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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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

13 Plaintiff,

14 v.

15 SAN GABRIEL VALLEY GUN
16 CLUB, a non-profit California
corporation, and DOES 1 through 10,
17 inclusive,

18 Defendants.

19 SAN GABRIEL VALLEY GUN
20 CLUB, a non-profit California
corporation,

21 Counter-Claimant,

22 v.

23 CALMAT CO. dba VULCAN
MATERIALS COMPANY,
24 WESTERN DIVISION, a Delaware
corporation,

25 Counter-Defendants.

CASE NO: EDCV08-1198 SGL (OPx)

**DEFENDANT AND COUNTER-
CLAIMANT SAN GABRIEL
VALLEY GUN CLUB'S
COUNTERCLAIM FOR:**

1. CONTRIBUTION PURSUANT TO CERCLA [42 U.S.C. §§ 107(a), 113(f)];
2. DECLARATORY RELIEF UNDER FEDERAL LAW [42 U.S.C. § 113(g), 42 U.S.C. § 6972, AND 28 U.S.C. § 2201];
3. RECOVERY UNDER CALIFORNIA HAZARDOUS SUBSTANCES ACCOUNT ACT [HEALTH & SAFETY CODE Section 25300 ET SEQ.]
4. NEGLIGENCE PER SE;
5. NEGLIGENCE;
6. EQUITABLE INDEMNITY;
7. DECLARATORY RELIEF UNDER STATE LAW; AND
8. BREACH OF CONTRACT

[DEMAND FOR JURY TRIAL]

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1 Defendant and Counter-Claimant SAN GABRIEL VALLEY GUN CLUB
2 (“SGVGC”) alleges as follows.

3 1. SGVGC brings this Counterclaim against Plaintiff and Counter-
4 Defendant CALMAT CO. dba VULCAN MATERIALS COMPANY, WESTERN
5 DIVISION’S (“VULCAN”) pursuant to 42 U.S.C. §§ 9607(a) and 9613(f) of the
6 Comprehensive Environmental Response, Compensation, and Liability Act of 1980
7 (“CERCLA”), and various other federal and state statutory and common law
8 theories, for the recovery of costs incurred and to be incurred by SGVGC in
9 response to the release and threat of release of hazardous substances onto, beneath,
10 and from the real property commonly described as 4001 Fish Canyon Road, Azuza
11 (previously Duarte), California (the “Site”). The Site is a “Facility” as defined in
12 CERCLA § 101(9), 42 U.S.C. § 9601(9).

13 2. This matter generally arises from the use of the Site, which is owned by
14 VULCAN, the Plaintiffs in the primary action. The Site was utilized by SGVGC for
15 the location of a shooting range from 1947 through 2006; VULCAN’s predecessors
16 (and predecessors-in-interest) owned the Site prior to 1947, and VUCLAN
17 continues to own the Site (subject to portions condemned by the United States for
18 flood control purposes) to this day. This Counterclaim arises from VULCAN’s
19 responsibility as owner of the Site for contamination and pollution of structures, soil
20 and subsurface soils at and in the vicinity of the Site resulting from the improper
21 handling, generation, usage, storage, disposal and release of Hazardous Substances
22 and Hazardous Wastes at or near the Site.

23 3. SGVGC seeks declarations by this Court, pursuant to the
24 Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202, that VULCAN:

25 (A) is jointly and severally liable for the presence of hazardous
26 substances contamination at the Site under CERCLA;

27 (B) is jointly and severally liable for general damages and all costs
28 or expenses, including attorneys' fees, necessary to respond to the release and threat

1 of release of hazardous substances onto and from the Site under CERCLA; and
2 (C) must reimburse SGVGC for all costs or expenses, including
3 attorneys' fees, that they have incurred and will incur for the testing, investigation,
4 abatement, remediation and removal of Hazardous Substances contamination from
5 the structures, soil and subsurface soil at and in the vicinity of the Site.

6 4. The grounds for such declaratory relief are that VULCAN was and is
7 aware that certain operations at the Site, occurring prior to and during SGVGC's
8 possession and use of the Site, generated or otherwise incorporated Hazardous
9 Substances or Hazardous Wastes, or both, and that such materials were Disposed of
10 and released, at or near the Site, resulting in onsite contamination, which may have
11 led to offsite contamination as well.

12 5. Pursuant to the supplemental jurisdiction of this Court over state law
13 claims, SGVGC also seeks declaratory relief and damages under state law from
14 VULCAN. SGVGC is informed and believes, and based thereon allege, that
15 VULCAN allowed, caused, or exacerbated contamination, and will cause further
16 contamination and pollution of the structures, soil and subsurface soil at and in the
17 vicinity of the Site through the negligent, improper, or unreasonable transport,
18 generation, handling, usage, storage, Disposal, or release of Hazardous Substances
19 and Hazardous Wastes.

