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21
22 **UNITED STATES DISTRICT COURT**
23 **DISTRICT OF ARIZONA**

24 BERENDO PROPERTY, a California general
25 partnership; HARRISON PROPERTIES, L.L.C.,
26 an Arizona limited liability company; LINCOLN
27 INDUSTRIAL, L.L.C., an Arizona limited
28 liability company; and PREDIO
MANAGEMENT LLC, an Arizona limited
liability company,

Plaintiffs,

v.

CLOSED LOOP REFINING AND
RECOVERY, INC., an Arizona corporation;
ACE METAL CORPORATION; ADVANCED
COMPUTER RECYCLING, INC.; AK
RECYCLING, INC.; ALIANZA RECYCLING
AND RECOVERY, LLC; ALL E WASTE,
INC.; ALL GREEN ELECTRONICS
RECYCLING, LLC; AMERICAN
RETROWORKS, INC., d/b/a GOOD POINT
RECYCLING; ATTAN RECYCLING, CORP.;
CALIFORNIA ELECTRONIC WASTE, LLC;
CALIFORNIA ELECTRONIC ASSET
RECOVERY; CINCO ELECTRONICS
RECYCLING, INC.; COMPUPOINT USA

No. _____

COMPLAINT

(Jury Trial Requested)

1 LLC; DANNY EWASTE LLC; DESERT ARC;
2 DYNAMIC RECYCLING, INC., n/k/a
3 DYNAMIC LIFECYCLE INNOVATIONS
4 INC.; ECO INTERNATIONAL LLC;
5 ENVIRONMENTAL COORDINATION
6 SERVICES AND RECYCLING, INC.;
7 EGREEN-IT SOLUTIONS, L.L.C.;
8 ELECTRONIC RECYCLING SOLUTIONS
9 LLC; EWASTE CENTER, INC.; E-WASTE
10 RECYCLERS OF COLORADO; E-WASTE
11 LLC; E-WORLD RECYCLERS, LLC;
12 EXECUTIVE RECYCLING SERVICES, LLC;
13 FMI RECYCLING; GLOBAL ELECTRIC
14 ELECTRONIC PROCESSING; GLOBAL
15 ELECTRONIC RECYCLING, LLC; GLOBAL
16 ERECYCLERS, INC.; GLOBAL SURPLUS
17 SOLUTIONS, INC.; GREENVIEW
18 RESOURCE MANAGEMENT INC.; IMS
19 ELECTRONICS RECYCLING, INC.; KYO
20 COMPUTER INC.; MAGIC RECYCLING,
21 LLC; MONITOR AND CRT RECYCLERS OF
22 CALIFORNIA; OC RECYCLING, INC.; PC
23 RECYCLE LLC; PRECISE RECYCLING
24 SERVICES, INC.; ROUND2 INC.; RUUHWA
25 DANN AND ASSOCIATES, INC., d/b/a CAL
26 MICRO II; SCRAPCOMPUTER.COM USA,
27 INC.; SOUTHWEST RECYCLING
28 SOLUTIONS LLC; TEXAS GREEN
ELECTRONIC RECYCLING COMPANY
LLC; TRI PRODUCTS, INC.; TUNG TAI
GROUP; FEDERAL PRISON INDUSTRIES,
INC., d/b/a UNICOR; U.S. MICRO
DEVELOPMENT CORPORATION; VTKK,
LLC; YNOT RECYCLE LLC; and GOLD’N
WEST SURPLUS, INC.,

Defendants.

Berendo Property (“Berendo”), Harrison Properties, L.L.C. (“Harrison”), Lincoln Industrial, L.L.C. (“Lincoln”), and Predio Management LLC (“Predio”) (collectively “Plaintiffs”) allege as follows for their Complaint against Closed Loop Refining and Recovery, Inc. (“Closed Loop”) and the Arranger/Transporter Defendants (identified individually below):

NATURE OF ACTION

1. This civil action arises from Defendants’ abandonment and disposal of approximately 195 million pounds of used or broken cathode ray tubes (“CRTs”) and CRT

1 crushed glass (collectively, “CRT Waste”) in Arizona. CRTs are vacuum tubes, made
2 primarily of glass, which constitute the video display components of outdated television,
3 computer monitor, and other electronic devices. CRTs contain an average of four pounds
4 of lead, which is a hazardous substance under the Comprehensive Environmental,
5 Response, Compensation, and Liability Act (“CERCLA”).

6 2. Plaintiffs seek cost recovery, declaratory relief, and common law damages
7 resulting from releases or threatened releases of hazardous substances caused by Defendant
8 Closed Loop and the Arranger/Transporter Defendants at: (1) a warehouse owned by
9 Plaintiffs Berendo and Harrison (“Berendo/Harrison”) located within 435 S. 59th Avenue,
10 Phoenix, Arizona (“59th Ave Warehouse”); and (2) a warehouse owned and managed by
11 Plaintiffs Lincoln and Predio (“Lincoln/Predio”) located at 625 S. 27th Avenue, Phoenix,
12 Arizona (“27th Ave. Warehouse”) (together, the “Properties”). Plaintiffs’ claims for relief
13 arise under (i) CERCLA, 42 U.S.C. §§ 9601-9675; (ii) the Declaratory Judgment Act, 28
14 U.S.C. §§ 2201-2202; and (iii) principles of common law.

15 **JURISDICTION AND VENUE**

16 3. This Court has original jurisdiction over this civil action pursuant to 42 U.S.C.
17 § 9613(b), 18 U.S.C. § 1965, and 28 U.S.C. § 2201.

18 4. This Court has supplemental jurisdiction over the Plaintiffs’ state law claims
19 pursuant to 28 U.S.C. § 1367, because the state law claims are so related to Plaintiffs’
20 federal claims that they form a part of the same case or controversy.

21 5. Venue is proper under 42 U.S.C. § 9613(b), 18 U.S.C. § 1965(a), and 28
22 § 1391(b), because a substantial part of the events or omissions giving rise to this lawsuit
23 occurred within this District, including the damages and the release and/or threatened
24 release of hazardous substances, and because the Properties that are the subject of this action
25 are located in this District.

PARTIES

I. PLAINTIFFS.

6. Plaintiff Berendo Property, a California general partnership, is the owner/landlord of the 59th Ave. Warehouse.

7. Plaintiff Harrison Properties, L.L.C., an Arizona limited liability company, is an owner/manager of the 59th Ave. Warehouse.

8. Plaintiff Lincoln Industrial, L.L.C., an Arizona limited liability company, is the owner/landlord of the 27th Ave. Warehouse.

9. Plaintiff Predio Management LLC, an Arizona limited liability company, is the designated property manager of the 27th Ave. Warehouse.

II. DEFENDANTS.

10. Defendant Closed Loop Refining and Recovery, Inc. (“Closed Loop”) is a corporation organized under the laws of the State of Arizona, with a principal place of business in Phoenix, Arizona. Beginning in 2010 and extending into 2016, Closed Loop was a tenant occupying the Properties.

11. Defendant Ace Metal Corporation (“Ace”) is a corporation organized under Washington state law. Upon information and belief, Ace arranged for the transport, treatment, and disposal of at least 1,006,166 pounds of CRT Waste at the Properties.

12. Defendant Advanced Computer Recycling, Inc. (“Advanced Comp.”) is a corporation organized under California state law. Upon information and belief, Advanced Comp. arranged for the transport, treatment, and disposal of at least 1,565,316 pounds of CRT Waste at the Properties.

13. Defendant AK Recycling, Inc. (“AK”) is a corporation organized under California state law. Upon information and belief, AK arranged for the transport, treatment, and disposal of at least 73,697 pounds of CRT Waste at the Properties.

14. Defendant Alianza Recycling and Recovery, LLC (“Alianza”) is a limited liability company organized under Arizona state law. Alianza arranged for the transport and disposal of at least 4,568,003 pounds of CRT Waste at the Properties.

