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8 **STATE WATER RESOURCES CONTROL BOARD**
9 **OF THE STATE OF CALIFORNIA**

10
11 In the Matter of the Petition for Review
of February 16, 2022, Investigative
12 Order No. R4-2022-0024 issued by the
Los Angeles Regional Water Quality
13 Control Board to Harry Meskin, as
Trustee of the H.M. Meskin Revocable
14 Trust 2012; and Gary Rothman, Trustee
of the Gary and Aida Rothman
15 Charitable Remainder Unitrust dated
December 12, 2016
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**Petition for Review of Action by
California Regional Water Board;
Request for Stay; and Request for
Petition to be Held in Abeyance**

(Cal. Water Code § 13320; 23 Cal. Code
Reg. §§ 2050 et seq.)

**Declaration of Kenneth A. Ehrlich
filed concurrently**

19
20 **I.**

21 **PETITION FOR REVIEW**

22 In accordance with California Water Code § 13320¹ and 23 California Code of
23 Regulations, title 23, §§ 2050, et seq., Harry Meskin, as Trustee of the H.M. Meskin
24 Revocable Trust 2012; Marion Rothman, Trustee of the Rothman Trust dated
25
26

27 ¹ All further references to the “Water Code” refer to the California Water Code unless
28 otherwise noted.

1 November 22, 2011, and Trustee of the Alex Rothman Family Trust;² and Gary
2 Rothman, Trustee of the Gary and Aida Rothman Charitable Remainder Unitrust
3 dated December 12, 2016³ (together, “Petitioners”) petition the State Water Resources
4 Control Board (“State Board”) to review and rescind Investigative Order No. R4-2022-
5 0024 as to Petitioner, issued under Water Code § 13267 by the Los Angeles Regional
6 Water Quality Control Board (“Regional Board”) on February 16, 2022 (“Order”).
7 Petitioners submit the Declaration of Kenneth A. Ehrlich concurrently in support of
8 this Petition (“Ehrlich Decl.”). In short, Petitioners did not cause, contribute, or
9 exacerbate contamination at the Property or the Source Property (defined below) and
10 did not own the Property at the time any contamination may have been released at the
11 site. Petitioners have no responsibility whatsoever for the subject contamination and
12 should have no obligations to the RWQCB or others.

13 The Order purports to require Petitioners, former owners of 1901 Wilshire
14 Boulevard, Santa Monica, CA 90403 (“Property”),⁴ to submit a Work Plan by June 16,
15 2022 for a complete site assessment of the Property in order to, among other things,
16 assess the Property for volatile organic compounds (“VOCs”) and to delineate the full
17 extent of contaminants in soil and soil vapor. Ehrlich Decl., Exh. 1, p. 4. During
18 Petitioners ownership of the Property, which lasted from approximately 1983 to
19 January 2022, the site was leased for use as a billiard hall with no use of VOCs. Ehrlich
20 Decl., ¶ 5.

21
22 ² Marion Rothman, the Trustee of the Rothman Trust dated November 22, 2011, and
23 the trustee of the Alex Rothman Family Trust, was not named in the Order.
24 However, these trusts also had an ownership interest in the Property, which was
conveyed to Orthowest, LLC in January 2020, as further discussed herein.

25 ³ The Order was issued to the “G & A Rothman trust.” We assume this was meant to
26 refer the Gary and Aida Rothman Charitable Remainder Unitrust dated December
12, 2016.

27 ⁴ Also addressed 1901A Wilshire Boulevard and 1143 19th Street, Santa Monica, CA
28 90403 (APNs 4276-008-010 and 4276-008-009).

1 As applied to Petitioners, the Order cannot stand because: (1) the contamination
2 emanated from the decades-long, documented use of chlorinated solvents by the dry-
3 clearing operation located at the adjacent property to the east at 1907 Wilshire
4 Boulevard, Santa Monica, CA (“Source Property”), not from any use of the Property;
5 and (2) the Order fails to name the appropriate responsible parties, including (a) the
6 dry-cleaning operator causing the discharge, Hallmark Cleaners; (b) the owner of the
7 Source Property, and the McCloskey Family Trust. Ehrlich Decl., ¶ 25.

8 To the extent that the Order requires a Work Plan, Hallmark Cleaners and the
9 McCloskey Family Trust (collectively, the “Polluters”) should assume sole
10 responsibility for preparation and implementation of such Work Plan, not Petitioner.

11 Pursuant to California Code of Regulations §§ 2053(b) and 2050.5(d),
12 Petitioners request that the State Board stay the Order of the Regional Board and
13 hold this Petition in abeyance while Petitioners seek to resolve this matter with the
14 Regional Board. Petitioners recently retained counsel to respond to the Regional
15 Board, who has not had the opportunity to engage the Regional Board on Petitioners’
16 objections to the Order following a thorough factual investigation. Petitioners will
17 work with the Regional Board to address Petitioners’ objections. Petitioners will
18 notify the State Board if discussions conclude and the State Board should end the
19 abeyance.

