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11 CLEAN AIR COALITION OF NORTH  
12 WHITTIER & AVOCADO HEIGHTS and  
13 CENTER FOR ENVIRONMENTAL HEALTH

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

17 CLEAN AIR COALITION OF NORTH  
18 WHITTIER & AVOCADO HEIGHTS, a  
19 community organization; and CENTER FOR  
20 ENVIRONMENTAL HEALTH,  
21 a non-profit corporation,

22 Plaintiffs,

23 v.

24 QUEMETCO, INC.; QUEMETCO WEST, LLC;  
25 RSR CORPORATION; and DOES 1 through 20,  
26 inclusive,

27 Defendants.  
28

**CONFORMED COPY**  
**ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**JAN 30 2019**

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Steven Drew, Deputy

Case No. **19STCV02668**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

(Other)

**BY FAX**

1 Plaintiffs Clean Air Coalition of North Whittier & Avocado Heights and Center for  
2 Environmental Health, in the public interest, based on information and belief and investigation of  
3 counsel, except for information based on knowledge, hereby make the 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 lead and lead compounds (collectively,  
7 "Lead") and inorganic arsenic oxides and inorganic arsenic compounds (collectively, "Arsenic").  
8 Lead and Arsenic are known to the State of California to cause cancer, birth defects and other  
9 reproductive harm. The exposures to Lead and Arsenic have occurred, and continue to occur, as a  
10 result of Defendants' lead-acid battery recycling operations located at 720 South Seventh Avenue,  
11 City of Industry, California 91746 (the "Facility"). The Facility's operations emit significant  
12 quantities of Lead and Arsenic into the air, which has contaminated the soil of residential  
13 properties in the neighborhood surrounding the Facility. Individuals living in the neighborhood  
14 surrounding the Facility are exposed to Lead and Arsenic in the soil at their residences and when  
15 they breathe the Lead and Arsenic emitted from the Facility.

16 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is  
17 unlawful for businesses to knowingly and intentionally expose individuals in California to  
18 chemicals known to the State to cause cancer, birth defects and other reproductive harm without  
19 providing clear and reasonable warnings to individuals prior to their exposure. Defendants'  
20 operations emit Lead and Arsenic into the air, thereby exposing individuals in the area to airborne  
21 Lead and Arsenic. Additionally, the Lead and Arsenic emitted from the Facility has  
22 contaminated the soil of residential properties in the neighborhood surrounding the Facility,  
23 thereby exposing individuals to Lead and Arsenic when they come into contact with the soil.

24 3. Despite the fact that Defendants expose individuals to Lead and Arsenic,  
25 Defendants provide no warnings whatsoever about the carcinogenic or reproductive hazards  
26 associated with such exposures. Defendants' conduct thus violates the warning provision of  
27 Proposition 65, Health & Safety Code § 25249.6.

**PARTIES**

4. Plaintiff CLEAN AIR COALITION OF NORTH WHITTIER & AVOCADO HEIGHTS (“CAC”) is a community organization committed to defending the environment and quality of life in the North Whittier and Avocado Heights community. CAC is based in Whittier, California. CAC is a “person” within the meaning of Health & Safety Code § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety Code § 25249.7(d).

5. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a non-profit corporation dedicated to protecting the public from environmental health hazards and toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the State of California. CEH is a “person” within the meaning of Health & Safety Code § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has prosecuted a large number of Proposition 65 cases in the public interest. These cases have resulted in significant public benefit, including the reformulation of thousands of products to remove toxic chemicals and to make them safer. CEH also provides information to Californians about the health risks associated with exposure to hazardous substances, where manufacturers and other responsible parties fail to do so.

6. Defendant QUEMETCO, INC. is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. Quemetco, Inc. owns and/or operates a lead-acid battery recycling Facility that emits Lead and Arsenic into the air, which pollutes the air and has contaminated the soil of residential properties in the neighborhood surrounding the Facility. The Facility is located at 720 South Seventh Avenue, City of Industry, California 91746. Quemetco, Inc. exposes individuals living in the neighborhood surrounding the Facility to Lead and Arsenic in the air and soil without first providing such individuals with clear and reasonable warnings.

7. Defendant QUEMETCO WEST, LLC is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. Quemetco West, LLC owns and/or

1 operates the Facility. Quemetco West, LLC exposes individuals living in the neighborhood  
2 surrounding the Facility to Lead and Arsenic in the air and soil without first providing such  
3 individuals with clear and reasonable warnings.

