



June 9, 2022

***Sent Via Certified U.S. Mail***

Senator Alex Padilla  
United States Senate  
112 Hart Senate Office Building  
Washington, D.C. 20510

Senator Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

Re: Robert Anderson, et al v. The United States of America 2:21-cv-09102-VAP-PD

Dear Senators Feinstein and Padilla,

We represent individuals and families whose lives have been devastated by our Nation's failure to warn them of the dangers of exposure to hazardous materials and waste while they lived and/or worked on the former George Air Force Base. Unfortunately, these families are not alone. There are many more out there that have either succumbed to the exposure or simply remain unaware. Having served in our Armed Forces, on active duty and in the reserve, for over 30 years, I have an expectation that my family, while living on base, will be protected or at the very least not harmed by the actions or inactions of my service and the government of the United States. This is the same expectation that these families had when they lived on George Air Force Base. These families trusted that the Air Force and our Nation would do the right thing. Unfortunately, the Air Force and our Nation has betrayed their trust.

It is no secret that the Air Force, at the former George Air Force Base, failed to properly use and handle as well as dispose of hazardous materials and waste. A simple internet search can provide all the details anyone would need to understand the scope of the problem. We have attached a copy of the complaint filed in the United States District Court for the Central District of California on behalf of the families devastated by this egregious breach of trust. These families only seek to be made whole after suffering the consequences of exposure at the former George Air Force Base. Unfortunately, these families are not alone. They are much like the many individuals and families who suffered from exposure to toxins in their water supply when they served and lived aboard Camp Lejeune in North Carolina. While it took decades, Congress has finally seen fit to give these families a fighting chance. As you know, the Senate is on the verge of passing and sending the Camp Lejeune Justice Act of 2022 to the President for his signature.

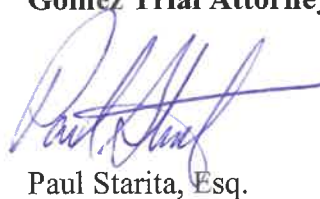
In addition to our complaint, we have attached the United States' motion to dismiss our complaint. The United States is invoking the Discretionary Function Exception to shield itself from liability. Do the families who served and sacrificed for our Nation at the



former George Air Force Base deserve less consideration than those that served and sacrificed at Camp Lejeune? Of course, they do not. We request that you take up the fight for the families impacted by the contamination at the former George Air Force Base. They are in desperate need of a “legislative fix.” The framework already exists in the Camp Lejeune Justice Act. Respectfully, it is time for Congress to stop approaching this problem in piecemeal fashion and solve the problem for all families who are suffering the consequences of exposure to toxic contamination at military installations across our Nation.

I would be honored to work with your staff in drafting legislation or providing any insight that you deem appropriate. We look forward to your response and action on this issue of national significance. It is quite literally a matter of life and death.

Sincerely,  
**Gomez Trial Attorneys**

A handwritten signature in blue ink, appearing to read 'Paul Starita', is written over the printed name.

Paul Starita, Esq.

Enclosures

CC: Congressman Jay Obernolte

**GOMEZ TRIAL ATTORNEYS**

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ROBERT ANDERSON, individually;  
DIXIE ATWOOD, individually;  
HOLLY ATWOOD, individually;  
JORDAN ATWOOD, individually;  
CATHERINE BENDELE, individually;  
DOROTHY LYNN BODDY,  
individually; DIANA BODKIN,  
individually; STACIE CLEMENT on  
behalf of her minor child L.C.,  
individually; STACIE CLEMENT,  
individually; SUZANNE COIT,  
individually; JORDAN SALTERN  
DEHEK, individually; MARY  
DEJONG, individually; PATRICIA  
MARIE EARL MAUGHAN,  
individually; CHRISTOPHER JAMES  
EARL individually; GEORGE JAMES  
GIBSON, individually; MEGAN HILL,  
individually; CHRISTI HUMPHREYS,  
individually; MICHAEL HYE,  
individually; SUZANNE JERABEK,  
individually; COBY MAUGHAN,  
individually; MICHAEL MCCAULEY,  
individually; KAILEY MEYER,

CASE NO.: 2:21-cv-9102

**PLAINTIFFS' SECOND  
AMENDED COMPLAINT**

1 individually; MONY PARK, as Legal  
 2 Representative of the ESTATE OF  
 3 LARRY C. PARK, individually;  
 4 REBECCA POPPLETON, individually;  
 5 CHRYSTINA ROWE, individually;  
 6 AMY SMITH, individually; BRENDA  
 7 STROUPE, individually; LISA  
 8 TICHENOR, individually; JESSICA  
 9 WALKER, individually; PAULINE  
 10 LLOYD WALKER, individually;  
 11 BERGANDY WATSON, individually;  
 12 LAUREN COLETRAIN, individually;  
 13 BRIAN CROOKS, individually;  
 14 DAVID GRASTY, individually;  
 15 RACHEL GRASTY-SHEEHAN,  
 16 individually; TANYA LIEB,  
 17 individually; APRIL MANDEVILLE,  
 18 individually; APRIL MANDEVILLE,  
 19 on behalf of her minor child, A.V.,  
 20 individually; CRYSTAL NASH,  
 21 individually; CRYSTAL NASH, on  
 22 behalf of her minor child, A.F.,  
 23 individually; ASHLEY RICE  
 24 individually; ASHLEY RICE, on behalf  
 25 of her minor child, M.D., individually;  
 26 MARLENE SHEEHAN, individually;  
 27 JOHN TEAGUE, individually; FRANK  
 28 VERA III, on behalf of his minor child,  
 F.V., individually; FRANK VERA III,  
 on behalf of his minor child, M.V.,  
 individually; KANDI WIMBERLY,  
 individually; CORBYN ZIEMER  
 MCCONAHY, individually; SARAH  
 MCCONAHY ZIEMER, individually;  
 and SARAH MCCONAHY ZIEMER,  
 behalf of her minor child, O.Z.,  
 individually;

Plaintiffs,

v.

1 THE UNITED STATES OF  
2 AMERICA

3 Defendants.  
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1           Plaintiffs ROBERT ANDERSON, DIXIE ATWOOD, HOLLY ATWOOD,  
2 JORDAN ATWOOD, CATHERINE BENDELE, DOROTHY LYNN BODDY,  
3 DIANA BODKIN, STACIE CLEMENT ON BEHALF OF HER MINOR CHILD L.C.,  
4 STACIE CLEMENT, SUZANNE COIT, JORDAN SALTERN DEHEK, MARY  
5 DEJONG, PATRICIA MARIE MAUGHAN EARL, JAMES EARL, GEORGE JAMES  
6 GIBSON, MEGAN HILL, CHRISTI HUMPHREYS, EARL HUMPHREYS,  
7 MICHAEL HYE, SUZANNE JERABEK, COBY MAUGHAN, MICHAEL  
8 MCCAULEY, KAILEY MEYER, MONY PARK, ON BEHALF OF THE ESTATE OF  
9 LARRY C. PARK, REBECCA POPPLETON, CHRYSTINA ROWE, AMY SMITH,  
10 BRENDA STROUPE, LISA TICHENOR, JESSICA WALKER, PAULINE LLOYD  
11 WALKER, BERGANDY WATSON, LAUREN COLETRAIN, BRIAN CROOKS,  
12 DAVID GRASTY, RACHEL GRASTY-SHEEHAN, TANYA LIEB, APRIL  
13 MANDEVILLE, APRIL MANDEVILLE ON BEHALF OF HER MINOR CHILD,  
14 A.V., CRYSTAL NASH, CRYSTAL NASH ON BEHALF OF HER MINOR CHILD,  
15 A.F., ASHLEY RICE, ASHLEY RICE ON BEHALF OF HER MINOR CHILD, M.D.,  
16 MARLENE SHEEHAN, JOHN TEAGUE, FRANK VERA III ON BEHALF OF HIS  
17 MINOR CHILD, F.V., FRANK VERA III ON BEHALF OF HIS MINOR CHILD,  
18 M.V., KANDI WIMBERLY, CORBYN ZIEMER MCCONAHY, SARAH  
19 MCCONAHY ZIEMER, SARAH MCCONAHY ZIEMER BEHALF OF HER MINOR  
20 CHILD, O.Z, (hereinafter “Plaintiffs”) have filed this lawsuit through their attorneys,  
21 Gomez Trial Attorneys, against Defendant, the United States of America, hereby allege,  
22 upon information and belief, as follows:

## 23 24 JURISDICTION AND VENUE 25

26           1. This is an action arising under the Federal Tort Claims Act 28 U.S.C. §§  
27 2671 et seq. This Court is vested with original jurisdiction to hear this matter pursuant  
28 to 28 U.S.C. § 1346 (b)(1), which provides in part that, “[t]he district courts ... shall

1 have exclusive jurisdiction of civil actions on claims against the United States, for  
2 money damages, accruing on and after January 1, 1945, for injury or loss of property, or  
3 personal injury or death caused by the negligent or wrongful act or omission of any  
4 officer, employee or servant of the Government while acting within the scope of his  
5 office or employment, under circumstances where the United States, if a private person,  
6 would be liable to the claimant in accordance with the law of the place where the act or  
7 omission occurred.”

8       2. Plaintiffs timely filed administrative claims with the United States Air  
9 Force pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2675. These claims were  
10 denied on either May 24, 2021 or June 14, 2021. The denials are attached hereto and  
11 marked as Exhibit A.

12       3. Venue is proper in the Central District of California, pursuant to 28 U.S.C.  
13 § 1402(b), in that the acts or omissions giving rise to the claims occurred in this district  
14 at former George Air Force Base, Victorville, California.

15       4. This action arises from the Defendant’s acts or omissions to address the  
16 toxic, hazardous, and radioactive waste deposited into the soils, groundwater, water  
17 supply, and released into the air at former George Air Force Base, and the failure to  
18 alert and treat individuals exposed to said contamination. Plaintiffs bring this action to  
19 recover damages for adverse health outcomes developed as a result of exposure to toxic,  
20 hazardous, and radioactive waste deposited into the soils, groundwater, water supply,  
21 and related airborne release of these chemicals at the former George Air Force Base. As  
22 alleged below, the acts and omissions complained of herein were performed by officers,  
23 agents, servants, and/or employees of the United States of America acting within the  
24 course and scope of their employment with the Defendant.

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PARTIES

5. Plaintiff ROBERT ANDERSON lived near former George Air Force Base  
in Adelanto, CA from approximately 1989 to 1994. Since that time, Plaintiff ROBERT

1 ANDERSON has suffered from various medical conditions such as stage 3  
2 lymphedema, cysts in the brain and nasal passages, high blood pressure, venous  
3 insufficiency, bilateral hip arthritis, septicemia, morbid obesity, plantar fasciitis,  
4 depression, anti-social disorder, tinnitus, chronic cellulitis, carpal tunnel, arthritis in  
5 hands, loss of mobility, fibrosis, tinea pedis, esophagitis, bilateral leg edema,  
6 hypertension, brain cysts, facial twitching, and venous insufficiency. Sometime after  
7 January 2019, Plaintiff ROBERT ANDERSON came to believe that these injuries were  
8 more likely than not caused by exposure to toxic contamination while living on former  
9 George Air Force Base.

10 6. Plaintiff DIXIE ATWOOD lived in family housing on former George Air  
11 Force Base from approximately February 1975 to October 1977 and again from March  
12 1983 to October 1987. Since that time, Plaintiff DIXIE ATWOOD has suffered from  
13 various medical conditions such as seizure disorder, migraines, a tumor in the pituitary  
14 gland, a tumor in the parotid gland, pregnancy complications, and urinary tract  
15 infections. Sometime after January 2019, Plaintiff DIXIE ATWOOD came to believe  
16 that these injuries were more likely than not caused by exposure to toxic contamination  
17 while living on former George Air Force Base.

18 7. Plaintiff HOLLY ATWOOD is the child of Plaintiff DIXIE ATWOOD  
19 who lived in family housing on former George Air Force Base from approximately  
20 February 1975 to October 1977 and again from March 1983 to October 1987. Plaintiff  
21 Dixie Atwood was exposed to toxic contamination that can have effects on organs and  
22 remain in the body for many years after exposure. Plaintiff HOLLY ATWOOD has  
23 suffered from various medical conditions including endometriosis, migraines, chronic  
24 pelvic pain, abnormal uterine bleeding, polycystic ovaries, retroperitoneal fibrosis,  
25 myalgia of pelvic floor, frequent urinary tract infections, and chronic nausea. Sometime  
26 after January 2019, Plaintiff HOLLY ATWOOD came to believe that these injuries  
27 were more likely than not caused by her mother's direct exposure to toxic contamination  
28 while living on former George Air Force Base.



1           8. Plaintiff JORDAN ATWOOD is the child of Plaintiff DIXIE ATWOOD  
2 who lived in family housing on former George Air Force Base from approximately  
3 February 1975 to October 1977 and again from March 1983 to October 1987. Plaintiff  
4 Dixie Atwood was exposed to toxic contamination that can have developmental effects  
5 on organs and can remain in the body for several years after exposure. Plaintiff  
6 JORDAN ATWOOD has suffered from various medical conditions including a birth  
7 defect with being born with only one kidney, severe ADHD, and chronic migraines.  
8 Sometime after January 2019, Plaintiff JORDAN ATWOOD came to believe that these  
9 injuries were more likely than not caused her mother's direct exposure to toxic  
10 contamination while living on former George Air Force Base.

11           9. Plaintiff CATHERINE BANDELE lived in family housing on former  
12 George Air Force Base from approximately October 1989 to January 1991. Since that  
13 time, Plaintiff CATHERINE BANDELE has suffered from various medical conditions  
14 such as pre-cancerous cells on the cervix, endometriosis, fibroid tumors, hypertension,  
15 multiple sclerosis, severe polyneuropathy, hypothyroidism, carpal tunnel syndrome,  
16 arthritis in the back, large granular lymphocytic leukemia, headaches, dizziness, fatigue,  
17 foot numbness, burning sensation in the hands and feet, optic neuritis, restless leg  
18 syndrome, and high blood pressure. Sometime after January 2019, Plaintiff  
19 CATHERINE BANDELE came to believe that these injuries were more likely than not  
20 caused by exposure to toxic contamination while living on former George Air Force  
21 Base.

