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ASBURY ENVIRONMENTAL SERVICES d/b/a

WORLD OIL ENVIRONMENTAL SERVICES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ASBURY ENVIRONMENTAL
SERVICES d/b/a WORLD OIL
ENVIRONMENTAL SERVICES,

Plaintiffs,

v.

SAN BERNARDINO COUNTY FIRE
DEPARTMENT; and DOES 1-20,
inclusive,

Defendants.

CASE NO. CIVSB2413242

COMPLAINT FOR:

(1) BREACH OF CONTRACT

(2) BREACH OF IMPLIED AGREEMENT

(3) NEGLIGENCE

(4) UNLAWFUL BUSINESS PRACTICE

UNDER CAL. BUS. PROF. CODE

SECTION 17200

1 Plaintiff Asbury Environmental Services d/b/a World Oil Environmental Services
2 (“WOES” or “Plaintiff”) by and through its attorneys, hereby complain against Defendant San
3 Bernardino County Fire Department (“Defendant”), and DOES 1 to 20:

4 **INTRODUCTION**

5 1. This lawsuit concerns the improper delivery of highly toxic restricted hazardous
6 waste contaminated with polychlorinated byphenyls (PCBs) by Defendant to Plaintiff. Although
7 widely used in the middle of the last century for various industrial and commercial applications,
8 including as insulating fluids and coolants, PCBs were banned in 1979. PCBs have been
9 demonstrated to cause a variety of adverse health effects on humans, including carcinogenicity
10 and interference with the immune, reproductive, nervous, and endocrine systems.

11 2. Unfortunately, PCBs do not readily break down once in the environment,
12 remaining for long periods cycling between air, water, and soil. PCBs can also be carried long
13 distances and have been found in snow and seawater in areas far from where they were released
14 into the environment. PCBs can accumulate in the leaves and above-ground parts of plants and
15 food crops. They are also taken up into the bodies of small organisms and fish, leaving people
16 who eat those fish or other small organisms at risk of exposure to bioaccumulated PCBs.

17 3. Both the federal government and the State of California highly regulate and
18 monitor the use and disposal of PCBs. Under these robust regulatory schemes, any person
19 disposing of PCBs must do so at registered and permitted facilities according to specified
20 methods.

21 4. Plaintiff WOES is a licensed hauler of hazardous waste and regularly hauled waste
22 for Defendant’s Household Hazardous Waste Program.

23 5. Although Defendant expressly agreed that it would not provide waste
24 contaminated with PCBs, as set forth by the parties’ Service Order No. 5770176 (the “Service
25 Order”), it breached that agreement by providing PCB-contaminated waste.

26 6. Due to Defendant’s egregious conduct, Plaintiff has suffered significant harm,
27 including the expenditure of significant effort in containing and remediating the PCB
28 contamination of its tanks, trucks, equipment, and facilities through testing, extensive clean-up,

1 and transportation of the PCB-contaminated hazardous waste to permitted PCB disposal sites.

2 7. Accordingly, Plaintiff brings this action to redress Defendant's unlawful conduct,
3 including Defendant's breach of an express and implied contract, negligence, and unlawful
4 business practices.

5 **JURISDICTION AND VENUE**

6 8. This Court has both subject matter and personal jurisdiction under the Code of
7 Civil Procedure ("C.C.P.") section 410.10.

8 9. This is an action for damages and equitable relief in an amount greater than
9 \$25,000.00, excluding attorney's fees and costs. Plaintiff seeks actual and compensatory
10 damages arising under contract with Defendant, as well as treble damages pursuant to Health and
11 Safety Code section 25250.26(b)(1), arising from Defendant's intentional and tortious activities.

12 10. Venue is proper in this Court. Defendants reside in and have transacted business
13 within San Bernardino County and throughout the State of California, with a portion of the
14 injuries occurring in San Bernardino County.

