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12 THE ATHLETICS INVESTMENT GROUP LLC

13 **SUPERIOR COURT OF CALIFORNIA**
14 **FOR THE COUNTY OF ALAMEDA**

15 THE ATHLETICS INVESTMENT GROUP LLC,

16
17 Petitioner,

18 v.

19 CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL, a public agency of
20 the State of California; MEREDITH WILLIAMS,
in her official capacity as the Director of the
21 California Department of Toxic Substances
Control,

22 Respondents.

23
24 SCHNITZER STEEL INDUSTRIES, INC.,

25 Real Party in Interest
26
27
28

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

(Code Civ. Proc. § 1085)

INTRODUCTION

1
2 1. Real Party in Interest Schnitzer Steel Industries, Inc. (“Schnitzer”) unlawfully
3 pollutes West Oakland, where it maintains a metal-shredding operation (“the Facility”) that
4 shreds automobiles, among other things. Under the law, Respondent California Department of
5 Toxic Substances Control (“DTSC”) is required to regulate Schnitzer in compliance with
6 California’s Hazardous Waste Law (“HWCL”). Indeed, DTSC has found that Schnitzer’s
7 hazardous waste management practices pose significant public health risks to the surrounding
8 community. Yet, for decades, DTSC has failed to apply the HWCL to Schnitzer’s Facility, a
9 failure which has severely harmed the health of the West Oakland community.

10 2. Beginning in the 1980s, DTSC has issued variances allowing a few businesses,
11 including Schnitzer, in a single industry, the metal-shredding industry, to operate without
12 complying with the HWCL, California’s primary statute protecting humans and the environment
13 from toxins and other hazardous wastes, even though the HWCL would otherwise apply. On
14 numerous occasions over the last 20 years, DTSC has found that hazardous waste generated by
15 metal-shredding operations, including Schnitzer’s Facility, poses significant public health risks
16 and it has come close to ordering metal shredders to comply with the HWCL, only to retreat at the
17 last minute due to intensive lobbying efforts from Schnitzer and other shredders.

18 3. The Legislature finally took matters into its own hands in 2014, after a series of
19 fires at metal shredders emitted toxic smoke that forced local residents to repeatedly seek refuge
20 indoors. That year, the Legislature enacted and the Governor signed a bill requiring DTSC to
21 apply the HWCL to Schnitzer and the few remaining facilities that shred automobiles and have an
22 over twenty-year-old variance from the HWCL, known as an “f letter.” A principal component of
23 the bill, SB 1249, was a specific legislative directive that DTSC rescind any operative “f letters.”
24 The Legislature was crystal clear that it intended to revoke once and for all the “f letters”: “It is
25 the intent of the Legislature that the conditional nonhazardous waste classifications, as
26 documented through the historical ‘f letters,’ be revoked and that metal shredding facilities be
27 thoroughly evaluated and regulated to ensure adequate protection of the human health and the
28 environment.” (*See* SB 1249 (2013–2014 Reg. Sess.) § 1(f).)

1 4. SB 1249 gave DTSC over three years to implement the bill’s requirements,
2 imposing a January 1, 2018 deadline. But the deadline that the Legislature set came and went,
3 and DTSC failed to revoke the variance that the Legislature had specifically commanded it to
4 revoke. While it did not rescind the “f letters,” DTSC did issue a “draft evaluation” that yet again
5 found that metal shredders’ hazardous waste management activities “pose substantial risks to
6 nearby communities.” Yet, to this day, metal shredders in California, including Schnitzer,
7 continue to operate out of compliance with the HWCL—because DTSC allows them to do so.
8 This result directly contravenes the plain wording and intent of SB 1249, and must be remedied
9 through this action.

10 5. West Oakland bears the brunt of DTSC’s inaction. Schnitzer’s Facility is within
11 the West Oakland environmental justice community, a low-income community of color with a
12 long history of suffering environmental pollution. Schnitzer is located closer to nearly every class
13 of sensitive receptor, including hospitals, schools, and daycare centers, than any other metal
14 shredder in California; indeed, the Facility is less than a mile away from schools, hospitals, senior
15 living centers, parks, and approximately 23,000 residents. The Facility adjoins the Oakland Inner
16 Harbor of the San Francisco Bay, which is impaired by multiple pollutants. In this sensitive
17 location, Schnitzer shreds more material and generates more hazardous waste than any other
18 metal shredding facility in the State. DTSC’s failure to obey the Legislature has let down the
19 West Oakland community, its residents, students, and the thousands of people who access its
20 services and businesses. As if to punctuate the ongoing harm caused by DTSC’s violation of the
21 law, just weeks ago, a large fire at Schnitzer’s Facility sent dark plumes of toxic smoke into the
22 skies above Oakland and Alameda.¹

23 6. Petitioner the Athletics Investment Group LLC (“the Athletics”) maintains its
24 business operations near the Facility and is in the process of seeking approvals to build a ballpark
25 for Major League Baseball games and other events in close proximity to the Facility. The
26 Athletics are proudly rooted in Oakland and look forward to deepening their involvement in West

27 _____
28 ¹ KTVU Fox 2, *Crews responding to blaze at Schnitzer Steel in Oakland* (June 17, 2020),
<https://www.ktvu.com/news/crews-responding-to-blaze-at-schnitzer-steel-in-oakland>.

1 Oakland for years to come. The Athletics bring this lawsuit to compel DTSC to perform its
2 duties under state law and to protect the West Oakland community by—as required by statute—
3 rescinding the outdated and unlawful “f letter” that Schnitzer is using to evade compliance with
4 the HWCL. A writ is urgently needed to reduce the ongoing “substantial risks to nearby
5 communities” and the environment that DTSC itself has repeatedly found the “f letters” to be
6 causing.

7 **JURISDICTION AND VENUE**

8 7. This Court has jurisdiction over this petition for a writ of mandate pursuant to
9 section 1085 of the California Code of Civil Procedure and Article VI, Section 10 of the
10 California Constitution.

11 8. Venue is proper in this Court pursuant to section 401 of the Code of Civil
12 Procedure because this is an action against the State or a department, officer, or other agency
13 thereof, which may be commenced in any county in which the California Attorney General has an
14 office. The California Attorney General has an office in this county. Venue is also proper under
15 section 395 because the relevant operations of Real Party in Interest Schnitzer Steel Industries,
16 Inc. occur in Alameda County.

17 **PARTIES**

18 9. Petitioner Athletics Investment Group LLC is a limited liability corporation
19 organized under the laws of the State of California and having a principal place of business at 55
20 Harrison Street, Oakland, California 94607. It owns the Major League Baseball franchise known
21 as the Oakland Athletics.

22 10. Respondent California Department of Toxic Substances Control is a California
23 state public agency, organized and existing under and pursuant to California Health & Safety
24 Code section 58000, *et seq.*

25 11. Respondent Dr. Meredith Williams is the Director of Respondent California
26 Department of Toxic Substances Control. She is sued in her official capacity only.

27
28

1 15. DTSC allows Schnitzer to operate without complying with the HWCL, which
2 numerous other industries and businesses comply with every day. Since the mid-1980s, DTSC
3 has exempted Schnitzer and five other existing metal shredders in California from having to
4 handle and dispose of aggregate and metal shredder residue as hazardous waste. DTSC granted
5 this exemption through a conditional nonhazardous waste classification called an “f letter” and
6 DTSC’s Official Policy and Procedure Number 88-6 (OPP 88-6).

7 16. In 2001, a DTSC legal memo recognized that the variance it has granted Schnitzer
8 is “outdated and legally incorrect.”³

9 17. In 2002, DTSC issued a report recommending rescission of the “f letters” and OPP
10 88-6.⁴ However, the agency did not act to rescind these policies and regulate metal shredders
11 pursuant to the HWCL.

12 18. In 2008, DTSC’s then-Director notified Schnitzer that rescission of the “f letters”
13 and OPP 88-6 was required to “ensure the safety of public health and the environment from
14 harmful exposures to toxins.”⁵ After intense industry lobbying, however, DTSC again did not
15 act.⁶

16 19. DTSC’s various failures to regulate the metal-shredding industry led to the
17 Legislature enacting SB 1249, also known as the Metal Shredding Facilities Law (“MSFL”),
18 Health & Safety Code §§ 25150.82-25150.86. The MSFL required DTSC to take one of two
19 actions before January 1, 2018: (1) develop and apply alternative management standards to the
20

21 ³ Senior Staff Counsel Nancy J. Long, Memorandum to DTSC Senior Environmental Scientist
22 Peter Wood (Oct. 9, 2001) p. 17, [https://assets.documentcloud.org/documents/2777064/2001-
23 Ruling.pdf](https://assets.documentcloud.org/documents/2777064/2001-Ruling.pdf). Exacerbating the problem, Schnitzer does not appear to have met the conditions of
24 the “f letter” and OPP 88-6.

25 ⁴ DTSC’s Draft Report on California’s Auto Shredder Waste Initiative.

26 ⁵ DTSC Director Maureen F. Gorsen, letter to Schnitzer Steel Industries, Inc. Executive Vice
27 President, Gary Schnitzer, Sept. 29, 2008, p. 1, [https://dtsc.ca.gov/wp-
28 content/uploads/sites/31/2018/05/Schnitzer-1.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/05/Schnitzer-1.pdf).

⁶ “[A]n intense lobbying campaign” by the metal shredding industry” followed DTSC’s move to
rescind Schnitzer and other metal shredders’ “f letters.” (C. Richard, *Is California’s Toxic Waste
Regulator Letting Oversight Slide?*, KQED News (April 24, 2017), [https://www.kqed.org/news/
11359491/is-californias-toxic-waste-regulator-letting-enforcement-slide](https://www.kqed.org/news/11359491/is-californias-toxic-waste-regulator-letting-enforcement-slide).)

1 metal shredding facilities or (2) apply the HWCL to the facilities and rescind the “f letters.”
2 (Health & Saf. Code § 25150.82(j)(1) [“The disposal of treated metal shredder waste shall be
3 regulated pursuant to this chapter and the regulations adopted pursuant to this chapter, *unless*
4 alternative management standards are adopted by the department pursuant to this section.”]; *id.* at
5 subd. (k)(1) [“The department shall complete . . . regulatory action before January 1, 2018.”]; *see*
6 *also* SB 1249 (2013–2014 Reg. Sess.) § 1(f) [“It is the intent of the Legislature that the
7 conditional nonhazardous waste classifications, as documented through the historical ‘f letters,’
8 be revoked and that metal shredding facilities be thoroughly evaluated and regulated to ensure
9 adequate protection of the human health and the environment.”].) Before proposing any
10 alternative management standards, the MSFL required DTSC to thoroughly evaluate shredding
11 facilities to determine the threats they pose to the surrounding communities. (Health & Saf. Code
12 § 25150.82(c)(1), (d).) Based on this evaluation, the MSFL authorized DTSC to adopt alternative
13 management standards by the January 1, 2018 deadline only if DTSC could demonstrate
14 compliance with one of the four conditions listed in Health & Safety Code sections
15 25150.82(e)(1) through 25150.82(e)(4). These conditions required DTSC to find that any
16 alternative standards would protect human health and the environment at least as well as any
17 requirements of the HWCL they would replace. (*Id.*)

18 20. In 2015, DTSC’s Deputy Director sent Schnitzer a letter explaining that the “onsite
19 activities and management of wastes and materials” at metal shredding facilities “raised serious
20 concerns” and were “alarming.”⁷ Again, however, DTSC did not act, notwithstanding the
21 legislative command of SB 1249.

22 21. Continuing its longstanding pattern of inaction despite recognizing substantial
23 risks to human health and the environment, DTSC failed to act by SB 1249’s January 1, 2018
24 deadline. DTSC neither adopted alternative management standards nor began to apply the
25 Hazardous Waste Control Law to metal shredders, as the MSFL required. Rather, DTSC issued a

26 _____
27 ⁷ DTSC Deputy Director Elise Rothschild, letter to Schnitzer Steel Industries Senior Vice
28 President and General Counsel and Secretary, Richard Josephson, April 13, 2015, p. 2.

1 “draft evaluation,” which yet again found that metal shredders’ hazardous waste management
2 activities “pose substantial risks to nearby communities.”⁸ In that document, DTSC also
3 concluded that, based on the agency’s findings, the MSFL did not authorize alternative
4 management standards because they would not be as protective of human health and the
5 environment as would be application of the HWCL’s requirements. Accordingly, having not
6 issued alternative management standards by January 1, 2018, and having further found that
7 alternative standards were insufficiently protective to be authorized, the MSFL left DTSC no
8 other option but to rescind its outdated policies and apply the HWCL to metal shredders. (Health
9 & Saf. Code § 25150.82(j)(1).) Yet, over two-and-a-half years later, DTSC still has not acted.
10 The “f letters” remain in place, and Schnitzer continues to flaunt the HWCL even though DTSC
11 has repeatedly found that Schnitzer’s practices place surroundings communities and the
12 environment at substantial risk.

13 22. As further described below, DTSC’s failure to follow SB 1249’s mandates harms
14 the West Oakland community, where “sensitive receptors” such as hospitals, schools, daycare
15 centers, and residences exist in close proximity to Schnitzer’s Facility.

16 **B. Schnitzer’s metal-shredding operations in West Oakland**

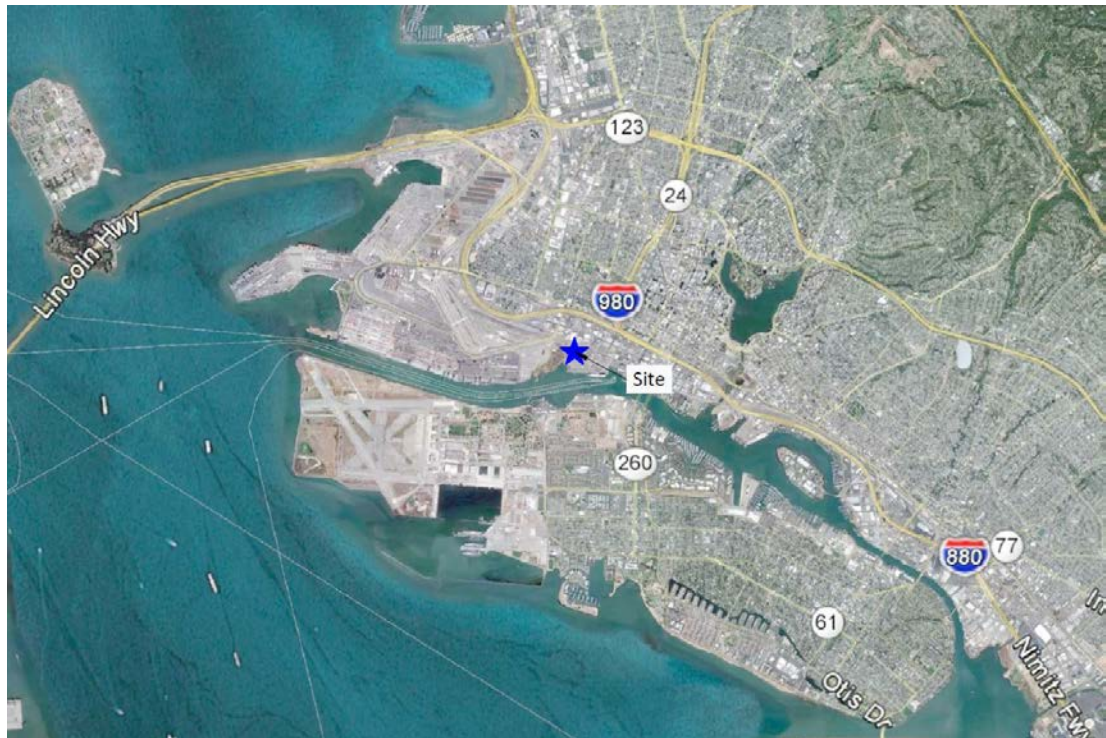
17 23. Schnitzer Steel is a large, profitable company that can afford to implement best
18 management practices necessary for protecting public health and the environment. Schnitzer is a
19 multinational company with operations that include both acquiring, processing, and selling scrap
20 metals, and manufacturing and selling finished steel products.⁹ Over the last three years,
21 Schnitzer has generated an average of over \$2 billion in total revenue and \$85 million in net
22 income, with cashflow from operations averaging approximately \$135 million.

23 24. Schnitzer’s Facility is a 26.5-acre complex bordering the Oakland Inner Harbor
24 and located at 1101 Embarcadero West in West Oakland, a largely African-American, low-
25 income community with a long history of suffering environmental pollution. The Facility is
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27 ⁸ 2018 DTSC Evaluation at p. 43.

28 ⁹ Schnitzer Steel Industries, Inc. operates the Facility under the name Schnitzer Steel Products Company.

1 located within a mile of approximately 40 “sensitive receptors,” including numerous schools,
2 daycare centers, hospitals, senior living centers, parks, and several residential neighborhoods.
3 Approximately 23,000 fulltime residents live within a mile of the Facility. Thousands more are
4 present during the day in this area, which includes parts of downtown Oakland, busy commercial
5 districts in Alameda, and all of Jack London Square, including its harbor and ferry terminals.



18 25. Schnitzer’s metal-shredding Facility in Oakland receives and stockpiles junked
19 products containing metal, such as vehicles, appliances, construction and demolition materials,
20 and manufacturing waste. Junk vehicles and other metal-containing “feedstock” regularly contain
21 hazardous materials, including gasoline, oil, antifreeze, lead-acid batteries, vehicle air bags,
22 compressed gas cylinders (e.g., propane tanks, compressed gas tanks, and fire extinguishers),
23 refrigerants in air conditioning or heat transfer systems, capacitors containing polychlorinated
24 biphenyls (PCBs), light ballasts, transformers, and items containing elemental mercury (e.g., tilt-
25 switches or thermostats). California law requires metal shredders to remove hazardous materials
26 from feedstock before feeding the scrap metal through the shredder, a process known as “de-
27 pollution.” (Cal. Pub. Res. Code § 42175.)

1 26. Schnitzer loads stockpiled feedstock into a 9,000-horsepower machine called the
2 “mega shredder,” which reduces the feedstock to small pieces. From there, magnets remove
3 ferrous metals from the shredded feedstock. The remaining material, called “metal shredder
4 aggregate”—which DTSC has determined “is a hazardous waste”—is dropped off a conveyor belt
5 and stored in large stockpiles. (DTSC, Proposed Concepts for Environmental Protection and
6 Authorization of Hazardous Waste Operations at Metal Shredding Facilities (March 2019) p. 3.)
7 This aggregate typically contains non-ferrous metal and a mixture of material frequently called
8 “metal shredder residue,” which consists of metals, plastics, rubber, glass, foam, fabrics, carpet,
9 wood, residual automobile fluids, road dirt, and/or other debris.

10 27. Schnitzer eventually moves stockpiled aggregate from there to the Facility’s “joint
11 product plant,” where non-ferrous metals such as aluminum, copper, lead, and zinc are removed.
12 The remaining metal shredder residue is stockpiled, eventually “treated” (sprayed with a sodium
13 or potassium silicate solution and an alkaline activator such as cement), and then again stockpiled
14 outside of the joint products plant.

15 28. Schnitzer loads the treated metal shredder residue into trucks and transports it
16 through Oakland and other areas to the Altamont Landfill & Resource Recovery Management
17 Facility and Republic Service’s Vasco Road landfill. “Typically, 20 loads per day are transported
18 offsite to the landfill.” (2018 DTSC Evaluation at p. 26.) These are Class III municipal
19 *nonhazardous* waste landfills—they cannot accept hazardous waste, but, as explained in further
20 detail below, they accept Schnitzer’s waste pursuant to the variance that DTSC has failed to
21 revoke. Once there, the treated metal shredder residue is again stockpiled and eventually
22 disposed of on top of normal garbage as “alternative daily cover.”

23 29. Schnitzer transports harvested metals from the facility by ship, rail, and truck.

24 C. **DTSC has found that Schnitzer’s metal shredder aggregate, metal shredder**
25 **residue, and other materials are hazardous wastes.**

26 30. Long ago, DTSC determined that contaminants in Schnitzer’s aggregate, untreated
27 metal shredder residue, and treated metal shredder residue exceed toxicity thresholds for
28

1 hazardous waste under California law. According to DTSC, Schnitzer processes more scrap
2 metal, produces more aggregate, and generates and disposes more metal shredder residue than
3 any other metal shredding facility in California. (*Id.* at p. 71.) In 2015, Schnitzer reported that it
4 continually stockpiles between 70,000 and 80,000 tons of sorted scrap metal outdoors. (*Id.* at p.
5 26.) In addition, typically there are 300 to 500 tons of aggregate and up to 350 tons of treated
6 metal shredder residue at the Facility at any given time. (*Id.*) Schnitzer also regularly transports
7 approximately 20 loads of treated metal shredder residue per day to landfills, with each load
8 weighing between 20 and 25 tons. (*Id.*)

9 31. DTSC has found that Schnitzer’s aggregate, treated metal shredder residue, and
10 untreated metal shredder residue exceed toxicity thresholds for several harmful contaminants, and
11 that they constitute hazardous waste under California law.

12 32. For instance, DTSC determined through extensive testing that the “aggregate”
13 resulting from shredding scrap metal exceeds hazardous waste thresholds under California law.
14 Aggregate has been found to contain levels of lead, copper, zinc, and, at least historically,
15 cadmium and PCBs, that exceed their respective “Soluble Threshold Limit Concentrations” and
16 “Total Threshold Limit Concentrations.”¹⁰ This means that the aggregate qualifies as hazardous
17 waste under California law due to the toxicity levels of these harmful contaminants.¹¹

18 33. DTSC has also determined that the metal shredder residue left after non-ferrous
19 metals have been separated from the aggregate contains lead, cadmium, copper, zinc, and PCBs at
20 levels above California’s hazardous waste thresholds. (*See, e.g.*, DTSC, Draft Report,
21 California’s Automobile Shredder Waste Initiative (Nov. 2002).)

22 34. Additionally, DTSC has determined that metal shredder residue still exceeds
23 toxicity thresholds for hazardous waste under California law even after treatment, including due

24 ¹⁰ Soluble Threshold Limit Concentrations and Total Threshold Limit Concentrations are
25 regulatory levels above which a waste is considered hazardous under California law because of its
26 toxicity. (DTSC, Glossary of Environmental Terms, <https://dtsc.ca.gov/glossary-of-environmental-terms/>.)

27 ¹¹ DTSC has recognized that “metal shredder aggregate is a hazardous waste.” (DTSC, Proposed
28 Concepts for Environmental Protection and Authorization of Hazardous Waste Operations at
Metal Shredding Facilities (March 2019), p. 3.)

1 to high concentrations of lead and zinc. Thus, according to DTSC, treated metal shredder residue
 2 “continues to exhibit hazardous characteristics after treatment, and is a hazardous waste.” (2018
 3 DTSC Evaluation, p. 4.)

4 35. The materials generated by Schnitzer are no exception. For example, as shown in
 5 the table below, in 2015, DTSC found that samples of aggregate, untreated metal shredder
 6 residue, and treated metal shredder residue collected from the Facility exceeded toxicity
 7 thresholds for hazardous waste under California law.

8 **TABLE 1: HAZARDOUS WASTE CHARACTERISTICS OF THE FACILITY’S METAL SHREDDER AGGREGATE AND RESIDUE (a)**

Contaminant	Total Contaminant Concentration (mg/kg) ^(b)				Soluble Contaminant Concentration (mg/L) ^(b)			
	Aggregate	Residue		TTL Limit	Aggregate	Residue		STLC Limit
	TTL Untreated	TTL Untreated	TTL Treated		STLC Untreated	STLC Untreated	STLC Treated	
Cadmium	<125 ^(c)	<125	<50	100	<2	<2	<1	1
Copper	7,980^(d) ~3 x limit	2,140 ^(e)	17,200 ~7 x limit	2,500	<2	<2	<1	25
Lead	1,570 ~1.5 x limit	1,970 ~2 x limit	910	1,000	<2	10.9^(e) ~2 x limit	22.5 ~4.5 x limit	5
Zinc	17,000 ~3.5 x limit	19,900 ~4 x limit	12,100 ~2.5 x limit	5,000	1,520 ~6 x limit	1,780 ~7 x limit	1,100 ~4.5 x limit	250
Polychlorinated Biphenyls ("PCBs")	20	15	10	50	- ^(f)	-	-	5

9 **Notes:**

- 10 (a) Based on samples obtained by DTSC at Schnitzer Steel Industries, Inc.’s Oakland facility in March 2015.
 11 (b) Under California law, hazardous wastes include wastes that exhibit characteristics of toxicity. A waste is defined to be a hazardous waste if it
 12 contains contaminants at total concentrations measured in milligrams per kilogram (“mg/kg”) that are greater than Total Threshold Limit
 13 Concentration (“TTL”) values or soluble contaminants in the extractant of the Waste Extraction Test at concentrations measured in milligrams
 14 per liter (“mg/L”) that are greater than Soluble Threshold Limit Concentration (“STLC”) values. (22 CCR § 66261.24(a)(2).)
 15 (c) Less than symbol (“<”) indicates contaminant was not measured above the analytical method reporting limit shown.
 16 (d) Red boldface type indicates that the average contaminant concentration is greater than California’s threshold value and residue displays the
 17 characteristics of hazardous waste.
 18 (e) This figure for the 2015 sample was low compared to average concentrations of samples reported by DTSC in 1989, 2002, and 2018. For
 19 metal shredding facilities in California, DTSC has found TTL average concentrations of copper for untreated shredder residue as high as
 20 14,431 mg/kg (DTSC, Public Workshop on Proposed Rulemaking, Conditional Exclusion for Chemically Treated Metal Shredder at slide 16
 21 (June 26, 2018)) and STLC average concentrations of lead for untreated shredder residue as high as 210 mg/L (DTSC, Treatment Levels for
 22 Auto Shredder Waste at App. C (June 1989)).
 23 (f) Dash (“-”) denotes no concentration or value available.

24 36. Exposures to these chemicals can cause a range of health problems. For instance,
 25 exposure to high doses of copper can cause liver and kidney damage and even death. (2018
 26 DTSC Evaluation, p. 72.) Exposure to high levels of lead can cause anemia, weakness, and
 27 kidney and brain damage, and can probably cause cancer. (*Id.*) Exposure to zinc can cause
 28 stomach cramps, anemia, and changes in cholesterol levels. (*Id.* at p. 73.)

1 **D. Schnitzer does not manage aggregate, metal shredder residue, or other**
2 **materials that exceed hazardous waste thresholds as hazardous wastes.**

3 37. While DTSC has found that aggregate, untreated metal shredder residue, and
4 treated metal shredder residue all exceed toxicity thresholds for hazardous waste under California
5 law, DTSC does not require Schnitzer to manage these materials as hazardous waste.

6 38. For example, Schnitzer stores metal shredder aggregate and metal shredder residue
7 outside and uncovered in large stockpiles that are often several stories high and, in some cases, on
8 bare ground. (2018 DTSC Evaluation, p. 50.) Stored in this manner, the materials are susceptible
9 to leaching into the soil and groundwater and being blown offsite. (*Id.*)



20 Uncontained pile of untreated aggregate at Schnitzer Facility. *Source:* Photo taken by Paul Baranich,
21 DTSC Senior Environmental Scientist, during March 17 and 18, 2015 investigation of the Facility.