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1 A. NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL
2 ADDRESS OF PETITIONER

3
4 Harold Meskin, Trustee for the H M Revocable Trust 2012
5 2500 6th Avenue, #6704.
6 San Diego, CA 92103-6633
7 Telephone: (818) 634-5252
8 Email: harrymeskinh@yahoo.com

9
10 Gary B. Rothman, Trustee for the Gary and Aida
11 Charitable Remainder Unitrust dated December 12, 2016
12 23084 Cass Ave
13 Woodland Hills, CA 91364
14 Telephone: (310) 828-2120
15 Email: hobsm@aol.com

16
17 Marion Rothman, Trustee of Rothman Trust dated
18 November 22, 2011 and Sole Trustee u/d/t dated November
19 14, 1984 and known as The Alex Rothman Family Trust
20 2509 6th Avenue
21 San Diego, CA 92103

22
23 Petitioner requests that the State Water Board and Regional Water Board send
24 copies of all communications and documents relating to this Petition to:

25
26 Kenneth Ehrlich, Esq.
27 Jackson McNeill, Esq.
28 Elkins Kalt Weintraub Reuben Gartside LLP

1 10345 W. Olympic Boulevard
2 Los Angeles, California 90064

3 Telephone: 310-746-4400

4 Email: kehrlich@elkinskalt.com
5 jmcneill@elkinskalt.com

6 **B. ACTION BEING PETITIONED**

7 Petitioners challenges the issuance of the Regional Board’s Order to Petitioners;
8 Petitioners have no environmental responsibility for VOCs at the Property or the
9 Source Property, as explained below.

10 **C. DATE ON WHICH THE REGIONAL BOARD ACTED**

11 The Regional Board acted on February 16, 2022, when it issued the Order to
12 Petitioners. Ehrlich Decl., ¶ 2.

13 **D. PETITIONERS’ STATEMENT OF REASONS THE REGIONAL**
14 **BOARD’S ACTION WAS INAPPROPRIATE AND IMPROPER**

15 The Regional Board issued the Order pursuant to Water Code § 13267. Ehrlich
16 Decl., Exh. 1, p. 4. However, Water Code § 13267, subd. (b)(1) only authorizes the
17 Regional Board to require action from a “person who has discharged, discharges, or is
18 suspected of having discharged or discharging, or who proposes to discharge waste
19 within its region, or any citizen or domiciliary, or political agency or entity of this state
20 who has discharged, discharges, or is suspected of having discharged or discharging,
21 or who proposes to discharge, waste outside of its region that could affect the quality
22 of waters within its region.” Petitioners did not do any of these activities.

23 Water Code § 13267, subd. (b)(1) does not apply to Petitioners because absolutely
24 no evidence exists, and the Regional Board offers no evidence to suggest, that
25 Petitioners have or will ever discharge any Contaminant that could adversely impact
26 water quality. By contrast, the contamination at issue solely emanated from the dry-
27 cleaning operation at the Source Property and subsequently migrated to affect the
28

1 Property.

2 Notably, the environmental documents fail to demonstrate any potential source
3 of contamination at the Property, either during Petitioners' ownership or otherwise.
4 Critically, an ASTM Phase I of the Property prepared by Alpha Environmental
5 determined that a market occupied the front portion of the existing building beginning
6 in 1940 and further determined a billiard hall took over and occupied this tenancy as
7 soon as 1965, and in all cases by 1972. Ehrlich Decl., Exh. 3, pp. ii, 30. A carpentry
8 business and a board game store formerly occupied the rear portion of the existing
9 building. *Id.* at 36. Building permits show the rear tenant space may have also been
10 occupied by a "cash register" business in the late 1960's. *Id.* at 27. The present
11 occupant, an upholstery company, has occupied the 1901A unit since at least 1989. *Id.*
12 at 30.

13 During Petitioners' ownership of the Property, the billiard hall solely occupied
14 the front unit, and the back unit was used first as a game store and then solely as an
15 upholstery business. Ehrlich Decl., ¶ 5. Patently, none of these uses indicate any
16 potential source of VOCs. The Phase I report concludes that no evidence of a recognized
17 environmental condition ("RECs") exists at all *except* for "vapor encroachment onto the
18 [Property] from unauthorized releases or leaks of dry cleaning chemicals (chlorinated
19 solvents)" from "the adjacent dry cleaner...." at the Source Property. Ehrlich Decl.,
20 Exh. 3, p. 35.

