	1 2 3 4 5 6 7 8 9 10 11 12	IVOR E. SAMSON (SBN 52767) ivor.samson@snrdenton.com STEVEN H. FRANKEL (SBN 171919) steven.frankel@snrdenton.com MATTHEW G. ADAMS (SBN 229021) matthew.adams@snrdenton.com SNR DENTON US LLP 525 Market Street, 26th Floor San Francisco, CA 94105-2708 Telephone: (415) 882-5000 Facsimile: (415) 882-0300 Attorneys for Plaintiff GEORGIA-PACIFIC LLC IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA					
FLOOR 4105-2	13	GEORGIA-PACIFIC LLC,	No. 12-02797 DMR				
C3 LE 3, 26 TH 1 RNIA 9	14	Plaintiff,	FIRST AMENDED COMPLAINT FOR:				
SAN FRANCISCO, CALIFORNIA 94105-2708 (415) 882-5000	15 16 17 18 19 20 21 22 23 24 25		 Recovery of Response Costs Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a); Claim for Contribution Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f); Declaratory Relief Under CERCLA; Continuing Nuisance; and Continuing Trespass JURY TRIAL DEMANDED 				
	26	defendants OfficeMax Incorporated and Boise Cascade, L.L.C. (collectively, "Defendants") as					
	27	follows:					
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NATURE OF ACTION

1. This action arises from Georgia-Pacific's cleanup of hazardous substances at certain real property located in Fort Bragg, California (the "Site"), and for which Georgia-Pacific seeks recovery, pursuant to the Federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et. seq.*, from Defendants, the former owners, operators and polluters of the Site, of the response costs Georgia-Pacific has incurred and will continue to incur at the Site. In addition to the recovery of response costs, Georgia-Pacific seeks certain declaratory relief with respect to the Defendants' liabilities and continuing obligations with respect to the Site as well as damages and other relief arising from Defendants' continuing nuisance and trespass at the Site.

JURISDICTION AND VENUE

- 2. This Court has original jurisdiction pursuant to 42 U.S.C. § 9607(a) and 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
- 3. Venue is proper in this District pursuant to 42 U.S.C. § 9607(a) and 28 U.S.C. § 1391(b) because the events giving rise to this action, including the releases or threatened releases of hazardous substances, occurred and are occurring at real property located in this District.

PARTIES

- 4. Plaintiff Georgia-Pacific is a Delaware limited liability company headquartered in Atlanta, Georgia. Georgia-Pacific is one of the world's leading manufacturers of tissue, pulp, paper, packaging, building products and related chemicals.
- 5. Defendant OfficeMax Incorporated ("OfficeMax") is a Delaware corporation headquartered in Naperville, Illinois. OfficeMax is engaged in business-to-business and retail office products distribution throughout the United States.
- 6. Defendant Boise Cascade, L.L.C. ("Boise Cascade") is a Delaware limited liability company headquartered in Boise, Idaho. Boise Cascade manufactures engineered wood products, plywood, lumber, and particleboard and distributes a broad line of building materials.

FACTUAL BACKGROUND

- 7. The Site consists of approximately 415 acres along the Pacific Ocean, located at 90 West Redwood Avenue, Fort Bragg, Mendocino County, California.
- 8. Union Lumber Company began operating a sawmill at the Site in 1885. Over time, Union Lumber Company developed a significant lumber mill at the Site, including a large dam and log pond in the center of the Site and a railroad line that begins in the northeast portion of the Site.
- 9. Union Lumber Company merged with Boise Cascade Corporation in 1968.

 Pursuant to the merger, Boise Cascade Corporation assumed Union Lumber Company's debts, liabilities, obligations and duties associated with the Site. Boise Cascade Corporation owned and operated the Site until it sold the Site to Georgia-Pacific in 1973. Boise Cascade Corporation changed its name to defendant OfficeMax in 2004, after acquiring all the securities of OfficeMax, Inc. in 2003.
- 10. In 2004, defendant Boise Cascade acquired the forest products and paper assets of defendant OfficeMax. Georgia-Pacific is informed and believes that defendant Boise Cascade may have assumed liabilities, obligations and duties associated with the Site in connection with the foregoing transaction.
- 11. Georgia-Pacific ceased operations on the Site on August 8, 2002. Most of the structures and equipment associated with lumber production have been removed and the Site is currently unoccupied and unused except for a small office maintained by Georgia-Pacific and a wastewater treatment plant owned and operated by the City of Fort Bragg.
- 12. Over the course of Defendants' and Georgia-Pacific's 117 years of lumber production and related operations at the Site, logs were received, unloaded, and stored in the log storage areas. Logs were then removed from inventory, debarked, and milled. Milled lumber was shipped green, kiln dried, or air dried on-site. Finished lumber was transported by rail or flatbed trailers. Bark and wood refuse were transported by truck, conveyer or pneumatic system to the power plant, where they were burned to generate steam for electricity. Site operations were conducted in sawmills, planer buildings, a fence plant, a power plant, lumber storage areas,

and various storage and maintenance facilities.

