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LEGAL PROCESS #7

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

**People of the State of California ex rel.
Attorney General Kamala D. Harris in her
independent capacity, and the State Water
Resources Control Board,**

Plaintiffs,

v.

E2C Remediation, LLC, et al.,

Defendants.

07AS04626

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO ENFORCE JUDGMENT**

Date: September 26, 2012
Time: 9:00 a.m.
Dept.: 54, Hon. Shelleyanne Chang

Action Filed: October 11, 2007
Judgment Entered: February 26, 2010

1 **INTRODUCTION**

2 The State Water Resources Control Board (State Water Board) operates the Underground
3 Storage Tank Cleanup Fund (Fund), in order to ensure the rapid cleanup of spills and leaks from
4 underground petroleum storage tanks. (Health & Saf. Code, § 25299.50.) In 2007, the State
5 Water Board sued defendants Environmental Engineering, Consulting and Remediation, Inc., aka
6 E2C Remediation, Philip Goalwin, and Debbie Goalwin (E2C Defendants), among others, for
7 illegal and fraudulent misrepresentations in connection with reimbursements the E2C Defendants
8 sought and obtained from the Fund.

9 On February 26, 2010, this Court entered a stipulated judgment in this matter against the
10 E2C Defendants, among others. (A true and correct copy of the judgment is attached as Exhibit
11 A to the Ramsey-Lewis Declaration filed in support of this motion.) The judgment includes a
12 civil liability of \$150,000 against the E2C Defendants pursuant to Water Code section 13350,
13 stayed for a period of three years, pending compliance with certain injunctive relief terms of the
14 judgment. (Ex. A, ¶¶ 3.e and 4.) One of the injunctive relief terms requires the E2C Defendants
15 to “Not submit to the Fund or cause to be submitted to the Fund any claim or request for
16 reimbursement containing false or misleading information.” (Ex. A, ¶ 4.a.6.) The purpose of the
17 stayed \$150,000 penalty was to strongly discourage the E2C Defendants from continuing to
18 engage in fraudulent billing practices when dealing with the Fund.

19 Since entry of judgment, the E2C Defendants have on several occasions violated the
20 injunctive relief terms of the judgment by submitted false and/or misleading claims to the Fund,
21 and the full \$150,000 in stayed civil liability is now due and owing to the Fund. The State Water
22 Board requests that the Court grant this motion and enter an order modifying the judgment to
23 require the immediate payment of \$150,000 as a civil liability against the E2C Defendants.

24 **FACTUAL BACKGROUND**

25 The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 (Act) (Health
26 & Saf. Code § 25299.10 et seq.) was enacted in part to “help ensure an efficient petroleum
27 underground storage tank cleanup program that adequately protects public health and safety and
28 the environment and provides for the rapid distribution of cleanup funds.” (Health & Saf. Code, §

1 25299.10, subd. (b)(1).) The Act established the Fund within the state treasury. (Health & Saf.
2 Code, § 25299.50.) Owners of underground storage tanks that contain petroleum pay money to
3 the Fund each year. (Health & Saf. Code, § 25299.41.) Owners who pay into the Fund and
4 comply with its requirements may make claims for reimbursement from the Fund for the costs of
5 corrective action associated with cleanup of releases of petroleum from underground storage
6 tanks. The Fund only reimburses claims for corrective work that has been approved by the
7 Regional Water Quality Control Board (Regional Water Board). (Cal. Code Regs., tit. 23, §
8 2812.2, subd. (b).) A “claim” within the Act means “a submittal to the fund for the
9 reimbursement of costs due to an occurrence. A claim consists of several documents, including,
10 but not limited to, the fund application, reimbursement requests, and verification documents.”
11 (Health & Saf. Code, § 25299.13; see also Cal. Code Regs., tit. 23, § 2814, subd. (d).) Owners
12 who make claims on the Fund are called “claimants.” (Cal. Code Regs., tit. 23, § 2804.)

13 The E2C Defendants operate an environmental remediation contracting business. They
14 provide environmental cleanup services to gas stations and other similar sites with environmental
15 contamination problems. After performing approved cleanup activities, the E2C Defendants
16 prepare and submit claims for reimbursement to the Fund on behalf of owners of contaminated
17 sites. The Fund processes such claims and provides reimbursement directly to the owners.

