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KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General
MEGAN H. ACEVEDO
Deputy Attorney General
State Bar No. 226604
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2195
Fax: (510) 622-2270
E-mail: Megan.Acevedo@doj.ca.gov
*Attorneys for Plaintiff, People of the State of
California, ex rel. Deborah O. Raphael, Director,
California Department of Toxic Substances Control*

ENDORSED
FILED
ALAMEDA COUNTY

DEC 07 2011

CLERK OF THE SUPERIOR COURT
Dy/ Tasha Perry, Esq.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. DEBORAH O.
RAPHAEL, Director, CALIFORNIA
DEPARTMENT OF TOXIC SUBSTANCES
CONTROL,**

Plaintiff,

v.

EAGLE RECYCLING, INC. and DOES 1-20,
Defendants.

Case No. RG11605736

**STIPULATION FOR ENTRY OF
FINAL JUDGMENT ON CONSENT**

Date: January 3, 2012
Time: 10:30 a.m.
Dept: 31
Judge:
Trial Date:
Action Filed: November 23, 2011
Reservation Number: 1241063

This Stipulation for Entry of Final Judgment on Consent ("Stipulation") is entered into by and between Plaintiff People of the State of California, ex rel. Deborah O. Raphael, Director California Department of Toxic Substances Control ("the Department") and Defendant Eagle Recycling, Inc. ("Eagle") and Eagle's owner, Ernest L. Chambers, Jr. ("Mr. Chambers"). The Department, Eagle, and Mr. Chambers, collectively "the Parties," have agreed to settle this matter without further litigation on the terms set forth below.

//

1 **A. JURISDICTION**

2 The Parties stipulate and agree that the Superior Court of the State of California for the
3 County of Alameda (“the Court”) has subject matter jurisdiction over the matters alleged in the
4 Complaint and personal jurisdiction over the Parties.

5 Eagle and Mr. Chambers waive their rights to a hearing and appeal in this matter.

6 **B. SETTLEMENT OF DISPUTED CLAIMS**

7 The Parties enter into this Stipulation pursuant to a compromise and settlement of disputed
8 claims for purposes of furthering the public interest. The Department believes that the resolution
9 embodied in this Stipulation is fair and reasonable and fulfills the Department’s enforcement
10 objectives; that except as provided in this Stipulation, no further action is warranted concerning
11 the allegations contained in the Complaint for Civil Penalties and Injunctive Relief (“Complaint”);
12 and that entry of the Final Judgment on Consent, a copy of which is attached as Exhibit A
13 (“Consent Judgment”), is in the public’s best interest. Eagle and Mr. Chambers agree that this
14 Stipulation and Consent Judgment entered thereon are a fair and reasonable resolution of the
15 matters alleged in the Complaint.

16 **C. DEFINITIONS**

17 Except where otherwise expressly defined herein, all terms in this Stipulation and Consent
18 Judgment shall be interpreted consistent with the California Hazardous Waste Control Law,
19 Chapter 6.5 of Division 20 of the Health and Safety Code (Health and Safety Code sections
20 25100 *et seq.* “HWCL”) and the regulations promulgated under the HWCL (Cal. Code Regs., tit.
21 22, section 66000 *et seq.*)

22 “Facilities” means the Eagle facility located at 2400 San Juan Hollister Road, Hollister,
23 California 95023 (“Hollister Facility”) and the Eagle facility located at 1055-A Commercial
24 Court, San Jose, California 95112 (“San Jose Facility”).

25 “Offsite Facility” as used herein, shall have the definition provided in Health and Safety
26 Code section 25117.11.

27 “Universal Waste” as used herein, shall have the definition provided in Health and Safety
28 Code section 25123.8.

1 **D. SETTLEMENT PAYMENT**

2 Eagle is liable to the Department for a total OF SEVENTY FIVE THOUSAND DOLLARS
3 (\$75,000) in civil penalties to be paid as set forth herein.

4 **1. SUBMITTALS**

5 Eagle shall pay the Department the full penalty of seventy five thousand dollars (\$75,000)
6 in twelve monthly installments of six thousand two hundred fifty dollars (\$6,250) ("Settlement
7 Payments"). Settlement Payments may be paid by a valid credit card upon completion of the
8 Department's credit card authorization form with charges to the card authorized on or before the
9 tenth day of each month beginning on January 10, 2012 and continuing until December 10, 2012.
10 In the alternative, Settlement Payments may be paid by cashier's check made payable to
11 Department of Toxic Substances Control and shall identify the Docket Number of this case
12 (HWCA20092123.) Settlement Payments are due on the tenth day of each month beginning on
13 January 10, 2012 and continuing until December 10, 2012.

