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**LOS ANGELES
SUPERIOR COURT**

J. Scott Kuhn (State Bar No. 190517)
COMMUNITIES FOR A BETTER ENVIRONMENT
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Attorney for Plaintiff
Communities for a Better Environment

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

COMMUNITIES FOR A BETTER
ENVIRONMENT, a California non-profit
corporation,

Plaintiff

vs.

CAMEO CLEANERS, FRED NIK DBA
and DOES I-X,

Defendants.

BC 327818

CASE NO.

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND CIVIL PENALTIES

[Health & Safety Code §§ 25249.6
et seq.]

Plaintiff, Communities for a Better Environment ("CBE") hereby alleges:

I

INTRODUCTION

1. CBE brings this action as a private attorney general on behalf of the People

1 of the State of California and in the public interest pursuant to Health Safety Code section 25249.7
2 (d). Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety
3 Code section 25249.5 et seq) also known as “Proposition 65,” this complaint seeks injunctive and
4 declaratory relief and civil penalties based on Cameo Cleaners’ (“Cameo”) failure to warn residents
5 and workers in and around Los Angeles, California, that they have been and continue to be exposed
6 to perchloroethylene (PCE), a chemical known to the State of California to cause cancer, from the
7 Cameo facility. Under Proposition 65, businesses with ten or more employees must provide
8 persons with a “clear and reasonable warning” prior to exposing them to chemicals listed by the
9 State to cause cancer in excess of the no significant risk level for that chemical.
10
11

12 II

13 PARTIES

14 2. Plaintiff CBE is an environmental health and justice organization and a 501 (c) (3) non-
15 profit California corporation with over 25 years of experience in working to prevent and reduce
16 toxic hazards to human health and the environment. CBE is a membership organization with
17 approximately 20,000 members throughout the state of California, including thousands living,
18 working, breathing, owning property, and recreating in the Los Angeles area. CBE has offices in
19 Oakland and Huntington Park. CBE's organizational goals include protecting and enhancing the
20 environment and public health by reducing air pollution in California's urban areas, including the
21 greater Los Angeles metropolitan area. CBE was awarded the Attorney of the Year Award in
22 2001 for Environmental Law from the State Bar’s California Lawyer Magazine. In 2003, CBE
23 received a Good Environmental Stewardship award from the South Coast Air Quality
24 Management District. CBE lawsuits have resulted in settlements and court orders requiring
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1 companies to spend millions of dollars on the installation of pollution control devices and the
2 elimination of millions of pounds of toxic, cancer-causing, and ozone layer depleting chemicals.

3
4 3. Cameo is a corporation licensed to do business in the State of California. Cameo operates
5 a dry cleaning facility at 3650 Crenshaw Blvd., Los Angeles California 90016.

6 4. Defendants DOES I-X, are named herein under fictitious names, as their true names and
7 capacities are unknown to Plaintiff. CBE is informed and believes, and thereon alleges, that each of
8 said DOES is responsible, in some actionable manner, for the events and happenings hereinafter
9 referred to, either through said Cameo's conduct, or through the conduct of its agents, servants or
10 employees, or in some other manner, causing the harms alleged by Plaintiff in this complaint.
11 When said true names and capacities of DOES are ascertained, CBE will seek leave to amend this
12 complaint to set forth the same.
13

14 III

15 JURISDICTION AND VENUE

16
17 5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10.

18 6. CBE has performed any and all conditions precedent to the filing of a legal action
19 pursuant to Proposition 65 by mailing a Notice of Violation, dated July 20, 2004, to the Attorney
20 General of the State of California, the Los Angeles County District Attorney, Los Angeles City
21 Attorney, and Cameo. A true and correct copy of this Notice is attached herein as Exhibit A.
22 More than 60 days have passed since CBE mailed its Notice and no public enforcement entity
23 has filed a complaint in this case.
24

25 7. This Court is the proper venue for the action because the causes of action have arisen in
26 Los Angeles County. Furthermore, this Court is the proper venue under Code of Civil Procedure
27 section 395 and Health and Safety Code section 25249.7.
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IV

STATUTORY BACKGROUND

A. PROPOSITION 65

8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as "Proposition 65" by an overwhelming majority vote of the people in November of 1986.

9. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

10. Implementing regulations for Proposition 65 provide that warnings are required for environmental exposures. Environmental exposures are those which may foreseeably occur as a result of contact with an environmental medium, including ambient air, "through inhalation, ingestion, skin contact or otherwise." 22 CCR section 12601 (d).

11. Warnings for environmental exposures must be "provided in a conspicuous manner and under such conditions as to make it likely to be read, seen, or heard and understood by an ordinary individual in the course of normal daily activity." 22 CCR section 12601 (d) (2). The warnings must also be "reasonably associated with the location and source of the exposure." *Id.*

12. Proposition 65 establishes a procedure by which the state is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." Cameo had a duty to provide clear and reasonable warning to those persons exposed to PCE at significant risk levels 12-months after the chemical was published on the state list. PCE was listed as a carcinogen by the State of California on April 1, 1988.

13. Proposition 65 may be enforced by any person in the public interest who provides notice

1 sixty days before filing suit to both the violator and designated law enforcement officials. The
2 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
3 pursuant to Health and Safety Code section 25249.7 (c).
4

5 14. Proposition 65 provides for injunctive relief and a civil fine of up to \$2,500 per day for each
6 violation. Health and Safety Code section 25249.7(a) (b). Each individual exposure without
7 warning is a separate violation.

