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Superior Court of California
County of Los Angeles

OCT 31 2018

Sherri R. Carter, Executive Officer/Clerk of Court
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Attorneys for People of the State of California, ex rel. Barbara A. Lee, Director of the California Department of Toxic Substances Control

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

v.

QUEMETCO, INC.; QUEMETCO WEST, LLC,

Defendants.

Case No. **18STCV03084**
COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
(Health & Saf. Code § 25100 et seq.)

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

PRELIMINARY STATEMENT

1. Plaintiff brings this action to address violations of the California Hazardous Waste Control Law, chapter 6.5 of division 20 of the Health and Safety Code ("HWCL"), and its implementing regulations set forth in the California Code of Regulations, title 22, division 4.5, section 66260.1 et seq. ("Title 22").

1 contractors, affiliates, and/or representatives of Quemetco while acting within the course and
2 scope of their employment or agency on behalf of Quemetco during the relevant time periods.

3 **JURISDICTION AND VENUE**

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

6 9. Venue is proper in this Court pursuant to Health and Safety Code section 25183
7 because Los Angeles County is the county in which the Facility is located, the processing or
8 disposal of hazardous wastes is conducted, and the Attorney General has an office.

9 **HWCL STATUTORY AND REGULATORY BACKGROUND**

10 10. The State of California has enacted a comprehensive statutory and regulatory
11 framework for the generation, handling, treatment, transport, and disposal of hazardous wastes.
12 The framework contained in the HWCL and its implementing regulations, mandates a “cradle to
13 grave” registration, tracking, storage, treatment, and disposal system for the protection of the
14 public from the risks posed by hazardous wastes and for the protection of the environment—*i.e.*,
15 soil, air, surface water, groundwater—from contamination by hazardous wastes and their
16 constituents. Except where otherwise expressly defined in this Complaint, all terms shall be
17 interpreted consistent with the HWCL and Title 22.

18 11. Pursuant to Health and Safety Code sections 25101, subdivision (d) and 25159 to
19 25159.9, California administers the HWCL in lieu of federal administration of the federal
20 Resource Conservation and Recovery Act (“RCRA”), which is codified at 42 United States Code
21 section 6901 et seq. Federal law prohibits California from imposing any requirements less
22 stringent than those authorized under RCRA. (42 U.S.C. § 6929.) Certain provisions in the
23 HWCL are more strict than the analogous provisions in RCRA.

24 12. The HWCL charges the Department with the responsibility to adopt standards and
25 regulations for the management of hazardous waste to protect the public health and environment.
26 (Health & Saf. Code, § 25150.) Accordingly, the Department has promulgated the HWCL’s
27 implementing regulations setting forth comprehensive environmental- and health-protective
28 requirements for the day-to-day operations of hazardous waste generators and transporters, as

1 well as hazardous waste facilities. (See Title 22.)

2 13. Health and Safety Code section 25124, subdivision (a) defines a “waste’ [as] any
3 solid, liquid, semisolid, or contained gaseous discarded material that is not excluded by this
4 chapter or by regulations adopted pursuant to this chapter.”

5 14. A “hazardous waste” is a waste that meets any of the criteria established by the
6 Department. (Health & Saf. Code, §§ 25117 and 25141.) The criteria consist of lists of particular
7 hazardous wastes, and waste exhibiting certain characteristics.

8 15. The HWCL, at Health and Safety Code section 25200, subdivision (a), authorizes the
9 Department to issue operating permits, called hazardous waste facilities permits, to the owners
10 and operators of facilities managing hazardous wastes.

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

16 17. Title 22, sections 66270.1 to 66270.29 specify the procedure for the owner and
17 operator of a hazardous waste facility to apply for a hazardous waste facilities permit. These
18 regulations require that the permit application include a Part B permit application. (Title 22,
19 §§ 66270.14 to 66270.27.) The Part B permit application is also called the “Operation Plan” and
20 describes in detail the facility’s operations and how the facility will comply with all applicable
21 provisions of the HWCL and its implementing regulations.

22 18. The HWCL and its implementing regulations each require that the owner and
23 operator of a hazardous waste facility comply with the provisions of the facility’s hazardous
24 waste facilities permit.

25 a. Health and Safety Code section 25202, subdivision (a) requires the owner or
26 operator of a hazardous waste facility who holds a hazardous waste facilities
27 permit to “comply with the conditions of [that] permit.”
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1 b. Title 22, section 66270.30, subdivision (a) requires that the “permittee comply
2 with the conditions of the permit” and specifies that any ‘noncompliance . . .
3 constitutes a violation of the [HWCL] and is grounds for” enforcement.

4 **GROUNDWATER MONITORING REQUIREMENTS FOR LAND DISPOSAL UNITS**

5 19. The owner or operator of a permitted hazardous waste facility that has waste
6 management units that constitute land disposal units, called “regulated units,” must comply with
7 groundwater monitoring and response requirements specified in Title 22, section 66264.91 et seq.
8 These requirements apply both to units that are in service and to units that are closed.

9 20. These regulations establish a phased approach for a facility’s groundwater monitoring
10 program. The first phase requires the facility to establish a “detection monitoring program” that
11 will allow the facility and the Department to detect when a release from a regulated unit to the
12 groundwater has occurred. (Title 22, § 66264.91, subd. (a)(1) [requiring facility to institute a
13 detection monitoring system under Title 22, section 66264.98 for each regulated unit].)

14 21. If a release is detected, then the facility enters the second phase and must implement
15 an “evaluation monitoring program” to characterize the release and determine whether corrective
16 action is required. (Title 22, § 66264.91, subd. (a)(2) [requiring facility to institute an evaluation
17 monitoring program under Title 22, section 66264.99 whenever there is statistically significant
18 evidence or significant physical evidence of a release from a regulated unit].)

19 22. If corrective action is required, then the facility enters the third phase and must
20 develop and implement a “corrective action program” in order to address the contamination and
21 prevent future releases. (Title 22, § 66264.91, subd. (a)(4).)

22 23. In addition to the specific requirements for each groundwater monitoring phase set
23 forth in Title 22, sections 66264.98 (detection monitoring), 66264.99 (evaluation monitoring),
24 and 66264.100 (corrective action), general monitoring and system requirements applicable to all
25 three phases are contained in Title 22, section 66264.97.

26 24. Title 22, section 66264.97 also establishes analogous phased monitoring protocols for
27 the unsaturated zone and surface water.

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1 25. Because Title 22, sections 66264.91, subdivision (a) and 66264.97, subdivision (a)
2 each require the facility to institute a groundwater monitoring program for each regulated unit,
3 any violation of Title 22, sections 66264.97, 66264.98, and 66264.99 also constitutes a violation
4 of Title 22, sections 66264.91, subdivision (a) and 66264.97, subdivision (a).

5 **THE DEPARTMENT'S ENFORCEMENT AUTHORITY UNDER THE HWCL**

6 26. The HWCL authorizes the Court to impose civil penalties under two distinct and
7 alternative statutory provisions. Health and Safety Code section 25189 creates liability for any
8 negligent or intentional violation of the HWCL or any permit, rule, regulation, standard, or
9 requirement issued or adopted thereto. Health and Safety Code section 25189.2 is a strict liability
10 provision, which creates liability for any violation of the HWCL or any permit, rule, regulation,
11 standard, or requirement issued or adopted thereto. A person may not be held liable for a civil
12 penalty imposed under section 25189 and for a civil penalty imposed under section 25189.2 for
13 the same act. (Health & Saf. Code, § 25189.2, subd. (f).)

14 27. Prior to January 1, 2018, the HWCL authorized the Court to impose a civil penalty of
15 up to twenty-five thousand dollars (\$25,000) for each violation of a separate provision of the
16 HWCL and/or implementing regulations. For continuing violations, the HWCL authorized the
17 Court to impose a penalty of up to twenty-five thousand dollars (\$25,000) for each day that a
18 violation continues. (Health & Saf. Code, §§ 25189, subd. (b) and 25189.2, subd. (b).)

19 28. Effective January 1, 2018, the HWCL authorizes the Court to impose a civil penalty
20 of up to seventy thousand dollars (\$70,000) for each violation of a separate provision of the
21 HWCL and/or implementing regulations. For continuing violations, the HWCL authorizes the
22 Court to impose a penalty of up to seventy thousand dollars (\$70,000) for each day that a
23 violation continues. (Health & Saf. Code, §§ 25189, subd. (b) and 25189.2, subd. (b).)

24 29. Health and Safety Code section 25187 authorizes the Department to order any action
25 necessary to correct violations and assess a penalty when the Department determines that any
26 person has violated specific provisions of the Health and Safety Code, or any permit, rule,
27 regulation, standard, or requirement issued or adopted thereto. Health and Safety Code section
28 25187 also authorizes the Department to issue an order for corrective action when the Department

1 determines that there is or may be a release of hazardous waste or constituents into the
2 environment from a hazardous waste facility.

