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APR 03 2008

**LOS ANGELES
SUPERIOR COURT**

8 Attorneys for Plaintiffs

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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 FOR THE COUNTY OF LOS ANGELES
 12 CENTRAL DISTRICT

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14 PEOPLE OF THE STATE OF CALIFORNIA, et
 15 al.,

Plaintiffs,

v.

17 S&W ATLAS IRON AND METAL CO., INC., et
 18 al.

Defendants.

And related cross-action.

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Case No.: BC316733
 (Ordered related to BC 330071)
 (Hon. Peter Lichtman - Dept. 322)

**STIPULATION FOR
SETTLEMENT AND ENTRY
OF JUDGMENT**

Plaintiffs, THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel.
 DEPARTMENT OF TOXIC SUBSTANCES CONTROL, and the TOXIC SUBSTANCES
 CONTROL ACCOUNT, and Defendants, S&W ATLAS IRON AND METAL CO., INC.,
 a corporation; GARY J. WEISENBERG, individually, as Trustee of the Dorothy Sebulsky
 Trust, and as Co-Trustee of the Residual Trust created under the Will of Jacob L. Sebulsky;
 SOPHIE WEISENBERG aka Sophia Weisenberg, as Co-Trustee of the Residual Trust
 created under the Will of Jacob L. Sebulsky; DORIS SEBULSKY; and 10019 S.

1 ALAMEDA LLC (collectively the “Parties”), stipulate as follows:

2 **A. THE COMPLAINT**

3 On June 8, 2004, Plaintiffs filed their complaint in this action. Plaintiffs filed a first
4 amended complaint on June 16, 2004, and a second amended complaint on October 14,
5 2004. Plaintiffs request: injunctive relief and civil penalties under Health and Safety Code
6 section 25100 et seq.; public nuisance abatement; and cost recovery under Health and Safety
7 Code section 25300 et seq.

8 **B. JURISDICTION**

9 Plaintiffs and Defendants agree this Court has subject matter jurisdiction over the
10 matters alleged in the operative complaint and personal jurisdiction over Defendants.

11 **C. WAIVER OF HEARING AND TRIAL AND ENTRY OF JUDGMENT**

12 By signing and entering into this Stipulation, Defendants waive their right to a
13 hearing or trial on the matters alleged in the operative complaint. Further, the Parties request
14 this Court to enter Judgment for Plaintiffs in the form and substance set forth in Exhibit 1
15 to this Stipulation.

16 **D. SETTLEMENT**

17 Plaintiffs and Defendants jointly enter into this Stipulation as a compromise and
18 settlement of disputed claims for the purpose of avoiding prolonged and complicated
19 litigation and furthering the public interest. The Parties agree that there has been no
20 adjudication of any fact or law, and Defendants expressly deny any liability.

21 **1. WORK TO BE PERFORMED**

22 Defendants S&W Atlas Iron and Metal Co., Inc. (“S&W Atlas”) and Gary
23 Weisenberg shall perform the following work at the Atlas Iron and Metal property, 10019-
24 10035-10047 South Alameda Street, Los Angeles, California 90002:

25 1.1. **Temporary Covers.** Currently, water resistant tarpaulins cover the area where
26 the larger pile described in the operative complaint was formerly located. S&W Atlas and
27 Gary Weisenberg shall leave such tarpaulins in place until the work described in Section 1.2
28 commences.

1 1.2. **Cap.**

2 1.2.1. Within ninety (90) days of entry of Judgment, S&W Atlas and Gary
3 Weisenberg shall install an engineered cap (“Cap”) over the former location of the larger
4 pile. The Cap shall be installed according to the Work Plan attached as Exhibit 2.

5 1.2.2. Construction of the Cap shall comply with all applicable building and
6 safety codes and all necessary permits.

