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18 *Attorneys for Plaintiff, The People of the State of California*

19 *[Additional Plaintiff's Counsel Continued on Exhibit A]*

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF SAN JOAQUIN

22 **THE PEOPLE OF THE STATE OF**
23 **CALIFORNIA,**

Plaintiff,

24 v.

25 **McLANE COMPANY, INC., a Texas**
26 **Corporation,**

27 Defendants.
28

FILED
SUPERIOR COURT
2014 DEC 23 AM 9:53
Rosa Junqueira, Clerk
BY **CARLO CABUAG**
DEPUTY
Exempt from Filing
Fees, Government
Code § 6103

THIS CASE HAS BEEN ASSIGNED TO JUDGE
BARBARA A. KRONLUND IN DEPARTMENT 11
FOR ALL PURPOSES, INCLUDING TRIAL

Case No 39-2014-00319887-CU-TT-STK

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

**(Health & Saf. Code, Div. 20, Chapters 6.5;
Health and Saf. Code § 117600; Bus. & Prof.
Code § 17200, et seq.)**

1 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA (“People”), based on
2 information and belief, alleges as follows:

3 **PLAINTIFF**

4 1. The People bring this action and by and through: Tony Rackauckas, District
5 Attorney of Orange County; Larry Morse, District Attorney of Merced County; Paul Zellerbach,
6 District Attorney of Riverside County; Michael Ramos, District Attorney of San Bernardino
7 County; and James P. Willett, District Attorney of San Joaquin County; (collectively
8 “Prosecutors”).

9 2. Pursuant to Health and Safety Code section 25182, the Prosecutors may bring a
10 civil action in the name of the People of the State of California to enjoin any violation of Chapter
11 6.5 of Division 20 of the Health and Safety Code (hereinafter “Chapter 6.5”) and to seek civil
12 penalties for violations of the provisions of Chapter 6.5.

13 3. Pursuant to Business and Professions Code sections 17203, 17204, and 17206,
14 the Prosecutors may bring a civil action in the name of the People of the State of California to
15 enjoin any person who engages, has engaged, or proposes to engage in unfair competition, as
16 defined in California Business and Professions Code section 17200, and to seek civil penalties for
17 each unlawful act or act of unfair competition.

18 4. Pursuant to Health and Safety Code sections 117830, subdivision (c), 118325,
19 and 118345, subdivision (b), the Prosecutors may bring a civil action in the name of the People of
20 the State of California to enjoin any violation of section 117600, *et seq.*, of the Health and Safety
21 Code and to seek civil penalties for violations of the provisions thereof.

22 5. Plaintiff brings this action without prejudice to any other action or claim which
23 Plaintiff may have based on separate, independent and unrelated violations arising out of matters
24 or allegations that are not set forth in this Complaint.

25 **DEFENDANT McLANE COMPANY, INC.**

26 6. Defendant McLANE COMPANY, INC. (hereinafter “McLane”) is now, and at
27 all times mentioned in this Complaint was, a Texas corporation, with its principal corporate office
28 located at 4747 McLane Parkway, Temple, Texas, 76504.

1 7. At all times relevant, McLane has owned, operated, licensed, or leased
2 distribution centers and tractor trailers (which are used to transport products and materials to and
3 from such facilities, as well as to and from certain retail stores, restaurants, and other third party
4 distribution customers, throughout the State of California).

5 8. McLane does business in its own capacity and/or through agents and affiliates in
6 the State of California through the operation of twelve (12) distribution centers (hereinafter
7 “Facilities”) and through tractor trailers used to transport products and materials to and from such
8 Facilities (hereinafter collectively referred to as “McLane Operations”). McLane Operations
9 services retail stores, restaurants, and other third party distribution and food service customers in
10 the State of California. These distribution centers/Facilities are:

- 11 • Meadowbrook Meat Company: 500 Burning Tree Lane, Fullerton, California
- 12 • Meadowbrook Meat Company: 800 Mellon Avenue, Manteca, California
- 13 • Meadowbrook Meat Company: 1051 North Wineville Avenue, Ontario, California
- 14 • Meadowbrook Meat Company: 5675 Sunol Boulevard, Pleasanton, California
- 15 • Meadowbrook Meat Company: 9408 Richmond Pl., Rancho Cucamonga, California
- 16 • Meadowbrook Meat Company: 1495 Columbia Avenue, Riverside, California
- 17 • Meadowbrook Meat Company: 1050 Palmyrita Avenue, Riverside, California
- 18 • Meadowbrook Meat Company: 6300 Sycamore Canyon, Riverside, California
- 19 • McLane Tracy: 800 E. Pescadero Drive, Tracy, California
- 20 • McLane Pacific: 3876 E. Childs Ave., Merced, California
- 21 • McLane Southern California: 4472 Georgia Blvd., San Bernardino, California
- 22 • McLane Riverside: 14813 Meridian Parkway, Riverside, California.

