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Judge's Copy

EDMUND G. BROWN JR.  
Attorney General of California  
KEN ALEX  
Senior Assistant Attorney General  
EDWARD G. WEIL  
Supervising Deputy Attorney General  
SUSAN S. FIERING  
Deputy Attorney General  
State Bar No. 121621  
1515 Clay Street, 20th Floor  
P.O. Box 70550  
Oakland, CA 94612-0550  
Telephone: (510) 622-2142  
Fax: (510) 622-2270  
E-mail: Susan.Fiering@doj.ca.gov  
*Attorneys for Defendants and Respondents  
Governor Arnold Schwarzenegger et al.*

**FILED**  
ALAMEDA COUNTY

APR 24 2009

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

**SIERRA CLUB ET AL.**  
  
Plaintiffs/Petitioners  
  
v.  
  
**ARNOLD SCHWARZENEGGER, ET AL.,**  
  
Defendants/Respondents

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**CALIFORNIA CHAMBER OF  
COMMERCE,**  
  
Plaintiff/Petitioner,  
  
v.  
  
**ARNOLD SCHWARZENEGGER, ET AL.,**  
  
Defendants/Respondents

No. RG07356881  
  
Consolidated with San Diego Superior Court  
Case No. 37-2008-00096549-CU-WM-CTL

~~PROPOSED~~ ORDER DENYING  
CALIFORNIA CHAMBER OF  
COMMERCE'S MOTION FOR JUDGMENT  
ON THE PLEADINGS AND GRANTING  
DEFENDANTS'/RESPONDENTS' MOTION  
FOR JUDGMENT ON THE PLEADINGS

Action Filed: November 19, 2007  
Dept: 20  
Judge: Hon. Robert Freedman

1 This matter came on for hearing on April 16, 2009 at 2:00 p.m. The Court having  
2 considered the papers filed by the parties and the arguments of counsel at the hearing, hereby  
3 rules as follows:

4 The Motion of Plaintiff California Chamber of Commerce ("CCC") for Judgment on the  
5 Pleadings is DENIED. The Motion of Respondents/Defendants Arnold Schwarzenegger, Linda  
6 S. Adams and Dr. Joan E. Denton for Judgment on the Pleadings is GRANTED.

7 The plain language of Health and Safety Code §25249.8 requires that the substances  
8 identified by reference in Labor Code sections 6382(b)(1) and 6382(d) be included on the list of  
9 chemicals known to the state to cause cancer or reproductive toxicity, and that the list, including  
10 the chemicals referenced in the Labor Code sections, be updated annually. Thus, the statute  
11 imposes a clear ministerial duty on Respondents to list the carcinogens and reproductive toxicants  
12 identified by reference to the above Labor Code sections without further review. This is an issue  
13 of first impression, not addressed in the court's decisions in *AFL-CIO v. Deukmejian* (1989) 212  
14 Cal.App.3d 425, or in *Exxon Mobil Corp. v. Office of Environmental Health Hazard Assessment*  
15 (2009) 169 Cal. App.4th 1264. The court's role in construing a statute is to ascertain legislative  
16 intent so as to effectuate the purpose of the law. When there is no ambiguity in the plain language  
17 of the statute, that plain meaning governs, and there is no need to resort to a review of any  
18 legislative history. (See *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*  
19 (2005) 133 Cal.App.4th 26, 29-30; *Diamond Multimedia Systems, Inc. v. Superior Court* (1999)  
20 19 Cal.4th 1036, 1055.) Likewise, the agency's past interpretations of the statute and regulations  
21 under the statute cannot be used to alter its plain meaning. (See generally *Yamaha Corp. of*  
22 *America v. State Bd. of Equalization* (1998) 19 Cal.4th 1.) Here, the language of the statute is  
23 clear on its face. Whether or not the agency correctly interpreted the statute at some time in the  
24 past, or even in enacting regulations that might be construed to conflict, is of no moment. Finally,  
25 as to CCC's contention that it is entitled to a judgment to the effect that chemicals listed by the  
26 American Conference of Government Industrial Hygienists cannot be listed by reference to the  
27 incorporated sections of the Labor Code, this issue was not alleged in their Petition and  
28 Complaint, and thus there is no basis for granting such a judgment. The Court GRANTS the

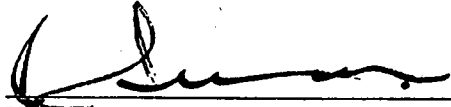
1 parties' requests for judicial notice, and OVERRULES the objections of Respondent. The  
2 documents to which Respondent objected are an appropriate subject of judicial notice insofar as  
3 they are contained within the agency's rulemaking file. However, as noted herein, the agency's  
4 rulemaking history has no bearing on the unambiguous meaning of the statute.

5 Since the Court is granting CCC's request for leave to amend the complaint to add a new  
6 claim, judgment will not be entered on the claim in the original complaint until such time as the  
7 additional matter raised by the First Amended Complaint is resolved, as envisioned by the  
8 schedule separately established by the Court.

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IT IS SO ORDERED:

Dated: April 24, 2009

  
HON. ROBERT FREEDMAN  
Judge, Alameda County Superior Court

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