14 The Settlement Payments shall be mailed to:

15 Cashier
16 Accounting Office
17 Department of Toxic Substances Control
18 P.O. Box 806
19 Sacramento, CA 95812-0806

20 A copy of the check shall be sent to each of the following:

21 Maria Soria
22 Section Chief
23 State Oversight and Enforcement Branch
24 Enforcement and Emergency Response Program
25 Department of Toxic Substances Control
26 700 Heinz Avenue
27 Berkeley, CA 94710

28 Megan H. Acevedo
 Deputy Attorney General
 Office of the Attorney General
 1515 Clay Street, 20th Floor
 Oakland, CA 94612-0550

 If any payment from Eagle required pursuant to this Stipulation is delinquent, then Eagle
shall pay interest on such overdue amount at the interest rate applicable to civil judgments as
authorized by Code of Civil Procedure § 685.010. Eagle further agrees to pay all attorney's fees

1 and costs incurred by the Department in pursuing the collection of any delinquent sums under this
2 Stipulation.

3 **E. INJUNCTIVE RELIEF**

4 **1. GENERAL INJUNCTIVE PROVISIONS**

5 Eagle shall be and is enjoined as follows: Pursuant to the provisions of Health and Safety
6 Code sections 25181 and 25184, Eagle shall comply with the HWCL and the regulations
7 promulgated under this statute (California Code of Regulations, title 22, § 66000 *et seq.*) at and in
8 connection with, the operation of the Facilities. Failure to comply with the specific injunctive
9 provisions that follow may subject Eagle to the enforcement provisions set forth below.

10 **2. SPECIFIC INJUNCTIVE PROVISIONS**

11 During the period beginning on the Effective Date of the Consent Judgment and continuing
12 uninterrupted for five years, Defendant Eagle agrees that it will not perform any management of
13 Universal Waste from Offsite Facilities. In addition, during the period beginning on the Effective
14 Date of the Consent Judgment and continuing uninterrupted for five years, Mr. Chambers agrees
15 that he will not hold a position in which he would have the responsibility to control, oversee, or
16 direct any management of Universal Waste from Offsite Facilities. Notwithstanding the
17 foregoing, the Consent Judgment shall not be interpreted to prohibit Mr. Chambers from being
18 employed for wages by a facility that performs management of Universal Waste from Offsite
19 Facilities, provided that his job duties do not include the responsibility to control, oversee or
20 direct management of Universal Waste from Offsite Facilities at the facility. On an annual basis
21 Mr. Chambers shall submit to the Department a declaration signed under penalty of perjury
22 verifying that he and Eagle are complying with the specific injunctive provisions of this
23 paragraph.

24 **F. ADMISSION**

25 Defendant Eagle does not admit the violations alleged in the Complaint, except as follows:
26 Defendant Eagle admits the facts alleged in the Complaint for the purposes of any subsequent
27 action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section
28 25100 *et seq.*, within 5 years of the date the violations alleged in the Complaint occurred.

1 **G. ENFORCEMENT OF CONSENT JUDGMENT**

2 The Department has the right to enforce the Consent Judgment pursuant to applicable law.

3 **H. EFFECT OF CONSENT JUDGMENT**

4 Other than "Covered Matters" as defined in Section I, nothing herein is intended, nor shall
5 it be construed, to preclude the Department, or any state, county or local agency, department,
6 board, or entity from exercising its authority under any law, statute or regulation.

7 **I. MATTERS COVERED AND RESERVED CLAIMS**

8 The Consent Judgment entered in this matter is a final and binding resolution and
9 settlement of the claims, violations, and causes of action specifically alleged by the Department
10 against Eagle in the Complaint and against its officers, employees, agents and attorneys for the
11 matters specifically alleged in the Complaint. The matters described in the previous sentence are
12 "Covered Matters." The Department reserves the right to pursue any claim, violation, or cause of
13 action that is not a Covered Matter ("Reserved Claims"). Claims, violations, or causes of action
14 against independent contractors of Eagle are not resolved by the Consent Judgment.

15 Any claims, violations, or causes of action that are not alleged in the Complaint against
16 Eagle, are not resolved, settled, or covered by the Consent Judgment.

17 Notwithstanding any other provision of the Consent Judgment, Reserved Claims include,
18 but are not limited to, any claims or causes of action for: a) performance of corrective action,
19 response action, or recovery of costs of actions, concerning or arising out of actual past or future
20 releases, spills, leaks, discharges, or disposal of hazardous materials, hazardous wastes, and/or
21 hazardous substances; and b) claims or causes of action relating to the disposal of hazardous
22 materials, hazardous wastes, and/or hazardous substances, by Eagle, where such disposal is
23 unknown to the Department. In any subsequent action that may be brought in the name of the
24 Department based on any Reserved Claims, Eagle agrees that it will not assert that the failure to
25 pursue the Reserved Claims as part of this action constitutes claim-splitting or laches or is
26 otherwise inequitable because of this asserted failure. This paragraph does not bar Eagle from
27 asserting any statute of limitations that may be applicable to any Reserved Claims or any other
28 defense.

1 Eagle covenants not to pursue any civil or administrative claims against the Department or
2 against any governmental unit of the State of California, any counties or municipalities in the
3 State of California, or against their officers, employees, representatives, agents, or attorneys for
4 actions taken against Eagle arising out of or related to Covered Matters.

