

1 KAMALA D. HARRIS
Attorney General of California
2 SALLY MAGNANI
SENIOR ASSISTANT ATTORNEY GENERAL
3 MARGARITA PADILLA
Supervising Deputy Attorney General
4 ROSE B. FUA (SBN: 119757)
EDWARD H. OCHOA (SBN: 144842)
5 Deputy Attorneys General
1515 Clay Street, 20th Floor
6 P.O. Box 70550
Oakland, CA 94612-0550
7 Telephone: (510) 622-2126
Fax: (510) 622-2270
8 E-mail: Rose.Fua@doj.ca.gov
Attorneys for People of the State of California
9 *ex rel.* Barbara A. Lee, Director of the California
Department of Toxic Substances Control

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FRESNO COUNTY SUPERIOR COURT
By: J. Phillips, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF FRESNO

14 **PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.***
Barbara A. Lee, Director of the California
15 Department of Toxic Substances Control
16
17 **v.**
18
19 **ARDAGH GLASS, INC.,**
20 Defendant.

Case No. 16CECG02174
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health and Safety Code §§ 25100 et seq.)

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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 to address violations of the California Hazardous Waste
5 Control Law, chapter 6.5 of division 20 of the California Health and Safety Code (“HWCL”),
6 and its implementing regulations. The HWCL and its implementing regulations establish
7 comprehensive “cradle to grave” standards for the generation, storage, transportation, treatment,
8 and disposal of hazardous waste in California.

9 2. Plaintiff seeks injunctive relief and civil penalties against defendant 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”) is a state
14 agency organized and existing pursuant to sections 58000 et seq. of the California Health and
15 Safety Code. The Department is the state agency responsible for administering and enforcing the
16 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, subdivision (a), and 25182 of the California Health and
20 Safety Code, the Attorney General of the State of California is authorized, at the request of the
21 Department, to commence an action for civil penalties and injunctive relief under the HWCL in
22 the name of the People of the State of California. The Department has made such a request to the
23 Attorney General.

24 **DEFENDANT**

25 6. Defendant Ardagh Glass, Inc., formerly known and operating as Saint-Gobain
26 Containers, Inc., (collectively referred to as “AGI”) is a corporation organized and existing under
27 the laws of the State of Delaware, and is authorized to conduct business in the State of California.
28 Defendant AGI owns and operates a facility, located at 24441 Avenue 12, Madera, California

1 (“Facility”), where the manufacturing of glass bottles results in the generation, storage, disposal
2 and/or treatment of hazardous waste. Defendant AGI is a “person,” as that term is defined by
3 Health and Safety Code section 25118. Defendant AGI is also a “generator,” and an “owner or
4 operator” as those terms are defined by California Code of Regulations, title 22, section
5 66260.10.

6 7. In this Complaint when reference is made to any act or omission of defendant AGI,
7 such allegations shall include the acts and omissions of owners, officers, directors, agents,
8 employees, contractors, affiliates, and/or representatives of defendant AGI while acting within the
9 course and scope of their employment or agency on behalf of defendant AGI during the relevant
10 time periods.

11 JURISDICTION AND VENUE

12 8. The Superior Court has jurisdiction pursuant to Article VI, Section 10 of the
13 California Constitution, and California Health and Safety Code section 25181.

14 9. Venue is proper in this Court pursuant to California Health and Safety Code section
15 25183, because Fresno County is the county in which the Attorney General has an office nearest
16 to Madera County in which at least one of defendant’s principal offices are located.

17 10. Plaintiff and defendant AGI have entered into a series of agreements to toll any
18 applicable statutes of limitation. As a result of those agreements, the period from July 16, 2012
19 through March 31, 2015 (the “Tolling Period”) will not be included in computing the time limited
20 by any statutes of limitation applicable to the causes of action brought against defendant based on
21 claims covered by the tolling agreement. Those claims include the claims alleged in this action
22 against defendant. This Complaint has been filed within five years of the Plaintiff discovering the
23 HWCL violations alleged herein.