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13. The	operations by Defendants and Georgia-Pacific on the Site led to releases of			
hazardous substa	nces, including, but not limited to, metals, dioxins, polycyclic aromatic			
hydrocarbons and total petroleum hydrocarbons to the soil and groundwater underlying the Site				
and the surround	ing soils and groundwater.			

- Georgia-Pacific voluntarily began investigating alleged environmental concerns at the Site in 2004. The Regional Water Quality Control Board, North Coast Region oversaw Site investigation activities until the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") assumed the role of lead regulatory agency in August 2006. For administrative convenience, the DTSC divided the Site into five operable units.
- 15. By letter dated February 16, 2007, DTSC notified Georgia-Pacific that DTSC required Georgia-Pacific to conduct a response action at the Site. Also on February 16, 2007, DTSC issued a Site Investigation and Remediation Order.
- Through December 31, 2011, Georgia-Pacific had expended approximately \$31,400,000 in response costs at the Site arising from releases and threatened releases of hazardous substances. Georgia-Pacific anticipates incurring significant future response costs at the Site.

FIRST CLAIM FOR RELIEF

(Recovery for Response Costs Pursuant to Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607(a))

- Georgia-Pacific hereby incorporates the allegations contained in paragraphs 1 through 16, inclusive, as though set forth in full.
- Each of the Defendants is a "person" as that term is defined in 42 U.S.C. § 18. 9601(21).
 - The Site is a "facility" as that term is defined in 42 U.S.C. § 9601(9).
- 20. Contaminants located in the soil and groundwater at, on, or under the Site, including but not limited to, metals, dioxins, polycyclic aromatic hydrocarbons and total petroleum hydrocarbons, are "hazardous substance[s]" as that term is defined in 42 U.S.C. § 9601(14).

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21.	There has been a	"release"	or threatened	"release"	of hazardous	substances as
defined in 42	2 U.S.C. § 9601(22	2) at and	from the Site.			

- 22. Each Defendant was an "owner or operator" of the Site, as that term is defined in 42 U.S.C. § 9601(20), at or during the time of the acts or omissions which resulted in the release of hazardous substances at or around the Site, and these substances migrated and threaten to continue to migrate to the environment.
 - 23. Defendants are liable persons pursuant to 42 U.S.C. § 9607(a).
- 24. Georgia-Pacific has incurred and will continue to incur response costs in response to the release or threatened release of hazardous substances into the environment at the Site, and these response costs are necessary and consistent with the provisions of CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.
- 25. Georgia-Pacific is entitled to reimbursement from Defendants, who are jointly and severally liable for those response costs under 42 U.S.C. § 9607.
- 26. Upon filing this Complaint, Georgia-Pacific provided a copy to the Attorney General of the United States and to the Administrator of the United States Environmental Protection Agency pursuant to 42 U.S.C. § 9613(1).

SECOND CLAIM FOR RELIEF

(Claim for Contribution Pursuant to Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9613(f))

- 27. Georgia-Pacific hereby incorporates the allegations of paragraphs 1 through 26, inclusive, as though set forth in full.
- Alternatively, to the extent that the Defendants are not liable, or jointly and severally liable for response costs under the standards of 42 U.S.C. § 9607, each Defendant is liable under 42 U.S.C. § 9613(f) for contribution to the response costs Georgia-Pacific has incurred and will continue to incur in connection with the release and threatened release of hazardous substances at the Site.

Pacific's fair and equitable share of such response costs.

THIRD CLAIM FOR RELIEF
(Declaratory Relief Under CERCLA)

29. Georgia-Pacific is entitled to recover in contribution amounts in excess of Georgia-

30. Georgia-Pacific hereby incorporates the allegations of paragraphs 1 through 29, inclusive, as though set forth in full.

- 31. Pursuant to 28 U.S.C. § 2201, there is an actual controversy between the parties regarding their duties and obligations with respect to the response costs that have been incurred and will continue to be incurred in connection with the release and threatened release of hazardous substances at the Site. Georgia-Pacific is entitled to a declaration under 42 U.S.C. § 9613(g)(2) that (a) Defendants are jointly and severally liable and responsible under 42 U.S.C. § 9607(a) for the response costs which have been and will continue to be incurred by Georgia-Pacific at the Site, including prejudgment interest; or (b) Defendants are liable under 42 U.S.C. § 9613(f) for contribution to the response costs Georgia-Pacific has incurred and will continue to incur at the Site, including prejudgment interest, for amounts in excess of Georgia-Pacific's fair and equitable share of such costs.
- 32. The declaratory relief sought herein is necessary and appropriate, and in the interest of justice, because it will obviate the need for multiple lawsuits and provide complete resolution of the dispute between the parties.

