

1 Encanto Gas Holder Victims (Plaintiff without attorney)
7042 Akins Avenue
2 San Diego, California 92114
(619) 262-8549
3 (Plaintiffs without attorneys on page 16)
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FILED
CIVIL BUSINESS OFFICE 5
CENTRAL DIVISION

2008 AUG -5 P 3:08

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

8 Encanto Gas Holder Victims, John C. Gonzales,
April Flake, Juanita O. Gonzales,
9 Juanita M. Anderson AKA Juanita M. Maes,
Rosa M. Rivera, Raymond V. Gonzales,
10 Nancy E. Rivera, Leslie Flake,
Juan De Dios Alvarado, Jose J. Rivera,
11 Evangelina Ramirez, Edgar J. Rivera,
Brandon J. Lepkowski, Ana M. Gutiérrez,
12 Maria Cristina De La Cruz, Regina Peterson,
Fred A. Gonzales, and Judith A. Bynnom,

13 Plaintiffs

14 v.

15 San Diego Gas and Electric,
16 Sempra Energy, and
Carter Reese and Associates,
17

18 Defendants

Case No. 37-2008-00085159-CU-BT-CTL

**AMENDED VERIFIED COMPLAINT
FOR DECLARATORY RELIEF AND
FOR CIVIL PENALTIES**

(Failure to Warn)
(Unfair Competition)
[Health & Safety Code, §25249.7]
[Bus. & Prof. Code, §17200]

Judge: Yuri Hofmann
Dept: C-60

19 Plaintiffs allege:

20 **PARTIES**

- 21 1. Plaintiff **ENCANTO GAS HOLDER VICTIMS** is an un-incorporated association of
22 California residents living, working, or otherwise entering the 1000-foot zone surrounding the
23 old Encanto Gas Holder site (Site) as further described herein on or after the decommissioning

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of the Site that commenced on or about September 25, 2000, as well as those California residents living, working, or otherwise entering into the Encanto Branch watershed of Chollas Creek on or after the start of the Winter rainy season of 2001.

2. Plaintiffs JOHN C. GONZALES (Attorney General Number 2007-00163 and 2008-00135), APRIL FLAKE (2007-00225), JUANITA O. GONZALES (2008-0071), JUANITA M. ANDERSON AKA JUANITA M. MAES (2008-00101), ROSA M. RIVERA (2008-00129), RAYMOND V. GONZALES (2008-00130), NANCY E. RIVERA (2008-00131), LESLIE FLAKE (2008-00132), JUAN DE DIOS ALVARADO (2008-00133), JOSE J. RIVERA (2008-00134), EVANGELINA RAMIREZ (2008-00136), EDGAR J. RIVERA (2008-00137), BRANDON J. LEPKOWSKI (2008-00138), ANA M. GUTIÉRREZ (2008-00139), MARIA CRISTINA DE LA CRUZ (2008-00140), REGINA PETERSON (2008-00141), FRED A. GONZALES (2008-00142), and JUDITH A. BYNNOM (2008-00143) are each an individual member of the ENCANTO GAS HOLDER VICTIMS who is now, and at all times mentioned in this complaint was, a resident of the County of San Diego in the State of California.

3. Defendant SAN DIEGO GAS AND ELECTRIC (SDG&E) is public utility that owned and operated the Site as regulated by the California Public Utilities Commission (CPUC), in Defendant's energy utility service areas within the County of San Diego. SDG&E has ten or more employees.

4. Defendant SEMPRA ENERGY is the California corporation that is the parent holding company of Defendant SDG&E and has corporate offices located in the County of San Diego with ten or more employees.

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5. Defendant CARTER REESE AND ASSOCIATES (CARTER REESE) is a real estate developer that has purchased the Site with the intent to construct residential housing as permitted by the City of Lemon Grove under the plans for the Citrus Heights Development, and has its business office located in the County of San Diego with ten or more employees, agents, and subcontractors.

JURISDICTION

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

7. The Court has jurisdiction over defendants SDG&E, SEMBRA ENERGY, and CARTER REESE because Defendants both engage in commerce, either directly or indirectly through an owned public utility Defendant, in the County of San Diego and have business offices located in the County of San Diego.

