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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

QUEMETCO, INC., *et al.*,

Defendants.

Case No.: 19STCV02668

Assigned for all purposes to:
HON. DAVID S. CUNNINGHAM, DEPT.
SS11

**[PROPOSED] AMENDED CONSENT
JUDGMENT RE: QUEMETCO, INC.,
QUEMETCO WEST, LLC, AND RSR
CORPORATION**

Complaint Filed: January 30, 2019

1. INTRODUCTION

1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a non-profit corporation (“CEH” or “Plaintiff”), and Quemetco, Inc., Quemetco West, LLC, and RSR Corporation (together “Settling Defendants” or “Quemetco”) to settle claims asserted by Plaintiff against Settling Defendants as set forth in the operative Complaint in *Center for Environmental Health, et al. v. Quemetco, Inc., et al.*, Los Angeles Superior Court Case No.

1 19STCV02688 (the “Action”). Plaintiff and Settling Defendants are referred to collectively as
2 the “Parties.”

3 **1.2.** On November 20, 2018, CEH and the Clean Air Coalition of North Whittier &
4 Avocado Heights (“CAC”) served a 60-day notice of violation pursuant to Health and Safety
5 Code section 25249.7(d) on Settling Defendants, the California Attorney General, the District
6 Attorney for the County of Los Angeles, and the City Attorney for the city of Los Angeles. The
7 Notice asserted that Quemetco’s facility located at 720 South Seventh Avenue, City of Industry,
8 California 91746 (the “Quemetco Site”) exposes individuals living within 0.25 miles of the
9 Quemetco Site to lead and arsenic through inhalation of ambient air and ingestion of soil on their
10 residential properties.

11 **1.3.** Settling Defendants are each a corporation that employs ten (10) or more persons.
12 Quemetco West, LLC owns and Quemetco Inc. operates the Quemetco Site.

13 **1.4.** On January 30, 2019, CEH and CAC (together “Plaintiffs”) filed the operative
14 Complaint, seeking injunctive relief and civil penalties. The Complaint alleges that Quemetco
15 causes the exposures identified in the notice without first issuing the clear and reasonable
16 warnings required by the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
17 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

18 **1.5.** Quemetco denies the material factual and legal allegations contained in CEH’s
19 Complaint and maintains that it does not expose individuals to lead or arsenic in violation of
20 Proposition 65 or any other law. Quemetco denies any liability under Proposition 65 and denies
21 that Proposition 65 applies to CEH’s claim as pled.

22 **1.6.** Plaintiff’s claims were based, in part, on soil sampling and testing received from
23 the California Department of Toxic Substances Control (“DTSC”) which showed lead and arsenic
24 in the soil in the area located within 0.25 miles of the Quemetco Site. The Court has not made
25 any findings in this case proving that Settling Defendants are responsible for or have contributed
26 to the lead and arsenic found in DTSC’s testing.

1 **1.7.** On July 14 and 15, 2022, Plaintiffs and Settling Defendants engaged in two full
2 days of mediation with the Honorable Louis M. Meisinger, Ret.

3 **1.8.** Following the mediation, Plaintiffs and Settling Defendants stipulated to the
4 dismissal with prejudice of CAC without any consideration from Settling Defendants. On
5 September 19, 2022, the Court dismissed CAC's claim with prejudice.

6 **1.9.** Beginning in June 2019 and continuing up through the date of the mediation, the
7 Parties engaged in substantial discovery and motion practice, including a motion for summary
8 judgment and cross motions for summary adjudication.

9 **1.10.** The Parties enter this Consent Judgment as a full and final settlement of all
10 disputed claims which were or could have been raised in the Complaint arising out of the facts or
11 conduct alleged therein. Excepting the Stipulated Facts below, execution and compliance with
12 this Consent Judgment shall not constitute or be construed as an admission by the Parties of any
13 fact, conclusion of law, or violation of law.

