

**COPY**

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*Attorneys for Plaintiff, the People of the State of  
9 California, ex rel. Barbara A. Lee, Director,  
California Department of Toxic Substances Control*

*EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103*

15 AUG 31 PM 12:16 D  
Clerk of the Superior Court

AUG 31 2016  
By: Anthony Shirley, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN DIEGO

14  
15 **THE PEOPLE OF THE STATE OF**  
16 **CALIFORNIA, ex rel. Barbara A. Lee,**  
**Director, California Department of Toxic**  
**Substances Control,**

17 Plaintiff,

18 v.

19  
20 **SAN DIEGO PAINTING, INC., a California**  
**Corporation,**

21 Defendant.

Case No. **37-2016-00030224-CU-MC-CTL**

**STIPULATION FOR ENTRY OF FINAL  
JUDGMENT AND ORDER**

(Code of Civ. Proc., § 664.6)

23 Plaintiff, the People of the State of California, ex rel. Barbara A. Lee, Director, California  
24 Department of Toxic Substances Control (DTSC) and Defendant, San Diego Painting, Inc., a  
25 California Corporation (San Diego Painting), by and through their respective representatives  
26 and/or counsel, enter into this Stipulation for Entry of Final Judgment and Order (Stipulation) and  
27 stipulate as follows:  
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**1. ENTRY OF FINAL JUDGMENT PURSUANT TO STIPULATION.**

The Parties stipulate that the Court may enter the proposed Final Judgment and Order on Consent (Final Judgment) in this matter in the form set forth in the attached Exhibit 1.

**2. AUTHORITY TO ENTER STIPULATION.**

Each signatory to this Stipulation certifies that he or she is fully authorized by the Party he or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and to legally bind that Party in consenting to the entry of Final Judgment.

**3. COUNTERPARTS.**

This Stipulation may be executed in several counterpart originals, all of which taken together shall constitute an integrated document.

**4. ENTRY OF FINAL JUDGMENT PURSUANT TO STIPULATION.**

Final Judgment shall not be effective until it is approved and entered by the Court. If the Court does not approve this Stipulation and enter Final Judgment in the form and substance proposed, it shall be of no force or effect and may not be used by the People, Defendants, or any other person for any purpose whatsoever; however, the Parties agree to collaborate in good faith to overcome the Court's objections to this Stipulation or the Final Judgment.

**IT IS SO STIPULATED.**

Dated: August 24, 2016

FOR THE CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

  
KEITH KIHARA  
CHIEF, ENFORCEMENT AND EMERGENCY  
RESPONSE DIVISION, HAZARDOUS WASTE  
MANAGEMENT PROGRAM

Dated: August \_\_, 2016

FOR SAN DIEGO PAINTING, INC.

  
SHAWN ITZHAKI  
OWNER & PRESIDENT

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Dated: August \_\_, 2016

FOR THE CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

\_\_\_\_\_  
KEITH KIHARA  
CHIEF, ENFORCEMENT AND EMERGENCY  
RESPONSE DIVISION, HAZARDOUS WASTE  
MANAGEMENT PROGRAM

Dated: August 29, 2016

FOR SAN DIEGO PAINTING, INC.

\_\_\_\_\_  
SHAWN ITZHAKI  
OWNER & PRESIDENT

1 APPROVED AS TO FORM.

2 Dated: August 30, 2016

KAMALA D. HARRIS  
Attorney General of California  
TIMOTHY PATTERSON  
Supervising Deputy Attorney General

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7 ~~JOHN W. EVERETT~~  
Deputy Attorney General  
Attorneys for Plaintiff People of the State of  
8 California, ex rel. Department of Toxic  
Substances Control  
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# Exhibit 1

EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103

**FILED**  
Clerk of the Superior Court

SEP 07 2016

By: Anthony Shirley, Deputy  
15 AUG 31 PM 12:16

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

**THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel. Barbara A. Lee, Director, California Department of Toxic Substances Control,**

Plaintiff,

v.

**SAN DIEGO PAINTING, INC., a California Corporation,**

Defendant.

