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[EXEMPT FROM FILING FEES –
GOV. CODE SECTION 6103]

VENTURA
SUPERIOR COURT
FILED

FEB - 2 2015

MICHAEL D. PLANET
Executive Officer and Clerk

BY: C. CUELLAR, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

BY FAX

STATE WATER RESOURCES CONTROL BOARD,

Plaintiff,

v.

JORDAN - BOTKE ENTERPRISES, A CALIFORNIA CORPORATION, DOING BUSINESS AS PW ENVIRONMENTAL, WILLIAM RICHARD JORDAN, AN INDIVIDUAL, RICHARD EDWARD BOTKE, AN INDIVIDUAL, KIM MARIE JORDAN, AN INDIVIDUAL, AND DOES 1 THROUGH 100, INCLUSIVE,

Defendants.

Case No. 56-2015-00463585-CU-FR-VTA

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

- 1. **Fraudulent Misrepresentation**
- 2. **Negligent Misrepresentation**

CASE OVERVIEW

1. Defendant Jordan – Botke Enterprises, doing business as PW Environmental, has obtained almost \$17 million in payments from the Barry Keene Underground Storage Tank Cleanup Trust Fund (“Fund”), which is administered by the State Water Resources Control

1 Board. However, a portion of the money received by defendants was based on false, misleading
2 and over-stated invoices. This action seeks to recover monies paid to Jordan – Botke Enterprises,
3 the principal owners of Jordan – Botke Enterprises, and other defendants, that were based on
4 false, misleading and over-stated invoices, and to enjoin defendants from engaging in such
5 unlawful activity in the future.

6 THE PARTIES AND VENUE

7 2. Plaintiff State Water Resources Control Board (“State Water Board” or “Plaintiff”) is a
8 state board created in the California Environmental Protection Agency. The State Water Board
9 administers the payment of funds from the Barry Keene Underground Storage Tank Cleanup
10 Trust Fund.

11 3. Defendant Jordan – Botke Enterprises, doing business as PW Environmental (“PW”) is a
12 California corporation registered with the California Secretary of State, and is located in the City
13 of Santa Paula, California. PW holds a Class A, B and C57 license from the Contractors State
14 License Board, license number 457640. On information and belief, PW is owned by Defendants
15 William Richard Jordan and Richard Edward Botke. Defendant William Richard Jordan serves
16 as the Chief Executive Officer of PW; Defendant Richard Edward Botke serves as the Chief
17 Financial Officer and Vice President of PW; and Defendant Kim Marie Jordan serves as
18 Secretary.

19 4. Defendant William Richard Jordan (“W. Jordan”) is an individual who resides in the
20 State of California.

21 5. Defendant Richard Edward Botke (“Botke”) is an individual who resides in the State of
22 California.

23 6. Defendant Kim Marie Jordan (“Kim Jordan”) is an individual who resides in the State of
24 California. In pursuing that actions taken as alleged herein, Kim Jordan was acting on behalf PW
25 as an agent of the corporation, and her actions were known to and ratified by W. Jordan and
26 Botke.

27 7. The true names and capacities, whether corporate, individual, associate, or otherwise, of
28 Defendants Does 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues those

1 Defendants by such fictitious names. Plaintiff will ask leave of court to amend this complaint to
2 show their true names and capacities when the same have been ascertained. Plaintiff is informed
3 and believes that each of the Defendants named herein as a Doe is responsible in some manner for
4 the events, occurrences, and circumstances that form the basis of this lawsuit, and is thereby
5 liable for the damages, costs, and other relief sought herein. Plaintiff is informed and believes
6 that each of these fictitiously named Defendants Does 1 through 100, inclusive, were agents,
7 servants, and/or employees of their co-Defendants, and in doing the things alleged in this
8 complaint were acting in the scope of their authority as such agents, servants, and/or employees,
9 and with the permission and consent of their co-Defendants.

10 8. Defendants PW, W. Jordan, Botke, Kim Jordan, and Does 1 through 100 are collectively
11 referred to herein as the Defendants.

