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**EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103**

*Attorneys for Plaintiff People of the State of
California ex rel. Miriam Barcellona Ingenito,
Acting Director of the Department of Toxic
Substances Control*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**PEOPLE OF THE STATE OF
CALIFORNIA EX REL. MIRIAM
BARCELLONA INGENITO, ACTING
DIRECTOR OF THE DEPARTMENT OF
TOXIC SUBSTANCES CONTROL,**

Plaintiff,

v.

**SYNERGY ENTERPRISES, INC., AND
DOES 1 - 20,**

Defendants.

Case No. RG14734092
**STIPULATION FOR ENTRY OF FINAL
JUDGMENT**

Trial Date: None set.
Action Filed: July 23, 2014

Plaintiff People of the State of California ex rel. Miriam Barcellona Ingenito, Acting
Director of the Department of Toxic Substances Control (“Plaintiff” or “the Department”), and
Defendant Synergy Enterprises, Inc. (“Defendant” or “Synergy”) enter into this Stipulation for
Entry of Final Judgment (“Stipulation”), and agree as follows:

1 1. THE FACILITY.

2 Synergy Enterprises, Inc., a registered hazardous waste transporter, provides energy
3 efficiency, solar energy, and environmental services for residential, commercial, and government
4 entities. Synergy's Environmental Services Division specializes in asbestos, lead-based paint,
5 and mold remediation, with 90% of its operations consisting of asbestos abatement. Synergy
6 operates an exempt transfer facility at 28436 Satellite Street, Hayward, Alameda County ("the
7 Facility"). The Department regulates Synergy's operations.

8 2. INVESTIGATION ACTIVITIES.

9 On or about July 26 and 31, 2012, the Department inspected Synergy for compliance with
10 the Hazardous Waste Control Law, Health and Safety Code §§ 25100 et seq. (the "HWCL") and
11 its implementing regulations. The Department discovered violations of the HWCL and the
12 applicable regulations (Cal. Code Regs, tit. 22, Division 4.5, sections 66000 et seq.).

13 3. THE COMPLAINT.

14 On July 23, 2014, the Department filed a Complaint seeking, among other things, civil
15 penalties against Synergy pursuant to the HWCL and its implementing regulations based on the
16 2012 inspection of the Facility. The Department's complaint is attached as Exhibit A
17 ("Complaint"). On November 14, 2012, the Department issued Synergy an inspection report
18 ("2012 Inspection Report") based on its 2012 inspection of the Facility. The 2012 Inspection
19 Report alleges that Synergy violated provisions of the HWCL and its implementing regulations,
20 including violating its status as an exempt transfer facility by transporting hazardous waste to the
21 Facility and holding it for more than ten (10) days in violation of Health & Safety Code section
22 25201, subdivision (a), and failing to properly label approximately 15 containers of hazardous
23 waste in violation of California Code of Regulations, title 22, sections 66262.34, subdivision
24 (f)(1), 66262.34, subdivision (f)(3), and 66262.11.

25 4. AGREEMENT TO SETTLE DISPUTE.

26 The Department and Synergy (the "Parties") enter into the Stipulation pursuant to a
27 compromise and settlement. Each of the parties consents to the entry by the Superior Court of
28 Alameda County (the "Court") of the Final Judgment Pursuant to Stipulation in the substance and

1 form attached hereto as Exhibit B (“Final Judgment”). The Stipulation and Final Judgment were
2 negotiated and executed in good faith and at arms’ length by each of the Parties, with their
3 respective counsel, to avoid expensive and protracted litigation regarding alleged violations of the
4 HWCL, and to further the public interest. The Department and Synergy both request entry of
5 judgment on the terms set forth in this Stipulation. Nothing herein shall inure to the benefit of
6 any persons not parties to this Stipulation.

7 **5. JURISDICTION AND VENUE.**

8 The Parties agree that the Court has subject matter jurisdiction over the matters alleged in
9 the Complaint and personal jurisdiction over Synergy. Venue is proper pursuant to Health &
10 Safety Code section 25183.

11 **6. WAIVER OF TRIAL AND ENTRY OF JUDGMENT.**

12 By signing and entering into this Stipulation, Synergy waives its right to a trial on matters
13 alleged in the Complaint. Further, the Parties each request entry of the Judgment on the terms set
14 forth in this Stipulation.

15 **7. MATTERS COVERED BY THIS STIPULATION.**

16 7.1 This Stipulation is a final and binding resolution and settlement of all claims, alleged
17 violations, or causes of action which the Department alleged in the 2012 Inspection Report and in
18 the Complaint against Synergy (“Matters Covered”). This resolution is binding upon Synergy, its
19 officers, directors, shareholders, and employees, and the Department. The provisions of this
20 paragraph become effective when the Final Judgment is entered and Synergy has made full
21 payment of the amount in paragraph 11. Nothing in the Final Judgment shall constitute or be
22 construed as a satisfaction or release from liability for any conditions or claims arising as a result
23 of past, current, or future operations of Synergy, its predecessors in interest, and its officers,
24 directors, shareholders, partners, employees, representatives, and agents except for the Matters
25 Covered. The Department reserves its right to initiate further actions pursuant to its regulatory
26 authority to protect public health or welfare or the environment on matters not within the scope of
27 “Matters Covered,” notwithstanding Synergy’s compliance with the terms of the Final Judgment.
28

1 7.2 Paragraph 7.1 does not limit the ability of the Department to enforce the terms of this
2 Stipulation or the Final Judgment.