Case No.:

**[PROPOSED] FINAL JUDGMENT AND ORDER ON CONSENT**

**1. INTRODUCTION AND COMPLAINT.**

This Plaintiff, the People of the State of California, ex rel. Barbara A. Lee, Director, California Department of Toxic Substances Control (DTSC) and Defendant, San Diego Painting, Inc., a California Corporation (San Diego Painting), by and through their respective representatives and counsel, consent to entry of this Final Judgment and Order on Consent (Final Judgment) via the Stipulation for Entry of Final Judgment and Order (Stipulation).

1 Defendant San Diego Painting is an active California Corporation engaged in the business  
2 of home improvement activities, including interior and exterior painting, crown molding  
3 installation, wallpaper removal, and—historically—acoustic ceiling and lead paint removal and  
4 abatement. In the course of acoustic ceiling and lead paint removal and abatement, San Diego  
5 Painting transported asbestos, a hazardous waste. During the time of the alleged violations, San  
6 Diego Painting co-owned and operated a facility at 6156 Mission Gorge Road, Suite, San Diego,  
7 CA 92120 with San Diego Abatement Services, Inc., a California Corporation (San Diego  
8 Abatement). San Diego Painting and San Diego Abatement shared the facility, employees, and  
9 corporate officers. San Diego Painting contends that, beginning on or about December 2012, San  
10 Diego Abatement began operating the abatement services business, including transportation of  
11 hazardous waste asbestos, while San Diego Painting continued the remaining business activities.  
12 San Diego Painting and San Diego Abatement currently share a facility located at 7401 Princess  
13 View Drive, Suite C, San Diego, CA 92120.

14 DTSC alleges that San Diego Painting has transported hazardous waste asbestos without  
15 being registered as a hazardous waste transporter, thereby violating the California Health and  
16 Safety Code, section 25163, subdivision (a)(1)—which provides:

17 [I]t is unlawful for any person to carry on, or engage in, the transportation of  
18 hazardous wastes unless the person holds a valid registration issued by the  
19 department. Any registration issued by the department to a transporter of hazardous  
20 waste is not transferable from the person to whom it was issued to any other person.

21 Specifically, DTSC alleges that San Diego Painting transported hazardous waste without valid  
22 registration under 506 manifests over the course of thirty-four days between December 2008 and  
23 December 2012. During April 2012, the owner of San Diego Painting applied for registration as  
24 a transporter of hazardous waste on behalf of San Diego Abatement. After that application was  
25 made, DTSC alleges that San Diego Painting transported hazardous waste under 105 manifests  
26 over the course of six days.

27 On October 15, 2013, DTSC issued a Summary of Violations to San Diego Painting setting  
28 forth the foregoing allegations. These allegations are also set forth in the Complaint filed  
concurrently herewith, at paragraphs 25-35.

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**4. AGREEMENT TO SETTLE DISPUTE.**

Pursuant to the Stipulation, as a compromise and settlement of the disputed claims, the Parties mutually consent to the entry by the Court of this Final Judgment. This Final Judgment and the Stipulation were negotiated in good faith and at arms' length by the Parties to further the public interest and to avoid expensive and protracted litigation regarding the violations alleged in the Complaint. The Parties agree that there has been no adjudication of any fact or law.

**5. JURISDICTION AND VENUE.**

The Parties agree that for purposes of this Final Judgment, this Court has subject matter jurisdiction over the matters alleged in the Complaint, personal jurisdiction over San Diego Painting, and that venue in this Court is proper under Health and Safety Code section 25183.

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

By signing the Stipulation and consenting to the entry of this Final Judgment, San Diego Painting waives its right to hearing and a trial on the matters alleged in the Complaint.

**7. APPLICABILITY.**

Unless otherwise expressly provided herein, the provisions of this Final Judgment shall apply to and be binding on San Diego Painting and its agents, servants, employees, representatives, successors, and all persons, as that term is defined in Health and Safety Code section 25118, acting in concert or participating with San Diego Painting, and on DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of the Final Judgment entered in this matter.

**8. MATTERS COVERED.**

Except as otherwise provided herein, this Final Judgment is a full, final, and binding resolution and settlement of all claims and causes of action alleged by DTSC in the Complaint (Covered Matters). Except as expressly provided herein, nothing in this Final Judgment is intended to nor shall it be construed to preclude DTSC, or any federal, state, or local agency, department, board, or other entity, from exercising its authority or rights under any federal, state,

1 or local law, statute, or regulation, nor shall it. In any subsequent action that may be brought by  
2 DTSC based on any claim, violation, or cause of action not covered by this Final Judgment, San  
3 Diego Painting agrees that it will not assert that failing to pursue such claim, violation, or cause of  
4 action as part of this action constitutes claim-splitting.

