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YOLO SUPERIOR COURT
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DEPUTY

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9 *Additional counsel listed on following page*

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF YOLO

12 THE PEOPLE OF THE STATE OF CALIFORNIA,) Case No. CV17-532
13)
14 Plaintiff,) COMPLAINT FOR INJUNCTIVE
15) RELIEF, CIVIL PENALTIES, AND
16 v.) OTHER RELIEF
17)
18 WOODLAND BIOMASS POWER, LTD., a) (Health & Saf. Code, §§ 25100 *et seq.*,
19 California limited partnership; and DOES 1-20,) 25249.5 *et seq.*; Bus. & Prof. Code, §§
20 inclusive,) 17200 *et seq.*, 17500 *et seq.*)
21 Defendants.) *Exempt from fees per Gov. Code, § 6103*
22)
23)
24)
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1 Facility. In 1993, the People brought suit alleging that Woodland Biomass Facility Ash—which was
2 high in lead—was unlawfully disposed of on agricultural lands in Yolo County, in violation of
3 California’s Hazardous Waste Control Law. The People’s suit ended in a stipulated judgment
4 enjoining WOODLAND BIOMASS POWER, LTD., from violating California’s Hazardous Waste
5 Control laws.

6 6. The People now bring this suit to again enjoin Defendants from violating California’s
7 Hazardous Waste Control Law—along with California’s Unfair Competition Law, False Advertising
8 Law, and Proposition 65—and to assess civil penalties against Defendants.

9 PARTIES

10 7. Plaintiff is the People of the State of California. The People bring this action by and
11 through Jeff W. Reisig, District Attorney of Yolo County, Tori Verber Salazar, District Attorney for
12 San Joaquin County, and Krishna A. Abrams, District Attorney for Solano County. The authority of
13 the District Attorneys of Yolo County, Solano County, and San Joaquin County to bring this action is
14 derived from statutory language of the State of California, specifically Health and Safety Code
15 sections 25182 and 25249.7, and Business and Professions Code sections 17203, 17204, 17206,
16 17535, and 17536.

17 8. Defendant Woodland Biomass Power, LTD., is a California limited partnership that
18 owns the Woodland Biomass Facility.

19 9. Does 1 through 20, inclusive, are persons whose names and identifies are unknown to
20 the People at this time, and the People therefore sue these defendants by their fictitious names. The
21 People will seek leave to amend this Complaint to allege the true names of Does 1 through 20 once
22 they have been determined. Does 1 through 20 participated in some or all of the acts alleged herein.

23 10. The named and unnamed defendants in this action are collectively referred to as
24 “Defendants.”

25 11. Allegations in this Complaint of Defendants’ acts or omissions include the acts and
26 omissions of Defendants’ owners, officers, agents, employees, and representatives that were
27 committed while acting within the course and scope of their employment or agency on behalf of
28 Defendants.

1 12. All Defendants at all times acted as authorized agents of one another. With regard to
 2 the conduct and omissions alleged in this Complaint, each of the Defendants ratified the actions of
 3 the other Defendants.

4 **JURISDICTION AND VENUE**

5 13. This Court has jurisdiction over Defendants because all causes of action asserted in
 6 this Complaint arise out of the Defendants' conduct in Yolo County, California, and pursuant to
 7 Article 6, Section 10 of the California Constitution.

8 14. Venue is proper in this Court under Code of Civil Procedure section 393 because the
 9 causes of action alleged in this Complaint arose out of Defendants' conduct in Yolo County,
 10 California.

11 15. The People and Defendants have entered into a series of agreements to toll any
 12 applicable statutes of limitation. As a result of those agreements, the period between July 1, 2014
 13 through January 30, 2015, inclusive, and from April 14, 2016 to April 15, 2017, inclusive, will not be
 14 included in computing the time limited by any statutes of limitation applicable to the causes of action
 15 brought against Defendants based on claims covered by the tolling agreements. Those claims
 16 include the claims alleged in this action against Defendants.

17 **STATUTORY AND REGULATORY BACKGROUND**

18 **I. The Hazardous Waste Control Law**

19 16. The State of California has enacted a comprehensive statutory and regulatory
 20 framework governing the generation, handling, treatment, storage, transportation, and disposal of
 21 hazardous waste. This framework—contained in Chapter 6.5 of Division 20 of the Health and Safety
 22 Code, section 25100 *et seq.*, and its implementing regulations found at Section 66260.1 *et seq.* of title
 23 22 of the California Code of Regulations—mandates a “cradle to grave” system known as the
 24 Hazardous Waste Control Law (“HWCL”). The HWCL system is maintained to record the
 25 registration, tracking, storage, treatment, and disposal of hazardous waste, and to provide for the
 26 protection of the public and the environment from the potential risks posed by hazardous waste.

27 17. Section 25189 of the Health and Safety Code provides for civil liability for any
 28 negligent or intentional violation of the HWCL, or for any violation of any permit, rule, regulation,

1 standard, or requirement issued or promulgated pursuant to the HWCL. Section 25189.2 of the
2 Health and Safety Code is an alternative liability provision providing for strict civil liability for any
3 violation of the HWCL, or for any violation of any permit, rule, regulation, standard, or requirement
4 issued or promulgated pursuant to the HWCL.

5 18. The HWCL, pursuant to Health and Safety Code sections 25181 and 25184,
6 authorizes the Court to issue an order enjoining any ongoing or potential violation of the HWCL, or
7 any applicable rule, regulation, permit, standard, requirement, or order issued or promulgated
8 pursuant to the HWCL.

