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8 *California, ex rel. Deborah O. Raphael, Director,*
California Department of Toxic Substances Control

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO

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13 **PEOPLE OF THE STATE OF**
CALIFORNIA ex rel. DEBORAH O.
14 **RAPHAEL, Director, CALIFORNIA**
DEPARTMENT OF TOXIC SUBSTANCES
15 **CONTROL,**

16 **Plaintiff,**

17 **v.**

18 **PILKINGTON NORTH AMERICA, INC., a**
19 **Delaware Corporation, and DOES 1-20,**

20 **Defendants.**

Case No. _____

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Cal. Health & Saf. Code, Div. 20, Chapter
6.5)

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23 **Original**
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1 Plaintiff, the People of the State of California ex rel. Deborah O. Raphael, Director of the
2 Department of Toxic Substances Control ("the Department"), allege the following.

3 **STATEMENT OF THE CASE**

4 1. Defendant, Pilkington North America, Inc. ("PNA"), a Delaware Corporation, owns
5 and operates a hazardous waste facility at 500 East Louise Avenue, Lathrop, California ("Lathrop
6 Facility"). At the Lathrop Facility, during all times relevant herein, PNA and Does 1-20
7 (collectively "Defendants") generated and continue to generate hazardous waste from the
8 manufacturing of float glass. Defendants also, as part of their operations at the Lathrop Facility,
9 stored and continue to store hazardous waste generated during the manufacture of float glass. In
10 addition, Defendants, generated and stored, and continue to generate and store, electronic and
11 universal waste at the Lathrop Facility.

12 2. While conducting their operations, Defendants violated numerous provisions of
13 California's Hazardous Waste Control Law, Health and Safety Code Sections 25100 et seq. (the
14 "HWCL") and its implementing regulations, including but not limited to unauthorized storage of
15 hazardous waste, including universal waste, unlawful disposal of hazardous waste, failure to
16 make a waste determination, failure to provide or document employee training in the handling of
17 hazardous waste, failure to complete, update or implement a hazardous waste contingency plan,
18 and failure to properly label hazardous waste, including universal waste.

19 3. Unless enjoined by order of this Court, Defendants may or will continue in the course
20 of conduct alleged herein.

21 4. The Department hereby seeks civil penalties from and injunctive relief against
22 Defendants for violations of the HWCL and its implementing regulations.

23 **THE PARTIES**

24 5. The Department is a public agency of the State of California organized and existing
25 under and pursuant to Health and Safety Code section 58000 et seq. The Department is the state
26 agency that administers and enforces the HWCL.

27 6. Plaintiff Deborah O. Raphael is the Director of the Department.
28

1 7. Pursuant to Health & Safety Code sections 25181 and 25182, the Attorney General of
2 the State of California is authorized, at the request of the Department, to commence an action in
3 the name of the People for civil penalties and injunctive relief under the HWCL. The Department
4 has asked the Attorney General to apply to this Court for penalties and an injunction enjoining
5 Defendants from continuing violations of the HWCL.

6 8. Defendant PNA is now, and at all times mentioned in this Complaint was, a Delaware
7 Corporation which does and did business in its own capacity and/or through affiliates in the State
8 of California.

9 9. PNA is, and at all times mentioned in this Complaint was, a "person," as defined at
10 Health and Safety Code section 25118.

11 10. PNA is now, and at all times mentioned in this Complaint was, an "owner" and/or
12 "operator," as defined at California Code of Regulations, Title 22, section 66260.10. At all times
13 mentioned in this Complaint, PNA operates or operated in at least one location in California: the
14 Lathrop Facility. PNA is, and at all times relevant to the claims in this Complaint was, legally
15 responsible for compliance with the provisions of the California Health and Safety Code,
16 including, but not limited to, Chapter 6.5 of Division 20, and the corresponding implementing
17 regulations, in connection with PNA's ownership and/or operation of the Lathrop Facility.

18 11. When reference is made in this complaint to any act of Defendant PNA, such
19 allegation shall mean that the owners, officers, directors, agents, employees, contractors and
20 representatives of Defendant PNA did or authorized such acts or recklessly and/or negligently
21 failed and omitted to adequately or properly supervise, control, or direct Defendant PNA
22 employees, representatives, or agents while engaged in the management, direction, operation, or
23 control of the affairs of Defendant PNA and did so while acting within the course and scope of
24 their employment or agency.

