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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Plaintiff,

vs.

HOUSING AUTHORITY OF THE
CITY OF LOS ANGELES; and DOES
1-10

Defendants.

CASE NO.

COMPLAINT FOR:

- 1) Response Costs Under CERCLA 42 U.S.C. 9607
- 2) Declaratory Relief Under CERCLA
- 3) Carpenter-Presley-Tanner Hazardous Substances Act (Cal. Health & Safety Code Sections 25300-25395.45);
- 4) Declaratory Relief Under Carpenter-Presley-Tanner Hazardous Substances Act (Cal. Health & Safety Code Sections 25300-25395.45);
- 5) Continuing Trespass;
- 6) Continuing Private Nuisance;
- 7) Continuing Public Nuisance;
- 8) Negligence;
- 9) Negligence Per Se
- 10) Equitable Indemnity;
- 11) Declaratory Judgment;
- 12) Injunctive Relief

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff Los Angeles Unified School District (“LAUSD”) owns the
3 property located at 2265 East 103rd Street, Los Angeles, California (the “School
4 Site”). Currently, LAUSD operates David Starr Jordan High School on the School
5 Site. By this action, LAUSD seeks to recover damages suffered and substantial
6 costs incurred, and continuing to be incurred, in response to hazardous
7 contamination migrating onto the School Site from the property located at 9901
8 South Alameda Street in the City of Los Angeles (the “HACLA Site”), which is
9 owned and operated by the Housing Authority of the City of Los Angeles
10 (“HACLA”). LAUSD also seeks injunctive relief requiring HACLA to abate the
11 hazardous contamination and prevent its further migration from the HACLA Site
12 onto the School Site.

13 2. LAUSD has been investigating the contamination on numerous
14 locations at the School Site and implementing a remedial response action at the
15 School Site. The purpose of the investigation and cleanup was to identify and
16 remove contamination existing at and beneath the School Site, primarily consisting
17 of high levels of arsenic, lead, chromium, copper, polycyclic aromatic hydrocarbon
18 (“PAHs”), antimony, cadmium, and polychlorinated biphenyls (“PCBs”).

19 3. The School Site hosts young students, teachers, employees,
20 administrators, and parents, many of whom regularly spend at least eight hours a
21 day at the School Site. The contamination migrating from the HACLA Site is,
22 therefore, of particular concern because of the exposure and risks that it poses to the
23 School Site’s sensitive population.

24 **THE PARTIES**

25 4. LAUSD is, and at all times herein mentioned was, a school district and
26 a political subdivision of the State of California.

27 5. HACLA is, and at all times herein mentioned was, a state of California-
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1 chartered public body, corporate and politic.

2 6. LAUSD is currently unaware of the true names and capacities of the
3 defendants sued as Does 1 through 10, inclusive, and therefore sues these defendants
4 by these fictitious names. LAUSD will amend this complaint to allege their true
5 names and capacities when ascertained. LAUSD believes that each of the
6 fictitiously named defendants, directly and/or through predecessors-in-interest, has
7 owned and/or conducted operations at facilities located near the School Site from
8 which hazardous substances have been released that have contributed to soil, soil
9 vapor and/or groundwater contamination at the School Site. The real names of Does
10 1 through 10, inclusive, are not known or ascertainable at this time because
11 investigations to locate potentially responsible parties are ongoing.

12 **JURISDICTION AND VENUE**

13 7. This Court has original jurisdiction over this action pursuant to Section
14 113(b) of the Comprehensive Environmental Response, Compensation and Liability
15 Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9613(b), and pursuant to 28
16 U.S.C. § 1331.

17 8. Venue is proper in this Court because the release of hazardous
18 substances and the damage caused thereby occurred in this District, the School Site
19 and the HACLA Site lie within this District, and HACLA is located and engaged in
20 substantial activities in this District.

21 **GENERAL ALLEGATIONS**

22 9. Jordan High School became part of the Los Angeles County School
23 system in 1925. The School Site is approximately 20 acres in size and was
24 originally constructed as a junior high school in the Compton School District. Prior
25 to its use as a school in 1925, the School Site was used for agricultural purposes.

26 10. The School Site is surrounded by the Jordan Downs multifamily
27 residential housing development to the west; the former steel mill foundry site and
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1 the HACLA Site to the north; Atlas Iron & Metal Company to the northeast; South
2 Alameda Street and commercial/industrial businesses to the east; East 103rd Street
3 and residential dwellings to the south; and commercial/industrial buildings to the
4 southeast.