9 19. Health and Safety Code section 25184 adds that in civil actions brought pursuant to
10 the HWCL in which an injunction or temporary restraining order is sought, "it shall not be necessary
11 to allege or prove at any stage of the proceeding that irreparable damage will occur should the
12 temporary restraining order, preliminary injunction, or permanent injunction not be issued; or that the
13 remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or
14 permanent injunction shall issue without such allegations and without such proof."

15 **II. Proposition 65**

16 20. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
17 passed as "Proposition 65" by a vote of the people in November of 1986.

18 21. The warning requirement of Proposition 65 is contained in Health and Safety Code
19 section 25249.6, and provides the following:

20 No person in the course of doing business shall knowingly and intentionally expose
21 any individual to a chemical known to the state to cause cancer or reproductive
22 toxicity without first giving clear and reasonable warning to such individual, except as
23 provided in Section 25249.10.

24 22. Section 5194 of title 8 of the California Code of Regulations implements Proposition
25 65 with respect to the workplace. Section 5194 requires, among other things, that employers must
26 evaluate chemicals produced in the workplace to determine if they are hazardous, obtain or develop
27 an accurate and complete safety data sheet for each hazardous chemical present in the workplace, and
28 provide employees with effective information and training on hazardous chemicals.

1 23. Any person violating or threatening to violate Proposition 65 may be enjoined in any
2 court of competent jurisdiction, and is liable for civil penalties of up to \$2,500 per day for each
3 violation, in addition to any other penalty authorized by law. (Health & Saf. Code, § 25249.7(a)-(b).)

4 **GENERAL ALLEGATIONS**

5 **I. Defendants' Generation of Ash at the Woodland Biomass Facility**

6 24. Defendants have owned and/or operated the Woodland Biomass Facility since 2005.

7 25.

8 26. Defendants combust primarily wood waste—including pallets, agricultural wood (e.g.,
9 food trees), and, on occasion, creosote-treated railroad ties—at the Woodland Biomass Facility to
10 generate electricity.

11 27. Defendants' combustion of biomass at the Woodland Biomass Facility produces waste
12 byproducts of Fly Ash and Bed Ash.

13 28. Fly Ash and Bed Ash produced at the Woodland Biomass Facility contain various
14 contaminants and heavy metals, including lead, arsenic, copper, and dioxins.

15 **II. Defendants' Failure to Appropriately Characterize Their Ash**

16 **A. Failure to appropriately characterize Fly Ash**

17 29. Defendants, as generators of Fly Ash at the Woodland Biomass Facility, have an
18 obligation to characterize and classify their Fly Ash by evaluating the Fly Ash's hazardous
19 characteristics. (Cal. Code Regs., tit. 22, §§ 66262.11, 66260.200.) This obligation requires, among
20 other things, that Defendants sample and test their Fly Ash.

21 30. Defendants, however, for at least the past five years, Woodland Biomass Facility Fly
22 Ash used a flawed methodology to characterize the Fly Ash as hazardous or nonhazardous.

23 31. For at least the past five years, Defendants have used the following sampling
24 procedure to characterize its Fly Ash. Defendants take one sample from each truckload of Fly Ash
25 transported each week—and there are about fourteen truckloads of Fly Ash transported each week.
26 Defendants then mix these samples together to form a single weekly composite sample, and test the
27 weekly composite sample each week.

28 32. Defendants' averaging of about fourteen truckloads of Fly Ash at a time for their

1 weekly composite sample, however, impairs Defendants' ability to determine whether any given
2 truckload of Fly Ash contains hazardous waste. This is particularly true given the significant and
3 varying levels of contaminants and heavy metals in the wood waste that Woodland Biomass Facility
4 burns to create the Fly Ash.

5 33. Defendants, moreover, for at least the past five years, have relied upon improper
6 statistical averaging to characterize Woodland Biomass Facility Fly Ash as nonhazardous.

7 34. As stated in paragraph 31 above, Defendants test their Fly Ash on a weekly basis
8 using weekly composite samples. Defendants then—using a spreadsheet they call the “52-Week
9 Rolling Average” spreadsheet—perform a statistical analysis of the past 52 weeks of weekly
10 composite samples. If Defendants' 52-Week Rolling Average spreadsheet shows a 90 percent
11 probability that a given weekly composite test result would be below regulatory thresholds,
12 Defendants will declare the Fly Ash generated during the current week to be nonhazardous—and
13 they will do so even if the weekly composite sample for the Fly Ash generated during the current
14 week shows that Fly Ash to exhibit hazardous-waste characteristics. Defendants have relied on their
15 52-Week Rolling Average spreadsheets for at least the past five years to characterize the Fly Ash.

16 35. Defendants' reliance on their 52-Week Rolling Average spreadsheets impairs their
17 ability to accurately determine whether any given truckload of Fly Ash contains hazardous waste,
18 and violates California law. While California law allows generators of waste, like Defendants, to use
19 generator knowledge and statistical analysis to determine whether a given waste is hazardous, it does
20 not permit the use of statistical analysis to determine whether a series of separate wastes—that are
21 produced at different times and delivered to different places—are hazardous or nonhazardous. But
22 that is exactly the way Defendants have wrongly used statistics in the name of “generator
23 knowledge.”

24 36. Finally, in further violation of waste-classification requirements, Defendants test Fly
25 Ash generated from the Woodland Biomass Facility too late to provide a meaningful classification of
26 the Fly Ash. For at least the past five years, Defendants have failed to test whether Fly Ash
27 generated from the Woodland Biomass Facility exhibited hazardous-waste characteristics until after
28 the Fly Ash was transported and disposed of off-site.

