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 12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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 15 CALIFORNIA DEPARTMENT OF TOXIC
 SUBSTANCES CONTROL and the TOXIC
 16 SUBSTANCES CONTROL ACCOUNT,

17 Plaintiffs,

18 v.

19 NL INDUSTRIES, INC., a New Jersey
 corporation; JX NIPPON MINING &
 20 METALS CORPORATION, a Japanese
 corporation; GOULD ELECTRONICS
 21 INC., an Arizona corporation;
 KINSBURSKY BROS. SUPPLY, INC., a
 22 California corporation; TROJAN
 BATTERY COMPANY, LLC, a Delaware
 23 limited liability company; RAMCAR
 BATTERIES INC., a California
 24 corporation; CLARIOS, LLC, a Wisconsin
 limited liability company; QUEMETCO,
 25 INC., a Delaware corporation;
 INTERNATIONAL METALS EKCO,
 26 LTD., a California corporation; and
 BLOUNT, INC., a Delaware corporation,

27 Defendants.
 28

CASE NO.

COMPLAINT FOR RECOVERY
 OF RESPONSE COSTS;
 DECLARATORY RELIEF; and
 SUPPLEMENTAL STATE LAW
 CLAIMS

1 Plaintiffs, the California Department of Toxic Substances Control (“DTSC”)
2 and the Toxic Substances Control Account (collectively referred herein as,
3 “Plaintiffs”), allege as follows:

4 **INTRODUCTION**

5 1. For nearly a century, various companies, including Defendants,
6 operated, owned, and/or sent hazardous waste to a metals smelter in southeast Los
7 Angeles County that spewed dangerous heavy metals and other toxins into the air,
8 onto the ground, and into the water. The releases of these heavy metals and other
9 toxins caused widespread contamination and harm to thousands of nearby residents,
10 many of whom are part of a population group that has suffered historically
11 disproportionate impacts from economic, environmental, and racial injustice. In this
12 action, Plaintiffs seek to require Defendants to take action to remedy this
13 contamination and harm. The smelter property, located in Vernon, California, was
14 most recently owned and operated by Exide Technologies, LLC (“Exide”), but, as a
15 result of Exide’s most recent bankruptcy, has been transferred to a vastly
16 underfunded response trust with only enough funds to conduct limited closure
17 activities, leaving most of the dangerous contamination at the facility unremediated.
18 Plaintiffs are asking the Court to require Defendants to reimburse Plaintiffs’ costs
19 related to the investigation and cleanup of this widespread contamination. Plaintiffs
20 also seek to have the Court require Defendants to complete all additional
21 investigation and cleanup work to address the contamination.

22 2. During its nearly 100 years of operation, the smelter released
23 thousands of pounds of lead and other pollutants into the environment. These
24 releases not only contaminated the smelter property itself, but also thousands of
25 surrounding residential properties, including homes, schools, parks, and child care
26 facilities. The releases also contaminated parkways, commercial and industrial
27 properties, and groundwater. The releases have exposed thousands of residents,
28 including children, and workers to serious health hazards from lead exposure.

1 VOCs, including benzene, semi-VOCs including naphthalene and polycyclic
2 aromatic hydrocarbons (“PAHs”), dioxins and/or furans (collectively,
3 “Contaminants of Concern”), at and from the former secondary smelter located at
4 2700 and 2717 South Indiana Street, 3900 East 26th Street, and 3841 and 3901
5 Bandini Boulevard in Vernon, California, 90058, identified by Assessor’s Parcel
6 Numbers 5243-021-024, 5243-022-007, 5243-022-009, 5243-022-010, and 5192-
7 030-009 (“the Vernon Plant”).

8 6. The Vernon Plant, and the horizontal and vertical extent of the
9 contamination from the Vernon Plant, including any area where any hazardous
10 substance from the Vernon Plant has come to be located, is referred to herein as
11 “the Site.”

12 7. Plaintiffs further make a claim for declaratory relief, under 28 U.S.C. §
13 2201 and section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), for a declaratory
14 judgment that each Defendant is jointly and severally liable to Plaintiffs for the
15 response costs DTSC has incurred and for any further response costs DTSC incurs
16 in the future as a result of any release and/or threatened release of a hazardous
17 substance at the Site.

18 8. In the alternative to the CERCLA section 107(a) claim, and only to the
19 extent any portion of Plaintiffs’ response costs are not recovered under that claim,
20 Plaintiffs also make a supplemental state law claim against Defendants under
21 section 25360 of the Carpenter-Presley-Tanner Hazardous Substance Account Act
22 (“HSAA”), California Health and Safety Code section 25300 *et seq.*, for the
23 recovery of costs that Plaintiffs have incurred in carrying out or overseeing a
24 response or corrective action as a result of any release and/or threatened release of
25 any hazardous substance, including, but not limited to, any Contaminant of Concern
26 at the Site, and interest on such costs.

27 9. Plaintiffs also seek preliminary and permanent injunctions under
28 sections 25358.3(a), (e), and (g) of the HSAA, requiring Defendants to take actions

1 necessary to abate the release and/or threatened release of hazardous substances at
2 the Site.

3 10. Plaintiffs also seek an order under California Civil Code sections 3479,
4 3480, and 3491, and California Health and Safety Code sections 58009 and 58010,
5 requiring Defendant NL Industries, Inc. (“NL Industries”) to abate the public
6 nuisance that NL Industries and its predecessor entities, Morris P. Kirk & Son, Inc.
7 and Morris P. Kirk & Son, a partnership (together, “Morris P. Kirk”) created and/or
8 contributed to at the Site. Specifically, NL Industries and/or Morris P. Kirk have
9 engaged in activities that released hazardous substances, including, but not limited
10 to, Contaminants of Concern from the Vernon Plant into the environment. NL
11 Industries and/or Morris P. Kirk’s activities contaminated the soil and groundwater
12 at the Site, including on, around, and beneath the Vernon Plant. This contamination
13 is injurious to health and substantially interferes with the comfortable enjoyment of
14 life and unlawfully prevents the customary use of residential and commercial, or
15 industrial properties surrounding the Vernon Plant that are included within the Site.
16 The contamination caused by NL Industries and/or Morris P. Kirk’s activities
17 affects a considerable number of persons in the communities where the Site is
18 located. NL Industries and/or Morris P. Kirk’s activities created or substantially
19 contributed to a public nuisance at the Site, which has created a threat to the
20 environment and to the health and safety of the public.

21 **JURISDICTION AND VENUE**

22 11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
23 1331 and section 113(b) of CERCLA, 42 U.S.C. § 9613(b). The Court also has
24 supplemental jurisdiction over the state law claims, pursuant to 28 U.S.C. § 1367,
25 because the state law claims form part of the same case or controversy as Plaintiffs’
26 federal law claims in that the state and federal claims arise from common facts
27 relating to the release of hazardous substances and the cleanup of contamination at
28 the Site.

DEFENDANTS

Owner/Operator Defendants

15. **NL Industries.** Defendant NL Industries, formerly known as National Lead Company, is a New Jersey corporation, with its headquarters in Dallas, Texas. NL Industries is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. In or prior to 1973, NL Industries became an operator of the Vernon Plant, and in 1974 became an owner of the Vernon Plant. NL Industries also is the successor to the CERCLA liabilities of Morris P. Kirk, with respect to operations at the Vernon Plant. Morris P. Kirk owned the Vernon Plant from approximately 1925 to 1974 and operated the Vernon Plant from approximately 1925 to 1973. NL Industries sold the Vernon Plant to Gould Inc. on or about January 31, 1979.

