

SEP 17 2008

ALAN CARLSON, Clerk of the Court

BY: _____, DEPUTY

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8 CONSUMER DEFENSE GROUP
9 ACTION

JUDGE JAMOA MOBERLY
SEPT 07

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

30-2008

10 CONSUMER DEFENSE GROUP
11 ACTION

CASE NO. 00112083

VERIFIED COMPLAINT FOR:

12 Plaintiff,

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

13 vs.

14 EXXON MOBIL CORPORATION;
15 TEXACO, INC.; SHELL OIL COMPANY;
16 THE DOW CHEMICAL COMPANY; BP
17 AMERICA, INC.; ATLANTIC RICHFIELD
18 COMPANY; SOUTHERN CALIFORNIA
19 EDISON AND DOES 1-100

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

20 Defendants.

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

21 As and for its causes of action against defendants EXXON MOBIL CORPORATION;
22 TEXACO, INC.; SHELL OIL COMPANY; THE DOW CHEMICAL COMPANY; BP
23 AMERICA, INC.; ATLANTIC RICHFIELD COMPANY; SOUTHERN CALIFORNIA
24 EDISON AND DOES 1-100, plaintiff CONSUMER DEFENSE GROUP ACTION alleges as
25 follows:

26 **PARTIES**

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

4 2. Defendants EXXON MOBIL CORPORATION; TEXACO, INC.; SHELL OIL
5 COMPANY; THE DOW CHEMICAL COMPANY; BP AMERICA, INC.; ATLANTIC
6 RICHFIELD COMPANY; SOUTHERN CALIFORNIA EDISON AND DOES 1-100 are and at
7 all times mentioned herein have been qualified to do business in the State of California.

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

18 4. At all times mentioned defendants were each a person within the meaning of
19 Business & Professions Code § 17201 and a person doing business within the meaning of
20 Health & Safety Code § 25249.11 (a). Plaintiff is informed and believes and thereon alleges
21 that at all times mentioned herein, defendants have 10 or more employees.

22 SUMMARY OF ALLEGATIONS

23 5. Defendants have violated California Safe Drinking Water and Toxic
24 Enforcement Act of 1986 ("Proposition 65") by "releasing chemicals known to the State of
25 California to cause cancer or reproductive toxicity into water or onto or into land where such
26 chemical passes or probably will pass into any source of drinking water", threatening to
27 "release chemicals known to the State of California to cause cancer or reproductive toxicity into
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1 water or onto or into land where such chemical passes or probably will pass into any source of
2 drinking water”, and by failing to warn their employees and local residents of their potential
3 exposure to chemicals known to the State of California to cause cancer or reproductive toxicity.
4 These violations occurred at the landfill site located at 21641 Magnolia Street, Huntington
5 Beach, California 92646 (hereinafter, “the Site”), a property controlled and operated by
6 Defendants, in violation of California Health & Safety Code § 25249.5 and § 25249.7.

7 6. Pursuant to California Health & Safety Code § 25249.5 a person is liable where
8 he, she or it releases or threatens to “release chemicals known to the State of California to cause
9 cancer or reproductive toxicity into water or onto or into land where such chemical passes or
10 probably will pass into any source of drinking water.” Chemicals known to the State of
11 California to cause cancer and/or reproductive toxicity shall hereinafter be referred to
12 collectively as the “Designated Chemicals.”

13 7. As a party legally responsible for the current condition of the Site, each named
14 Defendant is under a duty to prevent on an ongoing basis the actual and threatened “release” of
15 Designated Chemicals from the Site and “exposures” to Designated Chemicals affecting both
16 onsite and offsite persons.

17 8. The actual and threatened “release” of Designated Chemicals from the Site have
18 occurred and will continue until the Designated Chemicals are effectively contained by the
19 Defendants. Until the chemicals at the Site are effectively contained Defendants will continue
20 to be in violation of California Health & Safety Code § 25249.5, and subject to the remedy set
21 forth in California Health & Safety Code § 25249.7.

22 9. Defendants have also violated California Health & Safety Code § 25249.6 by
23 failing to provide a clear and reasonable warning at and around the Site to warn employees,
24 visitors and local residents that they may be exposed to Designated Chemicals. Such exposure
25 will occur by contact by any or all of those persons with those chemicals at or near the Facility.

26 10. As to the ongoing violations of California Health & Safety Code § 25249.5,
27 Plaintiff seeks an injunction under California Health & Safety Code § 25249.7 to require
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1 Defendants to effectively contain the identified Designated Chemicals at the Site.