1 15. Defendant All E Waste, Inc. (“All E Waste”) is a corporation organized under
2 California state law. Upon information and belief, All E Waste arranged for the transport,
3 treatment, and disposal of at least 208,736 pounds of CRT Waste at the Properties.

4 16. Defendant All Green Electronics Recycling, LLC (“All Green”) is a limited
5 liability company organized under California state law. Upon information and belief, All
6 Green arranged for the transport, treatment, and disposal of at least 228,121 pounds of CRT
7 Waste at the Properties.

8 17. Defendant American Retroworks, Inc., d/b/a Good Point Recycling (“Good
9 Point”) is a corporation organized under Delaware state law. Upon information and belief,
10 Good Point arranged for the transport, treatment, and disposal of at least 34,397 pounds of
11 CRT Waste at the Properties.

12 18. Defendant Attan Recycling Corp. (“Attan”) is a corporation organized under
13 California state law. Upon information and belief, Attan arranged for the transport,
14 treatment, and disposal of at least 4,710,246 pounds of CRT Waste at the Properties.

15 19. Defendant California Electronic Waste, LLC (“CEW”) is a limited liability
16 company organized under California state law. Upon information and belief, CEW
17 arranged for the transport, treatment, and disposal of at least 636,360 pounds of CRT Waste
18 at the Properties.

19 20. Defendant California Electronic Asset Recovery (“CEAR”) is a corporation
20 organized under California state law. Upon information and belief, CEAR arranged for the
21 transport, treatment, and disposal of at least 14,918,023 pounds of CRT Waste at the
22 Properties.

23 21. Defendant Cinco Electronics Recycling, Inc. (“Cinco”) is a corporation
24 organized under Texas state law. Upon information and belief, Cinco arranged for the
25 transport, treatment, and disposal of at least 53,712 pounds of CRT Waste at the Properties.

26 22. Defendant CompuPoint USA LLC (“CompuPoint”) is a limited liability
27 company organized under Georgia state law. Upon information and belief, CompuPoint
28

1 arranged for the transport, treatment, and disposal of at least 71,670 pounds of CRT Waste
2 at the Properties.

3 23. Defendant Danny E-waste LLC (“Danny”) is a limited liability company
4 organized under California state law. Upon information and belief, Danny arranged for the
5 transport, treatment, and disposal of at least 3,481,249 pounds of CRT Waste at the
6 Properties.

7 24. Defendant Desert Arc is a 501(c)(3) entity that operates a recycling center in
8 Indio, California. Upon information and belief, Desert Arc arranged for the transport,
9 treatment, and disposal of at least 10,443 pounds of CRT Waste at the Properties.

10 25. Defendant USA Dynamic Recycling, Inc., n/k/a Dynamic Lifecycle
11 Innovations Inc. (“Dynamic”), is a corporation organized under Wisconsin state law. Upon
12 information and belief, Dynamic arranged for the transport, treatment, and disposal of at
13 least 327,669 pounds of CRT Waste at the Properties.

14 26. Defendant Eco International LLC (“Eco”) is a limited liability company
15 organized under New York state law. Upon information and belief, Eco arranged for the
16 transport, treatment, and disposal of at least 1,117,153 pounds of CRT Waste at the
17 Properties.

18 27. Defendant Environmental Coordination Services and Recycling, Inc.
19 (“Env’tl. Coord.”) is a corporation organized under Pennsylvania state law. Upon
20 information and belief, Env’tl. Coord. arranged for the transport, treatment, and disposal of
21 at least 187,214 pounds of CRT Waste at the Properties.

22 28. Defendant eGreen-IT Solutions, L.L.C. (“eGreen”) is a limited liability
23 company organized under Arizona state law. Upon information and belief, eGreen arranged
24 for the transport, treatment, and disposal of at least 60,754 pounds of CRT Waste at the
25 Properties.

26 29. Defendant Electronic Recycling Solutions LLC (“ERS”) is a limited liability
27 company organized under Utah state law. Upon information and belief, ERS arranged for
28

1 the transport, treatment, and disposal of at least 1,589,681 pounds of CRT Waste at the
2 Properties.

3 30. Defendant eWaste Center, Inc. (“eWaste Center”) is a corporation organized
4 under California state law. Upon information and belief, eWaste Center arranged for the
5 transport, treatment, and disposal of at least 2,032,995 pounds of CRT Waste at the
6 Properties.

7 31. Defendant E-Waste Recyclers of Colorado (“E-Waste Recyclers”) is a
8 corporation organized under Colorado state law. Upon information and belief, E-Waste
9 Recyclers arranged for the transport, treatment, and disposal of at least 317,619 pounds of
10 CRT Waste at the Properties.

11 32. Upon information and belief, Defendant E-Waste LLC (“E-Waste”) is a
12 limited liability company organized under Washington state law. Upon information and
13 belief, E-Waste arranged for the transport, treatment, and disposal of at least 2,408,885
14 pounds of CRT Waste at the Properties.

15 33. Upon information and belief, Defendant E-World Recyclers, LLC (“E-
16 World”) is a limited liability company organized under California state law. Upon
17 information and belief, E-World arranged for the transport, treatment, and disposal of at
18 least 1,961,305 pounds of CRT Waste at the Properties.

19 34. Upon information and belief, Defendant Executive Recycling Services, LLC
20 (“Executive”) is a limited liability company organized under Colorado state law. Upon
21 information and belief, Executive arranged for the transport, treatment, and disposal of at
22 least 151,186 pounds of CRT Waste at the Properties.

23 35. Upon information and belief, Defendant FMI Recycling (“FMI”) is a
24 company with its principal place of business in Dallas, Texas. Upon information and belief,
25 FMI arranged for the transport, treatment, and disposal of at least 97,351 pounds of CRT
26 Waste at the Properties.

27 36. Upon information and belief, Defendant Global Electric Electronic
28 Processing Inc. (“GEEP”) is a corporation organized under North Carolina state law. GEEP

1 arranged for the transport, treatment, and disposal of at least 4,140,666 pounds of CRT
2 Waste at the Properties.

3 37. Records indicate that GEEP arranged for the transport of CRT Waste to the
4 Properties from at least four different locations: (a) GEEP Alberta; (b) GEEP Calgary;
5 (c) GEEP Costa Rica; and (d) GEEP Michigan.

6 38. Upon information and belief, Defendant Global Electronic Recycling, LLC
7 (“Global Elec.”) is a limited liability company organized under Arizona state law. Upon
8 information and belief, Global Elec. arranged for the transport, treatment, and disposal of
9 at least 15,360 pounds of CRT Waste at the Properties.

10 39. Upon information and belief, Defendant Global eRecyclers, Inc. (“Global
11 eRecyclers”) is a corporation organized under California state law. Upon information and
12 belief, Global eRecyclers arranged for the transport, treatment, and disposal of at least
13 511,675 pounds of CRT Waste at the Properties.

14 40. Upon information and belief, Defendant Global Surplus Solutions, Inc.
15 (“Global Surplus”) is a corporation organized under California state law. Upon information
16 and belief, Global Surplus arranged for the transport, treatment, and disposal of at least
17 1,213,067 pounds of CRT Waste at the Properties.

18 41. Upon information and belief, Defendant Greenview Resource Management
19 Inc. (“Greenview”) is a corporation organized under California state law. Upon information
20 and belief, Greenview arranged for the transport, treatment, and disposal of at least
21 4,398,323 pounds of CRT Waste at the Properties.

22 42. Upon information and belief, Defendant IMS Electronics Recycling, Inc.
23 (“IMS”) is a corporation organized under California state law. Upon information and belief,
24 IMS arranged for the transport, treatment, and disposal of at least 71,487,000 pounds of
25 CRT Waste at the Properties.