17. **JX Nippon Mining & Metals Corporation.** Defendant JX Nippon Mining & Metals Corporation (“JX Nippon”) is a Japanese corporation with its headquarters in Tokyo, Japan. JX Nippon is a “person” within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. JX Nippon is the successor to the CERCLA liabilities of Gould Inc., with respect to operations at the Vernon Plant. Gould Inc. owned and/or operated the Vernon Plant from approximately 1979 to 1984. JX Nippon’s liability as a successor is explained in more detail below.

19. **Gould Electronics Inc.** Defendant Gould Electronics Inc. is an Arizona corporation registered to do business in California. It was formerly known by the names Nimtec Inc. and Nikko Materials USA, Inc. Gould Electronics Inc. is a “person” within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. Gould Electronics Inc. is the successor to the CERCLA liabilities of Gould Inc., with respect to operations at the Vernon Plant, in the alternative and to

1 the extent that JX Nippon is not the successor to those liabilities, as explained
2 below.

3 **Arranger/Transporter Defendants**

4 21. **Kinsbursky Bros. Supply Inc.** Defendant Kinsbursky Bros. Supply,
5 Inc. (“Kinsbursky”) is a California corporation. Kinsbursky is a “person” within the
6 meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7 22. Kinsbursky arranged for disposal or treatment of hazardous substances
8 at, or arranged with a transporter for transport for disposal or treatment, of
9 hazardous substances to, the Vernon Plant as described in section 107(a)(3) of
10 CERCLA, 42 U.S.C. § 9607(a)(3).

11 23. Kinsbursky accepted a hazardous substance for transport to the Vernon
12 Plant as described in section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

13 24. **Trojan Battery Company, LLC.** Defendant Trojan Battery, LLC
14 (“Trojan”), formerly Trojan Battery Company, is a Delaware limited liability
15 company registered to do business in California. Trojan is a “person” within the
16 meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17 25. Trojan arranged for disposal or treatment of hazardous substances at,
18 or arranged with a transporter for transport for disposal or treatment, of hazardous
19 substances to, the Vernon Plant as described in section 107(a)(3) of CERCLA, 42
20 U.S.C. § 9607(a)(3).

21 26. **Ramcar Batteries Inc.** Defendant Ramcar Batteries Inc. (“Ramcar”)
22 is a California corporation. Ramcar is a “person” within the meaning of section
23 101(21) of CERCLA, 42 U.S.C. § 9601(21).

24 27. Ramcar arranged for disposal or treatment of hazardous substances at,
25 or arranged with a transporter for transport for disposal or treatment, of hazardous
26 substances to, the Vernon Plant as described in section 107(a)(3) of CERCLA, 42
27 U.S.C. § 9607(a)(3).

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1 28. **Clarios, LLC.** Defendant Clarios, LLC, is a Wisconsin limited
2 liability company registered to do business in California. Clarios, LLC, is a
3 “person” within the meaning of section 101(21) of CERCLA, 42 U.S.C. §
4 9601(21). Clarios, LLC, is the continuation of and successor to Johnson Controls
5 Battery Group, LLC, a limited liability company converted by operation of law
6 from Johnson Controls Battery Group, Inc. (“Johnson Controls”). Clarios, LLC,
7 and its predecessor entity Johnson Controls are collectively referred to herein as
8 “Clarios.”

9 29. Clarios arranged for disposal or treatment of hazardous substances at,
10 or arranged with a transporter for transport for disposal or treatment, of hazardous
11 substances to, the Vernon Plant as described in section 107(a)(3) of CERCLA, 42
12 U.S.C. § 9607(a)(3).

13 30. Clarios accepted a hazardous substance for transport to the Vernon
14 Plant as described in section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

15 31. **Quemetco, Inc.** Defendant Quemetco, Inc. (“Quemetco”) is a
16 Delaware corporation registered to do business in California. Quemetco is a
17 “person” within the meaning of section 101(21) of CERCLA, 42 U.S.C. §
18 9601(21).

19 32. Quemetco arranged for disposal or treatment of hazardous substances
20 at, or arranged with a transporter for transport for disposal or treatment, of
21 hazardous substances to, the Vernon Plant as described in section 107(a)(3) of
22 CERCLA, 42 U.S.C. § 9607(a)(3).

23 33. Quemetco accepted hazardous substances for transport to the Vernon
24 Plant as described in section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

25 34. **International Metals Ekco Ltd.** Defendant International Metals Ekco
26 Ltd. (“Ekco”), doing business as Ekco Metals, is a California corporation. Ekco is a
27 “person” within the meaning of section 101(21) of CERCLA, 42 U.S.C. §
28 9601(21).

1 Plant. Batteries were crushed by a hammer mill into three main component parts:
2 acid, plastic, and lead. Acid was treated, stored, disposed of, and/or released into
3 the environment. Lead was melted in large furnaces, then placed into molds to cool
4 and create ingots. Significant amounts of lead and other Contaminants of Concern
5 were disposed of and/or released at, around, and beneath the Vernon Plant.

6 43. The Uniform Hazardous Waste Manifest (“Manifest”) is the shipping
7 document that must accompany hazardous waste shipments under the Hazardous
8 Waste Control Law, California Health and Safety Code section 25100 *et seq.*, and
9 travels with hazardous waste from the point of generation, through transportation,
10 to the final treatment, storage, and disposal facility (“TSDF”). The Vernon Plant
11 was a TSDF. Since the 1980s, Manifests were used to document shipments of
12 hazardous waste that were sent to the Vernon Plant.

13 44. Each of the Arranger Defendants has been identified on Manifests,
14 which documented shipments containing hazardous substances to the Vernon Plant
15 between 1988 to 2015, as a generator of hazardous waste that arranged for disposal
16 or treatment of hazardous substances at the Vernon Plant or arranged with a
17 transporter for disposal or treatment of hazardous substances at the Vernon Plant.

18 45. Each of the Transporter Defendants has been identified on Manifests,
19 which documented shipments containing hazardous substances to the Vernon Plant
20 between 1988 to 2015, as a transporter that accepted hazardous substances for
21 transport to the Vernon Plant for disposal or treatment.

22 46. The Transporter Defendants are also identified on Manifests as the
23 generator of hazardous substances. The Transporter Defendants arranged for the
24 disposal or treatment of hazardous substances at the Vernon Plant.

25 47. The Transporter Defendants transported hazardous substances to the
26 Vernon Plant. The Transporter Defendants selected or actively participated in the
27 selection of the Vernon Plant as the TSDF for disposal or treatment of hazardous
28 substances.

1 48. At its peak operation, the Vernon Plant received up to approximately
2 40,000 lead-acid batteries per day. The lead extracted from these batteries was
3 smelted at the Vernon Plant. During the Vernon Plant's operations, hazardous
4 substances, including but not limited to, Contaminants of Concern, were generated,
5 treated, disposed of, and released. As a result, surrounding properties and
6 groundwater were contaminated with lead and other Contaminants of Concern.

7 49. Over more than nine decades of operation, the Vernon Plant released
8 millions of pounds of lead and other Contaminants of Concern into the
9 environment, which contaminated the surrounding properties, including the soil,
10 vegetation, homes, residential yards, and residential home rooftops in the
11 surrounding neighborhoods. These releases, and other releases and/or disposals of
12 hazardous substances at and from the Vernon Plant resulted in hazardous substance
13 contamination extending at least 1.7 miles from the Vernon Plant, affecting
14 residential, commercial and industrial areas in the surrounding communities of
15 Vernon, Bell, Boyle Heights, Commerce, Maywood, East Los Angeles, and
16 Huntington Park, California. Thousands of residents, including children, currently
17 live in the affected communities, and continue to be exposed to the contamination
18 and face serious chronic health hazards.

