

MEMORANDUM FROM:

LAW OFFICES OF THOMAS A. NITTI

1250 Sixth Street, Suite 205
Santa Monica, CA 90401-1637
Tel: (310) 393-1524 Fax: (310) 576-3581

To: John Katangian

From: Thomas A. Nitti

Date: August 31, 2009

Re: People of the State of California v. Key Disposal, Inc.

Enclosed please find COPY/ORIGINAL of: Stipulated Injunction and Order

Please sign and return

**Please sign, have notarized
and return**

**We need your answers to
the enclosed**

For your comments

Please call our office

**Please call our office
for an appointment**

Please review

For your information

Per your request

Other:

ORIGINAL

1 EDMUND G. BROWN JR, Attorney General
of the State of California

EXEMPT FROM FILING FEES
(GOV. CODE § 6103)

2 RICHARD MAGASIN, Supervising Deputy
Attorney General

REC'D

3 MICHAEL W. HUGHES (SBN 242330)
4 NOAH GOLDEN-KRASNER (SBN 217556)

AUG 11 2009

FILED

LOS ANGELES SUPERIOR COURT

5 Deputy Attorneys General
300 South Spring Street, 11th Floor
Los Angeles, California 90013

FILING WINDOW

AUG 20 2009

6 Telephone: (213) 897-2614
Facsimile: (213) 897-2802

7 Attorneys for Plaintiff, the People of the State of
California, *ex rel.*, the California Air Resources
8 Board

JOHN A. CLARKE, CLERK
Jeffrey Charles
BY GEOFFREY CHARLES, DEPUTY

9 LAW OFFICES OF THOMAS A NITTI
THOMAS A NITTI, (SBN 77590)

10 1250 Sixth Street, Suite 205
Santa Monica, CA 90401

11 Telephone: (310) 393-1524
12 Facsimile: (310) 576-3581

13 Attorneys for Defendants

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

17 PEOPLE OF THE STATE OF
18 CALIFORNIA, *ex rel.*, THE CALIFORNIA
AIR RESOURCES BOARD,

Case No. BC 393098

STIPULATED INJUNCTION AND
ORDER

19 Plaintiff,

20 v.

Dept: 24

Assigned to: Hon. Judge Robert L. Hess

21 KEY DISPOSAL, INC., a California
22 corporation; JOHN KATANGIAN, an
23 individual,

24 Defendants.

25
26 Plaintiff, People of the State of California *ex rel.* California Air Resources Board, and
27 Defendants Key Disposal Inc. and John Katangian (collectively "Parties") stipulate as follows:
28

1 WHEREAS, on May 26, 2009, the Parties reached a settlement agreement in the above
2 entitled case;

3 WHEREAS, on May 26, 2009, in Department 24, before the Honorable Judge Robert L.
4 Hess, the Parties stated and agreed to all material terms of the settlement agreement including the
5 injunction on the record (Settlement);

6 WHEREAS, the Parties and Court agreed that the Court will retain jurisdiction over the
7 Parties and their Settlement pursuant to Code of Civil Procedure Section 664.6.

8
9 THEREFORE, IT IS HEREBY STIPULATED THAT:

10 Pursuant to the Parties' Settlement, the Court shall enter an Injunction Order against
11 Defendants upon the following terms:

12 1. On or before September 29, 2009, Defendants shall bring their entire fleet of Solid
13 Waste Collection Vehicles as defined by California Code of Regulations, title 13, section 2021,
14 including any vehicles added to that fleet, which are owned or leased in whole or in part, by any
15 of the Defendants (SWCV Fleet), and their entire fleet of heavy-duty diesel-powered vehicles as
16 defined by California Code of Regulations, title 13, section 2191, including any vehicles added to
17 that fleet, which are owned or leased in whole or in part, by any of the Defendants (PSIP Fleet),
18 into full compliance with:

19 a. California Code of Regulations, title 13, sections 2190 through 2194 (the Periodic
20 Smoke Inspection Program);

21 b. California Code of Regulations, title 13, sections 2020 et seq. (the Solid Waste
22 Collection Vehicle rules).

23 2. Defendants may take any vehicle which is not brought into compliance by September
24 29, 2009, out of service by i) immediately ceasing the use of the vehicle on the streets or
25 highways of the State of California, and ii) sending a written affidavit by facsimile and by mail to
26 the Air Resources Board stating that the vehicle is not and will not be used on the streets or
27 highways of the State of California at any time until the vehicle is brought into compliance with
28

1 the Solid Waste Collection Vehicle rules and the Periodic Smoke Inspection Program, which
2 compliance shall be verified by the Air Resources Board on a mutually agreeable date.

3 3. The Air Resources Board shall inspect the Defendants' SWCV Fleet and PSIP Fleet
4 as described in paragraph 1 above, on a mutually agreeable date on or before September 29, 2009;

5 4. At all times after September 29, 2009, Defendants shall maintain their entire SWCV
6 Fleet and PSIP Fleet in full compliance with:

7 a. California Code of Regulations, title 13, sections 2190 through 2194 (the Periodic
8 Smoke Inspection Program);

9 b. California Code of Regulations, title 13, sections 2020 et seq. (the Solid Waste
10 Collection Vehicle rules).

11 5. If the Air Resources Board believes that any violation of this injunction has taken
12 place, then it or its counsel shall meet and confer with Defendants or Defendants' counsel, in an
13 attempt to resolve any dispute without Court intervention;

14 6. If after the meet and confer takes place, the Air Resources Board believes that a
15 violation of the injunction has not been resolved, then it or its counsel shall give notice by
16 facsimile and by mail to Defendants' counsel that the Defendants shall have five (5) days to cure
17 the violation of the injunction or take the vehicle out of service pursuant to paragraph 2 above
18 (Cure Period);

19 7. If the ARB determines that the violation(s) has not been cured following expiration of
20 the Cure Period, then the Air Resources Board may bring a regularly noticed Motion before this
21 Court to ask the Court to determine what, if any, violation(s) of the injunction has occurred;

22 8. If the Court determines that any violation(s) of the injunction has occurred, then the
23 Air Resources Board shall be entitled immediately to enter the agreed upon Judgment of
24 \$500,000 pursuant to the terms of the Parties' Settlement and to collect upon that Judgment less
25 credit for any monies already received pursuant to the Parties' Settlement;

26 9. If the Air Resources Board determines that any violation(s) of the injunction has
27 occurred, then the Air Resources Board reserves the right to take any and all appropriate action,
28 including, but not limited to revoking the registration(s) of the offending vehicle(s) pursuant to

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Vehicle Code section 4755 and/or bringing a separate action in any court of competent jurisdiction against Defendants for such violations, notwithstanding any other remedy provided herein;

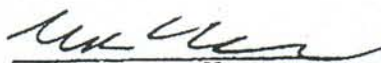
10. The Court shall also have the power to Order any further remedy the Court deems necessary to enforce this Order, including, but not limited to, instituting contempt proceedings.

IT IS SO STIPULATED

Dated: August 10, 2009

Respectfully Submitted,

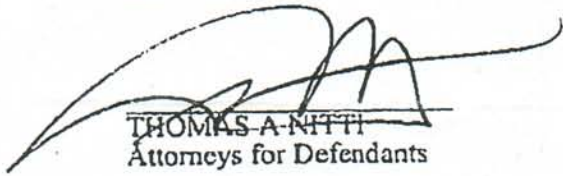
EDMUND G. BROWN JR.
Attorney General of California
RICHARD J. MAGASTIN
Supervising Deputy Attorney General


NOAH GOLDEN-KRASNER
Deputy Attorney General
Attorneys for California Air Resources Board

Dated: August 10, 2009

Respectfully Submitted,

LAW OFFICES OF THOMAS A NITTI


THOMAS A NITTI
Attorneys for Defendants

FOR DEFENDANTS KEY DISPOSAL INC. AND JOHN KATANGIAN

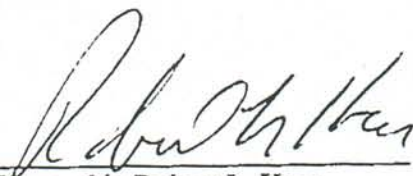
Dated: Aug. 10, 2009


JOHN KATANGIAN

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IT IS SO ORDERED

Date: 8/20, 2009


Honorable Robert L. Hess
Judge, California Superior Court

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People of the State of California ex rel. the California Air Resources Board v. Key Disposal, Inc., et al.**
Case No.: **LASC BC 393098**

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. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 27, 2009, I served the attached,

STIPULATED INJUNCTION AND ORDER (Order Granted)

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Thomas A. Nitti
Law Offices of Thomas A. Nitti
1250 Sixth Street, Suite 205
Santa Monica, CA 90401
Counsel for Defendants

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 27, 2009, at Los Angeles, California.

Gwen Blanchard
Declarant

Gwen Blanchard
Signature

LAW OFFICES OF THOMAS A. NITTI
1250 Sixth Street, Suite 205
Santa Monica, CA 90401
Phone (310) 393-1524
Fax (310) 576-3581

Sent to Fax Number: 323-721-8601

Date Sent: 10/14/09

Number of Pages including this Cover Sheet: 27

To: Shelly Katangian and John Katangian

From: Thomas A. Nitti

Regarding: People of the State of California v. Key Disposal

Message: see attached

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL OUR OFFICE IMMEDIATELY AT (310) 393-1524.

THE FOLLOWING PAGES ARE CONFIDENTIAL AND ARE TO BE READ BY THE INTENDED RECIPIENT ONLY. IF YOU HAVE RECEIVED THIS FAX IN ERROR, PLEASE CONTACT OUR OFFICE IMMEDIATELY AT (310) 393-1524, COLLECT.

Transcripts from Attorney.

