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13  
14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **IN AND FOR THE COUNTY OF SANTA CLARA**

16 MARY NICOLA, ROBERT NICOLA, )	Case No.: 231800
CAROL VELOTTA, CARRIE )	
17 BENNETT, SANTOS HERNANDEZ, )	<b><u>CLASS ACTION</u></b>
RICH TORRES, AMALIA )	
18 HERNANDEZ, MOISES OCHOA, )	<b>MODEL COMPLAINT FOR:</b>
SUSIE DAVIS, DORACELLIE )	
19 HERNANDEZ, ALFRED BARBOZA, )	1. NEGLIGENCE;
MARIA CARBRERA, individually and )	2. BATTERY;
20 on behalf of all others similarly situated, )	3. PUBLIC NUISANCE;
)	4. PRIVATE NUISANCE;
21 Plaintiffs, )	5. STRICT LIABILITY FOR
)	ULTRAHAZARDOUS ACTIVITY;
22 vs. )	6. TRESPASS;
)	7. NEGLIGENT INFLICTION OF
23 EDWARD FILBIN, MARY ETTA )	EMOTIONAL DISTRESS;
FILBIN, THE EDWARD JOSEPH )	8. INTENTIONAL INFLICTION OF
24 FILBIN REVOCABLE TRUST UAD )	EMOTIONAL DISTRESS;
SEPTEMBER 21, 1998, CALNEVA )	9. VIOLATION OF CALIFORNIA
25 RANCH COMPANY, THE PATRICK )	BUSINESS AND PROFESSIONS
H. AND MARGARET J. FILBIN )	CODE § 17200, ET SEQ.;
26 TRUST, UAE ENERGY OPERATIONS )	10. ATTORNEYS' FEES PURSUANT
CORPORATION, MODESTO )	TO CALIFORNIA CODE OF CIVIL
27 ENVIRONMENTAL CORPORATION, )	PROCEDURE § 1021.5.
MODESTO ENERGY LIMITED )	
28 PARTNERSHIP, CMS GENERATION )	

1 COMPANY, OXFORD TIRE )  
 2 RECYCLING OF NORTHERN )  
 3 CALIFORNIA, INC., OMEGA TIRES, )  
 4 INC., HEIGHTS II, INC., TOTAL TIRE )  
 5 RECYCLING, LLC., MARK R. )  
 6 KIRKLAND and DOES 1 through 200, )  
 7 inclusive, )  
 8 )  
 9 Defendants. )  
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IN RE WESTLEY TIRE FIRE  
 LITIGATION

This document relates to:  
 ALL ACTIONS.

Plaintiffs allege as follows:

**INTRODUCTION**

1. On September 22, 1999, at approximately 4:00 a.m., a fire ignited a pile of used tires located in Stanislaus County on land commonly known as PD-91, among other parcels, in and around Westley, California, sending an enormous cloud of black smoke and at least 141,000 pounds of carcinogenic benzene, 69,000 pounds of polynuclear aromatic hydrocarbons and 10,000 pounds of 1,3 butadiene into the air. The smoke also included such carcinogens as, at least, 219 pounds of nickel, 182 pounds of chromium, 31 pounds of lead, 4.6 pounds of arsenic, and other hazardous air pollutants, such as hydrogen sulfide, nitrous oxides and particulate matter.
2. The resulting fire and accompanying chemical release forced hundreds, if not thousands, of residents in the surrounding communities to seek medical attention for burning, watery eyes, scratchy throats, nosebleeds and other respiratory ailments, such as aggravation of preexisting asthma. Other short- and long-term symptoms are identified further herein.
3. On September 27, 1999, oil leaking from the burning tires also ignited, further contributing to the toxic emissions and health problems of those individuals living and working the surrounding communities. Although the oil fire had already since been extinguished, the tires themselves

1 continued to burn until October 27, 1999.

2 4. The pile of nearly six million tires, which stretched over half a mile and reached heights as  
3 great as 60 feet, was the largest in the State of California. Notably, historical estimates of the  
4 number of tires accumulated at the site ranged from 30 to 45 million.

5 5. Plaintiffs are informed and believe and, on that basis, alleged that, at the time of this fire,  
6 these waste tires were located on land owned by the Edward Joseph Filbin Revocable Trust UAD  
7 September 21, 1998 (the "FILBIN FAMILY TRUST"), the CalNeva Ranch Company  
8 ("CALNEVA"), the Patrick H. and Margaret J. Filbin Trust (the "P.H. and M.J. FILBIN TRUST"),  
9 Edward Joseph Filbin and Mary Etta Filbin (the "FILBINS"), UAE Energy Operations Corporation,  
10 Modesto Environmental Corporation and Modesto Energy Limited Partnership. In fact, defendant  
11 Modesto Energy Limited Partnership has already admitted publicly that at least 200,000 tires  
12 consumed by the fire were located on its property.

13 6. Plaintiffs are further informed and believe and, on that basis, allege that the land on which  
14 these tires was located at the time of the fire ignited was leased to, owned and/or controlled by the  
15 Modesto Energy Limited Partnership (hereinafter "MELP"), its owners and operators, as well as  
16 Oxford Tire Recycling of Northern California, Inc. (hereinafter "OTR"), its principals and/or  
17 successors in interest.

18 7. Plaintiffs are further informed and believe and, on that basis, allege that the waste tires  
19 located on and/or around PD-91 at the time of the fire were owned and/or controlled by defendants  
20 OTR, Heights II, Inc., and Total Tire Recycling, LLC (hereinafter "TTR"), as well as MELP and  
21 the FILBIN Defendants.

22 8. The FILBINS, CALNEVA, and related trusts, identified in paragraph 1, herein, (hereinafter,  
23 the "FILBIN DEFENDANTS") had been accepting tires at this rural site near Westley, California  
24 (along Highway 5) for decades and have made substantial profits by charging dump fees at the site.  
25 MELP and OTR continued the practice of accepting used tires and storing them in huge piles on  
26 and/or around the site at the time of the incidents which are the subject of this litigation.

27 9. Plaintiffs are informed and believe and, on that basis, allege that the Westley Tire Pile  
28 constitutes a "major waste tire facility" as that term is defined in Public resources Code Section

1 42808(b), requiring a permit for operation pursuant to Public Resources Code Sections 42820, et  
2 seq.

3 10. Plaintiffs are informed and believe and, on that basis, allege that, beginning in approximately  
4 1984, the FILBIN DEFENDANTS entered into discussions with CMS Generation Company  
5 (hereinafter "CMS") representatives regarding the potential for development of a waste-to-energy  
6 facility at the site referred to herein as the "Westley Tire Pile." An entity known as Oxford Energy,  
7 Inc. was formed to develop the facility. CMS provided funding, and owned approximately fifty  
8 percent of Oxford Energy, Inc.

9 11. Plaintiffs are informed and believe and, on that basis, allege that, on or about December  
10 1987, Oxford Tire Recycling of California, Inc. ("OTR") became qualified to do business in  
11 California. At that time, OTR was a subsidiary of Oxford Energy, Inc.

12 12. Plaintiffs are informed and believe and, on that basis, allege that, effective December 31,  
13 1987, defendant OTR entered into an agreement to purchase certain of the assets of Filbin Tire  
14 Collection Co., Inc. For the total consideration of \$2,750,000.00, payable in part by a cash deposit  
15 and, in part, pursuant to a promissory note in the amount of \$2,500,000.00. The used tires at the  
16 Westley Tire Pile were excepted from the assets purchased by OTR.

17 13. Plaintiffs are informed and believe and, on that basis, allege that, effective December 31,  
18 1987, OTR entered into a ground lease agreement with landowners Edward J. Filbin and Mary Etta  
19 Filbin, pursuant to which OTR leased approximately 40 acres at the Westley Tire Pile site for a term  
20 of approximately 48 years (from February 1988 until September 2036) for the purpose of collecting,  
21 separating, recycling, shredding, buffing and/or storing whole or partially-used auto and truck tires.

22 14. Plaintiffs are informed and believe and, on that basis, allege that, for approximately the next  
23 ten years, OTR and/or CMS did store, stockpile and accumulate waste tires at the Westley Tire Pile  
24 site.

25 15. Plaintiffs are informed and believe and, on that basis, allege that, on or about January 1988,  
26 OTR's corporate name was changed to "Oxford Tire Recycling of Modesto, Inc."

27 16. Plaintiffs are informed and believe and, on that basis, allege that, on or about February 1990,  
28 OTR's corporate name was changed to "Oxford Tire Recycling of Northern California, Inc."

1 17. Plaintiffs are informed and believe and, on that basis, allege that, in approximately late-1992  
2 or early-1993, Oxford Energy, Inc. entered into bankruptcy proceedings. As a result of the  
3 bankruptcy, UAE Energy Operations Corporation (hereinafter referred to as "UAE") acquired an  
4 ownership interest in defendant Modesto Environmental Corp. and Modesto Energy Limited  
5 Partnership (hereinafter referred to as "MELP"). UAE took over operating the MELP facility.

6 18. Plaintiffs are informed and believe and, on that basis, allege that, in approximately October  
7 1993, CMS acquired one hundred percent of OTR's stock.

8 19. Beginning in approximately 1994, OTR and CMS began to seek a waste tire facility permit  
9 from the California Integrated Waste Management Board (hereinafter "CIWMB"). On or about  
10 August 12, 1994, OTR and CMS submitted a formal permit application to the CIWMB. In the  
11 proposed closure plan, filed in support of the permit application, OTR and CMS contended that the  
12 number of tires stored at the Westley tire pile was just over two million.

13 20. During the remainder of 1994 and in 1995, discussions ensued between the permit applicants  
14 and the CIWMB regarding the bonding requirements that would satisfy the CIWMB's financial  
15 assurance requirements relating to the closure of the site. Additionally, the CIWMB and OTR had  
16 discussions regarding the actual number of tires remaining in the pile; CIWMB staff disagreed with  
17 OTR's estimations, believing that they were too low. Throughout this period, OTR and CMS  
18 continued to bring additional tires to the Westley tire pile, without obtaining a valid permit.