19 50. Releases and/or disposals of hazardous substances from the Vernon
20 Plant also resulted in contamination of soil and groundwater at and surrounding the
21 Vernon Plant. Prior to 1982, processing waste containing hazardous substances was
22 stored at the Vernon Plant in an unpaved earthen acid dump pit. The hazardous
23 substances in the pit, including acid, lead, and/or other metal waste, contaminated
24 the groundwater below the Vernon Plant. Prior to 1973, hazardous substances,
25 including furnace slag and/or dross from aluminum and zinc operations and from
26 secondary lead smelting were dumped into a separate earthen pit at the Vernon
27 Plant that was 20 feet deep and 50 feet across. Spent acid that could not be
28 processed in the acid tank due to overcapacity was dumped into both earthen pits.

1 51. From at least the late 1940s through at least the early 1980s, spills of
2 sulfuric acid from used lead batteries onto bare soil occurred at the Vernon Plant.
3 Other spills occurred at the Vernon Plant, including a spill of molten lead in the
4 early 1950s that contaminated the soil beneath the Vernon Plant to a depth of
5 approximately 35 feet.

6 52. In the areas where lead refining operations were carried out from 1974
7 to 1982, pockets of lead fused to sand were detected in soil to a depth of 20 feet,
8 indicating that lead was released and/or disposed of during operations at the Vernon
9 Plant.

10 53. Prior to 1978, TCE was used in the metal extrusion process, and TCE
11 was released to, and/or disposed of in, the groundwater underlying the Vernon
12 Plant. That groundwater contamination has migrated to the south and southeast.

13 54. Prior to 1981, zinc compounds were used in zinc alloy operations at
14 the Vernon Plant, and zinc was released to, and/or disposed in, the soil and
15 groundwater.

16 55. Releases and/or disposals of hazardous substances also occurred from
17 several openings and/or breaches in the Vernon Plant's industrial buildings in or
18 prior to 2014, and from contaminated wastewater used in plant operations released
19 into storm drains in or prior to 2013. Spills of battery acid were washed down with
20 water and the water runoff collected in depressions on the concrete floor.

21 **Health Effects of Lead and Other Hazardous Substances**

22 56. Hazardous substances, including Contaminants of Concern, released or
23 threatened to be released at and from the Vernon Plant are known to have negative
24 impacts on human health.

25 57. Exposure to metals and other hazardous substances can occur through
26 inhalation, ingestion, and dermal contact, although most exposure occurs through
27 ingestion or inhalation. Residents and workers, including construction workers,
28 may ingest, inhale, or have dermal contact with dust and soils containing elevated

1 concentrations of lead, including bare soil and dust and soil that is manually
2 distributed or otherwise dispersed.

3 58. Lead is a heavy metal and a strong poison. Lead is a cumulative
4 toxicant that affects multiple organ systems within the body. There can be long-
5 term health effects resulting from exposure to even low levels of lead. Lead can
6 enter through cuts in the skin or through mucous membranes. Lead in the body is
7 distributed to the brain, liver, kidney, and bones. It is stored in the teeth and bones
8 where it accumulates over time. Lead in bones is released into the blood during
9 pregnancy and becomes a source of exposure to the developing fetus.

10 59. Lead can damage all of the body systems, including the heart, bones,
11 kidneys, teeth, intestines, reproductive organs, and the nervous and immune
12 systems. Children and pregnant women are particularly vulnerable. Lead poisoning
13 in children can severely affect mental and physical development. At very high
14 levels, lead poisoning can be fatal.

15 60. Signs and symptoms of chronic lead poisoning in children include
16 slowed body growth, reduced I.Q., loss of appetite and weight loss, constipation,
17 irritability, general fatigue, anemia, hearing loss and reduction in other senses, and
18 neurological weaknesses.

19 61. Signs and symptoms of chronic lead poisoning in adults include joint
20 and muscle pain, constipation, anemia, memory loss and decline in mental
21 functions, headaches, hallucinations, difficulty sleeping, mood disorders, loss of
22 pregnancy or preterm birth, and low fertility.

23 62. Arsenic is a known human carcinogen. Chronic, long-term exposure to
24 inorganic arsenic causes cancer of the liver, bladder, and lungs. Inhaling high levels
25 of inorganic arsenic even for brief periods of time or at lower levels can irritate the
26 throat and lungs. It can damage blood vessels, have adverse effects on the heart
27 (abnormal heart rhythm), and cause peripheral neuropathy characterized by
28 numbness of hands and feet (“pins and needles” sensation), kidney damage, and

1 anemia (decreased production of red and white blood cells). Long-term exposure to
2 arsenic can cause a darkening of the skin and the appearance of small “corns” or
3 “warts” on the palms, soles, and torso. Acute high-dose exposures or chronic lower-
4 dose exposures can lead to nausea, vomiting and diarrhea, and irritation of the
5 gastrointestinal tract.

6 63. Mercury can damage the brain, kidneys, and a developing fetus. It can
7 cause irritability, tremors, changes in vision or hearing, and memory problems.
8 Exposure to high levels of mercury for even short periods can cause lung damage,
9 nausea, vomiting, diarrhea, increases in blood pressure or heart rate, skin rashes,
10 and eye irritation. In the developing fetus, it can cause brain damage, mental
11 retardation, incoordination, blindness, and seizures.

12 64. TCE is a known human carcinogen. Acute short-term and chronic
13 long-term inhalation exposure to high concentrations of TCE can cause dizziness,
14 headaches, confusion, euphoria, facial numbness, weakness, unconsciousness, and
15 even death. It can cause cardiac heart malformations in the developing fetus and
16 liver and kidney damage, as well as adversely affect the immune system. It is
17 classified as a carcinogen because it causes kidney cancer and it may cause liver
18 cancer.

19 **Regulation of the Vernon Plant**

20 65. The Hazardous Waste Control Law (“HWCL”), California Health and
21 Safety Code section 25100 *et seq.*, is the State of California’s comprehensive—
22 “cradle to grave”—statutory and regulatory framework for the generation, handling,
23 treatment, transportation, and disposal of hazardous wastes. The HWCL is the
24 California analog of the federal Resource Conservation and Recovery Act, 42
25 U.S.C. §§ 6901 *et seq.* (“RCRA”). Pursuant to both state and federal law, DTSC
26 administers the HWCL in lieu of RCRA in California. Federal law prohibits
27 California from imposing any requirements less stringent than those authorized
28

1 under RCRA. 42 U.S.C. § 6929. The HWCL has stricter requirements for
2 regulating hazardous waste than RCRA.

3 66. In the early 1980s, DTSC's predecessor agency, the Department of
4 Health Services, issued an interim status document to Gould Inc. under the HWCL,
5 stating that the Vernon Plant was authorized to operate under interim status
6 authorization.

7 67. In October 1990, DTSC completed a RCRA Facility Assessment
8 ("RFA"), which identified solid waste management units ("SWMUs") and areas of
9 concern ("AOCs") at and from which there may have been releases of hazardous
10 waste. Based on this RFA, DTSC determined that further investigation was needed
11 to ascertain the nature and extent of contamination in the identified SWMUs and
12 AOCs.

13 68. From 2000 to October 2020, Exide owned and/or operated the Vernon
14 Plant.

15 69. In 2002, DTSC issued a corrective action consent order ("CACO"),
16 Docket No. P3-01/02-010, to Exide. Under the 2002 CACO, DTSC required Exide
17 to control or abate immediate threats to human health and/or the environment,
18 perform investigations of hazardous waste released at and from the Vernon Plant,
19 and undertake corrective action to address the release of hazardous waste.

20 70. On or about August 21, 2013, DTSC approved the Emergency
21 Response Interim Measures Workplan, Stormwater Management System, which
22 was prepared in response to the CACO, that addressed the removal or abandonment
23 of the existing stormwater system.