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT LA 24

HON. ROBERT L. HESS, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA)
EX REL., THE CALIFORNIA AIR RESOURCES)
BOARD,)
PLAINTIFF,)

-VS-

) BC 393098

KEY DISPOSAL, INC., A CALIFORNIA)
CORPORATION; JOHN KATANGIAN, AN)
INDIVIDUAL; SHELLINE "SHELLY" KATANGIAN)
AN INDIVIDUAL; AND DOES 1-50, INCLUSIVE,)
DEFENDANTS.)

REPORTER'S EXPEDITED TRANSCRIPT OF PROCEEDINGS

TUESDAY, MAY 26, 2009

APPEARANCES:

FOR THE PLAINTIFFS:

LAW OFFICES OF
THOMAS A NITTI
ATTORNEY AT LAW
1250 SIXTH STREET
SUITE 205
SANTA MONICA, CA 90401

FOR THE DEFENDANTS:

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BY: ALLAN ONO
BY: NOAH GOLDEN-KRASNER
300 SOUTH SPRING STREET
SUITE 1702
LOS ANGELES, CA 90013

1 LOS ANGELES, CALIFORNIA; TUESDAY, MAY 26, 2009
 2 DEPARTMENT 24 HONORABLE JUDGE ROBERT H. HESS
 3 A.M.

4
 5 APPEARANCES: (AS PREVIOUSLY NOTED ON TITLE PAGE)
 6
 7 (CAROL L. CRAWLEY, OFFICIAL REPORTER.)
 8

9 THE COURT: GOOD AFTERNOON, COUNSEL.
 10 APPEARANCES, PLEASE.

11 MR. ANO: DEPUTY ATTORNEY GENERAL ALLAN ONO FOR THE
 12 PLAINTIFF.

13 MR. GOLDEN-KRASNER: DEPUTY ATTORNEY GENERAL NOEL
 14 GOLDEN-KRASNER.

15 MR. NITTI: THOMAS NITTI FOR THE DEFENDANT, YOUR HONOR.

16 THE COURT: I UNDERSTAND YOU HAVE BEEN SUCCESSFUL IN
 17 RESOLVING THE MATTER BEFORE JUDGE QUAN.

18 MR. ANO: THAT IS CORRECT, YOUR HONOR.

19 THE COURT: CONGRATULATIONS. HAS SOMEBODY GOT WRITTEN
 20 OUT SOMEWHERE WHAT THE TERMS THE SETTLEMENT ARE.

21 MR. ANO: YES, YOUR HONOR.

22 THE COURT: WHY DON'T YOU GO THROUGH AND TELL ME WHAT
 23 THE TERMS ARE, AND I WILL MAKE NOTES, AND I MAY HAVE
 24 QUESTIONS ABOUT IT, AND WE WILL SEE WHERE WE STAND.

25 GO AHEAD.

26 MR. ONO: FIRST WE WOULD LIKE TO HAVE THE COURT RETAIN
 27 JURISDICTION OVER THIS MATTER PURSUANT TO 64.6.

28 THE MONEY TERMS OF THE SETTLEMENT ARE AS FOLLOWS:

1 THE DEFENDANTS WILL PAY \$250,000 PAYABLE IN 24
2 EQUAL MONTHLY PAYMENTS.

3 THERE WILL BE A STIPULATION TO A JUDGMENT IN THE
4 DOLLAR AMOUNT OF \$500,000.

5 THE JUDGMENT DEBTORS WILL BE DEFENDANTS KEY
6 DISPOSAL INC. AND DEFENDANT JOHN KATANGIAN, SHELLY
7 KATANGIAN, WILL BE DISMISSED FROM THE LAWSUIT.

8 BOTH SIDES TO ABSORB THEIR OWN FEES AND COSTS, AND
9 THE DEPARTMENT WILL RECEIVE A RELEASE OF ANY CLAIMS.

10 THE COURT: AND THE RELEASE OF CLAIMS IS FROM WHOM TO
11 WHOM?

12 MR. ONO: FROM SHELLY TO THE PLAINTIFFS, IN EXCHANGE FOR
13 THE DISMISSAL.

14 THE COURT: OKAY.

15 MR. ONO: THE DEFENDANT'S FLEETS OF SOLID WASTE VEHICLES
16 WILL BE BROUGHT INTO COMPLIANCE WITHIN 120 DAYS.

17 THE PLAINTIFF WILL ISSUE A STANDARD PRESS RELEASE
18 OR BE ALLOWED TO ISSUE A STANDARD PRESS RELEASE.

19 THERE ARE CURRENTLY SEVEN DMV REGISTRATION HOLDS ON
20 VEHICLES OWNED BY THE DEFENDANTS.

21 THOSE REGISTRATION HOLDS WILL BE RATHER ARB WILL
22 REQUEST THAT THE DMV RELEASE THOSE REGISTRATION HOLDS UPON
23 AN ARB CONFIRMATION THAT THOSE SEVEN VEHICLES ARE NOW IN
24 COMPLIANCE WITH ARB LAWS, AND UPON FINALIZATION OF THE
25 SETTLEMENT.

26 IN OTHER WORDS, ONCE EVERYTHING IS WRAPPED UP, THE
27 ONE CONTINGENCY, NOT A CONTINGENCY THE ONE ISSUE THAT THE
28 DEFENDANTS WILL ALSO BE ENTERING INTO A STIPULATION FOR AN

1 INJUNCTION GOING FORWARD, AND WE DON'T HAVE THE SPECIFIC
2 LANGUAGE FOR THAT INJUNCTION.

3 THE PARTIES HAVE AGREED I THINK EVERYBODY KNOWS
4 MORE OR LESS WHAT THAT LANGUAGE IS GOING TO BE, AND THE
5 PARTIES HAVE AGREED TO WORK TOGETHER IN THE NEXT FEW DAYS TO
6 PUT THAT TOGETHER.

7 THE \$500,000 STIPULATED JUDGMENT WILL BE STAYED
8 ENDING THE PAYMENT OF \$250,000 OVER THAT TWO-YEAR PERIOD.

9 OBVIOUSLY ANY DEFAULTS ON THAT PAYMENT SCHEDULE
10 SUBJECT TO A TEN-DAY CURE NOTICE, OR FOR THAT MATTER ANY
11 VIOLATIONS OF THE INJUNCTION GOING FORWARD SUBJECT TO A MEET
12 AND CONFER REQUIREMENT WILL TRIGGER THE JUDGMENT.

13 THE COURT: JUST A SECOND IS.

14 MR. GOLDEN-KRASNER: AND THE FACT THAT WE HAVE GOT AN
15 INJUNCTION AND OBVIOUSLY THE ABILITY TO COME TO THIS COURT
16 AND SEEK A CONTEMPT ORDER IN THE EVENT THERE IS A VIOLATION
17 OF THE INJUNCTION IS NOT A WAIVER ON THE PART OF ARB, ANY
18 RIGHTS OR ABILITY TO PURSUE FUTURE VIOLATIONS.

19 THE COURT: OKAY. JUST A SECOND.

20 MR. GOLDEN-KRASNER: AND THE DEFENDANT IS AGREEABLE OR
21 IS GOING TO BE ATTENDING A TRAINING CLASS AT A COMMUNITY
22 COLLEGE WITH RESPECT TO SMOKE TESTS.

23 THE COURT: WHEN YOU SAY DEFENDANT YOU MEAN.

24 MR. GOLDEN-KRASNER: JOHN KATANGIAN AND YOUR MECHANIC.

25 MR. KATANGIAN WILL, WITHIN THE NEXT 120 DAYS, BE
26 ATTENDING A COMMUNITY COLLEGE CLASS.

27 IT IS EFFECTIVELY A SMOKE OPACITY COMPLIANCE CLASS,
28 YOUR HONOR.

1 ARE THERE ANY OTHER TERMS THAT I HAVE OVERLOOKED?

2 MR. NITTI: YEAH, IF THE VEHICLE, VEHICLES ANY VEHICLE
3 NOT BROUGHT INTO COMPLIANCE WITHIN 120 DAYS, CAN BE TAKEN
4 OUT OF SERVICE, BY THE DEFENDANTS PROVIDED THEY GIVE AN
5 AFFIDAVIT TO THAT EFFECT AND NOTICE TO THE ARB.

6 THE COURT: JUST A SECOND.

7 MR. ONO: THAT'S CORRECT, YOUR HONOR.

8 MR. NITTI: AND THE INTENTION HERE IS THAT NO JUDGMENT
9 IS TO BE ENTERED. IT IS THE \$500,000 JUDGMENT IN THE EVENT
10 OF A DEFAULT THAT THAT COULD POSSIBLY BE ENTERED, BUT THIS
11 IS A STIPULATED SETTLEMENT.

12 THE COURT: LET ME ASK A COUPLE QUESTIONS.

13 WHEN IS THE FIRST PAYMENT ON THE \$250,000 TO BE
14 MADE?

15 MR. ONO: RIGHT NOW I BELIEVE WE ARE TALKING ABOUT
16 30 DAYS FOR A FIRST PAYMENT, YOUR HONOR.

17 THE COURT: DO YOU HAVE A DAY OF THE MONTH THAT YOU ARE
18 TALKING ABOUT?

19 MR. ONO: I THINK FOR OUR PURPOSES WE CAN PROBABLY GO
20 WITH THE FIRST OF THE MONTH STARTING JULY 1ST.

21 MR. NITTI: THAT SOUNDS FINE..

22 THE COURT: THERE WILL BE A STIPULATION FOR ENTRY OF
23 JUDGMENT, AND THE JUDGMENT WILL BE IN THE AMOUNT OF
24 \$500,000, IF THERE IS A BREACH OF THIS, THEY GET CREDIT FOR.

25 MR. ONO: AMOUNTS PAID.

26 THE COURT: THE AMOUNTS PAID, AND THE JUDGMENT IS TO BE
27 ENTERED ON EX PARTE APPLICATION OR WHAT IS THE DEAL?

28 MR. ONO: WE DIDN'T SPECIFICALLY DISCUSS THAT, BUT I

1 WOULD IMAGINE IT WOULD BE WITHOUT FEES ON EX PARTE BECAUSE
2 WE WILL BE AN OPPORTUNITY TO CURE.

3 THE COURT: THAT IS EX PARTE.

4 MR. ONO: THERE IS A TEN-DAY CURE PERIOD WITH RESPECT TO
5 NON-PAYMENT ISSUES, AND A MEET AND CONFER OBLIGATION WITH
6 RESPECT TO COMPLIANCE ISSUES.

