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LITTLE CITY REDEVELOPMENT AGENCY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 LITTLE CITY REDEVELOPMENT
AGENCY,

12 Plaintiff,

13 vs.

14 DON DEFENDANT and DOES 1 through
15 25, inclusive,

16 Defendants.

Case No.

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:

- (1) BREACH OF LEASE;
- (2) RECOVERY OF CLEANUP COSTS
(H&S § 33459.4);
- (3) RESPONSE COST UNDER THE
HAZARDOUS SUBSTANCE
ACCOUNT ACT (H&S § 25363)
- (4) PRIVATE NUISANCE;
- (5) PUBLIC NUISANCE;
- (6) TRESPASS;
- (7) WASTE;
- (8) NEGLIGENCE AND NEGLIGENCE
PER SE;
- (9) CIVIL PENALTIES (H&S § 25359.7);
- (10) DECLARATORY RELIEF.

21 Plaintiff, LITTLE CITY REDEVELOPMENT AGENCY, alleges as follows:

22 GENERAL ALLEGATIONS

23 1. Plaintiff is, and at all relevant times herein was, a public body, corporate and
24 politic, organized and existing under the California Community Redevelopment law
25 (Health & Safety Code Sections 33000 et seq.).

26 2. Plaintiff is informed and believes and on that basis alleges that Don
27 Defendant is an individual residing in the County of Los Angeles and/or the County of
28 Orange.

1 3. Venue is proper in Los Angeles County because the real property which is
2 the subject of this action is located in the County and judicial district in which this action is
3 to be filed, and because the events giving rise to the claims in issue occurred in the County
4 of Los Angeles.

5 4. Plaintiff is unaware of the true names and capacities, whether individual,
6 corporate, associate or otherwise, of Defendants Does 1 through 25, inclusive, and
7 therefore sues these Defendants by such fictitious names. Plaintiff will seek leave of Court
8 to amend this Complaint to show the true names and capacities of such Defendants when
9 the same have been ascertained.

10 5. Plaintiff is informed and believes and on that basis alleges that at all times
11 mentioned herein, each of the Defendants was and now is the agent, servant, employee,
12 representative and alter ego of each of the remaining Defendants, and, in doing the things
13 hereinafter alleged, was acting within the scope of his/her or its authority as such an agent,
14 servant, employee, representative and alter ego, with the knowledge, permission, consent
15 and ratification of the remaining Defendants.

16 6. On or about October 1, 1994, Plaintiff Little Rock Redevelopment Agency
17 ("Plaintiff," "Agency" or "Landlord") entered into a written Lease Agreement with Don
18 Defendant ("Tenant") for the Subject Property (hereafter "Lease"). A true and correct
19 copy of the Lease is attached hereto and marked as Exhibit "A" and incorporated herein by
20 reference to this Complaint. The Lease was for a term of thirty (30) days, continuing on a
21 month-to-month basis.

22 7. Section 1.5 of the Lease allows Tenant to use the Property for the storage of
23 oil tank servicing equipment, and Section 4.1 of the Lease allows the Tenant to use the
24 Premises only for the purposes specified in said Section 1.5 "and for no other use."

25 8. Section 4.3 of the Lease required the Tenant at its sole cost and expense to
26 comply with all requirements of all municipal, state and federal authorities now in force or
27 which may hereafter be in force pertaining to the use of the Premises, and to faithfully
28 observe all applicable laws and regulations concerning the Premises.

1 9. Section 4.3 prohibits the Tenant from engaging in any activity on the
2 Premises that would violate any Environmental Law, and for the Tenant, at Tenant's sole
3 cost and expense, to take all investigatory and/or remedial action required or ordered by
4 any governmental agency, Landlord or pursuant to any Environmental Law, for cleanup
5 and removal of any contamination involving any hazardous material created or caused
6 directly or indirectly by the Tenant. Tenant is also obligated under the Lease to provide
7 prompt notice to the Landlord of the existence of hazardous substances on the Premises,
8 and to provide all notices of violation of Environmental Laws received by the Tenant.

