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34-2017-00217931

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA ex. rel. Barbara A. Lee, Director of the CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL, Plaintiff, **v.** **CALIFORNIA ELECTRONIC ASSET RECOVERY, a California corporation,** Defendant.	Case No. **COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF** (Health & Saf. Code, Div. 20, Chapter 6.5)

Plaintiff, the People of the State of California *ex rel.* Barbara A. Lee, Director of the California Department of Toxic Substances Control ("DTSC"), alleges as follows:

STATEMENT OF THE CASE

1. Defendant California Electronic Asset Recovery ("CEAR") is a recycler of electronic waste. CEAR operates a facility in Sacramento County at 3678 Le May Street, Mather, California, 95655 ("the Facility"). At the Facility, CEAR operates an indoor treatment machine known as the "MeWa shredder," which is used to shred electronic devices and metal components into small pieces based on cyclone action, and to mechanically sort the processed pieces.

CEAR's hazardous waste operations at the Facility are regulated by DTSC. DTSC alleges that CEAR violated the Hazardous Waste Control Law, Health and Safety Code §§ 25100 et seq. (the "HWCL") and its implementing regulations, Cal. Code Regs, tit. 22, Division 4.5, section 66260.1 et seq. ("Title 22") at the Facility.

2. DTSC seeks civil penalties from, and injunctive relief against, CEAR for its violations of the HWCL and Title 22 in connection with CEAR's hazardous waste management, as that term is defined in Health and Safety Code section 25117.2, at the Facility.

PLAINTIFF

3. DTSC is an agency of the State of California, organized and existing under and pursuant to Health and Safety Code section 58000 et seq. DTSC is authorized to administer and enforce the HWCL and Title 22. (Health & Saf. Code, § 58004.)

4. Barbara A. Lee is the Director of DTSC.

5. Pursuant to Health and Safety Code sections 25181, subdivision (a), and 25182, the Attorney General of the State of California is authorized, at DTSC's request, to commence an action in the name of the People for civil penalties and injunctive relief under the HWCL. DTSC has requested that the Attorney General bring this civil enforcement action.

DEFENDANT

6. CEAR is, and at all times relevant to the allegations set forth in this Complaint was, a California corporation. Its principal place of business is located at 3678 Le May Street, Mather, California, 95655. CEAR is a "person" within the meaning of Health and Safety Code section 25118. When this Complaint refers to any action of CEAR, such allegation shall mean that CEAR committed such acts, or its employees or agents performed or authorized such acts, or failed to adequately advise or properly supervise, control, or direct the CEAR employees or agents in the management, direction, operation, or control of the affairs of CEAR, and that they did so while acting within the course and scope of their employment or agency for CEAR.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to Article VI, Section 10 of the California Constitution, and Health and Safety Code section 25181. Venue in this Court is proper under

Health and Safety Code section 25183. The Facility is located, and the violations of the HWCL alleged in this Complaint occurred, in the county of Sacramento.

STATUTORY AND REGULATORY BACKGROUND

8. In enacting the HWCL, the California legislature created a comprehensive, "cradle-to-grave" statutory framework for the generation, management, treatment, transport, storage, tracking, and disposal of hazardous wastes. The HWCL's implementing regulations, Title 22, promulgated by DTSC, specify requirements for each of these stages in the lifecycle of hazardous waste to protect the public and California's environment from risks posed by improper management of hazardous wastes.

ENFORCEMENT AUTHORITY UNDER THE HWCL

9. The HWCL authorizes the Court to impose civil penalties under two distinct and alternative statutory provisions. For negligent or intentional violations, penalties may be imposed under Section 25189 of the Health and Safety Code. For strict liability violations, penalties may be imposed under Section 25189.2. A person, as that term is defined in Health and Safety Code section 25118, may not be held liable for a civil penalty imposed under section 25189 and for a civil penalty imposed under section 25189.2 for the same act. (Health & Saf. Code, § 25189.2, subd. (f).)

10. Further, pursuant to Health and Safety Code sections 25189, subdivision (b), and 25189.2, subdivision (b), the HWCL authorizes the Court to impose a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of a separate provision of the HWCL and/or Title 22. For continuing violations, the HWCL authorizes the Court to impose a penalty of up to twenty-five thousand dollars ($25,000) for each day that the violation continues. (*Id*.)

11. Health and Safety Code section 25181, subdivision (a), provides that when DTSC determines that any person has engaged in, is engaged in, or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of the HWCL, or any rule, regulation, permit, covenant, standard, requirement, or order issued, promulgated, or executed thereunder, and when requested by DTSC, the Attorney General may apply to the superior court for an order enjoining such acts or practices, or for an order directing compliance. Upon DTSC's

showing that a person has engaged in or is about to engage such acts or practices, the Court may issue a permanent or temporary injunction, a restraining order, or other appropriate order.

