

SEP 12 2017

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

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

18 Plaintiff,)

19 v.)

20
21 AEROCRAFT HEAT TREATING CO., INC.;)
ANAPLEX CORPORATION; CARLTON)
22 FORGE WORKS; PRECISION CASTPARTS)
CORP.; PRESS FORGE COMPANY and DOES)
23 1 through 10, inclusive,)

24 Defendants.)

Case No. BC 651485

**SECOND AMENDED COMPLAINT
FOR INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

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

(Other)

Complaint Filed: February 23, 2017
Trial Date: None Set
Department: 323
Judge: Hon. Elihu M. Berle

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, Carlton Forge Works, Press Forge Company and Precision Castparts
7 Corp.'s (collectively, "Defendants") continuing failure to warn individuals in California that they
8 are being exposed to hexavalent chromium, a chemical known to the State of California to cause
9 cancer. Such exposures have occurred, and continue to occur, as a result of Defendants' metal
10 processing and finishing operations in Paramount, California. Individuals living and/or working
11 in and around Defendants' facilities in Paramount, California are exposed to hexavalent
12 chromium when they 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. Aircraft
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. Aircraft 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 CARLTON FORGE WORKS is a person in the course of doing
20 business within the meaning of Health & Safety Code § 25249.11. Carlton Forge Works owns
21 and/or operates a metal processing and finishing facility located at 7743 E. Adams Street,
22 Paramount, CA 90723 that emits hexavalent chromium into the air. Carlton Forge Works
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 PRESS FORGE COMPANY is a person in the course of doing
26 business within the meaning of Health & Safety Code § 25249.11. Press Forge Company owns
27 and/or operates a metal processing and finishing facility located at 7770 Jackson Street,
28 Paramount, CA 90723 that emits hexavalent chromium into the air. Press Forge Company

1 exposes individuals living and/or working within a 0.6 mile radius of its location to hexavalent
2 chromium without first providing such individuals with clear and reasonable warnings.

3 9. Defendant PRECISION CASTPARTS CORP. is a person in the course of
4 doing business within the meaning of Health & Safety Code § 25249.11. Precision Castparts
5 Corp. is the parent company of Aerocraft HealthTreating Co. and Press Forge Company, which
6 own and/or operate the metal processing and finishing facilities located at 15547 Garfield
7 Avenue, Paramount, California 90723 and 7770 Jackson Street, Paramount, CA 90723
8 respectively, that emit hexavalent chromium into the air. Precision Castparts Corp. exposes
9 individuals living and/or working within a 0.6 mile radius of each of its subsidiaries' locations to
10 hexavalent chromium without first providing such individuals with clear and reasonable
11 warnings.

12 10. DOES 1 through 10 are each a person in the course of doing business
13 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 10 emit hexavalent
14 chromium in California.

15 11. The defendants identified in Paragraphs 5 through 9 and DOES 1 through
16 10 are collectively referred to herein as "Defendants."

17 12. The true names of DOES 1 through 10 are unknown to CEH at this time.
18 When their identities are ascertained or the applicable 60-Day Notice of Violation of Proposition
19 65 runs, the Complaint shall be amended to reflect their true names.

20 **JURISDICTION AND VENUE**

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

25 14. This Court has jurisdiction over Defendants because each is a business
26 entity that does sufficient business, has sufficient minimum contacts in California, or otherwise
27 intentionally avails itself of the California market through its operations that emit hexavalent
28 chromium in California and/or by having such other contacts with California so as to render the

1 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
2 play and substantial justice.

3 15. Venue is proper in the Los Angeles County Superior Court because one or
4 more of the violations arise in the County of Los Angeles.

5 **BACKGROUND FACTS**

6 16. The People of the State of California have declared by initiative under
7 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
8 defects, or other reproductive harm.” Proposition 65, § 1(b).

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

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

17 18. On February 27, 1987, the State of California officially listed hexavalent
18 chromium (referred to as “chromium (hexavalent compounds)” on the Proposition 65 list) as a
19 chemical known to cause cancer. Hexavalent chromium became subject to the Proposition 65
20 “clear and reasonable” cancer warning one year later beginning on February 27, 1988. 27 C.C.R.
21 § 27001(b); Health & Safety Code § 25249.10(b).

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

27 20. No clear and reasonable warning has been provided to individuals living
28 or working in and around Paramount, California regarding the carcinogenic hazards of

1 hexavalent chromium.

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

6 22. More than sixty days prior to naming each Defendant in this lawsuit, CEH
7 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
8 the District Attorney for the County of Los Angeles, the City Attorney for the County of Los
9 Angeles, and to each of the named Defendants. In compliance with Health & Safety Code §
10 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following information: (1) the
11 name and address of each violator; (2) the statute violated; (3) the time period during which the
12 violations occurred; (4) specific descriptions of the violations, including (a) the route of exposure
13 to hexavalent chromium from Defendants’ facilities and (b) the location of the exposures; and (5)
14 the name of the specific Proposition 65-listed chemical that is the subject of the violations
15 described in the Notice.

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

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

5 25. Defendants both know and intend that individuals will be exposed to
6 hexavalent chromium as a result of their metal processing operations.

7 26. Under Proposition 65, an exposure is "knowing" where the party
8 responsible for such exposure has:

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

12 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
13 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
14 § 12201).

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

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

1 reasonable warnings regarding the carcinogenic hazards of hexavalent chromium to individuals
2 living and/or working in Paramount, California.

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

8 **PRAYER FOR RELIEF**

9 CEH prays for judgment against Defendants as follows:

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

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

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

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

22 Dated: September 8, 2017

Respectfully submitted,

23 LEXINGTON LAW GROUP

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26 _____
27 Mark N. Todzo
28 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH