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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 THE UNITED STATES OF AMERICA

Civil Action No: 2:16-cv-08127

15 Plaintiff,

COMPLAINT

16 v.

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18 JPMORGAN CHASE BANK N.A.,
19 *et al.*,

20 Defendants.

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22 The United States of America, by the authority of the Attorney General of
23 the United States and through the undersigned attorneys, acting at the request of
24 the United States Environmental Protection Agency (“EPA”), files this Complaint
25 and alleges:
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JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) because the claims arose, and the threatened or actual releases of hazardous substances occurred in this district.

STATEMENT OF THE CASE

3. This is a civil action brought pursuant Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a), against JPMorgan Chase Bank, N.A., WMI Liquidating Trust, and WMI Rainier, LLC (jointly “Defendants”). The United States seeks recovery of unreimbursed costs incurred, together with interest, as well as declaratory judgment as to future response costs, for activities undertaken in response to the release or threatened release of “hazardous substances” within the meaning of 42 U.S.C. § 9601(14) (“CERCLA Hazardous Substances”) at the BKK Sanitary Landfill Site, located at 2210 South Azusa Avenue, in West Covina, Los Angeles County, California (the “Site”).

DEFENDANTS

4. Defendant JPMorgan Chase Bank, N.A. (“JPMC”) is a national banking association under the provisions of federal law, pursuant to the National Bank Act, 12 U.S.C. § 21 et seq., with its principal place of business in Columbus,

1 Ohio. JPMC is the successor in interest to one or more entities that owned and/or
2 operated the Site at a time CERCLA Hazardous Substances were disposed of at the
3 Site, or agreed to pay or fund or was responsible for the liabilities of those entities,
4 which include Home Savings, Washington Mutual Bank, Oxford Investment
5 Corporation, WMI Rainier, LLC, and/or Washington Mutual, Inc.
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8 5. Defendant WMI Liquidating Trust is a trust established pursuant to
9 the terms of the approved plan of reorganization in *In re Washington Mutual, Inc.*,
10 Bankr. Del. No. 08-12229, and is also a successor in interest to Washington
11 Mutual, Inc., which was a corporation organized under the laws of the State of
12 Washington. Washington Mutual, Inc. was the successor in interest to or was
13 otherwise responsible for the liabilities of one or more entities that owned and/or
14 operated the Site at a time CERCLA Hazardous Substances were disposed of at the
15 Site. Those entities include H.F. Ahmanson & Co.
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19 6. Defendant WMI Rainier LLC (“WMI Rainier”) is a limited liability
20 corporation organized under the laws of the State of Washington. WMI Rainier
21 was the successor in interest to or assumed the liability of one or more entities that
22 owned and/or operated the Site at a time CERCLA Hazardous Substances were
23 disposed of at the Site. Those entities include Oxford Investment Corporation.
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GENERAL ALLEGATIONS

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7. BKK Corporation (“BKK Corp.”) currently owns and operates a closed hazardous waste Class I landfill, a closed municipal Class III landfill, and an operating leachate treatment plant located at the Site (“The BKK Facility”).

8. In 1963, Home Savings of America FSB (“Home Savings”) was granted land-use and regulatory authorization to operate landfills in Area B and Area D of the BKK Facility, and was granted preliminary regulatory authority to accept wastes that would now be classified as CERCLA Hazardous Substances. Home Savings also owned the land on which the BKK Facility would operate.

9. In January 1964, Home Savings leased Area B and Area D of the BKK Facility to BKK Corp., which developed and operated the landfills. In or about 1969, BKK Corp. obtained further authorization from regulatory authorities to dispose of hazardous wastes in Area B, which later became known as the Class I landfill. Disposal of CERCLA Hazardous Substances in this area commenced at about that time.

10. In or about 1970, the lease between Home Savings and BKK Corp. was amended to increase the area of the leasehold and to provide BKK Corp. with an option to purchase the leased area.

11. In or about 1973, Home Savings transferred title to the BKK Facility to its affiliate Oxford Investment Corp. (“Oxford Investment”). Home Savings and/or Oxford Investment thereafter owned and/or operated the BKK Facility.

1 12. Oxford Investment owned the BKK Facility until approximately 1977,
2 when title transferred to BKK Corp., in accordance with the 1970 lease extension
3 between Home Savings and BKK Corp.
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5 13. Home Savings and Oxford Investment each owned and operated the
6 BKK Facility at a time when CERCLA Hazardous Substances were disposed of at
7 the BKK Facility.
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9 14. In 1984, the Class I landfill ceased accepting hazardous waste, except
10 for asbestos, which it accepted until 1987.
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12 15. In 1987, BKK Corp. closed the Class I landfill under a Closure Plan
13 approved by the California Department of Health Services (the predecessor agency
14 to the California Department of Toxic Substances Control) and EPA.
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16 16. Between approximately 1987 and 1996, BKK Corp. operated a Class
17 III (municipal waste) landfill on the BKK Facility, to the north and west of the
18 Class I landfill, in an area that partially overlapped the area formerly known as
19 Area D.
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21 17. During its operating life, the Class I landfill accepted waste containing
22 CERCLA Hazardous Substances. From 1968 to 1984, the Class I landfill accepted
23 in excess of 3.4 million tons of liquid and solid hazardous wastes, together with
24 large amounts of other wastes. During that period and subsequently, there were
25 releases of CERCLA Hazardous Substances at the BKK Facility.
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1 18. Waste disposed of at the Class I landfill contained CERCLA
2 Hazardous Substances including, but not limited to, mercury, copper, lead,
3 chromium, chromium III, chromium VI, K069 waste, zinc, cadmium, styrene,
4 hydrogen sulfide, aluminum sulfate, sodium hydroxide, potassium cyanide,
5 thallium, sodium hydrosulfide, arsenic, nickel, ammonium hydroxide,
6 polychlorinated biphenyls (PCBs), API separator sludge (K051), hydrochloric acid,
7 nitric acid, pyridine, sodium hydroxide, phenol, methylene chloride, 1,1,1
8 trichloroethene, 1,4 dioxane solvent, naphthalene, chromic acid, paraformaldehyde,
9 sulfuric acid, xylene, and tetraethyl lead.

