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12 and EAST YARD COMMUNITIES FOR
13 ENVIRONMENTAL JUSTICE

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Superior Court of California
County of Los Angeles

JUL 03 2019

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

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

13 CENTER FOR ENVIRONMENTAL HEALTH,
14 a non-profit corporation; and EAST YARD
15 COMMUNITIES FOR ENVIRONMENTAL
16 JUSTICE, a non-profit corporation,

17 Plaintiffs,

18 v.

19 AMERICH CORPORATION, *et al.*,

20 Defendants.
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Case No. 19STCV00673

ASSIGNED FOR ALL PURPOSES TO
Hon. Amy D. Hogue, Dept. 7

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

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

(Other)

BY FAX

1 Plaintiffs Center for Environmental Health and East Yard Communities for Environmental
2 Justice (“Plaintiffs”), 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 styrene, a chemical known to the State of
7 California to cause cancer. Such exposures have occurred, and continue to occur, as a result of
8 Defendants’ plastics processing operations at facilities they own and/or operate (the “Facilities”).
9 Individuals in the neighborhoods surrounding Defendants’ Facilities are exposed to styrene when
10 they inhale the air contaminated with significant amounts of styrene from Defendants’ Facilities.

11 2. Under California’s Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is
12 unlawful for businesses to knowingly and intentionally expose individuals in California to
13 chemicals known to the State to cause cancer without providing clear and reasonable warnings to
14 individuals prior to their exposure. Defendants process and treat plastics at their Facilities, which
15 releases styrene into the air and thereby exposes individuals in the neighborhoods surrounding
16 Defendants’ Facilities to styrene.

17 3. Despite the fact that Defendants expose individuals to styrene, Defendants provide
18 no warnings whatsoever about the carcinogenic hazards associated with styrene exposure.
19 Defendants’ conduct thus violates the warning provision of Proposition 65, Health & Safety Code
20 § 25249.6.

21 **PARTIES**

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a non-profit
23 corporation dedicated to protecting the public from environmental health hazards and toxic
24 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
25 California. CEH is a “person” within the meaning of Health & Safety Code § 25249.11(a) and
26 brings this enforcement action in the public interest pursuant to Health & Safety Code §
27 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
28 prosecuted a large number of Proposition 65 cases in the public interest. These cases have

1 resulted in significant public benefit, including the reformulation of thousands of products to
2 remove toxic chemicals and to make them safer. CEH also provides information to Californians
3 about the health risks associated with exposure to hazardous substances, where manufacturers and
4 other responsible parties fail to do so.

5 5. Plaintiff EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE
6 (“EYCEJ”) is an environmental health and justice non-profit organization working towards a safe
7 and healthy environment for communities that are disproportionately suffering the negative
8 impacts of industrial pollution. EYCEJ is based in Commerce, California and incorporated under
9 the laws of the State of California. EYCEJ is a “person” within the meaning of Health & Safety
10 Code § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
11 Safety Code § 25249.7(d). EYCEJ’s allegations in this action are limited to Defendants Custom
12 Fibreglass Manufacturing Co., Truck Accessories Group, LLC and J.B. Poindexter & Co., Inc.

13 6. Defendant AMERICH CORPORATION is a person in the course of doing
14 business within the meaning of Health & Safety Code § 25249.11. Americh Corporation owns
15 and/or operates a facility in which plastics are processed and that releases styrene into the air.
16 The Americh Corporation Facility is located at 13212 Saticoy Street, North Hollywood,
17 California 91605. Americh Corporation exposes individuals in the neighborhood surrounding its
18 Facility to styrene without first providing such individuals with clear and reasonable warnings.

19 7. Defendant ARMORCAST PRODUCTS COMPANY, INC. is a person in the
20 course of doing business within the meaning of Health & Safety Code § 25249.11. Armorcast
21 Products Company, Inc. owns and/or operates a facility in which plastics are processed and that
22 releases styrene into the air. The Armorcast Products Company, Inc. Facility is located at 13230
23 Saticoy Street, North Hollywood, California 91605. Armorcast Products Company, Inc. exposes
24 individuals in the neighborhood surrounding its Facility to styrene without first providing such
25 individuals with clear and reasonable warnings.

26 8. Defendant CUSTOM FIBREGLASS MANUFACTURING CO. is a person in the
27 course of doing business within the meaning of Health & Safety Code § 25249.11. Custom
28 Fibreglass Manufacturing Co. owns and/or operates a facility in which plastics are processed and

1 that releases styrene into the air. The Custom Fibreglass Manufacturing Co. Facility is located at
2 1711 Harbor Avenue, Long Beach, CA, 90813. Custom Fibreglass Manufacturing Co. exposes
3 individuals in the neighborhood surrounding its Facility to styrene without first providing such
4 individuals with clear and reasonable warnings.

