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Telephone: (209) 468-2400
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IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN JOAQUIN

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

SHIRLEY ENVIRONMENTAL TESTING, LLC, a Wisconsin Limited Liability Corporation,

Defendant.

Case No. CV 032518

CONSENT AGREEMENT AND STIPULATION FOR ENTRY OF FINAL JUDGMENT; (PROPOSED) ORDER

WHEREAS, the Plaintiff, People of the State of California, has engaged in settlement negotiations with Shirley Environmental testing, LLC ("Settling Defendant"). Plaintiff and the

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MAY 16 2007

ROSA JUNQUEIRO, Clerk

By KATHY VALONE
Deputy Clerk

1 Settling Defendant (hereinafter collectively referred to as "the Parties") have agreed to settle the
2 investigation without litigation and by lodging this settlement simultaneously with a First
3 Amended Complaint (hereinafter "Complaint"). Plaintiff believes that the resolution of the
4 violations alleged in the Complaint is fair and reasonable and fulfills the Plaintiff's enforcement
5 objectives, that no further action is warranted concerning the specific violations alleged in the
6 Complaint except as provided pursuant to the Consent Judgment, and that this Consent Judgment
7 is in the best interest of the general public.
8

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

10 **1. INTRODUCTION.**

11 In this action, Plaintiff filed a civil complaint (the "Complaint") in San Joaquin County
12 Superior Court against Settling Defendant. The Parties settle this action on the terms set forth in
13 this Consent Agreement and Stipulation for Entry of Final Judgment (hereinafter "Consent
14 Judgment"). A true and correct copy of the Complaint is attached as Exhibit "A".
15

16 **2. JURISDICTION.**

17 The Plaintiff and Settling Defendant agree that the Superior Court of California, County of
18 San Joaquin has subject matter jurisdiction over the matters alleged in this action and personal
19 jurisdiction over the parties to this Consent Judgment.
20

21 **3. SETTLEMENT OF DISPUTED CLAIMS.**

22 The Parties enter into this Consent Judgment pursuant to a compromise and settlement of
23 disputed claims set forth in the Complaint for the purpose of furthering the public interest.
24 Settling Defendant waives its right to a hearing on any matter covered by the Complaint prior to
25 the entry of this Consent Judgment.
26

27 **4. CIVIL PENALTIES AND COSTS OF INVESTIGATION.**

28 **4.1 Amount of Penalty Payment:** Settling Defendant shall be liable for a total payment
of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) which will be
allocated as follows:

1 a. SIXTY THOUSAND DOLLARS (\$60,000.00) to the State Water Resources
2 Control Board ("SWRCB"). The payments shall be made pursuant to the schedule
3 set forth in Exhibit B by cashiers or certified check payable to the STATE
4 WATER RESOURCES CONTROL BOARD and shall be sent to:

5 Office of the District Attorney, San Joaquin County
6 Attention: David J. Irey, Supervising Deputy District Attorney
7 San Joaquin County Courthouse, Room 202
8 P.O. Box 990
9 Stockton, California 95201

10 The State Water Resources Control Board shall deposit the funds provided by
11 this Consent Judgment into the account provided for by Health and Safety Code
12 section 25284.4(h).

13 b. THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500.00) to the
14 Treasurer of San Joaquin County. The payments shall be made pursuant to the
15 schedule set forth in Exhibit B by cashiers or certified check payable to the SAN
16 JOAQUIN DISTRICT ATTORNEY'S OFFICE and shall be sent to:

17 Office of the District Attorney, San Joaquin County
18 Attention: David J. Irey, Supervising Deputy District Attorney
19 San Joaquin County Courthouse, Room 202
20 P.O. Box 990
21 Stockton, California 95201

22 c. THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500.00) to the
23 California Department of Justice. The payments shall be made pursuant to the
24 schedule set forth in Exhibit B by cashiers or certified check payable to the
25 CALIFORNIA DEPARTMENT OF JUSTICE and shall be sent to:

26 California Department of Justice
27 Accounting Section - Cashiering Unit
28 1300 'T' Street, Suite 810
P.O. Box 944255
Sacramento, CA 94244-2550

4.2 Amount of Payment for Costs of Investigation and Enforcement: Settling
Defendant shall reimburse Plaintiff its costs of investigation and enforcement in the total amount

1 have been asserted based on the allegations in the Complaint against the Settling Defendant, and
2 its officers, directors, partners, employees, representatives, and agents.

