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County of Alameda

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

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13 CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

14 Plaintiff,

15 v.

16
17 ELECTRO-COATINGS OF CALIFORNIA,
TEIKURO CORPORATION, and DOES 1
18 through 20, inclusive,

19 Defendants.

Case No. **23CV039004**

**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
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 Defendants' continuing discharge and release of
6 substantial quantities of Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS)
7 (collectively, "PFAS") into sources of drinking water. PFAS are chemicals known to the State of
8 California to cause cancer, birth defects and other reproductive harm. Such discharges have
9 occurred, and continue to occur, as a result of Defendant ELECTRO-COATINGS OF
10 CALIFORNIA's operations at 893 Carleton Street, Berkeley, CA 94710 (the "Electro-Coatings
11 Facility"), and Defendant TEIKURO CORPORATION's operations at 31499 Hayman Street,
12 Hayward, CA 94544 (the "Teikuro Facility").

13 2. Under California's Proposition 65, Health & Safety Code §25249.5, *et seq.*, it is
14 unlawful for businesses to knowingly discharge or release chemicals known to the State to cause
15 cancer, birth defects, or other reproductive harm into water or into land where such chemical
16 passes or will probably pass into a source of drinking water. Defendants' operations and Facility
17 discharges and releases PFAS directly into the groundwater beneath and/or surrounding the
18 Facility, which is designated as a source of drinking water.

19 3. Defendants' conduct thus violates the discharge prohibition of Proposition 65.
20 Health & Safety Code §25249.5.

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 millions of products to
2 remove toxic chemicals and to make them safer, the reduction of toxic emissions from
3 manufacturing facilities, and the elimination of toxic discharges into sources of drinking water.
4 CEH also consults and/or works with environmental justice community partners (e.g., residents
5 living in impacted areas, grassroots groups, community-based organizations) in cases that affect
6 local water and air quality, and provides information to Californians about the health risks
7 associated with exposure to hazardous substances, where manufacturers and other responsible
8 parties fail to do so.

9 5. Defendant ELECTRO-COATINGS OF CALIFORNIA is a person in the course of
10 doing business within the meaning of Health & Safety Code §25249.11. Defendant ELECTRO-
11 COATINGS OF CALIFORNIA owns and/or operates the Electro-Coatings Facility that
12 discharges and releases PFOA and PFOS directly into the groundwater beneath and/or
13 surrounding the Electro-Coatings Facility as well as onto land where it passes or will probably
14 pass into the groundwater beneath and/or surrounding the Electro-Coatings Facility, which is
15 designated as a source of drinking water.

16 6. Defendant TEIKURO CORPORATION is a person in the course of doing
17 business within the meaning of Health & Safety Code §25249.11. Defendant TEIKURO
18 CORPORATION owns and/or operates the Teikuro Facility that discharges and releases PFOA
19 and PFOS directly into the groundwater beneath and/or surrounding the Teikuro Facility as well
20 as onto land where it passes or will probably pass into the groundwater beneath and/or
21 surrounding the Teikuro Facility, which is designated as a source of drinking water.

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

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

1 adopted by a regional board as being suitable for domestic or municipal uses.” Health & Safety
2 Code § 25249.11(d).

3 16. Pursuant to State Water Resources Control Board Resolution No. 88-63
4 (“Resolution No. 88-63”), “‘sources of drinking water’ shall be defined in Water Quality Control
5 Plans as those water bodies with beneficial uses designated as suitable, or potentially suitable, for
6 municipal or domestic water supply (MUN).” Thus, to the extent a basin plan defines
7 groundwater or other sources as suitable for MUN, those are “sources of drinking water” under
8 Resolution No. 88-63 and Proposition 65.

9 17. The California Regional Water Quality Control Board for the San Francisco Bay
10 Region (“Water Board”), which is the regional Water Board which regulates both the Teikuro
11 Facility and the Electro-Coatings Facility, has incorporated Resolution No. 88-63 into the Water
12 Quality Control Plan for the San Francisco Bay Basin (the “Basin Plan”). Water Board
13 Resolution No. 89-39; Basin Plan, p. 2-9. The Basin Plan specifically provides that, “[u]nless
14 otherwise designated by the Water Board, all groundwater is considered suitable, or potentially
15 suitable, for municipal or domestic water supply (MUN).” Basin Plan, p. 2-9. The Water Board
16 has designated the Facility area as MUN.

