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ex rel. Barbara A. Lee, Director of the California
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.*
Barbara A. Lee, Director of the California
Department of Toxic Substances Control

Plaintiffs,

v.

MANTREX INC. DBA WIT SALES AND
REFINING,

Defendant.

Case No. RG18904291

AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF

(Health and Safety Code §§ 25100 et seq.)

By Fax

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

3 **PRELIMINARY STATEMENT**

4 1. Plaintiffs bring this action to address violations of the California Hazardous Waste
5 Control Law, chapter 6.5 of division 20 of the Health and Safety Code ("HWCL") sections 25100
6 *et seq.*, and its implementing regulations, California Code of Regulations, title 22, division 4.5,
7 section 66260.1 *et seq.* ("Title 22"). The HWCL and its implementing regulations establish
8 comprehensive "cradle to grave" standards for the generation, storage, transportation, treatment,
9 and disposal of hazardous waste in California.

10 2. Plaintiffs seek injunctive relief and civil penalties against the defendant pursuant to
11 sections 25181, 25184, 25189 and 25189.2 of the Health and Safety Code for violations of the
12 HWCL.

13 **PLAINTIFFS**

14 3. The Department is a state agency organized and existing pursuant to sections 58000
15 *et seq.* of the Health and Safety Code. The Department is the state agency responsible for
16 administering and enforcing the provisions of the HWCL and Title 22.

17 4. Barbara A. Lee is the Director of the Department.

18 5. Pursuant to Sections 25181, subdivision (a), and 25182 of the Health and Safety
19 Code, the Attorney General of the State of California is authorized, at the request of the
20 Department, to commence an action for civil penalties and injunctive relief under the HWCL in
21 the name of the People of the State of California. The Department has made such a request to the
22 Attorney General to apply to this Court for injunctive relief and civil penalties for violations of
23 the HWCL and Title 22 by defendant pursuant to Health and Safety Code sections 25181, 25184,
24 25189, and 25189.2.

25 **DEFENDANT**

26 6. Defendant Mantrex Inc., dba WIT Sales and Refining ("WIT"), is a corporation
27 organized and existing under the laws of the State of California, and is authorized to conduct
28 business in the State of California. WIT owns and operates a facility, located at 538 Phelan

1 Avenue, San Jose, California ("Facility"), where WIT reclaims precious metals from offsite
2 generated wastes and non-hazardous scrap circuit boards that results in the generation, storage
3 and treatment of hazardous waste at the Facility. WIT is a "person," as that term is defined by
4 Health and Safety Code section 25118. WIT is also a "generator," and an "owner or operator" as
5 those terms are defined by California Code of Regulations, title 22, section 66260.10.

6 7. When reference is made in this Complaint to any act or omission of WIT, such
7 allegations shall include the acts and omissions of owners, officers, directors, agents, employees,
8 contractors, affiliates, and/or representatives of WIT while acting within the course and scope of
9 their employment or agency on behalf of WIT during the relevant time periods.

10 **JURISDICTION AND VENUE**

11 8. The Superior Court has jurisdiction pursuant to Article VI, Section 10 of the
12 California Constitution and Health and Safety Code section 25181.

13 9. Venue is proper in this Court pursuant to Health and Safety Code section 25183,
14 because Alameda County is the county in which the Attorney General has an office nearest to
15 Santa Clara County in which WIT's principal office is located.

16 10. This Complaint has been filed within five years of the Plaintiffs discovering the
17 HWCL and Title 22 violations alleged herein.

18 **HWCL STATUTORY AND REGULATORY BACKGROUND**

19 11. The State of California has enacted a comprehensive statutory and regulatory
20 framework for the generation, handling, treatment, transport and disposal of hazardous wastes.
21 The framework contained in the HWCL Title 22 mandates a "cradle to grave" registration,
22 tracking, storage, treatment, and disposal system for the protection of the public from the risks
23 posed by hazardous wastes. Except where otherwise expressly defined in this Complaint, all
24 terms shall be interpreted consistent with the HWCL and Title 22.

25 12. Pursuant to Health and Safety Code sections 25101, subdivision (d), and 25159
26 through 25159.9, California administers the HWCL in lieu of federal administration of the federal
27 Resource Conservation and Recovery Act ("RCRA"), which is codified at 42 United States Code
28 sections 6901 *et seq.* Federal law prohibits California from imposing any requirements less

1 stringent than those authorized under RCRA. (42 U.S.C. § 6929.) The HWCL has stricter
2 requirements for regulating hazardous waste than RCRA.

