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MAY - 9 2011
By S. Lee, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.* LEONARD ROBINSON, Acting Director, Department of Toxic Substances Control,
Plaintiff,
v.
FORTY-NINER SIERRA RESOURCES, INC., *et al.*,
Defendants.

Case No. 05AS00377

~~PROPOSED~~ FINAL JUDGMENT ON CONSENT

Good cause appearing therein, the Court approves the Settlement and Stipulation for Entry of Final Judgment on Consent ("Settlement"), executed by and between the named parties, as set forth in full in Exhibit A. As provided by local rule 9.16, final judgment is entered in favor of the People of the State of California, *ex rel.* Leonard Robinson, Acting Director, Department of Toxic Substances Control, and against defendants Forty-Niner Sierra Resources, Inc. (d/b/a Forty-Niner Subaru/Isuzu), a California corporation, Richard E. Wilmshurst, an individual, and Richard E. Wilmshurst, Trustee for the Louise B. Hall Wilmshurst Trust, according to the terms of the Settlement. The parties shall bear their own costs. IT IS SO ORDERED.

Dated: 5/9, 2011

MICHAEL KENNY
THE HONORABLE MICHAEL P. KENNY
Judge of the Superior Court

EXHIBIT A

1 KAMALA D. HARRIS
Attorney General of California
2 SALLY MAGNANI
Acting Senior Assistant Attorney General
3 RAISSA S. LERNER
Deputy Attorney General
4 State Bar No. 187038
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
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**EXEMPT FROM
FILING FEES
GOVERNMENT CODE § 6103**

8 *Attorneys for People of the State of California,*
ex rel. Leonard E. Robinson, Acting Director,
9 *California Department of Toxic Substances Control*

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO

15 **PEOPLE OF THE STATE OF
CALIFORNIA, *ex rel.* LEONARD
16 ROBINSON, Acting Director, Department
of Toxic Substances Control,**

Case No. 05AS00377

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

17
18 Plaintiff,

19 v.

20 **FORTY-NINER SIERRA RESOURCES,
INC., *et al.*,**

21
22 Defendants

23
24 **INTRODUCTION**

25 In this action, the People of the State of California, *ex rel.* Leonard Robinson, Acting
26 Director, Department of Toxic Substances Control (“Department” or “Plaintiff”), filed a civil
27 complaint (“Complaint”) in Sacramento Superior Court against three named defendants, Richard
28 E. Wilmshurst (“Wilmshurst”), the Louise B. Hall Wilmshurst Trust (“Trust”), and Forty-Niner

1 Sierra Resources, Inc. ("Forty-Niner"), collectively "Defendants." Plaintiff and Defendants have
2 agreed to settle this action on the terms set forth in this Settlement and Stipulation for Entry of
3 Final Judgment (the "Settlement").

4 1. COMPLAINT and PENDING LITIGATION

5 The Complaint alleges that Defendants violated provisions of the Hazardous Waste Control
6 Law ("HWCL"), Health and Safety Code sections 25100 *et seq.*, and regulations adopted there
7 under, in connection with Forty-Niner's business operations at 1103 Main Street, Angels Camp,
8 California (the "Site"), a property owned jointly by Wilmshurst and the Trust.

9 1.1. By Order of the Court issued August 24, 2010, Forty-Niner was adjudicated
10 liable for the first four (4) causes of action stated in the Complaint. The Court found Wilmshurst
11 and the Trust each liable for the fourth cause of action only. Wilmshurst and the Trust were
12 subsequently dismissed from the case. (Order, dated March 8, 2011.)

13 1.2. Defendants deny all of the allegations in the Complaint, and would appeal the
14 Court's finding of liability, should litigation of this matter continue to a final adjudicated outcome.
15 Wilmshurst and the Trust maintain that their dismissal from the action after adjudication of
16 liability was proper. Forty-Niner maintains that it, too, should have been dismissed from the case.

17 1.3. The Department is prepared to seek an order imposing penalties against Forty-
18 Niner in a trial proceeding scheduled to begin on March 28, 2011. The Department is further
19 prepared to appeal the earlier adverse liability and dismissal rulings against Wilmshurst and the
20 Trust, should litigation of this matter continue to a final adjudicated outcome.