17 18. On November 10, 2017, the State of California officially listed PFOA and PFOS
18 as chemicals known to cause reproductive toxicity. PFOA and PFOS are specifically identified as
19 developmental toxicants, which means they cause harm to the developing fetus. 27 Cal. Code
20 Regs. (“C.C.R.”) §27001(c). On July 10, 2019, twenty months after they were listed as chemicals
21 known to cause reproductive toxicity, PFOA and PFOS became subject to the prohibition on
22 discharging or releasing a listed chemical into a source of drinking water. *Id.*; Health & Safety
23 Code § 25249.9(a). On December 24, 2021 and February 25, 2022, the State of California
24 officially listed PFOS and PFOA, respectively, as chemicals known to cause cancer. On August
25 24, 2023 and October 25, 2023, PFOS and PFOA will, respectively, become subject to the
26 prohibition on discharging or releasing a listed chemical into a source of drinking water as it
27 relates to their listings as carcinogens. Health & Safety Code §25249.9(a).

28 19. The Electro-Coatings Facility’s operations result in the discharge and release of

1 PFOA and PFOS directly into the groundwater beneath and/or surrounding the Facility as well as
2 onto land where it will pass or probably will pass into the groundwater beneath and/or
3 surrounding the Facility. Testing conducted at the Electro-Coatings Facility reveals the presence
4 of significant amounts of PFOA and PFOS in the Electro-Coatings Facility's wastewater as well
5 as the groundwater adjacent and/or beneath to the Electro-Coatings Facility. PFOA and PFOS
6 discharged and/or released from the Electro-Coatings Facility is responsible for at least some of
7 the PFOA and PFOS contamination of the groundwater adjacent and/or beneath to the Electro-
8 Coatings Facility.

9 20. The Teikuro Facility's operations result in the discharge and release of PFOA and
10 PFOS directly into the groundwater beneath and/or surrounding the Facility as well as onto land
11 where it will pass or probably will pass into the groundwater beneath and/or surrounding the
12 Facility. Testing conducted at the Teikuro Facility reveals the presence of significant amounts of
13 PFOA and PFOS in the Teikuro Facility's soil, dust/dirt, stormwater, as well as the groundwater
14 adjacent and/or beneath to the Teikuro Facility. PFOA and PFOS discharged and/or released from
15 the Teikuro Facility is responsible for at least some of the PFOA and PFOS contamination of the
16 groundwater adjacent and/or beneath to the Teikuro Facility.

17 21. Any person acting in the public interest has standing to enforce violations of
18 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
19 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
20 within such time. Health & Safety Code §25249.7(d).

21 22. More than sixty days prior to naming each Defendant in this lawsuit, CEH
22 provided a 60-Day "Notice of Violation" of Proposition 65 to the California Attorney General as
23 well as to the District Attorney for the County of Alameda and to each of the named Defendants.
24 In compliance with Health & Safety Code §25249.7(d) and 27 C.C.R. § 25903(b), each of the
25 Notices included the following information: (1) CEH's name and the name, address, and
26 telephone number of a responsible individual within CEH; (2) the name and address of the
27 violators; (3) the approximate time period during which the violations occurred; (4) the names of
28 the specific Proposition 65-listed chemicals; (5) a general identification of the discharge or

1 release; and (6) the source of drinking water into which the discharges are alleged to have
2 occurred, to be occurring, or to be likely to occur. In compliance with 27 C.C.R. § 25903(b) CEH
3 also included a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986
4 (Proposition 65): A Summary” with the Notice sent to each Defendant.

5 23. None of the public prosecutors with the authority to prosecute violations of
6 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against any of
7 the named Defendants under Health & Safety Code §25249.5 *et seq.* based on the claims asserted
8 in the Notices.

9 24. Under Proposition 65, a discharge is “knowing” where the party responsible for
10 such discharge has:

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

14 27 CCR §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
15 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §
16 12201).

17 25. Defendants know that operations at each Defendant’s respective Facility discharge
18 and release significant amounts of PFOA and PFOS onto land where such chemicals are likely to
19 pass into groundwater as well as directly into groundwater beneath and/or surrounding the
20 Facility. Defendant ELECTRO-COATINGS OF CALIFORNIA has reported the presence of
21 PFOA and PFOS in the Electro-Coating Facility’s wastewater and the adjacent and/or beneath
22 groundwater. Defendant TEIKURO CORPORATION has reported the presence of PFOA and
23 PFOS in the Teikuro Facility’s soil, dust/dirt, stormwater, and adjacent and/or beneath
24 groundwater. Neither Defendant has ceased discharging and/or releasing PFOA and PFOS into
25 groundwater surrounding their respective Facility.

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

28

1 1. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
2 permanently enjoin Defendants from discharging and releasing PFOA and PFOS into sources of
3 drinking water.

4 2. That the Court, pursuant to Health & Safety Code §25249.7(a), require Defendants
5 to clean the PFOA and PFOS from the sources of drinking water into which it has released them.

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

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

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

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13 Dated: July 20, 2023

Respectfully submitted,

14 LEXINGTON LAW GROUP

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16
17 Mark N. Todzo
18 Attorneys for Plaintiff
19 CENTER FOR ENVIRONMENTAL HEALTH