3 13. The HWCL charges the Department with the responsibility to adopt standards and
4 regulations for the management of hazardous waste to protect the public health and environment.
5 (Health & Saf. Code, § 25150.) Accordingly, the Department has promulgated regulations setting
6 forth numerous and extensive environmental- and health-protective requirements for the day-to-
7 day operations of hazardous waste generators and transporters, as well as owners and operators of
8 hazardous waste facilities. (See Cal. Code. Regs., tit. 22, § 66262.10 *et seq.*)

9 14. Health and Safety Code section 25201, subdivision (a), provides that an owner or
10 operator of a hazardous waste management facility may not “accept, treat, store, or dispose of a
11 hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste
12 facilities permit or other grant of authorization from the department to use and operate the
13 facility, area, or site”

14 15. Health and Safety Code section 25200, subdivision (1), authorizes the Department to
15 issue operating permits, called hazardous waste facilities permits, to the owners and operators of
16 facilities managing hazardous wastes.

17 16. The HWCL and its implementing regulations require that the owner and operator of a
18 hazardous waste facility comply with the provisions of the facility’s hazardous waste
19 management permit.

20 a. Health and Safety code section 25202, subdivision (1) requires the owner or
21 operator of a hazardous waste facility who holds a hazardous waste facilities permit to “comply
22 with the conditions of [that] permit.”

23 b. California Code of Regulations, title 22, section 66270.30, subdivision (a)
24 requires that the “permittee comply with the conditions of the permit” and specifies that any
25 ‘noncompliance...constitutes a violation of the [HWCL] and is grounds for’ enforcement.

26 **ENFORCEMENT AUTHORITY UNDER THE HWCL**

27 17. The HWCL authorizes the Court to impose civil penalties under two distinct and
28 alternative statutory provisions. Section 25189 of the Health and Safety Code creates civil

1 penalty liability for any negligent or intentional violation of the HWCL, or a permit, rule,
2 regulation, standard, or required issued or promulgated under the HWCL. Section 25189.2 is a
3 strict liability provision, which creates civil penalty liability for any violation of the HWCL, or a
4 permit, rule, regulation, standard, or required issued or promulgated under the HWCL. A person
5 may not be held liable for a civil penalty imposed under section 25189 and for a civil penalty
6 imposed under section 25189.2 for the same act. (Health & Saf. Code, § 25189.2, subd. (f).)

7 18. The HWCL authorizes the Court to impose a civil penalty of up to twenty-five
8 thousand dollars (\$25,000) for each violation of a separate provision of the HWCL and/or Title
9 22.¹ For continuing violations, the HWCL authorizes the Court to impose a penalty of up to
10 twenty-five thousand dollars (\$25,000) for each day that a violation continues. (Health & Saf.
11 Code, §§ 25189, subd. (b) and 25189.2, subd. (b).)

12 19. Health and Safety Code sections 25181 and 25184 authorize and direct the Court to
13 enjoin any ongoing or potential violation of the HWCL.

14 20. Section 25181 of the Health and Safety Code provides that when the Department
15 determines that any person has engaged in, is engaged in, or is about to engage in any acts or
16 practices which constitute or will constitute a violation of any provision of the HWCL or any rule
17 or requirement issued or promulgated thereunder, and when requested by the Department, the
18 Attorney General may make application to the superior court for an order enjoining such acts or
19 practices, or for an order directing compliance. Upon a showing by the Department that such
20 person has engaged in or is about to engage in any such acts or practices, a permanent or
21 temporary injunction, restraining order, or other order may be granted.

22 21. Health and Safety Code section 25184 provides that, in civil actions brought pursuant
23 to the HWCL in which an injunction or temporary restraining order is sought:

24
25 ¹ The California Legislature recently amended sections 25189 and 25189.2 of the Health
26 and Safety Code to increase the maximum civil enforcement penalties for violations of the
27 HWCL from \$25,000 to \$70,000 for each separate violation, and for each day the violation
28 continues. HAZARDOUS SUBSTANCES AND WASTE—FINES AND PENALTIES, 2017
Cal. Legis. Serv. Ch. 499 (A.B. 245). WII's violations occurred prior to the amendment and all
references in this Complaint to the HWCL's enforcement provision are to the previous versions
of these provisions.

1 [I]t shall not be necessary to allege or prove at any stage of the proceeding that
2 irreparable damage will occur should the temporary restraining order, preliminary
3 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.