21 The most damning evidence of any suspicious use of the Property shows the City
22 of Santa Monica issued a building permit in 1977 for the installation of a self-contained
23 paint spray booth for the rear tenancy. *Id.* at 27. **However, no evidence exists that**
24 **the rear tenant ever acted on this building permit or that a spray-painting**
25 **booth ever operated at the Property.** Indeed, a search of South Coast Air Quality
26 Management District (SCAQMD) records conducted by Alpha Environmental (Phase I
27 preparer) failed to reveal any records for spray booth equipment at the Property. *Id.*
28 at 34-35. Alpha Environmental concluded that "the spray paint booth use appears to

1 have been for a short period in a relatively small portion of the [Property] and,
2 considering the time elapsed, the possible use of a spray booth is considered a *de*
3 *minimus* condition.” *Id.* This charitably assumes, of course, that a spray painting booth
4 operated at the Property all. Even the most favorable interpretation of this “spray
5 booth” inference fails to show any VOC contamination caused by such historical use.

6 An Environmental Summary Report prepared for 1901-1933 Wilshire
7 Boulevard in contemplation of potential purchase redevelopment of the Property,
8 Source Property, and an additional site to the east, meanwhile, reviewed the historical
9 uses of the Property as well as soil and soil vapor samples collected at and adjacent to
10 the Property in 2020 and concluded that “[r]esults of the investigation indicate that
11 historical operations at this property did not result in contamination.” Ehrlich Decl.,
12 Exh. 17, p. 1.

13 Despite having no evidence that any potential source of contamination existed
14 at the Property, the Regional Board’s Order states, without any analysis, that “[a]reas
15 of potential concern at the Site, such as areas where woodworking, furniture assembly,
16 painting, and cash register ‘repair activities’ were conducted, need to be assessed.”
17 Ehrlich Decl., Exh. 1, p. 3. No evidence even surmises that cash register “repair”
18 occurred at the Property; the Regional Board invented this use out of thin air.

19 Incredibly, other than noting in passing that “PCE was detected in groundwater
20 at locations adjacent to the Site” (*id.* at 2), the Order completely ignores the significant
21 PCE release from the adjacent dry-cleaning operation at 1907 Wilshire Boulevard—a
22 release for which the Regional Board has already issued orders for assessment and
23 remediation. Ehrlich Decl., ¶¶ 16-19.

24 Just as striking, the Regional Board fails to name the Polluters as responsible
25 parties in the current purported order. Ehrlich Decl., Exh. 1, p. 1. No rational basis
26 exists to name Petitioners as a result of potential, inferred uses many decades ago
27 while a clear polluter of the same chemicals lies just a few feet away. We can only
28 speculate that the Polluters have targeted Petitioners through a persistent

1 misinformation campaign aimed at Regional Board staff in which Polluters wishfully
2 argue that operations at the Property could have resulted in contamination. Ehrlich
3 Decl., ¶ 22. Clearly, the Polluters opportunistically seeks to pin a portion of its
4 remediation costs on Petitioner.

5 While *no* evidence suggests that any VOC contamination has ever been
6 discharged or released at the Property, overwhelming evidence demonstrates multiple
7 and constant releases of VOC solvent contamination from the Source Property, which
8 have now migrated onto the Property. Importantly, the Regional Board previously
9 requested and received a Chemical Storage and Use Questionnaire for the Source
10 Property (“Questionnaire”) from the Polluters. Ehrlich Decl., Exh. 8-9. In the
11 questionnaire, the Polluters admit that: **(1) solvent-based dry cleaning operations**
12 **have been conducted at the Source Property for over seventy (70) years (Exh.**
13 **9, p. 2); (2) the Source Property has housed hazardous substances (*id.*); (3)**
14 **solvent releases have occurred at the Source Property (*id.* at 2-3); (4) a Phase**
15 **II investigation for the Source Property confirmed “relatively elevated” PCE**
16 **concentrations in soil vapor (*id.* at 4); and (5) “impacted soil and soil vapor”**
17 **exist at and below the Source Property (*id.* at 2-4).** A Phase II report for the
18 Property, meanwhile, logically confirms that the highest PCE concentrations on the
19 Property exist in the areas closest to the dry cleaner, demonstrating that
20 Contaminants from the Source Property have migrated onto the Property. Ehrlich
21 Decl., Exh. 4, pp. i-ii, 13-14. Likewise, the Environmental Summary Report prepared
22 in connection with a potential purchase of the Property, Source Property, and adjacent
23 site determined the highest concentration of PCE exists “downgradient of the dry-
24 cleaners” at the Source Property and concluded that lateral migration of the PCE from
25 that site has occurred. *Id.* at p. 4. It remains a fool’s errand to claim Petitioners bear
26 any responsibility for any VOC contamination at either the Property or the Source
27 Property.

