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Exempt from fees pursuant to
Government Code section 6103

**ENDORSED
FILED
ALAMEDA COUNTY**

APR 09 2015

7 *Attorneys for Plaintiffs*

CLERK OF THE SUPERIOR COURT
By Lilly Tran

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF ALAMEDA**

11
12 **PEOPLE OF THE STATE OF
CALIFORNIA, EX REL. STATE WATER
13 RESOURCES CONTROL BOARD;**

Case No. **RG15765621**

14 **PEOPLE OF THE STATE OF
CALIFORNIA, EX REL. DEPARTMENT
15 OF FISH AND WILDLIFE;**

**COMPLAINT FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND
OTHER EQUITABLE RELIEF**

16 Plaintiffs,

17 v.

18 **THE REGENTS OF THE UNIVERSITY
19 OF CALIFORNIA**

20 Defendant.

21 Plaintiffs, People of the State of California *ex rel.* State Water Resources Control Board and
22 People of the State of California, *ex rel.* Department of Fish and Wildlife, are informed and
23 believe and, based thereon, allege as follows:

24 **PLAINTIFFS**

25 1. Plaintiffs, People of the State of California *ex rel.* State Water Resources Control
26 Board (“State Water Board”) and People of the State of California, *ex rel.* Department of Fish and
27

1 Wildlife (“CDFW”) bring this action by and through Kamala D. Harris, Attorney General of the
2 State of California (“Attorney General”) on behalf of the State Water Board and CDFW.

3 2. Pursuant to Water Code section 13000 *et seq.*, the Legislature established the State
4 Water Board to ensure comprehensive protection of California’s waters. The State Water Board
5 is the state agency responsible for administering and enforcing the provisions of Chapter 6.7 of
6 Division 20 of the Health and Safety Code (Health & Saf. Code, §§ 25280 *et seq.*) relating to the
7 storage of hazardous substances in underground storage tanks (USTs), including the
8 implementing regulations set forth in the California Code of Regulations, title 23, Chapter 16,
9 sections 2610 *et seq.* (“UST Law”). The UST Law was promulgated to protect the environment
10 and the public health and safety by requiring that USTs be properly installed, maintained,
11 inspected, tested, and upgraded.

12 3. CDFW is the trustee, on behalf of the people of the State of California, for fish,
13 wildlife, and their habitat, and is responsible for the enforcement of the California Fish and Game
14 Code. The CDFW’s Office of Spill Prevention and Response is also responsible for the
15 enforcement of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (“Lempert-
16 Keene Act”) (Government Code section 8670.1 *et seq.*). As such, CDFW and its Office of Spill
17 Prevention and Response (“CDFW/OSPR”) is responsible for protecting fish, wildlife, plant
18 species, animal and plant habitats, and natural communities for their intrinsic and ecological value
19 and their benefits to people.

20 4. Under Government Code section 12511, the Attorney General has charge of all legal
21 matters in which the State is involved. The Attorney General also has the express power to
22 protect the environment and natural resources of the State of California pursuant to Government
23 Code section 12600 *et seq.*

24 5. Pursuant to Health and Safety Code section 25299 *et seq.*, the Attorney General may
25 bring an action for civil penalties and injunctive relief in the name of the People of the State of
26 California for violations of the UST Law.

27 6. Pursuant to Government Code Section 8670.58, every civil action commenced
28 pursuant to Chapter 7.4 of the Government Code, at the request of the administrator of

1 CDFW/OSPR, may be brought by the Attorney General in the name of the People of the State of
2 California, and any actions relating to the same event, transaction, or occurrence may be joined or
3 consolidated.

4 7. Plaintiffs bring this action without prejudice to any other action or claims which they
5 may have based on separate, independent and unrelated violations of the UST Law, the Lempert-
6 Keene Act, and/or the Fish and Game Code by the Defendant and/or on facts which are not
7 alleged in this Complaint.

