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17 Attorneys for Plaintiffs
18 OAKLAND CANNERY COLLECTIVE,
19 ENVIRONMENTAL DEMOCRACY PROJECT
20 and CENTER FOR ENVIRONMENTAL
21 HEALTH

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 COUNTY OF ALAMEDA

24 OAKLAND CANNERY COLLECTIVE;
25 ENVIRONMENTAL DEMOCRACY PROJECT;
26 and CENTER FOR ENVIRONMENTAL
27 HEALTH,

28 Plaintiffs,

v.

GREEN SAGE MANAGEMENT, LLC;
OAKLAND CANNERY REAL ESTATE, LLC;
OAKLAND TINNERY, LLC; 5601 SLOCA,
LLC; 5733 SLOCA, LLC; 5601-A LLC; 5601-B
LLC; MEADOWS IN BLOOM LLC; UNITED
RENTALS (NORTH AMERICA), INC.; YCL
INVESTMENT GROUP LLC; DC CAPITAL
HOLDINGS LLC; and DOES 1 through 100,
inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
09/08/2022 at 02:08:33 PM
By: Xian-xii Bowie,
Deputy Clerk

Case No. 22CV017469

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

1 Plaintiffs Oakland Cannery Collective, Environmental Democracy Project, and Center for
2 Environmental Health, in the public interest, based on information and belief and investigation of
3 counsel, except for information based on knowledge, hereby make the following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to diesel engine exhaust. Diesel engine
7 exhaust is known to the State of California to cause cancer. The exposures to diesel engine
8 exhaust have occurred, and continue to occur, as a result of Defendants' use of diesel generators
9 placed at or near a warehouse complex located at 5601 and 5733 San Leandro Street in Oakland,
10 California (the "Facility"). The Facility's operations emit significant quantities of diesel engine
11 exhaust into the air. Individuals living in the Facility, and living and working in the
12 neighborhood surrounding the Facility, are exposed to diesel engine exhaust when they breathe.

13 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is
14 unlawful for businesses to knowingly and intentionally expose individuals in California to
15 chemicals known to the State to cause cancer without providing clear and reasonable warnings to
16 individuals prior to their exposure. Defendants' operations emit diesel engine exhaust into the
17 air, thereby exposing individuals in the area to diesel engine exhaust.

18 3. Despite the fact that Defendants expose individuals to diesel engine exhaust,
19 Defendants provide no warnings whatsoever about the carcinogenic hazards associated with such
20 exposures. Defendants' conduct thus violates the warning provision of Proposition 65, Health &
21 Safety Code § 25249.6.

22 **PARTIES**

23 4. Plaintiff OAKLAND CANNERY COLLECTIVE (the "Collective") is a live/work
24 community of artists that is located in the Facility. The Collective seeks to protect Oakland's
25 culture, and enrich and beautify Oakland's environment, while forming alliances to educate the
26 public about the Collective's process and history through cultural platforms. The Collective is a
27 "person" within the meaning of Health & Safety Code § 25249.11(a) and brings this enforcement
28 action in the public interest pursuant to Health & Safety Code § 25249.7(d).

1 5. Plaintiff ENVIRONMENTAL DEMOCRACY PROJECT (“EDP”) is a non-profit
2 corporation dedicated to representing communities of color exposed to disproportionate amounts
3 of pollution. Several of EDP’s officers live near the Facility and are exposed to the Facility’s
4 pollution on daily basis. EDP is based in Oakland, California and incorporated under the laws of
5 the State of California. EDP is a “person” within the meaning of Health & Safety Code §
6 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety
7 Code § 25249.7(d).

8 6. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a non-profit
9 corporation dedicated to protecting the public from environmental health hazards and toxic
10 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
11 California. CEH is a “person” within the meaning of Health & Safety Code § 25249.11(a) and
12 brings this enforcement action in the public interest pursuant to Health & Safety Code §
13 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
14 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
15 resulted in significant public benefit, including the reformulation of thousands of products to
16 remove toxic chemicals and to make them safer. CEH also provides information to Californians
17 about the health risks associated with exposure to hazardous substances, where manufacturers and
18 other responsible parties fail to do so.

19 7. Defendant GREEN SAGE MANAGEMENT, LLC is a person in the course of
20 doing business within the meaning of Health & Safety Code § 25249.11. Green Sage
21 Management, LLC is a limited liability company organized under the laws of the State of
22 Colorado. Green Sage Management, LLC is an owner, operator or tenant of the Facility and/or an
23 owner or operator of the enormous diesel generators that have been used at the Facility since on
24 or around July 30, 2020. Green Sage Management, LLC exposes individuals living in the
25 Facility, and living and working in the neighborhood surrounding the Facility, to diesel engine
26 exhaust in the air without first providing such individuals with clear and reasonable warnings.

