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FILED
LOS ANGELES SUPERIOR COURT

AUG 31 2011

JOHN A. CLARKE, CLERK

By: *R. Castle*
R. CASTLE

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District Attorney of Los Angeles County
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7 *The People of the State of California*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 SA RECYCLING, LLC a
Delaware Limited Liability Corporation
16 and SIMSMETAL WEST LLC, a
Delaware Limited Liability
17 Corporation,

18 Defendants.

CASE NO. BC458943

**~~PROPOSED~~ STIPULATED
JUDGMENT AND ORDER**

**PURSUANT TO TERMS OF
STIPULATION FOR SETTLEMENT**

19
20 This Stipulated Final Judgment ("Stipulated Judgment") is entered into by
21 and between the People of the State of California and SA RECYCLING, LLC a Delaware
22 Limited Liability Corporation and SIMSMETAL WEST LLC, a Delaware Limited
23 Liability Corporation, Defendants. ("Parties") In a document entitled "First Amended
24 Consent Agreement and Stipulation for Entry of Final Judgment," the People of the State of
25 California and SA RECYCLING, LLC a Delaware Limited Liability Corporation and
26 SIMSMETAL WEST LLC, a Delaware Limited Liability Corporation, Defendants.
27 ("Parties"), the Parties have stipulated in a writing signed by the Parties for settlement of
28 this matter. The Parties hereby stipulate that judgment enter pursuant to the terms of the

9/1/11

1 First Amended Consent Agreement and Stipulation for Entry of Final Judgment. On the
2 Parties' motion, the Court has reviewed the proposed settlement and finds it to be fair and
3 in the public interest.

4 The Court hereby enters judgment pursuant to the terms of the settlement as
5 set forth in the Parties' First Amended Consent Agreement and Stipulation for Entry of
6 Final Judgment, a full and complete copy of which is attached to, and incorporated in, this
7 Judgment of the Court. The Court retains jurisdiction to interpret and enforce this Judgment
8 until performance in full of its terms.

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IT IS SO ORDERED AND ADJUDGED.
Dated: 8/31/11, 2011

Judge of the Superior Court
Los Angeles County Superior Court

1 STEVE COOLEY
District Attorney of Los Angeles County
2 DANIEL J. WRIGHT, SBN 129309
Deputy District Attorney
3 Consumer Protection Division
Environmental Law Section
4 201 N. Figueroa Street, Suite 1200
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6 *Attorneys for Plaintiff*
The People of the State of California
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 PEOPLE OF THE STATE OF
CALIFORNIA,

12 Plaintiff,

13 vs.

14 SA RECYCLING, LLC a
15 Delaware Limited Liability Corporation
and SIMSMETAL WEST LLC, a
16 Delaware Limited Liability
Corporation,

17 Defendants.
18

CASE NO. BC458943

**FIRST AMENDED CONSENT
AGREEMENT AND
STIPULATION FOR ENTRY OF
FINAL JUDGMENT; [PROPOSED]
ORDER**

19
20 This Stipulation for Entry of Final Judgment on Consent ("First Amended
21 Consent Judgment") is entered between Plaintiff, The People of the State of California
22 (the "People"), appearing through their counsel of record Steve Cooley, District Attorney
23 of the County of Los Angeles, and Daniel J. Wright, Deputy District Attorney,
24 Environmental Law Section, and Defendants, SA Recycling, LLC ("SA Recycling") and
25 Simsmetal West LLC ("Sims") (hereafter collectively "Defendants" and individually
26 "Defendant"), appearing by and through their counsel of record, Paul, Hastings, Janofsky
27 & Walker LLP, by Thomas A. Zaccaro and Robert P. Hoffman. The People and
28 /

1 Defendants have agreed to settle this matter without litigation and stipulate to
2 entry of judgment in accordance with the terms set forth below.

3 INTRODUCTION

4 On August 20, 2008, representatives of the California Department of Toxic
5 Substances Control ("DTSC") and the Los Angeles District Attorney's Office executed a
6 search warrant ("Search Warrant") at the SA Recycling facilities located on Terminal
7 Island in Los Angeles and in Anaheim, California. The Search Warrant was issued based
8 on allegations of violations of Chapter 6.5 of Division 20 of the Health and Safety Code
9 and Chapter 3 of Part 4 of Division 26 of the Health and Safety Code.

