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Exempt from Fees Pursuant to Government Code section 6103

Attorneys for Plaintiff People of the State of California, ex. rel. Department of Toxic Substances Control

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

**PEOPLE OF THE STATE OF
CALIFORNIA, EX. REL., BARBARA A. LEE,
DIRECTOR OF THE DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,**

Plaintiff,

V.

APPLE INC., A CALIFORNIA CORPORATION,

Defendant.

Case No.

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

[Health and Safety Code, §§ 25100 et seq.]

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

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and civil penalties under California's Hazardous Waste Control Law ("HWCL"), Health and Safety Code § 25100 *et seq.*, and regulations contained in California Code of Regulations, title 22, division 4.5, section 66260.1 *et*

seq. (“Title 22”), pertaining to the storage, handling, management, treatment and disposal of hazardous waste, and the maintenance of closure plans and financial assurance mechanisms for closure and liability. The HWCL and its implementing regulations establish comprehensive cradle to grave standards for the generation, storage, transportation, treatment and disposal of hazardous waste in California. The California Department of Toxic Substances Control (“Department”) is the state agency organized and existing pursuant to sections 58000 et seq. of the California Health and Safety Code. The Department is the state agency responsible for administering and enforcing the HWCL and its implementing regulations. (Health & Saf. Code, § 25100 et seq.; Cal. Code Regs., tit. 22, § 66260.1 *et seq.*)

2. Plaintiff seeks injunctive relief and civil penalties against defendant pursuant to sections 25181, 25184, 25189 and 25189.2 of the Health and Safety Code for violations of the HWCL and Title 22.

3. Pursuant to an on-site inspection on June 13, 2013, of a facility operated by Defendant Apple, Inc., (“Apple”) in Sunnyvale, California and a subsequent review of records, the Department discovered various violations of the HWCL and its implementing regulations at electronic waste shredding facilities operated by Apple in Santa Clara County. Upon further investigation, the Department discovered that Apple had opened, operated and closed an electronic waste processing facility in Cupertino, California with inadequate regulatory oversight or compliance with applicable environmental laws. In this action, the Department seeks injunctive relief and civil penalties against Apple for the violations of the HWCL and Title 22.

PLAINTIFF

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

5. Pursuant to Sections 25181, subdivision (a) and 25182 of the California Health and Safety Code, the Attorney General may, at the Department's request, commence an action for civil penalties and injunctive relief under the HWCL in the name of the People of the State of California. The Department has made such a request to the Attorney General.

DEFENDANT

6. Defendant Apple is a California corporation, with its principal place of business in Cupertino, California.

7. Defendant Apple is a "person" as defined in Health and Safety Code section 25118.

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

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to Cal. Const., art. VI, § 10, and Health and Safety Code section 25181, subdivision (a). .

10. Venue is proper in Santa Clara County Superior Court under Health and Safety Code section 25183, because the violations at issue occurred in Santa Clara County, and because Apple's principal place of business is in Santa Clara County.

HWCL STATUTORY AND REGULATORY BACKGROUND

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

12. California administers the HWCL in lieu of federal administration of the federal Resource Conservation and Recovery Act (“RCRA”), which is codified at 42 United States Code sections 6901 et seq., pursuant to Health & Safety Code sections 25101, subdivision (d), and 25159-25159.9. Federal law prohibits California from imposing any requirements less stringent than those authorized under RCRA. (42 U.S.C. § 6929.) The HWCL has a more inclusive definition of “hazardous waste” than does federal law. Hazardous wastes that are regulated under

1 California law but not federal law are known as “non-RCRA hazardous wastes.” (Health & Saf.
2 Code, § 25117.9.)

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 operation of hazardous waste generators, transporters, as well as owners and operators of
8 hazardous waste facilities. (See Cal. Code. Regs., tit. 22, § 66262.1 et seq.)

9 14. Under Section 25189 of the Health and Safety Code, a person who intentionally or
10 negligently violates a provision of the HWCL, or any permit, rule, regulation, standard, or
11 requirement issued or promulgated pursuant to the HWCL, shall be liable for a civil penalty not to
12 exceed twenty-five thousand dollars (\$25,000) for each separate violation or, for continuing
13 violations, for each day that the violation continues. Alternatively, a person may be strictly liable
14 for any such violation under Section 25189.2. For continuing violations, the HWCL authorizes
15 the Court to impose a penalty of up to twenty five thousand dollars (\$25,000) for each day that a
16 violation continues. (Health & Saf. Code, §§ 25189, subd. (b) and 25189.2, subd. (b).) A person
17 may not be held liable for a civil penalty imposed under section 25189 and for a civil penalty
18 imposed under section 25189.2 for the same act. (Health & Saf. Code, § 25189.2, subd. (f).)