14 **1.11.** Settling Defendants deny the material, factual, and legal allegations in the Notice
15 and Complaint and expressly deny any wrongdoing whatsoever. Nothing in this Consent
16 Judgment is or will be construed as an admission by Quemetco of wrongdoing of any kind.
17 Nothing in this Consent Judgment will prejudice, waive, or impair any right, remedy, or defense
18 Quemetco may have in this or any other legal proceedings.

19 **1.12.** This Consent Judgment is the product of negotiation and compromise and is
20 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
21 disputed in this Action.

22 **2. DEFINITIONS**

23 **2.1.** "Effective Date" means the date on which the Court enters this Consent Judgment.

24 **3. INJUNCTIVE RELIEF**

25 **3.1. Clear and Reasonable Warnings.** The Parties agree to the following:

26 **3.1.1.** Within 30 days of the Effective Date and once annually thereafter Settling
27 Defendants will mail or cause to be delivered the Proposition 65 warning attached as Exhibit A,
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1 in English, Spanish, and Chinese, to all residences Settling Defendants can, to the best of their
2 ability, determine to be within the outlined portion of the map in Exhibit A.

3 **3.1.2.** Within 30 days after the Effective Date, and once quarterly thereafter,
4 Quemetco will publish the Proposition 65 warning attached as Exhibit A in the main news section
5 or in the local news section of one or more English language daily newspapers and in one Spanish
6 language daily newspaper consistent with the Spanish language publication’s Proposition 65
7 notice placement policy. Quemetco will initially comply with this obligation by publishing in the
8 San Gabriel Valley Tribune, which includes the Whittier Daily News and the Pasadena Star for
9 the English language newspapers, and Excelsior for the Spanish language newspaper.

10 **3.1.3.** The warnings identified in Sections 3.1.1 and 3.1.2 comply with the
11 requirements of Proposition 65 and will fully satisfy any warning obligations Proposition 65 may
12 impose on Quemetco arising out of emissions from the facility located on the Quemetco Site. For
13 the avoidance of doubt, those warnings constitute “clear and reasonable” warnings under Health
14 and Safety Code § 25249.6.

15 **3.2. Additional Transparency.** The Parties agree to the following:

16 **3.2.1.** Quemetco will develop enhanced community engagement and transparency
17 efforts that will include the public release of (a) emissions data, including stack test results and
18 fence line monitor data, which Quemetco will make publicly available as soon as practicable and
19 not later than 30 days after receiving the data, and (b) an annual report providing an update on the
20 facility’s operations, a summary of the yearly emissions data, and other relevant operational
21 updates. The public release of information required under this section will include a plainly
22 visible link to this information on the “Health, Environment, and Safety” section of Quemetco’s
23 website or the equivalent section of Quemetco’s future website, which section will be
24 conspicuous on the main page of the website.

25 **3.2.2.** Quemetco will notify CEH when it releases the information identified in
26 Subsection 3.2.1 above and will include CEH on any mailing list generated as part of these
27 community engagement efforts. Quemetco will engage in good faith discussions with CEH to
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1 address and resolve any issues CEH raises based on those disclosures. CEH will make best
2 efforts to raise any concerns in an aggregated way so that they can be efficiently addressed on a
3 bi-annual basis. Both CEH and Quemetco will identify a liaison for these purposes.

4 **4. STIPULATIONS OF FACT**

5 **4.1.** The Parties stipulate, and the Court finds, as follows:

6 **4.1.1.** Based on the most recent reported emissions data, which are attached as
7 Exhibit B to the judgment, Quemetco's emissions do not require a Proposition 65 warning for
8 airborne exposures.

9 **4.1.2.** Based on the most recent reported emissions data, which are attached as
10 Exhibit B to the judgment, Quemetco's emissions do not contribute recognizably to the
11 concentration of Proposition 65-listed substances on the ground or in the residential soil within
12 0.25 miles of the facility.

13 **4.1.3.** Defendants did not conduct business on the Quemetco Site until 1972,
14 when RSR Corporation purchased the then-existing facility from St. Joe Minerals Corporation.

15 **4.1.4.** Defendants have made substantial changes to and upgrades on the property
16 since RSR Corporation purchased the then-existing facility from St. Joe Minerals Corporation in
17 1972 and the land from Western Associates in 1986.

