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ELECTRONICALLY FILED
Superior Court of California,
County of Orange
03/01/2019 at 02:58:37 PM
Clerk of the Superior Court
By Mary M Johnson, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ORANGE

10 UNLIMITED JURISDICTION

11 CLEAN AIR OC, LLC, in the public interest,

12 Plaintiff,

13 vs.

14 WOODBRIDGE VILLAGE ASSOCIATION,

15 Defendant.

CASE NO: 30-2019-01054987-CU-MC-CJC

Judge Linda Marks

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

(Health & Safety Code § 25249.5 *et seq.*, and
Business & Professions Code § 17200)

16
17
18 Plaintiff, Clean Air OC, LLC (“Clean Air” or “Plaintiff”), brings this action in the interests of
19 the general public and, on information and belief, states and alleges as follows:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendant Woodbridge Village
22 Association (“Woodbridge” or “Defendant”) to warn persons of exposure to soot and other Proposition
23 65 Listed Chemicals in smoke emanating from ground level wood-burning open fire pits without
24 chimneys (“Fire Pits”) at Woodbridge’s North Lake Beach Club, 10 Stone Creek S., Irvine, CA 92604,
25 and South Lake Beach Club, 2 Blue Lake S., Irvine, CA 92614 (hereinafter, the “Properties”).

26 2. The burning of wood in the Fire Pits releases into the air a number of chemicals,
27 including soot, carbon monoxide, 1,3,-butadiene, arsenic, benzene, cadmium, formaldehyde, nickel,
28 lead, tetrachloroethylene, acetaldehyde, benzo[a]anthracene, benzo[a]pyrene, benzo[b]flouranthene,

1 dibenzo(a,h)pyrene, benzo[k]fluorathene, carbozole, chromium, chrysene, chloroform, furan, lead,
2 naphthylene, nickle, toluene, dichloromethan, ethylbenzene, indeno[1,2,3-cd]pyrene (collectively
3 referred to herein as “Listed Chemicals”).

4 3. Each of the aforementioned Listed Chemicals are known to the State of California to
5 cause cancer, birth defects, and other reproductive harm, and have been identified by the Office of
6 Environmental Health Hazard Assessment (“OEHHA”) as Proposition 65 List Chemicals.

7 4. The Listed Chemicals are released into the surrounding area and, as a result, affect not
8 only the Fire Pits and the Properties, but also extend into public and private areas in the vicinity of the
9 Properties. As a result, exposure to the Listed Chemicals is not limited to those persons using the Fire
10 Pits, but also includes members of the general public, Woodbridge residents, and local homeowners.

11 5. The Fire Pits were built and maintained by Defendant at its Properties and are thus
12 under its control. Defendant sanctions and facilitates the use of these Fire Pits by guests and residents.

13 6. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
14 & Safety Code § 25249.6, *et seq.* (“Proposition 65”), it is unlawful to knowingly and intentionally
15 expose individuals in California to chemicals known to the State to cause cancer, birth defects, or other
16 reproductive harm without providing “clear and reasonable” warnings to individuals prior to such
17 exposure.

18 7. As of the time of the filing of this Complaint, Defendant does not provide or post (and
19 has not provided or posted) any warning that identifying the Fire Pits or their use as a potential source
20 of exposure to Listed Chemicals.

21 8. Defendant has failed to comply with Proposition 65 warning requirements with respect
22 to exposures to Listed Chemicals at, near, or as a result of the Fire Pits or their use.

23 9. Further, Defendant’s failure to provide “clear and reasonable” warnings advising of the
24 risk of exposure to Listed Chemicals at, near, or as a result of the Fire Pits or their use, Defendant has
25 caused its members, visitors, guests, and employees at the Properties to be exposed to Listed
26 Chemicals without providing requisite warnings, and has created conditions that expose others, such as
27 those living in homes in close proximity to the Fire Pits, to be similarly exposed without warning, all in
28 violation of Proposition 65.

1 California. Liability for Plaintiff's causes of action, or portions thereof, has accordingly arisen in the
2 County of Orange.