20 6. Under this Court's supplemental jurisdiction over state law claims,
21 SGVGC seeks declarations by this Court that VULCAN:

22 (A) is jointly and severally liable for the presence of hazardous
23 substances or hazardous wastes, near or under the Site under California law;

24 (B) is jointly and severally liable for the general damages, special
25 damages, and all costs or expenses, including attorneys' fees, necessary to respond
26 to the release and threat of release of hazardous substances onto and from the Site
27 under California law; and

28 ///

1 (C) must reimburse SGVGC for all costs or expenses, including
2 attorneys' fees, that they have incurred and will incur for the testing, investigation,
3 abatement, remediation and removal of Hazardous Substances and Hazardous
4 Wastes from the structures, soil, or subsurface soil at and in the vicinity of the Site
5 under California law.

6 **JURISDICTION AND VENUE**

7 7. This is a civil action arising under CERCLA, 42 U.S.C. § 9601 et seq.
8 This Court has subject matter jurisdiction pursuant to 42 U.S.C. §§ et seq. and 28
9 U.S.C. § 1331. The claims for relief alleged herein arise under the Constitution,
10 laws, or treaties of the United States, or are supplemental thereto.

11 8. SGVGC's claims for relief arise in this district. Venue is
12 therefore appropriate in this district under 42 U.S.C. §§ 9607(a), 9613(b), and 28
13 U.S.C. § 1391(b).

14 9. This Court has pendant jurisdiction over the state law claims for
15 recovery under the California Hazardous Substances Account Act ("HSAA"),
16 negligence per se, negligence, nuisance, equitable indemnity, and declaratory relief
17 under the doctrine of supplemental jurisdiction because those claims arise out the
18 same common nucleus of operative facts as the federal claims.

19 **PARTIES**

20 10. VULCAN is a Delaware corporation qualified to do business in
21 California.

22 11. VULCAN is, and at all times relevant hereto was, a "person" as that
23 term is defined in California Health and Safety Code section 25228; CERCLA
24 §101(21), 42 U.S.C. § 9601(21), CERCLA § 103(15), 42 § U.S.C. 6903(15), and
25 the Solid Waste Disposal Act ("SWDA") § 1004(15). VULCAN's ownership of
26 and operations on the Site has resulted in the contamination of or exacerbation of
27 contamination at the Site. Accordingly, VULCAN is an Owner and Operator as to
28 the Site, pursuant to CERCLA (42 U.S.C. § 9601(20)(A)).

1 12. SGVGC is a California not-for-profit corporation that operated in
2 California from 1947 until approximately November 6, 2006, at the Site; SGVGC's
3 principal place of "business" was the Site. SGVGC is still in existence but does not
4 currently have a location from which it conducts "business," i.e., SGVGC does not
5 currently operate a shooting range.

6 13. SGVGC is, and at all times relevant hereto was, each a
7 "person" as that term is defined in California Health and Safety Code section
8 25228; CERCLA § 101(21), 42 U.S.C. § 9601(21), CERCLA § 103(15), 42 §
9 U.S.C. 6903(15), and SWDA § 1004(15).

10 **DEFINITIONS**

11 14. Disposal or Dispose: As used in this Counterclaim, the term
12 "Disposal" or "Dispose" shall have the meaning set forth in SWDA § 1004 (3), 42
13 U.S.C. § 6903(3):

14 [t]he discharge, deposit, injection, dumping,
15 spilling, leaking or placing of any solid waste
16 or hazardous waste into or on any land or
17 water so that such waste or hazardous waste
18 or any constituent thereof may enter the
19 environment or be emitted into the air or
20 discharged into any waters, including ground
21 waters.

22 15. Environment: As used in this Counterclaim, the term "Environment"
23 shall have the meaning set forth in CERCLA § 101(8), 42 U.S.C. § 9601(8):

24 (A) the navigable waters, the waters of the
25 contiguous zone, and the ocean waters for
26 which the natural resources are under the
27 exclusive management authority of the
28 United States ... and (B) any other surface
water, ground water, drinking water supply,
land surface or subsurface strata, or ambient
air within the United States or under the
jurisdiction of the United States.

29 16. Facility: As used in this Counterclaim, the term "Facility" shall have
30 the meaning set forth in CERCLA § 101(9), 42 U.S.C. § 9601(9):

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1 (A) any building, structure, installation,
2 equipment, pipe or pipeline (including any
3 pipe into a sewer or publicly owned treatment
4 works) well, pit, pond, lagoon, impoundment,
5 ditch, landfill, storage container, motor
6 vehicle, rolling stock or aircraft or (B) any
7 Site or area where a hazardous substance has
8 been deposited, disposed of, or placed, or
9 otherwise come to be located.

