local governments and  
8 elected officials rely on the tourism industry for funding, via sales and transient  
9 occupancy taxes. As a result, the County of Riverside, Coachella Valley cities and other  
10 governmental and quasi-governmental agencies heavily promote tourist activities,  
11 including hot air balloon rides and "ag trails."<sup>7</sup>

12 36. Tourism in the Coachella Valley also contributes to population growth due  
13 to job opportunities, which in turn contributes to housing growth. This re-population is  
14 highly dependent on a healthy tourism industry as it attracts new workers, second home  
15 purchasers and retirees to the Coachella Valley. The new housing that comes with this  
16 re-population often encroaches on existing agricultural operations, which also increases  
17 the risk for the new residents to chemical exposure without notice.

18 37. The second largest industry in the Coachella Valley is agriculture, which  
19 employs approximately 12,000 people and produces nearly \$1 billion in agricultural  
20 products yearly. The Coachella Valley supplies over 50% of Riverside County's fruits and  
21 vegetables and produces 95% of dates in the United States. Top producing crops include  
22 dates, bell peppers, lettuce, grapes, artichokes, broccoli, watermelon, citrus and carrots.<sup>8</sup>

23 38. More broadly, California is the number one agricultural commodities  
24 producing state in the country (\$42.6 billion in sales), followed distantly by Iowa (\$30

25 \_\_\_\_\_  
26 <sup>5</sup> <https://www.desertsun.com/story/money/business/tourism/2018/05/03/greater-palm-springs-tourism-7-billion-industry/575155002/>

27 <sup>6</sup> Id.

28 <sup>7</sup> <https://agtrail.rivcoca.org/index.html>

<sup>8</sup> <http://growingcoachellavalley.org/key-industries/>

1 billion), then Texas (\$25.4 billion).<sup>9</sup> California is **also** the most popular travel destination  
2 state in the US, followed by Florida, then Nevada.<sup>10</sup> This juxtaposition between being  
3 the most traveled to state and being the state with the greatest agricultural production  
4 (and unsurprisingly heaviest chemical use), exists in **no other** state. And within  
5 California, there is **no** region where the intersection between tourism and agriculture is  
6 greater than the Coachella Valley.

7 39. These two industries do not separately operate in a vacuum and indeed there  
8 is extensive cross-promotion of the two. Local Coachella Valley officials and businesses  
9 heavily promote and couple the region's tourism and agriculture. They support, subsidize,  
10 combine, and hype both of these two economic sectors by promoting "agritourism." The  
11 Valley's agritourism links ag production and/or processing with tourism in order to  
12 attract visitors onto a farm, ranch, or other ag business for the purposes of entertaining  
13 and/or educating the visitors and to generate tourism dollars for the farm, ranch, or  
14 business owner. For example, the Riverside County "Ag Trail," which is marketed as the  
15 largest in the world by number of participants, invites visitors to tour farms, wineries,  
16 farm stands, and markets in Coachella Valley and in other parts of Riverside County.

17 40. One reason the Coachella Valley Ag Trail is the world's largest is that,  
18 unlike all other ag trails, its location in Southern California allows for it to be a one to  
19 two hour drive for any one of the approximately 184 million people that annually travel  
20 to the Los Angeles County, San Diego County, Orange County and the Inland Empire.<sup>11</sup>  
21 LAX, Burbank, John Wayne, San Diego International, Ontario and Palm Springs airports  
22 account for the majority of the flights that bring visitors into the region. The Ag Trail is  
23 cross-promoted on-line and at airport kiosks along with the Coachella Valley's other  
24 tourist draws, including resorts, golf courses, music festivals and ballooning. No other ag  
25 trail in the nation can be, or is, readily visited by so many people. It goes without saying

26 <sup>9</sup> <https://www.usda.gov> FAQs.

27 <sup>10</sup> <https://www.businessinsider.com/the-most-popular-us-states-for-tourism-2014-10>

28 <sup>11</sup> <https://industry.visitcalifornia.com/research/report/california-travel-tourism-forecast-region-2019-october> (p. 2)

1 that due to lack of signage, many of these Ag Trail visitors have unknowingly been, and  
2 will continue to be, exposed to toxic chemicals applied to Coachella Valley produce.

