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8 of California ex rel. Deborah O. Raphael, Director,
California Department of Toxic Substances Control*
9

ENDORSED
FILED
ALAMEDA COUNTY

NOV 23 2011

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

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

18 **Plaintiff,**

19 v.

20 **EAGLE RECYCLING, INC. and DOES 1-**
21 **20,**

22 **Defendants**

Case No.

RG11605736

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

23 The People of the State of California, ex rel. Deborah O. Raphael, Director of the
24 Department of Toxic Substances Control ("the Department"), allege the following.

25 **STATEMENT OF THE CASE**

26 1. Defendant Eagle Recycling Inc. ("Defendant Eagle") operated two facilities that
27 during all times relevant herein collected, stored, treated, handled, and/or recycled universal
28 waste-electronic devices at the following sites: 2400 San Juan Hollister Road, Hollister,

1 California 95023 (“Hollister Facility”) and 1055-A Commercial Court, San Jose, California
2 95112 (“San Jose Facility”). (Collectively “Facilities”.) Mr. Ernest L. Chambers, Jr., is the
3 President of Defendant Eagle.

4 2. Defendant Eagle violated the California Hazardous Waste Control Law, Chapter 6.5
5 of Division 20 of the California Health and Safety Code, § 25100 *et seq.* (“HWCL”) and the
6 implementing regulations, California Code of Regulations, Title 22, Chapter 10, 66260.1, *et. seq.*
7 in conducting business at the Facilities.

8 3. The Department hereby seeks civil penalties from and injunctive relief against
9 Defendant Eagle for its violations of the HWCL and its implementing regulations.

10 **PLAINTIFF**

11 4. The Department is a public agency of the State of California organized and existing
12 under and pursuant to Health and Safety Code section 58000 *et seq.*

13 5. At the time of the filing of this action, Deborah O. Raphael is the Director of the
14 Department.

15 6. Pursuant to sections 25181 and 25182 of the Health and Safety Code, the Attorney
16 General of the State of California is authorized, at the request of the Department, to commence an
17 action in the name of the People for civil penalties and injunctive relief under the HWCL. The
18 Department has asked the Attorney General to apply to this Court for penalties and an injunction
19 enjoining Defendant Eagle from continuing violations of the HWCL.

20 **DEFENDANT**

21 7. Defendant Eagle is a California corporation.

22 8. The Department is informed and believes and thereon alleges that Eagle is
23 headquartered in Hollister, California and is the owner and operator of the Facilities.

24 9. Defendant Eagle is a “person,” as defined in Health and Safety Code section 25118.
25 Further, Defendant Eagle is an “owner” and/or “operator,” as defined in California Code of
26 Regulations, title 22, section 66260.10.

27 10. When reference is made in this complaint to any act of Defendant Eagle, such
28 allegation shall mean that the owners, officers, directors, agents, employees, contractors and

1 representatives of Defendant Eagle did or authorized such acts or recklessly and/or negligently
2 failed and omitted to adequately or properly supervise, control, or direct Defendant Eagle
3 employees, representatives, or agents while engaged in the management, direction, operation, or
4 control of the affairs of Defendant Eagle and did so while acting within the course and scope of
5 their employment or agency.

6 11. Defendants Does 1-20 are the officers, agents, employees, servants, or others acting
7 in interest or concert with Defendant Eagle. The Department is ignorant of the true names of
8 defendants sued herein as Does 1-20. When the names of these defendants have been ascertained,
9 the Department will seek leave to amend the Complaint to substitute the true name of each Doe
10 defendant in place of the fictitious name.

11 JURISDICTION AND VENUE

12 12. This Court has jurisdiction pursuant to Cal. Const. Art. 6, section 10 and Health and
13 Safety Code section 25181(a). Venue is proper under Health and Safety Code section 25183 in
14 that Defendant Eagle's principal office is in Hollister, California, and Alameda County is the
15 county in which the Attorney General has an office nearest to Hollister.