6 17. Hazardous Substance: As used in this Counterclaim, the term
7 "Hazardous Substance" shall have the meaning set forth in CERCLA § 101(14)(B),
8 42 U.S.C. § 9601(14)(B) and CERCLA § 101(14)(c)), 42 U.S.C. § 9601(14)(c)), as
9 listed by the USEPA at 40 C.F.R. § 302.4 pursuant to its authority under CERCLA
10 § 102, 42 U.S.C. § 9602 and applicable state

11 18. Hazardous Waste: As used in this Counterclaim, the term "Hazardous
12 Waste" shall have the meaning set forth in SWDA § 1004(5), 42 U.S.C. § 6905(5):
13 [a]ny solid waste, or combination of solid
14 wastes, which because of its quantity,
15 concentration, or physical chemical or
16 infectious characteristics may –

16 (A) cause or significantly contribute to an
17 increase in mortality or any increase in
18 serious irreversible, or incapacitating
19 reversible illness; or

19 (B) pose a substantial present or potential
20 hazard to human health or the environment
21 when improperly treated, stored, transported,
22 or disposed of, or otherwise managed.

22 Hazardous Waste shall also include the definition of Hazardous Waste as defined by
23 applicable state law and "Solid Waste " as set forth under SWDA § 1004(27), 42
24 U.S.C. § 6903(27), and applicable state law.

25 19. National Contingency Plan: As used in this Counterclaim, the term
26 "National Contingency Plan" ("NCP") means the National Oil and Hazardous
27 Substance Pollution Contingency Plan as set forth in 40 C.F.R. § 300; the
28 Congressionally-mandated plan developed by the EPA that delineates the required

1 procedures for investigating, analyzing remedial alternatives, responding to, and
2 abating the adverse effects of Releases of Hazardous Substances into the
3 Environment.

4 20. Owner or Operator: as used in this Counterclaim, the terms "Owner"
5 and "Operator" shall have the meanings set forth in 42 U.S.C. § 9601(20)(A):

6 (i) in the case of a vessel, any person owning,
7 operating, or chartering by demise, such
8 vessel, (ii) in the case of an onshore facility
9 or an offshore facility, any person owning or
10 operating such facility, and (iii) in the case of
11 any facility, title or control of which was
12 conveyed due to bankruptcy, foreclosure, tax
delinquency, abandonment, or similar means
to a unit of State or local government, any
person who owned, operated, or otherwise
controlled activities at such facility
immediately beforehand.

13 21. Property: As used in this Counterclaim, the term "the Site" refers to
14 real property commonly described as 4001 Fish Canyon Road, Azuza (previously
15 Duarte), California.

16 22. Release: As used in this Counterclaim, the term "Release" shall have
17 the meaning set forth in CERCLA § 101(22), 42 U.S.C. § 9601(22):

18 [a]ny spill, leaking, pumping, pouring, emitting, emptying,
19 discharging, injecting, escaping, leaching, dumping or
20 disposing into the environment (including the
21 abandonment or discharging of barrels, containers, and
other closed receptacles containing any hazardous
substance or pollutant or contaminant).

22 23. Response Cost(s): As used in this Counterclaim, the term "Response
23 Costs" means the costs of "removal" and "remedial actions" of Hazardous
24 Substances and/or Hazardous Wastes, as those terms are defined in CERCLA §
25 101(23) and (24), 42 U.S.C. § 9601(23) and (24), all other costs to respond to
26 Releases of Hazardous Substances, as defined in CERCLA § 101(25), 42 U.S.C. §
27 9601(25). Such costs include, but are not limited to, costs incurred to monitor,
28 assess and evaluate the Release of Hazardous Substances and/or Hazardous Waste

1 as well as costs of removal and Disposal of the Hazardous Substance and/or
2 Hazardous Waste. Such costs also include those incurred in actions to permanently
3 remedy the Release of Hazardous Substances and/or Hazardous Waste, including,
4 but not limited to (1) the storage, confinement, cleanup of Hazardous Substances or
5 Hazardous Waste, (2) the recycling or reuse, diversion, destruction or segregation of
6 reactive wastes, (3) the dredging or excavation, repair or replacement of leaking
7 containers, and (4) any other such action necessary to protect public health, welfare
8 and the Environment. The term "Response Cost" also means any costs and
9 attorneys' fees incurred in enforcing either removal or remedial actions or
10 CERCLA's scheme for liability, compensation and cost-recovery, set forth in
11 CERCLA § 101(25), 42 U.S.C. § 9601(25).

12 GENERAL ALLEGATIONS

13 24. Beginning prior to 1947, VULCAN's predecessor-in-interest
14 (Consolidated Rock Products Co., changing its name to Conrock Co. in 1972)
15 owned the Site. When Conrock merged with Portland Cement in 1984 and became
16 CalMat Co, the Site became CalMat Co.'s property. Similarly, in 1999, VULCAN
17 acquired CalMat Co. Thus, by virtue of VULCAN being the successor-in-interest
18 to Consolidated Rock Products Co., Conrock Co., and CalMat, VULCAN is the
19 current owner of the Site, and has been the owner of the Site since 1947.

