

1 Charles M. Tebbutt, WSBA #47255
Daniel C. Snyder, *pro hac vice*
2 B. Parker Jones, *pro have vice*
Law Offices of Charles M. Tebbutt, P.C.
3 941 Lawrence St.
Eugene, OR 97401
4 Charlie@tebbuttlaw.com
Tel: (541) 344-3505

5
6 *Additional Counsel Identified on Signature Page*

7
8 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

9 COMMUNITY ASSOCIATION FOR
RESTORATION OF THE
10 ENVIRONMENT, INC., a Washington
non-profit corporation; FRIENDS OF
11 TOPPENISH CREEK, a Washington non-
profit corporation; *and* CENTER FOR
12 FOOD SAFETY, a Washington, D.C. non-
profit corporation,

13 Plaintiffs,

14 v.

15 AUSTIN JACK DECOSTER, an individual,
DECOSTER ENTERPRISES, LLC, a
Delaware limited liability company,
16 AGRICULTURAL INVESTMENT-FUND
II, a Delaware limited liability company,
17 IDAHO AGRI IVESTMENTS, LLC, an
Idaho limited liability company, IDAHO
18 DAIRY HOLDINGS, LLC, and Idaho
limited liability company, DRY CREEK
19 DAIRIES, LLC, an Idaho limited liability
company, WASHINGTON DAIRY
20 HOLDINGS, LLC, a Washington limited

Case No. 1:19-cv-03110

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS
AUSTIN JACK DECOSTER,
DECOSTER ENTERPRISES, LLC,
AGRICULTURAL INVESTMENT-
FUND II, LLC, IDAHO AGRI
INVESTMENTS, LLC, IDAHO DAIRY
HOLDINGS, LLC, AND DRY CREEK
DAIRIES, LLC'S JOINT MOTION TO
DISMISS (ECF No. 112)**

1 liability company; WASHINGTON AGRI
INVESTMENTS, LLC, a Washington
2 limited liability company; DBD
WASHINGTON, LLC, a Washington
3 limited liability company; *and* SMD, LLC, a
Washington limited liability company,
4 Defendants.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

TABLE OF AUTHORITIES.....ii

INTRODUCTION..... 1

I. THE COURT HAS PERSONAL JURISDICTION OVER THE NON-WASHINGTON DEFENDANTS2

 A. The Court has Specific Personal Jurisdiction over Jack DeCoster and DeCoster Enterprises4

 B. All Defendants are Alter Egos of Jack DeCoster and DeCoster Enterprises9

II. NON-WASHINGTON DEFENDANTS SHARE A MEASURE OF CONTROL OVER THE DAIRIES OPERATIONS AND MANURE PRACTICES 17

III. THE COURT HAS JURISDICTION OVER PLAINTIFFS’ OPEN DUMPING CLAIM.....20

CONCLUSION20

TABLE OF AUTHORITIES

Cases

Am. Tel. & Tel. Co. v. Compagnie Bruzelles Lambert,
94 F.3d 586 (9th Cir. 1996)..... 8

Axiom Foods, Inc. v. Acerchem Int’l, Inc.,
874 F.3d 1064 (9th Cir. 2017)..... 3

Ballard v. Savage,
65 F.3d 1495 (9th Cir. 1995)..... 2

Bell Atlantic Corp. v. Twombly,
550 U.S. 544 (2007)..... 1

Bristol-Myers Squibb v. Superior Court of California, San Francisco County,
582 U.S.____, 137 S. Ct. 1773 (2017)..... 2

Cmt’y Ass’n for Restoration of the Env’t v. Cow Palace,
80 F. Supp. 3d 1180 (E.D. Wash. 2015) 18, 19, 20

Doe v. Unocal Corp.,
248 F.3d 915 (9th Cir. 2001)..... 3, 9, 17

Daumler v. Bauman,
571 U.S. 117, 134 S. Ct. 746 (2014)..... 2

Flynt Distributing Co. v. Harvey,
734 F.2d 1389 (9th Cir. 1984)..... 4

Helicopteros Nacionales de Columbia, S.A. v. Hall,
466 U.S. 408 (1984)..... 8

Hinds Invs., L.P. v. Angioli,
654 F.3d 846 (9th Cir. 2011)..... 17, 19

In re Stac Elecs. Sec. Litig.,
89 F.3d 1399 (9th Cir. 1996)..... 1

1
2 *Int'l Shoe Co. v. Washington*,
326 U.S. 310, 66 S. Ct. 154 (1945).....3

3 *Klopman-Baerselman v. Air & Liquid Sys. Corp.*,
4 2019 U.S. Dist. LEXIS 93492
(W.D. Wash. June 4, 2019).....2

5 *Mavrix Photo, Inc. v. Brand Techs, Inc.*,
6 647 F.3d 1218 (9th Cir. 2011).....9

