**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re:<br><br>EXIDE TECHNOLOGIES,<br><br>Reorganized Debtor.[1] | **Chapter 11**<br><br>**Case No. 13-11482 (KJC)**<br><br>**Hrg. Date: TBD**<br>**Obj. Due: TBD**<br><br>**Related Docket Nos.: 4414** |

**THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S MOTION FOR ENTRY OF AN ORDER CONCERNING THE TIMELINESS OF ITS GENERAL UNSECURED CLAIMS AGAINST EXIDE**

Pursuant to and in accordance with that certain *Order Resolving the Reorganized Debtor's Motion [to Enforce]* [Docket No. 4414], the South Coast Air Quality Management District (the "District") respectfully requests a determination by this Court that all prepetition claims asserted against Exide Technologies ("Exide" or the "Reorganized Debtor") in the District's *Third Amended Complaint for Civil Penalties and Injunctive Relief* filed on May 28, 2015 (Pfister Decl. Ex. 21)[2] (the "Third Amended Complaint" or "TAC") in the Superior Court of the State of California (the "California State Court") may be pursued by the District. In support of this motion, the District relies upon the *Declaration of Robert J. Pfister [Etc.]* [Docket No. 4247-1] (the "Pfister Declaration") that was submitted in opposition to *The Reorganized Debtor's Motion for Entry of an Order (I) Enforcing the Plan Injunction Under the Confirmation*

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 2730. The Reorganized Debtor's corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

[2] Many of the exhibits referenced herein are attached to the Pfister Declaration (as defined below), and accordingly this Motion references the declaration when such an exhibit is cited in the first instance.

*Order and the Confirmed Plan of Reorganization and (II) Awarding Costs and Attorney's Fees* [Docket No. 4023] (the "Motion to Enforce"), as well as the chart setting forth the paragraph-by-paragraph justifications for the language of Third Amended Complaint (the "Claims Chart"), attached hereto as Exhibit A, and the request for judicial notice filed concurrently herewith (the "RJN"), and respectfully states as follows:

**PRELIMINARY STATEMENT**

1. The gravamen of the District's claims is, and always has been, Exide's unlawful release of two toxins – lead and arsenic – at its Vernon, California battery recycling facility. The fact that these unlawful emissions occurred is indisputable. They are documented in stationary source emissions tests and ambient monitoring performed by Exide and vetted by Exide's army of consultants. Stemming entirely from these emissions, the District's lawsuit[3] against Exide includes detailed allegations and causes of action concerning Exide's failure to promptly and properly report test results, Exide's manipulation of testing conditions to conceal the true amount of lead and arsenic being emitted into the air, and the way in which Exide's poor operating practices led to the emissions – including, as Exide only recently admitted, its haphazard storage and transportation of broken-down battery parts in trailers that literally leaked lead onto the ground, leaving a toxin that could then be disturbed and released into the atmosphere at the Vernon facility, contributing to the unlawfully high levels of ambient air pollution.

2. Exide and the District both agree that the California State Action is the forum in which the District's prepetition claims against Exide are being liquidated, and that the California State Action appropriately encompasses all prepetition conduct (the "Original Allegations") set

[3] *People of the State of California, ex rel South Coast Air Quality Management District, a Public Entity v. Exide Technologies, Inc., and Does 1 through 50*, Civ. Case No. BC 533528 (the "California State Action").

forth in the District's December 9, 2013 proof of claim against Exide (Pfister Decl. Ex. 7) (the "Original Proof of Claim") and the *Complaint for Civil Penalties* filed on January 16, 2014 (Pfister Decl. Ex. 8) (the "Original Complaint"). *See* Motion to Enforce at ¶¶ 1 n.2 & 8.

3. Exide and the District disagree, however, about the extent to which the Third Amended Complaint's additional explication of the Original Allegations is proper. Exide says that the Third Amended Complaint includes "New Claims" that are an "attempted end-run around the chapter 11 process." *Id.* ¶ 1. Exide is incorrect. The standard governing the permissibility of an amendment to a proof of claim is that set forth in Rule 15(c)(1)(B) of the Federal Rules of Civil Procedure. That Rule provides that "[a]n amendment to a pleading relates back to the date of the original pleading when … the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading …." Fed. R. Civ. P. 15(c)(1)(B).[4] As set out in detail below, the portions of the Third Amended Complaint dealing with prepetition[5] conduct are either substantively identical to the Original Allegations, or they fall into one of two groups of permissible

[4] Another portion of the rule (titled "Amendments During and After Trial") is illustrative of the relationship between facts proven at trial and the operative pleadings: "If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits…. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move – at any time, even after judgment – to amend the pleadings to conform them to the evidence and to raise an unpleaded issue." Fed. R. Civ. P. 15(b).

[5] The Third Amended Complaint includes both prepetition and postpetition allegations, but only the prepetition allegations are at issue in this motion. In addition, the Third Amended Complaint was preceded by the District's *First Amended Complaint for Civil Penalties and Injunctive Relief* (Pfister Decl. Ex. 13) (the "First Amended Complaint" or "FAC") and the District's *Second Amended Complaint for Civil Penalties and Injunctive Relief* (Pfister Decl. Ex. 17) (the "Second Amended Complaint" or "SAC"), but the Third Amended Complaint is the District's operative pleading and therefore is the pleading at issue in this motion.

modifications to the Original Allegations, in each case, because they arise out of the same general conduct as the initial pleadings alleged:

4. ***Group One – Additional Detail and Particularity***. The first group consists of changes that merely add additional detail and particularity to the Original Allegations that Exide unlawfully emitted lead and arsenic. *See, e.g.*, Orig. Compl. ¶ 50 (Exide "negligently discharged emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded .15 micrograms per cubic meter averaged over any 30 consecutive days …."); Attachment to Orig. Proof of Claim at 4 ("Since at least September 17, 2010, when Exide completed its 2010 source test, Exide has failed to maintain sufficient and consistent negative air pressure and emission collection efficiency consistent with the design criteria for the system in order to adequately collect and control gaseous emissions, including but not limited to arsenic." (internal footnote omitted)). The modifications provide general background, including Exide's lengthy history of violations, *cf*. Fed. R. Evid. 406; expand on the relationship between the District and Exide, including Exide's undisputed legal obligations as one of the District's permittees; and describe in greater detail the equipment, physical processes, and operational activities that caused the emissions. In addition, these modifications separate out generally pled allegations into specific counts calibrated to Exide's knowledge, such as splitting certain of the Original Allegations regarding the release of arsenic and lead that encompassed both negligent and intentional conduct into separate causes of action, one for negligent conduct and the other for intentional conduct. Finally, the modifications refine the time periods at issue in the District's first and second causes of action, which concern continuing violations.

5. This first set of modifications relates back to the Original Allegations within the meaning of Rule 15 of the Federal Rules of Civil Procedure because the changes amplify the

factual circumstances surrounding the same conduct at issue in the Original Allegations, provide further particularity regarding Exide's state-of-mind, and refine the timeframe over which continuing violations took place. By way of example, the Original Allegations charge Exide with operating its cupola (or "blast") and reverbatory (or "reverb") furnaces without using good operating practices, including by failing to correct blockages in the movement of air within those furnaces. *See, e.g.*, Orig. Compl. ¶¶ 16 & 20. The Third Amended Complaint details these failings, such as by explaining how "Exide used an access door to visually inspect a portion of the interior of a ventilation riser connected to Exide's Blast Furnace" but the "access door that was being used for these inspections was not large enough to allow Exide's employees to conduct a thorough visual inspection …." TAC ¶¶ 32–33. These additional details in the Third Amended Complaint do not expand the scope of the Original Allegations any more than additional information about how cars operate expands the scope of a claim for injuries from a car accident. *Cf*. Fed. R. Civ. P. Form 11 (model complaint for negligence, alleging merely that "the defendant negligently drove a motor vehicle against the plaintiff" at a particular time and place). Nor are these modifications even remotely prejudicial to Exide, as they essentially consist of non-controversial background facts and/or information that Exide itself provided to the District. Indeed, Exide's answer to a previous iteration of the Original Allegations (in the First Amended Complaint) admits many of these background facts with significant specificity. *See, e.g.*, *Defendant Exide Technologies' Answer to [First Amended Complaint]* (RJN Ex. 1) (the "FAC Answer") ¶¶ 25–26 (admitting use of an access door to visually inspect part of the riser connected to the blast furnace, and admitting to modifying the design of the access door – apparently once it was discovered that the door was too small).

6. The Third Amended Complaint's separate counts for "willful and intentional"

emissions of arsenic and lead also relate back to the Original Allegations. *See* TAC ¶¶ 208–210 & 224–225. The District has pled Exide's state of mind in the alternative, *cf.* Fed. R. Civ. P. 8(d)(2), sometimes using separate counts, *compare* Orig. Compl. ¶¶ 41–44 *with id.* ¶¶ 45–48, and other times more generally, as when the District's Original Proof of Claim alleged that Exide violated District Rules generally and engaged in strict liability conduct giving rise to one penalty, negligent conduct giving rise to another, knowing conduct giving rise to another, and willful and intentional conduct giving rise to still another. For example, the Original Proof of Claim alleges that "[t]he Debtor failed to comply with SCAQMD Rules and committed a separate violation giving rise to civil penalties of up to $10,000 per day at the strict liability level for each and every day of noncompliance; up to $25,000 per day for each and every day of negligent emission violations; $40,000 per day for each and every day of knowing emissions violations; and $75,000 per day for each and every day of willful and intentional emissions violations …." Attachment to Orig. Proof of Claim at 1. In any case, Exide has always been on notice that its state of mind is at issue – and has litigated the California State Action accordingly. *See, e.g.*, FAC Answer ¶¶ 105 & 112 (alleging as affirmative defenses that its conduct was undertaken at the direction of, or ratified by, governmental agencies or in compliance with laws and regulations).

7. Similarly, refinement of the timing of certain continuing violations reflects the more detailed facts set out in later pleadings, which provide an anchor point (a specific test performed on October 10, 2008) against which subsequent test results – showing far higher emissions than were shown in the October 10, 2008 test – can be compared. *Compare* Orig. Compl. ¶¶ 16 & 20 (challenged conduct occurred "within the three years preceding the date of discovery of violations and continuing thereafter") *with* TAC ¶¶ 112 & 116 (challenged conduct

began "at some point after the October 10, 2008" test). These amendments do not necessarily broaden the timeframe at issue, and they certainly do not extend the statute of limitations (a feat that cannot be accomplished by a pleading); indeed, given the timing of the next-earliest subsequent emissions test, conducted on October 4, 5, and 7, 2010, *see id*. ¶ 42, these amendments may even ***narrow*** the timeframe at issue. In short, these changes permissibly relate back to the Original Allegations and are utterly non-prejudicial to Exide, which conducted (and occasionally concealed the true results of) the very emissions tests that bookend the District's claims.

8. ***Group Two – The Leaking Van Trailers***. The second set of permissible modifications to the Original Allegations concerns a lead-contaminated byproduct of Exide's operations at the Vernon facility. At the height of its operations, Exide received as many as 40,000 spent batteries per day. Exide crushed the batteries in a hammer mill, picked out the broken plastic casings, sprayed them with water, and then stored them in on-site van trailers until they could be shipped away. Had the van trailers performed properly (by keeping the wet, corrosive, lead-contaminated casings enclosed inside sealed, leak-proof containers), Exide's conduct in this regard would have been a matter between it, its other regulators, and ultimately the U.S. Attorney's Office (the "USAO"). But the van trailers leaked lead onto the ground at the Vernon facility. This "fugitive" lead could mix with dirt and other ground cover and became airborne when disturbed, *see generally* TAC ¶¶ 156, 185-87, 197–99 & 200–01, thereby contributing to the high levels of lead in the ambient air at the Vernon facility – the very same high levels of lead at the heart of the Original Allegations.[6]

[6] The District's rules define fugitive lead dust as "any solid particulate matter containing lead that is in contact with ambient air and has the potential to become airborne[,]" District Rule 1420.1(c)(8), and prohibit "emissions … discharged into the atmosphere which

*(footnote continued)*

9. The Third Amended Complaint supplements the Original Allegations by identifying this fugitive lead as a factor contributing to the high amount of lead in the air at Exide's Vernon facility. *See* TAC ¶¶ 6–10, 117–138, 140–147, 150–155, 157–172 & 211–219. The District added these allegations to its operative pleading promptly after Exide admitted them in its March 11, 2015 non-prosecution agreement with the USAO (the "Non-Prosecution Agreement") (*See* Pfister Decl. Ex. 18). These additions merely add an alternative evidentiary explanation to the Original Allegations that Exide emitted too much lead into the air at its Vernon facility, and that Exide failed to store all materials capable of generating any amount of fugitive lead-dust in sealed, leak-proof containers. The addition of the trailers to the District's Third Amended Complaint is, at bottom, an additional explanation for the same conduct that has been at issue from the beginning, and therefore these allegations relate back under Rule 15(c)(1)(B).

## JURISDICTION AND VENUE

10. This Court has jurisdiction to hear and determine this motion under 28 U.S.C. §§ 157 and 1334, Article XIV of the *Fourth Amended Plan of Reorganization of Exide Technologies* [Docket No. 3409-1] (the "Plan"), and Paragraph 67 of the *Findings of Fact, Conclusions of Law, and Order Confirming the Fourth Amended Plan of Reorganization of Exide Technologies* [Docket No. 3423] (the "Confirmation Order").

11. This is a core proceeding under 28 U.S.C. § 157(b). The District consents to the entry of a final order by this Court if it is determined that the Court, absent consent of the parties, cannot enter a final order consistent with Article III of the United States Constitution.

***contribute to*** ambient air concentrations of lead that exceed [certain limits,]" District Rule 1420.1(d)(2) (emphasis added). This rule was appended to, and thereby incorporated by reference in, the Original Proof of Claim. Fed. R. Civ. P. 10(c) (appended materials are deemed incorporated into and part of the pleadings to which they are attached).

12. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

13. The statutory predicates for the relief requested herein are sections 105, 501, 502, 524, 1141, and 1142 of the Bankruptcy Code.

## BACKGROUND

### A. General Background.

14. The District is a domestic governmental unit responsible for implementing the air quality mandates established under the federal Clean Air Act in the South Coast Air Basin, which includes the urban portions of Los Angeles, Riverside, and San Bernardino Counties and all of Orange County. This area of 10,743 square miles (an area slightly larger than the State of Massachusetts) is home to over 16.8 million people (about half the population of California), making it the second most populated urban area in the United States.

15. The District primarily regulates stationary sources of air pollution, which run the gamut from large power plants and refineries to corner gas stations and dry cleaners. Approximately 28,400 businesses in the South Coast Air Basin operate under District permits. The District develops and adopts an Air Quality Management Plan, which serves as the blueprint to bring the areas covered by the District into compliance with federal and state clean air standards. Rules are adopted to reduce emissions from various sources, including specific types of equipment and industrial processes. Permits are issued to many businesses and industries to ensure compliance with air quality rules. The District staff conducts periodic inspections to ensure compliance with these requirements. The District also continuously monitors air quality at 38 locations throughout the area covered by the District.

**B. The Original Allegations and the March 2014 Stipulation.**

16. On June 10, 2013 (the "Petition Date"), Exide filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code, commencing this case.

17. On September 13, 2013, this Court entered an order (the "Bar Date Order") setting December 9, 2013 at 5:00 p.m. (Eastern) (the "Bar Date") as the applicable deadline by which governmental units (including the District) were required to file proofs of claim.

18. On December 9, 2013, the District timely filed its Original Proof of Claim, asserting a claim for penalties. The gravamen of the Original Proof of Claim is that Exide engaged in unlawful conduct at its Vernon facility that resulted in the release of lead and arsenic into the atmosphere. *See* Orig. Compl. ¶ 50 (Exide "negligently discharged emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded .15 micrograms per cubic meter averaged over any 30 consecutive days …."); Attachment to Orig. Proof of Claim at 4 ("Since at least September 17, 2010, when Exide completed its 2010 source test, Exide has failed to maintain sufficient and consistent negative air pressure and emission collection efficiency consistent with the design criteria for the system in order to adequately collect and control gaseous emissions, including but not limited to arsenic."). More than 1,000 pages of supporting materials were appended to the Original Proof of Claim, *cf*. Fed. R. Civ. P. 10(c) (appended materials are deemed incorporated into and part of the pleadings to which they are attached), including copies of each of the specific District Rules that Exide violated, the pertinent portions of Exide's permit from the District, and primary evidence in the form of photographs, sampling data, correspondence, and the like.

19. As permitted by section 362(b)(4) of the Bankruptcy Code, which provides an exception to the automatic stay for governmental units like the District to proceed to judgment

against debtors in non-bankruptcy courts to liquidate their claims against the estate, on January 16, 2014, the District initiated the California State Action against Exide by filing the Original Complaint in the California State Court. Exide is correct that the allegations in the Original Complaint largely mirror those in the Original Proof of Claim, *see, e.g.*, Mot. to Enforce ¶ 8, and thus have been the baseline against which Exide has challenged subsequent filings, *see, e.g.*, *Notice of Filing of Exhibit to [Motion to Enforce]* [Docket No. 4029] at 140–205 (redlining the Third Amended Complaint against the Original Complaint to demonstrate the changes that Exide finds objectionable).

20. Between the Original Proof of Claim (inclusive of its more than 1,000 pages of supporting materials) and the Original Complaint, there can be no question that Exide was fully on notice of the Original Allegations. In addition, the Original Complaint provides clear notice that amendments might be required as a result of Exide's lengthy history of violating District Rules and the expectation that additional, as-yet-unknown violations might be discovered. *See* Orig. Compl. ¶ 4 ("As part of its business, the [Exide] facility emits lead and arsenic in the Basin. Exide has a lengthy history of violating District Rules, including for excessive emissions, and plaintiff may seek to amend this Complaint if Exide continues its pattern of conduct."); *see also* Plan § 10.4 (clarifying that nothing in the Plan "preclude[s] amendments to timely filed proofs of Claim to the extent permitted by applicable law").

21. On March 6, 2014, this Court entered the *Stipulation and Agreed Order Regarding the Lawsuit Filed by South Coast Air Quality Management District* [Docket No. 1510] (Pfister Decl. Ex. 6) (the "March 2014 Stipulation"), approving the parties' agreement, consistent with the exception to the automatic stay set forth in section 362(b)(4) of the Bankruptcy Code, that the District could prosecute the California State Action to judgment so

long as the District agreed to return to this Court before seeking to enforce a money judgment against Exide. Nothing in the March 2014 Stipulation precluded the District's ability to amend its pleadings (as it already had advised in Paragraph 4 of the Original Complaint that it might need to do) consistent with applicable rules of the California State Court. It would not have made sense for the District to agree to such stipulation given its clear right under section 362(b)(4) to maintain the California State Action without any limitation of its right to prosecute its case in accordance with general and well-developed rules of procedure, such as amendments to pleadings.

**C. The First Amended Complaint and Amended Proof of Claim.**

22. On August 7, 2014, the District filed the First Amended Complaint in the California State Action. The bulk of the changes reflected in the First Amended Complaint concerned general background that merely amplified the Original Allegations. As detailed in the Claims Chart, in a number of instances Exide admitted to these supposedly new factual allegations in the FAC Answer.

23. Notably, the only "new" cause of action against Exide based on prepetition conduct is the twenty-seventh cause of action, for willful and intentional emissions of air contaminants – specifically, lead – in violation of District Rule 1420.1(d)(2) and California Health and Safety Code section 42402.3(a). This cause of action properly relates back as the Original Proof of Claim alleges that Exide owes penalties for "willful violation" of the District's rules concerning lead emissions – rules that were appended to the Original Proof of Claim. This cause of action was also predicated on existing facts alleged by the District concerning Exide's emission of lead. Exide was thus on notice of this cause of action.

24. The only other particularly notable change effected by the First Amended

Complaint was to define with greater specificity the time period covered by the first and second causes of action. Whereas the Original Complaint indicated that the unlawful conduct began "within the three years preceding the date of discovery of violations," the First Amended Complaint indicated that the unlawful conduct began "at some point after the October 10, 2008" test (*i.e.*, the most recent test reporting relatively low arsenic emissions). *See* TAC ¶¶ 112 & 116. These amendments did not necessarily set forth a distinctly broader timeframe relative to the Original Complaint, only a more factually-grounded one.

25. Consistent with the unobjectionable nature of the amendments to the Original Complaint set forth in the First Amended Complaint, Exide stipulated[7] to allow the District to file the First Amended Complaint subject only to an express reservation of Exide's rights to challenge the First Amended Complaint in the California State Action, with no indication that the limited changes (which accord with the California State Court's pleading rules – hence the stipulation) somehow might not relate back under the Federal Rules. *See* FAC Stipulation at 1 (reserving only Exide's rights "to challenge the [amended pleadings] subsequently in this litigation"). Nor did Exide allege in the FAC Answer that any of the causes of action set forth in the First Amended Complaint were time-barred under the Bar Date Order.