19 21. Plaintiffs are informed and believe and, on that basis, allege that, on approximately March  
20 7, 1995, the P. H. and M. J. FILBIN TRUST granted an easement to Edward Joseph Filbin and Mary  
21 Etta Filbin, for the storage of certain tires located outside the boundaries of PD-91 and on property  
22 owned by the P. H. and M. J. FILBIN TRUST. Plaintiffs are informed and believe and, on that  
23 basis, allege that tires located on the P. H. and M. J. FILBIN TRUST property were among those  
24 that burned beginning September 22, 1999.

25 22. Plaintiffs are informed and believe and, on that basis, allege that, during the period from  
26 approximately December 1987 and into the early 1990's, there existed an agreement between the  
27 FILBIN DEFENDANTS, OTR/CMS and MELP regarding the transfer of ownership of tires at the  
28 Westley Tire Pile. Pursuant to the agreement, OTR/CMS delivered transient tires to the MELP

1 facility, rather than retrieving tires from the historic Filbin tire pile. For each transient tire  
2 OTR/CMS delivered to MELP, it received a ownership interest in a corresponding tire in the historic  
3 Filbin tire pile. Over time, therefore, OTR/CMS became the owner of the entire historic tire pile.

4 23. Plaintiffs are further informed and believe and, on that basis, allege that there was a dispute  
5 among the FILBIN DEFENDANTS, OTR/CMS and MELP as to the ownership of the historic pile,  
6 as well as the number of tires in the pile, which led to a lawsuit filed in Stanislaus County Superior  
7 Court (Case No. 298525).

8 24. Plaintiffs are informed and believe and, on that basis, allege that, on approximately March  
9 31, 1995, defendants MELP, Modesto Environmental Corporation (hereinafter referred to as  
10 "MEC"), OTR and the FILBINS entered into an agreement, under which the FILBINS purported  
11 to release any ownership interest in the above-ground waste tires stored at the Westley site. OTR,  
12 then under the ownership and control of defendant CMS, became the owner of the tires. The March  
13 31, 1995 Settlement Agreement was executed on behalf of OTR by Mr. Roger Kershner, an officer  
14 of defendant CMS.

15 25. In approximately July 1995, defendant CMS sold its shares of OTR stock to Heights 11, Inc.  
16 (hereinafter referred to as "HEIGHTS II"), without ever having obtained a permit to operate the  
17 waste tire facility from the CIWMB. At that time, Mr. Mark R. Kirkland (hereinafter referred to as  
18 "KIRKLAND") took over the control and operation of OTR as its President. KIRKLAND was also  
19 the President of HEIGHTS II and Omega Tires, Inc. (hereinafter referred to as "OMEGA").

20 26. Following the transfer of ownership, OTR continued to seek a major waste tire facility  
21 permit from the CIWMB and continued to bring additional tires to the Wesley Tire Pile. In  
22 approximately November 1995, CIWMB staff recommended that the CIWMB deny OTR's permit  
23 application because the closure plan did not accurately represent complete closure costs for the site,  
24 and because the proposed financial assurances were inadequate, among other reasons.

25 27. Among other conditions, the permit required OTR to reduce and, ultimately, eliminate the  
26 stockpile at the Wesley Tire Pile over a four-year period. In exchange, OTR was permitted to  
27 continue to bring new tires to the site on a day-to-day basis. Permit condition 11 required OTR to  
28 reduce and eliminate the tire pile as follows:

1 “The permittee shall at a minimum reduce the quantity of waste tires in accordance with the  
2 following schedule:

3	April 1, 1996 to March 31, 1997	7,500 tons
4	April 1, 1997 to March 31, 1998	12,500 tons
5	April 1, 1998 to March 31, 1999	20,000 tons
6	April 1, 1999 to March 31, 2000	ELIMINATE STOCKPILE”

7 28. Stated in reverse, permit condition 21 required an annual reduction in the maximum  
8 permitted capacity of the site:

9 “Permitted capacity: the total number of whole waste tires and tire equivalents stored at any  
10 time shall not exceed the quantities specified in the following schedule:

11	April 1, 1996	72,500 tons
12	April 1, 1997	65,000 tons
13	April 1, 1998	52,500 tons
14	April 1, 1999	32,500 tons
15	April 1, 2000	0 tons”

16 29. At the time the permit was issued, OTR committed to achieving the tire reduction conditions,  
17 and stated that the entire pile could be eliminated in four years. Plaintiffs are informed and believe  
18 and, on that basis, allege that, during 1996, OTR continued to bring waste tires to the Wesley Tire  
19 Pile.

20 30. In 1997, OTR began a new series of negotiations with the CIWMB regarding the amount and  
21 structure of its financial assurances for closure of the Wesley Tire Pile. Plaintiffs are informed and  
22 believe and, on that basis, allege that during 1997, OTR continued to bring waste tires to the Wesley  
23 Tire Pile, increasing the size of the pile.

24 31. By the time of the March 31, 1997 deadline for reduction of the Westley, waste tire pile by  
25 7,500 tons, OTR had reduced the size of the pile by only 1,530 tons, or approximately twenty  
26 percent of the required amount. Accordingly, on or about April 30, 1997, the CIWMB issued  
27 Cleanup and Abatement Order No. 97-17, requiring, among other things, that OTR cease accepting  
28 any additional tires at the site until the baseline reduction amount had been met, that OTR satisfy

1 permit requirements with respect to reduction of oversized tires, that OTR submit an updated closure  
2 plan and financial assurance demonstration and that OTR begin to meet monthly reduction  
3 benchmarks for the Wesley Tire Pile.

4 32. On or about June 25, 1997, following a hearing before the CIWMB, the Board voted to  
5 revoke OTR's permit and initiate a Board-directed closure, unless a satisfactory agreement could be  
6 reached between OTR and the CIWMB within fifteen (15) days.

7 33. OTR and the CIWMB subsequently negotiated an agreement under which OTR's permit was  
8 reinstated. On or about July 28, 1997, OTR and the CIWMB entered into a written contract under  
9 which the CIWMB agreed to reduce the size of the Wesley Tire Pile by four million (4,000,000)  
10 tires, by paying MELP sixteen (16) cents per tire to burn the waste tires. In exchange for this  
11 consideration, OTR continued to eliminate the remainder of the Wesley Tire Pile over a fourteen  
12 (14) month period, commencing immediately after the four millionth tire had been eliminated by the  
13 CIWMB. OTR also agreed to establish certain alternative financial assurances for the final closure  
14 of the site.

15 34. From approximately June 27, 1997 through June 6, 1998, CIWMB proceeded to eliminate  
16 over four million (4,000,000) tires from the Wesley Tire Pile, by paying MELP to bum the tires.

17 35. On or about April 6, 1998, the CIWMB issued to OTR, among others, Cleanup and  
18 Abatement Order No. 98-26, requiring OTR to, among other things, submit a revised closure  
19 schedule based on the July 28, 1997 CIWMB/OTR Agreement, prescribing a fourteen (14) month  
20 remediation period commencing on the date that the CIWMB removed the four millionth tire from  
21 the Wesley Tire Pile; submit a revised closure cost estimate based on the CIWMB's February 1998  
22 survey of the volume of the Wesley Tire Pile, or some other sufficiently substantiates volume  
23 estimate and submit a revised financial assurance demonstration.

24 36. On or about May 13, 1998, OTR submitted a revised closure plan, in which it proposed to  
25 remove the remaining tires and dispose of them as alternative daily cover at the Altamont Landfill.  
26 CIWMB staff reviewed the revised closure plan and found it inadequate, as not being based on the  
27 actual total number of tires remaining in the Wesley Tire Pile at the time.

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1 37. On or about May 17, 1998, the CIWMB completed its obligation under the July 28, 1997  
2 CIWMB/OTR Agreement to remediate four million tires from the Wesley Tire Pile, triggering  
3 OTR's obligation to begin removing the remaining waste tires over a fourteen (14) month period.  
4 From May 18, 1998 through June 6, 1998, the CIWMB eliminated an additional 2,267 tons of tires  
5 from the Westley, tire pile.

6 38. As of approximately July 14, 1998, the CIWMB estimated that the number of above-ground  
7 tires remaining in the Wesley Tire Pile was approximately five million, nine hundred forty-three  
8 thousand tires (5,943,000), or approximately 59,431 tons, in excess of the amount allowed at the  
9 time under OTR's permit. On or about July 17, 1998, the CIWMB issued a Statement of Issues to  
10 OTR, seeking to revoke OTR's major waste tire facility permit.

11 39. When the Board sent a contractor to assess compliance with the order on or about July 1998,  
12 the contractor was denied access to the site by the FILBIN DEFENDANTS, who ejected the  
13 contractor from the site.

14 40. Subsequently, following a hearing before the CIWMB, on or about August 24, 1998, the  
15 CIWMB adopted Resolution 98-290, determining that OTR was in violation of its major waste tire  
16 facility permit, as well as regulations governing the submittal of a complete closure plan and the  
17 maintenance of adequate financial assurances for closure. In addition, the CIWMB revoked OTR's  
18 major waste tire facility permit 50-TI-0010, effective August 24, 1998.

19 41. Plaintiffs are informed and believe and, on that basis, allege that OTR abandoned the Wesley  
20 Tire Pile site in approximately February 1999, and ceased all management of the pile.

21 42. On or about July 20, 1999, the CIWMB issued Cleanup and Abatement Order No. 99-92 to  
22 the FILBIN DEFENDANTS, among others. Following an appeal, on or about September 8, 1999,  
23 the CIWMB's Board members voted to ratify the issuance of the Order, and it became effective  
24 September 18, 1999. Among other requirements, the Order required the FILBIN DEFENDANTS  
25 to have a functioning fire engine at the site in the event of a fire.

26 43. On or about September 22, 1999, a fire ignited at the Westley site, and engulfed major  
27 portions of the tire pile in flames. As stated above, prior to the fire, CIWMB staff had estimated the  
28 number of tires in the Wesley Tire Pile at the time of the fire at nearly six million (6,000,000). The

1 tire fire released carcinogenic toxins into the atmosphere, generated at least 250,000 gallons of  
2 molten oil, threatening surface and groundwater drinking supplies with contamination, and requiring  
3 extraordinary efforts and expenses to contain. The tire fire burned for approximately thirty-four (34)  
4 days, and was extinguished on approximately October 27, 1999.