27 8. Defendant OAKLAND CANNERY REAL ESTATE, LLC is a person in the
28 course of doing business within the meaning of Health & Safety Code § 25249.11. Oakland

1 Cannery Real Estate, LLC is a limited liability company organized under the laws of the State of
2 California. Oakland Cannery Real Estate, LLC is an owner, operator or tenant of the Facility
3 and/or an owner or operator of the enormous diesel generators that have been used at the Facility
4 since on or around July 30, 2020. Oakland Cannery Real Estate, LLC exposes individuals living
5 in the Facility, and living and working in the neighborhood surrounding the Facility, to diesel
6 engine exhaust in the air without first providing such individuals with clear and reasonable
7 warnings.

8 9. Defendant OAKLAND TINNERY, LLC is a person in the course of doing
9 business within the meaning of Health & Safety Code § 25249.11. Oakland Tinnery, LLC is a
10 limited liability company organized under the laws of the State of California. Oakland Tinnery,
11 LLC is an owner, operator or tenant of the Facility and/or an owner or operator of the enormous
12 diesel generators that have been used at the Facility since on or around July 30, 2020. Oakland
13 Tinnery, LLC exposes individuals living in the Facility, and living and working in the
14 neighborhood surrounding the Facility, to diesel engine exhaust in the air without first providing
15 such individuals with clear and reasonable warnings.

16 10. Defendant 5601 SLOCA, LLC is a person in the course of doing business within
17 the meaning of Health & Safety Code § 25249.11. 5601 SLOCA, LLC is a limited liability
18 company organized under the laws of the State of California. 5601 SLOCA, LLC is an owner,
19 operator or tenant of the Facility and/or an owner or operator of the enormous diesel generators
20 that have been used at the Facility since on or around July 30, 2020. 5601 SLOCA, LLC exposes
21 individuals living in the Facility, and living and working in the neighborhood surrounding the
22 Facility, to diesel engine exhaust in the air without first providing such individuals with clear and
23 reasonable warnings.

24 11. Defendant 5733 SLOCA, LLC is a person in the course of doing business within
25 the meaning of Health & Safety Code § 25249.11. 5733 SLOCA, LLC is a limited liability
26 company organized under the laws of the State of California. 5733 SLOCA, LLC is an owner,
27 operator or tenant of the Facility and/or an owner or operator of the enormous diesel generators
28 that have been used at the Facility since on or around July 30, 2020. 5733 SLOCA, LLC exposes

1 individuals living in the Facility, and living and working in the neighborhood surrounding the
2 Facility, to diesel engine exhaust in the air without first providing such individuals with clear and
3 reasonable warnings.

4 12. Defendant 5601-A LLC is a person in the course of doing business within the
5 meaning of Health & Safety Code § 25249.11. 5601-A LLC is a limited liability company
6 organized under the laws of the State of California. 5601-A LLC is an owner, operator or tenant
7 of the Facility and/or an owner or operator of the enormous diesel generators that have been used
8 at the Facility since on or around July 30, 2020. 5601-A LLC exposes individuals living in the
9 Facility, and living and working in the neighborhood surrounding the Facility, to diesel engine
10 exhaust in the air without first providing such individuals with clear and reasonable warnings.

11 13. Defendant 5601-B LLC is a person in the course of doing business within the
12 meaning of Health & Safety Code § 25249.11. 5601-B LLC is a limited liability company
13 organized under the laws of the State of California. 5601-B LLC is an owner, operator or tenant
14 of the Facility and/or an owner or operator of the enormous diesel generators that have been used
15 at the Facility since on or around July 30, 2020. 5601-B LLC exposes individuals living in the
16 Facility, and living and working in the neighborhood surrounding the Facility, to diesel engine
17 exhaust in the air without first providing such individuals with clear and reasonable warnings.

18 14. Defendant MEADOWS IN BLOOM LLC is a person in the course of doing
19 business within the meaning of Health & Safety Code § 25249.11. Meadows In Bloom LLC is a
20 limited liability company organized under the laws of the State of California. Meadows In Bloom
21 LLC is an owner, operator or tenant of the Facility and/or an owner or operator of the enormous
22 diesel generators that have been used at the Facility since on or around July 30, 2020. Meadows
23 In Bloom LLC exposes individuals living in the Facility, and living and working in the
24 neighborhood surrounding the Facility, to diesel engine exhaust in the air without first providing
25 such individuals with clear and reasonable warnings.