26. On August 22, 2014, shortly after the District filed the First Amended Complaint, the District filed with this Court an amended proof of claim (Pfister Decl. Ex. 14) (the "Amended Proof of Claim"), which incorporated by reference and attached a copy of the First Amended Complaint.

27. The Amended Proof of Claim put Exide's creditors on notice not only of the allegations of the First Amended Complaint but also the fact that the District's claims may yet

[7] *See Stipulation and Order re Filing First Amended Complaint and Deadline for Responsive Pleading* (Pfister Decl. Ex. 12) (the "FAC Stipulation").

need to be amended further. *See* Attachment to Am. Proof of Claim at ¶¶ 2–3 (reservation of rights).

**D. <u>The Second Amended Complaint, Disclosure Statement, and Confirmation.</u>**

28. On February 18, 2015, the District filed its Second Amended Complaint in the California State Action. The changes to the First Amended Complaint set forth in the Second Amended Complaint were relatively limited, amounting to a smattering of minor changes in wording and the addition of several causes of action based upon postpetition conduct. The Second Amended Complaint added no new causes of action based upon prepetition conduct.

29. Again, given the benign nature of the amendments to the First Amended Complaint set forth in the Second Amended Complaint, Exide stipulated[8] to allow the District to file the Second Amended Complaint subject only to an express reservation of Exide's rights to challenge the Second Amended Complaint in the California State Action. *See* SAC Stipulation at 1. Implicitly recognizing that the Second Amended Complaint related back both to the Original Complaint and the First Amended Complaint, Exide did not reserve its right to challenge the Second Amended Complaint in this Court as asserting time-barred general unsecured claims against Exide.

30. Indeed, the Second Amended Complaint was described in Exide's Court-approved disclosure statement as the complaint of which Exide's creditors ought to be aware and consider in deciding whether to vote to accept or reject the Plan – belying Exide's current position that any portion of the Second Amended Complaint is time-barred:

> On January 16, 2014, the [District] filed a civil lawsuit against [Exide] and along with unnamed individuals ("DOE Defendants"), subsequently amended, which alleges that [Exide] and the DOE Defendants failed to comply with several of the

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[8] *See Stipulation and Order re Filing Second Amended Complaint and Responsive Pleading* (Pfister Decl. Ex. 16) (the "<u>SAC Stipulation</u>").

> [District's] rules related to lead and arsenic emissions at the Vernon Facility ("SCAQMD Penalty Lawsuit"). The [District] is seeking penalties in an amount not less than $40 million and has recently moved to amend the SCAQMD Penalty Lawsuit to increase its penalty demand to $60 million, which remains pending. [Exide] denies the allegations in the lawsuit, believes the amounts asserted by the [District] are overstated, and intends to vigorously defend itself against such allegations. There can be no assurance that [Exide] will be successful in its defense of the SCAQMD Penalty Lawsuit. The matter is in discovery and presently scheduled for trial on September 15, 2015. The ultimate adjudication or resolution of the SCAQMD Penalty Lawsuit cannot be predicted and may result in a material, post-emergence liability for the Debtor.

*Second Amended Disclosure Statement with Respect to the Second Amended Plan of Reorganization of Exide Technologies* [Docket No. 3095] (the "Disclosure Statement") § V.K.2; *see also id.* § VIII.E.9 (similar). The Disclosure Statement's discussion of amendments to the District's complaints against Exide again put Exide's creditors on notice that there could be yet further amendments, including increasing the amount the District demands from Exide.

31. On March 27, 2015, this Court entered the Confirmation Order. Paragraph 31 of the Confirmation Order ratifies the March 2014 Stipulation and confirms the District's right to prosecute the California State Action to judgment post-confirmation; Section 10.7 of the Plan purports to automatically disallow any new or amended claims filed after the Plan's effective date "except as otherwise provided herein," without the authorization of either this Court or Exide; and Section 10.4 of the Plan clarifies that nothing in the Plan "preclude[s] amendments to timely filed proofs of Claim to the extent permitted by applicable law."

**E. The Non-Prosecution Agreement.**

32. On March 11, 2015, Exide entered into the Non-Prosecution Agreement with the United States Attorney's Office, in which Exide made numerous, significant admissions constituting admissions to violations of District Rules and the California Health and Safety Code.

33. Exide made the following admissions (among others) in the Non-Prosecution

Agreement:

> Illegal Storage of Hazardous Waste
>
> Exide admits that it knowingly stored corrosive and lead-contaminated hazardous waste inside leaking van trailers, owned by Wiley Sanders Truck Line, Inc., parked at the [Vernon] Facility. Exide admits that it illegally stored such hazardous waste a significant number of times over the past two decades ….
>
> Illegal Disposal of Hazardous Waste
>
> Exide admits that it knowingly caused the disposal of corrosive and lead-contaminated hazardous waste by allowing it to leak from van trailers owned by Wiley Sanders Truck Line, Inc., which were parked at the [Vernon] Facility. Exide admits that it allowed such disposal to occur a significant number of times over the past two decades ….
>
> Illegal Shipment of Hazardous Waste in Leaking Trailers
>
> Exide admits that it knowingly and willfully caused the shipment of hazardous waste contaminated with lead and corrosive acid in leaking van trailers owned by Wiley Sanders Truck Line, Inc. and operated by Lutrel Trucking, Inc. and KW Plastics of California, Inc., from the [Vernon] Facility to Bakersfield, California, a significant number of times over the past two decades ….

Non-Prosecution Agreement, App'x 1 – Statement of Admissions and Fact, at 2.

### F. The Third Amended Complaint.

34. On May 28, 2015, the District filed its Third Amended Complaint in the California State Action. The amendments to the Second Amended Complaint set forth in the Third Amended Complaint relate principally to the addition of factual allegations and causes of action based upon Exide's leaking van trailer admissions in the Non-Prosecution Agreement. *See* TAC ¶¶ 6–10, 117–138, 140–147, 150–155, 157–172 & 211–219.[9] Based on the addition of these causes of action, the District increased its demand to no less than $80 million from the no less than $40 million demanded in the Original Complaint and the no less than $60 million

[9] These allegations and causes of action are based upon both Exide's prepetition and postpetition conduct. On May 30, 2015, the District timely filed an administrative expense claim with this Court (Pfister Decl. Ex. 22) by the administrative expense claim bar date asserting these allegations and causes of action based upon Exide's postpetition conduct.

demanded in the Second Amended Complaint. *See* TAC at 55.

35. These factual allegations and causes of action based on Exide's admissions permissibly amplify the factual circumstances surrounding the Original Allegations. *See, e.g.*, Orig. Compl. ¶¶ 4 ("As part of its business, the facility emits lead and arsenic in the Basin. Exide has a lengthy history of violating District Rules, including for excessive emissions …."), 34 ("[T]he owner or operator of a large lead-acid battery recycling facility shall not discharge emissions into the atmosphere that contribute to ambient air concentrations of lead that exceed .15 micrograms per cubic meter averaged over any 30 consecutive days."), & 39 ("[T]he owner or operator of a large lead-acid battery recycling facility shall store all materials capable of generating any amount of fugitive lead-dust including lead-containing waste generated from housekeeping or maintenance activities in sealed, leak-proof containers, unless located within a total enclosure."). The Third Amended Complaint simply explained a contributing cause of the discharge of lead into the atmosphere alleged in the Original Complaint. *See* TAC ¶ 125 ("[T]hese failures by Exide [relating to the leaking trailers] contributed to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days."); *see also id.* ¶¶ 135, 143, 151, 160 & 168 (same).

36. In addition to the leaking van trailer allegations and causes of action, the Third Amended Complaint also built on existing language by providing additional general background, expanding upon the relationship between the District and Exide, describing in greater detail the equipment, physical processes, and operational activities that resulted in Exide's release of lead and arsenic into the atmosphere, and setting forth the recent history of Exide's release of these pollutants, including the manner in which Exide tested for these pollutants, Exide's

communications with the District about the tests, and how Exide's pollution increased over time. *See* TAC ¶¶ 3–4, 26, 39–41, 45–46, 48–49, 51, 55–72, 75–98, 104, 108–109 & 112. As with the factual allegations added to prior iterations of the Original Allegations, these facts merely amplify the factual circumstances surrounding conduct already at issue.

37. The only "new" cause of action against Exide in the Third Amended Complaint that is based on prepetition conduct is the twenty-first cause of action, for willful and intentional emissions of arsenic in violation of District Rules 203(b), 1407(d)(5), 3002(c)(1) and California Health and Safety Code section 42402.3(a). But Exide's arsenic emissions are well-detailed in the Original Proof of Claim, *see* Attachment to Orig. Proof of Claim at 4–5, and the Original Complaint, *see* Orig. Compl. ¶¶ 4, 8, 15–20 & 41–48, and this allegedly new cause of action clearly "[arises] out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading …." Fed. R. Civ. P. 15(c)(1)(B).

38. Exide once again stipulated to allow the District to file the Third Amended Complaint, but raised for the first time its assertion that the changes effected by the Third Amended Complaint were time-barred and violated the discharge and injunction under the Plan, with Exide reserving its right to challenge the Third Amended Complaint on that basis in this Court.

### G. The Motion to Enforce and Order Thereon.

39. On June 3, 2015, less than a week after the Third Amended Complaint was filed, Exide filed the Motion to Enforce, in which it alleged that all changes to the Original Allegations were time-barred and violated the discharge and injunction under the Plan and in which it sought, among other things, an immediate bar to the continued prosecution of many of the District's causes of action, including those relating to the leaking van trailers.

40. Following further briefing and a July 7, 2015 hearing on the Motion to Enforce, the District and Exide agreed to resolve the Motion to Enforce via three new filings, of which this motion is one.[10]

## RELIEF REQUESTED

41. The District respectfully requests a determination by this Court that all prepetition claims asserted against Exide in the Third Amended Complaint may properly be asserted against Exide. The District's postpetition claims against Exide are not at issue in this motion.

## BASIS FOR RELIEF REQUESTED

42. In determining whether an amendment of a proof of claim relates back to the original filing, courts look to Rule 15(c)(1)(B), which permits an amendment where it "asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading …." Fed. R. Civ. P. 15(c)(1)(B). *See, e.g.*, *Interface Grp.-Nev. v. TWA (In re TWA)*, 145 F.3d 124, 141 (3d Cir. 1998) (applying Rule 15 in determining whether to permit the amendment of a timely claim against the debtor); *In re Quinn*, 423 B.R. 454, 463 (Bankr. D. Del. 2009) (same), *amended*, 425 B.R. 136 (Bankr. D. Del. 2010); *Wash. v. SN Servicing Corp. (In re Wash.)*, 420 B.R. 643, 645 (Bankr. W.D. Pa. 2009) (same). The purpose of Rule 15(c) is "to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits." *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 550, 130 S. Ct. 2485, 2494 (2010).

43. "[T]he Rule mandates relation back once the Rule's requirements are satisfied;

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[10] The District does not waive and specifically preserves its arguments made in response to the Motion to Enforce. *See Order Resolving the Reorganized Debtor's Motion for Entry of an Order Enforcing the Plan Injunction Under the Confirmation Order and the Confirmed Plan of Reorganization* [Docket No. 4414] ¶ 7.

it does not leave the decision whether to grant relation back to the district court's equitable discretion." *Id.* at 553, 130 S. Ct. at 2496; *see also Slayton v. Am. Express Co.*, 460 F.3d 215, 227 (2d Cir. 2006) ("[A] relation back decision under Rule 15(c)(2) [which is now Rule 15(c)(1)(B)] does not involve an exercise of discretion…. If facts provable under the amended complaint arose out of the conduct alleged in the original complaint, relation back is mandatory.").[11]

44. Applying this standard, the Third Circuit found it appropriate, for example, for a bankruptcy court to allow a post-bar date amendment to a complaint that added an additional cause of action against a debtor, increased the amount of damages sought against the debtor, and added a demand for punitive damages where those items arose from the same set of operative facts as those pled in the original complaint and incorporated into the plaintiff's proof of claim in the bankruptcy case. *See In re Ben Franklin Hotel Assocs.*, 186 F.3d 301, 303 & 309 (3d Cir. 1999). Similarly, this Court has found that where additional claims "have already been embraced by [a] filed proof[] of claim," even "in the absence of explicit articulation," those claims relate back to the original proof of claim and are not "new" claims. *See Plains Mktg., L.P. v. Bank of Am., N.A. (In re Semcrude, L.P.)*, 443 B.R. 472, 478–79 (Bankr. D. Del. 2011).

45. "So long as the original and amended [pleadings] state claims that are tied to a common core of operative facts, relation back will be in order." *Mayle v. Felix*, 545 U.S. 644, 664, 125 S. Ct. 2562, 2574 (2005); *see also Bensel v. Allied Pilots Ass'n*, 387 F.3d 298, 310 (3d

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[11] Although the Supreme Court in *Krupski* made this statement in the context of a proposed amendment under Rule 15(c)(1)(C) of the Federal Rules of Civil Procedure, the statement applies with equal force to amendments under Rule 15(c)(1)(B) as well. *See Krupski*, 560 U.S. at 553, 130 S. Ct. at 2496 (characterizing amendments under Rule 15(c) as "mandatory" and contrasting Rule 15(c) with Rule 15(a), which provides discretion to the trial court). *Krupski* implicitly overruled prior cases indicating or otherwise suggesting that the court has discretion in applying Rule 15(c)(1)(B). *See, e.g.*, *In re TWA*, 145 F.3d at 141.

Cir. 2004) ("In essence, application of Rule 15(c) involves a search for a common core of operative facts in the two pleadings."). The critical inquiry is thus "whether the opposing party has had fair notice of the general fact situation and legal theory upon which the amending party proceeds." *Id.* at 310. *See also Glover v. FDIC*, 698 F.3d 139, 146 (3d Cir. 2012) ("[T]he touchstone for relation back is fair notice [to the defendant] …."). Accordingly, newly asserted claims will relate back if they "restate the original claim with greater particularity or amplify the factual circumstances surrounding the pertinent conduct, transaction or occurrence in the preceding pleading…." *Bensel*, 387 F.3d at 310. By contrast, if a newly-asserted claim "asserts a new ground for relief supported by facts that differ in both time and type from those the original pleading set forth[,]" that claim will not relate back. *Mayle*, 545 U.S. at 650, 125 S. Ct. at 2566.

46. Applying these standards, courts have identified a number of relevant categories of amendments that are proper and which will relate back to a timely-filed claim:

47. ***Amplifying factual circumstances.*** Providing additional elaboration and factual background in an amended pleading will relate back to the original pleading. *See Bensel*, 387 F.3d at 310 ("[A]mendments that restate the original claim with greater particularity or amplify the factual circumstances surrounding the pertinent conduct, transaction or occurrence in the preceding pleading fall within Rule 15(c)."); *In re Cohen*, 139 B.R. 327, 333 (E.D. Pa. 1992) ("'If the original pleading gives fair notice of the general fact situation out of which the claim or defense arises, an amendment which merely makes more specific what has already been alleged … will relate back ….'" (citation omitted)). Thus, in *Bensel*, an amended complaint that "expound[ed] upon and further detail[ed] the factual scenario and breach claims that were roughly sketched in [an] original Complaint" related back to the original complaint. 387 F.3d at

310; *see also id.* ("These allegations are painted with a broad brush, and can easily be read to encompass the more particularized claims that appear in the Second Amended Restated Complaint."). The Third Circuit reasoned that the original complaint's broad outline of the events surrounding the claims gave the defendant "fair notice of the general fact situation and legal theory upon which the amending party proceed[ed]." *Id.* To similar effect, in *Slayton*, 460 F.3d 215, the Second Circuit indicated that where an initial complaint alleges a "basic scheme" of defrauding investors by misrepresenting earnings and profitability, a more detailed amendment alleging accounts receivable manipulation would relate back to the initial complaint because it is a "natural offshoot" of the alleged scheme. *Id.* at 228.

48. As described above and as detailed in the Claims Chart, most of the amendments to the Original Allegations merely amplify the factual circumstances surrounding the Original Allegations. These amendments provide helpful context about how the various devices and processes were supposed to work, how their failure was within Exide's control, how Exide manipulated testing conditions and concealed test results, and how Exide made false certifications of compliance. *See* TAC ¶¶ 3–4, 16–21, 26, 30–112 & 175.

49. ***Different causation.*** Where the initial pleading asserts a harm, an amended pleading setting forth a similar but different cause of the harm will relate back. *See, e.g.*, *Tiller v. Atlantic C. L. R. Co.*, 323 U.S. 574, 580–81, 65 S. Ct. 421, 424–25 (1945) (holding that an amended complaint related back where the original complaint alleged negligence for failure to provide a lookout who could warn of coming trains, and the amended complaint alleged negligence for failure to properly light the railroad car); *Bernstein v. Nat'l Liberty Int'l Corp.*, 407 F. Supp. 709, 713-14 (E.D. Pa. 1976) (holding that amended claim of sex discrimination related back to claim of discrimination based on religion as "[t]he underlying basis for the action,

employment discrimination, is still the same"); *Davis v. Yellow Cab Co.*, 35 F.R.D. 159, 161 (E.D. Pa. 1964) ("[A]n alteration of the modes in which defendant has breached the legal duty or caused the injury is not an introduction of a new cause of action." (internal quotation marks and citation omitted)). Put another way, "an amended complaint may relate back to the original complaint if the facts alleged in the original complaint indicate an underlying unifying scheme or course of conduct." *Golden v. The Guardian (In re Lenox Healthcare, Inc.)*, 343 B.R. 96, 106 (Bankr. D. Del. 2006) (internal quotation marks and citation omitted). For example, in *Miller v. American Heavy Lift Shipping*, 231 F.3d 242 (6th Cir. 2000), the Sixth Circuit reversed a district court ruling that an amended complaint did not relate back to the original complaint where the original complaint alleged the harm was caused by exposure to asbestos and other hazardous substances generally (without any specific reference to benzene), while the amended complaint alleged such hazardous substances included benzene and specified that the harm came in the form of leukemia. *See id.* at 249. The Sixth Circuit rejected the argument that the court should evaluate whether the two pleadings would be proven up by the same evidence and whether the new pleading "alter[ed] the 'when, where, what, or how' of the alleged injury," explaining that requiring such an inquiry is "too mechanical for the liberal approach of Rule 15(c)." *Id.* at 249 n.6. The Sixth Circuit found that the "very same general set of facts" were alleged in both pleadings: "that decedents worked for many years on Shippers' vessels, that they were exposed to hazardous substances during that time due to Shippers' negligence, and that they sustained injuries in the form of lethal diseases due to their exposure to hazardous substances." *Id.* at 249–50.

50. Here, the leaking van trailer allegations and causes of action permissibly identify a new causal connection between Exide's conduct and the release of lead challenged in the

Original Allegations. *See* TAC ¶¶ 6–10, 117–138, 140–147, 150–155, 157–172 & 211–219. The District asserted in the Original Allegations that Exide emitted lead at its Vernon facility, that Exide was prohibited from discharging emissions into the atmosphere contributing to ambient air concentrations of lead over certain levels, and that Exide failed to store all materials capable of generating any amount of fugitive lead-dust, including lead-containing waste generated from housekeeping or maintenance activities, in sealed, leak-proof containers. *See, e.g.*, Orig. Compl. ¶¶ 4, 34 & 39–40. The leaking van trailer allegations and causes of action simply explain in greater detail a contributing cause of the discharge of lead into the atmosphere originally alleged. *See* TAC ¶¶ 125, 135, 143, 151, 160 & 168. *See also* TAC ¶¶ 156, 185–87, 197–99 & 200–01 (explaining how poor "housekeeping" can lead to the discharge of emissions into the atmosphere and high ambient air concentrations of lead).

51. ***New theory of recovery.*** If an amendment sets forth new theories of recovery on the same core set of facts as in the original pleading, liberally construed, the amendment will relate back. *See, e.g.*, *In re Ben Franklin Hotel Assocs.*, 186 F.3d at 309 (affirming that additional claims for damages and new theory of recovery that arose from the same transactions in the original complaint were not new claims); *Blatt v. Merrill Lynch, Pierce, Fenner & Smith*, 916 F. Supp. 1343, 1351 (D.N.J. 1996) ("[T]he addition of new theories of recovery predicated on the same factual foundation is permissible under the relation back doctrine of Rule 15(c)." (citing 6A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1497, at 94–99 (2d ed. 1990))); *Roeder v. Lockwood (In re Lockwood Auto Grp., Inc.)*, 428 B.R. 629, 639 (Bankr. W.D. Pa. 2010) ("[T]he notice test does not require that the prior complaint put the defendant on notice of new or additional legal theories that the plaintiff seeks to pursue, only the facts that support the new theories."); *Gibbons v. First Fidelity Bank, N.A. (In re Princeton-N.Y.*

*Investors, Inc.)*, 199 B.R. 285, 290 (Bankr. D.N.J. 1996) ("'[T]he emphasis [in determining relation back] is not on the legal theory of the action, but whether the specified conduct of the defendant … is identifiable with the original claim…. The basic test is whether the evidence with respect to the second set of allegations could have been introduced under the original complaint, liberally construed; or as a corollary, that in terms of notice, one may fairly perceive some identification or relationship between what was pleaded in the original and amended complaint.'" (internal quotation and citation omitted)). For example, the Second Circuit has found that an original complaint involving acts of commodity wrongdoing, which contained no reference to RICO, nevertheless put the defendant on notice that a RICO claim might be made against it, because the new claim would involve some of the same or similar evidence and testimony of the same or similar witnesses – even though more evidence would be required. *Benfield v. Mocatta Metals Corp.*, 26 F.3d 19, 23 (2d Cir. 1994).