16 STATUTORY AND REGULATORY BACKGROUND

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

22 14. The HWCL is the California analog of the federal Resource Conservation and
23 Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”). Pursuant to state and federal law, the
24 Department administers the HWCL in lieu of federal administration of RCRA in California. (See
25 Health & Safety Code, § 25101, subd. (d); California: Final Authorization of Revisions to State
26 Hazardous Waste Management Program, 66 FR 49118 (September 26, 2001).) Federal law
27 prohibits California from imposing “any requirements less stringent than those authorized under
28

1 [RCRA].” (42 U.S.C. § 6929.) However, RCRA does not prevent California from imposing
2 requirements which are more stringent than those imposed by federal law. (*Id.*)

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

6 16. “Universal waste” is a subset of hazardous waste regulated under RCRA and
7 California law. In California, universal waste includes batteries, electronic devices and cathode
8 ray tubes (“CRT”). (Cal. Code Regs., tit. 22, §§ 66261.9, 66273.1.) Special standards apply to
9 universal waste handlers. Universal waste handlers include a generator of universal waste or an
10 owner or operator of a facility that receives universal waste, accumulates universal waste and
11 sends it to another handler. (Cal. Code Regs., tit. 22, § 66273.9.) Among the requirements that a
12 universal waste handler must meet are the following; notify DTSC of its intent to act as a handler,
13 properly contain the waste, use proper labeling for the waste, and accumulate universal waste for
14 no longer than one year. (Cal. Code Regs., tit. 22, §§ 66273.30 - 66273.35, 66273.74.) In
15 addition, universal waste handlers must provide personnel with proper training to manage the
16 waste, respond to universal waste releases, and keep records of shipments of the waste for three
17 years. (Cal. Code Regs., tit. 22, § 66273.36 - 66273.38.)

18 17. The Department is informed and believes, and thereon alleges that Defendant Eagle
19 collected, stored, treated, handled and/or recycled universal waste, including electronic devices
20 and CRT, at the Facilities. Therefore, Defendant Eagle is subject to the universal waste handler
21 requirements of section 66273.1 *et seq.*

22 **ENFORCEMENT AUTHORITY UNDER THE HWCL**

23 18. The HWCL authorizes the Court to impose civil penalties under two distinct and
24 alternative provisions. First, section 25189 of the Health and Safety Code creates liability for any
25 negligent or intentional violation of the HWCL. Second, section 25189.2 is a strict liability
26 provision, which creates liability for any violation of the HWCL. A person may not be held liable
27 for separate civil penalties imposed under sections 25189 and 25189.2 for the same act. (Health
28 & Saf. Code, § 25189.2(d).)

1 Defendant Eagle, sent DTSC photos and other requested information, along with a letter stating
2 that the San Jose Facility had been closed to customers since November 2009. On May 12, 2009
3 the Department sent an email to Defendant Eagle, through Mr. Chambers, requesting Defendant
4 Eagle submit the 2008 and 2009 annual report information for both the Hollister and San Jose
5 Facilities. On May 24, 2010 Defendant Eagle provided a scanned copy of the 2009 annual report
6 for the Hollister Facility and the Department responded by requesting the 2008 and 2009 annual
7 reports for the San Jose Facility and the 2008 annual report for the Hollister Facility. As of
8 August 25, 2011, Defendant Eagle had not correctly submitted to DTSC the 2008 and 2009
9 annual reports for the San Jose Facility or the 2008 annual report for the Hollister Facility.

10 **FIRST CAUSE OF ACTION**
11 **(Failure to Submit Required Notification for San Jose Facility**
12 **Cal. Code Regs., tit. 22, §§ 66273.72(c)(2)(A) and 66273.74(a))**

13 23. Paragraphs 1-22 are re-alleged as if fully set forth herein.

14 24. Defendant Eagle handles universal waste, including electronic devices, CRT, and/or
15 CRT glass. A universal waste handler who intends to treat any electronic device and/or CRT
16 must submit to the Department, an electronic or written notification containing information
17 specified in California Code of Regulations title 22 section 66273.74(a)(1) no later than 30
18 calendar days prior to treating any electronic device and/or CRT. (Cal. Code Regs., tit. 22, §§
19 66273.72(c)(2)(A) and 66273.74(a))

20 25. Defendant Eagle violated California Code of Regulations title 22 sections
21 66273.72(c)(2)(A) and 66273.74(a) in that on or about September 23, 2009 Defendant Eagle
22 failed to submit a notification for the San Jose Facility at least 30 calendar days before treating
23 any electronic device and/or CRT.

24 **SECOND CAUSE OF ACTION**
25 **(Failure to Submit Annual Report for Both Facilities**
26 **Cal. Code Regs., tit. 22, §§ 66273.72(c)(2)(A) and 66273.74(b))**

27 26. Paragraphs 1-22 are re-alleged as if fully set forth herein.