8 **DEFENDANT**

9 8. Defendant Regents of the University of California is a public trust constitutional
10 nonprofit corporation located in the County of Alameda. Defendant's corporate headquarters is
11 located at 1111 Franklin Street, 12th Floor, Oakland, California 94607. During the period of time
12 at issue in this lawsuit, Defendant owned and/or operated seven USTs at the University of
13 California's campus in Berkeley, California. The USTs are more specifically located at:
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- 15 a. Doe Library;
- 16 b. Life Sciences Building (Emergency Containment Tank #1);
- 17 c. Life Sciences Building (Emergency Containment Tank #4);
- 18 d. Hazardous Material Facility (Emergency Containment Tank #7);
- 19 e. Koshland Hall;
- 20 f. Life Sciences Building; and
- 21 g. Stanley Hall;
- 22

23 9. Defendant's USTs are used to store petroleum-based fuels, including diesel fuel. In
24 addition, several of Defendant's USTs are used for the purpose of providing emergency
25 containment for hazardous substances.

26 10. Defendant is or, at all times relevant to the claims in this Complaint, was legally
27 responsible for compliance with the UST Law.

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11. In this Complaint, when reference is made to an act of the Defendant, such reference shall mean that the University of California, Berkeley employees, or contractors, representatives, and/or agents of Defendant did such act, or that Defendant authorized such act, or that Defendant negligently failed and omitted to adequately or properly supervise, control or direct its employees, contractors, representatives, and/or agents with respect to such act.

VENUE

12. Venue is proper in this county pursuant to California Health and Safety Code section 25299.03 and Government Code section 8670.59, in that the violations of Chapter 6.7 of the Health and Safety Code and the discharge of oil alleged in this Complaint occurred in the County of Alameda.

GENERAL ALLEGATIONS

13. The State Water Board investigated Defendant’s compliance with the UST Laws at the University of California, Berkeley. The State Water Board’s investigation revealed that Defendant violated the UST Law. Defendant’s violations include, but are not limited to, the following representative actions:

- a. Operated one or more USTs without first obtaining a valid operating permit from the CUPA as required by Health and Safety Code section 25284(a)(1).
- b. Failure to operate and maintain UST monitoring equipment in accordance with the equipment manufacturer’s instructions, as required by Title 23, California Code of Regulations section 2638(a).
- c. Failure to have a UST monitoring system that is capable of detecting an unauthorized release from any portion of the UST system at the earliest possible opportunity, as required by Health and Safety Code sections 25290.1(d), 25290.2(d), 25291(b) and 25292(a) and Title 23, California Code of Regulations sections 2630(d) and 2641(a).
- d. Failure to provide adequate corrosion protection for all corrodible underground piping in direct contact with backfill, as required by Title 23, California Code of Regulations section 2636(b).

1 e. Failure to equip USTs with a spill container that will collect any hazardous
2 substances spilled during product delivery operations to prevent the hazardous substance from
3 entering the subsurface environment, as required by Health and Safety Code section 25284.2 and
4 Title 23, California Code of Regulations section 2635(b)(1).

5 f. Failure to maintain USTs so that the primary and secondary containment is
6 "product tight," in accordance with Health and Safety Code sections 25290.1(c), 25290.2(c) and
7 25291(a)(1).

8 14. On or about December 10, 2011, a 200 gallon fuel tank located in the generator room
9 of Stanley Hall at the University of California, Berkeley, discharged approximately 1650 gallons
10 of red-dye diesel fuel. The spill occurred when the fuel transfer pump which pumps the diesel
11 from a 7,000 gallon UST to the fuel tank failed to shut off. The fuel flowed down into a sump
12 room in the basement of Stanley Hall where approximately 850 gallons of the fuel was pumped
13 into Strawberry Creek, located in the City of Berkeley, in Alameda County, California (the
14 "Stanley Hall Incident" or "spill").

15 15. The diesel fuel released in the Stanley Hall Incident flowed downstream to the creek
16 mouth where it entered Brickyard Cove, in San Francisco Bay. Cleanup actions were conducted
17 by Defendant with oversight by federal, state, and local authorities, including the CDFW/OSPR.
18 Cleanup included removal of oiled vegetation, and disturbance of creek bottom sediments in
19 places where residual diesel was present. The fuel from the Stanley Hall Incident and the
20 resulting cleanup actions caused injuries to Natural Resources, including injuries to the creek
21 channel, riparian habitat, and mudflat/shoreline habitats.