52. In addition to the leaking van trailer allegations, the Original Allegations were amended to add only two other causes of action based on prepetition conduct, one for willful and intentional emission of arsenic and one for the willful and intentional emission of lead by Exide at its Vernon facility. *See* TAC ¶¶ 208–210 & 224–225. As noted above and in the Claims Chart, both of these causes of action stem from specific language in the Original Proof of Claim. *See* Attachment to Orig. Proof of Claim at 1 ("The Debtor failed to comply with [District] Rules and committed a separate violation giving rise to civil penalties of … $75,000 per day for each and every day of willful and intentional emissions violations pursuant to California Health and Safety Code section[] … 42402.3."). Dividing alternative allegations of Exide's degree of culpability into separate causes of action is, at most, merely a permutation of an existing theory of recovery on the same core set of facts as the Original Allegations.

53. The leaking van trailers allegations likewise are tethered to specific language in the Original Complaint, as noted above. *See, e.g.*, Orig. Compl. ¶¶ 4, 34 & 39. That the Third Amended Complaint splits out causes of actions based on the leaking van trailers from the more general causes of action for release of lead into the ambient atmosphere merely changes the form of the Original Allegations, not their substance. As explained above, the failure to properly store lead in sealed, leak-proof containers leads to the discharge of emissions into the atmosphere and high ambient air concentrations of lead.

54. ***Clarifying period of time.*** An amendment to clarify the period of time over which ongoing and continuous wrongful conduct took place will relate back. *See, e.g.*, *In re Lenox Healthcare, Inc.*, 343 B.R. at 105–06 ("'Because the relation back analysis focuses on whether the fact situation in the original complaint provided notice to the defendant that additional allegations would be pursued, Rule 15(c)(2) [which is now Rule 15(c)(1)(B)] will be satisfied if an amended complaint merely … changes the date … of the transaction alleged ….'" (internal quotation marks and citation omitted)); *Global Link Liquidating Trust v. Avantel, S.A. (In re Global Link Telecom Corp.)*, 327 B.R. 711, 716 (Bankr. D. Del. 2005) ("'Generally, an amended complaint will relate back if it merely … changes the date … of the transaction alleged … [as that does not] affect[] the quality of the notice given by the general fact situation alleged in the original pleading.'" (internal quotation marks and citation omitted)).

55. Paragraphs 112 and 116 of the Third Amended Complaint clarify that the time period covered by the first and second causes of action commenced "at some point after the October 10, 2008" test (*i.e.*, the most recent test reporting relatively low arsenic emissions), in lieu of "within the three years preceding the date of discovery of violations." These amendments follow from other portions of the same causes of action that allege ongoing and continuous

wrongful conduct by Exide in connection with how it operated at the Vernon facility and thereby caused the release of arsenic into the atmosphere. And, in any event, as noted above, these amendments did not necessarily set forth a distinctly broader timeframe relative to the Original Complaint, only a more factually-grounded one.

56. ***Increased damages***. An increase in the amount of damages sought also relates back. *See, e.g.*, *In re Ben Franklin Hotel Assocs.*, 186 F.3d at 303 & 309 (affirming that an increase in damages from $2 million to $5 million and an added demand for punitive damages was not a new claim); *Frontier Ins. Co. v. Westport Ins. Corp. (In re Black)*, 460 B.R. 407, 417 (Bankr. M.D. Pa. 2011) ("Amendments that … increase damages are not new claims.").

57. Accordingly, the fact that the Original Complaint asserted damages in the amount of no less than $40 million and the Third Amended Complaint asserted damages in the amount of no less than $80 million does not prevent the later pleading from relating back to the earlier pleading – especially where, as here, the increased damages are attributable in part to postpetition conduct not subject to the Bar Date Order and the leaking van trailer allegations.

58. In sum, the core conduct at issue in the Original Allegations – Exide's unlawful release of lead and arsenic into the air during the course of its battery recycling operations in Vernon, California – is the same core conduct challenged in the Third Amended Complaint. There is no overreach here. The District is not alleging the release of contaminants other than lead and arsenic; it is not alleging pollution related to facilities other than the Vernon facility; it is not alleging anything other than violations of District Rules; and the only damages it is seeking are penalties. The differences between the District's Original Allegations and those set out in the Third Amended Complaint are quite minor overall, with the only change of any real substance being the addition of the leaking van trailer allegations, which merely provide an

alternative causal connection between Exide's battery recycling operations and the unlawfully high levels of lead present at the Vernon facility.

**RESERVATION OF RIGHTS CONCERNING POSTPETITION CLAIMS**

59. As noted above, the District asserts numerous causes of action in the Third Amended Complaint based upon postpetition conduct. As the District asserted these causes of action in its administrative expense claim filed before the administrative expense claims bar date, these postpetition causes of action are timely. As set forth in the Amended Proof of Claim, however, to the extent that these postpetition causes of action are meritorious but nonetheless are not allowed as administrative expense claims, the District reserves the right to seek the allowance of these postpetition causes of action as general unsecured claims. *See* Plan § 1.98 (defining a "General Unsecured Claim" as a claim that is not, among other things, an "Administrative Claim"); *see also, e.g., Michaels v. Nat'l Bank of Sussex Cnty. (In re E-Tron Corp.)*, 141 B.R. 49, 59 (Bankr. D.N.J. 1992) (postpetition loans made without court approval and outside the ordinary course of business would "presumably be relegated to unsecured status" (citations omitted)).

## CONCLUSION

WHEREFORE, the District respectfully requests a determination by this Court that all prepetition claims asserted against Exide in the Third Amended Complaint may be pursued by the District.

Dated: September 30, 2015

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# Exhibit A

## Claims Chart

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
|---|---|
| **PLAINTIFF'S INTRODUCTORY ALLEGATIONS** | |
| 1. This action arises from Defendant Exide's knowing and willful release of unsafe levels of lead and arsenic into the air.[1] | The underlined language in this paragraph derives from the Third Amended Complaint.<br><br>The underlined language relates back to the December 9, 2013 proof of claim (the "**Original Proof of Claim**") of the South Coast Air Quality Management District (the "**District**"). Page 1 of the attachment to the Original Proof of Claim states: "The Debtor failed to comply with SCAQMD Rules and committed a separate violation giving rise to civil penalties of ... $40,000 per day for each and every day of knowing emissions violations; and $75,000 per day for each and every day of willful and intentional emissions violations pursuant to California Health and Safety Code sections 42402 through 42402.3." |
| 2. Exide is a Delaware corporation which, directly or through affiliates and other entities, does or did business in its own capacity and/or through a location in Los Angeles County, which is included in the South Coast Air Basin, as described in Health and Safety Code Section 40410 and Title 17 of the California Code of Regulations Section 60104 ("the Basin"). Exide owns and operates a large lead-acid battery recycling facility ("Facility") located at 2700 South Indiana Street, Vernon, California 90058. | The language in this paragraph derives from Paragraphs 2 and 4 of the District's original Complaint (the "**Original Complaint**"). |
| 3. More than 100,000 people in the Los Angeles area have been exposed to unsafe levels of lead and arsenic as a result of Exide's operations at the Facility. | The underlined language in this paragraph derives from the Third Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent |

[1] Factual allegations originating from the Original Complaint are not underlined, factual allegations originating from the First Amended Complaint are designated with a dash underline, factual allegations originating from the Second Amended Complaint are single-underlined, and factual allegations originating from the Third Amended Complaint are double-underlined.

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
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| | conduct, transaction or occurrence. *See, e.g.*, *Bensel v. Allied Pilots Ass'n*, 387 F.3d 298, 310 (3d Cir. 2004) ("[A]mendments that restate the original claim with greater particularity or amplify the factual circumstances surrounding the pertinent conduct, transaction or occurrence in the preceding pleading fall within Rule 15(c). In essence, application of Rule 15(c) involves a search for a common core of operative facts in the two pleadings. As such, the court looks to whether the opposing party has had fair notice of the general fact situation and legal theory upon which the amending party proceeds.").<br><br>In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide. |
| 4. Lead is a toxic air contaminant. Exposure to lead can cause damage to the brain and nervous system, cardiovascular problems, decreased kidney function, and other health problems. <u>Lead also has been linked to stunted growth, learning disabilities, seizures and a range of illnesses.</u> | The underlined language in this paragraph derives from the Third Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g.*, *Bensel*, 387 F.3d at 310.<br><br>In addition, the underlined language is non-prejudicial as it is not subject to reasonable dispute and is subject to judicial notice. |
| 5. Arsenic is a toxic air contaminant. It has been identified as a carcinogen that has no exposure threshold level below which adverse health effects are not likely to occur. In addition to being a carcinogen, arsenic also has adverse acute and chronic non-cancer effects. | The language in this paragraph derives from Paragraph 8 of the Original Complaint. |

| THIRD AMENDED COMPLAINT | JUSTIFICATION FOR AMENDMENT |
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| 6. On March 11, 2015, Exide executed a Non-Prosecution Agreement with the United States Attorney's Office for the Central District of California, where it admitted to engaging in felonious conduct in connection with its operation of the Facility. A copy of the Non-Prosecution Agreement, and Appendices 1 and 5 thereto, is attached hereto as Exhibit 1. | The underlined language in this paragraph derives from the Third Amended Complaint.<br><br>The underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint.<br><br>Finally, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute as demonstrated by Exide's admissions in the Non-Prosecution Agreement. |
| 7. In particular, Exide has admitted that, over the past two decades, it knowingly stored lead-contaminated hazardous waste inside leaking van trailers at the Facility. | *See* justification for amendment to Paragraph 6, above. |
| 8. Exide also has admitted to knowingly disposing of lead-contaminated hazardous waste that leaked from van trailers over the past two decades. | *See* justification for amendment to Paragraph 6, above. |
| 9. Exide also has admitted to knowingly and willfully causing the shipment of lead-contaminated hazardous waste in leaking van trailers over the past two decades. In addition, Exide admitted to knowingly causing the transportation of hazardous waste contaminated with corrosive acid to a facility in Bakersfield, California over the past two decades. Exide transported contaminated hazardous waste to this facility even though it knew that this facility was not permitted by the State of California, Department of Toxic Substances Control ("DTSC") to receive corrosive hazardous wastes. | *See* justification for amendment to Paragraph 6, above. |
| 10. Pursuant to the Non-Prosecution Agreement, Exide has agreed not to publicly deny any of the admissions identified in Appendix 1 to the Non-Prosecution Agreement. As laid out below, these admissions also constitute admissions to | *See* justification for amendment to Paragraph 6, above. |

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
|---|---|
| violations of District Rules and the California Health and Safety Code. | |
| 11. At all times herein mentioned, the District was and is organized and existing pursuant to Division 26, Part 3, Chapter 5.5 of the California Health and Safety Code ("Health and Safety Code"). | The language in this paragraph derives from Paragraph 1 of the Original Complaint. |
| 12. The District is responsible for regulating non-vehicular air pollution and emissions in the parts of Los Angeles, Orange, Riverside, and San Bernardino Counties included in the South Coast Air Basin, as described in Health and Safety Code Section 40410 and Title 17 of the California Code of Regulations Section 60104 ("the Basin"). | The language in this paragraph derives from Paragraph 2 of the Original Complaint. |
| 13. Pursuant to Health and Safety Code Section 40702, the District shall adopt rules and regulations and engage in acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the District. | The underlined language in this paragraph derives from the First Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g.*, *Bensel*, 387 F.3d at 310.<br><br>In addition, the underlined language is non-prejudicial as it is not subject to reasonable dispute and is subject to judicial notice.<br><br>In its answer to the First Amended Complaint (the "**Answer**"), Exide admitted that this paragraph asserted a "legal conclusion." |
| 14. Pursuant to Health and Safety Code Section 42403, the District may bring a civil action in the name of the People for civil penalties under Health and Safety Code Sections 42402, 42402.1, 42402.2 and 42402.3, for violation of District Rules. | The language in this paragraph derives from Paragraph 3 of the Original Complaint.<br><br>With respect to the underlined language, *see* justification for amendment to Paragraph 13, above. |
| 15. Pursuant to Health and Safety Code Section 41513, the District may bring a civil action in the name of the People to enjoin any violation of the Health and Safety Code and | *See* justification for amendment to Paragraph 13, above. |

| THIRD AMENDED COMPLAINT | JUSTIFICATION FOR AMENDMENT |
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| any violation of District Rules. | |
| **EXIDE'S OPERATIONS AT THE FACILITY** | |
| 16. Exide begins its recycling operations by receiving batteries, crushing the batteries, and separating out the plastic components from the lead. The lead-bearing materials are separated into grids, metal, and filter cake. The Reverberatory ("Reverb") Furnace smelts the metals and produces a relatively pure or "soft" lead. The molten material from the Reverb Furnace is tapped and transferred to either soft lead refining kettles or the Cupola/Blast ("Blast") Furnace. | The underlined language in this paragraph derives from the First Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.<br><br>The underlined language in Paragraph 16 (as well as the underlined language throughout the Third Amended Complaint generally) relates back to, among other things, Paragraph 4 of the Original Complaint, which stated, in pertinent part: "As part of its business, the facility emits lead and arsenic in the Basin. Exide has a lengthy history of violating District Rules, including for excessive emissions …." The First Amended Complaint explained in greater detail the cause of the discharge of lead and arsenic into the atmosphere alleged in the Original Complaint.<br><br>In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide.<br><br>In its Answer Exide admitted that "its recycling operations include receiving and crushing batteries, and separating the plastic components of the batteries from the lead-bearing components. Exide admits that the materials bearing lead are separated into grids, metal, and filter cake. Exide admits that the Reverb Furnace smelts the metal and filter cake and produces a 'soft' lead. Exide admits that the material from the Reverb Furnace is transferred to either the soft lead refining kettles or the Cupola/Blast Furnace." |

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
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| 17. The Blast Furnace is used to recover a less pure or "hard" lead from the slag produced in the Reverb Furnace, other scrap, and drosses generated from refining operations at the Facility. The Blast Furnace is loaded from the top of the furnace at the opening known as the "feed chute" or "charge chute." A "bucket" containing the feed materials and fuels such as petroleum coke moves up a conveyor system to the top of the Blast Furnace and dumps the feed materials into a funnel-like chute referred to as the "thimble." Exide sometimes adds other chemicals to harden the lead, and one of the chemicals Exide adds is arsenic. The Blast Furnace generates emissions of various contaminants, including but not limited to lead and arsenic. | *See* justification for amendment to Paragraph 16, above.<br><br>In its Answer Exide admitted that "the purpose of the Blast Furnace is to recover 'hard' lead from the slag produced by the Reverb Furnace, other scrap, and drosses generated from refining operations at the facility. Exide admits that feed materials and fuels such as petroleum coke move up a conveyor system to the top of the Blast Furnace and are loaded into the thimble. The Blast Furnace has generated emissions that include arsenic and lead." |
| 18. Because of the toxic nature of chemicals like lead and arsenic involved in Exide's business, and the need to control the emissions of those chemicals into the air, Exide is required to have a series of Air Pollution Control Devices to control emissions from its Blast Furnace. Exide designed its Air Pollution Control Devices to operate in the following manner. Emissions generated in the Blast Furnace are intended to be drawn by air pressure into the Blast Furnace's primary air pollution control system. These emissions are intended to be ducted and vented through the Blast Furnace thimble to an afterburner designed to destroy organic emissions. From the afterburner, the emissions are then intended to be ducted to a baghouse designed to capture filterable particulate emissions. From the baghouse, the emissions are then intended to be ducted to a wet scrubbing system consisting of a Venturi Scrubber and a Neptune Scrubber. The Venturi Scrubber is a high pressure device that uses liquid to react with the gases and the small amount of particulate matter that makes it through the baghouse. The Neptune Scrubber is a tray-type scrubber where the gas | *See* justification for amendment to Paragraph 16, above.<br><br>In its Answer Exide admitted that "it is required by certain regulations to have a series of Air Pollution Control Devices to control emissions from its Blast Furnace. Exide admits that its air pollution control systems are designed to capture emissions from numerous sources via numerous air pollution control devices." |

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
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| stream is brought into contact with caustic liquid. The chemical reactions generated by the contact with the caustic liquid precipitate out remaining gases and fine particulate that have passed through the baghouse filter. Emissions that pass through the wet scrubbing system are then vented to the atmosphere via the Neptune Stack. These scrubbers are effective at removing gaseous arsenic when it is routed through them as intended. | |
| 19. The afterburner, scrubbers, and other Air Pollution Control Devices involved in controlling gaseous emissions can only capture gaseous emissions if those gaseous emissions are being directed to the Air Pollution Control Devices designed to control them. This requires that Exide properly operate and maintain its ventilation system and Air Pollution Control Devices. | *See* justification for amendment to Paragraph 16, above.<br><br>In its Answer Exide admitted that "the air pollution control devices capture gaseous emissions." |
| 20. Emissions generated in the Blast Furnace that escape the primary air pollution control system described above, are typically vented to the Hard Lead Baghouse. These emissions are filtered for particulate matter as they pass through the Hard Lead Baghouse — but the Hard Lead Baghouse is not designed to capture gaseous emissions. Any emissions, including gaseous arsenic emissions, not removed by the Hard Lead Baghouse are vented to the atmosphere via the Hard Lead Stack. | *See* justification for amendment to Paragraph 16, above.<br><br>In its Answer Exide admitted that "emissions generated in the Blast Furnace that are not captured by the air pollution control system connected to the afterburner are typically vented to the Hard Lead Baghouse. Exide admits that the Hard Lead Baghouse filters the emissions for particulate matter." |
| 21. Pursuant to the Air Toxics Hot Spots Information and Assessment Act of 1987 ("Air Toxics Hot Spots Act"), codified in California Health and Safety Code Section 44300 et seq., certain stationary sources, including Exide, are required to report the types and quantities of certain toxic substances their facilities routinely release into the air. These Health Risk Assessments ("HRA") are performed according to the guidance provided by the Office of Environmental Health Hazards Assessment ("OEHHA"), as required by the | *See* justification for amendment to Paragraph 13, above. |

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| Air Toxics Hot Spots Act. Emissions of interest are those that result from the routine operation of a facility or that are predictable, including but not limited to continuous and intermittent releases and process upsets or leaks. The goals of the Air Toxics Hot Spots Act are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, to notify nearby residents of significant risks, and to address the reduction of significant risks. A risk assessment, as defined under the Air Toxics Hot Spots Act, includes a comprehensive analysis of the dispersion of hazardous substances into the environment, the potential for human exposure, and a quantitative assessment of both individual and population-wide health risks associated with those levels of exposure. The methodology typically employs a standardized computer model that takes into account the type and amount of emissions from a facility, weather conditions, and the nearby population of residents and workers. | |
| 22. In this Third Amended Complaint, when reference is made to any act or omission of Exide, such allegations shall include the acts and omissions of owners, officers, directors, agents, employees, contractors, vendors, affiliates, and/or representatives of Exide while acting within the course and scope of their employment or agency on behalf of Exide. | The language in this paragraph derives from Paragraph 5 of the Original Complaint. |
| 23. Plaintiff is ignorant of the true names and capacities of DOES 1 – 50 who are sued herein under fictitious names. Plaintiff will amend this Third Amended Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that such violations were proximately caused by their conduct. | The language in this paragraph derives from Paragraph 6 of the Original Complaint. |

