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9 *Attorneys for Plaintiff People of the State of*
 10 *California ex rel. Barbara A. Lee, Director of the*
California Department of Toxic Substances Control

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 COUNTY OF ALAMEDA

14 **PEOPLE OF THE STATE OF**
 15 **CALIFORNIA ex rel. BARBARA A. LEE,**
 16 **DIRECTOR OF THE CALIFORNIA**
 17 **DEPARTMENT OF TOXIC**
 18 **SUBSTANCES CONTROL,**
 Plaintiff,
 19 **GALLO GLASS COMPANY, and DOES 1**
 20 **THROUGH 50,**
 Defendants.
 21 **GALLO GLASS COMPANY, and DOES 1**
 22 **THROUGH 50,**
 Cross-Complainant,
 23 **PEOPLE OF THE STATE OF**
 24 **CALIFORNIA ex rel. BARBARA A. LEE,**
 25 **DIRECTOR OF THE CALIFORNIA**
 26 **DEPARTMENT OF TOXIC**
 27 **SUBSTANCES CONTROL,**
 Cross-Defendants,
 28

Case No. RG15760440
COMPLEX DESIGNATION
~~PROPOSED~~ FINAL CONSENT
 JUDGMENT AND PERMANENT
 INJUNCTION
 (Code of Civil Procedure § 664.6)
 Dept: 17
 Judge: Hon. George C. Hernandez, Jr.
 Trial Date: April 21, 2017
 Action Filed: February 27, 2015

1 Plaintiff and Cross-Defendant People of the State of California, ex rel. Barbara A. Lee,
2 Director of the California Department of Toxic Substances Control ("DTSC") and Defendant and
3 Cross-Complainant Gallo Glass Company ("Gallo Glass"), collectively the "Parties" or singularly
4 a "Party," having consented to the entry of this Final Consent Judgment and Permanent Injunction
5 ("Consent Judgment") prior to the taking any proof and without a trial or adjudication of any fact
6 or law herein, and the Court having considered DTSC's Complaint for Civil Penalties and
7 Injunctive Relief ("Complaint"), DTSC's First Amended Complaint for Civil Penalties and
8 Injunctive Relief ("First Amended Complaint"), Gallo Glass's Cross-Complaint for Specific
9 Performance, Breach of Contract, Breach of the Covenant of Good Faith & Fair Dealing, and
10 Declaratory Relief ("Cross-Complaint"), Gallo Glass's First Amended Cross-Complaint for
11 Specific Performance, Breach of Contract, Breach of the Covenant of Good Faith & Fair Dealing,
12 and Declaratory Relief ("First Amended Cross-Complaint), Gallo Glass's Second Amended
13 Cross-Complaint for Specific Performance, Breach of Contract, Breach of the Covenant of Good
14 Faith & Fair Dealing, and Declaratory Relief ("Second Amended Cross-Complaint), and the
15 Stipulation for Entry of Final Consent Judgment and Permanent Injunction (the "Stipulation"),
16 and good cause appearing therefore,

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows: settle this matter
18 without further litigation on the terms set forth below.

19 **1. JURISDICTION AND VENUE**

20 Jurisdiction exists over this matter pursuant to Health and Safety Code sections 25181,
21 25189, and 25189.2 and venue in this Court is proper pursuant to the Parties' Stipulation.

22 **2. DEFINITIONS**

23 Except where otherwise expressly defined herein, all terms in this Final Judgment shall be
24 interpreted consistent with the Hazardous Waste Control Law, Health and Safety Code sections
25 25100 et seq. and its implementing regulations, California Code of Regulations., title 22, division
26 4.5, sections 66260.1 et seq. ("the HWCL"). The following terms used in this Final Judgment
27 shall have the meaning(s) set forth below:
28

1 The "CUPA" means the Stanislaus County Certified Unified Program Agency or any
2 successor agency thereto.

3 "HAZARDOUS," as used herein, shall have the same meaning as the term is used in
4 California Code of Regulations, title 22, section 66261.3 and sections 66261.20 through
5 66261.24.

6 "HAZARDOUS WASTE," as used herein, shall have the definition as provided for in
7 Health and Safety Code section 25117.

8 "HAZARDOUS WASTE MANAGEMENT," "MANAGE," and "MANAGEMENT" as
9 used herein, shall have the definition as provided for in Health and Safety Code section 25117.2.

10 "TREAT" and "TREATMENT," as used herein, shall have the definition as provided for in
11 Health and Safety Code section 25123.5.