4 **GENERAL ALLEGATIONS**

5 22. At all times relevant herein, WIT, and/or its predecessors in interest, owned and
6 operated the Facility.

7 23. The Facility is approximately one acre and is identified by Santa Clara County
8 Assessor Parcel Number 447-49-056.

9 24. WIT possesses a Standardized Hazardous Waste Facility Permit ("Permit") that was
10 issued by the Department in 1997, modified in 2000, and renewed on March 24, 2016. Reference
11 made in this Complaint to any part(s) of the Permit shall mean the part(s) of the Permit that
12 existed at the time the violation(s) occurred as alleged in this Complaint.

13 25. WIT's business involves the reclamation of precious metals such as gold, platinum,
14 and palladium from offsite-generated wastes and non-hazardous scrap printed circuit boards.
15 WIT recovers the metals through various processes such as stripping, precipitation, purification,
16 and electrolytic recovery. The recovered precious metals are then sent to an authorized refiner
17 using hazardous waste manifests where they will be further refined. Other hazardous wastes
18 generated at the Facility are sent to an authorized offsite hazardous waste management facility.
19 WIT is also authorized to store hazardous waste at its Facility.

20 26. On or about May 19, 2015, representatives of the Department conducted an on-site
21 inspection of the Facility.

22 **FIRST CAUSE OF ACTION**

(Illegal Treatment of Hazardous Waste)
23 (Health & Saf. Code § 25201, subd. (a))

24 27. Paragraphs 1 through 26 above are incorporated by reference as though fully set forth
25 herein.

26 28. Health and Safety Code section 25201, subdivision (a), provides that no owner or
27 operator of a storage, treatment, transfer, or resource recovery facility or disposal site shall
28 accept, treat, store, or dispose of a hazardous waste at the facility, area, or site, unless the owner

1 or operator holds a hazardous waste facilities permit or other grant of authorization from the
2 Department.

3 29. Health and Safety Code section 25123.5 defines "treatment" of a hazardous waste to
4 include a method, technique, or process that is designed to change the physical, chemical, or
5 biological character or composition of the hazardous waste, or that removes or reduces its harmful
6 properties or characteristics for any purpose.

7 30. On and prior to May 19 2015, WIT violated Health and Safety Code section 25201,
8 subdivision (a) by unlawfully treating hazardous waste in the form of tank bottom sludge
9 removed from the stripping unit rinse tanks by securing a heat lamp immediately above a 5-gallon
10 bucket holding the hazardous waste in the Facility's permitted precious metal stripping unit area
11 Applying heat to evaporate hazardous waste is a form of treatment that requires a permit or other
12 grant of authorization from the Department, which WIT had not obtained.

13 31. Pursuant to Health and Safety Code sections 25189, subdivision (b), and/or 25189,
14 subdivision (e), WIT is liable for civil penalties according to proof based on these intentional or
15 negligent violations. In the alternative, WIT is strictly liable for civil penalties according to proof
16 pursuant to Health and Safety Code sections 25189.2, subdivision (b), and/or 25189.2,
17 subdivision (e). Pursuant to Health and Safety Code section 25181, WIT should also be enjoined
18 from further violations of the HWCL.

19 **SECOND CAUSE OF ACTION**

20 (Failure to Document Inspections of Facility Tank System and Surrounding Areas)
21 (Cal. Code Regs., tit. 22, § 66264.195, subd. (d))

22 32. Paragraphs 1 through 26 above are incorporated by reference as though fully set forth
23 herein.

24 33. California Code of Regulations, title 22, section 66264.195 requires owners and
25 operators of hazardous waste transfer, treatment, storage, and disposal facilities to conduct daily
26 safety inspections of their tank systems and areas immediately surrounding the externally
27 accessible portion of the tank system, including the secondary containment system. Subdivision
28

(d) requires owners and operators of hazardous waste transfer, treatment, storage, and disposal facilities to document the inspection in the operating record.

34. During the months of March, April, and May 2015, on 33 separate operating days, WIT violated California Code of Regulations, title 22, section 66264.195, subdivision (d) by failing to document in the operating record of the Facility the required inspections of the Facility's tank system and areas surrounding the externally accessible portion of the tank system.

35. Pursuant to Health and Safety Code section 25189, subdivision (b), WIT is liable for civil penalties according to proof based on these intentional or negligent violations. In the alternative, WIT is strictly liable for civil penalties according to proof pursuant to Health and Safety Code section 25189.2, subdivision (b). Pursuant to Health and Safety Code section 25181, WIT should also be enjoined from further violations of the HWCL.