15 11. Pursuant to Government Code § § 810 *eq seq.*, Plaintiff complied with all prior
16 prelawsuit requirements before filing suit. On April 15, 2024, Defendant rejected the Plaintiff's
17 demand.

18 **THE PARTIES**

19 12. Plaintiff Asbury Environmental Services d/b/a World Oil Environmental Services
20 ("WOES") is, and at all relevant times was, a corporation organized and existing under the laws
21 of California, with its principal place of business in Compton, California.

22 13. Defendant San Bernardino County Fire Department is, and at all times mentioned
23 in this Complaint was, authorized to operate by the State of California and the United States
24 government and authorized and qualified to do business in the County of San Bernardino. The
25 Fire Department's place of business is San Bernardino County.

26 14. Plaintiff is ignorant of the true names and capacities of defendants sued as DOES 1
27 through 20, inclusive, and therefore sues these defendants by such fictitious names and capacities.
28 Plaintiff will amend this complaint to allege their true identities when ascertained. Plaintiff

1 alleges that each fictitiously named defendant is responsible in some manner for the wrongful
2 conduct alleged and for the harm suffered by Plaintiff.

3 15. At all relevant times, each of the defendants was the agent, officer, director,
4 manager, joint venturer and/or employee of each and every one of the remaining defendants and
5 of such defendants were within the course and scope of said agency, joint venture, and/or
6 employment.

7 FACTUAL ALLEGATIONS

8 16. Defendant regularly delivered to Plaintiff loads of non-RCRA hazardous waste for
9 Plaintiff to transfer, for disposal, and/or recycling. As a fire department that regularly handles
10 various oils and other materials that may include PCBs, Defendant knew or had reason to know
11 that the oil that it delivered to Plaintiff for disposal was at higher risk of containing PCBs.

12 17. On or about November 7, 2023, WOES collected approximately 790 gallons of
13 used oil from Defendant, located at 2824 East W Street Bldg. 3Q2, San Bernardino, California.
14 Eric Martinez, on behalf of Defendant, signed Service Order No. 5770176, which described the
15 waste as “Non-RCRA Hazardous Waste, Liquid (used oil/mixed oils)” with “state code 221.”

16 18. By signing the Service Order, Defendant expressly promised “**the waste does not**
17 **contain any PCBs.**” (Emphasis added.) Defendant also certified, “I have not mixed any of the
18 waste described above...and the waste does not contain any PCBs. I have complied with the
19 requirements of the applicable California used oil management regulations to determine this is
20 true. I agree to accept the additional charges for the disposal of this waste if the information I
21 have provided about this waste is incorrect.”

22 19. Under the signed Service Order, Defendant’s waste constituted “Nonconforming
23 Waste”, and Defendant expressly agreed to “pay WOES for WOES’ reasonable expenses and
24 charges for services provided in relation to the disposition of the entire volume of waste impacted
25 by [Defendant’s] Nonconforming Waste, including, without limitation, analytical work,
26 transportation, storage, repair, replacement, decontamination and cleaning of applicable
27 equipment, supplies and associated disposal costs for waste generated during decontamination
28 process, and Nonconforming Waste disposal charges”; and to “indemnify, hold harmless and

1 defend WOES, from and against any and all liabilities, claims, penalties, forfeitures, suits and the
2 costs and expenses incident thereto . . . which WOES may hereafter incur, become responsible for
3 or pay as a result of . . . (ii) any Nonconforming Waste.” As part of the Service Order, Defendant
4 also agreed to pay WOES’ attorneys’ fees related to such indemnification. A true and correct
5 copy of the Service Order is attached hereto as **Exhibit 1**.

6 20. At the time of collection—as it does with all generators—WOES took retention
7 samples of Defendant’s used oil. Shortly thereafter, WOES tested its tanks containing the used
8 oil, which revealed that Defendants’ oil was contaminated with PCBs. Because Defendant’s oil
9 contained PCBs, it was thus “Nonconforming Waste” as defined by the Service Order.

