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KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General
KIRK MCINNIS/ HEIDI SALERNO
Deputy Attorneys General
State Bar Nos. 130952/157335
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2191/2207
Fax: (510) 622-2270
E-mail: Kirk.McInnis@doj.ca.gov/Heidi.Salerno@doj.ca.gov
*Attorneys for Plaintiffs People of the State of
California, ex. rel. Deborah O. Raphael, Director of
the Department of Toxic Substances Control*

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CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

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

Plaintiffs,

v.

ELECTRO-FORMING, CO.; MARION PATIGLER; THE ESTATE OF GERHARD PATIGLER; THE ESTATE OF INGRID PATIGLER; AND DOES 1 THROUGH 50,

Defendants.

Case No. C 13-01691

PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: November 8, 2013
Time: 10:00 a.m.
Dept: 9
Judge: The Honorable Judith Craddick

Action Filed: August 8, 2013

PLAINTIFF THE STATE OF CALIFORNIA, ex rel. DEBORAH O. RAPHAEL, DIRECTOR OF THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL, hereby applies ex parte for issuance of a Temporary Restraining Order enjoining Defendants ELECTRO-FORMING, CO.; MARION PATIGLER; THE ESTATE OF GERHARD PATIGLER; THE

1 ESTATE OF INGRID PATIGLER; AND DOES 1 through 50 and their agents, servants, and
2 employees from violating the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the
3 Health and Safety Code (“HWCL”), Health and Safety Code section 25100 et seq, and its
4 implementing regulations, California Code of Regulations, Title 22, Division 4.5 (“Title 22”), and
5 an order to show cause why a preliminary injunction should not be granted enjoining Defendants
6 and their agents, servants, and employees from committing the foregoing described acts during
7 the pendency of this action.

8 This application is made on the grounds that Defendants have engaged in or are about to
9 engage in violations of the HWCL (Health & Saf. Code § 25181) and Title 22. While not a
10 required showing under the expressed injunctive provision of the HWCL, this application is
11 further made on the ground that great or irreparable injury will result to the neighboring
12 population and the environment before the matter can be heard on notice. Code of Civ. Pro. § 527
13 6(a)(2), (3) and (4).

14 This application is based on the Complaint previously on file, on the Declarations of
15 Michael Pixton, Diana Peebler, Essam Eissa, Robert Hrabak and Ben Beauchaine, the Request for
16 Judicial Notice, and the Memorandum of Points and Authorities in Support of the Application for
17 Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction.

18 Dated: November 6, 2013

19 Respectfully Submitted,

20 KAMALA D. HARRIS
21 Attorney General of California



22 HEIDI SALERNO
23 Deputy Attorney General
24 *Attorneys for Plaintiffs People of the State
25 of California, ex. rel. Deborah O. Raphael,
26 Director of the Department of Toxic
27 Substances Control*
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1 **INTRODUCTION**

2 Plaintiff, the State of California ex rel. Deborah O. Raphael, Director of the Department of
3 Toxic Substance Control (“the Department”), initiated this civil law enforcement action under the
4 Health and Safety Code section 25100 et seq, (“HWCL”) and its implementing regulations,
5 California Code of Regulations, Title 22, Division 4.5 (“Title 22”)¹, against Defendants Electro-
6 Forming, Co. (“Electro-Forming”), Marion Patigler (“Patigler”), the Estate of Gerhard Patigler,
7 and the Estate of Ingrid Patigler (collectively “Defendants”) based on a long history of serious
8 and continuous violations of California’s environmental protection laws at Defendants’ plating
9 facility located at 130 Nevin Avenue, Richmond, California (“the Facility”). (See Complaint.)

10 The HWCL and Title 22 are a comprehensive statutory and regulatory framework
11 designed to regulate the generation, handling, treatment, transport, and disposal of hazardous
12 wastes from cradle to grave. (Health & Saf. Code, § 25100 et seq.²) In enacting the HWCL, the
13 Legislature expressly found that long-term threats are posed by, among other things, “the
14 inappropriate handling, storage, use and disposal of hazardous wastes.” (§ 25100, subd. (b).) The
15 Legislature thus declared that, “in order to protect the public health and environment . . . , it is in
16 the public interest to establish regulations and incentives, which ensure that generators of
17 hazardous waste employ technology and management practices for the safe handling, treatment,
18 recycling, and destruction of their hazardous wastes prior to disposal.” (§ 25101, subd. (a).)
19 Accordingly, to protect the public health and the environment, the HWCL, along with its
20 implementing regulations, mandate a system that regulates hazardous waste from “cradle to
21 grave” – from the time the waste is generated, through storage, transportation, and ultimately to
22 its treatment and disposal. The HWCL defines “hazardous waste management” and
23 “management” as the transport, transfer, recycling, recovery, disposal, handling, processing,
24 storage and treatment of hazardous waste. (§ 25117.2.)