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BACKGROUND FACTS

8. Defendant SDG&E operated the nearly 16 acre Site, at or about 1350 San Altos Place in the City of Lemon Grove, County of San Diego, as a CPUC-regulated gas holding facility from about 1951 until laws regarding secondary containment of underground-stored hazardous materials were enacted in the State of California. In 1998, defendant SDG&E began the process of assessing the Site for decommissioning and discovered the presence of asbestos in the tar-matrix pipe wrap coating the over 9 miles of the underground gas holder bottle used at the Site; a second opinion by an independent contractor also revealed the presence of asbestos in the pipe wrap.

9. In 1999, Defendant CARTER REESE agreed to purchase the Site from Defendant SDG&E after the gas holder facility at the Site was decommissioned. Initial decommissioning work at the Site was begun by Defendant SDG&E and/or its contractors during the month of August 2000.

10. On or about September 1, 2000, an initial courtesy notification by Defendant SDG&E and/or its contractors was sent to the County of San Diego Air Pollution Control District (APCD) regarding the nature of work to be done at the Site. In the courtesy notice, the nature of the work to be done was not described as a “demolition” but as a “renovation”, despite the anticipated sale of the Site as a residential housing development to be first cleared of the Site's then-existing gas holder facility assets. Relying on the provided courtesy notice information, APCD performed no pre-decommissioning inspections of the Site.

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11. On or about September 25, 2000, Defendant SEMPRA ENERGY caused letters to be delivered by the United States Postal Service, informing Lemon Grove and San Diego residents living within 1000 feet of the Site's perimeter fencing that Defendant SEMPRA ENERGY was the decommissioning agent for the Site. Residents were further informed in this letter: "Sempra Energy and SDG&E wants to assure you that this project is being done with all necessary permits, and is no threat to the health and safety of the neighborhood. Various agencies including ... the County of San Diego Air Pollution Control District have inspected the operation and have determined that all appropriate measures are being taken." The total number of individual letters sent to residents is unknown at the time of filing, but there were and are approximately 200 homes within the 1000-foot zone cited by Defendant SEMPRA ENERGY for "alerting them [property owners and/or residents] of the upcoming project."

12. During the decommissioning work conducted by Defendant SDG&E and/or its contractors, numerous complaints by residents in the 1000-foot zone to APCD resulted in multiple inspections with Notices of Violation issued to Defendant SDG&E, and Defendant's contractors IT Corporation and Tristate, citing various failures both to contain and keep wet the asbestos-containing material and to include "regulated asbestos containing material" (RACM) on manifests.

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13. Beginning in the Winter of 2001, moderate to heavy rain cause quantities of Site storm runoff material to enter the Encanto Branch of Chollas Creek, a federally-protected intermittent body of water with a state-designated use as a drinking water source adjacent to the southeast edge of the Site and parallel to the San Diego Trolley Orange Line. Defendants SDG&E and SEMPRA ENERGY were cited for storm runoff discharges into Chollas Creek by the Regional Water Quality Control District in 2001, and downstream residents have noted the annual quantities of storm runoff residue deposited after moderate to heavy rains since that time, becoming substantially less after 2003.

14. On or about December 17, 2001, the City of Lemon Grove advised residents in Lemon Grove and San Diego that Defendant SDG&E was "mandated" by the Water Quality Control District to prevent subsequent storm runoff material containing "asbestos fibers" from entering the Encanto Branch of Chollas Creek by taking steps to prevent any excessive disturbance of the ground. After rains in 2001 and thereafter, storm runoff material from the Site was visible in the Encanto Branch of Chollas Creek, and despite initial compliance by defendant SDG&E with the mandated measures, significant quantities of storm runoff material continue to enter Chollas Creek as a source of environmental exposure in the downstream Encanto Branch watershed over seven years after the Site demolition.