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

4 ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION

5 12. Health & Safety Code § 25249.5 *et seq* (also known as "Proposition 65")
6 provides that when a party, such as each of the Defendants, has been and is knowingly and
7 intentionally threatening to "release chemicals known to the State of California to cause cancer
8 or reproductive toxicity into water or onto or into land where such chemical passes or probably
9 will pass into any source of drinking water", that Defendant is in violation of Health & Safety
10 Code Section 25249.5. The sources of drinking water into which the discharges and releases
11 have occurred, continue to occur, and are likely to occur, are the groundwaters located beneath
12 and immediately surrounding the Site.

13 13. Proposition 65 also provides that when a party, such as each of the Defendants,
14 has been and is knowingly and intentionally exposing the public and/or their employees to
15 chemicals designated by the State of California to cause cancer and/or reproductive toxicity
16 ("the Designated Chemicals") it has violated Health & Safety Code Section 25249.6 unless,
17 prior to such exposure, it provides clear and reasonable warning of that potential exposure to
18 the potentially exposed persons.

19 14. Defendants are violating Health & Safety Code Sections 25249.5 and 25249.6 at
20 the landfill site owned by it and located at 21641 Magnolia Street, Huntington Beach,
21 California 92646 (hereinafter "the Site").

22 15. As one of the operating entities at the Site which is legally responsible for its
23 current condition, each of the Defendants is under a current duty to prevent the actual and
24 threatened "release" of Designated Chemicals from the site and "exposures" to Designated
25 Chemicals affecting both onsite and offsite persons.

26 16. Each of the Defendants is under a current duty to provide a clear and reasonable
27 warning of those potential exposure to the potentially exposed persons who may be effected
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1 both onsite and offsite.

2 17. Because each of the Defendants is legally responsible for the current condition
3 of the Site and is an operator of the Site, each Defendant is under a current duty to ensure that
4 the Site is operated in such a manner as to ensure (i) that there are no releases of any Designated
5 Chemicals at or from the Site and (ii) to inform the public that proximity to the Site will result
6 in exposure to Designated Chemicals. Defendants have not and are not fulfilling either of
7 those duties.

8 18. The Site consists of approximately 38 acres, and is bounded by Hamilton
9 Avenue on the north, Magnolia Street on the east, an oil storage tank area on the south, and the
10 Huntington Beach flood control channel and an industrial area on the west. It is identified by
11 Assessor's parcel numbers 114-150-75, 114-150-78, 114-150-79, and 114-150-80. The sources
12 of drinking water into which the discharges and releases have occurred, continue to occur, and
13 are likely to occur are the groundwaters located beneath and immediately surrounding the Site.
14 The Site is 0.25 miles from the Pacific Ocean, and located within a mixed commercial and
15 industrial, recreational and residential area; a community park (Edison Community Park) and a
16 high school (Edison High School) are located directly across the street from the Site.

17 19. The Site consists of historic disposal areas, comprising former disposal pits,
18 current "lagoons" and former "lagoon" areas. At present, the Site consists of five waste
19 lagoons filled with oily waste material, covering approximately 30% of the Site, and one pit
20 ("Pit F"), containing styrene waste and other toxic waste, located in the southeast corner of the
21 Site. Although the Site is fenced, the California Environmental Protection Agency ("CEPA")
22 and DTSC have noted that there is evidence that trespassers have obtained access to the Site on
23 a number of occasions.

24 20. Defendants unlawfully dumped toxic chemicals, including Designated
25 Chemicals, at the Site in the Pits and Lagoon over the course of many years. Plaintiff has
26 provided copies of the sworn declarations by employees of Defendants wherein they admit that
27 they unlawfully dumped toxic waste at the Site over the course of many years, without permit
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1 or license. They offer did performed unlawful dumping at night so as to avoid detection.

2 21. Defendants knew that there were and still are at the Site a number of abandoned
3 oil wells.

4 22. Defendants knew that abandoned oil wells must be properly maintained to
5 ensure that gases do not build up which can result in an explosion.

6 23. Despite the fact that Defendants knew that there were and are at the Site a
7 number of abandoned oil wells, and despite knowing that abandoned oil wells must be properly
8 maintained to ensure that gases do not build up which can result in an explosion, Defendants
9 intentionally refused and failed to adequately maintain the abandoned oil wells at the Site.