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

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

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

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

18. Universal wastes such as electronic devices, batteries and other consumer products that contain hazardous substances are a subset of hazardous waste subject to the Department's universal waste regulations, title 22, division 4.5, chapter 23 of the California Code of Regulations, as well as other applicable provisions of law.

19. Discarded electronic devices are a universal waste, and any person who manages such devices is a universal waste handler. (22 Cal. Code Regs. § 66273.3.)

20. A universal waste handler who manages a universal waste and its integral components is generally authorized by the Department to conduct those activities, provided the universal waste handler complies with all the applicable requirements of the regulations. (22 Cal. Code Regs. § 66273.70.)

ALLEGATIONS COMMON TO ALL CLAIMS

21. During some part of 2011 and throughout 2012, Apple operated a facility at 10501 Tantau Avenue in Cupertino, California, at which it dismantled, shredded and disposed of Apple brand electronic devices (*hereafter*, “Tantau Avenue Facility”). In January 2013, Apple ceased these operations at the Tantau Avenue Facility, and relocated equipment and operations from the Tantau Avenue Facility to 1330 Kifer Road in Sunnyvale (*hereafter*, “Sunnyvale Facility”). In or about January 2013, Apple began similar processes of dismantling, shredding and disposing of its electronic devices at the Sunnyvale Facility.

22. Apple's protocol for disposing and processing discarded electronic devices at its shredding facilities, including the Tantau Avenue Facility and the Sunnyvale Facility, includes

1 removing batteries from the devices for separate handling before the devices are shredded. Apple
2 ships waste lithium batteries off-site for purposes of recycling, and has exported these batteries at
3 times to foreign countries for this purpose.

4 23. Apple's electronic waste shredding operations produce a fine dust that is collected,
5 bagged and removed daily ("baghouse dust"). Apple personnel use a vacuum device that collects
6 a fine dust, among other things, from the floors of the facility ("floor sweep").

7 24. After shredding the electronic devices, Apple ships the shredded waste off-site for
8 recycling as scrap metal. Historically, Apple shipped baghouse dust, shredded waste, and floor
9 sweep waste to Sims Recycling Solutions, Inc. in Roseville, California (SRS Roseville).

10 25. Department personnel inspected the Sunnyvale Facility on June 13, 2013. During
11 this inspection, Department personnel observed Apple's waste handling practices and took
12 samples of the baghouse dust and floor sweep waste.

13 26. The Department tested samples of the baghouse dust and floor sweep waste taken
14 from the Sunnyvale Facility and found that these wastes contained hazardous constituents,
15 including hazardous levels of copper and zinc, and particles less than 100 microns in size.

16 27. Through a review of Apple's records and subsequent investigation, the Department
17 discovered that Apple had processed similar electronic waste using similar operations and
18 practices at the Tantau Avenue Facility, prior to closing that facility and transferring operations to
19 the Sunnyvale Facility.

20 28. Apple generated, treated and, at times, transported universal waste as a result of
21 dismantling, shredding and disposing of discarded electronic devices at both the Tantau Avenue
22 and Sunnyvale Facilities.

23 29. According to Apple's records, Apple processed approximately 1,121,847 pounds of
24 electronic waste at the Tantau Avenue Facility in 2011 and 2012. Apple processed this electronic
25 waste without informing the Department of the existence of this facility, or complying with the
26 Department's universal waste regulations.

27 30. Apple processed approximately 803,518 pounds of electronic waste at the Sunnyvale
28 Facility prior to informing the Department of the existence of this facility, or complying with all

of the requirements of the Department's universal waste regulations.