5 44. Plaintiffs are informed and believe and, on that basis, allege that the tires that burned  
6 included those located within the PD-91 boundaries (as further identified in paragraph 45 of this  
7 Complaint), tires located outside of PD-91 on property owned by the P. H. and M. J. FILBIN  
8 TRUST, tires located on property owned by defendant CALNEVA, and tires stored on site by  
9 defendants MELP and UAE subject to their own separate permit issued by the CIWMB. The wastes  
10 from the burning tires, including the oil generated by the fire, were and are commingled at the site,  
11 and the parties herein named as defendants are jointly and severally liable for the damages sought  
12 herein.

13 45. The "Wesley Tire Pile," as used herein, is located near Westley, California, in the County  
14 of Stanislaus, California. The defendants named herein conducted their principal business at the  
15 Wesley Tire Pile, which has been zoned by Stanislaus County as "Planned Development 91" and  
16 is frequently referred to as PD-91. Tires were and are located both within and outside of PD-91.  
17 The following Stanislaus County assessor's parcel numbers are herein alleged to have contained  
18 waste tires: APN # 16-36-04, APN # 16-18-04, APN # 16-18-08, APN # 16-18-09 and APN # 16-  
19 35-05, including, without limitation, any leaseholds affecting such assessor's parcels.

20 46. Plaintiffs are informed and believe and, based thereon, allege that tires owned and stored by  
21 defendants UAE Energy Operations Corporation, Modesto Environmental Corporation and Modesto  
22 Energy Limited Partnership also burned in the fire. In fact, defendant Modesto Energy Limited  
23 Partnership has already admitted publicly that at least 200,000 tires consumed by the fire were  
24 located on its property.

25 47. Massive stockpiles of tires constitute a substantial threat to human health and the  
26 environment. The remaining Wesley Tire Pile continues to pose a significant threat of a further fire,  
27 threatening the health and safety of a substantial area surrounding the tire pile. Uncontrollable fire,  
28 toxic air pollution, water contamination, escape of molten oil, and breeding of encephalitis-carrying

1 mosquitos are documented consequence of huge tire piles in the United States. Additionally,  
2 Plaintiffs are informed and believe and, on that basis, allege that there are a large number of buried  
3 tires at the Westley site, and that the wastes from the tire fire have drained into the area of buried  
4 tires. All of the buried tires will be required to be removed in order to adequately characterize the  
5 damage to soil and the threat to groundwater created by the tire fire.

6 48. Tire pile fires release hundreds of highly complex chemicals, including carcinogens and  
7 particulate matter, with potential danger to the environment and public health. Significant amounts  
8 of polynuclear aromatic hydrocarbons, carbon monoxide, and nitrogen oxides have been found in  
9 the smoke of tire fires. Residents near tire fires and those miles away have experienced choking,  
10 headaches, and vomiting. Those with heart and lung ailments face increased risk. Intense heat and  
11 the resulting thermal plume create an instability in the air above a burning tire pile, making aerial  
12 firefighting virtually impossible.

13 49. Tire fires pose a serious threat to surface and groundwater both from toxic runoff caused by  
14 water washing over tires (if water is used for firefighting), by the release of oil, and from storm  
15 water runoff. Massive runoff from the Wesley Tire Pile was difficult to contain and drained directly  
16 toward U.S. Interstate 5.

17 50. The proximity of the Wesley Tire Pile to the California Aqueduct creates an additional  
18 potential threat to the drinking water supply of the State of California. Runoff from the fire could  
19 also find it way to the San Joaquin River through creeks, irrigation drainage, and groundwater. Tires  
20 contain significant levels of zinc, which is released during a fire. Zinc is a hazardous waste and  
21 highly toxic to aquatic life.

22 51. The burning of each automobile tire releases two (2) gallons of oil; truck tires generate up  
23 to ten (10) gallons of oil upon burning. Six million tires represents the potential release of twelve  
24 million (12,000,000) gallons of oil into soil, groundwater, an, drinking water supplies.

25 52. While the fire burned, ash and soot were deposited, pyrolitic oil was produced and flowed  
26 into the earthen fire suppression water impoundment, now referred to as Pond 1. The oil saturated  
27 the embankments of the impoundment and along the channel. The copious amounts of water and  
28 foam used to extinguish the fire also carried pollutants from the tire fire as the liquids collected in

1 Pond I and in impoundments known as Ponds 3 and 4 that were created to prevent the water from  
2 overflowing at Pond 1. Dirt was scraped from the hillsides and placed loosely on top of tires that  
3 were no longer burning, to prevent them from reigniting. The MELP Evaporation Pond, now  
4 referred to as Pond 5, was used as a water recirculating pond during the fire fighting effort, causing  
5 pollutants from the tire fire to be spread to that pond also.

6 53. Surface water drainage from the site generally trends northeastward within the unnamed,  
7 intermittent drainage and distributes along the alluvial fan adjacent to the range front. The  
8 California Aqueduct is located just over one mile northeast of the site. The Delta-Mendota canal  
9 is located approximately 1.7 miles northeast of the site and the San Joaquin River is located  
10 approximately seven miles east of the site.

11 54. Lightning fires represent a substantial danger in the Westley area. The dry terrain and the  
12 grasslands surrounding the tire pile increase the threat of future fires.

13 55. Additionally, tire piles are breeding grounds for mosquitos. Water, trapped in tires, forms  
14 excellent mosquito habitat. Plaintiffs are informed and believe and, on that basis, allege that tire pile  
15 mosquitos can carry the encephalitis virus.

16 56. Plaintiffs are informed and believe and, on that basis, allege that the September/October 1999  
17 fire and subsequent release of smoke, particulate matter and hazardous chemicals could have been  
18 relatively quickly brought under control or, at minimum, would have been far less severe had the  
19 FILBIN DEFENDANTS created fire breaks and/or separated the tires into piles, as was ordered by  
20 the CIWMB.

21 57. The negligence of Defendants, and each of them, that led to the September 22, 1999 fire is  
22 part of a pattern and practice of disregard for the health and safety of the workers, transients and  
23 citizenry within the chemically-exposed areas, as evidenced, in part, by CIWMB's citations of the  
24 site and/or Defendants.

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**PLAINTIFFS**

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58. Plaintiff Mary Nicola and her husband, plaintiff Robert Nicola live in Patterson, California where their three daughters, Victoria (age 17), Julia (age 12) and Amelia (age 11) attend local public schools. Within a week of the tire fire's commencement, and continuing for many months thereafter, the Nicola family suffered continuous headaches, eye irritation, sore throats, painful sinus pressure, ear aches, nose bleeds, bouts of dizziness, nausea, constant respiratory complications and fatigue. All family members required and sought medical treatment in the months of October and November 1999 for symptoms directly related to their exposure to the catastrophe. Gould Medical Foundation physicians Dr. David Hillburn and Dr. Kristy Lindstrom prescribed medications for their continuing symptoms which these doctors attributed directly to the Nicola's exposure to the air contaminants released during the tire fire.

59. Plaintiff Carol Velotta and her husband Frank Velotta live with her sons, Paul Johnson (age 16) and Anthony Johnson (age 12), at 35150 Welty Road in Vernalis, California from which they could easily see the flames of the tire fire. Since, during the period of the tire fire, the Velottas left their home windows and doors open (due to a lack of air conditioning), the family was exposed twenty-four hours a day to the particulate and carcinogenic matter released thereby. Within days of the fire's commencement, and continuing for many months thereafter, Carol Velotta suffered headaches, a sore throat and severe breathing problems, necessitating treatment, including surgery, for a closed esophagus. Frank, due to a heart surgery procedure he underwent prior to the fire, suffered immediate and presently-continuing breathing problems, which required medication to control and assist him with his breathing. As a direct result of the tire fire, twelve-year-old Anthony suffered severe headaches, stomach pain, nose bleeds, systemic fatigue and malaise and the occurrence of skin falling from his fingertips.

60. Plaintiff Carrie Bennett and her husband, Dean Bennett live with their four children, William Fischer (age 13), Matthew (age 7), Joseph (age 5) and Meghan (age 3) at 218 N. 4<sup>th</sup> Street in Patterson, California. Carrie suffered constant and continuous coughing, eye irritation, painful ear aches, respiratory complications and fatigue due to the tire fire. All family members suffered similar

1 respiratory complications and symptomology and sought medical attention. The varied forms of  
2 medications prescribed were necessitated by the ongoing symptoms directly attributed to the  
3 family's exposure to the air contaminants caused by the tire fire.

4 61. During the 35-day tire fire, plaintiff Santos Hernandez resided at 320 Beall Court in Westley,  
5 California. Within a week of the fire's commencement and continuing for many months thereafter,  
6 Mr. Hernandez experienced severe nausea, numerous bouts of dizziness, wheezing problems and  
7 bronchitis, for which he sought medical treatment and was prescribed medication.

8 62. Plaintiff Rich Torres lives at 556 Agadoni Court, Patterson, California. During the weeks  
9 of the tire fire catastrophe, he was assigned to repair downed telephone lines within close proximity  
10 of the fire. As a result of this direct and lengthy exposure, Mr. Torres suffered sinus infections, eye  
11 irritation, coughing, ear aches, sleeping disorders, almost constant respiratory distress and fatigue,  
12 symptoms which plagued him for months or years thereafter. Mr. Torres' suffering became so  
13 severe at times that emergency medical attention was required on multiple occasions to treat him  
14 as well as a surgery to relieve the painful sinus symptoms caused by defendants' despicable and  
15 unlawful conduct.

16 63. Plaintiff Amalia Hernandez lives at 8920 Beal Avenue, Westley, California with her young  
17 daughters Crystal (age 10) and Stephanie (age 5). During, and for many months after the  
18 commencement of the tire fire, Amalia and both daughters suffered eye irritation, including itchy  
19 eyes, nausea, near-constant coughing (often followed by intense gagging), dizziness, respiratory  
20 complications and fatigue. Each of the family members sought treatment for their ongoing  
21 symptoms.