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15. In October 2006, Defendant CARTER REESE obtained approval for a City of Lemon Grove zoning change for the Site from institutional to residential as the Citrus Heights Development with approximately 77 proposed housing units. At the City Council hearing for the zoning change, developer partner Reese A. Jarrett claimed to have sufficient knowledge of the environmental factors at the site to negotiate directly with state agencies regarding the state's environmental concerns, without Lemon Grove's intervention. In March 2007, Defendant CARTER REESE employees, agents, and/or subcontractors entered the Site and disturbed the ground, with a dramatic increase in storm runoff discharges from the Site after any subsequent moderate to heavy rains in 2007 and 2008.

16. On February 27, 1987, asbestos (CAS # 1332-21-4) was officially listed by the State of California as known to cause cancer. As of February 27, 1988, therefore, Defendants SDG&E, SEMPRA ENERGY, and CARTER REESE were prohibited by Health and Safety Code section 25249.6 from knowingly and intentionally exposing any individual to the asbestos in and emitting from the Site without first giving clear and reasonable warning to that individual.

17. As of August 4, 2008, airborne asbestos-containing dust and storm runoff material is still being emitted from the Site without any warnings. As of August 4, 2008, airborne asbestos-containing dust is still being emitted from the remaining storm runoff deposits in the Encanto Branch of Chollas Creek without any warnings, where those deposits originated from material emitted from the Site as described above.

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18. As a proximate result of acts and/or omissions by Defendants SDG&E, SEMPRRA ENERGY, and/or CARTER REESE as persons doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11, individuals throughout the State of California who have performed work at the Site, or have passed within the 1000-foot environmental exposure zone surrounding the Site, or have ridden on the San Diego Trolley Orange Line between the Massachusetts Street Station and the 62nd Street Station in both directions, or have been in the downstream Encanto Branch watershed of Chollas Creek since the Winter 2001 rainy season, have been exposed to the cancer-causing chemical in the Defendants' released waste material without the required warning, either as an occupational exposure hazard to employees, inspectors and other individuals on the Site or as an environmental exposure hazard to individuals.

19. Plaintiffs are informed and believe, and based on such information and belief allege, that Defendants SDG&E, SEMPRRA ENERGY, and CARTER REESE knew at all times relevant to this action that the waste byproduct of the mechanical processes used for pipe stripping would produce friable asbestos in large quantities. Plaintiffs are informed and believe, and based on such information and belief allege, that these Defendants knew at all times relevant to this action that individuals would be exposed to asbestos, and exposures in many cases could greatly exceed the levels at which warning was, and is, legally required by Health and Safety Code section 25249.6.

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20. On April 6, 2001, an initial 60-Day Notice of Violations (Notice File #2410, 2001-00515) was served on Defendant SDG&E by Plaintiff JOHN C. GONZALES regarding occupational and environmental exposures dating back to September 25, 2000, that were in violation of Health and Safety Code sections 25249.5 and 25249.6. Responses to service by both the Attorney General and the District Attorney for the County of San Diego were relied upon by this Plaintiff for taking no private enforcement action at that time.

21. Subsequent to the testimony made public on or after June 5, 2007, during the federal environmental crimes trial United States v. San Diego Gas and Electric (2007), including facts that were unknowable and not discoverable in 2001 due to on-going acts and/or omissions by Defendants as alleged in that federal matter, all Plaintiffs to this action served 60-Day Notices of Violation on Defendants SDG&E, SEMBRA ENERGY, and CARTER REESE between July 3, 2007 and April 4, 2008, with copies served on the Attorney General, the County of San Diego District Attorney, and the City Attorneys of Lemon Grove and San Diego, pursuant to the post-2003 requirements for certificates of merit pursuant to Health & Safety Code section 25249.7, subdivision (d) and other relevant authorities.

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22. Plaintiffs are informed and believe, and based on such information and belief allege, that members of the un-incorporated association, plaintiff ENCANTO GAS HOLDER VICTIMS, are identified as witnesses and/or victims providing information, in the above entitled federal environmental crimes trial United States v. San Diego Gas and Electric and pursuant to the Crimes Victims Rights Act, with the rights, among others, to be free from retaliation by defendants in a federal criminal action, and to full and timely restitution as provided in law, 18 United States Code section 3771, whereas Defendants' acts and/or omissions have the effect of retaliation against Plaintiffs and other members of the ENCANTO GAS HOLDER VICTIMS as witnesses and/or victims both of federal crimes as alleged in United States v. San Diego Gas and Electric above and of unfair competition under California law.