5 **J. NOTICE**

6 All submissions and notices required by this Stipulation shall be sent to:

7 a. For Plaintiff Department of Toxic Substances Control:

8 Maria Soria
9 Section Chief
10 State Oversight and Enforcement Branch
11 Enforcement and Emergency Response Program
12 Department of Toxic Substances Control
13 700 Heinz Avenue
14 Berkeley, CA 94710

15 b. For Defendant Eagle:

16 Mr. Ernest Chambers, President
17 Eagle Recycling, Inc.
18 700 Park Center Drive
19 Hollister, California 95023

20 Any Party may change its notice name and address by informing the other Party in writing
21 by certified mail. The change shall be effective upon receipt of the certified mail.

22 All notices and communications required or permitted under the Stipulation that are
23 properly addressed as provided in this section are effective upon delivery if delivered personally
24 or by overnight delivery, or are effective five (5) days following deposit in the United States mail,
25 postage prepaid, if delivered by mail, or are effective the next court day that electronic mail is
26 sent before 5 p.m. (PST) to the electronic mail addresses of the designated recipient for notice
27 concurrent with sending the notice by United States mail.

28 **K. NECESSITY FOR WRITTEN APPROVALS**

All notices, approvals, and decisions of the Department under the terms of this Stipulation
or the Consent Judgment shall be communicated to Eagle in writing. No oral advice, guidance,
suggestions, or comments by employees or officials of the Department regarding submissions or

1 notices shall be construed to relieve Eagle of its obligations to obtain any final written approval
2 required by this Stipulation or the Consent Judgment.

3 **L. NO LIABILITY OF THE DEPARTMENT**

4 The Department shall not be liable for any injury or damage to persons or property resulting
5 from acts or omissions by Eagle or its respective officers, directors, employees, agents,
6 representatives, contractors, successors, or assigns, in carrying out activities pursuant to the
7 Consent Judgment. Nor shall the Department be held as a party to or guarantor of any contract
8 entered into by Eagle or its respective officers, directors, employees, agents, representatives,
9 contractors, successors, or assigns, in carrying out the requirements of this Stipulation or the
10 Consent Judgment.

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

12 The failure of the Department to enforce any provision of this Stipulation or the Consent
13 Judgment shall neither be deemed a waiver of such provision, nor in any way affect the validity
14 of this Stipulation or the Consent Judgment. The failure of the Department to enforce any such
15 provision shall not preclude it from later enforcing the same or other provisions of this Stipulation
16 or the Consent Judgment. No oral advice, guidance, suggestions, or comments by employees or
17 officials of the Department or Eagle, its officers, directors, employees or people or entities acting
18 on behalf of Eagle, regarding matters covered in this Stipulation or the Consent Judgment shall be
19 construed to relieve Eagle or Mr. Chambers of their obligations under this Stipulation or the
20 Consent Judgment.

21 **N. FUTURE REGULATORY CHANGES**

22 Nothing in this Stipulation or the Consent Judgment shall excuse Eagle from meeting any
23 more stringent requirements that may be imposed by changes in applicable law.

24 **O. APPLICATION OF CONSENT JUDGMENT**

25 This Stipulation and the Consent Judgment shall apply to and be binding upon the
26 Department and upon Eagle, and upon its officers, managers, employees, agents, contractors,
27 successors; and assigns. Mr. Chambers shall be personally bound by the provisions in Section E.2.

28 ///

1 **P. AUTHORITY TO ENTER INTO STIPULATION**

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

5 **Q. CONTINUING JURISDICTION**

6 The Parties agree that this Court has continuing jurisdiction to interpret and enforce this
7 Stipulation and the Consent Judgment. The Court shall retain continuing jurisdiction to enforce
8 the terms of this Stipulation and the Consent Judgment and to address any other matters arising
9 out of or regarding this Stipulation and the Consent Judgment.

10 **R. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

11 Eagle shall permit any duly authorized representative of the Department to inspect and copy
12 Eagle's records and documents to determine whether Eagle is in compliance with the terms of this
13 Stipulation and the Consent Judgment. Nothing in this Paragraph is intended to require access to
14 or production of any privileged documents.

15 **S. INTERPRETATION OF STIPULATION AND CONSENT JUDGMENT**

16 This Stipulation and the Consent Judgment were drafted equally by the signatories hereto.
17 The signatories agree that the rule of construction holding that ambiguity is construed against the
18 drafting party shall not apply to the interpretation of this Stipulation and the Consent Judgment.

19 **T. COUNTERPART SIGNATURES**

20 This Stipulation may be executed in counterpart signatures.

21 **U. INTEGRATION**

22 This Stipulation and the Consent Judgment constitute the entire agreement between the
23 Department and Eagle and Mr. Chambers with respect to the matters alleged in the Complaint and
24 may not be amended or supplemented except as provided for in this Stipulation or the Consent
25 Judgment.