5 **9. INJUNCTIVE TERMS.**

6 a. Compliance with the HWCL and its Implementing Regulations. Pursuant to the  
7 provisions of Health and Safety Code sections 25181 and 25184, San Diego Painting shall  
8 comply with Chapter 6.5 of Division 20 of the Health and Safety Code, and the regulations  
9 promulgated thereunder in Division 4.5 of Title 22 of the California Code of Regulations, in its  
10 operations. Nothing in this Final Judgment is intended to nor shall it be construed to relieve San  
11 Diego Painting of any obligation under the foregoing statutes and regulations.

12 b. Training. Within sixty (60) calendar days after the date of entry of this Final  
13 Judgment, San Diego Painting shall provide to all employees who manage hazardous waste, or  
14 verify that it has already provided, the initial hazardous waste training required for hazardous  
15 waste generators (such as San Diego Painting). These hazardous waste training requirements are  
16 set forth in California Code of Regulations, title 22, section 66265.16, and are required for  
17 generators pursuant to title 22, section 66262.34, subdivision (a). Verification shall be submitted  
18 in writing to the representatives of DTSC (including counsel) listed in Paragraph 12 below.  
19 Verification shall consist of: (1) copies of the training curriculum; and (2) sign-in sheets showing  
20 the dates on which employees were trained. Nothing in this paragraph is intended to nor shall it  
21 relieve San Diego Painting of its continuing obligations to provide new employee training and  
22 annual refresher training to existing employees under California Code of Regulations, title 22,  
23 section 66265.16.

24 **10. MONETARY SETTLEMENT REQUIREMENTS.**

25 San Diego Painting agrees to and shall expend funds in the amount of forty-eight thousand  
26 six hundred and forty-seven dollars (\$48,647) as civil penalties in this matter, to be paid to DTSC  
27 within 60 days of the entry of this Final Judgment. DTSC reduced the initial penalty assessment  
28

1 of one hundred and sixty five thousand dollars (\$165,000) to the foregoing sum after an analysis  
2 of San Diego Painting's ability to pay.

3 San Diego Painting shall pay all monies owed to DTSC pursuant to this Final Judgment by  
4 cashier's check, made payable to the "California Department of Toxic Substances Control" and  
5 bearing the notation "San Diego Painting, Inc.," sent to:

6 Cashier  
7 Accounting Office, MS-21 A  
8 Department of Toxic Substances Control  
9 P.O. Box 806  
10 Sacramento, California 95 812-0806

11 An electronic (i.e., Adobe PDF) copy or paper photocopy of each check shall be sent, at  
12 the same time, to those persons identified in Paragraph 12.

#### 13 **11. ENFORCEMENT.**

14 If San Diego Painting fails to comply with the schedule set forth above in Paragraphs 9 and  
15 10, DTSC will provide San Diego Painting with written notice of the default. Should San Diego  
16 Painting's failure to comply with the schedule extend beyond three weeks after receipt of the  
17 written notice of default, or beyond another time frame specified by DTSC at DTSC's sole  
18 discretion (whichever is later), San Diego Painting agrees to pay a penalty of \$1,000 per day for  
19 each additional day of non-compliance beyond the three week or other applicable period.

20 If DTSC determines that San Diego Painting has violated any other term(s) of this Final  
21 Judgment, DTSC may, by motion or order to show cause before the Superior Court of San Diego  
22 County, enforce the terms and conditions contained herein. In any action brought by DTSC to  
23 enforce this Final Judgment, DTSC may seek any fines, costs, penalties, injunctive relief, or other  
24 remedies provided for by law for the failure to comply with this Final Judgment. Where said  
25 failures constitute violations of the HWCL (Health & Saf. Code, § 25100 et seq.) or other laws,  
26 DTSC is not limited to the enforcement of this Final Judgment, but may seek, in another action,  
27 any fines, costs, penalties, injunctive relief, or other remedies provided for by law. Nothing  
28 herein is intended to nor shall it be construed to limit or preclude DTSC from initiating an  
enforcement action against San Diego Painting for any violations of the HWCL or its  
implementing regulations not alleged to date by DTSC.