3 8. **PARTIES BOUND.**

4 The provisions of this Stipulation and the Final Judgment shall apply to and be binding on
5 (1) Synergy, its officers, directors, and employees; and (2) the Department and any successor
6 agency of the Department that may have responsibility for and jurisdiction over the subject matter
7 of the Final Judgment.

8 9. **NO WAIVER OF RIGHT TO ENFORCE.**

9 The failure of the Department to enforce any provision of the Stipulation or Final Judgment
10 shall neither be deemed a waiver of such provision, nor in any way affect the validity of the Final
11 Judgment or the Department's enforcement authority. The failure of the Department to enforce
12 any such provision of this Stipulation or the Final Judgment shall not preclude it from later
13 enforcing the same or other provisions. No oral advice, guidance, suggestions, or comments by
14 employees or officials of the Department or Synergy, or people or entities acting on behalf of
15 Synergy, regarding matters covered in this Stipulation or the Final Judgment, shall be construed
16 to relieve Synergy of its obligations under this Stipulation or the Final Judgment.

17 10. **INJUNCTIVE REQUIREMENTS**

18 To ensure Synergy's compliance at all times with Health and Safety Code section 25201,
19 subdivision (a), and the exempt transfer facility requirements set forth in California Code of
20 Regulations, title 22, section 66263.18, subdivision (b)(1), Synergy agrees to do the following:

21 (a) Empty all bags of asbestos waste collected at a work site into the company-controlled
22 dumpster no later than the morning after the company vehicles containing the bags have returned
23 to the Facility from a work site.

24 (b) Immediately after transferring asbestos waste or any other hazardous wastes to the
25 Facility, place the manifest(s) for the hazardous wastes in a secure "in-basket."

26 (c) Update manifests daily into a central control system, placing all manifest numbers
27 with the date the waste arrives in a secure electronic file, backed up on an off-site server (the
28 "cloud").

1 (d) Have all dumpsters at the Facility emptied no less frequently than once weekly by a
2 registered hazardous waste transporter.

3 11. MONETARY SETTLEMENT REQUIREMENTS.

4 Synergy shall pay the Department the sum of One Hundred Ten Thousand Dollars
5 (\$110,000), as and for civil penalties and costs, in settlement of the Department's claims.
6 Payment is due to the Department from Synergy within sixty (60) days of entry of Final
7 Judgment. Of this amount, \$ 95,651.44 is for penalties and \$14,348.56 is for the Department's
8 costs.

9 This payment under the Final Judgment shall be made by cashier's check, payable to the
10 Department of Toxic Substances Control and sent by overnight mail to:

11 Cashier
12 Accounting Office, MS-21A
13 Department of Toxic Substances Control
14 P.O. Box 806
15 Sacramento, CA 95812-0806.

16 The check shall bear on its face the phrase "DTSC # HWCA 20126749 - Synergy."

17 A photocopy of this payment made pursuant to the Final Judgment, including overnight
18 mail tracking information, shall be sent by e-mail or first class U.S. mail, at the same time, to:

19 Rick Robison, Unit Chief
20 Enforcement and Emergency Response Division
21 Berkeley Enforcement Branch
22 Department of Toxic Substances Control
23 700 Heinz Avenue
24 Berkeley, California 94710-2721
25 Email: rick.robison@dtsc.ca.gov

26 Lynn Goldman, Staff Counsel
27 Office of Legal Counsel
28 Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806
E-mail: lynn.goldman@dtsc.ca.gov

and to:

1 Laura J. Zuckerman
2 Deputy Attorney General
3 State of California Department of Justice
4 Attorney General's Office
5 1515 Clay Street, 20th Floor
6 Oakland, CA 94612
7 E-mail: laura.zuckerman@doj.ca.gov

8 12. **NOTICE.**

9 All submissions and notices required by the Stipulation and Final Judgment shall be in
10 writing, and shall be sent to:

11 The Department:

12 Rick Robison, Unit Chief
13 Enforcement and Emergency Response Division
14 Berkeley Enforcement Branch
15 Department of Toxic Substances Control
16 700 Heinz Avenue
17 Berkeley, California 94710-2721
18 Fax: (510) 540-3819
19 Email: rick.robison@dtsc.ca.gov

20 Synergy:

21 Mr. Steven R. Shallenberger, President
22 Synergy Enterprises, Inc.
23 28436 Satellite Street
24 Hayward, CA 94545
25 Fax: (801) 224-2537
26 Email: steveshallenberger@gmail.com

27 With simultaneous copy to counsel for Synergy:

28 Mordecai D. Boone, Esq.
Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
Fax: (415) 986-8054
Email: mboone@gordonrees.com

All approvals and decisions regarding any matter requiring approvals or decisions under the terms of this Stipulation and the Final Judgment shall be communicated in writing. Each Party may change its respective representative(s) for purposes of notice by providing the name and

1 address of the new representative, in writing, to all Parties. Any such change will be effective
2 seven (7) calendar days after the date of the written notice.