25 12. Defendants Does 1-20 are the officers, agents, employees, servants or others acting in
26 interest or concert with PNA. The Department is ignorant of the true names of the defendants
27 sued herein as Does 1-20. When the names of these defendants have been ascertained, the
28 Department will seek leave to amend the complaint to substitute the true name of each Doe

1 defendant in place of the fictitious name. Does 1-20 are, and at all times relevant to the claims in
2 this Complaint were, legally responsible for compliance with the provisions of the California
3 Health and Safety Code, including, but not limited to, Chapter 6.5 of Division 20, and the
4 corresponding implementing regulations, in connection with the ownership and/or operation of
5 the Lathrop Facility.

6 JURISDICTION AND VENUE

7 13. This court has jurisdiction pursuant to California Constitution, Article VI, section 10.
8 Venue is proper under Health and Safety Code section 25183. The violations of law principally
9 took place at PNA's place of business in Lathrop, San Joaquin County, California and PNA has
10 stipulated to DTSC filing this action in Sacramento County.

11 STATUTORY AND REGULATORY BACKGROUND

12 14. The State of California has a comprehensive – “cradle to grave” – statutory and
13 regulatory framework for the generation, handling, treatment, storage, transport, and disposal of
14 hazardous wastes. The HWCL's implementing regulations specify requirements for the tracking,
15 storage, treatment, and disposal of hazardous waste to protect the public and the environment
16 from the risks posed by improper management of hazardous wastes. (Cal. Code Regs., tit. 22, §§
17 66260.1 *et seq.*)

18 15. The HWCL is the California analog of the federal Resource Conservation and
19 Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”). Pursuant to state and federal law, the
20 Department administers the HWCL in lieu of federal administration of RCRA in California. (See
21 Health & Safety Code, § 25101, subd. (d); California: Final Authorization of Revisions to State
22 Hazardous Waste Management Program, 66 FR 49118 (September 26, 2001).) Federal law
23 prohibits California from imposing “any requirements less stringent than those authorized under
24 [RCRA].” (42 U.S.C. § 6929.) However, RCRA does not prevent California from imposing
25 requirements which are more stringent than those imposed by federal law. (*Id.*)

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

1 17. The Department is informed and believes that PNA has been assigned U.S. EPA ID
2 Number CAD005415633 pursuant to RCRA.

3 **ENFORCEMENT AUTHORITY UNDER THE HWCL**

4 18. Pursuant to the provisions of the HWCL, the Court may impose civil penalties under
5 two distinct and alternative provisions. Section 25189 creates liability for any negligent or
6 intentional violation of the HWCL or any permit, rule, regulation, standard, or requirement issued
7 or adopted thereunder. Section 25189.2 is a strict liability provision, which creates liability for
8 any violation of the HWCL or any permit, rule, regulation, standard, or requirement issued or
9 adopted thereunder. (Health & Saf. Code, § 25189.2, subd. (b).)

10 19. Section 25181 of the Health and Safety Code authorizes the superior court to grant “a
11 permanent or temporary injunction, restraining order, or other order” when the Attorney General,
12 at the request of the Department, applies for an order enjoining violations of the HWCL or of any
13 rule or requirement issued thereunder, and the Department shows that the person against whom
14 the order is sought has violated or will violate those provisions. Violation of each provision of
15 the HWCL is a separate violation subject to penalty under Health and Safety Code section 25189
16 or section 25189.2

17 20. Health and Safety Code section 25184 provides that in civil actions brought pursuant
18 to the HWCL in which an injunction or temporary restraining order is sought: “. . . it shall not be
19 necessary to allege or prove at any stage of the proceeding that irreparable damage will occur
20 should the temporary restraining order, preliminary injunction, or permanent injunction not be
21 issued; or that the remedy at law is inadequate, and the temporary restraining order, preliminary
22 injunction, or permanent injunction shall issue without such allegations and without such proof.”