5 11. In 1996, HACLA initiated due diligence site investigations, and in 2008
6 it purchased the HACLA Site to redevelop it as a mixed-use public housing project.
7 In 2010, the first comprehensive soil sampling program implemented on the
8 HACLA Site concluded that concentrations of arsenic, lead, antimony, cadmium,
9 copper, chromium, and zinc were all detected in soil at the HACLA Site at levels
10 exceeding recognized regulatory thresholds.

11 12. Historical uses at the HACLA Site date back to the 1920s. Between
12 1920 and 1938 the HACLA Site was used primarily for agriculture. Starting in the
13 late 1930s, the HACLA Site was used for the development of an Electric Arc
14 Furnace (“EAF”) Steel Mini-Mill by Southwest Steel Rolling Mills. Historical
15 records indicate that by the 1950s, two EAFs were in operation at the HACLA Site,
16 which continued to operate until the late 1970s.

17 13. For approximately 40 years, from 1938 until the late 1970s, steel
18 products were manufactured at the HACLA Site by melting scrap iron in the EAFs.
19 In addition, scrap metal was stored in various areas throughout the HACLA Site
20 during the operation of the EAFs, including in the rectangular-shaped parcel located
21 in the northern border of the School Site that was acquired by LAUSD in 1974. In
22 1979 and 1980, major construction was performed at the HACLA Site, including
23 demolition of the former buildings, as well as excavation and backfilling of
24 materials.

25 14. From 2010 through 2016, numerous site investigations and remedial
26 activities were conducted at the HACLA Site, including soil excavations, to address
27 arsenic and lead contamination in the soil, as well as excavations to remove
28

1 underground storage tanks.

2 15. There are numerous potential sources of arsenic, lead and other heavy
3 metals from historical EAF operations on the HACLA Site, including the following:
4 (1) the steel manufacturing EAF emissions and associated particles and dust; (2)
5 stockpiled scrap metals and slag spread throughout the HACLA Site; and (3)
6 contaminated historic fill.

7 16. LAUSD is informed and believes, and based thereon alleges, that when
8 HACLA acquired the HACLA Site, it assumed all the liabilities related to, and
9 arising from, the environmental contamination on the HACLA Site that was created
10 by its former owners and operators.

11 17. In March 2011, the LAUSD Board of Education approved funding for
12 the Jordan High School Redevelopment Project (“Redevelopment Project”). The
13 objective of this Redevelopment Project was to restructure Jordan High School in an
14 effort to improve academic performance. As part of the reorganization, the school
15 would no longer operate as a comprehensive high school, but instead would be
16 separated into three small independent learning academies. To support the
17 Superintendent’s change in the educational program, modernizations and
18 enhancements to the existing facilities were proposed.

19 18. As part of these modernizations and enhancements to the School Site,
20 which were intended to facilitate the Redevelopment Project, in 2011 LAUSD
21 conducted environmental investigations that revealed the presence of arsenic and
22 lead impacted soil. Impacted areas were divided into operable units (“OUs”).
23 Between 2014 and 2016, remediation of the OUs, as well as additional remedial and
24 investigative activities were conducted at the School Site, which included the
25 following: (1) in 2014 over 900 tons of arsenic contaminated soil was excavated and
26 disposed of as hazardous waste in the vicinity of the track bleachers (OU1); (2) in
27 2014, 95 tons of lead impacted soil near the Girl’s Locker Room (OU2) was

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1 excavated, and disposed of as hazardous waste; (3) in March and April of 2015,
2 1,326 tons of soil near classrooms and the former basketball courts (OU3) was
3 excavated, and disposed of; (4) in June and July of 2015 additional soil samples in
4 the bleacher area contained elevated levels of arsenic and lead; and (5) in August
5 and September of 2016 soil screening conducted on the baseball field and the area
6 north of the football field and bleachers, indicated elevated levels of arsenic and lead
7 requiring further investigation.

8 19. In addition to its work on the Redevelopment Project, LAUSD also
9 constructed the Jordan High School Wellness Center in the western portion of the
10 School Site, which was completed in November 2013. As part of this project,
11 LAUSD conducted an investigation that revealed that shallow soil samples
12 contained arsenic. This resulted in the removal of approximately 494 tons of soil
13 impacted with arsenic. LAUSD conducted an additional delineation of the
14 contamination, which required the additional removal of 680 tons of lead and
15 arsenic impacted soil.

16 20. LAUSD first became generally aware of potential contamination at the
17 HACLA Site in or about September 2013, when it received HACLA's Draft
18 Removal Action Plan, which HACLA had submitted to the DTSC. At that time,
19 LAUSD submitted questions and comments regarding the environmental condition
20 of the HACLA Site.