3 No advice, guidance, suggestions, or comments by employees or officials of the
4 Department regarding submittals or notices shall be construed to relieve Synergy of its obligation
5 to obtain any final written approvals required by the Final Judgment.

6 **13. NO LIABILITY OF THE DEPARTMENT.**

7 Neither the Department nor any of the State of California's agencies, boards, or
8 departments (collectively, "State Entities") shall be liable for any injury or damage to persons or
9 property resulting from acts or omissions by Synergy, its directors, officers, employees, parent
10 companies, affiliates, agents, representatives, or contractors in carrying out activities pursuant to
11 this Stipulation or the Final Judgment, nor shall the Department or any of the State Entities be
12 held as a party to or guarantor of any contract entered into by Synergy, its directors, officers,
13 employees, agents, representatives, parent companies, affiliates, or contractors in carrying out the
14 requirements of this Stipulation or the Final Judgment.

15 **14. COMPLIANCE WITH APPLICABLE LAW.**

16 Synergy shall implement the terms of the Final Judgment entered by the Court in this
17 matter in compliance with all local, State, and federal requirements, including, but not limited to,
18 requirements to obtain permits and to assure worker safety.

19 **15. ACCESS.**

20 Nothing in the Final Judgment is intended to limit in any way the right of entry or
21 inspection that the Department or any other agency may otherwise have by operation of any law.

22 **16. INTEGRATION.**

23 The Stipulation, together with exhibits, and the Final Judgment constitute the entire
24 agreement and understanding of the parties with respect to the entire subject matter hereof, and
25 may not be amended or supplemented except as provided for in this Stipulation or in the Final
26 Judgment. No representations, oral or written, express or implied, other than those expressly set
27 forth herein have been made by any party hereto. No other agreements not specifically referred to
28 herein, oral or written, shall be deemed to exist or to bind either of the Parties.

1 17. **AUTHORITY TO ENTER STIPULATION.**

2 Each signatory to the 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 18. **MODIFICATION OF STIPULATION AND FINAL JUDGMENT.**

6 Neither the Stipulation nor the Final Judgment may be modified without written stipulation
7 of the Parties hereto and approval by the Court.

8 19. **EFFECT OF STIPULATION AND FINAL JUDGMENT.**

9 Except for the settlement of claims provided in Paragraph 7, nothing herein or in the Final
10 Judgment is intended, nor shall it be construed, to preclude the Department, or any state, county,
11 or local agency, department board or entity, or any Certified Unified Program Agency, from
12 taking appropriate enforcement action or otherwise exercising its authority under any law, statute
13 or regulation.

14 20. **GOVERNING LAW.**

15 The terms of the Final Judgment shall be governed by the laws of the State of California.

16 21. **RETENTION OF JURISDICTION.**

17 The Parties agree that the Court has continuing jurisdiction to interpret and enforce the
18 provisions of this Stipulation and the Final Judgment.

19 22. **EQUAL AUTHORSHIP.**

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

24 23. **COUNTERPARTS.**

25 The Stipulation may be executed in several counterparts, each of which shall be deemed an
26 original, and all such counterparts taken together shall constitute an integrated document.
27 Facsimile signature and PDF signatures shall be deemed original for the purposes of this
28 Stipulation.

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Judgment upon written notice to all Parties and the Court.

IT IS SO STIPULATED:

PEOPLE OF THE STATE OF CALIFORNIA EX REL
MIRIAM BARCELLONA INGENITO, ACTING DIRECTOR
OF THE DEPARTMENT OF TOXIC SUBSTANCES
CONTROL

Dated: July 17, 2014

By: Original signed by Maria Soria

MARIA SORIA, BRANCH CHIEF
ENFORCEMENT AND EMERGENCY RESPONSE
DIVISION

SYNERGY ENTERPRISES, INC.

Dated: 4 July, 2014

By: Original signed by Steven Shallenberger
STEVEN SHALLENBERGER, PRESIDENT

APPROVED AS TO FORM:

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

Dated: July 21, 2014

By: Original signed by Laura Zuckerman
LAURA J. ZUCKERMAN
Deputy Attorney General
Attorneys for Plaintiff

GORDON & REES LLP

Dated: July 17, 2014

By: Original signed by Mordecai Boone
MORDECAI D. BOONE
Attorneys for Defendant Synergy

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