

1 KAMALA D. HARRIS
Attorney General of California
2 SALLY MAGNANI
Senior Assistant Attorney General
3 MARGARITA PADILLA
Supervising Deputy Attorney General
4 SCOTT J. LICHTIG (SBN: 243520)
Deputy Attorney General
5 1301 I Street, 15th Floor
Sacramento, CA 95816
6 Telephone: (916) 445-5077
Fax: (916) 322-5609
7 E-mail: Scott.Lichtig@doj.ca.gov
Attorneys for People of the State of California
8 *ex rel.* Barbara A. Lee, Director of the California
Department of Toxic Substances Control

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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By Louis Staley, Jr.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

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14 **PEOPLE OF THE STATE OF**
CALIFORNIA, *ex rel.* BARBARA A. LEE,
15 **DIRECTOR OF THE CALIFORNIA**
DEPARTMENT OF TOXIC
16 **SUBSTANCES CONTROL**

17 Plaintiff,

18 v.

19 **GALLO GLASS COMPANY, AND DOES 1**
20 **THROUGH 50, INCLUSIVE**

21 Defendants.

RG15760440

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health and Safety Code §§ 25100 et seq.)

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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

By Fax

1 Plaintiff, the People of the State of California, *ex rel.* Barbara A. Lee, Director of the
2 California Department of Toxic Substances Control, alleges as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff brings this action against defendant Gallo Glass Company ("Gallo Glass") to
5 address violations of the California Hazardous Waste Control Law, Chapter 6.5 of Division 20 of
6 the California Health and Safety Code ("HWCL"), and its implementing regulations. The HWCL
7 and its implementing regulations establish comprehensive "cradle to grave" standards for the
8 generation, storage, transportation, treatment, and disposal of hazardous waste in California.

9 2. Plaintiff seeks injunctive relief and civil penalties against Defendants pursuant to
10 sections 25181, 25184, 25189 and 25189.2 of the Health and Safety Code for violations of the
11 HWCL.

12 **PLAINTIFF**

13 3. The California Department of Toxic Substances Control ("Department" or DTSC) is
14 a state agency organized and existing pursuant to sections 58000 et seq. of the California Health
15 and Safety Code. The Department is the state agency responsible for administering and enforcing
16 the provisions of the HWCL, and the implementing regulations set forth in the California Code of
17 Regulations, title 22, Division 4.5, section 66260.1 et seq. ("Title 22").

18 4. Barbara A. Lee, is the Director of the Department.

19 5. Pursuant to Sections 25181(a) and 25182 of the California Health and Safety Code,
20 the Attorney General of the State of California is authorized, at the request of the Department, to
21 commence an action for civil penalties and injunctive relief under the HWCL in the name of the
22 People of the State of California. The Department has made such a request to the Attorney
23 General.

24 **DEFENDANTS**

25 6. Defendant Gallo Glass Company ("Gallo Glass") is a corporation organized and
26 existing under the laws of the State of California, and is authorized to conduct business in the
27 State of California. Defendant Gallo Glass owns and/or operates a facility, located at 605 S.
28 Santa Cruz Avenue, Modesto, California ("Facility"), where the manufacturing of glass bottles

1 results in the generation, storage, disposal and treatment of hazardous waste. The Facility is
2 surrounded by residential neighborhoods to the north, east, and south. Defendant Gallo Glass is a
3 "person," as that term is defined by Health and Safety Code section 25118. Defendant Gallo
4 Glass is also a "generator," and an "owner or operator" as those terms are defined by California
5 Code of Regulations, title 22, section 66260.10. In this Complaint when reference is made to any
6 act or omission of defendant Gallo Glass or "Defendants," such allegations shall include the acts
7 and omissions of owners, officers, directors, agents, employees, contractors, affiliates, and/or
8 representatives of defendant Gallo Glass while acting within the course and scope of their
9 employment or agency on behalf of defendant Gallo Glass during the relevant time periods.

10 7. Defendants DOES 1-50 are the officers, agents, employees, servants, subsidiaries,
11 affiliates, parent companies, holding companies, owners, operators, successors or others acting in
12 interest or concert with Defendant Gallo Glass. Plaintiff is ignorant of the true names of
13 Defendants sued herein as DOES 1-50. When the names of these Defendants have been
14 ascertained, Plaintiff will seek leave to amend the complaint to substitute the true name of each
15 DOE Defendant in place of the fictitious name.

16 8. Each reference in this complaint to "Defendant" or "Defendants" refers to the named
17 Defendant or Defendants and also to all Defendants under fictitious names.

18 JURISDICTION AND VENUE

19 9. The Superior Court has jurisdiction pursuant to Article VI, Section 10 of the
20 California Constitution, and California Health and Safety Code section 25181.

21 10. Venue is proper in this Court pursuant to California Health and Safety Code section
22 25183, because Alameda County is the county in which the Attorney General has an office
23 nearest to Stanislaus County in which at least one of Defendants' principal offices is located.

24 11. Plaintiff and Defendant Gallo Glass entered into an agreement to toll any applicable
25 statutes of limitation from October 31, 2013, through March 31, 2014 (the "Tolling Period"),
26 which will not be included in computing the time limited by any statutes of limitation applicable
27 to the causes of action based on claims covered by the tolling agreement. Those claims include
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1 the claims alleged in this action. This Complaint has been filed within five years of the Plaintiff
2 discovering the HWCL violations alleged herein.