THIRD CAUSE OF ACTION

(Failure to Conduct Tank Assessment)
(Cal. Code Regs., tit. 22, § 66264.192)

36. Paragraphs 1 through 26 above are incorporated by reference as though fully set forth herein.

37. California Code of Regulations, title 22, section 66264.192 requires an owner or operator of a new tank system or components to obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer within the last five years attesting that the new tank system or components has sufficient structural integrity and is acceptable for the transferring, storing, and treating of hazardous waste before placing the tank system or components in service.

38. California Code of Regulations, title 22, section 66260.10 defines "tank system" as "a hazardous waste transfer, storage or treatment tank and its associated ancillary equipment and containment system." That section also defines "component" as "any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function..."

39. California Code of Regulations, title 22, section 66260.10 defines a "new tank system" as a tank system that will be used for the transfer, storage, or treatment of hazardous

1 waste and for which installation has commenced after July 14, 1986 for tanks containing RCRA
2 hazardous waste and July 1, 1991 for tanks containing non-RCRA hazardous waste.

3 40. During the period between February 8, 2012 and March 16, 2017, WIT violated
4 California Code of Regulations, title 22, section 66264.192 by failing to obtain a written
5 assessment reviewed and certified by an independent, qualified, registered professional engineer
6 for the hazardous waste tanks at the Facility.

7 41. Pursuant to Health and Safety Code section 25189, subdivision (b), WIT is liable for
8 civil penalties according to proof based on these intentional or negligent violations. In the
9 alternative, WIT is strictly liable for civil penalties according to proof pursuant to Health and
10 Safety Code section 25189.2, subdivision (b). Pursuant to Health and Safety section 25181, WIT
11 should be enjoined from violating the HWCL.

12 **FOURTH CAUSE OF ACTION**

13 (Exceedance of Maximum Storage Capacity and Storage of Non-Permitted Hazardous Waste)
(Health & Saf. Code § 25201, sub. (a), Cal. Code Regs., tit. 22, § 66270.30, subd. (a))

14 42. Paragraphs 1 through 26 above are incorporated by reference as though fully set forth
15 herein.

16 43. Health and Safety Code section 25201, subdivision (a) and California Code of
17 Regulations, title 22, section 66270.30, subdivision (a) provides that the owner or operator of a
18 hazardous waste management facility who holds a hazardous waste facilities permit is required to
19 comply with the conditions of the hazardous waste permit.

20 44. Part III of the Permit provides that a maximum of five 55-gallon drums containing
21 hazardous waste codes D002, D003, and/or 131 may be stored in the Caustic Waste Storage Unit.

22 45. On or prior to May 19, 2015, WIT violated Health and Safety Code section 25201,
23 subdivision (a) and California Code of Regulations, title 22, section 66270.30, subdivision (a) by
24 exceeding the maximum storage capacity by storing six 55-gallon drums and storing non-
25 permitted hazardous waste by storing at least three 55-gallon drums containing waste cyanide
26 solution with an associated hazardous waste code of F007 and 711.

27 46. Pursuant to Health and Safety Code section 25189, subdivision (b), WIT is liable for
28 civil penalties according to proof based on these intentional or negligent violations. In the

1 alternative, WIT is strictly liable for civil penalties according to proof pursuant to Health and
2 Safety Code section 25189.2, subdivision (b). Pursuant to Health and Safety Code section 25181,
3 WIT should also be enjoined from further violations of the HWCL.

4 **WHEREFORE**, Plaintiff prays that the Court grant the following relief:

5 A. Enter a judgment that WIT is required to pay civil penalties pursuant to the HWCL to
6 the Department pursuant to the First through Fourth Causes of Action according to proof at trial;

7 B. Enter preliminary injunctions, permanent injunctions, or other orders requiring WIT
8 to comply with the HWCL and/or Title 22;

9 C. Grant the Department its costs of suit herein; and

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

11 Dated: May 11, 2018

Respectfully Submitted,

12
13 XAVIER BECERRA
Attorney General of California
14 SUSAN S. FIERING
Supervising Deputy Attorney General

15 **Original signed by Andrew Wiener**

16
17 ANDREW WIENER
Deputy Attorney General

18
19 *Attorneys for PEOPLE OF THE STATE OF*
CALIFORNIA, ex rel., Barbara A. Lee,
20 *Director of the California Department of*
Toxic Substances Control