9 10. Section 5.2 of the Lease requires the Tenant, at its sole cost and expense, to
10 keep, maintain and repair the Premises and other improvements in good and sanitary order,
11 condition and repair. The Lease also provides that the Tenant accepted the Premises as
12 being in good and sanitary order, condition and repair, and further that the Tenant will, on
13 the last day of the term of the Lease, or sooner, surrender the Premises with appurtenances
14 in the same condition as when received and in a good, clean and sanitary condition,
15 reasonable use and wear thereof, and damage from fire, Act of God or by the elements,
16 excepted.

17 11. Section 6.2 of the Lease provides that the Tenant has waived all claims
18 against the Landlord for damage to equipment or personal property, trade fixtures,
19 leasehold improvements, goods, wares, inventory and merchandise, in, upon or about the
20 Premises, among other claims, and requires that Tenant indemnify the Landlord, its
21 officers, agents and employees against, and to hold and save them harmless from, any and
22 all actions due to claims and damages to person or property, arising out of or in connection
23 with the negligent performance of activities of the Tenant, its agents, employees,
24 subcontractors or invitees, or arising from the failure of Tenant to keep the Premises in
25 good condition or repair. Said section further requires the Tenant to defend any claims or
26 liabilities against the Landlord and to pay all costs and expenses, including legal costs and
27 attorneys' fees, in connection therewith, along with the prompt payment of any judgment
28 rendered against the Landlord in connection with the negligent performance or failure to

1 perform the work, operations or activities of Tenant, and to save and hold the Landlord, its
2 officers, agents and employees harmless therefrom.

3 12. Section 10 of the Lease provides that upon default or breach by Tenant, the
4 Agency is entitled to recover from Tenant all amounts necessary to compensate the
5 Landlord for all detriment proximately caused by Tenant's failure to perform its
6 obligations under the Lease. Plaintiff has been required to retain counsel, to prosecute this
7 action and has and will incur attorneys' fees and costs as a proximate result of Tenant's
8 failure to perform under the Lease, as set forth herein.

9 13. Plaintiff is informed and believes and on that basis alleges that Defendant
10 initially commenced operations of a storage facility for servicing oil equipment on the
11 Subject Property starting in or about the 1980s. Said Defendant vacated the Subject
12 Property on or about December 15, 1996.

13 14. Plaintiff is informed and believes and on that basis alleges that Don
14 Defendant, over the course of his operations on the Subject Property, handled what is
15 estimated to be millions of gallons of waste oil and other liquid and hazardous wastes on
16 an annual basis. Plaintiff is further informed and believes and based thereon alleges that
17 such waste oil was contaminated with various types of hazardous substances and wastes,
18 and that said Defendant handled, released, and disposed of such waste on the property and
19 other hazardous substances including, but not limited to, various heavy metals such as
20 lead, zinc, cadmium and chromium, and various chlorinated solvent materials including
21 but not limited to tetrachloroethylene ("PCE"), trichlorethylene ("TCE"), 1,1,1-
22 trichloroethane ("1,1,1 TCA") and various other chlorinated solvents, and other hazardous
23 substances such as toluene, benzene, xylenes, ethylbenzene, naphthalene, methylene
24 chloride, N-propylbenzene, 1,3,5 trimethylbenzene, 1,2,4-trimethylbenzene, 1,2-
25 dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 1,1-dichlorethane, cis-1,2-
26 dichloroethylene, isopropobenzene, and various other hazardous substances and wastes,
27 hereafter collectively referred to as "hazardous substances."

28 15. Defendant, over the course of his operations on the Subject Property,

1 received, stored, handled and disposed of various waste oils and other hazardous
2 substances throughout the Subject Property. As a result of such operations, Defendant
3 caused the release and threatened releases of hazardous substances which are now found in
4 the soil at various locations and depths throughout the Site.

5 16. Plaintiff is informed and believes and on that basis alleges that Don
6 Defendant engaged in a practice of collecting, consolidating, mixing and illegally
7 disposing of various hazardous substances onto the Subject Property, including the mixing
8 of hazardous substances with various absorbents such as bark, sawdust, leaves and other
9 miscellaneous debris, and that said Defendant engaged in a practice of spreading, burying
10 and mixing such hazardous substances in the ground and in the soil at different locations
11 throughout the Property. Plaintiff is informed and believes and based thereon alleges that
12 the apparent purpose of such activities by Defendant was to avoid the time, cost and
13 expense of properly and legally disposing of such hazardous substances, and to dispose of
14 the same in a manner and fashion so as to hide such illegal disposal practices.