23. Plaintiffs are informed and believe that no public prosecutor has initiated an action regarding violations of Health & Safety Code section 25249.6 in any 60-day period subsequent to the service of such Notices of Violation as described in paragraph 21.

24. Recent tests conducted by independent laboratories, performed on samples taken by APCD of the waste materials resulting from mechanical processes used in the Site pipe stripping, show that the asbestos content of those waste materials was at levels far in excess of levels determined by the State of California for an exemption from the warning requirement.

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FIRST CAUSE OF ACTION

(Failure to Warn, by all Plaintiffs against all Defendants)

25. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 24, as though fully set forth.

26. Health and Safety Code section 25249.6 requires that persons who in the course of doing business knowingly and intentionally expose any individual to a chemical known to the State of California to cause cancer must provide clear and reasonable warning prior to such exposure.

27. Plaintiffs allege that on each day beginning on or about September 25, 2000, and continuing to the present, Defendants engaged in conduct that violated Health & Safety Code sections 25249.6 et seq. This conduct includes the manufacture at the Site of friable asbestos waste byproducts and the subsequent release of same into both the 1000-foot exposure zone and the downstream portions of the Encanto Branch watershed, without a clear and reasonable warning within the meaning of Health & Safety Code section 25249.6. Defendants thereby, in the course of doing business, did knowingly and intentionally expose individuals to a chemical known to the State of California to cause cancer without first giving clear and reasonable warning of Health & Safety Code section 25249.6.

28. At all times relevant to this action, Defendants knew by their own surveys, or were informed by government inspectors, that the pipe stripping waste byproducts would expose individuals to asbestos by inhalation, dermal contact, ingestion or other means of exposure.

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29. Defendants failed and refused to give prior clear and reasonable warning to individuals exposed to a cancer-causing toxin in their ordinary enjoyment of their homes and property, or in their occupational exposures at the Site, or in their ordinary passage through surrounding or nearby areas of environmental exposure.

30. Individuals exposed to the cancer-causing toxin in the pipe-stripping waste byproduct have suffered and continue to suffer irreparable harm due to their being exposed to asbestos without prior clear and reasonable warning.

31. There exists an actual controversy relating to the legal rights and duties of the parties, within the meaning of Code of Civil Procedure section 1060, between the Plaintiffs and Defendants concerning the applicability of Health & Safety Code sections 25249.6 et seq. to Defendants' acts and/or omissions and the ability of Plaintiffs to enforce in the public interest the Safe Drinking Water and Toxic Enforcement Act (Proposition 65, as amended by the Legislature) upon Defendants' acts and/or omissions that took place prior to June 4, 2007, where knowledge of such acts and/or omissions was withheld from the public by Defendants and was not discoverable in an ordinary reasonable manner nor revealed until testimony was given in *United States v. San Diego Gas and Electric*.

32. Plaintiffs desire a judicial determination of the rights of the citizens of California and a declaration as to Defendants' violation of Health & Safety Code sections 25249.6 et seq. by having knowingly and intentionally exposed individuals to a chemical known to the State of California to cause cancer without first giving clear and reasonable warning to those individuals having been so exposed.

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33. A judicial declaration is necessary and appropriate at this time under the circumstances in order that the citizens of the State of California be properly informed as to the toxic hazards of Defendants' pipe-stripping waste byproducts and release thereof.

Wherefore, Plaintiffs request judgment against Defendants as set forth below.

SECOND CAUSE OF ACTION

(Unfair Competition, by all Plaintiffs against all Defendants)

34. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 33, as though fully set forth.

35. Persons who in the course of doing business do not comply with the requirements under Health & Safety Code sections 25249.6 et seq. do violate those statutes and thereby engage in an unlawful business practice constituting unfair competition in violation of Business & Professions Code sections 17200 et seq.

36. Plaintiffs as individual natural persons have suffered a presumptive monetary damage pursuant to 18 United States Code section 3771 (a) (6) as victims of federal environmental crimes.