1 **B. Failure to appropriately characterize Bed Ash**

2 37. Defendants, as generators of Bed Ash waste at the Woodland Biomass Facility, have
3 an obligation to characterize and classify their Bed Ash by evaluating the Fly Ash's hazardous
4 characteristics. (Cal. Code Regs., tit. 22, §§ 66262.11, 66260.200.) This obligation requires, among
5 other things, that Defendants sample and test their Bed Ash. Defendants have failed to comply with
6 this obligation.

7 38. Before 2010, Defendants entirely failed to characterize Woodland Facility Biomass
8 Facility Bed Ash as hazardous or nonhazardous. Defendants did not even sample or test the Bed Ash
9 before 2010.

10 39. From 2010 to around April 2015, Defendants, by relying on quarterly testing, sampled
11 and tested Woodland Biomass Facility Bed Ash too infrequently to properly characterize the Bed
12 Ash as hazardous or nonhazardous. According to internal plans that Defendants relied upon to guide
13 their management of Woodland Biomass Facility Ash, Defendants would take one sample of Bed
14 Ash per quarter—from the over 1,500 tons of Bed Ash typically generated per quarter—and test this
15 one sample to characterize all the Bed Ash as hazardous or nonhazardous.

16 40. Since April 2015, Defendants have taken one sample from each truckload of Bed Ash
17 transported each week. Defendants then mix these samples together to form a single weekly
18 composite sample, and test the weekly composite sample. Defendants' averaging of several
19 truckloads of Bed Ash at a time, however, impairs Defendants' ability to determine whether any
20 given truckload of Bed Ash contains hazardous waste. This is particularly true given the significant
21 and varying levels of contaminants and heavy metals in the wood waste that Woodland Biomass
22 Facility burns to create the Bed Ash.

23 41. Defendants, moreover, since April 2015, have improperly relied upon statistical
24 analysis to characterize Woodland Biomass Facility Bed Ash as hazardous or nonhazardous. As
25 stated in the paragraph above, Defendants test the Bed Ash on a weekly basis using a weekly
26 composite sample. Defendants then—using their 52-Week Rolling Average spreadsheet—perform a
27 statistical analysis of the past 52 weeks of weekly composite samples. If Defendants' 52-Week
28 Rolling Average spreadsheet shows a 90 percent probability that a given weekly composite test result

1 would be below regulatory thresholds, Defendants will declare the Bed Ash generated during the
2 current week to be nonhazardous—and they will do so even if the weekly composite sample for the
3 Bed Ash generated during the current week shows that Bed Ash to exhibit hazardous-waste
4 characteristics. Defendants’ reliance on this statistical analysis impairs their ability to determine
5 whether any given truckload of Bed Ash contains hazardous waste, and violates California law.
6 While California law allows generators of waste, like Defendants, to use generator knowledge and
7 statistical analysis to determine whether a given waste is hazardous, it does not permit the use of
8 statistical analysis to determine whether a series of separate wastes—that are produced at different
9 times and delivered to different places—are hazardous or nonhazardous.

10 42. Finally, Defendants test Bed Ash generated from the Woodland Biomass Facility too
11 late to provide a meaningful classification of the Bed Ash. For at least the past five years,
12 Defendants have failed to evaluate whether Bed Ash generated from the Woodland Biomass Facility
13 exhibited hazardous-waste characteristics until after the Bed Ash was transported and disposed of
14 off-site.

15 **III. Defendants’ Making of False Statements Concerning Their Ash**

16 43. Defendants rely on spreadsheets that summarize past test results—the 52-Week
17 Rolling Average spreadsheets discussed above in paragraphs 34 and 41—to characterize Woodland
18 Biomass Facility Ash as hazardous or nonhazardous.

19 44. From 2009-2015, a WOODLAND BIOMASS POWER, LTD. agent, Kirk Bingham,
20 in the course and scope of his employment at the Woodland Biomass Power Facility and under the
21 supervision and management of plant and corporate officials, modified these 52-Week Rolling
22 Average spreadsheets, along with other spreadsheets that summarize quarterly test results, to make
23 Woodland Biomass Facility Ash appear less corrosive and less toxic than it was in reality.
24 Specifically, Bingham changed certain test results that exceeded regulatory limits to a lower level,
25 below regulatory thresholds, in the 52-Week Rolling Average spreadsheets. Such fraudulent conduct
26 should have easily been discovered by plant managers and corporate environmental compliance. But
27 his supervisors, plant managers and corporate compliance staff did not double-check his work,
28 despite having the same underlying data available to them.

1 45. Examples of falsified test results input into the 52-Week Rolling Average
2 spreadsheets include, but are not limited to, the following:

- 3 a. For the Woodland Biomass Facility weekly Fly Ash sample dated January 30,
4 2011, Defendants' test result showed that the Ash had a Soluble Threshold Limit
5 Concentration ("STLC") of lead of 8.6 milligrams per liter (mg/L)—a
6 concentration level above the regulatory threshold. (Under California law, a waste
7 having an STLC of lead of 5 mg/L or above is hazardous waste. (Cal. Code Regs.,
8 tit. 22, § 66261.24.)) Bingham, however, input a lower result of 2.2 mg/L—a
9 concentration level just below the regulatory threshold—into Woodland Biomass
10 Facility's 52-Week Rolling Average spreadsheet.
- 11 b. For the Woodland Biomass Facility weekly Fly Ash sample dated January 1,
12 2012, Defendants' test result showed that the Ash had an STLC of lead of 6.7
13 mg/L. Bingham, however, input a lower result of 3.7 mg/L into Woodland
14 Biomass Facility's 52-Week Rolling Average spreadsheet.
- 15 c. For the Woodland Biomass Facility weekly Fly Ash sample dated June 2, 2013,
16 Defendants' test result showed that the Ash had an STLC of arsenic of 5.9 mg/L—
17 a concentration level above the regulatory threshold. (Under California law, a
18 waste having an STLC of arsenic of 5 mg/L or above is hazardous waste. (Cal.
19 Code Regs., tit. 22, § 66261.24.)) Bingham, however, input a lower result of 4.9
20 mg/L—a concentration level just below the regulatory threshold—into Woodland
21 Biomass Facility's 52-Week Rolling Average spreadsheet.
- 22 d. For the Woodland Biomass Facility weekly Ash sample dated June 9, 2013,
23 Defendants' test result showed that the Ash had an STLC of 7.4 mg/L for arsenic.
24 Bingham, however, input a lower result of 4.7 mg/L into Woodland Biomass
25 Facility's 52-Week Rolling Average spreadsheet.
- 26 e. For the Woodland Biomass Facility weekly Ash sample dated June 23, 2013,
27 Defendants' test result showed that the Ash had an STLC of 5.3 mg/L for arsenic
28 and of 5.1 mg/L for lead. Bingham, however, input lower results of 3.2 mg/L for

1 arsenic and 3.1 mg/L for lead—concentration levels below the relevant regulatory
2 thresholds—into Woodland Biomass Facility’s 52-Week Rolling Average
3 spreadsheet.

- 4 f. For the Woodland Biomass Facility weekly Ash sample dated July 21, 2013,
5 Defendants’ test result showed that the Ash had an STLC of 6.4 mg/L for arsenic
6 and of 8.9 mg/L for lead. Bingham, however, input lower results of 4.4 mg/L for
7 arsenic and 4.9 mg/L for lead into Woodland Biomass Facility’s 52-Week Rolling
8 Average spreadsheet.
- 9 g. For the Woodland Biomass Facility weekly Ash sample dated July 28, 2013,
10 Defendants’ test result showed that the Ash had an STLC of 5.4 mg/L for arsenic
11 and of 5.4 mg/L for lead. Bingham, however, input lower results of 4.6 mg/L for
12 arsenic and 4.4 mg/L for lead into Woodland Biomass Facility’s 52-Week Rolling
13 Average spreadsheet.
- 14 h. For the Woodland Biomass Facility weekly Ash sample dated September 8, 2013,
15 Defendants’ test result showed that the Ash had an STLC of 5.9 mg/L for arsenic
16 and of 7.5 mg/L for lead. Bingham, however, input lower results of 2.9 mg/L for
17 arsenic and 3.5 mg/L for lead into Woodland Biomass Facility’s 52-Week Rolling
18 Average spreadsheet.
- 19 i. For the Woodland Biomass Facility weekly Fly Ash sample dated April 27, 2014,
20 Defendants’ test result showed that the Ash had an STLC of lead of 5.9 mg/L.
21 Bingham, however, input a lower result of 4.9 mg/L into Woodland Biomass
22 Facility’s 52-Week Rolling Average spreadsheet.

23 46. Bingham input false data into the 52-Week Rolling Average spreadsheets, along with
24 spreadsheets that purportedly summarize quarterly test results, over 100 times.

25 47. Defendants provided the falsified 52-Week Rolling Average spreadsheets to various
26 individuals and companies that would use such information to determine whether or not to take or
27 use Defendants’ Ash.

28 48. Defendants also submitted the falsified 52-Week Rolling Average spreadsheets, along

1 with spreadsheets that incorrectly summarized quarterly test results, to the City of Woodland and
2 Yolo County. Defendants were required to provide these spreadsheets to the City of Woodland and
3 Yolo County pursuant to a City of Woodland monitoring plan.

4 **IV. Defendants' Additional Violations of California Law**

5 49. Defendants' weekly composite test results for Fly Ash produced at the Woodland
6 Biomass Facility show that the Fly Ash has repeatedly exhibited hazardous-waste characteristics of
7 toxicity and corrosivity.

8 50. Defendants' weekly composite test results for Bed Ash produced at the Woodland
9 Biomass Facility show that the Bed Ash has repeatedly exhibited hazardous characteristics of
10 toxicity.

11 51. Although Fly Ash and Bed Ash produced at the Woodland Biomass Facility have
12 repeatedly exhibited hazardous-waste characteristics, Defendants did not manage the Fly Ash and
13 Bed Ash as hazardous waste.

14 52. Defendants, at all relevant times and continuing to the date of filing of this Complaint,
15 caused each of the acts and omissions alleged below—all of which concern the Woodland Biomass
16 Facility—in violation of California law:

- 17 a. Delivered, or otherwise transferred custody or possession of, hazardous waste to a
18 person or entity that was not properly licensed and registered to transport
19 hazardous waste, in violation of California Health and Safety Code section 25163.
- 20 b. Transported hazardous waste without being properly licensed and registered to
21 transport hazardous waste, in violation of California Health and Safety Code
22 section 25163.
- 23 c. Transported, or submitted for transportation, hazardous waste without first
24 completing a Uniform Hazardous Waste Manifest, in violation of Health and
25 Safety Code section 25160.
- 26 d. Knowingly caused a hazardous substance to be deposited on another's lands,
27 without the landowner's permission, in violation of Penal Code section 374.8.
- 28 e. Disposed, or caused the disposal of, hazardous waste at a point not authorized, in

1 violation of Health and Safety Code section 25189. For example, from 2011 to
2 2013, Defendants disposed of tens of thousands of tons of Bed Ash and Fly Ash—
3 much of which constituted hazardous waste—on agricultural property in Yolo
4 County; from 2013 to 2016, Defendants disposed of thousands of tons of Bed Ash
5 and Fly Ash—much of which constituted hazardous waste—on a landfill in San
6 Joaquin County that was not authorized to accept hazardous waste; and from 2014
7 to 2016, Defendants disposed of thousands of tons of Bed Ash and Fly Ash—
8 much or all of which constituted hazardous waste—on a landfill in Solano County
9 that was not authorized to accept hazardous waste.