24 71. On or about August 2014, Exide conducted an emergency soil removal
25 and restoration at two residential properties.

26 72. On or about November 7, 2014, DTSC approved an Interim Measures
27 Work Plan, which was prepared by Exide, for the cleanup of contaminated
28 properties in areas surrounding the Vernon Plant. The areas covered by the 2014

1 Interim Measures Work Plan are referred to as the Northern and Southern
2 Assessment Areas and encompass dozens of residential properties, schools, and
3 parks.

4 73. In November 2014, DTSC and Exide entered into Stipulation and
5 Order, HWCA No. 2014-6489 (“2014 Stipulation and Order”). Under the 2014
6 Stipulation and Order, Exide was required to, among other things, (1) provide
7 financial assurance for Exide’s closure/post-closure plan; and (2) undertake
8 extensive onsite corrective action at the Vernon Plant and off-site corrective action
9 at residential and industrial areas surrounding the Vernon Plant. As part of the 2014
10 Stipulation and Order, Exide was required to perform interim measures for
11 residential off-site corrective action in accordance with the 2014 Interim Measures
12 Work Plan. Exide filed a bankruptcy petition on May 19, 2020, and the
13 implementation of these measures, and of the off-site corrective action, has not
14 been completed.

15 74. Pursuant to the 2002 CACO and the 2014 Stipulation and Order, and
16 in accordance with the 2014 Interim Measures Work Plan, Exide excavated
17 contaminated soil from 186 residential properties in the Northern and Southern
18 Assessment Areas starting in November 2014.

19 75. On December 8, 2016, DTSC approved Exide’s final Closure Plan.
20 The Closure Plan addresses potential impacts from hazardous waste management
21 units at the Vernon Plant. In December 2016, DTSC certified the Final
22 Environmental Impact Report for the Closure Plan completed under the California
23 Environmental Quality Act (“CEQA”).

24 76. On October 5, 2017, DTSC conditionally approved Exide’s Closure
25 Implementation Plan for the Vernon Plant, which governs the first phase of the
26 facility closure activities—inventory removal; unit decontamination and removal;
27 soil and soil gas sampling; and decontamination and deconstruction of buildings
28

1 containing former interim status hazardous waste management units. The final
2 Closure Implementation Plan was issued on October 19, 2017.

3 77. Exide began formal closure of the Vernon Plant, subject to DTSC
4 oversight and in accordance with the HWCL and its implementing regulations, Cal.
5 Code of Regulations, Title 22, Div. 4.5 (“Title 22”).

6 78. Exide filed a bankruptcy petition on May 19, 2020, and its assets have
7 been liquidated. On October 26, 2020, Exide transferred title to the Vernon Plant to
8 the trustee for the Exide Vernon Environmental Response Trust, a trust created
9 pursuant to Exide’s Fourth Amended Bankruptcy Plan. The trustee is required to
10 continue to implement closure activities and corrective action at the Vernon Plant,
11 but the trustee has insufficient resources to complete these actions. DTSC has
12 incurred and will continue to incur response costs related to its oversight and
13 enforcement of these corrective action and closure activities.

14 **Site Cleanup and Enforcement Activities**

15 79. Releases and/or disposals from the Vernon Plant’s operations
16 contaminated the sensitive land use properties surrounding the Vernon Plant with
17 hazardous substances. DTSC has taken continuous action in response to the
18 contamination at sensitive land use properties within the Site, including sampling
19 and cleanup actions. DTSC’s actions in the residential areas surrounding the
20 Vernon Plant involve one of the largest and most complex response actions in
21 DTSC’s history.

22 80. Sampling results showed that concentrations of lead in soil at some
23 sensitive land use properties surrounding the Vernon Plant were as high as 45,600
24 milligrams per kilogram (mg/kg), which is over 500 times the residential California
25 Human Health Screening Levels for lead in soil of 80 mg/kg.

26 81. On November 12, 2015, pursuant to section 25358.5 of the HSAA,
27 DTSC issued an “Imminent and Substantial Endangerment (ISE) Determination”
28 for the contamination surrounding the Vernon Plant (“2015 ISE Determination”).

1 The 2015 ISE Determination included findings that releases of lead from the
2 Vernon Plant contributed to the elevated lead concentration levels in the soil at
3 residential properties surrounding the Vernon Plant. The 2015 ISE Determination
4 was based on soil samples collected from more than 330 nearby residential
5 properties, schools, and parks.

6 82. On November 18, 2015, DTSC released the Offsite Interim Remedial
7 Measures Work Plan, for the cleanup of approximately 50 contaminated properties
8 in the area surrounding the Vernon Plant.

9 83. Under the 2015 ISE Determination, and in accordance with the Offsite
10 Interim Remedial Measures Work Plan, DTSC (through its contractor) performed
11 cleanups at 50 sensitive land use properties from late 2015 through mid 2016.

12 84. On February 28, 2017, DTSC released the final Time-Critical Removal
13 Action Implementation Plan (“TCRA Implementation Plan”). The TCRA
14 Implementation Plan set out procedures for implementing time-critical removal
15 actions within a portion of the Site commonly referred to as the Preliminary
16 Investigation Area (the area within a 1.7-mile radius of the Vernon Plant).

17 85. Commencing on February 28, 2017, DTSC conducted cleanups at 26
18 sensitive land use properties within the Preliminary Investigation Area of the Site
19 pursuant to the TCRA Implementation Plan and completed an action memorandum
20 for each property. DTSC performed cleanups at targeted properties within the
21 Preliminary Investigation Area of the Site with elevated soil lead levels and high
22 risks of exposure to sensitive populations. Letters of completion were issued in
23 May 2019.

24 86. On July 17, 2017, DTSC issued the Final Removal Action Plan for
25 Offsite Properties within the Preliminary Investigation Area (“the Cleanup Plan”).
26 The Cleanup Plan directs the cleanup of lead-contaminated soil at additional
27 sensitive land use properties within the Preliminary Investigation Area of the Site.
28 DTSC also certified the Final Environmental Impact Report for the Cleanup Plan

1 under CEQA. Under the Cleanup Plan, DTSC has cleaned up and is continuing to
2 clean up lead-contaminated soil at residential properties within the Preliminary
3 Investigation Area of the Site, reducing the risk posed by lead in soils. The
4 fieldwork under the Cleanup Plan began on May 1, 2018, and is ongoing. As of
5 November 27, 2020, DTSC has cleaned up or overseen the cleanup of lead-
6 contaminated soil at approximately 2,136 properties or parcels within the Site.

7 87. On March 9, 2018, DTSC finalized and released the Amended Final
8 Offsite Remedial Measures Work Plan (“Amended Offsite Remedial Measures
9 Work Plan”). On March 27, 2018, DTSC released a final Amended Time-Critical
10 Removal Action Implementation Plan (“Amended TCRA Implementation Plan”),
11 which set out procedures for implementing further time-critical removal actions
12 within the Preliminary Investigation Area.

13 88. In 2018, DTSC conducted the cleanup of lead-contaminated soil at 12
14 additional sensitive land use properties. DTSC performed this interim cleanup work
15 pursuant to the Amended TCRA Implementation Plan and Amended Offsite
16 Remedial Measures Work Plan and completed an action memorandum for each
17 property.

18 89. To date, DTSC has conducted soil sampling of over 8,500 parcels
19 within the Preliminary Investigation Area of the Site. DTSC is continuing to
20 conduct soil sampling.

21 90. In addition, DTSC has sampled parkways (defined as an unpaved area
22 approximately 5 feet wide by 5 to 40 feet long located in front of some sensitive
23 land use properties) within the Preliminary Assessment Area of the Site. The
24 sampling of parkways was conducted under DTSC’s Assessment Workplan for
25 Sampling and Analysis of Parkway in the Vicinity of the Exide Technologies
26 Facility, issued by DTSC on June 10, 2019.