23 **HAZARDOUS WASTE HANDLING AND**
24 **ENFORCEMENT HISTORY AT PNA’S LATHROP FACILITY**

25 21. PNA has a history of prior violations of the HWCL at its Lathrop Facility, some of
26 which are recurring violations in this action. The San Joaquin County Environmental Health
27 Department – the local Certified Unified Program Agency or CUPA – has issued three inspection
28 reports to PNA since 2007, finding numerous violations in each case:

1 (a) On June 15, 2007, the CUPA inspection report notified PNA's Lathrop Facility
2 that it had failed to comply with numerous aspects of California's hazardous waste laws and
3 regulations. The violations included failure to properly label containers of hazardous waste,
4 failure to keep containers of hazardous waste closed except when adding/removing hazardous
5 waste, failure to maintain a complete contingency plan and storage of universal waste on-site for
6 more than a year.

7 (b) On March 3 and April 17, 2009, as a result of two inspections, the CUPA
8 notified PNA's Lathrop Facility that it had failed to comply with an even greater number of
9 California hazardous waste regulations. As in 2007, the Lathrop Facility failed to maintain a
10 complete contingency plan and stored universal waste on site for more than a year. Other
11 violations included failing to have an emergency coordinator.

12 (c) On June, 30, 2010, the CUPA's inspection report notified PNA's Lathrop
13 Facility that once again it had failed to comply with several of California's hazardous waste
14 regulations. As in 2007, the Lathrop Facility failed to completely label containers of hazardous
15 waste and, as in 2009, the Facility failed to have an emergency coordinator. The Department's
16 inspection in December 2010 would also reveal unlabeled or incompletely labeled hazardous
17 waste and a failure to update the Facility's contingency plan to reflect a change in emergency
18 coordinators. The CUPA inspection also notified the Lathrop Facility that it had stored hazardous
19 waste on site longer than 90 days without a permit or authorization and had not maintained
20 complete personnel training records – two violations that the Department's inspectors would see
21 again just six months later in their December 2010 inspection.

22 22. On or about December 14 and 15, 2010, the Department inspected PNA's Lathrop
23 Facility ("2010 the Department Inspection") for compliance with the HWCL and its
24 implementing regulations. The Department's inspectors discovered violations of the HWCL and
25 its implementing regulations.

26 23. On December 15, 2011, the Department provided PNA with a summary of violations.

27 24. On or about February 9, 2011, the Department sent PNA an inspection report
28 indicating its findings for the 2010 DTSC Inspection. The Department's Inspection Report cited

1 PNA for numerous violations of the HWCL and its implementing regulations. PNA's violations
2 were spread across much of the Facility site, in multiple buildings and exterior locations.

3 **SPECIFIC ALLEGATIONS**

4 **FIRST CAUSE OF ACTION**

5 (Unpermitted and Unauthorized Storage of Hazardous Waste)
6 (Cal. Code Regs., tit. 22, § 66262.34, subd. (a))

7 25. Paragraphs 1 through 24 are realleged as if fully set forth herein.

8 26. California Code of Regulations, Title 22, section 66262.34, subdivision (a), limits the
9 time a hazardous waste generator may accumulate hazardous waste on-site without a permit or
10 grant of interim status from the Department to 90 days or less.

11 27. Since on or before August 24, 2010 and through at least December 14, 2010,
12 Defendants violated California Code of Regulations, Title 22, section 66262.34, subdivision (a)
13 by storing – in the bath basement area of the Lathrop Facility's maintenance shop – a 55-gallon
14 drum containing hazardous waste, such as waste oil and absorbents, for more than 90 days. The
15 drum's label bore an origination date of May 25, 2010.

16 28. Since on or before September 18, 2009 and through at least December 14, 2010,
17 Defendants violated California Code of Regulations, Title 22, section 66262.34, subdivision (a),
18 by storing – in a building know as the "butler" building – a 55-gallon drum of hazardous waste
19 containing non-empty aerosol cans and glass primer (Toluene and Methanol) for more than 90
20 days. The drum's label bore an origination date of June 20, 2009.