21 21. In May 2016, HACLA officials contacted LAUSD personnel to request
22 access to the School Site as part of its investigation of the contamination on the
23 HACLA Site. Specifically, HACLA had been directed by the DTSC to remove a
24 boundary wall between the HACLA Site and the School Site so it could properly
25 investigate and remediate contamination under the wall. At that time, LAUSD
26 requested that HACLA investigate (and remediate, if necessary) any contamination
27 that had migrated from the HACLA Site to the School Site.

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1 22. In July 2016, LAUSD gave notice to HACLA that the HACLA Site
2 was contaminating the School Site by presenting to HACLA extensive
3 documentation showing that the arsenic and lead contamination, among other
4 contaminants, had migrated onto the School Site. This information was also
5 provided to the DTSC. Further, LAUSD prepared and conducted an extensive
6 presentation to HACLA concerning the elevated levels of arsenic and lead (and
7 other contaminants) that had migrated from the HACLA Site to the School Site.
8 LAUSD also provided HACLA with initial information on the costs it had incurred
9 to respond to the arsenic and lead contamination, and requested that HACLA
10 investigate, and remediate if necessary, the contamination that had migrated to the
11 School Site.

12 23. During these discussions, HACLA informed LAUSD that it would not
13 investigate the School Site contamination. HACLA also informed LAUSD that it
14 was close to securing millions of dollars in federal grants for its housing
15 development, and therefore, it could not open the scope of its investigation activities
16 beyond its own property as that would put its application for grant funds at risk.

17 24. In response to HACLA's refusal to investigate and remediate the
18 contamination that had migrated onto the School Site, LAUSD informed HACLA of
19 state and federal regulations that require HACLA to investigate and remediate
20 contamination beyond its property line. LAUSD also informed HACLA that the
21 contamination on the School Site needed to be addressed urgently because of the
22 sensitive nature of the school's occupants and the daily exposure for eight hours a
23 day to the contaminants at issue.

24 25. Despite LAUSD's repeated requests, and the detailed information
25 provided by LAUSD to HACLA about the nature of the contamination that had
26 migrated onto the School Site, to date HACLA has done nothing to address the
27 hazardous contamination that has migrated from the HACLA Site to the School Site.

28

FIRST CLAIM FOR RELIEF

**Response Costs Under CERCLA, 42 U.S.C. §9607(a)
(Against HACLA and Does 1 through 10)**

26. LAUSD repeats the allegations contained in paragraphs 1 through 25 inclusive as though fully set forth herein.

27. HACLA is a “person,” as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

28. The School Site and the HACLA Site are “facilities,” as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. §9601 (9).

29. HACLA is the current “owner” and “operator” of the HACLA Site, as those terms are defined in Section 101(20)(A) of CERCLA, 42 U.S.C. §9601(20)(A).

30. Arsenic, lead, cadmium, PAHs, and PCBs identified herein are “hazardous substances,” as these terms are defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

31. As provided by 42 U.S.C. §9601(35)(A)(ii), LAUSD is a government entity that acquired the School Site more than 90 years ago.

32. In connection with the releases described herein, LAUSD has incurred, and will continue to incur, necessary costs of response consistent with the National Contingency Plan (“NCP”), including but not limited to, investigating the scope and nature of the contamination, testing soil and groundwater, and removing contaminated soil.

33. As a direct result of the release and disposal of the hazardous substances as alleged above, LAUSD has incurred response costs consistent with NCP, and will continue to incur necessary response costs and monitoring costs in the future. The amount of these necessary costs is not precisely ascertainable at this time but LAUSD is informed and believes that it will exceed \$1,000,000.

1 34. HACLA is liable under 42 U.S.C. §9607 because it is the current
2 “owner” and “operator” of the HACLA Site.

3 35. LAUSD is therefore entitled to recover from HACLA past, present and
4 future response costs, including attorneys’ fees, interest and court costs pursuant to
5 CERCLA, including, but not limited to, 42 U.S.C. § 9607(a).

6 **SECOND CLAIM FOR RELIEF**

7 **Declaratory Relief Under CERCLA**
8 **(Against HACLA and Does 1 through 10)**
9

10 36. LAUSD repeats the allegations contained in paragraphs 1 through 35
11 inclusive as though fully set forth herein.