18 **4.1.5.** The issues covered by this settlement agreement, including, but not limited
19 to, the stipulated findings in Sections 4.1.1 through 4.1.4, were actively litigated and resolved by
20 this judgment.

21 **5. PAYMENTS**

22 **5.1.** Within 30 days of the Effective Date, Settling Defendants shall pay to Plaintiff the
23 total sum of \$2,500,000, which shall be allocated as follows:

24 **5.1.1.** \$500,000 as an Additional Settlement Payment ("ASP") pursuant to
25 California Code of Regulations, Title 11, § 3204 payable to the Center for Environmental Health.
26 These funds shall be placed in CEH's City of Industry Community Fund ("Community Fund").
27 The payments to this fund shall be used exclusively for the purpose of reducing exposures to lead
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1 and arsenic in the neighborhood located within 0.25 miles of Quemetco's facility. The
2 Community Fund will not be used to conduct soil remediation. CEH, with input from community
3 members, will use the funds from the Community Fund to implement measures designed to
4 identify, mitigate, and reduce exposures to lead and arsenic at residences located within 0.25
5 miles of the facility. Plaintiff shall obtain and maintain adequate records to document that ASP is
6 spent on these activities and Plaintiff agrees to provide such documentation to the Attorney
7 General within thirty days of any request from the Attorney General.

8 **5.1.2.** Within nine months following the Effective Date and prior to expending
9 funds from the Community Fund, CEH will submit the details of its planned uses of the Fund to
10 the Court for its approval.

11 **5.1.3.** The Community Fund will not be used in any way to interfere in any way
12 with the facility's ongoing operations through, for example, litigation, picketing, lobbying,
13 seeking to influence regulators or government officials, or otherwise pressuring Quemetco to stop
14 conducting or to change the way it conducts business.

15 **5.2.** \$2,000,000 as a reimbursement of a portion of Plaintiff's reasonable attorneys'
16 fees and costs. This amount shall be divided into three checks: (1) a check for \$1,810,000 shall
17 be made payable to Lexington Law Group; (2) a check for \$80,000 shall be made payable to
18 Boucher LLP, and (3) a check for \$110,000 shall be made payable to the Center for
19 Environmental Health.

20 **6. ENFORCEMENT OF CONSENT JUDGMENT**

21 **6.1.** Plaintiff may, by motion or application for an order to show cause before the
22 Superior Court of Los Angeles County, enforce the terms and conditions contained in Section 3.1
23 of this Consent Judgment. Prior to bringing any motion or application to enforce the
24 requirements thereof, Plaintiff shall meet and confer regarding the basis for Plaintiff's anticipated
25 motion or application in an attempt to resolve it informally, including providing Settling
26 Defendants a reasonable opportunity of at least thirty (30) days to cure any alleged violation.
27 Should such attempts at informal resolution fail, Plaintiff may file its enforcement motion or
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1 application after the cure period has elapsed. The prevailing party on any motion to enforce this
2 Consent Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result
3 of such motion or application.

4 **6.2.** Any dispute arising under this Consent Judgment other than an alleged violation of
5 Section 3.1 that the Parties are unable to resolve through mutual, good faith negotiations will first
6 be mediated by a mutually selected mediator with each party bearing its own costs. If the Parties
7 cannot select an agreeable mediator, then the matter will be referred to the American Arbitration
8 Association for assignment to a mediator. If such dispute between the Parties cannot be resolved
9 by mediation, either party may submit the dispute to arbitration in accordance with the arbitration
10 rules of the American Arbitration Association then in effect. The dispute will be heard by a panel
11 of three neutral arbitrators, with each side selecting an arbitrator and those two arbitrators
12 selecting the third. The parties will bear their own costs.

13 **7. MODIFICATION OF CONSENT JUDGMENT**

14 **7.1.** This Consent Judgment may only be modified by written agreement of Plaintiff
15 and Settling Defendants, or upon motion of Plaintiff or Settling Defendants as provided by law.