10 During the searches, law enforcement representatives took samples of various
11 materials and seized documents and records, including privileged documents and records.
12 Following the execution of the Search Warrant, representatives of SA Recycling
13 cooperated with the District Attorney related to the matters resolved by this Consent
14 Agreement. SA Recycling has worked proactively to design a new air pollution control
15 system ("APCS") for the Terminal Island facility that significantly reduces air emissions
16 from the facility's auto shredding operations. SA Recycling represents that it intends to
17 work closely with state and local regulators to address compliance issues related to its
18 operations.

19 Concurrent with the filing of the Complaint in this matter, the People and
20 Defendants are filing this Stipulation for Entry of Final Judgment on Consent. The People
21 and Defendants have agreed to settle this matter without litigation pursuant to the terms of
22 this First Amended Consent Judgment for purposes of furthering the public interest.

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FINAL JUDGMENT ON CONSENT PURSUANT TO STIPULATION

1. JURISDICTION

The Superior Court of California, County of Los Angeles, has subject matter jurisdiction of the matters alleged in this action and personal jurisdiction over the parties hereto. Defendants waive their rights to a hearing and appeal in this matter.

2. SETTLEMENT OF DISPUTED CLAIMS

The People and Defendants enter into this First Amended Consent Judgment pursuant to a compromise and settlement of disputed claims for purposes of furthering the public interest. The People believe that the resolution embodied in this First Amended Consent Judgment is fair and reasonable and fulfills the People's enforcement objectives; that except as provided in this First Amended Consent Judgment, no further action is warranted concerning the allegations contained in the Complaint; and that entry of this First Amended Consent Judgment is in the best interest of the public. Defendants agree that this First Amended Consent Judgment is a fair and reasonable resolution of the matters alleged in the Search Warrant and the Complaint. This First Amended Consent Judgment is not an admission by Defendants regarding any issue of law or fact in this action or of any violation of law, as alleged in the Search Warrant or the Complaint.

3. SETTLEMENT TERMS AND COSTS

(a) As set forth in Section 4, SA Recycling shall pay a total of \$433,640 for reimbursement of agency investigatory costs, to be allocated and paid as set forth herein. SA Recycling shall be responsible for distribution of the payments required under this First Amended Consent Judgment to the organizations specified to receive funding in Section 4. In the event that payment is not accepted by any of the identified recipients or dispersing organizations identified in Sections 4(d) through (l), an alternative payment shall be shall be determined by subsequent written agreement between SA Recycling and the Los Angeles County District Attorney's Office.

1 (b) Within one year after entry of the Court's order approving of this
2 First Amended Consent Judgment, SA Recycling agrees to install an APCS to control
3 emissions from the hammer mill shredder at its Terminal Island facility for a total cost,
4 including monies identified to the People as already spent since August 2008, of not less
5 than \$1,700,000.00. The APCS shall be designed to have a control efficiency of no less
6 than 95% for PM10 and shall include a regenerative thermal oxidizer (RTO) approved by
7 the South Coast Air Quality Management District (District).

8 (c) The cost for the construction and installation of the APCS at the
9 Terminal Island facility described in Section 3 (b) shall be verified by documentation
10 submitted to the Los Angeles County District Attorney's Office within 30 days of the
11 issuance of a permit-to-operate for the APCS. If the expenditures for the equipment are
12 less than 90% of \$1,700,000.00, the entire difference between the total amount of the
13 expenditures and \$1,700,000.00 shall be paid in civil penalties to the Los Angeles County
14 District Attorney's Office at that time.

15 4. SETTLEMENT PAYMENT AND REIMBURSEMENT OF COSTS OF
16 INVESTIGATION AND ENFORCEMENT

17 Within thirty (30) calendar days of entry of the Court's Order approving of this First
18 Amended Consent Judgment, SA Recycling, on behalf of itself and Sims, shall pay the
19 following:

20 (a) Two Hundred and Forty Thousand Dollars (\$240,000.00) as civil
21 penalties for the violations alleged in the Complaint. Payment shall be made to the Los
22 Angeles County District Attorney's Office. The check shall identify the funds as civil
23 penalties and will include the case number;

24 (b) A total of \$20,000 as reimbursement to the Los Angeles District
25 Attorney's Office, for the costs of the investigation related to this matter and the allegations
26 contained in the Complaint;

27 (c) A total of \$ 413,640 as reimbursement to the DTSC for the costs
28 of the investigation related to this matter and the allegations contained in the Complaint.