26 **V. MODIFICATION OF CONSENT JUDGMENT**

27 The Consent Judgment may be modified only by the Court or upon written consent by the
28 Parties with the written approval of the Court.

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W. COSTS AND ATTORNEYS' FEES

Each Party to this Stipulation and Consent Judgment shall bear its own costs and attorneys' fees.

IT IS SO STIPULATED

Plaintiff, People of the State of California, ex rel. Deborah O. Raphael, Director, California Department of Toxic Substances Control.

Dated:

By:
SUSAN J. LANEY
Assistant Deputy Director,
Enforcement and Emergency Response
Program, California Department of Toxic
Substances Control

Dated: 11/16/11

By: 
ERNEST L. CHAMBERS, JR.
President, Eagle Recycling, Inc., for Eagle
Recycling, Inc. and himself as an
individual

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90221059.doc

EXHIBIT A

Attorney General's Office
Copy

1 KAMALA D. HARRIS
Attorney General of California
2 MARGARITA PADILLA
Supervising Deputy Attorney General
3 MEGAN H. ACEVEDO
Deputy Attorney General
4 State Bar No. 226604
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2195
Fax: (510) 622-2270
7 E-mail: Megan.Acevedo@doj.ca.gov
*Attorneys for Plaintiff People of the State
8 of California ex rel. Deborah O. Raphael, Director,
California Department of Toxic Substances Control*

ENDORSED
FILED
ALAMEDA COUNTY

NOV 23 2011

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

14 PEOPLE OF THE STATE OF
15 CALIFORNIA, ex rel, DEBORAH O.
16 RAPHAEL, Director, CALIFORNIA
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL ,

17 Plaintiff,

18 v.

20 EAGLE RECYCLING, INC. and DOES 1-
21 20,

22 Defendants

Case No.

RG11605736

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

23 The People of the State of California, ex rel. Deborah O. Raphael, Director of the
24 Department of Toxic Substances Control ("the Department"), allege the following.

25 STATEMENT OF THE CASE

26 1. Defendant Eagle Recycling Inc. ("Defendant Eagle") operated two facilities that
27 during all times relevant herein collected, stored, treated, handled, and/or recycled universal
28 waste-electronic devices at the following sites: 2400 San Juan Hollister Road, Hollister,

1 California 95023 (“Hollister Facility”) and 1055-A Commercial Court, San Jose, California
2 95112 (“San Jose Facility”). (Collectively “Facilities”). Mr. Ernest L. Chambers, Jr., is the
3 President of Defendant Eagle.

4 2. Defendant Eagle violated the California Hazardous Waste Control Law, Chapter 6.5
5 of Division 20 of the California Health and Safety Code, § 25100 *et seq.* (“HWCL”) and the
6 implementing regulations, California Code of Regulations, Title 22, Chapter 10, 66260.1, *et. seq.*
7 in conducting business at the Facilities.

8 3. The Department hereby seeks civil penalties from and injunctive relief against
9 Defendant Eagle for its violations of the HWCL and its implementing regulations.

10 **PLAINTIFF**

11 4. The Department is a public agency of the State of California organized and existing
12 under and pursuant to Health and Safety Code section 58000 *et seq.*

13 5. At the time of the filing of this action, Deborah O. Raphael is the Director of the
14 Department.

15 6. Pursuant to sections 25181 and 25182 of the Health and Safety Code, the Attorney
16 General of the State of California is authorized, at the request of the Department, to commence an
17 action in the name of the People for civil penalties and injunctive relief under the HWCL. The
18 Department has asked the Attorney General to apply to this Court for penalties and an injunction
19 enjoining Defendant Eagle from continuing violations of the HWCL.

20 **DEFENDANT**

21 7. Defendant Eagle is a California corporation.

22 8. The Department is informed and believes and thereon alleges that Eagle is
23 headquartered in Hollister, California and is the owner and operator of the Facilities.

24 9. Defendant Eagle is a “person,” as defined in Health and Safety Code section 25118.
25 Further, Defendant Eagle is an “owner” and/or “operator,” as defined in California Code of
26 Regulations, title 22, section 66260.10.

27 10. When reference is made in this complaint to any act of Defendant Eagle, such
28 allegation shall mean that the owners, officers, directors, agents, employees, contractors and

1 representatives of Defendant Eagle did or authorized such acts or recklessly and/or negligently
2 failed and omitted to adequately or properly supervise, control, or direct Defendant Eagle
3 employees, representatives, or agents while engaged in the management, direction, operation, or
4 control of the affairs of Defendant Eagle and did so while acting within the course and scope of
5 their employment or agency.

6 11. Defendants Does 1-20 are the officers, agents, employees, servants, or others acting
7 in interest or concert with Defendant Eagle. The Department is ignorant of the true names of
8 defendants sued herein as Does 1-20. When the names of these defendants have been ascertained,
9 the Department will seek leave to amend the Complaint to substitute the true name of each Doe
10 defendant in place of the fictitious name.