23 9. At all times relevant hereto, McLane provides products and services to its clients
24 by stocking, transporting, storing, distributing and selling items, some of which are products that
25 contain (or are in and of themselves) hazardous materials through McLane Operations through its
26 third-party supply chain management solutions and foodservice solutions programs. These
27 products that involve hazardous materials include, but are not limited to, over-the-counter
28 medications, bleaches, batteries, electronic devices, ignitable liquids, aerosol products, oven

1 cleaners and various other cleaning agents, and other ignitable, reactive, toxic, and corrosive
2 materials. McLane also generates regulated quantities of hazardous waste through McLane
3 Operations as a result of various causes including, but not limited to, damage to containers, spills
4 and releases of hazardous materials, pharmaceutical waste, and various hazardous wastes
5 generated from customer returns or breakage of hazardous products through its third-party supply
6 chain management solutions and foodservice solutions programs.

7 10. At all times relevant hereto, McLane was and is legally responsible for
8 compliance with the provisions of the Health and Safety Code, including Chapters 6.5 of Division
9 20 and section 117600, *et seq.*, and Business and Professions Code section 17200, *et. seq.*, at the
10 Facilities. The People are informed and believe, and based thereon allege that, at all relevant
11 times, McLane controlled, managed, directed and was responsible for the operations of the
12 Facilities, and/or aided and abetted, managed, directed or acted in concert with persons who
13 exercised control over those operations. The People are informed and believe, and based thereon
14 allege, that at all relevant times, McLane was legally responsible for all acts and omissions of its
15 officers, directors, agents, employees, contractors, vendors, affiliates, and/or representatives
16 relating to the management of hazardous materials, hazardous waste, and medical waste at the
17 Facilities, and/or that McLane failed to take appropriate steps to prevent and/or correct the
18 violations alleged herein despite having power, authority and notice sufficient to do so.

19 11. McLane is a “person,” as defined in Health and Safety Code sections 25118 and
20 Business & Professions Code section 17201, and a “business” as defined in Health and Safety
21 Code section 25501, subsection (c).

22 12. When reference is made herein to any act or omission of McLane, such allegation
23 shall include the act or omission of the owners, officers, directors, agents, employees, contractors,
24 vendors, affiliates, and/or representatives of McLane, engaged in said act or omission.

25 **JURISDICTION AND VENUE**

26 13. Venue is proper in this county pursuant to Health and Safety Code section
27 25183, and Business and Professions Code section 17200, *et seq.*, in that certain of the violations
28 alleged in the Complaint occurred in the County of San Joaquin and throughout the State of

1 California. This Court has jurisdiction pursuant to Article 6, section 10 of the California
2 Constitution and Code of Civil Procedure section 393.

3 14. Plaintiff and McLane have entered into a series of agreements to toll any
4 applicable statutes of limitation. As a result of these agreements, the period of time from
5 December 31, 2011, through May 31, 2012, inclusive, a total of 153 days (the “Tolling Period”)
6 will not be included in computing the time limited by any statutes of limitation applicable to the
7 claims covered by the tolling agreement.

8 **STATUTORY AND REGULATORY BACKGROUND**

9 15. The State of California has enacted a comprehensive statutory and regulatory
10 framework for the generation, handling, treatment, storage, transportation, and disposal of
11 hazardous wastes. This framework, contained in Chapter 6.5 of Division 20 of the Health and
12 Safety Code, section 25100, *et seq.*, and its implementing regulations, which are found at Title 22
13 of the California Code of Regulations section 66260.1, *et seq.*, mandates a “cradle to grave”
14 system known as the Hazardous Waste Control Law (“HWCL”). The HWCL system is
15 maintained to record the generation, registration, tracking, storage, treatment, and disposal of
16 hazardous wastes and to provide for the protection of the public and the environment from present
17 or potential risks posed by hazardous wastes.