12 37. An actual controversy exists between LAUSD and HACLA in that
13 LAUSD contends, and HACLA denies, that under the circumstance alleged above,
14 HACLA is liable for the response costs incurred by LAUSD to investigate and
15 remediate the contamination on the School Site. LAUSD is entitled to and hereby
16 seeks a determination, pursuant to CERCLA, 42 U.S.C. § 9613(g)(2), of HACLA’s
17 liability to LAUSD for the response costs incurred and to be incurred by LAUSD in
18 connection with the presence of hazardous substances on the School Site. LAUSD
19 is entitled to and hereby seeks a judicial determination of LAUSD’s right to
20 reimbursement and indemnification from HACLA for costs which LAUSD may
21 incur in investigating and remediating contamination on the School Site. LAUSD is
22 informed and believes that HACLA denies such allegations.

23 38. Substantial costs have been and will be incurred by LAUSD over
24 time and after conclusion of this action. Unless declaratory relief is granted, it will
25 be necessary for LAUSD to commence successive actions against HACLA to secure
26 compensation for the costs incurred and damages sustained, resulting in a
27 multiplicity of suits.

28 39. A declaratory judgment is appropriate for the following reasons:

1 a. A declaratory judgment will prevent the need for multiple
2 lawsuits as LAUSD incurs response costs in the future for which HACLA should be
3 liable, and will provide a final resolution of the issues between the parties regarding
4 liability for said costs.

5 b. A declaratory judgment will assure LAUSD will be
6 reimbursed by HACLA for the necessary costs of response incurred, ensuring a
7 proper response to the environmental contamination present on the School Site.

8 c. The public interest will be served in that a declaratory
9 judgment will prevent a multiplicity of actions and will promote an environmentally
10 proper response.

11 **THIRD CLAIM FOR RELIEF**

12 **Recovery of Response Costs and Damages Pursuant to Carpenter-Presley-**
13 **Tanner Hazardous Substances Act, California Health & Safety Code §§ 25300-**
14 **25395.45**

15 **(Against HACLA and Does 1 through 10)**

16
17 40. LAUSD repeats the allegations contained in paragraphs 1 through 39
18 inclusive as though fully set forth herein.

19 41. LAUSD is a “person” as defined in the Carpenter-Presley-Tanner
20 Hazardous Substances Act, Health & Safety Code Section 25319. LAUSD has
21 incurred and/or will continue to incur, substantial response costs to investigate the
22 nature and scope of the lead and arsenic contamination and remediate the
23 contamination migrating from the HACLA Site to the School site. All such
24 response costs have been necessary and consistent with the NCP.

25 42. HACLA is a “responsible party” within the meaning of Health and
26 Safety Code Section 25323.5.

27 43. Health and Safety Code Section 25363(e) imposes liability on any
28 “responsible party” who is the owner or operator of a facility, was the owner or

1 operator of any facility at which such hazardous substances were disposed of,
2 arranged for the disposal of hazardous substances, or arranged with a transporter for
3 transport of disposal of hazardous substances owned or possessed by such persons
4 for the response costs incurred.

5 44. The actions of HACLA and its predecessors in interest with regard to
6 the disposal of hazardous substances at the HACLA Site constitute a release or
7 threatened release of hazardous substances at a facility within the meaning of the
8 Carpenter-Presley-Tanner Hazardous Substances Act.

9 45. As a direct and proximate result of the releases or threatened releases of
10 hazardous substances from the HACLA Site, LAUSD has incurred and will continue
11 to incur response costs consistent with the NCP.

12 46. As a direct and proximate result of HACLA's conduct, LAUSD is
13 entitled to recover past, present and future response costs, together with interest,
14 from HACLA pursuant to Health and Safety Code Section 25363(e).

15 **FOURTH CLAIM FOR RELIEF**

16 **Declaratory Relief Pursuant to Carpenter-Presley-Tanner Hazardous**
17 **Substances Act, California Health & Safety Code §§ 25300-25395.45**
18 **(Against HACLA and Does 1 through 10)**

19
20 47. LAUSD repeats the allegations contained in paragraphs 1 through 46
21 inclusive as though fully set forth herein.

22 48. An actual controversy exists between LAUSD on the one hand and
23 HACLA, on the other hand, regarding their respective rights and obligations
24 concerning necessary response costs under Health and Safety Code Section
25 25363(e).

26 49. LAUSD asserts that HACLA, as the current owner and operator of the
27 HACLA Site, is responsible for all necessary response costs incurred in connection
28 with the investigation, testing, removal, and other remediation and monitoring of the

1 hazardous substances on the School Site.

2 50. LAUSD desires a judicial determination that HACLA is strictly liable
3 to LAUSD for all such necessary costs.

4 51. Such a declaration is necessary and appropriate at this time, although
5 due to the continuing nature of HACLA's release, LAUSD anticipates that it will
6 likely incur future response costs and will likely be required to undertake future
7 response actions necessitated by HACLA's release for which HACLA should be
8 strictly liable.

