



City Council Meeting Agenda

January 31, 2023
3:30 PM – Special Meeting
Council Chambers
400 N. Douty St.

Council Members will meet in-person in the Council Chambers. The meeting will also be live streamed on the City's website: <http://livestream.hanford.city/>

3:30 PM CALL TO ORDER SPECIAL SESSION:

ROLL CALL BY THE CITY CLERK:

PUBLIC COMMENT:

*Comments from the public are limited to items listed on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

GENERAL BUSINESS:

- A. City Attorney: Approval of a settlement Agreement between Helena Agri-Enterprises, LLC and the City of Hanford.

ADJOURNMENT:

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available to public inspection in the City Clerk's Office located at 319 N. Douty Street, Hanford, California 93230, during normal business hours. Such agendas are also available at the city's website, www.cityofhanfordca.com subject to staff's ability to post the agenda before the meeting.

If you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's office, 559-585-2515, 319 N. Douty Street, Hanford, California 93230, at least 2 days prior to the meeting {28 CFR 35.102.35.104 ADA Title II}



AGENDA STAFF REPORT

MEETING DATE: 1/31/2023	GENERAL BUSINESS a
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SUBJECT: Approval of a settlement Agreement between Helena Agri-Enterprises, LLC and the City of Hanford.

RECOMMENDATION:

Recommendation: It is recommended that the Council, by motion, approve the attached settlement agreement.

Recommended Motion: I move that the Council: (i) approve the settlement agreement attached to the staff report as Exhibit “A”; (ii) authorize and direct the Mayor to execute the settlement agreement on the City’s behalf; and (iii) authorize and direct City staff to carry out the terms of the settlement agreement and take necessary internal financing measures once it is fully executed.

BACKGROUND:

On November 25, 2014, the City and Helena entered into a Memorandum of Understanding (MOU). The MOU was approved by the City Council by a 5-0 vote. The MOU generally contained provisions for the exchange of Helena’s current Lacey Boulevard property for property in the Kings Industrial Park. Further, the MOU contemplated the City paying Helena’s relocation costs to the Industrial Park. The MOU envisioned the parties negotiating and signing a further definitive agreement. During negotiation of definitive agreement terms in 2015, Helena identified its relocation costs as approximately \$14.6 million dollars. The parties were unable to negotiate terms and the definitive agreement was never signed.

After a definitive agreement failed to be executed, in 2016 Helena and the City entered into a purchase and sale agreement for Helena’s purchase of the same Industrial Park property. After being in escrow for several months, Helena was ultimately unable to close and the City terminated escrow.

On April 11, 2017, Helena filed a lawsuit in Kings County Superior Court. On June 4, 2018, Helena filed an amended complaint to include breach of the 2016 Purchase Agreement, which included an attorney’s fees provision. Trial was set to begin on February 6, 2023. It was

anticipated that Helena would demand approximately \$38 million dollars at trial, not including attorney's fees, if it were successful at trial.

The City and Helena attended mediation on January 27, 2023. The parties were able to reach a tentative settlement, contingent upon approval by the City Council. The monetary terms of that settlement are as follows:

- The City will pay Helena \$7.5 million dollars within thirty (30) days of executing the settlement agreement.
- Additionally, the City will pay Helena \$5 million dollars over the course of four years. The payments will be a lump sum of \$1.25 million dollars each of the four years. The annual payments will begin on March 1, 2024.

In consideration for the payments described above, Helena will dismiss its current lawsuit against the City with prejudice. The public benefit in approving such settlement is that the City will not be required to expend large amounts of time, effort, and money to take this case to trial, and the matter will be fully and finally resolved for a fixed dollar amount of \$12.5 million dollars without risk of a jury award of \$38 million dollars plus interest and Helena's legal fees. The applicable interest rate is 10% per year under state law and could have started to accrue from the time that Helena claimed the City breached.

FISCAL IMPACT:

The City will pay \$7.5 million dollars upon the parties' signature of the Settlement Agreement, and the City will pay \$1.25 million dollars each year for four years, starting on March 1, 2024.

Payments will come from General Fund monies. As of the last audited financial statements, the City's General Fund unrestricted fund balance was approximately \$11 million, with less than that of cash on hand.

The City will need to establish an internal note at a recommended term of up to 10 years for up to \$7 million of the funding. There currently is \$5.5 million of cash in the General Fund Reserve to pay without internal borrowing. Staff has identified the ability to take a loan from other funds with available cash that will allow the City to maintain payments in accordance with the agreement. Staff would recommend a 2.5% interest rate on these internal notes, which is comparable to conservative investment instruments available to the City as of January 2023. This loan may impact the City's ability to fund major projects while the loan is outstanding. Should the General Fund have fund balance to pay back an internal loan faster than 10 years, Council authorizes staff to direct funding towards the payment before re-establishing the General Fund Reserve.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is made and entered into by and between CITY OF HANFORD (“City of Hanford”), on the one hand, and Helena Agri-Enterprises, LLC, a Delaware Limited Liability Company, formerly known as Helena Chemical Company, a Delaware Corporation (“Helena”), on the other hand. These entities are collectively referred to as the “Parties” or individually as “Party.”

RECITALS

A. WHEREAS, there is now pending in the Superior Court of California for the County of Kings an action entitled *Helena Agri-Enterprises, LLC v. City of Hanford*, Case No. 17C0102 (the “Lawsuit”), with regard to the Parties’ efforts to relocate Helena’s facilities within the City of Hanford since at least 2014. The claims and defenses of the Parties in the Lawsuit are hereinafter referenced as the “Dispute.” The Lawsuit was set for a trial to commence on February 6, 2023.

B. WHEREAS, Helena, one of the foremost agricultural and specialty formulators and distributors in the United States, has operated its retail fertilizer facility in the City of Hanford since 1972 generating substantial revenue for the City of Hanford and County of Kings, and providing jobs to residents in the Central Valley.

C. WHEREAS, the City of Hanford and Helena entered into a Memorandum of Understanding/Letter Agreement dated November 25, 2014 (“2014 MOU”) relating to relocation of Helena to the Kings Industrial Park (“Industrial Park”) located in Hanford, California.

D. WHEREAS, the City of Hanford and Helena entered into a Purchase and Sale Agreement effective December 28, 2016, for Helena’s purchase of property owned by the City of Hanford in the Industrial Park (“2016 Contract”).

E. WHEREAS, the Successor Agency to the Redevelopment Agency of the City of Hanford (“RDA”) and Helena entered into a Purchase and Sale Agreement effective December 28, 2016, for Helena to purchase property owned by the RDA located in the Industrial Park (“2016 RDA Contract”).

F. WHEREAS, in the Lawsuit, Helena asserts five (5) claims against the City of Hanford arising out of the above-referenced agreements: Breach of Contract (2014 MOU), Breach of Contract (2016 Agreement), Breach of Covenant of Good Faith and Fair Dealing (2014 MOU), Breach of Covenant of Good Faith and Fair Dealing (2016 Agreement), and Breach of Contract—Promissory Estoppel (2014 MOU).

G. WHEREAS, on January 27, 2023, the Parties mediated the Dispute before the Honorable Justice Stephen J. Kane (Ret.) in Hanford, California. At the conclusion of the mediation, the Parties agreed to fully settle, release, compromise and forever discharge any and all claims between or among them, arising from or related to the facts and circumstances relating to the development of the Costco Shopping Center, negotiations over Helena relocating to the Industrial Park, the sale of the Industrial Park properties to Helena, and all facts and circumstances relating in any way to the claims and defenses asserted in the Lawsuit.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

SETTLEMENT TERMS

1. Notice of Settlement of Entire Case and Dismissal of Lawsuit

- (a) Upon the full execution of this Agreement by the Parties, Helena will immediately file a "Notice of Settlement of Entire Case" with the Court, which requests that the Court vacate the February 3, 2023 "final trial readiness conference" and the February 6, 2023 trial date, and that the Court retain jurisdiction under Code of Civil Procedure section 664.6 to enforce terms of this Agreement, as referenced below.
- (b) Within five (5) business days after Helena's receipt of the City of Hanford's payment set forth in Section 2(a) below, Helena will file a request for dismissal of the entire Lawsuit, with prejudice, with each Party bearing its own attorneys' fees and costs.

2. Settlement Payment and Consideration

- (a) For the consideration set forth in this Agreement, on or before February 28, 2023, the City of Hanford shall pay to Helena via wire transfer the initial sum of Seven Million Five Hundred Thousand and no/100 Dollars (\$7,500,000.00). (Helena's wire instructions are attached hereto as Exhibit A.)
- (b) In addition, for the consideration set forth in this Agreement, the City of Hanford shall make four (4) additional payments to Helena via wire transfer as follows: (1) on or before March 1, 2024, the City of Hanford shall pay to Helena the sum of One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00); (2) on or before March 1, 2025, the City of Hanford shall pay to Helena the sum of One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00); (3) on or before March 1, 2026, the City of Hanford shall pay to Helena the sum of One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00); and (4) on or before March 1, 2027, the City of Hanford shall pay to Helena the sum of One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00).
- (c) Accordingly, for the consideration set forth in this Agreement, the total payments made by the City of Hanford to Helena shall be Twelve Million Five Hundred Thousand and no/100 Dollars (\$12,500,000.00), once all the payments have been made to Helena.

3. Mutual Release of Claims. For the consideration set forth in this Agreement, and effective upon the full execution of this Agreement by the Parties (**but expressly not including the City of Hanford's agreed-upon payment obligations to Helena under Section 2(a), 2(b) and 2(c) of this Agreement, which remain due and owing until fully paid**), the Parties, on behalf of themselves and their respective assigns, administrators, successors, legatees, representatives, contractors, elected officials, unelected officials, councils, committees, shareholders, members, managers, owners, officers, directors, boards, employees, attorneys,

insurers, indemnitors, agents, parents, subsidiaries, divisions, operations, licensees, and affiliates, fully release each other, and each other's assigns, administrators, successors, legatees, representatives, contractors, elected officials, unelected officials, councils, committees, shareholders, members, managers, owners, officers, directors, boards, employees, attorneys, insurers, indemnitors, agents, parents, subsidiaries, divisions, operations, licensees, and affiliates, (the "Releasees"), from all claims, demands, fees, costs, monies, liens, interests, debts, causes of action, judgments, settlements and damages of any kind whatsoever, in law or in equity, whether known or unknown, suspected or unsuspected, from the beginning of time until the date of the execution of this Agreement and any and all claims alleged, or which could have been alleged, by any of the Parties regarding the 2014 MOU, the 2016 Contract, the 2016 RDA Contract, or in the Lawsuit, including, without limitation, the defenses set forth in the Lawsuit.

4. **Waiver of Unknown Claims.** The Parties acknowledge that they may hereafter discover facts different from, or in addition to, what they know or believe to be true with respect to the matters herein released, and agree that the release provisions set forth herein shall be and remain in effect in all aspects as a complete and general release as to the matters released, notwithstanding any such different or additional facts. The Parties acknowledge that they have been informed of Section 1542 of the Civil Code of the State of California, and do hereby expressly waive and relinquish all rights and benefits which they may have under Section 1542, which reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Parties waive the provisions of Section 1542 of the California Civil Code or any similar statutes, laws, or principles of any jurisdiction which may apply to this Agreement.

5. **Jurisdiction and Venue: Section 664.6 Enforcement.** The validity, construction, interpretation and enforcement of this Agreement and its terms and provisions shall be governed by the laws of the State of California. The Parties agree and acknowledge that the Superior Court for the County of Kings, State of California ("Court") shall have jurisdiction over, and be the proper venue for, any disputes arising out of this Agreement. The Parties expressly agree, acknowledge and will jointly request via stipulation that the Court retain jurisdiction to enforce the terms and conditions set forth in this Agreement pursuant to Section 664.6 of California Code of Civil Procedure. (The stipulation is attached hereto as Exhibit B.)

6. **Severability.** Should any provision of this Agreement require interpretation or construction, the Parties agree that the presumption that a document or agreement is to be interpreted or construed more strictly against the Party who or which prepared such document or agreement, shall not apply. Should any provision of this Agreement be declared or determined to be illegal, invalid, or unenforceable, the validity of the remaining provisions shall not be affected.

7. **No Admission of Liability, Res Judicata or Estoppel.** This Agreement contains a release of disputed claims. It is understood by all Parties that this Agreement does not constitute an admission of liability, but is entered into solely as and for a compromise settlement of such disputed claims. The Parties also agree that nothing in this Agreement shall be used for any purpose other than the limited disclosure for remedy of any breach of the terms of this Agreement.

8. **No Other Claims.** The Parties represent that no other suit, claim, or proceeding has been commenced against the other(s) regarding the any of the claims released herein. If any such suit, claim, or proceeding is discovered, the offending Party, at its sole expense, shall take whatever steps are necessary to resolve the same without any ramifications on the other Parties, and without any cost or action required on the part of the other Parties, to this Agreement.

9. **Representations And Warranties.** The Parties represent and warrant to each other that this Agreement is made by each of them in reliance upon the following:

- (a) That the claims of the Parties and any causes of action or the proceeds thereof that are the subject of this Agreement have not previously been transferred, assigned, or quitclaimed to any person or entity not a party to this Agreement, and no other person or entity has or claims any interest therein or thereto.
- (b) Each Party to this Agreement is legally competent to execute this Agreement and accepts fully the responsibility therefor. All necessary approvals have been secured and all necessary findings have been made to effectuate this Agreement.
- (c) The representations, warranties, and covenants of the Parties shall remain in full force and effect and shall survive the payment of the settlement proceeds and the dismissals described herein.

10. **Warranty of Authority.** Each person signing this Agreement on behalf of an entity warrants that he or she has authority to bind said entity by signing this Agreement.

11. **Further Assurances and Covenant of Good Faith Cooperation.** The Parties covenant to, upon the reasonable request by any Party, at any time and from time to time, cooperate reasonably with each other and to take all such further actions, including without limitation the execution and filing of additional instruments or documents, as may be reasonably necessary to carry out the intent, purposes and terms of this Agreement.

12. **No Oral Modification; No Waiver.** The Parties expressly understand, acknowledge and agree that this Agreement may be modified or rescinded only by a writing signed by each of the Parties hereto or their duly authorized agents. Moreover, the failure of a Party to this Agreement to exercise any right or remedy provided by the Agreement or by law shall not be a waiver of any obligation or right of the Parties, or of any similar default, nor shall it constitute a modification of this Agreement.

13. **Fully Integrated Agreement.** This Agreement constitutes the entire integrated agreement between the Parties and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between them. The Parties acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, and that they have not executed this Agreement in reliance on any such representation.

14. **Attorneys' Fees and Costs Recoverable.** If suit, claim, or proceeding is commenced by any Party hereto concerning this Agreement, or to recover damages for the breach of any of the terms or provisions hereunder, or to enforce any such term or provision or otherwise concerning

the rights, duties or obligations of any Party hereunder, the prevailing party in any such suit, claim, or proceeding, in addition to such other relief as may be granted, shall be entitled to any and all attorneys' fees and costs incurred in connection therewith, which shall be fixed in such suit, claim or proceeding, or in a separate claim brought for that purpose.

15. **Counterparts.** This Agreement may be executed in counterparts by one or more Parties hereto, including via facsimile or PDF counterparts, each of which will be deemed an original, and all of which shall constitute one and the same Agreement, which may be delivered via email and shall be binding and effective on all Parties.

16. **Section Headings.** The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

17. **Parties to Bear Their Own Costs.** Except as identified in Section 14 above, each Party hereto will bear their own costs and attorneys' fees incurred in connection with the Lawsuit and the negotiation of this Agreement.