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| 24. Plaintiff is informed and believes and thereon alleges that DOES 1 – 50 include individuals in a position of responsibility allowing them to influence corporate policies or activities with respect to Exide's compliance with California environmental laws and regulations at its Facility and in the conduct of its business in the State of California, and had, by reason of their position in Exide, responsibility and authority either to prevent in the first instance, or promptly correct, the violations complained of herein, but failed to do so. In addition to any direct personal liability of these individuals, these DOES also are personally liable under the "responsible corporate officer doctrine" for violations of law committed by Exide as alleged herein. | The language in this paragraph derives from Paragraph 7 of the Original Complaint. |
| 25. For each day on which defendants failed to comply with any District Rule as hereinafter alleged, defendants committed a separate violation that gave rise to civil penalties of up to $10,000.00 for each and every day of each noncompliance, up to $25,000.00 for each and every day of each negligent emission violation, up to $40,000.00 for each and every day of each knowing emission violation, and up to $75,000.00 for each and every day of each willful and intentional emission violation pursuant to Health and Safety Code Sections 42402 through 42402.3. Health and Safety Code Section 42403 requires that numerous factors be considered in assessing civil penalties for a violation, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the frequency of past violations. | *See* justification for amendment to Paragraph 13, above.<br><br>In addition, the underlined language in the first sentence of this paragraph relates back to the Original Proof of Claim. Page 1 of the attachment to the Original Proof of Claim states: "The Debtor failed to comply with SCAQMD Rules and committed a separate violation giving rise to civil penalties of … $75,000 per day for each and every day of willful and intentional emissions violations pursuant to California Health and Safety Code sections 42402 through 42402.3." |
| 26. Exide has a lengthy history of violating District Rules, including violations involving excessive emissions while Exide was not operating, and plaintiff may seek to further amend this Third Amended Complaint if Exide | The underlined language in this paragraph derives from the Third Amended Complaint.<br><br>The underlined language alleges facts that occurred both post-petition and after the |

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| continues its pattern of conduct, and violates District Rules while it is demolishing, deconstructing, and removing facility structures. | governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint.<br><br>Finally, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide. |
| **JURISDICTION AND VENUE** | |
| 27. Venue is proper in this County pursuant to Health and Safety Code Section 42403, in that violations alleged in this Third Amended Complaint occurred in the County of Los Angeles and in the Basin. The Court has jurisdiction pursuant to Article 6, Section 10 of the California Constitution and Section 393 of the California Code of Civil Procedure. | The language in this paragraph derives from Paragraph 13 of the Original Complaint. |
| **PLAINTIFF'S FIRST CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULE 1407(d)(5)** | This cause of action derives from the First Cause of Action of the Original Complaint. |
| 28. Plaintiff realleges paragraphs 1-27, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 14 of the Original Complaint. |
| 29. At all relevant times herein mentioned, the District had, and continues to have, in full force and effect its Rule 1407 relating to the control of arsenic emissions. A copy of District Rule 1407 is attached hereto as Exhibit 2. District Rule 1407(d)(5) states that "[g]ood operating practices shall be used by the facility, and demonstrated through a maintenance program and the use of measuring devices, or other procedures approved by the District, to maintain air movement and emission collection efficiency by the system consistent with the design criteria for the system." District Rule 1407(b)(12) defines "good operating practices" as "any specific activities necessary to maintain the collection and control efficiencies | The language in this paragraph derives from Paragraph 15 of the Original Complaint. |

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| as designed and permitted for. These activities include, but are not limited to, verifying operating specifications such as production throughput, temperature control, cleaning cycles, air flow and velocity, and inspecting equipment, such as filter cartridges or bags in a baghouse, pressure gauges, duct work, blowers and components of the control equipment, through a general maintenance and inspection program." | |
| 30. As described above in the Introductory Allegations, Exide designed its air pollution control system so that gaseous arsenic was intended to leave the blast furnace via the downstream afterburner, baghouse, and Neptune Scrubber and Venturi Scrubber, because those scrubbers effectively control gaseous arsenic emissions. | *See* justification for amendment to Paragraph 16, above.<br><br>The underlined language in Paragraph 30 (as well as the underlined language in the paragraphs below through Paragraph 112) relates back to, among other things, Paragraph 16 of the Original Complaint (now Paragraph 112, below), which stated, in pertinent part:<br><br>"Plaintiff is informed and believes that within the three years preceding the date of discovery of violations and continuing thereafter, defendants, and each of them, operated Exide's Cupola Furnace [Device D128], its Reverbatory Furnace [Device D119], and/or process related air pollution control systems [Device Nos. C40, C42, C43, C44, C45, C46] without using good operating practices to maintain air movement and emission control efficiency consistent with the design criteria for the system. The lack of good operating practices included, but is not limited to, defendants' failure to prevent blockages from forming in its air pollution control system and equipment connected to its air pollution control equipment, defendants' failure to maintain the air movement necessary to direct gaseous emissions into the air pollution control equipment designed to control them, and defendants' failure to maintain emission collection efficiency because they failed to route gaseous arsenic emissions to an air pollution control system designed to control |

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| | arsenic emissions, in violation of District Rule 1407(d)(5). As a result, Exide emitted gaseous arsenic into the atmosphere."<br><br>In its Answer Exide admitted that "one portion of its air pollution control system is designed to have gaseous arsenic that might be present leave the blast furnace via the afterburner, baghouse, and Neptune and Venturi Scrubber, which Exide is informed and believes would effectively control such gaseous arsenic emissions that might be present." |
| 31. Exide's Title V permit required that Exide operate its air pollution control system, including the portions connected to the Venturi and Neptune Scrubbers, pursuant to Exide's design. | *See* justifications for amendment to Paragraphs 16 and 30, above. |
| 32. As part of its regular maintenance procedures, Exide used an access door to visually inspect a portion of the interior of a ventilation riser connected to Exide's Blast Furnace. Based on information and belief, Exide recognized that failing to prevent material from building up within its air pollution control system could affect the proper flow of air movement and prevent the efficient collection of emissions. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "it has used an access door to visually inspect a portion of the interior of the ventilation riser connected to Exide's Blast Furnace." |
| 33. The access door that was being used for these inspections was not large enough to allow Exide's employees to conduct a thorough visual inspection of a ventilation riser connected to Exide's Blast Furnace. Exide also failed to otherwise train its employees to conduct a thorough inspection of this ventilation riser. In addition, Exide failed to provide its employees with cleaning tools designed to thoroughly clean this ventilation riser. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "it modified the design of the access door and provided additional training to employees after discovery of the blockage." |
| 34. As outlined below, in part because of the failures referenced in the prior paragraph, Exide failed to keep a ventilation riser | *See* justifications for amendment to Paragraphs 16 and 30, above. |

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| connected to Exide's Blast Furnace free from blockage, and this failure was partially responsible for Exide unlawfully emitting arsenic into the air. | In its Answer Exide admitted that "there was a blockage in the riser, which was cleared." |
| 35. In or about 2007, based on information and belief, Exide conducted an emissions test of its Hard Lead Baghouse. The testing showed that Exide was emitting arsenic at a rate of approximately 0.0000774 pounds per hour ("lb/hr") from its Hard Lead Baghouse. This meant that Exide was emitting approximately 0.0018 pounds of arsenic a day. Exide later noted that these arsenic emissions were "in line with reasonable expectation and normal operation, and not associated with risks at a level of concern." | *See* justifications for amendment to Paragraphs 16 and 30, above. |
| 36. On or about October 10, 2008, the District conducted an emissions test of Exide's Hard Lead Baghouse. The test showed that Exide was emitting arsenic at a rate of approximately 0.000851 lb/hr from its Hard Lead Baghouse. This meant that Exide was emitting approximately 0.02 pounds of arsenic a day. Exide considered these emissions to be similar to the results from the 2007 tests and described them as "relatively low arsenic emissions." | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "the District conducted an emissions test on or about October 10, 2008, and is informed and believes that the results of a single run was reported by the District as having a mass emission rate for arsenic of 0.000851 lb/hr." |
| 37. Based on information and belief, at some point after the October 2008 test, a blockage began forming in a ventilation riser connected to Exide's Blast Furnace, and this was partially responsible for steadily increased arsenic emissions. Based on information and belief, proper maintenance and inspection by Exide would have discovered the blockage. Indeed, based on information and belief, proper maintenance would have simply required routinely looking throughout the entire riser to check for blockages, and regularly using cleaning tools designed to clean the ventilation riser. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "a blockage was discovered in the ventilation riser, which appeared to be responsible for increased emissions." |
| 38. Based on information and belief, at some | *See* justifications for amendment to Paragraphs |

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| point after the October 2008 test, Blast Furnace process exhaust containing gaseous arsenic was not being confined to its intended path that would ultimately lead it through the scrubbers. To prevent the gaseous emissions front escaping, Exide could have, and should have, increased the air flow in the blast furnace ventilation system to effectively send the gaseous emissions to their intended air pollution control system. In addition, failing to have a physical barrier on the charge chute, and failing to prevent leakage points in the walls around the Blast Furnace and elsewhere, allowed process exhaust gases containing arsenic to escape into the atmosphere. | 16 and 30, above. |
| 39. In court documents, Exide's Chief Financial Officer ("CFO") stated that Exide began pursuing initiatives in early 2010 to address the significant loss of revenue and battery cores from losing one of Exide's major customers, Wal-Mart. This resulted in Exide's loss of approximately $160 million in annual revenue. In addition to the revenue lost from Wal-Mart sales, Exide also lost an important and reliable source of battery cores under a captive-core arrangement with Wal-Mart. As a result, Exide engaged in efforts to cut costs, including reducing corporate and regional overhead cost, closing its Frisco, Texas plant and idling the Reading, Pennsylvania smelting facility. | The underlined language in this paragraph derives from the Third Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.<br><br>The underlined language in Paragraph 39 (as well as the underlined language in the paragraphs below through Paragraph 112) relates back to, among other things, Paragraph 16 of the Original Complaint (now Paragraph 112, below), which stated, in pertinent part:<br><br>"Plaintiff is informed and believes that within the three years preceding the date of discovery of violations and continuing thereafter, defendants, and each of them, operated Exide's Cupola Furnace [Device D128], its Reverbatory Furnace [Device D119], and/or process related air pollution control systems [Device Nos. C40, C42, C43, C44, C45, C46] without using good operating practices to maintain air movement and emission control efficiency consistent with the design criteria for the system. The lack of good operating practices included, but is not limited to, defendants' failure to prevent blockages from |

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| | forming in its air pollution control system and equipment connected to its air pollution control equipment, defendants' failure to maintain the air movement necessary to direct gaseous emissions into the air pollution control equipment designed to control them, and defendants' failure to maintain emission collection efficiency because they failed to route gaseous arsenic emissions to an air pollution control system designed to control arsenic emissions, in violation of District Rule 1407(d)(5). As a result, Exide emitted gaseous arsenic into the atmosphere."<br><br>In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide. |
| 40. According to Exide's CFO, with the closure of the Frisco and Reading facilities, Exide was left with only three lead recycling facilities: the recycling centers in Vernon, California, Canon Hollow, Missouri, and Muncie, Indiana. If Exide could not recycle enough lead to meet its battery recycling obligations, it was forced to purchase lead on the open market which was far more expensive. Of these three facilities, the Vernon facility was the largest. | *See* justification for amendment to Paragraph 39, above. |
| 41. In or about July 2010, while Exide was adjusting to the loss of Wal-Mart and experiencing other financial difficulties, the District required Exide to perform a Health Risk Assessment ("HRA") to assess the full spectrum of toxic air emissions that Exide was releasing regularly during its routine operations, and determine what health risks Exide's normal operations posed. | *See* justification for amendment to Paragraph 39, above. |
| 42. By October 2010, according to Exide's consultant, Exide was emitting arsenic at "significant levels." On or about October 4, 5, | *See* justifications for amendment to Paragraphs 16 and 30, above. |

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| and 7, 2010, Exide's consultant conducted a source test consisting of comprehensive emission stack tests, and obtaining a spectrum of air toxics emissions data so that Exide's HRA and Emission Inventory Report could be revised. The source test of the Hard Lead System included a minimum of three test runs, which were performed on the outlet of the Hard Lead baghouse during typical process unit and control operating conditions. Based on the average of those three tests, Exide's Hard Lead Baghouse was emitting arsenic at a rate of approximately 0.0759 lb/hr. This meant that over an average day, Exide was emitting approximately 1.82 pounds of arsenic a day, much higher than the level of emissions that it considered to be in line with reasonable expectation and normal operation. Notably, Exide's arsenic emissions had the potential to be much higher than this average. The October 4, 2010 test showed that Exide emitted arsenic at a rate of approximately 0.110 lb/hr, which meant that Exide had the potential to emit approximately 2.64 pounds of arsenic a day. | In its Answer Exide admitted that "emissions stack tests were conducted in October 2010 in order to obtain data for its HRA and EIR. Exide admits that three tests were run on the Hard Lead Baghouse. Exide admits that the average reported mass emission rate for arsenic during those three test runs was 0.0759 lb/hr and that the rates reported for each individual test are indicated in the test report." |
| 43. Exide's consultant stated that it "reviewed" the test results, believed them to be "accurate," and noted that the "equipment was operated at normal conditions during testing." Exide's consultant stated that during the testing, a "strict quality assurance program (QAP) was adhered to throughout the source sampling and analytical phases of the program. The QAP incorporated reference test methods, performance standards, and internal standard operating procedures to ensure that all measurements are valid, representative, and scientifically defensible." | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 44. Exide's consultant stated that the "purpose of the test was to conduct the AB2588 testing in support of the collection of emissions data so that the Exide Emission Inventory Report (EIR) and Health Risk Assessment (HRA) could be revised and the Resource | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |

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| Conservation and Recovery Act (RCRA) Part B Application could be updated." Based on information and belief, Exide understood that the emissions being tested contained toxic substances including carcinogens like arsenic. | |
| 45. By in or about 2010, technology had been on the market for years that could drastically reduce emissions from battery recycling facilities. One type of such technology was known as a Wet Electrostatic Precipitator ("WESP"). | *See* justification for amendment to Paragraph 39, above. |
| 46. However, based on information and belief, the implementation of WESP technology costs many millions of dollars, which Exide considered economically unfeasible. In or about November 2010, Exide's Vice President and General Manager of North American Recycling stated that "[t]he cost associated with further technology implementations may be too-burdensome for [Exide] to continue operations in California." | *See* justification for amendment to Paragraph 39, above. |
| 47. Based on information and belief, despite knowing that arsenic was a carcinogen, and that its Facility was emitting arsenic at significant levels, Exide continued to operate its Facility in the same manner. Based on information and belief, Exide continued to emit arsenic at significant levels on a daily basis. | *See* justification for amendment to Paragraphs 16 and 30, above. |
| 48. On or about June 29, 2011, Exide sent the District the report for the October 2010 source test, and stated that there was a "process abnormality at the time of testing that may have influenced the Arsenic measurements. Exide will repeat the Multi-metals Source Test of the Hard Lead Baghouse which is tentatively scheduled for Mid-July 2011. Please accept this letter as the initial Source Notification. We [will] submit a follow-up email with the exact testing dates. Once the Multi-metals re-test data is received and reviewed, Exide would like [to] replace the | *See* justification for amendment to Paragraph 39, above. |

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| earlier 2010 multi-metals data with the newer 2011 data for consideration in the AB2588/HRA evaluation." | |
| 49. On or about July 21, 2011, Exide sent the District an email stating that "Exide has scheduled repeat HRA multi-metals and hex-chrome source testing of the Hard Lead Baghouse. Retesting is scheduled for Wednesday 7/27/2011. Exide is repeating the multi-metal and hexavalent chrome testing because of anomalous results. The additional testing results will be submitted to the SCAQMD for review, as received." | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 50. Beginning several days later, on or about July 26, 27, and 28, 2011, Exide performed stationary source emissions testing of the Hard Lead Baghouse located at the Facility. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "on July 26, 27, and 28, 2011, it had source testing conducted on the Hard Lead Baghouse at the Vernon Facility." |
| 51. The July 26, 27, and 28, 2011 source test showed that the October 2010 test results were not "anomalous" as Exide had recently claimed. Rather, the July 2011 tests confirmed that Exide's arsenic emissions had progressively worsened since October 2010, and that Exide's regular operations were emitting high amounts of arsenic that posed an increasing health risk to the surrounding community. | *See* justification for amendment to Paragraph 39, above. |
| 52. The July 26, 27, and 28, 2011 source test confirmed that Exide continued to emit arsenic at "significant levels" and that the emissions had grown significantly worse. The test revealed that Exide was emitting arsenic at a rate of approximately 0.137 lb/hr. This meant that Exide was emitting approximately 3.288 pounds of arsenic a day, much higher than the level of emissions that it considered to be in line with reasonable expectation and normal | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "the average reported mass emission rate for arsenic during the test runs was 0.137 lb/hr and that the rates reported for each individual test are indicated in the test report."<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is |

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| operation. | the best evidence of what was stated therein." |
| 53. These July 2011 source tests were run using different amounts of feed material, and the highest arsenic emissions occurred when Exide used more than 80% of Exide's permitted amount of feed material. The test on July 27, 2011 was run using 83% of the permit limit, and it resulted in the highest arsenic emissions, approximately 0.233 lb/hr. The next day, Exide reduced the amount of feed material to 75%, and this resulted in the lowest arsenic emissions, approximately 0.0565 lb/hr. Thus, when Exide ran its blast furnace at more than 80% of its permitted capacity it was potentially emitting 5.59 pounds of arsenic a day. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "the measured mass emission rates for the test runs are indicated in the test report."<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 54. Exide's consultant stated that it "reviewed" the July 26, 27 and 28, 2011 source test results, believed them to be "accurate," and noted that the "equipment was operated at normal conditions during testing." Exide performed three test runs and all three test runs were "performed on the outlet of the Hard Lead baghouse during typical process unit and control operating conditions." Exide's consultant stated that during the testing, a "strict quality assurance program (QAP) was adhered to throughout the source sampling and analytical phases of the program. The QAP incorporated reference test methods, performance standards, and internal standard operating procedures to ensure that all measurements are valid, representative, and scientifically defensible." | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 55. In or about late August 2011, Exide received preliminary results showing that the arsenic emissions in the July 26, 27, and 28, 2011 source test was higher than the October 2010 source test. | *See* justification for amendment to Paragraph 39, above. |
| 56. Based on information and belief, Exide did not send the preliminary results showing that | *See* justification for amendment to Paragraph 39, above. |

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| the arsenic emissions in the July 26, 27, and 28, 2011 source test was higher than the October 2010 test to the District in August, September, or the rest of 2011, despite stating that it would send the District this information "as received." | |
| 57. Based on information and belief, several days after learning that its arsenic emissions had worsened, Exide wrote in a letter to DTSC that it would not be economically feasible for Exide to install additional air pollution controls that could reduce Exide's toxic emissions. Based on information and belief, Exide specifically referenced air pollution controls that it considered economically infeasible, namely, the "available EPA-designated process control and ventilation control technologies, including (but not limited to) Wet Electrostatic Precipitators and/or Fugitive Emission Filtration Units with HEPA filtration." Based on information and belief, Exide stated in the letter that "the expected $30 million capital cost (and incremental cost of over $6 million per ton) renders the available technologies economically infeasible." | *See* justification for amendment to Paragraph 39, above. |
| 58. In or about September 2011, Exide received the full source test report showing that the arsenic emissions in the July 26, 27, and 28, 2011 source test was higher than the October 2010 source test. | *See* justification for amendment to Paragraph 39, above. |
| 59. The cover letter accompanying the July 26, 27, and 28, 2011 source test results that Exide's consultant sent to Exide stated that this test was done to show Exide's emissions to determine the health risks posed by Exide's regular operations, to revise and update Exide's Health Risk Assessment under AB2588. Exide's consultant stated in the cover letter that "[t]esting was conducted at your facility to provide the emissions data for Multiple Metals and Hexavalent Chromium | *See* justification for amendment to Paragraph 39, above. |

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| according to AB2588 test protocol[.]" | |
| 60. The Title Page for the July 26, 27, and 28, 2011 source test also stated that this test were done to show Exide's emissions to determine the health risks posed by Exide's regular operations, to revise and update Exide's Health Risk Assessment under AB2588, and that it was meant to be submitted to the District. That page stated described the source test as "AB2588 Emissions Testing at the Exide Technologies, Vernon Facility, Hard Lead Refining System," stated it was prepared for Exide, and that it was "For Submittal to: South Coast Air Quality Management District (SCAQMD)." | *See* justification for amendment to Paragraph 39, above. |
| 61. The Executive Summary for the July 26, 27, and 28, 2011 source test also showed that this test was conducted to determine the health risks posed by Exide's regular operations, to revise and update Exide's Health Risk Assessment under AB2588. The Executive Summary stated that the "Test Objective" was to "Characterize emissions of the selected contaminants of concern (COC) for metals and hexavalent chromium at the outlet of control device. Exide will utilize the emissions data to revise the EIR and HRA and to update the RCRA Part B application." | *See* justification for amendment to Paragraph 39, above. |

