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12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES
15

16
17 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

18 Plaintiff,)

19 v.)

20
21 AEROCRAFT HEAT TREATING CO., INC.;)
ANAPLEX CORPORATION; PRECISION)
22 CASTPARTS CORP.; PRESS FORGE)
COMPANY and DOES 1 through 10, inclusive,)

23 Defendants.)
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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 15 2017

Shari H. Carter, Law Clerk/Clerk
By: M. Soto, Deputy
Moses Soto

BY FAX

Case No. BC 651485

FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL
PENALTIES

Health & Safety Code § 25249.6, *et seq.*

(Other)

Complaint Filed: February 23, 2017
Trial Date: February 27, 2018
Department: 32

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

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

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

23 **PARTIES**

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

1 Code § 25249.7(d). CEH is an environmental advocacy group that has prosecuted a large
2 number of Proposition 65 cases in the public interest, cases that have resulted in significant
3 public benefit such as the reformulation of thousands of products to remove toxic chemicals.
4 CEH also provides information to Californians about the health risks associated with exposure to
5 hazardous substances where the parties responsible for the exposures fail to do so.

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

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

19 7. Defendant PRESS FORGE COMPANY is a person in the course of doing
20 business within the meaning of Health & Safety Code § 25249.11. Press Forge Company owns
21 and/or operates a metal processing and finishing facility located at 7770 Jackson Street,
22 Paramount, CA 90723 that emits hexavalent chromium into the air. Press Forge Company
23 exposes individuals living and/or working within a 0.6 mile radius of its location to hexavalent
24 chromium without first providing such individuals with clear and reasonable warnings.

25 8. Defendant PRECISION CASTPARTS CORP. is a person in the course of
26 doing business within the meaning of Health & Safety Code § 25249.11. Precision Castparts
27 Corp. is the parent company of Aerocraft HealthTreating Co. and Press Forge Company, which
28 own and/or operate the metal processing and finishing facilities located at 15547 Garfield

1 Avenue, Paramount, California 90723 and 7770 Jackson Street, Paramount, CA 90723
2 respectively, that emit hexavalent chromium into the air. Precision Castparts Corp. exposes
3 individuals living and/or working within a 0.6 mile radius of each of its subsidiaries' locations to
4 hexavalent chromium without first providing such individuals with clear and reasonable
5 warnings.

6 9 DOES 1 through 10 are each a person in the course of doing business
7 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 10 emit hexavalent
8 chromium in California.

9 10. The defendants identified in Paragraphs 5 through 7 and DOES 1 through
10 10 are collectively referred to herein as "Defendants."

11 11. The true names of DOES 1 through 10 are unknown to CEH at this time.
12 When their identities are ascertained or the applicable 60-Day Notice of Violation of Proposition
13 65 runs, the Complaint shall be amended to reflect their true names.

14 **JURISDICTION AND VENUE**

15 12. The Court has jurisdiction over this action pursuant to Health & Safety
16 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
17 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
18 to other trial courts.

19 13. This Court has jurisdiction over Defendants because each is a business
20 entity that does sufficient business, has sufficient minimum contacts in California, or otherwise
21 intentionally avails itself of the California market through its operations that emit hexavalent
22 chromium in California and/or by having such other contacts with California so as to render the
23 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
24 play and substantial justice.

25 14. Venue is proper in the Los Angeles County Superior Court because one or
26 more of the violations arise in the County of Los Angeles.

27 **BACKGROUND FACTS**

28 15. The People of the State of California have declared by initiative under

1 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
2 defects, or other reproductive harm.” Proposition 65, § 1(b).