26 15. Defendant UNITED RENTALS (NORTH AMERICA), INC. is a person in the
27 course of doing business within the meaning of Health & Safety Code § 25249.11. United
28 Rentals (North America), Inc. is a corporation organized under the laws of the State of Delaware.

1 United Rentals (North America), Inc. is an owner or operator of the enormous diesel generators
2 that have been used at the Facility since on or around July 30, 2020. United Rentals (North
3 America), Inc. exposes individuals living in the Facility, and living and working in the
4 neighborhood surrounding the Facility, to diesel engine exhaust in the air without first providing
5 such individuals with clear and reasonable warnings.

6 16. Defendant YCL INVESTMENT GROUP LLC is a person in the course of doing
7 business within the meaning of Health & Safety Code § 25249.11. YCL Investment Group LLC
8 is a limited liability company organized under the laws of the State of California. YCL
9 Investment Group LLC is an owner, operator or tenant of the Facility and/or an owner or operator
10 of the enormous diesel generators that have been used at the Facility since on or around July 30,
11 2020. YCL Investment Group LLC exposes individuals living in the Facility, and living and
12 working in the neighborhood surrounding the Facility, to diesel engine exhaust in the air without
13 first providing such individuals with clear and reasonable warnings.

14 17. Defendant DC CAPITAL HOLDINGS LLC is a person in the course of doing
15 business within the meaning of Health & Safety Code § 25249.11. DC Capital Holdings LLC is a
16 limited liability company organized under the laws of the State of California. DC Capital
17 Holdings LLC is an owner, operator or tenant of the Facility and/or an owner or operator of the
18 enormous diesel generators that have been used at the Facility since on or around July 30, 2020.
19 DC Capital Holdings LLC exposes individuals living in the Facility, and living and working in
20 the neighborhood surrounding the Facility, to diesel engine exhaust in the air without first
21 providing such individuals with clear and reasonable warnings.

22 18. DOES 1 through 100 are each a person in the course of doing business within the
23 meaning of Health & Safety Code § 25249.11. DOES 1 through 100 own and/or operate the
24 Facility and/or own or operate the enormous diesel generators that have been used at the Facility
25 since on or around July 30, 2020.

26 19. The true names of DOES 1 through 100 are either unknown to Plaintiffs at this
27 time or the applicable time period before which Plaintiffs may file a Proposition 65 action has not
28 run. When their identities are ascertained or the applicable time period before which Plaintiffs

1 may file a Proposition 65 action has run, the Complaint shall be amended to reflect their true
2 names.

3 20. Plaintiffs the Collective, EDP and CEH are collectively referred to herein as
4 “Plaintiffs.” The defendants identified in Paragraphs 7 through 17 and DOES 1 through 100 are
5 collectively referred to herein as “Defendants.”

6 **JURISDICTION AND VENUE**

7 21. The Court has jurisdiction over this action pursuant to Health & Safety Code §
8 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
9 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
10 other trial courts.

11 22. This Court has jurisdiction over Defendants because each is a business entity that
12 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally
13 avails itself of the California market through the ownership, operation and/or leasing of the
14 Facility, or by the ownership or operation of the diesel generators used at the Facility, or as
15 having such other contacts with California so as to render the exercise of jurisdiction over it by
16 the California courts consistent with traditional notions of fair play and substantial justice.

17 23. Venue is proper in Alameda County Superior Court because the Facility is located
18 in Alameda County and the violations arise in Alameda County.

19 **BACKGROUND FACTS**

20 24. The People of the State of California have declared by initiative under Proposition
21 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
22 other reproductive harm.” Proposition 65, § 1(b).

23 25. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals
24 listed by the State of California as known to cause cancer, birth defects, or other reproductive
25 harm above certain levels without a “clear and reasonable warning” unless the business
26 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety
27 Code § 25249.6 states, in pertinent part:

1 No person in the course of doing business shall knowingly and
2 intentionally expose any individual to a chemical known to the state to
3 cause cancer or reproductive toxicity without first giving clear and
4 reasonable warning to such individual. . . .

5 26. On October 1, 1990, the State of California officially listed diesel engine exhaust
6 as a chemical known to cause cancer. On October 1, 1991, one year later, diesel engine exhaust
7 became subject to the clear and reasonable warning requirement regarding carcinogens under
8 Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code § 25249.10(b).