4 8. Defendant RSR CORPORATION is a person in the course of doing business  
5 within the meaning of Health & Safety Code § 25249.11. RSR Corporation owns and/or operates  
6 the Facility. RSR Corporation exposes individuals living in the neighborhood surrounding the  
7 Facility to Lead and Arsenic in the air and soil without first providing such individuals with clear  
8 and reasonable warnings.

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

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

16 11. Plaintiffs CAC and CEH are collectively referred to herein as “Plaintiffs.” The  
17 defendants identified in Paragraphs 6 through 8 and DOES 1 through 20 are collectively referred  
18 to herein as “Defendants.”

### 19 **JURISDICTION AND VENUE**

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

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

1           14.     Venue is proper in the Los Angeles County Superior Court because Defendants'  
2 Facility is located in Los Angeles County and the violations arise in Los Angeles County.

3                                   **BACKGROUND FACTS**

4           15.     The People of the State of California have declared by initiative under Proposition  
5 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
6 other reproductive harm.” Proposition 65, § 1(b).

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

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

15           17.     On February 27, 1987, the State of California officially listed lead as a chemical  
16 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant  
17 under three subcategories: “developmental reproductive toxicity,” which means harm to the  
18 developing fetus, “female reproductive toxicity,” which means harm to the female reproductive  
19 system, and “male reproductive toxicity,” which means harm to the male reproductive system. 27  
20 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27, 1988, one year later,  
21 lead became subject to the clear and reasonable warning requirement regarding reproductive  
22 toxicants under Proposition 65. *Id.*; Health & Safety Code § 25249.10(b).

23           18.     On October 1, 1992, the State of California officially listed lead and lead  
24 compounds as chemicals known to cause cancer. On October 1, 1993, one year later, lead and  
25 lead compounds became subject to the clear and reasonable warning requirement regarding  
26 carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code § 25249.10(b).

27           19.     On February 27, 1987, the State of California officially listed arsenic (inorganic  
28 arsenic compounds) as a chemical known to cause cancer. On February 27, 1988, one year later,

1 arsenic (inorganic arsenic compounds) became subject to the clear and reasonable warning  
2 requirement regarding carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety  
3 Code § 25249.10(b).

4 20. On May 1, 1997, the State of California officially listed arsenic (inorganic oxides)  
5 as a chemical known to cause reproductive toxicity. Arsenic (inorganic oxides) is specifically  
6 identified as a reproductive toxicant under the “developmental reproductive toxicity” category,  
7 which means it tends to harm the developing fetus. On May 1, 1998, one year later, arsenic  
8 (inorganic oxides) became subject to the clear and reasonable warning requirement regarding  
9 reproductive toxicants under Proposition 65. 27 C.C.R. § 27001(c); Health & Safety Code §  
10 25249.10(b).

11 21. The Facility’s operations emit significant quantities of Lead and Arsenic into the  
12 air, which has polluted the air and contaminated the soil of residential properties in the  
13 neighborhood surrounding the Facility. Individuals living in the neighborhood surrounding the  
14 Facility are exposed to Lead and Arsenic when they come into contact with the soil at their  
15 residences, and when they breathe the Lead and Arsenic emitted from the Facility. The primary  
16 routes of exposure for the violations are: direct ingestion when individuals (including children)  
17 ingest the soil contaminated with Lead and Arsenic; ingestion via hand to mouth contact after  
18 individuals touch or handle the soil contaminated with Lead and Arsenic; and inhalation when  
19 individuals breathe the Lead and Arsenic emitted from the Facility. No clear and reasonable  
20 warning is provided to residents in the neighborhood surrounding the Facility regarding the health  
21 hazards associated with Lead and Arsenic.

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

26 23. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiffs  
27 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,  
28 the District Attorney of Los Angeles, the City Attorney of Los Angeles, and each of the named

1 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b),  
2 the Notice included the following information: (1) the name and address of each violator; (2) the  
3 statute violated; (3) the time period during which the violations occurred; (4) specific descriptions  
4 of the violations, including (a) the routes of exposure to Lead and Arsenic, and (b) the locations  
5 of the sources of the exposures to Lead and Arsenic; and (5) the name of the specific Proposition  
6 65-listed chemical that is the subject of the violations described in the Notice.