26 43. Upon information and belief, Defendant KYO Computer Inc. (“KYO”) is a
27 corporation organized under California state law. Upon information and belief, KYO
28

1 arranged for the transport, treatment, and disposal of at least 6,346,634 pounds of CRT
2 Waste at the Properties.

3 44. Upon information and belief, Defendant Magic Recycling, LLC (“Magic”) is
4 a limited liability company organized under Colorado state law. Upon information and
5 belief, Magic arranged for the transport, treatment, and disposal of at least 39,238 pounds
6 of CRT Waste at the Properties.

7 45. Defendant Monitor and CRT Recyclers of California (“Monitor”) has its
8 principal place of business in Riverside, California. Upon information and belief, Monitor
9 arranged for the transport and disposal of at least 25,984,598 pounds of CRT Waste at the
10 Properties.

11 46. Upon information and belief, Defendant OC Recycling, Inc. (“OC”) is a
12 corporation organized under California state law. Upon information and belief, OC for the
13 transport, treatment, and disposal of at least 29,860 pounds of CRT Waste at the Properties.

14 47. Upon information and belief, Defendant PC Recycle LLC (“PC”) is a limited
15 liability company organized under California state law. Upon information and belief, PC
16 arranged for the transport, treatment, and disposal of at least 598,655 pounds of CRT Waste
17 at the Properties.

18 48. Upon information and belief, Defendant Precise Recycling Services, Inc.
19 (“Precise”) is a corporation organized under California state law. Upon information and
20 belief, Precise arranged for the transport, treatment, and disposal of at least 73,147 pounds
21 of CRT Waste at the Properties.

22 49. Upon information and belief, Defendant Round2, Inc. (“Round2”) is a
23 corporation organized under Texas state law. Round2 arranged for the transport and
24 disposal of at least 4,294,760 pounds of CRT Waste at the Properties.

25 50. Upon information and belief, Defendant Ruuhwa Dann and Associates, Inc.,
26 d/b/a Cal Micro Recycling (“Cal Micro”), is a corporation organized under California state
27 law. Upon information and belief, Cal Micro arranged for the transport, treatment, and
28 disposal of at least 10,283,735 pounds of CRT Waste at the Properties.

1 51. Upon information and belief, Defendant Scrapcomputer.com USA, Inc.
2 (“Scrapcomputer”) is a corporation organized under Arizona state law. Upon information
3 and belief, Scrapcomputer arranged for the transport, treatment, and disposal of at least
4 108,465 pounds of CRT Waste at the Properties.

5 52. Upon information and belief, Defendant Southwest Recycling Solutions LLC
6 (“Southwest”) is a limited liability company organized under Arizona state law. Upon
7 information and belief, Southwest arranged for the transport, treatment, and disposal of at
8 least 43,865 pounds of CRT Waste at the Properties.

9 53. Upon information and belief, Defendant Texas Green Electronic Recycling
10 Company LLC (“Texas Green”) is a limited liability company organized under Texas state
11 law. Upon information and belief, Texas Green arranged for the transport, treatment, and
12 disposal of at least 737,370 pounds of CRT Waste at the Properties.

13 54. Upon information and belief, Defendant Tri Products, Inc. (“Tri Prods.”) is a
14 corporation organized under California state law. Upon information and belief, Tri Prods.
15 arranged for the transport, treatment, and disposal of at least 710,775 pounds of CRT Waste
16 at the Properties.

17 55. Upon information and belief, Defendant Tung Tai Group (“Tung Tai”) is a
18 corporation organized under California state law. Upon information and belief, Tung Tai
19 arranged for the transport, treatment, and disposal of at least 198,212 pounds of CRT Waste
20 at the Properties.

21 56. Upon information and belief, Defendant Federal Prisons Industries, Inc.
22 (trade named “UNICOR”), is a wholly-owned government corporation pursuant to 31
23 U.S.C. § 9101(3)(E), with its headquarters in Yazoo City, Mississippi. UNICOR arranged
24 for the transport, treatment, and disposal of at least 14,381,531 pounds of CRT Waste at the
25 Properties.

26 57. Records indicate that UNICOR arranged for the transport of CRT Waste to
27 the Properties from at least six different locations: (a) Marianna Federal Prison Industries,
28 UNICOR Recycling, Marianna, Florida; (b) TXAR Federal Prison Industries, UNICOR

1 Recycling, Texarkana, Texas; (c) Lewisburg Federal Prison Industries, UNICOR
2 Recycling, Lewisburg, Pennsylvania; (d) Tucson Federal Prison Industries, UNICOR
3 Recycling, Tucson, Arizona; (e) Atwater Federal Prison Industries, UNICOR Recycling,
4 Atwater, California; and, (f) Leavenworth Federal Prison Industries, UNICOR Recycling,
5 Leavenworth, Kansas.

6 58. Upon information and belief, Defendant U.S. Micro Development
7 Corporation (“U.S. Micro”) is a corporation organized under California state law. Upon
8 information and belief, U.S. Micro arranged for the transport, treatment, and disposal of at
9 least 89,194 pounds of CRT Waste at the Properties.

10 59. Upon information and belief, Defendant VTKK, LLC (“VTKK”) is a limited
11 liability company organized under Illinois state law. Upon information and belief, VTKK
12 arranged for the transport, treatment, and disposal of at least 80,664 pounds of CRT Waste
13 at the Properties.

14 60. Upon information and belief, Defendant YNot Recycle LLC (“YNot”) is a
15 limited liability company organized under California state law. Upon information and
16 belief, YNot arranged for the transport, treatment, and disposal of at least 956,201 pounds
17 of CRT Waste at the Properties.

18 61. Upon information and belief, Defendant Gold’n West Surplus, Inc. (“Gold’n
19 West”) is a corporation organized under California state law. Upon information and belief,
20 Gold’n West arranged for the transport, treatment, and disposal of at least 3,495 pounds of
21 CRT Waste at the Properties.

22 **GENERAL ALLEGATIONS**

23 **I. CLOSED LOOP AND THE ARRANGER/TRANSPORTER DEFENDANTS**
24 **COOPERATED IN A SHAM CRT RECYCLING SCHEME.**

25 62. Beginning in 2010, Defendant Closed Loop secured leases at the Properties
26 based on false representations that Defendant Closed Loop would be operating recycling
27 services in compliance with all federal and state hazardous waste laws.
28

1 63. From 2010 until at least 2016, Defendant Closed Loop and the
2 Arranger/Transporter Defendants cooperated in a sham recycling scheme to profit from the
3 stockpiling and subsequent abandonment of approximately 195 million pounds (97,500
4 tons) of CRT Waste containing “hazardous substances” under CERCLA, 106 million
5 pounds of which were abandoned at the Properties.

6 **A. The Arranger/Transport Defendants’ CRT Waste Operations.**

7 64. Between 2010 and 2016, the Arranger/Transporter Defendants were paid to
8 collect or otherwise accept used and/or broken CRTs that required treatment and/or disposal
9 under state and federal environmental regulations.

10 65. To avoid heavy regulatory obligations required when managing hazardous
11 waste under the Resource Conservation and Recovery Act (RCRA), the
12 Arranger/Transporter Defendants sought to take advantage of RCRA’s conditional
13 exclusion for used and broken CRTs (the “RCRA CRT Exclusion”), which excludes such
14 CRTs from RCRA’s hazardous waste management regulations if they are “destined for
15 recycling” and certain other requirements are met.

16 66. Given their experience and sophistication in the electronic waste (“e-waste”)
17 industry, the Arranger/Transporter Defendants knew or should have known that, among
18 other things, the RCRA CRT Exclusion does not apply to (i) “sham recycling”—*e.g.*, any
19 form of treatment or disposal being called recycling in an attempt to avoid RCRA
20 regulations; (ii) operations involving speculative accumulation of CRT Waste, and/or (iii)
21 use of CRT Waste in a manner constituting disposal.