20 25. SGVGC operated a shooting range at the Site from approximately 1947
21 through November 6, 2006.

22 26. Through a series of leases SGVCG leased the Site (subject to certain
23 portions that, based on information and belief, were condemned at various times by
24 the United States for flood control purposes) from 1947 to approximately November
25 6, 2006.

26 27. Between some point prior to 1947 and November 6, 2006, SGVGC is
27 informed and believes, and on that basis alleges, that VULCAN's Operation of a
28 mining Facility at or near the Site resulted in the contamination of the Site, or the

1 exacerbation of existing contamination at the Site, via, among other things, the
2 disposal or placement of mining tailings, containing Hazardous Substances (e.g.,
3 heavy metals) or Hazardous Waste, or both, at the Site.

4 28. SGVGC is informed and believes, and on that basis alleges, that
5 VUCLAN, as Owner of the Site, violated hazardous waste laws, wrongfully
6 Disposed of, or allowed the wrongful Disposal of, Hazardous Substances and
7 Hazardous Wastes in the soil and sub-surface soil, and illegally stored, or allowed
8 the illegal storage of, Hazardous Substances and Hazardous Wastes on the Site
9 without the required permits.

10 29. SGVGC is informed and believed, and on that basis alleges, that
11 VULCAN's deposition of mining tailings on the Site effectively buried at least a
12 portion of whatever contaminants may have been present at the Site at the time such
13 deposition(s) occurred, and that such act(s) exacerbated the condition of the Site as
14 to contamination.

15 30. SGVGC is informed and believes, and on that basis alleges, that the Site,
16 including the soil and sub-surface soil, was contaminated with Hazardous
17 Substances or Hazardous Wastes, or both, which constitutes a Disposal, and caused
18 Release on and into the Environment, and VULCAN failed to warn SGVGC of the
19 contamination associated with the Hazardous Substances and Hazardous Wastes on
20 the Site prior to SGVGC's leasing of the Site.

21 31. SGVGC is informed and believes, and on that basis alleges, that any
22 alleged contamination of the soil and sub-surface soil at the Site was caused or
23 contributed to by VULCAN or unnamed third parties' maintenance and Operation
24 of VUCLAN's mining Facility located at or near the Site, and that the Operation of
25 such Facility caused the Disposal and Release of Hazardous Substances and
26 Hazardous Wastes on and into the Environment, or exacerbated existing
27 contamination at the Site, and that aforementioned Release and Disposal continue
28 and are ongoing.

1 U.S.C. § 9607(a), or asserts a contribution claim against SGVGC for such costs
2 incurred by another party pursuant to CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1)
3 or CERCLA § 107(a), 42 U.S.C. § 9607(a), SGVGC is entitled to one hundred
4 percent (100%) contribution, or contribution in such other percentage as this Court
5 deems appropriate, pursuant to CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1), or
6 CERCLA § 107(a), 42 U.S.C. § 9607(a).

7 **SECOND CLAIM FOR RELIEF**

8 **(Declaratory Relief Under Federal Law Pursuant To CERCLA § 113(g),**
9 **SWDA § 1002, and 28 U.S.C. § 2201)**

10 38. SGVGC refers to and realleges paragraphs 1 through 37 of this
11 Counterclaim and incorporate them herein by reference.

12 39. A dispute has arisen and an actual controversy exists between SGVGC
13 and VULCAN in that SGVGC claims that VULCAN is obligated to indemnify
14 SGVGC against and reimburse SGVGC for all necessary Response Costs and any
15 other costs and attorneys' fees past or future incurred by SGVGC in responding to
16 the Released Hazardous Substances or taking any other removal or remedial action
17 as a result of VULCAN's acts and conduct.

18 40. Substantial costs have been and will be incurred by SGVGC over time
19 and during the course of this action. Unless declaratory relief is granted, it may be
20 necessary for SGVGC to commence successive actions against various parties to
21 secure compensation for the costs incurred and damages sustained, thus requiring a
22 multiplicity of suits.

23 41. SGVGC is entitled to and hereby seek a declaratory judgment, pursuant
24 to CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), of VULCAN's liability to
25 SGVGC for all Response Costs incurred and/or to be incurred by SGVGC in
26 implementing the remedial action plan for responding to the Releases of Hazardous
27 Substances and Hazardous Wastes and adverse Environmental consequences at
28 issue.

1 42. SGVGC is entitled to and hereby seeks a declaratory judgement,
2 pursuant to SWDA § 1002, 42 U.S.C. § 6972, of VULCAN's liability to SGVGC
3 for all Response Costs incurred or to be incurred by SGVGC in removing and/or
4 remediating the Site due to the Release of Hazardous Substances and/or Hazardous
5 Waste, which pose an immediate and substantial endangerment to health and the
6 Environment.

