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8 CONSUMER DEFENSE GROUP
9 ACTION

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JAN 13 2005

ALAN SLATER, Clerk of the Court

BY: W. STEVENS, DEPUTY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ORANGE

12 CONSUMER DEFENSE GROUP
13 ACTION

14 Plaintiff,

15 vs.

16 CANNERY HAMILTON PROPERTIES
17 LLC AND DOES 1-100

18 Defendants.

CASE NO. 05C002179

COMPLAINT FOR:

(1) VIOLATION OF CALIFORNIA
HEALTH & SAFETY CODE SECTION
25249.5 [THREATENED RELEASE OR
DISCHARGE]; AND,

(2) VIOLATION OF CALIFORNIA HEALTH
& SAFETY CODE SECTION 252459.6
[FAILURE TO WARN].

JUDGE MARY FINGAL-ERICKSON
DEPT. W11

19 As and for its causes of action against defendant CANNERY HAMILTON
20 PROPERTIES LLC and DOES 1-100, plaintiff CONSUMER DEFENSE GROUP ACTION
21 alleges as follows:

22 PARTIES

23 1. Plaintiff CONSUMER DEFENSE GROUP ACTION is and has been at all
24 relevant times a California corporation in good standing, duly organized and existing under and
25 by virtue of the laws of the State of California, and bring this action in the public interest as
26 defined under Health & Safety Code § 25249.7 (d).

27 2. Defendant CANNERY HAMILTON PROPERTIES LLC is and at all times
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THIS CASE HAS BEEN ASSIGNED TO CIVIL CASE MANAGEMENT. EACH
FILING MUST INCLUDE THE ASSIGNED JUDGE AND DEPARTMENT
DESIGNATION AS SHOWN UNDER THE CASE NUMBER. ALL PARTIES MUST
COMPLY WITH THE ORANGE COUNTY SUPERIOR COURT RULES.

1 mentioned herein has been qualified to do business in the State of California.

2 3. Plaintiff is ignorant of the true names and capacities of defendants sued as
3 DOES 1- 100, inclusive, and therefore sues these defendants by such fictitious names. The
4 fictitious defendants named in this Complaint are sued pursuant to the provisions of C.C.P. §
5 474. Plaintiff is informed and believes, and upon that ground, alleges that each fictitious
6 defendant is in some way responsible for, participated in, or contributed to the matters and
7 things of which Plaintiff complains herein, and in some fashion, has legal responsibility
8 therefor. When the exact nature and identity of such fictitious defendants' responsibility for,
9 participation in, and contribution to the matters and things alleged herein are ascertained by
10 Plaintiff, Plaintiff will seek to amend this Complaint and all proceedings herein to set forth the
11 same.

12 4. At all times mentioned defendant was a person within the meaning of Business
13 & Professions Code § 17201 and a person doing business within the meaning of Health &
14 Safety Code § 25249.11 (a). Plaintiff is informed and believes and thereon alleges that at all
15 times mentioned herein, defendant has had 10 or more employees.

16 SUMMARY OF ALLEGATIONS

17 5. Plaintiff Consumer Defense Group Action hereby alleges that Defendant has
18 violated California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65")
19 by threatening to "release chemicals known to the State of California to cause cancer or
20 reproductive toxicity into water or onto or into land where such chemical passes or probably
21 will pass into any source of drinking water", at the landfill site located at 21641 Magnolia
22 Street, Huntington Beach, California 92646 (hereinafter, "the Site"), a property owned and
23 operated by Defendant, in violation of California Health & Safety Code § 25249.5 and §
24 25249.7. Hereinafter "chemicals known to the State of California to cause cancer or
25 reproductive toxicity" will be referred to as "Designated Chemicals".

26 6. Pursuant to California Health & Safety Code § 25249.5 an owner is liable where
27 it threatens to "release chemicals known to the State of California to cause cancer or
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1 reproductive toxicity into water or onto or into land where such chemical passes or probably
2 will pass into any source of drinking water.”

3 7. As owner of the Site Defendant is under a duty to prevent on an ongoing basis
4 the actual and threatened “release” of Designated Chemicals from the Site and “exposures” to
5 Designated Chemicals affecting both onsite and offsite persons.

6 8 The actual and threatened “release” of Designated Chemicals from the site will
7 continue until the Designated Chemicals are effectively contained by the Defendant. Until the
8 chemicals at the Site are effectively contained Defendant will continue to be in violation of
9 California Health & Safety Code § 25249.5, and subject to the remedy set forth in California
10 Health & Safety Code § 25249.7.

