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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRI-VALLEY CARES, MARYLIA KELLEY, and JANIS KATE TURNER, Plaintiffs, vs. UNITED STATES DEPARTMENT OF ENERGY, NATIONAL NUCLEAR SECURITY ADMINISTRATION, and LAWRENCE LIVERMORE NATIONAL LABORATORY, Defendants	Case No.: 08-cv-1372-SBA DECLARATION OF MARYLIA KELLEY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Marylia Kelley, declare as follows:

1. I am a named plaintiff in this action, and I have personal knowledge of the following and could and would competently testify thereto if called upon to do so.

2. I am Executive Director of Tri-Valley CAREs (Communities Against a Radioactive Environment), a California non-profit corporation based in Livermore, California and founded in 1983, which is a plaintiff in this action. I am a co-founder of Tri-Valley CAREs and have served as its Executive Director for most of the group's 26 years.

3. Tri-Valley CAREs is a community-based environmental organization whose primary purpose is to monitor, comment upon and develop public information and advocacy regarding operation of the local Lawrence Livermore National Laboratory (LLNL) and the weapons complex of which it is a part.

4. Tri-Valley CAREs holds two technical assistance grants from the US EPA to monitor environmental cleanup activities at the LLNL's main site and its Site 300 weapons testing facility. Both locations are on the federal "Superfund" list of most contaminated sites in the nation.

5. Tri-Valley CAREs publishes and distributes a free, bi-monthly newsletter as well as fliers, fact sheets, brochures, community guides and technical reports. The group also maintains a community "reading room" at its offices at 2582 Old First Street in Livermore and a web site at *www.trivalleycares.org* as part of its commitment to public outreach and education. Additionally, the group co-sponsors and maintains two displays at the LLNL visitors "Discovery Center" on the property of the LLNL main site near its eastern boundary on Greenville Road.

6. A major goal of Tri-Valley CAREs is to investigate and achieve remedies for the health and environmental threats posed by LLNL operations.

7. Tri-Valley CAREs currently has more than 5000 members, including a number of current and former lab employees. Most of the group's staff, Board of Directors and membership, including named plaintiff Janis Kate Turner, live or work in the vicinity of Livermore Lab. We are deeply concerned about the increased risks to public health, safety and security posed by the

operation of the LLNL BSL-3 facility at the LLNL main site in the absence of an adequate environmental review. We are deeply worried that housing up to 50 liters of dangerous pathogens-including anthrax strains famous for their special virulence, plague, Q Fever, and other agents and toxins historically used in biological warfare-will make the LLNL main site a more likely target of terrorism, thus posing a heightened threat to our staff, board and members.

8. I lived on East Avenue in the City of Livermore, approximately one-quarter mile from the LLNL main site from 1978 until 2009. I continue to live in the City of Livermore, yet I chose to move farther away from LLNL partially due to the health risks posed by living so close. Along the perimeter of the LLNL main site, you will see closely packed single-family homes built right up to the southwest boundary of LLNL. Directly adjacent are large apartment complexes, including one low-income complex. Other densely packed neighborhoods, along with a City park and little league fields, are also adjacent to LLNL. There are more than 81,000 people residing in Livermore, California, and the population is growing. There are more than 7 million people living within a 50-mile radius of LLNL.

9. Over the 33 years I have lived in Livermore, the population has swelled toward and around the LLNL main site. There are multiple new housing developments that have been built directly across the street from the LLNL fence line, and new homes are still under construction in the immediate vicinity.

10. I and Tri-Valley CAREs staff, board and members, along with Livermore Lab workers and the community at large, have been directly and adversely affected by past and current LLNL operations and fear additional harm from operation of the BSL-3 facility.