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1 Payment shall be made to: Cashier, Accounting, Department of Toxic Substances Control,
2 P.O. Box 806, Sacramento CA 95812-0806. The check shall bear on its face the Case
3 Number 913450 and shall identify the funds as reimbursement of investigatory costs;

4 (d) A total of \$15,000 for the purchase and maintenance of
5 enforcement tools such as video surveillance, tracking, location, or other similar devices
6 for the DTSC Office of Criminal Investigations. Payment shall be made to: Cashier,
7 Accounting, Department of Toxic Substances Control, P.O. Box 806, Sacramento CA
8 95812-0806. The check shall bear on its face the Case Number 913450 and shall identify
9 the purpose of the funds.

10 (e) A sum of \$100,000 to the College of Engineering at the
11 University of California at Davis to support aerosol studies performed by the DELTA
12 Group;

13 (f) A total of \$75,000 for projects sponsored by the Coalition For A
14 Safe Environment that are approved by DTSC. Funding shall be provided to the DTSC to
15 be disbursed to the Coalition For A Safe Environment for projects approved by DTSC.
16 Payment shall be made to: Cashier, Accounting, Department of Toxic Substances Control,
17 P.O. Box 806, Sacramento CA 95812-0806. The check shall bear on its face the Case
18 Number 913450 and shall identify the funds as dedicated for disbursement to the Coalition
19 For A Safe Environment pursuant to this settlement;

20 (g) A total of \$165,000 to assist the marina owners/operators of the
21 eleven marinas in the Wilmington District of the Port of Los Angeles (\$15,000 per
22 marina) to target water and sediment pollution sources, as identified in the Port of Los
23 Angeles and the Port of Long Beach Water Resources Action Plan. Funding shall be
24 provided to the Port of Los Angeles to be disbursed to individual marinas for appropriate
25 projects to reduce water pollution ;

26 (h) A total of \$50,000 to the Port of Los Angeles for a "skimmer
27 program" to clean trash in the Los Angeles port waters;

28 (i) A total of \$20,000 to Heal the Bay;

- 1 (j) A total of \$20,000 to the Marine Mammal Care Center;
2 (k) A total of \$25,000 to Santa Monica Baykeeper; and
3 (l) A total of \$25,000 to Orange County Coastkeeper.

4 5. ADDITIONAL COMMITMENTS BY SA RECYCLING

5 (a) SA Recycling also agrees that within ninety (90) calendar days
6 after entry of the Court's order approving of this First Amended Consent Judgment, it will
7 purchase two Thermo Scientific Niton XL2 Series x-ray fluorescence (XRF) analyzers or
8 equivalent models and deliver one each to the Los Angeles County Fire Department Health
9 HAZMAT Division, c/o Fernando Florez, Supervising Haz-Mat Specialist, Investigations
10 Unit, and the Los Angeles District Attorney, Consumer Protection Division, Environmental
11 Law Section, c/o District Attorney Bureau of Investigation. The cost for the XRF analyzers
12 shall be verified by documentation submitted to the Los Angeles County District
13 Attorney's Office at the time of the delivery of the XRF analyzer. If the expenditure for the
14 XRF analyzers is less than 90% of \$60,000, the difference between the total amount of the
15 expenditure and \$60,000 shall be paid in civil penalties to the Los Angeles County District
16 Attorney's Office at that time.

17 (b) SA Recycling also agrees that within ninety (90) calendar days
18 after entry of the Court's order approving of this First Amended Consent Judgment, it will
19 purchase and deliver a White's XLT Metal Detector to the Los Angeles County Fire
20 Department, Health HAZMAT Division. The cost of which is approximately \$1,175.

21 (c) SA Recycling also agrees that pursuant to the schedule approved
22 by the South Coast Air Quality Management District, it will install an APCS at the SA
23 Recycling facility located in Anaheim, California designed to have control efficiency of no
24 less than 95% for PM10 and shall include an RTO approved by the District.