22 64. Plaintiff Moises Ochoa lives at 551 Iandi Court in Patterson, California with his brother  
23 Michael Ochoa (age 10). Moises suffered nose bleeds, painful sinus pressure and near-constant  
24 respiratory complications and fatigue almost immediately after the start of the fire and for many  
25 months thereafter. Michael suffered continuous headaches, coughing up of blood after bouts of  
26 constant coughing/gagging as well as eye irritation and dry-eye syndrome. Moises and his brother  
27 both sought medical treatment therefor in the following months from Dr. LaTorre and consulted with  
28 specialists in Stockton and Modesto, California where CAT scans were negative for any disease or

1 cause other than inhalation of smoke and/or exposure related to the tire fire.

2 65. Plaintiff Susie Davis lives at 417 Osprey Drive, Patterson, California with her daughter  
3 Breanna (age 7). Within the first week of the blaze, Susie Davis visited the hospital due to  
4 respiratory complications, at which time she was provided an inhaler to relieve her suffering.  
5 Breanna suffered nose bleeds, severe asthmatic attacks and other respiratory complications during  
6 the fire. Breanna was asthmatic prior to the fire, yet had experienced no attacks of asthma since  
7 December 1998. Medical treatment was provided for the Davis family at the hospital's emergency  
8 facility and by Dr. Guerra. Breanna received underwent an examination and treatment by Dr. Kahn,  
9 M.D. of San Jose, California. Both mother and daughter were prescribed medications for the  
10 ongoing symptoms caused by their exposure to the air contaminants released during the tire fire.

11 66. Plaintiff Doracellie Hernandez lived at 8907 Walt Ave, Westley, with her husband Agustin  
12 and their three children Fabian (age 3) and his two sisters, Vanessa (age 8) and Byanca (age 6).  
13 Within weeks of the tire fire the family members, particularly, Fabian, the most seriously affected  
14 by the fire, experienced vomiting, "diarrhea," fever, headaches, a rash, bronchitis, a "cough with  
15 phlegm," and constant nasal mucous and was taken to the Golden Valley Health Center for  
16 continuous treatment. Medications were prescribed and treatment rendered for the ongoing  
17 symptoms of Fabian. Fabian and the remaining family members suffered for a significant time  
18 period following the catastrophe.

19 67. After fifteen years of military service, plaintiff Alfred Barboza returned to live in Patterson,  
20 California at 553 Hannah Drive. Within week of the tire fire's commencement, Mr. Barboza began  
21 experiencing constant and continuous coughing, eye irritation, headaches, bloody nose, ear  
22 infections, respiratory complications and fatigue, for which he sought medical attention and receive  
23 various medications.

24 68. Plaintiff Maria Carbrera has lived in Westley, California since 1984, where she works at the  
25 Stanislaus County Day Care Center. During the tire fire, Plaintiff Carbrera experienced severe  
26 respiratory complications, necessitating a sinus surgery in March 2000 and the prescription of  
27 various medications for her ongoing symptoms.

28

1 69. At all times herein relevant, the representative plaintiffs identified herein were and are  
2 natural persons, residing within the State of California and, in particular, within the geographic  
3 area(s) exposed by the chemical compounds and/or particulate matter emitted by and during the  
4 pendency of the September 22, 1999 through October 27, 1999 tire fire near Westley, California,  
5 discussed herein.

6 70. As used throughout this Complaint, the term "Plaintiffs" and/or "Class" refers to each and  
7 every named plaintiff herein, and each and every person eligible for membership in one or more of  
8 the plaintiff sub-classes, as described and defined below.

9 71. The Plaintiff Classes consist of all members who have been exposed, in some way, to  
10 chemical substances and/or particulate matter (including carcinogenic benzene, polynuclear aromatic  
11 hydrocarbons, 1,3 butadiene, nickel, chromium, lead, arsenic, and other hazardous air pollutants  
12 such as hydrogen sulfide, nitrous oxides, and particulate matter) as a result of the release of said  
13 chemical substances by Defendants, and each of them, commencing on or about September 22,  
14 1999, and/or who were damaged in some manner by said release.

15 72. At all times herein relevant, the representative plaintiffs were and now are persons within  
16 the class of persons described and defined herein.

17 73. The representative plaintiffs bring this action on behalf of themselves and as a class action,  
18 pursuant to California Code of Civil Procedure §382, on behalf of all persons or entities similarly  
19 situated and proximately damaged by the toxic chemical compound and particulate matter discharge  
20 described herein.

21  
22 **DEFENDANTS**

23 74. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
24 defendant FILBINS were and are natural persons who have, at all relevant times, resided within and  
25 owned property within the County of Stanislaus, California. Plaintiffs are further informed and  
26 believe and, on that basis, allege that tires are and were stored at such property owned thereby.

27 75. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
28 defendant Edward Joseph Filbin and Mary Etta Filbin Revocable Trust UAD September 21, 1998

1 (the "FILBIN FAMILY TRUST"), is a family trust that, at all relevant times, owned property within  
2 the County of Stanislaus, California. Edward Joseph Filbin and Mary Etta Filbin are and were the  
3 trustees of the FILBIN FAMILY TRUST. Plaintiffs are further informed and believe and, on that  
4 basis, allege that tires are and were stored at such property owned thereby.

5 76. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
6 defendant Patrick H. and Margaret J. Filbin Trust (the "P.H. and M.J. FILBIN TRUST") is a family  
7 trust that, at all relevant times, owned property within the County of Stanislaus, California.  
8 Plaintiffs are further informed and believe and, on that basis, allege that Dorothy Arnaud and Helen  
9 Jacobsen are and were trustees of this trust. Plaintiffs are further informed and believe and, on that  
10 basis, allege that tires are and were stored at such property owned thereby.

11 77. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
12 defendant CalNeva Ranch Company, LLC (hereinafter referred to as "CALNEVA") was and/or is  
13 a corporation, limited or general partnership, California Limited Liability company or partnership  
14 and/or other business entity, duly licensed, located and doing business in, but not limited to, the city  
15 of Westley, in the County of Stanislaus, in the State of California. During the relevant periods  
16 specified herein, Edward Joseph Filbin and Mary Etta Filbin are and were operating members of  
17 defendant CALNEVA. CALNEVA, by and through the FILBIN DEFENDANTS, owned, operated,  
18 managed and/or controlled the real property herein-described as the "Wesley Tire Pile."

19 78. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
20 defendant UAE Energy Operations Corporation (hereinafter referred to as "UAE") is a California  
21 corporation, qualified to do business in the State of California, with its principal place of business  
22 in San Ramon, California. Plaintiffs are further informed and believe and, on that basis, allege that,  
23 at all times herein relevant, defendant UAE is the operator of the Modesto Energy Limited  
24 Partnership tires-to-energy facility, located at 4549 Ingram Creek Road, Westley, in the County of  
25 Stanislaus, California. Plaintiffs are further informed and believe and, on that basis, allege that, at  
26 all times herein relevant, defendant UAE is a subsidiary of United American Energy Corporation,  
27 a New York corporation, with its principal place of business in Woodcliff Lake, New Jersey.

28

1 79. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
2 defendant Modesto Environmental Corporation (hereinafter referred to as “MEC”) is a California  
3 corporation, qualified to do business in the State of California, with its principal place of business  
4 in San Ramon, California. Plaintiffs are informed and believe and, on that basis, allege that, at all  
5 times herein relevant, defendant MEC is a general partner in the Modesto Energy Limited  
6 Partnership, owner of the tires-to-energy facility located at 4549 Ingram Creek Road, Westley, in  
7 the County of Stanislaus, California.

8 80. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
9 defendant Modesto Energy Limited Partnership (hereinafter referred to as “MELP”) is a California  
10 limited partnership, with its principal place of business at 4549 Ingram Creek Road, Westley, in the  
11 County of Stanislaus, California. Plaintiffs are informed and believe and, on that basis, allege that,  
12 at all times herein relevant, defendant MELP is the owner and operator of the tires-to-energy facility  
13 at that location.

14 81. Defendants UAE, MEC and MELP are collectively referred to herein as the  
15 “UAE/MEC/MELP DEFENDANTS.”

16 82. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
17 defendant CMS Generation Company (hereinafter referred to as “CMS”) was and/or is a Michigan  
18 corporation, qualified to do business in the State of California, with its principal place of business  
19 formerly at 4549 Ingram Creek Road, in Westley, California, where it owned and operated Oxford  
20 Tire Recycling of Northern California, Inc. (OTR) from approximately October 1993 through July  
21 1995. During the time that CMS owned and operated OTR, it deposited tires, including oversized  
22 tires, near the Westley tires-to-energy facility and/or at the property herein referred to as the Wesley  
23 Tire Pile.

24 83. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
25 defendants Oxford Tire Recycling of Northern California, Inc. (heretofore referred to as “OTR,” and  
26 hereinafter referred to as “OXFORD”) is a Delaware corporation, qualified to do business in the  
27 State of California, with its principal place of business formerly at 4561 Ingram Creek Road,  
28 Westley, in the County of Stanislaus, California. Defendant OXFORD also leased property adjacent

1 to the MELP tires-to-energy facility, located at 4549 Ingram Creek Road, Westley, California.  
2 OXFORD was formerly in the business of hauling and storing waste tires for profit. Plaintiffs lack  
3 any information or belief regarding OXFORD's current business operations, but are informed and  
4 believe and, on that basis, allege that OXFORD may derive current and/or future income from the  
5 sale or lease of its former accounts, equipment and/or other assets.

6 84. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
7 defendant Omega Tires, Inc. (hereinafter referred to as "OMEGA") was and/or is a California  
8 corporation, with its principal place of business formerly at 4561 Ingram Creek Road, in Westley,  
9 California. OMEGA was formerly in the business of hauling and storing waste tires for profit.  
10 Plaintiffs lack any information or belief regarding OMEGA's current business operations, but are  
11 informed and believe and, on that basis, allege that OMEGA may derive current and/or future  
12 income from the sale or lease of its former accounts, equipment and/or other assets.