THE UNDERSIGNED HAVE READ THE FOREGOING SETTLEMENT AGREEMENT, HAVE DISCUSSED THE CONTENTS WITH THEIR RESPECTIVE LEGAL COUNSEL OR HAVE HAD THE OPPORTUNITY TO DISCUSS THE CONTENTS WITH THEIR RESPECTIVE LEGAL COUNSEL, AND FULLY UNDERSTAND THE TERMS OF THE SETTLEMENT AGREEMENT, AND ASSENT TO ITS TERMS AND PROVISIONS.

DATED: January __, 2023

CITY OF HANFORD

By: _____
Name: Travis Paden
Title: Mayor

DATED: January __, 2023

HELENA AGRI-ENTERPRISES, LLC

By: _____
Name: Steven E. Alexander
Title: Vice President

EXHIBIT A



HELENA AGRI-ENTERPRISES, LLC
225 Schilling Blvd., Suite 300
Collierville, Tennessee 38017
Telephone: 901-761-0050

January 30, 2023

RE: Helena Agri-Enterprises, LLC Banking Instructions

To Whom It May Concern:

Listed below are the banking instructions for Helena Agri-Enterprises, LLC main operating account. Please use this information to remit payment via wire or ACH for payments related to Rebates, Refunds, or any other payments not specific to a regular, invoiced order.

Bank Name:	BNY Mellon
ABA Routing Number:	043 000 261
Account Name:	Helena Agri-Enterprises, LLC
Account Number:	008 0987

Please contact me if you have any questions.

Best regards,

A handwritten signature in black ink, appearing to read "Kaleb S. Reed".

Kaleb S. Reed
Senior Treasury Analyst, CTP
Helena Agri-Enterprises, LLC
reedk@helenaagri.com
(901)537-8615

EXHIBIT B

1 MARK E. MCKEEN (SBN 130950)
2 mark.mckeen@dlapiper.com
3 EVA K. SCHUELLER (SNB 237886)
4 Evi.Schueller@us.dlapiper.com
5 **DLA PIPER LLP (US)**
6 555 Mission Street, Suite 2400
7 San Francisco, California 94105-2933
8 Tel: 415.836.2500
9 Fax: 415.836.2501

10 Attorneys for Plaintiff
11 HELENA AGRI-ENTERPRISES, LLC, a Delaware
12 limited liability company, formerly known as
13 HELENA CHEMICAL COMPANY,
14 a Delaware corporation

15 SUPERIOR COURT OF CALIFORNIA

16 IN AND FOR THE COUNTY OF KINGS

17 HELENA AGRI-ENTERPRISES, LLC, a
18 Delaware limited liability company, formerly
19 known as HELENA CHEMICAL
20 COMPANY, a Delaware corporation,

21 Plaintiff,

22 vs.

23 CITY OF HANFORD, a municipal
24 corporation; and DOES 1-25

25 Defendants.

CASE NO. 17C0102

**STIPULATION AND [PROPOSED] ORDER
RETAINING COURT'S JURISDICTION
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 664.6 TO
ENFORCE TERMS OF PARTIES'
SETTLEMENT AGREEMENT**

Trial: February 6, 2023
Judge: Hon. Melissa R. D'Morias
Dept.: 7

1 **STIPULATION AND ORDER**

2 WHEREAS, on or about January 31, 2023, plaintiff Helena Agri-Enterprises, LLC and
3 defendant City of Hanford (together, the "Parties") entered into a written settlement agreement that
4 requires the payment of settlement amounts through March 1, 2027;

5 WHEREAS, the settlement agreement provides that, pursuant to California Code of Civil
6 Procedure section 664.6, the Court shall retain jurisdiction over this case and over the Parties to
7 this case until final performance of the settlement agreement;

8 WHEREAS, the Parties desire to dismiss this case with prejudice as provided in the
9 settlement agreement, provided that the Court retains jurisdiction over this case and the Parties to
10 this case pursuant to California Code of Civil Procedure section 664.6.

11 IT IS NOW THEREFORE HEREBY STIPULATED by and between the Parties, through
12 their respective counsel of record, that the Court shall retain jurisdiction over this case and the
13 Parties to this case until such time as all settlement amounts have been paid pursuant to the terms
14 of the settlement agreement.

15 Dated: January 31, 2023

DLA PIPER LLP (US)

16 By 

17 MARK E. MCKEEN
18 EVA K. SCHUELLER

19 Attorneys for Plaintiff
20 HELENA AGRI-ENTERPRISES, LLC, a
21 Delaware limited liability company, formerly
known as HELENA CHEMICAL COMPANY,
a Delaware corporation

22 Dated: January 31, 2023

GRISWOLD, LASALLE, COBB, DOWD & GIN,
L.L.P.

23 By 
24 MICHAEL R. JOHNSON

25 Attorneys for Defendant
26 CITY OF HANFORD

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

2 The Court will retain jurisdiction over this case and the Parties to this case pursuant to
3 California Code of Civil Procedure section 664.6 until such time as all settlement amounts have
4 been paid pursuant to the terms of the Parties' settlement agreement.
5

6 Date: _____

7 HONORABLE MELISSA R. D'MORIAS
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1 **PROOF OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am employed in the County of San Francisco, State of California. I am over the age of
4 18 and not a party to the within cause. My business address is DLA Piper LLP (US), 555
5 Mission Street, Suite 2400, San Francisco, California 94105-2933.

6 On January 31, 2023, I served a copy of the within document(s):

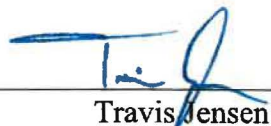
7 **STIPULATION AND [PROPOSED] ORDER**

8
9 ☒ (BY EMAIL) by transmitting via e-mail or electronic transmission the
10 document(s) listed above to the person(s) at the e-mail address(es) set forth
11 below.

12 ☐ (BY U.S. MAIL) by placing the document(s) listed above in a sealed envelope
13 with postage thereon fully prepaid, the United States mail at San Francisco,
14 California addressed as set forth below.

15 Mario U. Zamora (zamora@griswoldlasalle.com)
16 Michael Johnson (johnson@griswoldlasalle.com)
17 Megan N. Dodd (dodd@griswoldlasalle.com)
18 Griswold, LaSalle, Cobb, Dowd & Gin, LLP
19 111 E. Seventh Street
20 Hanford, CA 93230
21 Tel: (559) 584-6656
22 *Attorneys for Defendant, City of Hanford*

23 I declare under penalty of perjury under the laws of the State of California that the above
24 is true and correct. Executed on January 31, 2023, at San Francisco, California.

25
26
27
28

Travis Jensen

1 Jan L. Kahn (SBN 55788)
2 Rissa A. Stuart (SBN 166459)
3 Matthew T. Amaro (SBN 277777)
4 **KAHN, SOARES & CONWAY, LLP**
5 219 North Douty Street
6 Hanford, CA 93230
7 Phone: (559) 584-3337
8 Fax: (559) 584-3348

9 Attorneys for Plaintiff
10 **HELENA CHEMICAL COMPANY,**
11 a Delaware Corporation

FILED

APR 11 2017

JEFFREY E. LEWIS, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS
CYNTHIA DIAS DEPUTY

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF KINGS**

14 **HELENA CHEMICAL COMPANY,** a
15 Delaware Corporation,

16 Plaintiff,

17 vs.

18 **CITY OF HANFORD,** a municipal
19 corporation; JUSTIN MENDES; GARY
20 PANNETT; DAVID AYERS; RUSS CURRY;
21 FRANCISCO RAMIREZ; and DOES 1-25

22 Defendant.

Case No.

17C0102

**COMPLAINT FOR SPECIFIC
PERFORMANCE, DAMAGES, AND OTHER
EQUITABLE RELIEF FOR BREACH OF
CONTRACT; BREACH OF COVENANT OF
GOOD FAITH AND FAIR DEALING;
BREACH OF CONTRACT – PROMISSORY
ESTOPPEL**

[Civil Code §§ 3300, 3333, 3384]

*Unlimited civil case, amount demanded exceeds
\$25,000*

23 Plaintiff, Helena Chemical Company, alleges:

I.

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

24 1. Plaintiff, Helena Chemical Company is a Delaware Corporation, duly licensed to do
25 business in the State of California, and one of the nation's foremost agricultural and specialty
26 formulators, and distributors, in the United States. Helena has operated its retail fertilizer facility
27 ("Facility") in the City of Hanford since 1972.

28 2. Defendant, City of Hanford, (hereinafter referred to as "Defendant" or "City") is a
municipal corporation and general law city governed by the laws of the State of California and is

1 governed by the City Council ("**Council**"), duly elected by voters residing within the jurisdiction of the
2 City (the City and the Council hereinafter referred to collectively herein as "**Defendants**").

3 3. Defendants, JUSTIN MENDES; GARY PANNETT; DAVID AYERS; RUSS CURRY;
4 FRANCISCO RAMIREZ are individuals who are or were at the times mentioned herein, each members
5 of the City Council for the City of Hanford, and are sued in said capacity.

6 4. Plaintiff is ignorant of the true names and capacity of defendants sued herein as Does 1
7 through 25 inclusive, and, therefore, sues these defendants by fictitious names. Plaintiff will amend this
8 complaint to allege the true names and capacities when ascertained. Plaintiff is informed and believes
9 and thereon alleges that each of these fictitiously named defendants is responsible in some manner for
10 the acts or omissions alleged in this complaint and Plaintiff's damages were proximately, legally, and
11 foreseeably caused by the acts or omissions of these Defendants.

12 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein
13 each Defendant was the agent, servant, and employee of each of the remaining Defendants and was, in
14 doing the acts alleged herein, acting within the full scope of their agency and/or employment and acting
15 with the full knowledge or subsequent ratification of their principals or employers.

16 6. The instant action arises from a contractual dispute between Plaintiff, Helena Chemical
17 Company (hereinafter referred to as "**Plaintiff**" or "**Helena**"), and Defendant, City of Hanford,
18 concerning a written agreement entered into by the parties on November 25, 2014, a true and correct
19 copy of which is attached hereto and incorporated herein by this reference as **Exhibit "A,"** (hereinafter
20 referred to as the "**Agreement.**") Pursuant to the Agreement, the City agreed to acquire Helena's real
21 property located at 8148 E. Lacey Blvd., Hanford, California (the "**Lacey Property**") in exchange for
22 an approximately 26.24-acre city-owned parcel located within the Kings Industrial Park near Houston
23 and 11th Avenues (the "**Kings Industrial Park Property**"). As part of the Agreement, the City agreed
24 to move Helena's existing improvements on the Lacey Property to the Kings Industrial Park Property,
25 or, if it was ultimately not feasible to move the existing improvements, the City agreed to construct new
26 improvements at the Kings Industrial Park Property, at the City's sole cost and expense. The City
27 induced Helena to withdraw its pending efforts to expand its facilities at the Lacey Property, where the
28 City had already granted an expansion permit and municipal code amendment related thereto. Then,

1 after months of discussions culminating in a mutually-developed definitive written agreement, the
2 Hanford City Council decided not to perform the obligations to which the City is bound under the
3 Agreement. Moreover, the City initiated an aggressive plan of action to condemn substantial portions
4 of the Lacey Property, reversed its approval of critical authorizations for Helena's expansion and
5 operations, and forced Helena to initiate the instant action to preserve its over-44-year presence in the
6 City of Hanford.

7 7. Legal descriptions of the real properties that are the subject of this action are attached
8 hereto, and incorporated by this reference, as follows:

Property	APN(s)	Exhibit
Lacey Property	014-251-041	B
Kings Industrial Park Property	018-242-067; 018-242-077	C

11 8. Venue is proper in the County of Kings (the "**County**") because Defendant City has its
12 principal place of business located in this County; the actions complained of herein occurred within this
13 County; and the real property that is the subject of the instant action is situated in this County.

14 9. Plaintiff has performed any and all conditions precedent to filing this action and has
15 exhausted any and all administrative remedies. Plaintiff complied with the requirements of Government
16 Code §911.2 by presenting its claim, as provided under Government Code §915, on July 6, 2016.
17 Plaintiff's claim was rejected by Defendant City on October 13, 2016.

18 10. Helena has operated the Facility in the City of Hanford since 1972, and has been highly
19 successful in its operations at that Facility. Since 2004, Helena's business has doubled from just under
20 \$15 million to over \$30 million, generating substantial revenue for the City of Hanford and County of
21 Kings. Helena has numerous locations, in addition to its Hanford location, throughout the State of
22 California, and provides jobs to hundreds of residents throughout the Central Valley.

23 11. Formerly located on 11th Avenue in the City of Hanford, Helena moved its operations to
24 its present location at the Lacey Property on East Lacey Boulevard, just west of Highway 43, in 2011.
25 The Lacey Property site was acquired from Souza Enterprises, Inc., and has been used for a fertilizer
26 business since 1955. The Lacey Property site was, and remains, uniquely suited to accommodate
27 Helena's business operations, given the size of the property, railway access, existing infrastructure,
28 expandability, and proximity to arterial roads outside the City of Hanford.

1 12. Upon acquisition of the new site at the Lacey Property, Helena initiated efforts to
2 construct improvements to the site to accommodate its expanding operations, including a 24,650 square
3 foot warehouse for storage of its crop protection and production products, and a 630 square foot office
4 expansion.

5 13. Shortly after the expansions, in 2012, a Fresno-based developer, John Kashian
6 (“**Kashian**”) submitted a proposal to the City for the development of a large, mixed-use development on
7 a 58-acre piece of farmland on East Lacey Boulevard on the northwest corner of Highway 198 and
8 Highway 43, consisting of 498,624 square feet of retail space, including two anchors and several major
9 stores and restaurants, as well as additional space for an apartment complex or more stores (the
10 “**Highway 43/198 Commercial Center Project**”). The proposed development would also involve, as
11 is well-publicized, a new Costco Wholesale location. The site for the proposed Highway 43/198
12 Commercial Center Project is directly across the street from Helena’s location on the Lacey Property.
13 Plaintiffs are informed and believe, and based on such information and belief allege, that Kashian began
14 to pressure City officials to remove Helena and/or restrict Helena’s expansion based on the perceived
15 incompatibility of Helena’s fertilizer operations with the commercial activities envisioned by the
16 Highway 43/198 Commercial Center Project.

17 14. In 2013, during the process by which Helena sought to obtain City approval for its
18 expansion plans, it is was brought to Helena’s attention that, despite the over 60-year history of use of
19 the site for fertilizer business, and a number of permits issued by the County of Kings that had allowed
20 that type of business to operate there, the site had become a nonconforming use when the city annexed
21 the area in the 1980’s, rezoning the area from an industrial zone to a service commercial zone. While,
22 Helena remains able to operate much of its existing business as a grandfathered use under the prior
23 zoning ordinance, further efforts at expansion would require modification of the current zoning
24 ordinance.

25 15. During a meeting between the City and Helena in March 2013, City Manager Darrel Pyle,
26 noting that Helena provides one of the highest tax bases for the City, suggested a possible solution to the
27 zoning issue would be to relocate Helena to the Kings Industrial Park Property.

28 16. In April 2013, City Manager Darrel Pyle reported that the City Council directed the City

1 to work with Helena on a possible relocation plan to the Kings Industrial Park, and stated that the City
2 was very supportive of discussions to provide Helena with an alternative site to facilitate its continued
3 growth and expansion. These discussions did not, however, ultimately culminate in a finalized plan for
4 Helena's relocation at that time.

5 17. The City instead turned to the issue of Helena's existing efforts to expand its existing
6 operations at its present site. On November 18, 2014, the Hanford City Council approved a municipal
7 code amendment allowing expansion of Helena's Facility on East Lacey Boulevard. The Council voted
8 3-2 to approve a municipal code amendment to allow "enclosed storage, blending and sale of bulk and
9 prepackaged dry and liquid fertilizer for retail use" in the city's light industrial zones. The council also
10 approved a permit that would allow Helena's existing operations at its current location to continue
11 without restriction, and to construct its planned 24,650-square-foot warehouse for its expanding
12 operations.