3 30. Health and Safety Code section 25200.10 authorizes the Department to require
4 corrective action for all releases of hazardous waste or constituents from a solid waste
5 management unit or a hazardous waste management unit. Each hazardous waste facilities permit
6 requires the owner and operator of the facility to conduct corrective action to address any releases
7 of hazardous waste or hazardous waste constituents at the facility. (Health & Saf. Code
8 § 25200.10, subd. (b).)

9 31. The HWCL, at Health and Safety Code sections 25181 and 25184, authorizes and
10 directs the Court to enjoin any ongoing or potential violation of the HWCL.

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

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

21 It shall not be necessary to allege or prove at any stage of the proceeding that
22 irreparable damage will occur should the temporary restraining order, preliminary
23 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.

24 **QUEMETCO'S HWCL PERMIT AND OPERATION PLAN**

25 34. At all times relevant herein, Quemetco, and/or Quemetco's predecessors in interest,
26 owned and operated the Facility.

27 35. Quemetco purchased and began operating the Facility in approximately 1970.
28

1 Treatment Plant and the railroad tracks.

2 41. The second unit, the Former Raw Materials Storage Area, was the site of many of the
3 Facility's waste piles, including a scrap lead area, polypropylene chip and hard rubber storage
4 areas, and the reverberatory and electric furnace slag storage areas. Quemetco used these waste
5 piles to store broken battery parts, lead plates, and lead sulfate mud and slag from the Facility's
6 furnaces. The Former Raw Materials Storage Area, which has uncertain boundaries, is located
7 generally in the center of the Facility between the current Maintenance Building and the Battery
8 Wrecker Building. The Former Raw Materials Storage Area and the Closed Surface
9 Impoundment Unit are referred to as the "Regulated Units."

10 42. In 1994 and 1995, Quemetco conducted closure activities for the Regulated Units,
11 which included excavating, sampling, and disposing of subgrade materials, and constructing a
12 concrete cover for each Regulated Unit. Quemetco is required to provide post-closure care for the
13 Regulated Units pursuant to the HWCL, its implementing regulations, and the Permit.
14 Quemetco's post-closure care obligations continue for at least thirty years after the date of
15 completion of closure for the Regulated Units. (Permit, Part V.C.1.b.)

16 43. Among its post-closure care obligations, Quemetco is required to monitor the
17 groundwater and unsaturated zones beneath the Regulated Units and the nearby surface water
18 body (San Jose Creek) regularly for possible releases from the Facility. The groundwater that
19 flows beneath the Facility is part of the Puente Basin, which is hydraulically connected to the San
20 Gabriel Basin. The San Gabriel Basin covers approximately 170 square miles and is an important
21 drinking water source for up to one million Californians. The San Jose Creek, which is adjacent
22 to the Facility, may receive discharges from the Facility through one-way weep holes in the
23 creek's concrete liner. The San Jose Creek flows into the San Gabriel River, and both water
24 courses support wildlife and are bordered by pedestrian trails that facilitate human access and
25 recreation.

26 44. In addition to the groundwater monitoring regulations described in paragraphs 19
27 through 25 above, Part V.C.1.c. of the Permit generally requires that Quemetco, "as part of post-
28 closure care [of the Regulated Units], conduct groundwater monitoring as specified in Part

1 IV.D.2. of this Permit.” Further, based on evidence of past releases, Part IV.D.2.j. of the Permit
2 requires Quemetco to conduct evaluation monitoring to assess the nature and extent of
3 documented historic releases of lead, chromium, cadmium, and mercury and determine if
4 corrective action is required. The Permit requires Quemetco to conduct background, detection,
5 and evaluation groundwater monitoring on a quarterly basis, and submit quarterly and annual
6 groundwater monitoring reports to the Department. (Permit, Part IV.D.2.c.(2), i.(3), j.(1), and
7 n(2).) These reports show that several of Quemetco’s monitoring wells have been dry for years.

8 45. The constituents of concern that are the subject of the Facility’s post-closure
9 groundwater monitoring program are listed in the Permit. Part IV.D.2.e.(1) of the Permit
10 identifies 50 different constituents of concern, including lead, chromium, cadmium, mercury, and
11 numerous volatile organic compounds. Lead contamination is a particular concern at the Facility.
12 The Permit notes that “[l]ead remains in place in soils underlying the closed Surface
13 Impoundment unit at concentrations which met health-risk based closure standards, but may
14 threaten discharge to ground water under some conditions.” (Permit, Part IV.D.2.i.) The Permit
15 further states that “ground water underlying the closed surface impoundment was shown to be
16 contaminated by lead.” (*Id.*, Part V.C.1.a.)

17 46. Numerous provisions in the Permit require Quemetco to properly maintain and repair
18 the monitoring wells that are part of the groundwater monitoring program for the Regulated
19 Units, including Part IV.D.2.m.(1) (“[g]roundwater monitoring system maintenance shall be a
20 scheduled activity, performed as preventative maintenance to ensure proper operation of all
21 equipment and documentation of all inspections, repairs and modifications”), Part IV.D.2.m.(2)
22 (Quemetco “shall maintain all monitoring wells and piezometers that are monitored pursuant to
23 this Permit in good working condition”), and Part IV.D.2.m.(3)(a) (setting forth the requirements
24 for the preventative maintenance program for the groundwater monitoring system).

25 **THE DEPARTMENT’S 2015, 2016, 2017, AND 2018 INSPECTIONS OF THE FACILITY**

26 47. Between April 28, 2015, and May 12, 2015, the Department conducted a compliance
27 evaluation inspection of the Facility (the “2015 Compliance Inspection”). The Department
28 presented the results of that inspection in a May 12, 2015 Summary of Violations and a July 9,

1 2015 Inspection Report.

2 48. Between May 26, 2016, and July 21, 2016, the Department conducted another
3 compliance evaluation inspection of the Facility (the “2016 Compliance Inspection”). The
4 Department presented the results of that inspection in Summaries of Violations, dated June 20,
5 2016, and July 15, 2016, and in an October 13, 2016 Inspection Report.

6 49. Between June 26, 2017 and January 3, 2018, the Department conducted another
7 compliance evaluation inspection of the Facility (the “2017 Compliance Inspection”). The
8 Department presented the results of that inspection in a Summary of Violation, dated January 3,
9 2018, and in a March 29, 2018 Inspection Report.

10 50. Between June 28, 2018 and August 2, 2018, the Department conducted another
11 compliance evaluation inspection of the Facility (the “2018 Compliance Inspection”). The
12 Department presented the results of that inspection in a Summary of Violations, dated
13 September 11, 2018.

14 51. The First through Twelfth Causes of Action are based on evidence gathered by the
15 Department during the 2015, 2016, 2017, and 2018 Compliance Inspections.

16 52. The Thirteenth and Fourteenth Causes of Action are based on evidence obtained on
17 March 26, 2014 during a multi-agency inspection of the Facility lead by the United States
18 Environmental Protection Agency (“U.S. EPA”).

19 53. The Department also conducted a field audit and records review of the Facility’s
20 groundwater monitoring program on June 23 and 24, 2015 (the “Groundwater Monitoring
21 Evaluation”). The Department presented the results of that evaluation in an August 5, 2015
22 Summary of Violations (“2015 SOV”), an August 19, 2015 Focused Groundwater Audit Report,
23 and a June 1, 2016 Addendum to Summary of Violations (“2016 Addendum”). On June 8, 2016,
24 the Department issued a Groundwater Monitoring Evaluation Report containing detailed
25 descriptions of the violations identified in the 2015 SOV and the 2016 Addendum. The Fifteenth
26 through Twenty-Ninth Causes of Action are based on evidence gathered by the Department
27 during the Groundwater Monitoring Evaluation.

28

FIRST CAUSE OF ACTION

**Failure to Maintain a Functioning Secondary Containment and Leak Detection System for
the Batch House**

(Cal. Code of Regs., tit. 22, § 66264.1101, subd. (b)(3))

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54. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
herein.

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55. The owner or operator of a hazardous waste facility who maintains and uses a
containment building to store or treat hazardous wastes must comply with the provisions of
Title 22, sections 66264.1100 through 66264.1102.

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56. The Facility includes a containment building, called the "Batch House," which
Quemetco uses to store and manage hazardous wastes. Quemetco crushes lead-acid batteries in
the adjacent Battery Wrecker Building and transfers the lead wastes into the Batch House in
preparation for smelting. Quemetco's Batch House is identified as Unit 2 in the Permit.

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57. Title 22, section 66264.1101, subdivision (b)(3) requires that a containment building
that is either used to manage hazardous wastes containing free liquids or to treat hazardous wastes
with free liquids shall include a secondary containment system, including a secondary barrier
designed and constructed to prevent migration of hazardous constituents into the barrier.