25 _____
26 ¹ The HWCL is the state counterpart to the federal Resource Conservation and Recovery
27 Act (“RCRA”), 42 U.S.C. §6901 et. seq, which also regulates the cradle to grave management of
28 hazardous waste.

² All further statutory references are to the Health and Safety Code unless otherwise
stated.

1 Based on a tip from a former employee that the Facility was illegally dumping, storing and
2 mislabeling hazardous waste, the Department obtained a search warrant for the Facility. (Peebler
3 Declaration (“Decl.”), ¶6.) During the execution of the search warrant, the Department
4 discovered that Defendants had violated numerous statutes and regulations, including the HWCL
5 and Title 22. The evidence presented in support of this application establishes that Defendants
6 have repeatedly committed acts in violation of the HWCL and Title 22, including failing to
7 manage hazardous waste in a manner to prevent fires, explosions, or releases of hazardous waste,
8 failing to inspect hazardous waste systems and storage areas, failing to maintain adequate access
9 for fire control equipment, spill control equipment, and other safety equipment, and unlawful
10 treatment, storage, and disposal of hazardous waste.

11 Most recently, on October 30, 2013, the site was inspected by Plaintiff, the Contra Costa
12 County Hazardous Materials Program and the U.S. Environmental Protection Agency in order to
13 more closely examine a 6900-gallon “Baker tank”³ at the Facility. (Pixton Decl., ¶7.) The recent
14 inspection revealed that, in violation of the law, the Baker tank containing hazardous waste was
15 single-walled and did not have any secondary containment to protect the environment in the event
16 of a failure. Further, the Baker tank was completely full of the hazardous waste, and its contents
17 had not been disposed of since 2008 and there was no pending work order to do so. (*Id.*, ¶¶8, 9,
18 12.) Because the Baker tank is full of liquid hazardous waste that exceeds regulatory thresholds
19 for cyanide, nickel and copper, and is currently without containment, additional liquids added to
20 the tank would cause it to overflow. The overflow of the tank would cause the cyanide solution
21 contained therein to pour into the residential street releasing hydrogen cyanide gas and putting the
22 residences at severe risk as hydrogen cyanide gas is a powerful, rapid-acting poison used in gas-
23 chamber executions. The inspection also revealed 10 to 15 drums behind the Baker tank,
24 containing hazardous waste, some of which were leaking. The drums had no secondary
25 containment, and there was no pending work order for disposal of the drummed hazardous waste.
26 (*Id.*, ¶¶8, 11; Peebler Decl., ¶¶11-15, 17; Req. for Jud. Not. (“RJN”), Ex. M.)

27 ³The Baker tank is a very large, polyethylene tank, which sits above ground and is labeled
28 “Rain for Rent.” (See *Id.*, ¶11, Ex. 1.)

1 Defendants' violations of the HWCL and Title 22 entitle the Department to legislatively-
2 prescribed injunctive relief. Under the law, the Department is not required to show irreparable
3 harm to be entitled to relief. All that the Department needs to show to obtain injunctive relief is
4 that Defendants have engaged in, or are about to engage in, violations of the HWCL. (Health &
5 Saf. Code § 25181.) This application seeks a temporary restraining order and order to show cause
6 re: preliminary injunction pursuant to sections 25181 and 25184 ordering Defendants to cease
7 their unlawful practices of violating the HWCL and Title 22 and to promptly bring the Facility
8 into compliance. The declarations and exhibits filed in support of this application show that
9 immediate action is necessary and demonstrate a strong probability of success by the Department
10 in proving its allegations that Defendants have committed violations of the HWCL and that
11 injunctive relief should be granted as requested by the Department pursuant to sections 25181 and
12 25184. Even the Department need not prove harm to prevail, it is important to note that the
13 impeding overflow of the Baker tank and the drums, coupled with the quickly approaching rainy
14 season, require immediate action to protect the neighboring population and environment.

15 BACKGROUND

16 A. DEFENDANTS ARE EACH LIABLE AS AN OWNER OR OPERATOR OF THE FACILITY

17 Owners as well as operators are liable for violations of the HWCL and Title 22. (See, e.g., §
18 25201 (a).) Title 22 at section 66260.10(a) defines "operator" as the person responsible for the
19 overall operation of a facility, "owner" as the person who owns a facility or part of a facility, and
20 "owner or operator" as the owner or operator of any facility or activity subject to regulation under
21 section 25100. Each of the defendants is an owner and/or operator liable for the violations at the
22 Facility.