7 *MultiStar Indus. v. Ocala*,
8 2019 U.S. Dist. LEXIS 144969 (E.D. Wash. 2019)3

9 *Ranza v. Nike, Inc.*,
10 793 F.3d 1059 (9th Cir. 2015).....*passim*

11 *Schwarzenegger v. Fred Martin Motor Co.*,
12 374 F.3d 797 (9th Cir. 2004).....3

13 *United States v. Bestfoods*,
14 524 U.S. 51, 118 S. Ct. 1876 (1998).....19

15 *Wells Fargo & Co. v. Wells Fargo Exp. Co.*,
16 556 F.2d 406 (9th Cir. 1977).....8

17
18
19
20

Federal Rules

Fed. R. Civ. P. 817

Fed. R. Civ. P. 122

1 **INTRODUCTION**

2 “Follow the Money”

3 This phrase informed the Court’s decision authorizing financial discovery
4 following the February 24, 2021 Discovery Conference, ECF No. 89, and has
5 guided Plaintiffs’ discovery since. The irrefutable conclusion from the evidence
6 since obtained is that all roads, all money, and all decision-making leads to
7 defendants Austin Jack DeCoster and DeCoster Enterprises, LLC.

8 The non-Washington Defendants now move to dismiss for lack of personal
9 jurisdiction. They wish to insulate themselves from liability for contributing to the
10 imminent and substantial endangerment at the DBD and SMD Dairies. Defendants’
11 motion, however, is based on the faulty premise that these entities have never
12 conducted business in Washington or otherwise availed themselves to the State.
13 The discovery produced to date paints a very different picture: Mr. DeCoster and
14 DeCoster Enterprises, LLC are calling the shots at the dairy facilities, and must be
15 held accountable for their widespread groundwater contamination.

16 **LEGAL STANDARD**

17 A complaint must contain “enough facts to state a claim to relief that is
18 plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A
19 complaint’s allegations are taken as true and construed in the most favorable light
20 to the plaintiff. *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996).

1 In resolving a Fed. R. Civ. P. 12(b)(2) motions for lack of personal
2 jurisdiction, courts may consider evidence outside the pleadings, including
3 affidavits and materials submitted on the motion. *See Daumler v. Bauman*, 571
4 U.S. 117, 123, 134 S. Ct. 746 (2014).¹ Conflicts over statements contained in
5 affidavits or other materials are resolved in plaintiff’s favor. *Klopman-Baerselman*
6 *v. Air & Liquid Sys. Corp.*, 2019 U.S. Dist. LEXIS 93492, at * 9 (W.D. Wash.
7 June 4, 2019) (citing *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995)).

8 **ARGUMENT**

9 **I. THE COURT HAS PERSONAL JURISDICTION OVER THE NON-**
10 **WASHINGTON DEFENDANTS**

11 There are two types of personal jurisdiction: general and specific personal
12 jurisdiction. *Bristol-Myers Squibb v. Superior Court of California, San Francisco*
13 *County*, 582 U.S. ___, ___, 137 S. Ct. 1773, 1780 (2017). Plaintiffs do not advance
14 a general personal jurisdiction argument. Specific personal jurisdiction occurs
15 “when a case arises out of or relates to the defendant’s contacts with the forum.”
16 *Ranza v. Nike, Inc.*, 793 F. 3d 1059, 1068 (9th Cir. 2015).

17 _____
18 ¹ The Parties stipulated that Plaintiffs’ response would be due 21 days after
19 completion of the deposition of Mr. DeCoster. *See* ECF 101 ¶ 4. Plaintiffs’ intent
20 was to use Mr. DeCoster’s testimony in responding to motions to dismiss.

1 Specific jurisdiction requires the nonresident defendant to have “minimum
2 contacts” with the forum. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

3 Courts use a three-part test for determining if specific personal jurisdiction exists:

- 4 (1) The non-resident defendant must purposefully direct his
5 activities or consummate some transactions with the forum or
6 resident thereof; or perform some act by which he purposefully
7 avails himself of the privilege of conducting activities in the
8 forum thereby invoking the benefits and protections of its laws;
- 9 (2) the claim must be one which arises out of or relates to the
10 defendant’s forum related activities; and
- 11 (3) the exercise of jurisdiction must comport with fair play and
12 substantial justice.

13 *MultiStar Indus. v. Ocala*, 2019 U.S. Dist. LEXIS 144969, at *15-16 (E.D. Wash.
14 2019) (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th
15 Cir. 2004)). Once the plaintiff satisfies the first two prongs, the burden shifts to the
16 defendant to demonstrate that the exercise of jurisdiction would be unreasonable.

17 *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068-69 (9th Cir. 2017).