31. As a result of the Department's June 13, 2013 inspection of the Sunnyvale Facility, the Department's review of Apple's records and samples taken by the Department during the inspection, the Department noted the following violations:

- Failure to submit written closure plan and cost estimate for closure for Tantau Avenue and Sunnyvale Facilities (Cal. Code Regs., tit. 22, § 66273.76, subds. (a) and (b)).
 - Failure to demonstrate financial responsibility for liability for Tantau Avenue and Sunnyvale Facilities (Cal. Code Regs., tit. 22, § 66273.76, subd. (c)).
 - Failure to demonstrate financial assurance to fund the cost of closure for Tantau Avenue and Sunnyvale Facilities (Cal. Code Regs., tit. 22, § 66273.76, subd. (d)).
 - Failure to provide notice of closure for Tantau Avenue Facility (Cal. Code Regs., tit. 22, § 66273.77, subd. (a)).
 - Causing treatment and disposal of hazardous waste at an unauthorized point, at and from Sunnyvale Facility (Health & Saf. Code, § 25189.2, subds. (c) and (d)).
 - Transportation of hazardous waste without manifests from Sunnyvale Facility (Health & Saf. Code § 25160, Cal. Code Regs., tit. 22, §§ 66262.20, 66262.23, 66268.7).
 - Failure to report and track export of hazardous waste from Tantau Avenue Facility (Health & Saf. Code § 25162.1, Cal. Code Regs., tit. 22, §§ 66273.40, 66262.53, 66262.56, 66262.57).
 - Failure to label or otherwise clearly mark used oil containers as “Hazardous Waste” (Cal. Code Regs., tit. 22, § 66262.34, subd. (f)).

FIRST CAUSE OF ACTION

**(Failure to maintain closure plan and cost estimate for closure)
(Cal. Code Regs., tit. 22, § 66273.76, subds. (a) and (b))
(Tantau Avenue Facility)**

32. The People re-allege paragraphs one through 31, above.

33. California Code of Regulations, title 22, section 66273.76, requires that no later than 30 days prior to beginning treatment of universal waste, such as electronic devices, the operator

of the facility must submit a closure plan to the Department that meets all of the requirements of subdivision (a), and a cost estimate for closure that meets the requirements of subdivision (b).

34. Apple dismantled, shredded and disposed of electronic devices at the Tantau Avenue Facility during 2011 and 2012 without ever submitting a closure plan or cost estimate for closure to the Department.

35. Apple is liable for a civil penalty under Health and Safety Code section 25189 or, alternatively, under section 25189.2, for treating electronic waste at the Tantau Avenue Facility without ever submitting a closure plan and closure cost estimate to the Department, in violation of California Code of Regulations, title 22, section 66273.76, subdivisions (a) and (b).

SECOND CAUSE OF ACTION

**(Failure to maintain closure plan and cost estimate for closure)
(Cal Code Regs., tit. 22, § 66273.76, subds. (a) and (b))
(Sunnyvale Facility)**

36. The People re-allege paragraphs one through 31, above.

37. Apple began dismantling, shredding and disposing of electronic devices, a universal waste, at the Sunnyvale Facility in January 2013 without having submitting a closure plan or cost estimate for closure to the Department at least 30 days prior to beginning these operations.

38. Apple did not submit a closure plan for the Sunnyvale Facility to the Department, as required by subdivision (a) of section 66273.76, until November 18, 2013.

39. Apple first submitted a cost estimate for closure of the Sunnyvale Facility to the Department, according to the requirements of subdivision (b) of section 66273.76, on November 18, 2013.

40. Apple is liable for a civil penalty under Health and Safety Code section 25189 or, alternatively, under section 25189.2, for treating electronic waste at the Sunnyvale Facility for more than 10 months prior without a closure plan and closure cost estimate required by California Code of Regulations, title 22, section 66273.76, subdivisions (a) and (b).

THIRD CAUSE OF ACTION

**(Failure to document financial assurance for closure)
(Cal. Code Regs., tit. 22, § 66273.76, subd. (d))
(Tantau Avenue Facility)**

41. The People re-allege paragraphs one through 31, above.

42. California Code of Regulations, title 22, section 66273.76, subdivision (d) requires that, no later than 30 days prior to beginning treatment of universal waste, the operator of the treatment facility must submit to the Department documentation demonstrating financial assurance for the purpose of funding the cost of closure for that facility.

43. Apple dismantled, shredded and disposed of electronic devices, a universal waste, at the Tantau Avenue Facility during some period of time in 2011 and for all of 2012, without ever submitting documentation of financial assurance for closure of the Facility to the Department.

44. Apple is liable for a civil penalty under Health and Safety Code section 25189 or, alternatively, under section 25189.2, for treating electronic waste for more than one year at the Tantau Avenue Facility without providing documentation of financial assurance for the cost of closure to the Department, in violation of California Code of Regulations, title 22, section 66273.76, subdivision (d).