13 18. The developer of the Costco project, Kashian, voiced strong opposition to the Council's
14 approval of Helena's plans to expand its Facility. Following the November 18, 2014 vote, Kashian
15 ordered his engineering firm to stop work on the project, and commented publicly that allowing the
16 agricultural fertilizer retailer to expand would not be compatible with plans to build the 500,000-square-
17 foot Hanford Marketplace shopping center with stores and restaurants. Kashian told the City that
18 progress on the Costco project would remain halted until the City reconsidered its decision to allow
19 Helena to expand its operations at the Lacey Property, and build its new 24,650-square-foot warehouse.

20 19. To appease Kashian's concerns, so that the proposed Highway 43/198 Commercial
21 Center Project would continue to move forward, the City sought to address Helena's operations at the
22 Lacey Property. The City and Helena again entered discussions concerning relocation of Helena's
23 Facility. These discussions centered on moving Helena from the Lacey Property to a new location at the
24 1,100-acre city-owned Kings Industrial Park near Houston and 11th avenues.

25 20. The Hanford City Council held a special meeting on November 25, 2014 to negotiate an
26 agreement with Helena for its potential relocation. The special meeting culminated in a binding
27 contractual agreement with Helena, embodied in a memorandum of understanding executed the date of
28 the meeting on November 25, 2014. The Agreement was executed, on behalf of Helena, by Steve

1 Alexander, Vice President for Helena's western business unit; and, on behalf of the City, by all members
2 of the Council, including Mayor Gary Pannett, Vice Mayor Russ Curry, and Council Members Jim Irwin,
3 Joleen James, Lou Martinez, and City Manager Darrel Pyle. Pursuant to the Agreement, the City agreed
4 to acquire from Helena the Lacey Property in exchange for the Kings Industrial Park Property. The City
5 also agreed to relocate Helena's existing improvements to the new site and, if not feasible to move, then
6 to construct equivalent new improvements on the new site at the City's sole cost and expense.

7 21. The Agreement provided, in relevant part, that:

8 *In exchange for the Helena Property, Helena will receive approximately 26.24 acres of*
9 *real property located in the Kings Industrial Park . . .*

10 *. . . the City will cause the relocation of Helena's Existing Improvements to the extent*
11 *feasible. The City will construct new improvements (New Improvements) on the City*
12 *Property that are fully permitted and equivalent to the improvements that cannot be*
13 *feasibly relocated from the Helena Property to the City Property.*

14 *The Helena Property will be the sole consideration that Helena will provide in exchange*
15 *for the City Property, the relocation of Existing Improvements, the obtaining of the*
16 *required permits, and the construction of the New Improvements.*

17 22. The Agreement, which was approved by the City Council in open session and signed by
18 the Mayor, was intended to be binding. The Agreement, after setting forth its material terms and
19 conditions, states: "[i]t is understood and agreed that the terms of this memorandum of understanding,
20 while illustrative of the transactions contemplated by the parties, are *binding . . .* (italics added)."
21 Moreover, the City and Helena explicitly agreed to "reasonably cooperate with each other in an effort to
22 bring this matter to closure in a timely fashion . . . [and to] . . . work together to prepare all of the formal
23 documents and obtain all governmental approvals necessary to accomplish the land exchange
24 contemplated in [the] memorandum of understanding."

25 23. To its detriment, and in reliance upon the Agreement with the City and the Council's
26 representation related thereto, Helena took the following actions: (i) withdrew from further City action,
27 its application, and formal requests to secure necessary permits and approvals to expand its facilities (as
28 alleged in ¶17 herein—which had been previously approved by the City Council; (ii) ceased further
efforts to facilitate the necessary expansion; (iii) did not take advantage of its already approved building
permit, and (iv) agreed to move to the new site in the Kings Industrial Park. Helena took these actions
only because the City bound itself to perform as set forth in the Agreement. As a result of Helena's

1 actions in reliance on the Agreement, progress on the Highway 43/198 Commercial Center Project was
2 resumed. Immediately subsequent to securing the Agreement with Helena, the Council voted 5-0 to
3 deny approval of the second reading on Helena's expansion plans.

4 24. Over the course of the next several months, Helena and the City conducted extensive
5 discussions in a collaborative effort to develop a definitive written agreement embodying the terms set
6 forth in the parties Agreement. The parties were successful in those efforts, and a definitive written
7 agreement (the "**Definitive Agreement**") was presented to the Council in closed session for execution
8 on or about July 7, 2015. Shortly after the conclusion of the meeting, City officials reported to Helena's
9 attorneys that the Council refused to execute the Definitive Agreement. Further, the Council determined
10 the City would not perform its obligations under the Agreement.

11 II.

12 **FIRST CAUSE OF ACTION**

13 *(Breach of Contract: Damages Against Defendants)*

14 25. Plaintiff incorporates herein by this reference the allegations in Paragraphs 1 through 24
15 above, as though the same were fully set forth herein.

16 26. On November 25, 2014, Plaintiff Helena and Defendant City entered into the Agreement,
17 pursuant to which the City agreed to (a) acquire the Lacey Property from Helena in exchange for the
18 Kings Industrial Park Property; and (b) to relocate Helena's existing improvements to the new site and,
19 if not feasible to move the existing improvements, then to construct equivalent new improvements at the
20 Kings Industrial Park Property at the City's sole cost and expense. The sole consideration to be provided
21 by Helena was the Lacey Property.

22 27. Plaintiff has performed all things necessary on its part to be performed under the
23 Agreement with the City, except for those things the performance of which has been excused by the
24 failure of the Defendants and each of them to perform as herein alleged.

25 28. To date, Defendants have failed and refused to execute the Definitive Agreement
26 prepared through the joint efforts of the parties, and has failed and refused to perform its obligations to
27 exchange the Kings Industrial Park Property for the Lacey Property, and to relocate Helena's existing
28 improvements to the new site and/or construct equivalent new improvements on the new site, and is in

1 breach of the Agreement.

2 29. As a proximate result of Defendants, and each of their, breach of the Agreement, Plaintiff
3 has been damaged in the sum of an amount to be established according to proof at trial, but in no event
4 less than \$12,000,000.00.

5 **III.**

6 **SECOND CAUSE OF ACTION**

7 *(Breach of Contract: Specific Performance of Contract Against Defendant City of Hanford)*

8 30. Plaintiff incorporates herein by this reference the allegations in Paragraphs 1 through 29
9 above, as though the same were fully set forth herein.

10 31. Plaintiff's remedy in damages or in an action at law for this breach of Defendants' and
11 each of their duties under the Agreement is inadequate to protect Plaintiff's right to the Kings Industrial
12 Park Property, and for relocation of Helena's existing improvements to the new site. The Kings
13 Industrial Park Property is uniquely suited to Helena's purposes in continuing to operate and expand the
14 operations of its Hanford facilities. It is a well-settled principle in the courts of this State that, in general,
15 the legal remedy of damages is inadequate in all agreements for the sale or letting of land. (See e.g.
16 *Wilkison v. Wiederkehr* (2002) 101 Cal.App.4th 822, 830; Civil Code §3387.)

17 32. The consideration set forth in the Agreement, as alleged hereinabove, is adequate as to
18 the Defendant, and is fair and reasonable. Not only would the City receive Helena's property in an area
19 marked for substantial commercial development and expansion, but the removal of Helena from the area
20 has proven essential to the continued progress of the Highway 43/198 Commercial Center Project, most
21 specifically the Costco Project.

22 33. Plaintiff has performed all conditions, covenants, and promises that it is required to
23 perform, in accordance with the terms of the Agreement, except that it has not yet executed the Definitive
24 Agreement, nor transferred title to the Lacey Property, because Defendant failed to execute the Definitive
25 Agreement and perform its obligations to transfer the Kings Industrial Park Property and relocate
26 Helena's improvements. Plaintiff remains ready, willing, and able to perform all remaining terms and
27 conditions of the Agreement that it is required to perform, and has offered, and continues to offer, to do
28 so.

34. Defendant has failed and refused, and continues to fail and refuse, to perform the conditions of the Agreement on its part, in that Defendant has refused to execute the Definitive Agreement, and perform its obligations to relocate Helena and its improvements to Kings Industrial Park, in exchange for the Helena Property. Rather, the City, in promoting Costco, has used condemnation to deprive Helena of its property and refuses to perform as per the Agreement.

IV.

THIRD CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing Against Defendants)

35. Plaintiff incorporates herein by this reference the allegations in Paragraphs 1 through 34 above, as though the same were fully set forth herein.

36. In the discussions leading up to the execution of the Agreement, Defendants represented to Plaintiff that Defendants were supportive of a plan to move Helena to the Kings Industrial Park. This was Defendants proposal. Less than one week before the Agreement was executed, the Highway 43/198 Commercial Center Project developer put the project on hold as a consequence of Helena having successfully appealed and been granted approval for its expansion plans at the Lacey Property. It is a well-publicized fact that the Highway 43/198 Commercial Center Project developer was not willing to proceed with the project if Helena was allowed by Defendants to remain, operate, and expand at the Lacey Property. It is for this reason that Defendants induced Helena to withdraw further efforts to expand at the Lacey Property location by presenting the proposal to move Helena to the Kings Industrial Park, and executing a binding written agreement to carry out the relocation.

37. Plaintiff was initially reticent to proceed with the Agreement, in light of the probable cost issues related to relocation of Plaintiff, but after multiple discussions concerning estimates provided by Plaintiff, Defendants provided assurances to Plaintiff that they would be able to perform their obligations under the Agreement, and Plaintiff was, in reliance on those assurances, willing to proceed.

38. Plaintiff is informed and believes, and based on such information and belief alleges that, at the time of the above-described discussions, Defendants knew, or should have known, that Defendants were unwilling to execute the Definitive Agreement, and Defendants were unwilling to perform what it had promised. Defendants, and each of them, nevertheless continued to misrepresent their willingness

1 to relocate Helena according to the terms of the Agreement.

2 39. After Plaintiff Helena withdrew its previously approved application and formal requests
3 from further City action to formally secure authorizations for its expansions plans, ceased further efforts
4 to facilitate its necessary expansion, did not take advantage of its already approved building permit, and
5 agreed to move to the new site in the Kings Industrial Park, and the Costco Project was proceeding
6 forward, Defendants, and each of them, simply refused to perform their obligations under the Agreement,
7 declining to execute the Definitive Agreement prepared through the joint efforts of the parties. The City
8 subsequently denied approvals of the second reading on Helena's expansion plans, and moved forward,
9 instead, on an aggressive plan of action to restrict and impede Helena's existing operations at the Lacey
10 Property. Defendants, and each of them, by those actions, effectively made it impossible for Helena to
11 continue with its formerly approved plans for expansion, and has imposed substantial impediments
12 against Helena's continued use of the Lacey Property for its fertilizer business. In acting in the manner
13 described in this Paragraph, Defendant violated the implied covenant of good faith and fair dealing that
14 exists in the contract between Plaintiff and Defendants.

15 40. Plaintiff has performed all conditions, covenants, and promises required on Plaintiff's
16 part to be performed in accordance with the terms and conditions of the contract, and has expended
17 substantial sums in good faith participation and cooperation with the City in carrying out the terms of
18 their binding Agreement.

19 41. As a result of Defendants, and each of their, breach of the covenant of good faith and fair
20 dealing, Plaintiff has suffered damages in an amount according to proof to be established at trial, but in
21 no event, less than the sum of \$12,000,000.00.

22 **V.**

23 **FOURTH CAUSE OF ACTION**

24 ***(Breach of Contract: Promissory Estoppel Against Defendants)***

25 42. Plaintiff incorporates herein by this reference the allegations in Paragraphs 1 through 41
26 above, as though the same were fully set forth herein.

27 43. By way of its conduct described in Paragraphs 19 – 22, 24, 26, and 36 – 37, above,
28 Defendants promised, assured, and represented to Plaintiff that Defendants would perform the City's

1 obligations under its Agreement with Helena to acquire from Helena the Lacey Property in exchange for
2 the Kings Industrial Park Property, and to relocate Helena's existing improvements to the new site and,
3 if not feasible to move, then to construct equivalent new improvements on the new site at the City's sole
4 cost and expense.

5 44. In so doing, Defendants knew or should have known that Plaintiff would be reasonably
6 induced to rely on Defendants' promise, assurances and representations by Defendants as described in
7 Paragraphs 19 – 22, 24, 26, and 36 – 37, above.

8 45. Plaintiff reasonably relied on the Defendants' promises, assurances or representations
9 described in Paragraphs 19 – 22, 24, 26, and 36 – 37, above, and was induced to take the actions described
10 in Paragraph 23 and 39 above, and to participate, at significant cost, in extensive discussions in a
11 collaborative effort to develop a definitive written agreement embodying the terms set forth in the
12 parties' Agreement, as alleged in Paragraph 24 above.

13 46. Defendants have not performed any part of its promises, assurances and representations.

14 47. As a proximate result of Defendants' failure to perform according to the promises,
15 assurances, and representations that it made to Plaintiff, Plaintiff has been damaged in the sum of an
16 amount to be established according to proof at trial.

17 48. Injustice can be avoided only by enforcing Defendants' promises, assurance and
18 representations completely.

19 CONCLUSION

20 49. The Agreement clearly shows a "meeting of the minds" in the recitation of the most
21 important term to establish any contract, to wit: consideration. All that was left to be addressed in a
22 subsequent formal writing was an outline of the procedures for the City's payment and timing of
23 construction. The obligations of City and Helena under the Agreement are clearly defined. The position
24 taken by the City Council with respect to its duties and obligations under the Agreement, simply put, is
25 a clear breach of contract, and Helena is entitled to the relief requested therefrom.

26 WHEREFORE, Plaintiff prays for judgement against Defendant as follows:

27 1. For compensatory damages, in an amount according to proof to be established at trial, but
28 in no event less than \$12,000,000.00;

1 2. That Defendant be ordered to transfer the Kings Industrial Park Property, and to relocate
2 Plaintiff's exiting improvements to the new site at the Kings Industrial Park Property, and if not possible
3 to relocate the existing improvements, to build equivalent new improvements at the new site;

4 3. For costs of suit incurred herein; and

5 4. For such other and further relief as the Court may deem proper.

6 DATE: ~~April~~ 11, 2017

KAHN, SOARES & CONWAY, LLP



JAN L. KAHN,
RISSA A. STUART
MATTHEW T. AMARO
Attorneys for Plaintiff,
HELENA CHEMICAL COMPANY

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EXHIBIT A

City of HANFORD

CALIFORNIA 93230
CITY OFFICES 319 NORTH DOUTY STREET



MAYOR
GARY FANNETT
VICE MAYOR
RUSS CURRY
COUNCIL MEMBERS
JIM IRWIN
JOLLEN JAMESON
LOU MARTINEZ
CITY MANAGER
DARRYL L. PYLE
CITY ATTORNEY
ROBERT M. DOWD

November 25, 2014

Mr. Steven E. Alexander, Vice President
HELENA CHEMICAL COMPANY
7576 N. Ingram Ave.
Fresno, CA 93711

Re: 8148 E. Lacey Blvd.

Dear Mr. Alexander:

The City of Hanford (City) wishes to acquire Helena Chemical Company's real property located at 8148 E. Lacey Blvd., Hanford (Helena Property). In exchange for the Helena Property, Helena will receive approximately 26.24 acres of real property located in the Kings Industrial Park (Kings County APNs 018-242-067 and 077) (City Property).