5 9. Defendant TRUCK ACCESSORIES GROUP, LLC is a person in the course of
6 doing business within the meaning of Health & Safety Code § 25249.11. Truck Accessories
7 Group, LLC owns and/or operates the Custom Fibreglass Manufacturing Co. Facility. Truck
8 Accessories Group, LLC exposes individuals in the neighborhood surrounding its Facility to
9 styrene without first providing such individuals with clear and reasonable warnings.

10 10. Defendant J.B. POINDEXTER & CO., INC. is a person in the course of doing
11 business within the meaning of Health & Safety Code § 25249.11. J.B. Poindexter & Co., Inc.
12 owns and/or operates the Custom Fibreglass Manufacturing Co. Facility. J.B. Poindexter & Co.,
13 Inc. exposes individuals in the neighborhood surrounding its Facility to styrene without first
14 providing such individuals with clear and reasonable warnings. The Defendants listed in
15 Paragraphs 8 through 10 are together referred to as the “Custom Fibreglass Defendants.”

16 11. Defendant XERXES CORPORATION is a person in the course of doing business
17 within the meaning of Health & Safety Code § 25249.11. Xerxes Corporation owns and/or
18 operates a facility in which plastics are processed and that releases styrene into the air. The
19 Xerxes Corporation Facility is located at 1210 North Tustin Avenue, Anaheim, California 92807.
20 Xerxes Corporation exposes individuals in the neighborhood surrounding its Facility to styrene
21 without first providing such individuals with clear and reasonable warnings.

22 12. DOES 1 through 100 are each a person in the course of doing business within the
23 meaning of Health & Safety Code § 25249.11. DOES 1 through 100 own and/or operate the
24 Facilities.

25 13. The true names of DOES 1 through 100 are either unknown to Plaintiffs at this
26 time or the applicable time period before which Plaintiffs may file a Proposition 65 action has not
27 run. When their identities are ascertained or the applicable time period before which Plaintiffs
28

1 may file a Proposition 65 action has run, the Complaint shall be amended to reflect their true
2 names.

3 14. The defendants identified in Paragraphs 6 through 11 and DOES 1 through 100 are
4 collectively referred to herein as “Defendants.”

5 **JURISDICTION AND VENUE**

6 15. The Court has jurisdiction over this action pursuant to Health & Safety Code §
7 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
8 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
9 other trial courts.

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

15 17. Venue is proper in the Los Angeles County Superior Court because Defendants’
16 Facilities are located in Los Angeles County and styrene exposures to individuals living and
17 working near Defendants’ Facilities take place in Los Angeles County.

18 **BACKGROUND FACTS**

19 18. The People of the State of California have declared by initiative under Proposition
20 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
21 other reproductive harm.” Proposition 65, § 1(b).

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

27 No person in the course of doing business shall knowingly and
28 intentionally expose any individual to a chemical known to the state to

1 cause cancer or reproductive toxicity without first giving clear and
2 reasonable warning to such individual. . . .

3 20. On April 22, 2016, the State of California officially listed styrene as a chemical
4 known to cause cancer. On April 22, 2017, one year after it was listed as a chemical known to
5 cause cancer, styrene became subject to the clear and reasonable warning requirement regarding
6 carcinogens under Proposition 65. 27 California Code of Regulations (“C.C.R.”) § 27001(b);
7 Health & Safety Code § 25249.10(b).

8 21. Defendants’ Facilities release significant amounts of styrene into the air, exposing
9 individuals in the neighborhoods surrounding the Facilities to styrene. The primary route of
10 exposure to styrene is inhalation when individuals living and working near Defendants’ Facilities
11 inhale air that has been contaminated with styrene released from the Facilities. No clear and
12 reasonable warning is provided by Defendants to individuals living and working near Defendants’
13 Facilities regarding the carcinogenic hazards of styrene to individuals in the neighborhoods
14 surrounding the Facilities.

15 22. Any person acting in the public interest has standing to enforce violations of
16 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
17 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
18 within such time. Health & Safety Code § 25249.7(d).

19 23. On April 20, 2018, CEH provided 60-Day Notices of Violation of Proposition 65
20 to the California Attorney General, to the District Attorney of Los Angeles County, to the City
21 Attorney of Los Angeles County, and to Defendants Americh Corporation (“Americh”) and
22 Armorcast Products Company, Inc. (“Armorcast”). In compliance with Health & Safety Code §
23 25249.7(d) and 27 C.C.R. § 25903(b), the Notices included the following information: (1) the
24 name and address of each violator; (2) the statute violated; (3) the time period during which the
25 violations occurred; (4) specific descriptions of the violations, including (a) the routes of
26 exposure to styrene, and (b) the locations of the sources of the exposures to styrene; and (5) the
27 name of the specific Proposition 65-listed chemical that is the subject of the violations described
28 in the Notices.