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

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

22 26. Defendants know that their Facility has, for years, emitted and continues to emit  
23 significant quantities of Lead and Arsenic into the air, which pollutes the air, and has  
24 contaminated and continues to contaminate the soil of residential properties in the neighborhood  
25 surrounding the Facility. Defendants know that the Facility's emissions expose individuals living  
26 in the neighborhood surrounding the Facility to Lead and Arsenic when such individuals breathe  
27 the air and come into contact with the soil. Defendants intend that their Facility is operated in a  
28 manner that results in such Lead and Arsenic exposures.

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

3                     knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant  
4                     to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that  
5                     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 § 12601).

9           28.     Defendants have actual knowledge of the Lead and Arsenic exposures described  
10           herein. Defendants are required to monitor the Facility’s Lead and Arsenic air emissions, and  
11           Defendants report such emissions data to government agencies, including the South Coast Air  
12           Quality Management District. In addition, the soil contamination caused by the Facility’s Lead  
13           and Arsenic emissions has been widely discussed in government analyses and investigations, as  
14           well as media reports. For instance, the Department of Toxic Substances Control has conducted  
15           soil testing of certain residential properties contaminated with Lead an Arsenic emitted from the  
16           Facility. Finally, Defendants have been informed of the Lead and Arsenic exposures caused by  
17           the Facility by means of the 60-Day Notice of Violation and accompanying Certificate of Merit  
18           served on them by Plaintiffs.

19           29.     The Lead and Arsenic exposures in the neighborhood surrounding the Facility are  
20           the natural consequence of Defendants operating a lead-acid battery recycling operation in a  
21           densely populated neighborhood.

22           30.     Plaintiffs have engaged in good faith efforts to resolve the claims alleged herein  
23           prior to filing this Complaint.

24           31.     Nevertheless, Defendants have failed, and continue to fail, to provide clear and  
25           reasonable warnings regarding the carcinogenic and reproductive hazards of Lead and Arsenic to  
26           individuals in the neighborhood surrounding Defendants’ Facility. Nor have Defendants  
27           undertaken to eliminate the Lead and Arsenic exposures caused by the Facility’s operations. By  
28           committing the acts alleged above, Defendants have at all times relevant to this Complaint  
29           violated Proposition 65 by knowingly and intentionally exposing individuals to Lead and Arsenic.



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

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

33. Plaintiffs reallege and incorporate by reference as if specifically set forth herein Paragraphs 1 through 32, inclusive.

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

35. Lead and Arsenic are chemicals listed by the State of California as known to cause cancer, birth defects and other reproductive harm.

36. Defendants know and intend that Lead and Arsenic from their Facility is emitted into the air, which pollutes the air and has contaminated the soil of residential properties in the neighborhood surrounding the Facility, thereby exposing individuals to Lead and Arsenic.

37. Defendants have failed, and continue to fail, to provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead and Arsenic to individuals living in the neighborhood surrounding the Facility.

38. 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 Lead and Arsenic without first giving clear and reasonable warnings to such individuals regarding the carcinogenicity and reproductive toxicity of Lead and Arsenic.

## PRAYER FOR RELIEF

Plaintiffs pray 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 living in the neighborhood surrounding

1 Defendants' Facility to Lead and Arsenic without first providing clear and reasonable warnings,  
2 as Plaintiffs shall specify in further application to the Court;

3 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants  
4 to take action to stop ongoing unwarned exposures of individuals living in the neighborhood  
5 surrounding Defendants' Facility to Lead and Arsenic, as Plaintiffs shall specify in further  
6 application to the Court;

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

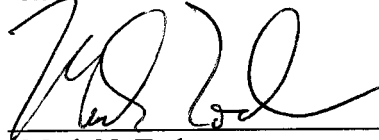
10 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
11 applicable theory, grant Plaintiffs' reasonable attorney fees and costs of suit; and

12 5. That the Court grant such other and further relief as may be just and proper.  
13

14 Dated: January 30, 2019

Respectfully submitted,

15 LEXINGTON LAW GROUP

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18 Mark N. Todzo  
19 Attorneys for Plaintiffs  
20 CLEAN AIR COALITION OF NORTH  
21 WHITTIER & AVOCADO HEIGHTS and  
22 CENTER FOR ENVIRONMENTAL HEALTH  
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