22           10. Plaintiff DOROTHY LYNN BODDY lived in family housing on former  
23 George Air Force Base from approximately April 1975 to December 1975. Since that  
24 time, Plaintiff DOROTHY LYNN BODDY has suffered from swollen lymph glands,  
25 supraclavicular adenopathy, Hodgkin's lymphoma, nodular sclerosing, recurring  
26 cystitis, precancerous cervix, miscarriage, breast cancer, neck muscle atrophy, dyspnea,  
27 mast cell activation syndrome, brain aneurysm, leaky aortic valve, leaky mitral valve,  
28 and atrophy of the pancreas. Sometime after January 2019, Plaintiff DOROTHY LYNN

1 BODDY came to believe that these injuries were more likely than not caused by  
2 exposure to toxic contamination while living on former George Air Force Base.

3 11. Plaintiff DIANA BODKIN lived in family housing on former George Air  
4 Force Base from approximately February 1975 to October 1976 and again from March  
5 1983 to 1989. Since that time, Plaintiff DIANA BODKIN has suffered from various  
6 medical conditions including breast cancer, miscarriages, bladder infections, yeast  
7 infections, hysterectomy, maculate degeneration, and depression. Sometime after  
8 January 2019, Plaintiff DIANA BODKIN came to believe that these injuries were more  
9 likely than not caused by exposure to toxic contamination while living on former  
10 George Air Force Base.

11 12. L.C. is the minor child of Plaintiff STACIE CLEMENT who lived in  
12 family housing on former George Air Force Base from approximately June 1988 to July  
13 1992 and was exposed to toxic contamination that can have effects on organs and  
14 remain in the body for many years after exposure. L.C. has suffered from various  
15 medical conditions including atresia and stenosis of the large intestine, rectum, and  
16 anus, as well as encopresis, fecal impaction, congenital anomaly of anus, urinary and  
17 fecal incontinence. Sometime after January 2019, Plaintiff STACIE CLEMENT, on  
18 behalf of her minor child L.C., came to believe that L.C.'s injuries were more likely  
19 than not caused by Plaintiff STACIE CLEMENT's direct exposure to toxic  
20 contamination while living on former George Air Force Base.

21 13. Plaintiff STACIE CLEMENT was born on former George Air Force Base  
22 in 1988 and thereafter lived in family housing on former George Air Force Base from  
23 approximately June 1988 to July 1992. Since that time, Plaintiff STACIE CLEMENT  
24 has suffered from various medical conditions including narcolepsy with cataplexy,  
25 migraines, ovarian cysts, thrombosis of ovarian vein, hypothyroidism, endometriosis,  
26 salpingectomy, hysterectomy, depression, abdominal cysts, irregularly heavy periods,  
27 fertility issues, pregnancy complications, and miscarriage. Sometime after January  
28 2019, Plaintiff STACIE CLEMENT came to believe that these injuries were more likely

1 than not caused by exposure to toxic contamination in-utero and while living on former  
2 George Air Force Base.

3 14. Plaintiff SUZANNE COIT lived in family housing on former George Air  
4 Force Base from approximately December 1988 to July 1992. Since that time, Plaintiff  
5 SUZANNE COIT has suffered from various medical conditions including  
6 hyperlipidemia, fibromyalgia, anxiety, high cholesterol, kidney stones, diverticulosis of  
7 the intestine, hysterectomy, endometriosis, recurrent major depressive disorder,  
8 hypothyroidism, congestive heart failure, pneumonia, gastroesophageal reflux disease  
9 (GERD), diabetes type 2, chronic kidney disease (CKD, stage III), dyspnea, left bundle  
10 branch block, prolonged QT interval, osteopenia, chronic diarrhea, disturbed sleep  
11 rhythm, angina pectoris, and coronary artery disease. Sometime after January 2019,  
12 Plaintiff SUZANNE COIT came to believe that these injuries were more likely than not  
13 caused by exposure to toxic contamination while living on former George Air Force  
14 Base.

15 15. Plaintiff JORDAN SALTEN DEHEK is the child of Plaintiff PATRICIA  
16 MARIE EARL MAUGHAN who lived in family housing on former George Air Force  
17 Base from approximately 1974 to 1980 and was exposed to toxic contamination that can  
18 have effects on organs and remain in the body for many years after exposure. Since that  
19 time, Plaintiff JORDAN SALTEN DEHEK has suffered various medical conditions  
20 including abnormal ovarian cysts, anxiety, depression, swollen lymph node, lumps in  
21 the arms, urinary tract infections, and mittelschmerz. Sometime after January 2019,  
22 Plaintiff JORDAN SALTEN DEHEK came to believe that these injuries were more  
23 likely than not caused by her mother's direct exposure to toxic contamination while  
24 living on former George Air Force Base.

25 16. Plaintiff MARY DEJONG was born on former George Air Force Base in  
26 1967 and lived in family housing on former George Air Force Base from approximately  
27 1967 to 1968 and then again from 1971 to 1975. Since that time, Plaintiff MARY  
28 DEJONG has suffered various medical conditions including severe environmental

1 allergies and asthma, respiratory issues such as frequent pneumonia, chronic tonsillitis,  
2 anxiety, eczema, lethargy, photosensitivity, joint pain, numbness and poor extremity  
3 circulation, hypersensitive nerve pain, painful and heavy periods, hypothyroidism,  
4 menorrhagia, depression, Osgood-Schlatter disease and aggressive mole growth.  
5 Sometime after January 2019, Plaintiff MARY DEJONG came to believe that these  
6 injuries were more likely than not caused by exposure to toxic contamination in-utero  
7 and while living on former George Air Force Base.

8 17. Plaintiff CHRISTOPHER JAMES EARL is the child of Plaintiff  
9 PATRICIA MARIE EARL MAUGHAN who lived in family housing on former George  
10 Air Force Base from approximately 1974 to 1980 and was exposed to toxic  
11 contamination that can have effects on organs and remain in the body for many years  
12 after exposure. Plaintiff CHRISTOPHER JAMES EARL has suffered various medical  
13 conditions including gouty arthritis, degenerative disc disease, hypermobile ehlers-  
14 danlos syndrome, connective tissue disorder, gastrointestinal issues, gastroparesis,  
15 dysautonomia, postural orthostatic tachycardia syndrome, mast cell activation  
16 syndrome, fibromyalgia, neuropathy, developmental disorders, anxiety, metabolic  
17 syndrome, chronic nutritional deficiency, morbid obesity, chronic fatigue, chronic  
18 inflammation, chronic pain, depression, deviated septum, chronic sinusitis, poor  
19 balance, poor focus and memory, poor stress management, temperature sensitivity,  
20 stimulus overload, crumbling teeth, eczema, slightly concaved chest, tendency to  
21 hyperextend joints, heart issues, cervical instability, neck strain, bone deformation,  
22 frequent respiratory illness, and amaurosis fugax. Sometime after January 2019,  
23 Plaintiff CHRISTOPHER JAMES EARL came to believe that these injuries were more  
24 likely than not caused by his mother's exposure to toxic contamination while living on  
25 former George Air Force Base.

26 18. Plaintiff GEORGE GIBSON lived in family housing on former George Air  
27 Force Base from approximately August 1981 to 1987. Since that time, Plaintiff  
28 GEORGE GIBSON has suffered from chronic obstructive pulmonary disease,

1 hypertension, scleroderma, diabetic, pulmonary hypertension, pulmonary fibrosis,  
2 diabetes mellitus, stage 4 kidney disease, a double lung transplant, anxiety,  
3 immunosuppression, acute renal failure syndrome, anemia, hyperparathyroidism,  
4 proteinuria, total knee replacement, total hip replacement and chronic pain. Sometime  
5 after January 2019, Plaintiff GEORGE GIBSON came to believe that these injuries  
6 were more likely than not caused by exposure to toxic contamination while living on  
7 former George Air Force Base.

8         19. Plaintiff MEGAN HILL lived in family housing on former George Air  
9 Force Base from approximately 1985 to 1992. Since that time, Plaintiff MEGAN HILL  
10 has suffered from postural orthostatic tachycardia syndrome, constipation, anxiety,  
11 generalized anxiety disorder, asthma, polycystic ovarian syndrome, dysthymia,  
12 fibromyalgia, migraines, eczema, temporomandibular joint dysfunction, irritable bowel  
13 syndrome, autism, Post-Traumatic Stress Disorder, chronic pain dorsalgia, arthritis,  
14 small fiber neuropathy, high cholesterol, depression, history of seizures, constipation,  
15 contact dermatitis, paraesthesia, temporomandibular joint syndrome, unsteady gait,  
16 gastric sleeve surgery, recurring shingles, Sheehan's syndrome, small fiber neuropathy  
17 and eczema. Sometime after January 2019, Plaintiff MEGAN HILL came to believe  
18 that these injuries were more likely than not caused by exposure to toxic contamination  
19 while living on former George Air Force Base.

20         20. Plaintiff CHRISTI HUMPHREYS was born on former George Air Force  
21 Base in 1972 and lived in family housing on former George Air Force Base from  
22 approximately 1972 to 1979. Since that time, Plaintiff CHRISTI HUMPHREYS has  
23 suffered from seizures – petite progressed to grand mal infant seizures, chronic sinusitis,  
24 depression, anxiety, mental illness, blindness, diabetes - a ketoacidosis lactic acidosis,  
25 ovarian cysts, anorexia, learning disorder, metabolic acidosis, lumbago, abnormal  
26 uterine and vaginal bleeding, migraines, gastroenteritis, sepsis and anemia. Sometime  
27 after January 2019, Plaintiff CHRISTI HUMPHREYS came to believe that these  
28

1 injuries were more likely than not caused by exposure to toxic contamination in-utero  
2 and while living on former George Air Force Base.

3 21. Plaintiff MICHAEL HYE lived in family housing on former George Air  
4 Force Base from approximately 1979 to 1984. Since that time, Plaintiff MICHAEL  
5 HYE has suffered from bone lesions, skin lesions, body twitching, muscle twitching  
6 other undiagnosed issues. Sometime after January 2019, Plaintiff MICHAEL HYE  
7 came to believe that these injuries were more likely than not caused by exposure to toxic  
8 contamination while living on former George Air Force Base.

9 22. Plaintiff SUZANNE JERABEK was born on former George Air Force  
10 Base in 1972 and lived in family housing on former George Air Force Base from  
11 approximately 1972 to 1975 and again in 1980 to 1986. Since that time, Plaintiff  
12 SUZANNE JERABEK has suffered from an ovarian cyst, miscarriages, achalasia,  
13 esophagectomy, kidney failure, migraines, chronic headaches, trigeminal neuralgia,  
14 fibromyalgia, axial spondylarthritis, constant abdominal pain, and depression. Sometime  
15 after January 2019, Plaintiff SUZANNE JERABEK came to believe that these injuries  
16 were more likely than not caused by exposure to toxic contamination in-utero and while  
17 living on former George Air Force Base.

18 23. Plaintiff COBY MAUGHAN is the child of Plaintiff PATRICIA MARIE  
19 EARL MAUGHAN who lived in family housing on former George Air Force Base  
20 from approximately 1974 to 1980 and was exposed to toxic contamination that can have  
21 effects on organs and remain in the body for many years after exposure. Plaintiff COBY  
22 MAUGHAN has suffered from premature birth, autism and ADHD. Sometime after  
23 January 2019, Plaintiff COBY MAUGHAN came to believe that these injuries were  
24 more likely than not caused by his mother's direct exposure to toxic contamination  
25 while living on former George Air Force Base.

26 24. Plaintiff PATRICIA MARIE EARL MAUGHAN lived in family housing  
27 on former George Air Force Base from approximately 1974 to 1980. Since that time,  
28 Plaintiff PATRICIA MARIE EARL MAUGHAN has suffered various medical

1 conditions including degenerative disc disorder, thyroid issues, depression, anxiety,  
2 miscarriage, nasal polyps, chronic back pain, bulging discs, fibromyalgia, bone spurs,  
3 osteoarthritis, no cartilage in knee, neuropathy in feet, tibia tendinitis, borderline  
4 diabetes, asthma, chronic fatigue, anemia, weak bladder, irritable bowel syndrome, pain  
5 and stiffness in feet and ankles, plantar fasciitis, kidney stones, morbid obesity,  
6 premature birth, autoimmune thyroid and adrenal issues. Sometime after January 2019,  
7 Plaintiff PATRICIA MARIE EARL MAUGHAN came to believe that these injuries  
8 were more likely than not caused by exposure to toxic contamination while living on  
9 former George Air Force Base.

10 25. Plaintiff MICHAEL McCAULEY lived near former George Air Force  
11 Base in Adelanto, California and attended school on former George Air Force Base  
12 around 1994 to 1997. Since that time, Plaintiff MICHAEL McCAULEY has suffered  
13 from bilateral vascular necrosis, testicular microlithiasis, psoriatic plaque psoriasis,  
14 bilateral hernias, cervical lymphadenopathy, enlarged jugulodigastric lymph nodes,  
15 hypertrophy of vas deferens, BPH (benign prostatic hyperplasia), abdominal pain, acute  
16 pain left shoulder, avascular necrosis of the hip, degeneration of intervertebral disc L5,  
17 epididymitis, hematochezia, muscle spasm of left shoulder area, psoriatic plaque  
18 psoriasis, and a renal cyst. Sometime after January 2019, Plaintiff MICHAEL  
19 McCAULEY came to believe that these injuries were more likely than not caused by  
20 exposure to toxic contamination while living near and attending school on former  
21 George Air Force Base.

22 26. Plaintiff KAILEY MEYER is the child of PLAINTIFF PATRICIA  
23 MAUGHAN who lived in family housing on former George Air Force Base from  
24 approximately September 1975 to 1980 and was exposed to toxic contamination that  
25 can have effects on organs and remain in the body for many years after exposure. Since  
26 that time, Plaintiff KAILEY MEYER has suffered from vision issues, scoliosis, major  
27 depressive disorder, panic disorder, morbid obesity, lumbar sprain, nerve root disorder,  
28 early pregnancy hemorrhage, and pyelonephritis. Sometime after January 2019, Plaintiff

1 KALEY MEYER came to believe that these injuries were more likely than not caused  
2 by her mother's direct exposure to toxic contamination while living on former George  
3 Air Force Base.

4 27. Plaintiff MONY PARK brings this action on behalf of the ESTATE OF  
5 LARRY C. PARK. LARRY C. PARK lived in family housing on former George Air  
6 Force Base from approximately 1955-1961. Since that time, LARRY C. PARK suffered  
7 various medical conditions including prostate cancer, colon cancer, neuropathy  
8 following radiation, bladder cancer, six back surgeries, and death. Sometime after  
9 January 2019, Plaintiff MONY PARK on behalf of the ESTATE OF LARRY C. PARK  
10 came to believe that the injuries that led to his death were more likely than not caused  
11 by exposure to toxic contamination while living on former George Air Force Base.