11. Nuclear weapons work at the LLNL main site has led to pollution released to the air, land, and groundwater, including plutonium (the radioactive core element of nuclear weapons), tritium (radioactive hydrogen), hexavalent chromium, Freon, volatile organic compounds like TCE, and numerous others. There is an off-site contaminated groundwater plume emanating from the LLNL main site westward into neighborhoods. Part of that off-site contaminant plume includes the groundwater beneath my former home, which is being cleaned up under the aforementioned Superfund program that will need to continue for decades to come. Other Tri-Valley CAREs

members still live in this directly affected neighborhood. Documented airborne releases of radioactivity from LLNL total about 1 million curies. One curie is a large amount of radiation, equaling 37 billion radioactive disintegrations per second. The rainwater on-site at LLNL main site and off-site in neighborhoods where Tri-Valley CAREs members live, has been found to contain elevated levels of tritium, with spikes as high as 7 times the state and federal maximum contaminant level for drinking water. Elevated levels of plutonium from LLNL were found in the top two inches of soil at a City park west of the LLNL main site and in an off-site air monitor east of LLNL. For twenty years, sludge from the City sewage treatment plant, contaminated by plutonium that was dumped down LLNL drains, was given away to unsuspecting residents for use in their gardens and lawns.

12. Coxiella burnetii, the agent that causes Q Fever, is listed in the Final Revised Environmental Assessment (FREA) and is one of many potentially deadly biological agents that will be handled in the proposed BSL-3 facility. The microorganism measures about 0.2 micrometers. According to the Centers for Disease Control and Prevention, and cited in the FREA, 10 microorganisms are sufficient to cause illness. The FREA for the LLNL BSL-3 discusses Coxiella burnetii and other microorganisms in culture of one-liter quantities in each of the three BSL-3 labs within the BSL-3 facility. At the concentrations specified in the FREA, a single liter of Coxiella burnetii would contain enough microorganisms to cause illness in 10 billion people. The FREA also shows that in addition to Coxiella burnetti, the LLNL BSL-3 facility is expected to culture other life-threatening bioagents, including, but not limited to, select agents Bacillus anthracis (anthrax), Yersinia pestis (plague), Clostridium botulinum (botulism), Coccidioides immitis (Valley Fever), Brucella spp. (Brucellosis), and Francisella tularenis (tularemia). If a person is made ill due to plutonium exposure, he or she will suffer the outcome, but cannot spread it to others. Plutonium is radioactive, not contagious. We in the community fear the additional harm that we face imposed by the multiplier effect if one or more of the pathogens released from the proposed LLNL BSL-3 facility causes a contagious illness.

13. There have been hundreds of documented violations of environmental, health and safety rules, regulations and laws at LLNL that I have read and that we have kept on file at the Tri-

Valley CAREs office. The documentation is in state and federal notices of violation, regulatory agency inspection and enforcement reports, compliance orders, legal proceedings, DOE notices and LLNL reports, among other sources.

14. I and the staff, board and members of Tri-Valley CAREs fear, and suffer harm from, the LLNL culture in which violations of procedures and regulation-and lax attitudes about safety and security-are tolerated in practice and the results are kept under wraps. This harm underscores the importance that I and others in Tri-Valley CAREs and the community place on obtaining public hearings and a thorough, comprehensive and objective analysis of potential terrorism and other risks associated with the LLNL BSL-3 facility, which the agency must consider alongside mitigation measures to address those risks. We believe that absent this higher level of review and opportunities for public participation, the root conditions that facilitate the accidents, spills, breaches and leaks with toxic and radioactive materials at other LLNL buildings and programs may lead to similar outcomes in the BSL-3 facility at Livermore Lab.

15. This fear of harm is exacerbated by the fact that the LLNL main site biological buildings and programs that pre-date the operation of the LLNL BSL-3 have themselves been the scenes of bio-accidents, spills, leaks, breaches, procedural deficiencies, security violations and a lack of openness or disclosure.

16. On October 4, 2007, while the House Energy and Commerce Committee held a hearing on the safety and security of the nation's biodefense research laboratories, it came to light that researchers at Livermore Lab mishandled anthrax, breached security and access requirements, and violated shipping laws leading to a release of anthrax. The incidents resulted in a $450,000 fine, which was levied by the Department of Health and Human Services (DHHS). According to the DHHS and its website, this was the largest fine levied up to that date for an accident involving a pathogen historically associated with bio-weapons. The incidents and release occurred in August-September 2005.

