

1 KAMALA D. HARRIS
Attorney General of California
2 MARGARITA PADILLA
Supervising Deputy Attorney General
3 LAURA J. ZUCKERMAN, SBN 161896
Deputy Attorney General
4 1515 Clay Street, 20th Floor
Oakland, CA 94612
5 Telephone: (510) 622-2174
Fax: (510) 622-2270
6 E-mail: Laura.Zuckerman@doj.ca.gov

7 *Attorneys for People of the State of California ex rel.*
Deborah O. Raphael, Director, California
8 *Department of Toxic Substances Control*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11
12 **PEOPLE OF THE STATE OF**
13 **CALIFORNIA *ex rel.* DEBORAH O.**
14 **RAPHAEL, DIRECTOR, CALIFORNIA**
15 **DEPARTMENT OF TOXIC**
16 **SUBSTANCES CONTROL,**

17 **Plaintiff,**

18 v.

19 **CYCLE SHACK, also known as CYCLE**
20 **SHACK, INC. and CYCLE SHACK**
21 **INC.,™ and DOES 1 to 20,**

22 **Defendant,**

Case No.

JUDGMENT PURSUANT TO
STIPULATION

(Code of Civil Procedure § 664.6)

Trial Date: None Set
Action Filed: October 17, 2012

22 Good cause appearing herein, the Court finds that the settlement between the Plaintiff,
23 People of the State of California *ex rel.* Deborah O. Raphael, Director, California Department of
24 Toxic Substances Control, and Defendant Cycle Shack, also known as Cycle Shack, Inc. and
25 Cycle Shack Inc.™, is fair and in the public interest. Accordingly, the Stipulation for Settlement
26 and Entry of Judgment entered into by Plaintiff, the People of the State of California, and
27 Defendant *ex rel.* Deborah O. Raphael, Director, California Department of Toxic Substances
28

ENDORSED
FILED
San Francisco County Superior Court

OCT 30 2012

CLERK OF THE COURT

BY: LESLEY FISCELLA
Deputy Clerk

1 Control, and Defendant Cycle Shack, also known as Cycle Shack, Inc. and Cycle Shack Inc.™, a
2 true and correct copy of which is attached hereto as Exhibit A, is approved, and the Judgment
3 Pursuant to Stipulation is entered as provided therein.
4

5 **IT IS SO ORDERED.**

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8 Dated: **OCT 30 2012**, 2012

ERNEST H. GOLDSMITH

Judge of the Superior Court

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ERNEST H. GOLDSMITH

Exhibit A

Copy

1 KAMALA D. HARRIS
Attorney General of California
2 MARGARITA PADILLA
Supervising Deputy Attorney General
3 LAURA J. ZUCKERMAN, SBN 161896
Deputy Attorney General
4 1515 Clay Street, 20th Floor
Oakland, CA 94612
5 Telephone: (510) 622-2174
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7 *Attorneys for People of the State of California ex rel.*
Deborah O. Raphael, Director, California
8 *Department of Toxic Substances Control*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

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12 **PEOPLE OF THE STATE OF**
13 **CALIFORNIA ex rel. DEBORAH O.**
14 **RAPHAEL, DIRECTOR, CALIFORNIA**
15 **DEPARTMENT OF TOXIC**
16 **SUBSTANCES CONTROL,**

17 **Plaintiff,**

18 **v.**

19 **CYCLE SHACK, also known as CYCLE**
20 **SHACK, INC. and CYCLE SHACK**
21 **INC.,™ and DOES 1 to 20,**

22 **Defendants.**

Case No. **CGC-12-525294**

**STIPULATION FOR SETTLEMENT
AND ENTRY OF JUDGMENT**

(Code of Civil Procedure § 664.6)

Trial Date: None Set
Action Filed: October 19, 2012

23 Plaintiff, People of the State of California ex rel. Deborah O. Raphael, Director,
24 Department of Toxic Substances Control (the "Department") and Defendant Cycle Shack also
25 known as Cycle Shack, Inc. and Cycle Shack Inc.,™ a California corporation ("Cycle Shack")
26 (collectively, "the Parties") enter into this Stipulation for Settlement and Entry of Judgment
27 ("Stipulation"), and stipulate as follows:

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1. THE COMPLAINT.

On October 19, 2012, the Department filed a Complaint for Civil Penalties pursuant to the California Hazardous Waste Control Law, Health and Safety Code section 25100 et seq. (“HWCL”) and its implementing regulations against Cycle Shack as a generator of hazardous waste and as the owner and operator of a metal manufacture and finishing facility located at 1104 San Mateo Avenue, South San Francisco, California (“the Facility”), where hazardous waste is generated and managed.