18 Alternatively, under the alter ego theory, courts can “imput[e] one entity’s
19 contacts with a forum state to another for the purpose of establishing personal
20 jurisdiction.” *See Doe v. Unocal Corp.*, 248 F.3d 915, 925-26 (9th Cir. 2001).

To satisfy the alter ego test, a plaintiff must make a prima facie showing “(1) that
there is such a unity of interest and ownership that the separate personalities of the
corporation and the individuals no longer exist and (2) that failure to disregard the
corporation would result in fraud or injustice.” *Flynt Distributing Co. v. Harvey*,

1 734 F. 2d 1389, 1393 (9th Cir. 1984).

2 *A. The Court has Specific Personal Jurisdiction Over Jack DeCoster and*
3 *DeCoster Enterprises*

4 The Court has specific jurisdiction over Jack DeCoster and DeCoster
5 Enterprises, LLC (collectively “DeCoster”) because DeCoster purposefully directs
6 all activities related to the claims in this case concerning manure management and
7 disposal at Washington.² See ECF No. 102 ¶ 50. From the cradle to the grave,
8 DeCoster is responsible for the operation of the facilities. See Declaration of
9 Charles M. Tebbutt, Ex. 1 (Organizational chart). After all, “it’s [his] money.”
10 Tebbutt Decl., Ex. 2 at 134:3.

11 First, Jack DeCoster himself negotiated, authorized, and financed the
12 purchase of both dairies. ECF. No. 102 ¶¶ 54-57. Mr. DeCoster traveled to
13 Washington to meet with the previous owners of the Dairies on multiple occasions.
14 Tebbutt Decl., Ex. 2 at 91:5-92:15. DeCoster entered into real estate contracts for
15 the Dairies, including personal guaranties and cross-default agreements, which
16

17 ² Only the first prong, “purposefully avails,” is at issue here. There should be no
18 dispute that the claims in this case arise out of Defendants’ forum related activities.
19 ECF No. 102 ¶¶ 1-14.
20

1 demonstrates he avails himself of the benefits and protections of Washington law.
2 Tebbutt Decl., Exs. 4 & 5.

3 Second, Mr. DeCoster, the sole member of DeCoster Enterprises, authorizes
4 and directs all financial transfers and expenditures for the Dairies' operations in
5 Washington. ECF No. 102 ¶ 50. In fact, Mr. DeCoster has a team of employees
6 working in his office with him that make a number of daily financial transfers at
7 his direction, including, but not limited to, transfers for payroll and operating
8 expenses at the Dairies, Tebbutt Decl., Ex., 6, milk and cull money from the
9 Washington Dairies, *id.*, Ex. 7, and payments for manure services. *Id.*, Ex. 8.

10 Third, DeCoster directs the hiring and firing of consultants who implement
11 his decisions at the Dairies. ECF No. 102 ¶ 50. For example, DeCoster personally
12 hired and sent John Glessner to Washington to oversee operations and implement
13 operational changes under DeCoster's authority. Tebbutt Decl., Ex. 2 at 23:21-
14 26:22. In doing so, Mr. Glessner regularly communicated with Mr. DeCoster for
15 updates and to receive authorization to implement changes involving manure
16 management at the facilities. *Id.* at 78:14-79:5.

17 Fourth, DeCoster oversees and implements all capital improvements related
18 to manure management. ECF. No. 102 ¶ 50; *see also, e.g.*, Tebbutt Decl., Ex. 1.
19 When the centrifuge manure separator at the DBD facility broke, it was Jack
20 DeCoster that called Daritech, Inc. to inquire whether the centrifuge required a

1 rebuild, Tebbutt Decl., Ex. 9, and it was Jack DeCoster who negotiated and made
2 payment for repairs, as well as regular manure service. *Id.*, Ex. 8. Mr. DeCoster
3 also personally approved the changes in manure management infrastructure at
4 SMD that led to consolidation of manure management operations. *See* ECF No.
5 102 at ¶¶ 73-74.

6 Fifth, DeCoster directs all activities related to state and regulatory
7 compliance. Mr. DeCoster installed a DeCoster Enterprises, LLC employee,
8 Wayne Cummings, as manager of each and every LLC operating the Dairies. *See*
9 ECF No. 102 at ¶ 46, Tebbutt Decl., Ex. 2 at 57:14-58:3. Mr. Cummings, however,
10 is manger “in title only” who reports daily via telephone to Mr. DeCoster and who
11 receives authorization from Mr. DeCoster, his “boss.” ECF No. 102, Ex. 6 at
12 55:15-24; 33:12-15; 24:23-25. Further, Lynn Geddis, who answered to Mr.
13 DeCoster, implemented Mr. DeCoster’s decisions from Outlook, WA. *See* Tebbutt
14 Decl., Ex. 1. Mrs. Geddis regularly communicated with Ecology and WSDA on
15 behalf of DeCoster and the Dairies. *See, e.g., id.*, Exs. 10 & 11. Mr. DeCoster now
16 speaks with Karina Chavarin weekly regarding such issues. *Id.*, Ex. 2 at 116:12-18.
17 Additionally, Travis Love was identified as the manager of the Dairies for state
18 regulatory agencies, but was an employee of DeCoster Enterprises at the time. *Id.*,
19 Exs. 10, 12.