17. The violations and fine were related to multiple shipments of anthrax from LLNL, according to the DHHS Office of the Inspector General. It was reported that in one case, 1,025 vials of anthrax were shipped from LLNL to Palm Beach, Florida. Two of the anthrax vials did

not have any caps (i.e., they were opened and spilled) and a third had a loose twist cap. Workers in Florida who unknowingly opened the package which contained the anthrax vials were potentially exposed and had to be placed on the antibiotic Cipro for a week before they could return to work. According to documents I read, a second anthrax package, sent from LLNL on the following day, contained 3,000 vials of anthrax, too much pathogen for the package and a violation of regulations.

18. According to written reports, the LLNL researcher, who was not authorized to handle potentially lethal bio-agents like anthrax, packed both of the above-listed shipments. Further, the biosafety officer whose responsibility it was to supervise the packaging operation failed to do so. These are both security breaches. This disregard for security could have led to a diversion or deliberate release of the pathogen. It not only violated government regulations but raised the risk that Livermore Lab's handling of biological agents at its Biosafety Level-2 facility may increase the threat that a terrorist could access anthrax at Livermore Lab. The operation of the LLNL BSL-3 facility greatly exacerbates and elevates this risk. The BSL-3 facility allows LLNL researchers access to and use of aerosolizable (sprayable and easily made airborne) forms of anthrax and numerous other deadly bio-warfare agents, as well as genetically modified pathogens that may have novel features of special interest to a terrorist, which require management at the BSL-3 level.

19. Under my direction, Tri-Valley CAREs' staff filed a Freedom of Information Act (FOIA) request in May 2007 for minutes and related records of the LLNL Institutional Biosafety Committee (IBC). We filed the FOIA request after being told that the minutes would not be made routinely or informally available to the public, including to Tri-Valley CAREs. After subsequently filing litigation under the FOIA to compel responsive records, in 2009 we received requested IBC minutes. I promptly read through the records. In them, I discovered that in 2005 Livermore Lab was found to have violated federal regulations by conducting "restricted experiments" without proper approval. According to the documents, "restricted experiments" are those that utilize recombinant DNA that involve deliberate transfer of a drug resistant trait to select agents that are not known to acquire the trait naturally. Thus, the agent post-experiment

could be both virulent and uniquely drug-resistant . Because of the dangers associated with this category of research, “restricted experiments” require approval from the Secretary of the Department of Health and Human Services. LLNL had neither sought nor obtained such approval. The federal Centers for Disease Control and Prevention (CDC) required LLNL to destroy the research samples. The records I obtained in 2009 show that the restricted experiments were discovered during an inspection by the CDC in August 2005. The information about the LLNL conduct of “restricted experiments” in violation of the law was not disclosed in the Draft or Final Revised Environmental Assessment for the LLNL BSL-3. Nor was it disclosed by LLNL to the public in another manner or timely way. The dangers posed by the conduct of these experiments concerns me and other staff, board and members of Tri-Valley CAREs. Moreover, that these experiments were done without proper approval in violation of the law adds to our concerns. And, that LLNL kept it quiet until it was revealed only due to Tri-Valley CAREs’ long diligence in seeking a response to its FOIA request scares me and my colleagues even more as it raises the specter that hazards we do know may be dwarfed by those we don’t.

20. We are certain that the 2005 anthrax incident and the “restricted experiments” are not the only biological incidents at the LLNL main site. On February 23, 2006, the U.S. Department of Energy issued LLNL a "Preliminary Notice of Violation and Proposed Civil Penalty of $588,500 (Waived by Statute)." Part 2 of the February 2006 Notice of Violation describes an accident that occurred in the main LLNL biological programs building. The violation is titled, "Phosphorus-32 Spread of Contamination Event." It describes an accident in Building 361, which is directly adjacent to the LLNL BSL-3 facility, which can be seen on the map on page 10 of the FREA.

21. The February 2006 notice cites biological personnel violations of law and procedure. Under "Control of Material and Equipment Violation," it cites violations of 10 C.F.R. § 835 (multiple sections) and LLNL's Environmental Safety and Health (ES&H) Manual 20.2 (multiple sections).

22. The document describes a radiological spill involving 10-15 milliliters of solution from a glass container holding radioactive phosphorus labeled DNA probes. According to the Notice of Violation: "The event occurred during a routine laboratory procedure in Building 361. The