

1 RUTAN & TUCKER, LLP
Jeffrey T. Melching (State Bar No. 180351)
2 jmelching@rutan.com
Noam Duzman (State Bar No. 213689)
3 nduzman@rutan.com
Lauren Palley (State Bar No. 330052)
4 lpalley@rutan.com
611 Anton Boulevard, Suite 1400
5 Costa Mesa, California 92626-1931
Telephone: 714-641-5100
6 Facsimile: 714-546-9035

7 Attorneys for Plaintiff
City of Irvine

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

Assigned for all purposes to: Judge Gregory H. Lewis

CITY OF IRVINE,

Plaintiff,

vs.

ALL AMERICAN ASPHALT
and DOES 1-10, inclusive,

Defendant.

Case No. 30-2020-01153015-CU-MC-CJC

**COMPLAINT FOR PUBLIC NUISANCE
ABATEMENT, INJUNCTION, EQUITABLE
RELIEF AND CIVIL PENALTIES**

1 Plaintiff City of Irvine (“City” or “Plaintiff”) alleges:

2 **INTRODUCTION**

3 1. This action is brought for the purpose of enjoining, abating, and preventing a public
4 nuisance occurring at 10671 Jeffrey Road, Irvine, California (the “Facility”) pursuant to the Irvine
5 Municipal Code (“IMC” or “Municipal Code”), Code of Civil Procedure section 731, and Civil
6 Code sections 3479 *et seq.*

7 2. Plaintiff is informed and believes and thereon alleges that the Defendant named
8 below is and at all times mentioned herein knowingly permitting the Facility to continue
9 operations in violation of the relevant State and local laws, regulations, and standards.

10 3. In particular, Plaintiff is informed and believes and based thereon alleges that
11 Defendant is operating an asphalt plant at the Facility, and providing construction materials to its
12 clients through both its operations at the Facility and the use of delivery of such materials, the
13 operations of which are in violation of the South Coast Air Quality Management District’s
14 (“SCAQMD”) air quality regulations and State and local public nuisance provisions.

15 4. Through this action, Plaintiff is seeking to remedy these injuries to the public
16 interest by enjoining Defendant’s violations of law through an order requiring Defendant to abate
17 the public nuisance.

18 **GENERAL ALLEGATIONS**

19 **THE PARTIES**

20 5. The City is, and at all relevant times herein was, a California municipal
21 corporation, organized and existing under the Constitution and laws of the State of California, and
22 located entirely within the County of Orange, California. The City Council of the City of Irvine is
23 responsible for regulating land use within its borders, and is charged with protecting the public
24 health and safety and promoting the general welfare and quality of life of its citizens.

25 6. Plaintiff is informed and believes and thereon alleges that Defendant All American
26 Asphalt and Doe Defendants 1 through 10 (collectively, “AAA” or “Defendant”) is a corporation
27 duly organized and existing under the laws of the State of California, with its principal place of
28 business in the City of Irvine located in Orange County, California. The City is informed and

1 13. SCAQMD issued AAA at least four (4) Notices of Violations and one (1) Notice to
2 Comply in 2019 alone. The violations cited in these Notices of Violations include unpermitted
3 discharge of air contaminants that resulted in a public nuisance, operational uses without the
4 benefit of the required permits, specific operations at the Facility that violated existing permits,
5 and AAA's failure to perform required tests. Specifically, SCAQMD cited AAA one (1) time in
6 September 2019 for a violation of Rule 2012 which relates to emissions of nitrogen oxides
7 (P66867), and three (3) times in 2019 for violations of Rule 402 relating to odor nuisance
8 (P69580, P69581, and P69725). SCAQMD also cited AAA three (3) times between November
9 2018 and May 2019 for violations of Rule 2012, 1155, and 2004, which, in addition to emissions
10 of nitrogen oxides, relate to particulate matter, and the requirements for operating under the
11 Regional Clean Air Incentives Market program (P66213, P66219, and P66863).