3 **HWCL STATUTORY AND REGULATORY BACKGROUND**

4 12. The State of California has enacted a comprehensive statutory and regulatory
5 framework for the generation, handling, treatment, transport, and disposal of hazardous wastes.
6 The framework contained in the HWCL, and its implementing regulations, mandate a “cradle to
7 grave” registration, tracking, storage, treatment, and disposal system for the protection of the
8 public from the risks posed by hazardous wastes. Except where otherwise expressly defined in
9 this Complaint, all terms shall be interpreted consistent with the HWCL and Title 22.

10 13. California administers the HWCL in lieu of federal administration of the federal
11 Resource Conservation and Recovery Act (“RCRA”), which is codified at 42 United States Code
12 sections 6901 et seq., pursuant to Health & Safety Code sections 25101(d) and 25159-25159.9.
13 Federal law prohibits California from imposing any requirements less stringent than those
14 authorized under RCRA. (42 U.S.C. § 6929.) The HWCL has stricter requirements for
15 regulating hazardous waste than RCRA.

16 14. The HWCL charges the Department with the responsibility to adopt standards and
17 regulations for the management of hazardous waste to protect the public health and environment.
18 (Health & Saf. Code, § 25150.) Accordingly, the Department has promulgated regulations setting
19 forth numerous and extensive health-protective requirements for the day-to-day operation of
20 hazardous waste generators, transporters, as well as owners and operators of hazardous waste
21 facilities. (See Cal. Code. Regs., tit. 22, § 66262.1 et seq.)

22 15. Health and Safety Code section 25124(a) defines a “waste” [as] any solid, liquid,
23 semisolid, or contained gaseous discarded material that is not excluded by this chapter or by
24 regulations adopted pursuant to this chapter.” “Discarded materials” include, among other things,
25 any material that is:

26 (1) relinquished (which includes disposed of, burned or incinerated);

27 (2) recycled or accumulated, stored, or treated before recycling, except as provided in
28 Health and Safety Code section 25143.2; or

1 (3) poses a threat to public health or the environment and is not timely and adequately
2 labeled or not timely packaged in an adequate container, or is considered inherently waste like, as
3 specified in regulations adopted by the Department. (Health & Saf. Code, § 25124, subds. (b)(1),
4 (b)(2) and (b)(3).)

5 16. A "hazardous waste" is a waste that meets any of the criteria established by the
6 Department. (Health & Saf. Code, §§ 25117 and 25141.) The criteria consist of lists of particular
7 hazardous wastes and waste exhibiting certain characteristics.

8 17. Recycled material means a recyclable material which has been used or reused, or
9 reclaimed. (Health & Saf. Code, § 25121(a).) Recyclable material means a hazardous waste that
10 is capable of being recycled. (Health & Saf. Code, § 25120.5.) Recycled material is subject to
11 full regulation as hazardous waste unless it can qualify for one of the recycling exemptions or
12 exclusions in Health and Safety Code section 25143.2. Even hazardous waste that qualifies for a
13 recycling exemption is regulated because it must initially, and continue to, meet certain
14 requirements under the HWCL. However, it does not need to meet all the management
15 requirements for hazardous waste.

16 18. The person claiming the recycling exemption must demonstrate that *bona fide*
17 recycling is occurring. Recycling of material that is only marginally effective for the claimed use
18 or use of recyclable material in excess of the amount necessary are both indicators of sham
19 recycling (surrogate disposal) and not within the scope of the recycling exemptions. (See 80
20 Fed.Reg. 1774 (January 13, 2015); (Health & Saf. Code, § 25143.10(a)(3)(B).)

21 19. Health and Safety Code section 25143.2 (f)(2) requires that the person claiming the
22 exemption/exclusion maintain adequate records to demonstrate *bona fide* recycling, furnish them
23 upon request to the Department pursuant to Health & Safety Code section 25143.2(f)(1)(B), and
24 demonstrate to the satisfaction of the Department that the requirements of any claimed
25 exemption/exclusion are met. (See also Cal. Code. Regs., tit. 22, § 66261.2(g).)

26 20. The HWCL has a more inclusive definition of "hazardous waste" than does federal
27 law. Hazardous wastes that are regulated under California law but not federal law are known as
28 "non-RCRA hazardous wastes." (Health & Saf. Code, § 25117.9.)

1 21. The HWCL, at Health and Safety Code section 25201(a), provides that an owner
2 or operator of a hazardous waste management facility may not “accept, treat, store, or dispose of a
3 hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste
4 facilities permit or other grant of authorization from the Department to use and operate the
5 facility, area, or site”

6 22. In general, a generator that generates 1,000 kilograms or more of hazardous waste
7 per month may accumulate that hazardous waste onsite for up to ninety (90) days without
8 authorization from the Department provided that the generator complies with certain
9 requirements, including, but not limited to, the requirements specified in California Code of
10 Regulations, title 22, section 66262.34. (Health & Saf. Code, § 25123.3, subs. (b) and (c).)

11 23. A person that generates a waste must determine if the waste is hazardous using the
12 methods outlined in California Code of Regulations, title 22, sections 66262.11, and 66260.200.
13 If the waste is hazardous, the generator must manage it in accordance with the statutes and
14 regulations governing generators of hazardous wastes. (See Cal. Code. Regs., tit. 22, §§
15 66262.11(d) and 66260.200(c).)