7 THE COURT: TALK TO ME A LITTLE BIT ABOUT THAT.

8 MR. ONO: WHICH, YOUR HONOR?

9 THE COURT: THE MEET AND CONFER WHAT TRIGGERS A MEET AND
10 CONFER?

11 MR. ONO: A MEET AND CONFER WOULD BE TRIGGERED BY WHAT
12 THE ARB CONSIDERS TO BE A BREACH OF THE INJUNCTION, SO IF
13 THERE ARE --

14 THERE IS A FAILURE TO COMPLY WITH ARB REQUIREMENTS
15 SET FORTH IN THE INJUNCTION, I E THE OBEY THE LAW
16 INJUNCTION, WE WILL HAVE A MEET AND CONFER WITH THE OTHER
17 SIDE SO THAT IN CASE THERE ARE MISUNDERSTANDINGS ANY
18 PROBLEMS WE CAN GET THOSE THINGS RESOLVED WITHOUT HAVING TO
19 RUN TO THE COURT BEFORE ANYONE COMES IN AND SAYS IS YOUR
20 HONOR WE BELIEVE THERE IS A VIOLATION THE INJUNCTION AND
21 ASKING THE COURT FOR AN OSC RE CONTEMPT AND ANYTHING ELSE WE
22 CAN GET, WE ARE GOING TO HAVE MET AND CONFERRED WITH THE
23 DEFENDANT.

24 THE COURT: NOW, TALK TO ME CONCEPTUALLY ABOUT WHAT THE
25 INJUNCTION IS GOING TO REQUIRE.

26 I DON'T HAVE TO HAVE THE DETAILED TERMS, BUT IT IS
27 ONE THING TO SAY THERE WILL BE AN INJUNCTION, AND WE SORT OF
28 KNOW WHERE WE ARE GOING ON IT, AND ANOTHER THING.

1 MR. ONO: I UNDERSTAND, YOUR HONOR. I WILL PASS THE
2 BATON TO DEPUTY GOLDEN-KRASNER.

3 MR. GOLDEN-KRASNER: CONCEPT IS THAT THE DEFENDANT WOULD
4 COMPLY WITH THE BACT, THE BEST AVAILABLE CONTROL TECHNOLOGY
5 REQUIREMENTS, THAT ARE SET FORTH IN THE LAW THAT THEY HAVE
6 TO PUT THE DEVICES ON THEIR VEHICLES BY A CERTAIN DATE THAT
7 IS SPECIFIED IN THE REGULATIONS, THAT THEY WILL CONDUCT KEEP
8 MAINTENANCE RECORDS, THOSE DEVICES, THEY WILL PUT THE
9 REQUIRED LABELING, LABELS ON THEIR VEHICLES, THAT INDICATE
10 COMPLIANCE NON-COMPLIANCE ENGINE, FAMILY ENGINE NAME ALL
11 THAT, AND THEY WILL KEEP ACCURATE RECORDS SOLID WASTE
12 VEHICLE COLLECTION RECORDS, AND THAT THEY WILL COMPLY WITH
13 THE PERIODIC SMOKE INSPECTION PROGRAM WHICH INCLUDES TENTING
14 THEIR TRUCKS ONCE A YEAR AS SPECIFIED IN TITLE 13 CC R, 192
15 THROUGH 94, AND THEY WILL KEEP THOSE RECORDS AS REQUIRED.

16 THE COURT: IS THERE THEY HAVE 120 DAYS TO COME IN TO
17 COMPLIANCE.

18 AND WHAT WHEN DOES THAT RUN FROM?

19 MR. GOLDEN-KRASNER: THAT WOULD RUN.

20 MR. ONO: FROM TODAY, ARE YOU AGREEABLE 120 DAYS FROM
21 TODAY.

22 MR. NITTI: WHY DON'T WE USE JULY 1ST, THAT IS EASY.

23 THE COURT: THAT.

24 MR. ONO: THAT IS 150 DAYS.

25 MR. NITTI: THAT IS NOT MY INTENTION USE JUNE 11, 20
26 DAYS FROM JUNE 1ST, IS SEPTEMBER 29TH, 2009.

27 THE COURT: IS THE CONTEMPLATION HERE THAT VERIFYING
28 COMPLIANCE BY THAT DATE THAT THERE WILL BE IS KIND OF

1 INSPECTION AND WHAT IF SO, WHAT KIND AND WHEN?

2 WHAT WILL BE DONE OR DO THEY HAVE TO TAKE THE
3 VEHICLES ONE BY ONE TO A SMOG STATION OR AN ARB STATION AND
4 DEMONSTRATE COMPLIANCE OR ARE YOU GOING TO GO OUT AND
5 INSPECT?

6 WHAT IS GOING TO HAPPEN?

7 MR. GOLDEN-KRASNER: WE CAN SET UP AN INSPECTION FOR
8 EITHER THAT DATE OR FOR WHATEVER IF THEY COME INTO
9 COMPLIANCE EARLIER THEN A MUTUALLY AGREEABLE DATE THAT THE
10 ARB WILL COME OUT AND INSPECT THE VEHICLES TO MAKE SURE THEY
11 ARE IN COMPLIANCE.

12 THE COURT: AND MAYBE THE DEFENSE WANTS TO SET THAT UP A
13 FEW DAYS IN ADVANCE SO IF THERE ARE SOME ISSUES, YOU CAN FIX
14 IT.

15 MR. GOLDEN-KRASNER: YES, YOUR HONOR.

16 THE COURT: NOW, SO THE REGISTRATION HOLDS THE REQUEST
17 FOR RELEASE OF THE REGISTRATION HOLDS WILL NOT OCCUR UNTIL
18 AFTER THAT 120-DAY DATE; IS THAT CORRECT.

19 MR. GOLDEN-KRASNER: NO, YOUR HONOR WE WILL ARB.

20 THE COURT: CONFIRMATION OF COMPLIANCE WITH THE ARB AND
21 WHAT?

22 MR. GOLDEN-KRASNER: YOUR HONOR, IT IS OUR UNDERSTANDING
23 THAT DEFENDANT ARE CURRENTLY IN COMPLIANCE WITH THOSE SEVEN
24 TRUCKS.

25 WE WILL SEND OUT AN ARB INSPECTOR IN THE VERY NEAR
26 FUTURE ON THOSE SEVEN, TO MAKE SURE THAT THEY ARE IN FACT
27 COMPLIANT, AND THE SECOND PART WAS THAT THE FINALIZATION
28 SETTLEMENT AND BY FINALIZATION THE SETTLEMENT YOU MEAN

1 EXECUTION YOU MEAN EXECUTION OF THE STIPULATION WITH RESPECT
2 TO THE INJUNCTION DO YOU NEED COURT SIGNATURE OR DO YOU JUST
3 NEED THEIR.

4 MR. ONO: I THINK WE WILL REQUIRE THE COURT SIGNATURE ON
5 THAT, YOUR HONOR.

6 THE COURT: SO THE COURT SIGNATURE IS, BY THAT TIME,
7 NOTIONALLY, WE WILL HAVE THE RELEASES BY SHELLY EXECUTED,
8 AND THERE WILL BE A MORE FORMAL SETTLEMENT AGREEMENT, I
9 ASSUME, AND YOU WILL HAVE A STIPULATION FOR ENTRY OF
10 JUDGMENT.

11 YOU WILL HAVE A FORM OF PERMANENT INJUNCTION, OR
12 YOU WILL HAVE A STIPULATION FOR JUDGMENT WHICH WILL NOT BE
13 ENTERED, UNLESS THERE IS A DEFAULT; IS THAT CORRECT?

14 MR. GOLDEN-KRASNER: CORRECT, DOES THAT GET LODGED, YOUR
15 HONOR OR IS THAT JUST.

16 THE COURT: WELL, YOU KNOW, I WOULD ASSUME YOU WOULD GO
17 AHEAD, AND.

18 MR. NITTI: MY EXPERIENCE IS WE JUST REFERENCE THE
19 SETTLEMENT, AND THE ATTORNEY GENERAL WILL HOLD THE JUDGMENT
20 IN THE FILES.

21 THE COURT: THEN YOU FILE THE ORIGINAL WITH YOUR
22 DECLARATION.

23 NOW, IF THERE IS A PROBLEM, THE NOTICE, I ASSUME
24 GOES TO DEFENSE COUNSEL; IS THAT CORRECT OR IS THERE -- ARE
25 THERE PROVISIONS OR FOR THE METHOD OF NOTICE AND TO WHOM IT
26 GOES?

27 MR. GOLDEN-KRASNER: THAT HAS NOT BEEN WORKED OUT, YOUR
28 HONOR.

1 WE HAVE AGREED TO A CURE PERIOD THEY ARE GOING TO
2 ADVISE US WHO GETS NOTICE AND HOW THEY WANT TO GET IT.

3 THE COURT: OKAY, AND, AND, WHAT DEFENSE DO YOU HAVE A
4 SENSE THAT.

5 MR. NITTI: NO, PROBABLY IT WILL PROBABLY BE ME, YOUR
6 HONOR, UNLESS THE CLIENT WANTS IT TO GO TO HIMSELF. I
7 ROUTINELY GET NOTICES IN SETTLEMENTS LIKE THESE.

8 THE COURT: THAT IS WHAT I SUSPECTED. WHAT ABOUT THE
9 FORM OF NOTICE? DEFENSE, DO YOU HAVE.

10 MR. NITTI: WE USUALLY ASK FOR TWO FAXES AND MAIL.

11 THE COURT: IN OTHER WORDS, IT DOESN'T HAVE TO BE
12 CERTIFIED MAIL WITH RECEIPT REQUESTED FAXED AND MAILED.
13 OKAY. THAT IS FINE.