8 V

9 STATEMENT OF FACTS

10
11 15. Cameo conducts dry cleaning operations that include the use of PCE at its Los Angeles
12 facility. During the course of operations, PCE is emitted into the air and surrounding community as
13 a fugitive emission.

14
15 16. PCE has been identified as a hazardous air pollutant pursuant to section 112 of the federal
16 Clean Air Act (42 U.S.C. section 7412(b)) and has been designated as a toxic air contaminant
17 pursuant to Health and Safety Code section 39657. Sufficient exposure to PCE can cause also
18 significant adverse health effects, including central nervous system depression, headache, slurred
19 speech, drowsiness, dizziness, nausea, loss of coordination and equilibrium, irritation to eyes, nose
20 and throat, and cancer.

21
22 17. Cameo reported 3,858 pounds of PCE emissions for the 2002-2003 period to the South Coast
23 Air Quality Management District. Cameo is one of the higher emitters of PCE in the South Coast
24 Air Basin. Furthermore, within the last several years, the Air District has issued several Notices of
25 Violation to Cameo for violating air pollution regulations including violations for vapor leaks,
26 failure to keep records of operation and maintenance functions, failure to document vapor leak, and
27 failure to operate its waste water separator and evaporator so that no PCE is allowed to vaporize.
28

1 18. Despite the availability and feasibility of safer solvents, Cameo has failed to eliminate PCE
2 by substituting a less toxic solvent. Cameo has also failed to install emission control technology at
3 its facility that would obviate the need to provide a warning to the surrounding community.
4

5 19. Cameo's facility is located close to residents and workers from other businesses.
6 The closest residents live approximately 20 meters from the facility; the closest workers are just a
7 few feet from the facility. Nearby residents, Cameo's workers and workers from other businesses
8 have been and continue to be exposed to Cameo's PCE emissions.
9

10 20. The Proposition 65 standard to require a warning in California is 10 excess cancer
11 risks per one-million persons. Air dispersion modeling using the most sophisticated Environmental
12 Protection Agency model ISCST3, demonstrates that numerous residents and workers have been
13 exposed to levels of PCE above the Proposition 65 warning threshold. The study concludes that
14 there are 95 residents and 36 workers exposed at concentrations requiring a warning; 42 residents
15 and 17 workers are exposed at concentrations two times the warning level; 15 residents and 6
16 workers are exposed at concentrations five times the warning level; and 6 residents and 2 workers
17 are exposed at concentrations ten times the warning level. People are exposed to significant risk
18 levels of perchloroethylene at distances as far away as 680 feet northeast of the facility.
19

20 21. Cameo has not provided clear and reasonable warnings to those residents and workers in the
21 surrounding community who are exposed to PCE from its facility as required by Proposition 65.
22

23 22. Cameo has knowingly and intentionally exposed families living nearby and workers at its
24 facility and in the surrounding neighborhood to PCE without providing a clear and reasonable
25 Proposition 65 warning. Cameo has at all times relevant hereto been aware that its operations use a
26 large amount of PCE, that the chemical escapes into the air as a fugitive emission, that safer
27 solvents are feasible and available, and that improved emission control technology exists. Cameo
28

1 has always been aware that a residential community and other workers are situated close by.
2 Cameo has operated its facility with knowledge that exposures to these chemicals have occurred.

3
4 **FIRST CAUSE OF ACTION**

5 **(Violation of section 25249.6 of the Health and Safety Code, Failure to Provide Clear and Reasonable Warning under Proposition 65)**

6
7 23. CBE refers to paragraphs 1-22, inclusive, and incorporates them herein by this reference.

8 24. Cameo operates a business, which employs ten or more persons.

9 25. By committing the acts alleged above, Cameo has, in the course of doing business,
10 knowingly and intentionally exposed individuals to a chemical known to the State of California to
11 cause cancer without first giving clear and reasonable warning to such individuals, within the
12 meaning of Health and Safety Code section 25249.6.

13
14 26. Said violations render Cameo liable for civil fines up to \$2,500 (two thousand, five hundred
15 dollars) per day, for each such violation.

16 27. Cameo's continued violation of the law will irreparably harm CBE and the public
17 interest in whose behalf Plaintiff brings this action, for which there is no adequate remedy at law.

18
19 **SECOND CAUSE OF ACTION**

20 **(Declaratory Relief)**

21 28. CBE refers to paragraphs 1-27, inclusive, and incorporates them herein by this reference.

22 29. There exists an actual controversy relating to the legal rights and duties of the parties, within
23 the meaning of Code of Civil Procedure section 1060, between Plaintiff and Cameo concerning:
24

25 a. whether Cameo has exposed individuals to a chemical known to the State of California to
26 cause cancer without providing clear and reasonable warning; and
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VI

JURY DEMAND

30. CBE demands a jury trial.

VII

PRAYER

WHEREFORE, CBE prays for relief against Cameo as follows:

1. On the First Cause of Action, for civil penalties for each and every violation according to proof;

2. On the First Cause of Action, and pursuant to Health and Safety Code section 25249.7 (a), for such temporary restraining orders, preliminary and permanent injunctive orders, or other orders, prohibiting Cameo from exposing persons to PCE without providing clear and reasonable warnings;

3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring:

a. that Cameo has exposed individuals to a chemical known to the State of California to cause cancer without providing clear and reasonable warning; and

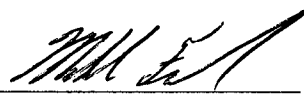
4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure or the substantial benefit theory;

5. For costs of suit herein; and

6. For such other relief as the Court may deem just and proper.

Dated: December 6, 2004

By



Michael Freund
Attorney for Communities for a Better Environment