12 14. The City is in possession of similar violation notices issued by SCAQMD to AAA
13 which date back to the previous year and a number of similar notices that date back several
14 decades. In total, based on the records in the City's possession, the City is informed and believes
15 that SCAQMD has issued AAA in excess of ten (10) Notices of Violations in various forms.
16 SCAQMD records also reveal that as recently as October of 2019, Air Quality Inspectors
17 contacted AAA to discuss Rule 1151 regarding leak checks with respect to AAA's rubber plant, a
18 component of AAA's operation that the City is informed and believes to be one source of the odor
19 issues.

20 15. Based on the records provided to the City, in the year 2019 alone, SCAQMD
21 fielded at least 468 complaints relating to the Facility, the vast majority of which related to issues
22 relating to "asphalt, oil, tar-like odors & smoke." In addition to SCAQMD, the City, The Irvine
23 Company, and the County Board have also received numerous complaints regarding these air
24 quality and odor issues that can be traced back to the Facility and the trucks that ingress and egress
25 the Facility.

26 16. For the first few months in 2020, SCAQMD reports that it has received at least 99
27 complaints about the Facility, evidencing that the Facility remains the source of odor issues.
28 Likewise, the fact that the City continued to receive similar complaints during this period further

1 evidences that the odor and air quality issues stemming from the Facility persist.

2 OVERVIEW OF APPLICABLE LAW

3 **Public Nuisance Law**

4 17. Under Civil Code section 3479: “Anything which is injurious to the health, . . . is a
5 nuisance.” Civil Code section 3480 defines a public nuisance as one which affects a community,
6 neighborhood, or a considerable number of persons.

7 18. Cities also have the police power authority to declare by ordinance what activities
8 or uses constitute a nuisance. (Cal. Const. art. XI, § 7; Gov. Code § 38771.) The IMC declares
9 that, amongst other things, “it is a violation of [the] Code for any person to create, maintain, or
10 allow any public nuisance to exist on any premises within the City.” (IMC § 4-11-109.) A
11 violation of a local ordinance declaring an activity or use a public nuisance is a nuisance *per se*.
12 (*IT Corp v. County of Imperial* (1983) 35 Cal.3d 63.)

13 19. A civil action may be brought by the city attorney of any town or city in which
14 such nuisance exists to abate a public nuisance. (Code Civ. Proc. § 731; Gov. Code § 38773; Civ.
15 Code § 3491; IMC § 4-11-110.)

16 **Relevant Provisions of the Irvine Municipal Code**

17 20. IMC section 4-11-101 provides that the following conditions, *inter alia*, constitute
18 public nuisances subject to enforcement: (1) Any public nuisance known at common law or in
19 equity jurisprudence (IMC § 4-11-101(A)); (2) Whatever is dangerous to human life or is
20 detrimental to health as determined by the Health Officer (IMC § 4-11-101(C)); (3) Whatever
21 renders air, food, or drink unwholesome or detrimental to the health of human beings, as
22 determined by the Health Officer (IMC § 4-11-101(H)); (4) Any condition or use of premises or of
23 building exteriors that is detrimental to the property of others (IMC § 4-11-101(I)); (5) Neglect of
24 premises to cause detrimental effect upon nearby property or property values (IMC § 4-11-101(J));
25 (6) Maintaining a condition as to be detrimental to the public health, safety or general welfare or in
26 such a manner as to constitute a public nuisance as defined by Civil Code or established by
27 California decisional law (IMC § 4-11-101(W)); and (7) Violation of any local, State, or Federal
28 code, regulation, standard, or rule (IMC § 4-11-101(X)).

1 34. That the Court grant a preliminary injunction, permanent injunction, and order of
2 abatement in accordance with section 3491 of the Civil Code, enjoining and restraining Defendant
3 and its agents, heirs, successors, officers, employees, and anyone acting on its behalf from
4 operating the Facility in violation of the aforementioned rules and regulations.

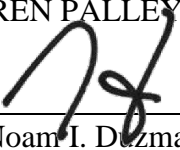
5 35. That Plaintiff recover all fines, attorneys' fees, costs, and other remedies as deemed
6 appropriate by the court.

7 36. That Plaintiff be granted such other and further relief as the Court deems just and
8 proper.

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Dated: July 27, 2020

RUTAN & TUCKER, LLP
JEFFREY T. MELCHING
NOAM DUZMAN
LAUREN PALLEY

By: 

Noam I. Duzman
Attorneys for Plaintiff
City of Irvine