7 1.2.3. All preparation for backfilling, backfilling, and compaction related to
8 installing the Cap shall be performed by a California-licensed General Contractor certified
9 for hazardous waste operations. All on-site personnel who are involved in such work,
10 including subcontractors, must have received the appropriate 40-hour training, 8-hour
11 refresher training, and medical monitoring in accordance with OSHA Hazardous Waste
12 Operators and Emergency Response (HAZWOPER) Standards (29 CFR 1910.120 and 8
13 CCR 5192). Proof of training and medical monitoring for all on-site personnel shall be
14 provided to the Department of Toxic Substances Control (“Department”) prior to mobilizing
15 to the site. All other work related to Cap installation shall be performed by a California-
16 licensed contractor.

17 1.2.4. Within thirty (30) days of completion of the Cap, S&W Atlas and Gary
18 Weisenberg shall submit written confirmation to the Department that the Cap was installed
19 in accordance with Section 1.2 and the attached Work Plan.

20 1.3. **Adjacent Area.** During the time frame when the Cap is installed, S&W Atlas
21 and Gary Weisenberg shall repair the concrete area that is within ten feet of the eastern edge
22 of the former location of the larger pile, along the entire eastern edge of that location (the
23 “Adjacent Area”). These repairs shall consist of all work necessary to provide a smooth,
24 crack-free, durable concrete surface in the Adjacent Area. All work under this section shall
25 be performed by a California-licensed contractor, in accordance with all applicable building
26 and safety codes, with all necessary permits.

27 1.4. **Permanent Delineation of Boundary.** Within twenty (20) days of completion
28 of the work on the Cap and Adjacent Area, S&W Atlas and Gary Weisenberg shall create

1 a permanent, visible delineation of the boundary of the entire Cap and Adjacent Area.

2 1.5. **Wall Replacement.** Within ninety (90) days of entry of Judgment (subject to
3 extension by order of the Court pursuant to Section J), S&W Atlas and Gary Weisenberg
4 shall install a new wall between the Atlas Iron and Metal Company facility and the Jordan
5 High School athletic field. The new wall shall be installed according to the Work Plan
6 attached as Exhibit 2. All work under this section shall be performed by a California-
7 licensed contractor, in accordance with all applicable building and safety codes, with all
8 necessary permits.

9 1.6. **Maintenance.** Following completion of the work described in Sections 1.2
10 through 1.4, S&W Atlas and Gary Weisenberg shall maintain the Cap and Adjacent Area as
11 follows while they own or occupy the Atlas Iron & Metal property, subject to expiration of
12 the injunctive terms of the Judgment:

13 1.6.1. Inspection of the Cap and Adjacent Area will be conducted at a
14 minimum of once per month to look for cracks or other damage, which would likely result
15 in exposure to underlying soil.

16 1.6.2. If repair of some or all of the Cap or Adjacent Area appears necessary
17 and will exceed \$5000, S&W Atlas and Mr. Weisenberg shall notify the Department within
18 ten (10) business days of the necessary repair, and shall complete the repair within thirty (30)
19 days thereafter. Any such repairs that require removal or replacement of any of the Cap or
20 Adjacent Area concrete are also subject to Department approval, which shall not be
21 unreasonably withheld. Repairs not requiring notification under this provision shall be
22 completed by S&W Atlas and Gary Weisenberg within thirty (30) days of discovery.

23 1.6.3. None of the following activities shall be conducted on the Cap or
24 Adjacent Area without written authorization from the Department:

- 25 (a) Metal recycling activities.
- 26 (b) Operation of equipment with a loaded weight in excess of 16,000
27 pounds, or a wheel loading in excess of 6,800 pounds.
- 28 (c) Placement or storage of any items, except empty steel bins no more

1 than 1000 pounds each, stacked no more than two high.

2 (d) Excavation, grading, removal, trenching, filling, earth movement, or
3 mining beneath the Cap or Adjacent Area, or in the areas providing
4 lateral support to the Cap or Adjacent Area.

5 (e) Any activities that violate the terms of S&W Atlas' Conditional Use
6 Permit, dated March 30, 2004.

7 1.6.4. S&W Atlas and Gary Weisenberg shall submit to the Department an
8 Annual Summary of their inspection and maintenance activities under this section. The
9 report must be mailed to the Department by the thirty-first of January of each year, and shall
10 describe the inspection and maintenance observations and activities during the previous
11 calendar year. Each Annual Summary shall contain a current photograph of the Cap and
12 Adjacent Area.