1 Sixth, DeCoster retains ultimate control and directs all activities related to
2 the purchasing and selling of cattle and the Dairies. DeCoster personally hired and
3 paid Doucas Goranites to assist DeCoster in this matter. *Id.*, Ex. 2 at 29:13-20. Mr.
4 Goranites oversees numerous aspects of the Dairies' herd, including health and
5 numbers, receives emails and texts daily to weekly from the employees at the
6 DBD, and communicates back to DeCoster for all operational decisions. *Id.*, Ex. 13.
7 Furthermore, DeCoster directs that all money received from culling the herd was to
8 be paid directly to Mr. DeCoster personally. *Id.*, Ex. 7.³

9 Finally, DeCoster controls and directs all activities concerning the
10 acquisition of commodities such as feed. Mr. DeCoster personally negotiates rates
11 and contracts with commodities brokers and personally approves and directs wire
12 transfers to cover expenses related to commodities for the Dairies. *See, e.g., id.*,

13
14 _____
15 ³ Plaintiffs provide exemplar documents from hundreds of pages of discovery thus
16 far obtained to support jurisdiction over DeCoster. Defendants designated most of
17 the documents as confidential under the Protective Order. Plaintiffs sought
18 Defendants' permission to lift the confidentiality designation for documents
19 submitted with this response, but were refused. Plaintiffs intend to file a request to
20 lift the seal, including for oral argument.

1 Ex. 14. Thus, the multiplicity of shell companies between the DBD-SMD Dairies
2 and DeCoster Enterprises all rely on the authorization of only one person, Jack
3 DeCoster, to make critical decisions for individual operations. *See, e.g.*, ECF No.
4 102, Ex. 6 at 55:15-24.

5 Defendants ignore the overwhelming evidence in the FAC, in Mr.
6 Cummings' testimony, and Mr. DeCoster's own admissions demonstrating that this
7 Court has specific jurisdiction over Jack DeCoster and DeCoster Enterprises, LLC
8 because this case "aris[es] out of [and] relates to the defendants' contacts with the
9 forum." *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n.8
10 (1984). The cases cited by Defendants in support of their position involve the
11 "alter ego" theory for specific jurisdiction. *See Ranza v. Nike*, 793 F.3d 1059,
12 1073-74 (9th Cir. 2015); *Am. Tel. & Tel. Co. v. Compagnie Bruzelles Lambert*, 94
13 F. 3d 586, 590-91 (9th Cir. 1996); *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556
14 F.2d 406, 420 & n.14 (9th Cir. 1977).⁴ This Court, however, does not need to enter

15
16
17 _____
18 ⁴ The third case cited by Defendants, *Wells Fargo & Co.*, 556 F.2d at 420 & n.14,
19 does not address dismissal for lack of personal jurisdiction even where a defendant
20 may be liable under CERCLA. That decision vacated the district court's dismissal

1 the alter ego analysis for Jack DeCoster and DeCoster Enterprises because their
2 “deliberate, purposeful, and affirmative contacts with the forum itself” more than
3 satisfy the Ninth Circuit’s purposeful availment test. *Mavrix Photo, Inc. v. Brand*
4 *Techs, Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011).

5 Given the breadth and frequency of the Non-Washington Defendants’
6 contacts with this forum, it would hardly offend due process for the Court to
7 exercise personal jurisdiction. To do otherwise would subject the Outlook
8 community to undercapitalized shell companies that may simply walk away from
9 their contamination. *See, e.g.*, Tebbutt Decl., Exs. 15 & 16 (hundreds of parts per
10 million of nitrate under DBD lagoons and improperly abandoned SMD lagoons).

11 *B. Alternatively, All Defendant LLCs are Alter Egos of Jack DeCoster &*
12 *DeCoster Enterprises*

13 Alternatively, the Court has specific jurisdiction over all non-Washington
14 Defendants because these LLCs are alter egos of DeCoster Enterprises and
15 ultimately Jack DeCoster. To satisfy the alter ego’s “unity of interest and
16 ownership” test, courts require “a showing that the parent controls the subsidiary to
17 such a degree as to render the latter the mere instrumentality of the former.”

18 _____
19 because the court considered none of the “minimum contacts,” including the alter
20 ego theory. *Id.* at 426.