28 Regional Board Order Nos. R4-2018-0053 and R4-2019-0028 identify the Source

1 Property’s dry cleaning operation as the cause of the contamination and name the
2 Polluters as responsible parties. Ehrlich Decl., Exh. 8, p. 1; Exh. 11, pp. 1-2. The
3 Regional Board subsequently approved plans requiring the Polluters to remediate the
4 contamination on the Source Property through, among other things, installing three
5 soil vapor extraction (“SVE”) well clusters. Ehrlich Decl., Exh. 13, p. 2. Petitioners,
6 meanwhile, have never owned or operated at the Source Property.

7 All evidence points to the contamination at the Property emanating solely from
8 the Source Property. No evidence even remotely infers a discharge or release from a
9 use at the Property. Accordingly, while we agree that the Property should be assessed
10 and remediated, the Polluters, not Petitioner, should assume sole responsibility for
11 preparation and implementation of such work.

12 Finally, the Order mistakenly indicates that Petitioners currently own the
13 Property. Ehrlich Decl., ¶ 26. In fact, Petitioner no longer owns the Property.
14 Orthowest, LLC acquired title to the Property from Petitioner in January 2022. *Id.*

15 **E. PETITIONERS WILL BE AGGRIEVED BECAUSE, IF NOT**
16 **RESCINDED, THE ORDER WOULD FORCE PETITIONERS TO**
17 **SPEND TIME AND MONEY ON AN UNWARRANTED**
18 **INVESTIGATION THAT WILL NOT YIELD NEW OR BENEFICIAL**
19 **INFORMATION**

20 It remains inconsistent with Water Code § 13267 and wholly inequitable to
21 require Petitioners, truly innocent parties, to expend time, effort, costs, and other
22 resources to prepare a Work Plan to address contamination that, if it exists, was
23 caused by the Polluters. Water Code § 13267(b)(l) provides: “[t]he burden, including
24 costs, of these reports shall bear a reasonable relationship to the need for the report
25 and benefits to be obtained from the reports.” *See also, City of Arcadia v. State Water*
26 *Resources Control Board*, 135 Cal.App.4th 1392, 1413-1414 (2006) (“when [a Regional
27 Board] requires a polluter to furnish ‘technical or monitoring program reports,’ the
28 ‘burden, including costs, of these reports shall bear a reasonable relationship to the

1 need for the report[s] and the benefits to be obtained from the reports.”). Here, no
2 benefit exists by naming Petitioners as responsible parties and requiring Petitioners
3 to implement any work because: (1) Petitioners are not a known, or even suspected,
4 discharger of VOCs; (2) no historical or current evidence exists of VOC discharges or
5 releases at the Property, much less by Petitioners or their lessees; (3) no plume exists
6 at the Property that is distinct from the plume associated with dry cleaning operations
7 at the Source Property; and (4) any such discharge of VOCs remains wholly
8 inconsistent with the chronology of Petitioners’ ownership of the Property and the uses
9 of its lessees.

10 In contrast, contamination has emanated and continues to emanate from the
11 Source Property and Polluters bear responsibility for the contamination. The Regional
12 Board should name these entities as the sole responsible parties. Given that the
13 Polluters have already been named and have already begun remediating the Source
14 Property, these third-parties should bear the burden of proving a distinct release and
15 distinct plume at the Property. Ehrlich Decl., ¶¶ 16-21. Subject to the parties entry
16 into an Access Agreement, the Polluters also remain free to implement the Work Plan
17 for the Property as well, separate and apart from Petitioner’s involvement.

18 No new or helpful information could result from forcing Petitioners to
19 implement the Work Plan. Further, it remains entirely unreasonable to impose any
20 burden on Petitioners since they bear absolutely no responsibility for the discharge of
21 VOCs at the Property. Accordingly, the State Board must rescind the Order issued to
22 Petitioner.

23 **F. ACTION REQUESTED BY PETITIONER**

24 Based on the facts and law specified in this Petition, Petitioners request the
25 State Board to: (a) hold this Petition in abeyance pending resolution with the Regional
26 Board; (b) issue a stay of the Order in order to provide interim relief and avoid the
27 unnecessary burden and expense that Petitioners would bear in preparing the
28 requested Work Plan; and (c) if Petitioners’ objections are not resolved with the

1 Regional Board, rescind the Order as issued to Petitioners; and (d) revise the Order to
2 name Hallmark Cleaners and the McCloskey Family Trust as responsible parties.

3 **G. THE SUBSTANTIVE ISSUES AND OBJECTIONS RAISED IN THE**
4 **PETITION WERE RAISED BEFORE THE REGIONAL BOARD OR**
5 **COULD NOT BE RAISED PRIOR TO THE ORDER BEING**
6 **ISSUED**

7 Petitioners’ counsel has reviewed the Order, but requires additional time to
8 engage the Regional Board with Petitioners’ objections to the Order following a
9 thorough factual investigation to support its objections. Petitioners will work with the
10 Regional Board to address Petitioners’ objections. Petitioners will notify the State
11 Board if discussions conclude and the abeyance and/or stay should be lifted.

