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California *ex rel.* State Water Resources Control  
Board

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA *ex*  
*rel.* STATE WATER RESOURCES CONTROL  
BOARD,  
  
Plaintiffs,  
  
v.  
  
E2C REMEDIATION, LLC, PHILIP GOALWIN, B  
& J LAND CO., BILL G. & ROENA M.  
ROYSTON, C.P. PHELPS, INC., FRANK H.  
HOBIN, HSK ENTERPRISE, INC., INYO CRUDE,  
INC., JB PERFORMANCE, JESSE M. LANGE  
DISTRIBUTING INC., LLOYD G. CHILDERS,  
MADELINE BARR TRUST, MARCHBANKS  
TRUCK SERVICE, MITSUKO NUMATA, NASSRI  
J. JABER, NIXON FOODS, INC., PARAMOUNT  
INTEREST, INC., RICHARD BECKWITH,  
ROBERT V. JENSEN, INC., ROCHE OIL, INC.,  
RONALD D. GROSSMAN, TOMS SIERRA CO.,  
INC., GURDIP PATTAR, and DOES 1 through 300,  
inclusive,  
  
Defendants.

EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103

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LEGAL PROCESS #3

Case No. 07AS04626

COMPLAINT FOR  
DAMAGES AND  
INJUNCTIVE RELIEF

- 1. Fraudulent misrepresentation;
- 2. Negligent misrepresentation;
- 3. Open book;
- 4. Breach of contract;
- 5. Money owed;
- 6. Violation of Water Code;
- 7. Injunction.

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## GENERAL ALLEGATIONS

1. This action is brought on behalf of the People of the State of California by the Attorney General at the request of the State Water Resources Control Board ("Plaintiffs"). The State Water Resources Control Board ("Board") is a state agency created in the California Environmental Protection Agency. (See generally Wat. Code, § 174 et seq.)

2. The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 ("Act") was enacted in part to "help ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment and provides for the rapid distribution of cleanup funds." (Health & Saf. Code, § 25299.10(b)(1).) The Act established the Underground Storage Tank Cleanup Fund ("UST Cleanup Fund" or "Fund"), a Fund created by the Legislature within the state treasury. (Health & Saf. Code, § 25299.50.)

3. Owners of underground storage tanks that contain petroleum pay money to the Fund each year. (Health & Saf. Code, § 25299.41.) Owners who pay into the Fund and comply with its requirements may make claims for reimbursement from the Fund for the costs of corrective action associated with cleanup of releases of petroleum from underground storage tanks. "Claim," within the Act, means "a submittal to the fund for the reimbursement of costs due to an occurrence. A claim consists of several documents, including, but not limited to, the fund application, reimbursement requests, and verification documents." (Health & Saf. Code, § 25299.13; see also Cal. Code Regs., tit. 23, § 2814, subd. (d).) Owners who make claims on the Fund are called "claimants." (Cal. Code Regs., tit. 23, § 2804.)

4. "Corrective action" within the Act, means various specified activities associated with identifying cleanup needs and cleaning up releases of petroleum from an underground storage tank. The Board may expend the money in the Fund to reimburse claims for "reasonable and necessary" costs of corrective action up to one million five hundred thousand dollars per occurrence. (See, e.g., Health & Saf. Code, § 25299.51.) Claimants - and their agents - have a duty to ensure that their requests for reimbursement on the fund are actually "reasonable and necessary." (Cal. Code Regs., tit. 23, § 2812.1, subd. (a).) The UST Cleanup Fund is administered by staff in the Cal/EPA building

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1 at Sacramento, California. Requests for payment are submitted to the staff and reviewed in  
2 Sacramento, California, and checks are issued to claimants from that location.

3 5. On information and belief, Defendant E2C Remediation LLC (“E2C”) was at all  
4 times relevant herein, a California company, business form unknown. Defendant’s registered agent  
5 is PHILIP GOALWIN and its registered address is 5300 Woodmere Dr., Ste 105, Bakersfield,  
6 California. On information and belief, E2C has corporate offices in Bakersfield and Roseville and  
7 provides environmental consulting business services at sites throughout the state.

8 6. On information and belief, Defendant PHILIP GOALWIN (“GOALWIN”) is a  
9 registered professional geologist and an individual who resides in Bakersfield, California, and was  
10 at all times relevant herein an officer and agent of E2C as alleged more fully below.