FOURTH CAUSE OF ACTION

**(Failure to document financial assurance for closure)
(Cal. Code Regs., tit. 22, §§ 662673.76, subd. (d))
(Sunnyvale Facility)**

45. The People re-allege paragraphs one through 31, above.

46. California Code of Regulations, title 22, section 66273.76, subdivision (d) requires that, no later than 30 days prior to beginning the handling and treatment of universal waste, a universal waste handler must submit to the Department documentation demonstrating financial assurance for the purpose of funding the cost estimate for closure for that facility.

47. Apple began handling, dismantling, shredding and disposing of discarded electronic devices, a universal waste, at the Sunnyvale Facility in January 2013, without first submitting documentation of financial assurance for closure of that facility to the Department.

1 48. Prior to the Department's inspection of the Sunnyvale Facility, on June 13, 2013, the
2 Department had notified Apple of the lack of financial assurance documentation for the Facility.

3 49. As of the date of the Department's inspection of the Sunnyvale Facility on June 13,
4 2013, Apple still had not submitted documentation of financial assurance for closure.

5 50. Section 66273.76, subdivision (d), requires a universal waste handler to "prepare and
6 submit documentation demonstrating financial assurance for closure to fund the cost estimate for
7 closure, pursuant to section 66265.143, subsections (a) through (h)." Section 66265.143 provides
8 several options for demonstrating financial assurance.

9 51. Apple first submitted adequate documentation of financial assurance for closure of
10 the Sunnyvale Facility, utilizing the mechanism provided by section 66265.143, subdivision (e),
11 on November 18, 2013.

12 52. Section 66265.143, subsection (e)(4) provides that updated information shall be sent
13 to the Department "within 90 days after the close of each succeeding fiscal year."

14 53. The fiscal year for the mechanism Apple chose to demonstrate financial assurance for
15 closure ended on September 27, 2014.

16 54. Apple failed to timely update or re-submit to the Department an approved mechanism
17 to demonstrate financial assurance for closure of the Sunnyvale Facility by December 27, 2014.
18 Apple ultimately submitted a new mechanism for financial assurance for closure to the
19 Department on March 16, 2015.

20 55. Apple is liable for a civil penalty under Health and Safety Code section 25189 or,
21 alternatively, under section 25189.2, for continuing violations of California Code of Regulations,
22 title 22, section 66273.76, subdivision (d) for: (1) treating electronic waste at the Sunnyvale
23 Facility for more than 10 months without complying with the financial assurance for closure
24 requirements of subdivision (d), and (2) continuing to operate the Sunnyvale Facility after
25 December 27, 2014 without an updated mechanism for financial assurance for closure, for an
26 additional 79 days in violation of this regulation.

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FIFTH CAUSE OF ACTION

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(Failure to demonstrate financial responsibility for liability)
3 (Cal. Code Regs., tit. 22, § 66273.76, subd. (c))
4 (Tantau Avenue Facility)

5 56. The People re-allege paragraphs one through 31, above.

6 57. California Code of Regulations, title 22, section 66273.76, subdivision (c) requires a
7 universal waste handler to submit documentation to the Department demonstrating financial
responsibility for liability thirty days prior to beginning operations.

8 58. Apple did not submit to the Department documentation of financial responsibility for
9 liability for the Tantau Facility at all.

10 59. Apple is liable for a civil penalty under Health and Safety Code section 25189 or,
11 alternatively, under section 25189.2, for treating electronic waste at the Tantau Avenue Facility
12 for more than one year without submitting documentation of financial responsibility for liability
13 to the Department, in violation of California Code of Regulations, title 22, section 66273.76,
14 subdivision (c).

15

SIXTH CAUSE OF ACTION

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(Failure to demonstrate financial responsibility for liability)
17 (Cal. Code Regs., tit. 22, § 66273.76, subd. (c))
18 (Sunnyvale Facility)

19 60. The People re-allege paragraphs one through 31, above.

20 61. California Code of Regulations, title 22, section 66273.76, subdivision (c) requires a
21 universal waste handler to submit documentation to the Department demonstrating financial
22 responsibility for liability, at least 30 days prior to beginning operations.

23 62. Apple began dismantling, shredding and disposing of electronic devices at the
24 Sunnyvale Facility in January 2013, without first submitting to the Department the required
25 documentation of financial responsibility for liability with respect to operations at the Facility.