1 *Unocal*, 248 F.3d at 926. In doing so, courts look for “pervasive control over the
2 subsidiary, such as when a parent corporation ‘dictates every facet of the
3 subsidiary’s business – from broad policy decisions to routine matters of day-to-
4 day operations.’” *Ranza*, 793 F.3d at 1073 (quoting *Unocal*, 248 F.3d at 926.)

5 For example, the Ninth Circuit had jurisdiction over two shareholders when
6 it pierced the corporate veil and found thirteen corporations and partnerships to be
7 their alter egos. *Flynt*, 734 F.3d at 1394. In that case, the sole shareholders
8 “converted the assets of the various corporations and partnerships for their own use
9 and dealt with them as if they were one.” *Id.* at 1393. Additionally, the sole
10 shareholders freely transferred assets among the various companies thereby leaving
11 exposed companies undercapitalized. *Id.* at 1393-94. The Court held that “[s]uch
12 conduct constitutes a prima facie showing that it would be unjust to shield the
13 [shareholders] behind the corporate veil.” *Id.* at 1394.

14 On the other hand, the Ninth Circuit refused to pierce the corporate veil
15 when the level of involvement between owners and subsidiaries was insufficient to
16 negate the entities’ separate personalities. *Ranza*, 793 F.3d at 1074 (citing *Unocal*,
17 248 F.3d at 927). In rejecting an alter ego theory argument based on *Unocal*, the
18 court explained that each entity observed all of the corporate formalities, such as
19 maintaining “adequate capitalization at each entity and the proper documentation
20 of transactions between the entities.” *Id.* The court further reasoned that each entity

1 leased its own facilities, had separate boards of directors, and maintained its own
2 accounting and books and records. *Id.* And Ranza presented no evidence that the
3 subsidiary was undercapitalized, that the entities failed to keep adequate records, or
4 that the parent freely transfers the subsidiaries assets, “all of which would be signs
5 of a sham corporate veil.” *Id.* (citing *Flynt*, 734 F.2d at 1393, 1394).

6 Here, there can be no question that Jack DeCoster’s shell corporations are a
7 sham corporate veil as Jack DeCoster controls his subsidiaries “to such a degree as
8 to render the latter the mere instrumentality of the former.”

9 First, there is no corporate division between Jack DeCoster and his shell
10 companies. Jack DeCoster formed DeCoster Enterprises, LLC in 2004 and is the
11 sole member, manager, and investor. Tebbutt Decl., Ex. 17. Similarly, Jack
12 DeCoster formed Agricultural Investment-Fund II, LLC with DeCoster
13 Enterprises, LLC as sole investor. ECF No. 102, Ex. 6 at 73:13-74:6. When Mr.
14 DeCoster sought to purchase a dairy operation in Idaho, he formed three more shell
15 companies - Idaho Dairy Holdings, LLC (“IDH”), Idaho Agri Investments, LLC
16 (“IAI”), and Dry Creek Dairies, LLC (“DCD”), the details of which are as follows:

- 17 • Agricultural Investment-Fund, II, LLC is the sole member of these Idaho
18 LLCs. *Id.*, Ex. 18.

1 • Jack DeCoster, through DeCoster Enterprises, LLC and Agricultural
2 Investment-Fund II, LLC, capitalized IAI, which in turn capitalized IDH and
3 DCD. ECF No. 102, Ex.6 at 24:7-13; 34:10-15

4 • IAI owns and operates the land for DCD. *Id.* at 34:20-35:1. IAI does not
5 have a source of revenue. *Id.* at 35:9-11. IAI does not make any money. *Id.*
6 at 35:12-13. IAI does not have a lease with DCD for use of the land. *Id.* at
7 35:22-36:1.

8 • Jack DeCoster, on behalf of DeCoster Enterprises, LLC authorized,
9 financed, and signed the purchase agreements documents for DCD. Tebbutt
10 Decl., Ex. 18.

11 • Wayne Cummings’s manager position is in “title only,” as Mr. DeCoster
12 calls all the shots. ECF No. 102, Ex. 6 at 55:19-20.

13 Just as the case with the Idaho LLCs, when Jack DeCoster sought to
14 purchase dairy operations in Washington, he formed more shell corporations –
15 DBD Washington, LLC, Washington Dairy Holdings, LLC (“WDH”), Washington
16 Agri Investments, LLC (“WAI”), and SMD, LLC. Unsurprisingly, the details of
17 the Washington shell companies are very similar:

18 • DCD is the sole member of DBD Washington, LLC. Tebbutt Decl., Ex. 19.
19 Idaho Dairy Holdings, LLC is the sole member WDH. *Id.*, Ex. 20. IAI is the
20

1 sole member of WAI. *Id.*, Ex. 21. WAI is the sole member of SMD, LLC.

2 *Id.*, Ex. 22.