23 Patigler is the President of Electro-Forming and is the person responsible for the overall
24 operation of the Facility. (RJN, Ex. B, p. 2; Peebler Decl., ¶4; RJN Ex. J, p. 1, Ex. K, p. 4 .) As
25 such, Patigler has liability under the HWCL and Title 22. (See e.g. *Liquid Chemical Corporation*
26 *v. Department of Health Services* (1991) 227 Cal. App. 3d 1682, 1704-1708.)⁴ The Estates of

27 ⁴ See also, *United States v. Northeastern Pharmaceutical* (8th Cir. 1986); 810 F. 2d 726,
28 745, cert. denied, 484 U.S. 848; (definition of person under RCRA includes corporate officers
(continued...))

1 Ingrid and Gerhard Patigler have owned the Facility since the deaths of Ingrid and Gerhard
2 Patigler in 2009. (See, e.g., RJN, Ex. L.) Thus, under the HWCL the estates have liability as
3 owners of the Facility. Because Patigler is administrator of both estates, she is also liable in her
4 representative capacity for violations at the Facility.⁵ (RJN, Ex. H, Ex. I.)

5 **B. THE CONDITION OF THE FACILITY**

6 The Facility consists of a plating area, boiler room, buffing area, office area, four Conex
7 containers (modular containers used in shipping and storage), a mobile home used as an office,
8 and a rear paved yard. (Peebler Decl., ¶¶4, 10.) The neighborhood is a mixed-use, containing both
9 residences and commercial buildings. The Facility is located across the street from an apartment
10 building, a church and Bay Area Rescue Mission. (*Id.* ¶10.)

11 The plating area at the Facility has nine plating tanks, including copper cyanide, brass,
12 dull and bright nickel, acid copper, gold, silver, antiquing (an inorganic acid solution), and
13 chromium tanks. (*Id.*) There are also eleven plating rinse tanks, a tank containing pumice cleaner,
14 other rinse areas, and various 55-gallon drums for cleaning and etching. (*Id.*)

15 At least two strip tanks are located at the rear of the Facility. (*Id.*) One of these strip tanks
16 has been used to boil off plating rinse waters. (Eissa Decl., ¶7) The rear area also has a 6,900
17 gallon polyethylene Baker tank and four Conex containers. (Peebler Decl., ¶¶10-11.) There are
18 two strip tanks in the boiler room: a chromium strip tank and a nickel strip tank. (*Id.*, ¶10.)

19 The buffing area at the Facility contains various buffing machines, a shop vacuum, 55-
20 gallon drums, and five gallon containers. (*Id.*, ¶25.) The five gallon containers and 55 gallon
21 drums are used to hold spent buffing dust/wastes. (*Id.*)

22 There are four Conex containers at the rear of the Facility. (*Id.*, ¶30.) Inside the Conex
23 containers were many rusted, unlabeled containers, ranging from five gallon containers to 55

24 _____
25 (...continued)
26 who make decisions. Imposing such liability is consistent with intent to impose liability on
27 persons who are involved in handling and disposing of hazardous waste.)

28 ⁵ Since Marion Patigler's actions were made in her representative capacity as
administrator of the Estates, as well as in her individual capacity as an operator and President of
Electro-Forming, injunctive relief is appropriate against the Estates, Marion Patigler, individually
and in her representative capacity, and Electro-Forming.

1 gallon drums. (*Id.*) At the time of the search, the largest Conex container was filled with boxes,
2 paper, shelves, and filing cabinets. (*Id.*) When those items were removed from the front, nineteen
3 drums in various states of disrepair, along with open spilling bags of unidentified material, were
4 found in the back of the Conex container. (*Id.*)

5 There are two 275-gallon totes and approximately ten drums of hazardous waste in the
6 rear area of the Facility. (*Id.*, ¶18.) The Department found some of these containers had hazardous
7 waste labels and some did not. (*Id.*, ¶¶18-19.) Even when containers did have hazardous waste
8 labels, the labels showed the hazardous waste was being stored beyond the allowable date. (*Id.*,
9 ¶18.) The Baker tank, also located in the rear area of the Facility, had no label at all even though
10 it contained hazardous waste. (*Id.*, ¶¶11-12, 15.) The drums, totes, and Baker tank are all in close
11 proximity to each other. (*Id.*, ¶¶30-34.)