12 9. Venue is appropriate because Ventura County is where Defendant PW's principal place
13 of business is located, and it is also the County in which several underground storage tank sites
14 for which Defendants submitted invoices to claimants are located.

15 BACKGROUND

16 10. The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 ("Act")
17 was enacted in part to "help ensure an efficient petroleum underground storage tank cleanup
18 program that adequately protects public health and safety and the environment and provides for
19 the rapid distribution of cleanup funds." (Health & Saf. Code, § 25299.10, subd. (b)(1).) The Act
20 established the Underground Storage Tank Cleanup Fund ("UST Cleanup Fund" or "Fund"), a
21 fund-created by the Legislature within the state treasury. (Health & Saf. Code, § 2599.50.)

22 11. Owners of underground storage tanks containing petroleum pay money to the Fund
23 each year. (Health & Saf. Code, §§ 25299.41, 25299.43.) The current storage fee is 2 cents per
24 gallon of petroleum stored. (*Id.*) Owners who pay into the Fund and comply with its
25 requirements may make claims for reimbursement from the Fund for the costs of corrective action
26 associated with cleaning up releases of petroleum from leaking underground storage tanks.

27 "Claim," within the Act, means "a submittal to the fund for the reimbursement of costs due to an
28 occurrence. A claim consists of several documents, including, but not limited to, the fund

1 application, reimbursement requests, and verification documents.” (Health & Saf. Code,
2 § 25299.13; see also Cal. Code Regs., tit. 23, § 2814, subd. (d).) Underground storage tank
3 owners or operators who make claims on the Fund are called “claimants”. (Cal. Code Regs., tit.
4 23, § 2804.)

5 12. “Corrective action” within the Act, means various specified activities associated with
6 identifying cleanup needs and cleaning up releases of petroleum from an underground storage
7 tank. The State Water Board may expend the money in the Fund to reimburse claims for
8 “reasonable and necessary” costs of corrective action up to \$1.5 million per occurrence. (See,
9 e.g., Health & Saf. Code, § 25299.51.)

10 13. Pursuant to Health and Safety Code section 25299.57, subdivision (h), the State Water
11 Board has published Cost Guidelines, dated October 1, 2001, to provide “a summary of expected
12 costs for common remedial actions” and to “help claimants identify reimbursable goods and
13 services.” (Cost Guidelines, p. 6.)

14 **GENERAL ALLEGATIONS**

15 14. PW is an environmental contracting company that offers services to owners and
16 operators of petroleum underground storage tanks that have released petroleum into the
17 environment. Defendants provide these services knowing that the owners and operators intend to
18 submit claims to the Fund to cover costs they incur for services, work done, and materials
19 provided by PW that are recoverable from the Fund.

20 15. Plaintiff is informed and believes that PW and its principals, W. Jordan, Botke, and
21 Kim Jordan, and each of them, are experienced in the investigation, monitoring and remediation
22 of soil and groundwater contamination. Accordingly, in providing such services on behalf of
23 claimants as set forth below, Defendants knew or should have known what activity was
24 “reasonable and necessary” based upon the standards of the industry in the community in which
25 the services were performed.

26 16. Defendants, as long time participants in the environmental cleanup services industry,
27 were aware of the laws, regulations, and guidelines published by the Fund, and they had the
28 necessary expertise to discern what services were “reasonable and necessary” in line with those

1 laws, regulations and guidelines. Likewise, Defendants knew that claimants must verify under
2 penalty of perjury that the amount of money for which they seek repayment is true and correct.
3 They knew that the State Water Board would rely on the representations they made in the
4 invoices they submitted to claimants to make disbursements from the Fund.