12 "USED OIL," as used herein, shall have the definition as provided for in Health and Safety
13 Code section 25250.1. Pursuant to Health and Safety Code section 25250.1(a)(1)(C)(ii), USED
14 OIL does not include wastewater, the discharge of which is subject to regulation under either
15 Section 307(b) (33 U.S.C. Sec. 1317(b)) or Section 402 (33 U.S.C. Sec. 1342) of the federal
16 Clean Water Act (33 U.S.C. Sec. 1251 et seq.), including wastewaters at facilities that have
17 eliminated the discharge of wastewater, contaminated with de minimis amounts of used oil.

18 "WASTE," as used herein, shall have the definition as provided for in Health and Safety
19 Code section 25124. The plural of WASTE is WASTES.

20 3. SYSTEM OPERATIONS

21 Gallo Glass owns and operates a glass bottle manufacturing plant at 605 S. Santa Cruz
22 Avenue, Modesto, California ("FACILITY"). Gallo Glass generates and MANAGES
23 HAZARDOUS WASTE at its FACILITY and is currently a large quantity generator pursuant to
24 California Code of Regulations, title 22, section 66262.34. Gallo Glass represents it is not
25 currently a treatment, storage or disposal facility ("TSDF"). DTSC does not currently regulate
26 Gallo Glass as a TSDF.

27

28

1 **a. WASTEWATER TREATMENT SYSTEM**

2 The Parties agree that Gallo Glass may operate its wastewater treatment system without a
3 DTSC permit or other DTSC authorization subject to the conditions in Paragraph 5(b)(17), which
4 are designed to prevent the introduction of HAZARDOUS WASTE or more than “de minimis
5 quantities of used oil,” as defined by Health & Safety Code section 25250.1(a)(1)(C)(ii), into the
6 wastewater treatment system. This agreement does not authorize Gallo Glass to TREAT
7 wastewater that contains more than “de minimis quantities of used oil,” as defined by Health &
8 Safety Code section 25250.1(a)(1)(C)(ii), and/or that exhibits a HAZARDOUS characteristic,
9 without a DTSC permit or authorization pursuant to the HWCL, including but not limited to
10 Health & Safety Code section 25201.

11 **b. USE OF ELECTROSTATIC PRECIPITATOR DUST (“EP DUST”) AND**
12 **CERAMIC DUST COLLECTOR DUST (“CDC DUST”) IN GLASS BATCHES.**

13 The Parties agree that Gallo Glass may use EP Dust and/or CDC Dust it generates in its
14 glass making operations as an excluded recyclable material without a DTSC permit or other
15 DTSC authorization provided the applicable conditions in Paragraph 5(b)(18) are met. This
16 agreement does not authorize Gallo Glass to TREAT quantities of EP Dust or CDC Dust that do
17 not meet the applicable conditions of Paragraph 5(b)(18) without a DTSC permit pursuant to
18 Health & Safety Code section 25201 or other authorization pursuant to HWCL.

19 **4. CIVIL PENALTIES**

20 **a. SETTLEMENT PAYMENT**

21 Within forty-five (45) calendar days of entry of this Final Judgment in this matter, Gallo
22 Glass shall pay to DTSC a total sum of two million dollars (\$2,000,000.00) in civil penalties
23 pursuant to the HWCL (the “Settlement Payment”). The Settlement Payment shall be made by
24 cashier’s check or electronic fund transfer. If by check, the check shall be made payable to “the
25 Department of Toxic Substances Control,” and mailed to:

26 Cashier
27 Accounting Office
28 Department of Toxic Substances Control
 P.O. Box 806
 Sacramento, CA 95812-0806

1 A copy of the check shall be sent to:

2

3 Denise Tsuji, Branch Chief
4 Enforcement and Emergency Response Division
5 Hazardous Waste Management Program
6 Department of Toxic Substances Control
7 8800 Cal Center Drive, MS R1
8 Sacramento, CA 95826-3200

6

7 Scott Lichtig
8 Deputy Attorney General
9 Office of the Attorney General
10 1300 I Street, Suite 125
11 P.O. Box 944255
12 Sacramento, CA 94244-2550

10 The check for the Settlement Payment shall bear the name of this case and court number.

11 **b. LATE PAYMENTS, POST JUDGMENT INTEREST and ENFORCEMENT of**
12 **JUDGMENT COSTS**

13 Gallo Glass shall pay a late payment of \$10,000 per day for each day the Settlement
14 Payment is late. In addition, Gallo Glass shall pay DTSC post-judgment interest as provided in
15 Code of Civil Procedure section 685.010 (10%) from the date of default. Further, Gallo Glass is
16 obligated to pay costs incurred by DTSC in enforcing the money judgment against Gallo Glass, in
17 this matter, including, but not limited to, reasonable attorney's fees.