The City acknowledges that the Helena Property is improved (Existing Improvements). As part of the land exchange described herein, the City will cause the relocation of Helena's Existing Improvements to the extent feasible. The City will construct new improvements (New Improvements) on the City Property that are fully permitted and equivalent to the improvements that cannot be feasibly relocated from the Helena Property to the City Property. The New Improvements will comply with then current local, state or federal laws to obtain any and all necessary permits to operate. For example, the Helena Property currently has as part of its improvements two concrete domes, and the improvements that the City will cause to be constructed on the City Property will include an equivalent amount of bulk dry fertilizer storage. Relocation of improvements and construction of the New Improvements will occur at no cost to Helena; provided however, if Helena desires to expand or upgrade beyond the scope of the Existing Improvements, Helena will do so at its sole cost.

Upon the relocation of Helena's Existing Improvements, to the extent feasible, and completion of the New Improvements, and contingent upon Helena receiving all necessary local, state and federal permits for Helena to operate on the City Property, Helena will convey the Helena Property to the City or the City's assignee, and the City will cause title to the City Property to be conveyed to Helena. The Helena Property will be the sole consideration that Helena will provide in exchange for the City Property, the relocation of Existing Improvements, the obtaining of the required permits, and the construction of the New Improvements.

Since multiple issues must be addressed in order to facilitate the land exchange, including, without limitation, each party conducting due diligence efforts with respect to the other's property and preparation of plans for Helena's facility that will be constructed on the City Property with Helena's approval, the City and Helena will reasonably cooperate with each other in an effort to bring this matter to closure in a timely fashion. The City and Helena will also work together to prepare all of the formal documents and obtain all governmental approvals necessary to accomplish the land exchange contemplated in this memorandum of understanding. It is understood and agreed that the terms of this memorandum of understanding, while illustrative of the transactions contemplated by the parties, are binding and that the transaction described herein shall be contingent upon the execution of a definitive agreement that is agreed upon in writing by the parties, and contingent upon receipt of all corporate approvals.

If the terms and conditions of this memorandum of understanding meet with Helena's approval, please sign and date below.

Sincerely,

CITY OF HANFORD

By: 
GARY PANNETT
Mayor

Enclosure

cc: Russ Curry, Vice Mayor
Jim Irwin, Councilmember
Joleen James, Councilmember
Lou Martinez, Councilmember
Darrel Pyle, City Manager

Helena Chemical Company, a Delaware corporation, hereby agrees to the terms of this memorandum of understanding.

HELENA CHEMICAL COMPANY

By: 
STEVEN E. ALEXANDER
Vice President

EXHIBIT B

EXHIBIT B

Lacey Property Legal Description

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF KINGS, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 2 of Parcel Map (of a portion of the West 58 acres of the South half of the Southeast quarter of Section 29, Township 18 South, Range 22 East, Mount Diablo Base and Meridian, in the City of Hanford, County of Kings, State of California, according to the Official Plat thereof, lying South of the South line of the Southern Pacific Railway Co., right of way) as shown on map filed Book 6, Page 58 of Maps, in the office of the County Recorder of said County.

EXCEPTING THEREFROM a life estate in and to one-half of all oil, gas, minerals and mineral rights in and under said land as reserved in the Deed from Edith M. Starr to Thomas W. Wright and wife, dated December 1, 1955 and recorded January 13, 1956, Instrument No. 429, in Book 636, Page 88, Official Records.

APN: 014-251-041

EXHIBIT C

EXHIBIT C

Kings Industrial Park Property Legal Description

PARCEL 3

That portion of the Southwest quarter of Section 13, Township 19 South, Range 21 East, Mount Diablo Base and Meridian, in the City of Hanford, County of Kings, State of California, described as follows;

Commencing at the Southeast corner of said Southwest quarter of Section 13;

Thence, North 01°26'53" East, along the East line of said Southwest quarter, 1803.35 feet;

Thence, North 89°53'58" West, parallel with the North line of said Southwest quarter, 50.01 feet, more or less, to the Northeast corner of Parcel D of Parcel Map No. 11-10, Kings County Records;

Thence, continuing North 89°53'58" West, along said North line of Parcel D, 1862.00 feet, to the Northwest corner of said Parcel D, said point also being the Northeast corner of Parcel C of said Parcel Map No. 11-10, and the TRUE POINT OF BEGINNING;

Thence, continuing North 89°53'58" West, along the North line of said Parcel C, 676.54 feet, to the Northwest corner of said Parcel C and a point on the East right of way line of 11th Avenue;

Thence, South 01°28'20" West, along the West line of said Parcel C and said East right of way line, 529.67 feet;

Thence, South 89°53'58" East, parallel with the North line of said Parcel C, 676.54 feet, to a point on the East line of said Parcel C;

Thence, North 01°28'20" East, along said East line, 529.67 feet, to the TRUE POINT OF BEGINNING.

Parcel 3 contains 8.22 acres

[continued on next page]

PARCEL 4

That portion of the Southwest quarter of Section 13, Township 19 South, Range 21 East, Mount Diablo Base and Meridian, in the City of Hanford, County of Kings, State of California, described as follows;

Commencing at the Southeast corner of said Southwest quarter of Section 13;

Thence, North $01^{\circ}26'53''$ East, along the East line of said Southwest quarter, 1803.35 feet;

Thence, North $89^{\circ}53'58''$ West, parallel with the North line of said Southwest quarter, 50.01 feet, more or less, to the Northeast corner of Parcel D of Parcel Map No. 11-10, Kings County Records;

Thence, continuing North $89^{\circ}53'58''$ West, along said North line of Parcel D, 1862.00 feet, to the Northwest corner of said Parcel D, said point also being the Northeast corner of Parcel C of said Parcel Map No. 11-10;

Thence, continuing North $89^{\circ}53'58''$ West, along the North line of said Parcel C, 676.54 feet, to the Northwest corner of said Parcel C and a point on the East right of way line of 11th Avenue;

Thence, South $01^{\circ}28'20''$ West, along the West line of said Parcel C and said East right of way line, 529.67 feet, to the TRUE POINT OF BEGINNING;

Thence, continuing South $01^{\circ}28'20''$ West, along the West line of said Parcel C, and along the West line of said Parcel D and said East right of way line, 497.67 feet, to the beginning of a tangent curve, concave Northeasterly, having a radius of 30.00 feet;

Thence, Southeasterly, along said 30.00 foot radius curve, through a central angle of $91^{\circ}15'25''$, an arc distance of 47.78 feet;

Thence, South $89^{\circ}47'05''$ East, parallel with the South line of said Southwest quarter of Section 13, a distance of 645.84 feet, to the intersection with the Southerly prolongation of the East line of said Parcel C;

Thence, North $01^{\circ}28'20''$ East, along said Southerly prolongation and said East line, 529.69 feet;

Thence, North $89^{\circ}53'58''$ West, parallel with the North line of said Parcel C, a distance of 676.54 feet, to the TRUE POINT OF BEGINNING.

Parcel 4 contains 8.21 acres

[continued on next page]

PARCEL 9

That portion of the Southwest quarter of Section 13, Township 19 South, Range 21 East, Mount Diablo Base and Meridian, in the City of Hanford, County of Kings, State of California, described as follows;

Commencing at the Southwest corner of said Southwest quarter of Section 13;

Thence, North $01^{\circ}28'20''$ East, along the West line of said Southwest quarter, 71.77 feet;

Thence, at right angles, South $88^{\circ}31'40''$ East, 50.00 feet, to a point on the East right of way line of 11th Avenue and the TRUE POINT OF BEGINNING;

Thence, North $01^{\circ}28'20''$ East, along said East right of way line, 572.14 feet, to the beginning of a tangent curve, concave Southeasterly, having a radius of 30.00 feet;

Thence, Northeasterly, along said 30.00 foot radius curve, through a central angle of $88^{\circ}44'35''$, an arc distance of 46.47 feet;

Thence, South $89^{\circ}47'05''$ East, parallel with the South line of said Southwest quarter, 647.16 feet;

Thence, South $01^{\circ}28'20''$ West, parallel with the West line of said Southwest quarter, 632.15 feet, to a point on the North right of way line of Idaho Avenue;

Thence, South $89^{\circ}47'05''$ East, along said North right of way line, 645.84 feet, to the beginning of a tangent curve, concave Northeasterly, having a radius of 30.00 feet;

Thence, Northwesterly, along said 30.00 foot radius curve, through a central angle of $91^{\circ}15'25''$, an arc distance of 47.78 feet, to the TRUE POINT OF BEGINNING;

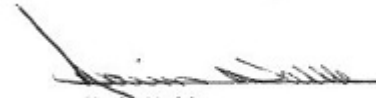
Parcel 9 contains 9.81 acres

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MAY 17 2017

GRISWOLD, LASALLE,
COBB, DOWD & GIN


Karin Noble Deputy

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Attorneys for Plaintiff
HELENA AGRI-ENTERPRISES, LLC, a
Delaware limited liability company, formerly
known as HELENA CHEMICAL COMPANY,
a Delaware corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KINGS

HELENA AGRI-ENTERPRISES, LLC, a
Delaware limited liability company, formerly
known as HELENA CHEMICAL COMPANY,
a Delaware corporation,

Plaintiff,

vs.

CITY OF HANFORD, a municipal corporation;
JUSTIN MENDES; GARY PANNETT;
DAVID AYERS; RUSS CURRY;
FRANCISCO RAMIREZ; SUE SORENSON;
MARTIN DEVINE; DARREL PYLE; and
DOES 1-25

Defendants.

Case No. 17C0102

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR BREACH OF CONTRACT;
BREACH OF COVENANT OF GOOD FAITH
AND FAIR DEALING; BREACH OF
CONTRACT – PROMISSORY ESTOPPEL**

*Unlimited civil case, amount demanded exceeds
\$25,000*

1 Plaintiff, Helena Agri-Enterprises, LLC, alleges:

2 I.

3 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 1. Plaintiff Helena Agri-Enterprises, LLC (“Plaintiff” or “Helena”) is a Delaware limited
5 liability company, formerly known as Helena Chemical Company, a Delaware corporation, duly
6 licensed to do business in the State of California, and one of the nation’s foremost agricultural and
7 specialty formulators and distributors in the United States. Helena has operated its retail fertilizer
8 facility (“Facility”) in the City of Hanford since 1972.

9 2. Defendant City of Hanford (“Defendant” or “City”) is a municipal corporation and
10 general law city governed by the laws of the State of California and is governed by the City Council
11 (“Council”), duly elected by voters residing within the jurisdiction of the City (hereinafter, the City
12 and the Council are referred to collectively as “Defendants”).

13 3. Defendants Justin Mendes, Gary Pannett, David Ayers, Russ Curry, Francisco Ramirez,
14 Sue Sorenson, Martin Devine, and Darrel Pyle are individuals who are or were at the times mentioned
15 herein, each members or former members of the City Council for the City of Hanford, and are sued in
16 said capacity.

17 4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does
18 1 through 25 inclusive, and, therefore, sues these defendants by fictitious names. Plaintiff will further
19 amend this First Amended Complaint to allege the true names and capacities when ascertained.
20 Plaintiff is informed and believes and thereon alleges that each of these fictitiously named defendants
21 is responsible in some manner for the acts or omissions alleged in this complaint and Plaintiff’s
22 damages were proximately, legally, and foreseeably caused by the acts or omissions of these
23 Defendants.

24 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein
25 each Defendant was the agent, servant, and employee of each of the remaining Defendants and was, in
26 doing the acts alleged herein, acting within the full scope of their agency and/or employment and
27 acting with the full knowledge or subsequent ratification of their principals or employers.

28 6. This First Amended Complaint arises from two contractual disputes between Plaintiff

1 Helena and Defendant City concerning (1) written agreements entered into by the parties dated
2 November 25, 2014 (the “2014 Purchase Agreement”), and (2) written agreements entered into by the
3 parties dated December 28, 2016 (the “2016 Purchase Agreement”).

4 7. Pursuant to the 2014 Purchase Agreement, the City agreed to acquire Helena’s real
5 property located at 8148 E. Lacey Blvd., Hanford, California (the “Lacey Property”) in exchange for
6 an approximately 26.24-acre City-owned parcel located within the Kings Industrial Park near Houston
7 and 11th Avenues (the “Kings Industrial Park Property”). As part of the 2014 Purchase Agreement,
8 the City agreed to move Helena’s existing improvements on the Lacey Property to the Kings Industrial
9 Park Property, or, if it was ultimately not feasible to move the existing improvements, the City agreed
10 to construct new improvements at the Kings Industrial Park Property, at the City’s sole cost and
11 expense. The City induced Helena to withdraw its pending efforts to expand its facilities at the Lacey
12 Property, where the City had already granted an expansion permit and municipal code amendment
13 related thereto. Then, after months of discussions culminating in a mutually-developed definitive
14 written agreement, the Hanford City Council decided not to perform the obligations to which the City
15 is bound under the 2014 Purchase Agreement. Moreover, the City initiated an aggressive plan of
16 action to condemn substantial portions of the Lacey Property, reversed its approval of critical
17 authorizations for Helena’s expansion and operations, and forced Helena to initiate the original
18 Complaint filed April 11, 2017 to recover damages caused by the City’s actions.

19 8. Pursuant to the 2016 Purchase Agreement, the City agreed to sell to Helena a 16.43 acre
20 parcel located within the Kings Industrial Park near the intersection of Houston Avenue and 11th
21 Avenue (the “New Kings Industrial Park Property”), for the purchase price of \$660,000.00. In a
22 separate but related transaction, Helena was to acquire a 9.81 acre parcel held by the Successor Agency
23 to the Community Redevelopment Agency of the City of Hanford for the purchase price of
24 \$392,400.00, with the closing of that transaction to occur simultaneously with, and contingent upon,
25 the closing of the escrow for the New Kings Industrial Park Property. On or about August 2, 2017, the
26 City improperly attempted to terminate or cancel the escrow regarding the 2016 Purchase Agreement.
27 Specifically, following the original close of escrow date of April 7, 2017, and during the months of
28 April, May, June, and July 2017, Helena diligently and jointly worked with the City (and First

1 American Title) in good faith to close escrow; and, on June 29, 2017, the City advised First American
2 Title to prepare Amended/Supplemental Escrow Instructions whereby the closing date would be
3 extended, with exercise of options, through October 30, 2017 in order to resolve “a few” final issues.
4 On July 18, 2017, the City Manager informed Helena that the City was “extending escrow to finalize
5 rail operational stuff.” However, the very next day, July 19, 2017 at 10:19 p.m., and without warning,
6 the City stated it was only willing to extend the closing deadline on the condition that Helena
7 dismissed its pending lawsuit regarding the 2014 Purchase Agreement and agreed not to pursue
8 litigation in the future with respect to said Agreement. When Helena was unwilling to waive the
9 claims set forth in its existing Complaint (and as preserved in Section 9(e) of the Purchase Agreement),
10 on August 2, 2017, the City delivered a letter to First American Title unilaterally instructing it to
11 “cancel escrow and to refund Helena’s deposit.”

12 9. Venue is proper in the County of Kings (the “County”) because Defendant City has its
13 principal place of business located in this County; the actions complained of herein occurred within
14 this County; and the real property that is the subject of the First Amended Complaint is situated in this
15 County.

16 10. Plaintiff Helena has performed any and all conditions precedent to filing this First
17 Amended Complaint and has exhausted any and all administrative remedies. Regarding the 2014
18 Purchase Agreement, on July 6, 2016, Plaintiff complied with the requirements of Government Code
19 section 911.2 by presenting its claim, as provided under Government Code section 915; on October 13,
20 2016, Plaintiff’s “first” claim was rejected by Defendant City. Regarding the 2016 Purchase
21 Agreement, on November 13, 2017, Plaintiff complied with the requirements of Government Code
22 section 911.2 by presenting its claim, as provided under Government Code section 915; on December
23 7, 2017, Plaintiff’s “second” claim was rejected by Defendant City.