7 43. SGVGC is entitled to, and hereby seeks, a judicial determination
8 pursuant to the Federal Declaratory Relief Act, 28 U.S.C. § 2201, of SGVGC's right
9 to reimbursement from and indemnification by VULCAN for all costs that SGVGC
10 may incur resulting from VULCAN's Release of Hazardous Substances or Wastes,
11 or exacerbation of any existing contamination, or any combination thereof, into the
12 Environment.

13 **THIRD CLAIM FOR RELIEF**

14 **(Recovery Under the California Hazardous Substances Account Act,**
15 **California Health and Safety Code Sections 25300 Et Seq.)**

16 44. SGVGC refers to and realleges paragraphs 1 through 43 of this
17 Counterclaim and incorporate them herein by reference.

18 45. HSAA provides for an action by parties who have incurred removal or
19 remediation costs under the HSAA. Pursuant to HSAA, such parties may seek
20 contribution or indemnity for those costs from any "person" that is a liable person
21 within the meaning of Cal. Health & Safety Code section 25323.5. VULCAN is a
22 "persons" that is liable within the meaning of Cal. Health & Safety Code section
23 25323.5.

24 46. SGVGC has incurred and will continue to incur necessary Response
25 Costs with respect to the contamination VULCAN caused, allowed to be caused, or
26 exacerbated on the Site.

27 47. SGVGC allege that the response actions undertaken by SGVGC have
28 been and will be consistent with the NCP and other applicable law.

1 48. SGVGC has satisfied any and all conditions precedent under California
2 law or otherwise in the undertaking of response actions and incurring of Response
3 Costs related to the Site and the recovery of such costs from VULCAN.

4 49. Pursuant to Cal. Health & Safety Code section 25363(e), VULCAN is
5 liable to SGVGC for all of the Response Costs incurred and to be incurred as a
6 result of the Release at and from the Site, in addition to interest thereon, at the
7 maximum rate allowed by law.

8 **FORTH CLAIM FOR RELIEF**

9 **(Negligence Per Se)**

10 50. SGVGC refers to and realleges paragraphs 1 through 49 of this
11 Counterclaim and incorporate them herein by reference.

12 51. SGVGC alleges that VULCAN negligently and wrongfully caused, or
13 allowed to be caused, or exacerbated the disposal or discharge of, Hazardous
14 Substances and Hazardous Waste Disposed and discharged in the soil at the Site in
15 a manner that threatens to create or has created a condition of pollution or nuisance.
16 The Release of Hazardous Substances, and the practice of allowing their continuing
17 migration by VULCAN is negligence per se and breaches VULCAN's legal duties
18 under state and federal law, including: 1) CERCLA, specifically including
19 CERCLA § 107(a)(1-4)(B), 42 U.S.C. § 9607(a)(1-4)(b); 2) RCRA § 3008(a), 42
20 U.S.C. § 6928(a); 3) Cal. Health and Safety Code, section 25363; and 4) Cal. Health
21 and Safety Code section 25249.5.

22 52. CERCLA § 107(a)(1-4)(B), 42 U.S.C. § 9607(a)(1-4)(b); RCRA §
23 3008(a), 42 U.S.C. § 6928(a); and Cal. Health and Safety Code sections 25363 &
24 25249.5 impose certain duties on responsible parties for Releases of Hazardous
25 Substances and Hazardous Wastes.

26 53. The Releases of Hazardous Substances and/or Hazardous Wastes
27 caused or contributed to by VULCAN has created a condition that injures or
28 endangers the health and interfered or interferes with the public's comfortable

1 enjoyment of life or property, or both. VULCAN's breach of its duty has caused
2 SGVGC to incur costs associated with the investigation, monitoring, removal, or
3 remediation, or any combination thereof, of the alleged contamination of the Site.

4 54. SGVGC did not Dispose or discharge Hazardous Substances or
5 Hazardous Wastes, or both, and did not cause a condition of pollution or nuisance
6 pre-existing at the Site. SGVGC is not responsible for any such condition of
7 pollution or nuisance and are therefore entitled to indemnification and contribution
8 from VULCAN for the costs and expenditures SGVGC has incurred or will incur in
9 connection with investigation, monitoring, removal and/or remediation of the
10 alleged contamination in the waters of the State of California and any administrative
11 and/or civil penalties imposed on SGVGC.

12 55. The resulting damages and harm alleged herein above is the specific
13 harm and damage from which SGVGC may seek contribution or indemnity pursuant
14 to CERCLA § 107(a)(1-4)(B), 42 U.S.C. § 9607(a)(1-4)(b); RCRA § 3008(a), 42
15 U.S.C. § 6928(a); California Health and Safety Code sections 25363 & 25249.5;
16 and California Water Code section 13304(c)).