12 28. Plaintiff REBECCA POPPLETON was born in close proximity to former  
13 George Air Force Base in 1975 and lived in family housing on former George Air Force  
14 Base from approximately 1975 to 1980. Since that time, Plaintiff REBECCA  
15 POPPLETON has suffered from a blood disorder, heart murmur, pars defect in spine,  
16 hip clicking, hip dislocations, polycystic ovary syndrome, diabetes, insulin resistance,  
17 arthritis, fibromyalgia, chronic pain, fatigue, brain fog, REM sleep disorder, heart  
18 disease, heart enlargement, high cholesterol, hypothyroidism, fatty liver, townes-brocks  
19 syndrome, acid reflux, sleep apnea, worsening asthma, chronic bronchitis, chronic  
20 pneumonia, allergies, depression, anxiety, lasting heartache, ADD/ADHD, eosinophilic  
21 fasciitis connective tissue disorder, postural orthostatic tachycardia syndrome autonomic  
22 dysfunction, plantar fasciitis, restless leg, precancerous spitz nevus, degenerative disc  
23 disease, sciatica, fracture of lumbar, permanent nerve damage, pain in both legs and  
24 both feet from multiple fractures L5, LS L5 fusion, permanent right foot neuropathy,  
25 coccydynia, myokymia, abdominal twitching, leg twitching, trembles in both hands,  
26 brain lesions, temporomandibular joint dysfunction, multiple sclerosis symptoms, and  
27 stillborn birth in third trimester. Sometime after January 2019, Plaintiff REBECCA  
28 POPPLETON came to believe that these injuries were more likely than not caused by



1 exposure to toxic contamination in-utero and while living on former George Air Force  
2 Base.

3       29. Plaintiff CHYRSTINA ROWE was born on former George Air Force Base  
4 in 1988 and lived in family housing on former George Air Force Base from  
5 approximately 1988 to 1991. Since that time, Plaintiff CHYRSTINA ROWE has  
6 suffered from a miscarriage, pre-diabetes, chronic upper respiratory infections, total  
7 abdominal hysterectomy, laparoscopic surgeries, gall bladder removal, fibrocystic breast  
8 disease, benign breast tumors, swallowing disorder, thyroid issues, fevers, coughs,  
9 colds, strep throat, pharyngitis, vomiting, diarrhea, high levels of lead, fevers, raspy  
10 breathing, ear infections, gastritis, tapered trachea, croup, constant sickness, trouble  
11 conceiving, endometriosis, ovarian cysts uterus issues, right ovary and fallopian tube  
12 removed due to ovarian cyst instigated bleeding, postpartum depression, blood pressure  
13 issues, eosinophilic esophagitis, chronic autoimmune disease, chronic constipation,  
14 eustachian tube dysfunction, insomnia, constant earaches, abdominal pain, exocrine  
15 pancreatic insufficiency, acid reflux disease, chronic sinusitis, hiatal hernia,  
16 gastroesophageal reflux disease, aphasia, acute sinusitis, thyroglossal cyst, tonsillitis,  
17 alopecia areata, irritable bowel syndrome, dysphagia, swallowing disorder, tension  
18 headaches, migraines, extreme pain while menstruating, ringing in ears from chronic ear  
19 infections, and chronic abdominal pain. Sometime after January 2019, Plaintiff  
20 CHYRSTINA ROWE came to believe that these injuries were more likely than not  
21 caused by exposure to toxic contamination in-utero and while living on former George  
22 Air Force Base.

23       30. Plaintiff AMY SMITH lived in family housing on former George Air Force  
24 Base from approximately 1989 to 1991. Since that time, Plaintiff AMY SMITH has  
25 suffered from chronic knee pain, late miscarriage, depression, anxiety, skin problems,  
26 feet-heel spurs, plantar fasciitis, arthritis, migraines, and sacroiliitis joint pain.  
27 Sometime after January 2019, Plaintiff AMY SMITH came to believe that these injuries  
28

1 were more likely than not caused by exposure to toxic contamination while living on  
2 former George Air Force Base.

3 31. Plaintiff BRENDA STROUPE lived in family housing on former George  
4 Air Force Base from approximately 1988 to 1992. Since that time, Plaintiff BRENDA  
5 STROUPE has suffered from infertility, hypothyroidism, fibroids, endometriosis, pelvic  
6 adhesions, asthma, allergies, dermatitis, damaged fallopian tubes, and ovarian cyst.  
7 Sometime after January 2019, Plaintiff BRENDA STROUPE came to believe that these  
8 injuries were more likely than not caused by exposure to toxic contamination while  
9 living on former George Air Force Base.

10 32. Plaintiff LISA TICHENOR lived in family housing on former George Air  
11 Force Base from approximately September 1989 to August 1991. Since that time,  
12 Plaintiff LISA TICHENOR has suffered from two miscarriages, subsequent PTSD,  
13 mitral valve prolapse, supraventricular tachycardia, premature ventricular, asthma,  
14 tinnitus, ocular migraines, immune thrombocytopenia purpura requiring blood and  
15 platelet transfusions, systemic lupus erythematosus, fibromyalgia, anemia, solar  
16 urticaria, Raynaud's phenomenon, livedo reticularis, length dependent sensory  
17 peripheral neuropathy, degenerative disc disease, sciatica, osteoarthritis, convulsive  
18 syncope seizures, restless leg syndrome, insomnia, REM sleep disorder, pre-cancerous  
19 endometrial hyperplasia, adenomyosis, ovarian cysts, multiple fibroid tumors,  
20 gastroparesis, allergic colitis, sliding hiatal hernia, orthostatic hypertension, autonomic  
21 neuropath, orthostatic essential tumor, Parkinson's disease, dystonia, cricopharyngeal  
22 dysfunction, multiple chemical sensitivities, metal allergy, allergies to numerous  
23 medications, environmental allergizes, mass in supraclavicular fossa, crushed pituitary  
24 gland/empty sella, brain lesions, mast cell activation disorder symptoms, meibomian  
25 gland dysfunction, chronically low vitamin D, anaphylaxis, depression, and anxiety.  
26 Sometime after January 2019, Plaintiff LISA TICHENOR came to believe that these  
27 injuries were more likely than not caused by exposure to toxic contamination while  
28 living on former George Air Force Base.

33. Plaintiff JESSICA WALKER's mother lived in family housing on former George Air Force Base before and after Plaintiff JESSICA WALKER's birth on September 7, 1977. Plaintiff JESSICA WALKER's mother was exposed to toxic contamination that can have effects on organs and remain in the body for many years after exposure. Plaintiff JESSICA WALKER also lived in family housing on former George Air Force Base during 1977. Plaintiff JESSICA WALKER has suffered from three miscarriages, tubal pregnancy, multi-directional joint instability, Ehlers Danlos syndrome, endometriosis, Barrett's esophagus, gastroesophageal reflux disease, colitis, irritable bowel syndrome, spinal stenosis, bradycardia, blood clot (mesenteric vein), chronic pain, fibromyalgia, post-traumatic stress disorder, sciatica, tendonitis, depression, anxiety, bipolar and personality disorders, asthma, deformities in feet, back, neck, degenerative discs, bulging discs, arthritis, bone spurs, high arches, hypermobility, hammer toes, claw foot, and nervous system disorders. Sometime after January 2019, Plaintiff JESSICA WALKER came to believe that these injuries were more likely than not caused by her mother's direct exposure to toxic contamination while living on former George Air Force Base, as well as her exposure to the toxic contamination in-utero and while living on former George Air Force Base.

34. Plaintiff PAULINE LLOYD WALKER lived in family housing on former George Air Force Base from approximately 1974 to 1980. Since that time, Plaintiff PAULINE LLOYD WALKER has suffered from a dual stroke, fibromyalgia, diabetes, atrial fibrillation, cerebrovascular disease, chronic gastrointestinal disorder, diverticulitis, irritable bowel syndrome, intestinal dysmotility, gastroparesis, heartburn, indigestion, reflux, chronic pain, chronic fatigue, Ehlers Danlos syndrome, connective tissue disorder, hemorrhoids, internal bleeding, ischemic /transient Strokes, polycystic ovarian syndromes, pulmonary embolus, rectal/anal bleeding, right hemiplegia, general arthritis, cataracts, chondritis, dental issues, edema in feet, high blood pressure, low blood pressure, high cholesterol, inner ear pain, kidney stones, migraines, mitral valve prolapse, osteoarthritis, osteoporosis, patent foramen ovale, seasonal allergies, tremors,

1 and uterine polyps. Sometime after January 2019, Plaintiff PAULINE LLOYD  
2 WALKER came to believe that these injuries were more likely than not caused by  
3 exposure to toxic contamination while living on former George Air Force Base.

4 35. Plaintiff BERGANDY WATSON lived in family housing on former  
5 George Air Force Base from approximately 1982 to 1986. Since that time, Plaintiff  
6 BERGANDY WATSON has suffered from fibroadenomas, interstitial cystitis, chronic  
7 pain, endometriosis, chronic migraines, peripheral neuropathy, fibromyalgia,  
8 osteoporosis, and degenerative disc disease. Sometime after January 2019, Plaintiff  
9 BERGANDY WATSON came to believe that these injuries were more likely than not  
10 caused by exposure to toxic contamination while living on former George Air Force  
11 Base.

12 36. Plaintiff LAUREN COLETRAIN was born on former George Air Force  
13 Base in 1988 and lived in family housing on former George Air Force Base during  
14 1988. Since that time, LAUREN COLETRAIN has suffered from various medical  
15 conditions including bone spurs, ADHD, sinusitis, sores on scalp and skin related to  
16 chemical exposure, issues with bone structure in her back and ribs, migraines,  
17 depression, high risk for breast and ovarian cancer, and anxiety. Sometime after January  
18 2019, Plaintiff LAUREN COLETRAIN came to believe that these injuries were more  
19 likely than not caused by exposure to toxic contamination in-utero and while living on  
20 former George Air Force Base.

21 37. Plaintiff BRIAN CROOKS' mother lived on former George Air Force Base  
22 from approximately 1980 to 1982 and in family housing on former George Air Force  
23 Base from approximately 1983 to 1985. After birth, Plaintiff BRIAN CROOKS lived in  
24 family housing on former George Air Force Base from approximately 1983 to 1985. His  
25 mother was exposed to toxic contamination at former George Air Force Base while she  
26 was pregnant with Plaintiff BRIAN CROOKS and Plaintiff BRIAN CROOKS was  
27 exposed to toxic contamination in-utero and while living on former George Air Force  
28 Base. Plaintiff BRIAN CROOKS has since suffered from various medical conditions

1 including a premature birth, grade 3 intraventricular hemorrhage, respiratory  
2 dependency for a prolonged period of time, progressive hydrocephalus, severe seizure  
3 problems, hearing loss, and optic nerve damage. Sometime after January 2019, Plaintiff  
4 BRIAN CROOKS came to believe that these injuries were more likely than not caused  
5 by in-utero exposure to toxic contamination from his mother's direct exposure to toxic  
6 contamination while living on former George Air Force Base and his direct exposure to  
7 toxic contamination while living on former George Air Force Base.

8 38. Plaintiff DAVID GRASTY lived in family housing on former George Air  
9 Force Base from approximately 1984 to 1989. Since that time, Plaintiff DAVID  
10 GRASTY has suffered from seizures. Sometime after January 2019, Plaintiff DAVID  
11 GRASTY came to believe that these injuries were more likely than not caused by  
12 exposure to toxic contamination while living on former George Air Force Base.

13 39. Plaintiff RACHEL GRASTY-SHEEHAN lived in family housing on  
14 former George Air Force Base from approximately 1984 to 1989. Since that time,  
15 Plaintiff RACHEL GRASTY-SHEEHAN has suffered from various medical conditions  
16 including miscarriages, post-surgical menopause, COPD, arthritis, anxiety, depression,  
17 Raynaud's syndrome, hypothyroidism, rosacea, fatty liver, dyslipidemias, TMD,  
18 bursitis, fibrocystic breast disease, lumbago with sciatica, endocervical squamous  
19 metaplastic cells, hyperglycemia, essential hypertension, abnormal ECG, valvar lesion,  
20 hysterectomy, cysts, fibroids, adhesions, chronic bronchitis, asthma, and dyspnea.  
21 Sometime after January 2019, Plaintiff RACHEL GRASTY-SHEEHAN came to  
22 believe that these injuries were more likely than not caused by exposure to toxic  
23 contamination while living on former George Air Force Base.

24 40. Plaintiff TANYA LIEB lived in family housing on former George Air  
25 Force Base from approximately 1978 to 1980. Since that time, Plaintiff TANYA LIEB  
26 has suffered from profound sensorineural hearing loss in both ears, retinitis pigmentosa  
27 deafness syndrome in both eyes, Usher syndrome and retinal edema in both eyes.  
28 Sometime after January 2019, Plaintiff TANYA LIEB came to believe that these

1 injuries were more likely than not caused by exposure to toxic contamination while  
2 living on former George Air Force Base.

3 41. Plaintiff APRIL MANDEVILLE was born on former George Air Force  
4 Base in 1984 and lived in family housing on former George Air Force Base from  
5 approximately 1984 to 1987. Since that time, Plaintiff APRIL MANDEVILLE has  
6 suffered from various medical conditions including attention deficit disorder,  
7 miscarriage, hyper parathyroid, cholecystitis, multiple kidney and gallbladder stones,  
8 and blighted ovum. Sometime after January 2019, Plaintiff APRIL MANDEVILLE  
9 came to believe that these injuries were more likely than not caused by exposure to toxic  
10 contamination in-utero and while living on former George Air Force Base.

11 42. A.V. is the minor child of Plaintiff APRIL MANDEVILLE. Plaintiff  
12 APRIL MANDEVILLE lived in family housing on former George Air Force Base from  
13 approximately 1984 to 1987. Plaintiff APRIL MANDEVILLE was exposed to toxic  
14 contamination at former George Air Force Base that effects organs and remains in the  
15 body for many years after exposure. A.V. has suffered from various medical conditions  
16 including a severe birth defect, gastroschisis, abdominal scarring, and attention deficit  
17 disorder. Sometime after January 2019, Plaintiff APRIL MANDEVILLE, on behalf of  
18 her minor child, A.V., came to believe that A.V.'s injuries were more likely than not  
19 caused by Plaintiff APRIL MANDEVILLE's exposure to toxic contamination while  
20 living on former George Air Force Base.