15 17. Defendant has operated a facility on the Subject Property and disposed of or
16 caused the disposal of and the release of hazardous substances and waste at different
17 locations throughout the Site, resulting in a condition of pollution or nuisance on the
18 Subject Property, and resulting in the existence of hazardous substances which have
19 created a threat to the health and safety of the public and the environment.

20 18. Defendant further engaged in practices which have caused an imminent and
21 substantial endangerment to the health and safety of the public and/or the environment. By
22 way of example, Defendant stored a truck/trailer on the Subject Property containing liquid
23 hazardous substances. The truck/trailer was then moved by said Defendant onto its side,
24 and a large earthen pit was excavated immediately beneath the compartments storing the
25 liquid hazardous substances. Plaintiff is informed and believes and based thereon alleges
26 that Defendant was in the process of disposing of the liquid hazardous substances in the
27 truck/trailer into the earthen pit which they caused to be excavated beneath the same. Prior
28 to the actual disposal of such liquid hazardous substances, however, the existence of the

1 truck/trailer was discovered by a representative of the Police Department, and the illegal
2 disposal of such waste from the truck/trailer was prevented.

3 19. At the time Defendant vacated the Premises, however, the truck/trailer was
4 left in a threatening and hazardous condition with the liquid hazardous substances
5 remaining in its compartments and the truck/trailer sitting precariously on its side over the
6 earthen pit. Upon taking possession, Plaintiff proceeded to test the contents of the liquid
7 wastes within the compartments and confirmed that such liquid wastes were in fact
8 hazardous. Plaintiffs thereafter retained a contractor to pump out the contents of the
9 compartments of the truck/trailer and to properly dispose of the same and to remove and
10 properly dispose of the truck/trailer from the Subject Site.

11 20. Plaintiff is informed and believes and based thereon alleges that Defendant
12 Does 1 through 15 are generators and/or transporters of various hazardous substances and
13 waste that have been transported to the Subject Property, and that said Defendants are
14 parties that arranged for the disposal of the hazardous substances and/or waste, whereby
15 such hazardous waste and substances have been ultimately disposed of and/or released at
16 various locations into the soil, pavement and ground of the Subject Property and
17 potentially into the groundwater. As such, Defendant Does 1 through 15 are responsible
18 and liable parties as transporters and/or generators and/or those who arranged for the
19 disposal of hazardous substances and wastes onto the Subject Property.

20 21. Defendants have been notified of the existence of the hazardous substances
21 and contamination throughout the Subject Property, the conditions of pollution and
22 nuisance created by their operations, and the threat to the health and safety of the public
23 and the environment as a result of their operations and the condition in which they have
24 left the Property. Demand was made on such Defendants to properly assess, investigate,
25 remove and remediate all such hazardous substances and contamination from the Subject
26 Property, but to date said Defendants have failed and refused to do so.

27 22. As a result of the existence of hazardous substances and wastes and other
28 contamination on the Subject Property and the operations conducted by Defendant on the

1 Subject Property, a condition of pollution and/or nuisance exists on the Subject Property,
2 and this condition of pollution and nuisance has created and continues to create a threat to
3 the health and safety of the public and the environment.

4 FIRST CAUSE OF ACTION

5 (For Breach of Lease Against All Defendants)

6 23. Plaintiff realleges and incorporates paragraphs 1 through 22 above as though
7 fully rewritten and set forth herein.

8 24. As a result of the actions, inactions and omissions of Defendants in failing to
9 comply with applicable laws including Environmental Laws, as required by the Lease, and
10 in failing to take all appropriate investigatory and/or remedial action necessary to clean up
11 and remove all waste, contamination and hazardous substances from the Subject Property
12 caused by their handling and disposal practices on the Property, and by failing to use the
13 Premises in accordance with the terms and conditions of the Lease, and to notify the
14 Landlord of the existence of hazardous substances on the Premises, and by failing to
15 comply with various other terms and conditions of the Lease, as set forth above, said
16 Defendants, and each of them, have breached and violated the terms and conditions of the
17 Lease.