14 LET ME LOOK AT THE NOTES HERE THAT HAVE TAKEN TO
15 SEE IF THERE ARE ANY OTHER THINGS BECAUSE TO THE EXTENT WE
16 CAN RESOLVE ANY AMBIGUITIES HERE ON THE RECORD, IT IS
17 PROBABLY A GOOD IDEA.

18 MR. NITTI: I HAVE A COMMENT, YOUR HONOR.

19 THE COURT: SIR.

20 MR. NITTI: THE IDEA OF A TEN-DAY CURE NOTICE FOR
21 NON-PAYMENT, AND THEN EX PARTE IF IT IS NOT MADE MAKES SENSE
22 TO ME.

23 IT IS PRETTY EASY TO DETERMINE, AND I ASSUME EX
24 PARTE MEANS NORMAL EX PARTE YOU GET TELEPHONE NOTICE. IT
25 MEANS WE DON'T GO FORWARD.

26 THE COURT: I HAVE ASKED ABOUT IT, AND I HAVE SEEN IT ON
27 DEFAULT ON PAYMENTS FOR EXAMPLE WHERE THE PARTIES HAVE
28 AGREED IF THERE IS A DEFAULT ON PAYMENT YOU GET NOTICE THE

1 DEFAULT AND OPPORTUNITY TO CURE, BUT IF IT IS NOT CURED,
2 THEY CAN COME IN EX PARTE WITHOUT NOTICE TO GET THE JUDGMENT
3 ENTERED.

4 MR. NITTI: OKAY. THAT IS, YEAH, THAT IS FINE.
5 THE OTHER ONE, THOUGH.

6 THE COURT: JUST A SECOND, SO THE TEN DAY CURE APPLIES
7 NOT ONLY TO THE PAYMENTS BUT ALSO THE VIOLATIONS OF THE
8 INJUNCTION. IT APPLIES TO BOTH.

9 MR. NITTI: THAT IS WHERE I THINK A SLIGHT DISTINCTION
10 NEEDS TO BE DRAWN. WE WOULD THEREFORE HAVE A MEET AND
11 CONFER, BUT LET ME GIVE YOU AN EXAMPLE WHERE WE COULD HAVE A
12 PROBLEM.

13 I THINK THE MEET AND CONFER HAS TO BE TIED IN WITH
14 A CURE PERIOD AS WELL. OTHERWISE, IT IS MEANINGLESS.

15 THE COURT: LET'S STOP FOR A SECOND. FIRST, THE MEET
16 AND CONFER NEEDS TO BE TRIGGERED BY SOME SORT OF NOTICE, AND
17 IF YOU ARE ASSUMING NOTICE FAX AND MAIL BY FOR THE DEFAULT
18 IN PAYMENT IT SEEMS TO ME FOR SYMMETRY IT IS APPROPRIATE TO
19 DO THE SAME THING.

20 WE NEED TO HAVE, WE NEED TO HAVE A PROVISION THAT
21 PROBABLY THAT THE MEET AND CONFER WILL OCCUR WITHIN A
22 CERTAIN AMOUNT OF TIME AFTER THE NOTICE.

23 IS THE CONTEMPLATION THAT IT WILL BE WITHIN TEN
24 DAYS AFTER NOTICE OR THAT THAT IS THE CURE PERIOD AFTER
25 NOTICE FOR AN ALLEGED VIOLATION?

26 HAVE WE GOT A MEETING OF THE MINDS ON THAT?

27 MR. NITTI: I THINK MY FEEL WOULD BE TEN DAYS FOR THE
28 MEET AND CONFER AND TEN DAYS IN TEN DAYS FOR A CURE.

1 LET ME GIVE YOU AN EXAMPLE, LET'S SAY MY CLIENT
2 MISSED A DATE, TO HAVE SOMETHING INSTALLED, I DON'T WANT A
3 MEET AND CONFER THAT SAYS YOU MISSED THE DATE.

4 NOW YOU OWE \$500,000. I WANT MR. NITTI, YOU KNOW
5 YOUR CLIENT MISSED THIS DATE YOU KNOW TAKE CARE OF IT.

6 NOW, WE MIGHT DISAGREE ON WHEN THAT DATE IS BECAUSE
7 OF A PARTICULAR TRUCK. IF AFTER WE MEET AND CONFER THE
8 STATE STILL HAS THE SAME POSITION NOW WE HAVE TEN DAYS TO
9 CURE, AND THAT SEEMS TO BE AN ACCEPTABLE WAY TO APPROACH IT.

10 THE COURT: YOU MAY HAVE SOME EQUIPMENT ISSUES.

11 MR. ONO: YOU KNOW, I WOULD NEED TO CONSULT WITH MY
12 CLIENT ON THE BUSINESS OF THE CURE ON THE INJUNCTION.

13 I THINK OUR EXPECTATION WAS GOING TO BE YOU NEED TO
14 BE IN COMPLIANCE WITH THE INJUNCTION.

15 WE WILL GIVE YOU A MEET AND CONFER TO MAKE SURE
16 THAT THERE IS NO MISTAKE ABOUT WHAT IT IS THAT WE CONTEND IS
17 A VIOLATION BECAUSE IF WE HAVE GOT THE WRONG TRUCK OR
18 SOMETHING LIKE THAT, WE DON'T WANT TO BE COMING IN AND
19 SAYING THEY VIOLATED IT, YOUR HONOR, BUT --

20 THE COURT: NOTIONALLY YOU HAVE ARTICULATED WHAT THE
21 PROBLEM IS, IN THE LETTER IN THE NOTICE OKAY, WHY ISN'T TEN
22 DAYS ENOUGH TO EITHER GET IT STRAIGHTENED OUT OR CURED?

23 BECAUSE YOU WILL KNOW NOTIONALLY YOU WILL HAVE
24 PRETTY SPECIFIC NOTICE OF WHAT IT IS THAT THEY SAY, IF IT
25 IS A MISAPPREHENSION YOU OUGHT TO BE ABLE TO CLEAR THAT UP
26 FAIRLY EASILY IF THERE IS IN FACT NON-COMPLIANCE.

27 MR. NITTI: TWO RECENT EXAMPLES WERE SOMEBODY TRANSPOSED
28 A LABEL ON A TRUCK, AND THE STATE WAS UNDER THE IMPRESSION

1 IT WAS OUT OF COMPLIANCE.

2 SECONDLY, MY CLIENT HAS AN EXPERIMENTAL SYSTEM
3 WHICH IT SEEMS TO CHANGE FROM MONTH TO MONTH WHETHER THAT
4 IS OKAY WITH THE STATE OR NOT.

5 THE COURT: TALK TO ME ABOUT THIS EXPERIMENTAL SYSTEM.

6 MR. NITTI: I MEAN THESE ARE THINGS THAT ARE SUBJECT TO
7 DISAGREEMENT, AND WE CAN COME TO AN AGREEMENT.

8 THE COURT: I WANT TO UNDERSTAND THE ISSUE BECAUSE LOOK,
9 I AM NOT SUGGESTING TO YOU WHAT THE RESOLUTION OF ANY OF
10 THESE THINGS ARE.

11 WHAT I AM TRYING TO DO IS MAKE SURE I UNDERSTAND IT
12 BECAUSE IF WE HAVE ARTICULATED THESE THINGS IN OPEN COURT
13 WITH THE PARTIES PRESENT, OKAY THEN WE HAVE NOTIONALLY A
14 COMMON UNDERSTANDING, AND ALL I AM TRYING TO DO IS REMOVE
15 THE AMBIGUITIES AS WE CAN RECOGNIZING THAT YOU STILL HAVE TO
16 GO OFF AND PREPARE SOME PAPERS.

17 OKAY, BUT WHAT WE ARE DOING TODAY HERE IS GOING TO
18 FORM THE PARAMETERS FOR WHAT IS PERMISSIBLE IN THOSE PAPERS.
19 SO, I WANT, IF I UNDERSTAND THE ISSUE, THEN I CAN UNDERSTAND
20 IT IF THERE IS A POTENTIAL FOR MIS-INTERPRETATION OR
21 SOMETHING THAT SEEMS TO ME TO NEED CLARIFICATION THE KINDS
22 OF QUESTIONS I HAVE ALREADY ASKED YOU HERE I THINK ARE
23 INDICATIVE OF TRYING TO SIMPLY TRYING TO BRING CLARITY TO
24 IT, YOU CAN HAVE A COPY OF THE TRANSCRIPT HERE, AND THAT
25 WILL BE BINDING WHEN WE ARE DONE, IN THE EVENT OF AMBIGUITY
26 OR IN THE EVENT DISAGREEMENTS, BUT I AM TRYING TO REMOVE AS
27 MANY OF THE AMBIGUITIES AS WE CAN.

28 GIVE ME A SENSE OF WHAT WE ARE TALKING ABOUT.

1 MR. NITTI: WE HAD A MEETING WITH THE STATE JUST A
2 COUPLE WEEKS AGO.

3 WE DISCUSSED THE EXPERIMENTAL SYSTEM THAT IS
4 INSTALLED IN ONE OF THE TRUCKS THE STATE INDICATED THAT NO,
5 IT IS NOT CORRECT.

6 IT IS NOT THE RIGHT EXPERIMENTAL SYSTEM FOR THAT
7 TRUCK. MY CLIENT GOT A LETTER FROM THE MANUFACTURER
8 YESTERDAY SHOWING THAT THE STATE SAID JUST THE OPPOSITE
9 OKAY.

10 THE COURT: TO THE MANUFACTURER.

11 MR. NITTI: SO NOW WE HAVE SOMETHING TO TALK ABOUT.

12 I WOULD ASSUME THAT THE MEET AND CONFER MY CLIENT
13 WOULD PRESENT THIS LETTER. THE STATE WOULD PRESENT THAT AND
14 THEN WHAT WOULD HAPPEN IS THE REASON I SAY THE TEN-DAY CURE
15 FOLLOWS IS MY CLIENT CAN AVOID HAVING TO PAY HALF A MILLION
16 BUCKS BY SIMPLY PUTTING THE TRUCK OUT OF SERVICE.