13 19. EPA has undertaken various response actions at the Site since 1983,
14 including Site investigations related to soil, soil gas, and groundwater
15 contamination. EPA has also issued two unilateral administrative orders pursuant
16 to 42 U.S.C. § 9606 requiring BKK Corp. to conduct Site investigation and
17 removal activities related to landfill gasses in the neighborhoods adjacent to the
18 Site. EPA conducted and/or oversaw Site investigations, including sampling and
19 analysis of soil vapor and indoor air, and evaluations of impacts to groundwater
20 and surface water. In conducting these activities, EPA incurred response costs in
21 connection with the Site.

25 20. DTSC is currently the primary agency conducting oversight activities
26 at the Site, but EPA continues to have a role at the Site and will likely continue to
27 incur response costs in connection with the Site.
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1 21. In 1995 Oxford Investment became a direct subsidiary of Home
2 Savings' parent corporation, H.F. Ahmanson & Company. That same year, Oxford
3 Investment was renamed Ahmanson Developments Inc.
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5 22. In 1998, H.F. Ahmanson & Company merged into Washington
6 Mutual, Inc., which was Washington Mutual Bank's parent corporation. As part of
7 that transaction, Home Savings merged into Washington Mutual Bank and
8 Ahmanson Developments Inc. became a direct subsidiary of Washington Mutual,
9 Inc.
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11 23. On September 25, 2008, the Office of Thrift Supervision closed
12 Washington Mutual Bank and appointed the Federal Deposit Insurance
13 Corporation ("FDIC") as receiver for Washington Mutual Bank. On September
14 25, 2008, the FDIC in its corporate capacity, the FDIC as Receiver for Washington
15 Mutual Bank, and JPMC, entered into a Purchase and Assumption Agreement,
16 whereby JPMC purchased assets and assumed liabilities of Washington Mutual
17 Bank as provided by that agreement. (Events relating to the closure of Washington
18 Mutual Bank and distribution of its assets and liabilities are collectively referred to
19 as the "Washington Mutual Bank FDIC Proceeding.")
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22 24. On September 26, 2008, Washington Mutual, Inc. filed for Chapter 11
23 bankruptcy protection in Delaware. *In re Washington Mutual, Inc.*, Bankr. Del.
24 No. 08-12229 (the "Washington Mutual, Inc. Bankruptcy"). A confirmation order
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1 was issued in the Washington Mutual, Inc. Bankruptcy on February 24, 2012, with
2 an effective date of March 19, 2012.

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4 25. On December 30, 2008, Ahmanson Development Inc. was merged
5 into WMI Rainier, LLC.

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7 26. Defendants have consented in writing to the filing of this lawsuit by
8 the United States for the limited purpose of effectuating the proposed Consent
9 Decree filed concurrently with this Complaint, despite any arguments Defendants
10 may have (a) that the United States' claims were discharged or otherwise waived in
11 the Washington Mutual Bank FDIC Proceeding or the Washington Mutual, Inc.
12 Bankruptcy, (b) that this Court lacks jurisdiction to hear the United States' claims,
13 or (c) that the United States' claims are barred or subject to an injunction against
14 pursuing such claims. Defendants' consent to be sued is limited to the filing of this
15 Complaint concurrent with a proposed Consent Decree seeking to resolve the
16 allegations set forth in this Complaint. Should the United States withdraw its
17 support for the proposed Consent Decree, or should the Court decline to enter the
18 proposed Consent Decree, Defendants have reserved their right to assert any and
19 all arguments or defenses they may have, including (a) that this Court lacks
20 jurisdiction to hear the United States' claims, (b) that the United States' claims are
21 barred or subject to an injunction against pursuing such claims, and (c) that the
22 United States' claims were discharged or otherwise waived in the Washington
23 Mutual Bank FDIC Proceeding or the Washington Mutual, Inc. Bankruptcy.
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FIRST CLAIM FOR RELIEF
(Response Costs)

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3 27. The allegations contained in Paragraphs 1 through 26 are realleged
4 and incorporated by reference herein.

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6 28. Section 107(a)(2)(A) of CERCLA, 42 U.S.C. § 9607(a)(2)(A),
7 provides in pertinent part that any person who, at the time of disposal of any
8 hazardous substance, owned or operated a facility at which such hazardous
9 substances were disposed of, from which there is a release, or a threatened release,
10 of a hazardous substance that causes the incurrence of response costs, shall be
11 liable for all costs of removal or remedial action incurred by the United States
12 Government not inconsistent with the National Contingency Plan.
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15 29. Each Defendant is a successor in interest to or has otherwise assumed
16 liabilities of an entity or entities that owned and/or operated the Site at a time
17 CERCLA Hazardous Substances were disposed of at the Site, within the meaning
18 of Section 107(a)(2)(A) of CERCLA, 42 U.S.C. § 9607(a)(2)(A).
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20 30. The Site is a “facility” within the meaning of section 101(9) of
21 CERCLA, 42 U.S.C. § 9601(9).
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23 31. There has been a “release” or a threat of a “release,” within the
24 meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of CERCLA
25 Hazardous Substances including one or more of the substances identified in
26 Paragraph 18 into the environment at and from the Site.
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