3 **FACTUAL ALLEGATIONS**

4 18. Plaintiff brings this enforcement action against Defendant pursuant to California Health
5 & Safety Code § 25249.7(d), following its provision of a Notice of Violation ("Notice") dated
6 December 6, 2018, which Plaintiff sent to Defendant on that same date. Attached hereto as Exhibit A,
7 and incorporated by reference, is a copy of that Notice. Additionally, Plaintiff sent a copy of this
8 Notice to California's Attorney General and to every District Attorney for Each of the 58 counties in
9 California, the City Attorney for the City of Irvine. The Notice was accompanied by a Certificate of
10 Service attesting to the service of the Notice of Violation on each entity which received it. Pursuant to
11 Health & Safety Code § 25249.7(d), Plaintiff also sent a Certificate of Merit attesting to the reasonable
12 and meritorious basis for the action with each Notice of Violation. Further, Plaintiff enclosed factual
13 information sufficient to establish the basis of the Certificate of Merit with the Notice of Violation
14 letter sent to the Attorney General.

15 19. Defendant owns, controls, and/or maintains the properties known as North Lake Beach
16 Club located at 10 Stone Creek S., Irvine, CA 92604, and South Lake Beach Club located at 2 Blue
17 Lake S., Irvine, CA 92614 (referred to collectively herein as the "Properties").

18 20. Located on each of the Properties are a number of ground level wood-burning open fire
19 pits without chimneys (the above-defined "Fire Pits"). The Fire Pits were built and are owned,
20 maintained and/or controlled by Defendant.

21 21. The Fire Pits are provided by Defendant for the burning of wood for recreational
22 purposes, and Defendant sanctions and facilitates the burning of firewood in the Fire Pits by guests,
23 residents and/or members of the Woodbridge Village Association community. This use is permitted
24 between the hours of 10:00 a.m. and 10:00 p.m., 6 days per week, and from 2:30 p.m. to 10:00 p.m. the
25 other one day per week, for a total of 113.5 hours per week of potential exposure. The Fire Pits have
26 been in operation near continuously since 1975, representing over 180,000 potential hours of exposure
27 from each of the Fire Pits. While the number of Fire Pits has fluctuated minimally over that time, as of
28 the time of this Complaint, there are six (6) Fire Pits in operation. The Fire Pits are regularly used

1 throughout the entire calendar year.

2 22. The burning of firewood in the Fire Pits by guests and residents, as permitted,
3 sanctioned, and encouraged by Defendant, results in exposures to a number of chemicals recognized by
4 the State of California to cause cancer, birth defects, or other reproductive harm, and which are
5 included on the Proposition 65 List, specifically soot, carbon monoxide, 1,3,-butadiene, arsenic,
6 benzene, cadmium, formaldehyde, nickel, lead, tetrachloroethylene, acetaldehyde, benzo[a]anthracene,
7 benzo[a]pyrene, benzo[b]fluoranthene, dibenzo(a,h)pyrene, benzo[k]fluorathene, carbozole,
8 chromium, chrysene, chloroform, furan, lead, naphthylene, nickle, toluene, dichloromethan,
9 ethylbenzene, indeno[1,2,3-cd]pyrene (collectively referred to herein as “Listed Chemicals”).

10 23. Exposures to the Listed Chemicals occur at the Properties through several bodily routes,
11 including inhalation, dermal contact and absorption from skin and/or clothing and ingestion directly,
12 but also indirectly due to touching of contaminated surfaces and subsequent hand-to-mouth contact.

13 24. Additionally, because certain of these exposures are environmental, airborne in
14 particular, exposures are not spatially limited to the bounds of the Properties, but also intrude into
15 public and private areas in the vicinity of the Properties. Consequently, members of the general public,
16 residents, and local homeowners are additionally exposed to the Listed Chemicals.

