

1 KAMALA D. HARRIS
Attorney General of California
2 MARGARITA PADILLA
Supervising Deputy Attorney General
3 KIRK MCINNIS
Deputy Attorney General
4 State Bar No. 130952
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2191
7 Fax: (510) 622-2270
E-mail: Kirk.McInnis@doj.ca.gov
8 *Attorneys for Plaintiff People of the State of
California, ex rel. Deborah O. Raphael, Director of
the Department of Toxic Substances Control*

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PCSA JUDGE/RO. CLERK

~~MARGARITA PADILLA~~

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN JOAQUIN

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

17 Plaintiff,

18 v.

19 **JOSE G. SOSA**

20 Defendant

Case No. 39-2013-00295469-CU-TT-STK

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health and Safety Code sections 25181,
25184, 25189, and 25189.2)

THIS CASE HAS BEEN ASSIGNED TO
JUDGE LESLEY B. HAYWARD IN DEPARTMENT 11
FOR ALL PURPOSES, INCLUDING TRIAL.

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 Jose G. Sosa ("Sosa"), at all times relevant to this Complaint, transported,
27 abandoned, and/or stored hazardous wastes, including aerosol cans containing flammable
28 propellants, used motor oil, and substances containing mercury.

1 2. Sosa violated the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the Health
2 and Safety Code (“HWCL”) and its implementing regulations by handling hazardous waste in an
3 unsafe manner and without complying with the applicable laws and regulations.

4 3. The Department hereby seeks civil penalties from and injunctive relief against Sosa for
5 violations of the HWCL and its implementing regulations.

6 PLAINTIFF

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

9 5. Deborah O. Raphael is the Director of the Department.

10 6. Pursuant to sections 25181 and 25182 of the Health and Safety Code, the Attorney
11 General of the State of California is authorized, at the request of the Department, to commence an
12 action in the name of the People for civil penalties and injunctive relief under the HWCL. The
13 Department has asked the Attorney General to apply to this Court for injunctive relief pursuant to
14 Health and Safety Code sections 25181 and 25184 and for an order imposing civil penalties
15 pursuant to Health and Safety Code sections 25189 and/or 25189.2 for violations of the HWCL
16 by Sosa.

17 DEFENDANT

18 8. The Department is informed and believes and thereon alleges that Sosa is a resident of the
19 State of California and resides at 643 N. Manley Road, Ripon, California.

20 9. Sosa is a “person” as defined at Health and Safety Code section 25118. Further, Sosa
21 was, at all times relevant to this Complaint, a transporter of hazardous waste, as “transporter” is
22 defined in California Code of Regulations, title 22, section 66260.10.

23 JURISDICTION AND VENUE

24 10. This Court has jurisdiction pursuant to California Constitution Article 6, section 10.
25 Venue is proper in this Court under Health and Safety Code section 25183 in that the violations
26 principally took place in Ripon, San Joaquin County, California. Venue is further proper in this
27 Court under Health and Safety Code section 25183 in that the defendant resides in San Joaquin
28 County, California.

1 ENFORCEMENT AUTHORITY UNDER THE HWCL

2 16. The HWCL authorizes the Court to issue civil penalties under two distinct and alternative
3 provisions. Section 25189 of the Health and Safety Code creates liability for any negligent or
4 intentional violation of the HWCL or its implementing regulations. Section 25189.2 of the
5 Health and Safety Code is a strict liability provision, which creates liability for any violation of
6 the HWCL or its implementing regulations. A person may not be held liable for separate civil
7 penalties imposed under sections 25189 and 25189.2 for the same act. (Health & Saf. Code §
8 25189.2(f).)

9 17. Sections 25181 and 25184 of the Health and Safety Code authorize and direct the Court to
10 enjoin any ongoing or potential violation of the HWCL.

11 18. Section 25181 of the Health and Safety Code authorizes the Court to grant “a permanent
12 or temporary injunction, restraining order, or other order” when the Attorney General, at the
13 request of the Department, applies for an order enjoining violations of the HWCL or of any rule
14 or requirement issued thereunder, and the Department shows that the person against whom the
15 order is sought has violated or will violate those provisions.

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

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

22 THE INVESTIGATION

23 20. On April 23, 2010, a City of Ripon Police Department officer discovered a box trailer that
24 contained two hundred and forty-five (245) 55-gallon drums parked in a back parking lot of the
25 Jimco Truck Stop in Ripon, California. During a phone call that same day with the Ripon police
26 officer, Sosa admitted that he had owned a trucking business that “went under”, and that because
27 he could not afford to properly dispose of the drums, he delivered them to the box trailer parked
28 in the Jimco Truck Stop parking lot. The box trailer was parked within 300 yards of a trailer

1 repair business and a single family residence.