13 85. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
14 defendant Mark R. Kirkland (hereinafter referred to as "KIRKLAND"), is an individual and the  
15 owner, operator and President of OXFORD, OMEGA and HEIGHTS II. Defendant KIRKLAND  
16 is sued in his individual capacity in connection with his operation of OXFORD's and OMEGA's  
17 business of hauling, storing and/or recycling waste tires for profit.

18 86. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
19 defendant Heights II, Inc. (hereinafter referred to as "HEIGHTS II") was and/or is an Utah  
20 corporation and the corporate parent and alter ego of defendant OXFORD and OMEGA. Defendant  
21 HEIGHTS II maintains its principal place of business in Westley, California.

22 87. Defendants OXFORD, OMEGA, KIRKLAND and HEIGHTS II are collectively referred to  
23 herein as the "OXFORD DEFENDANTS."

24 88. Plaintiffs are informed and believe and, on that basis, allege that, at all times herein relevant,  
25 defendant Total Tire Recycling, LLC (hereinafter referred to as "TTR") was and/or is a California  
26 limited liability company, with its principal place of business in Sacramento, California. Plaintiffs  
27 are further informed and believe and, on that basis, allege that the operating members of defendant  
28 TTR are Michael Byrne and George Henebury.

1 89. TTR is a continuation of defendant OXFORD's business enterprise and, as successor to  
2 OXFORD, has acquired all of defendant OXFORD's legal obligations, liabilities and duties.  
3 Plaintiffs are informed and believe and, on that basis, allege that TTR acquired the rights to utilize  
4 all of OXFORD's equipment and to serve OXFORD's accounts and has otherwise acquired all of  
5 the valuable assets and rights of OXFORD. Accordingly, Plaintiffs request a determination by the  
6 Court that TTR, as successor to defendant OXFORD, has acquired all of defendant OXFORD's legal  
7 obligations, liabilities and duties.

8 90. Plaintiffs are informed and believe and, on that basis, allege that, during the relevant periods  
9 specified herein, defendant TTR was and/or is in the business of collecting, disposing, recycling, and  
10 selling used tires for profit, and is the direct successor-in-interest to the OXFORD DEFENDANTS.  
11 Plaintiffs are further informed and believe and, on that basis, allege that, during the relevant periods  
12 specified herein, defendant TTR was under contract with MELP to supply waste tires to MELP for  
13 the purpose of producing energy through burning of such supplied tires.

14 91. Those defendants identified as DOES 1 through 200, inclusive, are and were, at all relevant  
15 times herein mentioned, officers, directors, supervisors, agents and/or employees of some/each of  
16 the remaining defendants and/or other business entities organized for the purpose of acquiring,  
17 handling, storing, controlling, maintaining, selling, distributing and/or recycling tires at the Wesley  
18 Tire Pile.

19 92. Plaintiffs are unaware of the true names and capacities of those defendants sued herein as  
20 DOES 1 through 200, inclusive and, therefore, sue these defendants by such fictitious names.  
21 Plaintiffs will seek leave of court to amend this Complaint when same are ascertained. Plaintiffs are  
22 informed and believe and, on that basis, allege that each of the fictitiously-named defendants is  
23 responsible in some manner for the occurrences herein alleged, and that Plaintiffs' injuries and  
24 damages, as herein alleged, were proximately caused by that negligent or intentional conduct.

25 93. Plaintiffs are informed and believe and, on that basis, allege that, at all relevant times herein  
26 mentioned, each of the defendants was the agent and/or employee of each of the remaining  
27 defendants and, in doing the acts herein alleged, was acting within the course and scope of such  
28 agency and/or employment.

1 94. Plaintiffs are informed and believe and, on that basis, allege that, as President of defendant  
2 OXFORD, defendant KIRKLAND was and is an agent of his corporate principal and a policy-maker  
3 who directs and ultimately controls the corporation's conduct.

4 95. Plaintiffs are informed and believe and, on that basis, allege that, as President of defendant  
5 OXFORD, defendant KIRKLAND personally participated and/or participates in all decisions  
6 affecting actions taken by defendant OXFORD.

7 96. Plaintiffs are informed and believe and, on that basis, allege that defendant KIRKLAND has  
8 been and continues to be aware of the responsibility of OXFORD to remove the Wesley Tire Pile,  
9 yet has negligently or intentionally failed to do so.

10 97. Plaintiffs are informed and believe and, on that basis, allege that defendant KIRKLAND, at  
11 all relevant times, failed to adequately capitalize defendant OXFORD for its intended business  
12 purpose.

13 98. Wherefore, Plaintiffs pray that the Court enter an Order finding defendant KIRKLAND  
14 personally liable for the acts and omissions of defendant OXFORD, as identified herein.

15 99. Plaintiffs are informed and believe and, on that basis, allege that defendant KIRKLAND is  
16 President and dominating shareholder of defendant OXFORD. Plaintiffs are further informed and  
17 believe and, on that basis, allege that defendant KIRKLAND is President and dominating  
18 shareholder of defendant HEIGHTS II. Plaintiffs are further informed and believe and, on that basis,  
19 allege that defendant KIRKLAND is President and dominating shareholder of defendant OMEGA.

20 100. Plaintiffs are informed and believe and, on that basis, allege that, as President of defendants  
21 OXFORD, HEIGHTS II and OMEGA, defendant KIRKLAND personally participated and/or  
22 participates in all decisions affecting actions taken by said defendants.

23 101. Plaintiffs are informed and believe and, on that basis, allege that defendant KIRKLAND, at  
24 all relevant times, failed to adequately capitalize defendants OXFORD, HEIGHTS II and/or  
25 OMEGA for its/their intended business purpose(s). Defendant KIRKLAND is liable for the  
26 activities alleged herein as the alter ego of defendants OXFORD, HEIGHTS II and OMEGA.  
27 Recognition of the privilege of separate existence would promote injustice because KIRKLAND and  
28 parent corporation HEIGHTS II organized and controlled defendants OXFORD and OMEGA so that

1 they are now, and at all relevant times were, merely instrumentalities, agencies, conduits, or adjuncts  
2 of defendants KIRKLAND and HEIGHTS II.

3 102. Plaintiffs are informed and believe and, on that basis, allege that defendant CMS was the  
4 owner and operator of defendant OXFORD and exercised dominion and control over defendant  
5 OXFORD in a manner that demonstrates that the two companies were operated as one. Defendant  
6 CMS was fifty percent (50%) owner of Oxford Energy at the time it controlled defendant OXFORD  
7 and, subsequently, was a direct owner of defendant OXFORD from approximately October 1993  
8 through July 1995.

9 103. During that time, defendant CMS owned OXFORD directly, wrote numerous letters on  
10 OXFORD's behalf, intervened on behalf of OXFORD in the permitting process with the CIWMB,  
11 executed legal documents on OXFORD's behalf, and frequently listed CMS's Dearborn, Michigan  
12 address as the appropriate location for legal notices to be sent regarding OXFORD, indicating that  
13 OXFORD was undercapitalized to do business in the State of California. Even after defendant CMS  
14 sold OXFORD to HEIGHTS II, in July 1995, CMS had knowingly sold OXFORD to a purchaser  
15 that was financially unable to adequately capitalize the company to do business in the State of  
16 California.

17 104. Plaintiffs are informed and believe and, on that basis, allege that, at the time that defendant  
18 OXFORD was owned by defendant CMS, it was undercapitalized for the nature and type of business  
19 that it conducted. Defendant CMS is, therefore, liable for the activities alleged herein as the alter  
20 ego of defendant OXFORD. Recognition of the privilege of separate existence would promote  
21 injustice because defendant CMS organized and controlled defendant OXFORD, so that, at all  
22 relevant times, it was merely the instrumentality, agency, conduit or adjunct of defendant CMS.

23 105. Plaintiffs are informed and believe and, on that basis, allege that defendants CALNEVA and  
24 the FILBIN FAMILY TRUST are instrumentalities of the FILBINS, created to avoid liability for  
25 the Wesley Tire Pile. In or about March 1999, the FILBINS purported to convey fee title to the  
26 Westley property to defendant CALNEVA, through the FILBIN FAMILY TRUST. The operating  
27 members of CALNEVA are Edward Joseph and Mary Etta Filbin (named defendants herein).  
28 Plaintiffs are unaware of any other business purpose of defendant CALNEVA, and recognition of

1 the privilege of separate existence would promote injustice because the FILBINS organized and  
2 controlled defendant CALNEVA so that, at all relevant times, it was merely the instrumentality,  
3 agency, conduit or adjunct of the FILBINS and the FILBIN FAMILY TRUST.

4 106. The FILBINS, the FILBIN FAMILY TRUST and CALNEVA are, therefore, liable for the  
5 activities alleged herein as the alter egos of each other.

### 6 7 CLASS ACTION ALLEGATIONS

8 107. Plaintiffs bring this action on behalf of themselves and as a class action on behalf of all  
9 persons or entities proximately damaged by Defendants' conduct, leading to the ultimate discharge  
10 of toxic chemical compounds and substantial amounts of particulate matter, as described herein, into  
11 the atmosphere, commencing on or about September 22, 1999 and continuing through and including  
12 October 27, 1999, including, but not limited to the following Classes:

13 **A. The Property Owner Class.**

14 *The "Property Owner Class" consists of all persons and entities who are owners*  
15 *of residential and/or commercial real property and/or personal property in the*  
16 *vicinity of the Wesley Tire Pile in Westley, California, including, but not limited*  
17 *to the cities of Grayson, Newman, Patterson and Westley, California, and for*  
*which this Model Complaint alleges property damage, loss, or diminution of*  
*value, as a result of the toxic fumes and/or harmful particulate matter released*  
*in the Westley tire fire commencing on or about September 22, 1999.*

18 **B. The Chemical Exposure-Related Personal Injury Class.**

19 *The "Chemical Exposure-Related Personal Injury Class" consists of all persons*  
20 *present in and around the area of the Wesley Tire Pile in Westley, California and*  
21 *downwind therefrom, for which this Model Complaint alleges personal injuries*  
*and/or emotional distress as a result of toxic fumes and/or harmful particulate*  
*matter released in the Westley tire fire commencing on or about September 22,*  
*1999.*

22 **C. The Medical Monitoring Class.**

23 *The "Medical Monitoring Class" consists of all persons present in and around*  
24 *the area of the Wesley Tire Pile in Westley, California and downwind therefrom,*  
*for which this Model Complaint alleges an increased risk of future illness due to*  
*exposure to the toxic fumes and/or harmful particulate matter released in the*  
*Westley tire fire commencing on or about September 22, 1999.*

25 **D. The Punitive Damage Class.**

26 *The "Punitive Damage Class" consists of all persons entitled to compensatory*  
27 *damages as a result of the misconduct of defendants, and each of them, with*  
*respect to the toxic fumes and/or harmful particulate matter released in the*  
*Westley tire fire commencing on or about September 22, 1999.*

1 108. Defendants, their officers, directors, employees and subsidiaries are excluded from each  
2 of the Classes.