17 25. The Properties are bounded primarily by vertical bar-style fencing that allows
18 unobstructed movement of Listed Chemical-laden air to travel from the Fire Pits to areas within and
19 adjacent to the Properties, including areas open to the public and nearby private residences. There is a
20 heavily used walking and bike path adjacent to the North Lake Beach Club facility where hundreds of
21 persons may pass each hour.

22 26. Numerous persons are exposed and have been exposed as a result, including but not
23 limited to guests and residents using the Fire Pits and/or frequenting the Properties, local residents and
24 anyone present on or using any adjacent public area, or living at or visiting private residences in the
25 vicinity of the Properties, as well as Defendant’s employees, including maintenance workers, security
26 personnel, managers of the locations and lifeguards assigned to the Beach Clubs, who are presumably
27 exposed during working hours.

28 27. The extent of the exposure is significant in terms of its danger to the health of those

1 who become exposed. While the magnitude of exposure for any given person will depend on the
2 distance the person is from an operating fire pit, as well as wind direction and patterns, certain
3 populations, such as children and pregnant women, will be more susceptible.

4 28. Defendant has knowledge of the potential for such exposures presented by and
5 associated with use of the Fire Pits.

6 29. Further, Defendant has been aware of the potential health consequences of these
7 exposures since at least 2010, when members of the community began to complain and provide
8 educational materials from professional medical publications.

9 30. Despite knowledge of such exposures, and the associated potential harmful effects,
10 Defendant has failed to provide clear and reasonable warnings regarding the risk of exposure to Listed
11 Chemicals caused by or associated with the Fire Pits and/or their use.

12 31. As a result, customers, visitors, guests, and employees, among others, who may not
13 wish to be exposed, are not (and have not been) warned prior to exposure to Listed Chemicals.

14 **FIRST CAUSE OF ACTION**

15 **(Claim for Injunctive Relief – Violation of Cal. Health & Safety Code § 2429.5 *et seq.*)**

16 32. Plaintiff re-alleges and incorporates by reference into this First Cause of Action, as if
17 specifically set forth herein, paragraphs 1 through 31, inclusive.

18 33. The People of the State of California have declared by referendum under Proposition
19 65, California Health & Safety Code § 25249.5, *et seq.*, their right “[t]o be informed about exposures
20 to chemicals that cause cancer, birth defects, and reproductive harm.”

21 34. In furtherance of this purpose, California Health & Safety Code § 25249.6 mandates
22 that a business that knowingly and intentionally exposes any individual to a chemical known to the
23 State of California to cause cancer or birth defects must first provide a clear and reasonable warning to
24 such individual prior to the exposure.

25 35. Since at least 2010, Defendants have engaged in conduct that violates California Health
26 & Safety Code § 25249.6. This conduct includes knowingly and intentionally exposing guests and
27 residents using the Fire Pits and/or frequenting the Properties, employees, local residents and anyone
28 present on or using any adjacent public area, or living at or visiting private residences in the vicinity of

1 the Properties to the Listed Chemicals, all of which are known to the State of California to cause
2 cancer, birth defects, and other reproductive harm.

3 36. At all times relevant to this action, Defendants have known that the Fire Pits that they
4 own, operate, maintain and/or control were causing exposures to the Listed Chemicals.

5 37. Nevertheless, Defendants have not provided clear and reasonable warnings within the
6 meaning of California Health & Safety Code §§ 25249.6 and 25249.11(f).

7 38. California Health & Safety Code § 25249.7(a) provides that, “A person who violates or
8 threatens to violate Section . . . 25249.6 may be enjoined in any court of competent jurisdiction.”

9 39. By the above-described acts, Defendants have violated California Health & Safety Code
10 § 25249.6 and should be subject to an injunction ordering them to stop violating Proposition 65, to
11 provide warnings to all present and future persons who may have contact with the Fire Pits and/or the
12 Listed Chemicals emitted by their use, and to provide warnings any individuals who have previously
13 had contact with Defendants’ Fire Pits and/or the Listed Chemicals emitted by their use, without
14 receiving a clear and reasonable warning.