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58. The Batch House sits on a cement slab that acts as both the floor and the primary
containment. There is a polyvinylchloride ("PVC") layer underneath the Batch House that
Quemetco identifies as the secondary containment barrier. Between the cement slab and the PVC
layer is a bed of sand that is part of the secondary containment system.

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59. Title 22, section 66264.1101, subdivision (b)(3) also requires that the secondary
containment system include a leak detection system capable of detecting failure of the primary
barrier and of collecting accumulated hazardous wastes and liquids at the earliest practicable
time. The leak detection system for the secondary containment at Quemetco's Batch House is a
liner drain connected to a stand pipe, which is intended to reveal when liquids pass through the
primary barrier into the secondary containment.

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60. During the 2015, 2016, 2017, and 2018 Compliance Inspections, Department
representatives observed the presence of liquid in the stand pipe. During the 2016 Compliance

1 Inspection, Department representatives observed Quemetco removing that liquid. Quemetco
2 informed Department representatives that liquid continuously accumulates in the stand pipe and
3 that Quemetco routinely removes it and that this condition has persisted for years.

4 61. Quemetco violated Title 22, section 66264.1101, subdivision (b)(3) in that the routine
5 presence of liquid in the stand pipe renders the leak detection system incapable of detecting
6 failure of the containment building's primary barrier at the earliest practicable time.

7 **SECOND CAUSE OF ACTION**

8 **Failure to Minimize Accumulation of Liquids in Collection Sump**

9 (Cal. Code of Regs., tit. 22, §§ 66264.31, 66264.1101, subd. (b)(2), and 66264.1101, subd. (c)(1))

10 62. Paragraphs 1 through 53, 56 and 58 above are incorporated by reference as though
11 fully set forth herein.

12 63. Title 22, section 66264.31 requires that hazardous waste facilities be located,
13 designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion,
14 or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste
15 constituents to air, soil, or surface water that could threaten human health and the environment.

16 64. Title 22, section 66264.1101, subdivision (b)(2) requires the owner or operator of a
17 hazardous waste facility to design the liquid collection and removal system in containment
18 buildings so as to minimize the accumulation of liquids on the primary barrier of each
19 containment building and to collect liquids and waste to minimize the hydraulic head on the
20 containment system.

21 65. Title 22, section 66264.1101, subdivision (c)(1) requires the owner or operator of a
22 hazardous waste facility that includes a containment building to take measures to prevent the
23 tracking of hazardous waste out of the unit.

24 66. During the 2015 Compliance Inspection, Department representatives observed that
25 liquids overflowed out of the collection sump at the east end of the Batch House such that there
26 was an accumulation of liquids on the primary barrier of the Batch House, creating a danger that
27 workers would step into the overflowing liquid.

28 67. Quemetco violated Title 22, sections 66264.31, 66264.1101, subdivision (b)(2), and
66264.1101, subdivision (c)(1) in that it failed to operate the containment system in the Batch

1 House to minimize the possibility of a release of hazardous waste constituents, to minimize the
2 hydraulic head on the containment system, and to minimize the accumulation of liquids on the
3 primary barrier and prevent tracking of liquids from the containment system.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Properly Maintain Stored Hazardous Waste Within
6 a Containment Building**

(Cal. Code of Regs., tit. 22, § 66270.30, subd. (a) (Operation Plan,
7 Paragraphs 4.3.1.9, 8.4.2))

8 68. Paragraphs 1 through 53, 56 and 58 above are incorporated by reference as though
9 fully set forth herein.

10 69. Inside the Batch House are “crowd walls,” which are reinforced concrete walls
11 attached to the main walls for structural support. The Batch House was designed with crowd
12 walls “at areas of anticipated pile material contact.” (Operation Plan, ¶ 4.3.1.1.)

13 70. Paragraph 4.3.1.9 of Quemetco’s Operation Plan, requires Quemetco personnel “to
14 maintain piles such that piles do not flow onto the top of the crowd walls.” Further, paragraph
15 8.4.2 of Quemetco’s Operation Plan states that materials stored in the Batch House “are not
16 allowed to exceed the height of the crowd (interior) walls.”

17 71. During the 2016 Compliance Inspection, Department representatives observed that
18 the level of treated hazardous waste in the Batch House exceeded the height of the crowd walls
19 and in some places flowed onto the crowd walls.

20 72. Quemetco violated paragraphs 4.3.1.9 and 8.4.2 of its Operation Plan in that
21 hazardous waste was piled higher than the level of the crowd walls and flowed onto the top of the
22 crowd walls.

23 **FOURTH CAUSE OF ACTION**

24 **Failure to Minimize the Possibility of Releases of Hazardous Waste or Constituents**

(Cal. Code of Regs., tit. 22, §§ 66264.31 and 66264.1101, subd. (c)(3))

25 73. Paragraphs 1 through 53, 56 and 58 above are incorporated by reference as though
26 fully set forth herein.

27 74. Title 22, section 66264.1101, subdivision (c)(3) provides that throughout the active
28 life of any containment building, if the owner or operator detects a condition that could lead to or
has caused a release of hazardous waste, the owner or operator shall repair the condition promptly

1 and in accordance with procedures set forth in that section.

2 75. Title 22, section 66264.31 requires that hazardous waste facilities be located,
3 designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion,
4 or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste
5 constituents to air, soil, or surface water that could threaten human health and the environment.

6 76. During the 2016 Compliance Inspection, Department representatives observed a hole
7 in a containment wall of the Batch House and gaps under the doors to the Batch House.

8 77. Quemetco violated Title 22, section 66264.1101, subdivision (c)(3) in that, at the time
9 of the 2016 Compliance Inspection, Quemetco had failed to promptly repair the hole in the Batch
10 House and the gaps under the door.

11 78. Quemetco violated Title 22, section 66264.31 in that, at the time of the 2016
12 Compliance Inspection, Quemetco had not maintained and operated the Facility to minimize the
13 possibility of any releases of hazardous waste or hazardous waste constituents to air, soil, or
14 surface water that could threaten human health or the environment.

15 79. Quemetco's failure to comply with these regulatory requirements may result, or may
16 have already resulted, in a release of hazardous waste or hazardous waste constituents into the
17 environment.

18 **FIFTH CAUSE OF ACTION**

19 **Failure to Remedy Deterioration or Malfunction of Equipment and Structures**
20 (Cal. Code of Regs., tit. 22, § 66264.15, subd. (c))

21 80. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
22 herein.

23 81. Title 22, section 66264.15, subdivision (c), requires that the owner or operator of a
24 hazardous waste facility remedy any deterioration or malfunction of equipment or structures
25 according to a schedule that ensures that the problem will not lead to an environmental or human
26 health hazard.

27 82. During the 2016 Compliance Inspection, Department representatives observed cracks
28 and gaps within the outdoor area where Quemetco stores truck-trailers that hold the cracked
pieces of battery casing (the "Plastic Storage Area"), which constituted a structural deterioration

1 or malfunction that could lead to an environmental or human health hazard, which Quemetco had
2 failed to resolve.

3 83. Quemetco violated Title 22, section 66264.15, subdivision (c) in that it failed to
4 remedy the cracks and gaps in the Plastic Storage Area.

5 **SIXTH CAUSE OF ACTION**

6 **Failure to Accurately Record Inspection Results in an Inspection Log**
7 (Cal. Code of Regs., tit. 22, § 66264.15, subd. (d))

8 84. Paragraphs 1 through 53 and 82 above are incorporated by reference as though fully
9 set forth herein.

10 85. Title 22, section 66264.15, subdivision (d) requires that the owner or operator of a
11 hazardous waste facility record its inspections of the facility in an inspection log and that the
12 entry in the inspection log include, at a minimum, the date and time of the inspection, the name of
13 the inspector, a notation of observations made, and the date and nature of any repairs or other
14 remedial actions.

15 86. During the 2016 Compliance Inspection, Department representatives observed that
16 the cracks and gaps within the Plastic Storage Area had not been documented in Quemetco's
17 inspection log.

18 87. Quemetco violated Title 22, section 66264.15, subdivision (d) in that, it failed to
19 document the cracks and gaps within the Plastic Storage Area in its inspection log.

20 **SEVENTH CAUSE OF ACTION**

21 **Failure to Sign, Date, and Provide Copy of Manifest to Transporter**
22 (Cal. Code of Regs., tit. 22, § 66264.71, subd. (a))

23 88. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
24 herein.

25 89. Title 22, section 66264.71, subdivision (a) requires that the owner or operator of a
26 hazardous waste facility sign and date copies of manifests for hazardous wastes received at the
27 facility and immediately provide one copy of the manifest(s) to the hazardous waste transporter
28 who delivered the hazardous wastes to the facility.

89. During the 2016 Compliance Inspection, Department representatives determined that
Quemetco had failed to sign and date one or more manifests for hazardous wastes received at the

1 Facility and, furthermore, had failed to immediately provide a copy of the manifest to the
2 transporter who delivered the hazardous wastes to the Facility.