9 27. Diesel engine exhaust, also known as diesel particulate matter, includes over forty
10 substances that are listed by the United States Environmental Protection Agency as hazardous air
11 pollutants, and the California Air Resources Board as toxic air contaminants. Fifteen of these
12 substances are listed by the International Agency for Research on Cancer as carcinogenic to
13 humans, or as probable or possible human carcinogens. These highly toxic substances include
14 acetaldehyde, antimony compounds, arsenic, benzene, beryllium compounds, dioxins, furans,
15 formaldehyde, lead, mercury, nickel and styrene.

16 28. The Facility is an indoor cannabis cultivation facility. The Collective's artist
17 live/work space, which houses approximately 30 residents, is also located at the Facility.

18 29. To supply the Facility with sufficient power to grow substantial quantities of
19 cannabis, Defendants have been operating up to twelve massive diesel generators twenty-four
20 hours a day, seven days a week, since July 2020. Each generator is the size of an eighteen-
21 wheeler truck, and each one produces approximately 1,500 to 2,500 horsepower of electricity.

22 30. The Facility's generators are operated without any pollution limits or control
23 technology because Defendants failed to obtain air quality permits before operating the
24 generators. The fumes from the generators permeate nearby homes and businesses, including the
25 homes of the Collective's residents. The fumes from the generators are visible to the naked eye
26 and have created a black soot stain on the Facility's external walls.

27 31. Defendants have continued to operate the Facility's generators despite being
28 warned or ordered to stop doing so by numerous government officials. For instance, in April
2022, the Fire Prevention Bureau of the Oakland Fire Department issued a Notice of Violation to

1 the Facility in which it concluded that, “[d]iesel generator exhaust fumes pose a grave risk to the
2 health and safety of residents and employees. Exhaust fumes from the diesel generators are
3 entering living spaces of first floor occupants.”

4 32. Likewise, the Bay Area Air Quality Management District (“BAAQMD”) has
5 found that the Facility is operating the generators without air quality permits required by the
6 federal Clean Air Act. In a July 21, 2022 Order of Abatement, BAAQMD ordered Defendants
7 Green Sage Management, LLC, Oakland Cannery Real Estate, LLC, 5601 SLOCA, LLC, 5733
8 SLOCA, LLC, 5601-A LLC, and 5601-B LLC to cease operating any portable diesel generators
9 at the Facility unless and until they obtain a current valid permit to do so. Rather than complying
10 with the Order of Abatement, however, Defendant Green Sage Management, LLC filed a writ
11 against the BAAQMD and its hearing board, which is currently pending in this Court. *See Green*
12 *Sage Management, LLC v. Bay Area Air Quality Management District*, Alameda County Superior
13 Court Case No. 22-CV-015219.

14 33. Plaintiff EDP has also filed a citizen suit in federal court under the Clean Air Act
15 to enjoin Defendant Green Sage Management, LLC’s ongoing operation of the diesel generators
16 at the Facility without a required permit. *See Environmental Democracy Project v. Green Sage*
17 *Management, LLC*, Case No. 22-cv-03970-JST (N.D. Cal.). In that case, Judge Tigar recently
18 issued a Preliminary Injunction enjoining Defendant Green Sage Management, LLC from
19 operating any and all portable generators at the Facility without first obtaining Clean Air Act
20 permits. Nevertheless, Defendants, including Defendant Green Sage Management, LLC,
21 continue to operate unpermitted diesel generators at the Facility.

22 34. The Facility’s operations emit significant quantities of diesel engine exhaust into
23 the air. Individuals living in the Facility, and individuals living or working in the neighborhood
24 surrounding the Facility, are exposed to diesel engine exhaust when they breathe. The primary
25 route of exposure for the violations is inhalation when individuals breathe the diesel engine
26 exhaust emitted from the Facility. No clear and reasonable warning is provided to residents
27 living in the Facility, nor to individuals living or working in the neighborhood surrounding the
28 Facility, regarding the health hazards associated with diesel engine exhaust exposures.

1 35. The East Oakland community surrounding the Facility is especially vulnerable to
2 toxic pollution from the Facility’s generators. The community already suffers from high rates of
3 adverse health conditions, like asthma and cardiovascular disease, which are linked to the high
4 levels of pollution in the area. According to CalEnviroScreen 4.0, a screening tool created by the
5 California Office of Environmental Health Hazard Assessment to identify communities
6 disproportionately burdened by pollution and with population characteristics that make them
7 more sensitive to pollution, the East Oakland community near the Facility is adversely affected by
8 pollution to a greater extent than 91% of California. The East Oakland community is also a low-
9 income community, with 85% of households living under the poverty line, and a community of
10 color, with a population that is 66% Latinx and 21% African American.