- 10 f. Disposed, or caused the disposal of, Ash on agricultural land for a purported
11 agricultural use without first providing notice to the California Department of
12 Toxic Substances Control (“DTSC”), in violation of Section 66266.115 of title 22
13 of the California Code of Regulations and Food and Agriculture Code Section
14 14501 *et seq.* and 14682.
- 15 g. Disposed, or caused the disposal of, Ash on agricultural land for a purported
16 agricultural use without first receiving DTSC approval, in violation of Section
17 66266.115 of title 22 of the California Code of Regulations.
- 18 h. Failed to manage generated hazardous waste in accordance with the requirements
19 of Chapter 6.5 of the Health and Safety Code and its implementing regulations in
20 Title 22 of the California Code of Regulations.
- 21 i. Failed to determine if hazardous waste had to be treated before it could be land
22 disposed by testing the waste or using generator knowledge of the waste, in
23 violation of Section 66268.7 of title 22 of the California Code of Regulations.
- 24 j. Failed to implement, maintain, and comply with an employee training program
25 meeting the requirements of Section 66265.16 of title 22 of the California Code of
26 Regulations.
- 27 k. Made or caused to be made statements to the public concerning Defendants’ Ash
28 that were false or misleading and that Defendants knew or reasonably should have

1 known were false or misleading, in violation of Business and Professions Code
2 section 17500, and which statements Defendants knew would be used by members
3 of the public to determine whether or not to take the Ash.

- 4 l. Knowingly and intentionally exposed individuals—including employees and those
5 who received Ash—to chemicals known to cause cancer or reproductive toxicity
6 without first providing clear and reasonable warning, in violation of Proposition
7 65 (Health & Saf. Code 25249.5 et seq.).
- 8 m. Failed to provide employees with effective training information and training on
9 hazardous chemicals in their work area, in violation of Section 5194(h) of title 8
10 of the California Code of Regulations.
- 11 n. Failed to evaluate chemicals produced at the Woodland Biomass Facility to
12 determine if they were hazardous and classify the chemicals as required under
13 Section 5194(d) of title 8 of the California Code of Regulations.
- 14 o. Failed to maintain accurate safety data sheets, in violation of Section 5194(g) of
15 title 8 of the California Code of Regulations.
- 16 p. Combusted/burned materials not allowed by a business engaging in biomass
17 conversions, in violation of Public Resources Code Section 40106.

18 **FIRST CAUSE OF ACTION**
19 **(Disposal of Hazardous Waste at a Point Not Authorized;**
20 **Against all Defendants)**
21 **(Health & Saf. Code, §§ 25189, 25189.2)**

22 53. The People restate and incorporate all previous paragraphs.

23 54. Health and Safety Code section 25189, subdivision (c), prohibits the intentional
24 disposal of hazardous waste at an unauthorized point.

25 55. Health and Safety Code section 25189, subdivision (d), prohibits the negligent
26 disposal of hazardous waste at an unauthorized point.

27 56. Health and Safety Code section 25189.2, subdivision (c), prohibits the disposal of
28 hazardous waste at an unauthorized point.

1 57. Defendants have intentionally disposed or caused the disposal of hazardous waste
2 generated at the Woodland Biomass Facility at unauthorized points, in violation of California Health
3 and Safety Code section 25189, subdivision (c), and unless enjoined by order of the Court,
4 Defendants may or will continue in the course of conduct as alleged herein. Each intentional
5 disposal of hazardous waste at an unauthorized point discovered within five years of commencing
6 this action, exclusive of any applicable tolling periods and those set forth in paragraph 15 above,
7 subjects Defendants to a separate and additional civil penalty under Health and Safety Code section
8 25189, subdivision (c).

9 58. Defendants have negligently disposed or caused the disposal of hazardous waste
10 generated at the Woodland Biomass Facility at unauthorized points, in violation of California Health
11 and Safety Code section 25189, subdivision (d), and unless enjoined by order of the Court,
12 Defendants may or will continue in the course of conduct as alleged herein. Each negligent disposal
13 of hazardous waste at an unauthorized point discovered within five years of commencing this action,
14 exclusive of any applicable tolling periods and those set forth in paragraph 15 above, subjects
15 Defendants to a separate and additional civil penalty under Health and Safety Code section 25189,
16 subdivision (d).

17 59. Defendants have disposed or caused the disposal of hazardous waste originating from
18 the Woodland Biomass Facility at unauthorized points, in violation of California Health and Safety
19 Code section 25189.2, subdivision (c), and unless enjoined by order of the Court, Defendants may or
20 will continue in the course of conduct as alleged herein. Each disposal of hazardous waste at an
21 unauthorized point discovered within five years of commencing this action, exclusive of any
22 applicable tolling periods and those set forth in paragraph 15 above, subjects Defendants to a
23 separate and additional civil penalty under Health and Safety Code section 25189.2, subdivision (c).