5 17. Defendants submitted invoices to claimants and/or the Fund on behalf of the claimants
6 for materials, services, work, or other items allegedly provided by them. However, Defendants
7 did not provide the claimants or Fund with true, accurate, and correct invoices and documentation
8 for services, work, materials, and equipment provided and used for cleanup activities. Defendants
9 further submitted invoices to claimants and/or the Fund on behalf of the claimants for work that
10 was not reasonable and necessary based upon applicable standards for soil and groundwater
11 remediation. They did so with full knowledge that claimants would forward those false,
12 misleading, unsubstantiated and over-stated invoices to the State Water Board for reimbursement
13 from the Fund, and that the State Water Board would rely on the misrepresentations made in
14 those invoices to make disbursements from the Fund, which they would not have made in the
15 absence of the false, misleading, unsubstantiated and over-stated invoices. They did this, among
16 other reasons, to obtain payments from the Fund that they were not entitled to receive.

17 18. Defendants submitted invoices to claimants for work allegedly performed in 2007 at
18 the following 28 UST sites:

19 18.1. TLC Carwash, 740 W. San Marcos Blvd., San Marcos, CA (Claim No. 18750);

20 18.2. Katch-Go Petroleum, 1294 Grand Ave., Arroyo Grande, CA (Claim No.

21 17128);

22 18.3. Santa Barbara American Fuel, 2234 De La Vina, Santa Barbara, CA (Claim No.

23 15938);

24 18.4. Antelope Valley Aggregate, 7311 East Avenue T, Littlerock, CA (Claim No.

25 14738);

26 18.5. Arrieta Construction, Inc., 1215 N. Marshall Avenue, El Cajon, CA (Claim No.

27 01653);

28 18.6. Gas-N-Save, 1114 Cecil Ave., Delano, CA (Claim No. 03005);

- 1 18.7. Commercial Parking Area, 534 Santa Clara, Fillmore, CA (Claim No.00553);
- 2 18.8. Village Pool Supply, 1080 Coast Village Road, Montecito, CA (Claim No.
- 3 16539);
- 4 18.9. Island Marine Fuel, 410 South Bay Front, Balboa Island, CA (Claim No.
- 5 03281);
- 6 18.10. W. Service, 1016 North Alvarado St., Los Angeles, CA (Claim No.01189);
- 7 18.11. La Cumbre Country Club, 4015 Via Laguna, Santa Barbara, CA (Claim No.
- 8 17993);
- 9 18.12. Lompoc Unified School District, 1301 North A Street, Lompoc, CA (Claim
- 10 No. 17219);
- 11 18.13. Los Feliz Truck Stop, 3160 Riverside Dr., Los Angeles, CA (Claim No.
- 12 13645);
- 13 18.14. Arco, 302 North Milpas Street, Santa Barbara, CA (Claim No.06344);
- 14 18.15. Hi Time Liquor, 109 South Fairview Avenue, Goleta, CA (Claim No. 14747);
- 15 18.16. Monte Vista Alta Dena Dairy, 44949 10th Street West, Lancaster, CA (Claim
- 16 No. 12929);
- 17 18.17. Abe's Arco, 6242 Beach Blvd., Buena Park, CA (Claim No. 07879);
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- 19 18.18. DJ's Market, 72352 Baker Blvd., Baker, CA (Claim No. 9872);
- 20 18.19. Vacant lot, 72358 Baker Blvd., Baker, CA (Claim No. 13798);
- 21 18.20. Ranchers Market, 9001 Elizabeth Lake Road, Leona Valley, CA (Claim No.
- 22 14077);
- 23 18.21. RJ Carroll & Sons Plumbing, 625 North Salsipuedes Street, Santa Barbara,
- 24 CA (Claim No. 02729);
- 25 18.22. Vic's Unocal, 1900 E. New York Drive, Altadena, CA (Claim No. 17792);
- 26 18.23. Sanchez Property, 526 Anacapa Street, Santa Barbara, CA (Claim No. 17137);
- 27 18.24. Tanglewood Market, 3506 Black Road, Santa Maria, CA (Claim No. 12927);
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1 18.25. Summit Gas, 50 West new Los Angeles Avenue, Moorpark, CA (Claim No.
2 17007);

3 18.26. Kohanoff Brothers Service Station, 4831 North las Virgenes Road, Calabasas,
4 CA (Claim No. 13698).