12 The Department's sampling of the area around the dull nickel tank indicated that liquids
13 from the tank had spilled onto the floor and leached through the wall onto the front sidewalk
14 facing Nevin Avenue. (*Id.*, ¶34.) The City of Richmond has locked out the Facility's sewer
15 access. (RJN, Ex. C, City of Richmond Wastewater Treatment Plant, Pretreatment Annual
16 Report, p. 9.) Further, the Facility does not have a waste water treatment system. (Peebler Decl.,
17 ¶10.) Thus, any spills that are not cleaned up immediately are likely to flow into the soil or run
18 into the street. Department personnel observed a green stain running from the area at the base of
19 the wall outside of the Facility, a few feet east of the entrance, towards the gutter. (Pixton Decl.,
20 ¶¶3-4.) Department personnel tested the sidewalk area with an X-ray fluorescence detector
21 ("XRF") device to determine if any metals were present. (*Id.*, ¶5.) The XRF device showed high
22 concentrations of nickel⁶ on the sidewalk next to the building. (*Id.*) Buffing dust, a hazardous
23 waste, was thickly layered on the floor throughout the entire buffing area. (*Id.*, ¶28)

24 C. PATIGLER'S HISTORY OF MISHANDLING HAZARDOUS WASTE

25 Patigler owned and operated a plating operation in Hayward, California. (See RJN, Ex. D,

26 _____
27 ⁶ Nickel as a hazardous waste when it exceeds its regulatory threshold, which is known to
28 be human carcinogens and can affect the body if they are inhaled or if they come in contact with
the eyes or skin. (Peebler Decl., ¶14.)

1 Corrective Action Consent Agreement.) In 2002, Patigler was convicted of misdemeanor
2 violation of section 25190 for the Hayward site. (RJN, Ex. G, Clerk's Docket and Minutes.) The
3 Department entered into a Corrective Action Consent Agreement with Electro-Forming in 2003
4 to investigate and remediate the contamination at the Hayward facility. (RJN, Ex. D.)

5 Patigler also operated a plating shop in Bettendorf, Iowa. (RJN, Ex. F, Unilateral
6 Administrative Order.) The U.S. Environmental Protection Agency inspected the site, found
7 illegal storage of hazardous waste, and issued Patigler a Cleanup Order in November 2010. (*Id.*)

8 ARGUMENT

9 I. TEMPORARY RESTRAINING ORDER IS THE PROPER REMEDY

10 Section 25181 authorizes the Court to grant "a permanent or temporary injunction,
11 restraining order, or other order" when the Attorney General, at the request of the Department,
12 applies for an order enjoining violations of the HWCL or any rule or requirement issued under the
13 HWCL, and the Department shows that the person against whom the order is sought has violated
14 or will violate those provisions. Electro-Forming's corporate status has been suspended by the
15 California Secretary of State's Office. (RJN, Ex. A, Certificate of Status, California Secretary of
16 State.) The effect of this suspension is that Electro-Forming may not defend itself in this litigation.
17 (*See Boyle v. Lakeview Creamery Co.* (1937) 9 Cal.2d 16, 19-20.) "Certainly, a suspended
18 corporate defendant may not defend or participate in an action." (*The Cadle Co. v. World Wide*
19 *Hospitality Furniture, Inc.* (2006) 144 Cal.App. 4th 504, 513; *see also Demato v. Slevin* (1989)
20 214 Cal.App.3d 668, 67.) Regardless of what arguments that the other defendants make regarding
21 the issuance of the temporary restraining order against them, Defendant Electro-Forming may not
22 oppose entry of injunctive relief against it.

23 The Legislature, in enacting the HWCL, recognized the serious threat posed to the public
24 health and the environment by the unlawful handling, treatment, or disposal of hazardous wastes.
25 (See § 25101(a).) Due to the seriousness of this threat, the Legislature elected to make injunctive
26 relief much easier to obtain than under the traditional standard. The Legislature eliminated the
27 traditional requirements of showing irreparable harm and the inadequacy of a remedy at law to
28 obtain a temporary restraining order under the HWCL for the mismanagement of hazardous waste.

1 Rather, “[i]n any civil action brought pursuant to this chapter, in which a ... temporary restraining
2 order ... is sought, **it shall not be necessary to allege or prove at any stage of the proceeding**
3 **that irreparable damage will occur should the ... temporary restraining order ... not be**
4 **issued** [T]he ... temporary restraining order ... *shall issue* without such allegations and
5 without such proof.” (§ 25184 [emphasis added].) All that the Department needs to show is that a
6 defendant “has engaged in or is about to engage in those acts or practices” which violate the
7 HWCL or Title 22. (§ 25181.) The Department readily makes this showing.