24 60. Based on the above, the People request injunctive relief against Defendants under
25 Health and Safety Code section 25181, and civil penalties against Defendants under Health and
26 Safety Code section 25189, subdivision (c), section 25189, subdivision (d), or section 25189.2,
27 subdivision (c), as set forth in the People's prayer for relief.
28

SECOND CAUSE OF ACTION
(Unauthorized Transportation of Hazardous Waste;
Against all Defendants)
(Health & Saf. Code, §§ 25163, 25189, 25189.2;
Cal. Code Regs., tit. 22, § 66263.23)

61. The People restate and incorporate all previous paragraphs.

62. Section 25163 of the Health and Safety Code prohibits the transportation of hazardous waste without a valid registration from DTSC. Section 66263.23, subdivision (b), of title 22 of the California Code of Regulations prohibits the transportation of hazardous waste to a location not permitted or otherwise authorized by DTSC to receive the waste.

63. Defendants intentionally engaged in the transportation of hazardous waste without a valid registration from DTSC from the Woodland Biomass Facility to unauthorized locations, in violation of Health and Safety Code section 25163 and Section 66263.23 of title 22 of the California Code of Regulations, and unless enjoined by order of the Court, Defendants may or will continue in the course of conduct as alleged herein. Each intentional act of unauthorized transportation discovered within five years of commencing this action, exclusive of any applicable tolling periods and those set forth in paragraph 15 above, subjects Defendants to a separate and additional civil penalty under Health and Safety Code section 25189, subdivision (b).

64. Defendants negligently engaged in the transportation of hazardous waste without a valid registration from DTSC from the Woodland Biomass Facility to unauthorized locations, in violation of Health and Safety Code section 25163 and Section 66263.23 of title 22 of the California Code of Regulations, and unless enjoined by order of the Court, Defendants may or will continue in the course of conduct as alleged herein. Each negligent act of unauthorized transportation discovered within five years of commencing this action, exclusive of any applicable tolling periods and those set forth in paragraph 15 above, subjects Defendants to a separate and additional civil penalty under Health and Safety Code section 25189, subdivision (b).

65. Defendants engaged in the transportation of hazardous waste without a valid registration from DTSC from the Woodland Biomass Facility to unauthorized locations, in violation of Health and Safety Code section 25163 and Section 66263.23 of title 22 of the California Code of

1 Regulations, and unless enjoined by order of the Court, Defendants may or will continue in the
2 course of conduct as alleged herein. Each act of unauthorized transportation discovered within five
3 years of commencing this action, exclusive of any applicable tolling periods and those set forth in
4 paragraph 15 above, subjects Defendants to a separate and additional civil penalty under Health and
5 Safety Code section 25189.2, subdivision (b).

6 66. Based on the above, the People request injunctive relief against Defendants under
7 Health and Safety Code section 25181, and civil penalties against Defendants under Health and
8 Safety Code section 25189, subdivision (b), or section 25189.2, subdivision (b), as set forth in the
9 People's prayer for relief.

10 **THIRD CAUSE OF ACTION**
11 **(Violations of Hazardous Waste Handling, Training, and Storage Requirements;**
12 **Against all Defendants)**
13 **(Health & Saf. Code, §§ 25100, *et seq.*, 25189(b), 25189.2(b);**
14 **Cal. Code Regs., tit. 22, § 66260.1, *et seq.*)**

15 67. The People restate and incorporate all previous paragraphs.

16 68. Defendants have intentionally violated, and continue to violate, the hazardous waste
17 handling, training, and storage requirements of Chapter 6.5 of Division 20 of the Health and Safety
18 Code, section 25100 *et seq.*, and its implementing regulations at Section 66260.1 *et seq.* of title 22 of
19 the California Code of Regulations, at the Woodland Biomass Facility, and unless enjoined by order
20 of the Court, Defendants may or will continue in the course of conduct as alleged herein. Each of
21 Defendants' intentional violations of the hazardous waste handling, training, and storage
22 requirements discovered within the five years of commencing this action, exclusive of any applicable
23 tolling periods and those set forth in paragraph 15 above, subjects Defendants to a separate and
24 additional civil penalty under Health and Safety Code section 25189, subdivision (b).

25 69. Defendants have negligently violated, and continue to violate, the hazardous waste
26 handling, training, and storage requirements of Chapter 6.5 of Division 20 of the Health and Safety
27 Code, section 25100 *et seq.*, and its implementing regulations at Section 66260.1 *et seq.* of title 22 of
28 the California Code of Regulations, at the Woodland Biomass Facility, and unless enjoined by order
of the Court, Defendants may or will continue in the course of conduct as alleged herein. Each of

1 Defendants' negligent violations of the hazardous waste handling, training, and storage requirements
2 discovered within the five years of commencing this action, exclusive of any applicable tolling
3 periods and those set forth in paragraph 15 above, subjects Defendants to a separate and additional
4 civil penalty under Health and Safety Code section 25189, subdivision (b).

5 70. Defendants have violated, and continue to violate, the hazardous waste handling,
6 training, and storage requirements of Chapter 6.5 of Division 20 of the Health and Safety Code,
7 section 25100 *et seq.*, and its implementing regulations at Section 66260.1 *et seq.* of title 22 of the
8 California Code of Regulations, at the Woodland Biomass Facility, and unless enjoined by order of
9 the Court, Defendants may or will continue in the course of conduct as alleged herein. Each of
10 Defendants' violations of the hazardous waste handling, training, and storage requirements
11 discovered within the five years of commencing this action, exclusive of any applicable tolling
12 periods and those set forth in paragraph 15 above, subjects Defendants to a separate and additional
13 civil penalty under Health and Safety Code section 25189.2, subdivision (b).