12 In addition, Petitioners have previously filed documents with the Regional
13 Board stating that no evidence exists of subsurface contamination from on-site
14 activities on the Property, either before or during Petitioners’ ownership. Ehrlich Decl.
15 ¶ 15; Decl. Exhs. 5-7. Instead, Petitioners have consistently argued in at least three
16 letters to the Regional Board that contamination of the Property has occurred solely
17 as the result of the discharge of chlorinated solvents from the dry-cleaning operation
18 at the adjacent Source Property. Ehrlich Decl. ¶ 15; Decl. Exhs. 5-7. These issues were
19 raised in 2018, long before the Regional Board issued its Order. *Id.*

20 **H. PETITIONER’S STATEMENT OF POINTS AND AUTHORITIES IN**
21 **SUPPORT OF LEGAL ISSUES RAISED BY THE PETITION**

22 **1. No Substantial Evidence Exists That Petitioner**
23 **Constitutes a “Responsible Party.”**

24 The State Board should rescind the Order as to Petitioners because the Regional
25 Board has not provided sufficient evidence in support of its decision to name
26 Petitioners as responsible parties. While the Water Code § 13267 allows the Regional
27 Board to issue orders to “any person that has discharged, discharges, or is suspected
28 of having discharged or discharging, or who proposes to discharge waste with its

1 region...,” **substantial evidence must support a finding that a party is**
2 **responsible for such discharge.** See *In the Matter of Petition of Exxon Company,*
3 *U.S.A., et al.*, 1985 WL 20026 at *6 (1985), Ehrlich Decl., Exh. 19 (“There must be
4 substantial evidence to support a finding of responsibility for each party named. This
5 means credible and reasonable evidence which indicates the named party has
6 responsibility.”).

7 Here, no credible or reasonable evidence links Petitioners’ former ownership, or
8 tenant uses during such ownership, to VOCs in the vicinity of the Property. Petitioners
9 have never discharged or released VOCs. The environmental reports prepared for the
10 Property, attached to the Ehrlich Decl. as Exhibits 3, 4, and 17, confirm this conclusion.

11 The Phase I report prepared Alpha Environmental (Exh. 3) states that no
12 evidence of recognized environmental conditions (“RECs”) exist except for “vapor
13 encroachment onto the subject property from unauthorized releases or leaks of dry
14 cleaning chemicals (chlorinated solvents)” from “the adjacent dry cleaner....” at the
15 Source Property. Ehrlich Decl., Exh. 3, p. 35. The prior use of the Property as a billiard
16 hall, meanwhile, with ancillary game store and upholstery uses (and a potential but
17 unproven cash register business), does not warrant concern. *Id.* Further, although a
18 previous building permit for a self-contained spray-paint booth exists, no evidence has
19 been provided that a spray-paint booth ever operated. The Phase I preparer found the
20 “possible” spray-paint booth at most represents a *de minimus* condition. *Id.* at 34-35.
21 An Environmental Summary Report prepared by Ramboll Consulting USA, Inc.,
22 likewise, reviewed the historical uses of the Property and obtained soil and soil vapor
23 samples at and adjacent to the Property in 2020. Exh. 17, pp. 2-3. The report concluded
24 that “[r]esults of the investigation indicate that historical operations at this property
25 did not result in contamination.” Ehrlich Decl., Exh. 17, p. 1

26 The Phase II report (Exh. 4) covering the Property, meanwhile, detected PCE in
27 six of the seven soil vapor samples. Ehrlich Decl., Exh. 4, pp. i to ii, 12. The soil vapor
28 data detected PCE concentrations at a depth of five (5) feet below ground surface

1 (“bgs”) ranging from 1.9 micrograms per liter (“µg/L”) to 122 µg/L. PCE concentrations
2 as high as 95 µg/L was detected ten (10) feet bgs in the walkway inside the Property’s
3 billiard hall next to the dry cleaning facility at the Source Property. *Id.* All levels
4 exceed the DTSC’s Human Health Risk Assessment (“HHRA”) guidelines and the EPA
5 Regional Screening Levels (“RSL”) for commercial use. *Id.* The soil matrix samples
6 likewise showed PCE concentrations above the laboratory reporting limit of 0.0020
7 milligrams per kilogram (“mg/kg”). Exh. 4, p. 14. The soil matrix samples show PCE
8 concentrations above the laboratory reporting limit of 0.0020 milligrams per kilogram
9 (“mg/kg”). *Id.*

10 The Phase II (Exh. 4) reveals the highest PCE concentrations on the Property
11 exist in the area adjacent to the dry cleaning operation, demonstrating that VOCs
12 migrated from the Source Property to the Property. Exh. 4, pp. i-ii, 13-14. The Phase
13 II report did not find, by contrast, that PCE resulted of any onsite release or discharge.