18 The Fund sued the E2C Defendants and numerous underground tank owners in 2007 for
19 alleged misrepresentations in claims to the Fund. The suit alleged that the E2C Defendants
20 submitted to the fund claims that were double-billings, claims for employee time that had not
21 been incurred, and claims that were based on altered invoices, among other charges. After
22 lengthy litigation, the parties reached a settlement, resulting in the February 26, 2010, judgment
23 entered in this matter. (Ex. A.)

24 The judgment contains a provision for a suspended penalty payment by the E2C Defendants
25 to the State Water Board in the total amount of \$250,000. (Ex. A, ¶ 3.e.) This penalty is stayed
26 for a period of three years, pending compliance with the judgment’s terms by the E2C
27 Defendants. (*Ibid.*) The judgment further provides that “\$150,000 of this stayed portion of the
28 judgment shall immediately be due and owing in this case if the E2C Defendants violate any of

1 the provisions of Paragraph 4, below.” (*Ibid.*)¹ Paragraph 4 of the judgment contains various
2 injunctive relief terms, including the requirement that the E2C Defendants “Not submit to the
3 Fund or cause to be submitted to the Fund any claim or request for reimbursement containing
4 false or misleading information.” (*Id.* at ¶ 4.a.6.) The judgment specifies that submission of false
5 or misleading information to the Fund is an uncorrectable violation and “the suspended penalty
6 shall be immediately due.” (*Id.* at ¶ 4.b.)

7 VIOLATIONS BY THE E2C DEFENDANTS

8 The E2C Defendants have submitted several claims to the Fund containing “false or
9 misleading information” requiring that the \$150,000 stayed penalty be imposed in full.

10 I. FALSE AND MISLEADING CLAIM FOR REIMBURSEMENT OF COSTS AT CHICO SITE.

11 The E2C Defendants performed site remediation work at the Jesse M. Lange Distributing,
12 Inc. site in Chico, California, and submitted claims to the Fund for reimbursement of such work.
13 (Ramsey-Lewis Declaration, ¶ 3.) In September 2000, the Fund determined that 80% of the
14 contamination at the Chico site is attributable to a contamination source covered by the Fund.
15 The remaining 20% of costs are not eligible for reimbursement from the Fund. (Ramsey-Lewis
16 Declaration, ¶ 3, and Ex. B.) This determination has never been challenged and is not subject to
17 challenge at this time.

18 In 2008, the E2C Defendants submitted a claim for reimbursement (Reimbursement Request
19 No. 15) to the Fund relating to the Chico site, for \$35,469.45, including subcontractor invoice
20 number 161263 for well drilling. (Ramsey-Lewis Declaration, ¶ 3, and Ex. C.) In 2009, after
21 applying the 80% eligibility determination to the claim, the Fund paid all eligible well drilling
22 costs for subcontractor invoice number 161263 requested in Reimbursement Request No. 15 in
23 the amount of \$35,469.45 (30,843.00 + 15% mark-up), less the 20% of the subcontractor costs
24 (\$6,168.60) were ineligible for reimbursement. (Ramsey-Lewis Declaration, ¶ 3, and Ex. D.)

25 On June 8, 2010, after entry of the judgment in this matter, the Fund received from the E2C
26 Defendants Reimbursement Request No. 16 for the Chico site, dated May 14, 2010, in the total

27 ¹ The remaining \$100,000 in stayed penalties pertain to other potential violations of the
28 stipulated judgment, so-called correctable violations, not at issue here.

1 amount of \$216,985.72, which included \$6,168.60 of subcontractor costs for the same 2008
2 invoice number 161263 which had been previously disallowed. (Ramsey-Lewis Declaration, ¶ 3,
3 and Ex. E.) The E2C Defendants' resubmission of a previously disallowed claim for \$6,168.60
4 was false and misleading and an uncorrectable violation of paragraph 4.a.6 of the judgment,
5 triggering the \$150,000 stayed penalty.