2. AGREEMENT TO SETTLE DISPUTE.

The Parties enter into this Stipulation pursuant to a compromise and settlement of disputed claims by mutually consenting to the entry by the Superior Court of the County of San Francisco (the “Court”) of the Judgment Pursuant to Stipulation in the form attached as Exhibit 1 (“Judgment”). The Parties are each represented by counsel. The Department is represented by the Office of the Attorney General, and Cycle Shack is represented by Castellón and Funderburk LLP. This Stipulation and the Judgment were negotiated and executed in good faith and at arms’ length by the Department and by Cycle Shack to avoid expensive and protracted litigation regarding the alleged violations of the HWCL, and to further the public interest. Cycle Shack admits to the facts underlying the violations described in the Inspection Report dated April 17, 2009 and the Summary of Violations dated December 11, 2008, but does not admit to the violations therein alleged. The Department and Cycle Shack both request entry of judgment on the terms set forth in this Stipulation. The Department and Cycle Shack agree that there has been no adjudication of any fact or law.

3. JURISDICTION AND VENUE.

The Department and Cycle Shack agree that this Court has subject matter jurisdiction over the matters alleged in the Complaint and personal jurisdiction over Cycle Shack. Venue is proper pursuant to Health and Safety Code section 25183.

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1 **4. WAIVER OF TRIAL AND ENTRY OF JUDGMENT.**

2 By signing and entering into this Stipulation, Cycle Shack waives its right to a trial on
3 matters alleged in the Complaint. Further, the Parties each request entry of the Judgment on the
4 terms set forth in this Stipulation.

5 **5. APPLICABILITY.**

6 The provisions of this Stipulation and the Judgment shall apply to and be binding on
7 Cycle Shack, its subsidiaries and divisions, its parent companies, its officers and directors, its
8 successors and assignees or other entities, acting by, through, under or on behalf of Cycle Shack;
9 and (2) the Department and any successor agency of the Department that may have responsibility
10 for and jurisdiction over the subject matter of this Judgment.

11 **6. DEFINITIONS.**

12 Except where otherwise expressly defined in this Stipulation, all terms shall be interpreted
13 consistent with Chapters 6.5 and 6.95 of Division 20 of the California Health and Safety Code
14 and the regulations promulgated under these chapters.

15 “Certified Unified Program Agency,” or “CUPA,” is an agency certified by the California
16 Environmental Protection Agency pursuant to the requirements of Chapter 6.11 of the California
17 Health and Safety Code, and Title 27 of the California Code of Regulations, to implement certain
18 State environmental programs within the agencies’ jurisdiction.

19 “Facility” means the metal manufacturing and finishing facility located at 1104 San Mateo
20 Avenue, South San Francisco, California, where hazardous waste is generated and managed by
21 Cycle Shack.

22 “Hazardous waste” shall have the definition set forth in California Health and Safety Code
23 section 25117.

24 The “Hazardous Waste Control Law” and “HWCL” refer to Chapter 6.5 of Division 20 of
25 the California Health and Safety Code, § 25100 et seq. and the implementing regulations,
26 California Code of Regulations, Title 22, Chapter 10, § 66260.1 et seq.

27 “Hazardous waste management” shall have the definition set forth in California Health
28 and Safety Code section 25117.2.

1 **7. MONETARY SETTLEMENT REQUIREMENTS.**

2 A. Judgment shall be entered in this matter for a civil penalty in the amount of five
3 hundred sixty nine thousand dollars (\$569,000). The Department has determined the penalties for
4 the violations it alleges to be \$569,000. Cycle Shack has represented under penalty of perjury,
5 and it also certifies by signing below, that it does not have the financial resources to pay the full
6 penalty determined by the Department for the violations it alleges in this matter. Accordingly, in
7 reliance on these representations and certifications by Cycle Shack, and in settlement of this
8 matter, the Parties agree that civil penalties shall be paid in accordance with the Sections 7B, 7C,
9 and 7D below. Nothing in the foregoing is intended to, or shall, eliminate Cycle Shack's
10 obligation to comply with Chapter 6.5 of Division 20 of the California Health and Safety Code, §
11 25100 et seq. and the implementing regulations, California Code of Regulations, Title 22, Chapter
12 10, § 66260.1 et seq., or any other applicable law.