18 25. In addition to the numerous breaches of the Lease set forth above and the
19 consequential damage caused by his failure to comply with other terms of the Lease, said
20 Defendant failed to surrender the Property in good condition and repair and to return the
21 Property in a condition so that it may be Leased or marketed to another party.

22 26. In addition to the above alleged breaches and violations of the Lease,
23 Defendant failed to notify Plaintiff of the existence of the releases of hazardous substances,
24 wastes and contamination on the Subject Property, as required by the Lease and as
25 required by State law, California Health & Safety Code Section 25359.7; such failure
26 constitutes a breach of the express terms of the Lease and constitutes a statutory default of
27 the Lease, as set forth in the Health & Safety Code Section 25359.7.

28 27. Plaintiff Agency has complied with all the terms and conditions as required

1 of the Landlord under the Lease.

2 28. As a result of the actions, inactions and omissions of Defendant and the
3 violations, defaults, and breaches of the Lease as set forth above and as may otherwise be
4 shown through proof at the time of trial, Plaintiff herein seeks general, compensatory and
5 consequential damages in amounts to be shown in accordance with proof at the time of
6 trial.

7 SECOND CAUSE OF ACTION

8 (For Cost Recovery Against All Defendants Pursuant to
9 Health & Safety Code Section 33459.4)

10 29. Plaintiff realleges paragraphs 1 through 28 above as though fully set forth
11 and rewritten herein.

12 30. Defendant is the former operator of a facility where there has been a release
13 of hazardous substances on the facility, resulting in past and future costs to investigate,
14 assess, remove, treat, monitor, remediate and abate such hazardous substances and
15 contamination from the Site. Defendant as the operator of the Subject Property at the time
16 of the disposal and the release of the hazardous substances in issue, and as the party who
17 caused and contributed to the release of such hazardous substances on the Subject
18 Property, pursuant to Health & Safety Code Section 33459.4, is strictly liable for any and
19 all response costs and other costs incurred or to be incurred to assess, investigate, remove,
20 treat, remediate and abate such hazardous substances, including all reasonable attorneys'
21 fees and costs as well as all consulting fees incurred in connection with the same, and
22 including all costs the Plaintiff has incurred and/or will incur in the future to assess,
23 investigate, monitor, treat, remove and/or remediate the same.

24 31. Plaintiff has expended already approximately \$50,000 in assessment,
25 investigation and removal costs and attorneys' fees and costs to date, and has commenced
26 action to devise a workplan to complete a site characterization of the contamination and
27 hazardous substances, and to remedy and remove all releases of hazardous substances and
28 contamination from the Subject Property, in accordance with the priorities, guidelines,

1 criteria and regulations set forth in the National Contingency Plan published pursuant to
2 Section 9605 of Title 42 of the United States Code.

3 32. Defendant Does 1 through 15 as generators, transporters and/or those who
4 arranged for the disposal of hazardous substances on the Subject Property, are responsible
5 parties for the releases and/or threatened releases of hazardous substances on the Subject
6 Property, and are liable to Plaintiff for any and all costs incurred and/or to be incurred to
7 assess, investigate, treat, remove and/or remediate any contamination from the Subject
8 Property.

9 33. As a result of the releases and threatened releases of hazardous substances
10 and contamination into the soil and ground at the Subject Property, and potentially into the
11 groundwater, Plaintiff has incurred and will continue to incur necessary response costs
12 consistent with the National Contingency Plan in the form of investigation, assessment,
13 monitoring, and/or evaluation response costs and immediate removal costs, and additional
14 costs to be incurred in the future, including but not limited to additional assessment,
15 investigation and removal and/or remedial costs, including consulting fees and attorney's
16 fees.