21 2. JURISDICTION

22 The parties agree that Sacramento County Superior Court has subject matter jurisdiction
23 over the matters alleged in this action, and personal jurisdiction over the Defendants.

24 3. SCOPE OF SETTLEMENT

25 The Department and Defendants enter into this Settlement pursuant to a compromise and
26 resolution of the claims stated in the Complaint, and all defenses thereto, and mutually consent to
27 entry by the Court of a Final Judgment on Consent pursuant to this Settlement. This Settlement
28

1 was negotiated in good faith to avoid expensive and protracted continuing litigation and appeals
2 regarding Defendants' liability and penalties.

3 3.1. The terms of this Settlement shall constitute a full, final, and binding settlement
4 of (a) all of the claims alleged in the Complaint and defenses thereto; (b) all of the liabilities
5 adjudicated by the Court in its Order dated August 24, 2010; and (c) all of the appealable issues in
6 this action.

7 3.2. Defendants represent that (a) Forty-Niner is no longer an operating business
8 and no longer conducts any business or other activities at the Site; and (b) Wilmshurst no longer
9 conducts any business activities at the Site.

10 3.3. Except as provided in paragraph 3.1 above, nothing in this Stipulation or the
11 [Proposed] Final Judgment on Consent is intended to preclude the Department or any other state
12 or local agency, department, board, or entity from taking appropriate enforcement actions or
13 otherwise exercising its authority under any law, statute or regulation, and does not restrict the
14 Department or any other agency from taking appropriate enforcement action concerning any
15 violations of law that are not covered by this Settlement.

16 3.4. Any terms used in this Settlement that are defined in the Hazardous Waste
17 Control Law, California Health and Safety Code sections 25100 *et seq.*, or regulations adopted
18 there under, shall have the same meaning when used in this Settlement agreement.

19 4. TERMS OF SETTLEMENT

20 Plaintiff and Defendants enter into this Settlement as a compromise and complete
21 settlement of all of the disputed claims and rights to appeal in this action. Upon satisfactory
22 performance of the following provisions of this Settlement, all parties waive their rights to appeal
23 any matter covered by the Complaint, this Settlement and the [Proposed] Final Judgment on
24 Consent.

25 4.1 PAYMENTS:

26 Defendants agree to pay **FORTY-EIGHT THOUSAND SEVEN HUNDRED AND**
27 **FIFTY DOLLARS** (\$48,750) to the Department as a penalty. Payment shall be made as follows:
28 No later than five (5) days after Defendants sign and execute this Settlement agreement,

1 Defendants shall deliver to the Department a first installment of **FIFTEEN THOUSAND**
2 **DOLLARS** (\$15,000). On or before April 28, 2011, Defendants shall deliver to the Department
3 pay a second installment of **THIRTY-THREE THOUSAND SEVEN HUNDRED AND**
4 **FIFTY DOLLARS** (\$33,750). Defendants are jointly and severally responsible for these
5 payments. Delivery shall be by any means guaranteed to accomplish delivery to the Department
6 on or before the dates specified for each payment.

7 All payments pursuant to this Settlement shall be by cashier's checks, made payable to the
8 California Department of Toxic Substances Control, and shall be delivered to: Cashier, TSCP
9 Accounting, Department of Toxic Substances Control, P.O. Box 806, Sacramento, CA 95812-
10 0806. Each check shall bear on its face the court docket number of this case. A photocopy of the
11 checks shall be sent, at the same time, to Raissa S. Lerner, Office of the Attorney General, 1515
12 Clay Street, 20th Floor, Oakland, CA 94612, and to Sue Laney, Department of Toxic Substances
13 Control, 8800 Cal Center Drive, Sacramento, CA 95826.

14 4.2 PROHIBITIONS

15 Based upon Defendants' representations to the Department that (a) Forty-Niner is no longer
16 an active business, and no longer operates at the Site; and (b) neither Forty-Niner nor Wilmshurst
17 is presently engaged in any business activity that generates hazardous waste at the Site,
18 Defendants and each of them agree not to engage in any business or other activity at the Site that
19 generates hazardous waste. Defendants and each of them further agree not to operate a business
20 in California that generates hazardous waste.