10 24. On March 18, 2004 one of the abandoned oil wells which the Defendants
11 intentionally failed to supervise or properly maintain exploded resulting in an explosive
12 discharge and release from a confined space into and onto the land contained both on the Site
13 and off the Site. The explosion sprayed chemicals, including benzene and methane (which are
14 Designated Chemicals) over hundreds of homes within a half-mile radius of the Site and caused
15 hundreds of thousands of dollars in property damage and resulted in numerous complaints by
16 local residents of breathing and irritation problems. The sources of drinking water into which
17 the discharges and releases have occurred, continue to occur, and are likely to occur are the
18 groundwaters located beneath and immediately surrounding the Site. Persons in the local area
19 were therefore actually exposed to Designated Chemicals as a direct result of an actual
20 discharge and release of Designated Chemicals from the Site.

21 25. Despite these facts, Defendants still refuse and fail to adequately and properly
22 maintain the abandoned oil wells to ensure that one of them does not again explode and result
23 in further discharges and releases into or onto land on- and off-Site.

24 26. Similarly Defendants have been repeatedly warned that their failure to maintain
25 the berms surrounding the Pits and lagoons could result in a discharge or release of the toxic
26 substances, including Designated Chemicals, contained therein during heavy rainfall.
27 Defendants were warned both by earlier Notices and pleadings by Plaintiff and by the DTSC.

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1 Defendants intentionally chose to ignore those warnings and the berms themselves have been
2 breached on a number of occasions during the last four years during heavy rains resulting in
3 discharges and releases of the Designated Chemicals "into water or onto or into land where
4 such chemical passes or probably will pass into any source of drinking water." The sources of
5 drinking water into which the discharges and releases have occurred, continue to occur, and are
6 likely to occur are the groundwaters located beneath and immediately surrounding the Site.
7 Persons in the local area were therefore actually exposed to Designated Chemicals as a direct
8 result of an actual discharge and release of Designated Chemicals from the Site.

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

16 28. Metals detected at the Site, greater than typical background concentrations,
17 include arsenic, lead, chromium, cadmium, mercury, and thallium. Lead and lead compounds,
18 chromium (hexavalent compounds), arsenic (inorganic arsenic compounds), and cadmium and
19 cadmium compounds are Designated Chemicals known to the State of California to cause
20 cancer. Arsenic (inorganic arsenic compounds), lead, cadmium, mercury and mercury
21 compounds are Designated Chemicals known to the State of California to cause reproductive
22 toxicity. Significant risks from many of these chemicals may occur primarily by direct contact
23 with soils, ingestion, and dermal exposure.

24 29. Pesticides detected at the Site include lindane and chlordane. Lindane and
25 lindane compounds and chlordane are Designated Chemicals known to the State of California
26 to cause cancer. Significant risks from these chemicals occur primarily by direct contact with
27 soils, ingestion and dermal exposure.
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1 30. Semi-volatile organic compounds ("SVOCS") detected at the Site include
2 benzo(a)pyrene, naphthalene, benzidine, and polychlorinated biphenyl. Benzo(a)pyrene,
3 naphthalene, benzidine (and its salts), and polychlorinated biphenyls are Designated Chemicals
4 known to the State of California to cause cancer. Polychlorinated biphenyls is a Designated
5 Chemical known to the State of California to cause reproductive toxicity. Significant risks
6 from these chemicals occur primarily by direct contact with soils, ingestion and dermal
7 exposure.

8 31. Volatile organic compounds ("VOCS") detected at the Site include benzene,
9 toluene, styrene, chloroform, and dichloroethane. Benzene, styrene oxide, chloroform, and
10 dichloroethane are Designated Chemicals known to the State of California to cause cancer.
11 Benzene and toluene are Designated Chemicals known to the State of California to cause
12 reproductive toxicity. Significant risks from these chemicals occur primarily by inhalation.

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

27 33. The chemicals that were disposed of at the Site by the Violator have discharged
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1 and will continue to discharge from the containment Pits and lagoons into the soil and
2 groundwater beneath and adjacent to the Site until those chemicals are effectively contained in
3 those Pits and lagoon. Exposure to impacted groundwater will occur if groundwater is pumped
4 for use or if discharged into a surface water body” and that the potential thus exists for “Site
5 contamination to impact drinking water supplies.” This threat will exist until the waste
6 materials at the Site are effectively contained.

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

13 35. There have been “releases” at the Site, and there is presently a “threatened
14 release” of the Designated Chemicals, as the term “release” is defined by Health & Safety Code
15 § 25320. Health & Safety Code § 25320 defines “Release as “any spilling, leaking, pumping,
16 pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing
17 into the environment”.