16 24. A person who generates a hazardous waste is subject to the requirements prescribed
17 in chapter 6.5 of division 20 of the Health and Safety Code (commencing with section 25100). A
18 generator who treats, stores, or disposes of hazardous waste on-site shall also comply with the
19 applicable standards and permit requirements set forth in chapters 14, 15, 16, 18 and 20 of
20 division 4.5, California Code of Regulations, title 22, section 66260.1 et seq. (Cal. Code. Regs.,
21 tit. 22, § 66262.10.)

22 **ENFORCEMENT AUTHORITY UNDER THE HWCL**

23 25. As is relevant to this proceeding, the HWCL authorizes the Court to impose civil
24 penalties under two distinct and alternative statutory provisions. Section 25189 of the Health and
25 Safety Code creates liability for any negligent or intentional violation of the HWCL. Section
26 25189.2 is a strict liability provision, which creates liability for any violation of the HWCL. A
27 person may not be held liable for a civil penalty imposed under section 25189 and for a civil
28 penalty imposed under section 25189.2 for the same act. (Health & Saf. Code, § 25189.2(f).)

1 32. In or around 1995, Defendants installed an air-pollution control device called an
2 Electrostatic Precipitator (EP) to capture certain regulated pollutants (including particulate
3 matter) from furnace exhaust gas that would otherwise be emitted to the air. The air pollution
4 control device has been operational since installation, except for possible shutdowns for
5 maintenance or other events.

6 33. The captured exhaust gas from the furnace goes through the EP unit which produces
7 EP sludge. As a solid waste generated from an air pollution control device, the effluent from the
8 EP unit is "sludge" as defined in California Code of Regulations, title 22, section 66260.10. EP
9 sludge is considered a RCRA hazardous waste because it exhibits the toxicity characteristic under
10 RCRA's Toxicity Characteristic Leaching Procedure. In particular, EP sludge contains
11 concentrations of lead, arsenic, cadmium, and selenium above regulatory thresholds, and EP
12 sludge is therefore subject to regulation as hazardous waste under the HWCL once it exits the EP
13 unit. (Health & Saf. Code, § 25201.12.) EP sludge is also a "recyclable material" (hazardous
14 waste) within the meaning of Health and Safety Code section 25120.5.

15 34. With respect to EP sludge collected from the air pollution control devices, Defendants
16 engaged in surrogate disposal of EP sludge by using it to make glass bottles. Defendants claim
17 EP sludge was being used as a substitute for salt cake, a raw ingredient used in the making of
18 glass bottles, but have not provided the Department with the requested information necessary to
19 confirm that claim. Based on information and belief, Defendants reaped a substantial economic
20 benefit by failing to properly dispose of all EP sludge to an authorized disposal facility.

21 35. Between 1995 and 2014, Defendants collected tons of EP sludge and mechanically
22 conveyed it to a storage tank (aka EP sludge silo) where the EP sludge was illegally stored. A
23 significant amount of the EP sludge was subsequently illegally treated in the furnaces by adding it
24 to the glass batch ingredient mix from which Defendants' glass bottles are made. The EP sludge
25 that did not make it into the silo or furnace was either unlawfully released into the environment or
26 disposed of as a hazardous waste to an authorized landfill.

27 36. On or about September 29, 2009, October 7, 2009, and February 3, 2011,
28 representatives of the Department conducted on-site inspections of Defendants' Facility.

1 **FIRST CAUSE OF ACTION**

2 (Intentional or Negligent Disposal of Hazardous Waste)
3 (Health & Saf. Code, §§ 25189(c) and (d), 25201(a), 25250.4(a), 25250.5(a))

4 37. Paragraphs 1 through 36 above are incorporated by reference as though fully set forth
5 herein.

6 38. In relevant part, Health and Safety Code section 25201(a) provides that no owner or
7 operator of a hazardous waste disposal facility or disposal site shall accept, treat, store, or dispose
8 of a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous
9 waste facilities permit or other grant of authorization from the Department.

10 39. In relevant part, Health and Safety Code section 25189(c) forbids any person from
11 intentionally disposing, or causing the disposal, of a hazardous waste at an unauthorized location.
12 Further, Health and Safety Code section 25189(d) forbids any person from negligently disposing
13 of hazardous waste at an unauthorized location.

14 40. In relevant part, Health and Safety Code section 25250.4(a) provides that used oil
15 shall be managed as hazardous waste in accordance with the HWCL. Health and Safety Code
16 section 25250.5(a) further provides that the disposal of used oil is prohibited unless authorized
17 under other provisions of law.

18 41. On and prior to September 29, 2009, October 7, 2009, and February 3, 2011, and
19 continuing thereafter according to proof, Defendants violated Health and Safety Code sections
20 25189(c), 25189(d), and 25201(a) by unlawfully and intentionally and/or negligently disposing,
21 or causing the disposal, of EP sludge, a hazardous waste, by:

22 (a) engaging in surrogate disposal: instead of sending all EP sludge to an
23 authorized hazardous waste landfill, Defendants put tons of the EP sludge back into a furnace as
24 part of its glass batch mix, claiming it was substituting EP sludge for raw materials to make glass
25 bottles; and

26 (b) depositing EP sludge at various locations throughout the Facility, including on
27 the ground, on the walls, on the air pollution control equipment, and near the EP sludge storage
28 silo tank, and by tracking it outside the building.