24 HWCL STATUTORY AND REGULATORY BACKGROUND

25 11. The State of California has enacted a comprehensive statutory and regulatory
26 framework for the generation, handling, treatment, transport and disposal of hazardous wastes.
27 The framework contained in the HWCL, and its implementing regulations, mandate a “cradle to
28 grave” registration, tracking, storage, treatment and disposal system for the protection of the

1 public from the risks posed by hazardous wastes. Except where otherwise expressly defined in
2 this Complaint, all terms shall be interpreted consistent with the HWCL and Title 22.

3 12. California administers the HWCL in lieu of federal administration of the federal
4 Resource Conservation and Recovery Act ("RCRA"), which is codified at 42 United States Code
5 sections 6901 et seq., pursuant to Health & Safety Code sections 25101, subdivision (d), and
6 25159-25159.9. Federal law prohibits California from imposing any requirements less stringent
7 than those authorized under RCRA. (42 U.S.C. § 6929.) The HWCL has stricter requirements
8 for regulating hazardous waste than RCRA.

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

15 14. Health and Safety Code section 25124, subdivision (a), defines a "'waste' [as] any
16 solid, liquid, semisolid, or contained gaseous discarded material that is not excluded by this
17 chapter or by regulations adopted pursuant to this chapter." "Discarded materials" include,
18 among other things, any material that is:

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

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

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

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

1 16. Recycled material means a recyclable material which has been used or reused, or
2 reclaimed. (Health & Saf. Code, § 25121, subd. (a).) Recyclable material means a hazardous
3 waste that is capable of being recycled. (Health & Saf. Code, § 25120.5.) Recycled material is
4 subject to full regulation as hazardous waste unless it can qualify for one of the recycling
5 exemptions in Health and Safety Code section 25143.2. Even hazardous waste that qualifies for a
6 recycling exemption is regulated because it must initially, and continue to, meet certain
7 requirements under the HWCL. However, it does not need to meet all the management
8 requirements for hazardous waste.

9 17. The person claiming the recycling exemption must demonstrate that *bona fide*
10 recycling is occurring. Recycling of material that is only marginally effective for the claimed use
11 or use of recyclable material in excess of the amount necessary are both indicators of sham
12 recycling (surrogate disposal) and not within the scope of the recycling exemptions. (See 45
13 Fed.Reg. 33084, 33093 (May 19, 1980); 50 Fed.Reg. 614, 638 (January 4, 1985); (Health & Saf.
14 Code, § 25143.10, subd.(a)(3)(B).)

15 18. Health and Safety Code section 25143.2 , subdivision (f)(2), requires that the person
16 claiming the exemption/exclusion maintain adequate records to demonstrate *bona fide* recycling,
17 furnish them upon request to the Department, and demonstrate to the satisfaction of the
18 Department that the requirements of any claimed exemption/exclusion are met. (See also Cal.
19 Code. Regs., tit. 22, § 66261.2, subd. (g).)

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

23 20. The HWCL, at Health and Safety Code section 25201, subdivision (a), provides that
24 an owner or operator of a hazardous waste management facility may not "accept, treat, store, or
25 dispose of a hazardous waste at the facility, area, or site, unless the owner or operator holds a
26 hazardous waste facilities permit or other grant of authorization from the Department to use and
27 operate the facility, area, or site"

28

1 violation continues. (Health & Saf. Code, §§ 25189, subd. (b) and 25189.2, subd. (b).) For
2 intentional disposals of hazardous waste, the HWCL sets the minimum civil penalty at \$1,000 per
3 violation. (Health & Saf. Code, § 25189, subd. (c).)

4 26. The HWCL, at Health and Safety Code sections 25181 and 25184, authorizes and
5 directs the Court to enjoin any ongoing or potential violation of the HWCL.