18 16. The HWCL is the California analog of the Federal Resource Conservation and
19 Recovery Act, 42 U.S.C. section 6901, *et seq.* (“RCRA”). Pursuant to state and federal law, the
20 California Department of Toxic Substances Control (“DTSC”) administers the HWCL in lieu of
21 federal administration of RCRA in California. (See Health & Saf. Code, § 25101, subdivision
22 (d).) Federal law prohibits California from imposing “any requirements less stringent than those
23 authorized under [RCRA].” (42 U.S.C. § 6929.)

24 17. The HWCL has, in certain instances, a more inclusive definition of hazardous
25 waste than federal law. Hazardous wastes that are regulated under California law but not federal
26 law are known as “non-RCRA hazardous wastes.” (Health & Saf. Code, § 25117.9.)
27
28

1 18. Companies that accumulate or generate hazardous waste in the course of their
2 operations and send such waste offsite for management, treatment, storage or disposal are subject
3 to certain regulatory requirements. (See Cal. Code Regs., tit 22, § 66262.10, *et seq.*)

4 19. California has enacted a comprehensive statutory framework to govern the
5 management of medical waste in order to protect the public and the environment from potentially
6 infectious disease-causing agents and other hazards. This framework is known as the Medical
7 Waste Management Act (“MWMA”) and it contains requirements related to the generation,
8 handling, storage, treatment, transport, and disposal of medical waste in California. The MWMA
9 is found at Health and Safety Code section 117600, *et seq.*

10 **ENFORCEMENT AUTHORITY**

11 20. Section 25189 of the Health and Safety Code imposes civil liability for any
12 negligent or intentional violation of the HWCL, or for any violation of any permit, rule, regulation,
13 standard, or requirement issued or promulgated pursuant to the HWCL. Section 25189.2 of the
14 Health and Safety Code is an alternative strict liability provision, which creates liability for any
15 violation of the HWCL, or for any violation of any permit, rule, regulation, standard, or
16 requirement issued or promulgated pursuant to the HWCL.

17 21. Section 118345, subdivision (b) of the Health and Safety Code imposes civil
18 liability for any violation of the MWMA, for violation of any order issued pursuant to section
19 118330 of the Health and Safety Code, or for any violation of a regulation promulgated pursuant
20 to the MWMA.

21 22. Business and Professions Code section 17206 imposes civil liability for any act
22 of unfair competition, as defined in California Business and Professions Code section 17200.

23 23. Business and Professions Code section 17203 authorizes the Court to issue an
24 order that enjoins any person who engages, has engaged, or proposes to engage in unfair
25 competition, as defined in California Business and Professions Code section 17200.

26 24. Health and Safety Code sections 25181 and 25184 authorize the Court to issue
27 an order that enjoins any ongoing or potential violation of the HWCL, or of any applicable rule,
28 regulation, permit, standard, requirement, or order issued or promulgated pursuant to the HWCL.

1 28. At all times relevant to this Complaint, Defendant is and was responsible for
2 McLane Operations. At all times relevant to this Complaint, Defendant was aware of, established,
3 implemented, managed, directed, approved, ratified and/or controlled the hazardous materials,
4 medical waste, and hazardous waste management activities, policies and procedures of the
5 McLane Operations. At all times relevant to this Complaint, Defendant's actions and/or
6 omissions, as part of a continuing course of conduct, are or were the legal cause of the violations
7 alleged herein, and Defendant reasonably could have taken action to prevent violations and
8 comply with applicable laws and regulations.

9 29. Plaintiff is informed and believes, and thereupon alleges, that at all times
10 relevant to this Complaint, Defendant, at each of the Facilities, generated hazardous waste during
11 every ninety (90) day period.

12 30. Plaintiff is informed and believes and thereupon alleges that Defendant has
13 violated provisions of the following statutes, including implementing regulations associated with
14 each of the statutes and any related permit, rule, standard, or requirement issued or promulgated
15 pursuant to these statutes, through McLane Operations within the time period applicable to this
16 action: Chapter 6.5 of the Health and Safety Code, section 25100, *et seq.*; Health and Safety Code
17 section 117600, *et seq.*; Business and Professions Code section 17200, *et seq.*; and in addition to
18 the time tolled pursuant to Tolling Agreements referenced in paragraph 14.