1 42. On and prior to September 29, 2009, October 7, 2009, and February 3, 2011, and
2 continuing thereafter according to proof, Defendants violated Health and Safety Code sections
3 25189(c), 25189(d), 25201(a), and 25250.5(a) by unlawfully and intentionally and/or negligently
4 disposing of, or causing the disposal of, used oil without authorization, by:

5 (a) disposing of used oil by pumping the hazardous waste into glass batch mixes
6 and incinerating it in the furnace;

7 (b) disposing of used oil by combining the oily sludge from the Facility's used oil
8 treatment system with other waste streams in a roll-off bin and disposing of this hazardous waste
9 as a non-hazardous waste at the Clean Harbors Disposal Facility, located at 2500 West Lokern
10 Road in Buttonwillow, California; and

11 (c) discharging used oil directly to a sewer.

12 43. Pursuant to Health and Safety Code sections 25189(b), 25189(c) and/or 25189(d),
13 Defendants are liable for civil penalties according to proof based on these intentional and/or
14 negligent violations. For each intentional disposal of hazardous waste in violation of Health and
15 Safety Code section 25189(c), Defendants each are subject to a civil penalty of not less than one
16 thousand dollars (\$1,000) and up to twenty five thousand dollars (\$25,000). For each negligent
17 disposal of hazardous waste in violation of Health and Safety Code section 25189(d), Defendants
18 each are subject to a civil penalty of up to twenty five thousand dollars (\$25,000). Each violation
19 of a separate provision of the HWCL and/or its implementing regulations is subject to an a civil
20 penalty of up to twenty five thousand dollars (\$25,000). For a continuing violation, each day a
21 violation continues is subject to a civil penalty of up to twenty five thousand dollars (\$25,000).
22 For intentional disposals of hazardous waste, the HWCL sets the minimum civil penalty at \$1,000
23 per violation. (Health & Saf. Code, § 25189(c).) Pursuant to Health and Safety Code section
24 25181, Defendants should also be enjoined from further violations of the HWCL.

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SECOND CAUSE OF ACTION
(Strict Liability for Disposal of Hazardous Waste)
(Health & Saf. Code, §§ 25189.2(c), 25201(a), 25250.4(a), 25250.5(a))

44. Paragraphs 1 through 43 above are incorporated by reference as though fully set forth herein.

45. In relevant part, Health and Safety Code section 25201(a) provides that no owner or operator of a hazardous waste disposal facility or disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or other grant of authorization from the Department.

46. In relevant part, Health and Safety Code section 25189.2(c) is a strict liability provision that forbids any person from disposing, or causing the disposal, of a hazardous waste at an unauthorized location.

47. In relevant part, Health and Safety Code section 25250.4(a) provides that used oil shall be managed as hazardous waste in accordance with the HWCL. Health and Safety Code section 25250.5(a) further provides that the disposal of used oil is prohibited unless authorized under other provisions of law.

48. On and prior to September 29, 2009, October 7, 2009, and February 3, 2011, and continuing thereafter according to proof, Defendants violated Health and Safety Code sections 25189.2(c) and 25201(a) by unlawfully disposing, or causing the disposal, of EP sludge, a hazardous waste, by:

(a) engaging in surrogate disposal: instead of sending all EP sludge to an authorized hazardous waste landfill, Defendants put tons of the EP sludge back into a furnace as part of its glass batch mix, claiming it was substituting EP sludge for raw materials to make glass bottles; and

(b) depositing EP sludge at various locations throughout the Facility, including on the ground, on the walls, on the air pollution control equipment, and near the EP sludge storage silo tank, and by tracking it outside the building.

1 49. On and prior to September 29, 2009, October 7, 2009, and February 3, 2011, and
2 continuing thereafter according to proof, Defendants violated Health and Safety Code sections
3 25189.2(c), 25201(a), and 25250.5(a) by unlawfully disposing of, or causing the disposal of, used
4 oil without authorization, by:

5 (a) disposing of used oil by pumping the hazardous waste into glass batch mixes
6 and incinerating it in the furnace;

7 (b) disposing of used oil by combining the oily sludge from the Facility's used oil
8 treatment system with other waste streams in a roll-off bin and disposing of this hazardous waste
9 as a non-hazardous waste at the Clean Harbors Disposal Facility, located at 2500 West Lokern
10 Road in Buttonwillow, California; and

11 (c) discharging used oil directly to a sewer.

12 50. Pursuant to Health and Safety Code sections 25189.2(b) and 25189.2(c), Defendants
13 are strictly liable for civil penalties according to proof based on these violations. Each violation
14 of a separate provision of the HWCL and/or its implementing regulations is subject to a civil
15 penalty of up to twenty five thousand dollars (\$25,000). For a continuing violation, each day a
16 violation continues is subject to a civil penalty of up to twenty five thousand dollars (\$25,000).
17 Pursuant to Health and Safety Code section 25181, Defendants should also be enjoined from
18 further violations of the HWCL.