9 **FIFTH CLAIM FOR RELIEF**

10 **Continuing Trespass**

11 **(Against HACLA and Does 1 through 10)**

12
13 52. LAUSD repeats the allegations contained in paragraphs 1 through 51
14 inclusive as though fully set forth herein.

15 53. LAUSD is informed and believes and based thereon alleges that at all
16 material times, HACLA allowed, permitted, caused, and continues to allow, permit,
17 and cause hazardous substances and other contaminants, located on the HACLA
18 Site, to migrate into the soil and groundwater of the School Site. HACLA has no
19 lawful right, authority or consent to store or dispose of hazardous substances,
20 including the disposal of lead and arsenic contamination, onto the School Site.

21 54. HACLA, by its wrongful storage and disposal of pollutants onto the
22 School Site and its intentional and reckless failure to clean up the contamination, has
23 unlawfully interfered and continues to interfere with LAUSD's exercise of its rights
24 to use and enjoyment of the School Site.

25 55. LAUSD is informed and believes and based thereon alleges that the
26 trespass caused by the migration of the contamination from HACLA Site to the
27 School Site can be abated at a reasonable cost.

28 56. As an actual and proximate cause of HACLA's intentional and

1 unlawful trespass, LAUSD has incurred costs and suffered damages, and will
2 continue to incur costs and suffer damages, until the investigations and cleanup of
3 the School Site are complete and until HACLA cleans up the contamination existing
4 at the HACLA Site and migrating from the HACLA Site onto the School Site.

5 57. LAUSD is informed and believes, and on that basis alleges, that
6 HACLA knew about the contamination at the HACLA Site; it knew that the
7 contamination was spreading to adjacent properties in all directions, including the
8 School Site, which is immediately adjacent to the HACLA Site; it knew that the
9 contamination consisted of heavy metals that are known carcinogens; and it knew or
10 should have known that the school immediately adjacent to the HACLA Site
11 contained a sensitive population and that there were children and school staff
12 occupying the School Site daily, who could potentially be exposed to contaminants
13 discharged, emanating, or flowing from the HACLA Site. Despite knowing all this
14 for many years, HACLA delayed and avoided any cleanup of the contamination at
15 the HACLA Site. Moreover, although HACLA was specifically notified by
16 LAUSD of the contamination migration of hazardous substances onto the School
17 Site, HACLA took the position that it would not investigate and remediate the
18 contamination that had spread off of its own property. In fact, HACLA argued with
19 LAUSD that any effort to expand its investigation to the School Site may jeopardize
20 federal funding it was attempting to receive for the construction of its public/private
21 housing development.

22 **SIXTH CLAIM FOR RELIEF**

23 **Continuing Private Nuisance**

24 **(Against HACLA and Does 1 through 10)**

25 58. LAUSD repeats the allegations contained in paragraphs 1 through 57
26 inclusive as though fully set forth herein.

27 59. LAUSD is informed and believes and based thereon alleges that at all
28

1 material times, HACLA intentionally and recklessly allowed and permitted, and
2 continues to allow and permit, hazardous substances located and stored on the
3 HACLA Site to migrate into the soil and groundwater on the School Site. The
4 contamination migrating from the HACLA Site to the School Site constitutes a
5 continuing nuisance. The contamination has interfered, and continues to interfere,
6 with LAUSD's use and enjoyment of the School Site.

7 60. LAUSD is informed and believes and based thereon alleges that the
8 continuing nuisance caused by the storage and migration of the contamination from
9 the HACLA Site to the School Site can be abated at a reasonable cost.

10 61. As an actual and proximate cause of the continuing nuisance created by
11 HACLA, LAUSD has incurred costs and suffered damages, and will continue to
12 incur costs and suffer damages, until the investigation and cleanup of the School
13 Site are complete and until HACLA cleans up the contamination existing at the
14 HACLA Site and migrating from the HACLA Site onto the School Site.

15 62. LAUSD is informed and believes, and on that basis alleges, that
16 HACLA knew about the contamination at the HACLA Site; it knew that the
17 contamination was spreading to adjacent properties in all directions, including the
18 School Site, which is immediately adjacent to the HACLA Site; it knew that the
19 contamination consisted of heavy metals that are known carcinogens; and it knew or
20 should have known that the school immediately adjacent to the HACLA Site
21 contained a sensitive population and that there were children, teachers and school
22 staff occupying the School Site daily, who could potentially be exposed to
23 contaminants discharged, emanating, or flowing from the HACLA Site. Despite
24 knowing all this for many years, HACLA delayed and avoided any cleanup of the
25 contamination at the HACLA Site. Moreover, even after being notified of the
26 spread of its contamination to the School Site, HACLA informed LAUSD that
27 because federal funding for its development project was potentially at risk, it was

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1 not going to investigate or clean up any of the contamination that had spread off of
2 the HACLA Site.