18 **5. INJUNCTIVE RELIEF**

19 Gallo Glass shall be and is permanently enjoined as follows:

20 **a. GENERAL INJUNCTIVE PROVISIONS**

21 Pursuant to the provisions of the Health and Safety Code sections 25181 and 25184, Gallo
22 Glass shall comply with the HWCL at, and in connection with, the MANAGEMENT of
23 HAZARDOUS WASTE and USED OIL at and from the FACILITY. Failure to comply with
24 these injunctive provisions may subject Gallo Glass to the enforcement provisions set forth
25 below.

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1 **b. SPECIFIC INJUNCTIVE PROVISIONS**

2 Pursuant to the provisions of the Health and Safety Code sections 25181 and 25184,
3 Gallo Glass shall comply with the following specific injunctive terms in connection with its
4 operations at the FACILITY:

5 1. Management of USED OIL. Subject to the HWCL, including but not limited to
6 Health & Safety Code section 25250.4, Gallo Glass shall MANAGE USED OIL as
7 HAZARDOUS WASTE, including in accordance with the standards in this Stipulation applying
8 to HAZARDOUS WASTE, to the extent required by law.

9 2. Disposal of HAZARDOUS WASTE. Gallo Glass shall not dispose, or cause
10 the disposal, of HAZARDOUS WASTE at an unauthorized location without a permit pursuant to
11 Health and Safety Code section 25201 or other grant of authorization.

12 3. TREATMENT of HAZARDOUS WASTE. Gallo Glass shall not TREAT
13 HAZARDOUS WASTE, including but not limited to HAZARDOUS WASTE in its glass batches
14 and wastewater treatment system, without a permit in accordance with Health and Safety Code
15 section 25201 or other grant of authorization.

16 4. HAZARDOUS WASTE Determination. Gallo Glass shall identify all
17 WASTES generated, stored, TREATED, and/or transported at or from the FACILITY and shall
18 determine if the WASTES are HAZARDOUS pursuant to California Code of Regulations, title
19 22, sections 66260.200 and 66262.11. Gallo Glass shall identify in writing and keep current a list
20 of all HAZARDOUS WASTES MANAGED at the FACILITY in accordance with Hazardous
21 Materials Business Plan ("HMBP") requirements contained in Health & Safety Code, division 20,
22 chapter 6.95. Gallo Glass shall maintain a copy of the HAZARDOUS WASTE list required
23 herein at the FACILITY and shall make such list available upon request to DTSC and the CUPA.

24 5. Accumulation Time. Gallo Glass shall not accumulate HAZARDOUS WASTE
25 at the FACILITY for greater than ninety (90) calendar days from its accumulation start date
26 unless otherwise permitted by California Code of Regulations, title 22, section 66262.34 or other
27 applicable provisions of the HWCL. Gallo Glass shall identify in writing and keep current a list
28 of any satellite accumulation areas used to store HAZARDOUS WASTE in accordance with the

1 HMBP requirements contained in Health & Safety Code, division 20, chapter 6.95. Gallo Glass
2 shall maintain a copy of the list required herein at the FACILITY and shall make it available upon
3 request to DTSC and the CUPA.

4 6. Manifests. Gallo Glass shall timely prepare, and submit to DTSC, a
5 HAZARDOUS WASTE manifest for such HAZARDOUS WASTE that is transported, or
6 submitted for transportation, for offsite handling, TREATMENT, storage, disposal, or any
7 combination thereof, as provided by Health and Safety Code section 25160 subdivision (b),
8 subdivision (3) and California Code of Regulations, title 22, section 66262.23. Gallo Glass shall
9 timely notify DTSC of the TREATMENT, storage, or disposal facility's failure to return an
10 executed manifest.

11 7. Labeling. Gallo Glass shall clearly mark each container holding
12 HAZARDOUS WASTE with the initial date on which accumulation begins and a label with the
13 words "HAZARDOUS WASTE" (or "USED OIL," as applicable per California Code of
14 Regulations, title 22, section 66279.21 subdivision (b)), its composition and physical state,
15 HAZARDOUS properties, and the name and address of the generator as required by California
16 Code of Regulations, title 22, section 66262.34.