3 91. Quemetco violated Title 22, section 66264.71, subdivision (a) in that it failed to sign
4 and date one or more manifests for hazardous wastes received at the Facility and failed to
5 immediately provide a copy of the manifest to the transporter who delivered the hazardous wastes
6 to the Facility.

7 **EIGHTH CAUSE OF ACTION**

8 **Failure to Estimate Remaining Service Life of Tank System**

9 (Cal. Code of Regs., tit. 22, § 66264.191, subd. (i)(10))

10 92. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
11 herein.

12 93. Title 22, section 66264.191, subdivision (i)(10) requires that the owner and operator
13 of a hazardous waste facility containing one or more tank systems submit to the Department a
14 tank system assessment that estimates the remaining service life of the system based on the
15 nine (9) findings set forth in Title 22, section 66264.191, subdivisions (i)(1) through (i)(9).

16 94. Quemetco uses a tank system to treat acid removed from batteries and other waste
17 liquids.

18 95. During the 2016 Compliance Inspection, Department representatives determined that
19 Quemetco had failed to estimate the remaining service life of the tank system at the Facility.

20 96. Quemetco violated Title 22, section 66264.191, subdivision (i)(10) in that, it failed to
21 estimate the remaining service life of the tank system at the Facility.

22 **NINTH CAUSE OF ACTION**

23 **Failure to Establish Procedures to Detect Corrosion and Erosion of Tanks**

24 (Cal. Code of Regs., tit. 22, § 66264.195, subd. (e))

25 97. Paragraphs 1 through 53 and 94 above are incorporated by reference as though fully
26 set forth herein.

27 98. Title 22, section 66264.195, subdivision (e) requires that the owner or operator of a
28 hazardous waste facility that includes a tank system establish procedures for inspecting such tank
systems at the facility, including the procedures necessary to adequately determine the condition
and integrity of each such tank system.

1 99. During the 2015 Compliance Inspection, Department representatives observed that
2 Quemetco's tank assessment procedure did not include established procedures for emptying the
3 contents of its tanks to allow entry and inspection of the interior of each tank in order to detect
4 corrosion or erosion of the sides and bottom of the tank.

5 100. Quemetco violated Title 22, section 66264.195, subdivision (e) in that Quemetco's
6 tank assessment procedure did not include procedures to allow entry and inspection of the interior
7 of the tank to detect corrosion or erosion of the sides and bottom of the tank.

8 **TENTH CAUSE OF ACTION**
9 **Failure to Properly Maintain Containment System in Battery Storage Area**
(Cal. Code of Regs., tit. 22, § 66264.175)

10 101. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
11 herein.

12 102. Title 22, section 66264.175 requires that the owner and operator of a hazardous waste
13 facility with a container storage area design and operate a containment system for that area in
14 accordance with the requirements set forth in Title 22, section 66264.175, subdivision (b),
15 including the requirement for "a base" that "shall underlie the containers which is free of cracks
16 or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until
17 the collected materials are detected and removed."

18 103. The Battery Storage Area, which is identified as Unit 1 in the Permit, is a container
19 transfer and storage area within the meaning of Title 22, section 66264.175. Quemetco uses the
20 Battery Storage Area to store lead acid batteries, other lead-bearing hazardous wastes and
21 occasional on-site generated waste prior to delivery to other units or shipment off-site.

22 104. During the 2015 Compliance Inspection, Department representatives observed that
23 there were cracks and gaps in the base of the containment system for the Battery Storage Area.

24 105. Quemetco violated Title 22, section 66264.175 in that the base underlying the Battery
25 Storage Area contained cracks and gaps and was not sufficiently impervious to contain leaks,
26 spills and accumulated precipitation.

ELEVENTH CAUSE OF ACTION
Failure to Maintain Primary Barrier Free of Gaps
(Cal. Code of Regs., tit. 22, § 66264.1101, subd. (c)(1))

106. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth herein.

107. Title 22, section 66264.1101, subdivision (c)(1) requires the owner or operator of a hazardous waste facility that includes a containment building to maintain the primary barrier of that containment building free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier.

108. During the 2018 Compliance Inspection, Department representatives observed that Quemetco had cut an approximately six feet by seven feet square hole into the floor of the Batch House. The floor of the Batch House serves as the primary barrier required by Title 22, section 66264.1101. The hole that Quemetco cut went through two layers of concrete and directly exposed the sand layer that is part of the secondary containment system.

109. Quemetco violated Title 22, section 66264.1101, subdivision (c)(1) in that Quemetco failed to maintain the primary barrier of a containment building free of significant gaps that could cause hazardous waste to be released from the primary barrier.

TWELFTH CAUSE OF ACTION
Failure to Notify Department of Physical Alterations of Facility
(Cal. Code of Regs., tit. 22, § 66270.30, subs. (l)(1) and (2))

110. Paragraphs 1 through 53 and 107 above are incorporated by reference as though fully set forth herein.

111. Title 22, section 66270.30, subdivision (l)(1) requires the owner or operator of a hazardous waste facility to give notice to the Department as soon as possible and at least 30 days in advance of any planned physical alterations or additions to the permitted facility.

112. Title 22, section 66270.30, subdivision (l)(2) requires the owner or operator of a hazardous waste facility to give advanced notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

113. Quemetco violated Title 22, section 66270.30, subdivisions (l)(1) and (l)(2) in that it failed to give notice to the Department as required in advance of cutting the hole into the floor of

1 the Batch House. Cutting that hole was a planned physical alteration of the Facility and resulted
2 or may have resulted in non-compliance with the Permit.

3 **THIRTEENTH CAUSE OF ACTION**

4 **Failure to Minimize the Possibility of Releases of Hazardous Waste or Constituents**
5 (Cal. Code of Regs., tit. 22, § 66264.31)

6 114. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
7 herein.

8 115. Title 22, section 66264.31 requires that hazardous waste facilities be located,
9 designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion,
10 or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste
11 constituents to air, soil, or surface water that could threaten human health and the environment.

12 116. As part of its battery recycling process, Quemetco crushes used batteries in its Battery
13 Wrecker Room. Quemetco processes the plastic chips from the crushed batteries and uses a
14 blower to load those chips into a trailer for storage and eventual transport to another facility.

15 117. On information and belief, Plaintiff alleges that in 2013 and earlier it was Quemetco's
16 practice to use a blower to load plastic chips into trailers while those plastic chips were still wet
17 with battery acid and/or battery acid diluted with rinse water. The trailers that Quemetco utilized
18 frequently had cracks in the floor and were otherwise not water-tight.

19 118. On information and belief, Plaintiff alleges that in 2013 and earlier it was Quemetco's
20 practice to allow liquid to drip out of the trailers onto parking and driving areas within the
21 Facility. The parking and driving areas were not designated or identified in the Permit as
22 hazardous waste management units and were not properly equipped to contain the waste liquid.

23 119. On information and belief, Plaintiff alleges that in 2013 and earlier Quemetco
24 violated Title 22, section 66264.31 in that, it allowed liquid including diluted battery acid to drip
25 onto the Facility's parking and driving areas, and thereby failed to maintain and operate the
26 Facility to minimize the possibility of any release of hazardous waste or hazardous waste
27 constituents to air, soil, or surface water that could threaten human health or the environment.
28

FOURTEENTH CAUSE OF ACTION
Failure to Remove Hazardous Waste from Leaking Containers
(Cal. Code of Regs., tit. 22, § 66264.171)

120. Paragraphs 1 through 53 and 117 through 119 above are incorporated by reference as though fully set forth herein.

121. Title 22, section 66264.171 requires that when “a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator shall transfer the hazardous waste from this container to a container that is in good condition”

122. On information and belief, Plaintiff alleges that the trailers holding the plastic chips were “containers” as that term is defined in Title 22, section 66260.10.

123. On information and belief, Plaintiff alleges that in 2013 and earlier Quemetco violated Title 22, section 66264.171 in that it failed to transfer plastic chips including hazardous waste liquid from leaking containers to containers in good condition.

FIFTEENTH CAUSE OF ACTION
Failure to Maintain an Adequate Detection Monitoring Program –
Closed Surface Impoundment Unit

(Cal. Code of Regs., tit. 22, §§ 66264.97, 66264.98, and 66270.30, subd. (a)
(Permit, Part IV.D.2.b., c., i., and n. (1)))

124. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth herein.

125. The requirements for Quemetco’s groundwater detection monitoring program are found in Title 22, sections 66264.97 and 66264.98 and in the Permit, Part IV.D.2., particularly in Part IV.D.2.i.