24 11. Helena has operated the Facility in the City of Hanford since 1972, and has been highly
25 successful in its operations at that Facility. Since 2004, Helena’s business has doubled from just under
26 \$15 million to over \$30 million, generating substantial revenue for the City of Hanford and County of
27 Kings. Helena has numerous locations, in addition to its Hanford location, throughout the State of
28 California, and provides jobs to hundreds of residents throughout the Central Valley.

1 12. Formerly located on 11th Avenue in the City of Hanford, Helena moved its operations
2 to its present location at the Lacey Property on East Lacey Boulevard, just west of Highway 43, in
3 2011. The Lacey Property site was acquired from Souza Enterprises, Inc., and has been used for a
4 fertilizer business since 1955. The Lacey Property site was, and remains, uniquely suited to
5 accommodate Helena's business operations, given the size of the property, railway access, existing
6 infrastructure, expandability, and proximity to arterial roads outside the City of Hanford.

7 13. Regarding to its 2014 Purchase Agreement claim, upon acquisition of the new site at the
8 Lacey Property, Helena initiated efforts to construct improvements to the site to accommodate its
9 expanding operations, including a 24,650 square foot warehouse for storage of its crop protection and
10 production products, and a 630 square foot office expansion.

11 14. Shortly after the expansions, in 2012, a Fresno-based developer, John Kashian
12 ("Kashian") submitted a proposal to the City for the development of a large, mixed-use development
13 on a 58-acre piece of farmland on East Lacey Boulevard on the northwest corner of Highway 198 and
14 Highway 43, consisting of 498,624 square feet of retail space, including two anchors and several major
15 stores and restaurants, as well as additional space for an apartment complex or more stores (the
16 "Highway 43/198 Commercial Center Project"). The proposed development would also involve, as
17 was well-publicized, a new Costco Wholesale location. The site for the proposed Highway 43/198
18 Commercial Center Project was directly across the street from Helena's location on the Lacey
19 Property. Plaintiffs are informed and believe, and based on such information and belief allege, that
20 Kashian pressured City officials to remove Helena and/or restrict Helena's expansion based on the
21 perceived incompatibility of Helena's fertilizer operations with the commercial activities envisioned
22 by the Highway 43/198 Commercial Center Project.

23 15. In 2013, during the process by which Helena sought to obtain City approval for its
24 expansion plans, it is was brought to Helena's attention that, despite the over 60-year history of use of
25 the site for fertilizer business, and a number of permits issued by the County of Kings that had allowed
26 that type of business to operate there, the site had become a nonconforming use when the City annexed
27 the area in the 1980s, rezoning the area from an industrial zone to a service commercial zone. While
28 Helena remains able to operate much of its existing business as a grandfathered use under the prior

1 zoning ordinance, further efforts at expansion would require modification of the current zoning
2 ordinance.

3 16. During a meeting between the City and Helena in March 2013, City Manager Darrel
4 Pyle, noting that Helena provides one of the highest tax bases for the City, suggested a possible
5 solution to the zoning issue would be to relocate Helena to the Kings Industrial Park Property.

6 17. In April 2013, City Manager Darrel Pyle reported that the City Council directed the
7 City to work with Helena on a possible relocation plan to the Kings Industrial Park, and stated that the
8 City was very supportive of discussions to provide Helena with an alternative site to facilitate its
9 continued growth and expansion. These discussions did not, however, ultimately culminate in a
10 finalized plan for Helena's relocation at that time.

11 18. The City instead turned to the issue of Helena's efforts to expand its existing operations
12 at its present site. On November 18, 2014, the Hanford City Council approved a municipal code
13 amendment allowing expansion of Helena's Facility on East Lacey Boulevard. The Council voted 3-2
14 to approve a municipal code amendment to allow "enclosed storage, blending and sale of bulk and
15 prepackaged dry and liquid fertilizer for retail use" in the City's light industrial zones. The Council
16 also approved a permit that would allow Helena's existing operations at its current location to continue
17 without restriction, and to construct its planned 24,650-square-foot warehouse for its expanding
18 operations.

19 19. The developer of the Costco project, Kashian, voiced strong opposition to the Council's
20 approval of Helena's plans to expand its Facility. Following the November 18, 2014 vote, Kashian
21 ordered his engineering firm to stop work on the project, and commented publicly that allowing the
22 agricultural fertilizer retailer to expand would not be compatible with plans to build the 500,000-
23 square-foot Hanford Marketplace shopping center with stores and restaurants. Kashian told the City
24 that progress on the Costco project would remain halted until the City reconsidered its decision to
25 allow Helena to expand its operations at the Lacey Property, and build its new 24,650-square-foot
26 warehouse.

27 20. To appease Kashian's concerns, so that the proposed Highway 43/198 Commercial
28 Center Project would continue to move forward, the City sought to address Helena's operations at the

1 Lacey Property. The City and Helena again entered discussions concerning relocation of Helena's
2 Facility. These discussions centered on moving Helena from the Lacey Property to a new location at
3 the 1,100-acre City-owned Kings Industrial Park near Houston and 11th Avenues.

4 21. The Hanford City Council held a special meeting on November 25, 2014 to negotiate an
5 agreement with Helena for its potential relocation. The special meeting culminated in a binding
6 contractual agreement with Helena, embodied in a memorandum of understanding executed the date of
7 the meeting on November 25, 2014. The 2014 Purchase Agreement was executed, on behalf of
8 Helena, by Steve Alexander, Vice President for Helena's western business unit; and, on behalf of the
9 City, by all members of the Council, including Mayor Gary Pannett, Vice Mayor Russ Curry, and
10 Council Members Jim Irwin, Joleen James, Lou Martinez, and City Manager Darrel Pyle. Pursuant to
11 the 2014 Purchase Agreement, the City agreed to acquire from Helena the Lacey Property in exchange
12 for the Kings Industrial Park Property. The City also agreed to relocate Helena's existing
13 improvements to the new site and, if not feasible to move, then to construct equivalent new
14 improvements on the new site at the City's sole cost and expense.

15 22. The 2014 Purchase Agreement provided, in relevant part, that:

16 *In exchange for the Helena Property, Helena will receive approximately 26.24 acres of*
17 *real property located in the Kings Industrial Park . . .*

18 *. . . the City will cause the relocation of Helena's Existing Improvements to the extent*
19 *feasible. The City will construct new improvements (New Improvements) on the City*
20 *Property that are fully permitted and equivalent to the improvements that cannot be*
21 *feasibly relocated from the Helena Property to the City Property.*

22 *The Helena Property will be the sole consideration that Helena will provide in*
23 *exchange for the City Property, the relocation of Existing Improvements, the obtaining*
24 *of the required permits, and the construction of the New Improvements.*

25 23. The 2014 Purchase Agreement, which was approved by the City Council in open
26 session and signed by the Mayor, was intended to be binding. The 2014 Purchase Agreement, after
27 setting forth its material terms and conditions, states: "[i]t is understood and agreed that the terms of
28 this memorandum of understanding, while illustrative of the transactions contemplated by the parties,
are *binding* . . . (italics added)." Moreover, the City and Helena explicitly agreed to "reasonably
cooperate with each other in an effort to bring this matter to closure in a timely fashion . . . [and to] . . .
work together to prepare all of the formal documents and obtain all governmental approvals necessary

1 to accomplish the land exchange contemplated in [the] memorandum of understanding.”

2 24. To its detriment, and in reliance upon the 2014 Purchase Agreement with the City and
3 the Council’s representation related thereto, Plaintiff Helena took the following actions: (i) withdrew
4 from further City action, its application, and formal requests to secure necessary permits and approvals
5 to expand its facilities (which had been previously approved by the City Council); (ii) ceased further
6 efforts to facilitate the necessary expansion; (iii) did not take advantage of its already approved
7 building permit, and (iv) agreed to move to the new site in the Kings Industrial Park. Helena took
8 these actions only because the City bound itself to perform as set forth in the 2014 Purchase
9 Agreement. As a result of Helena’s actions in reliance on the 2014 Purchase Agreement, progress on
10 the Highway 43/198 Commercial Center Project was resumed. Immediately subsequent to securing
11 the Agreement with Helena, the Council voted 5-0 to deny approval of the second reading on Helena’s
12 expansion plans.

13 25. Over the course of the next several months, Helena and the City conducted extensive
14 discussions in a collaborative effort to develop a definitive written agreement embodying the terms set
15 forth in the parties’ 2014 Purchase Agreement. The parties were successful in those efforts, and a
16 definitive written agreement (the “Definitive Agreement”) was presented to the Council in closed
17 session for execution on or about July 7, 2015. Shortly after the conclusion of the meeting, City
18 officials reported to Helena’s attorneys that the Council refused to execute the Definitive Agreement.
19 Further, the Council determined the City would not perform its obligations under the 2014 Purchase
20 Agreement.

21 26. Regarding its 2016 Purchase Agreement claim, it arises from written “Purchase and
22 Sale Agreements” of real property between Helena and the City dated December 28, 2016, and
23 Escrows 4839327 and 5243097 with First American Title Company related to the 2016 Purchase
24 Agreement. This claim was previously referenced in the “Litigation Hold Notice to the City of
25 Hanford” dated October 26, 2017 from Helena’s counsel to the City’s counsel, as delivered via e-mail
26 and UPS Overnight Mail.

27 27. Pursuant to the 2016 Purchase Agreement, the City agreed to sell to Helena a 16.43 acre
28 parcel located within the Kings Industrial Park near the intersection of Houston Avenue and 11th

1 Avenue (as noted, the “New Kings Industrial Park Property”), for the purchase price of \$660,000.00.
2 In a separate but related transaction, Helena was to acquire a 9.81 acre parcel held by the Successor
3 Agency to the Community Redevelopment Agency of the City of Hanford for the purchase price of
4 \$392,400.00, with the closing of that transaction to occur simultaneously with, and contingent upon,
5 the closing of the escrow for the New Kings Industrial Park Property. Further, Section 9(e) of the 2016
6 Purchase Agreement, titled “No Release of Prior Claims,” expressly stated: “Nothing in this
7 Agreement, or the performance of the parties pursuant to this Agreement, shall release or act as a
8 release to any claims or claims Buyer may have against the Seller which arose prior to closing.”

9 28. By way of background regarding Section 9(e) of the 2016 Purchase Agreement, as
10 detailed above, (a) on July 6, 2016, *i.e.*, months prior to the execution of the Purchase Agreement,
11 Helena submitted a government claim against the City arising out of a contractual dispute between
12 Helena and City concerning the 2014 Purchase Agreement, and (b) on April 11, 2017, Helena filed a
13 Complaint in Kings County Superior Court, case no. 17C0102, against the City for specific
14 performance, breach of contract, breach of the covenant of good faith and fair dealing, and breach of
15 contract – promissory estoppel arising out of the 2014 Agreement (the “Complaint”). At that time,
16 none of the City defendants named in the Complaint were formally served, given that Helena’s counsel
17 and the City’s counsel had previously engaged in discussions and negotiations relating to the claims
18 asserted in the Complaint, and Helena opted to forestall service of the Complaint to allow those
19 discussions and negotiations to further develop.

20 29. Regarding the 2016 Purchase Agreement, on or about August 2, 2017 the City
21 improperly attempted to terminate or cancel the escrow regarding said Agreement. Specifically,
22 following the original close of escrow date of April 7, 2017, and during the months of April, May,
23 June, and July 2017, Helena diligently and jointly worked with the City (and First American Title) in
24 good faith to close escrow; and, on June 29, 2017, the City advised First American Title to prepare
25 Amended/Supplemental Escrow Instructions whereby the closing date would be extended, with
26 exercise of options, through October 30, 2017 in order to resolve “a few” final issues. On July 18,
27 2017, the City Manager informed Helena that the City was “extending escrow to finalize rail
28 operational stuff.” However, the very next day, July 19, 2017 at 10:19 p.m., and without warning, the

City's counsel advised Helena via email as follows:

*“The City Council met in closed session to consider Helena’s request to extend escrow. The Council recognized that Helena offered no new consideration for the requested extension. After discussion, the Council determined that the City **is willing to extend the closing deadline in consideration for Helena’s dismissal of the pending lawsuit and Helena’s agreement that it not pursue litigation in the future with respect to the November 25, 2014 letter or Helena’s relocation to the Industrial Park . . .** The proposed terms are justified because the current railroad improvement issue is not [sic] fault of the City, and, therefore, the City is under no legal obligation to amend the executed Purchase Agreement to extend escrow.” (Emphasis added.)*

30. When Helena was unwilling to waive the claims set forth in its existing Complaint (and as preserved in Section 9(e) of the 2016 Purchase Agreement), on August 2, 2017, the City delivered a letter to First American Title unilaterally instructing it to “cancel escrow and to refund Helena’s deposit.” In response, on August 2, 2017, Helena delivered a letter to First American Title stating that the City “is not entitled to terminate this Escrow” and seeking confirmation that “FirstAm is not terminating or cancelling this Escrow.” As of the date of this First Amended Complaint, on information and belief, the escrow has not been terminated or cancelled, but the City sold the Property to a third party (Tessengerlo Kerley, Inc.) on or about April 2018.

31. After Defendant City canceled the escrow on the 2016 Purchase Agreement, Plaintiff Helena has diligently pursued the purchase and acquisition of alternative and/or replacement property in Hanford, California or proximate to Hanford, California, but to date has been unable to acquire such property. As of the date of this First Amended Complaint, Helena continues to search for such alternative and/or replacement property as a direct result and consequence of the City's breaches of the 2014 Purchase Agreement and 2016 Purchase Agreement, as detailed herein.

II.

FIRST CAUSE OF ACTION

(Breach of Contract – 2014 Purchase Agreement – Damages Against Defendants)

32. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1

1 through 31 above, as though the same were fully set forth herein.

2 33. On November 25, 2014, Plaintiff Helena and Defendant City entered into the 2014
3 Purchase Agreement, pursuant to which the City agreed to (a) acquire the Lacey Property from Helena
4 in exchange for the Kings Industrial Park Property; and (b) to relocate Helena's existing improvements
5 to the new site and, if not feasible to move the existing improvements, then to construct equivalent new
6 improvements at the Kings Industrial Park Property at the City's sole cost and expense. The sole
7 consideration to be provided by Helena was the Lacey Property.

8 34. Plaintiff Helena has performed all things necessary on its part to be performed under the
9 Agreement with the City, except for those things the performance of which has been excused by the
10 failure of the Defendants and each of them to perform as herein alleged.

11 35. To date, Defendants have failed and refused to execute the Definitive Agreement
12 prepared through the joint efforts of the parties, and has failed and refused to perform its obligations to
13 exchange the Kings Industrial Park Property for the Lacey Property, and to relocate Helena's existing
14 improvements to the new site and/or construct equivalent new improvements on the new site, and is in
15 breach of the 2014 Purchase Agreement.

16 36. As a proximate result of Defendants' breach of the 2014 Purchase Agreement, and other
17 wrongful conduct, Helena has been damaged in an amount to be established according to proof at trial,
18 including, but not limited to, the substantial fees and costs incurred in good faith participation and
19 cooperation with the City in carrying out the terms of the parties' 2014 Purchase Agreement; all fees
20 and costs associated with Helena being required to relocate its business facilities and all other damages
21 resulting therefrom, including loss of Helena's operations and profits; additional damages to be
22 suffered as a result of injury to Helena's continuing business operations, due to its inability to expand,
23 loss of property, and related changed conditions of operations; and any and all other damages incurred
24 by Helena arising out of, and/or related to, the City's failure to perform under the 2014 Purchase
25 Agreement, and applicable law, in an amount according to proof, but in no event less than
26 \$15,000,000.00 (in total) due to Defendants' conduct and actions as alleged in this First Amended
27 Complaint.