3 41. The problem with directing the public to the Ag Trail is that chemical usage  
4 in the eastern Coachella Valley is rampant. Pesticide use within the Coachella Valley  
5 and large swaths of the valley is in or above the seventy-fifth percentile (75th+ percentile)  
6 of all counties in California, meaning pesticide use in that geographic area is in the top  
7 twenty-five percent in total agricultural pesticide use in California, according to data from  
8 the California Department of Pesticide Regulation's Pesticide Use Reporting program,  
9 available at [www.trackingcalifornia.org/pesticides/pesticide-mapping-tool](http://www.trackingcalifornia.org/pesticides/pesticide-mapping-tool). An example of  
10 the graphic produced is attached hereto as Exhibit A. When overlaid on the "Ag Trail"  
11 referenced above, it is obvious that the "Ag Trail" traverses heavily chemically treated  
12 land.

13 42. Unfortunately, as Plaintiff found in the Coachella Valley, tourism, ag and  
14 housing's economic benefits come at the expense of public health and safety, which brings  
15 us full circle to the EPA and lack of FIFRA signage. **None, not one**, of the agricultural  
16 fields that Ag Trail tourists visit or that the hot air balloonists take-off from, contour fly  
17 over, and land in, or that new residents move next to, have signs posted warning of  
18 pesticide applications – not even while pesticide application is occurring.

19 43. The basic purpose of notice of risks and harm is to inform the public of the  
20 risk/harm and allow people the option to change or moderate their behavior in a manner  
21 that promotes personal and public safety. Here, informed individuals could choose to: 1)  
22 not visit hot fields and risk harm to themselves, and often their family; 2) not balloon over  
23 and/or land in "hot" fields; or 3) not move into new homes or send their children to any  
24 one of 21 schools adjacent or near ag fields where some of the most toxic chemicals are  
25 present. See Exhibit B attached hereto.

26 44. The only obvious reason for a complete lack of signage is that key decision-  
27 makers believe that FIFRA signage is bad for business in the Coachella Valley.  
28

1           45. Plaintiff's initial investigation into simple ballooning improprieties became  
2 a ten-year study which uncovered a more systemic and publicly harmful wrong – a  
3 systemic and knowing failure to warn the public of exposure to dangerous chemicals, all  
4 for apparently financial reasons.

5           46. It is disturbing that in the course of a ten-year investigation involving tens  
6 of thousands of proprietary photographs and hundreds of hours of video, *not even one*  
7 *single instance* of FIFRA signage was found present in all of the agricultural fields of  
8 the Coachella Valley. This historic, ongoing, and consistent lack of FIFRA-required  
9 warning signage makes it a near certainty that a countless but significant number of  
10 unknowing children and adults have been exposed to highly toxic chemical agents.

11           47. Yet, chemical usage persists because agriculture is highly dependent on the  
12 use of carcinogenic and other toxic chemicals, all of which are subject to regulation and  
13 enforcement first and foremost by the EPA, but locally by the County Agricultural  
14 Commissioner and the California Department of Pesticide Regulation (“DPR”). These  
15 chemicals are produced, marketed, and sold by their FIFRA “Registrants” – a who's who  
16 of the world's largest agro-chemical manufacturers.

17           48. Use of chemical type, amount and location is required prior to purchase, and  
18 this information is publicly available on DPR's website. Plaintiff has compiled this  
19 information, along with proprietary (copyrighted) video and photographic evidence, in a  
20 way that incontrovertibly shows chemical exposure to an unsuspecting public. In short,  
21 Plaintiff has proof that the Coachella Valley's agricultural fields are a hotbed of  
22 dangerous chemicals to which the public is unknowingly exposed on a regular basis.

23           49. The most heavily-applied pesticides in the Coachella Valley include  
24 metam-sodium, 1,3-dichloropropene, malathion, linuron, mancozeb, trifluralin, sulfur,  
25 and imidacloprid. Several of the pesticides are subject to a restricted entry interval  
26 (“REI”) of at least 48 hours. Despite this, Worker Protection Standard required warning  
27 signs have not been posted in the Coachella Valley. Indeed, the required warning signs  
28 are not even sold in the Coachella Valley.

1           50.    When chemicals subject to a REI are applied, not only are Worker Protection  
2 Standard warning signs required, but the use of full-body Personal Protection Equipment  
3 (“PPE”) is also required in the chemical exclusion zone, commonly referred to as a “buffer  
4 zone”. This zone runs 100 feet in all directions from the point of chemical usage. Failure  
5 to wear PPE or to properly dispose of or launder clothing contaminated by toxic chemicals  
6 greatly increases the likelihood that dangerous chemical molecules will be transported  
7 off-site and further expose the public. In the Coachella Valley this means that exposed  
8 residents and tourists are going to transfer at least some amount of restricted use  
9 chemicals to family members, other festival-goers, hotel rooms, casinos, public transports,  
10 commercial aircraft, and other states and countries if FIFRA regulations are not enforced.

