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9 Attorneys for Plaintiff,
10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA
13 (Unlimited Jurisdiction)

14 MATEEL ENVIRONMENTAL
15 JUSTICE FOUNDATION,

16 Plaintiff,

17 v.

18 PACIFIC GAS & ELECTRIC COMPANY,

19 Defendant.
20 _____/

CASE NO. RG15785913

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

21 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

22 INTRODUCTION

23 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
24 failure of defendant PACIFIC GAS & ELECTRIC COMPANY (hereinafter "PG&E" or
25 "Defendant"), to give clear and reasonable warnings to those residents of California who inhale,
26 absorb through their skin and eat the chemical pentachlorophenol and the myriad of even more
27 toxic contaminants in pentachlorophenol. Pentachlorophenol is used to treat wooden utility
28 "telephone" poles ("poles") that PG&E ubiquitously maintains throughout northern California.

COMPLAINT FOR INJUNCTION
AND CIVIL PENALTIES

ENDORSED
FILED
ALAMEDA COUNTY

SEP 16 2015

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson
Deputy

1 The pentachlorophenol used to treat PG&E's poles is contaminated with hexachlorobenzene;
2 polychlorinated dibenzo-p-dioxins; hexachlorodibenzo-p-dioxin; 2,3,7,8 tetrachlorodibenzo-p-
3 dioxin; and polychlorinated dibenzo furans (collectively, along with pentachlorophenol, "wood
4 treatment chemicals"). People in Alameda County and other parts of northern California are
5 exposed to these chemicals in many ways. They touch PG&E's wood treatment chemicals when
6 they touch utility poles, such as when children play around the poles using them, for example, as
7 bases when they play kickball, or when campaign workers affix signs to the poles, or when
8 people affix lost cat notices, roommate wanted flyers, or advertising handbills the poles. People
9 touch PG&E's wood treatment chemicals when they handle or remove paper handbills from
10 PG&E's poles because these paper notices soak up the wood treatment chemicals at extremely
11 toxic levels and are thus transferred to people's skin. Once on a person's skin, these chemicals
12 are absorbed through it. The chemicals are also ingested via hand-to-mouth behavior and from
13 their hands to food and then eaten, or from hands to cigarettes and then smoked.

14 2. Pentachlorophenol is the primary chemical used to treat utility poles. The most
15 common method by which pentachlorophenol is applied to poles is to dissolve it in heavy oil and
16 then to force this oil/pentachlorophenol mixture into the pole under pressure. The process by
17 which pentachlorophenol is manufactured creates a suite of contaminants, which themselves are
18 much more toxic than is pentachlorophenol. These contaminants include 2,3,7,8 tetrachloro
19 dibenzo-p-dioxin, hexachloro dibenzo-p-dioxin, polychlorinated dibenzo-p-dioxins and
20 polychlorinated dibenzo furans (collectively "dioxins").

21 3. Dioxins are lipophilic, that is they bind to organic molecules, such as fat and they
22 concentrate in fatty tissue and liquids. Dioxins are extremely long-lived in the human body, with
23 an average half-life of approximately seven years. Dioxins are potent endocrine disruptors,
24 mimicking hormones that determine when, how and for how long genes express themselves.
25 When a fetus is inside its mother's womb, it is the mother's hormones – secreted according to the
26 timetable dictated by the mother's pregnancy – that cause the fetus's cells to begin to
27 differentiate and to develop. When dioxins are introduced into the mother's body, they mimic
28 some of the mother's hormones. Because the dioxins are introduced at times not dictated by the

1 course of the mother's pregnancy, they can short circuit, or block, the timetable by which the
2 fetus's genes express themselves. Some of the known effects of pre-natal dioxin exposure are
3 hypospadias in boys, endometriosis in girls, and impaired ability to deal with stress for either
4 gender. As hormones operate at extremely low concentrations in the human body, so do dioxins.

5 4. For more than a half century, PG&E has maintained millions of pentachlorophenol-
6 treated utility poles throughout northern California – along public sidewalks and pedestrian
7 thoroughfares, on the grounds of schools and day care centers, in the yards of northern California
8 residents, along lakes and rivers and along urban, suburban and rural public thoroughfares. The
9 ubiquity of these poles and their known tendency to shed most of the chemicals used to treat
10 them, has dispersed these chemicals into virtually every corner of northern California, both
11 indoors and outdoors.