6 27. Section 25181 of the Health and Safety Code provides that when the Department
7 determines that any person has engaged in, is engaged in, or is about to engage in any acts or
8 practices which constitute or will constitute a violation of any provision of the HWCL or any rule
9 or requirement issued or promulgated thereunder, and when requested by the Department, the
10 Attorney General may make application to the superior court for an order enjoining such acts or
11 practices, or for an order directing compliance, and upon a showing by the Department that such
12 person has engaged in or is about to engage in any such acts or practices, a permanent or
13 temporary injunction, restraining order, or other order may be granted.

14 28. Health and Safety Code section 25184 provides that in civil actions brought pursuant
15 to the HWCL in which an injunction or temporary restraining order is sought:

16 It shall not be necessary to allege or prove at any stage of the proceeding that
17 irreparable damage will occur should the temporary restraining order, preliminary
18 injunction, or permanent injunction not be issued; or that the remedy at law is
19 inadequate, and the temporary restraining order, preliminary injunction, or permanent
20 injunction shall issue without such allegations and without such proof.

19 **GENERAL ALLEGATIONS**

20 29. At all times relevant herein, defendant, and/or its predecessors in interest, owned and
21 operated the Facility.

22 30. Defendant mixes glass cullet (recycled glass) and raw materials into two furnaces to
23 manufacture glass bottles at the Facility. Defendant did not produce or use Electrostatic
24 Precipitator Dust ("EP Dust") at the Facility prior to 2007.

25 31. In 2007, the San Joaquin Valley Air Control District required defendant to install and
26 use air pollution control devices at the Facility to capture certain regulated pollutants (including
27 particulate matter) from furnace exhaust gas that would otherwise be emitted to the air. The air
28 pollution control devices were installed at the Facility in 2007.

1 32. The captured exhaust gas from the furnaces goes through two air pollution control
2 devices, first, through the scrubber unit which produces scrubber dust and then through the
3 Electrostatic Precipitator (EP) unit which produces EP dust. Scrubber dust and EP dust are both
4 hazardous waste sludge as defined in California Code of Regulations, title 22, section 66260.10.
5 EP dust and scrubber dust are also RCRA hazardous wastes because they exhibit the toxicity
6 characteristic when using RCRA's Toxicity Characteristic Leaching Procedure. EP dust and
7 scrubber dust are subject to regulation as hazardous waste under the HWCL once they exit their
8 respective units. (Health & Saf. Code, § 25201.12.) EP dust is a "recyclable material" within the
9 meaning of Health and Safety Code section 25120.5 and a hazardous waste within the meaning of
10 Health and Safety Code sections 25117 and 25124.

11 33. With respect to EP dust collected from the air pollution control devices, defendant
12 engaged in surrogate disposal by adding EP dust to the manufacturing of glass bottles rather than
13 lawfully disposing of EP dust. Defendant claims EP dust was being used as a substitute for soda
14 ash and/or salt cake, raw ingredients used in the making of glass bottles. Based on information
15 and belief, defendant reaped a substantial economic benefit by failing to properly dispose of EP
16 dust to an authorized disposal facility.

17 34. Between 2007 and approximately December 2013, defendant typically collected
18 thousands of tons of EP dust and mechanically conveyed it to an approximately 170-ton capacity
19 collector tank (aka EP dust silo) where the EP dust was illegally stored. A significant amount of
20 the EP dust was illegally treated in the furnaces. The EP dust that did not make it into the silo
21 was either unlawfully released or disposed to a landfill authorized to accept hazardous waste.

22 35. Defendant's statements and actions have been inconsistent on whether EP dust is a
23 hazardous waste and/or is exempted/excluded from the definition of waste. Defendant has not
24 followed the requirements of the HWCL:

25 a. In response to on-site inspections of defendant's Facility, defendant claimed that EP dust
26 is not a waste as defined by Health and Safety Code section 25124, but posted a sign at the
27 entrance to the EP dust room, stating "We Recycle Air Pollution Control Equipment Dust." EP
28 dust that is recycled is "waste" under Health and Safety Code section 25124, subdivision (b)(2);

1 41. On and prior to March 22, 2010, defendant violated Health and Safety Code sections
2 25189.5, subdivision (a), and 25201, subdivision (a), by unlawfully disposing, or causing the
3 disposal, of EP dust, a hazardous waste, by:

4 a. engaging in surrogate disposal: instead of sending all EP dust to an authorized
5 hazardous waste landfill, defendant put a significant amount of the EP dust back into the two
6 furnaces at the Facility claiming it was substituting EP dust for raw materials to make glass
7 bottles; and

8 b. disposing of EP dust at various locations throughout the Facility, including on the
9 ground, on the walls, on the air pollution control equipment, near the EP dust storage silo tank
10 and beneath a small hole in the wall of the EP dust room, and by tracking it outside the building.