28 27. A universal waste handler who treats any electronic device and/or CRT in a calendar
year shall, by February 1 of the following year, submit to the Department an electronic or written
annual report containing the information specified in subsection (b)(1)(A) through (b)(1)(J) of

1 section 66273.74(b). (Cal. Code Regs., tit. 22, §§ 66273.72(c)(2)(A) and 66273.74(b).) The
2 information submitted shall cover the electronic device treatment and CRT treatment activities
3 conducted during the previous calendar year. (Cal. Code Regs., tit. 22, § 66273.74(b).)

4 28. Defendant Eagle violated California Code of Regulations title 22 sections
5 66273.72(c)(2)(A) and 66273.74(b) in that on or about September 23, 2009 and September 30,
6 2009, Defendant Eagle failed to correctly submit annual reports for 2008 by February 1, 2009, for
7 the San Jose and Hollister Facilities. Defendant Eagle further violated California Code of
8 Regulations title 22 sections 66273.72(c)(2)(A) and 66273.74(b) in that on or about May 24, 2010,
9 Defendant Eagle failed to correctly submit an annual report for 2009 by February 1, 2010, for the
10 San Jose Facility.

11 **THIRD CAUSE OF ACTION**
12 **(Failure to Label Universal Waste at Both Facilities**
13 **Cal. Code Regs., tit. 22, § 66273.34(d) and (e), and/or (g))**

14 29. Paragraphs 1-22 are re-alleged as if fully set forth herein.

15 30. A universal waste handler shall label or mark universal waste to identify the type of
16 universal waste. (Cal. Code Regs., tit. 22, § 66273.34.) Under the regulations, each electronic
17 device or container or pallet in or on which the electronic devices are contained, shall be labeled
18 or marked clearly with the following phrase: "Universal Waste-Electronic Device(s)". (*Id.* at sub.
19 (d).) In addition, each CRT or a container or pallet in or on which the CRTs are contained, shall
20 be labeled or marked clearly with the following phrase: "Universal Waste-CRT(s)". (*Id.* at sub.
21 (e).) The regulations provide that in lieu of labeling individual electronic devices and/or CRTs, a
22 universal waste handler may combine, package, and accumulate those universal wastes in
23 appropriate containers or within a designated area demarcated by boundaries that are clearly
24 labeled with the applicable portions of the following phrase: "Universal Waste-Electronic
25 Device(s)/Universal Waste -CRT(s)". (*Id.* at sub. (g).)

26 31. Defendant Eagle violated California Code of Regulations title 22 section 66273.34, in
27 that since at least on or about September 23, 2009 and September 30, 2009, and continuing
28 thereafter, Defendant Eagle failed to label or mark universal waste electronic devices and CRT
and/or pallets and containers of the waste with the phrase "Universal Waste-Electronic Device(s)"

1 and "Universal Waste-CRT(s)", respectively; or failed to label a designated area where those
2 universal wastes are accumulated at the Facilities within demarcated boundaries with the
3 applicable portions of the phrase, "Universal Waste-Electronic Device(s)/Universal Waste -
4 CRT(s)."

5 **FOURTH CAUSE OF ACTION**
6 **(Failure to Demonstrate Length Universal Waste Accumulated at Both Facilities**
7 **Cal. Code Regs., tit. 22, § 66273.35(a) and (b))**

7 32. Paragraphs 1-22 are re-alleged as if fully set forth herein.

8 33. A universal waste handler shall accumulate universal waste for no longer than one
9 year from the date the universal waste was generated, or was received from another universal
10 waste handler. (Cal. Code Regs., tit. 22, § 66273.35(a).) A universal waste handler shall be able
11 to demonstrate the length of time that the universal waste has been accumulated from the date it
12 became a waste or was received. (Cal. Code Regs., tit. 22, § 66273.35(b).) California Code of
13 Regulations section 66273.35 subsection (b) provides a number of options for demonstrating
14 accumulation dates, which include: (1) placing the universal waste in a container and marking or
15 labeling the container with the earliest date that any universal waste in the container became a
16 waste or was received; (2) Marking or labeling the individual item of universal waste with the
17 date it became a waste or was received; (3) Maintaining an inventory system that identifies the
18 date the universal waste being accumulated became a waste or was received; (4) Placing the
19 universal waste in a specific accumulation area and marking or labeling the area to identify the
20 earliest date that any universal waste in the area became a waste or was received; or (5) Any other
21 method which clearly demonstrates the length of time that the universal waste has been
22 accumulated from the date it became a waste or was received. (Cal. Code Regs., tit. 22, §
23 66273.35 (b)(1)-(4), (6).)