21 43. Plaintiff CRYSTAL NASH lived in family housing on former George Air  
22 Force Base from approximately 1984 to 1989. Since that time, Plaintiff CRYSTAL  
23 NASH has suffered from various medical conditions such as nervous ticks, neuropathy,  
24 depression, anxiety, and gallbladder issues. Sometime after January 2019, Plaintiff  
25 CRYSTAL NASH came to believe that these injuries were more likely than not caused  
26 by exposure to toxic contamination while living on former George Air Force Base.

27 44. A. F. is the minor child of Plaintiff CRYSTAL NASH. Plaintiff CRYSTAL  
28 NASH lived in family housing on former George Air Force Base from approximately

1 1984 to 1989. Plaintiff CRYSTAL NASH was exposed to toxic contamination at former  
2 George Air Force Base that effects organs and remains in the body for many years after  
3 exposure. A. F. has suffered from various medical conditions including nervous ticks,  
4 leg length discrepancy, bowed feet, and ADHD. Sometime after January 2019, Plaintiff  
5 CRYSTAL NASH, on behalf of her minor child, A. F., came to believe that A.F.'s  
6 injuries were more likely than not caused by her exposure to toxic contamination while  
7 living on former George Air Force Base.

8 45. Plaintiff ASHLEY RICE (formerly known as Ashley DeClerk) was born on  
9 former George Air Force Base in 1987 and lived in family housing on former George  
10 Air Force Base from approximately 1987 to 1989. Since that time, Plaintiff ASHLEY  
11 RICE has suffered from hypertension. Sometime after January 2019, Plaintiff ASHLEY  
12 RICE came to believe that these injuries were more likely than not caused by exposure  
13 to toxic contamination in-utero and while living on former George Air Force Base.

14 46. M.D. is the child of Plaintiff ASHLEY RICE. Plaintiff ASHLEY RICE  
15 lived in family housing on former George Air Force Base from approximately 1987 to  
16 1989. Plaintiff ASHLEY RICE was exposed to toxic contamination at former George  
17 Air Force Base that effects organs and remains in the body for many years after  
18 exposure. M.D. has suffered from various medical conditions including a severe birth  
19 defect, short gut, and gastroschisis. Sometime after January 2019, Plaintiff ASHLEY  
20 RICE, on behalf of her minor child, M.D., came to believe that M.D.'s injuries were  
21 more likely than not caused by her exposure to toxic contamination while living on  
22 former George Air Force Base.

23 47. Plaintiff MARLENE SHEEHAN is the child of Plaintiff RACHEL  
24 GRASTY-SHEEHAN. Plaintiff RACHEL GRASTY-SHEEHAN lived on former  
25 George Air Force Base from approximately 1984 to 1989 and was exposed to toxic  
26 contamination at former George Air Force Base that effects organs and remains in the  
27 body for many years after exposure. Plaintiff MARLENE SHEEHAN has suffered from  
28 various medical conditions including celiac disease, anemia, hyperlipidemia, abnormal

1 pap, anxiety, and pinguecula in both eyes. Sometime after January 2019, Plaintiff  
2 MARLENE SHEEHAN came to believe that these injuries were more likely than not  
3 caused by her mother's exposure to toxic contamination while living on former George  
4 Air Force Base.

5 48. Plaintiff JOHN TEAGUE was born on former George Air Force Base in  
6 1982 and lived in family housing on former George Air Force Base from approximately  
7 March 1984 to February 1987 and was exposed to toxic contamination at former George  
8 Air Force Base that effects organs and remains in the body for many years after  
9 exposure. Plaintiff JOHN TEAGUE has suffered from various medical conditions  
10 including premature birth, congenital heart disease, atrial septal defect, ascending aorta  
11 dilation, chronic bronchitis, seizures, migraines, ADHD, asthma, autism, Asperger's,  
12 venous insufficiency lower extremities, and dental disease. Sometime after January  
13 2019, Plaintiff JOHN TEAGUE came to believe that these injuries were more likely  
14 than not caused by exposure to toxic contamination in-utero and while living on former  
15 George Air Force Base.

16 49. F.V. is the child of FRANK VERA III. FRANK VERA III lived on former  
17 George Air Force Base from approximately January 1973 to May 1974 and was exposed  
18 to toxic contamination at former George Air Force Base that effects organs and remains  
19 in the body for many years after exposure. F.V. has suffered from various medical  
20 conditions including premature birth, malformed ears causing deafness in both ears,  
21 brain malformations including a narrowed left ventricle, autism, respiratory issues, lack  
22 of fine motor skills in extremities, malformation of spinal nerve root, food and  
23 environmental allergies, tooth enamel decay, behavioral, reading and speech  
24 development issues, and digestive problems. Sometime after January 2019, Plaintiff  
25 FRANK VERA III, on behalf of his minor child, F.V., came to believe that F.V.'s  
26 injuries were more likely than not caused by his exposure to toxic contamination on  
27 former George Air Force Base.

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1           50. M.V. is the child of FRANK VERA III. FRANK VERA III lived on former  
2 George Air Force Base from approximately January 1973 to May 1974. FRANK VERA  
3 III was exposed to toxic contamination at former George Air Force Base that effects  
4 organs and remains in the body for many years after exposure. M.V. has suffered from  
5 various medical conditions including premature birth, respiratory issues which required  
6 oxygen therapy due to underdeveloped lungs, significant environmental allergies,  
7 reading and speech development issues, extreme fatigue, an outward turning hip.  
8 Sometime after January 2019, Plaintiff FRANK VERA III, on behalf of his minor child,  
9 M.V., came to believe that M.V.'s injuries were more likely than not caused by his  
10 exposure to toxic contamination on former George Air Force Base.

11           51. Plaintiff KANDI WIMBERLY lived in family housing on former George  
12 Air Force Base from approximately 1990 to 1991. Since that time, Plaintiff KANDI  
13 WIMBERLY has suffered from various medical conditions such as several  
14 miscarriages, ovarian cysts, depression, anxiety, gastroesophageal reflect, Barrett's  
15 esophagus, essential thrombocythemia, leukocytosis, diffused hyperplasia with mild  
16 megaloblastic differentiation, hysterectomy due to fibroids, urinary incontinence,  
17 insomnia, hypertriglyceridemia, abnormal glucose, osteoarthritis, splenic lesion, cardiac  
18 arrhythmia, trigeminal rhythm and sleep apnea. Sometime after January 2019, Plaintiff  
19 KANDI WIMBERLY came to believe that these injuries were more likely than not  
20 caused by exposure to toxic contamination while living on former George Air Force  
21 Base.

22           52. Plaintiff CORBYN ZIEMER MCCONAHY is the child of Plaintiff  
23 SARAH MCCONAHY ZIEMER. Plaintiff SARAH MCCONAHY ZIEMER lived in  
24 family housing on former George Air Force Base from approximately November 1982  
25 to July 1989 and was exposed to toxic contamination at former George Air Force Base  
26 that effects organs and remains in the body for many years after exposure. Plaintiff  
27 CORBYN ZIEMER MCCONAHY has suffered from eczema and fear of risk of health  
28 complications. Sometime after January 2019, Plaintiff CORBYN ZIEMER

1 MCCONAHY came to believe that F.V.'s injuries were more likely than not caused by  
2 his mother's exposure to toxic contamination while living on former George Air Force  
3 Base.

4 53. Plaintiff SARAH MCCONAHY ZIEMER lived in family housing on  
5 former George Air Force Base from approximately November 1982 to July 1989. Since  
6 that time, Plaintiff SARAH MCCONAHY ZIEMER has suffered from miscarriages,  
7 polycystic ovary syndrome, depression, anxiety, joint spurs, kidney stones, polymyalgia  
8 rheumatic, cataracts, metabolic syndrome, joint hypermobility syndrome, pellucid  
9 marginal degeneration, bladder prolapse, cervical spinal stenosis, myelopathy,  
10 temporomandibular disorder, dyshidrotic eczema, arthritis and joint pain. Sometime  
11 after January 2019, Plaintiff SARAH MCCONAHY ZIEMER came to believe that  
12 these injuries were more likely than not caused by exposure to toxic contamination  
13 while living on former George Air Force Base.

14 54. O.Z. is the child of Plaintiff SARAH MCCONAHY ZIEMER. Plaintiff  
15 SARAH MCCONAHY ZIEMER lived in family housing on former George Air Force  
16 Base from approximately November 1982 to July 1989 and was exposed to toxic  
17 contamination at former George Air Force Base that effects organs and remains in the  
18 body for many years after exposure. Plaintiff O.Z. has suffered from sleep apnea,  
19 migraines, depression, and anxiety. Sometime after January 2019, Plaintiff SARAH  
20 MCCONAHY ZIEMER, on behalf of her minor child O.Z., came to believe that O.Z.'s  
21 injuries were more likely than not caused by her exposure to toxic contamination while  
22 living on former George Air Force Base.

23 55. Defendant United States of America is the sovereign nation responsible for  
24 the acts and omissions of the officers, agents, servants, and/or employees of the United  
25 States Air Force and former George Air Force Base.

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## FACTUAL ALLEGATIONS

56. From 1941 until December 1992, the Defendant, United States of America, through its military branch, the United States Air Force, owned and operated the 5,347-acre George Air Force Base located in Victorville, California.

57. The mission of George Air Force Base was to support tactical fighter operations and provide training for air crews and maintenance personnel that involved the use and disposal of hazardous and non-hazardous materials.

58. At all relevant times, Defendant knew or should have known that the Plaintiffs living on and around former George Air Force Base and/or regularly visiting former George Air Force Base were exposed to toxic, hazardous, and radioactive substances.

59. At all relevant times, Defendant knew or should have known that permitting and causing toxic, hazardous, and radioactive substances to be deposited in the soil, and to enter groundwater and/or water supply, and be released into the air, would more likely than not cause adverse health outcomes for all Plaintiffs living, working, and/or attending school on or near former George Air Force Base.

60. From at least 1941 through 1992, Air Force members, their families and other persons living on and around or attending school on or around former George Air Force Base were exposed to soil, water, and air contaminated with various contaminants of concern.

61. On May 25, 1956, the Air Force issued Technical Order 00-110A-1 which allowed the disposal of solid radioactive waste by burial. This was ultimately reversed in 1971 by technical order 00-110N-2 which required transfer of radioactive waste to an authorized disposal site.

62. In 1979, John Richard Sabol, J.D., P.E. located 18 to 20, 55-gallon drums of radioactive waste in the Southeast Disposal Area (SEDA) when he conducted an environmental assessment/investigation of the SEDA for the Air Force. Radioactive

1 material discovered at former George Air Force Base include Cesium-137, Thorium-  
2 232, and Uranium-238.

3 63. In 1980, the Air Force implemented the Installation Restoration Program  
4 (IRP) to clean up health-threatening hazardous waste sites on its installations. Air Force  
5 IRPs require remedial action to ameliorate contamination that presents an imminent  
6 threat to public health.

7 64. In 1982, the Industrial Storm Drain and Sewage Treatment Ponds were  
8 identified by Phase I of the former George Air Force Base IRP as potential areas of  
9 hazardous waste accumulation.

10 65. In 1985, trichloroethylene (TCE) plumes were first identified during Phase  
11 II of former George Air Force Base's Phase II investigation.

12 66. In January 1986, George Air Force Base received a Cleanup and  
13 Abatement Order (CAO) adopted by the California Lahontan Regional Water Quality  
14 Control Board. Under the CAO former George Air Force Base was required to define  
15 the extent of the of TCE contamination in the groundwater beneath the Northeast  
16 Disposal Area, submit a remediation plan, and initiate groundwater cleanup.

17 67. In January 1986, the Environmental Planning and Compliance Branch  
18 under the IRP confirmed TCE contamination over an area approximately 1.25 miles  
19 long by 0.75 miles wide. The contaminated plume lied within an upper aquifer. The  
20 level of contamination was 560 parts per billion (ppb) at a time when California State  
21 Action Level was 5 ppb. TCE is a cancer-causing substance known to attack the nervous  
22 system, blood, kidneys, and heart. TCE was used to de-grease and clean aircraft at  
23 former George Air Force Base.

24 68. In or around 1990, former George Air Force Base was declared a  
25 Superfund site by the Environmental Protection Agency (EPA) due to high levels of  
26 chemical and radioactive contamination.

27 69. In October 1990, the EPA, the State of California, and the Air Force signed  
28 a Federal Facilities Agreement to remedy the environmental impact of the base. The Air

1 Force was assigned as the lead agency for site cleanup, with EPA and the State of  
2 California Lahontan Regional Water Quality Control Board (RWQCB) providing  
3 regulatory oversight through FFA Base Closure Team (BCT) procedures.

4 70. On December 15, 1992, former George Air Force Base was officially  
5 decommissioned.

6 71. Government reports in 1994, 1995, and 1998 revealed the presence of three  
7 radioactive elements disposed of by the Defendant at former George Airforce Base: (1)  
8 cesium-137, (2) thorium-238, and (3) uranium-238.

9 72. Since the closure of former George Air Force Base, the EPA has released a  
10 list of contaminants found at high levels in the soil, waste, and groundwater at former  
11 George Air Force Base. The list includes antimony, asbestos, barium, benzene,  
12 cadmium, copper, dioxins, ethylbenzene, inorganics, lead, manganese, mercury,  
13 pesticides, polychlorinated biphenyls (PCBs), polycyclical aromatic hydrocarbons,  
14 semi-volatile organic compounds, tetrachloroethene, toluene, total petroleum  
15 hydrocarbons, trichloroethylene, and xylene. Accidental ingestion of or direct contact  
16 with the listed contaminants poses various health risk including developmental delays in  
17 fetuses and children, changes to the immune system, and various cancers.

18 73. In January 2002, an EPA released Administrative Record, File No. 1773,  
19 which reported the presence of Aldrin, Chlordane, Dichlorodiphenyltrichloroethane  
20 (DDT), Dieldrin, Endrin, Heptachlor, and Lindane. At least three of these toxic  
21 pesticides were present through 2002 at levels exceeding EPA permissible remediation  
22 goals (PRG); aldrin was present at 576 times its EPA proscribed PRG, dieldrin was  
23 present at 500 times its EPA proscribed PRG, and chlordane was present at 15 times its  
24 EPA proscribed PRG.

25 74. Groundwater at former George Air Force Base is contaminated with jet  
26 fuel, TCE, pesticides, and nitrates. Soil at former George Air Force base is contaminated  
27 with total petroleum hydrocarbons (TPHs), dioxins, construction debris, medical wastes,  
28 pesticides, semi-volatile organic compounds (SVOCs), and various inorganic

1 compounds. Groundwater and soil at the base have also been contaminated by  
2 improperly disposed radioactive waste. About forty percent of buildings at former  
3 George Air Force Base have been found to contain asbestos.