19 **THIRD CAUSE OF ACTION**
20 (Illegal Storage of Hazardous Waste)
(Health & Saf. Code, § 25201(a))

21 51. Paragraphs 1 through 50 above are incorporated by reference as though fully set forth
22 herein.

23 52. In relevant part, Health and Safety Code section 25201(a) provides that no owner or
24 operator of a storage facility shall accept, treat, store, or dispose of a hazardous waste at the
25 facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or
26 other grant of authorization from the Department.

27 53. In relevant part, Health and Safety Code section 25123.3(b)(4)(A) provides that a
28 hazardous waste "storage facility" is a facility where hazardous waste is held onsite for any

1 period of time unless the hazardous waste is held in a container or tank in accordance with the
2 Department's regulations.

3 54. Under California Code of Regulations, title 22, section 66262.34, a generator that
4 generates a 1,000 kilograms or more of hazardous waste per month is able to accumulate
5 hazardous waste on site for 90 days or less without a permit or grant of interim status from the
6 Department only if it complies with certain requirements including, but not limited to, placing the
7 hazardous waste in proper containers or tanks and properly assessing and labeling the containers
8 or tanks. (See Cal. Code. Regs., tit. 22, §§ 66262.34(a) and 66262.34(f).) If the generator fails to
9 meet all the requirements for the 90 day accumulation period, it is not authorized to accumulate
10 any hazardous waste at all.

11 55. In relevant part, California Code of Regulations, title 22, section 66265.173(a)
12 provides that a container holding hazardous waste shall always be closed during transfer and
13 storage, except when it is necessary to add or remove waste.

14 56. On and prior to September 29, 2009, October 7, 2009, and February 3, 2011, and
15 continuing thereafter according to proof, Defendants stored hazardous waste, including EP
16 sludge, at the Facility without a permit or authorization from the Department in violation of
17 Health and Safety Code section 25201(a) and without complying with California Code of
18 Regulations, title 22, sections 66262.34(a), 66262.34(f), and section 66265.173 with respect to
19 subparagraphs (a)(ii) and (b). Defendants unlawfully stored EP sludge at the Facility in a silo
20 storage tank that had not been assessed and/or certified by an engineer as being capable of
21 holding the EP sludge as required by California Code of Regulations, title 22, section
22 66265.192(a).

23 57. On and prior to September 29, 2009, October 7, 2009, and February 3, 2011, and
24 continuing thereafter according to proof, Defendants stored hazardous waste at the Facility
25 without a permit or authorization from the Department in violation of Health and Safety Code
26 section 25201(a), and without complying with California Code of Regulations, title 22, sections
27 66262.34(a), 66262.34(f), and, with respect to used oil, in violation of section 66266.130(a), as
28 follows:

1 (a) used oil was combined with other waste streams and stored in an uncovered
2 roll-off bin at the Facility that was not properly labeled as a hazardous waste; and

3 (b) used oil was stored in tanks and other parts of the used oil treatment system that
4 were not properly labeled as a hazardous waste and had not been assessed and/or certified by an
5 engineer as being capable of holding used oil as required by California Code of Regulations, title
6 22, section 66265.192(a). These tanks include, but are not limited to, the reclaim byproduct
7 holding tank, the reclaim system separator tank, and the "sludge oil" tank in the Facility's basement.

8 58. Pursuant to Health and Safety Code sections 25189(b) and/or 25189(e), Defendants
9 are liable for civil penalties according to proof based on these intentional or negligent violations.
10 In the alternative, Defendants are strictly liable for civil penalties according to proof pursuant to
11 Health and Safety Code section 25189.2(d). Each violation of a separate provision of the HWCL
12 and/or its implementing regulations is subject to a civil penalty of up to twenty five thousand
13 dollars (\$25,000). For a continuing violation, each day a violation continues is subject to a civil
14 penalty of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code
15 section 25181, Defendants should also be enjoined from further violations of the HWCL.

16 **FOURTH CAUSE OF ACTION**
17 (Illegal Treatment of Hazardous Waste)
18 (Health & Saf. Code, § 25201(a))

19 59. Paragraphs 1 through 58 above are incorporated by reference as though fully set forth
20 herein.

21 60. In relevant part, Health and Safety Code section 25201(a) provides that no owner or
22 operator of a treatment facility shall accept, treat, store, or dispose of a hazardous waste at the
23 facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or
24 other grant of authorization from the Department.

25 61. Health and Safety Code section 25123.5 defines treatment of a hazardous waste to
26 include any method, technique, or process which is designed to change the physical, chemical, or
27 biological character or composition of the hazardous waste, or which removes or reduces its
28 harmful properties or characteristics for any purpose.

1 66. In relevant part, California Code of Regulations, title 22, section 66265.192(a)
2 requires an owner or operator of a new tank system or components to obtain a written assessment
3 reviewed and certified by an independent, qualified, registered professional engineer attesting that
4 the new tank system or components has sufficient structural integrity and is acceptable for the
5 transferring, storing, and treating of hazardous waste before placing the tank system or
6 components in service.

7 67. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
8 "tank system" as "a hazardous waste transfer, storage or treatment tank and its associated
9 ancillary equipment and containment system." That section also defines "component" as "any
10 constituent part of a unit or any group of constituent parts of a unit which are assembled to
11 perform a specific function..."