27 91. On October 12, 2020, pursuant to sections 25355.5(b)(3), 25358.3,
28 58009, and 58010 of the California Health and Safety Code, DTSC issued an

1 “Imminent and Substantial Endangerment (ISE) Determination” for the
2 contamination at the Vernon Plant and in the surrounding area (“2020 ISE
3 Determination”). The 2020 ISE Determination expanded on the 2015 ISE
4 Determination, which addressed the residential area around the Vernon Plant. The
5 2020 ISE Determination included findings that releases of lead and other
6 Contaminants of Concern from the Vernon Plant contributed to the elevated
7 concentrations of lead and other Contaminants of Concern in the soil at the Vernon
8 Plant and in surrounding areas including commercial, industrial, and residential
9 areas. The 2020 ISE Determination was based on, among other things, thousands of
10 soil and dust samples collected at the Vernon Plant and in the surrounding areas.

11 92. Plaintiffs have incurred response costs to take this response action at
12 the Site, and are continuing to take response actions and incur response costs, as a
13 result of the releases and/or threatened releases of hazardous substances from the
14 Vernon Plant.

15 93. Plaintiffs’ unreimbursed response costs related to the Site from 2015
16 through June 2020 total \$136,518,770.05, exclusive of interest and enforcement
17 costs.

18 94. Plaintiffs have incurred and expect to continue to incur additional
19 response costs caused by the release and/or threatened release of hazardous
20 substances at and from the Vernon Plant and the Site.

21 **History of Owners and Operators of the Vernon Plant and Their**
22 **Successors**

23 95. The Vernon Plant began operating in approximately 1925. From at
24 least 1925 to 1927, Morris P. Kirk & Son, a partnership, operated the Vernon Plant.
25 Morris P. Kirk & Son, Inc. operated the Vernon Plant between approximately 1927
26 and 1973, and owned the Vernon Plant between at least 1940 and 1974. Morris P.
27 Kirk & Son, Inc. is the successor entity to Morris P. Kirk & Son, a partnership.

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1 96. NL Industries is the successor entity to Morris P. Kirk & Son, Inc. In
2 1971, NL Industries purchased all outstanding shares of Morris P. Kirk & Son, Inc.,
3 making Morris P. Kirk & Son, Inc. a wholly-owned subsidiary of NL Industries.
4 NL Industries dissolved Morris P. Kirk & Son, Inc. in 1979.

5 97. In or prior to 1973, NL Industries became an operator of the Vernon
6 Plant, and in 1974 became an owner of the Vernon Plant. NL Industries sold the
7 Vernon Plant to Gould Inc. on or about January 31, 1979.

8 98. Gould Inc. owned and/or operated the Vernon Plant from
9 approximately 1979 to 1984.

10 99. In 1983, Gould Inc. transferred its battery business, including the
11 Vernon Plant, to GNB Batteries Inc. (“GNB Batteries”), a wholly-owned subsidiary
12 it created for the purpose of later selling the battery business. As part of that
13 transaction, Gould Inc. created an agreement with GNB Batteries in which it sought
14 to transfer its liabilities related to its battery business to GNB Batteries.

15 100. In 1984, Gould Inc. sold GNB Batteries to GNB Acquisition Corp.
16 GNB Acquisition Corp. then merged into GNB Batteries. The merged company
17 later changed its name to GNB, Inc. (“GNB”).

18 101. GNB owned and operated the Vernon Plant from 1984 until 2000,
19 when GNB merged with Exide Corporation. Exide Corporation later became Exide
20 Technologies, LLC.

21 102. From 2000 to October 2020, Exide owned and operated the Vernon
22 Plant.

23 103. Under CERCLA section 107(e)(1), 42 U.S.C. § 9607(e)(1), Gould
24 Inc.’s transfer of its battery business and purported transfer of liabilities to GNB
25 Batteries and its subsequent sale of that subsidiary to GNB Acquisition Corp. did
26 not absolve Gould Inc. of liability under CERCLA section 107(a), 42 U.S.C. §
27 9607(a). Gould Inc.’s CERCLA section 107(a) liability with respect to the Vernon
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1 Plant, therefore, remained with Gould Inc. after the sale of the battery business to
2 GNB Batteries.

3 104. In 1988, Nippon Mining U.S., Inc., a wholly-owned subsidiary of
4 Nippon Mining Co. Ltd., acquired all of the stock of Gould Inc.

5 105. In 1993, Nippon Mining Co., Ltd. merged with Kyodo Oil Co., Ltd. to
6 form a company called Nikko Kyodo Co. Ltd. Later in 1993, Nikko Kyodo Co. Ltd.
7 changed its name to Japan Energy Corporation. As a result, Gould Inc. was wholly
8 owned by Japan Energy Corporation's wholly-owned subsidiary Nippon Mining
9 U.S., Inc.

10 106. In October 1993, Gould Electronics Inc. (hereinafter "Gould
11 Electronics Inc. (Ohio)") filed articles of incorporation in Ohio. Michael C. Veysey
12 signed the articles of incorporation.

13 107. During or before January 1994, Gould Electronics Inc. (Ohio) was a
14 subsidiary of Japan Energy Corporation.

15 108. In 1994, Japan Energy Corporation took steps to liquidate its
16 subsidiaries Gould Inc. and Nippon Mining U.S., Inc. and to redistribute their assets
17 to other subsidiaries to carry on the same businesses. As part of this redistribution
18 of assets, in 1994 Gould Electronics Inc. (Ohio) (also a subsidiary of Japan Energy
19 Corporation) received assets and liabilities of Gould Inc. and Nippon Mining U.S.,
20 Inc. through a January 1994 Purchase Agreement ("1994 Agreement").

21 109. The 1994 Agreement was signed for Gould Inc. by Yasayuki Shimizu
22 (its Senior Vice President and Chief Financial Officer), for Nippon Mining U.S.
23 Inc. by Michael C. Veysey (its Vice President and Secretary), and for Gould
24 Electronics Inc. (Ohio) by C. David Ferguson (its President and Chief Executive
25 Officer).

26 110. As of April 1993 Michael C. Veysey was Senior Vice President,
27 General Counsel, Secretary, and a member of the Board of Directors of Gould Inc.
28 As of January 1994, Mr. Veysey was Gould Electronics Inc. (Ohio)'s Secretary,

1 and on or before April 1994 he was also Senior Vice President, General Counsel,
2 and a member of the Board of Directors. As of April 1993 Yasuyuki Shimizu was
3 Gould Inc.'s Senior Vice President, Chief Financial Officer, and a member of the
4 Board of Directors. As of January 1994 Mr. Shimizu was Gould Electronics Inc.
5 (Ohio)'s Senior Vice President, and as of April 1994 was also its Chief Financial
6 Officer, and a member of the Board of Directors. Plaintiffs are informed and
7 believe and on that basis allege that at that time Mr. Shimizu was also a Director of
8 Japan Energy Corporation. As of April 1993 Thomas N. Rich was Vice President –
9 Corporate Controller of Gould Inc. As of April 1994 Mr. Rich was Gould
10 Electronics Inc. (Ohio)'s Vice President – Corporate Controller. As of April 1993
11 C. David Ferguson was President and Chief Executive Officer and a member of the
12 Board of Directors of Gould Inc. As of April 1994 Mr. Ferguson was Gould
13 Electronics Inc. (Ohio)'s President and Chief Executive Officer and a member of
14 the Board of Directors. Many other individuals who held officer and director
15 positions with Gould Inc. in April 1993 held the same position with Gould
16 Electronics Inc. (Ohio) in April 1994.