17 56. SGVGC belong to the class of persons that the statutes (raised in this
18 Fourth Claim for Relief) are designed to afford protection and relief because
19 members of the class have beneficial rights in the Environment and to clean.

20 57. As a direct, proximate, and actual result of the wrongful acts and/or
21 omissions of VULCAN, SGVGC has suffered general, consequential, and
22 compensatory damages in amounts that are not yet fully ascertained. These
23 damages include, but are not limited to the following:

24 (A) Damages due to contamination of the soil and sub-surface soil at
25 the Site; and

26 (B) Any and all amounts SGVGC has incurred or will incur
27 for the investigation, assessment, monitoring, removal and remediation of the
28 contamination. These amounts are in excess of the minimum jurisdictional amounts

1 of this Court and will be established according to proof at the time of trial.

2 **FIFTH CLAIM FOR RELIEF**

3 **(Negligence)**

4 58. SGVGC refers to and realleges paragraphs 1 through 57 of this
5 Counterclaim and incorporate them herein by reference.

6 59. Throughout their possession and use of the Site, VULCAN has acted
7 negligently and carelessly in the manner in which they allowed the storage, usage,
8 handling, generation, treatment, transportation, and Disposal of Hazardous
9 Substances or Hazardous Waste, or both, at the Site. As a result of such conduct,
10 Hazardous Substances or Hazardous Wastes, or both, have been Released into the
11 soil and sub-surface soil at the Site.

12 60. Any and all contamination existing on the Site, in the soil, sub-surface
13 soil, or any combination thereof, has resulted at least in part from VULCAN's
14 wrongful acts and omissions. VULCAN's wrongful acts and omissions and the
15 damages suffered by SGVGC speak for themselves, i.e., Res Ipsa Loquitur.

16 61. Throughout VULCAN's leasing of the Site to SGVGC, VULCAN
17 owed SGVGC and the public at large a duty not to store, maintain, Release, Dispose
18 or discharge in a negligent manner any Hazardous Substances or Hazardous Wastes,
19 or both, that would cause injury or harm to SGVGC or the Site, and to further not
20 allow such negligence to occur on property owned by VULCAN. These duties
21 include but are not limited to the following:

22 (A) To exercise due diligence in the Operation of the Site, including,
23 but not limited to the use, operation and transportation of Hazardous Substances or
24 Hazardous Wastes, or both;

25 (B) To report the existence of any contamination at, or emanating
26 from the Site they Operated to the appropriate governmental agencies;

27 (C) To disclose and to warn of the existence of any Hazardous
28 Substances or Hazardous Wastes, or both, Releases or Disposal of any Hazardous

1 Substances or Hazardous Wastes, or both, or other contamination at or emanating
2 from the vicinity of the Site to SGVGC, persons or entities that are subject to
3 exposure; and

4 (D) To remove and remediate all Hazardous Substances, Hazardous
5 Wastes, or other contamination, or any combination thereof, at or emanating from
6 the Site in full compliance with all federal, state, and local laws and regulations, and
7 in compliance with their common law obligations, and in a manner that does not
8 aggravate, spread, or increase the contamination of or from the Site.

9 62. As a direct, proximate, and foreseeable result of the acts and omissions
10 of VULCAN, SGVGC has consequential and compensatory damages in amounts
11 that are not yet fully ascertained. These damages include, but are not limited to the
12 following:

13 (A) Damages due to contamination of the soil and sub-surface soil;
14 and

15 (B) Any and all amounts SGVGC has incurred or will incur
16 for the investigation, assessment, monitoring, removal and remediation of the
17 contamination. These amounts are in excess of the minimum jurisdictional amounts
18 of this Court and will be established according to proof at the time of trial.

19 **SIXTH CLAIM FOR RELIEF**

20 **(Equitable Indemnity)**

21 63. SGVGC refers to and realleges paragraphs 1 through 62 of this
22 Counterclaim and incorporate them herein by reference.

23 64. SGVGC has been, and will continue to be, compelled by the operation
24 of applicable federal and state laws to incur necessary Response Costs consistent
25 with the NCP and other abatement costs to investigate, study, and remove the
26 pollutants from the surface and sub-surface soils at and adjacent to the Site and to
27 take other response actions necessary to protect public health and the Environment,
28 and to enforce the liability schemes set forth in RCRA, CERCLA, and in state and

1 local law.