3 109. Plaintiffs and the class members share a community of interests in that there are  
4 numerous common questions of fact and law which predominate over any questions solely  
5 affecting individual members, including, but not necessarily limited to:

- 6 a) whether Defendants committed and/or participated in the acts alleged;
- 7 b) whether Defendants breached duties of care;
- 8 c) whether Defendants acted recklessly and/or willfully;
- 9 d) whether Defendants committed violations of law;
- 10 e) whether Defendants, by their use, ownership, management, control, storage  
11 and/or transportation of ultra-hazardous substances in commercial quantities are  
12 absolutely liable, regardless of fault, for damages or injuries and losses arising  
13 from the toxic releases;
- 14 f) whether Defendants are strictly liable for the chemical release herein-identified;
- 15 g) whether Defendants' conduct constitutes a nuisance, trespass or battery;
- 16 h) whether Plaintiffs are entitled to damages for economic injury, property losses,  
17 bodily injury, emotional distress, annoyance, inconvenience, and/or loss of  
18 enjoyment of legal rights, among other damages and, if so, what is the  
19 appropriate means of calculating such monetary damages;
- 20 i) what are the approximate concentrations of those toxic chemicals and amounts  
21 of particulate matter to which Plaintiffs were exposed;
- 22 j) what is the liability of Defendants, and each of them, for causing these  
23 exposures; and
- 24 k) what are the toxicological properties of the various chemical substances  
25 described herein and/or of their breakdown products.

26 110. A class action is the only available method for the fair and efficient adjudication of this  
27 controversy. The members of the Class are so numerous that joinder of all members is  
28 impractical, if not impossible, insofar as the total population of workers and residents in the  
affected area(s) is far in excess of 10,000 individuals.

111. Since the damages suffered by individual Class members, while not inconsequential, may  
be relatively small, the expense and burden of individual litigation by each makes it impractical  
for members of the Class to seek redress individually for the wrongful conduct alleged herein.

1 Should separate actions be brought or be required to be brought by each individual member of  
2 the Class, the resulting multiplicity of lawsuits would cause undue hardship and expense for the  
3 Court and the litigants. The prosecution of separate actions would also create a risk of  
4 inconsistent rulings which might be dispositive of the interests of other Class members who are  
5 not parties to the adjudications and/or may substantially impede their ability to adequately  
6 protect their interests.

7 112. The named plaintiffs in this class action are adequate representatives of the Class, in that  
8 these plaintiffs' claims are typical thereof and insofar as these named plaintiffs have the same  
9 interests in the litigation of this case as other plaintiffs. These named plaintiffs are committed  
10 to vigorous prosecution of this case, and have retained competent counsel, experienced in  
11 litigation in this nature. These named plaintiffs are not subject to any individual defenses unique  
12 from those conceivably applicable to the Class as a whole. These named plaintiffs anticipate no  
13 management difficulties in this litigation.

14  
15 **COMMON FACTUAL ALLEGATIONS**

16 113. As described herein, the fire that ignited the Wesley Tire Pile on September 22, 1999 sent  
17 substantial amounts of hazardous chemical compounds and particulate matter into the  
18 environment. These substances traveled airborne (as well as through the soil and/or  
19 groundwater) into the populated portions of Grayson, Newman, Patterson and Westley,  
20 California, among other areas both within and outside of Stanislaus County.

21 114. Nitrous Oxides, PM-10 and Sulfur Dioxide are all regulated under the Federal Clean Air  
22 Act and can cause irritation of the eyes, skin, nose, throat and upper respiratory system, choking,  
23 coughing and reflexive bronchoconstriction.

24 115. Benzene and 1,3 Butadiene are listed as hazardous air pollutants under the Federal Clean  
25 Air Act. Exposure to these chemicals can lead, for example, to irritation of the eyes, skin and  
26 respiratory system, and can cause coughing, dyspnea, giddiness, headaches, nausea, staggered  
27 gait, fatigue, anorexia, exhaustion, pulmonary edema and corneal necrosis, as well as liver and  
28 kidney damage.

1 116. The chemicals known as Nickel, Chromium, Lead and Arsenic are all toxic metals and  
2 known carcinogens. Exposure to these metals can cause such symptoms as skin sensitization  
3 and irritation, allergic asthma, irritated eyes, respiratory distress and pulmonary fibrosis, anemia,  
4 weakness, exhaustion, insomnia, facial pallor, anorexia, constipation, abdominal pain, colic,  
5 diarrhea, tremors, hypotension, kidney damage, tremors, seizures and reproductive damage.

6 117. In addition to the long- and short-term health effects caused by exposure to these  
7 chemicals, it is commonly known by persons employed in Defendants' industry that the  
8 particulate matter and/or "fall-out" from such airborne chemicals and/or any of their breakdown  
9 products was and is likely to cause damage to personal and/or real property and to the  
10 environment.

11 118. Prior to the commencement date of each said release, Defendants, and each of them,  
12 knew or had reason to know of the dangerous conditions under which tires were being stored,  
13 maintained and/or handled at the Wesley Tire Pile. As a result thereof, Defendants, and each  
14 of them, knew or had reason to know of the heightened risks naturally attendant to such a  
15 condition, including the foreseeable risk of fire and the subsequent generation and release of  
16 noxious and/or toxic substances, as did, in fact, occur in this instance.

17 119. The proximate result of said facility's sub-standard condition, Defendants' failure to take  
18 adequate corrective/preventative measures to avoid the risks of chemical release(s) as did, in  
19 fact, occur here, Defendant's refusal to perform the cleanup and/or abatement measures  
20 previously ordered by the CIWMB and their refusal to allow inspection of said property for the  
21 purpose of ensuring compliance with said order, was the release of noxious and/or toxic  
22 substances, commencing on or about September 22, 1999.

23 120. The above-described release by Defendants, and each of them, and the resulting exposure  
24 to these toxic substances by the residents of the cities of Grayson, Newman, Patterson and  
25 Westley, California, among other areas, has resulted in health problems for a large portion of the  
26 citizenry of the aforementioned communities, too numerous to identify herein.

27 121. Further health effects suffered as a result of this chemical release include "flu-like"  
28 symptoms such as sore throats, coughs, eye irritation, nausea, vomiting, diarrhea, runny and

1 bloody noses, severe headaches, fatigue, dizziness, loss of appetite, weight loss, and related  
2 pains and symptoms. Various other health effects experienced by Plaintiffs include, but are not  
3 limited to, intense cramping of and pain to the abdomen, itchy and/or watery eyes, lung irritation  
4 and insomnia. Long-term health affects include, but are not necessarily limited to memory loss,  
5 skin disorders, adverse reproductive effects and cancer.

6 122. These health effects are, in many cases, ongoing, and are an extreme concern to  
7 Plaintiffs. In particular, Plaintiffs, or at least many of them, continue to suffer coughing, eye  
8 and/or lung irritation, and psychological problems requiring medical and/or psychiatric attention.

9 123. As a proximate result of Defendants' conduct, as set forth herein, Plaintiffs have  
10 sustained damages, as described above, including lost use and enjoyment of personal and real  
11 property and diminution of the fair market value of their real property, all in an amount to be  
12 established at trial.

13 124. As a further proximate result of Defendants' conduct, as set forth herein, Plaintiffs have  
14 sustained damages, as described above, including personal injuries and/or medical and related  
15 expenses, loss of consortium, mental anguish and other emotional distress, lost business profits,  
16 loss of earnings and earning potential due to their injuries and/or work missed, opportunities and  
17 other benefits of employment, all in an amount to be established at trial.

18  
19 **FIRST CAUSE OF ACTION**  
20 **Negligence**  
**(vs. All Defendants)**

21 125. Plaintiffs incorporate in this cause of action each and every allegation of paragraphs 1  
22 through 124, inclusive, with the same force and effect as though fully set forth herein.

23 126. At all times herein relevant, Defendants, and each of them, jointly and severally, owed  
24 a duty of care to Plaintiffs, and each of them, to act with reasonable care so as not to put  
25 Plaintiffs' health and safety or the condition of these Plaintiffs' real and/or personal property in  
26 jeopardy.

27 127. Defendants, and each of them, jointly and severally, did breach their general duty of care  
28 to Plaintiffs in, but not necessarily limited to, the following ways:

- 1 a) in knowing or having reason to know of the sub-standard condition and operation  
2 of the Wesley Tire Pile, prior to the dates of said release(s) and of the heightened  
3 risks naturally attendant to such a condition (including the foreseeable risk of  
4 such chemical releases, as did, in fact, occur in this instance) and failing to  
5 correct same;
- 6 b) in failing to properly maintain the Wesley Tire Pile and/or the fire protection  
7 equipment;
- 8 c) in failing to maintain adequate fire breaks within the Wesley Tire Pile to  
9 minimize the spread of fire;
- 10 d) in failing to adequately maintain the fire protection loop system in a manner that  
11 it could have been used to quickly maintain the fire once ignited;
- 12 e) in releasing excessive quantities of toxic chemical compounds known to cause  
13 severe health effects to humans and animals from their facility(ies);
- 14 f) in failing to contain, timely correct and/or remedy the source of the release  
15 immediately upon discovery thereof;
- 16 g) in failing to adequately warn the foreseeable class of Plaintiffs of the dangers of  
17 such releases; and/or
- 18 h) in failing to adhere to applicable industry standards, internal safety procedures  
19 and/or other applicable state or local laws, rules, regulations and standards,  
20 and/or in otherwise doing the acts alleged herein.