11 42. On and prior to March 22, 2010, defendant violated Health and Safety Code sections
12 25189.5, subdivision (a), and 25201, subdivision (a), by unlawfully disposing, or causing the
13 disposal, of baghouse hazardous waste dust from two baghouse systems inside the mold shop at
14 the Facility by sending it to a municipal solid waste landfill not authorized to receive hazardous
15 waste.

16 43. On and prior to March 22, 2010, defendant violated Health and Safety Code sections
17 25189.5, subdivision (a), and 25201, subdivision (a), by unlawfully disposing, or causing the
18 disposal, of glass bead waste from the bead blasting unit, including used glass bead waste that
19 was stored in 55-gallon drums, all hazardous waste, at an unauthorized place at the Facility and
20 by sending these hazardous wastes to a municipal solid waste landfill not authorized to receive
21 hazardous waste.

22 44. On and prior to May 4, 2011, defendant violated Health and Safety Code sections
23 25189.5, subdivision (a), and 25201, subdivision (a), and Health and Safety Code sections
24 25250.4, subdivision (a), and 25250.5, subdivision (a), by unlawfully disposing, or causing the
25 disposal, of the following hazardous wastes at an unauthorized place at the Facility and/or by
26 placing these items into a trash container, the contents of which were destined to a municipal
27 solid waste landfill not authorized to receive hazardous waste:
28

- 1 a. two partially full 5-gallon containers of "used oil," as defined in Health and Safety Code
2 section 25250.1, subdivision (a)(1);
- 3 b. one used fluorescent lighting fixture with ballasts containing polychlorinated biphenyls
4 (PCBs) and Di (2-ethylhexyl) phthalate (DEHP);
- 5 c. a partially full aerosol can containing paint waste;
- 6 d. iron chromite, including floor sweep containing iron chromite and non-empty bags
7 containing iron chromite; and
- 8 e. soda ash on the floor and in floor sweep.

9 45. On and prior to May 4, 2011, defendant violated Health and Safety Code sections
10 25189.5, subdivision (a), and 25201, subdivision (a), by unlawfully disposing, or causing the
11 disposal, of waste piles of dust containing hazardous waste, used oil waste and dust contaminated
12 with metals to the soil at or near the Facility's northern glass/cullet area, and beyond the Facility's
13 northern boundary onto adjacent property, locations not authorized to receive hazardous waste.

14 46. Pursuant to Health and Safety Code sections 25189, subdivision (c), and/or 25189,
15 subdivision (d), defendant is liable for civil penalties according to proof based on these
16 intentional or negligent violations. In the alternative, defendant is strictly liable for civil penalties
17 according to proof pursuant to Health and Safety Code section 25189.2, subdivision (c). Each
18 violation of a separate provision of the HWCL and/or its implementing regulations is subject to a
19 civil penalty of up to twenty five thousand dollars (\$25,000). For a continuing violation, each day
20 a violation continues is subject to a civil penalty of up to twenty five thousand dollars (\$25,000).
21 For intentional disposals of hazardous waste, the HWCL sets the minimum civil penalty at \$1,000
22 per violation. (Health & Saf. Code, § 25189, subd. (c).) Pursuant to Health and Safety Code
23 section 25181, defendant should also be enjoined from further violations of the HWCL.

24 **SECOND CAUSE OF ACTION**
25 (Illegal Storage of Hazardous Waste)
26 (Health & Saf. Code, § 25201, subd. (a))

27 47. Paragraphs 1 through 36 above are incorporated by reference as though fully set forth
28 herein.