14 In addition, the Environmental Summary Report prepared by Ramboll USA
15 Consulting, Inc. in contemplation of potential redevelopment of the Property, Source
16 Property, and an adjacent site reviewed the historical uses of the Property and
17 obtained soil and soil vapor samples at and adjacent to the Property in 2020. It
18 concluded that “[r]esults of the investigation indicate that historical operations at this
19 property did not result in contamination.” Ehrlich Decl., Exh. 17, p. 1.

20 Indeed, all credible evidence unequivocally demonstrates that the
21 contamination at the Property emanates from the Source Property. This includes a
22 Chemical Storage and Use Questionnaire for the Source Property admitting that
23 solvent-based dry cleaning operations have been conducted at the Source Property for
24 over seventy (70) years, that the Source Property has housed hazardous substances for
25 decades, and that solvent releases have occurred at the Source Property. Ehrlich Decl.,
26 Exh 9, pp. 2-4. In fact, the Regional Board has already named the Polluters as
27 responsible parties in order for the assessment and remediation of the contamination
28 at the Source Property. Ehrlich Decl., ¶¶ 16, 19.

1 Because no credible or reasonable evidence links Petitioners' former ownership
2 or operations to VOCs in the vicinity of the Property, Petitioner cannot be named as a
3 responsible party. *See In the Matter of Petition of Exxon Company, U.S.A., et al.*, 1985
4 WL 20026 at *6 (1985), Ehrlich Decl, Exh. 19.

5 **2. Hallmark Cleaners and the McCloskey Family Trust**
6 **Constitute the "Responsible Parties," Not Petitioner.**

7 Hallmark Cleaners plainly bears responsibility for this release of chlorinated
8 solvents. Hallmark has operated at the Source Property as a dry-cleaning operation
9 since approximately 1948 and clearly caused the discharge or release of VOCs. A
10 Chemical Storage and Use Questionnaire for the Source Property prepared and signed
11 by Eugene McCloskey, Trustee for the McCloskey Family Trust admits that solvent-
12 based dry cleaning operations have been conducted at the Source Property for over
13 seventy (70) years, that the Source Property has housed hazardous substances for
14 decades, and that solvent releases have occurred at the Source Property. Ehrlich Decl.,
15 Exh. 9, pp. 2-4. In light of these facts, the Regional Board already deems Hallmark
16 Cleaners responsible for the contamination at the Source Property. *See, e.g.*, Ehrlich
17 Decl., Exh. 8, 11 (Orders from the Regional Board naming Hallmark Cleaners as a
18 party). As the party that discharged the VOCs, the law requires that Hallmark
19 Cleaners constitute a responsible party. Water Code § 13304(a); *see In the Matter of*
20 *the Petitions of County of San Diego, City of National City, and City of National City*
21 *Community Development Commission*, 1996 WL 34481302, at *4, Ehrlich Decl., Exh.
22 20 ("It is clear that under Water Code Section 13304, any person whose action is the
23 direct cause of a waste discharge is properly included in a CAO.")

24 The McCloskey Family Trust owns the Source Property and must also serve as
25 a responsible party. The Porter-Cologne Water Act (and case law interpreting it)
26 unequivocally mandates that current owners bear responsibility for discharges that
27 occur or that have previously occurred on their property, regardless of whether the
28 current owner caused or permitted the discharge. Cal. Water Code § 13305(f) ("[t]he

1 owner of the property on which the condition exists, or is created, is liable for all
2 reasonable costs incurred by the regional board or ... public agency in abating the
3 condition.”); *United Artists Theatre Cir., Inc. v. California Reg’l Water Quality Control*
4 *Bd.*, 42 Cal. App. 5th 851, 876 (2019), *as modified on denial of reh’g* (Dec. 18, 2019)
5 (the Porter-Cologne Water Act holds current property owners strictly liable for
6 discharges occurring on their property).

7 To this point, the State Water Board has stated: “the current landowner,
8 however blameless for the existence of the problem, should be included as a responsible
9 party in a cleanup order.” *In the Matter of the Petitions of Wenwest, Inc., Susan Rose,*
10 *Wendy’s International, Inc. and Phillips Petroleum Company*, 1992 WL 12622783, at
11 *3, Ehrlich Decl., Exh. 18. Plainly, the McCloskey Family Should be named as a
12 responsible party as well.