14 71. Based on the above, the People request injunctive relief against Defendants under
15 Health and Safety Code section 25181, and civil penalties against Defendants under Health and
16 Safety Code section 25189, subdivision (b), or section 25189.2, subdivision (b), as set forth in the
17 People's prayer for relief.

18 **FOURTH CAUSE OF ACTION**
19 **(False Statements Made in Documents Used for Compliance with Hazardous Waste Laws;**
20 **Against all Defendants)**
21 **(Health & Saf. Code, §§ 25189, 25189.2)**

22 72. The People restate and incorporate all previous paragraphs.

23 73. Health and Safety Code section 25189, subdivision (a), prohibits the intentional or
24 negligent making of a false statement in any document used for compliance with Chapter 6.5 of
25 Division 20 of the Health and Safety Code, section 25100 *et seq.*

26 74. Health and Safety Code section 25189.2, subdivision (a), prohibits the making of a
27 false statement in any document used for compliance with Chapter 6.5 of Division 20 of the Health
28 and Safety Code, section 25100 *et seq.*

1 75. Defendants have intentionally or negligently made false statements in documents used
2 for compliance with Chapter 6.5 of Division 20 of the Health and Safety Code, section 25100 *et seq.*,
3 in violation of California Health and Safety Code section 25189, subdivision (a), and unless enjoined
4 by order of the Court, Defendants may or will continue in the course of conduct as alleged herein.
5 Each such false statement made within five years of commencing this action, exclusive of any
6 applicable tolling periods and those set forth in paragraph 15 above, subjects Defendants to a
7 separate and additional civil penalty under Health and Safety Code section 25189, subdivision (a).

8 76. Defendants have made false statements in documents used for compliance with
9 Chapter 6.5 of Division 20 of the Health and Safety Code, section 25100 *et seq.*, in violation of
10 California Health and Safety Code section 25189.2, subdivision (a), and unless enjoined by order of
11 the Court, Defendants may or will continue in the course of conduct as alleged herein. Each such
12 false statement made within five years of commencing this action, exclusive of any applicable tolling
13 periods and those set forth in paragraph 15 above, subjects Defendants to a separate and additional
14 civil penalty under Health and Safety Code section 25189.2, subdivision (a).

15 77. Based on the above, the People request injunctive relief against Defendants under
16 Health and Safety Code section 25181, and civil penalties against Defendants under Health and
17 Safety Code section 25189, subdivision (a), or section 25189.2, subdivision (a), as set forth in the
18 People's prayer for relief.

19 **FIFTH CAUSE OF ACTION**

20 **(Proposition 65; Against all Defendants)**

21 **(Health & Saf. Code, § 25249.5 *et seq.*; Cal. Code. Regs., § 5194)**

22 78. The People restate and incorporate all previous paragraphs.

23 79. Proposition 65 (Health & Saf. Code 25249.5 *et seq.*) prohibits businesses from
24 knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer
25 or reproductive toxicity without first providing clear and reasonable warning.

26 80. Section 5194 of title 8 of the California Code of Regulations describes employers'
27 obligations to comply with Proposition 65.

28 81. Section 5194(h) of title 8 of the California Code of Regulations requires employers to

1 provide employees with effective information and training on hazardous chemicals in their work area
2 at the time of their initial assignment, and whenever a new chemical hazard is introduced into their
3 work area.

4 82. Section 5194(d) of title 8 of the California Code of Regulations requires any person
5 who produces a hazardous chemical to evaluate chemicals produced in its workplace to determine if
6 they are hazardous and classify the chemicals in accordance with Section 5194(d).

7 83. Section 5194(g) of title 8 of the California Code of Regulations requires any person
8 who produces a hazardous chemical to obtain or develop a safety data sheet for each produced
9 hazardous chemical. The safety data sheet must accurately reflect any significant information
10 regarding the hazards of the chemical.

11 84. Defendants knowingly and intentionally exposed individuals—including employees
12 and those who received Ash—to chemicals known to cause cancer or reproductive toxicity without
13 first providing clear and reasonable warning, in violation of Health and Safety Code section 25249.6.
14 Each violation of Section 25249.6 discovered within one year of commencing this action, exclusive
15 of any applicable tolling periods and those set forth in paragraph 15 above, subjects Defendants to a
16 separate and additional civil penalty under Health and Safety Code section 25249.7, subdivision (b).

17 85. Defendants failed to provide employees with effective training information and
18 training on hazardous chemicals in their work area, in violation of Section 5194(h) of title 8 of the
19 California Code of Regulations. Each violation of Section 5194(h) discovered within one year of
20 commencing this action, exclusive of any applicable tolling periods and those set forth in paragraph
21 15 above, subjects Defendants to a separate and additional civil penalty under Health and Safety
22 Code section 25249.7, subdivision (b).

23 86. Defendants failed to evaluate chemicals produced at the Woodland Biomass Facility
24 to determine if they are hazardous and classify the chemicals as required under Section 5194(d) of
25 title 8 of the California Code of Regulations. Each violation of Section 5194(d) discovered within
26 one year of commencing this action, exclusive of any applicable tolling periods and those set forth in
27 paragraph 15 above, subjects Defendants to a separate and additional civil penalty under Health and
28 Safety Code section 25249.7, subdivision (b).

1 87. Defendants failed to maintain accurate safety data sheets, in violation of Section
2 5194(g) of title 8 of the California Code of Regulations. Each violation of Section 5194(g)
3 discovered within one year of commencing this action, exclusive of any applicable tolling periods
4 and those set forth in paragraph 15 above, subjects Defendants to a separate and additional civil
5 penalty under Health and Safety Code section 25249.7, subdivision (b).