22 67. To take advantage of the RCRA CRT Exclusion, the Arranger/Transporter
23 Defendants arranged to transport their used and/or broken CRTs to other companies,
24 purportedly for “CRT processing” and “recycling.”

25 68. Because there was no legitimate market for selling used and/or broken CRTs
26 between 2010 and 2016, the Arranger/Transporter Defendants were forced to pay other
27 companies to accept their CRT Waste. The Arranger/Transporter Defendants still profited
28 from these arrangements by transferring possession of CRT Waste to other companies and,

1 in some instances, receiving reimbursement from the California Department of Resources
2 Recycling and Recovery (“CalRecycle”).

3 69. Between 2010 and 2016, the Arranger/Transporter Defendants arranged for
4 and paid Closed Loop to accept, treat, and/or dispose of their CRT Waste.

5 **B. Closed Loop’s Sham Recycling Operations.**

6 70. In 2010, Closed Loop entered the e-waste processing and recycling industry
7 and, for a price, offered to accept CRT Waste from the Arranger/Transporter Defendants
8 for CRT processing.

9 71. To undercut the national e-waste market and attract customers, Closed Loop
10 accepted inbound CRTs at prices substantially below what other companies in the U.S. e-
11 waste industry charged.

12 72. Closed Loop speculatively accumulated used and broken CRTs and handled
13 those CRTs in violation of the RCRA CRT Exclusion (*e.g.*, placing used and/or broken
14 CRTs outside or in warehouses indefinitely).

15 73. Closed Loop’s “CRT processing” operations resulted in releases or threatened
16 releases of hazardous substances contained in CRT Waste into the environment. And
17 Closed Loop failed to take reasonable measures to protect against such releases.

18 74. Closed Loop also cross-contaminated CRT Waste by failing to adhere to
19 standard industry practice of segregating leaded funnel glass from nonleaded panel glass
20 during CRT processing to meet the product specifications of downstream lead smelters,
21 because it is not economically viable for lead smelters to accept commingled glass from e-
22 waste recyclers.

23 75. Closed Loop’s operations involved feeding both leaded funnel glass and panel
24 glass into the same mechanical crusher, creating a stream of commingled leaded and
25 nonleaded glass.

26 76. The commingled leaded and nonleaded glass produced by Closed Loop
27 between 2010 and 2016 was never destined for recycling at a CRT glass manufacturer or a
28

1 lead smelter, because it did not meet any commercial specification for which a legitimate
2 market existed.

3 77. Instead, Closed Loop stockpiled this ostensibly “processed” CRT glass at the
4 Properties indefinitely, without any feasible means to recycle it. In other words, Closed
5 Loop speculatively accumulated this CRT glass and also mismanaged that CRT glass in
6 violation of the RCRA CRT Exclusion.

7 78. Outside the 59th Ave. Warehouse, Closed Loop deposited leaded glass and
8 nonleaded glass in large, uncontained and uncovered piles causing releases or the potential
9 for releases of hazardous substances into the surrounding environment.

10 79. Closed Loop also failed to manage the processed CRT glass at the Properties
11 in an environmentally responsible manner with a concern for product integrity.

12 80. For example, it is standard industry practice to use new octagon Gaylord
13 boxes to provide appropriate containment for processed CRT glass. On average, a Gaylord
14 box can contain approximately 2 tons of materials.

15 81. Instead of using new Gaylord boxes, Closed Loop repurposed many of the
16 same four-sided Gaylord boxes that had previously been used to transport used, intact CRTs
17 to the Properties.

18 82. These boxes had, in turn, been repurposed from their initial use to package
19 non-hazardous consumer products, which do not require the same standard of durability.
20 As a result of Closed Loop’s negligence, processed CRT glass spilled to the floor in both
21 the 27th Ave. Warehouse and the 59th Ave. Warehouse.

22 83. At the 59th Ave. Warehouse, Closed Loop also stored outside hundreds of
23 pallets of processed CRT glass and partially processed CRTs in Gaylord boxes. The
24 containers had deteriorated to the point that they could no longer hold the glass, and CRT
25 glass and parts were strewn throughout the storage area.

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27
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1 **C. The Arranger/Transporter Defendants’ Facilitated and Cooperated in**
2 **Sham Recycling Operations.**

3 84. The Arranger/Transporter Defendants failed to exercise reasonable care to
4 inquire and confirm Closed Loop’s compliance with environmental laws and regulations.

5 85. Given their experience and sophistication in the e-waste industry, the
6 Arranger/Transporter Defendants knew or had a reasonable basis to believe that Closed
7 Loop was running a sham recycling operation.

8 86. Between 2010 and 2016, the Arranger/Transporter Defendants knew that
9 Closed Loop was (at best) only an “intermediate facility,” did not a qualify as a final
10 destination for CRT Waste recycling, and charged below-market prices for alleged
11 recycling services. The Arranger/Transporter Defendants knew and/or had an objectively
12 reasonable basis for believing that Closed Loop had no feasible means for recycling the
13 CRT glass—*e.g.*, Closed Loop was not a remanufacturer of CRT glass and has never
14 engaged or had the capacity to engage in lead smelting.

15 87. Despite their knowledge, between 2010 and 2016, the Arranger/Transporter
16 Defendants arranged for Closed Loop to accept approximately 195 million pounds of CRT
17 Waste, purportedly for “CRT processing.” But 106 million pounds of that CRT Waste was
18 abandoned at the Properties.

19 88. Because no market existed in which the Arranger/Transporter Defendants
20 could sell their CRTs, the Arranger/Transporter Defendants were forced to pay entities to
21 take those CRTs.

22 89. The Arranger/Transporter Defendants chose to ship their CRT Waste to
23 Closed Loop, because Closed Loop charged substantially less for accepting and ostensibly
24 “processing” CRT Waste than other companies in the e-waste industry.

25 90. Given their experience and sophistication in the e-waste industry, at the time
26 they sent CRT Waste to Closed Loop, the Arranger/Transporter Defendants knew or had an
27 objectively reasonable basis to believe both that Closed Loop’s operations violated
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1 environmental laws and regulations, and that the CRT Waste they arranged for and paid
2 Closed Loop to accept was not destined for legitimate recycling.

3 91. Between 2010 and 2016, it became widely known in the e-waste industry that
4 the market for CRT glass in the United States had disappeared.

5 92. Historically, CRTs collected for recycling were recycled into new CRTs
6 through glass-to-glass recycling, or were sent to secondary lead smelters to recover the lead.

7 93. By 2006, however, the advancement of flat screen televisions and computer
8 monitors was displacing CRTs—sending demand for the manufacturing of new CRTs into
9 rapid decline.

10 94. Upon information and belief, the last U.S.-based CRT remanufacturing
11 operations ceased in or about 2010, eliminating the primary way in which CRT Waste was
12 recycled in the U.S. Shortly thereafter, global CRT remanufacturing operations also closed
13 or stopped accepting CRT Waste.

14 95. Although a few North American lead smelters have accepted limited amounts
15 of CRT glass, since no later than 2010, it was well known in the e-waste industry that those
16 smelters lacked the capacity to recycle the vast amounts of CRT Waste in the United States.

17 96. During this period, it became widely known in the e-waste industry that (i) no
18 viable market existed for CRT Waste; (ii) companies across the U.S. were running scam
19 recycling operations in which they collected payments to accept and/or purportedly
20 “process” CRT Waste for recycling, but instead stockpiled, abandoned, and/or otherwise
21 disposed of the CRT Waste; and (iii) millions of pounds of CRT Waste had been abandoned
22 or otherwise disposed of at locations around the country.

23 97. Between 2010 and 2016, several e-waste abandonments and related
24 environmental enforcement actions were widely reported in the media and by regulatory
25 agencies. Any participant in the tight-knit e-waste recycling industry would have been
26 aware of the trend, including the Arranger/Transporter Defendants.

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1 98. Between 2010 and 2016, it became widely known in the e-waste industry and
2 was known or should have been known by the Arranger/Transporter Defendants that Closed
3 Loop was not operating in compliance with federal and state hazardous waste laws.