13 **2. LAND USAGE**

14 Within thirty (30) days of completion of the work described in Section 1 (excluding
15 Section 1.6.), Defendants shall execute the land use covenant attached as Exhibit 3 to this
16 Stipulation, and record it upon execution by the Department.

17 **3. PAYMENTS FOR WORK - ESCROW ACCOUNT.**

18 Unless the work described in Section 1 (excluding section 1.6) is completed by May 15, 2008, Defendants
19 shall deposit three hundred thousand dollars (\$300,000), less any amount that Defendants
20 have actually paid for work performed prior to May 15, 2008, into an escrow account, to be
21 known as the Atlas Remediation Escrow Account. The sole and governing purpose of the
22 Atlas Remediation Escrow Account and the funds contained therein shall be to pay for the
23 work described in Section 1 (excluding Section 1.6). The escrow instructions shall be in the
24 form and substance that Defendants have previously provided to the Plaintiffs. Following
25 the completion of the work described herein, the escrow shall terminate.

26 Exhaustion of the Atlas Remediation Escrow Account before completion of the work
27 described in this Stipulation and the Judgment shall not relieve S&W Atlas and Gary
28 Weisenberg of their obligations to perform work under the Stipulation or the Judgment.

1 **4. ADDITIONAL PAYMENTS**

2 4.1. In addition to the amount in Section 3, Defendants shall pay Plaintiffs the sum
3 of three hundred fifty thousand dollars (\$350,000), of which two hundred ten thousand
4 dollars (\$210,000) is cleanup costs of Plaintiffs for Jordan High School, ninety thousand
5 dollars (\$90,000) is administrative costs of Plaintiffs, and fifty thousand dollars (\$50,000)
6 is civil penalties. These amounts shall be due within thirty (30) days of entry of the
7 Judgment.

8 4.2. The payments shall be made by wire transfer or by certified or cashier’s check,
9 payable to the Department of Toxic Substances Control, and shall bear the title and case
10 number as follows: *People of the State of California, et al. v. S&W Atlas Iron and Metal*
11 *Co., et al.*, No. BC 316733, Los Angeles Superior Court. Defendants shall send all payments
12 to:

13 Department of Toxic Substances Control
14 Accounting Office
15 1001 “I” Street
16 P.O. Box 806
17 Sacramento, CA 95812-0806

18 A copy of all payments shall be sent to:

19 Florence Gharibian
20 Department of Toxic Substances Control
21 9211 Oakdale Avenue
22 Chatsworth, CA 91311-6505

23 Nancy Long
24 Department of Toxic Substances Control
25 Office of Legal Counsel
26 1001 “I” Street
27 P.O. Box 806
28 Sacramento, CA 95812-0806

29 **5. ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT**

30 Upon Defendants’ payment of the amounts described in paragraphs 3 and 4, Plaintiffs
31 shall file an Acknowledgment of Satisfaction of Judgment as to all defendants. As to
32 Defendants S&W Atlas and Gary Weisenberg, the Acknowledgment of Satisfaction of
33 Judgment shall not affect the injunctive provisions of the Judgment, and shall expressly state
34 that fact.

1 **E. NOTICE**

2 Unless otherwise specified in this Stipulation, all submissions and notices required
3 by this Stipulation shall be sent as follows:

4 For Plaintiffs:

5 Florence Gharibian
6 Department of Toxic Substances Control
7 9211 Oakdale Avenue
8 Chatsworth, CA 91311-6505

9 Nancy Long
10 Department of Toxic Substances Control
11 Office of Legal Counsel
12 1001 "I" Street
13 P.O. Box 806
14 Sacramento, CA 95812-0806

15 Thomas G. Heller
16 California Department of Justice
17 300 South Spring Street, Suite 1702
18 Los Angeles, CA 90013

19 For Defendants:

20 Gary Weisenberg, President
21 S&W Atlas Iron and Metal Co., Inc.
22 10019 S. Alameda Street
23 Los Angeles, CA 90002

24 **F. AUTHORITY TO ENTER STIPULATION**

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

28 **G. RETENTION OF JURISDICTION**

As to Section 1.6 of the Judgment, the Court may retain jurisdiction over the Parties
under Code of Civil Procedure section 664.6 for a period of ten years. The Court may retain
jurisdiction as to the other provisions of the Judgment until Defendants have complied in full
with those provisions, but not more than ten years.