17 111. Through the 1994 Agreement, Gould Inc. and Nippon Mining U.S.,
18 Inc. transferred to Gould Electronics Inc. (Ohio) their assets, including, among
19 other things, their real property, leases, inventory, customer contracts, contractual
20 rights, accounts receivable, intellectual property, licenses and permits, records,
21 claims, and goodwill. Also through that agreement, Gould Inc. and Nippon Mining
22 U.S., Inc. transferred to Gould Electronics Inc. (Ohio) their liabilities, including all
23 liabilities of any nature whatsoever (other than specified exclusions).

24 112. Gould Inc. dissolved in or about February 1994. Thereafter, Gould
25 Electronics Inc. (Ohio) carried on aspects of the Gould Inc. business connected to
26 the assets transferred to it.

27 113. When Japan Energy Corporation caused Gould Inc. to liquidate in
28 1994, Gould Inc. was a defendant in cases alleging that Gould Inc. was liable under

1 CERCLA due to releases of hazardous substances from operation of its former
2 battery business that occurred prior to 1983, including but not limited to, lawsuits
3 initiated by Bay Corrugated Container, Inc., against Gould Inc. in the U.S. District
4 Court for the Eastern District of Michigan (*Bay Corrugated Container, Inc. v.*
5 *Gould Inc.*, Case No. 2:91-cv-70170) and by Chemtech Industries against Gould
6 Inc, in the U.S. District Court for the Northern District of Georgia (*Chemtech*
7 *Indus. v. Gould Inc.*, Case No. 1:91cv2130).

8 114. At the time Japan Energy Corporation caused Gould Inc. to liquidate,
9 there existed a unity of interest between the two entities such that the separate
10 personalities of the corporations no longer existed. Gould Inc. was wholly owned
11 by Nippon Mining U.S., Inc., and Nippon Mining U.S., Inc. was wholly owned by
12 Japan Energy Corporation until Japan Energy Corporation caused both subsidiaries
13 to liquidate. Plaintiffs are informed and believe and thereon allege that, upon
14 liquidation of Gould Inc., Japan Energy Corporation collected hundreds of millions
15 of dollars of cash assets from Gould Inc., including value derived from activities
16 that resulted in environmental contamination. Plaintiffs are informed and believe
17 and thereon allege that this liquidation left Gould Inc. undercapitalized in that it
18 retained its CERCLA liabilities but no longer retained assets sufficient to satisfy
19 those liabilities. The Chairman of the Board of Directors of Gould Inc., Yukio
20 Kasahara, was also Chairman of Japan Energy Corporation. Plaintiffs are informed
21 and believe and thereon allege that various other of Gould Inc.'s officers or
22 directors were also officers or directors of Japan Energy Corporation. Plaintiffs are
23 informed and believe and thereon allege that Japan Energy Corporation used Gould
24 Inc. as a mere instrumentality for a single venture of Japan Energy Corporation.

25 115. Because Gould Inc. is a dissolved corporation, it no longer has assets
26 to satisfy a judgment against it under CERCLA section 107(a). As a result the
27 public may bear the financial cost of the response actions DTSC has performed and
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1 will perform at the Site due to releases of hazardous substances for which Gould
2 Inc. is legally responsible.

3 116. Treating Gould Inc. and Japan Energy Corporation as separate entities
4 for the purposes of liability under CERCLA section 107(a) with respect to
5 operations at the Vernon Plant would result in injustice. The intent of Congress in
6 enacting CERCLA in 1980 was to ensure that those responsible for environmental
7 contamination, and not the public, bore the cost of remedying the conditions they
8 created. *City of Emeryville v. Robinson*, 621 F.3d 1251, 1264 (9th Cir. 2010).
9 Treating Japan Energy Corporation and its successors as separate entities from
10 Gould Inc. would circumvent congressional intent.

11 117. Based on the foregoing, Japan Energy Corporation was the alter ego of
12 Gould Inc., and therefore Japan Energy Corporation was liable under CERCLA
13 section 107(a) with respect to operations at the Vernon Plant to the same extent as
14 was Gould Inc.

15 118. In January 1998, Japan Energy Corporation caused Gould Electronics
16 Inc. (Ohio) and American Microsystems Holding Corporation, two of its
17 subsidiaries, to merge, with the resulting Ohio corporation taking the name GA-
18 TEK Inc. The certificate of merger was signed for Gould Electronics Inc. (Ohio) by
19 Michael C. Veysey, who was then its Senior Vice President, General Counsel, and
20 Secretary.

21 119. In April 2001, GA-TEK Inc., filed amended articles of incorporation,
22 signed by Michael C. Veysey, its Vice President, with the Ohio Secretary of State
23 changing the name of the company back to “Gould Electronics Inc.,” referred to
24 herein as Gould Electronics Inc. (Ohio).

25 120. In April 2003, Japan Energy Corporation changed its name to Japan
26 Energy Electronic Materials, Inc. In October 2003 Japan Energy Electronic
27 Materials, Inc. merged with Nippon Mining Holdings, Inc., and then dissolved.

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1 121. In 2010, Nippon Mining Holdings, Inc. and Nippon Mining & Metals
2 Co., Ltd., merged and formed JX Nippon.

3 122. In a September 2003 “Asset Purchase Agreement,” Gould Electronics
4 Inc. (Ohio) transferred its assets and liabilities to Nikko Materials USA, Inc., an
5 Arizona corporation originally incorporated in 1990 as Nimtec Inc. Through that
6 agreement, Gould Electronics Inc. (Ohio) transferred to Nikko Materials USA, Inc.
7 its assets, including, among other things, its real property, leases, vehicles,
8 inventory, contractual rights, accounts receivable, intellectual property, licenses and
9 permits, records, claims, and goodwill. Also through that agreement, Gould
10 Electronics Inc. (Ohio) transferred to Nikko Materials USA, Inc. its liabilities,
11 including all liabilities of any nature whatsoever (other than specified exclusions)
12 and specifically transferred to Nikko Materials USA, Inc. its environmental liability
13 under CERCLA.

14 123. At the time it entered into the September 2003 Asset Purchase
15 Agreement, Nikko Materials USA, Inc. was a wholly-owned subsidiary of Japan
16 Energy Electronic Materials, Inc. (formerly known as Japan Energy Corporation).

17 124. The September 2003 Asset Purchase Agreement was signed on behalf
18 of Gould Electronics Inc. (Ohio) by Thomas N. Rich, its Vice President – Finance,
19 Secretary, and Treasurer, and on behalf of Nikko Materials USA, Inc. by Isao
20 Yamanashi, its Chairman. Mr. Yamanashi was at that time also Chairman of the
21 Board of Gould Electronics Inc. (Ohio) and an Associate Corporate Officer of
22 Japan Energy Corporation. In October 2003 Mr. Rich became Chief Financial
23 Officer, Secretary, and a member of the Board of Directors of Nikko Materials
24 USA, Inc.

25 125. In October 2003, Gould Electronics Inc. (Ohio) filed a certificate of
26 dissolution with the Ohio Secretary of State, effective December 2003. Thereafter,
27 Nikko Materials USA, Inc. carried on aspects of the Gould Electronics Inc. (Ohio)
28 business connected to the assets transferred to it.

1 131. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that the
2 owner and/or operator of a facility, any person who arranged for disposal or
3 treatment of hazardous substances to a facility, or any person who accepted any
4 hazardous substances for transport to disposal or treatment facilities, from which
5 there is a release, or a threatened release which causes the incurrence of response
6 costs, shall be liable for all costs of removal or remedial action incurred by a State
7 not inconsistent with the National Oil and Hazardous Substances Pollution
8 Contingency Plan (“National Contingency Plan”), 40 C.F.R. Part 300.