4 75. At all relevant times, Defendant knew or should have known civilian  
5 residents at former George Air Force Base were exposed to toxic, hazardous, and  
6 radioactive substances through the pathways included but not limited to: (1) inhalation  
7 from golf course water sprinklers using reclaimed water from wastewater treatment  
8 plants; (2) inhalation of toxins from hospital incinerator; (3) oral ingestion of lead-based  
9 paints; (4) indoor air inhalation of solvents, fuel components, radioactive material, and  
10 fine particulate tracked into homes and schools; and (5) oral ingestion and osmotic  
11 transfer through the skin of dirt, soil, dust, and water in schools, playgrounds, and  
12 homes.

13 76. Plaintiffs, at the times alleged above, were exposed to toxic, hazardous, and  
14 radioactive substances on or around former George Air Force Base.

15 77. The adverse health outcomes experienced by Plaintiffs from exposure to  
16 the toxic, hazardous, and radioactive substances deposited in the soils, groundwater, and  
17 water supply, and related release of these substances into the air at former George Air  
18 Force Base, include but are not limited to: various types of cancer, birth defects,  
19 neurological issues, heart disease, kidney disease, renal disease, seizures, migraines,  
20 nausea, cardiomyopathy, respiratory issues, hypothyroidism, hypertension, abdominal  
21 pain, digestive diseases, development of cysts on internal organs, reproductive issues  
22 and harm including infertility and miscarriages, anemia, anxiety, depression, and  
23 ADHD.

24 78. Defendant has never notified or otherwise communicated to Plaintiffs the  
25 risks associated with or the fact of exposure to toxic, hazardous, and radioactive  
26 substances present at former George Air Force Base.

27 79. Clean up at former George Air Force Base is projected to continue until at  
28 least 2077.

## CAUSE OF ACTION

### Negligence

80. Plaintiffs reallege and incorporate by reference as though fully set forth herein the preceding paragraphs 1 through 79.

81. Plaintiffs were and continue to be harmed by Defendant's negligent actions as above-described above.

82. At all relevant times herein alleged, Defendant had a duty to act with reasonable and due care for the safety of others to not cause personal harm to Plaintiffs.

a. Defendant had a duty to do whatever necessary to provide safe and uncontaminated living and working environment for all residents of former George Air Force Base.

b. Defendant had a duty to provide safe and uncontaminated living and working environment for all persons who could be reasonably foreseen to frequent or live on or around former George Air Force Base.

c. Defendant had a duty to maintain air and water supply systems on the property it owned, operated, and controlled at former George Air Force Base to ensure it remained free from toxic, hazardous, and radioactive contaminants reasonably foreseen to result in adverse health consequences to those living on and around former George Air Force Base, consistent with due care, federal, state, local, and military regulations, orders, procedures, and instructions meant to ensure health, safety, and welfare of those living on and around former George Air Force Base.

d. Defendant had a duty to provide well-trained and competent personnel whose qualifications were commensurate with the responsibility to provide a clean and safe environment for all persons living and working on or around former George Air Force Base.

1 e. Defendant had a duty to effectively and comprehensively clean up,  
2 repair, and remedy contamination present and caused by former George Air  
3 Force Base.

4 f. Defendant had a duty to notify those living on and around former  
5 George Air Force Base of health risks caused by exposure to the toxic,  
6 hazardous, and radioactive substances present at the base.

7 83. Defendant created a dangerous condition on and around former George Air  
8 Force Base by depositing toxic, hazardous, and radioactive substances in the air, soils  
9 and groundwater.

10 84. Defendant knew or should have known that its actions, omissions, and  
11 failures to act posed a threat to human health and created the dangerous condition in and  
12 around an area that was frequented by the civilian residents, visitors, and workers on  
13 and around former George Air Force Base.

14 85. Despite this knowledge, Defendant negligently, recklessly, and/or  
15 intentionally continued to deposit toxic, hazardous, and radioactive substances in the  
16 soils, groundwater, and water supply within former George Air Force Base in a manner  
17 that exposed individuals in residential facilities and schools on and around former  
18 George Air Force Base.

19 86. Despite this knowledge, Defendant failed to warn civilian residents,  
20 visitors, students, and workers in and around former George Air Force Base reasonably  
21 foreseeable as subject to adverse health effects of the dangers of exposure to the toxic,  
22 hazardous, and radioactive substances in the soils, groundwater, and water supply, and  
23 related airborne release of these substances on former George Air Force Base.

24 87. Defendant failed to exercise reasonable care in that they failed to properly  
25 use, maintain, and dispose of the toxic, hazardous, and radioactive substances used at  
26 and deposited on former George Air Force Base, and Defendants failed to exercise  
27 reasonable care to prevent harm to Plaintiffs.

28 ///





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11  
12 **UNITED STATES DISTRICT COURT**  
13  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
15  
16 **WESTERN DIVISION**

17 ROBERT ANDERSON, et al.,

18 Plaintiffs,

19 v.

20 UNITED STATES OF AMERICA,

21 Defendant.  
22  
23  
24  
25  
26  
27  
28

Case No. 2:21-cv-09102-VAP-PD

**DEFENDANT UNITED  
STATES OF AMERICA'S  
NOTICE OF MOTION  
TO DISMISS &  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT**

Motion Hearing:  
August 1, 2022 at 2 pm  
Honorable Virginia A. Phillips

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on August 1, 2022, at 2:00 p.m. in the First Street Courthouse, located on the 6th Floor of 350 West 1st Street, Los Angeles, California 90012, Defendant United States of America (the “United States” or “Government”) will move to dismiss this action pursuant to Fed. R. Civ. P. (“FRCP”) 12(b)(1) & 12(b)(6). The motion is based on this notice, the following memorandum of points and authorities, a reply brief, and such oral argument as the Court may permit. This motion is made following the Conference of Counsel, pursuant to L.R. 7-3, which took place on May 24, 2022.

**RELIEF SOUGHT**

Pursuant to FRCP 12(b)(1) & 12(b)(6), the United States moves the Court to dismiss this lawsuit brought by Plaintiffs under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680 (“FTCA”). This action should be dismissed with prejudice and without leave to amend because Plaintiffs (1) have not alleged facts sufficient to establish subject-matter jurisdiction, and (2) have failed to state a claim upon which relief can be granted for any individual plaintiff.<sup>1</sup>

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

**INTRODUCTION**

Plaintiffs’ Second Amended Complaint (the “SAC”) groups together approximately 50 separate, personal injury claims in just 90 paragraphs of allegations. Plaintiffs consist of former service members, their spouses, children, and/or survivors or personal representatives of deceased individuals who assert personal injury or wrongful death claims stemming from alleged exposure to “toxic, hazardous, and radioactive waste” while living at or near former George Air Force Base (“GAFB”), a former 5,000+ acre base in Victorville, California,

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<sup>1</sup> In the event the Court were to decline to dismiss the action at this juncture, the United States reserves the right to seek dismissal on other grounds as appropriate based on the discovery of additional information about the claims in the case.

1 that was used to train pilots and bombardiers during World War II and the Cold  
2 War. The SAC falls woefully short of meeting federal pleading standards, failing  
3 to provide the threshold factual support necessary to (1) establish subject-matter  
4 jurisdiction, and (2) state a claim upon which relief can be granted on behalf of any  
5 individual plaintiff.

6 Plaintiffs' SAC should be dismissed in its entirety because it fails on its face  
7 to allege facts sufficient to establish subject-matter jurisdiction. Under the FTCA's  
8 discretionary function exception, the United States retains immunity from claims  
9 challenging discretionary governmental conduct that is susceptible to policy  
10 analysis. 28 U.S.C. § 2680(a); *United States v. Gaubert*, 499 U.S. 315, 322-23  
11 (1991). Here, Plaintiffs fail to plead any claims that are not facially barred by the  
12 FTCA's discretionary function exception, identifying no Government violations of  
13 any mandatory and specific federal requirements regarding use, disposal,  
14 remediation, or warnings related to alleged toxic, hazardous, or radioactive waste  
15 at GAFB. Likewise, Plaintiffs fail to allege any facts rebutting the presumption  
16 that the Government's actions were grounded in policy. That is because Plaintiffs'  
17 claims necessarily challenge discretionary conduct that is susceptible to policy  
18 analysis. Additionally, under the *Feres* doctrine, as articulated in *Feres v. United*  
19 *States*, 340 U.S. 135, 146 (1950), the United States retains immunity for injuries  
20 "incident" to military service. Here, the personal injury claims of Plaintiffs F.V.  
21 and M.V. are barred by the *Feres* doctrine because they are incident to active-duty  
22 military service.

23 Furthermore, the SAC should be dismissed because each plaintiff fails to  
24 state a plausible claim under federal pleading standards. As an initial matter,  
25 Plaintiffs fail to provide the necessary factual detail regarding each plaintiff's  
26 exposure claim. Rather than identifying the specific contaminant(s) underlying  
27 each exposure claim and providing details about when, where, or how any alleged  
28 exposure took place, Plaintiffs identify dozens of substances found at GAFB

1 during the Air Force's environmental cleanup efforts and allege in blanket fashion  
 2 exposure to undefined "toxic, hazardous, and radioactive waste" by virtue of living  
 3 at or near the base. Moreover, Plaintiffs fail to provide necessary factual detail  
 4 about each plaintiff's alleged injuries. Each plaintiff asserts a laundry list of  
 5 alleged injuries but fails to provide necessary facts about when the alleged injuries  
 6 were discovered or the basis for believing that any alleged injuries were caused by  
 7 exposure to contaminants at GAFB. Lastly, Plaintiffs fail to adequately identify or  
 8 define the alleged wrongful conduct of the United States. Instead, Plaintiffs assert  
 9 sweeping allegations consisting primarily of unsupported, conclusory statements  
 10 and a formulaic recitation of the elements for a negligence claim. Consequently,  
 11 the United States is unable to properly evaluate Plaintiffs' claims or its possible  
 12 defenses.

13 Accordingly, Plaintiffs' SAC should be dismissed with prejudice and without  
 14 leave to amend.

## 15 **FACTUAL BACKGROUND**

### 16 **I. Former George Air Force Base**

17 GAFB is a former 5,000+ acre Air Force base located 90 miles northwest of  
 18 Los Angeles in Victorville, California. The base was originally known as  
 19 Victorville Army Airfield and established in 1941 to train pilots and bombardiers  
 20 during World War II. After World War II, all flying operations were discontinued  
 21 as part of a nationwide demobilization, but, following the outbreak of the Korean  
 22 War in 1950, the base was reopened by the Air Force and renamed GAFB. Over  
 23 the course of four-plus decades, fighter pilots were trained in a variety of aircrafts  
 24 to carry out strategic military objectives, to support tactical fighter operations, and  
 25 to provide training for air crews and maintenance personnel. GAFB also provided  
 26 combat training for NATO (primarily West German) pilots, provided forces in  
 27 support of the 26th North American Aerospace Defense Command (NORAD)  
 28 region from 1966-1990, and provided forces in support of strike missions in

1 Vietnam. GAFB was officially decommissioned and closed in 1992 at the end of  
 2 the Cold War. After its closing, much of the property was transferred to the South  
 3 California Logistics Airport Authority. Today, the property is home to a number  
 4 of aviation-related businesses and a community college, which trains aircraft  
 5 mechanics.<sup>2</sup>

6 While GAFB was operational, many routine aircraft maintenance tasks  
 7 involved use and disposal of chemicals such as jet fuel, gasoline, paints, and  
 8 solvents, and military training exercises included the use of a variety of munitions.  
 9 The Air Force has dedicated significant effort and resources to ensure that any  
 10 chemicals that potentially affected soil and groundwater at or near GAFB were  
 11 remediated and pose no public health hazards. The Air Force began its  
 12 remediation and clean-up efforts in 1981, which include regular sampling and  
 13 monitoring of soil and groundwater. These efforts remain ongoing today. Notably,  
 14 the Agency for Toxic Substances and Disease Registry (ATSDR) performed Public  
 15 Health Assessments in 1998 and 2013 and confirmed that soil and groundwater at  
 16 or near GAFB do not present a past, present, or future public health hazard.<sup>3</sup>

## 17 **II. Plaintiffs' FTCA Action**

18 Plaintiffs filed this FTCA action on November 19, 2021. [Dkt. 1.] After  
 19 amending their Complaint once on December 10, 2021, and again, on February 16,  
 20 2022, Plaintiffs served the United States with the SAC on March 3, 2022. [Dkts.  
 21 11, 13, 17.]

22 In their SAC, approximately 50 Plaintiffs, individually and, purportedly, on  
 23 behalf of others, assert FTCA personal injury claims against the United States.  
 24 [SAC, Dkt. 13, *passim*.] In a single cause of action for negligence, the SAC

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26 <sup>2</sup> See Former George Air Force Base Summary & FAQs, Air Force Civil Engineer  
 27 Center, available at <https://www.afcec.af.mil/Home/BRAC/George.aspx> (last  
 28 accessed on June 2, 2022).

<sup>3</sup> *Id.*

1 broadly alleges that the Air Force “failed to exercise reasonable care in that [it]  
 2 failed to properly use, maintain, and dispose of the toxic, hazardous, and  
 3 radioactive substances used at and deposited on former George Air Force Base”  
 4 and that the Air Force failed to warn about “adverse health effects of the dangers of  
 5 exposure to the toxic, hazardous, and radioactive substances in the soils,  
 6 groundwater, and water supply, and related airborne release of these substances...  
 7 .” [SAC, Dkt. 13, ¶¶ 82, 85-87.]

8 The Court approved the Parties’ joint stipulation to extend the United States’  
 9 responsive pleading deadline until June 2, 2022. The United States now timely  
 10 moves to dismiss Plaintiffs’ SAC pursuant to FRCP 12(b)(1) & 12(b)(6).