21 29. Based on the above, the Department is entitled to injunctive relief against Defendants
22 under Health and Safety Code section 25181 and civil penalties under Health and Safety Code
23 section 25189, subdivision (b) or section 25189.2, subdivision (b), for each day during which
24 each violation of California Code of Regulations, Title 22, section 66262.34, subdivision (a)
25 occurred or continued.

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SECOND CAUSE OF ACTION

(Unpermitted and Unauthorized Storage of Universal Waste)
(Cal. Code Regs., tit. 22, § 66273.35, subd. (a))

30. Paragraphs 1 through 24 are realleged as if fully set forth herein.

31. California Code of Regulations, Title 22, section 66273.35, subdivision (a), limits the time a universal waste handler may accumulate universal waste on-site to no longer than one year from the date the universal waste was generated.

32. Since on or before October 16, 2010 and through at least December 14, 2010, Defendants violated California Code of Regulations, Title 22, section 66273.35, subdivision (a), by storing – in the hazardous waste storage building situated near the oil-water separation tank system area of its Facility – electronic waste (“e-waste”) for more than one year. The e-waste container’s label bore an origination date of October 15, 2009.

33. Based on the above, the Department is entitled to injunctive relief against Defendants under Health and Safety Code section 25181 and civil penalties under Health and Safety Code section 25189, subdivision (b) or section 25189.2, subdivision (b), for each day during which each violation of California Code of Regulations, Title 22, section 66262.35, subdivision (a) occurred or continued.

THIRD CAUSE OF ACTION

(Unlawful Disposal of Hazardous Waste)
(Health & Saf. Code, § 25189.2, subd. (c))

34. Paragraphs 1 through 24 are realleged as if fully set forth herein.

35. Health and Safety Code section 25189.2, subdivision (c), prohibits any person from disposing of any hazardous or extremely hazardous waste at a point which is not authorized according to the provisions of Chapter 6.5 of the Health and Safety Code. Each day on which the deposit remains is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with any order concerning the deposit issued by the department.

1 wastes. The selenium powder at the Lathrop Facility had a concentration level many times that
2 for an extremely hazardous waste. The selenium powder was found in an area where employees
3 walk and therefore, could be tracked and emitted into the air in and around the Facility or
4 discharged via the storm water system to the Delta.

5 41. Based on the above, the Department is entitled to injunctive relief against Defendants
6 under Health and Safety Code section 25181 and civil penalties under Health and Safety Code
7 section 25189, subdivision (b) or section 25189.2, subdivision (b), for each day during which
8 each violation of California Code of Regulations, Title 22, section 66265.31 occurred or
9 continued.

10 **FIFTH CAUSE OF ACTION**

11 (Improper Placement of Universal Waste Aerosol Cans Processing Device)
12 (Health & Saf. Code, § 25201.16, subd. (3))

13 42. Paragraphs 1 through 24 are realleged as if fully set forth herein.

14 43. Health and Safety Code section 25201.16, subdivision (3)(A), requires that a device
15 used to process aerosol cans containing universal waste be placed on or above a floor or other
16 surface that has secondary containment to contain leaks and spills.

17 44. On and prior to December 14, 2010, Defendants violated Health and Safety Code
18 section 25201.16, subdivision (3)(A), by placing a paint puncturing device on a wooden pallet
19 resting on the floor with no secondary containment.

20 45. Based on the above, the Department is entitled to injunctive relief against Defendants
21 under Health and Safety Code section 25181 and civil penalties under Health and Safety Code
22 section 25189, subdivision (b) or section 25189.2, subdivision (b), for each day during which
23 each violation of Health and Safety Code 25201.16, subdivision (3)(A) occurred or continued.

24 **SIXTH CAUSE OF ACTION**

25 (Unlawful Disposal of Hazardous Waste)
26 (Health & Saf. Code, §§ 25189.2, subd. (c), 25201, subd. (a))

27 46. Paragraphs 1 through 24 are realleged as if fully set forth herein.
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1 processing universal waste aerosol cans, and proper waste handling and emergency procedures
2 relevant to his or her responsibilities during normal facility operations and emergencies.