11 JURISDICTION AND VENUE

12 12. This Court has jurisdiction pursuant to Cal. Const. Art. 6, section 10 and Health and
13 Safety Code section 25181(a). Venue is proper under Health and Safety Code section 25183 in
14 that Defendant Eagle's principal office is in Hollister, California, and Alameda County is the
15 county in which the Attorney General has an office nearest to Hollister.

16 STATUTORY AND REGULATORY BACKGROUND

17 13. The State of California has a comprehensive – “cradle to grave” – statutory and
18 regulatory framework for the generation, handling, treatment, storage, transport, and disposal of
19 hazardous wastes. The HWCL's implementing regulations specify requirements for the tracking,
20 storage, treatment, and disposal of hazardous waste to protect the public from the risks posed by
21 improper management of hazardous wastes. (Cal. Code Regs., tit. 22, § 66260.1 *et seq.*)

22 14. The HWCL is the California analog of the federal Resource Conservation and
23 Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”). Pursuant to state and federal law, the
24 Department administers the HWCL in lieu of federal administration of RCRA in California. (See
25 Health & Safety Code, § 25101, subd. (d); California: Final Authorization of Revisions to State
26 Hazardous Waste Management Program, 66 FR 49118 (September 26, 2001).) Federal law
27 prohibits California from imposing “any requirements less stringent than those authorized under
28

1 [RCRA].” (42 U.S.C. § 6929.) However, RCRA does not prevent California from imposing
2 requirements which are more stringent than those imposed by federal law. (*Id.*)

3 15. California state law – the HWCL – has a more inclusive definition of hazardous waste
4 than does federal law. Hazardous wastes that are regulated under California law but not federal
5 law are known as “non-RCRA hazardous wastes.” (Health & Saf. Code, § 25117.9.)

6 16. “Universal waste” is a subset of hazardous waste regulated under RCRA and
7 California law. In California, universal waste includes batteries, electronic devices and cathode
8 ray tubes (“CRT”). (Cal. Code Regs., tit. 22, §§ 66261.9, 66273.1.) Special standards apply to
9 universal waste handlers. Universal waste handlers include a generator of universal waste or an
10 owner or operator of a facility that receives universal waste, accumulates universal waste and
11 sends it to another handler. (Cal. Code Regs., tit. 22, § 66273.9.) Among the requirements that a
12 universal waste handler must meet are the following; notify DTSC of its intent to act as a handler,
13 properly contain the waste, use proper labeling for the waste, and accumulate universal waste for
14 no longer than one year. (Cal. Code Regs., tit. 22, §§ 66273.30 - 66273.35, 66273.74.) In
15 addition, universal waste handlers must provide personnel with proper training to manage the
16 waste, respond to universal waste releases, and keep records of shipments of the waste for three
17 years. (Cal. Code Regs., tit. 22, § 66273.36 - 66273.38.)

18 17. The Department is informed and believes, and thereon alleges that Defendant Eagle
19 collected, stored, treated, handled and/or recycled universal waste, including electronic devices
20 and CRT, at the Facilities. Therefore, Defendant Eagle is subject to the universal waste handler
21 requirements of section 66273.1 *et seq.*

22 ENFORCEMENT AUTHORITY UNDER THE HWCL

23 18. The HWCL authorizes the Court to impose civil penalties under two distinct and
24 alternative provisions. First, section 25189 of the Health and Safety Code creates liability for any
25 negligent or intentional violation of the HWCL. Second, section 25189.2 is a strict liability
26 provision, which creates liability for any violation of the HWCL. A person may not be held liable
27 for separate civil penalties imposed under sections 25189 and 25189.2 for the same act. (Health
28 & Saf. Code, § 25189.2(d).)

1 Defendant Eagle, sent DTSC photos and other requested information, along with a letter stating
2 that the San Jose Facility had been closed to customers since November 2009. On May 12, 2009
3 the Department sent an email to Defendant Eagle, through Mr. Chambers, requesting Defendant
4 Eagle submit the 2008 and 2009 annual report information for both the Hollister and San Jose
5 Facilities. On May 24, 2010 Defendant Eagle provided a scanned copy of the 2009 annual report
6 for the Hollister Facility and the Department responded by requesting the 2008 and 2009 annual
7 reports for the San Jose Facility and the 2008 annual report for the Hollister Facility. As of
8 August 25, 2011, Defendant Eagle had not correctly submitted to DTSC the 2008 and 2009
9 annual reports for the San Jose Facility or the 2008 annual report for the Hollister Facility.

10 **FIRST CAUSE OF ACTION**
11 **(Failure to Submit Required Notification for San Jose Facility**
12 **Cal. Code Regs., tit. 22, §§ 66273.72(c)(2)(A) and 66273.74(a))**

12 23. Paragraphs 1-22 are re-alleged as if fully set forth herein.