22 39. As noted, Schnitzer also loads treated metal shredder residue, which DTSC has
23 found continues to exceed hazardous waste toxicity thresholds despite “treatment,” into trucks
24 and transports it to area landfills that are not equipped for hazardous waste disposal, where it is
25 used as “alternative daily cover.”
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1 **E. Schnitzer’s hazardous waste management practices raise substantial public**
2 **health and environmental risks.**

3 **1. Schnitzer’s hazardous waste practices have contaminated soil and**
4 **groundwater.**

5 40. Soil and groundwater tested throughout the Facility have been found to exceed San
6 Francisco Bay Regional Water Quality Control Board (SF RWQCB) Environmental Screening
7 Levels (ESLs) for several metals, including arsenic, copper, lead, and zinc.¹² (Terraphase
8 Engineering, Revised Groundwater Investigation and Monitoring Well Installation Report,
9 Schnitzer Steel Facility (July 14, 2017) Table 4; Terraphase Engineering, Draft Multi-Media
10 Investigation Report, Schnitzer Steel Facility (2016).)

11 41. For example, in 2015, DTSC collected soil samples from numerous locations at
12 the Facility, including on bare ground where scrap metal was stored or processed; piles of
13 material collected from the bare ground and from paved surfaces (swept material); and areas
14 adjacent to and under the joint products plant. The testing showed that these samples exceeded
15 regulatory thresholds for chromium, lead, nickel, zinc, and copper. (2018 DTSC Evaluation, pp.
16 61-62.) One of the samples exceeded the federal limit for lead, indicating that the waste was also
17 subject to federal regulation as hazardous waste. (*Id.* at p. 61.)

18 42. Schnitzer’s consultant also has reported that groundwater at the Facility’s
19 boundary with the Oakland Inner Harbor has exceeded several toxicity screening levels, including
20 the groundwater saltwater Ecotox ESLs for numerous metals (copper, lead, arsenic, and nickel)
21 and petroleum hydrocarbons (diesel), and the seafood ingestion human health ESL for thallium.¹³
22 (Terraphase Engineering, Revised Groundwater Investigation and Monitoring Well Installation
23 Report, Schnitzer Steel Facility (July 14, 2017) Table 4.)

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25 ¹² “ESLs” provide conservative screening levels for chemicals found at sites with contaminated
26 soil and groundwater. They are intended to help expedite the identification and evaluation of
27 potential environmental concerns at contaminated sites. For a site where chemical concentrations
28 are greater than the ESLs, the site may pose a chemical threat and require investigation or
evaluation to better asses the threat.

¹³ Ecotox thresholds are media-specific contaminant concentrations above which there is
sufficient concern regarding adverse ecological effects to warrant further site investigation.

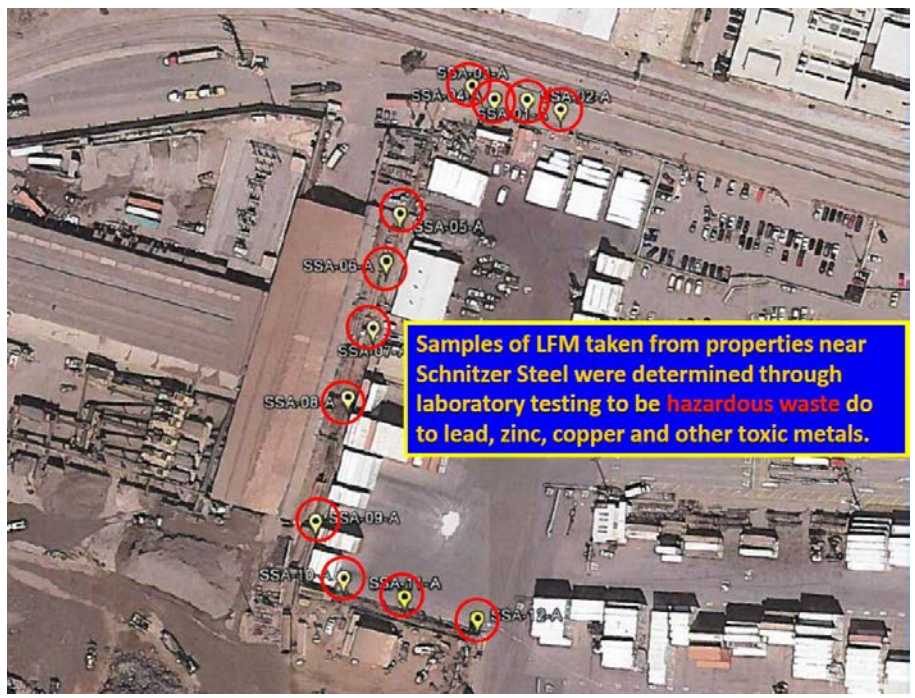
1 **2. Hazardous materials from the Facility, including light fibrous**
2 **material, migrate off-site onto neighboring properties.**

3 43. Schnitzer’s shredding, stockpiling, processing, and treatment of aggregate and
4 metal shredder residue also cause hazardous materials to be blown offsite. The storage of
5 aggregate and metal shredder residue in enormous stockpiles outdoors is particularly problematic.
6 As DTSC has explained, “[t]he greatest chemical hazards these waste constituents pose is when
7 they or the waste they are within are not contained or otherwise controlled, and they are allowed
8 to be released into the environment. This can result in contamination of the metal shredding
9 facilities and potentially the areas near the metal shredding facilities” (2018 DTSC
10 Evaluation, p. 78.)

11 44. Indeed, multiple agencies have found that Schnitzer’s operations have caused a
12 large amount of “light fibrous material” (LFM) to be deposited across a broad swath of West
13 Oakland.¹⁴ DTSC has determined that LFM frequently exceeds toxicity thresholds for hazardous
14 waste under California law due to high concentrations of lead, copper, and zinc. (Community
15 Meeting Regarding Schnitzer Steel, pp. 71-74; *see also* DTSC, Proposed Operational
16 Considerations for Hazardous Waste Operations at Metal Shredding Facilities (Feb. 2019) p. 3.)
17 Indeed, laboratory tests confirmed that samples of LFM taken from properties near Schnitzer met
18 the standard for hazardous waste classification due to the presence of lead, zinc, copper, and other
19 toxic metals. (Community Meeting Regarding Schnitzer Steel, p. 16.)
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26 ¹⁴ (Alameda County District Attorney’s Office, California Attorney General’s Office, Department
27 of Toxic Substances Control, Community Meeting concerning Schnitzer Steel Industries, Inc.
28 (Nov. 20, 2014) (“Community Meeting Regarding Schnitzer Steel”); SF RWQCB, Cleanup and
Abatement Order No. R2-2012-0083 (“2012 CAO”) p. 3; *see also* Terraphase Engineering Report
on Light Fibrous Material Removal for Schnitzer Steel (March 17, 2015).)

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Source: Community Meeting Regarding Schnitzer Steel, p. 16.



LFM that migrated offsite from the Facility onto a neighboring property. Source: Community Meeting Regarding Schnitzer Steel, p. 47.

45. The offsite migration of these materials can “result in contamination of the metal shredding facilities and potentially the areas near the metal shredding facilities, and may result in both the public and other biological organisms coming into contact with or being exposed to these

1 hazardous constituents, and *potentially suffering negative health impacts and harm.*” (2018
2 DTSC Evaluation, p. 78, emphasis added.)

3 **3. Schnitzer’s hazardous waste management practices have degraded the**
4 **San Francisco Bay and Oakland Inner Harbor.**

5 46. Schnitzer’s failure to comply with hazardous waste management practices—a
6 failure that DTSC allows by keeping the “f letters” in place—also harms the San Francisco Bay.
7 The SF RWQCB recently acknowledged that the “discharge of unacceptable contaminated
8 groundwater [from the Facility] to the San Francisco Bay has been occurring and documented
9 since 2013.” (SF RWQCB California Water Code § 13267 Order to Schnitzer Steel Industries,
10 Inc. (April 16, 2019), p. 2.) The agency concluded that these discharges are still “degrading the
11 water quality of San Francisco Bay and adversely affecting the Bay’s beneficial uses.” (*Id.*)

12 47. The SF RWQCB has also found evidence that airborne fugitive dust from the
13 Facility is deposited directly into the Oakland Inner Harbor:

- 14 • “Airborne dust [is] also discharged into estuary waters, as evidence[d] by
15 accumulation of dust on side railing and adjacent fence.” (SF RWQCB, Inspection
16 Report for Schnitzer Steel Products Co. (March 29, 2012) (“March 2012 Inspection
17 Report”), row NS-7.)
- 18 • “Excessive dust and sediment is discharged from area into estuary waters via wind and
19 stormwater . . .” (*Id.* at row NS-8.)
- 20 • “Once airborne, the dust travels across the site and into off-site areas.” (*Id.* at row NS-
21 11.)

22 48. Airborne LFM, fugitive dust, and other debris blowing from the Facility also
23 deposit contaminants in the Inner Harbor and Bay:

- 24 • “Dust and sediment is discharged in stormwater to the [B]ay via conduits under the
25 sidewalk which connect the site interior to the [B]ay.” (March 2012 Inspection
26 Report, row NS-6.)
- 27 • “Process sediment was . . . on the riprap and bridge foundation, on the sides of the
28 bridge railing, on lower bridge supports, and on pipes running the length of the bridge
29 . . . where it probably will be directly discharged.” (SF RWQCB, Cleanup and
30 Abatement Order No. R2-2013-1001 (Jan. 2, 2013), p. 3.)