8 **II. VIOLATIONS OF THE HWCL AND ITS IMPLEMENTING REGULATIONS**

9 **A. Failure to Properly Manage Ignitable, Reactive, or Incompatible** 10 **Hazardous Waste**

11 Title 22, section 66265.17 requires that an owner and/or operator of a facility take
12 precautions to prevent accidental ignition or reaction of ignitable or reactive waste. Similarly,
13 Title 22, section 66265.177(c) provides that a container holding hazardous waste that is
14 incompatible with any waste or other materials stored nearby be separated from the other
15 materials by means of a dike, berm, wall, or other device. Defendants have blatantly ignored these
16 vital responsibilities.

17 The Department discovered that samples taken on March 20, 2013 from one of the 275-
18 gallon totes in the rear yard had a pH of .38 (very acidic). (Peebler Decl., ¶18.) One of the drums
19 containing hazardous waste is only six feet away from the tote contains 5,900 mg/L (high levels)
20 cyanide. (*Id.*, ¶21.) This drum containing high levels of cyanide is directly next to a drum
21 containing nitric acid with a pH of 1.17. (*Id.*, ¶22.) The adjacent drum to the nitric acid drum
22 contains 390 mg/L cyanide. (*Id.*, ¶23.) The drums are not secondarily contained and do not have
23 correct identifying information on their labels. (*Id.*, ¶¶18-20, 22-23.) If the low pH solution mixes
24 with a high pH solution, heat is generated and a violent reaction (explosion) would occur. If low
25 pH solution comes in contact with cyanide solution, it will cause the release of hydrogen cyanide,
26 a deadly gas. (*Id.*, ¶24.)

27 Further, the Department discovered that samples taken on March 20, 2013 from the Baker
28 tank indicate high concentration of cyanide in the tank along with a pH level of 7.23. (*Id.*, ¶12.)

1 Electro-Forming employees deposit rinse solutions, strip solutions, and other wastes into the top
2 of the Baker tank. (Eissa Decl., ¶10.) If these solutions have low pH, highly toxic gaseous
3 hydrogen cyanide could be released when they come in contact with the contents of the Baker
4 tank. (Peebler Decl., ¶17.)

5 In addition, the Department determined that hazardous waste from the dull nickel plating
6 tank had spilled and been allowed to accumulate on the floor. (*Id.*, ¶34.) Adjacent to the dull
7 nickel tank is the copper cyanide tank. (*Id.*) Samples taken from beneath the floor next to this tank
8 show concentrations of cyanide at 29,000 mg/L (extremely high levels). (*Id.*) If there is further
9 spillage from the dull nickel tank, the low pH solution in the tank could mix with the accumulated
10 solutions beneath the floor that has a very high concentration of cyanide and create a gaseous
11 release of highly toxic hydrogen cyanide into the environment posing a threat to the workers
12 standing above. (*Id.*)

13 Defendants are liable for violating Title 22, sections 66265.17 and 66265.177(c) and
14 subjecting the neighboring community to a serious risk of exposure to highly toxic hydrogen
15 cyanide gas, creating a very real threat of serious injury or even death. The Court should grant
16 injunctive relief to prevent such a disaster.

17 **B. Unlawful Treatment of Hazardous Waste Without Authorization**

18 Section 25201(a) forbids an owner or operator from treating hazardous waste at a facility
19 without permit or other authorization from the Department. Treatment is very broadly defined as
20 “any method, technique, or process ... which is designed to change the physical, chemical, or
21 biological character or composition of any hazardous waste or any material contained therein, or
22 which removes or reduces its harmful properties or characteristics for any purpose.” (§
23 25123.5(a).)

24 On March 20, 2013, the Department discovered that Defendants were treating hazardous
25 waste by combining different hazardous waste in the Baker tank and heating plating rinsewaters
26 to boil off liquids without proper authorization from the Department. (Peebler Decl., ¶¶11; Eissa
27 Decl., ¶7.)

28 None of the Defendants has a permit that allows them to treat hazardous wastes (Peebler

1 Decl., ¶15; Eissa Decl. ¶7) and are thus in direct violation of section 25201(a). Since safe
2 treatment of hazardous waste is necessary “to protect the public health and environment” (see §
3 25101(a)), Defendants should be immediately enjoined from treating hazardous waste.

4 **C. Unlawful Storage of Hazardous Waste**

5 **1. Storage of Hazardous Waste for more than Ninety Days**

6 Section 25201(a) forbids an owner or operator from storing hazardous waste at a facility
7 without permit or authorization. Title 22, section 66262.34 allows a facility to have hazardous
8 waste on site for no more than 90 days without permit or authorization before it is deemed illegal
9 storage.