13 24. Defendant Eagle handles universal waste, including electronic devices, CRT, and/or
14 CRT glass. A universal waste handler who intends to treat any electronic device and/or CRT
15 must submit to the Department, an electronic or written notification containing information
16 specified in California Code of Regulations title 22 section 66273.74(a)(1) no later than 30
17 calendar days prior to treating any electronic device and/or CRT. (Cal. Code Regs., tit. 22, §§
18 66273.72(c)(2)(A) and 66273.74(a))

19 25. Defendant Eagle violated California Code of Regulations title 22 sections
20 66273.72(c)(2)(A) and 66273.74(a) in that on or about September 23, 2009 Defendant Eagle
21 failed to submit a notification for the San Jose Facility at least 30 calendar days before treating
22 any electronic device and/or CRT.

23 **SECOND CAUSE OF ACTION**
24 **(Failure to Submit Annual Report for Both Facilities**
25 **Cal. Code Regs., tit. 22, §§ 66273.72(c)(2)(A) and 66273.74(b))**

25 26. Paragraphs 1-22 are re-alleged as if fully set forth herein.

26 27. A universal waste handler who treats any electronic device and/or CRT in a calendar
27 year shall, by February 1 of the following year, submit to the Department an electronic or written
28 annual report containing the information specified in subsection (b)(1)(A) through (b)(1)(J) of

1 section 66273.74(b). (Cal. Code Regs., tit. 22, §§ 66273.72(c)(2)(A) and 66273.74(b).) The
2 information submitted shall cover the electronic device treatment and CRT treatment activities
3 conducted during the previous calendar year. (Cal. Code Regs., tit. 22, § 66273.74(b).)

4 28. Defendant Eagle violated California Code of Regulations title 22 sections
5 66273.72(c)(2)(A) and 66273.74(b) in that on or about September 23, 2009 and September 30,
6 2009, Defendant Eagle failed to correctly submit annual reports for 2008 by February 1, 2009, for
7 the San Jose and Hollister Facilities. Defendant Eagle further violated California Code of
8 Regulations title 22 sections 66273.72(c)(2)(A) and 66273.74(b) in that on or about May 24, 2010,
9 Defendant Eagle failed to correctly submit an annual report for 2009 by February 1, 2010, for the
10 San Jose Facility.

11 **THIRD CAUSE OF ACTION**
12 **(Failure to Label Universal Waste at Both Facilities**
13 **Cal. Code Regs., tit. 22, § 66273.34(d) and (e), and/or (g))**

14 29. Paragraphs 1-22 are re-alleged as if fully set forth herein.

15 30. A universal waste handler shall label or mark universal waste to identify the type of
16 universal waste. (Cal. Code Regs., tit. 22, § 66273.34.) Under the regulations, each electronic
17 device or container or pallet in or on which the electronic devices are contained, shall be labeled
18 or marked clearly with the following phrase: "Universal Waste-Electronic Device(s)". (*Id.* at sub.
19 (d).) In addition, each CRT or a container or pallet in or on which the CRTs are contained, shall
20 be labeled or marked clearly with the following phrase: "Universal Waste-CRT(s)". (*Id.* at sub.
21 (e).) The regulations provide that in lieu of labeling individual electronic devices and/or CRTs, a
22 universal waste handler may combine, package, and accumulate those universal wastes in
23 appropriate containers or within a designated area demarcated by boundaries that are clearly
24 labeled with the applicable portions of the following phrase: "Universal Waste-Electronic
25 Device(s)/Universal Waste -CRT(s)". (*Id.* at sub. (g).)

26 31. Defendant Eagle violated California Code of Regulations title 22 section 66273.34, in
27 that since at least on or about September 23, 2009 and September 30, 2009, and continuing
28 thereafter, Defendant Eagle failed to label or mark universal waste electronic devices and CRT
and/or pallets and containers of the waste with the phrase "Universal Waste-Electronic Device(s)"

1 and "Universal Waste-CRT(s)", respectively; or failed to label a designated area where those
2 universal wastes are accumulated at the Facilities within demarcated boundaries with the
3 applicable portions of the phrase, "Universal Waste-Electronic Device(s)/Universal Waste -
4 CRT(s)."

5 **FOURTH CAUSE OF ACTION**
6 **(Failure to Demonstrate Length Universal Waste Accumulated at Both Facilities**
7 **Cal. Code Regs., tit. 22, § 66273.35(a) and (b))**

7 32. Paragraphs 1-22 are re-alleged as if fully set forth herein.

8 33. A universal waste handler shall accumulate universal waste for no longer than one
9 year from the date the universal waste was generated, or was received from another universal
10 waste handler. (Cal. Code Regs., tit. 22, § 66273.35(a).) A universal waste handler shall be able
11 to demonstrate the length of time that the universal waste has been accumulated from the date it
12 became a waste or was received. (Cal. Code Regs., tit. 22, § 66273.35(b).) California Code of
13 Regulations section 66273.35 subsection (b) provides a number of options for demonstrating
14 accumulation dates, which include: (1) placing the universal waste in a container and marking or
15 labeling the container with the earliest date that any universal waste in the container became a
16 waste or was received; (2) Marking or labeling the individual item of universal waste with the
17 date it became a waste or was received; (3) Maintaining an inventory system that identifies the
18 date the universal waste being accumulated became a waste or was received; (4) Placing the
19 universal waste in a specific accumulation area and marking or labeling the area to identify the
20 earliest date that any universal waste in the area became a waste or was received; or (5) Any other
21 method which clearly demonstrates the length of time that the universal waste has been
22 accumulated from the date it became a waste or was received. (Cal. Code Regs., tit. 22, §
23 66273.35 (b)(1)-(4), (6).)