11 9 Defendant has also violated California Health & Safety Code § 25249.6 by
12 failing to provide a clear and reasonable warning at and around the Site to warn employees,
13 visitors and local residents that they may be exposed to chemicals known to the State of
14 California to cause cancer and/or reproductive toxicity (referred to collectively hereinafter as
15 the “Designated Chemicals”). Such exposure will occur by contact by any or all of those
16 persons with those chemicals at or near the Facility.

17 10 As to the ongoing violation of California Health & Safety Code § 25249.5,
18 Plaintiff seeks an injunction under California Health & Safety Code § 25249.7 to require
19 Defendant to effectively contain the identified Designated Chemicals at the Facility.

20 11 As to the violation of California Health & Safety Code § 25249.6, Plaintiff seeks
21 the civil penalties available for violation of that section.

22 ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION

23 12 Health & Safety Code § 25249.5 *et seq* (also known as “Proposition 65”)
24 provides that when a party, such as Defendant, has been and is knowingly and intentionally
25 threatening to “release chemicals known to the State of California to cause cancer or
26 reproductive toxicity into water or onto or into land where such chemical passes or probably
27 will pass into any source of drinking water”, that Defendant is in violation of Health & Safety
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1 Code Section 25249.5.

2 13. Proposition 65 also provides that when a party, such as the Defendant, has been
3 and is knowingly and intentionally exposing the public and/or their employees to chemicals
4 designated by the State of California to cause cancer and/or reproductive toxicity (“the
5 Designated Chemicals”) it has violated Health & Safety Code Section 25249.6 unless, prior to
6 such exposure, it provides clear and reasonable warning of that potential exposure to the
7 potentially exposed persons.

8 14. Defendant is violating Health & Safety Code Sections 25249.5 and 25249.6 at
9 the landfill site owned by it and located at 21641 Magnolia Street, Huntington Beach,
10 California 92646 (hereinafter “the Site”).

11 15. As owner of the Site Defendant is under a current duty to prevent the actual and
12 threatened “release” of Designated Chemicals from the site and “exposures” to Designated
13 Chemicals affecting both onsite and offsite persons.

14 16. As owner of the Site Defendant is under a current duty to provide a clear and
15 reasonable warning of those potential exposure to the potentially exposed persons who may be
16 effected both onsite and offsite.

17 17. As owner, Defendant is under a current duty to ensure that the Site is operated in
18 such a manner as to ensure (i) that there are no future releases of any Designated Chemicals at
19 or from the Site and (ii) to inform the public that proximity to the Site will result in exposure to
20 Designated Chemicals. Defendant has not and is not fulfilling either of those duties.

21 18. The Site consists of approximately 38 acres, and is bounded by Hamilton
22 Avenue on the north, Magnolia Street on the east, an oil storage tank area on the south, and the
23 Huntington Beach flood control channel and an industrial area on the west. It is identified by
24 Assessor’s parcel numbers 114-150-75, 114-150-78, 114-150-79, and 114-150-80. The Site is
25 0.25 miles from the Pacific Ocean, and located within a mixed commercial/industrial,
26 recreational and residential area; a community park (Edison Community Park) and a high
27 school (Edison High School) are located directly across the street from the Site.

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1 19. The Site consists of historic disposal areas, comprising former disposal pits,
2 current "lagoons" and former "lagoon" areas. At present, the Site consists of five waste
3 lagoons filled with oily waste material, covering approximately 30% of the Site, and one pit
4 ("Pit F"), containing styrene waste and other waste, located in the southeast corner of the Site.
5 Although the Site is fenced, the California Environmental Protection Agency ("CEPA") and
6 DTSC have noted that there is evidence that trespassers have obtained access to the Site on a
7 number of occasions. There is also at the Site an abandoned oil well which has been poorly
8 maintained and which exploded on March 18, 2004 spraying chemicals, including benzene and
9 methane (a Designated Chemical) over hundreds of homes within a half-mile radius of the Site
10 and causing hundreds of thousands of dollars of property damage and resulting in numerous
11 complaints by local residents of breathing and irritation problems. The full effects of this actual
12 release are not known at this time.