3 59. On and prior to December 14, 2010, Defendants violated California Code of
4 Regulations, Title 22, section 66265.16, subdivision (a)(1), by failing to provide annual training
5 to employees at the Lathrop Facility as required by this regulation, including failing to train
6 maintenance personnel or contract employees on, *inter alia*, waste container management
7 labeling, on-site storage of hazardous waste, empty container management, universal waste
8 management, and management of used oil and batteries.

9 60. On and prior to December 14, 2010, Defendants violated California Code of
10 Regulations, Title 22, section 66265.16, subdivision (d), by failing to provide documentation for
11 annual training of employees at the Lathrop Facility with hazardous waste handling or
12 management responsibilities. On June 30, 2010, the CUPA had also cited the Lathrop Facility for
13 failure to maintain complete training records in violation of section 66265.16, subdivision (d).

14 61. On and prior to December 14, 2010, Defendants violated Health and Safety Code
15 section 25201.16, subdivision (h)(8), by failing to provide documentation of any training of
16 employees processing of universal waste aerosol cans, including employees processing of aerosol
17 paint cans using a puncturing device found at its Lathrop Facility.

18 62. Based on the above, the Department is entitled to injunctive relief against Defendants
19 under Health and Safety Code section 25181 and civil penalties under Health and Safety Code
20 section 25189, subdivision (b) or section 25189.2, subdivision (b), for each day during which
21 each violation of California Code of Regulations, Title 22, section 66265.16, subdivisions (a)(1)
22 and (d)(4), and Health and Safety Code, § 25201.16, subdivision (h) occurred or continued.

23 **NINTH CAUSE OF ACTION**

24 (Failure to Complete and Update Contingency Plan)
25 (Cal. Code Regs., tit. 22, § 66265.54, subd. (d))

26 63. Paragraphs 1 through 24 are realleged as if fully set forth herein.
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1 (e) one 55-gallon drum containing sludge from the wastewater treatment plant had
2 no accumulation start date;

3 (f) one pallet containing four containers had both "non-hazardous" and "hazardous
4 waste" labels on them, without any additional information regarding the hazardous waste; and

5 (g) near the battery recharging area, one 55-gallon drum containing antifreeze, one
6 55-gallon drum containing oily contaminated absorbent pads and gloves, and one 55-gallon drum
7 containing empty aerosol cans did not have accumulation start dates.

8 74. In 2007 and 2010, after inspections, the CUPA cited PNA's Lathrop Facility for
9 failure to properly or completely label containers of hazardous waste.

10 75. Based on the above, the Department is entitled to injunctive relief against Defendants
11 under Health and Safety Code section 25181 and civil penalties under Health and Safety Code
12 section 25189, subdivision (b) or section 25189.2, subdivision (b), for each day during which
13 each violation of California Code of Regulations, Title 22, section 66262.34, subdivision (f)
14 occurred or continued.

15 **TWELFTH CAUSE OF ACTION**

16 (Failure to Notify CUPA)
17 (Health & Saf. Code, § 25201.16, subd. (j))

18 76. Paragraphs 1 through 24 are realleged as if fully set forth herein.

19 77. California Health and Safety Code section 25201.16, subdivision (j), in relevant part,
20 requires a universal waste handler to submit a notification to the CUPA in its jurisdiction no later
21 than the date on which it first initiated the processing of universal waste aerosol cans.

22 78. On and prior to December 14, 2010, Defendants violated California Health and Safety
23 Code section 25201.16, subdivision (j), by failing to notify the CUPA when they first initiated use
24 of a spray paint can puncturing device to process universal waste aerosol cans.

25 79. Based on the above, the Department is entitled to injunctive relief against Defendants
26 under Health and Safety Code section 25181 and civil penalties under Health and Safety Code
27 section 25189, subdivision (b) or section 25189.2, subdivision (b), for each day during which
28 each violation of Health and Safety Code section 25201.16, subdivision (j) occurred or continued.

1 **THIRTEENTH CAUSE OF ACTION**

2 (Unauthorized Onsite Treatment of Waste Oil)
3 (Health & Saf. Code, § 25201, subd. (a))

4 80. Paragraphs 1 through 24 are realleged as if fully set forth herein.