4 99. In 2013, for example, Basel Action Network (“BAN”)—an environmental
5 non-profit group that describes itself as an investigative watchdog for sham electronic waste
6 recyclers—provided the following public comments about Closed Loop:

7 This is an important matter because an influx of cash comes into
8 a business of this kind upon receipt of CRT glass and the actual
9 subsequent processing of the CRTs is a very large subsequent
10 expense. The economic temptation to avoid [the] latter costs,
11 in the face of large influxes of cash is real and thus holding to
12 Speculative Accumulation rules is vital unless there is a clear
13 pathway for meeting the processing goals, and avoiding
14 accumulation is seen as a reality in the near term. Already
15 numerous CRT storage-for-later processing sites around the
16 nation have been found abandoned with massive amounts of
17 glass still on site due to this factor (*see* Luminous Recycling,
18 Denver, Dow Management, Yuma).

19 100. BAN’s public statements regarding Defendant Closed Loop’s situation were
20 widely disseminated and known to participants in the industry, including the
21 Arranger/Transporter Defendants which had the requisite sophistication and experience in
22 the e-waste industry to appreciate BAN’s public warning regarding the “economic
23 temptation” for Defendant Closed Loop to circumvent the speculative accumulation
24 regulations in exchange for “large influxes of cash.”

25 101. The Arranger/Transporter Defendants nevertheless knowingly transported
26 and/or arranged for the transport of tens of millions of pounds of CRTs and other e-waste
27 to the Properties.

28 102. Also in August 2013, at least one other recycler in the e-waste industry issued
a public white paper acknowledging there was “insufficient capacity to manage the quantity
of CRTs reaching end-of-life” and warning that recyclers “setting aside the cost of
managing CRT glass while enjoying revenue from commodities is the largest contributor
to stockpiling CRT glass.”

1 103. By 2014, the same recycler announced in a second white paper that CRT glass
2 continues to be stockpiled in the industry; that existing end-use markets fall short of current
3 demand; and that proposed future capacity is “at best, only available at some unknown point
4 in the future (when the strongest demand exists today) or, at worst, speculative in nature.”

5 104. Also in 2014, the Wisconsin Department of Natural Resources (“Wisconsin
6 DNR”) issued a warning to e-waste recyclers that Closed Loop lacked the capacity to
7 process CRTs and that any CRTs sent to Closed Loop would accordingly not be counted
8 toward manufacturer credit under the E-Cycle Wisconsin Program.

9 105. On September 23-24, 2014, Brent Benham of Defendant Closed Loop
10 participated in the “Sustainable Materials Management Electronics Recycling Forum”
11 (“SMM Forum”) in Arlington, Virginia, which was hosted by the EPA as part of a
12 nationwide effort “to address the challenges of Cathode Ray Tube (CRT) stockpiling.” The
13 SMM Forum began with the following “CRT Problem Statement”:

14 CRTs and CRT glass were once easily recycled into new CRTs;
15 however, the demand for new CRTs has collapsed in favor of
16 new flat panel technologies. Because of rising costs, negative
17 economic incentives, and shifts in CRT glass markets, some
18 CRT processors and recyclers are choosing to store the glass
 indefinitely rather than send it for recycling (or disposal), which
 increases the risk of mismanagement and/or abandonment of
 CRTs.

19 106. During the same SMM Forum, the EPA publicly identified several “Factors
20 Leading to the Problem” of stockpiled CRTs and CRT Waste, including that the “[f]inancial
21 incentive for entities to get paid to receive CRTs and then not pay to recycle (or dispose);
22 “[s]hipments out of state can’t be regulated by original jurisdiction”; “[b]arriers to [market]
23 entry are low”; and “[r]ecyclers aren’t changing enough to cover costs for recycling.”

24 107. On or about November 6, 2014, E-Scrap News also reported that Brent
25 Benham admitted that “Closed Loop has been amassing leaded glass instead of sending it
26 downstream for recycling elsewhere.” *See* E-Scrap News, “CRT Player Closed Loop
27 Receives Notice of Violation” (Nov. 6, 2014).

1 108. The Arranger/Transporter Defendants knew or had an objectively reasonable
2 basis to believe that, given the low prices they were paying, no e-waste company with
3 Closed Loop’s business model and low profit margin could have complied with applicable
4 environmental laws and regulations—*e.g.*, the requirements to operate under the RCRA
5 CRT Exclusion. Yet the Arranger/Transporter Defendants knowingly continued to ship
6 CRT Waste to the Properties and profited from Closed Loop’s below-market prices.

7 109. Given their experience and sophistication in the e-waste industry, at the time
8 they sent CRT Waste to Closed Loop, the Arranger/Transporter Defendants knew or had an
9 objectively reasonable basis to know that Closed Loop was speculatively accumulating
10 and/or managing CRTs in violation of state and federal environmental laws.

11 110. From 2010 to 2016, Closed Loop accumulated approximately 161 million
12 pounds of crushed CRT glass in Arizona, but shipped out only 4.4 million pounds (or 2.7%)
13 of those same materials for purported “recycling.” Closed Loop speculatively accumulated
14 the remaining 97.3% at the Properties and other locations in violation of federal regulations.
15 At no time during its entire six-year operation was Closed Loop in compliance with the
16 speculative accumulation requirements in 40 C.F.R. § 261.39(c).

17 111. The Arranger/Transporter Defendants arranged to ship CRT Waste to Closed
18 Loop without a reasonable or informed expectation that CRT Waste would be disposed of
19 or treated in compliance with applicable environmental laws.

20 112. Given their experience and sophistication in the e-waste industry, at the time
21 they sent CRT Waste to Closed Loop, the Arranger/Transporter Defendants knew or had an
22 objectively reasonable basis to believe that Closed Loop’s “CRT processing” operations
23 violated state and federal environmental regulations and generated and deposited lead-
24 containing dust throughout Closed Loop’s facilities, resulting in releases or threatened
25 releases of hazardous substances to the environment.

26 113. Given their experience and sophistication in the e-waste industry, at the time
27 they sent CRT Waste to Closed Loop, the Arranger/Transporter Defendants knew or had an
28 objectively reasonable basis to believe that Closed Loop’s “CRT processing” created a

1 commingled stream of leaded and nonleaded glass, which did not meet any commercial
2 specification for which a legitimate market existed.

3 114. Given their experience and sophistication in the e-waste industry, at the time
4 they sent CRT Waste to Closed Loop, the Arranger/Transporter Defendants knew or had an
5 objectively reasonable basis to believe that Closed Loop was speculatively accumulating
6 “processed” CRT glass and/or otherwise managing it in violation of the CRT Exclusion
7 (e.g., placing CRT glass outside or in warehouses indefinitely).

8 115. While making numerous deliveries to Defendant Closed Loop, drivers for the
9 Arranger/Transporter Defendants observed that Defendant Closed Loop’s e-waste recycling
10 operation was not a legitimate enterprise and amounted to sham recycling.

11 116. Among several things, drivers of the Arranger/Transporter Defendants
12 observed that Defendant Closed Loop was stockpiling CRTs and other e-waste in such
13 immense quantities that such materials could not possibly be recycled during a single
14 calendar year or otherwise as part of a legitimate and economically viable recycling
15 program.

16 117. The Arranger/Transporter Defendants also knew Defendant Closed Loop
17 lacked other downstream markets to manage crushed CRT glass, because the lack of such
18 downstream markets directly impacted the revenue streams of nearly every entity involved
19 in the CRT recycling chain, including the Arranger/Transporter Defendants.

20 **D. Closed Loop and the Arranger/Transporter Defendants Abandoned**
21 **CRT Waste at the Properties.**

22 118. In or about March 2016, Closed Loop abandoned the Properties and
23 approximately 106 million pounds of its CRT Waste at the Properties, leaving Plaintiffs, as
24 the landlords, to incur substantial removal and clean-up costs that may exceed \$15 million.