24 34. Defendant Eagle violated California Code of Regulations title 22, section 66273.35
25 subsection (b) in that since at least on or about September 23, 2009 and September 30, 2009, and
26 continuing thereafter at both Facilities, Defendant Eagle failed to demonstrate the length of time
27 pallets or containers of universal waste had been accumulated.

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FIFTH CAUSE OF ACTION
(Failure to Contain Electronic Waste and CRT in Structurally Sound Container at Both Facilities Cal. Code Regs., tit. 22, §§ 66273.33.5(a)(1)(B) and (b)(1)(B)1)

35. Paragraphs 1-22 are re-alleged as if fully set forth herein.

36. Universal waste handlers that handle electronic devices or CRT are required to manage electronic devices in a way that prevents releases of any universal waste or component of a universal waste to the environment under reasonably foreseeable conditions. (Cal. Code Regs., tit. 22, § 66273.33.5(a)(1)(B).) The regulations mandate that a universal waste handler shall contain any electronic device in a manner that prevents breakage and release of components to the environment. If a container is used, such a container shall prevent leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. (*Id.* at sub. (a)(1)(B)1.a.) In addition, a universal waste handler must manage CRTs in a manner that prevents releases of any CRTs or component of any CRTs to the environment under reasonably foreseeable conditions. (*Id.* at sub. (b)(1)(B).) Specifically, a universal waste handler shall contain any CRT in a container or package that is structurally sound, adequate to prevent breakage of the CRT, and compatible with the contents of the CRT. Such a container or package shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. (*Id.* at sub. (b)(1)(B)1.)

37. Defendant Eagle violated California Code of Regulations title 22, sections 66273.33.5(a)(1)(B) and (b)(1)(B)1 in that since at least on or about September 23, 2009 and September 30, 2009, and continuing thereafter at both of the Facilities, Defendant Eagle failed to contain any electronic device or bare CRT in a container that is structurally sound and does not show evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

SIXTH CAUSE OF ACTION
(Failure to Contain and Repackage Releases of Universal Waste at San Jose Facility Cal. Code Regs., tit. 22, § 66273.37)

38. Paragraphs 1-22 are re-alleged as if fully set forth herein.

39. A universal waste handler shall immediately contain all releases of universal wastes and of residues from universal wastes to the environment. (Cal. Code Regs., tit. 22, §

1 66273.37(a.) Furthermore, a universal waste handler shall determine whether any material
2 resulting from such a release is a hazardous waste, and if so, shall manage the hazardous waste in
3 compliance with all applicable requirements of this division. (*Id.* at sub. (b).) Hazardous waste
4 consisting only of residues of leaking, broken, or otherwise damaged universal waste may be
5 managed as universal waste provided that the leaking, broken, or otherwise damaged universal
6 waste is repackaged according to the standards of section 66273.33 or 66273.33.5. (*Id.* at sub.
7 (c).)

8 40. Defendant Eagle violated California Code of Regulations title 22, section 66273.37 in
9 that since at least on or about September 23, 2009, and continuing thereafter at the San Jose
10 Facility, Defendant Eagle failed to immediately contain all releases of universal waste and
11 residues of universal waste to the environment, and to repackage residues of broken universal
12 waste according to the standards of section 66273.33.5.

13 **SEVENTH CAUSE OF ACTION**
14 **(Failure to Maintain Aisle Space at Hollister Facility**
15 **Cal. Code Regs., tit. 22, § 66273.72(c)(2)(C)(7))**

16 41. Paragraphs 1-22 are re-alleged as if fully set forth herein.

17 42. A universal waste handler must dismantle electronic devices in a manner that protects
18 persons managing the electronic devices and/or the CRTs, and that prevents releases of any
19 universal wastes and/or any components of universal wastes, to the environment under reasonably
20 foreseeable conditions. (Cal. Code Regs., tit. 22, § 66273.72(c)(2)(C)) This includes ensuring
21 that the facility maintains aisle spacing in compliance with applicable fire safety code standards
22 in California. (*Id.* at sub. (7).)