17 SO, THERE IS NO VIOLATION UNTIL WHATEVER THE
18 PROBLEM IS RESOLVED. I DON'T WANT TO SAY THERE IS MEET AND
19 CONFER AND SAY YOU WERE WRONG NOW YOU OWE US \$500,000.

20 THE POINT IS TO RESOLVE DISAGREEMENT.

21 THE COURT: I UNDERSTAND YOUR POINT.

22 MR. GOLDEN-KRASNER: YOUR HONOR, WHAT HAPPENED WITH THE
23 EXPERIMENTAL DEVICES ACTUALLY THE ARB ISSUED AN EXECUTIVE
24 ORDER CHANGING THE VIN NUMBER WHICH WAS THE PROBLEM THAT THE
25 VIN NUMBER WAS INCORRECT, AND NOW THE TRUCK HAS THE CORRECT
26 EXPERIMENTAL DEVICE.

27 THE COURT: LET ME ASK YOU THIS:

28 IF THE SOLUTION TO THE PROBLEM AFTER YOU HAVE MET

1 AND CONFERRED IF THE QUICK AND EASY IS TO TAKE THE VEHICLE
2 TEMPORARILY OUT OF SERVICE.

3 MR. NITTI: WHICH WE WOULD.

4 THE COURT: OKAY. DO WE NEED TEN DAYS TO DO THAT?

5 MR. NITTI: NO, GO FOR A FEW DAYS.

6 THE COURT: CAN WE MAKE THE MEET AND CONFER HAS TO OCCUR
7 WITHIN TEN DAYS THAT GIVES YOU TIME FOR NOTICE AND
8 INVESTIGATION HOPEFULLY COMMUNICATION AND THEN FIVE DAYS
9 THEREAFTER.

10 DOES THAT WORK FOR EVERYBODY?

11 MR. GOLDEN-KRASNER: YES.

12 THE COURT: OKAY, FIVE DAYS THEREAFTER, TO CURE. WE ARE
13 TALKING ABOUT IF THE LAST DAY OF ANY OF THESE THINGS IS ON A
14 WEEKEND OR A HOLIDAY, IT IS THE NEXT BUSINESS DAY IS WHEN
15 THE TIME EXPIRES.

16 MR. ONO: YOUR HONOR, I DON'T WANT TO BE THE WET BLANKET
17 ON THIS.

18 I AM A LITTLE UNCOMFORTABLE WITH THE NOTION OF THE
19 CURE PERIOD WITH RESPECT TO THE INJUNCTION, AND THIS IS
20 SOMETHING I HAVEN'T SPECIFICALLY DISCUSSED WITH THE CLIENT
21 BUT.

22 THE COURT: WHY DON'T YOU TAKE SOME TIME TO DO IT, BUT
23 WHAT WE ARE TALKING ABOUT HERE, LOOK IT IS CONCEIVABLE TO
24 ME, AND AGAIN I WON'T TWIST ANYBODY'S ARMS, BUT LET ME JUST
25 ARTICULATE PRACTICALITIES.

26 NOBODY WANTS TO COME BACK IN TO COURT ON A
27 CONTEMPT.

28 IT IS A PAIN IN THE BUTT FOR EVERYBODY.

1 MR. ONO: I JUST WANT.

2 THE COURT: BUT LET ME OFFER THIS THOUGHT.

3 IT IS CONCEIVABLE TO ME, THAT A NOTICE COULD BE
4 SENT OUT, THAT WOULD REQUIRE AT LEAST A MODICUM OF TIME AT
5 LEAST A CERTAIN AMOUNT OF TIME FOR INVESTIGATION, POSSIBLY
6 CORRECTION.

7 IT MAY BE A PAPERWORK VIOLATION OR SOMETHING.

8 IT MAY BE SOMETHING WHERE A PART NEEDS TO BE
9 OBTAINED OR SOMETHING, WHERE THE CORRECTIONS NOT NECESSARILY
10 PRACTICABLE WITHIN THAT INITIAL TEN DAYS OKAY, AFTER BETWEEN
11 WITH THE PROBLEM OF MEETING AND CONFERRING TO DISCUSS IT,
12 AND THEN TRYING TO CORRECT IT.

13 I MEAN IF THERE IS AN AMBIGUITY IN THE NOTICE OR IF
14 THERE IS SOME DISCUSSION AS TO WHAT THE PROBLEM REALLY IS,
15 MAYBE IT IS A PARTIAL PROBLEM.

16 MAYBE IT HAS BEEN PARTIALLY CORRECT WHATEVER, SO,
17 YOU KNOW, WE WANT A PRACTICAL CONSTRUCTION ON THIS.

18 MR. ONO: I UNDERSTAND, YOUR HONOR.

19 THE COURT: SO I AM OFFERING THIS AS A THOUGHT.

20 MR. ONO: I THINK THAT ARB'S CONCERN WOULD BE IN AN
21 EXTREME EXAMPLE, AND I AM NOT SUGGESTING THIS IS WHAT WILL
22 HAPPEN IN AN EXTREME EXAMPLE THEY WOULD WANT TO AVOID
23 OBVIOUSLY A SITUATION WHERE SOMEONE COULD WILLFULLY VIOLATE
24 THE INJUNCTION KNOWING THAT THEY HAVE GOT AN OPPORTUNITY TO
25 GET THIS NOTICE AND AN OPPORTUNITY TO CURE.

26 SO, HEY, IF WE GET CAUGHT I CAN FIX IT. I FIX IT,
27 NEXT MONTH. LET'S DO IT AGAIN UNTIL I GET CAUGHT, AND AGAIN
28 I AM NOT SUGGESTING THAT WILL HAPPEN.

1 THE COURT: I HAVE GOT TO TELL YOU.

2 MR. GOLDEN-KRASNER: I WANT TO AVOID.

3 THE COURT: I UNDERSTAND THAT.

4 MR. ONO: THE ALB DOES NOT WANT ITS HANDS TIED IN THAT
5 EVENT.

6 THE COURT: I UNDERSTAND WHAT YOU ARE SAYING.

7 LET ME OFFER YOU THIS THOUGHT.

8 I CAN CONCEIVE OF THAT AS A THEORETICAL
9 POSSIBILITY, OKAY, IT IS THEORETICALLY CONCEIVABLE, BUT IF
10 YOU ARE GOING TO HAVE A NOTICE, IF YOU ARE GOING TO HAVE A
11 MEET AND CONFER REQUIREMENT AND WE TAKE THE TEN DAYS, A
12 LITTLE BIT OF ADDITIONAL TIME IS NOT THAT MUCH, AND YOU HAVE
13 GOT TO THINK ABOUT NOTIONALLY, THE OTHER SIDE KEY DISPOSAL
14 WILL THINK ABOUT THIS IN TERMS OF, DO WE REALLY WANT TO LIVE
15 ON THE EDGE ALL THE TIME, BECAUSE EVERY TIME THEY HAVE TO GO
16 THROUGH THIS MEET AND CONFER PROCEDURE THAT THERE IS IS AN
17 ISSUE THAT IS MONEY OUT OF THEIR POCKET THAT IS ATTORNEYS
18 FEES.

19 AND I KNOW IT IS AN ISSUE FOR YOU, BUT YOU KNOW,
20 PURELY IN PRACTICAL TERMS UNLESS THEY ARE REALLY DESPERATE
21 AND TEETERING ON THE EDGE, AND THEY CAN'T DO IT ANY OTHER
22 WAY.

23 IT DOESN'T MAKE EITHER ECONOMIC OR BUSINESS SENSE
24 TO DO IT, AND IF THEY ARE TEETERING ON THE EDGE THAT WAY
25 ANYWAY SOONER OR LATER THEY WILL FALL OFF THE EDGE AND YOU
26 ARE GOING TO HAVE YOUR JUDGMENT.

27 NOTIONALLY, BUT, YOU KNOW, IT SEEMS TO ME NOT
28 UN-REASONABLE I WON'T TWIST YOUR ARM OR EITHER PARTY'S ARM,

1 BUT THE DIFFERENCE BETWEEN HAVING IT DONE IN TEN DAYS AND
2 15 DAYS IS NOT THAT GREAT.

3 YOU MAY WANT A LITTLE BUFF ROOM THERE.

4 IT SEEMS TO ME, POSSIBLY A REASONABLE APPROACH TO
5 IT IF WE WERE SAYING TEN DAYS AND 30 DAYS I MIGHT SCRATCH MY
6 HEAD AND SAY WHY DO WE NEED TO TAKE IT THAT FAR OUT.

7 THAT IS MY THOUGHT. YOU ARE WELCOME TO TALK TO
8 YOUR CLIENTS ABOUT THIS.

9 MR. ONO: I THINK WE WOULD NEED TO DISCUSS IT WITH THEM
10 EVEN IF IT IS ONLY FOR A FEW MOMENTS.

11 THE COURT: WELL, PLEASE DO.

12 I DON'T THINK I HAD ANYTHING ELSE THAT WAS A
13 QUESTION.

14 SO YOU TALK TO YOUR CLIENTS BECAUSE WHAT I AM GOING
15 TO DO IS I WILL GET THE CLIENTS UP HERE AND IDENTIFY
16 THEMSELVES, AND THEN I WILL QUESTION THEM INDIVIDUALLY, AS
17 TO WHETHER THEY UNDERSTAND AND AGREE TO THESE TERMS. OKAY.