24 34. Defendant Eagle violated California Code of Regulations title 22, section 66273.35
25 subsection (b) in that since at least on or about September 23, 2009 and September 30, 2009, and
26 continuing thereafter at both Facilities, Defendant Eagle failed to demonstrate the length of time
27 pallets or containers of universal waste had been accumulated.

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FIFTH CAUSE OF ACTION
(Failure to Contain Electronic Waste and CRT in Structurally Sound Container at Both Facilities Cal. Code Regs., tit. 22, §§ 66273.33.5(a)(1)(B) and (b)(1)(B)1)

35. Paragraphs 1-22 are re-alleged as if fully set forth herein.

36. Universal waste handlers that handle electronic devices or CRT are required to manage electronic devices in a way that prevents releases of any universal waste or component of a universal waste to the environment under reasonably foreseeable conditions. (Cal. Code Regs., tit. 22, § 66273.33.5(a)(1)(B).) The regulations mandate that a universal waste handler shall contain any electronic device in a manner that prevents breakage and release of components to the environment. If a container is used, such a container shall prevent leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. (*Id.* at sub. (a)(1)(B)1.a.) In addition, a universal waste handler must manage CRTs in a manner that prevents releases of any CRTs or component of any CRTs to the environment under reasonably foreseeable conditions. (*Id.* at sub. (b)(1)(B).) Specifically, a universal waste handler shall contain any CRT in a container or package that is structurally sound, adequate to prevent breakage of the CRT, and compatible with the contents of the CRT. Such a container or package shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. (*Id.* at sub. (b)(1)(B)1.)

37. Defendant Eagle violated California Code of Regulations title 22, sections 66273.33.5(a)(1)(B) and (b)(1)(B)1 in that since at least on or about September 23, 2009 and September 30, 2009, and continuing thereafter at both of the Facilities, Defendant Eagle failed to contain any electronic device or bare CRT in a container that is structurally sound and does not show evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

SIXTH CAUSE OF ACTION
(Failure to Contain and Repackage Releases of Universal Waste at San Jose Facility Cal. Code Regs., tit. 22, § 66273.37)

38. Paragraphs 1-22 are re-alleged as if fully set forth herein.

39. A universal waste handler shall immediately contain all releases of universal wastes and of residues from universal wastes to the environment. (Cal. Code Regs., tit. 22, §

1 66273.37(a.) Furthermore, a universal waste handler shall determine whether any material
2 resulting from such a release is a hazardous waste, and if so, shall manage the hazardous waste in
3 compliance with all applicable requirements of this division. (*Id.* at sub. (b).) Hazardous waste
4 consisting only of residues of leaking, broken, or otherwise damaged universal waste may be
5 managed as universal waste provided that the leaking, broken, or otherwise damaged universal
6 waste is repackaged according to the standards of section 66273.33 or 66273.33.5. (*Id.* at sub.
7 (c).)

8 40. Defendant Eagle violated California Code of Regulations title 22, section 66273.37 in
9 that since at least on or about September 23, 2009, and continuing thereafter at the San Jose
10 Facility, Defendant Eagle failed to immediately contain all releases of universal waste and
11 residues of universal waste to the environment, and to repackage residues of broken universal
12 waste according to the standards of section 66273.33.5.

13 **SEVENTH CAUSE OF ACTION**
14 **(Failure to Maintain Aisle Space at Hollister Facility**
Cal. Code Regs., tit. 22, § 66273.72(c)(2)(C)(7))

15 41. Paragraphs 1-22 are re-alleged as if fully set forth herein.

16 42. A universal waste handler must dismantle electronic devices in a manner that protects
17 persons managing the electronic devices and/or the CRTs, and that prevents releases of any
18 universal wastes and/or any components of universal wastes, to the environment under reasonably
19 foreseeable conditions. (Cal. Code Regs., tit. 22, § 66273.72(c)(2)(C)) This includes ensuring
20 that the facility maintains aisle spacing in compliance with applicable fire safety code standards
21 in California. (*Id.* at sub. (7).)

22 43. Defendant Eagle violated California Code of Regulations title 22, section
23 66273.72(c)(2)(C)(7) in that since at least on or about September 30, 2009, and continuing
24 thereafter at the Hollister Facility, Defendant Eagle failed to ensure that the Hollister Facility
25 maintained aisle spacing in compliance with the applicable fire safety code standards in
26 California.

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1 drivers, who manage universal waste were thoroughly familiar with proper universal waste
2 management and emergency response procedures relative to those persons' responsibilities.