126. Each hazardous waste facility subject to groundwater monitoring requirements must conduct background monitoring that includes “a sufficient number of background monitoring points installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater that has not been affected by a release from the regulated unit.” (Title 22, § 66264.97, subd. (b)(1)(A); see also the Permit, Parts IV.D.2.b.(4) and IV.D.2.c. [requiring Quemetco to implement a background groundwater monitoring program and specifying requirements].)

1 127. In addition to background monitoring of the uppermost aquifer, each detection
2 monitoring system is required to include the following monitoring points:

3 a. “[A] sufficient number of monitoring points installed at appropriate locations and
4 depths to yield groundwater samples from the uppermost aquifer that represent the quality
5 of groundwater passing the point of compliance and to allow for the detection of a release
6 from the regulated unit.” (Title 22, § 66264.97, subd. (b)(1)(B)1.)

7 b. “[A] sufficient number of monitoring points installed at additional locations and
8 depths to yield groundwater samples from the uppermost aquifer as necessary to provide the
9 best assurance of the earliest possible detection of a release from the regulated unit[.]” (Title
10 22, § 66264.97, subd. (b)(1)(B)2.)

11 c. “[A] sufficient number of monitoring points and background monitoring points
12 installed at appropriate locations and depths to yield groundwater samples from other
13 aquifers, low-yielding saturated zones and from zones of perched water as necessary to
14 provide the best assurance of the earliest possible detection of a release from the regulated
15 unit.” (Title 22 § 66264.97, subd. (b)(1)(B)3.)

16 128. Title 22, section 66264.97, subdivision (b)(7) requires that “[a]ll monitoring wells
17 shall be adequately developed to enable collection of representative groundwater samples.” The
18 numbers and kinds of samples and the sampling methods used to establish background values and
19 to conduct monitoring shall follow those methods proposed by Quemetco and approved by the
20 Department. (Title 22, § 66264.97, subd. (e)(12).) The sample size utilized shall be as large as
21 necessary to ensure with reasonable confidence that a release from the Regulated Units will be
22 detected. (*Id.*, § 66264.97, subd. (e)(12)(A)1.)

23 129. As reflected in Quemetco’s Quarterly Groundwater Monitoring Reports (see
24 paragraph 44, above), Quemetco’s background monitoring wells have been inadequate since
25 sometime prior to 2013 and remain inadequate. Some background monitoring wells have been
26 dry for many years and no longer can be used for sampling, and other wells are unusable due to
27 problems with their construction and design. In order to properly monitor groundwater at the
28 Facility for a release from the Closed Surface Impoundment Unit, the Permit, consistent with

1 industry practice, requires at least one functioning background monitoring point. Currently,
2 Quemetco has no functioning background monitoring points. Quemetco has proposed using
3 monitoring well (“MW”) 7, MW-9, and MW-10 as background monitoring points. MW-7 is
4 located within the area impacted by releases from the Closed Surface Impoundment Unit and
5 therefore is not a proper background monitoring point. The Department has not approved MW-9
6 and MW-10 as background monitoring points due to historic changes in groundwater flow
7 direction in the lower water bearing zone, the construction and design of the wells, the fact that
8 these two wells are located within the areas impacted by the Facility’s operations, and impacted
9 groundwater quality in these wells.

10 130. In order to properly monitor groundwater for a release from the Closed Surface
11 Impoundment Unit, the Permit requires at least three functioning down-gradient monitoring
12 points in addition to a proper background monitoring point. Several down-gradient monitoring
13 wells have been dry for many years and no longer can be used for sampling, and other wells are
14 unusable due to problems with their construction and design. Of the nine monitoring wells that
15 Quemetco has identified as part of the monitoring network for the Closed Surface Impoundment
16 Unit, only two have adequate water for sampling purposes.

17 131. Accordingly, Quemetco is in violation of Title 22, sections 66264.97, subds. (a),
18 (b)(1)(A), (b)(1)(B), and (e)(12), and 66264.98, subd. (b), and Part IV.D.2. of the Permit in that
19 its detection monitoring system for the Closed Surface Impoundment Unit lacks sufficient
20 monitoring points to be effective.

21 **SIXTEENTH CAUSE OF ACTION**

22 **Failure to Maintain an Adequate Evaluation Monitoring Program –
23 Closed Surface Impoundment Unit**

24 (Cal. Code of Regs., tit. 22, §§ 66264.97, 66264.99, and 66270.30, subd. (a)
25 (Permit, Part IV.D.2.j.))

26 132. Paragraphs 1 through 53 and 126, 128, 129 and 130 above are incorporated by
27 reference as though fully set forth herein.

28 133. The requirements for Quemetco’s evaluation monitoring program are found in Title
22, sections 66264.97 and 66264.99 and in Part IV.D.2.j. of the Permit. In addition to background
29 monitoring, each evaluation monitoring system is required to include the following:

1 a. “[A] sufficient number of monitoring points installed at appropriate locations and
2 depths to yield groundwater samples from the uppermost aquifer that represent the quality
3 of groundwater passing the point of compliance, and at other locations in the uppermost
4 aquifer as necessary, to provide the data needed to evaluate changes in water quality due to
5 the release from the regulated unit[.]” (Title 22, § 66264.97, subd. (b)(1)(C)1.)

6 b. “[A] sufficient number of monitoring points and background monitoring points
7 installed at appropriate locations and depths to yield groundwater samples from other
8 aquifers, low-yielding saturated zones and zones of perched water as necessary to provide
9 the data needed to evaluate changes in water quality due to the release from the regulated
10 unit[.]” (Title 22, § 66264.97, subd. (b)(1)(C)2.)

11 134. In addition, the monitoring wells and sampling protocols used for evaluation
12 monitoring must comply with the requirements described in paragraph 128 above. (Title 22,
13 § 66264.97, subds. (b)(7), (e)(12).) The sample size utilized shall be as large as necessary to
14 ensure with reasonable confidence that changes in water quality due to a release from the
15 Regulated Units will be recognized. (*Id.*, § 66264.97, subd. (e)(12)(A)2.)

16 135. As reflected in Quemetco’s Quarterly Groundwater Monitoring Reports (see
17 paragraph 44, above), since sometime prior to 2013, Quemetco’s evaluation monitoring network
18 for the Closed Surface Impoundment Unit has had an insufficient number of functioning wells to
19 recognize changes in water quality due to releases from the Closed Surface Impoundment Unit
20 and remains inadequate.

21 a. Currently, Quemetco has no functioning background monitoring points and, an
22 insufficient number of functioning down-gradient monitoring points to conduct evaluation
23 monitoring for the Closed Surface Impoundment Unit. (See paragraphs 129 and 130.)

24 b. Quemetco cannot evaluate the spatial distribution and concentrations of all
25 constituents of concern as required by Title 22, section 66264.99, subd. (b) because
26 monitoring wells MW-22 and MW-23 do not have adequate water for sampling.

27 c. Based on the groundwater potentiometric surface, additional down-gradient
28 monitoring points are necessary to evaluate the extent of the release from the Closed

1 Surface Impoundment Unit.

2 d. Since sometime prior to 2013, Quemetco has failed to analyze water quality
3 samples from the Closed Surface Impoundment Unit for the full suite of Article IX
4 compounds as it is required to do annually under the evaluation monitoring program in
5 order to determine whether additional hazardous constituents are present and at what
6 concentrations. (Title 22, § 66264.99, subd. (e)(6).)

7 136. Accordingly, Quemetco is in violation of Title 22, sections 66264.97, subds.
8 (b)(1)(A), (b)(1)(C)(1), (b)(1)(C)(2), and (e)(12), and 66264.99 subds. (a), (b), (c), (e), and (h),
9 and Part IV.D.2. of the Permit in that its evaluation monitoring system for the Closed Surface
10 Impoundment Unit lacks sufficient monitoring points to be effective and it has failed to sample
11 for the full suite of Article IX compounds.

12 **SEVENTEENTH CAUSE OF ACTION**

13 **Failure to Apply for Permit Modification for the Detection Monitoring Program – Closed
14 Surface Impoundment Unit**

15 (Cal. Code of Regs., tit. 22, §§ 66264.98, subd. (l) and 66270.30, subd. (a)
16 (Permit, Part IV.D.2.n.))

17 137. Paragraphs 1 through 53 and 129 and 131 above are incorporated by reference as
18 though fully set forth herein.

19 138. Title 22, section 66264.98, subdivision (l) requires that, upon determining “that the
20 detection monitoring program does not satisfy the requirements of this section, the owner or
21 operator shall (1) notify the Department by certified mail within seven days of such determination
22 and (2) within 90 days of such determination, submit an application for a permit modification to
23 make any appropriate changes to the program.”

24 139. Part IV.D.2.n.(1) of the Permit obligates Quemetco to comply with the notice and
25 permit modification requirements in Title 22, section 66264.98, subdivision (l).

26 140. As reflected in Quemetco’s Quarterly Groundwater Monitoring Reports, beginning
27 sometime prior to 2013, Quemetco knew that the detection monitoring program for the Closed
28 Surface Impoundment Unit did not satisfy the requirements of Title 22, section 66264.98, but did
not submit an application for a permit modification to make the appropriate changes to the
program within the required time.