18 MR. ONO: THANK YOU, YOUR HONOR.

19 (BRIEF RECESS)

20 THE COURT: WE HAVE HAD AN OPPORTUNITY TO CONSULT.

21 MR. GOLDEN-KRASNER: YES, YOUR HONOR.

22 MR. NITTI: ARE WE ALL AGREED?

23 MR. GOLDEN-KRASNER: WE HAVE AGREED TO THE FIVE-DAY
24 CURE.

25 MR. NITTI: FOLLOWING THE MEET AND CONFER, YES.

26 THE COURT: FIVE DAYS AFTER THE MEET AND CONFER AND.

27 MR. NITTI: AND WE DISCUSSED THAT WOULD BE A CURE OR YOU
28 KNOW SOMETIMES THAT IS PHYSICALLY IMPOSSIBLE SO A TRUCK CAN

1 BE TAKEN OUT OF SERVICE GIVEN THE SAME AFFIDAVIT.

2 THE COURT: ANYTHING ELSE WE NEED TO TALK ABOUT HERE?

3 MR. ONO: YOU KNOW, I HAVE ALREADY GONE THROUGH ALL THE
4 POINTS.

5 I JUST WANTED TO MAKE SURE WITH ALL THIS BUSINESS
6 OF THE CURE PERIOD AND WHAT NOT THAT NOTWITHSTANDING THE
7 INJUNCTION AND THE COURT'S ABILITY TO ISSUE A CONTEMPT ORDER
8 AS A CONSEQUENCE OF ITS DETERMINATION THAT THE INJUNCTION
9 HAS BEEN VIOLATED THAT THAT IS NOT GOING TO AMOUNT TO THE
10 INJUNCTION DOES NOT WAIVE ARB'S ABILITY TO ADDRESS ANY NEW
11 VIOLATIONS.

12 THE COURT: OKAY, VERY GOOD.

13 LET'S GET MR. KATANGIAN UP HERE, AND WHOEVER THE
14 REPRESENTATIVE OF THE PEOPLE, PLEASE.

15 IS MRS. KATANGIAN AVAILABLE?

16 MR. NITTI: SHE HAS A SIX WEEK OLD BABY, YOUR HONOR.

17 I HAVE HER ON CALL, BUT SHE HAS BEEN DISMISSED AS
18 PART OF THIS. I CAN SPEAK ON HER BEHALF.

19 THE COURT: ALL RIGHT.

20 SIR, WOULD YOU INTRODUCE YOURSELF.

21 MR. JACOBS: PAUL E. JACOBS, J-A-C-O-B-S.

22 THE COURT: WITH WHOM ARE YOU?

23 MR. JACOBS: CALIFORNIA RESOURCES BOARD CHIEF OF MOBIL
24 SOURCES ENFORCEMENT.

25 THE COURT: AND YOU ARE MR. KATANGIAN?

26 MR. KATANGIAN: YES.

27 THE COURT: PRESIDENT OF KEY DISPOSAL; IS THAT CORRECT?

28 MR. KATANGIAN: YES, YOUR HONOR.

1 THE COURT: MR. JACOBS, PAUL JACOBS, YOU HAVE BEEN
2 PRESENT IN THE COURTROOM THROUGHOUT THIS DISCUSSION OF THE
3 TERMS AND CONDITIONS OF THE SETTLEMENT, ARE THERE ANY
4 QUESTIONS THAT YOU THINK YOU WOULD LIKE TO ASK ME ABOUT THE
5 TERMS AND CONDITIONS?

6 MR. JACOBS: NO, YOUR HONOR.

7 THE COURT: HAVE YOU HAD ENOUGH TIME TO SPEAK WITH YOUR
8 ATTORNEYS?

9 MR. JACOBS: YES, YOUR HONOR.

10 MR. KATANGIAN: YES, YOUR HONOR.

11 THE COURT: DO YOU UNDERSTAND ON BEHALF OF THE ARB AND
12 AGREE TO EACH OF THE TERMS AND CONDITIONS THAT WE HAVE
13 DISCUSSED?

14 MR. JACOBS: YES, YOUR HONOR.

15 THE COURT: MR. KATANGIAN, YOU HAVE BEEN IN THE
16 COURTROOM.

17 HAVE YOU HEARD ALL OUR DISCUSSION CONCERNING THE
18 TERMS AND CONDITIONS OF THIS SETTLEMENT?

19 MR. KATANGIAN: YES, YOUR HONOR.

20 THE COURT: AND ARE THERE ANY QUESTIONS THAT YOU WOULD
21 LIKE TO ASK ME ABOUT THE TERMS AND CONDITIONS? ANYTHING YOU
22 DON'T UNDERSTAND?

23 MR. KATANGIAN: NO, SIR.

24 THE COURT: HAVE YOU HAD ENOUGH TIME TO TALK TO YOUR
25 ATTORNEY ABOUT THESE SO THAT YOU FEEL YOU ARE FULLY INFORMED
26 AND ADVISED?

27 MR. KATANGIAN: YES, SIR.

28 THE COURT: ON BEHALF OF YOURSELF, INDIVIDUALLY DO YOU

1 UNDERSTAND AND AGREE TO EACH OF THESE TERMS AND CONDITIONS
2 OF THE SETTLEMENT?

3 MR. JACOBS: YES, SIR.

4 MR. KATANGIAN: YES.

5 THE COURT: ON BEHALF OF KEY DISPOSAL, DO YOU UNDERSTAND
6 AND AGREE TO THESE?

7 MR. KATANGIAN: YES.

8 THE COURT: PLAINTIFF'S COUNSEL JOIN.

9 MR. GOLDEN-KRASNER: YES.

10 THE COURT: DEFENSE COUNSEL JOIN?

11 MR. NITTI: YES, YOUR HONOR.

12 DEFENSE COUNSEL JOINS.

13 THE COURT: OKAY. ALL RIGHT.

14 SO I THINK WE HAVE GOT A DEAL, AND THE TRIAL DATE
15 IS VACATED, AND WE WILL --

16 THE TRANSCRIPT OF OUR PROCEEDINGS HERE TODAY, WILL
17 CONTROL IN THE EVENT THERE IS ANY DISPUTE.

18 I UNDERSTAND YOU PEOPLE ARE GOING TO WORK THROUGH
19 THIS STUFF AND IN THE NEAR FUTURE AND GET IT REDUCED TO AN
20 APPROPRIATE WRITING, AND I WILL BE HAPPY TO ADDRESS THIS
21 PROMPTLY WHEN YOU HAVE YOUR SUBMISSION TO THE COURT IF IT
22 COMES IN AS A JOINT SUBMISSION.

23 AND I DON'T HAVE TO WAIT FOR APPROVALS THEN.

24 THAT WOULD BE, YOU KNOW, APPROVED AS TO FORM, THAT
25 WOULD BE USEFUL, AND YOU CAN PRESENT IT DIRECTLY TO MY CLERK
26 UP HERE, AND WE WILL GO AHEAD AND GET THAT EXECUTED AS
27 PROMPTLY AS WE CAN.

28 ANY QUESTIONS?

1 MR. NITTI: I HAVE ONE QUESTION, YOUR HONOR.

2 I MEANT TO BRING UP EARLIER I JUST THOUGHT IT NOW
3 FOLLOWING I UNDERSTAND THAT IF A PAYMENT IS NOT MADE, AN
4 EX-PARTE APPLICATION WILL BE MADE HERE FOR THE FULL
5 JUDGMENT.

6 IF THE OTHER EVENT HAPPENS WHICH THERE IS A MEET
7 AND CONFER, AND THAT MEET AND CONFER RESULTS IN DISAGREEMENT
8 AS TO WHAT IS REQUIRED, I DON'T THINK THAT WOULD BE
9 APPROPRIATE TO GO FOR A QUARTER OF A MILLION.

10 THE COURT: CERTAINLY THE CONTEMPT REQUIRES A CONTEMPT
11 CITATION BUT THAT ONLY DEALS WITH CONTEMPT.

12 MR. NITTI: TO ENFORCE A JUDGMENT AFTER A MEET AND
13 CONFER.

14 THE COURT: BUT IF THERE IS AN UNRESOLVED ISSUE HERE,
15 AFTER THE MEET AND CONFER, ARE YOU LOOKING AT, THAT AS A
16 CIRCUMSTANCE THAT WOULD AUTOMATICALLY TRIGGER THE PENALTY
17 PROVISION?

18 MR. GOLDEN-KRASNER: YES, YOUR HONOR, BUT OBVIOUSLY IT
19 IS NOT UP TO THE ARB TO USURP YOUR AUTHORITY AND SAY MAKE
20 THE DETERMINATION THAT THEY ARE IN BREACH OF THE INJUNCTION.

21 WE OBVIOUSLY HAVE TO COME TO YOU, AND THERE HAS TO
22 BE A DETERMINATION MADE BY THE COURT.

23 THE COURT: LET ME POSIT, LET ME PUT THE ISSUE SLIGHTLY
24 DIFFERENTLY.

25 I UNDERSTAND IF YOU DON'T GET PAID YOU WANT TO
26 ENFORCE THE FULL AMOUNT.

27 BUT IF THERE IS A NON-MONETARY TERM THAT IS NOT
28 COMPLIED WITH, OKAY, IS THAT THE KIND OF THING THAT YOU

1 WOULD EXPECT TO BRING TO THE COURT'S ATTENTION?

2 MR. GOLDEN-KRASNER: YES, YOUR HONOR.

3 THE COURT: AND SEEK SOME ENFORCEMENT MECHANISM.

4 MR. GOLDEN-KRASNER: IF THERE IS A BREACH, AN UNRESOLVED
5 BREACH, IF THERE IS A BREACH OF THE INJUNCTION, AND THE
6 COURT MAKES THE DETERMINATION OBVIOUSLY THAT THE INJUNCTION
7 HAS BEEN BREACHED, THEN THAT BREACH TRIGGERS THE STIPULATED
8 JUDGMENT JUST AS SURELY AS NON-PAYMENT.