9 132. The Site, including the Vernon Plant and the horizontal and vertical
10 extent of the hazardous substances contamination, including any area where any
11 hazardous substance from the Vernon Plant has come to be located, is a “facility”
12 within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The
13 hazardous substances that have been released from the Vernon Plant have
14 contaminated the Site.

15 133. Each Defendant is a “person” within the meaning of section 101(21) of
16 CERCLA, 42 U.S.C. § 9601(21).

17 134. NL Industries was the owner and/or operator of the Vernon Plant at the
18 time of disposal of hazardous substances at and from the Vernon Plant under
19 section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), which contaminated the
20 Site. Disposals of hazardous substances at and from the Vernon Plant, which
21 contaminated the Site, occurred during NL Industries’ and/or Morris P. Kirk’s
22 ownership and/or operation of the Vernon Plant.

23 135. Gould Inc. was the owner and/or operator of the Vernon Plant at the
24 time of disposal of hazardous substances at and from the Vernon Plant under
25 section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), which contaminated the
26 Site. JX Nippon is the successor to the CERCLA liabilities of Gould Inc., with
27 respect to operations at the Vernon Plant. Gould Electronics Inc. is the successor to
28 the CERCLA liabilities of Gould Inc. with respect to operations at the Vernon

1 Plant, in the alternative and to the extent that JX Nippon is not the successor to
2 those liabilities.

3 136. The Arranger Defendants each arranged for disposal or treatment, or
4 arranged with a transporter for transport for disposal or treatment, of hazardous
5 substances at the Vernon Plant, from which hazardous substances were released.
6 The Arranger Defendants are each liable to DTSC for response costs DTSC
7 incurred as a result of releases or threatened releases at the Site, pursuant to section
8 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

9 137. The Transporter Defendants each accepted hazardous substances for
10 transport to the Vernon Plant, a disposal or treatment facility, from which
11 hazardous substances were released. Each of the Transporter Defendants selected or
12 actively participated in the selection of the Vernon Plant as the TSDf for disposal
13 or treatment. Each of the Transporter Defendants is liable to DTSC for response
14 costs DTSC incurred as a result of releases or threatened releases at the Site,
15 pursuant to section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

16 138. Contaminants of Concern released and/or threatened to be released at
17 the Site are “hazardous substances” as defined in section 101(14) of CERCLA, 42
18 U.S.C. § 9601(14).

19 139. There has been a release and/or threatened release of hazardous
20 substances from the Vernon Plant into the environment, within the meaning of
21 sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22).

22 140. Plaintiffs are a “State” for purposes of recovery of response costs
23 under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

24 141. Plaintiffs have incurred response costs not inconsistent with the
25 National Contingency Plan, 40 C.F.R. Part 300, as the result of the release and/or
26 threatened release of hazardous substances at the Site within the meaning of section
27 101(25) of CERCLA, 42 U.S.C. § 9601(25).

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1 142. Each Defendant is jointly and severally liable, without regard to fault,
2 pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Plaintiffs’
3 response costs incurred as a result of the release and/or threatened release of
4 hazardous substances at the Site.

5 143. Pursuant to section 107(a) of CERCLA, Defendants are also liable for
6 interest accrued on Plaintiffs’ response costs.

7 **SECOND CLAIM FOR RELIEF**

8 (Claim for Declaratory Relief Pursuant to
9 Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2))
10 Against All Defendants

11 144. Plaintiffs re-allege and incorporate by reference the allegations of the
12 preceding paragraphs 1 through 143 as though fully set forth herein.

13 145. Under section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2),
14 Plaintiffs are entitled to a declaratory judgment that each Defendant is jointly and
15 severally liable to Plaintiffs for any response costs DTSC has incurred and for any
16 further response costs DTSC incurs in the future as a result of any release and/or
17 threatened release of hazardous substances at the Site.

18 **THIRD CLAIM FOR RELIEF**

19 (Claim for Recovery of Costs Pursuant to the HSAA,
20 California Health and Safety Code section 25360)
21 Against All Defendants

22 146. Plaintiffs re-allege and incorporate by reference the allegations of the
23 preceding paragraphs 1 through 145 as though fully set forth herein.

24 147. Pursuant to section 25360 of the California Health and Safety Code,
25 Plaintiffs may bring an action against responsible parties in order to recover all
26 costs DTSC has incurred in carrying out or overseeing a response or corrective
27 action as a result of any release or threatened release of a hazardous substance at the
28 Site.

1 148. Contaminants of Concern released and/or threatened to be released at
2 the Site are “hazardous substances” as defined by section 25316 of the California
3 Health and Safety Code.

4 149. The release and/or threatened release of hazardous substances has
5 occurred at the Site, as defined by California Health and Safety Code section
6 25320.

7 150. Plaintiffs have incurred response costs in carrying out or overseeing
8 response actions addressing the releases and/or threatened releases of hazardous
9 substances at the Site, as defined in California Health and Safety Code section
10 25323.

11 151. Defendants are liable persons as defined in section 25319 of the
12 California Health and Safety Code.

13 152. To the extent any portion of Plaintiffs’ response costs are not
14 recovered pursuant to the First Claim for Relief, Defendants are liable to Plaintiffs
15 under section 25360 of the California Health and Safety Code for such costs
16 incurred by Plaintiffs.

17 153. Under sections 25360 and 25360.1 of the California Health and Safety
18 Code, Defendants are liable to Plaintiffs for interest at the rate provided by law on
19 any costs that may be recovered under the HSAA.

20 **FOURTH CLAIM FOR RELIEF**

21 (Claim for Abatement of Release or Threatened Release

22 Pursuant to the HSAA, California Health and Safety Code section 25358.3)

23 Against All Defendants

24 154. Plaintiffs re-allege and incorporate by reference the allegations in
25 paragraphs 1 through 153 as though fully set forth herein.

26 155. California Health and Safety Code section 25358.3(a) provides that:

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(a) Whenever the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance, the director may do any of the following:

* * *

(3) Request the Attorney General to secure such relief as may be necessary from the responsible party or parties to abate the danger or threat. ... Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction pursuant to subdivision (e).

156. California Health and Safety Code section 25358.3(e) provides, in relevant part:

Whenever there is a release or threatened release of a hazardous substance, the director may request the Attorney General to secure such relief as may be necessary from the responsible party or parties to abate the release or threatened release. ... Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction.

157. California Health and Safety Code section 25358.3(g) provides that:

It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order or the preliminary or permanent injunction not be issued, or that the remedy at law is inadequate; and the temporary restraining order or the preliminary or permanent injunction shall issue without those allegations and without that proof.

1 158. DTSC’s Director has determined that there may be an imminent or
2 substantial endangerment to the environment or to the public health or welfare,
3 because of the release or threatened release of hazardous substances, including but
4 not limited to, Contaminants of Concern, at the Site.

5 159. In accordance with California Health and Safety Code section
6 25358.3(a) and (e), DTSC has requested that the Attorney General secure relief
7 from each Defendant necessary to abate the danger or threat to the public and safety
8 and to the environment from the Site.

9 160. Defendants are responsible parties within the meaning of California
10 Health and Safety Code section 25358.3.

11 161. Pursuant to California Health and Safety Code Sections 25358.3(a),
12 (e), and (g), DTSC is entitled to such relief as may be necessary from Defendants to
13 abate the danger or threat, including preliminary and permanent injunctive relief to
14 require Defendants to take actions necessary to abate the release and/or threatened
15 release of hazardous substances at the Site causing an imminent or substantial
16 endangerment to the public health and safety or to the environment.