1 141. Quemetco violated Title 22, section 66264.98, subdivision (l) and Part IV.D.2.n.(1) of
2 the Permit in that it knew that the detection monitoring program for the Closed Surface
3 Impoundment Unit did not satisfy the requirements of Title 22, section 66264.98, but did not
4 submit an application for a permit modification to make the appropriate changes to the program
5 within the required time.

6 **EIGHTEENTH CAUSE OF ACTION**

7 **Failure to Apply for Permit Modification for the Evaluation Monitoring Program – Closed
8 Surface Impoundment Unit**

9 (Cal. Code of Regs., tit. 22, § 66264.99, subd. (h) and 66270.30, subd. (a)
10 (Permit, Part IV.D.2.n.))

11 142. Paragraphs 1 through 53 and 135 and 136 above are incorporated by reference as
12 though fully set forth herein.

13 143. Title 22, section 66264.99, subdivision (h) requires that, upon determining “that the
14 evaluation monitoring program does not satisfy the requirements of this section, the owner or
15 operator shall within 90 days, submit an application for a permit modification to make any
16 appropriate changes to the program.”

17 144. Part IV.D.2.n.(1) of the Permit further obligates Quemetco to comply with the permit
18 modification requirements in Title 22, section 66264.99, subdivision (h).

19 145. As reflected in Quemetco’s Quarterly Groundwater Monitoring Reports, beginning
20 prior to 2013, Quemetco knew that the evaluation monitoring program for the Closed Surface
21 Impoundment Unit did not satisfy the requirements of Title 22, section 66264.99, but did not
22 submit an application for a permit modification to make the appropriate changes to the program
23 within the required time.

24 146. Quemetco violated Title 22, section 66264.99, subdivision (h) and Part IV.D.2.n.(1)
25 of the Permit in that it knew that the evaluation monitoring program for the Closed Surface
26 Impoundment Unit did not satisfy the requirements of Title 22, section 66264.99, but did not
27 submit an application for a permit modification to make the appropriate changes to the program
28 within the required time.

NINETEENTH CAUSE OF ACTION

Failure to Establish an Adequate Unsaturated Zone Monitoring System – Closed Surface Impoundment Unit

(Cal. Code of Regs., tit. 22, §§ 66264.97, 66264.98, 66264.701, 66264.706, and 66270.30, subd.

(a) (Permit, Part IV.D.3. and 4.))

147. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth herein.

148. Title 22, sections 66264.97 and 66264.98 require Quemetco to establish an unsaturated zone monitoring system to monitor conditions in unsaturated soil that could be affected by a release from the Regulated Units. This monitoring system shall include the following:

a. “[A] sufficient number of background monitoring points established at appropriate locations and depths to yield soil-pore liquid samples or soil-pore liquid measurements that represent the quality of soil-pore liquid that has not been affected by a release from the regulated unit[.]” (Title 22, § 66264.97, subd. (d)(2)(A).)

b. For the Facility’s detection monitoring program, the unsaturated zone monitoring system must include “a sufficient number of monitoring points established at appropriate locations and depths to yield soil-pore liquid samples or soil-pore liquid measurements that provide the best assurance of the earliest possible detection of a release from the regulated unit[.]” (Title 22, § 66264.97, subd. (d)(2)(B).)

c. For the Facility’s evaluation monitoring program, the unsaturated zone monitoring system must include “a sufficient number of monitoring points established at appropriate locations and depths to yield soil-pore liquid samples or soil-pore liquid measurements as necessary to provide the data necessary to evaluate changes in water quality due to the release from the regulated unit[.]” (Title 22, § 66264.97, subd. (d)(2)(C).)

149. Title 22, sections 66264.701 and 66264.706 require Quemetco to establish a detection monitoring system for soil-pore gas.

150. Likewise, the Permit, at Part IV.D.3. and 4., requires Quemetco to establish monitoring systems that include sampling of the soil-pore liquid and soil-pore gas in the unsaturated zones beneath the Closed Surface Impoundment Unit.

1 151. Quemetco has violated Title 22, sections 66264.97, subdivision (d), 66264.98,
2 subdivision (b), 66264.701, and 66264.706 and Part IV.D.3. and 4. of the Permit in that it has
3 failed to establish and implement an appropriate unsaturated zone monitoring system for the
4 Closed Surface Impoundment Unit. Quemetco does not perform monitoring of the unsaturated
5 zone between the surface cover for the Closed Surface Impoundment Unit and the groundwater
6 surface. As a result, neither Quemetco nor the Department is able to fully assess the performance
7 of the final surface cover for the Closed Surface Impoundment Unit and determine if migration of
8 constituents of concern to the groundwater is occurring.

9 **TWENTIETH CAUSE OF ACTION**

10 **Failure to Maintain an Adequate Detection Monitoring Program –
11 Former Raw Materials Storage Area**

(Cal. Code of Regs., tit. 22, § 66264.97, 66264.98 and 66270.30, subd. (a)
12 (Permit, Part IV.D.2.b. and n.(1)))

13 152. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
14 herein.

15 153. Paragraphs 125 through 127 above summarize the regulatory requirements for
16 detection monitoring programs and are also incorporated by reference.

17 154. As reflected in Quemetco's Quarterly Groundwater Monitoring Reports (see
18 paragraph 44, above), Quemetco's detection monitoring network for the Former Raw Materials
19 Storage Area has been inadequate since sometime prior to 2013 and remains inadequate to detect
20 potential releases. Several monitoring wells have been dry for many years and no longer can be
21 used for sampling, and other wells are unusable due to problems with their construction and
22 design. In order to properly monitor groundwater for a release from the Former Raw Materials
23 Storage Area, the Permit requires at least one functioning background monitoring point and two
24 functioning down-gradient monitoring points.

25 a. Currently, Quemetco has no functioning background monitoring points and, at
26 most, only one functioning down-gradient monitoring point for the Former Raw Materials
27 Storage Area. Quemetco has proposed using MW-7, MW-9, and MW-10 as background
28 monitoring points. However, MW-7 is located within the area impacted by releases from the
Closed Surface Impoundment Unit and therefore is not a proper background monitoring

1 point. the Department has not approved MW-9 and MW-10 as background monitoring
2 points due to historic changes in groundwater flow direction in the lower water bearing
3 zone, the construction and design of the wells, the fact that these two wells are located
4 within the areas impacted by the Facility's operations, and impacted groundwater quality in
5 these wells.

6 b. Of the three monitoring wells that Quemetco has identified as part of the
7 monitoring network for the Former Raw Materials Storage Area, only one has adequate
8 water for sampling purposes.

9 155. Accordingly, Quemetco is in violation of Title 22, sections 66264.97, subdivisions.
10 (b)(1)(A), (b)(1)(B), and (e)(12) and 66264.98, subdivision (b), and Part IV.D.2.b. of the Permit
11 in that its detection monitoring system for the Former Raw Materials Storage Area lacks
12 sufficient monitoring points to be effective.

13 **TWENTY-FIRST CAUSE OF ACTION**

14 **Failure to Apply for Permit Modification for the Detection Monitoring Program – Former
15 Raw Materials Storage Area**

16 (Cal. Code of Regs., tit. 22, §§ 66264.98, subd. (l) and 66270.30, subd. (a)
17 (Permit, Part IV.D.2.n.))

18 156. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
19 herein.

20 157. Paragraphs 138 through 139 above summarize the notification requirements for
21 inadequate detection monitoring programs and are also incorporated by reference.

22 158. As reflected in Quemetco's Quarterly Groundwater Monitoring Reports, beginning
23 sometime prior to 2013, Quemetco knew that the detection monitoring program for the Former
24 Raw Materials Storage Area did not satisfy the requirements of Title 22, section 66264.98, but
25 did not submit an application for a permit modification to make the appropriate changes to the
26 program within the required time.

27 159. Quemetco violated Title 22, section 66264.98, subdivision (l) and Part IV.D.2.n.(1) of
28 the Permit in that it knew that the detection monitoring program for the Former Raw Materials
Storage Area did not satisfy the requirements of Title 22, section 66264.98, but did not submit an
application for a permit modification to make the appropriate changes to the program within the

1 required time.

2 **TWENTY-SECOND CAUSE OF ACTION**

3 **Failure to Establish an Adequate Unsaturated Zone Monitoring System – Former Raw**
4 **Materials Storage Area**

5 (Cal. Code of Regs., tit. 22, §§ 66264.97, 66264.98, and 66270.30, subd. (a)
6 (Permit, Part IV.D.3. and 4.))

7 160. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
8 herein.

9 161. Paragraphs 148 and 150 above summarize the regulatory requirements for monitoring
10 of the unsaturated zone and are also incorporated by reference.