19 31. Plaintiff alleges that Defendant, at all times relevant hereto, including the period
20 of time spanned by the series of Tolling Agreements, and continuing from and after the date of the
21 filing of this Complaint, caused and/or performed each of the acts and/or omissions in violation of
22 California law in the ownership and/or operation of McLane Operations as alleged below:

23 a. Disposed of, or caused the disposal of, hazardous waste and medical waste at a
24 point not authorized, in violation of Health and Safety Code sections 25189 and
25 25189.2;

26 b. Transported hazardous waste and medical waste to unauthorized locations,
27 including, without limitation, McLane distribution centers and reverse logistics
28

1 vendors through McLane Operations, in violation of California Code of
2 Regulations, title 22, section 66263.23;

3 c. Transported hazardous waste and medical waste at, to, and from Facilities as part
4 of McLane Operations on vehicles that did not hold a valid registration issued by
5 the California Department of Toxic Substances Control (“DTSC”), in violation
6 of Health and Safety Code section 25163.

7 32. Defendant’s noncompliance with the above statutes and regulations threatened
8 public health and safety and/or the environment.

9 **FIRST CAUSE OF ACTION**
10 (Hazardous Waste Control Act)
(Health & Safety Code §§ 25189 and 25189.2)

11 33. Plaintiff realleges paragraphs 1 through 32, inclusive.

12 34. Plaintiff is informed and believes and based upon such information and belief
13 alleges that beginning at an exact date that is unknown to Plaintiff, but within five (5) years of
14 commencing this action, in addition to any applicable tolling periods and those set forth in
15 paragraph 13 herein, Defendant has engaged in acts in violation of Health and Safety Code
16 sections 25189 and/or 25189.5, including but not limited to the following:

17 a. Disposed of and/or caused the disposal of hazardous waste originating from the
18 Facilities at unauthorized points, in violation of California Health and Safety
19 Code sections 25189 and 25189.2.

20 b. Engaged in the transportation or caused the transportation of hazardous waste
21 itself, or by a waste hauler, without a valid registration from the DTSC, from the
22 Facilities to unauthorized locations, in violation of Health and Safety Code
23 section 25163 and California Code of Regulations, Title 22, section 66263.23.

24 c. Transported hazardous waste at, to, and from Facilities on vehicles that did not
25 hold a valid registration issued by the California Department of Toxic
26 Substances Control (“DTSC”), in violation of Health and Safety Code section
27 25163;

28

1 1. A Permanent Injunction requiring Defendant to comply with those provisions of
2 Health and Safety Code, Division 20, Chapter 6.5 and implementing regulations, which Defendant
3 is alleged to have violated;

4 2. A Permanent Injunction requiring Defendant to comply with those provisions of
5 Health and Safety Code section 117600, *et seq.*, which Defendant is alleged to have violated;

6 3. A Permanent Injunction, issued pursuant to Business and Professions Code section
7 17203, prohibiting Defendant from engaging in activity that violates the provisions of Chapters 6.5
8 of Division 20 of the Health and Safety Code, as alleged in this Complaint which thereby
9 constitute unfair competition within the meaning of Business and Professions Code section 17200;

10 4. That the Defendant herein be assessed a civil penalty of TWENTY-FIVE
11 THOUSAND DOLLARS (\$25,000.00), for each violation, in an amount according to proof, for its
12 violations of Health and Safety Code section 25189, or alternatively section 25189.2;

13 5. That the Defendant herein be assessed a civil penalty of TEN THOUSAND
14 DOLLARS (\$10,000.00), for each violation, in an amount according to proof, for its violations of
15 Health and Safety Code section 118345, subdivision (b):

16 6. That the Defendant herein be assessed a civil penalty of TWO THOUSAND FIVE
17 HUNDRED DOLLARS (\$2,500.00), for each violation, in an amount according to proof, for its
18 violations of Business and Professions Code section 17206;

19 7. Plaintiff's costs of inspection, investigation, enforcement, prosecution, and suit
20 herein; and,

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

22
23 JAMES P. WILLETT, District Attorney
County of San Joaquin, State of California

24
25 DATE: 12/23/14

26 By: _____

27 DAVID J. IREY
Special Deputy District Attorney
Environmental Prosecutions Unit
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PAUL ZELLERBACH, District Attorney
County of Riverside, State of California

DATE: 12/23/14

By: 
DALE C. HOY
Deputy District Attorney
Environmental Protection Unit

TONY RACKAUCKAS, District Attorney
County of Orange, State of California

DATE: 12/19/14

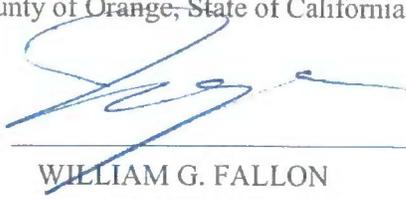
By: 
WILLIAM G. FALLON
Deputy District Attorney
Environmental Protection Unit

EXHIBIT A

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EXHIBIT A

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