25 (d) SA Recycling also agrees that, within 1 year after entry of the
26 Court's order approving of this First Amended Consent Judgment, it will install an APCS
27 at the SA Recycling facility located in Kern County, California designed to have a control
28 efficiency of no less than 95% for PM10.

1 6. SCHEDULE FOR COMPLIANCE

2 SA Recycling agrees to certify the air pollution control equipment specified Section
3 3 (b) at its Terminal Island facility as follows:

4 (a) Submit written notice of the source test of the APCS to the District
5 Engineer at least 14 days prior to the source test date so that an observer from the District
6 may be present.

7 (b) Conduct the source test in accordance with the conditions set forth in
8 the permit-to-construct issued by the District, unless otherwise approved in writing by the
9 District.

10 (c) Submit two complete copies of the source test report to the District
11 Engineer and a copy to Deputy District Attorney Daniel Wright within sixty (60) days after
12 the source test date.

13 7. RETURN OF ALL DOCUMENTS

14 The People, including DTSC, shall return all documents and records, including
15 electronic documents and records, seized during the August 20, 2008 execution of the
16 search warrant at SA Recycling facilities located at Terminal Island in Los Angeles and
17 Anaheim, California within sixty (60) calendar days after entry of the Court's order
18 approving of this First Amended Consent Judgment.

19 8. PERMANENT INJUNCTION

20 (a) Pursuant to Business and Professions Code section 17203, and the
21 Court's equitable powers, Defendant SA Recycling, LLC shall be permanently enjoined
22 from operating the hammer mill mega-shredder shredder at the Terminal Island facility
23 without fully functioning Air Pollution Control System operated in compliance with the
24 conditions of the South Coast Air Quality Management District permit or other written
25 authorization issued by the District. Failure to comply with this Final Judgment and the
26 specific additional injunctive provisions may subject Defendant SA Recycling, LLC to
27 sanctions, including but not limited to contempt and additional penalties in this action as
28 well as any separate enforcement action that may be brought.

1 (b) The injunctive provisions contained in this First Amended Consent
2 Judgment are applicable to Defendant SA Recycling and its successors or assignees,
3 officers, directors, employees, representatives, or agents acting by, through, under, or on
4 behalf of Defendant, with actual or constructive knowledge of this Stipulation and the First
5 Amended Consent Judgment. Any alleged violation of the Permanent Injunction and First
6 Amended Consent Judgment shall be considered separate and in addition to, and not a bar
7 to, any violation of California statutory or regulatory requirements and to any other
8 remedies or sanctions provided by statute, ordinance, or regulation.

9 9. MATTERS COVERED BY THIS FIRST AMENDED CONSENT
10 JUDGMENT

11 (a) This First Amended Consent Judgment is a final and binding
12 resolution and settlement of all "Covered Matters" against SA Recycling or Sims and each
13 Defendant's respective successors, heirs, assigns, officers, directors, employees,
14 representatives and agents. As used in this First Amended Consent Judgment, Covered
15 Matters or Covered Matter means any claim or allegation in the Complaint. The People
16 agree not to pursue any further claims against the Defendants, or either of them, for any
17 Covered Matter. This Section does not limit the ability of the People to enforce this First
18 Amended Consent Judgment.

19 (b) Any claim, violation, or cause of action that is not a Covered Matter
20 is a "Reserved Claim." Reserved Claims include, without limitation, any unknown
21 violation, any violation that occurs after February 25, 2011. The Parties reserve the right to
22 pursue any Reserved Claim and to defend against any Reserved Claim.

23 (c) Any claims or causes of action against Defendants for performance
24 of cleanup, corrective action, or response action for any actual past or future releases, spills,
25 or disposals of hazardous waste or hazardous substances that were caused or contributed to
26 by Defendants are not Covered Matters.

1 (d) In any subsequent action that may be brought by the People based on
2 any Reserved Claim, Defendants agree that it will not assert that failing to pursue any
3 Reserved Claim as part of this action constitutes claim-splitting.

4 10. PEOPLE ARE NOT LIABLE

5 The Defendants covenant not to sue or pursue any civil or administrative claims
6 against the People or agencies of the County of Los Angeles or State of California, or their
7 officers, employees, representatives, agents or attorneys arising out of or related to any
8 Covered Matter, except for the purpose of enforcing or responding to obligations under this
9 First Amended Consent Judgment.