21 128. As a proximate result of Defendants' conduct, as set forth herein, Plaintiffs have  
22 sustained damages, as set forth in paragraphs 120 through 124, among other paragraphs of this  
23 Model Complaint.

24 **SECOND CAUSE OF ACTION**  
25 **Battery**  
26 **(vs. All Defendants)**

27 129. Plaintiffs incorporate in this cause of action each and every allegation of paragraphs 1  
28 through 128, inclusive, with the same force and effect as though fully set forth herein.

130. Defendants, and each of them, acted intentionally, maliciously, oppressively and with  
conscious disregard for the rights and safety of Plaintiffs, and each of them, with respect to  
the events alleged in this Complaint, including, but not limited to the following:

- a) operating sub-standard, dangerous and/or defective facilities, including, but  
not limited to, the Wesley Tire Pile which, upon ignition, released excessive  
quantities of toxic chemical compounds and particulate matter into the  
environment;



1 137. These defendants shamelessly committed these public nuisances in the course of their  
2 profit-making activity, and benefitted monetarily from the inexpensive, but environmentally  
3 irresponsible, methods of controlling and securing their facilities from releasing dangerous  
4 chemicals, as has occurred and is described herein. Plaintiffs never consented to any of the  
5 foregoing conduct.

6 138. The nuisance affects a considerable number of persons, but at the same time, causes  
7 special injury to Plaintiffs in that the natural resources located within their community are  
8 affected most greatly.

9 139. As a proximate result of Defendants' conduct, as set forth herein, Plaintiffs have  
10 sustained damages, as set forth in paragraphs 120 through 124, among other paragraphs of  
11 this Model Complaint.

12  
13 **FOURTH CAUSE OF ACTION**  
14 **Private Nuisance**  
**(vs. All Defendants)**

15 140. Plaintiffs incorporate in this cause of action each and every allegation of paragraphs 1  
16 through 139, inclusive, with the same force and effect as though fully set forth herein.

17 141. Plaintiffs are informed and believe, and based upon such information and belief,  
18 herein allege that during the time Defendants, and each of them, occupied the premises of the  
19 facility herein-referred to as the Wesley Tire Pile, Defendants occupied, used and maintained  
20 the above-described premises in such a manner that allowed the herein-described toxic  
21 chemicals to be released into the environment commencing on or about September 22, 1999,  
22 and onto Plaintiffs' property and into Plaintiffs' soil, groundwater and waters of the State of  
23 California.

24 142. The aforementioned occupation, use and maintenance of the premises of these  
25 defendants, in the manner herein-described, constitutes a nuisance within the meaning of  
26 California Civil Code section 3479, in that it interfered with Plaintiffs' comfortable and quiet  
27 enjoyment of their property. That nuisance created by the negligent or reckless release of  
28 dangerous chemical compounds and extremely elevated levels of particulate matter required

1 and continues to require Plaintiffs to incur costs by reason of their ownership of their  
2 property. Said nuisance is continuing.

3 143. Plaintiffs have never consented to said nuisance.

4 144. As a proximate result of the nuisance, Plaintiffs have been deprived of the full use  
5 and enjoyment of their property and have suffered and will continue to suffer damages by  
6 reason of diminution in the value of their property, lost profits and economic losses,  
7 diminution of rents from their property and/or damages resulting from the stigma to their  
8 property caused by its contaminated condition. The amount of said damages shall be in an  
9 amount to be determined at trial, according to proof.

10 145. As a proximate result of Defendants' conduct, as set forth herein, Plaintiffs have  
11 sustained damages, as set forth in paragraphs 120 through 124, among other paragraphs of  
12 this Model Complaint.

13  
14 **FIFTH CAUSE OF ACTION**  
15 **Strict Liability for Ultrahazardous Activity**  
**(vs. All Defendants)**

16 146. Plaintiffs incorporate in this cause of action each and every allegation of paragraphs 1  
17 through 145, inclusive, with the same force and effect as though fully set forth herein.

18 147. In the course of the operation of said premises, Defendants and each of them,  
19 engaged in the acquisition, handling, management, storage, recycling, distribution and/or  
20 control of tires. Those activities were conducted in close proximity to commercial  
21 establishments and residences, as herein alleged.

22 148. Tires, when burned, are known to those within the relevant industry to emit the  
23 dangerous substances herein-described. These chemical substances and the particulate  
24 matter generated by burning of tires are toxic substances, capable of doing substantial  
25 damage to humans, animals, personal or real property and/or the environment if released, in  
26 any form, into the atmosphere. As such, the release of these substances poses a serious  
27 health and safety hazard to humans, animals, property and/or the environment.

28

1 149. The management, control and handling of tires in commercial quantities, tire piles  
2 and tire recycling facilities are subject to regulation by federal, state and local authorities and  
3 require special management and handling to ensure safety.

4 150. Unless managed, controlled, and/or handled properly, with sufficient safeguards  
5 imposed and strictly adhered to, there is a substantial likelihood that harm will occur upon  
6 the release of the above-referenced substances into the environment.

7 151. The handling and control of tires and the constituent compounds thereof in  
8 commercial quantities are not activities which are matters of common usage.

9 152. The management, control and handling of tires and the constituent compounds  
10 thereof are subject to regulation by federal, state and local authorities and require special  
11 management and handling to ensure safety.

12 153. The handling and control of tires and the constituent compounds thereof in  
13 commercial quantities, as done by Defendants herein, were conducted for the purposes of  
14 generating profits, for the direct benefit of these defendants, and each of them.

15 154. The control, use and management of tires and the constituent compounds thereof by  
16 these defendants, and each of them, constitute abnormally dangerous activities and these  
17 defendants, and each of them, are strictly, jointly and severally, liable for damages which  
18 result from these activities.

19 155. As a proximate result of Defendants' conduct, as set forth herein, Plaintiffs have  
20 sustained damages, as set forth in paragraphs 120 through 124, among other paragraphs of  
21 this Model Complaint.

22  
23 **SIXTH CAUSE OF ACTION**  
24 **Trespass**  
**(vs. All Defendants)**

25 156. Plaintiffs incorporate in this cause of action each and every allegation of paragraphs 1  
26 through 155, inclusive, with the same force and effect as though fully set forth herein.

27 157. Plaintiffs are and were, for all relevant times herein mentioned, in lawful possession  
28 of certain real and personal property in the geographical areas around the Wesley Tire Pile,

1 as herein described.  
2 158. Defendants, and each of them, engaged in the handling, management and control of  
3 said tires, that, upon ignition and the burning thereof resulted in the release and, in turn, the  
4 “fall-out” of these chemical substances onto the real and/or personal property of Plaintiffs.  
5 Said releases had the normal and foreseeable consequence that these substances would cause  
6 damage to said property.

7 159. Defendants’ release of the above-referenced compounds, all known to be toxic and  
8 otherwise dangerous substances, was intentional.

9 160. Plaintiffs, at no time, consented to the intrusion of said substances onto their  
10 respective properties.

11 161. As a proximate result of Defendants’ conduct, as set forth herein, Plaintiffs have  
12 sustained damages, as set forth in paragraphs 120 through 124, among other paragraphs of  
13 this Model Complaint.

14  
15 **SEVENTH CAUSE OF ACTION**  
16 **Negligent Infliction of Emotional Distress**  
**(vs. All Defendants)**

17 162. Plaintiffs incorporate in this cause of action each and every allegation of paragraphs 1  
18 through 161, inclusive, with the same force and effect as though fully set forth herein.

19 163. Defendants, and each of them, permitted the release of toxic and otherwise harmful  
20 chemicals into the environment, with full knowledge of the dangerous nature of said  
21 chemicals, have permitted same to continue unabated for weeks (as of the date of the filing of  
22 this Complaint) and have failed to otherwise control the release herein-described in a timely  
23 manner, with full knowledge of the likely consequences thereof.

24 164. Moreover, Defendants, and each of them, knew or had reason to know of the sub-  
25 standard condition of their facility, prior to the date of said release(s), and of the heightened  
26 risks naturally attendant to such condition (including the foreseeable risk of fire and,  
27 thereafter, such chemical releases as did, in fact, occur). Despite said actual and/or  
28 constructive knowledge, Defendants, and each of them, failed to take adequate preventative

1 or corrective measures to reduce the likelihood of such chemical releases, as occurred in this  
2 instance.

3 165. Defendants, and each of them, knew or should have known that the result of the  
4 above-described acts would cause Plaintiffs severe emotional distress, yet performed said  
5 acts nonetheless.

6 166. As a direct and proximate result of the above-described negligent conduct of  
7 Defendants, and each of them, Plaintiffs did/do suffer severe emotional distress and mental  
8 suffering. In particular, Plaintiffs were and are extremely fearful for the safety, health and  
9 welfare of themselves, their spouses and other potentially-affected family members.

10 167. As a proximate result of Defendants' conduct, as set forth herein, Plaintiffs have  
11 sustained damages, as set forth in paragraphs 120 through 124, among other paragraphs of  
12 this Model Complaint.

13  
14 **EIGHTH CAUSE OF ACTION**  
15 **Intentional Infliction of Emotional Distress**  
16 **(vs. All Defendants)**

17 168. Plaintiffs incorporate in this cause of action each and every allegation of paragraphs 1  
18 through 167, inclusive, with the same force and effect as though fully set forth herein.