2 21. Following the discovery of the drums, the Department became involved with the
3 investigation of this matter. The Department inventoried and photographed the drums and
4 collected samples from some of the drums. The Department determined that two hundred and
5 twenty-eight (228) of the drums in the box trailer contained hazardous waste such as non-empty
6 aerosol cans (several of the aerosol cans had rusted away inside the drums), used motor oil, and
7 substances containing mercury. The Department further determined that sixty-nine (69) of the
8 drums containing hazardous waste did not have hazardous waste labels as required by law. Of the
9 drums which had hazardous waste labels, the accumulation dates on the labels were from 2001
10 and 2002 calendar years. The Department's emergency response staff oversaw the removal and
11 disposal of the drums from the box trailer at the Jimco Truck Stop in Ripon, California.

12 FIRST CAUSE OF ACTION

13 (Intentional or Negligent Disposal of Hazardous Waste in Violation of
Health and Safety Code section 25189(d) and Its Implementing Regulations)

14 22. Paragraphs 1 through 21, inclusive, are re-alleged as if fully set forth herein.

15 23. Health and Safety Code section 25189(d) imposes civil penalties on any person who
16 negligently or intentionally disposes of hazardous waste at an unauthorized location.

17 24. The Department is informed and believes and thereupon alleges that Sosa negligently or
18 intentionally disposed of two hundred twenty-eight (228) 55-gallon drums containing hazardous
19 waste, including aerosol cans containing flammable propellants, used motor oil, and substances
20 containing mercury, at Jimco Truck Stop in Ripon, California, a point not authorized by the
21 Department for disposal of hazardous waste.

22 25. Each separate violation subjects Sosa to a separate and additional penalty. Pursuant to
23 section 25189(d) of the Health and Safety Code, a separate civil penalty must be imposed for each
24 separate violation, and each penalty that must be imposed is also separate and in addition to any
25 other civil penalty imposed under this section and separate and in addition to any other civil
26 penalty imposed under any other provision of law.

27 26. Injunctive relief is warranted to prevent future unlawful disposal of hazardous waste by
28 Sosa.

SECOND CAUSE OF ACTION
(Strict Liability for Disposal of Hazardous Waste in Violation of
Health and Safety Code section 25189.2(c))

27. Paragraphs 1 through 26, inclusive, are re-alleged as if fully set forth herein.

28. Health and Safety Code section 25189.2(c) imposes civil penalties on any person who disposes of hazardous waste at an unauthorized location.

29. The Department is informed and believes and thereupon alleges that Sosa disposed of two hundred twenty-eight (228) 55-gallon drums containing hazardous waste, including aerosol cans containing flammable propellants, used motor oil, and substances containing mercury, at Jimco Truck Stop in Ripon, California, a point not authorized by the Department for disposal of hazardous waste.

30. Each separate violation subjects Sosa to a separate and additional penalty. Pursuant to section 25189.2(c) of the Health and Safety Code, a separate civil penalty must be imposed for each separate violation, and each penalty that must be imposed is also separate and in addition to any other civil penalty imposed under this section and separate and in addition to any other civil penalty imposed under any other provision of law.

31. Injunctive relief is warranted to prevent future unlawful disposal of hazardous waste by Sosa.

THIRD CAUSE OF ACTION
(Intentional or Negligent Storage of Hazardous Waste in Violation of
Health and Safety Code section 25189(e) and Its Implementing Regulations)

32. Paragraphs 1 through 31, inclusive, are re-alleged as if fully set forth herein.

33. Health and Safety Code section 25189(e) imposes civil penalties on any person who negligently or intentionally stores hazardous waste at an unauthorized location.

34. The Department is informed and believes and thereupon alleges that Sosa negligently or intentionally stored two hundred twenty-eight (228) 55-gallon drums containing hazardous waste, including aerosol cans containing flammable propellants, used motor oil, and substances containing mercury, at Jimco Truck Stop in Ripon, California, a point not authorized by the Department for storage of hazardous waste.

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1 35. Each day of violation subjects Sosa to a separate and additional penalty. Pursuant to
2 section 25189(e) of the Health and Safety Code, a separate civil penalty must be imposed for each
3 separate violation, and each penalty that must be imposed is also separate and in addition to any
4 other civil penalty imposed under this section and separate and in addition to any other civil
5 penalty imposed under any other provision of law.

6 36. Injunctive relief is warranted to prevent future unlawful storage of hazardous waste by
7 Sosa.

8 FOURTH CAUSE OF ACTION
(Strict Liability for Storage of Hazardous Waste in Violation of
9 Health and Safety Code section 25189.2(d))

10 37. Paragraphs 1 through 36, inclusive, are re-alleged as if fully set forth herein.

11 38. Health and Safety Code section 25189.2(d) imposes civil penalties on any person who
12 stores hazardous waste at an unauthorized location.

13 39. The Department is informed and believes and thereupon alleges that Sosa stored two
14 hundred twenty-eight (228) 55-gallon drums containing hazardous waste, including aerosol cans
15 containing flammable propellants, used motor oil, and substances containing mercury, at Jimco
16 Truck Stop in Ripon, California, a point not authorized by the Department for storage of
17 hazardous waste.

18 40. Each day of violation subjects Sosa to a separate and additional penalty. Pursuant to
19 section 25182.2(d) of the Health and Safety Code, a separate civil penalty must be imposed for
20 each separate violation, and each penalty that must be imposed is also separate and in addition to
21 any other civil penalty imposed under this section and separate and in addition to any other civil
22 penalty imposed under any other provision of law

23 41. Injunctive relief is warranted to prevent future unlawful storage of hazardous waste by
24 Sosa.