11           51.    In short, a danger zone (box or dome) is created into which entry without  
12 PPE is prohibited. Field hands that work within a buffer zone during a restricted entry  
13 interval must be in PPE so as to avoid chemical exposure. Even pilots in enclosed cockpits  
14 that are applying FIFRA regulated chemicals are required to be in basic PPE including  
15 pants, boots and long-sleeved shirts. However, even though countless balloon operators  
16 have clearly flown through or landed in REI buffer zones, Plaintiff’s investigators have  
17 never observed a single balloon operator (or passenger) to be in proper required PPE.

18           52.    Ballooning is particularly dangerous in the Coachella Valley. The  
19 ballooning season runs concurrent with the high crop growing season when toxic chemical  
20 usage is the highest. The hot air balloon operators launch and land their balloons on  
21 private property, including agricultural fields that often have Class 1 chemicals present.  
22 These chemicals are most often applied between 2:00 a.m. and 5:00 a.m. when there is  
23 minimal wind drift. The balloons operate shortly thereafter during the cold morning  
24 hours and often “contour fly” very low above ground over chemically treated fields – well  
25 below 100 feet.

26           53.    Balloons, which can be 55 feet across and 80 feet tall, and have a volume of  
27 up to 650,000 cubic feet displacement and circulate large masses of hot air when flying.  
28 In the cold morning hours, the cool air (50°F +/-) at ground level below the balloon rises

1 via a convective (vacuum) effect as the balloon's envelope is heated up to 250° by the blast  
2 from the burners (or "heaters"). When fully operating, a balloon's burner(s) can produce  
3 up to 43.9 million BTU's per hour.<sup>12</sup> The cold air that rushes upward to be heated is a  
4 part of the density air exchange process which allows for a balloon's buoyancy. This  
5 buoyancy is the upward force of the balloon caused by the pressure differences in the hot  
6 and cold air above and below the balloon envelope when the air inside the balloon  
7 envelope is heated. The net upward buoyancy force is equal to the magnitude of the  
8 weight of air that is displaced by the balloon in this cold air heating process. This air  
9 exchange process is a perilously effective system for transporting chemical molecules from  
10 the treated surface up to, through and around the gondola, thereby exposing the ride  
11 participants to dangerous chemicals.

12 54. The FIFRA violations Plaintiff observed, logged and photographed  
13 throughout the Coachella Valley evidence a complete lack of signage which, if present,  
14 would have warned tourists, workers and the public of pesticide usage and potential  
15 exposure to toxic chemicals. As a result, adults and children have unknowingly been  
16 exposed to confirmed carcinogenic and otherwise toxic chemicals. Plaintiff is particularly  
17 concerned for the well-being of all the children that have been exposed to Class 1  
18 chemicals, because children can be up to 200% more susceptible than adults to the  
19 harmful effects of these toxic chemicals. It bears noting that Plaintiff's investigation has  
20 found that balloon operators, who do not use PPEs and are most regularly exposed to  
21 these chemicals, have an above average incidence of cancer related deaths and have  
22 experienced other unusual medical conditions such as seizures. Plaintiff estimates that  
23 tens of thousands of people have suffered this type of chemical exposure.

24 55. Plaintiff first expected that the lack of FIFRA signage enforcement was due  
25 to a lack of awareness on the part of local authorities. However, after Plaintiff made local  
26 government officials aware of the problem, Plaintiff began to suspect it was perhaps due

27 \_\_\_\_\_  
28 <sup>12</sup> A BTU is defined as the quantity of heat required to raise the temperature of one  
pound of water by one degree Fahrenheit.

1 to local authorities turning a blind eye to the law in order to support tourism, ag and  
2 growth, at all costs.

3 56. Plaintiff brought these violations to the attention of the County Board of  
4 Supervisors and other local authorities, but they were completely unwilling to even  
5 discuss the claims. This made no sense since it is the primary responsibility of  
6 governmental authorities to protect the public from harms resulting from improper  
7 and/or illegal activities. This lack of FIFRA-required warning signage was particularly  
8 troubling in light the County's aggressive promotion of agritourism (including the Ag  
9 Trail) and hot air ballooning.

