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COPY

22 SUPERIOR COURT OF CALIFORNIA
23 COUNTY OF RIVERSIDE
24 (Riverside)

25 THE PEOPLE OF THE STATE OF
26 CALIFORNIA,

27 Plaintiff,

28 v.

TXI RIVERSIDE, INC., TXI CALIFORNIA,
INC., RIVERSIDE CEMENT HOLDINGS
COMPANY,

Defendant.

Exempt from fees pursuant to Government
Code Section 6103

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 03 2008

J. Dorante

NO. *PLC* 502893

COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES
AND OTHER EQUITABLE
RELIEF

1 Plaintiffs People of the State of California, by and through Edmund G. Brown Jr., Attorney
2 General, and Rod Pacheco, District Attorney of Riverside County hereby allege:

3 **I. PRELIMINARY STATEMENT**

4 1. This complaint seeks to remedy the failure of defendants to warn persons of exposure to
5 hexavalent chromium, a chemical known to the State of California to cause cancer. Under the
6 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section
7 25249.6, also known as "Proposition 65", businesses must provide persons with a "clear and
8 reasonable warning" before exposing individuals to these chemicals. These exposures occur, and
9 have occurred, because defendants operate a cement plant in the City of Riverside, at which the
10 deliberate and intentional acts of the defendants result in emissions of hexavalent chromium into
11 the surrounding area, where it is inhaled by persons living, working, or otherwise present in the
12 area.

13 **II. PARTIES**

14 2. Plaintiffs are the People of the State of California, by and through the Attorney General
15 of California, Edmund G. Brown Jr., and the District Attorney for the County of Riverside, Rod
16 Pacheco. Actions to enforce Proposition 65 may be brought by the Attorney General or a
17 District Attorney in the name of the People of the State of California. The Unfair Competition
18 Law, Business and Professions Code sections 17200 *et seq*, provides that actions to enforce that
19 statute may be brought by the Attorney General in the name of the People of the State of
20 California or a District Attorney.

21 3. Defendant TXI Riverside, Inc. ("Riverside Cement") is a Delaware Corporation that
22 operates a cement plant at 1500 Rubidoux Blvd., in the City of Riverside.

23 4. Defendant TXI California, Inc., ("TXI California") is a Delaware Corporation.
24 Plaintiffs are informed and believe, and based on such information and belief allege, that TXI
25 California owns and controls Riverside Cement.

26 5. Defendant Riverside Cement Holdings Company ("Riverside Holdings") is a Delaware
27 Corporation. Plaintiffs are informed and believe, and based on such information and belief
28 allege, that Riverside Holdings owns and controls Riverside Cement.

1 **III. JURISDICTION AND VENUE**

2 6. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
3 because this case is a cause not given by statute to other trial courts.

4 7. This Court has jurisdiction over defendants named above, because they operate and
5 control a facility within the County of Riverside, California.

6 8. Venue is proper in this Court because the cause, or part thereof, arises in the County of
7 Riverside.

8 **IV. STATUTORY BACKGROUND**

9 **A. Proposition 65**

10 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
11 passed as "Proposition 65" by a vote of the people in November of 1986.

12 10. The warning requirement of Proposition 65 is contained in Health and Safety Code
13 section 25249.6, which provides: No person in the course of doing business shall knowingly and
14 intentionally expose any individual to a chemical known to the state to cause cancer or
15 reproductive toxicity without first giving clear and reasonable warning to such individual, except
16 as provided in Section 25249.10.

17 11. Implementing regulations promulgated by the California Health and Welfare Agency
18 provide that the warning method "must be reasonably calculated, considering the alternative
19 methods available under the circumstances, to make the warning message available to the
20 individual prior to exposure." (22 CCR § 12601(a).)

21 12. The regulations prescribe certain types of warnings that are considered valid for
22 "environmental exposures," as "the most appropriate" of either "a sign in the affected area," a
23 warning "in a notice mailed or otherwise delivered to each occupant in the affected area" or a
24 warning through "public media announcements which target the affected area." (22 CCR §
25 12601(d)(1).) The regulations further provide that any warning "shall be provided in a
26 conspicuous manner and under such conditions as to make it likely to be read, seen or heard and
27 understood by an ordinary individual in the course of normal daily activity, and reasonably
28 associated with the location and source of the exposure." (22 CCR § 12601(d)(2).)

1 13. The statute establishes a procedure by which the state is to develop a list of chemicals
2 "known to the State to cause cancer or reproductive toxicity." (Health & Safety Code, section
3 25249.8.) No warning need be given concerning a listed chemical until one year after the
4 chemical first appears on the list. (Id., § 25249.10(b).)

5 14. Any person "violating or threatening to violate" the statute may be enjoined in any
6 court of competent jurisdiction. (Health & Safety Code, § 25249.7.) To "threaten to violate" is
7 defined to mean "to create a condition in which there is a substantial probability that a violation
8 will occur." (Id., § 25249.11(e).) In addition, violators are liable for civil penalties of up to
9 \$2,500 per day for each violation, recoverable in a civil action. (Id., § 25249.7(b).) Actions to
10 enforce the law "may be brought by the Attorney General in the name of the People of the State
11 of California or by any district attorney". (Id., § 25249.7(c).)