## 11 ARGUMENT

### 12 **I. This Lawsuit Should Be Dismissed under FRCP 12(b)(1) for Lack of** 13 **Subject-Matter Jurisdiction.**

#### 14 **A. Plaintiffs Bear the Burden of Proving that Subject-Matter** 15 **Jurisdiction Exists.**

16 FRCP 12(b)(1) allows a defendant to seek dismissal of a claim or action for  
 17 lack of subject-matter jurisdiction. “A motion to dismiss for lack of subject matter  
 18 jurisdiction under Federal Rule of Civil Procedure 12(b)(1) may challenge  
 19 jurisdiction either on the face of the pleadings or by presenting extrinsic evidence  
 20 for the court's consideration.” *Siofele v. Duncan*, 09-CV-2800, 2009 WL  
 21 10674359, at \*1 (C.D. Cal. Sept. 14, 2009) (citing *Safe Air for Everyone v. Meyer*,  
 22 373 F.3d 1035, 1039 (9th Cir. 2004)). “When an attack is facial, the court confines  
 23 its inquiry to allegations in the complaint, and when factual, the court may look  
 24 beyond the complaint.” *Id.* (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.  
 25 2000)). The Court may consider affidavits, declarations, or other evidence without  
 26 converting the motion into a summary judgment motion under FRCP 56. *Id.*

27 Plaintiffs bear the burden of proving that this action is properly in federal  
 28 court. *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d

1 981, 984 (9th Cir. 2008) (citing *Kokkonen v. Guardian Life Ins. Co of Am.*, 511  
 2 U.S. 375, 377 (1994)); *see also J.R. by and through Rizzi v. Palos Verdes*  
 3 *Peninsula Unified School District*, 21-CV-07656, 2021 WL 4553056, at \*1 (C.D.  
 4 Cal. Oct. 5, 2021) (“A ‘plaintiff bears the burden of proving’ the existence of  
 5 subject matter jurisdiction and ‘must allege facts, not mere legal conclusions’ to  
 6 invoke the court’s jurisdiction.”) (internal citation omitted). The Court must  
 7 ensure that it has subject-matter jurisdiction at the outset before proceeding with  
 8 the merits of a case. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94–  
 9 95 (1998); *Carl’s Jr. Rest. LLC v. 6Points Food Serv. Ltd*, 15-CV-9827, 2016 WL  
 10 8849026, at \*1 (C.D. Cal. Jan. 8, 2016) (“As a court of limited jurisdiction, [] we  
 11 must determine the issue of subject matter jurisdiction before reaching the merits  
 12 of a case.”) (internal citations omitted). “Dismissal for lack of subject matter  
 13 jurisdiction is appropriate if the complaint, considered in its entirety, on its face  
 14 fails to allege facts sufficient to establish subject matter jurisdiction.” *In re*  
 15 *Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d at 984-85.

16 Here, Plaintiffs have not alleged facts sufficient to establish subject-matter  
 17 jurisdiction, and the United States has not waived sovereign immunity as to  
 18 Plaintiffs’ claims. *See United States v. Orleans*, 425 U.S. 807, 814 (1976) (stating  
 19 that, as the sovereign, the United States “can be sued only to the extent that it has  
 20 waived its immunity” from suit). Plaintiffs have sued the United States under the  
 21 FTCA, which waives the United States’ immunity for certain tort claims  
 22 committed by an “employee of the Government while acting within the scope of  
 23 his office or employment, under circumstances where the United States, if a private  
 24 person, would be liable to the claimant in accordance with the law of the place  
 25 where the act or omission occurred.” 28 U.S.C. § 1346(b)(1). However, there are  
 26 exceptions to this waiver of sovereign immunity, two of which apply to bar  
 27 Plaintiffs’ claims in this case. Plaintiffs cannot establish subject-matter jurisdiction  
 28 because (1) Plaintiffs’ claims are barred by the discretionary function exception of

1 the FTCA, and (2) the personal injury claims of Plaintiffs F.V. and M.V. are barred  
 2 by the *Feres* doctrine because they are incident to active-duty military service.  
 3 Accordingly, the Court should dismiss Plaintiffs' SAC in its entirety for lack of  
 4 subject-matter jurisdiction.

5 **B. This Court Lacks Subject-Matter Jurisdiction Because Plaintiffs'**  
 6 **Claims Are Barred by the FTCA's Discretionary Function**  
 7 **Exception.**

8 i. Plaintiffs' Claims Challenge Discretionary Governmental  
 9 Conduct that is Susceptible to Policy Analysis.

10 The discretionary function exception of the FTCA bars each plaintiff's  
 11 claims in this lawsuit. 28 U.S.C. § 2680(a). The exception "marks the boundary  
 12 between Congress' willingness to impose tort liability upon the United States and  
 13 its desire to protect certain governmental activities from exposure to suit by private  
 14 individuals." *Berkovitz v. United States*, 486 U.S. 531, 536 (1988) (internal quotes  
 15 omitted). The basis for the discretionary function exception was Congress' desire  
 16 "to prevent judicial 'second-guessing' of legislative and administrative decisions  
 17 grounded in social, economic, and political policy through the medium of an action  
 18 in tort." *United States v. Varig Airlines*, 467 U.S. 797, 814 (1984).

19 Courts employ the Supreme Court's two-part test to determine whether the  
 20 discretionary function exception applies to particular claims. *Kim v. United States*,  
 21 940 F.3d 484, 487 (9th Cir. 2019). First, for the exception to apply, the alleged  
 22 conduct must not have been subject to a federal statute, regulation, or policy that  
 23 prescribes a specific course of action for a government employee to follow. *See*  
 24 *Gaubert*, 499 U.S. at 322; *Berkovitz*, 486 U.S. at 536; *Kennewick Irr. Dist. v.*  
 25 *United States*, 880 F.2d 1018, 1027 (9th Cir. 1989) (stressing that the applicable  
 26 rule or policy must be both mandatory and specific to defeat part one of the test).  
 27 Second, assuming that the government had discretion, the exception applies if the  
 28 alleged negligent conduct was "susceptible" to analysis involving social,



1 economic, or political policy considerations. *Gaubert*, 499 U.S. at 322-23;  
 2 *Berkovitz*, 486 U.S. at 536-37. The exception applies regardless of whether the  
 3 Government was negligent. *See Routh v. United States*, 941 F.2d 853, 855 (9th  
 4 Cir. 1991).

5 Significantly, a plaintiff “can invoke jurisdiction only if the complaint is  
 6 facially outside the exceptions of [28 U.S.C.] § 2680” and “may not invoke federal  
 7 jurisdiction by pleading matters that clearly fall within the exceptions of § 2680.”  
 8 *Prescott v. United States*, 973 F.2d 696, 701 (9th Cir. 1992) (quoting *Carlyle v.*  
 9 *United States*, 674 F.2d 554, 556 (6th Cir.1982)). Thus, “[a]lthough the United  
 10 States bears the ‘ultimate burden of proving’ the discretionary function exception  
 11 applies, ‘a plaintiff must advance a claim that is facially outside the discretionary  
 12 function exception in order to survive a motion to dismiss.’” *J.G. v. United States*,  
 13 19-CV-623, 2019 WL 3555183, at \*3 (N.D. Cal. 2019) (quoting *Prescott*, 973 F.2d  
 14 at 702 n. 4); *see also Doe v. Holy See*, 557 F.3d 1066, 1084 (9th Cir. 2009).

15 As explained below, Plaintiffs have failed to advance any claim that is  
 16 facially outside of the discretionary function exception in order to survive a motion  
 17 to dismiss.

18 ii. The Discretionary Function Exception’s First Criterion is  
 19 Satisfied Because Plaintiffs Fail to Allege a Violation of a  
 20 Specific and Mandatory Federal Requirement Regarding Toxic,  
 21 Hazardous, or Radioactive Waste at GAFB.

22 The “identification of a mandatory duty is a threshold requirement” to defeat  
 23 the discretionary function exception. *Terbush v. United States*, 516 F.3d 1125,  
 24 1135 (9th Cir. 2008). A complaint must plead with specificity the federal statute,  
 25 regulation, or policy containing the mandatory and specific directive that allegedly  
 26 strips the United States of discretion. Simply alleging that the United States “‘did  
 27 not have discretionary decision’” is not enough. *J.G.*, 2019 WL 3555183, at \*3.  
 28 Likewise, “[b]road allegations regarding undefined ‘policies and practices’ are

insufficient under clear Ninth Circuit precedent.” *Dichter-Mad Fam. Partners, LLP v. United States*, 707 F. Supp. 2d 1016, 1040 (C.D. Cal. 2010) (quoting *Doe*, 557 F.3d at 1084-85), *aff’d*, 709 F.3d 749 (9th Cir. 2013); *see also Ghazarian v. Republic of Turkey*, 19-CV-4664, 2021 WL 5934471, at \*4 (C.D. Cal. 2021) (holding that allegations of mandatory directives in “legislative, executive, administrative and other official and/or unofficial acts” was insufficient).

The Ninth Circuit Court of Appeals and federal district courts in California, including the Central District of California, have repeatedly held that a complaint’s failure to sufficiently plead a mandatory and specific directive satisfies the first prong of the discretionary function exception. *See, e.g., Doe*, 557 F.3d at 1084 (“Yet nowhere does Doe allege the existence of a policy that is “specific and mandatory” on the Holy See. He does not state the terms of this alleged policy, or describe any documents, promulgations, or orders embodying it.”) (emphasis within); *Sanchez v. United States*, 18-CV-1550, 2020 WL 1157200, at \*3 (S.D. Cal. 2020) (“the first step of the test is satisfied because Sanchez fails to identify a federal statute, regulation, or policy that required specific course of action”); *Ard v. F.D.I.C.*, 770 F. Supp. 2d 1029, 1036 (C.D. Cal. 2011) (“Plaintiffs have not identified, nor can the court locate, any federal statute, regulation, or policy that applies to the conduct challenged in this action”); *Dichter-Mad*, 707 F. Supp. 2d at 102 (“What is lacking in the present Complaint, however, is any plausible allegation revealing that the SEC violated its clear, non-discretionary duties, or otherwise undertook a course of action that is not potentially susceptible to policy analysis.”), *aff’d*, 709 F.3d 749 (9th Cir. 2013).

Here, Plaintiffs fail to plead any claims outside the first criterion of the discretionary function exception because they cannot point to any federal statute, regulation, or policy containing a mandatory requirement that prescribes a specific course of conduct that the United States failed to follow regarding use, disposal, remediation, or warnings related to alleged toxic, hazardous, or radioactive waste

1 at GAFB. The allegations contained in Paragraph 61 of the SAC represent  
2 Plaintiffs only attempt to identify applicable non-discretionary language. In  
3 Paragraph 61, Plaintiffs concede that Air Force Technical Order 00-110A-1  
4 “allowed the disposal of solid radioactive waste by burial,” but allege that “[t]his  
5 was ultimately reversed in 1971 by technical order 00-110N-2, which required  
6 transfer of radioactive waste to an authorized disposal site.” [SAC, Dkt. 13, ¶ 61.]  
7 Plaintiffs, however, fail to point to any actual mandatory and specific language in  
8 Air Force Technical Order 00-110N-2, and they do not allege that the Government  
9 violated that technical order. That is because the Air Force complied with  
10 Technical Order 00-110N-2, which continued to allow the burial of radioactive  
11 waste with permission from the USAF Radioisotope Committee and left the  
12 maintenance of existing burial sites to the discretion of the Air Force. Moreover,  
13 Air Force Technical Order 00-110N-2 is limited to disposal of radioactive waste,  
14 whereas Plaintiffs’ claims are more broadly based on exposure to “toxic,  
15 hazardous, and radioactive waste” with the SAC identifying dozens of  
16 contaminants found during the Air Force’s environmental cleanup efforts at  
17 GAFB. [SAC, Dkt. 13, ¶ 71-79.] Plaintiffs make no attempt in the SAC to  
18 identify a mandatory and specific requirement applicable to the other possible  
19 contaminants at issue. They cannot because the Air Force’s decisions regarding  
20 use, disposal, remediation, or warnings related to alleged toxic, hazardous, or  
21 radioactive waste at GAFB were discretionary. As such, the first criterion of the  
22 discretionary function is satisfied.

23       Indeed, the Ninth Circuit and California district courts have repeatedly  
24 dismissed FTCA claims, finding that military and wartime decisions regarding use,  
25 disposal, investigation, remediation, and warnings related to alleged environmental  
26 contaminants are discretionary and satisfy the first step of the discretionary  
27 function exception. *See, e.g., Savary v. United States*, 205 F.3d 1352, at \*3-4 (9th  
28 Cir. 1999) (holding that decisions of Army and NASA regarding waste disposal,

cleanup, safety, supervision, and warnings were discretionary in an FTCA wrongful death case stemming from alleged exposure to hazardous chemicals contaminating soil and water); *In re Consol. U.S. Atmospheric Testing Litig.*, 820 F.2d 982, 998 (9th Cir. 1987) (holding that discretionary function exception barred claims for personal injury and failure to warn arising from alleged exposure to radiation from a nuclear weapons testing program that took place during the end of WWII until 1963); *City of Lincoln v. United States*, 283 F. Supp. 3d 891, 901–03 (E.D. Cal. 2017) (holding that Air Force’s decisions regarding disposal of hazardous waste from an intercontinental ballistic missile facility in the 1960s were discretionary); *Welsh v. U.S. Army*, 08-CV-3599, 2009 WL 250275, at \*1 (N.D. Cal. Feb. 3, 2009) (holding that the Army had discretion in its decisions to parcel off Fort Ord property, to lease and sell the property, and on how to remediate the property); *Shea Homes v. United States*, 397 F. Supp. 2d 1194, 1200-01 (N.D. Cal. 2005) (holding that the Army Corps of Engineers' decisions on how to evaluate and address public health and environmental threats were discretionary).<sup>4</sup>

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<sup>4</sup> Likewise, other circuit and district courts across the country have reached the same conclusion. *See, e.g., Ross v. United States*, 129 Fed. App’x. 449 (4th Cir. 2005) (holding that Air Force decisions regarding use, disposal, and warnings related to TCE, which allegedly was buried, permeated groundwater, and migrated to neighboring properties, were discretionary); *Loughlin v. United States*, 393 F.3d 155, 164-65 (D.C. Cir. 2004) (in a case involving chemical warfare research and testing during World War I, holding that Army’s decisions regarding handling, disposal, remediation, and warnings related to buried chemical weapons were discretionary); *OSI, Inc. v. United States*, 285 F.3d 947, 952 (11th Cir. 2002) (holding that Air Force decisions regarding waste disposal from 1956 to early 1970s were discretionary); *Aragon v. United States*, 146 F.3d 819, 823–26 (10th Cir. 1998) (holding that Air Force’s decisions regarding disposal of TCE-contaminated wastewater from 1942 to 1967 were discretionary); *In re Camp Lejeune N. Carolina Water Contamination Litig.*, 263 F. Supp. 3d 1318, 1343-58 (N.D. Ga. 2016), *aff’d*, 774 F. App’x 564 (11th Cir. 2019) (holding that Marine Corps’ decisions regarding use, disposal, warnings related to TCE and PCE-contaminated water from the 1950s to 1980s were discretionary); *Horton v. United*

1 In short, the challenged conduct at GAFB was discretionary, and the first  
 2 criterion of the discretionary function exception is satisfied because Plaintiffs  
 3 cannot point to any mandatory federal language that prescribes a specific course of  
 4 conduct that the United States failed to follow regarding use, disposal, remediation,  
 5 or warnings related to alleged toxic, hazardous, or radioactive waste at GAFB.

