

**COPY**

1 JEFFER MANGELS BUTLER & MITCHELL LLP  
KENNETH A. EHRLICH (Bar No. 150570)  
2 KEhrlich@jmbm.com  
ELIZABETH A. CULLEY (Bar No. 258250)  
3 ECulley@jmbm.com  
1900 Avenue of the Stars, Seventh Floor  
4 Los Angeles, California 90067-4308  
Telephone: (310) 203-8080  
5 Facsimile: (310) 203-0567

6 Attorneys for Plaintiff CALMAT CO. dba VULCAN  
MATERIALS COMPANY, WESTERN DIVISION  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES  
10

11 CALMAT CO. dba VULCAN MATERIALS  
12 COMPANY, WESTERN DIVISION, a  
Delaware Corporation,

13 Plaintiff,

14 v.

15 SAN GABRIEL VALLEY GUN CLUB, a non-  
16 profit California Corporation; and DOES 1-  
17 1000, inclusive,

18 Defendants.  
19  
20  
21  
22

CASE NO. KC062582J

**PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANT'S MOTION  
TO STRIKE**

*[Concurrently filed with Request for Judicial  
Notice; Memorandum of Points and Authorities  
in Opposition to Demurrer; and Declaration of  
Paul Kroeger]*

Date: March 8, 2012

Time: 8:30 a.m.

Dept: J

Judge: Hon. Dan T. Oki

Action Filed: November 22, 2011

Trial Date: None

23 Plaintiff Calmat Co. dba Vulcan Materials Company, Western Division ("Vulcan" or  
24 "Plaintiff") submits the following Opposition to Defendant San Gabriel Valley Gun Club's  
25 ("Defendant") Motion to Strike Portions of Plaintiff's Complaint.  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant operated a gun range for rifles, pistols, and other firearms on property leased from Plaintiff Vulcan (the "Azusa Property," as more specifically defined in the Complaint) for almost sixty (60) years. After more than two (2) years notice of its remedial obligations, Defendant vacated the Azusa Property without cleaning up the hazardous substances it left behind as a result of its use. Plaintiff originally filed this action in federal court ("Federal Court Action") based upon several, later dismissed, federal claims. Subsequently, Plaintiff refiled its state law causes of action in this Court ("State Court Action"). Defendant's Motion to Strike ("Motion"), filed in connection with an equally meritless Demurrer, does nothing but grasp at straws.

Specifically, Defendant seeks to (1) strike Plaintiff's claim for treble damages despite the fact that Plaintiff has more than adequately plead "willfulness", (2) strike Plaintiff's claim for damages related to Defendant's off-site contamination despite the clearly applicable relation back doctrine, and (3) strike Plaintiff's claim for damages related to all iterations of the Lease prior to the 1992 Lease despite the fact that all of the Leases are inter-related and ultimately function as extensions. Accordingly, Plaintiff respectfully requests that this Court deny Defendant's Motion in its entirety.

**II. DEFENDANT'S MOTION TO STRIKE HAS NO MERIT**

**A. Motion to Strike Standard**

A motion to strike lies either (1) to strike any "irrelevant, false or improper matter inserted in any pleading" (Cal. Code Civ. Proc. § 436(a)); or (2) to strike any pleading or part thereof "not drawn or filed in conformity with the laws of this state, a court rule or order of court" (Cal. Code Civ. Proc. § 436(b)).<sup>1</sup> As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice. Cal.

---

<sup>1</sup> Although Defendant's Notice of Motion states that the grounds for striking the requested material falls under subdivision (b) of § 436, this section is neither applicable nor referred to in the substance of Defendant's Motion to Strike. Accordingly, Plaintiff will assume, for purposes of this opposition that Defendant moves only on subdivision (a).

1 Code Civ. Proc. § 437.

2 California courts disfavor motions to strike and, pleadings must be "liberally  
3 construed, with a view to substantial justice between the parties." Cal. Code Civ. Proc. § 452. On a  
4 motion to strike, the court considers the complaint's allegations in context and presumes them as  
5 true: "[j]udges read allegations of a pleading subject to a motion to strike as a whole, all parts in  
6 their context, and assume their truth." *Clauson v. Sup. Ct. (Pedus Services, Inc.)*, 67 Cal.App.4th  
7 1253, 1255 (1998). Under these standards, Defendant fails to demonstrate the merit in any part of  
8 its Motion to Strike.