13 B. A stipulated penalty of five hundred sixty nine thousand dollars (\$569,000), to be
14 satisfied as follows:

15 1. Payment in the amount of \$65,000 is due to the Department from Cycle Shack
16 within 10 days of the entry of Judgment;

17 2. Payment in the amount of \$5,000 is due to the Department 180 days from the
18 entry of Judgment, unless Cycle Shack provides the Department, prior to the expiration of the 180
19 days, with Certificates of Satisfactory Completion for employees who complete California
20 Compliance School training, in which case the Department will credit Cycle Shack with \$1,000
21 per employee who has successfully completed compliance school training, up to a maximum of
22 five employees;

23 3. The balance of the penalty, \$499,000, shall be stayed under the terms of the
24 Judgment, provided that:

25 (a) Cycle Shack satisfactorily completes the probationary period as provided in
26 Section 7C and the Judgment, and

27 (b) within the 5-year probationary period there is no agreement by, or on behalf
28 of, Cycle Shack to sell or transfer:

1 (i) any assets of Cycle Shack (excluding assets sold in the ordinary course
2 of business the proceeds of which sale(s) are reinvested in Cycle Shack);

3 (ii) any stock of Cycle Shack to a person or entity other than Steve Reedy,
4 Grove Hoover, or Buzz Dyer; or

5 (iii) any stock of Cycle Shack that results in the dissolution of Cycle Shack.

6 In the event that such an agreement to sell or transfer stock or assets of Cycle Shack is
7 made (other than assets sold in the ordinary course of business the proceeds of which sale(s) are
8 reinvested in Cycle Shack), Cycle Shack must notify the Department of the existence of such a
9 contract within 10 days of the execution of such contract by any party to the contract. No such
10 agreement may eliminate or modify Cycle Shack's obligations under the Judgment. In the event
11 there is a sale of Cycle Shack stock that results in the dissolution of Cycle Shack, a sale of Cycle
12 Shack stock to a person or entity other than Steve Reedy, Grove Hoover, or Buzz Dyer, or a sale
13 of assets of Cycle Shack (excluding assets sold in the ordinary course of business the proceeds of
14 which sale(s) are reinvested in Cycle Shack), the Department shall be paid any net sale proceeds
15 of any such sale(s) up to \$499,000, less any amounts previously paid to the Department.

16 C. Successful completion of a five-year probationary period (no Class I violation) from
17 the date of entry of the Judgment will satisfy the \$499,000 penalty balance, subject to the
18 provisions above. If, during the five-year probationary period, the Department determines that
19 Cycle Shack has one or more Class I violations falling within the categories below, and Cycle
20 Shack fails to cure the violations within 10 days of written notification by the Department, the
21 balance of the penalty will be payable to the Department immediately.

- 22 • Failure to prepare a written hazardous waste tank system assessment certified by
23 an independent, qualified, professional engineer registered in California;
- 24 • Failure to reassess hazardous waste tank systems as required by regulations;
- 25 • Failure to segregate incompatible wastes;
- 26 • Failure to prepare a written waste analysis plan and maintain waste analysis
27 records for all hazardous wastes treated onsite under Permit By Rule;
- 28 • Failure to adequately train employees who manage hazardous wastes;

- 1 • Failure to maintain employee training records;
- 2 • Failure to clean up spilled hazardous plating chemicals from the floor of the
- 3 facility;
- 4 • Failure to maintain financial assurance adequate to cover the complete cost of
- 5 closure of the fixed treatment units at the 1104 San Mateo Avenue, South San
- 6 Francisco facility pursuant to California Code of Regulations, title 22, section
- 7 67450.13 et seq.;
- 8 • Unauthorized treatment, storage, or disposal of hazardous waste; and
- 9 • Any Class I violation similar to those identified in the 2009 inspection report
- 10 (including, but not limited to, the release of metal/dust powder to the
- 11 environment).

12 D. If Cycle Shack successfully completes the five-year probationary period, the
13 \$499,000 penalty balance will be deemed satisfied, subject to the provisions of Section 7B above.