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| 62. The Report's Introduction for the July 26, 27, and 28, 2011 source test similarly showed that this test was conducted to determine the health risks posed by Exide's regular operations and to revise and update Exide's Health Risk Assessment under AB2588. It stated that the "purpose of the test was to conduct the AB2588 testing in support of the collection of emissions data so that the Exide Emission Inventory Report (EIR) and Health Risk Assessment (HRA) could be revised and the Resource Conservation and Recovery Act (RCRA) Part B Application could be updated." | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 63. Exide's Tile V Permit required Exide to submit the July 26, 27, and 28, 2011 source test report to the District no later than 60 days after conducting the July 26, 27, and 28 2011 source test. Specifically, Section E, Administrative Condition 10, of Exide's Title V Permit required that Exide "shall submit a report no later than 60 days after conducting a source test[.]" | *See* justification for amendment to Paragraph 39, above. |
| 64. Despite having a duty to submit the July 26, 27, and 28, 2011 source test report to the District, Exide did not submit this report to the District in September 2011 when Exide received the report, or for the rest of 2011. | *See* justification for amendment to Paragraph 39, above. |

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| 65. If Exide had sent the July 26, 27, and 28 source test report to the District no later than 60 days after conducting the July 26, 27, and 28 2011 source test as it was required to do, or shortly after it received it, the District would not have allowed Exide to continue to operate the Facility. | *See* justification for amendment to Paragraph 39, above. |
| 66. Exide failed to send the report for the July 2011 source test in 2011 despite stating that it would send the District the July 2011 source test results "as received," even though the report was prepared for submittal to the District to revise and update Exide's HRA under AB2588, even though Exide had stated it intended to replace the October 2010 source test with the July 2011 source test for its HRA under AB2588, even though Exide's permit required it, and even though Exide knew that the results of the July 2011 source tests were material to Exide's HRA under AB2588. | *See* justification for amendment to Paragraph 39, above. |
| 67. On or about October 10, 2011, revised emissions values were provided to the District for the October 4, 5, and 7, 2010 source tests of Exide's Hard Lead System. Exide and the District communicated about these revisions. | *See* justification for amendment to Paragraph 39, above. |
| 68. If Exide had sent the July 26, 27, and 28 source test report to the District during these October 2010 communications, the District would not have allowed Exide to continue to operate the Facility. | *See* justification for amendment to Paragraph 39, above. |
| 69. Based on information and belief, Exide failed to inform the District that the arsenic emissions in the July 26, 27, and 28, 2011 source test were higher than the October 2010 source test during these communications in October 2011, or for the rest of 2011, despite Exide's duty to provide this source test to the District. | *See* justification for amendment to Paragraph 39, above. |
| 70. Based on information and belief, Exide concealed the July 2011 source test report in | *See* justification for amendment to Paragraph 39, above. |

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| 2011, and omitted any mention of it in 2011, despite having a duty to submit it to the District, because of Exide's concern that the District would not have allowed Exide to continue to operate the Facility if it learned of the increased arsenic omissions. | |
| 71. Based on information and belief, Exide concealed the July 2011 source test report in 2011, and omitted any mention of it in 2011, despite having a duty to submit it to the District, because of Exide's concern that the District would require Exide to install improved air pollution technology that Exide considered economically unfeasible. | *See* justification for amendment to Paragraph 39, above. |
| 72. Based on information and belief, Exide concealed the July 2011 source test report, and omitted any mention of it in 2011, despite having a duty to submit it to the District, because of Exide's concern that it would reveal increased health risks for HRA purposes. | *See* justification for amendment to Paragraph 39, above. |
| 73. Based on information and belief, despite knowing that arsenic was a carcinogen, and that it was emitting arsenic at significant levels, Exide continued to operate its Facility in the same manner after receiving the July 2011 source test results. Based on information and belief, Exide continued to emit arsenic at significant levels on a daily basis. | *See* justifications for amendment to Paragraphs 16 and 30, above. |
| 74. Exide later claimed that "the root cause of the abnormally high arsenic results" was "material buildup in the blast furnace exhaust ventilation system at the transition from the feed shaft as it passes through the riser." After identifying the material buildup as a potential cause of the abnormally high arsenic results, Exide performed two brief additional tests, which showed a reduction in arsenic emissions. On February 16, 2012, Exide's consultant ran two tests to evaluate arsenic emissions from the hard lead system. The first test showed a noticeably lower rate than the October 2010 or | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |

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| July 2011 source tests, at 0.0046 lb/hr of arsenic emissions. But the second test was more than twice as high, at 0.0099 lb/hr of arsenic emissions. Exide's consultant did not perform a third test that day. Taken together, these numbers indicated that Exide's air pollution control system continued to function improperly. | |
| 75. In a March 12, 2012 letter to the District, Exide admitted that a problem in its hard lead ventilation system had caused high arsenic emissions, but claimed that Exide had fixed the problem. Exide stated that based on its October 2010 source test there was an "increase in calculated risk [that] was essentially entirely due to elevated arsenic emissions from the hard lead baghouse stack" and noted that prior HRA emissions data from 2007 for "arsenic emissions from that stack were much lower, in line with reasonable expectation and normal operation, and not associated with risks at a level of concern." Exide stated that material buildup had "the effect of drawing process gases into the hard lead ventilation system," instead of sending the gases through Air Pollution Control Devices designed to control arsenic emissions. Exide acknowledged that it had failed to identify and remove the material buildup in the riser. Exide also wrote that it had "modified its published Proposition 65" warning notice to reflect the area affected by the arsenic emissions. Exide then requested that it be allowed to run new tests, and to substitute those tests for the October 2010 results in calculating Exide's health risks. Exide claimed that these tests would reflect normal operations of its blast furnace. Exide did not mention the July 26, 27, and 28, 2011 source test in this letter. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "it sent a letter to the District discussing the blockage in the riser."<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 76. In a March 30, 2012 email and accompanying letter to the District, Exide again admitted that a problem in its Hard Lead Ventilation System had caused high arsenic | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "it sent a |

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| emissions, but claimed that Exide had fixed the problem. It stated that the problem was "related to the fact that process off-gases were drawn into the blast furnace charge area hooding served by the Hard Lead Ventilation System due to a partial obstruction and back pressure in the process exhaust system directed to the Neptune Scrubber." In this communication, Exide mentioned the July 2011 source test as a retest, compared those results to some February 16, 2012 tests, and used the differing results, along with other claims, to argue that any problem had been fixed. Exide again requested to be allowed to run additional tests, and to substitute those tests for the October 2010 source test results in calculating Exide's health risks. Exide claimed that these tests would represent current normal operations of its blast furnace. | letter to the District discussing the blockage in the emissions stack."<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 77. Several statements made by Exide in its March 12, 2012 letter and March 30, 2012 email to the District were false, misleading, omitted material information, and recklessly disregarded the truth. First, the problem identified by Exide had not been fixed. Rather, as of March 12, 2012, gaseous plumes were still being drawn into the hard lead baghouse. Exide failed to mention that the Facility had a control room with a video monitor that continuously allows Exide's employees to watch the top of the Blast Furnace and that, based on information and belief, this video monitor showed that large puffs of gray fumes were continuing to regularly escape the Blast Furnace instead of travelling along their intended route that would lead them through the scrubbers designed to control gaseous arsenic emissions. Despite its video monitor showing that gaseous fumes were escaping from their air pollution control system, and Exide's awareness that, or reckless disregard of the fact that, these fumes contained arsenic, a carcinogen, Exide continued to operate its air pollution control system without a physical | *See* justification for amendment to Paragraph 39, above. |

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| barrier on the charge chute to prevent gaseous arsenic emissions from escaping, without sufficient air flow to send gaseous emissions to the scrubber, and failed to repair the Blast Furnace's leakage points, all of which allowed gaseous emissions to escape. Second, the new tests would not reflect normal operations, as Exide had represented. Instead, Exide altered the operating conditions for the new tests, so that the operating conditions were significantly different than those during the October 2010 tests and July 2011 source tests. | |
| 78. Shortly after Exide's March 30, 2012 communications, Exide provided additional data to the District, this time including the July 2011 source test, in an attempt to support its claim that Exide had fixed the problem in its Hard Lead Ventilation System. But Exide again failed to mention that, based on information and belief, this video monitor showed that large puffs of gray fumes were continuing to regularly escape the Blast Furnace instead of travelling along their intended route that would lead them through the scrubbers designed to control gaseous arsenic emissions. | *See* justification for amendment to Paragraph 39, above. |
| 79. Even though Exide represented in its March 30, 2012 communication that subsequent tests would represent current normal operations, Exide altered the operating conditions for the May 2, 3, and 4, 2012 source test, so that the operating conditions were significantly different than those during the October 2010 and July 2011 source tests. Exide altered the operating conditions despite claiming that the problem in its Hard Lead Ventilation System was fixed, and despite requesting additional testing of its normal operations to show that the problem was fixed. | *See* justification for amendment to Paragraph 39, above. |
| 80. Exide's Title V Permit, Section D, Condition C1.2 limits Exide to processing 178.32 tons in the Blast Furnace, also referred | *See* justification for amendment to Paragraph 39, above. |

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| to as the Cupola Furnace, in any day. Exide's Title V Permit, Section D, Condition C1.3 limits Exide to processing 439.2 tons in the Reverberatory Furnace in any day. | |
| 81. District Rule 1420.1(k)(7) states that "[s]ource tests shall be conducted while operating at a minimum of 80% of equipment permitted capacity[.]" Each source test consists of three individual test runs, or samples, that are averaged together, and that average is used to determine a facility's emissions. | *See* justification for amendment to Paragraph 39, above.<br><br>In addition, the underlined language is non-prejudicial as it is subject to judicial notice. |
| 82. A full day at 80% of the Blast Furnace's permitted capacity is approximately 142.64 tons, while an average hour at 80% capacity is 5.94 tons per hour. A full day at 80% of the Reverberatory Furnace's permitted capacity is approximately 351.36 tons, while an average hour at 80% capacity is 14.64 tons per hour. | *See* justification for amendment to Paragraph 39, above. |
| 83. The October 2010 source test consisted of three individual tests on October 4, 5, and 7, 2010 that were, respectively, run at approximately 86.5%, 95%, and 83.5% of the Blast Furnace's permitted throughput limit for an average of approximately 88.3% of permitted capacity. This meant that between approximately 6.21 and 7.06 tons of feed material per hour were going through the Blast Furnace during the October 2010 source test. The July 2011 source test consisted of three individual tests on July 26, 27, and 28, 2011 that were, respectively, run at approximately 81%, 83% and 75% of the Blast Furnace's permit limit for an average of approximately 79.6%, which rounds up to 80%. This meant that between approximately 5.6 and 6.2 tons of feed material per hour were going through the Blast Furnace during the July 2011 source test. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 84. In contrast, the May 2, 3, and 4, 2012 pre-scheduled source test was run with substantially less feed material going to the | *See* justification for amendment to Paragraph 39, above. |

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| Blast Furnace than the October 2010 or July 2011 source tests. This occurred despite District Rule 1420.1(k)(7)'s requirement that source tests be run at 80% of permitted capacity. It also stood in stark contrast to the October 2010 and July 2011 source tests that were conducted at approximately 80% or more of permitted capacity. Moreover, running the source tests at these low rates was contrary to AB2588's purpose of assessing Exide's health risks posed by its normal, routine operations. | |
| 85. The May 2012 source test consisted of individual runs on May 2, 3, and 4, 2012 that were run at approximately 56.3%, 60.9%, and 46% of the Blast Furnace's permitted capacity, for an average of 54.4% of the Blast Furnace's permitted capacity. This meant that approximately 3.42 and 4.53 tons of feed material per hour were going through the Blast Furnace during the tests. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "on May 2, 3, and 4, 2012, Exide's consultants performed three tests on the Blast Furnace." |
| 86. On the days of the May 2, 3, and 4 source test, during which approximately 8 hours per day were spent testing, Exide processed only approximately 97.2 tons, 99.4 tons, and 99.8 tons, respectively, in the Blast Furnace. That was the last time in May 2012 that Exide processed less than 100 tons a day for three days in a row. | *See* justification for amendment to Paragraph 39, above. |
| 87. While Exide was processing less material than average through its Blast Furnace on the days of the May 2, 3, and 4, 2012 source test, it was simultaneously processing significantly more material than average in its other furnace, the Reverberatory Furnace, which was not being tested. On May 2, 3, and 4, 2012, the Reverberatory Furnace was run using, respectively, approximately 425 tons (96.8% of permitted capacity), approximately 429.2 tons (97.7% of permitted capacity), and approximately 412.6 tons (93.9% of permitted capacity). For the rest of May 2012, Exide had only one day when it processed more than | *See* justification for amendment to Paragraph 39, above. |

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| 350 tons a day in its Reverberatory Furnace, and none when it processed more than 400 tons a day. Indeed, the Reverberatory Furnace's two highest production days for 2012, and the fourth highest production day for the Reverberatory Furnace in 2012 all occurred during these source tests. | |
| 88. On each day of the May 2, 3, and 4, 2012 source test, Exide processed less than 100 tons in its Blast Furnace, and more than 400 tons in its Reverberatory Furnace. | *See* justification for amendment to Paragraph 39, above. |
| 89. It was exceedingly rare for Exide to process less than 100 tons in its Blast Furnace, and more than 400 tons in its Reverberatory Furnace, for three days in a row. | *See* justification for amendment to Paragraph 39, above. |
| 90. Outside of the days of the May 2, 3, and 4, 2012 source test, unless the Blast Furnace was not operating, at no other time in 2009, 2010, 2011, or 2012, did Exide process more than 400 tons in its Reverberatory Furnace and less than 100 tons in its Blast Furnace for even two days in a row. | *See* justification for amendment to Paragraph 39, above. |
| 91. Indeed, the last time Exide processed less than 100 tons in its Blast Furnace, and more than 400 tons in its Reverberatory Furnace, for three days in a row was October 8, 9 and 10, 2008. | *See* justification for amendment to Paragraph 39, above. |
| 92. On October 9 and 10, 2008, the District was at Exide conducting a prior round of pre-scheduled tests. | *See* justification for amendment to Paragraph 39, above. |
| 93. On October 9 and 10, 2008, Exide was also under increased scrutiny for high emissions. That time the District was investigating Exide for high lead emissions. | *See* justification for amendment to Paragraph 39, above. |
| 94. Based on information and belief, Exide determined the amount of feed material that would be going to each furnace for the tests | *See* justification for amendment to Paragraph 39, above. |

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| on October 9 and 10, 2008, and the tests on May 2, 3, and 4, 2012. | |
| 95. The May 2, 3, and 4, 2012 source test did not reflect normal operation of the Blast Furnace and Reverberatory Furnace. | *See* justification for amendment to Paragraph 39, above. |
| 96. Based on information and belief, Exide knew that the process conditions during the May 2, 3 and 4, 2012 source tests did not reflect normal operating conditions. Despite this, they caused to be submitted to the District, a Source Test Report for May 2, 3, and 4, 2012 that falsely stated that "equipment was operated at normal conditions during testing," and that also falsely stated that all three test runs were "performed on the outlet of the Hard Lead baghouse during typical process unit and control operating conditions." | *See* justification for amendment to Paragraph 39, above. |
| 97. Based on information and belief Exide knew the hard lead ventilation system was still not operating properly, and that running the May 2, 3 and 4, 2012 source tests at 80% would expose that. Therefore, Exide ran the May 2, 3 and 4, 2012 source tests at less than 80% of its permitted capacity in an attempt to conceal the full scope of its arsenic emissions. | *See* justification for amendment to Paragraph 39, above. |
| 98. Based on information and belief, Exide may have used a variety of other methods to artificially deflate its arsenic emissions. | *See* justification for amendment to Paragraph 39, above. |
| 99. Despite substantially lowering the amount of material going to its Blast Furnace, the May 2012 source test revealed that Exide's normal operations could still emit over one pound per day of arsenic. The test confirmed that Exide was still failing to operate its air pollution control system properly. The average of the three individual tests showed an emission rate of approximately 0.0212 lb/hr. This meant that over an average day, even with substantially less material going to their Blast Furnace, Exide was emitting approximately 0.5 pounds | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |

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| of arsenic a day, much higher than the level of emissions that it considered to be in line with reasonable expectation and normal operation. Notably, two of the three individual tests showed arsenic emission rates higher than the 0.0099 rate from the second February 16, 2012 source test. The May 3, 2012 source test was significantly higher at 0.0437 lb/hr. The elevated rate of the May 3, 2012 test showed that Exide's normal operations could still emit over one pound per day of arsenic. Notably, the May 3, 2012 source test was run at only 61% of the permit limit. Exide ran the next source test, on May 4, 2012, with an even lower amount of material, this time only 46% of the permit limit, and it still resulted in an emission rate of 0.0114 lb/hr. Based on information and belief, if Exide had run these tests using material amounts similar to those used in the October 2010 and July 2011 source tests, the arsenic emission rates would have been significantly higher. | |
| 100. Exide's consultant "reviewed" the May 2, 3, and 4, 2012 source test, believed it to be "accurate," and noted that the "equipment was operated at normal conditions during testing." All three individual test runs that Exide performed were "performed on the outlet of the Hard Lead baghouse during typical process unit and control operating conditions." Exide's consultant stated that during the testing, a "strict quality assurance (QAP) was adhered to throughout the source sampling and analytical phases of the program. The QAP incorporated reference test methods, performance standards, and internal standard operating procedures to ensure that all measurements are valid, representative, and scientifically defensible." | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 101. Exide's consultant stated that the "purpose of the test was to conduct the AB2588 testing in support of the collection of emissions data so that the Exide Emission Inventory Report (EIR) and Health Risk | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "the test results indicated the presence of toxic |

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| Assessment (HRA) could be revised and the Resource Conservation and Recovery Act (RCRA) Part B Application could be updated." Exide understood that the emissions being tested contained toxic substances including carcinogens like arsenic. | substances."<br><br>In its Answer Exide did not dispute the document, but asserted that "[t]he document is the best evidence of what was stated therein." |
| 102. The May 2, 3, and 4, 2012 source test showed that Exide was still failing to operate its air pollution control system properly. Gaseous emissions from the Blast Furnace process exhaust were not being confined on the intended path that would ultimately lead them through the scrubbers. To prevent the gaseous emissions from escaping Exide could have, and should have, increased the air flow in the blast furnace ventilation system to send the gaseous emissions to their intended Air Pollution Control Device. In addition, Exide failed to have a physical barrier on the charge chute and failed to prevent leakage points in the walls around the blast furnace and elsewhere, both of which allowed process exhaust gases containing arsenic to more easily escape. | *See* justifications for amendment to Paragraphs 16 and 30, above. |
| 103. Pursuant to AB 2588, Exide used the information gathered from its October 2010 and May 2012 source tests to compile an HRA for its Vernon Facility, but did not include information gathered during its July 2011 source tests that showed the highest arsenic emissions. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide asserted that "[t]he District required Exide to use the AB2588 source tests from 2010 and 2012 for purposes of the HRA" and Exide admitted that "the HRA prepared using such data calculated the theoretical MEIW and MEIR cancer risks stated in paragraph [103]." |
| 104. By omitting the July 2011 source test that showed the highest arsenic emissions, and including the May 2012 source test that was run with substantially less material going to the Blast Furnace, Exide artificially deflated the health risks in its HRA. | *See* justification for amendment to Paragraph 39, above. |
| 105. The HRA that Exide submitted to the District identified elevated health risk levels at | *See* justifications for amendment to Paragraphs 16 and 30, above. |

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| the Facility. Exide's HRA disclosed an off-site cancer risk of 156 in a million to the maximally exposed off-site worker and 22 in a million to the maximally exposed nearby resident. A cancer risk of 156 in a million means that emissions from Exide are expected to result in an additional risk of 156 chances in a million beyond normal risks of cancer to any person exposed to that level of risk over 70 years. Approximately 90% of this excess cancer risk was caused by emissions of arsenic. Exide's off-site worker cancer risk of 156 in a million was one of the highest off-site cancer risks of any AB 2588 HRA ever submitted to the District. | In its Answer Exide asserted that "[t]he District required Exide to use the AB2588 source tests from 2010 and 2012 for purposes of the HRA" and Exide admitted that "the HRA prepared using such data calculated the theoretical MEIW and MEIR cancer risks stated in paragraph [105]." |
| 106. Exide's HRA disclosed that its emissions resulted in a cancer burden of approximately 10. The cancer burden is calculated by considering the population of all persons exposed to a cancer risk of greater than one in a million. In this case, approximately 3,668,318 residents were exposed to a cancer risk of one in a million or greater. The cancer burden in a population is calculated by multiplying the estimated cancer risk at each census tract centroid by the population in that census tract and adding up the totals. Exide's cancer burden of 10 means that its emissions are expected to result in 10 additional cancer cases if these emissions occurred over a 70-year period. Under District Rule 1402(c)(2) and (e)(l), a facility must reduce its cancer burden to below 0.5 as quickly as feasible. As the HRA demonstrated, Exide's cancer burden was 20 times the allowable level. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that the "HRA prepared using the data required by the District calculated the theoretical cancer burden stated in paragraph [106]." Exide further asserted in its Answer that Paragraph 106 "states legal conclusions." |
| 107. Exide's HRA disclosed a maximum chronic hazard index for off-site workers of 63 for arsenic. A hazard index is the ratio of the maximum estimated level of a substance divided by its Reference Exposure Level established by OEHHA. A Reference Exposure Level is the level below which no adverse health effects are expected. A Chronic | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that the "HRA prepared using the data required by the District calculated the theoretical chronic risk hazard index stated in paragraph [107]." Exide further asserted in its Answer that Paragraph 107 |