10 21. On or about November 28, 2023, the lab tested the generators’ retention samples
11 for PCBs. Defendant’s sample had a PCB concentration of more than 5 ppm.

12 22. On or about December 14, 2023, the lab tested the generators’ retention samples
13 for PCBs. Defendant’s sample had a PCB concentration of more than 5 ppm.

14 23. The lab retested Defendant’s retention samples for PCBs and a laboratory report
15 was produced on or about December 19, 2023. Defendant’s sample had a PCB concentration of
16 more than 5 ppm.

17 24. On or about December 20, 2023, third-party Environ-Chem Inc. tested the
18 generators’ retention samples for PCBs. Environ-Chem Inc.’s laboratory results again confirmed
19 Defendant’s sample had a PCB concentration of more than 5 ppm.

20 25. Because of Defendant’s contaminated oil, WOES had to properly dispose of the
21 contaminated used oil and then clean and remediate its equipment. The cost of such remediation
22 was at least \$341,405.80.

23 **FIRST CAUSE OF ACTION**

24 **(Breach of Contract)**

25 26. Plaintiff hereby re-alleges and incorporates by reference the allegations contained
26 in paragraphs 1 through 25, as though fully set forth herein.

27 27. On or about November 7, 2023, Plaintiff and Defendant entered into a written
28 agreement wherein Plaintiff agreed to accept Defendant’s waste load pursuant to the Service

1 Order on condition that the waste did not contain PCBs.

2 28. By signing the Service Order, Defendant expressly promised that the “**the waste**
3 **does not contain any PCBs.**”

4 29. Defendant, however, provided waste to Plaintiff that was PCB-contaminated in an
5 unequivocal violation of its contractual obligations.

6 30. Defendant’s breach of contract has caused significant monetary harm to Plaintiff,
7 who expended at least \$341,405.80 in testing and properly transporting all affected oil, and in
8 emptying and cleaning Plaintiff’s contaminated property.

9 31. Plaintiff has therefore suffered monetary damages legally and proximately caused
10 by Defendant’s breach of contract.

11 32. As a result of Defendant’s conduct, Plaintiff is entitled to relief as set forth herein.

12 **SECOND CAUSE OF ACTION**

13 **(Breach of Implied Agreement)**

14 33. Plaintiff hereby re-alleges and incorporates by reference the allegations contained
15 in paragraphs 1 through 32, as though fully set forth herein.

16 34. By its actions and representations, Defendant entered into an agreement to deliver
17 waste to Plaintiff that was not contaminated by PCBs, and Plaintiff agreed to transport the waste
18 generated by Defendant that was not contaminated by PCBs.

19 35. Defendant knew or had reason to know that the actions alleged herein would be
20 interpreted by Plaintiff as an agreement, as evidenced by the relevant Service Order.

21 36. Plaintiff performed all obligations owed to Defendant, except those obligations
22 that Plaintiff was prevented or excused from performing.

23 37. Defendant, however, transported and delivered PCB-contaminated hazardous
24 waste to Plaintiff in an unequivocal violation of their implied agreement.

25 38. Defendant’s breach of implied agreement has caused significant monetary harm to
26 Plaintiff, who expended at least \$341,405.80 in testing and properly transporting all affected oil,
27 and in emptying and cleaning Plaintiff’s contaminated property.

28 39. Plaintiff has therefore suffered damages legally and proximately caused by

1 Defendant's breach of the implied agreement.

2 40. As a result of Defendant's conduct, Plaintiff is entitled to relief as set forth herein.

3 **THIRD CAUSE OF ACTION**

4 **(Negligence)**

5 41. Plaintiff hereby re-alleges and incorporates by reference the allegations contained
6 in paragraphs 1 through 40, as though fully set forth herein.

7 42. Defendant had a duty not to deliver, or otherwise transfer possession of, restricted
8 hazardous waste contaminated with PCBs to a person or entity that was not properly permitted to
9 accept such PCB-contaminated hazardous waste, in violation of California Health and Safety
10 Code section 25162(a)(2).