3 **SEVENTH CLAIM FOR RELIEF**

4 **Continuing Public Nuisance**
5 **(Against HACLA and Does 1 through 10)**

6
7 63. LAUSD repeats the allegations contained in paragraphs 1 through 62
8 inclusive as though fully set forth herein.

9 64. Groundwater within the State of California, including the groundwater
10 underlying the School Site and the HACLA Site, constitutes “waters of the state”
11 pursuant to California Water Code §13050(e).

12 65. The California Legislature has declared, as stated in California Water
13 Code §13000, that “the people of the state have a primary interest in the
14 conservation, control and utilization of water resources of the state, and that the
15 quality of all waters of the state shall be protected for use and enjoyment by the
16 people of the state.”

17 66. LAUSD is informed and believes and based thereon alleges that at all
18 material times, HACLA allowed and permitted, and continues to allow and permit,
19 hazardous substances and other contaminants that had been released onto the
20 HACLA Site to migrate into the soil and groundwater on, adjacent to, and
21 underlying the School Site and other adjacent properties, and into the waters of the
22 State of California. These hazardous substances and other contaminants continue to
23 migrate onto the School Site, adjacent properties, and the groundwater.

24 67. The hazardous substances and contaminants are carcinogens,
25 reproductive toxins and/or are otherwise highly toxic to plant and animal life, and
26 their release into the soil and groundwater constitutes a public nuisance within the
27 meaning of California Civil Code §§ 3479 and 3480. The hazardous substances and
28 contaminants have migrated, and are continuing to migrate, into the waters of the

1 state and the environment and are damaging the public natural resources of the State
2 of California. Further, the hazardous substances and contaminants that have
3 migrated onto the School Site have injured students, teachers, school administrators,
4 by potentially exposing them and creating fear of exposure to heavy metals,
5 depriving them of the free use of the facilities of the School Site, including the
6 athletic facilities, and forcing LAUSD to spend time and money for the
7 investigation, testing and environmental remediation of the School Site.

8 68. While this public nuisance affects a considerable number of persons, it
9 has caused special injury to LAUSD because the hazardous substances and
10 contaminants that HACLA allowed to migrate, continue to migrate, primarily to the
11 soil and groundwater on and underlying the School Site. Further, LAUSD has
12 incurred costs and suffered damages in remediating the environmental conditions at
13 the School Site.

14 69. LAUSD is informed and believes and based thereon alleges that the
15 contamination caused by the nuisance can be abated at reasonable cost.

16 70. As a direct and proximate result of the continuing nuisance maintained
17 by HACLA, LAUSD has incurred costs and suffered damages in remediating the
18 environmental conditions at the School Site, and will continue to incur costs and
19 suffer damages until the environmental condition of the School Site has been fully
20 remediated and the migration of hazardous substances and other contaminants from
21 the HACLA Site to the School Site has ceased. LAUSD is therefore entitled to an
22 award of damages according to proof at trial and an order requiring HACLA to
23 abate the nuisance in accordance with all applicable laws, regulations and orders.

24 71. LAUSD is informed and believes, and on that basis alleges that, at all
25 relevant times, HACLA knew about the contamination at the HACLA Site; it knew
26 that the contamination was spreading to adjacent properties in all directions,
27 including the School Site, which is immediately adjacent to the HACLA Site; it

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1 knew that the contamination consisted of heavy metals that are known carcinogens;
2 and it knew that there were children and school staff occupying the School Site
3 daily, who could potentially be exposed to contaminants discharged, emanating, or
4 flowing from the HACLA Site. Despite knowing all this for many years, HACLA
5 delayed and avoided any cleanup of the contamination at the HACLA Site.

6 **EIGHTH CLAIM FOR RELIEF**

7 **Negligence**

8 **(Against HACLA and Does 1 through 10)**

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10 72. LAUSD repeats the allegations contained in paragraphs 1 through 71
11 inclusive as though fully set forth herein.

12 73. HACLA owes LAUSD a continuing duty to prevent the hazardous
13 substances situated on the HACLA Site from spilling onto and contaminating the
14 School Site in a manner, which caused LAUSD to sustain damages and losses.

15 74. HACLA breached its duty to LAUSD, and continues to breach its duty
16 to LAUSD, by negligently owning, maintaining, controlling, managing and
17 operating the HACLA Site so as to cause the hazardous substances situated on the
18 HACLA Site to spill onto and contaminate the School Site, and by intentionally and
19 recklessly failing to timely clean up the contamination.