H. INTEGRATION

This Stipulation constitutes the entire agreement between the Parties regarding the

1 matters specifically covered herein. The Parties hereto acknowledge that there are no
2 representations, agreements or understandings relating to this Stipulation other than those
3 expressly contained herein.

4 **I. AUTHORSHIP**

5 This Stipulation and all of its provisions shall be deemed to have been drafted equally
6 by all Parties hereto.

7 **J. REQUESTS FOR EXTENSION OF TIME**

8 Any Party may apply to the Court ex parte for an extension of any of the time periods
9 specified in this Stipulation or the Judgment.

10 **K. AMENDMENTS TO STIPULATION**

11 Except as to extensions of time pursuant to section J, this Stipulation may only be
12 amended pursuant to a written agreement signed by all Parties, followed by approval of the
13 Court if the amendment is sought during the period in which the Court retains jurisdiction.

14 **L. COUNTERPART ORIGINALS**

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

17 **M. EXPIRATION**

18 The injunctive provisions of the Judgment to be entered shall expire no later than ten
19 years after entry of the Judgment.

20 **N. RESERVATIONS OF RIGHTS**

21 This Stipulation shall not affect any claims, rights or remedies of any Party
22 concerning matters other than those alleged in the operative complaint.

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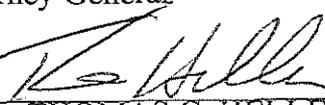
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1 This Stipulation shall also not prejudice any claims, rights or remedies of any Party
2 arising more than ten years after entry of the attached Judgment.

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4 Dated: April 2, 2008.

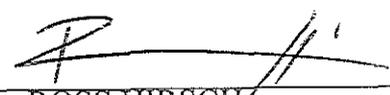
EDMUND G. BROWN JR.
Attorney General

6 By: 
7 THOMAS G. HELLER
8 Deputy Attorney General

Attorneys for Plaintiffs

9
10 Dated: April 3, 2008.

STANZLER, FUNDERBURK & CASTELLON

11 By: 
12 ROSS HIRSCH

Attorneys for Defendants

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EXHIBIT 1

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
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PEOPLE OF THE STATE OF CALIFORNIA, et
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S&W ATLAS IRON AND METAL CO., INC., et
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Defendants.

And related cross-action.

Case No.: BC316733
(Ordered related to BC 330071)

(Hon. Peter Lichtman - Dept. 322)

**JUDGMENT ON
COMPLAINT PURSUANT TO
STIPULATION**

Plaintiffs, THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel.
DEPARTMENT OF TOXIC SUBSTANCES CONTROL, and the TOXIC SUBSTANCES
CONTROL ACCOUNT, and Defendants, S&W ATLAS IRON AND METAL CO., INC.,
a corporation; GARY J. WEISENBERG, individually, as Trustee of the Dorothy Sebulsy
Trust, and as Co-Trustee of the Residual Trust created under the Will of Jacob L. Sebulsy;
SOPHIE WEISENBERG aka Sophia Weisenberg, as Co-Trustee of the Residual Trust
created under the Will of Jacob L. Sebulsy; DORIS SEBULSKY; and 10019 S.
ALAMEDA LLC, having presented and filed with the Court a written Stipulation for
Settlement and Entry of Judgment (the "Stipulation"), and good cause appearing for approval

1 of said Stipulation:

2 IT IS HEREBY ORDERED that judgment is awarded in favor of Plaintiffs and
3 against Defendants as set forth below.

4 **1. INJUNCTION TO PERFORM WORK**

5 Defendants S&W Atlas Iron and Metal Co., Inc. (“S&W Atlas”) and Gary
6 Weisenberg are enjoined and ordered to perform the following work at the Atlas Iron and
7 Metal property, 10019-10035-10047 South Alameda Street, Los Angeles, California 90002:

8 1.1. **Temporary Covers.** Currently, water resistant tarpaulins cover the area where
9 the larger pile described in the operative complaint was formerly located. S&W Atlas and
10 Gary Weisenberg shall leave such tarpaulins in place until the work described in Section 1.2
11 commences.