11 43. Defendant had a duty not to falsely or negligently state or represent in a label,
12 manifest, report, or permit, or other document concerning the hazardous waste being disposed of;
13 or cause the disposal of, PCB-contaminated hazardous waste at a point not authorized, as
14 provided by Health and Safety Code section 25189.2.

15 44. Defendant had a duty to certify that the waste it sent to Plaintiff met the statutory
16 definition of "used oil," and that such waste did not contain PCBs above the statutory amount
17 pursuant to Health and Safety Code section 25250.26.

18 45. Defendant had a duty to determine through state-accredited laboratory testing and
19 analysis that the waste it sent to Plaintiff met the "used oil" statutory requirements prior to
20 providing that waste to Plaintiff, as provided by Health and Safety Code sections 25250.19 and
21 25250.29.

22 46. Defendant had a duty to properly characterize their waste, as required by
23 California Code of Regulations, Title 22, section 66262.11, and where such waste was
24 contaminated with PCBs, had a duty to handle such waste in compliance with the requirements of
25 Chapter 6.5 of the Health and Safety Code and its implementing regulations in the California
26 Code of Regulations, Title 22, including but not limited to Division 4.5, Chapters 12, 18 and 29.

27 47. In failing to determine that the waste contained in load was contaminated with
28 PCBs; improperly certifying that the load did not contain PCBs; and providing the PCB-

1 contaminated hazardous waste to Plaintiff, who is not permitted to receive, store, dispose
2 and/recycle such waste, Defendant breached its duty to comply with the laws and regulations
3 regarding hazardous waste containing PCBs.

4 48. These violations proximately caused harm to Plaintiff and Plaintiff's property,
5 exposing them to PCB contamination.

6 49. The harm to Plaintiff and Plaintiff's property resulted from precisely the type of
7 occurrence of the nature that the statutes and regulations were designed to prevent.

8 50. Plaintiff was one of the class of persons for whose protection the statutes and
9 regulations were adopted.

10 51. As a consequence of Defendant's conduct, Plaintiff is entitled to relief as set forth
11 herein, including treble damages pursuant to Health and Safety Code section 25250.26(b)(1) in an
12 amount to be determined at trial.

13 **FOURTH CAUSE OF ACTION**

14 **(Unlawful Business Practices – Cal. Bus. Prof. Code Section 17200)**

15 52. Plaintiff hereby re-alleges and incorporates by reference the allegations contained
16 in paragraphs 1 through 51, as though fully set forth herein.

17 53. Defendant, through the conduct alleged herein, has engaged in unlawful business
18 practices against Plaintiff, in violation of the California Businesses and Professions Code section
19 17200 *et seq.*

20 54. Specifically, Defendant's conduct alleged herein violated various sections of the
21 Health and Safety Code, including but not limited to the sections as set forth herein, and those
22 implementing regulations enumerated within Title 22 of the California Code of Regulations.

23 55. Defendant has deprived Plaintiff of the money and property to which Plaintiff is
24 entitled.

25 56. As a consequence of Defendant's conduct, Plaintiff is entitled to relief as set forth
26 herein, including treble damages pursuant to Health and Safety Code section 25250.26(b)(1) in an
27 amount to be determined at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

1. Compensatory damages, plus interest and prejudgment interest in an amount to be determined at trial;
2. Treble damages pursuant to Health and Safety Code section 25250.26(b)(1) in an amount to be determined at trial;
3. Attorneys' fees, and the costs of the litigation incurred by Plaintiff in an amount to be determined; and
4. For such other and further relief as the Court deems just and proper.

Dated: April 17, 2024

LARSON LLP

By: 
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Attorneys for Plaintiffs

ASBURY ENVIRONMENTAL SERVICES
d/b/a WORLD OIL ENVIRONMENTAL
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