12. Health and Safety Code section 25184 provides that in civil actions brought pursuant to the HWCL in which DTSC seeks an injunction or temporary restraining order:

> [I]t shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued; or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without such allegations and without such proof.

DTSC'S INSPECTIONS OF THE FACILITY

13. On or about April 25, 2012, June 12, 2012, August 29, 2013, August 14, 2014, August 27, 2015, and July 21, 2016, DTSC, through its inspectors, conducted regulatory inspections of the Facility (the "Inspections"). DTSC discovered violations of the HWCL and Title 22 during all of the 2012, 2013, and 2014 inspections. Following the 2012, 2013, and 2014 inspections of the Facility, DTSC provided written Summaries of Violations ("SOVs") to CEAR on April 25, 2012, August 29, 2013, September 11, 2013, and August 14, 2014, which identified the violations found during DTSC's Inspections of the Facility. DTSC directed CEAR to cease and correct the violations.

VIOLATIONS OF THE HWCL

FIRST CAUSE OF ACTION
(Intentional Disposal of Hazardous Waste at an Unauthorized Point)
(Health & Saf. Code, § 25203)

14. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

15. Health and Safety Code section 25203 provides that it is unlawful for any person to dispose of a hazardous waste except at a disposal site or facility of an owner or operator who holds a valid hazardous waste facilities permit or other grant of authorization from DTSC to use and operate the site or facility.

16. Health and Safety Code section 25189, subdivision (c), imposes civil penalties against any person for intentionally disposing, or causing the disposal, of a hazardous waste at an unauthorized location.

17. DTSC is informed and believes and thereupon alleges that, at times relevant to this

Complaint, CEAR intentionally disposed of, or caused the disposal of, hazardous waste containing lead, antimony, cadmium, copper, zinc, chromium, and nickel at unauthorized locations.

18. DTSC is informed and believes, based on its review of shipping papers CEAR provided to DTSC, that CEAR caused the disposal of hazardous waste to an unauthorized point by shipping to Japan, on five separate occasions in 2011 and 2012, 46 containers of baghouse dust and cyclone output ("baghouse waste"), a hazardous waste, generated from the MeWa shredder. CEAR shipped this hazardous waste, which it improperly labeled "Excluded Recyclable Material" ("ERM"), to a middleman who sold and/or transported the hazardous baghouse waste elsewhere in Japan.

19. DTSC tested baghouse waste generated by the MeWa shredder at the Facility. This baghouse waste tested hazardous for lead, antimony, cadmium, copper, and zinc, and also contained mercury.

20. In addition, during the 2012 Inspection of the Facility, DTSC inspectors observed half a sack of treated (i.e., cut-up) solar panel pieces in a porous woven bag. The treated solar panel pieces tested hazardous for chromium, copper, and nickel.

21. DTSC is informed and believes, based on its review of shipping papers that CEAR provided to DTSC, that CEAR also caused the disposal of hazardous waste to an unauthorized point by exporting solar panels and large panel pieces, a hazardous waste, to Japan on April 23, 2012.

22. On April 25 and June 12, 2012, and prior thereto, CEAR unlawfully disposed, or caused the disposal, of floor sweep containing hazardous baghouse waste from the MeWa shredder to a municipal waste landfill that was not authorized to receive hazardous waste. At times relevant to this action, at the end of each work shift, CEAR employees swept the floor near the MeWa shredder and disposed of the floor sweep, which included hazardous baghouse waste from the MeWa shredder, into trash containers, the contents of which were destined for a municipal waste landfill not authorized to receive hazardous waste.

23. Pursuant to Health and Safety Code section 25189, subdivision (c), DTSC is entitled

to penalties of at least $1,000 for each intentional disposal and up to $25,000 for each intentional disposal of hazardous waste at an unauthorized point.

24. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

SECOND CAUSE OF ACTION
(Negligent Disposal of Hazardous Waste at an Unauthorized Point)
(Health & Saf. Code, § 25203)

25. DTSC realleges Paragraphs 1 through 13, 15, and 18 through 22, inclusive, as if fully set forth herein.

26. Health and Safety Code section 25189, subdivision (d), imposes civil penalties against any person who negligently disposes or causes the disposal of hazardous waste at an unauthorized location.

27. DTSC is informed and believes, and thereupon alleges, that at times relevant to this Complaint, CEAR negligently disposed of, or caused the disposal of, hazardous waste containing lead, antimony, cadmium, copper, zinc, chromium, and nickel at unauthorized locations.

28. Pursuant to Health and Safety Code section 25189, subdivision (d), DTSC is entitled to penalties of up to $25,000 for each negligent disposal of hazardous waste at an unauthorized point.

29. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

THIRD CAUSE OF ACTION
(Illegal Disposal of Hazardous Waste at an Unauthorized Point – Strict Liability)
(Health & Saf. Code, § 25203)

30. DTSC realleges Paragraphs 1 through 13, 15, and 18 through 22, inclusive, as if fully set forth herein.

31. Health and Safety Code section 25189.2, subdivision (c), provides in relevant part

that a person who disposes or causes the disposal of hazardous waste at an unauthorized point is subject to civil penalties of up to $25,000 per day.

32. DTSC is informed and believes, and thereupon alleges, that at times relevant to this Complaint, CEAR unlawfully disposed of, or caused the unlawful disposal of, hazardous waste containing lead, antimony, cadmium, copper, zinc, chromium, and nickel.

33. Pursuant to Health and Safety Code section 25189.2, subdivision (c), DTSC is entitled to penalties of up to $25,000 for each disposal of hazardous waste at an unauthorized point.

34. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

FOURTH CAUSE OF ACTION
(Intentional Illegal Treatment of Hazardous Waste)
(Health & Saf. Code, § 25201, subd. (a); Cal. Code Regs., tit. 22, § 66273.75, subdivision (a)(2))

35. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

36. Health and Safety Code section 25201, subdivision (a), prohibits an owner and/or operator of a facility from treating hazardous waste at the facility without a hazardous waste facility permit or other grant of authorization from DTSC. Health and Safety Code section 25123.5 defines treatment of a hazardous waste to include any method, technique, or process which is designed to change the physical, chemical, or biological character or composition of the hazardous waste, or which removes or reduces its harmful properties or characteristics for any purpose.

37. California Code of Regulations, title 22, section 66273.75, subdivision (a)(2), requires that universal waste handlers who treat electronic devices, residual printed circuit boards, and/or cathode ray tubes shall ensure that all mercury-containing lamps, PCB capacitors, and other components containing fluids that would be identified as hazardous wastes be removed prior to undergoing treatment methods (e.g., cutting, sawing, breaking, shredding, crushing, grinding, screening, sieving, acceleration, or compacting) that may release the fluids.

38. Health and Safety Code section 25189, subdivision (e), imposes civil penalties

against any person who intentionally treats, or causes the treatment of, hazardous waste at an unauthorized location.

39. DTSC is informed and believes, and thereupon alleges, that on or before August 26, 2011, through August 16, 2012, and continuing until sometime in November 2012, when CEAR shut down the MeWa shredder, CEAR intentionally treated hazardous baghouse waste generated during the shredding process at the Facility, without a permit or other grant of authorization from DTSC, by using rotary magnets, a secondary nonferrous metals removal system, and a shaker to physically separate the components of the shredder output, in violation of Health and Safety Code section 25189, subdivision (e).

40. DTSC is informed and believes, and thereupon alleges, that on April 25 and June 12, 2012, and prior thereto, CEAR intentionally failed to ensure that mercury-containing lamps and components containing fluids identified as hazardous waste were removed prior to their treatment in the MeWa shredder at the Facility, in violation of California Code of Regulations, Title 22, section 66273.75, subdivision (a)(2). Mercury was detected in DTSC's samples collected from floor sweep, a bin under the MeWa shredder with e-waste residuals, and a sack stored with e-waste residuals ready to be shipped to Japan. Samples collected by CEAR after the April 25, 2012 inspection showed that mercury was detected on an aisle in front of the air compressor, in bunkers holding material to be processed in the MeWa shredder, and in the MeWa shredder.

41. In addition, DTSC is informed and believes, and thereupon alleges, that on or before June 12, 2012, CEAR violated Health and Safety Code section 25201, subdivision (a), in that the Facility intentionally treated hazardous waste solar panels without a permit or grant of authorization from DTSC by cutting them into small pieces in the MeWa shredder at the Facility. During the inspection on June 12, 2012, DTSC inspectors observed half a sack of treated solar panel pieces in a porous woven bag. Sample results of the solar panel pieces showed that the pieces were toxic for chromium, copper, and nickel.

42. Pursuant to Health and Safety Code section 25189, subdivision (e), DTSC is entitled to penalties of up to $25,000 for each violation.

43. DTSC is further entitled to injunctive relief to abate existing violations and prevent

future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

FIFTH CAUSE OF ACTION
(Negligent Illegal Treatment of Hazardous Waste)
(Health & Saf. Code, § 25201, subd. (a); Cal. Code Regs., tit. 22, § 66273.75, subdivision (a)(2))

44. DTSC realleges Paragraphs 1 through 13, inclusive, and Paragraphs 36 and 37, as if fully set forth herein.

45. Health and Safety Code section 25189, subdivision (e), imposes civil penalties against any person who negligently treats, or causes the treatment of, hazardous waste at an unauthorized location.