3 **TENTH CAUSE OF ACTION**
4 **(Failure to Properly Dismantle Electronic Devices San Jose Facility**
5 **Cal. Code Regs., tit. 22, § 66273.72(c)(2)(C)1 and 2)**

5 50. Paragraphs 1-22 are re-alleged as if fully set forth herein.

6 51. A universal waste handler who dismantles, or otherwise manually segregates,
7 components from an electronic device or removes the yokes from CRTs without breaking the
8 CRT glass must comply with the requirements set forth in California Code of Regulations title 22
9 section 66273.72(c)(2)(C). This includes dismantling electronic devices and/or removing yokes
10 from CRTs over, on, or in, a containment device sufficient in size and construction to contain any
11 universal waste and/or component of such waste that may be released to the environment under
12 reasonably foreseeable conditions. (Cal. Code Regs., tit. 22, § 66273.72(c)(2)(C)1.) In addition,
13 the handler must contain any hazardous residuals produced from dismantling electronic devices
14 and/or removing yokes from CRTs in a manner that prevents releases of the residuals to the
15 environment under reasonably foreseeable conditions. (Cal. Code Regs., tit. 22, §
16 66273.72(c)(2)(C)2.)

17 52. Defendant Eagle violated California Code of Regulations title 22, section
18 66273.72(c)(2)(C) in that since at least on or about September 23, 2009, and continuing thereafter
19 at the San Jose Facility, Defendant Eagle failed to dismantle electronic devices and/or remove
20 yokes from CRTs over, on, or in a containment device sufficient in size and construction to
21 contain any universal waste and/or component of such waste that may be released to the
22 environment under reasonably foreseeable conditions. Additionally, Defendant Eagle failed to
23 contain the dismantling residuals in a manner that prevents releases of residuals to the
24 environment under reasonably foreseeable conditions.

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1 **ELEVENTH CAUSE OF ACTION**
2 **(Failure to obtain California ID Number for San Jose Facility**
3 **Cal. Code Regs., tit. 22, § 66273.32(b))**

4 53. Paragraphs 1-22 are re-alleged as if fully set forth herein.

5 54. A universal waste handler who accumulates 5,000 kilograms of universal waste non-
6 RCRA hazardous waste shall obtain an ID Number from the Department. (Cal. Code Regs., tit.
7 22, §§ 66273.32(b), 66260.10.)

8 55. Defendant Eagle violated California Code of Civil Procedure section 66273.32(b) in
9 that since at least on or about September 23, 2009, and continuing thereafter, Defendant Eagle
10 failed to obtain for the San Jose Facility a California ID Number after accumulating 5,000
11 kilograms of non-RCRA universal waste.

12 **REQUEST FOR RELIEF**

13 The Department requests the Court grant the relief that follows:

14 1. Enter judgment that Defendant Eagle has violated the HWCL as described in the First
15 through Eleventh Causes of Action;

16 2. Enter judgment that Defendant Eagle is liable for civil penalties for those violations
17 as authorized by Health and Safety Code section 25189 or in the alternative, Health and Safety
18 Code section 25189.2, not to exceed \$25,000 per day per violation, in an amount of not less than
19 seventy five thousand dollars (\$75,000);

20 3. Enter a permanent injunction or other order requiring the Defendant Eagle to comply
21 with the HWCL and/or the regulations adopted thereunder;

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- 4. Grant the Department its cost of suit herein; and
- 5. Grant the Department such other and further relief as the Court deems just and proper.

Dated: November 23, 2011

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General


MEGAN H. ACEVEDO
Deputy Attorney General
*Attorneys for Plaintiff People of the State of
California ex rel. Deborah O. Raphael,
Director, California Department of Toxic
Substances Control*

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KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General
MEGAN H. ACEVEDO
Deputy Attorney General
State Bar No. 226604
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2195
Fax: (510) 622-2270
E-mail: Megan.Acevedo@doj.ca.gov
*Attorneys for Plaintiff People of the State
of California ex rel. Deborah O. Raphael, Director,
California Department of Toxic Substances Control*

FILED
ALAMEDA COUNTY

FEB - 3 2012

By 

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. DEBORAH O. RAPHAEL, Director, CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL ,

Plaintiff,

v.

EAGLE RECYCLING, INC. and DOES 1-20,

Defendants

Case No. RG11605736

~~REDACTED~~ FINAL JUDGMENT ON CONSENT

Good cause appearing herein, the Court finds that the settlement between Plaintiff, People of the State of California, ex rel. Deborah O. Raphael, Director, California Department of Toxic Substances Control (“the Department”) and Defendant Eagle Recycling, Inc. (“Defendant Eagle”) is fair and in the public interest.

1 Accordingly, the Stipulation for Entry of Final Judgment on Consent entered into by Plaintiff the
2 People and Defendant Eagle is approved and Final Judgment is entered as provided therein.

3 **IT IS SO ORDERED.**

4 Dated: *February 3, 2012*


JUDGE OF THE SUPERIOR COURT

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EVELIO M. GRILLO

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