22 16. The Stanley Hall Incident and resultant harms were directly and proximately caused
23 by the acts, omissions, strict liability, fault, negligence, breach, and violations by Defendants
24 and/or their agents, or representatives, in regard to the UST violations and applicable California
25 laws and regulations.

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FIRST CAUSE OF ACTION
(Civil penalties for UST operators – Health and Safety Code § 25299(a))

17. Plaintiff State Water Board refers to and incorporates by reference as though fully set forth herein all allegations contained in Paragraphs 1 through 16, inclusive.

18. Defendant, as operators of the UST systems at the University of California, Berkeley, are strictly liable for civil penalties as set forth in Health and Safety Code section 25299(a) for each daily violation of the rules, regulations, standards or requirements applicable to each UST as set forth above which occurred within five years after discovery of the facts constituting grounds for commencing the action on these claims.

19. Defendant, as the operators of the USTs at the University of California, Berkeley, must immediately and permanently be enjoined from further violations of the UST Law.

SECOND CAUSE OF ACTION
(Civil penalties for UST owners – Health and Safety Code § 25299(b))

20. Plaintiff State Water Board refers to and incorporates by reference as though fully set forth herein all allegations contained in Paragraphs 1 through 16, inclusive.

21. Defendant, as the owners of the UST systems at the University of California, Berkeley, are strictly liable for civil penalties as set forth in California Health and Safety Code section 25299(b) for each daily violation of the rules, regulations, standards or requirements applicable to each UST as set forth above which occurred within five years after discovery of the facts constituting grounds for commencing the action on these claims.

22. Defendant, as the owners of the USTs at the University of California, Berkeley, must immediately and permanently be enjoined from further violations of the UST Law.

THIRD CAUSE OF ACTION
(Cost Recovery Under Lempert-Keene-Seastrand Oil Spill Prevention and Response Act—
Government Code § 8670.53)

1 23. Plaintiff CDFW refers to and incorporates by reference as though fully set forth
2 herein all allegations contained in Paragraphs 1 through 16, inclusive.

3 24. The waters of the San Francisco Bay constitute “marine waters” under
4 Government Code section 8670.3, subdivision (l), which defines “marine waters” as “those
5 waters subject to tidal influence....”

6 25. The waters of Strawberry Creek constitute “inland waters” under Government
7 Code section 8670.3, subdivision (h), which defines “inland waters” as “waters of the state other
8 than marine waters, but not including groundwater.”

9 26. The diesel fuel that was discharged into Strawberry Creek and San Francisco Bay
10 from the fuel tank at Stanley Hall constitutes “oil” under Government Code section 8670.3,
11 subdivision (q), which defines “oil” as “any kind of petroleum, liquid hydrocarbons, or petroleum
12 products or any fraction or residues therefrom....”

13 27. The aforementioned unauthorized discharge from Stanley Hall into Strawberry
14 Creek, which consisted of at least 850 gallons of oil, constituted an “inland spill” under
15 Government Code section 8670.3, subdivision (g) which defines an “inland spill” as “a release of
16 at least one barrel (42 gallons) of oil into inland waters that is not authorized by any federal, state,
17 or local governmental entity”.

18 28. The aforementioned unauthorized discharge from Stanley Hall into San Francisco
19 Bay, which consisted of at least 653 gallons of oil, constituted a “spill” or “discharge” under
20 Government Code section 8670.3, subdivision (ad) which defines “spill” or “discharge” as “any
21 release of at least...42 gallons...of oil into marine waters that is not authorized by any federal,
22 state, or local government entity.”

23 29. Defendant is a “responsible party” under Government Code section 8670.3,
24 subdivision (z), which defines “responsible party” as “(1) [t]he owner or transporter of oil or a
25 person or entity accepting responsibility for the oil...”

26 30. As a result of the oil spill from Stanley Hall into Strawberry Creek and the San
27 Francisco Bay, Plaintiff CDFW has made expenditures from the Oil Spill Response Trust Fund
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1 and is thus entitled to recover from Defendants all such expenditures, under Government Code
2 section 8670.53, which provides, in pertinent part, "The Attorney General, in consultation with
3 the administrator [for oil spill response, i.e., a chief deputy director of CDFW], shall undertake
4 actions to recover all costs to the [Oil Spill Response Trust Fund] from any responsible party for
5 an oil spill into marine waters for which expenditures are made from the fund."