9 THE COURT: SO IT REQUIRES A COURT DETERMINATION OF
10 NON-COMPLIANCE.

11 OKAY, SO, IF THERE IS A DISAGREEMENT THAT DOES NOT
12 TRIGGER FILING THE JUDGMENT, IT REQUIRES A DETERMINATION BY
13 THE COURT THAT THERE IS NON-COMPLIANCE WITH THE TERM OF THE
14 INJUNCTION, AND LET ME SAY IT HERE, WHICH SUGGESTS A HEARING
15 ON WHETHER OR NOT THERE HAS BEEN --

16 YOU DON'T AUTOMATICALLY FILE EX PARTE. YOU SAY WE
17 HAVE A DISAGREEMENT.

18 AT THE MEET AND CONFER YOU DON'T AUTOMATICALLY FILE
19 EX PARTE FOR THE JUDGMENT IT AWAITS THE COURT'S
20 DETERMINATION, AND THEN THE COURT'S DETERMINATION WHETHER
21 THERE HAS BEEN A BREACH MAY, IF THE COURT DETERMINES THERE
22 HAS BEEN A BREACH, REGARDLESS WHATEVER IT DOES WITH RESPECT
23 TO THE INJUNCTION, BUT THAT DETERMINATION IS WHAT TRIGGERS
24 THE RIGHT TO GET THE MONETARY PROVISIONS AND THE MONETARY
25 PROVISIONS, THE MONETARY REMEDY THAT IS THE JUDGMENT GOES IN
26 TO EFFECT IS SEPARATE AND APART FROM WHATEVER THE COURT MAY
27 DO WITH RESPECT TO ENFORCEMENT OF THE INJUNCTION; IS THAT
28 CORRECT?

1 MR. ONO: I AM NOT ENTIRELY SURE I FOLLOWED THAT VERY
2 WELL, MAYBE MR. GOLDEN-KRASNER WOULD.

3 THE COURT: WHAT I HEARD YOU SAY SUGGESTS THAT THE FACT
4 THAT YOU MAY HAVE A DISAGREEMENT AFTER A MEET AND CONFER AS
5 TO WHETHER THE INJUNCTION HAS BEEN VIOLATED, THE EXISTENCE
6 OF AN UNRESOLVED DISAGREEMENT DOES NOT IN AND OF ITSELF GIVE
7 YOU THE RIGHT TO GO IN EX-PARTE WITHOUT NOTICE TO TRANSLATE
8 THE STIPULATED JUDGMENT INTO AN ENTERED JUDGMENT FOR HALF A
9 MILLION?

10 MR. GOLDEN-KRASNER: CORRECT.

11 THE COURT: OKAY. IF THERE IS A BREACH, IF YOU BELIEVE
12 THAT THERE IS A BREACH OF THE INJUNCTION, YOU NEED THE
13 COURT'S DETERMINATION THAT THERE HAS BEEN A BREACH OF THE
14 INJUNCTION, BEFORE YOU CAN GET THAT HALF A MILLION JUDGMENT
15 ENTERED, AND IF THE COURT DETERMINES THAT THERE IS A BREACH,
16 OF THE INJUNCTION, AND YOU GET YOUR HALF MILLION JUDGMENT
17 THAT IS INDEPENDENT OF ANYTHING THE COURT MAY SEE FIT TO DO
18 WITH RESPECT TO ENFORCING THE INJUNCTION?

19 MR. GOLDEN-KRASNER: CORRECT.

20 THE COURT: OKAY.

21 I UNDERSTAND THAT, SO WHAT THAT SUGGESTS IS,
22 DEFENSE, IS THAT THEY CAN'T JUST COME IN EX PARTE IF THERE
23 IS A DIFFERENCE IN THE MEET AND CONFER THEY CAN'T COME IN EX
24 PARTE AND SAY WE DISAGREE WITH THE MEET AND CONFER.

25 WE ARE ENTITLED TO THE HALF MILLION JUDGMENT.

26 IT REQUIRES THE COURT DETERMINATION IF THERE HAS
27 BEEN, IN FACT, A VIOLATION OF THE TERMS OF THE INJUNCTION AS
28 THE PREDICATE FOR GETTING THE HALF A MILLION JUDGMENT UNDER

1 THOSE CIRCUMSTANCES, AND THAT IS WITHOUT PREJUDICE, AND
2 REGARDLESS WHAT THE COURT MAY DO OR MAY NOT DO, WITH RESPECT
3 TO OTHER ENFORCEMENT OF THE INJUNCTIVE ORDER.

4 MR. NITTI: RIGHT. THEN I BELIEVE MY UNDERSTANDING IS
5 THAT THAT WOULD REQUIRE A NOTICED MOTION SO WE WOULD HAVE AN
6 OPPORTUNITY TO BE HEARD.

7 THE COURT: THEY WOULD HAVE TO COME IN ON NOTICE, WITH
8 RESPECT TO ENFORCEMENT OF THE INJUNCTION AND HAVE IT FOR THE
9 COURT TO COME IN TO MAKE A DETERMINATION IF IT HAD BEEN
10 VIOLATED.

11 MR. NITTI: WE WOULD HAVE THE OPPORTUNITY TO BE HEARD.

12 THE COURT: ABSOLUTELY. MR. JACOBS, DO YOU UNDERSTAND
13 WHAT WE HAVE JUST DISCUSSED?

14 MR. JACOBS: YES, YOUR HONOR.

15 THE COURT: MR. KATANGIAN?

16 MR. KATANGIAN: YES.

17 THE COURT: YOU AGREE TO IT AS WELL?

18 MR. KATANGIAN: YES. OKAY.

19 MR. GOLDEN-KRASNER: THANK YOU, YOUR HONOR.

20 I APPRECIATE YOU AND YOUR STAFF WORKING THROUGH
21 THEIR LUNCH HOUR. THANK YOU, SO MUCH.

22 (PROCEEDINGS CONCLUDED)

23

24

25

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27

28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPT. LA 24 HONORABLE ROBERT L HESS, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA)
EX REL., THE CALIFORNIA AIR RESOURCES)
BOARD,)
PLAINTIFF,)

-VS-

KEY DISPOSAL, INC., A CALIFORNIA)
CORPORATION; JOHN KATANGIAN, AN)
INDIVIDUAL; SHELLINE "SHELLY" KATANGIAN)
AN INDIVIDUAL; AND DOES 1-50, INCLUSIVE,)
DEFENDANTS.)

) REPORTER'S
) CERTIFICATE
) BC 393098

STATE OF CALIFORNIA)

) SS

COUNTY OF LOS ANGELES)

I, CAROL L. CRAWLEY, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF
LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES,
1-24, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE
PROCEEDINGS HELD ON MAY 26, 2009, IN DEPARTMENT 24 OF THE
LOS ANGELES COURT IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

DATED THIS 10TH DAY OF JUNE, 2009.

_____, CSR #7518
CAROL CRAWLEY, OFFICIAL REPORTER

**EXEMPT FROM FILING FEES
(GOV. CODE § 6103)**

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15

16
17 **PEOPLE OF THE STATE OF
CALIFORNIA, *ex rel.*, THE CALIFORNIA
18 AIR RESOURCES BOARD,**

19 Plaintiff,

20 v.

21 **KEY DISPOSAL, INC., a California
22 corporation; JOHN KATANGIAN, an
23 individual,**

24 Defendants.
25
26
27
28

Case No. BC 393098

**SETTLEMENT AGREEMENT AND
ORDER**

Dept: 24
Assigned to: Hon. Judge Robert L. Hess

1 On May 26, 2009, before the Honorable Robert Hess in Department 24 of the Los Angeles
2 County Superior Court (Court) Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA, ex
3 rel., CALIFORNIA AIR RESOURCES BOARD (ARB) and Defendants KEY DISPOSAL, INC.
4 JOHN KATANGIAN (Defendants), and SHELLINE KATANGIAN (Collectively "Parties")
5 entered into a Settlement of the above captioned case in open court pursuant to Code of Civil
6 Procedure Section 664.6 (Settlement). The material terms of the Settlement including imposition
7 of a Court Ordered injunction were set forth on the record. That Settlement is now more fully set
8 forth below.

9 10 **SETTLEMENT TERMS**

11 The Parties, after opportunity for review by counsel, hereby agree to the following
12 Settlement terms as set forth below. In the event of any dispute of the Settlement's terms, the
13 Settlement terms set forth on the record on May 26, 2009, will be determinative of those terms.

14 **1. JURISDICTION**

15 The Court will retain jurisdiction over the Parties pursuant to the Code of Civil Procedure
16 Section 664.6 to enforce the Parties' Settlement.

17 **2. JUDGMENT**

18 Defendants each agree to a Judgment against them jointly and severally in the amount of
19 \$500,000 in the form attached hereto as Exhibit A (Judgment). Such Judgment shall be stayed
20 contingent upon the Defendants' compliance with the monthly payment requirements of this
21 Settlement totaling two hundred and fifty thousand dollars (\$250,000) in penalty payments in
22 equal amounts over a 24 month period, and compliance with the Injunction Ordered by this Court
23 on [ADD] date, and more fully described at section 5 below.

24 **3. SHELLINE KATANGIAN**

25 **3.1** ARB hereby agrees to dismiss Shelline Katangian from this case pursuant to the terms
26 set forth in sections 3.2 and 3.3 below, and she shall therefore not be a party to this Settlement
27 except for purposes of this dismissal and all other terms pursuant to Section 3 of this Settlement.
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1 **3.2** Shelline Katangian shall bear her own costs and attorneys' fees associated with the
2 above captioned case.

3 **3.3** Shelline Katangian covenants not to sue or pursue any civil or administrative claims
4 against the ARB or other departments or agencies of the State of California, or their officers,
5 employees, representatives, agents or attorneys arising out of or related to the above captioned
6 case. Shelline Katangian hereby releases the ARB and its respective Representatives from any
7 and all liability arising from or related to the above captioned case. This release applies to all
8 claims, whether known or unknown by Shelline Katangian at the time of the execution of this
9 agreement. and Shelline Katangian agrees to waive any rights she might have to pursue any
10 claims subject to Civil Code Section 1542.