3 • Jack DeCoster authorized, financed, and personally guaranteed the purchase
4 of what is now known as the DBD Dairy. *Id.*, Ex. 4 & 23; ECF No. 102, Ex.
5 6 at 48:24-49:15. WAI used funds from DeCoster Enterprises, LLC for the
6 closing of the purchase. *Id.*

7 • WDH owns and operates the buildings and infrastructure of the DBD Dairy.
8 Tebbutt Decl., Ex. 24; ECF No. 102, Ex. 6 at 37:16-20, 79:15-16. WDH
9 does not have any leases with any LLCs, including DBD Washington, LLC.
10 *Id.* at 38:11-13.

11 • WAI owns and operates the land for DBD Dairy. Tebbutt Decl, Ex. 24; ECF
12 No. 102 at 37:23-24. WAI does not have any leases with any LLCs,
13 including DBD Washington, LLC. ECF No. 102 at 38:8-10. WAI does not
14 have any sources of revenue. *Id.* at 38:14-15.

15 • WAI purchased the dairy operation now known as SMD Dairy with funds
16 from DeCoster Enterprises, LLC as authorized by Jack DeCoster. *Id.* at 80:8
17 – 82:20. WAI does not have any loan agreements with DeCoster Enterprises,
18 LLC. *Id.* at 50:8-11.

- 1 • Mr. Cummings is also manager “in title only” of all four Washington LLCs.

2 *Id.* at 55:16-20.

3 Thus, there are no corporate formalities with Jack DeCoster and his
4 companies. There is only a direct connection to Jack DeCoster. He is the sole
5 shareholder and investor. The LLCs share facilities and land, but do not bother
6 with leases or loan agreements. *Id.* at 50:8-18. None of the companies held annual
7 meetings. *Id.* at 72:14 -73:14. Nor are there separate or distinct boards of directors.
8 *Id.*

9 In fact, *all* of the accountants, bookkeepers, accounts payable, consultants,
10 and the manager of the shell companies are either DeCoster Enterprises, LLC
11 employees or paid directly by Jack DeCoster. Tebbutt Decl., Ex. 2 at 117:21-
12 120:23; *id.*, Ex. 12; ECF No. 102, Ex. 6 at 30:8-11. Mr. DeCoster even had the
13 former manager of SMD Dairy, Travis Love, on the DeCoster Enterprises, LLC
14 payroll. Tebbutt Decl., Ex. 12. Simply put, anyone and everyone involved with the
15 Dairies answers directly to Mr. DeCoster.

16 Indeed, a quick glance at the DeCoster Enterprises, LLC balance sheet
17 shows that all LLCs operating the Dairies are accounted for as one entry. *Id.*, Ex.
18 25. DeCoster’s complete failure to respect corporate formalities easily surpasses
19 *Ranza* or *Unocal* in demonstrating that Jack DeCoster controls each and every
20

1 shell company “to such a degree as to render the latter the mere instrumentality of
2 the former.” *Unocal*, 248 F. 3d at 926.

3 Secondly, Jack DeCoster and his shell corporations freely and regularly
4 transfer assets among companies, often times leaving multiple entities
5 undercapitalized. For example, every morning DeCoster Enterprises, LLC’s
6 accounting and finance employees make daily transfers freely among the LLCs to
7 cover such expenditures as day-to-day operational needs and payroll.

8 More telling, however, is that many days, these transfers take money/assets
9 from the Dairy LLCs and give it directly to DeCoster Enterprises. *See, e.g.*,
10 Tebbutt Decl., Ex. 7 (February 28, 2020 - take \$1,160,100 from DBD Operating
11 and give to Jack; take \$334,900 from SMD Operating and give to Jack); *id.*
12 (October 31, 2019 – take \$28,738 from Dry Creek and give to jack, \$1,218,410
13 from DBD Operating (milk money) and give to Jack, \$242,630 from SMD (milk
14 money) and give to Jack); *id.* at p. 6 (October 21, 2019 – “Jack wants to start
15 taking the cull money. He is going to look at it everyday.”); *id.* (January 18, 2019 –
16 “Per Jack Please transfer all Milk money to DeCoster Enterprises first then take the
17 money out.”). As a result of these transfers to DeCoster Enterprises, most of the
18 Dairy LLCs are left undercapitalized. *Id.*, Ex. 25 This is precisely the conduct the
19 Ninth Circuit found in *Flynt* to “constitute a prima facie showing that it would be
20 unjust to shield [sole shareholders] behind the corporate veil.” 734 F.2d at 1394.

1 Finally, Jack DeCoster formed all of these LLCs and purchased the Dairies
2 with his money, and he exhibits no reservations about dictating every facet of the
3 operations. As he testified, it's his money. *See* Tebbutt Decl., Ex. 2 at 133:24-
4 134:3. As discussed *infra*, Mr. DeCoster oversees the day-to-day management and
5 operations of the Dairies and retains ultimate control over all of the decisions. The
6 Dairies' organizational chart shows Mr. DeCoster as the person in charge. *Id.*, Ex.
7 1.