3 16. To effectuate this goal, Proposition 65 prohibits exposing people to
4 chemicals listed by the State of California as known to cause cancer, birth defects, or other
5 reproductive harm above certain levels without a “clear and reasonable warning” unless the
6 business responsible for the exposure can prove that it fits within a statutory exemption. Health
7 & Safety Code § 25249.6 states, in pertinent part:

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

11 17. On February 27, 1987, the State of California officially listed hexavalent
12 chromium (referred to as “chromium (hexavalent compounds)” on the Proposition 65 list) as a
13 chemical known to cause cancer. Hexavalent chromium became subject to the Proposition 65
14 “clear and reasonable” cancer warning one year later beginning on February 27, 1988. 27 C.C.R.
15 § 27001(b); Health & Safety Code § 25249.10(b).

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

21 19. No clear and reasonable warning has been provided to individuals living
22 or working in and around Paramount, California regarding the carcinogenic hazards of
23 hexavalent chromium.

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

28 21. More than sixty days prior to naming each Defendant in this lawsuit, CEH

1 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
2 the District Attorney for the County of Los Angeles, the City Attorney for the County of Los
3 Angeles, and to each of the named Defendants. In compliance with Health & Safety Code §
4 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following information: (1) the
5 name and address of each violator; (2) the statute violated; (3) the time period during which the
6 violations occurred; (4) specific descriptions of the violations, including (a) the route of exposure
7 to hexavalent chromium from Defendants’ facilities and (b) the location of the exposures; and (5)
8 the name of the specific Proposition 65-listed chemical that is the subject of the violations
9 described in the Notice.

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

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

27 24. Defendants both know and intend that individuals will be exposed to
28 hexavalent chromium as a result of their metal processing operations.

1 25. Under Proposition 65, an exposure is “knowing” where the party
2 responsible for such exposure has:

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

6 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
7 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
8 § 12201).

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

18 27. The hexavalent chromium exposures are the natural consequence of
19 Defendants operating metal processing and finishing facilities in a populated neighborhood.
20 Individuals that live and work in the Paramount neighborhood are exposed to hexavalent
21 chromium when they inhale the air that has been contaminated with the hexavalent chromium
22 released by Defendants’ facilities.

23 28. CEH has engaged in good faith efforts to resolve the claims alleged herein
24 prior to filing this Complaint.

25 29. Any person “violating or threatening to violate” Proposition 65 may be
26 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to
27 violate” is defined to mean “to create a condition in which there is a substantial probability that a
28 violation will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil

1 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

2 30. Defendants have failed, and continue to fail, to provide clear and
3 reasonable warnings regarding the carcinogenic hazards of hexavalent chromium to individuals
4 living and/or working in and around Paramount, California. By committing the acts alleged
5 above, Defendants have at all times relevant to this Complaint violated Proposition 65 by
6 knowingly and intentionally exposing individuals living and/or working in and around
7 Paramount to hexavalent chromium.

8 **FIRST CAUSE OF ACTION**

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

10 31. CEH realleges and incorporates by reference as if specifically set forth
11 herein Paragraphs 1 through 29, inclusive.

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

15 33. Hexavalent chromium is a chemical listed by the State of California as
16 known to cause cancer.

17 34. Defendants know that operating their metal processing and finishing
18 facilities released significant amounts of hexavalent chromium into the environment, thereby
19 exposing individuals living and/or working in Paramount, California to hexavalent chromium.
20 Defendants intend that their metal processing and finishing facilities will be operated in a manner
21 that results in exposures to hexavalent chromium from their operations.

22 35. Defendants have failed, and continue to fail, to provide clear and
23 reasonable warnings regarding the carcinogenic hazards of hexavalent chromium to individuals
24 living and/or working in Paramount, California.

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

1 hexavalent chromium.

2 **PRAYER FOR RELIEF**

3 CEH prays for judgment against Defendants as follows:

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

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

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

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

16
17 Dated: June 14, 2017

Respectfully submitted,

18 LEXINGTON LAW GROUP

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21 _____
22 Mark N. Todzo
23 Attorneys for Plaintiff
24 CENTER FOR ENVIRONMENTAL HEALTH
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