14 E. All payments by Cycle Shack to the Department pursuant to this Stipulation and the
15 Judgment shall be made by cashier's check, payable to the California Department of Toxic
16 Substances Control, and shall bear the following notation: "Cycle Shack (# HWCA20081934)"
17 and shall be sent to:

18 Cashier
19 Accounting Office, MS-21A
20 Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

21 An electronic (i.e., Adobe PDF) copy or paper photocopy of all checks and payments
22 made pursuant to the Judgment shall be sent, at the same time, to:

23 Paul Kewin, Chief
24 State Oversight and Enforcement Branch
25 Enforcement and Emergency Response Program
26 Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200
PKewin@dtsc.ca.gov

1 Stephanie Lai, Staff Counsel
2 Office of Legal Counsel
3 Department of Toxic Substances Control
4 700 Heinz Avenue, Suite 200
5 Berkeley, CA 94710
6 SLai@dtsc.ca.gov

7 and to:

8 Laura J. Zuckerman
9 Deputy Attorney General
10 Attorney General's Office
11 1515 Clay Street
12 Oakland, CA 94612
13 Laura.Zuckerman@doj.ca.gov

14 **8. SATISFACTION OF CIVIL PENALTY PAYMENT REQUIREMENT.**

15 A. If within five (5) years after the date of entry of the Judgment, the Department
16 determines that Cycle Shack: (a) commits one or more Class I violations listed in Section 7C
17 above or (b) fails to make the payments required by Sections 7B and 7C of this Stipulation and
18 the Judgment, then the full amount of the five hundred sixty nine thousand dollars (\$569,000)
19 penalty, plus interest, will be immediately due and payable to the Department, less any payment
20 previously made by or on behalf of Cycle Shack to the Department.

21 B. If the Department determines that Cycle Shack has defaulted under the terms of this
22 Stipulation or the terms of the Judgment, the Department will provide Cycle Shack with written
23 notice of the default. Such written notice constitutes Cycle Shack's notice of its reasonable
24 opportunity to cure the default on the terms required by the Department. If Cycle Shack fails to
25 cure the default within ten calendar days of the date of the notice, the Department may proceed to
26 pursue all its rights and remedies to enforce the Judgment. Notwithstanding the foregoing,
27 nothing herein is intended, or shall be construed, to preclude the Department from initiating an
28 enforcement action against Cycle Shack for any violations of the HWCL not alleged in this matter
by the Department against Cycle Shack, or from assessing penalties for such violations.

9 **9. NOTICE.**

10 A. All submissions and notices required by this Stipulation and the Judgment shall be
11 in writing, and shall be sent to:

12 ///

1 For the Plaintiff:

2 Paul Kewin, Chief
3 State Oversight and Enforcement Branch
4 Enforcement and Emergency Response Program
5 Department of Toxic Substances Control
6 8800 Cal Center Drive
7 Sacramento, CA 95826-3200
8 PKewin@dtsc.ca.gov

9 Stephanie Lai, Staff Counsel
10 Office of Legal Counsel,
11 Department of Toxic Substances Control
12 700 Heinz Avenue, Suite 200
13 Berkeley, CA 94710
14 SLai@dtsc.ca.gov

15 and to:

16 Laura J. Zuckerman
17 Deputy Attorney General
18 Attorney General's Office
19 1515 Clay Street, 20th Floor
20 Oakland, CA 94612
21 Laura.Zuckerman@doj.ca.gov

22 For Cycle Shack, also known as, Cycle Shack, Inc. and Cycle Shack, Inc.™:

23 Buzz Dyer, President
24 Cycle Shack
25 1104 San Mateo Avenue
26 South San Francisco, CA 94080

27 Ruben Castellón
28 Castellón and Funderburk LLP
3200 Danville Boulevard, Suite 100
Alamo, CA 94507

All approvals and decisions regarding any matter requiring approvals or decisions under the terms of this Stipulation and the Judgment shall be communicated in writing. Each Party may change its respective representative(s) for purposes of notice by providing the name and address of the new representative, in writing, to all Parties. Any such change will take effect within 7 calendar days of the date of the written notice.

10. AUTHORITY TO ENTER STIPULATION.

Each signatory to this Stipulation certifies that he or she is fully authorized by the party he or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and to legally bind that party.

1 **11. NO WAIVER OF RIGHT TO ENFORCE.**

2 The failure of the Department to enforce any provision of the Stipulation or Judgment
3 shall neither be deemed a waiver of such provision, nor in any way affect the validity of the
4 Judgment or the Department's enforcement authority. The failure of the Department to enforce
5 any such provision of this Stipulation or the Judgment shall not preclude it from later enforcing
6 the same or other provisions. No oral advice, guidance, suggestions, or comments by employees
7 or officials of the Department or Cycle Shack, or people or entities acting on behalf of Cycle
8 Shack, regarding matters covered in this Stipulation or the Judgment, shall be construed to relieve
9 Cycle Shack of its obligations under this Stipulation or the Judgment.