10 On December 11, 2012, Patigler informed a Department inspector that liquids that are
11 spilled on site are deposited in the Baker tank. (Eissa Decl., ¶10.) The Baker tank was full when
12 Department inspectors returned on March 20, 2013 and again on October 30, 2013. (Peebler
13 Decl., ¶11; Pixton Decl., ¶7-8.) Patigler also informed a Department inspector that she stores
14 hazardous buffing dust generated from the buffing process in one of the Conex containers. (Eissa
15 Decl., ¶11.) Hazardous waste manifests filed with the Department show the contents of the Baker
16 Tank had not been legally disposed since 2008 and the Department’s manifest tracking system
17 does not indicate that hazardous buffing dust waste has ever been legally disposed. (*Id.*, ¶¶16, 28.)
18 Further, the deteriorated condition of various hazardous waste containers at various locations at
19 the Facility shows that hazardous waste is being stored on site well beyond the 90 day time limit.
20 (*Id.*, ¶¶30, 32.)

21 None of the Defendants has a permit to store hazardous waste for more than 90 days at the
22 Facility and must be enjoined from such illegal storage. Defendants must be required to
23 immediately remove all hazardous waste at the Facility that has been stored for more than 90 days
24 and transport it to an authorized hazardous waste treatment, storage, disposal facility using a
25 registered hazardous waste transporter and hazardous waste manifests. Further, in light of
26 Patigler’s history of disregarding hazardous waste laws, the Court should order this removal be
27 done by a qualified hazardous waste handler paid for by Defendants under the Department’s
28 supervision and in accordance with all hazardous waste laws and regulations.

1 **2. Storage of Hazardous Waste in Uncovered and/or Unsafe Containers**

2 Pursuant to Title 22, section 66265.173, containers used to store hazardous waste at a
3 facility must be closed during storage, except when necessary to add or remove waste. Similarly,
4 Title 22, section 66265.171 requires an owner or operator to store hazardous waste at a facility in
5 containers in safe condition. Continuing their dangerous pattern, Defendants failed to comply
6 with these clear, common sense regulations enacted to protect the public and the environment.

7 For example, on March 20, 2013, the Department discovered that Defendants stored
8 hazardous waste at the Facility in numerous open containers in violation of Title 22, section
9 66265.173. Hazardous waste was stored in the Baker tank, which was open. (Peebler Decl., ¶11,
10 17, 25.) Also, hazardous buffing dust containing copper, lead, nickel, and zinc were stored in
11 open five gallon buckets and open 55 gallon drums at the Facility. (*Id.*, ¶25.) Similarly, the
12 Department discovered that Defendants stored hazardous waste at the Facility in containers which
13 were unsafe in that the containers were rusted, cracked, deteriorated, and/or corroded. (*Id.*, ¶30,
14 32.) When the Department recently inspected the Facility on October 30, 2013, it again observed
15 drums that were stained, discolored, corroded, and rusted. (Pixton Decl. ¶11.) Injunctive relief is
16 necessary to force Defendants to comply with the law.

17 **3. Failure to Label Hazardous Waste Containers**

18 Title 22, section 66262.34(f) requires that each container used at a facility for the
19 accumulation of hazardous waste must be clearly marked with, among other information, the date
20 upon which accumulation of hazardous waste began and the words “Hazardous Waste.”

21 On December 11, 2012, a Department inspector noticed that many of the drums which
22 appeared to contain hazardous waste had no labels of any kind. (Eissa Decl., ¶9.) The inspector
23 questioned Patigler about the contents of some of the containers. (*Id.*) Patigler claimed that they
24 did not contain waste. (*Id.*) When the inspector asked to open the drums for inspection, Patigler
25 admitted that containers actually did contain hazardous waste. (*Id.*) Patigler then hastily placed
26 labels onto these particular drums but did not address any other containers, including the Baker
27 tank, which also did not have a hazardous waste label. (*Id.*)

28 Nearly three months later, the situation had not improved. On March 20, 2013,

1 Department personnel observed that the Baker tank and several drums, totes, and bags containing
2 hazardous waste located throughout the Facility were unlabeled. (Peebler Decl., ¶19-20, 25, 30.)
3 Defendants have been made aware of their duties to adequately label hazardous waste containers
4 and have consistently flouted them. The Court should order immediate compliance.

5 **D. Unlawful Disposal of Hazardous Waste and Failure to Operate in a**
6 **Manner that Minimizes the Risk of the Release of Hazardous Waste**

7 Section 25189.2(c) forbids any person from disposing, or causing the disposal, of hazardous
8 waste at an unauthorized location. Further, pursuant to Title 22, section 66265.31, facilities must
9 be maintained and operated to minimize the possibility of a fire, explosion, or an unplanned
10 sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or
11 surface water which could threaten human health or environment.