11 162. Likewise, the Permit, at Part IV.D.3, requires Quemetco to establish monitoring
12 systems that include sampling of the soil-pore liquid in the unsaturated zones beneath the Former
13 Raw Materials Storage Area.

14 163. Quemetco does not perform monitoring of the unsaturated zone between the surface
15 cover for the Former Raw Materials Storage Area and the groundwater surface. As a result,
16 neither Quemetco nor the Department are able to fully assess the performance of the final surface
17 cover for the Former Raw Materials Storage Area and determine if migration of constituents of
18 concern to the groundwater is occurring.

19 164. Quemetco has violated Title 22, sections 66264.97, subdivision (d) and 66264.98,
20 subdivision (b) and Part IV.D.3. and 4. of the Permit in that it has failed to establish and
21 implement an appropriate unsaturated zone monitoring system for the Former Raw Materials
22 Storage Area.

23 **TWENTY-THIRD CAUSE OF ACTION**

24 **Failure to Establish an Adequate Surface Water Monitoring System**

25 (Cal. Code of Regs., tit. 22, §§ 66264.97, 66264.98 and 66270.30, subd. (a)
26 (Permit, Part IV.D.5.))

27 165. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
28 herein.

166. Title 22, sections 66264.97 and 66264.98 require Quemetco to establish a surface
water monitoring system to monitor each surface water body that could be affected by a release
from the Regulated Units. This monitoring system shall include the following:

1 a. “[A] sufficient number of background monitoring points established at appropriate
2 locations and depths to yield samples from each surface water body to represent the quality
3 of the surface water that has not been affected by a release from the regulated unit[.]”
4 (Title 22, § 66264.97, subd. (c)(2)(A).)

5 b. For Quemetco’s detection monitoring program, the surface water monitoring
6 system must include “a sufficient number of monitoring points established at appropriate
7 locations and depths to yield samples from each surface water body to provide the best
8 assurance of the earliest possible detection of a release from the regulated unit[.]” (Title 22,
9 § 66264.97, subd. (c)(2)(B).)

10 c. For Quemetco’s evaluation monitoring program, the surface water monitoring
11 system must include “a sufficient number of monitoring points established at appropriate
12 locations and depths to yield samples from each surface water body that provide the data
13 necessary to evaluate changes in water quality due to the release from the regulated unit[.]”
14 (Title 22, § 66264.97, subd. (c)(2)(C).)

15 167. Likewise, the Permit, at Part IV.D.5., requires Quemetco to establish a surface water
16 monitoring system for San Jose Creek.

17 168. To maintain an adequate surface water monitoring system, Quemetco should have
18 collected samples from San Jose Creek but it has failed to do so. Because no appropriate surface
19 water monitoring system exists, the Department is unable to fully determine the presence or
20 extent of a release to San Jose Creek from the Regulated Units.

21 169. Quemetco has violated Title 22, sections 66264.97, subdivision (c) and 66264.98,
22 subdivision (b) and Part IV.D.5. of the Permit in that it has failed to establish and implement an
23 appropriate surface water monitoring system for San Jose Creek.

24 **TWENTY-FOURTH CAUSE OF ACTION**
25 **Failure to Collect Data Necessary to Conduct Statistical Analyses for**
26 **Unsaturated Zone and Surface Water Monitoring**
(Cal. Code of Regs., tit. 22, §§ 66264.97 and 66264.98.)

27 170. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
28 herein.

1 171. Title 22, section 66264.97 requires Quemetco to “collect all data necessary for
2 selecting the appropriate statistical method and for establishing background values” in the
3 unsaturated zone and surface water bodies. (Title 22, § 66264.97, subds. (e)(6), (e)(10).) “At a
4 minimum, this data shall include analytical data obtained during quarterly sampling of all
5 background monitoring points for a period of one year[.]” (Title 22, § 66264.97, subd. (e)(6).)

6 172. Based on the data, the owner or operator is required to propose an appropriate
7 statistical method for each constituent of concern and for each monitoring parameter. (Title 22,
8 § 66264.97, subd. (e)(7), (8).) Further, “the owner or operator shall propose and justify the use of
9 a procedure for determining a background value for each constituent of concern and for each
10 monitoring parameter.” (Title 22, § 66264.97, subd. (e)(10).) These procedures shall be proposed
11 for the unsaturated zone and surface water. (*Ibid.*)

12 173. Quemetco is also required to periodically monitor all constituents of concern and
13 monitoring parameters specified in the Permit and determine whether there is statistically
14 significant evidence of a release of any constituent of concern or monitoring parameter to the
15 unsaturated zone or surface water using the approved statistical procedure. (Title 22, § 66264.98,
16 subds. (e), (g), and (i).)

17 174. Quemetco failed to do the following:

18 a. Collect data necessary for selecting the appropriate statistical method and for
19 establishing background values for the unsaturated zones for the Regulated Units and for
20 San Jose Creek.

21 b. Based on such data, propose an appropriate statistical method for each constituent
22 of concern and for each monitoring parameter associated with the unsaturated zones for the
23 Regulated Units and for San Jose Creek.

24 c. Propose and justify the use of a procedure for determining a background value for
25 each constituent of concern and each monitoring parameter associated with the unsaturated
26 zones for the Regulated Units and for San Jose Creek.

27 d. Periodically monitor all constituents of concern and monitoring parameters
28 specified in the Permit and, using the approved statistical procedures, determine whether

1 there is statistically significant evidence of a release to the unsaturated zones for the
2 Regulated Units and to San Jose Creek.

3 175. Quemetco has violated Title 22, sections 66264.97, subdivision (e) and 66264.98,
4 subdivisions (e), (g), and (i) in that it failed to properly sample, collect data, propose appropriate
5 methods and procedures, and monitor and analyze surface water quality.

6 **TWENTY-FIFTH CAUSE OF ACTION**

7 **Failure to Construct Replacement Monitoring Wells**

8 (Cal. Code of Regs., tit. 22, § 66270.30, subd. (a) (Permit, Part IV.D.2.1.(6)))

9 176. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
10 herein.

11 177. The Permit, at Part IV.D.2.1.(6), requires that if Quemetco or the Department
12 “determines that a groundwater monitoring well or piezometer is no longer capable of yielding
13 representative groundwater samples or groundwater piezometric measurements, [Quemetco] shall
14 construct replacement wells and piezometers to adequately monitor the appropriate water bearing
15 zone.”

16 178. As reflected in Quemetco’s Quarterly Groundwater Monitoring Reports (see
17 paragraph 44 above), beginning in 2013 or earlier, monitoring wells MW-1, MW-2, MW-3, MW-
18 4, and MW-20 were not capable of yielding representative groundwater samples, yet Quemetco
19 failed to replace those wells.

20 179. Quemetco violated Part IV.D.2.1.(6) of the Permit in that it has failed to construct
21 replacement wells for no-longer functioning monitoring wells.

22 **TWENTY-SIXTH CAUSE OF ACTION**

23 **Failure to Properly Maintain Monitoring Wells and Bore Holes**

24 (Cal. Code of Regs., tit. 22, §§ 66264.97, subs. (b)(4), (6), & (7) and 66270.30, subd. (a)
25 (Permit, Part IV.D.2.m.(2)))

26 180. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth
27 herein.

28 181. The Permit, at Part IV.D.2.m.(2), states that Quemetco “shall maintain all monitoring
wells and piezometers that are monitored pursuant to this Permit in good working condition.”

182. Title 22, section 66264.97, subdivision (b)(4) requires that “[a]ll monitoring wells

1 shall be cased and constructed in a manner that maintains the integrity of the monitoring well
2 bore hole and prevents the bore hole from acting as a conduit for contaminant transport.”

3 183. During the field inspection portion of the Groundwater Monitoring Evaluation,
4 Department representatives observed liquid inside the flush mounted protective well box for
5 Monitoring Well MW-1, and also observed metal corrosion on the protective standpipe for
6 Monitoring Well MW-17. These conditions show that Quemetco failed to maintain the integrity
7 of the bore holes for Monitoring Wells MW-1 and MW-17, and failed to maintain these
8 monitoring wells in good condition.

9 184. Title 22, section 66264.97, subdivision (b)(6) requires that “[f]or each monitoring
10 well the annular space ... above and below the sampling interval shall be appropriately sealed to
11 prevent entry of contaminants from the surface, entry of contaminants from the unsaturated zone,
12 cross contamination of saturated zones and contamination of samples.”

13 185. During the Groundwater Monitoring Evaluation, Department representatives
14 determined that the seals for monitoring wells MW-1, MW-2, MW-3, and MW-4 were not
15 present or were not constructed in accordance with the applicable standard, California Well
16 Standards, Bulletin 74-90. The absence of appropriately constructed and maintained seals in the
17 bore holes for these four wells means that surface drainage water from the Facility can infiltrate
18 into the wellheads and migrate along the well casing and into the groundwater.