17 8. Inspections. Gallo Glass shall test and maintain as necessary all facility
18 communications or alarm systems, fire protection equipment, spill control equipment, and
19 decontamination equipment, where required, to assure its proper operation in time of emergency
20 pursuant to California Code of Regulations, title 22, section 66265.33. Gallo Glass shall also
21 conduct weekly inspections of all containers in which HAZARDOUS WASTE or USED OIL is
22 generated or accumulated. Gallo Glass shall maintain written records at the FACILITY of the
23 inspections which shall be made available upon request to DTSC and the CUPA. The inspections
24 shall also ensure that Gallo Glass MANAGES the HAZARDOUS WASTE at the FACILITY in
25 accordance with the HWCL, including, but not limited to, California Code of Regulations, title
26 22, sections 66265.171, 66265.172, 66265.173, 66265.174, 66265.176, and 66265.177.

27 9. Tank Integrity Assessments. Prior to using any tank or tank system for the
28 MANAGEMENT of HAZARDOUS WASTE, Gallo Glass shall conduct and maintain a tank

1 assessment for each tank and tank system (including ancillary equipment) used at the FACILITY
 2 to MANAGE HAZARDOUS WASTE. Each such tank assessment shall be conducted by an
 3 independent, qualified, professional engineer, registered in California, in accordance with
 4 California Code of Regulations, title 22, sections 66265.191 and 66265.192. Gallo Glass shall
 5 maintain copies at the FACILITY in accordance with California Code of Regulations, title 22,
 6 section 66265.191, and shall also make them available upon request to DTSC and the CUPA.

7 10. Secondary Containment. Gallo Glass shall provide and maintain secondary
 8 containment for each tank and tank system used at the FACILITY to MANAGE HAZARDOUS
 9 WASTE as required by California Code of Regulations, title 22, sections 66265.193 and
 10 66265.196. Gallo Glass shall provide secondary containment assessments for each tank and tank
 11 system used at the FACILITY to MANAGE HAZARDOUS WASTE certified by an independent,
 12 qualified, professional engineer registered in California, in compliance with California Code of
 13 Regulations, title 22, section 66265.193. Gallo Glass shall maintain copies of its secondary
 14 containment assessments at the FACILITY in accordance with California Code of Regulations,
 15 title 22, section 66265.193 and shall make them available upon request to DTSC and the CUPA.

16 11. Daily Tank Inspections. Gallo Glass shall: (a) conduct daily tank inspections
 17 for each tank and tank system used at the FACILITY to MANAGE HAZARDOUS WASTE as
 18 required by California Code of Regulations, title 22, section 66265.195, subdivisions (a) and (c);
 19 and (b) shall maintain an accurate log of the daily inspections conducted, including corrective
 20 actions taken. Gallo Glass shall keep a written log of daily inspections in accordance with
 21 California Code of Regulations, title 22, section 66265.195, and make it available upon request to
 22 DTSC and the CUPA.

23 12. Tank Removal and Closure. In the event that a tank or tank system or
 24 secondary containment system leaks, spills, or is unfit for use, Gallo Glass shall immediately
 25 remove from service the tank system or secondary containment and comply with all other
 26 requirements specified in California Code of Regulations, title 22, section 66265.196. Gallo
 27 Glass shall comply with the HWCL, including but not limited to California Code of Regulations,
 28 title 22, sections 67383.3 and 66265.197, for the closure of any tank or tank system at the

1 FACILITY used for the MANAGEMENT of HAZARDOUS WASTE, including the submission
2 of a certificate to the CUPA certifying that the closed tank has been properly cleaned and closed.

3 13. Minimization of Releases. Gallo Glass shall maintain and operate the
4 FACILITY to minimize the possibility of unplanned, sudden, or non-sudden release of
5 HAZARDOUS WASTE and/or HAZARDOUS WASTE constituents at the FACILITY as
6 required by California Code of Regulations, title 22, section 66265.31.

7 14. Training. Gallo Glass shall comply with the employee training requirements as
8 mandated by California Code of Regulations, title 22, section 66265.16, pertaining to the
9 MANAGEMENT of HAZARDOUS WASTE, including, but not limited to, training for
10 employees, contractors, and all managers that MANAGE or that direct FACILITY personnel to
11 MANAGE HAZARDOUS WASTE in the scope of their work duties, including those employees
12 identified by Gallo Glass as emergency contacts that have responsibility for implementing the
13 contingency plan requirements contained in California Code of Regulations, title 22, section
14 66265.50 through 66265.56. As part of the training required by this paragraph, Gallo Glass shall
15 train all FACILITY employees and contractors not to dispose of any HAZARDOUS WASTE into
16 any non-HAZARDOUS WASTE containers or roll-off containers, the contents of which are
17 destined for municipal solid waste facilities. Gallo Glass shall maintain training records for
18 current employees, including contract employees, until closure of the FACILITY and training
19 records for former employees for at least three (3) years from the date the employee last worked
20 at the FACILITY pursuant to California Code of Regulations, title 22, section 66265.16. Gallo
21 Glass shall make all training records available upon request to DTSC and the CUPA.