17 34. All response costs Plaintiff has incurred and/or will incur in responding to
18 the releases and/or threatened releases of hazardous substances at the Subject Property,
19 including assessment, removal and/or remedial action costs, enforcement costs,
20 investigatory attorney fees and costs, consulting fees and related costs, are or will be
21 necessary response costs consistent with the National Contingency Plan, and Plaintiff
22 seeks reimbursement for any and all such past, present and/or future response costs
23 incurred prior to trial, together with interest thereon, including any and all reasonable
24 attorneys' fees and costs incurred in connection with this action, said Defendants herein,
25 and each of them, being strictly liable for the same.

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1 THIRD CAUSE OF ACTION

2 (For Response Costs, Reimbursement, Indemnity and Contribution
3 Against all Defendants Under California
4 Superfund--Health & Safety Code Section 25363 et seq.)

5 35. Plaintiff realleges paragraphs 1 through 34 above as though fully set forth
6 and rewritten herein.

7 36. Plaintiff has incurred and will continue to incur response costs in accordance
8 with the requirements of CERCLA, 42 U.S.C. § 9601 et seq. and in accordance with
9 Chapter 6.8 of Division 20 of the California Health & Safety Code, California Health &
10 Safety Code § 25300 et seq., for the releases and threatened releases of hazardous
11 substances and the contamination in issue.

12 37. Plaintiff hereby seeks the recovery, reimbursement, indemnity and
13 contribution from the Defendants, and each of them, for any and all past, present and/or
14 future response costs incurred in connection with the Subject Property, together with
15 interest thereon, with said Defendants, and each of them, being strictly liable to the
16 Plaintiffs for the same pursuant to California Health & Safety Code § 25363, and all
17 provisions related thereto, including but not limited to all costs incurred and/or to be
18 incurred to assess, investigate, treat, remove and/or remediate any hazardous substances
19 and/or contamination from the Property.

20 FOURTH CAUSE OF ACTION

21 (For Private Nuisance Against all Defendants)

22 38. Plaintiff realleges paragraphs 1 through 37 above as though fully set forth
23 and rewritten herein.

24 39. The existence of hazardous substances and contamination and other waste
25 materials in the soil and in the ground at the Subject Property has resulted in a condition
26 which is injurious to the health and offensive to the senses, and which is an obstruction to
27 the free use of the Subject Property, and an interference with Plaintiff's comfortable use
28 and enjoyment of the Site.

40. As a result of the actions, inactions and omissions of the Defendants, and

1 each of them, a continuing and/or permanent nuisance exists and continues to exist
2 resulting in damage to the Plaintiff on a daily basis, with each release and/or threatened
3 release of hazardous substances and each migration of the same, from the surface into the
4 soil and into the ground and potentially into the groundwater, giving rise to a new cause of
5 action. Alternatively, to the extent the injuries and damages cannot be abated, the nuisance
6 is permanent with permanent damages and injuries to Plaintiff.

7 41. The condition of pollution and nuisance is specifically injurious to Plaintiff
8 in that the damages and injuries resulting therefrom are different in type and effect from
9 any damages or injuries that may have resulted to the entire community or neighborhood,
10 in light of Plaintiff's leasehold interest in the Subject Property and in property adjacent
11 thereto and in the vicinity of the Subject Property and in light of the Plaintiff's desired use
12 of such Properties.

13 42. As a result of the action, inactions and omissions of the Defendants, and each
14 of them, Plaintiff has suffered and will continue to suffer general, compensatory and
15 consequential damages, inclusive of but not limited to any and all amounts incurred and to
16 be incurred for the investigation, assessment, monitoring, treatment, removal and/or
17 remediation of hazardous substances, contamination and wastes on the Subject Property,
18 the diminution in value of the Subject Property, and the loss of use and loss of rent from
19 use of the Subject Property, all in amounts not yet fully ascertained, but which will be
20 more specifically shown in accordance with proof at the time of trial.

21 43. Plaintiff has requested and continues to seek to have the Defendants herein
22 abate and enjoin the nuisance, but the Defendants have failed and refused to do the same
23 and the nuisance continues to exist. The failure of the Defendants herein to timely
24 mitigate, through assessment, investigation, monitoring, treatment, removal and
25 remediation, the hazardous substances, waste and contamination from the Subject
26 Property, will further increase the damages and injuries Plaintiff has and will continue to
27 incur.