12 **B. The Unfair Competition Act**

13 15. California Business and Professions Code section 17200 provides that "unfair
14 competition shall mean and include unlawful, unfair or fraudulent business practice." Section
15 17203 of the Business and Professions Code provides that "(a)ny person performing or proposing
16 to perform an act of unfair competition within this state may be enjoined in any court of
17 competent jurisdiction."

18 16. Unlawful acts under the statute include any act that is unlawful that is conducted as
19 part of business activity, and therefore include violations of Proposition 65.

20 17. Section 17206(a) provides that any person violating Section 17200 "shall be liable for
21 a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,
22 which shall be assessed and recovered in a civil action brought in the name of the people of the
23 State of California by the Attorney General or by any district attorney." Under section 17205,
24 these penalties are "cumulative to each other and to the remedies or penalties available under all
25 other laws of this state."

26 **V. FACTS**

27 18. "Chromium (hexavalent compounds)" was placed on the list of chemicals known to
28 the State to cause cancer on February 27, 1987.

1 19. Riverside Cement operates a cement plant at 1500 Rubidoux Avenue, in the City of
2 Riverside, County of Riverside.

3 20. In the course of operating the cement plant, defendants maintain piles of material
4 called “clinker.” In the cement manufacturing process, various raw materials, such as limestone,
5 clay, silica, and other materials are ground, combined, and heated in a kiln. The resulting
6 pebble- like particles are called clinker, and may be stored for long periods or shipped as is,
7 before they have other materials added and are ground into a fine powder in order to create the
8 final cement product.

9 21. Defendants maintain about 80 tons of clinker in uncovered, unwetted piles covering
10 about four acres at the cement plant. When wind or atmospheric conditions raise dust from the
11 piles into the surrounding air, this results in emissions of the material contained in the dust.
12 These emissions are called “fugitive emissions.” Uncovered, unwetted clinker piles are
13 maintained by defendants deliberately and intentionally as part of their operation of the cement
14 plant.

15 22. The clinker at the cement plant contains hexavalent chromium.

16 23. Defendants have known since at least 2006 that the clinker at the cement plant
17 contains hexavalent chromium.

18 24. Persons in the area in which the fugitive emissions occur are exposed to hexavalent
19 chromium through inhalation.

20 25. Persons in the area in which the fugitive emissions occur are exposed to hexavalent
21 chromium through dermal contact with dust that settles in the area.

22 26. Defendants know that the fugitive emissions from the clinker piles spread off of the
23 cement plant property and into the surrounding area, including, but not limited to, the nearby
24 Fleetwood Motor Homes facility, where they cause exposures to hexavalent chromium to the
25 persons living, working, or otherwise present in the area.

26 27. Plaintiffs are informed and believe, and based on such information and belief allege,
27 that Riverside Cement has known since at least 2006, that this exposure occurs as the result of its
28 operation of the cement plant.

1 28. Riverside Cement has failed to provide clear and reasonable warning to persons
2 outside the premises of the plant that they are being exposed to hexavalent chromium caused by
3 Riverside Cement's operations.

4 29. Riverside Cement has ten or more employees.

5 30. TXI California has ten or more employees.

6 31. Riverside Cement Holdings Company has ten or more employees.

7 **VI. FIRST CAUSE OF ACTION**

8 (Against All Defendants for Violation of Proposition 65)

9 32. Paragraphs 1 through 31 are realleged as if fully set forth herein.

10 33. By committing the acts alleged above, each defendant has, in the course of doing
11 business, knowingly and intentionally exposed individuals to chemicals known to the state of
12 California to cause cancer or reproductive toxicity without first giving clear and reasonable
13 warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

14 34. Said violations render defendant liable to plaintiffs for civil penalties not to exceed
15 \$2,500 per day for each violation, as well as other remedies.

16 **VII. SECOND CAUSE OF ACTION**

17 (Against All Defendants for Unlawful Business

18 Practices Consisting of Violations of Proposition 65)

19 35. Paragraphs 1 through 34 are realleged as if fully set forth herein.

20 36. By committing the acts alleged above, Riverside Cement has engaged in unlawful
21 business practices which constitute unfair competition within the meaning of Business and
22 Professions Code section 17200.

23 37. Said violations render Riverside Cement liable to plaintiffs for civil penalties not to
24 exceed \$2,500 per day for each violation.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, plaintiffs pray that the Court:

27 1. Pursuant to the First and Second Causes of Action, grant civil penalties
28 according to proof;

1 2. Pursuant to Health and Safety Code section 25249.7 and Business and
2 Professions Code section 17203, enter such temporary restraining orders, preliminary
3 injunctions, permanent injunctions, or other orders prohibiting defendant from exposing persons
4 to hexavalent chromium without providing clear and reasonable warnings, as plaintiffs shall
5 specify in further application to the court;

6 3. Order appropriate restitution, disgorgement, and such other orders as "may be
7 necessary to restore to any person in interest any money or property, real or personal, which may
8 have been acquired by means of" these unlawful acts, as provided in Business and Professions
9 Code section 17203 and other applicable laws;


10 4. Award plaintiffs their costs of suit;

11 5. Plaintiff have such other and further relief as the nature of the case may require
12 and the court finds appropriate to dissipate the effects of the unlawful acts complained of herein.

13
14 Dated: July 3, 2008

Respectfully submitted,

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