6 88. Based on the above, the People request injunctive relief against Defendants under
7 Health and Safety Code section 25249.7, subdivision (a), and civil penalties against Defendants
8 under Health and Safety Code section 25249.7, subdivision (b), as set forth in the People’s prayer for
9 relief.

10 **SIXTH CAUSE OF ACTION**

11 **(Violations of Unfair Competitions Law; Against all Defendants)**

12 **(Bus. & Prof. Code, § 17200 et seq.)**

13 89. The People restate and incorporate all previous paragraphs.

14 90. Section 17200 of the Business and Professions Code prohibits unfair competition—
15 meaning any unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or
16 misleading advertising; and any act prohibited under Business and Professions Code section 17500.

17 91. Within four years of the date of commencement of this action—exclusive of any
18 applicable tolling periods, including equitable tolling, and those tolling periods set forth in paragraph
19 15, above—Defendants engaged in unlawful acts, omissions, and practices that constitute unfair
20 competition within the meaning of Business and Professions Code sections 17200 through 17208—
21 including but not limited to the acts or omissions and practices alleged in this Complaint. Unless
22 enjoined by order of the Court, Defendants may or will continue in the course of conduct as alleged
23 in this Complaint.

24 92. Each and every separate act constitutes an unlawful or unfair business practice. Each
25 day that Defendants engaged in each separate unlawful act, omission, or practice is a separate and
26 distinct violation of Business and Professions Code section 17200.

27 93. Based on the above, the People request injunctive relief against Defendants under
28 Business and Professions Code section 17203, and civil penalties against Defendants under Business

1 and Professions Code section 17206, as set forth in the People’s prayer for relief.

2 **SEVENTH CAUSE OF ACTION**

3 **(False or Misleading Statements; Against all Defendants)**

4 **(Bus. & Prof. Code, § 17500 *et seq.*)**

5 94. The People restate and incorporate all previous paragraphs.

6 95. Section 17500 of the Business and Professions Code makes it unlawful “for any
7 person, . . . with intent directly or indirectly to dispose of real or personal property or to perform
8 services, professional or otherwise, or anything of any nature whatsoever or to induce the public to
9 enter into any obligation relating thereto, to make or disseminate . . . before the public . . . any
10 statement . . . which is untrue or misleading, and which is known, or which by the exercise of
11 reasonable care should be known, to be untrue or misleading.”

12 96. Defendants, with the intent to induce members of the public to take or use
13 Defendants’ Ash, made or caused to be made statements to the public concerning Defendants’ Ash
14 that were false or misleading and that Defendants knew or reasonably should have known were false
15 or misleading—including but not limited to the representations alleged in paragraphs 43-48 above—
16 in violation of Business and Professions Code section 17500 *et seq.*

17 97. Each false or misleading statement discovered within three years of commencing this
18 action—exclusive of any applicable tolling periods, including equitable tolling, and those tolling
19 periods set forth in paragraph 15 above—subjects Defendants to a separate and additional civil
20 penalty under Business and Professions Code section 17500.

21 98. Unless enjoined by order of the Court, Defendants may or will continue in the course
22 of conduct as alleged in this Complaint.

23 99. Based on the above, the People request injunctive relief against Defendants under
24 Business and Professions Code section 17535, and civil penalties against Defendants under Business
25 and Professions Code section 17536, as set forth in the People’s prayer for relief.

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1 **PRAYER**

2 WHEREFORE, the People respectfully request the following relief:

3 1. That Defendants, their successors, agents, representatives, employees, and assigns be
4 permanently enjoined from violating those provisions of Chapter 6.5 of Division 20 of the Health and
5 Safety Code and its implementing regulations, which Defendants are alleged to have violated;

6 2. That Defendants, their successors, agents, representatives, employees, and assigns be
7 permanently enjoined from violating those provisions of Health and Safety Code section 25249.5 *et*
8 *seq.* and its implementing regulations, which Defendants are alleged to have violated;

9 3. That Defendants, their successors, agents, representatives, employees, and assigns be
10 permanently enjoined from engaging in unfair competition as defined in Business and Professions
11 Code section 17200, including, but not limited to, the acts alleged in this Complaint;

12 4. That the Court assess a civil penalty of TWENTY-FIVE THOUSAND DOLLARS
13 (\$25,000) against Defendants for each violation of Health and Safety Code sections 25189, 25189.2,
14 and 25191, in an amount according to proof;

15 5. That the Court assess a civil penalty of TWO THOUSAND FIVE HUNDRED
16 DOLLARS (\$2,500) against Defendants for each violation of Health and Safety Code section
17 25249.7, in an amount according to proof;

18 6. That the Court assess a civil penalty of TWO THOUSAND FIVE HUNDRED
19 DOLLARS (\$2,500) against Defendants for each violation of Business and Professions Code section
20 17200, in an amount according to proof;

21 7. That the Court assess a civil penalty of TWO THOUSAND FIVE HUNDRED
22 DOLLARS (\$2,500) against Defendants for each violation of Business and Professions Code section
23 17500, in an amount according to proof;

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- 8. That the People recover their costs of suit, including costs of investigation;
- 9. That the People receive all other relief to which they are legally entitled; and
- 10. That the Court award such other relief that it deems just, proper, and equitable.

Dated: 4/10/17

Respectfully submitted,

JEFF W. REISIG
DISTRICT ATTORNEY



By: DAVID J. IREY
Assistant Chief Deputy District Attorney