10 **12. APPLICATION OF CONSENT JUDGMENT.**

11 Both this Stipulation and the Judgment shall apply to and be binding on the Department
12 and upon Cycle Shack, and upon their successors and assigns.

13 **13. EFFECT OF STIPULATION AND JUDGMENT.**

14 Except as expressly provided in this Stipulation or in the Judgment, nothing herein is
15 intended, nor shall it be construed, to preclude the Department, or any state, county, or local
16 agency, department board or entity, or any CUPA, from exercising its authority under any law,
17 statute, or regulation.

18 **14. NO LIABILITY OF THE DEPARTMENT.**

19 The Department shall not be liable for any injury or damage to persons or property
20 resulting from acts or omissions by Cycle Shack, its officers, directors, employees, agents,
21 representatives, or contractors, in carrying out activities pursuant to this Stipulation or the
22 Judgment, nor shall the Department be held as a party to or guarantor of any contract entered into
23 by Cycle Shack, its officers, directors, employees, agents, representatives, or contractors, in
24 carrying out the requirements of this Stipulation or the Judgment.

25 **15. INTEGRATION.**

26 This Stipulation and the Judgment constitute the entire agreement between the Parties, and
27 may not be amended or supplemented except as provided for in this Stipulation or in the
28

1 Judgment. No oral representations have been made or relied on other than as expressly set forth
2 herein.

3 **16. RETENTION OF JURISDICTION.**

4 The Parties agree that the Court has continuing jurisdiction to interpret and enforce the
5 provisions of this Stipulation and the Judgment.

6 **17. EQUAL AUTHORSHIP.**

7 This Stipulation and the Judgment shall be deemed to have been drafted equally by all
8 Parties hereto. The Parties agree that the rule of construction holding that ambiguity is construed
9 against the drafting party shall not apply to the interpretation of this Stipulation or the Judgment.

10 **18. AMENDMENTS TO THIS STIPULATION AND THE JUDGMENT.**

11 This Stipulation and the Judgment may only be amended pursuant to a written agreement
12 signed by all the Parties, followed by written approval by the Court.

13 **19. COUNTERPARTS.**

14 This Stipulation may be executed in several counterpart originals, all of which taken
15 together shall constitute an integrated document.

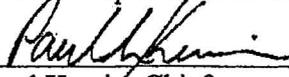
16 **20. ENTRY OF JUDGMENT PURSUANT TO STIPULATION.**

17 The Parties further stipulate that upon approval of this Stipulation by the Court, the Court
18 shall enter the Judgment in this matter in the form set forth in the attached Exhibit 1. The
19 effective date of this Stipulation is the date this Stipulation is filed with the Court. The effective
20 date of the Judgment is the date the Judgment is entered by the Court. If the Court does not
21 approve this Stipulation and the Judgment in the form and substance proposed in Exhibit 1 hereto,
22 each party reserves the right to withdraw both the Stipulation and the Judgment upon written
23 notice to all Parties and the Court.

24 **IT IS SO STIPULATED.**

25 Dated: October 16, 2012

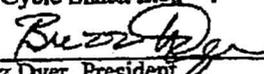
For the Department of Toxic Substances Control

26 
27 Paul Kewiz, Chief
28 State Oversight and Enforcement Branch
Department of Toxic Substances Control

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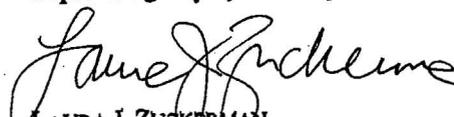
Dated: 10/15, 2012

For Cycle Shack, also known as Cycle Shack, Inc.
and Cycle Shack Inc.,™:


Buzz Dyer, President

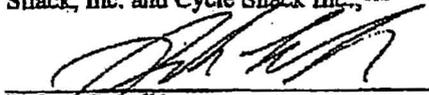
Approved as to form:

KAMALA D. HARRIS
Attorney General of California
Margarita Padilla
Supervising Deputy Attorney General


LAURA J. ZUCKERMAN
Deputy Attorneys General
Attorneys for People of the State of
California ex rel. Deborah O. Raphael,
Director, California Department of Toxic
Substances Control

Castellón and Funderburk, LLP
Attorney for Cycle Shack, also known as Cycle
Shack, Inc. and Cycle Shack Inc.,™

Dated: 10/15, 2012


Ruben Castellón