5 18.27. Los Olivos Garage, 2900 Grand Ave., Los Olivos, CA (Claim No. 15483).

6 18.28. Petro Lock, Inc., 45315 N. Trevor Ave., Lancaster, CA (Claim No. 16931).

7 19. On more than one occasion, Defendants billed for staff, employee or contractor time
8 not actually incurred in order to obtain overpayments or payments they were not entitled to
9 receive from the Fund.

10 20. On more than one occasion, Defendants billed for a "Utility Truck, Special Equipment"
11 when, based upon applicable industry standards, only a regular truck, with a lower per day
12 reimbursement rate, should have been billed; in addition, Defendants billed the full-day rate for
13 the use of one or more vehicles when the Cost Guidelines provide that Defendants should have
14 billed claimants for mileage only; furthermore, Defendants billed multiple claimants for the use
15 of a vehicle for the entire day, when that vehicle was used by Defendants at multiple sites,
16 resulting in overpayments or payments they were not entitled to receive from the Fund.

17 21. On more than one occasion, Defendants improperly billed for small equipment they did
18 not need and likely did not actually use in order to obtain overpayments or payments they were
19 not entitled to receive.

20 22. Specific instances of Defendants' improper and fraudulent billing in 2007 and which
21 are currently known to the Board are set forth in Appendix A, attached hereto and incorporated
22 herein in full.

23 23. Staff within the State Water Board's Fraud, Waste, and Abuse Prevention unit first
24 accessed the GeoTracker database to review PW's invoices on June 23, 2010. On December 21,
25 2010, pursuant to Health and Safety Code section 25299.59, the Board requested that PW provide
26 documentation to support invoices that PW had submitted to the Fund since 2007. On February 1,
27 2011, the State Water Board received from PW documents in response to the State Water Board's
28 December 21 letter. Not until the State Water Board received those documents from PW on

1 February 1, 2011 did the State Water Board discover, or have reason to discover, that Defendants
2 were engaging in the practices alleged in this complaint in order to obtain payments from the
3 Fund that they were not entitled to receive. During the ensuing investigation into Defendants'
4 conduct, the parties entered into agreements, first entered as of June 20, 2013, tolling any
5 applicable statutes of limitation to and including January 30, 2015.

6 24. After the State Water Board's request for information as set forth above, defendant
7 Kim Jordan orchestrated a fraudulent scheme on behalf of all Defendants designed to prevent the
8 State Water Board from discovering Defendants' falsification of reimbursement requests to the
9 Fund. Kim Jordan created a second set of bookkeeping records wherein she re-created employee
10 time records such that they corresponded with the falsely padded reimbursement requests. . On
11 information and belief, W. Jordan and Botke participated in Kim Jordan's cover up of PW's
12 fraudulent submissions to the Fund, and approved of Kim Jordan's improper manipulation of
13 PW's time records. On information and belief, Kim Jordan's actions were taken as part of a
14 preconceived scheme by Defendants to suppress information and falsely obtain reimbursement
15 for work that was not performed by PW on behalf of claimants.

16 25. The State Water Board's investigation of Defendants' invoices submitted to claimants
17 and thereafter to the State Water Board, or to the Fund on behalf of the claimants, for work
18 allegedly performed from 2007 to the present concerning the 28 sites identified above is ongoing.
19 On information and belief, each of the invoices submitted by Defendants during that time period
20 was similarly false and misleading.

21 26. Plaintiff alleges on information and belief that Jordan – Botke Enterprises has been
22 converted to and used as a sham corporation in a scheme to wrongfully and fraudulently obtain
23 reimbursement from the Fund for the alleged “services” provided to the claimants listed herein.
24 Plaintiff further alleges on information and belief that Defendants Jordan and Botke, and each of
25 them, diverted funds and assets directly from Jordan – Botke Enterprises to themselves personally,
26 wrongfully commingled funds and assets, and otherwise treated that corporate entity as a vehicle
27 for personal profit and gain without consideration of, or compliance with, the applicable laws,
28 rule and regulations relating to corporate entities.