3 6.2 The provisions of Paragraph 6.1 are effective as of the date of the entry of the
4 Consent Judgment but the continuing effect of such provisions is expressly conditioned on
5 Settling Defendant's full payment of the civil penalty, costs and other payments specified in
6 Paragraph 4 of the Consent Judgment.

7 6.3 Paragraphs 6.1 and 6.2 have no effect on the ability of Plaintiff to enforce the
8 terms of the Consent Judgment. Moreover, this Court retains exclusive jurisdiction to address
9 any future claims for injunctive relief, penalty assessments, or other relief for the covered
10 matters against Settling Defendant arising from or related to any alleged or actual violations of
11 the Consent Judgment.
12

13 6.4 The matter which are addressed as set forth in Paragraph 6.1 are a "Covered
14 Matter."

15 6.5 Any violations of law, statute, regulation or ordinance, which are based on facts
16 not expressly addressed as a Covered Matter are not resolved, settled, or covered by this Consent
17 Judgment.
18

19 6.6 Settling Defendant covenants not to sue or pursue any civil or administrative
20 claims against Plaintiff or agencies of the State of California or the County of San Joaquin
21 arising out of or related to the Covered Matters except for the purpose of enforcing Plaintiff's
22 obligations under this Consent Judgment.
23

24 6.7 Except as provided by this Consent Judgment, the Parties reserve the right to
25 pursue any claims not covered by this Consent Judgment and any defense to such reserved
26 claims.
27

1 7. EFFECT OF JUDGMENT.

2 Except as expressly provided in this Consent Judgment, nothing in this Consent Judgment
3 is intended nor shall it be construed to preclude Plaintiff or any state agency, department, board
4 or entity or any local agency from exercising its authority under any law, statute, or regulation
5 with regard to any service provided by Settling Defendant.

6 8. PLAINTIFF IS NOT LIABLE.

7 Plaintiff shall not be liable for any injury or damage to persons or property resulting from
8 acts or omissions by Settling Defendant, its directors, officers, employees, agents,
9 representatives or contractors in carrying out activities pursuant to this Consent Judgment, not
10 shall the Plaintiff be held as a party to or guarantor of any contract entered into by Settling
11 Defendant, its directors, officers, employees, agents, representatives or contractors in carrying
12 out activities required pursuant to this Consent Judgment.
13

14 9. INTERPRETATION.

15 This Consent Judgment shall be deemed to have been drafted equally by all parties hereto.
16 Accordingly, the Parties hereby agree that any and all rules of construction to the effect that
17 ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning
18 the terms, meaning, or interpretation of this Consent Judgment.
19

20 10. NO WAIVER OF RIGHT TO ENFORCE.

21 The failure of Plaintiff to enforce any provision of this Consent Judgment shall in no way
22 be deemed a waiver of such provision, or in any way affect the validity of this Consent
23 Judgment. The failure of the Plaintiff to enforce any such provision shall not preclude it from
24 later enforcing the same or any other provision of this Consent Judgment. No oral advice,
25 guidance, suggestions or comments by employees or officials of any Party regarding matters
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1 covered in this Consent Judgment shall be construed to relieve any Party of its obligations
2 required by this Consent Judgment.

3 **11. REGULATORY CHANGES.**

4 Nothing in this Consent Judgment shall excuse Settling Defendant from meeting any more
5 stringent requirements which may be imposed hereafter by changes in applicable and legally
6 binding legislation or regulations.

7
8 **12. APPLICATION OF CONSENT JUDGMENT.**

9 This Consent Judgment shall apply to and be binding upon the Plaintiff, Settling
10 Defendant, and each of them, and the successors or assigns of each of them.