22 15. Contingency Plan. Gallo Glass shall maintain a proper contingency plan in
23 accordance with California Code of Regulations, title 22, sections 66265.50 and 66265.52 and
24 amend or update the contingency plan as necessary in accordance with California Code of
25 Regulations, title 22, section 66265.54. In the event of an imminent or actual emergency situation
26 at the FACILITY such as a fire, explosion, or release of HAZARDOUS WASTE or
27 HAZARDOUS WASTE constituents which could threaten human health or the environment,
28 Gallo Glass shall implement its contingency plan in accordance with California Code of

1 Regulations, title 22, section 66265.51 and take the actions required by California Code of
2 Regulations, title 22, section 66265.56, including, but not limited to, notifying DTSC that Gallo
3 Glass is in compliance with California Code of Regulations, title 22, section 66265.56,
4 subdivision (h), prior to resuming operations in the affected areas of the FACILITY and preparing
5 and submitting a written report of the incident to DTSC in accordance with California Code of
6 Regulations, title 22, section 66265.56, subdivision (j).

7 16. Waste Minimization Plans. Gallo Glass shall conduct, maintain, and certify a
8 HAZARDOUS WASTE Source Reduction and Management Review Plan in accordance with
9 California Code of Regulations, title 22, sections 67100.2, 67100.4, 67100.5 and 67100.13. Gallo
10 Glass shall prepare and certify a HAZARDOUS WASTE Management Performance Report
11 pursuant to California Code of Regulations, title 22, sections 67100.2, 67100.7, 67100.8 and
12 67100.13.

13 17. Wastewater Treatment System.

14 17(a). Best Management Practices for HAZARDOUS WASTE and USED
15 OIL. Within thirty (30) calendar days of entry of the Consent Judgment, Gallo Glass shall
16 implement Best Management Practices (BMPs) designed to prevent the introduction of
17 HAZARDOUS WASTE and/or more than "de minimis quantities of used oil," as defined by
18 Health & Safety Code section 25250.1(a)(1)(C)(ii), into the wastewater treatment system. Within
19 thirty (30) calendar days of entry of the Consent Judgment, Gallo Glass shall also prepare a
20 written Best Management Practices Plan ("BMP Plan"), which shall be maintained for no less
21 than two (2) years from the date of entry of the Consent Judgment and be made available to
22 DTSC and the CUPA upon request. The BMP Plan shall describe: (1) the type of containment
23 devices and/or other BMPs used to prevent HAZARDOUS WASTE and/or more than "de
24 minimis quantities of used oil," as defined by Health & Safety Code section
25 25250.1(a)(1)(C)(ii), from entering the wastewater treatment system (e.g., drip pans under bottle
26 manufacturing equipment); (2) maintenance and any other BMPs for preventing releases from the
27 containment device to the wastewater treatment system, including during transfer from the
28 containment device to an appropriate HAZARDOUS WASTE and/or USED OIL, tank or

1 container; and (3) routine inspections of containment devices and any other BMPs. Gallo Glass
2 shall evaluate the BMP Plan on at least a quarterly basis in order to determine whether updates or
3 modifications are necessary. Any such updates or modifications will be recorded in the BMP
4 Plan.

5 17(b). Sampling for HAZARDOUS WASTE. Within thirty (30) calendar days
6 of entry of the Consent Judgment, Gallo Glass shall test for HAZARDOUS WASTE by sampling
7 the contents of each individual basement collection sump that conveys wastewater to its
8 wastewater treatment system to determine whether the wastewater exhibits a HAZARDOUS
9 characteristic pursuant to California Code of Regulations, title 22, sections 66261.20 through
10 66261.24. Gallo Glass shall conduct this sampling on a quarterly basis for a period of two (2)
11 years, unless Gallo Glass's generator knowledge or sampling results warrant additional sampling,
12 or as otherwise required by law. Gallo Glass shall ensure that the samples collected are
13 representative of the individual sump contents and determine the appropriate analytical test(s) in
14 accordance with Paragraph 5(b)(4) (e.g., a fish bioassay test) to be performed by a laboratory
15 certified by the Environmental Laboratory Accreditation Program (ELAP). Gallo Glass shall
16 maintain records of this testing for a minimum of three (3) years pursuant to California Code of
17 Regulations, title 22, section 66262.40. Should testing of these samples indicate that the
18 wastewater exhibits a HAZARDOUS characteristic, Gallo Glass shall, within seven (7) calendar
19 days, notify DTSC in writing and provide DTSC with a complete copy of the laboratory
20 analytical report(s) for the sampling results.