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III.

SECOND CAUSE OF ACTION

(Breach of Contract – 2016 Purchase Agreement – Damages Against Defendants)

37. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1 through 36 above, as though the same were fully set forth herein.

38. On or about December 28, 2016, Plaintiff Helena and Defendant City entered into written “Purchase and Sale Agreements” of real property, and opened Escrows 4839327 and 5243097 with First American Title Company related to the 2016 Purchase Agreement. Pursuant to the 2016 Purchase Agreement, the City agreed to sell to Helena a 16.43 acre parcel located within the Kings Industrial Park near the intersection of Houston Avenue and 11th Avenue (the “New Kings Industrial Park Property”), for the purchase price of \$660,000.00. In a separate but related transaction, Helena was to acquire a 9.81 acre parcel held by the Successor Agency to the Community Redevelopment Agency of the City of Hanford for the purchase price of \$392,400.00, with the closing of that transaction to occur simultaneously with, and contingent upon, the closing of the escrow for the New Kings Industrial Park Property.

39. Plaintiff Helena has performed all things necessary on its part to be performed under the 2016 Purchase Agreement with the City, except for those things the performance of which has been excused by the failure of the Defendants and each of them to perform as herein alleged.

40. To date, Defendants have failed and refused to perform their contractual obligations under the 2016 Purchase Agreement, and under applicable law, and is in breach of the 2016 Purchase Agreement.

41. As a proximate result of Defendants’ breach of the 2016 Purchase Agreement, and other wrongful conduct, Helena has been damaged in an amount to be established according to proof at trial, including, but not limited to, the substantial fees and costs incurred in good faith participation and cooperation with the City in carrying out the terms of the parties’ 2016 Purchase Agreement; all fees and costs associated with Helena being required to relocate its business facilities and all other damages resulting therefrom, including loss of Helena’s operations and profits; additional damages to be suffered as a result of injury to Helena’s continuing business operations, due to its inability to expand,

1 loss of property, and related changed conditions of operations; and any and all other damages incurred
2 by Helena arising out of, and/or related to, the City's failure to perform under the 2016 Purchase
3 Agreement, and applicable law, in an amount according to proof, but in no event less than
4 \$15,000,000.00 (in total) due to Defendants' conduct and actions as alleged in this First Amended
5 Complaint.

6 IV.

7 **THIRD CAUSE OF ACTION**

8 *(Breach of Covenant of Good Faith and Fair Dealing – 2014 Purchase Agreement – Against*
9 *Defendants)*

10 42. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1
11 through 41 above, as though the same were fully set forth herein.

12 43. In the discussions leading up to the execution of the 2014 Purchase Agreement,
13 Defendants represented to Plaintiff that Defendants were supportive of a plan to move Helena to the
14 Kings Industrial Park. This was Defendants' proposal. Less than one week before the Agreement was
15 executed, the Highway 43/198 Commercial Center Project developer put the project on hold as a
16 consequence of Helena having successfully appealed and been granted approval for its expansion plans
17 at the Lacey Property. It is a well-publicized fact that the Highway 43/198 Commercial Center Project
18 developer was not willing to proceed with the project if Helena was allowed by Defendants to remain,
19 operate, and expand at the Lacey Property. It is for this reason that Defendants induced Helena to
20 withdraw further efforts to expand at the Lacey Property location by presenting the proposal to move
21 Helena to the Kings Industrial Park, and executing a binding written agreement to carry out the
22 relocation.

23 44. Plaintiff Helena was initially reticent to proceed with the 2014 Purchase Agreement, in
24 light of the probable cost issues related to relocation of Plaintiff, but after multiple discussions
25 concerning estimates provided by Plaintiff, Defendants provided assurances to Plaintiff that they
26 would be able to perform their obligations under said Agreement, and Plaintiff was, in reliance on
27 those assurances, willing to proceed.

28 45. Plaintiff is informed and believes, and based on such information and belief alleges that,

1 at the time of the above-described discussions, Defendants knew, or should have known, that
2 Defendants were unwilling to execute the Definitive Agreement, and Defendants were unwilling to
3 perform what they had promised. Defendants, and each of them, nevertheless continued to
4 misrepresent their willingness to relocate Helena according to the terms of the 2014 Purchase
5 Agreement.

6 46. After Plaintiff Helena withdrew its previously approved application and formal requests
7 from further City action to formally secure authorizations for its expansion plans, ceased further efforts
8 to facilitate its necessary expansion, did not take advantage of its already approved building permit,
9 and agreed to move to the new site in the Kings Industrial Park, and the Costco Project was proceeding
10 forward, Defendants, and each of them, simply refused to perform their obligations under the
11 Agreement, declining to execute the Definitive Agreement prepared through the joint efforts of the
12 parties. The City subsequently denied approvals of the second reading on Helena's expansion plans,
13 and moved forward, instead, on an aggressive plan of action to restrict and impede Helena's existing
14 operations at the Lacey Property. Defendants, and each of them, by those actions, effectively made it
15 impossible for Helena to continue with its formerly approved plans for expansion, and has imposed
16 substantial impediments against Helena's continued use of the Lacey Property for its fertilizer
17 business. In acting in the manner described in this Paragraph, Defendants violated the implied
18 covenant of good faith and fair dealing that exists in the contract between Plaintiff and Defendants.

19 47. Plaintiff has performed all conditions, covenants, and promises required on Plaintiff's
20 part to be performed in accordance with the terms and conditions of the 2014 Purchase Agreement, and
21 has expended substantial sums in good faith participation and cooperation with the City in carrying out
22 the terms of said Agreement.

23 48. As a proximate result of Defendants' breach of the covenant of good faith and fair
24 dealing under the 2014 Purchase Agreement, and other wrongful conduct, Helena has been damaged in
25 an amount to be established according to proof at trial, including, but not limited to, the substantial fees
26 and costs incurred in good faith participation and cooperation with the City in carrying out the terms of
27 the parties' 2014 Purchase Agreement; all fees and costs associated with Helena being required to
28 relocate its business facilities and all other damages resulting therefrom, including loss of Helena's

1 operations and profits; additional damages to be suffered as a result of injury to Helena's continuing
2 business operations, due to its inability to expand, loss of property, and related changed conditions of
3 operations; and any and all other damages incurred by Helena arising out of, and/or related to, the
4 City's failure to perform under the 2014 Purchase Agreement, and applicable law, in an amount
5 according to proof, but in no event less than \$15,000,000.00 (in total) due to Defendants' conduct and
6 actions as alleged in this First Amended Complaint

7 **V.**

8 **FOURTH CAUSE OF ACTION**

9 **(Breach of Covenant of Good Faith and Fair Dealing – 2016 Purchase Agreement – Against**
10 **Defendants)**

11 49. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1
12 through 48 above, as though the same were fully set forth herein.

13 50. Helena has expended substantial sums in good faith participation and cooperation with
14 the City in carrying out the terms of the 2016 Purchase Agreement. Specifically, following the original
15 close of escrow date of April 7, 2017, and during the months of April, May, June, and July 2017,
16 Helena diligently and jointly worked with the City (and First American Title) in good faith to close
17 escrow; and, on June 29, 2017, the City advised First American Title to prepare
18 Amended/Supplemental Escrow Instructions whereby the closing date would be extended, with
19 exercise of options, through October 30, 2017 in order to resolve "a few" final issues. On July 18,
20 2017, the City Manager informed Helena that the City was "extending escrow to finalize rail
21 operational stuff." However, the next day, July 19, 2017 at 10:19 p.m., and without warning, the City
22 advised Helena that it would only extend the escrow closing in exchange for Helena's dismissal and
23 release of Helena's pending lawsuit filed April 11, 2017, as described above. When Helena was
24 unwilling to waive the claims set forth in its existing Complaint (and as preserved in Section 9(e) of
25 the 2016 Purchase Agreement), on August 2, 2017, the City delivered a letter to First American Title
26 unilaterally instructing it to "cancel escrow and to refund Helena's deposit."

27 51. Plaintiff has performed all conditions, covenants, and promises required on Plaintiff's
28 part to be performed in accordance with the terms and conditions of the 2016 Purchase Agreement, and

1 has expended substantial sums in good faith participation and cooperation with the City in carrying out
2 the terms of said Agreement, as referenced above.

3 52. As a proximate result of Defendants' breach of the covenant of good faith and fair
4 dealing under the 2016 Purchase Agreement, and other wrongful conduct, Helena has been damaged in
5 an amount to be established according to proof at trial, including, but not limited to, the substantial fees
6 and costs incurred in good faith participation and cooperation with the City in carrying out the terms of
7 the parties' 2016 Purchase Agreement; all fees and costs associated with Helena being required to
8 relocate its business facilities and all other damages resulting therefrom, including loss of Helena's
9 operations and profits; additional damages to be suffered as a result of injury to Helena's continuing
10 business operations, due to its inability to expand, loss of property, and related changed conditions of
11 operations; and any and all other damages incurred by Helena arising out of, and/or related to, the
12 City's failure to perform under the 2016 Purchase Agreement, and applicable law, in an amount
13 according to proof, but in no event less than \$15,000,000.00 (in total) due to Defendants' conduct and
14 actions as alleged in this First Amended Complaint

15 **VI.**

16 **FIFTH CAUSE OF ACTION**

17 *(Breach of Contract – Promissory Estoppel – 2014 Purchase Agreement – Against Defendants)*

18 53. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1
19 through 52 above, as though the same were fully set forth herein

20 54. By way of the conduct described above, specifically Paragraphs 20-23, and 25,
21 Defendants promised, assured, and represented to Plaintiff Helena that Defendants would perform the
22 City's obligations under its 2014 Purchase Agreement with Helena to acquire from Helena the Lacey
23 Property in exchange for the Kings Industrial Park Property, and to relocate Helena's existing
24 improvements to the new site and, if not feasible to move, then to construct equivalent new
25 improvements on the new site at the City's sole cost and expense.

26 55. In so doing, Defendants knew or should have known that Plaintiff Helena would be
27 reasonably induced to rely on Defendants' promises, assurances and representations as described in
28 Paragraphs 20-23, and 25, above.

1 56. Plaintiff Helena reasonably relied on the Defendants' promises, assurances or
2 representations described above, and was induced to take the actions described in Paragraph 24 above,
3 and to participate, at significant cost, in extensive discussions in a collaborative effort to develop a
4 definitive written agreement embodying the terms set forth in the parties' 2014 Purchase Agreement,
5 as alleged in Paragraph 25 above.

6 57. Defendants failed to perform on their promises, assurances and representations made to
7 Plaintiff regarding the 2014 Purchase Agreement.

8 58. As a proximate result of Defendants' failure to perform according to the promises,
9 assurances, and representations made to Plaintiff, Plaintiff has been damaged and injustice can be
10 avoided only by enforcing Defendants' promises, assurance and representations completely.

11 59. As a proximate result of Defendants' breach of the 2014 Purchase Agreement, and other
12 wrongful conduct, Helena has been damaged in an amount to be established according to proof at trial,
13 including, but not limited to, the substantial fees and costs incurred in good faith participation and
14 cooperation with the City in carrying out the terms of the parties' 2014 Purchase Agreement; all fees
15 and costs associated with Helena being required to relocate its business facilities and all other damages
16 resulting therefrom, including loss of Helena's operations and profits; additional damages to be
17 suffered as a result of injury to Helena's continuing business operations, due to its inability to expand,
18 loss of property, and related changed conditions of operations; and any and all other damages incurred
19 by Helena arising out of, and/or related to, the City's failure to perform under the 2014 Purchase
20 Agreement, and applicable law, in an amount according to proof, but in no event less than
21 \$15,000,000.00 (in total) due to Defendants' conduct and actions as alleged in this First Amended
22 Complaint.

23
24 WHEREFORE, Plaintiff Helena prays for judgement against Defendants as follows:

- 25 1. For compensatory damages, in an amount according to proof to be established at trial,
26 but in no event less than \$15,000,000.00;
- 27 2. For its attorneys' fees and costs, as the prevailing party;
- 28 3. For its costs of suit incurred herein; and

1 4. For such other and further relief as the Court may deem proper.

2
3 Dated: June 4, 2018

4 DLA PIPER LLP (US)

5
6 By



7 MARK E. MCKEEN
8 JULIA BRIGHTON
9 Attorneys for Plaintiff
10 HELENA AGRI-ENTERPRISES, LLC, a
11 Delaware limited liability company, formerly
12 known as HELENA CHEMICAL COMPANY,
13 a Delaware corporation
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6 Delaware limited liability company, formerly
known as HELENA CHEMICAL COMPANY,
7 a Delaware corporation

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF KINGS**

11 HELENA AGRI-ENTERPRISES, LLC, a
12 Delaware limited liability company, formerly
known as HELENA CHEMICAL COMPANY,
13 a Delaware corporation,

14 Plaintiff,

15 vs.

16 CITY OF HANFORD, a municipal corporation;
17 and DOES 1-25,

18 Defendants.
19
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Case No. 17C0102

**SECOND AMENDED COMPLAINT FOR
DAMAGES FOR BREACH OF CONTRACT;
BREACH OF COVENANT OF GOOD FAITH
AND FAIR DEALING; BREACH OF
CONTRACT – PROMISSORY ESTOPPEL**

*Unlimited civil case, amount demanded exceeds
\$25,000*

1 Plaintiff, Helena Agri-Enterprises, LLC, alleges:

2 I.

3 GENERAL ALLEGATIONS

4 1. Plaintiff Helena Agri-Enterprises, LLC ("Plaintiff" or "Helena") is a Delaware limited
5 liability company, formerly known as Helena Chemical Company, a Delaware corporation, duly
6 licensed to do business in the State of California, and one of the nation's foremost agricultural and
7 specialty formulators and distributors in the United States. Helena has operated its retail fertilizer
8 facility ("Facility") in the City of Hanford since 1972.

9 2. Defendant City of Hanford ("Defendant", "Defendant City" or "City") is a municipal
10 corporation and general law city governed by the laws of the State of California and is governed by the
11 City Council ("Council"), duly elected by voters residing within the jurisdiction of the City.

12 3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does
13 1 through 25 inclusive, and, therefore, sues these defendants by fictitious names. Plaintiff will further
14 amend this Second Amended Complaint to allege the true names and capacities when ascertained.
15 Plaintiff is informed and believes and thereon alleges that each of these fictitiously named defendants
16 is responsible in some manner for the acts or omissions alleged in this complaint and Plaintiff's
17 damages were proximately, legally, and foreseeably caused by the acts or omissions of these
18 defendants.

19 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein
20 each defendant was the agent, servant, and employee of each of the remaining Defendants and was, in
21 doing the acts alleged herein, acting within the full scope of their agency and/or employment and
22 acting with the full knowledge or subsequent ratification of their principals or employers.

23 5. This Second Amended Complaint arises from two contractual disputes between Plaintiff
24 Helena and Defendant City concerning (1) written agreements entered into by the parties dated
25 November 25, 2014 (the "2014 Purchase Agreement"), and (2) written agreements entered into by the
26 parties dated December 28, 2016 (the "2016 Purchase Agreement").