11 **13. AUTHORITY TO ENTER CONSENT JUDGMENT.**

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

15
16 **14. CONTINUING JURISDICTION.**

17 The Court shall retain continuing jurisdiction to enforce the terms of this Consent
18 Judgment.

19
20 **15. PENALTIES FOR NONCOMPLIANCE.**

21 Any Party may, by noticed motion or order to show cause, enforce the terms and
22 conditions contained in this Consent Judgment. Failure to comply with the terms of this Consent
23 Judgment shall subject a party to further relief as provided for by law. Plaintiff may move this
24 court to enjoin Settling Defendant from any violation of any provision of this Consent Judgment
25 and for civil penalties as provided in this Paragraph. Settling Defendant shall be liable for a civil
26 penalty for each material violation of the provisions of the Consent Judgment as provided for by
27
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1 law except that Settling Defendant shall be liable for a stipulated civil penalty of \$2,500 for each
2 day that any of the payments required pursuant to Paragraph 4 is late. The Parties shall meet-
3 and-confer prior to the filing of any motion to assess penalties pursuant to this Paragraph and
4 shall negotiate in good faith in an effort to resolve any penalty assessments pursuant to this
5 Paragraph without judicial intervention.

6 **16. INTEGRATION.**

7 This Consent Judgment constitutes the entire agreement between the parties and may not
8 be amended or supplemented except as provided for in the Consent Judgment.
9

10 **17. MODIFICATION OF CONSENT JUDGMENT.**

11 This Consent Judgment may be modified only upon written consent by the parties hereto
12 and the approval of the court.

13 **18. ENFORCEMENT OF JUDGMENT.**

14 In the event that a Party brings an action to enforce any of the terms of this Consent
15 Judgment, the prevailing party shall be entitled to its reasonable costs of enforcement, including
16 attorney fees and costs; including any costs for expert witnesses or other costs of enforcement.
17

18 **19. SETTLING DEFENDANT'S LITIGATION EXPENSES AND FEES.**

19 Settling Defendant shall pay its own attorney fees, expert witness fees and costs, and all
20 other costs of litigation incurred to date.

21 **20. COUNTERPART SIGNATURES.**

22 This Consent Judgment may be executed by the parties in counterpart, and when a copy is
23

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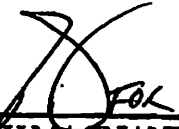
1 signed by an authorized representative of each party, the stipulation shall be effective as if a
2 single document were signed by all parties:

3 **IT IS SO STIPULATED:**

4 **FOR THE PLAINTIFF:**

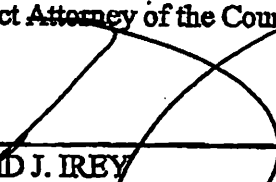
5 Dated: 5/15/07
6

EDMUND G. BROWN JR.
Attorney General of the State of California
TOM GREENE
Chief Assistant Attorney General
THEODORA P. BERGER
Senior Assistant Attorney General

9
10 
11 _____
12 SALLY MAGNANI KNOX
13 Deputy Attorney General
14 Attorneys for Plaintiff, People of the
15 State of California


16
17 Dated: 5/15/07
18

JAMES P. WILLETT
District Attorney of the County of San Joaquin

19
20 
21 _____
22 DAVID J. IRELY
23 Supervising Deputy District Attorney
24 Attorneys for Plaintiff, People of the State of
25 California

26 **FOR THE SETTLING DEFENDANT**

27 Dated: 5-7-07
28



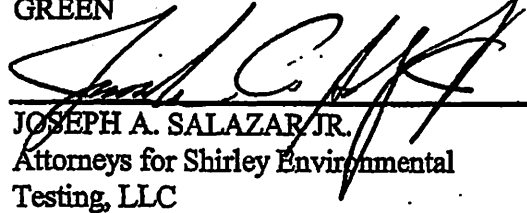
MARK SHIRLEY
President
SHIRLEY ENVIRONMENTAL
TESTING, LLC

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Approved as to Form:

Dated: 5/8/07

MAYALL, HURLEY, KNUTSEN, SMITH &
GREEN



JOSEPH A. SALAZAR, JR.
Attorneys for Shirley Environmental
Testing, LLC

IT IS SO ORDERED,

Dated:

JUDGE OF THE SUPERIOR COURT

EXHIBIT A