9 **B. Plaintiff's Complaint Properly Asserts That Defendant Willfully Committed**  
10 **Waste and That Treble Damages Are Appropriate**

11 First, Defendant asks this Court to strike Plaintiff's treble damages claim under its  
12 waste cause of action, claiming that Plaintiff fails to allege facts supporting Defendant's "willful and  
13 malicious" waste on the Azusa Property. This is wrong. The facts alleged by Plaintiff and against  
14 defendant are more than sufficient to demonstrate willfulness for purposes of a motion to strike.

15 The Complaint in the State Court Action specifically alleges that, while in possession  
16 of the Azusa Property, "Defendant's activities [on the Azusa Property] extensively contaminated the  
17 soil and potentially the groundwater underlying the Azusa Property and, potentially, neighboring  
18 parcels with heavy metals and other hazardous substances (the "Contamination")." Compl. ¶ 8.  
19 Plaintiff also alleges that "During [Defendant's] operation and use of the Azusa Property, hazardous  
20 substances were used, dumped, released, deposited, and/or disposed of onto and into the soil and,  
21 potentially, the groundwater at, on, beneath the Azusa Property and, potentially, neighboring  
22 properties." Compl. ¶ 49.

23 Plaintiff further alleges that the 1988 and the 1992 Leases specifically (1) "precluded  
24 [Defendant] from committing waste or nuisance on the property and from interfering with the use  
25 and enjoyment of neighboring propert[ies]," (2) "obligated [Defendant] to comply with all  
26 applicable federal, state and local laws, including environmental laws," and (3) "required that  
27 [Defendant] maintain the property in good condition and repair and, upon termination of the lease,  
28 return the Final Leasehold Property in an orderly, safe and sanitary condition." Compl. ¶¶ 28, 31.

1 After the termination of the Lease, Plaintiff alerted Defendant to the fact that its  
2 activities had caused environmental contamination at the Azusa Property and asked Defendant to  
3 remediate the Azusa Property. Compl. ¶ 35. Defendant refused to do so. Compl. ¶¶ 63-47.

4 Specifically, after Plaintiff requested on multiple occasions that Defendant remediate  
5 the Azusa Property (Compl. ¶¶ 35, 40, 42, 43, 45), Defendant did not follow the proper  
6 requirements for environmental cleanup and "failed to remediate the contamination at the Azusa  
7 Property." Compl. ¶ 47. These facts, taken as true and liberally construed, support Plaintiff's  
8 willful allegations regarding Defendant's waste and, accordingly, an allegation of treble damages.  
9 Cal. Code Civ. Proc § 452 (pleadings must be "liberally construed, with a view to substantial justice  
10 between the parties); *Clauson*, 67 Cal.App.4th at 1255 (1998) ("[j]udges read allegations of a  
11 pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth.")

12 Contrary to Defendant's assertion, the facts that the parties entered into a series of  
13 written leases and the subject leases permitted Defendant to operate a shooting range do not mean  
14 that Defendant could commit waste or that Plaintiff consented to waste on the Azusa Property.  
15 Indeed, the Lease specifically prohibited the commission of waste. Compl. ¶¶ 31 (1992 Lease, ¶ 9).

16 C. **The Relation Back Doctrine Mandates That Plaintiff Has Properly Alleged It's**  
17 **Offsite Contamination Claims**

18 Next, Defendant claims that Plaintiff's allegations of off-site contamination are time-  
19 barred because Plaintiff did not include such allegations in the federal Complaint. Motion, p. 2.  
20 This is incorrect. In fact, Plaintiff included multiple allegations regarding off-site contamination in  
21 the federal Complaint. *See e.g.*, Request for Judicial Notice ("RJN"), Ex. 3 (the federal Complaint),  
22 ¶¶ 10, 42, 51, 81, 104, 105, 117. Although Plaintiff supplemented its allegations regarding off-site  
23 contamination in the current Complaint, no doubt exists that the relation back doctrine applies for  
24 statute of limitations purposes. Tellingly, Defendant cites no case law or other authority in support  
25 of its argument and fails to mention the relation back doctrine or Plaintiff's various references to  
26 Defendant's off-site contamination.