12 Defendants disposed of hazardous buffing dust containing copper, lead, nickel, and zinc
13 onto adjacent property. (Peebler Decl., ¶29.) No walls divide the buffing operations from the
14 vacant lot next door. (*Id.*) Only a chain link fence divides the two properties. (*Id.*) Thus, the very
15 design of the buffing area ensures that such illegal disposal of buffing dust will occur again and
16 again without the issuance of injunctive relief by the Court.

17 The Department is entitled to injunctive relief to prevent this illegal disposal of hazardous
18 waste by Defendants. Specifically, all buffing dust generated at the Facility must be immediately
19 captured and properly contained in a closed drum or container labeled in accordance with
20 hazardous waste requirements to prevent any unlawful disposal and to require Defendants to
21 operate in a manner to minimize the release of hazardous waste.

22 **E. Unlawful Management of Hazardous Waste**

23 **1. Failure to Obtain Tank Assessments**

24 Title 22, section 66265.192(a) requires that, before using a hazardous waste tank system
25 or components, a facility shall obtain a written assessment reviewed and certified by an
26 independent, qualified professional engineer, registered in California, attesting that the tank
27 system or components have sufficient structural integrity, are acceptable for the waste handling
28 activity, and are suitably designed. Further, Title 22, section 66265.192(h) requires periodic

1 reassessments of a hazardous waste tank system or components.

2 As a result of the sampling conducted on March 20, 2013, the Department discovered that
3 the polyethylene Baker tank was used to store hazardous waste at the Facility. (Peebler Decl.,
4 ¶11-15.) However, Defendants never obtained a written assessment of the tank as required under
5 section 66265.192(a).⁷ (*Id.*, ¶16.) Thus, Defendants are using a tank for storage of hazardous
6 waste without obtaining the required written assessment and/or reassessments required by Title
7 22, section 66265.192(a) and (h).

8 Section 66265.192(a)'s purpose in requiring written assessments of tanks containing
9 hazardous waste by an independent, qualified professional engineer is straightforward – to
10 prevent the risks associated with storing hazardous wastes in inappropriate tanks, including those
11 lacking secondary containment. The Court should enjoin further violations of section
12 66265.192(a) and order Defendants to properly empty the Baker tank of all hazardous wastes,
13 promptly properly dispose of the hazardous wastes by retaining a qualified independent third
14 party, and not use the tank again without first obtaining a written assessment from an independent
15 qualified professional engineer.

16 **2. Failure to Inspect Hazardous Waste Storage Areas**

17 Pursuant to Title 22, section 66265.174, an owner or operator must inspect areas used for
18 storage of containers of hazardous waste at least weekly to discover leaking containers,
19 deterioration of containers, and corrosion in the containment system.

20 Defendants have completely ignored their inspection duties. Two of the hazardous waste
21 storage areas discovered by the Department at the Facility contained rusted, unlabeled containers
22 of hazardous waste, ranging from five gallon containers to 55-gallon drums, showing years of
23 neglect. (Peebler Decl., ¶18-23, 25-27.) Further, one Conex container was filled with boxes,
24 paper, shelves, and filing cabinets. (*Id.*, ¶30.) When those items were removed from the front,
25 nineteen drums, along with open, spilling bags of unidentified material, were found in the back of
26 the Conex container. (*Id.*) The Department's testing of the contents revealed that some of these

27 ⁷ Indeed, documentation submitted by Patigler to the Contra Costa County Health Service
28 claimed that this tank was only a "rain water holding tank." (*Id.*, ¶11; RJN, Ex. J p. 59.)

1 drums contained hazardous waste. (*Id.*, ¶31-33.) Because the amount of debris blocking access to
2 the hazardous waste storage areas, daily inspections of these hazardous waste storage areas could
3 not have occurred. The Court should order Defendants to properly dispose of the hazardous waste
4 in the storage areas that exceeds the hazardous waste storage limits and comply with their duty to
5 conduct weekly inspections of hazardous waste storage areas.

6 **3. Failure to Maintain Adequate Aisle Space**

7 Title 22, section 66265.35 requires an owner or operator must maintain aisle space
8 adequate to allow the unobstructed movement of personnel, fire protection equipment, spill
9 control equipment, and decontamination equipment.

10 As discussed above, on March 23, 2013, Department personnel discovered drums and
11 bags of hazardous waste contained in the back of a Conex container. (Peebler Decl., ¶30-33.)
12 Access to this hazardous waste was completely blocked by boxes, files, and other assorted
13 materials (*Id.*, ¶30), making unobstructed movement of personnel, fire protection equipment, spill
14 control equipment, and decontamination equipment an impossibility. On October 30, 2013, the
15 Department again observed that there was no aisle space between drums labeled as hazardous
16 waste. (Pixton Decl. ¶11.) The Court should order Defendants to comply with Title 22, section
17 66265.35 and provide access to areas containing hazardous waste so as to allow adequate
18 response in case of an emergency.