31 49. Schnitzer’s spreading of contaminated fugitive dust, LFM, and other material into
32 the Oakland Inner Harbor is particularly concerning because the Oakland Inner Harbor is already

1 impaired by multiple pollutants frequently found in materials generated by metal shredding
2 facilities, including mercury, copper, lead, zinc, and PCBs.¹⁵

3 **4. Schnitzer’s hazardous waste management practices have led to**
4 **numerous fires.**

5 50. Schnitzer’s hazardous waste management practices have also led to numerous fires
6 raising public health concerns.

7 51. For example, on April 8, 2009, a fire broke out in a stockpile and the smoke
8 created air quality concerns for local neighborhoods. (D. Sanchez, ABC News, *Fire Breaks Out*
9 *at Steel Plant in Oakland* (Apr. 8, 2009), <http://abc7news.com/archive/6751956/>; *see also* 2018
10 DTSC Evaluation, p. 61.)

11 52. On September 29, 2011, a stockpile caught on fire, emitting a dark plume of
12 smoke that was visible for miles. (See A. Woodall, East Bay Times, *Oakland Firefighters*
13 *Extinguish Scrap Metal Blaze* (Sept. 29, 2011), [http://www.eastbaytimes.com/2011/09/29/](http://www.eastbaytimes.com/2011/09/29/oakland-firefighters-extinguish-scrap-metal-blaze/)
14 [oakland-firefighters-extinguish-scrap-metal-blaze/](http://www.eastbaytimes.com/2011/09/29/oakland-firefighters-extinguish-scrap-metal-blaze/); 2018 DTSC Evaluation, p. 61.)

15 53. On June 2, 2018, a fire occurred that was visible throughout the Bay Area,
16 emitting what a Bay Area Air Quality Management District (BAAQMD) official called a “toxic
17 brew” and prompting widespread concern about public health impacts and ongoing agency
18 investigations. (L. Anthony, ABC Channel 7 News, *West Oakland fire is recycling plant’s fifth in*
19 *eight years*, (June 4, 2018), [http://abc7news.com/oakland-fire-is-recycling-plants-fifth-in-eight-](http://abc7news.com/oakland-fire-is-recycling-plants-fifth-in-eight-years/3561037/)
20 [years/3561037/](http://abc7news.com/oakland-fire-is-recycling-plants-fifth-in-eight-years/3561037/); *see also* A. Hassan, NBC Bay Area, *Air Quality Concern in Oakland Following*
21 *Recycling Plant Fire* (June 2, 2018), [https://www.nbcbayarea.com/news/local/Recycling-Pile-on-](https://www.nbcbayarea.com/news/local/Recycling-Pile-on-Fire-in-Oakland-484396781.html)
22 [Fire-in-Oakland-484396781.html](https://www.nbcbayarea.com/news/local/Recycling-Pile-on-Fire-in-Oakland-484396781.html).)

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25 ¹⁵ (See State Water Resources Control Board, Region 2 Section 303(d) list from the “Final
26 California 2010 Integrated Report (Clean Water Act Section 303(d) List/305(b) Report) –
27 Statewide, [https://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/](https://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/00009.shtml#18094)
28 [00009.shtml#18094](https://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/00009.shtml#18094) (listing these pollutants for the Oakland Inner Harbor); UC Davis DELTA
Group Study, *Deposition of Coarse Toxic Particles in Wilmington, CA for DTSC: Summer 2008*
and Spring 2009 (May 6, 2011), p. 42 (listing these pollutants for metal shredders).)



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10 Plume of smoke at Schnitzer Steel Facility during June 2, 2018 fire. *Source: CBS News, Fire erupts at*
11 *scrap yard in Oakland, California, that's had trouble in the past* (June 2, 2018), <https://www.cbsnews.com/news/oakland-california-scrap-yard-fire-schnitzer-steel-blaze-today-live-updates-2018-06-02/>.

12 54. DTSC has observed that such “plumes of dense smoke [are] consistent with the
13 burning of plastics and other synthetic materials that comprise the majority of the metal shredder
14 wastes,” and explained that “[t]he chemical constituents in this smoke can harm those who come
15 in contact with it by, for example, exacerbating existing respiratory problems.” (2018 DTSC
16 Evaluation, p. 79.)

17 55. In fact, the Facility had at least four fires in 2018 alone. (*See Oakland Fire*
18 *Department Incident Report No. 2018-0008289* (Jan. 31, 2018); *Oakland Fire Department*
19 *Incident Report No. 2018-0018039* (March 10, 2018); *Oakland Fire Department Incident Report*
20 *No. 2018-0018338* (March 11, 2018); *Oakland Fire Department Incident Report No. 2018-*
21 *0039820* (June 2, 2018).)

22 56. Most recently, a fire broke out at the Facility on June 17, 2020. The blaze sent
23 large plumes of black smoke over West Oakland, Alameda, and the Bay. (*KTVU, Crews*
24 *responding to blaze at Schnitzer Steel in Oakland*, [https://www.ktvu.com/news/crews-](https://www.ktvu.com/news/crews-responding-to-blaze-at-schnitzer-steel-in-oakland)
25 [responding-to-blaze-at-schnitzer-steel-in-oakland](https://www.ktvu.com/news/crews-responding-to-blaze-at-schnitzer-steel-in-oakland) (June 17, 2020).)

1 **F. Schnitzer’s location raises additional public health risk**

2 57. In addition to the size of its operations, Schnitzer’s location differentiates the risk
3 it poses to nearby communities from other metal shredders. The Facility is located within a half
4 mile of sensitive receptors. Many more sensitive receptors are located within a mile of the
5 Facility, including numerous schools, daycare centers, hospitals, senior living centers, parks, and
6 residential neighborhoods. Approximately 23,000 fulltime residents live within a mile of the
7 Facility.

8 58. The Oakland Unified School District has found that five schools in West Oakland
9 near the Facility show the highest “environmental stress indicators” based on exposure to poor air
10 quality, among other risks. (Oakland Unified School District, *School Environment: Environmental*
11 *Stress Factors 2016*, https://dashboards.ousd.org/views/SRA1718_3SCHOOLS_ENVIRONM
12 [ENT_0/SchoolEnvironment?iframeSizedToWindow=true&:embed=y&:showAppBanner](https://dashboards.ousd.org/views/SRA1718_3SCHOOLS_ENVIRONM)
13 [=false&:display_count=no&:showVizHome=no.](https://dashboards.ousd.org/views/SRA1718_3SCHOOLS_ENVIRONM)) Prescott School, an elementary school near the
14 Facility, has the *highest score possible* (145 out of 145) for environmental stress factors. (*Id.*)
15 Martin Luther King Jr. Elementary School is located less than a mile from the Facility and is
16 shown to be “highly stressed,” with a score of 112. (*Id.*) In 2014, DTSC found that Schnitzer had
17 caused hazardous LFM to be deposited at Martin Luther King Jr. Elementary School. DTSC’s
18 testing showed that the LFM samples exceeded California hazardous waste toxicity threshold for
19 lead. (Community Meeting Regarding Schnitzer Steel, p. 74; DTSC, Harbison Summary of Test
20 Results (Oct. 29, 2014)).

21 59. The Facility is also surrounded by neighborhoods that have a high proportion of
22 socioeconomically disadvantaged populations. Approximately 27.1% percent of residents living
23 in ZIP code 94607, where the Facility sits and which encompasses most of West Oakland, live
24 below the federal poverty level. This is almost three times greater than Alameda County’s overall
25 10.6% poverty rate.¹⁶

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27 ¹⁶ U.S. Census Bureau, American Communities Survey, 2018 ACS 5-Year Estimates Subject
28 Tables, tbl. S1701, [https://data.census.gov/cedsci/table?q=United%20States&g=](https://data.census.gov/cedsci/table?q=United%20States&g=0100000US&tid=ACSDP1Y2018.DP05)
[0100000US&tid=ACSDP1Y2018.DP05](https://data.census.gov/cedsci/table?q=United%20States&g=0100000US&tid=ACSDP1Y2018.DP05).