27 The relation back doctrine allows an amended complaint to relate back to the original  
28 complaint for statute of limitations purposes if the "amendment (1) rests on the same general set of

1 facts; (2) involves the same injury; and (3) refers to the same instrumentality." *Pointe SD*  
2 *Residential Comm. v. PCHS*, 195 Cal.App.4th 265, 276 (2011). "An amended complaint relates  
3 back to an earlier complaint if it is based on the same general set of facts, even if the plaintiff  
4 alleges a different legal theory or new cause of action." *Id.* The same remains true for a state cause  
5 of action originally filed in federal court, and subsequently litigated in state court. *Dudley v. Dept.*  
6 *of Trans.*, 90 Cal.App.4th 255 (2001). "The criterion of relation back is whether the original  
7 complaint gave the defendant enough notice of the nature and scope of the plaintiff's claim that he  
8 shouldn't have been surprised by the amplification of the allegations of the original complaint in the  
9 amended one." *Pointe SD*, 195 Cal.App.4th at 279.

10 Here, the State Court Action relies on the same "general set of facts" as alleged in the  
11 Federal Court Action. Specifically, the operative facts relate to Defendant's disposal of hazardous  
12 substances, on **and off** the Azusa Property, throughout the course of their operation of a gun range  
13 on the Azusa Property and subsequent refusal to remediate the Azusa Property. RJN, Ex. 3 (the  
14 federal Complaint, ¶¶ 8-10. The current Complaint merely amplifies the allegations regarding off-  
15 site contamination. These allegations function to add more detail for the Court as to how Defendant  
16 damaged Plaintiff. In *Pointe SD*, the appellate court ruled that the relation back doctrine applied  
17 where the difference between the original complaint and the amended complaint was that the  
18 plaintiffs added substantially more detail with respect to how defendants had damaged plaintiffs.  
19 *Pointe SD*, 195 Cal.App.4th at 282. Certainly, Defendant cannot argue the federal Complaint failed  
20 to put it on notice that its activities also caused off-site contamination. *Pointe SD*, 195 Cal.App.4th  
21 at 279. This is particularly true because the federal Complaint included **multiple** references to  
22 Defendant's off-site contamination. *See e.g.*, RJN, Ex. 3 (the federal Complaint), ¶¶ 10, 42, 51, 81,  
23 104, 105, 117.

24 The State Court Action also involves the same injury (monetary damages sustained  
25 as a result of the alleged permanent nuisance, permanent trespass, and negligence as well as a  
26 request to repair) and refers to the same instrumentality (alleged permanent nuisance, permanent  
27 trespass, and negligence). *Pointe SD*, 195 Cal.App.4th at 278 (applying the relation back doctrine  
28 where the amended complaint "involved the same injury (monetary damages sustained as a result of

1 alleged professional negligence), and referred to the same instrumentality (alleged professional  
2 negligence).") Accordingly, the relation back doctrine must apply to the State Court Action and  
3 Plaintiff's allegations regarding off-site contamination are not time-barred.

4 **D. Plaintiff's Damages Claim for Old Leases is Not Time-Barred Because All of the**  
5 **Leases at Issue are Related**

6 Finally, Defendant claims that Plaintiff is time-barred from seeking damages  
7 regarding all contract claims except for those based off of the 1992 Lease. Defendant's claim has no  
8 merit. Each of the eight Leases referenced in the Complaint (1947 Lease, 1950 Lease, 1958 Lease,  
9 1961 Lease, 1970 Lease, 1977 Lease, 1988 Lease, and 1992 Lease) are related to one another and  
10 function as extensions rather than independent leases for the purposes of calculating the appropriate  
11 statute of limitations. As specified in the Complaint, Defendant operated under each Lease,  
12 beginning with the 1947 Lease until the execution of the next Lease and ending with the 1992  
13 Lease. Compl. ¶¶ 9-30. No time gaps exist in or between any of the Leases, and Defendant  
14 remained in possession of the Azusa Property from the execution of the 1947 Lease to the  
15 termination of the 1992 Lease. Thus, each individual Lease really functions as an extension of the  
16 previous Lease. Accordingly, Plaintiff properly bases its Breach of Contract Claim off of all of the  
17 Leases as a collective whole.