6 iii. The Discretionary Function Exception's Second Criterion Is  
 7 Satisfied Because Plaintiffs Fail to Rebut the Presumption that  
 8 the Challenged Governmental Conduct Is Grounded in Policy  
 9 Considerations.

10 Because the first criterion of discretionary function exception is satisfied and  
 11 the challenged conduct at GAFB was discretionary, the second criterion of the  
 12 discretionary function exception requires Plaintiffs to rebut the presumption that  
 13 the United States' actions were grounded in policy in order to establish subject-  
 14 matter jurisdiction. However, Plaintiffs have made no such showing.

15 Given the important national security policies that were underlying the  
 16 mission of the Air Force at GAFB, there is a strong presumption that military  
 17 policy considerations underlie the government operational decisions that were  
 18 made at GAFB. *Lorsch v. United States*, 14-CV-2202, 2015 WL 6673464, at \*6  
 19 (C.D. Cal. 2015) (finding that when "the very existence of the regulation[s]"  
 20 allows for discretion, a "strong presumption" of policy considerations is  
 21 established); *Dichter-Mad*, 707 F. Supp. 2d at 1035 ("[T]he Government sets forth  
 22 a number of general, broad principles governing the SEC's duties and functions.  
 23 These legal assertions establish that the alleged wrongs were done in the course of  
 24 the SEC's exercise of its discretion . . . Accordingly, there is 'a strong

25  
 26 *States*, 13-CV-947, 2014 WL 2780271, at \*6 (D.S.C. June 19, 2014) (holding that  
 27 Air Force's decisions in the 1940s and 1950s related to the use, disposal, and  
 28 remediation of TCE or PCE, maintenance or monitoring of water systems, and  
 public notification of contamination were discretionary).

presumption’ that the alleged acts were ‘based on considerations of public policy,’ and Plaintiffs bear the burden of rebutting this presumption.”) (quoting *Gaubert*, 499 U.S. at 323). Department of the Air Force regulations provide for the United States Air Force “to provide an Air Force that is capable, in conjunction with the other armed forces, of-- (1) preserving the peace and security, and providing for the defense, of the United States . . . (2) supporting the national policies; (3) implementing the national objectives; and (4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.” 10 U.S.C. § 9062(a). In addition, the United States Air Force “shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations” and “is responsible for the preparation of the air forces necessary for the effective prosecution of war . . . and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.” 10 U.S.C. § 9062(c).

Here, any decisions that the Air Force might have made regarding use, disposal, remediation, and warnings related to alleged toxic, hazardous, and radioactive waste at GAFB were subject to the defense, and security policies and considerations underlying the broader military mission. These decisions were intertwined with policies and resource priorities for investigation, remediation, and notification related to mission execution. This includes the general mission of the United States Air Force and the specific mission of the units at GAFB. Relevant policy considerations that the military at former GAFB would have had to balance included: the need to maintain sufficient services and resources to operate the base at all times; the need to maintain military equipment for training and deployment; the prioritization of limited financial resources to meet military objectives; the monitoring of the base for any regulated substances, and overall compliance with the Department of Defense’s mission.

Plaintiffs cannot rebut the strong presumption that the Air Force’s decisions

1 regarding use, disposal, remediation, and warnings related to alleged toxic,  
2 hazardous, and radioactive waste at GAFB were grounded in policy. To rebut  
3 such a presumption and “survive a motion to dismiss,” Plaintiffs must show that  
4 “the challenged actions are not the kind of conduct that can be said to be grounded  
5 in the policy of the regulatory regime.” *Gaubert*, 499 U.S. at 324-25. Here,  
6 Plaintiffs fail to allege any facts in the SAC demonstrating that the Air Force’s  
7 decisions at GAFB were not grounded in policy, as the Air Force’s decisions at  
8 GAFB necessarily implicated policy considerations. Thus, the second criterion of  
9 the discretionary function exception is satisfied.

10       Indeed, the Ninth Circuit and California district courts have repeatedly  
11 dismissed FTCA claims challenging military and wartime decisions regarding use,  
12 disposal, environmental investigation, remediation, and warnings related to alleged  
13 environmental contaminants, finding the discretionary function exception to apply  
14 based on considerations of public policy. *See, e.g., Savary*, 205 F.3d 1352, at \*3-4  
15 (holding that decisions of the Army and NASA regarding waste disposal, cleanup,  
16 safety, supervision, and warnings were subject to policy considerations); *In re*  
17 *Consol. U.S. Atmospheric Testing Litig.*, 820 F.2d at 997 (“The program required  
18 difficult judgments balancing the magnitude of the risk from radiation exposure—  
19 of which there was only fragmentary knowledge—against the risks and burdens of  
20 a public program. Those risks included the potential consequences of creating  
21 public anxiety and the health hazards inherent in the medical responses to the  
22 warning.”); *City of Lincoln*, 283 F. Supp. 3d at 904 (noting that “[n]umerous  
23 courts, analyzing the military’s allocation of resources involving waste  
24 management during the 1950s and ‘60s, have found those decisions susceptible to  
25 policy analysis” and reaching the same conclusion with respect to the disposal of  
26 hazardous waste from an intercontinental ballistic missile facility in the 1960s)  
27 (citation omitted); *Welsh*, 2009 WL 250275, at \*1 (analyzing Army decisions to  
28 parcel off Fort Ord property, to lease and sell the property, and on remediation of

1 the property, and holding that “[t]hese kinds of judgments implicate policy choices  
 2 and decisions of the type that Congress intended to protect from judicial second  
 3 guessing and therefore satisfy the second prong of [discretionary function  
 4 exception].”); *Shea Homes*, 397 F. Supp. 2d at 1200-01 (holding that the Army  
 5 Corps of Engineers' decisions on how to evaluate and address public health and  
 6 environmental hazards from remediation at former Hamilton Air Force Base  
 7 property were of the kind implicating policy choices and were barred from suit by  
 8 the discretionary function exception).<sup>5</sup>

9  
 10 <sup>5</sup> Numerous other circuit and district courts have held the same. *See, e.g., Ross*,  
 11 129 Fed. Appx. at 452 (“[T]he procedures involved in deciding when and how  
 12 much to tell plaintiffs about the TCE contamination at the Base implicate similar  
 13 policy concerns to those involved in the overall cleanup. These governmental  
 14 decisions are grounded in policy discretion and, as such, are shielded by the  
 15 discretionary function exception to the FTCA.”); *Loughlin*, 393 F.3d at 165  
 16 (holding that discretionary function exception barred warning claim because in  
 17 deciding what information to release to the public about hazards detected and  
 18 remediation steps, the agency had to weigh several factors, including the reliability  
 19 of test results, whether further testing should be done, the significance of the  
 20 hazard, and the possibility of unnecessarily alarming residents); *OSI, Inc.*, 285 F.3d  
 21 at 953 (holding that “[d]isposal of waste on a military base” . . . “involve[s] policy  
 22 choices of the most basic kind,” as “[t]he nature of the military’s function requires  
 23 that it be free to weigh environmental policies against security and military  
 24 concerns.”) (internal citation omitted); *Aragon*, 146 F.3d at 826 (where the  
 25 military’s use and disposal of chemicals was at issue, expressing “little doubt . . .  
 26 the Air Force’s actions involved policy choices of the most basic kind” and that  
 27 “[o]perational decisions . . . were subject to defense and security considerations  
 28 which encompass the heart of military policy.”); *In re Camp Lejeune N. Carolina  
 Water Contamination Litig.*, 263 F. Supp. 3d at 1354 (“As *OSI* and *Aragon* make  
 clear, the direction of resources on a military base during the Cold War is a classic  
 illustration of the kind of balancing of national security and economic policies that  
 should be protected by the discretionary function exception.”), *aff’d*, 774 F. App’x  
 564 (11th Cir. 2019); *Horton*, 2014 WL 2780271, at \*6 (holding that Shaw Air  
 Force Base’s “decisions concerning the use, disposal, or remediation of TCE or  
 PCE; maintenance or monitoring of water systems; or public notification of  
 contamination were grounded in public policy.”).



1 In short, Plaintiffs fail to allege facts sufficient to establish that the  
 2 challenged conduct at GAFB was not subject to these policy considerations.  
 3 Accordingly, both criterion of the discretionary function exception are satisfied,  
 4 depriving this Court of subject-matter jurisdiction over Plaintiffs' claims.

5 **C. This Court Lacks Subject-Matter Jurisdiction over the Claims of**  
 6 **Plaintiffs F.V. and M.V. under the *Feres* Doctrine, as Their Alleged**  
 7 **Injuries Are Incident to Their Father's Military Service.**

8 The *Feres* doctrine bars the injury claims of Plaintiffs F.V. and M.V., the  
 9 children of Frank Vera III ("Vera"), as their claims are incident to Vera's military  
 10 service. The FTCA provides that the United States shall be liable for tort claims  
 11 "in the same manner and to the same extent as a private individual under like  
 12 circumstances." 28 U.S.C. § 2674. This liability, however, has been limited by  
 13 both statute and common law precedent. In *Feres v. United States*, the United  
 14 States Supreme Court held that injuries to service members that are incident to  
 15 their military service fall outside the statutory waiver of sovereign immunity in the  
 16 FTCA because there is no private liability "even remotely analogous" to the  
 17 liability a service member seeks to impose against the government for conduct  
 18 arising out of military service. 340 U.S. 135, 141-42 (1950). *Feres* bars claims for  
 19 injuries incident to military service, even in circumstances where the injuries are  
 20 latent and did not manifest themselves until after the service member's discharge,  
 21 as long as the exposures occurred while the service member was on active-duty.  
 22 See *Monaco v. United States*, 661 F.2d 129, 132-33 (9th Cir. 1981) (holding that  
 23 *Feres* precluded a service member's claim despite radiation-induced cancer not  
 24 manifesting itself until after discharge). The Ninth Circuit has further recognized  
 25 the "genesis test," which bars injury claims of family members when their injuries  
 26 have their "genesis in injuries to members of the armed forces." *Ritchie v. United*  
 27 *States*, 733 F.3d 871, 875 (9th Cir. 2013) (internal citation omitted).

1 To determine whether a plaintiff's injury claims are barred by *Feres*, the  
 2 Supreme Court has encouraged the use of the "incident-to-service" test, which  
 3 focuses on the totality of circumstances. *See, e.g., United States v. Johnson*, 481  
 4 U.S. 681, 682-83 (1987); *United States v. Shearer*, 473 U.S. 52, 57 (1985).  
 5 Following the Supreme Court's guidance, the Ninth Circuit has identified four,  
 6 non-exclusive factors that are relevant to determining whether *Feres* bars a claim:  
 7 (1) the place where the alleged negligent act occurred; (2) the plaintiff's duty status  
 8 at the time of the alleged negligent act; (3) the benefits accruing to the plaintiff  
 9 because of his status as a service member; and (4) the nature of the plaintiff's  
 10 activities at the time of the alleged negligent act. *See Bon v. United States*, 802  
 11 F.2d 1092, 1094 (9th Cir. 1986) (internal citation omitted). In addition to weighing  
 12 these four factors, however, courts in the Ninth Circuit typically examine cases that  
 13 are most factually analogous to determine whether *Feres* bars the plaintiff's suit.  
 14 *Costo v. United States*, 248 F.3d 863, 867 (9th Cir. 2001) ("[C]omparison of fact  
 15 patterns to outcomes in cases that have applied the *Feres* doctrine is the most  
 16 appropriate way to resolve *Feres* doctrine cases.") (internal citation omitted).

17 When applying the Ninth Circuit factors, it is clear that *Feres* would bar any  
 18 injury claim brought by Vera because his alleged injuries stem from exposure to  
 19 contaminants at GAFB and are incident to his active military status. Additionally,  
 20 he received medical treatment through the military for his alleged injuries.<sup>6</sup>  
 21 Presumably, the clear *Feres* bar stopped Vera from asserting any individual claims  
 22 in this action, despite the SAC alleging that Vera "lived on former George Air  
 23 Force Base from approximately January 1973 to May 1974 and was exposed to

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24  
 25 <sup>6</sup> Vera maintains a public website on which he acknowledges, not only that his  
 26 alleged injuries were incident to service, but that he received treatment and benefits  
 27 for his alleged injuries based on his status as a service member and, later, as a  
 28 military veteran. *See Frank Vera's GAFB Website, available at*  
<https://www.georgeafb.info/frank-vera/> (last accessed on June 2, 2022).

1 toxic contamination at former George Air Force Base that effects organs and  
 2 remains in the body for many years after exposure.”<sup>7</sup> [SAC, Dkt. 13, ¶¶ 49-50.]

3 Moreover, the alleged injuries of Plaintiffs F.V. and M.V. are directly tied to  
 4 Vera’s *Feres* barred injuries. Specifically, the SAC alleges that Vera “came to  
 5 believe” that the alleged injuries of F.V. and M.V. “were more likely than not  
 6 caused by *his* exposure to toxic contamination on former George Air Force Base.”  
 7 [SAC, Dkt. 13, ¶¶ 49-50 (emphasis added).] Consequently, the alleged injuries of  
 8 F.V. and M.V. have their “genesis in injuries to members of the armed forces” and  
 9 thus are *Feres* barred under the genesis test. *See Ritchie*, 733 F.3d at 875.

10 The Ninth Circuit barred nearly identical injury claims applying the genesis  
 11 test in *Monaco*. *See* 661 F.2d at 133-34. *Monaco* involved claims brought by a  
 12 retired service member, Daniel Monaco, and his daughter, Denise Monaco. Denise  
 13 Monaco alleged that she had suffered a birth defect due to a chromosomal change  
 14 in her father, resulting from his exposure to radiation during active military  
 15 service, while engaged in training exercises. *Id.* at 133-34. Denise Monaco argued  
 16 that the *Feres* doctrine could not bar her claim, as the chromosomal change to her  
 17 father was not an “injury” to him, nor was she a military service-member. *Id.* at  
 18 133. Upon review, the Ninth Circuit confirmed that, when applying the *Feres*  
 19 doctrine, the focus is whether the allegedly negligent act that ultimately resulted in  
 20 Denise Monaco’s injury occurred while her father was in military service. *Id.*  
 21 Since Daniel Monaco experienced the chromosomal change incident to his military  
 22 service, the Ninth Circuit determined that Denise Monaco’s claims were barred  
 23 under *Feres*. *Monaco*, 661 F.2d at 133-34. Moreover, although Denise Monaco’s  
 24 claims involved injuries to herself, rather than indemnity for her father’s injuries,  
 25 the court would still have to examine the Government’s activity in relation to  
 26 military personnel, “precisely [the] type of examination the *Feres* doctrine seeks to

27 <sup>7</sup> During the pre-motion Conference of Counsel required by L.R. 7.3, Plaintiffs’  
 28 counsel confirmed that Vera is not asserting any individual claims in this action.