18 36. The DTSC has specifically found that the threatened release of the Designated
19 Chemicals noted herein, as well as other hazardous chemicals stored onsite, present an
20 imminent and substantial endangerment to the public health or welfare.

21 37. More than sixty days prior to filing this action Plaintiff mailed to the President
22 and Chief Executive Officer for each Defendant a Sixty (60) Day Notice of Intent to Sue
23 (hereinafter, “the Notice”) for violations of Proposition 65, the Safe Drinking Water and Toxic
24 Enforcement Act (commencing with Health & Safety Code Section 25249.5) by (1) knowingly
25 and intentionally “releas(ing) 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” in violation of Health & Safety Code § 25249.5 at
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1 the Site; (2) knowingly and intentionally threatening to “release chemicals known to the State
2 of California to cause cancer or reproductive toxicity into water or onto or into land where such
3 chemical passes or probably will pass into any source of drinking water” in violation of Health
4 & Safety Code § 25249.5 at the Site, and (3) knowingly and intentionally exposing the general
5 public around and on the Site, and employees, contractors and visitors to the Site to the
6 Designated Chemicals identified herein and designated by the State of California to cause
7 cancer and reproductive toxicity without first giving clear and reasonable warning of that fact to
8 the exposed persons as required by Health & Safety Code § 24249.6. The Notice specifically
9 identified the chemicals to which each Defendant had exposed the general public around and on
10 the Site, and employees, contractors and visitors to the Site. The Notice identified the locations
11 where the exposures had occurred, the time period wherein such exposure had occurred and
12 continues to occur, and also identified the route of exposure for the chemicals as inhalation,
13 ingestion and dermal contact. Included with the Notice was a copy of “The Safe Drinking
14 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.” The Notice fully
15 complied with the requirements of the Safe Drinking Water and Toxic Enforcement Act of
16 1986.

17 38. Copies of the Notice referred to in paragraph 36 were mailed to the California
18 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
19 collectively as “the Prosecutors”).

20 39. No response was ever received from any of the Prosecutors. To the best of
21 Plaintiff’s knowledge, none of the Prosecutors is prosecuting an action against any defendant
22 herein for the violations set forth above.

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

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1 **FIRST CAUSE OF ACTION**

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

3 **(Violation of California Health & Safety Code Section 25249.5**
4 **for Knowingly and Intentionally Releasing Designated Chemicals)**

5 41. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
6 paragraphs 1 through 40 of this Complaint as though fully set forth herein.

7 42. Defendants have been and are knowingly and intentionally "releas(ing)"
8 chemicals known to the State of California to cause cancer or reproductive toxicity into water
9 or onto or into land where such chemical passes or probably will pass into any source of
10 drinking water" in violation of Health & Safety Code Section 25249.5 at the site located at
11 21641 Magnolia Street, Huntington Beach, California 92646 ("hereinafter "the Site").

12 43. More than sixty days prior to filing this action Plaintiff mailed to the President
13 and Chief Executive Officer for each Defendant a Sixty (60) Day Notice of Intent to Sue
14 (hereinafter, "the Notice") for violations of Proposition 65, the Safe Drinking Water and Toxic
15 Enforcement Act (commencing with Health & Safety Code Section 25249.5) by knowingly and
16 intentionally "releas(ing)" chemicals known to the State of California to cause cancer or
17 reproductive toxicity into water or onto or into land where such chemical passes or probably
18 will pass into any source of drinking water" in violation of Health & Safety Code Section
19 25249.5 at the Site. The Notice specifically identified the Designated Chemicals which each
20 Defendant is and was knowingly and intentionally threatening to release at, around and on the
21 Site. The Notice identified the Site where the violations have and continue to occur, and also
22 identified the route of exposure for the Designated Chemicals as inhalation, ingestion and
23 dermal contact. Included with the Notice was a copy of "The Safe Drinking Water and Toxic
24 Enforcement Act of 1986 (Proposition 65): A Summary." The Notice fully complied with the
25 requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986. The Notice fully
26 complied with the requirements of the Safe Drinking Water and Toxic Enforcement Act of
27 1986.

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1 45. Copies of the Notices referred to in paragraph 43 were mailed to the California
2 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
3 collectively as “the Prosecutors”).

4 46. On information and belief, none of the Prosecutors is prosecuting an action
5 against any defendant herein for the violations set forth above.

6 47. This action for injunctive relief and penalties for violation of Health & Safety
7 Code Sections 25249.5, et seq. is specifically authorized by Health & Safety Code Section
8 25249.7.