5 81. Health and Safety Code section 25201, subdivision (a), in relevant part, prohibits the
6 owner or operator of a facility from treating a hazardous waste unless they hold a hazardous
7 waste facilities permit or other grant of authorization or grant of conditional authorization or
8 conditional exemption from the Department.

9 82. On and prior to December 14, 2010, Defendants violated Health and Safety Code
10 section 25201, subdivision (a), by treating waste oil on site in its maintenance shop without a
11 permit or other authorization.

12 83. Based on the above, the Department is entitled to injunctive relief against Defendants
13 under Health and Safety Code section 25181 and civil penalties under Health and Safety Code
14 section 25189, subdivision (b) or section 25189.2, subdivision (b), for each day during which
15 each violation of Health and Safety Code section 25201, subdivision (a) occurred or continued.

16 **FOURTEENTH CAUSE OF ACTION**

17 (Failure to Provide Notification and Certification of Tank Closure)
18 (Cal. Code Regs., tit. 22, § 67383.3, subds. (f), (g) and (h))

19 84. Paragraphs 1 through 24 are realleged as if fully set forth herein.

20 85. California Code of Regulations, Title 22, section 67383.3, subdivisions (f), (g) and
21 (h), require the owner or operator of a tank system to obtain a certificate certifying that a closed
22 tank has been properly cleaned and to submit that certificate to the CUPA.

23 86. On and prior to December 14, 2010, Defendants violated California Code of
24 Regulations, Title 22, section 67383.3, subdivisions (f), (g) and (h), by ceasing use in 2001 of a
25 hydrofluoric acid tank in the basement of its maintenance shop without obtaining the required
26 certificate or providing a copy of a certificate to the CUPA.

27 87. Based on the above, the Department is entitled to injunctive relief against Defendants
28 under Health and Safety Code section 25181 and civil penalties under Health and Safety Code

1 section 25189, subdivision (b) or section 25189.2, subdivision (b), for each day during which
2 each violation of California Code of Regulations, Title 22, section 67383.3, subdivisions (f), (g)
3 and (h) occurred or continued.

4 **FIFTEENTH CAUSE OF ACTION**

5 (Failure to Determine, Label, and Contain Universal Waste Lamps)
6 (Cal. Code Regs., tit. 22, §§ 66273.34, subs. (c) and (d), 66273.33, subd. (b), 66273.33.5,
7 subd. (a) and 66273.35, subd. (b)(1))

8 88. Paragraphs 1 through 24 are realleged as if fully set forth herein.

9 89. California Code of Regulations, Title 22, section 66273.34, subdivisions (c) and (d),
10 require a universal waste handler to clearly label or mark containers or packages containing
11 universal waste lamps or electronic devices with the phrase "Universal Waste – Lamp(s)" or
12 "Universal Waste – Electronic Device(s)" as applicable. Further, section 66273.33, subdivision
13 (b), requires a universal waste handler to manage lamps in a way that prevents releases of any
14 universal waste or a component of a universal waste to the environment by, among other things,
15 containing any lamp in a container or package that is structurally sound and prevents leakage. In
16 addition, section 66273.33.5, subdivision (a), requires a universal waste handler to do the same
17 for electronic devices. Finally, section 66273.35, subdivision (b)(1), requires a universal waste
18 handler to mark or label a container that stores universal waste with the earliest date that any
19 universal waste in the container became a waste.

20 90. On and prior to December 14, 2010, Defendants violated California Code of
21 Regulations, Title 22, sections 66273.34, subdivisions (c) and (d), 66273.33, subdivision (b),
22 66273.33.5, subdivision (a) and 66273.35, subdivision (b)(1), by storing universal waste lamps on
23 the floor of its storage building and storing computer CRT monitors on open wood pallets in its
24 hazardous waste storage building. Defendants failed to store the universal waste lamps nor the
25 computer monitors in structurally sound containers that would prevent leakage, to label or mark
26 any such non-existent containers or the waste itself to identify it as universal waste or to state the
27 earliest date any of these items became universal waste.

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5. Grant such other and further relief as the Court deems just and proper.

Dated: September 9, 2013

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General

Original signed by David A. Zonana

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Director, California Department of Toxic
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