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| Reference Exposure Level refers to long term exposure over several years. This chronic hazard index is more than 20 times the action risk level of 3, which Exide must meet under Rule 1402(c)(2) and (e)(1). | "states legal conclusions." |
| 108. In or about April 2013, Exide again claimed to have fixed the problem in its hard lead ventilation system that had caused excessive arsenic emissions. But when Exide ran tests in April 2013, Exide again ran the tests at significantly less than 80% of the Blast Furnace's permitted capacity. Indeed, those tests were only run between approximately 31% and 61% of the Blast Furnace's permitted capacity. | *See* justification for amendment to Paragraph 39, above. |
| 109. Although Exide's wet scrubbing system was intended to control gaseous arsenic emissions from Exide's Blast Furnace if those gaseous arsenic emissions reached it, the wet scrubbing system also had other air streams vented to it. But Exide's air pollution control equipment lacked sufficient capacity to maintain sufficient air flow to ensure that the Blast Furnace's arsenic emissions were being routed to the wet scrubbing system, while also venting the other air streams. Accordingly, despite only processing between approximately 31% and 61% of the Blast Furnace's permitted capacity during these April 2013 tests, Exide's operators in its control room still needed to maintain constant attention to flow balances for the Blast Furnace and these other air streams to attempt to generate sufficient air flow in the Blast Furnace to ensure that the Blast Furnace's arsenic emissions were being routed to the scrubbing system. | *See* justification for amendment to Paragraph 39, above. |
| 110. Based on information and belief, the video monitor in Exide's control room showed that large puffs of gray fumes were continuing to regularly escape the Blast Furnace instead of travelling along their intended route that would lead them through the scrubbers designed to | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>In its Answer Exide admitted that "the facility has a control room with a video monitor, which allows employees to view the top of the Blast |

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| control gaseous arsenic emissions. Despite its video monitor showing that gaseous fumes were escaping from their air pollution control system, and Exide's awareness that these fumes contained arsenic, a carcinogen, Exide continued to operate its air pollution control system without sufficient air flow to send gaseous arsenic emissions to the scrubbers and failed to repair the Blast Furnace's leakage points, both of which allowed gaseous arsenic emissions to more easily escape. Exide could have fixed these problems by upgrading its air pollution control system, but chose to continue to operate its air pollution control system without sufficient air flow to send gaseous emissions to the scrubbers and without fixing the Blast Furnace's leakage points. | Furnace" and "that gray matter has occasionally come out of the Blast Furnace ...." Exide further asserted in its Answer that Paragraph 110 "states legal conclusions." |
| 111. On or about June 10, 2013, Exide declared bankruptcy. Based on information and belief, after Exide declared bankruptcy, Exide continued to operate its air pollution control system without sufficient air flow to send gaseous emissions to the scrubbers and failed to repair the Blast Furnace's leakage points, both of which allowed gaseous arsenic emissions to more easily escape, despite its video monitor showing that gaseous fumes were escaping from their air pollution control system, and Exide's awareness that these fumes contained arsenic, a carcinogen. | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>The underlined language alleges certain facts that occurred post-petition and, in some instances, after the governmental claims bar date and therefore would not have been alleged in the Original Proof of Claim.<br><br>In its Answer Exide admitted that "it filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware on June 10, 2013." |
| 112. Plaintiff is informed and believes that beginning at some point after the October 10, 2008 source test and continuing until on or about March 14, 2014, when Exide finally shut down its operations to conduct maintenance work, defendants, and each of them, operated Exide's Blast Furnace, its Reverb Furnace, and/or Exide's related air pollution control system without using good operating practices to maintain air movement and emission control efficiency consistent with the design criteria for the system. The lack of good operating | *See* justifications for amendment to Paragraphs 16 and 30, above.<br><br>The underlined language alleges certain facts that occurred post-petition and, in some instances, after the governmental claims bar date and therefore would not have been alleged in the Original Proof of Claim.<br><br>The phrase "beginning at some point after the October 10, 2008 source test" (*i.e.*, the most recent source test reporting relatively low |

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| practices included, but is not limited to, defendants' failure to prevent blockages from forming in its air pollution control system and equipment connected to its air pollution control equipment, defendants' failure to repair leakage points in the Blast Furnace and otherwise maintain the air movement necessary to direct gaseous arsenic emissions into the air pollution control equipment designed to control them, and defendants' failure to maintain emission collection efficiency because they failed to route gaseous arsenic emissions to the Air Pollution Control Devices designed to control arsenic emissions, in violation of District Rule 1407(d)(5). As a result, Exide unlawfully emitted gaseous arsenic into the atmosphere. | arsenic emissions) replaced the Original Complaint's more generic "within the three years preceding the date of discovery of violations." This is not necessarily a distinctly broader time frame relative to the Original Complaint, only a more factually-grounded one. *See, e.g., Golden v. The Guardian (In re Lenox Healthcare, Inc.)*, 343 B.R. 96, 105-06 (Bankr. D. Del. 2006) ("'Because the relation back analysis focuses on whether the fact situation in the original complaint provided notice to the defendant that additional allegations would be pursued, Rule 15(c)(2) [which is now Rule 15(c)(1)(B)] will be satisfied if an amended complaint merely … changes the date … of the transaction alleged ….'" (citations omitted)). |
| **PLAINTIFF'S SECOND CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 203(b) and 3002(c)(1)** | This cause of action derives from the Second Cause of Action of the Original Complaint. |
| 113. Plaintiff realleges paragraphs 1-112, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 17 of the Original Complaint. |
| 114. At all relevant times herein mentioned, District Rule 203(b) required, and continues to require, that equipment not be operated contrary to the conditions specified in the permit to operate issued to the facility. A copy of District Rule 203 is attached hereto as Exhibit 3. | The language in this paragraph derives from Paragraph 18 of the Original Complaint. |
| 115. At all relevant times herein mentioned, District Rule 3002(c)(1) required, and continues to require, all equipment located at a Title V facility to be in compliance with all terms, requirements, and conditions specified in the Title V permit at all times. Exide is a Title V facility. A copy of District Rule 3002 is attached hereto as Exhibit 4. | The language in this paragraph derives from Paragraph 19 of the Original Complaint. |
| 116. At all relevant times herein mentioned, Section E of Exide's Title V permit contained, | The language in this paragraph derives from Paragraph 20 of the Original Complaint. |

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and continues to contain, the following Administrative Conditions:

2. The operator shall maintain all equipment in such a manner that ensures proper operation of the equipment.

4. The operator shall not use equipment identified in this facility permit as being connected to air pollution control equipment unless they are so vented to the identified air pollution control equipment which is in full use and which has been included in this permit.

Plaintiff is informed and believes that beginning at some point after the October 10, 2008 test and continuing thereafter, defendants, and each of them, operated Exide's Blast Furnace, its Reverb Furnace, and/or Exide's related air pollution control system without maintaining them in a manner that ensured their proper operation, and while venting to air pollution control equipment that was not in full use. Specifically, defendants failed to, among other things, prevent blockages from forming in its air pollution control system and equipment connected to its air pollution control system equipment defendants failed to repair leakage points in the Blast Furnace and otherwise failed to maintain the air movement necessary to direct gaseous arsenic emissions into the air pollution control equipment designed to control them, and failed to maintain emission collection efficiency because they failed to route gaseous arsenic emissions to an air pollution control system designed to control arsenic emissions, in violation of District Rules 203(b) and 3002(c)(1), and Permit Conditions 2 and 4 of Section E of Exide's Title V permit. A copy of the relevant portions of Exide's Title V permit is attached hereto as Exhibit 5.

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The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.

In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide.

The phrase "beginning at some point after the October 10, 2008 test" (*i.e.*, the most recent source test reporting relatively low arsenic emissions) replaced the Original Complaint's more generic "within the three years preceding the date of discovery of violations." This is not necessarily a distinctly broader time frame relative to the Original Complaint, only a more factually-grounded one. *See, e.g., In re Lenox Healthcare, Inc.*, 343 B.R. at 105-06.

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| **PLAINTIFF'S THIRD CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 203(b) and 3002(c)(1)** | This cause of action derives from the Third Amended Complaint. |
| 117. Plaintiff realleges 1-116, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Third Amended Complaint. |
| 118. At all relevant times herein mentioned, Exide's Title V Permit, Section I contained its District Rule 1420 Compliance Plan approved on May 7, 2008. The 1420 Compliance Plan includes the following provisions. | The language in this paragraph derives from the Third Amended Complaint.<br><br>Notwithstanding the foregoing, the underlined language still merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.<br><br>The underlined language in Paragraph 118 (as well as the underlined language deriving from the Third Amended Complaint through Paragraph 172) also relates back to, among other things, Paragraph 4 of the Original Complaint, which stated, in pertinent part: "As part of its business, the facility emits lead and arsenic in the Basin. Exide has a lengthy history of violating District Rules, including for excessive emissions …." It also relates back to, among other things, Paragraph 34 of the Original Complaint, which stated, in pertinent part, that "the owner or operator of a large lead-acid battery recycling facility shall not discharge emissions into the atmosphere that contributed to ambient air concentrations of lead that exceed .15 micrograms per cubic meter averaged over any 30 consecutive days." It also relates back to, among other things, Paragraph 39 of the Original Complaint, which stated, in pertinent part, that "the owner or operator of a large lead-acid battery recycling facility shall store all materials capable of generating any amount of fugitive lead-dust including lead-containing waste generated from housekeeping or maintenance activities in sealed, leak-proof containers, unless located within a total enclosure." The Third Amended |

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| | Complaint explains in greater detail the cause of the discharge of lead into the atmosphere alleged in the Original Complaint. *See, e.g.*, Paragraph 125, below ("[T]hese failures by Exide contributed to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days."); *see also* Paragraphs 135, 143, 151, 160 & 168 (same).<br><br>In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute as demonstrated by Exide's admissions in the Non-Prosecution Agreement.<br><br>Finally, the underlined language is not limited to the pre-petition period and thus alleges facts that occurred post-petition that therefore would not have been and could not have been alleged in the Original Proof of Claim. |
| 119. Condition 2 of the 1420 Compliance Plan required that "Not later than thirty (30) days after receipt of their approved Rule 1420 Compliance Plan, Exide shall survey all facility structures that house, contain or control any and all lead emission points or fugitive lead-dust emission and shall permanently repair such facility structures to ensure the structural integrity of these buildings/structures (including roofs) such that there are no gaps, break, separations, leak points or other possible routes for emissions of lead or lead dust to outside ambient air." It further required that if "a specific repair cannot he concluded in the time period specified, Exide shall immediately notify the Executive Officer for approval, the specific repair and the approximate date that the repair will be concluded." | *See* justification for amendment to Paragraph 118, above. |
| 120. Condition 6 of the 1420 Compliance Plan states that "Effective immediately upon receipt of their approved amended Rule 1420 Compliance Plan, Exide Technologies shall | *See* justification for amendment to Paragraph 118, above. |

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
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| transport all materials capable of generating any amount of fugitive lead-dust emissions at the facility within closed conveyor systems or in closed containers. When transporting any materials capable of generating any amount of fugitive lead dust emissions via forklift or any other mobile transportation method … the materials capable of generating any amount of fugitive lead-dust emissions shall be transported in closed containers and in such a manner as to prevent fugitive lead emissions from being released into the ambient atmosphere.” | |
| 121. Condition 15 of the 1420 Compliance Plan requires that any employees responsible for complying with the Rule 1420 housekeeping provisions shall be trained, and retrained every year thereafter, in all Rule 1420 housekeeping provisions and requirements before commencing with any Rule 1420 housekeeping duties. New employees must be trained within 60 days of hire and before commencing any housekeeping activities. Training records must be kept for 5 years and made available upon request. | *See* justification for amendment to Paragraph 118, above. |
| 122. Condition 25 of the 1420 Compliance Plan states that “Not later than thirty (30) days after receipt of their approved Rule 1420 Compliance Plan, Exide Technologies shall retain the services of an Environmental Manager whose responsibility shall be to assure ongoing and sustained compliance with the terms and conditions of this agreement, and all applicable AQMD Rules and Regulations including … Rule 1420 — Emissions Standard for Lead and all relevant and applicable state and federal standards ….” | *See* justification for amendment to Paragraph 118, above. |
| 123. Plaintiff is informed and believes, and thereupon alleges, that beginning on or after May 7, 2008 and continuing until an unknown date, defendants, and each of them, failed to transport materials capable of generating any | *See* justification for amendment to Paragraph 118, above. |

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| amount of fugitive lead-dust emissions in closed containers in such a manner as to prevent fugitive lead emissions from being released into the ambient atmosphere. Specifically, defendants, and each of them, transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility, in violation of District Rules 203(b) and 3002(c)(1), and Condition 6 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit. A copy of the relevant portions of Exide's Title V permit is attached hereto as Exhibit 5. | |
| 124. Plaintiff is informed and believes, and thereupon alleges, that beginning in or after June 2008 and continuing until an unknown date, defendants, and each of them, failed to permanently repair facility structures that house, contain or control any and all lead emission points or fugitive lead-dust emission to ensure the structural integrity of those structures such that there are no gaps, breaks, separations, leak points or other possible routes for emissions of lead or lead dust to outside ambient air. Instead, Exide stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility, in violation of District Rules 203(b) and 3002(c)(1), and Condition 2 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit. Moreover, on some occasions, the van trailers were stored with the large rear doors open, which further exposed the lead-contaminated plastic chips to the atmosphere. | *See* justification for amendment to Paragraph 118, above. |
| 125. Based on information and belief, these failures by Exide contributed to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic | *See* justification for amendment to Paragraph 118, above. |

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| meter averaged over any 30 consecutive days. | |
| 126. At all relevant times, Section K, Provision 24, of Exide's Title V Permit required that defendants submit to the District an Annual Compliance Certification. On that Certification, Exide was required to disclose any violations of its Title V Permit. A responsible Exide official would then sign a certification that stated: "I certify under penalty of law that I am the responsible official for this facility as defined in AQMD Regulation XXX and that based on information and belief formed after reasonable inquiry, the statements and information in this document and in all attached application forms and other materials are true, accurate, and complete." | *See* justification for amendment to Paragraph 118, above. |
| 127. On or about October 20, 2010, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2009. The report was signed by Exide's Plant Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of Conditions 2 or 6 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit]" in 2009. At the time Exide made this statement, however, Exide knew that the statement was false, or recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored and transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |
| 128. On or about March 1, 2011, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2010. The report was signed by Exide's Plant Manager as the Responsible Official on behalf | *See* justification for amendment to Paragraph 118, above. |

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| of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit" in 2010. At the time Exide made this statement, however, Exide knew that the statement was false, or recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored and transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | |
| 129. On or about October 10, 2012, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2011. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of Conditions 2 or 6 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit]" in 2011. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored and transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |
| 130. On or about March 1, 2013, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2012. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in | *See* justification for amendment to Paragraph 118, above. |

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| the Title V permit … except [for certain non-compliant actions other than violations of Conditions 2 or 6 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit]" in 2012. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored and transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | |
| 131. On or about April 1, 2014, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2013. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of Conditions 2 or 6 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit]" in 2013. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored and transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above.<br><br>In addition, the underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |
| **PLAINTIFF'S FOURTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 1420.1(d)(3) AND 1420.1(e)(1)(B)** | This cause of action derives from the Second and Third Amended Complaints. |
| 132. Plaintiff realleges paragraph 1-131, inclusive, and by this reference incorporates | This language in this paragraph derives from the Second and Third Amended Complaints. |

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| the same as though fully set forth herein. | |
| 133. At all relevant times herein mentioned, District Rules 1420.1(d)(3) and 1420.1(e)(1)(B) required that no later than July 1, 2011, the owner or operator of a large lead-acid battery recycling facility shall enclose within a total enclosure the battery breaking areas and materials storage and handling areas, excluding areas where unbroken lead-acid batteries and finished lead products are stored. District Rule 1420.1(c)(4) defines a "Battery Breaking Area" as the plant location at which lead-acid batteries are broken, crushed, or disassembled and separated into components. A copy of District Rule 1420.1 is attached hereto as Exhibit 6. District Rule 1420.1(c)(18) defines "Materials Storage and Handling Area" as "any area of a large lead-acid battery recycling facility in which lead-containing materials … are stored[.] … Areas may include, but are not limited to, locations in which materials are stored in piles, bins, or tubs[.]" District Rule 1420.1(c)(29) defines "total enclosure" as "a permanent containment building/structure, completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-off), with limited openings to allow access and egress for people and vehicles, that is free of cracks, gaps, corrosion, or other deterioration that could cause or result in fugitive lead-dust." | With respect to the underlined language deriving from the Third Amended Complaint, *see* justification for amendment to Paragraph 118, above.<br><br>In addition, the underlined language deriving from the Second Amended Complaint alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |
| 134. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about July 1, 2011, defendants, and each of them, failed to enclose within a total enclosure the materials storage and handling areas where lead-containing plastic chips were stored, and instead stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility, in violation of District Rule 1420.1(d)(3) and (e)(1)(B). Moreover, on some occasions, the van trailers | *See* justification for amendment to Paragraph 118, above. |

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| were stored with the large rear doors open, which further exposed the lead-contaminated plastic chips to the atmosphere. | |
| 135. Based on information and belief, these failures by Exide contributed to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days. | *See* justification for amendment to Paragraph 118, above. |
| 136. On or about October 10, 2012, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2011. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(d)(3) and (e)(1)(B)]" in 2011. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |
| 137. On or about March 1, 2013, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2012. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(d)(3) and (e)(1)(B)]" in 2012. At the time Exide made this statement, | *See* justification for amendment to Paragraph 118, above. |

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| however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | |
| 138. On or about April 1, 2014, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2013. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(d)(3) and (e)(1)(B)]" in 2013. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above.<br><br>In addition, the underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |
| 139. In addition, Plaintiff is informed and believes, and thereupon alleges, that on or about January 18, 2014, January 19, 2014, and January 20, 2014, defendants, and each of them, failed to enclose a battery breaking area within a total enclosure, in violation of District Rule 1420.1(d)(3). Specifically, on each of those days, defendants opened up the roof of the Raw Materials Preparation System building that contains a battery breaking area. | The language in this paragraph derives from the Second Amended Complaint.<br><br>The underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |

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| **PLAINTIFF'S FIFTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULE 1420.1(h)(2)** | This cause of action derives from the Third Amended Complaint. |
| 140. Plaintiff realleges paragraphs 1-139, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Third Amended Complaint. |
| 141. Beginning on or about December 5, 2010, District Rule 1420.1(h)(2) required, and continues to require the owner or operator of a large lead-acid battery recycling facility to inspect all total enclosures and facility structures that house, contain, or control any lead point source or fugitive lead-dust emissions at least once a month. Rule 1420.1(h)(2) further requires that any gaps, breaks, separations, leak points or other possible routes for emissions of lead or fugitive lead-dust to ambient air be permanently repaired within 72 hours of discovery. A copy of District Rule 1420.1 is attached hereto as Exhibit 6. | *See* justification for amendment to Paragraph 118, above. |
| 142. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about December 5, 2010, defendants, and each of them, failed to repair the materials storage and handling areas where lead-containing plastic chips were stored, and instead stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility, in violation of District Rule 1420.1(h)(2). Moreover, on some occasions, the van trailers were stored with the large rear doors open, which further exposed the lead-contaminated plastic chips to the atmosphere. | *See* justification for amendment to Paragraph 118, above. |
| 143. Based on information and belief, these failures by Exide contributed to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic | *See* justification for amendment to Paragraph 118, above. |

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| meter averaged over any 30 consecutive days. | |
| 144. On or about March 1, 2011, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2010. The report was signed by Exide's Plant Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit" in 2010. At the time Exide made this statement, however, Exide knew that the statement was false, or recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |
| 145. On or about October 10, 2012, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2011. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(h)(2)]" in 2011. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |
| 146. On or about March 1, 2013, Exide submitted Exide's Report for Annual Compliance Certification to the District for | *See* justification for amendment to Paragraph 118, above. |

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| 2012. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(h)(2)]" in 2012. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | |
| 147. On or about April 1, 2014, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2013. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(h)(2)]" in 2013. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above.<br><br>In addition, the underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |
| **PLAINTIFF'S SIXTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULE 1420.1(h)(6)** | This cause of action derives from the Eighth Cause of Action of the Original Complaint, and the First and Third Amended Complaints. |
| 148. Plaintiff realleges paragraphs 1-147, inclusive, and by this reference incorporates | The language in this paragraph derives from Paragraph 38 of the Original Complaint. |

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| the same as though fully set forth herein. | |
| 149. Beginning on or about December 5, 2010, District Rule 1420.1(h)(6) required, and continues to require that the owner or operator of a large lead-acid battery recycling facility shall store all materials capable of generating any amount of fugitive lead-dust including lead-containing waste generated from housekeeping or maintenance activities in sealed, leak-proof containers, unless located within a total enclosure. A copy of District Rule 1420.1 is attached hereto as Exhibit 6. | The language in this paragraph derives, in part, from Paragraph 39 of the Original Complaint. The underlined language in this paragraph derives from the Third Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.<br><br>In addition, the underlined language is non-prejudicial as it is not subject to reasonable dispute and is subject to judicial notice. |
| 150. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about December 5, 2010, defendants, and each of them, failed to store all materials capable of generating any amount of fugitive lead-dust in sealed, leak-proof containers. Instead, defendants, and each of them, stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility, in violation of District Rule 1420.1(h)(6). Moreover, on some occasions, the van trailers were stored with the large rear doors open, which further exposed the lead-contaminated plastic chips to the atmosphere. | *See* justification for amendment to Paragraph 118, above. |
| 151. Based on information and belief, these failures by Exide contributed to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days. | *See* justification for amendment to Paragraph 118, above. |
| 152. On or about March 1, 2011, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2010. The report was signed by Exide's Plant Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This | *See* justification for amendment to Paragraph 118, above. |

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| facility has been in compliance with the terms and conditions in the Title V permit" in 2010. At the time Exide made this statement, however, Exide knew that the statement was false, or recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | |
| 153. On or about October 10, 2012, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2011. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(h)(6)]" in 2011. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |
| 154. On or about March 1, 2013, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2012. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(h)(6)]" in 2012. At the | *See* justification for amendment to Paragraph 118, above. |

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time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility.