6
7 **II. FALSE AND MISLEADING CLAIM FOR OPERATION OF SOIL TREATMENT SYSTEM AT
8 REEDLEY SITE.**

8 The E2C Defendants performed remediation services for the Ben W. Nachtigall Trust B site
9 (a.k.a. "Robert V. Jensen site" or "Chevron Bulk Plant") in Reedley, California, and sought
10 reimbursement from the Fund for such services. (Ramsey-Lewis Declaration, ¶ 4.) In 2008, the
11 E2C Defendants sought and obtained approval from the Regional Water Board to conduct a 2 to 5
12 day pilot test for a soil vapor extraction/air sparging system at the Reedley site. (*Ibid.*, and Ex. F.)
13 Instead of conducting the approved 2 to 5 day pilot test, the E2C Defendants operated a soil vapor
14 extraction system at the site for 56 days, from February 16, 2011, through April 12, 2011. Only
15 at the conclusion of the 56 day operation period, did the E2C Defendants conduct the approved
16 pilot test, from April 13 to 15, 2011. (*Ibid.*, and Ex. G.) On July 1, 2011, the Fund received
17 Reimbursement Request No. 5 for the Reedley site, with claims for costs of \$7,620.07 associated
18 with the unapproved operation of the soil vapor extraction system for 56 days. (*Ibid.*, and Ex. H.)

19 Operation of the soil vapor extraction system prior to the pilot test was not only unapproved,
20 but also not conducted according to E2C's workplan. E2C made it appear as if the soil vapor
21 extraction system was effective at removing contamination. However, the efficacy of the system
22 could only be established with a pilot test and associated testing conducted as specified in E2C's
23 workplan, and as approved by the Regional Water Board. (Ramsey-Lewis Declaration, ¶ 4.)

24 Additionally, the E2C Defendants attempted to cover up the improper operation of the soil
25 vapor extraction system. First, the hour meter on the soil vapor extraction unit was inoperable,
26 then they hid the hour meter by covering it up. (Ramsey-Lewis Declaration, ¶ 4.) Additionally,
27 the E2C Defendants sought the approval of the Regional Water Board for the soil vapor
28 extraction system after the work was performed. (*Ibid.*)

1 The Fund only reimburses corrective action work that has been approved by the Regional
2 Water Board. (Cal. Code Regs., tit. 23, § 2812.2, subd. (b).) The Regional Water Board did not
3 approve or authorize the 56 days of operation of the soil vapor extraction system, and all costs
4 associated with the unauthorized operation of the system totaling at least \$7,620.07 were
5 ineligible for reimbursement from the Fund. In Reimbursement Request No. 5 for the Reedley
6 site, the E2C Defendants mixed costs associated with approved and unapproved corrective action
7 work to mislead the Fund. (Ramsey-Lewis Declaration, ¶ 4.) The E2C Defendants' submission
8 of \$7,620.07 in unapproved costs for 56 days of unauthorized operation of the soil vapor
9 extraction system in Reedley was misleading and an uncorrectable violation of paragraph 4.a.6 of
10 the judgment, triggering the \$150,000 stayed penalty.

11 **III. DOUBLE BILLING OF SOUTHERN CALIFORNIA EDISON INVOICES FOR TULARE SITE.**

12 The E2C Defendants performed remediation services for the C.P. Phelps, Inc. site in Tulare,
13 California, and sought reimbursement from the Fund for such services. (Ramsey-Lewis
14 Declaration, ¶ 5.) On August 10, 2010, the Fund received Reimbursement Request No. 11 from
15 the E2C Defendants, which included a request for reimbursement of \$1,342.53 (\$1,167.42 plus a
16 15% markup of \$175.11) for utility services from Southern California Edison for the period May
17 17, 2006, to June 16, 2006. (*Ibid.*, and Ex. I.) Reimbursement Request No. 11 included as
18 supporting documentation an invoice from E2C (no. 6.2.158706) and a corroborating invoice
19 from Southern California Edison dated June 17, 2006. (*Ibid.*) On August 11, 2010, the Fund
20 notified the claimant that the \$1,342.53 claim was eligible for reimbursement. (*Ibid.*, and Ex. J.)