11 36. Any person acting in the public interest has standing to enforce violations of
12 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
13 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
14 within such time. Health & Safety Code § 25249.7(d).

15 37. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiffs
16 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
17 the District Attorney of Alameda County, the City Attorney of Oakland, and each of the named
18 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b),
19 the Notice included the following information: (1) the name and address of each violator; (2) the
20 statute violated; (3) the time period during which the violations occurred; (4) specific descriptions
21 of the violations, including (a) the routes of exposure, and (b) the locations of the sources of the
22 exposures; and (5) the name of the specific Proposition 65-listed chemical that is the subject of
23 the violations described in the Notice.

24 38. Plaintiffs also sent a Certificate of Merit for each Notice to the California Attorney
25 General, the District Attorney of Alameda County, the City Attorney of Oakland, and each of the
26 named Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. §
27 3101, the Certificate certified that Plaintiffs’ counsel: (1) has consulted with one or more persons
28 with relevant and appropriate experience or expertise who reviewed facts, studies, or other data

1 regarding the exposures to diesel engine exhaust alleged in each Notice; and (2) based on the
2 information obtained through such consultations, believes that there is a reasonable and
3 meritorious case for a citizen enforcement action based on the facts alleged in the Notice. In
4 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, the Certificate served
5 on the Attorney General included factual information – provided on a confidential basis –
6 sufficient to establish the basis for the Certificate, including the identity of the person(s) consulted
7 by Plaintiffs’ counsel and the facts, studies, or other data reviewed by such persons.

8 39. None of the public prosecutors with the authority to prosecute violations of
9 Proposition 65 has commenced and is diligently prosecuting a cause of action against Defendants
10 under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in Plaintiffs’ Notice.

11 40. Defendants know that the Facility has, for over two years, emitted and continues to
12 emit significant quantities of diesel engine exhaust into the air. Defendants know that the
13 Facility’s emissions expose individuals living in Facility, and individuals living or working in the
14 neighborhood surrounding the Facility, to diesel engine exhaust when such individuals breathe
15 the air. Defendants intend that the Facility is operated in a manner that results in such exposures
16 to diesel engine exhaust.

17 41. Under Proposition 65, an exposure is “knowing” where the party responsible for
18 such exposure has:

19 knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant
20 to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that
the . . . exposure is unlawful is required.

21 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
22 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
23 § 12601).

24 42. Defendants have actual knowledge of the diesel engine exhaust exposures
25 described herein. For instance, Defendants have been informed of the diesel engine exhaust
26 exposures caused by the Facility by means of the 60-Day Notice of Violation and accompanying
27 Certificate of Merit served on them by Plaintiffs.

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1 43. The diesel engine exhaust exposures are the natural consequence of Defendants
2 operating huge, unpermitted diesel generators twenty-four hours a day, seven days a week, for
3 over two years, in a densely populated neighborhood.

4 44. Plaintiffs have engaged in good faith efforts to resolve the claims alleged herein
5 prior to filing this Complaint.

6 45. Nevertheless, Defendants have failed, and continue to fail, to provide clear and
7 reasonable warnings regarding the carcinogenic hazards of diesel engine exhaust. Nor have
8 Defendants undertaken to eliminate the diesel engine exhaust exposures caused by the Facility's
9 operations. By committing the acts alleged above, Defendants have at all times relevant to this
10 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to diesel
11 engine exhaust.

12 46. Any person "violating or threatening to violate" Proposition 65 may be enjoined in
13 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is
14 defined to mean "to create a condition in which there is a substantial probability that a violation
15 will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not
16 to exceed \$2,500 per day for each violation of Proposition 65.

17 **FIRST CAUSE OF ACTION**
18 **(Violations of Health & Safety Code § 25249.6)**

19 47. Plaintiffs reallege and incorporate by reference as if specifically set forth herein
20 Paragraphs 1 through 46, inclusive.

21 48. Each Defendant is a person in the course of doing business within the meaning of
22 Health & Safety Code § 25249.11.

23 49. Diesel engine exhaust is a chemical listed by the State of California as known to
24 cause cancer.

25 50. Defendants know and intend that diesel engine exhaust from the Facility's
26 generators is emitted into the air, which pollutes the air in and around the Facility, thereby
27 exposing individuals to diesel engine exhaust.

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Dated: September 8, 2022

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch
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OAKLAND CANNERY COLLECTIVE,
ENVIRONMENTAL DEMOCRACY PROJECT,
and CENTER FOR ENVIRONMENTAL
HEALTH