20 75. HACLA, by failing to exercise reasonable care in the conduct of the
21 ownership and operation of the HACLA Site, and by its continuing failure to
22 exercise reasonable care to abate the hazardous and dangerous conditions at that
23 property, proximately caused and will continue to cause LAUSD to investigate,
24 identify, remove, and remediate the hazardous substances and other contaminants at
25 the School Site and to incur significant response costs in undertaking each of these
26 activities, unless and until the contamination is cleaned up.

27 76. LAUSD has been damaged by the necessity to incur significant
28 response costs and respond to HACLA's negligence in an amount as yet unknown

1 for which LAUSD makes claim according to proof at trial.

2 77. The damages and losses sustained by LAUSD were caused solely by
3 HACLA's negligence, without any fault of LAUSD contributing thereto. Therefore,
4 LAUSD is entitled to recover from HACLA the full amount of its damages.

5 **NINTH CLAIM FOR RELIEF**

6 **Negligence Per Se**

7 **(Against HACLA and Does 1 through 10)**

8
9 78. LAUSD repeats the allegations contained in paragraphs 1 through 77
10 inclusive as though fully set forth herein.

11 79. HACLA's failure and continued failure to date to exercise reasonable
12 care in controlling the release of hazardous substances and other contaminants
13 violates numerous state and federal statutes, rules and regulations, including but not
14 limited to, California Health & Safety Code §§25189 and 25189.6, and California
15 Water Code §§13271 and 13304.

16 80. As a direct and proximate result of HACLA's continued failure to
17 exercise reasonable care in controlling the release of hazardous substances and other
18 contaminants at the HACLA Site and onto the School Site, the School Site has been
19 contaminated, and continues to be contaminated by migration of the hazardous
20 substances from the HACLA Site.

21 81. The purpose of the aforementioned statutes is to set a standard of care
22 or conduct to protect LAUSD's students, teachers, faculty, school staff and others in
23 their classes, athletic fields, and their property and the environment from the type of
24 improper activities engaged in by HACLA. Therefore, HACLA's improper
25 activities and violations constitute negligence per se.

26 82. As a direct and proximate result of HACLA's negligence per se,
27 LAUSD has suffered damages, including other consequential, incidental and general
28 damages to be proven at trial.

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TENTH CLAIM FOR RELIEF

**Common Law Equitable Indemnity
(Against HACLA and Does 1 through 10)**

83. LAUSD repeats the allegations contained in paragraphs 1 through 82 inclusive as though fully set forth herein.

84. Under the oversight of DTSC and as compelled by the California Education Code, LAUSD conducted remedial activities and incurred response costs for which HACLA is primarily liable.

85. HACLA, by failing to remediate the hazardous substances and other contaminants existing and being stored on the HACLA Site and by permitting these hazardous substances and contaminants to migrate onto the School Site, is liable for the presence and release of the hazardous substances and other contaminants onto the School Site.

86. Any liability or potential liability of LAUSD due to the presence of hazardous substances and other contaminants at the School Site is the sole and proximate result of the improper handling, use, storage, disposal and/or release by HACLA of hazardous substances and other contaminants at the HACLA Site, as, due to such improper handling, use, storage, disposal and release, the hazardous substances and other contaminants migrated from the HACLA Site to the School Site. HACLA's improper handling, use, storage, disposal and release of hazardous substances and other contaminants at the HACLA Site gave rise to a duty on the part of HACLA to investigate and remove or remedy the hazardous condition created by their conduct.

87. HACLA has failed, and continues to fail, to recognize its equitable obligation to assume responsibility for the investigation, removal and/or remediation of the hazardous substances and hazardous wastes which have contaminated the School Site.

1 88. LAUSD has incurred costs as a consequence of HACLA's improper
2 handling, use, storage, disposal and release of hazardous substances and
3 contaminants, and is therefore entitled to be indemnified by HACLA for all of
4 LAUSD's past, present and future costs for the investigation, testing, removal and
5 remediation of the hazardous substances and other contaminants at the School Site,
6 including attorneys' fees, incurred in response to LAUSD's duty and obligations
7 arising under state and federal law.

8 **ELEVENTH CLAIM FOR RELIEF**

9 **Declaratory Judgment Under State Law**
10 **(Against HACLA and Does 1 through 10)**

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12 89. LAUSD repeats the allegations contained in paragraphs 1 through 88
13 inclusive as though fully set forth herein.