16 **8. CLAIMS COVERED AND RELEASE**

17 **8.1. Plaintiff's Release on Behalf of Public Interest.** This Consent Judgment is a
18 full, final, and binding judgment between CEH, acting on behalf of itself and in the public interest
19 pursuant to Health and Safety Code § 25249.7(d), and Settling Defendants regarding any
20 allegations, violations, actions, damages, costs, penalties, causes of action, or claims made, or
21 which could have been made, in the Notice and/or the Complaint, arising out of emissions of lead
22 and/or arsenic from the Quemetco Site up to and including the Effective Date, including any
23 Proposition 65 claims related to exposures to lead and arsenic from the air, soil, water, or any
24 other manner alleged to have resulted, in whole or in part, from any emissions from the facility
25 that occurred before the judgment date.

26 **8.2. Plaintiff's Release on Behalf of Itself.** Plaintiff also agrees to the broadest
27 possible release and waiver of claims available under California Law. Plaintiff, on behalf of itself
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1 only, hereby waives any and all rights and benefits which it now has, or in the future may have,
2 conferred upon it with respect to claims arising from any violation of Proposition 65 or any other
3 statutory or common law regarding the emissions from the Quemetco Site. Plaintiff
4 acknowledges that it is familiar with the provisions of section 1542 of the California Civil Code,
5 which provides as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
7 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF
9 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

10 CEH waives and relinquishes all of the rights and benefits CEH has, or may have, under
11 California Civil Code section 1542. CEH acknowledges that it may discover facts in addition to,
12 or different from, those which they now know or believe to be true with respect to the subject
13 matter of this Consent Judgment. Nevertheless, this release will be and remain in effect as a full
14 and complete general release, notwithstanding the discovery or existence of any additional or
15 different facts.

16 **8.3.** Compliance with the terms of this Consent Judgment resolves any issue, now and
17 in the future, concerning compliance by Quemetco or its affiliates, parent or subsidiary
18 corporations, divisions, successors, officers, directors, or assigns with the requirements of
19 Proposition 65 with respect to any emissions from the Quemetco Site that occurred up to and
20 including the Effective Date. Quemetco shall not be liable for, and the Consent Judgment shall
21 extinguish and preclude, any Proposition 65 claims related to past or future exposures to lead and
22 arsenic from the air, soil, water, or any other manner alleged to have resulted, in whole or in part,
23 from any emissions from the facility that occurred before the judgment date.

24 **9. PROVISION OF NOTICE**

25 **9.1.** When any Party is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and electronic mail as follows:

1 **9.1.1. Notices to Settling Defendants.** The addresses for Settling Defendants to
2 receive notices pursuant to this Consent Judgment shall be:

3 433 E. Las Colinas Blvd, Suite 900
4 Irving TX 75039
5 ATTN: Legal Department

6 With a copy sent via email to Quemetco at EcobatLegal@Ecobat.com

7 **9.1.2. Notices to Plaintiff.** The persons for Plaintiff to receive notices pursuant to
8 this Consent Judgment shall be:

9 Mark Todzo
10 Lexington Law Group
11 503 Divisadero Street
12 San Francisco, CA 94117
13 mtodzo@lexlawgroup.com

14 **9.2.** Any Party may modify the person and address to whom the notice is to be sent by
15 sending the other Parties notice by first class and electronic mail.

16 **10. COMPLIANCE WITH REPORTING REQUIREMENTS AND COURT APPROVAL**

17 **10.1.** Plaintiff shall comply with the reporting form requirements of Health and Safety
18 Code section 25249.7(f). Pursuant to the regulations under Health and Safety Code section
19 25249.7(f), CEH presented this Consent Judgment to the California Attorney General's office
20 upon receiving all necessary signatures prior to submitting it to the Court for its approval and
21 entry.

22 **10.2.** This Consent Judgment shall become effective on the Effective Date, provided
23 however, that Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and
24 Settling Defendants shall support the relief sought by that Motion.