12 68. On and prior to September 29, 2009, October 7, 2009, and February 3, 2011, and
13 continuing thereafter according to proof, Defendants failed to obtain a written assessment for the
14 following hazardous waste tanks at the Facility as required by California Code of Regulations,
15 title 22, section 66265.192(a):

16 (a) EP sludge storage silo tank and its associated ancillary equipment and
17 containment system; and

18 (b) used oil treatment system storage tanks and their associated ancillary equipment
19 and containment systems, including the Wemco, the Coalescer, the reclaim byproduct holding tank,
20 the reclaim system separator tank, and the "sludge oil" tank in the basement.

21 69. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for civil
22 penalties according to proof based on these intentional or negligent violations. In the alternative,
23 Defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety
24 Code section 25189.2(b). Each violation of a separate provision of the HWCL and/or its
25 implementing regulations is subject to a civil penalty of up to twenty five thousand dollars
26 (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty
27 of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code section
28 25181, Defendants should be enjoined from violating the HWCL.

1 **SIXTH CAUSE OF ACTION**

2 (Failure to Conduct Daily Tank Inspections and Maintain Inspection Logs)
3 (Cal. Code Regs., tit. 22, § 66265.195(a))

4 70. Paragraphs 1 through 69 above are incorporated by reference as though fully set forth
5 herein.

6 71. In relevant part, California Code of Regulations, title 22, section 66265.195(a)
7 requires an owner or operator of a tank system to conduct daily inspections of tanks and to
8 document these inspections.

9 72. On and prior to September 29, 2009, October 7, 2009, and February 3, 2011, and
10 continuing thereafter according to proof, Defendants failed to conduct and document inspections
11 for the following hazardous waste tanks at the Facility as required by California Code of
12 Regulations, title 22, section 66265.195(a):

13 (a) EP sludge storage silo tank and its associated ancillary equipment and
14 containment system; and

15 (b) used oil treatment system storage tanks and their associated ancillary equipment
16 and containment systems, including the Wemco, the Coalescer, the reclaim byproduct holding
17 tank, the reclaim system separator tank, and the "sludge oil" tank in the basement.

18 73. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for civil
19 penalties according to proof based on these intentional or negligent violations. In the alternative,
20 Defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety
21 Code section 25189.2(b). Each violation of a separate provision of the HWCL and/or its
22 implementing regulations is subject to a civil penalty of up to twenty five thousand dollars
23 (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty
24 of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety section 25181,
25 Defendants should be enjoined from violating the HWCL.

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1 and/or containers at the Facility, in violation of California Code of Regulations, title 22, section
2 66262.34(a) and (f), and, with respect to "used oil," in violation of section 66279.21(b):

3 (a) EP sludge storage silo tank and its associated ancillary equipment and
4 containment system;

5 (b) a roll-off bin used by Defendants to capture EP sludge;

6 (c) used oil storage tanks in the used oil treatment system and their associated
7 ancillary equipment and containment systems, including but not limited to, the Coalescer, the Wemco,
8 the reclaim byproduct holding tank, the reclaim system separator tank, and the "sludge oil" tank in the
9 basement;

10 (d) roll-off bin containing used oil and other waste streams;

11 (e) three drums of glass-bead waste in the Facility's Mold Shop Blaster area;

12 (f) one roll-off bin of glass bead waste in the Facility's east parking lot; and

13 (g) six 55-gallon drums of hazardous waste located outside of the Mold Shop at the
14 Facility.

15 78. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for civil
16 penalties according to proof based on these intentional or negligent violations. In the alternative,
17 Defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety
18 Code section 25189.2(b). Each violation of a separate provision of the HWCL and/or its
19 implementing regulations is subject to a civil penalty of up to twenty five thousand dollars
20 (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty
21 of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code section
22 25181, Defendants should also be enjoined from further violations of the HWCL.

23 **EIGHTH CAUSE OF ACTION**

24 (Failure to Minimize Possibility of Release of Hazardous Waste)
(Cal. Code Regs., tit. 22, § 66265.31)

25 79. Paragraphs 1 through 78 above are incorporated by reference as though fully set forth
26 herein.

27 80. California Code of Regulations, title 22, section 66265.31 provides that "[f]acilities
28 shall be maintained and operated to minimize the possibility of a fire, explosion, or any

1 unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to
2 air, soil, or surface water which could threaten human health or the environment.”

3 81. On and prior to September 29, 2009, and October 7, 2009, and continuing thereafter
4 according to proof, Defendants failed to properly maintain and operate the Facility to minimize
5 hazardous waste and/or hazardous waste constituent releases into the environment in violation of
6 California Code of Regulations, title 22, section 66265.31, as demonstrated by the following:

7 (a) EP sludge was observed on both the equipment and the floor near the high
8 density pump station, on paved concrete outside the door of the high density pump station, and
9 surrounding the EP sludge storage silo outside the main building; and

10 (b) Oily spills and sludge were observed on the equipment and on the floor around
11 the oil treatment system.

12 82. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for civil
13 penalties according to proof based on these intentional or negligent violations. In the alternative,
14 Defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety
15 Code section 25189.2(b). Each violation of a separate provision of the HWCL and/or its
16 implementing regulations is subject to a civil penalty of up to twenty five thousand dollars
17 (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty
18 of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code section
19 25181, Defendants should also be enjoined from further violations of the HWCL.