12 1.2. **Cap.**

13 1.2.1. Within ninety (90) days, S&W Atlas and Gary Weisenberg shall install
14 an engineered cap (“Cap”) over the former location of the larger pile. The Cap shall be
15 installed according to the Work Plan attached as Exhibit 2 to the Stipulation.

16 1.2.2. Construction of the Cap shall comply with all applicable building and
17 safety codes and all necessary permits.

18 1.2.3. All preparation for backfilling, backfilling, and compaction related to
19 installing the Cap shall be performed by a California-licensed General Contractor certified
20 for hazardous waste operations. All on-site personnel who are involved in such work,
21 including subcontractors, must have received the appropriate 40-hour training, 8-hour
22 refresher training, and medical monitoring in accordance with OSHA Hazardous Waste
23 Operators and Emergency Response (HAZWOPER) Standards (29 CFR 1910.120 and 8
24 CCR 5192). Proof of training and medical monitoring for all on-site personnel shall be
25 provided to the Department of Toxic Substances Control (“Department”) prior to mobilizing
26 to the site. All other work related to Cap installation shall be performed by a California-
27 licensed contractor.

28 1.2.4. Within thirty (30) days of completion of the Cap, S&W Atlas and Gary

1 Weisenberg shall submit written confirmation to the Department that the Cap was installed
2 in accordance with Section 1.2 and Exhibit 2 to the Stipulation.

3 1.3. **Adjacent Area.** During the time frame when the Cap is installed, S&W Atlas
4 and Gary Weisenberg shall repair the concrete area that is within ten feet of the eastern edge
5 of the former location of the larger pile, along the entire eastern edge of that location (the
6 “Adjacent Area”). These repairs shall consist of all work necessary to provide a smooth,
7 crack-free, durable concrete surface in the Adjacent Area. All work under this section shall
8 be performed by a California-licensed contractor, in accordance with all applicable building
9 and safety codes, with all necessary permits.

10 1.4. **Permanent Delineation of Boundary.** Within twenty (20) days of completion
11 of the work on the Cap and Adjacent Area, S&W Atlas and Gary Weisenberg shall create
12 a permanent, visible delineation of the boundary of the entire Cap and Adjacent Area.

13 1.5. **Wall Replacement.** Within ninety (90) days (subject to extension by order
14 of the Court pursuant to Section 5), S&W Atlas and Gary Weisenberg shall install a new
15 wall between the Atlas Iron and Metal Company facility and the Jordan High School athletic
16 field. The new wall shall be installed according to the Work Plan attached as Exhibit 2 to
17 the Stipulation. All work under this section shall be performed by a California-licensed
18 contractor, in accordance with all applicable building and safety codes, with all necessary
19 permits.

20 1.6. **Maintenance.** Following completion of the work described in Sections 1.2
21 through 1.4, S&W Atlas and Gary Weisenberg shall maintain the Cap and Adjacent Area as
22 follows while they own or occupy the Atlas Iron & Metal property, subject to expiration of
23 the injunctive terms of this Judgment under Section 5:

24 1.6.1. Inspection of the Cap and Adjacent Area will be conducted at a
25 minimum of once per month to look for cracks or other damage, which would likely result
26 in exposure to underlying soil.

27 1.6.2. If repair of some or all of the Cap or Adjacent Area appears necessary
28 and will exceed \$5000, S&W Atlas and Mr. Weisenberg shall notify the Department within

1 ten (10) business days of the necessary repair, and shall complete the repair within thirty (30)
2 days thereafter. Any such repairs that require removal or replacement of any of the Cap or
3 Adjacent Area concrete are also subject to Department approval, which shall not be
4 unreasonably withheld. Repairs not requiring notification under this provision shall be
5 completed by S&W Atlas and Gary Weisenberg within thirty (30) days of discovery.