26 63. Apple first submitted documentation of financial responsibility for liability for the
27 Sunnyvale Facility on November 18, 2013.
28

64. To remain in compliance with the financial responsibility requirements for the mechanism that Apple chose (section 66265.147, subsection (f)(3)), the owner or operator is required to send complete updated information to the Department within 90 days after the close of each succeeding fiscal year.

65. The fiscal year for the mechanism Apple chose to demonstrate financial responsibility for liability ended on September 27, 2014. Apple was therefore required to submit updated documentation within 90 days of September 27, 2014.

66. Apple failed to timely update or re-submit a mechanism for financial responsibility for liability to the Department by December 27, 2014.

67. Apple submitted to the Department a new mechanism for financial responsibility for liability for the Sunnyvale Facility on March 16, 2015.

68. Apple is liable for a civil penalty under Health and Safety Code section 25189 or, alternatively, under section 25189.2, for successive violations of California Code of Regulations, title 22, section 66273.76, subdivision (c) for: (1) treating electronic waste at the Sunnyvale Facility for more than 10 months without complying with the financial responsibility for liability requirements of subdivision (c), and (2) continuing to operate the Facility after December 27, 2014, without updating its financial responsibility for liability, for an additional 79 days in violation of this regulation.

SEVENTH CAUSE OF ACTION

**(Failure to provide notice of closure)
(Cal. Code Regs., tit. 22, § 66273.77, subd. (a))
(Tantau Avenue Facility)**

69. The People re-allege paragraphs one through 31, above.

70. California Code of Regulations, title 22, section 66273.77, subdivision (a), provides that a universal waste handler who intends to close a universal waste handling and/or treatment facility, or to cease such operations, must notify the Department thirty days prior to closure.

71. In or about January 2013, Apple closed the Tantau Avenue Facility for the handling and treatment of universal waste without notifying the Department of the closure, or of the last

day on which Apple intended to conduct treatment and/or handling of universal waste at this Facility.

72. Apple is liable for a civil penalty under Health and Safety Code section 25189 or, alternatively, under section 25189.2, for violation of California Code of Regulations, title 22, section 66273.77, subdivision (a), for failure to timely and properly notify the Department of the closure of, and cessation of waste handling and treatment at, the Tantau Avenue Facility.

EIGHTH CAUSE OF ACTION

**(Causing the treatment and storage of hazardous waste at unauthorized point
(Health & Saf. Code § 25189.2, subd. and (d))
(Sunnyvale Facility)**

73. The People re-allege paragraphs one through 31 above.

74. Health and Safety Code section 25189.2, subdivision (d) makes it unlawful to treat or store or cause the treatment or storage of a hazardous waste at a point that is not authorized for such treatment or storage.

75. Apple caused the unlawful storage and treatment of hazardous waste by shipping the baghouse dust and floor sweep waste from the Sunnyvale Facility to SRS Roseville, as non-hazardous waste. SRS Roseville stored and treated this waste as non-hazardous before export to Canada. SRS Roseville is not authorized to store or treat the hazardous waste from Apple's Sunnyvale facility.

76. Apple is liable for a civil penalty under Health and Safety Code section 25189.2, subdivisions (c), for causing the unauthorized treatment and storage of hazardous waste.

NINTH CAUSE OF ACTION

**(Transport of hazardous waste without manifest)
(Health & Saf. Code §25160, Cal. Code Regs., tit. 22, §§ 66262.20, 66262.23, 66268.7)
(Sunnyvale Facility)**

77. The People re-allege paragraphs one through 31, above.

78. Health and Safety Code section 25160, subdivision (b)(1) provides that a person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, shall complete a manifest according to the Department's manifest requirements (Cal. Code Regs., tit. 22, §§ 66262.20).

1 66262.23), prior to the time the waste is transported or offered for transportation.

2 79. A generator of hazardous waste is required to determine whether or not waste to be
3 transported offsite is hazardous, and to comply with the requirements for shipping waste that is
4 hazardous. (22 Cal. Code Regs. section 66268.7.)

5 80. From about January 2013 through June 13, 2013, Apple shipped an hazardous waste
6 (baghouse dust) from the Sunnyvale Facility to SRS Roseville, without complying with the
7 uniform manifest requirement for transportation of hazardous waste. Apple did not label or
8 otherwise identify the shipments of hazardous waste (baghouse dust) to SRS Roseville as
9 hazardous.

10 81. SRS Roseville is not an authorized point for the receipt and treatment of hazardous
11 waste.