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

5 49. In relevant part, Health and Safety Code section 25123.3, subdivision (b)(4)(A),
6 provides that a hazardous waste “storage facility” is a facility where hazardous waste is held
7 onsite for any period of time unless the hazardous waste is held in a container or tank in
8 accordance with the Department’s regulations.

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

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

20 52. On and prior to March 22, 2010, defendant stored hazardous waste, including EP
21 dust, scrubber dust, and baghouse dust at the Facility without a permit or authorization from the
22 Department in violation of Health and Safety Code section 25201, subdivision (a), and without
23 complying with California Code of Regulations, title 22, sections 66262.34, subdivision (a),
24 66262.34, subdivision (f), and section 66265.173 with respect to subdivisions (a)(ii) and (b)
25 below, as follows:

26 a. Defendant unlawfully stored EP dust at the Facility:

27 i) in a 170 ton silo storage tank that had not been assessed and/or certified by an
28 engineer as being capable of holding the EP dust as required by California Code of Regulations,

1 title 22, section 66265.192, subdivision (a), and the tank was not labeled as containing hazardous
2 waste; and

3 ii) in an uncovered twenty yard roll off bin that did not have a hazardous waste label;

4 b. Scrubber dust was stored in an uncovered twenty yard roll off bin that did not have a
5 hazardous waste label; and

6 c. Six 55-gallon drums containing baghouse dust that did not have a hazardous waste label
7 and were stored outside the mold shop.

8 53. On and prior to March 22, 2010, defendant stored hazardous waste at the Facility
9 without a permit or authorization from the Department in violation of Health and Safety Code
10 section 25201, subdivision (a), and without complying with California Code of Regulations, title
11 22, sections 66262.34 subdivision (a), 66262.34, subdivision (f), and, with respect to “used oil
12 filters,” in violation of section 66266.130, subdivision (a), as follows:

13 a. Used oil filters were stored in a 55-gallon drum that did not have a hazardous waste label
14 and was located in the satellite storage area;

15 b. Non-empty aerosol spray paint cans were stored in a 55-gallon drum that did not have a
16 hazardous waste label and was located in the storage area;

17 c. Glass bead blast dust was stored in a 55-gallon drum that did not have a hazardous waste
18 label and was located outside the mold shop;

19 d. Sand blasting dust was stored in containers, inside the mold shop, with signage
20 indicating “dump the both cans after the shift,” and in a 55-gallon drum located outside the mold
21 shop, none of which had a hazardous waste label; and

22 e. Paint thinner in a container that did not have a hazardous waste label and was located in
23 the hazardous waste storage area;

24 f. Used oil that was stored in a 55-gallon drum that was leaking, and did not have a
25 hazardous waste label and located in the hazardous waste storage area; and

26 g. Used oil that was stored in a tank and part of the oil-water separation system and did not
27 have a hazardous waste label.
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1 waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facilities
2 permit or other grant of authorization from the Department.

3 58. Health and Safety Code section 25123.5 defines treatment of a hazardous waste to
4 include any method, technique, or process which is designed to change the physical, chemical, or
5 biological character or composition of the hazardous waste, or which removes or reduces its
6 harmful properties or characteristics for any purpose.

7 59. On and prior to March 22, 2010, defendant violated Health and Safety Code section
8 25201, subdivision (a), by unlawfully treating EP dust, a hazardous waste, by mixing EP dust
9 with glass cullet and raw materials in batch quantities, and then introducing the mixture into the
10 Facility furnaces to make glass bottles, without a permit or other authorization from the
11 Department. During the Department's May 4, 2011 inspection, defendant's unlawful treatment
12 of EP dust was still occurring, and continued, up through at least December 2013.

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

21 **FOURTH CAUSE OF ACTION**

22 (Failure to Conduct Tank Assessment)
23 (Cal. Code Regs., tit. 22, § 66265.192, subd. (a))

24 61. Paragraphs 1 through 36 above are incorporated by reference as though fully set forth
25 herein.