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FIRST CAUSE OF ACTION

(Intentional Misrepresentation Against all Defendants)

27. Plaintiff incorporates herein by reference each and every matter, fact and allegation contained in paragraphs 1 through 26, inclusive, of this complaint and makes the same a part hereof with the same force and effect as though fully set forth herein.

28. Each of the Defendants, by engaging in the conduct alleged, made multiple material misrepresentations of fact to the Fund claimants, and by extension, to the State Water Board, regarding materials, services, and work they claimed were eligible for Fund payments in order to obtain payments of money from the Fund that they were not entitled to receive.

29. Defendants knew that the representations were false when they made them, or Defendants made the representations recklessly and without regard for their truth.

30. Defendants intended for the State Water Board to rely on the representations they made to claimants.

31. The State Water Board reasonably relied on the representations Defendants made to the claimants, and which were contained in the claims submitted to the Fund. Fund staff believed the Defendants would prepare supporting documents properly, truthfully, and accurately. Plaintiff believed the Defendants were familiar with Fund procedures, laws, and guidance. Plaintiff's reliance was justifiable and reasonable.

32. The State Water Board was harmed by the Defendants' representations, in that they authorized disbursements from the Fund for materials, services, and work which was not eligible for payment from the Fund.

33. The Board would not have authorized disbursements from the Fund had the Board known that Defendants' representations were false.

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SECOND CAUSE OF ACTION

(Negligent Misrepresentation Against all Defendants)

34. Plaintiff incorporate herein by reference each and every matter, fact and allegation contained in paragraphs 1 through 33, inclusive, of this complaint and makes the same a part hereof with the same force and effect as though fully set forth herein.

35. Each of the Defendants, by engaging in the conduct alleged, made multiple material misrepresentations of fact to the Fund claimants, and by extension, to the Board, regarding materials, services, and work they claimed were eligible for Fund payments in order to obtain payments of money from the Fund that they were not entitled to receive.

36. To the extent that Defendants honestly believed that the representations were true, they had no reasonable grounds for believing the representations to be true when they made them.

37. Defendants intended for the State Water Board to rely on their representations. The Defendants knew Fund laws, procedures, and guidance, and thus lacked a reasonable ground for belief in the truth of the representations they made. The full extent of the false representations is not known at the time of filing this complaint.

38. The State Water Board in fact reasonably relied on their Defendants' representations, and authorized disbursements from the Fund to claimants on the basis of Defendants' representations. Fund staff believed the Defendants would prepare supporting documents properly, truthfully, and accurately. Plaintiff believed the defendants were familiar with Fund procedures, laws, and guidance. Plaintiff's reliance was justifiable and reasonable.

39. The State Water Board was harmed by Defendants' misrepresentations, in that the State Water Board would not have authorized the disbursements from the Fund had it known that Defendants' representations were not true.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1 1. For damages according proof, including without limitation the Defendants' return to the
2 Fund of all overpayments and payments they were not entitled to receive;

3 2. For punitive damages for Defendants' intentional misrepresentations, as allowed by
4 Civil Code section 3294;

5 3. For preliminary equitable relief, subject to proof upon a duly noticed motion, including
6 such orders as may be necessary to prevent the Defendants from hiding or dissipating assets and
7 requiring them to cease the practices described in this complaint;

8 4. For a permanent injunction against Defendants, pursuant to Civil Code 3422, restraining
9 them from seeking reimbursement from the State Water Board or the Fund, and from making
10 false or misleading submissions to the Fund in the future;

11 5. For such orders as are appropriate piercing the corporate veil between and among PW,
12 and PW's agents, employees, managers, officers, directors, shareholders, and principals and any
13 other entities and companies, in order to prevent great injustice;

14 6. For all costs of investigating and prosecuting this action, including expert fees,
15 reasonable attorneys' fees, and costs as provided in Government Code section 12513.1;

16 7. For such other and further relief as the Court deems just and proper.

17 Dated: February 2, 2015

Respectfully Submitted,

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20 ERIC M. KATZ
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