1 24. CEH also sent a Certificate of Merit for the April 20, 2018 Notices to the
2 California Attorney General, the District Attorney of Los Angeles County, the City Attorney of
3 Los Angeles, and to Americh and Armorcast. In compliance with Health & Safety Code §
4 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that CEH's counsel: (1) has consulted
5 with one or more persons with relevant and appropriate experience or expertise who reviewed
6 facts, studies, or other data regarding the exposures to styrene alleged in each Notice; and (2)
7 based on the information obtained through such consultations, believes that there is a reasonable
8 and meritorious case for a citizen enforcement action based on the facts alleged in each Notice.
9 In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate
10 served on the Attorney General included factual information – provided on a confidential basis –
11 sufficient to establish the basis for the Certificate, including the identity of the person(s) consulted
12 by CEH's counsel and the facts, studies, or other data reviewed by such persons.

13 25. On October 1, 2018, CEH provided a 60-Day Notice of Violation of Proposition
14 65 to the California Attorney General, to the District Attorney of Los Angeles County, to the City
15 Attorney of Los Angeles County, and to the Custom Fibreglass Defendants. In compliance with
16 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following
17 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
18 during which the violations occurred; (4) specific descriptions of the violations, including (a) the
19 routes of exposure to styrene, and (b) the locations of the sources of the exposures to styrene; and
20 (5) the name of the specific Proposition 65-listed chemical that is the subject of the violations
21 described in the Notice.

22 26. CEH also sent a Certificate of Merit for the October 1, 2018 Notice to the
23 California Attorney General, the District Attorney of Los Angeles County, the City Attorney of
24 Los Angeles, and to the Custom Fibreglass Defendants. In compliance with Health & Safety
25 Code § 25249.7(d) and 11 C.C.R. § 3101, the Certificate certified that CEH's counsel: (1) has
26 consulted with one or more persons with relevant and appropriate experience or expertise who
27 reviewed facts, studies, or other data regarding the exposures to styrene alleged in the Notice; and
28 (2) based on the information obtained through such consultations, believes that there is a

1 reasonable and meritorious case for a citizen enforcement action based on the facts alleged in the
2 Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, the
3 Certificate served on the Attorney General included factual information – provided on a
4 confidential basis – sufficient to establish the basis for the Certificate, including the identity of the
5 person(s) consulted by CEH’s counsel and the facts, studies, or other data reviewed by such
6 persons.

7 27. On January 25, 2019, CEH provided a 60-Day Notice of Violation of Proposition
8 65 to the California Attorney General, to the District Attorney of Los Angeles County, to the City
9 Attorney of Los Angeles County, and to Defendant Xerxes Corporation. In compliance with
10 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following
11 information: (1) the name and address of the violator; (2) the statute violated; (3) the time period
12 during which the violations occurred; (4) specific descriptions of the violations, including (a) the
13 routes of exposure to styrene, and (b) the locations of the sources of the exposures to styrene; and
14 (5) the name of the specific Proposition 65-listed chemical that is the subject of the violations
15 described in the Notice.

16 28. CEH also sent a Certificate of Merit for the January 25, 2019 Notice to the
17 California Attorney General, the District Attorney of Los Angeles County, the City Attorney of
18 Los Angeles, and to Defendant Xerxes Corporation. In compliance with Health & Safety Code §
19 25249.7(d) and 11 C.C.R. § 3101, the Certificate certified that CEH’s counsel: (1) has consulted
20 with one or more persons with relevant and appropriate experience or expertise who reviewed
21 facts, studies, or other data regarding the exposures to styrene alleged in the Notice; and (2) based
22 on the information obtained through such consultations, believes that there is a reasonable and
23 meritorious case for a citizen enforcement action based on the facts alleged in the Notice. In
24 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, the Certificate served
25 on the Attorney General included factual information – provided on a confidential basis –
26 sufficient to establish the basis for the Certificate, including the identity of the person(s) consulted
27 by CEH’s counsel and the facts, studies, or other data reviewed by such persons.