12 5. These chemicals are extremely long-lived, lasting in the environment for decades
13 and, in the case of dioxins, for centuries. Dust and dirt around the bottoms of poles becomes
14 impregnated with these wood treatment chemicals as the chemicals ooze from the poles (or are
15 washed off the poles by rain) and into the soil. This chemical-laden soil then exposes people to
16 PG&E's wood treatment chemicals when people track that soil into their homes on their shoes,
17 depositing it on their rugs, where their children and pets come into contact with it. This dust is
18 eaten by children who stick their hands in their mouths after crawling on carpets. It is spread
19 around the house when rugs are vacuumed. Wood treatment chemical-laden dust is blown
20 around the environment by the wind and is deposited on the food people grow in their gardens
21 and is then eaten. These wood treatment chemicals are washed off poles and sidewalks by the
22 rain, and soil around the base of poles is eroded into gutters and ditches. The chemicals are then
23 washed into rivers, lakes, and bays throughout northern California, where they enter the food
24 chain, bio-magnifying as they move up the food chain, continually concentrating at higher levels
25 as they move into higher benthic levels of the food chain. Both San Francisco and Humboldt
26 Bays are listed under Section 303(d) of the federal Clean Water Act (33 U.S. C. § 1313(d)) as
27 "impaired" due to dioxin contamination found in the tissues of fish and other species that live in
28 and around these bays. Wood treatment chemicals, especially dioxins, eventually end up

1 concentrated in the bodies of fish and game that residents of northern California catch or kill and
2 then eat. These chemicals are, in turn, concentrated in the fatty tissues of women and thus
3 entrained in the lipid fractions of breast milk. Women feed their babies PG&E's wood treatment
4 chemicals when they nurse them.

5 6. PG&E owns and utilizes treated-wood utility poles in its electricity distribution
6 and sales operations throughout northern California. PG&E purchases these poles from various
7 manufacturers and then installs them to suspend electrical distribution lines. PG&E knows and
8 intends that these poles contain wood treatment chemicals, that these poles bleed the chemicals
9 into the environment, that people contact the poles and are exposed to wood treatment chemicals
10 as a result of PG&E installing the poles in the environment. It is PG&E's intention that these
11 poles be installed throughout northern California. PG&E did not and does not provide northern
12 California residents clear and reasonable warnings that its treated-wood utility poles expose them
13 to chemicals known to cause cancer, birth defects and other reproductive harm.

14 7. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
15 to compel PG&E to bring its business practices into compliance with section 25249.5 *et seq.* by
16 providing a clear and reasonable warning to each individual who has been and who in the future
17 is threatened to be exposed to the above mentioned wood treatment chemicals as a result of
18 PG&E intentionally installing these treated-wood poles into the northern California environment.

19 8. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
20 of PG&E to provide clear and reasonable warnings regarding exposure to chemicals known to
21 cause cancer, birth defects and other reproductive harm.

22
23 PARTIES

24 9. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
25 is a non-profit organization dedicated to, among other causes, the protection of the environment,
26 promotion of human health, environmental education, and consumer rights. Mateel is based in
27 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
28 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement

1 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
2 California are regularly exposed to wood treatment chemicals from treated-wood utility poles
3 that PG&E utilizes in its electricity distribution and sales operations. These California residents
4 are so exposed without a clear and reasonable Proposition 65 warning.

5 10. PG&E is a person doing business within the meaning of Health & Safety Code
6 Section 25249.11. PG&E stores and then installs, thousands of treated-wood poles each year
7 throughout northern California, including in Alameda County. Storage installation and
8 maintenance of treated-wood utility poles in northern California's environment causes people to
9 be exposed to wood treatment chemicals while they are physically present in Alameda County.

10 11. Plaintiff brings this enforcement action against PG&E pursuant to Health &
11 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
12 Notice of Violation, dated March 4, 2015, which Mateel sent to California's Attorney General.
13 Substantively identical letters were sent to District Attorneys for every county in which PG&E
14 distributes and sells electricity, to the City Attorneys for the cities of San Francisco, Sacramento
15 and San Jose, and to PG&E. The parties to whom these Notices of Violation were sent are
16 named on the Service List attached to the Attorney General's copy of the Notice of Violation, a
17 true and correct copy of which is appended to this Complaint and which is incorporated herein by
18 reference. Enclosed in the Notice of Violation sent to PG&E was a summary of Proposition 65
19 that was prepared by California's Office of Environmental Health Hazard Assessment. Each
20 Notice of Violation plaintiff sent was accompanied by a Certificate of Service attesting to the
21 service of the Notice of Violation on each entity which received it. Pursuant to California Health
22 & Safety Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and
23 meritorious basis for the action was also sent with each Notice of Violation. Factual information
24 sufficient to establish the basis of the Certificate of Merit was enclosed with the Notice of
25 Violation Mateel sent to the Attorney General.