11 **4. PENALTY PAYMENTS**

12 **4.1** On or before July 1, 2009, Defendants shall pay the ARB the sum of two hundred and
13 fifty thousand dollars (\$250,000) in penalty payments in equal amounts over a 24 month period,
14 with the first payment due on July 1, 2009, and each subsequent payment due on the first of each
15 month. All payments shall be payable by check to the "California Air Pollution Control Fund" to
16 be delivered to the following address:

17
18 Gretchen Ratliff
19 California Air Resources Board
20 Enforcement Division
21 9460 Telstar Avenue
22 El Monte, California 91731

23 **4.2** If the Defendants miss any of the monthly payments, or fail to pay any monthly
24 payment in full, then the ARB or its counsel shall give notice by facsimile and by mail to
25 Defendants' counsel identified in Section 9 below that the Defendants shall have ten (10) days to
26 cure the violation and make the payment (Cure Period).

27 **4.3** If Defendants fail to pay the full amount within the Cure Period, then the ARB or its
28 counsel may make an ex-parte application, without further notice, to the Court seeking to have the
Stipulated Judgment entered and to collect upon that Judgment less credit for any monies already
received pursuant to Section 4.1 above

1 **5. INJUNCTIVE RELIEF**

2 The Court shall enter an injunction order (Injunction) on the following terms:

3 **5.1** On or before September 29, 2009, Defendants shall bring their entire fleet of Solid
4 Waste Collection Vehicles as defined by California Code of Regulations, title 13, section 2021,
5 including any vehicles added to that fleet, which are owned or leased in whole or in part, by any
6 of the Defendants (SWCV Fleet), and their entire fleet of heavy-duty diesel-powered vehicles as
7 defined by California Code of Regulations, title 13, section 2191, including any vehicles added to
8 that fleet, which are owned or leased in whole or in part, by any of the Defendants (PSIP Fleet),
9 into full compliance with:

- 10 a. California Code of Regulations, title 13, sections 2190 through 2194 (the Periodic
11 Smoke Inspection Program);
12 b. California Code of Regulations, title 13, sections 2020 et seq. (the Solid Waste
13 Collection Vehicle rules).

14 **5.2** Defendants may take any vehicle which is not brought into compliance by September
15 29, 2009, pursuant to this Section, out of service by i) immediately ceasing the use of the vehicle
16 on the streets or highways of the State of California, and ii) sending a written affidavit by
17 facsimile and by mail to the Air Resources Board at the address listed in section 4.1 stating that
18 the vehicle is not and will not be used on the streets or highways of the State of California at any
19 time until the vehicle is brought into compliance with the Solid Waste Collection Vehicle rules
20 and the Periodic Smoke Inspection Program, which compliance shall be verified by the Air
21 Resources Board on a mutually agreeable date.

22 **5.3** The Air Resources Board shall inspect the Defendants' SWCV Fleet and PSIP Fleet as
23 described in paragraph 5.1 above to determine the Defendants' compliance with section 5.1 of
24 this agreement, on a mutually agreeable date on or before September 29, 2009.

25 **5.4** In addition, Defendants shall maintain their entire SWCV Fleet and PSIP Fleet in full
26 compliance with:

- 27 a. California Code of Regulations, title 13, sections 2190 through 2194 (the Periodic
28 Smoke Inspection Program);

1 b. California Code of Regulations, title 13, sections 2020 et seq. (the Solid Waste
2 Collection Vehicle rules).

3 **5.5** If the Air Resources Board believes that any violations of sections 5.1, 5.2, and/or 5.4
4 of this agreement have taken place, then it or its counsel shall meet and confer with Defendants or
5 Defendants' counsel, in an attempt to resolve any dispute without Court intervention.

6 **5.6** If after the meet and confer takes place the Air Resources Board believes that a
7 violation of the injunction has not been resolved, then it or its counsel shall give notice to
8 Defendants' counsel by facsimile and by mail that the Defendants shall have five (5) days to cure
9 the violation of the injunction (Injunction Cure Period). The facsimile and mail shall be made to
10 the following person at the following address and facsimile number [**Tom to Add**]

11 **5.7** If the ARB determines that the alleged violation(s) of sections 5.1, 5.2, and/or 5.4
12 above have not been cured following the expiration of the Injunction Cure Period, then the Air
13 Resources Board may bring a regularly noticed Motion in accordance with Code of Civil
14 Procedure section 1005 to ask the Court to determine what, if any, violation(s) of section(s) 5.1,
15 5.2, and/or 5.4 above have occurred.

16 **5.8** If the Court determines that any violation(s) of the Injunction has occurred, then the
17 Air Resources Board shall be entitled immediately to enter the agreed upon Judgment and to
18 collect upon that Judgment less credit for any monies already received pursuant to the Section 4.1
19 above.

20 **5.9** If the Air Resources Board determines that any violation(s) of the Injunction has
21 occurred, then the Air Resources Board shall also be entitled to take any and all appropriate
22 action, including, but not limited to revoking the registration(s) of the offending vehicle(s)
23 pursuant to Vehicle Code section 4755 and/or bringing a separate action in any court of
24 competent jurisdiction against Defendants for such violations, notwithstanding any other remedy
25 provided herein.

26 **5.10** The Court shall also have the power to Order any further remedy the Court deems
27 necessary to enforce its Injunction Order against the Defendants, including, but not limited to,
28 instituting contempt proceedings.

1 **6. CURRENT REGISTRATION HOLDS**

2 **6.1** The ARB shall request the Department of Motor Vehicles to release the registration
3 holds currently in effect on Defendants' vehicles once those vehicles have been determined by
4 ARB to be in compliance with:

5 a. California Code of Regulations, title 13, sections 2190 through 2194 (the Periodic
6 Smoke Inspection Program); and,

7 b. California Code of Regulations, title 13, sections 2020 et seq. (the Solid Waste
8 Collection Vehicle rules).

9 **7. TRAINING**

10 Defendant John Katangian and any other person responsible for compliance with ARB's
11 Periodic Smoke Inspection Program or Solid Waste Collection Vehicle rules shall complete the
12 California Council on Diesel Education and Technology (CCDET) class, as described on the
13 ARB's webpage at www.arb.ca.gov/msprog/hdvp/hdvp.htm. This class is conducted by various
14 California Community Colleges throughout the State. Proof of CCDET completion shall be
15 provided to the ARB within one hundred and twenty (120) days of the signing of this agreement
16 and shall also be maintained in each applicable employee's file for the term of his or her
17 employment by Defendants.

18 **8. PRESS RELEASE**

19 The ARB may issue any standard press release following the signing of this agreement

20 **9. NOTICE**

21 All submissions and notices required by this agreement shall be sent to: For the Air
22 Resources Board:

23 Noah Golden-Krasner, Esq.
24 Allan Ono, Esq.
25 Deputy Attorneys General
26 Office of the Attorney General
27 300 S. Spring Street, 11th Floor
28 Los Angeles, California 90013
29 Phone: (213) 897-2614
30 Fax: (213) 897-2802
31 E-mail: Noah.GoldenKrasner@doj.ca.gov

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For the Defendant:

[Tom to add]

Any Party may change its notice name and address by informing the other Parties in writing, but no change is effective until it is received.

10. EFFECT OF JUDGMENT

Except as expressly provided in this agreement, nothing in this agreement is intended nor shall it be construed to preclude the ARB, or any state, county, or local agency, department, board or entity, or any CUPA, from exercising its authority under any law, statute or regulation.

11. NO WAIVER OF RIGHT TO ENFORCE

The failure of the ARB to enforce any provision of this agreement shall neither be deemed a waiver of such provision nor in any way affect the validity of this agreement. The failure of the ARB to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this agreement. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered in this agreement shall be construed to relieve any Party of its obligations under this agreement.

12. REGULATORY CHANGES

Nothing in this agreement shall excuse Defendants from meeting any more stringent requirements that may be imposed by changes in the applicable law or regulation.

13. AUTHORITY TO ENTER AGREEMENT

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

14. NON-DISCHARGEABILITY OF OBLIGATIONS

Payments required by this agreement are not dischargeable in bankruptcy.

15. PAYMENT OF LITIGATION EXPENSES AND FEES.

1 Defendants shall pay their own attorney fees, expert witness fees and costs and all other
2 costs of litigation and investigation incurred to date.

3 **16. COUNTERPART SIGNATURES**

4 This agreement may be executed by the Parties in counterpart.

5 **17. MODIFICATION OF CONSENT JUDGMENT**

6 This Consent Judgment may be modified only by the Court, or upon written consent by the
7 Parties and with the approval of the Court.

8 **18. Computation of Time**

9 If the last day for the performance of any act provided or required by this Settlement falls
10 on a weekend or holiday, then that period is extended to the next business day. "Holiday" means
11 all holidays specified in Code of Civil Procedure section 135, and to the extent provided in Code
12 of Civil Procedure section 12b, all days that by terms of section 12b are required to be considered
13 as holidays.

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23 IT IS SO AGREED.
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1 Dated: June _____, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
RICHARD J. MAGASIN
Supervising Deputy Attorney General

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NOAH GOLDEN-KRASNER
Deputy Attorney General
*Attorneys for California Air Resources
Board*

Dated: June _____, 2009

Respectfully Submitted,

LAW OFFICES OF THOMAS A NITTI

THOMAS A NITTI
Attorneys for Defendants

FOR THE AIR RESOURCES BOARD:

Dated: June _____, 2009

JAMES N. GOLDSTENE
EXECUTIVE OFFICER

FOR DEFENDANTS KEY DISPOSAL INC. AND JOHN KATANGIAN

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Dated: June 25, 2009



JOHN KATANGIAN

Dated: June 25, 2009



SHELLINE KATANGIAN

The Court having received the above stated Settlement hereby:

1. Approves the Settlement and Orders that it be entered as a legal and binding Settlement.
2. Will retain jurisdiction over the Parties pursuant to Code of Civil Procedure Section

664.6 to enforce the Parties' Settlement.

IT IS SO ORDERED

Date: _____, 2009

Honorable Robert L. Hess
Judge, California Superior Court

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