17 **FIFTH CLAIM FOR RELIEF**

18 (Claim for Abatement of a Public Nuisance, California Civil Code sections 3479,
19 3480 and 3491, California Health and Safety Code sections 58009 and 58010)

20 Against Defendant NL Industries Only

21 162. Plaintiffs re-allege and incorporate by reference the allegations in
22 paragraphs 1 through 129 as though fully set forth herein.

23 163. Under California Civil Code section 3479, a “nuisance” is “anything
24 which is injurious to health . . . or an obstruction to the free use of property, so as to
25 interfere with the comfortable enjoyment of life or property. . . .”

26 164. Under California Civil Code section 3480, “a public nuisance is one
27 which affects at the same time an entire community or neighborhood, or any
28 considerable number of persons although the extent of the annoyance or damage

1 inflicted upon individuals may be unequal.”

2 165. Pursuant to California Health and Safety Code section 58009, DTSC
3 may commence and maintain all proper and necessary actions and proceedings to
4 enjoin and abate nuisances related to matters within its jurisdiction that are
5 dangerous to health.

6 166. Pursuant to California Health and Safety Code section 58010, DTSC
7 may abate public nuisances related to matters within its jurisdiction.

8 167. NL Industries and/or Morris P. Kirk engaged in conduct that is
9 injurious to public health and that interferes with the comfortable enjoyment of life
10 and property of a considerable number of persons.

11 168. NL Industries and/or Morris P. Kirk’s business operations at the
12 Vernon Plant involved dismantling spent batteries, extracting lead and plastic from
13 the dismantling of these batteries, and then disposing of lead waste and spent
14 sulfuric acid, in part by means of air emissions of these hazardous solid and liquid
15 wastes. NL Industries and/or Morris P. Kirk’s operations also included processing
16 lead scrap and waste. NL Industries and /or Morris P. Kirk’s release of
17 Contaminants of Concern and other hazardous substances from the Vernon Plant,
18 including the release of lead waste by air emissions, and the release of TCE and
19 spent sulfuric acid on and into the soil, contaminated the soil and groundwater at
20 and beneath the Site, including at thousands of privately and publicly owned
21 properties in residential, commercial, and industrial areas surrounding the Vernon
22 Plant.

23 169. NL Industries and/or Morris P. Kirk’s business operations resulted in
24 release of hazardous substances, including but not limited to, Contaminants of
25 Concern, onto or into the soil and/or groundwater at the Site. NL Industries and/or
26 Morris P. Kirk’s release of hazardous substances is a direct and proximate
27 contributing cause of conditions that are injurious to human health.

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1 170. The presence of hazardous substances including, but not limited to,
2 Contaminants of Concern in the soil at the Site caused by NL Industries and/or
3 Morris P. Kirk's operations at the Vernon Plant exceed state regulatory levels that
4 are intended to protect public health.

5 171. The presence of, and exposure to, hazardous substances, including, but
6 not limited to, the Contaminants of Concern, in the soil at the Site may have long-
7 term health impacts on residents and workers. With respect to lead, which has been
8 detected in the soil at 500 times the California Human Health Screening Levels for
9 residential soil, exposure could cause damage to all of the body systems or death.

10 172. Hazardous substances, including, but not limited to, antimony, arsenic,
11 barium, beryllium, cadmium, cobalt, lead, mercury, nickel, selenium, sulfate,
12 vanadium, zinc, and the VOCs naphthalene, TCE, and carbon tetrachloride, are
13 present in groundwater at the Site at concentrations that exceed the regulatory
14 standards in Title 22, Chapter 15, § 64431 of the California Code of Regulations,
15 the Maximum Contaminant Levels in Drinking Water ("MCLs"), either primary or
16 secondary. Chronic, long-term exposure to hazardous substances such as lead,
17 arsenic, mercury, and/or TCE, interferes with the comfortable enjoyment of life
18 because such exposure could cause negative health impacts including cancer.

19 173. The presence of, and exposure to, hazardous substances, including, but
20 not limited to, the Contaminants of Concern, contaminated the groundwater at
21 levels exceeding the MCLs, and creates a threat to public health, safety, and well-
22 being by contaminating water sources that have been designated beneficial for
23 municipal, industrial, and agricultural uses, which could include future drinking
24 water uses. These conditions threaten to continue unless contamination is abated.

25 174. The presence of hazardous substances, including, but not limited to,
26 Contaminants of Concern, in the soil and/or groundwater at the Site caused by NL
27 Industries and/or Morris P. Kirk's operations at the Vernon Plant interferes with the
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1 comfortable enjoyment of life or property so as to cause a nuisance pursuant to
2 California Civil Code section 3479.

3 175. The presence of hazardous substances in the soil and/or groundwater at
4 the Site at concentrations higher than levels developed pursuant to Health and
5 Safety Code Section 57008 and caused by NL Industries and/or Morris P. Kirk's
6 operations at the Vernon Plant is a public nuisance which affects at the same time
7 an entire community or neighborhood, or any considerable number of persons,
8 although the extent of the annoyance or damage inflicted upon individuals may be
9 unequal, pursuant to California Civil Code section 3480.

10 176. NL Industries and/or Morris P. Kirk's conduct created the
11 unreasonable interference with a right common to the general public. NL Industries
12 and/or Morris P. Kirk's conduct created a significant interference with the public
13 health, public safety, public peace, public comfort, and/or public convenience.

14 177. NL Industries and/or Morris P. Kirk's conduct creating an interference
15 with a public right is intentional and unreasonable. In the alternative, NL Industries
16 and/or Morris P. Kirk's conduct is unintentional but is negligent or reckless, and/or
17 is caused by an abnormally dangerous activity.

18 178. NL Industries and/or Morris P. Kirk's business operations caused the
19 unreasonable interference with a public right. NL Industries is therefore liable, on
20 behalf of itself and/or as the successor to Morris P. Kirk, under California Civil
21 Code sections 3479, 3480, and 3491, for creating and/or substantially contributing
22 to a public nuisance.

23 179. The threat to the public health and safety posed by the nuisance at the
24 Site will continue unless NL Industries is ordered to abate the nuisance. NL
25 Industries must therefore abate the public nuisance caused by its release of
26 hazardous substances at the Site.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a judgment that Defendants are jointly and severally liable to Plaintiffs under section 107(a) of CERCLA, 42 U.S.C. § 9607(a) for all unreimbursed response costs incurred by Plaintiffs responding to releases and/or threatened releases of hazardous substances at the Site, in an amount to be proven at trial, but at least \$136,518,770.05, including attorneys' fees and other enforcement costs;

2. For interest to be paid to Plaintiffs on the above sums as provided under section 107(a) of CERCLA, 42 U.S.C. § 9607(a);

3. For a declaratory judgment, pursuant to 28 U.S.C. § 2201 and section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that each Defendant is jointly and severally liable without regard to fault to Plaintiffs for all future response costs incurred by Plaintiffs responding to the release and/or threatened release of hazardous substances at the Site;

4. In the alternative to the CERCLA section 107(a) claim and only to the extent a portion of Plaintiffs' response costs are not recovered pursuant to that claim, for a judgment that each Defendant is liable to Plaintiffs under section 25360 of the HSAA, for response costs incurred by Plaintiffs responding to the release and/or threatened release of hazardous substances at the Site, in an amount to be proven at trial, but at least \$136,518,770.05, including interest pursuant to California Health and Safety Code section 25360.1;

5. For preliminary and/or permanent injunctions pursuant to California Health and Safety Code section 25358.3 requiring Defendants to abate the release or threatened release of hazardous substances at the Site;

6. For an order enjoining Defendant NL Industries to abate the public nuisance at the Site;

7. For costs of this suit; and

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8. For all other relief the Court deems just and appropriate.

Dated: December 14, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
SARAH E. MORRISON
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Substances Control and the Toxic
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