26 62. In relevant part, California Code of Regulations, title 22, section 66265.192,
27 subdivision (a), requires an owner or operator of a new tank system or components to obtain a
28 written assessment reviewed and certified by an independent, qualified, registered professional
engineer attesting that the new tank system or components has sufficient structural integrity and is

1 acceptable for the transferring, storing, and treating of hazardous waste before placing the tank
2 system or components in service.

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

8 64. On and prior to March 22, 2010, defendant failed to obtain a written assessment for
9 the following hazardous waste tanks at the Facility as required by California Code of Regulations,
10 title 22, section 66265.192, subdivision (a):

- 11 a. EP dust storage silo tank;
- 12 b. used oil storage tank.

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

21 **FIFTH CAUSE OF ACTION**

22 (Failure to Properly Label or Mark Hazardous Waste Containers)
23 (Cal. Code Regs., tit. 22, §§ 66262.34, subs. (a) and (f), 66279.21, subs. (a) and (b))

24 66. Paragraphs 1 through 36 above are incorporated by reference as though fully set forth
25 herein.

26 67. In relevant part, California Code of Regulations, title 22, section 66262.34,
27 subdivision (a), provides that a generator that generates 1,000 kilograms or more of hazardous
28 waste per month may accumulate hazardous waste on-site for 90 days or less without a permit or

1 grant of interim status, provided, in part, that the generator complies with the following
2 requirements of 66262.34, subdivision (f):

3 (1) the date upon which each period of accumulation begins shall be clearly marked and
4 visible for inspection on each container and portable tank; (2) the date the applicable
5 accumulation period specified in subsection (a) or (d) of this section begins, for purposes of
6 subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each
7 container and tank; and (3) each container and tank used for onsite accumulation of hazardous
8 waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all
9 containers and portable tanks shall be labeled with the following information: (A) composition
10 and physical state of the wastes; (B) statement or statements which call attention to the particular
11 hazardous properties of the waste (e.g., flammable, reactive, etc.); (C) name and address of the
12 person producing the waste.

13 68. In relevant part, California Code of Regulations, title 22, section 66279.21,
14 subdivision (a), provides that generators of used oil shall comply with the generator requirements
15 of chapter 12 of the Department's regulations (Cal. Code Regs., tit. 22, §§ 66262.10-66262.89).
16 Section 66279.21, subdivision (b), further provides that containers and aboveground used oil
17 storage tanks shall be marked or clearly labeled with the words "used oil."

18 69. On or prior to March 22, 2010, defendant failed to properly label the following
19 hazardous waste in tanks and/or containers at the Facility, in violation of California Code of
20 Regulations, title 22, section 66262.34, subdivisions (a) and (f), and, with respect to "used oil," in
21 violation of section 66279.21, subdivision (b):

- 22 a. EP dust storage silo tank;
- 23 b. Used oil storage tank in the oil-water separation system;
- 24 c. One 55-gallon drum of used oil filters located in the satellite storage area;
- 25 d. One 55-gallon drum of non-empty aerosol spray paint cans located in the satellite storage
26 area;
- 27 e. One 55-gallon drum with glass bead blast dust located outside the mold shop;
- 28 f. One 55-gallon drum of sand blasting dust located outside the mold shop;

- 1 g. One paint thinner container located in the hazardous waste storage area;
- 2 h. One 55-gallon leaking used oil drum located in the hazardous waste storage area;
- 3 i. Six drums of baghouse waste situated outside the mold shop
- 4 j. Two 55-gallon drums of used oil with unfilled labels.

5 70. On or prior to May 4, 2011, defendant failed to properly label the following
6 containers in violation of California Code of Regulations, title 22, section 66262.34, subdivision
7 (f):

- 8 a. one 1.5 cubic-yard bin containing EP dust located in the EP room;
- 9 b. one trash can containing EP dust located in the EP room;
- 10 c. one 1.5 cubic-yard bin container with scrubber dust that did not have the correct
11 accumulation start date and that was located in the scrubber room.