1           **12. NOTICES.**

2           All notices under this Final Judgment shall be in writing and shall be sent to:

3           Ellen Haertle  
4           Senior Environmental Scientist  
5           Enforcement and Emergency Response Division  
6           1001 I Street, MS 11A  
7           P.O. Box 806  
8           Sacramento, CA 95812-0806  
9           [Ellen.Haertle@dtsc.ca.gov](mailto:Ellen.Haertle@dtsc.ca.gov)

10          Alexander Mayer  
11          Senior Staff Counsel  
12          Office of Legal Counsel  
13          Department of Toxic Substances Control  
14          1001 I Street, MS 23A  
15          P.O. Box 806  
16          Sacramento, California 95812-0806  
17          [Alexander.Mayer@dtsc.ca.gov](mailto:Alexander.Mayer@dtsc.ca.gov)

18          John W. Everett  
19          Deputy Attorney General  
20          Office of the Attorney General  
21          600 West Broadway, Suite 1800  
22          San Diego, CA 92101  
23          [John.Everett@doj.ca.gov](mailto:John.Everett@doj.ca.gov)

24          Shawn Itzhaki  
25          Owner & President  
26          San Diego Painting, Inc.  
27          7401 Princess View Drive, Suite C  
28          San Diego, CA 92120  
            [info@sandiegopainting.net](mailto:info@sandiegopainting.net)

19           **13. NO WAIVER OF RIGHT TO ENFORCE.**

20           The failure of DTSC to enforce any provision of this Final Judgment shall neither be  
21           deemed a waiver of such provision, nor in any way affect the validity of this Final Judgment, the  
22           Stipulation, or DTSC's enforcement authority. The failure of DTSC to enforce any such  
23           provision of this Final Judgment shall not preclude it from later enforcing the same or other  
24           provisions. No oral advice, guidance, suggestions, or comments by employees or officials of  
25           DTSC or San Diego Painting, or people or entities acting on behalf of San Diego Painting,  
26           regarding matters covered in this Final Judgment shall be construed to relieve San Diego Painting  
27           of its obligations under this Final Judgment.  
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**14. NO LIABILITY OF DTSC.**

DTSC shall not be liable for any injury or damage to persons or property resulting from acts or omissions by San Diego Painting or its agents, servants, employees, representatives, or other persons acting in concert with or participating with San Diego Painting in carrying out activities pursuant to this Final Judgment, nor shall DTSC be held as a party to or guarantor of any contract entered into by San Diego Painting or its agents, servants, employees, representatives, or other persons acting in concert or participating with San Diego Painting, in carrying out the requirements of this Final Judgment.

**15. LEGAL OBLIGATIONS AND FUTURE REGULATORY CHANGES.**

Nothing in this Final Judgment shall relieve San Diego Painting from the obligation to obtain all necessary permits, entitlements and authorizations, or from any other obligations it has under law, statute, regulation, ordinance, permitting authority, or other authority.

Nothing in this Final Judgment shall excuse San Diego Painting from meeting any more stringent requirements that may be imposed by applicable law or by changes in the applicable law. To the extent future statutory and regulatory changes make San Diego Painting's obligations less stringent than those provided for in this Final Judgment, San Diego Painting (a) may stipulate with DTSC to modify San Diego Painting' obligations and submit such stipulation to this Court for review and approval or (b) may apply to this Court by noticed motion to modify San Diego Painting' obligations.

**16. INTEGRATION.**

This Final Judgment and the Stipulation constitute the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Final Judgment. No oral representations have been made or relied on other than as expressly set forth herein.

**17. RETENTION OF JURISDICTION.**

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

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**18. EQUAL AUTHORSHIP.**

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

**19. AMENDMENTS TO THIS FINAL JUDGMENT.**

This Final Judgment may be amended only pursuant to a written agreement signed by all the Parties, followed by written approval by the Court, or by order of the Court following the filing of a duly noticed motion.

**IT IS ORDERED THAT THE FINAL JUDGMENT AND ORDER ON CONSENT BE ENTERED.**

Dated: SEP 07, 2016

RANDA TRAPP  
JUDGE OF THE SUPERIOR COURT