25 119. Closed Loop’s sham recycling operations also extended to locations in Ohio
26 where Closed Loop conducted a similar sham recycling operation. In a bench trial by
27 Closed Loop’s Ohio landlord for breach of its Ohio lease, the Ohio state court ruled that:
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1 Closed Loop was not engaged in legitimate CRT recycling
2 operations at the Properties, but was instead engaged in the
3 speculative accumulation and subsequent abandonment and
4 disposal of the CRT Waste at the Properties without any
5 feasible means of recycling it. The testimony established that
6 [the Closed Loop Defendants] also failed to segregate leaded
7 funnel glass from panel glass during its CRT recycling
8 operation, resulting in the abandonment of over 113 million
9 pounds of crushed, commingled leaded and unleaded glass at
10 the Properties in addition to approximately 15 million pounds
11 of other electronic waste. . . . [A] legitimate CRT recycling
12 operation at the Properties would not have commingled the
13 CRT glass because the cross-contamination of leaded and
14 unleaded glass would have rendered any available downstream
15 recycling option unprofitable, i.e., no legitimate market existed
16 for this commingled glass as a feedstock for lead smelters or
17 otherwise.

18 120. RCRA established a cradle-to-grave program that regulates the generation,
19 transportation, treatment, storage, and disposal of hazardous wastes and provides for the
20 conditional exclusion for legitimate CRT operations, but only if required criteria are met.
21 *See* 40 C.F.R. §§ 261.4(a)(22) & 261.39.

22 121. Defendant Closed Loop failed to manage the used CRTs and crushed CRT
23 glass at the Properties in compliance with the conditional CRT Exclusion because it
24 speculatively accumulated CRT materials at the Properties in violation of such exclusion.

25 122. Among other things, Defendant Closed Loop could not show that “during the
26 calendar year--(commencing January 1)--the amount of material that is recycled, or
27 transferred to a different site for recycling, equals at least 75 per cent by weight or volume
28 of the amount of that material accumulated at the beginning of the period.” 40 C.F.R. §§
261.39 & 261.1(c)(8).

123. Defendant Closed Loop also could not show that the CRT materials had “a
feasible means of being recycled.” 40 C.F.R. §§ 261.39 & 261.1(c)(8).

124. According to the EPA, demonstration of a feasible means of recycling
“ordinarily will require identification of actual recyclers and recycling technology, location
of the recycler, and relative costs associated with recycling,” none of which was ever shown
or otherwise established by Defendant Closed Loop.

125. Defendant Closed Loop also never established that:

1 a. The crushing of commingled leaded funnel glass and panel glass
2 provided a useful contribution to the recycling process;

3 b. The crushed commingled leaded funnel glass and panel glass was a
4 valuable product or intermediate;

5 c. A legitimate market existed for the crushed CRT glass that was being
6 generated and accumulated;

7 d. The CRTs and crushed CRT glass that were accumulating on the
8 Properties were being managed as valuable commodities; and

9 e. The CRTs and crushed CRT glass that were accumulating on the
10 Properties were being managed to prevent a release.

11 126. No legitimate market existed for the crushed CRT glass that Defendant
12 Closed Loop was generating given the way it was generated:

13 a. It is standard industry practice to segregate leaded funnel glass from
14 clean panel glass during CRT processing to meet the product
15 specifications of downstream lead smelters;

16 b. It is not economically viable for lead smelters to accept commingled
17 glass from e-waste recyclers, given the need to run over twice as much
18 glass feedstock to extract the same amount of lead;

19 c. The commingled, crushed CRT glass that Defendant Closed Loop
20 generated also was contaminated with steel, wood, and plastic
21 impurities, rendering it unsuitable for lead smelters; and

22 d. The commingled, crushed CRT glass that Defendant Closed Loop
23 generated had insufficient granularity to meet lead smelter
24 specifications.

25 127. Nor did Defendant Closed Loop manage the crushed CRT glass at the
26 Properties in an environmentally responsible manner with a concern for product integrity:

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- 1 a. It is standard industry practice to use new octagon Gaylord boxes with
- 2 a 2-ton capacity to provide appropriate containment for processed CRT
- 3 glass;
- 4 b. Defendant Closed Loop repurposed many of the same four-sided
- 5 Gaylord boxes that had previously been used to transport used, intact
- 6 CRTs to the Properties;
- 7 c. As a result, significant portions of the crushed CRT glass spilled out
- 8 of their Gaylord containers; and
- 9 d. Defendant Closed Loop stored CRT materials outside the 59th Ave.
- 10 Warehouse, despite the EPA’s guidance that “storing CRTs outdoors
- 11 prior to processing is inconsistent with the premise that these materials
- 12 are commodity-like.” 71 Fed. Reg. 42,928, 42,933 (July 28, 2006).

13 128. The way Defendant Closed Loop processed and stored CRT glass was further
14 evidence that Defendant Closed Loop had no reasonable intention of actually recycling
15 CRT materials as though they were valuable commodities, or that there was any legitimate
16 downstream market for such materials.

17 129. Used CRTs and crushed CRT glass containing lead at concentrations equal to
18 or greater than 5.0 mg/L using the Toxicity Characteristic Leaching Procedure (“TCLP”),
19 if not managed under the conditional CRT Exclusion, are regulated and must be disposed
20 of as hazardous wastes under RCRA.

21 130. Total lead content from samples collected at the Properties exceeded the 5.0
22 mg/L regulatory limits using TCLP.

23 131. Each of the Arranger/Transporter Defendants learned of Closed Loop’s
24 abandonment of hazardous wastes at the Properties, but none of them has cooperated in or
25 otherwise provided funds for the hazardous waste removal and clean-up efforts.

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1 **E. Plaintiffs Have Undertaken Removal and Clean-Up Efforts at Their**
2 **Own Expense.**

3 132. In addition to cooperating with ADEQ and other state and federal regulatory
4 agencies, Plaintiffs have undertaken numerous efforts at their sole expense to investigate
5 the nature and quantity of the abandoned CRTs and other CRT Waste at the Properties; to
6 protect public health and safety; and to address releases and threatened releases. All costs
7 incurred to date, for which CERCLA cost recovery is sought herein, are consistent with the
8 U.S. EPA National Contingency Plan (“NCP”) at 40 C.F.R. Part 300, in keeping with 42
9 U.S.C. § 9607.

10 133. Plaintiffs’ removal and clean-up costs have included, but are not limited to:

- 11 a. Retention of an environmental consultant, which performed removal
12 preliminary assessments, removal site inspections and surveys, and
13 records review in accordance with 40 C.F.R. § 300.410, *inter alia*, to:
14 (i) characterize the nature and extent of the abandoned CRTs and CRT
15 waste at the Properties; (ii) identify sources and the nature of releases
16 and threatened releases; (iii) evaluate the magnitude of the threat; and
17 (iv) evaluate factors necessary to determine whether a removal is
18 necessary;
- 19 b. Identify and evaluate potential options and locations for the recycling
20 or, if necessary, disposal of the abandoned CRTs and CRT waste in
21 furtherance of 40 C.F.R. § 300.415(b)(4)(i) and in accordance with
22 other applicable federal and state laws;
- 23 c. Obtaining and evaluating estimates from potential hazardous and
24 electronic waste vendors for the recycling and/or disposal of the
25 abandoned CRTs and CRT Waste and for the removal and/or remedial
26 action at the Properties in furtherance of 40 C.F.R. § 300.415(b)(4)(i)
27 and in accordance with other applicable federal and state laws;
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- 1 d. Securing the Properties to prevent unauthorized entry in accordance
- 2 with 40 C.F.R. § 300.415(b)(1)-(3) and (e)(1);
- 3 e. Directing an environmental consultant to prepare a health and safety
- 4 plan in accordance with 40 C.F.R. § 300.150(b) to inform personnel
- 5 participating in onsite activities at the Properties, including contractors
- 6 performing removal and/or remediation, of the known or reasonably
- 7 anticipated potential hazards and safety concerns;
- 8 f. Preparing documentation in accordance with 40 C.F.R. 300.160(a)(1),
- 9 *inter alia*, to (i) identify responsible parties; (ii) describe the source
- 10 and circumstances of releases or potential releases; and (iii) provide
- 11 for an accounting of removal and other response costs;
- 12 g. Arranging for an environmental consultant to prepare an Engineering
- 13 Evaluation/Cost Analysis pursuant to 40 C.F.R. § 300.415(i) to
- 14 analyze removal alternatives for the Properties;
- 15 h. Commence and conduct a removal action to identify, remove,
- 16 transport, and dispose of CRTs and CRT Waste from the Properties;
- 17 and
- 18 i Commence and conduct other clean-up efforts after removal of CRT
- 19 Waste from the Properties.