18 Alternatively, should the Court determine that the 1992 Lease provides the only basis  
19 for Plaintiff's Breach of Contract Claim, it would nevertheless be improper to force Plaintiff to  
20 exclude paragraphs 9-29 which describe the lease history between Plaintiff and Defendant. These  
21 paragraphs provide background and are rightfully included in the Complaint under any  
22 circumstances.

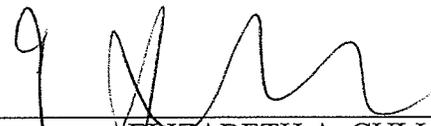
1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendant's  
3 Motion to Strike in its entirety.

4  
5  
6 DATED: February 24, 2012

JEFFER MANGELS BUTLER & MITCHELL LLP  
KENNETH A. EHRLICH  
ELIZABETH A. CULLEY

8  
9 By: \_\_\_\_\_



ELIZABETH A. CULLEY

10 Attorneys for Plaintiff CALMAT CO. DBA VULCAN  
11 MATERIALS COMPANY, WESTERN DIVISION

JMBM | Jeffer Mangels  
Butler & Mitchell LLP

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, CITY AND COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7<sup>th</sup> Floor, Los Angeles, California 90067.

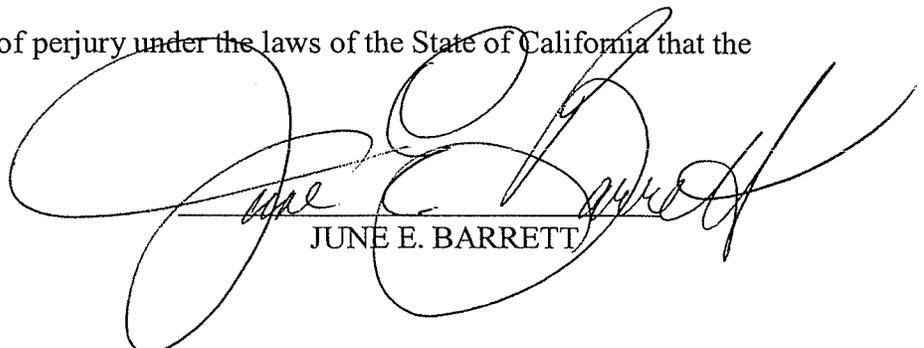
On February 24, 2012 I served the document(s) described as **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO STRIKE** in this action addressed as follows:

**C.D. Michel  
W. Lee Smith  
Thomas E. Maciejewski  
MICHEL & ASSOCIATES, P.C.  
180 East Ocean Boulevard, Suite 200  
Long Beach, CA 90802  
Telephone: 562.216.4444  
Facsimile: 562.216.4445  
Attorneys for Defendant San Gabriel Valley Gun Club**

- (BY MAIL) I am "readily familiar" with the business' practice for collection and processing correspondence for mailing. Under that practice true and correct copies of the aforementioned document(s) was deposited, in a sealed envelope with postage thereon fully prepaid, with the U.S. Postal Service on that same day to be mailed via first class mail at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY ELECTRONIC SERVICE) On \_\_\_\_\_, I transmitted the aforementioned document(s) directly, through an agent, or through a designated electronic filing service provider to the aforementioned electronic notification address(es). The transmission originated from my electronic notification address, which is \_\_\_\_\_, and was reported as complete and without error. Pursuant to Rule 2.260(f)(4), I will maintain a printed form of this document bearing my original signature and will make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 2.257(a).
- (BY OVERNIGHT DELIVERY) I placed the aforementioned document(s) in a sealed envelope with postage thereon fully prepaid and I caused said envelope to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on February 24, 2012 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
JUNE E. BARRETT