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MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

MARTY PAULSON, WILLIAM J. HAUGEN, HARRY FELTON, RAY ROBERTSON and WARD BURLEIGH, President of Burleigh's Angus Cattle Ranch, Inc., Individually and For All Persons Similarly Situated,

Plaintiffs,

v.

MONSANTO CHEMICAL COMPANY n/k/a PHARMACIA, MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS, **COLUMBIA PAINT AND COATINGS CO., and JOHN DOE PAINT COMPANIES and DISTRIBUTORS II through X,**

Defendants.

Cause No. DV-2004-55

Hon. Kurt Krueger

THIRD AMENDED COMPLAINT AND JURY DEMAND

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PLAINTIFFS, for themselves, and all other members of the class herein described, would respectfully show to the Court:

I

The named Plaintiffs are residents of the County of Fergus, State of Montana.

II

Big Spring Creek is a stream originating approximately eight (8) miles southeast of Lewistown, Montana. Big Spring Creek travels generally south to north for approximately 25 miles where it empties into the Judith River. Big Spring Creek is nature's treasured gift to Central Montana. It is a first class fishery and provides a variety of recreational opportunities. It provides irrigation for agricultural and domestic uses. Land that lies adjacent to or near Big Spring Creek has value for these reasons.

III

This action is brought by Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under the provisions of Rule 23 M.R.Civ.P.

Defendant, Monsanto Chemical Company, now known as (n/k/a) Pharmacia is a corporation organized under the laws of the State of Delaware.

Defendant Pharmacia is the successor company of Monsanto Chemical Company.

Defendant Monsanto Chemical Company produced polychlorinated biphenyls (PCB's) known as Aroclors.

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Defendant Montana Department of Fish, Wildlife and Parks is an agency of the State of Montana. This Defendant (and its predecessors) owns and operates the Big Spring Creek Trout Hatchery located at the source of Big Spring Creek.

Defendant Columbia Paint and Coatings Co. (hereinafter Columbia) and formerly identified as John Doe Paint Company and Distributor I, at all relevant times was authorized to do business and doing business in the State of Montana.

Defendant Columbia is, and at all relevant times was, a manufacturer and distributor of paint containing PCBs known as Aroclors. Paint manufactured and distributed by Columbia was used to paint the raceways of the Big Spring Creek Trout Hatchery.

Defendant John Doe Paint Companies and Distributors II through X are manufacturers and distributors of paints containing PCB's known as Aroclors. Paint manufactured and distributed by these defendants was used to paint the raceways of the Big Spring Creek Trout Hatchery.

IV

The class so represented by Plaintiffs in this action, and of which plaintiffs are members, consists of all real property owners who own land adjacent to Big Spring Creek and all owners and users of water rights in Big Spring Creek.

V

The class identified above is composed of more than 100 (One-Hundred)

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members. The class is so numerous that joinder of individual members herein is impracticable.

VI

The causes of action asserted by the class against all Defendants are as follows:

a) The waters of Big Spring Creek have been polluted by Aroclors since 1960 and continue to be so polluted. The source of the pollution has been traced to the paint on the raceways of Big Spring Creek Trout Hatchery.

Article II, Section 3 of the Montana Constitution provides that all citizens of Montana, including the class identified here, have the inalienable right to a clean and healthy environment. The pollution caused by Defendants violates this provision of the Montana Constitution;

b) The pollution described above constitutes a temporary or permanent nuisance;

c) The pollution described above as to Defendants Monsanto, Pharmacia, **and Columbia** is a nuisance per se;

d) The pollution described above as to Defendant Montana Department of Fish, Wildlife and Parks is a qualified nuisance based upon the negligence of this Defendant in the operation and maintenance of the Big Spring Creek Fish Hatchery.

e) Defendants should be permanently enjoined from polluting Big Spring Creek.

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f) All Defendants should be required to participate in a remediation and cleanup of the PCB's contained in Big Spring Creek according to Montana pollution cleanup laws.

All class members have and will continue to suffer a diminution in property values caused by said pollution and the stigma of owning land adjacent or near a stream polluted by probable carcinogens.

All class members have suffered and will continue to suffer emotional distress caused by the tortious actions of Defendants described above because of the actual or potential exposure to PCBs.

VII

By the 1950's, Monsanto knew that PCBs were toxic. By the 1950s, Monsanto knew that PCBs it made and sold, were being discharged into the aquatic environment without regard for aquatic life. Monsanto stopped selling PCBs for use in paints in 1970. However, Monsanto failed to take any action to prevent paints containing its PCBs that were already in service from polluting the aquatic environment. Instead, Monsanto concealed the end uses of paint products containing PCBs from the United States Government and the general scientific community. Monsanto Chemical Company continually failed to warn consumers and end users of paints containing its PCBs of the continuing harm to the aquatic environment that Monsanto Chemical Company knew was certain to occur, even

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with the normal use of paints that contained PCBs.

VIII

There are common questions of law and fact in this action that relate to the right of each member of the class; and the relief sought is common to the entire class, namely the nature and extent of the damage to the property owned by the class members and the type of harm suffered by the class members.

IX

The claims of Plaintiffs, who are representatives of the class herein, are typical of the claims of the class, in that the claims of all members of the class, including Plaintiffs, depends on the showing of the acts of omissions of Defendants giving rise to the right of Plaintiffs to the relief sought herein. There is no conflict as between any individual named Plaintiff and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

X

This action is properly maintained as a class action, in that the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

This action is properly maintained as a class action inasmuch as the object of this action is the adjudication of claims, which do or may affect specific property

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involved herein, all as more fully set forth above. This action is properly maintained as a class action inasmuch as the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

XI

Based upon the foregoing allegations, especially the allegations of paragraph VII, the Defendants, excluding the Defendant Montana Department of Fish Wildlife and Parks, are liable for punitive damages under Montana law.

XII.

Plaintiffs are entitled to collect reasonable attorneys fees and costs associated with the prosecution of this matter under the Private Attorney General Doctrine.

Wherefore, Plaintiffs request for themselves and all other members of the class that:

1. The rights of the class members to this action be adjudicated and declared;

2. Defendants be permanently restrained and enjoined from polluting Big Spring Creek;

3. Defendants be required to cleanup the PCB pollution in Big Spring Creek

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according to Montana law.

4. Plaintiffs class be awarded damages incident to the equitable relief requested, in a sum exceeding the minimum jurisdictional limits of the court; and

5. Plaintiffs' class be awarded punitive damages as allowed by Montana law.

6. Plaintiffs be awarded reasonable attorney's fees and costs pursuant to the Private Attorney General Doctrine.

7. Plaintiffs have such other and further relief as the Court may deem appropriate, including costs and expenses.

7. Plaintiffs demand trial by jury.

DATED this 13 day of January, 2006.

TORGER OAAS
Co-counsel for Plaintiffs

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CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served upon the following counsel of record this 13 day of January, 2006 via:

☒U.S. Mail ☐Federal Express ☐UPS ☐Hand Delivery ☐Fax

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