21 Defendants shall not file either a chapter 7 or chapter 11 bankruptcy petition, or any other
22 bankruptcy petition, within one hundred (100) days of the date that the second of the two
23 payments provided for in paragraph 4.1, above, has been delivered to the Department, as provided
24 for in section 4.1.

25 4.3 FURTHER ACTION

26 No later than twenty (20) days after the effective date of this Settlement, Defendants shall
27 submit to the Department verification in the form of an inspection report or letter issued by
28 Calaveras County or, if such is not available, a declaration signed under penalty of law that all 55-

1 gallon drums that contain or previously contained hazardous waste have been removed from the
2 Site in accordance with all applicable laws.

3 5. PARTIES BOUND

4 This Settlement shall apply to and be binding upon Defendants and each of them and any
5 successor entity to any of the Defendants. This Settlement shall apply to and be binding upon the
6 Department and any successor agency of the Department that may have responsibility for and
7 jurisdiction over the subject matter of this Settlement.

8 6. ENTIRE AGREEMENT

9 This Settlement comprises the entire agreement and understanding of the parties with
10 respect to the entire subject matter discussed herein, and any and all prior discussions,
11 negotiations, commitments and understandings related hereto. No representations, oral or
12 otherwise, express or implied, other than those contained herein have been made by any party
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
14 deemed to exist or to bind any of the parties.

15 7. AUTHORIZATION TO SETTLE THIS MATTER

16 Each signatory to this Settlement certifies that he or she is fully authorized by the party he
17 or she represents to enter into this Settlement on behalf of the party represented and legally to
18 bind that party.

19 8. MODIFICATION

20 This Settlement may be modified only by express written agreement of the parties and in
21 accordance with law.

22 9. ENTRY OF FINAL JUDGMENT

23 The Department shall submit this Settlement, together with the [Proposed] Final Judgment
24 on Consent incorporating this Settlement, to the Court for entry as the final judgment in this
25 matter. This Settlement is final and binding between the parties as of its effective date, regardless
26 of entry by the Court as final judgment.

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10. GOVERNING LAW

The terms of this Settlement and the Final Judgment on Consent shall be governed by the laws of the State of California.

11. COUNTERPARTS AND FACSIMILE

This Settlement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

12. EFFECTIVE DATE

The effective date of this Settlement is the date it is signed by all parties.

APPROVALS OF THE PARTIES

IT IS SO AGREED:

DATED: 3/28/11

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Susan J. Laney
BY: Sue Laney, Acting Deputy Director
Enforcement & Emergency Response Program
California Department of Toxic Substances Control

DATED: _____

FORTY-NINER SIERRA RESOURCES, INC.

BY: RICHARD E. WILMSHURST
President of Forty-Niner Sierra Resources, Inc.

DATED: _____

RICHARD E. WILMSHURST

BY: RICHARD E. WILMSHURST, Individual

1 DATED: _____

LOUISE B. HALL (WILMSHURST) TRUST

2

3

4

BY: RICHARD E. WILMSHURST, Trustee

5

6 APPROVED AS TO FORM:

6

7

DATED: 3/28/2011

KAMALA D. HARRIS
Attorney General
SALLY MAGNANI
Acting Senior Assistant Attorney General
MARGARITA PADILLA
Supervising Deputy Attorney General

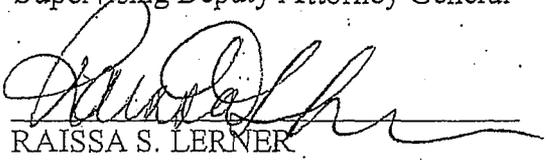
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RAISSA S. LERNER

13

BY: Deputy Attorney General

14

Attorneys for Plaintiff, People of the State of
California, *ex rel.* Leonard Robinson, Acting
Director, Department of Toxic Substances Control

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DATED: _____

JEFFREY D. HEISER
HEISER LAW CORPORATION

18

19

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BY: JEFFREY D. HEISER, Esq.
Attorney for Forty-Niner Sierra Resources, Inc.

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