46. DTSC is informed and believes, and thereupon alleges, that on or before August 26, 2011, through August 16, 2012, and continuing until sometime in November 2012, when CEAR shut down the MeWa shredder, CEAR negligently treated hazardous baghouse waste generated during the shredding process at the Facility, without a permit or other grant of authorization from DTSC, by using rotary magnets, a secondary nonferrous metals removal system, and a shaker to physically separate the components of the shredder output, in violation of Health and Safety Code section 25189, subdivision (e).

47. In addition, DTSC is informed and believes, and thereupon alleges, that on April 25 and June 12, 2012, and prior thereto, CEAR negligently failed to ensure that mercury-containing lamps and components containing fluids identified as hazardous waste were removed prior to their treatment in the MeWa shredder at the Facility, in violation of California Code of Regulations, Title 22, section 66273.75, subdivision (a)(2). Mercury was detected in DTSC's samples collected from floor sweep, a bin under the MeWa shredder with e-waste residuals, and a sack stored with e-waste residuals ready to be shipped to Japan. Samples collected by CEAR after the April 25, 2012 inspection showed that mercury was detected on an aisle in front of the air compressor, in bunkers holding material to be processed in the MeWa shredder, and in the MeWa shredder.

48. DTSC is informed and believes, and thereupon alleges, that on or before June 12, 2012, CEAR violated Health and Safety Code section 25201, subdivision (a), in that the Facility

negligently treated hazardous waste solar panels without a permit or other grant of authorization from DTSC by cutting them into small pieces in the MeWa shredder at the Facility. During the Inspection on June 12, 2012, DTSC inspectors observed half a sack of treated solar panel pieces in a porous woven bag. Sample results of the solar panel pieces showed that the pieces were toxic for chromium, copper, and nickel.

49. Pursuant to Health and Safety Code section 25189, subdivision (e), DTSC is entitled to penalties of up to $25,000 for each violation.

50. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

SIXTH CAUSE OF ACTION
(Illegal Treatment of Hazardous Waste – Strict Liability)
(Cal. Code Regs., tit. 22, § 66273.75, subdivision (a)(2))

51. DTSC realleges Paragraphs 1 through 13, inclusive, and Paragraphs 36 and 37, as if fully set forth herein.

52. Health and Safety Code section 25189.2, subdivision (d), prohibits any treatment of hazardous waste at an unauthorized point.

53. On or before August 26, 2011 through August 16, 2012, and continuing until sometime in November 2012, when CEAR shut down the MeWa shredder, CEAR treated hazardous waste generated during the shredding process at the Facility, without a permit or other grant of authorization from DTSC, by using rotary magnets, a secondary nonferrous metals removal system, and a shaker to physically separate the components of the shredder output, in violation of Health and Safety Code section 25189.2, subdivision (d).

54. On April 25 and June 12, 2012, and prior thereto, CEAR failed to ensure that mercury-containing lamps and components containing fluids identified as hazardous waste were removed prior to their treatment in the MeWa shredder at the Facility, in violation of Health and Safety Code sections 25201, subdivision (a), and Code of California Regulations, Title 22, section 66273.75, subdivision (a)(2). Mercury was detected in DTSC's samples collected from floor sweep, a bin under the MeWa shredder with e-waste residuals, and a sack stored with e-waste

residuals ready to be shipped to Japan. Samples collected by CEAR after the April 25, 2012 inspection showed that mercury was detected on an aisle in front of the air compressor, in bunkers holding material to be processed in the MeWa shredder, and in the MeWa shredder.

55. On or before June 12, 2012, CEAR violated Health and Safety Code section 25189.2, subdivision (d), and Health and Safety Code section 25201, subdivision (a), in that the Facility unlawfully treated hazardous waste solar panels without a permit or other grant of authorization from DTSC by cutting them into small pieces in the MeWa shredder at the Facility. During the inspection on June 12, 2012, DTSC inspectors observed half a sack of treated solar panel pieces in a porous woven bag. Sample results of the solar panel pieces showed that the pieces were toxic for chromium, copper, and nickel.

56. Pursuant to Health and Safety Code section 25189.2, subdivision (d), DTSC is entitled to penalties of up to $25,000 for each violation.

57. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

SEVENTH CAUSE OF ACTION

(Intentional Illegal Storage of Hazardous Waste)
(Health & Saf. Code, § 25201, subd. (a); Cal. Code Regs., tit. 22, § 66262.34)

58. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

59. Health and Safety Code section 25201, subdivision (a), prohibits an owner and/or operator of a facility from storing hazardous waste at a facility without a hazardous waste facility permit or other grant of authorization from DTSC. California Code of Regulations, title 22, section 66262.34, allows a generator that generates 1,000 kilograms or more of hazardous waste per month to accumulate hazardous waste on site for 90 days or less without a permit or other grant of authorization from DTSC only if it complies with certain requirements, including, but not limited to, placing the hazardous waste in proper containers or tanks and properly assessing and labeling the containers or tanks in accordance with Title 22 requirements. (See Cal. Code Regs., tit. 22, §§ 66262.34, subd. (a), and 66262.34, subd. (f).) For generators of more than 100

kilograms of hazardous waste per calendar month or one kilogram of acutely or extremely hazardous waste per calendar month, the 90-day period begins on the first date on which any amount of hazardous waste begins to accumulate during that month. (Cal. Code Regs., tit. 22, §§ 66262.34, subd. (b)(2).) If the generator fails to meet all the requirements for the 90-day accumulation period, it is not authorized to accumulate any hazardous waste at all.

60. Health and Safety Code section 25189, subdivision (e), prohibits intentional storage of hazardous waste at an unauthorized point.

61. DTSC is informed and believes, and thereupon alleges, that on or before August 29, 2013, CEAR intentionally stored hazardous waste at the Facility (a 55-gallon drum of floor sweep, a 55-gallon drum of MeWa shredder dust, and one Gaylord box of lead waste) for greater than 90 days without a permit or other grant of authorization from DTSC, in violation of Health and Safety Code section 25201, subdivision (a), and California Code of Regulations, title 22, section 66262.34.

62. The intentional storage of hazardous waste by CEAR for more than 90 days without a permit or other grant of authorization from DTSC violated Health and Safety Code sections 25201, subdivision (a), and 25189, subdivision (e), and Cal. Code Regs., tit. 22, section 66262.34.

63. Pursuant to Health and Safety Code section 25189, subdivision (e), DTSC is entitled to penalties of up to $25,000 for each violation.

64. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

EIGHTH CAUSE OF ACTION

(Negligent Illegal Storage of Hazardous Waste)

(Health & Saf. Code, § 25201, subd. (a); Cal. Code Regs., tit. 22, § 66262.34)

65. DTSC realleges Paragraphs 1 through 13, inclusive, and Paragraph 59, as if fully set forth herein.

66. Health and Safety Code section 25189, subdivision (e), prohibits negligent storage of hazardous waste at an unauthorized point.

67. DTSC is informed and believes, and thereupon alleges, that on or before August 29, 2013, CEAR negligently stored hazardous waste at the Facility (a 55-gallon drum of floor sweep, a 55-gallon drum of MeWa shredder dust, and one Gaylord box of lead waste) for greater than 90 days without a permit or other grant of authorization from DTSC, in violation of Health and Safety Code section 25201, subdivision (a), and California Code of Regulations, title 22, section 66262.34.

68. The negligent storage of hazardous waste by CEAR for more than 90 days without a permit or other grant of authorization from DTSC violated Health and Safety Code sections 25201, subdivision (a), and 25189, subdivision (e), and Cal. Code Regs., tit. 22, section 66262.34.

69. Pursuant to Health and Safety Code section 25189, subdivision (e), DTSC is entitled to penalties of up to $25,000 for each violation.

70. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

NINTH CAUSE OF ACTION

(Illegal Storage of Hazardous Waste – Strict Liability)
(Health & Saf. Code, §§ 25201, subd. (a); Cal. Code Regs., tit. 22, § 66262.34)

71. DTSC realleges Paragraphs 1 through 13, inclusive, and Paragraph 59, as if fully set forth herein.

72. Health and Safety Code section 25189.2, subdivision (d), prohibits any storage of hazardous waste at an unauthorized point.

73. On or before August 29, 2013, CEAR stored hazardous waste at the Facility (a 55-gallon drum of floor sweep, a 55-gallon drum of MeWa shredder dust, and one Gaylord box of lead waste) for greater than 90 days without a permit or other grant of authorization from DTSC, in violation of Health and Safety Code section 25201, subdivision (a), and California Code of Regulations, title 22, section 66262.34.

74. The storage of hazardous waste by CEAR for more than 90 days at the Facility without a permit or other grant of authorization from DTSC violated Health and Safety Code

sections 25201, subdivision (a), and 25189.2, subdivision (d).

75. Pursuant to Health and Safety Code section 25189.2, subdivisions (b) and (d), DTSC is entitled to penalties against CEAR of up to $25,000 for each day the unlawful storage of hazardous waste occurred and continued.

76. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

TENTH CAUSE OF ACTION
(Illegal Transportation of Hazardous Waste)
(Health & Saf. Code, § 25163, subd. (a)(1))

77. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

78. Health and Safety Code section 25163, subdivision (a)(1), prohibits any person from transferring custody of hazardous waste to a transporter that does not have a valid hazardous waste transporter registration issued by DTSC.