10 57. The fact that the County of Riverside and its local sub-agencies appeared to  
11 be wilfully blinding themselves to the dangerous ballooning activities as well as lack of  
12 signage caused Plaintiff to bring these violations to the attention of several Federal  
13 agencies. Plaintiff has met with members of the Department of Justice, Department of  
14 Transportation, and the Federal Bureau of Investigation on at least ten separate  
15 occasions and Plaintiff believes they are currently evaluating how to proceed.

16 58. On January 9, 2019, during the height of the farming season, JCM  
17 Farming's counsel met in person with agents of the U.S. Department of Transportation  
18 Office of Inspector General ("OIG"). During this meeting, counsel took the OIG agents on  
19 an approximately twenty-mile "ag" tour to view multiple sites that balloon operators use  
20 for landing. Not a single instance of pesticide application warning signage was observed  
21 by any of the tour participants.

22 59. Plaintiff and its employees are and have been deprived of information that  
23 must be publicly disclosed – namely, the application of harmful pesticides to areas  
24 adjacent to its facilities. This has, and does, expose employees and individuals to  
25 potentially harmful products. As noted, JCM Farming employees often travel to and from  
26 the Ranch along public roadways abutting agricultural fields. Without FIFRA-required  
27 signage warning of recent pesticide application, Plaintiff's employees cannot know  
28 whether they are traveling alongside a "hot" field. Thus, the lack of signage creates a

1 serious risk of medical harm – harm that FIFRA and its regulations are designed to guard  
2 against. If, on the other hand, signage had been present and observed by drivers they  
3 could have chosen to reroute to avoid the area, or protect themselves by closing all  
4 windows and shutting off outside air, and thus avoid exposure.

5 60. The FIFRA signage violations Plaintiff observed run counter to the  
6 obligations that the State of California is obligated to adhere to under the permit granted  
7 it by Defendant EPA. Under permits granted by the EPA, States (including California)  
8 are authorized to pass their own pesticide regulations provided they are at least as  
9 stringent as federal regulations. The States then maintain and enforce their pesticide  
10 regulation authority which comes from both FIFRA and implementing state pesticide  
11 laws. According to FIFRA, States are given primary enforcement responsibility when the  
12 EPA has determined that they meet three requirements. First, the State must have  
13 adopted adequate pesticide use laws and regulations. Second, the State must have  
14 adopted procedures to allow enforcement responsibilities to be carried out. Third, the  
15 state must keep adequate records detailing enforcement actions. If the EPA determines  
16 that the state agency has not carried out its enforcement responsibilities it can rescind  
17 the State's enforcement authority.

#### 18 **STATUTORY AND REGULATORY BACKGROUND**

#### 19 **Federal Insecticide, Fungicide and Rodenticide Act (FIFRA),**

#### 20 **7 U.S.C. § 136 *et seq.***

21 61. FIFRA, 7 U.S.C. § 136 *et seq.*, provides for federal regulation of pesticide  
22 distribution, sale, and use. The revision of FIFRA through the adoption of the Federal  
23 Environmental Pesticide Control Act of 1972 transformed FIFRA from a labeling law into  
24 a comprehensive regulatory statute. As amended, FIFRA regulates the use, as well as  
25 the sale and labeling, of pesticides.<sup>13</sup> All pesticides distributed or sold in the United  
26 States must be registered (licensed) by the EPA. Before the EPA may register a pesticide

27 \_\_\_\_\_  
28 <sup>13</sup> *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991-92 (1984) (citing H.R. Rep. No. 92-511, at 1).

1 under FIFRA, the applicant must show, among other things, that using the pesticide  
2 according to specifications “will not generally cause unreasonable adverse effects on the  
3 environment.”

4 62. Under FIFRA section 12(a)(2)(G), it is unlawful for any person “to use any  
5 registered pesticide in a manner inconsistent with its labeling.” 7 USC § 136j(2)(G).

6 63. The Administrator has enforcement authority for violations of FIFRA.  
7 When there is no enforcement of FIFRA’s requirements, the public trust to keep citizens  
8 safe from – or at least informed of – exposure to toxic chemicals is violated. Such a  
9 violation has occurred in the Coachella Valley, where dangerous Class 1 chemicals are  
10 currently being used and dispersed without public notice.

11 **Worker Protection Standard, 40 C.F.R. § 170.301 et seq.**

12 64. EPA’s FIFRA-implementing regulations include the Worker Protection  
13 Standard (“**WPS**”) found in Code of Federal Regulations, Title 40, Part 170.

14 65. The WPS was promulgated in 1992 under FIFRA section 25, 7 U.S.C.  
15 § 136w. A revised final WPS rule was published in the Federal Register on November  
16 2015.