25 FIFTH CAUSE OF ACTION
26 (Failure to Label Hazardous Waste Containers in Violation
Code of Regulations, title 22, section 66263.23(a))

27 42. Paragraphs 1 through 41, inclusive, are re-alleged as if fully set forth herein.

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1 43. California Code of Regulations, title 22, section 66263.23(a) requires that a transporter of
2 hazardous waste comply with the applicable hazardous material regulations adopted by the
3 California Highway Patrol, including Title 13, Division 2, Chapter 6 of the California Code of
4 Regulations (section 1160 *et seq.*) California Code of Regulations, Title 13, section 1161.2(a), in
5 turn, requires transporters of hazardous waste to comply with the labeling requirements of Part
6 172, Subpart E, of Title 49 of the Federal Code of regulations (section 172.400 *et seq.*). Section
7 172.400 requires that containers of hazardous waste be labeled as hazardous waste.

8 44. At the time of the April 23, 2010 visit, sixty-nine (69) of the 55-gallon drums containing
9 hazardous waste stored by Sosa in the box trailer at the Jimco Truck Stop did not have hazardous
10 waste labels.

11 45. Sosa violated California Code of Regulations, title 22, section 66263.23(a) in that he did
12 not have hazardous waste labels on sixty-nine (69) of the 55-gallon drums containing hazardous
13 waste that he delivered to and stored in the box trailer.

14 46. Section 25189(b) of the Health and Safety Code imposes civil penalties for any negligent
15 or intentional violation of the HWCL or its implementing regulations, including California Code
16 of Regulations, title 22, section 66263.23(a). Section 25189.2(b) of the Health and Safety Code is
17 a strict liability provision, which imposes civil penalties for any violation of the HWCL or its
18 implementing regulations, including California Code of Regulations, title 22, section 66263.23(a).

19 47. Injunctive relief is warranted to prevent future violations by Sosa pertaining to the
20 labeling of containers of hazardous waste.

21 SIXTH CAUSE OF ACTION

22 (Delivery of Hazardous Waste to a Location other than to an
23 Authorized Hazardous Waste Facility in Violation of
California Code of Regulations, title 22, section 66263.23(b))

24 48. Paragraphs 1 through 47, inclusive, are re-alleged as if fully set forth herein.

25 49. California Code of Regulations, title 22, section 66263.23(b) forbids a transporter of
26 hazardous waste to deliver hazardous waste to any location other than hazardous waste facility
27 that has a valid permit or is otherwise by the Department to received hazardous waste.

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1 50. The Department is informed and believes and there upon alleges that Sosa, on or before
2 April 23, 2010 delivered two hundred twenty-eight (228) 55-gallon drums of hazardous waste to
3 the box trailer in the parking lot at Jimco Truck Stop.

4 51. Sosa violated California Code of Regulations, title 22, section 66263.23(b) in that he
5 delivered hazardous waste to a location other than a facility permitted or otherwise authorized by
6 the Department to accept hazardous waste.

7 52. Section 25189(b) of the Health and Safety Code imposes civil penalties for any negligent
8 or intentional violation of the HWCL or its implementing regulations, including California Code
9 of Regulations, title 22, section 66263.23(b). Section 25189.2(b) of the Health and Safety Code
10 is a strict liability provision, which imposes civil penalties for any violation of the HWCL or its
11 implementing regulations, including California Code of Regulations, title 22, section
12 66263.23(b).

13 53. Injunctive relief is warranted to prevent future unlawful disposal of hazardous waste by
14 Sosa.

15 REQUEST FOR RELIEF

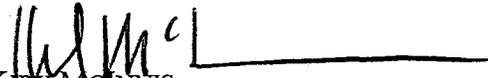
16 The Department requests that the Court grant the relief that follows:

- 17 1. Enter judgment that Sosa has violated the HWCL as set forth in the First through Sixth
18 Causes of Action;
 - 19 2. Enter judgment that Sosa is liable for civil penalties for the violations set forth in the First
20 through Sixth Causes of Action as authorized by Health and Safety Code section 25189 or, in the
21 alternative, by Health and Safety Code section 25189.2, in an amount according to proof;
 - 22 3. Enter temporary restraining orders, preliminary injunctions, permanent injunctions, or
23 other orders enjoining Sosa from transporting hazardous waste in California and requiring Sosa to
24 otherwise comply with the HWCL and/or the regulations adopted thereunder;
 - 25 4. Grant the Department its costs of suit herein; and
 - 26 5. Grant such other and further relief as the court deems just and proper.
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1 Dated: March 15, 2013

Respectfully Submitted,

2 KAMALA D. HARRIS
Attorney General of California
3 MARGARITA PADILLA
Supervising Deputy Attorney General

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6 KIRK MCINNIS
Deputy Attorney General
7 *Attorneys for Plaintiff People of the State of*
8 *California, ex rel. Deborah O. Raphael,*
9 *Director of the Department of Toxic*
10 *Substances Control*

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