14 90. LAUSD is informed and believes and based thereon alleges that an
15 actual controversy has arisen and now exists between LAUSD and HACLA in that
16 LAUSD contends and, upon information and belief, HACLA denies, that
17 responsibility for the hazardous substances and other contaminants caused or
18 permitted to come onto the School Site rests solely and entirely upon it.

19 91. LAUSD has incurred and will continue to incur necessary response
20 costs, including, but not limited to, investigatory, remedial and removal expenses,
21 attorneys' fees, and interest, in remediating the School Site.

22 92. LAUSD seeks a declaration of the rights and obligations of the parties,
23 binding in any subsequent action or actions to recover necessary response costs and
24 other damages incurred and to be incurred by LAUSD in connection with the
25 releases, threatened releases, spills, disposals, discharges of hazardous substances
26 and other contaminants that have and will pollute the School Site in the manner
27 previously referenced. Such declaration will prevent multiple, future actions to
28 determine the rights and obligations of the parties.

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TWELFTH CLAIM FOR RELIEF

**Injunctive Relief Under State Law
(Against HACLA and Does 1 through 10)**

93. LAUSD repeats the allegations contained in paragraphs 1 through 92 inclusive as though fully set forth herein.

94. Since acquiring the HACLA Site in or about March 2008, HACLA has wrongfully and unlawfully permitted hazardous substances and other contaminants to be stored at and released onto the HACLA Site, which subsequently migrated onto the School Site and into the School Site’s underlying groundwater.

95. LAUSD hereby demands that HACLA stop failing to properly remediate the hazardous substances and other contaminants contained on the HACLA Site and stop allowing the hazardous substances and other contaminants contained thereon to be released onto the School Site and into the School Site’s underlying groundwater.

96. HACLA’s wrongful conduct, unless and until enjoined and restrained by order of this Court, will cause great and irreparable harm to LAUSD, so long as hazardous substances and other contaminants remain on the HACLA Site, LAUSD’s contractors, employees, agents, and the students, faculty and staff of LAUSD’s school, remain at risk of exposure to the hazardous substances and other contaminants.

97. LAUSD has no adequate remedy at law because, unless and until HACLA stops allowing the hazardous substances and other contaminants contained thereon to be released onto School Site and into the School Site’s underlying groundwater, LAUSD cannot be assured the contamination has been remediated to, and will remain at, a safe level. This will result in further irreparable harm to LAUSD.

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PRAYER FOR RELIEF

WHEREFORE, LAUSD prays for judgment as follows:

1. Against HACLA, for response costs and other damages incurred by LAUSD, under CERCLA, including reasonable attorneys' fees and interest;
2. Against HACLA, for a judicial declaration under CERCLA that HACLA is liable for all future response costs incurred by LAUSD and other costs that may be incurred by LAUSD in connection with the School Site;
3. Against HACLA, for response costs and other damages, under HSAA, incurred by LAUSD, including prejudgment interest allowed by law;
4. Against HACLA, for a judicial declaration under HSAA that the Defendants are liable for all future response costs and other costs that may be incurred by LAUSD in connection with the School Site;
5. Against HACLA for general, consequential and incidental damages, in an amount to be proven at trial, caused by HACLA's continuing private nuisance, continuing public nuisance, continuing trespass, negligence and negligence per se;
6. Against HACLA for equitable indemnification;
7. Against HACLA for a judicial declaration that HACLA caused the contamination at the School Site and are liable for its total cost of remediation;
8. Against HACLA for a preliminary injunction and a permanent injunction enjoining HACLA, their agents, servants, and all persons acting under, in concert with, or for HACLA, from: (a) failing to prevent contamination of the School Site; and (b) failing to remediate the hazardous substances and other contaminants contained on the School Site;
9. Against HACLA for the reasonable amount of attorneys' fees and costs expended in recovering response costs and for the reasonable fees required to retain experts and consultants;
10. Against HACLA for LAUSD's expenditure of costs to investigate,

1 remove and remediate the hazardous substances and other contaminants that
2 HACLA has allowed to migrate through the soils and groundwater of the HACLA
3 SITE and onto the School Site will confer a significant benefit on the general public
4 to protect and restore natural resources within the public trust. Therefore, LAUSD
5 prays for all reasonable attorneys' fees and costs pursuant to Cal. Civ. Proc. Code §
6 1021.5;

7 11. Against HACLA, for such other and further relief which the Court may
8 deem just and proper.

9 **JURY DEMAND**

10 LAUSD demands a jury trial.

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12 DATED: February 27, 2017

MUSICK, PEELER & GARRETT LLP

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15 By: /s/

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Attorneys for Plaintiff Los Angeles Unified
School District

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