155. On or about April 1, 2014, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2013. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(h)(6)]" in 2013. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility.

*See* justification for amendment to Paragraph 118, above.

In addition, the underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint.

156. In addition, on or about September 9, 2013, Exide began performing work to repair and replace a storm drain. During this work, Exide excavated, transported, and stored soil, dirt, dust, and asphalt capable of generating any amount of fugitive lead-dust. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about September 16, 2013 and continuing to on or about September 23, 2013, defendants, and each of them, failed to store soil, dirt dust, and asphalt materials capable of generating any amount of fugitive lead-dust including lead-containing waste generated from housekeeping or maintenance

The language in this paragraph derives, in part, from Paragraph 40 of the Original Complaint. The underlined language in this paragraph derives primarily from the First Amended Complaint and, to a very limited extent, from the Third Amended Complaint as well.

The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g.*, *Bensel*, 387 F.3d at 310.

In addition, the underlined language is non-prejudicial inasmuch as it is not subject to

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| activities in sealed, leak-proof containers, and instead left these materials outside on the ground, in violation of Rule 1420.1(h)(6). Based on information and belief, these housekeeping failures contributed to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days. | reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide.<br><br>Finally, the underlined language alleges facts that occurred post-petition and therefore would not have been and could not have been alleged in the Original Proof of Claim. |
| **PLAINTIFF'S SEVENTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULE 1420.1(h)(7)** | This cause of action derives from the Third Amended Complaint. |
| 157. Plaintiff realleges paragraphs 1-156, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Third Amended Complaint. |
| 158. Beginning on or about December 5, 2010, District Rule 1420.1(h)(7) required, and continues to require that the owner or operator of a large lead-acid battery recycling facility shall transport all materials capable of generating any amount of fugitive lead-dust within closed conveyor systems or in sealed, leak-proof containers, unless located within a total enclosure. A copy of District Rule 1420.1 is attached hereto as Exhibit 6. | *See* justification for amendment to Paragraph 118, above. |
| 159. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about December 5, 2010, defendants, and each of them, failed to transport all materials capable of generating any amount of fugitive lead-dust within closed conveyor systems or in sealed, leak-proof containers, unless located within a total enclosure. Instead, defendants, and each of them, transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility, in violation of District Rule 1420.1(h)(7). | *See* justification for amendment to Paragraph 118, above. |
| 160. Based on information and belief, these failures by Exide contributed to the discharge | *See* justification for amendment to Paragraph 118, above. |

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| of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days. | |
| 161. On or about March 1, 2011, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2010. The report was signed by Exide's Plant Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit" in 2010. At the time Exide made this statement, however, Exide knew that the statement was false, or recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |
| 162. On or about October 10, 2012, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2011. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(h)(7)]" in 2011. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the | *See* justification for amendment to Paragraph 118, above. |

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
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| Facility. | |
| 163. On or about March 1, 2013, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2012. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(h)(7)] in 2012. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |
| 164. On or about April 1, 2014, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2013. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of District Rule 1420.1(h)(7)] in 2013. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had transported lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the | *See* justification for amendment to Paragraph 118, above.<br><br>In addition, the underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
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| Facility. | |
| **PLAINTIFF'S EIGHTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 203(b) and 3002(c)(1)** | This cause of action derives from the Third Amended Complaint. |
| 165. Plaintiff realleges 1-164, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Third Amended Complaint. |
| 166. At all relevant times herein mentioned, Exide's Title V Permit, Section I contained its District Rule 1420.1 Compliance Plan approved on January 27, 2012. Condition 3.1 of the 1420.1 Compliance Plan requires that the following areas be enclosed within a total enclosure: "Materials storage and handling areas, excluding areas where unbroken lead-acid batteries and finished lead products are stored." District Rule 1420.1(c)(18) defines "Materials Storage and Handling Area" as "any area of a large lead-acid battery recycling facility in which lead-containing materials … are stored or handled between process steps. Areas may include, but are not limited to, locations in which materials are stored in piles, bins, or tubs[.]" District Rule 1420.1(c)(29) defines "total enclosure" as "a permanent containment building/structure, completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-off), with limited openings to allow access and egress for people and vehicles, that is free of cracks, gaps, corrosion, or other deterioration that could cause or result in fugitive lead-dust." A copy of District Rule 1420.1 is attached hereto as Exhibit 6. | *See* justification for amendment to Paragraph 118, above. |
| 167. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about January 27, 2012, defendants, and each of them, failed to enclose within a total enclosure the materials storage and handling areas where lead-containing plastic chips were stored, and | *See* justification for amendment to Paragraph 118, above. |

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| instead stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility, in violation of District Rules 203(b) and 3002(c)(1), and Condition 3.1 of Exide's 1420.1 Compliance Plan of Section I of Exide's Title V permit. Moreover, on some occasions, the van trailers were stored with the large rear doors open, which further exposed the lead-contaminated plastic chips to the atmosphere. | |
| 168. Based on information and belief, these failures by Exide contributed to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days. | *See* justification for amendment to Paragraph 118, above. |
| 169. On or about March 1, 2011, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2010. The report was signed by Exide's Plant Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit" in 2010. At the time Exide made this statement, however, Exide knew that the statement was false, or recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |

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| 170. On or about October 10, 2012, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2011. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of Condition 3.1 of Exide's 1420.1 Compliance Plan of Section I of Exide's Title V permit]" in 2011. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above. |
| 171. On or about March 1, 2013, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2012. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of Condition 3.1 of Exide's 1420.1 Compliance Plan of Section I of Exide's Title V permit]" in 2012. At the time Exide made this statement, however, Exide knew that the statement was false, or it recklessly disregarded the true facts regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the | *See* justification for amendment to Paragraph 118, above. |

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| Facility. | |
| 172. On or about April 1, 2014, Exide submitted Exide's Report for Annual Compliance Certification to the District for 2013. The report was signed by Exide's Environmental Manager as the Responsible Official on behalf of Exide. In the report, Exide stated that "This facility has been in compliance with the terms and conditions in the Title V permit … except [for certain non-compliant actions other than violations of Condition 3.1 of Exide's 1420.1 Compliance Plan of Section I of Exide's Title V permit]" in 2013. At the time Exide made this statement, however, Exide knew that the statement was false, deceitful concealed the true facts, or recklessly disregarded the true facts, regarding Exide's compliance with the terms and conditions of the Title V permit, because Exide knew it had stored lead-contaminated plastic chips inside leaking van trailers that leaked, or van trailers that were capable of leaking, lead-contaminated waste at the Facility. | *See* justification for amendment to Paragraph 118, above.<br><br>In addition, the underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |
| **PLAINTIFF'S NINTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 3002(c)(1) and 3004(a)(10)(E)** | This cause of action derives from the Fifth Cause of Action of the Original Complaint. |
| 173. Plaintiff realleges paragraphs 1-172, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 27 of the Original Complaint. |
| 174. At all relevant times herein mentioned, District Rule 3004(a)(10)(E) required, and continues to require, that a Title V permit include compliance requirements, including submitting compliance certifications at least annually. A copy of District Rule 3004 is attached hereto as Exhibit 7. Section K, Provision 24, of Exide's Title V Permit required that defendants submit to the District an Annual Compliance Certification, and specified that it was due when the Annual | The language in this paragraph derives from Paragraph 28 of the Original Complaint. The underlined language derives from the First and Second Amended Complaints.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.<br><br>In addition, the underlined language is non- |

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| Permit Emissions Program report was due, in this case February 29, 2012. A copy of the relevant portions of Exide's Title V permit is attached hereto as Exhibit 5. | prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide. |
| 175. On or about October 3, 2012, an Exide employee sent an email stating he had "neglected" to submit an Annual Compliance Certification that was due in "Feb 2012" and further stated that he was "late on submittal" of the Semi-Annual Monitoring Report. | The underlined language in this paragraph derives from the First Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.<br><br>In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide. |
| 176. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about March 1, 2012 and continuing until on or about October 10, 2012, defendants, and each of them, failed to submit an Annual Compliance Certification Report, in violation of District Rules 3002(c)(1) and 3004(a)(10)(E), and Section K, Provision 24, of Exide's Title V Permit. | The language in this paragraph derives from Paragraph 29 of the Original Complaint.<br><br>*See* justification for amendment to Paragraph 175, above. |
| **PLAINTIFF'S TENTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 3002(c)(1) and 3004(a)(4)(F)** | This cause of action derives from the Fourth Cause of Action of the Original Complaint. |
| 177. Plaintiff realleges paragraphs 1-176, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 24 of the Original Complaint. |

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| 178. At all relevant times herein mentioned, District Rule 3004(a)(4)(F) required, and continues to require, that a Title V permit shall include monitoring, recordkeeping, and reporting requirements, including “Submittal, to the Executive Officer, of reports of any required monitoring at least every six months.” A copy of District Rule 3004 is attached hereto as Exhibit 7. Section K, Provision 23, of Exide’s Title V Permit required that defendants submit to the District a report for the last six calendar months of the prior year by February 28, 2012. A copy of the relevant portions of Exide’s Title V permit is attached hereto as Exhibit 5. | The language in this paragraph derives from Paragraph 25 of the Original Complaint.<br><br>The underlined language in this paragraph derives from the Second Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.<br><br>In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide. |
| 179. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about February 29, 2012 and continuing until on or about October 10, 2012, defendants, and each of them, failed to submit a Semi-Annual Monitoring Report, in violation of District Rules 3002(c)(1) and 3004(a)(4)(F), and Section K, Provision 23, of Exide’s Title V Permit. | The language in this paragraph derives from Paragraph 26 of the Original Complaint. |
| **PLAINTIFF’S ELEVENTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 203(b) and 3002(c)(1)** | This cause of action derives from the Sixth Cause of Action of the Original Complaint. |
| 180. Plaintiff realleges paragraphs 1-179, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 30 of the Original Complaint. |
| 181. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about July 8, 2013 and continuing until on or about July 9, 2013, defendants, and each of them, operated equipment connected to air pollution control equipment while the air pollution control equipment was not in full use because numerous baghouse filters in the West MAC Baghouse had burned, in violation of District Rules 203(b) and 3002(c)(1), and Section E, | The language in this paragraph derives from Paragraph 32 of the Original Complaint. |

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| Condition 4, of Exide's Title V Permit. | |
| **PLAINTIFF'S TWELFTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULE 1420.1(d)(2)** | This cause of action derives from the Seventh Cause of Action of the Original Complaint. |
| 182 Plaintiff realleges paragraph 1-181, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 33 of the Original Complaint. |
| 183. At all relevant times herein mentioned, District Rule 1420.1 required, and continues to require, that the owner or operator of a large lead-acid battery recycling facility shall not discharge emissions into the atmosphere that contribute to ambient air concentrations of lead that exceed 0.150 micrograms per cubic meter averaged over any 30 consecutive days. A copy of District Rule 1420.1 is attached hereto as Exhibit 6. | The language in this paragraph derives from Paragraph 34 of the Original Complaint. |
| 184. Plaintiff is informed and believes, and thereupon alleges, that from on or about the following dates to on or about the following dates, defendants, and each of them, discharged emissions into the atmosphere that contributed to ambient air concentrations of lead at its midway monitor that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days, in violation of District Rule 1420.1(d)(2):<br><br>October 28, 2012 to November 3, 2012;<br><br>November 5, 2012 to November 6, 2012; and<br><br>November 9, 2012 to November 10, 2012. | The language in this paragraph derives from Paragraph 35 of the Original Complaint. |
| 185. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about September 9, 2013, and continuing to on or about September 20, 2013, defendants, and each of them, discharged emissions into the atmosphere that contributed to ambient air concentrations of lead at its northeast monitor that exceeded 0.150 micrograms per cubic | The language in this paragraph derives from Paragraph 36 of the Original Complaint. |

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| meter averaged over any 30 consecutive days, in violation of District Rule 1420.1(d)(2). | |
| 186. Plaintiff is informed and believes, and thereupon alleges, that beginning at some point in December 2013, and continuing until at least December 27, 2013, Exide's Facility had dried sediment exposed to the ambient air in its north yard that, based on information and belief, resulted at least in part from the use of a nearby sump pump without using proper housekeeping procedures. At another location in its north yard, Exide was using a tent intended to control lead dust emissions, but a mesh tarp that formed part of the tent had holes in it, which exposed the tent's contents to the ambient air. Based on information and belief, these problems led to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days. | The underlined language in this paragraph derives from the First Amended Complaint and, to an extent, Second Amended Complaint.<br><br>The underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |
| 187. On or about January 2, 2014, Exide began another phase of repairing and replacing the storm drain. During this work, which continued until at least January 9, 2014, Exide excavated, transported, and stored soil and asphalt capable of generating any amount of fugitive lead-dust. Based on information and belief, Exide knew that its recent use of the sump pump had resulted in dried sediment being exposed to the ambient air. Despite this knowledge, Exide again used a sump pump in a manner that, based on information and belief, resulted in dried sediment being exposed to the ambient air. Based on information and belief, this contributed to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about January 3, 2014 arid continuing to on or about January 9, 2014, defendants, and | The underlined language in this paragraph derives from the First Amended Complaint.<br><br>The underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint.<br><br>In its Answer Exide admitted that "in January 2014, it repaired and replaced the storm drain." |

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| each of them, discharged emissions into the atmosphere that contributed to ambient air concentrations of lead at its on-site north monitor that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days, in violation of District Rule 1420.1(d)(2). | |
| **PLAINTIFF'S THIRTEENTH CAUSE OF ACTION FOR VIOLATION OF DISTRICT RULE 1420.1(g)(4)** | This cause of action derives from the Second Amended Complaint. |
| 188. Plaintiff realleges paragraphs 1-187, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Second Amended Complaint. |
| 189. At all relevant times herein mentioned, District Rule 1420.1(g)(4) required, and continues to require that the owner or operator of a large lead-acid battery recycling facility shall implement measures in its approved Compliance Plan if lead emissions discharged from the facility contribute to ambient air concentrations of lead that exceed 0.150 micrograms per cubic meter averaged over any 30 consecutive days. Exide's approved Compliance Plan required that it reduce the amount charged to the reverberatory furnace by 15% of the daily average charged over the prior 90 days within 48 hours of receiving the sampling result showing that it exceeded 0.150 micrograms of lead per cubic meter averaged over any 30 consecutive days. A copy of District Rule 1420.1 is attached hereto as Exhibit 6. | The language in this paragraph derives from the Second Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g.*, *Bensel*, 387 F.3d at 310.<br><br>In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide.<br><br>Finally, the underlined language relates to a cause of action that arose post-petition. |
| 190. Plaintiff is informed and believes, and thereupon alleges, that on or about September 20, 2013 defendant received a sampling result showing that it exceeded 0.150 micrograms of lead per cubic meter averaged over any 30 consecutive days at its on-site north monitor. Based on information and belief, despite receiving this sampling result, defendants, and each of them, failed to reduce the amount charged to the reverberatory furnace by 15% of | The language in this paragraph derives from the Second Amended Complaint.<br><br>The underlined language alleges facts that occurred post-petition and therefore would not have been and could not have been alleged in the Original Proof of Claim. |

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| the daily average charged over the prior 90 days on or about the following dates: September 22, 2013, September 24, 2013, September 26, 2013, September 27, 2013, September 28, 2013, September 29, 2013, October 1, 2013, and October 3, 2013, in violation of District Rule 1420.1(g)(4). | |
| **PLAINTIFF'S FOURTEENTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 3002(c)(1) and 3004(a)(4)(F)** | This cause of action derives from the Second Amended Complaint. |
| 191. Plaintiff realleges paragraphs 1-190, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Second Amended Complaint. |
| 192. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about September 1, 2013 and continuing until on or about April 1, 2014, defendants, and each of them, failed to submit a Semi-Annual Monitoring Report for the first six months of 2013 that was due on August 31, 2013, in violation of District Rules 3002(e)(1) and 3004(a)(4)(F), and Section K, Provision 23, of Exide's Title V Permit. | *See* justification for amendment to Paragraph 190, above. |
| **PLAINTIFF'S FIFTEENTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 3002(c)(1) and 3004(a)(10)(E)** | This cause of action derives from the Second Amended Complaint. |
| 193. Plaintiff realleges paragraphs 1-192, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Second Amended Complaint. |
| 194. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about March 1, 2014 and continuing until on or about April 1, 2014, defendants, and each of them, failed to submit a Semi-Annual Monitoring Report for the last six months of 2013 that was due on February 28, 2014, in violation of District Rules 3002(c)(1) and 3004(a)(4)(F), | The language in this paragraph derives from the Second Amended Complaint.<br><br>The underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |

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| and Section K, Provision 23, of Exide's Title V Permit. | |
| **PLAINTIFF'S SIXTEENTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULES 3002(c)(1) and 3004(a)(10)(E)** | This cause of action derives from the Second Amended Complaint. |
| 195. Plaintiff realleges paragraphs 1-194, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Second Amended Complaint. |
| 196. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about March 2, 2014 and continuing until on or about April 1, 2014 defendants, and each of them, failed to submit an Annual Compliance Certification Report that was due March 1, 2014, in violation of District Rules 3002(c)(1) and 3004(a)(10)(E), and Section K, Provision 24, of Exide's Title V Permit. | *See* justification for amendment to Paragraph 194, above. |
| **PLAINTIFF'S SEVENTEENTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULE 1420.1(i)(1)** | This cause of action derives from the First Amended Complaint. |
| 197. Plaintiff realleges paragraphs 1-196, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the First Amended Complaint. |
| 198. At all relevant times herein mentioned, District Rule 1420.1(i)(1) required, and continues to require that the owner or operator of a large lead-acid battery recycling facility shall conduct any maintenance activity in a negative air containment enclosure that is vented to a permitted negative air machine, and that encloses all affected areas where fugitive lead-dust generation potential exists. Rule 1420.1(c)(17)(c) defines "maintenance activity" as including the "replacement of any duct section used to convey lead-containing exhaust." A copy of District Rule 1420.1 is attached hereto as Exhibit 6. | The language in this paragraph derives from the First Amended Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.<br><br>In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide.<br><br>Finally, the underlined language relates to a |