20 **NINTH CAUSE OF ACTION**

21 (Failure to Properly Train Personnel and Maintain Training Records)
22 (Cal. Code Regs., tit. 22, § 66265.16)

23 83. Paragraphs 1 through 82 above are incorporated by reference as though fully set forth
24 herein.

25 84. In relevant part, California Code of Regulations, title 22, section 66265.16(a)
26 provides that,

27 (1) facility personnel shall successfully complete a program of classroom instruction
28 or on-the-job training that teaches them to perform their duties in a way that ensures
the facility's compliance with the requirements of this chapter. The owner or operator
shall ensure that this program includes all the elements described in the document
required under subsection (d)(3) of this section.

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(3) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems. . .

Section 66265.16, subdivisions (b) through (e), further provide that facility personnel shall complete such required training within specified time limits and that the owner or operator shall maintain appropriate written documentation of such training as set forth in said regulation.

85. On and prior to September 29, 2009, October 7, 2009, and February 3, 2011, and continuing thereafter according to proof, Defendants failed to provide adequate emergency contingency training and a training plan for its contract employees and failed to maintain the appropriate written documentation of such training in violation of California Code of Regulations, title 22, sections 66265.16(a) and (e).

86. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for civil penalties according to proof based on these intentional or negligent violations. In the alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety Code section 25189.2(b). Each violation of a separate provision of the HWCL and/or its implementing regulations is subject to a civil penalty of up to twenty five thousand dollars (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code section 25181, Defendants should also be enjoined from further violations of the HWCL.

TENTH CAUSE OF ACTION
(Failure to Provide Secondary Containment)
(Cal. Code Regs., tit. 22, § 66265.193)

87. Paragraphs 1 through 86 above are incorporated by reference as though fully set forth herein.

88. In relevant part, California Code of Regulations, title 22, section 66265.193 requires that tank systems be equipped with secondary containment in order to prevent the release of hazardous waste or hazardous constituents to the environment.

1 89. On and prior to September 29, 2009, and October 7, 2009, and continuing thereafter
2 according to proof, Defendants failed to provide the necessary secondary containment in the
3 following ways:

4 (a) Defendants had no secondary containment system for the Facility's tanks and
5 ancillary systems housing EP sludge; and

6 (b) Defendants had no secondary containment for the Facility's oil treatment
7 system, including the Coalescer, Wemco, the "sludge oil" storage tank in the basement, and
8 related ancillary equipment.

9 90. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for civil
10 penalties according to proof based on these intentional or negligent violations. In the alternative,
11 Defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety
12 Code section 25189.2(b). Each violation of a separate provision of the HWCL and/or its
13 implementing regulations is subject to a civil penalty of up to twenty five thousand dollars
14 (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty
15 of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code section
16 25181, Defendants should also be enjoined from further violations of the HWCL.

17 **ELEVENTH CAUSE OF ACTION**

18 (Failure to Provide Adequate Secondary Containment)
19 (Cal. Code Regs., tit. 22, § 66265.196)

20 91. Paragraphs 1 through 90 above are incorporated by reference as though fully set forth
21 herein.

22 92. In relevant part, California Code of Regulations, title 22, section 66265.195 requires a
23 facility owner or operator to immediately remove from service a secondary containment system
24 from which there has been a leak or spill, or which is unfit for use.

25 93. On and prior to February 3, 2011, and continuing thereafter according to proof,
26 Defendants failed to provide adequate secondary containment for the used oil treatment system.
27 In particular, DTSC observed that the floor around the reclaim byproduct holding tank and the
28 reclaim system separator tank was cracked and damaged and also covered with oil stains.

1 (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty
2 of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code section
3 25181, Defendants should also be enjoined from further violations of the HWCL.

4 **THIRTEENTH CAUSE OF ACTION**
5 (Failure to Provide Information on Waste Streams)
6 (Health & Saf. Code, § 25185.6)

7 99. Paragraphs 1 through 98 above are incorporated by reference as though fully set
8 forth herein.

9 100. In relevant part, Health and Safety Code section 25185.6 requires that, upon
10 request from the Department, owners and operators must provide any existing information
11 relating to hazardous substances, hazardous wastes, or hazardous materials.

12 101. On November 4, 2009, the Department sent an information request to Defendants
13 requesting information on each waste stream generated from the used oil treatment system at the
14 Facility.

15 102. In its response, Defendants failed to disclose that it pumped out the waste stream
16 from the Wemco (part of the used oil treatment system) into a septic tank hauler and disposed of
17 the hazardous waste off-site as a nonhazardous waste. The Department only learned of this waste
18 stream upon reviewing files in the City of Modesto's office and discovering Defendants' use of a
19 septic tank hauler.

20 103. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for
21 civil penalties according to proof based on these intentional or negligent violations. In the
22 alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health
23 and Safety Code section 25189.2(b). Each violation of a separate provision of the HWCL and/or
24 its implementing regulations is subject to a civil penalty of up to twenty five thousand dollars
25 (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty
26 of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code section
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1 25181, Defendants should also be enjoined from further violations of the HWCL.