19 169. Defendants, and each of them, engaged in extreme and outrageous conduct in  
20 permitting the unabated release of toxic and otherwise harmful chemicals into the  
21 environment, with full knowledge of the dangerous nature of said chemicals. Defendants,  
22 and each of them, further engaged in extreme and outrageous conduct in knowing of said  
23 release and permitting same to continue for continue unabated for weeks (as of the date of  
24 the filing of this Complaint) and/or in failing to otherwise control the release herein-  
25 described in a timely manner, all for the sake of profits to Defendants and in blatant  
26 disregard of the health and welfare of the citizenry of surrounding areas and the likely affects  
27 to said citizens' real and/or personal property.

28 170. Defendants, and each of them, knew of the sub-standard condition of their facility,  
prior to the dates of said release, and of the heightened risks naturally attendant to such a

1 condition (including the foreseeable risk of such chemical releases, as did, in fact, occur).  
2 Despite said actual knowledge, Defendants, and each of them, failed and/or refused to take  
3 adequate preventative or corrective measures to reduce the likelihood of such chemical  
4 and/or particulate matter releases, as occurred in this instance.

5 171. As a direct and proximate result of the unlawful conduct of Defendants, and each of  
6 them, Plaintiffs did/do suffer severe emotional distress and mental suffering. In particular,  
7 Plaintiffs were and are extremely fearful for the safety, health and welfare of themselves,  
8 their spouses and other potentially affected family members.

9 172. Defendants, and each of them, intended to cause or acted with reckless disregard of  
10 the probability of causing emotional distress to Plaintiffs.

11 173. As a direct and proximate result of Defendants' extreme and outrageous conduct as  
12 set forth herein, Plaintiffs have sustained damages, as set forth in paragraphs 120 through  
13 124, among other paragraphs of this Model Complaint.

14 174. Moreover, in that, at all times herein mentioned, Defendants, and each of them,  
15 intended to cause or acted with reckless disregard of the probability of causing injury to  
16 Plaintiffs, and because these defendants were guilty of Oppressive, Fraudulent and/or  
17 Malicious conduct, Plaintiffs are entitled to an award of exemplary or punitive damages in an  
18 amount adequate to deter such conduct in the future.

19  
20 **NINTH CAUSE OF ACTION**  
21 **Unfair Business Practices Under the Unfair Competition Act:**  
22 **California Business & Professions Code §17200, et sequitur**  
23 **(vs. All Defendants)**

24 175. Plaintiffs incorporate in this cause of action each and every allegation of paragraphs 1  
25 through 174, inclusive, with the same force and effect as though fully set forth herein.

26 176. Plaintiffs bring this cause of action on behalf of the general public seeking equitable  
27 and statutory relief to halt and/or minimize any future toxic chemical and/or particulate  
28 matter releases by Defendants and compel disgorgement of all profits obtained by  
Defendants through the unfair, unlawful and fraudulent business practices described herein.

1 177. The knowing conduct of Defendants, and each of them, as alleged herein, constitutes  
2 unlawful and/or fraudulent business practices, as set forth in California Business &  
3 Professions Code Sections 17200, et sequitur.

4 178. Specifically, the FILBIN DEFENDANTS conducted business activities while failing  
5 to comply with the requirements of the CIWMB, the applicable fire protection requirements  
6 for the Wesley Tire Pile, including, but not necessarily limited to the 1987 Fire Protection  
7 Agreement and the requirements of the 1990 stipulated judgment, the tire pile management  
8 requirements, as well as applicable zoning requirements.

9 179. Specifically, defendant OXFORD conducted business activities while failing to  
10 comply with the conditions of its waste tire facility permit No. 50-TI-0010. OXFORD  
11 further failed and refused to comply with the requirements of Cleanup and Abatement Order  
12 No. 98-26, issued by the CIWMB and continued to operate its facility in violation of that  
13 Order.

14 180. TTR is a continuation of defendant OXFORD's business enterprise and, as successor  
15 to OXFORD, has acquired all of defendant OXFORD's legal obligations, liabilities and  
16 duties. Moreover, Plaintiffs are informed and believe and, on that basis, allege that TTR had  
17 trailers at the site when the September 1999 fire erupted, and that those trailers, including  
18 any tires in them, were consumed by the fire.

19 181. Defendants' violation of California Health and Safety Code Section 25249.6, et  
20 sequitur, constitutes unlawful and/or fraudulent business practices, as set forth in California  
21 Business & Professions Code Sections 17200, et sequitur.

22 182. Public policy mandates that a certain level of corrective/preventative actions must be  
23 adopted by producers and handlers of hazardous materials/chemicals in order to protect the  
24 health and safety of the public and the environment.

25 183. Defendants' knowing failure to adopt and/or adhere to such measures constitutes  
26 unlawful business practices, as set forth in California Business & Professions Code Sections  
27 17200, et sequitur.

28

1 184. Defendants' knowing failure to adopt and/or adhere to such measures which are  
2 binding upon and burdensome to Defendants' competitors engenders an unfair competitive  
3 advantage for Defendants and constitutes unfair business practices, as set forth in California  
4 Business & Professions Code Sections 17200, et sequitur.

5 185. Defendants' failure to abide by order(s) of the CIWMB, agreements therewith and/or  
6 with local government and community groups which directly concern the storage, handling  
7 and/or recycling of tires at the Wesley Tire Pile constitute fraudulent business practices, as  
8 set forth in California Business & Professions Code Sections 17200, et sequitur.

9 186. Defendants' past and ongoing policies of blatant disregard for the health of the  
10 general public and the safety and/or quality of the environment are well evidenced by  
11 Defendants' blatant disregard for the mandates of the above-referenced CIWMB order(s) and  
12 these defendants' refusal to allow inspection of the Wesley Tire Pile for the purpose of  
13 ensuring compliance with said order(s).

14 187. Defendants have clearly established a policy of accepting a certain amount of  
15 collateral damage, as represented by the injuries to Plaintiffs and the environment herein  
16 alleged, as incidental to their business operations, rather than accept the alternative costs of  
17 full compliance with fair, lawful and honest business practices ordinarily borne by  
18 responsible competitors of Defendants and as set forth in legislation and the judicial record.

19  
20 **TENTH CAUSE OF ACTION**  
21 **Attorneys' Fees Pursuant to California Code of Civil Procedure §1021.5**  
22 **(vs. All Defendants)**

23 189. Plaintiffs incorporate in this cause of action each and every allegation of paragraphs 1  
24 through 188, inclusive, with the same force and effect as though fully set forth herein.

25 190. The reimbursement of costs and fees by Defendants, and each of them, to Plaintiffs in  
26 responding to the releases into the environment of these hazardous chemicals and amounts of  
27 particulate matter will confer a significant benefit on the general public.

28 191. Plaintiffs have expended and will continue to expend considerable costs in this action  
in order to recover for the costs of remedying the various forms of damage caused by said

1 toxic substances and particulate matter released. Such costs are and will continue to be of  
2 public benefit.

3 192. Recovery of said costs confers a benefit on the public by ensuring that those who  
4 profited from and who are directly at fault for the release of said toxic substances into the  
5 environment bear the full cost of such releases, and by discouraging future reckless or  
6 negligent management and control of other substances and/or facilities.

7 193. It is in the interests of justice that Plaintiffs' attorneys' fees not be paid out of the  
8 recovery for which the Plaintiffs pray herein.

9  
10 **DAMAGES**

11 Defendants' acts and omissions were the legal cause of the following damages  
12 suffered by Plaintiffs and the Class in excess of the jurisdictional minimum of this Court:

- 13 1. Bodily Personal Injuries;
  - 14 2. Severe Emotional pain and suffering, Emotional Distress and Anxiety;
  - 15 3. Physical Injuries to and loss of use and enjoyment of Real and Personal Property;
  - 16 4. Annoyance, Inconvenience and Loss of Enjoyment of legal rights as a result of the  
17 toxic release(s);
  - 18 5. Loss of the value of property, lost profits and rights incidental thereto;
  - 19 6. Costs for clean-up and protection of property, property rights and equipment;
  - 20 7. Costs of Medical Treatment;
  - 21 8. Loss of past and future earnings/wages, business income, lost opportunities and  
22 benefits of employment and employment earning capacity;
  - 23 9. Expenses required for medical monitoring;
  - 24 10. Non-business-related economic losses; and
  - 25 11. Other damages to be proven at trial.
- 26  
27  
28

1 **RELIEF SOUGHT**

2 **WHEREFORE, Plaintiffs**, on behalf of themselves and the proposed **Class**, pray for  
3 judgment and the following specific relief against the **Defendants, and each of them**, jointly  
4 and separately, as follows:

- 5 1. For an Order certifying the proposed Class and any appropriate subclasses;
- 6 2. For Compensatory damages in an amount to be proven at trial or other expedited  
7 alternative procedures adopted by the Court;
- 8 3. For Punitive and Exemplary Damages in an amount appropriate and sufficient to  
9 punish Defendants, and each of them, and deter others from engaging in similar  
10 misconduct in the future;
- 11 4. For an Order requiring Defendants to establish a fund for monitoring, testing and  
12 providing medical treatment to Plaintiffs and the Class;
- 13 5. For an Order requiring Defendants to implement appropriate and sufficient safety  
14 procedures, staffing and/or equipment upgrades to lessen the chance of future harmful  
15 particulate matter and/or toxic discharges;
- 16 6. For all other Orders, findings and determinations identified and sought in this  
17 Complaint;
- 18 7. Penalties, disgorged profits and attorneys' fees pursuant to Business and Professions  
19 Code §17200, et seq.;
- 20 8. For costs of removal of any harmful substances from Plaintiffs' real and/or personal  
21 property and/or all other related remedial action;
- 22 9. For Interest on the amount of any and all economic losses, at the prevailing legal rate;
- 23 10. For reasonable Attorneys' Fees, pursuant to California Civil Code §1021.5; and
- 24 11. For Costs of suit and any and all such other relief as the Court deems just and proper.

25 Dated: August 16, 2001.

26 **SCOTT COLE & ASSOCIATES, APC**

27 By: \_\_\_\_\_  
28 Scott Edward Cole, Esq.  
Erica J. Rodriguez-Bertorello, Esq.  
Plaintiffs' Lead and Co-Liaison Counsel

[Additional Counsel of following page]

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