15 **SECOND CAUSE OF ACTION**

16 **(Claim for Civil Penalties – Violation of Cal. Health & Safety Code § 2429.6 *et seq.*)**

17 40. Plaintiff re-alleges and incorporates by reference into this Second Cause of Action, as
18 if specifically set forth herein, paragraphs 1 through 39, inclusive.

19 41. California Health & Safety Code § 25249.7(b)(1) provides that, “A person who has
20 violated Section . . . 25249.6 is liable for a civil penalty not to exceed two thousand five hundred
21 dollars (\$2,500) per day for each violation in addition to any other penalty established by law. That
22 civil penalty may be assessed and recovered in a civil action brought in any court of competent
23 jurisdiction.”

24 42. By the above-described acts, Defendants have violated California Health & Safety Code
25 § 25249.6, and should be liable pursuant to § 25249.7(b)(1), for a civil penalty of \$2,500.00 per day for
26 each individual exposed without proper warning to the Listed Chemicals by absorbing, ingesting,
27 inhaling, or otherwise coming into contact with such chemicals.

1 **THIRD CAUSE OF ACTION**

2 **(Violations of Cal. B&P Code § 17200 –Unlawful Business Practice Predicated on**
3 **Violations of Health & Safety Code § 25249.6)**

4 43. Plaintiff re-alleges and incorporates by reference into this Third Cause of Action, as if
5 specifically set forth herein, paragraphs 1 through 42, inclusive.

6 44. California Business & Professions Code § 17200 defines unfair competition to include
7 “unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading
8 advertising.”

9 45. California Business & Professions Code § 17202 allows for “specific or preventative
10 relief [to] be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.”

11 46. California Business & Professions Code § 17203 provides that “the court may make
12 such orders or judgments . . . as may be necessary to prevent the use or employment by any person of
13 any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to
14 restore to any person in interest any money or property, real or personal, which may have been
15 acquired by means of unfair competition.”

16 47. California Business & Professions Code § 17204 provides for suits for injunctive relief
17 to be brought by private attorneys general: “Actions for injunction pursuant to this chapter may be
18 prosecuted by . . . any person acting for the interests of itself, its members or the general public.”

19 48. Defendants have, in the course of doing business, knowingly and intentionally exposed
20 individuals to the Listed Chemicals without first providing a clear and reasonable warning, in violation
21 California Health & Safety Code § 25249.6, and thereby has engaged, and continues to engage, in a
22 *per se* unlawful business practice constituting unfair competition in violation of California Business &
23 Professions Code § 17200.

24 49. Continuing commission by Defendant of the actions alleged above will irreparably
25 harm residents and employees of, and visitors to, the Properties, adjacent property owners, and the
26 general public, for which harm those individuals have no plain, speedy or adequate remedy at law.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

1 1. Pursuant to the First Cause of Action, that Defendant be enjoined, restrained, and
2 ordered to comply with the provisions of California Health & Safety Code § 25249.6;

3 2. Pursuant to the Second Cause of Action, that Defendant be assessed a civil penalty in an
4 amount equal to \$2,500 per day per individual exposed to any of the Listed Chemicals in violation of
5 California Health & Safety Code § 25249.6, as a result of the Defendant's owning, operating,
6 maintaining and/or controlling the Fire Pits and/or encouraging or facilitating their use without
7 providing the requisite warning;

8 3. That Defendant be ordered to identify and locate each individual exposed to the Listed
9 Chemicals as a result of either direct contact with the Fire Pits or otherwise caused by their use, and
10 provide a warning to each such person that contacting or using the Fire Pits or being within their
11 proximity will expose and may have already exposed that person to chemicals known to cause cancer,
12 birth defects, and other reproductive harm;

13 4. That, pursuant to Civil Procedure Code § 1021.5, Defendant be ordered to pay to
14 Plaintiff the attorneys' fees and costs it incurred in bringing this enforcement action; and

15 5. For a jury trial to the extent permitted on any claims.

16 6. For such other relief as this court deems just and proper.

17
18 Dated: March 1, 2019

DORSEY & WHITNEY LLP

19
20 By: 

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Clean Air OC, LLC