FOURTH CLAIM FOR RELIEF (Continuing Nuisance)

- 33. Georgia-Pacific hereby incorporates the allegations of paragraphs 1 through 32, inclusive, as though set forth in full.
- 34. Defendants created conditions at the Site which constitute a continuing nuisance by conducting operations at the Site which resulted in the release of hazardous substances at or around the Site, which migrated and continue to migrate into the environment. In addition, Defendants failed to initiate investigation, monitoring, remediation, or abatement of the nuisance, all in violation of California Civil Code § 3479.

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35.	The contamination at the Site is actually and practicably abatable by reasonable
measures an	nd without unreasonable cost.

- The contamination at the Site constitutes a nuisance and has interfered with, and continues to interfere with, Georgia-Pacific's use and enjoyment of the Site, and has created a risk to human health and the environment.
- 37. As a direct and proximate result of Defendants' activities, Georgia-Pacific has incurred and will continue to incur damages in an amount subject to proof at trial, including but not limited to, costs of the investigation, assessment, monitoring, and remediation of the nuisance; loss of property value; loss of future rent; costs to repair and restore the Site to proper condition; statutory costs; and other damages as a result of the continuing nuisance for which Defendants are responsible.

FIFTH CLAIM FOR RELIEF (Continuing Trespass)

- Georgia-Pacific hereby incorporates the allegations of paragraphs 1 through 37, inclusive, as though set forth in full.
- 39. As a result of the control, maintenance, use and/or occupation of the Site by Defendants, the contamination at the Site was caused to remain at, on or under the Site without Georgia-Pacific's knowledge or consent. The existence of the contamination at, on and under the Site has unlawfully interfered, and continues to interfere, with Georgia-Pacific's possession, use and enjoyment of the Site.
- 40. The contamination has been released, and continues to be released, at, on and under the Site as a result of Defendants' actions or failure to act, causing the contamination to remain at, on and beneath the Site.
- 41. The contamination at the Site is actually and practicably abatable by reasonable measures and without unreasonable cost.
- 42. As a direct and proximate result of Defendants' continuing trespass, Georgia-Pacific has incurred and will continue to incur damages including, but not limited to, costs of the investigation and remediation of the trespass; loss of property value during the existence of the

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trespass; losses due to stigma associated with the contamination; loss of future rent; costs to repair and restore the Site to proper condition; statutory costs; attorneys' fees and costs; and other damages as a result of the continuing trespass for which Defendants are responsible.

PRAYER FOR RELIEF

WHEREFORE, Georgia-Pacific prays for judgment as follows:

ON THE FIRST CLAIM FOR RELIEF:

- 1. For recovery in an amount to be determined at trial from Defendants, jointly and severally, for the response costs and other damages and expenses Georgia-Pacific has incurred and will continue to incur in connection with the release and threatened release of hazardous substances at and from the Site;
- 2. For prejudgment interest at the legal rate;
- 3. For attorneys' fees, expert witness' fees, consultants' fees and costs, as appropriate; and
- 4. For such other and further relief as the Court deems just and proper.

ON THE SECOND CLAIM FOR RELIEF:

- 1. For recovery in amount to be determined at trial from Defendants for contribution to the response costs and other damages and expenses Georgia-Pacific has incurred and will continue to incur in excess of its own equitable share of such costs arising from the release and threatened release of hazardous substances at and from the Site;
- 2. For prejudgment interest at the legal rate;
- 3. For attorneys' fees, expert witness' fees, consultants' fees and costs, as appropriate; and
- 4. For such other and further relief as the Court deems just and proper.

ON THE THIRD CLAIM FOR RELIEF:

1. For a declaration pursuant to 28 U.S.C.\(\) 2201 and 42 U.S.C.\(\) 9613(g)(2) that (a) Defendants are jointly and severally liable and responsible under 42 U.S.C. § 9607(a) for the response costs which have been and will continue be incurred by

Georgia-Pacific at the Site, including prejudgment interest; or (b) Defendants are liable under 42 U.S.C. § 9613(f) for contribution to the response costs Georgia-Pacific has incurred and will continue to incur at the Site, including prejudgment interest, in excess of Georgia-Pacific's fair and equitable share of such costs; and

2. For such other and further relief as the Court deems just and proper.

ON THE FOURTH AND FIFTH CLAIMS FOR RELIEF:

- 1. For damages according to proof at trial against Defendants, including but not limited to, Georgia-Pacific's costs incurred for investigating, assessing, monitoring, and remediating the Site; loss of property value due to the existence of contamination at the Site; loss of future rent; costs to repair and restore the Site to proper condition; statutory costs; and other damages according to proof at trial.
- 2. For its reasonable costs and attorneys' fees incurred herein; and
- 3. For such other and further relief as the Court deems just and proper.

Dated: June 4, 2012 SNR DENTON US LLP

By: /s/ Ivor E. Samson
IVOR E. SAMSON

Attorneys for Plaintiff GEORGIA-PACIFIC LLC

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Georgia-Pacific demands a jury trial on any issue triable as of right by a jury.

Dated: June 4, 2012 SNR DENTON US LLP

By: /s/ Ivor E. Samson
IVOR E. SAMSON

Attorneys for Plaintiff GEORGIA-PACIFIC LLC

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