20 134. Plaintiffs now bring this action to require Closed Loop and the
21 Arranger/Transporter Defendants to clean-up and/or pay for the clean-up of nearly 106
22 million pounds of CRT Waste that Defendants abandoned at the Properties.

23 135. The Arranger/Transporter Defendants participated in and profited from
24 Defendant Closed Loop's sham recycling operations at the Properties, thereby saving
25 millions of dollars in e-waste disposal fees and imposing on Plaintiffs potential liability for
26 millions of dollars in removal and other environmental clean-up costs.

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1 136. The Arranger/Transporter Defendants selected Defendant Closed Loop as the
2 cheapest possible option on the market to receive and ostensibly “recycle” CRTs and CRT
3 waste.

4 137. Given their experience and sophistication in the tight-knit e-waste industry,
5 the Arranger/Transporter Defendants knew or should have known that the artificially low
6 prices being charged by Defendant Closed Loop substantially undercut the prevailing
7 market with a price point that no reasonable industry participant could have believed to be
8 sufficient to cover the costs of a legitimate recycling operation.

9 138. Given their experience and sophistication in the tightknit e-waste industry,
10 the Arranger/Transporter Defendants knew or should have known that Defendant Closed
11 Loop did not qualify for the conditional CRT Exclusion, because the Arranger/Transporter
12 Defendants knew or should have known that Defendant Closed Loop was speculatively
13 accumulating CRTs and CRT Waste, had no feasible means of recycling CRTs or CRT
14 waste, and otherwise was not engaged in legitimate recycling.

15 **FIRST CAUSE OF ACTION**

16 **(CERCLA Cost Recovery)**

17 139. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 138 of
18 this Complaint as if fully set forth herein.

19 140. Section 107(a) of CERCLA, 42 U.S.C. § 9601(a), imposes strict and joint and
20 several retroactive liability on: (i) “the owner and operator of a vessel or a facility”;
21 (ii) “any person who at the time of disposal of any hazardous substance owned or operated
22 any facility at which such hazardous substances were disposed of”; (iii) “any person who
23 by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a
24 transporter for transport for disposal or treatment, of hazardous substances owned or
25 possessed by such person, by any other party or entity, at any facility or incineration vessel
26 owned or operated by another party or entity and containing such hazardous substances,
27 and”; and (iv) “any person who accepts or accepted any hazardous substances for transport
28 to disposal or treatment facilities, incineration vessels or sites selected by such person, from

1 which there is a release, or a threatened release which causes the incurrence of response
2 costs, of a hazardous substance.”

3 141. Each Defendant is a “person” as defined by 42 U.S.C. § 9601(21).

4 142. The Properties constitute a “facility” within the meaning of 42 U.S.C.
5 § 9601(9).

6 143. Between 2010 and 2016, Closed Loop was the “operator” of the Properties
7 within the meaning of 42 U.S.C. 9601(20)(A).

8 144. Between 2010 and 2016, Closed Loop and each of the Arranger/Transporter
9 Defendants are persons who (i) by contract, agreement, or otherwise arranged for disposal
10 or treatment, or arranged with a transporter for the transport for disposal or treatment, of
11 hazardous substances at the Properties; and/or (ii) selected the Properties as a site for
12 disposal or treatment of hazardous substances and then transported hazardous substances to
13 the Properties for that purpose.

14 145. The Arranger/Transporter Defendants arranged for and paid Closed Loop to
15 accept their CRT Waste with the intent that at least a portion of that CRT Waste would be
16 disposed of or treated.

17 146. Under CERCLA, “disposal” means “the discharge, deposit, injection,
18 dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any
19 land or water so that such solid waste or hazardous waste or any constituent thereof may
20 enter the environment or be emitted into the air or discharged into any waters, including
21 ground waters.” 40 C.F.R. § 260.10.

22 147. Under CERCLA, “treatment” means any “method, technique, or process . . .
23 designed to change the physical, chemical, or biological character or composition of any
24 hazardous waste so as to . . . recover . . . material resources from the waste, or so as to render
25 such waste . . . amenable for recovery, amenable for storage, or reduced in volume.” 40
26 C.F.R. § 260.10.

27 148. Thus, each of the Defendants is an “arranger” and/or “transporter” within the
28 meaning of Sections 107(a)(3) & (4) of CERCLA, 42 U.S.C. §§ 9607(a)(3) & (4).

1 149. Closed Loop’s CRT “processing” operations between 2010 and 2016
2 produced commingled leaded and nonleaded glass that did not meet any commercial
3 specification for which a legitimate market existed.

4 150. The Arranger/Transporter Defendants knew or had an objectively reasonable
5 basis to believe at the time of their transactions with Closed Loop that (i) CRT Waste
6 shipped to Closed Loop would not be recycled, and (ii) Closed Loop was not operating in
7 compliance with substantive provisions of environmental law.

8 151. The Arranger/Transporter Defendants failed to exercise reasonable care with
9 respect to the management and handling of the recyclable material.

10 152. The Arranger/Transporter Defendants further failed to exercise reasonable
11 care to determine whether Defendant Closed Loop was operating in compliance with
12 applicable law and whether Defendant Closed Loop had a feasible means of recycling the
13 millions of pounds of CRTs and CRT Waste it was accumulating.

14 153. Between 2010 and 2016, a “release” or “threatened release” of one or more
15 hazardous substances occurred at and/or from the Properties. 42 U.S.C. §§ 9601(22) and
16 (29), and § 9607(a).

17 154. CERCLA defines “release” as including “any spilling, leaking, pumping,
18 pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or
19 disposing into the environment (including the abandonment or discarding of barrels,
20 containers, and other closed receptacles containing any hazardous substance or pollutant or
21 contaminant).” 42 U.S.C. § 9601(22).

22 155. Between 2010 and 2016, hazardous substances, within the meaning of 42
23 U.S.C. § 9601(14), including (but not limited to) lead, were abandoned and/or otherwise
24 disposed of at the Properties.

25 156. Closed Loop’s CRT operations at the 59th Ave. Warehouse, which involved
26 crushing leaded glass, released hazardous leaded dust, which has dispersed throughout
27 Closed Loop’s leased warehouse space and has become embedded in Closed Loop’s
28

1 abandoned CRT processing equipment and surrounding structures within Closed Loop’s
2 leased warehouse space.

3 157. Closed Loop’s CRT operations at the 27th Ave. Warehouse, which included
4 stockpiling of CRT Waste, also has released hazardous leaded dust that has collected on the
5 floor and may have been tracked by workers inside Closed Loop’s leased warehouse space.

6 158. The vast majority of the CRT Waste that Defendants disposed of at the 59th
7 Ave. Warehouse and 27th Ave. Warehouse was abandoned in inappropriate containers
8 (resulting in spills onto the warehouse floors).