1 60. The community surrounding the Facility is also already burdened by much higher
2 pollution levels than other areas in Oakland and California. (Alameda County Pub. Health Dept.,
3 East and West Oakland Health Data Existing Cumulative Health Impacts (Sept. 3, 2015)
4 (“ACPHD Report”), p. 7.) The Alameda County Public Health Department has found that “[l]ow
5 income neighborhoods and communities of color [in Alameda County] are unjustly burdened by a
6 disproportionate number of hazardous facilities that pollute the air, ground water and soil with
7 toxic contaminants.” (*Id.* at p. 7.) In fact, “the density of industrial chemical and fuel release
8 sites in very high poverty neighborhoods [in Alameda County] is 4 times higher than in affluent
9 neighborhoods.” (*Id.*) The California Environmental Protection Agency’s Communities
10 Environmental Health Screening Tool shows that the majority of the West Oakland community is
11 in the 81-90 percentile of census tracts in the state that are “disproportionately burdened by, and
12 vulnerable to, multiple sources of pollution.”¹⁷

13 61. As to health impacts, the rate of asthma emergency-department visits in West
14 Oakland neighborhoods surrounding the Facility is almost double Alameda County’s rate.
15 (ACPHD Report at p. 9.) Stroke and congestive heart failure-related hospitalization rates are also
16 much higher in West Oakland, as well as stroke and heart disease mortality rates. (*Id.* at p. 9;
17 Alameda County Pub. Health Dept., Community Assessment, Planning, and Evaluation Unit,
18 *Map Set 2016* (Nov. 2016), pp. 17, 21.) Death rates in West Oakland are 1.3 times the rate for
19 Oakland and 1.5 times the rate for Alameda County overall. (ACPHD Report, p. 13.) In fact, an
20 African American child born in West Oakland has a life expectancy that is 12.4 years shorter than
21 a white child living in the more affluent Oakland Hills. (*Id.* at p. 18.)

22 62. Schnitzer’s proximity to these sensitive receptors in the vulnerable West Oakland
23 community is particularly concerning because DTSC has “found that the hazardous waste
24 management activities” of metal shredding facilities, including Schnitzer’s Facility, “pose
25 *substantial risks* to nearby communities.” (2018 DTSC Evaluation, p. 112, emphasis added.)
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28 ¹⁷ See California Office of Environmental Health Hazard Assessment, CalEnviroScreen 3.0 (June 2018 update), <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

1 **G. DTSC’s regulation of metal shredders**

2 63. Enacted in 1972, the HWCL directs DTSC to regulate the handling, processing,
3 and disposal of hazardous and extremely hazardous waste to protect the public, livestock, and
4 wildlife from hazards to health and safety. Under the HWCL, facilities that treat, store, handle,
5 and/or dispose of hazardous waste are required to obtain a permit from DTSC. A hazardous
6 waste facility permit identifies specific requirements for a facility to ensure its safe operation.
7 The HWCL also implements federal tracking requirements for the handling and transportation of
8 hazardous waste from generation to ultimate disposition.

9 64. In 1984, DTSC first found that metal shredder residue was California hazardous
10 waste due to the presence of cadmium, copper, lead, PCBs, and zinc at levels above the state’s
11 regulatory thresholds, as well as PCBs at concentrations “that, on some occasions, exceeded
12 either the federal or the California regulatory thresholds, or both.”¹⁸ (SB 1249 § 1(b); *see also*
13 DTSC, Draft Report, California’s Automobile Shredder Waste Initiative (Nov. 2002) p. 11.)
14 These findings subjected metal shredder residue to statutory and regulatory requirements for
15 California hazardous waste management, including permitting, treatment, transportation, and
16 disposal requirements.

17 65. In accordance with these findings, on March 9, 1984, DTSC directed metal
18 shredding facilities to manage metal shredder residue in accordance with hazardous waste
19 regulations.

20 66. In 1986, however, DTSC examined whether treating metal shredder residue with
21 silicate and cement to reduce the solubility of metals could permit its classification as
22 nonhazardous waste. (2018 DTSC Evaluation, p. 14.)

23 67. Between 1986 and 1992, DTSC “issued conditional nonhazardous waste
24 classifications . . . to seven shredder facilities in California that treated their metal shredder waste
25 to stabilize the metals in the waste and reduce their solubility.”¹⁹ (SB 1249 § 1(c).) These

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27 ¹⁸ DTSC is also used to refer to the agency’s predecessor, the Toxic Substances Control Division
of the former State Department of Health Service.

28 ¹⁹ Six of the seven facilities currently remain.

1 conditional nonhazardous waste classifications are referred to as “f letters” because DTSC issued
2 them pursuant to subdivision (f) of Section 66260.200 of Title 22 of the California Code of
3 Regulations. Once a metal shredder received an “f letter,” DTSC no longer regulated the treated
4 waste as hazardous. The practical result was that metal shredder residue from these facilities
5 could then be treated, stored, transported, and disposed of as non-hazardous waste, even though
6 the shredder residue continues to exceed toxicity thresholds for hazardous waste after
7 “treatment.” For example, Schnitzer is not required to containerize the hazardous treated
8 shredder residue, and is allowed to dispose of the material in Class III municipal landfills—
9 landfills *not* approved to accept hazardous waste.

10 68. In addition to issuing “f letters,” in 1988, DTSC issued its related OPP 88-6 to
11 address the management of metal shredder waste. (*See* DHS Official Policy and Procedure No.
12 88-6 Auto Shredder Waste Policy and Procedure (1988).) Under OPP 88-6, if the chemical
13 stabilization were to take place while the metal shredder aggregate was still undergoing
14 separation processes, DTSC’s policy was to consider the treatment to be “in-line” and not require
15 a hazardous waste facility permit.²⁰

16 69. As the Legislature explained in passing SB 1249, “[i]n early 2001, DTSC began an
17 initiative to evaluate the adequacy of the metal shredder waste policy and compliance with the
18 conditional nonhazardous waste classifications, which included new sampling and analysis.” (SB
19 1249 § 1(d).)

20 70. A DTSC legal memorandum issued on October 9, 2001, concluded that DTSC’s
21 policies on metal shredder waste, including OPP 88-6 and the “f letters,” were “outdated and
22 legally incorrect.” (DTSC Senior Staff Counsel Nancy J. Long, memorandum to DTSC Senior
23 Environmental Scientist Peter Wood, Oct. 9, 2001, p. 17.) The memorandum explains:

24 DTSC’s policy on [metal shredder waste] is outdated and legally incorrect. The
25 crushed automobile or junked appliance arriving at the resource recovery facility
26 (shredder) is a “waste” as set forth in the relevant case law. This waste becomes a
hazardous waste as a result of the shredding process. The treatment of any

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28 ²⁰ “In-line” treatment means “any treatment to a material in an industrial process before that material is exhausted or otherwise rendered a waste.” (*See* OPP 88-6 (Nov. 21, 1988), p. 3.)

1 hazardous waste, including [metal shredder waste], requires a permit or other grant
2 of authorization.

3 (*Id.*) Yet DTSC left its policies in place.

4 71. In 2002, DTSC released a draft report summarizing its on-site surveys and review
5 of metal shredder facilities operating in California, including DTSC's sampling of treated and
6 untreated metal shredder residue. The report demonstrated that both treated and untreated metal
7 shredder residue exceeded state regulatory thresholds for lead, zinc, and cadmium. (*See* DTSC,
8 Draft Report, California's Automobile Shredder Waste Initiative (Nov. 2002) pp. 7, 17–19.)
9 Some of the samples also exceeded the federal regulatory thresholds for soluble lead and
10 cadmium. (*Id.* at pp. 7, 10, 21.) Based on the results of the sampling investigation, DTSC
11 recommended:

12 a) Rescinding OPP 88-6;

13 b) Requiring “facilities that wish to continue treating their shredder waste on-site to obtain
14 the appropriate authorization within a specified period of time;” and

15 c) Rescinding “all previously issued nonhazardous waste classifications for treated
16 shredder waste,” *i.e.*, the “f letters.”

17 (*Id.* at pp. 8, 25.) However, DTSC shelved the report and did not act on its recommendations.

18 72. In 2008, again based on the results of sampling, the then-Director of DTSC
19 notified Schnitzer and other metal shredding facilities that DTSC intended to rescind the “f
20 letters” and OPP 88-6:

21 Despite many discussions with industry regarding alternative management and
22 treatment of the waste, it is clear that the conditions contained in the DTSC's
23 previous authorization letters and in DTSC's Policy and Procedure 88-6 have not
24 been sufficient to reduce the waste to a non-hazardous solid waste. Therefore, those
25 letters and policy need to be repealed, and the wastes need to be managed as
26 hazardous waste to ensure the safety of public health and the environment from
27 harmful exposures of toxins.

28 (DTSC Director Maureen F. Gorsen, letter to Schnitzer Steel Industries, Inc. Executive
Vice President, Gary Schnitzer, Sept. 29, 2008, p. 1, [https://dtsc.ca.gov/wp-
content/uploads/sites/31/2018/05/Schnitzer-1.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/05/Schnitzer-1.pdf).)

1 73. However, after industry lobbying, DTSC again did not rescind the “f letters” or
2 OPP 88-6.

3 74. DTSC was not the only agency to raise concern about metal shredders’ hazardous
4 waste management practices. In 2009, the California Integrated Waste Management Board (now
5 CalRecycle) issued the “Alternative Daily Cover White Paper.” The paper explained that:

6 Staff with [DTSC] have indicated that [metal shredder waste] *treatment is not*
7 *effective, the material should be considered hazardous, and [metal shredder waste]*
8 *should be required to be disposed in Class I landfills.*²¹ DTSC staff also indicate
9 that [metal shredder waste] feedstocks are variable and have changed in the last 20
10 years (more electronic components, white goods, chlorinated plastics)
11 Automobile Recycling Fluff in Ohio is considered unsuitable for [alternative daily
12 cover] due to concerns regarding fire hazards, wind-driven scattering dispersal
13 outside the working face by landfill equipment, and the potential for contamination
14 by asbestos, PCBs, and mercury (from switches).