21 On May 11, 2011, the Fund received Reimbursement Request No. 12 from the E2C
22 Defendants, which included a resubmission of \$1,167.42 for utility services from Southern
23 California Edison for the period from May 17, 2006, to June 16, 2006. (Ramsey-Lewis
24 Declaration, ¶ 5, and Ex. K.) Reimbursement Request No. 12 did not include an invoice number
25 from Southern California Edison or E2C. (*Ibid.*) The Fund is not authorized to issue double
26 payments for the same claim. (Cal. Code Regs., tit. 23, § 2812.3.) Re-submission of the same
27 claim for double payment is false, misleading, and an uncorrectable violation of paragraph 4.a.6
28 of the judgment, triggering the \$150,000 stayed penalty. Further, the E2C Defendants appear to

1 have attempted to hide the double billing by re-submitting the invoice as an individual line item
2 (i.e., without mark-up) rather than as originally submitted as a subcontractor line item cost (i.e.,
3 with mark-up), in an effort to mislead the State Water Board.

4 **IV. DUPLICATE INVOICE NUMBERS AND DATES FOR CIRCLE K SITE IN BLYTHE.**

5 The E2C Defendants performed remediation services for the Circle K site in Blythe,
6 California, and sought reimbursement from the Fund for such services. (Ramsey-Lewis
7 Declaration, ¶ 6.) On more than one occasion in 2011, E2C submitted different claim amounts
8 for work done on the same day, using the same invoice number. On May 19, 2011, the Fund
9 received Reimbursement Request No. 6 from the E2C Defendants, which included invoices as
10 follows:

11 1.1.194411 February 3, 2011. \$6,648.59

12 3.1.194411 March 3, 2011 \$195.00

13 4.1.194411 April 13, 2011 \$517.50

14 (Ramsey-Lewis Declaration, ¶ 6, and Ex. L.)

15 On August 8, 2011, the Fund received Reimbursement Request No. 7 from the E2C
16 Defendants, which sought reimbursement for work done on the same days listed in Request No.
17 6, using the same invoice numbers, but seeking different amounts:

18 1.1.194411 February 3, 2011 \$122.38

19 3.1.194411 March 3, 2011 \$263.00

20 4.1.194411 May 5, 2011 \$320.00

21 (Ramsey-Lewis Declaration, ¶ 6, and Ex. M.)

22 The E2C Defendants also submitted invoices with duplicative invoice numbers and dates
23 (2.1.180511, dated February 21, 2011) in support of claim number 13744. (Ramsey-Lewis
24 Declaration, ¶ 6, and Exs. N and O.)

25 Because the Fund expects unique invoice numbers and dates to track individual expenses,
26 the duplicative invoices appear to represent an attempt to obtain double payment by the E2C
27 Defendants. Submission of double payment claims is false, misleading, and an uncorrectable
28 violation of paragraph 4.a.6 of the judgment, triggering the \$150,000 stayed penalty.

1 **CONCLUSION**

2 The E2C Defendants have repeatedly violated the terms of the judgment in this matter by
3 submitting false and misleading claims for reimbursement to the fund. The \$150,000 stayed
4 penalty is now due and owing. Accordingly, the Fund requests that the Court grant this motion
5 and modify paragraph 3.e of the judgment to state that "The remaining \$150,000.00 of this stayed
6 portion of the judgment is immediately due and owing in this case."

7 Dated: August 21, 2012

Respectfully Submitted,

8 KAMALA D. HARRIS
9 Attorney General of California
10 DENISE FERKICH HOFFMAN
11 Supervising Deputy Attorney General



12 RUSSELL B. HILDRETH
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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: *People v. E2C Remediation, et al.*

Case No.: **Sacramento County Superior Court Case No. 07AS04626**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

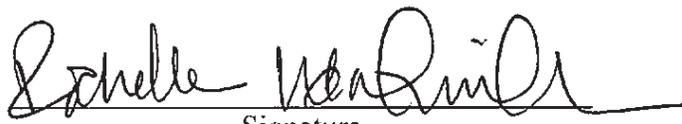
On August 2, 2012, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO ENFORCE JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with the **GOLDEN STATE OVERNIGHT SERVICE**, addressed as follows:

Dion N. Cominos Attorneys for Defendants Philip Goalwin, Debbie Goalwin,
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 21, 2012, at Sacramento, California.

Rochelle Uda-Quillen
Declarant



Signature