2 65. VULCAN is entirely liable for the contamination that resulted from the
3 Release of Hazardous Substances or Hazardous Wastes, or both, into the
4 Environment from the Site. The Release of Hazardous Substances or Hazardous
5 Wastes, or both, into the Environment, or the exacerbation of prior contamination,
6 that resulted from VULCAN's conduct was negligent, careless, wrongful, and
7 unlawful. SGVGC's costs for environmental assessment clean-up and remediation
8 are solely the result of VULCAN's negligent, careless, wrongful and unlawful
9 conduct in the course of their profit-making activities. VULCAN has benefitted
10 monetarily from their environmentally irresponsible methods of Operation, resulting
11 in the discharge and Disposal of toxic wastes in a manner that was at least
12 negligent.

13 66. VULCAN is therefore bound and obligated, jointly and severally, to
14 indemnify and hold harmless SGVGC from and against any and all Response Costs
15 and any other costs heretofore or hereafter incurred by SGVGC in responding to the
16 Release of Hazardous Substances and Hazardous Wastes by VULCAN.

17 **SEVENTH CLAIM FOR RELIEF**

18 **(Declaratory Relief Under State Law Pursuant to California Code of Civil**
19 **Procedure Section 1060)**

20 67. SGVGC refers to and realleges paragraphs 1 through 66 of this
21 Counterclaim and incorporate them herein by reference.

22 68. A dispute has arisen and an actual controversy exists between SGVGC
23 and VULCAN in that SGVGC claims that VULCAN, jointly and severally, is
24 obligated to indemnify SGVGC against, and reimburse SGVGC for, all Response
25 Costs and any other costs heretofore or hereafter incurred by SGVGC in removing
26 the Hazardous Substances and/or Hazardous Waste or taking any other removal or
27 remedial action as a result of VULCAN's conduct complained of herein, and
28 VULCAN denies such obligation.

1 on the Site, which in turn effectively buried spent ammunition present at the Site as
2 the result of the normal and proper operation of a firing range.

3 76. On or about May 16, 2007, a contractor retained by SGVGC (Fred
4 Wooldridge of Lead Reclamation Services), was performing remediation at the Site
5 (i.e., working to remove spent ammunition from the Site so the spent ammunition
6 could be recycled). At some point while Mr. Wooldridge was performing the task
7 he was hired to do, a VULCAN representative instructed him that he could not
8 continue his work. Accordingly, Mr. Woolridge left the property after having just
9 started his task. Thus, it appears VULCAN's activities at the Site precluded Mr.
10 Wooldrige from completing his task.

11 77. SGVGC made a non-refunded deposit to Mr. Wooldridge in the amount
12 of approximately \$15,000 to retain Mr. Wooldridge to perform remediation work at
13 the Site. Because VULCAN's actions resulted in Mr. Wooldridge's inability to
14 complete the work he was hired to do, SGVGC did not receive services from Mr.
15 Wooldridge commensurate with the approximately \$15,000 paid.

16 78. SGVGC has performed all conditions, covenants, and promises required
17 to be performed by it in accordance with the terms and conditions of the Agreement,
18 subject to the conditions VULCAN has prevented or impeded SGVGC from
19 complying with.

20 79. By placing mining tailings on the Site, and by preventing SGVGC's
21 remediation attempt on or about May 16, 2007 (both of which had a negative effect
22 on SGVGC's remediation and reclamation of spent ammunition at the Site),
23 VULCAN breached its contractual duty not to materially affect SGVGC's use of the
24 Site. The actions mentioned in the prior sentence also effectuated a breach the
25 covenant of good faith and fair dealing implied in every contract by law.

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1 WHEREFORE, SGVGC prays for judgment against VULCAN as follows:

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3 **AS TO THE FIRST CLAIM FOR RELIEF FOR**
4 **CONTRIBUTION UNDER CERCLA**

5 1. For total contribution from VULCAN for all Response Costs that have
6 been incurred by SGVGC as required by law in response to the Release and
7 threatened Release of Hazardous Substances or Hazardous Wastes, or both, and in
8 enforcement of CERCLA's statutory liability scheme, or in an amount this Court
9 deems appropriate; and

10 2. For costs of suit incurred here.

11 **AS TO THE SECOND CLAIM FOR RELIEF FOR**
12 **DECLARATORY RELIEF UNDER FEDERAL LAW**

13 1. For a declaration that VULCAN is obligated to pay to SGVGC all
14 future Response Costs and any other costs incurred by SGVGC hereafter in
15 response, removal or remediation efforts incurred pursuant to a state or federal
16 agency-issued, or court-approved, remedial action plan that is required by the NCP
17 in order to properly respond to the discharge of Hazardous Substances or Hazardous
18 Wastes, or both, by VULCAN;

19 2. For attorneys' fees; and

20 3. For costs of suit incurred herein.

21 **AS TO THE THIRD CLAIM FOR RELIEF**
22 **RECOVERY UNDER CALIFORNIA HAZARDOUS SUBSTANCES**

23 **ACCOUNT ACT**

24 1. For payment of all necessary fees, cost, expenses and Response Costs
25 for removal, remediation, abatement, and liability occurred by SGVGC as a result of
26 any Disposal, Release, and discharge of Hazardous Substances or Hazardous
27 Wastes, or both, at or from the Site.