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

20 **SIXTH CAUSE OF ACTION**

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

23 72. Paragraphs 1 through 36 above are incorporated by reference as though fully set forth
24 herein.

25 73. California Code of Regulations, title 22, section 66265.31 provides that “[f]acilities
26 shall be maintained and operated to minimize the possibility of a fire, explosion, or any
27 unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to
28 air, soil, or surface water which could threaten human health or the environment.”

1 74. On and prior to March 22, 2010, defendant failed to properly maintain and operate the
2 Facility to minimize hazardous waste and/or hazardous waste constituent releases into the
3 environment in violation of California Code of Regulations, title 22, section 66265.31, as
4 demonstrated by the following:

5 a. EP dust was on the ground, on the walls, on the air pollution control equipment, near the
6 EP dust storage silo tank, beneath a small hole in the wall of the EP dust room, and tracked
7 outside the building;

8 b. Used oil spills were in and around the hydraulic oil storage area;

9 c. Baghouse dust was near the baghouse system outside the mold shop;

10 d. Used oil was leaking from a 55-gallon drum in the hazardous waste storage area;

11 e. Sandblasting dust was on the floor near the hydraulic oil storage area, and on the floor
12 near the sandblasting booths;

13 f. Glass bead dust was on the floor around the bead blasting unit and around the glass bead
14 storage drums in the mold shop area.

15 75. On and prior to May 4, 2011, defendant failed to properly maintain and operate the
16 Facility in order to minimize hazardous waste and/or hazardous waste constituent releases into the
17 environment in violation of California Code of Regulations, title 22, section 66265.31, as
18 demonstrated by the following:

19 a. EP dust was on the ground, on the walls, on the air pollution control equipment, near the
20 EP dust storage silo tank, beneath a small hole in the wall of the EP dust room, and tracked
21 outside the building;

22 b. Scrubber dust was on the ground, outside the walkway near the scrubber room, and near
23 a storm drain;

24 c. Soda ash was on the ground and walkway near the railcar transfer station;

25 d. Piles of waste dust was on the soil in the waste glass/cullet storage area outside the
26 building;

27 e. Iron chromite dust was on the floor, in the walkway, and around the iron chromite feed
28 tanks; and

1 f. Tan-colored dust was on the floor around the "fire checkers" (small doors to the furnace)
2 and on the walkway.

3 76. During the period between June 2011 and September 2012, defendant repeatedly
4 failed to properly maintain and operate the Facility in order to minimize releases of scrubber dust,
5 a hazardous waste into the environment in violation of California Code of Regulations, title 22,
6 section 66265.31, as documented in their weekly inspection sheets.

7 77. During the period between June 2011 and September 2012, defendant repeatedly
8 failed to properly maintain and operate the Facility in order to minimize releases of EP dust, a
9 hazardous waste into the environment in violation of California Code of Regulations, title 22,
10 section 66265.31, as documented in their weekly inspection sheets.

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

19 **SEVENTH CAUSE OF ACTION**

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

22 79. Paragraphs 1 through 36 above are incorporated by reference as though fully set forth
23 herein.

24 80. In relevant part, California Code of Regulations, title 22, section 66265.16,
25 subdivision (a), provides that,

26 (1) facility personnel shall successfully complete a program of classroom instruction
27 or on-the-job training that teaches them to perform their duties in a way that ensures
28 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. (3) At a minimum, the training
program shall be designed to ensure that facility personnel are able to respond

1 effectively to emergencies by familiarizing them with emergency procedures,
2 emergency equipment, and emergency systems. . .

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

6 81. On and prior to March 22, 2010, defendant failed to provide emergency contingency
7 training and a training plan for its contract employees that includes a written job description for
8 each position and a written description of introductory and continuing education given to each
9 person and failed to maintain the appropriate written documentation of such training in violation
10 of California Code of Regulations, title 22, sections 66265.16, subdivisions (a) and (e).

11 82. On and prior to March 22, 2010, defendant failed to provide adequate hazardous
12 waste training to employees and contractors that managed hazardous waste EP dust and failed to
13 maintain the appropriate written documentation of such training in violation of California Code of
14 Regulations, title 22, sections 66265.16, subdivisions (a) and (e).