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FOURTEENTH CAUSE OF ACTION
(Failure to Manifest Hazardous Waste)
(Health & Saf. Code, § 25160)

104. Paragraphs 1 through 103 above are incorporated by reference as though fully set forth herein.

105. In relevant part, California Health & Saf. Code, § 25160 provides that a person generating hazardous waste that is transported offsite for disposal must complete a manifest prior to the time the waste is transported and, within thirty days, submit to the Department a copy of the manifest.

106. On and prior to March 1, 2012, and continuing thereafter according to proof, Defendants disposed of hazardous waste at the Clean Harbors Disposal Facility in Buttonwillow, California, without completing any of the required manifests or providing any manifests to the Department, as required by the HWCL.

107. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for civil penalties according to proof based on these intentional or negligent violations. In the alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety Code section 25189.2(b). Each violation of a separate provision of the HWCL and/or its implementing regulations is subject to a civil penalty of up to twenty five thousand dollars (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code section 25181, Defendants should also be enjoined from further violations of the HWCL.

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1 **FIFTEENTH CAUSE OF ACTION**

2 (Failure to Notify DTSC of Fires and Explosions)
3 (Cal. Code Regs., tit. 22, §§ 66265.51 and 66265.56(i) and (j))

4 108. Paragraphs 1 through 107 above are incorporated by reference as though fully set
5 forth herein.

6 109. In relevant part, California Code of Regulations, title 22, section 66265.51(a)
7 provides that owners and operators must have a contingency plan for the Facility that is designed
8 to minimize hazards to human health or the environment from fires, amongst other events.

9 110. In relevant part, California Code of Regulations, title 22, section 66265.51(b)
10 provides that owners and operators must carry out the provisions of the plan immediately
11 “whenever there is a fire, explosion, or release of hazardous waste or hazardous waste
12 constituents which could threaten human health or the environment.”

13 111. In relevant part, California Code of Regulations, title 22, section 66265.56(i)
14 provides that, after a fire or explosion, owners and operators must notify DTSC that the facility
15 has complied with explicit safety measures prior to resuming operations.

16 112. In relevant part, California Code of Regulations, title 22, section 66265.56(j)
17 provides that, within 15 days of a fire or explosion, owners and operators must submit a written
18 report to DTSC stating, amongst other things, the nature of the fire, the extent of any injuries, an
19 assessment of actual or potential hazards to human health or the environment, and an estimated
20 quantity and disposition of recovered material that resulted from the incident.

21 113. In 2006, 2007, 2008, 2009, and 2011, multiple fires and/or explosions occurred at
22 the Facility in areas covered by defendant’s contingency plan. These incidents include:

23 (a) A fire in 2006 that Gallo Glass employees informed the Department had
24 occurred, but for which no incident report was written or filed.

25 (b) A fire in 2007 that Gallo Glass employees informed the Department had

1 occurred, but for which no incident report was written or filed.

2 (c) On or around June 8, 2008, a fire in an enclosed, five-story building
3 occurred at the Facility in a machine area when film and residue from Gallo Glass's use of
4 lubricating oil ignited. Four Gallo Glass employees were taken to the hospital for smoke
5 inhalation.
6

7 (d) On or around September 14, 2008, an explosive device, or "home made dry
8 ice bomb," detonated at the Facility, injuring a Gallo Glass employee.

9 (e) On or around August 27, 2009, a three-alarm fire ignited at the Facility in a
10 four-story incinerator area. The Facility's special hazard extinguishing system operated but failed
11 to suppress the fire. The fire caused the Facility's electric furnace to crack and leak molten glass
12 from the pot, the radiant heat from which started fires throughout the basement portion around the
13 containment walls, where Defendants stored combustibles.
14

15 (f) On or around June 13, 2011, a major fire erupted at the Facility, requiring
16 five fire engines to extinguish.

17 114. Defendants failed to adequately notify DTSC about any of these respective fires
18 and/or explosions, in violation of California Code of Regulations, title 22, sections 66265.56(i)
19 and (j).
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21 115. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for
22 civil penalties according to proof based on these intentional or negligent violations. In the
23 alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health
24 and Safety Code section 25189.2(b). Each violation of a separate provision of the HWCL and/or
25 its implementing regulations is subject to a civil penalty of up to twenty five thousand dollars
26 (\$25,000). For a continuing violation, each day a violation continues is subject to a civil penalty
27 of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety Code section
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25181, Defendants should also be enjoined from further violations of the HWCL.

REQUEST FOR RELIEF

The Department requests that the Court grant the relief that follows:

- A. Enter judgment that Defendants have violated the HWCL and its implementing regulations as set forth in the First through Fifteenth Causes of Action;
- B. Enter judgment that Defendants are liable for civil penalties for the violations set forth in the First through Fifteenth Causes of Action as authorized by Health and Safety Code section 25189 or, in the alternative, by Health and Safety Code 25189.2, in an amount according to proof;
- C. Enter temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders enjoining Defendants, and each of them, from illegally treating, storing, and disposing of hazardous waste in California and requiring Defendants to otherwise comply with the HWCL and the regulations adopted thereunder;
- D. Grant the Department its costs of suit herein; and
- E. Grant such other and further relief as the Court deems just and proper.

Dated: February 27, 2015

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California



SCOTT J. LICHTIG
Deputy Attorney General

Attorneys for **PEOPLE OF THE STATE OF CALIFORNIA**, ex rel., Barbara A. Lee,
Director of the California Department of
Toxic Substances Control