25 **10.3.** In the event of any opposition to entry of the Consent Judgment by this Court and
26 in any or all appeals relating to such entry instituted by a third party or governmental entity or
27 official, the Parties agree to affirmatively cooperate in all efforts to defend against any such
28 litigation.

1 **10.4.** If this Consent Judgment is not entered by the Court, it shall be of no force or
2 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
3 purpose.

4 **11. NON-PUBLIC INFORMATION**

5 **11.1.** The Parties, including their principals and agents, agree that they will not disclose
6 any non-public information learned through the course of their investigation of the claims at issue
7 in this case or the litigation of those claims to any non-party.

8 **11.2.** The parties will agree to a procedure for collecting and either returning or
9 destroying (a) the non-public information, including documents and materials exchanged in
10 discovery and during settlement negotiations, and (b) any materials derived from that non-public
11 information.

12 **12. GOVERNING LAW AND CONSTRUCTION**

13 **12.1.** The terms and obligations arising from this Consent Judgment shall be construed
14 and enforced in accordance with the laws of the State of California.

15 **13. ENTIRE AGREEMENT**

16 **13.1.** This Consent Judgment contains the sole and entire agreement and understanding
17 of Plaintiffs and Settling Defendants with respect to the entire subject matter hereof, and any and
18 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
19 hereby merged herein and therein.

20 **13.2.** There are no warranties, representations, or other agreements between Plaintiffs
21 and Settling Defendants except as expressly set forth herein. No representations, oral or
22 otherwise, express or implied, other than those specifically referred to in this Consent Judgment
23 have been made by any Party hereto.

24 **13.3.** No other agreements not specifically contained or referenced herein, oral or
25 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
26 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
27 any of the Parties hereto only to the extent that they are expressly incorporated herein.

1 **13.4.** No supplementation, modification, waiver, or termination of this Consent
2 Judgment shall be binding unless executed in writing by the Parties to be bound thereby.

3 **13.5.** No waiver of any of the provisions of this Consent Judgment shall be deemed or
4 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
5 such waiver constitute a continuing waiver.

6 **14. RETENTION OF JURISDICTION**

7 **14.1.** This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

10 **15.1.** Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
12 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

13 **16. NO EFFECT ON OTHER SETTLEMENTS**

14 **16.1.** Nothing in this Consent Judgment shall preclude Plaintiffs from resolving any
15 claim against another entity on terms that are different from those contained in this Consent
16 Judgment.

17 **17. EXECUTION IN COUNTERPARTS**

18 **17.1.** The stipulations to this Consent Judgment may be executed in counterparts and by
19 means of facsimile, which taken together shall be deemed to constitute one document.

20
21 **IT IS SO STIPULATED:**

22 **CENTER FOR ENVIRONMENTAL HEALTH**

23
24 

25 _____
26 Regina Jackson
27 Interim Chief Executive Officer

Dated: March 31, 2023

QUEMETCO, INC.

DocuSigned by:

Craig Clark

599A377BEA08434...

Signature

Dated: 27-Mar-23

Craig Clark

Printed Name

Director and President

Title

QUEMETCO WEST, LLC

DocuSigned by:

Craig Clark

599A377BEA08434...

Signature

Dated: 27-Mar-23

Craig Clark

Printed Name

Director and President

Title

RSR CORPORATION

DocuSigned by:

Bob Finn

E13085DA6B2A4F6...

Signature

Dated: 27-Mar-23

Bob Finn

Printed Name

VP Environmental Compliance

Title

IT IS SO ORDERED:

Dated: _____, 2023

Judge of the Superior Court

Exhibit A

Proposition 65 Warning



WARNING

Entering the outlined area in the map below, located near the intersection of 7th Street and Salt Lake Avenue in the City of Industry, California, can expose you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm, including lead and arsenic, from ingestion of and contact with soil. Lead and arsenic are present in the soil in this area due to historical and ongoing industrial operations, lead paint, vehicle emissions, and naturally occurring lead and arsenic. Visit www.P65Warnings.ca.gov for more information.



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Exhibit B

[Most Recent Emissions Data]