28 44. Plaintiff prays that a mandatory and/or prohibitory injunction be issued,

1 requiring the Defendants herein, and each of them, to enjoin and abate said nuisance and/or
2 to perform any and all actions necessary to assess, investigate, remove, remediate, monitor,
3 treat, or cleanup the hazardous substances, wastes and contamination from the Subject
4 Site.

5 FIFTH CAUSE OF ACTION

6 (For Public Nuisance Against all Defendants)

7 45. Plaintiff realleges paragraphs 1 through 44 above as though fully set forth
8 and rewritten herein.

9 46. The nuisance created by the existence of hazardous substances,
10 contamination and wastes in the soil and ground at the Subject Property is a public
11 nuisance which affects at the same time the entire community or neighborhood and/or a
12 considerable number of persons and which has created and continues to create a significant
13 threat to the health and safety of the public and/or the environment.

14 47. The nuisance is specifically injurious to the Plaintiff, resulting in damages
15 and injuries of a different type and effect from the damages and injuries which have
16 resulted to the entire community or neighborhood, or to a considerable number of persons.
17 The nuisance is, furthermore, continuing, with continuing injuries and damages to Plaintiff
18 and the public on a daily basis. Alternatively, to the extent any injury and/or damage
19 cannot be abated, the nuisance is permanent with permanent damages and injuries to the
20 Plaintiff.

21 48. As a result of the actions, inactions and omissions of the Defendants herein,
22 Plaintiff has suffered and will continue to suffer general, compensatory and consequential
23 damages to property in which it has a leasehold interest in, inclusive of but not limited to,
24 any and all amounts incurred or to be incurred for the investigation, assessment,
25 monitoring, removal and/or remediation of the hazardous substances, wastes and
26 contamination on the Subject Property, the diminution in value to the Subject Property, the
27 loss of use and loss of rent from the Subject Property, and other amounts yet to be
28 determined, all of which have not yet been fully ascertained but which will be more

1 inclusive of but not limited to any and all amounts incurred or to be incurred from the
2 investigation, assessment, monitoring, removal and/or remediation of hazardous
3 substances, wastes and/or contamination, the diminution in value of the Subject Property,
4 the loss of use and loss of rent from use of the Subject Property, and all other amounts to
5 be determined in the Courts with proof at trial, all of which have not yet been fully
6 ascertained but which will more specifically be shown in accordance with proof at the time
7 of trial.

8 54. Plaintiff has requested and continues to request to have the Defendants abate
9 and enjoin the alleged trespass, but the Defendants have failed and refuse to do so and the
10 trespass continues to exist. Plaintiff requests a mandatory and/or prohibiting injunction be
11 issued requiring the Defendants and each of them to enjoin and abate the alleged trespass
12 and/or to perform any and all assessment, monitoring, investigation, removal, remediation,
13 treatment, cleanup or otherwise to accomplish the same.

14 SEVENTH CAUSE OF ACTION

15 (For Waste Against Defendant)

16 55. Plaintiff realleges paragraphs 1 through 54 above as though fully set forth
17 and rewritten herein.

18 56. As a result of the Defendant's use, storage, handling and disposal and
19 releases of various hazardous substances, materials, chemicals and wastes on the Subject
20 Property and the contamination resulting therefrom to the Premises, the Defendants have
21 committed waste on the Property and have rendered the Property unfit for use or
22 occupancy, resulting in a diminution in the use and marketability of the Property and a
23 diminution in the value of the Property.

24 57. Rather than using the Property in accordance with the terms of the Lease, for
25 the storage of oil tank servicing equipment, Defendant used the Premises for the illegal
26 storage and disposal of waste oil and other hazardous substances and wastes, including
27 various heavy metals and chlorinated solvent materials, as well as other chemicals and
28 contaminants as previously described above.

1 58. Defendant further engaged in an illegal practice of collecting, consolidating,
2 mixing and disposing of hazardous substances and wastes throughout the Property and,
3 through the mixture of such substances with various absorbents including bark, sawdust,
4 leaves and other miscellaneous absorbent materials, said Defendant engaged in a practice
5 of spreading, burying and mixing such hazardous substances and wastes into the ground at
6 different locations throughout the Property, and by such conduct committed waste to the
7 Site. In addition, Defendant left and scattered various debris and rubbish throughout the
8 Property, including general trash and other waste material throughout the Site and left the
9 Property and the building on the Property, in an uninhabitable and unconscionable condition
10 such that the Property was not marketable, usable, or saleable.