17 66. The WPS requires posted notification of entry restrictions under certain  
18 circumstances. If a pesticide with product labeling that requires a restricted-entry  
19 interval greater than 48 hours is applied to an outdoor production area, warning signs  
20 must be posted every 300 feet in areas “visible from all reasonably expected points of  
21 worker entry to the treated area, including at least each access road, ... and each footpath  
22 and other walking route that enters the treated area. Where there are not reasonably  
23 expected points of worker entry, signs must be posted in the corners of the treated area  
24 or in any other location affording maximum visibility.” 40 C.F.R. § 170.409(b)(3)(ii).

25 67. The warning signs must be at least 14 inches by 16 inches and must remain  
26 posted throughout the application and any restricted-entry interval (“**REI**”). 40 C.F.R.  
27 § 170.409(b)(1)(iii), (b)(3)(ii). See attached Exhibit C for examples of warning signs.  
28



1 authority) such responsibility, the Administrator shall notify the State. Such notice shall  
2 specify those aspects of the administration of the State program that are determined to  
3 be inadequate. The State shall have ninety days after receipt of the notice to correct any  
4 deficiencies. If after that time the Administrator determines that the State program  
5 remains inadequate, the Administrator may rescind, in whole or in part, the State’s  
6 primary enforcement responsibility for pesticide use violations.” 7 U.S.C. § 136w-2(b).

7  
8  
9 **Administrative Procedure Act, 5 U.S.C. § 701 *et seq.***

10 74. The Administrative Procedure Act (APA) provides for judicial review of final  
11 agency action, including an agency’s failure to act. 5 U.S.C. §§ 702, 551(13).

12 75. Under the APA, a reviewing court “shall – (1) compel agency action  
13 unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706.

14 **FIRST CAUSE OF ACTION**

15 **Declaratory and Injunctive Relief**

16 76. Plaintiff incorporates the allegations of paragraphs 1 through 75 as if fully  
17 set forth herein.

18 77. The posted notification requirements set forth in the WPS have been and  
19 continue to be ignored in the Coachella Valley.

20 78. The Supervisors that direct the Riverside County Agriculture Commissioner  
21 have been notified of the rampant and ongoing violations of the WPS posted notification  
22 requirements, but have failed to take any enforcement action or to direct that the County  
23 Agriculture Commissioner take action.

24 79. FIFRA section 27, entitled “Failure by the State to assure enforcement of  
25 State pesticide use regulations,” provides that, “upon receipt of any complaint or other  
26 information alleging or indicating a significant violation of the pesticide use provisions of  
27 this Act, the Administrator shall refer the matter to the appropriate State officials for  
28

1 their investigation of the matter consistent with the requirements of this Act.” 7 U.S.C.  
2 § 136w-2(a).

3 80. FIFRA section 27 further provides that “if, within thirty days, the State has  
4 not commenced appropriate enforcement action, the Administrator may act upon the  
5 complaint or information to the extent authorized under this Act.” 7 U.S.C. § 136w-2(b).

6 81. Plaintiff requests an order declaring that the failure to post pesticide use  
7 notification as described herein alleges or indicates a significant violation of the pesticide  
8 use provisions of FIFRA and the WPS.

9 82. Plaintiff further requests an order directing the Administrator to refer the  
10 matter of violations of the WPS posted notification requirements to the appropriate State  
11 officials (namely, the Riverside County Agriculture Commissioner and the California  
12 Department of Pesticide Regulation) for prosecution.

13 **SECOND CAUSE OF ACTION**

14 **Injunctive Relief**

15 83. Plaintiff incorporates the allegations of paragraphs 1 through 82 as if fully  
16 set forth herein.

17 84. FIFRA section 27 provides that, “[w]henver the Administrator determines  
18 that a State having primary enforcement responsibility for pesticide use violations is not  
19 carrying out (or cannot carry out due to the lack of adequate legal authority) such  
20 responsibility, the Administrator shall notify the State.”

21 85. By this Complaint, Plaintiff requests the Court order the Administrator to  
22 engage in a process to determine whether California is or is not carrying out its  
23 enforcement responsibility for pesticide use violations.

24  
25 WHEREFORE, Plaintiff respectfully seeks an Order of this Court:

26 1. Declaring that the information set forth in this Complaint demonstrates a  
27 significant violation of the pesticide use provisions of FIFRA and the WPS regulations  
28 promulgated pursuant to FIFRA;

