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CENTER FOR ENVIRONMENTAL HEALTH

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

BC 651485

12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)
14 Plaintiff,)
15 v.)
16 AEROCRAFT HEAT TREATMENT CO.,)
17 INC.; ANAPLEX CORPORATION;)
18 PRECISION CASTPARTS CORP.; and DOES)
1 through 10, inclusive,)
19 Defendants.)

Case No.
**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**
Health & Safety Code § 25249.6, *et seq.*
(Other)

BY FAX

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Aerocraft Heat Treatment Co., Inc.,
6 Anaplex Corporation, and Precision Castparts Corp.'s (collectively, "Defendants") continuing
7 failure to warn individuals in California that they are being exposed to hexavalent chromium, a
8 chemical known to the State of California to cause cancer. Such exposures have occurred, and
9 continue to occur, as a result of Defendants' metal processing and finishing operations in
10 Paramount, California. Individuals living and/or working in and around Defendants' facilities in
11 Paramount, California are exposed to hexavalent chromium when they breathe the air.

12 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
14 to chemicals known to the State to cause cancer without providing clear and reasonable warnings
15 to individuals prior to their exposure. Defendants process metal at their facilities, which releases
16 hexavalent chromium into the air and thereby exposes individuals living and/or working in
17 Paramount to hexavalent chromium.

18 3. Despite the fact that Defendants expose individuals to significant amounts
19 of hexavalent chromium, Defendants have not provided any warnings whatsoever about the
20 carcinogenic hazards associated with these exposures. Defendants' conduct thus violates the
21 warning provision of Proposition 65. *See* Health & Safety Code § 25249.6.

22 **PARTIES**

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
24 non-profit corporation dedicated to protecting the public from environmental health hazards and
25 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
26 State of California. CEH is a "person" within the meaning of Health & Safety Code §
27 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety
28 Code § 25249.7(d). CEH is an environmental advocacy group that has prosecuted a large

1 number of Proposition 65 cases in the public interest, cases that have resulted in significant
2 public benefit such as the reformulation of thousands of products to remove toxic chemicals.
3 CEH also provides information to Californians about the health risks associated with exposure to
4 hazardous substances where the parties responsible for the exposures fail to do so.

5 5. Defendant AEROCRAFT HEAT TREATMENT CO., INC. is a person in
6 the course of doing business within the meaning of Health & Safety Code § 25249.11. Aircraft
7 Health Treatment Co., Inc. owns and/or operates a metal processing and finishing facility located
8 at 15701 Minnesota Avenue, Paramount, California 90723 that releases hexavalent chromium
9 into the air. Aircraft Health Treatment Co., Inc. exposes individuals living and/or working
10 within a 0.6 mile radius of its location to hexavalent chromium without first providing such
11 individuals with clear and reasonable warnings.

12 6. Defendant ANAPLEX CORPORATION is a person in the course of doing
13 business within the meaning of Health & Safety Code § 25249.11. Anaplex Corporation owns
14 and/or operates a metal processing and finishing facility located at 15547 Garfield Avenue,
15 Paramount, California 90723 that emits hexavalent chromium into the air. Anaplex Corporation
16 exposes individuals living and/or working within a 0.6 mile radius of its location to hexavalent
17 chromium without first providing such individuals with clear and reasonable warnings.

18 7. Defendant PRECISION CASTPARTS CORP. is a person in the course of
19 doing business within the meaning of Health & Safety Code § 25249.11. Precision Castparts
20 Corp. is the parent company for Aircraft Health Treatment Co., which owns and/or operates a
21 metal processing and finishing facility located at 15547 Garfield Avenue, Paramount, California
22 90723 that emits hexavalent chromium into the air. Precision Castparts Corp. exposes
23 individuals living and/or working within a 0.6 mile radius of its location to hexavalent chromium
24 without first providing such individuals with clear and reasonable warnings.

25 8. DOES 1 through 10 are each a person in the course of doing business
26 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 10 emit hexavalent
27 chromium in California.

28

1 No person in the course of doing business shall knowingly and
2 intentionally expose any individual to a chemical known to the
3 state to cause cancer or reproductive toxicity without first giving
4 clear and reasonable warning to such individual

5 16. On February 27, 1987, the State of California officially listed hexavalent
6 chromium (referred to as “chromium (hexavalent compounds)” on the Proposition 65 list) as a
7 chemical known to cause cancer. Hexavalent chromium became subject to the Proposition 65
8 “clear and reasonable” cancer warning one year later beginning on February 27, 1988. 27 C.C.R.
9 § 27001(b); Health & Safety Code § 25249.10(b).

10 17. Hexavalent chromium is designated as a hazardous air contaminant under
11 federal and California law. 42 U.S.C. § 7412; 17 C.C.R. § 93000. Despite hexavalent
12 chromium’s widely recognized hazardous health effects, Defendants’ metal processing facilities
13 emit significant quantities of hexavalent chromium into the air in Paramount, a densely populated
14 neighborhood.

15 18. No clear and reasonable warning has been provided to individuals living
16 or working in and around Paramount, California regarding the carcinogenic hazards of
17 hexavalent chromium.

18 19. Any person acting in the public interest has standing to enforce violations
19 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
20 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
21 action within such time. Health & Safety Code § 25249.7(d).

22 20. More than sixty days prior to naming each Defendant in this lawsuit, CEH
23 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
24 the District Attorney for the County of Los Angeles, the City Attorney for the County of Los
25 Angeles, and to each of the named Defendants. In compliance with Health & Safety Code §
26 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following information: (1) the
27 name and address of each violator; (2) the statute violated; (3) the time period during which the
28 violations occurred; (4) specific descriptions of the violations, including (a) the route of exposure
to hexavalent chromium from Defendants’ facilities and (b) the location of the exposures; and (5)

1 the name of the specific Proposition 65-listed chemical that is the subject of the violations
2 described in the Notice.