11 7. On information and belief, defendants B & J LAND CO., BILL G. & ROENA M.  
12 ROYSTON, C.P. PHELPS, INC., FRANK H. HOBIN, HSK ENTERPRISE, INC., INYO CRUDE,  
13 INC., JB PERFORMANCE, JESSE M. LANGE DISTRIBUTING INC., LLOYD G. CHILDERS,  
14 MADELINE BARR TRUST, MARCHBANKS TRUCK SERVICE, MITSUKO NUMATA,  
15 NASSRI J. JABER, NIXON FOODS, INC., PARAMOUNT INTEREST, INC., RICHARD  
16 MICHAEL BECKWITH, ROBERT V. JENSEN, INC., ROCHE OIL, INC., RONALD D.  
17 GROSSMAN, TOMS SIERRA CO., INC., and GURDIP PATTAR, (collectively, “claimant  
18 Defendants”), are owners and/or operators of underground petroleum storage tanks. The claimant  
19 Defendants’ tanks are located at sites throughout the State of California.

20 8. On information and belief, each of the claimant Defendants submitted claims for  
21 reimbursement to the Fund to pay for materials, services, work, or other items allegedly provided  
22 to them by E2C and GOALWIN; as more fully alleged below, those claims for reimbursement  
23 contained inaccurate or misleading information and on that basis the Fund made payments of money  
24 to the claimant Defendants they were not entitled to receive.

25 9. The true names and capacities, whether corporate, individual, associate or otherwise  
26 of Defendants Does 1 through 300, inclusive, are unknown to the Plaintiffs, who therefore sues said  
27 Defendants by such fictitious names, and the Plaintiffs will ask leave of court to amend this  
28 complaint to show their true names and capacities when the same have been ascertained. Plaintiffs

1 are informed and believe that each of the Defendants named herein as a Doe is responsible in some  
2 manner for the events, occurrences, and circumstances which form the basis of this lawsuit, and is  
3 thereby liable for the damages, costs, and other relief sought herein. Plaintiffs are informed and  
4 believe that each of these fictitiously named Defendants Does 1 through 300, inclusive were agents,  
5 servants, and employees of their co-Defendants, and in doing the things alleged in this complaint  
6 were acting in the scope of their authority as such agents, servants, and employees, and with the  
7 permission and consent of their co-Defendants.

8 10. The facts stated in this paragraph are alleged on information and belief. Each  
9 Defendant herein was the agent of each of the other Defendants and in doing, or failing to do, the  
10 things alleged in this complaint was acting within the scope of such agency. At all times herein  
11 mentioned, Defendants GOALWIN and Does 1 through 300, and each of them, were the agents  
12 and/or employees of each other and of Defendant E2C. In doing the things hereinafter said  
13 Defendants were acting within the course and scope of such agency and/or employment and at/with  
14 direction, permission and consent by Defendant E2C.

15 11. The facts in this paragraph are alleged on information and belief. E2C is an  
16 environmental contracting company that offers services to owners and operators of petroleum  
17 underground storage tanks. E2C provided services to owners and operators of underground storage  
18 tanks that have released petroleum into the environment. E2C provides these services knowing that  
19 these owners and operators intend to submit claims to the Fund to cover costs they incur for services,  
20 work done, and materials provided by E2C that are recoverable from the Fund. E2C agreed to  
21 provide cleanup services to each of the claimant Defendants, whose tanks had released petroleum  
22 into the soil and/or groundwater.

23 12. The facts in this paragraph are alleged on information and belief. E2C, as a contractor  
24 in the industry of providing environmental cleanup services, is aware of the laws, regulations, and  
25 guidelines published by the Fund. It knows that the money it receives from claimants comes from  
26 the Fund. It knows that claimants must verify under penalty of perjury that the amount of money  
27 they seek repayment for is true and correct.

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1           13. Each claimant Defendant, Goalwin, E2C, and Does 1 to 300 had a fiduciary  
2 responsibility to the Fund to ensure their submissions to Fund claimants were true and correct.

3           14. The facts in this paragraph are alleged on information and belief. E2C did not  
4 provide the claimant Defendants with true, accurate, and correct invoices and documentation for  
5 services, work, materials and equipment provided and used for cleanup activities. Instead, on more  
6 than one occasion, E2C provided documents that contained false or misleading information; it did  
7 this, among other reasons, to obtain payments from the Fund that it was not entitled to receive, or  
8 early payments from the Fund that it was not entitled to receive.