15 (California Integrated Waste Management Board, Alternative Daily Cover White Paper
16 (Oct. 2009) p. 22, emphasis added.)

17 75. Despite conceding that the treatment of metal shredder residue was ineffective,
18 and recognizing that other states have concluded that treated metal shredder residue was
19 unsuitable for use as alternative daily cover, DTSC again took no action to rescind the “f letters.”

20 **H. The Legislature enacts Senate Bill 1249, mandating that DTSC rescind the “f**
21 **letters.”**

22 76. Frustrated with DTSC’s pattern of inaction and concerned with the dangers posed
23 by the metal shredding industry, in 2014, the California Legislature stepped in by passing SB
24 1249. The law required DTSC to act by January 1, 2018, by either developing alternative
25 management standards or applying the HWCL to metal shredders.

26 77. The Senate Committee on Environmental Quality explained that legislation was
27 required because “DTSC has failed to revoke the nonhazardous waste classifications for treated
28 shredder waste granted decades ago to the metal shredding industry despite a 2001 legal opinion
29 by DTSC attorneys, which called the exemption ‘outdated and legally incorrect,’ and warnings
30 from the department’s scientists that this waste could become hazardous during the shredding

31 ²¹ A Class I landfill is a landfill that is authorized to accept hazardous waste. In contrast, a Class
32 II landfill is not authorized to accept hazardous waste, and a Class III landfill is a municipal
33 landfill that is not authorized to accept hazardous waste.

1 process.” (Sen. Comm. on Environmental Quality, April 29, 2014 Analysis of SB 1249 (2013–
2 2014 Reg. Sess.) pp. 3-4.) The Bill’s author, Senator Jerry Hill, explained that SB 1249 was also
3 prompted by several fires that had occurred at metal shredding facilities, including at least one
4 within his district. (*Id.* at p. 3.) He explained that the Counties of San Mateo, Alameda, and
5 Santa Clara issued health advisories because of the smoke from these fires, and school districts
6 were forced to keep students inside because of poor air quality. (*Id.*) He concluded that “these
7 incidents provide clear evidence that this industry is not currently adequately regulated.” (*Id.*)

8 78. SB 1249 became effective on January 1, 2015, enacting the MSFL, Health &
9 Safety Code sections 25150.82 through 25150.86.

10 79. A central provision of the MSFL requires that “[t]he disposal of treated metal
11 shredder waste shall be regulated pursuant to this chapter [the HWCL] and the regulations
12 adopted pursuant to this chapter, unless alternative management standards are adopted by the
13 department pursuant to this section.” (Health & Saf. Code § 25150.82(j)(1).) The MSFL makes
14 clear that DTSC’s authority to adopt alternative management “shall remain in effect only until
15 January 1, 2018,” absent subsequent legislative action amending that deadline. (*Id.* at
16 § 25150.82(i).) Accordingly, absent regulatory action by that deadline, “[t]he disposal of treated
17 metal shredder waste shall be regulated pursuant to [the HWCL],” requiring DTSC to rescind the
18 “f letters.” (*Id.* § 25150.82(j)(1); *see also* SB 1249 § 1(f) [“It is the intent of the Legislature that
19 the conditional nonhazardous waste classifications, as documented through the historical ‘f
20 letters,’ be revoked and that metal shredding facilities be thoroughly evaluated and regulated to
21 ensure adequate protection of the human health and the environment”].)

22 80. The MSFL also imposes procedural and substantive requirements on DTSC’s
23 ability to adopt alternative management standards. Specifically, to adopt such standards instead
24 of applying the HWCL, DTSC must first evaluate the hazardous waste management activities at
25 metal shredding facilities to determine the hazards and risks that are posed to the surrounding
26 communities. (*Id.* § 25150.82(c)(1), (d).) Based on this evaluation, the MSFL authorizes DTSC
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1 to adopt alternative management standards only if it can satisfy one of the four demonstrations
2 required by Health & Safety Code sections 25150.82(e)(1) through 25150.82(e)(4).²²

3 81. DTSC neither adopted alternative management standards nor began to apply the
4 HWCL to metal shredders by the January 1, 2018 deadline. Rather, DTSC issued a “draft
5 evaluation” of metal shredders, which yet again found that their hazardous waste management
6 activities “pose substantial risks to nearby communities.” (2018 DTSC Evaluation, p. 112.) In
7 that document, DTSC also concluded that, based on the agency’s findings, the MSFL did not
8 authorize alternative management standards because it could not satisfy any of the four
9 demonstrations required by Health & Safety Code sections 25150.82(e)(1) through
10 25150.82(e)(4). (*Id.* at pp. 98-100.) DTSC found that none of these requirements were met
11 because “the risks and hazards posed by the hazardous waste management activities conducted at
12 metal shredding facilities require the protections that can only be provided by the existing
13 hazardous waste management requirements.” (*Id.* at p. 113.) Specifically, alternative
14 management standards would not be as protective of human health and the environment as
15 detailed, facility-specific requirements imposed through the HWCL’s permitting process, which
16 “consider[s] the variability between facilities’ operations, treatment equipment, pollution control
17 equipment and practices, and environmental setting and proximity to nearby sensitive land uses,
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21 ²² Pursuant to Health & Safety Code sections 25150.82(e), DTSC evaluated whether (1) the
22 requirements of existing hazardous waste control law, including the requirement to obtain a
23 permit to conduct hazardous waste treatment and storage activities, are significant or important in
24 preventing or mitigating potential hazards to human health or safety and the environment, or in
25 ensuring compliance with other hazardous waste requirements; (2) the requirements imposed and
26 enforced by other public agencies are equivalent to, or as effective as, the existing hazardous
27 waste control law; (3) conditions or limitations could be developed that would provide protection
28 of human health and safety and the environment equivalent to the requirement, or requirements,
of existing hazardous waste control law; and (4) conditions or limitations could be imposed that
would accomplish the same regulatory purpose as the requirement, or requirements, of existing
hazardous waste control law, but at less cost or with greater administrative efficiency, and while
preventing potential risks to human health or safety or to the environment.

1 such as residences, schools, day care centers, and hospitals.”²³ (*Id.* at p. 94.) Despite these
2 findings, DTSC did not act to rescind Schnitzer’s “f letter” or to apply the HWCL to the Facility.

3 82. Instead, DTSC explained its view that it would be more appropriate and effective
4 to establish a conditional exclusion for metal shredder residue and regulate other hazardous waste
5 management practices by metal shredders pursuant to regulations that DTSC might develop in the
6 future. This position is fundamentally at odds with SB 1249’s clear command that DTSC either
7 regulate metal shredders under the HWCL or pursuant to alternative regulations promulgated
8 consistent with SB 1249’s requirements. (Health & Safety Code § 25150.82(j)(1).) DTSC has
9 stayed its unlawful course; it has since embarked on a rulemaking process to create new
10 hazardous waste management standards for metal shredders. But even if this alternative path
11 qualified as compliance with SB 1249—which it does not—DTSC still has failed, over two and a
12 half years later, to act. In clear violation of the law, DTSC is still not regulating Schnitzer
13 pursuant to the HWCL. Rather, Schnitzer’s “f letter” remains in place, as do the onsite hazardous
14 waste management practices they purport to authorize, which DTSC has repeatedly found place
15 surroundings communities and the environment at “substantial risk.”

16 **I. DTSC has not complied with the Metal Shredding Facilities Law**

17 83. As summarized above, the MSFL authorized DTSC to adopt alternative
18 management standards by January 1, 2018. (Health & Saf. Code § 25150.82(l).) Absent
19 adoption of alternative management standards by that deadline, the MSFL imposed a non-
20 discretionary duty on DTSC to regulate metal shredders pursuant to the HWCL and rescind the “f
21 letters.” (Health & Saf. Code § 25150.82(j)(1); *id.* at subd. (k).) Because DTSC did not adopt
22 alternative management standards by the January 1, 2018 deadline, it must rescind Schnitzer
23 Steel’s “f letter” and regulate Schnitzer pursuant to the HWCL.

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26 ²³ Such requirements imposed through hazardous waste permits include but are not limited to the
27 use of containment buildings, pavement, and liners, as well as other preparedness and prevention
28 measures “to minimize the possibility of a fire, explosion, or any unplanned sudden or non-
sudden release of metal shredder waste or metal shredder waste constituents to air, soil, or surface
water.” (2018 DTSC Evaluation, pp. 89-91, 94-95.)

1 84. This conclusion is supported by the MSFL’s statutory statement of purpose, plain
2 language, and legislative history, as well as by DTSC’s own previous interpretations of the law,
3 as further detailed below.

4 85. In its findings and declarations at SB 1249’s outset, the Legislature made clear that
5 DTSC must rescind the “f letters:”

6 It is the intent of the Legislature that the conditional nonhazardous waste
7 classifications, as documented through the historical ‘f letters,’ *be revoked* and that
8 metal shredding facilities be thoroughly evaluated and regulated to ensure adequate
protection of the human health and the environment.

9 (SB 1249 § 1(f), emphasis added.)

10 86. This intent is carried forward in the plain language of the MSFL’s substantive
11 provisions. For example, Health and Safety Code section 25150.82(j)(1) provides that “[t]he
12 disposal of treated metal shredder waste *shall* be regulated pursuant to this chapter and the
13 regulations adopted pursuant to this chapter, *unless* alternative management standards are adopted
14 by the department pursuant to this section.” (Health & Saf. Code § 25150.82(j)(1), emphasis
15 added.)