10 11. LEGAL OBLIGATIONS

11 Nothing in this First Amended Consent Judgment relieves Defendant SA Recycling
12 from the obligation to obtain all necessary permits, entitlements and authorizations, or from
13 any obligations it has under law, statute, regulation or ordinance, permitting authority or
14 other authority. Nothing in this First Amended Consent Judgment shall excuse Defendant
15 SA Recycling from meeting any more stringent requirements effected by changes in law,
16 statutes, regulations or ordinances. Where SA Recycling's obligations under this First
17 Amended Consent Judgment require it to obtain additional permits, entitlements or
18 authorizations, SA Recycling shall exercise due diligence in obtaining such permits,
19 entitlements or authorizations.

20 12. INTERPRETATION

21 This Final Judgment was drafted equally by all Parties. The Parties agree that the
22 rule of construction holding that ambiguity is construed against the drafting party shall not
23 apply to the interpretation of this Final Judgment.

24 Pursuant to Evidence Code sections 1119-23, the parties specifically agree that: (1)
25 this settlement agreement is admissible as evidence and subject to disclosure in
26 enforcement proceedings; (2) this settlement agreement is binding and enforceable; (3) all
27 of the material terms of the settlement are set forth herein; (4) this agreement is enforceable
28 under C.C.P. section 664.6, and the court, upon motion of either party, may enter judgment

1 pursuant to the terms hereof; (5) neither party shall oppose a motion under C.C.P. section
2 664.6 to enter judgment pursuant to the terms of this settlement agreement on the ground
3 that this agreement is confidential or otherwise privileged; and (6) all parties specifically
4 waive the mediation privilege and any other confidentiality privilege that may apply to this
5 agreement for purposes of its enforcement in a court of law; (7) the Court retains
6 jurisdiction over the Parties to enforce this Judgment until performance in full of its terms.

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8 13. COUNTERPART SIGNATURES

9 This Stipulation may be executed by the Parties in counterpart, and when a copy is
10 signed by an authorized representative of each Party, the Stipulation shall be effective as if
11 a single document were signed by all Parties.

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STEVE COOLEY, DISTRICT ATTORNEY

Dated:

By: *Daniel J. Wright*
Daniel J. Wright

8/16/2011

Deputy District Attorney

SA RECYCLING, LLC.

Dated:

By: _____

George Adams, President

SA Recycling, LLC.

SIMSMETAL WEST LLC

Dated:

By: _____

Scott Miller, Assistant Secretary

Simsmetal West LLC

PAUL HASTINGS LLP

Dated:

By: *Robert P. Hoffman*
Robert P. Hoffman, Esq.

8/15/11

Attorney for SA Recycling, LLC and

Simsmetal West LLC

IT IS SO ORDERED:

Dated: _____, 2011

Judge of the Superior Court
Los Angeles County Superior Court

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STEVE COOLEY, DISTRICT ATTORNEY

Dated:

By: _____

Daniel J. Wright

Deputy District Attorney

SA RECYCLING, LLC

Dated:

By: _____

9/15/11

George Adams, President

SA Recycling, LLC.

SIMSMETAL WEST LLC

Dated:

By: _____

Scott Miller, Assistant Secretary

Simsmetal West LLC

PAUL HASTINGS LLP

Dated:

By: _____

Robert P. Hoffman, Esq.

Attorney for SA Recycling, LLC and

Simsmetal West LLC

IT IS SO ORDERED:

Dated: _____, 2011

Judge of the Superior Court
Los Angeles County Superior Court

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STEVE COOLEY, DISTRICT ATTORNEY

Dated:

By: _____

Daniel J. Wright
Deputy District Attorney

SA RECYCLING, LLC.

Dated:

By: _____

George Adams, President
SA Recycling, LLC.

SIMSMETAL WEST LLC

Dated:

By:  _____

8/15/11

Scott Miller, Assistant Secretary
Simsmetal West LLC

PAUL HASTINGS LLP

Dated:

By: _____

Robert P. Hoffman, Esq.
Attorney for SA Recycling, LLC and
Simsmetal West LLC

IT IS SO ORDERED:

Dated: _____, 2011

Judge of the Superior Court
Los Angeles County Superior Court