11 59. The damage and waste committed to the Property by Defendant is in excess
12 of the damage and destruction to the Premises as expected from the reasonable use and
13 wear from the operations to be conducted by said Defendant in accordance with the terms
14 of the Lease.

15 60. Plaintiff has requested and continues to seek to have the Defendant herein
16 remove the waste committed to the Site but the Defendant has failed and refuse to do so.

17 61. As a result of the waste committed to the Property by the Defendant, Plaintiff
18 has suffered and will continue to suffer general, compensatory and consequential damages,
19 inclusive of but not limited to any and all amounts incurred and to be incurred for the
20 investigation, assessment, monitoring, treatment, removal and/or remediation of the
21 hazardous substances, contamination and wastes from the Subject Property, the diminution
22 in value of the Subject Property, and the loss of use and loss of rent from use of the Subject
23 Property, all in amounts not yet fully ascertained, but which will be more specifically
24 shown in accordance with proof at the time of trial.

25 62. Plaintiff further prays that a mandatory and/or prohibitory injunction be
26 issued requiring Defendant to remedy the waste they committed on the Property, and to
27 perform any and all actions necessary to assess, investigate, remove, remediate, treat,
28 monitor and/or cleanup the hazardous substances, waste and contamination from the

1 Subject Property and to remedy the waste committed by said Defendants during and as a
2 result of their operations on the Site.

3 EIGHTH CAUSE OF ACTION

4 (For Negligence and Negligence Per Se Against all Defendants)

5 63. Plaintiff realleges paragraphs 1 through 62 above as though fully set forth
6 and rewritten herein.

7 64. The hazardous substances, wastes and contamination in the soil and ground
8 at the Subject Property were released in whole or in part as a result of the negligence and
9 careless actions, inactions and omissions and the reckless conduct of the Defendants, in
10 their generation, transportation, storage, disposal and arranging for the transportation,
11 storage and disposal of hazardous substances, wastes and other contaminants to and on the
12 Subject Property, and in their actions, inactions, omissions and reckless conduct in failing
13 to develop and maintain procedures and policies for the proper transportation, handling,
14 storage, disposal and arranging for the transportation, storage, and disposal of hazardous
15 substances and waste and/or in responding to releases or threatened releases of the same on
16 the Subject Property.

17 65. Defendant's actions in improperly and illegally generating, transporting,
18 storing, disposing of and/or arranging for the transportation, storage and disposal of
19 hazardous waste, substances and other contaminants on the Subject Property constitute
20 violations of applicable environmental laws including, but not limited to, California Health
21 & Safety Code Section 25189.5, et seq. and California Water Code Sections 13260, 13264,
22 13265, 13271, 13272, 13304 and 13305 and related provisions thereto, as well as
23 California Public Resources Code Section 45005 and provisions related thereto. As such,
24 the actions and inactions and omissions of the Defendants, and each of them were
25 negligent per se as such actions violate express statutory provisions prohibiting such
26 conduct and activity.

27 66. As a result of the negligent and reckless actions, inactions and omissions of
28 the Defendants, Plaintiff has suffered and will continue to suffer general, compensatory

1 and consequential damages, including but not limited to amounts incurred or to be incurred
2 by the Plaintiff for the assessment, monitoring, investigation, removal and/or remediation
3 of hazardous substances, wastes and contamination in the soil and ground and potentially
4 in the groundwater at the Subject Property as well as resulting from the diminution in the
5 value of the Subject Property, lost rent and lost use of the Subject Property, and other
6 amounts that have not been fully ascertained at this time, but all of which will be more
7 specifically shown in accordance with proof at the time of trial.

8 NINTH CAUSE OF ACTION

9
10 (For Civil Penalties Pursuant to H&S 25359.7
Against Defendant)

11 67. Plaintiff realleges paragraphs 1 through 66 above as though fully set forth
12 and rewritten herein.