9           15. The facts in this paragraph are alleged on information and belief. The claimant  
10 Defendants improperly verified requests for payment from the Fund for alleged corrective action  
11 charges; the requests for payment were prepared and given to them to verify by E2C, GOALWIN,  
12 and Does 1 to 300. Those requests for payment contained material misrepresentations and line-items  
13 that were not entitled to receive payment from the Fund.

14           16. The facts in this paragraph are alleged on information and belief. On more than one  
15 occasion E2C improperly diluted samples taken from cleanup sites; it did this, among other reasons,  
16 to obtain early payments or overpayments from the Fund that it was not entitled to receive.

17           17. The facts in this paragraph are alleged on information and belief. On more than one  
18 occasion E2C failed to properly dispose of byproducts of cleanup activities, including condensate  
19 containing waste. Instead, that waste was dumped or allowed to flow onto the ground. Even though  
20 it did not dispose of the byproducts properly, E2C charged a disposal fee for byproducts of cleanup  
21 that it did not incur, in order to obtain payments from the Fund that it was not entitled to receive.

22           18. The facts in this paragraph are alleged on information and belief. On more than one  
23 occasion E2C billed for employee time that it did not incur in order to obtain overpayments or  
24 payments it was not entitled to receive from the Fund.

25           19. E2C, Goalwin, and Does 1 to 300 were effective in concealing their wrongful  
26 conduct. The Fund staff reasonably believed that E2C and GOALWIN would follow applicable  
27 laws, regulations, and Fund guidance documents when it gave requests for payment to the claimant  
28 Defendants to verify. The Fund reasonably relied on claimants' verifications of their claims.







1 37. Fund regulations provide that "claimants shall verify under penalty of perjury all  
2 statements, documents, or certifications contained in or accompanying a claim are true and  
3 correct to the best of the claimant's knowledge." (Cal. Code Regs, tit. 23, § 2812.6.)

4 38. The claimant Defendants and Does 1 to 300 are indebted to the Board on an open  
5 book account for money due in sums unknown at this time due to E2C, GOALWIN, and Does 1  
6 to 300s' wrongful conduct alleged in this complaint. After February 2005 when Fund staff  
7 learned E2C and GOALWIN had submitted what appeared to be a false invoice to the Fund, the  
8 Fund staff pended a number of claims to investigate. The full extent of the wrongdoing is  
9 unknown at this time and review of those claims are ongoing. Plaintiffs had no knowledge of,  
10 ability to discover, or reason to know of the wrongful conduct alleged in this complaint until  
11 February 2005.

12 39. Government Code section 12513.1 provides:

13 Any person who fails to pay on a timely basis any liability or penalty imposed by or on  
14 behalf of any state agency or official, the People of the State of California, the State of  
15 California, or any liability or penalty otherwise imposed in any matter prosecuted by the  
16 Attorney General, shall be required to pay, in addition to that liability or penalty,  
17 interest, reasonable attorneys' fees, and costs for any collection proceedings to enforce  
18 payment.

17 **FOURTH COUNT**  
18 **(Breach of contract - against claimant Defendants and Does)**

19 40. Plaintiffs incorporate herein by reference each and every matter, fact and  
20 allegation contained in paragraphs 1 through 39 inclusive, of this complaint and makes the same  
21 a part hereof with the same force and effect as though fully set forth herein.

22 41. The laws and regulations cited in this complaint create a contract between  
23 claimants on the Fund and the Fund. Each written request for payment submitted by a claimant  
24 to the Fund constitutes a binding agreement between the Fund and the claimant governed by the  
25 laws and regulations of the Fund. There are multiple written agreements for each claim and the  
26 many agreements with the claimant Defendants are too voluminous to attach to this complaint.  
27 Each claimant has copies of each request for payment, but if claimants desire copies of those

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1 agreements they will be provided upon request. The written agreements incorporate and assume  
2 compliance with Fund laws, regulations, and procedures.

3 42. Plaintiffs performed all conditions, covenants, and promises required on its part to  
4 be performed in accordance with the terms of the agreements.

5 43. The claimant Defendants and Does 1 to 300 did not perform all conditions of the  
6 agreements. They failed to follow the laws, regulations, and procedures of the Fund alleged  
7 above, and in particular, verifying claims that were not true or correct, and instead contained  
8 material misrepresentations of fact, the claimants named in this complaint breached their  
9 agreements with the Fund.

10 44. As a result of the breach of contract, Plaintiffs suffered damage, in an amount  
11 according to proof.