21 17(c). Detection of HAZARDOUS WASTE and/or USED OIL. If analytical
22 testing of the sample of the sump wastewater exhibits a HAZARDOUS characteristic and/or if
23 more than "de minimis quantities of used oil," as defined by Health & Safety Code section
24 25250.1(a)(1)(C)(ii), enters the wastewater treatment system, Gallo Glass shall (i) immediately
25 contain and prevent the further introduction of HAZARDOUS WASTE and/or USED OIL into
26 the wastewater treatment system; and (ii) notify DTSC within seven (7) calendar days that
27 HAZARDOUS WASTE and/or USED OIL has entered the wastewater treatment system.

28

1 Nothing in this paragraph shall be interpreted to excuse Gallo Glass from existing
2 MANAGEMENT, reporting and/or notification requirements pursuant to the HWCL.

3 18. EP Dust and CDC Dust Use. Gallo Glass shall not use EP Dust and/or CDC Dust
4 in its glass batches, unless Gallo Glass (i) meets the recyclable materials exemptions or
5 exclusions contained in Health and Safety Code section 25143.2 and contained in Health &
6 Safety Code section 25143.9 and 25143.10, as applicable; (ii) obtains a grant of conditional
7 authorization or conditional exemption from DTSC as required by Health and Safety Code
8 section 25201, or other grant of authorization; or (iii) demonstrates in the future that the EP Dust
9 and/or CDC Dust is not a HAZARDOUS WASTE based on a valid waste determination made
10 pursuant to the HWCL, including but not limited to California Code of Regulations, title 22,
11 section 66262.11. Any discarded EP Dust and/or CDC Dust which exhibits a HAZARDOUS
12 characteristic shall be MANAGED as HAZARDOUS WASTE and shall be identified as "EP
13 Dust" or "CDC Dust" and/or by its appropriate waste profile identification number on all
14 HAZARDOUS WASTE manifests used to transport it from the FACILITY.

15 19. Make Records Available Upon Request. Gallo Glass shall make available, as
16 required by the HWCL, upon request by DTSC and the CUPA all records relating to
17 HAZARDOUS WASTES, USED OIL, or HAZARDOUS materials, including, but not limited to,
18 records demonstrating compliance with the injunctive provisions identified in the Stipulation and
19 this Consent Judgment.

20 **6. ENFORCEMENT OF CONSENT JUDGMENT**

21 a. The parties have the right to enforce this Consent Judgment and the Stipulation as
22 provided herein and pursuant to applicable law.

23 b. Before pursuing any legal action in this Court relating to the enforcement of the terms
24 of the Consent Judgment, the Parties shall meet and confer in a good faith attempt to resolve the
25 disputed issue(s) without judicial intervention. To ensure that the meet and confer process is as
26 productive as possible, the enforcing Party shall identify in writing, at least five (5) business days
27 in advance of the meet and confer, as specifically as the available information allows, the grounds
28 for any motion relating to the enforcement of the Consent Judgment, and the specific relief, if

1 any, sought by the Party. At least two (2) business days in advance of the meet and confer, the
 2 receiving Party shall provide a response to the grounds for enforcement, as specifically as the
 3 available information allows. This "meet and confer" procedure shall not apply to any emergency
 4 relief that DTSC may seek pursuant to its authority under the law, or to any Reserved Claim, as
 5 defined *infra*.

6 c. The Parties reserve all rights to oppose any motion brought by the other Party
 7 pursuant to this Consent Judgment.

8 d. Nothing in the forgoing is intended to, nor shall be construed to, restrict DTSC's
 9 authority to pursue a new action under the HWCL against Gallo Glass and to seek injunctive
 10 relief and penalties, except as provided below in Paragraph 8, "Matters Covered and Reserved
 11 Claims."

12 **7. EFFECT OF CONSENT JUDGMENT**

13 Other than "Covered Matters" as defined in Paragraph 8(a), below, nothing herein is
 14 intended, nor shall it be construed, to preclude DTSC, or any state, county, or local agency,
 15 department, board, or entity, from exercising its authority under any law, statute, or regulation.
 16 Nothing in this Stipulation or the Consent Judgment shall be interpreted to excuse Gallo Glass
 17 from compliance with the terms of the HWCL or any other law.