27 6. Pursuant to the 2014 Purchase Agreement, the City agreed to acquire Helena's real
28 property located at 8148 E. Lacey Blvd., Hanford, California (the "Lacey Property") in exchange for

1 an approximately 26.24-acre City-owned parcel located within the Kings Industrial Park near Houston
2 and 11th Avenues (the "Kings Industrial Park Property"). As part of the 2014 Purchase Agreement,
3 the City agreed to move Helena's existing improvements on the Lacey Property to the Kings Industrial
4 Park Property, or, if it was ultimately not feasible to move the existing improvements, the City agreed
5 to construct new improvements at the Kings Industrial Park Property, at the City's sole cost and
6 expense. The City induced Helena to withdraw its pending efforts to expand its facilities at the Lacey
7 Property, where the City had already granted an expansion permit and municipal code amendment
8 related thereto. Then, after months of discussions culminating in a mutually-developed definitive
9 written agreement, the Hanford City Council decided not to perform the obligations to which the City
10 is bound under the 2014 Purchase Agreement. Moreover, the City initiated an aggressive plan of
11 action to condemn substantial portions of the Lacey Property, reversed its approval of critical
12 authorizations for Helena's expansion and operations, and forced Helena to initiate the original
13 Complaint filed April 11, 2017 to recover damages caused by the City's actions.

14 7. Pursuant to the 2016 Purchase Agreement, the City agreed to sell to Helena a 16.43 acre
15 parcel located within the Kings Industrial Park near the intersection of Houston Avenue and 11th
16 Avenue (the "New Kings Industrial Park Property"), for the purchase price of \$660,000.00. In a
17 separate but related transaction, Helena was to acquire a 9.81 acre parcel held by the Successor Agency
18 to the Community Redevelopment Agency of the City of Hanford for the purchase price of
19 \$392,400.00, with the closing of that transaction to occur simultaneously with, and contingent upon,
20 the closing of the escrow for the New Kings Industrial Park Property. On or about August 2, 2017, the
21 City improperly attempted to terminate or cancel the escrow regarding the 2016 Purchase Agreement.
22 Specifically, following the original close of escrow date of April 7, 2017, and during the months of
23 April, May, June, and July 2017, Helena diligently and jointly worked with the City (and First
24 American Title) in good faith to close escrow; and, on June 29, 2017, the City advised First American
25 Title to prepare Amended/Supplemental Escrow Instructions whereby the closing date would be
26 extended, with exercise of options, through October 30, 2017 in order to resolve "a few" final issues.
27 On July 18, 2017, the City Manager informed Helena that the City was "extending escrow to finalize
28 rail operational stuff." However, the very next day, July 19, 2017 at 10:19 p.m., and without warning,

1 the City stated it was only willing to extend the closing deadline on the condition that Helena dismiss
2 its pending lawsuit regarding the 2014 Purchase Agreement and agree not to pursue litigation in the
3 future with respect to said Agreement. When Helena was unwilling to waive the claims set forth in its
4 existing Complaint (and as preserved in Section 9(e) of the Purchase Agreement), on August 2, 2017,
5 the City delivered a letter to First American Title unilaterally instructing it to "cancel escrow and to
6 refund Helena's deposit."

7 8. Venue is proper in the County of Kings (the "County") because Defendant City has its
8 principal place of business located in this County; the actions complained of herein occurred within
9 this County; and the real property that is the subject of the Second Amended Complaint is situated in
10 this County.

11 9. Plaintiff Helena has performed any and all conditions precedent to filing this Second
12 Amended Complaint and has exhausted any and all administrative remedies. Regarding the 2014
13 Purchase Agreement, on July 6, 2016, Plaintiff complied with the requirements of Government Code
14 section 911.2 by presenting its claim, as provided under Government Code section 915; on October 13,
15 2016, Plaintiff's "first" claim was rejected by Defendant City. Regarding the 2016 Purchase
16 Agreement, on November 13, 2017, Plaintiff complied with the requirements of Government Code
17 section 911.2 by presenting its claim, as provided under Government Code section 915; on December
18 7, 2017, Plaintiff's "second" claim was rejected by Defendant City.

19 10. Helena has operated the Facility in the City of Hanford since 1972, and has been highly
20 successful in its operations at that Facility. Since 2004, Helena's business has doubled from just under
21 \$15 million to over \$30 million, generating substantial revenue for the City of Hanford and County of
22 Kings. Helena has numerous locations, in addition to its Hanford location, throughout the State of
23 California, and provides jobs to hundreds of residents throughout the Central Valley.

24 11. Formerly located on 11th Avenue in the City of Hanford, Helena moved its operations
25 to its present location at the Lacey Property on East Lacey Boulevard, just west of Highway 43, in
26 2011. The Lacey Property site was acquired from Souza Enterprises, Inc., and has been used for a
27 fertilizer business since 1955. The Lacey Property site was, and remains, uniquely suited to
28 accommodate Helena's business operations, given the size of the property, railway access, existing

1 infrastructure, expandability, and proximity to arterial roads outside the City of Hanford.

2 12. Regarding to its 2014 Purchase Agreement claim, upon acquisition of the new site at the
3 Lacey Property, Helena initiated efforts to construct improvements to the site to accommodate its
4 expanding operations, including a 24,650 square foot warehouse for storage of its crop protection and
5 production products, and a 630 square foot office expansion.

6 13. Shortly after the expansions, in 2012, a Fresno-based developer, John Kashian
7 ("Kashian") submitted a proposal to the City for the development of a large, mixed-use development
8 on a 58-acre piece of farmland on East Lacey Boulevard on the northwest corner of Highway 198 and
9 Highway 43, consisting of 498,624 square feet of retail space, including two anchors and several major
10 stores and restaurants, as well as additional space for an apartment complex or more stores (the
11 "Highway 43/198 Commercial Center Project"). The proposed development would also involve, as
12 was well-publicized, a new Costco Wholesale location. The site for the proposed Highway 43/198
13 Commercial Center Project was directly across the street from Helena's location on the Lacey
14 Property. Plaintiffs are informed and believe, and based on such information and belief allege, that
15 Kashian pressured City officials to remove Helena and/or restrict Helena's expansion based on the
16 perceived incompatibility of Helena's fertilizer operations with the commercial activities envisioned
17 by the Highway 43/198 Commercial Center Project.

18 14. In 2013, during the process by which Helena sought to obtain City approval for its
19 expansion plans, it was brought to Helena's attention that, despite the over 60-year history of use of the
20 site for fertilizer business, and a number of permits issued by the County of Kings that had allowed
21 that type of business to operate there, the site had become a nonconforming use when the City annexed
22 the area in the 1980s, rezoning the area from an industrial zone to a service commercial zone. While
23 Helena remains able to operate much of its existing business as a grandfathered use under the prior
24 zoning ordinance, further efforts at expansion would require modification of the current zoning
25 ordinance.

26 15. During a meeting between the City and Helena in March 2013, City Manager Darrel
27 Pyle, noting that Helena provides one of the highest tax bases for the City, suggested a possible
28 solution to the zoning issue would be to relocate Helena to the Kings Industrial Park Property.

1 16. In April 2013, City Manager Darrel Pyle reported that the City Council directed the
2 City to work with Helena on a possible relocation plan to the Kings Industrial Park, and stated that the
3 City was very supportive of discussions to provide Helena with an alternative site to facilitate its
4 continued growth and expansion. These discussions did not, however, ultimately culminate in a
5 finalized plan for Helena's relocation at that time.

6 17. The City instead turned to the issue of Helena's efforts to expand its existing operations
7 at its present site. On November 18, 2014, the Council approved a municipal code amendment
8 allowing expansion of Helena's Facility on East Lacey Boulevard. The Council voted 3-2 to approve
9 a municipal code amendment to allow "enclosed storage, blending and sale of bulk and prepackaged
10 dry and liquid fertilizer for retail use" in the City's light industrial zones. The Council also approved a
11 permit that would allow Helena's existing operations at its current location to continue without
12 restriction, and to construct its planned 24,650-square-foot warehouse for its expanding operations.

13 18. The developer of the Costco project, Kashian, voiced strong opposition to the Council's
14 approval of Helena's plans to expand its Facility. Following the November 18, 2014 vote, Kashian
15 ordered his engineering firm to stop work on the project, and commented publicly that allowing the
16 agricultural fertilizer retailer to expand would not be compatible with plans to build the 500,000-
17 square-foot Hanford Marketplace shopping center with stores and restaurants. Kashian told the City
18 that progress on the Costco project would remain halted until the City reconsidered its decision to
19 allow Helena to expand its operations at the Lacey Property, and build its new 24,650-square-foot
20 warehouse.

21 19. To appease Kashian's concerns, so that the proposed Highway 43/198 Commercial
22 Center Project would continue to move forward, the City sought to address Helena's operations at the
23 Lacey Property. The City and Helena again entered discussions concerning relocation of Helena's
24 Facility. These discussions centered on moving Helena from the Lacey Property to a new location at
25 the 1,100-acre City-owned Kings Industrial Park near Houston and 11th Avenues.

26 20. The Hanford City Council held a special meeting on November 25, 2014 to negotiate an
27 agreement with Helena for its potential relocation. The special meeting culminated in a binding
28 contractual agreement with Helena, embodied in a memorandum of understanding executed the date of

1 the meeting on November 25, 2014. The 2014 Purchase Agreement was executed, on behalf of
2 Helena, by Steve Alexander, Vice President for Helena's western business unit; and, on behalf of the
3 City, by all members of the Council, including Mayor Gary Pannett, Vice Mayor Russ Curry, and
4 Council Members Jim Irwin, Joleen James, Lou Martinez, and City Manager Darrel Pyle. Pursuant to
5 the 2014 Purchase Agreement, the City agreed to acquire from Helena the Lacey Property in exchange
6 for the Kings Industrial Park Property. The City also agreed to relocate Helena's existing
7 improvements to the new site and, if not feasible to move, then to construct equivalent new
8 improvements on the new site at the City's sole cost and expense.

9 21. The 2014 Purchase Agreement provided, in relevant part, that:

10 *In exchange for the Helena Property, Helena will receive approximately 26.24 acres of*
11 *real property located in the Kings Industrial Park . . .*

12 *. . . the City will cause the relocation of Helena's Existing Improvements to the extent*
13 *feasible. The City will construct new improvements (New Improvements) on the City*
14 *Property that are fully permitted and equivalent to the improvements that cannot be*
15 *feasibly relocated from the Helena Property to the City Property.*

16 *The Helena Property will be the sole consideration that Helena will provide in*
17 *exchange for the City Property, the relocation of Existing Improvements, the obtaining*
18 *of the required permits, and the construction of the New Improvements.*

19 22. The 2014 Purchase Agreement, which was approved by the Council in open session and
20 signed by the Mayor, was intended to be binding. The 2014 Purchase Agreement, after setting forth its
21 material terms and conditions, states: "[i]t is understood and agreed that the terms of this memorandum
22 of understanding, while illustrative of the transactions contemplated by the parties, are *binding . . .*
23 (*italics added*)."

24 Moreover, the City and Helena explicitly agreed to "reasonably cooperate with each
25 other in an effort to bring this matter to closure in a timely fashion . . . [and to] . . . work together to
26 prepare all of the formal documents and obtain all governmental approvals necessary to accomplish the
27 land exchange contemplated in [the] memorandum of understanding."

28 23. To its detriment, and in reliance upon the 2014 Purchase Agreement with the City and
the Council's representation related thereto, Plaintiff Helena took the following actions: (i) withdrew
from further City action, its application, and formal requests to secure necessary permits and approvals
to expand its facilities (which had been previously approved by the Council); (ii) ceased further efforts
to facilitate the necessary expansion; (iii) did not take advantage of its already approved building

1 permit, and (iv) agreed to move to the new site in the Kings Industrial Park. Helena took these actions
2 only because the City bound itself to perform as set forth in the 2014 Purchase Agreement. As a result
3 of Helena's actions in reliance on the 2014 Purchase Agreement, progress on the Highway 43/198
4 Commercial Center Project was resumed. Immediately subsequent to securing the Agreement with
5 Helena, the Council voted 5-0 to deny approval of the second reading on Helena's expansion plans.

6 24. Over the course of the next several months, Helena and the City conducted extensive
7 discussions in a collaborative effort to develop a definitive written agreement embodying the terms set
8 forth in the parties' 2014 Purchase Agreement. The parties were successful in those efforts, and a
9 definitive written agreement (the "Definitive Agreement") was presented to the Council in closed
10 session for execution on or about July 7, 2015. Shortly after the conclusion of the meeting, City
11 officials reported to Helena's attorneys that the Council refused to execute the Definitive Agreement.
12 Further, the Council determined the City would not perform its obligations under the 2014 Purchase
13 Agreement.

14 25. Regarding its 2016 Purchase Agreement claim, it arises from written "Purchase and
15 Sale Agreements" of real property between Helena and the City dated December 28, 2016, and
16 Escrows 4839327 and 5243097 with First American Title Company related to the 2016 Purchase
17 Agreement. This claim was previously referenced in the "Litigation Hold Notice to the City of
18 Hanford" dated October 26, 2017 from Helena's counsel to the City's counsel, as delivered via e-mail
19 and UPS Overnight Mail.

20 26. Pursuant to the 2016 Purchase Agreement, the City agreed to sell to Helena a 16.43 acre
21 parcel located within the Kings Industrial Park near the intersection of Houston Avenue and 11th
22 Avenue (as noted, the "New Kings Industrial Park Property"), for the purchase price of \$660,000.00.
23 In a separate but related transaction, Helena was to acquire a 9.81 acre parcel held by the Successor
24 Agency to the Community Redevelopment Agency of the City of Hanford for the purchase price of
25 \$392,400.00, with the closing of that transaction to occur simultaneously with, and contingent upon,
26 the closing of the escrow for the New Kings Industrial Park Property. Further, Section 9(e) of the 2016
27 Purchase Agreement, titled "No Release of Prior Claims," expressly stated: "Nothing in this
28 Agreement, or the performance of the parties pursuant to this Agreement, shall release or act as a

1 release to any claims or claims Buyer may have against the Seller which arose prior to closing.”

2 27. By way of background regarding Section 9(e) of the 2016 Purchase Agreement, as
3 detailed above, (a) on July 6, 2016, *i.e.*, months prior to the execution of the Purchase Agreement,
4 Helena submitted a government claim against the City arising out of a contractual dispute between
5 Helena and City concerning the 2014 Purchase Agreement, and (b) on April 11, 2017, Helena filed a
6 Complaint in Kings County Superior Court, case no. 17C0102, against the City for specific
7 performance, breach of contract, breach of the covenant of good faith and fair dealing, and breach of
8 contract – promissory estoppel arising out of the 2014 Agreement (the “Complaint”). At that time,
9 none of the City defendants named in the Complaint were formally served, given that Helena’s counsel
10 and the City’s counsel had previously engaged in discussions and negotiations relating to the claims
11 asserted in the Complaint, and Helena opted to forestall service of the Complaint to allow those
12 discussions and negotiations to further develop.

13 28. Regarding the 2016 Purchase Agreement, on or about August 2, 2017 the City
14 improperly attempted to terminate or cancel the escrow regarding said Agreement. Specifically,
15 following the original close of escrow date of April 7, 2017, and during the months of April, May,
16 June, and July 2017, Helena diligently and jointly worked with the City (and First American Title) in
17 good faith to close escrow; and, on June 29, 2017, the City advised First American Title to prepare
18 Amended/Supplemental Escrow Instructions whereby the closing date would be extended, with
19 exercise of options, through October 30, 2017 in order to resolve “a few” final issues. On July 18,
20 2017, the City Manager informed Helena that the City was “extending escrow to finalize rail
21 operational stuff.” However, the very next day, July 19, 2017 at 10:19 p.m., and without warning, the
22 City’s counsel advised Helena via email as follows:

23 *“The City Council met in closed session to consider Helena’s request to extend escrow.*
24 *The Council recognized that Helena offered no new consideration for the requested*
25 *extension. After discussion, the Council determined that the City is willing to extend*
26 *the closing deadline in consideration for Helena’s dismissal of the pending lawsuit*
27 *and Helena’s agreement that it not pursue litigation in the future with respect to the*
28 *November 25, 2014 letter or Helena’s relocation to the Industrial Park . . . The*

proposed terms are justified because the current railroad improvement issue is not [sic] fault of the City, and, therefore, the City is under no legal obligation to amend the executed Purchase Agreement to extend escrow.” (Emphasis added.)