12 82. Because Apple failed to comply with the manifest requirements, SRS Roseville
13 received, treated and disposed of hazardous waste without being informed by Apple of the
14 waste's hazardous nature, and the Department was unable to track the quantity of the hazardous
15 waste and the location of its disposal.

16 83. Apple is liable for a civil penalty under Health and Safety Code section 25189 or,
17 alternatively, under section 25189.2, for violation of Health and Safety Code Section 25160 and
18 California Code of Regulations, title 22, sections 66262.20, 66262.23, and 66268.7, for
19 transporting hazardous waste from the Sunnyvale Facility without a manifest.

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21 TENTH CAUSE OF ACTION

22 (Failure to notify, report and track export of hazardous waste)
23 (Cal. Code Regs, tit. 22, §§ 66273.40, 66262.53, 66262.56, 66262.57)
24 (Tantau Avenue Facility)

25 84. The People re-allege paragraphs one through 31, above.

26 85. Health and Safety Code section 25162.1 contains detailed requirements for
27 exporting waste to foreign countries.

28 86. California Code of Regulations, title 22, section 66273.40, subdivision (a)(2)
provides additional regulatory requirements for exporting universal waste to a foreign destination

in a country other than an Organization for Economic Cooperation and Development (OECD) country specified in section 66262.58(a)(1).

87. On October 13, 2012, and again on November 3, 2012, Apple shipped universal waste lithium batteries to Canada from the Tantau Avenue Facility without complying with the applicable statutory and regulatory requirements for exporting a universal waste to a non-OECD country. The Department's review of Apple's records and the Department's own database indicates that for both of these shipments Apple failed to comply with the notification (section 66262.53), annual reporting (section 66262.56), and tracking (section 66262.57) requirements, as well as the requirements of Health and Safety Code section 25162.1, subsections (a) and (b).

88. Apple is liable for civil penalties under Health and Safety Code section 25189 or, alternatively, under section 25189.2, for failure to notify, report and track exports hazardous waste to Canada from the Tantau Avenue Facility without complying with statutory and regulatory requirements.

ELEVENTH CAUSE OF ACTION

**(Failure to label hazardous waste)
(Cal. Code Regs, tit. 22, § 66262.34(f))
(Sunnyvale Facility)**

89. The People re-allege paragraphs one through 31, above.

90. California Code of Regulations, title 22, section 66262.34, subdivision (f) provides that generators who accumulate hazardous waste on site without a permit or grant of interim status shall, among other things, label or clearly mark each container and tank used for onsite accumulation of hazardous waste with the words, "Hazardous Waste."

91. On June 13, 2013, during the Department's inspection of the Sunnyvale Facility, Department personnel observed three five-gallon used oil containers that were not labeled or otherwise marked as "Hazardous Waste" as required pursuant to California Code of Regulations, title 22, section 66262.34, subdivision (f).

92. Apple is liable for a civil penalty under Health and Safety Code section 25189 or, alternatively, under section 25189.2, for violation of California Code of Regulations, title 22,

1 section 66262.34 subdivision (f), for failure to label used oil containers as "Hazardous Waste."

2 PRAYER FOR RELIEF

3 The People of the State of California, by and through the Department, request the following
4 relief:

5 1. Judgment finding that Apple has violated the HWCL and its implementing
6 regulations as described in the First through Eleventh Causes of Action;

7 2. Judgment against Apple for civil penalties in accordance with proof but in an amount
8 of no less than \$450,000 (four hundred-fifty thousand dollars) for violations described in the First
9 through Eleventh Causes of Action; and

10 3. For an injunction ordering Apple, its agents, servants, employees, representatives, and
11 all persons acting within the control of Apple, to comply with Chapter 6.5 of Division 20 of the
12 Health and Safety Code (Health & Saf. Code §25100 *et seq.*) and the regulations promulgated
13 under this chapter (Cal. Code Reg., tit. 22, § 66000 *et seq.*) in connection with the handling,
14 storage, treatment and transportation of hazardous waste.

15 4. Any additional relief that the Court deems appropriate.

16 Dated: December 2, 2016

17 Respectfully Submitted,

18 KAMALA D. HARRIS
19 Attorney General of California
20 MARGARITA PADILLA
21 Supervising Deputy Attorney General

22 original signed by Reed Sato

23 _____
24 REED SATO
25 Deputy Attorney General
26 *Attorneys for People of the State of*
27 *California, ex. rel. Department of Toxic*
28 *Substances Control*

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