13 **3. Even if a Discharge Occurred at the Property, Petitioners Cannot**
14 **be Named as a Responsible Party.**

15 Nothing suggests that the any use on the Property resulted in a discharge of
16 VOCs. All evidence points to the contamination migrating from the Source Property.
17 Nevertheless, even assuming *arguendo* that a discharge of VOCs has occurred on the
18 Property, which Petitioners deny, Petitioners cannot be named as Responsible
19 Parties. Importantly, Petitioners sold the Property in January 2022. Ehrlich Decl. ¶ 5.
20 The California Court of Appeal’s decision in *United Artists* explains the
21 circumstances needed to name a prior, out-of-possession landowner as a responsible
22 party who “permitted” the discharge of contaminants resulting from a tenant’s
23 operation. *United Artists Theatre Cir., Inc. v. California Reg’l Water Quality Control*
24 *Bd.*, 42 Cal. App. 5th 851 (2019), *as modified on denial of reh’g* (Dec. 18, 2019)
25 (“*United Artists*”). In *United Artists*, the First Appellate District squarely rejected the
26 notion that a cleanup and abatement order resulting from a lessee’s activities can
27 name a prior landowner based solely on its status as the previous landowner. *Id.* at
28 887-88. Instead, **the landowner must have been aware of a risk of discharge**

1 **and proof must exist that the owner knew or should have known that the**
2 **lessee’s activity created a reasonable possibility of a discharge. *Id.***
3 Responsibility does not attach merely because the prior landowner was generally
4 aware of the tenant’s business. *Id.* at 876.

5 Here, no evidence exists (and the Regional Board provides none) that any
6 discharge occurred at the Property or that, even if it did, Petitioners knew or should
7 have known that a discharge occurred. During Petitioners’ ownership of the Property,
8 the Property was occupied by a billiard hall, a game store, an upholstery shop, and a
9 surface parking lot. Ehrlich Decl., ¶ 5. Nothing about these uses even hints at the
10 possibility of VOC use or discharge. To Petitioners’ knowledge, all of these tenancies
11 did not use any chemicals of concern; they met industry standards, and they had all
12 necessary permits and other governmental authorizations to operate. Thus,
13 Petitioners did not “permit” a discharge under Water Code § 13304 and cannot be
14 named as responsible parties even if a discharge occurred at the Property.

15 **II.**

16 **PETITIONER HAS PROVIDED THE REGIONAL BOARD WITH A COPY OF**
17 **THE PETITION**

18 A copy of this Petition, along with the documents filed concurrently herewith,
19 was sent via email on March 18, to the following addresses:

20 Ms. Renee Purdy
21 Executive Officer
22 Los Angeles Regional Water Quality Control Board
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27 **III.**

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1 **PETITIONERS' REQUEST FOR ABEYANCE**

2 Pursuant to California Code of Regulations, § 2050.5 (d), Petitioners requests
3 this Petition be held in abeyance pending discussions between Petitioners and the
4 Regional Board.

5 **IV.**

6 **PETITIONERS' REQUEST TO STAY THE REGIONAL BOARD'S ORDER**

7 **A. PETITIONERS WILL INCUR SUBSTANTIAL HARM IF THE STATE**
8 **BOARD FAILS TO GRANT A STAY.**

9 The Order would result in substantial harm to Petitioners by unlawfully and
10 inequitably requiring the Petitioners to bear the time, effort, costs, and other resources
11 to prepare a Work Plan in order to address contamination that Petitioners could not
12 possibly have caused. These burdens and costs are not remote or hypothetical: the
13 Order requires Petitioners to prepare a Work Plan no later June 16, 2022. Ehrlich
14 Decl., Exh. 1, p. 4. Thus, unless the State Board grants the stay, Petitioners will incur
15 costs during the time that the State Board reviews the petition. Clearly, interim relief
16 must be granted.

17 As explained in the Petition, no evidence exists of VOC contamination from
18 current or historical activities on the Property since development. All evidence
19 supports migrating contamination from the past and present dry-cleaning operations
20 at the Source Property. Petitioners had absolutely no involvement in these activities.

21 Water Code § 13267(b)(l) provides: “[t]he burden, including costs, of these
22 reports shall bear a reasonable relationship to the need for the report and benefits to
23 be obtained from the reports.” *See also, City of Arcadia v. State Water Resources*
24 *Control Board*, 135 Cal.App.4th 1392, 1413-1414 (2006) (“when [a Regional Board]
25 requires a polluter to furnish ‘technical or monitoring program reports,’ the ‘burden,
26 including costs, of these reports shall bear a reasonable relationship to the need for the
27 report[s] and the benefits to be obtained from the reports.’”).

28 If the State Board does not stay the Regional Board’s Order, Petitioners,

1 innocent former owners, would be forced to expend significant time, costs, and
2 resources on an investigation to assess contamination it has no responsibility for, while
3 the parties responsible for the contamination bear no cost at all. At the same time, no
4 additional benefit will be derived from this effort since the Polluters who bear
5 responsibility for the discharge remain free to prepare and implement the Work Plan
6 separate and apart from Petitioners.

7 In addition, failure to stay the Order would put Petitioners in an impossible
8 position. Petitioners do not have access to the Property. Petitioners cannot prepare,
9 much less implement, a Work Plan without involvement from the current owner. A
10 stay must be granted to prevent this result.