6 1.6.3. None of the following activities shall be conducted on the Cap or
7 Adjacent Area without written authorization from the Department:

- 8 (a) Metal recycling activities.
- 9 (b) Operation of equipment with a loaded weight in excess of 16,000
10 pounds, or a wheel loading in excess of 6,800 pounds.
- 11 (c) Placement or storage of any items, except empty steel bins no more
12 than 1000 pounds each, stacked no more than two high.
- 13 (d) Excavation, grading, removal, trenching, filling, earth movement, or
14 mining beneath the Cap or Adjacent Area, or in the areas providing
15 lateral support to the Cap or Adjacent Area.
- 16 (e) Any activities that violate the terms of S&W Atlas' Conditional Use
17 Permit, dated March 30, 2004.

18 1.6.4. S&W Atlas and Gary Weisenberg shall submit to the Department an
19 Annual Summary of their inspection and maintenance activities under this section. The
20 report must be mailed to the Department by the thirty-first of January of each year, and shall
21 describe the inspection and maintenance observations and activities during the previous
22 calendar year. Each Annual Summary shall contain a current photograph of the Cap and
23 Adjacent Area.

24 **2. LAND USAGE**

25 Within thirty (30) days of completion of the work described in Section 1 (excluding
26 section 1.6.), Defendants shall execute the land use covenant attached as Exhibit 3 to the
27 Stipulation, and record it upon execution by the Department.

28 **3. PAYMENTS FOR WORK - ESCROW ACCOUNT.** Unless the work

1 described in Section 1 (excluding section 1.6) is completed by May 15, 2008, Defendants
2 shall deposit three hundred thousand dollars (\$300,000), less any amount that Defendants
3 have actually paid for work performed prior to May 15, 2008, into an escrow account, to be
4 known as the Atlas Remediation Escrow Account. The sole and governing purpose of the
5 Atlas Remediation Escrow Account and the funds contained therein shall be to pay for the
6 work described in Section 1 (excluding Section 1.6). The escrow instructions shall be in the
7 form and substance that Defendants have previously provided to the Plaintiffs. Following
8 the completion of the work described herein, the escrow shall terminate.

9 Exhaustion of the Atlas Remediation Escrow Account before completion of the work
10 required by this Judgment shall not relieve S&W Atlas and Gary Weisenberg of their
11 obligations to perform work under this Judgment.

12 **4. ADDITIONAL PAYMENTS**

13 4.1. In addition to the amount in Section 3, Defendants shall pay Plaintiffs the sum
14 of three hundred fifty thousand dollars (\$350,000), of which two hundred ten thousand
15 dollars (\$210,000) is cleanup costs of Plaintiffs for Jordan High School, ninety thousand
16 dollars (\$90,000) is administrative costs of Plaintiffs, and fifty thousand dollars (\$50,000)
17 is civil penalties. These amounts shall be due within thirty (30) days.

18 **5. OTHER ISSUES**

19 The terms of the Judgment may be modified only by an order of this Court.

20 Extensions of time may be requested from the Court on ex parte application, with
21 notice to the opposing party.

22 The Court retains jurisdiction over the parties under Code of Civil Procedure section
23 664.6 for a period of ten years as to Section 1.6 of the Judgment. The Court retains
24 jurisdiction as to the other provisions of the Judgment until Defendants have complied in full
25 with those provisions, but not more than ten years.

26 The Acknowledgment of Satisfaction of Judgment to be filed under the Stipulation
27 shall not affect the injunctive provisions of the Judgment.

28 The injunctive terms of this Judgment expire after ten years. Such expiration shall

1 not terminate the Land Use Covenant described in Section 2 of this Judgment.

2 The monetary terms of this Judgment are governed by Code of Civil Procedure Title
3 9, Chapter 3.

4 This Judgment shall not affect any claims, rights or remedies of any party concerning
5 matters other than those alleged in the operative complaint.

6 This Judgment does not prejudice any claims, rights or remedies of any party arising
7 more than ten years after entry of this Judgment.

8

9 Dated: _____, 2008.

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By: _____
Hon. Peter Lichtmann
Judge of the Superior Court

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