8 Furthermore, Mr. DeCoster speaks to Wayne Cummings, manager of all
9 LLCs, daily on the phone regarding the Dairies. ECF No. 102, Ex. 6 at 33:12-15.
10 Mr. DeCoster hired John Glessner as a consultant to implement his decisions and
11 policy. Tebbutt Decl., Ex. 2 at 23:21-26:22. Mr. DeCoster hired his long-time
12 friend, Doucas Goranites, who is paid directly by DeCoster Enterprises, and
13 installed him to do "what I ask him to do." *Id.* at 30:20. Mr. DeCoster even calls
14 the office manager, Karina Chavarin, at least weekly to make sure his operations
15 are running as he desires. *Id.* at 116:12-18. Finally, Mr. DeCoster controls the
16 DeCoster Enterprises, LLC employees working in his Turner, ME office, who
17 focus on finance and accounts payable *for the Dairy LLCs*. *Id.* at 117:21-120:23.

18 Mr. DeCoster also controls and dictates the Dairies' day-to-day operations
19 and partnerships with outside vendors. For example, Mr. DeCoster spoke directly
20 with Daritech regarding manure infrastructure maintenance and service, as well as

1 negotiated payment terms with Daritech, and Mr. DeCoster negotiates and pays for
2 the commodities and feed for the Dairies. *Id.*, Exs. 8, 9, 14.

3 Plaintiffs’ allegations are more than sufficient to meet the “unity of interest
4 and ownership” test as Mr. DeCoster not only dictates every facet of his shell
5 companies’ operations, but also fails to respect and observe corporate formalities.
6 Mr. DeCoster’s level of involvement far exceeds any parent companies’
7 involvement in both *Ranza* and *Unocal*. 793 F.3d at 1074; *Unocal*, 248 F.3d at
8 926. Furthermore, it would be unjust to allow Mr. DeCoster and DeCoster
9 Enterprises to protect themselves behind the many thin-shelled corporations, as
10 Mr. DeCoster’s companies could avoid remediating the current endangerment.

11 **II. NON-WASHINGTON DEFENDANTS SHARE A MEASURE OF**
12 **CONTROL OVER THE DAIRIES’ OPERATIONS AND MANURE**
13 **PRACTICES**

14 The FAC properly alleges that the Non-Washington Defendants are liable
15 under RCRA for contributing to an imminent and substantial endangerment to the
16 community around Outlook, WA because they maintain a measure of control over
17 the waste and are otherwise involved in its disposal process.⁵ *Hinds Invs., L.P. v.*

18 ⁵ There is no dispute that WDH and WAI are “owners” of the “dairies whose
19 manure handling practices are at issue.” ECF No. 40 at p. 14.
20

1 *Angiolo*, 654 F.3d 846, 850 (9th Cir. 2011). Defendants’ claim that the FAC is
2 silent regarding the non-Washington Defendants ignores the twenty-five plus
3 paragraphs detailing how Mr. DeCoster, DeCoster Enterprises, LLC, and the Idaho
4 LLCs share a measure of control over the Dairies’ operations and manure
5 management practices. Furthermore, the FAC exemplifies “the interconnected
6 relationship” and the “common decision-making authority” between all of the
7 entities operating the Dairies. ECF No. 102 at ¶¶ 15-16, 41-63, 69-79; *Cmt’y Ass’n*
8 *for Restoration of the Env’t v. Cow Palace*, 80 F. Supp. 3d at 1180, 1229-30 (E.D.
9 Wash. 2015).

10 First, as stated in the FAC, Mr. DeCoster is the primary decision-maker for
11 DeCoster Enterprises, LLC and the ultimate owner and operator of the DBD-SMD
12 dairy facilities. ECF No. 102 ¶ 15. Mr. DeCoster communicates daily with Wayne
13 Cummings, the manager of all non-Washington Defendant LLCs, to implement his
14 operational decisions at the Dairies. *See* ECF No. 102 ¶ 51. Indeed, Mr. DeCoster
15 and DeCoster Enterprises, LLC retain control over decisions at the DBD-SMD
16 dairies related to: real estate transactions; financial transfers and expenditures,
17 including payroll; hiring and/firing consultants; capital improvement related to
18 manure management, storage, treatment, transportation, and disposal; receiving
19 and certifying state and federal regulatory documents related to manure
20 management; purchasing and selling cattle; and acquisition of commodities, such

1 as feed. *Id.* ¶ 50. There can be no genuine dispute that Mr. DeCoster and DeCoster
2 Enterprises, LLC retain a “measure of control over the waste at the time of disposal
3 or was otherwise actively involved in the waste disposal process.” *Hinds Invs., L.P.*
4 *v. Angiolo*, 654 F.3d 846, 850 (9th Cir. 2011).