1 29. On February 27, 2019, EYCEJ provided a 60-Day Notice of Violation of
2 Proposition 65 to the California Attorney General, to the District Attorney of Los Angeles
3 County, to the City Attorney of Los Angeles County, and to the Custom Fibreglass Defendants.
4 In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice
5 included the following information: (1) the name and address of the violators; (2) the statute
6 violated; (3) the time period during which the violations occurred; (4) specific descriptions of the
7 violations, including (a) the routes of exposure to styrene, and (b) the locations of the sources of
8 the exposures to styrene; and (5) the name of the specific Proposition 65-listed chemical that is
9 the subject of the violations described in the Notice.

10 30. EYCEJ also sent a Certificate of Merit for the February 27, 2019 Notice to the
11 California Attorney General, the District Attorney of Los Angeles County, the City Attorney of
12 Los Angeles, and to the Custom Fibreglass Defendants. In compliance with Health & Safety
13 Code § 25249.7(d) and 11 C.C.R. § 3101, the Certificate certified that EYCEJ's counsel: (1) has
14 consulted with one or more persons with relevant and appropriate experience or expertise who
15 reviewed facts, studies, or other data regarding the exposures to styrene alleged in the Notice; and
16 (2) based on the information obtained through such consultations, believes that there is a
17 reasonable and meritorious case for a citizen enforcement action based on the facts alleged in the
18 Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, the
19 Certificate served on the Attorney General included factual information – provided on a
20 confidential basis – sufficient to establish the basis for the Certificate, including the identity of the
21 person(s) consulted by EYCEJ's counsel and the facts, studies, or other data reviewed by such
22 persons.

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

1 32. Defendants know that their Facilities emit significant quantities of styrene into the
2 air, exposing individuals in the neighborhoods surrounding the Facilities to styrene. Defendants
3 intend that their Facilities are operated in a manner that results in such styrene exposures.

4 33. Under Proposition 65, an exposure is “knowing” where the party responsible for
5 such exposure has:

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

9 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
10 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
11 § 12601).

12 34. Defendants here have actual knowledge of the styrene exposures described herein.
13 Indeed, Defendants report significant styrene emissions data to the United States Environmental
14 Protection Agency. In addition, Defendants have been informed of the styrene exposures caused
15 by their Facilities by means of the 60-Day Notice of Violation and accompanying Certificate of
16 Merit served on them by Plaintiffs.

17 35. The styrene exposures in the neighborhoods surrounding the Facilities are the
18 natural consequence of Defendants operating plastics processing facilities in densely populated
19 neighborhoods.

20 36. Plaintiffs have engaged in good faith efforts to resolve the claims alleged herein
21 prior to filing this Complaint.

22 37. Nevertheless, Defendants have failed, and continue to fail, to provide clear and
23 reasonable warnings regarding the carcinogenic hazards of styrene to individuals in the
24 neighborhoods surrounding Defendants’ Facilities. By committing the acts alleged above,
25 Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and
26 intentionally exposing individuals to styrene.

27 38. Any person “violating or threatening to violate” Proposition 65 may be enjoined in
28 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

1 will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not
2 to exceed \$2,500 per day for each violation of Proposition 65.

3 **FIRST CAUSE OF ACTION**
4 **(Violations of Health & Safety Code § 25249.6**
5 **Plaintiff EYCEJ as to the Custom Fibreglass Defendants**
6 **Plaintiff CEH as to all Defendants)**

7 39. Plaintiffs reallege and incorporate by reference as if specifically set forth herein
8 Paragraphs 1 through 38, inclusive.

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

11 41. Styrene is a chemical listed by the State of California as known to cause cancer.

12 42. Defendants know and intend that styrene from their Facilities is released into the
13 air, thereby exposing individuals in the neighborhoods surrounding the Facilities to styrene.

14 43. Defendants have failed, and continue to fail, to provide clear and reasonable
15 warnings regarding the carcinogenicity of styrene to individuals in the neighborhoods
16 surrounding the Facilities.

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

21 **PRAYER FOR RELIEF**

22 Plaintiffs pray for judgment against Defendants as follows:

23 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
24 permanently enjoin Defendants from exposing individuals in the neighborhoods surrounding
25 Defendants’ Facilities to styrene without providing prior clear and reasonable warnings, as
26 Plaintiffs shall specify in further application to the Court;

27 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants
28 to take action to stop ongoing unwarned exposures of individuals in the neighborhoods

1 surrounding Defendants' Facilities to styrene, as Plaintiffs shall specify in further application to
2 the Court;

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

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

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

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10 Dated: July 3, 2019

Respectfully submitted,

11 LEXINGTON LAW GROUP

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13 _____
14 Mark N. Todzo
15 Attorneys for Plaintiff
16 CENTER FOR ENVIRONMENTAL HEALTH
17 and EAST YARD COMMUNITIES FOR
18 ENVIRONMENTAL JUSTICE
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