11 **B. THE PUBLIC INTEREST OR OTHER INTERESTED PERSONS WILL**
12 **INCUR NO SUBSTANTIAL HARM IF THE STATE BOARD GRANTS A**
13 **STAY**

14 The public interest will not incur substantial harm if the State Board grants a
15 stay. The record unequivocally demonstrates that the contamination has emanated
16 and continues to emanate from the Source Property and that the Polluters bear
17 responsibility for the contamination. The Regional Board should name these entities
18 as responsible parties. Since the Polluters have already been named and have already
19 begun remediating the Source Property, these third-parties clearly remain free to
20 implement the Work Plan for the Property as well, subject to an access agreement,
21 separate and apart from Petitioners' involvement. Ehrlich Decl., ¶¶ 16-21. Thus, the
22 public interest in seeing the alleged contamination, if any, assessed and remediated,
23 will not be injured provided that the Polluters conduct the work.

24 The Polluters would qualify as other interested parties under this analysis. The
25 Polluters, not Petitioners, bear responsibility for the discharge. Ehrlich Decl., Exh. 1,
26 pp. 2-4. Clearly, the status of these entities as responsible parties will not change based
27 on whether the stay is granted. Simply put: the stay does not affect these parties'
28 interests.

1 Given that no substantial harm will result, the stay should be granted.

2 **C. SUBSTANTIAL QUESTIONS OF FACT AND LAW EXIST REGARDING**
3 **THE DISPUTED ACTION**

4 The Objections and Petition raise substantial questions of fact and law
5 regarding the disputed action that remain unresolved.

6 First, no substantial evidence exists that Petitioners constitute responsible
7 parties. *See In the Matter of Petition of Exxon Company, U.S.A., et al.*, 1985 WL 20026
8 at *6 (1985), McNeill Decl., Exh. 19 (“There must be substantial evidence to support a
9 finding of responsibility for each party named. This means credible and reasonable
10 evidence which indicates the named party has responsibility.”). No credible or
11 reasonable evidence links Petitioners’ ownership or their tenant operations to VOCs
12 in the vicinity of the Property. Petitioners have never been discharged VOC or other
13 contaminants at the Property. Ehrlich Decl., ¶ 5.

14 On the other hand, overwhelming evidence unequivocally demonstrates that
15 migrating PCE contamination caused the contamination on the Property. The
16 Questionnaire for Source Property, for example, admits that solvent-based dry
17 cleaning operations have been conducted at the Source Property for over seventy (70)
18 years, that the Source Property has housed hazardous substances for decades, and that
19 solvent releases have occurred at the Source Property. Ehrlich Decl., Exh. 9, pp. 2-4. A
20 Phase II report for the Property likewise confirms that the highest PCE concentrations
21 on the Property exist in the area adjacent to the dry cleaner, demonstrating that
22 Contaminants from the Source Property have migrated onto the Property. And an
23 Environmental Summary Report prepared by Ramboll USA Consulting, Inc. in
24 connection with the potential acquisition and redevelopment of the Property, Source
25 Property, and an adjacent site similarly determined the “PCE soil vapor plume ...
26 originates at the adjacent dry cleaner (1907 Wilshire)” and that highest concentration
27 of PCE exists “downgradient of the dry-cleaners” at the Source Property, concluding
28 that a lateral migration of the PCE from the Source Property to the Property has

1 occurred. *Id.* at p. 6.

2 The Regional Board's Order, however, fails to address this factual reality.
3 Instead, the Order only mentions the significant PCE release from the adjacent dry-
4 cleaning operation at 1907 Wilshire Boulevard in a single sentence. It essentially
5 ignores the uncontroverted evidence that the contamination at the Source Property
6 emanated onto, and resulted in, the contamination at the Property. The Order
7 similarly fails, without explanation, to name the Source Property owner and dry-
8 cleaning operator, the Polluters, as responsible parties, ignoring clear legal precedent.
9 *See Resol. Tr. Corp. v. Rossmoor Corp.*, 34 Cal. App. 4th 93, 40 Cal. Rptr. 2d 328 (1995)
10 (noting order from Regional Board requiring entity to cleanup contamination on
11 adjoining property). These questions of fact and law remain unresolved and bear
12 critically on whether Petitioners could legally constitute responsible parties.

13 V.

14 CONCLUSION

15 Petitioner respectfully requests that the State Board: (a) hold this Petition in
16 abeyance pending resolution with the Regional Board; (b) issue a stay of the Order in
17 order to provide interim relief and avoid the unnecessary burden and expense that
18 Petitioners would be forced to bear in preparing a Work Plan; and; (c) if Petitioners'
19 objections are not resolved with the Regional Board, rescind the Order as issued to
20 Petitioners; and (d) revise the Order to name Hallmark Cleaners and the McCloskey
21 Family Trust as responsible parties.

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Respectfully submitted,

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