12 **FIFTH COUNT**  
13 **(Common count for money owed - against claimant Defendants)**

14 45. Plaintiffs incorporate herein by reference each and every matter, fact and  
15 allegation contained in paragraphs 1 through 44 inclusive, of this complaint and makes the same  
16 a part hereof with the same force and effect as though fully set forth herein.

17 46. The claimant Defendants and Does 1 to 300 are indebted to the Fund for money  
18 paid by the Fund to them that they were not entitled to receive. Because of the intentional or  
19 negligent misrepresentations alleged in this complaint Plaintiffs are unable to state a sum certain  
20 at the time of filing this complaint and are continuing to investigate, review requests for payment,  
21 and take such actions as are feasible to determine the amount owed by Defendants to the Fund.  
22 As of the date of this complaint the above-described sums paid out from the Fund remain due,  
23 owing, and unpaid.

24 47. Demand is hereby made upon the claimant Defendants and Does 1 to 300 for  
25 payment of the whole amount of the sums wrongfully paid and/or overpaid by the Fund to the  
26 claimant Defendants and Does 1 to 300, plus any applicable interest thereon, and Plaintiff asks  
27 the Court to enter judgment in an amount according to proof.

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**SIXTH COUNT**  
**(Injunction - against E2C and GOALWIN)**

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3       48.     Plaintiff repeats and realleges every matter of fact and allegation in Paragraphs 1  
4 through 47, above, as though set forth in full herein.

5       49.     Civil Code Section 3422 provides in pertinent part:

6       Except where otherwise provided by this title, a final injunction may be granted to  
7 prevent the breach of an obligation existing in favor of the applicant:

- 8       1. Where pecuniary compensation would not afford adequate relief;  
9       2. Where it would be extremely difficult to ascertain the amount of compensation  
10       which would afford adequate relief;  
11       3. Where the restraint is necessary to prevent a multiplicity of judicial  
12       proceedings; or,  
13       4. Where the obligation arises from a trust.

14       50.     E2C, GOALWIN, and Does 1 to 300 have a duty to ensure that claims submitted  
15 for payment to be received by them and on their behalf to the Fund are truthful, complete, and  
16 accurate and comply with applicable laws.

17       51.     On information and belief, as alleged in more detail above, it is the practice of  
18 E2C, GOALWIN, and Does 1 to 300 to submit inaccurate and misleading claims to the Fund to  
19 obtain money from the Fund that they are not entitled to receive.

20       52.     On information and belief, E2C, GOALWIN, and Does 1 to 300 will not cease  
21 these practices unless this Court issues an injunction restraining that conduct.

22       53.     On information and belief, these practices, unless and until enjoined and  
23 restrained by order of this court, will cause great and irreparable injury to Plaintiffs because the  
24 Fund will continue to make overpayments or payments for false activities based on the alleged  
25 practices and intentional or negligent misrepresentations by E2C, GOALWIN, and Does 1-300.

26       54.     The Fund has no adequate remedy at law for the injuries threatened. This  
27 continuing wrongful conduct will require it to repeatedly return to this court for relief in damages  
28 caused by Defendants' wrongful practices and intentional or negligent misrepresentations.

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1 including condensate containing waste, and restraining E2C, GOALWIN, and Does 1 to 300  
2 from dumping or allowing waste that should be taken off-site and disposed of at a proper facility  
3 to instead flow onto the ground.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Plaintiff prays for judgment against the Defendants, and each  
6 of them, as follows:

- 7 1. Against all Defendants, for damages according to proof;
- 8 2. For an injunction as against E2C, GOALWIN, and Does 1 to 300, restraining them  
9 from making false or misleading submissions to the Fund in the future, requiring them to properly  
10 dispose of waste, and requiring them to submit a report of waste discharge for any waste they  
11 previously discharged or propose to discharge in the future where it could impact waters of the state;
- 12 3. For all costs of investigating and prosecuting this action, including expert fees,  
13 reasonable attorneys' fees, and costs as provided in Government Code section 12513.1;
- 14 4. For such other and further relief as the Court deems just and proper.

15 Dated: October 11, 2007

16 Respectfully submitted,

17 EDMUND G. BROWN, JR.  
18 Attorney General of the State of California

19 

20 TRACY L. WINSOR  
21 Deputy Attorney General

22 Attorneys for Plaintiffs People of the State of  
23 California *ex rel.* State Water Resources  
24 Control Board

25 **[Note: Code Civ. Proc., § 446 Requires**  
26 **Verification of the Answer to this Complaint]**