18 **8. MATTERS COVERED AND RESERVED CLAIMS**

19 a. This Stipulation and the Consent Judgment entered in this matter are a final and
 20 binding resolution, settlement, and release of: (a) all violations alleged in DTSC's inspection
 21 reports dated February 16, 2011, April 4, 2011, and March 18, 2016 (collectively referred to as
 22 "Inspection Reports"), in DTSC's Summary of Violations dated September 29, 2009, October 7,
 23 2009, and January 26, 2016 ("Summaries"), in correspondence from DTSC's counsel to Gallo
 24 Glass's counsel dated September 5, 2013 and April 14, 2014 ("Correspondence"), and all causes
 25 of action alleged in DTSC's Complaint or First Amended Complaint; and (b) all causes of action
 26 alleged by Gallo Glass against DTSC in Gallo Glass's Cross-Complaint, First Amended Cross-
 27 Complaint, or Second Amended Cross-Complaint. The matters described in this paragraph are
 28 "Covered Matters."

1 b. DTSC and Gallo Glass reserve the right to pursue any claim, violation, or cause of
2 action that is not a Covered Matter ("Reserved Claims"), and each Party reserves their rights to
3 defend against any Reserved Claim.

4 c. DTSC's Reserved Claims include any HWCL violations that are not alleged against
5 Gallo Glass with respect to the FACILITY in DTSC's Inspection Reports, Correspondence,
6 Summaries, Complaint, or First Amended Complaint, including, but not limited to, violations, if
7 any, that occurred after January 26, 2016. Gallo Glass's Reserved Claims include claims not
8 alleged against DTSC in Gallo Glass's Cross-Complaint, First Amended Cross-Complaint, or
9 Second Amended Cross-Complaint. The Parties' Reserved Claims are not resolved, settled, or
10 covered by this Stipulation or the Consent Judgment.

11 d. Notwithstanding any other provision of this Stipulation and the Consent Judgment,
12 DTSC's Reserved Claims also include, and are not limited to, any claims or causes of action for
13 violations under Health & Safety Code sections 25214.11 et seq. and b) corrective action, cost
14 recovery, or performance of response action, concerning or arising out of past or future releases,
15 spills, leaks, discharges, or disposal of HAZARDOUS materials, HAZARDOUS WASTES,
16 and/or USED OIL.

17 e. In any subsequent action that may be brought in the name of DTSC based on any
18 Reserved Claims, Gallo Glass agrees that it will not assert that the failure to pursue the Reserved
19 Claims as part of this action constitutes claim-splitting or laches or is otherwise inequitable
20 because of this asserted failure. This paragraph does not bar Gallo Glass from asserting any
21 statute of limitations defense or any other defenses that may be applicable to DTSC's Reserved
22 Claims.

23 f. Gallo Glass covenants not to pursue any civil or administrative claims against DTSC
24 or against any governmental unit of the State of California, any counties or municipalities in the
25 State of California, or against their officers, employees, representatives, agents, or attorneys for
26 actions taken against Gallo Glass arising out of or related to Covered Matters.

27
28

1 **9. NOTICE**

2 a. All submissions and notices required by the Stipulation and this Final Judgment shall
3 be sent to:

4 For DTSC:

5 Denise Tsuji, Branch Chief
6 Enforcement and Emergency Response Division
7 Hazardous Waste Management Program
8 Department of Toxic Substances Control
9 8800 Cal Center Drive, MS R1-3
10 Sacramento, CA 95826-3200

11 Sonia Wills, Senior Staff Counsel
12 Office of Legal Counsel
13 Department of Toxic Substances Control
14 700 Heinz Avenue, Suite 200
15 Berkeley, CA 94710-2721

16 and

17 Scott Lichtig
18 Deputy Attorney General
19 Office of the Attorney General
20 1300 I Street, Suite 125
21 P.O. Box 944255
22 Sacramento, CA 94244-2550

23 For Gallo Glass :

24 Gallo Glass Company
25 600 Yosemite Boulevard
26 Modesto, CA 95354
27 Attn: Tim Byrd

28 and

 Jon K. Wactor
 Wactor & Wick LLP
 180 Grand Avenue, Suite 950
 Oakland, CA 94612

Any party may change its notice and name and address by informing the other parties in writing by certified mail. The change shall be effective upon receipt of the certified mail.

b. All notices and communications required or permitted under this Consent Judgment or the Stipulation that are properly addressed as provided in this section are effective upon

1 delivery if delivered personally or by overnight delivery, or are effective five (5) calendar days
2 following deposit in the United States mail, postage prepaid, if delivered by mail, or are effective
3 the next court day if electronic mail is sent before 5 p.m. (PST) to the electronic mail addresses of
4 the designated recipient for notice concurrent with sending the notice by United States mail.