13 68. Defendant was the lessee of non-residential real property who knew or had
14 reasonable cause to believe that a release of hazardous substances had come to be located
15 on or beneath the Subject Property during the time of their tenancy on the Site.

16 69. Defendant although knowing and/or having reasonable cause to believe of
17 the existence of releases of hazardous substances on the Subject Property, failed to provide
18 written notice of the same to the Plaintiff as required by law, pursuant to California Health
19 & Safety Code Section 25359.7. Said Defendant further failed to comply with the terms
20 and conditions of the Lease by failing to investigate, assess, remove and remediate the
21 hazardous substances, wastes and contamination in question.

22 70. Defendant had actual knowledge of the presence of the release of a material
23 amount of hazardous substances and of hazardous substances that were required to be
24 reported to state or local agencies pursuant to state and federal law but knowingly and
25 willingly failed to provide such notice to such agencies and failed to provide the notices as
26 required by Health & Safety Code Section 25359.7 to Plaintiff.

27 71. The failure of Defendant to provide such notice constitutes a default on the
28 written Lease Agreement with the Plaintiff, subjecting the Defendant to general and

consequential damages as set forth above, and to civil penalties up to \$5,000 for each separate violation.

72. Plaintiff is informed and believes and based thereon alleges that there have been a number of violations of Health & Safety Code Section 25359.7 subjecting the Defendant to civil penalties in the amount of \$5,000 for each violation, all of which are due and payable to the Plaintiff herein, as will be shown in accordance with proof at the time of trial.

TENTH CAUSE OF ACTION

(For Declaratory Relief Against all Defendants)

73. Plaintiff realleges paragraphs 1 through 72 above as though fully set forth and rewritten herein.

74. An actual controversy exists between the Plaintiff and the Defendants herein in that Plaintiff contends and the Defendants deny that if Plaintiff's allegations with respect to their damages and injury are true, that the Defendants, and each of them, have responsibility for such costs and damages that have been or will be incurred for activities performed and/or to be performed in the repair, investigation, assessment, monitoring, treatment, removal, remediation and cleanup of any hazardous substances, wastes or contamination on the Subject Property and for the diminution in the market value of the Property and the loss of rent and use of the Property, and for such other damages in amounts that Plaintiff will continue to incur.

75. Plaintiff requests that a judicial determination and declaration setting forth the parties' rights and obligations as necessary and appropriate in order to avoid a multiplicity of actions and in order for the respective parties herein to ascertain their rights and duties with respect to the Plaintiff's claims herein, and each of them.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For the recovery of all response costs incurred or to be incurred by the Plaintiff in connection with the release or threatened release of hazardous substances, wastes and contamination on the Subject Property;

- 1 2. For general compensatory and consequential damages in amounts to be
2 shown in accordance with proof at the time of trial;
- 3 3. For reimbursement of costs, restitution and a mandatory and/or prohibitory
4 injunction requiring the Defendants to enjoin and abate the alleged hazardous substances,
5 wastes and contamination existing in soil and ground at the Subject Property and to
6 perform any and all necessary repair, investigatory, assessment, monitoring, removal,
7 remediation, treatment or cleanup or other similar work on and at the Subject Property and
8 in the vicinity of the Subject Property and potentially within the groundwater beneath the
9 Subject Property;
- 10 4. For civil penalties in accordance with proof at trial pursuant to California
11 Health & Safety Code 25359.7;
- 12 5. For attorneys' fees, expert fees and costs and litigation costs and fees
13 pursuant to the Lease Agreement and California Health & Safety Code 33459.4 and all
14 related fees and costs as otherwise may be provided by contract or by law;
- 15 6. For a judicial determination and declaration setting forth the parties' rights,
16 obligations and duties under the Lease Agreement and as otherwise may be required by
17 law; and
- 18 7. For such other and further relief as this Court deems just and proper.

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20 Dated: _____

RUTAN & TUCKER, LLP
RICHARD MONTEVIDEO
ERIC DUNN

21
22 By: _____

23 RICHARD MONTEVIDEO
24 Attorneys for Plaintiff
25 LITTLE CITY REDEVELOPMENT
26 AGENCY
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