3 21. CEH also sent a Certificate of Merit for the Notice to the California
4 Attorney General, the District Attorney for the County of Los Angeles, the City Attorney for the
5 County of Los Angeles, and to each of the named Defendants. In compliance with Health &
6 Safety Code § 25249.7(d) and 11 C.C.R. § 3101, the Certificate certified that CEH’s counsel: (1)
7 has consulted with one or more persons with relevant and appropriate experience or expertise
8 who reviewed facts, studies, or other data regarding the exposures to hexavalent chromium
9 alleged in the Notice; and (2) based on the information obtained through such consultations,
10 believes that there is a reasonable and meritorious case for a citizen enforcement action based on
11 the facts alleged in the Notice. In compliance with Health & Safety Code § 25249.7(d) and 11
12 C.C.R. § 3102, the Certificate served on the Attorney General included factual information –
13 provided on a confidential basis – sufficient to establish the basis for the Certificate, including
14 the identity of the person(s) consulted by CEH’s counsel and the facts, studies, or other data
15 reviewed by such persons.

16 22. None of the public prosecutors with the authority to prosecute violations
17 of Proposition 65 has commenced and is diligently prosecuting a cause of action against
18 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in
19 CEH’s Notice.

20 23. Defendants both know and intend that individuals will be exposed to
21 hexavalent chromium as a result of their metal processing operations.

22 24. Under Proposition 65, an exposure is “knowing” where the party
23 responsible for such exposure has:

24 knowledge of the fact that a[n] . . . exposure to a chemical listed
25 pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No
26 knowledge that the . . . exposure is unlawful is required.

27 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
28 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,

1 § 12201).

2 25. Defendants know that they expose individuals living and/or working in
3 Paramount, California to hexavalent chromium through their own self-reported data and South
4 Coast Air Quality Management District's investigation of Defendants' operations, which both
5 revealed significant amounts of hexavalent chromium released into the air. In addition, the fact
6 that individuals living and/or working in Paramount are exposed to hexavalent chromium has
7 also been widely discussed in media reports and government studies such that Defendants have
8 knowledge of the exposures that result from their operations. Defendants have also been
9 informed of the hexavalent chromium exposures caused by their operations via the 60-Day
10 Notice of Violation and accompanying Certificate of Merit served on them by CEH.

11 26. The hexavalent chromium exposures are the natural consequence of
12 Defendants operating metal processing and finishing facilities in a populated neighborhood.
13 Individuals that live and work in the Paramount neighborhood are exposed to hexavalent
14 chromium when they inhale the air that has been contaminated with the hexavalent chromium
15 released by Defendants' facilities.

16 27. CEH has engaged in good faith efforts to resolve the claims alleged herein
17 prior to filing this Complaint.

18 28. Any person "violating or threatening to violate" Proposition 65 may be
19 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to
20 violate" is defined to mean "to create a condition in which there is a substantial probability that a
21 violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil
22 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

23 29. Defendants have failed, and continue to fail, to provide clear and
24 reasonable warnings regarding the carcinogenic hazards of hexavalent chromium to individuals
25 living and/or working in and around Paramount, California. By committing the acts alleged
26 above, Defendants have at all times relevant to this Complaint violated Proposition 65 by
27 knowingly and intentionally exposing individuals living and/or working in and around
28 Paramount to hexavalent chromium.

1 **FIRST CAUSE OF ACTION**

2 **(Violations of the Health & Safety Code § 25249.6)**

3 30. CEH realleges and incorporates by reference as if specifically set forth
4 herein Paragraphs 1 through 29, inclusive.

5 31. By operating a metal processing and finishing facility and employing 10 or
6 more people, each Defendant is a person in the course of doing business within the meaning of
7 Health & Safety Code § 25249.11.

8 32. Hexavalent chromium is a chemical listed by the State of California as
9 known to cause cancer.

10 33. Defendants know that operating their metal processing and finishing
11 facilities released significant amounts of hexavalent chromium into the environment, thereby
12 exposing individuals living and/or working in Paramount, California to hexavalent chromium.
13 Defendants intend that their metal processing and finishing facilities will be operated in a manner
14 that results in exposures to hexavalent chromium from their operations.

15 34. Defendants have failed, and continue to fail, to provide clear and
16 reasonable warnings regarding the carcinogenic hazards of hexavalent chromium to individuals
17 living and/or working in Paramount, California.

18 35. By committing the acts alleged above, Defendants have at all times
19 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
20 individuals living and/ or working in Paramount, California to hexavalent chromium without first
21 giving clear and reasonable warnings to such individuals regarding the carcinogenic toxicity of
22 hexavalent chromium.

23 **PRAYER FOR RELIEF**

24 CEH prays for judgment against Defendants as follows:

25 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess
26 civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation
27 of Proposition 65 according to proof;
28

1 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
2 preliminarily and permanently enjoin Defendants from exposing individuals living and/or
3 working in and around Defendants' metal processing and finishing facilities in Paramount,
4 California to hexavalent chromium without providing prior clear and reasonable warnings, as
5 CEH shall specify in further application to the Court;

6 3. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
7 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

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11 Dated: February 23, 2017

Respectfully submitted,

LEXINGTON LAW GROUP

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Mark N. Todzo

Attorneys for Plaintiff

CENTER FOR ENVIRONMENTAL HEALTH