5 **10. NECESSITY FOR WRITTEN APPROVALS**

6 All notices, approvals, and decisions of DTSC under the terms of the Stipulation or this
7 Consent Judgment shall be communicated to Gallo Glass in writing. No oral advice, guidance,
8 suggestions, or comments by employees or officials of DTSC regarding submissions or notices
9 shall be construed to relieve Gallo Glass of its obligations to obtain any final written approval
10 required by the Stipulation or this Consent Judgment.

11 **11. NO LIABILITY OF DTSC**

12 DTSC shall not be liable for any injury or damage to persons or property resulting
13 from acts or omissions by Gallo Glass or its respective officers, directors, employees, agents,
14 representatives, contractors, successors, or assigns, in carrying out activities pursuant to this
15 Stipulation or the Consent Judgment, nor shall DTSC be held as a party to or guarantor of any
16 contract entered into by Gallo Glass or its respective officers, directors, employees, agents,
17 representatives, contractors, successors, or assigns, in carrying out the requirements of the
18 Stipulation or this Consent Judgment.

19 **12. NO WAIVER OF RIGHT TO ENFORCE**

20 The failure of DTSC to enforce any provision of this Stipulation or the Consent Judgment
21 shall neither be deemed a waiver of such provision, nor in any way affect the validity of this
22 Stipulation or the Consent Judgment. The failure of DTSC to enforce any such provision shall
23 not preclude it from later enforcing the same or other provisions of the Stipulation or this Consent
24 Judgment. No oral advice, guidance, suggestions, or comments by employees or officials of
25 DTSC regarding matters covered in this Stipulation or the Consent Judgment shall be construed
26 to relieve Gallo Glass of its obligations under the Stipulation or this Consent Judgment.

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1 **13. FUTURE REGULATORY CHANGES**

2 Nothing in this Stipulation or the Consent Judgment shall (a) excuse Gallo Glass from
3 meeting any more stringent requirements, or (b) prevent Gallo Glass from qualifying for less
4 stringent requirements, that may be imposed by future changes in applicable law.

5 **14. APPLICATION OF CONSENT JUDGMENT**

6 The Stipulation and this Consent Judgment shall apply to and be binding upon DTSC and
7 upon Gallo Glass, and upon its officers, managers, employees, agents, contractors, successors,
8 and assigns in their official capacity.

9 **15. CONTINUING JURISDICTION**

10 The Parties agree that this Court has continuing jurisdiction to interpret and enforce the
11 Stipulation and this Consent Judgment. The Court shall retain continuing jurisdiction to enforce
12 the terms of the Stipulation and this Consent Judgment and to address any other matters arising
13 out of or regarding the Stipulation and this Consent Judgment.

14 **16. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

15 Gallo Glass shall permit any duly authorized representative of DTSC and the CUPA, as
16 authorized by law, to exercise their respective regulatory authority to inspect and copy Gallo
17 Glass's records and documents to, *inter alia*, determine whether Gallo Glass is in compliance
18 with the terms of the Stipulation and this Consent Judgment.

19 **17. INTERPRETATION OF STIPULATION AND FINAL JUDGMENT**

20 DTSC and Gallo Glass agree that the rule of construction holding that ambiguity is
21 construed against the drafting party shall not apply to the interpretation of the Stipulation and this
22 Consent Judgment.

23 **18. INTEGRATION**

24 The Stipulation and this Final Judgment constitutes the entire agreement between DTSC
25 and Gallo Glass with respect to the Covered Matters may not be amended or supplemented except
26 as provided for in the Stipulation or this Consent Judgment.

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19. MODIFICATION OF FINAL JUDGMENT

The Stipulation and this Consent Judgment may be modified by express written agreement of the Parties, with the approval of the Court, or by an order of the Court in accordance with law.

20. COSTS AND ATTORNEYS' FEES


Except as otherwise provided in the Stipulation and this Consent Judgment, each Party to the Stipulation and Consent Judgment shall bear its own costs and attorneys' fees.

21. ENTRY OF JUDGMENT

The Clerk of the Court is ordered to entry forthwith this Consent Judgment and to provide notice of entry of the Consent Judgment promptly to the Parties.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated:

3/1/2017 

JUDGE GEORGE C. HERNANDEZ, JR.