9 **SECOND CAUSE OF ACTION**

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

11 **(Violation of California Health & Safety Code Section 25249.5 for**
12 **Knowingly and Intentionally Threatening to Release Designated Chemicals)**

13 48. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
14 paragraphs 1 through 47 of this Complaint as though fully set forth herein.

15 49. Defendants have been and are knowingly and intentionally threatening to
16 “release chemicals known to the State of California to cause cancer or reproductive toxicity into
17 water or onto or into land where such chemical passes or probably will pass into any source of
18 drinking water” in violation of Health & Safety Code Section 25249.5 at the site located at
19 21641 Magnolia Street, Huntington Beach, California 92646 (“hereinafter “the Site”).

20 50. More than sixty days prior to filing this action Plaintiff mailed to the President
21 and Chief Executive Officer for each Defendant a Sixty (60) Day Notice of Intent to Sue
22 (hereinafter, “the Notice”) for violations of Proposition 65, the Safe Drinking Water and Toxic
23 Enforcement Act (commencing with Health & Safety Code Section 25249.5) by knowingly and
24 intentionally threatening to “release chemicals known to the State of California to cause cancer
25 or reproductive toxicity into water or onto or into land where such chemical passes or probably
26 will pass into any source of drinking water” in violation of Health & Safety Code Section
27 25249.5 at the Site. The Notice specifically identified the Designated Chemicals which each
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1 Defendant is and was knowingly and intentionally threatening to release at, around and on the
2 Site. The Notice identified the Site where the violations have and continue to occur, and also
3 identified the route of exposure for the Designated Chemicals as inhalation, ingestion and
4 dermal contact. Included with the Notice was a copy of "The Safe Drinking Water and Toxic
5 Enforcement Act of 1986 (Proposition 65): A Summary." The Notice fully complied with the
6 requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986. The Notice fully
7 complied with the requirements of the Safe Drinking Water and Toxic Enforcement Act of
8 1986.

9 51. Copies of the Notices referred to in paragraph 49 were mailed to the California
10 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
11 collectively as "the Prosecutors").

12 52. On information and belief, none of the Prosecutors is prosecuting an action
13 against any defendant herein for the violations set forth above.

14 53. This action for injunctive relief and penalties for violation of Health & Safety
15 Code Sections 25249.5, et seq. is specifically authorized by Health & Safety Code Section
16 25249.7.

17 **THIRD CAUSE OF ACTION**
18 **AGAINST DEFENDANT AND DOES 1-100**

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

20 54. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
21 paragraphs 1 through 53 of this Complaint as though fully set forth herein.

22 55. Defendants have been and are knowingly and intentionally exposing the general
23 public around and on the Site, as well as employees, contractors and visitors to the Site to
24 Designated Chemicals without first giving clear and reasonable warnings of that fact to the
25 exposed persons prior to exposure as required by Health & Safety Code Section 25249.6.

26 56. The route of exposure for the said chemicals has been inhalation, ingestion and
27 dermal contact. Such exposures have occurred and are likely to occur at the Site and around the
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1 Site.

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

18 58. Copies of the Notices referred to in paragraph 57 were mailed to the California
19 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
20 collectively as "the Prosecutors").

21 59. No response was ever received from any of the Prosecutors. None of the
22 Prosecutors is prosecuting an action against any defendant herein for the violations set forth
23 above.

24 60. This action for injunctive relief and penalties for violation of Health & Safety
25 Code Sections 25249.5, et seq. is specifically authorised by Health & Safety Code Section
26 25249.7.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff requests against each defendant:

3 **ON THE FIRST CAUSE OF ACTION**

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

11 **ON THE FIRST CAUSE OF ACTION**

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

19 **ON THE SECOND CAUSE OF ACTION**

- 20 1. A permanent injunction pursuant to California Health & Safety Code Section 25249.7
21 (a), and the equitable powers of the court;
- 22 2. Cost of suit;
- 23 3. Reasonable attorneys fees and costs; and,
- 24 4. Any further relief that the court may deem just and equitable.

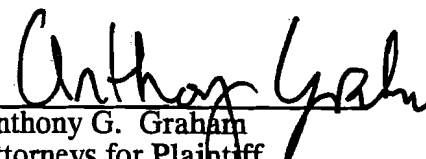
25 **ON THE THIRD CAUSE OF ACTION**

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

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7 Dated : September 15, 2008

GRAHAM & MARTIN, LLP

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10 Anthony G. Graham
11 Attorneys for Plaintiff
12 Consumer Defense Group Action
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