29. When Helena was unwilling to waive the claims set forth in its existing Complaint (and as preserved in Section 9(e) of the 2016 Purchase Agreement), on August 2, 2017, the City delivered a letter to First American Title unilaterally instructing it to “cancel escrow and to refund Helena’s deposit.” In response, on August 2, 2017, Helena delivered a letter to First American Title stating that the City “is not entitled to terminate this Escrow” and seeking confirmation that “FirstAm is not terminating or cancelling this Escrow.” As of the date of this Second Amended Complaint, on information and belief, the escrow has not been terminated or cancelled, but the City sold the Property to a third party (Tessengerlo Kerley, Inc.) on or about April 2018.

30. After Defendant City canceled the escrow on the 2016 Purchase Agreement, Plaintiff Helena has diligently pursued the purchase and acquisition of alternative and/or replacement property in Hanford, California or proximate to Hanford, California, but to date has been unable to acquire such property. As of the date of this Second Amended Complaint, Helena continues to pursue the purchase and acquisition for such alternative and/or replacement property as a direct result and consequence of the City's breaches of the 2014 Purchase Agreement and 2016 Purchase Agreement, as detailed herein.

II.

FIRST CAUSE OF ACTION

(Breach of Contract – 2014 Purchase Agreement)

31. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1 through 24 above, as though the same were fully set forth herein.

32. On November 25, 2014, Plaintiff Helena and Defendant City entered into the 2014 Purchase Agreement, pursuant to which the City agreed to (a) acquire the Lacey Property from Helena in exchange for the Kings Industrial Park Property; and (b) to relocate Helena's existing improvements to the new site and, if not feasible to move the existing improvements, then to construct equivalent new improvements at the Kings Industrial Park Property at the City's sole cost and expense. The sole consideration to be provided by Helena was the Lacey Property.

33. Plaintiff Helena has performed all things necessary on its part to be performed under the Agreement with the City, except for those things the performance of which has been excused by the failure of Defendant City as herein alleged.

34. To date, Defendant City has failed and refused to execute the Definitive Agreement prepared through the joint efforts of the parties, and has failed and refused to perform its obligations to exchange the Kings Industrial Park Property for the Lacey Property, and to relocate Helena's existing improvements to the new site and/or construct equivalent new improvements on the new site, and is in breach of the 2014 Purchase Agreement.

35. As a proximate result of Defendant City's breach of the 2014 Purchase Agreement, and other wrongful conduct, Helena has been damaged in an amount to be established according to proof at trial, including, but not limited to, the substantial fees and costs incurred in good faith participation and cooperation with the City in carrying out the terms of the parties' 2014 Purchase Agreement; all fees and costs associated with Helena being required to relocate its business facilities and all other damages resulting therefrom, including loss of Helena's operations and profits; additional damages to be suffered as a result of injury to Helena's continuing business operations, due to its inability to expand, loss of property, and related changed conditions of operations; and any and all other damages incurred by Helena arising out of, and/or related to, the City's failure to perform under the 2014 Purchase Agreement, and applicable law, in an amount according to proof, but in no event less than \$15,000,000.00 (in total) due to Defendant City's conduct and actions as alleged in this Second Amended Complaint.

III.

SECOND CAUSE OF ACTION

(Breach of Contract – 2016 Purchase Agreement)

36. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1 through 30 above, as though the same were fully set forth herein.

37. On or about December 28, 2016, Plaintiff Helena and Defendant City entered into written "Purchase and Sale Agreements" of real property, and opened Escrows 4839327 and 5243097 with First American Title Company related to the 2016 Purchase Agreement. Pursuant to the 2016

1 Purchase Agreement, the City agreed to sell to Helena a 16.43 acre parcel located within the Kings
2 Industrial Park near the intersection of Houston Avenue and 11th Avenue (the "New Kings Industrial
3 Park Property"), for the purchase price of \$660,000.00. In a separate but related transaction, Helena
4 was to acquire a 9.81 acre parcel held by the Successor Agency to the Community Redevelopment
5 Agency of the City of Hanford for the purchase price of \$392,400.00, with the closing of that
6 transaction to occur simultaneously with, and contingent upon, the closing of the escrow for the New
7 Kings Industrial Park Property.

8 38. Plaintiff Helena has performed all things necessary on its part to be performed under the
9 2016 Purchase Agreement with the City, except for those things the performance of which has been
10 excused by the failure of Defendant City as herein alleged.

11 39. To date, Defendant City has failed and refused to perform their contractual obligations
12 under the 2016 Purchase Agreement, and under applicable law, and is in breach of the 2016 Purchase
13 Agreement.

14 40. As a proximate result of Defendant City's breach of the 2016 Purchase Agreement, and
15 other wrongful conduct, Helena has been damaged in an amount to be established according to proof at
16 trial, including, but not limited to, the substantial fees and costs incurred in good faith participation and
17 cooperation with the City in carrying out the terms of the parties' 2016 Purchase Agreement; all fees
18 and costs associated with Helena being required to relocate its business facilities and all other damages
19 resulting therefrom, including loss of Helena's operations and profits; additional damages to be
20 suffered as a result of injury to Helena's continuing business operations, due to its inability to expand,
21 loss of property, and related changed conditions of operations; and any and all other damages incurred
22 by Helena arising out of, and/or related to, the City's failure to perform under the 2016 Purchase
23 Agreement, and applicable law, in an amount according to proof, but in no event less than
24 \$15,000,000.00 (in total) due to Defendant City's conduct and actions as alleged in this Second
25 Amended Complaint.

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27 ///

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1 IV.

2 **THIRD CAUSE OF ACTION**

3 *(Breach of Covenant of Good Faith and Fair Dealing – 2014 Purchase Agreement)*

4 41. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1
5 through 24 above, as though the same were fully set forth herein.

6 42. After Plaintiff Helena withdrew its previously approved application and formal requests
7 from further City action to formally secure authorizations for its expansion plans, ceased further efforts
8 to facilitate its necessary expansion, did not take advantage of its already approved building permit,
9 and agreed to move to the new site in the Kings Industrial Park, and the Costco Project was proceeding
10 forward, Defendant City refused to perform its obligations under the 2014 Purchase Agreement,
11 declining to execute the Definitive Agreement prepared through the joint efforts of the parties. The
12 City subsequently denied approvals of the second reading on Helena's expansion plans, and moved
13 forward, instead, on an aggressive plan of action to restrict and impede Helena's existing operations at
14 the Lacey Property. Defendant City, by those actions, effectively made it impossible for Helena to
15 continue with its formerly approved plans for expansion, and has imposed substantial impediments
16 against Helena's continued use of the Lacey Property for its fertilizer business. In acting in the manner
17 described herein, Defendant City violated the implied covenant of good faith and fair dealing that
18 exists in the contract between Plaintiff and Defendant City.

19 43. Plaintiff has performed all conditions, covenants, and promises required on Plaintiff's
20 part to be performed in accordance with the terms and conditions of the 2014 Purchase Agreement, and
21 has expended substantial sums in good faith participation and cooperation with the City in carrying out
22 the terms of said Agreement.

23 44. As a proximate result of Defendant City's breach of the covenant of good faith and fair
24 dealing under the 2014 Purchase Agreement, and other wrongful conduct, Helena has been damaged in
25 an amount to be established according to proof at trial, including, but not limited to, the substantial fees
26 and costs incurred in good faith participation and cooperation with the City in carrying out the terms of
27 the parties' 2014 Purchase Agreement; all fees and costs associated with Helena being required to
28 relocate its business facilities and all other damages resulting therefrom, including loss of Helena's

1 operations and profits; additional damages to be suffered as a result of injury to Helena's continuing
2 business operations, due to its inability to expand, loss of property, and related changed conditions of
3 operations; and any and all other damages incurred by Helena arising out of, and/or related to, the
4 City's failure to perform under the 2014 Purchase Agreement, and applicable law, in an amount
5 according to proof, but in no event less than \$15,000,000.00 (in total) due to Defendant City's conduct
6 and actions as alleged in this Second Amended Complaint

7 V.

8 FOURTH CAUSE OF ACTION

9 (Breach of Covenant of Good Faith and Fair Dealing – 2016 Purchase Agreement)

10 45. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1
11 through 30 above, as though the same were fully set forth herein.

12 46. Helena has expended substantial sums in good faith participation and cooperation with
13 the City in carrying out the terms of the 2016 Purchase Agreement. Specifically, following the original
14 close of escrow date of April 7, 2017, and during the months of April, May, June, and July 2017,
15 Helena diligently and jointly worked with the City (and First American Title) in good faith to close
16 escrow; and, on June 29, 2017, the City advised First American Title to prepare
17 Amended/Supplemental Escrow Instructions whereby the closing date would be extended, with
18 exercise of options, through October 30, 2017 in order to resolve "a few" final issues. On July 18,
19 2017, the City Manager informed Helena that the City was "extending escrow to finalize rail
20 operational stuff." However, the next day, July 19, 2017 at 10:19 p.m., and without warning, the City
21 advised Helena that it would only extend the escrow closing in exchange for Helena's dismissal and
22 release of Helena's pending lawsuit filed April 11, 2017, as described above. When Helena was
23 unwilling to waive the claims set forth in its existing Complaint (and as preserved in Section 9(e) of
24 the 2016 Purchase Agreement), on August 2, 2017, the City delivered a letter to First American Title
25 unilaterally instructing it to "cancel escrow and to refund Helena's deposit."

26 47. Plaintiff has performed all conditions, covenants, and promises required on Plaintiff's
27 part to be performed in accordance with the terms and conditions of the 2016 Purchase Agreement, and
28 has expended substantial sums in good faith participation and cooperation with the City in carrying out

1 the terms of said Agreement, as referenced above.

2 48. As a proximate result of Defendant City's breach of the covenant of good faith and fair
3 dealing under the 2016 Purchase Agreement, and other wrongful conduct, Helena has been damaged in
4 an amount to be established according to proof at trial, including, but not limited to, the substantial fees
5 and costs incurred in good faith participation and cooperation with the City in carrying out the terms of
6 the parties' 2016 Purchase Agreement; all fees and costs associated with Helena being required to
7 relocate its business facilities and all other damages resulting therefrom, including loss of Helena's
8 operations and profits; additional damages to be suffered as a result of injury to Helena's continuing
9 business operations, due to its inability to expand, loss of property, and related changed conditions of
10 operations; and any and all other damages incurred by Helena arising out of, and/or related to, the
11 City's failure to perform under the 2016 Purchase Agreement, and applicable law, in an amount
12 according to proof, but in no event less than \$15,000,000.00 (in total) due to Defendant City's conduct
13 and actions as alleged in this Second Amended Complaint

14 VI.

15 FIFTH CAUSE OF ACTION

16 (Breach of Contract – Promissory Estoppel – 2014 Purchase Agreement)

17 49. Plaintiff Helena incorporates herein by this reference the allegations in Paragraphs 1
18 through 24 above, as though the same were fully set forth herein

19 50. By way of the conduct described above, specifically Paragraphs 19-22, and 24,
20 Defendant City promised, assured, and represented to Plaintiff Helena that Defendant City would
21 perform the City's obligations under its 2014 Purchase Agreement with Helena to acquire from Helena
22 the Lacey Property in exchange for the Kings Industrial Park Property, and to relocate Helena's
23 existing improvements to the new site and, if not feasible to move, then to construct equivalent new
24 improvements on the new site at the City's sole cost and expense.

25 51. In so doing, Defendant City knew or should have known that Plaintiff Helena would be
26 reasonably induced to rely on Defendant City's promises, assurances and representations as described
27 in Paragraphs 19-22, and 24, above.

28 52. Plaintiff Helena reasonably relied on Defendant City's promises, assurances or

1 representations described above, and was induced to take the actions described in Paragraph 23 above,
2 and to participate, at significant cost, in extensive discussions in a collaborative effort to develop a
3 definitive written agreement embodying the terms set forth in the parties' 2014 Purchase Agreement,
4 as alleged in Paragraph 24 above.

5 53. Defendant City failed to perform on their promises, assurances and representations
6 made to Plaintiff regarding the 2014 Purchase Agreement.

7 54. As a proximate result of Defendant City's failure to perform according to the promises,
8 assurances, and representations made to Plaintiff, Plaintiff has been damaged and injustice can be
9 avoided only by enforcing Defendant City's promises, assurance and representations completely.

10 55. As a proximate result of Defendant City's breach of the 2014 Purchase Agreement, and
11 other wrongful conduct, Helena has been damaged in an amount to be established according to proof at
12 trial, including, but not limited to, the substantial fees and costs incurred in good faith participation and
13 cooperation with the City in carrying out the terms of the parties' 2014 Purchase Agreement; all fees
14 and costs associated with Helena being required to relocate its business facilities and all other damages
15 resulting therefrom, including loss of Helena's operations and profits; additional damages to be
16 suffered as a result of injury to Helena's continuing business operations, due to its inability to expand,
17 loss of property, and related changed conditions of operations; and any and all other damages incurred
18 by Helena arising out of, and/or related to, the City's failure to perform under the 2014 Purchase
19 Agreement, and applicable law, in an amount according to proof, but in no event less than
20 \$15,000,000.00 (in total) due to Defendant City's conduct and actions as alleged in this Second
21 Amended Complaint.

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24 ///

1 WHEREFORE, Plaintiff Helena prays for judgment against Defendant City as follows:

- 2 1. For compensatory damages, in an amount according to proof to be established at trial,
3 but in no event less than \$15,000,000.00;
- 4 2. For its attorneys' fees and costs, as the prevailing party;
- 5 3. For its costs of suit incurred herein; and
- 6 4. For such other and further relief as the Court may deem proper.

7 Dated: October 8, 2018

DLA PIPER LLP (US)

8
9 By 
10 MARK E. MCKEEN
11 JULIA BRIGHTON
12 Attorneys for Plaintiff
13 HELENA AGRI-ENTERPRISES, LLC, a
14 Delaware limited liability company, formerly
15 known as HELENA CHEMICAL COMPANY,
16 a Delaware corporation
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1 **PROOF OF SERVICE**

2 I am employed in the County of San Francisco, State of California. I am over the age of
3 18 and not a party to the within cause. My business address is DLA Piper LLP (US), 555
Mission Street, Suite 2400, San Francisco, California 94105-2933.

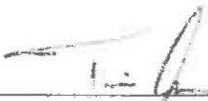
4 On October 8, 2018, I served a copy of the within document(s):

5 **SECOND AMENDED COMPLAINT FOR DAMAGES FOR BREACH OF**
6 **CONTRACT; BREACH OF COVENANT OF GOOD FAITH AND FAIR**
7 **DEALING; BREACH OF CONTRACT – PROMISSORY ESTOPPEL**

8 ☐	by transmitting via electronic mail the document(s) listed above to the e-mail addresses set forth below on this date before 5:00 p.m.
9 ☒	by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at San Francisco, California addressed as set forth below.
10 ☐	by placing the document(s) listed above in a sealed Delivery Service envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery Service agent for next day delivery.
11 ☐	by having First Legal Network personally deliver the document(s) listed above to the person(s) at the address(es) set forth below.

12
13
14
15 Robert M. Dowd, Esq.
16 Mario Zamora, Esq.
17 Jaskaran S. Gill, Esq.
18 Griswold, Lasalle, COBB, DOWD & GIN, L.L.P.
19 111 East Seventh Street
Hanford, California 93230
Tel: (559) 584-6656

20 I declare under penalty of perjury under the laws of the State of California that the above
21 is true and correct. Executed on October 8, 2018, at San Francisco, California.

22
23 
24 _____
25 Travis Jensen
26
27
28