6 31. By virtue of the acts and omissions alleged in this Complaint, Defendant is liable
7 for the aforementioned costs under Government Code section 8670.53.
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9 **FOURTH CAUSE OF ACTION**
10 **(Damages Under Lempert-Keene-Seastrand Oil Spill Prevention and Response Act—**
11 **Government Code § 8670.56.5)**

12 32. Plaintiff CDFW refers to and incorporates by reference as though fully set forth
13 herein all allegations contained in Paragraphs 1 through 16, inclusive.

14 33. CDFW has incurred costs and damages, including damages for injuries to the
15 natural resources under its trusteeship, as a result of the discharge and/or leaking of oil from the
16 Stanley Hall into or onto inland waters and marine waters.

17 34. Defendant is absolutely liable under Government Code section 8670.56.5,
18 subdivisions (a), & (g), without regard to fault, for all damages that arise out of or are caused by a
19 spill or inland spill, including but not limited to: all costs of response, containment, cleanup,
20 removal, and treatment; damages for injury to, destruction of or loss of, natural resources, and all
21 costs of the suit and attorneys' fees.

22 35. By virtue of the acts and omissions alleged in this Complaint, Defendant is liable
23 for the aforementioned damages under Government Code section 8670.56.5.
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25 **FIFTH CAUSE OF ACTION**
26 **(Penalties Under Lempert-Keene-Seastrand Oil Spill Prevention and Response Act—**
27 **Government Code § 8670.66(a)(3))**

28 36. Plaintiff CDFW refers to and incorporates by reference as though fully set forth
herein all allegations contained in Paragraphs 1 through 16, inclusive.

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37. By virtue of the acts and omissions alleged in this Complaint, Defendant acted intentionally or negligently, resulting in the unauthorized discharge or spill of oil from the fuel tank at Stanley Hall into or onto inland waters and marine waters.

38. Defendant is liable for penalties under Government Code section 8670.66, subdivision (a)(3), which provides that “Any person who intentionally or negligently does any of the following acts shall be subject to a civil penalty of not less than...\$50,000...or more than...\$1,000,000, or for an inland spill not to exceed...\$50,000, for each violation, and each day or partial day that a violation occurs is a separate violation: (3) [I]s responsible for a spill or inland spill, unless the discharge is authorized by the United States, the state, or other agency with appropriate jurisdiction.”

39. By virtue of the acts and omissions alleged in this Complaint, Defendant is liable for the aforementioned penalties under Government Code section 8670.66, subdivision (a)(3).

PRAYER

WHEREFORE, the Plaintiffs pray for the following relief:

40. Civil penalties according to proof against Defendant pursuant to California Health and Safety Code section 25299(a) at the statutory maximum of five thousand dollars (\$5,000) for each UST system violation for each day of violation.

41. Civil penalties according to proof against Defendant pursuant to California Health and Safety Code section 25299(b) at the statutory maximum of five thousand dollars (\$5,000) for each UST system violation for each day of violation.

42. A permanent injunction requiring Defendant to comply with the specific requirements of California Health and Safety Code, Division 20, Chapter 6.7 and California Code of Regulations, title 23, Chapter 16, as alleged in this Complaint;

43. Plaintiff’s costs of inspection, investigation, attorney’s fees, enforcement, prosecution, and suit herein pursuant to Code of Civil Procedure section 1021.8, and all other authority;

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44. Damages according to proof against Defendant pursuant to Government Code section 8670.56.5, including response costs, natural resource damages, and costs of suit and attorney's fees;

45. Plaintiff CDFW's response costs and other expenditures from the Response Trust Fund pursuant to Government Code section 8670.53;


46. Civil penalties according to proof against Defendant pursuant to Government Code section 8670.66 (a)(3) at the statutory maximum of fifty thousand dollars (\$50,000) for each inland spill or one million dollars (\$1,000,000) for each marine spill.

Such other and further relief as the Court deems just and proper.

Dated:

Respectfully Submitted:

KAMALA D. HARRIS
Attorney General of California
GAVIN G. MCCABE
Supervising Deputy Attorney General

By: 

JONATHAN WIENER
Attorneys for Plaintiffs