79. On six separate occasions in 2011 and 2012, CEAR transferred five shipments of baghouse waste and one shipment of solar panels and solar panel pieces, all of which were hazardous wastes, to unregistered transporters, thereby violating Health and Safety Code section 25163, subdivision (a)(1). DTSC tested the baghouse waste generated by the MeWa shredder at the Facility. This baghouse waste tested hazardous for lead, antimony, cadmium, copper, and zinc, and also contained mercury. DTSC tested the solar panel pieces and found that they contained hazardous levels of chromium, copper, and nickel.

80. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to penalties of up to $25,000 for each violation.

81. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

ELEVENTH CAUSE OF ACTION

(Failure to Make Hazardous Waste Determination)
(Cal. Code Regs., tit. 22, §§ 66260.200, subd. (c), and 66262.11)

DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

82. 66262.11, require a generator of waste to determine whether the waste it generated must be managed as hazardous under the HWCL.

83. On April 25, 2012, CEAR told DTSC inspectors that the dust found around the MeWa shredder and the floor sweep was disposed of in trash containers at the Facility. The contents of the trash containers were destined for disposal at a municipal landfill. CEAR failed to determine whether the dust around the MeWa shredder and the floor sweep, which contained hazardous baghouse waste, met the classification requirements for hazardous waste before disposing of it to a municipal landfill, in violation of California Code of Regulations, title 22, sections 66260.200, subdivision (c), and 66262.11.

84. During the April 25, 2012 inspection of the Facility, DTSC inspectors observed half a sack of treated (i.e., cut-up) solar panel pieces in a porous woven bag. The treated solar panel pieces tested hazardous for chromium, copper, and nickel. Yet on April 23, 2012, CEAR failed to make a determination whether the solar panels and large panel pieces it shipped to Japan were hazardous waste, in violation of California Code of Regulations, title 22, sections 66260.200, subdivision (c), and 66262.11.

85. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to up to $25,000 in penalties for each violation.

86. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

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TWELFTH CAUSE OF ACTION

(Failure to Use Hazardous Waste Manifests)
(Cal. Code Regs., tit. 22, § 66262.23, subd. (a))

87. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

88. California Code of Regulations, title 22, section 66262.23, subdivision (a), requires hazardous waste generators shipping hazardous waste to complete a hazardous waste manifest that provides details about the shipment, including the generator, the transporter, the receiving facility, and the composition and state of the waste.

89. CEAR failed to complete hazardous waste manifests for one shipment of solar panels and five shipments of baghouse dust and cyclone output generated from the MeWa shredder, and shipped this material to Japan on April 23, 2012, and on May 24, 2011, July 5, 2011, September 6, 2011, November 22, 2011, and May 11, 2012, respectively, without such hazardous waste manifests, in violation of California Code of Regulations, title 22, section 66262.23, subdivision (a).

90. The baghouse waste generated by the MeWa shredder tested hazardous for lead, antimony, cadmium, copper, and zinc, and contained mercury. The baghouse waste does not qualify as ERM, and CEAR was required to manage the baghouse waste as hazardous waste.

91. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to up to $25,000 in penalties for each violation.

92. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

THIRTEENTH CAUSE OF ACTION

(Failure to Label Hazardous Waste Storage Containers)
(Cal. Code Regs., tit. 22, § 66262.34, subds. (d) & (e))

93. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

94. California Code of Regulations, title 22, section 66262.34, subdivision (f) requires

hazardous waste generators to label any containers in which hazardous waste is accumulated at a facility with certain details about the hazardous waste contained therein, including the type of waste, its hazardous characteristics, and the date accumulation began in the container.

95. On or before August 14, 2014, CEAR failed to label seven containers of universal waste batteries and failed to properly label multiple boxes and pallets of its universal waste electronic devices and CRTs, in violation of California Code of Regulations, title 22, section 66273.34, subdivisions (d) and (e).

96. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to up to $25,000 in penalties for each violation.

97. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

FOURTEENTH CAUSE OF ACTION

(Failure to Maintain and Operate the Facility in a Manner to Minimize the Possibility of a Release)
(Cal. Code Regs., tit. 22, §§ 66273.75, subds. (a)(3) & (b)(2))

98. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

99. California Code of Regulations, title 22, section 66273.75, subdivisions (a)(3) and (b)(2), require hazardous waste facilities to be maintained and operated in a manner that minimizes the possibility of the release of hazardous waste or hazardous waste constituents into the air, soil, or surface water.

100. On or before April 25, 2012, and continuing until sometime in November 2012, when CEAR shut down the MeWa shredder, CEAR violated California Code of Regulations, title 22, section 66273.75, subdivisions (a)(3) and (b)(2), in that it failed to minimize the potential release of hazardous waste or hazardous waste constituents at or from the Facility by, *inter alia*, operating the MeWa shredder at the Facility without adequately containing hazardous e-waste dust emitted by the shredder. The MeWa shredder was leaky, and dispersed e-waste dust onto the

floor and other surfaces of the Facility continuously over its 11 ½ daily hours of operation.