13 20. A Baseline Health Risk Assessment ("BHRA"), which evaluated the potential
14 health impacts associated with human exposure to chemicals released from the waste pits and
15 lagoons at the Site, specifically found that the estimated health risk for adults and children
16 living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels
17 considered acceptable by California regulatory agencies. These potential risks were found to be
18 associated with the volatilization and subsequent inhalation of volatile organic compounds and
19 oral and dermal contact with contaminants in the soil.

20 21. Metals detected at the Site, greater than typical background concentrations,
21 include arsenic, lead, chromium, cadmium, mercury, and thallium. Lead and lead compounds,
22 chromium (hexavalent compounds), arsenic (inorganic arsenic compounds), and cadmium and
23 cadmium compounds are Designated Chemicals known to the State of California to cause
24 cancer. Arsenic (inorganic arsenic compounds), lead, cadmium, mercury and mercury
25 compounds are Designated Chemicals known to the State of California to cause reproductive
26 toxicity. Significant risks from many of these chemicals may occur primarily by direct contact
27 with soils, ingestion, and dermal exposure.
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1 22. Pesticides detected at the Site include lindane and chlordane. Lindane and
2 lindane compounds and chlordane are Designated Chemicals known to the State of California
3 to cause cancer. Significant risks from these chemicals occur primarily by direct contact with
4 soils, ingestion and dermal exposure.

5 23. Semi-volatile organic compounds (“SVOCS”) detected at the Site include
6 benzo(a)pyrene, naphthalene, benzidine, and polychlorinated biphenyl. Benzo(a)pyrene,
7 naphthalene, benzidine (and its salts), and polychlorinated biphenyls are Designated Chemicals
8 known to the State of California to cause cancer. Polychlorinated biphenyls is a Designated
9 Chemical known to the State of California to cause reproductive toxicity. Significant risks
10 from these chemicals occur primarily by direct contact with soils, ingestion and dermal
11 exposure.

12 24. Volatile organic compounds (“VOCS”) detected at the Site include benzene,
13 toluene, styrene, chloroform, and dichloroethane. Benzene, styrene oxide, chloroform, and
14 dichloroethane are Designated Chemicals known to the State of California to cause cancer.
15 Benzene and toluene are Designated Chemicals known to the State of California to cause
16 reproductive toxicity. Significant risks from these chemicals occur primarily by inhalation.

17 25. The route of exposure for the chemicals noted above is as follows: (i) volatile
18 waste components present in the lagoons and Pit F volatilizes from the surface and disperses in
19 the atmosphere causing exposure to people both onsite and offsite via inhalation; (ii)
20 disturbance of the lagoons or Pit F will result in the release of vapors or hazardous particulates
21 into the atmosphere where persons may inhale or ingest such substances; (iii) the lagoons have
22 previously overflowed during heavy rains causing hundreds of gallons of overflow to run down
23 the streets offsite. Rainwater runoff from the Site which has come into contact with
24 contaminated soils on the Site is likely to lead to offsite contamination by direct contact with
25 persons in the area; (iv) the Designated Chemicals in the lagoons and Pit F have migrated and
26 will continue to migrate into the soil and groundwater beneath and adjacent to the Site through
27 the walls of the lagoons and Pit F. Though the Site is fenced, there is evidence that trespassers
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1 are regularly onsite and there is therefore a potential for direct contact with contaminated soils
2 and accumulated contaminated runoff by persons either legally at the Site (such as investigators
3 or site workers) or by trespassers.

4 26. The chemicals that were disposed of at the Site by the Violator have migrated
5 and will continue to migrate into the soil and groundwater beneath and adjacent to the Site until
6 those chemicals are effectively contained in the lagoons and Pit F. Exposure to impacted
7 groundwater will occur if groundwater is pumped for use or if discharged into a surface water
8 body” and that the potential thus exists for “Site contamination to impact drinking water
9 supplies.” This threat will exist until the waste materials at the Site are effectively contained.

10 27. Until effectively contained there exists the potential for future migration of the
11 waste materials from the Site to the wetlands through the unlined Huntington Beach flood
12 control channel that currently passes the westerly edge of the Site and flows through the Talbert
13 Marsh wetland. Defendant is therefore in violation of Health & Safety Code § 15249.5 until it
14 effectively contains the chemicals contained in the lagoons and pits at the Site.

15 28. There have been “releases” at the Site, and there is presently a “threatened
16 release” of the Designated Chemicals, as the term “release” is defined by Health & Safety Code
17 § 25320. Health & Safety Code § 25320 defines “Release as “any spilling, leaking, pumping,
18 pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing
19 into the environment”. Moreover, the DTSC has specifically found that the threatened release
20 of the Designated Chemicals noted herein, as well as other hazardous chemicals stored onsite
21 present an imminent and substantial endangerment to the public health or welfare.