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| | cause of action that arose post-petition. |
| 199. On or about March 21 and 22, 2014, Exide performed maintenance on the Reverb Furnace's A-Pipe, which is a section of duct used to convey lead-containing exhaust. Exide's maintenance work included hammering the A-Pipe to dislodge chunks of debris, and cutting the A-Pipe into several pieces. The District had informed Exide that it had recent lead violations of Rule 1420.1(d)(1) that were caused in part by failing to follow the proper housekeeping protocols necessary to prevent fugitive lead emissions. Despite being so informed, Exide performed this work on the A-Pipe without using a negative air containment enclosure that encloses all affected areas where fugitive lead-dust generation potential exists, and that is vented to a permitted negative air machine, in violation of Rule 1420.1(i)(1). Based on information and belief, this failure led to the discharge of emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days. | The language in this paragraph derives from the First Amended Complaint, and, to a lesser extent, the Second Amended Complaint.<br><br>The underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint.<br><br>In its Answer Exide admitted that "it performed maintenance on the Reverb Furnace's A-Pipe in March 2014." |
| **PLAINTIFF'S EIGHTEENTH CAUSE OF ACTION FOR VIOLATIONS OF DISTRICT RULE 1420.1(d)(2)** | This cause of action derives from the First Amended Complaint. |
| 200. Plaintiff realleges paragraphs 1-199, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the First Amended Complaint. |
| 201. Plaintiff is informed and believes, and thereupon alleges, that beginning on or about March 21, 2014, and continuing to on or about April 19, 2014, defendants, and each of them, discharged emissions into the atmosphere that contributed to ambient air concentrations of lead at its northeast monitor that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days, in violation of | The language in this paragraph derives from the First Amended Complaint.<br><br>The underlined language alleges facts that occurred both post-petition and after the governmental claims bar date and therefore would not have been and could not have been alleged in the Original Complaint. |

| THIRD AMENDED COMPLAINT | JUSTIFICATION FOR AMENDMENT |
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| District Rule 1420.1(d)(2). | |
| **PLAINTIFF'S NINETEENTH CAUSE OF ACTION FOR NEGLIGENT EMISSIONS OF AIR CONTAMINANTS IN VIOLATION OF DISTRICT RULES 203(b), 1407(d)(5), 3002(c)(1) AND HEALTH AND SAFETY CODE SECTION 42402.1(a)** | This cause of action derives from the Ninth Cause of Action of the Original Complaint. |
| 202. Plaintiff realleges paragraphs 1-201, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 41 of the Original Complaint. |
| 203. Plaintiff is informed and believes, and based thereon alleges, that defendants, and each of them, failed to use good operating practices and negligently emitted arsenic into the atmosphere, in violation of District Rule 1407(d)(5) and Health and Safety Code Section 42402.1(a). | The language in this paragraph derives from Paragraph 42 of the Original Complaint. |
| 204. Plaintiff is informed and believes, and based thereon alleges, that defendants operated equipment in a manner that failed to ensure the equipment's proper operation, and operated equipment while it was vented to air pollution control equipment that was not in full use, which resulted in the negligent emission of arsenic into the atmosphere, and negligently emitted arsenic into the atmosphere in violation of District Rules 203(b) and 3002(c)(1), Permit Conditions 2 and 4 of Section E of Exide's Title V permit, and Health and Safety Code Section 42402.1(a). | The language in this paragraph derives from Paragraph 43 of the Original Complaint.<br><br>The underlined language merely amplifies the factual circumstances surrounding the pertinent conduct, transaction or occurrence. *See, e.g., Bensel*, 387 F.3d at 310.<br><br>In addition, the underlined language is non-prejudicial inasmuch as it is not subject to reasonable dispute by Exide and/or is based upon documents and information previously provided to the District by Exide. |
| **PLAINTIFF'S TWENTIETH CAUSE OF ACTION FOR KNOWING EMISSIONS OF AIR CONTAMINANTS IN VIOLATION OF DISTRICT RULES 203(b), 1407(d)(5), 3002(c)(1) AND HEALTH AND SAFETY CODE SECTION 42402.2(a)** | This cause of action derives from the Tenth Cause of Action of the Original Complaint. |

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
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| 205. Plaintiff realleges paragraphs 1-204, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 45 of the Original Complaint. |
| 206. Plaintiff is informed and believes, and based thereon alleges, that defendants' failure to use good operating practices resulted in arsenic emissions into the atmosphere, and that defendants, and each of them, knew of these emissions and failed to take corrective action within a reasonable period of time, in violation of District Rule 1407(d)(5), and Health and Safety Code Section 42402.2(a). | The language in this paragraph derives from Paragraph 46 of the Original Complaint. |
| 207. Plaintiff is informed and believes, and based thereon alleges, that defendants operated equipment in a manner that failed to ensure the equipment's proper operation, and operated equipment while it was venting to air pollution control equipment that was not in full use, which resulted in arsenic emissions into the atmosphere, and that defendants, and each of them, knew of these emissions and failed to take corrective action within a reasonable period of time, in violation of District Rules 203(b) and 3002(c)(1), Permit Conditions 2 and 4 of Section E of Exide's Title V permit, and Health and Safety Code Section 42402.2(a). | The language in this paragraph derives from Paragraph 47 of the Original Complaint. |
| **PLAINTIFF'S TWENTY-FIRST CAUSE OF ACTION FOR WILLFUL AND INTENTIONAL EMISSIONS OF AIR CONTAMINANTS IN VIOLATION OF DISTRICT RULES 203(b), 1407(d)(5), 3002(c)(1) AND HEALTH AND SAFETY CODE SECTION 42402.3(a)** | This cause of action derives from the Third Amended Complaint. |
| 208. Plaintiff realleges paragraphs 1-207, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Third Amended Complaint. |
| 209. Plaintiff is informed and believes, and based thereon alleges, that defendants willfully and intentionally failed to use good operating | *See* justification for amendment to Paragraph 118, above. |

| THIRD AMENDED COMPLAINT | JUSTIFICATION FOR AMENDMENT |
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| practices, which resulted in arsenic emissions into the atmosphere, in violation of District Rule 1407(d)(5), and Health and Safety Code Section 42402.3(a). | In addition, the underlined language in the first sentence of this paragraph relates back to the Original Proof of Claim. Page 1 of the attachment to the Original Proof of Claim states: "The Debtor failed to comply with SCAQMD Rules and committed a separate violation giving rise to civil penalties of … $75,000 per day for each and every day of willful and intentional emissions violations pursuant to California Health and Safety Code sections 42402 through 42402.3."<br><br>Finally, the underlined language is not limited to the pre-petition period and thus alleges facts that occurred post-petition that therefore would not have been and could not have been alleged in the Original Proof of Claim. |
| 210. Plaintiff is informed and believes, and based thereon alleges, that defendants willfully and intentionally operated equipment in a manner that failed to ensure the equipment's proper operation, and willfully and intentionally operated equipment while it was venting to air pollution control equipment that was not in full use, which resulted in arsenic emissions into the atmosphere, in violation of District Rules 203(b) and 3002(c)(1), Permit Conditions 2 and 4 of Section E of Exide's Title V permit, and Health and Safety Code Section 42402.3(a). | *See* justification for amendment to Paragraph 209, above. |
| **PLAINTIFF'S TWENTY-SECOND CAUSE OF ACTION FOR NEGLIGENT EMISSIONS OF AIR CONTAMINANTS IN VIOLATION OF DISTRICT RULES 203(b), 1420.1(d)(3), (e)(1)(B), (h)(2), (h)(6), and (h)(7), 3002(c)(1) AND HEALTH AND SAFETY CODE SECTION 42402.1(a)** | This cause of action derives from the Third Amended Complaint. |
| 211. Plaintiff realleges paragraphs 1-210, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Third Amended Complaint. |
| 212. Plaintiff is informed and believes, and | *See* justification for amendment to Paragraph |

| THIRD AMENDED COMPLAINT | JUSTIFICATION FOR AMENDMENT |
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| based thereon alleges, that defendants, and each of them, stored lead-contaminated plastic chips inside leaking van trailers and negligently emitted lead into the atmosphere, in violation of District Rules 203(b) 1420.1(d)(3), (e)(1)(B), (h)(2) and (h)(6), and 3002(c)(1), Permit Condition 2 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit, Permit Condition 3.1 of Exide's 1420.1 Compliance Plan of Section I of Exide's Title V permit, and Health and Safety Code Section 42402.1(a). | 118, above.<br><br>In addition, the underlined language in this paragraph relates back to, among other things, Paragraph 12 of the Original Complaint, which stated, in pertinent part: "For each day on which defendants failed to comply with any District Rule as hereinafter alleged, defendants committed a separate violation that gave rise to civil penalties of … up to $25,000 for each and every day of each negligent emission violation …." Further, the underlined language relates back to, among other things, Paragraph 50 of the Original Complaint, which stated, in pertinent part: "[D]efendants, and each of them, negligently discharged emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded .15 micrograms per cubic meter averaged over any 30 consecutive days, in violation of District Rule 1420.1(d)(2), and Health and Safety Code Section 42402.1(a)." The Third Amended Complaint explained in greater detail the cause of the discharge of lead into the atmosphere alleged in the Original Complaint.<br><br>Finally, the underlined language is not limited to the pre-petition period and thus alleges facts that occurred post-petition that therefore would not have been and could not have been alleged in the Original Proof of Claim. |
| 213. Plaintiff is informed and believes, and based thereon alleges, that defendants, and each of them, transported lead-contaminated plastic chips inside leaking van trailers and negligently emitted lead into the atmosphere, in violation of District Rules 203(b), 1420.1(h)(7), and 3002(c)(1), Permit Condition 6 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit, and Health and Safety Code Section 42402.1(a). | *See* justification for amendment to Paragraph 212, above. |

| THIRD AMENDED COMPLAINT | JUSTIFICATION FOR AMENDMENT |
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| **PLAINTIFF'S TWENTY-THIRD CAUSE OF ACTION FOR KNOWING EMISSIONS OF AIR CONTAMINANTS IN VIOLATION OF DISTRICT RULES 203(b), 1420.1(d)(3), (e)(1)(B), (h)(2), (h)(6), and (h)(7), 3002(c)(1) AND HEALTH AND SAFETY CODE SECTION 42402.2(a)** | This cause of action derives from the Third Amended Complaint. |
| 214. Plaintiff realleges paragraphs 1-213, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Third Amended Complaint. |
| 215. Plaintiff is informed and believes, and based thereon alleges, that defendants' storage of lead-contaminated plastic chips inside leaking van trailers resulted in lead emissions into the atmosphere, and that defendants, and each of them, knew of these emissions and failed to take corrective action within a reasonable period of time, in violation of District Rules 203(b) 1420.1(d)(3), (e)(1)(B), (h)(2) and (h)(6), and 3002(c)(1), Permit Condition 2 of Exide's 1420 Compliance Plan of Section I of Exide's Tile V permit, Permit Condition 3.1 of Exide's 1420.1 Compliance Plan of Section I of Exide's Title V permit, and Health and Safety Code Section 42402.2(a). | *See* justification for amendment to Paragraph 118, above.<br><br>In addition, the underlined language in this paragraph relates back to, among other things, Paragraph 12 of the Original Complaint, which stated, in pertinent part: "For each day on which defendants failed to comply with any District Rule as hereinafter alleged, defendants committed a separate violation that gave rise to civil penalties of … up to $40,000.00 for each and every day of each knowing emission violation …." Further, the underlined language relates back to, among other things, Paragraph 52 of the Original Complaint, which stated, in pertinent part: "[D]efendants, and each of them, discharged emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded .15 micrograms per cubic meter averaged over any 30 consecutive days, and … defendants knew of these emissions and failed to take corrective action within a reasonable period of time, in violation of District Rule 1420.1(d)(2), and Health and Safety Code Section 42402.2(a)." The Third Amended Complaint explained in greater detail the cause of the discharge of lead into the atmosphere alleged in the Original Complaint.<br><br>Finally, the underlined language is not limited to the pre-petition period and thus alleges facts that occurred post-petition that therefore |

| THIRD AMENDED COMPLAINT | JUSTIFICATION FOR AMENDMENT |
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| | would not have been and could not have been alleged in the Original Proof of Claim. |
| 216. Plaintiff is informed and believes, and based thereon alleges, that defendants' transportation of lead-contaminated plastic chips inside leaking van trailers resulted in lead emissions into the atmosphere, and that defendants, and each of them, knew of these emissions and failed to take corrective action within a reasonable period of time, in violation of District Rules 203(b), 1420.1(h)(7), and 3002(c)(1), Permit Condition 6 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit, and Health and Safety Code Section 42402.2(a). | *See* justification for amendment to Paragraph 216, above. |
| **PLAINTIFF'S TWENTY-FOURTH CAUSE OF ACTION FOR WILLFUL AND INTENTIONAL EMISSIONS OF AIR CONTAMINANTS IN VIOLATION OF DISTRICT RULES 203(b), 1420.1(d)(3), (e)(1)(B), (h)(2), (h)(6), and (h)(7), 3002(c)(1) AND HEALTH AND SAFETY CODE SECTION 42402.3(a)** | This cause of action derives from the Third Amended Complaint. |
| 217. Plaintiff realleges paragraphs 1-216, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the Third Amended Complaint. |
| 218. Plaintiff is informed and believes, and based thereon alleges, that defendants willfully and intentionally stored lead-contaminated plastic chips inside leaking van trailers, which resulted in lead emissions into the atmosphere, in violation of District Rules 203(b) 1420.1(d)(3), (e)(1)(B), (h)(2) and (h)(6), and 3002(c)(1), Permit Condition 2 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit, Permit Condition 3.1 of Exide's 1420.1 Compliance Plan of Section I of Exide's Title V permit and Health and Safety Code Section 42402.3(a). | *See* justification for amendment to Paragraph 118, above.<br><br>In addition, the underlined language relates back to the Original Proof of Claim. Page 1 of the attachment to the Original Proof of Claim states: "The Debtor failed to comply with SCAQMD Rules and committed a separate violation giving rise to civil penalties of … $75,000 per day for each and every day of willful and intentional emissions violations pursuant to California Health and Safety Code sections 42402 through 42402.3."<br><br>Finally, the underlined language is not limited |

| THIRD AMENDED COMPLAINT | JUSTIFICATION FOR AMENDMENT |
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| | to the pre-petition period and thus alleges facts that occurred post-petition that therefore would not have been and could not have been alleged in the Original Proof of Claim. |
| 219. Plaintiff is informed and believes, and based thereon alleges, that defendants willfully and intentionally transported lead-contaminated plastic chips inside leaking van trailers, which resulted in lead emissions into the atmosphere, in violation of in violation of District Rules 203(b), 1420.1(h)(7), and 3002(c)(1), Permit Condition 6 of Exide's 1420 Compliance Plan of Section I of Exide's Title V permit, and Health and Safety Code Section 42402.3(a). | *See* justification for amendment to Paragraph 218, above. |
| **PLAINTIFF'S TWENTY-FIFTH CAUSE OF ACTION FOR NEGLIGENT EMISSIONS OF AIR CONTAMINANTS IN VIOLATION OF DISTRICT RULE 1420.1(d)(2) AND HEALTH AND SAFETY CODE SECTION 42402.1(a)** | This cause of action derives from the Eleventh Cause of Action of the Original Complaint. |
| 220. Plaintiff realleges paragraphs 1-219, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 49 of the Original Complaint. |
| 221. Plaintiff is informed and believes, and based thereon alleges, that defendants, and each of them, negligently discharged emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days, in violation of District Rule 1420.1(d)(2), and Health and Safety Code Section 42402.1(a). | The language in this paragraph derives from Paragraph 50 of the Original Complaint. |

| THIRD AMENDED COMPLAINT | JUSTIFICATION FOR AMENDMENT |
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| **PLAINTIFF'S TWENTY-SIXTH CAUSE OF ACTION FOR KNOWING EMISSIONS OF AIR CONTAMINANTS IN VIOLATION OF DISTRICT RULE 1420.1(d)(2) AND HEALTH AND SAFETY CODE SECTION 42402.2(a)** | This cause of action derives from the Twelfth Cause of Action of the Original Complaint. |
| 222. Plaintiff realleges paragraphs 1-221, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from Paragraph 51 of the Original Complaint. |
| 223. Plaintiff is informed and believes, and based thereon alleges, that defendants, and each of them, discharged emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days, and that defendants knew of these emissions and failed to take corrective action within a reasonable period of time, in violation of District Rule 1420.1(d)(2), and Health and Safety Code Section 42402.2(a). | The language in this paragraph derives from Paragraph 52 of the Original Complaint. |
| **PLAINTIFF'S TWENTY-SEVENTH CAUSE OF ACTION FOR WILLFUL AND INTENTIONAL EMISSIONS OF AIR CONTAMINANTS IN VIOLATION OF DISTRICT RULE 1420.1(d)(2) AND HEALTH AND SAFETY CODE SECTION 42402.3(a)** | This cause of action derives from the First Amended Complaint. |
| 224. Plaintiff realleges paragraphs 1-223, inclusive, and by this reference incorporates the same as though fully set forth herein. | The language in this paragraph derives from the First Amended Complaint. |
| 225. Plaintiff is informed and believes, and based thereon alleges, that defendants, and each of them, willfully and intentionally discharged emissions into the atmosphere that contributed to ambient air concentrations of lead that exceeded 0.150 micrograms per cubic meter averaged over any 30 consecutive days, in violation of District Rule 1420.1(d)(2), and Health and Safety Code Section 42402.3(a). | The language in this paragraph derives from the First Amended Complaint.<br><br>The underlined language relates back to the Original Proof of Claim. Page 1 of the attachment to the Original Proof of Claim states: "The Debtor failed to comply with SCAQMD Rules and committed a separate violation giving rise to civil penalties of … $75,000 per day for each and every day of |

| **THIRD AMENDED COMPLAINT** | **JUSTIFICATION FOR AMENDMENT** |
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| | willful and intentional emissions violations pursuant to California Health and Safety Code sections 42402 through 42402.3." |

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re:<br><br>EXIDE TECHNOLOGIES,<br><br>Reorganized Debtor.[1] | **Chapter 11**<br><br>**Case No. 13-11482 (KJC)** |

## CERTIFICATE OF SERVICE

The undersigned certifies that on September 30, 2015, I caused a true and correct copy of the concurrently filed pleadings, *The South Coast Air Quality Management District's Motion for Entry of an Order Concerning the Timeliness of its General Unsecured Claims Against Exide*, *The South Coast Air Quality Management District's Motion for a Determination that it has Alleged a Prima Facie Case for Application of the 11 U.S.C. § 1141(d)(6) Exception to Discharge*, and *The South Coast Air Quality Management District's Request for Judicial Notice*, to be served upon all parties via CM/ECF and upon the persons below in the manner indicated.

Date: September 30, 2015

*<u>/s/ Jack Shrum</u>*______________
"J" Jackson Shrum (#4757)

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[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 2730. The Reorganized Debtor's corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

**By Fax:**

- **The Debtor, Exide Technologies** Attn: Phillip A. Damaska (fax: 678-566-9188)
- **Office of the U.S. Trustee for the District of Delaware**, Attn: Mark S. Kenney, Esq. (fax: 302-573-6497)

**By Email:**

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- **Counsel to the Agent under the DIP Financing**, Davis, Polk & Wardwell LLP, Attn: Damian S. Schaible, Esq. (damian.schaible@davispolk.com), and Richards, Layton & Finger, P.A., Attn: Mark D. Collins, Esq. (collins@rlf.com)
- **Counsel to the Agent for the Debtor's Prepetition Secured Lenders**, Greenberg Traurig, LLP, Attn: David B. Kurzweil, Esq. and Dennis A. Meloro, Esq. (kurzweild@gtlaw.com and melorod@gtlaw.com)
- **Indenture Trustee for the Debtor's secured bond issuances**, Foley & Lardner LLP, Attn: Mark F. Hebbeln (mhebbeln@foley.com)
- **Indenture Trustee for the Debtor's Unsecured Bond Issuances**, U.S. Bank, N.A., Global Corporate Trust Services, Attn. Cindy Woodward (cindy.woodward@usbank.com), and Arent Fox LLP, Attn: Andrew Silfen, Esq. (andrew.silfen@arentfox.com)
- **Counsel to the Unofficial Committee of Senior Secured Noteholders**, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Alice Belisle Eaton, Esq. (aeaton@paulweiss.com) and Young Conaway Stargatt & Taylor, LLP, Attn: Pauline K. Morgan, Esq. (pmorgan@ycst.com)
- **Counsel to the Official Committee of Unsecured Creditors**, Lowenstein Sandler LLP, Attn: Kenneth A. Rosen, Esq., Sharon L. Levin, Esq, and Gerald C. Bender, Esq. (krosen@lowenstein.com, slevine@lowenstein.com, gbender@lowenstein.com, and Morris Nichols Arsht & Tunnell LLP, Attn: Robert J. Dehney, Esq. (rdehney@mnat.com)
- **Counsel to the GUC Trust Trustee,** Kelley Drye & Warren LLP, Attn. Dana P. Kane (dkane@kelleydrye.com) and Morris Nichols Arsht & Tunnel, Attn: Erin R. Fay (efay@mnat.com)
- **Fee Examiner,** Robert J. Keach, Esq. (rkeach@bernsteinshur.com)

**By Overnight Delivery (FedEx):**

- **Indenture Trustee for the Debtor's secured bond issuances**, Wells Fargo Bank, N.A., 150 East 42nd Street, 40th Floor, New York, NY 10017, Attn: James R. Lewis
- **The GUC Trust Trustee,** Peter S. Kravitz, Province, Inc., 9209 Canwood Street, Suite 210, Agoura Hills, CA 91301