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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN DIEGO  
12

13 CENTER FOR ENVIRONMENTAL HEALTH,

14 Plaintiff,

15 v.

16 SENIOR OPERATIONS, LLC; and DOES 1  
17 through 20, inclusive,

18 Defendants.  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**02/01/2018** at 11:49:09 AM

Clerk of the Superior Court  
By Katelin O'Keefe, Deputy Clerk

Case No. 37-2018-00005835-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

(Other)

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

#### 4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn  
6 individuals in California that they are being exposed to trichloroethylene ("TCE"), a chemical  
7 known to the State of California to cause cancer. Such exposures have occurred, and continue to  
8 occur, as a result of TCE emanating from Defendants' facility located at 790 Greenfield Drive, El  
9 Cajon, CA 92021 (the "Facility"). Individuals in the neighborhood surrounding the Facility are  
10 exposed to TCE when they inhale air and come into contact with soil contaminated with  
11 significant amounts of TCE from the Facility's.

12 2. Under California's Proposition 65, Health & Safety Code § 25249.6, it is unlawful  
13 for businesses to knowingly and intentionally expose individuals in California to chemicals  
14 known to the State to cause cancer without providing clear and reasonable warnings to  
15 individuals prior to their exposure. Despite the fact that Defendants expose individuals in the  
16 neighborhood surrounding the Facility to TCE, Defendants provide no warnings whatsoever  
17 about the carcinogenic hazards associated with TCE. Defendants' conduct thus violates the  
18 warning provision of Proposition 65, Health & Safety Code § 25249.6.

#### 19 **PARTIES**

20 3. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit  
21 corporation dedicated to protecting the public from environmental health hazards and toxic  
22 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of  
23 California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a) and  
24 brings this enforcement action in the public interest pursuant to Health & Safety Code §  
25 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has  
26 prosecuted a large number of Proposition 65 cases in the public interest. These cases have  
27 resulted in significant public benefit, including the reformulation of thousands of products to  
28 remove toxic chemicals and to make them safer. CEH also provides information to Californians

1 about the health risks associated with exposure to hazardous substances, where manufacturers and  
2 other responsible parties fail to do so.

3 4. Defendant SENIOR OPERATIONS, LLC is a person in the course of doing  
4 business within the meaning of Health & Safety Code § 25249.11. Defendant SENIOR  
5 OPERATIONS, LLC owns and/or operates the Facility.

6 5. DOES 1 through 20 are each a person in the course of doing business within the  
7 meaning of Health & Safety Code § 25249.11. DOES 1 through 20 own and/or operate the  
8 Facility.

9 6. The true names of DOES 1 through 20 are either unknown to CEH at this time or  
10 the applicable time period before which CEH may file a Proposition 65 action has not run. When  
11 their identities are ascertained or the applicable time period before which CEH may file a  
12 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

13 7. The defendant identified in paragraph 4 and DOES 1 through 20 are collectively  
14 referred to herein as “Defendants.”

### 15 **JURISDICTION AND VENUE**

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

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

26 10. Venue is proper in the San Diego County Superior Court because one or more of  
27 the violations arise in the County of San Diego.

1 **BACKGROUND FACTS**

2 11. The People of the State of California have declared by initiative under Proposition  
3 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
4 other reproductive harm.” Proposition 65, § 1(b).

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

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

12 13. On April 1, 1988, the State of California officially listed TCE as a chemical known  
13 to cause cancer. On April 1, 1989, twelve months after it was listed as a chemical known to cause  
14 cancer, TCE became subject to the clear and reasonable warning requirement under Proposition  
15 65. Health & Safety Code § 25249.10(b).

16 14. Defendants’ Facility releases significant amounts of TCE into the air, groundwater  
17 and soil, exposing individuals who live and/or work in the neighborhood surrounding the Facility  
18 to TCE. On information and belief, these exposures to TCE occur at all locations within a 0.5  
19 mile radius of the Facility, although that distance likely extends farther to the northeast of the  
20 Facility. The primary routes of exposure to TCE are inhalation when individuals inhale air and  
21 come into contact with soil that has been contaminated with TCE released from the Facility. No  
22 clear and reasonable warning is provided by Defendants regarding the carcinogenic hazards of  
23 TCE to individuals in the neighborhood surrounding the Facility.

24 15. Defendants’ Facility discharges and/or releases significant amounts of TCE  
25 directly into the local groundwater and/or onto land where the TCE passes or probably will pass  
26 into the local groundwater. The local groundwater is a present source of drinking water under the  
27 Water Quality Control Plan for the San Diego Basin. The groundwater contaminated with TCE  
28

1 flows throughout the neighborhood surrounding the Facility resulting in additional exposures to  
2 TCE.

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

7 17. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
8 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, to  
9 the District Attorneys of every county in California, to the City Attorneys of every California city  
10 with a population greater than 750,000, and to each of the named Defendants. In compliance with  
11 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following  
12 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period  
13 during which violations occurred; (4) specific descriptions of the violations, including (a) the  
14 routes of exposure to TCE released from the Facility, and (b) the location of the environmental  
15 exposures to TCE released from the Facility; and (5) the name of the specific Proposition 65-  
16 listed chemical that is the subject of the violations described in the Notice.