22 29. More than sixty days prior to filing this action Plaintiff mailed to the President
23 and Chief Executive Officer for Defendant a Sixty (60) Day Notice of Intent to Sue (hereinafter,
24 “the Notice”) for violations of Proposition 65, the Safe Drinking Water and Toxic Enforcement
25 Act (commencing with Health & Safety Code Section 25249.5) by (1) knowingly and
26 intentionally threatening to “release chemicals known to the State of California to cause cancer
27 or reproductive toxicity into water or onto or into land where such chemical passes or probably
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1 will pass into any source of drinking water” in violation of Health & Safety Code § 25249.5 at
2 the Site, and (2) knowingly and intentionally exposing the general public around and on the
3 Site, and employees, contractors and visitors to the Site to the Designated Chemicals identified
4 herein and designated by the State of California to cause cancer and reproductive toxicity
5 without first giving clear and reasonable warning of that fact to the exposed persons as required
6 by Health & Safety Code § 24249.6. The Notice specifically identified the chemicals to which
7 each Defendant had exposed the general public around and on the Site, and employees,
8 contractors and visitors to the Site. The Notice identified the locations where the exposures had
9 occurred, the time period wherein such exposure had occurred and continues to occur, and also
10 identified the route of exposure for the chemicals as inhalation, ingestion and dermal contact.
11 Included with the Notice was a copy of “The Safe Drinking Water and Toxic Enforcement Act
12 of 1986 (Proposition 65): A Summary.” The Notice fully complied with the requirements of
13 the Safe Drinking Water and Toxic Enforcement Act of 1986.

14 30. Copies of the Notice referred to in paragraph 29 were mailed to the California
15 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
16 collectively as “the Prosecutors”).

17 31. No response was ever received from any of the Prosecutors. To the best of
18 Plaintiff’s knowledge, none of the Prosecutors is prosecuting an action against any defendant
19 herein for the violations set forth above.

20 32. The Court has jurisdiction over this action pursuant to California Constitution
21 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
22 those given by statute to other trial courts. The statutes under which this action is brought do
23 not specify any other basis of jurisdiction.

24 **FIRST CAUSE OF ACTION**
25 **AGAINST DEFENDANT AND DOES 1-100**

26 **(Violation of California Health & Safety Code Section 25249.5)**

27 33. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
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1 paragraphs 1 through 32 of this Complaint as though fully set forth herein.

2 34. Plaintiff is informed and believes and thereon alleges that Cannery Hamilton
3 Properties LLC and DOES 1-100 have been and are knowingly and intentionally threatening to
4 “release chemicals known to the State of California to cause cancer or reproductive toxicity into
5 water or onto or into land where such chemical passes or probably will pass into any source of
6 drinking water” in violation of Health & Safety Code Section 25249.5 at the site located at
7 21641 Magnolia Street, Huntington Beach, California 92646 (“hereinafter “the Site”).

8 35. More than sixty days prior to filing this action Plaintiff mailed to the President
9 and Chief Executive Officer for Defendant a Sixty (60) Day Notice of Intent to Sue (hereinafter,
10 “the Notice”) for violations of Proposition 65, the Safe Drinking Water and Toxic Enforcement
11 Act (commencing with Health & Safety Code Section 25249.5) by knowingly and intentionally
12 threatening to “release chemicals known to the State of California to cause cancer or
13 reproductive toxicity into water or onto or into land where such chemical passes or probably
14 will pass into any source of drinking water” in violation of Health & Safety Code Section
15 25249.5 at the Site. The Notice specifically identified the Designated Chemicals which each
16 Defendant is and was knowingly and intentionally threatening to release at, around and on the
17 Site. The Notice identified the Site where the violations have and continue to occur, and also
18 identified the route of exposure for the Designated Chemicals as inhalation, ingestion and
19 dermal contact. Included with the Notice was a copy of “The Safe Drinking Water and Toxic
20 Enforcement Act of 1986 (Proposition 65): A Summary.” The Notice fully complied with the
21 requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986. The Notice fully
22 complied with the requirements of the Safe Drinking Water and Toxic Enforcement Act of
23 1986.

24 36. Copies of the Notices referred to in paragraph 35 were mailed to the California
25 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
26 collectively as “the Prosecutors”).