26 12. PG&E employs more than ten people.

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1 JURISDICTION

2 13. The Court has jurisdiction over this action pursuant to California Health & Safety
3 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court
4 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6
5 of the Health & Safety Code, which contains the statutes under which this action is brought, does
6 not grant jurisdiction to any other trial court.

7 14. This Court has jurisdiction over PG&E because it is a business that has sufficient
8 minimum contacts in California and within the County of Alameda. PG&E intentionally availed
9 itself of the California and Alameda County markets for distribution and sales of electricity. It is
10 thus consistent with traditional notions of fair play and substantial justice for the Superior Court
11 in Alameda County to exercise jurisdiction over PG&E.

12 15. Venue is proper in this Court because PG&E has installed treated-wood utility
13 poles, and thus caused exposure to wood treatment chemicals to occur, in Alameda County.
14 Liability for Plaintiff's causes of action, or some parts thereof, has accordingly arisen in Alameda
15 County during the times relevant to this Complaint and Plaintiff seeks civil penalties imposed by
16 statute.

17 FIRST CAUSE OF ACTION
18 (Claim for Injunctive Relief)

19 16. Plaintiff realleges and incorporates by reference into this First Cause of Action, as
20 if specifically set forth herein, paragraphs 1 through 15, inclusive.

21 17. The People of the State of California have declared by referendum under
22 Proposition 65 (California Health & Safety Code § 25249.5 *et seq.*) their right "[t]o be informed
23 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

24 18. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
25 that businesses that knowingly and intentionally expose any individual to a chemical known to
26 the State of California to cause cancer or birth defects must first provide a clear and reasonable
27 warning to such individual prior to the exposure.

28 19. Since at least September 8, 2012, PG&E has engaged in conduct that violates

1 Health and Safety Code Section 25249.6 *et seq.* This conduct includes knowingly and
2 intentionally exposing to the above mentioned toxic chemicals, those California residents who
3 live, breath and eat in northern California. The purpose for which PG&E intends to use its
4 wooden utility poles causes exposure to wood treatment chemicals, which are chemicals known
5 to the State of California to cause cancer, birth defects and other reproductive harm. PG&E has
6 not provided clear and reasonable warnings, within the meaning of Health & Safety Code
7 Sections 25249.6 and 25249.11.

8 20. At all times relevant to this action, PG&E knew that the utility poles it installs in
9 the northern California environment cause exposures to wood treatment chemicals. PG&E
10 intended that its treated-wood utility poles be installed in the northern California environment in
11 such ways as would lead to significant exposures to wood treatment chemicals.

12 21. By the above described acts, PG&E has violated Cal. Health & Safety Code
13 § 25249.6 and is therefore subject to an injunction ordering it to stop violating Proposition 65,
14 and to provide warnings to all present and future residents of northern California.

15
16 SECOND CAUSE OF ACTION
17 (Claim for Civil Penalties)

18 22. Plaintiff realleges and incorporates by reference into this Second Cause of Action,
19 as if specifically set forth herein, paragraphs 1 through 21, inclusive.

20 23. By the above described acts, PG&E is liable and should be liable, pursuant to
21 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual
22 exposed without proper warning to wood treatment chemicals as a result of PG&E's utilization
23 of treated-wood utility poles in its electricity distribution and sales operations.

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1 PRAYER FOR RELIEF

2 Wherefore, plaintiff prays for judgment against PG&E, as follows:

3 1. Pursuant to the First Cause of Action, that PG&E be enjoined, restrained, and
4 ordered to comply with the provisions of Section 25249.6 of the California Health & Safety
5 Code;

6 2. Pursuant to the Second Cause of Action, that PG&E be assessed a civil penalty in
7 an amount equal to \$2,500.00 per day per individual exposed, in violation of Section 25249.6 of
8 the California Health & Safety Code, to wood treatment chemicals as the result of PG&E's
9 utilization of treated wood utility poles in its electricity distribution and sales operations.;

10 3. That, pursuant to Civil Procedure Code § 1021.5, PG&E be ordered to pay to
11 Plaintiff the attorneys fees and costs it incurred in bringing this enforcement action.

12 4. For such other relief as this court deems just and proper.

13 Dated: September 15, 2015

KLAMATH ENVIRONMENTAL LAW CENTER

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15
16 By 
17 William Verick
18 Attorney for Plaintiff
19 Mateel Environmental Justice Foundation
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