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AS TO THE FORTH CLAIM FOR RELIEF
DAMAGES FOR NEGLIGENCE PER SE

- 1. For compensatory and consequential damages including but not limited to:
 - (A) Damage to the soil and sub-surface soil at Site; and
 - (B) Any and all amounts SGVGC has incurred or will incur for the investigation, assessment, monitoring, removal and remediation of the contamination. These amounts are in excess of the minimum jurisdictional amounts of this Court and will be established according to proof at the time of trial; and
- 2. For attorneys' fees as set forth by contract and as required and permitted by law.

AS TO THE FIFTH CLAIM FOR RELIEF
DAMAGES FOR NEGLIGENCE

- 1. For compensatory and consequential damages including but not limited to:
 - (A) Damage to the soil and sub-surface soil at Site;
 - (B) Any and all amounts SGVGC has incurred or will incur for the investigation, assessment, monitoring, removal and remediation of the contamination. These amounts are in excess of the minimum jurisdictional amounts of this Court and will be established according to proof at the time of trial; and
- 2. For attorneys' fees as set forth by contract and as required and permitted by law.

AS TO THE SIXTH CLAIM FOR RELIEF
EQUITABLE INDEMNITY

- 1. For a declaration that SGVGC is entitled to full indemnity from VULCAN for all Response Costs and any other costs incurred in removal or remediation efforts in response to the discharge of pollutants by VULCAN;
- 2. For attorneys' fees; and

1 3. Costs of suit incurred herein.

2 **AS TO THE SEVENTH CLAIM FOR RELIEF**

3 **DECLARATORY RELIEF UNDER STATE LAW**

4 1. For a declaration that VULCAN is obligated to pay to SGVGC all
5 future Response Costs and any other costs incurred by SGVGC hereafter in
6 response, removal or remediation efforts incurred pursuant to a state or federal
7 agency-issued and/or court-approved remedial action plan that is required by the
8 NCP in order to properly respond to the discharge of pollutants by VULCAN and as
9 otherwise provided by law;

10 2. For attorneys' fees; and

11 3. For costs of suit incurred herein.

12 **AS TO THE EIGHTH CLAIM FOR RELIEF**

13 **BREACH OF CONTRACT**

14 1. For general damages according to proof;

15 2. For special damages according to proof;

16 3. For attorneys' fees as set forth by contract and as required and
17 permitted by law; and

18 4. For costs of suit incurred herein.

19 **ON ALL CLAIMS FOR RELIEF**

20 1. For SGVGC' costs of suit herein;

21 2. For interest on any money judgment;

22 3. For SGVGC' reasonable attorneys' fees; and

23 4. For such other and further relief as the Court may deem just and
24 proper.

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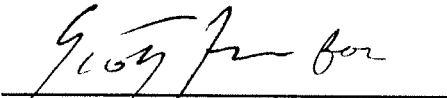
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DEMAND FOR JURY TRIAL

SGVGC demands a jury trial on all claims for relief that SGVGC alleges in its Counterclaim and that are so triable.

Dated: November 7, 2008¹

TRUTANICH • MICHEL, LLP



W. Lee Smith
Attorney for Defendant,
San Gabriel Valley Gun Club

¹ This Counterclaim was originally electronically filed and served on October 30, 2008. It is now being manually re-filed pursuant to General Order 80-02.

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Christina Sanchez, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On November 7, 2008, I served the foregoing document(s) described as

DEFENDANT AND COUNTER-CLAIMANT SAN GABRIEL VALLEY GUN CLUB'S COUNTERCLAIM FOR:

- 1. CONTRIBUTION PURSUANT TO CERCLA [42 U.S.C. §§ 107(a), 113(f)];
- 2. DECLARATORY RELIEF UNDER FEDERAL LAW [42 U.S.C. § 113(g), 42 U.S.C. § 6972, AND 28 U.S.C. § 2201];
- 3. RECOVERY UNDER CALIFORNIA HAZARDOUS SUBSTANCES ACCOUNT ACT [HEALTH & SAFETY CODE Section 25300 ET SEQ.]
- 4. NEGLIGENCE PER SE;
- 5. NEGLIGENCE;
- 6. EQUITABLE INDEMNITY;
- 7. DECLARATORY RELIEF UNDER STATE LAW; AND
- 8. BREACH OF CONTRACT

on the interested parties in this action by placing

the original
 a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

Kenneth Ehrlich
Michael Stiles
JEFFER MANGELS BUTLER & MARAMO LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, 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 is more than one day after date of deposit for mailing an affidavit.
Executed on November 7, 2008, at Long Beach, California.

X (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

Christina Sanchez
CHRISTINA SANCHEZ