17 18. CEH also sent a Certificate of Merit for each Notice to the California Attorney  
18 General, to the District Attorneys of every county in California, to the City Attorneys of every  
19 California city with a population greater than 750,000, and to each of the named Defendants. In  
20 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, the Certificate  
21 certified that CEH’s counsel: (1) has consulted with one or more persons with relevant and  
22 appropriate experience or expertise who reviewed facts, studies, or other data regarding the  
23 exposures to TCE alleged in the Notice; and (2) based on the information obtained through such  
24 consultations, believes that there is a reasonable and meritorious case for a citizen enforcement  
25 action based on the facts alleged in the Notice. In compliance with Health & Safety Code §  
26 25249.7(d) and 11 C.C.R. § 3102, the Certificate served on the Attorney General included factual  
27 information – provided on a confidential basis – sufficient to establish the basis for the  
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1 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,  
2 studies or other data reviewed by such persons.

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

6 20. Under Proposition 65, an exposure or discharge is "knowing" where the party  
7 responsible for such exposure or discharge has:

8 knowledge of the fact that a discharge of, release of, or exposure to a  
9 chemical listed pursuant to [Health & Safety Code § 25249.8(a)] is  
occurring. No knowledge that the . . . exposure is unlawful is required.

10 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
11 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
12 § 12601).

13 21. Defendants know that the Facility emits significant quantities of TCE into the air,  
14 groundwater and soil, exposing individuals in the neighborhood surrounding the Facility to TCE.  
15 Defendants intend that the Facility is operated in a manner that results in such TCE exposures.

16 22. Defendants know that the Facility discharges and/or releases of TCE directly into  
17 the local groundwater and/or onto land where the TCE passes or probably will pass into the local  
18 groundwater. Defendants know that the groundwater contaminated with TCE flows throughout  
19 the neighborhood surrounding the Facility, resulting in additional exposures to TCE.

20 23. Defendants have had knowledge of the TCE exposures caused by the Facility  
21 described herein since on or around 1998 when the Defendants purchased the Facility. Even if  
22 Defendants may have believed that the TCE exposures had been curtailed, on or around March  
23 2017, the California Regional Water Quality Control Board ("RWQCB") informed Defendants  
24 that the TCE contamination caused by the Facility continued to expose individuals in the  
25 neighborhood surrounding the Facility to TCE. Specifically, RWQCB tested the indoor air at the  
26 homes of a number of residents at the mobile home parks located immediately adjacent to the  
27 nearby Magnolia Elementary School and/or the Facility. These tests showed that significant  
28 amounts of TCE were detected in indoor air samples taken at the homes.

1           24.     In addition, in or around October 2016, Defendants were informed by the  
2 California Department of Toxic Substances Control (“DTSC”) that the TCE contamination  
3 caused by the Facility continued to expose individuals in the neighborhood surrounding the  
4 Facility to TCE. Specifically, DTSC conducted soil gas, groundwater, and indoor air sampling at  
5 properties adjacent to the Facility, including soil gas samples from the nearby Magnolia  
6 Elementary School property fence line. DTSC determined that TCE is present in the groundwater  
7 and soil gas throughout the neighborhood surrounding the Facility.

8           25.     Defendants have also been informed of the TCE exposures described herein by the  
9 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

10          26.     Nevertheless, Defendants continue to expose individuals in the neighborhood  
11 surrounding the Facility to TCE without providing prior clear and reasonable warnings regarding  
12 the carcinogenic hazards of TCE.

13          27.     CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to  
14 filing this Complaint.

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

20                                   **FIRST CAUSE OF ACTION**  
21                                   **(Violations of Health & Safety Code § 25249.6)**

22          29.     CEH realleges and incorporates by reference as if specifically set forth herein  
23 Paragraphs 1 through 28, inclusive.

24          30.     Each Defendant is a person in the course of doing business within the meaning of  
25 Health & Safety Code § 25249.11.

26          31.     TCE is a chemical listed by the State of California as known to cause cancer.

27          32.     Defendants know that TCE from the Facility is released into the air, groundwater  
28 and soil, thereby exposing individuals in the neighborhood surrounding the Facility to TCE.

33. Defendants have failed, and continue to fail, to provide clear and reasonable warnings regarding the carcinogenicity of TCE to individuals in the neighborhood surrounding the Facility.

34. By committing the acts alleged above, Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to TCE without first giving clear and reasonable warnings to such individuals regarding the carcinogenicity of TCE.

### **PRAYER FOR RELIEF**

CEH prays for judgment against Defendants as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendants from exposing individuals in the neighborhood surrounding the Facility to TCE without providing prior clear and reasonable warnings, as CEH shall specify in further application to the Court;

2. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants to take action to stop ongoing unwarned exposures of individuals in the neighborhood surrounding the Facility to TCE, as CEH shall specify in further application to the Court;

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

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

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



1 Dated: February 1, 2018

Respectfully submitted,

2 LEXINGTON LAW GROUP

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4  
5 Mark N. Todzo

6 Attorneys for Plaintiff

7 CENTER FOR ENVIRONMENTAL HEALTH