23 43. Defendant Eagle violated California Code of Regulations title 22, section
24 66273.72(c)(2)(C)(7) in that since at least on or about September 30, 2009, and continuing
25 thereafter at the Hollister Facility, Defendant Eagle failed to ensure that the Hollister Facility
26 maintained aisle spacing in compliance with the applicable fire safety code standards in
27 California.

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1 drivers, who manage universal waste were thoroughly familiar with proper universal waste
2 management and emergency response procedures relative to those persons' responsibilities.

3 **TENTH CAUSE OF ACTION**
4 **(Failure to Properly Dismantle Electronic Devices San Jose Facility**
5 **Cal. Code Regs., tit. 22, § 66273.72(c)(2)(C)1 and 2)**

5 50. Paragraphs 1-22 are re-alleged as if fully set forth herein.

6 51. A universal waste handler who dismantles, or otherwise manually segregates,
7 components from an electronic device or removes the yokes from CRTs without breaking the
8 CRT glass must comply with the requirements set forth in California Code of Regulations title 22
9 section 66273.72(c)(2)(C). This includes dismantling electronic devices and/or removing yokes
10 from CRTs over, on, or in, a containment device sufficient in size and construction to contain any
11 universal waste and/or component of such waste that may be released to the environment under
12 reasonably foreseeable conditions. (Cal. Code Regs., tit. 22, § 66273.72(c)(2)(C)1.) In addition,
13 the handler must contain any hazardous residuals produced from dismantling electronic devices
14 and/or removing yokes from CRTs in a manner that prevents releases of the residuals to the
15 environment under reasonably foreseeable conditions. (Cal. Code Regs., tit. 22, §
16 66273.72(c)(2)(C)2.)

17 52. Defendant Eagle violated California Code of Regulations title 22, section
18 66273.72(c)(2)(C) in that since at least on or about September 23, 2009, and continuing thereafter
19 at the San Jose Facility, Defendant Eagle failed to dismantle electronic devices and/or remove
20 yokes from CRTs over, on, or in a containment device sufficient in size and construction to
21 contain any universal waste and/or component of such waste that may be released to the
22 environment under reasonably foreseeable conditions. Additionally, Defendant Eagle failed to
23 contain the dismantling residuals in a manner that prevents releases of residuals to the
24 environment under reasonably foreseeable conditions.

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1 **ELEVENTH CAUSE OF ACTION**
2 **(Failure to obtain California ID Number for San Jose Facility**
3 **Cal. Code Regs., tit. 22, § 66273.32(b))**

4 53. Paragraphs 1-22 are re-alleged as if fully set forth herein.

5 54. A universal waste handler who accumulates 5,000 kilograms of universal waste non-
6 RCRA hazardous waste shall obtain an ID Number from the Department. (Cal. Code Regs., tit.
7 22, §§ 66273.32(b), 66260.10.)

8 55. Defendant Eagle violated California Code of Civil Procedure section 66273.32(b) in
9 that since at least on or about September 23, 2009, and continuing thereafter, Defendant Eagle
10 failed to obtain for the San Jose Facility a California ID Number after accumulating 5,000
11 kilograms of non-RCRA universal waste.

12 **REQUEST FOR RELIEF**

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

14 1. Enter judgment that Defendant Eagle has violated the HWCL as described in the First
15 through Eleventh Causes of Action;

16 2. Enter judgment that Defendant Eagle is liable for civil penalties for those violations
17 as authorized by Health and Safety Code section 25189 or in the alternative, Health and Safety
18 Code section 25189.2, not to exceed \$25,000 per day per violation, in an amount of not less than
19 seventy five thousand dollars (\$75,000);

20 3. Enter a permanent injunction or other order requiring the Defendant Eagle to comply
21 with the HWCL and/or the regulations adopted thereunder;

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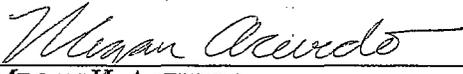
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- 4. Grant the Department its cost of suit herein; and
- 5. Grant the Department such other and further relief as the Court deems just and proper.

Dated: November 23, 2011

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


MEGAN H. ACEVEDO
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*Attorneys for Plaintiff People of the State of
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