37. There exists an actual controversy relating to the legal rights and duties of the parties, within the meaning of the Code of Civil Procedure section 1060, between Plaintiffs and Defendants concerning whether Defendants engaged in an unlawful business practice constituting unfair competition in violation of Business & Professions Code section 17200 et seq. by having knowingly and intentionally exposed individuals to a chemical known to the State of California to cause cancer without first giving clear and reasonable warning in violation of Health & Safety Code section 25249.6.

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38. Plaintiffs desire a judicial determination of the rights of the citizens of California and a declaration as to the Defendants' violation of Business & Professions Code section 17200 by failing to provide clear and reasonable warnings to those individual victims of occupational and/or environmental exposures as previously alleged.

39. A judicial declaration is necessary and appropriate at this time under the circumstances as the continued releases and subsequent exposure will cause irreparable harm to Plaintiffs and the citizens of California, for which harm they have no plain, speedy, or adequate remedy at law.

WHEREFORE, Plaintiffs request judgment against Defendants as follows:

1. That the Court impose penalties pursuant to Health and Safety Code section 25249.7 subdivision (d) on Defendants, upon entering a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring that Defendants have knowingly and intentionally exposed individuals to a chemical known to the State of California to cause cancer without clear and reasonable warning as required by Health & Safety Code sections 25249.5 et seq.;
2. That the Court enter a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring that Defendants are engaged in an unlawful business practice constituting unfair competition in violation of Business and Professions Code sections 17200 et seq. by having knowingly and intentionally exposed individuals to a chemical known to the State of California to cause cancer without clear and reasonable warning as required by Health & Safety Code sections 25249.5 et seq.;

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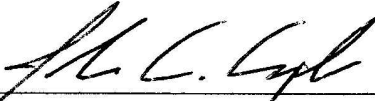
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1 3. That the Court grant Plaintiffs their reasonable attorneys' fees and costs of suit; and

2 4. That the Court grant such other and further relief as may be just and proper.


3
4 Respectfully submitted this day, August 5, 2008.

5 

6 John C. Gonzales
7 (Plaintiff without attorney)

8 VERIFICATION

9 I, Juanita O. Gonzales, a citizen of the United States and a resident of the County of San Diego in the
10 State of California, am a founding member of the Encanto Gas Holder Victims. I have read the foregoing
11 Amended Verified Complaint for Declaratory Relief and declare under penalty of perjury under the State
12 of California that facts stated in this Amended Verified Complaint are true and correct to the best of my
13 knowledge and belief.
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17 Juanita O. Gonzales
18 (Plaintiff without attorney)

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26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers):

27 This page may be used with any Judicial Council form or any other paper filed with the court.

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John C. Gonzales (plaintiff without attorney)

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April Flake (plaintiff without attorney)

919 69th Street

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619-269-1051

Juanita O. Gonzales (plaintiff without attorney)

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Juanita M. Anderson AKA Juanita M. Maes (plaintiff without attorney)

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Rosa M. Rivera (plaintiff without attorney)

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Raymond V. Gonzales (plaintiff without attorney)

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Nancy E. Rivera (plaintiff without attorney)

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(Additional plaintiffs on following final pages)

(Required for verified pleading) The items on this page stated on information and belief are *(specify item numbers, not line numbers)*:

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Jose J. Rivera (plaintiff without attorney)

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Edgar J. Rivera (plaintiff without attorney)

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Brandon J. Lepkowski (plaintiff without attorney)

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Ana M. Gutiérrez (plaintiff without attorney)

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Maria Cristina De La Cruz (plaintiff without attorney)

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Chula Vista, California 91913
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(Additional plaintiffs on following final page)

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Regina Peterson (plaintiff without attorney)

8849 Bridle Run

Alpine, California 91901

619-659-8787

Fred A. Gonzales (plaintiff without attorney)

2180 Berryland Court

Lemon Grove, California 91945

619-461-2764

Judith A. Bynnom (plaintiff without attorney)

989 Hagmann Court

San Diego, California 92114

619-825-6480

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