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

23 **EIGHTH CAUSE OF ACTION**

24 (Failure to Make Waste Determination)
25 (Cal. Code Regs., tit. 22, §§ 66262.11 and 66260.200)

26 84. Paragraphs 1 through 36 above are incorporated by reference as though fully set forth
27 herein.
28

1 forth herein.

2 90. In relevant part, California Code of Regulations, title 22, section 66268.1,
3 subdivision (f), provides that “[e]ffective May 8, 1990, all hazardous wastes (RCRA and non-
4 RCRA) are prohibited from land disposal unless the wastes have been exempted, granted a
5 variance or granted an extension under this chapter or pursuant to California Health and Safety
6 Code sections 25179.8, 25179.9, 25179.10, 25179.11 and 25179.12, unless the wastes meet the
7 applicable treatment standards specified under article 4 and article 11 of this chapter, or 40 CFR
8 part 268 or unless the wastes have a treatment standard that has been repealed pursuant to Health
9 and Safety Code section 25179.6.”

10 91. In relevant part, California Code of Regulations, title 22, section 66268.29,
11 subdivision (d), provides that non-RCRA hazardous waste that is collected in air pollution control
12 devices and baghouses are subject to land disposal restrictions.

13 92. In relevant part, California Code of Regulations, title 22, section 66268.7,
14 subdivision (a)(1), provides that “. . . a generator of hazardous waste shall determine if the waste
15 has to be treated before it can be land disposed. This is done by determining if the hazardous
16 waste meets the treatment standards in article 4 or article 11. This determination can be made in
17 either of two ways: testing the waste or using knowledge of the waste . . .”

18 93. On or about July 2007, defendant improperly indicated in two waste profiles that
19 scrubber dust and EP dust were not subject to land disposal restrictions and defendant did not
20 submit the certification required by California Code of Regulations, title 22, section 66268.7(a).

21 94. The Department sampled defendant’s scrubber dust and EP dust as part of its May
22 4, 2011, inspection of the Facility and determined that the Toxicity Characteristic Leaching
23 Procedure (TCLP) concentrations of lead and selenium for EP dust and scrubber dust exceeded
24 the state and federal land disposal restrictions standards. The TCLP analysis simulates landfill
25 conditions.

26 95. Pursuant to Health and Safety Code section 25189, subdivision (b), defendant is
27 liable for civil penalties according to proof based on these intentional or negligent violations. In
28 the alternative, defendant is strictly liable for civil penalties according to proof pursuant to Health

1 and Safety Code section 25189.2, subdivision (b). Each violation of a separate provision of the
2 HWCL and/or its implementing regulations is subject to a civil penalty of up to twenty five
3 thousand dollars (\$25,000). For a continuing violation, each day a violation continues is subject
4 to a civil penalty of up to twenty five thousand dollars (\$25,000). Pursuant to Health and Safety
5 Code section 25181, defendant should also be enjoined from further violations of the HWCL.

6 **WHEREFORE**, Plaintiff prays that the Court grant the following relief:

7 A. Enter a judgment that defendant is required to pay civil penalties pursuant to the
8 HWCL to Plaintiff pursuant to the First through Ninth Causes of Action, according to proof at
9 trial;

10 B. Enter preliminary injunctions, permanent injunctions, or other orders requiring
11 defendant to comply with the HWCL and/or the regulations adopted thereunder;

12 C. Grant Plaintiff its costs of suit herein; and

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

14 Dated: July 5, 2016

15 Respectfully Submitted,

16 KAMALA D. HARRIS
17 Attorney General of California

18 *original signed by Rose Fua*

19 ROSE B. FUA
20 EDWARD H. OCHOA
21 Deputy Attorneys General

22 *Attorneys for* **PEOPLE OF THE STATE OF**
23 **CALIFORNIA**, ex rel., Barbara A. Lee,
24 Director of the California Department of
25 Toxic Substances Control
26
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