101. Floor sweep collected inside the Facility by DTSC, and later by CEAR, tested hazardous for mercury.

102. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to up to $25,000 in penalties for each violation.

103. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

FIFTEENTH CAUSE OF ACTION

(Failure to Use Compatible Waste Containers)
(Cal. Code Regs., tit. 22, § 66265.172)

104. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

105. California Code of Regulations, title 22, section 66265.172, requires an owner or operator of a hazardous waste transfer, treatment, storage, or disposal facility to use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be transferred or stored, so that the ability of the container to contain the waste is not impaired.

106. On April 25 and June 12, 2012, and prior thereto, CEAR used unfit containers to store hazardous waste. CEAR used woven bags, that leaked, to store and to ship e-waste residuals and hazardous waste, i.e., solar panel pieces and fine metal powders less than 100 microns in size. CEAR shipped the hazardous waste in the woven bags to Japan. DTSC's samples collected from three different bags show that this hazardous waste contained hazardous levels of chromium, copper, lead, and nickel.

107. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to up to $25,000 in penalties for each violation.

108. DTSC is further entitled to injunctive relief to abate existing violations and prevent

future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

SIXTEENTH CAUSE OF ACTION

(Failure to Contain Universal Waste Lamps in a Closed, Structurally Sound, and Compatible Container Showing No Evidence of Leaks or Damage)
(Cal. Code Regs., tit. 22, § 66273.33, subdivision (b)(1))

109. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

110. California Code of Regulations, title 22, section 66273.33, subdivision (b), requires a universal waste handler to manage lamps in a manner that prevents releases of any universal waste or component of a universal waste to the environment. California Code of Regulations, title 22, section 66273.33, subdivision (b)(1), provides that a universal waste handler must contain any lamp in a container or package that is structurally sound, adequate to prevent breakage, and compatible with the contents of the lamp, with such a container or package to remain closed and lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

111. On or before August 14, 2014, CEAR failed to contain universal waste lamps (including broken lamps) in a closed, structurally sound, and compatible container that does not show evidence of leaks or damage, in violation of California Code of Regulations, title 22, section 66273.33, subdivision (b)(1). CEAR accumulated universal waste lamps removed from electronic devices in a satellite accumulation area, from which lamps were transferred to the hazardous waste storage area at the Facility. During the 2014 Inspection, DTSC observed an open container into which universal waste lamps, some of them broken, had been placed. The open container was stored in CEAR's satellite accumulation area.

112. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to up to $25,000 in penalties of up to $25,000 for each violation.

113. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety

Code section 25181, subdivision (a).

SEVENTEENTH CAUSE OF ACTION

(Failure to Contain Electronic Devices and Waste Batteries to Prevent Breakage and Releases to the Environment)
(Cal. Code Regs., tit. 22, § 66273.33.5, subds. (a)(1)(B)(1) & (2))

114. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

115. California Code of Regulations, title 22, section 66273.33.5, subd. (a)(1)(B), requires universal waste handlers to manage electronic devices in a manner that prevents releases of any universal waste or component of a universal waste to the environment under reasonably foreseeable conditions. California Code of Regulations, title 22, section 66273.33.5, subd. (a)(1)(B)(1), requires universal waste handlers to contain any electronic device in a manner that prevents breakage and release of components to the environment. If a container is used, such a container shall prevent leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. California Code of Regulations, title 22, section 66273.33.5, subd. (a)(1)(B)(2), provides that a universal waste handler shall immediately clean up and place in a container any electronic device that is accidentally or unintentionally broken and may be expected to cause a release of hazardous constituents to the environment under reasonably foreseeable conditions. The container shall be structurally sound, compatible with the contents of the electronic devices, and shall prevent releases of components to the environment under reasonably foreseeable conditions.

116. On or before April 25, 2012, and continuing until June 12, 2012, CEAR violated California Code of Regulations, title 22, section 66273.33.5, subds. (a)(1)(B)(1) and (2), in that it failed to clean up and place in a container spilled residual printed circuit boards and electronic devices that might reasonably be expected to cause a release to the environment under reasonably foreseeable conditions. CEAR employees stored broken e-waste on the floor, next to a walkway for employees and visitors, before loading it into the MeWa shredder. The forklift operator at the Facility and other employees periodically stepped into the pile of dust and pieces of electronic waste that were on the floor. The Facility did not have storage containers to hold electronic devices that were further processed by the MeWa shredder.

117. Floor sweep samples taken by DTSC showed that the e-waste stored on the floor contained hazardous levels of lead, chromium, nickel, barium, copper, and mercury.

118. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to up to $25,000 in penalties for each violation.

119. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

EIGHTEENTH CAUSE OF ACTION

(Failure to Dismantle Electronic Devices Over, on, or in a Containment Device Sufficient in Size to Contain any Residuals Released)
(Cal. Code Regs., tit. 22, §§ 66273.72, subd. (c)(2)(D)(1))

120. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

121. California Code of Regulations, title 22, section 66273.72, subdivision (c)(2)(D)(1), requires a universal waste handler to dismantle electronic devices and/or remove yokes from cathode ray tubes over, on, or in, a containment device sufficient in size and construction to contain any universal waste and/or component of such waste that may be released to the environment under reasonably foreseeable conditions.

122. On or before August 14, 2014, CEAR failed to dismantle electronic devices over, or, or in a containment device sufficient in size to contain any or all residuals that may be released. DTSC observed during the 2014 Inspection of the Facility that the satellite accumulation area in which CEAR disassembled electronic devices and containerized residuals did not have a containment device large enough to contain the disassembly operation, in violation of California Code of Regulations, title 22, section 66273.72, subdivision (c)(2)(D)(1).

123. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to up to $25,000 in penalties for each violation.

124. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety

Code section 25181, subdivision (a).

NINETEENTH CAUSE OF ACTION

(Failure to Update and Appropriately Complete CEAR's Closure Plan)
(Cal. Code Regs., tit. 22, §§ 66273.76, subds. (a)(1)(C), (a)(2)(A), & (b)(1))

125. DTSC realleges Paragraphs 1 through 13, inclusive, as if fully set forth herein.

126. California Code of Regulations, title 22, section 66273.76, subdivision (a)(1)(C), requires a universal waste handler to prepare and submit a closure plan containing, *inter alia*, an estimated maximum inventory of universal wastes and universal waste treatment residuals ever to be present onsite, and a detailed description of the boundaries of the universal waste accumulation area(s), universal waste treatment unit(s), and treatment-residual storage area(s).

127. California Code of Regulations, title 22, section 66273.76, subdivision (a)(2)(A), requires a universal waste handler to modify its required closure plan whenever there is a change in the type of treatment activity or an increase in facility capacity greater than 10 percent.

128. California Code of Regulations, title 22, section 66273.76, subdivision (b)(1), requires a universal waste handler to prepare and submit a cost estimate for closure that specifies, *inter alia*, the estimated cost of closing a universal waste treatment facility, including the respective costs of universal-waste inventory disposition, equipment decontamination or removal, laboratory testing, and other relevant costs.

129. On or about January 30, 2013, and continuing until September 11, 2013, CEAR failed to include all hazardous waste generated at the Facility in its closure plan's maximum inventory estimates, in violation of California Code of Regulations, title 22, sections 66273.76, subd. (a)(1)(C). CEAR's maximum inventory estimates did not account for plasma screens and floor sweep that were manifested offsite as hazardous waste.

130. On or about January 30, 2013, and continuing until September 11, 2013, CEAR failed to modify its closure plan after a 10 percent increase in the Facility's treatment capacity had occurred, in violation of California Code of Regulations, title 22, section 66273.76, subdivision (a)(2)(A). CEAR's then-existing closure plan allowed for up to 3.6 million pounds of electronic devices to be treated on site annually, while in 2012, CEAR treated 10.4 million pounds of

electronic devices at the Facility.

131. On or about January 30, 2013, and continuing until September 11, 2013, CEAR failed to include all costs for universal waste and hazardous waste disposition, equipment decontamination or removal, laboratory testing, and other relevant costs in its closure plan for the Facility, in violation of California Code of Regulations, title 22, section 66273.76, subdivision (b)(1). CEAR's then-current closure plan did not account for the costs of structural sampling and equipment decontamination for its newly-installed MeWa shredder.

132. Pursuant to Health and Safety Code section 25189, subdivision (b), or alternatively Health and Safety Code section 25189.2, subdivision (b), DTSC is entitled to up to $25,000 in penalties for each violation, and for each day the violation continued.

133. DTSC is further entitled to injunctive relief to abate existing violations and prevent future violations of the HWCL and its implementing regulations, pursuant to Health and Safety Code section 25181, subdivision (a).

PRAYER FOR RELIEF

DTSC requests that the Court grant the following relief:

1. Enter judgment that CEAR violated the HWCL and its implementing regulations, as alleged in the First through Nineteenth Causes of Action;

2. Enter judgment that CEAR is liable for civil penalties for those violations, as set forth in Health and Safety Code section 25189 or 25189.2, according to proof;

3. Enter temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders requiring CEAR to comply with the HWCL and Title 22;

4. Grant DTSC its costs of suit herein against CEAR; and

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

Dated: August 23, 2017

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General

Original signed by Laura J. Zuckerman

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