19 **F. Failure to Determine whether Waste Is Hazardous Waste**

20 Title 22, sections 66262.11 and 66260.200 (c) require a person who generates a waste to
21 determine whether that waste is hazardous before discarding it. If the generator determines that a
22 waste is not hazardous, the generator may handle that waste as ordinary, non-hazardous waste. On
23 the other hand, if the generator determines that a waste is hazardous, the generator is required to
24 manage that waste in conformity with the HWCL, or else seek a variance (§ 25143) or
25 declassification of the waste by the DTSC. (Tit. 22, § 66260.200 (f).) The generator's
26 determination must be made *before* opting to manage a waste as non-hazardous. Failure to do so
27 will subject the generator of the waste to enforcement based on an incorrect determination or non-
28 determination. (*Id.*)

1 Defendants failed to make the required waste determinations. Facility employees were
2 unable to identify the contents of the Baker tank. (*Id.*, ¶11.) Defendants had previously identified
3 the contents as rainwater. (*Id.*, ¶11; RJN, Ex. J p. 59.) However, after the Department tested the
4 contents of the Baker tank, it was discovered that the contents were hazardous waste. (*Id.*, ¶12-15.)

5 It is axiomatic that before a hazardous waste can be properly managed, the persons charged
6 with handling it must know whether or not it is hazardous waste. Yet the employees at the
7 Facility were unable to identify whether or not the containers at the Facility held hazardous waste.
8 The Department requests injunctive relief requiring Defendants to properly characterize all the
9 waste generated at the Facility and to properly manage the waste if it is hazardous.

10 **III. DANGER TO THE PUBLIC HEALTH AND ENVIRONMENT**

11 Although under the provisions of sections 25181 and 25184, the Department is not required
12 to show irreparable harm in order for the Court to issue a temporary restraining order, the threats
13 to the public health and environment in this case are very significant and further justify the
14 request for a Temporary Restraining Order.

15 As discussed above, the Facility is located in a mixed-use area of Richmond and uses,
16 among other things, cyanide in its operations, which is acutely toxic to humans. Cyanide salts and
17 hydrogen cyanide are used in electroplating as well as some other industrial processes, and
18 hydrogen cyanide has been used in gas-chamber executions. Cyanide has the potential to be
19 transported over long distances from its emission source. Nonlethal exposure to hydrogen cyanide
20 gas produces upper respiratory irritation, cough, heart palpitations, nausea, and vomiting. High
21 inhalation levels result in convulsions, unconsciousness and death. (Peebler Decl. ¶17.) The risk
22 of cyanide release at the Facility is significant. Facility employees deposit rinse solutions, strip
23 solutions, and other wastes into the top of the Baker tank. (Eissa Decl., ¶10; Peebler Decl. ¶15.)
24 It is likely that hydrocyanic gas is being emitted to the atmosphere through the open topped Baker
25 tank at the Facility. The cyanide solution exhibits characteristics of reactivity, meaning it can
26 generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health
27 or the environment. Additionally, if this full, 6900-gallon tank were to fail, rupture, or overflow
28 due to rain or the addition of waste solutions to the full tank, there is no containment which would

1 contain the contents on the property. This cyanide solution would likely pour to the street and put
2 the nearby residents at severe risk due to the potential for release of hydrogen cyanide gas (*Id.*,
3 ¶17)

4 Further, there are nineteen drums contained inside the Conex container in addition to
5 broken, open bags of powders. (*Id.*, ¶30.) The containers are rusted and not adequately labeled.
6 (*Id.*, ¶30-32.) If the cyanides and acids were to leak and mix, there is a significant risk of a release
7 of hydrogen cyanide gas to the neighborhood. (*Id.*, ¶33.)

8 Accordingly, the practices of Defendants at the Facility are a potential disaster. The risk of
9 toxic gas being released into a Richmond neighborhood must be abated through injunctive relief.

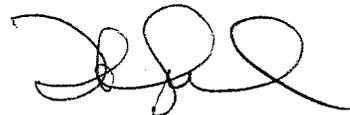
10 CONCLUSION

11 The Department respectfully requests that the Court now issue Temporary Restraining
12 Order requiring Defendants to promptly and properly comply with these important health and
13 safety laws.

14 Dated: November 7, 2013

Respectfully Submitted,

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16 KAMALA D. HARRIS
Attorney General of California

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18 

19 HEIDI SALERNO
20 Deputy Attorney General
Attorneys for Plaintiffs People of the State
of California, ex. rel. Deborah O. Raphael,
21 *Director of the Department of Toxic*
Substances Control

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