19 186. Title 22, section 66264.97, subdivision (b)(7) requires that “[a]ll monitoring wells
20 shall be adequately developed to enable collection of representative groundwater samples.”

21 187. In or around June 2015, the well casing for monitoring well MW-2 was filled with
22 sediment, which prevents this monitoring well from being used for groundwater sampling.

23 188. Quemetco violated Title 22, section 66264.97, subdivisions (b)(4), (b)(6), and (b)(7)
24 and Part IV.D.2.m.(2) of the Permit in that certain monitoring wells and bore holes were not
25 properly maintained.
26
27
28

TWENTY-SEVENTH CAUSE OF ACTION

Failure to Accurately Determine Groundwater Surface Elevations and Field Parameters
(Cal. Code of Regs., tit. 22, §§ 66264.97, subds. (e)(4) and (e)(13) and 66270.30, subd. (a)
(Permit, Part IV.D.2.k.(2)))

189. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth herein.

190. Title 22, section 66264.97, subdivision (e)(4) requires a hazardous waste facility's water quality monitoring program to "include and implement consistent sampling and analytical procedures that are designed to ensure that monitoring results provide a reliable indication of water quality at all monitoring points and background monitoring points" including procedures and techniques for sample collection, sample preservation and shipment, analytical procedures and chain of custody control.

191. Title 22, section 66264.97, subdivision (e)(13) requires that the operator of the facility "include [in the groundwater portion of the monitoring program] an accurate determination of the groundwater surface elevation and field parameters (temperature, electrical conductivity, turbidity and pH) at each well each time groundwater is sampled."

192. In addition, the Permit, at Part IV.D.2.k.(2) requires that Quemetco "shall monitor water levels in accordance with the GWMRP [Groundwater Monitoring and Response Plan]." For purposes of describing the requirements relating to groundwater sampling activity at the Facility, the applicable Groundwater Monitoring and Response Plan is Quemetco's May 12, 2011 Sampling and Analysis Plan, which sets forth specific requirements relating to the sampling of groundwater monitoring wells, including the measurement of surface elevations, the recording of field stability parameters, the manner in which to lower the bailer, and the proper labeling of sampling containers.

193. During the Groundwater Monitoring Evaluation, Department representatives observed the following:

- a. At each of the 19 groundwater monitoring well locations, Quemetco failed to perform multiple groundwater surface elevation measurements as required by Title 22, section 66264.97, subdivision (e)(13) and the May 12, 2011 Sampling and Analysis Plan, Appendix E, paragraph 5.

1 b. At monitoring wells MW-5, MW-7, MW-9, MW-10, MW-11, MW-13, MW-16,
2 MW-18, MW-19, and MW-20, more than one survey location or marking on the well
3 casing was displayed, and multiple markings and/or notches on the top of the well casings
4 was observed. Multiple and/or ambiguous survey locations can lead to inaccurate
5 groundwater elevation and groundwater flow measurements and are inconsistent with
6 standard industry practice, which requires the identification of a single point of
7 measurement for water elevation measurements.

8 c. Quemetco failed to record field stability parameters during and after groundwater
9 sampling of monitoring wells MW-7, MW-9, and MW-10, as required by Title 22,
10 section 66264.97, subdivision (e)(13) and the May 12, 2011 Sampling and Analysis Plan,
11 Appendix G, section G-10.

12 d. When purging groundwater from monitoring well MW-7, Quemetco allowed the
13 bailer to rapidly descend into the well water rather than lowering the bailer into the well in
14 a controlled manner to prevent surging of the well, as required by the Sampling and
15 Analysis Plan, section 4.6, page 12, paragraph 1, and May 12, 2011 Sampling and Analysis
16 Plan, Appendix G, section G-9, paragraph 2.

17 e. Quemetco failed to properly label sampling containers with the required
18 information, as required by the May 12, 2011 Sampling and Analysis Plan, Appendix G,
19 section G-8.

20 194. Quemetco violated Title 22, section 66264.97, subdivisions (e)(4) and (e)(13) and
21 Part IV.D.2.k.(2) of the Permit in that it did not properly determine and record the groundwater
22 surface elevation and field parameters and comply with the requirements in the May 12, 2011
23 Sampling and Analysis Plan.

TWENTY-EIGHTH CAUSE OF ACTION

Failure to Properly Determine Water Level and Groundwater Flow Rate and Direction
(Cal. Code of Regs., tit. 22, §§ 66264.97, subd. (e)(15) and 66270.30, subd. (a)
(Permit, Part IV.D.2.k.(2)))

195. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth herein.

196. Title 22, section 66264.97, subdivision (e)(15) requires that “the owner or operator [] measure the water level in each well and determine the groundwater flow rate and direction in the uppermost aquifer and in any zones of perched water and in any additional aquifers monitored pursuant to subsection (b)(1) of this section at least quarterly”

197. In addition, the Permit, at Part IV.D.2.k.(2), requires that Quemetco “shall monitor water levels in accordance with the GWMRP [the Groundwater Monitoring and Response Plan]”, and Part IV.D.2.k.(5)(b) requires Quemetco to submit quarterly groundwater elevation contour maps in the annual groundwater monitoring report that “include arrows indicating the direction(s) of groundwater flow.”

198. Quemetco failed to properly determine the groundwater flow rates and direction. Specifically:

a. The values for the hydraulic conductivity value used in these calculations were last measured in the Shallow Water Bearing Zone in 1988 and in the Lower Water Bearing Zone in 1992, and therefore are stale and unreliable.

b. While the Shallow Water Bearing Zone is currently dry, the Lower Water Bearing Zone wells last used for hydraulic conductivity measurements only represent one-quarter to one-third of the site lithology.

c. The groundwater levels have fluctuated substantially since 1992 in the saturated zone below the Regulated Units, warranting additional investigation and testing in the Lower Water Bearing Zone, which Quemetco has not performed.

199. Quemetco violated Title 22, section 66264.97, subdivision (e)(15) and Part IV.D.2.k.(2) and (5)(b) of the Permit in that it failed to obtain current hydraulic conductivity values for the entire Facility and failed to properly determine the groundwater levels in the saturated zone below the Regulated Units.

TWENTY-NINTH CAUSE OF ACTION
Failure to Maintain Post-Closure Final Cover

(Cal. Code of Regs., tit. 22, §§ 66264.310 and 66270.30, subd. (a)
(Permit, Part V.C.1.d. and e.)

200. Paragraphs 1 through 53 above are incorporated by reference as though fully set forth herein.

201. Title 22, section 66264.310 requires the operator of a facility with a closed regulated unit to design, construct, and maintain a final cover to prevent the downward entry of water. Title 22, section 66264.310, subdivision (a)(1) requires the operator to cover the unit “with a final cover designed and constructed to ... prevent the downward entry of water into the closed landfill throughout a period of at least 100 years[.]” Title 22, section 66264.310, subdivision (b)(1) requires the operator to “maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events[.]” Title 22, section 66264.310, subdivision (b)(4) requires the operator to “prevent run-on and run-off from eroding or otherwise damaging the final cover[.]”

202. Likewise, Part V.C.1.d. of the Permit requires that, with respect to the Former Raw Materials Storage Area and the Closed Surface Impoundment Unit, Quemetco “shall maintain the integrity and effectiveness of the final cover, including making repairs to the cap, as necessary to correct the effects of settling, subsidence, erosion, storms, droughts and other events” It further requires that “[t]he integrity of the cap must be such as to prevent the downward entry of water into the ‘regulated units’ throughout a period of 100 years” Part V.C.1.e. of the Permit requires that Quemetco “shall prevent run-on and run-off from eroding or otherwise damaging the final cover of all ‘regulated units’”

203. During the Groundwater Monitoring Evaluation in June 2015, Department representatives observed a saw cut in the final cover for the Former Raw Materials Storage Area. The saw cut was observed to run the entire length of the final cover, and run-off water from the Facility’s cooling towers was observed to be flowing over and ponding over the saw cut. In this way, the integrity of the cap for the Former Raw Materials Storage Area had been compromised.

1 204. Quemetco violated Title 22, section 66264.310, subdivisions (a)(1), (b)(1) and (b)(4)
2 and Part V.C.1.d. and e. of the Permit in that did not maintain the integrity of the cover of the
3 Closed Surface Impoundment Unit.

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

5 A. Enter a judgment that Defendants are required to pay civil penalties pursuant to the
6 HWCL to Plaintiff pursuant to the First through Twenty-Ninth Causes of Action, according to
7 proof at trial;

8 B. Enter preliminary injunctions, permanent injunctions, or other orders requiring
9 Defendants to comply with the HWCL and the regulations adopted thereunder;

10 C. Grant Plaintiff its costs of suit herein; and

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

12
13 Dated: 10/31/18

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California

ORIGINAL SIGNED

JAMES R. POTTER
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