16 87. The legislative history also makes clear that DTSC had a non-discretionary duty to
17 apply the HWCL to Schnitzer and rescind the “f letters,” unless the agency adopted alternative
18 management standards by January 1, 2018. For example, the legislative counsel’s digest states:

19 The bill would require the disposal of treated metal shredder waste to be regulated
20 pursuant to the hazardous waste control laws, unless the department adopts those
21 alternative management standards, and would authorize treated metal shredder
22 waste to be used at a specified type of disposal unit as alternative daily cover or for
23 beneficial reuse or placed in that specified type of disposal unit, if the alternative
management standards result in the treated metal shredder waste being classified as
nonhazardous waste.

24 (SB 1249, Legislative Counsel’s Digest at § 1.) SB 1249’s Bill Analysis similarly explains:

25 SB 1249 *rescinds all previously issued nonhazardous waste classifications* for
26 treated shredder waste for facilities that deal with vehicle shredder waste and
27 requires DTSC to analyze, classify and develop regulations to ensure that storage,
28 treatment, transport and disposal are done in a manner that protects public health
and the environment, as appropriate. The author believes that this legislation will
provide for better DTSC oversight of the industry to prevent contamination,

1 explosions or other risks to California communities.
2 (Sen. Comm. on Environmental Quality, April 29, 2014 Analysis of SB 1249 (2013–2014 Reg.
3 Sess.) p. 7, emphasis added.)

4 88. In fact, even DTSC itself interpreted (at least initially) SB 1249 as requiring it to
5 act. For example, DTSC has stated:

6 SB 1249 requires DTSC to evaluate the risks and threats posed by metal shredders
7 and the management of metal shredder waste, and to *either* develop alternative
8 management standards that govern metal shredding activities, *or* rescind its 1987
9 era decisions under which metal shredders have operated without hazardous waste
permits and managed their waste as nonhazardous waste.

10 (DTSC, State of California Budget Change Proposal Regarding Implementation of SB 1249
11 (Nov. 6, 2015).)

12 89. In its Project Summary on SB 1249 Implementation, DTSC’s Independent Review
13 Panel (IRP)²⁴ interpreted the statute similarly and confirmed that the status quo was unacceptable:

14 SB 1249 authorizes DTSC to *either* develop alternative management standards for
15 metal shredding facilities *or* rescind any prior decisions and require the facilities and
its waste to be subject to full hazardous waste management requirements.

16 (DTSC Independent Review Panel, Project Summary, SB 1249 Implementation (Jan. 28, 2016) p.
17 1, emphasis added; *see also id.* at p. 2 [“As expressed in the bill, it was the intent of the Legislature
18 that the non-hazardous waste classification, as documented through the ‘f letters,’ *be revoked* and
19 that metal shredding facilities be regulated to ensure adequate protection of the human health and
20 environment.”], emphasis added.)

21 90. Indeed, the IRP stated that DTSC had intended to follow the Legislature’s intent to
22 rescind the “f letters”:

23 By January 1, 2018, DTSC intends to revoke the historic “f letters” and either
24 replace them with alternative management standards or require the industry to be
25 regulated under existing hazardous waste control law. Ultimately, at the conclusion
26 of the DTSC’s implementation of SB 1249, all metal shredding facilities will be
consistently regulated under uniform statewide standards that ensure adequate
protection of human health and the environment.

27 ²⁴ Senate Bill 83 established within DTSC a three-member IRP to review the Department and
28 make recommendations to improve its programs. (*See* Sen. Bill No. 83 (2015–2016 Reg. Sess.)
§ 15.)

1 (DTSC Independent Review Panel, Project Summary, SB 1249 Implementation (Jan. 28,
2 2016) p. 8.)

3 91. Moreover, other agencies have expressed their understanding that the “f letters”
4 have already been rescinded, as SB 1249 required of DTSC. (Email from Arleen Feng, Alameda
5 Countywide Clean Water Program, to Lucile Paquette, Jon Konnan, and Reig Bogert (May 23,
6 2017) [“The process and timeline are driven by SB 1249, which led to DTSC’s rescinding the ‘F-
7 letters’ that allowed 7 CA shredding facilities to classify their treated Metal Shredder Waste as
8 non-hazardous waste, pending re-evaluation and revising regulations.”].)

9 92. However, DTSC reversed course and never acted to rescind the “f letters” and
10 apply the HWCL, as the MSFL requires. To date, DTSC has not rescinded the “f letters,” and it
11 has not begun regulating metal shredders under the HWCL. Rather, the hazardous waste
12 management practices that DTSC has found “pose substantial risks to nearby communities” and
13 the environment continue today. (2018 DTSC Evaluation, p. 112.)

14 93. As explained above, the public health and environmental concerns raised by these
15 hazardous waste management practices are particularly alarming in West Oakland, where
16 Schnitzer operates the largest metal shredding facility in California in an environmental justice
17 community with many nearby sensitive receptors. Indeed, DTSC recognized as much in its
18 Budget Change Proposal to the California Legislature to fund implementation of SB 1249:

19 This proposal will allow DTSC to perform the responsibilities specified in the bill
20 in the amount of time required by the bill. *Even more importantly*, this proposal will
21 allow DTSC to reduce risks and hazards faced by California’s most vulnerable and
impacted communities in the vicinity of these types of facilities.

22 (DTSC, State of California Budget Change Proposal Regarding Implementation of SB 1249 (Jan.
23 2, 2015), emphasis added.)

24 **FIRST CAUSE OF ACTION**

25 **(For Writ of Mandate Under C.C.P. § 1085)**

26 94. Petitioner hereby incorporates all preceding paragraphs as if fully set forth herein.
27
28

1 95. DTSC has a clear, mandatory duty under the Metal Shredding Facilities Law
2 (Health and Safety Code §§ 25150.82–25150.86), as enacted by Senate Bill 1249, to rescind
3 Schnitzer’s “f letter” and regulate its Oakland metal shredding facility pursuant to the California
4 Hazardous Waste Control Law.

5 96. DTSC has unlawfully failed and/or refused to perform this duty and, unless this
6 Court mandates it to do so, will continue to fail and refuse to perform the duties imposed on it by
7 California law.

8 97. Petitioner has no available administrative remedies. Petitioner has no plain,
9 speedy, and adequate remedy in the ordinary course of law, other than the relief sought herein.

10 98. Petitioner is beneficially interested in issuance of a peremptory writ because it
11 presently maintains business operations in close proximity to Schnitzer and additionally because
12 Petitioner is seeking to construct its ballpark in close proximity to Schnitzer. Petitioner, along
13 with its employees and patrons, is entitled to the protection of the environmental laws that the
14 Legislature has enacted to protect individuals within close proximity to hazardous waste.
15 Petitioner is further beneficially interested in issuance of a peremptory writ of mandate so that
16 hazardous wastes can be safely managed to ensure adequate protection of human health in
17 surrounding communities and of the environment, including the Oakland community.

18 99. The writ of mandate sought by Petitioner will result in the enforcement of an
19 important right affecting the public interest, and will confer a significant benefit on the general
20 public, especially the West Oakland environmental justice community, as it will require
21 compliance with California laws that were enacted to protect human health and the environment.

22 100. DTSC’s failure and/or refusal to rescind Schnitzer’s “f letter” and apply the
23 Hazardous Waste Control Law to the Facility violates mandatory duties imposed on DTSC and/or
24 constitutes action that is contrary to law, an abuse of discretion, and/or arbitrary and capricious.

25 101. Therefore, pursuant to Code of Civil Procedure section 1085, a Writ of Mandate
26 should issue directing DTSC (i) to rescind Schnitzer’s “f letter” and (ii) to require Schnitzer to
27 operate the Facility in compliance with the HWCL.
28

1 **PRAYER FOR RELIEF**

2 Petitioner hereby prays for relief as follows:

- 3 A. A peremptory writ of mandate or other order commanding the DTSC to rescind
4 Schnitzer’s conditional nonhazardous waste classification (“f letter”) and to
5 require Schnitzer to operate the Facility in compliance with the HWCL;
6 B. Costs of suit;
7 C. Attorneys’ fees as allowed by law, including under Code of Civil Procedure
8 Section 1021.5;
9 D. Such other and further relief as the Court deems just and proper.

10 Dated: August 5, 2020

KEKER, VAN NEST & PETERS LLP

11
12 By: /s/ R. James Slaughter

13 R. JAMES SLAUGHTER
14 ERIC H. MACMICHAEL

15 Dated: August 5, 2020

VENABLE LLP

16
17 By: /s/ William M. Sloan

18 WILLIAM M. SLOAN
19 TYLER WELTI

20 *Attorneys for Petitioner*
21 THE ATHLETICS INVESTMENT
22 GROUP LLC
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VERIFICATION

I, David Kaval, declare:

I have been authorized to make this verification on behalf of Petitioner THE ATHLETICS INVESTMENT GROUP LLC.

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE and know the contents thereof. I verify that the factual allegations set forth therein are true or are allegations that on information and belief I believe to be true.

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

Executed at Oakland, California on this 4th day of August, 2020.



DAVID KAVAL