5 The same holds true for the Idaho LLCs. DCD is the sole member and
6 investor of DBD Washington, LLC. ECF No. 102 ¶ 44. IDH is the sole member
7 and investor in WDH, and IAI is the sole member and investor of WAI. *Id.* As the
8 sole member of each Washington, LLC, they each retain a measure of control
9 because there is no other member to make decisions for the Washington LLCs. *See*
10 ECF No. 102, Ex. 6 at 71:5-18. Furthermore, all three Idaho LLCs send and
11 receive financial transfers on behalf of DeCoster Enterprises, LLC to cover payroll
12 and operating expenses related to manure management at the Dairies. *Id.* ¶ 52.

13 These allegations from the FAC are precisely the information that exemplifies “the
14 interconnected relationship” and the “common decision-making authority”
15 between all of the entities operating the Dairies. *See Cow Palace*, 80 F. Supp. 3d at
16 1229-30.

17 Defendants cite to *United States v. Bestfoods* to support their position that
18 Mr. DeCoster and all of his LLCs’ actions are consistent with the “general
19 principle of corporate law deeply ‘ingrained in our economic and legal systems’
20 that a parent corporation . . . is not liable for the acts of its subsidiaries.” 524 U.S.

1 51, 61 (1998). Defendants misunderstand Plaintiffs’ argument. Plaintiffs’ FAC
2 makes clear that “[t]aken as a whole, there can be no doubt that each of these
3 entities, although legally separate, maintain or maintained some ‘measure of
4 control’ over the Dairies’ operations or ‘share[d] in any act or effect’ of the
5 Dairies’ management practices” sufficient to maintain a claim. *Cow Palace*, 80 F.
6 Supp. 3d at 1229-30. Thus, Plaintiffs are not seeking to pierce the corporate veil at
7 this time, but rather hold Defendants liable as contributors to the solid waste
8 disposal practices that create an endangerment.

9 **III. PLAINTIFFS PROVIDED APPROPRIATE PRE-SUIT NOTICE FOR**
10 **THE OPEN DUMPING CLAIM**

11 For the reasons stated in Plaintiffs’ Response to Washington Defendants’
12 Motion to Dismiss Plaintiffs’ Second Claim for Relief (filed herewith), the Court
13 should reject the non-Washington Defendants’ frivolous pre-suit notice argument.
14 Such arguments are incorporated here by reference and not repeated in order to
15 save space.

16 **CONCLUSION**

17 For the reasons stated herein, Plaintiffs respectfully request that the Court
18 deny Defendants’ Motion to Dismiss.

19 Respectfully submitted this 13th day of January, 2022.

20 s/ Charles M. Tebbutt
CHARLES M. TEBBUTT

1 WSBA #47255
DANIEL C. SNYDER, *pro hac vice*
2 OSB #105127
B. PARKER JONES, *pro hac vice*
3 OSB #191163
Law Offices of Charles M. Tebbutt, P.C.
4 941 Lawrence St.
Eugene, OR 97401
5 charlie@tebbuttlaw.com
dan@tebbuttlaw.com
6 parker@tebbuttlaw.com
Tel: (541) 344-3505

7 s/ Andrea K. Rodgers
8 ANDREA K. RODGERS
WSBA #38683
9 Law Offices of Andrea K. Rodgers
3026 NW Esplanade
10 Seattle, WA 98117
andrearodgers42@gmail.com
11 Tel: (206) 696-2851

12 s/ Toby J. Marshall
TOBY J. MARSHALL
13 WSBA #32726
Terrell Marshall Law Group PLLC
14 936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
15 tmarshall@terrellmarshall.com
Tel: (206) 816-6603

16 /s Amy van Saun
17 AMY VAN SAUN, *pro hac vice*
OSB #155085
18 CENTER FOR FOOD SAFETY
303 Sacramento Street, 2nd Floor
19 San Francisco, CA 94111
avansaun@centerforfoodsafety.org
20 Tel: (415) 826-2770

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2022, I electronically filed the above document with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing to the following individuals:

Blythe H. Chandler	bchandler@terrellmarshall.com
Toby J. Marshall	tmarshall@terrellmarshall.com
Andrea K. Rodgers	andrearodgers42@gmail.com
Daniel C. Snyder	dan@tebbuttlaw.com
B. Parker Jones	parker@tebbuttlaw.com
Amy van Saun	avansaun@centerforfoodsafety.org
Lawson E. Fite	lfite@martenlaw.com
Jeff B. Kray	jkray@martenlaw.com
Robin E. Wechkin	rwechkin@sidley.com

/s/ Charles M. Tebbutt
Charles M. Tebbutt, WSBA #47255
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97401
Charlie@tebbuttlaw.com
Tel: (541) 344-3505

Counsel for Plaintiffs