27 37. On information and belief, none of the Prosecutors is prosecuting an action
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1 against any defendant herein for the violations set forth above.

2 38. This action for injunctive relief and penalties for violation of Health & Safety
3 Code Sections 25249.5, et seq. is specifically authorised by Health & Safety Code Section
4 25249.7.

5 **SECOND CAUSE OF ACTION**

6 **AGAINST DEFENDANT AND DOES 1-100**

7 **(Violation of California Health & Safety Code Section 25249.6)**

8 39. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
9 paragraphs 1 through 38 of this Complaint as though fully set forth herein.

10 40. Plaintiff is informed and believes and thereon alleges that Cannery Hamilton
11 Properties LLC and DOES 1-100 have been and are knowingly and intentionally exposing the
12 general public around and on the Site, as well as employees, contractors and visitors to the Site
13 to Designated Chemicals without first giving clear and reasonable warnings of that fact to the
14 exposed persons prior to exposure as required by Health & Safety Code Section 25249.6.

15 41. The route of exposure for the said chemicals has been inhalation, ingestion and
16 dermal contact. Such exposures have occurred and are likely to occur at the Site and around the
17 Site.

18 42. More than sixty days prior to filing this action Plaintiff mailed to the President
19 and Chief Executive Officer for Defendant a Sixty (60) Day Notice of Intent to Sue (hereinafter,
20 "the Notice") for violations of Proposition 65, the Safe Drinking Water and Toxic Enforcement
21 Act (commencing with Health & Safety Code Section 25249.5) by have been and are
22 knowingly and intentionally exposing the general public around and on the Site, and employees,
23 contractors and visitors to the Site to the Designated Chemicals identified herein and designated
24 by the State of California to cause cancer and reproductive toxicity without first giving clear
25 and reasonable warning of that fact to the exposed persons as required by Health & Safety Code
26 Section 24249.6. The Notice specifically identified the Designated Chemicals to which each
27 Defendant had exposed and continues to expose the general public around and on the Site, and
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1 employees, contractors and visitors to the Site. The Notice identified the location where the
2 exposures had occurred, the time period wherein such exposure had occurred, and also
3 identified the route of exposure for the chemicals as inhalation, ingestion and dermal contact.
4 Included with the Notice was a copy of "The Safe Drinking Water and Toxic Enforcement Act
5 of 1986 (Proposition 65): A Summary." The Notice fully complied with the requirements of
6 the Safe Drinking Water and Toxic Enforcement Act of 1986.

7 43. Copies of the Notices referred to in paragraph 42 were mailed to the California
8 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
9 collectively as "the Prosecutors").

10 44. No response was ever received from any of the Prosecutors. None of the
11 Prosecutors is prosecuting an action against any defendant herein for the violations set forth
12 above.

13 45. This action for injunctive relief and penalties for violation of Health & Safety
14 Code Sections 25249.5, et seq. is specifically authorised by Health & Safety Code Section
15 25249.7.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiff requests against each defendant:

18 **ON THE FIRST CAUSE OF ACTION**

- 19 1. A permanent injunction pursuant to California Health & Safety Code Section 25249.7
20 (a), and the equitable powers of the court;
- 21 2. Penalties pursuant to California Health & Safety Code Section 25249.7 (b) in the
22 amount of \$2,500.00 per day per violation against each of the named Defendants;
- 23 3. Cost of suit;
- 24 4. Reasonable attorneys fees and costs; and,
- 25 5. Any further relief that the court may deem just and equitable.

26 **ON THE SECOND CAUSE OF ACTION**

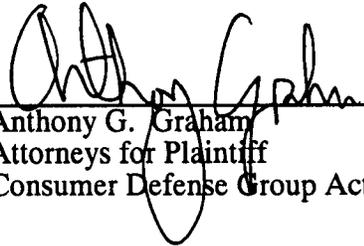
- 27 1. A permanent injunction pursuant to California Health & Safety Code Section 25249.7
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- (a), and the equitable powers of the court;
- 2. Penalties pursuant to California Health & Safety Code Section 25249.7 (b) in the amount of \$2,500.00 per day per violation against each of the named Defendants;
- 3. Cost of suit;
- 4. Reasonable attorneys fees and costs; and,
- 5. Any further relief that the court may deem just and equitable.

Dated : January 10, 2005

GRAHAM & MARTIN, LLP


Anthony G. Graham
Attorneys for Plaintiff
Consumer Defense Group Action