1 avoid.” *Id.* at 134; *see also Ritchie*, 733 F.3d at 875 (barring claim for death of son  
 2 after pregnant servicewoman on active military duty was ordered to perform  
 3 physical training in contravention to her doctor’s orders); *Persons v. United States*,  
 4 925 F.2d 292, 296-97 (9th Cir. 1991) (barring claim of widow and child after  
 5 serviceman committed suicide while on active military duty).

6 The Ninth Circuit’s genesis test mirrors the logic followed by other courts  
 7 when confronted with claims for genetic injuries and birth defects stemming from  
 8 a service member’s exposure to various chemical agents and substances. *See, e.g.,*  
 9 *Minns v. United States*, 155 F.3d 445, 449-51 (4th Cir. 1998) (barring claims by  
 10 children born with serious birth defects resulting from father's exposure to toxins  
 11 and pesticides given to servicemen in Persian Gulf War); *In re "Agent Orange"*  
 12 *Prod. Liab. Litig.* (“*Agent Orange II*”), 818 F.2d 201, 203 (2d Cir. 1987) (barring  
 13 claims by children resulting from father's exposure to defoliant); *Hinkie v. United*  
 14 *States*, 715 F.2d 96, 98 (3d Cir. 1983) (barring wife’s and children's genetic injury  
 15 claims arising out of father's exposure to radiation); *Gaspard v. United States*, 713  
 16 F.2d 1097, 1102 (5th Cir. 1983) (barring claims related to miscarriages resulting  
 17 from chromosomal damage suffered by husbands incident to service in the  
 18 military); *Lombard v. United States*, 690 F.2d 215, 225 (D.C. Cir. 1982) (barring  
 19 claims by children alleging injuries sustained by serviceman's exposure to radiation  
 20 during atomic bomb project).

21 Here, Plaintiffs F.V. and M.V. claim to suffer various conditions, including  
 22 birth defects and premature birth, as a direct result of their father’s alleged  
 23 exposure to toxic contamination at GAFB while on active military duty. [SAC,  
 24 Dkt. 13, ¶¶ 49-50]. Given the standards set by the Supreme Court and the Ninth  
 25 Circuit, it is clear that the *Feres* doctrine bars any individual claims by Vera, as  
 26 well as the derivative claims of Plaintiffs F.V. and M.V. As in *Monaco*, but for  
 27 *Feres*, the claims of Plaintiffs F.V. and M.V. would inherently require the Court to  
 28 examine discretionary decisions by the Air Force regarding use, disposal,

remediation, or warnings related to alleged toxic, hazardous, or radioactive waste at GAFB and how those decisions and activities related to Vera, an active service member. 661 F.2d at 133-34; *see also Agent Orange II*, 818 F.2d at 203-04 (noting that *Feres* bars cases brought by family members where plaintiffs' allegations of wrongdoing relate directly to management of the military or involve military decisions whose nature may be considered "discretionary functions").

In light of the circumstances surrounding Vera's alleged exposure to toxic, hazardous, and radioactive waste and because the genesis of F.V.'s and M.V.'s alleged injuries in said exposure, the *Feres* doctrine bars Plaintiff F.V.'s and Plaintiff M.V.'s claims, and the Court should dismiss their claims with prejudice.

## **II. This Lawsuit Should Be Dismissed under FRCP 12(b)(6) for Failure to Comply with Federal Pleading Standards.**

### **A. FRCP 12(b)(6) Requires Plaintiffs to Plead Facts Sufficiently Specific to Allege a Claim Plausible on its Face.**

FRCP 12(b)(6) provides that where a plaintiff fails to articulate specific grounds upon which relief may be granted, a defendant may move to dismiss the allegations against it. "A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in a complaint." *United States, et al. v. San Bernardino Mountains Cmty. Dist., et al.*, 17-CV-00002, 2018 WL 5266867, at \*3 (C.D. Cal. Sept. 27, 2018). Dismissal under FRCP 12(b)(6) is appropriate "where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Id.* (citing *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008)). "Factual allegations must be enough to 'raise a right to relief above a speculative level.'" *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

"In resolving a Rule 12(b)(6) motion under *Twombly*, the Court must follow a two-pronged approach." *In re Toyota Motor Corp.*, 785 F. Supp. 2d 883, 910 (C.D. Cal. 2011). "First, the Court must accept all well-pleaded factual allegations

as true, but ‘[t]hread-bare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.’” *Id.* (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)). “Nor must the Court ‘accept as true a legal conclusion couched as a factual allegation.’” *Id.* (quoting *Twombly*, 550 U.S. at 555); *see also Iqbal*, 129 S. Ct. at 1949–50. “Second, assuming the veracity of well-pleaded factual allegations, the Court must ‘determine whether they plausibly give rise to an entitlement to relief.’” *Id.* (quoting *Iqbal*, 129 S. Ct. at 1950). “This determination is context-specific, requiring the Court to draw on its experience and common sense; there is no plausibility ‘where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.’” *Id.*

Additionally, “Rule 12(b)(6) is read along with Rule 8(a), which requires a short, plain statement upon which a pleading shows entitlement to relief.” *Plater v. United States*, 359 F. Supp. 3d 930, 936 (C.D. Cal. 2018) (citing Fed. R. Civ. P. 8(a)(2)). Specifically, Rule 8 requires a complaint to (1) “contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively” and (2) “the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

As the analysis below reveals, each plaintiff in this matter fails to meet the federal pleading standards articulated by *Twombly* and *Iqbal*.

## **B. The SAC Lacks the Factual Support Necessary to State a Claim for Any Individual Plaintiff.**

Plaintiffs’ SAC consists of approximately 50 separate, individual personal injury claims and fails to include the factual specificity and detail required to state a plausible claim on behalf of any individual plaintiff. The SAC includes one paragraph of allegations for each individual plaintiff, and the remainder of the SAC

1 primarily consists of sweeping and conclusory allegations against the United  
2 States. Thus, the SAC is deficient in multiple respects.

3 As an initial matter, the SAC fails to plead the necessary factual support  
4 regarding each plaintiff's exposure claim. Not only does each plaintiff fail to  
5 identify any specific contaminant(s) underlying the plaintiff's exposure claim, each  
6 plaintiff also fails to provide details about when, where, or how any alleged  
7 exposure took place. Considering that nearly all of the plaintiffs in this case claim  
8 exposure to contaminants while living at GAFB, they should be able to provide  
9 basic information about where on the base the plaintiff spent time while living  
10 there, what activities the plaintiff engaged in on the base, and the specific basis for  
11 believing that he or she was exposed to contaminants while on the base. [SAC,  
12 Dkt. 13, ¶¶ 5-55.] Rather than providing this necessary factual detail, however, the  
13 SAC simply identifies dozens of substances found at GAFB during the Air Force's  
14 environmental cleanup efforts and asserts in blanket fashion that each plaintiff was  
15 exposed to unidentified "toxic, hazardous, and radioactive waste" by virtue of  
16 living at or near the base. [SAC, Dkt. 13, ¶¶ 62-79.] This is despite the fact that  
17 GAFB was a 5000+ acre base that operated during the four-plus decades between  
18 1941 and 1992, whereas the majority of plaintiffs assert living at GAFB for only a  
19 handful of years during the 1970s and 1980s. [SAC, Dkt. 13, ¶¶ 5-55.] Some  
20 plaintiffs like Plaintiff Dorothy Lynn Boddy even acknowledge living at GAFB for  
21 less than a year. [SAC, Dkt. 13, ¶ 10.]

22 Moreover, the SAC fails to provide the necessary factual detail regarding  
23 each plaintiff's alleged injuries. Rather than providing facts about when each  
24 plaintiff discovered his or her alleged injuries, the SAC alleges in blanket fashion  
25 that "[s]ometime after January 2019" each plaintiff "came to believe that these  
26 injuries were more likely than not caused by exposure to toxic contamination while  
27 living on former George Air Force Base." [SAC, Dkt. 13, ¶¶ 5-55.] Additionally,  
28 not a single plaintiff identifies the contaminant(s) that he or she reasonably

believes caused his or her alleged injuries or the basis for believing that these alleged injuries were caused by exposure to contaminants at GAFB. This deficiency is particularly stark because each plaintiff alleges a laundry list of claimed injuries ranging from conditions like high blood pressure, arthritis, and carpal tunnel syndrome to conditions like endometriosis, Hodgkin's lymphoma, and leukemia. [SAC, Dkt. 13, ¶¶ 5-55.]

Lastly, Plaintiffs' negligence cause of action fails to adequately define and identify the underlying facts regarding the alleged negligent wrongful conduct of the United States. [SAC, Dkt. 13, ¶¶ 80-90.] Instead, the relevant allegations primarily consist of unsupported conclusory statements and a formulaic recitation of the elements for a negligence claim. For example, Plaintiffs allege that the United States "had a duty to act with reasonable and due care for the safety of others" and "knew or should have known that its actions, omissions, and failures to act posed a threat to human health and created the dangerous condition in and around an area that was frequented by the civilian residents, visitors, and workers on and around former George Air Force Base." [SAC, Dkt. 13, ¶¶ 82, 84.] However, Plaintiffs fail to point to any specific negligent conduct or provide any factual detail about the alleged governmental conduct constituting "specific actions, omissions, or failure to act." [SAC, Dkt. 13, *passim*.] Instead, Plaintiffs rely solely on blanket allegations regarding the Air Force's use, disposal, and warnings related to undefined "toxic, hazardous, and radioactive substances" during the four-plus decades that GAFB operated between 1941 and 1992, notwithstanding the actual years that any plaintiff lived at GAFB. [SAC, Dkt. 13, ¶¶ 85-87.] Simply put, the United States is unable to properly investigate and evaluate Plaintiffs' allegations or marshal its own defenses without receiving at least the basic identifying information required by FRCP 12(b)(6).

Because the SAC lacks the requisite factual specificity, Plaintiffs have failed to allege facially plausible claims against the United States upon which relief can



1 be granted. Accordingly, Plaintiffs' SAC should be dismissed. *See, e.g.,*  
 2 *Esteghlalian v. Dep't of the Navy*, 19-CV-01808, 2020 WL 3250611, at \*3 (S.D.  
 3 Cal. Jun. 16, 2020) ("Here, Plaintiff does not plead any facts alleging the Navy's  
 4 duty of care toward Plaintiff, a breach of that duty, or proximate cause resulting in  
 5 her claimed injuries. Plaintiff merely makes legal conclusions alleging the Navy is  
 6 responsible for her property damage and medical issues without providing any  
 7 specific facts to support these claims."); *Lopez v. County of Los Angeles*, 15-CV-  
 8 01745, 2015 WL 3913263, at \*3-4 (C.D. Cal. Jun. 25, 2015) ("The complaint does  
 9 not provide a coherent explanation of the basis for defendants' liability . . .  
 10 Consequently, plaintiffs have failed to state a wrongful death claim under Rule 8,  
 11 *Twombly*, and *Iqbal*, and the claim must be dismissed for this reason as well.").

### 12 **III. Plaintiffs' SAC Should Be Dismissed with Prejudice and Without Leave** 13 **to Amend.**

14 District courts have discretion in determining whether to allow a plaintiff the  
 15 opportunity to amend the complaint. While Rule 15 admittedly embodies a liberal  
 16 amendment policy, the Ninth Circuit and Central District of California have  
 17 recognized that "a Court does not need to grant leave to amend in cases where the  
 18 Court determines that permitting a plaintiff to amend would be an exercise in  
 19 futility." *Curten v. Recontrust Co.*, 12-CV-9565, 2013 WL 12081084, at \*2 (C.D.  
 20 Cal. Jan. 23, 2013); *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738  
 21 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the  
 22 pleadings before the court demonstrate that further amendment would be futile.").  
 23 Amendment is futile "if no set of facts can be proved under the amendment to the  
 24 pleadings that would constitute a valid and sufficient claim or defense." *Del Toro*  
 25 *v. 360 P'Ship LP*, 21-CV-1216, 2021 WL 5050057, at \*1 (C.D. Cal. Nov. 1, 2021)  
 26 (citing *Barahona v. Union Pac. R.R.*, 881 F.3d 1122, 1134 (9th Cir 2018)).

27 Here, allowing Plaintiffs to amend their SAC would be futile. As an initial  
 28 matter, Plaintiffs have already amended their complaint two times in this case, and

1 during the parties' L.R. 7-3 Conference of Counsel, they declined the United  
 2 States' offer of attempting to fix the aforementioned deficiencies by amending the  
 3 SAC. Moreover, even if Plaintiffs were able to provide additional facts to support  
 4 their exposure, personal injury, and negligence allegations, Plaintiffs cannot allege  
 5 facts sufficient to establish that their claims fall outside of the discretionary  
 6 function exception or the *Feres* bar for the reasons explained in Sections I.B. and  
 7 I.C. above. Accordingly, Plaintiffs' SAC should be dismissed with prejudice and  
 8 without leave to amend.

### 9 CONCLUSION

10 For all of the foregoing reasons, this Court should grant the United States'  
 11 motion to dismiss Plaintiffs' SAC with prejudice and without leave to amend.

12 Dated: June 2, 2022

13 Respectfully submitted,

14 J. PATRICK GLYNN  
 15 Director, Torts Branch  
 16 BRIDGET BAILEY LIPSCOMB  
 17 Assistant Director  
 18 ROSEMARY C. YOGIAVEETIL  
 19 Trial Attorney

20 /s/Haroon Anwar

21 Haroon Anwar  
 22 (IN Bar No. 29135-53)  
 23 Trial Attorney

24 *Attorneys for Defendant*  
 25 *United States of America*  
 26  
 27  
 28

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee of the United States Department of Justice, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that he is causing a copy of the foregoing Notice of Motion to Dismiss and Memorandum of Points and Authorities in Support, to be served on counsel of record by the Court's Electronic Case Filing System.

I declare under penalty of perjury that the foregoing is true and correct.

Executed June 2, 2022 in Washington, DC

/s/ Haroon Anwar

Haroon Anwar

CERTIFIED MAIL



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