9 159. A “release or threatened release” occurred at both the 59th Ave. Warehouse
10 and the 27th Ave. Warehouse even though the leaded glass or leaded dust may not have
11 escaped from initial confinement, because Congress expressly defined the term “release” in
12 CERCLA as “including the abandonment or discarding of barrels, containers, and other
13 closed receptacles containing any hazardous substance or pollutant.”

14 160. At the 59th Ave. Warehouse, Defendants also abandoned and disposed of
15 CRT Waste in piles outside the warehouse.

16 161. Because of the releases or threatened releases of hazardous substances,
17 Plaintiffs have incurred and will continue to incur necessary response costs within the
18 meaning of 42 U.S.C. §§ 9601(23) and (25), and therefore are entitled to bring this action
19 against Defendants.

20 162. To date, Plaintiffs have incurred several millions of dollars in necessary
21 removal and other response costs, and Plaintiffs will continue to incur response costs in the
22 future. All of Plaintiffs’ removal and response costs have been or will be incurred in
23 substantial compliance with CERCLA’s NCP, 42 U.S.C. § 9605(a) and 40 C.F.R. Part 300.

24 163. Each Defendant is jointly and severally liable under Section 107(a) of
25 CERCLA, 42 U.S.C. § 9607(a), for the removal and response costs Plaintiffs have incurred,
26 and each Defendant is jointly and severally liable for all future costs Plaintiffs may incur
27 that are recoverable under CERCLA.
28

1 164. Plaintiffs are also entitled to statutory interest pursuant to 42 U.S.C.
2 § 9607(a)(4).

3 **SECOND CAUSE OF ACTION**

4 **(Declaratory Judgment)**

5 165. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 164 of
6 this Complaint as if fully set forth herein.

7 166. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), Plaintiffs
8 are entitled to a declaration of each Defendant's joint and several liability for future costs
9 incurred by Plaintiffs that are recoverable under CERCLA.

10 167. This claim also arises under the provisions of the Declaratory Judgment Act,
11 28 U.S.C. §§ 2201-2202, which authorizes this Court to render declaratory judgment as to
12 the allocation of liability for response costs and damages.

13 168. An actual, substantial, and justiciable controversy exists between Plaintiffs
14 and all Defendants regarding their respective rights and obligations for the removal and
15 other response costs and/or damages that have been and will be incurred in connection with
16 the release and/or threatened release of hazardous substances at the Properties.

17 169. Declaratory relief is necessary because, without a ruling on the parties'
18 allocation of liability for response costs and damages, Plaintiffs would be forced to bring
19 subsequent lawsuits to obtain contribution for future response costs.

20 170. Plaintiffs seek a declaratory judgment against Defendants under Section
21 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2) and 28 U.S.C. §§ 2201-2202, holding all
22 Defendants jointly and severally liable for all removal and response costs incurred and to
23 be incurred at the Properties that will bind the parties in any subsequent action to recover
24 further response costs or damages.

25 **THIRD CAUSE OF ACTION**

26 **(Common Law Negligence)**

27 171. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 170 of
28 this Complaint as if fully set forth herein.

1 172. Each of the Defendants owed a duty to Plaintiffs, the owners and managers
2 of the Properties, to use reasonable care to avoid causing reasonably foreseeable damage to
3 the Properties.

4 173. A reasonable and prudent person engaged in the transport of, or arranging for
5 the transport of, CRT Waste exercises due diligence on downstream recipients to avoid
6 causing injury to public health, property, or the environment.

7 174. At all relevant times, Plaintiffs detrimentally relied on their reasonable
8 expectation and Defendant Closed Loop's representations that Closed Loop would operate
9 in compliance with applicable federal and state hazardous waste laws.

10 175. At all relevant times, Plaintiffs detrimentally relied on their reasonable
11 expectation that the Arranger/Transporter Defendants also would operate in compliance
12 with applicable federal and state hazardous waste laws.

13 176. Defendants caused damage to Plaintiffs by (i) transporting and arranging for
14 the transport of CRTs and CRT Waste to the Properties when there was no feasible means
15 of recycling CRTs or CRT Waste, and then (ii) abandoning/disposing of CRTs and CRT
16 Waste at the Properties.

17 177. As a result of their acts and omissions, Defendants were negligent and
18 breached their duties to Plaintiffs, thereby causing reasonably foreseeable harm and
19 damages to Plaintiffs, as the owners and managers of the Properties.

20 178. As a direct and proximate result of the acts and omissions of Defendants,
21 Plaintiffs were unable to rent or sell the Properties in their contaminated condition and have
22 suffered and continue to suffer physical harm to the Properties as well as economic harm,
23 including, but not limited to, loss of rent, loss of business opportunity, and costs of CRT
24 and CRT Waste removal and other environmental clean-up.

25 179. The Defendants' sham recycling scheme was designed to shift the costs of
26 removing the CRTs and CRT Waste and cleaning the Properties to Plaintiffs, the owners
27 and managers of the Properties.

28

1 180. The Defendants knew or should have known that their actions created strict
2 liability under CERCLA and RCRA for owners of properties at which there are threatened
3 releases of hazardous substances or wastes, even when those properties are contaminated
4 by third-parties.

5 181. Furthermore, Defendants acted with conscious disregard for the hazards
6 associated with the hazardous substances they handled at the Properties, and through their
7 reckless acts and omissions caused the release or threatened release of hazardous substances
8 and wastes at the Properties for which the owner of the Properties may be held liable under
9 federal and state hazardous waste law.

10 **REQUEST FOR RELIEF**

11 Plaintiffs Berendo Property, Harrison Properties, L.L.C., Lincoln Industrial, L.L.C.,
12 and Predio Management LLC respectfully request entry of judgment in their favor against
13 each of the Defendants, jointly and severally, as follows:

14 A. With respect to the First Cause of Action, awarding Plaintiffs their
15 recoverable costs incurred in responding to the releases or threatened releases of hazardous
16 substances from the Properties in the amount of at least \$15,000,000.00, with pre-judgment
17 interest pursuant to 42 U.S.C. § 9607(a) from the date of expenditure;

18 B. With respect to the Second Cause of Action, declaring each Defendant jointly
19 and severally liable for all future costs recoverable under CERCLA, which Plaintiffs will incur in
20 responding to the releases or threatened releases of hazardous substances from the Properties;

21 C. With respect to the Third Cause of Action, awarding Plaintiffs damages in
22 the amount of at least \$15,000,000.00;

23 D. With respect to all Causes of Action, awarding Plaintiffs their attorneys' fees
24 and costs incurred in connection with this lawsuit pursuant to A.R.S. § 12-341.01 and any
25 other applicable statute, rule, or law; and

26 E. Granting such other and further relief in law or equity as the Court may deem
27 proper.

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October 7, 2022.

PEARSON LAW GROUP, LLC

By: s/ William Pearson
William W. Pearson
3509 E. Shea Boulevard, Ste. 117
Phoenix, Arizona 85028

*Attorneys for Berendo Property and Harrison
Properties, L.L.C.*

PERKINS COIE LLP

By: s/ Todd R. Kerr
Todd R. Kerr
P. Derek Petersen
2901 North Central Avenue, Ste. 2000
Phoenix, Arizona 85012-2788

*Attorneys for Lincoln Industrial, L.L.C. and
Predio Management LLC*

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Certificate of Service

I certify that, on October 7, 2022, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing.

s/ Susan Carnall

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Berendo Property, et al.**

Defendant(s): **Closed Loop Refining and Recovery, Inc., et al.**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**William W. Pearson, Attorney
Pearson Law Group LLC
3509 E. Shea Blvd., Ste. 117
Phoenix, Arizona 85028
602.320.4344**

II. Basis of Jurisdiction:

1. U.S. Government Plaintiff

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

893 Environmental Matters

VI. Cause of Action:

Cost recovery action for hazardous waste removal and other clean-up costs under the Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA") and a declaratory judgment for future response costs.

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: s/ William W. Pearson

Date: 10/07/2002

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014